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Agreement on dumping and anti-dumping measures. The scope of the agreement, the definition of dumping and injury to the domestic industry, the imposition of anti-dumping duties. EU cases on Russian products.

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Multilateral Framework for trade in goods

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Trade Instruments – Overview (1)

GATT 1947/GATT 1994 – Rules for trade in goods

- Multilateral commitment to reduce trade barriers through rules since 1947
- Tariffs on goods are bound
- Tariff increases are exception: dumping, subsidies, safeguard
- Codes for interpretation of the rules, 1979 and 1994
- WTO strengthened rule based system as of 1994

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Trade Instruments – Overview (2)

European Union follows GATT rules

- Dumping – Art. VI GATT 1994
- Subsidies – Art. VI and XVI GATT 1994
- Safeguards – Art. XIX GATT 1994
- Trade Barriers Instrument (trade in goods and other issues)
- Subsidies and unfair pricing practices in the supply of air services
- Injurious pricing of ships

- See
- <http://ec.europa.eu/trade/tackling-unfair-trade/>

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Trade Instruments – Overview (3)

Other countries and trade zones

- Proliferation of trade protection rules all over the world
- Countries which heavily criticized Canada, EU, USA are now major users of these instruments
- Special rules within trade zones, such as NAFTA (the EU is a customs union, not only a free trade area)

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GATT AD Rules

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GATT AD Rules (1)

Dumping - Article VI GATT 1947/1994

- Article VI constitutes an exception:
It allows a country to increase the customs tariff,
thereby increasing the tariff rates for a given product from a given country;
see Article II 2 c GATT which deals with tariff concessions.

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GATT AD Rules (2)

Ratio legis - Article VI GATT 1947/1994

- GATT binds tariff rates for a given product from a given country, with effect for all.
- Only few exceptions exist, and tariff reductions hardly leave any protection in form of tariffs.
- Price discrimination can be challenged with competition law and/or unfair competition rules within a country or within a customs union, such as the European Union, but we do not yet have worldwide applicable competition rules.

GATT AD Rules (3)

Article VI

1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

GATT AD Rules (4)

- (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
- (b) in the absence of such domestic price, is less than either
 - (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
 - (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit. Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.*

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GATT AD Rules (5)

- 2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.*
- 6.(a) No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

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GATT AD Rules (6)

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

See for the full text http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm

In addition to the rules in Article VI GATT, more detailed rules governing the application of dumping measures were first provided in an Anti-dumping Agreement concluded at the end of the Tokyo Round (1979).

Negotiations in the Uruguay Round resulted in a revision of this agreement which addresses many areas in which the first agreement lacked precision and detail.

See for the text http://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm

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GATT AD Rules (7)

In the Doha Round two major sets of texts have been circulated, one in December 2008

http://www.wto.org/english/news_e/news08_e/rules_19dec08_e.htm

and one in April 2011

http://www.wto.org/english/tratop_e/dda_e/chair_texts11_e/chair_texts11_e.htm

http://wto.org/english/tratop_e/rulesneg_e/rulesneg_e.htm

Many disagreements still exist between the negotiating parties. The main areas of disagreements are shown in bracketed texts.

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Conditions for increasing tariff rates to counter dumping

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Dumping – Conceptual Issues

Definition and concept

- A company exports products at lower prices than the price it normally charges in its own country. In case of a non-market economy, the price should usually be determined in the analogue country's market.

Economic circumstances

- Material Injury
- It is necessary to show material injury or threat of material injury by reason of imports.

Competition law justification or other justification?

- Is dumping unfair competition?
- Art. VI GATT allows countries to take action against dumping.

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Dumping – Conditions (1)

Only when the following conditions are met :

- A **finding** of dumping: export price < home market price
- **Material Injury** to the domestic industry
- In the European Union, specific additional test:
- **Interest of the Union**: Costs of taking measures not disproportionate to benefits

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Dumping – Conditions (2)

Normal value - Price on the exporter's domestic market

- If not possible: calculation based on:
 - production costs,
 - other expenses and
 - normal profit margins

Export Price - Transaction price at which the exporting producer sells the product to a customer in the importing country

- if not appropriate for purposes of comparison
- then: *Constructed Export Price*

Comparison - *Fair comparison* between the export price and the normal value.

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Dumping – Conditions (3)

Definition of product – very detailed so as to allow calculation of price differences and later to permit administration of customs duties

Example – see spreadsheet

Dumping calculation

Comparison - *Fair comparison* between the export price and the normal value.

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Dumping – Practical Issues (1)

Like product – detailed comparisons will be made

EXPORT AND DOMESTIC PRODUCT SPECIFICATIONS - product control number								
DETERMINATION OF PRODUCT CONTROL NUMBER								
Product code in company's records	CN Code (*)	Outside diameter (*)	Wall thickness (*)	Fixed length (*)	Normalisation (*)	Finishing (*)	Testing (*)	Inspection (*)
sales code	production code	1 DIGIT	1 DIGIT	1 LETTER	1 LETTER	1 LETTER	1 LETTER	1 LETTER
	1 = CN code ex 73041010	A: <= 13,0 mm	1: <= 2,0 mm	L = if the product was ordered on a fixed length basis	N = if the product underwent normalisation or annealing	F = if the product was given end protection or underwent bevelling	T = if the product underwent non-destructive testing	I = if the product underwent third party inspection
	2 = CN code ex 73041030	B: > 13,0 mm to <= 20,0 mm	2: > 2,0 mm to <= 4,5 mm	X = not	X = not	X = not	X = not	X = not
	3 = CN code 73043199	C: > 20,0 mm <= 25,0 mm	3: > 4,5 mm <= 8,8 mm					
	4 = CN code 73043991	D: > 25,0 mm <= 34,0 mm	4: > 8,8 mm <= 32,0 mm					
	5 = CN code 73043993	E: > 34,0 mm <= 45,0 mm	5: > 32,0 mm to <= 50,0 mm					
	6 = CN code 73043999	F: > 45,0 mm <= 75,0 mm	6: > 50,0 mm <= 70,0 mm					
		G: > 75,0 mm <= 168,3 mm	7: > 70,0 mm <= 168,3 mm					
		H: > 168,3 mm <= 200,0 mm						
		I: > 200,0 mm <= 300,0 mm						
		J: > 300,0 mm <= 406,4 mm						

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Dumping – Practical Issues (2)

Export and domestic sales will be investigated

SN	PCN	NORM	GRADE	SALECOD	DOCTYPE	DATEISS	IVNUM	CREDEBNUM	NOBILL	CUSTNUM	CUSTREL	DEST
1	FC21NN	UNI 8863-87	Fe 330	101148100w	I	11.06.2004	4		1130200004004445		7U	IT
2	FB21NN	UNI 8863-87	Fe 330	103241100w	I	30.06.2004	8		1/LM dd. 17/07/04		8U	IT
3	FB21NN	UNI 8863-87	Fe 330	103241100w	I	30.06.2004	8		1/LM dd. 17/07/04		8U	IT
4	FC21NN	UNI 8863-87	Fe 330	101148100w	I	25.05.2004	1		1130200004003806		7U	IT
5	FC21NN	UNI 8863-87	Fe 330	101148100w	I	27.05.2004	2		1130200004003942		7U	IT
6	FC21NN	UNI 8863-87	Fe 330	101148100w	I	11.06.2004	3		1130200004004446		7U	IT
7	FC21NN	UNI 8863-87	Fe 330	101148100w	I	11.06.2004	5		1130200004004445		7U	IT
8	FC21NN	UNI 8863-87	Fe 330	101148100w	I	25.06.2004	7		2/LM dd. 17/07/04		5U	IT
9	FC21NN	DIN 2440-78	St33.2	103197175w	I	29.06.2004	8		1130200004005046		10U	IT
10	FB21NN	DIN 2440-78	St33.2	103197175w	I	29.06.2004	8		1130200004005046		10U	IT
11	FB21NN	DIN 2440-78	St33.2	103197175w	I	29.06.2004	8		1130200004005046		10U	IT
12	FB21NN	DIN 2440-78	St33.2	103197175w	I	29.06.2004	8		1130200004005046		10U	IT
13	FC21NN	DIN 2440-78	St33.2	103197175w	I	25.06.2004	7		1130200004004960		10U	IT
14	FB21NN	DIN 2440-78	St33.2	103197175w	I	25.06.2004	7		1130200004004960		10U	IT
15	FB21NN	DIN 2440-78	St33.2	103197175w	I	25.06.2004	7		1130200004004960		10U	IT
16	FB21NN	DIN 2440-78	St33.2	103241175w	I	29.06.2004	8		1130200004005046		10U	IT
17	FC21NN	DIN 2440-78	St33.2	101125175w	I	25.06.2004	6		1130200004004977		10U	IT
18	FC21NN	DIN 2440-78	St33.2	103197175w	I	25.06.2004	6		1130200004004977		10U	IT

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Dumping – Practical Issues (3)

Production costs will be determined

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6
PCN	PRODCOD	QTY SOLD	QTY PROD	DIRRAWMAT	DIROTHMAT
EA11NN, EB11NN, EB21NN		1695,469		6359,876	351,583
EB21NN, EB31NN, EC21NN, EC31NN		6259,599		12968,924	716,940
EB21YNN, EB31YNN, EC21YNN, EC31YNN		2437,83		6559,218	362,603
FA11NN		30,955		84,870	4,692
FB21NN, FB31NN, FC21NN, FC31NN		219,084		429,047	23,718
FC21NN, FC31NN, FC41NN		348,63		682,746	37,743
GC21YNN, GC31YNN, GC41YNN		652,84		2368,043	130,909
IB21NN, IB31NN, IC21NN, IC31NN		2926,488		10586,238	585,222
IB21YNN, IB31YNN, IC21YNN, IC31YNN		148,485		593,332	32,800
IC21NN, IC31NN, IC41NN		94,945		254,015	14,042
IC21YNN, IC31YNN, IC41YNN		180,49		1007,766	55,711
JC21NN, JC31NN, JC41NN		307,23		601,669	33,261
GC31NN, GC41NN		3535,545		6941,881	383,757
GC21NN		5953,125		15155,931	837,841
EA11NN		247,433		899,448	49,723
IA11NN, IB11NN		102,312		767,997	42,456
		25.140,46		66.261,00	3.663,00

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Dumping – Practical Issues (4)

Adjustments will be made if necessary

Case T-235/08 Acron – ammonium nitrate

The Commission ... examined whether the domestic sales could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. To this end, the cost of production of the product produced and sold by the applicant on the domestic market was examined.

Gas is a main raw material component in the manufacturing process of the product concerned and represents a significant proportion of the total cost of production. In accordance with Article 2(5) of the basic Regulation, it was examined whether the costs associated with the production and sales of the product under consideration were reasonably reflected in the records of the parties concerned.

http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=lst&docid=133602&occ=first&dir=&cid=691398

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Dumping – Practical Issues (5)

It was established on the basis of data published by internationally recognised sources specialised in energy markets, that the prices paid by the applicant were abnormally low. By way of illustration, they amounted to one fifth of the export price of natural gas from Russia and were also significantly lower than the gas price paid by the Community producers. In this regard, all available data indicate that domestic gas prices in Russia were regulated prices which are far below market prices paid in unregulated markets for natural gas.

Since gas costs were not reasonably reflected in the applicant's records, they had to be adjusted accordingly. In the absence of any undistorted gas prices relating to the Russian domestic market, and in accordance with Article 2(5) of the basic Regulation, gas prices had to be established on "any other reasonable basis, including information from other representative markets". The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), net of transport costs and adjusted to reflect local distribution costs. Waidhaus being the main hub for Russian gas sales to the EU, which is both the largest market for Russian gas and has prices reasonably reflecting costs, can be considered a representative market.

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Dumping – Practical issues (6)

Injury factors

- Material injury to the domestic industry, threat of material injury or material retardation of establishment of a domestic industry.
- Necessary detailed investigation of, inter alia,
 - Volume effects of dumped imports.
 - Price effects of dumped imports.
 - Impact of dumped imports on the European Union industry

Causality

- Necessary: Demonstration (based on examination of relevant evidence) of causal relationship between the dumped prices and the injury to the European Union industry.

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Dumping – Practical issues (7)

Injury factors – what if you have several factors ?

- For instance, quotas for textiles have been terminated while at the same time dumped products have been shipped in increased quantities to the EU. How do you attribute causes? Do you need to attribute causes? See
- Ahmed Gul Textile Mills, Case T-199/04 and C-638/11 P
- <http://curia.europa.eu/juris/document/document.jsf?text=&docid=110122&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=781681>
- <http://curia.europa.eu/juris/document/document.jsf?text=&docid=144488&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=781762>

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Dumping – Practical issues (8)

De minimis – in the EU

- No anti-dumping measure if dumping margin is low <2%
- No investigation against countries with a market share <1% unless >3% EU consumption.

EU Interest - EU approach

- Cost of taking measures can not be disproportionate to benefits. Broader EU interest to be considered.
- Producers, importers, users or consumers can present their views.
- Other countries do not have this approach.

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Dumping – Practical issues (9)

European Union: Lesser Duty Principle

- The measure shall be sufficient to remove injury. If this margin is lower than the margin of dumping, this lower rate will be used as duty rate.

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EU cases concerning Russian products

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EU cases concerning Russian products (1)

The EU has not many cases against Russian products. For instance in 2008, eight duties against Russia and India each and 48 against Chinese products out of some 140 and in 2012 five out of 102.

Ferro-silicon

[Provisional duties](#), August 2007

[Definitive duties](#), February 2008

[Ongoing expiry review](#)

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EU cases concerning Russian products (2)

Ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, F.Y.F.O.M. and Russia

FeSi is used in the iron and steel industry as an alloy and deoxidiser. FeSi production takes place in electric arc furnaces by means of reducing quartz using carbon-bearing products. The investigation period (IP) was 1 October 2005 to 30 September 2006. The examination of trends relevant for the injury assessment covered the period from 1 January 2003 to 30 September 2006.

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EU cases concerning Russian products (3)

Russia

The two cooperating exporting producers are the only known FeSi producers in Russia. The comparison of the normal value and export prices on an ex-works basis yielded duty margins of 22.7% and 17.8%. Given the high level of cooperation, the residual margin applicable to all other Russian exporters was set at the same level as the highest dumping margin established for a cooperating producer, i.e., 22.7%.

Injury

In order to ascertain the existence of material injury to the Community industry (CI), the effects of the imports from the countries under investigation were assessed cumulatively.

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EU cases concerning Russian products (4)

The investigation found clear evidence of injury to the Community industry. It was found that the volume of dumped imports increased significantly during the period considered, as did their market share to the detriment of the market share of the CI.

Furthermore, during the IP, the import prices undercut the prices of the CI between 4% and 11% depending on the exporting producer concerned, with the exception of a Russian, Egyptian and the sole exporting producer in the former Yugoslav Republic of Macedonia for which no undercutting was found. Price levels during the IP were found to be unsustainable since the CI was forced to sell below full cost in order to stay in the market.

The analysis of the injury indicators shows a significant deterioration in the condition of the Community industry: production, capacity utilisation and market shares all declined. Although some injury indicators showed positive trends, the overall analysis demonstrated that the Community industry had suffered material injury.

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EU cases concerning Russian products (5)

Causation

The coincidence in time between the increase in dumped imports and the deterioration in the situation of the Community industry was found to be a clear indication that the injury was caused by the dumped imports. The effect of other factors was examined such as the sharp increase in costs, in particular raw materials and electricity suffered by the CI. Nevertheless, it was found that the presence of low-priced dumped imports did not allow the CI to pass on the full effect of its increases in costs in its sales prices. As such, the effect of other factors was not found to be a cause of the injury suffered by the Community industry.

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EU cases concerning Russian products (6)

Community Interest, now European Union interest

The Commission carefully examined the interests of importers and users, in particular foundries and steel producers. Out of the 500 questionnaires sent to users, only eight cooperated - representing around 24 % of the total Community consumption of FeSi during the IP. However, it was concluded that the impact of anti-dumping duties would have a negligible effect on the overall turnover of the importers and steel producers, which in any event could be passed on to consumers.

What is more, the possible price increases would be likely, in any event, limited due to the availability of alternative sources without any duties and it was concluded that there were no compelling reasons against the imposition of measures.

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EU cases concerning Russian products (7)

Definitive Measures

Definitive measures were imposed on 28 February 2008, some based on dumping margins, some on the injury margins whichever was lower, on imports from the PRC (ranging from 15.6% to 31.2%), Egypt (15.4% to 18%), Kazakhstan (33.9%), the former Yugoslav Republic of Macedonia (5.4%) and Russia (17.8% to 22.7%).

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EU cases concerning Russian products (8)

Interim review

In October 2010 a partial interim review was initiated following a request from a Russian exporting producer, Joint Stock Company (JSC) Chelyabinsk Electrometallurgical Integrated Plant and its related company Joint Stock Company (JSC) Kuznetsk Ferroalloy Works, alleging that the dumping was lower than the current level of the measure and that the changes were of a lasting nature.

The comparison of normal value and export price with necessary adjustments revealed a dumping margin of 8.3%.

As regards the claims that the changes were of a lasting nature, the applicant cited changes to the export sales structure of the group including exploration of new markets such as India, Asia and the US as an indication of an expected drop in their level of exports to the EU. In addition, they claimed that expected growth in the Russian market with its increasing steel production along with higher prices to be obtained in other export markets meant that even in the absence of AD measures they would have no major incentive to export to the EU market.

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EU cases concerning Russian products (9)

However, the applicant was unable to provide sufficient proof of their claims and no conclusive independent data regarding the expected developments in the Russian market was provided. In addition the investigation had showed that while the dumping level had dropped, the export prices to the EU in the investigation period were very volatile and following trends in world prices. Consequently, the claims that the changes were of a lasting nature were rejected. As a result the review was terminated in January 2012 without any amendment to the existing measures.

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EU cases concerning Russian products (10)

Grain oriented flat-rolled products of silicon-electrical steel (GOES)

[Definitive duties](#), August 2005

[Expired](#)

Granular polytetrafluoroethylene (PTFE)

[Provisional duties](#), June 2005

[Definitive duties](#), December 2005

[Expired](#)

Pentaerythritol

[No measures](#)

SBS Thermoplastic Rubbers

[No measures](#)

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EU cases concerning Russian products (11)

[Seamless pipes](#) and tubes (or iron or non-alloy steel)

[Definitive measures](#), June 2006

[Expiry review result](#), December 2012

[Tube and pipe fittings](#) of iron or steel (certain)

[Provisional measures](#), July 2012

[Definitive measures](#), January 2013

Welded tubes and pipes of iron or non-alloy steel

[Definitive measures](#), December 2008 Council Regulation 1256/2008

[Expiry review](#) ongoing

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Court challenge

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Court challenge (1)

Example of direct action to courts in Luxemburg

Interpipe Niko Tube ZAT and Interpipe NTRP VAT, Case T 249/06, Judgment 10 March 2009

In their fourth plea, the applicants argue that the Council made a manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation, in that the deduction from Sepco's sale price of an amount corresponding to the commission which an agent working on a commission basis would have taken implies a functional asymmetry between the normal value and the export price, that asymmetry affecting the comparability of prices.

The Council argues that the applicants are ignoring the fact that they themselves explained that SPIG Interpipe received a commission for all sales made through the intermediary of Sepco. Since SPIG Interpipe was associated both with internal and export sales, and since the adjustment covered only the supplementary participation of Sepco in export sales, the operation created a symmetry and not an asymmetry.

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Court challenge (2)

Findings of the Court

This Court is of the view that the limb of the fourth plea claiming manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation cannot be regarded as an autonomous limb in relation to the limb of the same plea claiming infringement of Article 2(10)(i) of the basic regulation. In this case, the applicants claim that the adjustment, pursuant to Article 2(10)(i) of the basic regulation, is unjustified since, far from rendering the normal value and the export price comparable, it created a functional asymmetry. Such an adjustment thus constituted a manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation.

According to the case-law, it is apparent both from the wording and the general system of Article 2(10) of the basic regulation that an adjustment of the export price or normal value may be made only in order to take account of differences concerning factors which affect prices and thus their comparability (*Kundan and Tata v Council*, cited in paragraph 180 above, at paragraph 94). In other words, and to use the terminology used by the applicant, the *raison d'être* of an adjustment is to re-establish the symmetry between normal value and export price.

Court challenge (3)

Thus, if the adjustment has been validly made, that implies that it has re-established the symmetry between normal value and export price. By contrast, if the adjustment has not been validly made, that implies that it has maintained or created an asymmetry between the normal value and the export price.

In this case, the limb of the fourth plea claiming the existence of a manifest error of assessment in applying Article 2(10)(i) of the basic regulation has been upheld in so far as the Council made an adjustment on the export price charged by Sepco, in the context of transactions concerning pipes produced by NTRP, but has been dismissed in so far as it concerns the adjustment on the export price charged by Sepco in the context of transactions concerning pipes produced by Niko Tube (see paragraph 190 above). The Court must therefore hold that there has been a manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation in so far as an adjustment was made on the export price charged by Sepco in the context of transactions concerning pipes produced by NTRP and that there has been no manifest error of assessment in applying the first subparagraph of Article 2(10) of the basic regulation in so far as an adjustment was made on the export price charged by Sepco in the context of transactions concerning pipes produced by Niko Tube.

WTO challenge

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WTO challenge

- Review of (national) decisions by dispute settlement panels
 - GATT/WTO
 - Art. 16 Committee on Anti-Dumping practices
 - Art. 17 Dispute settlement by panels
 - Uruguay Rounds understanding rules and procedures governing settlement procedures (DSU).
 - Doha Round. Proposal to create a permanent Court integrated by professional judges in place of the actual system based in panels.

Example

DS 474 Russia vs, EU - Cost Adjustment Methodologies

http://wto.org/english/tratop_e/dispu_e/cases_e/ds474_e.htm

<http://ictsd.org/i/news/bridgesweekly/182330/>

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