

**Committee on Anti-Dumping Practices
Ad Hoc Group on Implementation**

Original: English

**LIST OF QUESTIONS POSED BY MEMBERS ON THE APPLICATION OF THE
LESSER DUTY RULE AND CONSIDERATION OF PUBLIC INTEREST**

Replies of the European Communities

The following communication, dated 9 April 2001, has been received from the Permanent Delegation of the European Commission.

The following are the EC's answers to the questions posed by other Members on public interest and compiled by the Secretariat in its paper G/ADP/AHG/W/107 of 7 March 2001.

The relevant provisions on the EC's public interest test are basically contained in Articles 7, 9 and 21 of the EC Basic Anti-Dumping Regulation. The assessment of public interest is based on an appreciation of all the various interests in the Community taken as a whole by analysing the likely economic impact of the imposition or non imposition of measures on economic operators in the Community.

The assessment is therefore concentrated on those operators likely to be directly affected by the measures, i.e. usually those located one step upwards and one step downwards in the production/consumption chain compared to the product concerned by the investigation. Over and above the operators one step upwards and one step downwards of the product concerned, the EC also examines the situation of those operators in the EC which can prove that there is an objective link between their activities and the product concerned. All these operators are subsequently referred to as 'interested parties'.

Q1. Are the industrial users and consumer organisations given the right to review and copy the non-confidential versions of all documents submitted by the parties to the investigation? (This is relevant only to Members who do not maintain a full public file of all documents relating to the investigation.)

Reply

If they qualify as an interested party, as all such parties, they can review and, to the extent practically possible, copy non-confidential versions of documents at any stage of the investigation after initiation.

Q2. At what stage of the investigation do the Members provide opportunities for the industrial users and consumer organisations to provide information? Do they have a right to be heard as well as submit written information?

Reply

Under EC anti-dumping legislation, if they qualify as interested parties and if they have made themselves known within the period specified in the notice of initiation of the AD proceeding, they can provide information for the purposes of the EC's public interest test and also request a hearing as any other interested party. In addition, in order to facilitate the collection of information, the EC, in the framework of the Community interest part of the investigation, also follows a proactive approach and contacts and/or sends questionnaires to all parties known to be concerned and the relevant associations. Information is requested from such interested parties within the same time frame as for the dumping and injury investigation, i.e. within 40 days from initiation.

Furthermore, as all other interested parties they may also provide comments on the application of any provisional anti-dumping duties imposed within a month of the application of such measures.

Such comments, or appropriate non confidential summaries thereof, shall also be made available to all other interested parties who will be entitled to respond to such comments.

Q3. Are there Members who maintain a verification procedure for verifying the factual information submitted by these parties?

Reply

Depending on whether the information is substantiated by actual evidence and, in general terms, on its relevance, the EC verifies the information provided by interested parties as for the other aspects of the investigation.

Q4. Do those Members which do not include a public interest clause in their anti-dumping regimes also provide an opportunity to industrial users and consumer organisations to provide information and to what extent, if any, do their views have on the determinations made by the Authorities?

Reply

Not applicable. The EC has a public interest clause in its anti-dumping legislation.

Q5. To what extent, do those Members who do include a public interest clause in their anti-dumping regimes, consider, the information and comments received by the Industrial users and consumer organisations in their final determinations. It may be useful to provide specific examples of cases where those comments actually had an impact on the final determination.

Reply

Information submitted by interested parties is taken into consideration both at the provisional stage and at the definitive stage. This information will only be taken into account where it is supported by actual evidence which substantiates its validity. On this basis, an overall assessment of the likely impact of the imposition or non imposition of measures on the interested parties in the Community will be carried out. According to EC law and practice, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition is given special consideration. On this basis, measures may not be applied where it can be clearly concluded that it is not in the Community interest to impose such measures.

The assessment of the public interest in the EC was either the main or one of the reasons for the termination of proceedings without imposition of measures in the following cases: laser optical reading systems (LORS)¹, synthetic handbags², gum rosin³, tungstic oxide and acid⁴, and ferro-silicon.⁵ An analysis of these cases shows, that the imposition of AD measures was not found to be in the EC's interest, (a) if it was most unlikely that the Community industry could have benefited from such measures or (b) if their negative economic effects on interested parties would have been disproportionate when compared to their positive effects.

Q6. Do Members affording opportunities for industrial users to comment also include the suppliers of the raw material as parties who may also provide relevant information to the Authorities?

Reply

As outlined above, if a supplier qualifies as an interested party they may provide relevant information and also participate in the proceeding, i.e. they may request a hearing, consult and respond to comments submitted by other interested parties and receive disclosure.

Q7. Is there any distinction drawn between the preliminary and final determination in respect to the relevance of the information provided by the users or consumers?

Reply

As mentioned above in the EC's reply to question 5, there is no distinction drawn between the preliminary and final determination in respect to the relevance of the information provided by interested parties. In other words, under EC legislation, public interest is at issue both at the provisional and at the definitive stage of anti-dumping investigations.

Q8. How do other members take into account the "relevancy" of submissions from consumers and downstream users?

Reply

Please refer to the EC's reply to question 5.

Q9. Are competition authorities, on behalf of consumers and downstream industries, allowed/required to provide input?

Reply

Under EC anti-dumping legislation, there is no specific provision allowing/requiring competition authorities to provide submissions during an investigation on behalf of consumers and downstream industries. However, EC competition authorities may provide input to an anti-dumping investigation in cases. Such input could for instance be relevant where there is a link with on-going or concluded investigations carried out by competition authorities or where the imposition of any anti-dumping measures might have significant consequences on the conditions of competition within the EC.

¹ OJ L 18, 23.1.99 p.62

² OJ L 208 2.8.97 p.31

³ OJ L 41, 12.02.94 p.50

⁴ OJ L 87; 21.3.98 p. 24

⁵ OJ L 84, 23.3.01, p. 36

Q10. Can representations from these groups result in the reduction of anti-dumping duties?

Reply

According to EC 's legislation and practice, public interest considerations as such and in particular considerations from these groups do not have an impact on the level of the anti-dumping measures. The possible results of the application of the public interest test would be that either anti-dumping measures are imposed or they are not imposed at all.

In fact, the level of anti-dumping measures results from the application of the lesser duty rule.

Q11./13. Is not public interest a sovereign judgement? Can not a sovereign determine that its economy is best served by enforcement of Anti-Dumping laws?

Reply

The EC considers that decisions on the public interest test as well as decisions on the other tests involved in anti-dumping investigations (i.e. dumping, injury and causation) are the result of the application of the law.

Q12. May not the public interest lie in enforcement of Anti-Dumping laws?

Reply

Please refer to the EC's reply in question 5 above. In EC's practice, the assessment can also lead to the clear conclusion that the enforcement through the imposition of measures is in the interest of the EC.

Q14. Does consideration of public interest testimony allow for testimony of producers and employees of the industries subject to alleged dumping?

Reply

Under EC anti-dumping legislation, domestic producers are considered as interested parties and have therefore the right to provide information etc. provided they comply with the various procedural requirements. As to employees of the domestic industry, up to now we have not come across a case where they wanted to participate in an AD investigation probably because they considered their situation as already being sufficiently addressed by the submissions of their employers. In any event, submissions of employees as those of all other interested parties would have to be supported by actual evidence substantiating the validity of their claims.

Q15. To what extent is a public evaluation affected by the fact that the duty is less than the margin of dumping?

Reply

As mentioned above, the EC applies a lesser duty rule. The application of the lesser duty rule is, nevertheless, independent from the assessment of public interest in the EC.

Q16. In the context of lesser duty calculations, to what extent, if any, are competition authorities allowed in the process?

Reply

Under EC anti-dumping legislation, there is no specific provision governing the intervention of competition authorities in the context of lesser duty calculations. In any event, our practice shows that competition authorities never considered it opportune to intervene in anti-dumping investigations in this context.

Q17. To what extent, if any, are importers in the investigation allowed to represent the downstream consumer?

Reply

Under EC anti-dumping legislation, importers and their representative associations are also considered as interested parties. They are subject to and benefit from the same procedural rules as other parties.

Importers are not allowed to represent downstream consumers under EC anti-dumping legislation. However, if they submit substantiated information concerning the likely impact of measures on the situation of consumers, this information will be taken into consideration for the purposes of the assessment of public interest in the EC.

As mentioned above, consumer organisations are of course entitled to intervene directly as interested parties in the public interest investigation if they demonstrate that there is an objective link between the product under consideration and their activities.
