ANTI-DUMPING LAW

NOVEMBER 2018 UPDATE

CHAPTER 2

ANTI-DUMPING

Section 1 Elements constituting dumping

I. Criteria to determine product concerned and like product

2.02. Multi-criteria analysis

As for competition, but according to a different method as this is not a matter of analyzing a conduct on the market or structural changes in the supply of goods or services, the Commission carries out a

multi-criteria analysis to define the product concerned or like product. Three series of criteria are generally used to identify a product: its nature, its conditions of use and how it is marketed.

The adoption of anti-dumping measures at the end of the procedure depends, to a large extent, on the definition of the product concerned[1]. The definition of "the product under consideration" at the time the investigation is initiated, does not prevent the EU institutions from subdividing the product into individual product types or models or from relying on model-by-model or type-by-type comparisons between the normal value and the export price, provided that an overall dumping margin for the product under consideration as a whole is established[2].

Anti-dumping duties may be extended to types of products which are not dumped where they are perfectly interchangeable with the product in question[3]. According to the Court of Justice, the concept of "product concerned" within the meaning of Article 1 of the Basic Regulation read in the light of the 1994 Anti-dumping Agreement, does not necessarily refer to a product envisaged as a homogeneous whole[4].

II. Dumping

A. Normal value

1° Market economy countries

a) Calculation methods

2.11. Order of application

The three methods of calculation of the normal value set out in Article 2 of the regulation apply in the order they are mentioned. It is only when none of those methods may be applied that use is made of the general provision set forth in Article 2(6)(c), according to which costs and profits are to be determined on 'any other reasonable method'[5]. The two methods which depart from the method based

[1] Case C-232/14 Portmeirion Group UK Ltd, Judgment of 17 March 2016, LawLex16606, holding that the constituent elements of the concept of "product under consideration", and especially the assessment of its homogeneous nature, necessarily determine those to be attributed to the "product concerned".

[2] Cases C-376/15 P and C-377/15 P Changshu City Standard Parts Factory, Judgment of 5 April 2017, LawLex17711: the EU institutions were entitled to exclude from the calculation of the dumping margin export transactions relating to certain types of the product under consideration because there were no "comparable prices" for those product types, price comparability not being taken into account in the context of the application of Article 2(10) of the basic regulation but only in that of the application of Article 2(11) thereof.

[3] See, for example, regarding persulphate having a content of persulphate of more than 99%: Commission Regulation No 1748/95 of 17 July 1995, LawLex092750.

[4] Case C-232/14 Portmeirion Group UK Ltd, Judgment of 17 March 2016, LawLex16606.

[5] Case 277/85 Canon v Council [1988] ECR 5731, LawLex092332, considering that the Commission enjoys a margin of discretion regarding the order of application of the two other subsidiary methods of calculation; C-76/98 P Hamptaux v Commission [1999] ECR-SC I-A-59, II-303, LawLex091174, stating that the normal value must be established having regard primarily to the price actually paid or payable in the ordinary course of trade.

on actual prices, are exhaustive and both relate to the characteristics of the sales effected rather than to the price of the product[6].

The normal value must be determined having regard primarily on the price actually paid or payable in the ordinary course of trade[7], the Commission enjoying a margin of discretion regarding the order of application of the two other subsidiary methods of calculation[8]. The first method is used where the domestic prices are regarded as representative, which is in principle the case where the volume of sales in the ordinary course of trade on the domestic market is at least 5% of the volume of sales of the product concerned in the Union[9]. Where the domestic prices are not representative, the Commission is free to determine the normal value based on the price of product when exported to a third country or using the method of constructed value[10]. The criterion relating to market size is not in principle a factor capable of being taken into consideration in the choice of a reference country, provided that that market is representative in relation to exports[11].

Thus, the basic method consists in calculating the normal value based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country (Art. 2(1)) or on the basis of prices of other sellers or producers, where the exporter does not produce or does not sell the like product in the exporting country.

A second method (the so-called constructed value) consists in calculating the normal value on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits. It constitutes the most used alternative method.

A third method takes account of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative. This method is rarely used by the Commission since it is particularly difficult to define the concept of appropriate third country. To base itself on export prices on markets other than European markets, it must be able to demonstrate that these prices are not dumped and some international currency fluctuations would make it even more

[6] Case C-76/98 P Hamptaux v Commission [1999] ECR-SC I-A-59, II-303, LawLex091174.
[7] Case C-76/98 P Hamptaux v Commission [1999] ECR-SC I-A-59, II-303, LawLex091174.
[8] Case 277/85 Canon v Council [1988] ECR 5731, LawLex092332.
[9] Commission Regulation (EC) No 3643/84 of 20 December 1984, imports of electronic typewriters (Japan), LawLex092659.
[10] Case 277/85 Canon v Council [1988] ECR 5731, LawLex092332.
[11] Case T-675/15 Shanxi Taigang Stainless Steel Co. Ltd., Judgment of 23 April 2018, LawLex18627: the Commission had not erred in choosing the United States as a more appropriate analogue country than Taïwan due to the level of competition and the size of the market since there were at least four large producers of a like product in the United States whereas in Taïwan, the market and prices of the products concerned are driven, to a large extent, by one group of companies are not due to a normal competitive interaction.

difficult to choose an export market in an appropriate third country[12]. The condition of representative prices further implies that the sales on export markets are sufficient in volume and that the products concerned are fully and directly comparable to the products exported to the Union[13].

Lastly, where there is no representative sales volume on the domestic market, the normal value may also be determined on the basis of a combined use of the domestic prices of the country of origin and the export prices to a third country, both countries constituting one large competitive market having the characteristics of a single market[14].

2° Non-market economy countries

2.20. Choice of reference country

An appropriate market economy third country must be selected in a not unreasonable manner "due account being taken of any reliable information made available at the time of selection". A market economy third country which is subject to the same investigation may be retained to take account of time-limits (Regulation No 2016/1036, Article 2(7)(a)).

According to the Commission[15], a market economy third country is an appropriate analogue country, where the domestic prices are governed by market forces[16], the market accounts for two producers being in competition[17] and having both cooperated, imports from third countries are significant[18], certain factors show that the manufacturing techniques and processes are quite similar and highly cost effective[19], and the selected producer has very good access to the main raw materials used in the manufacturing process[20]. The size of the third country market is irrelevant: it is sufficient that the

[12] Council Regulation (EU) No 341/90 of 5February 1990, imports of ferro-silicon (Iceland, Norway, Sweden, Venezuela, Yugoslavia), LawLex092386.
[13] Commission Regulation (EC) No 2376/94 of 27 September 1994, imports of color television receivers (Malaysia, China, Korea, Singapore and Thailand), LawLex092743.
[14] Case T-164/94 Ferchimex v Council [1995] ECR II-2681, LawLex091275.
[15] Commission Regulation (EC) No 358/2002 of 26 February 2002, imports of certain tube and pipe fittings, of iron or steel (the Czech Republic, Malaysia, Russia, Korea, the Slovak Republic), LawLex092811.
[16] The mere fact that the reference country subjects imports from certain third countries to anti-dumping duties does not allow the conclusion that there is no price competition: Council Regulation (EU) No 2605/2000 of 27 November 2000, imports of certain electronic weighing scales (China, Korea, Taiwan), LawLex092591.
[17] The mere fact that there is only one producer in a third country does not preclude from retaining that qualification where genuine price competition may result from significant imports: Case C-26/96 Rotexchemie v Hauptzollamt Hamburg-Waltershof [1997] ECR I-2817, LawLex092171. On the nature of the competitive environment, Commission Regulation (EC) No 255/2001 of 7 February 2001, imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China, LawLex092843.
[18] Case C-26/96 Rotexchemie v Hauptzollamt Hamburg-Waltershof [1997] ECR I-2817, LawLex092171.
[19] Different methods do not preclude from making any comparison where the selected producer operated in a highly cost effective environment, which is the result of continuous research and investment: Commission Regulation (EC) No 1002/98 of 13 May 1998, imports of unwrought unalloyed magnesium originating in the People's Republic of China, LawLex092829.
[20] Commission Regulation (EC) No 1002/98 of 13 May 1998, imports of unwrought unalloyed magnesium originating in the People's Republic of China, LawLex092829.

minimum threshold of 5% of the sales volume in the Union in relation to the exports in question is reached[21]. Lastly, products must fall within a same range level[22]. The suitability of the analogue country selected for the purposes of determining the normal value may not be assessed solely in the light of the domestic production (even if a monopoly) of the products at issue, but in the light of the competition on the sales market for the products[23]. In the absence of any analogue third country, the Commission may use the Union as an analogue market[24].

Although the choice of the appropriate market economy third country falls within the discretion enjoyed by the Commission, there can be no doubt on the competitive character of the country retained[25]. Otherwise, normal value will not be regarded as determined in an appropriate and reasonable manner, in particular where the Commission has not seriously examined another country proposed[26]. The discretion enjoyed by the Commission in the choice of an analogue country does not authorize it to disregard the requirement to choose a market economy third country where such a choice is possible. Therefore, where the Eurostat statistics available at the time of the investigation suggest that products similar to the product concerned are produced in market economy third countries in quantities which are not insignificant, it is the duty of the Commission to examine on its own initiative whether one of those countries could constitute an analogue country for the purposes of Article 2(7) of the basic regulation[27].

2.21. Market economy producer

The producer or producers which are subject to investigation and are established in a non-market economy country may claim, under the conditions of Article 2(7)(b) of the anti-dumping regulation, for the system applicable to producers active in a market economy country[28]. The claim must be made

[21] Case C-305/86 Neotype Techmashexport v Commission and Council [1990] ECR I-2945, LawLex09648; Council Regulation (EU) No 930/2003 of 26 May 2003, imports of farmed Atlantic salmon (Norway, Chili, Faeroe Islands), LawLex092550.

[22] See also Council Regulation (EU) No 2605/2000 of 27 November 2000, imports of certain electronic weighing scales (China, Korea, Taiwan), LawLex092591, which considers that an appropriate third country may be identified in view of the significant volume of domestic and export sales made as compared to imports into the Union of the products concerned from a non-market economy country, given the level of competition on the markets in that third country and in foreign countries, which allowed for reasonable profits, and to the extent that products fall within the same range level.

[23] Case T-351/13 Crown Equipment (Suzhou), Judgment of 18 October 2016, LawLex161706.

[24] Commission Decision No 98/90 of 21 January 1998, imports of dihydrostreptomycin, LawLex11607.

[25] Case C-16/90 Panagiotopoulou v Parliament [1992] ECR II-89, LawLex09633. See also, Commission Decision No 2000/137 of 17 February 2000, imports of certain seamless pipes and tubes of iron or non-alloy steel (Croatia, Ukraine), LawLex11522, which retains as an indication of the status as a non-market economy country the offer of joint undertaking by the exporting producers underpinned by guarantees given by the national authorities to ensure adequate monitoring, particularly with regard to the maximum volume of anti-dumping duty free imports.

[26] Case C-16/90 Panagiotopoulou v Parliament [1992] ECR II-89, LawLex09633.

[27] Case C-338/10 GLS, Judgment of 22 March 2012, LawLex12646.

[28] The claim must be submitted by the whole group involved in the production and sale of the product rather than only by one company within the group: Commission Regulation (EC) No 1043/2000 of 18 May 2000, imports of glycine (China), LawLex092872.

in writing and contain sufficient evidence that the producer operates under market economy conditions[29]. Article 2(7)(c) sets forth the cumulative conditions that the producer in question must meet[30]:

- decisions of firms regarding prices, costs and inputs - raw materials, technology, labor, output, sales and investments - are taken in accordance with supply and demand[31], without significant State interference[32]; costs of major inputs must substantially reflect market values. Domestic sales restrictions[33], sales at a loss on the domestic market[34] or centrally imposed price controls[35] are regarded as excluding the free market rules from applying;

- firms have only one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes[36];

- the production costs and financial situation of firms are not subject to significant distortion carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade or payment via compensation of debts[37]; the Court of Justice has specified that the words "former non-market economy system" do not refer necessarily and specifically to the historic economic system of a state-trading country, but, more generally, to a non-market

[29] The claim is dismissed if the answer to the questionnaire is sent after the deadline and is clearly insufficient because there is no list of export sales to the Union of the domestic sales, as well as the required information on the cost of production: Commission Regulation (EU) No 230/2001 of 2 February 2001, imports of certain iron or steel ropes and cables (the Czech Republic, Russia, Thailand, Turkey), LawLex092845.

[30] These conditions must be met by all the companies belonging the a same group to be given the status as market economy producer to one of them: Case T-1/07 Apache Footwear and Apache II Footwear v Council [2009] ECR II-232*, Summ.pub., LawLex11231.

[31] As regards compliance with market signals, see Council Regulation (EU) No 692/2005 of 28 April 2005, imports of certain electronic weighing scales (REWS) originating, inter alia, in the People's Republic of China, LawLex092497.

[32] Council Regulation (EU) No 1612/2001 of 3 August 2001, imports of ferro molybdenum originating in the People's Republic of China, LawLex092832, which defines significant State interference as the exercise of a direct influence in the management of companies to the imposition of limitations in the freedom to run the business and the creation of distortions in the costs of major inputs; Case T-498/04 Zhejiang Xinan Chemical Group Industrial v Council [2009] ECR II-1969, LawLex11241, which excludes that State 'control' or 'influence' might be a criterion expressly laid down in Article 2(7)(c) where such a control is not, as such, incompatible with the taking of commercial decisions in keeping with market economy conditions.

[33] Commission Regulation (EC) No 1043/2000 of 18 May 2000, imports of glycine (China), LawLex092872; Council Regulation (EU) No 2605/2000 of 27 November 2000, imports of certain electronic weighing scales (China, Korea, Taiwan), LawLex092591.

[34] Council Regulation (EU) No 2605/2000 of 27 November 2000, imports of certain electronic weighing scales (China, Korea, Taiwan), LawLex092591; Case T-35/01 Shanghai Teraoka Electronic v Council [2004] ECR II-3663, LawLex091352.

[35] Council Regulation (EU) No 2605/2000 of 27 November 2000, imports of certain electronic weighing scales (China, Korea, Taiwan), LawLex092591.

[36] Commission Regulation (EU) No 230/2001 of 2 February 2001, imports of certain iron or steel ropes and cables (the Czech Republic, Russia, Thailand, Turkey), LawLex092845; Council Regulation (EU) No 692/2005 of 28 April 2005, imports of certain electronic weighing scales (REWS) originating, inter alia, in the People's Republic of China, LawLex092497; Case T-299/05 Shanghai Excell M&E Enterprise and Shanghai Adeptech Precision v Council [2009] ECR II-573, LawLex091938.

[37] Case T-1/07 Apache Footwear and Apache II Footwear v Council [2009] ECR II-232*, Summ.pub., LawLex11231, for a Chinese producer which had a rent for immovable properties that was significant lower than the market price from the former non-market economy system.

economy system[38]; in addition, even if the connection of a measure to various five-year plans implemented in China is sufficient for the assumption that that measure constitutes a distortion carried over from the former non-market economy system, the producer concerned may rebut that presumption if it demonstrates, to the requisite legal standard, that the measure in question is not inherently contrary to a market economy[39];

- the firms concerned are subject to bankruptcy and property laws;

- exchange rate conversions are carried out at the market rate.

The Commission has a maximum of between seven and eight months after the initiation of the proceedings to decide whether the producer meets these criteria, after the Union industry has submitted comments. The solution retained remains in force throughout the proceedings. Non-compliance with the three-month period does not entail the annulment of the regulation relating to the review which is adopted subsequently[40]. The Commission must respond individually to each MET (market economy treatment) claim submitted. Using the sampling technique does not authorize the Commission to depart from its obligation to rule individually on a producer's application for MET status pursuant to a properly substantiated claim, since such an obligation concerning the recognition of the economic conditions under which each producer operates in respect of the manufacture and sale of the like product concerned, is not affected by the manner in which the dumping margin is to be calculated[41]. Even if tax breaks such as reduced tax rates, which presuppose State intervention, may orientate the conduct of undertakings in a different direction to that caused by the forces present in a market economy, the mere existence of such measures does not suffice for a refusal to grant the applicant MET[42].

Where evidence is not brought that the producer is active in a market economy, the provisions of Article 2(7)(a) apply[43]. This is also the case where, within the three months following the initiation of the anti-dumping proceedings, the producer in question is found not to fulfill the criteria which an

[38] Case C-301/16 P Commission v GMB Glasmanufaktur Brandenburg GmbH, Xinyi PV Products (Anhui) Holdings Ltd, Judgment of 28 February 2018 LawLex18339, holding that insofar as the tax incentives concerned implement a five-year plan, a characteristic feature of non-market economies which is fundamental to the organization of the Chinese economy, the Commission was entitled to presume that those measures had been "carried over from the former non-market economy system" and therefore did not commit a manifest error of assessment by refusing to grant the Chinese producer market economy treatment (MET) status.
[39] Case C-301/16 P Commission v GMB Glasmanufaktur Brandenburg GmbH, cited above.
[40] Case T-299/05 Shanghai Excell M&E Enterprise and Shanghai Adeptech Precision v Council [2009] ECR II-573, LawLex091938.
[41] Case C-247/10 P Zhejiang Aokang Shoes v Council, Judgment of 15 November 2012, LawLex122407.
[42] Case T-586/14 Xinyi PV Products Holdings Ltd, Judgment of 16 March 2016, LawLex16605.
[43] Council Regulation EU No 92/2002 of 17 January 2002, imposed on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine, LawLex092602.

undertaking operating under market economy conditions must satisfy, following changes in the factual situation or the discovery of new evidence of which the Commission could not reasonably have been aware at the time of the determination of the status of the firm active in a market economy[44].

B. Export price

2.25. Constructed price

Where there is no actual export price or the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party[45], the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer[46], or, if the products are not resold to an independent buyer, or are not resold in the State to which they have been imported, on any other reasonable basis (Art. 2(9)(1), Regulation No 2016/1036). A transaction-by-transaction method may be preferred to a weighted average of the prices charged where it is used to preclude certain maneuvers in which dumping is disguised by charging different prices, some above the normal value and some below it[47].

In order to establish a reliable export price at the European frontier level, adjustments must be made to take account of all costs, including duties and taxes, incurred between importation and first resale to an independent buyer, and a profit margin (Art. 2(9)(2), Regulation No 2016/1036)[48]. In particular, costs and profits inherent in the activity pursued by the exporter's subsidiary which is established in the

[44] Case T-138/02 Nanjing Metalink v Council [2006] ECR II-4347, LawLex091229.
[45] Regulation No 2016/1036, Article 2(9)(1); Case T-51/96 Miwon v Council [2000] ECR II-1841, LawLex0899, stating that the constructed export price may be used not only where the institutions obtain actual evidence of the existence of a compensatory arrangement but also where such an arrangement appears to exist or the export price reported appears to be unreliable; T-88/98 Kundan and Tata v Council [2002] ECR II-4897, LawLex091390, stating that the finding of a compensatory arrangement which may be deduced from the fact that resale price charged by the exported on the European market are lower than the purchase prices charged by the manufacturer with whom it is linked by an exclusive distribution agreement, leads to fix the export price according to the price charged by that exported within the Union.
[46] Case C-172/87 Mita Industrial v Council [1992] ECR I-1301, LawLex09738; Council Regulation (EU) No 3651/88 of 23 November 1988, imports of serial-impact dot-matrix printers (Japan), LawLex092383; No 1074/96 of 10 June 1996, imports of polyester yarn (Taiwan, Turkey), LawLex092411; No 950/2001 of 14 May 2001, imports of certain aluminum foil (China, Russia), LawLex092608; Commission Regulation (EC) No 981/97 of 29 May 1997, imports of certain seamless pipes and tubes of iron or non-alloy steel (Russia, the Czech Republic, Rumania, the Slovak Republic), LawLex092794.
[47] Case 255/84 Nachi Fujikoshi v Council [1987] ECR 1861, LawLex091771 and 260/84 Minebea v Council [1987] ECR 1975, LawLex091786. See also Council Regulation (EU) No 1074/96 of 10 June 1996, imports of polyester yarn (Taiwan, Turkey), LawLex092411, which, according to the transaction-by-transaction method, only retains transactions which concern quantities directly sold by the exporter to independent importers in order to determine the export price.
[48] Case 277/85 Canon v Council [1988] ECR 5731, LawLex092332, which, with respect to adjustment factors, retains a 3% profit margin to be deduced from that margin of independent importers; See also C-156/87 Gestetner Holdings v Council and Commission [1990] ECR I-781, LawLex09561, which retains the price invoiced by the subsidiary after deducting from that price a reasonable margin for overheads and profit, estimated at 5%; C-188/88 NMB v Commission [1992] ECR I-1689, LawLex09761, for the deduction of anti-dumping duties; Council Regulation (EU) No 2380/95 of 2 October 1995, imports of plain paper photocopiers (Japan), LawLex092395, regarding deduction of costs incurred by the exported, or its subsidiary, and which would normally have been undertaken by the importer, such as the provision of advertising support or costs relating to the performance of the role of re-invoicing agent.

Union, and through which export sales are made, shall be deduced[49]. The costs justifying adjustment include those normally borne by an importer but paid by any party, either inside or outside the Union, which appears to be associated or to have a compensatory arrangement with the importer or exporter: usual transport, insurance, handling, loading and ancillary costs, customs duties, any anti-dumping duties, and other taxes payable in the importing country by reason of the importation or sale of the goods, and a reasonable margin for selling, general and administrative costs and profit[50]. An adjustment of the export price can be made not only for differences in commissions paid in respect of the sales under consideration but also for the mark-up received by traders of the products if their functions are similar to those of agents working on a commission basis[51].

The adjustments made to the export price intended to determine the export price corresponding to normal trading conditions are different, as regards both their purpose and the conditions under which they are applied, from adjustments made in the construction of the export price intended to rectify the export price or the normal value already calculated pursuant to the rules laid down in Article 2(3) to (9) of the Basic Regulation by reference to objective factors corresponding to the particular features of each market (domestic or export), and have a varying impact on conditions and terms of sale, thus affecting price comparability[52].

Section 2 Anti-dumping procedure

III. Commission decision

C. Commitments

2.65. Elimination of the injurious effect

The Commission accepts the undertakings only where it is convinced that they eliminate the injurious effect of the dumping (Regulation No 2016/1036, Article 8(1)). However, according to the General Court, Article 8 does not require the Commission to conduct systematic monitoring of the injurious effects of the dumping, where the Commission accepts satisfactory voluntary undertaking offers submitted by exporters to revise their prices or to cease exports at dumped prices[53]. Undertakings mainly relate to prices of which the increase cannot be higher than necessary to eliminate the margin

[49] Case C-172/87 Mita Industrial v Council [1992] ECR I-1301, LawLex09738.
[50] Regulation No 2016/1036, Article 2(9)(3).
[51] Case T-459/08 EuroChem Mineral and Chemical Company OAO (EuroChem MCC), Judgment of 7 February 2013, LawLex13248.
[52] Case C-239/15 P, RFA International LP, Judgment of 4 May 2017, LawLex17785.
[53] Case T-783/14 SolarWorld AG, Judgment of 16 February, LawLex17338.

of dumping or less than such margin if such increase is adequate to remove the injury to the Union industry[54]. Undertakings may take the form of a minimum price covering imports up to an agreed volume threshold, with imports over and above that threshold being subject to an ad valorem duty[55], provided that the market structure or the characteristics of the product do not make them inappropriate[56].

By contrast, by giving the companies a choice in deciding whether to export or not, undertakings cannot thus give them the option of exporting higher-priced products under the undertakings while lower-priced products bear the duty[57]. The proposed minimum price cannot be 30% below the target price necessary for the Union producer to achieve a reasonable profit[58]. Purely quantitative undertakings which, without any price reference, limit the volume of products concerned exported to the Union, are also refused in practice[59]. An undertaking relating to a fixed price is not suitable where the product concerned is a commodity product with a considerable volatility in prices even in the very short term, which is due to the variation in prices of raw materials and linked to currency exchange rates, which would require a monthly revision of prices[60].

The acceptable character of the undertakings is defined by the Commission as part of its discretionary power. Thus, to reject an undertaking, they may base themselves on past experience acquired in the

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[54] See Case 294/86 Technointorg v Commission and Council [1988] ECR 6077, LawLex092333, which refuses an undertaking where the price increases offered are far less than those needed to eliminate injury and are to take effect over several years; Council Regulation EU No 733/1999 of 30 March 1999, imports of calcium metal (Russia, China), LawLex092502, which considers that the undertaking offered is not acceptable where the proposed minimum price is 30% below the target price necessary for the Union producer to achieve a reasonable profit.

[55] See, inter alia, Council Regulation (EU) No 1531/2002 of 14 August 2002, imports of color television receivers (China, Korea, Malaysia, Thailand, Singapore), LawLex092563; No 190/2000 of 24 January 2000, imports of certain seamless pipes and tubes of iron or non-alloy steel (Russia), LawLex092528; No 2320/97 of 17 November 1997, imports of certain seamless pipes and tubes of iron or non-alloy steel (Hungary, Poland, Russia, the Czech Republic, Rumania and the Slovak Republic), LawLex092457; Commission Decision No 2000/137 of 17 February 2000, imports of certain seamless pipes and tubes of iron or non-alloy steel (Croatia, Ukraine), LawLex11522.

[56] Council Regulation (EU) No 1965/98 of 9 September 1998, imports of polysulphide polymers (United States of America), LawLex092483, for a duopolistic market.

[57] Council Regulation (EU) No 603/1999 of 15 March 1999, imports of polypropylene binder or baler twine (Poland, the Czech Republic, Hungary), LawLex092501.

[58] Council Regulation EU No 733/1999 of 30 March 1999, imports of calcium metal (Russia, China), LawLex092502.

[59] Case T-97/95 Sinochem v Council [1998] ECR II-85, LawLex091353, as regards an undertaking the acceptance of which would result in a high anti-dumping duty being applied to all other imports from the same country and the applicant regaining the monopoly in exports to the Union; Commission Regulation (EC) No 1629/2000 of 25 July 2000, imports of ammonium nitrate (Poland, Ukraine), LawLex092856, as regards an undertaking which would result in exempting a substantial volume of imports from the provisional measures; Council Regulation (EU) No 1786/97 of 15 September 1997, imports of silicon carbide (Ukraine), LawLex092441, as regards a quantitative undertaking which consists of a duty-free quota set at a level equivalent to a market share significantly higher than that held by the exporter concerned in the years prior to the investigation; Compare, as regards a non-purely quantitative undertaking: Commission Decision No 2002/683 of 29 July 2002, imports of color television receivers (Malaysia, China, Korea, Singapore, Thailand), LawLex11543, which considers that a minimum price undertaking which provides for quantitative ceilings in defined periods for sales to the Union of the product concerned and the levy of the anti-dumping duty in force once these ceilings are reached, is acceptable.

[60] Council Regulation (EU) No 1697/2002 of 23 September 2002, imports of certain welded tubes and pipes, of iron or non-alloy steel (the Czech Republic, Poland, Thailand, Turkey, Ukraine), LawLex092562; Commission Regulation (EC) No 1251/2003 of 14 July 2003, imports of hollow sections (Turkey), LawLex092651.

sector concerned if that experience has shown that undertakings do not constitute a satisfactory solution to the problems caused by dumping practices[61].

In order to safeguard the effectiveness of the undertakings and to avoid circumvention of the anti-dumping measures, a duty may be imposed on other imports of the products concerned even if the export prices of producers are, according to their undertakings, at a level where dumping is eliminated and sales at prices below their costs of production are prevented[62].

Lastly, when examining the undertakings, the Commisssion must not only make sure that it can remove the injury suffered by the Union industry, but must also make sure that exporter may comply with them. The breach of a prior undertaking is a non-negligible indication in this respect. In principle, the Commission does not accept a second undertaking offered by a company which has violated a previous undertaking[63]. At its discretion, the Commission may however accept the new undertaking where the possibilities of supervision existing in the State concerned are clearly reinforced[64] or where changes have occurred in the management of the company. In effect, the breach of a first undertaking may result from a lack of internal coordination and the absence of staff capable of managing the obligations taken out. A structural change in the company, with a more competent accounting staff and an efficient IT system capable of implementing the software required for the production of quarterly sales reports to the Commission, may, in such a case, reassure it on the compliance with the undertakings[65].

VII. Circumvention

2.91. Circumvention by assembly operation

In order to put an end to the 'screwdriver plants' practices, Article 13(2) of the anti-dumping regulation settles circumvention by assembly operations in the Union or a third country. In order to circumvent the anti-dumping measures, the product concerned is sometimes exported in the form of

[61] Case 240/84 Toyo v Council [1987] ECR 1809, LawLex091716; Case 255/84 Nachi Fujikoshi v Council [1987] ECR 1861, LawLex091771 and 256/84 Koyo Seiko v Council [1987] ECR 1899, LawLex092295.
[62] Council Regulation (EU) No 611/93 of 15 March 1993, imports into the Community of certain electronic microcircuits known as DRAMs (Korea), LawLex092446; No 584/96 of 11 March 1996, imports of certain tube or pipe fittings, of iron or steel (China, Croatia, Thailand), LawLex092406.
[63] Case T-97/95 Sinochem v Council [1998] ECR II-85, LawLex091353; Council Regulation (EU) No 95/95 of 16 January 1995, imports of furfuraldehyde (China), LawLex092389; No 81/96 of 19 January 1996, imports of monosodium glutamate (Indonesia, Korea, Taiwan, Thailand), LawLex092403.
[64] Commission Decision No 83/649 of 19 December 1983, imports of hardboard (Sweden), LawLex11559.
[65] Commission Decision No 2002/157 of 5 February 2002, imports of farmed Atlantic salmon importations (Norway), LawLex11541, as regards a partial interim review.

spare parts for assembly, in the Union or a third country, for purposes of resale of the product concerned in the Union. Several cumulative conditions must be met for the assembly operation being described as an unfair circumvention:

- The operation started or substantially increased since, or just prior to, the initiation of the investigation (Art. 13(2)(a)). The Commission retained circumvention whereas the operation started more than three years before the initiation of the investigation[66].

- The parts must be from the country subject to measures (Art. 13(2)(a)). Depending on the different language versions of the anti-dumping regulation, the definition of circumvention implies either that the parts concerned originate in the countries subject to measures, or that they come from that country. According to the General Court[67], although it is sufficient to simply refer to where the parts used for assembling the final product are "from", it may be necessary in case of doubt, to verify whether the parts "from" a third country in actual fact originate in another country[68]; thus the trader contesting the unfair character of the circumvention must provide the Union institutions with proof that those parts originated in another country.

- Parts which are from the country subject to anti-dumping duties must constitute 60% or more of the total value of the parts of the assembled product and the value added to the parts brought in, during the assembly or completion operation, must be equal to or less than 25% of the manufacturing cost (Art. 13(2)(b)). When calculating the value of the imported parts taken into consideration for the '60% of the value of the parts' test, all elements manufactured, assembled or developed by the exporting producer in order to be incorporated into the finished product are considered as an individual part where its manufacture, assembly or development cannot be reversed to any extent without significantly diminishing the value of that element[69]. The value added to the parts brought in, during the assembly or completion operation, corresponds to the sum of labor and depreciation costs and other manufacturing overheads incurred by the assembler in respect of those parts, to the exclusion of selling, general and administrative expenses, as well as the amounts of State grants related to the

[66] Commission Regulation (EC) No 984/97 of 30 May 1997, imports of certain electronic weighing scales (Japan, Singapore), LawLex092795.
[67] Case T-80/97 Starway v Council [2000] ECR II-3099, LawLex091387.
[68] Case T-435/15 Kolachi Raj Industrial (Private) Ltd, Judgment of 10 October 2017, : Although the "Form A" certificates of origin have evidentiary value in relation to the origin of the goods to which they relate, that is not absolute, such a certificate, completed by a third country, cannot bind the Union authorities with regard to the origin of those goods by preventing them from verifying the origin by other means where there is objective, sound and consistent evidence creating a doubt as to the true origin of the goods covered by those certificates.
[69] Commission Regulation (EC) No 985/97 of 30 May 1997, imports of certain retail electronic weighing scales (Japan, Indonesia), LawLex092797.

manufacturing costs of the assembled product[70]. Labor costs and factory overheads relating to packing are particularly excluded from the calculation of that value added[71].

- The practice in dispute undermines the remedial effects of the duty in terms of the prices and/or quantities and evidence of dumping in relation to the normal values previously established for the like or similar products must be brought (Art. 13(2)(c))[72].

2.92. Anti-circumvention procedure

Where the conditions of circumvention seem to be met, an anti-circumvention investigation may be initiated by the Commission, on its initiative or at the request of any interested party or a Member State, through a regulation after consultation of the Advisory Committee (Regulation No 2016/1036, Article 13(3))[73]. The investigation, initiated by Commission regulation, which may be conducted with the assistance of the customs authorities, must be concluded within nine months. In the initiating regulation, the Commission may instruct the customs authorities to make imports subject to registration or to request guarantees[74]. When the facts justify the extension of measures, this is decided by the Commission according to the examination procedure of Article 15(3). The extension of anti-dumping duties to imports at issue takes effect from the date on which registration was imposed or on which guarantees were requested[75].

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[70] Commission Regulation (EC) No 799/2000 of 17 April 2000, imports of certain magnetic disks (China, Taiwan), LawLex092881.
[71] Commission Regulation (EC) No 799/2000 of 17 April 2000, imports of certain magnetic disks (China, Taiwan), LawLex092881.
[72] See for a textbook case regarding circumvention by way of assembly: Council Regulation (EU) No 71/97 of 10 January 1997, imports of bicycles and certain bicycle parts (China), LawLex092414: in order to avoid that imported parts be subject to the anti-dumping duty, suppliers applied a rather costly and complex practice consisting in spreading parts destined for the same assembler across different containers, sent on different dates and sometimes unloaded at different ports. This practice enabled classification of the imported parts in the common customs tariff, which is different from the finished product, and therefore outside the scope of application of the anti-dumping regulation. But, one of the companies liable to circumvention changed its sourcing pattern towards the end of the investigation period, and started to assemble the bicycles by using more than 40% of non-Chinese parts, which it purchased either directly from manufacturers located in these countries of origin or from subsidiaries of these manufacturers located in the Union. The Council took an extension regulation in order to extend the anti-dumping duty in force to certain bicycles parts originating in or consigned from China with the exception of those parts of proven non-Chinese origin.
[73] The regulation specifies in fine that the provisions of the anti-dumping regulation relating to the initiation and conduct of the investigation apply.
[74] Council Regulation (EU) No 1905/2003 of 27 October 2003, imports of furfuryl alcohol originating in the People's Republic of China, LawLex092535, which considers that in order to minimize the risk of circumvention due to the substantial level of non-cooperation (40%) and the high difference in the amounts of definitive duties instituted, special provisions may be taken such as the presentation to the customs authorities of the Member States of a valid commercial invoice, which is to conform to the requirements set out in the annex to the definitive regulation, under penalty of application of the residual anti-dumping duty.
[75] Council Regulation (EU) No 1023/2003 of 13 June 2003, imports of certain malleable cast iron tube or pipe fittings (Brazil, Argentina), LawLex092546: where circumvention is established, the existing anti-dumping measures are extended to the same products consigned from the not concerned third country, whether declared as originating in that country or not, and apply from the date of registration of their import established, in this case, by the regulation initiating the anti-circumvention investigation.

Imports may be exempted from extension where the parts are not imported for purposes of circumvention (exempted assembler)[76] or they are imported in too small quantities by small operators - for example as substitution - to truly undermine the anti-dumping duty in force (de minimis clause). A conditional exemption may be granted where parts are declared for free circulation by, or on behalf of, an assembler which is subject to examination by the Commission[77]. Where the exemption is granted, imports will not be submitted to registration or to other measures (Art. 13(4))[78]. It is the task of the EU institutions to establish that anti-dumping measures are being circumvented in respect of the third country in question as a whole, whereas it is for each individual producer-exporter to show that its particular situation justifies an exemption pursuant to Article 13(4) of the regulation[79]. Exemption may be granted during the circumvention investigation or after the investigation having resulted in the extension of the duty[80]. The general rules applying to anti-dumping investigations, regarding in particular the conduct of investigations, verification visits, non-cooperation[81], confidentiality, and the procedural rights of the parties concerned, apply to the procedures of request for exemption[82].

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[76] See Council Regulation (EU) No 1623/2003 of 11 September 2003, imports of certain zinc oxides (China), LawLex092539, which considers that where the circumvention takes place outside the Union, the exemption of exporters which have not exported the product concerned during the investigation period and are not related to any exporters or producers subject to the extended anti-dumping duty, may be granted after the assessment of the market situation of the product concerned, production capacity and capacity utilization, procurement and sales, and taking into account the likelihood of practices for which there is insufficient due cause or economic justification and the evidence of dumping.

[77] Commission Regulation (EC) No 88/97 of 20 January 1997, imports of certain bicycle parts originating in the People's Republic of China, LawLex092785; See, also, Council Regulation (EU) No 71/97 of 10 January 1997, imports of bicycles and certain bicycle parts (China), LawLex092414, point 34 et seq., which constitutes the 'reference regulation' which explains in detail the system of grant and delivery of certificates of non-circumvention.

[78] See, for an example of interruption from import registration after the exporting producer succeeded in showing that there was no circumvention: Commission Regulation (EC) No 2593/2001 of 28 December 2001, imports of glyphosate (Taiwan, Malaysia), LawLex092816.

[79] Cases C-248/15-P, C-254-15/P, C-260/15-P Maxcom Ltd v City Cycle Industries, Judgment of 26 January 2017, LawLex17228.

[80] The entry into force of the exemption therefore depends on when it was requested: where it was requested during the investigation, the exemption comes into force from the date of initiation of the circumvention investigation; where the request is submitted after extension of the duty, the exemption comes into force from the date of the request.

[81] Case C-21/13 Simon, Evers & Co, Judgment of 4 September 2014, LawLex14843: where there is a complete refusal to cooperate with the circumvention investigation, the Commission is entitled to act on the basis of the evidence available in order to find the existence of a practice, process or work in a third country aiming solely at the circumvention of the antidumping duty affecting imports originating in another third country. It is for the parties concerned to prove that there are reasonable grounds justifying those activities, other than avoiding the anti-dumping duty. See also Cases C-247/15 P, C-253/15 P, C-259-15 P Maxcom Ltd, Judgment of 26 January 2017, LawLex17231, specifying that there is no legal presumption whereby it is possible to infer the existence of circumvention directly from the non-cooperation of an interested party and Cases C-248/15-P, C-254-15/P, C-260/15-P Maxcom Ltd v City Cycle Industries, Judgment of 26 January 2017, LawLex17228, finding that, with regard to the standard of proof required to demonstrate circumvention where there is insufficient or indeed no cooperation on the part of producer-exporters, that there is no provision in the basic regulation which confers on the Commission, in an investigation to establish whether there has been circumvention, the power to compel producers or exporters which are the subject of a complaint to participate in the investigation or to provide information and therefore the Commission is reliant on the voluntary cooperation of the interested parties to provide it with the necessary information.

[82] Commission Regulation (EC) No 88/97 of 20 January 1997, imports of certain bicycle parts originating in the People's Republic of China, LawLex092785.

VIII. Remedies

2.94. Action for annulment

Any natural or legal person may, under Article 263 TFEU, institute action for annulment against decisions addressed to that person and against decisions which are of direct and individual concern to that person, although they are in the form of a regulation or a decision addressed to another person. The action must be brought within two months of the publication of the act, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter.

1) Reviewable acts

Only the final act setting forth a definitive decision, even implied, may be appealed[83]. Commission decisions, in particular imposing interim duties or accepting or refusing undertakings[84] are merely proposals and do not have binding effects, except where they directly, immediately and definitively affect the interests of the applicant[85]. Likewise, neither preparatory acts, such as the initiation of the proceedings[86], nor purely confirmative decisions[87] may be appealed. As an exception, some acts by the Commission which directly, immediately and definitely affect the applicant's interests may be subject to an action for annulment.

2) Standing/legitimate interest

The action for annulment may be brought by the person to whom the decision is addressed or by any person who is directly and individually concerned by it. Since the anti-dumping regulation does not lay

[83] Case T-195/98 Ettlin Gesellschaft für Spinnerei und Weberei and others v Council [2005] ECR II-4*, LawLex091288, T-177/00 Philips v Council [2005] ECR II-5*, LawLex091283; T-192/98 Eurocoton v Council [2005] ECR II-2*, LawLex091287, and T-192/98 Eurocoton v Council [2005] ECR II-2*, LawLex091287; T-195/98 Ettlin Gesellschaft für Spinnerei und Weberei and others v Council [2005] ECR II-4*, LawLex091288 (press release from the Council); Case C-76/01 P Eurocoton and others v Council [2003] ECR I-10091, LawLex091168.

[84] Case C-133/87 Nashua Corporation and others v Commission and Council [1990] ECR I-719, LawLex09556 and C-156/87 Gestetner Holdings v Council and Commission [1990] ECR I-781, LawLex09561 (rejection of a proposed undertaking); T-208/95 Miwon v Commission [1996] ECR II-635, LawLex091321 (decision to terminate an undertaking).

[85] Case C-170/89 BEUC v Commission [1991] ECR I-5709, LawLex09709, as regards a letter by which the Commission refuses to consider a consumer association as an interested party and therefore refuses it access to a non-confidential document. In this case, the plea in law based on infringement of the principle of the right to a fair hearing is however rejected as to the substance since the refusal of access could not result in a measure adversely affecting the consumers, insofar as no allegation was made against them; Case T-369/08 European Wire Rope Importers Association, Judgment of 17 December 2010, LawLex11457, concerning a letter sent by the Commission refusing to initiate a partial interim review due to insufficient evidence.

[86] Case T-134/95 Dysan Magnetics and Review Magnetics v Commission [1996] ECR II-181, LawLex091228, which considers that the decision to initiate anti-dumping proceedings is not capable of immediately and irreversibly affecting the legal position of the undertakings concerned; T-75/96 R National Farmers' Union and others v Commission [1996] ECR II-815, LawLex091393, stating that the initiation of the proceedings does not even create any requirement to cooperate; T-75/96 Söktas v Commission [1996] ECR II-1689, LawLex12260, which refuses to consider as challengeable the decision that initiates the proceedings, including in the event that the decision results in setting aside proceedings for amicable settlement of disputes defined by an agreement that creates an association between the European Union and a third country.

[87] Case T-84/97 BEUC v Commission [1998] ECR II-795, LawLex11242, as regards an application for annulment which is inadmissible because against a decision which merely confirms an earlier decision which was not challenged in due time.

down general rules which apply to a whole group of traders without distinguishing between them but imposes different duties on a series of manufacturers or exporters established in certain countries and who are expressly named and also, on other companies which are not named but which pursue the same activities in those same countries, a trader may be individually concerned only by those provisions of the contested regulation which impose on it a specific anti-dumping duty and determine the amount thereof[88].

The applicant must have on actual and existing interest in the annulment of the challenged measure. The anti-dumping regulations may thus be subject to application for annulment only if they affect the applicant by reason of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other persons and therefore distinguishes it individually just as in the case of the person addressed[89]. The concept of individual interest therefore varies depending on the status of the trader.

The exporting producers must be identified in the acts of the Commission or concerned by the preparatory investigation to be able to bring an action for annulment. This is the case where they are named[90]; if only exporters have replied to the questionnaire, they are referred to as exporters of the products concerned or having cooperated in the investigation[91], where they are included amongst the undertakings referred to in the provisional duty regulation under the heading 'Exporters/producers' in the country concerned and have been subject to an on-the-spot verification[92], or participated in the investigation whereas the Commission has ultimately decided not to accept the information provided[93]; they triggered the partial interim review procedure, and as the measures adopted at the end

[88] Case 258/84 Nippon Seiko v Council [1987] ECR 1923, LawLex091784; Case T-431/12 Distillerie Bonollo SpA, Judgment of 3 May 2018 LawLex18656, specifying that the concept of direct concern to the legal situation of the applicants cannot be interpreted restrictively in determining the admissibility of their action, as any action brought by an EU producer against a regulation imposing anti-dumping duties would have to be declared automatically inadmissible, as would any action brought by a competitor of the beneficiary of aid declared compatible with the internal market by the Commission at the end of the formal investigation procedure, as well as any action brought by a competitor against a decision declaring a concentration compatible with the internal market.

[89] Case 25/62 Plaumann v Commission of the EEC [1963] ECR 95, LawLex11623; C-358/89 Extramet Industrie v Council [1991] ECR I-2501, LawLex09486.

[90] Case 120/77 Koyo Seiko v Council and Commission [1979] ECR 1337, LawLex091512 and 119/77 Nippon Seiko v Council and Commission [1979] ECR 1303, LawLex091492; 239/82 Allied Corporation and others v Commission [1984] ECR 1005, LawLex091675; C-75/92 Gao Yao v Council [1994] ECR I-3141, LawLex091166; T-597/97 Euromin v Council [2000] ECR II-2419, LawLex091382.

[91] Case T-147/97 Champion Stationery Mfg and others v Council [1998] ECR II-4137, LawLex091260; Compare Case C-75/92 Gao Yao v Council [1994] ECR I-3141, LawLex091166, as regards a company regarded as not concerned by the preliminary measures, since it is established in a not-concerned third country, has not been the target of the investigation and intervened in the proceedings merely as a channel of transmission of documents between the Commission and the exporting producer concerned.

[92] Case T-147/97 Champion Stationery Mfg and others v Council [1998] ECR II-4137, LawLex091260; Compare Case C-75/92 Gao Yao v Council [1994] ECR I-3141, LawLex091166, as regards a company regarded as not concerned by the preliminary measures, since it is established in a not-concerned third country, has not been the target of the investigation and intervened in the proceedings merely as a channel of transmission of documents between the Commission and the exporting producer concerned.

[93] Case T-161/94 Sinochem Heilongjiang v Council [1996] ECR II-695, LawLex091272; See, also, Case T-278/03 Van Mannekus v Council [2006] ECR II-14*, Summ. pub., which states that this is only an indication, insufficient alone.

of that procedure were intended to offset the dumping that caused the injury, they have suffered as competing producers operating on the same market[94]. The action brought by a producer and its importing subsidiaries established in the Union against a regulation imposing an anti-dumping duty is admissible without it being required, to answer to the question whether the contested measure is of concern to the applicants, to make a distinction between producers and importers, where the existence of dumping is established depending on the resale price applied by importers[95].The leading manufacturer of the products concerned in the Union and the only remaining manufacturer of those products, which made observations that have largely determined the conduct of the investigation procedure and which suffered a significant injury due to dumped imports which was used to fix the definitive anti-dumping duty, may be regarded as concerned by the regulation imposing that duty[96]. On the other hand, the mere fact that an applicant's name appears in the anti-dumping regulation is not sufficient to confer on him a right to bring proceedings[97].

Insofar as the importer is compelled to pay anti-dumping duties, it is open to it to bring an action in the competent national court in the context of which it can put forward its arguments against the validity of the regulations at issue[98]. The regulation imposing anti-dumping duties may be of individual concern to the importer. This is the case where it is the largest importer of the product subject to the anti-dumping measure and, at the same time, the end user of that product, and where the economic activity of the undertaking concerned is dependent on these imports and is seriously affected by the regulation, taking into account the limited number of producers of the products concerned and the fact that it encountered difficulties in obtaining supplies from the sole producer in the Union, which is its main competitor for the processed product[99].

The admissibility of the action for annulment also implies that the applicant is directly affected by the measure. An anti-dumping regulation applicable to all imports in the Union of the products concerned originating in a specific country, directly affects each exporter insofar as implementation by the national authorities, by virtue of the European legislation only, of the anti-dumping duty fixed is

[94] Case T-431/12 Distillerie Bonollo SpA, Judgment of 3 May 2018 LawLex18656.
[95] Case 113/77 NTN Toyo Bearing v Council [1979] ECR 1185, LawLex091489 and 118/77 ISO v Council [1979] ECR 1277, LawLex091500.
[96] Case 264/82 Timex v Council and Commission [1985] ECR 849, LawLex091790.
[97] Case T-162/09 Adolf Würth GmbH & Co. KG, Judgment of 19 April 2012, not available in English.
[98] Case 239/82 Allied Corporation and others v Commission [1984] ECR 1005, LawLex091675.
[99] Case C-358/89 Extramet Industrie v Council [1991] ECR I-2501, LawLex09486; See, also, Case C-458/98 P Industrie des poudres sphériques v Council [2000] ECR I-8147, LawLex071661, which considers that the action which is not exclusively based on the difficulties encountered by the applicant in obtaining supplies from the sole Union producer, but on various factors constituting a situation peculiar to the applicant which differentiated it from all other traders with respect to the measure in question, is admissible.

purely automatic[100]. The customs authorities of the Member States are particularly obliged to collect that duty without having discretion in that regard[101]. Likewise, an assembler is directly concerned by the regulation extending the anti-dumping measure where the extended duty remains collected on imports of its products[102]. An OEM (Original Equipment Manufacturer) supplier also has an interest in bringing proceedings, irrespective of whether it is an exporter or an importer, given its business dealings with the manufacturer concerned by the measures, from which it obtains supplies, which have certain features taken into consideration when constructing the export prices, the normal value and the calculation of the weighted dumping margin on the basis of which the anti-dumping duty has been fixed[103].

The object of the action must reflect the individual and direct interest of the applicant to bring proceedings. Accordingly, the action for annulment of a regulation instituting definitive duty which is confined to the annulment of the regulation only to the extent that it affects the applicant, is admissible[104]. The admissibility of the action for annulment is also beyond doubt, even if the regulation has reduced the rate of duty imposed on the applicant's imports to 0%, where the latter retains an interest in bringing proceedings for nullity of the implied dismissal by the regulation of his request for the rates of duty laid down in the course of the review procedure to be applied retroactively, since the amendment only applies for the future[105] or where the action is brought by the exporter concerned by the preparatory investigations, even if it has not been expressly confined to the part of the regulation concerning imports originating in his country[106]. On the other hand, an action which seeks the annulment of a regulation instituting an anti-dumping duty in its entirety, where only the provisions of the regulation which impose specific anti-dumping duties on imports of his products concern the applicant, is inadmissible[107].

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[100] Case T-155/94 Climax Paper Converters v Council [1996] ECR II-873, LawLex091262.
[101] Case T-147/97 Champion Stationery Mfg and others v Council [1998] ECR II-4137, LawLex091260; Case T-74/97 Büchel v Council and Commission [2000] ECR II-3067, LawLex091386.
[102] Case T-80/97 Starway v Council [2000] ECR II-3099, LawLex091387.
[103] See Case C-133/87 Nashua Corporation and others v Commission and Council [1990] ECR I-719, LawLex09556 and C-156/87 Gestetner Holdings v Council and Commission [1990] ECR I-781, LawLex09561. The Original Equipment Manufacturer is a company which purchases the products concerned from a producer concerned by an anti-dumping measure to resell them under its own brand in the Union through its subsidiaries.
[104] Case T-155/94 Climax Paper Converters v Council [1996] ECR II-873, LawLex091262.
[105] Case T-7/99 Medici Grimm v Council [2000] ECR II-2671, LawLex0895.
[106] Case T-161/94 Sinochem Heilongjiang v Council [1996] ECR II-695, LawLex091272.
[107] Case C-156/87 Gestetner Holdings v Council and Commission [1990] ECR I-781, LawLex09561.

3) Formal requirements

Initiating an application for annulment is governed by the rules of general law as regards the form[108] and time-limit (two months)[109]. It is obviously impossible to challenge the validity of a regulation against which the period to bring an action has expired, whether before the European court or the national court[110]. Where the applicant is a legal person governed by private law, in order to be able to bring an application for annulment, it must have acquired capacity as an independent legal entity at the latest by the expiry of the period prescribed for proceedings to be instituted[111].

4) Powers of the European court

The complex economic character of the appraisals made by the Commission regarding dumping, and more generally in the field of trade defense measures, results in a court review limited to verifying whether the relevant procedural rules have been complied with, whether the facts on which the choice is based have been accurately stated and whether there has been a manifest error of appraisal and a misuse of powers[112]. The European court, which verifies that the procedural rules have been complied with, may annul a regulation imposing definitive duties following a review procedure where the investigation has been initiated although there was no evidence of the existence of dumping[113].

As in competition procedure, the Commission's wide power of appraisal requires it to supervise the compliance with the rights guaranteed by the European legal order in administrative proceedings. In particular, it must examine carefully and impartially all the relevant aspects of the individual case and the compliance with the right of the person concerned to make his views known and to have an adequately reasoned decision[114]. In the specific case of the anti-dumping procedure where measures

[108] Case T-37/98 FTA and others v Council [2000] ECR II-373, LawLex14200, which states that the application must be signed by an attorney empowered to carry out procedural acts before the European court.
[109] Case T-104/99 AS Bolderaja and others v Council [2000] ECR II-451, LawLex14202, which considers that the action initiated one day after the expiry of the two-month period which starts at the end of the fourteenth day following the date of publication of the regulation, extended on account of distance of two weeks because of the geographical situation of the applicants, is inadmissible due to the fact that it is late; See, also, Case T-84/97 BEUC v Commission [1998] ECR II-795, LawLex11242, as regards an application for annulment held inadmissible because it was brought against a decision which merely confirmed an earlier decision not challenged in due time.
[110] Case C-239/99 Nachi Europe [2001] ECR I-1197, LawLex09890.
[111] Case T-161/94 Sinochem Heilongjiang v Council [1996] ECR II-695, LawLex091272, which states that the condition is met, for an undertaking having submitted on the basis of a repealed national law a license attesting to its registration as an undertaking with its own capital and an independent accounting system, from the time it has been treated as an independent legal entity by the European institutions.
[112] See, inter alia, Case 255/84 Nachi Fujikoshi v Council [1987] ECR 1861, LawLex091771 and 260/84 Minebea v Council [1987] ECR 1975, LawLex091786; Case T-97/95 Sinochem v Council [1998] ECR II-85, LawLex091353.
[113] Case C-216/91 Rima v Council [1993] ECR I-6303, LawLex092104.
[114] Case T-413/03 Shandong Reipu Biochemicals v Council [2006] ECR II-2243, LawLex091355, which considers that it is for the European courts to satisfy themselves that the institutions took account of all the relevant circumstances and appraised the facts of the matter with all due care, so that normal value may be regarded as having been determined in a reasonable manner; Case C-76/00 P Petrotub and Republica v Council [2003] ECR I-79, LawLex091167, which annuls a regulation imposing definitive duties by resorting to the asymmetrical method in

are taken in several phases, the requirements stemming from the right to a fair hearing are taken into consideration not only in the course of proceedings which may result in the imposition of penalties, but also in investigative proceedings prior to the adoption of anti-dumping Regulations[115].

5) Effects of annulment

The annulment of an anti-dumping regulation which imposes an anti-dumping duty to the applicant has effects limited to those aspects which concern that applicant. The annulment does not affect the validity of the anti-dumping duty applicable to products manufactured by another operator, where they do not form part of the matter to be tried by the European court, even if the act not challenged before that court would be vitiated by the same illegality[116]. Where the annulment of the regulation is based on factors which arose in the course of the anti-dumping proceedings, but without affecting the initiation of the proceedings, the Commission may, without infringing either the operative part or the grounds of the judgment of annulment, look in more detail at the issue of determining injury in the course of the anti-dumping proceedings which are still open and, under its wide discretion, carry out the investigation on the basis of a different reference period[117].

order to calculate the dumping margin because it does not comply with the duty to state reasons provided for in Article 2.4.2 of the 1994 Anti-dumping Code.

[115] Insofar as they directly and individually affect the undertakings concerned and entail adverse consequences for them, See Case C-49/88 Al-Jubail Fertilizer Company and others v Council [1991] ECR I-3187, LawLex09979.

[116] Case C-239/99 Nachi Europe [2001] ECR I-1197, LawLex09890.

[117] Case C-458/98 P Industrie des poudres sphériques v Council [2000] ECR I-8147, LawLex071661, as regards annulment based on factors which arose in the course of the investigation concerning the determination of injury, Case C-283/14 CM Eurologistik GmbH, Grünwald Logistik Service GmbH (GLS) v Hauptzollamt Duisburg, Judgment of 28 January 2016, LawLex161336.