
Global Anti-Dumping Briefing

Issue number 1: April 4 2007

This briefing is for informal guidance only. Before taking any decisions or actions relating to any matter mentioned, professional advice should be sought.

The launch of a new anti-dumping newsletter!

Antidumpingpublishing.com is proud to announce the publication of its first newsletter on global anti-dumping and other trade protection issues. Antidumpingpublishing.com is a portal dedicated to providing both the best coverage of major developments in global anti-dumping and in providing regular and extensive publications on the topic. The site went live in October 2007 with the introduction of free anti-dumping resources including news, links, free publications, statistics etc. Already the free resources are a hit. We have built up a following of regular visitors who, judging by the number of hits and return visits, already find our site a useful resource. Antidumpingpublishing.com remains committed to providing a comprehensive and useful free section to the site and it's only going to get better. The launch of the Global AD Briefing is just the next step. This will provide free and regular updates on major AD issues.

In addition to the free AD resources, the premium content will come on-line during 2007. This will be the most comprehensive anti-dumping resource on the planet. It will contain a 400 page textbook (The Global Anti-Dumping Manual) that never gets out of date, the anti-dumping legislation of more than 60 countries, detailed commentaries on all Panel/Appellate Body rulings in AD disputes, and a comprehensive series of detailed articles on all aspects of anti-dumping. This information will be available by subscription or on a pay per item basis. The premium section is still not open for business yet because creating such a comprehensive resource takes time. We want this website to set the very highest standards in on-line publishing to bring you an amazing resource. Check back with the site regularly for news of when this service will go online.

Global anti-dumping activity remains relatively low but some users have gone against the trend

The new Global Trade Protection (GTP) report has reported that global anti-dumping activity has remained at relatively low levels in 2006 (similar to 2005). The primary reason for this is that commodity type prices remain relatively high meaning a) less dumping is taking place and b) it can be difficult to establish that domestic industries are injured. Commodity prices tend to be cyclical and, therefore, we can expect an increase in AD activity when the cycle turns downwards.

Despite the relatively low levels of AD activity, certain countries (namely EC, India and Argentina) have seen significant increases in the number of cases initiated. Indeed, the EC, who initiated the most cases in 2006, opened its 3rd highest number of investigations since the creation of the WTO in 1995. Such 'buoyant' activity, in the presence of continued relatively high commodity prices which reduces the level of AD activity, indicates that AD remains a trade protection tool very much in use.

China continued to be the main target of AD cases in 2006. There is a significant upward trend towards China as a target. The proportion of global AD initiations against China has been significantly increasing in recent years - 23% in 2004, 30% in 2004 and 37% in 2006.

For more information see the Global Trade Protection Report 2007 at www.antidumpingpublishing.com.

Countervailing duty/anti-subsidy investigations remain low but likely to increase against China

The GTP report notes that only 7 countervailing duty (CVD) investigations were initiated in 2006. However, it is notable that 3 of the 4 main AD users (US, EU and Canada) all opened CVD cases in 2006 indicating that this still remains a relevant protection tool.

Both the US and EU have previously had longstanding policies not to open CVD investigations against China due to the fact it has been considered a non-market economy. In 2006, however, the US initiated its first CVD investigation against China (see separate item below). The EU is also formally considering this issue in the review of trade defence instruments being undertaken (also discussed in a separate item). These changing practices are likely to mean that countervailing duty cases against China will increase.

US applies countervailing duties against China

The US Department of Commerce (DOC) has made a preliminary determination that exports of coated free sheet paper from China are subsidised in line with the WTO agreement on subsidies and countervailing measures. The DOC found countervailable subsidies between 10.9% and 20.35%. Parallel investigations were also opened against Korea and Indonesia. Korean subsidies were found to be between 0.04% and 1.76%. For Indonesia, subsidies of 21.24% were found. The DOC will make its final determination by June 13 2007, though this can be extended until October 2007.

In 1984, the DOC adopted a policy of not applying countervailing duty law to non-market economy countries. According to the DOC, the reasoning behind this was that the nature of “Soviet-style economies” in the mid-1980s made it impossible for the DOC to apply US CVD law. This view considered that government and industry were so integrated that they were, in essence, one economic entity. ‘Subsidies’ did not make sense because, to find a subsidy, would effectively mean that the Governments of non-market economies were effectively subsidising themselves. In this context, it was considered that subsidies had no meaning. This policy was upheld in Georgetown Steel case by the Court of Appeals for the Federal Circuit (1986).

Following the receipt of a complaint in December 2006, the DOC has reviewed this policy. The DOC has concluded that Georgetown steel no longer applies because of ‘vast differences’ between the characteristics of 1980s non-market economies and China’s economy today.

US confirms China is an NME for anti-dumping, though may allow MET treatment for individual respondents

Despite the change in policy relating to China and CVD investigations, China will still be designated a non-market economy for US anti-dumping investigations. Nevertheless, the DOC has stated that it may modify some aspects of current US NME anti-dumping policy, most particularly the conditions under which individual applicants may be granted market economy treatment. This is currently not possible under US law. Unlike the EC, where individual companies can apply for MET in each investigation, the US currently makes market economy determinations on the basis of the country as a whole rather than for individual applicants.

EC review of anti-dumping and other ‘trade defence instruments’

In December 2006, DG Trade of the European Commission published a green paper initiating a reflection on the application of the EC’s trade defence instruments (anti-dumping, countervailing duty/anti-subsidy and safeguards), particularly in light of changes in the global economy.

Many interested parties have taken the opportunity to comment, the deadline for which ended on 31 March 2007. These comments are available on-line (see the link given below). Following this public debate the Commission will communicate the results and, if appropriate, propose further action.

The consultation comes in the wake of increasing controversy, particularly over the EC’s anti-dumping policy. Several cases over the past year or so have had a much higher profile than AD cases normally have. Most significant was the AD investigation on footwear, which resulted in the adoption of definitive anti-dumping duties in 2006. Other AD cases have had high profiles such as plastic bags, salmon as well as textiles quotas. These cases have generated a significant interest in AD and other trade defence instruments in the EC, which in turn has been reflected in the active response of interested parties to the Green Paper.

The EU has 27 Member States, though TDI/trade remedies are administered at the EU level by DG Trade of the European Commission. Measures cannot be adopted without the support of the Member States. Likewise, any changes to legislation must be adopted by the Member States. This is a complex process given that views differ greatly between Member States. Some would label certain Member States as ‘protectionist’, while other Member States would abolish AD altogether. The current rules are a fragile balance between the extreme views held on anti-dumping by Member States and other EU stakeholders.

This fragile balance becomes more complex when considering the role of importing interests in AD investigations. Even in the presence of dumping, injury and causal link, the EU will assess the public interest (‘Community Interest’) before adopting measures. This means that importing interests, that will face a higher cost as a result of an AD duty, play an active role in investigations. Thus, like EU Member States, there is a broad spectrum of differing views amongst business interests.

The sum of all this is that changing the balance too much between these different interests is not easy or even advisable. That said, there is a high expectation that the consultation will review in some changes to EU policy. The conclusion of the review is likely to be some relatively small but significant changes, primarily relating to transparency. Improved transparency changes are highly likely, given that this is the one area where there is relatively broad support amongst all stakeholders.

More information and relevant links to the DG Trade website can be found at the [‘EU Consultation on AD/TDI’](#) link at www.antidumpingpublishing.com.

Australian study results in administrative changes

In February 2006, the Minister for Justice and Customs and the Minister for Industry, Tourism and Resources announced a Joint Study into the administration of Australia's anti-dumping system. The study was undertaken by officials from relevant government agencies. It was completed in August 2006.

The study made the following principal recommendations to improve the administration of Australian dumping:

- develop plain English, user-friendly guidelines to assist entities, particularly SMEs, to understand the application process;
- appoint an SME officer within Customs to provide a specialist contact point to assist SMEs to understand the anti-dumping system;
- replace the current arrangements for provision of advice on draft applications with an option for a more substantial check of whether an application is properly documented;
- introduce a deficiency notice system to provide clear advice to applicants about deficiencies in an application, at the draft and/or formal assessment stages;
- develop guidelines in the Dumping and Subsidy Manual to promote consistency and certainty in Customs' assessment of anti-dumping applications, and to enable applicants to better understand the parameters for assessment;
- introduce a more rigorous and specific requirement for non-confidential versions of documents to describe the nature of all material deleted from the confidential version;
- examine Customs' approach to analysis and reporting of injury and causal link with a view to making the reporting of relevant findings more robust and persuasive.

As part of this process, a revised Dumping and Subsidy Manual was published on April 2 2007. The revised manual is designed to promote a consistent approach to investigations, findings and decisions. It also provides interested members of the community with an explanation of the practices used by the Trade Measures Branch in conducting investigations. Certain amendments have been made to the application (complaint) forms, which became available on March 26 2007.

Both the manual and the new application forms can be found at the [reference material](#) link in anti-dumping section of the Australian Customs website at www.customs.gov.au.

Appellate Body clarifies rules on zeroing in US-Japan Zeroing dispute

On January 9 2007, the Appellate Body issued its report in the dispute relating to US Zeroing (Japan) (DS322).

The Appellate Body upheld the panel's finding that US zeroing procedures, including the computer program used by the DOC, constitute a measure which can be challenged as such. This includes the

panel's decision in relation to methodologies which the US claims it has never used (e.g. weighted average to transaction comparison methodology) .

However, the Appellate Body reversed several of the panel's findings with regard to the use of zeroing by the US.

- In original investigations, the AB ruled that maintaining zeroing procedures when calculating margins of dumping on the basis of transaction to transaction comparisons is not consistent with WTO rules.
- Further the AB ruled that the US acts inconsistently with WTO obligations by maintaining zeroing procedures in periodic and new shipper reviews.

This is a complex but potentially far reaching Appellate Body report. It would appear that it does not rule out the use of zeroing where the weighted average to transaction method is used in a situation of targeted dumping in terms of purchasers, regions or time periods. However, it does confirm that the same restrictions on zeroing in original investigations (i.e. no model zeroing and no zeroing in transaction to transaction comparisons) apply in administrative, expiry (sunset) and new shipper (newcomer) reviews.

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