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

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**PRACTICAL ISSUES AND EXPERIENCE IN CASES INVOLVING  
CUMULATION UNDER ARTICLE 3.3**

Paper by the European Communities

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**INTRODUCTION**

An EU anti-dumping investigation requires an objective examination of (1) the volume of the dumped imports and the effect of those imports on prices in the Community market for like products, and (2) the consequent impact of those imports on the Community industry.

In cases where imports of a product originating from more than one country are simultaneously subject to an investigation, it is necessary to assess whether the injury and causation analysis should be performed for each country individually or on a cumulated basis. Cumulation is only allowed if certain conditions are fulfilled. In the EU's Basic Anti-dumping Regulation, these are set out in Article 3.4. These provisions mirror Article 3.3 of the WTO Anti-dumping Agreement.

The underlying rationale behind cumulation is that, under the circumstances set out in the EU's Basic Regulation and the WTO Agreement, all dumped imports under investigation have a joint and simultaneous effect on the situation of the Community industry. Under these circumstances, assessing the contribution to injury from each country in any way apart from a cumulated basis may be contrary to the principle of non-discrimination, as non-cumulation may result in different treatment for the various imports considered, despite their similar characteristics (dumped, having similar effects on the Community industry in terms of volume and/or prices).

Cumulation is used in the vast majority of the EU's multi-country investigations. For example, among new, multi-country investigations where measures were imposed, it was used every time in 1998, and six out of seven times in 1999.

**CONDITIONS FOR CUMULATION**

Four conditions must be met for a cumulated analysis of exports from different countries:

1. The imports in question must be simultaneously subject to investigations;
2. The margin of dumping established for each country is more than *de minimis*;
3. The volume of imports is not negligible;

4. The cumulative assessment is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

If any of these conditions is not met for any of the countries under consideration, then the imports originating in the country/countries concerned must be assessed separately. The investigation will be terminated for a country if either of the two *de minimis* thresholds are not reached. In the other cases, a separate ad hoc injury and causation analysis would be made, which would obviously take into careful account the findings which lead to non-cumulation. This separate analysis might then either lead to termination or to the imposition of measures.

1. Imports simultaneously subject to anti-dumping investigations

Cumulation can only be used for imports that are simultaneously under investigation, i.e. under the same investigation or under two different investigations running simultaneously and having the same or largely overlapping investigation periods (minimum six months in common). The investigation period in this context is the time covered by the dumping investigation. Cumulation of imports under investigation and imports for which an investigation has already been completed is not allowed.

2. Dumping margins above *de minimis*

Non-dumped imports (or imports with a dumping margin below *de minimis*) are not cumulated. While in a new proceeding *de minimis* dumping margins result in termination without imposition of measures, it should be noted that in expiry reviews, a determination that there is no likelihood of recurrence of dumping must nevertheless be made before a conclusion leading to termination can be reached.

3. Volume of imports not negligible

The EU establishes negligible levels of imports by reference to Article 5.7 of its Basic AD Regulation. In other words, imports are considered negligible when their market share is below 1 per cent unless, in cases of multi-country investigations, the collective market share of such countries is 3 per cent or more. Negligible imports are deemed not to have caused injury and are therefore excluded from the analysis.

The WTO AD Agreement established the thresholds on a different basis (volume of imports instead of market shares). The Community therefore also examines the volume of imports on the basis of the criteria set out in Article 5.8 of the WTO Agreement. If the imports concerned are found to be negligible under either of the two criteria, then they are normally excluded from the analysis and the investigation is terminated for the country/countries concerned. In other words, both the EU's Basic AD Regulation and the WTO Agreement must be complied with at the same time.

4. Appropriateness of a cumulative assessment in view of the conditions of competition

Two 'conditions of competition' have to be examined: those between the imports concerned themselves and those between the (cumulated) imports and the like Community product. In practice, the same criteria are used to assess both (see below).

This requirement would appear to leave more scope for judgement than the other three requirements, especially since the notion of 'similarity of conditions of competition' is not explained in the WTO AD Agreement or EU Basic AD Regulation as such. Nevertheless, the EU has built up

and applied a consistent practice for this rule. It has always referred to the following criteria when assessing the similarity of conditions of competition:

- 4a. Like product finding;
- 4b. The significance of the import volume level;
- 4c. The development and level of the prices of imports and their undercutting or not of prices of the Community industry;
- 4d. Similarity of sales channels.

4a. Like product finding

Two main criteria are relevant for a like product finding: (1) the imported products must share the same basic physical and/or chemical, and/or technical characteristics (main rule), and (2) they must have similar end uses (ancillary rule). Thus, cumulation might not be appropriate where the product under consideration consists of various types or models and where the models/types imported from each country under investigation do not overlap.

4b. Level of import volume

The significance of the imports concerned will often be established by reference to market shares or to shares in the total volume of imports. However, it is impossible to provide fixed rules on what percentage shares are required for imports to be considered 'significant'. The case-by-case consideration will depend on several factors, notably the number of the countries concerned, the total market share of the imports concerned, the distribution of the imports from the various countries concerned and the market share held by the Community industry.

For example, in *Pipe and tube fittings from China, Croatia, Slovakia, Taiwan and Thailand - provisional*<sup>1</sup>, imports from Slovakia and Taiwan were not cumulated with the other countries' imports. It was found that imports from these two countries during the investigation period could not be considered significant (at market shares of 1.5 per cent and 1.6 per cent respectively), even though they were above *de minimis* thresholds, when compared to imports from the other countries concerned. In addition, imports from Slovakia and Taiwan presented sharply declining trends, while the other imports grew, albeit by different degrees, over the period considered. Thus, the effects of imports from Slovakia and Taiwan were assessed separately.

4c. Development and level of prices of imports

Similarity in pricing behaviour by exporters would tend to indicate similar conditions of competition, and such behaviour is based above all on data from the Community industry and the co-operating exporters for the investigation period, unless there is a significant degree of non-cooperation. Pricing behaviour would primarily be assessed by reference to undercutting/underselling margins found (calculated separately for each exporting country). In addition, trends observed over the period considered would also be taken into account.

In *Tungsten Carbide from China and the Republic of Korea*<sup>2</sup>, the price undercutting levels for the two countries were not similar at all (35 per cent and 3.5 per cent respectively) and price developments over the period diverged (Korean prices remained steady, while Chinese prices declined considerably). These elements, including the fact that market shares and import volume had evolved in a diametrically opposed manner, prompted non-cumulation of the Korean imports.

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<sup>1</sup> Official Journal L234 3/10/95 pg 4

<sup>2</sup> Official Journal L83 30/3/90 pg 36

4d. Similar sales channels

Imported products sold through the same or similar sales channels to those of the Community industry would tend to indicate similar conditions of competition. This is even more likely if, for instance, imported products and Community-produced products have common customers (users/consumers).

**CONCLUSION**

Cumulation is possible only if four conditions are met. While three of these are relatively straightforward, the last, concerning 'conditions of competition' would appear to leave more scope for judgement. Nevertheless, the EU has built up and applied a consistent practice in this area, based on:

- 'like product' determination;
- levels of imports;
- similar pricing behaviour; and
- similar channels of distribution.

Of these conditions, not all need to be met for cumulation to take place. But neither would it suffice if only one is met. In practice, these elements are inter-linked: for example, the fact that there is no product type overlap will also result in striking differences in the pricing behaviour or in the sales channels used. On the other hand, significant levels of imports with similar pricing strategies and similar price levels would clearly show a degree of joint and simultaneous effects on the Community industry.

Finally, non-cumulation does not automatically lead to termination. The effects of non-cumulated imports must be assessed separately and only after such separate assessment can a conclusion on injury and causation be made for these imports.

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