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CRITICAL ANALYSIS OF COMMISSION REGULATION (EC) NO 306/2004 AND COUNCIL REGULATION (EC) NO 367/2004 IMPOSING ANTI-DUMPING DUTY ON IMPORTS OF POLYETHYLENE TEREPHTHALATE ORIGINATING FROM PAKISTAN

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ABSTRACT:

This research paper is aimed to analyse the application of Anti-dumping duty on imports of polyethylene terephthalate originating from Pakistan; this analysis of the investigation has been carried out within the preview of the related provisions of the basic regulation and the relevant judgements of the EU courts. For the purpose of such analysis, statutes have been interpreted by using Golden Literal and Mischief rule, while the judgements has been dissected into Obiter Dicta and Ratio Decidendi having recourse only to the later. This is an original contribution to the existing knowledge, as the current investigation has not been inspected before. It fills the gap in the existing literature, as it attempts to evaluate all the calculations of the EU Commission by cross checking them in contradiction of their legal basis which originates from the basic regulation. Through such in depth analysis, this paper has identified certain instances where the Commission could not provide justifiable ground for its particular calculations. For example such instances include the omission of the Commission to state the fulfilment of all three conditions for considering a particular business in an ordinary course of trade. At the end it recommends that the discretionary powers of the investigative bodies should be reduced and this goal can only be attained by provision of more detailed and specific trade defence laws.

KEY WORDS: Anti-dumping duty, normal value, export price, dumping margin.

I. OBLIGATION OF PROVISIONAL MEASURES BY COMMISSION REGULATION (EC) NO 306/2004: COMMISSION'S CALCULATIONS

The case commenced when a complaint was filed by the European Association of Plastic Manufacturers (plaintiff) in April 2003; presented on behalf of representatives of most manufacturers on behalf of more than 80% of the polyethylene terephthalate manufacturing in the Association. The information was provided to all concerned parties regarding the start of the procedure. The Commission stated that the sampling would be large enough to be used. However, the use of sampling was not deemed necessary because the less-expected exporter manufacturer was willing to cooperate. Surveys were sent to all companies introducing themselves and all interested parties within a certain period of time.

The Commission measured the comparability of the merchandise in question with the merchandise sold by the exporter to the domestic market. The Commission then carried out a "representative" test in Article 2 (2) of Council Regulation (EC) No 384/96. The dirty (one-year-old producer) of the exporting country was considered a dirty ICT representative to get at least 5% of their ICT exports.

To decide this question, dirty or polyethylene terephthalate all types of domestic normal transactions made in white share, off the set for dirty snow (product), if the local market, was designed by the Commission where the subjective average price of the cost of gold production, type PET equivalent trade volume and PET illustrated with more gold at 80% of the total sales volume of this destiny, sales of gold corresponding to the value of sales net on the cost of production identified, NV, full normal weight as determined on a local figure of actual costs where each dirty or local monetize these guys not in the middle of the period, noting that the small and dirty work was paying attention .

It is little as compared to the estimated cost of creation costs or PET types of such profitable sales volumes when fewer than 80% of the whole sales volume, NV only, corresponded to the weighted average productive sales of these local costs. Sales represent 10% or additional of this total sales volume. In addition, the PET of a given type of PET represents 10% of the entire capacity of the less dense sales volumes, in order to ensure that the volume of the corresponding precursor is considered to be the NV supplier sold in insufficient quantities.

Subsequently, by the basic regulation 2(3) According to Article NV, by the type of conventional assembly costs, a reasonable and reasonable profit margin and reasonable selling, general and administrative expenses have been developed in adding costs. In this context, the Commission checks whether each exporting producer benefits in particular from the local market and that the latter has established dependable data.

In the light of Article 2(1) of Regulation (EC) 384/96, with the exception of a Pakistani exporter and producer, for each type of PET, the Commission may create a NV on the price paid. They exchange normal exchanges via clients in the indigenous market. However, the calculated normal value is used in Article 2(2) of the Basic Regulation for an individual kind of PET where 10% of local sales are conducted during normal sales.

The second exporting producer did not sell at the national level. Consequently, in the light of Article 2, paragraph 1, normal value was created on the basis of product prices indicted by the main exporter manufacturer in the local market. Only two Pakistani exporters are concerned with the manufacturer.

To allow for a just appraisal of the normal value and export price, adjustments were made, as appropriate, in accordance with Article 2, paragraph 10, of Council Regulation (EC) No 384/96. It has been established in all practical and precise circumstances and has been made accordingly. In accordance with Article 2 (11), the estimated average of polyethylene of each type of polyethylene terephthalate in question was equated with the estimated average of normal value of each type of polyethylene terephthalate exported to the EU.

The evaluation showed the existence of dumping among the harmonising commercial producers. Temporary dumping margin contacts the CIF at the world border; and in accordance with the policy of the Association for the producers concerned. The remaining margin is set out according to the level of the commercial enterprise, which cooperates with the maximum margin of dumping to ensure the effectiveness of the measures, the level of cooperation being high.

Beneath the umbrella of Council Regulation (EC) No 384/96, the Union market is now suffering material losses. The Commission considers that all factors are entitled to draw conclusions in this context: dumping, capital increase, sales capacity, and outcome of investments, share of market, productivity and cash flow.

The Commission established a considerable link between the dumped imports and the suspected damage to the industry of EU. This is also true for the intensification in market share and the profitability of imports against dumping, which leads to a weakening of the trade union sector. In addition, there is fierce competition between the increased dumping imports and the monetary decline of the Union industry.

The investigation additionally showed that importations done from Taiwan and the Republic of Korea could not be decided to contribute to the injury. However, the potential impact of these imports, Australia, Pakistan and dumped imports by dumped imports from China due to imports of injury instigated by the industry of EU indicates merely can be divided into a causal link. The union industry had no effect on other factors.

II. ANALYSIS OF COMIISIONS'S CALCULATIONS UNDER (EC) NO 306/2004

The review of investigation exposed that the claim was endorsed via community manufacturers demonstrating the 80 per-cents of the production of polyethylene terephthalate. However, the levels of support were considerably large, as community manufacturers who own 25 per-cents and 50 per-cents of the industry, correspondingly, are enough to launch and Keep an allegation. However, it should be noted that only the Community factories are covered, since producers of EU demonstrating at least 25 per-cents of the total production of EU may file a complaint. This implies that remaining interested parties, for example distributors or consumers, have no right to complain if they are victims of dumped imports.

The European Court of Justice has set out in Case C-105/90 that it is the price which has been paid actually for that transaction. In accordance with Article 2 (3) of the Basic Regulation, this principle can only be repealed while these salts are inadequate or do not allow a satisfactory assessment or while there is absence of withdrawal of the like product. However, it has been argued that alternative methods for calculating the value of net assets leads towards creating upper local price which is not the actual price paid in the local market.

In cases C-393/13 and T-304/11, the courts of the European Union argued that for determining whether the EU market was dumped, normal trade is a concept connected to the nature of sale in Yes and no regarding the price of that product. In accordance with Article 2 (4), the auction of that product in the domestic market of manufacture at prices lower in comparison to the unit manufacturing and sales charges, administrative charges and other overheads can be ignored at the time of the sale. The determination of normal value as well as the mentioned sale may be deliberated according to the general law. However, this unprofitable sale must be carried out for a prolonged period.

Moreover, it is ambiguous that under what conditions the investigating authorities will be able to change from year to year. However, in no case shall the minimum period be six months, estimated selling price of the average cost of production less when at least 20% of sales are detected on the local market or in third countries, the entire capacity of sales of the product in question takes place which may weaken the nature of this alleged trend of dumping cases.

In addition, C-76/00, C-105/90 and T-34/98 compensate for the irreparable normal value between export and import. Secondly, when determining normal value, the price paid in the impartial third jurisdiction or the price paid by unbiased operators of national residence may be taken into account. But this normal value is lower while comparing with the average production costs. In order to determine the sale of manufacture costs, it should have been determined that these sales are made in large quantities and for a longer period.

However, Commission Regulation No 2 does not specify whether compliance with the guidelines has been respected and must not be forgotten (4) in order to determine its normal activities. In this context, it can be concluded that the provisions of Regulation (EC) No 306/2004 of the European Commission No 306/2004 do not exceed 20% of total sales.

However, the Commission did not spend an unprofitable period of at least six months. The European Commission also notes that this is a rational period. It has been stated that the burden of proof must be in the above conditions. For this reason, investigating authorities often bear the burden of proof on producers.

EU Commission might have utilised all criteria to create a normal commercial activity, however if it had already done so, it would be necessary to explain to the parties the Regulation (EC) No, as established by the courts of the European Union. It will be beneficial for the concerned parties to comprehend the motives for procedures to enforce and defend their rights. Although the institutions are not supposed to disclose all the pertinent actualities and legal points, the adequacy of the reasoning will be evaluated according to the state of affairs of every case.

In addition, this document excludes the criteria for determining the "substantial quantity of the product" provided for in Article 2 (4) of the Basic Regulation. This advocates that sales are higher than normal when it is determined that the sales volume is less than 20% or greater than 20%. The rotation is used to set the normal value. However, the investigator opposes the discretionary power granted to the Commission to one of the two criteria stated above to choose a price below the substantial cost in the domestic market.

This means that it generates less than 20% of total sales and that the Commission using another option can be determined by specifying that the average price is less or equal to the average cost of manufacture. However, the authors suggest that the Commission applies both thresholds; Non-compliance with one of them should result in a deleterious result of "significant quantity" control. This will ensure consistency and uniformity with the results of the Commission's normal workflow; else, the selection of mode presented to the Commission could affect the results of the survey.

An analysis of the present investigation reveals that the basic Charter is essentially defined by the Commission. The utilisation of these freely placed authorities has been described and studied in the perspective in which this document is discussed. The frequent use of this decision-making power by the Commission often leads to inconsistencies and deficiency of transparency in judicial proceedings in the EU.

The two main problems were identified related to the absence of transparency. Firstly, it is an extreme freedom of decision for the European Commission, which is a governing body that has only one contact to the real context of the decision. Furthermore, it allows pouring and abusing. For example, the information on a comic book is usually disclosed before the start of the process. Observed important cases where transparency of EU procedures was insufficient; among which only interested parties may have access to the questionnaires; everyone in the open file has no open access; Responses to non-confidential investigations are often ambiguous and irrelevant; Audit reports are not delivered to the concerned parties. The positions are the old part.

The non-existence of transparency in the EU is additionally influenced by the EU institutions and reforms have been requested in the area of basic regulation. For example, in 2006, EU Trade Commissioner Peter Mandelson tried to put an end to the absence of encouragement from the EU industry and few Member States. Likewise, in 2013, the Commission projected to modernize the trade defence instruments of EU that would still follow the normal process of legislation. In 2014, the legislative resolution of European Parliament shut the initial reading. Nevertheless, in 2016, the Commission committed to increase the transparency as much as possible.

However, it has been argued that the EU's anti-dumping tool for transparency, notwithstanding the fact that the US is the world's principal commercial presence, with regard to WTO anti-dumping investigations are rarely appealed to the WTO. Most experts say that the EU's trade defense framework has criticized them for an export perspective. Nevertheless, the EU institutions must confirm the imbalance of interests by using trade defense instruments.

Another important factor that brands the EU anti-dumping system stable and transparent is the control of the anticipated methods by a three-level control: the internal control of the Commission in Brussels, the EU courts in Luxembourg as well as WTO panels in Geneva. Though, the examination of surveys conducted in Pakistan, as shown in this document, discloses that EU institutions have sometimes produced divergent results.

III. INFLICTION OF CONCLUSIVE ANTI-DUMPING DUTY BY THE COUNCIL REGULATION (EC) NO 1467/2004

The two inter-connected export manufacturers entered following the imposition of the interim anti-dumping procedures, stating that they were not considered detached instead associated companies. Secondly, a single dumping margin must be calculated. This request

has been carefully analyzed on the basis of the claims made by these exporting manufacturers as a result of the provisional measures.

It has been found that certain aspects of the relationship between the respective companies and their close links in their activities differ from their normal positions in the two related companies. In particular, there were very important financial links and various links between the two creators; they sell a particular product under the same brand, as well as the same central and regulatory agencies and marketing departments.

In addition, there are essentially the same employees and the same managers and there are common regulations for production. The combination of each of these elements ensures that, in these particular circumstances, the manufacturers of both exporters consider the fact as a trading company in the PET sector in Pakistan, unlike the two separate entities. In this way, it is thought that when each of these elements is taken into consideration, the claim must be recognized.

However, the Council confirmed the calculations of the European Commission's assessment of export prices and damages, as Pakistani exporters did not question these calculations. Though, the Council has observed as well as revised the calculations of commission concerning normal value and margins of dumping.

In the sense of the said article, The Commission first determines whether it represents domestic sales of the concerned product for the sole exporting producer. According to that article, local representative sales were sold when the total domestic sales of each exporter's manufacturer represented at least 5 per-cents of the whole volume of sales to the Union. The Commission then invented this type of PET; it is sold indoors by the sole exporting manufacturer, which is clearly similar to the types of products exported (PET) and represents domestic sales. In addition, a study was conducted to find out whether domestic sales of respective PET were made in the normal course of the transaction.

In accordance with Article 2 (3) of Council Regulation (EC) No 384/96, the calculated normal value was used for the three types of PET whose local salts were representative. For the two types of PET negotiated by the export manufactures, the Commission could compute normal value considering the prices normally compensated by independent consumers in the local market according to Article 2 (1).

IV. ANALYSIS OF THE INFLICTION OF DUTY UNDER (EC) NO 1467/2004

The investigation established that the Commission erroneously deliberated that only one company was a detached but associated company, although they shared the alike marketing and administrative facilities and the organization. This obvious evaluation error is superficially unlikely, particularly when exporters cooperate fully and the information provided by them is verifiable through a verification visit. Nevertheless, at the request of the exporter, the Council validated the situation.

The judgments in case 76/98 recommends that the article 2, paragraph 3, of the Regulation indicate that, in order to calculate normal value, the Community institutions must use both mods in the event that the sale of the related product in the domestic market cannot fulfil the criteria of a normal commercial activity. The argument was posed that the estimate of normal value should have been directed at the current local price of a product valued on the basis of normal conditions of market.

The Court observes that the method adopted by the Commission for calculating normal value in the provisional Regulation is not in accordance with the manner used by the Council in its final regulation. The Commission assessed the price of two forms of polyethylene terephthalate based on the value paid in the local market, with five of the PETs included in the study included in the survey. PET varieties do not represent exports.

Though, the auction of 2 kinds of polyethylene terephthalate takes place in a normal trade; for this reason, consumers depend on the internal market. It has been indicated that a simple commercial test must be performed on the product and they should not be distributed into diverse kinds for ordinary commerce.

The Court of First Instance, T-385/11, stated that the United States had recently put in place a number of sub-procedures. As part of the AD research, there is a wide range of products whose properties differ considerably. The purpose of this group is to permit an evaluation of comparable products, thus avoiding incorrect calculations of dumping and injury. However, the Commission did not specify the names of the three companies. The Commission's statement on this issue should be more transparent as all interested parties, including importers, exporters and local producers, are clear.

The EU courts have been recognised on the basis of the work in case T-401/06 T-401/06. 253 EC, explanation of the reason, as it is clearly thought to be justified and should reflect the measures of the Union in an impeccable manner, and therefore allowed and the European

Union courts to defend their rights - must use their power to investigate. It is necessary to indicate if they are correct and sufficient.

In addition, it was discovered that the sales representative of certain types of petroleum products represented less than 80% of total sales. Your NV has been calculated on usual of entire lucrative transactions that ignore the unprofitable sale. It can be argued that, for the sake of clarity of the investigation, the Commission of the European Union should clearly take into account normal transactions and vice versa.

In contrast, in the United States, the Commission sets the normal value of products on the market. The NV of the other 3 kinds of crude oil is assessed according to the Article 2 (3) the SG&A usual price, the manufacture and the addition of sufficient profit margins represent less than 10% of the Union's same product. For this reason, the calculations of the number of people in the household market of the two institutions are inconsistent.

It has been established that in order to assess the “like products” the Commission divided the product in question in definite control numbers. Next, calculate the individual margin of injury as well as the dumping margin for every PNC. This methodology is not an error because it provides more precision in the assessments. The commission endeavours to make a comparison of identical models instead of using similar models with the essential adjustments, and relates a cost of less than 5% and 20% to each cabin crew. In addition, he rarely uses the normal value paid in another matching third jurisdiction. Therefore, normal value is built for every PCN distinctly.

These constructed normal value assessments involve a variety of discretionary items and options. In addition, the assessment of the rational profit margin is complex and extremely susceptible to subjective decisions. As a result, CNV is sometimes artificial and does not represent the current value paid by customers in the domestic market.

Though, the Commission’s discretionary powers are defined as well. The limitations of particular legal regulations apply to these powers. The more limited legal provisions of the Basic Regulation, which constitute the discretionary powers of the Commission, are more detailed and complete. Consequently, the rules regarding the building of normal value shall limit its discretionary usage.

In addition, according to the WTO Agreement, at the time of sale, administrative costs and other overhead costs of producers are used, selling costs, administrative costs and other general expenses are included in transactions, if they are profitable or not, that do not belong

to the ordinary commerce. Therefore, using merely lucrative transactions for this perseverance is against the law.

Therefore, the authors conclude that the infliction of diverse methods for calculating the NV implemented by the Commission as well as the Council has made it possible to calculate very variable margins of dumping (14.8 per-cents of the export value assessed by the Commission; however 1.6 per-cents is less than the minimum standard set by the Council). The purpose of this distinction could be the assessment of NV by the Commission for certain forms of polyethylene terephthalate based solely on a ratio of lucrative transactions, totally overlooking unprofitable transactions.

However, the affirmative characteristic of this investigation is that the calculation error related to the NV was subsequently corrected by the Council as well as the fees paid by the Pakistani operators under the provisional measures.

V. CONCLUSION

To conclude, it is necessary to ensure that the transaction is not subject to a normal transaction. The investigation revealed that the EU was subject to more than one condition, which represents considerable, higher than 20 per-cents of total sales. Though, the Commission was unable to endorse in the Regulation whether it had been maintained for a longer period. Furthermore, the commission should have a profitable result that does not allow the cost of production to be recovered in a judicious time. The Commission might have proved these disorders; however it must be the opposite. The European Commission determined that the Commission fulfilled all the conditions and that it was not possible to comply with Article 2 (4).

In addition, this paper indicates that, according to Article 2 (4) of the basic Regulation, the Commission of the European Union may use two different controls. . If the “substantial amount” does not reach the 20% threshold without profit, the Commission may found that, by finishing the estimated value is lower than the estimated value of production. Though, the use of these two tests should be limited to one of the two basic tests.

Similarly, the European Commission makes a separate statement for the same company, while allocating the same brand, the same administrative staff, the same facilities as well as the same company. . However, the authors argue that such a palpable evaluation is very likely when exporters cooperate fully and the information provided by exporters can be verified.

However, the positive aspect is that, as a result of the exporter's complaint, the Council repaired the calculations accordingly.

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