

When the Lesser Duty Rule Falls Away

What the phosphonic acids AD case shows about the Commission's deeper cost analysis

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This briefing provides an overview on the European Commission's latest move to impose higher provisional anti-dumping duties by setting aside the lesser duty rule. Its approach goes further than the usual practice, looking beyond direct inputs to capture raw material distortions deeper in the supply chain. This includes upstream inputs, in other words, raw materials of the raw materials, where they significantly affect costs.

Background

On 13 May 2026, the European Commission adopted provisional anti-dumping measures in case AD740 - Certain alkyl phosphonic acids and their sodium salts. The provisional duties ranging from 182.9% to 219.4% are among the highest ever imposed by the EU in an anti-dumping proceeding. The high scale of duties is directly attributable to a deliberate and consequential methodological decision taken by the Commission, namely, the disapplication of the lesser duty rule.

Lesser Duty Rule (LDR)

Under EU law, at the end of an anti-dumping investigation the Commission calculates a dumping margin and looks at whether a lower duty would be enough to remove the injury caused by dumped imports to the Union industry (i.e., injury margin). If the injury margin is lower than the dumping margin, the duty is normally set at the lower of the two.

The LDR finds its legal basis under Article 7(2) of Regulation (EU) 2016/1036 (the basic Anti-Dumping Regulation). What sets the EU law apart from the WTO framework is that the latter makes the application of the LDR discretionary.¹ The EU's 2018 modernisation (Regulation (EU) 2018/825) preserved the mandatory nature of the LDR but introduced Articles 7(2a) and 7(2b); creating a legal route to disapply it where (i) raw material distortions exist and (ii) the disapplication is in the Union interest. Since the 2018 reform, the Commission has predominantly applied the LDR because (i) conditions under Article 7(2a) were not met,² (ii) dumping margins were lower than injury margins,³ (iii) exporters did

¹ Article 9.1 of the WTO Anti-Dumping Agreement. Certain WTO members (e.g., the USA) do not apply it at all.

² AD679 – Calcium silicon from China (2022), AD668 – Aluminium flat-rolled products from China (2021), AD673 – Aluminium converter foil from China (2021).

³ AD664 – Aluminium extrusions from China (2021), AD665 – Hot-rolled coils from Türkiye (2021), AD670 – Stainless steel cold-rolled flat products from Indonesia (2021) and AD680 – Graphite electrodes from China (2022).

not use the material,⁴ or (iv) it was not in the Union interest.⁵ To date, the LDR was waived only in two cases before the phosphonic acids case.⁶

Analysis of the Phosphonic Acid Case

In the *Phosphonic Acid* investigation, the Commission waived the LDR based on the finding that Chinese producers benefit from distorted access to phosphorus trichloride (PCl_3), as it accounted for over 17% of the total cost of production.

What makes this case very interesting is that PCl_3 is not a direct raw material purchased by the sampled exporters. Instead, they purchased DMPI (dimethyl phosphite), produced from PCl_3 and methanol, and which constitutes the main raw material used in the production of the product concerned. The Commission thus looked through one additional layer of the supply chain.

To establish the 17% threshold, it performed a three-step calculation:

- *First*, it determined how much PCl_3 is required to produce one tonne of DMPI,
- *Second*, it assessed DMPI's share in the production cost of the product concerned,
- *Third*, it applied PCl_3 's share within DMPI costs to DMPI's share within the total cost of production of the product concerned.

As a result, the Commission concluded that PCl_3 represented more than 17% of the cost of producing the product concerned. Consequently, duties are set at the full dumping margin calculated by the Commission.

Implications for Businesses

For a raw material of a raw material to clear the 17% threshold is rare. This case signals that the Commission is willing to conduct a several-step cost analysis and trace inputs deep into the supply chain to make findings on raw material distortions. It would thus be advisable for businesses to know their supply chain all the way down. If a distortion exists at any level, the Commission may likely remedy it.

EU producers will welcome the measures as providing meaningful protection, though they should be ready to supply the Union market at much larger quantities to meet the Union demand Chinese exporters would normally meet, but can no longer. Importers and users, on the other hand, will likely face a dramatic increase in their costs. They should assess the extent to which their supply chains are exposed to and model the cost impact of the provisional measures.

⁴ AD670 – Stainless steel cold-rolled flat products from India (2021).

⁵ AD692 – Electrolytic manganese dioxide from China (2024)

⁶ AD649 – Urea ammonium nitrate (UAN) from Russia (2019) and AD687 – Fatty Acid from Indonesia (2023).

Key Takeaways and Future Outlook

The disapplication of the LDR reflects the Commission's increasing willingness to use the full arsenal of trade defence tools when it identifies structural distortions in the exporting country's economy. The finding in the present case sets a meaningful precedent: any sector where Chinese producers benefit from subsidised or controlled access to upstream inputs may be vulnerable to the same approach.

BLOMSTEIN will closely monitor further developments and keep you informed. If you have any questions on the topic, [Leonard von Rummel](#), [Uğur Can Hekim](#) and the entire team is ready to assist you.

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