PET Peeves

What the Terephthalic Acid Investigation Says About EU Trade Defence in 2026

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*On 10 August 2026, the European Commission (**Commission**) definitively imposed anti-dumping (**AD**) duties on imports from the Republic of Korea (**Korea**) and Mexico of terephthalic acid (**TA**), i.e., the essential feedstock for PET bottles, polyester fibres and food packaging. This Regulation is unusually rich in points that matter well beyond the TA world. It (i) signals that China is not the only target; explains how the Commission calculates (ii) dumping margin when its own sample partly do not dump and (iii) injury margin when it treats two different-behaving exporting countries as one.*

Korea and Mexico are not the usual suspects

If you were placing bets on which countries the European Union ***(EU)*** would target with new AD duties in 2026, Korea and Mexico would not have been anyone's first picks as both are preferential trading partners of the EU (see the EU-Korea Free Trade Agreement and the EU-Mexico Global Agreement). Yet, any trade lawyer will tell you that preferential trade does not buy immunity from AD duties. The classic trade defence instruments ***(TDI)*** sit outside the preferential trade regime and remain mostly available.

While China remains by far the main target of EU trade defence investigations, Mexico and Korea are a different story. Mexico is almost a virgin territory. Only 3 EU AD proceedings have ever concerned Mexico (one being the TA case itself). Korea is a more familiar target with 8 AD measures are currently in force against it, but the TA case still came as a surprise. In 2017, the Commission had investigated Korean TA imports and terminated the investigation because dumping was below the 2% *de minimis* threshold. Less than a decade later, the Commission came back and imposed duties.

These facts signal that none of the usual comfort factors, e.g., preferential trade status, a country's limited TDI exposure, or a previous Commission clearance, held up here.

The "weighted average" of one

Upfront learning point for businesses: This investigation showed that if a company exports to the EU, cooperates, but does not get into the sample, it is in the most sensitive position. A well-behaved sampled producer that dumps less than 2% *(de minimis)* will be stripped out of the average dumping margin calculation. This will leave the rest of the exporters tied to the other sampled exporter having a much higher rate. Cooperating is still the right strategy; but requesting individual examination and submitting a questionnaire response is now the safest course of action. Moreover, what you reported in your sampling form carries a heavy evidentiary weight that determines your final duty rate.

This case had to answer an interesting question: how the dumping margin should be calculated when only one company remains in the weighting. When the EU investigates dumping, it does not usually calculate a duty for every cooperating exporter. Instead, it establishes a sample from the largest producers and calculates their individual duty rates. All others who cooperate get a weighted average of the sampled companies' dumping margins, whereas non-cooperators get the highest residual rate. Article 9(6) of the Basic Anti-Dumping Regulation (Regulation (EU) 2016/1036 as amended, *BADR)* mandates that cooperating non-sampled exporters "shall not exceed the weighted average margin of dumping established [for] the sample," and, the Commission "shall disregard any zero and de minimis margins" when weighting.

In this case, the Commission sampled two Korean producers, i.e., Samnam and Taekwang. It found Samnam dumping at 6.1% and Taekwang not dumping at all. Since it had to disregard Taekwang's zero margin, the "weighted average" it applied to the cooperating non-sampled Korean exporter, Hanwha, was based on a single company, i.e., Samnam. Hanwha's own margin thus came out at exactly 6.1%.

Hanwha objected, arguing that a "weighted average" derived from one exporter alone is flawed as it is inconsistent with Article 6.10 of the WTO Anti-Dumping Agreement *(ADA)*, as the latter requires the sample to be representative;. The Commission's rebuttal relied on various points:

- *First*, the disregard rule under Article 9(6) BADR is not optional and requires the Commission to strip out *de minimis* margins from the weighted-average.

- *Second*, Samnam's sales accounted for 40–50 % of Korean exports of TA to the Union during the investigation period, and its product mix was comparable to that of the non-sampled cooperators. The sample was therefore representative.

- *Third*, the "weighted average" language in Article 9(6) is not a mandatory arithmetic operation that requires more than one sampled exporter's dataset.

- *Fourth*, the second sampling method identified by the Court of Justice of the EU *(CJEU)* in T.KUP (Case C-349/16) permits the Commission to base a sample on one exporting producer representing "the largest volume of production, sales or exports which can reasonably be investigated within the time available". Since a sample of one was lawful *ex-ante*, the Commission decided that the practical effect of the disregard rule on an *ex-post* basis should not be different. This seems to be the first Commission Regulation to spell out the argument in these terms.

- *Fifth*, Hanwha had not applied for individual examination, and Hanwha's own sampling-form revealed that its prices were more aligned with Samnam than Taekwang. No full cost analysis was required to extend the dumping finding.

In short, a "weighted average" does not need to be an average. A single sampled exporter's margin can, on its own, set the ceiling for every cooperating exporter that did not make it to the sample.

Cumulation: counting Korea and Mexico as one for injury purposes

Upfront learning point for businesses: in most cases, the Commission applies cumulation of imports for its injury analysis, including all countries concerned. Once cumulated, your imports are painted with the same brush. This case is a warning that even a declining volume of higher-priced imports from a country (in this case, Mexico) cannot easily and totally distance itself from the injury assessment.

Article 3(4) BADR permits the Commission to cumulate imports from the target countries for the purpose of assessing injury, provided (i) each country's dumping margin is above the *de minimis* threshold and its import volumes are not negligible, and (ii) a cumulative assessment is "appropriate in the light of the conditions of competition." The second condition is more problematic, because when small volumes from one country are joined to bigger volumes from another country, the sum looks a lot more injurious than either would alone.

In the TA case, the Commission cumulated Korea and Mexico despite the two behaving very differently. Mexican import volumes fell by 17% over the period considered, in line with declining demand, and Mexican prices stayed consistently higher than both Korean and EU prices. Neither Korean nor Mexican imports were found to be undercutting EU industry prices. On paper, Mexico thus looks more like a well-mannered guest at a party.

Alpek, the Mexican exporter, raised this argument, pointing to the General Court's judgment in VTZ and Others v Council (T-432/12), which requires the Commission to look not just at physical similarity but at whether "the market behaviour of exporters is similar".

The Commission answered this in two ways:

- The fact that the market behaviour of Korea and Mexico were quite different was not enough to withdraw from cumulation. Both countries sold the same product to the same customers in the same EU market. So, they must be cumulated.
- Mexican and Korean prices did not undercut EU prices. Still, both were sold below the EU industry's cost of production. That was enough for putting pressure on EU prices, even if Mexico was more expensive than Korea.

In short, if you are the smaller and more expensive source in a multi-country investigation, do not assume the Commission will analyse you separately from the more aggressive supplier next door.

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

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