

# IMPLEMENTATION OF EU COURT CASES

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# 1. AZOT CASE

- I. Discretionary power by the Commission must be exercised within strict procedural boundaries (in this case the time limit)
- II. In line with other judgments where the importance of procedural requirements is stressed (*Jinan Meide, Changmao*, etc)
- III. But also: "*it is not for the Court to substitute its own assessment of whether the evidence contained in the original request is sufficient for the Commission's assessment as set out in the notice of initiation and the contested regulation*"
- IV. Possibility to repair? Can Commission claim in reopening that the original request contained sufficient evidence? Can one reopen a review when the procedural error was found at initiation?

## 2. IMPLEMENTATION OF ECJ JUDGMENTS

- I. IPS v Council (C-458/98): Investigation can be reopened and the procedural error (failure to examine whether injury was self-inflicted) can be fixed with all the other steps remaining valid
- II. Puma v Council (C-507/21P):
  - Same principle that investigation can be reopened (to examine MET and IT claim forms) and that measures can be reimposed.
  - Also retroactive imposition (even though the measures had already lapsed)
- III. Jinan Meide III (T 687/20)
  - Failure to disclose information (Jinan Meide I) and comparison methodology (Jinan Meide II)
  - Correction of the methodology used and retro-active application upheld

### 3. SOME CONCERNS

#### I. Reparation of errors in annulled Regulation

- For substantive violations (for example dumping margin or injury margin incorrectly calculated), relatively uncontroversial
- For more procedural violations: In how far would the new assessment still be objective and impartial?

#### II. Retro-active imposition of duties

- Purpose of basic Regulations is to protect the Union industry; how does retro-active imposition provide (protection (principle of proportionality)
- Why unlimited retroactivity (10 years in Puma; 7 years in Jinan Meide) whereas 3-year deadline for claiming refunds following annulment (ECJ in Clarks)?

### 3. SOME CONCERNS

#### III. What to claim in an application?

- Often several pleas, some substantive and some procedural
- To include procedural pleas with risk only those are addressed?
- To include substantive pleas with limited impact? (*Jinan Meide*; measures in 2013 at 40%; reimposition in 2020 at 36%).
- In several cases, annulled on one ground without examining the other pleas
- Is there a willingness by the General Court to address all claims (like in *Jinan Meide II*)? Would also avoid situations like in *Xinyi* (more than 8 years) and *Jinan Meide* (nearly 10 years)

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THANK YOU

