

Correspondence

Dear Editor:

I read with great interest the article by Dr. Utz Toepke appearing in the Spring 1982 issue of the *International Lawyer* concerning "Pricing of Products in the EEC." The article is most informative and will, I am sure, be of great help to businessmen in assessing the impact of EC competition law on European pricing policies.

However, one is likely to be drawn to the conclusion from reading the article that it is only the competition law of the EC that impacts upon European pricing policies. I am sure that this impression was unintended by the author but it may be worth pointing out that there are other legal considerations which impact upon pricing policies, including taxation considerations and, more importantly, perhaps, the EC rules on antidumping.

The EC rules concerning antidumping are of particular importance in determining the proper pricing of products exported to the EC, since they are concerned with the fair value or, to use the expression contained in the EC rules, the "normal value" of products exported to the European community.

The EC rules, which are contained in Council Regulation No. 3017 79 (OJ 1979 L339 1), provide in part that a product shall be considered to have been dumped if its export price to the community is less than the normal value of the like product.

"Normal value" is generally defined as the comparable price paid or payable in the ordinary course of trade for the like product intended for consumption in the exporting country or country of origin.

Thus, in effect, dumping occurs where goods are sold for export to the EC at prices which are lower than the prices obtained on the home market of the exporting country. If dumping is established, and injury to a European industry is also established, this will result in the imposition by the EC of offsetting antidumping duties.

In effect, therefore, the EC dumping rules are concerned with a form of price discrimination by non-EC country producers, since a producer in one EC member country cannot be accused of dumping in another EC member country. Accordingly, the rules are of enormous significance to non EC-country producers and require such producers to be intimately familiar

with the "normal value" of their products, and the manner in which such value is calculated.

In the second full paragraph on page 234 of Dr. Toepke's article, he states the following:

Two statements can be made at the outset which will provide some basic guidelines in the area of product pricing. First, a company acting alone, i.e., independently of outside contacts, can do what it wishes as regards its product pricing, unless it is a dominant firm. In other words, *single-company conduct of a nondominant enterprise* escapes the prohibitions of EEC law; such a firm can price its products as it sees fit.

I believe that these observations must be qualified by reference to EC dumping law, since, under such law, low pricing can pose serious risks for an exporter to the EC, even though it is acting independently, has no dominant position and exhibits no predatory intent: the mere act of selling in the EC below "normal value" can, if injury to an EC industry is established, subject the exporter to additional import duties.

Thus, for those enterprises who are concerned with exporting to the EC, their pricing policies must take account not only of the EC competition law but of the EC antidumping laws, as well. Indeed, in these recessionary and protectionist times, the risks of dumping may be of more significance in some industries than the risks of breaching the competition laws.

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