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**European Association for
Ductile Iron Pipe Systems**

Fachgemeinschaft Guss-Rohrsysteme

NEWSLETTER

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Dear Readers,

The time of the pandemic has shown us on the one hand the reliability of global supply chains and on the other hand the advantages of regional supply chains. Thus, even during the pandemic, EADIPS members were able to ensure supply security through regional manufacturing, reliable partners and short distances. In the European Union (EU), too, there are changes in the assessment of global economic interrelationships due to the pandemic, but also, for example, due to the activities surrounding the European Green Deal.



Fair trade relations with third countries are regularly on the EU Commission's agenda in various forms - including the two cases we report on in this newsletter: While the EU has largely opened its public procurement markets to companies from third countries, many of these states unfortunately do not grant EU companies comparable access. It should be emphasized, however, that the European Union has not been idle on the subject of 'products from third countries' in the past either. The EU therefore published a directive back in 2014 for contracting authorities in the water, energy and transport sectors which makes it possible to reject bids from non-EU countries. We also report on anti-dumping and anti-subsidy procedures of the European Commission.

We hope you enjoy reading this newsletter

Yours

Christoph Bennerscheidt

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Fair trade and reciprocity – Tenders comprising third countries products

Information letter on the implementation of European Union Directive 2014/25/EU on the awarding of public contracts by clients in the field of supplying water, energy and communications.



First the COVID-19 pandemic and then, in March, the incidence of a container ship getting stuck in the Suez Canal brought our dependency on global supply chains to our attention in a drastic way. Both events have, on the one hand, made it clear that a reliable European production guarantees security of supply and, on the other hand, the interruptions to the supply chain have also sharpened the perception of countries with which the EU has concluded a free trade agreement and those with which there is no such free trade agreement – referred to as third countries. China or India are examples of third countries.

While the EU has broadly opened up its public procurement markets for businesses from third countries, many of these countries do not grant any similar access to EU businesses.

It is not always realised that, in the context of tendering for the delivery of products and in compliance with EU Directive 2014/25/EU [1], public clients in the EU from the water, energy and communications supply sector have the either reject non-EU bids where the proportion of goods originating in non-EU countries exceeds 50 percent or give preference to the EU bid if prices are equivalent (meaning within a three percent margin).

This procedure is established by the implementation of said EU Directive 2014/25/EC in the national law of all the Member states. So, for example, the EU Directive has been implemented

- in Germany: § 55 of the sectoral regulations (SektVO) [2],
- in Austria: § 303 BVergG (Federal law on the awarding of contracts) [3],
- in France: L.2153-1 et seq. of the French Code on public procurement,
- in Belgium: art.154 – Loi du 17 JUIN 2016 relative aux marchés publics,
- in Luxemburg: art. 147 – Loi du 8 avril 2018 sur les marchés publics,
- in the Netherlands: art. 3.76 – Aanbestedingswet 2012 – Geldend van 18-04-2019 t/m heden,
- in Italy: Art 137, CODICE DEI CONTRATTI PUBBLICI Decreto legislativo 18 aprile 2016, n. 50, and
- in Spain: art. 70 “Preference for community offers in supply contracts”, Royal Decree-Law 3/2020, on February 4, 2020 (<https://www.boe.es/buscar/pdf/2020/BOE-A-2020-1651-consolidado.pdf>). On June 28, 2021, this Royal Decree-Law was incorporated into the “Public Sector Contracts Code”, along with the rest of the EU directives and legislation related to public procurement (https://boe.es/legislacion/codigos/codigo.php?mo-do=1&id=031_Codigo_de_Contados_del_Sector_Publico).

As an example of the legal provisions listed above, the text from Section 55 SektVo ist quoted as follows:

1. The client who issues a supply contract may reject tenders in which the proportion of goods originating from countries which are not parties to the Agreement on the European Economic Area is more than 50 percent of the total value and with whom there are also no other agreements on reciprocal market access. The Federal Ministry for Economic Affairs and Energy publishes the countries with which such agreements exist and the areas to which they apply in the Federal Gazette.

2. If two or more tenders are of equal value according to the awarding criteria, then the offer which cannot be rejected in accordance with paragraph 1 is to be given preference. The prices are to be considered as equal if they do not differ from one another by more than 3 percent. Sentence 1 is not to be applied if the preferential treatment would lead to the acquisition of equipment which has technical features other than those of the equipment already used by the client, thereby resulting in incompatibility or technical difficulties during operation and maintenance or in disproportionate costs.

Not to be left unmentioned is the fact that, public clients also have the possibility of stipulating other awarding criteria when placing contracts, such as quality, environmental or social aspects to assess the cost effectiveness of an offer. With the targeted use of awarding criteria of this kind it is at least possible to rate European bidders higher than bidders from third countries.

It is worth noting that, with consistent application of the existing possibilities for rejecting tenders with products from third countries and/or the use of appropriate awarding criteria, European network operators in the water, energy and communications supply sector can make a significant contribution to

- protecting the businesses manufacturing in Europe according to European criteria,
- maintaining skilled jobs with high health, safety and social standards and
- safeguarding know-how in strategic key industries in Europe, in particular with respect to water supply.

In 1997, former German Federal President Roman Herzog made a keynote speech in Berlin with the famous quote “Germany needs to wake up with a jolt”. – These days it makes sense to replace the word “Germany” in this quote with “Europe”. We must jolt ourselves into action and urgently start focusing on the European markets and strengthening them. Especially with reference to crucial water and energy supplies with their underground infrastructure, the sensitive lifelines of our towns and cities, we are ideally positioned. What are we waiting for? It is up to us to promote, stabilise and secure the European market – ecologically, economically and for generations to come.

Bibliography

- [1] DIRECTIVE 2014/25/EU OF THE EUROPEAN PARLIAMENT AND COUNCIL dated 26 February 2014 on the awarding of contracts by clients in the field of supplying water, energy and communications as well as postal services and repealing 2004/17/EC.
- [2] Regulation on the awarding of public contracts in the field of communications, drinking water supply and energy supply [Verordnung über die Vergabe von öffentlichen Aufträgen im Bereich des Verkehrs, der Trinkwasserversorgung und der Energieversorgung (Sektorenverordnung – SektVO)]. Sectoral regulations dated 12 April 2016 (BGBl. I p. 624, 657), last modified by Article 6 of the Law of 12 November 2020 (BGBl. I p. 2392).
- [3] Federal law on the awarding of contracts [Bundesgesetz über die Vergabe von Aufträgen (Bundesvergabegesetz 2018 – BVergG 2018)]
- [4] COMMUNICATION FROM THE COMMISSION
Guidance on the participation of third-country bidders and goods in the EU procurement market
[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0813\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0813(01)&from=EN)

Ductile Iron Pipes from India:

Anti-Dumping and Anti Subsidy Proceedings by the European Commission.

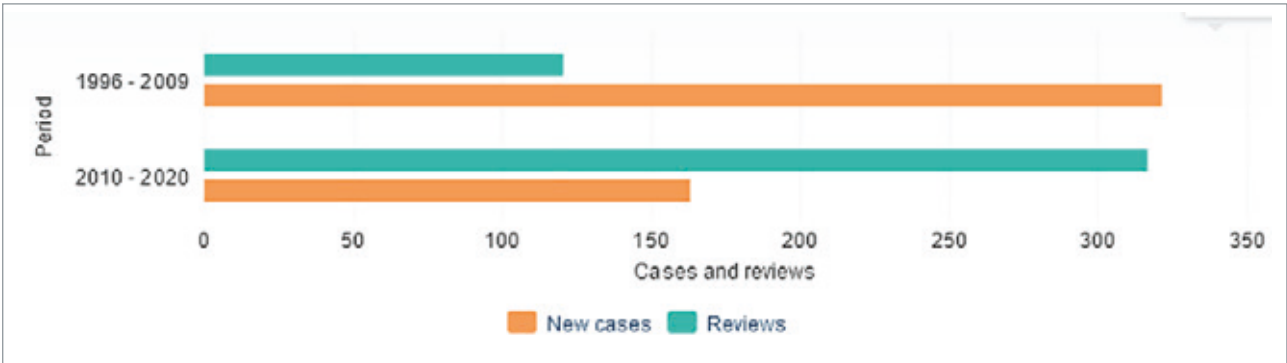
The European Commission is responsible for investigating dumping claims by exporting producers originating from non-EU countries and imposing measures (if any). The European Commission opens an investigation if it receives a complaint from the concerned EU manufacturers, but it can also do this on its own initiative.



A non-EU company is said to be exercising dumping if it is exporting a product into the EU at a price which is below its normal value. The normal value is either the price of the product at which it is sold on the domestic market of said non-EU company or a price which is based on production costs plus profit.

The European Commission can also check whether a subsidy – a financial contribution by (or on behalf of) an official public institution in the country of the non-EU manufacturers – is influencing the pricing of goods imported into the EU. In such a case, the European Commission can impose measures such as countervailing duties in order to neutralise the advantage of such a subsidy on imported goods.

The average number of trade defence actions initiated for the years 1996 to 2009 and 2010 to 2020 are shown in the following figure.



Average number of trade defence actions initiated 1996 to 2009 and 2010 to 2020 [1].

Anti-Dumping and Anti-Subsidy Proceedings on the Importation of Ductile Iron Pipes

Late 2014 and early 2015, the European Commission initiated an anti-dumping and an anti-subsidy actions on the importation of pipes in ductile cast iron (also known as spheroidal graphite cast iron) originating in India. In 2016, these cases resulted in the imposition of antidumping duties and countervailing duties for exporters from India (see Commission Implementing Regulation (EU) 2016/387 [2] and Commission Implementing Regulation (EU) 2016/388 [3], both dated 17 March 2016).

Basically, anti-dumping and anti-subsidy measures only remain in effect to the extent necessary in order to render the injurious dumping ineffective or to counteract a subsidy. Anti-dumping and anti-subsidies measure cease to be effective five years after its implementation or five years after the date of the conclusion of the latest review. For the above mentioned cases, these measures expired on March 2021 (see (EU) 2016/1036 [4], article 11).

Review of Anti-Dumping and Anti-Subsidies Measures After Five Years

In the above-mentioned case, a review of the antidumping and antisubsidy measures was initiated by the European Commission on March 2021. The present expiry date and current status can be found at trade.ec.europa.eu.

We will closely follow the outcome of such review of these anti-dumping and anti-subsidy measures imposed on Indian ductile iron pipes manufacturers.

Bibliography

- [1] <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/>
- [2] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0387>
- [3] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0388>
- [4] <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A32016R1036>