

EUROPEAN PARLIAMENT



*Directorate General for Research*

WORKING PAPERS

THE ECONOMIC IMPACT OF  
DUMPING  
AND THE COMMUNITY'S  
ANTI-DUMPING POLICY

*E c o n o m i c S e r i e s*

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THIS PUBLICATION IS ONLY AVAILABLE IN ENGLISH.

HOWEVER, THE EXECUTIVE SUMMARY HAS BEEN TRANSLATED INTO FRENCH AND GERMAN.

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DIRECTORATE GENERAL FOR RESEARCH  
INTERNAL MARKET DIVISION  
L - 2929 LUXEMBOURG  
TEL: (00352) 4300-1  
FAX: (00352) 43 40 71

**Editors:**        Frank WIEHLER  
Frank SCHUERMANS

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## **FOREWORD**

At the request of the European Parliament's Committee on External Economic Relations and Committee on Economic and Monetary Affairs and Industrial Policy, the Directorate-General for Research commissioned a study on the economic impact of dumping and the European Community's anti-dumping policy.

Following a restricted invitation to tender, the Management Consultants Ernst & Young of London were instructed to carry out the study.

The purpose of the study is to provide Members with information on the impact of various forms of dumping on specific industrial sectors, on the basis of empirical investigations.

The second part of the study analyses the Commission's anti-dumping policy and its impact on market participants (manufacturers, importers, users, consumers and so on) and on competition and employment in the EC.

The study concludes by setting out possible options for a future Community anti-dumping policy. Members may find these useful as a basis for discussion in the political debate.

DIRECTORATE GENERAL FOR RESEARCH

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## **VORWORT**

Auf Wunsch des Ausschusses für Außenwirtschaftsbeziehungen sowie des Ausschusses für Wirtschaft, Währung und Industriepolitik des Europäischen Parlaments hat die Generaldirektion Wissenschaft eine Studie über die wirtschaftlichen Auswirkungen des Dumping und der Antidumpingpolitik der Europäischen Gemeinschaft in Auftrag gegeben.

Auf der Grundlage einer beschränkten öffentlichen Ausschreibung wurde das Beratungsinstitut Ernst & Young, Management Consultants, London, mit der Durchführung der Studie beauftragt.

Ziel der Untersuchung ist es, den Abgeordneten Informationen über die Auswirkungen der verschiedenen Formen des Dumping auf bestimmte Industriesektoren an Hand empirischer Untersuchungen zu vermitteln.

In einem zweiten Untersuchungsschritt wird sodann die Antidumpingpolitik der Kommission der Europäischen Gemeinschaften analysiert und deren Auswirkungen auf die Marktteilnehmer (Hersteller, Importeure, Verwender, Konsumenten etc.) sowie auf Wettbewerb und Beschäftigung in der EG.

Die Untersuchung schließt ab mit einer Darstellung der möglichen Optionen für eine künftige Gestaltung der gemeinschaftlichen Antidumpingpolitik. Diese können den Abgeordneten als Diskussionsgrundlage für die politische Debatte dienen.

GENERALDIREKTION WISSENSCHAFT

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## AVANT-PROPOS

Conformément au souhait de la commission des relations économiques extérieures comme de la commission économique, monétaire et de la politique industrielle du Parlement européen, la Direction générale des études a confié à un organisme une étude relative aux incidences économiques du dumping et de la politique antidumping de la Communauté européenne.

Sur la base d'un appel d'offres restreint, c'est l'institut de consultatns Ernst & Young, de Londres, qui a été chargé de l'exécution de cette étude.

L'étude visait à présenter aux parlementaires, à partir d'analyses empiriques, des informations relatives aux conséquences que peuvent avoir les diverses formes de dumping sur divers secteurs industriels.

Dans une deuxième étape, il est procédé à une analyse de la politique antidumping de la Commission des Communautés européennes, ainsi que de ses effets sur les acteurs du marché (producteurs, importateurs, utilisateurs, consommateurs, etc.), et sur la concurrence et l'emploi à l'intérieur de la CE.

L'étude se conclut par la présentation des options possibles concernant la mise en forme future de la politique antidumping de la Communauté. Ces options peuvent servir de base de discussions dans le débat politique auquel se livreront les parlementaires.

DIRECTION GENERALE DES ETUDES

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Luxembourg, February 1993.

## THE ECONOMIC IMPACT OF DUMPING AND THE COMMUNITY'S ANTI-DUMPING POLICY

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## **EXECUTIVE SUMMARY AND CONCLUSIONS**



## EXECUTIVE SUMMARY AND CONCLUSIONS

### Introduction

In this summary we present an overview of our report to the European Parliament on the economic impact of dumping and the Community's anti-dumping policy, highlighting our principal conclusions and recommendations.

### *Outline of Report*

- Section I describes the background to our study, our terms of reference, our work programme and the approach we have adopted;
- Section II outlines the principal features of the Community's Anti-Dumping Regulation and the relevant GATT provisions;
- Section III analyses the economic impact of dumping and describes some of the Community's experience;
- Section IV considers the economic rationale for anti-dumping measures;
- Section V discusses the Community's use of anti-dumping measures;
- Section VI discusses the economic impact of dumping and anti-dumping measures on key dimensions of the Community interest;
- Sections VII and VIII discuss the key criteria of dumping, injury and the Community interest;
- Section IX discusses the selection of the appropriate measures and Section X considers institutional issues;
- Section XI discusses some broader policy issues relating to dumping.

### Background, Terms of Reference and Work Programme (Section I)

#### *Background and Terms of Reference*

In the last decade, the European Parliament has taken a close interest in the Community's anti-dumping policy and the GATT Anti-Dumping Code. Most recently, in 1990, the Parliament adopted a Resolution which endorsed the need for anti-dumping measures and made a number of specific recommendations for policy changes to make anti-dumping measures more effective, equitable and transparent.

In order to improve the Parliament's understanding of the economic effects of dumping and of the Community's anti-dumping policy, Ernst & Young was commissioned in December 1991 to undertake a study which would:

- assess the economic effects of dumping and anti-dumping policy in the Community;
- evaluate the relevance and effectiveness of the Community's anti-dumping measures;
- present and assess options for changes in both Community and international policy.

## *Work Programme*

In the course of the study we have:

- developed a conceptual framework within which to analyse the impact on the Community of dumping and anti-dumping measures which takes account of important developments in the last decade in the economic analysis of trade in international markets;
- undertaken a desk analysis of the economic characteristics of the industries and markets in which there have been anti-dumping proceedings and of the Community's use of anti-dumping measures in the last decade;
- undertaken more detailed case studies of five anti-dumping proceedings<sup>1</sup>. The selection of the case studies was made in consultation with the Commission and the Parliament's Research Directorate;
- had many meetings with the Anti-Dumping Directorate of the Commission to discuss all aspects of Community anti-dumping policy;
- undertaken a programme of interviews with other Commission services, the GATT Secretariat, Ministries and competition agencies in some Member States, industry associations, consumer bodies, trade union bodies, government representatives of exporter interests, trade lawyers, and academic commentators;
- reviewed the anti-dumping measures and experience of the three other largest users of anti-dumping measures – Australia, Canada and the United States.

## *Scope and Approach*

Our approach has been to start from the presumption that the Community's overall economic interests are, in the main, maximised by free trade and then to assess the impact of dumping and whether anti-dumping measures increase economic welfare in the Community, either in all or in some cases, when an industry has suffered injurious dumping. In doing so, we consider whether other policy measures would be a more appropriate response to problems created by dumping.

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<sup>1</sup> Our five case studies were of the anti-dumping investigations of imports into the Community of:

- denim – a fabric used in the manufacture of clothing – from four countries (Turkey, Indonesia, Hong Kong and Macao). Only very limited dumping was found and the Commission concluded that this had not caused material injury to the Community industry. No measures were therefore imposed;
- mini ball bearings – which are used in motors and a wide range of other products to reduce friction between moving parts – from Japan, Singapore and Thailand. Undertakings were accepted on imports from Japan in the 1970s. Duties were applied in 1984 to imports from Japan and Singapore and subsequently extended to Thailand. The measures remain in force;
- photocopiers from Japan. Provisional anti-dumping duties were applied in 1986 and are currently being reviewed;
- polyvinyl chloride – a plastic used in the manufacture of a wide range of products – from four East European countries (Czechoslovakia, Romania, Hungary and the former GDR). Measures were applied in 1982/83 and lapsed in 1987/88;
- small colour televisions. Provisional duties were applied on imports from Korea in 1989 and subsequently on imports from Hong Kong and China.

To achieve a full understanding of the impact of dumping and anti-dumping measures in particular cases would have involved access to highly sensitive information and would have placed a considerable burden on Community industry and exporters – we would have had to re-run the investigation and undertake a detailed analysis of subsequent events. This would not have been practicable. Our report therefore takes the form of an economic analysis of the case for anti-dumping policy which has been (deeply) informed by our study of five cases and our discussions with the Commission and other observers and participants in the Community's anti-dumping policy.

In addition to the issues analysed in this report, there are a number of other economic and political considerations which are important in practical policy-making:

- anti-dumping measures may help to open third markets, thereby conferring economic benefits. A much wider study of trade relations would be required in order to judge whether anti-dumping measures make an effective and efficient contribution to the liberalisation of world markets. This was outside our terms of reference;
- a widely held view is that if there were no anti-dumping measures, in practice, protectionist pressures would then be accommodated in ways which have a greater distortionary effect on world trade. On this view, anti-dumping measures are a form of safety valve;
- the notion that dumping is "unfair". This has a powerful emotional appeal, but it has to be considered whether there is an economic case for retaliatory action;
- there may be strong pressures to accommodate the interests of well-organised groups.

### ***Limitations***

As envisaged by the Parliament's terms of reference and in our proposal, our work programme has focused on the Community itself. The extent to which overseas markets are closed to Community industry and the trade and industrial policies adopted by major trading partners of the Community are important issues and have implications for the Community's anti-dumping policy. The Research Directorate of the Parliament did not feel our study should be broadened to research these issues.

For legal reasons, we were not able to have access to the Commission's files for our case studies. It was agreed that we could see details of individual exporters dumping margin calculations with their agreement. Unfortunately, this was not forthcoming and inevitably limited the value of the case studies. More generally, our case studies suffered from a reluctance on the part of some exporters to assist our study; and we sensed that in some cases Community firms and industry associations were guarded in their co-operation.

### **The Community's Anti-Dumping Policy (Section II)**

The Community's anti-dumping measures follow closely the provisions of the GATT Anti-Dumping Code. Anti-dumping measures may be applied when the following three criteria are met:

- exports to the Community have been dumped. It tends to be assumed that dumping implies that exporter's prices in its domestic market are higher than those charged to Community importers. But this need not be the case since, if the exporter's domestic sales are not profitable, the export price will be compared to a constructed domestic price which includes all overheads and a margin of profit;

- the Community industry has suffered material injury as a result of the dumping. Additionally, a finding of material injury may be made when dumping threatens to cause injury or is retarding the development of a Community industry. But these provisions are little used in practice;
- the application of measures would be in the Community interest.

Measures, which usually take the form of ad valorem duties or price undertakings, are applied at the level necessary to remove dumping unless a lower duty (or price undertaking) would be sufficient to remove the injury (the "lesser duty rule"). Measures lapse five years from the date when they were last renewed unless the continuing need for them is confirmed by a "Sunset Review".

Duties paid will be refunded when the importer can demonstrate that they have exceeded the dumping margin.

As the Parliament's Committees have recognised, the Community's anti-dumping measures include three provisions which make the Community's policy more liberal than the strict requirements of the GATT Code:

- the Community interest criterion. Australia and Canada have provision in their legislation for public interest issues to be taken into account, but there is no requirement to consider them in every case;
- apart from the Community, only Australia operates an explicit lesser duty rule;
- like the Community, Australia and Canada have five-year sunset clauses; and the draft of the new GATT Code makes sunset clauses mandatory.

Two other key differences between the Community's measures and those of Australia, Canada and the United States are that:

- time limits are set for investigations in all three countries;
- in Canada and the United States, the investigation of dumping is undertaken by a government department whilst injury investigations are undertaken by a separate, independent Commission or Tribunal. In Australia, an independent Authority reviews as a matter of course proposals to implement anti-dumping measures made by the Australian Customs Service.

### **The Impact of Dumping (Section III)**

#### ***The Background Circumstances***

General perceptions of dumping problems are often based on the assumption that they involve a surge of low-priced imports, perhaps when demand is already weak.

Our desk analysis of 40 dumping investigations shows that significant numbers of cases seem to have these characteristics. Indeed in three of our case studies – *Denim*, *Mini Ball Bearings* and *Polyvinyl Chloride* – Community demand and production were falling significantly in the period before the investigation.

However, in other cases, very different background circumstances applied, and in the period immediately before the investigation was launched we found:

- in almost half the cases, demand in the Community was growing by 3% or more;
- in around 25% of cases, Community production was growing by 3% or more;
- in around 20% of cases, the imports alleged to have been dumped accounted for 5% or less of the Community market;
- in around a third of cases, import prices were static or rising.

Similarly, in our case studies of *Plain Paper Photocopiers* (PPCs) and *Small Screen Colour Televisions* (SCTVs) the Community market was buoyant, although in the latter case overall production was falling.

### ***The Impact of Dumping***

Dumping can be expected to have various effects on the Community industry and other economic agents, according to the background circumstances of the case. Where the amount of dumping and level of trade is significant, Community prices, profits, production and employment levels are likely to be lower than otherwise in the short run. In markets which are growing, dumping may manifest itself in loss of market share rather than falling production. Indeed, loss of market share may be a particularly important indicator of injury when growth is necessary to maintain or improve cost competitiveness. In *Plain Paper Photocopiers* and *Small Screen Colour Televisions* the loss of market share by the Community industry was significant.

Other key indicators of injury which were found in each of our case study industries to a significant extent are reductions in prices and profitability.

It is important to distinguish the short term impact of dumping from its longer term effects. In part this will depend on whether or not the dumping is transient. From the overall economic impact viewpoint a critical long term question is whether the competitiveness of Community industry is damaged by the dumping. This could happen if, for example:

- there are scale economies or learning effects which are denied to the Community industry by the dumping but enjoyed in consequence by the dumper;
- necessary R&D and investment is not undertaken due to short term financial difficulties created by the dumping;
- the Community suppliers and components industries are damaged.

The potential future effects of dumping have been a key consideration in a number of cases. For example:

- in *Mini Ball Bearings* there was concern that the profitability of the industry was not sufficient to finance necessary investment and R&D;
- similarly, in *Plain Paper Photocopiers* the Community industry was found to be spending less than Japanese exporters on research and development and it was concluded that the future competitiveness of the Community industry was threatened;
- in *Small Screen Colour Televisions* it was feared that continued dumping would lead to the cessation of integrated Community production and that there would be adverse longer term effects on the development of new generation products.

In general, consumers and industrial purchasers are likely to benefit in the short run from dumping, due to receiving lower prices than otherwise. The critical question is whether these "prices lower than otherwise" will be sustainable in the future, and indeed whether ultimately consumers will face higher prices, and/or poorer quality service as a result of any damage caused by dumping.

## **The Rationale for Anti-Dumping Policy (Section IV)**

### *Perspectives on Anti-Dumping Policy*

Views on whether there is an economic rationale for anti-dumping policy vary very widely.

At one extreme, it is argued that dumping is only possible when the exporter's domestic market is closed to competition or "isolated". As such, dumping is at variance with the objectives of free trade and international competition which have been central to the development of the international trading system in the last five decades. Injurious dumping is condemned by the GATT and, when established, advantage should be taken of the rights under the GATT to apply anti-dumping measures. In this form, the rationale for anti-dumping measures depends in large measure, not only on the economic effects of dumping, but also on the wider considerations of fairness and the objective of promoting open markets identified above.

At the other extreme, some critics of anti-dumping measures argue that insufficient allowance is made for the price benefits derived by consumers and industrial purchasers from dumping. They believe that dumping is only economically damaging when it leads to the elimination of the Community industry and to the exposure of Community purchasers to a monopoly supplier. In their view, cases of "predatory dumping" are likely to be very rare. Accordingly, there is only a case for the application of anti-dumping measures in highly restricted circumstances.

We believe that dumping has the potential to be damaging to the economic interests of the Community in a wider range of circumstances than suggested immediately above. However, in considering whether there is an economic case for the introduction of anti-dumping measures, it is vital to undertake a detailed analysis of the market, why the dumping has occurred and the likely effects of anti-dumping measures. In particular, we have found it useful to distinguish the following types of dumping:

- long run dumping: a strategy of setting lower prices in export markets over many years, and possibly permanently;
- cyclical dumping: exporting at prices which do not allow the recovery of all costs when the market is depressed;
- state trade dumping: exports from non-market economies at prices which would not allow the recovery of all costs in a market economy;
- predatory or strategic dumping: exporting at low (but not necessarily loss-making) prices with the result that competition in the Community market is weakened;
- transitional dumping: exporting at low prices on a temporary basis:
  - in order to enter the Community market or develop sales of a new product;
  - when there is excess production capacity globally.

### ***Predatory Dumping***

The most contentious issues concerning the Community's anti-dumping policy arise from cases which the Commission and the industries concerned regard as examples of predatory dumping – predominantly, cases involving exports of electronics products from the Far East.

In these cases, the concern is that exporters benefit from closed domestic markets with the result that:

- they are able to charge high prices and earn high returns which can be used to cross-subsidise exports to the Community;
- costs can be reduced more rapidly since fixed costs are spread over greater volumes.

As a result, exporters may be able to undercut Community producers without selling below cost.

The Commission argues that, unless measures are taken to counter dumping, the Community industry will find that its costs increase, at least relatively, as dumped exports take a larger share of the Community market. Depressed profitability will make it difficult for the Community industry to fund and justify continuing investment in research and development. Over time, the Community industry will either be eliminated entirely or will become technologically dependent on exporters to the Community and will cease to be an independent competitive force. Dumping across a range of related products may lead to the loss of whole sectors of industry to the Community. The resulting weakening or elimination of competition in the Community market will be severely detrimental to the interests of both consumers and industrial purchasers.

We believe that the critical questions to be evaluated when considering whether or not to introduce anti-dumping measures in the circumstances described above are:

- whether there are strategic reasons to retain a Community capability in the industry in question;
- the impact on long run effective competition in the Community.

With regard to the latter, the key questions are whether:

- the dumping will force Community firms out of the market or ensure that they are permanently weakened;
- the extent to which there will remain competition between exporters, irrespective of whether they have themselves been engaged in dumping;
- the extent of the entry or re-entry barriers in the relevant market.

These conditions are most likely to be met in sectors in which technological progress is rapid and a high level of investment is required in research and development and production equipment in order to maintain competitiveness. Where this is the case, market closure may allow the dumper(s) to gain an initial cost advantage which is reinforced by building volumes through aggressive pricing in the Community market. As a result, the Community industry may suffer an increasing cost disadvantage.

Even if dumping has caused damage, it is still important to consider whether anti-dumping measures will rectify the damage. There may be little point (apart from sending a strategic message) in introducing measures if the Community industry has already been permanently damaged to the point where it cannot be restored as an effective competitor.

### *Other Types of Dumping*

However, whilst the incidence of predatory dumping is a key issue, dumping does not necessarily lead to a detrimental reduction in competition. In general, economic analysis suggests that there can be no presumption that measures should be introduced when dumping has created material injury. There are four fundamental reasons for this.

#### *i) Dumping is not Aberrant*

Dumping as measured and defined by GATT does not necessarily reflect an aggressive or anti-competitive strategy of the dumper. The economist's concept of perfectly competitive markets in which the free and rapid movement of goods ensures that prices in different markets are the same is rarely observed in practice. Indeed, where a relatively small number of producers compete in a number of national markets, both overall demand conditions and those facing individual producers will often vary between markets leading to differences in prices. When those demand conditions are stable, firms may adopt differential pricing strategies indefinitely unless the products can be easily (re)exported. In other instances, a policy of setting low prices in a market may be transitory. Even within their own domestic markets, firms often adopt a policy of price discrimination, eg. selling at different prices to different sub-markets, according to demand and supply sensitivities. Similarly, there will be a degree of price discrimination (dumping) from one country to another within the Community as firms adjust their pricing strategies to the different market circumstances they face. Indeed, one of the objectives of the Single Market Programme and the Community's competition policy has been to eliminate the frictions which have allowed price differentials to persist within the Community in many sectors.

Examples of how imperfect competition may lead to dumping include:

- firms will generally wish and be able to set higher prices in markets in which they have a strong brand image;
- in entering a new market, firms may well have to set low prices for several years in order to persuade consumers to sample their products;
- in industries in which costs decline over time as output is increased, there is a strong incentive to price below (current) costs in order to increase sales and reduce (future) costs. In these conditions firms may adopt aggressive pricing strategies irrespective of whether their domestic market is closed.

#### Cyclical Dumping

A determination of dumping would be made if an export price to the Community did not exceed the exporter's full costs (plus a margin of profit) in its domestic market. Thus if business conditions and domestic prices are depressed and unit costs are high, an exporter may have to set higher prices for sales to the Community in order to avoid a determination of dumping.

#### *ii) Injury is a Partial Measure of Economic Welfare*

As discussed above, dumping may have very severe effects on the industry directly affected both in the short and in the longer term. In addition, there may be detrimental indirect effects on suppliers and, if dumping reduces competition or efficiency, on customers of the Community industry subject to dumping.

However, dumping may also have other effects:

- new entry by an exporter will increase competition in the Community market and may lower prices in the longer term and/or add to the variety of products available to consumers;
- similarly, forward pricing and cyclical dumping strategies may reduce the general level of prices to consumers and industrial purchasers. Furthermore, if industrial purchasers are not allowed to benefit fully from low prices, their competitiveness in downstream markets may be affected with a consequent loss of output and employment.

A focus on the industry directly affected and on any indirect adverse effects on the wider sector and on suppliers of materials and components may therefore not fully reflect the overall economic impact on the Community.

*iii) There is no General Case for Reciprocal Measures Against Closed Markets*

There is a very powerful economic case for the removal of formal and informal barriers to trade which allow price differentials to persist. This maxim has been the driving force behind the GATT and, as noted above, the Community's Single Market Programme. However, faced with closed markets, there is no presumption that adopting measures which have the effect of making imports less competitive in the Community market will increase economic welfare in the Community. Closed markets may, of course, provide the opportunity for dumping. From the Community's viewpoint, whether measures are justified in such circumstances has to reflect the comparative advantages of supply, the ability of the Community industry to compete effectively on equal terms and whether measures help in opening markets. The long term impact on prices is another key issue. It is important that there is not an emotional response to closed markets.

*iv) Other Measures may be More Appropriate*

More generally, economic policies should, wherever possible be directed at the source of the problem. As discussed above, dumping is not in itself a problem. It may however create problems which require policy intervention. In some cases, anti-dumping measures may be the only available solution. But other policy measures available to the Community, particularly employment and research and development policies may be more appropriate in certain circumstances.

*When Measures May be Justified*

The analysis above suggests that anti-dumping measures are not automatically justified on economic grounds even when injury is found. There are clearly, however, circumstances when such measures are merited.

The circumstances when measures may be justified include:

- where labour is a significant cost, its opportunity cost in a recession may be low, with the result that prices of Community producers may exceed the social costs during the relevant period. This may apply, in particular, if Community producers are located in regions with high unemployment;
- if capital markets are imperfect, unusually depressed conditions in the Community industry could reduce investment below the efficient level, or could lead to potentially efficient firms going out of business.

In any particular case, it is necessary to consider the balance between these considerations and the impact on consumers and downstream purchasers to determine whether there is an overall case for policy intervention. A key consideration should be a judgement on the overall competitive position of the Community industry after the dumping episode.

## **The Community's Use of Anti-Dumping Measures (Section V)**

### *Analysis of Cases*

Over the period 1981-91, the Community initiated 422 anti-dumping investigations. Analysis by country and sector shows that:

- 41% of cases involved non-market economies; 33% involved industrialised countries; and the remaining 26% of investigations were directed at imports from developing countries (including the Asian Newly Industrialised Economies ("NIEs"));
- there has been a notable increase in the number of cases accounted for by Japan and, particularly, the Asian NIEs. Taken together, the proportion of cases accounted for by these countries increased from 10% over the period 1981-85 to 32% over the period 1986-91;
- whilst the overall proportion of cases involving non-market economies has declined, there has been a marked increase in the number of cases directed against China;
- dumping investigations have been initiated in a wide range of sectors; the largest proportion has been in the chemicals sector.

### *Outcome of Investigations*

In around 70% of cases closed since 1981, definitive measures were adopted. In just under 20% of cases no material injury to the Community industry was found; and only 6% of cases were closed with a finding of no dumping.

Since 1986, no case has been closed on the grounds that, despite the fact that a Community industry had been injured by dumping, the adoption of measures would not be in the Community interest.

### *Reviews*

The Commission estimates that 75% of cases expire or are repealed under the sunset provisions. Over the period 1989-91, just over a half of all reviews concluded led to the repeal of measures.

### *Investigations of Dumping by Community Exporters*

This study is concerned with the direct economic impact of the Community's own anti-dumping policy. Nevertheless, in considering the overall impact of the GATT provisions on dumping on the economic interests of the Community, it is notable that Community exporters are the most frequent target of anti-dumping investigations by other users of measures. Nearly a quarter of all anti-dumping investigations notified to the GATT Secretariat over the period 1980-89 were of exports from the Community, as compared to 11% for Japan and 10% for the United States.

## The Economic Impact of Anti-Dumping Measures (Section VI)

Only a limited amount of research has been undertaken previously on the economic impact of dumping and anti-dumping measures and there is considerable scope for further detailed research on specific topics. Our case studies help to illustrate some of the possible effects of measures. However, it is impossible to generalise on the basis of a few cases.

### *Prices*

As the Commission argues, the impact of anti-dumping measures on prices depends on factors such as:

- the costs faced by EC producers and the extent of competition between them;
- the prices of undumped imports.

An increase in prices equivalent to the duty applied is likely to be at the top of the range of possibilities. Nevertheless, there is a strong presumption that measures will raise prices above the level that otherwise would have prevailed. Indeed, removal of the injury to the Community industry depends in large part on such an effect. In the longer term, if the application of measures has the effect of preserving competition, prices may be lower than they would have been if no measures had been taken against dumping.

It should be stressed that the relevant comparison is with the trend in prices that would have been observed if measures had not been applied. For products which tend to fall in price over time, measures may "raise prices" by stabilising or braking a downward trend.

We are only aware of one study which has attempted to assess the impact of measures on prices across a wide range of products. This yielded some rather surprising results but suggested that, overall, measures had the effect of raising the prices of dumped and of undumped imports and of EC manufactured products.

Our case studies suggest the following results:

- in *Denim*, there was competition from other low-price imports and it must be doubtful if measures would have had any significant impact on prices;
- in *Mini Ball Bearings*, there is some evidence that measures raised prices;
- in *Plain Paper Photocopiers*, the market conditions would suggest that prices would have been affected and exporters and some observers claim that this has been the case. However, we have seen other conflicting evidence and the position is unclear;
- in *Polyvinyl Chloride*, a price undertaking at a low level was given and prices seem to have recovered before measures could have had an effect;
- it is too early to assess the effects of measures against *Small Screen Colour Televisions*.

### *Competition*

Anti dumping measures reduce competitive pressures in the short run. In the longer run they can have the effect of either increasing or reducing the degree of competition.

Measures may have an adverse long run impact on competition in certain circumstances. For instance, if transitional dumping is used by an importer as a means of market entry, measures or the threat of measures, may deter an effective entry strategy. If the Community industry is already highly concentrated, measures by deterring an important source of competition, may enhance existing market power.

In contrast, measures may be necessary in order to protect effective competition in the Community in the long run. This applies in cases of predatory dumping, or in other dumping episodes if serious damage to the long run comparative efficiency is caused by dumping.

Our finding, confirmed by other research, is that in a significant proportion of cases, there are a relatively small number of producers in the Community. The direction of the impact of measures on competition is particularly important in these cases.

### *Trade and the Location of Production*

The table below summarises our estimates of the distribution of Community imports subject to anti-dumping measures by country and sector. It demonstrates that currently the Community's anti-dumping measures are heavily concentrated on imports from the Far East and in the electronics sector.

*Distribution of Community Imports Subject to Anti-Dumping Measures by Country and Sector, 1991*  
(% of All Community Imports Subject to Anti-Dumping Measures)

<i>Country Analysis</i>		<i>Sectoral Analysis</i>	
Japan	83	Electronics	86
Korea	6	Mechanical Engineering	3
Total Japan & Asian NIEs	91	Chemicals	2
Non-Market Economies	4	Textiles	2
Other Industrialised Countries	4	Iron & Steel	1
Other Developing Countries	1	Other	7

*Source: Commission Annual Report and Eurostat trade statistics*

In its 1990 Annual Report, the Commission estimated that 0.6% of Community imports were subject to anti-dumping duties. This estimate does not take account of the impact of undertakings. Our own estimate, which includes undertakings, is that in 1991 1.1% of the Community's import trade was subject to anti-dumping measures. In any case, the level of trade directly affected by measures is very small.

However, anti-dumping measures may also have indirect "trade chilling" effects. For example, exporters may seek a lower market share or price less aggressively in Community markets in order to avoid an anti-dumping investigation. It is very difficult to assess the importance of these effects in practice. However, our interviews did provide some support for the view that exporters to the Community do take account of the danger of anti-dumping measures being imposed in framing their strategies for the Community market.

There is considerable variation in the proportion of all trade in the relevant products which is subject to anti-dumping measures. In around 40% of cases, the proportion of trade affected in 1991 was 20% or less of all trade in the product. At the other extreme, in around 15% of cases, more than 60% of trade was affected. In our view, this is an important indicator of the economic impact of measures.

Both previous research and our case studies suggest that measures reduce trade levels with the countries affected and increase trade with other countries.

It is difficult to distinguish the effects of anti-dumping measures on the location of production from those of globalisation strategies. However, it seems very likely that at least the timing of investments in Community countries in industries such as *Plain Paper Photocopiers* and *Mini Ball Bearings* was influenced by anti-dumping measures.

### ***Industrial Purchasers***

More than half of anti-dumping cases involve raw materials and intermediate products which are subject to further processing. These industrial purchasers clearly benefit from dumping in the short run at least, and measures may affect their own competitive position in the international markets. Indeed, when Community purchasers face competition in international markets, a loss of competitiveness could lead to a loss of output and employment "downstream" which exceeds the benefit of measures to the EC industry directly affected.

This issue has been raised in a number of cases – including our *Polyvinyl Chloride* case study – and in some cases it is clear that this consideration has influenced the measures applied.

### ***Our Case Studies***

Three of our case studies – *Plain Paper Photocopiers*, *Mini Ball Bearings*, *Small Screen Colour Televisions* – are regarded by the Commission and the industries concerned as cases of predatory dumping.

In all of these cases, our research suggests that if the Community industry were to be eliminated or enfeebled, it would be unlikely to re-emerge. The principal questions are then whether:

- dumping did threaten to fundamentally alter the structure of the EC industry;
- the loss of the Community industry would so weaken competition that in the longer term prices would rise;
- there are wider or strategic benefits from the protection of the industries.

We are not in a position to definitively comment on these points. However:

- it is notable that in each case there are a significant number of non-EC firms in the market. The question of whether they could be expected to compete in the longer term is a vital one;
- the ball bearings industry is strategic in the sense that they are indispensable components of a very wide range of products. However, the key question is whether dumping would lead to a risk of denial of supplies to EC industry or supply on less attractive terms;
- in the *Small Screen Colour Televisions* case, it appears that an important element of the case for measures was the need to preserve the industry's marketing base and to fund the development of new products, including High Definition Television. Since there is only an indirect link between the profitability of SCTV sales and the development of new technologies, there seem to us to be considerable dangers in this line of argument.

It should be recognised that many cases do not involve "strategic" considerations or concerns about future competition:

- the Community imports *Denim* from a number of sources. The production technology is readily available. Price is a key consideration for many buyers. This is therefore an example of a dumping investigation in a highly competitive industry in which dumping would not create an enduring competitive advantage for the exporter;
- *Polyvinyl Chloride* is probably representative of a wide range of cases in the steel and chemicals sector in which relatively low levels of imports have a major impact on prices, particularly when the Community market is depressed. This is because the capital intensive nature of the industries means that when capacity is under-utilised, there is a large incentive to reduce prices as short run variable costs are low. Again, in the absence of rapid technical advance, there is no necessary reason why the dumper should gain an enduring competitive advantage. However, dumping could lead to underinvestment and to a loss of competitiveness.

### **The Community's Approach to Dumping Margin Determinations (Section VII)**

There are a number of controversial issues which merit discussion.

#### ***Sales at a Loss***

As noted above, exporters may sell at a loss in their domestic markets for a number of reasons, including when:

- demand is weak;
- there are high costs during the early stages of production of a new product or in a new factory;
- not all products in a range are able to bear a full share of overheads.

Following the provisions of the GATT Code, the Community will treat (significant) sales at a loss (ie. sales at prices which do not recover overheads as well as variable costs within a period of a year or less) as not being in the "ordinary course of trade" and will determine normal value on the basis of production costs plus overheads and a reasonable rate of profit.

As in the circumstances described above, the exporter may be following identical pricing strategies in its home and export markets, there remains the possibility that dumping will be found, or dumping margins inflated, in circumstances which would not be regarded as prima facie unfair or anti-competitive in competition law proceedings.

**We recommend that sales prices in the exporter's domestic market should be adopted as the basis for normal value determinations unless they are below variable cost. (Recommendation 1)**

### *Related Sales and Marketing Organisations*

The Community's approach to determining dumping margins when manufacturers sell through wholly or partly owned sales companies or distributors has been widely criticised by (particularly) Far East exporters and by some trade lawyers and academic observers. They allege that asymmetric adjustments are made to the prices at which the first independent sale is made in the exporter's domestic market and in the Community.

This is a complex issue which has been at the heart of a number of cases considered by the European Court of Justice. To have reached a definitive conclusion on the Commission's policy we would have needed to have had access to specific dumping margin calculations. However, we have been able to discuss the issues involved with exporters and their advisers and with the Commission. This leads us to the conclusion that the considerable controversy created by this question turns on two key issues.

First, as a matter of policy, the Commission argues that normal value should take account of what it regards as high cost distribution systems in countries such as Japan, which have, in the Commission's view, the effect of closing the exporter's domestic market. For this reason, its policy is to determine normal value on the basis of the prices paid by independent customers and only to make limited adjustments to such prices. However, where the exporter can demonstrate that a particular sales channel in the domestic market is most comparable to the export price to the Community, the Commission will determine normal value on the basis of sales in that channel.

Second, as the functions carried out at different stages of distribution vary as between the home and export market, there is considerable scope for disagreement as to the appropriate level for comparison.

As we have not been able to review specific dumping margin determinations in detail, we cannot comment on the Community's approach in practice.

However:

- as a matter of principle, we believe it is undesirable that differences in distribution costs between the home and export market should be allowed to influence dumping margins. Distribution costs may vary for a number of reasons other than the relative degree of openness of markets;
- the problem would not arise if the export price to the Community were compared with an estimate of the cost of supplying the Community market rather than with the price in the exporter's domestic market;
- an alternative way of ensuring that the distortion of dumping margins by differences in distribution costs is minimised would be to compare export prices and prices in the exporter's domestic market as "close to the factory gate" as possible;

- if price to price comparisons are adopted, it may not be possible to make full allowance for differences in the level of trade (ie. for differences in the point in the distribution chain at which prices are compared) other than by making adjustments to remove or add particular costs. When this is the case, contrary to current practice, allowance should be made for overheads as well as for directly related costs.

**In summary, we conclude that:**

- **there is an overriding requirement for fundamentally economic reasons that normal value and the export price should be on the same basis. So far as possible, differences should be removed by the adoption of a selective normal value. However, to the extent that this is not possible, we see little alternative to making cost-based adjustments to ensure comparability. Thus, any adjustments necessary to achieve comparability should include allowance for differences in indirect as well as direct costs. This would not appear to be provided for in the Anti-Dumping Regulation;**
- **there is no economic rationale for treating separately the determinations of normal value and the export price and consideration of the need for adjustments to achieve comparability separately. The need for adjustments will crucially depend on the basis of normal value and the export price;**
- **since we see no reason why the level of any dumping margin should depend on the costs of distribution and marketing incurred in the exporter's domestic market, the dumping margin should be assessed at a level of trade as "close to the factory" as possible;**
- **in any case, there are strong economic arguments for comparing the export price with an estimate of the cost of supplying the Community market rather than the cost of supplying the exporter's domestic market;**
- **if allowance is made for the profit that an importer might be expected to earn in constructing export prices, care should be taken to ensure that the rate of profit is truly representative. (Recommendation 2).**

#### *Comparison of Export Prices with Normal Value*

At present, dumping margins are determined by comparing the prices of specific export transactions with a single average normal value. If the export price exceeds normal value, a value of zero is assigned in determining the overall dumping margin. It is a longstanding criticism of the method adopted by the Community, and other leading users such as US, Canada and Australia, that this approach has the potential to inflate dumping margins.

Subject to certain exceptions, the draft GATT Code requires that dumping margins should be determined by comparing average export prices with normal value.

**We recommend that, in implementing this provision, the Commission should provide guidance on the circumstances in which it would not follow the average-to-average approach. (Recommendation 3).**

Our two recommendations above are consistent with the Parliament's recommendation (14 December 1990) that the Commission publish guidelines for business concerning EC anti-dumping policy, following the example of its guidelines concerning competition policy and public procurement. The Parliament believes such guidelines would improve the transparency of EC policy, notably with respect to the calculation of the dumping margin.

### **Injury and the Community Interest (Section VIII)**

#### ***Injury***

As we have recognised above, dumping can clearly cause considerable economic distress to the Community industry directly affected by competition from dumped imports. However, in our view, the GATT and Community injury criteria do not provide a sufficient guide to when measures will increase economic welfare. This is because:

- the criterion is only a partial indicator of the Community interest. In particular, no account is taken of the impact that anti-dumping measures have on:
  - industrial purchasers;
  - consumers;
  - suppliers of materials and components.
- although reference is made to the implications of continued dumping, the injury criterion tends to be backward looking. Policy analysis should recognise that by-gones are by-gones and focus on the effects that anti-dumping measures will have on producers and purchasers. In saying this, we recognise however that measures may provide a signal and act as a deterrent to other industries.

Our consideration of the injury criterion has also raised some more technical issues.

#### ***Period of Analysis***

Whereas in the analysis of injury, trends over three years or more are analysed, dumping margins are usually only determined for one year or for an even shorter period. If dumping is found in the period leading up to the investigation, it is implicitly assumed to have been taking place throughout the period for which injury is being assessed. This need not be the case. For example, exporters may not adjust their prices for movements in exchange rates until it is clear that these will not be reversed.

However, determining dumping margins for several years – as is done in Australia – would be onerous.

**We recommend that the Commission should examine and report on pricing trends in the exporter's domestic market as well as in the Community during the reference period to verify that those trends are indeed consistent with the emergency or development of dumping and the injury suffered by the Community industry. However, this should not include the estimation of dumping margins for the whole reference period. (Recommendation 4).**

#### ***De Minimis Limits***

Under normal conditions of competition firms will face significant "shocks" from time to time which reduce the demand that they face or the price that they can realise in their markets. In addition, there is inevitably a margin of error in the determination of dumping margins.

These considerations suggest that increases in import penetration of, perhaps, up to 5% or dumping margins of 5-10% would not pose an unusual threat to Community companies. Not surprisingly, there is a tendency, although not a very strong one (see pp153-154), for proceedings to be closed without measures when dumping margins and import penetration are low.

The draft GATT Code sets a de minimis level for dumping of 2% and 1% (subject to exceptions) for market shares. The former will require some change in Community practice.

**We recommend that the Commission should adopt and publish de minimis limits which are significantly higher than those set in the new GATT Code. (Recommendation 5)**

This recommendation seems consistent with the Parliament's 1990 Resolution that there can only be said to be dumping where a large influx of cheap imports causes substantial damage to the domestic industry.

### *Community Interest*

It is some years since a proceeding was closed with a finding that the application of measures would not be in the Community Interest. Prima facie this is surprising since:

- the Commission takes the view that an investigation should be opened if there is reasonable evidence of dumping and injury and that Community Interest issues should not be taken into account at this stage;
- dumping investigations have been launched and measures imposed in a variety of market circumstances;
- economic analysis suggests that the producer interest is not a good proxy for the overall Community economic interest;
- more than half of anti-dumping cases involve raw materials and intermediate products which are subject to further processing.

A wide range of views on the Community interest criterion was expressed to us.

At one extreme, some observers argued that the Commission treats the Community interest as equivalent to that of the industry. At most, the criterion is merely a safety valve which allows the Commission and the Council not to adopt or to modify measures when there is strong pressure for this. This assessment leads some observers to the view that the pretence that other interests are taken into account should be abandoned. Others feel that giving substance to the Community interest criterion is a central and necessary reform.

However, other observers - and particularly industry associations - were concerned that Community industry would not get the protection from injurious dumping that it requires and deserves if prominence were to be given to Community interest issues. Some regard injurious dumping as of itself contrary to the Community interest. Others are concerned at the range of commercial, economic and political issues which might be brought into account.

Based on our case studies, the interview programme and a review of the outcome of cases over the last decade, our overall impression is that there is scope for more detailed analysis of the impact that anti-dumping measures will have and a need to re-consider the balance between producer and purchaser interests. We recommend that the Commission should report its analysis of the impact of dumping and of imposing anti-dumping measures on all economic interests from both a long and short term perspective. (Recommendation 6)

## Measures (Section IX)

### *Design of Measures*

There are a number of significant considerations in the selection of an anti-dumping measure in the circumstances of a specific case, including:

- compliance;
- effectiveness in removing injury;
- its impact on consumer prices and duty revenues;
- effects on competition;
- flexibility in the face of changed market circumstances;
- administrative convenience.

As noted above, in most cases the Community applies fixed rate duties or accepts undertakings.

Some commentators have argued that the Community, and possibly the GATT, should adopt a variable duty system, ie. one which links the level of duty to the difference between the value declared to Customs and some target price. Such a system would indeed have the advantages of:

- make the effect on the prices at which Community producers would be able to sell more predictable;
- creating a positive incentive to cease dumping;
- introducing a "self-destruct" mechanism whereby measures would cease to have an impact when prices recover and the threat of further injury is removed;
- arguably increasing the fairness of the duty system.

However:

- the benefit of the price increase would accrue to the exporter;
- it would be more costly to administer;
- if there are few suppliers to the Community market, setting a floor price for a significant proportion of imports could provide a benchmark and, as a result, have an adverse impact on competition.

Much the same considerations are relevant in the comparison of undertakings and ad valorem duties. However, variable duties have the advantage of an inbuilt mechanism to ensure compliance.

**The arguments are not clearcut but, on balance, we recommend that the Community should adopt a variable duty system unless there are overriding concerns about the effect on competition or when to do so would not be administratively practicable. (Recommendation 7)**

### *Change in Circumstances*

Anti-dumping measures may in practice provide too much or too little protection to the Community industry.

**We believe that the Commission should monitor the impact of measures and, where the measures are not having the intended effect, open a review on its own initiative. (Recommendation 8)**

### *Life of Measures*

The five year "Sunset Period" provided for in the Anti-Dumping Regulation and in the draft GATT Code would in most cases seem to provide a reasonable period for the Community industry to adjust. In one of our case study sectors – *Mini Ball Bearings* – measures have been in place since the 1970s.

**We believe that**

- **consideration should be given to the adoption of measures for a lesser period, particularly when dumping and the injury it has caused are linked to the state of the economic cycle. Provision could be made (exceptionally) for the renewal of these measures;**
- **measures should only exceptionally endure for more than five years. (Recommendation 9)**

### *Level of Protection*

The "Lesser Duty Rule" has a central role in the Community's anti-dumping policy. At present, the level of duty is set to remove injury.

Assessing the level of duty (or price undertaking) which will remove injury poses a number of technical difficulties. The Commission has adopted a number of different approaches and this has led to allegations of inconsistency. Since the impact of measures depends on the specific market circumstances, assessing injury margins is very difficult. We see significant scope for further work to develop and evaluate alternative approaches.

**We recommend that the Commission should undertake or commission research on this question and should subsequently publish guidance on its policy on determining injury margins. (Recommendation 10)**

Furthermore, since the impact of measures in relieving the injury to the Community industry is only a partial indicator of their impact on the Community interest, we recommend that the Community's lesser duty rule should be redefined to provide that the level and form of any anti-dumping measures adopted should not simply be set in order to remove injury but in order to maximise the overall interests of the Community. (Recommendation 11)

#### *Anti-Circumvention Measures*

In its 1990 Resolution, the European Parliament emphasised the importance of effective rules to prevent the circumvention of anti-dumping measures.

Primary anti-dumping measures create a clear and powerful incentive to circumvention. However:

- there is a risk that anti-circumvention measures may create additional distortions;
- it may be difficult to distinguish between legitimate inward investment projects and those principally stimulated by anti-dumping duties.

We would therefore stress the need to apply anti-circumvention measures flexibly and to take account of the effect that supplementary measures would have on the Community interest.

#### *Refunds and Reviews of Anti-Dumping Duties*

Whatever view is taken of the case for the application of anti-dumping measures, it seems desirable that exporters subject to measures should be given an incentive to stop dumping. This can be achieved by:

- refunding duties when dumping ceases;
- releasing exporters who cease and are not expected to resume dumping from measures through a review.

At present, both Community policy on refunds and reviews and practical difficulties in securing refunds appear to weaken the incentive for exporters to stop dumping. These problems would not arise if our recommendation that the Community should adopt a variable duty system were to be accepted.

The policy problem concerns the treatment of anti-dumping duties themselves when dumping margins are recalculated to determine whether a refund should be paid or whether measures should be renewed or amended. At present, if the importer is related to the exporter, duties paid by the former are deducted in determining whether dumping has continued.

Whilst recognising that the balance of the arguments is not clearcut, we recommend that, as is the case in the United States, anti-dumping duties themselves should not be treated as a cost incurred by importers which are related to the exporter. (Recommendation 12)

We also recommend that the system for securing refunds should be simplified (see page 214). (Recommendation 13)

## **Institutions and Procedures (Section X)**

Our report is concerned with economic issues raised by the Community's anti-dumping policy. However, there are a number of institutional and procedural issues which relate to the effectiveness of the policy and our recommendations for future Community policy which we should comment on.

### *Length of Investigations*

The time taken to reach a final decision is a serious and understandable source of concern to Community industry, upon which the European Parliament has commented on a number of occasions. In its 1990 Resolution, the Parliament called for provisional measures to (as a rule) be adopted within six months of the opening of a proceeding.

It can take many months from the emergence of dumping problems to the opening of proceedings. Investigations then last for an average of 18 months, although provisional measures may be applied four to six months before this. The average time taken to complete investigations has increased significantly within the last decade.

The complexity of decision-making in the Community means that investigations will tend to take longer than in other countries. However, this consideration does not explain why the average length of investigations has increased.

It is notable that other leading users of anti-dumping measures (Australia, Canada and the US), all operate a system of time limits and several commentators have suggested that such a system should be adopted by the Community.

This issue cannot be divorced from that of Commission resources. The draft GATT Code includes an overriding limit on the length of investigations of 18 months. If our proposals for the reform of the Community interest criterion are adopted, the overall amount of work needed in the course of the investigation will increase significantly. In any case there is a danger that the system of time limits results in shortcuts being taken.

**However, we do recommend that the Commission should establish and publish targets for the completion of the various stages of anti-dumping investigations and that detailed information on performance against these targets should be included in the Commission's Annual Report to the Parliament. (Recommendation 14)**

### *Consideration of Alternatives to Anti-Dumping Measures*

Anti-dumping measures may themselves not be the appropriate response to problems created by dumping. In some cases, considerations of efficient policy design would suggest that explicit subsidies would be preferable to the protection afforded by duties. However, while we recognise that subsidies might not be consistent with the Community's international obligations, it may be appropriate to seek other measures to assist the Community industry, either at the Community or the Member State level. In particular;

- regional and employment policies may be used when an industry is likely to contract as a result of international competition;
- R&D measures may be used to foster the development of key technologies.

**We therefore recommend that consideration of the Community interest should include whether some alternative policy measure would be more appropriate. (Recommendation 15)**

### ***Transparency of Anti-Dumping Proceedings***

We believe that the transparency of anti-dumping proceedings could be improved, thereby contributing to its effectiveness in promoting the Community interest. At present, we believe that the Commission's detailed policy is not sufficiently explained and that the basis of specific decisions is not adequately justified in the implementing Regulations. It is notable that in other leading user countries such as Australia, Canada and the US, more detailed reports are issued when measures are adopted.

**We recommend that:**

- **consumer, trade union and other organisations which wish to make representations should have access to non-confidential information on proceedings;**
- **Regulations imposing provisional and definitive measures (and indeed Decisions closing proceedings) should include more background information and a full discussion of the basis of the Commission and Council's decisions. It would be helpful if the analysis of market trends were to be separated from the (legal) analysis of injury and the (policy) analysis on the Community interest;**
- **the Commission should publish a detailed statement of its approach on specific issues arising in dumping proceedings (eg on how dumping and injury margins are determined). (Recommendation 16)**

This latter recommendation is in line with the European Parliament's recommendation that the Commission should publish guidelines for business on its anti-dumping policy.

### ***Provisions for the Review of Commission and Council Decisions***

Anti-dumping proceedings raise strong emotions on both sides of the argument and it is important that the system should contain adequate checks and balances. We have noted above that the Community is unique among leading users of anti-dumping measures in having a single agency responsible for all stages of the investigations.

At present, oversight of the Commission is exercised by the Council of Ministers, the European Parliament and the European Court of Justice. Member States will inevitably have particular regard to national interests and the Court has recognised that it is not well placed to rule on questions which are often either technical or policy issues rather than legal questions.

**The European Parliament may therefore wish to consider whether a specialist body should be established which would advise on issues of general policy and, perhaps, on the overall Community interest in particular cases. (Recommendation 17)**

### ***Provisions for Monitoring of Measures***

In some cases measures may only be justified to the extent that the Community industry takes steps to improve its competitiveness. In addition, measures may not in practice be having the effects expected or intended.

**We recommend that the Commission should actively monitor anti-dumping measures and should initiate a review where measures are not having their intended effects. (Recommendation 18)**

### *Commission Resources*

At present the Commission has 124 posts (including support staff) allocated to the administration of anti-dumping and anti-subsidy measures. By contrast, in the United States over 200 staff of the Department of Commerce and the International Trade Commission work on anti-dumping and anti-subsidy investigations.

We have not explored the adequacy of the resources available to the Commission in the course of this study.

**We recognise that the recommendations in this report would require a detailed review of resourcing requirements. That review should include consideration of the skills required to undertake the detailed analysis of the Community interest that is at the centre of our recommendations. (Recommendation 19)**

### **Broader Policy Issues (Section XI)**

#### *Social and Environmental Dumping*

Within the existing GATT framework, it would not be possible for the Community to apply measures when exporters to the Community:

- do not observe internationally accepted minimum standards for terms and conditions of employment and thus benefit from low labour costs ("social dumping");
- use older, more polluting processes or are subject to less stringent environmental legislation ("environmental dumping").

In its 1990 Resolution the European Parliament considered that countries should meet ILO standards as a condition for securing duty free access to the Community market.

We found mixed views on the desirability of adopting measures against social and environmental dumping.

We do not believe that anti-dumping measures are well suited to dealing with these problems:

- there is no obvious reason to apply measures solely against exports which cause material injury to the Community industry;
- the cost advantage enjoyed by the exporter would be very difficult to assess and there would be a severe risk that an underlying comparative advantage would be obscured;
- applying trade protection measures could be counter productive as social and environmental standards could well improve with economic growth.

#### *Less Developed Countries and Eastern Europe*

As noted above, a high proportion of anti-dumping investigations relate to imports from non-market economies (41% over the period 1981-91) and from the developing countries (26%). However, (leaving Korea aside) these cases taken together account for less than 10% of all trade subject to anti-dumping measures.

There is a clear scope for conflict between the application of anti-dumping measures and a policy stance which generally seeks to promote development in the LDCs and Eastern Europe. However, the point was made to us that it is unreasonable to withhold protection from specific industries subject to dumping because of a general policy of promoting development.

Nevertheless, this does not preclude the adoption of higher de minimis limits for these cases. The balance between anti-dumping and other policies is a matter of political judgement, but we believe that this deserves consideration. It can be noted that in its 1990 Resolution, the Parliament advocated that no measures should be taken against LDC producers if the dumping margin is found to be minimal; a figure of 5% was mentioned. This conclusion is consistent with our conclusion about de minimis limits.

### Overall Conclusions

In terms of their impact on trade and the Community interest, the most significant anti-dumping cases in the Community are those involving what the Commission regards as "strategic" products from the Far East. The rationale emphasised by the Commission in these cases is essentially one based on concern about the impact of dumping on competition in the Community market. However, it is recognised that anti-dumping measures do not strike at the root of competition problems, ie. the closure of markets and collusive behaviour.

We believe that it can also be argued that other developments in the world economy have made the GATT framework outmoded. In particular:

- it is very difficult to determine whether a decision to locate production in the Community or in third countries should be treated as a case of circumvention;
- where there are economies of scale, duties may well not be reflected in increased prices, thereby reducing the effectiveness of the measure;
- the determination of dumping is made very much more complex when producers become involved in distribution in both their domestic and export markets.

For these reasons, there is a strong case for the replacement of anti-dumping measures by international competition laws. Indeed, we have found that it is generally accepted that if international trade were subject to the equivalent of the competition laws applied in the Community and many other developed economies, the case for anti-dumping policy would be substantially removed.

However, although initiatives to co-ordinate competition policies are emerging (for example the recent agreement between the Community and the United States), it will inevitably be many years, even decades, before agreement can be reached on a system for the regulation of competition at the international level.

In the meantime, the only practicable option for the Community is to use the framework created by the GATT Anti-Dumping Code.

Some critical commentators have argued that the Community should redefine dumping and injury and only apply measures when:

- the export price to the Community does not cover costs;
- dumping will injure competition (rather than producers).

We have some sympathy with these views. However, for the reasons set out above we would not wish to apply anti-dumping measures only in cases in which there is a threat to effective competition in the Community. Nor do we regard it as likely that such a reform would be implemented.

Rather, in our view, the priority should be to make the Community interest criterion the central focus of anti-dumping proceedings. Measures would only be introduced when and to the extent that they are demonstrably in the Community interest. We would expect this to mean that in some cases in which dumping and injury are found no measures would be adopted because to do so would not be in the Community interest.

**More particularly, we recommend that anti-dumping proceedings should include an economic cost benefit analysis of the case for the application of anti-dumping measures. (Recommendation 20)**

The analysis would:

- be forward looking. That is, a comparison would be made of the likely impact of measures on the various constituent parts of the Community's economic interests;
- focus on whether measures would:
  - be necessary to preserve effective competition in the Community market;
  - promote the more efficient utilisation of the Community's resources.

The impact of measures on the competitiveness of the Community industry and on its customers in both the short and long term would be central to this appraisal. That is, the analysis would include consideration of the effects that measures would have on:

- prices in the short and longer term;
- investment and research and development in the industry directly affected;
- the competitiveness of the wider sector and of suppliers and purchasers;
- regional employment.

The GATT does not require signatories to adopt anti-dumping measures; rather it permits them to do so. Indeed, the Code states that it is desirable that the application of measures should be permissive rather than automatic. The reform that we propose would therefore be consistent with the Code.

## **ZUSAMMENFASSUNG UND SCHLUSSFOLGERUNGEN**



## ZUSAMMENFASSUNG UND SCHLUSSFOLGERUNGEN

### **Einführung**

Diese Zusammenfassung enthält eine Kurzfassung unseres Berichts an das Europäische Parlament über die wirtschaftlichen Auswirkungen des Dumping und die Antidumping-Politik der Gemeinschaft, in der unsere wichtigsten Schlußfolgerungen und Empfehlungen dargelegt werden.

### *Inhaltsangabe des Berichts*

- Teil I beschreibt den Hintergrund unserer Studie, unsere Aufgabenstellung, unser Arbeitsprogramm und unser Konzept.
- Teil II behandelt die Grundzüge der Antidumping-Politik der Gemeinschaft und die einschlägigen GATT-Bestimmungen.
- Teil III analysiert die wirtschaftlichen Auswirkungen des Dumping und die diesbezüglichen Erfahrungen der Gemeinschaft.
- Teil IV erörtert die ökonomischen Argumente, die für Antidumping-Maßnahmen sprechen.
- Teil V befaßt sich mit der Anwendung von Antidumping-Maßnahmen durch die Gemeinschaft.
- Teil VI behandelt die wirtschaftlichen Auswirkungen des Dumping und der Antidumping-Maßnahmen auf die wichtigsten Dimensionen des Gemeinschaftsinteresses.
- Teil VII und Teil VIII behandeln die wichtigsten Kriterien für das Dumping, die Schädigung und das Gemeinschaftsinteresse.
- Teil IX befaßt sich mit der Auswahl von geeigneten Maßnahmen und Teil X mit institutionellen Fragen.
- Teil XI erörtert einige gesamtpolitische Fragen, die mit dem Dumping zusammenhängen.

### **Hintergrund, Aufgabenstellung und Arbeitsprogramm (Teil I)**

#### *Hintergrund und Aufgabenstellung*

Im vergangenen Jahrzehnt hat sich das Europäische Parlament stark für die Antidumping-Politik der Gemeinschaft und für den Antidumping-Kodex des GATT interessiert. Erst kürzlich, im Jahre 1990, hat das EP eine EntschlieÙung angenommen, in der die Notwendigkeit von Antidumping-Maßnahmen betont und mehrere spezifische Empfehlungen vorgebracht werden, die dazu angetan sind, die Antidumping-Maßnahmen wirksamer, ausgewogener und transparenter zu gestalten.

Um den Sachverstand des EP bezüglich der wirtschaftlichen Auswirkungen des Dumping und der Antidumping-Politik der Gemeinschaft zu verbessern, wurde Ernst & Young im Dezember 1991 mit der Ausarbeitung einer Studie beauftragt, die zum Gegenstand hat:

- die wirtschaftlichen Auswirkungen des Dumping und der Antidumping-Politik in der Gemeinschaft zu bewerten;
- die Bedeutung und die Effizienz der Antidumping-Maßnahmen der Gemeinschaft zu beurteilen;
- Optionen für Änderungen der gemeinschaftlichen und der internationalen Politik in diesem Bereich zu ermitteln und zu bewerten.

### **Arbeitsprogramm**

Im Rahmen der Studie haben wir:

- ein Rahmenkonzept entwickelt, das eine Analyse der Auswirkungen des Dumping und der Antidumping-Maßnahmen auf die Gemeinschaft ermöglicht und die wesentlichen Entwicklungen in der ökonomischen Analyse des Handels auf den internationalen Märkten im vergangenen Jahrzehnt berücksichtigt;
- eine statistische Analyse der ökonomischen Daten der Industrien und Märkte, für die Antidumping-Verfahren eingeleitet wurden, sowie des Einsatzes von Antidumping-Maßnahmen durch die Gemeinschaft im vergangenen Jahrzehnt durchgeführt;
- detaillierte Fallstudien von fünf Antidumping-Verfahren (1) angefertigt. Die Auswahl der Fallstudien erfolgte im Benehmen mit der Kommission und der Direktion Wissenschaft des EP;
- zahlreiche Sitzungen mit der Antidumping-Direktion der Kommission abgehalten, in denen alle Aspekte der Antidumping-Politik der Gemeinschaft erörtert wurden;
- ein Interview-Programm mit anderen Dienststellen der Kommission, dem GATT-Sekretariat, Ministerien und Wettbewerbsbehörden in einigen Mitgliedstaaten, Industrieverbänden, Verbraucherverbänden, Gewerkschaften, Regierungsvertretern von Interessen der Exportwirtschaft, Handelsrechtsanwälten und Hochschulkommentatoren abgewickelt;
- die Antidumping-Maßnahmen und die diesbezüglichen Erfahrungen der drei anderen größten Anwender von Antidumping-Maßnahmen, nämlich Australiens, Kanadas und der Vereinigten Staaten, geprüft.

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(1) Unsere fünf Fallstudien befaßten sich mit den Antidumping-Verfahren für die Einfuhren folgender Produkte in die Gemeinschaft:

- Denim - ein zur Herstellung von Bekleidung verwendeter Stoff - aus vier Ländern (Türkei, Indonesien, Hong-Kong und Macao). Dabei wurde nur ein sehr begrenztes Dumping festgestellt, weswegen die Kommission zu dem Schluß kam, daß der Gemeinschaftsindustrie dadurch kein Schaden entstanden sei. Daher wurden auch keine einschlägigen Maßnahmen ergriffen;
- Minikugellager - die in Motoren und zahlreichen anderen Produkten zur Verringerung der Reibung zwischen beweglichen Teilen verwendet werden - aus Japan, Singapur und Thailand. In den 70er Jahren wurden für die Einfuhren aus Japan einseitige Verpflichtungen akzeptiert. 1984 wurden auf die Einfuhren aus Japan und Singapur Zölle verhängt und danach auch auf Thailand ausgedehnt. Diese Maßnahmen sind noch immer in Kraft;

- Fotokopierer aus Japan. Seit 1986 werden vorläufige Antidumping-Zölle angewendet, die derzeit überprüft werden;
- Polyvinylchlorid - ein zur Herstellung zahlreicher Produkte verwendeter Kunststoff - aus vier osteuropäischen Ländern (Tschechoslowakei, Rumänien, Ungarn, ex-DDR). Ab 1982/83 wurden Maßnahmen angewendet, die 1987/88 ausliefen;
- Kleinfarbferscher. 1989 wurden vorläufige Antidumping-Zölle auf die Einfuhren aus Korea und danach auch auf die Einfuhren aus Hong Kong und China verhängt.

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### **Rahmen und Konzept**

Bei unserem Konzept gingen wir davon aus, daß die globalen Wirtschaftsinteressen der Gemeinschaft generell durch den Freihandel optimal gefördert werden, um dann die Auswirkungen des Dumping bzw. die Frage zu beurteilen, ob der wirtschaftliche Wohlstand in der Gemeinschaft durch Antidumping-Maßnahmen in allen oder nur in einigen Fällen verbessert wird, in denen eine Industriebranche unter schädlichem Dumping zu leiden hat. Dabei haben wir geprüft, ob andere Maßnahmen eine bessere Antwort auf die durch Dumping verursachten Probleme darstellen würden.

Eine vollständige Beurteilung der Auswirkungen von Dumping und Antidumping-Maßnahmen hätte in bestimmten Fällen den Zugang zu sehr empfindlichen Informationen vorausgesetzt und für die Industrie und die Exporteure der Gemeinschaft eine erhebliche Belastung bedeutet: Wir hätten die Untersuchung erneut durchführen und eine detaillierte Analyse der weiteren Entwicklungen vornehmen müssen. Dies wäre nicht machbar gewesen. Daher hat unser Bericht die Form einer ökonomischen Analyse der Möglichkeiten einer Antidumping-Politik, die (weitgehend) auf unseren fünf Fallstudien und unseren Gesprächen mit der Kommission und anderen Beobachtern und Beteiligten an der Antidumping-Politik der Gemeinschaft beruht.

Neben den in diesem Bericht analysierten Fragen gibt es noch mehrere andere wirtschaftliche und politische Erwägungen, die für die Festlegung einer praktischen Politik von Bedeutung sind:

- Antidumping-Maßnahmen können insofern wirtschaftliche Vorteile bringen, als sie Drittmärkte öffnen. Eine wesentlich umfassendere Studie der Handelsbeziehungen wäre vonnöten, um die Frage zu beurteilen, ob Antidumping-Maßnahmen einen wirklichen und wirksamen Beitrag zur Liberalisierung der Weltmärkte leisten. Dies lag jedoch außerhalb unserer Aufgabenstellung.
- Weithin wird die Auffassung vertreten, daß - gäbe es keine Antidumping-Maßnahmen - der protektionistische Druck in der Praxis auf eine Art und Weise bewältigt werden müßte, die eine stärkere Verzerrung des Welthandels bewirken würde. So gesehen, sind Antidumping-Maßnahmen eine Art von Sicherheitsventil.
- Die Vorstellung, daß Dumping "unfair" ist, hat eine starke emotionale Wirkung, doch muß jeweils erwogen werden, ob es einen ökonomischen Grund für Gegenmaßnahmen gibt.
- Es kann starker Druck ausgeübt werden, um den Interessen gutorganisierter Gruppen zu entsprechen.

## **Beschränkungen**

Wie im Auftrag des EP und in unserem Angebot vermerkt ist, haben wir unser Arbeitsprogramm auf die Gemeinschaft als solche konzentriert. Das Ausmaß, in dem Überseemärkte der Gemeinschaft verschlossen sind, sowie die von dem wichtigsten Handelspartnern der Gemeinschaft verfolgten Handels- und Industriepolitiken sind wichtige Faktoren, die sich auf die Antidumping-Politik der Gemeinschaft auswirken. Die Direktion Wissenschaft des EP war nicht der Auffassung, daß unsere Studie auf diese Punkte ausgedehnt werden sollte.

Aus rechtlichen Gründen war es uns nicht möglich, die Akten der Kommission für unsere Fallstudien zu benutzen. Vereinbarungsgemäß sollten wir die Gelegenheit bekommen, die Dumpingspannenkalkulationen einzelner Exporteure mit deren Zustimmung einzusehen. Leider ließ sich dies nicht verwirklichen, was den Aussagewert der Fallstudien einschränkt. Ganz allgemein wirkte sich die Tatsache, daß mehrere Exporteure Bedenken hatten, unsere Studie zu unterstützen, negativ auf unsere Fallstudien aus, und wir hatten den Eindruck, daß Firmen und Industrieverbände aus der Gemeinschaft bei ihrer Zusammenarbeit mit uns recht zurückhaltend waren.

## **Die Antidumping-Politik der Gemeinschaft (Teil II)**

Die Antidumping-Maßnahmen der Gemeinschaft lehnen sich eng an den Antidumping-Kodex des GATT an. Antidumping-Maßnahmen dürfen ergriffen werden, wenn folgende drei Kriterien erfüllt sind:

- Die Exporte in die Gemeinschaft werden gedumpte. Dumping wird häufig so verstanden, daß die Preise des Exporteurs auf seinem Inlandsmarkt höher liegen als die Preise, die er den Importeuren aus der Gemeinschaft berechnet. Dies muß jedoch nicht der Fall sein: Wenn der Inlandsabsatz des Exporteurs nicht rentabel ist, wird der Exportpreis mit einem errechneten Inlandspreis verglichen, der alle Gemeinkosten und eine Gewinnspanne umfaßt.
- Die Industrie der Gemeinschaft hat durch das Dumping einen materiellen Schaden erlitten. Darüber hinaus kann ein materieller Schaden dann geltend gemacht werden, wenn das Dumping eine Schädigung zu verursachen droht oder wenn es die Entwicklung einer Industriebranche der Gemeinschaft hemmt. Diese Bestimmungen werden jedoch in der Praxis kaum angewendet.
- Die Anwendung von Maßnahmen liegt im Interesse der Gemeinschaft.

Die Maßnahmen, die gewöhnlich die Form von Wertzöllen oder Preisverpflichtungen annehmen, werden auf einer Ebene angewendet, die erforderlich ist, um das Dumping unwirksam zu machen, es sei denn, daß ein niedrigerer Zoll (bzw. Preisverpflichtung) ausreichen würde, um die Schädigung abzustellen ("Regel des niedrigeren Zolls"). Die Maßnahmen laufen fünf Jahre nach dem Zeitpunkt ihrer letzten Erneuerung aus, sofern ihre weitere Notwendigkeit nicht durch eine abschließende Überprüfung ("Sunset Review") bestätigt wird.

Die entrichteten Zölle werden zurückerstattet, falls der Importeur nachweisen kann, daß sie über der Dumpingspanne lagen.

Wie die Parlamentsausschüsse festgestellt haben, umfassen die Antidumping-Maßnahmen der Gemeinschaft drei Bestimmungen, durch die die Politik der Gemeinschaft liberaler wird als die eigentlichen Bestimmungen des GATT-Kodex:

- das Kriterium des Gemeinschaftsinteresses. Australien und Kanada sehen zwar in ihren Rechtsvorschriften vor, daß Aspekte des öffentlichen Interesses berücksichtigt werden, doch wird nicht vorgeschrieben, dies in jedem Fall zu tun;
- außer der Gemeinschaft wendet nur noch Australien ausdrücklich die Regel des niedrigeren Zolls an;
- wie die Gemeinschaft haben auch Australien und Kanada auf fünf Jahre befristete "Sunset"-Klauseln; im Entwurf des neuen GATT-Kodex werden die "Sunset"-Klauseln verbindlich vorgeschrieben.

Zwei weitere wesentliche Unterschiede zwischen den Maßnahmen der Gemeinschaft und denjenigen Australiens, Kanadas und der Vereinigten Staaten bestehen darin, daß:

- in allen drei Ländern zeitliche Fristen für die Untersuchung festgesetzt werden;
- in Kanada und den Vereinigten Staaten die Dumping-Untersuchung von einer Regierungsbehörde durchgeführt wird, während für die Schädigungsuntersuchungen eigene unabhängige Gremien oder Gerichte zuständig sind. In Australien befaßt sich eine unabhängige Behörde mit der Prüfung von Antidumping-Maßnahmen, die von der australischen Zollbehörde vorgeschlagen werden.

### **Die Auswirkungen des Dumping (Teil III)**

#### ***Hintergrund***

Einer weitverbreiteten Auffassung zufolge entstehen Dumpingprobleme vor allem dadurch, daß eine Welle von Niedrigpreisimporten ein Land überflutet, in dem die Nachfrage womöglich ohnedies schon recht niedrig ist.

Unsere statistische Analyse von 40 Dumping-Untersuchungen hat gezeigt, daß zahlreiche Fälle offensichtlich diese Merkmale aufweisen. In dreien unserer Fallstudien - Denim, Minikugellager und Polyvinylchlorid - waren Nachfrage und Produktion in der Gemeinschaft in der Zeit vor der Untersuchung erheblich zurückgegangen.

In anderen Fällen sahen die Hintergrundbedingungen jedoch ganz anders aus, und für die Zeit unmittelbar vor der Einleitung der Untersuchung stellten wir folgendes fest:

- In etwa der Hälfte der Fälle betrug der Anstieg der Nachfrage in der Gemeinschaft 3 % oder mehr;
- in etwa 25 % der Fälle betrug der Anstieg der Produktion in der Gemeinschaft 3 % oder mehr;
- in etwa 20 % der Fälle betrug der Anteil der mutmaßlich gedumpten Einfuhren 5 % des Gemeinschaftsmarktes oder weniger;
- in etwa einem Drittel der Fälle stagnierten oder stiegen die Importpreise.

In unseren Fallstudien über Normalpapierkopierer (PPC) und Kleinfarbfernseher (SCTV) war der Gemeinschaftsmarkt lebhaft, wenn auch im letzteren Fall die Gesamtproduktion zurückging.

### Die Auswirkungen des Dumping

Je nach den Hintergrundbedingungen der einzelnen Fälle ist zu erwarten, daß das Dumping verschiedene Auswirkungen auf die Industrie der Gemeinschaft und auf andere Wirtschaftsobjekte haben wird. Bei starkem Dumping und großem Handelsvolumen werden Preise, Gewinne, Produktion und Beschäftigung in der Gemeinschaft wahrscheinlich kurzfristig niedriger liegen als andernfalls. Bei wachsenden Märkten kann Dumping eher zu einem Verlust von Marktanteilen als zu einem Rückgang der Produktion führen. Der Verlust von Marktanteilen kann ein besonders wichtiger Indikator für eine Schädigung sein, wenn Wachstum nötig ist, um die Wettbewerbsfähigkeit bezüglich der Kosten zu wahren oder zu verbessern. Bei den Normalpapierkopierern und den Kleinfarbfernsehern war der Verlust von Marktanteilen durch die Industrie der Gemeinschaft besonders ausgeprägt.

Sonstige wichtige Indikatoren für eine Schädigung, die bei jeder der von unseren Fallstudien erfaßten Industriebranchen in erheblichem Umfang festgestellt wurden, waren Preis- und Rentabilitätsrückgänge.

Es ist wichtig, zwischen den kurzfristigen und den längerfristigen Auswirkungen des Dumping zu unterscheiden. Dies hängt zum Teil davon ab, ob das Dumping vorübergehender Natur ist oder nicht. Unter dem Aspekt der wirtschaftlichen Gesamtauswirkung stellt sich langfristig die entscheidende Frage, ob die Wettbewerbsfähigkeit der Gemeinschaftsindustrie durch das Dumping beeinträchtigt wird. Dies könnte z.B. dann der Fall sein, wenn:

- der Gemeinschaftsindustrie durch das Dumping Größenvorteile oder Lerneffekte vorenthalten werden, die der Dumper selbst aber nutzen kann;
- wegen etwaiger durch das Dumping bedingter kurzfristiger Finanzprobleme auf notwendige F & E-Tätigkeiten oder Investitionen verzichtet werden muß;
- die Lieferanten und Zulieferindustrien der Gemeinschaft geschädigt werden.

In mehreren Fällen bildeten die potentiellen künftigen Auswirkungen des Dumping einen der Hauptaspekte der Studie.

- Im Fall der Minikugellager bestand die Befürchtung, daß die Rentabilität der Industrie nicht ausreichen könnte, um die erforderlichen Investitionen und F & E-Tätigkeiten zu finanzieren;
- im Fall der Normalpapierkopierer ergab sich, daß die Gemeinschaftsindustrie weniger für F & E ausgab als die japanischen Exporteure, woraus geschlossen wurde, daß die künftige Wettbewerbsfähigkeit der Gemeinschaftsindustrie bedroht ist;
- im Fall der Kleinfarbfernseher wurde befürchtet, daß ein fortgesetztes Dumping zur Einstellung der integrierten Gemeinschaftsproduktion führen könnte und daß sich langfristig negative Auswirkungen auf die Entwicklung neuer Produktgenerationen ergeben könnten.

Insgesamt gesehen, dürften Verbraucher und industrielle Abnehmer kurzfristig vom Dumping profitieren, weil sie niedrigere Preise zahlen müssen als andernfalls. Die entscheidende Frage ist jedoch, ob diese niedrigeren Preise auch in Zukunft gehalten werden können, oder ob die Verbraucher durch negative Auswirkungen des Dumping letztlich mit höheren Preisen und/oder schlechterem Service konfrontiert werden.

## Die Argumente für eine Antidumping-Politik (Teil IV)

### *Perspektiven einer Antidumping-Politik*

Die Antworten auf die Frage, ob es eine ökonomische Rechtfertigung für eine Antidumping-Politik gibt, gehen sehr weit auseinander.

Auf der einen Seite wird argumentiert, daß Dumping nur dann möglich sei, wenn der Inlandsmarkt des Exporteurs dem Wettbewerb verschlossen oder "isoliert" ist. In diesem Sinne steht das Dumping im Widerspruch zu den Zielen des Freihandels und des internationalen Wettbewerbs, die in den vergangenen fünf Jahrzehnten den Mittelpunkt der Entwicklung des Welthandelssystems bildeten. Das schädliche Dumping wird vom GATT verurteilt, und wenn ein solches Dumping vorliegt, sollten die im GATT vorgesehenen Rechte, Antidumping-Maßnahmen anzuwenden, in Anspruch genommen werden. In dieser Form hängt die Rechtfertigung von Antidumping-Maßnahmen zum großen Teil nicht nur von den wirtschaftlichen Auswirkungen des Dumping, sondern auch von den darüber hinausgehenden Argumenten der Fairness und dem vorgenannten Ziel einer Förderung der offenen Märkte ab.

Auf der anderen Seite argumentieren einige Kritiker der Antidumping-Maßnahmen, daß die Preisvorteile, die sich für Verbraucher und industrielle Abnehmer durch das Dumping ergeben, nicht gebührend berücksichtigt würden. Ihres Erachtens ist Dumping nur dann wirtschaftlich schädigend, wenn es zur Ausschaltung der Gemeinschaftsindustrie und zu der Situation führt, daß es die Abnehmer der Gemeinschaft mit einem Liefermonopol zu tun haben. Sie glauben, daß Fälle von "ruinösem" Dumping sehr selten sein dürften. Folglich sei die Anwendung von Antidumping-Maßnahmen nur unter ganz besonderen Umständen gerechtfertigt.

Wir sind der Meinung, daß Dumping in einer größeren Zahl von Fällen als vorstehend beschrieben den wirtschaftlichen Interessen der Gemeinschaft schaden kann. Bei der Prüfung der wirtschaftlichen Rechtfertigung für die Anwendung von Antidumping-Maßnahmen ist es jedoch von entscheidender Bedeutung, eine detaillierte Marktanalyse durchzuführen, die Gründe für das Dumping zu ermitteln und die voraussichtlichen Auswirkungen des Dumping abzuschätzen. In diesem Zusammenhang halten wir es für nützlich, zwischen den folgenden Typen des Dumping zu unterscheiden:

- langfristiges Dumping: eine Strategie, die darin besteht, über lange Jahre hinweg und womöglich auf Dauer niedrigere Preise für die Exportmärkte festzulegen;
- zyklisches Dumping: Export von Produkten zu Preisen, die nicht alle Kosten decken, wenn der Markt gedrückt ist;
- Staatshandels-Dumping: Exporte aus nichtmarktwirtschaftlichen Ländern zu Preisen, die in einer Marktwirtschaft nicht alle Kosten decken würden;
- ruinöses oder strategisches Dumping: Export zu niedrigen (aber nicht unbedingt verlustbringenden) Preisen, der zur Folge hat, daß der Wettbewerb auf dem Gemeinschaftsmarkt beeinträchtigt wird;
- vorübergehendes Dumping: Export zu niedrigen Preisen für eine befristete Zeit:
  - um sich Zugang zum Gemeinschaftsmarkt zu verschaffen oder den Absatz eines neuen Produktes zu fördern;
  - wenn die gesamte Produktionskapazität übermäßig groß ist.

### *Ruinöses Dumping*

Die umstrittensten Probleme im Zusammenhang mit der Antidumping-Politik der Gemeinschaft ergeben sich in Fällen, die von der Kommission und den Industriebranchen als Musterbeispiele des ruinösen Dumping betrachtet werden und bei denen es sich hauptsächlich um Exporte von Elektronikprodukten aus dem Fernen Osten handelt.

In diesen Fällen ist davon auszugehen, daß die Exporteure von abgeschotteten Inlandsmärkten profitieren, mit dem Ergebnis, daß:

- sie imstande sind, hohe Preise zu verlangen und hohe Profite zu erzielen, die dazu verwendet werden können, die Exporte in die Gemeinschaft zu subventionieren;
- die Kosten rascher gesenkt werden können, weil die fixen Kosten auf größere Volumen umgelegt werden können.

Das hat zur Folge, daß die Exporteure die Hersteller in der Gemeinschaft unterbieten können, ohne unter Selbstkosten zu verkaufen.

Die Kommission ist der Auffassung, daß die Gemeinschaftsindustrie - wenn nichts gegen das Dumping getan wird - zumindest mit relativen Kostensteigerungen konfrontiert wird, weil die gedumpten Exporte einen größeren Anteil am Gemeinschaftsmarkt erobern. Die rückläufige Rentabilität macht es der Gemeinschaftsindustrie noch schwieriger, regelmäßige Investitionen in Forschung und Entwicklung zu finanzieren und zu rechtfertigen. Mit der Zeit wird die Gemeinschaftsindustrie entweder ganz ausgeschaltet, oder sie wird technologisch von den Exporteuren in die Gemeinschaft abhängig und hört damit auf, ein unabhängiger Wettbewerbsfaktor zu sein. Dumping bei mehreren verwandten Produkten kann dazu führen, daß ganze Industriesektoren in der Gemeinschaft ausgeschaltet werden. Die dadurch bedingte Schwächung bzw. Ausschaltung des Wettbewerbs auf dem Gemeinschaftsmarkt ist sowohl den Interessen der Verbraucher als auch denjenigen der industriellen Abnehmer sehr abträglich.

Wir sind der Auffassung, daß bei der Prüfung der Frage, ob unter den vorstehend beschriebenen Umständen Antidumping-Maßnahmen eingeleitet werden sollen oder nicht, folgende Kriterien ausschlaggebend sind:

- Gibt es strategische Gründe, ein Gemeinschaftspotential in dem betreffenden Industriesektor zu erhalten?
- Welche Auswirkungen haben die Maßnahmen auf einen langfristig effektiven Wettbewerb in der Gemeinschaft?

Was den letzteren Punkt angeht, so stellen sich als wichtigste Fragen:

- Drängt das Dumping Gemeinschaftsfirmen aus dem Markt oder führt es zu ihrer dauerhaften Schwächung?
- Inwieweit bleibt ein Wettbewerb zwischen Exporteuren bestehen, und zwar unabhängig davon, ob sie selbst Dumping betrieben haben oder nicht?
- Inwieweit wird der Zugang zu dem betreffenden Markt erschwert oder versperrt?

Diese Voraussetzungen sind am ehesten in Sektoren gegeben, in denen es rasche technologische Fortschritte gibt und ein großes Volumen von Investitionen in Forschung, Entwicklung und Produktionsanlagen vonnöten ist, um die Wettbewerbsfähigkeit zu wahren. Ist das der Fall, so kann die Abschottung des Marktes dem Dumper bzw. den Dumpfern zunächst einen Kostenvorteil verschaffen, der dadurch verstärkt wird, daß durch eine aggressive Preispolitik auf dem Gemeinschaftsmarkt die Volumina erhöht werden. Dies kann wiederum dazu führen, daß die Gemeinschaftsindustrie unter einem steigenden Kostennachteil zu leiden hat.

Auch wenn das Dumping eine Schädigung bewirkt hat, muß auf jeden Fall geprüft werden, ob die Schädigung durch Antidumping-Maßnahmen ausgeglichen werden kann. Abgesehen von der strategischen Botschaft dürfte es wenig Sinn haben, Antidumping-Maßnahmen zu ergreifen, wenn die Gemeinschaftsindustrie bereits so dauerhaft geschädigt ist, daß sie nicht mehr als effektiver Konkurrent in Frage kommt.

### *Andere Arten von Dumping*

Während die Auswirkungen des ruinösen Dumping unbestreitbar sind, führt Dumping nicht zwangsläufig zu einer schädlichen Verringerung des Wettbewerbs. In der ökonomischen Analyse heißt es allgemein, daß man nicht automatisch Maßnahmen einleiten sollte, wenn Dumping eine materielle Schädigung bewirkt hat. Dafür gibt es vier wesentliche Gründe.

- i) Dumping ist nicht unnatürlich  
Das vom GATT bewertete und definierte Dumping geht nicht zwangsläufig auf eine aggressive oder gegen den Wettbewerb gerichtete Strategie des Dumpers zurück. Das ökonomische Konzept des vollkommenen Wettbewerbsmarktes, auf dem der freie und rasche Warenverkehr sicherstellt, daß die Preise auf den verschiedenen Märkten gleich sind, wird in der Praxis nur selten verwirklicht. Wenn eine relativ kleine Anzahl von Herstellern auf mehreren nationalen Märkten miteinander konkurriert, dann kommt es häufig vor, daß sich sowohl die Gesamtnachfrage als auch die Bedingungen für die einzelnen Hersteller auf den einzelnen Märkten unterscheiden, was unterschiedliche Preise zur Folge hat. Sind die Nachfragebedingungen stabil, so können die Firmen nach Belieben unterschiedliche Preisstrategien verfolgen, sofern die Produkte nicht ohne weiteres (re)exportiert werden können. In anderen Fällen kann eine Niedrigpreispolitik auf einem bestimmten Markt auch nur vorübergehender Natur sein. Selbst auf ihren eigenen Inlandsmärkten verfolgen Firmen häufig eine Politik der Preisdiskriminierung, d.h. sie verkaufen z.B. an unterschiedliche Teilmärkte zu unterschiedlichen Preisen, entsprechend den jeweiligen Angebots- und Nachfragetendenzen. Ebenso gibt es ein gewisses Maß an Preisdiskriminierung (Dumping) zwischen Gemeinschaftsländern, weil die Firmen ihre Preisstrategien an die unterschiedlichen Marktbedingungen anpassen. Eines der Ziele des Binnenmarktprogramms und der Wettbewerbspolitik der Gemeinschaft besteht übrigens darin, die Spannungen zu beseitigen, die ein Fortbestehen unterschiedlicher Preispolitiken in vielen Sektoren der Gemeinschaftsindustrie ermöglichen.

Folgende Beispiele zeigen, wie ein unvollkommener Wettbewerb zu Dumping führen kann:

- Die Firmen sind im allgemeinen bestrebt und imstande, auf Märkten, auf denen sie ein starkes Markenimage haben, höhere Preise zu verlangen.
- Beim Vordringen auf einen neuen Markt sehen sich die Firmen oft genötigt, einige Jahre lang niedrigere Preise zu verlangen, um die Verbraucher zur Annahme ihrer Produkte zu veranlassen.

- In Industriebranchen, in denen die Kosten bei steigender Produktion zurückgehen, besteht ein starker Trend, die Preise unter den (derzeitigen) Kosten festzusetzen, um den Absatz zu steigern und die (künftigen) Kosten zu verringern. Unter diesen Umständen können die Firmen aggressive Preisstrategien verfolgen, wobei es keine Rolle spielt, ob ihr Inlandsmarkt abgeschottet ist oder nicht.

### *Zyklisches Dumping*

Eine Feststellung von Dumping könnte erfolgen, wenn ein Exportpreis in die Gemeinschaft nicht höher liegt als die Gesamtkosten des Exporteurs (plus Gewinnspanne) auf seinem eigenen Inlandsmarkt. Wenn also die Absatzbedingungen und die Preise ungünstig und die Stückkosten hoch sind, kann es sein, daß ein Exporteur für die Exporte in die Gemeinschaft höhere Preise festsetzen muß, um einer Feststellung von Dumping zu entgehen.

- ii) Eine Schädigung kann auch günstige Konsequenzen für die Wirtschaft haben. Wie vorstehend beschrieben, kann das Dumping auf kurze und längere Sicht sehr schwerwiegende Auswirkungen auf die direkt betroffene Industriebranche haben. Darüber hinaus kann es schädliche indirekte Auswirkungen auf die Lieferanten und, falls das Dumping den Wettbewerb und die Effizienz beeinträchtigt, auch auf die Kunden der Gemeinschaftsindustriebranche haben, die von dem Dumping betroffen ist.

Allerdings kann das Dumping auch andere Wirkungen haben:

- Das neue Auftreten eines Exporteurs auf dem Gemeinschaftsmarkt steigert den Wettbewerb und kann längerfristig dazu führen, daß die Preise sinken und/oder daß die für den Kunden verfügbare Produktpalette größer wird.
- Ebenso können aggressive Preispolitik und zyklische Dumpingstrategien das allgemeine Preisniveau für Verbraucher und industrielle Abnehmer drücken. Wenn es den industriellen Abnehmern nicht erlaubt ist, niedrige Preise voll zu nutzen, kann es außerdem sein, daß ihre Wettbewerbsfähigkeit auf nachgeordneten Märkten beeinträchtigt wird, was sich wiederum ungünstig auf Produktion und Beschäftigung auswirkt.

Wenn man sich somit auf die direkt betroffene Industriebranche sowie auf indirekte ungünstige Auswirkungen auf den Gesamtsektor und die Zulieferer beschränkt, dann ergibt sich daraus nicht unbedingt die wirtschaftliche Gesamtauswirkung auf die Gemeinschaft.

- iii) Es gibt keine automatische Rechtfertigung für Gegenmaßnahmen gegen abgeschottete Märkte. Es gibt sehr starke wirtschaftliche Gründe für die Beseitigung der formellen und informellen Handelsschranken, die ein Fortbestehen der Preisunterschiede ermöglichen. Diese Maxime war der Motor des GATT und, wie bereits bemerkt, auch des Binnenmarktprogramms der Gemeinschaft. Angesichts abgeschotteter Märkte kann man jedoch nicht automatisch davon ausgehen, daß Maßnahmen, die darauf abzielen, die Wettbewerbsfähigkeit von Einfuhren auf dem Gemeinschaftsmarkt zu drosseln, das wirtschaftliche Wohlergehen in der Gemeinschaft steigern. Natürlich können abgeschottete Märkte Gelegenheit zum Dumping bieten. Ob unter diesen Umständen Maßnahmen der Gemeinschaft gerechtfertigt sind, hängt von den Wettbewerbsvorteilen des Anbieters, der Fähigkeit der Gemeinschaftsindustrie zu einem effektiven, gleichberechtigten Wettbewerb sowie von der Frage ab, ob diese Maßnahmen zur Öffnung der Märkte beitragen. Die langfristige Auswirkung auf die Preise ist ein weiterer entscheidender Aspekt. Es ist wichtig, daß man auf abgeschottete Märkte nicht emotional reagiert.

- iv) Andere Maßnahmen können angemessener sein  
Wirtschaftspolitische Maßnahmen sollten generell und nach Möglichkeit auf die Wurzel des Problems zielen. Wie bereits gesagt, ist Dumping an sich kein Problem. Es kann jedoch Probleme verursachen, die ein politisches Eingreifen erforderlich machen. In manchen Fällen dürften Antidumping-Maßnahmen die einzige praktikable Lösung darstellen. Unter bestimmten Umständen kann es jedoch sein, daß andere politische Maßnahmen der Gemeinschaft, insbesondere Maßnahmen in den Bereichen Beschäftigung, Forschung und Entwicklung, angemessener sind.

### ***Wann können Maßnahmen gerechtfertigt sein?***

Aus der vorstehenden Analyse läßt sich entnehmen, daß Antidumping-Maßnahmen sich nicht automatisch mit wirtschaftlichen Argumenten rechtfertigen lassen, auch wenn eine Schädigung vorliegt. Allerdings gibt es sicherlich auch Umstände, unter denen solche Maßnahmen gerechtfertigt sind.

Derartige Maßnahmen können sich in folgenden Fällen empfehlen:

- Wenn die Lohnkosten ein wichtiger Faktor sind, dann können diese Kosten in einer Rezession niedrig sein, was zur Folge haben kann, daß die Preise der Hersteller aus der Gemeinschaft die sozialen Kosten in dem betreffenden Zeitraum übersteigen. Dies gilt insbesondere dann, wenn die Hersteller aus der Gemeinschaft in Regionen mit hoher Arbeitslosigkeit angesiedelt sind.
- Wenn die Kapitalmärkte unvollkommen ausgebildet sind, könnten außerordentlich rezessive Bedingungen in der Gemeinschaftsindustrie die Investitionen unter die Effizienzschwelle abrutschen lassen oder dazu führen, daß potentiell effiziente Firmen aus dem Markt gedrängt werden.

In jedem speziellen Fall müssen eine Bilanz dieser Aspekte und die Auswirkungen auf Verbraucher und nachgeordnete Abnehmer erwogen werden, wenn entschieden werden soll, ob ein politisches Eingreifen insgesamt gerechtfertigt ist. Ein ausschlaggebendes Kriterium sollte dabei die Beurteilung der Wettbewerbsposition der Gemeinschaftsindustrie nach der Dumpingperiode sein.

## **Die Anwendung von Antidumping-Maßnahmen durch die Gemeinschaft (Teil V)**

### ***Fallanalyse***

Im Zeitraum von 1981-1991 hat die Gemeinschaft 422 Dumping-untersuchungen eingeleitet. Eine Analyse nach Ländern und Sektoren ergibt folgendes:

- In 41 % der Fälle handelte es sich um nichtmarktwirtschaftliche Länder, in 33 % der Fälle um Industrieländer, und die restlichen 26 % der Untersuchungen betrafen Importe aus Entwicklungsländern (einschließlich der sogenannten "Schwellenländer" aus Asien).
- Die Zahl der Fälle, die Japan und insbesondere die asiatischen Schwellenländer betrafen, nahm stark zu. Insgesamt gesehen, stieg der Anteil dieser Länder von 10 % im Zeitraum 1981-1985 auf 32 % im Zeitraum 1986-1991.
- Während der Gesamtanteil der Länder mit nichtmarktwirtschaftlichem System zurückging, nahm die Zahl der Untersuchungen gegen China erheblich zu.

- Dumpinguntersuchungen wurden in zahlreichen Sektoren eingeleitet; der größte Anteil betraf den Sektor der chemischen Erzeugnisse.

### ***Ergebnisse der Untersuchungen***

In etwa 70 % der seit 1981 abgeschlossenen Untersuchungen wurden endgültige Maßnahmen ergriffen. In etwas weniger als 20 % der Fälle wurde keine materielle Schädigung der Gemeinschaftsindustrie festgestellt, und nur 6 % der Fälle wurden ohne eine Feststellung von Dumping abgeschlossen.

Seit 1986 wurde keine Untersuchung mit der Feststellung abgeschlossen, daß die Einleitung von Maßnahmen nicht im Gemeinschaftsinteresse liegen würde, obwohl eine Schädigung einer Gemeinschaftsindustrie durch das Dumping vorlag.

### ***Überprüfungen***

Die Kommission schätzt, daß in etwa 75 % der Fälle Maßnahmen aufgrund der "Sunset"-Bestimmungen auslaufen oder aufgehoben werden. Im Zeitraum 1989-1991 wurde etwas mehr als die Hälfte aller Überprüfungen mit der Aufhebung der Maßnahmen abgeschlossen.

### ***Untersuchungen von Dumping durch Exporteure aus der Gemeinschaft***

Diese Studie befaßt sich mit den direkten wirtschaftlichen Auswirkungen der eigenen Antidumping-Politik der Gemeinschaft. Allerdings stellt sich bei der Prüfung der globalen Auswirkungen der GATT-Vorschriften über Dumping heraus, daß die Exporteure der Gemeinschaft das häufigste Ziel von Antidumping-Untersuchungen der anderen Anwender von Maßnahmen sind. Fast ein Viertel aller dem GATT-Sekretariat mitgeteilten Antidumping-Untersuchungen im Zeitraum 1980-1989 betraf Exporte aus der Gemeinschaft, gegenüber 11 % für Japan und 10 % für die Vereinigten Staaten.

### **Die wirtschaftlichen Auswirkungen von Antidumping-Maßnahmen (Teil VI)**

Bisher wurde nur eine begrenzte Zahl von Forschungsarbeiten über die wirtschaftlichen Auswirkungen von Dumping und Antidumping-Maßnahmen ausgeführt, und es bleibt ein weites Feld für weitere detaillierte Studien zu speziellen Themen übrig. Unsere Fallstudien tragen dazu bei, einige der möglichen Auswirkungen der Maßnahmen darzulegen. Allerdings ist es unmöglich, aufgrund einiger weniger Fälle allgemeingültige Schlußfolgerungen zu ziehen.

### ***Preise***

Nach Auffassung der Kommission hängt die Auswirkung von Antidumping-Maßnahmen auf die Preise u.a. von folgenden Faktoren ab:

- den Kosten der EG-Hersteller und dem Ausmaß des Wettbewerbs zwischen ihnen;
- den Preisen von ungedumpten Importen.

Eine Anhebung der Preise, die dem angewendeten Zoll entspricht, dürfte die wahrscheinlichste Möglichkeit sein. Trotzdem ist stark anzunehmen, daß durch die Maßnahmen die Preise stärker steigen, als dies sonst der Fall gewesen wäre. Die Beseitigung der Schädigung der Gemeinschaftsindustrie hängt weitgehend von dieser Wirkung ab. Wenn die Anwendung von Maßnahmen die Wiederherstellung des Wettbewerbs bewirkt, dann können die Preise auf längere Sicht niedriger sein, als sie es ohne die Anwendung von Antidumping-Maßnahmen gewesen wären.

Hier sei betont, daß der Vergleich mit der Preistendenz maßgeblich ist, die ohne Anwendung der Maßnahmen zu beobachten gewesen wäre. Bei Produkten, bei denen die Preistendenz fallend ist, können die Maßnahmen schon "preistreibend" sein, wenn sie die fallende Preistendenz stoppen oder stabilisieren.

Uns ist nur eine Studie bekannt, in der versucht wurde, die Auswirkung von Antidumping-Maßnahmen auf die Preise einer ganzen Reihe von Produkten zu beurteilen. Diese gelangte zu einigen überraschenden Ergebnissen, kam jedoch insgesamt zu dem Schluß, daß die Maßnahmen dazu führten, die Preise von gedumpten und von nichtgedumpten Einfuhren und von EG-Fertigwaren zu erhöhen.

Unsere Fallstudien führten zu folgenden Erkenntnissen:

- Bei Denim gab es einen Wettbewerb mit anderen Niedrigpreisimporten, und es muß bezweifelt werden, ob die Maßnahmen eine nennenswerte Auswirkung auf die Preise gehabt haben.
- Bei den Minikugellagern läßt einiges darauf schließen, daß die Maßnahmen höhere Preise bewirkten.
- Bei den Normalpapierkopierern lassen die Marktbedingungen den Schluß zu, daß die Preise beeinflußt wurden; Exporteure und einige Beobachter behaupten, daß dies der Fall sei. Andererseits haben wir auch gegenteilige Anzeichen festgestellt, so daß die Lage hier nicht eindeutig ist.
- Bei Polyvinylchlorid wurde eine Preisverpflichtung auf niedriger Ebene erreicht, und die Preise dürften sich erholt haben, bevor die Maßnahmen Wirkung zeigen konnten.
- Bei den Kleinfarbfernsehern ist es noch zu früh, die Auswirkungen der Maßnahmen zu beurteilen.

### **Wettbewerb**

Durch Antidumping-Maßnahmen wird der Wettbewerbsdruck kurzfristig verringert. Langfristig können sie bewirken, daß der Wettbewerb entweder verschärft oder verringert wird.

Unter gewissen Umständen können sich die Maßnahmen langfristig ungünstig auf den Wettbewerb auswirken. Wenn z.B. ein Importeur ein vorübergehendes Dumping als Teil seiner Marktzugangstrategie benutzt, dann können Maßnahmen oder deren Androhung eine effektive Zugangsstrategie verhindern. Wenn die Gemeinschaftsindustrie schon stark konzentriert ist, dann können Maßnahmen durch die Abschreckung eines wichtigen Konkurrenten die existierenden Marktverhältnisse verfestigen.

Andererseits können Maßnahmen nötig sein, um langfristig einen effektiven Wettbewerb in der Gemeinschaft zu sichern. Dies gilt für das ruinöse Dumping oder auch für andere Fälle von Dumping, wenn die langfristige Effizienz des Wettbewerbs durch Dumping ernstlich beeinträchtigt wurde.

Wir sind zu dem - auch von anderen Studien bestätigten - Ergebnis gelangt, daß es in einem erheblichen Anteil der Fälle nur eine relativ geringe Anzahl von Produzenten in der Gemeinschaft gibt. In diesen Fällen ist die Wirkung der Maßnahmen auf den Wettbewerb besonders ausgeprägt.

## Handel und Standort der Produktion

Die nachstehende Tabelle enthält unsere Schätzungen bezüglich der Aufschlüsselung der Gemeinschaftseinfuhren, die Gegenstand von Antidumping-Maßnahmen sind, nach Ländern und nach Sektoren. Sie beweist, daß sich die derzeitigen Antidumping-Maßnahmen der Gemeinschaft stark auf die Einfuhren aus Fernost und auf den Elektroniksektor konzentrieren.

Aufschlüsselung der Gemeinschaftseinfuhren,  
die Gegenstand von Antidumping-Maßnahmen sind,  
nach Ländern und Sektoren - 1991  
(in % aller Gemeinschaftseinfuhren, gegen die Antidumping-Maßnahmen ergriffen wurden)

Analyse nach Ländern		Analyse nach Sektoren	
Japan	83	Elektronik	86
Korea	6	Maschinen	3
Japan und asiatische Schwellenländer insgesamt	91	Chemische Erzeugnisse	2
Nichtmarktwirtschaftliche Länder	4	Textilien	2
Sonstige Industrieländer	4	Eisen und Stahl	1
Sonstige Entwicklungsländer	1	Sonstige	7

*Quelle: Jahresbericht der Kommission und Eurostat-Handelsstatistik*

In ihrem Jahresbericht 1990 schätzte die Kommission, daß auf 0,6 % der Gemeinschaftseinfuhren Antidumping-Zölle erhoben wurden. Bei dieser Schätzung sind die Auswirkungen der Verpflichtungen nicht berücksichtigt. Nach unserer eigenen Schätzung, die die Verpflichtungen einschließt, dürften 1991 etwa 1,1 % der Gemeinschaftseinfuhren Gegenstand von Antidumping-Maßnahmen gewesen sein. Auf jeden Fall ist der Anteil des direkt von diesen Maßnahmen betroffenen Handels sehr gering.

Andererseits können Antidumping-Maßnahmen auch eine "abkühlende" Wirkung auf den Handel haben. Es kann z.B. sein, daß Exporteure einen geringeren Marktanteil oder eine weniger aggressive Preispolitik auf den Gemeinschaftsmärkten anstreben, um Antidumping-Untersuchungen zu vermeiden. Es ist sehr schwierig, die Bedeutung dieser Auswirkungen in der Praxis zu beurteilen. Allerdings ergaben unsere Interviews Gründe für die Annahme, daß die Exporteure in die Gemeinschaft bei der Festlegung ihrer Strategien für den Gemeinschaftsmarkt die Gefahr einer Verhängung von Antidumping-Maßnahmen berücksichtigen.

Es gibt erhebliche Unterschiede bei demjenigen Anteil des Gesamthandels mit den betreffenden Produkten, der Gegenstand von Antidumping-Maßnahmen ist. In etwa 40 % der Fälle betrug dieser Anteil 1991 20 % oder weniger des Gesamthandels mit dem jeweiligen Produkt. Auf der anderen Seite lag dieser Anteil in etwa 15 % der Fälle bei 60 % oder mehr des Gesamthandels. Unseres Erachtens ist dies ein wichtiger Indikator für die wirtschaftlichen Auswirkungen der Maßnahmen.

Sowohl aus den bisherigen Studien als auch aus unseren Fallstudien läßt sich entnehmen, daß durch die Maßnahmen der Handel mit den betroffenen Ländern verringert und der Handel mit anderen Ländern ausgeweitet wurde.

Es ist schwierig, die Auswirkungen von Antidumping-Maßnahmen auf den Standort der Produktion von denjenigen der Globalstrategien zu trennen. Immerhin ist es sehr wahrscheinlich, daß zumindest die Investitionsplanung für Produkte wie Normalpapierkopierer oder Minikugellager in den Ländern der Gemeinschaft durch Antidumping-Maßnahmen beeinflusst wird.

### **Industrielle Abnehmer**

Über die Hälfte der Antidumping-Verfahren betreffen Rohstoffe und Halbfertigerzeugnisse, die noch einer Weiterverarbeitung bedürfen. Diese industriellen Abnehmer profitieren zumindest auf kurze Sicht eindeutig vom Dumping, und Antidumping-Maßnahmen können ihre eigene Wettbewerbsposition auf den internationalen Märkten beeinträchtigen. Wenn sich Abnehmer aus der Gemeinschaft dem Wettbewerb auf internationalen Märkten stellen, dann könnte eine geringere Wettbewerbsfähigkeit zu einem Rückgang der Produktion und der davon abhängigen Arbeitsplätze und damit zu einem Verlust führen, der die vorteilhaften Auswirkungen auf die direkt betroffene EG-Industrie übersteigt.

Dieses Argument wurde in mehreren Fällen, darunter auch in unserer Fallstudie über Polyvinylchlorid, vorgebracht, und es hat in einigen Fällen die angewendeten Maßnahmen eindeutig beeinflusst.

### **Unsere Fallstudien**

Drei von unseren Fallstudien - Normalpapierkopierer, Minikugellager und Kleinfarbfernseher - werden von der Kommission und den betroffenen Industriebranchen als Fälle von ruinösem Dumping eingestuft.

In all diesen Fällen gelangt unsere Studie zu dem Ergebnis, daß sich die Gemeinschaftsindustrie nicht mehr erholen würde, wenn sie geschädigt oder geschwächt würde. In diesem Zusammenhang stellen sich folgende wichtigen Fragen:

- Droht das Dumping, die Struktur der EG-Industrie grundlegend zu ändern?
- Würde durch die Ausschaltung der Gemeinschaftsindustrie der Wettbewerb so geschwächt, daß die Preise langfristig steigen würden?
- Sind von dem Schutz der Industrien weitergehende oder strategische Vorteile zu erwarten?

Wir sind nicht in der Lage, diese Fragen endgültig zu beantworten. Immerhin sei folgendes festgestellt:

- In jedem einzelnen Fall ist ein erheblicher Anteil von Nicht-EG-Firmen im Markt. Die Frage, ob sie auf längere Sicht als Konkurrenten auftreten könnten, ist hier von maßgeblicher Bedeutung.
- Die Kugellagerindustrie ist insofern von strategischer Bedeutung, als Kugellager als unerläßliche Bauteile bei sehr vielen Produkten verwendet werden. Hier stellt sich die entscheidende Frage, ob das Dumping die Gefahr beinhaltet, daß die EG-Industrie überhaupt nicht mehr oder nur noch zu weniger günstigen Bedingungen beliefert wird.
- Im Fall der Kleinfarbfernseher bestand ein wichtiger Faktor für die Verhängung von Maßnahmen in der Notwendigkeit, die Absatzgrundlage der Industrie zu erhalten und die Entwicklung neuer Produkte, darunter auch des hochauflösenden Fernsehens, zu finanzieren. Da es nur eine indirekte Verbindung zwischen der Rentabilität des Absatzes von Kleinfarbfernsehern und der Entwicklung neuer Technologien gibt, scheint uns diese Argumentation recht gefährlich zu sein.

Man sollte sich bewußt sein, daß in vielen Fällen "strategische" Erwägungen oder Bedenken hinsichtlich des künftigen Wettbewerbs keine Rolle spielen.

- Die Gemeinschaft führt Denim aus mehreren Ursprungsländern ein. Die Produktionstechnologie ist problemlos verfügbar. Für viele Käufer ist der Preis der wichtigste Faktor. Daher haben wir es hier mit einem Beispiel für eine Dumpinguntersuchung in einem sehr stark umkämpften Sektor zu tun, in dem das Dumping dem Exporteur keinen dauerhaften Wettbewerbsvorteil verschaffen dürfte.
- Polyvinylchlorid ist vermutlich beispielhaft für eine Reihe von Fällen im Stahl- und im Chemiesektor, in denen sich relativ niedrige Einfuhrvolumen erheblich auf die Preise auswirken, insbesondere dann, wenn der Gemeinschaftsmarkt gedrückt ist. Der Grund: Der kapitalintensive Charakter dieser Sektoren bewirkt, daß es bei nicht ausgelasteten Kapazitäten einen starken Anreiz zur Senkung der Preise gibt, weil die kurzfristigen variablen Kosten niedrig sind. Wenn kein rascher technischer Fortschritt vorliegt, dann gibt es auch hier keinen zwingenden Grund dafür, daß sich der Dumper einen dauerhaften Wettbewerbsvorteil verschafft. Andererseits kann das Dumping hier zu rückläufigen Investitionen und einem Verlust an Wettbewerbsfähigkeit führen.

### **Das Konzept der Gemeinschaft bei der Festsetzung der Dumpingspannen (Teil VII)**

In diesem Bereich gibt es eine Reihe von strittigen Fragen, die erörtert werden müssen.

#### ***Verkauf mit Verlust***

Wie bereits bemerkt, können Exporteure auf ihren Inlandsmärkten mit Verlust verkaufen. Dafür kann es u.a. folgende Gründe geben:

- die Nachfrage ist schwach;
- in der Anlaufphase eines neuen Produkts oder einer neuen Fabrik entstehen hohe Kosten;
- nicht alle Produkte einer Produktionspalette können den vollen Anteil an den Gemeinkosten übernehmen.

Gemäß den Bestimmungen des GATT-Kodexes behandelt die Gemeinschaft (erhebliche) Verkäufe mit Verlust (d.h. Verkäufe zu Preisen, die in einem Zeitraum von höchstens einem Jahr die Gemeinkosten und die variablen Kosten nicht decken) als nicht zum "normalen Handelsverkehr" gehörig und setzt den Normalwert anhand der Produktionskosten plus Gemeinkosten und einer angemessenen Gewinnspanne fest.

Wenn der Exporteur unter den vorher beschriebenen Umständen auf seinem Inlandsmarkt und auf den Exportmärkten identische Preisstrategien verfolgt, bleibt die Möglichkeit, daß Dumping festgestellt wird oder die Dumpingspannen unter Bedingungen erhöht werden, die in wettbewerbsrechtlichen Verfahren nicht von vornherein als unlauter oder wettbewerbsfeindlich betrachtet würden.

**Wir empfehlen, die Verkaufspreise auf dem Inlandsmarkt des Exporteurs als Basis für die Festsetzung des Normalwertes heranzuziehen, sofern sie nicht unter den variablen Kosten liegen (Empfehlung 1).**

### *Verbundene Verkaufs- und Vertriebsorganisationen*

Das Vorgehen der Gemeinschaft bei der Festsetzung von Dumpingspannen, wenn die Hersteller ihre Produkte über ganz oder teilweise in ihrem Besitz befindliche Verkaufs- oder Vertriebsfirmen verkaufen, wurde (vor allem) von Exporteuren aus dem Fernen Osten sowie von einigen Handelsrechtsanwälten und Hochschulkommentatoren stark kritisiert. Sie behaupteten, daß die Preise, zu denen der erste unabhängige Verkauf auf dem Inlandsmarkt des Exporteurs und in der Gemeinschaft erfolgt, in asymmetrischer Weise korrigiert würden.

Hier handelt es sich um ein komplexes Problem, das im Mittelpunkt einiger Fälle stand, mit denen sich der Europäische Gerichtshof befassen mußte. Um die Politik der Kommission abschließend beurteilen zu können, hätten wir einen Zugang zu speziellen Dumpingspannenberechnungen benötigt. Immerhin war es uns möglich, diesen Problemkomplex mit Exporteuren, deren Beratern und der Kommission zu erörtern. Dabei sind wir zu der Schlußfolgerung gelangt, daß der sehr umstrittene Charakter dieses Problems auf zwei Hauptfaktoren zurückzuführen ist.

Zum einen ist die Kommission grundsätzlich der Auffassung, daß beim Normalwert die von ihr als kostspielig eingestuften Vertriebssysteme in Ländern wie Japan berücksichtigt werden sollten, weil sie nach Ansicht der Kommission eine Abschottung des Inlandsmarktes des Exporteurs zur Folge haben. Deswegen verfolgt sie die Politik, den Normalwert anhand der von unabhängigen Kunden gezahlten Preise nur in begrenztem Maße zu korrigieren. Kann der Exporteur jedoch nachweisen, daß ein bestimmter Vertriebskanal auf dem Inlandsmarkt dem Exportpreis für die Gemeinschaft durchaus vergleichbar ist, so setzt die Kommission den Normalwert anhand der Verkäufe über diesen Kanal fest.

Da sich zweitens die in den verschiedenen Vertriebsphasen anfallenden Funktionen des Inlandsmarktes und des Exportmarktes unterscheiden, gibt es ein weites Feld für unterschiedliche Auffassungen über das angemessene Vergleichsniveau.

Da es uns nicht möglich war, die Festsetzung von Dumpingspannen eingehend zu prüfen, sind wir nicht imstande, uns zum praktischen Vorgehen der Gemeinschaft zu äußern.

Andererseits:

- halten wir es grundsätzlich für unangebracht, daß die Dumpingspannen durch unterschiedliche Vertriebskosten auf dem Inlandsmarkt und dem Exportmarkt beeinflußt werden. Für die unterschiedlichen Vertriebskosten kann es mehrere andere Gründe geben als die relative Offenheit der Märkte;
- würde sich das Problem nicht stellen, wenn der Exportpreis für die Gemeinschaft mit den geschätzten Kosten für die Belieferung des Gemeinschaftsmarktes und nicht mit dem Preis auf dem Inlandsmarkt des Exporteurs verglichen würde;
- würde eine alternative Möglichkeit, die Verzerrung der Dumpingspannen durch unterschiedliche Vertriebskosten möglichst gering zu halten, darin bestehen, die Exportpreise und die Preise auf dem Inlandsmarkt des Exporteurs möglichst nahe "ab Werk" miteinander zu vergleichen;
- wenn Preisvergleiche verwendet werden, kann es sein, daß die unterschiedliche Handelsstufe (d.h. die unterschiedlichen Stellen der Vertriebskette, an denen die Preise verglichen werden) nur dadurch berücksichtigt werden kann, daß Korrekturen durch Einbeziehung oder Ausklammerung bestimmter Kosten angebracht werden. Ist dies der Fall, so sollten entgegen der üblichen Praxis die Gemeinkosten und die direkten Kosten mitberücksichtigt werden.

**Zusammenfassend ziehen wir nachstehende Schlußfolgerungen:**

- **Aus fundamentalen wirtschaftlichen Gründen ist es unbedingt erforderlich, den Normalwert und den Exportpreis auf der gleichen Basis festzustellen. Dabei sollten Unterschiede nach Möglichkeit durch die Festsetzung eines selektiven Normalwertes beseitigt werden. Ist dies nicht möglich, so sehen wir kaum eine Alternative für an den Kosten orientierte Korrekturen, um eine Vergleichbarkeit zu gewährleisten. Bei allen Korrekturen, die für die Vergleichbarkeit vonnöten sind, sollten die Unterschiede in den indirekten und den direkten Kosten berücksichtigt werden. Dies ist in der Antidumping-Regelung offensichtlich nicht vorgesehen.**
- **Es gibt keine ökonomische Rechtfertigung für die separate Behandlung der Feststellung des Normalwertes und des Exportpreises und die Berücksichtigung der Notwendigkeit von Korrekturen, um eine Vergleichbarkeit zu erreichen. Die Notwendigkeit von Korrekturen hängt entscheidend von dem Normalwert und dem Exportpreis ab.**
- **Da wir nicht einsehen können, warum die Höhe einer Dumpingspanne von den auf dem Inlandsmarkt des Exporteurs herrschenden Vertriebs- und Marketingkosten abhängen soll, sollte die Dumpingspanne auf eine Handelsstufe bezogen werden, die möglichst nahe "ab Werk" liegt.**
- **Auf jeden Fall gibt es starke wirtschaftliche Argumente für einen Vergleich des Exportpreises mit den geschätzten Kosten für die Belieferung des Gemeinschaftsmarktes statt mit den Kosten für die Belieferung des Inlandsmarktes des Exporteurs.**
- **Wenn bei der rechnerischen Ermittlung der Exportpreise der Gewinn berücksichtigt wird, den ein Importeur erwarten kann, dann sollte darauf geachtet werden, daß die Gewinnspanne auch wirklich repräsentativ ist (Empfehlung 2).**

***Vergleich der Exportpreise mit dem Normalwert***

Gegenwärtig werden die Dumpingspannen dadurch festgesetzt, daß die Preise spezifischer Exportgeschäfte mit einem einzigen durchschnittlichen Normalwert verglichen werden. Liegt der Exportpreis über dem Normalwert, so ergibt sich bei der Festsetzung der gesamten Dumpingspanne der Wert Null. Diese Methode, die von der Gemeinschaft und anderen führenden Anwendern wie den USA, Kanada und Australien angewendet wird, wird seit langem kritisiert, weil dadurch angeblich die Dumpingspannen aufgebläht werden.

Von einigen Ausnahmen abgesehen, schreibt der Entwurf des GATT-Kodexes vor, daß die Dumpingspannen anhand eines Vergleichs der durchschnittlichen Exportpreise mit dem Normalwert festgesetzt werden sollen.

**Wir empfehlen, daß die Kommission bei der Anwendung dieser Bestimmung die Umstände angeben sollte, unter denen sie dieses Konzept des Vergleichs der Durchschnittswerte nicht anwenden würde (Empfehlung 3).**

Unsere beiden vorstehenden Empfehlungen entsprechen der Empfehlung des Parlaments (14.12.1990), wonach die Kommission Leitlinien für die Antidumping-Politik der EG nach dem Muster der Leitlinien für die Wettbewerbspolitik und das öffentliche Beschaffungswesen veröffentlichen sollte. Das Parlament ist der Ansicht, daß solche Leitlinien die Transparenz der EG-Politik, insbesondere hinsichtlich der Berechnung der Dumpingspanne, verbessern würden.

### *Schädigung und Gemeinschaftsinteresse (Teil VIII)*

#### *Schädigung*

Wie bereits bemerkt, kann Dumping zweifellos beträchtliche wirtschaftliche Probleme für die Gemeinschaftsindustrie verursachen, die sich einer direkten Konkurrenz durch gedumpte Einfuhren ausgesetzt sieht. Unseres Erachtens bieten die vom GATT und von der Gemeinschaft verwendeten Kriterien für eine Schädigung nicht genügend Gewähr dafür, daß durch Antidumping-Maßnahmen das wirtschaftliche Wohlergehen gesteigert werden kann. Das hat folgende Gründe:

- Dieses Kriterium ist nur zum Teil ein Indikator für das Gemeinschaftsinteresse. Insbesondere wird nicht berücksichtigt, welche Auswirkungen Antidumping-Maßnahmen haben auf:
  - \* industrielle Abnehmer
  - \* Verbraucher
  - \* Zulieferer von Material und Bauteilen.
  
- Obgleich auf die Auswirkungen eines anhaltenden Dumping verwiesen wird, ist das Schädigungskriterium eher rückwärtsgewendet. Bei der Analyse der Politik sollte man die Vergangenheit ruhen lassen und sich auf die Auswirkungen konzentrieren, die Antidumping-Maßnahmen auf Produzenten und Abnehmer haben. Dabei sind wir uns jedoch bewußt, daß Maßnahmen ein Signal setzen und für andere Industrien als abschreckendes Beispiel dienen können.

Bei unserer Prüfung des Schädigungskriteriums ergaben sich außerdem einige eher technische Fragen.

#### *Zeitraum der Prüfung*

Während bei der Prüfung der Schädigung Entwicklungen von drei Jahren oder mehr analysiert werden, werden Dumpingspannen in der Regel nur aufgrund von einem Jahr oder weniger festgesetzt. Wenn in der Zeit vor der Prüfung ein Dumping festgestellt wird, dann wird implizit angenommen, daß das Dumping innerhalb des gesamten Zeitraums anhielt, für den die Schädigung beurteilt wird. Das muß jedoch nicht so sein. Zum Beispiel ist es möglich, daß Exporteure ihre Preise erst dann an Wechselkursänderungen anpassen, wenn feststeht, daß diese nicht rückgängig gemacht werden.

Andererseits wäre eine Festsetzung von Dumpingspannen für mehrere Jahre, wie es in Australien geschieht, recht aufwendig.

**Wir empfehlen, daß die Kommission die Preistendenzen auf dem Inlandsmarkt des Exporteurs und in der Gemeinschaft im Bezugszeitraum prüfen und berücksichtigen sollte, um sich zu vergewissern, daß diese Tendenzen der Dringlichkeit bzw. der Entwicklung des Dumping und der Schädigung der Gemeinschaftsindustrie entsprechen. Dies sollte jedoch keine Schätzung der Dumpingspannen für den gesamten Bezugszeitraum umfassen (Empfehlung 4).**

### ***Mindestschwellen***

Unter normalen Wettbewerbsbedingungen erleben die Unternehmen von Zeit zu Zeit erhebliche "Schocks", die dazu führen, daß die Nachfrage nach ihren Produkten und die Preise, die sie auf ihren Märkten erzielen können, rückläufig sind. Darüber hinaus gibt es bei der Festsetzung der Dumpingspannen unweigerlich eine Fehlermarge.

Daraus kann man schließen, daß Steigerungen der Importpenetration von bis etwa 5 % oder Dumpingspannen von 5-10 % für die Unternehmen in der Gemeinschaft keine außergewöhnliche Bedrohung bedeuten würden. Es ist daher nicht verwunderlich, daß eine - wenn auch nicht allzu ausgeprägte - Tendenz besteht (vgl. S. 153-154), daß die Verfahren ohne Festlegung von Antidumping-Maßnahmen eingestellt werden, wenn die Dumpingspannen und die Importpenetration niedrig sind.

Im Entwurf des GATT-Kodexes werden als Mindestschwellen für Dumping Marktanteile von 2 % und 1 % (mit Ausnahmen) festgesetzt. Der erstgenannte Wert dürfte eine Änderung der Gemeinschaftspraxis erforderlich machen.

**Wir empfehlen, daß die Kommission Mindestschwellen festlegen und veröffentlichen sollte, die erheblich höher liegen als die im neuen GATT-Kodex vorgesehenen Werte (Empfehlung 5).**

Diese Empfehlung dürfte auch der EP-Entscheidung von 1990 entsprechen, wonach es sich erst dann um Dumping handelt, wenn die inländische Industrie durch umfangreiche Billigimporte erheblich geschädigt wird.

### ***Gemeinschaftsinteresse***

Vor einigen Jahren wurde ein Verfahren mit der Bemerkung eingestellt, daß die Anwendung von Maßnahmen nicht im Interesse der Gemeinschaft liegen würde. Auf den ersten Blick ist das überraschend, weil:

- die Kommission der Auffassung ist, daß eine Untersuchung eingeleitet werden sollte, wenn angemessene Beweise für Dumping und für eine Schädigung vorliegen, und daß das Interesse der Gemeinschaft in dieser Phase nicht berücksichtigt werden sollte;
- unter vielen unterschiedlichen Marktbedingungen Dumping-untersuchungen eingeleitet und Maßnahmen ergriffen wurden;
- die ökonomische Analyse nahelegt, daß das Interesse des Herstellers kein brauchbarer Maßstab für das globale Interesse der Gemeinschaft ist;
- mehr als die Hälfte der Antidumping-Fälle Rohstoffe und Halbfertigerzeugnisse betrifft, die noch weiterverarbeitet werden müssen.

In bezug auf das Kriterium des Gemeinschaftsinteresses sahen wir uns mit einem breiten Spektrum unterschiedlicher Meinungen konfrontiert.

Auf der einen Seite äußerten einige Beobachter die Ansicht, daß die Kommission das Interesse der Gemeinschaft mit dem Interesse der Industrie gleichsetze. Das Kriterium des Gemeinschaftsinteresses sei nur ein Sicherheitsventil, das es der Kommission und dem Rat erlaube, Maßnahmen nicht zu ergreifen oder zu ändern, auch wenn ein starker Druck in diesem Sinne ausgeübt werde. Diese Einschätzung veranlaßt die Beobachter zu der Auffassung, daß der Anspruch, auch andere Interessen berücksichtigen zu wollen, aufgegeben werden sollte. Andere sind der Ansicht, daß eine zentrale und notwendige Reform darauf abzielen sollte, das Kriterium des Gemeinschaftsinteresses mit Sinn zu erfüllen.

Auf der anderen Seite äußerten andere Beobachter - insbesondere die Wirtschaftsverbände - die Befürchtung, daß die Gemeinschaftsindustrie nicht den nötigen und angemessenen Schutz vor schädlichem Dumping bekommen werde, wenn dem Kriterium des Gemeinschaftsinteresses Vorrang eingeräumt werde. Einige von ihnen betrachten das schädliche Dumping an sich bereits als Verstoß gegen das Interesse der Gemeinschaft. Andere fragen sich, welche kommerziellen, wirtschaftlichen und politischen Aspekte in diesem Zusammenhang berücksichtigt werden könnten.

**Aufgrund unserer Fallstudien, des Interviewprogramms und der Ergebnisse der Fälle des vergangenen Jahrzehnts haben wir den allgemeinen Eindruck gewonnen, daß eine eingehendere Analyse der Auswirkungen von Antidumping-Maßnahmen sowie eine Überprüfung der Gewichtung zwischen den Interessen der Hersteller und denjenigen der Abnehmer erforderlich sind. Wir empfehlen, daß die Kommission einen Bericht mit ihrer Analyse bezüglich der kurz- und der langfristigen Auswirkungen des Dumping und der Anwendung von Antidumping-Maßnahmen auf alle wirtschaftlichen Interessen ausarbeiten sollte (Empfehlung 6).**

## **Maßnahmen (Teil IX)**

### ***Konzept der Maßnahmen***

Bei der Auswahl der Antidumping-Maßnahmen für einen speziellen Fall sind mehrere wichtige Kriterien zu beachten, darunter:

- ihre Einhaltung;
- die Wirksamkeit bei der Beseitigung der Schädigung;
- ihre Auswirkungen auf die Verbraucherpreise und das Zollaufkommen;
- ihre Auswirkungen auf den Wettbewerb;
- die Flexibilität angesichts geänderter Marktbedingungen;
- die administrative Angemessenheit.

Wie bereits bemerkt, wendet die Gemeinschaft in den meisten Fällen feste Zölle an, oder sie akzeptiert Preisverpflichtungen.

Einige Kommentatoren haben sich dafür ausgesprochen, daß die Gemeinschaft und möglicherweise auch das GATT ein System variabler Zölle anwenden sollte, d.h. ein System, das die Höhe des Zolls mit dem Unterschied zwischen dem deklarierten Zollwert und einem bestimmten Zielpreis verknüpft. Ein derartiges System hätte in der Tat den Vorzug, daß:

- die Auswirkung auf die Preise, zu denen die Hersteller in der Gemeinschaft ihre Produkte verkaufen können, berechenbarer würde;
- ein positiver Anreiz zum Verzicht auf Dumping geboten würde;
- ein "Selbsterstörungsmechanismus" eingeführt würde, wonach die Maßnahmen auslaufen, sobald sich die Preise erholt haben und keine weitere Schädigung droht;
- die Fairneß des Zollsystems erheblich verstärkt würde.

Andererseits:

- würde die Preissteigerung dem Exporteur zugute kommen;
- wäre die Verwaltung dieses Systems kostspieliger;
- könnte die Festsetzung eines Mindestpreises - wenn der Gemeinschaftsmarkt nur von wenigen Lieferanten versorgt wird - für einen erheblichen Anteil der Importe einen Richtwert darstellen und sich damit nachteilig auf den Wettbewerb auswirken.

Etwa die gleichen Argumente gelten bei einem Vergleich von Verpflichtungen und Wertzöllen. Allerdings haben variable Zölle den Vorteil eines eingebauten Mechanismus, der die Einhaltung gewährleistet.

**Obgleich die Argumente nicht eindeutig dafür sprechen, empfehlen wir nach reiflicher Überlegung, daß die Gemeinschaft ein variables Zollsystem anwenden sollte, sofern keine übergeordneten Bedenken bezüglich der Auswirkungen auf den Wettbewerb bestehen und sofern ein solches System administrativ durchführbar ist (Empfehlung 7).**

#### ***Veränderte Bedingungen***

Es kann sein, daß Antidumping-Maßnahmen der Gemeinschaftsindustrie in der Praxis einen zu starken oder einen zu geringen Schutz bieten.

**Wir sind der Meinung, daß die Kommission die Auswirkungen der Maßnahmen überwachen und aus eigener Initiative eine Überprüfung durchführen sollte, falls die Maßnahmen nicht die beabsichtigte Wirkung zeigen (Empfehlung 8).**

#### ***Laufzeit der Maßnahmen***

Die in der Antidumping-Regelung und im Entwurf des GATT-Kodexes vorgesehene "Sunset-Periode" von fünf Jahren dürfte der Gemeinschaftsindustrie in den meisten Fällen einen vernünftigen Anpassungszeitraum bieten. In einem Sektor unserer Fallstudien, nämlich bei den Minikugellagern, sind Maßnahmen seit den 70er Jahren in Kraft.

**Wir sind der Meinung, daß:**

- **die Anwendung von Maßnahmen für einen kürzeren Zeitraum insbesondere dann geprüft werden sollte, wenn das Dumping und die dadurch verursachte Schädigung mit der jeweiligen Phase des Wirtschaftszyklus zusammenhängen. Eine Verlängerung dieser Maßnahmen könnte (ausnahmsweise) vorgesehen werden;**
- **die Maßnahmen nur in Ausnahmefällen länger als fünf Jahre in Kraft bleiben sollten (Empfehlung 9).**

#### ***Schutzniveau***

Die "Regel des niedrigeren Zolls" muß in der Antidumping-Politik der Gemeinschaft eine zentrale Rolle spielen. Gegenwärtig wird die Höhe des Zolls so festgesetzt, daß die Schädigung beseitigt wird.

Bei der Festsetzung der Höhe des Zolls (bzw. der Preisverpflichtung), die eine Beseitigung der Schädigung bewirkt, stellt sich eine Reihe von technischen Problemen. Die Kommission hat in diesem Zusammenhang mehrere unterschiedliche Konzepte verfolgt, was ihr den Vorwurf der Inkonsequenz eingetragen hat. Da die Wirkung der Maßnahmen von den speziellen Marktbedingungen abhängt, ist eine Ermittlung der Schädigungsspannen sehr schwierig. Unseres Erachtens gibt es beträchtliche Möglichkeiten für die weitere Entwicklung und Bewertung alternativer Konzepte.

**Wir empfehlen, daß die Kommission Forschungsarbeiten zu diesem Fragenkomplex durchführen oder in Auftrag geben und anschließend Leitlinien für ihre Politik im Bereich der Ermittlung der Schädigungsspannen veröffentlichen sollte (Empfehlung 10).**

Da die Wirkung der Maßnahmen zur Beseitigung der Schädigung der Gemeinschaftsindustrie nur ein teilweiser Indikator für ihre Auswirkung auf das Gemeinschaftsinteresse ist, empfehlen wir darüber hinaus, daß die Gemeinschaftsregel des niedrigeren Zolls neuformuliert werden sollte, um zu erreichen, daß Niveau und Form von Antidumping-Maßnahmen nicht nur zur Beseitigung der Schädigung, sondern zur optimalen Wahrung der globalen Interessen der Gemeinschaft festgelegt werden (Empfehlung 11).

#### *Maßnahmen zur Verhinderung der Umgehung*

In seiner Entschließung von 1990 hat das EP die Bedeutung von wirksamen Vorschriften zur Verhinderung der Umgehung von Antidumping-Maßnahmen betont.

Einschneidende Antidumping-Maßnahmen schaffen einen eindeutigen und starken Anreiz zu ihrer Umgehung. Allerdings:

- besteht die Gefahr, daß Maßnahmen zur Verhinderung der Umgehung zusätzliche Verzerrungen bewirken;
- kann es schwierig sein, zwischen legitimen inländischen Investitionsvorhaben und im wesentlichen durch Antidumping-Zölle bedingten Vorhaben zu unterscheiden.

Wir möchten daher die Notwendigkeit betonen, Maßnahmen zur Verhinderung der Umgehung flexibel zu handhaben und die Auswirkung zu berücksichtigen, die zusätzliche Maßnahmen auf das Interesse der Gemeinschaft haben können.

#### *Rückerstattung und Überprüfung von Antidumping-Zöllen*

Welche Meinung man bezüglich der Anwendung von Antidumping-Maßnahmen auch vertreten mag, es scheint jedenfalls wünschenswert, daß den Exporteuren nach der Verhängung von Maßnahmen ein Anreiz zum Verzicht auf das Dumping geboten wird. Dies läßt sich erreichen durch:

- Rückerstattung der Zölle bei der Einstellung des Dumping;
- Rücknahme der Maßnahmen gegen Exporteure, die das Dumping einstellen und vermutlich nicht wiederaufnehmen werden, aufgrund einer Überprüfung.

Gegenwärtig sind die Gemeinschaftspolitik im Bereich der Rückerstattungen und der Überprüfungen sowie die Schwierigkeiten bei der Abwicklung der Rückerstattungen offensichtlich nicht dazu angetan, den Anreiz für die Exporteure zur Einstellung des Dumping zu erhöhen. Diese Probleme ergäben sich nicht, wenn unsere Empfehlung, die Gemeinschaft sollte ein variables Zollsystem anwenden, befolgt würde.

Das grundsätzliche Problem betrifft die Behandlung der Antidumping-Zölle, wenn die Dumpingspannen neu berechnet werden, um zu ermitteln, ob eine Rückerstattung erfolgen sollte oder ob die Maßnahmen verlängert bzw. geändert werden sollten. Wenn der Importeur mit dem Exporteur verbunden ist, dann werden derzeit bei der Feststellung, ob das Dumping anhält, die vom erstgenannten entrichteten Zölle abgezogen.

**Obgleich wir uns bewußt sind, daß die Abwägung der Argumente nicht zu einem eindeutigen Ergebnis führt, empfehlen wir, die Antidumping-Zölle als solche nicht als Kosten zu behandeln, die einem mit dem Exporteur verbundenen Importeur entstehen, wie dies auch in den Vereinigten Staaten gehandhabt wird (Empfehlung 12).**

**Wir empfehlen ferner, das System für die Abwicklung der Rückerstattungen zu vereinfachen (vgl. S. 214) (Empfehlung 13).**

### *Institutionen und Verfahren (Teil X)*

In unserem Bericht befassen wir uns mit wirtschaftlichen Problemen, die sich aus der Antidumping-Politik der Gemeinschaft ergeben. Allerdings sollten wir auch auf einige institutionelle und verfahrenstechnische Fragen eingehen, die die Effektivität der Politik und unsere Empfehlungen für die künftige Politik der Gemeinschaft betreffen.

#### *Dauer der Untersuchungen*

Die Zeit bis zum Ergehen eines endgültigen Beschlusses ist ein ernstliches und verständliches Problem der Gemeinschaftsindustrie, zu dem sich das Europäische Parlament mehrfach geäußert hat. In seiner EntschlieÙung von 1990 forderte das EP, daß vorläufige Maßnahmen (in der Regel) binnen sechs Monaten nach der Einleitung eines Verfahrens verhängt werden sollten.

Vom Auftreten eines Dumpingproblems bis zur Einleitung eines Verfahrens können viele Monate vergehen. Die Untersuchungen dauern durchschnittlich 18 Monate, obgleich vier bis sechs Monate davor vorläufige Maßnahmen angewendet werden können. Die durchschnittliche Dauer von Untersuchungen hat sich im letzten Jahrzehnt erheblich verlängert.

Die komplexe Entscheidungsstruktur in der Gemeinschaft hat zur Folge, daß die Untersuchungen eher länger dauern als in anderen Ländern. Dieser Umstand erklärt jedoch nicht, warum die durchschnittliche Dauer der Untersuchungen zugenommen hat.

Bekanntlich bedienen sich andere führende Anwender von Antidumping-Maßnahmen eines Systems von zeitlichen Fristen, und einige Kommentatoren haben vorgeschlagen, daß die Gemeinschaft ebenfalls ein solches System anwenden sollte.

Dieses Problem läßt sich nicht von den der Kommission zur Verfügung stehenden Ressourcen trennen. Der Entwurf des GATT-Kodexes setzt für die Dauer einer Untersuchung eine verbindliche Frist von 18 Monaten fest. Wenn unsere Vorschläge für die Reform des Kriteriums des Gemeinschaftsinteresses befolgt werden, wird der Gesamtumfang der im Verlauf der Untersuchung erforderlichen Arbeiten erheblich zunehmen. Auf jeden Fall besteht die Gefahr, daß das Fristensystem zu übereilten Beschlüssen führt.

**Wir empfehlen, daß die Kommission Ziele für den Abschluß der einzelnen Phasen der Antidumping-Untersuchungen festsetzen und veröffentlichen sollte und daß sie in ihrem Jahresbericht an das EP detaillierte Angaben zur Einhaltung dieser Ziele machen sollte (Empfehlung 14).**

#### *Prüfung von Alternativen zu Antidumping-Maßnahmen*

Es kann vorkommen, daß Antidumping-Maßnahmen nicht die angemessene Antwort auf durch Dumping verursachte Probleme sind. In manchen Fällen kann es sich aus Gründen eines effektiven politischen Vorgehens empfehlen, dem durch die Zölle gebotenen Schutz regelrechte Subventionen vorzuziehen. Obgleich wir uns bewußt sind, daß Subventionen nicht mit den internationalen Verpflichtungen der Gemeinschaft in Einklang stehen, kann es angemessen sein, andere Maßnahmen zur Unterstützung der Gemeinschaftsindustrie entweder auf Gemeinschaftsebene oder auf Mitgliedstaatenebene zu prüfen. Im besonderen:

- kann auf regional- und beschäftigungspolitische Maßnahmen zurückgegriffen werden, wenn eine Industriebranche aufgrund des internationalen Wettbewerbs zu schrumpfen droht;
- können F & E-Maßnahmen zur Unterstützung der Entwicklung wichtiger Technologiesektoren eingesetzt werden.

**Wir empfehlen daher, daß bei der Prüfung des Gemeinschaftsinteresses auch geprüft werden sollte, ob nicht eine alternative Maßnahme angemessener wäre (Empfehlung 15).**

#### *Transparenz der Antidumping-Verfahren*

Wir glauben, daß die Transparenz der Antidumping-Verfahren verbessert werden könnte, wodurch ein Beitrag zur effektiven Wahrung des Gemeinschaftsinteresses geleistet würde. Wir sind der Meinung, daß die konkrete Politik der Kommission derzeit nicht genug erläutert wird und daß die Grundlage für spezielle Beschlüsse in den Durchführungsbestimmungen nicht in angemessener Weise gerechtfertigt wird. Bekanntlich werden in anderen führenden Anwenderländern von Antidumping-Maßnahmen, wie Australien, Kanada und den Vereinigten Staaten, detaillierte Berichte veröffentlicht, wenn Antidumping-Maßnahmen verhängt werden.

**Wir empfehlen, daß:**

- Verbraucherverbände, Gewerkschaften und andere Organisationen, die in dieser Sache mitreden wollen, Zugang zu nichtvertraulichen Informationen über die Verfahren erhalten sollten;

- die Beschlüsse zur Einleitung vorläufiger und endgültiger Maßnahmen (einschließlich der Beschlüsse zur Einstellung der Verfahren) mehr Hintergrundinformationen und eine umfassende Darstellung der Basis für die Beschlüsse der Kommission und des Rates enthalten sollten. Es wäre nützlich, wenn die Analyse der Markttrends von der (rechtlichen) Analyse der Schädigung und der (politischen) Analyse des Gemeinschaftsinteresses getrennt würde;
- die Kommission eine detaillierte Beschreibung ihres Konzepts zu spezifischen Fragen im Zusammenhang mit dem Dumpingverfahren (z.B. zur Bestimmung der Schädigungs- und der Dumpingspanne) veröffentlichen sollte (Empfehlung 16).

Diese letztere Empfehlung entspricht der Empfehlung des Europäischen Parlaments, wonach die Kommission für die Wirtschaft Leitlinien ihrer Antidumping-Politik veröffentlichen sollte.

#### *Bestimmungen für die Überprüfung der Beschlüsse der Kommission und des Rates*

Durch Antidumping-Verfahren werden starke Emotionen auf beiden Seiten freigesetzt, und es ist wichtig, daß das System geeignete Überprüfungen und Bewertungen umfaßt. Wir haben weiter oben festgestellt, daß die Gemeinschaft der einzige führende Anwender von Antidumping-Maßnahmen ist, bei dem eine einzige Stelle für alle Phasen der Untersuchungen zuständig ist.

Derzeit wird die Tätigkeit der Kommission vom Rat, vom Europäischen Parlament und vom Europäischen Gerichtshof kontrolliert. Die Mitgliedstaaten richten ihr Augenmerk unweigerlich auf nationale Interessen, und der Gerichtshof hat eingeräumt, daß er schlecht darauf vorbereitet ist, über Fragen zu entscheiden, die häufig technischen oder politischen und weniger rechtlichen Charakter haben.

**Daher würde es sich empfehlen, daß das Europäische Parlament die Einsetzung eines Fachgremiums prüfen sollte, das mit der Beratung in Fragen der allgemeinen Politik und möglicherweise, in bestimmten Fällen, auch in Fragen des globalen Interesses der Gemeinschaft beauftragt wird (Empfehlung 17).**

#### *Bestimmungen für die Überwachung der Maßnahmen*

In einigen Fällen dürften Maßnahmen nur insofern gerechtfertigt sein, als die Gemeinschaftsindustrie Initiativen zur Verbesserung ihrer Wettbewerbsfähigkeit ergreift. Darüber hinaus ist es möglich, daß Maßnahmen in der Praxis nicht die erwarteten oder beabsichtigten Auswirkungen haben.

**Wir empfehlen, daß die Kommission die Antidumping-Maßnahmen aktiv überwachen und eine Überprüfung einleiten sollte, wenn Maßnahmen nicht die beabsichtigte Wirkung zeigen (Empfehlung 18).**

#### *Ressourcen der Kommission*

Gegenwärtig verfügt die Kommission über 124 Planstellen für Beamte (einschließlich Hilfspersonal), die mit der Verwaltung von Antidumping- und Antisubventionsmaßnahmen der Gemeinschaft betraut sind. Im Vergleich dazu arbeiten in den Vereinigten Staaten über 200 Beamte des Handelsministeriums und der Internationalen Handelskommission an Untersuchungen im Bereich der Antidumping- und Antisubventionsmaßnahmen.

Im Rahmen dieser Studie haben wir nicht untersucht, ob die der Kommission zur Verfügung stehenden Ressourcen angemessen sind.

Wir sind uns bewußt, daß die in diesem Bericht enthaltenen Empfehlungen eine detaillierte Überprüfung der notwendigen Ressourcen erfordern würde. Diese Überprüfung sollte auch eine Beurteilung der Qualifikationen umfassen, die vonnöten sind, um eine detaillierte Analyse des Gemeinschaftsinteresses durchzuführen, das im Mittelpunkt unserer Empfehlungen steht (Empfehlung 19).

## Gesamtpolitische Fragen (Teil XI)

### *Soziales Dumping und Umweltdumping*

Innerhalb des existierenden GATT-Rahmens wäre es der Gemeinschaft nicht möglich, Maßnahmen zu verhängen, wenn Exporteure in die Gemeinschaft:

- die international anerkannten Mindestnormen für Beschäftigungsbedingungen nicht einhalten und damit von niedrigen Arbeitskosten profitieren ("soziales Dumping");
- ältere, umweltbelastendere Verfahren anwenden oder weniger strengen Umweltgesetzen unterliegen ("Umweltdumping").

In seiner Entschliebung von 1990 hat das Europäische Parlament die Auffassung vertreten, daß Länder, die einen zollfreien Zugang zum Gemeinschaftsmarkt anstreben, die IAO-Normen einhalten müßten.

Wir hörten unterschiedliche Ansichten zu der Frage, ob es zweckmäßig sei, Maßnahmen gegen das soziale Dumping oder das Umweltdumping zu ergreifen.

Wir glauben nicht, daß Antidumping-Maßnahmen geeignet sind, um sich mit diesen Problemen zu befassen, denn:

- es gibt keinen einleuchtenden Grund, Maßnahmen nur gegen Exporte zu ergreifen, die der Gemeinschaftsindustrie materiellen Schaden zufügen;
- der Kostenvorteil des Exporteurs wäre sehr schwer abzuschätzen, und es bestünde die große Gefahr, daß dadurch ein unterschwelliger Wettbewerbsvorteil verdeckt würde;
- die Anwendung von Handelsprotektionsmaßnahmen könnte sich als kontraproduktiv erweisen, da sich die sozialen Normen und die Umweltnormen mit dem Wirtschaftswachstum verbessern könnten.

### *Am wenigsten entwickelte Länder und Osteuropa*

Wie bereits bemerkt, entfällt ein hoher Anteil der Antidumping-Untersuchungen auf Importe aus nichtmarktwirtschaftlichen Ländern (41 % zwischen 1981 und 1991) und aus den Entwicklungsländern (26 %). (Abgesehen von Korea) machen diese Fälle zusammengenommen jedoch weniger als 10 % des gesamten Handels aus, der Antidumping-Maßnahmen unterliegt.

Es besteht ein eindeutiger Zielkonflikt zwischen der Anwendung von Antidumping-Maßnahmen und einer Politik, die generell darauf abzielt, die Entwicklung der am wenigsten entwickelten Länder und Osteuropas zu fördern. Allerdings erklärte man uns, daß es unvernünftig sei, bestimmten, einem Dumping ausgesetzten Industriebranchen wegen einer allgemeinen Politik zur Förderung der Entwicklung den Schutz zu verweigern.

Dies schließt trotz allem die Festsetzung höherer Mindestschwellen für diese Fälle nicht aus. Die Gewichtung zwischen Antidumping-Maßnahmen und anderen Politiken ist eine Frage des politischen Ermessens, doch wir sind der Meinung, daß dieser Punkt eine Prüfung verdient. Im übrigen sei darauf hingewiesen, daß sich das EP in seiner Entschließung von 1990 dafür aussprach, keine Antidumping-Maßnahmen gegen Produzenten aus den am wenigsten entwickelten Ländern zu verhängen, wenn die Dumpingspanne sehr gering ist, wobei der Wert von 5 % genannt wurde. Diese Schlußfolgerung deckt sich mit unserer Empfehlung bezüglich der Mindestschwellen.

### *Allgemeine Schlußfolgerungen*

Was die Auswirkung auf den Handel und das Gemeinschaftsinteresse angeht, so betreffen die bedeutsamsten Antidumping-Fälle in der Gemeinschaft diejenigen Produkte, welche die Kommission als "strategische" Produkte aus dem Fernen Osten betrachtet. Die von der Kommission in diesen Fällen vertretene Grundhaltung beruht auf der Beschäftigung mit den Auswirkungen des Dumping auf den Wettbewerb auf dem Gemeinschaftsmarkt. Allerdings wird anerkannt, daß sich Antidumping-Maßnahmen nicht auf die Wurzel der Wettbewerbsprobleme, d.h. die Abschottung der Märkte und das unlautere Wettbewerbsverhalten, auswirken.

Unseres Erachtens kann man außerdem anführen, daß der GATT-Rahmen auch durch andere Entwicklungen in der Weltwirtschaft überholt ist. Im besonderen:

- ist es schwierig zu entscheiden, ob der Beschluß zur Verlagerung der Produktion in die Gemeinschaft oder in Drittländer als ein Fall von Umgehung behandelt werden sollte;
- ist es möglich, daß die Zölle im Fall einer Kostendegression nicht zu erhöhten Preisen führen, wodurch die Wirksamkeit der Maßnahmen beeinträchtigt wird;
- gestaltet sich die Feststellung eines Dumping sehr viel schwieriger, wenn sich die Produzenten sowohl auf ihrem Inlandsmarkt als auch auf den Exportmärkten am Vertrieb beteiligen.

Aus diesen Gründen spricht viel dafür, daß die Antidumping-Maßnahmen durch internationale Wettbewerbsvorschriften ersetzt werden. Wir haben in der Tat festgestellt, daß allgemein die Auffassung vorherrscht, daß die Notwendigkeit von Antidumping-Maßnahmen im wesentlichen entfallen würde, wenn der internationale Handel ähnlichen Wettbewerbsvorschriften unterläge, wie sie in der Gemeinschaft und in vielen anderen entwickelten Volkswirtschaften gelten.

Allerdings wird es sicher viele Jahre, wenn nicht Jahrzehnte dauern, bevor ein System für die Regulierung des Wettbewerbs auf internationaler Ebene angewendet werden kann, obgleich es schon jetzt Initiativen zur Koordinierung der Wettbewerbsregeln gibt (z.B. die kürzliche Vereinbarung zwischen der Gemeinschaft und den Vereinigten Staaten).

Bis dahin besteht die einzige praktische Möglichkeit für die Gemeinschaft darin, den Rahmen des GATT-Antidumping-Kodexes zu benutzen.

Einige kritische Kommentatoren haben sich dafür ausgesprochen, daß die Gemeinschaft das Dumping und die Schädigung neu definieren und nur dann noch Maßnahmen anwenden sollte, wenn:

- der Exportpreis in die Gemeinschaft nicht die Kosten deckt;
- das Dumping dem Wettbewerb (und nicht den Herstellern) schadet.

Unseres Erachtens spricht einiges für diese Auffassungen. Aus den weiter oben genannten Gründen sind wir jedoch nicht dafür, Antidumping-Maßnahmen nur in Fällen anzuwenden, in denen der effektive Wettbewerb in der Gemeinschaft bedroht ist. Im übrigen halten wir es für unwahrscheinlich, daß eine solche Reform verwirklicht werden kann.

Deshalb sollte vorrangig angestrebt werden, daß das Kriterium des Gemeinschaftsinteresses in den Mittelpunkt der Antidumping-Verfahren gerückt wird. Maßnahmen sollten nur dann eingeleitet werden, wenn sie nachweislich im Interesse der Gemeinschaft liegen. Dies dürfte unseres Erachtens dazu führen, daß in einigen Fällen, in denen ein Dumping und eine Schädigung festgestellt werden, keine Maßnahmen eingeleitet werden, weil dies nicht im Gemeinschaftsinteresse liegen würde.

**Im besonderen empfehlen wir, daß Antidumping-Verfahren eine ökonomische Kosten/Nutzen-Analyse umfassen sollten, aus der hervorgeht, ob die Anwendung von Antidumping-Maßnahmen gerechtfertigt ist (Empfehlung 20).**

Diese Analyse sollte:

- nach vorne gerichtet sein. Das bedeutet, daß die voraussichtlichen Auswirkungen der Maßnahmen auf die verschiedenen Bestandteile der wirtschaftlichen Interessen der Gemeinschaft abgewogen werden müßten;
- sich darauf konzentrieren, ob die Maßnahmen:
  - = notwendig sind, um einen effektiven Wettbewerb auf dem Gemeinschaftsmarkt zu erhalten;
  - = einen effizienteren Einsatz der Ressourcen der Gemeinschaft fördern.

Bei dieser Bewertung würde der kurz- und langfristigen Auswirkung der Maßnahmen auf die Wettbewerbsfähigkeit der Gemeinschaftsindustrie und auf deren Abnehmer eine zentrale Rolle zukommen. Das heißt, daß die Analyse eine Berücksichtigung der Auswirkungen der Maßnahmen auf folgende Faktoren einschließen sollte:

- die Preise auf kurze und lange Sicht;
- die Investitionen, Forschung und Entwicklung in der direkt betroffenen Industriebranche;
- die Wettbewerbsfähigkeit des gesamten Sektors sowie der Zulieferer und der Abnehmer;
- die regionale Beschäftigung.

Das GATT schreibt seinen Vertragsparteien nicht vor, Antidumping-Maßnahmen zu ergreifen, sondern es erlaubt ihnen das. Im Kodex heißt es nämlich, es sei wünschenswert, daß die Anwendung von Maßnahmen nicht automatisch, sondern fakultativ gehandhabt werde. Die Reform, die wir vorschlagen, würde daher dem Kodex entsprechen.



## **RESUME ET CONCLUSIONS**



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## RESUME ET CONCLUSIONS

### Introduction

Ce résumé présente une vue d'ensemble du rapport que nous avons adressé au Parlement européen quant aux incidences économiques du dumping et de la politique antidumping de la Communauté, en mettant l'accent sur nos conclusions et recommandations principales.

#### *Lignes générales du rapport*

- La section I décrit la situation générale dans laquelle notre étude a été effectuée, nos références, notre programme de travail, ainsi que notre manière d'aborder la question;
- La section II donne les grandes lignes de la réglementation antidumping de la Communauté, ainsi que des dispositions pertinentes du GATT ;
- La section III analyse les incidences économiques du dumping et relate une partie de l'expérience communautaire en la matière ;
- La section IV envisage les motivations économiques de mesures antidumping ;
- La section V reprend l'utilisation faite par la Communauté des mesures antidumping ;
- La section VI discute les conséquences économiques du dumping et des mesures antidumping sur des dimensions essentielles relevant de l'intérêt communautaire ;
- Les sections VII et VIII envisagent les critères fondamentaux du dumping, des préjudices qui peuvent en résulter, et de l'intérêt communautaire ;
- La section IX analyse le choix des mesures adéquates et la section X envisage les questions institutionnelles ;
- La section XI s'attache à certaines questions politiques de portée plus large et relatives au dumping.

#### **Situation générale, références et programme de travail (section I)**

##### *Situation générale et références*

Ces dix dernières années, le Parlement européen a accordé une attention considérable à la politique antidumping de la Communauté et au Code antidumping mis au point par le GATT. Plus récemment, en 1990, le Parlement a adopté une résolution affirmant la nécessité de mesures antidumping et a émis un certain nombre de recommandations précises visant à établir des modifications politiques de manière à rendre plus efficaces, équitables et transparentes les mesures antidumping.

De façon à améliorer la compréhension qu'a le Parlement des conséquences économiques du dumping et de la politique antidumping adoptée par la Communauté, Ernst & Young ont été chargé en décembre 1991 d'engager une étude en vue:

- d'évaluer les conséquences économiques du dumping et de la politique antidumping au sein de la Communauté ;
- d'estimer la pertinence et l'efficacité des mesures antidumping prises par la Communauté ;

- de présenter et évaluer des options visant à apporter des modifications en matière de politique communautaire et de politique internationale.

### *Programme de travail*

Au cours de notre étude, nous avons :

- mis au point un cadre conceptuel à l'intérieur duquel analyser l'incidence sur la Communauté du dumping et des mesures antidumping, en tenant compte des faits nouveaux importants survenus ces dix dernières années en matière d'analyse économique des échanges sur les marchés internationaux ;
- entrepris une analyse sur documents des caractéristiques économiques que présentaient les industries et les marchés qui ont fait l'objet de procédures antidumping, ainsi que de l'utilisation faite par la Communauté de mesures antidumping ces dix dernières années ;
- engagé des études plus détaillées, au cas par cas, de cinq procédures antidumping (1). Le choix de ces études a été réalisé en consultation avec la Commission et la Direction générale des études du Parlement ;
- rencontré à plusieurs reprises la Direction pour l'antidumping de la Commission de manière à discuter tous les aspects de la politique antidumping de la Communauté ;
- entrepris un programme d'entretiens avec d'autres services de la Commission, avec le Secrétariat du GATT, les ministères et les organes chargés de la concurrence de certains Etats membres, des associations industrielles, des groupes de défense du consommateur, des syndicats, des représentants officiels d'intérêts des exportateurs, des avocats d'affaires et des analystes universitaires ;
- examiné les mesures antidumping et les expériences réalisées en la matière par trois autres grands utilisateurs de mesures antidumping : l'Australie, le Canada et les Etats-Unis.

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1 Nos trois études ont porté sur les mesures antidumping de la Communauté frappant :

- les tissus pour jeans provenant de quatre pays (la Turquie, l'Indonésie, Hong Kong et Macao). Le degré de dumping a été considéré comme faible et la Commission en a conclu qu'aucun dommage matériel n'en avait résulté pour la Communauté. En conséquence, nulle mesure n'a été imposée;
- les mini-roulements à billes - utilisés dans les moteurs et dans un vaste éventail d'autres produits en vue de réduire les frictions entre éléments en mouvement - provenant du Japon, de Singapour et de Thaïlande. On a accepté de prendre des mesures à l'encontre du Japon dans les années soixante-dix. Des droits de douane ont été appliqués aux importations en provenance du Japon et de Singapour, et ont par la suite été étendus à la Thaïlande. Ces mesures sont encore en vigueur;
- des photocopieuses en provenance du Japon. Des mesures antidumping provisoires ont été appliquées en 1986 et font actuellement l'objet d'un réexamen ;
- le chlorure de polyvinyle - matière plastique utilisée dans la fabrication d'un vaste éventail de produits - provenant de pays d'Europe orientale (Tchécoslovaquie, Roumanie, et l'ancienne RDA). Des mesures ont été appliquées en 1982/83 et ont pris fin en 1987/88 ;
- des petits téléviseurs couleur. Des droits de douane provisoires ont été appliqués aux importations provenant de Corée en 1989 et ensuite aux importations provenant de Hong Kong et de Chine.

### *Portée et approche*

Notre approche a consisté à partir de l'idée de base que les intérêts globaux de la Communauté sont, pour l'ensemble, maximisés par le libre échange, pour ensuite évaluer les conséquences du dumping ainsi que la mesure dans laquelle les mesures antidumping accroissent le bien-être économique au sein de la Communauté, que ce soit pour un certain nombre de cas ou dans l'ensemble, lorsqu'une industrie a eu à subir les effets dommageables du dumping. Ce faisant, nous examinons si d'autres mesures politiques constitueraient une réponse plus adéquate aux problèmes créés par le dumping.

Comprendre de manière pleine et entière les conséquences du dumping et des mesures antidumping dans des cas particuliers aurait impliqué que nous ayons accès à des informations particulièrement confidentielles et aurait pesé lourdement sur l'industrie et les exportateurs de la Communauté - il nous aurait fallu reprendre entièrement notre enquête et entreprendre une analyse détaillée des événements subséquents, ce qui, dans la pratique, était impossible. C'est pourquoi notre rapport revêt la forme d'une analyse économique du phénomène de la politique antidumping, analyse se fondant sur des informations (en profondeur) provenant des cinq cas évoqués et de nos discussions avec la Commission, et avec d'autres observateurs et participants à la politique antidumping de la Communauté.

En plus des questions analysées dans ce rapport, il ne faut pas perdre de vue un certain nombre d'autres considérations politiques et économiques qui ont leur rôle à jouer dans la détermination pratique de la politique :

- les mesures antidumping peuvent favoriser l'ouverture de marchés tiers, ce qui implique des bénéfices économiques. Une étude bien plus large des relations commerciales serait de rigueur si l'on voulait juger la contribution efficace et effective de mesures antidumping à la libéralisation des marchés mondiaux. Ce dernier point n'était pas dans notre propos ;
- il est largement accepté que l'absence de mesures antidumping, la pratique verrait surgir des pressions protectionnistes qui exerceraient des distorsions beaucoup plus importantes sur le commerce mondial. De ce point de vue, les mesures antidumping sont comme une valve de sécurité ;
- la notion de dumping n'est pas "équitable". Il y a là une dimension émotionnelle de poids, mais il faut envisager si, d'un point de vue économique, cela suffit à prendre des mesures de rétorsion ;
- il se peut qu'existent de fortes pressions visant à concilier les intérêts de groupes bien organisés.

### *Limites*

Tels que l'envisageaient les références du Parlement, ainsi que notre proposition, notre programme de travail s'est concentré sur la Communauté elle-même. Le degré de fermeture de marchés étrangers par rapport à l'industrie de la Communauté, ainsi que les politiques commerciales et industrielles adoptées par des partenaires commerciaux majeurs de la Communauté sont des questions d'importance, et non dénuées d'implications pour la politique antidumping de la Communauté. La Direction générale des études du Parlement n'a cependant pas estimé que nos recherches devaient s'élargir à ces questions.

Pour des raisons juridiques, nous n'avons pas été en mesure d'avoir accès aux dossiers de la Commission relatifs aux cas que nous avons étudiés. Il a été convenu que nous pouvions examiner des détails relatifs au calcul de marges de dumping pratiqués par des exportateurs individuels avec leur accord. Malheureusement, cela ne s'est pas traduit dans les faits, d'où, inévitablement, limitation de la valeur de nos études. De manière plus générale, l'étude de nos cas s'est heurtée au manque de bonne volonté de la part de certains exportateurs, peu désireux de nous prodiguer leur aide; et, dans certains cas, nous avons eu l'impression que les entreprises et les associations industrielles de la Communauté n'étaient pas entièrement libres de nous accorder leur coopération.

## La politique antidumping de la Communauté (section II)

Les mesures antidumping de la Communauté se conforment largement aux dispositions du Code antidumping du GATT. Il est permis d'appliquer des mesures antidumping lorsque sont présents les trois critères suivants :

- les exportations en direction de la Communauté ont fait l'objet de dumping. On tend à considérer que le dumping implique que les prix pratiqués par les exportateurs sur leurs marchés intérieurs sont plus élevés que ceux que font payer les importateurs de la Communauté. Mais tel n'est pas nécessairement le cas, dans la mesure où, si les ventes de l'exportateur ne sont pas bénéficiaires sur le plan intérieur, le prix à l'exportation sera comparé à un prix intérieur fabriqué qui comprendra tous les frais généraux ainsi qu'une marge bénéficiaire ;
- l'industrie communautaire a subi des préjudices matériels à la suite du dumping. De surcroît, il est possible de conclure à un préjudice matériel lorsque le dumping menace d'en causer un ou retarde le développement de l'industrie communautaire. Mais ces dispositions sont peu utilisées dans la pratique ;
- l'application de ces mesures irait dans l'intérêt de la Communauté.

Des mesures qui, habituellement, revêtent la forme de droits ad valorem ou d'engagements de prix, sont appliquées à un niveau nécessaire pour mettre fin au dumping, à moins qu'un droit inférieur (ou engagement de prix) ne soit suffisant pour mettre un terme au préjudice ("loi du droit le moins élevé"). Les mesures viennent à expiration cinq ans à partir de la date où, pour la dernière fois, elles ont fait l'objet d'un réexamen, à moins qu'une "sunset review" ne confirme qu'elles doivent être maintenues.

Les droits payés seront remboursés dès lors que l'importateur pourra démontrer qu'ils ont excédé la marge de dumping.

Comme l'ont reconnu les commissions parlementaires, les mesures antidumping adoptées par la Communauté comprennent trois dispositions qui rendent la politique de la Communauté plus libérale que les exigences strictes du Code du GATT :

- le critère d'intérêt communautaire. La législation de l'Australie et du Canada prévoient que soient prises en considération des questions d'intérêt public, sans qu'existe d'obligation de les envisager dans chaque cas ;
- la Communauté mise à part, seule l'Australie pratique des droits explicitement moins élevés ;
- comme la Communauté, l'Australie et le Canada connaissent un délai d'expiration de cinq ans ("sunset") ; et le projet de nouveau Code du GATT rendent de telles clauses obligatoires.

Il existe entre les mesures communautaires et celles adoptées par l'Australie, le Canada et les Etats-Unis deux autres différences fondamentales :

- dans ces trois derniers pays, les enquêtes sont soumises à des limites dans le temps ;
- au Canada et aux Etats-Unis, les enquêtes relatives au dumping sont le fait d'un département gouvernemental alors que les investigations relatives aux préjudices relèvent d'une Commission ou d'un Tribunal séparé et indépendant. En Australie, une autorité indépendante examine traditionnellement les propositions visant à mettre en oeuvre les mesures antidumping formulées par le service australien des douanes.

### Les incidences du dumping (section III)

#### *Les circonstances de fond*

Les opinions que l'on se fait en règle générale des problèmes de dumping se fondent souvent sur l'idée préconçue que le dumping implique un afflux d'importations à bas prix, lorsque, peut-être, la demande est déjà faible.

Notre analyse opérationnelle, portant sur 40 situations de dumping, montre qu'un nombre non négligeable de cas semblent présenter ces caractéristiques. Pour trois de ces études en effet - le tissu pour jeans, les mini-roulements à bille, et le chlorure de polyvinyle - la demande et la production communautaire enregistraient une baisse importante pendant la période qui a précédé notre enquête.

Néanmoins, dans d'autres cas, on a retrouvé des données de base nettement différentes, et pour l'époque qui a immédiatement précède notre étude, nous avons découvert que :

- dans la moitié, ou presque, des cas, la demande communautaire s'accroissait de 3%, ou plus ;
- dans 25% des cas, environ, la production communautaire s'accroissait de 3%, ou plus ;
- dans 20% des cas, environ, les importations dont il était prétendu qu'elles avaient fait l'objet d'un dumping ne représentaient que 5%, voire moins, du marché communautaire;
- dans un tiers des cas environ, les prix à l'importation demeuraient statiques ou étaient en augmentation.

De même, dans les études auxquelles nous nous sommes livrés pour les *Photocopieuses de papier uni* (PPU) et les *Téléviseurs couleurs à petit écran* (TCPE), le marché communautaire était en plein essor, même si, pour le second cas, la production globale diminuait.

#### *L'incidence du dumping*

On peut s'attendre que le dumping entraînera diverses conséquences sur l'industrie communautaire et sur d'autres agents économiques, en fonction des circonstances fondamentales de tel ou tel cas. Lorsque le niveau du dumping et celui des transactions est de taille, les niveaux des prix, des bénéfices, de la production et de l'emploi communautaires seront, en toute probabilité, moins élevés à court terme que dans des circonstances différentes. Sur les marchés en développement, le dumping peut prendre la forme d'une perte de parts de marché plutôt que d'une baisse de la production. De fait, une perte des parts de marché peut constituer un indicateur important de préjudice, lorsque la croissance est nécessaire au maintien ou à l'amélioration de la compétitivité en matière de coûts. Dans le cas des *photocopieurs de papier uni* et des *téléviseurs couleur à petit écran*, l'industrie communautaire a subi d'importantes pertes en parts de marché.

D'autres indicateurs significatifs de préjudice découverts dans l'étude que nous avons réalisée de chacun des cas consistait dans des baisses de prix et de bénéfices.

Il est important de distinguer les effets à court terme du dumping de ses incidences à long terme, ce qui dépendra en partie du caractère plus ou moins prolongé du dumping. Du point de vue de l'incidence économique globale, une question de taille qui se posera sur le long terme consistera à savoir si la compétitivité de l'industrie communautaire est compromise par le dumping, ce qui pourrait être le cas, par exemple:

- s'il existe des économies d'échelle ou des effets d'apprentissage dont ne bénéficie pas l'industrie communautaire, mais dont, en conséquence, l'auteur du dumping tire profit ;
- si la recherche et le développement, ainsi que les investissements nécessaires, ne sont pas entrepris en raison de difficultés financières à court terme qui ont pour origine le dumping ;
- s'il est porté préjudice aux fournisseurs de la Communauté et à ses industries de pièces détachées.

Les effets potentiels du dumping ont joué un rôle central dans l'analyse d'un certain nombre de cas. Par exemple:

- pour les *mini-roulements à bille*, on s'inquiétait de ce que les bénéfices que pouvait éventuellement retirer l'industrie ne soient pas suffisants pour financer la recherche et le développement nécessaires ;
- de même, dans le cas des *photocopieuses de papier uni*, on a découvert que l'industrie communautaire dépensait moins d'argent que les exportateurs japonais en recherche et développement, et l'on en a conclu que la compétitivité future de l'industrie communautaire s'en trouvait menacée ;
- dans le cas des *téléviseurs couleur à petit écran*, on a craint qu'une poursuite du dumping n'ait pour conséquence un arrêt de la production communautaire intégrée et qu'à long terme, la mise au point de produits de nouvelle génération n'en subisse les effets négatifs.

En règle générale, les consommateurs et les acheteurs industriels bénéficieront, à court terme du dumping, dans la mesure où ils auront affaire à des prix moins élevés que dans le cas contraire. Toute la question consiste à savoir si ces "prix moins élevés que dans le cas contraire" se maintiendront à l'avenir, et si, en fait, les consommateurs n'auront pas à faire face à plus long terme à des prix plus élevés et/ou à des services de moindre qualité à la suite des préjudices engendrés par le dumping.

## Motivations générales de la politique antidumping (section IV)

### *Perspectives relatives à la politique antidumping*

Les opinions relatives à l'existence de raisons économiques motivant une politique antidumping sont loin de s'accorder.

A l'un des extrêmes, on avance que le dumping n'est possible que si le marché intérieur de l'exportateur est fermé à la concurrence ou "isolé". De la sorte, le dumping s'oppose aux objectifs du libre-échange et de la concurrence internationale qui ont été au centre du développement du système international des échanges lors des cinquante dernières années. Les formes de dumping comprenant des préjudices sont condamnées par le GATT et, lorsqu'elles existent, il conviendrait de faire usage des droits définis par le GATT pour mettre en application des mesures antidumping. Sous cette forme, les motivations qui poussent à adopter des mesures antidumping dépendent dans une large mesure, non seulement des effets économiques du dumping, mais aussi de considérations plus larges impliquant l'équité et l'objectif qui consiste à promouvoir l'ouverture de marchés dont il a été fait état plus haut.

A l'autre extrême, certains critiques des mesures antidumping avancent qu'on ne tien pas assez compte des bénéfices en matière de prix procurés aux consommateurs et aux acheteurs industriels par le dumping. Ils considèrent que le dumping n'est néfaste d'un point de vue économique que lorsqu'il a pour conséquences la disparition d'une industrie communautaire et le danger de voir les acheteurs de la Communauté exposés à une situation de monopole. A leurs yeux, les cas de "dumping sauvage" seront probablement rares. En conséquence, seules des circonstances très restreintes exigeront l'application de mesures antidumping.

Nous sommes d'avis que le dumping, potentiellement, est de nature à mettre en danger les intérêts économiques de la Communauté dans un certain nombre de secteurs plus vastes que ceux qui viennent d'être suggérés. Néanmoins, lorsque l'on envisage si, d'un point de vue économique, l'introduction de mesures antidumping est motivée, il est essentiel de se livrer à une analyse détaillée du marché, des raisons qui ont conduit au dumping et des effets probables de mesures antidumping. Nous avons particulièrement mis l'accent sur la distinction qui doit exister entre les types suivants de dumping :

- dumping à long terme : stratégie consistant à fixer des prix plus bas pour les marchés à l'exportation pendant plusieurs années, voire de manière permanente;
- dumping cyclique : exportation à des prix qui ne permettent pas le recouvrement de tous les coûts dans le cas où le marché est déprimé ;
- dumping commercial d'Etat : exportations provenant d'économies autres que de marché à des prix qui ne permettraient pas le recouvrement de tous les coûts dans une économie de marché ;
- dumping sauvage ou stratégique : exportation à des prix peu élevés (mais n'entraînant pas nécessairement des pertes), avec pour conséquence un affaiblissement de la concurrence sur le marché communautaire ;
- dumping provisoire : exportation à des prix peu élevés de manière temporaire :
  - de manière à pénétrer le marché communautaire ou à développer les ventes d'un nouveau produit ;
  - lorsque la capacité globale de production est en excès.

### *Dumping sauvage*

Les questions les plus controversées relatives à la politique antidumping de la Communauté concernent des cas que la Commission et les industries intéressées considèrent comme des exemples de dumping sauvage - essentiellement, des cas qui impliquent des exportations de produits électroniques en provenance d'Extrême-Orient.

Dans ces cas, on se soucie de ce que les exportateurs bénéficient de marchés intérieurs fermés, avec pour résultat:

- qu'ils sont en mesure d'imposer des prix élevés et de faire des chiffres d'affaires élevés qui peuvent à leur tour subventionner des exportations en direction de la Communauté ;
- que les coûts peuvent être réduits plus rapidement dans la mesure où les frais fixes se répartissent sur des quantités plus élevées.

En conséquence, les exportateurs peuvent vendre moins cher que les producteurs de la Communauté sans pour autant vendre à perte.

La Commission avance que, si des mesures ne sont pas prises pour s'opposer au dumping, l'industrie communautaire verra ses coûts s'accroître, du moins de manière relative, dans la mesure où des exportations bénéficiant du dumping s'empareront d'une part plus large du marché communautaire. Une réduction des bénéfices permettra moins facilement à l'industrie communautaire de financer et de justifier une poursuite de ses investissements en matière de recherche et de développement. Avec le temps, l'industrie communautaire disparaîtra entièrement ou alors dépendra d'un point de vue technologique des exportateurs en direction de la Communauté, et elle cessera de constituer une force concurrentielle indépendante. Une forme de dumping s'appliquant à des produits du même ordre pourrait conduire à la perte de secteurs industriels entiers de la Communauté. L'affaiblissement ou la disparition de la concurrence qui en résultera sur le marché communautaire sera considérablement préjudiciable aux intérêts des consommateurs comme des acheteurs industriels.

Nous sommes d'avis que les questions essentielles qu'il convient d'examiner lorsque l'on envisage l'introduction ou non de mesures antidumping dans les circonstances que nous venons de décrire sont les suivantes :

- existe-t-il des raisons stratégiques suffisantes pour maintenir des capacités communautaires dans l'industrie en question ?
- quelle sera l'incidence sur l'efficacité à long terme de la concurrence communautaire ?

En ce qui concerne le second point, les questions essentielles portent sur les points suivants :

- le dumping chassera-t-il les entreprises communautaires du marché ou les affaiblira-t-il de manière permanente ?
- dans quelle mesure la concurrence continuera-t-elle d'exister entre exportateurs, qu'ils aient eux-même pratiqué le dumping ou non ?
- dans quelle mesure le marché en question sera-t-il soumis à des barrières à l'importation ou à la réimportation ?

Il est plus que probable que ces conditions se rencontreront satisfaites dans des secteurs dans lesquels le progrès technologique est rapide et dans lesquels un niveau élevé d'investissement est requis en matière de recherche et de développement, et d'équipements de production en vue de maintenir les capacités concurrentielles. Lorsque tel sera le cas, la fermeture du marché pourra bien permettre aux exportateurs pratiquant le dumping d'acquérir un avantage initial au niveau des coûts qui sera renforcé par la production de quantités importantes par le biais d'une pratique des prix agressive sur le marché communautaire. En conséquence, l'industrie communautaire pourrait subir un accroissement des désavantages en matière de coûts.

Même si le dumping a causé des préjudices, il demeure important de se demander si des mesures antidumping mettront un terme à ces préjudices. Il pourrait n'être qu'insignifiant (mis à part le message stratégique) d'introduire des mesures si l'industrie communautaire a déjà souffert de manière permanente au point de ne plus pouvoir retrouver son rôle concurrentiel.

### *Autres types de dumping*

Néanmoins, alors que l'incidence du dumping sauvage est une question clé, le dumping ne conduit pas nécessairement à une réduction préjudiciable en matière de concurrence. En règle générale, l'analyse économique suggère qu'il n'est pas impératif de prendre des mesures lorsque le dumping a causé des dommages matériels. Et pour quatre raisons fondamentales.

*i) Le dumping n'est pas une aberration*

Le dumping, tel qu'il est évalué et défini par le GATT, ne reflète pas nécessairement une stratégie agressive ou hostile à la concurrence de la part de son auteur. La conception que se fait l'économiste de marchés parfaitement concurrentiels sur lesquels le mouvement libre et rapide des biens garantit que les prix sont les mêmes sur différents marchés ne se vérifie que rarement dans la pratique. De fait, lorsqu'un nombre relativement peu élevé de producteurs sont en concurrence sur un certain nombre de marchés nationaux, les conditions globales de la demande comme celles auxquelles doivent faire face les producteurs individuels varieront fréquemment en fonction des marchés, ce qui conduira à des disparités dans les prix. Lorsque ces conditions de la demande sont stables, les entreprises peuvent adopter des stratégies différentes de fixation des prix selon leur bon plaisir, à moins que les produits en question ne puissent être facilement (ré)exportés. Dans d'autres cas, une politique consistant à fixer des prix peu élevés sur un marché peut n'être que provisoire. Même au sein de leurs propres marchés intérieurs, il n'est pas rare que les entreprises adoptent une politique de discrimination en matière de prix, vendant par exemple à des prix différents sur des sous-marchés différents, en fonction des impératifs de l'offre et de la demande. De même, il prévaudra un certain niveau de discrimination en matière de prix (dumping) d'un pays à l'autre au sein de la Communauté, à mesure que les entreprises ajustent leurs stratégies en matière de prix aux différentes situations de marché auxquelles elles doivent faire face. De fait, un des objectifs du Programme du Marché unique et de la politique communautaire en matière de concurrence a consisté à éliminer les frictions qui ont permis l'existence de disparités de prix dans divers secteurs de la Communauté.

Les exemples suivants montrent la façon dont une concurrence imparfaite peut conduire au dumping:

- les entreprises seront généralement désireuses et en mesure de déterminer des prix plus élevés sur des marchés où leur image de marque jouit d'une forte considération ;
- en pénétrant un nouveau marché, des entreprises peuvent très bien être contraintes de fixer des prix moins élevés pendant plusieurs années de manière à persuader les consommateurs de faire l'essai de leurs produits ;
- dans les industries où les coûts diminuent avec le temps à mesure que s'accroît la production, la tentation est grande de fixer des prix inférieurs aux coûts (du moment) de manière à augmenter les ventes et à réduire les coûts (futurs). Dans de telles conditions, des entreprises peuvent adopter des stratégies agressives en matière de fixation des prix, que leur marché intérieur soit fermé ou non.

Dumping cyclique

Une définition du dumping serait possible si un prix à l'exportation en direction de la Communauté ne dépassait pas l'ensemble des coûts de l'exportateur (plus une marge bénéficiaire) sur son marché intérieur. Ainsi, si les conditions des affaires et les prix intérieurs étaient en baisse et que les coûts à l'unité étaient élevés, un exportateur pourrait très bien fixer des prix plus élevés pour la Communauté de manière à éviter d'être défini comme pratiquant le dumping.

*ii) Le préjudice fait partie du bien-être économique*

Comme nous l'avons évoqué plus haut, il se peut que le dumping comporte des incidences très sévères sur l'industrie directement affectée à la fois à court et à long terme. De surcroît, les fournisseurs pourraient en souffrir de manière indirecte, et, si le dumping réduit la concurrence ou l'efficacité, les consommateurs de l'industrie communautaire faisant l'objet du dumping pourraient également en être les victimes.

Reste que le dumping peut aussi avoir des conséquences différentes :

- la pénétration d'un importateur nouveau augmentera la concurrence sur le marché communautaire et pourra très bien contribuer à une baisse des prix à plus long terme et/ou diversifier les produits offerts au consommateur ;
- de même, la fixation de prix à terme et les stratégies de dumping cyclique peuvent réduire le niveau général des prix au bénéfice des consommateurs et des acheteurs industriels. En outre, si les acheteurs industriels n'ont pas la possibilité de bénéficier entièrement de prix peu élevés, leur caractère concurrentiel en aval peut en souffrir, avec pour conséquences, une baisse de la production et de l'emploi.

C'est pourquoi le fait de se concentrer sur l'industrie directement touchée et sur des effets négatifs indirects frappant l'ensemble du secteur, ainsi que sur les fournisseurs de matériaux et de pièces détachées ne reflète pas nécessairement l'incidence globale sur l'économie communautaire.

*iii) Il n'existe pas de motif global justifiant des mesures de représaille contre les marchés fermés*

D'un point de vue économique, il est possible de s'opposer de manière virulente aux barrières formelles et informelles au commerce qui permettent la persistance de différentiels de prix. Cette maxime a été à l'origine même du GATT et, comme nous l'avons noté précédemment, du programme communautaire relatif au Marché unique. Néanmoins, en face de marchés fermés, il n'est absolument pas certain que l'adoption de mesures rendant les importations moins compétitives sur le marché communautaire soit de nature à accroître le bien-être économique de la Communauté. Il va de soi que des marchés fermés peuvent donner l'occasion de pratiquer le dumping. Du point de vue de la Communauté, la question de savoir si des mesures se justifient dans de telles circonstances doit refléter les avantages comparatifs de l'offre, de la capacité qu'a l'économie communautaire d'être réellement concurrentielle sur les mêmes bases et la possibilité qu'offrent ces mesures d'ouvrir de nouveaux marchés. Les conséquences à long terme sur les prix constituent une autre dimension essentielle. Il importe que les marchés fermés ne se heurtent pas à une réaction émotionnelle.

*iv) D'autres mesures pourraient être plus efficaces*

D'un point de vue plus général, les politiques économiques devraient, dès que la possibilité s'en présente, s'attaquer à la source du problème. Comme nous l'avons vu plus haut, le dumping ne constitue pas en soi un problème. Cependant, il peut créer des problèmes qui nécessitent une intervention politique. Dans certains cas, des mesures antidumping peuvent constituer la seule solution possible. Mais d'autres mesures politiques dont dispose la Communauté, en particulier en matière d'emploi, de recherche et de développement, pourraient bien se révéler plus adaptées dans certaines circonstances.

*A quel moment des mesures peuvent-elles se justifier ?*

L'analyse qui précède indique que des mesures antidumping ne se justifient pas automatiquement pour des motifs économiques, même lorsque l'on peut établir l'existence d'un préjudice. Reste que, dans certaines circonstances, des mesures de ce type s'imposent.

Parmi les circonstances dans lesquelles de telles mesures sont justifiées on peut mentionner les suivantes:

- lorsque la main-d'oeuvre constitue un coût d'importance, son coût d'utilisation en période de récession peut être peu élevé, le résultat étant que les prix des producteurs de la Communauté peuvent dépasser les coûts sociaux pendant la période concernée. Ce phénomène peut se manifester particulièrement lorsque les producteurs de la Communauté se situent dans des régions connaissant un fort taux de chômage ;
- si les marchés des capitaux sont imparfaits, une baisse inhabituelle des conditions présentées par l'industrie communautaire pourrait réduire l'investissement au-dessous de son seuil d'efficacité, ou pourrait conduire des entreprises potentiellement efficaces à cesser leurs activités.

Dans chaque cas particulier, il est nécessaire de prendre en considération l'équilibre entre ces données et leur incidence sur les consommateurs ou les acheteurs en aval de manière à déterminer l'opportunité d'une intervention politique globale. Un élément essentiel devrait être un jugement relatif à la position concurrentielle globale de l'industrie communautaire une fois l'épisode du dumping achevé.

### **L'utilisation faite par la Communauté de mesures antidumping (section V)**

#### ***Analyse de cas particuliers***

Pour la période 1981-1991, la Communauté a engagé 422 enquêtes antidumping. Une analyse par pays et par secteur montre que :

- 41% des cas impliquaient des économies non soumises aux lois du marché ; 33% portaient sur des pays industrialisés ; et les 26% restants concernaient des importations en provenance de pays en développement (y compris les Economies nouvellement industrialisées d'Asie (ENI));
- on a enregistré une augmentation notable des cas concernant le Japon, et en particulier, les ENI asiatiques. Dans leur ensemble, la proportion des cas relatifs à ces pays a augmenté de 10% de la période 1981-85 à 32% pour la période 1986-91;
- alors que la proportion globale impliquant des économies non soumises aux lois du marché a diminué, on a constaté un accroissement net du nombre d'actions engagées contre la Chine ;
- les enquêtes relatives au dumping ont porté sur un vaste éventail de secteurs ; la proportion la plus élevée a été enregistrée dans le secteur des produits chimiques.

#### ***Résultat des enquêtes***

Dans environ 70% des cas ayant abouti depuis 1981, des mesures définitives ont été adoptées. Dans un peu moins de 20% des cas, on n'a conclu à aucun préjudice envers l'industrie communautaire ; et 6% des cas seulement se sont terminés sur une conclusion d'absence de dumping.

Depuis 1986, on n'a procédé à la conclusion d'aucun cas pour le motif que, même si l'industrie communautaire avait souffert du dumping, l'adoption de mesures n'aurait pas été dans le sens des intérêts communautaires.

## **Révisions**

La Commission estime que 75% des affaires expirent ou sont annulées en vertu des dispositions dites "sunset". Durant la période 1989-91, un peu plus de la moitié des révisions menées à terme ont conclu à l'annulation des mesures.

## **Enquêtes relatives au dumping de la part d'exportateurs de la Communauté**

Cette étude se penche sur les incidences économiques directes de la politique antidumping propre à la Communauté. Néanmoins, lorsque l'on prend en considération l'incidence globale des dispositions du GATT relatives au dumping affectant les intérêts économiques de la Communauté, il convient d'observer que les exportateurs de la Communauté constituent la cible la plus fréquente d'enquêtes antidumping de la part d'autres utilisateurs de mesures de cet ordre. Un quart environ des enquêtes antidumping signalées au Secrétariat du GATT durant la période 1980-1989 concernait des exportations en provenance de la Communauté, 11% mettaient en cause le Japon et 10% les Etats-Unis.

## **L'incidence économique de mesures antidumping (section VI)**

L'on n'a consacré jusqu'ici qu'un nombre limité d'études relatives à l'incidence économique de mesures de dumping et d'antidumping, et il y a largement place pour des recherches plus détaillées portant sur des sujets bien précis. L'étude des cas à laquelle nous avons procédée contribue à illustrer certains des effets possibles de ces mesures. Il est néanmoins impossible de généraliser à partir d'un matériel aussi réduit.

## **Prix**

Comme l'avance la Commission, l'incidence de mesures antidumping sur les prix dépend de facteurs tels que :

- les coûts auxquels doivent faire face les producteurs de la Communauté et la concurrence qui règne entre eux ;
- les prix des importations ne faisant pas l'objet d'un dumping.

Une augmentation des prix équivalant à la taxe appliquée constituera probablement la solution la plus fréquente. Néanmoins, on est fortement convaincu que des mesures augmenteront les prix au-dessus du niveau qui se serait instauré en leur absence. De fait, l'élimination du préjudice porté à l'industrie communautaire dépend pour une large part d'un effet de ce type. A plus long terme, si l'adoption de mesures a pour effet de préserver la concurrence, les prix peuvent être moins élevés qu'ils ne l'auraient été si l'on n'avait pas pris de mesures antidumping.

Il convient de souligner que la comparaison qui s'impose ici porte sur la tendance des prix qui aurait été observée si aucune mesure n'avait été adoptée. En ce qui concerne les produits dont le prix a tendance à baisser avec le temps, des mesures peuvent avoir pour conséquence une "augmentation des prix" par le biais d'une stabilisation ou de l'arrêt d'une tendance à la baisse.

Nous ne connaissons qu'une seule étude qui ait tenté d'évaluer l'incidence de mesures sur les prix recouvrant un large éventail de produits. Cette étude a fourni des résultats plutôt surprenants, mais elle suggérait que, dans l'ensemble, les mesures avaient pour effet d'augmenter les prix des importations faisant l'objet d'un dumping comme de celles qui n'en faisaient pas l'objet des produits fabriqués dans la Communauté.

Les cas que nous avons étudiés indiquent les résultats suivants :

- pour ce qui concerne le *tissu de jeans*, on observait une concurrence provenant d'autres importations à bas prix et il n'est pas sûr que des mesures auraient eu des conséquences significatives sur les prix ;
- pour les *mini-roulements à bille*, certains éléments indiquent que les mesures ont débouché sur une augmentation des prix ;
- pour les *photocopieuses de papier uni*, les conditions du marché auraient tendance à suggérer que les prix auraient été affectés et les exportateurs ainsi que certains observateurs affirment que tel a été le cas. Néanmoins, nous avons découvert des éléments qui vont dans le sens opposé, et la situation demeure floue ;
- pour le *chlorure de polyvinyle*, un engagement de prix à un niveau peu élevé a été donné, et les prix semblent s'être rétablis avant que les mesures aient pu avoir des effets;
- il est trop tôt pour évaluer les effets de mesures frappant les *téléviseurs couleur à petit écran*.

### **Concurrence**

Les mesures antidumping réduisent les pressions concurrentielles à court terme. A plus long terme, elles peuvent avoir pour effet soit d'augmenter, soit de diminuer le degré de concurrence.

Il se peut que des mesures aient une incidence opposée à long terme sur la concurrence dans certaines circonstances. Par exemple, si un importateur a recours à un dumping provisoire afin de pénétrer sur un marché, des mesures, ou la menace de mesures, peuvent dissuader une stratégie efficace de pénétration. Si l'industrie communautaire est déjà hautement concentrée, des mesures qui découragent une source importante de concurrence peuvent renforcer la puissance déjà existante du marché.

Par contraste, des mesures peuvent être nécessaires en vue de protéger l'efficacité de la concurrence à long terme à l'intérieur de la Communauté. Cette remarque s'applique aux cas de dumping sauvage, ou dans d'autres situations de dumping, si ce dernier porte de sérieux préjudices à l'efficacité comparative à long terme.

Nos conclusions, confirmées par d'autres recherches, sont que, dans un nombre significatif de cas, il existe un nombre relativement peu élevé de producteurs à l'intérieur de la Communauté. Dans ces cas-là, l'incidence de mesures sur la concurrence est particulièrement importante.

*Commerce et lieu de production*

Le tableau ci-dessous résume nos estimations en ce qui concerne la répartition des importations communautaires soumises à des mesures antidumping en fonction du pays et du secteur d'activités. Il montre qu'à l'heure actuelle, les mesures antidumping se concentrent massivement sur des importations en provenance d'Extrême-Orient et touchant au secteur de l'électronique.

**Répartition des importations communautaires soumises à des mesures anti-dumping par pays et par secteur en 1991**  
(% de toutes les importations de la CE soumises à des mesures antidumping)

<i>Analyse par pays</i>		<i>Analyse par secteur</i>	
Japon	83	électronique mécanique	86
Corée	6	ingénierie	3
Total Japon et ENI		chimie	2
asiatiques	91	textile	2
Economies non soumises			
au marché	4	fer & acier	1
Autres pays industrialisés	4	autres	7
Autres pays en développement	1		

*Source : Rapport annuel de la Commission et statistiques commerciales Eurostat*

Dans son rapport annuel de 1990, la Commission a estimé que 0,6% des importations communautaires étaient soumises à des droits antidumping. Cette évaluation ne tient pas compte de l'incidence des engagements de prix. Notre propre estimation, qui, elle, comprend les engagements, est qu'en 1991, 1,1% du commerce communautaire en matière d'importations était soumis à des mesures antidumping. Quoi qu'il en soit, le niveau du commerce directement touché par ces mesures est très peu élevé.

Reste que des mesures antidumping peuvent avoir un effet de "gel commercial" indirect. Par exemple, des exportateurs peuvent rechercher une part de marché moins élevée ou pratiquer des prix moins agressifs sur les marchés communautaires de manière à éviter une enquête portant sur des mesures antidumping. Il est très difficile d'évaluer l'importance de ces effets dans la pratique. Néanmoins, les entretiens que nous avons eus ont bien indiqué que les exportateurs en direction de la Communauté tiennent effectivement compte du danger de se voir imposer des mesures antidumping dans l'élaboration de leurs stratégies destinées au marché communautaire.

Il existe des divergences considérables dans la proportion des échanges mettant en jeu des produits soumis à des mesures antidumping. Dans environ 40% des cas, la proportion du commerce touchée en 1991 était de 20%, ou moins, de tous les échanges concernant ce produit. A l'autre extrémité, dans environ 15% des cas, plus de 60% du commerce était affecté. Selon nous, il y a là un indicateur important quant à l'incidence économique de ces mesures.

Les recherches antérieures ainsi que les cas que nous avons étudiés suggèrent que ces mesures réduisent le volume du commerce avec les pays affectés, et augmentent les échanges avec les autres pays.

Il est difficile de distinguer les effets des mesures antidumping en fonction du lieu de production par rapport à ceux des stratégies globales. Néanmoins, il semble très probable qu'à tout le moins, le calendrier des investissements pratiqué par les pays de la Communauté dans des industries telles que les *photocopieuses de papier uni* et les *mini-roulements à bille* a été influencé par les mesures antidumping.

### *Acheteurs industriels*

Plus de la moitié des cas où se pratique l'antidumping impliquent des matières premières et des produits intermédiaires qui sont soumis à une élaboration supplémentaire. Ces acheteurs industriels tirent clairement profit du dumping, du moins à court terme, et des mesures peuvent affecter leur propre position concurrentielle sur les marchés internationaux. De fait, lorsque les acheteurs communautaires font face à la concurrence sur les marchés internationaux, une perte de compétitivité pourrait conduire à une réduction de la production et de l'emploi "en aval", excédant le profit que peut retirer de ces mesures l'industrie de la CE directement concernée.

Cette question a été soulevée dans un certain nombre de cas - parmi lesquels figure notre étude sur le chlorure de polyvinyle - et, dans certains cas, il est clair que ce point de vue a influencé l'application des mesures.

### *Les cas que nous avons étudiés*

Trois de ces cas - *les photocopieuses de papier uni, les mini-roulements à bille, les téléviseurs couleur à petit écran* - sont considérés par la Commission et les industries concernées comme des cas de dumping sauvage.

Dans chacun de ces cas, nos recherches suggèrent que, si l'industrie communautaire devait être éliminée ou affaiblie, elle ne s'en relèverait pas. Les principales questions qui se posent sont donc les suivantes :

- le dumping a bien risqué de modifier fondamentalement la structure de l'industrie de la CE ;
- la disparition de l'industrie communautaire réduirait la concurrence au point qu'à long terme, les prix augmenteraient ;
- la protection de ces industries présente des bénéfices plus larges et stratégiques.

Nous ne sommes pas en mesure d'apporter un commentaire définitif sur ces points. Néanmoins,

- il est remarquable que, dans chaque cas, un nombre important d'entreprises n'appartenant pas à la CE sont présentes sur le marché. La question de leur capacité concurrentielle à long terme revêt une importance capitale ;
- l'industrie des roulements à bille occupe une position stratégique en ce sens qu'il s'agit de composants indispensables pour un large éventail de produits. Néanmoins, la question clé est de savoir si le dumping conduirait au risque d'un refus de fournir ces éléments à l'industrie communautaire, ou si les fournitures se feraient en des termes moins attractifs ;

- dans le cas des *téléviseurs couleur à petit écran*, il apparaît qu'un élément important militant en faveur de l'adoption de mesures a été la nécessité de préserver la base de marché de l'industrie et de financer la mise au point de nouveaux produits, y compris la télévision à haute définition. Dans la mesure où n'existe qu'un lien indirect entre les bénéfices que l'on peut tirer de la vente de TCPE et le développement de nouvelles technologies, il nous semble que cette argumentation présente des dangers considérables.

Il conviendrait d'admettre que de nombreux cas n'impliquent pas de considérations "stratégiques" ou d'inquiétudes relatives à la concurrence future :

- la Communauté importe du tissu pour *jeans* en provenance de nombreuses sources. La technologie de production est facilement disponible. Le prix constitue un élément clé pour de nombreux acheteurs. C'est pourquoi il y a là un exemple d'une enquête de dumping portant sur une industrie éminemment concurrentielle, dans laquelle le dumping ne créerait pas d'avantage concurrentiel durable pour l'exportateur ;
- le *chlorure de polyvinyle* est probablement représentatif d'un grand nombre de cas relevant du secteur de l'acier et de la chimie, dans lequel des niveaux relativement faibles d'importations ont une incidence majeure sur les prix, particulièrement lorsque le marché communautaire est en dépression. La raison en est que la nature à forte intensité de capital de ces industries signifie que, lorsque les capacités sont sous-utilisées, il existe une forte tendance à diminuer les prix alors que les coûts variables à court terme sont peu élevés. Ici encore, en l'absence d'avancées techniques rapides, nous ne voyons pas pourquoi l'exportateur pratiquant le dumping pourrait bénéficier d'un avantage concurrentiel durable. Néanmoins, le dumping pourrait conduire à un sous-investissement et à une perte de compétitivité.

### **L'approche communautaire en matière de détermination des marges de dumping (section VII)**

Il existe un certain nombre de questions controversées qui méritent d'être examinées.

#### ***Ventes à perte***

Comme nous l'avons observé ci-dessus, les exportateurs peuvent vendre à perte sur leurs marchés intérieurs pour un certain nombre de raisons, par exemple lorsque :

- la demande est faible ;
- les premières étapes de la fabrication d'un nouveau produit ou de la création d'une nouvelle usine impliquent des coûts élevés;
- tous les produits d'une gamme ne peuvent pas supporter une part entière des frais généraux.

A la suite des dispositions du Code du GATT, la Communauté considérera les ventes (importantes) à perte (c'est-à-dire les ventes à des prix qui ne sont pas supérieurs aux frais généraux et aux coûts variables sur une période d'une année ou moins) comme ne relevant pas de "la marche ordinaire des affaires" et fixera une valeur normale sur la base des coûts de production, plus les frais généraux, plus un taux de profit raisonnable.

Comme dans la situation que nous venons de décrire, l'exportateur peut pratiquer des stratégies de prix identiques sur le marché intérieur et le marché extérieur, il restera la possibilité de découvrir l'existence de dumping, ou les marges de dumping pourront être grossières, dans des circonstances qui, à première vue, ne seraient pas considérées comme déloyales ou anticoncurrentielles lors d'une procédure légale portant sur la concurrence.

**Nous recommandons que les prix de vente sur le marché intérieur de l'exportateur soient adoptés comme base de la définition normale de valeurs, à moins qu'ils ne soient inférieurs aux coûts variables (recommandation 1).**

### *Ventes liées et organisations de marché*

La manière dont la Communauté définit les marges de dumping lorsque les producteurs vendent par l'intermédiaire de compagnies ou de distributeurs dont ils sont entièrement ou partiellement propriétaires a été largement critiquée (particulièrement) par des exportateurs d'Extrême-Orient, ainsi que par certains avocats d'affaires et observateurs universitaires. Ils soutiennent que l'on procède à des ajustements asymétriques aux prix auxquels la première vente indépendante s'opère sur le marché intérieur de l'exportateur et dans la Communauté.

Il y a là une question complexe, qui a été au centre d'un certain nombre d'affaires examinées par la Cour européenne de Justice. Pour arriver à une conclusion définitive quant à la politique de la Commission, nous aurions dû avoir accès à des calculs particuliers de marges de dumping. Néanmoins, nous avons été en mesure de discuter ces questions avec les exportateurs et leurs conseillers ainsi qu'avec la Commission. Nous en avons tiré la conclusion que la controverse de taille créée par ce problème s'articule autour de deux questions clé.

Premièrement, pour des raisons de politique, la Commission avance que la valeur normale devrait tenir compte de ce qu'elle considère comme des systèmes de distribution à coûts élevés qui existent dans des pays comme le Japon, et qui ont, aux yeux de la Commission, pour effet de fermer le marché intérieur de l'exportateur. Pour cette raison, sa politique consiste à déterminer une valeur normale sur la base des prix payés par des consommateurs indépendants et à ne pratiquer que des ajustements limités par rapport à ces prix. Néanmoins, lorsque l'exportateur est en mesure de démontrer qu'une chaîne de ventes particulière existant sur le marché intérieur est le plus comparable au prix à l'exportation en direction de la Communauté, la Commission fixera la valeur normale sur la base de cette chaîne.

Secondement, dans la mesure où les fonctions exécutées à différentes étapes de la distribution sont différentes entre le marché intérieur et le marché à l'exportation, il existe de nombreuses possibilités de divergences de vues en ce qui concerne le niveau adéquat de comparaison.

Dans la mesure où nous n'avons pas été en mesure d'examiner en détail la détermination de marges spécifiques de dumping, nous ne pouvons pas, en pratique, commenter l'approche adoptée par la Communauté.

Néanmoins :

- par principe, nous estimons qu'il n'est pas désirable que des différences dans les coûts de distribution entre le marché intérieur et le marché à l'exportation puissent influencer sur les marges de dumping. Les coûts de distribution peuvent varier pour un certain nombre de raisons autres que le degré relatif d'ouverture des marchés ;
- la question ne se posera pas si le prix à l'exportation en direction de la Communauté était comparé à une estimation du coût lié à l'approvisionnement du marché communautaire plutôt qu'au prix pratiqué sur le marché intérieur de l'exportateur ;
- une autre manière de garantir que la distorsion des marges de dumping par le biais de différences dans les coûts de distribution soit réduite au minimum consisterait à comparer les prix à l'exportation et les prix pratiqués sur le marché intérieur de l'exportateur "le plus près possible de l'usine";

- si l'on adopte des comparaisons de prix à prix, il peut être impossible de tenir pleinement compte des différences dans le degré des échanges (c'est-à-dire de différences portant sur le point de la chaîne de distribution auquel les prix sont comparés) sans procéder à des ajustements destinés à éliminer ou à ajouter des coûts particuliers. Lorsque tel est le cas, contrairement à la pratique courante, il conviendrait de prendre en considération les frais généraux ainsi que des coûts qui y sont directement liés.

**En résumé, nous concluons:**

- qu'il est impératif, pour des raisons économiques fondamentales, que la valeur normale et le prix à l'exportation soient fixés sur les mêmes bases. Autant que possible, il conviendrait d'éliminer les différences par le biais de l'adoption d'une valeur normale sélective. Néanmoins, dans la mesure où la chose n'est pas possible, nous ne voyons guère d'autre solution que de procéder à des ajustements fondés sur les coûts de manière à rendre la comparaison possible. Ainsi, tous les ajustements nécessaires pour que la comparaison soit possible devraient tenir compte des disparités entre les coûts indirects et les coûts directs. Cet aspect ne semble pas prévu par la réglementation antidumping ;
- qu'il n'existe pas de base économique rationnelle permettant de traiter séparément les fixations de valeurs normales et du prix à l'exportation d'une part, et d'autre part la prise en compte de la nécessité de procéder à des ajustements de manière à rendre possible la comparaison. La nécessité des ajustements dépendra essentiellement de la base de la valeur normale et du prix à l'exportation ;
- que dans la mesure où nous ne voyons pas de raison pour laquelle le niveau d'une marge de dumping devrait dépendre des coûts de distribution et de politique de marché existant sur le marché intérieur de l'exportateur, il convient d'évaluer la marge de dumping à un niveau commercial "aussi près de l'usine que possible" ;
- quoi qu'il en soit, il existe de puissants arguments économiques allant dans le sens d'une comparaison entre le prix à l'exportation avec une estimation des coûts qu'implique l'approvisionnement du marché communautaire plutôt qu'avec le coût lié à l'approvisionnement du marché intérieur de l'exportateur ;
- si l'on tient compte des bénéfices que l'exportateur peut espérer obtenir dans l'établissement des prix à l'exportation, il conviendrait de veiller à ce que le taux de profit soit réellement représentatif (Recommandation 2).

***Comparaison des prix à l'exportation et de la valeur normale***

A l'heure actuelle, les marges de dumping sont fixées par une comparaison des prix pratiqués lors de transactions spécifiques à l'exportation avec une valeur normale moyenne unique. Si le prix à l'exportation est supérieur à la valeur normale, une valeur zéro est attribuée à la fixation de la marge de dumping générale. Ce phénomène donne lieu, depuis longtemps, à des critiques envers la méthode adoptée par la Communauté, et par d'autres pays qui en font usage, tels que les Etats-Unis, le Canada et l'Australie, critiques selon lesquelles cette approche peut gonfler les marges de dumping.

A quelques exceptions près, le projet de Code du GATT demande que les marges de dumping soient établies par une comparaison entre les prix moyens à l'exportation avec la valeur normale.

**Nous recommandons que, dans la mise en pratique de cette disposition, la Commission donne des indications relatives aux circonstances dans lesquelles elle ne se conformerait pas à l'approche moyenne-contre-moyenne (Recommandation 3).**

Les deux recommandations qui précèdent vont dans le même sens que la recommandation du Parlement (14 décembre 1990) selon laquelle la Commission devrait publier des directives relatives aux affaires concernant la politique antidumping de la CE, suivant ainsi l'exemple de ses directives concernant la politique de la concurrence et les équipements publics. Le Parlement est d'avis que de telles directives amélioreraient la transparence de la politique de la CE, particulièrement en ce qui concerne le calcul de la marge de dumping.

### **Préjudice et intérêt communautaire (section VIII)**

#### ***Préjudice***

Comme nous l'avons reconnu ci-dessus, le dumping peut, de toute évidence, causer des dommages économiques considérables à l'industrie communautaire directement frappée par la concurrence que représente les importations faisant l'objet de dumping. Néanmoins, selon nous, les critères du GATT et de la communauté en matière de préjudice ne fournissent pas d'orientation suffisante quant aux mesures destinées à accroître le bien-être économique. Et ce pour les raisons suivantes :

- ce critère n'est qu'un indicateur partiel de l'intérêt communautaire. En particulier, il n'est pas tenu compte des conséquences du dumping sur :
  - les acheteurs industriels ;
  - les consommateurs
  - les fournisseurs de matériel et de pièces détachées.
- même s'il est fait référence aux implications d'un dumping continu, le critère du préjudice tend à regarder vers le passé. Une analyse politique devrait reconnaître que ce qui est fait est fait et accorder son attention aux effets que les mesures antidumping auront pour les producteurs et les acheteurs. Ce disant, nous n'en reconnaissons pas moins que ces mesures peuvent constituer un signal et avoir un effet dissuasif sur d'autres industries.

Notre analyse du critère du préjudice a également soulevé des questions plus techniques.

#### ***Période de l'analyse***

Alors que dans l'analyse du préjudice, on envisage les tendances portant sur trois ans ou plus, les marges de dumping ne sont généralement déterminées que pour un an ou pour une période encore plus courte. Si l'on découvre une pratique de dumping dans la période conduisant à l'enquête, on suppose implicitement qu'elle dure depuis le début de la période pour laquelle on évalue le préjudice. Ce qui n'est pas nécessairement le cas. Par exemple, des exportateurs peuvent s'abstenir d'ajuster leurs prix en raison de fluctuations dans les taux de change jusqu'à ce qu'il soient clair que ces dernières ne vont pas s'inverser.

Néanmoins, la détermination de marges de dumping pour plusieurs années - comme le pratique l'Australie - serait onéreuse.

**Nous recommandons que la Commission procède à un examen et établisse un rapport concernant les tendances en matière de prix pratiqués sur le marché intérieur de l'exportateur comme dans la communauté pendant la période de référence de manière à vérifier que ces tendances correspondent effectivement à l'émergence ou au développement d'une pratique de dumping et au préjudice subi par l'industrie communautaire. Néanmoins, cette analyse ne devrait pas comprendre une estimation des marges de dumping pour l'ensemble de la période de référence (Recommandation 4).**

#### *Limites minimales*

Dans des conditions normales de concurrence, les entreprises seront mises en présence de "chocs" importants de temps en temps, qui réduiront la demande qui s'adresse à elles où les prix qu'elles peuvent obtenir sur leurs marchés. De surcroît, une marge d'erreur est inévitable dans la détermination de marges de dumping.

Ces réflexions suggèrent que des accroissements dans la pénétration des importations de, peut-être, jusqu'à 5% ou des marges de dumping de 5-10% ne constitueraient pas une menace inhabituelle pour les entreprises de la communauté. Il n'est pas surprenant qu'il existe une tendance - encore qu'elle ne soit pas forte (cf pp 153-154) à clore les procédures sans que soient prises des mesures lorsque les marges de dumping et la pénétration des importations sont peu élevées.

Le projet de Code du GATT fixe des niveaux minimaux pour le dumping de 2% et 1% (tout en permettant des exceptions) des parts de marché. Le premier chiffre impliquera certaines modifications dans la pratique communautaire.

**Nous recommandons que la Commission adopte et publie des limites minimales qui soient considérablement plus élevées que celles qui sont fixées dans le nouveau Code du GATT (Recommandation 5).**

Cette recommandation semble s'accorder avec la résolution du Parlement de 1990 selon laquelle on ne peut affirmer qu'il y a dumping que lorsque des flux importants d'importations à bon marché cause des dommages substantiels à l'industrie communautaire.

#### *Intérêt communautaire*

Il y a quelques années déjà qu'une procédure s'est close sur la conclusion que l'application de mesures ne serait pas dans l'intérêt de la Communauté. A première vue, pareille chose est surprenante, dans la mesure où

- la commission est d'avis qu'une enquête devrait être ouverte s'il existe suffisamment de preuves de dumping et de préjudice et que des questions d'intérêt communautaire ne devraient pas être prises en compte à ce stade ;
- des enquêtes en matière de dumping ont été engagées et des mesures imposées dans des situations de marché diverses ;
- l'analyse économique suggère que l'intérêt du producteur n'est pas un indicateur idéal de l'intérêt économique global de la communauté ;
- plus de la moitié des affaires antidumping impliquent des matières premières et des produits intermédiaires destinés à une élaboration ultérieure.

Nous avons entendu une large variété d'opinions relatives au critère d'intérêt communautaire.

A l'un des extrêmes, certains observateurs avançaient que la Commission considère l'intérêt communautaire comme l'équivalent de l'intérêt de l'industrie. Tout au plus, ce critère n'est qu'une valve de sécurité qui permet à la Commission et au Conseil de ne pas adopter ou de modifier des mesures lorsque de fortes pressions s'exercent en ce sens. Cette affirmation conduit certains observateurs à estimer qu'il conviendrait de renoncer à faire croire que d'autres intérêts sont pris en considération. D'autres estiment que le fait de donner une substance au critère de l'intérêt communautaire constitue une réforme fondamentale et essentielle.

Néanmoins, d'autres observateurs - et en particulier les associations industrielles - s'inquiétaient de ce que l'industrie de la Communauté ne bénéficierait pas de la protection dont elle a besoin - et qu'elle mérite - en face des préjudices du dumping, si l'on devait donner la priorité aux questions d'intérêt communautaire. Certains se soucient de l'éventail de questions commerciales, économiques et politiques qui pourraient être prises en considération.

Sur la base des études que nous avons réalisées, de notre programme d'entretiens et d'un examen des résultats obtenus dans diverses affaires ces dix dernières années, notre impression globale est qu'il y a lieu de procéder à une analyse plus détaillée de l'incidence qu'auront des mesures antidumping et qu'il est nécessaire de repenser l'équilibre entre les intérêts des producteurs et des acheteurs. Nous recommandons que la Commission fasse rapport de son analyse des conséquences du dumping comme des conséquences de l'introduction de mesures antidumping sur tous les intérêts économiques, dans une perspective qui soit à la fois à court et à long terme (Recommandation 6).

## Mesures (section IX)

### *Détermination des mesures*

Le choix d'une mesure antidumping dans une situation donnée est soumis à un certain nombre de considérations de poids, dont :

- le fait que les parties s'y conforment ;
- l'efficacité dans l'élimination du préjudice ;
- son incidence sur les prix à la consommation et les revenus créés par les droits ;
- ses effets sur la concurrence ;
- la souplesse en face de modifications dans la situation du marché ;
- l'opportunité administrative.

Comme nous l'avons noté ci-dessus, dans la plupart des cas, la Communauté applique des droits à taux fixe ou accepte des engagements.

Certains commentateurs ont soutenu que la Communauté, et peut-être le GATT, devrait adopter un système de droits variables, c'est-à-dire un système liant le niveau des droits à la différence qui sépare la valeur déclarée à la douane et un prix-cible. Et de fait, un tel système présenterait les avantages suivants :

- rendre plus prévisible l'effet sur les prix auxquels les producteurs de la Communauté seront en mesure de vendre ;
- inviter de manière positive à mettre fin au dumping ;

- introduire un mécanisme "d'auto-destruction" par le biais duquel les mesures cesseraient d'avoir des conséquences lorsque les prix se rétabliraient et que disparaîtrait la menace de nouveaux préjudices ;
- augmenter - on peut le croire - le caractère équitable du système des droits.

Néanmoins :

- les bénéfices résultant de l'augmentation des prix reviendraient à l'exportateur ;
- la gestion d'un tel système serait plus coûteuse ;
- si le marché de la Communauté ne dispose que de peu de fournisseurs, le fait de fixer un prix plancher pour un nombre significatif d'importations pourrait créer une référence et, en conséquence, avoir des effets négatifs sur la concurrence.

La plupart de ces conditions sont pertinentes dans la comparaison des engagements et des droits ad valorem. Néanmoins, des droits variables présentent l'avantage de constituer un mécanisme automatique qui assure que les parties s'y conforment.

**Les arguments ne sont pas clairement tranchés mais, tout bien pesé, nous recommandons que la Communauté adopte un système de droits variables, sauf en cas de préoccupations prioritaires touchant les effets sur la concurrence ou lorsque la gestion d'un tel système se révélerait difficile (Recommandation 7).**

#### *Modification des circonstances*

Les mesures antidumping peuvent, en pratique, représenter une protection insuffisante, ou au contraire trop importante pour l'industrie communautaire.

**Nous sommes d'avis que la Commission devrait surveiller l'incidence de ces mesures, et, lorsqu'elles ne produisent pas les effets escomptés, engager une révision de sa propre initiative (Recommandation 8).**

#### *Durée des mesures*

La période de cinq ans, dite de "sunset" prévue dans la réglementation antidumping et dans le projet de code du GATT semblerait, dans la plupart des cas, constituer une période raisonnable permettant à l'industrie de la communauté de procéder à des ajustements. Dans un des secteurs que nous avons étudiés -les mini-roulements à bille - des mesures sont en place depuis les années soixante-dix.

**Nous sommes d'avis:**

- **qu'il convient d'envisager de prendre des mesures pour une période plus brève, particulièrement lorsque le dumping et le préjudice qu'il a causé sont liés à l'état du cycle économique. Il serait possible de prévoir (exceptionnellement) le renouvellement de ces mesures ;**
- **qu'il ne devrait être qu'exceptionnel que des mesures soient maintenues pendant plus de cinq ans (Recommandation 9).**

### ***Niveau de protection***

La "règle des droits les moins élevés" joue un rôle central dans la politique antidumping de la Communauté. A l'heure actuelle, le niveau des droits est fixé de manière à mettre un terme au préjudice.

Le fait d'évaluer le niveau des droits (ou engagements de prix) qui éliminera le préjudice pose un certain nombre de problèmes techniques. La Commission a adopté des approches diverses, ce qui l'a conduite à être accusée de manquer de logique. Dans la mesure où l'incidence des mesures dépend de la situation spécifique du marché, il est très difficile d'évaluer les marges préjudiciables. Nous apercevons la possibilité de poursuivre des travaux en vue de mettre au point et d'évaluer des approches différentes.

**Nous recommandons que la Commission entreprenne ou confie à des tiers des recherches sur cette question, et publie par la suite les grandes lignes relatives à sa politique en matière de détermination de marges préjudiciables (Recommandation 10).**

En outre, dans la mesure où l'incidence des mesures sur l'élimination des préjudices causés à l'industrie communautaire ne constitue qu'un indicateur partiel de leurs conséquences sur les intérêts de la Communauté, nous recommandons que la règle des droits les moins élevés adoptée par la Communauté soit redéfinie de manière que les mesures antidumping adoptées ne soient pas uniquement définies en vue de mettre fin à un préjudice mais en vue de maximaliser les intérêts globaux de la communauté (Recommandation 11).

### ***Contre-mesures***

Dans sa résolution de 1990, le Parlement européen a mis l'accent sur l'importance d'avoir des règles efficaces visant à empêcher que ne soient contournées les mesures antidumping.

Des mesures antidumping fondamentales représentent une invitation claire et puissante à la circonvension. Néanmoins :

- on court le risque que des mesures anticirconvension ne créent des distorsions supplémentaires ;
- il pourrait être difficile de distinguer entre des projets d'investissements intérieurs légitimes et ceux qui sont principalement stimulés par des droits antidumping.

C'est pourquoi nous tenons à souligner la nécessité d'appliquer avec souplesse les mesures anticirconvension et de tenir compte des effets qu'auraient des mesures supplémentaires sur les intérêts communautaires.

### ***Remboursements et révisions de droits antidumping***

Quelle que soit l'opinion que l'on a de l'application des mesures antidumping, il semble souhaitable que les exportateurs soumis à ces mesures soient invités à mettre fin au dumping. Ce qui peut se faire sous les formes suivantes :

- en remboursant les droits lorsque cesse le dumping ;
- en libérant des mesures, par le biais d'une révision, les exportateurs qui mettent fin au dumping et dont on ne s'attend pas à ce qu'ils le reprennent.

A l'heure actuelle, la politique communautaire concernant les remboursements comme les révisions, ainsi que des difficultés pratiques auxquelles se heurte le financement des remboursements semblent dissuader les exportateurs de mettre fin au dumping. Des problèmes de ce type ne surgiraient pas si était acceptée notre recommandation selon laquelle il conviendrait que la communauté adopte un système de droits variables.

Le problème politique porte sur le traitement des droits antidumping eux-mêmes lorsque les marges de dumping sont recalculées en vue de déterminer s'il faut procéder à un remboursement ou si des mesures doivent être renouvelées ou modifiées. A l'heure actuelle, si l'importateur est en relation avec l'exportateur, les droits payés par le premier sont déduits lorsque l'on détermine si le dumping s'est poursuivi.

**Tout en reconnaissant que la balance ne penche pas en faveur de l'une ou de l'autre argumentation, nous recommandons que, comme c'est le cas aux Etats-Unis, les droits antidumping eux-mêmes ne soient pas traités comme un coût imposé aux importateurs qui sont en relation avec les exportateurs (Recommandation 12).**

**Nous recommandons également que le système assurant les remboursements soit simplifié (cf p. 214) (Recommandation 13).**

### **Institutions et procédures (section X)**

Notre rapport se préoccupe des questions économiques soulevées par la politique antidumping de la Communauté. Néanmoins, il existe un certain nombre de questions relatives aux institutions et aux procédures qui sont liées à l'efficacité de la politique et à nos recommandations quant à la politique communautaire future. Il nous incombe de commenter ces points.

#### ***Durée des enquêtes***

Le temps nécessaire à l'obtention d'une décision définitive est une source de préoccupation sérieuse et compréhensible pour l'industrie communautaire, point que le Parlement européen a commenté en de nombreuses occasions. Dans sa résolution de 1990, le Parlement a demandé que des mesures provisoires soient (en règle générale) adoptées dans un délai de six mois après l'ouverture de la procédure.

Il peut s'écouler plusieurs mois entre l'émergence de problèmes de dumping et l'ouverture d'une procédure. Dans ce cas, les enquêtes durent en moyenne dix-huit mois, même si des mesures provisoires peuvent être appliquées de quatre à six mois avant la fin de l'enquête. La durée moyenne nécessaire à la conclusion des enquêtes s'est considérablement accrue ces dix dernières années.

La complexité de la prise de décisions au sein de la communauté a pour conséquence que les enquêtes tendront à être plus longues que dans d'autres pays. Néanmoins, ce phénomène n'explique pas pourquoi la durée moyenne des enquêtes a augmenté.

Il est remarquable que d'autres pays de taille qui font usage de mesures antidumping (l'Australie, le Canada et les Etats-Unis) ont tous mis en place un système de limites dans le temps et de nombreux commentateurs ont suggéré que la communauté devrait elle aussi adopter un tel système.

Cette question ne peut pas être séparée de celle des ressources de la Commission. Le projet de code du GATT prévoit une limite impérative à la longueur des enquêtes (dix-huit mois). Si nos propositions relatives à la réforme du critère de l'Intérêt communautaire sont adoptées, la somme de travail à mettre en oeuvre au cours de l'enquête augmentera de manière notable. Quoi qu'il en soit, le système de limites dans le temps implique le danger que l'on ne procède par raccourci.

Néanmoins, nous recommandons que la Commission établisse et publie des objectifs pour l'achèvement des diverses étapes que comprennent les enquêtes antidumping et que des informations détaillées quant aux résultats obtenus par rapport à ces objectifs soient incluses dans le rapport annuel de la Commission au Parlement (Recommandation 14).

#### *Analyse des solutions autres que les mesures antidumping*

En soi, il se peut que les mesures antidumping ne constituent pas la réponse adéquate aux problèmes créés par le dumping. Dans certains cas, des considérations d'efficacité politique suggéreraient que des subventions explicites sont préférables à la protection que représentent les droits. Néanmoins, alors que nous reconnaissons que les subventions pourraient ne pas être en accord avec les obligations internationales de la Communauté, il peut être opportun de rechercher d'autres mesures destinées à aider l'industrie communautaire, que ce soit à l'échelon de la communauté ou des Etats membres. En particulier :

- des politiques régionales et de l'emploi peuvent être mises en oeuvre lorsqu'il est probable qu'une industrie régressera en raison de la concurrence internationale ;
- des mesures de recherche et de développement peuvent être utilisées en vue de promouvoir la mise au point de technologies clé.

C'est pourquoi nous recommandons que l'examen de l'intérêt communautaire envisage également la possibilité que d'autres mesures politiques soient plus adéquates (Recommandation 15).

#### *Transparence des procédures antidumping*

Nous sommes d'avis que la transparence des procédures antidumping pourrait être améliorée, ce qui contribuerait à son efficacité dans la promotion des intérêts communautaires. A l'heure actuelle, nous estimons que la politique de détail de la Commission ne fait pas l'objet d'explications suffisantes et que les bases de certaines décisions ne sont pas justifiées de manière adéquate dans les règlements d'exécution. Il est à noter que dans d'autres pays utilisateurs importants, tels que l'Australie, le Canada et les Etats-Unis, des rapports plus détaillés sont publiés lorsque des mesures sont adoptées.

Nous recommandons que :

- les consommateurs, les syndicats et les autres organisations qui souhaitent présenter leur point de vue aient accès aux informations non confidentielles relatives aux procédures ;
- les règlements imposant des mesures provisoires et définitives (de même que les décisions clôturant les procédures) comprennent plus d'informations sur la situation d'ensemble et une discussion détaillée des fondements qui ont motivé les décisions de la Commission et du Conseil. Il serait souhaitable que l'analyse des tendances du marché soit séparée de l'analyse (juridique) des préjudices et de l'analyse (politique) de l'intérêt communautaire ;
- la Commission publie une déclaration détaillée de l'approche qu'elle a eue de questions spécifiques qui se sont fait jour dans les procédures de dumping (par exemple sur la manière dont sont déterminées les marges de dumping et de préjudice) (Recommandation 16).

Cette dernière recommandation va dans le même sens que la recommandation du Parlement européen selon laquelle il conviendrait que la Commission publie des directives sur ses activités dans le cadre de sa politique antidumping.

### *Dispositions relatives à la révision des décisions de la Commission et du Conseil*

Les procédures antidumping suscitent des émotions fortes dans l'un comme dans l'autre camp et il importe que le système comprenne des contrôles et des équilibres adéquats. Nous avons fait observer ci-dessus que la Communauté est la seule, parmi les utilisateurs majeurs de mesures antidumping à n'avoir qu'un seul organisme responsable pour toutes les étapes de l'enquête.

A l'heure actuelle, le contrôle de la Commission est exercé par le conseil des ministres, le Parlement européen et la Cour européenne de Justice. Inévitablement, les Etats membres se préoccupent particulièrement de leurs intérêts nationaux et la Cour a reconnu qu'il n'est pas bon de décider de questions qui, souvent, sont de nature technique ou politique, plutôt que juridique.

**Le Parlement européen peut donc souhaiter envisager qu'un organe spécialisé soit mis en place, qui donnerait des conseils relatifs aux questions de politique générale, et peut-être, à l'ensemble de l'intérêt communautaire pour certains cas (Recommandation 17).**

### *Dispositions relatives à la vérification des mesures*

Dans certains cas, des mesures peuvent n'être justifiées que dans la mesure où l'industrie de la Communauté entreprend d'améliorer sa compétitivité. De surcroît, certaines mesures peuvent très bien, dans la pratique, ne pas avoir les effets escomptés ou prévus.

**Nous recommandons que la Commission exerce un contrôle actif sur les mesures antidumping et qu'elle soit à l'origine d'une révision lorsque certaines mesures n'ont pas l'effet escompté (Recommandation 18).**

### *Ressources de la Commission*

A l'heure actuelle, la Commission dispose de 124 emplois (y compris le personnel assistant) affectés à l'administration de mesures antidumping et antisubventions. Par comparaison, aux Etats-Unis, plus de 200 membres du personnel du Département du commerce et de la Commission des échanges internationaux s'occupent d'enquêtes antidumping et antisubventions.

Nous n'avons pas examiné, au cours de cette étude, si les ressources dont dispose la Commission sont adéquates.

**Nous reconnaissons que les recommandations contenues dans ce rapport demanderaient un examen détaillé des besoins en ressources. Cet examen devrait comprendre une analyse des compétences requises pour engager une étude détaillée de l'intérêt communautaire, qui est au centre de nos recommandations (Recommandation 19).**

### **Questions de politique plus larges (section XI)**

#### *Le dumping social et environnemental*

Dans le cadre du GATT, la Communauté n'aurait pas la possibilité d'appliquer des mesures lorsque les exportateurs en direction de la Communauté :

- n'observent pas des normes minimales reconnues au niveau international en matière de termes et de conditions d'emploi, et qui donc bénéficient de coûts peu élevés de main-d'oeuvre ("dumping social") ;
- utilisent des méthodes obsolètes et qui sont sources de pollution ou sont soumis à une législation moins stricte en matière d'environnement ("dumping environnemental").

Dans sa résolution de 1990, le Parlement européen a estimé que les divers pays devaient se conformer aux normes du BIT, et ce comme condition d'accès exempt de droits au marché communautaire.

Nous avons rencontré des opinions partagées quant à l'opportunité d'adopter des mesures contre le dumping social et environnemental.

Nous ne sommes pas d'avis que les mesures antidumping conviennent pour lutter contre ce genre de problèmes :

- il n'existe pas de raison précise d'appliquer des mesures uniquement à l'encontre d'exportations qui causent un préjudice matériel à l'industrie communautaire ;
- l'avantage dont bénéficie l'exportateur en matière de coûts serait très difficile à évaluer et il existerait un danger sérieux de voir dissimuler un avantage comparatif sous-jacent ;
- l'application de mesures protégeant le commerce pourrait être contre-productives, dans la mesure où il est possible que les normes sociales et environnementales s'améliorent parallèlement à la croissance économique.

#### *Les pays moins développés et l'Europe de l'Est*

Comme nous l'avons observé ci-dessus, une proportion élevée d'enquêtes antidumping touchent des importations provenant d'économies qui ne sont pas des économies de marché (41% durant la période 1981-1991) et de pays en développement (26%). Néanmoins - la Corée mise à part -, ces divers cas, pris dans leur ensemble, représentent moins de 10% de l'ensemble des échanges soumis à des mesures antidumping.

Il y a clairement possibilité de conflit entre l'application de mesures antidumping et une position politique qui, en règle générale, cherche à promouvoir le développement des pays moins développés et de l'Europe de l'Est. Néanmoins, on nous a expliqué qu'il n'est pas raisonnable de s'abstenir de se protéger contre certaines industries sujettes au dumping en raison d'une politique générale visant à promouvoir le développement.

Cependant, rien n'empêche l'adoption de limites minimales plus élevées dans le cas de ces pays. L'équilibre entre la politique antidumping et les autres est une affaire de décision politique, mais nous sommes d'avis que cette question mérite d'être examinée. On peut observer que dans sa résolution de 1990, le Parlement a plaidé pour qu'aucune mesure ne soit prise contre les producteurs des pays moins développés dès lors que l'on s'aperçoit que la marge de dumping est minimale ; il a été fait état d'un chiffre de 5%. Cette conclusion s'accorde avec nos propres conclusions relatives aux limites minimales.

#### **Conclusions générales**

En ce qui concerne leur incidence sur le commerce et l'intérêt communautaire, les cas d'antidumping les plus significatifs sont ceux qui impliquent ce que la Commission considère comme des produits "stratégiques" en provenance d'Extrême-Orient. Le raisonnement sur lequel la Commission met l'accent dans ces cas-là se fonde essentiellement sur un souci causé par le dumping sur la concurrence sur le marché communautaire. Néanmoins, il est reconnu

que des mesures antidumping ne s'en prennent pas aux racines du problème de la concurrence, à savoir la fermeture de certains marchés et des comportements de collusion.

Nous sommes d'avis que l'on peut également affirmer que d'autres évolutions intervenues dans l'économie mondiale ont rendu obsolète le cadre du GATT. En particulier :

- il est très difficile d'établir si une décision de situer la production à l'intérieur de la Communauté ou dans des pays tiers devrait être traitée comme un cas de circonvension
- lorsqu'il existe des économies d'échelle, des droits peuvent très bien ne pas se traduire par des augmentations de prix, ce qui réduit l'efficacité de la mesure ;
- la détermination du dumping est rendue bien plus complexe lorsque les producteurs sont impliqués dans la distribution à la fois sur leurs marchés intérieurs et sur leurs marchés à l'exportation.

Il existe donc de très bonnes raisons de remplacer les mesures antidumping par des lois de concurrence internationale. De fait, nous avons découvert qu'il est généralement admis que, si le commerce international était soumis à des règles de concurrence équivalant à celles qui sont appliquées au sein de la communauté et de nombreuses autres économies développées, la politique antidumping n'aurait virtuellement plus de raison d'être.

Néanmoins, même si des initiatives visant à coordonner les politiques de concurrence commencent à voir le jour (par exemple l'accord récent entre la Communauté et les Etats-Unis), il faudra inévitablement attendre de nombreuses années, voire des décennies, avant qu'un accord soit atteint sur un système réglementant la concurrence à l'échelon international.

Entre-temps, la seule option pratique dont dispose la communauté est d'utiliser le cadre créé par le Code antidumping du GATT.

Certains commentateurs critiques ont fait valoir que la Communauté devrait redéfinir le dumping et la notion de préjudice et n'appliquer des mesures que lorsque :

- les prix à l'exportation en direction de la communauté ne couvrent pas les coûts;
- le dumping nuit à la concurrence (plutôt qu'aux producteurs).

Dans une certaine mesure, nous comprenons cette opinion. Néanmoins, pour les raisons exposées ci-dessus, nous ne tiendrions pas à n'appliquer des mesures antidumping que dans les cas où existe une menace réelle à l'encontre de la concurrence dans la Communauté. Pas plus que nous n'estimons probable qu'une telle réforme serait mise en oeuvre.

Selon nous, le plus important serait plutôt de faire du critère de l'intérêt communautaire le centre des procédures antidumping. Il conviendrait de n'introduire des mesures que lorsque et dans la mesure où l'on peut démontrer qu'elles vont dans le sens de l'intérêt communautaire. Nous entendons également par là que dans certains cas où l'on constate l'existence de dumping et d'un préjudice, il ne conviendrait pas d'adopter de mesures, parce qu'une telle décision n'irait pas dans le sens de l'intérêt communautaire.

**Plus particulièrement, nous recommandons que des procédures antidumping comprennent une analyse économique des coûts et des profits impliqués par l'application de mesures antidumping (Recommandation 20).**

Cette analyse :

- regarderait vers l'avenir. C'est-à-dire que l'on procéderait à une comparaison de l'incidence probable qu'auraient les mesures sur les divers éléments constituant les intérêts économiques de la Communauté ;
- envisagerait si d'autres mesures :
  - seraient nécessaires pour préserver une concurrence réelle sur le marché communautaire ;
  - promouvoir une utilisation plus efficace des ressources communautaires.

L'incidence de ces mesures sur la compétitivité de l'industrie communautaire et ses consommateurs à court et à long terme serait au centre de cette estimation. C'est-à-dire que l'analyse comprendrait un examen des effets que les mesures auraient sur:

- les prix à court et à long terme ;
- les investissements et la recherche et le développement dans l'industrie directement touchée ;
- la compétitivité de l'ensemble du secteur, ainsi que des fournisseurs et des acheteurs ;
- l'emploi régional.

Le GATT n'exige pas que les pays qui ont signé l'accord adoptent des mesures antidumping ; il leur permet plutôt de le faire. De fait, le code affirme qu'il est souhaitable que l'application de mesures serait discrétionnaire plutôt qu'automatique. Ainsi, la réforme que nous proposons serait en harmonie avec le Code.



**THE ECONOMIC IMPACT OF DUMPING AND THE COMMUNITY'S ANTI-DUMPING POLICY**



## I INTRODUCTION

### Background and Terms of Reference

#### *Background*

Since 1980 the European Parliament has adopted three resolutions on dumping and many other resolutions on trade issues have endorsed the Community's anti-dumping policy or called for changes in it. Most recently, in December 1990 the Parliament adopted a Resolution<sup>1</sup> which in its preamble:

- identified an increase in the prevalence of injurious dumping and a resulting increased use of anti-dumping measures in many areas of the world, although not in the Community;
- suggested that protection of their home markets created an incentive for companies to dump in order to achieve scale economies;
- noted that steps to open markets would therefore reduce the need for anti-dumping measures;
- argued that, in order to avoid the use of anti-dumping measures for protectionist purposes, they should only be adopted in clear and specific cases of dumping;
- called for the GATT Anti-Dumping Code and the Community's Anti-Dumping Regulation to strike a balance between the various interests and to provide equitable and open procedures for the investigation of dumping cases; and for these measures to be made more effective, equitable and transparent.

The Resolution went on to make a number of technical recommendations for change in the Code and Regulation.

#### *Terms of Reference*

In July 1991 the European Parliament's Directorate General for Research issued a call for tenders to undertake a study of the economic effects of dumping and anti-dumping policy in the European Community. Ernst & Young was invited to undertake the study in December 1991 and work commenced at the end of January 1992. The call for tenders specified that the study should provide an analysis and assessment of:

- the economic effects of dumping on a representative selection of industries in different sectors and on the overall Community economy;
- the effects of anti-dumping measures on these industries and the overall Community economy;
- the relevance and effectiveness of current EC anti-dumping measures;
- options for changes in anti-dumping policy, including:
  - the adoption of alternative measures by the Community;
  - the development of international competition rules;
  - detailed changes in the Community's Anti-Dumping Regulation.

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<sup>1</sup> Resolution of 14.14.90, OJ C 19/633, 28.1.91 Doc. A3-336/90

## Work Programme, Scope and Approach

### *Work Programme*

Our study of the economic impact of dumping and the Community's anti-dumping policy has, as called for by the study specification, included:

- the development of a conceptual framework for analysing dumping and anti-dumping measures. This area of work has focused on the following key questions:
  - why firms adopt dumping strategies;
  - the economic impact of these strategies;
  - the conditions in which there is an economic rationale for anti-dumping measures.

This work has been led by our adviser, Professor Tony Venables of the London School of Economics and Political Science. Professor Venables is an expert on the economics of international trade.

A working paper by Professor Venables is available.

- an analysis of 41 dumping proceedings initiated by the Community between 1986 and 1989. The analysis was largely based on the Commission and Council Regulations and Commission Decisions. These were reviewed to provide information on:
  - some of the economic characteristics of the sectors in which dumping in the Community has occurred or been alleged;
  - the measures taken;
  - the time taken to undertake the investigation.

A working paper reporting this analysis in greater detail is available.

- five case studies of dumping episodes:
  - *Denim*. An investigation of imports from Indonesia, Hong Kong, Macao and Turkey was closed in 1990 with a finding that the injury suffered by the Community industry could not be attributed to dumped imports;
  - *Mini Ball Bearings*. Duties were imposed on imports from Japan and Singapore in 1984 and subsequently against imports from Thailand. They remain in force;
  - *Plain Paper Photocopiers*. Duties were imposed on imports from Japan in 1986 and anti-circumvention measures were taken in 1988/89. A Review was opened in August 1992;
  - *Polyvinyl Chloride ("PVC")*. Undertakings were accepted in respect of imports from East Germany, Hungary, Romania and Czechoslovakia in 1982/83 and lapsed in 1987/88;
  - *Small Screen Colour Televisions*. Duties were imposed on imports from Korea in 1989 and in 1991 measures were extended to cover imports from Hong Kong and China.

Because of the commercial sensitivity of some of the material contained in the case studies, it was agreed that they should remain confidential to Ernst & Young. However, our conclusions and points of interest arising from them are referred to in this report.

- a programme of interviews with:
  - the anti-dumping unit and other relevant Commission services;
  - the GATT Secretariat;
  - Ministries and competition agencies in some Member States;
  - industry associations;
  - consumer representatives;
  - trade unions;
  - government representatives of exporter interests;
  - legal advisers;
  - economic experts.

A more detailed list of interviewees can be found at Annex I;

- a comparative analysis of the anti-dumping measures applied by the three other largest users of such measures – Australia, Canada and the United States of America. Again, a working paper is available.

### *Scope and Approach*

#### *Economic vs Political Considerations*

A central focus of this study is whether there is an economic rationale for the Community to apply anti-dumping measures. It is important therefore that we should define in general terms the circumstances in which we would find that an economic rationale exists and when we would describe a justification as "political". In doing so, we recognise that the precise boundary between economic and political considerations is arbitrary.

In our view, an economic rationale exists in a particular case if, taking one year with the next:

- the imposition of an anti-dumping measure would raise economic welfare in the Community as a whole. Gross National Product, ie. the sum total of the income of residents of the Community, is normally taken as a proxy for economic welfare;
- there is no feasible alternative policy measure which would result in an even higher level of economic welfare.

A political justification would include a wider range of considerations, including:

- the possibility that the adoption of anti-dumping measures helps to open overseas markets. Achieving such an objective would undeniably secure economic benefits for the Community. However, a much wider study of trade relations would be required in order to judge whether anti-dumping measures make an effective and efficient contribution to the liberalisation of world markets;
- the argument that anti-dumping measures can be seen as a form of safety valve. Many commentators, including a number of the trade lawyers who contributed to our study, believe that the economic justification for anti-dumping measures, as defined above, is weak or non-existent. However, in their view, it is necessary to have a trade policy instrument which can respond to protectionist pressures and

thereby prevent the adoption of other, possibly ad hoc, measures which would be more damaging to trade. Anti-dumping measures are well suited to this role for two reasons:

- exporters with a genuine comparative advantage will tend to attract a low normal value and thus be less likely to be found to be dumping;
- the complexity and delay associated with anti-dumping measures ensure that only the most assiduous and persistent applicants for protection succeed;
- the notion that dumping is "unfair". This view has a powerful emotional appeal. However, it does not provide the basis for an economic rationale for anti-dumping measures. The exporter may, for example, benefit from a protected market. But, as argued in greater detail below (Section IV), it does not follow as a matter of necessity that retaliatory action will increase the economic welfare of the Community as a whole. Indeed, generally it will not;
- closely related to this, there may be strong pressure from a well-organised entity or group of entities asserting the predominance of its own interests over those of others which would be affected by an anti-dumping measure.

These and other considerations are important in practical policy-making. However, it is also important that the economic rationale for measures in the sense defined above should be understood.

#### *Recognition of Policy Alternatives*

In this report, we analyse the rationale for anti-dumping measures as an instrument of Community economic policy. Whilst the scope of our study is limited to anti-dumping measures, we have inevitably, as implied above, to recognise that other instruments may be better suited to dealing with particular problems.

In general, policies which bear directly on a problem are, where feasible, to be preferred to policies which only have an indirect effect and potentially create other distortions. In particular:

- since the link between anti-dumping measures and a decision by other Governments to take action to open markets is, as previously noted, likely to be very indirect, there are strong grounds for preferring other instruments (eg. the New Commercial Policy Instrument);
- measures to foster directly the development or retention of technologies are likely to be preferable to measures which protect companies which develop those technologies. One reason for concern is that protection from international competition may reduce the stimulus to innovation;
- measures to promote adjustment in particular industries or regions are available if they are threatened by keenly priced imports.

#### *Liberal Perspective*

Some of the arguments that have been put to us in the course of the study would, if taken to their logical extreme, amount to a denial of the general case for free trade. We do not regard a restatement of the case for free trade as part of this study. Rather we start from the presumption that economies gain from free trade; even with partners who themselves protect their domestic industry. Among other things, this involves a recognition that industries will grow and decline in response to changing patterns of comparative advantage. Some of the adjustments involved may be painful; but, in general, those costs

must be borne unless the Community's economic structure is to be allowed to ossify and its income to decline.

However, it is widely recognised that there are particular circumstances in which the general case for free trade does not hold good. Our approach is to consider whether there is a case for treating injurious dumping as one such departure from the general case for free trade either in general or in restricted circumstances.

### *Economic vs Legal Issues*

In considering the detailed issues about the Community's Anti-Dumping Regulation and associated procedures on which we should comment we have adopted a broad definition of "economic". Our criterion has been whether the issue is of general importance to the impact and effectiveness of anti-dumping policy. Many of the issues considered in this report can therefore be seen either as "legal" or "economic".

With the following exception, the distinction between economic and legal issues is of little importance. However, it must be recognised that this study is a policy analysis and, as such, our conclusions on particular aspects of the Community's policy take account of but are not bound by existing Community law. In particular, it is unnecessary for us to take a view on various controversial questions concerning the correct interpretation of the GATT Anti-Dumping Code and the Community's Regulation. Where we have considered those issues, we have asked what the Community's policy should be in order to maximise economic welfare and not what the current state of the law is. In this respect, the role of our study is very different from that of the European Court of Justice.

### *Limitations*

In presenting our report to the Parliament we are conscious of two limitations of our study.

#### *Focus on the Community*

The terms of reference for the study and our work programme focused on the Community itself. Our research outside the Community has been limited to the anti-dumping measures adopted by other leading users.

The Commission and many of the Community companies and industry associations we met:

- pointed to the difficulties, and in some cases impossibility, of penetrating some overseas markets;
- alleged that in some cases in which the Community has faced dumping problems, exporters' strategies were co-ordinated as part of the relevant Government's trade policy.

As we discuss below, we believe that the significance which is attached to these considerations as part of an economic rationale for anti-dumping measures is widely exaggerated. Nevertheless, we agree that they are important considerations in determining whether a policy response – and this may not be a response involving anti-dumping measures – can be justified on economic grounds.

However, these issues are of importance in a much wider field than anti-dumping policy; and the scope of this study was already wide. Of more particular importance to the evaluation of dumping policy are the adjustments which exporters claim should be made to ensure that the home and export prices are compared at the same "level of trade" in dumping determinations. This is a question of great significance and complexity. In Section VI below, we present an assessment of the true nature of the disagreement between

the Community and exporters in certain types of industry. However, in order to reach a conclusion on this issue it would have been necessary to study the structure of the distribution arrangements in these sectors in the Community and in the exporting countries concerned. It was agreed by the Parliament's Research Directorate that this was outside our terms of reference.

#### *Availability of Confidential Information and Assistance from Exporters and Community Industry*

Since the issues involved in the case studies go wider than the investigation itself, we recognised from the outset that we would need to rely heavily on information provided by the Community industry and exporters. In practice, we were disappointed at the level of assistance we received:

- in two case studies we received a high level of assistance from the Community industry which, whilst unwilling to provide us with some commercially sensitive material, did give us a full assessment of the investigations and their effects. It is perhaps no coincidence that these were the cases in which measures are not currently in force – Denim and PVC;
- the remaining case studies involved measures which are still in force. They also raised more complex issues. In these cases the Community industry was willing, indeed anxious in at least one case, to give us its views. However, we sensed a reluctance to be open with us and to provide us with hard information on the impact of measures. This is readily understandable given the importance to these industries of protection. In two of these cases we were able to secure the co-operation of several exporters. However, in the remaining case despite repeated efforts we were unable to secure the co-operation of exporters for our study.

In addition, the Commission was unable to open its files to us for reasons of commercial confidentiality. However, whilst observing these constraints, the Commission did provide us with useful background material and answered questions arising from the case studies when this was possible.

For these reasons, the case studies did not achieve the depth of insight into the way that the Commission undertakes investigations and on the impact of measures that we had hoped would be possible. We have nevertheless made our best judgement on the basis of the information available to us and this is reflected in the report.

#### **Acknowledgements**

In the course of the study many people have helped us, in most cases by agreeing to meet us and tell us their views and experience. Some of these are listed in Annex I. However, many industrialists and Government representatives participated in the study on a confidential basis and other commentators did not wish their views to be attributed. For this reason, we have generally followed a policy of not attributing views in the report.

In the course of our discussions, a very wide range of views were expressed about the Community's anti-dumping policy. Many of those who helped us will therefore not agree with the conclusions we have reached. However, we record our thanks to all those who participated in the study.

## II DUMPING AND ANTI-DUMPING MEASURES

### Introduction

This section provides a brief outline of the GATT provisions on dumping and the Community's Anti-Dumping Regulation<sup>1</sup>; and highlights the principal differences between the Community's measures and those of Australia, Canada and the USA.

### GATT

#### *Article VI*

Article VI of the GATT defines dumping and the circumstances in which GATT signatories may introduce anti-dumping measures:

"1. ....dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the development of a domestic industry. ...."

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty....."

From an economic policy perspective, two points are striking about Article VI:

- it only provides grounds for introducing measures when dumping causes or threatens material injury or materially retards the development of a domestic industry. Dumping itself is not condemned;
- although injurious dumping is condemned, no obligation to introduce measures is created.

#### *The 1979 GATT Anti-Dumping Code*

The GATT Anti-Dumping Code governing the implementation of Article VI includes:

- an elaboration of the circumstances in which a determination of dumping may be made (Article 2). Its provisions include:
  - following Article VI, that, in certain conditions, the existence of dumping may be determined by comparing the (allegedly dumped) export price with an export price to third countries or with the "cost of production plus a reasonable amount for administrative, selling and other costs and for profits", rather than with prices in the exporter's domestic market;
  - if the importer and the exporter are connected, the export price may be constructed on the basis of the price at which the first independent sale is made;
  - the export price and the domestic price in the exporter's country shall be compared at the same "level of trade, normally at the ex-factory level..."

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<sup>1</sup> Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community. L209, Volume 31 2 August 1988. Commission Decision No 2424/88/ECSC of 29 July 1988 relates to ECSC products.

- a long list of indicators of injury and a requirement that it should be demonstrated that injury has been caused by the dumped imports through the effects of the dumping (Article 3);
- provision for a determination of injury to be made in respect of producers in a region, rather than a territory as a whole, under specified circumstances (Article 4);
- provision for investigations to be terminated through the acceptance of undertakings on prices or to cease exporting (Article 7);
- provision for provisional measures to be imposed where this is necessary to prevent injury during the investigation (Article 10);
- a statement that it is desirable that the duties should not be imposed automatically and that the duty should be less than the dumping margin if a lesser duty would be sufficient to remove injury to the domestic industry. In any event, the duty should not exceed the dumping margin (Article 8);
- a requirement that duties should "remain in force only as long as, and to the extent necessary to counteract dumping which is causing injury" (Article 9);
- a requirement to explore "constructive remedies" before applying duties which would affect the "essential interests of developing countries";
- a number of procedural rules covering matters such as:
  - the circumstances in which a dumping investigation may be opened (Article 5);
  - a requirement that investigations should be concluded "except in special circumstances" within one year of initiation (Article 5); and that provisional measures should be limited to four months, with provision for an extension to six months (Article 10);
  - publication of the initiation of investigations and of their closure, including requirements for the publication of conclusions and reasons (Articles 6,7,8,10);
  - the submission, verification and revelation of evidence (Article 6);
  - the rights of interested parties to hearings and to defend their interests (Article 6);
  - consultation, conciliation and dispute settlement (Article 15).

## **The Community's Anti-Dumping Regulation**

### ***Introduction***

The Community's Anti-Dumping Regulation follows the provisions of the GATT Code. However, in certain key respects, which are discussed below, the Community's Anti-Dumping Regulation develops the GATT framework.

## *Criteria*

Following the GATT, the Community requires that three criteria must be met if anti-dumping measures are to be introduced:

- it must be demonstrated that exports to the Community have been dumped;
- it must be shown that the Community industry has been materially injured by the dumped imports; or that there is a threat of material injury; or that the establishment of a Community industry will be materially retarded;
- injury caused by other factors must not be attributed to the dumping.

In addition, the application of anti-dumping measures must be in the interests of the Community.

## *Definition of Dumping*

Where the exporter makes a significant level of profitable sales in its domestic market, normal value is determined at the domestic price and compared to the export price.

When there are no (or insufficient) sales in the exporter's domestic market or sales are made at a loss, the Community will construct a normal value rather than adopting the price in that market. If the relevant criteria are met, constructed values may be adopted for specific products/models or for all the products/models within the scope of the investigation.

The Community's practice in constructing values is to estimate the cost (including a representative rate of profit) that the exporter would incur in serving its domestic market. The Community does not make an estimate of the costs that the exporter incurs in serving the Community market.

The inclusion of fixed costs and representative profits in constructed values means that they do not provide an estimate of the incremental or marginal cost of serving the domestic market. Rather, the approach yields an estimate of total average costs plus profit.

Taken together, these points mean that the Community operates a dual definition of dumping. An affirmative determination of dumping will be made if and to the extent that:

- the sales price in the exporter's domestic market is profitable and greater than the export price to the Community. On this definition, dumping is a form of price discrimination;
- where there are insufficient domestic sales or they are not profitable, the constructed normal value exceeds the export price. This definition potentially extends the scope for an affirmative determination of dumping to include situations in which the export price is equal to or exceeds the domestic price.

It is notable that the profitability of the export price is irrelevant to the determination of dumping since, under the latter definition, the export price is compared to the costs incurred in the domestic market.

The issues raised by the Community's approach to the determination of dumping, which follows the GATT Code, are discussed in Section VI.

### ***Injury***

An essential pre-condition for a finding of material injury is that the dumped imports should have undercut the prices of Community producers or have caused them to cut their prices ("price depression") or not to increase prices ("price repression").

The Anti-Dumping Regulation includes a non-inclusive list of indicators of injury to the Community industry producing "like products" to the dumped imports:

- production
- capacity utilisation
- stocks
- market share
- sales
- prices
- profits
- return on investment
- cash flow
- employment

Producers who import the dumped products or are related exporters may be excluded from the definition of the Community industry.

The Commission considers a period of three to five years in its investigation of injury.

When imports from more than one country are under investigation, these will be cumulated in the analysis of injury.

The injury criterion is discussed in Section VII.

### ***Community Interest***

The Anti-Dumping Regulation provides that provisional and definitive measures shall be imposed where affirmative determinations of dumping and injury have been made and the interests of the Community call for intervention. The Regulation does not define "Community interest". However, it is taken to include:

- the impact of measures on purchasers, including effects on consumers and on the competitiveness of producers in downstream markets;
- preservation of employment;
- the impact on the longer term competitiveness of the Community industry;
- the industry's strategic importance.

The Community interest criterion is discussed in Section VII.

### ***Lesser Duty Rule***

The Community's Regulations include the provision commended in the GATT Code that the duty imposed should be less than the dumping margin where this be adequate to remove injury. The level of duty necessary to remove injury is the "injury margin".

The determination of injury margins is discussed in Section VIII.

## *Types of Measure*

### *Primary Measures*

The primary measures available to the Community are duties and undertakings.

#### Duties

Three types of anti-dumping duty may be distinguished:

- ad valorem duties, ie. a fixed percentage of the value declared to Customs;
- specific duties, ie. a fixed amount in ECU per unit of imports;
- variable or minimum price duties – the difference between normal value or some lesser trigger price and the value declared to Customs. That is, if the value declared to Customs is equal to or exceeds the trigger price, no duty is payable. If the value declared is less than the trigger price, duty is levied at the rate necessary to bring the total cost to the importer up to the trigger price.

Variable duty systems may take several forms:

- a system of periodic (annual) retrospective reviews in which normal value is determined definitively and compared to the export prices charged. An adjustment is then made for any under or overpayment of duties made provisionally. Such a system is adopted in the United States and is criticised for the delays in carrying out reviews and the uncertainty of their outcome;
- a target price is set prospectively and duty is levied definitively on individual transactions to the extent that the export price is below the target. Such a system is applied in Canada and was adopted until recently in Australia.

Duties in the Community may be:

- imposed for up to four months on a provisional basis following a preliminary investigation;
- retroactive, where:
  - there has been a history of dumping which has caused injury;
  - the importer was or should have been aware that the exporter practises dumping which would cause injury;
  - injury is caused by "massively dumped imports in a short period";
  - an undertaking has been violated.

As noted above, duties are set at the lesser of the dumping margin and the amount necessary to remove injury. Both the level of dumping margins and, in principle at least, the level of duty necessary to remove injury may vary between exporters. Thus the rate of duty applied may, and usually does, vary between exporters.

#### Undertakings

These generally take the form of price undertakings but undertakings to cease or limit exports to the Community may be accepted. The undertaking must eliminate dumping or remove the injury that it has caused.

### Other Measures

In law, duties and undertakings are the only forms of relief potentially available to Community industries which have suffered from injurious dumping.

However, it has been suggested that some dumping cases have been settled (perhaps even before they have been formally opened) by the withdrawal of the complaint by the Community industry and the acceptance by the exporters of Voluntary Restraint Arrangements (VRAs) or some other measure.

There is clearly scope in principle for the tactical use of anti-dumping measures in this way since some other measure may be preferred by both parties (ie. afford greater relief to the Community industry at lesser cost to the exporters). However, where such agreements are in the private interests of the Community industry and exporters it cannot be assumed that they are in the overall Community interest.

### Reviews and Refunds

Duties and undertakings may be reviewed if circumstances have changed and lapse after five years unless renewed. Duties are refunded when the exporter can show that the duty collected exceeds the dumping margin.

However, as discussed below, the Community's procedures limit the scope for securing refunds and for exporters to secure the removal of anti-dumping measures through the review process.

### *Anti-Circumvention Measures*

The Community's Anti-Dumping Regulation provides for supplementary measures to be applied in two sets of circumstances.

### Increase in Community Production

The three formal criteria that must be met when an exporter is suspected of circumventing an anti-dumping duty by establishing or expanding Community production are that:

- the Community producer and the exporter subject to duties must be related or associated;
- assembly or production must have increased substantially after the anti-dumping investigation was opened;
- parts and materials originating from the country of export of the products subject to duties must account for 60% or more of the value of all parts and materials.

However:

"account shall be taken of the circumstances of each case and, inter alia, of the variable costs incurred in the assembly or production operation and of the research and development carried out and the technology applied within the Community."

Thus the Regulation provides a considerable degree of flexibility for the Commission to take account of the perceived contribution of the production or assembly operation to the Community economy in cases in which the three formal conditions are met.

Proceedings under this provision were opened against a number of manufacturers of *Plain Paper Photocopiers* in 1988; and in three cases duties were applied for a short period. However, they were subsequently replaced by undertakings which remain in force.

The draft of the new GATT Code provides for the application of measures to prevent circumvention by local production but in more restricted circumstances than the Community's Anti-Dumping Regulation permits.

### Absorption of Duties

The Regulation provides that duties may be increased where these have been absorbed by the exporter and provided that such an increase would be in the Community interest. This provision was applied for the first time in 1992 when the original definitive duty on imports of silicon metal from China was doubled.

### **Key Differences Between the Community's Anti-Dumping Measures and Those of Other Major Users**

Like the Community, other leading users of anti-dumping measures have developed their policies, procedures and institutions within the GATT framework in the light of their political and legal traditions and to meet their specific policy objectives. The paragraphs below highlight some of the key differences between the Community and the anti-dumping systems of Australia, Canada and the United States of America.

#### *Institutions*

In the Community, anti-dumping investigations are undertaken by the Commission subject to oversight by an Advisory Committee of officials from Member States, adoption of definitive measures by the Council and appeal to the Court of Justice. In other leading jurisdictions, the institutional arrangements are rather different:

- in Australia, investigations of both dumping and injury are undertaken by the Customs Service ("ACS"). If the ACS finds that provisional measures should be imposed, a second full inquiry to determine whether definitive measures should be applied is undertaken by the Anti-Dumping Authority ("ADA"), which makes a recommendation to the relevant Minister;
- in Canada dumping and injury are subject to separate investigations by Revenue Canada and the Canadian International Trade Tribunal ("CITT") respectively;
- similarly, in the United States of America, the Department of Commerce undertakes the dumping investigation whilst the International Trade Commission ("ITC") investigates injury.

The ADA, CITT and ITC are all independent of government.

#### *Public Interest Criteria*

The Community interest criterion is often claimed to be a distinctive feature of the EC system. However:

- in Australia, the ADA may take evidence and advise the Minister on wider public interest issues and the Minister is not required to impose measures if dumping and injury are established. In practice, these provisions are regarded as equivalent to a public interest criterion;
- in Canada, the CITT invites representations on public interest issues and may so advise the Minister if it believes that the imposition of measures would not be justified in whole or in part. In practice, public interest issues rarely arise and the CITT appears to interpret narrowly the range of issues which it should consider.

### *Lesser Duty Rule*

Australia, but not Canada or the United States, operates a lesser duty rule.

### *Duty Systems*

Whereas in the Community duties are usually set on an ad valorem basis and prospectively (ie. the duty established during an investigation or review applies until it is amended or expires, subject to the refund provisions):

- Australia until recently operated a variable duty system, ie. duties were only payable if the value declared to Customs exceeded a trigger price. However, during 1992, Australia has adopted a duty system similar to the Community's;
- Canada operates a variable duty system;
- in the United States duty rates are only established provisionally in advance. Following an annual review, duties paid during the previous period are adjusted and new duty rates are set provisionally for the next period.

### *Sunset Clauses*

Like the Community, Australia and Canada operate five-year sunset clauses. (Until recently measures expired automatically in Australia after three years with no provision for renewal.) In the United States importers must show that there has been no dumping for three years and no likelihood of its resumption.

### *Time Limits*

In the Community the Regulations state that investigations should normally be concluded within one year of the initiation of the proceeding. By contrast, in the three other leading user countries, specific time limits are established for each stage of the investigation.

### *Transparency*

In the United States and in proceedings before the CITT confidential information is disclosed to independent Counsel. This is not the case in dumping investigations by Revenue Canada (although there is a power to make disclosure) or in Australia.

In all three countries, the outcome of anti-dumping proceedings tends to be communicated through freestanding reports. These often contain substantially more background information and analysis in support of the decision reached than do Regulations and Decisions in the Community.

### **The New GATT Code**

When this report was prepared, a new GATT Anti-Dumping Code was in draft as part of the proposals for completing the Uruguay Round. Adoption of the new Code would require amendments to the Community's Anti-Dumping Regulation and the laws of other leading users. In general the new Code makes no fundamental change to the GATT framework for the regulation of dumping. However, it does include the following significant changes:

- an absolute limit of 18 months is placed on the length of investigations;

- territories applying a lesser duty rule may have provisional measures in place for six months or, in certain conditions, nine months. For other countries these periods remain unchanged at four and six months;
- a de minimis dumping margin of 2% and a presumption that market shares of less than 1% will be treated as negligible (unless the total market shares of countries with a share of less than 1% exceeds 2.5%) are introduced;
- a Sunset provision is introduced;
- the inclusion of an anti-circumvention provision allowing the application of duties to imported parts.

Other detailed and technical changes in the new Code are referred to below as appropriate.

### III THE ECONOMIC IMPACT OF DUMPING

#### Introduction

In this section we discuss:

- the economic characteristics of the industries in which dumping investigations have been launched in the Community;
- the market conditions which must prevail if dumping is to take place;
- five sets of circumstances in which firms may have an incentive to dump:
  - long run dumping;
  - cyclical dumping;
  - predatory dumping;
  - transitional dumping;
  - dumping by State Traders;
- the impact of dumping in our five case study industries.

The section concludes with some observations on the policy implications of the discussion.

#### Economic Characteristics of Sectors Affected by Dumping

In order to understand the types of sector in the Community which have been subject to dumping problems and the dumping episodes themselves, we undertook an analysis of investigations of 41 products (a total of 89 product times country cases) initiated over the period 1986-89. The analysis was based on the Commission Decisions and Regulations for these cases supplemented by some non-confidential material provided by the Commission.

#### *Type of Product*

As Table III.1 shows, the 41 investigations covered products ranging from raw materials (eg Oxalic Acid and Iron and Steel Section); through intermediate components (Diesel Engines and DRAMS); to consumables (eg Paint Brushes and Video Cassette Recorders).

**Table III.1: Product Characteristics**

<i>Type of Product/ Degree of Differentiation</i>	<i>Durable</i>	<i>Consumable</i>	<i>Raw Material</i>	<i>Intermediate Component</i>	<i>Capital Good</i>	<i>Total</i>
Commodity	1	1	14	3		19
Some	5			6		11
High	8			2	1	11
Total	14	1	14	11	1	41

*Source: Case Analysis*

We judged that 19 of the products were commodities, ie. that price was the most important factor for buyers. The remaining 22 products were subject to a degree of differentiation, ie. the specific product characteristics would be an important influence on sales.

**Number of Community Producers**

The level of market concentration is a conventional indicator of the degree of competition in a market. Information on the market shares of the leading suppliers in the Community (including both Community producers and importers) was not available and Table III.2 therefore presents an analysis of the number of producers in the Community in the cases investigated.

**Table III.2: Number of Producers in the EC**

Number of Producers	Number of Cases
1-2	3
3-5	14
6-10	5
11-20	10
21-50	3
51+	1

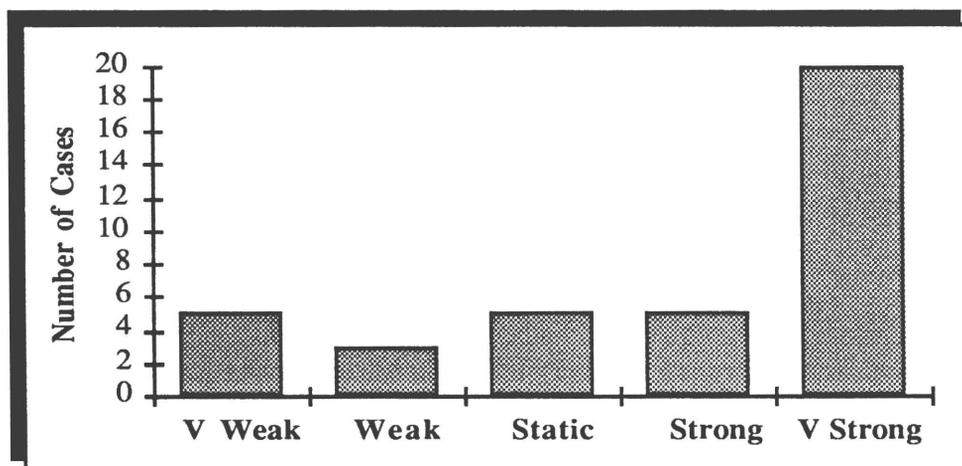
Source: Case Analysis

In over 40% of cases there were five or fewer Community producers and in only 10% of cases were there 21 or more Community producers. In terms of Community production at least, it appears that markets in which dumping investigations have been launched are relatively concentrated.

**Trends in Demand**

As Figure III.1 shows, demand for almost half the products was growing strongly in the period immediately before the investigation. A significant proportion of these cases were in the consumer electronics sector.

**Figure III.1: Trend in Demand in Year Preceding Investigation**



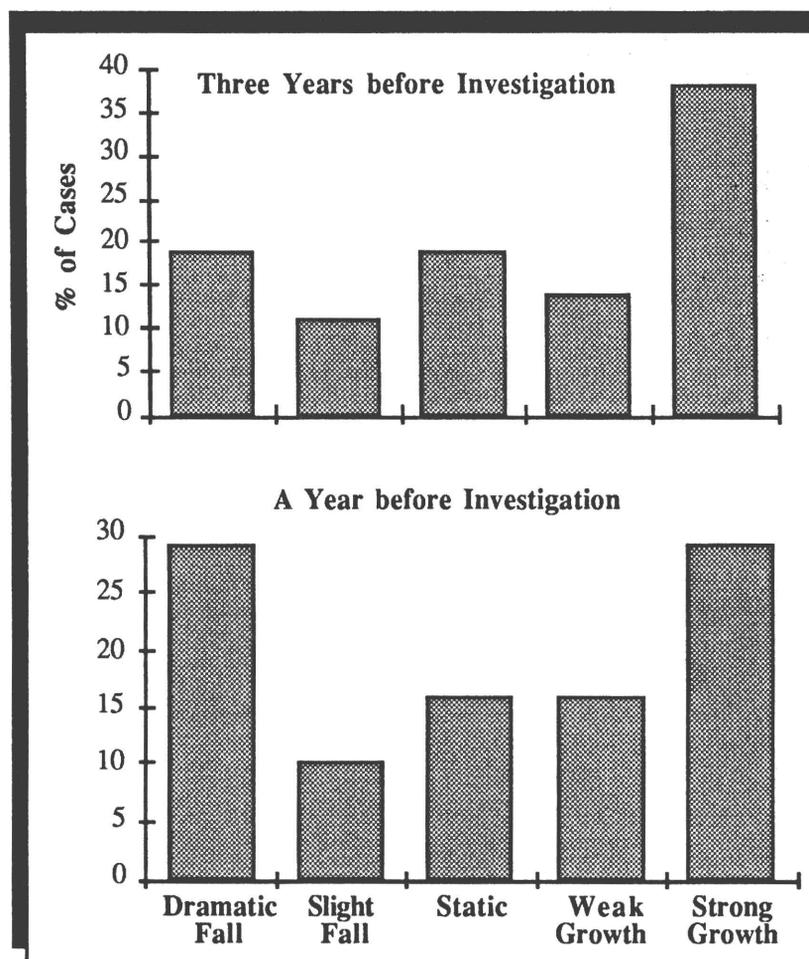
- V Weak: An annual decline of more than 10%
- Weak: An annual decline of between -3% and -10%
- Static: A rise or fall in the range of -3% to +3%
- Strong: An annual increase of between 3% and 10%
- V Strong: An annual increase of more than 10%

Source: Case Analysis

### *Trends in Community Production*

Figure III.2 shows that in around 30% of cases Community production was already falling three years before the investigation. In the year before the investigation, Community production was falling in around 40% of cases. However, in over a quarter of cases Community production was growing strongly (by 3% or more) in the year before the investigation.

**Figure III.2: Trend in Community Production**



Dramatic Fall:	An annual decline of more than 10%
Slight Fall:	An annual decline of between 3% and 10%
Static:	A fall or rise in the range -3% to +3%
Weak Growth:	An annual increase of between 3% and 10%
Strong Growth:	An annual increase of more than 10%

*Source:* Case Analysis - based on 37 product cases for three years before the investigation and on 31 cases for a year before the investigation

### *Capacity Utilisation*

Information on capacity utilisation was only available for fourteen cases. Table III.3 shows the levels of utilisation of production capacity for both three years before and immediately before the investigation. In most cases there is evidence of spare capacity existing. There was a slight tendency for there to be a higher degree of spare capacity one year before the investigation than three years before. 29% of the cases remained in the same category; in 29% of cases capacity utilisation increased over the period; and in 43% of cases it declined.

**Table III.3: Capacity Utilisation in the Period Before the Investigation**

3 Years Before Investigation %	Year before Investigation %						Total
	31-50	51-60	61-70	71-80	81-90	91-100	
31-50		2					2
51-60	1						1
61-70			1	1		1	3
71-80	1			2			3
81-90			1	2	1		4
91-100		1					1
Total	2	3	2	5	1	1	14

Source: Case Analysis

### **Trends in Prices and Price Undercutting**

Information on price trends was available for only around half the cases. Where information was available, both EC producer and import prices tended to be falling both in the year before the investigation and over the three-year investigation period. However, in around a third of cases import prices were static or rising in the year before the investigation.

As Table III.4 shows, in many cases very high levels of price undercutting (ie. the extent to which the prices charged for dumped exports in the Community were less than those of Community producers) were found by the Commission: in 75% of cases undercutting was between 11 and 50%.

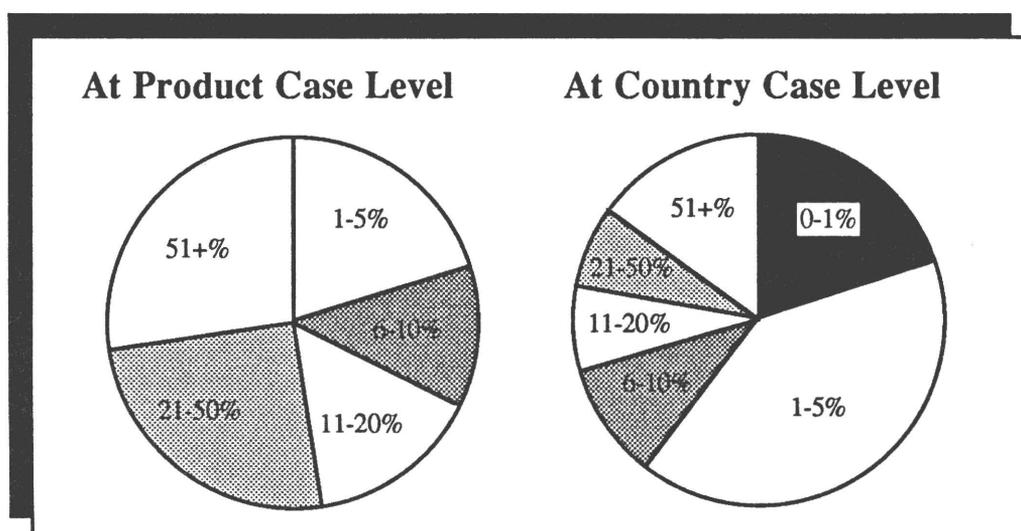
**Table III.4: Levels of Price Undercutting**

	Level of Price Undercutting %					
	0-5	6-10	11-20	21-30	31-50	31+
Percentage	13	4	25	29	23	7

Source: Case Analysis - based on 56 cases

### **Import Penetration**

Figure III.3 presents an analysis of import penetration in the year before the investigation was launched.

**Figure III.3: Import Penetration in the Year Before the Investigation**

Source: Case Analysis

There is a marked degree of variation in import penetration levels. In around a quarter of cases the total imports investigated (ie. including imports from all the countries included within the investigation) accounted for over half of the EC market. At the other extreme, in around 20% of cases, imports alleged to be dumped accounted for 5% or less of the EC market. If import penetration is analysed for specific countries, in around 20% of cases the imports alleged to be dumped accounted for 1% or less of the EC market.

Not surprisingly, we found that import penetration tended to increase in the period leading up to the investigation.

### Fundamental Requirements for Price Discrimination and Dumping

As discussed in Section II, a finding of dumping may be made when exporters to the Community:

- discriminate between their home and the Community markets by setting lower prices in the latter; or
- export to the Community at a price below the costs they incur in supplying their domestic market.

The existence of dumping as price discrimination requires that two conditions should be satisfied (however, there are no such requirements for sales below cost):

- the firm dumping should face different demand conditions in its home (Country A) and export (Country B) markets. More particularly, it must have a degree of discretion in its pricing and face greater competition in its export market;
- markets must be segmented. Firms can only pursue a policy of charging lower prices in export than in domestic markets (or vice versa) for any significant period of time if, and to the extent that, there is some form of barrier to trade. Unless such barriers exist, profitable opportunities will arise to:
  - re-export products from Country B to Country A;
  - export Country A's products to Country B.

Arbitrage can be expected to continue until the price differentials are removed.

Market segmentation can exist for a number of reasons, including:

- transport costs. For products which are difficult or costly to transport, material price differentials can persist even if trade is free;
- the existence of traditional trade barriers (eg. tariffs and quotas);
- where it is difficult or impossible for imports to secure access to a country's distribution system;
- brand loyalty and product differentiation;
- differing national product standards;
- patent protection in the exporter's domestic market.

It can be noted that anti-dumping measures themselves have the effect of (partially) isolating the market in which they are applied.

Dumping, in the form of price discrimination, generally implies that the dumper has some degree of market power or advantage in its domestic market.

### **Five Types of Dumping and Their Impact**

We have found it useful to distinguish five different sets of circumstances in which firms may adopt pricing strategies which involve dumping within the meaning of the GATT and the Community's Anti-Dumping Regulation:

- long run dumping, ie. circumstances in which the dumping is likely to be a permanent feature;
- cyclical dumping, ie. dumping in response to depressed market conditions;
- transitional dumping, ie. dumping which occurs as companies and markets adapt to changed circumstances;
- predatory or strategic dumping, which is deliberately designed to limit the competition the exporter will face in future;
- dumping by exporters from non-market economies ("State Traders").

It is clear that there can be a high degree of overlap between the different types of dumping outlined above, and their effects.

We now discuss in more detail the circumstances leading to the different types of dumping and their impact on the affected countries.

#### ***Long Run Dumping***

We have defined long run dumping as a strategy of setting lower prices in export markets over a period of many years, and possibly permanently. It is to be distinguished from transitional dumping where the dumping is only expected to be temporary, perhaps to secure market entry, or predatory dumping which is designed to eliminate or weaken competition thus leading to higher prices in the longer run.

Long run dumping may be in firms' interests for a number of reasons including:

- the demand conditions (price elasticities) facing all firms may vary between markets, so that the "optimum" price may vary;
- competition is restricted in the exporter's domestic market and it can therefore price above cost (including normal profit);
- the exporter incurs higher costs than its competitors in the Community, and must match their prices in order to sell in the overseas market. If the marginal cost of producing for the Community market is below the average cost, ie. if economies of scale are significant, selling at dumped prices could be profitable;
- in a market in which brand names and the supplier's image are important, the exporter may have a stronger image in its home market, which makes it profitable to set higher prices there than in the Community.

The second and third of these conditions, requires that the dumper's home market should be protected.

A key feature of long run dumping is that it is sustainable. That is, from the dumper's perspective, sales in the export market are commercially justified at "dumped prices". The rationale for dumped sales does not depend on the ability to increase prices in the future or on an increase in market share.

The economist's concept of perfectly competitive markets in which the free and rapid movement of goods ensures that prices in different national markets are the same is rarely observed in practice. The key point to emphasise about long run dumping is that it is a normal commercial response by firms to different market circumstances. Even within their own domestic markets, firms often adopt a policy of price discrimination, eg. selling at different prices to different sub-markets, according to demand and supply sensitivities. Similarly, there will be a degree of price discrimination (dumping) from one country to another within the Community as firms adjust their pricing strategies to the different market circumstances they face. Indeed, to take the point one stage further, it is easy to envisage circumstances in which Community producers were dumping in non-Community markets, but were subject to dumping in the Community itself. For example, Community producers of *Polyvinyl Chloride* have:

- instigated an anti-dumping investigation against imports from Eastern Europe;
- been subject to anti-dumping measures in Australia.

Long run dumping clearly means that the sales of the Community industry are lower and imports are higher than they would be if no dumping were taking place. However, consumers benefit from lower prices, and given the way in which long run dumping has been defined, this position can be expected to be a long run or permanent benefit. In addition, long run dumping per se does not pose any necessary threat to the continued existence of the Community industry.

### ***Cyclical Dumping***

Cyclical dumping is a temporary phenomenon which occurs when markets are depressed. In any market, there are likely to be cyclical fluctuations in profitability, and, during some stages of the cycle, firms may sell at a loss in either or both of their domestic and export markets. However, cyclical problems are most prevalent in industries in which there is a high ratio of fixed to variable costs. This creates a significant incentive to cut prices in order to contribute to overheads when demand is depressed. If purchasers who are price sensitive, as is particularly the case for "commodity" products, account for a significant

proportion of sales, even a limited level of low price imports can set off a round of price cutting which significantly reduces the general level of prices in the Community market.

In times of recession, companies are more likely to lower prices in their export rather than their domestic markets, as they do not want to destroy their "own" price base. Companies are also more likely to attack new markets in times of recession if they have high fixed costs.

This description seems to apply to many dumping episodes in the steel and chemicals sectors. High fixed costs in these industries reflect the large size and high cost of steel and chemicals plants. However, cyclical dumping can also occur in industries in which labour is the principal cost if legal or social norms, eg. redundancy laws, mean that firms in one country find it more difficult to cut costs during a recession than firms in other countries. During a recession:

- firms in Country A with strict redundancy laws may tend to seek to maintain output by cutting prices;
- firms in Country B will treat labour as a variable cost, cut prices by less and accept larger output and employment changes.

Strict redundancy laws may therefore create incentives for firms to dump.

Our *Polyvinyl Chloride* case study illustrates some of the features of cyclical dumping even though it involved an increase in imports from four East European countries. If the Community market had not been depressed at the time, low-priced imports might have had a lesser impact on the general level of prices in the Community.

It is clear that cyclical dumping can and does cause significant injury to the Community industries directly affected, in the sense that dumping causes a loss of sales and profits. However, as with long run dumping, consumers benefit in the short run at least. In this context, it must be remembered that in many industries the immediate consumers, eg. for steel and "commodity chemicals" are industrial purchasers and that their own competitiveness, and hence output, will be greater than otherwise as a result of the dumping.

The long run effects of cyclical dumping will very largely depend on whether the dumping episode influences the long run scale and competitiveness of the Community industry affected. This could happen if:

- the dumping episode and the potential for future dumping means that the investors regard the industry as more risky, with the result that the cost of capital to the industry may be higher than otherwise. A higher cost of capital could, in turn, affect the scale and quality of future investment and Research and Development;
- the dumping leads to the elimination of some Community producers or permanently damages them, eg. through delaying necessary investment or crippling them financially.

Cyclical dumping may therefore permanently damage the Community industry affected. This is not a necessary result, however, and many companies have the financial resources to "ride out" a cyclical dumping episode without there being any effect on their long run efficiency and competitiveness. Indeed, if the cyclical dumping episode is seen as a "one off" there is no reason why capital markets should not recognise this in their funding arrangements - it must be recognised, however, that many capital markets do take a short term perspective.

The long run impact on consumers (including industrial purchasers) of cyclical dumping depends on whether there has been a long run impact on:

- the efficiency, technological progress, etc. of suppliers to the Community;
- whether the degree of effective competition in Community markets has been reduced in the long run, ie. whether suppliers have more market power than before, with the potential to charge higher prices than under more competitive circumstances.

### *Predatory Dumping*

Economists reserve the term "predatory" for use in a restricted set of circumstances. Here we use the term "predatory dumping" to describe dumping which is intended to limit the future competition that the exporter(s) will face and allow them to charge higher prices in the Community.

The effects of predatory dumping are similar to those of other dumping episodes in the short run, in that:

- prices are lower than otherwise to the benefit of consumers (including industrial purchasers);
- Community production and profitability is adversely affected.

Predatory dumping is, however, designed to be permanently damaging to the Community industry and to eliminate effective competition in the Community in the long run. In these circumstances, consumers (including industrial purchasers) are likely, if the predatory dumping is successful, to:

- be dependent for their supplies on a restricted number of companies;
- in most circumstances face higher prices in the long term due to the loss of effective competition. This is likely to be the case except where economies of scale are very significant and the exporter's monopoly price would be lower than the cost at which Community producers could supply the market.

Predatory dumping implies that firms deliberately set low prices and forego profits in order to reduce future competition. Firms will only have an incentive to engage in predatory dumping in particular market circumstances and it is useful to discuss the criteria which economic analysis suggests need to be satisfied if predatory dumping is to be, potentially, a sensible commercial policy to be adopted.

### *The Market Must be Highly Concentrated*

Unless predatory pricing eliminates all or most effective competition, the predator will be unable to recoup the cost of selling at low prices. Analysis of predatory pricing therefore usually focuses on a single dominant firm which is seeking to thwart competition from actual or potential smaller competitors.

However, there seems little doubt that in markets in which there are only a very few major producers (perhaps up to five) in the world, the requirement that the market should be highly concentrated could be satisfied. But in cases in which there are a number of major producers, before concluding that there was predatory dumping one would look for evidence either that:

- the world market is actually segmented with the major producers having different "spheres of influence" and that this could be expected to endure if prices in the Community market were to be raised above the levels prevailing in other markets; or that
- all, or substantially all, of the actual and potential competitors to Community firms collude, ie. that there is "collusive predatory dumping".

Collusive predatory dumping requires that:

- the members of the "cartel" can rely on one another not to break the agreement;
- unless competition has also been eliminated in third markets, there would need to be barriers which prevent the export of the cartel's products from third markets to the Community.

It is important to note that it may be the level of concentration in the market for a key component rather than in that for the dumped product which is relevant. A large number of companies may, for example, compete in the assembly of a consumer electronics product and most of the components of that product may be available from many sources. However, if only one or a few manufacturers have the capability to cost-effectively manufacture one or several key components, this may confer substantial market power on them which is relevant to the analysis of a dumping episode. The Commission argues that the following sequence of events may occur:

- dumping of the assembled product weakens the Community industry and makes it particularly receptive to cost-saving opportunities;
- Community assemblers are offered supplies of key components on attractive terms and, as a result, either cease their own production of these components or stop buying them from Community sources;
- the conditions of supply of those components are then subsequently made less attractive (either by raising prices or by requiring the purchase of sub-assemblies).

This chain of events could indeed be predatory in its motivation and effects.

These concerns are relevant to our case studies of *Small Screen Colour Televisions* and *Plain Paper Photocopiers*:

- a number of exporters from Far East countries were involved in *Small Screen Colour Televisions*. However, most were assemblers and the sources of supply of at least one major component – the tube – are much more restricted;
- PPCs bring together a number of technologies which have developed rapidly and a manufacturer either needs to undertake development and manufacture in-house or to have access to competitive supplies of outsourced components.

*The Damage to the Community Industry Must be Irreversible*

For a strategy of predatory pricing to be effective, it must be impossible or very costly for the Community industry or other competitors to re-establish effectively. More particularly, if the Community industry were to re-emerge, it must face higher costs than those which were incurred by the industry eliminated by the dumping. If this condition is met, the possibility exists that the predator will, having eliminated or weakened the Community industry and provided that it does not face other significant competition, be able to raise prices as compared to the position in the absence of dumping.

This condition is most likely to be satisfied in industries in which:

- a very high level of sunk costs, notably Research and Development, have already been incurred, which a new entrant would need to replicate (or buy in if the technology can be purchased);
- there is a continuing requirement to undertake a high level of R&D expenditure;
- there are significant learning economies.

There can be little doubt that these conditions apply in some industries in which dumping problems have occurred in the Community, such as parts of the electronics sector.

#### *Dumping Must Reduce the Community Industry's Expectations of Future Profits*

Firms' decisions about whether to invest and remain in markets are determined by their and their financiers' expectations of future profitability. Dumping will reduce profitability in the short term, but if Community firms expect prices to recover and to be able to regain lost sales, there will be no reason for them to leave the market. If dumping is to force firms out of a market, or to seriously weaken them, it must either depress their expectations of future profitability or so weaken their financial position that appropriate financial resources are no longer available to them. This requirement may be met in the following circumstances:

- Community firms expect dumping to continue.

Traditional analysis of predatory pricing suggests that the predator must sell below marginal cost in order to force its competitor(s) out of the market. If the exporter is selling below marginal cost, then this is unlikely to be a credible strategy as persistent dumping would be very costly.

However, the traditional analysis assumes that the same market opportunities are available to all competitors. Where costs are related to past as well as current sales volumes (ie. where so-called learning effects are significant), market closure in the exporters' domestic market may give the dumper an initial cost advantage which is reinforced by the gain in sales resulting from the dumping strategy. Thus dumping may increase the cost advantage enjoyed by the dumper. If this is the case, the exporter may be able to sell profitably in the Community and still undercut Community producers. Since the exporter is selling profitably such a strategy would be credible.

In addition, if the exporter and the Community industry compete in a number of different markets, dumping in one market may earn the exporter a reputation for aggressive pricing making it easier to reduce competition from the Community industry in other markets.

- the dumper is financially stronger.

If Community firms are weakened financially to the point where they are perceived to be more risky by investors, they may withdraw their backing, forcing withdrawal from the market.

- the Community industry will incur considerable costs in regaining market share in the form of lower prices or higher promotional expenditure.

Again, several of these conditions would seem to be met in parts of the electronics sector:

- for at least some products (eg. parts of semi-conductor manufacture) learning effects are important;

- where the reputation of the brand is important, it may be very costly to regain market share once this has been lost.

### *Transitional Dumping*

Transitional dumping, as its name implies, is intended to be short term and occurs as companies and markets adapt to changed circumstances. Four specific examples can be identified:

- in markets in which existing suppliers' reputation and brand names are important, a new entrant may have to undercut its competitors in order to demonstrate the quality of its products and establish a position in the market. If the brand positions of some or all established competitors are very strong, the exporter may need to set prices below those of the market leader on a continuing basis (ie. transitional dumping may become long run dumping);
- if the costs of entering a new market are very high, the entrant may make losses in the early years even if it does not undercut Community firms. In these circumstances, even though sales in the Community may be loss-making, dumping should not be found if prices in the home and Community markets are the same and the former are profitable;
- when the costs of developing and launching a new product are high, prices may be set well below full cost in the early years in order to build up volume. This is particularly likely if costs are expected to decline as experience of production accumulates. This form of transitional dumping is generally known as "forward pricing";
- in markets in which prices are depressed because there is a problem of excess capacity which is not expected to be removed by growth in demand, an exporter may price aggressively to demonstrate to its competitors that it has lower costs and to encourage them to contract rapidly.

Transitional dumping shares many of the features and short run effects of predatory dumping even if the intentions are different:

- a surge in imports at low prices;
- a loss of market share by the Community industry and a decline in the prices realised by Community producers;
- consequent uncertainty about the future viability of Community production leading to weakening of the confidence necessary to invest in new and improved products and production facilities.

Transitional dumping is clearly intended to achieve or enhance a significant market share in the Community and, if the strategy is successful, may well cause Community firms to lose sales volume and to a decline in prices in the short term. Indeed, weaker competitors in the Community may be forced out of the market. Transitional dumping may therefore cause material injury to the Community industry.

Transitional dumping is not intended to reduce the competition faced by the dumper. Indeed, in the short run competition will be increased; and long run competition may also be enhanced if new entrants establish themselves in the Community market. Nevertheless, in the market circumstances identified in the discussion of predatory dumping, transitional dumping may have the effect of reducing long run effective competition.

### *Dumping by State Traders*

This form of dumping involves exports to the Community at prices below those prevailing in Community markets from non-market economies. It is frequently alleged that this form of dumping is motivated by a need for hard currencies or for other reasons which are not commercial in the conventional sense.

The short and long run impact of dumping by State Traders will be similar to the other types of dumping with the actual effects on dumping on:

- how long it lasts, or is expected to last;
- the impact on the long run efficiency of other suppliers;
- the impact on effective competition.

### *The Role of Market Closure*

As discussed above, price differentials between markets can only exist to the extent that they are segmented. In addition, it is worth considering the implications of market segmentation, and particularly market closure, for the effects of dumping. It is clear that market segmentation will intensify the effects of dumping on the Community industry for a number of reasons:

- the Community will have no (or less) scope to respond to the dumping through (increased) sales in the dumper's domestic market;
- if the dumper is able to secure high margins in its domestic market, it will be able to bear low prices in the Community for longer, thereby increasing the pressure on the Community industry;
- in industries where there are learning effects (ie. where costs are related to cumulative production) exporters may gain a cost advantage.

These points are of particular relevance to predatory dumping. In addition, the first point may be a significant consideration in cases of cyclical dumping. Several industry associations argued to us that, since the Community's economy is generally open to trade, Community industry is particularly vulnerable in times of recession. This vulnerability is increased by the fact that other leading importers themselves employ anti-dumping measures to protect their domestic industries in times of recession. A unilateral decision by the Community to abstain from using measures against cyclical dumping would therefore mean that Community companies had to contend with greater volatility in prices and imports than their overseas competitors.

However, in evaluating these considerations, it is necessary to take account of the extent to which the Community industry has the scope to increase its penetration of third markets.

### *Indirect Effects on Other Industries*

In addition to its direct effects on the production of comparable products, dumping may indirectly affect:

- suppliers of materials and components. Particularly where there is a requirement for a "critical mass" in order to achieve competitiveness in the supply of components, these effects may be significant;

- users of the dumped products. In the short run they may benefit from dumping. However, their longer term competitiveness may be damaged if the continued availability of the latest generation products is threatened;
- there may be wider adverse effects on efficiency and competitiveness if other industries rely on products or technologies supplied or developed by suppliers to the industry facing dumping.

These considerations are clearly very relevant to the appraisal of the Community interest and are discussed further in Section VIII.

### **The Impact of Dumping in Practice**

The Regulations adopting anti-dumping measures and Decisions closing proceedings generally provide a detailed account of the distress of the Community industry. The following paragraphs summarise:

- the key developments in our case study industries in the period leading up to the dumping investigation;
- the other factors that did or may have contributed to the economic distress of the Community industry;
- the concerns that existed about the effects that dumping had had or would have if allowed to continue.

#### ***Denim***

In *Denim* imports from Turkey and three Asian countries were investigated in 1989/90. The proceeding was closed with a finding that the Community industry had not been materially injured by dumping. No measures were therefore imposed.

In the investigation the Commission found that in 1988:

- demand in the Community fell by more than 26% as compared to 1987;
- sales in the Community by Community producers fell by 11% and their production by 12.5%;
- stocks accumulated and prices fell by 20 to 30%;
- Community producers incurred losses averaging 5.1% as compared to profits of 10.2% in 1987.

It is therefore clear that the Community industry was facing very serious difficulties in the period leading up to the investigation.

However, the Commission concluded that the dumping had not itself caused material injury to the Community industry:

- Community production had fallen by less than the market between 1987 and 1988;
- the imports actually dumped only accounted for 2.8% of the Community market in 1988 and this proportion had fallen from 4.4% in 1987. Community producers had increased their share of the smaller market;

- prices from the export countries had fallen by less than those in the Community as a whole between 1987 and 1988;
- there were significant imports from countries not under investigation, some of which had significantly undercut Community producers.

### *Mini Ball Bearings*

Imports of all ball bearings were subject to undertakings following the anti-dumping investigation in the 1970s. However, in 1983 a specific investigation into imports of mini ball bearings from Japan and Singapore was launched and duties were applied in 1984. In 1990 duties were applied to imports from Thailand. In the same year, duty levels on imports from Japan were generally increased following a review.

In the 1983/84 proceeding the Commission's analysis focused on bearings with a diameter of 30mm or less. It was found that:

- the Community industry's sales fell by 13% between 1979 and 1983;
- production fell by 4.5% between 1979 and 1982;
- capacity utilisation fell by 19%;
- the industry was selling at a loss to retain market share in the face of low-priced imports;
- smaller firms had reduced employment and larger ones had redeployed staff.

Against a background of weak demand, EC producers saw their overall Community market share for mini ball bearings fall from 79% to 70% over the period from 1979 to the first half of 1983. However, within this total, the share of Japanese producers in the Community rose. The share of exports from Japan and Singapore rose from 18% to 28%. Other imports into the Community only accounted for a few per cent of the market and declined over the period. The Commission found that exports from Japan and Singapore were concentrated on high volume types.

The analysis of injury in the review of duties in 1988/90 considered all ball bearings and not just those with a diameter not exceeding 30mm. At this level, the share of Japanese exporters is significantly lower – 6.1% during the investigation period. The Commission found that:

- sales in the Community had risen by 7% between 1985 and the investigation period (1987/88);
- imports of ball bearings from Japan had fallen by a third, largely as a result of increased production by Japanese manufacturers in the Community and elsewhere;
- production by Community producers (ie. excluding Japanese companies) had fallen by 10%;
- Community producers' selling prices had fallen;
- the profitability of EC producers had halved since 1985;
- employment in the industry had fallen.

Ball bearings are used in a very wide range of products and may be a key component of new products. For this reason concern about the potential effect of dumping has focused not only on the industry itself but also on its strategic importance for the European economy.

For example, in the 1989/90 review of the duties, the Council concluded that the profitability of the industry was not inadequate to finance investment, R&D and marketing. The Council considered that the loss of the industry would have serious consequences for research and development in high technology areas and for the development of new products.

### *Plain Paper Photocopiers*

The investigation of imports of PPCs from Japan was opened in 1985 and provisional measures were applied at the end of 1986.

In this case the Commission examined trends after 1975, when Xerox Corp's patents became generally available, although the emphasis was on the period between 1981 and 1984. Among the key trends it observed were:

- the entry into PPC manufacture of a number of Community producers and, despite the rapid growth in the market, the subsequent withdrawal of many of them. Only five remained when the proceeding was launched and one of these was taken over by a Japanese exporter soon after;
- the market share of Japanese producers was 78% in 1985 and had risen gradually in the early 1980s. Japanese exporters seem to have developed their position in the Community market in the late 1970s, ie. well before the proceeding was opened;
- there was a significant decline in prices in the late 1970s and early 1980s;
- several Community producers began but subsequently abandoned as unviable the development of smaller machines which would have competed directly with Japanese exporters;
- Community producers were unable to exploit available scale economies;
- the profitability of Community producers declined and one producer was loss-making in 1985;
- employment declined by 8% between 1982 and 1984.

The Community industry was found to be spending less on research and development than the Japanese industry. The Commission attributed this to the low profitability of the Community industry and concluded that the future competitiveness of the Community industry was threatened.

There were no other material imports and the Commission therefore concluded that the injury to the Community industry was attributable to the dumping. Issues raised by exporters included:

- the suggestion that Community producers had been slow to develop PPCs. Against this, it was argued that low prices had made the development of new machines unviable;
- the contention that Japanese machines were of better quality,

### *Polyvinyl Chloride*

The investigation of imports of PVC from four East European countries was opened in 1981. Undertakings were accepted in 1982/83 and the measures lapsed in 1987/88.

Dumped imports increased from 2.3% to 5.6% of the EC market over the period 1979-81 and were concentrated in particular markets, notably Germany. There was significant price undercutting. Between 1979 and 1981:

- demand in Western Europe fell by 14%;
- production fell by 17%;
- intra-EC prices fell by around 8%;
- the Community industry moved from profitability to a high level of losses.

In reaching its conclusion that the dumped imports had caused material injury, the Commission also:

- found that the market share of other imports had changed little;
- recognised that excess capacity in the Community was itself depressing prices.

Thus the Commission concluded that at a time when the market was depressed, dumped imports had significantly added to the industry's difficulties.

### *Small Screen Colour Televisions*

An investigation of imports of small screen colour televisions from Korea was opened in February 1988 and extended to include imports from Hong Kong and China in November of that year. Provisional duties were applied to imports from Korea in 1989 and to imports from Hong Kong and China in 1991.

The Commission found that over the period 1985-1988:

- consumption in the Community rose by 70%;
- total sales by the Community industry rose by only 15%;
- the Community industry's market share fell from 69% to 39% (from 80% to 53% if imports by the Community industry from the Far East are included);
- production by the Community industry within the Community fell by nearly 10% and production was switched to the Far East;
- price realisations by the Community industry fell by 20%;
- the Community industry was lossmaking. Losses increased in 1985/86 before stabilising and then increasing significantly in 1988. In that year they averaged 10%;
- employment in the Community fell by 15% in 1986/87.

The Commission found that the worsening in the performance of the Community industry coincided with the surge in imports from the three countries investigated – their combined market share rose from 3% in 1985 to 32% in 1988.

In *Small Screen Colour Televisions*, the Commission concluded that in the absence of measures, cessation of fully integrated Community production was "quite probable". The Commission's longer term concerns were that "the large foothold secured in the SCTV sector will be used for attacking the Community industry's position in the larger screen sizes". Community producers would then lose their marketing base. As a result:

- exploitation of the industry's development of "High Definition Television" would be "seriously prejudiced";
- the development and exploitation of related technologies for products such as video cassette players and laser video disc players would be affected.

Exporters pointed to the increase in imports from other sources as a source of injury.

It is notable that the undercutting margins found by the Commission were well in excess of the dumping margins.

However, the Commission did not contend that dumped imports from Korea were the sole cause of the Community industry's difficulties.

### **Policy Implications**

We conclude this section with some observations on policy implications.

#### ***When Dumping Has Adverse Economic Effects***

In this section we have analysed how different market circumstances and motivations can result in the adoption of dumping strategies and how the effects of dumping may vary according to the structure and conditions of the market. In analysing the case for policy intervention, the effects of dumping are of principal importance. Here we have seen that adverse effects may arise from dumping strategies which are not intended to limit competition. For example:

- cyclical dumping may prevent the Community industry from undertaking necessary investment;
- in relatively concentrated industries, in breaking into the Community market, new exporters could severely weaken the Community industry leading to concerns about the adequacy of competition in the longer term.

For this reason, as discussed in greater detail in the next section, we do not believe that there can only be a case for anti-dumping measures when dumping is predatory.

However, it is also important that the motivation for the dumping should be considered. How the market will evolve if measures are not adopted will often not be clearcut and it will be useful to consider why exporters have priced at a low level in the Community market and, in particular, how long these low prices will persist in the absence of measures.

#### ***Appropriate Baseline for Policy Analysis***

In analysing the impact of dumping in this section, we have implicitly compared a position in which dumping occurs with one in which there is no dumping. However, in considering the case for policy measures against dumping, either in general or in specific cases, it must be recognised that the appropriate comparison is between the positions with and without anti-dumping measures. In particular, policy analysis must:

- consider whether there is scope to restore the Community industry to competitiveness;
- take account of distortions and inefficiencies resulting from policy intervention as well as the benefits to the industry.

In the later sections of this report, we focus on how the adoption of policy measures will affect the position rather than on the effects of the dumping.

### *The Importance of Other Factors in the Causation of Injury*

On the basis of our case studies and impressions of other cases, it is apparent that it is rarely if ever the case that the economic distress ("injury") of the Community industry is unambiguously and solely attributable to dumping. At least in the view of the exporters, other factors have been important in explaining the distress of the industry and the question for the consideration in dumping investigations has been whether the dumping has itself been a cause of material injury. (There is no requirement, as there was under the Kennedy Round Code and the Community legislation which implemented it, that dumping should be the principal cause of the injury.) Where the Community industry is facing other difficulties, quantification of the impact of dumping alone is very difficult and reliance must be placed on qualitative analysis. For this reason, the conclusions reached in a proceeding are likely to be controversial.

## IV THE ECONOMIC RATIONALE FOR ANTI-DUMPING MEASURES

### Introduction

In this section we discuss:

- the traditional economic analysis of trade protection measures;
- five specific arguments which may be made for trade protection with specific reference to anti-dumping measures;
- the implications for the rationale for the adoption of measures against the five types of dumping identified in the previous section.

The discussion is developed in greater detail in Professor Venables' paper.

### The Case for Free Trade and the Impact of Duties

Anti-dumping measures are applied only against imports from specified countries and, subject to the possibility of renewal following a review, for a specified period. As such, their economic effects are likely to differ from those of a tariff which is applied against all imports for some unspecified period. Nevertheless, in understanding the concerns that many economists have expressed at anti-dumping measures, it is helpful to begin by summarising how they have traditionally analysed the impact of tariffs and then to introduce some of the complexities which have been introduced in more recent economic analysis.

The classical economic case for free trade rests on the belief that all participants in the international trading system benefit when countries specialise in goods and services which they can supply relatively cheaply. By increasing production of (and exporting) goods which they can produce relatively efficiently, and reducing production of (and importing) goods for which they are relatively high cost producers, countries increase their overall level of production and income. The gains from trade are maximised when domestic and world prices are the same (allowing for transport costs) and:

- domestic production takes place if, and to the extent that, the costs of domestic firms are less than or equal to the world price (the "production efficiency" condition);
- domestic consumption occurs up to the point at which the benefit derived by consumers is also equal to the world price (the "consumption efficiency" condition).

Starting from a position in which there is free trade in a product, the impact of a duty on all imports will be to:

- increase domestic prices by up to the amount of the duty to the benefit of the domestic industry and the authorities levying the duty;
- increase the profitability of domestic production leading to an increase in output and employment in the industry concerned. Whilst this may appear beneficial, it is typically achieved by drawing resources from other uses. Since these uses were more remunerative in the absence of the duty, there is a presumption that the duty has led to a reduction in production efficiency;

- reduce domestic consumption below the level at which consumers' valuation of the product is equal to the (world) price at which it is available. The introduction of a duty therefore also reduces consumption efficiency.

Some of the increase in the costs borne by consumers is the counterpart of the increase in profits of the Community industry and the duty revenue. These effects are generally regarded as transfers and do not affect overall welfare. However, in so far as overseas owned producers in the Community benefit from higher prices, this effect is a clear economic loss to the Community. If the measure is a price undertaking, exporters gain by an amount equivalent to the duty revenue. For this reason, economists normally prefer duties to price undertakings or quotas which have an equivalent impact on prices.

The impact of anti-dumping duties on prices is discussed further in Section VI.

### **Possible Arguments in Favour of Trade Protection and Anti-Dumping Measures**

The above analysis of the impact of trade protection (including anti-dumping measures) on prices and production and consumption efficiency only provides a partial assessment. In particular, it assumes that the prices on which firms and individuals base their decisions reflect all the economic costs and benefits of the relevant transactions. When they do not, it is well recognised that there may be a case for policy intervention. There are five reasons why market prices may not reflect social costs and benefits which are of particular relevance to the analysis of trade protection measures. Most economic arguments for anti-dumping measures or other forms of trade protection can be reduced to one or some combination of these arguments.

These various arguments are discussed below. It should, however, be noted that even though prices may not reflect social costs and benefits, it does not necessarily follow either that any form of policy intervention is justified or that trade policy and anti-dumping measures are appropriate:

- since policy measures usually themselves have distortionary effects, there may be no policy measure which increases economic welfare;
- policy instruments other than anti-dumping measures may tackle the "problem" more directly and efficiently.

### ***Reduction in World Prices or "Optimal Tariff" Argument***

Economists have long recognised that trade protection measures will generate benefits for the countries that apply them when they reduce import prices (net of duties). The scope for securing gains in this way exists when an importing country or trading bloc accounts for a significant proportion of the world market, since a fall in its demand following the imposition of a tariff would be likely to reduce the world price. However, if all countries were to employ trade protection measures in this way, all would be worse off.

A case for anti-dumping measures on these grounds may exist if dumping is expected to lead to a weakening of the Community industry, the development of a world monopoly position and a subsequent increase in prices. In these circumstances, the saving in the cost of imports can be counted as an economic benefit from the anti-dumping measures. Thus this argument is relevant to suspected cases of predatory dumping.

The key issues in evaluating the strength of this argument are:

- whether the dumping, if allowed to continue, will lead to the irreversible weakening of the Community industry;

- the extent of competition from third countries;
- the extent of competition between exporters alleged to be dumping;
- the scope for measures to restore the competitiveness of the Community industry.

### *Spillover Effects*

Expenditure undertaken by one firm may benefit other firms without their sharing the costs involved. In particular, some technologies are "strategic" in the sense that they are used in a number of firms and sectors. If dumping leads to a reduction in research and development effort in such technologies, there may be a case for trade protection measures to ensure that other users of the technology continue to have access to it. However, it must be recognised that:

- although trade protection measures may encourage R&D, they are likely to do so at the cost of higher prices;
- there is a danger that, by reducing competition, protection will weaken the incentive to undertake R&D. This risk is particularly great when competition in the Community is limited and when the Community industry believes that protection will be renewed.

The latter consideration suggests that if measures are introduced to foster the development of a technology:

- they should be linked to a programme of R&D which can be expected to deliver the benefits sought;
- a commitment to limit protection to a particular period (not necessarily five years) should normally be made.

It must also be remembered that direct measures to support R&D may be more effective than trade measures in encouraging the development of new technologies.

### *Imperfectly Competitive Community Markets*

In markets in which producers have significant discretion in setting prices (ie. in markets which are imperfectly competitive), it will be in their interests to restrict output in order to raise prices above marginal cost. Since, where such a strategy is adopted, the true cost to the economy is less than the market price, domestic production will tend to be lower and imports higher than would be the case if the production efficiency condition was met. Where these conditions exist in the Community, an increase in prices following an anti-dumping measure leading to higher Community output would raise economic welfare.

Since dumping requires that the dumper should have a degree of pricing discretion, a finding of dumping may indicate that the relevant Community market is not fully competitive. (However, a finding that dumping has occurred certainly does not prove that this is the case since the dumper's ability to set differential prices may depend on the fact that its domestic market is closed.) This suggests that this argument may be of relevance in some cases. However, although they may improve welfare by increasing output, trade protection measures will tend to raise prices and thus increase the loss of consumption efficiency. Measures to increase competition and drive prices down are therefore to be preferred.

### *Unemployment Problems*

A further reason why firms may set higher prices and produce lower levels of output than the conditions of economic efficiency would require is that in times or areas of high unemployment, wage and salary costs may not reflect the true opportunity cost of labour. This argument could be of relevance in cases of dumping when:

- Community markets are generally depressed;
- the effects of dumping are concentrated in particular regions or specialised labour markets where there are limited opportunities for jobs lost as a result of the contraction of Community production to be replaced within a reasonable period.

However, it needs to be remembered that a variety of other measures exist to counter unemployment problems. In particular, there is a severe danger that anti-dumping or other trade protection measures will impede rather than encourage necessary structural adjustment. Nevertheless, trade protection measures may have a transitional role to play in slowing the rundown of a Community industry.

### *Imperfect Capital Markets and Entry Barriers*

The classical economic model assumes perfect capital markets and that entry and re-entry barriers are low. In practice this is not the case.

For instance, in industries requiring substantial investments in R&D or fixed assets, it is often alleged that suppliers of finance restrict investment by requiring rates of return which are unrealistically high in the light of the alternatives open to them. The criticism is made with particular force when the payback from the investment is likely to be slow or is subject to high risk. If investors do focus on current returns and undervalue investments which appear risky and which are likely to generate their returns over an extended period, this would contribute towards an economic rationale for anti-dumping measures. By depressing returns in the short term, dumping would then depress investors' expectations of future returns making it more difficult for firms to justify their investment programmes. This is particularly the case in industries with high entry or re-entry barriers, or where there are "learning" economies.

### *Modern Industrial Economics and International Trade Theory*

The discussion above is largely based on economists' long-established approach to the analysis of the benefits of free trade and the case for trade protection measures. That approach starts from an assumption that the norm in international trade is competition between a relatively large number of firms. Arguments for trade protection of the kind outlined above are treated as departures from the theoretical ideal of perfect competition in international trade.

In the last decade, economists have explored in depth the implications of adopting an alternative framework in which a relatively small number of suppliers are engaged in international competition. This is likely to be the case in markets in which:

- there are significant economies from large scale production such that even the world market as a whole can only support a relatively small number of producers operating at or near to the levels of output at which costs are minimised;
- existing suppliers have significant advantages over new entrants because of their accumulated knowledge and experience of development and production or the reputation of their products.

This new area of research appears of relevance to the economic analysis of dumping. The starting point of the analysis – markets in which a small number of major firms compete and seek to gain enduring advantages by increasing sales – seems to describe many of the major cases in which dumping problems have arisen much more adequately than the traditional model of perfect competition. As previously noted, dumping requires a degree of market power. The approach seems particularly applicable to sectors such as electronics in which the rapid rate of technical progress reflects the need for a very high level of expenditure on R&D in order to maintain and enhance competitiveness.

Further, as Professor Venables shows in his paper, when competition is imperfect, it can be in the interests of an exporting country to close its economy or subsidise exports where this will allow domestic producers to reduce costs; weaken overseas competition; and subsequently allow prices to be increased in the longer term. This description corresponds closely to the concerns expressed by Community producers which have experienced dumping problems in sectors such as electronics.

The arguments which flow from modern industrial economics and international trade theory are not, in fact, very different from those outlined earlier. In particular, the case for an exporting country closing its domestic market or subsidising exports is equivalent to the optimal tariff argument. The discussion below of "predatory dumping" suggests that cases of predatory dumping are likely to be unusual.

Further, although it is clear that the target economies can be damaged if potential trading partners close their economies or subsidise exports, it does not automatically follow that they should adopt counter measures. A comparison needs to be made between the two available alternatives:

- if no measures are applied, the industry directly affected may be further injured and there may be wider adverse effects including the possibility that Community purchasers will face reduced competition and higher prices;
- if measures are applied, the Community industry may continue to be "high cost" through the continuing denial of access to third markets.

Thus, whilst reciprocal free trade will maximise combined welfare, adopting measures to counter market closure will only improve welfare in restricted circumstances.

It also remains the case that, as in traditional analysis, the threat of retaliation can in many circumstances be a powerful incentive not to impose trade protection measures as the effect of retaliation is to leave all countries worse off.

Overall, whilst the new trade economics helps to demonstrate why firms may dump and why governments may find it beneficial to promote their domestic industry, in fact the conclusions it leads to about the case for trade protection are very similar to those resulting from traditional analysis.

## **Implications for Different Types of Dumping**

### ***Long Run Dumping***

Since long run dumping does not pose any threat to the continued existence of the Community industry, it is unlikely that, even if a dumping investigation were to be opened, a finding of material injury would be made. Certainly, none of our case studies appears to satisfy the conditions of long run dumping. However, the example demonstrates:

- the importance of independent determinations of dumping and injury; dumping by no means necessarily threatens the future of the Community industry;
- the very imperfect relationship between findings of dumping and injury on the one hand and the existence of a possible case for trade policy intervention on the other.

### *Cyclical Dumping*

It is clear that cyclical dumping can and does cause significant injury to Community industries, in the sense that dumping causes a loss of sales and profits. In addition, exposure to cyclical dumping is likely to mean that the Community industry is smaller than it would be if anti-dumping measures were to be imposed, since for some firms the profits made in the upswing will not be sufficient to offset losses or low returns when business is depressed. This tendency will be greater if the Community's trading partners adopt anti-dumping measures.

However, equally, protecting Community industry from cyclical dumping will mean that:

- consumers forego the opportunity to benefit from cheap import prices during the downturn. Consumption efficiency may therefore be reduced;
- industrial purchasers may face higher prices than their overseas competitors leading to an (inefficient) loss of sales, profits and employment in downstream markets.

The impact of cyclical dumping on the industry affected is relatively complex. In general, demand fluctuations are part of the normal environment that business has to deal with. The fact that those fluctuations are made more intense by exporters cutting prices in the face of a downturn, or the fact that other countries adopt anti-dumping measures, does not of itself create a case for trade protection.

However, as argued above, there may be a case for policy intervention when prices in the Community market exceed social costs. In a recession several of the arguments for trade protection developed above could apply. In particular:

- where labour is a significant cost, its opportunity cost over the relevant period may be low;
- other significant inputs may themselves be priced at above their true cost because the relevant markets are depressed;
- prices in the Community market for the dumped product may exceed marginal cost as a result of imperfect competition;
- if capital markets are imperfect, unusually depressed conditions in the Community industry could reduce investment below the efficient level, or could lead to potentially efficient firms going out of business.

In any particular case, it is necessary to consider the balance between these considerations and the impact on consumers and downstream purchasers to determine whether there is an overall case for policy intervention. A key consideration should be a judgement on the competitive position of the Community industry after the cyclical dumping.

Episodes of cyclical dumping are by definition of limited duration. They may develop relatively quickly and are unlikely to last for as long as three years. This suggests that:

- if anti-dumping measures are to be introduced to protect the Community industry from cyclical dumping, action needs to be taken quickly. This point was made to us by several industry associations and is illustrated by our case study. In this case, measures were introduced around two years after significant low-priced imports from Eastern Europe came onto the Community market. This was only shortly before the market recovered so that, as argued in Section VI, they may have had little effect on prices;
- measures should lapse after less than five years. Cyclical dumping problems are unlikely to endure for five years after measures have been introduced. Particularly if they are ad valorem or a fixed number of ECU per unit of imports, measures may distort trade long after there is any rationale for them to prevent injury to the Community industry.

### *Predatory and Strategic Dumping*

It is quite clear that predatory dumping is usually economically damaging and that there will be a powerful case for policy intervention to prevent and discourage it, since:

- the Community industry may be destroyed or reduced to the position in which it is no longer a significant competitive force;
- although purchasers benefit from low prices in the short term, this benefit may be more than offset in the longer term when competition has been reduced or eliminated in the Community market.

Nevertheless, as Professor Venables shows, it is possible to envisage circumstances in which it would be in the Community's economic interest to purchase from a monopoly exporter rather than to protect Community producers. This could be the case if the economies of scale are very significant and the exporter's monopoly price would be lower than the cost at which Community producers could supply the market. However, given the size of the Community market, it would be surprising if it could not support at least one producer operating at an efficient scale.

As detailed above, economic theory suggests that only under unusual conditions will there will be an incentive for firms to set very low prices and forego profits in order to reduce future competition; and this view is reflected or confirmed by the comparative rarity of competition proceedings which have concluded that firms' pricing behaviour has been predatory. Further, a number of economists and other observers and participants in Community anti-dumping proceedings told us that in their view cases of predatory dumping were very rare – several referred to one particular case – *Aspartame* – as the only example they had encountered in recent years. However, by contrast, the Commission argue that predatory (or "strategic") dumping is a major problem involving, in particular, exports of consumer and other electronic products from Japan, Korea and other Far Eastern countries in which Japanese and Korean companies have established manufacturing operations in their own ownership or through joint ventures. In the view of the Commission and the Community industries concerned, three of our case studies – *Mini Ball Bearings*, *Plain Paper Photocopiers* and *Small Screen Colour Televisions* – represent examples of predatory dumping.

This widely differing assessment of the frequency of predatory dumping, reflects the very considerable practical difficulty in assessing whether a particular pricing episode should be considered as predatory or whether the dumping is unlikely to cause any enduring and undesirable reduction in effective competition in the Community market.

### ***Transitional Dumping***

Transitional dumping is clearly intended to achieve or enhance a significant market share in the Community and, if the strategy is successful, may well cause Community firms to lose sales volume and to a decline in prices. Indeed, weaker competitors in the Community may be forced out of the market. Transitional dumping may therefore cause material injury to the Community industry.

Applying anti-dumping measures in cases of transitory dumping may, however, lead to a loss of production and consumption efficiency as defined previously. More particularly, it may:

- slow down an inevitable process of contraction in an industry which has lost its comparative advantage in world markets or in which there is global excess capacity. This may well have been the case in our *Denim* case study;
- restrict competition in Community markets from new entrants since their pricing policies may be influenced by the risk of a finding that they have dumped. If the new entrant in a growing market is only expected to take a relatively small market share, such entry may be beneficial to the development of efficient competition;
- inhibit the rapid development of new products the costs of which will fall rapidly as volume increases.

### ***Dumping by State Traders***

From an economic perspective, the issues raised by State Trader dumping are very similar to those arising from cyclical dumping. The precise motivation for the dumping is largely irrelevant to the Community's economic interests. However, since dumping by State Traders can be episodic and unpredictable, it may have a greater adverse impact on investment if capital markets are imperfect.

## V THE COMMUNITY'S USE OF ANTI-DUMPING MEASURES

### Introduction

This section presents an analysis of the Community's use of anti-dumping measures. It is largely based on:

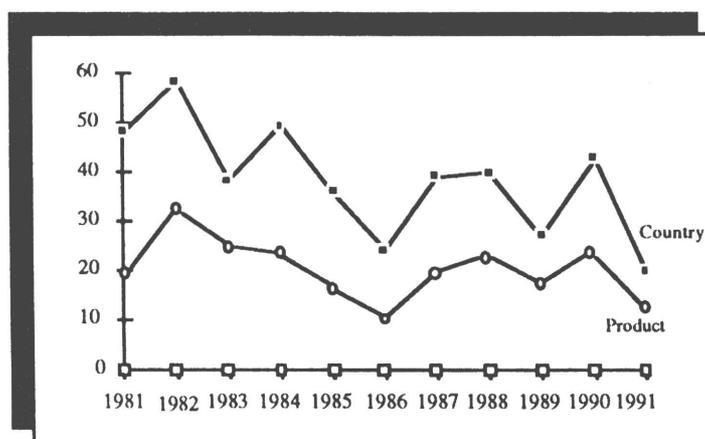
- the Commission's Annual Reports to the Parliament on its anti-dumping activities<sup>1</sup>;
- our analysis of 41 anti-dumping investigations initiated between 1986 and 1989.

### Cases Initiated by Sector and Country

#### *Number of Cases*

Over the period 1981-91, new investigations into imports of an average of 20 products were initiated (38 product times country cases) each year. Figure V.1 suggests that there has been a small decline in the number of new cases over time. Over the period 1981-85 an average of 23 new product cases (46 country cases) was initiated as compared to an average of 21 product cases (39 country cases) over the period 1986-91.

**Figure V.1:** *Number of Cases Initiated 1981-91*



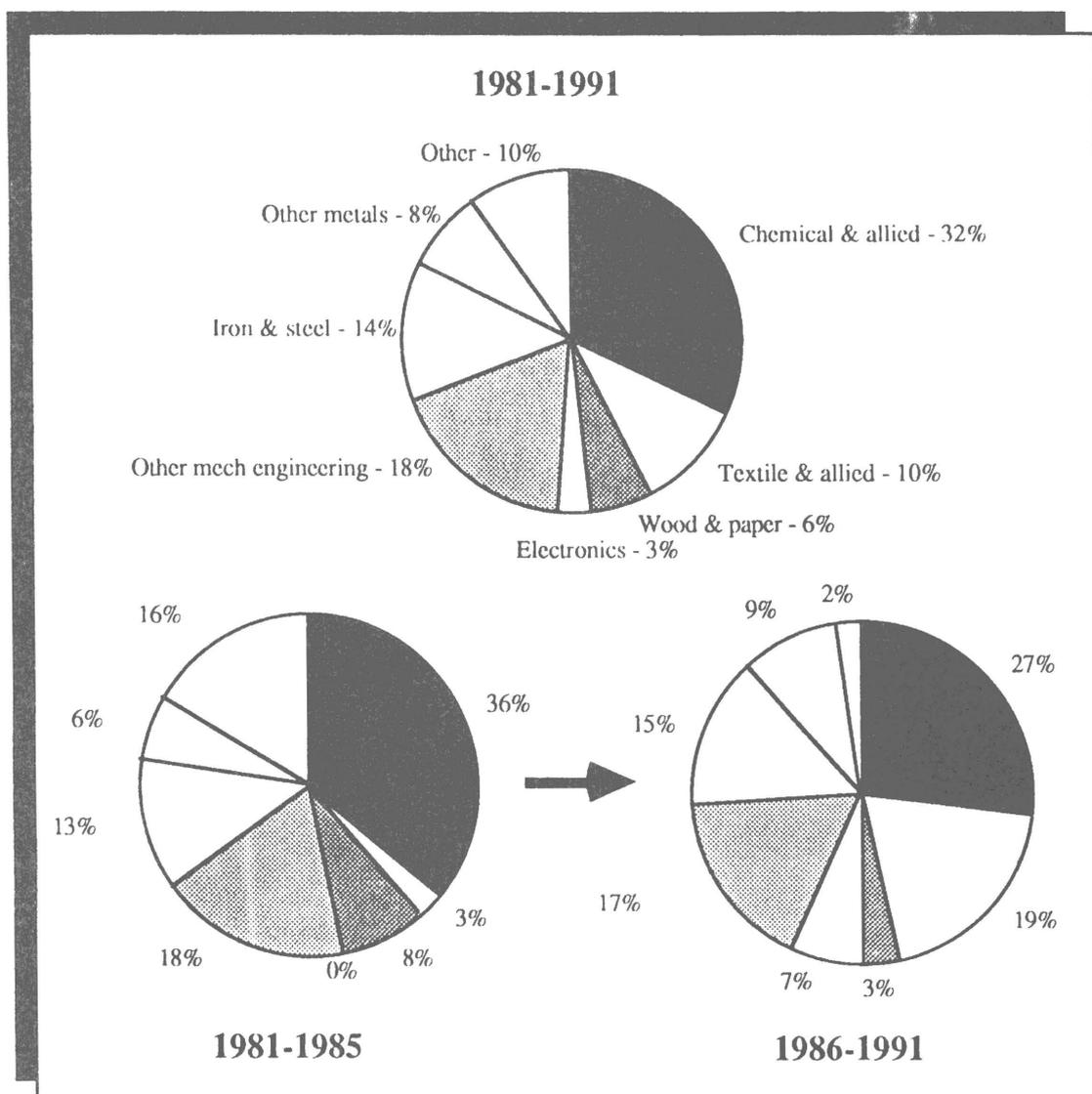
Source: Commission Annual Reports

<sup>1</sup> The reports and the statistics quoted in this section also include anti-subsidy investigations. However, these are sufficiently small in number that they do not affect the analysis.

*Analysis by Sector*

Figure V.2 shows that investigations have been initiated in a wide range of industrial sectors over the period 1981-91.

**Figure V.2: Analysis of Cases Initiated by Sector**



Source: Commission Annual Reports

It is notable that:

- chemicals account for the largest proportion of cases initiated;
- as discussed in Section VI, whilst the number of electronics cases has increased, the number of investigations in this sector considerably understates the impact of measures in this sector on trade;
- there has been an increase in the proportion of cases in the textile sector.

*Analysis by Country*

Table V.1 presents an analysis of new cases classified by country and by the country's economic status.

**Table V.1: Investigations Initiated by Economic Status of Country**

Type of Country	No of Investigations			Percentage of TOTAL			Growth in Imports 1981-90
	1981-1985	1986-1991	1981-1991	1981-1985	1986-1991	1981-1991	
<i>Industrialised Countries</i>							
EFTA	10	5	15	4	3	4	+113%
Portugal	2		2	1		0	N/A
Spain	18		18	8		4	N/A
Other Western Europe (1)	19	4	23	8	2	5	+382%
USA	15	3	18	7	2	4	+73%
Canada	4	1	5	2	1	1	
Japan	14	22	36	6	11	9	+232%
Other (2)	5	16	21	2	8	5	+44%
Total	87	51	138	38	26	33	+108%
<i>Developing Countries</i>							
Asian NIEs (3)	9	40	49	4	21	12	+170%
South American NIEs (4)	19	14	33	8	7	8	+59%
OPEC		7	7		4	2	-47%
Other (5)	9	12	21	4	6	5	+59%
Total	37	73	110	16	38	26	+6%
<i>Non-Market Economies</i>							
Eastern Europe (6)	94	46	140	41	24	33	+41%
China	11	22	33	5	11	8	+364%
Other (7)		1	1		1	0	+9%
Total	105	69	174	46	36	41	+68%
TOTAL	229	193	422	100	100	100	+58%

Source: Commission Annual Reports

- (1) GDR
- (2) Australia, Turkey
- (3) Hong Kong, Korea, Taiwan, Thailand, Singapore
- (4) Argentina, Brazil, Mexico and Venezuela
- (5) Egypt, India, Macao, Malaysia, South Africa, Trinidad, Tobago, Israel, Surinam, Zimbabwe
- (6) Bulgaria, Czechoslovakia, Hungary, Poland, Romania, USSR, Yugoslavia
- (7) Albania

It is notable that:

- non-market economies (including East European countries in the process of making the transition to a market economy) have accounted for the greatest proportion of cases during the period. Whilst in general their significance has declined, there was a marked increase in the number of cases initiated against China in the second part of the period;

- the impact of the Community's anti-dumping measures on trade with North America is very limited; and there have been very few cases in recent years;
- the number of cases initiated against Japan increased in the second part of the period but remained relatively low. However, as discussed in Section VI, measures against Japanese imports account for a very high proportion of all trade subject to duties;
- over the period 1986-91, 38% of cases involved imports from developing countries. The number of cases involving the Asian NIEs (Korea, Hong Kong, Singapore, Thailand and Taiwan) more than quadrupled.

There appears to be an association between the increase in the number of anti-dumping cases and the increase in the level of the Community's import trade with a country. This association can be interpreted in at least two ways:

- in its 1990 Annual Report, the Commission asserts that the rapid growth of trade with countries subject to an increased number of measures shows that they do not frustrate trade;
- rapid growth in imports creates frictions which lead to anti-dumping investigations.

### The Dumping Investigation

For our sample of 41 products we analysed some of the features of the dumping investigation undertaken by the Commission.

#### *Dumping*

##### *Calculation of Normal Value*

Table V.2 presents an analysis of the method used by the Commission to determine normal value for the 74 country cases in our sample.

**Table V.2: Basis of Calculation of Dumping Margin**

	<i>CVME</i>	<i>CVDM</i>	<i>HMP</i>	<i>HMP/CVDM</i>	<i>Basis</i>
Number of cases	19	18	20	12	5

CVME	-	Constructed values based on Market Economics
CVDM	-	Constructed values based on Domestic Markets
HMP	-	Home Market Prices
HMP/CVDM	-	Home Market Prices and Constructed Values based on Domestic Markets
Basis	-	Basis Prices

*Source: Case Analysis*

In a large proportion of cases, normal value was constructed on the basis of conditions in a market economy. This reflects the high proportion of cases involving imports from non-market economies. Leaving these cases aside, normal value was based on prices in the exporter's domestic market and on constructed value for all exporters in roughly equal numbers of cases. In the remaining cases, normal value was based on domestic prices for some exporters and constructed for others. In no case was normal value based on export prices to third countries.

**Calculation of Export Prices**

In 30% of cases the export price "actually paid or payable" was determined to be unreliable and the export price was constructed on the basis of the first independent sales price within the Community.

**Dumping Margins**

Table V.3 analyses the definitive dumping margins determined for each country case.

**Table V.3: Dumping Margins**

<i>Dumping Margins (%)</i>	<i>Number of Country Cases</i>
0-5	6
6-10	5
11-20	10
21-30	13
31-40	11
41-50	5
51-60	8
61-70	5
71-80	2
81-90	1
91-100	
100+	6

*Source: Case Analysis*

Note: where a range of dumping margins was found, the highest has been recorded

The weighted average dumping margin found by the Commission was 39%. In 31% of cases dumping margins exceeded 50%. Of the six cases which had dumping margins of 5% or less, five were closed with findings of no injury or no dumping.

Table V.4 presents an analysis by sector of the average dumping margin determined by the Commission and Table V.5 an analysis by economic status of country.

**Table V.4: Dumping Margin by Sector - (at Country Level)**

	<i>Chemical</i>	<i>Textile</i>	<i>Consumer Electronics</i>	<i>Elect Components</i>	<i>Metals</i>	<i>Mech-anical</i>	<i>Other</i>	<i>Total</i>
Number of Cases	24	12	9	2	13	2	11	73
Weighted average dumping margin	49	21	27	106	28	16	48	39

Source: Case Analysis

Note: where a range of dumping margins was found, the highest has been recorded

It is notable that:

- above average dumping margins have been found in electronic components and chemicals cases;
- below average margins have been found in consumer electronics, textiles and mechanical engineering cases.

**Table V.5: Dumping Margin by Type of Country**

<i>Economic Status of Country</i>	0-5	6-10	11-20	21-30	31-40	41-50	51-60	61-70	71-80	81-90	91-100	100+	<i>Weighted average</i>
<i>Industrialised Countries</i>													
EFTA			2										16
Other Western Europe (1)			1				1						36
Japan			1	3		1		1		1		3	61
Other (2)		1	1		2								24
Total		1	5	3	2	1	1	1		1		3	45
<i>Developing Countries</i>													
Asian NIEs (3)	2	3	4	5	1		2	2					26
South American NIEs (4)			1	2	1								26
OPEC	2	2			1	1	2						27
Other (5)													
Total	4	5	5	7	3	1	4	2					26
<i>Non-Market Economies</i>													
Eastern Europe (6)	2		1	2	4	2	2	2	1			1	43
China				1		1	1		1			2	69
Other (7)													
Total	2		1	3	4	3	3	2	2			3	50
TOTAL	6	6	11	13	9	5	8	5	2	1		6	39

Source: Case Analysis

(1) GDR

(2) Australia, Turkey

(3) Hong Kong, Korea, Taiwan, Thailand, Singapore

(4) Argentina, Brazil, Mexico and Venezuela

(5) Egypt, India, Macao, Malaysia, South Africa, Trinidad, Tobago, Israel, Surinam, Zimbabwe

(6) Bulgaria, Czechoslovakia, Hungary, Poland, Romania, USSR, Yugoslavia

(7) Albania

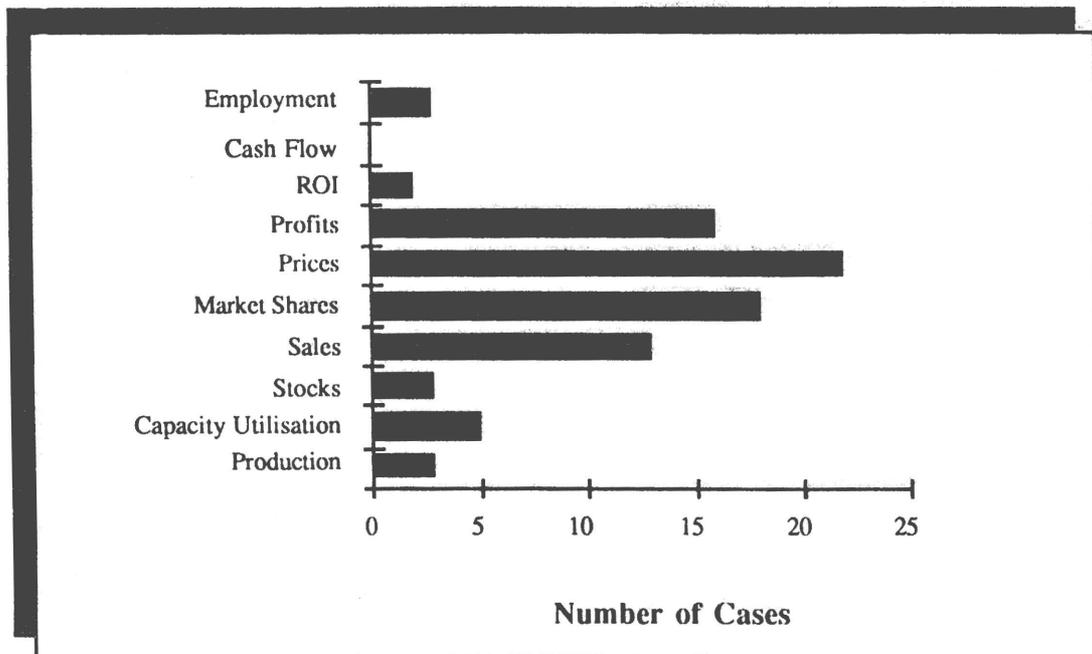
It is notable that:

- below average dumping margins have been found in cases involving developing countries;
- the dumping margins found for non-market economies, and China in particular, have been above average;
- the dumping margins found in cases involving Japan have been above average.

**Injury**

Figure V.3 presents an analysis of the key indicators relied on by the Commission when affirmative injury determinations were made.

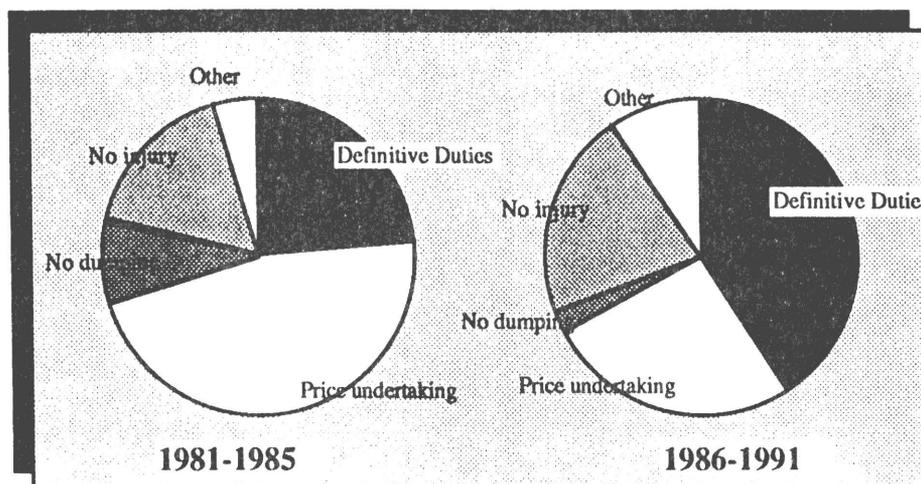
**Figure V.3: Key Indicators of Injury**



Source: Case Analysis

**Outcome of Investigations**

Figure V.4 shows the outcome of all investigations concluded over the period 1981-91 (ie. it is not restricted to the sample).

**Figure V.4: Outcome of Investigations 1981-85 and 1986-91**

Source: Commission Annual Reports

It is notable that:

- whilst the overall proportion of cases ending with the adoption of definitive measures has remained constant at around 70%, there has been an increase in the use of duties and a corresponding decline in the proportion of cases settled by the acceptance of undertakings;
- over the period as a whole, only 6% of cases were closed with a finding of no dumping; and between 1986 and 1991 the proportion was only 3%;
- just under 20% of cases were concluded with a finding of no injury.

According to the Commission's Annual Reports, no case has been closed with a finding that measures would not be in the Community interest since 1986. In that year and in each of the two preceding years one (product) case was closed on Community interest grounds:

- in 1986 an investigation into imports of malleable cast iron tube and pipe fittings was closed on the grounds that "...it was not in the Community's interest to apply protective measures in view of the high market share obtained by imports from other countries at prices which were as low as the prices of the imports subject to investigation.....";
- in 1985 a countervailing subsidy investigation was closed on Community interest grounds because the system of export subsidies in question had been terminated;
- in 1984 an investigation of imports of wrought aluminium from four countries was closed on Community interest grounds because prices had risen in the Community and worldwide since the initiation of the proceeding.

We used our sample to explore whether the chances of a case being closed without the adoption of measures is related to particular characteristics. The analysis suggests that:

- "closure rates" do not vary materially with the number of EC producers;
- cases against developing countries are less likely to be closed without the adoption of measures (22% as compared to an average of 34%);

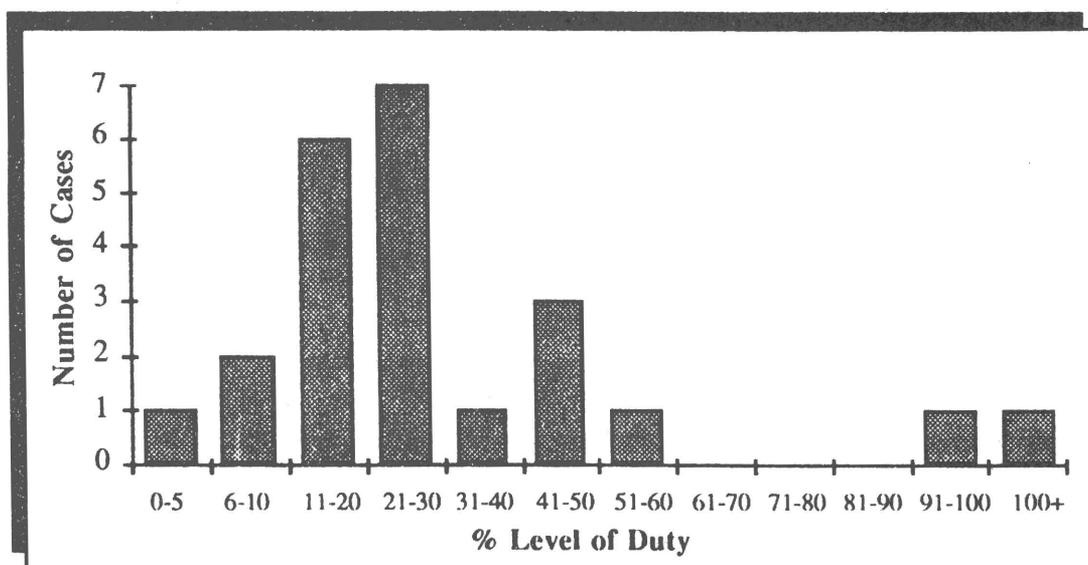
- 40% of cases involving relatively low dumping margins (up to 20%) were closed with a finding of no injury as compared to an average of 20%;
- among cases in which undercutting was considered, all cases in which the margin of undercutting was 5% or less were closed with a finding of no injury;
- cases involving markets in which demand was growing strongly immediately before the investigation were slightly more likely to be closed with a finding of no injury (20% as compared to an average of around 30%);
- nearly 50% of cases in which Community production was static or growing in the period before the investigation were closed with a finding of no injury (as compared to an average of around one-third for all cases for which demand information was available);
- there is no apparent tendency for cases against countries with a low level of import penetration in the Community to be closed with a finding of no injury. However, taking other reasons for closure into account, in around a quarter of cases where a country had 5% or less of the EC market, the case was closed without measures, as compared to a termination rate of one-sixth for higher levels of import penetration.

Several of these findings tend to confirm prior expectations.

### *Level of Duties*

Figure V.5 demonstrates the wide range in duty levels applied in our sample of cases.

**Figure V.5: Analysis of Duty Levels**



Source: Case Analysis

In cases in our sample in which duties were imposed, the average level of duties was 30%. For those same cases the average level of dumping found was 52%. In 58% of cases the duty applied was below the dumping margin, ie the injury margin was below the dumping margin.

The Commission estimate that in 50% of cases concluded over the period 1981-90 the level of duty was below the dumping margin for some or all exporters (Commission Annual Report for 1990).

### *Length of Investigations*

The average length of investigations in our sample – from initiation to closure – was 18 months. This is the same as the figure given in an answer to a Parliamentary Question in November 1991. In our sample of cases initiated in the late 1980s, cases in which no measures were ultimately introduced were concluded on average in 15 months whilst cases in which definitive measures were introduced took an average of 19 months to reach a final determination.

Table V.6 shows that the time taken to complete investigations varied significantly. However, only 17% of cases were concluded within a year.

**Table V.6: Length of Investigation by Outcome**

<i>Outcome</i>	<i>Number of Months</i>									<i>Average in days</i>
	<i>9-12</i>	<i>12-15</i>	<i>15-18</i>	<i>18-21</i>	<i>21-24</i>	<i>24-27</i>	<i>27-30</i>	<i>30-33</i>	<i>33+</i>	
Definitive Measures	5	4	8	7	-	2	1	1	2	577
No Measures	2	3	3	1	1	1	-	-	-	458
Total	7	7	11	8	1	3	1	1	2	542

*Source: Case Analysis*

Until 1987, the Commission recorded the time taken to complete investigations in its Annual Report. Over the period 1983-87 investigations were completed on average in 7.8-9.3 months. At the beginning of the 1980s the average period within which provisional measures were adopted was around 6 months.

### *Reviews*

Table V.7 presents a summary of review activity.

**Table V.7: Reviews of Anti-Dumping and Anti-Subsidy Investigations 1981 to 1991.**

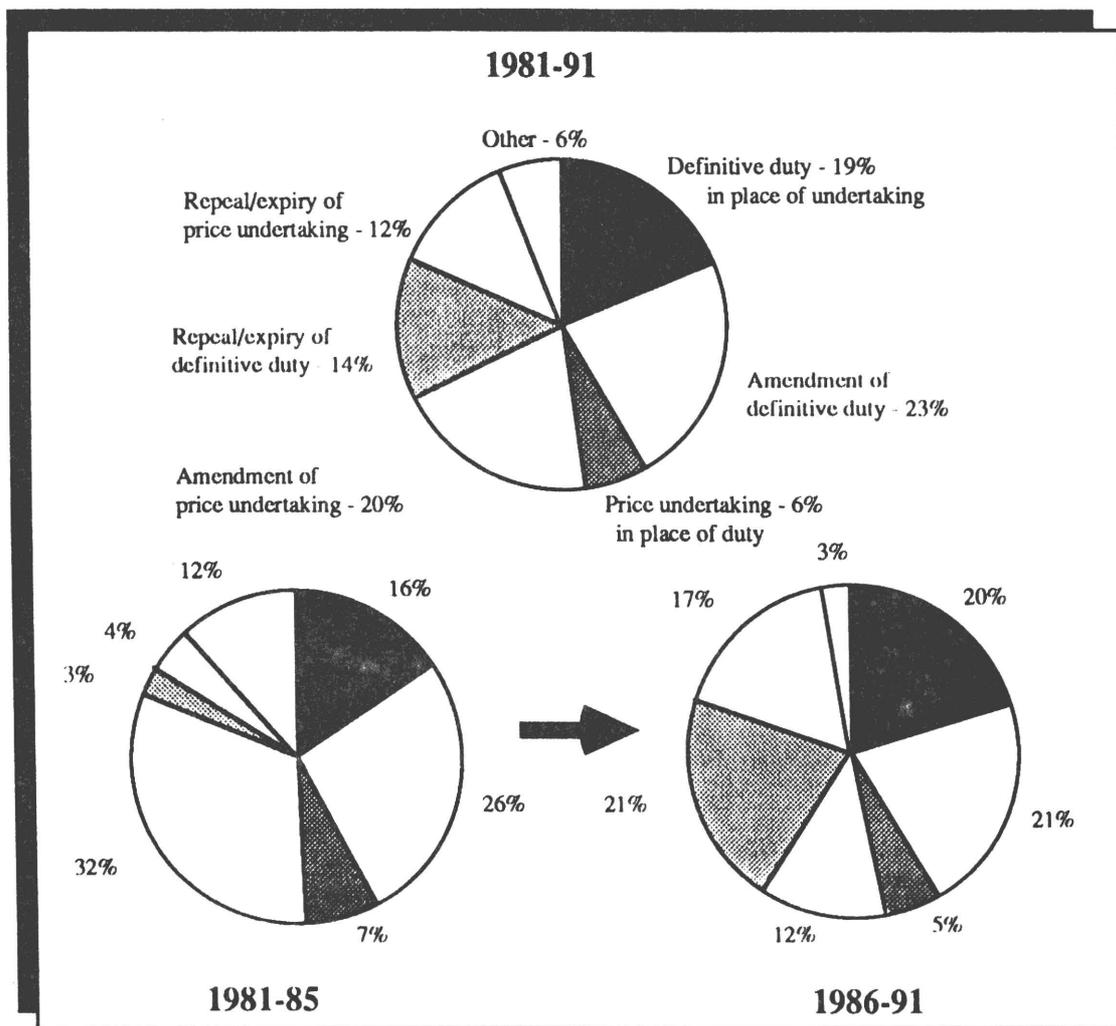
	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Reviews in progress at the beginning of the period	1	16	24	2	2	20	27	11	20	15	21
Reviews opened during the period	17	24	10	7	30	24	8	24	17	26	16
Reviews in progress during the period	18	40	34	9	32	44	35	35	37	41	37
Reviews concluded by:											
- imposition of definitive duty in lieu of price undertaking	-	1	8	1	1	1	7	4	4	6	1
- amendment of definitive duty	-	-	11	2	5	7	8	-	4	2	3
- suspension of definitive duty	-	-	-	-	3	-	1	-	-	-	-
- acceptance of price undertaking in lieu of definitive duty	-	-	2	2	1	1	1	3	-	1	-
- amendment of price undertaking	-	13	8	1	-	2	4	2	1	-	5
- repeal or expiry of definitive duty	1	-	-	-	2	2	2	1	9	6	4
- repeal or expiry of price undertaking	-	-	3	-	-	3	-	5	4	5	2
- no change of the measures in force	1	2	-	-	-	1	1	-	-	-	-
Total reviews terminated during the period	2	16	32	7	12	17	24	15	22	20	15
Reviews in progress at the end of the period	16	24	2	2	20	27	11	20	15	21	22
Provisional duties imposed during the reviews	1	13	3	3	2	8	-	7	1	-	-

Source: Commission Annual Reports

The effect of the sunset clause introduced in 1984 on the level of review activity is evident. According to the Commission's 1991 Annual Report, 75% of measures expire or are repealed under the sunset review provisions.

The effect of the sunset clause is further demonstrated by Figure V.7, which analyses the outcome of reviews: the proportion of reviews concluded with the expiry of measures increased from 7% over the period 1981-85 to 38% over the period 1986-91. The significant proportion of reviews concluded by the replacement of undertakings by duties is also notable.

**Figure V.7: Outcome of Reviews**



Source: Commission Annual Reports

**Number of Measures in Place**

At the end of 1991, imports of 64 products were subject to anti-dumping measures. The measures involved a total of 143 country cases.

**Revenue**

We estimate that in 1991 the EC would have raised about ECU 650 million through anti-dumping duties. This sum amounts to about 10% of the value of all imports affected by anti-dumping measures.

**Use of Anti-Dumping Measures by Other Countries**

Whilst this study is concerned with the economic impact of dumping in the Community, it should not be forgotten that the anti-dumping policies of other countries have a major impact on exports from the Community. The Community is not only a major user of anti-dumping measures, its companies are also a major target for anti-dumping investigations.

Over the period 1980-89:

- of the 1,456 anti-dumping investigations notified to the GATT Secretariat 271 were initiated by the Community;
- 344 anti-dumping investigations of Community exports were launched. On this very crude measure, the Community's export trade was subject to the highest level of anti-dumping intervention of any territory. The Community was followed by Japan (159 cases) and the United States (144 cases).

## VI THE COMMUNITY'S EXPERIENCE OF THE IMPACT OF ANTI-DUMPING MEASURES

### Introduction

In this section we discuss the Community's experience of the impact of anti-dumping measures drawing on our case studies, our programme of interviews and previous research. Specifically, we discuss the impact of anti-dumping measures on:

- prices;
- competition;
- trade;
- Community producers and their employees;
- industrial purchasers;
- consumers;
- exporters;
- the overall Community interest.

### Prices

The effect of anti-dumping measures on prices in the Community is a vital, if partial, indicator of their economic impact.

In considering this issue it is important to recognise that the relevant comparison is between:

- the trend in prices after measures were introduced;
- the trend in prices that would have been observed if measures had not been introduced.

Comparison with the level of prices at the time measures were introduced is only of relevance in so far as it indicates how prices might have developed in the absence of anti-dumping measures. This is an issue of some importance in markets in which there is a tendency for costs and prices to fall over time; it is not infrequently asserted that, since prices did not rise after measures were introduced, they have not had the impact intended or claimed by critics<sup>1</sup>.

The traditional framework for the analysis of trade protection measures outlined in Section IV has been widely adopted by economists to estimate their impact on prices and the resulting loss of production and consumption efficiency. A study by the UK National Consumer Council<sup>2</sup> on the impact of anti-dumping measures applied on imports of eight products in the electronics sector (including two of our case studies) argues that anti-dumping measures have imposed a heavy burden on consumers and that the cost to consumers exceeds any gain to Community producers.

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<sup>1</sup> For example, an article in the Financial Times of 23 August 1992 on the review of the anti-dumping duties on Plain Paper Photocopiers reports a statement by a spokesman for one of the leading companies in the industry asserting that the fact that the prices of photocopiers has fallen shows that Japanese exporters have absorbed anti-dumping duties and have continued to dump in the Community. This conclusion may (or may not) be valid but it does not follow simply from an observation that prices in the Community have fallen.

<sup>2</sup> International Trade and the Consumer: Working Paper 1: Consumer Electronics and the EC's Anti-dumping Policy, 1990, National Consumer Council.

The study calculates the impact of measures on consumers by:

- deriving the average effective rate of protection (including allowance for undertakings as well as duties);
- assuming that duties/undertakings are fully reflected in consumer prices;
- estimating the impact of higher prices on sales;
- calculating the implied additional annual costs (ie. higher prices) borne by consumers at the lower level of consumption.

The study's estimates of the annual costs imposed on consumers by anti-dumping measures are summarised in Table VI.1.

**Table VI.1 Annual Costs Borne by Community Consumers as a Result of Anti-Dumping Measures**

	<i>ECU million</i>		<i>ECU million</i>
Video Tape Recorders	250		140
Dot Matrix Printers	486	Daisy Wheel Printers	63
Video Cassettes and Tape Reels	48	Electronic Typewriters	105
Photocopiers	322	Small Screen TVs*	9
* Assumes only prices of Korean imports were affected.			

Source: National Consumer Council (1990) (*op cit*)

The study acknowledges that these estimates are "little more than a guess at rough orders of magnitude".

The Commission rejects estimates of the impact of measures on prices based on the effective rate of duty arguing that price increases do not take place across the whole of a product's consumption; or even, necessarily, in the prices of products subject to anti-dumping duties. Rather, in the Commission's view, the effect of duties is felt on market shares and the transfer of production as well as on prices. In particular, the Commission point to the fact that duties will often not be payable on all imports and that competition between Community producers will often be sufficient to keep prices down.

The Commission's concerns seem to us to have considerable validity. The impact of measures on prices in the Community will depend on the conditions of competition in the Community market and the strategies that Community producers and exporters follow. Generalisation is difficult, but the impact on prices, which may vary over time, of a given level of duty is likely to be greater:

- the lesser the extent to which there is competition from imports from other countries. If the export prices of these other countries are the same as or a little above those of the country(ies) subject to measures and these third countries can expand their exports to the Community, anti-dumping measures will impose little or no costs. However, equally, little relief will be provided to the Community industry. As discussed below, in cases initiated between 1980 and 1985, imports from countries subject to investigation on average accounted for 50% of all extra-EC imports between 1980 and 1985, but the proportion varied very significantly;
- the more inelastic is the demand for the product;

- the lesser the extent of competition between Community producers. In markets in which there are few Community producers, import competition is likely to be an important restraint on prices and to provide an incentive to efficiency;
- the lesser the scope for circumventing duties by relocating production without significantly increasing costs;
- the less significant are returns to scale in the industry. The more costs fall with output, the greater will be the tendency for:
  - Community producers to react to anti-dumping duties by increasing output rather than prices;
  - exporters to absorb duties in an effort to maintain sales volume.

In practice, an increase in prices equal to the effective rate of duty is likely to be at the top of the range of possibilities.

Nevertheless, estimates like those made by the National Consumer Council do demonstrate the potentially very significant impact of anti-dumping duties on prices and costs in the Community.

Professor Messerlin investigated trends in import prices excluding duties for products subject to anti-dumping proceedings<sup>1</sup>. He found that:

- overall, in real terms, the (pre-duty) prices of imports from countries subject to dumping investigations rose by 7% in the year following the initiation of the investigation and by 24% over a five-year period;
- as would be expected, prices of imports subject to duties decreased whilst those subject to undertakings increased. Somewhat surprisingly, the greatest increase was in cases in which mixed measures were applied;
- prices in intra-EC trade of goods subject to investigations tended to be declining before the investigation and subsequently stabilised. However, intra-EC prices continued to decline in cases in which only ad valorem duties were applied. In cases in which undertakings were accepted, price trends were erratic;
- overall, prices of extra-EC imports not subject to investigation tended to be falling before the investigation and to increase slightly afterwards;
- relative to intra-EC prices, those of dumped imports subject to measures rose by 17% over the three years following the initiation of the investigation.

A World Bank study of the impact of US anti-dumping and anti-subsidy measures on import prices found that experience varied between sectors<sup>2</sup>. Whilst in some cases prices were increased, in others the study suggests that duties were treated as an unavoidable tax and pre-duty prices were reduced.

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<sup>1</sup> Messerlin, *The EC Anti-dumping Regulations: A First Economic Appraisal, 1980-85*, *Wirtschaftliches Archiv*, Band 125, Heft 3 (1989).

<sup>2</sup> Harrison, *The New Trade Protection: Price Effects of Anti dumping and Countervailing Measures in the United States*, World Bank Trade Policy Working Paper, November 1991

Our case studies suggest the following observations.

### ***Denim***

The imports subject to investigation in this case amounted to around 20% of all denim imports into the Community during the investigation. In the course of the investigation it was established that there had been significant other low price imports which undercut Community producers. It must therefore be doubted whether, if measures had been imposed, there would have been a significant impact on prices in the Community since buyers would have been able to switch to other sources of low price imports. Equally, and for the same reason, it seems doubtful whether measures would have provided significant relief to the Community industry.

### ***Mini Ball Bearings***

The industry's view is that the duties applied in 1984 had the effect of slowing the rate of decrease in prices. The implication that measures have had some impact on prices is consistent with the views of exporters:

- one exporter gave us a comparison of prices for a single representative bearing which was 40% more expensive in the Community than in Japan;
- another exporter told us that prices were 20-30% higher in the Community than in Japan.

### ***Plain Paper Photocopiers***

By the time anti-dumping duties were imposed in 1986, there were few remaining "Community producers" (as defined in the proceedings) and there was little scope for imports from non-Japanese producers to increase. Although Community production by subsidiaries of Japanese producers developed during and after the proceedings, it is widely believed that costs have been higher in Europe than in Japan.

It would appear that there was significant scope for the duties to lead to prices being higher than they would otherwise have been in the Community. We have received a range of conflicting evidence and opinion, much of it (necessarily) partial. The question requires (and deserves as part of the current review of measures) more detailed study.

### ***Polyvinyl Chloride***

In the year in which the investigation was launched (1981) consumption and prices fell significantly and imports from Eastern Europe rose. During 1982 consumption began to recover and prices rose. Provisional measures were applied against imports from four East European countries during the year. Subsequently, prices increased until 1991 when consumption again turned down.

A number of factors suggest that the measures did not have any significant impact on prices:

- the highest level of injury margin determined was 12% and measures took the form of price undertakings. An undertaking involving a 12% increase in prices would have been quickly rendered irrelevant by the recovery of prices that occurred;
- during the 1980s it appears that imports from Eastern Europe continued to be priced at well below the levels realised by EC manufacturers;
- the removal of measures in 1987/88 does not seem to have influenced price trends.

Measures would need to have been implemented very rapidly for their effect to be felt while prices remained depressed. The Commission Regulation records that the dumped imports increased their market share from 2.3% in 1979 to 5.6% in 1981.

A further study by Professor Messerlin has argued that the measures imposed in this case raised prices in the Community by up to 14%<sup>1</sup>. However, the industry argues that the measures were imposed as the industry recovered from the recession and that there was little or no impact on prices. Since the price undertakings were set to allow the industry to recover its variable costs, it seems unlikely that there would have been a significant impact on prices once the market recovered.

### *Small Screen Colour Televisions*

Provisional measures were only introduced in late 1989 and it is premature to attempt to assess their impact on prices. There are indications that EC prices continued to fall after measures were applied. However, as noted above, this does not mean that measures have not had an effect.

It appears that production in this industry is highly mobile and there is production in SE Asia by EC producers as well as by Far East producers. Unless the duties were to be applied to a wider range of countries, the scope for circumventing duties by relocating production would appear to be a significant restraint on price increases.

### **Competition**

The impact of anti-dumping measures on competition is clearly very closely related to their impact on prices. Two possibilities may be distinguished:

- in the absence of anti-dumping measures, Community firms set prices and determine other aspects of their strategy in the light of the competition they actually or potentially face from imports. If the constraints imposed by import competition are removed or relaxed, Community producers may gain the power to increase prices or to restrict competition within the Community; or existing market power may be enhanced. Thus, in principle, the application of anti-dumping measures may create a competition problem in a market which was previously acceptably competitive;
- in markets in which import competition (actual and potential) is limited, anti-dumping measures may safeguard competition and keep prices down by ensuring that the Community industry remains an effective force in the market.

The risks that measures will increase prices is clearly greatest when there are few Community producers in the relevant market and the anti-dumping measure covers a high proportion of actual and potential imports. In Section III we estimated that in 40% of cases there are five or fewer producers in the Community. In some cases in which measures have been imposed there have been only one or two EC producers. Recent examples include *Glycine* and *Linear Tungsten Lightbulbs*. In another study, Professor Messerlin found that there was only one EC complainant in 39 of the 255 cases initiated between 1980 and 1985<sup>2</sup>. This evidence suggests that the impact of anti-dumping measures on competition is a significant issue.

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<sup>1</sup> Messerlin, 1990 *Anti-dumping Regulations or Pro-Cartel Law? The EC Chemical Cascs*, *World Economy*, Vol. 13 No.4

<sup>2</sup> Messerlin, (1991) *op cit*

The importance of the problem in practice cannot be assessed without detailed investigation of a large number of anti-dumping cases. In 1988 the Commission adopted a Decision against 14 EC PVC producers for an infringement of Article 85. They were alleged to have operated schemes to raise prices from 1980, ie during the period in which imports from Eastern Europe were rising. Clearly, the application of anti-dumping measures which raised export prices to the Community would have assisted the cartel. However, the price undertakings seem to have been set at a sufficiently low level to avoid this danger.

Professor Messerlin has analysed Decisions under Articles 85 & 86 during the 1980s to determine how frequently anti-dumping proceedings were launched in the same industries. Overall, he finds that in 22% of competition cases there were also anti-dumping proceedings; and that this was the case for 52% of decisions on infringements of Article 85(1). Also drawing on two case studies (including one of *Polyvinyl Chloride*), he argues that members of cartels have captured anti-dumping procedures to enforce their agreements<sup>1</sup>.

The Commission argues that it is well aware of the dangers that anti-dumping proceedings will be misused but that in practice problems are rare. In any case, competition problems fall to be dealt with under the Community's competition legislation.

Professor Messerlin's analysis does not, in our view, justify his strong conclusion. It appears that many of the industries in which there have been both competition and anti-dumping proceedings have high fixed costs and large scale plants. These conditions appear to be related to both a tendency to collude and vulnerability to dumping. Thus, there may have been both competition and anti-dumping proceedings in the same industry during the 1980s without there being any "capture" of anti-dumping proceedings. However, the clear scope for conflict between the Community's competition and anti-dumping policies must be recognised.

## Trade

In its 1990 Annual Report, the Commission presented an analysis of the proportion of Community trade which was subject to anti-dumping duties in 1989. Trade subject to undertakings was excluded. The table below summarises and extends the analysis.

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<sup>1</sup> Messerlin (1990) op cit

**Table VI.2 Analysis of Community Imports Subject to Anti-Dumping Duties, 1989**

	<i>Share of EC Imports from Country Subject to Duties %</i>	<i>Share of All EC Imports Subject to Duties %</i>
EFTA	0.2	7
Japan	3.5	65
USA and Canada	0.1	1
Turkey	0.6	1
Yugoslavia	2.0	6
Other	0.0	0
Total	0.7	80
<i>Developing Countries:</i>		
South American NIEs	0.5	4
Asian NIEs	0.9	10
Other	0.1	2
Total	0.6	16
<i>Non-Market Economies</i>	0.2	3
<b>WORLD TOTAL</b>	<b>0.6</b>	<b>100</b>

*Source: Derived from Annex S of the Ninth Annual Report of the Commission on the Community's Anti-Dumping and Anti-Subsidy Activities (1990)*

Overall, the Commission estimates that 0.6% of Community imports were subject to anti-dumping duties. Imports from Japan accounted for two-thirds of all Community imports subject to anti-dumping duties.

In addition, we have made our own estimates of the trade impact of anti-dumping measures (including undertakings as well as duties) in force at the end of 1991. We estimate that the total value of imports affected by anti-dumping measures (undertakings or duties) in 1991 was about 5,200 million ECU, approximately 1.1% of all extra-EC imports.

Although the imports of many countries are subject to measures:

- over four-fifths of imports subject to duties come from Japan:
- the Asian newly-industrialised economies together comprise approximately 7.4% of imports affected by anti-dumping measures. The most prominent country in this group is South Korea which produces about 5.5% of affected imports;
- the next most affected countries (aside from Japan and the NIEs) are the USA and China;
- Eastern European economies account for 1.7% of total imports subject to anti-dumping measures.

**Table VI.3 Geographical Distribution of Imports Subject to Anti-Dumping Measures 1991**

<i>Region/Country</i>	<i>Share of All Imports Subject to Duties</i>
China	2.5%
EFTA	1.0%
NIE	7.4%
Eastern Europe	1.7%
USA	3.3%
Japan	83.3%
Other	0.8%

*Source: Ernst & Young Estimates Based on 1991 Eurostat Data*

We have also analysed imports subject to measures by product sector. The results are given in Table VI.4. Again, the effect of the measures appears concentrated in one area. The electronics sector accounts for 86% of the value of all affected imports.

**Table VI.4 Distribution of Imports Subject to Anti-dumping Measures, 1991**

<i>Product Sector</i>	<i>Proportion of Imports Affected</i>
Chemicals	2.1%
Mechanical Engineering	3.1%
Iron and Steel	0.5%
Other Metals	0.2%
Textiles	1.5%
Electronics	85.8%
Other	6.8%

*Source: Ernst & Young Estimates Based on 1991 Eurostat Data*

Neither the Commission nor our estimates take account of the impact that measures have had on trade levels. That is, it is likely that trade in products subject to measures would otherwise have been higher. Nor do the estimates take account of a "trade chilling" effect from anti-dumping measures, ie. the impact on trade of the threat or potential for anti-dumping measures to be introduced. The existence of such an effect is widely hypothesised by economists but cannot be estimated. However, we were told by trade lawyers that exporters ask them to advise on the pricing policy they should follow to avoid a determination of dumping. Whilst this can be viewed as a deterrent effect, it suggests that estimates of the imports subject to measures do underestimate the overall impact on trade of anti-dumping measures.

#### **Trade Levels and Composition**

Professor Messerlin's study of Community anti-dumping cases initiated between 1980 and 1985 suggests that measures significantly reduce imports from countries subject to investigation and increase imports from other countries:

- a year after initiation – when the level of any definitive measures will generally not be known – the (unweighted) average reduction in import volumes from countries investigated was 18%; and after three years the reduction in imports was around 35%. Imports from other non-EC countries rose by 20% in the year following initiation and by nearly 50% over four years;

- as a result, the share of imports from countries subject to investigation fell from an average of 49% when cases were initiated to 38% three years later;
- the impact on import volumes from dumping countries was less in cases which were closed by the acceptance of undertakings than in cases in which duties were applied;
- measures had a significantly lesser impact on imports from industrialised countries than on imports from LDCs, NMEs and NICs. Messerlin suggests that this reflects the tendency to apply duties against industrialised countries and to accept undertakings from LDCs and NMEs.

In our *Polyvinyl Chloride* case study, imports from countries against which measures were adopted (with the exception of the GDR, for which data are not available) peaked in 1981 – the year in which the investigation was opened – and fell back subsequently before rising again in the last few years. By contrast, imports from other countries increased in the years after measures were introduced.

This pattern is consistent with a trade diversion effect, although it is difficult to reconcile with the conclusion above that measures did not influence the competitiveness of imports from countries subject to measures.

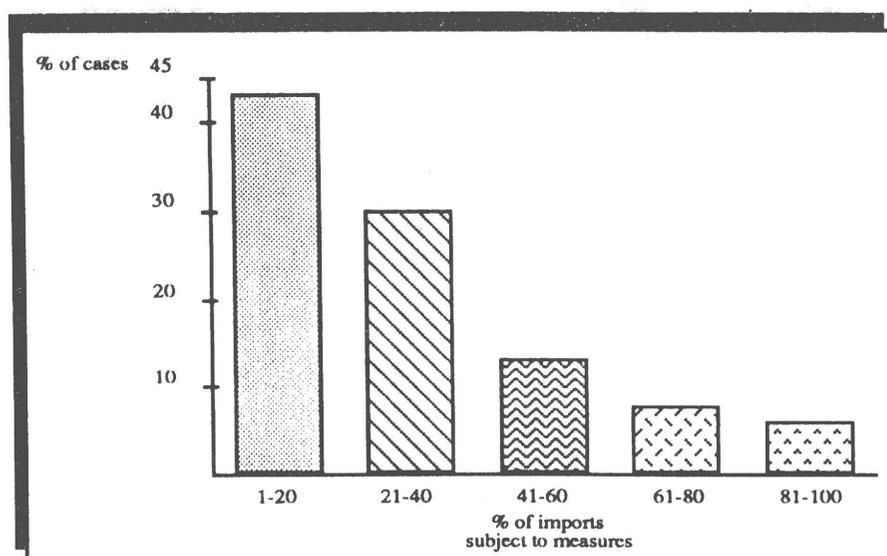
In *Plain Paper Photocopiers* it seems clear that imports from Japan were to some extent replaced by trade with other Asian countries. However, the principal effect was an increase in imports of parts from Japan as production in the Community by Japanese manufacturers built up.

In *Small Screen Colour Televisions*, imports from countries subject to measures (Korea, Hong Kong and China) fell or stabilised after the opening of the investigation. However, imports from other countries rose, as did imports from Korea of televisions of a slightly larger size.

#### ***Proportion of Trade Subject to Measures***

Professor Messerlin found that, on average, Community anti-dumping proceedings related to 49% of trade in the year in which the case was initiated. However, the proportion varied from 0.3% to 98.9%.

As Figure VI.1 shows, our analysis of measures in force at the end of 1991 suggests that in a high proportion of cases measures only affect a relatively small proportion of the Community's trade. However, in a minority of cases, a high proportion of trade is subject to measures. On average, imports from countries subject to measures accounted for 19% of all imports of the relevant products. This proportion is rather higher – 33% – in the electronics sector.

**Figure VI.1 Impact on Trade in Products Subject to Anti-Dumping Measures, 1991**

Source: Commission 1991 Annual Report and Eurostat trade statistics

### Community Producers and Employees

As one industry association pointed out, as a major exporter the Community's industry has a strong interest in encouraging open markets for its products. If protection measures induce retaliation, the overall impact on the Community's industry could well be negative. Equally, if the (threat of) trade protection measures encourages countries to open their markets, they would have a positive impact. However, leaving these points aside, it is clear that the application of anti-dumping measures, and indeed any other form of trade protection, will generally be in the interests of Community producers by reducing import competition and permitting some combination of an increase in sales volume and prices.

Furthermore, as indicated previously, if capital markets are imperfect, dumping may have an adverse effect on the level of investment. This may be manifested either in a gradual loss of competitiveness or, simply, in the Community industry being smaller than the optimum size. However, the converse is also possible. In addition to encouraging Community industry to invest, expand and increase its competitiveness in world markets, anti-dumping measures may shelter producers with little chance of achieving competitiveness in world markets.

The interests of employees in industries subject to dumping are generally similar to those of the industry itself. However, it should not be forgotten that employees are also consumers. As such they have a general interest in low prices.

### Industrial Purchasers

As noted above, the application of anti-dumping measures may have significant adverse effects "downstream" on purchasers for which the products are a significant cost item.

If downstream Community producers do not face competition from outside the Community, the effect on their costs of anti-dumping measures would be largely or wholly passed through. As such, the incidence of the anti-dumping measures would be felt by consumers. Whilst the effect of anti-dumping measures on consumption efficiency is itself, as discussed above, of great importance, concerns about the impact of anti-dumping measures on industrial purchasers have focused on cases in which the purchaser faces

international competition. Where this is the case, if anti-dumping duties raise prices above the level in world or key national markets, they will clearly place Community producers at a competitive disadvantage. Indeed, any increase in prices will reduce the competitiveness of EC purchasers in world (and EC) markets. Although such circumstances would be rare, the loss of output and employment downstream could then exceed the output gain by the Community industry affected by dumping. This issue has been recognised in cases in which the impact of measures could very clearly have a crucial impact on the competitiveness of the Community industry. For example, the undertaking given by Japanese exporters of DRAMS linked the floor price to the costs incurred by the most efficient producer. (However, this action was not sufficient to meet the concerns of EUROBIT, which represents national associations of Community manufacturers of business machinery and data processing and telecommunications equipment, which has argued vigorously against the application and level of anti-dumping measures on DRAMS.)

Users made representations in the proceeding against dumped imports of *Polyvinyl Chloride* from Eastern Europe.

No representations were made by users of *Mini Ball Bearings*. An exporter told us that customers have now become aware of the price differential between the Community and Japan (see above). However, this exporter's experience is that customers are not willing to take sides in what appears to them a dispute between valued suppliers.

### Consumers

Consumers' general interest in low prices and product variety means that the application of anti-dumping measures is clearly against their short term interests. However, more deeply:

- the distinction between the overall impact on consumers of any higher prices and the loss of consumption efficiency (which will be much less) is an important one. As stated above, the effect of duties in redistributing income from consumers to producers does not represent a net loss of economic welfare to the Community (except in so far as the producer is a subsidiary of a company owned outside the Community). Nevertheless, the loss of consumption efficiency should not be neglected as a trivial consideration. As is the case for industrial purchasers, economic analysis suggests that the impact of measures on consumer welfare should be a central consideration in anti-dumping investigations;
- the consumer interest clearly includes the longer run impact of dumping and anti-dumping duties on prices and the products available. In cases of predatory dumping, low prices in the short term are not generally in consumer's interest once account is taken of the increase in prices that will follow successful predatory dumping.

### Exporters

Anti-dumping measures are likely to influence the strategies and opportunities open to exporters in a number of ways, many of which are often regarded as attempts to avoid or circumvent the anti-dumping measure.

#### *Pricing: Trade Chilling and Deterrent Effects*

The threat of a dumping complaint may itself influence the pricing behaviour of exporters. If this is the case, many of the effects of anti-dumping duties discussed above may occur without an investigation or the imposition of duties. Such a result would be seen as a beneficial deterrent effect by advocates of anti-dumping measures and as an additional source of concern by critics.

Assessing the significance of this possibility in practice is very difficult. However, several lawyers that we spoke to in the course of the study said that they are asked to advise clients on whether proposed pricing policies could lead to a finding of dumping.

### *Pricing: Absorption of Duties*

The discussion of the impact of anti-dumping measures on prices above shows that it should not be regarded as surprising if companies do not increase their prices by the full amount of an ad valorem duty. However, there is no incentive to absorb duties under variable duty systems since the duty is set at the level necessary to achieve a specified duty inclusive price.

### *Product Strategies*

Anti-dumping measures create incentives to develop and promote products which will be outside the scope of the protection. This possibility is greatest when:

- products are developing rapidly. This can then lead to controversy as to whether new or improved products should be dutiable;
- there are close substitutes for products subject to duties. For example, in *Plain Paper Photocopiers* the largest copiers were excluded from the scope of duties. This created an incentive to exporters to promote sales of these products.

In the extreme, anti-dumping measures may lead exporters to either abandon the EC market altogether or to withdraw specific products. Our discussions with exporters indicated that the latter effect, at least, does occur in practice.

In the ball bearings market prices vary very significantly according to purchase volume and end use. One exporter told us that it had increased its efforts to secure low volume, high price sales in order to reduce the chances of being found to be dumping in reviews. This inevitably implied a reduction in competition for high volume, low price sales.

### *Impact on Location of Production*

Anti-dumping measures create an incentive to replace exports to the Community by local production. Whilst some advocates of anti-dumping measures see this effect as a benefit, it is unlikely to be in the Community's interest if Community production is more costly than exports. High cost Community production will only be viable if measures have raised prices.

During and after the *Plain Paper Photocopier* proceeding a number of Japanese exporters established production facilities in the Community for the first time (and in the case of the one Japanese manufacturer which already produced in the Community, added to those facilities). Whilst many of these companies may have established such facilities sooner or later, it seems that the timing of these investments was influenced by the intervention. This case therefore appears to demonstrate the powerful impact that anti-dumping measures may have in encouraging exporters to establish Community production.

However, it should be noted that several commentators we spoke to confirmed Professor Messerlin's belief that Japanese PPC production in the Community was relatively high cost<sup>1</sup>.

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<sup>1</sup> Messerlin and Noguchi (1991), *The EC Anti-dumping and Anti-circumvention Regulations: A Costly Yet Futile Exercise, the Case of Photocopiers*.

Production of mini ball bearings in the Community by Japanese manufacturers was already increasing in the late 1970s and continued to do so after duties were introduced (however, exports from Japan were already subject to an undertaking). Our interviews with exporters confirm that anti-dumping measures have been a significant influence on their decisions to invest in Community production.

### ***Community Production: Sourcing***

If exporters do switch production to the Community, the associated increase in sourcing will benefit suppliers in the Community directly; and there may be indirect benefits to Community producers if:

- additional volumes reduce the prices of key components;
- the range and quality of components is increased.

Several PPC manufacturers told us that the increase in Japanese production in the Community has had a beneficial effect on the components industry and that some components were now available from Community sources for the first time in many years.

Since they create an incentive to local sourcing, the application of "screwdriver" anti-circumvention measures will tend to increase this effect.

Whilst the effects of anti-dumping measures on inward investment and the availability of components from Community sources is indeed a potential source of economic benefit, there are of course other measures available to achieve these benefits.

### **The Community Interest Criterion in Practice**

The analysis of the Community interest in our five case studies and our comments may be summarised as follows.

#### ***Denim***

This case was closed with a finding of no material injury to the Community industry. Community interest issues were therefore not considered in the Decision closing the proceeding.

The Community imports denim from a number of sources and the market appears to be highly competitive. The exporters seem to have enjoyed a cost advantage over the Community industry. The low returns earned by the Community industry since the investigation suggest that this position persists.

The variety of competitively priced sources of supply suggests that there was no threat that future competition would be damaged. By the time that the investigation was concluded in 1990 production had recovered and it is therefore not apparent that there was a case for measures for one or two years to allow the industry to survive a period of intense competition. Overall, in a competitive industry such as this it is difficult to see how the application of measures could be in the Community's economic interests.

#### ***Mini Ball Bearings***

In both the original case and in the 1988/90 review, consideration of the Community interest balanced the difficulties faced by the Community industry against the effect of a price rise on consumers. The 1984 Council Regulation referred to the strategic importance of the industry whilst the review led the Council to the conclusion that the industry's viability was threatened and that its loss would have adverse effects on investment,

employment, research and development and the development of new products in fast growing sectors.

Against this, the Council recognised that there might be an impact on prices but argued that:

"Any such benefit would be minimal, since the bearings in question account for only a tiny fraction of the final price of most products."<sup>1</sup>

As noted in Section III, this is regarded by the Commission as a case of predatory or strategic dumping.

As argued by the Council, this case involved a balance between price benefits to purchasers in the short term and any longer term effects on the price or availability of ball bearings to Community purchasers. This market is a relatively concentrated one – we have seen it suggested that the top 10 world producers account for 90% of the supply of bearings. The apparent economies of large scale production and the need for "know how" suggest that the prospect of an industry re-emerging once it has lost competitiveness seems remote. In these circumstances the key judgements are whether:

- the viability and competitiveness of the European industry was threatened. As noted, in 1990 the Council judged that it was;
- if the industry were to be weakened or destroyed, would there have been adequate competition between Japanese companies or between Japanese and US suppliers;
- if competition would be restricted, would prices ultimately rise above the levels that would prevail if measures were to be applied;
- alternatively, for defence and economic strategic reasons the Community cannot afford to risk the elimination of the industry.

The treatment of the effect on prices in this case appears to reflect the Commission's general policy and deserves comment. The fact that the impact of a price increase would be widely spread does not reduce its overall significance, although this helps to explain why few representations are made in such cases. The implicit assumption seems to be that price rises are only of significance when they have a significant impact on the competitiveness of purchasers.

Anti-dumping measures have now been in place in this sector for 15 years. It seems very unlikely that Japanese companies would have sold below cost for such a period; and, as noted above, we were told by exporters that prices are lower in Japan than in the Community. This would suggest that Japanese producers may be more cost competitive in parts of the market. Such greater competitiveness could reflect the effects of dumping, but it would then appear that anti-dumping measures have not been effective in allowing the industry to regain competitiveness.

Although it is not possible for us to reach definite conclusions, after 15 years there must be a worry that purchasers have had to pay higher prices without securing the benefits of an industry which has been restored to full international competitiveness.

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<sup>1</sup> Recital 47 of Council Regulation (EEC) No 2685/90.

### *Polyvinyl Chloride*

This is an old case and it was impracticable to discuss Community interest considerations in detail. The Commission Regulation notes that users argued that the application of measures would make them less competitive. However, the Commission took the view that the serious difficulties of the industry meant that the immediate application of measures was in the Community interest.

It was suggested above that the measures did not have any significant effect on prices. Thus, in practice, it does not seem that the measures applied provided the Community industry with any significant relief. Until the late 1980s when there was a further surge in imports from Eastern Europe, the EC industry appears to have retained its market share, which may suggest that it did not suffer any long term damage from the dumping. Thus, with the benefit of hindsight, the case for applying measures to assist the industry to rationalise would seem weak.

### *Plain Paper Photocopiers*

The following issues were raised in this case:

- the impact on the industry. The Commission argued that without measures the current structure of the industry could not be sustained;
- the importance of PPC technology for other manufacturers of reprographic products and the key role of PPCs in the office equipment industry;
- the interests of own label distributors. They argued that they could not absorb duties and that their other reprographic interests would be threatened. The Commission argued that "their difficulties result principally from the nature of the business arrangements they have concluded.....". Some had contracted to take minimum quantities. The Commission noted that they were vulnerable to their suppliers setting up sales companies. It concluded that the interests of the Community lay more in preserving manufacturing capacity than in protecting OEMs;
- employment. Only a limited overall effect from measures was anticipated by the Commission;
- competition. The Commission dismissed concerns about the (short run) impact of provisional measures on competition by saying that measures were only temporary. The Council Regulation argued that there was a danger that Community producers would be taken over if measures were not imposed. It also drew attention to the prospect that six of nine exporters would begin EC manufacture;
- worries about shortages. The Commission concluded that the Community industry had adequate capacity and that exports would still be available;
- the impact on prices. The Commission accepted that there might be a short term price increase. However, the importance of the industry and the extent of the injury meant that the stability of the industry was more important. In the long term, consumers' interests lay in having a Community industry which would be able to compete with imports.

The overriding interest of the Community lay, the Commission concluded, in protecting the Community industry from further injury. The Council subsequently confirmed this view stating that:

"...on balance, it is in the Community's long term interest to eliminate the injurious effect to the Community industry concerned of the dumped Japanese imports, and that the

benefits of such protection clearly outweigh any effects, particularly on price, which could be said not to be in the interests of the consumer."

In our view the key considerations in this case, as in *Mini Ball Bearings*, were the impact of measures on prices in the short and longer term and the strategic importance of the technology.

On the former point, although the impact of measures on prices in practice remains unclear, they were intended to raise prices in the short term. The longer term effect of measures in preserving competition in the Community market is therefore the central issue.

Whilst there are only a relatively small number of suppliers of producers of photocopiers in the world and the prospect of new suppliers entering the market seems remote, the structure of the industry in Europe seems reasonably competitive. However, at the time of the investigation (and since), Japanese companies have accounted for over 70% of placements in the overall market and for a significantly higher proportion of placements of smaller machines. Thus the longer term prospects for competition turned on:

- how the structure of the Community industry would have evolved if measures had not been applied;
- given any reduction in the number of EC-owned producers, would Japanese exporters have acted competitively in the longer term?

Our best judgement is that measures have affected the structure of the Community industry. We are not in a position to judge how Japanese exporters would have reacted to a loss of competition from Community producers but note that there would remain a number of independent (Japanese) suppliers to the Community market.

The industry appears to be "strategic" in that it brings together a number of rapidly developing technologies of wider application. However, it is not apparent that the possibility of preserving or promoting the development of these technologies in other ways was considered.

### *Small Screen Colour Televisions*

The respective interests of producers and consumers and the possible longer run impact of dumping were the focus in this case. The Commission was concerned about the potential impact of continued dumping on the viability of Community production and the development of High Definition Television.

To be balanced against these concerns was the impact of measures on prices. The Commission argued that competition between EC producers and from other imports would ensure that the impact on prices would be "limited". Consumer choice would not be reduced.

Technology in the SCTV market itself is mature and there seems to be intense competition between manufacturers of several different nationalities with production throughout Asia. Thus, there would not seem to be any threat that the demise of the EC industry would reduce effective competition in the SCTV market itself. Indeed, this seems to have been the Commission's own conclusion as it argued that measures would not materially reduce competition and consumer choice.

There remains the impact on the development of new and related technologies. Here the Commission's argument appears to be that purchasers of small screen televisions should pay higher prices or buy EC rather than imported SCTV's in order to fund the development of these technologies. In the apparent absence of a strong link between the two technologies, there seem to us to be considerable dangers in this line of argument. If the development and exploitation of these technologies is economically justified, this should be funded either commercially or through an R&D support programme.

## VII THE COMMUNITY'S ANTI-DUMPING MEASURES: DUMPING DETERMINATIONS

### Introduction

In this section we discuss detailed issues raised by the Community's approach to the determination of dumping margins:

- the basis for comparison of normal value and export prices;
- the treatment of sales below cost in the exporter's domestic market;
- the treatment of sales from non-market economies;
- the treatment of related sales and marketing organisations;
- the comparison of export prices with normal value.

In many cases these same issues are a source of controversy in other leading anti-dumping jurisdictions.

### The Basis for Comparison of Normal Value and Export Prices

Dumping is often described as international price discrimination.

Since the costs of serving individual markets may vary, most definitions of price discrimination focus on differences in profit margins rather than differences in prices. Unless margins are compared or allowance is made for cost differences, it is impossible to assess whether a company is truly pursuing a discriminatory pricing strategy (ie. whether it is cross-subsidising its export sales).

This consideration would appear to underlie the provision in the GATT Code that the export and domestic price should normally be compared at the ex-factory level. If this is not done, then the comparison will be influenced by different cost conditions in the two markets. For example, if the distribution costs of a product in the exporter's domestic market are very high, as is often alleged is the case in Japan for example<sup>1</sup>, the dumping margin will be increased correspondingly unless prices are compared at a point before significant differential costs are incurred or an appropriate adjustment is made.

However, the Commission told us that its view is that:

- distribution systems in Japan and other markets which it regards as closed are high cost and also have the effect of making it very difficult or impossible for European exporters to penetrate the Japanese market;
- it is therefore appropriate not to fully adjust prices in the Japanese market for these costs in determining normal value.

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<sup>1</sup> However, the discussion of this topic in the U.S. National Bureau of Economic Research symposium on *Trade with Japan* (Krugman ed (1991)) suggests that overall distribution margins are no higher in Japan than in other developed economies.

The Parliament appears to have accepted this view when it argued in its 1990 Resolution that:

"...the new GATT Anti-Dumping Code must not restrict the possibility to compare export prices with domestic prices or constructed value, as such restrictions would favour exporters in those countries where domestic prices are high because their markets are protected."

We have some doubts about the Commission's view for a number of reasons:

- prices may be higher in the exporter's domestic market for a number of reasons other than market closure;
- the argument comes close to redefining the purpose of dumping measures as being to open closed markets to exports rather than to prevent injurious dumping of imports;
- in any case, dumping measures are not necessarily an efficient instrument for opening markets.

For these reasons, we do not accept that it is appropriate to distort dumping margins by making less than full allowance for cost differences.

### **Sales Below Cost in the Exporter's Domestic Market**

The Community's Regulation provides that, in determining normal value, sales below cost may be treated as "not having been made in the ordinary course of trade" if:

- they have been made in "substantial quantities during the investigation period";
- the prices charged will not recover costs incurred during the investigation period.

There are a variety of possible bases for measuring cost and thus for assessing whether domestic sales are made below cost. The cost concept adopted in anti-dumping proceedings is one which includes overhead costs. This can be described as a measure of "average total costs" or "fully allocated costs".

When sales have been made below costs, normal value may be determined:

- as the price at which any domestic sales which recovered costs were made;
- on the basis of export prices to third countries;
- "by adjusting the sub-production-cost price referred to above in order to eliminate loss and provide for a reasonable profit."

In practice, the Community does not use export prices to third countries to determine normal value.

Economic theory suggests that marginal or incremental cost will be an important or even overriding influence on firms' pricing decisions. Prices which do not cover full costs and provide a reasonable rate of profit should not automatically be regarded as aberrant and unfair.

On a practical level, it can be argued that the Community's practice (and that of other leading jurisdictions) penalises companies following perfectly normal pricing policies which would not be regarded as anti-competitive if adopted within the Community. Specifically, this is the case when:

(i) prices in the exporter's domestic market are depressed as a result of excess capacity due to:

- (a) the state of the economic cycle;
- (b) a fall in demand which is expected to persist;

(ii) the exporter has recently commenced production and is incurring start-up costs. Particularly when the exporter's competitors face lower costs, start-up costs may have to be absorbed in order to gain a foothold in the market;

(iii) output is expected to increase, if fixed costs and overheads are allocated as a fixed amount per period, average costs will fall. For marketing reasons firms may not wish to adopt the pricing strategy that would be required to cover costs allocated on this basis in each period;

(iv) production costs are expected to fall over time as a function of cumulative output. As previously discussed, where "learning effects" are present, there is an incentive to price below the costs incurred in the period in question;

(v) companies decide not to allocate general overheads across different products pro rata with turnover. Specifically, overhead recovery may be lower from the products subject to the dumping investigation. This strategy may be followed for a number of reasons:

(a) a judgement that the market for products subject to dumping will not bear its share of overhead costs;

(b) although classified as overheads, some costs may actually disproportionately be attributable to other products;

(c) there may be economies of scale or scope in some overhead cost items. For example, the incremental cost of promoting a new product may be less for companies which have similar products already established in the market.

(vi) the exporter discriminates between different customers (rather than different products) in its domestic market. In this situation, which may reflect the buying power of major purchasers, some prices may be below cost in the sense defined in the Regulation.

It should be stressed that in all circumstances described above the exporter may be following identical pricing strategies in its home and export markets. The Community's approach may therefore find dumping where there are no price differences or may inflate dumping margins.

*Mini Ball Bearings* appears to provide an example of the dangers of an overly rigid definition of sales below cost. In this market there are many thousands of specific products with widely varying market sizes and a significant level of joint costs. In these circumstances, it is not surprising that producers appear to seek to disproportionately recover fixed and common costs in particular segments of the market: as noted in Section VI, prices appear to vary by volume and end use.

Pricing below average total cost in these conditions would not be regarded as *prima facie* unfair or anti-competitive in competition law proceedings. Where allegations of unfair or predatory pricing are made, many economists would advocate a test involving a comparison of the price complained of with marginal costs. However, other economists would argue that sustained pricing close to marginal cost can lead to a significant and detrimental reduction in competition. But it is generally recognised that pricing below full cost is not presumptively malign.

In any case, the concept of cost employed in competition law proceedings is the cost of serving the market in question. By contrast, when a price in the exporter's domestic market is not available or fails to meet the standards prescribed in Community law (e.g. because sales are at a loss), the Commission constructs a price on the basis of costs in the exporter's domestic market. The Commission contends that this is appropriate since the GATT envisages a comparison of prices in the home and export markets. However, if costs differ between two markets, this should be taken into account in determining whether a firm is discriminating or cross-subsidising its export sales. Equally, if the intention is in fact to determine whether a firm is selling below cost in its export markets, the costs evaluated should be those incurred in serving that market.

Because standards of the kind adopted in competition proceedings have a firmer foundation in economic analysis, some commentators have advocated that dumping should be redefined as pricing in export markets at below marginal cost.

To a significant extent, these problems arise because the determination of dumping margins focuses on a relatively short period, usually a year. In examples i - iv above (except i(b)), it is quite probable that costs would be recovered over some longer period.

The new GATT Code sets some standards for the assessment of whether sales should be treated as below cost. The draft states that:

- the extended period over which sales must be made at a loss "should normally be one year but shall in no case be less than six months";
- sales shall be treated as having been made below cost in substantial quantities when the weighted average selling price is below the weighted average cost or when 20% or more of the volume of sales were made below cost;
- cost allocations should "normally" be on the basis of the records of the exporter provided that these are in accordance with normal accounting principles in the exporting country "and reasonably reflect the costs associated with the production and sale of the product under consideration";
- "costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations".

The periods set in the first two of these provisions only go a little way towards recognising that non-uniform recovery of costs over time, different products and different customers is a pervasive and unexceptionable (in itself) feature of commercial life. This would be of little consequence if costs are appropriately allocated (and accepted as such) under the remaining provisions. However, for the following reasons the provisions in the new Code seem likely to be an inadequate response to the problems identified above:

- the provisions would seem to leave much scope for interpretation. For example, even where costs are allocated in accordance with accepted accounting principles, such allocations may be rejected if they do not "reasonably reflect the costs associated.....";
- the appropriate accounting principles depend on the purpose for which accounts were prepared. In particular, it is normal to charge R&D costs in the year in which they were incurred in financial accounts. However, R&D costs are typically incurred in the expectation that they will yield benefits in later years. As such, economic analysis suggests that they should be treated as an investment and charged over a period;
- even where they produce accounts on an appropriate basis for particular activities, firms may not in practice prepare detailed product specific accounts.

The adoption and implementation of the letter of the new Code will therefore not, in our judgement, be a sufficient response to the problem of how to deal with sales at a loss. **In our view, the usual presumption should be to adopt sales prices in the exporter's domestic market as the basis for normal value determinations unless they are below variable cost.**

### *Profit Rates*

When normal value is constructed on the basis of production costs, overheads and a reasonable rate of profit, the Commission's normal approach is to use the rate of profit earned on profitable sales either by the exporter in question (when sales of some models are profitable and others are not) or the profit earned by other exporters.

If a fully allocated cost approach to constructing normal value is adopted (which we do not regard as appropriate), it is open to question whether profitability should be routinely assessed on a model specific basis. A significant proportion of costs are likely to be allocated more or less arbitrarily across specific products. If this is the case, it may be perfectly normal for a manufacturer to earn lower margins on some products on the range than others according to the size of the market for particular models and their competitiveness. In our view, it is not consistent with ordinary commercial practice to describe sales of models which cannot support their full share of allocated overheads as "not in the ordinary course of trade".

The reasonableness of the specific profit rates adopted by the Commission in some cases has been criticised. In *Mini Ball Bearings*, a mark-up of 48% (a margin of 32%) was used in the construction of the normal value of exports from Thailand. This was based on the profitability of sales which were re-imported into Thailand. The profit margin used far exceeded the dumping margin of 7% determined by the Commission.

We have not been able to explore the circumstances of this case in detail. However, if the rationale for basing constructed values on conditions in the exporter's domestic market is that profits in that market are used to cross-subsidise exports, the rate of profit should be representative of conditions in that market.

### **Non-Market Economies**

The determination of the normal value of exports from Non-Market Economies (NMEs) poses obvious problems in so far as domestic prices are administered rather than being determined by market forces. The Community's Regulation provides that normal value may be determined on the basis of:

- domestic prices in a third market economy country;
- export prices from third market economy countries;
- constructed value in a third market economy country;
- if none of these is adequate, "the price actually paid or payable in the Community for the like product, duly adjusted, if necessary, to include a reasonable profit margin", ie. the price needed for the community industry to be profitable.

The last of these possibilities clearly involves a formidable barrier to price competition from NMEs and it seems difficult to see how its adoption could be justified. However, it appears that this approach has been followed in a number of recent cases, particularly those involving China<sup>1</sup>.

Basing normal value on circumstances in third countries runs the risk that an underlying comparative advantage will be obscured. In addition, it is difficult for NME exporters to know when they will be found to be dumping.

However, these problems seem largely unavoidable if a policy of pursuing anti-dumping proceedings against NMEs is adopted.

## **Related Sales and Marketing Organisations**

### ***Introduction***

In comparing normal value and the export price at the "ex-factory level" it is crucial that a symmetrical concept of "ex-factory" is adopted on both sides of the comparison and that the same approach is adopted to making any adjustments. Since the early major cases against imports from Japan (eg. *Ball Bearings* and *Electronic Typewriters*) it has been alleged that the Commission's methodology is not symmetrical and that in these and in later cases there was an inflation of the dumping margin to a significant extent (one exporter mentioned a figure of 25-30%). Despite (apparent) changes in the Commission's methodology in later cases, exporters from the Far East and trade lawyers who represent them who we have met in the course of the study still perceive that the Commission's dumping methodology does not compare like with like. The Commission reject this and point to the fact that the Court of Justice has considered and rejected the complaints of exporters on a number of occasions.

The issue of symmetry is a major source of concern to Far East exporters and their Governments. To be able to reach a definitive conclusion on this issue would require:

- detailed study of the structure of distribution in both the Far East and the Community;
- in-depth scrutiny of the Commission's dumping margin calculations.

The former was outside our terms of reference and the latter was not possible as exporters were unwilling to agree to our seeing and discussing with the Commission their dumping margin calculations.

Nevertheless, we present here an assessment of the issues that have been raised concerning level of trade adjustments based on our discussions with the Commission, our case studies, judgments of the Court of Justice and interviews with exporters, trade lawyers and academic commentators. In so far as we are able to, we have put forward some conclusions and suggestions for changes in policy. In particular, the substance of any problems and the frictions created by clear and strongly felt perceptions of injustice could be minimised by the inclusion in the Regulations and Decisions closing investigations of a detailed description of the basis of dumping margin calculations.

It should be remembered that the analysis is an economic one and takes no position on whether the Commission is legally required or entitled to make or not to make particular adjustments under the provisions of the Anti-Dumping Regulation.

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<sup>1</sup> Vermulst & Waer, *The Calculation of Injury Margins in EC Anti-Dumping Proceedings*, Journal of World Trade, Vol 25, No.6, (1991)

### *The Problem*

Both the GATT and the Anti-Dumping Regulation state that normal value in the exporter's domestic market and the export price should normally be compared at the "ex-factory" level. If the manufacturer merely produces and sells to independent wholesalers/distributors in its home and export markets, comparison of the home and export price is relatively straightforward; and, in any case, any adjustments are likely to be of limited size. However, in many markets one or more of the following conditions apply:

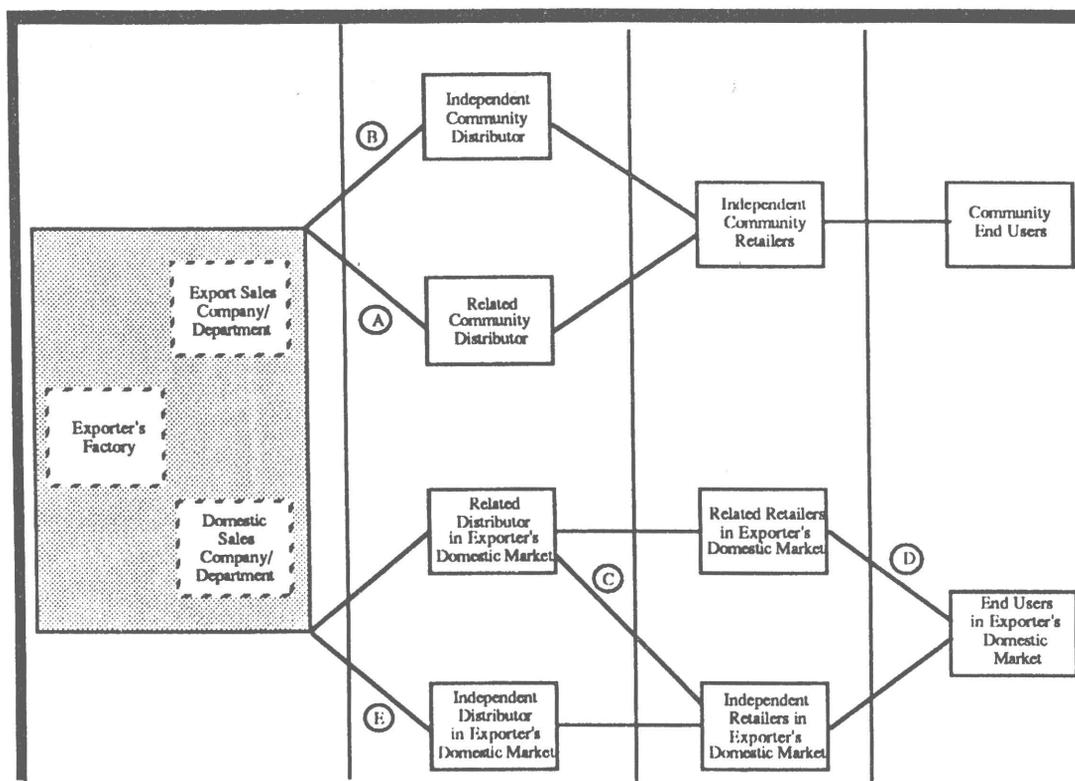
- the supplier's reputation is important in the consumer's purchase decision and there is a consequent need to invest in advertising and promotional activity;
- there is a need for technical sales support and/or after sales service;
- setting up a distribution network is costly.

Where these conditions apply, manufacturers often decide that they need to be closely involved in marketing and/or distribution. The manufacturer's objectives may be achieved through a contract with an independent distributor. However, in many cases the interests of the manufacturer and distributor differ and the manufacturer will decide to undertake a high level of marketing and distribution activity itself.

Figure VII.1 illustrates some of the possible distribution channels to the export and home markets:

- in the export market, an exporter's sales company or department sells to either an unrelated importer, which acts as a distributor in a Member State, or to a subsidiary which carries out these functions, or to a mixture of the two (perhaps to subsidiaries in the larger Member States and to unrelated importers in the smaller Member States). These distributors then sell direct to retailers, or perhaps through wholesalers;
- similarly in the domestic market, sales may be made by a sales department/subsidiary to related and/or unrelated subsidiaries and then to retailers. Some of these retailers may themselves be related.

*Figure VII.1 Distribution Channels in the Exporter's Domestic Market and in the Community*



Thus there may be differences between the domestic and export market:

- in the level of integration into distribution and marketing activities and their nature;
- since sales may be made at varying levels of distribution to independent companies or indeed to end users, in the composition of sales to independent customers;
- in the costs of undertaking distribution/marketing functions.

In addition, the functions undertaken by different levels of distribution may vary.

Where there are differences, significant adjustments need to be made to the prices charged to independent customers in the home and export market before they can provide a basis for comparison.

Alternative approaches are to:

- base the comparison on transfer prices between the manufacturer and related companies responsible for various distribution and marketing activities. Even the first transfer price may provide for the recovery of differential costs as between the home and export market. However, the degree of the problem is likely to be less. Where sales are not "at arms length", it would be necessary to construct this price;
- construct a hypothetical "ex-factory price" which is on a comparable basis to the export price.

The controversy raised by these problems has mostly concerned cases involving imports from the Far East; and notably Japan and Korea. In the case of Japan in particular, this may in part reflect differences in the structure of distribution. However, more fundamentally, the problems are due to the fact that manufacturers may (for good reasons) decide to integrate forward into distribution and marketing. Strategies of this kind are adopted by producers of all nationalities. That the same problems have not arisen in cases involving, for example, imports from the United States is probably merely a reflection of the pattern of trade and the small number of anti-dumping cases which are opened concerning imports from other developed economies.

### *The Commission's Approach*

Where the exporter is closely and directly involved in distribution and marketing in the home and export market, the Commission's general approach is to:

- construct the export price on the basis of the price at which the first independent sale is made in the Community;
- determine normal value on the basis of the prices at which the first independent sales are made in the exporter's domestic market except in so far as the exporter can demonstrate that only a sub-set of sales should be considered;
- make any adjustments for direct costs which are needed to achieve comparability.

Until *Compact Disc Players*, the Commission's general practice was to base dumping margins on sales to all independent buyers in the exporter's domestic market and in the Community. Claims that this would involve the comparison of sales at different levels of trade were made but were not generally substantiated to the Commission's satisfaction.

### *Export Price Before the Compact Disc Players Case*

Starting from the prices at which sales are made to unrelated customers in the Community, the Commission will deduct:

- the direct and indirect costs incurred by the exporter's Community subsidiary (the related importer);
- any costs incurred directly by the exporter which would normally be incurred by the importer;
- a margin for profit based on the returns typically earned by independent distributors of the same or similar products.

The size of the resulting adjustments is significant.

In some cases, exporters have sold through subsidiaries in some Community countries and through independent distributors in others. In these cases, separate dumping margins are calculated for related and independent importers.

### *Normal Value Before the Compact Disc Players Case*

The Commission's normal practice before *Compact Disc Players* was to determine normal value as the weighted average of prices at which sales were made to the first independent buyers. In cases in which the product was not sold in the domestic market or sales were unprofitable, normal value was constructed. In doing so, the Commission included S, G & A expenses at the level incurred by the manufacturer on other models or by other manufacturers and a rate of profit determined on the same basis. In either case, the level of

S, G & A costs included those incurred by sales offices and related sales companies and distributors.

### *Adjustments*

The Anti-Dumping Regulation provides that adjustments should be made for differences in:

- physical characteristics;
- duties and taxes;
- selling expenses resulting from sales made at:
  - different levels of trade;
  - in different quantities;
  - under different terms and conditions of sale.

The Regulation requires the party claiming an adjustment to prove that the claim is justified.

Under the Regulation, adjustments for selling expenses are limited to directly related costs. That is, no adjustment is made for overheads. Notwithstanding the reference to trade level differences in the section of the Regulation dealing with "Comparison" (Articles 2(9) and 2(10)), the Commission takes the view that trade level differences should be removed by the selection or construction of a comparable normal value. Subsequent adjustments are limited to any remaining differences in directly related costs.<sup>1</sup>

### *The Compact Disc Player Methodology*

In *Compact Disc Players (CDP)*, the Commission accepted the argument of four exporters that there were differences in the level of trade at which sales to independent buyers were first made in the Japanese market and in the Community.

In order to evaluate the exporters' claims, the Commission examined the functions undertaken by the exporters' customers and whether these were "clearly reflected in the quantities sold and the pattern of prices charged". This led the Commission to accept that:

- separate export prices and normal values should be established for sales to importers with their own brands;
- the export sales to the Community of five exporters should be regarded as sales to distributors;
- on the basis of an examination of functions, quantities, pricing policies and patterns of prices in Japan, there was a distinction between different types of independent customer for four of these five exporters. Accordingly, normal value was determined on the basis of the prices to the class of customers most comparable to the customer in the Community. For this reason, the methodology used in this case is also known as "selective normal value".

In terms of Figure VI.1 the effect of the CDP methodology is that Prices A and B (export prices to independent and related distributors in the Community) are compared to Price E (the price to independent distributors in the exporter's domestic market) rather than to Prices C, D & E (ie. prices confirmed to be at a different level of trade). If, on average, independent sales are first made further down the distribution chain in the domestic market

<sup>1</sup> See for example Recital 59 of the Commission Regulation in *Compact Disc Players*, OJ L 205/5-21, 18 July 1989.

than in the export market, the adoption of the CDP method will tend to reduce normal value and the dumping margin.

### *The Views of Exporters*

The approach to the determination of dumping margins in cases in which the exporter is closely and directly involved in marketing and distribution has been criticised in a number of articles and other publications<sup>1</sup> and similar views were expressed by exporters and trade lawyers who we met. The criticisms concern:

- the allowance made for the profit of related Community distributors in constructing export prices;
- the limited adjustments made to normal value before this is compared to the constructed export price;
- the detailed analysis of trade level differences;
- the basis of constructed values where this approach is adopted.

### *Allowance for Profit in Constructing Export Prices*

Many critics argue that the allowance made for profit in constructing export prices has been excessive in some cases; and some would argue that it is not appropriate to make any adjustment.

In a number of cases (eg. *Compact Disc Players* and *Plain Paper Photocopiers*), the Commission has used a 5% profit margin in constructing the export price on the basis of the price at which the first sale to an independent buyer in the Community is made. However, in another of our case studies – *Small Screen Colour Televisions* – a 10% margin was adopted on the basis of an examination of the profitability of independent importers which co-operated with the investigation.

### *Level of Trade Adjustments*

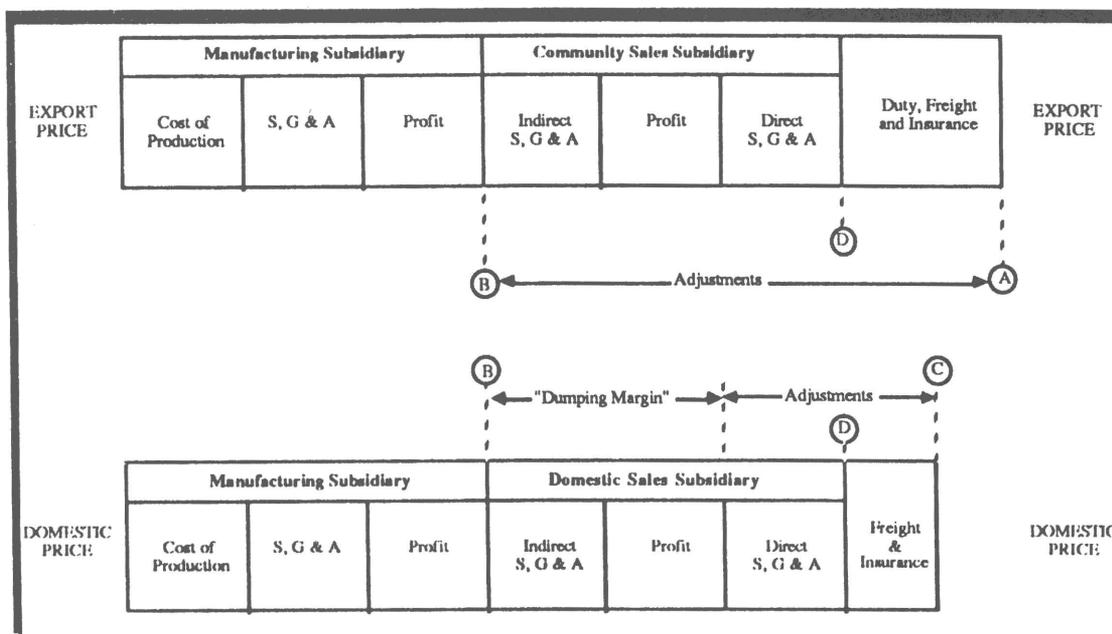
Figure VII.2 summarises in simplified form the essence of the critics' views on how the Community's methodology inflates dumping margins. In this example:

- the costs and returns earned by both the manufacturing and sales subsidiaries are the same in the domestic and export market;
- the price to the first independent buyer in the export market (A) is higher than the price in the domestic market (C), reflecting greater duty, freight and insurance costs. Once these costs are deducted, the net price is the same in both markets (D).

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<sup>1</sup> See for example: Hindley (1988), *Dumping and the Far East Trade of the European Community*, World Economy, Vol. 11, No.4; Norall (1986) *New Trends in Anti-Dumping Practice in Brussels*, World Economy, Vol 9. For an alternative view, see Lesguillons et Pangratis (1991), *Le Niveau de Commerce dans les Calculs Anti-dumping de La Commission des Communautés Europeennes apres le Cas des Disques Compact*, Droit Economique, No 4.

**Figure VII.2 Level of Trade Adjustments in Dumping Margin Calculations: the Critics' View**



In constructing the export price, the Commission deducts all the costs incurred by the Community sales subsidiary and a margin for profit. In the figure, the constructed export price is B. However, the critics argue, in the domestic market only directly related costs are deducted. Overall, therefore, it is said, the Community's approach to determining dumping margins inflates the margin by an amount which, in this example, is equal to the indirect S, G & A costs and profit margin of the domestic sales subsidiary.

#### *Basis of Constructed Values*

The critics argue that the Commission's practice of constructing values at the level of the first independent sale has the effect of building into normal value costs which are deducted from the export price. In particular, they allege that indirect S, G & A costs and profit are included and then subsequently not deducted.

#### *The Effect of the Compact Disc Player Methodology*

The critics acknowledge that the CDP methodology meets some of their concerns since, where a distinct and comparable class of independent customers can be identified in the domestic market, normal value will be based on the price at which sales are made to those customers. However, it was argued to us that:

- not all exporters will make sales of sufficient magnitude in the domestic market at a level of trade comparable to that of the constructed export price;
- even where a distinct class of independent customers exists in the domestic market, the functions and costs involved in export sales are less than those required to serve the selected domestic customers.

#### *The Impact of Community Methodology*

The Community's methodology in this area differs from that adopted by the US Department of Commerce in two respects:

- the Department of Commerce does not make an allowance for profit in constructing export prices;
- the Department of Commerce makes adjustments to normal value for S, G & A costs up to the amount of costs deducted in constructing the export price.

The potential significance of differences in methodology between the US and the Community is illustrated by our *Small Screen Colour Television* case study. In this case there was a review of dumping margins relating to almost exactly the same period in the US. The dumping margins found are shown in Table VII.1 below.

**Table VII.1 Comparison of Dumping Margins for Small Screen Colour Televisions Determined by the Community and the U.S. Department of Commerce**

	US %	Community %
Samsung	0.11	10.5
Goldstar	3.79	10.4
Daewoo	1.64	10.2

Note: US dumping margins are those resulting from the administrative review for the period 1 April 1987 to 31 March 1988. The investigation period in the Community was the calendar year 1987.

Since, we were told, prices of these products are generally lower in the US, and this remains the case after allowance for the different costs of production resulting from differences in standards, this suggests the differences in dumping margins must reflect the different methodologies followed by the Community and the US.

One exporter of *Plain Paper Photocopiers* provided us with an analysis of S, G & A costs included in the export price and normal value for one model (after allowance for differentials in conditions and terms of sale). This showed that:

- overall, the level of S, G & A expenses in normal value was around four times the level in the export price;
- around 60% of the S, G & A costs included in normal value were incurred by the manufacturing division; the remaining 40% were incurred by domestic sales offices and related sales companies. In the view of the producer, this demonstrates the level of sales and marketing activity within the manufacturing division;
- the S, G & A expenses of the manufacturing division alone included in normal value were more than twice the level of such expenses included in the export price;
- significant cost items incurred by the manufacturing division itself were included in normal value which in the export market were borne by the importer and so were excluded from the constructed export price.

Thus, in the producer's view, the dumping margin had been inflated by the inclusion in normal value of:

- costs incurred by its sales offices and related sales companies;
- costs incurred by its manufacturing division in the domestic market which were excluded from the export price.

Unfortunately, the exporter was not prepared to permit us to seek the Commission's comments on these points.

### *Impact of the New Code*

In cases in which the export price is constructed, the draft GATT Code requires that:

"the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties."

### *Conclusions*

The controversy over the Commission's approach to determining dumping margins in cases which the manufacturer is closely and directly involved in distribution and marketing raises three sets of issues:

- the appropriate basis for comparison;
- the adequacy of adjustments made for differences in the level of trade;
- detailed adjustments made in constructing prices.

### *The Appropriate Basis for Comparison*

As noted above, as a matter of policy, the Commission takes the view that normal value should reflect the sales, marketing and distribution costs incurred by a producer in supplying its domestic market. The Commission's general policy is therefore not to accept arguments for trade level adjustments to normal value which are based on cost differences.

In practice, this means that the Commission seeks to allow for any trade level differences by determining normal value on the basis of a price which is at a level of trade comparable to that of the (constructed) export price.

As we have explained above, we believe that the comparison should be made as close to the factory as possible. One suggestion is that normal value should reflect all the costs that are necessarily associated with production and direct sales by a manufacturer to an unrelated purchaser. If a sale to related company meets this condition, normal value could be constructed on the basis of the costs incurred in making that sale. If the condition is not met, normal value could be determined by deduction of costs on the basis of the first independent sale.

Alternatively, normal value could be based on the costs of supplying the export market.

### *The Adequacy of Adjustments for Level of Trade Differences*

The Commission will base normal value on the weighted average of the prices at which sales are first made to independent buyers (or on the constructed value of such sales) unless the exporter can demonstrate that:

- the functions undertaken by the (generally related) Community importer differ from those undertaken by distinct classes of customer in the domestic market;
- one of these distinct classes of customer undertakes functions comparable to those performed by the Community importer.

In the course of this study we have unfortunately not been able to study specific dumping calculations in the depth necessary to comment on the adequacy of the adjustments made by the Commission.

However, it is clear that there continues to be major disagreement between exporters and the Commission and the Court of Justice on the appropriate interpretation of the provisions of the Anti-Dumping Regulation relating to the determination of normal value and the provisions relating to adjustments to normal value and the export price in order to achieve comparability. As previously stated, we are not competent to comment on questions of legal interpretation; nor is it necessary that we should comment for the purposes of this study. However, the appropriate basis for determining dumping margins in these cases is a major and difficult policy issue.

The root of the disagreement between the Commission and its critics appears to be differing assessments of the level of trade at which the exporter makes the first independent sale in its domestic market. In the view of the critics, the level of trade at which the Commission has determined normal value is further down the distribution chain than that at which the export sale takes place. If this view is accepted, normal value and the dumping margin are inflated. However, in the Commission's view its determinations of normal value have been made at a comparable level of trade.

The issue is illustrated by one of the Court cases arising from *Plain Paper Photocopiers*<sup>1</sup>;

- Matsushita argued that Matsushita Electrical Industries (MEI) was not merely a manufacturer but also performed a number of sales functions. MEI argued that the Commission should have treated MEI as a producer and determined normal value on the basis of sales to related sales companies;
- the Council contended that the functions of the sales department in the export market were partly undertaken by MEI's related sales companies.

If this assessment is correct, complex legal and economic disputes turn on an issue which is essentially empirical: the functions undertaken at differing levels of distribution in the domestic and Community markets and the allocation of the associated costs to particular classes of sale. Such disagreements should be capable of being reduced if not eliminated through detailed analysis of the functions undertaken by the various levels of distribution. The need for such analysis would be minimised if normal value was determined "close to the factory" as discussed above.

In any case, the new GATT Code, if adopted, would seem to lower the standard of evidence needed to support claims for level of trade adjustments.

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<sup>1</sup> Report for the Hearing in Case C 175/87, Matsushita Electrical Industrial Co. Ltd and Matsushita Electric Trading Co. Ltd v Council of the European Communities.

### *Detailed Adjustments*

If dumping is viewed as sales below marginal cost, it would follow that only the incremental costs incurred by the Community subsidiary should be deducted in computing the export price.

However, if a fully allocated cost approach to the determination of dumping margins is adopted, it does seem appropriate to make an allowance for reasonable profit.

We have not been able to review in detail the profit margin used. However, the margin of 10% used in *Small Screen Colour Televisions* does seem high to be regarded as typical of all companies, especially as 5% is the margin normally adopted. We believe that the margin employed should be clearly representative of the normal returns earned in the sector of distribution concerned and that care should be taken to ensure that abnormal figures are not adopted.

### *Guiding Principles*

In summary, we conclude that:

- **there is an overriding requirement for fundamentally economic reasons that normal value and the export price should be on the same basis. So far as possible, differences should be removed by the adoption of a selective normal value. However, to the extent that this is not possible, we see little alternative to making cost-based adjustments to ensure comparability. Thus, any adjustments necessary to achieve comparability should include allowance for differences in indirect as well as direct costs. This would not appear to be provided for in the Anti-Dumping Regulation;**
- **there is no economic rationale for treating separately the determinations of normal value and the export price and consideration of the need for adjustments to achieve comparability separately. The need for adjustments will crucially depend on the basis of normal value and the export price;**
- **since we see no reason why the level of any dumping margin should depend on the costs of distribution and marketing incurred in the exporter's domestic market, the dumping margin should be assessed at a level of trade as "close to the factory" as possible;**
- **in any case, there are strong economic arguments for comparing the export price with an estimate of the cost of supplying the Community market rather than the cost of supplying the exporter's domestic market;**
- **if allowance is made for the profit that an importer might be expected to earn in constructing export prices, care should be taken to ensure that the rate of profit is truly representative.**

### **Comparison of Export Prices with Normal Value**

Like other major users of the anti-dumping measures, the Community computes dumping margins by:

- **establishing a normal value (or where appropriate a series of normal values for specific products);**

- comparing export prices with normal value on a transaction by transaction basis to determine the margin of dumping for each transaction;
- assigning a value of zero to transactions where the export price exceeds normal value;
- averaging the transaction specific dumping margins (including zero values for all undumped transactions).

This procedure has been criticised as creating a bias towards a finding of dumping since transactions at prices above normal value are not permitted to offset transactions below normal value. In particular, a positive dumping margin may be found when both prices in the exporter's domestic market and the export price to the Community are the same on average but vary from transaction to transaction. The simple example below illustrates this possibility.

**Table VII.2: Illustrative Example of the Averaging Problem**

	<i>Transaction 1</i>	<i>Transaction 2</i>	<i>Transaction 3</i>	<i>Average</i>
Prices in Exporter's Domestic Market	110	100	90	100
Export Price	110	100	90	100
Dumping Margin (% of Export Price)	0	0	11	3.7

The Commission argue that:

- the issue only arises in cases where there is a significant degree of price variability;
- the obvious alternative procedure – comparing average export prices with normal value – could obscure cases in which injurious dumping has occurred. For example, the dumped exports may be concentrated in a single country or region of the Community or in a particular product niche.

As noted above, the prices paid by specific customers for ball bearings can vary very significantly. An exporter showed us that the range of prices paid by large customers for one type of bearing was DM1.05 – DM1.5. Small customers paid up to DM3. With this degree of price variability, there would seem to be significant scope for the comparison of specific export prices with average normal values to distort dumping margins.

The draft of the new GATT Code states that dumping margins should normally be established by comparing normal values and export prices which have both been computed as weighted averages. However, it allows comparison of (weighted average) normal values with transaction specific export prices if:

"the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods and if an explanation is provided why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison."

We agree that as a matter of normal practice the average-to-average method should be used but that allowance needs to be made for exceptional circumstances. However, the above form of words would seem to allow considerable scope for interpretation. **We therefore recommend that, in implementing this change, the Commission should provide**

**guidance on the circumstances in which it would not follow the average-to-average approach.**

Differences in market circumstances during the investigation period could dictate the need to make an average-to-average comparison for sub-periods (however, computing margins for sub-periods would not be a change in policy for the Community). However, it would only seem appropriate to calculate specific margins for particular producers or regions where there is a systematic policy of undercutting or price repression.

## VIII THE COMMUNITY'S ANTI-DUMPING MEASURES: INJURY AND THE COMMUNITY INTEREST

### Introduction

In this section we discuss:

- issues raised by the injury and Community interest criteria;
- the definition of the relevant market for anti-dumping proceedings.

### Injury

The analysis of whether the Community industry has suffered injury raises a number of detailed issues relating to:

- indicators of injury;
- the causal link between dumping and injury
- the significance of injury as an indicator of the economic effects of dumping.

### *Indicators of Injury*

The Community's injury criterion, like the GATT code, defines material injury to the Community industry in terms of the impact of dumped imports on a range of indicators of economic loss or distress. The indicators included in the Anti-Dumping Regulation are:

- production;
- utilisation of capacity;
- stocks;
- sales;
- market share;
- depression of prices or prevention of price increases that would otherwise have occurred;
- profits;
- returns on investment;
- cash flow;
- employment.

As the discussion of our case studies and the analysis in Section V show, a determination of material injury will rely on a number of these indicators.

A pre-condition for a finding of material injury is that the dumped imports should have either undercut the prices of Community producers or caused them to:

- cut their prices in response to the prices of dumped imports "price repression";
- not increase their prices when they would otherwise have done so "price suppression".

Determining whether dumping has led to price repression or suppression requires analysis and judgement since the prices that Community producers would have realised in the absence of dumping cannot be known.

Price undercutting would seem to be directly observable and thus relatively clearcut. However, the prices of exporters and Community producers may not be comparable for a number of reasons:

- exporters and Community producers may not distribute their products in the same way. In the market for *Plain Paper Photocopiers*, exporters largely sold through dealers whilst Community producers sold to end users;
- the products themselves may not be comparable. In *Plain Paper Photocopiers*, only limited evidence of undercutting was found. However, the Commission argued that the exporters' nearest equivalent products tended to have additional features;
- high volume purchasers will tend to get keener prices. One exporter of *Mini Ball Bearings* argued to us that undercutting margins had been exaggerated in this case by the comparison of prices for bearings which exporters tended to sell in high volumes, whilst Community producers tended to sell smaller volumes of the same bearings.

Thus, even determining whether an essential pre-condition for material injury is met is far from straightforward.

One industry association argued that the analysis of injury should not have regard to the profitability of the Community industry as this would weaken incentives to take measures which would enable Community industry to meet aggressive price competition. We agree that there must be some risk that this will happen. However, the same point could be made about other indicators and we believe that this risk should be counted as one of the potential distortions arising from the operation of anti-dumping measures.

### *The Causal Link Between Dumping and Injury*

#### *The Appropriate Counterfactual*

Analysis of the impact of dumping on the Community industry requires (implicitly at least) the specification of the position that would have prevailed in the absence of dumping. The (apparently) obvious solution is to base the analysis on the presumption that exports would otherwise have been made at the product's normal value. If this approach is adopted, the dumping margin is itself a measure of the capacity of dumping to injure. However:

- if the exporter sells at a loss in its domestic market, it is unlikely to be able to export to the Community at prices which match its (constructed) normal value;
- if the exporter benefits from a protected home market, removal of the conditions which permit dumping would bring prices in the exporter's domestic market down.

Thus the dumping margin may well exaggerate the potential impact of dumping on prices in the Community.

#### *Period of Analysis*

The analysis of injury will typically cover a period of three years prior to the investigation. However, in *Plain Paper Photocopiers*, the Commission also examined trends before the formal reference period. By contrast, dumping determinations typically relate to the year preceding the investigation. Thus it is generally assumed that, if exporters were dumping during the year preceding the investigation, they were also dumping during the longer period over which the injury analysis is conducted.

By contrast, in Australia dumping margins are determined for two or three years.

In principle, it seems to us desirable that the existence of dumping should be investigated for the whole of the reference period. At present, the Commission analyses trends in prices over a period of three years or so before the investigation. However, pricing trends in the exporter's domestic market are not considered. Circumstances may change within the reference period with the result that a dumping margin determined for a relatively short period could be misleading. For example, when significant and rapid movements in exchange rates take place, it may take several years for exporters to adjust their strategies.

However, we recognise that it would be very costly to make formal determinations of dumping on the basis of the reference period as a whole.

**We therefore recommend that the Commission should examine and report on pricing trends in the exporter's home market and in the Community during the reference period to verify that those trends are indeed consistent with the emergence or development of dumping and the injury suffered by the Community industry. However, this should not include the estimation of dumping margins for the whole reference period.**

#### *Other Causes of Injury*

The GATT Code contains a substantial list of factors other than dumping which could be responsible for injury. Whether dumping has itself caused material injury is a matter of analysis and judgement in the circumstances of the particular case. Section IV includes a discussion of injury in our case studies. However, we would make the following observations:

- it would seem important that the extent of imports which have actually been dumped should be examined closely. In *Denim* the fact that a high proportion of imports from the countries investigated were not in fact dumped played a significant part in the decision to close the proceeding. But in our other case studies, it is not apparent that the injury analysis distinguished between dumped and (any) undumped imports;
- where, as in *Small Screen Colour Televisions*, the margin by which Community production was undercut significantly exceeded the dumping margins, it would appear that the exporter had a significant comparative advantage over Community producers. The application of a duty equal to the dumping margin would not prevent the exploitation of that advantage. But whether dumping is itself a source of "material injury" in such circumstances needs to be considered.

As discussed further in Section VIII, where injury is partly due to other factors, this should be taken into account in the determination of the injury margin.

#### *Cumulation and De Minimis*

Like other leading jurisdictions, where imports from a number of countries are under investigation, the Community will cumulate the market shares involved. Focusing on the injury criterion alone, this seems to us appropriate since there seems little reason to treat dumped imports accounting for, say, 10% of the Community market differently according to the number of exporting countries. However, as we discuss below, the number of independent sources of exports to the Community is of considerable relevance to the consideration of the Community interest.

As noted in Section II, the new GATT Code sets a de minimis level of 2% for dumping and 1% for market shares (subject to a provision that the total for countries with a share of less than 1% should not exceed 2.5%). However, one industry association that we met told us that its policy was not to make a complaint unless dumped imports have a Community market share of 5% or more.

In practice, as noted in Section V, there are a significant number of cases in which investigations have been launched which have only involved small market shares and the de minimis threshold for dumping in practice is 1.5%.

As our analysis of the outcome of proceedings shows (Section V above), cases in which a low dumping margin was determined are more likely to have been closed with a finding of no injury.

A decline in prices of 1.5% or 2% or a decline in sales of 5% would not seem out of the range of normal experience for most industries. Indeed, dumping margins of a few per cent must be within the margin of error of the calculations.

The interdependence of the levels of dumping and import penetration must be recognised. For example, a low but rising level of import penetration will tend to have a greater capacity to injure the Community industry if the level of dumping is high.

**We recommend that the Commission should adopt and publish guidance on non-binding de minimis thresholds which are significantly higher than those applied at present.**

### *The Partial Nature of "Injury"*

As discussed in Section IV, dumping and anti-dumping measures have a significant impact on economic interests other than those of the Community industry affected. In particular:

- when anti-dumping measures increase prices there will be:
  - a transfer of income from consumers to Community producers and possibly to exporters;
  - downstream effects on industrial purchasers, which may themselves be significantly "impaired";
- suppliers of components and other imports will benefit from anti-dumping measures to the extent that they have the effect of increasing Community output.

Whatever damage may have been done to Community industry by dumping, an economic analysis of the impact on producers would also focus on whether and to what extent future production in the Community would be efficient and the measures necessary to achieve this. This would involve consideration of questions such as:

- the competitiveness of EC producers in world markets and in particular with the exporters alleged to be dumping;
- the impact that dumping, if allowed to continue, would have on the scale of the industry and its future competitiveness;
- where there is a lack of competitiveness, the scope for the EC industry to improve its performance and the level of protection needed to achieve this;
- the impact that protection would have on competition and pricing in the Community market.

In the light of the above, we believe that whatever damage may have been done to the Community industry by dumping, an important policy question is whether there is scope to secure economic benefits by the adoption of measures. Equally, a focus on the future suggests that there may be circumstances in which measures should be adopted in

anticipation of the effects that dumping will have if allowed to continue, that is on the basis of a threat of injury.

This brings us to the related question of the treatment of the Community interest.

### **The Community Interest**

The Commission's Anti-Dumping Regulation does not define the Community Interest. Clearly it can embrace a wide range of issues in the fields of politics and international relations as well as economic questions. Here we focus on economic considerations, whilst recognising that in practice other factors have to be taken into account.

Economic analysis suggests that:

- the effects on industrial purchasers, component suppliers, consumers and employment are all potentially very significant, as well as the impact on the Community Industry;
- there is no reason to believe that the effects on the industry subject to dumping are predominant;
- it is important that long term issues as well as the immediate and transparent effects of dumping are taken into account. The dangers of pre-occupation with the short term include the potential failure to recognise that:
  - dumped prices may not be sustainable;
  - "injury" to the Community industry may be a symptom of a desirable reallocation of resources towards industries in which the Community and its industries are fully competitive.

As noted in Section V, it is some years since a proceeding was closed with a finding that the application of measures would not be in the Community interest. This is surprising since:

- the Commission takes the view that an investigation should be opened if there is reasonable evidence of dumping and injury and that Community interest issues should not be taken into account at this stage;
- dumping investigations have been launched and measures imposed in a wide variety of market circumstances;
- analysis suggests that the producer interest is not a good proxy for the overall Community economic interest.

Many of the experts and observers we met in the course of the study commented on the Community interest criterion and a wide range of views were expressed.

A number of experts - including several trade lawyers - felt that, in practice, the Commission treats the Community interest as that of the industry. At the most, the criterion acts as a form of safety valve allowing the Commission and the Council not to impose measures, or to modify them, when findings of dumping and injury have been made. Following from this position, some observers felt that the pretence that other interests are taken into account should be abandoned. Others felt that giving substance to the analysis of the Community interest was a central and necessary reform.

By contrast, some of our interviewees - and particularly industry associations - were concerned that application of the Community interest criterion could prevent Community industry from obtaining the protection it needed and deserved. The principal themes were:

- concern at the range of considerations that could be brought into account. One view was that the Community interest should be limited to those of the Community industry and industrial purchasers. Consumers were felt to pay excessive attention to short term issues. Political considerations should be excluded;
- dumping and other unfair trading practices are contrary to the Community interest. One view was that since the Community only applies measures up to the level necessary to remove injury, the Community interest criterion is superfluous.

### *Recommendations on the Community Interest*

Based on our case studies, the interview programme and a review of the outcome of cases over the last decade, our overall impression is that there is scope for more detailed analysis of the impact of measures and a need to reconsider the balance between purchaser and producer interests.

Economic theory suggests that the evaluation of whether measures would be in the Community interest should be forward looking. That is, it should seek to compare how relevant economic magnitudes will develop if measures are imposed compared with the position if no measures are adopted. As previously discussed, considerations of efficient policy design indicate that measures outside the realm of anti-dumping policy should also be considered where relevant as responses to problems created by dumping.

We believe that the cases in which dumping may call for some form of policy response fall into two main categories:

- those in which the underlying problem is the possible effect of dumping on long term competition, that is those in which dumping may ultimately lead to an increase in the prices faced by Community purchasers;
- those in which dumping may lead to an undesirable effect on the scale or structure of the Community industry, such that what would otherwise be an internationally efficient Community industry does not develop.

In addition, on occasions there may be special reasons for dumping measures outside these categories, eg. the need to maintain a "strategic" industry or to combat short term regional unemployment problems.

It is, of course, not an easy matter to assess the impact of anti-dumping measures on the future competitive position and efficiency.

However, in terms of assessing the impact on competition, the key question is whether there will be effective competition in future, ie. a situation whereby companies are competing actively with each other in terms of prices, services offered, etc, and there is a stimulus to efficiency, new product development, etc. It is not possible to be prescriptive about how to determine "effective competition" but key considerations are:

- number of competitors;
- country of origin of competitors;
- entry barriers;
- customer sensitivity to changes in product offering, including price;

- what is the apparent rationale for dumping and whether the dumped price covers the exporter's costs in serving the EC market.

In terms of assessing the impact on efficiency, it is important to consider whether exporting countries have "natural" advantages over the Community industry, or whether following the dumping episode and any resultant damage, there are reasons to believe that if measures are imposed, the Community industry can become internationally competitive again.

The checklist developed by the OECD and included at Annex VIII.A outlines some of the key questions which might be considered in the analysis of the Community interest.

### *Key Conclusions on the Community Interest*

The discussion in this and the previous sections lead us to the following key conclusions:

- a finding that imports into the Community have been dumped does not of itself demonstrate that the economic welfare of the Community has been damaged or that the application of measures would increase economic welfare;
- a Community industry could be materially injured by free and fair trade;
- the Commission should report its analysis of the impact of dumping, **and** of imposing anti-dumping measures on all economic interests from both a long and short term perspective.

There is a need for a balanced assessment in the light of the specific circumstances of the case. For example, the following statement, while eminently reasonable in its own right, nevertheless provides a starting point of analysis that injurious dumping is per se detrimental to the Community interest. The danger is that such a starting point means that effects on other interests may not be given proper attention. Recital 121 of the Commission Regulation adopting provisional measures on imports of Compact Disc Players states that:

"The purpose of anti-dumping duties is to eliminate dumping which is causing injury to the Community industry and thus re-establish a situation of open and fair competition which is fundamentally in the general Community interest."

### **Definition of the Relevant Market**

The injury and Community interest criteria require different approaches to market definition:

- the analysis of injury focuses on producers of "like products" in the Community;
- the analysis of the Community interest has the effect of widening the scope of the proceeding to include the wider impact of anti-dumping measures.

The Anti-Dumping Regulation defines like products as those which are identical to or closely resemble the exported product under investigation. Thus, the test would appear to be one which emphasises the physical likeness of the Community manufactured products to the dumped imports.

Economic analysis suggests that dumping may also adversely affect manufacturers of products which, whilst not physically identical, are regarded by purchasers as being (at least) close substitutes for the dumped imports. Specifically, the conventional economic approach to market definition focuses on how responsive demand for product A is to the

price of product B. If the level of "cross price elasticity" is high, products A and B would be regarded as being in the same economic market. The relevance of this approach to dumping is clear. Manufacturers who suffer a significant loss of sales as a result of the dumping potentially suffer "material injury" even if there is no great physical similarity between their products and the dumped imports.

In addition, as discussed in Sections IV and V, dumping may have wider effects which are very similar to those on the products directly affected:

- it is very likely that suppliers to Community producers will lose sales as a result of dumping and their own viability may be threatened;
- in some cases (eg. *Mini Ball Bearings*) it has been argued that the loss of the Community industry would reduce the competitiveness of purchasers;
- if other products rely on the same technology or production facilities, dumping may increase the cost burden which these other products have to bear making their development less attractive. This would seem to be the case in the consumer electronics sector.

However, whilst these possibilities require consideration under the Community interest, they are outside the scope of an injury criterion which is consistent with the GATT Code.

Commission practice on market definition appears to vary:

- in *Mini Ball Bearings*, the Commission's injury analysis in the original proceeding considered only those bearings. However, in the 1988/90 review the injury analysis examined the ball bearings market as a whole;
- in *Plain Paper Photocopiers*, it adopted a broad economic approach to market definition arguing that the various segments of the market (defined in terms of copy speed) overlapped and that users regarded large machines and (a number of) small machines as alternatives. However, it concluded that there had not been material injury to Community production of the largest machines and these were excluded from the scope of the duties applied;
- in *Small Screen Colour Televisions*, the proceedings were concerned with TVs with a diagonal screen measurement of more than 6 inches and not more than 16 inches. In this case emphasis was placed on physical characteristics and on the distinct uses of TVs with screen sizes in this range.

In our other case studies (*Denim* and *Polyvinyl Chloride*), the appropriate definition of the market is reasonably clear. However, ball bearings, PPCs and televisions are all differentiated products. That is, either or both of the following conditions apply:

- on the demand side of the market individual models are regarded by purchasers as alternatives but are not perfectly substitutable for one another. This would seem to be the case for different sizes of PPC and television, although the degree of substitutability may differ;
- on the production side of the market, production of a range of models reduces costs because the same equipment or technologies are used or because there are marketing synergies. Manufacturers therefore typically produce a full or nearly full range. Although there are examples of companies which focus on market niches, this appears to be the case in each of the three industries.

We believe that economic considerations suggest that a broad approach to market definition is likely to be appropriate in most cases. Adopting a narrow approach creates two principal risks:

- the relative competitiveness of exporters and Community producers may vary across a (differentiated) product range. If proceedings focus only on niches in which exporters are competing aggressively, a distorted impression of the implications of dumping for the wider sector may be created;
- equally, where the wider impact of dumping of a restricted range of products is significant, this should be taken into account.

These considerations demonstrate the very close link between the injury and Community interest criteria. Whilst it may be possible to take a broad approach to market definition in the injury analysis, wider effects on the sector and on suppliers and users must clearly fall for consideration under the Community interest criterion.

We believe that there is significant scope for the Commission to show more clearly that it has fully evaluated the implications of product differentiation in proceedings. For example:

- in *Mini Ball Bearings*, the overall level of import penetration by Japanese exporters is very much lower in the sector as a whole than in mini ball bearings alone. The impression given about the impact of the dumped exports therefore depended on the market definition selected;
- in *Small Screen Colour Televisions*, whilst the injury analysis focused on products within this narrow market definition, the (Community interest) argument for applying duties on imports rested to a significant extent on the existence of a threat to the wider profitability of Community producers and the implications of this for the development of new generation products.

**We suggest that a single analysis of all relevant past and prospective market trends should be presented as a basis for conclusions on injury and the Community interest.**

## Appendix VIII.A

### OECD INDICATIVE CHECKLIST FOR THE ASSESSMENT OF TRADE POLICY MEASURES (5)

- a) Is the measure in conformity with the country's international obligations and commitments?
- b) What is the expected effect of the measure on the domestic prices of the goods or services concerned and on the general price level?
- c) What are the expected direct economic gains to the domestic sector, industry or firms in question (technically, the increase in producers' surplus)?
- d) What types of jobs are expected to be affected by the measure? What are the net employment effects of the measure in the short and long term?
- e) What are the expected (direct) gains to government revenues (eg. from tariffs, import licences, tax receipts) and/or increased government costs (eg. export promotion, government subsidies, lost tax revenues)?
- f) What are the direct costs of the measure to consumers due to the resulting higher prices they must pay for the product in question and the reduction in the level of consumption of the product (technically, the reduction in consumers' surplus)? Are there specific groups of consumers which are particularly affected by the measure?
- g) What is the likely impact of the measure on the availability, choice, quality and safety of goods and services?
- h) What is the likely impact of the measure on the structure of the relevant markets and the competitive process within those markets?
- i) In the medium and longer term perspective, will the measure, on balance, encourage or permit structural adaptation of domestic industry leading over time to increased productivity and international competitiveness, or will it further weaken and delay pressures for such adaptation? Is the measure of a temporary nature? Is it contingent on, or linked to, other policy measures designed to bring about the desired structural adjustment?
- j) What will be the expected effect on investment by domestic firms in the affected sector, by potential new entrants and by foreign investors?
- k) What could be the expected economic effects of the measure on other sectors of the economy, in particular, on firms purchasing products from, and selling products to, the industry in question?
- l) What are the likely effects of the measure on other countries? How can prejudice to trading partners be minimised?
- m) How are other government and foreign firms likely to react to the measure and what would be the expected effect on the economy of such actions? Is the measure a response to unfair practices in other countries?

## **IX THE COMMUNITY'S ANTI-DUMPING MEASURES: SELECTION AND DESIGN OF MEASURES**

### **Introduction**

In this section we discuss the advantages and disadvantages of different types of anti-dumping measure from an economic perspective and the considerations relevant to the determination of the level of protection provided to the Community industry; and in particular;

- the design of primary measures (duties and undertakings);
- the determination of the appropriate level of protection;
- anti-circumvention measures;
- refunds and reviews.

The discussion pre-supposes that a case for the application of anti-dumping measures exists. As discussed at length elsewhere in this report, in many instances in which determinations of dumping and injury may be made, we do not believe that it would necessarily be in the Community's economic interests to apply anti-dumping measures, although there may be a case for some other form of policy intervention.

### **Comments on the Design of Measures**

#### *Criteria for Selecting Primary Measures*

Duties and undertakings, on the one hand, and the different types of duty on the other, are likely to have different economic effects. In particular, the following considerations are relevant.

#### *Deterrence Effects*

Variable duty systems remove the incentive to dump and, like undertakings, will therefore not normally impose any financial cost on the dumper. However, the threat of removal of pricing flexibility may itself provide an incentive not to be made subject to anti-dumping measures. By contrast, ad valorem and specific duties, taken in isolation, impose a financial penalty but leave the dumper with the discretion to absorb duties; and they are levied irrespective of whether exports are in fact sold at dumped prices. The incentive to absorb duties is greater under ad valorem duty systems since the reduction in the net of duty price is geared up by the effect of the duty.

#### *Effect of Refund and Duty Absorption Provisions*

It is arguable that the Community's refund and duty absorption provisions have the effect of making all three duty systems equivalent in so far as:

- the duty absorption provisions remove any incentive to set prices below the target level;
- exporters are able to secure refunds (with interest) if they raise prices, which removes any incentive to continue dumping.

Whilst the fact that these provisions modify the incentives created by specific and ad valorem duty systems should not entirely be neglected, there appear to be significant barriers to obtaining refunds and the duty absorption provisions are far from automatic.

For these reasons, we believe that the different duty systems should not be treated as equivalent.

### *Compliance*

Undertakings raise issues of compliance; and several Community industry associations expressed concern on these grounds. However, the Commission does monitor undertakings and the threat of retrospective application of duties would appear to represent a significant incentive to comply.

### *Effectiveness in Removing Injury*

As discussed in detail below, setting measures at a level which will remove injury requires a judgement about the impact of those measures on the strategies of players in the market.

Both undertakings (subject to compliance) and variable duties ensure that the measure has the intended effect on the import price and, to that extent, provide a greater degree of reassurance that the intended effect on the Community industry will be achieved. Nevertheless, it remains necessary to predict the impact on market shares.

However, where the importer and exporter are related, variable duties would provide scope for the exporter/importer to declare a value to Customs at or above the trigger price and continue to dump in the Community market. Thus the duty would need to be linked to the first independent resale price in the Community.

In the Commission's experience, exporters from non-market economies may absorb duties; and for this reason undertakings are preferred.

### *Incidence of the Measure*

Economists tend to advocate duties rather than quotas or price undertakings. The revenues from duties accrues to the Community whereas the benefits of any higher export prices achieved through undertakings accrues to the exporter. In addition, companies which produce in the Community but are owned outside it benefit from higher prices achieved through undertakings.

The incidence of measures is an important consideration for non-economic reasons. The Community normally accepts undertakings from developing countries in order to avoid the burden of duties. Since LDC exports will generally be made by smaller enterprises operating in highly competitive markets, they are unlikely to be able to raise prices significantly when duties are applied and their impact is therefore likely to be severe.

### *Effects on Competition*

Although the level of price undertakings is treated as confidential, they and variable price duties may have the effect of setting a floor price in the Community market, which is widely seen as a cause for concern on competition grounds. We find this objection slightly surprising since the objective of anti-dumping measures is to provide Community producers with a degree of protection from competition. However, it is arguable that *ad valorem* duties leave exporters with discretion to amend their prices as market conditions change. This means that, with such duties, the Community industry is not provided with a benchmark against which to align prices.

### *Flexibility*

The effect of both undertakings and variable duties may be dramatically altered by changing market circumstances:

- if prices in the Community rise, undertakings and variable price duties may cease to have any impact on exporters. If the rise in prices has removed the injury to the Community industry, this may be a considerable advantage. However, if the price rise simply reflects a cost increase, measures could cease to provide relief at a time when the pressure on the Community industry has increased;
- if prices fall, exporters may be unable to compete and be driven from the market.

Changed market circumstances may also alter the impact of ad valorem and specific duties. In particular, the impact of specific duties will be eroded by inflation. However, ad valorem duties in particular are likely to be more robust to changes and require less frequent review.

### *Administrative Complexity*

The US and Canadian variable duty systems both include provision for annual reviews including the recalculation of product specific normal values. As such, they are administratively burdensome. However, if greater use was made of the Community's refund system, it too would impose a high administrative cost.

### *Conclusions on the Design of Primary Measures*

The above discussion demonstrates there are a number of significant considerations in the selection of an anti-dumping measure in the circumstances of a specific case. In addition, the selection of a measure will be influenced by the priority given to specific considerations.

Some commentators<sup>1</sup> have argued that the Community, and possibly the GATT, should adopt a variable duty system. Such a system would indeed have the advantages of:

- removing the incentive to dump and as a result making the effect on the prices at which Community producers would be able to sell more predictable;
- introducing a "self-destruct" mechanism whereby measures would cease to have an impact when prices recover and the threat of further injury is removed;
- arguably increasing the fairness of the duty system.

However:

- the benefit of the price increase would accrue to the exporter;
- it seems likely that a variable duty system would be more costly to administer (however, we have not explored this issue);

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<sup>1</sup> For example, Vermulst, *The Anti-dumping Systems of Australia, Canada, the EEC and the USA: Have Anti-dumping Laws Become a Problem in International Trade?*, in Jackson and Vermulst ed, *Anti-Dumping Law and Practice, A Comparative Study*, Harvester Wheatsheaf, (1990)

- in some market circumstances, there would be a danger of an adverse impact on competition.

Much the same considerations are relevant in the comparison of undertakings and ad valorem duties. However, variable duties have the advantage of an inbuilt mechanism to ensure compliance.

The arguments are not clear-cut but, on balance, **we recommend that the Community should adopt a variable duty system unless there are overriding concerns about the effect on competition and when to do so would not be administratively practicable.**

#### *Change in Circumstances*

Anti-dumping measures may in practice provide too much or too little protection to the Community industry. Whilst unpredicted changes in market circumstances could lead to an application for a Review, we believe that **the Commission should monitor the impact of measures and, where the measures are not having the intended effect, open a review on its own initiative.**

#### *Life of Measures*

The five-year "Sunset Period" provided for in the Anti-Dumping Regulation and in the draft GATT Code would in most cases seem to provide a reasonable period for the Community industry to adjust. However:

- we believe that consideration should be given to the adoption of measures for a lesser period, particularly when dumping and the injury it has created are linked to the state of the economic cycle. Provision could be made (exceptionally) for the renewal of these measures;
- measures should only exceptionally endure for five years and from the introduction of definitive measures (rather than, as now, from the date when they were confirmed or amended) unless a full review of the Community interest has been conducted.

### **Determining the Level of Protection**

#### *Introduction*

As noted in Section II, the Community and Australia, but not the United States or Canada, have implemented the statement in Article 8 of the GATT Code that it is desirable that:

"the duty be less than the (dumping) margin, if such lesser duty would be adequate to remove the injury to the domestic industry."

The Anti-Dumping Regulation requires that any duties adopted should be less than the dumping margin "if such lesser duty would be sufficient to remove injury." Similar provisions govern the acceptance of undertakings.

The lesser duty rule is of considerable practical importance as the duties of some or all exporters have been set on the basis of injury margins in around 50% of cases; and particularly cases involving exports from Japan and from non-market economies (Section V above).

### *Policy Considerations and Objectives*

The rationale for lesser duty rules is to limit protection to the minimum level necessary to remove the injury. If measures are above this level, it is very likely that trade with the countries subject to measures will be reduced by more than is necessary to allow the Community industry to recover. Further, if market conditions are such that duties raise the general level of prices in the Community, a higher than necessary duty would impose or enhance the economic costs of the measures (discussed in Sections IV and V) by reducing Community consumption/use of the product.

It is immediately apparent that, as a matter of analysis and policy, if not law, lesser duty rules and public interest criteria are closely related. If the impact of a measure above the level necessary to remove injury would be to (further) raise prices, it is clear that the adoption of such a measure would not be in the Community interest.

Indeed, (as noted in Section VIII) it was argued to us that, since the Community applies the lesser duty rule, the Community interest criterion is superfluous. On this view, the lesser duty rule is intended to ensure that price levels are restored to fair and non-injurious levels and no higher. Although, in the short term the prices paid by consumers/purchasers may be higher, the restoration of non-injurious prices ensures that their longer term interests are protected.

This argument has considerable merit when dumping is predatory. However, if there is no reason to believe that dumping will damage competition and ultimately lead to a higher general level of prices in the Community, then the restoration of non-injurious prices will impose costs on consumers/purchasers. Since the impact of measures on competition is a central consideration in the framework for the analysis of Community interest that we have outlined above, we conclude that the lesser duty rule does not remove the need for a Community interest criterion.

Indeed, in view of the close link between the lesser duty rule and the Community interest criterion, **we believe that it would be appropriate to redefine the Community's lesser duty rule and provide that the level and form of any duty or undertaking should be set in order to maximise the interests of the Community.** The desirability, on its merits, of removing the injury to the Community industry would form part of this analysis, as would the impact of measures on consumers/purchasers.

In practice, issues such as the impact of differing levels of duty on prices are taken into account. For example, in *DRAMS from Japan*, the Commission was concerned to ensure that measures should not cause "unnecessary hindrance" to user industries. To achieve this, price undertakings linked to the cost of Japanese producers were accepted. Provision was made for these to be revised quarterly. However, since it is not clear that this is the Commission's habitual practice, such a change would be consistent with the general conclusion of this report that greater account should be taken of Community interest issues other than injury.

### *Implementation Issues*

The application of lesser duty rules raises a number of practical problems and issues.

#### *Definition of Objectives*

In order to determine the appropriate level of any duty (or price undertaking) a clear statement of the objectives to be achieved is needed. If the objective is to remove the injury this must be given substance by the specification of the circumstances in which the Community industry will be judged to no longer be suffering injury. As discussed further below, the Commission's normal practice is to set a target rate of profitability on the basis

of information relating to the investigation period. This general approach seems to us appropriate as the link between duty levels and other indicators of the Community interest (including injury indicators) is too indirect. However, careful consideration should be given to the level of profitability that it is appropriate for the industry to earn in the light of the various factors relevant to the Community interest and those outlined below.

### *Impact on Prices/Sales*

Account should be taken of the impact that measures will have on the sales volumes and prices of the Community industry. Any benefit to the Community industry may, depending on the conditions of competition in the market, be reflected in an increase in the sales and market share of the Community industry. Indeed, we understand that it is often the Commission's objective in imposing measures that the Community industry should react to increased import prices by maintaining its own prices and increasing market share. An assessment of how measures will affect the pricing decisions of the Community industry and its competitors (including imports from countries not under investigation) is a central feature of the evaluation of the Community interest. However, in any case, since sales volume is a principal driver of profitability in most industries, an assessment of the impact of measures on sales is required for the successful application of the lesser duty rule.

### *Product Differentiation*

If the products under investigation are commodities, the prices of Community producers and importers can be expected to be broadly uniform. In these circumstances, a uniform level of duty, target price or price undertaking is likely to be appropriate. However, if products are – although judged to be "like products" – differentiated, or if the prices of exporters vary for some other reason, a uniform rate of duty may not be optimal, since:

- the dumping margin may vary from product to product and exporter to exporter;
- by definition, competition in the markets for differentiated products depends on issues such as product quality and characteristics and brand image as well as on price.

Applying a uniform rate of duty – even one below the overall dumping margin found for an exporter – could therefore have differential effects on Community producers and on exporters:

- Community producers specialising in particular niches of the market could receive either insufficient or excessive protection;
- conversely, exporters whose sales are not price sensitive (perhaps because they have a strong brand image) might be little affected whilst other exporters could be driven from the market.

There is therefore a strong case in principle for considering specific duty levels for each exporter in markets for differentiated products.

### *Market Conditions*

Where dumping is not the sole cause of the injury, this should be reflected in the level of protection. If some or all Community producers are partly experiencing difficulties for some other reason (eg. depressed demand, competition from other imports or a lack of competitiveness) seeking to remedy this through measures against a subset of exporters to the Community will create distortions.

In addition, as discussed above, the need for and effect of a given measure may vary through time as market conditions change.

Our *Polyvinyl Chloride* case study illustrates these points;

- dumping from Eastern Europe was clearly not the sole cause of the industry's problems as the European market was depressed at the beginning of the 1980s as a result of the second OPEC price rise and the recession;
- given competition within the Community and from other sources, no measure could have had the effect of allowing the Community industry to cover its full costs. A measure intended to provide more than marginal relief would have had the effect of driving East European exports from the market.

Apparently in recognition of these points, the Commission therefore accepted an undertaking related to the variable costs of production, ie. not including full contribution to overheads and profit. The recovery of the market ensured that its effect was only felt, if at all (see discussion in Section VI), for a short period.

### *The Commission's Approach*

A recent article<sup>1</sup> identifies a variety of different approaches which the Commission has adopted to determine injury margins:

- price undercutting. This involves the comparison of the prices of representative imported and Community - produced models in some national markets. To determine the injury margin, the weighted average margin by which imports have undercut Community producers is expressed as a percentage of the CIF price. Since the comparison must be made on a like for like basis, trade level adjustments may be necessary.

This approach is only appropriate when the prices of Community producers have not been affected by dumped imports and assumes that prevailing Community prices are at the level necessary to remove injury. Trade level adjustments, if undertaken, inevitably make the comparison an unreal one. If the prices constructed are those observed in the market, the adjustments are unnecessary. If they are not the prices observed in the market, the undercutting margin is hypothetical and not representative of the conditions of competition in which the injury has occurred.

- target prices. This approach may involve either:
  - the comparison of the export prices for representative models with the prices EC producers would need to realise in order to earn a target rate of profit; or
  - estimating the increase in prices necessary for the EC industry to achieve the target rate of profit either overall or on a model specific basis.

In either case, issues raised include:

- whether average production costs or those of a specific EC producer should be adopted;
- the rate of profit which the EC industry is believed to need;
- whether the same margin should apply to all producers.

In addition, where the injury margin is based on target prices for EC producers without any comparison being made with export prices, even exporters who did not undercut Community producers attract injury margins.

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<sup>1</sup> Vermulst and Waer (1991) op cit.

In one recent case (*Audio Tapes in Cassettes*), adjustments were made:

- to the target price in the Community to reflect loss of profits due to loss of capacity utilisation;
- for the level of export volume and the degree of price undercutting by specific exporters.

It is difficult to understand why the various versions of the target price approach should be adopted unless the objective is to allow the Community industry to raise its prices. Unless the sole effect is expected to be an increase in prices, it would be appropriate to make an adjustment for the effect of measures on sales volumes.

### *Conclusion on the Lesser Duty Rule*

The lesser duty rule plays a very important role in the Community's anti-dumping policy.

Several trade lawyers commented to us on the absence of a clearly defined and consistent policy for determining injury margins<sup>1</sup>. Given the inherent difficulty and subjectivity of assessing injury margins we do not think it is possible to use a single approach in all circumstances, nor that it is feasible to determine injury margins mechanistically. Further, the approach followed by the Commission will develop over time.

The approaches outlined above make the assumptions that:

- exporters will increase their prices in line with the duty;
- the Community industry will react by raising its own prices;
- the sales volume of the Community industry will be unaffected.

None of these results will necessarily follow and, indeed, it would not appear to be the Commission's intention that the Community industry should raise its prices. For example:

- if duties are ad valorem, exporters may well decide to absorb the duty to some degree;
- the Community industry can be expected to benefit from an increase in sales unless it increases prices in line with those of exporters. The impact on its revenues and profits will depend on demand conditions in the industry.

There therefore appears to be a fundamental tension between the methods used to assess injury margins and the likely effects of the duties implemented as a result of those calculations.

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<sup>1</sup> Vermulst and Waer comment that "...the lack of binding rules in GATT and of detailed rules in EC law offer the Community institutions ample latitude in resolving precisely how injury margins ought to be calculated. From the interested parties' point of view, the situation is exacerbated by the fact that cost and pricing data of the EC producers are considered confidential and therefore not available to foreign producers while the export prices of the foreign producers are considered confidential vis-a-vis the EC complainants. This means that only the Community institutions have the complete picture and makes it exacting, if not impossible, for interested parties to divine – in advance or ex post facto – to what degree injury margins will operate as an adequate limit on the level of anti-dumping duties in concrete cases."

We see considerable scope for further detailed research to evaluate different approaches and to develop tools for use in determining injury margins. For example, simple computer models such as the CADIC model used by the US International Trade Commission could be of considerable value in assessing the impact of differing levels of duty. **We recommend that the Commission should commission research into the methodology for the determination of injury margins and should subsequently publish guidance on its policy.**

#### **Anti-Circumvention Measures**

Definitive anti-dumping measures are not payable to the extent that exporters:

- commence or increase production in the Community and reduce exports;
- source their requirements for the Community market from third countries;
- substitute or develop new products which are outside the scope of the measures.

In addition, measures will not have their intended effect if the prices charged in the Community and other aspects of the exporter's strategy are unaffected by the duty.

As discussed in Section II, the Community's Anti-Dumping Regulation includes provision for "anti-circumvention measures" to be applied in certain circumstances when:

- the exporter begins or increases Community production after the opening of an anti-dumping investigation;
- duties are absorbed.

The first of these provisions – the Screwdriver Regulation – was applied on a number of occasions in the late 1980s but is now in abeyance having been criticised by a GATT Panel<sup>1</sup>. The duty absorption provision was only invoked for the first time in 1992.

The argument before the GATT Panel on the Screwdriver Regulation was almost exclusively concerned with legal questions of GATT consistency and not with the economic merits of the measure. However, by way of background, the Commission explained that the Screwdriver Regulation had been introduced in response to concern on the part of the Community industries at the ineffectiveness of primary measures in a number of cases involving exports from Japan. In these cases, local assembly was economic and had enabled exporters to circumvent duties on the assembled product.

#### ***Appraisal***

There can be little doubt that exporters may have both the opportunity and the incentive to "circumvent" anti-dumping measures. However, there are two sides to the story.

From the Community industry's perspective, if, following the application of anti-dumping measures, exporters commence or expand Community production and prices do not increase, the measure is failing to have the effect sought and intended.

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<sup>1</sup> General Agreement on Trade and Tariffs, *EEC – Regulation on Imports of Parts and Components*, Doc L/6657, 22 March 1990.

From the exporter's perspective:

- market conditions may make point towards absorbing the duty (either wholly or partly) in order to maintain growth;
- anti-dumping duties may be one of a number of factors pointing towards local (ie. Community) production.

If the application of primary measures has been determined to be in the Community interest, there may well be a case for supplementary measures when these are not having their intended effect. However, there must be a risk of piling distortion on distortion since:

- the application of duties on local Community production will tend to encourage exporters to adapt their plans to escape the supplementary duty (eg. by increasing local sourcing and, in doing so perhaps increasing costs);
- further increasing duties when these have been absorbed may force exporters out of the market or lead them to devote less attention to the Community market.

A particular problem with measures against Community production is the need to distinguish between "legitimate inward investment" and projects wholly or largely motivated by the opportunity to avoid anti-dumping measures. Assembly in the Community of imported parts sourced from traditional suppliers may well be merely the first step towards either integrated Community production or to a position in which Community plants play a major or key role in a global production system. Many Japanese companies, and before them US corporations, have followed this path.

Thus in practice, it is difficult to find objective criteria for making a distinction between screwdriver plants and legitimate investments. It is necessary to recognise that the sourcing patterns of a plant may change and its contribution to the Community economy may increase.

**Thus, overall, whilst we recognise the need for anti-circumvention measures, we would stress the need to apply them flexibly, recognising the particular circumstances of the case and the effects that further measures may have on the Community interest.**

### **Refunds and Reviews of Anti-Dumping Duties**

A number of criticisms have been made of the Community's provisions for the refund of anti-dumping duties. In one case, the same point arises in relation to the provisions for the review of measures.

#### ***Basis of Refund Applications***

The refund provisions of the Anti-Dumping Regulation require the importer to show that the "duty collected exceeds the actual dumping margin". However, duties are set at the lower of the dumping and injury margins. Thus where the duty is determined by the injury margin, importers may not obtain a refund which is commensurate with the reduction in the dumping margin. For example, if a duty of 5% was levied in a case in which a 10% dumping margin had been determined, refunds would only be payable to the extent that the dumping margin was reduced below 5%. Equally, if the actual dumping margin calculated when a refund application is made is below the injury margin, a refund would be made even if export prices have not risen by the amount necessary to remove injury.

This provision could have the effect of causing the exporter to increase prices by more than the duty rate in order to ensure that the importer receives a refund. In such circumstances

the objectives of the lesser duty rule – limiting protection to the level necessary to remove injury – would be undermined.

However, since injury margins are calculated independently of dumping margins, linking refunds to injury margins would raise a number of difficulties. Whilst recognising that the current position is not adequate, it is difficult to see how it could be improved.

### *Institutional Barriers to Refunds*

Several trade lawyers who we met argued that there were significant institutional barriers to refund applications. In particular:

- the application for a refund must be made by the importer. An independent importer will not be well placed to judge whether dumping continues since it has no way of knowing the normal value of the product;
- refund applications must be made in the Member State into which the goods were imported and within three months;
- refund investigations can take two to three years;
- interest is not generally payable on duties which are subsequently refunded.

As a result of these points, the costs of making refund applications is increased and the returns to doing so are reduced and made less certain. As a result, as discussed below, importers may pass duties on to their customers even when dumping has ceased.

**We therefore recommend that the refund system should be amended. In particular, consideration should be given to:**

- **centralising applications for refunds and making provision for an annual application;**
- **allowing exporters to apply for refunds on behalf of importers where the necessary authority is given;**
- **paying interest at market rates on duties which are subsequently refunded.**

### *Treatment of Duties in Review and Refund Calculations*

As noted in Section VII, when the importer and exporter are related, in making dumping determinations, the export price is constructed on the basis of the first independent sale. Inter alia, the Anti-Dumping Regulation provides that anti-dumping duties should themselves be deducted in constructing the export price.

Thus in the example below it would not be sufficient for the related importer to raise the price in the Community by the dumping margin and duty (ie. by 10) since in calculating the export price for the purposes of a review or refund the export price would remain 100, i.e. the dumping margin would be unaltered. Rather, the related importer would need to increase the Community price by the sum of the dumping margin and the duty.

**Table IX.1: Illustrative Example of Refund Calculations for a Related Importer**

Normal Value	110	First Independent Sales Price	140
		Costs of Related Importer	40
		Constructed Export Price	100
		Dumping Margin	10
		Duty	10

*Implications for Refunds*

This treatment has been criticised, particularly because of the barriers it appears to place in the way of refund applications.<sup>1</sup> However, the Commission's position has recently been upheld in a judgment by the Court of Justice<sup>2</sup> in a case brought by the associated importers in the Community of a ball bearing exporter. As throughout this report we are concerned with the policy substance rather than the presence or absence of legal grounds for the Commission's interpretation of the Anti-Dumping Regulation.

The Commission argues that:

- a related importer could increase prices by the sum of the duty and the dumping margin and then, when the refund is paid, reimburse its customers;
- if duties were refunded, it would be open to the associated importer to pass the refund on to its customer, thereby negating the impact of the duties;
- any other treatment would disadvantage independent importers. If the exporter raises prices to eliminate dumping, the importer must continue to pay the duty and seek refunds.

The relative favourability of the positions of related and independent importers was a key issue in the case. In particular, the Court accepted that independent importers will not be in position to judge whether a refund application will proceed or, perhaps to bear the cost of financing the duty, with the result that they will tend to pass the duty on to their customers. By contrast, related importers were well placed to judge whether a refund application would succeed.

As a result of the imperfections in the refund system discussed above, there is a danger that the level of protection (and so the costs imposed by measures) will exceed those envisaged in setting primary measure. In our view, if duty were not treated as a cost in refund applications, the effect would be to make the position more favourable for related importers. However, the fact that the refund system does not work well for independent importers (for the reasons discussed above) does not seem a good reason for requiring related importers to increase prices by more than the amount necessary to eliminate dumping.

Duty is not treated as a cost in the equivalent calculations in the United States.

**We recommend that duty should not be treated as a cost in constructing the export price for the purpose of refund calculations.**

<sup>1</sup> See for example, Norall (1986) op cit and Bellis (1990), The EEC Anti-dumping System, in Jackson and Vermulst (1990) op cit.

<sup>2</sup> Case C-188/88, NMB (Deutschland, GmH, NMB, Italia Srl and NMB (UK) Limited V Commission of the European Communities, 10 March 1992.

It can be observed that this problem would not arise under a variable duty system which, when the importer and exporter were related, linked duties to the difference between the first independent sales price and a target price.

### *Implications for Reviews*

The treatment of duty as a cost and the other imperfections in the refund mechanism also have implications for reviews since:

- a related importer will be found to be still dumping unless it has raised its prices by the sum of the dumping margin and the duty;
- an exporter which sells to unrelated importers may be found to still be dumping if, in recognition of the problems of importers in obtaining refunds, it absorbs duties.

In our view, reviews raise very similar issues to refunds and **we recommend that anti-dumping duties should not be treated as a cost in review proceedings.**

## **X THE COMMUNITY'S ANTI-DUMPING MEASURES: INSTITUTIONAL ISSUES**

### **Introduction**

This report is primarily concerned with the substance of the Community's anti-dumping policy. Nevertheless, there are a number of institutional issues which we feel we should comment on because they relate to the efficiency and effectiveness of anti-dumping measures or because we believe that the implementation of our recommendations on the substance of the policy would require changes in institutions or procedures if they are to succeed. In particular, we discuss:

- the length of investigations;
- criteria for determining whether investigations should be opened;
- consideration of alternatives to anti-dumping measures;
- the transparency of anti-dumping proceedings;
- the provisions for the review of Commission and Council Decisions;
- provisions for monitoring of measures;
- Commission resources.

### **The Length of Investigations**

A number of Community industry associations expressed concern at the length of time between the emergence of dumping problems and the application of anti-dumping measures. In its 1990 Resolution, the Parliament considered that provisional measures should be imposed within six months of the opening of the proceeding.

It is helpful to consider separately the time taken to initiate proceedings and the length of proceedings.

#### ***Opening of Proceedings***

The Commission does not formally log complaints and there are therefore no statistics on the time taken from the receipt of a complaint to the opening of proceedings. Probably because the complexity of the issues and the difficulty of substantiating complaints differs, it appears that experience varies. One industry association which is frequently involved in anti-dumping cases told us that it typically took a year to substantiate a complaint; another that its experience was that proceedings were opened within three to four months.

The time taken to open proceedings clearly depends to a significant extent on the standards applied in deciding whether "sufficient evidence" of dumping and injury has been provided. Perhaps not surprisingly, representatives of Community industry feel that the Commission adopts strict standards whilst exporters and importers feel that proceedings are initiated too readily. The Commission argues that 50% of complaints are rejected, although the basis of this figure is unclear in the absence of a system for logging complaints.

It would require a detailed investigation of a significant number of cases, including access to confidential material of the kind that we were unable to see, to reach any firm conclusions on the standards applied by the Community. However, amongst our interviewees the Community does have the reputation of being relatively challenging in its scrutiny of complaints.

Since anti-dumping investigations impose costs on importers and exporters and can themselves have adverse effects on trade, it is important that strict standards should be applied. This relates most particularly to injury and to the existence of a link between dumping, if found, and injury, since the Community industry ought to be able to assemble information on these issues. However, a lesser standard must inevitably be applied to dumping since it is difficult for the Community industry to assess normal value.

Equally, it is important that measures should be implemented rapidly where they can be justified. It is therefore important that the Commission should have adequate resources to respond to complaints rapidly. We comment on the issue of Commission resources further below.

### *Length of Proceedings*

As shown in Section V, in the last few years the length of time between the opening of proceedings and a final determination has averaged 18 months and has been considerably longer in a number of cases. Thus the Community does not meet the provision in the existing GATT Code that investigations should be concluded within one year "except in special circumstances". The draft of the new GATT Code adds a requirement that investigations should be completed within 18 months. The draft also provides that jurisdictions applying the lesser duty rule may apply provisional measures for a maximum of nine months, as compared to six months at present. This goes some way to meeting the concern that measures should be applied more quickly as the Commission will be able to apply provisional measures at an earlier stage.

### *Time Limits for Investigations*

If dumping is damaging to the economic welfare of the Community, it is important that measures are taken as quickly as possible.

Several commentators we have spoken to advocate the adoption of time limits for the completion of investigations. Australia, Canada and the United States all operate a system of time limits. These vary according to the circumstances of a particular case and account needs to be taken of the institutional environment. However, briefly:

- in Australia the maximum time allowed between the filing of a complaint to a provisional determination is 125 days (145 days in large or complex cases). The second stage of the investigation leading up to the adoption of definitive measures takes a further 120 days;
- in Canada, provisional measures may be imposed following a provisional determination of dumping 120 days from the filing of a complaint (165 days in complex cases). The investigation of injury adds up to a further 120 days to the proceeding;
- in the United States, provisional measures may be adopted following a provisional determination of dumping after a maximum of 180 days from the filing of the complaint (230 days in complex cases). The second stage of the investigation takes 120 days (180 days in complex cases).

The key steps in each stage of an anti-dumping investigation and the Commission's broad view as to the minimum feasible period for each stage which could be consistently achieved are set out below.

**Stage One: Complaint to Opening: 8 Weeks**

- Consultation with Member States
- Translation of Opening Notice
- Preparation of Questionnaires

**Stage Two: Opening to Provisional Measures: 38-41 Weeks**

- Response to Questionnaires
- Preliminary Assessment
- Injury Verification and Analysis
- Dumping Verification
- Assessment and Preparation of Working Document
- Internal Review
- Consultation with Commission Services
- Consultation with Member States
- Preparation and Translation of Regulation

**Stage Three: Provisional to Definitive Measures: 16-26 Weeks**

- Disclosure
- Comments on Disclosure
- Preparation of Final Working Document
- Internal Review
- Consultation with Commission Services
- Consultation with Advisory Committee
- Preparation and Translation of Draft Regulation
- Consideration by Council

We have not reviewed the reasonableness of these periods; nor do they represent the outcome of detailed consideration by the Commission. Nevertheless, it is apparent that there are a number of substantial steps in an anti-dumping investigation which reflect the particular circumstances of the Community.

Whilst in principle it is desirable for all parties that investigations should be swiftly concluded, there is a danger that time limits will cause shortcuts to be taken. However, we see no reason why a system of published targets should not be adopted. Achievement of these targets could then be monitored by the Parliament through the Commission's Annual Report on its Anti-Dumping and Anti-Subsidy Activities.

**We recommend that the Commission should establish and publish targets for the completion of the various stages of anti-dumping investigations and that detailed information on performance against these targets should be included in the Commission's Annual Report to the Parliament.**

**Criteria for Determining Whether Investigations Should be Opened**

At present, the Commission takes the view that if dumping and injury are demonstrated, a proceeding should be opened. That is, Community interest issues are not formally considered when a complaint is evaluated. It would be consistent with our general conclusion that public interest issues should be considered at an early stage.

However, this would inevitably slow down the process of responding to complaints and would arguably lead to the creation of a two-stage investigation. In addition, the Commission fear that the opening of an investigation would be made in effect a discretionary act which would be challenged in court.

We accept that Community interest issues cannot be brought into account before the proceeding is opened. However, this adds to the importance of a statement of general policy on the Community interest. If it were clear that measures would not be adopted, complaints would be deterred.

### **Consideration of Alternatives to Anti-Dumping Measures**

A key conclusion of this report is that, even where it is concluded that injurious dumping has occurred and that a policy response is required, anti-dumping measures may not be the appropriate form of intervention.

We do not underestimate the difficulty of ensuring that alternative policy measures are adequately and quickly considered when dumping problems arise. There is a danger that no measures will be taken when some form of intervention would be justified in economic terms or is deemed imperative for other reasons. However, equally, we do not accept that these difficulties justify acceptance of the severe distortions and economic costs that may be imposed by the adoption of inferior policy measures.

**We recommend that consideration be given to the adequacy of other Community measures which might be adopted in place of anti-dumping measures. In particular, the following measures may be relevant:**

- **to assist with the preservation or development of a technology which is threatened by dumping;**
- **to assist in the orderly rundown of industries facing severe competition;**
- **to assist labour - intensive industries in time of recession.**

### **The Transparency of Anti-Dumping Proceedings**

A number of issues related to the transparency of anti-dumping proceedings have arisen in the course of our research:

- access by Counsel (and possibly other advisers) to confidential information provided by other parties;
- the rights of interests other than the Community industry, exporters and importers to non-confidential information to enable them to comment on Community interest issues;
- the extent of the information and analysis supporting decisions to adopt provisional measures and close proceedings;
- the extent to which the Commission's detailed procedures and policy are codified and made public.

### ***Access to Confidential Information***

The provisions for the disclosure of confidential information to advisers to directly interested parties varies between and indeed within other jurisdictions. The views of trade lawyers we met varies as to whether it would be desirable for the Community to adopt a mechanism like the US Protective Order System.

This issue raises complex questions of legal procedure on which we are not competent to conclude. However, we will comment that, as several lawyers pointed out, the absence of a right to disclosure makes it difficult for the parties to comment on the determination of injury margins since this involves information provided by exporters, importers and the Community industry.

### *Access to the Non-Confidential File*

A recent decision by the Court of Justice confirmed that consumer organisations do not have a right of access to the non-confidential file maintained by the Commission in order to allow them to make representations on whether the adoption of measures would be in the Community interest.

In Section VIII we have argued that the impact of measures on consumers and other purchasers should be a central focus of anti-dumping investigations. This should include actively consulting consumer organisations. Since they lack the resources to marshal evidence on each case, they require assistance if they are to represent the interests of consumers. The same point applies to other representatives of general interests, such as trade unions.

The need for what are presently considered to be "indirectly interested parties" to have access to the non-confidential file would be reduced if our recommendation below that the Commission and the Council should justify their decisions much more fully were to be implemented.

**We recommend that the Commission should make available to consumer and other organisations non-confidential information which they feel will enable them to promote the interests that they represent.**

### *Justification for Decisions*

The Regulations and Decisions closing anti-dumping initial investigations and reviews or imposing provisional measures have become more detailed in the last decade. However, it is striking how little information and analysis they provide on:

- the market and market developments;
- the dumping episode;
- the determination of dumping margins;
- the injury suffered by the Community industry and the causal link to dumping;
- the determination of injury margins;
- Community interest issues.

By contrast, in the United States and Canada, detailed free-standing reports are published justifying findings on dumping and injury.

More detailed analysis in support of decisions would considerably assist scrutiny of the Commission's and Council's exercise of their powers under the Anti-Dumping Regulation by the Parliament and by commentators.

**We recommend that, within the constraints of confidentiality, decisions imposing provisional measures or closing proceedings should be supported by a detailed analysis of the issues listed above. We believe this is a necessary step to ensure full and explicit attention is given to the wider Community Interest issues. Greater openness on the determination of dumping margins would also help to allay concerns in this area.**

### ***Codification of Practice***

A number of trade lawyers commented on the high level of discretion that the Anti-Dumping Regulation leaves the Commission and expressed concern at what they regard as a lack of consistency in its application. Examples include:

- the various approaches that exist to the determination of injury margins which have been outlined in Section IX;
- the criteria for determining whether selective normal values will be determined.

In its 1990 Resolution, the Parliament recommended that the Commission should publish guidance for business on anti-dumping policy.

Closely related to this, we were surprised to learn that the Commission does not have an up to date set of Guidelines describing the various technical issues that arise in anti-dumping investigations and the approach that staff undertaking investigations should adopt. This may explain in part a lack of consistency in approach.

**We recommend that the Commission should:**

- **prepare and maintain Technical Guidelines for its staff;**
- **publish from time to time a detailed statement of its practice.**

### **Provisions for the Review of Commission and Council Decisions**

We have noted that the Community is unique among leading users of anti-dumping measures in having a single agency responsible for all stages of the investigations. Anti-dumping proceedings raise strong emotions on both sides of the argument and it is important that the system should contain adequate checks and balances.

At present, oversight of the Commission is exercised by the Council of Ministers, the Advisory Committee, the European Parliament and by the European Court of Justice. Member States will inevitably have particular regard to national interests and, in the view of many, the Court is not well placed to rule on questions which are often either technical or policy issues, rather than legal questions. Indeed, the Court has itself expressed this view in a number of cases. For example, in one of the cases arising from the *Plain Paper Photocopier* proceeding (Case C-177/87 Sanyo Electric) the Court said that;

"....the question whether the interests of the Community call for Community intervention involves appraisal of complex economic situations and judicial review of such an appraisal must be limited to verifying relevant procedural rules have been complied with..."

**The Parliament may wish to consider whether a specialist body should be established which would advise on issues of general policy and on whether the interests of the Community call for the adoption of measures in particular cases.**

## **Provisions for Monitoring of Measures**

For a number of reasons we believe that the Commission should systematically monitor anti-dumping measures:

- as we argued in Section VII, in many cases anti-dumping measures should be regarded as an industrial policy measure. That is, they are justified to the extent that the Community industry takes advantage of the protection provided either to contract or to increase its competitiveness in world markets. In these cases, we believe that the application of measures should be accompanied by an action plan which should be monitored;
- measures may not be having their intended effect in other respects and may need to be amended on the Commission's initiative. For example, the effect on prices may have been less or greater than expected;
- particularly where new approaches have been adopted, (for example to the determination of injury margins) there is a need to assess whether these techniques have been successful and should be applied in other cases,

**We therefore recommend that the Commission should devote significant resources to the monitoring of anti-dumping measures in place. The monitoring plan should form an integral part of the initial measure.**

## **Commission Resources**

The Commission presently has 124 posts (including support staff) allocated to the administration of its anti-dumping and anti-subsidy activities, of which 26 are national experts on two to three-year placements with the Commission. The Commission argue, and we endorse this view on the basis of our experience of carrying out this study, that the complexity of carrying out anti-dumping investigations means that the contribution of national experts in the first year of their placement is inevitably limited.

By contrast, in the United States the Department of Commerce has 160 staff working on anti-dumping and anti-subsidy investigations. The International Trade Commission has 43 professional accountants, lawyers, economists and investigators who work on injury inquiries.

The Parliament has called for an increase in the resources available to the Commission on a number of occasions.

We have not assessed the adequacy of the resources available to the Commission as part of this study. However:

- we recognise that the recommendations we have made in this report for more in-depth analysis, monitoring of measures and a reform of the refund system have significant implications for resources;
- we see considerable scope for the increased use of accountants and economists by the Commission.

## XI BROADER POLICY ISSUES

### Introduction

In this section we discuss from an economic perspective some broader questions raised by the Community's existing anti-dumping policy:

- social and environmental dumping;
- dumping of services;
- policy towards less developed countries.

### Social and Environmental Dumping

Despite the obvious differences in the rationale for applying measures against social and environmental dumping, they raise substantially the same issues.

#### *Social Dumping*

Social dumping is the term used when exporters to the Community have benefited from low labour costs which reflect non-observation of minimum terms and conditions. Originally it was applied to goods produced by prison labour or other sweated labour.

The arguments for linking trade and workers' rights run as follows:

- workers' conditions in a number of countries are very poor;
- there is a role for the industrialised countries to seek to prevent such exploitation;
- trade policy is one legitimate mechanism that can contribute.

Trade Unionists argue that, just as the European Community is seeking to prevent unfair competition between Member States through a common Social Chapter, it is reasonable for the industrialised countries to prevent erosion of workers' rights by insisting on respect for minimum standards as specified by international agreements. The Trade Unions are calling for minimum labour standards to be:

- specified by the International Labour Organisation;
- enforced by national legislation in all countries;
- encouraged by the industrialised countries through their trade policy with non-complying countries.

Such minimum standards would relate not only to remuneration, but also to issues such as age of workers, minimum breaks, minimum levels of safety, and the right to belong to a trade union.

In the GATT Round there has been pressure for formal links between workers' rights and trade; and, specifically, for the inclusion of a social clause in the GATT. The International Confederation of Free Trades Unions (ICFTU) and others are also lobbying for respect of the ILO minimum standards to be made a condition for the Generalised System of Preferences (GSP). Countries not respecting internationally-recognised workers' rights would be removed from the GSP. The Parliament supported this view in its 1990 Resolution on dumping.

In line with their general views on trade, the union organisations we met initially supported the view that any social dumping should be taken into account in dumping margin calculations since they regard competition from exporters who benefit from labour costs which do not reflect minimum standards as unfair. However, no branch of the movement appears to be lobbying specifically on the issue of dumping.

### *Environmental Dumping*

Environmental dumping arises when exporters to the Community have a significant cost advantage over Community firms because they use older, cheaper (but more polluting) production methods, or processes or are subject to less stringent environmental legislation.

An economic argument for protecting Community industry from environmental dumping can be made as an extension of the general economic case for (domestic) environmental protection measures. Where the pollution affects a shared environmental resource, those effects and the costs of cleaning up will be borne by the Community as well as by the country engaged in dumping. In order to avoid these costs, the Community may be justified in applying measures which compensate for the cost advantage enjoyed by the dumper.

A further, non-economic argument is that, even where the environmental consequences of less stringent legislation is confined to the producing country, it is morally wrong to allow people there to be subject to such pollution.

### *Social and Environmental Dumping: The Case for Measures*

Within the existing GATT framework, it would not be possible for the Community to apply measures against cases of social and environmental dumping.

In the case of environmental dumping, the argument outlined above could be used to justify an extension of the scope of dumping measures on economic grounds to the extent that it is clear that the Community will or may bear the costs of pollution. However, arguments for protection against social dumping would need to be based on political considerations as it is difficult to see how low - cost imports reflecting low labour costs could be contrary to the Community's economic interests.

Applying measures against these forms of dumping would require multilateral agreement on the minimum standards to be observed.

We discussed social and environmental dumping with the Anti-Dumping Directorate of the Commission. The Commission has not studied these issues in detail and stresses that social and environmental dumping cannot be taken into account in dumping margin calculations under the current legislation. However, in principle, the Commission's view was that adjustments could be made if such a policy were to be adopted.

The Bureau Europeen des Unions de Consommateurs has argued that instruments to deal with environmental dumping should be developed.<sup>1</sup>

One industry association expressed concern that action against social and environmental dumping would be open to exploitation by interests seeking protection for other reasons.

In our view, anti-dumping measures are not well suited to meeting an objective of putting pressure on trading partners to ensure that minimum labour and environmental standards and conditions are observed:

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<sup>1</sup> Consumers Demand a Conclusion to the GATT Round, November 1991.

- it is arguable that both environmental and social conditions in trading partners will improve as their economies grow. Applying trade protection measures could therefore be counter-productive;
- there is no obvious reason for applying measures specifically and solely against imports which have caused material injury to the Community industry. Exports to the Community could impose environmental costs or involve exploitation of workers without meeting the injury criterion;
- closely linked to this, dumping investigations are initiated by the Community industry;
- the cost advantage enjoyed by the exporter would be very difficult to assess. Any resort to constructing normal values on the basis of their country conditions would run the risk of obscuring any underlying comparative advantage.

### **Service Dumping**

The GATT Anti-Dumping Code and the Community's Anti-Dumping Regulation only relate to trade in goods. However, the Community does have a separate trade policy instrument relating to dumping of marine transport services.

We discussed dumping of services in the course of our programme of interviews and contacted a number of trade associations for the service sector. It appears that there is at present little concern about dumping of services and little thought has been given to problems that might arise and how these can be dealt with in the framework set by the GATT Code (if it were decided to amend this to encompass services).

### **Less Developed Countries and Eastern Europe**

Anti-dumping cases involving imports from less developed countries and Eastern Europe have in the past accounted for a significant proportion of cases. As Table [ ] shows, over the period 1981-91:

- overall, LDCs accounted for 26% of cases. However, around half the LDC cases involved imports from the Asian Newly Industrialising Economies;
- a third of cases involved imports from Eastern Europe.

However, the trade impact of cases involving these countries is very much less than this would suggest. Whilst cases involving the Asian NIEs accounted for 7% of all trade subject to measures in 1991:

- imports from other LDCs accounted for less than 1% of all trade subject to measures;
- imports from Eastern Europe only accounted for 2% of all trade subject to measures.

### ***Views of LDC Exporters***

In the course of the study, we held discussions with representatives of several LDCs and also considered submissions prepared by others.

LDC critics of Community anti-dumping policy also argue that complaints are likely to be made in sectors in which developing countries are efficient, such as textiles. This threat of protection and denial of access to EC markets is a particularly important issue for countries that are in the process of opening their economies to competition.

The specific concerns expressed include:

- many of the industries are subject to intense world competition, where it would not be practical or possible for one company to practise predatory dumping. Firms accused of dumping may be privately owned, very small firms that have no incentive to dump;
- some of the products investigated are governed by the Multi-Fibre Agreement. The governments argued that if a quantity quota for a product has been agreed, then it is not possible for those imports to cause injury to European industry as the quantitative quotas cannot be exceeded;
- anti-dumping investigation is that as it creates uncertainty in the market for exports, this uncertainty can lead to delays in investing in new technology as exporters are uncertain whether future orders from the EC will be placed. Hence accusations of dumping in even a small proportion of the EC's imports can be extremely harmful to the development and success of industry in LDCs;
- the calculation of normal value and export prices may take atypical and asymmetric sets of cases. LDCs expressed concern about some of the issues relating to the calculation of dumping margins discussed in Section VI.

Some LDCs also expressed concern at a trade chilling effect from anti-dumping measures. In some cases, orders must be placed some months in advance of delivery. If a measure is introduced between the placing of an order and importation to the Community, the Community-based buyer then faces a higher-than-anticipated cost, as it is the buyer that must pay the duties. For this reason, it is argued, importers may become reluctant to place orders in countries which are subject to frequent anti-dumping investigations. The governments of developing countries argue that this is the case, and that the atmosphere of investigations and the threat of measures can harm trade in other products. Hence dumping investigation may have the potential to seriously disrupt a wide range of exports from accused countries.

LDC representatives suggested a number of changes that they would wish to see made to the Community's anti-dumping policy:

- cases in products that are subject to world competition should not be opened;
- companies accused of dumping should have a minimum market share, say, over 5%;
- alternatively, companies investigated should be of a minimum size;
- products covered by the MFA should not be investigated.

### *Comment on LDC and Eastern European Cases*

Cases involving imports from LDCs and Eastern Europe are typically relatively small and do not involve strategic industries. However, there is a potential for conflict between policies favouring and promoting development in these countries and anti-dumping policy. The balance between the two policy objectives is a matter of political judgement rather than economic analysis. However, the clear potential exists to apply stricter standards in anti-dumping cases involving these countries.

## **ANNEX I ORGANISATIONS AND EXPERTS CONSULTED**

### **INDUSTRY ASSOCIATIONS**

EUROBIT (Business Machines and Data Processing)  
CEFIC (Chemicals)  
EACEM (Consumer Electronics)  
EUROCOTON (Textiles)  
COMITEXTIL (Textiles)  
Associazione Cottoniera  
EUROFER (Steel)  
Electronic Industries Association of Japan

### **CONSUMER BODIES**

Bureau Europeen des Unions de Consommateurs, Brussels  
National Consumer Council, London

### **TRADE UNION BODIES**

European TUC  
International Confederation of Free Trades Unions

### **INTERNATIONAL AGENCIES**

GATT Secretariat

### **EUROPEAN COMMISSION**

DG I  
DG IV

### **GOVERNMENT DEPARTMENTS AND AGENCIES**

Bundeskartellamt, Berlin  
Department of Trade and Industry, London  
Federal Ministry of Economics, Bonn  
Ministere des Finances and Ministere de l'Industrie et Commerce Exterieur, Paris

### **TRADE LAWYERS**

Jean-Francois Bellis, van Bael & Bellis, Brussels  
Dietrich Ehle, Ehle, Schiller & Partner, Cologne  
James Lockett, Dorsey & Whitney, Brussels  
Chris Norall, Forrester, Norall, Sutton, Brussels  
Edwin Vermulst, De Smedt & Dassel, Akin, Gump, Hauer & Feld, Brussels

### **ACADEMICS AND RESEARCHERS**

Harald Grossman and Georg Koopman, Institut fur Wirtschaftsforschung, Hamburg  
Brian Hindley, London School of Economics and Political Science, London  
Patrick Messerlin, Institut d'Etudes Politiques, Paris  
Phedon Nicolaidis, European Institute of Public Administration, Maastricht