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O N

THE COMMUNITY'S ANTI-DUMPING AND ANTI-SUBSIDY ACTIVITIES

(1992)

- 16 -

(11th Annual Report to Parliament - 1992)

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ELEVENTH ANNUAL REPORT<sup>1)</sup> OF THE COMMISSION ON THE COMMUNITY'S  
ANTI-DUMPING AND ANTI-SUBSIDY ACTIVITIES<sup>2)</sup>

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1. INTRODUCTION

This report is submitted to the European Parliament following its Resolution of 16 December 1981 on the Community's anti-dumping activities<sup>3)</sup>, and the more recent report of the European Parliament's Committee on External Economic Relations on the anti-dumping policy of the European Community<sup>4)</sup>.

The report concentrates mainly on the Community's activities during 1992, but for the purpose of comparison, the number of anti-dumping and anti-subsidy investigations initiated and concluded by the Community in the years 1988 to 1992, together with a breakdown of the type of measures taken, are summarized in Table 1 below.

For 1992, a concise commentary on each case opened, each provisional and definitive measure taken, and each case terminated without measures, is given in sections 4, 5, 6 and 7 respectively.

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1) Previous reports were given in COM(83)519 final/2; COM(84)721 final; COM(86)308 final; COM(87)178 final; COM(88)92 final; COM(89)106 final; COM(90)229 final; SEC(91)92 final; SEC(91)974 final and SEC(92)716 final.

2) In accordance with Council Regulation (EEC) No 2423/88, OJ No L 209 of 02.08.1988, p. 1, and Commission Decision No. 2424/88/ECSC, OJ No L 209 of 02.08.1988, p. 18.

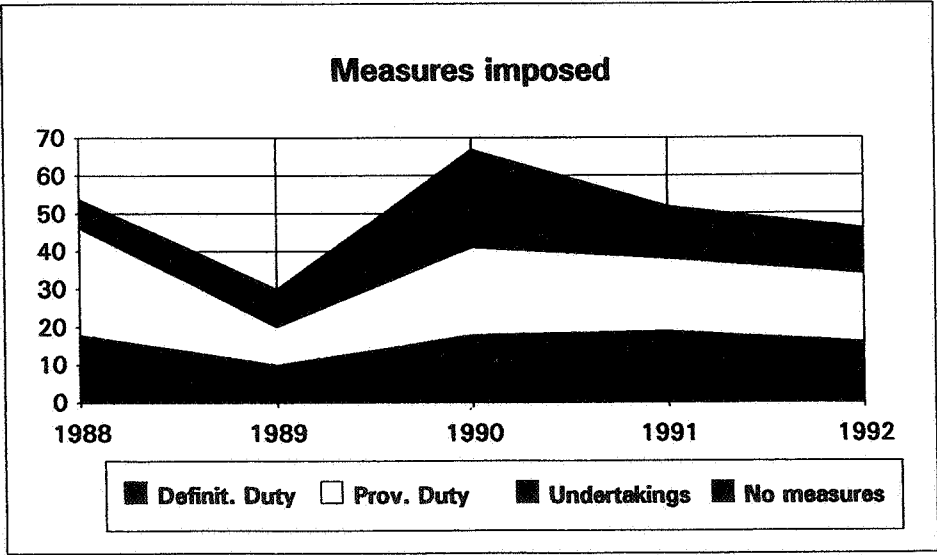
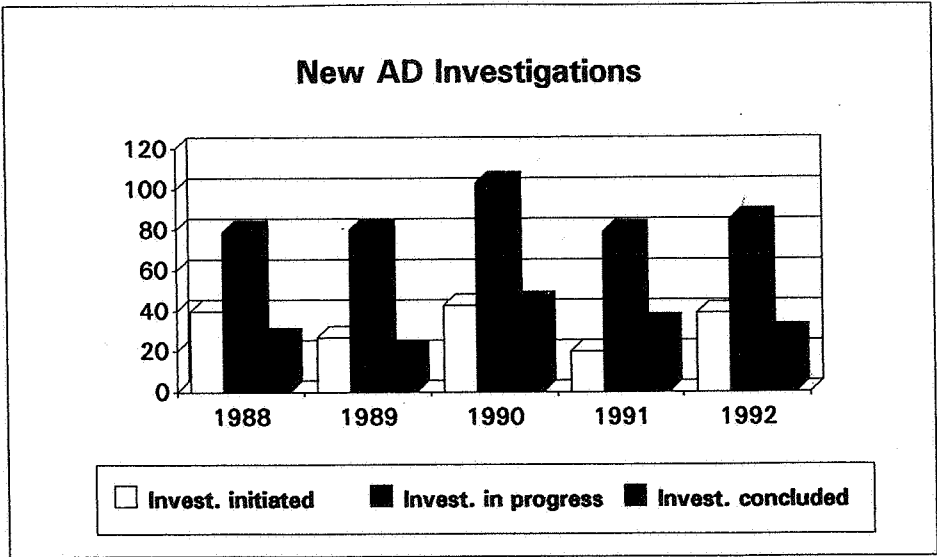
3) OJ No C 11, 18.01.1982, p. 37.

4) PE 141.178/fln of 30.11.1990, rapporteur: Mr. Gijs DE VRIES

T A B L E 1

Anti-dumping and anti-subsidy investigations  
during the period 1 January 1988 to 31 December 1992

	1988	1989	1990	1991	1992
Investigations in progress at the beginning of the period	39	53	60	59	46
Investigations initiated during the period	40	27	43	20	39
Investigations in progress during the period	79	80	103	79	85
Investigations concluded by:					
- imposition of definitive duty	18	10	18	19	16
- acceptance of price undertaking	-	5	9	3	-
- determination of no dumping	-	-	-	1	1
- determination of no subsidisation	-	-	-	-	-
- determination of no injury	5	5	13	6	4
- other reasons	3	-	4	4	7
Total investigations concluded during the period	26	20	44	33	28
Investigations in progress at the end of the period	53	60	59	46	57
Provisional duties imposed during the period	28	10	23	19	18





## 2. THE COMMUNITY'S ANTI-DUMPING POLICY - LEGAL FRAMEWORK AND RATIONALE

### 2.1 LEGAL FRAMEWORK

#### 2.1.1 THE GATT RULES

Anti-dumping action against injurious dumping from third countries is an instrument of the Community's Common Commercial Policy which is expressly provided for in Article 113 of the EC Treaty. Its justification in international law is in Article VI of the GATT, which condemns dumping where it causes material injury to the industry in the importing country because it stems from a contrived rather than a true comparative advantage (see section 2.2).

The GATT defines dumping as occurring where export prices are below a "normal value" calculated on the basis of:

- the exporter's home market prices, or
- if the exporter's domestic sales are made at a loss in substantial quantities over an extended period, his costs of production.

The GATT also recognizes that the markets in the State trading countries are not profit motivated like trade in market economy countries and, consequently, it permits the "normal value" for these countries to be based, for example, on prices in an appropriate market economy third country or on competitive import prices from other sources.

In addition, under the GATT anti-dumping rules, action may only be taken against dumped imports if these have caused, or are threatening to cause, "material" injury to the domestic industry. A material injury finding normally requires that the domestic industry has either lost significant market share or its prices have been significantly forced down by the imports. Moreover, these effects must be demonstrated to have resulted in lower production, sales profits, productivity, etc. In addition, there is a requirement that any injury caused by other factors, such as

recession or imports sold under normal conditions cannot be attributed to the dumped imports.

### 2.1.2 COMMUNITY LEGISLATION

- a) The Community's anti-dumping legislation, which is based on and in full conformity with GATT rules, spells out the criteria and rules for taking effective action against dumping. A number of these provisions also ensure that anti-dumping measures, when they are taken, constitute the least possible impediment to the Community's import trade. The most important of these provisions, which are not mandatory under the GATT and which are not applied, or only partially applied, by other signatories, are
- "the lesser duty rule", under which the Community does not automatically apply the full margin of dumping found. In each case, care is taken that the level of the measure is the minimum necessary to remove the injury. The application of this rule has had a very significant overall effect on the level of measures applied in the Community. In the last 5 years, the average dumping margin established was approximately 40% whereas the actual measures were imposed, on average, at half that rate.
  - the Community interest test, under which the overall interests of the Community are taken into account before the application of anti-dumping measures. For example, the short term benefits of low prices for industrial users and consumers, are weighed against the injurious effects of the dumped imports in terms of the industrial and social costs of the contraction or elimination of firms, sectors or whole industries. Over the last five years this has become an increasingly important aspect in the implementation of the Community's anti-dumping policy.
  - the "sunset" provision, under which the period of validity of anti-dumping measures is limited to 5 years unless a review is carried out and it is deemed necessary that they continue. Under this provision, 212 measures have been

allowed to expire automatically since 1985.

- b) The application of Community legislation has also been changed to reflect the "new" market economy status of Hungary, Poland and the former Czechoslovakia (scheduled to become the Czech Republic and the Slovak Republic from 1.1.1993). This means that dumping will now be established in relation to the domestic prices in these countries and not under the mechanism reserved for state traders explained in section 2.1.1 above. The situation with regard to these countries is also addressed in section 12.3 of this report.

## 2.2 Rationale

The reasons why the GATT considers injurious dumping as unfair are:

- dumping requires that the exporting market be segregated and that the importing market be open. These substantially different degrees of market access makes international trade fundamentally different to trade within an integrated market;
- operating from a segregated market can confer on exporters an advantage which is not due to higher efficiency and cannot be matched by his competitors in the importing country;
- this provides the dumper with the opportunity to maximize profits or minimize losses and can be highly injurious for the importing country's industry.

### 2.2.1 Dumping in integrated and international markets.

Domestic trade within an integrated market economy is governed by the freedom of movement of goods, services, capital and people which create a level playing field and give maximum impact to the role of market forces which compel firms to price in relation to efficiency. Under such conditions, there is only room for very limited and short term price discrimination between different parts of the market, by the operator (or a group of operators)

because this would lead to immediate arbitrage or retaliation by competitors.

An integrated market is also a very hostile environment for those who attempt to gain by sustained selling below cost. There is little incentive to carry out such a strategy, on any other than a short term basis, given that competitors are free to retaliate with equally low prices. It would simply force all prices down with no offsetting gain in terms of increased market share. With these "inbuilt" constraints on unfair pricing, competition rules can be restricted to maintaining the level playing field, through action, for example, against cartels or abuse of dominant position.

The international environment is very different to the situation prevailing in integrated markets. The rules applying to international trade have so far not been able to ensure equal access to all or, at least, the most important markets, nor do they cover international competition<sup>(5)</sup> Even between the main players in world trade there are still significant differences in tariff rates. Non-tariff barriers are numerous, ranging from outright quotas and so-called "voluntary restraint agreements" to a multitude of measures impeding market access by foreign competitors such as elaborate customs procedures, discriminatory standards and other technical barriers, discriminatory patent regulations, non-enforced or biased anti-trust legislation, exclusive import groupings, closed-bidding practices, etc. As a consequence large scale price discrimination between different national markets is possible and can become a strategy for companies operating in foreign trade from a "closed" market.

#### 2.2.2 The effects of dumping

##### a) Position of the dumper and the exporting country.

Provided its home market is shielded against arbitrage or retaliation, and a consequent price drop (which would neutralize

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(5) Competition rules were included in the so-called Havana Charter of 1945 but not implemented when GATT was concluded in 1948.

(...e discrimination), dumping can have clear advantages for the individual exporter. A profitable home market provides a platform which may be used to operate in export markets at prices much lower than could have been possible without market segregation. The low export prices generate further sales which in turn lower the costs of production, an advantage which benefits both export and home sales. Under such conditions, dumping becomes an economic behaviour of great efficiency, the benefits of which do not necessarily reflect a genuine competitive advantage to the dumper.

Dumping can also be beneficial to dumpers, even in situations where home market sales are made at a loss. As long as the latter cover fixed costs, export sales can be priced as low as variable cost, a strategy which permits production and employment to be maintained in a recession or enables the aggressor to obtain considerable advantages when going for economies of scale, etc. Annex S sets out an example of how market segregation enables exporters to loss-minimize and profit maximize in these circumstances.

The benefits of dumping for the exporting country's economy are that domestic industries develop capacities which far exceed the size of the national market. This allows high economic growth and high production levels, even in periods of domestic or world-wide recession. Furthermore, it facilitates strategic targeting of key industrial sectors in important markets. This can result in a high trade surplus and possibly dominant positions in the industrial sectors concerned. The advantages derived from dumping can thus outweigh disadvantages stemming from protection of the home market, in particular relatively high consumer prices.

b) Effects for the importing country

A domestic industry facing dumped imports is in a difficult position. The normal reaction to the low prices of a competitor would be to sell on the latter's home market at equally low prices, but this is not always possible because of access barriers. Instead, it has to reduce its domestic prices to the level of the dumped import prices or lose market share. Its

position becomes the more difficult as the dumper may be able to sustain losses on its export business for long periods because of its "guaranteed" home market profits. The resulting cost increases and losses may affect also the industry's position in third markets. As a result, its overall productivity and investment strength is weakened. In addition, dumping creates uncertainty for investment. Even correct investment planning may be frustrated by less efficient competition with the result that resources in the importing country are wasted.

Users and consumers are likely to enjoy short term benefits from dumped imports through low prices, but the position may be less favourable in the longer term. Where domestic producers are forced to lower production or to cease it altogether, competition is reduced, a situation which, in the long run, is unlikely to serve consumer interests.

The impact of dumping on the importing country as a whole is the reverse of the impact on the exporting country. There may be an immediate advantage through the cheap imports, but account has to be taken of the total costs of dumping to the domestic economy, i.e. lost capacities, lost investments, the loss of technology especially in promising or strategic sectors, a shrinking industrial base, and the social costs of unemployment and the contraction or elimination of whole industries.

### 2.3 Different Dumping Strategies.

In a number of instances, dumping is not or not sufficiently harmful to justify defensive action. Short term dumping, e.g. for the purpose of ensuring market entry, as a general rule may only involve limited damage to domestic producers and therefore constitutes insufficient reason to warrant protection. Even where long-term dumping takes place, anti-dumping action is justified only if and when it leads or threatens to lead to significant injury, e.g. in terms of market shares or through price undercutting or price depression. The GATT and Council Regulation (EEC) No. 2423/88 consequently stipulate that anti-dumping action is dependant upon the finding of material injury caused by the dumping to the domestic industry of the importing country.

There are three types of dumping which are particularly damaging:

- **state trade dumping** from economies whose main aim may not be cost efficiency but to earn hard currency at any price. In these cases the margins by which the prices of the Community producers are undercut may be unusually high. Because the exporters in question often do not follow normal business behaviour, this type of dumping is unpredictable in view of its occurrence, volume, price and duration;
  
- **"cyclical" dumping** occurs in industries subject to periodic excess supply and capacity in which there is an incentive to export during the period of shrinking domestic demand to dump the excess production at prices below full cost, thus exporting unemployment. Cyclical dumping can be expected in industries with high investment and consequently high fixed costs, like the steel or chemical industry and has the effect of exacerbating the difficulties facing an industrial sector in the importing country which is already affected by economic recession;
  
- **strategic dumping** aimed at achieving, through an aggressive export strategy, a strong position on important export markets. The long-term character of such dumping usually stems from the fact that the dumper operates from a home market base where foreign competition is weak or non-existent. This strategy has as its main aim the expansion of production to benefit from scale and learning economies for products such as in the electronics sector.

3. GENERAL OVERVIEW - MEASURES IN FORCE

At the end of 1992, the Community had 158 measures in force, 108 of which were original measures and 50 of which were measures maintained after a full review. Of these 158 measures, 114 were in the form of duties and 44 in the form of undertakings. It is, of course, important to bear in mind that these measures, although substantial in relation to numbers of investigations, only affect 0.6% of total imports to the Community.

Of all the measures in force 47, or 30% of the total, were imposed against the state trading countries,<sup>(6)</sup> including China with 20 measures. The other countries most involved were Japan with 21 measures, S.Korea with 13 and Turkey with 10.

The picture changes, however, if measures are examined in relation to trade value, which is a more realistic measurement. In this respect, the measures against Japan represented 70% of the total trade value affected by all measures.

It is noteworthy that most of the Japanese products which are subject to measures, approximately 10 in number, can be classified as strategic in terms of their high technology content or their importance to an economy. They are also products where the "learning curve" and economies of sale are crucial and these factors make them particularly vulnerable to a dumping strategy. These products in fact, won very considerable market shares in the Community, while imports into Japan, from any source, were practically zero for each of the products, except DRAMs, where a bilateral agreement with the United States led to some U.S. goods being sold in Japan.

See tables 2 and 3 for a statistical overview of original investigations and reviews for the period 1981 to 1992.

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(6) These figures only include measures for the then CSSR, Hungary and Poland when they were classified as State traders.



T A B L E 2

ANTI-DUMPING AND ANTI-SUBSIDY INVESTIGATIONS DURING THE PERIOD 1981 - 1992

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Investigations in progress at the beginning of the period	29	46	53	33	40	44	21	39	53	60	59	46
Investigations initiated during the period	48	58	38	49	36	24	39	40	27	43	20	39
Investigations in progress during the period	77	104	91	82	76	68	60	79	80	103	79	85
Investigations concluded by :												
- imposition of definitive duty	10	7	20	5	8	4	9	18	10	18	19	16
- acceptance of price undertaking	7	35	27	27	4	25	8	-	5	9	3	-
- determination of no dumping	7	3	-	6	2	4	-	-	-	-	1	1
- determination of no subsidisation	-	-	-	-	1	-	-	-	-	-	-	-
- determination of no injury	6	6	8	-	15	7	4	5	5	13	6	4
- other reasons	1	1	3	4	2	7	-	3	-	5	4	7
Total investigations concluded during the period	31	51	58	42	32	47	21	26	20	45	33	28
Investigations in progress at the end of the period	46	53	33	40	44	21	39	53	60	58	46	57
Provisional duties imposed during the period	10	18	22	11	9	6	13	28	10	23	19	18

T A B L E 3

REVIEWS OF ANTI-DUMPING AND ANTI-SUBSIDY INVESTIGATIONS DURING 1981 - 1992

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Reviews in progress at the beginning of the period	1	16	24	2	2	20	27	11	20	15	21	21
Reviews opened during the period	17	24	10	7	30	24	8	24	17	26	16	27
Reviews in progress during the period	18	40	34	9	32	44	35	35	37	41	37	48
Reviews concluded by :												
- imposition of definitive duty in lieu of price undertaking	-	1	8	1	1	1	7	4	4	6	1	1
- amendment of definitive duty	-	-	11	2	5	7	8	-	4	2	3	11
- 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	1
- repeal or expiry of definitive duty	-	-	-	-	2	2	2	1	9	6	4	5
- repeal or expiry of price undertaking	-	-	3	-	-	3	-	5	4	5	2	-
- repeal of regional duty	1	-	-	1	-	-	-	-	-	-	-	-
- 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	18
Reviews in progress at the end of the period	16	24	2	2	20	27	11	20	15	21	22	30
Provisional duties imposed during the reviews	1	13	3	3	2	8	-	7	1	-	-	-

#### 4. INITIATIONS OF ANTI-DUMPING AND ANTI-SUBSIDY INVESTIGATIONS

##### 4.1 OVERVIEW

In the five-year period from 1988 to 1992, 169 investigations were initiated involving imports from 40 countries. The countries most involved were the People's Republic of China with 28 investigations, S. Korea with 15 investigations and Japan and Turkey with 14 investigations each.

In 1992, 39 investigations were initiated involving imports from 22 countries, the People's Republic of China being by far the most prominent with 8 initiations. The high number of countries involved is due in part to the political changes in the former U.S.S.R. and the former Yugoslavia, with each new Republic now being listed as a country in its own right. The investigations initiated over the last five years are broken down by country of export in Annex G.

The investigations initiated in the years 1988 to 1992 are broken down by product sector in Annex H. This shows that, over the period, the sectors most involved were those of chemicals and electronics with, in 1992, the largest number of initiations again taking place in the electronics sector.

##### 4.2 INITIATIONS IN 1992

###### 4.2.1 Electronic weighing scales from Singapore and S. Korea

The notice of initiation of an anti-dumping proceeding was published on 10 January 1992, with regard to imports of certain electronic weighing scales originating in Singapore, subsequent to a complaint lodged by 9 EC manufacturers representing a major proportion of Community production. Following a further complaint from the same producers, the investigation was extended on 4 April 1992 to the Republic of Korea.

This type of weighing scale concerned is a simple three-function electronic retail scale used in small retail shops as well as in supermarkets.

The complaint contained evidence of significant dumping on the basis of a comparison between export prices to the Community and the domestic prices in Singapore and S.Korea.

With regard to injury, it was claimed that the market share of imports from Singapore and S.Korea had risen from 5.6% in 1988 to 22% in 1991. The complaint also alleged price undercutting, price depression to loss-making levels leading to a decline in Community production and sales.

#### 4.2.2 Unwrought manganese from the People's Republic of China

The notice of initiation of an anti-dumping proceeding was published on 21 January 1992, with regard to imports of unwrought manganese containing more than 96% by weight of manganese, originating in the People's Republic of China. The complaint was lodged by the Chambre syndicale de l'électrometallurgie et de l'électrochimie in Paris on behalf of the sole Community producer.

The complaint contained evidence of significant dumping on the basis of a comparison between export prices to the Community and domestic prices in the U.S.A., which was claimed to be the most appropriate analogue country.

With regard to injury, the share of the Community market held by the Chinese product was alleged to have increased 15-fold between 1985 and 1990, when it reached 46%. Substantial price undercutting and price depression were also alleged causing the Community producer to lose market share, reduce his production and make workers redundant.

4.2.3 Paint brushes from the People's Republic of China

This investigation was resumed on 31 January 1992 following a judgement of the Court of Justice (see 10th Annual Report).

4.2.4 Antimony trioxide from the P.R. China

The notice of initiation of an anti-dumping proceeding was published on 21 March 1992, with regard to imports of refined antimony trioxide originating in the People's Republic of China, following a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC), which was acting on behalf of a major proportion of Community production.

Refined antimony trioxide is a white odourless powder obtained by the oxidation of antimony metal, ores or concentrates. Its main application is as a flame retardant in plastics, polymers, rubber and paints. It is also used in the production of polyester fibres, as a smelting agent in glass and as an opacifier in ceramics.

The complaint contained evidence of significant dumping on the basis of a comparison between export prices to the Community and domestic prices in the Republic of Korea, which was claimed to be the most appropriate analogue country.

With regard to injury, it was claimed that the market share of the Chinese product had risen from 14.3% in 1987 to almost 24% in 1991 and that, during the same period of time, the prices at which the Chinese product had been sold in the Community had declined significantly, substantially undercutting the prices charged by Community producers. This in turn was alleged to have caused substantial decreases in profit and job losses despite a significant increase in Community consumption.

4.2.5 Portland cement from Romania, Tunisia and Turkey

The notice of initiation of a regional anti-dumping proceeding was published on 22 April 1992, concerning imports into Spain of certain Portland cement originating in Romania, Tunisia and Turkey. The complaint was lodged by OFICEMEN, the national organisation of Spanish cement producers, representing the totality of Spanish Portland cement production.

On the basis of a comparison of domestic prices of the like product in Turkey and Tunisia with the corresponding prices charged for export to Spain, significant dumping margins were alleged for each of the three countries concerned.

Market shares of imports into the Community from the countries cited allegedly rose from 3% in 1988 to 9.4% in 1991, and their prices undercut the prices charged by the Spanish producers by up to 21%. The latter were consequently forced to suppress price increases necessary to meet increases in costs, and even to reduce their prices, causing production to fall and operating profits to decline.

4.2.6 Fluorspar from the People's Republic of China

The notice of initiation of an anti-dumping proceeding was published on 25 April 1992, with regard to imports of fluorspar originating in the People's Republic of China, following a complaint lodged by Eurométaux on behalf of the Community producers of fluorspar.

