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Report

drawn up on behalf of the Committee on External Economic Relations

on the practice of dumping and the threat posed to Europe by uncontrolled
competition

(Doc. 209/77 and Doc. 447/77)

Rapporteur: Lord BRIMELOW

PE 50.277/fin.



The President of the European Parliament referred the motion for a resolution tabled by Mr Inchauspé, on behalf of the Group of European Progressive Democrats, on the practice of dumping and the threat posed to Europe by uncontrolled competition, (Doc. 209/77) and that tabled by Mr de la Malène, on behalf of the Group of European Progressive Democrats (Doc. 447/77), to the Committee on External Economic Relations as the Committee responsible and to the Committee on Economic and Monetary Affairs, the Committee on Social Affairs and Employment and the Committee on Agriculture for their opinions on 5 July 1977 and 14 December 1977 during Plenary Session.

The Committee on External Economic Relations appointed Lord Brimelow rapporteur at its meeting of 20 September 1977.

After an exchange of views on 19 October 1977 the Committee on External Economic Relations considered the draft report at its meeting of 24 January 1978 and adopted the motion for a resolution and explanatory statement unanimously.

Present: Mr Kaspereit, chairman; Mr Martinelli, vice-chairman; Lord Brimelow, rapporteur; Mr Amadei, Mr Bersani, Lord Castle, Mr Cousté, Mr Jensen, Mr L'Estrange, Mr Nyborg, Mr Pintat, Mr Spicer, Lord St. Oswald and Mr Vandewiele.

The opinions of the Committee on Economic and Monetary Affairs, the Committee on Social Affairs and Employment and the Committee on Agriculture are attached.

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The Committee on External Economic Relations hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on the practice of dumping and the threat posed to Europe by uncontrolled competition

The European Parliament,

- having regard to the motion for a resolution introduced by Mr Inchauspé on behalf of the Group of European Progressive Democrats (Doc. 209/77) at the end of the discussion about an oral question tabled by Mr Cousté on the practice of dumping (Doc. 174/77);
- having regard also to the motion for a resolution tabled by Mr de la Malène on behalf of the Group of European Progressive Democrats (Doc. 447/77) at the end of a discussion on oral questions moved by Mr Inchauspé on imports flooding the Community markets (Docs. 363/77/rev. and 364/77/rev.);
- reaffirming its acceptance of all the principles incorporated in the Treaties by which the European Communities were established;
- conscious of the Community's international and domestic responsibilities and obligations;
- recognizing the unique status of the Community as the world's largest importer and exporter and the consequent impact on international trade of any changes in the Community's trading policies;
- mindful of Article 110 of the Treaty establishing the European Economic Community, in which the Member States stated it to be their aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers;
- noting with concern the increasing number of instances of market disruption within the Community in recent years;
- noting with equal concern the parallel deterioration in the trade balances of most of the Member States;
- noting with growing concern the persistence of high rates of unemployment within the Community;
- recognizing that not all the manifestations of these adverse developments can be attributed to the disruptive effects of low-cost imports, but observing that such imports have been a significant contributing factor;
- wishing to limit the deleterious consequences of market disruption within the Community;

- accepting that the Community's liberty to take corrective action is limited by its international obligations, particularly by those flowing from the General Agreement on Tariffs and Trade (GATT);
- recalling that GATT authorizes certain forms of commercial defence and lays down appropriate procedures, notably in Article VI as regards dumping and subsidization and in Article XIX as regards market disruption;
- noting with approval that the Commission is pressing for the revision of Article XIX of GATT in order to make it more effective;
- noting with approval that the Commission, acting in accordance with Article 113 of the Treaty establishing the European Economic Community, has developed increasingly effective procedures for defensive action within the limits authorized by Articles VI and XIX of GATT;
- recalling that these procedures are being used with increasing frequency, notably
 - in the textile sector, where the Community, acting within the framework of the Multifibre Agreement, had negotiated self-restraint agreements with all the major exporting countries and has unilaterally imposed import restrictions on particularly sensitive imports;
 - in other sectors, by the imposition of import restrictions, either on the initiative of the Commission or in response to justified requests by Member States;
 - in the frustration of dumping and subsidization, in that proof of injury resulting from dumping or subsidization leads to the imposition of adequate protective measures;
 - in the surveillance of the importation into the Community of particularly sensitive products such as footwear, zip fasteners, fertilizers and steel products;
- observing that in spite of the efforts which have been and are being made, many sectors of Community continue to suffer from the disruptive effects of low-cost imports;
- desiring to help the industries affected, but recognizing that any ill-considered defensive actions by an economic unit as large as the Community could all too easily touch off a world-wide escalation of protectionist measures;
- having regard to the report of the Committee on External Economic Relations and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Social Affairs, Employment and Education and the Committee on Agriculture (Doc. 551 / 77);

1. Requests the Commission to continue and to reinforce, within the limits imposed by its international obligations, its judicious and vigorous efforts to protect Community industries against market disruption and trading practices such as dumping and subsidization;
2. Urges the Commission to organize the rapid acquisition of the data needed to permit prompt reaction before serious damage has been done;
3. Urges the Commission to ensure the punctitious execution of the agreements it has negotiated with foreign suppliers of textiles within the framework of the multifibre agreement. It requests the Commission to make sure that safeguards against all forms of circumvention (including abuse of the rules establishing the origin of imports) are effectively enforced;
4. Requests the governments of the Member States to cooperate with the Commission in the implementation of Chapter X of the Treaty of Paris so that the Community's steel industry may be protected against any disruptive export practices that may be pursued by third countries;
5. Supports the efforts of the Commission to establish a satisfactory basis (covering both prices and quantities) for trade in steel between the Community, the U.S.A. and Japan;
6. Urges all the Community's trading partners to respect the OECD gentleman's agreement regarding credits for shipbuilding and the understanding about the fair distribution of new orders;
7. Endorses and indeed wishes to see strengthened the Community's efforts to organise relations with state-trading countries in such a way that a fair balance of mutual advantages and obligations is achieved and that market disruption is avoided.
8. Requests the Commission to intensify its efforts to promote Community exports, particularly to countries which have a surplus in their trade with the Community, and most of all to press for new openings for Community exports to Japan, and in this connection would welcome progress towards the early establishment of a European Export Bank;

9. Suggests that in the Tokyo round of multilateral trade negotiations, the Commission should seek to achieve inter alia the following aims:
- in the field of customs duties: the progressive harmonization of tariffs by making the biggest cuts in the highest tariffs;
 - in the field of non-tariff barriers: maximum reductions;
 - in the field of safeguarding action under Article XIX: greater precision in the international rules, particularly those establishing criteria of market disruption: greater flexibility through agreement that safeguard measures may be applied selectively (i.e. circumventing the most-favoured-nation principle), subject to international supervision;
 - in the field of safeguarding action against dumping and subsidies under Article VI: eliminate the existing discrepancies between the practices of states, thereby equalizing the obligations and rights of all GATT members;
 - in the field of customs valuation: standardize practice on the basis of that now adopted by the majority of trading nations;
 - in the field of North/South relations: take the fullest possible account of the interests and needs of the developing countries, and in particular of the least developed;
10. Instructs its President to forward this resolution and the report of its committee to the governments of the Member States, to the Council and Commission of the European Communities.

EXPLANATORY STATEMENT

1. The title of the draft Resolution of Mr Inchauspé (Doc. 209/77)¹ refers only to dumping and the threat posed to Europe by uncontrolled competition; but the subject matter of the draft Resolution is broader than the title implies. It advocates a new and world-wide approach to the organization of international economic relations. In paragraph 13 it expresses opposition to "all" protectionist policies, but it suggests that the rules of free trade on which international relations have been based for thirty years should be re-defined and reformed so that freedom of trade may become an "organized" freedom. The scope of the draft Resolution is so wide that it exceeds the competence of any single committee of the European Parliament.
2. The specific proposals put forward in the draft Resolution for the achievement of "organized" freedom are contained in paragraphs 14-17. Despite the rejection in paragraph 13 of "all" protectionist policies, paragraph 14 includes a number of suggestions which have traditionally been regarded as protectionist. It also calls for a "truly" European export policy. Paragraph 15 deals with certain aspects of the Common Agricultural Policy. Its connection with the rest of the Resolution is that it is concerned with the organization of the Community market in agricultural produce, and that the theme of market "organization" runs through the whole of the draft Resolution. Paragraphs 16 and 17 relate to the organization of markets outside the Community. Their scope is much broader than the title of the Resolution; but since the organization of outside markets can influence the degree of dumping and the kind of competition which the Community has been experiencing, there is a certain unity of thought.
3. In order that the freedom of international trade may be appropriately transformed into "organized" freedom, paragraph 14 of the draft Resolution proposes that the commercial policy of the Community be based on seven rules: and paragraph 16 suggests that these rules be made the basis for a completely new mandate to the Commission for the future conduct of its negotiations in GATT.

¹ After this Report was drafted, a further motion for a resolution (Doc. 447/77) on the subject of imports flooding the Community markets was referred to the Committee. The points raised in that motion were already covered by the original draft report.

4. The seven rules mentioned in paragraph 14 of the draft Resolution are set out below, with a comment following each.

Rule (i) - the maintenance of a common external tariff ensuring an effective Community preference.

Comment: the meaning of an "effective" Community preference is not defined. A tariff preference is usually regarded as effective when it eliminates or reduces to acceptable proportions, without recourse to supplementary measures, competition from outside the area protected by the tariff preference. The Community is, on the whole, a low-tariff area. Paragraph 3 of the draft Resolution asserts that the Common Market is open to every wind that blows; and paragraph 7 implies that the liberalism of the Community is one of the causes of this. The clear implication is that the protection at present accorded by the system of Community preference is inadequate and should be increased until, under each relevant tariff heading, it affords "effective" protection.

It was the hope of those who originally drafted the General Agreement on Tariffs and Trade that the level of protection afforded by tariffs would be progressively reduced; and the Member States of the Community have undertaken, in Article 18 of the Treaty of Rome, to work for the lowering of barriers to trade. It follows that the adoption of this recommendation would involve the abandonment of the Community's traditional tariff policy and its replacement by a policy of increased tariff preferences. The international implications of the adoption of this proposal would be far-reaching. The draft Resolution neither draws attention to nor discusses these implications.

Rule (ii) - the establishment of a system of 'levies' for the products of labour-intensive industries in order to avoid 'social dumping' and rationalize trade.

Comment: The term 'social dumping' is not defined in the draft Resolution. The inclusion of the word 'social' differentiates 'social dumping' from the dumping defined in Article VI of GATT. The term 'social dumping' designates low-cost imports from countries with low labour and social costs. To cope with the market disruption caused by such imports, the protective measures authorised by GATT are not those foreseen in Article VI, which deals with dumping (precisely defined) and subsidies, but those foreseen in Article XIX, which deals with the problem of imports which "causes or threaten injury to domestic producers".

The wording of this "rule" suggests that the labour-intensive industries of the Community are entitled to special forms and degrees of protection supplementary to those provided by GATT. Specifically it recommends 'levies' without giving details of their nature.

By definition, 'levies' sufficient to put an end to 'social dumping' would put an end to Community imports of certain low-cost goods. That this interruption of trade would be tantamount to a rationalization of trade, as the wording of the draft Resolution appears to imply, is not self-evident. The Commission has negotiated voluntary restraint agreements with a number of countries in order to prevent the disruption of the Community market by low-cost imports from the countries concerned; but it has been the aim of these agreements to limit such imports, not to bring them to a complete halt. The stopping of trade and the rationalization of trade are not identical concepts.

At present, the only measures which may legitimately be taken against dumping as defined in GATT are those authorised by Article VI, by the Anti-Dumping Code negotiated within GATT in 1968, and by Commission Regulation 459/68. Measures to protect domestic producers to whom serious injury is being caused or threatened by increased imports are governed by Article XIX of GATT, and, in the case of fibres for textiles, by the Multi-Fibre Agreement. Efforts are currently being made in GATT to re-negotiate Article XIX and the Multi-Fibre Agreement in order to make safeguards against disruptive imports more effective. The re-negotiation is proving difficult.

Since Article VI of GATT does not recognise 'social dumping', 'levies' of the kind recommended in the draft Resolution could probably be successfully challenged both in GATT and in the European Court of Justice.

Rule (iii) - Automatic recourse to the safeguard clause provided for under the Treaty of Rome when imports become excessive.

Comment: This is a change of subject. The issue is no longer dumping or 'social dumping'. The suggestion is that whenever imports are deemed to have become excessive, for whatever reason, recourse to the safeguard clause of the Treaty of Rome should be automatic.

The Treaty of Rome contains no specific safeguard clause in the sense of the draft Resolution. Article 113 calls for a common commercial policy, which is to include, inter alia, measures to protect trade, "such as those to be taken in case of dumping and subsidies". This text makes no mention of an excessive level of imports as a justification of measures to protect trade. It mentions only dumping and subsidies. It is true that these are cited only as examples, and not as the sole considerations which might justify measures in protection of trade: but to suggest that an excessive level of imports should lead to automatic recourse to the safeguard clause of the Treaty of Rome would be to initiate a controversy about the interpretation of Article 113.

The safeguarding of a country's balance of payments is covered by Articles 108 and 109 of the Treaty of Rome. It seems unnecessary, however, to discuss the relevance of these articles since the subject of this part of the draft Resolution is not the safeguarding of a country's balance of payments, but the protection of labour-intensive industries threatened by excessive imports.

Safeguards against excessive imports are governed not so much by the Treaty of Rome as by Article XIX of GATT. This article does not use the words 'excessive imports', but it does deal with the contingency of "produce being imported in such increased quantities and under such conditions as to cause or threaten injury to domestic producers of like or ordinarily competitive products." This article does authorise, to the extent and for such time as may be necessary to prevent or remedy such injury, the suspension of obligations and the withdrawal or modifications of concessions: but before such action is taken notice has to be given and the parties likely to be affected by such emergency action must be given an opportunity to consult. In critical circumstances, action may precede consultation, but in that case consultation has to follow immediately. The Article also contains provisions regarding counter-action by the parties affected if consultation does not lead to agreement.

It follows that recourse to safeguards under Article XIX of GATT is not characterised by the abrupt and unilateral automaticity recommended in this part of the draft Resolution. Moreover, the application of Article XIX of GATT has been made difficult by the need to avoid discrimination between the various foreign suppliers of goods which are causing market disruption. This is one of the consequences of the "most-favoured-nation" principle. It is because of these difficulties that an effort is now being made in GATT to re-negotiate Article XIX. But within GATT the countries whose interests as exporters might be adversely affected by the re-negotiation of Article XIX are numerous. The balance of voting power in GATT has shifted with the increase in its membership. This makes it virtually certain that any attempt to circumvent Article XIX by recourse to alternative measures such as those recommended in this part of the draft Resolution would at once run into trouble.

It cannot be gainsaid that, in many Community countries, the growth of imports at a time when certain domestic industries are shrinking and dismissing workers has become a cause of deep and growing concern. The Commission is taking action to safeguard the industries affected. This action is more complex than that recommended in the draft Resolution. It shows greater regard for existing international obligations and the legitimate interests of third countries. The contrast between automaticity recommended in this part of the draft Resolution and the differentiated approach of the Commission is illustrated by the complexity of the Commission's current negotiations for the revision of the Multifibre Agreement (subsequently referred to as the MFA). The Commission is trying to revise the MFA before it expires at the end of 1977. The MFA sought to establish a balance between the disruption of markets and the desirability of expanding world trade in textiles. The hope that it would lead to an orderly expansion and progressive liberalization of trade in textiles has dimmed as the recession in textiles has deepened. From the point of view of the Community, the balance has shifted from the promotion of growth to the limitation of market disruption. According to Annex A of the MFA, market disruption is held to have occurred when actual damage, or threat of damage, to domestic producers has been caused by a sharp and substantial increase of imports of

particular products from particular sources, and when these products are offered at prices substantially below those prevailing for similar goods of comparable quality in the market of the importing country. Article 4 of the MFA allows participating countries to conclude bilateral agreements intended on the one hand to eliminate real risks of market disruption in importing countries and on the other hand to ensure the expansion and orderly development of trade in textiles and the equitable treatment of participating countries. The point to be noted is that under Article 4 market disruption becomes the subject of bilateral negotiations, not of automatic action. The negotiations for the revision of the MFA are proving difficult. But there is a marked contrast between the spirit in which these negotiations are being conducted by the Commission and the recommendation in the draft Resolution for automatic recourse to safeguards, with no reference either to international obligations or to regard for the interests of third countries. Nor does the draft Resolution draw attention to the fact that safeguards arbitrarily imposed may be challenged both in GATT and in the European Court of Justice, while safeguards in the field of textiles may be challenged before the Textiles Surveillance Body.

Rule (iv) - Establishment of permanent Community investigation procedures to detect cases of dumping other than those revealed merely by complaints from individuals.

Comment: The establishment by the Community of a world-wide and comprehensive system of surveillance to detect cases of dumping would involve waste of money and manpower. Present procedures probably bring to light all the cases where substantial damage is being suffered by Community producers. Complaints are being made directly to the Commission on an increasing scale.

Rule (v) - Effective supervision of the implementation of the agreements concluded between the Community and third countries, in particular through the automatic issue of licences.

Comment: That the supervision of agreements between the Community and third countries should be effective is clearly right. But that this requires an all-embracing system of import licences is not self-evident. The scale of the bureaucratic effort that would be involved, the costs that it would

create, the delays it would impose, the resentments it would inspire, the corruption to which it would probably lead - these are all matters which give food for thought. The recommendation is incompatible with the principle underlying both GATT and the Treaty of Rome that barriers to trade should be reduced and not increased. Experience has shown that at times recourse to quotas and import licences cannot be avoided (e.g. for the limitation of certain categories of textile imports). But this should be regarded as an instrument of last resort, not as a procedure suitable for general use.

Rule (vi) - The introduction in intra-Community trade of certificates of origin in order to prevent deflections of trade.

Comment: This recommendation has been prompted by abuses of the freedom of movement of goods within the Community (Article 10 of the Treaty of Rome), particularly in connection with the evasion of quotas regulating the import of certain textiles and garments into individual Member States.

The Commission and the member Governments of the Community are aware of the abuses and wish to put an end to them. Whether - and, if so, to what extent - the introduction of a system of certificates of origin would be the most effective and economical way of coping with these abuses is a question on which the Commission, in consultation with member Governments, is best placed to advise.

Rule (vii) - Pursuit of a truly European export policy.

Comment: At this point the proposed rules (and the GATT negotiating mandate which is to be based on them) turn from the control of imports to the promotion of Community exports. What constitutes a "truly" European export policy is not defined. It is known that the Group of European Progressive Democrats would like to see tariffs and non-tariff barriers in third countries brought down to the Community level.

5. Paragraph 16 of the draft Resolution of Mr Inchauspé expresses the opinion "that the negotiating mandate given to the Commission within the framework of GATT should be fully renewed on the basis defined under paragraph 14 and supplemented by the progressive introduction of a world organization of markets founded on the establishment of minimum reference prices for raw materials and food produce and rules for the storage and removal from storage of such raw materials and food products".

Comment: Negotiating mandates for GATT are detailed and lengthy documents. They do not merely set out principles. They marshal the information needed for the conduct of a complex multilateral negotiation which involves the striking of a series of bargains. Within GATT it is customary for concessions to be compensated - a matter on which the draft Resolution is silent. The principles set out in paragraph 14 of the draft Resolution would require the jettisoning of the work so far done by the Commission in the Tokyo Round and its replacement by a new approach, that is to say

- not the policy envisaged in GATT and the Treaty of Rome of reducing barriers to trade, but the creation of certain new barriers to trade;

- not the negotiation of compensated reductions in Community tariffs, but the raising of certain Community tariffs to a level at which they give "effective" preference;

- not the continuation of the trade and tariff policies of the past thirty years, but their replacement by an "organized freedom", of which no precise definition is given;

- not the expansion of world trade in the basis of comparative advantage in an international system of diminishing tariffs and non-tariff barriers, but the protection of the Community's labour-intensive industries by a new system of levies designed to end "social dumping", of which no precise definition is given;

- not the acceptance of change in the pattern of international trade when that change is based on comparative advantage, but automatic recourse to safeguards whenever imports are deemed to have become excessive;

- not the continuing delegation of responsibility for exports to the Member States of the Community and to the individual enterprises in them, but a centralized drive to create a "truly European" export policy. This policy is not defined, but when Mr Inchauspé introduced his draft Resolution in the European Parliament on 5 July last, he referred to the study days of his Group at Lyons; and from a paper discussed there, it appears that his Group would like to see parity established between the treatment given by third States to Community exports and that given by the Community to imports from third States. The implications of this concept are great. So are the difficulties which any attempt to implement it would encounter.

To give the Commission a new negotiating mandate based on these principles at this stage of the Tokyo Round would be to put a large and hungry cat into the GATT dovecote. The argumentation contained in the draft Resolution is an exiguous basis on which to propose such a radical change of policy. This in itself should counsel caution. But the desirability of caution will be even more evident if it is borne in mind that Mr Inchauspé regards his sweeping proposals as merely temporary. The draft Resolution does not say this. But Mr Inchauspé said this in the European

Parliament on 5 July. He spoke of his proposed measures as constituting "a genuine organization, not new but temporary, of European commerce", and later he spoke of the Community taking "drastic but temporary measures - since it is not a question of returning to an out-of-date protectionism". If proposals such as those recommended in the draft Resolution were to be adopted, it is in the highest degree unlikely that their impact would be either limited or temporary.

The proposal in paragraph 16 of the draft Resolution that the new approach to GATT negotiations should be supplemented by the progressive introduction of a world organization of markets is inserted inconspicuously, without supporting argumentation, and with no attempt to draw attention either to the complexity and importance of its implications or to the lessons of past experience in this field. The history of past attempts to control world markets in selected commodities has been a history of at best only partial successes, usually accompanied by unwanted side-effects. It is also a history of the need for carefully differentiated approaches to the problems presented by individual commodities, individual markets and individual social systems. Against this historical background it is difficult to regard as other than premature and over-ambitious any proposal for the comprehensive organization of world markets. A cautious, commodity-by-commodity approach would be more prudent. As for the suggestion that the world organization of markets should be "founded on the establishment of minimum reference prices for raw materials and foodstuffs", this is a highly over-simplified approach to pricing and production problems which abound in complexities and difficulties. Minimum prices can all too easily lead to the creation of unwanted surpluses. This is not to deny that the establishment of minimum prices can, in certain circumstances, play a useful role in agreements intended to encourage the production and regulate the marketing of specified commodities. The current negotiations for a new International Wheat Agreement illustrate this. But the application of such agreements can be complicated and distorted by many additional factors, of which due account has to be taken if undesired consequences are to be avoided. The approach recommended in the draft Resolution is too simple.

6. Paragraph 17 of the draft Resolution after recalling the European Parliament's support of the principles of the Lomé Agreements, describes them as constituting "a first encouraging step towards the regional organization of markets". It then expresses the opinion that "there should be greater coherence in all the agreements concluded between the Community and the rest of the world".