COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 516 final

Brussels, 28 October 1993

ELEVENTH ANNUAL REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

ON

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

(1992)

(11th Annual Report to Parliament - 1992)

CONTENTS

ELEVENTH ANNUAL REPORT[1] OF THE COMMISSION ON THE COMMUNITY'S ANTI-DUMPING AND ANTI-SUBSIDY ACTIVITIES[2]

1. INTRODUCTION

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

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.

---

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.

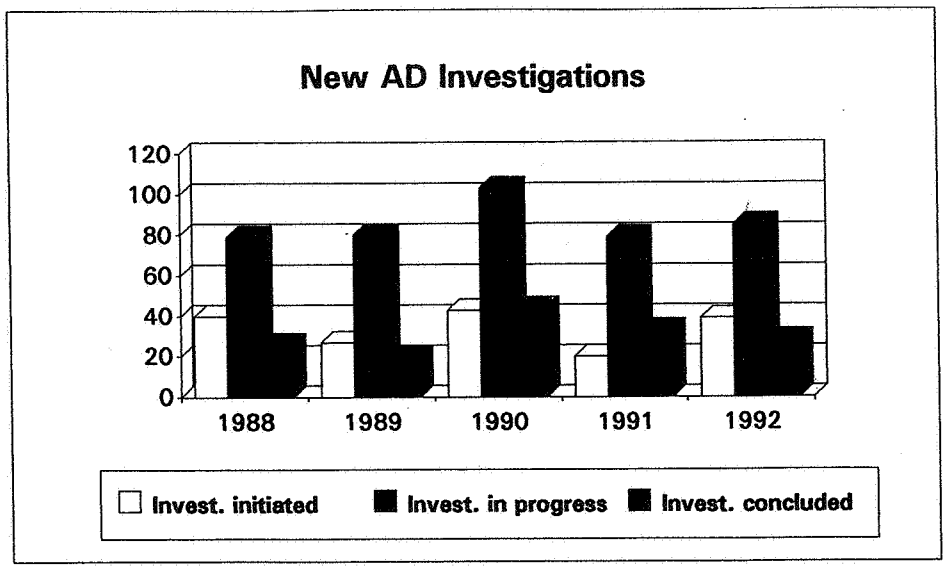
3) OJ No C 11, 18.01.1982, p. 37.

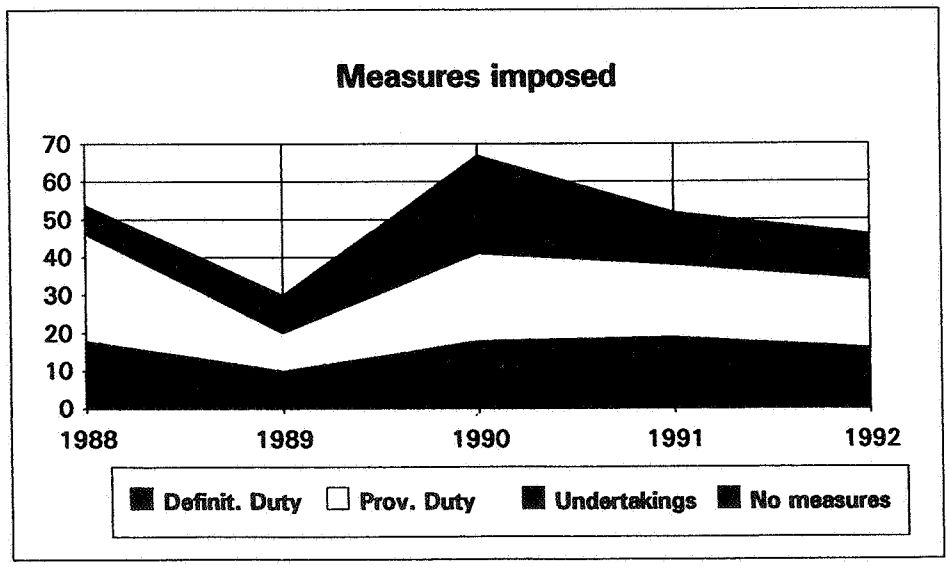
4) PE 141.178/fin of 30.11.1990, rapporteur: Mr. Gijs DE VRIES

TABLE 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


New AD Investigations
120
100
80
60
40
20
0
1988
1989
1990
1991
1992
Invest. initiated
Invest. in progress
Invest. concluded


Measures imposed
70
60
50
40
30
20
10
0
1988
1989
1990
1991
1992
Definit. Duty
Prov. Duty
Undertakings
No measures

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 Czecholovakia (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 enviroment 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(5) 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

(5) Competition rules were included in the so-called Havanna 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 under-cutting 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,(6) 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.

---

(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

TABLE 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 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.

The complaint contained evidence of significant dumping on the basis of comparison between export prices in Morocco, which was claimed to be an appropriate analogue country.

With regard to injury, it was claimed that the share of Community market held by the Chinese product had risen from 3% in 1988 to 15% in 1991. The complaint also alleged price undercutting and price depression which led to a significant decline in Community production and sales.

4.2.7 Photo albums from the People's Republic of China

The notice of initiation of an anti-dumping proceeding was published on 12 May 1992, with regard to imports of photo albums originating in the People's Republic of China, following a complaint lodged by the Committee of European Photo Albums Manufacturers (CEPAM) representing a major proportion of Community production.

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

With regard to injury, the market shares of the Chinese product were alleged to have risen from 1.2% in 1988 to 15% in 1991. The complaint further alleged substantial undercutting, losses and a fall in Community production and sales.

4.2.8 Compact disc players from Taiwan, Singapore and Malaysia

The notice of initiation of an anti-dumping proceeding was published on June 12 1992, with regard to imports of compact disc players originating in Taiwan, Singapore and Malaysia. The proceeding was opened following a complaint lodged by the Committee of Mechoptronics Producers and Connected Technologies (COMPACT) on behalf of producers representing a major proportion

of the Community industry.

The opening notice underlined the importance which the Commission attached to the question of the origin of the products, and did not exclude the possibility that its conclusions on this point could be useful in the framework of the review of the anti-dumping measures against Japan and S. Korea, which was opened in July 1991.

The complaint contained evidence of significant dumping based on a comparison of export prices to the Community and a constructed normal value for the three countries cited, as sales of the like product in the countries were alleged not to permit a proper comparison.

With regard to injury, the combined share of the Community market held by imports from the three countries was alleged to have reached 22% in 1991, whilst that of the Community industry was claimed to have substantially decreased. Furthermore, the development of these imports was considerably in excess of the increase in consumption of compact disc players in the Community. These imports were alleged to have had a severe impact on the profitability of the Community industry through undercutting and price depression, compounding the injury already caused by dumped imports from Japan and South Korea.

4.2.9 Ferro-silicon from South Africa and the People's Republic of China

The notice of initiation of an anti-dumping proceeding was published on 9 July 1992, with regard to imports of ferro-silicon originating in South Africa and the People's Republic of China. The complaint was lodged by the Liaison Committee of Ferroalloy Industries on behalf of Community producers representing a major proportion of Community production.

The complaint contained evidence of significant dumping based on a comparison of export prices to the Community and domestic

prices in South Africa, the latter being claimed to be an appropriate analogue country for China.

With regard to injury, significant increases in the share of the Community market (from 1.4% in 1988 to almost 7% in 1991) were alleged for both South Africa and the P.R. China, the imports being made at prices which undercut those charged by the Community producers, thus further depressing the already low level of ferro-silicon prices on the Community market.

4.2.10 Manganese steel wearparts from South Africa

The notice of initiation of an anti-dumping proceeding was published on 25 July 1992, with regard to the imports into the Community of manganese steel wearparts originating in South Africa, subsequent to a complaint lodged by six Community producers representing a major proportion of Community production.

The products concerned are parts of machinery which are liable to be worn away by contact with the material they are processing. They are manufactured by a foundry process and moulded into a steel casting with a minimum content of 6% manganese.

The complaint contained evidence of significant dumping based on a comparison between export prices to the Community and domestic prices in South Africa.

With regard to injury, it was claimed that the market share of imports from South Africa had risen from 19% in 1989 to 26% in 1991. Substantial price undercutting and price depression were also alleged causing lost sales and market losses for Community producers, to the extent that doubts were expressed about them continuing in production.

4.2.11 Gum rosin from the People's Republic of China

The notice of initiation of an anti-dumping proceeding was published on 1 August 1992, with regard to imports of gum rosin originating in the People's Republic of China, following a complaint lodged by the Associaçao dos Industriais e Exportadores de Produtos Resinosos (AIEPR) representing a major proportion of Community production.

The product concerned is rosin obtained from fresh oleoresins and is used in various sectors of the chemical industry, notably for the production of glue for paper, paints and varnishes, resinoids, base gum for chewing gum and units of rosin.

The complaint contained evidence of significant dumping based on a comparison of export prices to the Community and domestic prices in Brazil, which was claimed to be an appropriate analogue country.

With regard to injury, it was alleged that the Chinese imports had increased their market share from 42% in 1988 to 60% in 1991 at prices which had undercut those charged by the Community producers by up to 25%, and had forced the latter to artificially depress their prices. It was alleged that the Community industry had suffered a decline in production, sales and capacity utilisation, a large reduction in employment and considerable financial losses, leading to a number of closures in recent years.

4.2.12 Low carbon ferrochrome from Kazakhstan, Russia and Ukraine

The notice of intiation of an anti-dumping proceeding was published on 1 August 1992, with regard to imports of low-carbon ferrochrome originating in Kazakhstan, Russia and the Ukraine. These investigations, the first involving Republics of the former Soviet Union as independent entities, were opened following a

complaint by the Liaison Committee of Ferroalloy Industries on behalf of a major proportion of Community producers.

The complaint contained evidence of significant dumping based on a comparison between export prices to the Community and the costs of production in South Africa, which was claimed to be an appropriate analogue country.

The complaint alleged that the exporters had managed to increase their share of the Community market from 8.9% in 1988 to 19% in 1991, thanks to dumped imports at prices which were consistently and considerably depressed. These prices allegedly undercut those of the Community producers by 26% to 50%, forcing the latter to align their prices downwards and to sustain considerable financial losses.

4.2.13 Ethanolamines from the U.S.A.

The notice of initiation of an anti-dumping proceeding was published on 8 August 1992, with regard to imports into the Community of certain ethanolamines originating in the U.S.A. This proceeding was opened following a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC), acting on behalf of all Community production of ethanolamines.

There exist three main types of the product in question, all of which are produced by the reaction of ethylene oxide and aqueous ammonia. The three types have overlapping end uses, mainly as surfactants (in detergents formulations, personal care products, all-purpose cleaners, wax formulations and waterless hand cleaners), gas purification, metals and textiles. Ethanolamine is also used as feed-stock for the production of ethylene-diamines.

The complaint contained evidence of significant dumping based on a comparison between export prices to the Community and domestic prices in the United States.

With regard to injury, it was claimed that the market share of imports had risen from 31% in 1988 to 40% in 1991. Price undercutting and price depression were also alleged and this had led to reduced profits and losses to Community producers, which reduced production despite increased demand.

4.2.14 Isobutanol from Russia

The notice of initiation of an anti-dumping proceeding was published on 18 September 1992, with regard to imports into the Community of isobutanol originating in the Russian Federation. The complaint was lodged by the European Council of Chemical Manufacturer's Federations (CEFIC), acting on behalf of a major proportion of the Community production.

Isobutanol is used, inter alia, in the paint and solvent industries.

The complaint contained evidence of significant dumping based on a comparison of export prices to the Community and domestic prices in Brazil, which was claimed to be an appropriate analogue country.

The complaint also alleged that the market share of Russian isobutanol had increased from 13.9% in 1988 to 24.8% in 1991. This led to a drop in Community production, sales and production capacity, apparently causing some producers to record losses.

4.2.15 Microdisks from Hong Kong and the Republic of Korea

The notice of initiation of an anti-dumping proceeding was published on 18 September 1992, covering imports into the Community of certain magnetic disks (3.5" microdisks) originating in Hong Kong and the Republic of Korea, following a complaint lodged by the Committee of the European Diskette Manufacturers, acting on behalf of a major proportion of Community production.

The complaint contained evidence of significant dumping based on a comparison of export prices to the Community and the estimated costs of production, plus an amount for profit, in the respective exporting countries.

With regard to injury, the complaint alleged that the imports of microdisks from the countries cited had increased their share of the Community market from 4.3% in 1988 to 14.2% in 1991. Over the same period, the prices of the imported product apparently underwent a rapid decline of about 50%, substantially undercutting the prices of the Community producers, who allegedly suffered price erosion, reduced profits and in some cases, even financial losses.

It should be noted that the Commission is simultaneously carrying out an anti-dumping investigation into imports of the same product originating in Japan, Taiwan and the People's Republic of China. (see 10th Annual Report, Annex A.)

4.2.16 Ammonium nitrate from Belarus, Georgia, Lithuania, Russia, Turkmenistan, Ukraine and Uzbekistan

The notice of initiation of a regional anti-dumping proceeding was published on 24 November 1992, with regard to imports into the United Kingdom of ammonium nitrate originating in the above-mentioned Republics of the former Soviet Union. The complaint was lodged by the U.K. producers of the product in question.

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

With regard to injury, the complaint claimed that the market share of imports had risen from 1.3% in 1990 to 19.1% in the first half of 1992. It was also alleged that heavy price undercutting had resulted in a sizeable loss of market

hare; decreases in capacity and capacity utilization, huge increases in stocks, reduced profits and redundancies.

4.2.17 Colour television receivers from Malaysia, the People's Republic of China, the Republic of Korea, Singapore, Thailand and Turkey

The notice of initiation of an anti-dumping proceeding was published on 25 November 1992, with regard to the imports into the Community of colour television receivers originating in or exported from the countries listed above. It was decided to defer the initiation of anti-dumping proceedings against Japan and Hong Kong, countries which were cited in the complaint lodged by the Community producers' federation SCAN, until questions of origin and level of imports were clarified.

In view of the anti-dumping measures currently in force on small-screen colour television receivers originating in the Republic of Korea, Hong Kong and the People's Republic of China, the scope of the proceeding concerning these countries was limited to colour televisions with a diagonal measurement of the screen exceeding 42cm.

The complaint contained evidence of significant dumping based on a comparison of export prices to the Community and domestic prices in the countries cited. The complaint also contained evidence of constructed normal values based on the costs of production in Singapore.

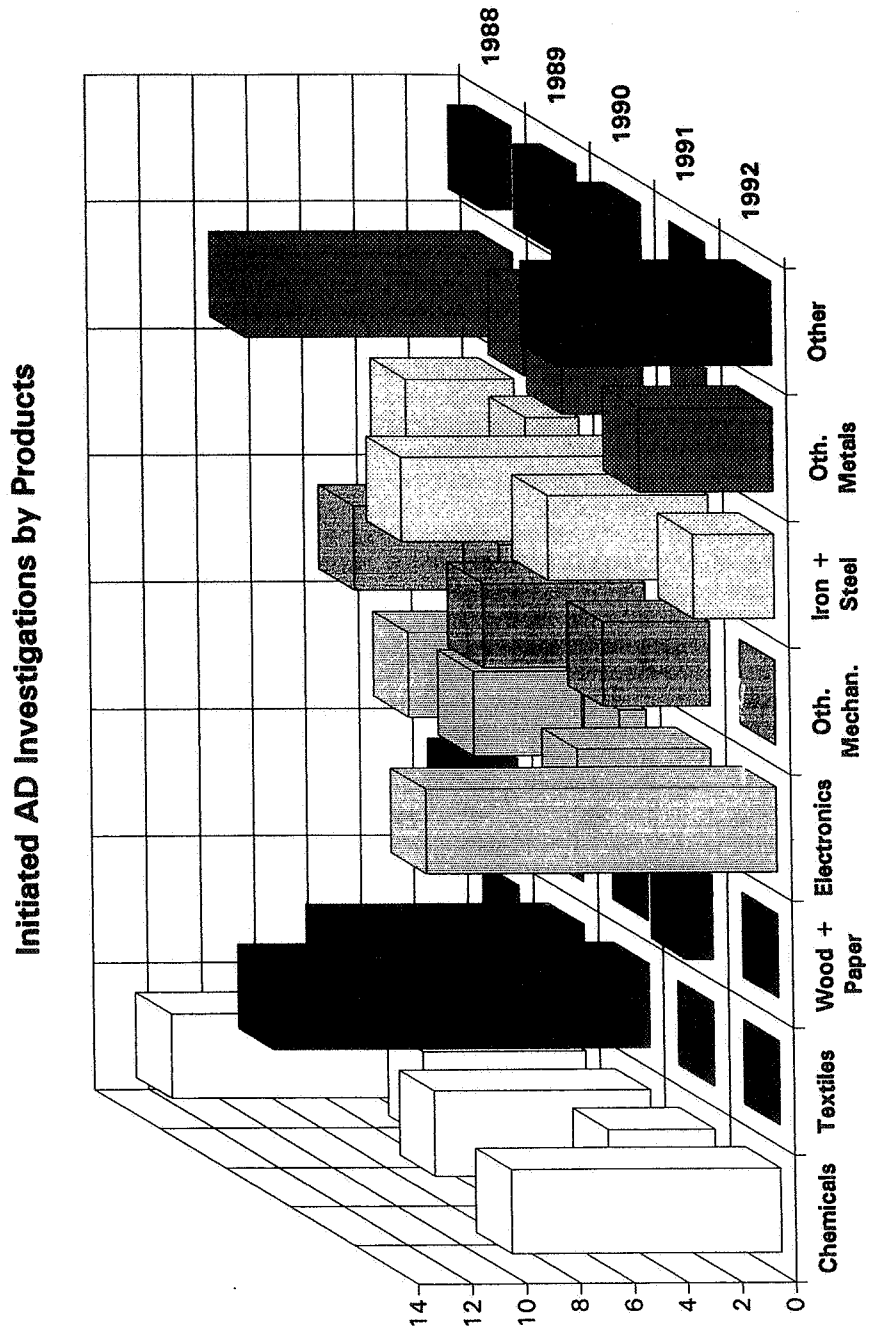
With regard to injury, the complaint alleged that the market share of the six countries concerned had increased from 10% in 1988 to 22% in 1991, and that this increase in market share was accompanied by substantial price undercutting. The consequent price depression had apparently significantly eroded the profitability of the Community producers, and had led certain of them into a loss-making situation in 1991.

4.2.18 Haematite pig iron from Brazil and Poland

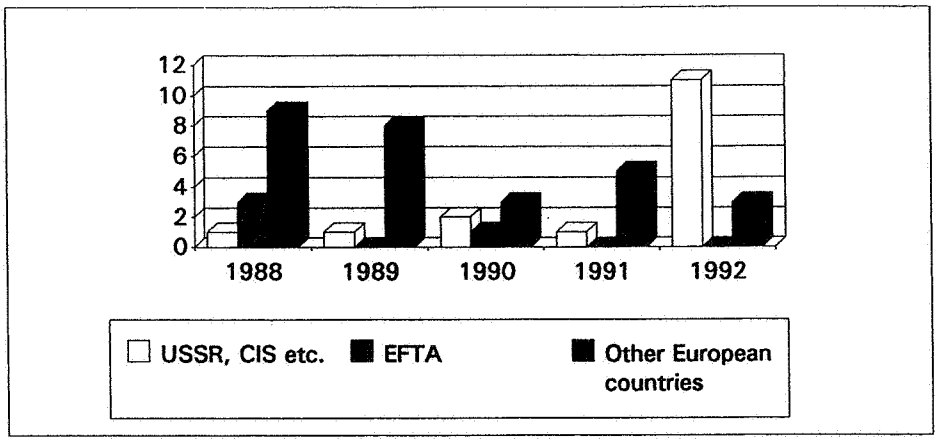
The notice of initiation of an anti-dumping proceeding was published on 9 December 1992, concerning the imports of haematite pig iron originating in Brazil and Poland. These investigations were opened following a request by EUROFONTES on behalf of a major proportion of Community producers, and form an extension to an initial investigation published in September 1991 with regard to the former Soviet Union.

The complaint contained evidence of dumping based on a comparison of export prices to the Community and domestic prices in Brazil and constructed normal values for Poland.

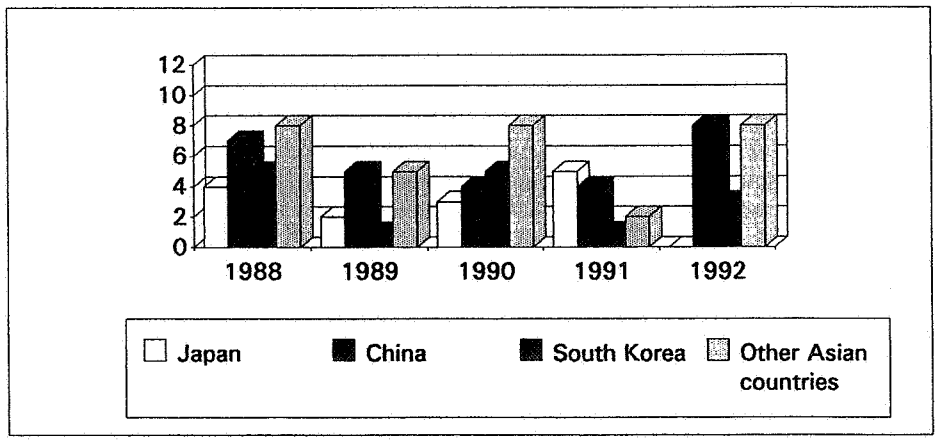
With regard to injury, it was alleged that Brazilian imports into the Community had increased their market share from 22% in 1990 to 43% in 1992, whilst the Polish market share had risen from 3% to 10% over the same period of time. The prices of these imports, it was claimed, undercut those of the Community producers by up to 38%, forcing the latter to lower their prices in spite of significant increases in costs, and to curb their production, reduce their work force or introduce short-time working, in the face of a considerable loss of profitability.


Initiated AD Investigations by Products
1988
1989
1990
1991
1992
0
2
4
6
8
10
12
14
Chemicals
Textiles
Wood + Paper
Electronics
Oth. Mechan.
Iron + Steel
Oth. Metals
Other

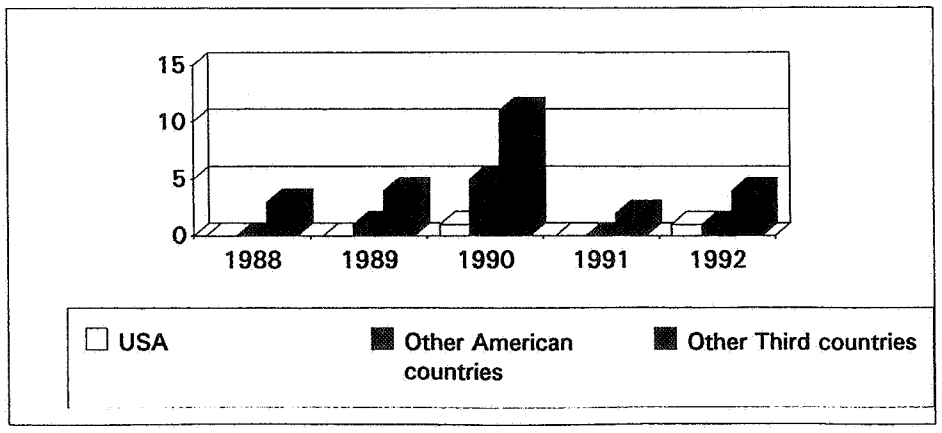
AD Investigations initiated against European Countries

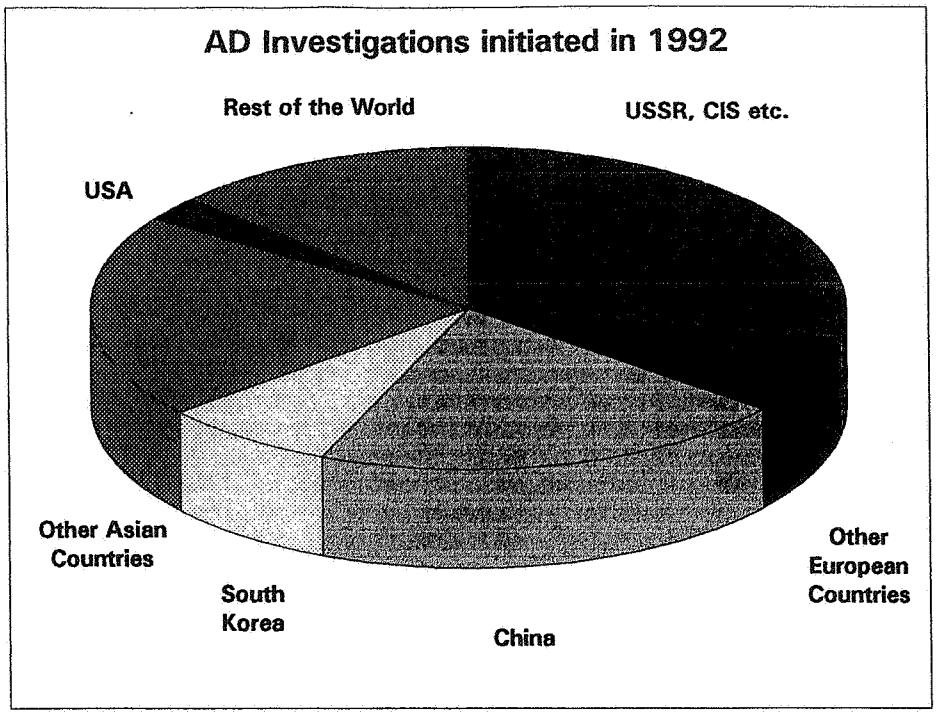


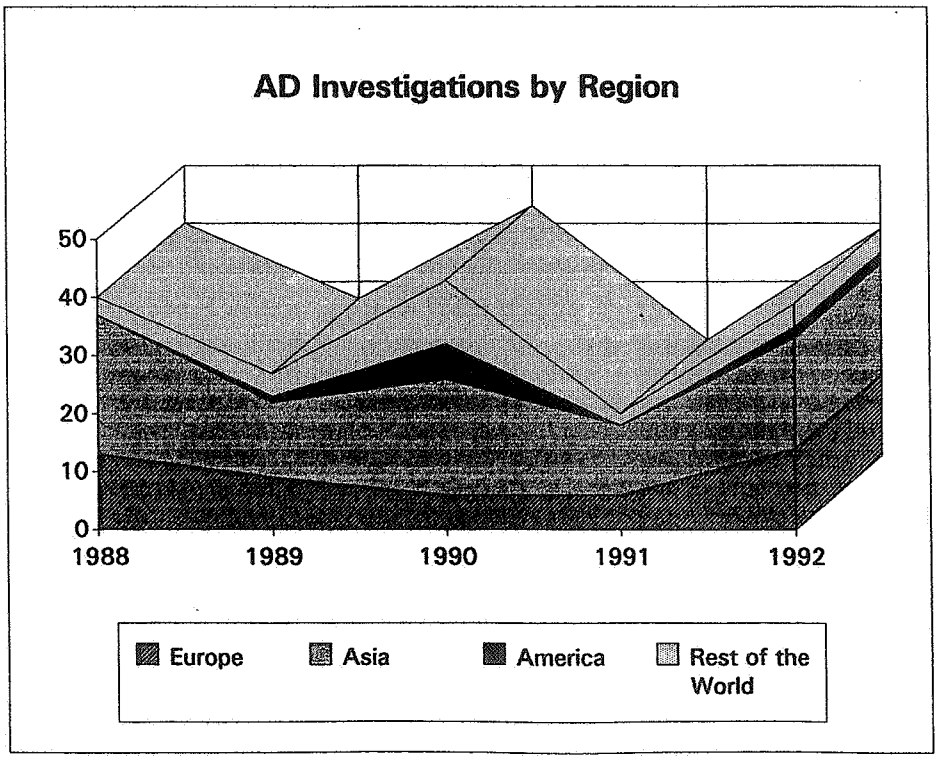
AD Investigations initiated against Asian Countries



AD Investigations initiated against other Third Countries




AD Investigations initiated in 1992
Rest of the World
USSR, CIS etc.
USA
Other Asian Countries
South Korea
China
Other European Countries


AD Investigations by Region
50
40
30
20
10
0
1988
1989
1990
1991
1992
Europe
Asia
America
Rest of the World

5. PROVISIONAL MEASURES

5.1 OVERVIEW

Provisional measures may be taken where the preliminary examination shows that dumping or a subsidy exists, that there is sufficient evidence of injury caused thereby, and that the interests of the Community call for intervention. Provisional duties have a normal period of validity of four months, which may under certain circumstances be extended for a further period of two months.

Table 1 above shows that 18 provisional duties were imposed in 1992, compared to 19 in 1991 and 23 in 1990. The provisional measures imposed cover a wide range of product types and origins, and reflect, of course, the range covered by the opening of investigations.

Details of the provisional duties imposed in 1992 are given in Annex B, whilst the following section of this report gives a summary of each case where provisional duties were imposed during 1992.

5.2 CASES

5.2.1 Car radios from the Republic of Korea

On 11th February 1992, provisional anti-dumping duties were imposed on imports into the Community of car radios originating in the Republic of Korea. The investigation was initiated on 8 May 1990, following a complaint lodged by the Association for Legal Auto-Radio Measures (ALARM).

Dumping

Dumping margins of between 0.25% and 33.95 were established for the nineteen Korean exporters which cooperated in the investigation. For non-cooperators the dumping margin was based on available evidence, at 38.3%, a level considered to be both appropriate and representative given the extent of non-cooperation.

Normal values were constructed on the basis of actual manufacturing costs in S.Korea, plus an amount for selling, general and administrative costs and for profit; these were adjusted to take account of differences in categories of customers between domestic and export sales.

Export prices were based on actual prices to independent importers or, in cases where sales were made via related importers, on the basis of prices charged by these related firms when sold to independent buyers, adjusted to c.i.f. Community frontier level by deducting the costs of the importer and an amount for profit.

In order to make a fair comparison between normal values and export prices, allowances were made for all factors affecting price comparability, conditions of sale, transport, warranties, etc. With regard to credit terms, allowance was restricted to the length of the credit period agreed at the time of sale as that was the period that was used in determining the price charged.

Injury

With regard to injury, the provisional findings of the Commission revealed that the market share of the Community industry had decreased from 36.7% in 1985 to 22.2% during the reference period. This was despite the fact that consumption of car radios on the Community market increased by roughly 60% during that time. Prices had fallen by 20% or more, a reduction which could not be explained solely by normal competitive conditions, such as increased production volumes and improved manufacturing techniques. This price erosion, accompanied by a serious deterioration of profits, resulted from the massive dumped imports of Korean car radios sold at low prices in the Community.

With regard to other factors alleged to have caused injury, the Korean exporters failed to produce any evidence to support their allegations of dumping as regards imports originating in the other third countries. It was, furthermore, not apparent that the said imports could have had an impact on the Community industry comparable to that of the imports from Korea.

Community interest

With regard to Community interest, it was considered that the imposition of duties could affect prices in the short term, but that the impact should be fairly limited in view of the large number of other suppliers on the Community market. Furthermore, it was clear that unless measures were taken, the situation of the Community industry would inevitably deteriorate. Moreover, it was in the interests both of the Community industry and consumers that fair competition be restored to the Community market.

Measures

As the level of injury caused by the dumping was, in all cases, greater than the dumping margins found, the duty was aligned on those dumping margins for individual cooperating firms, and at a level of 38.3% for the remainder.

5.2.2 Semi-finished products of alloy steel from Turkey and Brazil

On 9 April 1992, provisional anti-dumping duties were imposed on imports into the Community of semi-finished products of alloy steel. These investigations were initiated on 14 June 1990 following a complaint lodged by the European Confederation of Iron and Steel Industries (EUROFER).

Dumping

A dumping margin of 33.7% was established for the sole Turkish producer and at rates ranging from 1.7% to 37.9% for the Brazilian exporter.

Domestic sales prices in Turkey were chosen for the determination of normal value, calculated on a monthly basis in order to eliminate the effects of the 70% per annum inflation rate prevailing in Turkey during the investigation period. In the case of all four Brazilian producers, normal value had to be constructed because substantial sales had been made at a loss or because of a lack of representative sales on the domestic market.

These normal values were constructed on the basis of actual manufacturing costs plus an amount for selling, general and administrative costs and for profit.

Export prices were based on actual prices to independent importers in the country.

In order to make a fair comparison between the normal values and export prices, allowance was made for all factors affecting price comparability, i.e. conditions of sales, import charges indirect taxes, etc.

Injury

With regard to injury, the investigation showed that the combined market share of imports from the two countries cited increased from 1.3% in 1985 to 8.7% during the investigation period. Moreover, import prices were found to have undercut those charged by the Community producers by up to 26%. Community producers suffered a loss of market share from 84% to 71% during the same period. Because of this pressure on prices, Community producers had difficulty in generating satisfactory returns, sometimes insufficient even to cover the rises in wage and raw material costs.

With regard to causation, it was established that the injury to the Community industry coincided with the rapid increase of the dumped imports. With respect to other factors which may have caused injury it was found that, within the restructuring process taking place in the industry, a certain shift of share between Community producers had taken place but this was considered to have had less effect than the dumped imports.

Community interest

With regard to Community interest, it was found that it was clearly in the interest of the Community that the production of these highly-specialized alloy steels, with their widespread ramifications in other essential sectors of the manufacturing industry, should continue under healthy conditions. It was also

considered necessary to have security of supplies for these basic products to preserve the industry's cost structure for the more specialized grades.

Measures

The Commission imposed duties at the level of the lower of the price undercutting margin or the dumping margin in order to eliminate price undercutting where possible. These provisional duties were 16% for Turkey and ranged from 1.75% to 15% in the case of Brazil.

5.2.3 Silicon metal from Brazil

On 10 April 1992, a provisional anti-dumping duty was imposed on imports of silicon metal originating in Brazil. The investigation had been initiated on 27 November 1990, subsequent to a complaint lodged by the Liaison Committee of Ferroalloy Industries.

Dumping

Dumping margins ranging from 18.55% to 67.16% were established for the Brazilian exporters.

Normal values were established on the basis of actual prices in Brazil or, were those were made at a loss, on the basis of constructed value which was calculated by reference to actual manufacturing costs, plus an amount for selling, general and administrative costs and for profit.

Export prices were based on actual prices to independent importers in the Community, or in cases where sales were made via related importers, on the basis of prices charged by the related firms when sold to independent buyers, adjusted to a c.i.f. Community frontier level by deducting the costs of the importers and an amount for profit.

Injury

The share of the Community market captured by Brazilian imports

leapt from 3% in 1986 to 15% in 1990, whilst the market share of Community producers fell by a similar amount. Moreover, Brazilian prices fell by 33.2% over the same period and caused the prices charged by the Community producers to steadily decline, affecting production, production capacity, sales, market share, financial results and employment.

Community interest

With regard to Community interest, it was felt that continued damage to the industry would result in substantial reduction in the capacity of Community producers, with a consequent impact on competition and employment. As far as the importers were concerned, it was stressed that the measures imposed were not likely to exclude the Brazilian exporters from the Community market. It was considered that the measures may affect prices to consumers of the product but the maintenance of a Community presence in this sector was considered necessary to maintain effective competition in the longer term.

Measures

As the injury caused by the dumped imports exceeded the dumping margins, the level of measures were calculated in relation to the latter. Provisional anti-dumping duties were imposed at a level of 42.1%, with individual duties of between 18.5% and 40.1% being calculated for certain cooperating companies.

5.2.4 Potassium chloride from Belarus, Russia and the Ukraine

On 28 April 1992, a provisional anti-dumping duty was imposed on imports into the Community of potassium chloride (potash) originating in the Republics of Belarus, Russia and the Ukraine. The investigation had been initiated against the former Soviet Union as one entity on 31 October 1990, subsequent to a complaint from the European Potash Producers' Association (EPPA).

Dumping

A dumping margin of 35% was established for the three countries concerned.

Normal values were based on domestic prices in Canada, which was considered an appropriate analogue country.

As the export sales under consideration were made via related importers, the export prices were established on the basis of prices charged by these related firms when sold to the independent buyers, adjusted to a c.i.f. Community frontier level by deducting the costs of the importers and an amount for profit. Exports made via unofficial sources were disregarded because of lack of cooperation.

In order to make a fair comparison between the normal values and export prices, allowance was made for all factors affecting price comparability.

Injury

With regard to injury, it was found that the imports had increased their market share from 5% to almost 11% from 1986 to 1990 against a background of stable consumption. The Community industry was forced to cut its prices which were, however, still undercut by the imported product. The Community industry also incurred heavy financial losses, and employment declined by 14% or 2.400 jobs, between 1986 and 1990. The Community found that the increasing losses suffered by the Community industry coincided with the rise in imports of cheap potash from these countries.

Community Interest

With regard to Community interest, it was considered that measures were necessary to preserve a Community presence in this sector and to avoid the costs of exit in this industry.

In any event, it was felt that the form of the measure, a minimum price, would permit the countries to remain on the Community market.

Measures

The level of injury found exceeded the dumping margin and, therefore, the measures were calculated in relation to the latter. The provisional duty imposed took the form of a variable duty based on a minimum price, which was set at ECU 62/tonne for the standard grade and ECU 67/tonne for the granulated grade of potash with a potassium content of 40% or less, whilst for potash with a potassium content exceeding 40% but less than 62%, the minimum price was set at ECU 92/tonne for the standard grade and ECU 103/tonne for the granulated grade.

5.2.5 Electrolytic capacitors from Japan

On 4 June 1992, provisional anti-dumping duties were imposed on imports into the Community of large aluminium electrolytic capacitors originating in Japan. The investigation had been initiated on 11 April 1991, subsequent to a complaint lodged by the Federation for Appropriate Remedial Anti-Dumping (FARAD).

Dumping

Dumping margins of between 14.1% to 43.1% were established for the four exporters which cooperated in the investigation. For the non-cooperators, the margin was established in relation to available evidence at a rate of 75%, a level considered both representative and appropriate given the extent of non-cooperation.

Due to the low level of sales made on the Japanese market, normal values were established on the basis of actual manufacturing costs, plus an amount for selling, general and administrative costs and for profit.

Export prices were based on actual prices to independent importers or, in cases where sales were made via related

importers, on the basis of prices charged by the related firms when sold to independent buyers, adjusted to a c.i.f. Community frontier level by deducting the costs of the importer and an amount for profit.

In order to ensure a fair comparison between the normal values and export prices, allowance was made for all factors affecting price comparability. Certain claims which were not wholly related to direct selling activities were disallowed.

Injury

With regard to injury, it was found that Japanese imports increased their market share from 27.70% in 1988 to 38.5% in 1990, whilst the share of Community producers fell from 52.9% to 39.9% during the same period. The prices of the dumped imports were substantially lower than those of the Community producers, showing price undercutting margins of between 33.7% and 62.7%. In this respect, the Commission noted that the Japanese exporters had consistently sold below their cost of production in the Community market whilst enjoying high profits on their domestic market. The injury to the Community industry was mainly in the form of loss of profitability and market share.

Community interest

With regard to Community interest, it was considered that measures could affect prices in the short term but that such effects would have little or no impact on consumers of the finished products. Moreover, this product was considered strategic in terms of its high-technology aspects and a Community presence in this sector was deemed important.

Measures

It was established that the injury in all cases exceeded the dumping margins and, therefore, the level of duties was calculated in relation to the latter. The Commission consequently imposed a provisional anti-dumping duty of 75%, with individual rates varying between 14.1% and 43.1%.

5.2.6 Ferro-silicon from Poland and Egypt

On 3 July 1992, provisional anti-dumping duties were imposed on imports into the Community of ferro-silicon originating in Poland and Egypt. These investigations had been initiated in May 1991 following a complaint lodged by the Liaison Committee of Ferro-alloy Industries.

Dumping

The dumping margins established for Egypt and Poland were 61.5% and 43.9% respectively.

Due to the fact that domestic sales in Egypt were negligible, normal value was based on constructed value i.e. the costs of manufacture plus an amount for selling, general and administrative costs and for profit. For Poland, normal values were established on the basis of constructed value in Norway, which was considered an appropriate analogue country.

Export prices were based on the actual prices charged to independent importers in the Community.

In order to ensure a fair comparison between normal value and export prices, allowance was made for factors affecting price comparability.

Injury

With regard to injury, the combined market shares of imports from these two countries were found to have increased from 1.4% in 1989 to 7.2% in 1991, while the share of Community producers fell from 36% to 26% during the same period. Moreover, the prices of these imports undercut the already depressed prices of the Community producers by up to 12%. Indeed, Community producers were forced to sell their product in the Community at prices which in most cases did not cover their production costs, entailing substantial financial losses.

Community interest

The investigation concluded that it was in the Community's interest to restore fair competition, as the Community could not be left to depend wholly on non-Community suppliers of ferro-silicon. In any event, the impact of increased ferro-silicon prices would have a very limited effect in the steel-making sector.

Measures

For both countries, the level of injury was less than the dumping found and, therefore, measures were calculated in relation to the former. A provisional anti-dumping duty of 32% was imposed on imports of ferro-silicon from Poland and Egypt.

The sole cooperating Egyptian producer offered an undertaking, which was accepted by the Commission, and was therefore exempted from the duty.

5.2.7 Synthetic fibres of polyester from India and the Republic of Korea

On 16 July 1992, provisional anti-dumping duties were imposed on imports into the Community of synthetic fibres of polyester originating in India and the Republic of Korea. The investigations were opened on 21 November 1990, subsequent to a complaint lodged by the International Rayon and Synthetic Fibres Committee (CIRFS).

Dumping

With regard to dumping, margins were found for India up to a level of 15.9% while, for S.Korea, no dumping was found for one producer and rates ranging from 1.68% and 9.02% were established for the remainder.

Normal values were established of the basis of domestic prices or, where sales were made in insufficient quantities, on the basis of constructed value, i.e. the actual costs of manufacture,

plus an amount for selling, general and administrative costs and for profit.

Export prices were based on the actual prices charged to independent importers in the Community.

In order to ensure a fair comparison between normal value and export prices, allowance was made for all factors affecting price comparability, including differences in physical characteristics, selling expenses and import charges, though several claims for the latter were rejected on grounds of insufficient evidence.

Injury

With regard to injury, the combined market share of these imports increased from 1.1% in 1988 to 6.2% in 1991, whilst their prices undercut those charged by the Community producers by between 10% and 29%. Though consumption, Community production and market share remained relatively stable, the investigation found that there was a negative return on sales of the Community industry from 1988 onwards. In 1990, none of the Community producers reached reasonable profitability, and several of them incurred severe losses. Over the same period, the Community industry cut its workforce by 5%, cut its investments and closed two plants. It was found, furthermore, that the rapid penetration of the Indian and Korean imports was obtained at the expense of imports already subject to anti-dumping measures, and had the effect of impeding the improvement of the Community industry.

Community Interest

As far as Community interest was concerned, though the Commission recognized that the imposition of duties could affect the relative competitiveness of the exporters, it also held that the removal of unfair advantages gained by dumping was designed to prevent the decline of the Community industry and to maintain the availability of choice.

Measures

Duty levels were established at the lower of the dumping margin or the injury level. Provisional anti-dumping duties were, therefore, imposed at a level of 15.9% for synthetic fibres of polyester originating in India, with individual rates of between 1.6% and 15.9%, for the Republic of Korea. One company was exempted from the duty.

5.2.8 Outer rings of tapered roller bearings from Japan

On 18 July 1992, provisional anti-dumping duties were imposed on imports into the Community of outer rings of tapered roller bearings, commonly called "cups", originating in Japan. The investigation, initiated on 4 January 1991, followed a complaint by the Federation of European Bearing Manufacturers' Associations (FEBMA).

Dumping

Dumping margins of 61% and 12.6% were established for the two Japanese exporters.

Normal values were established on the basis of domestic sales prices, except where domestic sales were considered to be unrepresentative or made at a loss. In the latter cases, normal value was constructed, on the basis of the actual costs of manufacture plus an amount for selling, general and administrative costs and for profit. Normal values were only calculated in relation to one category of customers on the domestic market as it was deemed that this category was similar to export customers.

As export sales were predominantly to related customers in the Community, export prices were based on the prices of these related firms to independent customers, adjusted by deducting the costs of the importer and an amount for profit.

In order to ensure a fair comparison between the normal values

and export prices, allowance was made for all factors affecting price comparability, including directly related selling expenses.

Injury

With regard to injury, estimated dumped imports of cups from Japan rose by 11.2% in 1988 to 14.3% in 1990 against a background of falling consumption, whilst the share of Community producers dropped by a similar amount. These imports were found to have undercut the prices of Community-produced cups by between 6.1% and 9.4%, causing a decline in the sales and the return on sales of the Community producers. These trends were particularly apparent when compared to the overall results on other products produced by the same companies.

Community interest

In considering the question of Community interest, the Commission took account of the interests of the Community bearing industry, the users of bearings and the fact that the measures proposed would have limited impact on the final consumer of the end product, and concluded that the interest of the Community clearly lay in granting protection to its bearing industry against unfair imports.

Measures

The injury caused to the Community industry exceeded the level of dumping found and therefore measures were calculated in relation to the latter. The Commission, consequently, imposed a provisional anti-dumping duty on imports of outer rings of tapered roller bearings originating in Japan at a level of 12.4%, with a rate of 6% for one company.

5.2.9 DRAMs from the Republic of Korea

A provisional anti-dumping duty was imposed on 17 September 1992 on imports of dynamic random access memories (DRAMs) originating in the Republic of Korea. The investigation, opened in March 1991, followed a complaint by the European Electronic Component

Manufacturers' Association (EECA).

Dumping

Dumping margins of 18.1%, 57.3% and 122.4% were established for the three known Korean exporters.

The Commission elected to establish normal value on a quarterly basis in view of the fact that DRAM production is characterized by substantial cost-reductions over time due to the learning curve effect. Sales of certain types of DRAMs on the Korean domestic market were considered not to be representative, whilst more than 90% of sales of other types were made at a loss. Normal value was thus constructed on the basis of actual costs of manufacture, plus an amount for selling, general and administrative costs and for profit.

Export prices were established on the basis of actual prices to independent importers in the Community or, where sales were made via related parties, on the basis of the actual prices charged by the related importers to independent buyers, adjusted by deducting the costs of the importers and an amount for profit.

In order to ensure a fair comparison between the normal values and export prices, allowances were made for all factors affecting price comparability, including transport, insurance, handling, loading etc.

Injury

With regard to injury, the market share of Korean DRAMs had risen from 6% in 1986 to 20% in 1990. The investigation revealed substantial price undercutting of up to 20.7%, and that, furthermore, a considerable proportion of sales of Korean DRAMs on the Community market were made below the cost of production. This caused a level of price depression far greater than could be expected from normal economies of scale and the Community industry was, therefore, unable to fully achieve the unit-cost improvement associated with high volume production in this industry.

Community Industry

With regard to Community interest, it was considered that the maintenance of a strong and viable Community DRAM industry was important for strategic reasons. Moreover, that aim required conditions of fair competition in the Community market, conditions which were achieved for some time following the imposition of measures against Japan at the beginning of 1990 but which were now being eroded by injurious dumping from S.Korea. It was, therefore, in the Community interest to impose countermeasures against the imports. Nevertheless, account was taken of the fact that the information processing equipment industry operated in a worldwide competitive enviroment, when assessing the form and nature of anti-dumping to be imposed.

Measures

The injury found was less than the margins of dumping and, therefore, the level of measures was calculated in relation to the former at a rate of 10.1%.

5.2.10 Magnesium oxide (caustic magnesite) from the P.R. China

Provisional anti-dumping duties were imposed on 26 September 1992 on imports into the Community of caustic magnesite originating in the People's Republic of China. The investigation was initiated on 26 October 1991, following a complaint lodged by Eurométaux, representing all the Community producers of caustic magnesite, which are located in Spain and Greece.

Dumping

The dumping margin established for these imports from China was ECU 34 per tonne.

The normal values were established on the basis of constructed value in Turkey, which was considered an appropriate analogue country. The constructed value was based on costs of production, suitably adjusted for quality differences in comparison with the

Chinese product, plus an amount for selling, general and administrative costs and for profit.

Export prices were established on the basis of prices to independent importers in the Community.

In order to ensure a fair comparison between the normal value and export prices, allowance was made for factors affecting price comparability, including differences in physical characteristics, transport, insurance, etc.

Injury

With regard to injury, it was found that the Chinese imports had increased their market share of the Community market from 21% in 1988 to 32% in 1991 and their prices had undercut those of the Community producers by almost 38%.

The Community producers suffered price depression, loss of sales, market share and employment, whilst incurring financial losses or substantially reduced returns on sales.

Community interest

The Commission felt that it would not be in the Community interest to abandon a structurally sound industry at a time when, faced by unfair competition, it was sustaining serious injury which was jeopardizing its viability. With the possible exception of the pulp and paper industry, the Commission also found that caustic magnesite only formed a small part of the overall cost for end-users.

Measures

Since the level of injury found exceeded the level of dumping, measures were imposed in relation to the latter. In these circumstances, a provisional anti-dumping duty of 34 ECU/tonne was imposed.

5.2.11 Deadburned magnesite from the P.R. China

Provisional anti-dumping duties were imposed on 26 September 1992 on imports into the Community of deadburned magnesite originating in the People's Republic of China. The proceeding was opened in October 1991 as a result of a complaint lodged by Eurométaux.

Dumping

The dumping margin provisionally established for these imports from China was ECU 69 per tonne.

Normal value was established on the basis of constructed value in Turkey, which was considered an appropriate analogue country. Constructed value was calculated in relation to costs of production, plus an amount for selling, general and administrative costs and for profit.

Export prices were established on the basis of export prices to independent importers in the Community.

In order to ensure a fair comparison between the normal values and export prices, allowance was made for factors affecting price comparability, including differences in physical characteristics, transport, insurance etc.

Injury

With regard to injury, it was found that Chinese imports had increased their market share of the Community market from 31% in 1988 to 41% in 1991, while their prices had undercut those of the Community producers by 64%.

The Community producers suffered price depression, loss of sales, market share (from 37% in 1988 to 23% in 1991), and employment, with two companies having completely ceased activity. The remaining producers suffered financial losses or substantially reduced returns on sales.

Community interest

The Commission felt that it would not be in the Community interest to abandon a structurally sound industry at a time when, faced by unfair competition, it was sustaining serious injury which was jeopardizing its viability. Even though the Commission acknowledged that deadburned magnesite formed a significant part of the cost of production of refractories, it felt that the Community interest lay in sustaining, over the long term, a viable Community magnesite industry.

Measures

Since the injury found exceeded the dumping level, measures were calculated in relation to the latter. A provisional anti-dumping duty of 69 ECU/tonne was therefore imposed on imports of deadburned magnesite from China.

5.2.12 Seamless steel and iron tubes from Czechoslovakia, Hungary, Poland and Croatia

On 14 November 1992, provisional anti-dumping duties were imposed on imports into the Community of seamless steel and iron tubes originating in Czechoslovakia, Hungary, Poland and Croatia. The investigation had been initiated on 12 December 1991 with regard to Czechoslovakia, Hungary, Poland and Yugoslavia. However, in view of the political changes which had taken place in the latter country, and the investigation having established Croatian origin for the tubes in question, the proceeding was terminated on 14 November 1992 with regard to the Republics of Serbia and Montenegro, the former Yugoslav Republic of Macedonia, the Republic of Bosnia-Herzegovina and the Republic of Slovenia.

At the date of initiation and throughout the entire investigation period, Poland, Hungary and Czechoslovakia were still considered to have been state-trading countries.

Normal value

Dumping margins were established at a level of 25.5% for Croatia,

21.8% for Hungary, 11.7% for Poland and 49.6% for Czechoslovakia.

Normal value was established on the basis of domestic prices in Croatia for all countries concerned, as this was considered an appropriate analogue country for Czechoslovakia, Hungary and Poland.

Export prices were established on the basis of sales to independent importers in the Community.

In order to ensure a fair comparison between the normal values and export prices, allowance was made for factors affecting price comparability, including transport, insurance, commissions etc.

Injury

With regard to injury, it was found that the cumulated market share of the exporting countries concerned rose from 7.8% in 1988 to 13.7% in 1991, with the prices of the imports undercutting those of the Community producers by between 10.8% and 30.4%. The Community producers' capacity and capacity utilization, sales, and market share had all declined, and they were unable to raise their prices in order to reflect the rise in production costs. In some cases, they even had to lower their prices to levels which did not cover costs. This had a consequent and substantial impact on their profit and loss situation.

Community interest

In examining Community interest, the Commission noted the importance of this basic industry, with both upward and downward ramifications in other steel sectors. The Commission also considered that the effects of the necessary price increases would not be significant and felt that Community processors could not expect to benefit from unfair competition which forces Community producers to sell at a loss.

Measures

Provisional anti-dumping duties were imposed at the level of injury found. This gave rates of 21.7% for Hungary, 10.8% for Poland and 30.4% for Czechoslovakia. In view of the dramatic situation in Croatia, in particular the fact that the production units were situated in the combat zone and that production and export activities were severely hampered, the Commission decided not to apply duties, at that time, against Croatia.

6. DEFINITIVE MEASURES

6.1 OVERVIEW

Definitive measures may be taken where the facts as finally established during the investigation show that there is dumping or subsidization, that injury is caused thereby, and that the interests of the Community call for intervention. Definitive anti-dumping or countervailing duties are imposed by the Council, acting by qualified majority, on a proposal submitted by the Commission after consultation of Member States.

During the course of 1992, 17 definitive duties were imposed as a result of anti-dumping investigations. This figure is in line with the number of definitive duties imposed over the four previous years. The measures imposed reflect a wide diversity of product sectors and origins. Details of the definitive duties imposed in 1992 are given in Annex C, and the following section of this report gives a summary of each case where definitive duties were imposed during 1992.

6.2 CASES

6.2.1 Thermal paper from Japan

On 26 March 1992, the Council imosed a definitive anti-dumping duty on imports of thermal paper from Japan. On the same date, the Commission accepted an undertaking from one of the Japanese exporters involved in the proceeding. The investigation was initiated on 24 January 1991 and a provisional duty was imposed on 26 September 1991.

One Community producer, 4 Community importers and 8 Japanese exporters cooperated in the investigation.

Dumping

The definitive dumping margins established ranged from 10.3% to 24.8%. No dumping was found for one Japanese exporter. For those exporters which did not cooperate in the investigation it was

decided that the information contained in the complaint was the most reasonable basis for establishing the dumping margin and, accordingly, it was fixed at 53.3%.

The normal values were established on the basis of domestic prices in Japan or, where there were insufficient sales or the sales were below the costs of production, on the basis of constructed value, i.e. the actual costs of manufacture, plus an amount for selling, general and administrative costs and for profit.

In order to ensure a fair comparison between the normal values and the export prices, allowance was made for factors affecting price comparability, i.e. those expenses which were shown to bear a direct relationship to the sales under consideration.

Injury

With regard to injury, it was found that these imports had increased their share of the Community market from 31% in 1987 to 68% in 1990, whilst undercutting the prices of the Community producers by up to 22.8%. The injury to the complainant was reflected in a loss of market share, price undercutting and price depression and losses.

Community interest

With regard to Community interest, it was considered that the need to maintain a viable Community industry in a high-tech sector outweighed the limited effect of price increases on the total operational costs incurred by companies and public bodies, which form the major end users for fax paper.

Measures

It was established that the injury caused by the dumped imports, in all cases, exceeded the level of dumping and therefore the measures were calculated in relation to the latter. Definitive duties ranging from ECU 211.55 per tonne to ECU 1275.15 were imposed.

A price undertaking was accepted from one of the Japanese exporters at a level which eliminated the dumping found.

6.2.2 Cotton yarns from Brazil and Turkey

On 23 March 1992, the Council imposed definitive anti-dumping duties on imports of cotton yarn from Brazil and Turkey. No duties were applied against Egypt because the levels of dumping were de minimis. The investigation was initiated on 22 March 1990 and a provisional anti-dumping duty was imposed on 27 September 1991, at which time the cases against India and Thailand were closed on grounds of negligible imports.

Given the large number of parties concerned the Commission restricted its investigation to 35 Community producers, and 18 exporters.

Dumping

Dumping margins were established in three ways:

- the exporters whose information was verified received individual dumping margins;

- the exporters which cooperated but whose information was not verified received the average of the individual margins established above;

- for those exporters which did not cooperate, the dumping margin was established on the basis of the best information available.

On this basis, margins of between 7% to 16.6% were found for Brazil, between 0.1% to 0.4% for Egypt and between 4.9% to 12.1% for Turkey.

The normal values were established on the basis of domestic prices in the countries concerned or, where there were insufficient sales or the sales were below the costs of

production, on the basis of constructed value, i.e. the actual costs of manufacture, plus an amount for selling, general and administrative costs and for profit.

The export prices were established on the basis of export prices to independent importers in the Community.

In order to ensure a fair comparison between the normal values and the export prices, allowance was made for factors affecting price comparability, i.e. those expenses which were shown to bear a direct relationship to the sales under consideration.

Injury

With regard to injury, it was found that the market share of these imports had remained at around 9% between 1986 to 1989 but they had undercut the prices of Community producers by between 3% to 24%. The injury to the Community industry was found mainly to be in the form of price depression, losses, plant closures and redundancies.

Community interest

With regard to Community interest, it was considered that measures were necessary to keep the spinning industry, which had made considerable investments in technology, viable and competitive and this outweighed the fact that measures may have some limited impact on prices.

Measures

As the injury found exceeded the dumping margins, the level of measures was based on the latter. Therefore, definitive duties ranging from 7% to 16.6% were imposed for Brazil and from 4.9% to 12.1% in the case of Turkey.

6.2.3 Polyester yarns from Taiwan, Indonesia, India, the People's Republic of China and Turkey

On 30 March 1992, the Council imposed definitive anti-dumping duties on imports of certain polyester yarn from China, India, Indonesia, Taiwan and Turkey. The investigation was initiated on 30 March 1990 and a provisional duty was imposed on 3 October 1991, when the case against S.Korea was closed without measures on the grounds of negligible imports.

The Commission carried out verification visits to 23 Community producers, 5 Community importers and 14 exporters.

Dumping

Dumping margins were established in three ways:

- the exporters whose information was verified received individual dumping margins;

- the exporters which cooperated but whose information was not verified received the average of the individual margins established above;

- for those exporters which did not cooperate, the dumping margin was established on the basis of the best information available.

On this basis, margins of between 0.2% to 23.5% were found for China, between 2.0% to 7.8% for India, between 0.2% to 11.9% for Indonesia, between 2.2% and 14.3% for Taiwan and between 2.6% and 10.1% for Turkey.

The normal values were established on the basis of domestic prices in Japan or, where there were insufficient sales or the sales were below the costs of production, on the basis of constructed value, i.e. the actual costs of manufacture, plus an amount for selling, general and administrative costs and for profit.

The export prices were established on the basis of export prices to independent importers in the Community or, where sales were made via related importers, on the basis of the prices charged by these related firms when sold to independent buyers, adjusted by deducting the costs of the importer and an amount for profit.

In order to ensure a fair comparison between the normal values and the export prices, allowance was made for factors affecting price comparability i.e. those expenses which were shown to bear a direct relationship to the sales under consideration.

Injury

With regard to injury, it was found that the market share of the dumped imports increased from 3.7% in 1986 to 8.3% during the period of investigation while the prices of these imports undercut those of Community producers by margins which, in some instances, exceeded 50%. This price undercutting depressed market prices and resulted in losses for practically all Community producers.

Community interest

With regard to Community interest, it was considered that measures were necessary to keep the spinning industry, which had made considerable investments in technology, viable and competitive and this outweighed the fact that measures may have some limited impact on the processing industry.

Measures

As the injury found exceeded the dumping margins, the level of measures was based on the latter. Therefore, definitive duties were imposed at rates of 23.5% for China, between 2% and 7.8% for India, 11.9% for Indonesia, between 2.2% and 14.3% for Taiwan and between 2.6% and 10.1% for Turkey.

6.2.4 Semi-finished products of alloy steel from Turkey and Brazil

On 2 July 1992, the Commission imposed definitive anti-dumping duties on these ECSC products from Brazil and Turkey. These investigations were initiated on 14 June 1990 and provisional anti-dumping duties were imposed on 9 April 1992.

Dumping

A dumping margin of 33.7% was established for the sole Turkish producer and at rates ranging from 1.7% to 15% for the Brazilian exporter.

Domestic sales prices in Turkey were chosen for the determination of normal value, calculated on a monthly basis in order to eliminate the effects of the 70% per annum inflation rate prevailing in Turkey during the investigation period. In the case of all four Brazilian producers, normal value had to be constructed because substantial sales had been made at a loss, or because of a lack of representative sales on the domestic market. These normal values were constructed on the basis of actual manufacturing costs plus an amount for selling, general and administrative costs and for profit.

Export prices were based on actual prices to independent importers in the country.

In order to make a fair comparison between the normal values and export prices, allowance was made for all factors affecting price comparability, i.e. conditions of sale, import charges, indirect taxes, etc.

Injury

With regard to injury, the investigation showed that the combined market share of imports from the two countries cited increased from 1.3% in 1985 to 8.7% during the investigation period. Moreover, import prices were found to have undercut those charged

by the Community producers by up to 26%. Community producers also suffered a loss of market share from 84% to 71% during the same period. Because of this pressure on prices, Community producers had difficulty in generating satisfactory returns, sometimes insufficient even to cover the rises in wage and raw material costs.

With regard to causation, it was established that the injury to the Community industry coincided with the rapid increase of the dumped imports. With respect to other factors which may have caused injury, it was found that, within the restructuring process taking place in the industry, a certain shift of share between Community producers had taken place but this was considered to have had less effect than the dumped imports.

Community interest

With regard to Community interest, it was found that it was clearly in the interest of the Community that the production of these highly-specialized alloy steels, with their widespread ramifications in other essential sectors of the manufacturing industry, should continue under healthy conditions. It was also considered necessary to have security of supplies for these basic products to preserve the industry's cost structure for the more specialized grades.

Measures

The Commission imposed duties at the level of the lower of the price undercutting margin or the dumping margin in order to eliminate price undercutting where possible. These provisional duties were 16% for Turkey and ranged from 1.75 to 15% in the case of Brazil. An undertaking was accepted from one Turkish producer at a level such as to eliminate the injury caused.

6.2.5 Silicon metal from Brazil

On 4 August 1992, the Council imposed a definitive anti-dumping duty of 36.8% on imports of silicon metal from Brazil. The investigation had been initiated on 27 November 1990 and a

provisional anti-dumping duty was imposed on 10 April 1992.

Dumping

Dumping margins ranging from 18.3% to 67% were established for the Brazilian exporters.

Normal values were established on the basis of actual prices in Brazil or, where those were made at a loss, on the basis of constructed value which was calculated by reference to actual manufacturing costs, plus an amount for selling, general and administrative costs and for profit.

Export prices were based on actual prices to independent importers in the Community, or in cases where sales were made via related importers, on the basis of prices charged by the related firms when sold to independent buyers, adjusted to a c.i.f. Community frontier level by deducting the costs of the importers and an amount for profit.

Injury

The share of the Community market captured by Brazilian imports leapt from 3% in 1986 to 15% in 1990, whilst the market share of Community producers fell by a similar amount. Moreover, Brazilian prices fell by 33.2% over the same period and caused the prices charged by the Community producers to steadily decline, affecting production, production capacity, sales, market share, financial results and employment.

Community interest

With regard to Community interest, it was felt that continued damage to the industry would result in substantial reduction in the capacity of Community producers, with a consequent impact on competition and employment. As far as the importers were concerned, it was stressed that the measures imposed were not likely to exclude the Brazilian exporters from the Community market. It was considered that the measures may affect prices to

consumers of the product, but the maintenance of a Community presence in this sector was considered necessary to maintain effective competition in the longer term.

Measures

The level of measures equated to the lower of the injury level or the dumping margin. Definitive anti-dumping duties were, therefore, imposed at a level of 36.8%, with individual duties of between 18.3% and 34.6% being calculated for certain cooperating companies.

6.2.6 Car radios from the Republic of Korea

On 4 August 1992, definitive anti-dumping duties were imposed on imports of car radios from the Republic of Korea. The investigation was initiated on 8 May 1990 and provisional anti-dumping duties were imposed on 11 February 1992.

Dumping

Dumping margins of between 0.6% and 29.3 were established for the nineteen Korean exporters which cooperated in the investigation. For non-cooperators, the dumping margin was based on available evidence at 34.4%, a level considered both appropriate and representative given the extent of non-cooperation.

Normal values were constructed on the basis of actual manufacturing costs in S. Korea, plus an amount for selling, general and administrative costs and for profit; these were adjusted to take account of differences in categories of customers between domestic and export sales.

Export prices were based on actual prices to independent importers or, in cases where sales were made via related importers, on the basis of prices charged by these related firms when sold to independent buyers, adjusted to c.i.f. Community frontier level by deducting the costs of the importer and an amount for profit.

In order to make a fair comparison between normal values and export prices, allowance were made for all factors affecting price comparability, conditions of sale, transport, warranties, etc. With regard to credit terms, allowance was restricted to the length of the credit period agreed at the time of sale as that was the period that was used in determining the price charged.

Injury

With regard to injury, the Commission found that the market share of the Community industry had decreased from 36.7% in 1985 to 22.2% during the reference period. This was despite the fact that consumption of car radios on the Community market increased by roughly 60% during that time. Prices had fallen by 20% or more, a reduction which could not be explained solely by normal competitive conditions, such as increased production volumes and improved manufacturing techniques. This price erosion, accompanied by a serious deterioration of profits, resulted from the massive dumped imports of Korean car radios sold at low prices in the Community.

With regard to other factors alleged to have caused injury, the Korean exporters failed to produce any evidence to support their allegations of dumping as regards imports originating in the other third countries. It was, furthermore, not apparent that the said imports could have had an impact on the Community industry comparable to that of the imports from Korea.

Community interest

With regard to Community interest, it was considered that the imposition of duties could affect prices in the short term but that the impact should be limited in view of the large number of other suppliers on the Community market. Furthermore, it was clear that unless measures were taken, the situation of the Community industry would inevitably deteriorate. It was, moreover, in the interests both of the Community industry and consumers that fair competition be restored to the Community market.

Measures

As the level of injury caused by the dumping was, in all cases, greater than the dumping margins found, the duty was aligned on the latter. Therefore, a definitive duty of 34.4% was imposed with individual rates ranging from 3.4% to 29.3%.

6.2.7 Potassium chloride from Belarus, Russia and the Ukraine

On 24 October 1992, the Council imposed a definitive anti-dumping duty on imports of potassium chloride. The investigation was initiated on 31 October 1990, and on 28 April 1992, a provisional anti-dumping duty was imposed on the Republics of Belarus, Russia and the Ukraine.

Dumping

A dumping margin of 35% was established for the three countries concerned.

Normal values were based on domestic prices in Canada, which was considered an appropriate analogue country.

As the export sales under consideration were made via related importers, the export prices were established on the basis of prices charged by these related firms when sold to the independent buyers, adjusted to a c.i.f. Community frontier level by deducting the costs of the importers and an amount for profit. Exports made via unofficial sources were disregarded because of lack of cooperation.

In order to make a fair comparison between the normal values and export prices, allowance was made for all factors affecting price comparability.

Injury

With regard to injury, it was found that the Soviet imports had increased their market share from 5% to almost 11% from 1986 to 1990 against a background of stable consumption. The Community industry was forced to cut its prices which were, however, still undercut by the Soviet product. The Community industry also incurred heavy financial losses, and employment declined by 14% or 2.400 jobs, between 1986 and 1990. The Community found that the increasing losses suffered by the Community industry coincided with the rise in imports of cheap potash from these countries.

Community interest

With regard to Community interest, it was considered that measures were necessary to preserve a Community presence in this sector and to avoid the costs of exit in this industry. In any event, it was felt that the form of the measure, a minimum price, would permit the countries to remain in the Community market.

Duty level

The level of injury found exceeded the dumping margin and, therefore, the measures were calculated in relation to the latter. The definitive duty imposed took the form of a variable duty based on a minimum price which, depending on grade and K20 content, varied from ECU 57.95 to ECU 133.87 per tonne.

6.2.8 Electrolytic capacitors from Japan

On 3 December 1992, the Council imposed a definitive anti-dumping duty on imports of electrolytic capacitors from Japan. The investigation was initiated on 11 April 1991 and provisional anti-dumping duties were imposed on 4 June 1992.

Dumping

Dumping margins of between 11.6% to 35.8% were established for the exporters which cooperated in the investigation. For the non-cooperators, the margin was established in relation to available evidence at a rate of 75%, a level considered both representative and appropriate given the extent of non-cooperation.

Due to the low level of sales made on the Japanese market, normal values were established on the basis of actual manufacturing costs, plus an amount for selling, general and administrative costs and for profit.

Export prices were based on actual prices to independent importers or, in cases where sales were made via related importers, on the basis of prices charged by the related firms when sold to independent buyers, adjusted to a c.i.f. Community frontier level by deducting the costs of the importer and an amount for profit.

In order to ensure a fair comparison between the normal values and export prices, allowance was made for all factors affecting price comparability. Certain claims which were not wholly related to direct selling activities were disallowed.

Injury

With regard to injury, it was found that Japanese imports increased their market share from 27.70% in 1988 to 38.5% in 1990, whilst the share of Community producers fell from 52.9% to 39.9% during the same period. The prices of the dumped imports were substantially lower than those of the Community producers, showing price undercutting margins of between 33.7% and 62.7%. In this respect, the Commission noted that the Japanese exporters had consistently sold below their cost of production in the Community market whilst enjoying high profits on their domestic market. The injury to the Community industry was mainly in the form of loss of profitability and market share.

Community interest

With regard to Community interest, it was considered that measures could affect prices in the short term but that such effects would have little or no impact on consumers of the finished products. Moreover, this product was considered strategic in terms of its high-technology aspects and a Community presence in this sector was deemed important.

Measures

It was established that the injury, in all cases, exceeded the dumping margins and, therefore, the level of duties was calculated in relation to the latter. The Commission consequently imposed a provisional anti-dumping duty of 75%, with individual rates varying between 11.6% and 35.8%.

6.2.9 Ferro-silicon from Poland and Egypt

On 18 December 1992, the Council imposed a definitive anti-dumping duty on imports of ferro-silicon from Egypt and Poland. These investigations were initiated in May 1991 and provisional anti-dumping duties were imposed on imports into the Community of ferro-silicon originating in Poland and Egypt.

Dumping

The dumping margins established for Egypt and Poland were 61.5% and 43.9% respectively.

Due to the fact that domestic sales in Egypt were negligible, normal value was based on constructed value i.e. the costs of manufacture plus an amount for selling, general and administrative costs and for profit. For Poland, normal values were established on the basis of constructed value in Norway, which was considered an appropriate analogue country.

Export prices were based on the actual prices charged to independent importers in the Community.

In order to ensure a fair comparison between normal values and export prices, allowance was made for all factors affecting price comparability.

Injury

With regard to injury, the combined market shares of imports from these two countries were found to have increased from 1.4% in 1989 to 7.2% in 1991, while the share of Community producers fell from 36% to 26% during the same period. Moreover, the prices of these imports undercut the already depressed prices of the Community producers by up to 12%. Indeed, Community producers were forced to sell their product in the Community at prices which in most cases did not cover their production costs, entailing substantial financial losses.

Community interest

The investigation concluded that it was in the Community's interest to restore fair competition, as the Community could not be left to depend wholly on non-Community suppliers of ferro-silicon. In any event, the impact of increased ferro-silicon prices would have a very limited effect in the steel-making sector.

Measures

For both countries, the level of injury was less than the dumping found and, therefore, measures were calculated in relation to the former. A definitive anti-dumping duty of 32% was, therefore, imposed on imports of ferro-silicon from Poland and Egypt.

The sole cooperating Egyptian producer offered an undertaking, which was accepted by the Commission, and was therefore exempted from the duty.

6.3 Acceptance of price undertakings

Table 1 also shows that the Commission did not conclude any investigations solely by the acceptance of price undertakings in 1992. However, some cases were concluded both by the acceptance of undertakings and the imposition of duties. These cases are included in Table 1 under duties imposed, but the investigations in question are identified in Annex C.

7. ANTI-DUMPING AND ANTI-SUBSIDY INVESTIGATIONS - TERMINATIONS WITHOUT MEASURES

7.1 OVERVIEW

Investigations are concluded without measures when no dumping or injury is found or for other reasons, such as the withdrawal of the complaint. In 1992, 1 investigation was concluded without measures due to a finding of no dumping, 4 due to findings of no injury, and 7 due to the withdrawal of the complaint. The number of closures without measures has remained, in relation to the number of investigations concluded, relatively steady over the last five years, i.e. a ratio of approximately one third. The references for the investigations terminated without measures are given in Annexes D, E and F. A concise commentary of the investigations concluded without the imposition of measures in 1992 is given below.

7.2 CASES

7.2.1 Dihydrostreptomycin from Japan

The anti-dumping proceeding concerning imports of dihydrostreptomycin (DHS) originating in Japan was terminated without measures on 4 February 1992. This proceeding had been initiated against Japan and the People's Republic of China in July 1990, subsequent to a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC).

At the time of the provisional findings in July 1991, it was established that, although Japanese imports were made at dumped prices, the level of these imports had decreased by 51% between 1985 and the investigation period. In addition, the prices of the Japanese product were found not to be any lower than the prices charged by the Community producer. It was therefore decided that, in view of the lack of material injury caused to the Community industry by the Japanese imports, provisional measures should not be imposed on Japan.

Subsequent to the imposition of provisional duties on imports of DHS originating in China, no reasoned arguments were put forward

by the Community industry or the Chinese exporter to dispute the findings with regard to Japan. The Commission, after consultation with the Member States, therefore formally terminated the proceeding.

7.2.2 Audio tapes on reels from Japan, S. Korea and Hong Kong

The anti-dumping proceeding concerning imports of audio tapes on reels originating in Japan, the Republic of Korea and Hong Kong was terminated without measures on 4 February 1992. This proceeding had been initiated in January 1989 further to a complaint lodged by the European Council of Chemical Manufacturer's Federation.

However, it was considered necessary to treat audio tapes on reels as a different product from audio tapes in cassettes. As far as the latter product is concerned, definitive anti-dumping duties were imposed in May 1991 (see 10th Annual Report).

Subsequently, the complainant informed the Commission that it had decided to withdraw the complaint with regard to audio tapes on reels owing, in particular, to the imposition of measures on tapes in cassettes. The Commission therefore decided to terminate the anti-dumping proceeding concerning audio tapes on reels.

7.2.3 Merchant bars and rods of alloy steel from Turkey

The anti-dumping proceeding concerning imports of merchant bars and rods of alloy steel from Turkey was terminated without measures on 12 February 1992. This proceeding was initiated in June 1990 subsequent to a complaint lodged by the European Confederation of Iron and Steel Industries (EUROFER).

The Commission commenced the investigation by seeking and verifying the information necessary for the assessment of dumping and injury. However, in November 1991, the Commission was informed by the complainant of their intent to withdraw the complaint because of profound changes in the market place.

The Commission therefore, considered further investigation unnecessary, and following consultation with the Member States, formally terminated the proceeding.

7.2.4 Cotton yarn from Egypt

The anti-dumping proceeding concerning imports of cotton yarn from Egypt was terminated without measures on 27 March 1992. At the same time definitive duties were imposed against Brazil and Turkey, (see section 6.2.2).

The proceeding was initiated in March 1990 following a complaint by the Committee of the Cotton and Allied Textile Industries (EUROCOTON), citing India and Thailand in addition to the countries already mentioned. On 27 September 1991, provisional anti-dumping duties were imposed in respect of Brazil, Egypt and Turkey. The rate of duty for Egypt was 12.8%, calculated on the basis of constructed normal value.

Subsequent to the imposition of provisional duties, the Commission modified the normal value after having taken account of arguments put forward by the Egyptian side with regard to the rate of exchange used, and certain elements in the calculation of constructed value. This modification resulted in the establishment of a weighted average dumping margin of 0.1%. In view of this de minimis dumping margin, the Commission, after consultation with Member States, terminated the proceeding without the imposition of measures and released the amounts collected by way of provisional duties.

7.2.5 Haematite pig iron from Turkey

The anti-dumping proceeding with regard to imports into the Community of pig iron originating in Turkey was terminated without the imposition of measures on 13 August 1992. The notice of initiation, published on 21 September 1991 following a complaint lodged by Eurofontes, also covered imports of the same product from the then Soviet Union.

During the investigation, the Commission received information concerning Turkish producers which indicated that the exports from Turkey were apparently of an incidental and temporary nature, and concluded that their contribution to any material injury suffered by the Community industry was negligible. The complainant, upon being informed by the Commission of its findings, subsequently withdrew the complaint, and the proceeding was formally terminated without the imposition of measures.

7.2.6 Wire rod from Argentina, Egypt, Trinidad and Tobago, Turkey, Bosnia-Herzegovina, Croatia, Slovenia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia

The anti-dumping proceeding on imports of wire rod from the above mentioned countries was terminated without the imposition of measures on 2 September 1992. The notice of initiation, published on 11 December 1990, subsequent to a complaint by the European Confederation of Iron and Steel Industries (EUROFER), covered Argentina, Egypt, Trinidad and Tobago, Turkey and the then Yugoslavia as a single entity.

The Commission sought and verified all information deemed necessary, and carried out verification visits at the premises of the Community producers and importers. However, due to a change in the market circumstances which led to the lodging of the complaint, the complainant formally withdrew the complaint on 10 July 1992. Following consultation with the Member States, the Commission formally terminated the proceeding without measures for all countries cited.

8. REVIEWS

8.1 OVERVIEW

The Regulations and Decisions imposing anti-dumping or countervailing duties and Decisions accepting price undertakings may be subject, under the basic legislation, to at least 4 types of review during their life time:

- Article 15 provides for the expiry of anti-dumping measures after 5 years unless a "sunset" review demonstrates that they should remain in force;

- Article 14 provides for the review of measures on the initiative of the Commission, at the request of a Member State or, once they have been in force for 12 months, following a request from an interested party;

- Another type of review carried out under Article 14 are "newcomer" reviews. Such reviews may be requested by exporters who become subject to measures but who did not export during the original investigation, and who have subsequently commenced exporting or have the firm intention to do so;

- Article 13.11 also provides for the review of anti-dumping duties where evidence is presented that the duty is being absorbed by the exporter, thus effectively reducing the export price and increasing the dumping margin.

The above-mentioned reviews are now a major part of the work of the Commission's Anti-Dumping Unit. In the period from 1981, they represented approximately one third of all cases initiated and in the last 5 years this ratio was increased to approximately 40%, a ratio that was maintained in 1992.

Between 1988 and 1992, a total of 122 review investigations were initiated, 39 of which were under Article 15, 70 under Article 14, 9 were "newcomer" reviews and 4 were under Article 13.11. In approximately half of those cases, the measures were allowed to

expire following the review while for the other half, measures were continued, mainly in amended form.

In 1992, a total of 27 reviews were initiated, 4 of which were under Article 15, 16 under Article 14 and 7 as "newcomer" reviews. There were no reviews opened under Article 13.11 in 1992. Details of the review investigations opened and of the results of reviews concluded in 1992, can be found in Annexes I, J, K, L.

Table 3 provides statistical information for the period 1988 to 1992.

8.1.1 ARTICLE 15 REVIEWS

Since Article 15 of the basic legislation came into force in 1985, a total of 212 anti-dumping measures have been allowed to expire automatically.

In 1992, 16 measures were allowed to expire automatically under Article 15, while reviews were carried out leading to no further X expiries and the continuance of 1 measure in amended form. The references for these reviews are set out in Annexes J to L and N.

8.1.2 ARTICLE 14 REVIEWS

Since 1988, a total of 56 reviews have been initiated under Article 14. Following review, 24 measures were repealed and 20 measures were allowed to continue, mainly in amended form.

In 1992, 23 reviews were initiated under Article 14. Following review, 3 measures were allowed to expire and 10 measures allowed to continue, mainly in amended form.

8.1.3 "NEWCOMER" REVIEWS

Newcomer reviews are now a common feature in the administration of the anti-dumping instrument. These reviews are carried out for the benefit of new exporters which are subject to residual duties but which were not investigated in the original investigation because they had not yet exported to the Community.

Since the Commission carried out the first review of this type in 1990, 9 investigations have been initiated and 5 of those were in 1992. Four investigations were concluded in 1992 and the references of these initiations and conclusions are given in annex I and J.

8.1.4 ARTICLE 13.11 REVIEWS

The possibility for these Article 13.11 reviews, which deal with situations where the exporter directly or indirectly bears the cost of the duty and thereby increases the dumping margin, was incorporated into the basic legislation in 1988.

Since then four such reviews have been initiated, all in 1991, one of which was concluded on 22 June 1992, when an additional anti-dumping duty was imposed on imports of silicon metal originating in the People's Republic of China. References are given in Annex J.

TABLE 4

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

	1988	1989	1990	1991	1992
Reviews in progress at the beginning of the period	11	20	15	21	21
Reviews opened during the period	24	17	26	16	27
Reviews in progress during the period	35	37	41	37	48
Reviews concluded by:					
- imposition of definitive duty in lieu of price undertaking	4	4	6	1	1
- amendment of definitive duty	-	4	2	3	11
- suspension of definitive duty	-	-	-	-	-
- acceptance of price undertaking in lieu of definitive duty	3	-	1	-	-
- amendment of price undertaking	2	1	-	5	1
- repeal or expiry of definitive duty	1	9	6	4	5
- repeal or expiry of price undertaking	5	4	5	2	-
- no change of the measures in force	-	-	-	-	-
Total reviews terminated during the period	15	22	20	15	18
Reviews in progress at the end of the period	20	15	21	22	30
Provisional duties imposed during the reviews	-	7	1	-	-

9. REFUNDS

During 1992, when four decisions on refunds were rendered, work with regard to requests for refund has continued to be centralized. The objective of taking a decision, to the extent possible, within a year was attained in the cases where the applicants provided the necessary information within the statutory deadlines, laid down by article 16 of the Basic Regulation and underlined in the Notice of the Commission with regard to the refund of anti-dumping duties(7). The period of one year was, however, exceeded in cases where information was not provided in due time, or where problems specific to an individual case arose. In several cases where refund requests have been introduced in a regular fashion, most often in the context of a review proceeding, they were grouped together in a decision taken at the close of that review proceeding.

In March 1992, the Court of Justice rendered an important decision in the area of refunds (see point 10.3.2. below).

---

(7) O.J. no. C 266, 22.10.1992, p. 2

10. THE COURT OF JUSTICE

10.1 Overview

A list of the anti-dumping and anti-subsidy cases before the Court of Justice in 1992 is given in Annex P. It gives the cases which were still pending at the beginning of 1992, in addition to the five new cases brought during the year. Judgements were rendered in 11 cases, and a summary of these judgements is given below.

10.2 New cases

The five new cases brought during the year concerned the use of facts available[8], like product and calculation of normal value[9], referral for a preliminary ruling on a matter of product definition[10], the refund of anti-dumping duties[11], and the length of the investigation[12].

10.3 Judgements rendered

The Court also rendered judgements in 1992 in the following cases:

10.3.1. Compact disc players: judgement of 13 February 1992[13]

- Case 105/90 : Goldstar Co. Ltd. v. Council

The judgement concerns the interpretation of the rules in article 2(3)(b) of the Council Regulation (EEC) No. 2423/88 of 11 July 1988, (hereafter the basic regulation) for determining "normal value" in particular with regard to the representativity of domestic sales.

---

(8) Case 61/92, OJ No. C 103, 23.04.92, p. 8
(9) Case 75/92, OJ No. C 113, 05.05.92, p. 4
(10) Case 90/92, OJ No. C 107, 28.04.92, p. 7
(11) Case 346/92, OJ No. C 246, 24.09.92, p. 13
(12) Case 423/92, OJ No. C 29, 02.02.93, p. 7
(13) Case 105/90, OJ No. C 59, 06.03.92, p. 15

The main issue raised by Goldstar was whether the Community institutions, in applying the standard practice, ought to have taken into account the volume of domestic sales in absolute terms, e.g. to verify whether domestic sales amounting to a very small quantity were sufficiently representative. The other issues concerned the determination of the profit margin, in the cases where the normal value had to be constructed.

Goldstar submitted that domestic sales corresponding to small quantities, were not "in the ordinary course of trade" and did not permit a "proper comparison". It was argued that the concepts "in ordinary course of trade" and "proper comparison" require a sufficient volume of sales on the domestic market not only in relative terms i.e. as a percentage of the export sales to the EEC (the 5% rule), but also in absolute terms. According to Goldstar, the Council should have determined the normal value on the basis of a constructed value. The Community institutions had therefore committed a manifest error of appraisal, and in addition Goldstar claimed that the Community institutions should have taken into account that the production of the models in question, sold on the domestic market had ceased before the initiation of the investigation period.

The Court stated that sales on the domestic market permit a proper comparison when they are sufficiently representative, i.e. the transactions on the domestic market reflect "normal behaviour" on the part of the purchaser and result from "normal patterns of price formation". The Court ruled that the standing practice of the Community institutions, according to which the sales on the domestic market should at least correspond to 5% by volume of the export to the EEC, fulfils these requirements, and offers the traders concerned a degree of legal certainty. The practice should therefore be upheld and may be departed from only in exceptional circumstances. A particularly small volume of sales in absolute terms does, in the view of the Court, not in itself constitute a factor permitting a departure from the 5% criteria.

With regard to the profit margins used to construct normal values for certain models, Goldstar claimed that profit margins realized on domestic sales of other Goldstar models were not representative, that the approach of the Council was not in accordance with the Agreement on implementation of Article VI of the GATT, and that the Council should, instead, have referred to the profits made by other Korean producers.

The Court referred to Case C-69/89 (Nakajima All Precision v Council), where it had ruled that Article 2(3)(b)(ii) of the basic regulation complies with the GATT rules and that the methods of calculating the constructed value laid down in that provision should be considered in the order in which they are set out. Accordingly, the profit margin must primarily be calculated by reference to the profit realized by the producer in question, in order to ensure that the constructed normal value corresponds as closely as possible to the situation of the producer concerned. The submissions of Goldstar were thus rejected.

Concerning the application of an individual margin for sales to OEM purchasers by Goldstar, instead of an identical average profit margin for all the Korean producers concerned, the Court stated that the aim of constructing the normal value is to determine what the selling price of a product would be if that product were sold on the domestic market. Individual data from the producer concerned is most suited to reach that objective, in particular in cases where these data differ considerably from those relating to other producers. Since Goldstar realized a particularly high profit on its own-brand sales on the Korean market, while in the cases referred to by Goldstar the profit margins realized by the undertakings concerned were very close to one another, the Court concluded that the Council acted correctly in applying an individual profit rate to Goldstar with regard to the models sold to OEM producers in the EEC.

The Court also stated that the Council did not fix the profit rate for OEM's in an arbitrary manner and that applying a rate at one third the level of sales to non - OEM's was reasonable given the absence of any other concrete information.

The Court dismissed the application by Goldstar in its entirety.

10.3.2 Refunds of anti-dumping duties paid on imports of ball-bearings: judgement of 10th March 1992(14)

- Case 188/88 : NMB (Deutschland) GmbH and others v. Commission

The application before the Court was lodged by three subsidiaries in the Community of a Japanese company, NMB. These three companies imported and distributed in the Community, ball-bearings supplied by a Singapore company, which was also a subsidiary of NMB.

The three applicants had submitted before the Commission, pursuant to Article 16 of Council Regulation (EEC) No. 2176/84, applications for partial refund of anti-dumping duties paid on imports of ball-bearings originating in Singapore made by them in 1985 and 1986.

By decisions of 22nd April 1988, the Commission partly rejected the applications for refunds. This partial rejection was based on the fact that the Commission, applying the methodology laid down in its legislation and the notice concerning the reimbursement of anti-dumping duties (OJEC No. C 266 of 22.10.1986, p. 2) published for the purpose of informing interested parties and guiding the internal procedure for the application of Article 16 of the basic regulation, had deducted the anti-dumping duties paid from the resale prices of each subsidiary to the first independent buyers.

The applicants contested the appropriateness and the legality of the inclusion of the anti-dumping duties in the costs deductible from the resale price. They claimed that this method was incompatible with the principle of proportionality since it would impose, on related importers, a burden in excess of that which is necessary to remedy the dumping and afford the European industry an excessive protection. It would also be discriminatory since independent importers and related importers would be treated differently for the purpose of refund of anti-dumping duties without objective justification. These violations of general principles of Community law would, in addition,

(14) Case 188/92, OJ No. C 81, 01.04.92, p. 12

constitute a misuse of its power by the Commission. The applicants alleged also an infringement of the principle of the protection of legitimate expectations. Finally, they contended that the basic regulation was contrary to Article VI of the GATT and the Anti-dumping Code.

The Court ruled that, in cases where the dumping margin has to be calculated on the basis of export prices constructed because the importer is related to the exporter, the basic regulation expressly specifies that the anti-dumping duties have to be deducted as a cost incurred between importation and resale. The Court considered that the alleged difference in the treatment of independent importers and related importers with respect to the refund of anti-dumping duties is justified by the difference in their respective situations in relation to the dumping and therefore does not constitute discrimination. Independent importers may be expected to pass on the anti-dumping duties to their customers, given their ignorance as to whether or not the dumping had ceased and whether the refund would be granted. In contrast, related importers could refrain from passing on the anti-dumping duties since they would be aware of the commercial practices underlying the dumping and they would therefore not be in any doubt and run no risks with respect to the possibility of obtaining a refund. The Court concluded that if the anti-dumping duties were not deducted in constructing the export price, associated importers would be in a more favourable position than independent importers and that, consequently, Article 2 (8) (b) of the basic regulation requires the deduction of anti-dumping duties in constructing the export price for the purpose of refunding duties.

On the same grounds, the arguments claiming violation of the principle of proportionality and misuse of power were rejected.

The Court accepted that a violation of the rules of the GATT anti-dumping code may be invoked as a way of controlling the legality of a Community regulation and also that the policy of the Community's trading partners may be invoked as an argument to uphold the claim that the arrangements laid down by a Community regulation have not been correctly interpreted. However, the Court recognized that there is no inconsistency between the basic regulation and the anti-dumping code.

Finally the Court considered that there was no infringement of the principle of legitimate expectations since the Commission had not clearly defined its position on the matter prior to the publication of its Notice in 1986.

The Court dismissed the applications in their entirety.

10.3.3 Photocopiers from Japan : judgements of 10th March 1992(15)

- 171/87 : Canon Inc. v. Council
- 172/87 : Mita Industrial Co. Ltd. v. Council
- 174/87 : Ricoh Company v. Council
- 175/87 : Matsushita Electrical Industrial Co. Ltd. and Matsushita Electric Trading Co. Ltd. v. Council
- 176/87 : Konishiroku Photo Industry Ltd. v. Council
- 177/87 : Sanyo Electric Co. Ltd. v. Council
- 178/87 : Minolta Camera Co. Ltd. v. Council
- 179/87 : Sharp Corporation v. Council

Council Regulation (EEC) No. 535/87 of 23 February 1987 imposed a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan. The rate of duty was fixed at 20%. The Council regulation was adopted on the basis of the former basic regulation (EEC) No. 2176/84 (hereinafter the basic regulation). Most of the exporters concerned challenged the Council Regulation before the Court of Justice. The exporters main allegations concerned:

1) miscalculation of the normal value and the export price;

2) erroneous definition of the Community industry;

3) incorrect evaluation of injury;

---

(15) Cases 171/87, 172/87, 174/87, 175/87, 176/87, 177/87, 178/87 and 179/87, OJ No. C 90, 10.04.92, pp. 3 - 6

4) Incorrect appraisal of the interest of the Community.

1) Miscalculation of the normal value and the export price

Referring to earlier cases, the Court reiterated that the determination of the normal value and the export price are governed by separate rules, and therefore selling, general and administrative expenses need not necessarily be treated in the same way in both cases. The Court stated that the costs incurred by sales subsidiaries on the domestic market, which are acting as a domestic sales department, are equivalent to those incurred by the export department of the exporter and not to those of the European subsidiaries of the exporter. Furthermore the Court stated that according to the judgements in cases 277/85 and 300/85 (Canon v Council), the prices charged by domestic subsidiaries to independent buyers on the domestic market may be regarded as the price actually paid or payable in the ordinary course of trade within the meaning of Article 2(3)(a) of the basic regulation, the other possibilities enumerated in the basic regulation for the establishment of normal value being merely subsidiary. The Court therefore held that there was no need for the Council to construct the normal value.

Concerning the products where the normal value had been constructed, the Court pointed out that the Community institutions had constructed the normal value because all PPC models exported to the Community were sold in Japan at prices that were on average lower than their production cost and that the aim of constructing the normal value is to establish a normal value which comes as close as possible to the selling price as if the sales had taken place in the country of origin. The Court stated that, consequently, the expenses relating to sales on the domestic market should be taken into account, even if the product is not sold on the market, but is sold for export. Recourse to an average profit realized on sales in the ordinary course of trade was thus justified.

With regard to the Council's comparison of a weighted average normal value with individual export prices, the Court reiterated that it is

not required that the normal value and the export price be calculated according to the same method. Furthermore the freedom for the institutions to choose the right method is specifically intended to ensure the application of the method most appropiate to the purpose of the anti-dumping proceeding.

With regard to allowances claimed on the grounds that the normal value and the export price were established at different levels of trade, the Court stated that the applicants had produced no evidence to show that this was the case.

2) Erroneous definition of the Community industry

Some exporters claimed that in view of the numerous imports from Japan by three of the complainants, the institutions should not have included those companies in the number of producers making up the "Community industry". The exporters considered this to be particularly the case for imports of small photocopiers from Japan where European production was low or non-existent.

The Court referred to its judgement in case 156/87 (Gestetner) and reiterated that it is within the discretion of the institutions to determine whether they should exclude from the "Community industry" producers which are related to exporters or importers and who themselves are importers of the dumped product. This discretion must be exercised on a case-by-case basis by reference to all the relevant facts. Furthermore the Court pointed out that the volume of imports made by Community producers was minimal in relation to the entire range of PPC's produced by this producer within the EEC.

The plaintiffs also claimed that one producer's production should not be counted as part of the Community production, since part of the company's operations consisted in reality of assembling or producing machines in the Community from parts or materials originating in

Japan. In support of their argument, the exporters pointed out that existing anti-dumping duties could be extended to cover like products merely assembled in the Community and that maintaining this complainant's production as part of Community production would be treating similar situations dissimilarly.

The argument was rejected by the Court which stressed that the "screwdriver" provision in Community legislation was introduced after the contested regulation had been adopted, and, in any event, it concerned anti-dumping duties on products assembled or produced in the Community from parts or materials originating in exporting countries which are subject to duties, not the definition of Community production.

3) Incorrect assessment of the injury suffered by the Community industry

Several exporters claimed that the Community institutions, in considering that the different types of PPC's were a like product, made a wrong assessment. According to the exporters there are no similarities between the PPC's in adjoining and especially in non-adjoining segments.

The Court stated that, at least, the PPC's in adjoining segments were like products. The differences concerning speed and copy volume between PPC's falling within one or various segments were not sufficient to establish that those PPC's do not have identical functions or do not satisfy the same needs. The Court stressed that the customer's choice was made on the basis of factors relating in particular to the decision to centralize or decentralize their photocopying facilities, which confirms that there is competition between machines in different categories.

The exporters contested the findings of the institutions that the alleged injury resulted from the imports in question and not from the policy followed by Community undertakings, in particular their decision not to manufacture small photocopiers owing to the costs and technological difficulties which development of new models of small photocopiers would have involved, and from the inferiority of their

machines compared with the products of the exporters.

4) Interest of the Community

Some exporters claimed that the Community institutions inaccurately assessed the interest of the Community. They argued that the OEM importers employed a substantial number of people and were very active in the field of small photocopiers whereas three Community producers were holding only 3% of the Community market for small photocopiers. Protecting the manufacturers producing such a small quantity of the products concerned did not, in view of the exporters, take into consideration the disadvantageous consequences which would ensue.

The Court rejected the argument, stating that the question whether the interest of the Community calls for an intervention is a matter of discretion and the judicial review of such an appraisal must be limited. According to the Court there were no clear failures made by the institutions in their appraisal. On the contrary, the Court deemed it doubtful whether an independent Community PPC industry would have survived without an anti-dumping duty on the imports of PPC's from Japan. The Court stated that the institutions assessment that the need to protect the Community industry were more important than the need to protect the immediate interests of consumers was thus correct.

10.3.4 Calcium metal : judgement of 11th June 1992(16)

Case 358/89 : Extramet Industrie S.A. v. Council

The application was lodged by a large importer in the Community of calcium metal originating in China and the former Soviet Union on whose imports a definitive anti-dumping duty, amounting respectively to 21.8% and 22%, was imposed by Council Regulation (EEC) No. 2808/89.

The applicant submitted several pleas in law based on alleged errors committed in defining the like product, determining the normal value, determining the injury suffered by Community industry and appreciating the interest of the Community for imposing measures.

The Court examined in first place, the plea concerning the injury determination and decided to annul the contested Regulation without further examination of the other pleas.

Extramet had claimed in particular that the sole producer of calcium metal in the Community had itself caused the injury suffered when it refused to supply Extramet with the product.

For the purpose of refuting Extramet's arguments, the Council had referred to the recitals in the preamble to the contested regulation, which stated that Extramet had begun Court proceedings in one Member State against the Community producer, alleging abuse of dominant position, but that the latter had denied such allegations and that no final judgement had been reached in the Court proceedings in the Member State concerned. The Council had added that an undertaking cannot be deprived of its right to initiate proceedings under competition law, the outcome of which cannot be prejudiced by an anti-dumping investigation. In any event, if it were ruled that competition rules had been infringed, the anti-dumping proceeding may then be reviewed.

The Court noted that it did not appear from the recitals to which the Council referred, that the Community institutions had in fact

---

(16) Case 358/89, OJ No. C 174, 10.07.92, p. 20

examined the question whether the Community producer concerned had itself contributed to the injury it suffered through its refusal to sell, or established that the proven injury did not result from the factors alleged by the applicant. The Community institutions had for that reason failed to determine correctly the injury suffered.

10.4 Cases withdrawn

In addition to the above-mentioned judgements, two cases were removed from the register. These involved:

- 193/89 : Venezolana de Nitrogeno C.A. (Nitroven) and Petroquimica de Venezuela (Pequiven) v. Council

- 337/90 : Musso and Parker v. Hauptzollamt Gronau

10.5 Cases pending

At the end of 1992, ten cases were still pending on the register of the Court of Justice. These cases can be identified in Annex P.

10.6 Court of First Instance

At the request of the Court of Justice, the Court of First Instance (CFI) was set up by Council decision of 24 October 1988[17] in order to examine, subject to an appeal to the Court of Justice and limited to matters of law, certain petitions lodged by individuals or corporate bodies. Two years after the founding of the Court of First Instance, and taking account of the experience acquired particularly in the evolution of the case-law, the Council decided to examine the Court of Justice's proposal to extend the CFI's competence to examine petitions lodged against one of the Community institutions by individuals or corporate bodies in the area of commercial defence measures within the framework of article 113 of the EEC Treaty for dumping and subsidy cases.

---

(17) OJ no. L 319 of 25.11.1988

In a letter dated 17 October 1991[18], the Court of Justice requested that the Council undertake such an examination.

In its opinion[19] of 18 March 1992, the Commission considered, and the European Parliament agreed with this view, that it would be necessary to find a solution to the additional difficulties created by the setting up of a double layer of jurisdiction, which would come on top of a decision-making process already burdened with cumbersome procedures. As a consequence the Commission, as announced in its opinion, proposed to the Council an amendment of the regulation in force[20], aimed at harmonizing and streamlining the decision-making process with regard to instruments of commercial defence.

---

(18) Council Doc. 9286/91 of 08.11.1991

(19) SEC(92) 495 final

(20) SEC(92) 1097

11. REFORM OF THE E.C. LEGISLATION

On 2 July 1992 the Commission presented a proposal to the Council for a Council Regulation on the harmonization and streamlining of decision-making procedures for Community instruments of commercial defence and modification of the relevant Council Regulations (SEC(92) 1097 final). The proposal concerns definitive measures of commercial defence to be taken under the Anti-dumping/Anti-subsidy Regulation (Reg. No. 2423/88), the Regulations enabling the adoption of safeguard measures (common rules on imports: Reg. No. 288/82, No. 1765/82, No. 1766/82), and the so-called "New Instrument of Commercial Policy" (Reg. 2641/84).

The proposal is aimed at replacing the existing mechanism for taking definitive measures(21) with a Management Committee procedure(22) except that the special procedure for safeguard measures (Article 3 of the same Council Decision) is maintained or adopted for measures to be taken promptly, either because of the urgency of the matter (eg safeguard measures under Reg. No. 288/82) or to comply with international obligations (eg. termination of anti-dumping proceedings without measures). In summary, the basic features of the decision-making mechanism proposed by the Commission would be that (a) the decision on whether or not to apply definitive measures of commercial defence would be taken by the Commission, after consultation of a management committee in all cases, and (b) insofar as Member States would be entitled to refer such Commission decisions to the Council, a qualified majority in the Council would be needed to overturn the Commission decision.

These changes concern exclusively internal Community procedures, and would not affect the substantive conditions for the application of instruments of commercial defence (conditions which are dictated by the Community's GATT obligations). Thus, such changes would not affect the international rights and obligations of the Community, nor

---

(21) A decision of the Council based on a proposal from the Commission following consultation of an Advisory Committee.

(22) Article 2, type 11(b) of "Comitology Decision", Council Regulation No. 87/373/EEC, which sets out procedures for the exercise of implementing powers conferred in the Commission.

would they affect the position of the Community's trading partners or that of their enterprises.

The rationale for the Commission's proposal is that decision-making procedures for Community instruments of commercial defence are of great complexity and length. In some cases they do not even guarantee any decision at all, namely in the case of safeguard measures which can lapse after a period of three months if the Council does not take a decision. This raises real concerns as to both the legal certainty for all economic operators involved and the effectiveness of the Community's commercial defence policy. Furthermore, these concerns appear all the more serious when Community procedures are compared with those of our trading partners.

Thus, the Commission proposal seeks to remedy these difficulties for the decision-making process by replacing the existing mechanism with a more effective system which would be, at the same time, in conformity with the principle of the devolution of implementing powers to the Commission laid down in Article 145 of the EEC Treaty. This system would eliminate the risk of the Council not taking a decision, thereby increasing legal certainty, and would speed up decisions on cases where there is no disagreement between the Commission and the Member States.

This proposal stemmed from the opinion which the Commission gave (on 18 March 1992) on the extension of the competences of the Court of First Instance to include measures of commercial defence. Indeed, although the Commission agrees with such extension of competences, it is nevertheless apparent that a two-tiered mechanism of jurisdictional control would add to the overall length and complexity of Community commercial defence procedures. Thus, the Commission linked its favourable opinion on this issue to the parallel improvement of the decision-making mechanism.

It is also very important to consider this Commission proposal in the context of the completion of the internal market and of the external policy implications of such a large scale trade liberalisation. Consequently, the proposal on harmonization and streamlining of decision-making procedures now forms part of a wider package concerning the Community's import regime. The main feature of this

package is trade liberalisation: that is, elimination of all of the 1700 quantitative restrictions maintained by individual Member States vis-à-vis GATT Contracting Parties, as well as all of the 4716 quotas concerning State-trading countries, with the sole exception of 8 product groups for which Community-wide quotas are envisaged with regard to China alone.

The Council was supposed to decide on the various Commission proposals by the end of 1992, but no agreement could be reached within the Council.

12. DEVELOPMENTS IN THIRD COUNTRIES

A number of events, in particular in Central and Eastern Europe and in the former USSR and Yugoslavia, had some impact for the Community's commercial defence in 1992.

12.1. FORMATION OF NEW INDEPENDENT STATES

12.1.1. EX - USSR

With the dissolution of the former USSR, 15 states became independent in 1992. Each of them has to be treated as a separate entity. Consequently, commercial defence proceedings pending on 01.01.1992 are pursued only with regard to the state(s) from which the product in question originates or in which subsidization allegedly takes place. The same applies to proceedings initiated after that date.

Measures applied remain in force with regard to the states which were part of the former Soviet Union on its dissolution (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgystan, Moldava, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan). By contrast these measures no longer apply to the states which became independent before such dissolution (Latvia, Estonia, Lithuania).

12.1.2. EX - YUGOSLAVIA

The situation is the same with regard to the independent states having succeeded the former Yugoslavia (Slovenia, Croatia, Bosnia-Herzegovina and the former Yugoslav Republic of Macedonia[23]. New proceedings can only be initiated or continued against the individual state(s) concerned. Measures taken against imports from "Yugoslavia" remain in force with regard to all successor states.

---

(23) Concerning the Federal Republic of Yugoslavia (Serbia and Montenegro) which has not been internationally recognized, its status with regard to commercial defence action is of no practical importance given the trade embargo imposed by the Community as of 31.05.1992.

12.2. DISMANTLING OF EXPORTS MONOPOLIES

In the process of the economic reforms in Central and Eastern Europe and in the former USSR, a number of state organisations have lost their export monopoly. Even where definitive steps towards a market oriented economy have not yet been taken, new private operators have increasingly been able to become active in export trade, often concurrently with the former state monopolists.

A similar evolution can be observed as a consequence of the reform of the foreign trade system in the People's Republic of China. The operation of export trade was to a large extent decentralized. In addition, private companies are permitted to engage in export operations under the regulations applicable to foreign investment in China.

This diversification, as such clearly a positive development, has led to difficulties regarding certain anti-dumping measures applied prior to the reforms in question. Where a proceeding had resulted in the acceptance of an undertaking offered by the state monopoly without the imposition of so-called "residual" duties (duties applicable to all other existing or future exporters in the country concerned), the appearance of new exporters makes the measure obsolete or unworkable. Several cases of this kind are currently under examination by the Commission, with a view to finding an appropriate solution.

The Community institutions are also considering whether certain exporters in non-market economy countries can receive an individual dumping margin - and consequently an individual dumping duty. Such individual treatment of a company in a non-market economy country, however, has to remain a strict exception. It can be granted solely in cases where the company concerned has provided sufficient and verifiable evidence of the fulfillment of certain conditions. The fact that a company has, for example, the status of a joint venture with foreign capital participation or a majority shareholding by a foreign investor, or has an export sales office outside the non-market economy country, cannot by itself justify an individual dumping margin determination.

12.3. TRANSITION TOWARDS MARKET ECONOMIES

On 01.03.1992, interim agreements on trade and accompanying measures[24] between the Community and Hungary, Poland and Czechoslovakia (as of 01.01.1993: the Czech Republic and the Slovak Republic) entered into force. Simultaneously, these countries were eliminated from the list of state trading countries annexed to Council Regulation (EEC) N° 1765/82[25]. "Normal value" for the goods originating in the countries concerned has, therefore, to be established according to the ground rules contained in Article 2 paragraph 3 of Regulation 2423/88.

12.4. ADVICE TO THIRD COUNTRIES

The Commission's anti-dumping/anti-subsidy service is frequently approached by governments which are or intend to become signatories to the GATT Anti-Dumping/Anti-Subsidy Code, or are candidates for GATT membership, with a view to providing assistance, in the form of advice on how to establish commercial defence systems in the countries concerned. To the extent that the limited resources of the service permit such activity, the Commission attempts to respond favourably to such requests. It is, indeed, important that newly-created national systems respect the obligations resulting from the GATT rules, particularly with regard to the requirements of a fair process and the guarantee of full rights of defence for all parties concerned.

To this effect, the service has organized seminars in Brussels for officials of Colombia, the People's Republic of China, the Republic of Korea and South Africa. In addition, and at the invitation of the Chinese government, two officials conducted a seminar in Bei Jing for Chinese officials active in the trade sector.

---

(24) Concluded with a view to the subsequent coming into effect, of the so-called "European Agreements".

(25) O.J. N° L 195 of 05.07.1982

The courses, devised and presented by experienced officials of the service, cover all stages of the investigation process, from the lodging of complaints, definition of product and industry, examination of dumping and injury, calculation of dumping and injury margins and consideration of the national interest question.

12.5. DEFENCE OF EXPORT INTERESTS

The defence of interests of EC firms involved in anti-dumping and anti-subsidy procedures in third countries rests primarily upon the firms themselves, as all the information in the case of anti-dumping, and most of the information in the case of anti-subsidy, can only be provided by these firms.

Thus, the role of the Commission is limited to those cases in which substantive or procedural rules provided for under the GATT appear to have been violated. In such cases, the Commission may engage in bilateral consultations and, in the event that these are unsuccessful, may take the matter to the Anti-Dumping or Anti-Subsidy Code Committee and, in certain circumstances, to a panel.

In 1992, the Commission intervened in such contested cases involving exports of agricultural products to Australia, Brazil, Argentina and particularly, given the considerable volume of trade involved, in the cases concerning EC steel exports to the US.