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# DUMPING AND THE EEC

# ANTI-DUMPING/ANTI-SUBSIDIES POLICY

by

George I. Myrogiannis

A Masters Thesis

Submitted in partial fulfillment of
the requirements for the award of
Master of Philosophy of the Loughborough University of Technology

March, 1986

Supervisors: Mr. David Allen,
Department of European Studies,
Loughborough University,
Professor Dennis Swann,
Department of Economics,
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To my parents

C O N T E N T S

ACKNOWLEDGEMENTS

The author would like to express his gratitude to both Mr. David Allen, Senior Lecturer in the Department of European Studies, Loughborough University of Technology, and to Professor Dennis Swann, Department of Economics, Loughborough University of Technology, who supervised this study and made critical reviews which proved very helpful in completing this work.

Special thanks are addressed to the members of the staff of the European Communities (DG.I and DG. IV) in Brussels, particularly to Dr. J. F. Beseler, Mr. G. Kasimatis, Dr. W. Elsner and Mr. A. Ioakimidis, who were a perpetual source of valuable information.

The author would also like to thank the Library of Loughborough University of Technology and Dr. M. Hopkins, who supplied him with very useful material throughout this study, as well as both the Ministries of National Economy and Trade, for the financial support which was granted to him.

Thanks are also due to Mr. Elias Pentazos, for his constructive criticism of the draft.

Lastly, special thanks go to Mrs. Judith Brand who typed the manuscript so well.

ABSTRACT OF THESIS

The thesis is concerned with the problem of dumping and subsidies in international trade and with attempts by the EEC to deal with this problem with legislation. Particular attention is paid to the 1984 EEC Code which builds on previous EEC legislation.

By examining the 1984 Code and the changes that are incorporated within it the evolution of Community, anti-dumping/anti-subsidies policy and practice is explained.

Where appropriate, reference is made to specific cases, in order to illustrate the analysis of the Code and comparative reference is also made to relevant legislation in the United States.

As well as providing definitions of dumping and subsidisation and a brief history of individual countries attempts to deal with the problem, the thesis also presents a detailed analysis of EEC activity against dumping and subsidies from 1968 to 1983.

The conclusion provides an assessment of the utility of this action and of the new Code together with some suggestions for the improvement of the EEC anti-dumping/anti-subsidies legislation.

PREFACE

The first condition necessary for the existence of international free trade is the readiness of an economic unit (regardless of whether it consists of one or a group of Member-States) to accept the importation and trading of foreign goods into its home market, under conditions equal to those applicable to its own similar goods. The above economic unit for its part, obtains the reciprocal benefit of being able to export and sell its goods into the foreign markets on terms that are equal to those provided for domestically produced goods.

Under normal conditions of trade, the main task of free trading enterprises is to face the competition by keeping their prices at a level which enables them to cover their costs and to obtain a reasonable profit, whilst trying to improve, on the other hand, their market share (or, at least, not to lose it).

However, and especially in times when markets are failing to grow, or are shrinking during periods of economic recession, producers find that they cannot so easily sell what they produce. Then they discover that, as competition increases, some imported goods begin to be sold at prices even lower than the normal cost of production, by using the so called dumping practices, increasing thereby their market share at the expense of home-produced products.

If this happens home producers are forced either to start selling their goods also at prices below their cost of production, in order to keep themselves in the market. The alternative is to abandon lines of production.

Thus, the above dumping practices could often lead, especially when applied to an unstable market, to the complete destruction of the domestic industry and to the domination of the market by the artificially low priced dumped goods. The companies that were dumping, having succeeded in gaining more or less monopolistic control of the market in question, could then unhindered fix prices at a more profitable level. Thus the consumer, who in the beginning seemed to have profited from this lawless competition, finally finds that he is injured both, directly, by paying high prices without having any alternative, and indirectly, by the damage to his national economy because of the dumping.

As no government can be expected to stand by whilst its market is flooded by foreign imports with dumped prices, nation—states, both individually and collectively in economic communities, have decided that if there is to be free trade, then it has to be a fair trade. This led them to legislate rules that restricted dumping practices.

Below we shall deal with dumping, by referring to the main conditions necessary for its existence, as well as the various forms in which it has appeared.

Subsequently we shall examine the evolution of dumping this century, along with the development of anti-dumping legislation both, nationally and internationally, with particular reference to the GATT regulations.

The main focus of the study will, however, be the European Communities (E.C.) legislation; the so-called E.C. Anti-Dumping/Anti-subsidies Code. The above Code is the result of the Communities obligation to apply the provisions of Article VI of GATT (dealing with dumping) in combination with Articles, V, XVI and XXIII (dealing with subsidies).

The E.C.'s Code provides detailed rules concerning most aspects of the anti-dumping/anti-subsidies system, and setting out conditions under which provisional and definitive action may be taken. Our intention is to describe, analyse and explain the function of the E.C.'s anti-dumping/anti-subsidies mechanism. The main subject of this study will be the recent Code of 1984, which is based on Council Regulation (EEC) 2176/84 (concerning EEC products) and Commission Decision (ECSC) 2177/84 (concerning ECSC products).

The basis of the new Code still remains the previous Code of 1979. However there have also been a number of modifications and additions which (as is stated in the introduction to the 1984 Code[*1]) the Commission considered to be essential, either for the further improvement of the anti-dumping legislation, or just for technical reasons. We have the intention to refer to those changes and to explain the reasons for their incorporation.

The chosen method of analysis is to examine each article of the Code separately. Firstly we will examine the Council Regulation (E.E.C.) 2176/84 and at the end of the chapter we will refer to the differences of Commissions Decision 2177/84 (ECSC). However, it must be underlined from the beginning that the Commission's intention is to bring anti-dumping legislation concerning ECSC products, as close as possible to the provision of legislation concerning EEC products.

During the analysis of the Code we intend to refer to the points which we consider to be particularly important, either because they have been the source of some contention or disagreement between the interested parties, or because they are significant indications of E.C. policy on dumping or subsidies matters. We will also discuss a number of relevant cases in order to illustrate each point in question. We intend also to mention a number of essential differences between E.C. and US anti-dumping/anti-subsidies legislation.

U.S. legislation is significant because it has been considered that it comprises, together with the E.C.'s, the most comprehensive system of legislation against dumping and subsidies in the contemporary international system.

Finally we will describe the Commission's activities against dumping and subsidies during the period since the enaction of the first anti-dumping provision at the Community level (that means since 1968) until the recent legislation of 1984. For a better understanding we will provide also a number of tables, illustrating the above activities, together with the necessary explanations as well as some comments and personal opinions.

# CHAPTER I

# THE CONCEPT OF DUMPING

## A. THE DEFINITION

The origin of the phrase to dump is uncertain. As R. Dale refers, "it seems that on its first appearance, early in the nineteenth century, it referred to the act of throwing down in a lump or mass, as with a load from a cart. Hence its extension to the disposal of refuse and the description of a dumping ground as a market for the disposal of surplus stock."*2

The first use of the term dumping in English trade language was at the beginning of the present century. Here dumping referred to a situation in which imported goods had prices lower than their price on the home market. During the following years, economists, trying to describe dumping more clearly, defined dumping as a price discrimination in international trade; that is the sale of like goods at different prices, in different national markets.
This definition was of course very general because it included both price discrimination between home market and foreign markets and also between export markets. Moreover it did not exclude the cases where home-market prices were higher than the export prices.*3

As the definition of dumping was not very precise, a lot of misunderstandings arose each time about the nature of dumping and its effects on the economy of each country. In the home markets, for instance, consumers maintained

that it was unfair for domestic producers to burden them with a greater levy than the price at which foreign sales were found to be profitable. On the other hand the producers, who felt their existence threatened by low-priced foreign goods, have labelled the practice unfair in the sense that such low-priced imports do not bear their rightful share of fixed costs which import-competing producers must recoup on a pro-rata basis on their home sales.*4 It was this point of view which prevailed in the first national legislations against dumping.*5 Early anti-dumping laws described dumping as an unfair and harmful practice in general. Thus the main concern was to prohibit dumping when the import price fell below the home price in the producing country, without any effort to define what exactly had to be considered as dumping. Only many years later, in 1923 did Jacob Viner make a distinction between Dumping proper and Reverse dumping. More precisely he described as Dumping proper "the sale of similar goods at a lower price in export trade than at home", and as Reverse dumping "the international price discrimination that arose when a higher price is charged in exportation".*6

Although, because of the evolution of international trade, national legislators have made some amendments and modifications to the above definition (most of them in order to deal with some particular forms of dumping as they arose) it is generally considered that Viner's definition still gives a very clear idea of what dumping is. However, as

the majority of the national and international anti-dumping legislation seems to deal mostly with dumping proper, any further use of the term dumping in the thesis, refers to dumping in this sense and not to reverse dumping.

## B. THE CONDITIONS

Before carrying on to the description of the history of dumping and of the parallel evolution of the Anti-dumping legislation, we believe that it would be useful to make the term more familiar to the reader, by referring firstly to the conditions necessary for the existence of dumping as well as to the main forms in which dumping has appeared.

The main condition for dumping is the existence of some kind of barrier separating the domestic-market of the dumper from the export-market. This barrier could help a producer to obtain a more or less monopolistic control of the domestic market. Thus he could fix his home-market selling prices at a level high enough to permit him to recover the costs initially incurred by dumping at unprofitable prices. The barrier in question could be some kind of tariff or even the transport costs of the goods. If there were no tariffs in the exporter's home market and if transport costs were negligible, then the low-priced export product could simply be re-exported back into the domestic market of the dumper and so force the price in the latter down to the export price.

Although transport costs can still maintain some margin between the domestic and the export price, the curve of international transport costs has, in recent years, shown a declining trend. As a result, in practice, tariffs

become more important causes of market separation, although in advanced industrial countries they too have a similar declining trend. Thus it can be concluded that the upper limit to the price which a firm dumping abroad can charge at home, is the CIF[*7] import price plus tariff. It can also be stated that the possibility of dumping depends on the strength of a firm's monopoly domination in its own domestic market. As W. Corden explains,[*8] the stronger the home monopoly, the greater will be the incentive to maintain home prices; the more frequently will foreign prices fall between the domestic price and marginal cost in production for home sale and the larger will be the surplus profits that can be used to offset temporary losses abroad.

A similar position to the monopolistic control of the domestic market, necessary for a firm to dump, may come into being with the intervention of a government, so-called subsidy. This intervention could take place either directly, in the form of bounties to the exporters, or indirectly, through tax breaks, financial aid, disproportionate rebates on raw material import duties, etc. In this case, of course, the domestic consumer is suffering both directly, by paying a price higher than the foreigner, and indirectly because he is burdened with providing the amount of the subsidy. However, he could expect a higher indirect benefit as a result of this export policy of his government such as the creation of employment, the correction of a balance of payments deficit or the development of a particularly valuable industry, etc.

C. THE FORMS

Besides the previous mentioned distinction of Viner's between dumping proper and reverse, economists, trying to classify the different forms of dumping that have been identified during the years, have made some interesting classifications of dumping. The factors mainly used for those classifications are (a) the duration of dumping and (b) the motive of the dumper.

The most significant of those classifications are mentioned below.

(a) According to the duration of dumping

This distinction has been made by Viner; he describes three types of dumping: Sporadic, short-run (or intermittent) and long-run (or continuous).

Sporadic dumping is "dumping which is occasional and casual, which occurs only in scattered instances and irregular intervals and which is not the manifestation of a definitely established price-policy on the part of the dumping concern."*9

Short-run or intermittent dumping " ... is continued systematically and steadily for a period of limited duration, which is practiced in accordance with a definitely

established export policy and which involves the deliberate production of commodities to be dumped."*10

Long-run or persistent dumping " ... is carried on not merely sporadically nor even intermittently but continuously over a prospectively permanent period."*11

According to Viner, sporadic dumping is of insufficient duration to affect the investment and employment decisions of producers in the importing country. However he believed that short-run dumping could affect such decisions thereby inducing a misallocation in the use of productive resources. Finally he was of the opinion that 'long-run' dumping could cause changes in the use of resources which are however justified by the continuity of low-priced imports.

G. Haberler seems to have the same opinion as Viner with regard to the harmful effects of short-run (or intermittent) dumping. More precisely he states that: "Dumping is harmful only when it occurs in spasms and each spasm lasts long enough to bring about a shifting production in the importing country which must be reversed when the cheap imports cease. Such intermittent dumping may be harmful even if there is no home industry."*12

On the contrary, A. Plant appears to use the term in a quite different sense: "... there remains the class of intermittent dumping which does not recur with sufficient

regularity to enable the community to rearrange its production on the basis of allowing for it, and which consequently causes temporary dislocation to local production."*13 The GATT Codes of 1967 and 1979, as well as E.C.'s anti-dumping Regulations of 1968, 1979 and 1984 use Viner's classification only as far as it refers to sporadic dumping.

More precisely, the relevant articles of the GATT and the E.C. anti-dumping Codes define sporadic dumping as: "massive dumped imports of a product in a relatively short period."*14 In the above legislation, in opposition to Viner's and Haberler's opinions, sporadic dumping is considered to be especially injurious and the affected Member-State is accordingly authorised to impose, as an exceptional measure, retroactive anti-dumping duties on the imports concerned.

Another classification of dumping, mentioned by R. Dale,*15 is related to the motive of the dumper. Thus, Dale distinguishes between predatory dumping and non-predatory dumping. The essential difference between them is the intention on the part of the dumper to drive out rival producers in the importing country with a view, subsequently, to raising prices to a monopoly profit-maximising level. In other words it is the specific object of the predatory dumper to bring about a shift in the use of productive resources in the importing country.

According to Dale, this distinction between predatory and non-predatory motives has little relevance to real world problems, because there are relatively few documented examples of predatory price-cutting within national markets, still fewer in international trade and none at all it would seem in the post-second world war period.

Another distinction related to the previous one, is drawn between anti-competitive and pro-competitive dumping,*16 analogous to the kind of competitive test applied by domestic anti-price discrimination laws, such as the United States Robinson-Patman Act.

Dale mentions that several United States commentators have proposed that injury determinations should be based on the distinction between anti-competitive and pro-competitive dumping but, apart from the United States Revenue Act of 1916, anti-dumping legislation does not explicitly draw any distinction between anti-competitive and pro-competitive behaviour. However, the GATT anti-dumping Code states that the existence of restrictive trade practices in the importing country should be taken into account in anti-dumping proceedings.*17

Another categorisation of Dumping, relating to the dumper's motives is to be found in the distinction between surplus, social and exchange dumping.*18

Surplus dumping is the practice of monopolists of exporting unexpected inventories at low prices to preserve the home market. W. Wares refers as the first recorded usage of the term, to the report in the U.S. House Ways and Means Committee, on Title I of the Emergency Tariff Bill of 1921.*19 The above Title proposed an increase in tariffs on agricultural imports and a majority of the Committee claimed that the additional levies were needed because of "the dumping of great quantities of foreign agricultural surpluses"*20 in the American market. The majority's claims were against foreign industries with much lower costs than the American producers but, as Wares remarks, no comparison was made between the import and home-market prices of the foreign industries.

Social dumping means the sale of imports at a price below that charged by competing domestic producers as a result of social conditions in the exporting country. These conditions could be, for example, long working hours, extensive employment of female labor, etc.*21 Wares claims that the first attempt to penalise social dumping was the effort of Representative Harter to amend the American Anti-dumping Act, in 1935. According to Mr Harter's opinion, low-priced merchandise, from Japan and the USSR, was being dumped on the American market because of the low wage rates and long working hours that existed in the above nations. Again no mention was made of comparison between domestic and export price.*22

Similar testimonies, about the above case, can be found in the works of G. C. Allen*23 and T. Uyeda.*24 According to them Japan's remarkable export advance in 1930, was attributed to what was called social dumping. They state also that this charge rested not simply on her very low wages, by the standards of her Western competitors, but also on the fact that Japan had deliberately depressed the living standards of large groups of her workers to increase exports, particularly in the textiles and miscellaneous consumption goods industries. Exchange dumping is caused by the continued devaluation of a country's currency ahead of the rise in internal prices during a period of severe inflation. Thus the persistent lag in the adjustment of internal prices to the external value of the domestic currency, causes export prices to fall and remain low in terms of the currency of the importing nation.

It has to be mentioned that the distinction of the above forms of dumping, that means, surplus, social and exchange dumping, has been disputed among the economists. W. Wares (and others) for instance, believes that the term dumping has been incorrectly used to describe the above practices, because they do not involve price discrimination at all.*25 D. J. Gijlstra refers as motives for dumping " ... markets get rid of surplus production, dispose of outdated series no longer adequate for the home market, eliminate competitors etc."*26 He also states that although within the meaning of the European Community legislation social

dumping is not held to be dumping, nevertheless"... the many examples of Community action against dumping indicate that there is no question of social dumping, or some other kind, which would not be covered by the Community legislation"*27

Finally, there is a very useful list of motives for dumping, made by J. Viner, with which we sall conclude this section.

"A. Motives for Sporadic Dumping

1. Uninternational-dumping resulting from the receipt of lower price than anticipated on the speculative foreign sale of goods.

2. To dispose of a casual overstock - the dumping of unanticipated inventories in foreign markets rather than selling them at home and endangering the domestic price.

B. Motives for Short-run, or Intermittent Dumping

1. To maintain connections in a market where prices are unacceptable - a potential pricing policy when the foreign market is temporarily depressed.

2. To develop trade connections and buyers' goodwill in a new market.

3. To eliminate competition - thereby acquiring monopoly power in a foreign market.

4. To forestall the development of competition - and preserve monopoly power in the foreign market.

5. To retaliate against dumping in the reverse direction - that is against dumping by foreign-based rivals in the monopolist's home-market.

C. Motives for Long-run or Persistent Dumping

1. To maintain full production from existing capacity without cutting prices.

2. To achieve economies of scale by increasing production without cutting prices - in this instance, capacity is increased precisely because the producer has the option to dump."*28

There are of course a number of similar classifications of dumping, as for example W. A. Seavy's list.*29 However Viner's list is still considered the most comprehensive one.

FOOTNOTES

1. Official Journal of the European Communities (O.J.) L 201,30/7/84, pp1-3 and 17-19

2. W. Wares: The Theory of Dumping and the American Commercial Policy. p.3

3. Remark made by J. Viner: Dumping. A Problem in International Trade. pp3-5

4. Roger Q. Miles: Tariff Issues Plainly Stated. p.536

5. In Canada, in 1904, followed by New Zealand (1905), Australia (1906), Britain (1916) and U.S.A. (1916)

6. J. Viner, op.cit. p.6

7. Net price, plus Costs, Insurance and Freight up to the place of destination.

8. W. M. Corden: Trade Policy and Economic Welfare. pp235-247

9. J. Viner, op.cit. pp30-31

10. ibid.

11. ibid.

12. G. Harberler: The Theory of International Trade. p.314

13. Arnalt Plant: The Anti-Dumping Regulations of South African Tariff. p.88

14. Article 11(ii)(b) of GATT Anti-Dumping Code and Article 13.4.b.(i) 2 of E.C. Anti-Dumping Code.

15. R. Dale: Anti-Dumping Law in a Liberal Trade Order. p.10

16. R. Dale: Anti-Dumping Law in a Liberal Trade Order. p.11

17. Article 3 4 not 2

18. W. Wares op.cit. pp5-7

19. U.S. Congress, Senate 67th Cong., 1st Sess., 6/5/1921, Congressional Record 61:1099

20. ibid.

21. H. W. de Jonge: The Significance of Dumping in International Trade. pp162-165

22. W. Wares, op.cit.

23. G.C. Allen: How Japan Competes. A Verdict on Dumping. p.17

24. T. Uyeda: The Small Industries of Japan. pp287-304

25. W. Wares, op.cit. p.7

26. D. J. Gijlstra (with others): Protectionism and the European Community. p.152

27. ibid.

28. J. Viner op.cit. p.23

29. William Arthur Seavy: Dumping Since the War. pp2-5

# CHAPTER II

# THE HISTORY OF ANTI-DUMPING LEGISLATION

## A. INTRODUCTION

The history of anti-dumping legislation can be divided into two broad periods. The first period starts from the beginning of the twentieth century and up to World War II and it is the period in which the first serious attempts to enact anti-dumping rules at the national level appeared. The second period, from World War II onwards, is the period in which the movement for an international common anti-dumping legislation takes place.

Before the beginning of the twentieth century, there were no anti-dumping provisions of any kind. Furthermore, the definition of dumping was more or less obscure, if not unknown, to national authorities. On the other hand dumping practices, in parallel to the development of large-scale production and protective tariffs, had already been widespread since the last quarter of the nineteenth century.

The reason for this evolution was that the emergence of large-scale production in Europe, the United States, Russia and Japan, reduced the number of firms in a variety of industries. As a result all of the developing nations experienced some degree of monopolisation, which, as previously mentioned, is one of the main conditions for the existence of a dumping practice. Thus, dumping became widespread, especially after 1890, when the monopolisation of industry became a more established factor. The countries

who can be identified as the main users of dumping practices during this period are: Germany (iron and steel sector), Belgium (iron, steel, coal, cement), France (iron, steel, tow-yarn), Britain (cotton yarn, steel), Japan (cotton yarns and cloths); Canada (iron, steel and leather products) and USA (petrol and steel).*1

## B. THE PERIOD BEFORE WORLD WAR II

In 1904, Canada enacted the first general measure applicable to dumping in any of its common forms. Its example was soon followed by New Zealand (1905), Australia (1906), South Africa (1916), USA and Britain (1916) and Japan (1920). The model of the original Canadian law has been closely followed in most of other legislation.*2 However some of their provisions vary substantially in form and in manner of operation from these of Canada.

The Canadian Anti-Dumping Law of 1904, took the form of a new clause introduced into the Customs Tariff which imposed a special duty on goods that were dumped in the technical sense of the term.

The Canadian dumping-duty was introduced to counter protectionist demands for higher ordinary duties. It was opposed by those who favoured high protection and supported by their opponents. Prior to 1921 it was applicable only when technical dumping occurred and seems to have been successful in stopping it. Later, after being used more widely to give high protection even in the absence of price discrimination, it was to gain the support of protectionists.*3

As far as the European countries are concerned it seems that, during the first period, only Britain enacted anti-dumping provisions, in the exact sense of the term.

In 1916, during the Paris Conference of the Allies, the British delegation drafted and proposed a resolution, which was finally adopted, calling for joint action to be taken after the war, by the Allies to protect their interests against "German economic agression resulting from dumping or any other mode of unfair competition."*4 The reasons which led to them taking this decision, were mainly the marked increase of protectionist sentiment since 1914 and the fear that Germany, during the war and the post-armistice period, was storing up her energies for a campaign of predatory competition with the industries of the Allied countries.

In 1916, the Coalition Cabinet pledged itself in Parliament and in its election manifesto to introduce anti-dumping legislation and in November 1916, after its re-election to office, Lloyd George's government introduced a bill in the House of Commons which contained, among other tariff proposals, provisions dealing with dumping.*5

The above bill met with general opposition and was clearly unpopular. In view of this situation the government withdrew it. Finally, in 1918, there was enacted into law, after a stormy passage in both Houses of Parliament, the Safeguarding Industries Act, which in addition to provisions for the application of import duties on products coming from countries with depreciating currencies, also contained elaborate anti-dumping provisions.*6

As far as the rest of the European countries are concerned during this period, it seems that only France had made any noticeable efforts to enact provisions that especially referred to dumping.

More precisely, in 1908, the Committee of the French Chamber of Deputies, charged with the duty of recommending changes in existing tariff legislation, proposed the insertion in the tariff law of anti-dumping measure. Although this measure was regarded as essentially similar to the Canadian law, it differed from it in some important particulars. The proposal was not received with favour and was withdrawn.*7

The proposed duty resembled the Canadian law in the fundamental particular that the additional duty was to apply only to imports sold at prices lower than those current in the exporting country. It differed, however, from the Canadian law in that it was to apply only to instances of dumping resulting from the granting of export subsidies, that the amount of the subsidy instead of the amount of the difference between the domestic price in the exporting country and the export price was the measure of the additional duty, and, finally, that application of the additional duty was not mandatory upon the customs officals but was subject in each case to the discretion of the President and the Cabinet.

## C. THE PERIOD AFTER WORLD WAR II

### The movement for an international anti-dumping legislation

During the first years after World War II, there were no serious efforts on the part of the nations to enact anti-dumping provisions.

The reason was the existence of a great number of quantitive restrictions on imports, applied by the majority of the nations, as well as the slow recovery of the international economy. Thus, during this period most of the producers were occupied securing their position in their home market and consequently no serious cases of dumping appeared.

The first national anti-dumping measures after the War, were enacted in the late 1950's and early 1960's. These included the United Kingdom's Customs Duties (Dumping and Subsidies) Act of 1957 (which replaced the ineffectual anti-dumping provisions of the Safeguarding of Industries Act), Article 19bis of the French Customs Code of 1958, Section 21 of the German Customs Law of 1961, and the Italian Anti-Dumping Duties and Countervailing Duties Act, adopted in 1963.*8

On the other hand, in the international field, just after World War II, the dumping problem was taken up during the negotiations for the establishment of an International

Trade Organisation, intended to be the counterpart to the International Monetary Fund (IMF).

The above negotiations were a part of American and British efforts, which took place just after the war, to devise an international structure and machinery to avoid the sort of policies that had been followed in the 1930's.

The initial plan was the foundation of three instruments at the international level. A central bank, a development bank and a trade organisation. The first two materialised in the form of IMF and the World Bank. The formation of an international trade organisation proved too difficult.

During discussions in Havana in March 1948, the United States proposed a draft article on dumping for an ITO charter, based on its own Anti-Dumping Act of 1921. This charter was incorporated as Article 17 of the final draft.

An ITO charter was drawn up in Havana in March 1948. The so-called Havana Charter was never ratified by the United States, but the anti-dumping provisions of Article 17 were transferred, with some modifications, into Article VI of the GATT*9 which had meanwhile been drawn up as an international trade agreement in October 1947.*10 GATT was originally more in the nature of an interim arrangement and represented a multilateral and standardised version

of the sort of trade agreements which had been agreed between the United States and Britain before the war. It provided rules dealing with quotas, with emergency situations and set out rules for dealing with dumped or subsidised imports. Within this framework the countries adhering to the General Agreement, in lieu of the old bilateral 'most favoured nation' agreements, concentrated on reducing the high tariffs that had existed in the 1930's.

Since the ITO was stillborn, GATT became the legal framework governing international commercial policy and Article VI remains the main reference point for every national legislation.

During the 1960's, as anti-dumping enforcement increased, several problems appeared,caused by the obscure formulation of some of the GATT articles. As a result trade negotiators began to see anti-dumping action, rather than dumping itself, as the main threat to free trade. The main reason for this was that the formulation of Article VI gave rise to a number of disagreements, some of which might have been resolved by a more detailed international code of anti-dumping practices and some of which could only be resolved by some procedures for international adjudication or arbitration.

For example, GATT permitted contracting parties to impose anti-dumping duties against dumped imports equal to the margin of dumping, but only if they caused or threatened injury to a domestic industry or materially retarded the establishment of such an industry. In Article VI of the GATT, dumped imports were defined as "... articles introduced into the commerce of an importing country at less than the comparable price charged for the like product in the exporting country or, in the absence of a domestic price with which the import price could be compared, if sold at less than the highest comparable price charged in a third country or at less than the cost of production." Finally Article VI of GATT provided that " ... in making these price comparisons, due allowance be made for differences in conditions of sale, differences in taxation, and other differences affecting price comparability."

The above rules open up inumerable opportunities for conflicting interpretations. J. Evans, for example poses a number of interesting questions: "How serious does injury need to be before it is considered material? Is a reduction in profits to be considered injury? If so, how should the blame be assigned among various possible causes? Is it legitimate to compare an end-of-season sale for export with a domestic sale at the height of the season? Can losses incurred by an individual firm be considered an injury to the domestic industry? How inclusive is the term industry intended to be? Can export prices of one

seller be compared with domestic sales of another in the country of export, in order to determine whether differential pricing has occurred? If goods are offered at the market price prevailing in the importing country, should this be taken as proof that domestic producers have not been injured?"*11

As a result of those confusions the need for a new international anti-dumping code was raised during the Kennedy Round of multinational trade negotiations, which took place in 1967.

The outcome of these discussions was the GATT Anti-dumping Code of 1967, which was intended firstly to clarify and elaborate some of the very broadly defined concepts of Article VI, secondly to fill the gap left by Article VI regarding appropriate procedural requirements in anti-dumping investigations and, finally, to bring all signatory countries into conformity with Article VI.

The Code, which came into force on 1st July 1968, also provided for the establishment of a Committee on Anti-Dumping practices, whose function was to review annually the operation of national Anti-Dumping laws. One of the Code's major drawbacks was that there were no provisions on State subsidies and countervailing duties.

As the preamble to the GATT Anti-dumping Code made clear, it was intended not as an amendment to, but as an interpretation of Article VI. Nevertheless, following the adoption of the Code by all the major trading nations,*12 several countries have felt obliged to adapt their own anti-dumping legislation, so as to conform both to Article VI and the Code. The new Canadian Anti-Dumping Act, which took effect on 1st January 1969, incorporated, for the first time, a material injury requirement and provided for a quasi-juridicial Anti-Dumping Tribunal to make the necessary injury determinations. In the United Kingdom the Customs Duties (Dumping and Subsidies) Amendment Act of 1968, subsequently consolidated with the 1957 Act in the Customs Duties (Dumping and Subsidies) Act of 1969, made a number of minor changes, but also enabled the Board of Trade, in conformity with the Code, to impose provisional duties during anti-dumping investigations and to extend the price comparison basis in respect of dumping by state-trading countries.

On the other hand, the United States delegation had negotiated the Code on the assumption that its provisions were not in conflict with the Anti-Dumping Act of 1921, a view which was subsequently disputed both by the United States Tariff Commission (now re-named the International Trade Commission) and by Congress. Thus, although the United States Treasury introduced amended Regulations in 1968, designed to adapt American anti-dumping procedures,

so as to conform both to the 1921 Act and the GATT Code, there is continuing controversy over the question of whether and to what extent the united States may have failed to fulfil its international obligations under the 1967 Agreement.

During the Tokyo Round of multilateral negotiations,*13 the GATT Anti-Dumping Code was amended to conform to the newly-negotiated Subsidies Code and implementing legislation was introduced by the United States and the European Community in 1979. Under pressure from the United States, separate negotiations were conducted on the problem of subsidies and countervailing duties. The United States took this opportunity of extending its anti-dumping procedures and inserting a material injury requirement into its own legislation. The changes in the United States law were accomplished by repealing the Anti-dumping Act of 1921 and amending the Tariff Act of 1930, to include the new anti-dumping provisions as Title VII, subtitle B, of the amended Act.*14

Thus by the beginning of the 1980's a common international anti-dumping legislation has finally been established, acceptable to the majority of the interested nations, in the form of Article VI of the GATT Code (in combination with Articles V, XVI and XXIII, dealing with subsidies).

The above legislation remains the main source of anti-dumping legislation at the international level.

FOOTNOTES

1. As a matter of fact it was U.S. Steel Corporation's dumping in Canada, which was the original cause of the enactment by that country, in 1904, of the first general anti-dumping law.

2. The Canadian Anti-Dumping Clause is cited as Appendix (1) at the end of the thesis.

3. For further information see C. A. Elliot: Tariff Procedures and Trade Barriers. As Study on Indirect Protection in Canada and the United States.

4. Parliamentary Debates, Commons, August 2, 1916, col. 340

5. The text of the Bill, the Import and Exports Regulation Bill, is given in the Board of Trade Journal, December 27, 1919, p.640ff

6. The text of the Act is given in the Law Reports, 1921, part II, p.260ff

7. France: Chambre des Deputes, Commission des Douanes. Report General, 1908, p.100

8. International Comparative Law Bulletin, Chicago, December 1965.

9. General Agreement of Tariffs and Trade.

10. John H. Jackson: World Trade and the Law of GATT. pp403-6

11. John W. Evans: The Kennedy Round in American Trade Policy. pp107-108

12. The following were parties to the Code: Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, the European Economic Community, Finland, France, the Federal Republic of Germany, Greece, Hungary, Italy, Japan, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom, the United States, and Yugoslavia.

13. "The Tokyo Round negotiations were formally launched in September 1973 in Tokyo. Negotiations were however delayed until the U.S. Congress granted negotiating authority to the U.S. Administration, and the Council of Ministers agreed negotiating guidelines for the Commission. These formalities were not completed until January 1975, so negotiations did not start in earnest until February 1975 and were not complete until December 1979." (C. Stanbrook: Dumping, pp9-10, 12)

14. R. Dale: Anti-Dumping Law in a Liberal Trade Order pp12-16

# CHAPTER III

# ANTI-DUMPING LEGISLATION IN THE E.C.

## A. INTRODUCTION

The history of the E.C.'s anti-dumping legislation begins in 1965. At that time the Commission basing itself on Articles 111 and 113 of the EEC Treaty of Rome[*1] (provided for the harmonisation of the Common Commercial Policy) as well as on the work programme on trade policy of September 1962,[*2] submitted its first proposal on those problems to the Council.[*3] At this time the relevant rules of the individual Member-States on the subject, showed considerable differences.

In the three Benelux countries, anti-dumping provisions in the proper sense, did not even exist. There were merely some protection clauses of a general nature.[*4] In the rest of the EEC countries anti-dumping provisions, although more detailed, were far from being effective.[*5] It is characteristic that, during the period from 1958 to 1964, the United States began 221 anti-dumping proceedings and had recourse to provisional measures 98 times, and in 8 cases laid down definitive countervailing duties,[*6] whilst in the same period, all the Member-States of the Community together, introduced just 1 provisional duty and in only 3 cases imposed definitive charges.[*7]

Article 113 of the EEC Treaty provided for a common commercial policy after the expiry of the transitional period, including common rules in the case of dumping or

subsidised exports to the Community.*8 Article 91 of the Treaty provided that during the transitional period Member-States could take individually, in close consultation with the Commission, protective measures against dumped imports in their area. This Article was no longer applicable after the end of the transitional period. However EEC legislation still contains provisions allowing individual protective action, always in close collaboration with the Commission, when it is established that a home market is injured by dumping as a result of the entrance of new Member-States. These provisions are included in the Act of Accession*9 of each new Member-State and apply only during its transitional period.

At the same time as the discussions were taking place on the Commission's proposal,by the institutions of the Community and interested parties within the Community, the 'Kennedy Round' of GATT negotiations had started. On 30th June 1967 agreement on the implementation of Article VI of GATT (so-called '1967 Kennedy Round Anti-Dumping Code') was reached. One of the main provisions of this new legislation was the obligation on the signatories to bring their national legislation as quickly as possible into line with the GATT Anti-dumping Code. Therefore the Commission, which represented all six Member-States within the GATT, produced, at the end of 1967, a new draft Regulation taking into consideration the obligations under the Kennedy Round Anti-dumping Code.

The Council of the EEC adopted the new proposals which came into force on July 1st, 1969, in the form of Regulation 459/68/EEC of 5th April 1969 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Communities.*10

The above Regulation was amended three times, mainly to cover points of procedure: in 1973, by Regulation 2011/73*11 in 1977, by Regulation 1411/77,*12 and in 1979, by Regulation 1681/79.*13

Regulation (EEC) 459/68 did not apply to the coal and steel sector as the ECSC Treaty contains, in Articles 71 and 74, specific rules for a commercial policy in the field of coal and steel, which creates a regime separate from that applicable to the sectors covered by the EEC and EURATOM Treaties. The competence for the commercial policy in this field remains mainly with the Member-States, but the High Authority (Commission) is competent to take measures against dumping or subsidies. Thus, as the growing problems in the steel area made it necessary for the Community to act, the Commission took measures in the form of Recommendation 77/329/ECSC.*14

The Recommendation basically provided for the application of the principles of Regulation 459/68 (EEC) to the field of the Coal and Steel Treaty and it has been amended several times.*15

After the negotiation of the so-called 'Tokyo Round' of GATT which led to the introduction of a new Anti-dumping Code, the European Community implemented the new international agreements in Council Regulation (EEC) 3017/79[*16] and Commission Recommendation 3018/79/ECSC.[*17] They were both amended in 1982 by Regulation (EEC) 1580/82[*18] and Recommendation (ECSC) 3025/82.[*19] Both amendments mainly covered procedural points.

Recently, in order to deal with imperfections which have appeared after four and a half years experience of the above Codes, the E.C. decided to improve its anti-dumping legislation by the enaction of a new anti-dumping Code by Regulation (EEC) 2176/84[*20] and Commission Decision 2177/84/ECSC,[*21] and that is the subject of the following analysis. As we have already stated in the preface of the thesis, we will examine and analyse each Article of the Code separately. However, for better understanding the Code is divided into four main units.

The first, and shorter, unit is referring on the applicability of the Code. The second one contains the definitions of the basic terms of the Anti-dumping legislation.

In the third unit is analysed and explained the method used by the Commission to ascertain and calculate dumping.

Last, in the fourth unit is described the procedure which is followed when the Commission faces a dumping case.

Finally, at the end of the chapter, will be referred the differences between EEC and ECSC anti-dumping legislation.

## B. ANTI-DUMPING CODE OF THE E.C.

### 1. APPLICABILITY

COUNCIL REGULATION (EEC) No 2176/84 of 23 July 1984

On protection against dumped or subsidized imports from countries not members of the European Economic Community.

Article 1

Applicability

This Regulation lays down provisions for protection against dumped or subsidized imports from countries not members of the European Economic Community.

As the above Article suggests, the EEC anti-dumping legislation is applied only on dumped imports from countries that are not members of the EEC; so-called third countries. EEC legislation therefore does not affect intra-Community trade, as the EEC's legislation considers the Community to be one common market. Thus, terms like: home-market and foreign-market have no meaning within the EEC itself. It is assumed that the progressive unification of the common market as well as the erasure of the existing custom barriers between Member-States, makes intra-Community dumping practically impossible. Furthermore, if a Member-State persists in the application of dumping practices within the Community, it would be theoretically counter-productive as the exported goods might be simply re-imported back into the

original Member-State with dumping prices, provided of course that the dumping margin was higher than the additional cost of transportation.

Thus the Community has no rules for dumping between Member-States, except of course the provisions, mentioned in the introduction of the chapter, relating to dumping practices into the Community market between any new Member-States themselves or between a new and an original Member-State. Obviously a complaint could not arise where both parties were original Member-States, and it only could take place during the transitional period of the newly entered Member-States.

The dumping complaints warranted investigation, which took place during the transitional period of Britain, Denmark, Ireland and Greece, are illustrated in Annex A.

There is no general feature concerning the types of products involved. The large number of Irish cases started in 1973 against British companies, was believed to be due to the fact that the Irish economy is still very closely linked to the UK, either by trade or by British subsidiary companies operating in Ireland.*22

As no formal action was finally taken by the Commission on the basis of dumping, the question of material injury did not have to be faced.

The attitude of the Commission when it faces intra-Community dumping seems to be softer than when it faces dumping from abroad. Thus, it appears to prefer making some recommendations to the parties involved, trying in this manner to produce conciliatory adjustment between them avoiding therefore the need to take any stricter measures.

## 2. THE DEFINITIONS

### Article 2

### Dumping

#### A. PRINCIPLE

1. An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.

2. A product shall be considered to have been dumped if its export price to the Community is less than the normal value of the like product.

By studying the way in which the above Article has been formulated, it can be concluded that E.C. anti-dumping legislation is intended to deal with dumping on prices only and not with other forms of dumping such as, for example, 'social' dumping. The definition of dumping which is given in paragraph 2, is almost the same as Viner's definition of 1926, cited above.*23 Up to 1979, the concept of normal value was absent from the EEC's anti-dumping legislation. Normal value has been firstly introduced by Regulation 1681/79 which amended the so far already existed EEC's Regulation 459/68.

As paragraph 1 states, the 1984 Code covers all dumped products imported into the Community. Agricultural products are also included, although import prices of such products are generally controlled by other mechanisms governing the Common Agricultural Policy. See, for example, Regulations EEC No. 1059/69,*24 EEC No. 2730/75*25 and EEC 2783/75.*26 In those areas the Code operates by way of complement to those Regulations. Coal and steel products, as mentioned before, are covered by Commission Decision 2177/84 (ECSC).

The Regulation establishes, as a basic principle, that an anti-dumping duty may be applied to any dumped product, whose entry in the Community causes injury. Thus, in every anti-dumping investigation it is necessary to decide both whether dumping and Community injury have occurred.

The term release for free circulation which is cited in section one, has replaced, for technical reasons,*27 the previous term entry for consumption which was mentioned several times in Regulation 3017/79. According to section two of the above Article, for a product to be considered a dumped product, its export price to the Community and the normal value of the like product must be ascertained and compared. Dumping will be found if the export price is less than the normal value, and the Dumping margin will be the difference between the two. However it is necessary to ascertain what is meant by normal value and

by export price. How must they be compared? What exactly does the term like product mean? How exactly is the dumping margin calculated?

In the following sections of Article 2, Community legislation tries to give some specific answers to these questions.

B. NORMAL VALUE

3. For the purposes of this Regulation the normal value shall be:

(a) the comparable price actually paid or payable in the ordinary course of trade for the like product intended for consumption in the exporting country or country of origin; or

(b) when there are no sales of the like product in the ordinary course of trade on the domestic market of the exporting country or country of origin, or when such sales do not permit a proper comparison:

(i) the comparable price of the like product when exported to any third country, which may be the highest such export price but should be a representative price; or

(ii) the constructed value, determined by adding cost of production and a reasonable margin of profit. The cost of production shall be computed on the the basis of all costs, in the ordinary course of trade, both fixed and variable, in the country of origin, of materials and manufacture, plus a reasonable amount for selling, administrative and other general expenses. As a general rule, and provided that a profit is normally realised on sales of products of the same general category on the domestic market of the country of origin, the addition for profit shall not exceed such normal profit. In other cases, the addition shall be determined on any reasonable basis, using available information.

4. Whenever there are reasonable grounds for believing or suspecting that the price at which a product is actually sold for consumption in the country of origin is less than the cost of production as defined in paragraph 3(b)(ii), sales at such prices may be considered as not having been made in the ordinary course of trade if they:

(a) have been made over an extended period of time and in substantial quantities; and

(b) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

In such circumstances, the normal value may be determined on the basis of the remaining sales on the domestic market made at a price which is not less than the cost of production or on the basis of export sales to third countries or on the basis of the constructed value or by adjusting the sub-production cost price referred to above in order to eliminate loss and provide for a reasonable profit. Such normal-value calculations shall be based on available information.

5. In the case of imports from non-market economy countries and, in particular, those which Regulations (EEC) No. 1765(82) and (EEC) No. 1766/82 apply, normal value shall be determined in an appropriate and not unreasonable manner on the basis of one of the following criteria:

(a) the price at which the like product of a market economy third country is actually sold:

(i) for consumption on the domestic market of that country; or

(ii) to other countries, including the Community; or

(b) the constructed value of the like product in a market economy third country;

(c) if neither price nor constructed value as established under (a) or (b) provides an adequate basis, the price actually paid or payable in the Community for the like product, duly adjusted, if necessary, to include a reasonable profit margin.

6. Where a product is not imported directly from the country of origin but is exported to the Community from an intermediate country, the normal value shall be the comparable price actually paid or payable for the like product on the domestic market of either the

country of export or the country of origin. The latter basis might be appropriate inter alia, where the product is merely transshipped through the country of export, where such products are not produced in the country of export or where no comparable price for it exists in the country of export.

7. For the purpose of determining normal value, transactions between parties which appear to be associated or to have a compensatory arrangement with each other may be considered as not being in the ordinary course of trade unless the Community authorities are satisfied that the prices and costs involved are comparable to those involved in transactions between parties which have no such link.

The term normal value was first introduced in E.C. anti-dumping legislation at 1st August 1979, by Council Regulation (EEC) No. 1681/79,*28 mainly as a result of its continued use in the new Anti-dumping Code of GATT which was agreed during the negotiation of the 'Tokyo Round' a few months before.

From the definition which is given in section 2.B.3., it can be concluded that the normal value can be determined only if:

1) There are sales of the like product in the domestic market and

2) When those sales are made in the ordinary course of trade.

There are no criteria in the Regulation for determining when a domestic market price is, or is not reliable. However, in practice, the Commission seems to avoid using in its estimates of the elements outcoming from investigations on markets in which the correlation between domestic and export sales is too low. For example, in the case of potato granules from Canada, the Commission in justification of the imposition of a provisional duty considered that: "during a certain period of time the company in question only sold minimal quantities of potato granules on the domestic market, representing less than 2% of export sales and that therefore these domestic sales did not permit a proper comparison."*29 In this case, then, the Commission made the comparison using a different method.

In practice there are a considerable number of cases in which the above mentioned criteria (1) and (2) do not apply. In these cases the Regulation provides two alternative methods of calculating normal value. Firstly, there is the possibility of replacing normal value with "comparable price of the like product when exported in third country" (section 3,(b),(i)). The second alternative is known as the method of constructed value (section 3,(b),(ii)), and it is this which the Commission finally used in the potato granules case.

In the EEC legislation there is no indication about when the one or the other method should be used. Thus the Commission is given the opportunity to choose the appropriate method on a case by case basis. It also has the freedom to decide to turn from the normal to one of these particular methods, according to its own judgement.

There is a significant difference between E.C. and American law on this matter. American law provides that, in general, domestic sales are insufficient if they are less than 5% of exports to countries other than the United States.*30 U.S. legislation therefore seems also to prefer the use of sales to third countries rather than the 'constructed value' method, as a basis of ascertaining the U.S. equivalent normal value. The U.S. attitude is based on the belief that reliable information (e.g. Customs declarations, etc.) on such sales, is more easily obtainable than reliable information on constructed value, since the latter often involves resolution of difficult cost accounting issues.*31

In opposition to this the Commission, although it has often used the method of replacing the normal value with comparable price of the like product when exported in the third country,*32 generally prefers to use the constructed value method in similar cases. Its view - which is based on its previous experience - is that if exported goods are being dumped on one market, they are probably being dumped on other markets as well.

The Regulation states that the constructed value can be formulated by adding the cost of production and a reasonable margin of profit. Two logical questions follow from this: What exactly should be included in the term cost of production? and how to calculate a reasonable margin of profit?

The Regulation, trying to give a sufficient answer to those questions, specifies in clause B,3(ii) what should be considered as cost of production, and how the normal profit should be calculated.

Up to 1984, the term cost of production had been the cause of numerous problems during the E.C. anti-dumping procedures. The reason was that its formulation was somewhat obscure. For example, it was not clear under the old code if the term covers all costs (fixed, variable, etc.). As a result, in the new anti-dumping Code of 1984, the description of the cost of production has been more closely defined.

With reference to the cost of production as well as to the normal profit, in the above mentioned clause (B,3(ii)), E.C. legislation - as opposed to other anti-dumping legislation - does not specify either the percentage which has to be considered as a reasonable amount for selling, administrative and other general expenses or that for a

reasonable profit margin. Thus, for example, in the case of the louvre doors originating in Malaysia and Singapore,*33 the Commission was faced with the fact that for all the producers there were no sales of the like product in the ordinary course of trade on their domestic market. The Commission established the normal value using the constructive value method. Thus, the normal value was estimated as the costs in the ordinary course of trade of material, manufacture and overheads in Singapore and Malaysia, plus a 10% profit considered to be reasonable. However, in the case of polyester yarn from the USA,*34 the Commission established a constructed value, using available information supplied by the complainants, on the costs of materials, manufacture and overheads and including a 3% profit margin, which it considered to be reasonable.

Thus, by not specifying any fixed percentage in the above mentioned clause, the Regulation gives to the Commission the opportunity to examine any particular case flexibly, but it might cause possible objections.

American legislation on the other hand, referring to the same clause, defines the amount of general expenses as a percentage which can be no less than 10% of the cost of material and the profit margin as no less than 8% above the sum of such general expenses on cost (19 G.F.R., 353.6 (a)(2)).

As well as the above mentioned cases, in which the Commission's Regulation does not recommend the use of domestic prices in the calculation of normal value, there is another particular situation, mentioned in section 2.B.4.

This section covers situations where the selling price of a product in the home market is less than its cost of production. Then the Regulation states that those prices, under some provisions specified in the above clause, may be considered as not having been made in the ordinary course of trade.

The terms extended period of time, substantial quantities and within a reasonable period of time, which are referred to in the clause 2.B.4.(a),(b), are not precisely defined in the E.C. legislation. This enables the Commission to flexibly adopt the legislation according to circumstances. The extended period, for instance, could be varied in accordance with market circumstances and the product concerned. For a seasonal product, for example, this period could be about a month or so. Anyway usually the Commission looks at the entire period under investigation in deciding whether sales have been made at a loss. To give an example, in the case of outboard motors originating in Japan, the Commission found that the prices of the like products marketed by Tohatsu Corporation on its domestic market had, during the period of investigation and in

respect of substantial quantities, been lower than all costs, both fixed and variable, ordinarily incurred in its production. Normal value was therefore determined by adjusting the sub-production cost prices referred to above, in order to eliminate the losses and allow a reasonable profit.*35

If finally the Commission declares that there have been sales at a loss, and if all the other conditions, mentioned above, have been met, then the Regulation states that the normal value may be determined according to four alternative methods, described in the above mentioned section 2.B.4.

The problem about sales at a loss was not covered by the 1967 GATT legislation and was also not dealt with in the E.C. Code of 1968.

The reason was that the Commission has been of the opinion that a wider interpretation of the term in the ordinary course of trade, could cover also the case of sales at a loss. This opinion has been disputed during the examination of the Japanese ball-bearing case in the European Court in 1979.*36 The Commission therefore, although its point of view was shared by the Advocat General, decided to introduce the above mentioned provision into E.C. legislation by the amendment of Regulation 459/68 by Regulation

1681/79, in order to put an end to similar objections in the future. This provision has finally proven to be very useful for the Commission as, during the subsequent years, in many cases it took action against this particular form of dumping.

Another situation in which normal value is not based on domestic prices, arises in the case of dealings with state-trading countries.

In a state-trading country all (or almost all) prices are fixed by the state. So there is no such concept as a market price to establish any guidelines. As a result the application of the anti-dumping rules to such a structure of trade poses enormous problems, as the price mechanism is not at all comparable with the price mechanism in countries with a market economy.

In the E.C. anti-dumping legislation up to 1979, there were no specific measures to cover dumped products coming from these kind of markets. Imports from state-trading countries had been dealt with on the basis that sales from those countries could not be considered as in the ordinary course of trade. However, since 1979, the E.C. legislation, in line with the GATT provisions, contains (in the above section 2.B(5)) special provisions about the determination of the normal value in these cases, as well as the criteria which have to be used as the basis of its estimation.

The Commission treats the following countries as state-trading, or non-market economy, countries: Soviet Union, China, East Germany, Poland, Hungary, Czechoslovakia, Bulgaria, Romania and North Korea. Yugoslavia is not treated as non-market economy country as it has signed a special bilateral agreement with the E.C.*37

It should be noted here that dumping legislation cannot be applied to trade between East and West Germany. That is because of the special EEC rules on German internal trade that provide in general for duty-free treatment for such trade. These rules are contained in the relevant protocol of the EEC Treaty. The special EEC treatment of East Germany does not concern, of course, East Germany's dumping actions on products which have been exported either directly or indirectly - through West Germany - to the other Member-States. As far as the latter case is concerned, and according to sections 2 and 3 of the before mentioned protocol, anti-dumping duty could simply apply when those products entered the next Member-State. A characteristic example, illustrating this extraordinary situation, caused by these special East-West Germany's trade relation, is the case of aluminium foil for household and catering use originating in Austria, Hungary, Israel and the G.D.R. In this case the Commission stated that "whereas the investigation showed that almost all of the exports to the Community of aluminium foil for household and catering use originating in the G.D.R.

were to the F.D.R. and thus, in accordance with the protocol annexed to the EEC Treaty, these exports are to be considered as part of German internal trade".*38 Thus, and as the remaining exports of this product from the G.D.R. to the Community during the term of the investigation were insignificant, the Commission decided to close the case without taking any action against East Germany.

When investigating imports from state-economy countries the Commission tends, most of the time, to take as a basis for comparison, the price in a third country having a market-economy. However this often leads to the problem of selecting an appropriate country which, logically, must be at the same level of economic development as the state-economy country. A characteristic example of the possible consequences of this selection arises with the case of mechanical wrist-watches from the USSR.*39 In this case the Commission suggested the Swiss market as an appropriate basis of comparison. Unfortunately it then discovered that it was not possible, by virtue of Swiss law, for the officials of the Commission to carry out inspections at the premises of Swiss wrist-watch producers. Then the Commission decided that the only other country that could be used as a basis for comparison, was Hong Kong. However, one of the complainants (Timex Corporation) protested about this, as it considered that the Hong Kong prices were extremely low and thus the possible dumping margin, defined by the Commission, would

also be lower than in fact was the case. The Commission stated that all parties had agreed from the beginning that if Switzerland was excluded, the only possible third country to use as a basis would be Hong Kong. The complainant insisted and the case is still to the Court of Justice.

As a starting point for the price comparison (as the EEC Regulation does not provide any criteria for making this selection) the Commission tends to consider a country which is suggested by the complainants. However it also frequently approves, as an alternative, market-economy countries suggested by the alleged dumpers. A characteristic example, illustrating all the consultations which take place between the Commission and the interested parties, in the search for a country of comparison that is acceptable to all, is the case of perchlorethylene originating in Czechoslovakia and Romania.*40 The Commission in this case, in order to establish whether the imports from the above countries were dumped, and taking account of the fact that the countries in question were not market economies, had to base its calculations on the normal value in a market-economy country. In this connection the complainants had suggested as a reference the U.S. domestic market.

During the Commission's discussions with the Czechoslovak and Romanian exporters, the comparability of the U.S.

perchlorethylene market was disputed, on the ground that the prices thus determined would not be representative. Then the exporters counter proposed the Austrian market as a reference market, which proved unacceptable to the Commission because of the absence of sufficient data for the comparison.

Finally the Commission, having examined the various possibilities of which it was aware, considered that it would be appropriate to use as a market of comparison the U.S. market, by making adjustments justified by the differences observed in conditions and terms of sale and in the quality characteristics of the product.

The U.S. Regulation, in opposition to the EEC's contains more specific guidelines about the selection of the market-economy country, providing that is should be at the same stage of economic development, which is to be determined inter alia, by per capita gross national product and infrastructure development in the industry producing the product in question.*41

The criteria which the Commission usually takes into consideration for the comparability or not of the two markets are whether the price of the like product appears to be freely determined in the market-economy country and in reasonable proportion to production costs and/or whether the same technical standards, technology and manufacturing production processes are used.

A very interesting observation, made by W. Davey,*42 is that the Commission tends to compare state-trading countries with economically more advanced countries. Thus, in the 34 state-trading country cases, in which decisions were published between 1/1/80 and 30/9/83, the countries of comparison have included the United States 8, Austria 5, Japan 3, Sweden 2, Norway 1, and Canada 1.

In section 2.B.6. the Regulation provides for the cases when a product is not exported into the Community directly (in other words from the country of origin) but is exported from an intermediate country. As the Regulation does not refer specifically to any particular evidence of origin, it seems that the Commission determines origin on the basis of Community rules applied for customs purposes.

The Regulation provides that in the case of indirect exports, the comparable market which could be used could be either the market of the country of origin or of the country of export. This is in opposition to the U.S. Code which states that in case of export from intermediate country, the country of origin will be used.*43

In section 2.B.7., the Regulation provides that sales between related or associated parties may not be taken into consideration during the determination of normal

value. So the Commission, when dealing with cases where costs arise as a result of transportation between associated or related companies, has to carefully examine the situation, in order to ensure that losses are not being transferred to an affiliated supplier or distributor. For example, in the case of louvre doors originating in Malaysia and Singapore, and with respect to Master Timber Industries PTE Ltd., it was found that their raw materials were bought from their associated company at prices which could not be considered as being in the ordinary course of trade and for certain other costs there was no substantiating evidence. The constructed value was therefore based on the evidence which could be substantiated, with a best estimate on the facts available being made for the other costs.*44 The Regulation however does not exclude the possibility that prices from sales between related or associated parties could be, after all, in the ordinary course of trade. Thus it leaves to the Commission to decide each time if they could be used, or not, in the construction of the normal value.

The Commission takes no measures against secondary dumping. This is where two or more processes are involved in the production cycle which are carried out by separate enterprises. The enterprise carrying out the intermediate process sells the semi-finished product to the final processor below cost, enabling them to substantially undercut the market, but still resist dumping complaints,

on the basis that they are making an acceptable margin although the costs of their semi-finished imports are artificially low.

The Commission's attitude to these practices is based on its opinion that "the sales of goods at a loss between independent parties on their own domestic market cannot, of itself, be regarded to be dumping as defined by GATT legislation or the E.C. anti-dumping Code."[*45] Anyway the subject seems to be more theoretical than practical, since there have been no complaints about secondary dumping, at least during the last few years.

C. EXPORT PRICE

8 (a) The export price shall be the price actually paid or payable for the product sold for export to the Community.

(b) In cases where there is no export price or where it appears that there is an association or a compensatory arrangement between the exporter and the importer or a third party, or that for other reasons the price actually paid or payable for the product sold for export to the Community is unreliable, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition imported, on any reasonable basis. In such cases, allowance shall be made for all costs incurred between importation and resale, including all duties and taxes, and for a reasonable profit margin.

Such allowances shall include, in particular, the following:

(i) usual transport, insurance, handling, loading and ancillary costs;

(ii) customs duties, any anti-dumping duties and other taxes payable in the importing country by reason of the importation or sale of the goods;

(iii) a reasonable margin for overheads and profit and/or any commission usually paid or agreed.

As we have mentioned before, the E.C.'s legislation states that in order for the existence of dumping to be verified, it is necessary to calculate the export price of the

product and to compare it with the normal value. Thus, in the above clause C.8.(a), the Regulation defines the export price.

From the formulation of the above definition it can be deduced that the E.C. legislation considers as the relevant price, the price in the country of export and not in the country into which the product is imported.

In opposition to this, the definition of the export price is not so clear in the relative Article VI of GATT. According to it, export price is the price of the product when it is exported from a country to another. So GATT's experts used to consider that the comparison between the normal value and the export price should take place when the goods leave the country.

In U.S. legislation, the calculation of the export price (which is called the United States price) is much more complicated than that of the E.C. So, in the American legislation export price is differentiated into purchase price and exporters sales price.*46 Purchase price is "... the price at which the product is purchased or agreed to be purchased, prior to the date of importation from the producer."*47

Exporters sales price is "... the price at which the product is sold in the United States, before or after

importation by or for the account of the exporter".*48 The U.S. legislation states that in each case only one of these prices could be selected as the United States price. This selection has to be done according to a number of guidelines.

From a very first analysis of the E.C.'s definition of export price, it would appear that its calculation is quite simple. However, in practice, a number of cases have appeared in which this calculation could not be made by using this normal procedure. Thus the Regulation, in section C,8,(b) deals with these cases by providing alternative methods of calculating export price, as well as the allowances which have to be made during that calculation. As far as this calculation is concerned it must be noted that there is a natural tendency amongst exporters to exaggerate the cost involved in exports whilst the Commission tends to minimise them.

The above section covers mainly the very common problem of dumping concealed by transfer pricing arrangements between parent and subsidiary companies. For example, in the case of certain textured polyester fabrics originating in the U.S.A.,*49 the export prices were determined by the Commission on the price actually paid for on-specification products exported to the Community, except for Dow Chemical Company and Monsanto Company, whose exports were made to subsidiary companies in the Community.

For these companies export prices were constructed on the basis of the prices at which the imported product was first resold to an independent buyer, suitably adjusted to take account of actual costs incurred, as established during the investigation, and a profit margin. Besides, in case of certain polyester fabrics from the U.S.A. it was the American company Burlington Industries Inc. which requested the Commission not to use the prices of the products which it exported to its subsidiary in the Community, Burling (Ireland) Ltd., as a reference for the establishment of the export prices. Thus, the export prices of Burlington Industries Inc. to its subsidiary in the Community, were reconstructed on the basis of the prices at which the imported products were first resold to an independent purchaser and adjustments were made to take account of all the costs incurred between importation and resale by Burlington (Ireland) Ltd.*50

Section C 8 (b), covers also the case of the so-called disguised or hidden dumping. This is the situation in which an exporter sets a high non-dumping export price, in order to hide its real dumping prices.

To give an example, the selling price of a product is £50 but its normal value is £75. It is obvious that a dumping practice is taking place. The exporter therefore fixes his prices at £75 in order to hide the dumping margin in question. The main condition, of course, which is

necessary for the existence and the continuation of this situation, is the existence of some form of relation, or compensatory arrangement between the exporter and the importer, who has to resell the product at a loss.

Although in the Regulation there is no provision for excluding any exports from calculation of the export price, the Commission has on occasion ignored the effect of some particular exports. This happened in cases where it thought that the exports in question, either because of the quantity of the products (e.g. very small or very large quantities) or because of their quality (e.g. second-hand products) or even because of the purpose of the exportation (e.g. products for testing purposes) could not be used for a fair calculation of an export price.

However, in general, the Commission's position is that in calculating an export price for a product, it must take into consideration all exports to the Community.

3. THE CALCULATION

D. COMPARISON

9. For the purpose of a fair comparison, the export price and the normal value shall be on a comparable basis as regards physical characteristics of the product, quantities and conditions and terms of sale. They shall normally be compared at the same level of trade, preferably at the ex-factory level, and as nearly as possible at the same time.

10. If the export price and the normal value are not on a comparable basis in respect of the factors mentioned in paragraph 9, due allowance shall be made in each case, on its merits, for differences affecting price comparability. Where an interested party claims such an allowance, it must prove that its claim is justified. The following guidelines shall apply in determining these allowances:

(a) differences in physical characteristics of the product: allowance for such differences shall normally be based on the effect on the market value in the country of origin or export; however, where domestic pricing data in that country are not available or do not permit a fair comparison, the calculation shall be based on those production costs accounting for such differences;

(b) differences in quantities: allowances shall be made when the amount of any price differential is wholly or partly due to either:

(i) price discounts for quantity sales which have been made freely available in the normal course of trade over a representative preceding period of time, usually not less than six months, and in respect of a substantial proportion, usually not less than 20% of the total sales of the product under consideration made on the domestic

market or, where applicable, on a third country market; deferred discounts may be recognized if they are based on consistent practice in prior periods, or on an undertaking to comply with the conditions required to qualify for the deferred discount, or

(ii) to savings in the cost of producing different quantities.

However, when the export price is based on quantities which are less than the smallest quantity sold on the domestic market, or, if applicable, to third countries, then the allowance shall be determined in such a manner as to reflect the higher price for which the smaller quantity would be sold on the domestic market, or, if applicable, on a third-country market.

(c) differences in conditions and terms of sale: allowances shall be limited to those differences which bear a direct relationship to the sales under consideration and include, for example, differences in credit terms, guarantees, warranties, technical assistance, servicing, commissions or salaries paid to salesmen, packing, transport, insurance, handling, loading and ancillary costs and, in so far as no account has been taken of them otherwise, differences in the level of trade; allowances generally will not be made for differences in overheads and general expenses, including research and development or advertising costs; the amount of these allowances shall normally be determined by the cost of such differences to the seller, though consideration may also be given to their effect on the value of the product;

(d) differences in import charges and indirect taxes: an allowance shall be made by reason of the exemption of a product exported to the Community from any import charges or indirect taxes, as defined in the notes to the Annex, borne by the like product and by materials physically incorporated therein, when destined for consumption in the country of origin or export, or by reason of the refund of such charges or taxes.

According to the Community's legislation, the step following the definition and the calculation of the normal value and the export price, is the comparison between them.

In order to ensure that a fair comparison is made between them, the Regulation establishes a number of guidelines. These guidelines concern the determination of the adjustments which have to be made in respect of differences in physical characteristics, in quantities, in conditions and terms of sale, in import charges and indirect taxes. The Regulation suggests that they should normally be compared at the same level of trade, i.e. at the same stage of the commercial traffic of the product in question.*51

The Regulation suggests the ex-factory level as the most suitable to be the level of comparison. That is because it is considered that this level best illustrates the real value of the product, as it does not include any other charges and therefore it gives the basis for a fair comparison. The Regulation also recommends that the comparison should be made as nearly as possible at the same time (section D.9.).

By using this term the Regulation authorises the Commission to select for each case a suitable reference period. Usually the Commission uses a twelve month period. However there have been cases when it has decided otherwise.

Thus, in the case of saccharin from Korea,*52 as the Commission could not find a sufficient number of representative Korean exports, made during 1979, it had to extend the reference period up to the first quarter of 1980, in order to make a proper comparison.

In cases where the export price and the normal value are still not comparable, the Regulation (in section 2.D.10) provides that allowance shall be made in each case, for differences affecting price comparability. However, the Regulation stresses that if a request for such adjustments comes from an interested party, then the above party must also bear the burden of proving that its claim is justified. The Regulation does not specify who has the burden of proof when it is the Commission which proposes an adjustment.

The above clause, concerning the burden of proof, was established first in the Regulation of 1979. Since then it has been the Commission who has been responsible for the comparability of prices as well as for the estimation of the necessary allowances.

The allowances provided by the Regulation, are applied when the following differences between the products exist:

a. Differences in physical characteristics of the product

It is often the case that a product can be varied or modified according to the market for which it is destined.

The reasons behind those modifications could be variations in standards in different markets or environmental policy regulations (as for example, the U.S. regulations about anti-pollution systems in automobiles) etc.

Most of those modifications have some effect on the price of the product. Therefore the Regulation provides that "allowance for such differences shall normally be based on the effect on the market value of the product" (section 2.D.10(a) ). However it can happen that relevant domestic pricing data for that country is not available, or does not permit a fair comparison. In this case, according to the same clause of the Regulation, "... the calculation shall be based on those production costs accounting for such differences".

In the U.S. legislation there is a preference for considering mainly differences in cost of production. However it is cited that "... when appropriate, differences in market value may be considered as an alternative".*53

Most of the time the decision for the appropriate adjustments is taken by the Commission's own experts. In some particular cases, where for example, the interested parties do not agree with the findings of the Commission's experts or where some special technical knowledge is required in order to make adjustments, the Community has had to use outside experts.*54

Products considered as seconds are usually excluded from these comparisons, although, frequently, during the investigations, the question arises as to whether goods sold as seconds are in fact seconds or simply dumped products.

As far as state-trading countries products are concerned, the Community usually makes allowances for the fact that such countries products are inferior in quality to most market-economy products.

b. Differences in quantities

The price of a product can also vary according to the quantities sold either in the home market or abroad. If, for example, a product is exported in greater quantities than it is sold on the domestic market, then its export price should be lower than its home-market price. On the other hand, if the demand for a product is greater in the domestic than in the export market, then the usual result is that the export price is higher than the home price. The selling price could also be different depending on the purchaser's bargaining power. A wholesaler, for example, usually buys at a lower price than a retailer.

The Regulation (in section D.10.b.(i) and (ii) ) deals with these cases, setting up the necessary allowances which shall be made in each case.

c. Differences in conditions and terms of sale

In section 2.D.10(c). the Regulation provides for differences in conditions and terms of trade, and particularly for those which have a direct impact on the sales of the products in question, setting up the relevant amount of the allowances which have to be made each time.

The Regulation does not permit allowances for differences in overheads and general expenses, including research and development or advertising costs.

With the exception of the cases which are mentioned in the above section, the Commission seems to have the flexibility to incorporate some other elements of the cost. Thus, for example, in the U.S. fluid cracking catalists case, the Commission permitted allowances for royalties;*55 in the U.S. Bisphenol case it permitted allowances for warehousing expenses,*56 etc.

American legislation is quite similar to the E.C.'s on these matters. Furthermore it contains special rules for the cases where selling commissions are paid in only one of the two markets under consideration. Home market selling expenses are also allowed under the U.S. legislation up to the amount of selling expenses incurred to the U.S. market.*57

d. Differences in import charges and indirect taxes

This clause was first formulated in the new code under examination here. According to its provisions the Commission, in practice, adds to the export price the amount of a rebate of, or the value of an exemption from indirect taxes or customs duties granted by the government of the exporting country to exporters.*58

## E. ALLOCATION OF COSTS

11. In general, all cost calculations shall be based on available accounting data, normally allocated, where necessary, in proportion to the turnover for each product and market under consideration.

In the above section, the Regulation is dealing with the allocation of costs and the precise way of calculating them.

Beofre 1984 the above provision was mentioned as a part of section C. (allowances). In the new Code it was decided to put it in a separate section (E) as it was thought that the problem of allocation of costs was of a more general nature and did not only arise in the context of allowances.

F. LIKE PRODUCT

12. For the purposes of this Regulation, 'like product' means a product which is identical i.e., alike in all respects, to the product under consideration, or, in the absence of such a product, another product which has characteristics closely resembling those of the product under consideration.

According to the Regulation dumping can occur when the export price of a product is less than the normal value of the like product. The Regulation, in the above section 2.F.12, defines as like product "... a product which is identical i.e., alike in all respects, to the product under consideration". However, when it is not possible to identify such a product, the Regulation provides for the selection of another product with similar characteristics.

The Commission has been particularly concerned with this problem of the likeness of the products, as far as it concerns two stages of its investigations. Firstly when it comes to make a comparison between the export price and the normal value and secondly during the analysis of whether or not the relevant Community industry has been injured.

During these calculations the following two questions arise: (1) Are the products sold by the exporter into the Community like products with those which are sold in

his domestic market ? (2) Are the Community products like products with those made by the exporter ?

Most of the time the answers to these questions are not immediately obvious. This is because it is very difficult to be precise about two products being like products or not. It is very rare that two industries produce exactly the same products. What usually happens is that there are many differences, not only in terms of the physical or technical characteristics of the product, but also in the way, or in the quantities which they are packed. Thus it is up to the Commission to decide if the term like products can be used with its narrow or its wide meaning. Of course a narrower definition can eliminate the possibility of a mistake, but on the other hand it can leave without protection a Community industry which has truly suffered from dumping of an almost like product.

Usually the Commission chooses the narrower or the wider meaning of the term according to both experience and circumstances, but there are also cases where a definite decision seems impossible. A characteristic example is the Greek Magnesite dumping case:

In June 1982, the Commission received a complaint lodged by the Greek manufacturers representing total Community production of Caustic-burned Natural Magnesite. The

complaint alleged dumping of this product by Chinese exporters and material injury resulting therefrom.

The Commission's preliminary investigation substantiated the existence of dumping and resulting material injury. A provisional anti-dumping duty was imposed by the Community by Regulation (EEC) No. 3541/81 of 22/12/82.*59

Having imposed the provisional duty, the Commission appointed two individual experts to study the comparability of the products. This exceptional approach was taken in view of the prime importance of this problem and particularly in the light of the completely contradictory opinions of the parties upon the numerous qualities and applications of the products.

As the experts themselves expressed contradictory opinions concerning the impact of the impurities on the quality of the products concerned and more particularly on their uses, they were asked by the Commission to fill out a list of 18 applications of these products, indicating whether the products originating in China, Spain and Greece could, or could not, be used for each of these applications.

According to the first expert, the product concerned, originating in any of the three countries, could be used for nine of the applications. This expert was uncertain concerning the possibility of using the product concerned

originating in one of two of the countries involved. With regard to two of the applications he concluded that none of the products concerned originating in the three countries could be used.

The second expert concluded that the products concerned originating in those countries involved, could be used with regard to 15 applications irrespective of the country or origin. With regard to two applications he concluded that they could not be used at all and with regard to one application he excluded the use of the product originating in one of the countries involved.

As a result, in subsequent meetings of the anti-dumping committee, a number of Member-States agreed about the similarity of the products, taking into consideration the conclusions of the second expert, whilst others denied that the products could be considered as 'like products', following the line of argument of the first expert.

Finally the Commission was forced to propose the closing of the case by extracting an 'undertaking' (i.e. a conciliatory arrangement) from the interested parties. By choosing this way, the subject of the likeness of the products was left unresolved.

G. DUMPING MARGIN

13. (a) 'Dumping margin' means the amount by which the normal value exceeds the export price.

(b) Where prices vary, the dumping margin may be established on a transaction-by-transaction basis or by reference to the most frequently occurring, representative or weighted average prices.

(c) Where dumping margins vary, weighted averages may be established.

Once the normal value and the export price have been established, adjusted and compared the dumping margin can be determined.

By the term dumping margin the Regulation means: " ... the amount by which the normal value exceeds the export price" (section 2.G.13.(a) ).

Up to 1979 the E.C.'s legislation defined as dumping margin the price difference between home market price and export price. This definition was changed by Regulation (EEC) 1681/79.*[60] The change was considered as necessary in order to clarify the Community's position of not recognising the existence of a negative dumping margin.

The theory of negative and positive dumping margin which was raised by a number of exporters, was that a price difference could be either negative or positive. The idea

was that if, for example, there was a normal value of 100 ECU and two exports, one of 80 ECU and another of 120 ECU, then, by using the Community's previous definition of margin, a negative dumping margin of 20 ECU existed in the first case, as well as a positive dumping margin of 20 ECU in the second. Thus, according to this line of argument, the average dumping was zero and therefore no injury existed. The Commission's position was always that no such thing as a negative dumping margin could exist and the modification of the definition of dumping margin was therefore necessary.

It often happens that prices vary during the period of the investigation. This means that the calculation of the dumping margin by using only one, unchanged, method cannot be effective. In this case the Regulation provides (in section 2.G.13.(b) ) some alternative methods of calculation. It also provides for the use of weighted average prices, where there are a number of transactions made at prices which vary considerably. Finally it provides for the establishment of the weighted average method, in cases where dumping margins vary.

The American legislation, although it is very similar to the E.C.'s contains more detailed guidance on some aspects of calculation such as exchange rates, use of weighted averages, etc.*61

The E.C. legislation, in opposition, prefers to authorise the Commission to handle the calculation of the dumping margin more flexibly and on a case by case basis.

Article 3

Subsidies

1. A countervailing duty may be imposed for the purpose of offsetting any subsidy bestowed, directly or indirectly, in the country of origin or export, upon the manufacture, production, export or transport of any product whose release for free circulation in the Community causes injury.

2. Subsidies bestowed on exports include, but are not limited to, the practices in the Annex.

3. The exemption of a product from import charges or indirect taxes, as defined in the notes to the Annex, effectively borne by the like product and by materials physically incorporated therein, when destined for consumption in the country of origin or export, or the refund of such charges or taxes, shall not be considered as a subsidy for the purposes of this Regulation.

4. (a) The amount of the subsidy shall be determined per unit of the subsidized product exported to the Community.

   (b) In establishing the amount of any subsidy the following elements shall be deducted from the total subsidy:

      (i) any application fee, or other costs necessarily incurred in order to qualify for, or receive benefit of, the subsidy;

      (ii) export taxes, duties or other charges levied on the export of the product to the Community specifically intended to offset the subsidy.

   Where an interested party claims a deduction, it must prove that the claim is justified.

   (c) Where subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount shall be determined by allocating the value of the subsidy as appropriate over the level

of production or exports of the product concerned during a suitable period. Normally this period shall be the accounting year of the beneficiary.

Where the subsidy is based upon the acquisition of future acquisition of fixed assets, the value of the subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. Where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan.

(d) In the case of imports from non-market economy countries and in particular those to which Regulations (EEC) No. 1765/82 and (EEC) 1766/82 apply, the amount of any subsidy may be determined in an appropriate and not unreasonable manner, by comparing the export price as calculated in accordance with Article 2 (8) with the normal value as determined in accordance with Article 2 (5). Article 2 (10) shall apply to such a comparison.

(e) Where the amount of subsidization varies, weighted averages may be established.

In the above Article 3 the Regulation deals with subsidies. To give an unofficial definition of the term subsidy (as it seems that there is no general international binding definition) we can suggest that a subsidy exists when a State intervenes in order to promote objectives of social and economic policy.

The General Agreement on Tariffs and Trade, in Articles VI and XVI, contained provisions about subsidies. Those provisions,however, were no more than statements of principle without any rules for their implementation.

During the Tokyo Round, these principles were elaborated in the so-called Subvention Code. This Code has been built into the E.C. legislation as Article 3 (subsidies).

The reason for the E.C. Regulation's particular reference to subsidies, in the context of dumping legislation, is that the procedure which the Community uses to deal with a subsidy is more or less the same as the dumping procedure.

The main difference between them is that the focus of a subsidy investigation concerns the existence of a subsidy and not whether dumping is occurring. There is therefore no need to establish and compare normal value and export price, as happens in dumping procedures.

Subsidies may be divided into export and domestic subsidies. Each of these may be further sub-divided into direct and indirect subsidies. The E.C.'s anti-dumping/anti-subsidies legislation is concerned only with export subsidies.

In the relevant section 3.1. the Regulation does not provide an exclusive definition of what constitutes a subsidy. The main reason for this seems to be that in recent times subsidies have become more and more numerous and complicated.

It thus prefers to authorise the Commission to ascertain the existence of a subsidy on a case by case basis, than to give a definition which could possibly leave a Community industry unprotected in the face of a particular kind of subsidy. The Regulation, therefore limits itself to giving, as an Annex, an indicative list of the most common kinds of subsidies, and to provide (in section 3.4) a number of rules concerning the calculation of these subsidies. The Annex is cited (as Appendix 2) at the end of the thesis.

With reference to cases where the subsidy is based upon the acquisition or future acquisition of fixed assets, the Regulation provides (in section 3.4.(c) ) that " ... the value of the subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned." That part differs from that of the previous anti-dumping legislation of 1979. The amendment was made in order to set out more clearly the fact that it is impossible to establish the level of production or exports for the whole depreciation period in advance.

As far as subsidised imports from state-trading countries are concerned, the Regulation recognises that it would be very difficult to establish whether low price imports are caused by subsidies or by dumping. That is because,

usually in these countries no real domestic market exists and so internal prices and costs are determined by the government.

Thus, the Regulation (in section 3.4.(d) ) provides that the amount of any subsidy may be determined by comparing the export price with the normal value, using the provisions referred to in the dumping proceedings.

Finally, in cases where the amount of subsidisation varies, the Regulation allows the use of the weighted averages method for its calculation (section 3.4.(e) ).

Article 4

Injury

1. A determination of injury shall be made only if the dumped or subsidized imports are, through the effects of dumping or subsidization, causing injury i.e., causing or threatening to cause material injury to an established Community industry or materially retarding the establishment of such an industry. Injuries caused by other factors, such as volume and prices of imports which are not dumped or subsidized, or contraction in demand, which, individually or in combination, also adversely affect the Community industry must not be attributed to the dumped or subsidized imports.

2. An examination of injury shall involve the following factors, no one or several of which can necessarily give decisive guidance:

   (a) volume of dumped or subsidized imports, in particular whether there has been a significant increase, either in absolute terms or relative to production or consumption in the Community.

   (b) the prices of dumped or subsidized imports, in particular whether there has been a significant price undercutting as compared with the price of a like product in the Community.

   (c) the consequent impact on the industry concerned as indicated by actual or potential trends in the relevant economic factors such as:

   - production,
   - utilization capacity,
   - stocks,
   - sales,
   - market share,
   - prices (i.e. depression of prices or prevention of price increases which otherwise would have occurred),

- profits,
- return on investment,
- cash flow,
- employment.

3. A determination of threat of injury may only be made where a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

   (a) rate of increase of the dumped or subsidized exports to the Community;

   (b) export capacity in the country of origin or export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Community;

   (c) the nature of any subsidy and the trade effects likely to arise therefrom.

4. The effect of the dumped or subsidized imports shall be assessed in relation to the Community production of the like product when available data permit its separate identification. When the Community production of the like product has no separate identity, the effect of the dumped or subsidized imports shall be assessed in relation to the production of the narrowest group or range of production which includes the like product for which the necessary information can be found.

5. The term 'Community industry' shall be interpreted as referring to the Community producers as a whole of the like product or to those of them whose collective output of the products consititues a major proportion of the total Community production of those products except that:

   - when producers are related to the exporters or importers or are themselves importers of the allegedly dumped or subsidized product the term 'Community industry' may be interpreted as referring to the rest of the producers;

- in exceptional circumstances the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market regarded as a Community industry if,

  (a) the producers within such market sell all or almost all their production of the product in question in that market, and

  (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community.

  In such circumstances injury may be found to exist 'even where a major proportion of the total Community industry is not injured, provided there is a concentration of dumped or subsidized imports into such an isolated market and provided further that the dumped or subsidized imports are causing injury to the producers of all or almost all of the production within such markets'.

The establishment of the existence of dumping by third countries into the Community market, is not enough for the imposition of protective measures by the Commission.

Before the Commission can take action against dumping or subsidised imports, it first has to prove that these imports are causing the Community industry injury. That means " ... causing or threatening to cause material injury to an established Community industry or materially retarding the establishment of such an industry" (section 4.1).

The Commission gives particular consideration to establishing the relationship between dumping or subsidization, and Community injury. That is because there could be cases where there is dumping or subsidized importation into the Community market and even an injury in the relative Community industry as well. However this injury in question might have no relation with the fact of dumping. For example, it could be the outcome of intra-Community competition or even could be caused by dumped imports from another country, not mentioned by the complainants. A characteristic example is the case of certain monochrome portable T.V. sets from North Korea.*62

The Commission, investigating the complaint of two Italian producers, noticed that although imports from Korea into Italy, increased from 212 sets in 1977 to 26,420 sets in 1980, in the same period imports from Taiwan increased from 751 sets to 204,206 sets, without causing any complaint by the Community industries in question. The Commission decided therefore, that there was no evidence that any injury suffered by Italian producers had been caused by imports from Korea, and therefore closed the case.

The American legislation defines material injury as: "a harm which is not inconsequential, immaterial or unimportant".*63 In opposition to this the Commision avoids giving a definition of what exactly it considers as

material injury and it seems to prefer to determine material injury by looking at the economic facts established in each case.

In section 4.1 the Regulation makes clear that: "injuries caused by other factors, such as volume and prices of imports which are not dumped or subsidized, or contraction in demand, which, individually or in combination also adversely affects the Community industry, must not be attributed to the dumped or subsidized imports".

This clause differs from that of the first anti-dumping legislation of 1968, which stated that a determination of injury could be made only when the dumped or subsidised imports were demonstrably the principal cause of the injury. It is clear that, especially at a time of general recession, it would be difficult, if not impossible, to prove that the injurious effect of dumping, or subsidization, was greater than the sum of the injurious effects of all other adverse factors. Thus, Community industry was at a great disadvantage in comparison with American industry, because U.S. anti-dumping legislation did not require either a finding of material injury or a determination that dumped imports were the principal cause of that injury. Thus, during the Tokyo Round, the U.S. and the E.C. agreed to provide material injury tests and neither now require the effect of dumping or subsidization to be the principal cause of injury.

In section 4.2. the Regulation sets out certain factors which should be considered in an examination of injury. However the Regulation states that no one or several of them can necessarily give decisive guidance.

According to the clause 4.2.(a) the Commission has to give consideration to the volume of the imports which are held to have been dumped. It must try to verify if there have been significant increases either in absolute terms or relative to production or consumption in the Community. This last criterion is absolutely necessary since it is often an increase in non-dumped imports which causes the Community industry to lodge a dumping complaint.

The clause 4.2.(b) contains provisions for the examination of the prices of dumped or subsidized imports. According to it the Commission compares the resale price of the dumped or subsidized goods, with the Community producers' prices at the same level of trade.

If the imported goods do significantly undercut the prices and if this undercutting is the result of either a dumping practice or a subsidy and if it has an adverse effect on the Community industry, a finding of injury may be made. In some cases, even if there is no undercutting, injury may be made if the low prices of dumped or subsidized imports cause Community producers to reduce prices and therefore to make losses, or even severely reduced profits.

Having considered the volume and prices of dumped and subsidized imports, it is necessary for the Commission to consider their impact on the Community industry. Thus the Regulation, in order to help the Commission's estimations, indicates, in clause 4.2.(c), the main factors of the Community industry which could be injured the most by the dumped or subsidized imports.

Where the claim is made that injury is threatened, the Regulation provides, in section 4.3., that it must be determined that actual injury is likely to occur, and specifies the factors which may be considered.

One of these factors, specified in clause 4.3.(c). is: "the nature of any subsidy and the trade effects likely to arise therefrom". However, when considering subsidies, it must be clarified whether a subsidy is an export or a domestic subsidy. This is because an export subsidy is designed to specifically promote exports and would therefore, in normal circumstances, be more likely to cause injury than a domestic subsidy. For this reason American legislation provides that particular consideration must be given to whether the subsidy is an export subsidy.*64

In section 4.4. the Regulation provides some guidance about the calculation of the effect of dumped or subsidized imports on the Community industry's production.

The term Community industry is defined by the Regulation, in section 4.5. However in the Regulation there is no further explanation concerning the percentage of the Community industry which is to be considered as a major proportion of the total Community production. In practice it seems that less than 50% is acceptable in order to start an anti-dumping proceeding.*65 Furthermore it is often difficult to specify exactly which branch of an industry is involved in specific anti-dumping cases. A case of dumped imports of synthetic textile yarns, for instance, could concern both the Community industries which produce the same type of yarns, as well as the industries producing similar types of yarns, or even industries producing synthetic textile cloths in general.

In exceptional circumstances the Commission can apply the so-called regional protection. In this case the Community may be divided into two or more markets and the producers of the product concerned within each market may be regarded as the Community industry. Thus, an industry in a region of the Community may be protected, even though the entire Community industry is not suffering material injury from dumped or subsidized imports. The exceptional circumstances, in which such regional protection may be considered, are referred to in section 4.5 of the Regulation. However, in practice, the Commission has never explicitly relied upon this provision and therefore it is not clear what tests would have to be met to qualify a region for separate consideration.

Finally another complicated case can arise when producers are linked to the exporters or importers or where they are themselves the importers of the allegedly dumped or subsidized product. In this case the Regulation, in section 4.5, provides that the term Community industry can be interpreted as referring to the rest of the producers in the industry.

## 4. THE PROCEDURE

Before going on to the description of the procedure which the Commission follows facing a dumping case, we believe that it will be helpful to provide first the following table illustrating the E.C. anti-dumping proceedings.

The main part of this table is taken from Dr. Heinz-Dieter Assman (Decision Making Under the E.E.C. and U.S. Anti-dumping Code, LLM, Frankfurt am Main, 1981, p.353 (Appendix 1) ). However there are some additional supplements, made by the author, in order to illustrate the recent changes which the new Code of 1984 has brought to the E.C. anti-dumping legislation.

TABLE 1: Anti-dumping Proceedings Under E.C. Law

| COMMISSION | ADVISORY COMMITTEE | COUNCIL |
|---|---|---|
| INITIATION<br>By complaint (Article 5) submitted to the Commission which inform M-S. If submitted to a M-S, it will be forwarded to the Commission (Article 5(3) ) | | |
| PRELIMINARY INVESTIGATION of sufficient evidence of dumping (Article 5(2))<br>→ If complaint does not provide sufficient evidence, information of complainant<br>→ Possibility to amend the complaint | consultation (Article 5(5)) | |
| → If it is apparent that there is sufficient evidence ... | consultation (Article 7(1)) | |
| INITIATION OF THE PROCEEDING and INVESTIGATION of both DUMPING (or SUBSIDISATION) and INJURY<br>→ Announcement in the Official Journal of the European Communities (Article 7(1)(a))<br>→ Advice of the exporters and importers known to the Commission to be concerned; of representatives of the exporting country; of the complainants (Article 7(1)(b))<br>→ Commencement of investigation at Community level (acting in cooperation with M-S) (Article 7(1)(c))<br>(For ways and means of the investigation see Article 7(2))<br>Disclosure of information gathered (Article 7(4),8)<br>Hearings and confrontations (Article 7 (5)(6) ) | | |
| TERMINATION OF PROCEEDINGS<br>where protective measures are unneccessary (Article 9) | → consultation (Article 9(1)) | |
| where undertakings offered and considered acceptable by the Commission (Article 10) | → consultation (Article 10(1)) | |
| IMPOSITION OF PROVISIONAL ANTI-DUMPING DUTY (or Countervailing duty in the case of a subsidy) if .....<br>preliminary examination shows that dumping (or a subsidy) exists<br>there is sufficient evidence of injury caused thereby<br>the interests of the Community call for intervention to prevent injury (Article 12) | consultation (Article 11(2)) | |
| | Information of the M-S (Article 11(4) ) → | Information of the Council (Article 11(4) ) |
| Provisional duties have a maximum period of validity of 4 months, but may be extended for a further period of 2 months if the conditions of Article 5 are met. | | |
| PROPOSAL FOR DEFINITIVE ACTION or for extension of provisional measures shall be submitted to the Council | consultation (Article 12(1) ) → | IMPOSITION OF A DEFINITIVE ANTI-DUMPING DUTY (or countervailing duty) (Article 12) |
| REFUND APPLICATIONS (Article 16) | → consultation (Article 16(2) ) | |
| REVIEW (Article 14) | → consultation (Article 14(2) ) | → Article 14(3) |
| SUNSET PROVISIONS (Article 15) | → consultation (Article 15(2) ) | |

4 months - 2 months possible extension - validity

After 5 years — 3 months period

Article 5

Complaint

1. Any natural or legal person, or any association not having legal personality, acting on behalf of a Community industry which considers itself injured or threatened by dumped or subsidized imports may lodge a written complaint.

2. The complaint shall contain sufficient evidence of dumping or subsidization and the injury resulting therefrom.

3. The complaint may be submitted to the Commission, or a Member State, which shall forward it to the Commission. The Commission shall send Member States a copy of any complaint it receives.

4. The complaint may be withdrawn, in which case proceedings may be terminated unless such termination would not be in the interest of the Community.

5. Where it becomes apparent after consultation that the complaint does not provide sufficient evidence to justify initiating an investigation, then the complainant shall be so informed.

6. Where, in the absence of any complaint, a Member State is in possession of sufficient evidence both of dumping or subsidization and of injury resulting therefrom for a Community industry, it shall immediately communicate such evidence to the Commission.

The normal way for an anti-dumping procedure to be started, is by the sending to the Commission of a written complaint, on the part of an injured Community industry. All the necessary information about how a complaint must be lodged, are provided in Article 5 of the Regulation.

Although the Commission has never done so, the Regulation, in section 5,(6), does not exclude the possibility of opening an investigation on its own initiative. The reason that the Community has never unilaterally opened an investigation in the absence of a relevant complaint, is that in practice it is very difficult to operationalise a dumping investigation without the collaboration of the injured industry which is required to provide all the necessary information.

The Regulation has no limitations as to the percentage of the Community industry which must be represented in a complaint in order to get the Commission to decide to open an investigation. Thus it seems that it is acceptable for the complaint to be filed by just one Community firm.

In practice the Commission, after receiving the complaint, has to make contact with the rest of the relevant Community industry either through the Member-States authorities, or directly to the relevant Community associations of producers, e.g. C.E.F.I.C., acting on behalf of the Community producers, is responsible for the majority of the complaints, concerning chemicals, submitted to the Commission during the last years.

Having action in a way which said, the Commission usually advises complainants that, for faster action, it is better

to consult and collaborate with the rest of the Community industries concerned,before filing and sending any dumping complaint to the Community.

In section 5(2) of the Regulation it states that a complaint must contain all available information concerning the existence of dumping or subsidization and the injury resulting therefrom. In order to help complainants to organise such information in the correct manner, the Commission provides them with a questionnaire that specifies the information it requires. A copy of this questionnaire is cited as Appendix 3 at the end of the thesis.

The interested parties can acquire this questionnaire from the Commission services, or from the corresponding authorities of each Member-State, which often help the complainant to fill in the questionnaire correctly.

According to the Regulation the Commission may not open an investigation if it is decided, after consultation, that the complaint does not provide sufficient evidence to justify the opening of the case. In any case it could still continue the investigation of a case, even if the complaint is withdrawn, if it judged that this could be in the interest of the Community. This provision can be applied when, for example, it is suspected that a withdrawal is the result of a private arrangement between the complainants and the exporters or importers.

Article 6

Consultations

1. Any consultations provided for in this Regulation shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately on request by a Member State or on the initiative of the Commission.

2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

3. Where necessary, consultation may be in writing only; in such case the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation.

4. Consultation shall in particular cover:

   (a) the existence of dumping or of a subsidy and the methods of establishing the dumping margin or the amount of the subsidy;

   (b) the existence and extent of injury;

   (c) the causal link between the dumped or subsidized imports and injury;

   (d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping or the subsidy and the ways and means for putting such measures into effect.

During an anti-dumping, anti-subsidies proceeding, the Commission works in close collaboration with the Anti-Dumping Advisory Committee. This committee provides the initial link between the Commission and the Member-States.

As the Regulation provides in section 6.(1), this Committee is made up of the representatives of each Member-State, which usually are officials from Financial and Commercial Ministries. The chairman of the Committee is an official from the E.C. 'External Relations' direction (DG1), which is responsible for E.C. anti-dumping policy.

All the consultations required by the Regulation, are managed within the framework of this Committee. Those consultations take place, on a continuing basis, before the opening of an investigation, during the proceedings, before the closing of the case and in the case of reopening or reviewing a case.

More specifically, the main stages during an anti-dumping procedure, at which the Regulation requires (or even obliges, sometimes) that consultations of the Advisory Committee must take place before any Commission's action, are the stages concerning:

(a) The decision of whether the initiation of a proceeding is warranted.

(b) The identification of the existence of dumping or a subsidy and 'the methods of establishing the dumping margin or the amount of the subsidy'. This latter phrase was first incorporated in the recent anti-dumping Regulation of 1984, in order

to take account of the wishes expressed by some Member-States to be consulted on the question concerning the choice of the appropriate country of comparison in cases of dumping from non-market economy countries.

(c) The existence and extent of injury.

(d) The causal link between the dumped or subsidized imports and injury.

(e) The termination of the proceeding without taking protective measures.

(f) The decision on the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping or the subsidy and the ways and means for putting such measures into effect. Those measures could be either:

(1) The acceptance of an undertaking and the closing of the case or

(2) The imposition of a provisional anti-dumping duty*66 and the continue of the investigation or (at the case that the investigation has been terminated),

(3) The proposal to the Council of the imposition of a definitive anti-dumping duty as well as the amount of the duty.

(g) The decision of the opening of a case's review.

(h) The modification of a duty imposed, or an undertaking agreed, and

(i) The lapse of an anti-dumping/anti-subsidy duty imposed, or an undertaking agreed. This lapse usually takes place after five years from the date on which the duty or the undertaking entered into force, or when it was last modified or confirmed.

The meetings of the Committee have taken place at regular intervals (approximately every two months). The consultations in the Advisory Committee are closed to the public and to the interested parties as well. No conclusions or opinions of any kind are published either. In urgent cases, similar to those mentioned above, when decisions have to be taken in a very short time in order to prevent further Community injury, or when it is so requested by a Member-State, consultation may be in writing only. In such cases the Commission shall notify the Member-States and (according to an amendment introduced in 1973) shall specify a period (usually five working days) within which they shall be entitled to express their opinions, or to request an oral consultation.

Article 7

Initiation and subsequent investigation

1. Where, after consultation it is apparent that there is sufficient evidence to justify initiating a proceeding the Commission shall immediately:

   (a) announce the initiation of a proceeding in the Official Journal of the European Communities; such announcements shall indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with paragraph 5;

   (b) so advise the exporters and importers known to the Commission to be concerned as well as representatives of the exporting country and the complainants;

   (c) commence the investigation at Community level, acting in cooperation with the Member States; such investigation shall cover both dumping or subsidization and injury resulting therefrom and shall be carried out in accordance with paragraphs 2 to 8; the investigation of dumping or subsidization shall normally cover a period of not less than six months immediately prior to the initiation of the proceeding.

2. (a) The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, examine and verify the records of importers, exporters, traders, agents, producers, trade associations and organisations.

(b) Where necessary the Commission shall carry out investigations in third countries, provided that the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection. The Commission shall be assisted by officials of those Member States who so request.

3. (a) The Commission may request Member States:

- to supply information,

- to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers,

- to carry out investigations in third countries, provided the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection.

(b) Member States shall take whatever steps are necessary in order to give effect to requests from the Commission. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out.

(c) Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

(d) Officials of the Commission shall be authorised, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.

4. (a) The complainant and the importers and exporters known to be concerned, as well as the representatives of the exporting country, may inspect all information made available to the Commission by any party to an investigation as distinct

from internal documents prepared by the authorities of the Community or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 8 and that it is used by the Commission in the investigation. To this end, they shall address a written request to the Commission indicating the information required.

(b) Exporters and importers of the product subject to investigation and, in the case of subsidization, the representatives of the country or origin, may request to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive duties or the definitive collection of amounts secured by way of a provisional duty.

(c) (i) requests for information pursuant to (b) shall:

(aa) be addressed to the Commission in writing,

(bb) specify the particular issues on which information is sought,

(cc) be received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty;

(ii) the information may be given either orally or in writing as considered appropriate by the Commission. It shall not prejudice any subsequent decision which may be taken by the Commission or the Council. Confidential information shall be treated in accordance with Article 8;

(iii) information shall normally be given no later than 15 days prior to the submission by the Commission of any proposal for final action pursuant to Article 12. Representations made after the information is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

5. The Commission may hear the interested parties. It shall so hear them if they have, within the period prescribed in the notice published in the Official Journal of the European Communities, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard orally.

6. Furthermore the Commission shall, on request, give the parties directly concerned an opportunity to meet, so that opposing views may be presented and any rebuttal argument put forward. In providing this opportunity the Commission shall take account of the need to preserve confidentiality and of the convenience of the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

7. (a) This Article shall not preclude the Community authorities from reaching preliminary determinations or from applying provisional measures expeditiously.

   (b) In cases in which any interested party or third country refuses access to, or otherwise does not provide, necessary information within a reasonable period, or significantly impedes the investigation, preliminary or final findings, affirmative or negative, may be made on the basis of the facts available.

8. Anti-dumping or countervailing proceedings shall not constitute a bar to customs clearance of the product concerned.

9. (a) An investigation shall be concluded either by its termination or by definitive action. Conclusion should normally take place within one year of the initiation of the proceeding.

   (b) A proceeding shall be concluded either by the termination of the investigation without the imposition of duties and without the acceptance of undertakings or by the expiry or repeal of such duties or by the termination of undertakings in accordance with Articles 14 or 15.

Article 7 of the Regulation provides for the initiation of proceedings and subsequent investigations. According to it a proceeding is initiated when the Commission, after preliminary examination and consultation in the Advisory Committee, decides that there is sufficient evidence to justify the initiation, and that this would be in the interest of the Community. Thus the Commission, as a first step, announces the initiation in the Official Journal of the European Communities (O.J.), and states the period within which the interested parties may make knows their views to the Community.*67 The Commission usually allows up to a month but often, because of certain practical difficulties (mail delays, etc.) this can be extended for two or more weeks.

In order to get all the information it requires in the correct manner, the Commission sends the questionnaire which we mentioned above to the firms in the injured Community industry. Furthermore it provides the importers accused of dumping with a similar questionnaire. This questionnaire (which is cited as Appendix 4 at the end of the thesis) contains questions about the quantities and prices of the goods imported into the Community and requests information about costs, reductions or discounts, payment to third parties, etc.

Next the Commission, acting in close collaboration with the Member-States, tries to ascertain if dumping, or subsidization, really exists as well as if a Community injury

is resulting therefrom. According to the Regulation (Article 7,(c) ) the investigation "shall cover normally a period not less than six months immediately prior to the initiation of the proceeding". This six months minimum limit was first restored in the new anti-dumping Code of 1984. The Regulation provides (Article 7,2(a)) that the Commission, in order to verify and clarify all information deemed to be relevant, could examine the records of all parties concerned. This provision, however, does not give to the Commission the power to examine records without the consent of the parties concerned.

Here it must be explained why it is that parties involved in a dumping case usually decide to collaborate with the Commission, even if in the beginning they are unwilling to provide the information requested.

It is a fact that no company is obliged either to reply to a questionnaire sent to it by the Commission, or to allow Commission experts to visit it in order to carry out an on-the-spot investigation. However the Regulation provides (in section 7,(7) (b) ) that " ... in cases in which any interested party or third country refuses access to, or otherwise does not provide, necessary information within a reasonable period, or significantly impedes the investigation, preliminary or final findings, affirmative or negative, may be made on the basis of the facts available". Thus, the interested parties are often afraid that the

Commission authorities without their collaboration might take a decision which is more disadvantageous for their interests, based on the facts available, than would be the case if they provided the additional information requested by the Commission.

Two characteristic examples can be cited here in order to underline the consequences for the interested parties of a Commission decision to act on the facts available. In the first example the Commission, examining a complaint about dumped imports of polyester yarn from the USA,*[68] was faced with the refusal of some U.S. producers to collaborate and to give the information requested. It was decided, based on the facts available, that the export of polyester yarn to the Community market from a large number of American companies (including those which had refused to collaborate), had been made at dumped prices. Therefore, the Commission imposed a definitive anti-dumping duty. It must be noted that after the imposition of the duty, some of those American industries which had refused to collaborate, asked the Commission to re-examine their case and provided the information it wanted.

In the second example, the Commission, examining the case of monochrome T.V. sets from South Korea,*[69] sent questionnaires to 29 Community producers, on behalf of whom the complaint was made, asking them for information to support the alleged injury.

Only five of those producers replied giving the information requested. In this case the Commission decided, based on the facts available, that no serious injury had been caused to the Community industry from dumped imports from South Korea, and thus decided to close the case.

In section 7 2,(b) the Regulation authorises the Commission to carry out, where necessary, investigation in third countries, in order to compare the prices which are provided from the importers. The main condition for this investigation is, of course, that the third country selected raises no objection. However, in practice, there are occasions when the third country in question raises objection. Then the Commission is obliged to select another alternative country as country of comparison, or if this is not possible, to change completely the method of comparison.*70

The E.C. legislation up to 1984 provided that consultations had to take place in the Advisory Committee, before the Commission decided about the selection of the third country of comparison. This provision is not continued in the new anti-dumping Code. The reason is that the Commission believes that, as no anti-dumping or countervailing investigation is opened without prior consultation of the Member-States, and as any investigation necessarily involves on-the-spot investigations in third countries, the need for special consultation before such investigation becomes redundant.

The investigations in third countries, as well as at Community level, are carried out by Commission officials (usually two), acting as 'case handlers'. These officials are working for the E.C.'s Direction I (D.G-I) which, as before mentioned, is responsible for E.C. anti-dumping policy. They usually travel to visit the interested parties and to check their records, in order to verify the relevant questionnaire that will have been returned to the Commission.

The experts investigating the concerned parties in a Member-State are usually assisted by officials of that Member-State. The Regulation provides also that officials of those Member-States who so request, can also assist the Commission officials during their investigation in third countries. However, in practice, this rarely happens.

Sections 7.3,(a),(b) and (c) of the Regulation describes the obligations of the Member-States during a Community investigation. Thus, it is stated that a Member-State may be requested by the Commission to carry out some checks or investigations amongst importers, traders or producers, instead of the Commission officials. This is because it is often the case that some industrialists are reluctant to collaborate directly with the Commission. In these cases they are encouraged to collaborate instead with the authorities of their own Member-States. Furthermore, a

Member-State is sometimes in a better position to estimate situations in its own market, than the Commission itself.

The previous anti-dumping legislation of 1979 provided that where a Member-State was requested to supply information, such as customs invoices, etc., or to carry out investigations for the Commission, the results had to be communicated to the other Member-States immediately. However, since most of this information will be of a confidential nature, or will be of interest only to the Member-State supplying it, this clause has been modified in the new Code (section 7,3,(c) ).

Section 7,3,(d) authorises Commission officials to assist the Member-States officials, if requested, in carrying out their duties. This authorisation, in practice, seems to be unnecessary, as, most of the time, Commission and Member-States officials are working anyway in close collaboration during the whole period of investigation.

According to section 7,4 of the Regulation, all interested parties may inspect all information made available to the Commission during the investigation, provided of course that it is relevant to the defence of their interests and not confidential. In order to obtain this information the interested parties are required to address a written request to the Commission.

As the number of such requests during the investigation period is rather high, the Commission, usually, has no time to examine and satisfy separately every single request. So, as a solution, it usually keeps, from the opening of each case, two separate files of information. One contains all the confidential information, available only to the case handlers, and another contains non-confidential information, the so-called public part, which may be submitted to all interested parties on request.

The Regulation, in section 7.4, gives detailed guidelines about the appropriate way of submitting such requests and specifies also the terms and the conditions under which the Commission is obliged to answer them.

Section 7.5 of the Regulation gives the interested parties the right to be heard by the Commission. For this they must make a request in writing, within the period prescribed in the notice published in the O.J., giving the particular reasons why they should be heard orally.

The Commission keeps those hearings quite informal. Usually only the interested parties who requested it and the case handlers take part, and no official records are kept. In comparison, the corresponding hearing under the U.S. anti-dumping legislation has a more formal character and official records are kept.*71

In section 7.6 the Regulation also gives to the conflicting parties the opportunity to meet each other. The main reason for the arrangement of these confrontation hearings, as the Commission tends to call them, seems to be that the Commission hopes that, by bringing the opposing parties together, it can achieve some kind of concilliatory arrangement between them or, at least, clarify any contested points of their arguments. However it seems that in practice these confrontation hearings do not work as well as they might. The reason is that, although most of the times the conflicting parties do attend the meetings, they nevertheless usually tend to stick to their previous positions and the only benefit for them is that they each get an idea of what the other is saying to the Commission.

Finally, in section 7.9., the Regulation deals with the conclusion of an investigation and gives separate directions about each conclusion (sections 7.9 (a), and 7.9 (b) ).

The previous anti-dumping legislation provided only for the conclusion of a proceeding either by its termination or by definitive action and stated that "a conclusion should normally take place within one year of initiation of the proceeding".*72

The reason for the amendment in the new Code is, that according to the Commission, an investigation is concluded when, for example, after a negative finding of dumping or

injury, it is determined that protective action is not necessary or when, alternatively, definitive action is taken. On the other hand, a proceeding coltinues until the expiry (repeal or lapse) of protective measures. Thus the Commission has argued that it is appropriate to ensure a consistent use of the terms investigation and proceeding throughout the Regulation.

The U.S. legislation concerning the proceeding after the lodging of a dumping complaint, differs from that of the E.C. It provides for the Commerce Department to make a preliminary determination in a period of 20 days from the date on which the complaint was lodged. The purpose of this preliminary determination is to determine whether a complaint covers the elements necessary to impose duties. Next, a preliminary determination must be made by the International Trade Commission (within 45 days of the date on which the complaint was filed) about whether or not there is a reasonable indication of injury. Then the Commerce Department must make a preliminary determination about whether or not dumping has occurred. This determination has to be completed within 120 days from the date on which the complaint was filed, or 160 days in the case of very complicated cases. If so, an anti-dumping duty is imposed on the product in question. The Commerce Department must make a final determination of dumping within 75 days (or 135 days, if an extension is requested by the exporters).

Finally the definitive injury determination has to be made in a period of 120 days after the preliminary determination, or 45 days after the final dumping determination. If the preliminary dumping determination was negative, this period has to be no more than 75 days.*73

Article 8

Confidentiality

1. Information received in pursuance of this Regulation shall be used only for the purpose for which it was requested.

2. (a) Neither the Council, nor the Commission, nor Member States, nor the officials of any of these, shall reveal any information received in pursuance of this Regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier.

   (b) Each request for confidential treatment shall indicate why the information is confidential and shall be accompanied by a non-confidential summary of the information, or a statement of the reasons why the information is not susceptible of such summary.

3. Information will ordinarily be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4. However, if it appears that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the information in question may be disregarded.

   The information may also be disregarded where such request is warranted and where the supplier is unwilling to submit a non-confidential summary, provided that the information is susceptible of such summary.

5. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken in pursuance of this Regulation are based, or disclosure of the evidence relied on by the Community authorities in so far as necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interest of the parties concerned that their business secrets should not be divulged.

As we stated earlier, the Regulation provides special treatment for confidential information. These provisions are contained in Article 8 of the Regulation, mentioned above.

The handling of this confidential information is essential for the effective functioning of the Commission, especially in cases in which it has to use a third country as country of comparison in order to compare the prices in question. In these cases the Commission, in order to obtain the permission to investigate the third country's market, has to give guarantees that the findings of the investigation will not be used in the future, either for the purpose of an anti-dumping investigation against that third country, or even for an investigation by another Community department, for example the Competition Department. Furthermore a lot of the information received by the Commission during each investigation, concerning, for example, price lists, commissions, costs, quantities exported, etc., is commercially confidential and its release by the Commission into the public domain could financially harm the suppliers. For those reasons the Reulation, in Article 8, contains very clear guidance about the handling of this kind of information.

In section 8.2.(a) it is provided that neither the Commission, the Council or the Member-States, nor their officials, could reveal any information for which confidential

treatment has been requested by the supplier, without the permission of the supplier. By enacting this clause, the Commission also ensures that the Community or the Member-States or their officials, cannot be held liable for damages where information is released, for which no confidential treatment has been requested by the party supplying that information. It wants also to make clear that the protection of confidential information applies to all persons submitting such information and not only to parties to the investigation.

According to section 8.2.(b), the request for confidential treatment has to be accompanied by a non-confidential summary of the information. In cases where the supplier believes that the information provided by him cannot be summarised, he has to write a statement to the Community, explaining the reasons why the information could not be summarised. However, if the Commission disagrees, and if the supplier still refuses, the Commission can disregard it. The Commission may also disregard information, when it appears that the request for its confidentiality is not warranted, and the supplier refuses either to withdraw the request in question or to summarise the information in a public form.

The U.S. provisions on confidentiality seem to be similar to the E.C.'s. Thus the American legislation provides that confidential information may be inspected pursuant to

a protective order by the attorney or another representative of a party.

The order must specify that the attorney or representative is not to divulge the information, or use it for purposes other than those related to the investigations.*74

Article 9

Termination of proceedings where protective measures are unnecessary

1. If it becomes apparent after consultation that protective measures are unnecessary, then, where no objection is raised within the Advisory Committee referred to in Article 6 (1), the proceeding shall be terminated. In all other cases the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the proceeding be terminated. The proceeding shall stand terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

2. The Commission shall inform any representatives of the country of origin or export and the parties known to be concerned and shall announce the termination in the Official Journal of the European Communities setting forth its basic conclusions and a summary of the reasons therefor.

Where, as a result of its investigations, the Commission decides, after consultations with the Advisory Committee, that protective measures are either unnecessary or against the Community's interests, and provided that no objection is raised within the Advisory Committee, then the proceedings shall be terminated.

If, however, one or more Member-States have expressed some objections about the Commission's decision to close the case, the Commission must submit to the Council, immediately, a report on the results of the consultation, together with a proposal that the proceedings be terminated. Then, and

if the Council, within one month and acting by a qualified majority, has not decided otherwise, the proceeding shall stand terminated. It has to be noted that under the ECSC's anti-dumping legislation there are no provisions covering cases where objections are expressed by the Member-States against the Commission decision to close a case.

Following, the Commission shall inform the interested parties about the termination of the proceeding and announce it in the O.J., together with the reasons for the termination.

Article 10

Undertakings

1. Where, during the course of an investigation, undertakings are offered which the Commission, after consultation, considers acceptable, the investigation may be terminated without the imposition of provisional or definitive duties.

   Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made under Article 7 (4) (c) (iii). The termination shall be decided in conformity with the procedure laid down in Article 9 (1) and information shall be given and notice published in accordance with Article 9 (2). Such termination does not preclude the definitive collection of amounts secured by way of provisional duties pursuant to Article 12 (2).

2. The undertakings referred to under paragraph 1 are those under which:

   (a) the subsidy is elininated or limited, or other measures concerning its injurious effects taken, by the government of the country of origin or export; or

   (b) prices are revised or exports cease to the extent that the Commission is satisfied that either the dumping margin or the amount of the subsidy or the injurious effects thereof, are eliminated. In case of subsidization the consent of the country of origin or export shall be obtained.

3. Undertakings may be suggested by the Commission, but the fact that such undertakings are not offered or an invitation to do so is not accepted, shall not prejudice consideration of the case. However, the continuation of dumped or subsidized imports may be taken as evidence that a threat of injury is more likely to be realised.

4. If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the Commission, after consultation, so decides or if request is made, in the case of dumping, by exporters representing a significant percentage of the trade involved or, in the case of subsidization, by the country of origin or export. In such a case, if the Commission, after consultation, makes a determination of no injury, the undertaking shall automatically lapse. However, where a determination of no threat of injury is due mainly to the existence of an undertaking, the Commission may require that the undertaking be maintained.

5. The Commission may require any party from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a violation of the undertaking.

6. Where an undertaking has been withdrawn or where the Commission has reason to believe that it has been violated and where Community interests call for such intervention, it may, after consultations and after having offered the exporter concerned an opportunity to comment, apply provisional anti-dumping or countervailing duties forthwith on the basis of the facts established before the acceptance of the undertaking.

During the course of an anti-dumping/anti-subsidy investigation, it can happen that the parties accused in the complaint propose to the Commission some kind of conciliatory arrangement, the so-called undertaking.

If the Commission, after consultation with the Advisory Committee, considers these undertakings acceptable, the

investigation may be terminated without the imposition of provisional or definitive duties.

In the previous anti-dumping Codes there were no time limits placed on the offerings of an undertaking. Thus, the accused parties tended to wait until the last moment, in order to be informed about the result of the Commission's investigations and then, if they considered that this solution would be more advantageous for them than an anti-dumping duty, they would offer an undertaking. This method cost the Commission in undue delays and administrative inconvenience. So, in the new anti-dumping Code of 1984 (section 10.1) it is stated that, except for exceptional circumstances, undertakings may not be offered later than the end of the period during which representation may be made (as defined in Article 7 of the Regulation).

If, however, there are any objections within the Advisory Committee against the Commission's decision to accept an undertaking, then the provisions dealing with the termination of the proceeding (Article 9 or the Regulation) are followed.

Up to 1979 the Code stated that the Commission could not accept an undertaking and, at the same time, collect any provisional duties imposed on the product in question.

In 1979, however, the Council (taking guidance from the Japanese ball bearings case in the Court of Justice) amended Regulation 459/68*75 so that this possibility was allowed, in order to discourage dumping. Thus now (in section 10.1) the Regulation provides that the termination of a proceeding, because of the acceptance by the Commission of an undertaking offered, does not preclude the definitive collection of amounts secured by way of provisional duties.

In sections 10.2(a) and (b), the Regulation specifies the necessary characteristics for an undertaking to be acceptable by the Commission. Most of the time the undertakings are offered by the accused parties. However they can be also suggested by the Commission. In this case any refusal by the parties involved, to accept it, shall not prejudice consideration of the case.

Usually when the Commission accepts an undertaking, the relevant investigation is automatically closed. However there are provisions in the Regulation (section 10.4) about the cases where, although the undertakings in question are accepted, the investigation of injury shall, nevertheless be completed. According to the Regulation, the Commission decides for this continuation of the investigation either by its own initiative, or after a relevant request by parties involved. If the final result is the

determination of no injury, then the Commission decides, after consultation with the Advisory Committee, that the undertaking shall lapse. However, in cases where the Commission has reason to believe that the absence of injury is mainly due to the existence of the undertaking in question, then the undertaking may be maintained.

The above provision is rarely applied as, in practice, the Commission always tries to determine the existence of injury before it accepts any undertakings.

The U.S. legislation considers that an undertaking (a suspension agreement as it is called in the U.S.) is possible only if exporters representing 85% of the exports under investigation accept it.*76 This provision makes, in practice, such agreements extremely rare, whereas the Community frequently uses the undertaking solution to close a case. As in Table 4 and Annexes E and F show, during the period 1980/83, from 159 cases, in which all the elements (dumping, injury, causality, etc.) which the Community considers as necessary in order to take protective measures, had been ascertained by the Commission, 114 cases (71.7%) were terminated by the acceptance of an undertaking, and only 45 (28.3%) by the imposition of an anti-dumping duty.

By acting in this way, the Commission seems to have the intention of proving its good faith, as well as avoiding

any unpleasant economic or political repercussions, from the wide use on its part of anti-dumping/anti-subsidy duties. Furthermore it is trying to refute any possible accusation that a policy of protectionism is applied.

There are, however, cases where the Commission hesitates to accept an undertaking offered, even when the proposed terms seem to be in the interests of the Community. This usually happens in cases where the Commission, based on its previous experience, believes that the party offering the undertaking in question has violated its obligations in the past and where there is danger that it will do so again.

When an undertaking has been withdrawn or where the Commission has reason to believe that it has been violated, and where the Community interests call for such intervention, it may, after consultations and having offered the exporter concerned an opportunity to comment, apply provisional anti-dumping or countervailing duties forthwith "on the basis of the facts established before the acceptance of the undertaking" (section 10.6).

This clause differs from that in the previous legislation, which provided application of provisional measures, based on best information available. By using as the basis of its calculations the facts established before the

acceptance of the undertaking, the Commission can impose a protective measure in a shorter time period than if it used the previous provision. However the time between the violation of the undertaking and its discovery by the Commission, which would have as a consequence the imposition of a duty, could still cause great injury to the Community industry. This fear is often expressed by Member-States, when they disagree with a Commission's decision to accept an undertaking.

Article 11

Provisional duties

1. Where preliminary examination shows that dumping or a subsidy exists and that there is sufficient evidence of injury caused thereby and the interests of the Community call for the intervention to prevent injury being caused during the proceeding, the Commission, acting at the request of a Member State or on its own initiative, shall impose a provisional anti-dumping or countervailing duty. In such cases, release of the products concerned for free circulation in the Community shall be conditional upon the provision of security for the amount of the provisional duty, definitive collection of which shall be determined by the subsequent decision of the Council under Article 12 (2).

2. The Commission shall take such provisional action after consultation or, in cases of extreme urgency, after informing the Member States. In this latter case, consultations shall take place 10 days at the latest after notification to the Member States of the action taken by the Commission.

3. Where a Member State requests immediate intervention by the Commission, the Commission shall within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping or countervailing duty should be imposed.

4. The Commission shall forthwith inform the Council and the Member States of any decision taken under this Article. The Council, acting by a qualified majority, may decide differently. A decision by the Commission not to impose a provisional duty shall not preclude the imposition of such duty at a later date, either at the request of a Member State, if new factors arise, or on the initiative of the Commission.

5. Provisional duties shall have a maximum period of validity of four months. However, where exporters representing a significant percentage of the trade involved so request or, pursuant to a notice of intention from the Commission do not object, provisional anti-dumping duties may be extended for a further period of two months.

6. Any proposal for definitive action, or for extension of provisional measures, shall be submitted to the Council by the Commission not later than one month before expiry of the period of validity of provisional duties. The Council shall act by a qualified majority.

7. After expiration of the period of validity of provisional duties, the security shall be released as promptly as possible to the extent that the Council has not decided to collect it definitively.

When the Commission's preliminary examination shows that dumping or subsidies exist, as well as Community injury caused thereby, and if the Community interests call for such intervention, then the Commission shall impose a provisional duty, acting in accordance to section 11.1 of the Regulation.

According to the Community*77 the main reason for the imposition of a provisional duty is to prevent the massive importation of dumped products during an anti-dumping investigation in anticipation of the imposition of a definitive duty, and thereby to induce immediate increases in the prices of those products. The provisional duties usually do not exceed the margins of the provisionally estimated dumping and injury.

According to section 11.2., the Commission usually takes such provisional action after consultations in the Advisory Committee. However, in cases of extreme urgency, where rapid decisions have to be taken in order to prevent further Community injury the Commission can impose a provisional duty simply by informing the Member-States. In this latter case, consultations must take place 10 days at the latest, after notification of the action taken by the Commission.

The provisional duties usually have a maximum duration of four months. However, they can be extended for a further period of two months. That usually happens when the exporters are of the opinion that a further two months extension period would allow the Commission to make a more advantageous assessment (for them) of their behaviour. On the other hand the Commission, facing a very complicated case (as for example a case in which a number of interested parties are involved) could use this two month extension to complete its investigations. That is, provided that the exporters involved do not object.

After the period of validity of provisional duties has expired, any security must be released as soon as possible, provided of course that the Council has not decided otherwise.

The Regulation does not provide any specific time limit, after which (and provided that the provisional duty has expired and the Council has not decided otherwise) the Member-States authorities should release the amount collected. That sometimes causes confusion for the Member-States customs authorities who usually send written questions to the Commission, requesting advice.

To date there has been only one case where the provisional duties have expired without action being taken by the Commission, either to impose a duty or to close the case. That happened in the case of Dead Burned Natural Magnesite from China and North Korea.*78 In this case the Commission, although it had decided that all necessary evidence (such as dumping, injury, causality, etc.) to take definitive measures had been established, nevertheless faced strong opposition from some Member-States, who believed that this decision would be contrary to their interests. As a result the case of Dead Burned Magnesite still remains open, two years after the expiration of the provisional duty.

Article 12

Definitive action

1. Where the facts as finally established show that there is dumping or subsidization during the period under investigation and injury caused thereby, and the interests of the Community call for Community intervention, a definitive anti-dumping or countervailing duty shall be imposed by the Council, acting by qualified majority on a proposal submitted by the Commission after consultation.

2. (a) Where a provisional duty has been applied, the Council shall decide, irrespective of whether a definitive anti-dumping or countervailing duty is to be imposed, what proportion of the provisional duty is to be definitively collected. The Council shall act by a qualified majority on a proposal from the Commission.

   (b) The definitive collection of such amount shall not be decided upon unless the facts as finally established show that there has been dumping or subsidization, and injury. For this purpose, 'injury' shall not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury.

When the Commission has finally established that there is dumping or subsidization during the period under investigation and that injury had been caused thereby, and if the interests of the Community call for Community intervention, then a definitive duty can be imposed by the Council, according to the provisions of the Regulation (Article 12).

The above phrase: during the period under investigation, was first added in the new anti-dumping Regulation of 1984, in order to stress that it is the dumping or subsidization established at the time of the investigation (and not earlier or later) which determines what definitive action shall be taken.

In cases where during the proceedings, a provisional duty has already been imposed, the Council must decide, acting by a qualified majority and on a proposal from the Commission (and irrespective of whether a definitive anti-dumping or countervailing duty is to be imposed), which proportion of this provisional duty is to be collected. Usually, as well as in the case of the imposition of a provisional duty, the amount collected does not exceed the amount of the dumping margin finally estimated, and should be no more than necessary to eliminate the Community injury.

Duties come into effect on the date they are published in the O.J. and, under normal circumstances, they will only be levied upon products entering the Community after their formal imposition.

The date of the entering of a product into the Community, is considered the date when the relevant customs authorities accept a declarant's statement of intention to enter the goods in question for free circulation into the Community.

Article 13

General provisions on duties

1. Anti-dumping or countervailing duties, whether provisional or definitive, shall be imposed by Regulation.

2. Such Regulation shall indicate in particular the amount and type of duty imposed, the product covered, the country or origin or export, the name of the supplier, if practicable, and the reasons on which the Regulation is based.

3. The amount of such duties shall not exceed the dumping margin provisionally estimated or finally established or the amount of the subsidy provisionally estimated or finally established; it should be less if such lesser duty would be adequate to remove the injury.

4. (a) Anti-dumping and countervailing duties shall be neither imposed nor increased with retroactive effect. The obligation to pay the amount of these duties is incurred in accordance with Directive 79/623/EEC.

   (b) However, where the Council determines:

      (i) for dumped products:

         - that there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and

         - that the injury is caused by sporadic dumping i.e., massive dumped imports of a product in a relatively short period, to such an extent that, in order to preclude it recurring, it appears necessary to impose an anti-dumping duty retroactively on those imports; or

(ii) for subsidized products:

- in critical circumstances that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from export subsidies paid or bestowed inconsistently with the provisions of the GATT and of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT, and

- that it is necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on these imports; or

(iii) for dumped or subsidized products:

- that an undertaking has been violated,

the definitive anti-dumping or countervailing duties may be imposed on products in relation to which the obligation to pay import duties under Directive 79/623/EEC has been or would have been incurred not more than 90 days prior to the date of application of provisional duties, except that in the case of violation of an undertaking such retroactive assessment shall not apply to imports which were released for free circulation in the Community before the violation.

5. Where a product is imported into the Community from more than one country, duty shall be levied at an appropriate amount on a non-discriminatory basis on all imports of such product found to be dumped or subsidized and causing injury, other than imports from those sources in respect of which undertakings have been accepted.

6. Where the Community industry has been interpreted as referring to the producers in a certain region, the Commission shall give exporters an opportunity to offer undertakings pursuant to Article 10 in respect of the region concerned. If an adequate undertaking is not given promptly or is not fulfilled, a provisional or definitive duty may be imposed in respect of the Community as a whole.

7. In the absence of any special provisions to the contrary adopted when a definitive or provisional anti-dumping or countervailing duty was imposed, the rules on the common definition of the concept of origin and the relevant common implementing provisions shall apply.

8. Anti-dumping or countervailing duties shall be collected by Member States in the form, at the rate and according to the other criteria laid down when the duties were imposed, and independently of the customs duties, taxes and other charges normally imposed on imports.

9. No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from the granting of any subsidy.

In article 13 the Regulation gives some general provisions and clarifications with regard to duties. Provisional and definitive anti-dumpint/anti-subsidy duties can be imposed either by a Regulation (in the case of EEC products) or by a Recommendation (in the case of coal and steel (ECSC) products). This legislation must indicate, in particular, the amount and type of the duty imposed, the product covered, the country of origin or export, the name of the supplier (if practicable) and the reasoning behind the particular Regulation.

As far as the type of duty is concerned, the Commission selects from the following list of anti-dumping/anti-subsidy duties:

a. Ad valorem duty

This is the most commonly used duty. It is a fixed percentage of the value declared for customs purposes on imports into the Community. It is especially used when there are a number of products or where the relation between import price and normal value of the products is more or less a stable percentage. To give an example, in the case of Oxalic acid from China,*79 the rate of the duty imposed has been a percentage of 34.2% on the basis of the customs value of the product.

b. A specific duty

That is a fixed amount per unit imposed. Specific duties are imposed where ther is a stable relation, in monetary terms, between the export price and the normal value. To give an example, in the case of upright pianos from the USSR,*80 duty has been specified at 284 ECU per piano.

c. The minimum price duty

That is a duty which has to be equal to the difference between the normal value and the Free-at-Community Frontier price.*81

This kind of duty is usually imposed when the Commission wants to remove the injury, or where most of the exporters involved have accepted undertakings with regard to future pricing policies. In this latter case the purpose of the duty is to ensure that the prices resulting from these undertakings are not undermined by other dumped imports. Thus, this king of duty gives an incentive to the exporters to increase their prices to the minimum level established. If the export price undercuts this minimum price, the difference will be collected as an anti-dumping duty. Thus, for example, in the case of Vinyl acetate monomer from Canada, the Commission has stated that: " ... the amount of the duty shall be equal to the amount by which the free-at-Community-frontier net price, before duty, is less than 647 ECU per 1000 kilograms".*82

d. A combination of ad valorem and minimum price duties

This combination is used in cases when both factors justifying the use of ad valorem and minimum price duties appear. For example, in the case of Copper sulphate from Czechoslovakia and the USSR, the Commission stated that: " ... the amount of the duty shall be equal to: either the amount by which the price, per ton net , free-at-Community-frontier, before duty, is less than:

- 507 ECU for copper sulphate originating in Czechoslovakia and
- 475 ECU for copper sulphate origininating in the USSR, or the following percentages of that price:

- 15% for copper sulphate originating in Czechoslovakia, and
- 17% for copper sulphate originating in the USSR, whichever is the higher."*83

As has been mentioned above (during the analysis of Articles 11 and 12) the amount of duty must not exceed the dumping margin provisionally estimated (in the case of provisional duty) or finally established (in the case of definitive duty) or, in the case of subsidies, the amount of the subsidy provisionally estimated or finally established. Furthermore it must be less if such lesser duty would be adequate to remove injury. The U.S. anti-dumping legislation differs on this point, as it states that any duties must eliminate the full amount of the dumping margin or the subsidy, once injury has been established.*84

In clause 13.4.(a), the Regulation provides that anti-dumping and countervailing duties shall be neither imposed nor increased retroactively, and it states that the obligation to pay the amount of these duties is incurred in accordance with Directive 79/623/EEC, which specifies, amongst other things, the determination of the date for the entry of goods into the Community market.

This reference to the above Directive did not exist in the previous anti-dumping legislation. The previous Regulation of 1979 related the date of imposition of the duty on the

imported goods to the date of the entry of the goods for Community consumption. Against this, the new Code refers to a date of imposition of the duty on the imported products, as the date at which those products are released for free circulation into the Community, as specified by the above mentioned Directive. This latter definition is more specific than the old one and thus prevents the various misunderstandings which have taken place between the customs authorities and the importers.

Despite the above mentioned provisions of the clause 13.4.(a), the Regulation provides that definitive duties can be applied retroactively, in some exceptional circumstances. These circumstances are described in section 13.4.(b) of the Regulation and concern dumped products (clause 13.4.b, (i) ), subsidized products (clause 13.4.b,(ii) ) and both, dumped and subsidized products (clause 13.4.b, (iii) ). The scope of these retroactively applied duties, as it is explained in the Regulation, is to protect the Community industry from the effects of some unusual forms of dumping or subsidization. These forms could be dumping which had taken place in the past, sporadic dumping or subsidies, (that means, dumped or subsidized imports taken place in short periods but in quantities injurious for the Community industry), etc. Retroactive definitive duty can also be imposed in the case of the violation of an undertaking.

Next the Regulation gives guidance about the correct handling of the duties where a product is imported from more than one country (section 13.5), when the previously mentioned regional protection is applied (section 13.6), about the application of the rules on the common definition of the concept of origin when a duty is imposed (section 13.7), and about the correct form of collecting the amount of duties by the Member-States (section 13.8).

Finally, in section 13.9, the Regulation confirms that the Commission cannot impose as a double penalty both, an anti-dumping and a countervailing duty on the same product for the same purpose.

Article 14

Review

1. Regulations imposing anti-dumping or countervailing duties and decisions to accept undertakings shall be subject to review, in whole or in part, where warranted.

   Such review may be held either at the request of a Member State or on the initiative of the Commission. A review shall also be held where an interested party so requests and submits evidence of changed circumstances sufficient to justify the need for such review, provided that at least one year has elapsed since the conclusion of the investigation. Such requests shall be addressed to the Commission which shall inform the Member States.

2. Where, after consultation, it becomes apparent that review is warranted, the investigation shall be re-opened in accordance with Article 7, where the circumstances so require. Such re-opening shall not per se affect the measures in operation.

3. Where warranted by the review, carried out either with or without re-opening of the investigation, the measures shall be amended, repealed or annulled by the Community institution competent for their introduction. However, where measures have been taken under the transitional provisions of an Act of Accession the Commission shall itself amend, repeal or annul them and shall report this to the Council; the latter may, acting by a qualified majority, decide that different action be taken.

The provisions covering the review of the Community's decisions, were first incorporated into the anti-dumping Code of 1979. According to these provisions " ... Regulations imposing anti-dumping or countervailing duties and decisions to accept undertakings, shall be subject to review, where warranted."*85 However, in practice, the

Commission found that during the examination of the reviews it is often unnecessary and inappropriate to extend the review to all questions related to the imposition of duties or the acceptance of undertakings. When, for example, only one exporter, out of many, asks for a review of his case, it is not necessary to review all the undertakings or dumping findings of other exporters.

Thus the Commission decided to amend the above mentioned clause and in the new Code of 1984 it reads: "Regulations imposing anti-dumping or countervailing duties and decisions to accept undertakings, shall be subject to review, in whole or in part, where warranted"(clause 14.1).

The review of a case may be held either at the request of a Member-State or on the initiative of the Commission. The Regulation also gives the right to any other interested party to request and obtain such a review. However, as far as the latter case is concerned, a limitation has been posed by the Commission, by an amendment, in 1982. According to this amendment, an interested party (except a Member-State) could ask for such review, provided that " ... at least one year has elapsed since the conclusion of the investigation".*86

The reason for this amendment was that in many cases, exporters concerned (even those which had not supplied

information during the investigation in question) used to apply to the Commission and request reviews, immediately after the imposition of the duties. This was a clear abuse of the Community procedures and to accede to all those requests would have led to a considerable waste of the Commission's time. So, by using this barrier, the Commission thought that it would provide an incentive to exporters to provide information in a timely manner and to cooperate in investigations.

Although it is too early for any definitive conclusions about the results of the Commission's action, it does seem that the above mentioned abuse has been eliminated, as there was a marked reduction in the reviews opened in 1983. Thus, only ten reviews were opened in the year, compared with twenty-four in 1982 and seventeed in 1981.*87

All requests for a case's review have to be examined by the Commission. When, after consultations with the Advisory Committee, it becomes apparent that a review is warranted, then the investigation must be re-opened and (when the circumstances so require) be examined as a new case, by using the provisions referred to in Article 7 of the Regulation. It is possible, however, to review a duty without formally re-opening the relative proceeding. That can happen where, for example, a review was justified on purely technical grounds. The rise of the U.S. dollar,

for example, could affect some specific anti-dumping duties*88 imposed on American products. In this instance, a rearrangement is required.

A review of a case does not per se affect the measures in operation. These measures can only be affected when the Commission finally decides so (with or without re-opening the investigation) according to the relevant provisions of the Regulation (section 14.3).

Article 15

Sunset provision

1. Subject to the provisions of paragraph 2, anti-dumping or countervailing duties and undertakings shall lapse after five years from the date on which they entered into force or were last modified or confirmed.

2. The Commission shall normally, after consultation and within six months prior to the end of the five year period, publish in the Official Journal of the European Communities a notice of the impending expiry of the measure in question and inform the Community industry known to be concerned. This notice shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with Article 7 (5).

   Where an interested party shows that the expiry of the measure would lead again to injury or threat of injury, the Commission shall carry out a review of the measure. The measure shall remain in force pending the outcome of this review.

   Where anti-dumping or countervailing duties and undertakings lapse under this Article the Commission shall publish a notice to that effect in the Official Journal of the European Communities.

3. Existing anti-dumping or countervailing duties and undertakings shall not lapse under this Article before 1 July 1985.

The recent anti-dumping legislation of 1984 includes, for the first time, provisions about the lapse of anti-dumping/countervailing duties as well as of undertakings.

The previous anti-dumping legislation contained (in Article 9) some relevant provisions in that it stipulated that an anti-dumping duty shall remain in force only as long as, and to the extent necessary to counteract the dumping causing injury. However, it was obvious that there was a need for an article which dealt with redundant anti-dumping/anti-subsidy measures and untertakings.

As a result, in this new Article 15, the Regulation provides that anti-dumping or countervailing duties and undertakings, shall normally lapse after five years from the date on which they came into force, or where last modified or confirmed, and it states (in the relevant section 15.2) the formal procedure which has to be followed for such lapse. It has to be noted here that in the cases where an interested party shows that the lapse of a duty would once again lead to injury, or threat of injury, then the Commission must act to open a review of the measures in question. In this instance the measures remain in force until the final decision of the Commission.

Article 16

Refund

1. Where an importer can show that the duty collected exceeds the actual dumping margin or the amount of the subsidy, consideration being given to any application of weighted averages, the excess amount shall be reimbursed.

2. In order to request the reimbursement referred to in paragraph 1, the importer shall submit an application to the Commission. The application shall be submitted via the Member State in the territory of which the products were released for free circulation and within three months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty.

   The Member State shall forward the application to the Commission as soon as possible, either with or without an opinion as to its merits.

   The Commission shall inform the other Member States forthwith and give its opinion on the matter. If the Member States agree with the opinion given by the Commission or do not object to it within one month of being informed, the Commission may decide in accordance with the said opinion. In all other cases, the Commission shall, after consultation, decide whether and to what extent the application should be granted.

It may happen that, after the termination of a proceeding by the imposition of a definitive anti-dumping or countervailing duty, a change in circumstances arises which has the effect of reducing the margin of dumping or the amount of the subsidy. This change could be, for example, an increase in the export price (in the case of dumping) or the alternation of a subsidy program (in the case of subsidies).

In such circumstances the Regulation provides (in section 16.1) for the possibility of an importer claiming a refund, of all or a part of the duty paid, and lays down a procedure for the processing of such claims, in the relevant section 16.2.

The Regulation does not provide any guidance about the calculation of a refund, and the Commission does not publish any refund decisions either. However it seems that it follows the normal review procedure when it calculates a refund.

Article 17

Final provisions

This Regulation shall not preclude the application of:

1. any special rules laid down in agreements concluded between the Community and third countries;

2. the Community Regulations in the agricultural sector and of Regulations (EEC) No 1059/69(1), (EEC) No 2730/75(2), and (EEC) No 2783/75(3); this Regulation shall operate by way of complement to those Regulations and in derogation from any provisions thereof which preclude the application of anti-dumping or countervailing duties;

3. special measures, provided that such action does not run counter to obligations under the GATT.

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(1) OJ No L 141, 12. 6. 1969, p. 1.

(2) OJ No L 281, 1.11. 1975, p. 20.

(3) OJ No L 282, 1.11. 1975, p.104.

Article 17 of the Regulation discusses the relationship between the E.C. anti-dumping/anti-subsidies provisions and other provisions of E.C. legislation. The main such provisions, referred to in the Regulation, are the Commission Regulations in the Agricultural sector (section 17.2), and any special rules laid down in Community agreements with third countries (section 17.1). These countries could be, for instance, the members of the European Free Trade Association (E.F.T.A.). Special rules normally cover consultation procedures which must take place before the adoption of any protective measures.

Article 18

Repeal of existing legislation

Regulation (EEC) No 3017/79 is hereby repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 19

Entry into force

This Regulation shall enter into force on 1 August 1984.

It shall apply to proceedings already initiated.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

## C. Differences between EEC and ECSC anti-dumping/anti-subsidy legislations

There are two basic differences between EEC and ECSC anti-dumping provisions.

The first difference arises out of the different role played by the Commission in the organisations set up by the Treaty of Rome (EEC) and those set up by the Treaty of Paris (ECSC).

Under the ECSC Treaty, the Commission has a broader and most important decision-making role than under the EEC Treaty. Thus, it is the Commission and not the Council which, in consultation with the Advisory Committee, makes the decisions, not only imposing provisional duties but also for definitive action whether by collecting provisional duties or imposing a definitive duty. It may also terminate the proceedings.

However, although on the one hand a more active role is given to the Commission, on the other the ECSC Decision on anti-dumping, in clause 7(10) (which does not exist in the EEC's anti-dumping Regulation) reserves the right of each Member-State, when there is no action at Community level and after consultation, to examine the matter at the national level and to act independently. However, the Member-State in question is obliged to send the results

of its investigations to the Community and to consult with it, before taking any action.

The second difference arises from the Commission's application of the so-called Basic Price System, as far as it affects the prices of ECSC products.

This system was introduced in the Community on 31/12/77, at a time when European industry had faced enormous problems in the field of iron and steel products and it involves the compilation of a list of basic prices for steel products. The list is published annually in the 'Official Journal of the European Communities' and revised, usually, at the end of the year.

The ECSC anti-dumping legislation, in Article 2,6(b)*89 (which has no parallel in the EEC's anti-dumping legislation) permits " ... where several suppliers from one or more countries are involved and when it is deemed appropriate to establish a basic price system ...", the establishment of the normal value from this basic price. However, it states that, where it becomes apparent that such method of determination would produce a significantly different result, the normal value shall be determined by using the regular method of determining normal value. This latest clause was the result of a change to the ECSC anti-dumping legislation, established by Recommendation No 3025/82/ECSC in order to bring the Communities rules into conformity with a recent GATT interpretation.*90

FOOTNOTES

1. Signed in March 1957 by Belgium, France, Germany, Netherlands, Italy and Luxembourg.

2. Decision of the Council on a working programme in the field of Common Trade Policy, O.J. 2353/62.

3. Proposal of the Commission of May 5 1965, published in O.J. p.989/1966 and in special supplement to the EEC Bulletin 1965, No. 7,9.

4. Belgium: Law of September 11, 1962, Moniteur Belge of October 27, 1962.
Netherlands: Law of July 5, 1962, Staatsblad No. 295.
Luxembourg: Law of August 5,1963, Lux.Memorial of August 10, 1963.

5. Germany: Para 21, Customs Law of August 30 1966, $BGB_1$ I, 542.
France: Art 19 bis, Customs Law.
Italy: Law No. 339 of January 11,1963, Gazetta Uffiiale No. 40 of February 12,1963, 761.

6. See speech of Senator Curtis before the American Congress. Congressinal Record-House, June 1, 1965, 11646.

7. J. F. Beseler: 'EEC Protection Against Dumping and subsidies'. C.M.L.R. 6, 1968-69.

8. Article 113 of the Treaty of Rome in fact proposed that from the end of the transitional period, a common commercial policy should be established: 'based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff

and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in case of dumping and subsidies'.

9. Article 131, in the case of Greece.

10. Official Journal of the European Communities (O.J.) L 93, 17/4/68.

11. O.J. L 206, 27/7/73.

12. O.J. L 160, 30/6/77.

13. O.J. L 196, 2/8/79.

14. O.J. L 114, 5/5/77.

15. Recommendations 3004/77(ECSC), 28/12/77, O.J. L 352, 28/12/77 and 158/79(ECSC), 29/1/77, O.J. L 21, 31/1/79.

16. O.J. L 339, 31/12/79.

17. O.J. L 339, 31/12/79.

18. O.J. L 178, 22/6/82.

19. O.J. L 317, 13/11/82.

20. O.J. L 201, 30/7/84.

21. O.J. L 201, 30/7/84.

22. 'Competition Policy towards Enterprises', EEC, Competition Department report, 1977, p.35.

23. Chapter 1, A: The definition.

24. O.J. L 141, 12/6/69.

25. O.J. L 281, 1/11/75.

26. O.J. L 282, 1/11/75.

27. In order to the Regulation 2176/84 (EEC) been conformed to the relevant terminology of Council Directive 79/695(EEC).

28. O.J. L 196/79.

29. O.J. L 116, 28/4/81.

30. 19 C.F.R.§353 4(a).

31. For further information about U.S. anti-dumping legislation, see W. Davey: 'An Analysis of E.C. Legislation Relating to Anti-Dumping and Countervailing Duty' (Forham Corporate Law Institute 1983) and H. D. Assmann: 'Decision-making under the EEC and U.S. Anti-Dumping Laws' (Frankfurt 1981), which have been the main sources of information concerning U.S. legislation.

32. As, for example, in the case of saccharin and its salts, originating in the Republic of Korea (O.J. L 331, 9/12/80), as the domestic sales were considered as not having been made in the normal course of trade. Thus the export prices to the Community were compared by the Commission with the weighted averages of each exporter's sales to Australia and the U.S.A.

33. O.J. L 135, 22/5/81.

34. O.J. L 231, 2/9/80.

35. O.J. L 152, 10/6/83.

36. Court of Justice of the European Communities, Case Nr. 113/77, 29/3/79.

37. Council Regulation (EEC) No 2170/73 of 31/7/73, O.J. L 224, 13/8/73.

38. O.J. L 339, 1/19/82, p.38.

39. O.J. L 11, 16/1/82.

40. O.J. L 371, 30/12/82.

41. 19 C.F.R. § 353 (b).

42. W. Davey, op.cit. p.13.

43. 19 C.F.R. § 353.21.

44. O.J. L 135, 22/5/81.

45. Answer given by Mr. Haferkamp, on behalf of the Commission, to a written question. O.J. C 92, 13/4/82, p.37.

46. 19 C.F.R. § 353 10(a).

47. 19 C.F.R. § 353 10(b).

48. 19 C.F.R. § 353 10(c).

49. O.J. L 12, 18/1/82.

50. O.J. L 133, 20/5/81.

51. To give an example, 'ex factory' (or 'ex-yard') level concerns the value of the product as it is cited in the 'yard' of the producing industry, without the addition of any other kind of charges. 'Free-On-Board' (F.O.B.) concerns the 'ex-factory' value plus transportation cost and other charges up to the board of the transporting ship. 'C.I.F.' means 'ex-factory' value plus Costs, Insurance and Freight up to the place of destination, etc.

52. O.J. L 331, 9/12/80.

53. 19 C.F.R. § 353. 16.

54. See, for example, the case of Magnesite from China and North Korea (O.J. L 371, 30/12/82) which is described in the following (section F: Like product).

55. O.J. L 11, 16/1/82.

56. O.J. L 23, 26/1/83.

57. C.F.R. § 353. 15(c).

58. Ivo Van Bael, Jean-Francois Bellis: E.E.C. Anti-Dumping and other Protective Laws. pp95-97.

59. O.J. L 371, 3/12/82.

60. O.J. L 196, 2/8/76.

61. C.F.R. § 353.

62. O.J. L 364, 19/12/81.

63. U.S. Trade Agreements Act, Section 771(7)(a).

64. U.S. Trade Agreements Act, Section 771(7)(e).

65. Ivo Van Bael refers, as an example, to a statement by Dr. Beseler, then Head of the Commercial Defence Division DG-I, at the CEFIC Anti-Dumping Seminar, held in Brussels on 2-3 April 1981, suggesting that a share of production of 25% or more would be regarded as acceptable. (I.V. Bael, J.F. Bellis, op.cit.)

66. Although in very urgent cases, as for example when an enormous volume of dumped imports are expected to arrive over a short term, the consultations may take place after the duty has been imposed.

67. Reg. Article 7,(a), (b).

68. O.J. L 231, 2/9/80.

69. O.J. L 364, 19/12/81.

70. See, for example, the case of the Russian wrist-watches, O.J. L 11, 16/1/82, which has been mentioned earlier (section D: Comparison).

71. 10 C.F.R. § 353.26, 19 C.F.R. 353 and 19 C.F.R. 201.13.

72. Regulation EEC 3017/79, section 7.9.: O.J. 339, 31/12/79.

73. 19 U.S.C. § 1673: a, b(a), b(b)-(c), b(d), d(a),d(b).

74. 19 C.F.R. § 353.30.

75. By Regulation EEC No. 1681/79, O.J. L 196, 2/8/79.

76. 19 C.F.R. § 353.42(c).

77. See Council's submission to the Court, in the Japanese Ball Bearings case (C.M.L.R. 257).

78. O.J. L 371, 30/12/82.

79. O.J. L 148/82.

80. O.J. L 238/82.

81. 'Free-at-Community Frontier' means the 'ex-factory' price (as specified in the analysis of Article 2D of the Code - footnote no. 51 - ) plus the costs and other expenses up to the Community customs.

82. O.J. L 170/84.

83. O.J. L 274/83.

84. C.F.R. § 353.

85. Regulation (EEC) 3017/79, Article 14. O.J. L 339, 31/12/79, p.12.

86. Regulation (EEC) No. 1580/82, O.J. L 178/82.

87. See Annex K of the thesis.

88. See the relevant analysis in the previous Article 13 of the Regulation (General Provisions on Duties).

89. Commissions Decision No 2177/84/ECSC, O.J. L 201, 30/7/84.

90. O.J. L 317, 13/12/82.

# CHAPTER IV

## THE ACTIVITIES OF THE E.C.'s ANTI-DUMPING/ANTI-SUBSIDY COMMITTEE

A. THE FIRST PERIOD (1968-1979)

In April 1968, the Council of the European Communities adopted Regulation 459/68 EEC: on protection against dumping bounties or subsidies, practiced by countries which are not members of the European Economic Community.*1 The following tables (2) and (3) contain a summary of the Commission's activities on dumping and subsidies, which have taken place between 1968 (date of installation of the Code) and 1979 (the date when the new anti-dumping Code came into force. A more detailed table concerning the above mentioned activities can be found in Annex B.

As can be seen by studying the tables, in the first two years of applying the Code, the Commission did not take any action against dumping practices. The Community's first dumping investigation appeared in 1970.

From 1970 to 1976, 23 cases were investigated by the Community. The Commission's attitude to these cases could be characterised as rather soft. In those cases where both dumping and Community injury were apparent, investigations were terminated by the Commission's acceptance of undertakings by the offenders to revise their prices. Thus, no anti-dumping duty was imposed until 1977.

The main reason for the Commission's policy was that, as Community industry during these years was developing

satisfactorily, Community prices remained competitive in spite of the dumping in question. Thus, as no serious Community injury had taken place, the application of any strict protective measures, such as anti-dumping or countervailing duties, on behalf of the Communities, was not really necessary.

The above situation changed from 1977, partly because of the oil crisis, which since 1973 had begun to dangerously affect European trade, and partly because of growing problems in the iron and steel sector. The Commission was thus forced to take stricter measures in order to protect European industry from imports from third countries.

As has already been mentioned, Regulation EEC 459/68 did not apply to the coal and steel sector. So, in 1977, the Commission took measures, in the shape of Recommendation 77/329/ECSC*2, to extend the anti-dumping provisions into the coal and steel sector.

The result of the Commission's new strict policy (also illustrated in tables (2) and (3) were first demonstrated by a sharp rise in the number of the examined cases (from 8 in 1976 to 17 in 1977, 38 in 1978 and 41 in 1979) and secondly by the appearance, for the first time, of the practice of terminating anti-dumping procedures by the imposition of definitive anti-dumping duties, as opposed

to the acceptance of undertakings from the companies involved. Thus, for the first time, in 1977 2 cases were terminated by a definitive anti-dumping duty, followed by 6 cases in 1978 and 5 in 1979.

Table (3) lists the countries concerned in these investigations, and it can be observed that there is a rise in investigations concerning State-Trading countries (from 8 investigations during 1970-77, to 39 in 1978 and 20 in 1979. Japan was the subject of 4 investigations during 1970-1976. Once the Japanese invasion of the Community market began to increase seriously, investigations rose to 5 in 1977, 7 in 1978 and 5 in 1979, whilst those concerning Spain rose then from 3 in 1970-1977, to 8 in 1978 and 7 in 1979. The above investigations concerned, mainly, iron, steel and chemical products.

Thus, by the end of the first period the Commission had begun to consider dumped imports as a serious threat to Community industry. It was about this time that the Commission began to realise that with anti-dumping legislation as it stood, it did not have the ability to effectively protect Community interests from contemporary dumping practices.

TABLE 2

Anti-dumping cases during the period 1969-1979

| | 1969 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Cases in progress at the beginning of the period | - | - | 1 | 3 | 4 | 3 | - | 2 | 4 | 10 | 16 |
| Cases in progress during the period | - | 2 | 5 | 9 | 5 | 5 | 2 | 8 | 17 | 38 | 41 |
| Cases terminated | | | | | | | | | | | |
| - by the imposition of a definitive A-D duty | - | - | - | - | - | - | - | - | 2 | 6 | 5 |
| - without the imposition of a definitive A-D duty | - | 1 | 2 | 5 | 2 | 5 | - | 4 | 5*1 | 16 | 10 |
| Total cases terminated during the period | - | 1 | 2 | 5 | 2 | 5 | - | 4 | 7 | 22 | 15 |
| Cases in progress at the end of the period | - | 1 | 3 | 4 | 3 | - | 2 | 4 | 10 | 16 | 26 |

*1 : special duty in the steel nuts from Taiwan case

A-D : Anti-dumping

Source: The table is outlined by the author, on the basis of the elements contained in Annex B, and taking as a model the similar tables of An.Rep. 1983 (COM(83)519, p.2) and An.Rep. 1984 (COM(84)721, p.2).

TABLE 3

Investigations initiated by country of export

| | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 |
|---|---|---|---|---|---|---|---|---|---|---|
| Australia | | | | | | | | | 5 | |
| Austria | | | | | | | | | 1 | |
| Brazil | | | | | | | 1 | 2 | 1 | 4 |
| Canada | | | | | | | | | 4 | 1 |
| China | | | | | | | | | | 2 |
| Cuba | 1 | | | | | | | | | |
| Finland | | | | | | | | | 3 | 1 |
| Greece | 1 | | | | | | | | 1 | 2 |
| Hong Kong | | | | | | | | | | 1 |
| Japan | | | 2 | 1 | | | 1 | 5 | 7 | 5 |
| Mexico | | | | | | | | 1 | 1 | |
| Norway | | | | | | | | | | 2 |
| Portugal | | | | | | | | | 1 | |
| S. Africa | | | | | | | | 1 | 2 | |
| S. Korea | | | 1 | | 1 | | | 1 | 3 | 2 |
| Spain | | | 1 | | | | | 2 | 8 | 7 |
| State Trading Countries | | | 3 | | | 3 | 2 | | 39 | 20 |
| Sweden | | | | | | | | | 5 | 2 |
| Taiwan | | | 1 | | 1 | | 2 | 1 | | |
| Turkey | | | | | | | | | | 2 |
| USA | | | | | | | | 1 | 5 | 4 |
| Yugoslavia | | 4 | | | | | | | | 1 |
| TOTAL | 2 | 4 | 8 | 1 | 2 | 3 | 6 | 14 | 86 | 56 |

Source: The table is outlined by the author, on the basis of the elements contained in Annexe B, and taking as a model the similar tables of An. Rep. 1983 (COM (83) 519, p.27) and An. Rep. 1984 (COM(84) 721, p.20)

B. THE SECOND PERIOD (1980-1984)

By 1979 the Community market was facing the threat of numerous import penetrations by countries who were suspected of using dumping or subsidization practices, for example, Japan, USA, State-Trading countries, etc. In addition, Community prices, affected by the rising cost of raw materials, gradually became less competitive. The main instrument in existence for the Community defence against these practices, the Anti-dumping Code, consisted of legislation that had been in place since 1968 and which was thus rather out of date.

Under these circumstances the need for the enaction of a contemporary and much more detailed anti-dumping Code, became obvious for the Commission.

This Code,established on the 31st December 1979, functioned, with a number of modifications and additions, until the first half of 1984.

At the beginning of its existence the Code of 1979 had to deal with 26 cases (71 investigations using the Commission's terminology) which remained open from previous years.

The following Tables 4 to 7, as well as Annexes C to Q, illustrate the activities of the Commission during the

period 1980-1983. Most of the elements about the Commission's activities from 1980 and so on, have been taken from the Annual Reports of the Commission, on the Community Anti-dumping and Anti-subsidy Activities (An.Rep), submitted to the Council and the Parliament by the Commission.*3

TABLE 4

Anti-dumping and anti-subsidy investigations during the period 1980-1983

| | 1980 | 1981 | 1982 | 1983 |
|---|---|---|---|---|
| Investigations in progress at the beginning of the period | 71 | 29 | 46 | 53 |
| Investigations initiated during the period | 25 | 48 | 58 | 38 |
| Investigations in progress during the period | 96 | 77 | 104 | 91 |
| Provisional duties imposed during the period | 7 | 10 | 18 | 22 |
| Investigations terminated by: | | | | |
| - imposition of definitive duty | 8 | 10 | 7 | 20 |
| - acceptance of price undertaking | 46 | 7 | 35 | 27 |
| - change in the market situation | 4 | - | - | - |
| - determination of no dumping | 7 | 7 | 3 | - |
| - determination of no subsidisation | 1 | - | - | - |
| - determination of no injury | 1 | 6 | 6 | 8 |
| - other reasons | - | 1 | - | 3 |
| Total investigations terminated during the period | 67 | 31 | 51 | 38 |
| Investigation in progress at the end of the period | 29 | 46 | 53 | 33 |

Source: An.Rep. 1983 (COM(83)519, p.2), An.Rep. 1984 (COM(84)721, p.2).

Initiation of Anti-dumping/Anti-subsidy investigations

Table (4) contains a summary of the Commission's investigations during the period 1980 to 1983.

From the above table it can be seen that in 1982 there was an increase in the number of investigations initiated. The number was about 20% higher than in 1981 and more than double the number initiated in 1980. In 1983 38 investigations were started. This number is lower than the number of investigations initiated in 1981 and 1982. However, the Community's activity in this area remained more than 50% higher than in 1980. More details about investigations initiated during the period 1980-1983 are contained in Annexe C.

Imposition of provisional duties

As we stated above, the usual Commission practice, once a preliminary determination has been completed and dumping or subsidization as well as injury ascertained, is to impose provisional duties, except if the exporter offers a satisfactory price undertaking. This practice has led over the years to a steady increase in the number of provisional duties imposed. Thus, 22 provisional duties were imposed in 1983, compared with 18 in 1982, 10 in 1981 and only 7 in 1980.

Annexe D contains an analytical table listing the provisional duties imposed in the period 1980-1983.

Termination of investigations

Table (4) also lists the number of the investigations terminated each year as well as the reasons for their termination.

The number of the investigations terminated during 1980, is extremely high. This is because of the high proportion of terminations at the beginning of the year. These consisted, mainly, of complicated investigations, concerning steel products, which had been initiated in 1978, as an outcome of the previously mentioned steel crisis and left open as a precautionary measure. These investigations had been closed during 1980, because of steel Agreements (eliminating injury) concluded with the countries in question.

The number of investigations terminated since 1980 has increased constantly from 31 investigations in 1981 to 51 investigations in 1982 and to 58 investigations in 1983, which was the highest achieved in any normal year so far. This increase is a positive record of the Commission's endeavours (mentioned in the latter) during recent years, to shorten the length of the procedure.

As far as the termination of cases by the imposition of a definitive anti-dumping duty is concerned, it can be

observed that, in contrast to the trend between 1980 and 1982, when there was little variation in the number of definitive duties imposed, there is an increase in the definitive duties imposed in 1983. Thus, 20 anti-dumping duties were imposed in this year, compared with 7 in 1982, 10 in 1981 and 8 in 1980.

According to the Commission, the increase in the number of definitive duties imposed during 1983, was due more to extraneous factors such as the administrative inconvenience and impracticability of monitoring undertakings, than to a change in its policy of accepting price undertakings as a possible alternative to the imposition of definitive duties.*4

The Commission often seems to use this undertaking alternative, mainly because such undertakings have proved to be more flexible than duties as a means of eliminating the injury caused by dumping or subsidization. However the Commission's practice is to accept them only if it considers the offer as reliable and that this acceptance would be in the interests of the Community industry. Maybe this explains the fact that from 20 definitive duties imposed during 1983, 7 concerned ECSC products and 9 chemical and allied products (i.e. sectors in which European industry was particularly sensitive).

Table (4) shows that 46 investigations were terminated by the acceptance of price undertakings in 1980, 7 in 1981, 35 in 1982 and 27 in 1983. Although the figures for 1983 represent a marked decrease in the number of price undertakings accepted, compared with the previous years, they still accounted for 57% of the measures applied in 1983. More details about undertakings accepted are provided in Annexe F.

Table (4) also gives information about the number of investigations concluded without the application of any anti-dumping or anti-subsidy measures.

Under the Community's earlier legislation, investigations were sometimes concluded because of changes in the market situation, i.e. when an exporter raised his prices, over a considerable period of time, to levels which eliminated the dumping margin without giving a formal price undertaking.*5 However, under the current legislation, investigations are concluded without any protective measures only when it has been established that the imports were not dumped or subsidized during the period under investigation (Annexe H), or that they had not caused, or threatened to cause, material injury to a Community industry (Annexe I), or when it is not believed to be in the Community's interest to continue the investigation or to apply protective measures, or because the threat of injury has been dealt

with by other Community action, or for other reasons (Annexe J). To give an example, a number of cases, concerning iron and steel products from Spain and South Africa were terminated in 1980 because of the Steel Arrangement concluded with those countries, which involved quantitive limits on their exports to the Community. Furthermore, the accession of Greece into the Communities in 1981, resulted in an end to the anti-dumping measures concerning Greek products, as for instance, steel coils for re-rolling (O.J. C 39,24.2.81).

Breakdown of investigations by country of export and by product

A breakdown of the number of investigations initiated during the period from 1980 to 1983, according to the country of export, is given in Table 5.

From this Table it can be seen that 38 investigations initiated in 1983 concerned exports from 21 countries though for thirteen countries only one investigation was initiated during the year.

The highest number of investigations was initiated in respect of COMECON countries (13) which although lower than those of 1982 (18) and 1981 (27), nevertheless constitutes 34% of the total investigations initiated in 1983, 31% in 1982 and 56% in 1981. As far as individual countries are concerned during 1983, Spain topped the list with 5 investigations, followed by Japan, 4 investigations. On the other hand only one investigation was initiated against the USA. during 1983, compared with 7 in 1982. The main reason for this decline seems to be the sharp increase in the value of the US dollar, which since 1982 has made American products gradually less competitive compared to those from Europe.

Table (6) contains a breakdown, by product, of the investigations initiated during the period 1980-1983. It can be

seen that a fixed percentage of the investigations initiated during this period concern chemical and allied products. Furthermore, whereas in 1980 and 1981 a substantial number of investigations concerned products in the mechanical engineering sector, in 1982 there was a swing to investigations concerning exports to the Community of iron and steel and other metal products. In 1983 there was a marked decline in the number of investigations concerning exports of chemical and allied products. The number was less than half those initiated in 1982 but, as the total number of the investigations initiated during this year also fell, they still represented about 30% of the total for the year.

There was also a fall in investigations concerning iron and steel products and an increase in the number of investigations concerning imports from the mechanical engineering sector, as well as in the number concerning 'other products', including horticultural glass, ceramic tiles, soya bean oil case, etc.

TABLE 5

Investigations initiated by country of export

| | 1980 | 1981 | 1982 | 1983 |
|---|---|---|---|---|
| Argentina | - | - | 1 | 1 |
| Australia | - | - | 1 | - |
| Austria | - | - | 1 | - |
| Brazil | 2 | 1 | 6 | 1 |
| Bulgaria | - | 1 | - | - |
| Canada | 1 | 1 | 1 | 1 |
| China | 1 | 2 | 4 | 2 |
| Czechoslovakia | - | 8 | 5 | 3 |
| Dominican Republic | 1 | - | - | - |
| Egypt | - | - | - | 1 |
| GDR | - | 6 | 6 | 2 |
| Hungary | 1 | 5 | 1 | 1 |
| Iceland | - | - | 1 | - |
| Israel | - | - | 1 | - |
| Japan | 1 | 1 | 3 | 4 |
| Korea South | - | 1 | - | - |
| Korea North | - | - | 1 | - |
| Malaysia | 1 | - | - | - |
| Norway | - | - | 1 | 1 |
| Poland | - | 6 | 1 | 1 |
| Puerto Rico | 2 | - | - | - |
| Romania | - | 4 | 3 | 3 |
| Singapore | 2 | - | - | 1 |
| South Africa | - | - | 1 | 1 |
| Spain | 2 | 1 | 3 | 5 |
| Surinam | - | - | - | 1 |
| Sweden | 1 | - | 1 | - |
| Taiwan | - | - | - | 1 |
| Turkey | - | - | 1 | 1 |
| USA | 8 | 6 | 7 | 1 |
| USSR | 1 | 3 | 3 | 3 |
| Venezuela | - | - | 2 | - |
| Virgin Islands | 1 | - | - | - |
| Yugoslavia | - | 2 | 2 | 3 |
| Zimbabwe | - | - | 1 | - |
| TOTAL | 25 | 48 | 58 | 38 |

Source: An.Rep. 1983 (COM(83)519, p.27),
An.Rep. 1984 (COM(84)721, p.20)

TABLE 6

Investigations initiated by product during the period 1980-1983

| PRODUCT | 1980 | 1981 | 1982 | 1983 |
|---|---|---|---|---|
| Chemical and allied | 12 | 23 | 25 | 12 |
| Textiles and allied | 2 | 1 | 0 | 1 |
| Mechanical engineering | 6 | 18 | 2 | 4 |
| Wood and paper | 3 | 4 | 1 | 1 |
| Iron and Steel (EEC & ECSC) | 1 | 1 | 15 | 4 |
| Other metals | 0 | 0 | 6 | 6 |
| Other | 1 | 1 | 9 | 10 |
| TOTAL | 25 | 48 | 58 | 38 |

Source: An.Rep. 1983 (COM(83) 519, p.28)
An.Rep. 1984 (COM(84) 721, p.21)

Length of the procedure

As far as the length of the procedure is concerned, in spite of the Commission's endeavours to shorten the investigation time, there are many factors which cause delays.

In the first place it must be remembered that these investigations by their very nature are complex affairs, requiring visits to be made to the premises of the Community producers and the importers of the product in question, in order to obtain and verify data, as well as visits to the exporters in the foreign country for the same purpose.

There is also an obligation under the GATT Codes to afford interested parties a reasonable opportunity to make representations, both orally and in writing, during the course of the investigation, whilst equity demands that they be allowed a reasonable time for this purpose.

In addition, account must be taken of the particular characteristics of the decision-making process, provided for under the Communities' legislation in this field, including the need to consult the Advisory Anti-Dumping Committee on the results obtained and the measures considered to be most appropriate to remedy any injury caused.

Often these consultations can become the main reason for a procedure's delay. This is because the Member-States are not affected equally by the cases that they have to consider. The Member-States whose interests are most affected naturally try to win the support of those States who are relatively unaffected and thus indifferent. This leads to the formation of various groups with different opinions about the handling of some particular cases. The Commission is thus obliged to delay the procedure of the case in question, in order to find the best possible solution acceptable to a majority of the Member-States. The reason is that although the Anti-Dumping Committee is only consultative, it nevertheless reflects the likely future reactions of Member-States when the case goes to the COREPER and then to the Council of Ministers. Thus the Commission prefers usually to accept delays at this stage, as it is often easier to reach solutions amongst the more flexible experts in the Anti-Dumping Committee than the Council of Ministers.

These factors arise in addition to the pressures which are also experienced by the investigating authorities of the importing countries when they try to obtain and verify data from all interested parties within a reasonable time period. Finally, there is also a need to produce the Regulations, Recommendations and Decisions in all Community languages, before they enter into effect.

According to the Community estimations,*6 the average time to complete a normal investigation was in 1980 9.6 months. In 1981 there was a reduction to 8.7 months. In 1980 the Commission, trying to eliminate some procedural delays, made some progress towards speeding up its response to complaints. Thus steps were taken to impose a provisional duty more quickly where a preliminary determination of the existence of dumping or subsidization, and injury caused thereof, has been made. Thus during this year the average time taken to impose provisional duties was reduced significantly to four months, compared to a period of seven months for investigations initiated in 1980.

The second way in which the Commission has speeded up its handling of cases is by reducing the number of investigations in progress for more than a year and this is also the maximum period laid down in the GATT Codes, except in special circumstances. By making efforts to reduce the time taken, it has been possible to reduce the number of investigations terminated after more than a year from 32 in 1980, to 7 in 1982.

In 1983 the average length of investigations within the Community was influenced by the number of exceptionally complicated cases*7 for which Community legislation, in conformity with the GATT Codes, recognises the need to extend the duration of the investigation for more than

the maximum period. During 1983 the number of these complicated cases was higher than usual. Thus, the average time taken to complete the normal investigation was only 7.8 months, an average well within comparable times taken by the Community's major trading partners, for example, the U.S.A. Furthermore, protective measures were applied more rapidly and the average time taken to impose provisional duties in the investigations concluded in 1983 was 5.7 months, a rather significant improvement, compared with 6.5 months in 1982.*8

Reviews

As we mentioned above, the Communities legislation, in accordance with GATT Codes, provides for a review, where warranted, of the Regulations and Decisions imposing anti-dumping or countervailing duties, as well as of the Decisions to accept price undertakings. Table (7) contains a summary of the reviews initiated, investigated and terminated during the period 1980 to 1983, together with the number of provisional duties imposed where price undertakings were found to have been violated or had proved unacceptable. More detailed information about the evolution of anti-dumping/anti-subsidy reviews, is provided in Annexes K to Q.

From Table (7) it can be seen that there was a marked reduction in the number of reviews begun in 1983. Thus, only ten were opened in the year, compared with 24 in 1982 and 17 in 1981.

As a result of the reviews completed during 1983 (32), eight price undertakings were replaced by definitive duties and eleven definitive duties were imposed. In addition two definitive duties were replaced by price undertakings, eight price undertakings were amended and three price undertakings were replaced. Finally three provisional duties were imposed during reviews carried out in 1983.

TABLE 7

Reviews of anti-dumping and anti-subsidy measures in the period 1980-1983

| | 1980 | 1981 | 1982 | 1983 |
|---|---|---|---|---|
| Reviews in progress at the beginning of the period | 4 | 1 | 16 | 24 |
| Reviews opened during the period | 3 | 17 | 24 | 10 |
| Reviews in progress during the period | 7 | 18 | 40 | 34 |
| Provisional duties imposed during the reviews | - | 1 | 13 | 3 |
| Reviews terminated by: | | | | |
| - imposition of definitive duty in lieu of price undertaking | - | - | 1 | 8 |
| - amendment of definitive duty | 2 | - | - | 11 |
| - acceptance of price undertaking in lieu of definitive duty | - | - | - | 2 |
| - amendment of price undertaking | - | - | 13 | 8 |
| - repeal of price undertaking | - | - | - | 3 |
| - repeal of national anti-dumping duty | 4 | 1 | - | - |
| - no change of the measures in force | - | 1 | 2 | - |
| Total reviews terminated during the period | 6 | 2 | 16 | 32 |
| Reviews in progress at the end of the period | 1 | 16 | 24 | 2 |

Source: An.Rep. 1983 (COM(83)519, p.7)
An.Rep. 1984 (COM(84)721, p.9)

Cases brought before the Court of Justice

The first case concerning anti-dumping ever brought on appeal before the Court of Justice, was the Japanese Roller Bearing case, initiated on December 13, 1976.*9

After a preliminary investigation followed by the imposition of a provisional anti-dumping duty by the Commission, the four main Japanese producers entered into a voluntary undertaking with the Commission, providing for a progressive price increase to settle the case. However on 3 August 1977, the same day as the Commission had accepted the undertakings given by the Japanese producers, Council Regulation (EEC) No. 1778/77 was published in the O.J., imposing a definitive anti-dumping duty of 15% (whose application was however suspended as long as the price revision undertakings were complied with). Furthermore the Regulation provided for the collection of the provisional duty which had been levied on bearings imported from four major producers and regarding which a bank guarantee had been secured.

On appeal, the Court annulled the said Council Regulation, holding that the Commission and Council cannot have it both ways: "In the light of these provision (i.e. Articles 14(2) and 17 of the then existed Regulation) it is unlawful for one and the same anti-dumping procedure to

be terminated on the one hand by the Commission accepting an undertaking from the exporter, or exporters, to revise their prices at the same time as, on the other, by the imposition on the part of the Council on a proposal of the Commission of a definitive duty".*10 This judgement led the Commission to modify existing legislation in order to allow it the possibility of accepting an undertaking and, at the same time collecting any provisional duties imposed on the product in question.*11

Table (8) illustrates the anti-dumping and anti-subsidy cases before the European Court of Justice, during the period from 1980 to 1983. It can be seen that during 1981 and 1982, seven cases were brought before the Court of Justice. The trend in the Community is towards an increase in litigation and the issue common to all cases on which judgement has been made, or is awaited, is admissibility.

The first judgement on this issue was in the Alusuisse case,*12 where the Court held that an action by unrelated importers into the Community, requesting the Court to declare void an act of the Council imposing anti-dumping measures, was inadmissible on the grounds that the Council Regulation concerned was not of direct and individual concern to the importers. Another judgement came in the Fediol case*13 regarding the question of whether a complainant has the right to open a countervailing procedure.

In this case the Court rules that a Federation of the Community industry concerned could challenge the Court on a Commission decision to reject a complaint.

In the Timex case which still remains open, the Court has to decide about the right of a complainant to challenge a Regulation imposing an anti-dumping duty which the complainant considered to be too low.*14 In the joint cases of Allied and Kaiser versus the Commission,*15 which also remains open, the Court was asked to decide on the admissibility of an appeal against the imposition of provisional measures and the admissibility of an action raised by exporters on whom anti-dumping duties had been imposed. These cases are particularly interesting because a Court decision justifying the complainant's claims, could quite probably lead to an amendment to Community legislation, as for example, happened in the ball bearings case, mentioned at the beginning of this section.

TABLE 8

Anti-dumping and anti-subsidy cases before the European Court of Justice

| YEAR | CASE No. | COMPLAINANT | VERSUS | OUTCOME |
|---|---|---|---|---|
| 1981 | 236/81 | Celanese Chemical Corporation | Council and Commission | Withdrawal by Celanese |
| | 307/81 | Alusuisse Italia Spa | Council and Commission | Judgement given on 6 October 1982 |
| 1982 | 141/82 | Demufert | Commission | Suspended |
| | 191/82 | Fediol | Commission | Judgement given on 4 October 1982 |
| | 239/82*1 | Allied Corporation/Demufert/ Transcontinental | Commission | Not yet reported |
| | 264/82 | Timex Corporation | Council and Commission | Not yet reported |
| | 275/82*1 | Kaiser Aluminium and Chemical Corporation | Commission | Not yet reported |
| 1983 | 53/83 | Allied Corporation/Demufert/ Transcontinental & Kaiser Aluminium and Chemical Corporation | Council | Not yet reported |
| | 87/83 | Zorka Sabac | Council | Withdrawn |
| | 120/83 | Raznoimport | Commission | Withdrawn |

*1 : Those two cases were combined by the Court

Sources: An.Rep. 1983 (COM(83)519, p.35), An.Rep. 1984 (COM(84)721, p.29)

FOOTNOTES

1. O.J. L 93/1968

2. O.J. L 114/5.5.77

3. COM (83) 519, final, 28.9.83 and
   COM (84) 721, final, 17.12.84

4. More detailed tables about definitive duties imposed during 1980-1983, are contained in Annexe E.

5. Those kinds of cases are illustrated in Annexe G.

6. COM (83) 519, final, 29.9.83, pp5-7 and
   COM (84) 721, final, 17.12.84, pp7-8

7. As, for example, the Chinese Magnesite (O.J. L 371, 30.12.82 and the Russian wrist watches (O.J. L 11, 16.1.82), cases previously mentioned.

8. COM (83) 519 and COM (84) 721, op. cit.

9. O.J. C 268/13.11.76

10. Court of Justice of the European Communities, Case No. 113/77, 29.3.79, p.34 17

11. See the previous analysis of 'undertakings' (Chapter III, B.3.)

12. Judgement of 6 October 1982, (1982) ECR 3463.

13. Case 191/82. Judgement dated 4.10.83

14. Case 264/82. This is the Russian wrist watches case, previously mentioned during the analysis on <u>normal value</u> (Chapter III, B.2.)

15. Case Nos. 239/82 and 275/82

# CONCLUSIONS

As has already been argued the main conditions for a firm (or State) to dump (or to subsidize its exports) have been:

(a) Large-scale machine production;

(b) Monopolistic or, at least, oligopolistic control in the domestic market and;

(c) The existence of distinctive protective trade barriers (mainly by tariffs) which separated the dumper's domestic market from his export market.

It should be pointed out that a lot of firms (or countries) which had reached the above conditions, had started, almost immediately, to dump (or to subsidize their exports).

As a consequence it could be stated that the main motive behind any country's support for an international anti-dumping/anti-subsidy legislation, was less a desire to assure fair trading conditions in the international area, and more a fear of the injury which dumping (or subsidies) might cause to their own markets. It is not thus surprising that as soon as a new Anti-Dumping/Anti-Subsidy Act is established, ways are sought to overcome it.

This constant confrontation between dumpers and anti-dumping legislators has largely affected the shape of the inter-

national Anti-Dumping/Anti-Subsidy legislation which, through time, has become wider, more detailed and more restrictive. These improvements of the legislation have been considered as necessary in order to cover any new instances arising whether from the natural evolution of trade conditions, or from inexhaustible efforts made by the dumpers to get around the law.

The E.C.'s Anti-Dumping/Anti-Subsidy mechanism has become, through time, one of the main instruments of the E.C.'s trade defence policy, particularly during periods of economic crisis. The threat of the imposition of anti-dumping measures has also been used effectively as an additional argument for signing bilateral agreements between the Community and countries accused of dumping. To give an example, in 1980, after the conclusion of an agreement between the E.C. and Spain, containing Spanish quantitive restrictions in the field of their exports of iron and steel products into the Community, the Commission closed a number of dumping cases, concerning steel products from Spain, which had left been left open as a precautionary measure.

The threat of a Commission Decision imposing dumping duties on these products, probably influenced the Spanish position during the consultations.

Thanks to a number of changes and improvements, mentioned above, imperfections and obscurities that existed in the previous anti-dumping legislation were significantly eliminated in the recent Code of 1984. However the possibility of a further improvement still remains. Moreover there are provisions, such as the sunset and refund provisions, which could be more clearly detailed. Furthermore, as far as the above provisions are concerned, the Commission could help the interested parties to submit more precisely their claims, by providing them with some kind of fixed questionnaire, using the same method as it does with the submission of the complaint process (see the analysis of the relevant Article (Chapter III, B.4.) as well as Appendix 3).

Compared with the American anti-dumping legislation, the E.C. Code still contains a number of points that are insufficiently defined. The main reason for this seems to be that, unlike the American situation, the E.C. legislation has to deal with the interests of several Member-States, whose market structure differs significantly. Thus it seems that it has chosen to remain more flexible than the Americans, in order to retain the ability to make judgements on a case by case basis.

In order to examine the Code's ability to protect equally all Member-States, we must first take into consideration

the fact that the Commission's policy is designed to gain the approval of the majority of the Member-States before a submission of its proposals is made to the Council. This policy, which is the inevitable effect of the E.C.'s decision-taking system, can sometimes be shown to make difficulties for some Community industries. This happens because the majority of the Community's industries have reached much the same level of evolution, which is considered to be quite advanced.

The Community industries produce products of much the same quality and in almost the same sectors, such as electronics, chemicals, machinery, steel products, etc. Thus it is inevitable that for the majority of the Member-States the main interest is to concentrate on providing on the one hand cheap raw materials to their industries, in order to be as competitive as possible, and on the other hand protecting these products from third country competition. This explains the findings from Table (6) that the main part of the Commission's investigations concern chemicals, machinery, steel products, etc. It explains also the findings from Table (5) that a significant part of the Commission's investigations concerning products from Japan (which are competitive both because of prices and quality), and State-trading countries (which are competitive because of prices).

As an outcome of the Commission's decision-taking system, described above, the Commission's reaction to an anti-dumping case will differ from product to product.

This sometimes affects some interested Community minorities (either States of individual firms), who find out that, in some particular cases, their interests have been protected less satisfactorily than they might have expected.

Finally, as far as intra-Community dumping is concerned, it has to be stressed that current E.C. legislation has been rather imperfect. One of the reasons why stricter legislation has not been introduced in this area, seems to be that it is limited to the transitional period of new Member-States. Thus, as both the Commission's procedure in a dumping case usually takes time, and the duration of the transitional period of each new Member-State is limited, a decision on behalf of the Commission concerning intra-Community dumping, often becomes practically useless, as, finally, its imposition starts acting in a time just before the expiration of the transitional period of the new Member-State in question. Furthermore, the Community injury caused from intra-Community dumping has proved so far to be rather unimportant, compared with the injury caused from dumping by third countries.

Thus, intra-Community anti-dumping legislation, as opposed to the legislation dealing with dumping by third countries, had not, so far, needed to be improved in order to protect Community interests against this particular form of dumping.

This might be affected, by Spanish (mainly) and Portuguese entry to the Community, and this should lead to legislative changes.

The reason is, that (as can be seen from Table (5) ) Spain has been among the main users of dumping and subsidisation practices. Hence, we believe that the Community legislation in the area of intra-Community dumping needs to be reinforced, in order to be more effective, vis-a-vis the above newcomers, during the transitional period.
We suggest therefore, that intra-Community anti-dumping legislation should be improved in both the speed of its decision-taking system, and in specifying in detail what exactly has to be considered as <u>intra-Community dumping</u>, as well as in providing a number of stricter and more detailed measures for the protection of the Community industry from this form of dumping.

# APPENDIXES

# AND

# ANNEXES

# LIST OF APPENDICES AND ANNEXES

APPENDIX 1

## Canadian Anti-dumping Clause of 1907*1

1. In the case of articles exported to Canada of a class or kind made or produced in Canada, if the export or actual selling price to an importer in Canada is less than the fair market value of the same article when sold for home consumption in the usual and ordinary course in the country whence exported to Canada at the time of its exportation to Canada, there shall, in addition to the duties otherwise established, be levied, collected, and paid on such article, on its importation into Canada, a special duty (or dumping duty) equal to the difference between the said selling price of the article for export and the said fair market value thereof for home consumption; and such special duty (or dumping duty) shall be levied, collected, and paid on such article, although it is not otherwise dutiable.

   Provided that the said special duty shall not exceed 15 per cent ad valorem in any case;

   Provided also that the following goods shall be exempt for such special duty, viz:

   (a) Goods whereon the duties otherwise established are equal to 50 per cent ad valorem;

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*1The following clause is a redrafted edition, with only a few substantial changes, of the Canadian general measure applicable to dumping. It is considered as the first anti-dumping legislation and it became the model of all the following national legislation.

(b) Goods of a class subject to excise duty in Canada;

(c) Sugar refined in the United Kingdom;

(d) Binder twine or twine for harvest binders manufactured from New Zealand hemp, istle, or tampico fibre, sisal grass, or sumn, or a mixture of any two or more of them, of single ply and measuring not exceeding 600 feet to the pound.

Provided further that excise duties shall be disregarded in estimating the market value of goods for the purposes of special duty when the goods are entitled to entry under the British Preferential Tariff.

2. 'Export price' or 'selling price' in this section shall be held to mean and include the exporter's price for the goods, exclusive of all charges thereon after their shipment from the place whence exported directly to Canada.

3. If at any time it appears to the satisfaction of the Governor in Council, or a report from the Minister of Customs, that the payment of the special duty by this section provided for is being evaded by the shipment of goods on consignment without sale prior to such shipment, the Governor in Council may in any case or class of cases authorize such action as is deemed necessary to collect on such goods or any of them the same special duty as if the goods have been sold to an importer in Canada prior to their shipment to Canada.

4. If the full amount of any special duty of Customs is not paid on goods imported, the Customs entry thereof shall be amended and the deficiency paid upon the demand of the collection of Customs.

5. The Minister of Customs may make such regulations as are deemed necessary for carrying out the provisions of this section and for the enforcement thereof.

6. Such regulations may provide for the temporary exemption from special duty of any article or class of articles when it is established to the satisfaction of the Minister of Customs that such articles are not made or sold in Canada in substantial quantities and offered for sale to all purchasers on equal terms under like conditions, having regard to the custom and usage of trade.

7. Such regulation may also provide for the exemption from special duty of any article when the difference between the fair market value and the selling price thereof to the importer as aforesaid amounts only to a small percentage of its fair market value.*

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* Statutes of Canada, 1907, 6-7, Edward VII, Vol. I-II, p.134.

## APPENDIX 2

### Illustrative List of Export Subsidies

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.

(e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises. Notwithstanding the foregoing deferral of taxes and charges referred to above need not amount to an export subsidy where, for example, appropriate interest charges are collected.

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g) The exemption or remission in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption. The problem of the excessive remission of value added tax is exclusively covered by this paragraph.

(h) The exemption, remission or deferral or prior stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on goods that are physically incorporated (making normal allowance for waste) in the exported product. This paragraph does not apply to value added tax systems and border tax adjustments related thereto.

(i) The remission or drawback of import charges in excess of those levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported product; provided, however, that in particular cases a firm may use a

quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods as substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, normally not to exceed two years. This paragraph does not apply to value added tax systems and border tax adjustments related thereto.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the costs of exported products or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and denominated at the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms. Provided, however, that if the country of origin or export is a party to an international undertaking on official export credits to which at least 12 original signatories to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT are parties

as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice the country of origin or export applies the interest rate provisions of the relevant undertaking, an export credit practice which in conformity with those provisions shall not be considered an export subsidy.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the GATT.

Notes:

For the purposes of this Annex the following definitions apply:

1. The term 'direct taxes' shall mean taxes on wages, profits, interest, rents, royalties, and all other forms of income, and taxes on the ownership of real property.

2. The term 'import charges' shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in these notes that are levied on imports.

3. The term 'indirect taxes' shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges.

4. 'Prior stage' indirect taxes are those levied on goods or services used directly or indirectly in making the product.

5. 'Cumulative' indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

6. 'Remission' of taxes includes the refund or rebate of taxes.

Source: O.J. L 201, pp15-16 and pp31-32.

## APPENDIX 3

## EEC Questionnaire for Lodging Complaints

This questionnaire is intended to assist the applicant to submit the necessary data. It is in the applicants own interest to give as precise and full answers as possible and to enclose any supporting evidence which he possesses.[1] Documents supplied in confidence should be clearly marked.

### A. GENERAL INFORMATION

1. Complainant:

   - Name and address:

   - Community producers on whose behalf the complainant is acting[2]:

   - Proportion of the total Community industry of the product in question represented by the complainant:

   - If the complainants do not represent the entire Community industry, give the names and addresses of other producers:

2. Product being dumped or subsidised:

   - Precise description of the product (technical characteristics, exact use, etc.):

   - Customs heading:

   - CCT duty:

   - Treatment on importation (free or quantitative restrictions):

   - Community treatment:

   - If none, national treatment in each Member State:

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1. Invoices and other evidence on prices; official or other statistics on production, consumption, imports and exports.
2. As the Commission must contact all producers, exporters and importers involved, it is extremely important that their full addresses should be given correctly.

3. Country of origin:

4. Exporting country:

5. Producer(s) in the country of origin[1]:

   - Name and address:

6. Exporter(s) to the Community[1]:

   - Name and address:

7. Importer(s) into the Community[1]:

   - Name and address:

## B. DUMPING[2]

I. Normal value:

   1. Price on the domestic market of the country of origin (or of the exporting country in the case of indirect dumping) of the product which is the subject of the complaint or of a like product[3,4]:

      a. Unit price:

         - ex factory:

         - if none, at another level of trade, to be specified:

      b. Nature and amount of charges and costs included in the unit price:

         - taxes:

         - packaging:

         - transport and insurance:

         - others:

---

1. See Footnote 2, p.
2. Particulars which, as far as possible, must be supplied in cases of dumping, together with the date to which they refer.
3. In this questionnaire, the term 'like product' means an identical product or, in the absence of such a product another product which has characteristics closely resembling those of the product under consideration. For a like product, give its name and its characteristics.
4. If the product sold on the domestic market is not identical with the product exported to the Community, show what effect this difference has on the price.

c. Rebates or reductions granted:

2. If no representative price on the domestic market of the country or origin exists, give:

a. the export price, from the country of origin to a country which is not a member of the Community, of the product which is the subject of the complaint or of a like product:[1,2,3]

b. or the cost of production in the country of origin of the product which is the subject of the complaint plus a reasonable amount for administration, selling and any other costs and for profits:

c. or, in the case of dumping from a State-trading country, the price on the domestic market of market economy countries which are not members of the EEC, of the product which is the subject of the complaint or of a like product:[1,2,3,4]

II. Export price to the Community of the product which is the subject of the complaint:

1. Unit price (currency stipulated in the sales contract):

- ex factory:

- fob:

- cif free at Community frontier[5]:

2. Nature and amount of charges and costs included in the price shown above:

- taxes:

- packaging:

- transport and insurance:

- within the exporting country:

---

1. See Footnote 3, p.
2. See Footnote 4, p.
3. Particulars to be set out as for item I, 1.
4. It must normally be a country at a stage of development comparable to that of the State-trading country referred to in the complaint.
5. Where prices differ according to the Member State to which the product is exported, give the cif prices free at frontier of each Member State.

- outside the exporting country:

- others:

3. Rebates or reductions granted:

III. Margin of dumping:

Difference between the prices given in I and II. The two prices must be compared on the same basis (ex-factory, fob, or cif). They must also be prices ruling at the same level of trade and be in respect of sales made at as nearly as possible the same time. Due allowance must be made in each case for the differences in conditions and terms of sale, for the differences in taxation, and for other differences affecting price comparability.

## C. SUBSIDIES[1]

- Nature, source and amount of any subsidies granted on production, export or transport of the product:

- Effects of these subsidies on formation of the price of the product which is the subject of the complaint; where applicable, set out evidence in the same way as before dumping.

## D. INJURY

I. Community industry of the product which is the subject of the complaint or of a like product:

1. Evolution of the entire Community production:

| | B | D | DK | F | GB | IRL | I | L | NL | GR | EEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1982 | | | | | | | | | | | |
| 1983 | | | | | | | | | | | |
| 1984 | | | | | | | | | | | |
| 1985 | | | | | | | | | | | |

1. Particulars to be supplied where subsidies are involved.

2. If a single region of the Community is affected and if, therefore, an exceptional regional protection is required, give:

   a. total production of regional producers:

   b. total consumption in the region of the products in question:

   c. share of the market in the region:

      - of the regional producers:

      - of the other Community producers:

   d. sales of the regional producers in the other regions of the Community:

If the particulars submitted pursuant to points a. to b. show that the region constitutes an isolated market and, therefore, a separate industry, the particulars asked for under points II to XII must be completed by data referring to the injury caused to the single region.

II. Level of utilisation of the Community production capacity for these products:

| | B | D | DK | F | GB | IRL | I | L | NL | GR | EEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1982 | | | | | | | | | | | |
| 1983 | | | | | | | | | | | |
| 1984 | | | | | | | | | | | |
| 1985 | | | | | | | | | | | |

III. Imports into the Community[1]:

1. of products which are being dumped or subsidised:

| | B | D | DK | F | GB | IRL | I | L | NL | GR | EEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1982 | | | | | | | | | | | |
| 1983 | | | | | | | | | | | |
| 1984 | | | | | | | | | | | |
| 1985 | | | | | | | | | | | |

1. External trade only.

2. of the same products imported from countries which are not members of the EEC, other than the country exporting the products which are being dumped or subsidised:

| | B | D | DK | F | GB | IRL | I | L | NL | GR | EEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1982 | | | | | | | | | | | |
| 1983 | | | | | | | | | | | |
| 1984 | | | | | | | | | | | |
| 1985 | | | | | | | | | | | |

IV. Community exports[1] of the products which are the subject of the complaint or of like products:

| | B | D | DK | F | GB | IRL | I | L | NL | GR | EEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1982 | | | | | | | | | | | |
| 1983 | | | | | | | | | | | |
| 1984 | | | | | | | | | | | |
| 1985 | | | | | | | | | | | |

V. Consumption of these products in the Community:

| | B | D | DK | F | GB | IRL | I | L | NL | GR | EEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1982 | | | | | | | | | | | |
| 1983 | | | | | | | | | | | |
| 1984 | | | | | | | | | | | |
| 1985 | | | | | | | | | | | |

VI. Share of the Community market[2] held:

a. by the foreign exporters of the products which are being dumped or subsidised:

| | B | D | DK | F | GB | IRL | I | L | NL | GR | EEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1982 | | | | | | | | | | | |
| 1983 | | | | | | | | | | | |
| 1984 | | | | | | | | | | | |
| 1985 | | | | | | | | | | | |

b. by the other exporters of these products:

| | B | D | DK | F | GB | IRL | I | L | NL | GR | EEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1982 | | | | | | | | | | | |
| 1983 | | | | | | | | | | | |
| 1984 | | | | | | | | | | | |
| 1985 | | | | | | | | | | | |

1. See Footnote 1.
2. As a proportion of Community consumption.

VII. Prices charged by Community producers on the Community market under conditions of normal competition (ex-factory, excluding taxes):

| | B | D | DK | F | GB | IRL | I | L | NL | GR | EEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1982 | | | | | | | | | | | |
| 1983 | | | | | | | | | | | |
| 1984 | | | | | | | | | | | |
| 1985 | | | | | | | | | | | |

VIII. Current resale price on the Community market of the product being dumped or subsidised:

| | B | D | DK | F | GB | IRL | I | L | NL | GR | EEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1982 | | | | | | | | | | | |
| 1983 | | | | | | | | | | | |
| 1984 | | | | | | | | | | | |
| 1985 | | | | | | | | | | | |

IX. Difference between these prices[1]:

X. Trend and outlook for turnover and profits in respect of the products in question:

XI. Exployment situation:

XII. Factors other than dumping adversely affecting the position of Community producers, such as: prices of undumped or unsubsidised imports of the products, competition between Community producers themselves, contraction in demand, substitution of other products for products manufactured in the Community, rationalisation measures, effect of the economic situation, etc.:

---

1. The prices must be compared on the same basis (ex-factory, or fob, or cif); they must also be the prices ruling at the same level of trade and be in respect of sales made at as nearly as possible the same time. Due allowance must be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability.

Source: European Communities, I/356/80/EL (with some modifications by the author).

## APPENDIX 4

EEC Questionnaire intended for producers and exporters of products which are the subject of an anti-dumping anti-subsidies complaint

The object of this questionnaire is to assist suppliers of such products to formulate their defence. It is in their own interest to reply as accurately and completely as possible and to attach supporting documents including price lists and invoices. If the information is not communicated to the Community authorities, the latter may make preliminary or final decisions on the basis of the factual data available.

General notes on the questionnaire are as follows:

- Replies should relate to a period of 12 months prior to the first day of the month in which notice of the investigation was given in the Official Journal.
- If there is insufficient space in any section of the questionnaire to provide the details asked for they should be given in an annex to the questionnaire.
- Information and supporting evidence may be given on a confidential basis, where appropriate. Any item supplied on this basis should be clearly marked and a non-confidential summary should be provided.
- Sections C III and C IV of the questionnaire need not be completed unless specifically requested by the Commission or the supplier considers that sales on the internal market do not allow a valid comparison with exports to the EEC.

### A. GENERAL

Total quantities, which were sold, of the product subject of the complaint or of a like product:

a) on the internal market:[1]

---

1. If the product sold on the internal market or for export to non-EEC countries is not identical to the product exported to the EEC, indicate the precise differences in the characteristics of the products.

b) for export to:

- Germany :
- Belgium :
- Denmark :
- France :
- Great Britain :
- Italy :
- Ireland :
- Luxembourg :
- Netherlands :
- Greece :

---

- the Community :

c) for export to non-EEC countries[1]:

B. EXPORT PRICE TO THE COMMUNITY
of the product which is the subject
of the complaint

1. Unit price (indicate the currency specified in the sales contract):

   - ex factory:
   - fob:
   - cif free-at-frontier of the Community[2]:
   - terms of payment:

2. Where the price varies according to certain categories of purchasers, indicate these and the price applicable to each:

3. Reductions or discounts granted:

   a) type:
      - for quantities:
      - other (specify):

---

1. See Footnote, 1, p.
2. In the case of price differences according to country of destination within the EEC, indicate the cif free-at-frontier price for each Member State.

b) amount:

c) precise conditions for granting:

4. Nature and amount of charges included in prices indicated above:

   - taxes:
   - transport:
     - within exporting country:
     - outside exporting country:
   - insurance:
   - other consignment costs (specify e.g. handling, cartage, loading, unloading, storage, customs clearance, etc. and list amounts separately):
   - other charges (specify e.g. advertising, marketing, credit, warranties, after sales service, technical assistance, etc. and list amounts separately):

5. Packaging:

   - indicate whether included in price or charged extra:
   - cost of packaging:

6. Financial relationships between the producer and purchasers in the Communities:

7. Bounties or subsidies received in respect of the manufacture, production, export or transport of the product:

8. Payments to third parties as a result of sales, e.g. royalties or commissions:

   - indicate whether included in prices:
   - specify nature and amount:

9. Agreements to reimburse anti-dumping duties to Community purchasers.

## C. NORMAL VALUE of the product which is the subject of the complaint, or of a like product

I. <u>Sales on the internal market</u>

1. Unit price on the internal market:

   - ex-factory:
   - free to purchaser:
   - terms of payment:

2. If the product sold on the internal market is not identical with that exported to the EEC, indicate the impact of the difference on the price of the product:

3. If the price varies according to certain categories of purchasers, indicate these and the prices applicable to each:

4. Reductions or discounts granted:

   a) type:

      - for quantities:
      - others (specify):

   b) amount:

   c) precise conditions for granting:

5. Nature and amount of charges included in the price indicated above:

   - taxes:
   - transport:
   - insurance:
   - other (specify e.g. advertising, marketing, credit, warranties, after sales service, technical assistance, etc.):

6. Packaging:

   - indicate whether included in price or charged extra:
   - cost of packaging:

7. Financial relationships between the producer and purchasers in the internal market:

8. Payments to third parties as a result of sales e.g. royalties and commissions:

   - indicate whether included in price:
   - specify nature and amount:

II. Profit and loss situation

Please supply audited accounts of your company for last three years and for the following periods with certified translation:

III. Export sales to third countries

1. Unit price in the various export markets:

   - ex-factory:
   - fob:
   - terms of payment:

2. If the product exported to third countries is not identical with that exported to the communities, indicate the impact of the difference on the price of the product:

3. If the price varies according to certain categories of purchasers, indicate these and the price applicable to each of them:

4. Reductions, discounts or rebates granted:

   a) type:

      - quantity:
      - other (specify):

   b) amount:

   c) precise conditions for granting:

5. Nature and amount of charges included in the price indicated above:

   - taxes:
   - transport, within and outside exporting country:
      - within exporting country:
      - outside exporting country:
   - insurance:
   - other (specify e.g. advertising, marketing, credit, after sales service, technical assistance, etc.):

6. Packaging:

   - indicate whether included in price or charged extra:
   - cost of packaging:

7. Financial relationships between the producer and purchasers in the countries of destination:

8. Payments to third parties as a result of sales e.g. royalities or commissions:

   - indicate whether included in price:
   - specify nature and amount:

IV. Cost of production[1]

Cost of production, plus a reasonable amount for administrative, selling and any other costs and for profits, these various components to be itemised:

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1. As a general rule, the addition for profit shall not exceed the profit normally realised on sales of products of the same general category in the domestic market of the country of origin.

EEC Questionnaire for importers of products which are the subject of an anti-dumping complaint

This questionnaire is intended to assist the importers of such products to put forward their point of view. It is in their interest to reply as precisely and as fully as possible and to furnish supporting evidence including price lists and invoices. If the necessary information is not forwarded to the Community authorities, the latter have the power to make either preliminary or final decisions on the basis of the facts available.

General notes on the questionnaire are as follows:

- Replies to sections B and C should relate to a period of 12 months prior to the first day of the month in which notice of the investigation was given in the Official Journal.
- If there is insufficient space in any section of the questionnaire to provide the details asked for, they should be given in an annex to the questionnaire.
- Information and supporting evidence may be given on a confidential basis, where appropriate. Any item supplied on this basis should be clearly marked and a non confidential summary should be provided.

Your reply should be addressed to the Directorate-General for External Relations, Division 'Instruments of Commercial Policy', with clear reference to the product concerned.

A. Quantities imported of the product which is the subject of the complaint (for the last four years)

B. Price when imported into the Community of the product which is the subject of the complaint.

1. Unit Price (currency stipulated in the contract of sale):

   - ex-factory:
   - fob:
   - cif free Community frontier:
   - cif free importer:
   - terms of payment:

2. Reductions or discounts granted:

a) type:

- quantity:
- other (please specify):

b) amount:

c) exact conditions of granting:

3. Nature and amount of charges included in above-mentioned prices:

- duties:
- transport:
  - within the exporting country:
  - outside the exporting country:
- insurance:
- other consignment costs (specify e.g. handling, cartage, loading, unloading, storage, customs clearance, etc. and list amounts separately):
- other charges (specify e.g. advertising, marketing, credit, warranties, after-sales service, technical assistance, etc. and list amounts separately):

4. Packing:

- indicate whether it is included in the price, or extra:
- cost of packing:

5. Financial relationships with the producer:

C. Resale price within the Community of the product which is the subject of the complaint:

1. Unit price:

- departure importer:
- all charges free to wholesaler:
- all charges free to client:
- terms of payment:

2. Reductions or discounts granted:

   a) type:

      - quantity:
      - other (please specify):

   b) amount:

   c) exact conditions of granting:

3. Further processing or assembly within the Community:

   - indicate if it is included in the resale price, or extra:

   - cost of processing or assembly:

4. Packing or repacking within the Community:

   - indicate if it is included in the resale price, or extra:

   - cost of packing:

5. Nature and amount of charges included in the resale price:

   - duties:

   - transport:

   - insurance:

   - other (specify e.g. advertising, marketing, credit, warranties, after sales service, technical assistance, etc. and list amounts separately):

6. Payments to third parties as a result of sales (e.g. royalties, commissions or licence payments):

   - indicate whether included in the price:

   - specify details and amounts:

N.B. In addition to the above questions, the importer is free to comment on any other aspect of the case, in particular the development of Community production and consumption and the development of importation into the Community.

Source: European Communities, I/357/80/EL
(with some modifications by the author).

# ANNEXES

ANNEXE A

Investigations of intra-Community dumping

| Year of Allegation | Allegation by an industry in | against an industry in | Product group |
|---|---|---|---|
| 1973 | Ireland | v U.K. | Paper products |
| | Ireland | v U.K. | Paper products |
| | Ireland | v U.K. | Paper products |
| | Ireland | v U.K. | Paper products |
| | Ireland | v U.K. | Paper products |
| | Ireland | v U.K. | Plastics |
| | Ireland | v U.K. | Chemicals |
| | Ireland | v U.K. | Pet foods |
| 1974 | Denmark | v Germany | Non-ferrous metals |
| 1975 | U.K. | v France | Security products |
| | U.K. | v Italy | Textiles |
| | U.K. | v Ireland | Plastics |
| | U.K. | v Belgium | Wood-based products |
| | U.K. | v Ireland | Textiles |
| 1976 | Denmark | v Germany | Ceramics |
| | U.K. | v Germany | Industrial cleaning equipment |
| | U.K. | v Italy | Domestic appliances |
| | U.K. | v Italy | Plastics |
| | U.K. | v Germany | Specialised building products |
| | U.K. | v Germany | Electronics |
| 1977 | U.K. | v Italy | Bathroom equipment |
| | U.K. | v Netherlands | Hand tools |
| 1981 | U.K. | v Greece | Aluminium foil |
| 1982 | Greece | v Italy | Bathtubs |
| | Greece | v Italy | Ceramic tiles |
| | U.K. | v Greece | Pastry products |

Source: E.C., Competition Report 1977, p.36
(with some additional supplements by the author)

ANNEXE B. Anti-dumping cases 1968-1979

| Year | Product | Country | Initiated (O.J. No.) | Terminated (O.J. No.) | Outcome |
|---|---|---|---|---|---|
| 1970 | Nitrogeneous fertilizers | Greece | C 52/30.4.70 | C123/8.10.70 | Undertaking to revise prices |
| | Sisal cords | Cuba | C133/5.11.70 | C 10/4.2.71 | Undertaking to revise prices |
| 1971 | Explosives | Yugoslavia | C 8/29.1.71 | C 77/30.7.71 | Changed circumstances |
| | Ammonium nitrate fertilizers | Yugoslavia | C103/16.10.71 | C 14/15.2.72 | No defensive measures necessary |
| | Urea | Yugoslavia | C103/16.10.71 | C 51/30.6.73 | Changed circumstances |
| | Ternary complex fertilizers | Yugoslavia | C103/16.10.71 | C138/11.11.74 | Changed circumstances |
| 1972 | Oxalic acid | Japan | C 30/25.3.72 | C 79/20.7.72 | Undertaking to revise prices |
| | Rubber boots | Czechoslovakia | C 30/25.3.72 | C 79/20.7.72 | Undertaking to revise prices |
| | Steel pipes | Spain | C 48/13.5.72 | C123/27.11.72, C135/28.12.72 | Undertaking to revise prices |
| | Ammonium nitrate fertilizers | Romania | C 51/23.5.72 | C123/27.11.72 | Changed circumstances |
| | Urea | Poland | C 51/23.5.72 | C59/21.5.74 | Changed circumstances |
| | Acrylic fibre yarns | Taiwan, Rep. of Korea, Japan | C 79/20.7.72 | C17/4.4.73 with respect to Taiwan, C33/23.5.73 with respect to Korea, C63/4.8.73 with respect to Japan. | Undertaking to revise prices in all three cases |

| Year | Product | Country | Initiated (O.J. No.) | Terminated (O.J. No.) | Outcome |
|---|---|---|---|---|---|
| 1973 | Zip fasteners | Japan | C 51/30.6.73 | C 63/1.6.74 | Changed circumstances (However, in reply to written question nr. 759/76, the Commission stated that undertakings to revise prices had been received.) |
| 1974 | Acrylic socks | Taiwan | C 25/12.3.74 | C 73/29.6.74 | Undertaking to revise prices |
| | Acrylic socks | Republic of Korea | C 25/12.3.74 | C 73/29.6.74 | Undertaking to revise prices |
| 1975 | Polyethylene packing sacks | Hungary | C285/13.12.75 | C183/7.8.76 | Changed circumstances |
| | Tricholorethylene | Poland, G.D.R. | C285/13.12.75 | C183/7.8.76 | Changed circumstances |
| 1976 | Wood panelling | Brazil | C 48/3.3.76 | C138/19.6.76 | No defensive measures necessary |
| | Furazolidine | Hungary | C123/4.6.76 | C138/19.6.76 | Undertaking to revise prices |
| | Cycle chains | Taiwan | C183/7.8.76 | L 45/17.2.77 (provisional duty: L312/ 13.11.76, extension: L331/30.11.76). | Imposition of anti-dumping duty |
| | Steel nuts | Taiwan | C183/7.8.76 | L286/10.11.77 | 'special' duty imposed*1 |
| | Ammonium nitrate fertilizers | Romania | C183/7.8.76 | C 4/7.1.77 | Changed circumstances |
| | Ball-bearings and tapered roller bearings*2 | Japan | C268/13.11.76 | L196/3.8.77 (provisional duty: L 34/ 5.2.77 | Imposition of anti-dumping duty |

| Year | Product | Country | Initiated (O.J. No.) | Terminated (O.J. No.) | Outcome |
|---|---|---|---|---|---|
| 1977 | Steel reinforcing bars | South Africa | C 26/3.2.77 | C 89/14.4.77 | Undertaking to revise prices |
| | Sisal twine | Brazil, Mexico | C 89/14.4.77 | C216/9.9.77 | Undertaking to revise prices |
| | Cycle tubes and tyres | Rep. of Korea | C 89/14.4.77 | - | - |
| | Cycle tubes and tyres | Taiwan | C 89/14.4.77 | - | - |
| | Soya meal | Brazil | C 89/14.4.77 | C298/10.12.77 | Undertaking to revise prices |
| | Housings for bearings | Japan | C257/26.1077 | C129/3.6.78 | Undertaking to revise prices |
| | Quartz crystal units | Japan | C273/12.11.77 | C 35/11.2.78 | Undertaking to revise prices |
| | Tubes of iron or steel | Spain | C278/18.11.77 | C109/2.5.79 | Undertaking to revise prices |
| | Kraft liner | U.S.A. | C304/17.12.77 | L247/9.9.78 (provisional duty: L69/ 11.3.78) | Imposition of anti-dumping duty |
| | Certain sections of iron and steel | Spain | C304/17.12.77 | - | - |
| | Titanium | Japan | C304/17.12.77 | - | - |
| | Hole punching machines | Japan | C312/28.12.77 | C112/13.5.78 | Undertaking to revise prices |
| | Heavy steel forgings | Japan | C310/31.12.77 | - | - |

| Year | Product | Country | Initiated (O.J. No.) | Terminated (O.J. No.) | Outcome |
|---|---|---|---|---|---|
| 1978 | Galvanized steel sheets and plates | Australia, Bulgaria, Canada, Czechoslovakia, G.D.R. Japan, Poland, Spain. | C 19/24.1.78 | C110/11.5.78 with respect to Czechoslovakia, C104/2.8.78 with respect to Australia, C36/9.2.79, with respect to Bulgaria, C216/29.8.79 with respect to Canada, C5/8.1.80 with respect to Spain, Poland. | VRA*3 with Czechoslovakian, Australian, Bulgarian, Spanish, Polish governments. Circumstances changed with respect to Canada Imposition of anti-dumping duty to G.D.R., Japan. |
| | Certain sheets and plates of iron or steel | Australia, Bulgaria, Czechoslovakia, G.D.R., Hungary, Japan, Poland, Romania, Spain. | C 19/24.1.78 | C110/11.5.78 with respect to Spain, C184/2.8.78 with respect to Australia, Hungary, C5/8.1.80 with respect to Czechoslovakia, Japan. | VRA with Spanish, Australian, Hungarian, Czechoslovakian, Japanese governments. Imposition of anti-dumping duty to Bulgaria, G.D.R., Romania and Poland. |
| | Certain Haematite pig iron | Canada | C 19/21.1.78 | C100/25.4.78 | Undertaking to revise prices |
| | Certain sheets and plates of iron and steel | Czechoslovakia, Japan, S.Korea, Spain | C 19/24.1.78 | C230/28.9.78 with respect to S. Korea. | VRA with South Korean government. Spain: imposition of anti-dumping duty. |

| Year | Product | Country | Initiated (O.J. No.) | Terminated (O.J. No.) | Outcome |
|---|---|---|---|---|---|
| | Iron or steel coils for re-rolling | Australia, Bulgaria, Czechoslovakia, Hungary, Japan, Poland, S. Korea, Spain, USSR. | C 19/24.1.78 | C110/11.5.78 with respect to Spain,C5/8.1.80 with respect to USSR,Australia, Czechoslovakia, Japan. C184/ 2.8.78 with respect to Poland,Hungary. | VRA with Spanish,Polish Hungarian, Australian, Czechoslovakian, Japanese governments. Circumstances changed with respect to USSR, S.Korea, Imposition of anti-dumping duty to Bulgaria. |
| | Wire rod | Australia, Czechoslovakia, Hungary, Japan, Poland, Spain. | C 19/24.1.78 | C97/22.4.78 with respect to Japan,C110/ 11.5.78 with respect to Spain C184/2.8.78 with respect to Australia,Poland, Hungary, C5/ 8.1.80 with respect to Czechoslovakia. | VRA with Japanese, Spanish, Australian, Polish,Hungarian, Czechoslovakian governments. |
| | Certain galvanized steel sheets and plates | Finland | C 27/2.2.78 | C 97/22.4.78 | VRA with Finnish government. |
| | Reconstituted wood (wood chipboard) | Spain, Sweden | C 31/7.2.78 | C 75/29.3.78 | Undertaking to revise prices |
| | Angles, shapes and sections of iron or steel | Czechoslovakia, Hungary, Japan, S.Africa, Spain. | C 33/9.2.78 | C97/22.4.78 with respect to S. Africa,C110/ 11.5.78 with respect to Czechoslovakia, C184/2.8.78 with respect to Hungary | VRA with S.African, Czechoslovakian, Hungarian governments. Imposition of anti-dumping duty to Japan, Spain. |

| Year | Product | Country | Initiated (O.J. No.) | Terminated (O.J. No.) | Outcome |
|---|---|---|---|---|---|
| | Certain galvanized steel sheets and plates | Austria | C 41/8.2.78 | C 97/22.4.78 | VRA with Austrian government. |
| | Kraft liner | Sweden, Finland, Canada, Portugal, Australia. | C 54/3.3.78 | C 61/10.3.78 with respect to Finland, Portugal, Sweden, Australia, C69/ 18.3.78 with respect to Canada. | Undertaking to revise prices |
| | Bars and rods of alloy steel | Japan, Spain | C 58/8.3.78 | C 97/22.4.78 with respect to Japan, C110/11.5.78 with respect to Spain. | VRA with Japanese and Spanish governments. |
| | Rosin | Sweden | C 62/11.3.78 | C112/13.5.78 | Undertaking to revise prices. |
| | Certain chemical wood pulp | Canada, Finland, Sweden, USA. | C 89/12.4.78 | C303/19.12.78 | Changed circumstances |
| | Ferrochromium | Republic of S. Africa, Sweden | C 90/13.4.78 | C232/30.9.78 | Imposition followed by undertaking to revise prices. |
| | Winding wire | Spain | C100/25.4.78 | - | - |
| | Kraft liner | USSR | C105/3.5.78 | C174/21.7.78 | Undertaking to revise prices |
| | Polyamide and polyester yarns for tyres, machinery and plant | USA | C114/17.5.78 | C107/28.4.79 | Undertaking to revise prices of polyamide yarn; no finding of dumping with respect to polyester yarn. |

| Year | Product | Country | Initiated (O.J. No.) | Terminated (O.J. No.) | Outcome |
|---|---|---|---|---|---|
| | Plywood, block board, laminate board, batten board and similar laminated wood products; inlaid wood and wood marquetry | Republic of Korea | C129/3.6.78 | C303/19.12.78 | No finding of dumping |
| | Polybutadiene styrene | GDR, Poland, Romania | C196/17.8.78 | C201/10.8.79 | Imports do not pose an immediate threat to EEC industry |
| | Viscose rayon yarn | Greece | C197/18.8.78 | C306/22.12.78 | Undertaking to revise prices |
| | Vinyl acetate | USA | C200/22.8.78 | C109/2.5.79 | Changed circumstances |
| | Filament lamps | Hungary, Poland, GDR, Czechoslovakia | C211/5.9.78 | - | - |
| | Sodium carbonate | Bulgaria, GDR, Poland, Romania, USSR | C277/21.11.78 | C303/4.12.79 | Undertaking to revise prices. USSR: imposition of anti-dumping duty |
| | Fibre building board | Czechoslovakia, Poland, Romania, USSR | C286/30.11.78 | - | - |
| | Herbicide | Romania | C311/29.12.78 | O.J. L121/79 | Imposition |
| | Graphite speroidal pig iron | Brazil | C311/29.12.78 | - | - |
| | Iron or steel coils for re-rolling | Greece | C311/29.12.78 | - | Imposition |

| Year | Product | Country | Initiated (O.J. No.) | Terminated (O.J. No.) | Outcome |
|---|---|---|---|---|---|
| 1979 | Graphite speroidal pig iron | Brazil | C 11/13.1.79 | - | - |
| | Certain tubes of iron or steel | Spain, Romania | C 21/24.1.79 | C109/2.5.79 with respect to Spain | Undertaking to revise prices |
| | Haematite pig iron | Brazil, GDR, USSR | C 35/8.2.79 | - | Brazil: imposition |
| | Haematite pig iron | Canada | C 46/20.2.79 (Reopening: first procedure initiated on 24.1.78 and closed on 25.4.78; reason: review of undertaking) | - | - |
| | Alloy steel wire | Spain | C 48/22.2.79 | C103/25.4.79 | Undertaking to revise prices |
| | Bovine cattle leather | Brazil | C 49/23.2.79 | C152/19.6.79 | VRA with Brazilian government |
| | Fishing nets and netting of polyamides | Norway | C 99/20.4.79 | C161/28.6.79 | Undertaking to revise prices |
| | Steel flanges | Spain | C103/25.4.79 | C201/10.8.79 | Undertaking to revise prices |

| Year | Product | Country | Initiated (O.J. No.) | Terminated (O.J.No.) | Outcome |
|---|---|---|---|---|---|
| | Electric multiphase motors | Bulgaria, Czechoslovakia, GDR, Hungary, Poland Romania,USSR | C103/25.4.79 | - | - |
| | Car tyres | Czechoslovakia, GDR, Romania, Yugoslavia | C107/28.3.79 | - | - |
| | Lithium hydroxine | USSR, USA | C126/19.5.79 | C274/31.10.79 with respect to one US exporter | USA, USSR imposition; undertaking by one US exporter to revise prices |
| | Fibre building board | Sweden, Norway, Finland, Spain | C116/9.5.79 | - | - |
| | Acrylic fibres | Greece, Japan, Spain, Turkey, USA | C146/12.6.79 | C305/5.12.79 with respect to Greece and Turkey, C 2/ 4.1.80 with respect to Spain; L308/ 4.12.79 and C325/ 29.12.79 with respect to USA | No finding of dumping with respect to Greece, Turkey and Spain, undertaking by one US exporter to revise prices, imposition for the others. |
| | Angles, shapes and sections of iron and steel | Romania | C146/12.6.79 | - | - |

| Year | Product | Country | Initiated (O.J. No.) | Terminated (O.J.No.) | Outcome |
|---|---|---|---|---|---|
| | Cotton yarns | Turkey | C196/3.8.79 | - | - |
| | Saccharin and its salt | China, Japan, USA | C207/17.8.79 | - | - |
| | Stereo cassette tape heads | Japan | C207/17.8.79 | - | - |
| | Canned peaches | Greece | C212/24.8.79 | - | - |
| | Mechanical alarm clocks | China, Hong Kong, GDR, Czecho-slovakia,USSR | C212/24.8.79 | - | - |
| | Mounted piezoelectric quartz crystal units | Japan, S.Korea, USA | C216/29.8.79 | - | - |
| | Ball bearings and tapered roller bearings | Japan, Romania, USSR | C235/18.9.79 | - | - |
| | Seamless tubes of non-alloy steels | Spain | C264/19.10.79 | - | - |
| | Saccharin | Republic of Korea | C303/4.12.79. This is in fact a review by the Commission of an anti-dumping duty imposed by the UK during the transition period (1973). | - | - |
| | Studded welded link chain | Spain, Sweden | C303/4.12.79 | - | - |
| | Stainless steel bars | Brazil | C317/18.12.79 | | |

Source: J. F. Bellis. LA REGLEMENTATION ANTI-DUMPING DE LA EEC. (Doctrine) Université Libre de Bruxelles, 24.4.79, pp531-539 and C. Stanbrook, Dumping, European Business Publications, 1980, pp77-86

*1 In this case the Commission did not terminate its enquiry procedure on receipt of undertakings from the exporters to revise the prices, because it wished to establish that such undertakings were being respected. Therefore the Commission, by Decision 77/280/EEC, established a retrospective monitoring of imports in respect of these products. It was found that the undertakings were not being respected and therefore special measures were adopted as provided for in Article 1(2) of Regulation (EEC) No. 459/68. These took the form of a duty additional to the normal customs duty on the said products.

*2 The Japanese Ball-bearings Case which has been referred to frequently, is an example.

*3 V.R.A.: Voluntary Restraint Agreement

ANNEXE C

Anti-dumping and anti-subsidy investigations initiated during the period 1980-1983

| Product | Country of origin | Date of opening |
|---|---|---|
| 1980: | | |
| Chemical fertilizer | USA | O.J.C 47/26.2.80 p2 |
| Polytester yarn | USA | O.J.C129/30.5.80 p2 |
| Paper masking tape | USA | O.J.C130/31.5.80 p3 |
| Vinyl acetate monomer | USA | O.J.C169/ 9.7.80 p2 |
| Mechanical watches | USSR | O.J.C181/19.7.80 p3 |
| Styrene monomer | USA | O.J.C189/26.7.80 p2 |
| Gelatine | Sweden | O.J.C219/27.8.80 p2 |
| Furfural | Dominican Republic | O.J.C219/27.8.80 p3 |
| Furfural | Spain | O.J.C219/27.8.80 p3 |
| Furfural | China | O.J.C219/27.8.80 p3 |
| Potato granules | Canada | O.J.C221/29.8.80 p2 |
| Malleable cast iron tube fittings | Brazil | O.J.C249/26.9.80 p2 |
| Orthoxylene | Puerto Rico | O.J.C286/5.11.80 p3 |
| Orthoxylene | USA | O.J.C286/5.11.80 p3 |
| Paraxylene | Puerto Rico | O.J.C286/5.11.80 p2 |
| Paraxylene | USA | O.J.C286/5.11.80 p2 |
| Paraxylene | Virgin Islands | O.J.C286/5.11.80 p2 |
| Louvre doors | Malaysia | O.J.C286/5.11.80 p4 |
| Louvre doors | Singapore | O.J.C286/5.11.80 p4 |
| Hermetic compressors | Brazil | O.J.C296/14.11.80 p2 |
| Hermetic compressors | Spain | O.J.C296/14.11.80 p2 |
| Hermetic compressors | Hungary | O.J.C296/14.11.80 p2 |
| Hermetic compressors | Japan | O.J.C296/14.11.80 p2 |
| Hermetic compressors | Singapore | O.J.C296/14.11.80 p2 |
| Textured polyester fabrics | USA | O.J.C337/24.12.80 p7 |
| 1981: | | |
| Monochrome portable TV sets | S. Korea | O.J.C 25/5.8.81 p3 |
| Fluid cracking catalysts | USA | O.J.C. 29/10.2.81 p2 |
| Upright pianos | GDR | O.J.C 35/18.2.81 p2 |
| Upright pianos | Poland | O.J.C 35/18.2.81 p2 |
| Phenol | USA | O.J.C 51/10.3.81 p4 |
| Codeine | Czechoslo-vakia | O.J.C 71/1.4.81 p2 |
| Codeine | Hungary | O.J.C 71/1.4.81 p2 |
| Codeine | Poland | O.J.C 71/1.4.81 p2 |
| Codeine | Yugoslavia | O.J.C 71/1.4.81 p2 |
| Plywood | Canada | O.J.C117/20.5.81 p2 |
| Plywood | USA | O.J.C117/20.5.81 p2 |

| Product | Country of origin | Date of opening |
|---|---|---|
| Polypropylene film | Japan | O.J.C155/24.6.81 p2 |
| Polyester cotton bed linen | USA | O.J.C157/26.6.81 p2 |
| Refrigerators | Czechoslovakia | O.J.C162/2.7.81 p3 |
| Refrigerators | GDR | O.J.C162/2.7.81 p3 |
| Refrigerators | Hungary | O.J.C162/2.7.81 p3 |
| Refrigerators | Poland | O.J.C162/2.7.81 p3 |
| Refrigerators | Romania | O.J.C162/2.7.81 p3 |
| Refrigerators | USSR | O.J.C162/2.7.81 p3 |
| Refrigerators | Yugoslavia | O.J.C162/2.7.81 p3 |
| Fibre building board | Bulgaria | O.J.C164/4.7.81 p2 |
| Fibre building board | Hungary | O.J.C164/4.7.81 p2 |
| Upright pianos | Czechoslovakia | O.J.C181/23.7.81 p3 |
| Upright pianos | USSR | O.J.C181/23.7.81 p3 |
| Women's shoes* | Brazil | O.J.C241/19.9.81 p10 |
| Oxalic acid | China | O.J.C241/19.9.81 p11 |
| Oxalic acid | Czechoslovakia | O.J.C241/19.9.81 p11 |
| Oxalic acid | GDR | O.J.C241/19.9.81 p11 |
| Oxalic acid | Hungary | O.J.C241/19.9.81 p11 |
| Cylinder vacuum cleaners | Czechoslovakia | O.J.C245/25.9.81 p2 |
| Cylinder vacuum cleaners | GDR | O.J.C245/25.9.81 p2 |
| Cylinder vacuum cleaners | Poland | O.J.C245/25.9.81 p2 |
| Photographic enlargers | Czechoslovakia | O.J.C271/23.10.81 p4 |
| Photographic enlargers | Poland | O.J.C271/23.10.81 p4 |
| Photographic enlargers | USSR | O.J.C271/23.10.81 p4 |
| Trichlorethylene | Czechoslovakia | O.J.C271/23.10.81 p5 |
| Trichlorethylene | GDR | O.J.C271/23.10.81 p5 |
| Trichlorethylene | Poland | O.J.C271/23.10.81 p5 |
| Trichlorethylene | Romania | O.J.C271/23.10.81 p5 |
| Trichlorethylene | Spain | O.J.C271/23.10.81 p5 |
| Trichlorethylene | USA | O.J.C271/23.10.81 p5 |
| Steel tubes | Romania | O.J.C299/18.11.81 p2 |
| Polyvinylchloride | Czechoslovakia | O.J.C332/19.12.81 p2 |
| Polyvinylchloride | GDR | O.J.C332/19.12.81 p2 |
| Polyvinylchloride | Hungary | O.J.C332/19.12.81 p2 |
| Polyvinylchloride | Romania | O.J.C332/19.12.81 p2 |
| Decabromodiphenylether | USA | O.J.C337/24.12.81 p6 |
| Paracetamol | China | O.J.C337/24.12.81 p6 |

| Product | Country of origin | Date of opening |
|---|---|---|
| 1982: | | |
| Aluminium foil | Austria | O.J.C 8/14.1.82 p5 |
| Aluminium foil | GDR | O.J.C 8/14.1.82 p5 |
| Aluminium foil | Hungary | O.J.C 8/14.1.82 p5 |
| Aluminium foil | Israel | O.J.C 8/14.1.82 p5 |
| Canned pears | Austria | O.J.C 33/10.2.82 p2 |
| Steel sheets | Brazil | O.J.C 70/19.3.82 p3 |
| Methylamines | GDR | O.J.C 79/31.3.82 p2 |
| Methylamines | Romania | O.J.C 79/31.3.82 p2 |
| Acrylonitrile | USA | O.J.C 84/3.4.82 p2 |
| Bisphenol | USA | O.J.C 93/14.4.82 p4 |
| Fibre building board | Brazil | O.J.C113/5.5.82 p3 |
| Thiophen | USA | O.J.C122/13.5.82 p5 |
| Perchlorethylene | Czechoslo-vakia | O.J.C133/25.5.82 p12 |
| Perchlorethylene | Romania | O.J.C133/25.5.82 p12 |
| Perchlorethylene | Spain | O.J.C133/25.5.82 p12 |
| Perchlorethylene | USA | O.J.C133/25.5.82 p12 |
| Ferro-silicon | Venezuela | O.J.C144/8.6.82 p2 |
| Ferro-silicon | Yugoslavia | O.J.C144/8.6.82 p2 |
| Steel sheets* | Brazil | O.J.C146/10.6.82 p4 |
| Sodium carbonate | USA | O.J.C147/11.6.82 p4 |
| Copper sulphate | Yugoslavia | O.J.C161/26.6.82 p2 |
| Canned pears | China | O.J.C276/19.10.82 p7 |
| Canned pears | S. Africa | O.J.C276/19.10.82 p7 |
| Magnesite (caustic-burned) | China | O.J.C162/29.6.82 p2 |
| Magnesite (dead-burned) | China | O.J.C162/29.6.82 p3 |
| Magnesite (dead-burned) | N. Korea | O.J.C162/29.6.82 p3 |
| Steel plates | Brazil | O.J.C197/31.7.82 p3 |
| Steel plates* | Brazil | O.J.C197/31.7.82 p3 |
| Steel broad-flanged beams | Spain | O.J.C207/10.8.82 p4 |
| Steel broad-flanged beams* | Spain | O.J.C207/10.8.82 p4 |
| Barium chloride | China | O.J.C207/10.8.82 p5 |
| Barium chloride | GDR | O.J.C207/10.8.82 p5 |
| Methenamine | Czechoslo-vakia | O.J.C211/13.8.82 p2 |
| Methenamine | GDR | O.J.C211/13.8.82 p2 |
| Methenamine | Romania | O.J.C211/13.8.82 p2 |
| Methenamine | USSR | O.J.C211/13.8.82 p2 |
| Outboard motors | Japan | O.J.C215/19.8.82 p3 |
| Polyethylene | Czechoslo-vakia | O.J.C230/3.9.82 p2 |
| Polyethylene | GDR | O.J.C230/3.9.82 p2 |
| Polyethylene | Poland | O.J.C230/3.9.82 p2 |
| Polyethylene | USSR | O.J.C230/3.9.82 p2 |
| Ferro-silicon | Iceland | O.J.C250/24.9.82 p2 |
| Ferro-silicon | Norway | O.J.C250/24.9.82 p2 |
| Ferro-silicon | Sweden | O.J.C250/24.9.82 p2 |

| Product | Country of origin | Date of opening |
|---|---|---|
| Xanthan gum | USA | O.J.C253/28.9.82 p2 |
| Cellulose ester resins | USA | O.J.C299/16.11.82 p3 |
| Steel coils for re-rolling | Argentina | O.J.C303/20.11.82 p4 |
| Steel coils for re-rolling | Brazil | O.J.C303/20.11.82 p4 |
| Steel coils for re-rolling | Canada | O.J.C303/20.11.82 p4 |
| Steel coils for re-rolling | Venezuela | O.J.C303/20.11.82 p4 |
| Glass textile fibre | Czechoslo-vakia | O.J.C310/27.11.82 p2 |
| Glass textile fibre | GDR | O.J.C310/27.11.82 p2 |
| Glass textile fibre | Japan | O.J.C310/27.11.82 p2 |
| Copper sulphate | Czechoslo-vakia | O.J.C331/17.12.82 p2 |
| Copper sulphate | USSR | O.J.C331/17.12.82 p2 |
| Ferro-chromium | Turkey | O.J.C338/24.12.82 p26 |
| Ferro-chromium | Zimbabwe | O.J.C338/24.12.82 p26 |
| Video tape recorders | Japan | O.J.C338/24.12.82 p27 |
| 1983: | | |
| Unwrought nickel | USSR | O.J.C 31/5.2.83 p3 |
| Unwrought aluminium | Egypt | O.J.C 31/5.2.83 p4 |
| Unwrought aluminium | USSR | O.J.C 31/5.2.83 p4 |
| Unwrought aluminium | Yugoslavia | O.J.C 31/5.2.83 p4 |
| Iron or steel U or I sections | S. Africa | O.J.C 37/10.2.83 p4 |
| Dicumyl peroxide | Japan | O.J.C 46/17.2.83 p5 |
| Sanitary fixtures | CSSR | O.J.C 87/29.3.83 p21 |
| Sanitary fixtures | Hungary | O.J.C 87/29.3.83 p4 |
| Caravans for camping | Yugoslavia | O.J.C 89/31.3.83 p4 |
| Lithium hydroxide | China | O.J.C 98/12.3.83 p3 |
| Synthetic fibre hand knitting yarn | Turkey | O.J.C102/15.4.83 p2 |
| Iron and steel angles, shapes and sections | Romania | O.J.C109/23.4.83 p2 |
| Choline chloride | GDR | O.J.C109/23.4.83 p3 |
| Choline chloride | Romania | O.J.C109/23.4.83 p3 |
| Tube and pipe fittings of malleable cast iron* | Spain | O.J.C142/31.5.83 p3 |
| Exterior panel doors | Taiwan | O.J.C152/10.6.83 p7 |
| Vinyl acetate monomer | Canada | O.J.C180/7.7.83 p3 |
| Ball bearings | Japan | O.J.C188/14.7.83 p8 |
| Ball bearings | Singapore | O.J.C188/14.7.83 p4 |
| Horticultural glass | CSSR | O.J.C194/21.7.83 p4 |
| Horticultural glass | Poland | O.J.C194/21.7.83 p4 |
| Horticultural glass | Romania | O.J.C194/21.7.83 p4 |
| Horticultural glass | USSR | O.J.C194/21.7.83 p4 |

| Product | Country of origin | Date of opening |
|---|---|---|
| Unwrought aluminium | Norway | O.J.C206/2.8.83 p2 |
| Unwrought aluminium | Suriname | O.J.C206/2.8.83 p2 |
| Electronic scales | Japan | O.J.C236/3.9.83 p5 |
| Pentaerythritol | Spain | O.J.C244/13.9.83 p2 |
| Artificial corundum | Yugoslavia | O.J.C261/30.9.83 p2 |
| Artificial corundum | China | O.J.C261/30.9.83 p2 |
| Artificial corundum | CSSR | O.J.C261/30.9.83 p2 |
| Artificial corundum | Spain | O.J.C261/30.9.83 p2 |
| Propan-1-ol (N-propul alcohol) | USA | O.J.C275/14.10.83 p3 |
| Ceramic tiles | Spain | O.J.C282/19.10.83 p4 |
| Soya bean oil cake* | Argentina | O.J.C283/20.10.83 p5 |
| Sensitized paper for colour photographs | Japan | O.J.C292/28.10.83 p2 |
| Concrete reinforcing bars | Spain | O.J.C299/5.11.83 p4 |
| Shovels | Brazil | O.J.C348/23.12.83 p5 |

* Anti-subsidy investigation

Source: An.Rep 1983 (COM(83)512,p12), An. Rep. 1984 (COM (84) 721,p13)

N.B.: An.Rep: Annual Report of the Commission of the European Communities, on the Community's anti-dumping/anti-subsidy activities.

ANNEXE D

Provisional duties imposed during anti-dumping and anti-subsidy investigations in the period 1980-1983

| Product | Country of origin | Regulation No. | Date of Publication (O.J.) |
|---|---|---|---|
| 1980: | | | |
| Electric multi-phase motors | USSR | EEC 451/80 | L 53/27.2.80 p15 |
| Mechanical alarm clocks | GDR | EEC1579/80 | L158/25.6.80 p5 |
| Mechanical alarm clocks | USSR | EEC1579/80 | L158/25.6.80 p5 |
| Seamless steel tubes* | Spain | EEC2019/80 | L196/30.7.80 p34 |
| Chemical fertilizer | USA | EEC2182/80 | L212/15.8.80 p43 |
| Polyester yarn | USA | EEC2297/80 | L231/2.9.80 p5 |
| Vinyl acetate monomer | USA | EEC2999/80 | L311/21.11.80 p13 |
| 1981: | | | |
| Styrene monomer | USA | EEC 384/81 | L 42/14.2.81 p14 |
| Potato granules | Canada | EEC1101/81 | L116/28.4.81 p11 |
| Textured polyester fabrics | USA | EEC1337/81 | L133/20.5.81 p17 |
| Orthoxylene | Puerto Rico | EEC1411/81 | L141/27.5.81 p29 |
| Orthoxylene | USA | EEC1411/81 | L141/27.5.81 p29 |
| Paraxylene | Puerto Rico | EEC1591/81 | L158/16.6.81 p7 |
| Paraxylene | USA | EEC1591/81 | L158/16.6.81 p7 |
| Paraxylene | Virgin Islands | EEC1591/81 | L158/16.6.81 p7 |
| Phenol | USA | EEC2017/81 | L195/18.7.81 p22 |
| Cotton yarn | Turkey | EEC3453/81 | L347/3.12.81 p19 |
| 1982: | | | |
| Mechanical watches | USSR | EEC 84/82 | L 11/16.1.82 p14 |
| Oxalic acid | China | EEC 171/82 | L 19/27.1.82 p26 |
| Oxalic acid | Czecho-slovakia | EEC 171/82 | L 19/27.1.82 p26 |
| Steel tubes | Romania | EEC 250/82 | L 26/3.2.82 p5 |
| Upright pianos | USSR | EEC 871/82 | L101/16.4.82 p30 |
| Steel sheets | Brazil | ECSC1104/82 D | L128/11.5.82 p9 |
| Photographic en-largers | Poland | EEC1958/82 | L212/21.7.82 p32 |
| Photographic en-largers | USSR | EEC1958/82 | L212/21.7.82 p32 |
| Trichlorethylene | GDR | EEC2127/82 | L223/31.7.82 p76 |

| Product | Country of origin | Regulation No. | Date of Publication (O.J.) |
|---|---|---|---|
| Trichlorethylene | Poland | EEC2127/82 | L223/31.7.82 p76 |
| Methylamines | GDR | EEC2243/82 | L238/13.8.82 p35 |
| Steel broad-flanged beams | Spain | ECSC2242/82[D] | L238/13.8.82 p32 |
| Polyvinyl chloride | Czecho-vakia | EEC2568/82 | L274/24.9.82 p15 |
| Copper Sulphate | Yugoslavia | EEC2936/82 | L308/4.11.82 p7 |
| Sodium carbonate | USA | EEC3018/82 | L317/13.11.82 p5 |
| Magnesite (caustic burned) | China | EEC3541/82 | L371/30.12.82 p21 |
| Magnesite (dead burned | China | EEC3542/82 | L371/30.12.82 p25 |
| Magnesite (dead burned | N. Korea | EEC3542/82 | L371/30.12.82 p25 |
| 1983: | | | |
| 4,4'isopropylid-enediphenol (bisphenol) | USA | EEC 163/83 | L 23/26.1.83 p9 |
| Hexamethylenete-tramine | GDR | EEC 348/83 | L 40/12.3.83 p24 |
| Hexamethylenete-tramine | USSR | EEC 348/83 | L 40/12.3.83 p24 |
| Sheets and plates of iron or steel | Brazil | ECSC376/83[D] | L 45/17.2.83 p14 |
| Steel coils for re-rolling | Argentina | ECSC702/83[D] | L 82/29.6.83 p9 |
| Steel coils for re-rolling | Brazil | ECSC702/83[D] | L 82/29.6.83 p9 |
| Steel coils for re-rolling | Canada | ECSC702/83[D] | L 82/29.6.83 p9 |
| Steel coils for re-rolling | Venezuela | ECSC702/83[D] | L 82/29.6.83 p9 |
| Barium chloride | China | EEC 985/83 | L110/27.4.83 p11 |
| Barium chloride | GDR | EEC 985/83 | L110/27.4.83 p11 |
| Copper sulphate | CSSR | EEC1479/83 | L151/9.6.83 p24 |
| Copper sulphate | USSR | EEC1479/83 | L151/9.6.83 p24 |
| Outboard motors | Japan | EEC1500/83 | L152/10.6.83 p18 |
| Unwrought nickel | USSR | EEC1613/83 | L159/17.6.83 p43 |
| Glass textile fibre | CSSR | EEC1631/83 | L160/18.6.83 p18 |
| Glass textile fibre | GDR | EEC1631/83 | L160/18.6.83 p18 |
| Glass textile fibre | Japan | EEC1631/83 | L160/18.6.83 p18 |
| Dicumyl peroxide | Japan | EEC2079/83 | L203/27.7.83 p13 |
| Concrete rein-forcing bars | Spain | ECSC3113/83[D] | L303/5.11.83 p13 |
| Tube and pipe fittings of mall-eable cast iron* | Spain | EEC3271/83 | L322/19.11.83 p13 |

| Product | Country of origin | Regulation No. | Date of Publication (O.J.) |
|---|---|---|---|
| Choline chloride | GDR | EEC3578/83 | L356/20.12.83 p12 |
| Choline chloride | Romania | EEC3578/83 | L356/20.12.83 p12 |

* : anti-subsidy investigation

D : Decision

Source: An.Rep. 1983 (COM(83)512, p.16), An. Rep. 1984(COM (84) 721 p.15)

ANNEXE E

Investigations terminated by the imposition of definitive duties during the period 1980-1983

| Product | Country of origin | Regulation No. | Date of Publication (O.J.) |
|---|---|---|---|
| 1980: | | | |
| Lithium hydroxide | USA | EEC191/80 | L 23/30.1.80 p19 |
| Lithium hydroxide | USSR | EEC191/80 | L 23/30.1.80 p19 |
| Sodium carbonate | USSR | EEC407/80 | L 48/22.2.80 p1 |
| Acrylic fibre | USA | EEC1100/80 | L114/3.5.80 p37 |
| Seamless steel tubes* | Spain | EEC3072/80 | L322/28.11.80 p30 |
| Mechanical alarm clocks | GDR | EEC3306/80 | L344/19.12.80 p34 |
| Mechanical alarm clocks | USSR | EEC3306/80 | L344/19.12.80 p34 |
| Polyester yarn | USA | EEC3439/80 | L358/31.12.80 p91 |
| 1981: | | | |
| Chemical fertilizer | USA | EEC349/81 | L 39/12.2.81 p4 |
| Vinyl acetate monomer | USA | EEC1282/81 | L129/15.5.81 p1 |
| Styrene monomer | USA | EEC1570/81 | L154/13.6.81 p10 |
| Potato granules | Canada | EEC2467/81 | L243/26.8.81 p1 |
| Texture polyester fabrics | USA | EEC2664/81 | L262/16.9.81 p1 |
| Orthoxylene | Puerto Rico | EEC2761/81 | L270/25.9.81 p1 |
| Orthoxylene | USA | EEC2761/81 | L270/25.9.81 p1 |
| Paraxylene | Puerto Rico | EEC2940/81 | L296/15.10.81 p1 |
| Paraxylene | USA | EEC2940/81 | L296/15.10.81 p1 |
| Paraxylene | Virgin Islands | EEC2940/81 | L296/15.10.81 p1 |
| 1982: | | | |
| Phenol | USA | EEC 90/82 | L 12/18.1.82 p1 |
| Cotton yarn | Turkey | EEC789/82 | L 90/3.4.82 p1 |
| Oxalic acid | China | EEC1283/82 | L148/27.5.82 p37 |
| Mechanical watches | USSR | EEC1882/82 | L207/15.7.82 p1 |
| Upright pianos | USSR | EEC2236/82 | L238/13.8.82 p1 |
| Steel sheets | Brazil | ECSC2975/82[D] | L312/9.11.82 p10 |
| Methylamines | GDR | EEC3276/82 | L348/8.12.82 p1 |

| Product | Country of origin | Regulation No. | Publication (O.J.) |
|---|---|---|---|
| 1983: | | | |
| Broad flanged beams** | Spain | ECSC259/83[R] | L 30/1.2.83 p61 |
| Sheets and plates of iron or steel*** | Brazil | ECSC275/83[R] | L 45/17.2.83 p11 |
| Copper sulphate | Yugoslavia | EEC486/83 | L 55/2.3.83 p4 |
| Sodium carbonate | USA | EEC550/83 | L 64/10.3.83 p23 |
| Sheets and plates of iron or steel | Brazil | ECSC1230/83[R] | L131/20.5.83 p13 |
| Hexamethylene-tetramine | GDR | EEC1472/83 | L151/9.6.83 p9 |
| Hexamethylene-tetramine | USSR | EEC1472/83 | L151/9.6.83 p9 |
| 4,4'isopropylidene-diphenol (bisphenol) | USA | EEC2024/83 | L199/22.7.83 p4 |
| Sheets and plates of iron or steel*** | Brazil | ECSC/2129/83[R] | L205/29.7.83 p29 |
| Steel coils for re-rolling | Argentina | ECSC2182/83[R] | L210/2.8.83 p5 |
| Steel coils for re-rolling | Brazil | ECSC2182/83[R] | L210/2.8.83 p5 |
| Steel coils for re-rolling | Canada | ECSC2182/83[R] | L210/2.8.83 p5 |
| Steel coils for re-rolling | Venezuela | ECSC2182/83 | L210/2.8.83 p5 |
| Barium chloride | China | EEC2370/83 | L228/20.8.83 p28 |
| Barium chloride | GDR | EEC2370/83 | L228/20.8.83 p28 |
| Copper sulphate | CSSR | EEC2786/83 | L274/7.10.83 p1 |
| Copper sulphate | USSR | EEC2786/83 | L274/7.10.83 p1 |
| Outboard motors | Japan | EEC2809/83 | L275/8.10.83 p1 |
| Glass textile fibres | CSSR | EEC3540/83 | L354/16.12.83 p15 |
| Glass textile fibres | GDR | EEC3540/83 | L354/16.12.83 p15 |

D : Decision

R : Recommendation

* : Anti-subsidy investigation

** : Suspended by Dec. No. 1064/83/ECSC, O.J.L 116, 30.4.83, p.91

*** : Countervailing duty imposed and immediately suspended by the same Regulation

Source: An. Rep. 1983, (COM(83) 519, p.18)
An. Rep. 1984, (COM(84) 721, p.16)

ANNEXE F

Investigations terminated by the acceptance of price undertakings during the period 1980-1983

| Product | Country of origin | Decision No. | Date of Publication (O.J.) |
|---|---|---|---|
| 1980: | | | |
| Acrylic fibre | Spain | - | C 2/4.1.80 p6 |
| Galvanised steel sheet | Poland | - | C 5/8.1.80 p2 |
| Galvanised steel sheet | Spain | - | C 5/8.1.80 p2 |
| Steel sheets | Czecho-slovakia | - | c 5/8.1.80 p2 |
| Steel sheets | Japan | - | C 5/8.1.80 p2 |
| Steel coils for re-rolling | Australia | - | C 5/8.1.80 p3 |
| Steel coils for re-rolling | Czecho-slovakia | - | C 5/8.1.80 p3 |
| Steel coils for re-rolling | Japan | - | C 5/8.1.80 p3 |
| Wire rod | Czecho-slovakia | - | C 5/8.1.80 p3 |
| Steel angles, shapes and sections | Japan | - | C15/19.1.80 p26 |
| Cycle tyres and tubes | S. Korea | - | C15/19.1.80 p27 |
| Cycle tyres and tubes | Taiwan | - | C15/19.1.80 p27 |
| Electric multi-phase motors | Bulgaria | 80/252/EEC | L 53/27.2.80 p21 |
| Electric multi-phase motors | Czechoslo-vakia | 80/252/EEC | L 53/27.2.80 p21 |
| Electric multi-phase motors | GDR | 80/252/EEC | L 53/27.2.80 p21 |
| Electric multi-phase motors | Hungary | 80/252/EEC | L 53/27.2.80 p21 |
| Electric multi-phase motors | Poland | 80/252/EEC | L 53/27.2.80 p21 |
| Electric multi-phase motors | Romania | 80/252/EEC | L 53/27.2.80 p21 |
| Cold formed steel sections | Romania | 80/253/EEC | L 56/29.2.80 p34 |
| Electric light bulbs | Czecho-slovakia | 80/410/EEC | L 97/15.4.80 p59 |
| Electric light bulbs | GDR | 80/410/EEC | L 97/15.4.80 p59 |
| Electric light bulbs | Hungary | 80/410/EEC | L 97/15.4.80 p59 |
| Electric light bulbs | Poland | 80/410/EEC | L 97/15.4.80 p59 |

| Product | Country of origin | Decision No. | Date of Publication (O.J.) |
|---|---|---|---|
| Motor car tyres | Czechoslovakia | 80/462/EEC | L113/1.5.80 p70 |
| Motor car tyres | GDR | 80/462/EEC | L113/1.5.80 p70 |
| Motor car tyres | Romania | 80/462/EEC | L113/1.5.80 p70 |
| Motor car tyres | Yugoslavia | 80/462/EEC | L113/1.5.80 p70 |
| Acrylic fibres | Japan | 80/488/EEC | L118/9.5.80 p60 |
| Stainless steel bars | Brazil | 80/531/EEC | L131/28.5.80 p18 |
| Fibre building board | Czechoslovakia | 80/564/EEC | L145/11.6.80 p39 |
| Fibre building board | Finland | 80/564/EEC | L145/11.6.80 p39 |
| Fibre building board | Norway | 80/564/EEC | L145/11.6.80 p39 |
| Fibre building board | Poland | 80/563/EEC | L145/11.6.80 p39 |
| Fibre building board | Romania | 80/564/EEC | L145/11.6.80 p39 |
| Fibre building board | Spain | 80/564/EEC | L145/11.6.80 p39 |
| Fibre building board | Sweden | 80/564/EEC | L145/11.6.80 p39 |
| Fibre building board | USSR | 80/564/EEC | L145/11.6.80 p39 |
| Electric multi-phase motors | USSR | 80/599/EEC | L153/21.6.80 p48 |
| Mechanical alarm clocks | China | 80/600/EEC | L158/25.6.80 p18 |
| Mechanical alarm clocks | Czechoslovakia | 80/600/EEC | L158/25.6.80 p18 |
| Electric quartz crystals | S. Korea | 80/603/EEC | L162/27.6.80 p62 |
| Studded welded link chain | Spain | 80/783/EEC | L231/2.9.80 p10 |
| Studded welded link chain | Sweden | 80/783/EEC | L231/2.9.80 p10 |
| Steel tubes | Romania | 80/875/EEC | L249/20.9.80 p24 |
| Saccharin | China | 80/116/EEC | L331/9.12.80 p41 |
| Saccharin | USA | 80/116/EEC | L331/9.12.80 p41 |
| 1981: | | | |
| Louvre doors | Singapore | 81/366/EEC | L135/22.5.81 p33 |
| Malleable cast iron tube fittings | Brazil | 81/378/EEC | L145/3.6.81 p29 |
| Ball and tapered roller bearings | Japan | 81/406/EEC | L152/11.6.81 p44 |
| Ball and tapered roller bearings | Poland | 81/406/EEC | L152/11.6.81 p44 |
| Ball and tapered roller bearings | Romania | 81/406/EEC | L152/11.6.81 p44 |
| Ball and tapered roller bearings | USSR | 81/406/EEC | L152/11.6.81 p44 |
| Women's shoes* | Brazil | 81/901/EEC | L327/14.11.81 p39 |

| Product | Country of origin | Decision No. | Date of Publication (O.J.) |
|---|---|---|---|
| 1982: | | | |
| Fluid cracking catalysts | USA | 82 31/EEC | L 11/16.1.82 p25 |
| Upright pianos | Czecho-slovakia | 82/220/EEC | L101/16.4.82 p45 |
| Upright pianos | GDR | 82/220/EEC | L101/16.4.82 p45 |
| Upright pianos | Poland | 82/220/EEC | L101/16.4.82 p45 |
| Oxalic acid | Czecho-slovakia | EEC/335/82 | L148/27.5.82 p51 |
| Steel tubes | Romania | EEC/1334/82$^{R}$ | L150/29.5.82 p79 |
| Polypropylene film | Japan | EEC/397/82 | L172/18.6.82 p44 |
| Cylinder vacuum cleaners | Czecho-slovakia | EEC/398/82 | L172/18.6.82 p47 |
| Cylinder vacuum cleaners | GDR | EEC/398/82 | L172/18.6.82 p47 |
| Cylinder vacuum cleaners | Poland | EEC/398/82 | L172/18.6.82 p47 |
| Fibre building board | Hungary | EEC/1633/82$^{R}$ | L181/25.6.82 p19 |
| Refrigerators | Czecho-slovakia | EEC/423/82 | L184/29.6.82 p23 |
| Refrigerators | GDR | EEC/423/82 | L184/29.6.82 p23 |
| Refrigerators | Hungary | EEC/423/82 | L184/29.6.82 p23 |
| Refrigerators | Poland | EEC/423/82 | L184/29.6.82 p23 |
| Refrigerators | Romania | EEC/423/82 | L184/29.6.82 p23 |
| Refrigerators | USSR | EEC/423/82 | L184/29.6.82 p23 |
| Refrigerators | Yugoslavia | EEC/423/82 | L184/29.6.82 p23 |
| Photographic enlargers | Czecho-slovakia | EEC/1958/82$^{R}$ | L212/21.7.82 p32 |
| Trichlorethylene | Romania | EEC/2127/82$^{R}$ | L223/31.7.82 p76 |
| Trichlorethylene | Spain | EEC/2127/82$^{R}$ | L223/31.7.82 p76 |
| Trichlorethylene | USA | EEC/2127/82$^{R}$ | L223/31.7.82 p76 |
| Paracetamol | China | EEC/543/82 | L236/11.8.82 p23 |
| Methylamines | Romania | EEC/2243/82$^{R}$ | L238/13.8.82 p35 |
| Polyvinylchloride | GDR | EEC/2568/82$^{R}$ | L274/24.9.82 p15 |
| Polyvinylchloride | Hungary | EEC/2568/82$^{R}$ | L274/24.9.82 p15 |
| Polyvinylchloride | Romania | EEC/2568/82$^{R}$ | L274/24.9.82 p15 |
| Thiopen | USA | EEC/710/82 | L295/21.10.82 p35 |
| Trichlorethylene | GDR | EEC/2935/82$^{R}$ | L308/4.11.82 p5 |
| Trichlorethylene | Poland | EEC/2935/82$^{R}$ | L308/4.11.82 p5 |
| Decabromodiphemy-lether | USA | EEC/757/82 | L319/16.11.82 p16 |
| Perchlorethylene | Czecho-slovakia | EEC/881/82 | L371/30.12.82 p47 |
| Perchlorethylene | Romania | EEC/881/82 | L371/30.12.82 p47 |
| Perchlorethylene | Spain | EEC/881/82 | L371/30.12.82 p47 |
| Perchlorethylene | USA | EEC/881/82 | L371/30.12.82 p47 |

| Product | Country of origin | Decision | Date of Publication (O.J.) |
|---|---|---|---|
| 1983: | | | |
| Photographic enlargers | Poland | EEC/ 53/83[R] | L 9/12.1.83 p5 |
| Photographic enlargers | USSR | EEC/ 53/83[R] | L 9/12.1.83 p5 |
| Polyvinyl chloride | CSSR | EEC/152/83[R] | L18/22.1.83 p26 |
| Hexamethylenetetramine | CSSR | EEC/348/83[R] | L40/12.2.83 p24 |
| Hexamethylenetetramine | Romania | EEC/348/83[R] | L40/12.2.83 p24 |
| Fibre building board | Brazil | EEC/75/83 | L47/19.2.83 p30 |
| Ferro-silicon | Iceland | EEC/93/83 | L57/4.3.83 p20 |
| Ferro-silicon | Norway | EEC/93/83 | L57/4.3.83 p20 |
| Ferro-silicon | Sweden | EEC/93/83 | L57/4.3.83 p20 |
| Ferro-silicon | Venuzuela | EEC/93/83 | L57/4.3.83 p20 |
| Ferro-silicon | Yugoslavia | EEC/93/83 | L57/4.3.83 p20 |
| Cellulose ester resins | USA | EEC/93/83 | L106/23.4.83 p24 |
| Low density polyethylene | CSSR | EEC/248/83 | L138/27.5.83 p65 |
| Low density polyethylene | GDR | EEC/248/83 | L138/27.5.83 p65 |
| Low density polyethylene | Poland | EEC/248/83 | L138/27.5.83 p65 |
| Low density polyethylene | USSR | EEC/248/83 | L138/27.5.83 p65 |
| Ferro-chromium | Turkey | EEC/306/83 | L161/21.6.83 p15 |
| Ferro-chromium | Zimbabwe | EEC/306/83 | L161/21.6.83 p15 |
| Canned pears | Australia | EEC/360/83 | L196/20.7.83 p22 |
| Canned pears | China | EEC/360/83 | L196/20.7.83 p22 |
| Canned pears | S. Africa | EEC/360/83 | L196/20.7.83 p22 |
| Caravans for camping | Yugoslavia | EEC/428/83 | L240/30.8.83 p12 |
| Lithium hydroxide | China | EEC/522/83 | L294/26.10.83 p29 |
| Sanitary fixtures | CSSR | EEC/559/83 | L325/22.11.83 p18 |
| Sanitary fixtures | Hungary | EEC/559/83 | L325/22.11.83 p18 |
| Dicumyl peroxide | Japan | EEC/561/83 | L329/25.11.83 p19 |
| Glass textile fibres | Japan | EEC/625/83 | L352/15.12.83 p47 |

* : Anti-subsidy investigation

R : Regulation

Source: An.Rep. 1983, (COM(83)519, p.19), An. Rep. 1984 (COM (84)721, p.17)

ANNEXE G

Investigations terminated due to changes in the market situation during the period 1980-1983

| Product | Country of origin | Decision | Date of termination (O.J.) |
|---|---|---|---|
| 1980: | | | |
| Steel coils for re-rolling | USSR | - | C 5/8.1.80 p2 |
| Haematite pig iron | GDR | - | C15/19.1.80 p26 |
| Haematite pig iron | USSR | - | C15/19.1.80 p26 |
| Haematite graphite spheroidal pig iron | Canada | - | C15/19.1.80 p26 |
| 1981: | | | |
| - | - | - | - |
| 1982: | | | |
| - | - | - | - |
| 1983: | | | |
| - | - | - | - |

Source: An. Rep. (COM(83)519, p.22), An.Rep. 1984, (COM(84)721 )

ANNEXE H

Investigations terminated on a finding of no dumping or subsidisation during the period 1980-1983

| Product | Country of origin | Decision | Date of termination (O.J.) |
|---|---|---|---|
| 1980: | | | |
| Stereo cassette tape heads | Japan | EEC 316/80 | L 69/15.3.80 p64 |
| Stainless steel bars* | Brazil | EEC 552/80 | L139/5.6.80 p30 |
| Mechanical alarm clocks | Hong Kong | EEC 600/80 | L158/25.6.80 p18 |
| Electric quartz crystals | Japan | EEC 603/80 | L162/27.6.80 p62 |
| Electric quartz crystals | USA | EEC 603/80 | L162/27.6.80 p62 |
| Gelatine | Sweden | EEC1094/80 | L320/27.11.80 p41 |
| Saccharin | Japan | EEC1116/80 | L331/9.12.80 p41 |
| Paper masking tape | USA | EEC1175/80 | L344/19.12.80 p57 |
| 1981: | | | |
| Hermetic compressors | Hungary | EEC 247/81 | L113/25.4.81 p53 |
| Hermetic compressors | Japan | EEC 247/81 | L113/25.4.81 p53 |
| Hermetic compressors | Singapore | EEC 247/81 | L113/25.4.81 p53 |
| Furfural | Dominican Republic | EEC 493/81 | L189/11.7.81 p57 |
| Louvre doors | Malaysia | EEC 366/81 | L135/22.5.81 p33 |
| Plywood | Canada | EEC 946/81 | L338/25.11.81 p42 |
| Plywood | USA | EEC 946/81 | L338/25.11.81 p42 |
| 1982: | | | |
| Polyester bed linen | USA | EEC 122/82 | L 48/20.2.82 p30 |
| Trichlorethylene | Czechoslo-vakia | EEC2127/82R | L223/31.7.82 p76 |
| Aluminium foil | Austria | EEC 808/82 | L339/1.12.82 p58 |
| 1983: | | | |

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* : anti-subsidy investigation
R : Regulation

Source: An.Rep. 1983 (COM(83)519, p.23, 24),
An.Rep. 1984 (COM(84)721 )

ANNEXE I

Investigations concluded on a finding of no injury during the period 1980-1983

| Product | Country of origin | Decision | Date termination (O.J.) |
|---|---|---|---|
| 1980: | | | |
| Canned peaches | Greece | EEC/456/80 | L110/29.4.80 p35 |
| 1981: | | | |
| Hermetic compressors | Brazil | EEC/247/81 | L113/25.4.81 p53 |
| Hermetic compressors | Spain | EEC/247/81 | L113/25.4.81 p53 |
| Seamless steel tubes | Spain | EEC/430/81 | L165/26.6.81 p27 |
| Furfural | Spain | EEC/493/81 | L189/11.7.81 p57 |
| Furfural | China | EEC/493/81 | L189/11.7.81 p57 |
| Monochrome portable T.V.sets | S. Korea | EEC/1012/81 | L364/19.12.81 p49 |
| 1982: | | | |
| Oxalic acid | GDR | EEC/335/82 | L148/27.5.82 p37 |
| Oxalic acid | Hungary | EEC/335/82 | L148/27.5.82 p37 |
| Fibre building board | Bulgaria | EEC/1633/82R | L181/25.6.82 p19 |
| Aluminium foil | GDR | EEC/808/82 | L339/1.12.82 p58 |
| Aluminium foil | Hungary | EEC/808/82 | L339/1.12.82 p58 |
| Aluminium foil | Israel | EEC/808/82 | L339/1.12.82 p58 |
| 1983: | | | |
| Codeine | CSSR | EEC/9/83 | L 16/20.1.83 p30 |
| Codeine | Hungary | EEC/9/83 | L 16/20.1.83 p30 |
| Codeine | Poland | EEC/9/83 | L 16/20.1.83 p30 |
| Codeine | Yugoslavia | EEC/9/83 | L 16/20.1.83 p30 |
| Acrylonitrile | USA | EEC/162/83 | L101/20.4.83 p29 |
| Unwrought aluminium | Egypt | EEC/305/83 | L161/21.6.83 p13 |
| Xanthan gum | USA | EEC/493/83 | L268/30.9.83 p60 |
| Unwrought nickel | USSR | EEC/2907/83R | L286/19.10.83 p29 |

R : Regulation

Source: An.Rep. 1983 (COM(83)519, p.25),
An.Rep. 1984 (COM(84)721, p.18).

ANNEXE J

Investigations terminated for other reasons during the period 1980-1983

| Product | Country of origin | Decision | Date of termination (O.J.) |
|---|---|---|---|
| 1980: | | | |
| Steel coils for re-rolling | Greece | - | C 39/24.2.81 p2 |
| 1981: | | | |
| - | - | - | - |
| 1982: | | | |
| - | - | - | - |
| 1983: | | | |
| Video tape recorders | Japan | EEC126/83 | L 86/31.3.83 p3 |
| Broad-flanged beams* | Spain | ECSC1064/83 | L116/30.4.83 p91 |
| Iron or steel U or I sections | S. Africa | ECSC334/83 | L181/6.7.83 p26 |

* : anti-subsidy investigation

Source: An. Rep. 1983, (COM(83)519, p.26),
An. Rep. 1984, (COM(84)721, p.19).

ANNEXE K

Reviews of previous anti-dumping and anti-subsidy actions opened during the period 1980-1983

| Product | Country of origin | Date of opening (O.J.) |
|---|---|---|
| 1980: | | |
| Louvre doors | Taiwan | C 77/27.3.80 p5 |
| Lithium hydroxide | USA | C181/19.7.80 p4 |
| Lithium hydroxide | USSR | C181/19.7.80 p4 |
| 1981: | | |
| Fibre building board | Czechoslovakia | C164/4.7.81 p3 |
| Fibre building board | Finland | C164/4.7.81 p3 |
| Fibre building board | Norway | C164/4.7.81 p3 |
| Fibre building board | Poland | C164/4.7.81 p3 |
| Fibre building board | Romania | C164/4.7.81 p3 |
| Fibre building board | Spain | C164/4.7.81 p3 |
| Fibre building board | Sweden | C164/4.7.81 p3 |
| Fibre building board | USSR | C164/4.7.81 p3 |
| Electric multi-phase motors | Bulgaria | C197/5.8.81 p2 |
| Electric multi-phase motors | Czechoslovakia | C197/5.8.81 p2 |
| Electric multi-phase motors | GDR | C197/5.8.81 p2 |
| Electric multi-phase motors | Hungary | C197/5.8.81 p2 |
| Electric multi-phase motors | Poland | C197/5.8.81 p2 |
| Electric multi-phase motors | Romania | C197/5.8.81 p2 |
| Electric multi-phase motors | USSR | C197/5.8.81 p2 |
| Herbicide | Romania | C208/18.8.81 p3 |
| Sodium carbonate | Bulgaria | C220/1.9.81 p2 |
| 1982: | | |
| Polyester yarn | USA | C 48/23.2.82 p2 |
| Iron or steel nuts | Taiwan | C 67/16.3.82 p7 |
| Sodium carbonate | Bulgaria | C 93/14.4.82 p5 |
| Sodium carbonate | GDR | C 93/14.4.82 p5 |
| Sodium carbonate | Poland | C 93/14.4.82 p5 |
| Sodium carbonate | Romania | C 93/14.4.82 p5 |
| Sodium carbonate | USSR | C 93/14.4.82 p5 |
| Orthoxylene | Puerto Rico | C124/15.5.82 p2 |
| Orthoxylene | USA | C124/15.5.82 p2 |
| Paraxylene | Puerto Rico | C124/15.5.82 p3 |
| Paraxylene | USA | C124/15.5.82 p3 |
| Paraxylene | Virgin Islands | C124/15.5.82 p3 |

| Product | Country of origin | Date of opening (O.J.) |
|---|---|---|
| Acrylic fibres | USA | C140/3.6.82 p8 |
| Chemical fertilizer | USA | C179/16.7.82 p4 |
| Seamless steel tubes* | Spain | C196/30.7.82 p3 |
| Kraftliner | Austria | C217/21.8.82 p2 |
| Kraftliner | Canada | C217/21.8.82 p2 |
| Kraftliner | Finland | C217/21.8.82 p2 |
| Kraftliner | Portugal | C217/21.8.82 p2 |
| Kraftliner | Sweden | C217/21.8.82 p2 |
| Kraftliner | USA | C217/21.8.82 p2 |
| Kraftliner | USSR | C217/21.8.82 p2 |
| Ferro-chromium | S. Africa | C338/24.12.82 p26 |
| Ferro-chromium | Sweden | C338/24.12.82 p26 |
| 1983: | | |
| Lithium hydroxide | USA | C 98/12.4.83 p2 |
| Lithium hydroxide | USSR | C 98/12.4.83 p2 |
| Saccharin | China | C119/4.5.83 p3 |
| Saccharin | Korea | C119/4.5.83 p3 |
| Saccharin | USA | C119/4.5.83 p3 |
| Louvre doors | Taiwan | C187/13.7.83 p3 |
| Hardboard | CSSR | C241/31.8.83 p9 |
| Hardboard | Poland | C241/31.8.83 p9 |
| Hardboard | Sweden | C241/31.8.83 p9 |
| Copper sulphate | Yugoslavia | C301/8.11.83 p2 |

* : anti-subsidy investigation

Source: An.Rep. 1983, (COM(83)519, p.29),
An.Rep. 1984, (COM(84)721, p.22).

ANNEXE L

Provisional duties imposed during review of previous anti-dumping or anti-subsidy actions opened in the period 1980-1983

| Product | Country of origin | Regulation No. | Date of Publication (O.J.) |
|---|---|---|---|
| 1981: | | | |
| Sodium carbonate | Bulgaria | EEC2516/81 | L246/29.8.81 p14 |
| 1982: | | | |
| Electric multi-phase motors | Bulgaria | EEC 724/82 | L 85/31.3.82 p9 |
| Electric multi-phase motors | Czecho-slovakia | EEC 724/82 | L 85/31.3.82 p9 |
| Electric multi-phase motors | GDR | EEC 724/82 | L 85/31.3.82 p9 |
| Electric multi-phase motors | Poland | EEC 724/82 | L 85/31.3.82 p9 |
| Electric multi-phase motors | Romania | EEC 724/82 | L 85/31.3.82 p9 |
| Electric multi-phase motors | USSR | EEC 724/82 | L 85/31.3.82 p9 |
| Fibre building board | Romania | EEC1633/82 | L181/25.6.82 p19 |
| Chemical fertilizer | USA | EEC1976/82 | L214/22.7.82 p7 |
| Sodium carbonate | Bulgaria | EEC2667/82 | L283/6.10.82 p9 |
| Sodium carbonate | GDR | EEC2667/82 | L283/6.10.82 p9 |
| Sodium carbonate | Poland | EEC2667/82 | L283/6.10.82 p9 |
| Sodium carbonate | Romania | EEC2667/82 | L283/6.10.82 p9 |
| Sodium carbonate | USSR | EEC2667/82 | L283/6.10.82 p9 |
| 1983: | | | |
| Hardboard | CSSR | EEC2444/83 | L241/31.8.83 p9 |
| Hardboard | Poland | EEC2444/83 | L241/31.8.83 p9 |
| Hardboard | Sweden | EEC2444/83 | L241/31.8.83 p9 |

Source: An.Rep. 1983, (COM(83)519, p.31),
An.Rep. 1984, (COM(84)721, p.23).

ANNEXE M

Reviews of previous anti-dumping and anti-subsidy actions terminated by the imposition of definitive duties during the period 1980-1983

| Product | Country of origin | Regulation No. | Date of termination (O.J.) |
|---|---|---|---|
| 1982: | | | |
| Electric multi-phase motors | USSR | EEC2075/82 | L220/29.7.82 p36 |
| 1983: | | | |
| Chemical fertilizer | USA | EEC 101/83 | L 15/19.1.83 p1 |
| Sodium carbonate | Bulgaria | EEC 273/83 | L 32/3.2.83 p1 |
| Sodium carbonate | GDR | EEC 273/83 | L 32/3.2.83 p1 |
| Sodium carbonate | Poland | EEC 273/83 | L 32/3.2.83 p1 |
| Sodium carbonate | Romania | EEC 273/83 | L 32/3.2.83 p1 |
| Sodium carbonate | USSR | EEC 273/83 | L 32/3.2.83 p1 |
| Hardboard | CSSR | EEC3648/83 | L361/24.12.83 p6 |
| Hardboard | Poland | EEC3648/83 | L361/24.12.83 p6 |

Source: An. Rep. 1983, (COM(83)519, p.32),
An. Rep. 1984, (COM(84)721, p.24).

ANNEXE N

Reviews of previous anti-dumping and anti-subsidy actions terminated by the amendment of the definitive duty during the period 1980-1983

| Product | Country of origin | Regulation No. | Date of termination (O.J.) |
|---|---|---|---|
| 1980: | | | |
| Lithium hydroxide | USA | EEC2294/80 | L228/30.8.80 p59 |
| Lithium hydroxide | USSR | EEC2294/80 | L228/30.8.80 p59 |
| 1981: | | | |
| - | - | - | - |
| 1982: | | | |
| - | - | - | - |
| 1983: | | | |
| Polyester yarns | USA | EEC 407/83 | L 50/23.2.83 p1 |
| Acrylic fibre | USA | EEC 485/83 | L 55/2.3.83 p1 |
| Kraftliner | USA | EEC 551/83 | L 64/10.3.83 p25 |
| Paraxylene | Puerto Rico | EEC 905/83 | L101/20.4.83 p1 |
| Paraxylene | USA | EEC 905/83 | L101/20.4.83 p1 |
| Paraxylene | Virgin Islands | EEC 905/83 | L101/20.4.83 p1 |
| Orthoxylene | Puerto Rico | EEC 906/83 | L101/20.4.83 p4 |
| Orthoxylene | USA | EEC 906/83 | L101/20.4.83 p4 |
| Seamless steel tubes* | Spain | EEC1027/83 | L116/30.4.83 p7 |
| Lithium hydroxide | USA | EEC2978/83 | L294/26.10.83 p3 |
| Lithium hydroxide | USSR | EEC2978/83 | L295/26.10.83 p3 |

* : Countervailing duty

Source: An.Rep. 1983, (COM(83)519, p.32),
An.Rep. 1984, (COM(84)721, p.25).

ANNEXE O

Reviews of previous anti-dumping and anti-subsidy actions terminated by the amendment of price undertakings during the period 1980-1983

| Product | Country of origin | Decision (Reg. no.) | Date of termination (O.J.) |
|---|---|---|---|
| 1982: | | | |
| Electric multi-phase motors | Hungary | EEC 724/82 | L 85/31.3.82 p9 |
| Fibre building board | Czecho-slovakia | EEC1633/82 | L181/25.6.82 p19 |
| Fibre building board | Finland | EEC1633/82 | L181/25.6.82 p19 |
| Fibre building board | Norway | EEC1633/82 | L181/25.6.82 p19 |
| Fibre building board | Poland | EEC1633/82 | L181/25.6.82 p19 |
| Fibre building board | Spain | EEC1633/82 | L181/25.6.82 p19 |
| Fibre building board | Sweden | EEC1633/82 | L181/25.6.82 p19 |
| Fibre building board | USSR | EEC1633/82 | L181/25.6.82 p19 |
| Electric multi-phase motors | Bulgaria | EEC2075/82 | L220/29.7.82 p36 |
| Electric multi-phase motors | Czecho-slovakia | EEC2075/82 | L220/29.7.82 p36 |
| Electric multi-phase motors | GDR | EEC2075/83 | L220/29.7.82 p36 |
| Electric multi-phase motors | Poland | EEC2075/82 | L220/29.7.82 p36 |
| Electric multi-phase motors | Romania | EEC2075/82 | L220/29.7.82 p36 |
| 1983: | | | |
| Kraftliner | Austria | EEC 551/83 | L 64/10.3.84 p25 |
| Kraftliner | Canada | EEC 551/83 | L 64/10.3.84 p25 |
| Kraftliner | Finland | EEC 551/83 | L 64/10.3.84 p25 |
| Kraftliner | Portugal | EEC 551/83 | L 64/10.3.84 p25 |
| Kraftliner | Sweden | EEC 551/83 | L 64/10.3.84 p25 |
| Kraftliner | USSR | EEC 551/83 | L 64/10.3.84 p25 |
| Ferro-chromium | S. Africa | EEC 306/83D | L161/21.6.83 p15 |
| Ferro-chromium | Sweden | EEC 306/83D | L161/21.6.83 p15 |

D : Decision

Source: An.Rep. 1983, (COM(83)519, p.33),
An.Rep. 1984, (COM(84)721, p.27).

ANNEXE P

Reviews of previous anti-dumping and anti-subsidy actions terminated by the repeal of national duties, or price undertakings during the period 1980-1983

| Product | Country of origin | Regulation No. | Date of termination (O.J.) |
|---|---|---|---|
| 1980: | | | |
| Fibre building board | Czecho-slovakia | EEC1452/80 | L145/11.6.80 p.12 |
| Fibre building board | Poland | EEC1452/83 | L145/11.6.80 p.12 |
| Mechanical alarm clocks | China | EEC1579/80 | L158/25.6.80 p5 |
| Saccharin | S. Korea | EEC3171/80 | L331/9.12.80 p25 |
| 1981: | | | |
| Louvre doors | Taiwan | EEC1590/81 | L158/6.6.81 p5 |
| 1982: | | | |
| - | - | - | - |
| 1983: | | | |
| Saccharin | China | EEC 626/83D | L352/15.12.83 p49 |
| Saccharin | Korea | EEC 626/83D | L352/15.12.83 p49 |
| Saccharin | USA | EEC 626/83D | L352/15.12.83 p49 |

D : Decision

Source: An.Rep. 1983, (COM(83)519, p.33),
An.Rep. 1984, (COM(84)721, p.28).

ANNEXE Q

Reviews of previous anti-dumping and anti-subsidy actions terminated without change of the measures in force, during the period 1980-1983

| Product | Country of origin | Decision No. | Date of termination (O.J.) |
|---|---|---|---|
| 1981: | | | |
| Sodium carbonate | Bulgaria | EEC3333/81[R] | L337/24.11.81 p5 |
| 1982: | | | |
| Herbicide | Romania | EEC285/82 | L128/11.5.82 p17 |
| Iron or steel nuts | Taiwan | EEC627/82 | L254/31.8.82 p15 |
| 1983: | | | |

R : Regulation

Source: An.Rep. 1983, (COM(83)519, p.34),
An.Rep. 1984, (COM(84)721 )

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