

Davenport, Michael

Article — Digitized Version

The economics of antidumping and the Uruguay Round

Intereconomics

Suggested Citation: Davenport, Michael (1990) : The economics of antidumping and the Uruguay Round, Intereconomics, ISSN 0020-5346, Verlag Weltarchiv, Hamburg, Vol. 25, Iss. 6, pp. 267-273, <https://doi.org/10.1007/BF02928794>

This Version is available at:

<https://hdl.handle.net/10419/140267>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.

Antidumping Measures under Review

Antidumping actions are widely criticised for being used as a protective device rather than as a means of controlling unfair trade practices. Michael Davenport discusses the complaints and proposals for change brought forward by the affected exporting countries in the current GATT round. Phedon Nicolaides analyses the antidumping policy of the European Community which has recently been the butt of particularly heavy criticism.

Michael Davenport*

The Economics of Antidumping and the Uruguay Round

A number of writers have discussed the use of antidumping actions as a protective device.¹ This use has been made easier by the lack of precision in Article VI of the GATT and the GATT Dumping Code. Each of the principal users of antidumping actions argues that its own regulations are consistent with the GATT. This is contested by Japan and the NICs who are arguing within the context of the Uruguay Round negotiations that national (including EC) regulations are often arbitrary and even, in some cases, GATT-illegal. In this article the Uruguay Round negotiations are used as a set of topical pegs to hang some general observations about the economics of antidumping policy.

The expansion of the numbers of antidumping procedures since the early 1980s has been well documented.² For example Finger³ gives data by country initiating the procedure and by exporting country from 1980 to 1986. The four countries, Australia, Canada, the European Community (which acts as a single country and GATT contracting party in this as in most areas of trade policy) and the United States accounted for 1276 out of 1288 initiations, and 767 out of 775 affirmative findings, over the period. Procedures against industrial country exporters showed no discernible trend. On the other hand proceedings against both developing countries and non-market economies showed strong if erratic growth.

Table 1 brings the data on initiations up to mid 1989. These data suggest some decline in antidumping activity since the years of 1982 to 1985 (when initiations averaged 221 per year). There could be a number of explanations. Exporting firms may have "learnt their lesson" and consciously priced their exports at levels high enough to avoid provoking antidumping complaints, they may have found ways of circumventing antidumping rules or opportunities for successful dumping have become fewer.

The last of these explanations is implausible. Antidumping policy is officially justified by the need to protect against the predatory goals of low-cost foreign producers who are seeking to eliminate competition from the established domestic producers. However it is difficult to

¹ See Michael Davenport: *The Charybdis of Antidumping: A New Form of EC Industrial Policy?*, Discussion Paper 22, Royal Institute of International Affairs, London 1989; Michael Finger: *Antidumping and Antisubsidy Measures*, in: Michael Finger, Andrzej Plechowski (eds.): *The Uruguay Round, The World Bank, Washington 1987*, pp. 152-161; Brian Hindley: *Dumping and the Far East Trade of the European Community*, in: *The World Economy*, Vol. 11, No. 4, 1988, pp. 445-463; Patrick Messerlin: *The E.C. Antidumping Regulations: A First Economic Appraisal, 1980-85*, in: *Weltwirtschaftliches Archiv*, Vol. 125, No. 3, 1989, pp. 563-587; Christopher Norall: *New Trends in Anti-dumping Practice in Brussels*, in: *The World Economy*, Vol. 9, No. 1, 1986, pp. 97-111; Eugeniusz Piontek: *Anti-Dumping in the EEC—Some Observations by an Outsider*, in: *Journal of World Trade Law*, Vol. 21, No. 4, pp. 67-94.

² See Michael Davenport, op. cit.; Brian Hindley, op. cit.; Patrick Messerlin, op. cit.

³ Michael Finger, op. cit.

* Research Associate, Overseas Development Institute, London, UK.

determine whether predatory intent exists and the GATT rules stop short of requiring that there should be proof of predatory intent or of threat to an otherwise competitive market. But there is no reason to suppose that opportunities for undercutting producers in the US, the EC, Canada or Australia have quite suddenly become significantly rarer.

Negotiations on a New Antidumping Code

Each country has its own procedures for dealing with alleged cases of dumping, though all are supposedly consistent with the broad rules of Article VI of the GATT and the GATT antidumping code (for signatories to that code). However, since the GATT rules are framed in very broad terms, the national procedures may respect the letter but flout the intention of those rules. The countries most often at the receiving end of antidumping actions – Japan and the NICs (henceforth the “exporting countries”) – have brought to the appropriate Uruguay Round negotiating group (that on MTN Agreements and Arrangements) a list of over 100 complaints directed, not so much at the Code itself, but at the national regulations of the importing countries.⁴ Much of the exporting countries’ criticism of the current national (or EC) regulations alleges a systemic bias against foreign producers in the establishment of dumping and of material injury, or threat of injury, and in the calculation of the dumping margin. Some of the more important of their complaints concern:

- ☐ the determination of “normal value”;
- ☐ the determination of the export price;
- ☐ the setting of the antidumping duty;
- ☐ the “sunset” clause;
- ☐ circumvention; and
- ☐ sampling.

The Determination of “Normal Value”

In assessing the dumping margin (if any), according to the GATT code, export prices are to be compared with “normal value”, which, where such a comparison is possible, is simply the domestic price of the same or like product. Where there are no, or few, sales in the producing country, either the export price on a third market may be used or the normal value may be constructed from cost data plus a “reasonable” profit margin. There has been a growing tendency, especially in the EC, to use “constructed prices”, because of the assumption that exports to other markets may have been dumped or simply because of the opportunities for keeping constructed prices to a minimum. The exporting countries want to rule

out constructed prices where there are sufficient sales in a third market.

Secondly the “importing countries” (shorthand for the main users of antidumping actions, the US, the EC, Australia and Canada) have adopted the practice of treating sales below the cost of production “over an extended period of time” as “not being in the ordinary course of trade” and therefore not relevant to calculations of normal value. The use of remaining sales above cost may significantly raise the estimate of normal value. Vermulst points out that the “extended period of time” has been whittled down from the business cycle to the past year or, even, the six month investigation period.⁵

Comment: Apart from the fact that the legal basis for excluding sales below fully allocated cost is questionable,⁶ it is nonsense economically. From an economic point of view selling below average cost in the short run may be perfectly rational, especially in the trough of a business cycle or to offload stocks that are becoming out of date. In the United States price discrimination in domestic commerce is only challenged under the Robinson-Patman Act when sales are made below marginal cost. Even then that would not in itself be sufficient to establish anti-competitive behaviour. There would have to be consideration of the effect on competition in the domestic industry, which in antidumping actions is totally ignored. In general “unfair” competition from abroad is much easier to establish than “unfair” competition from other domestic producers.

Export Price Determination

The treatment of such components of cost as administrative and selling expenses has long been a source of contention. Where the importer is “related” to the exporter all marketing expenses (“selling, administrative and other general expenses”) and, except in the US, a reasonable profit for the importer are deducted to reach the ex-factory export price. The new proposals would go some way to rationalise and standardise practices in this area. Secondly the four principal antidumping activists currently exclude prices above the normal value (“negative” dumping). This would be ruled out under new proposals of

⁴ One group of countries, which has been the subject of a disproportionate number of antidumping actions in the past and to special and particularly exacting regulations, is the Eastern European countries. Unfortunately those who are GATT members have not taken a very active part in the Uruguay Round antidumping negotiations.

⁵ See Edwin A. Vermulst: *The Anti-Dumping Systems of Australia, Canada, the EEC and the United States of America: Have Anti-Dumping Laws become a Problem in International Trade?*, in: *Michigan Journal of International Law*, Vol. 10, No. 3, 1989, pp. 765-806.

⁶ See Edwin A. Vermulst, *op. cit.*, pp. 784 f.

the exporting countries while the practice of cumulating imports from different countries in the assessment of injury would be restricted.

Comment: Excluding marketing costs from the export price biases the determination of the dumping margin against the exporter and is without economic logic. It is true that export prices could be artificially "loaded" with such costs. But unrealistic accounting methods are as likely to be the result of different tax regulations as they are of antidumping regulations. If the authorities insist on average cost rather than marginal cost calculations, it is appropriate to allocate marketing expenses in the same way.

Nor does excluding products sold in the importers' market at above normal price from the calculation of average export prices make economic sense. If the volume of goods sold below normal price is so low as to preclude the establishment of injury to the domestic industry, it is clearly illogical to inflate the volume by including goods that were by admission not dumped. The same may be said of the practice of cumulation in all four jurisdictions (the US, the EC, Canada and Australia) which means that antidumping duties are imposed on imports that would otherwise be excluded on *de minimis* grounds or where the volume of imports is negligible.

The Setting of the Antidumping Duty

At present under US and Canadian rules the antidumping duty must be equal to the established dumping margin, while in the EC and Australia it should be less if a lesser duty would be sufficient to remove the injury,

largely through a reluctance on the part of the legislature to allow executive discretion. The exporting countries want a mandatory lesser duty rule written into the Code.

There are other major discrepancies between the importing countries as regards their procedures in levying antidumping duties. In Canada and Australia once the final injury determination is made, the level of dumping during the investigation period is determined and a prospective normal value for the future is set. Thus potential importers know whether or not purchasing at a given price will attract antidumping duties. In the US the liability for duty is set retrospectively in an annual review and thus an importer does not know his liability in advance but the duty is based on actual data. In the EC the antidumping duty is set on the basis of data available during the investigation period and all subsequent imports are subject to that duty – regardless of whether the goods are dumped or not. The new proposals for the GATT Code allow these discrepancies to continue, presumably because of the difficulty in weighing predictability for the importer against out-of-date data. The only new proposals in this area concern the speed at which duties are set retrospectively, or provisions for prompt review and refunding if appropriate when they are set prospectively.

Comment: The requirement to impose an antidumping duty equal to the dumping margin clearly thwarts the intention of the GATT in that they may lead to antidumping duties being imposed in excess of that required to offset the injury to the domestic industry.

The Canadian system of announcing a normal value, below which imports will be liable to duty, has the

Table 1
Summary of Anti-dumping Actions¹

	Cases Initiated			Provisional Measures Adopted			Definitive Duties Imposed		
	86/87	87/88	88/89	86/87	87/88	88/89	86/87	87/88	88/89
Australia	40	20	19	17	10	6	3	5	8
Brazil ²	–	1	2	–	–	–	–	–	–
Canada	24	20	14	12	20	13	8	18	4
EC	17	30	29	12	10	9	7	4	13
Finland	5	5	2	3	3	–	–	–	2
South Korea	1	–	–	–	–	2	–	–	–
Mexico ³	–	2	12	–	12	8	–	2	2
New Zealand ⁴	–	4	8	–	–	3	–	1	6
Sweden	–	–	2	2	–	–	–	–	–
United States	41	31	25	55	13	36	38	22	29
Total	128	113	113	101	68	80	56	52	64

¹ All periods begin on July 1 and end on June 30. ² Data for Brazil cover the period 1. 7. 1987 to 30. 6. 1989.

³ Data for Mexico cover the period 1. 1. 1988 to 31. 12. 1988. ⁴ Data for New Zealand cover the period 1. 1. 1988 to 30. 6. 1989.

Source: GATT Activities 1989, Geneva 1990.

disadvantage that the data on which the normal value was calculated will become out of date (which implies that reviews should be frequent) but is more conducive to the continuation of trade and the exploitation of different comparative costs than either the US or the EC systems.

The "Sunset" Clause

At present EC antidumping measures last in the first instance five years. Before they expire a review takes place and if the authorities can be persuaded that dumping would resume the antidumping measures can be extended for a further five years. In the US there is no sunset clause – even though the domestic industry may have lost interest – and, unless a review is requested, the antidumping duties remain. A standard duration for measures and a common procedure for invoking a review procedure has been proposed.

Comment: A sunset clause should be part of the Code – clearly the idea of indefinite duties is quite contrary to the GATT intention of offsetting injury or potential injury only where dumping has been established.

Circumvention

The United States and the EC are concerned about increased circumvention of antidumping rules or existing antidumping duties. The EC is at present "defenceless" because of the GATT panel ruling on its antidumping duties on the products of Japanese "screwdriver" plants in the Community which are assembled using components largely manufactured in Japan.⁷ According to the EC regulation (No 1761/87) adopted in June 1987, where imports of the assembled products already bore an antidumping duty, that duty could under certain circumstances be applied to the products assembled in the EC. These conditions were that the assembly be carried out by a related party (the same entity, a subsidiary entity or an entity under contract to the original producer), that the assembly be started or considerably increased after the opening of the antidumping and that the value of parts originating in the country subject to the antidumping duty was at least 60 percent.⁸

The panel ruled that the antidumping duties on electronic typewriters, dot-matrix printers and other products of Japanese plants in the EC were internal taxes rather than border taxes, that they were discriminatory and, as such, illegal. The panel also concluded that the undertaking imposed on Japanese companies

manufacturing in the EC that they source at least 40 percent of their components from outside of Japan was also illegal under GATT.

The new proposals on circumvention adopt and develop the US procedure which is to extend the antidumping duties on the final goods to components. The proposals widen the scope for extending the duty from components imported from the foreign producer to components imported from the country *per se*. They would cover products assembled in a third country. The US has also sought to embody into the new GATT Code a version of its own rules designed to prevent circumvention through minor alterations of the dumped products by way of an extension of the definition of "like product".

Comment: The EC system of applying antidumping duties to the products of screwdriver plants will usually result in a greater degree of protection for the domestic industry than was originally thought necessary to offset the injury. Where the usual MFN or GSP duties have to be paid on the components, the effective rate of duty on the assembled product will be often many times higher than the nominal antidumping duty. This system may therefore introduce a considerable amount of hidden protection.

The US system of charging the antidumping duty on the components has the opposite effect, at least where "normal" duties on the components are equal to those on the assembled products. The value-added in the assembly process will escape the antidumping duty. In addition applying the antidumping duty to the components will also put the domestic users of those components at a disadvantage unless some way can be found to identify those components going to the assembly plant of the foreign dumper. At the time of writing the EC chemical industry association is arguing against this system since it fears that it could lose out from the imposition of antidumping duties on components.

Sampling

Another important proposal is that of the EC on the treatment of instances of dumping, where there are many small exporters involved as, for example, in shoes, clothing and leather goods. In these cases the difficulties are made more acute by the multiplicity of products and rapid changes in fashion. The EC has asked that a system of sampling the exporting firms be written into the Code.

Comment: The notion of sampling where there is a large number of exporting firms is hard to square with the intention of preventing predatory dumping. The proposal was motivated mainly by difficulties in bringing actions against clothing and footwear manufacturers in the Asian

⁷ In fact the EC has announced that, the panel ruling notwithstanding, it will retain its regulations until the end of the Uruguay Round.

⁸ Commission of the European Communities, Official Journal, No. L 167, 26 June, 1987, p. 9.

Newly Industrialised Countries. The very fact that these sectors are populated by large numbers of firms—there are over 2000 separate footwear manufacturers in Taiwan—is *prima facie* evidence of the intensity of competition. Where there is intense competition, dumping can be ruled out. Firstly profit margins are already extremely narrow (in firm-theoretic terms only “normal” profits are being made), and the firms could not finance a policy of selling abroad below average cost for long enough to damage the domestic industry. Secondly if one firm did so, those goods could be bought by a rival producer and profitably resold in the exporting country’s market. Thirdly the implicit suggestion that such firms may collude in order to destroy the industry in the target market is not consistent with the way in which these sectors operate in the countries concerned. But without collusion why should these firms all dump at the same time, that is when the competition is most acute.

In general the adoption of the exporting countries’ proposals for revisions to the Code will go some way to reduce the anti-import bias of the existing national regulations. It would do nothing to weaken the power of antidumping procedures in the importing countries to prevent predatory dumping where that can be reasonably established. But it would go some way to limiting the importing countries’ use of antidumping actions as a form of administrative protection. Conversely some of the proposals of the importing countries are clearly counter to the original intentions of the GATT. Most of the proposals by these countries are designed to incorporate sections of their own regulations into the GATT Code so that they will then be proof to complaints to GATT panels.

Several of them would extend the practice of subjecting imports where there has not been an investigation to antidumping duties (which is already done when producers start to export from a country already subject to antidumping duties on the same or like products pending an investigation of the new imports). This is contrary to the intentions of the GATT Article VI or the Code. There has been a growing tendency to think of antidumping duties as if they were another form of protective tariff barrier on the exports of particular products from particular countries rather than as a method for offsetting injury or potential injury on particular consignments of products where dumping is established.

But it would be misleading to suggest that all the

importing countries’ proposals are towards facilitating bringing successful antidumping actions. The EC has itself proposed changes to the Code to improve the definitions of “causality” and “threat of injury”.

Is Dumping Necessarily Predatory?

Selling below average cost is in certain circumstances rational behaviour. It may result from cyclical swings in demand or overly optimistic investment decisions (either in working or fixed capital). Some writers have shown that, under certain circumstances, selling below marginal cost may be rational for a limited period.

Dumping could reflect the difficulties of forecasting demand and costs of storage⁹ or it may be a response to the costs of varying factor inputs and output with cyclical swings in demand.¹⁰ Either approach can generate non-predatory dumping at below marginal cost, whereas the case of dumping at below domestic price can be explained by the traditional price discrimination hypothesis (which is more economical of assumptions).

There is no obligation in antidumping cases to establish predatory intent. Such a requirement would rapidly reduce antidumping to an interesting academic footnote. But a clause in the Code which placed emphasis on whether the dumping prices could be sustained over a long period would be valuable. Often dumping is found where the producer is making handsome profits on sales at those prices.

Effects on Economic Welfare

The traditional explanation of price discrimination implies a loss in the consumer surplus in the exporting country. Consumers there would be better off if the firm charged the same price in both markets. However it is easy to construct alternative situations where consumers in the exporting country gain from price discrimination.¹¹ But the welfare of producers must also be taken into account. In general it is impossible to conclude *a priori* whether economic welfare in the two countries together is increased or reduced by price discrimination.

But from the point of view of the justification for antidumping actions it is welfare in the importing country that is normally at issue. From a static economic welfare viewpoint there is no justification for antidumping actions. The improvement in the importing countries’ terms of trade from dumping or the foreign subsidisation of its imports implies a real income gain. The principle of comparative advantage has never suggested that nobody loses, but only that the benefits of trade exceed the costs. In a competitive market the gain in consumer surplus will

⁹ See Wilfred Ethier: Dumping, in: *Journal of Political Economy*, Vol. 90, No. 3, 1982, pp. 487-506.

¹⁰ See S. W. Davies, A. McGuinness: Dumping at Less than Marginal Cost, in: *Journal of International Economics*, No. 12, 1982, pp. 169-182.

¹¹ For example the case discussed in S. W. Davies, A. McGuinness, *op. cit.*

outweigh the loss in producer surplus and it is irrelevant whether the goods are dumped, or for that matter subsidised. Neither the GATT Code nor any of the national regulations require that proportionate weight be given to the gains to consumers or industrial users of dumped goods.

If there are unacceptable transfers from producers to consumers in the import-competing industries, the appropriate policy is redistribution through direct taxes or subsidies. Trade barriers are "second-best".¹²

However, it is usually argued that if dumping should lead to changes in the structure of the market, in particular the establishment of monopoly or oligopoly power, any short-term gains to consumers may be eventually outweighed by losses. Three points need to be made:

□ neither the GATT Code nor the national regulations suggest that the antidumping investigation should seek to determine whether the pricing behaviour of the exporter is predatory and/or might have welfare-damaging effects on market structure, or is the result of transitory problems in the producer's home market. The impact of alleged dumping instances on market structure is the justification for antidumping procedures but in fact is never systematically addressed in antidumping cases;

□ it can be argued (with supporting statistical evidence) that adverse changes in market structure, or the perpetuation of non-competitive structures, are as likely to be fostered by antidumping action as by dumping itself;¹³

□ even if the domestic industry were driven out of business, the foreign producer does not automatically become an actual or quasi-monopolist. In an open trading system an abundance of alternative sources will remain. Requiring full-cost pricing compromises the argument that antidumping actions are a defence against predatory dumping.¹⁴ The best defence against predatory dumping will often be to allow competition from other foreign firms to prevent the dumper from achieving the market power to recoup its initial losses. "(The) use of antidumping actions for policing full-cost pricing and market sharing would turn what would otherwise be bad business decisions into 'cash cows'".¹⁵

Value Calculation

The new proposals by the exporting countries would, if at the cost of more detail and complexity, reduce the discretion of importing countries in their calculation of

costs. For example "reasonable" profits would be based on actual profits for similar products or the same product in different markets. That is preferable to the current US minimum 8 percent profit margin.

But there is the danger that fine tuning the margin and injury determination rules will merely give an appearance of increased precision and acceptability. In the end there will always be a large measure of judgement, starting with whether a particular product is "like" another one. Finger points out another related danger – the risk of harassment increases with additional complexity and the cost of defence against invalid charges of dumping will itself become a barrier to trade.¹⁶ Messerlin argues that harassment is already prevalent in the EC, effected by Community firms initiating investigations and demanding reviews of cases that have already been decided negatively, or prior to the expiry of measures imposed after a positive determination.¹⁷

Price Undertakings

Up to this point I have concentrated on antidumping duties as the remedy for removing the injury caused by antidumping. But price undertakings by the exporting firm are also GATT-acceptable. These are becoming less common in EC but resulted of 63 percent of the "restrictive outcomes" in US antidumping cases between 1980 and 1988.¹⁸

From an economic viewpoint duties are to be preferred to price or volume undertakings in that competition from the foreign producer may still continue, thereby limiting the monopolistic or oligopolistic power of the Community producers. Duties are also more transparent than undertakings with the result that the users within the Community are more likely to ask for a review or make representations against the extension of the measure.

The GATT allows antidumping actions despite the fact that they lack economic rationality and despite the fact that they breach the GATT principles of non-discrimination and national treatment. Even were it necessary to establish predatory intent, in an economically justified antidumping procedure it would be necessary to establish that the balance of economic interest in the importing country was negative.

¹³ See Michael Davenport, *op. cit.*

¹⁴ See Michael Finger, *op. cit.*, p. 158.

¹⁵ *Ibid.*, p. 159.

¹⁶ *Ibid.*, p. 159.

¹⁷ See Patrick Messerlin, *op. cit.*

¹⁸ See Michael Finger, Tracy Murray: Policing Unfair Imports: the US Example, Working Paper WPS 401, The World Bank, Washington D.C. 1990, p. 11.

¹² For a more extensive review of the general arguments for and against intervention in trade see Alan V. Deardorff, Robert M. Stern: Current Issues in Trade Policy: an Overview, in: Robert M. Stern (ed.): US Trade Policies in a Changing World Economy, Cambridge, Mass., 1987.

Until the early 1980s antidumping procedures were hardly used. There is little complaint about their unavailability for trade disputes within the EC, though they were not excluded in the more recent EC-EFTA free trade agreements or in the US-Canada Free Trade Agreement. Large countries like the United States appear to be content for domestic trade purposes with very much more demanding anti-trust laws where damage, not just to a competitor, but to competition has to be established. Thus antidumping rules do not seem an essential weapon in the protectionist armoury, but rather their use has expanded because of their convenience and their success. It seems that antidumping procedures are used in the place of the selective safeguards instrument that the GATT members have, at least until now, refused to accept. Since they are available, since they allow individual firms to initiate procedures and since, with biased procedures for establishing dumping and myopic criteria for establishing injury, they are frequently successful, the use of antidumping actions has grown greatly over the last decade.

Antidumping procedures have been defended on the grounds that they defuse protectionist sentiment. But it is doubtful whether in their absence protectionism would have resulted in even greater distortions to free trade, either through "grey area" devices like voluntary export

restraints, or through clearly GATT-illegal safeguards procedures. Rather it is likely that industry would more-or-less have accepted the rules of GATT while pressuring for changing those rules in favour of a more flexible Article XIX (on safeguards). The effectiveness of the antidumping procedures came as an unexpected bonus in the early 1980s and, rather than deflecting protectionist sentiment, it probably encouraged recourse to these procedures in those industries, steel, chemicals and consumer electronics, where national (and Community) organisations were strong, foreign competitors were both competitive, increasing their share in the domestic market, and large in scale, and "like products" were easy to define.

Most of the proposed changes to the GATT Code will improve the operation of antidumping procedures by reducing the bias against the foreign producer. As for moves to make the process even more flexible as a quick and effective device for sectoral protection, the most important proposal is that on sampling (though this EC proposal would probably be withdrawn if a selective safeguards clause were accepted). The main problem in accepting the genuine improvements in the antidumping Code is that they may serve to give it a legal and economic respectability and measure of acceptance it does not merit. Scrapping the whole thing would be a much better idea.

Phedon Nicolaides*

Anti-dumping Measures as Safeguards: the Case of the EC

The European Community's anti-dumping policy has been recently criticised for having a hidden protectionist agenda.¹ Critics have argued that (a) there is a bias in favour of finding dumping in the methodology used by the Commission;² (b) East Asian exporters have been more unfavourably treated than other third-country exporters;³ (c) anti-dumping proceedings have been "captured" by oligopolies and industrial lobbies and that anti-dumping authorities conduct their investigations with little regard for the possible adverse effects on competition.⁴

In response, EC officials have maintained that the Community's policy is "incontestably the most liberal"⁵

and that it is compatible with GATT rules. It is very difficult to attribute protectionist motives to bureaucrats simply by observing their actions. Yet they have discretion in not applying rules which may be legal but of little economic rationality. Therefore, a question that is pertinent to ask is what are the consequences of the EC anti-dumping policy?

¹ For an assessment of other countries' anti-dumping policies see John Jackson, Edwin Vermulst (eds.): *Antidumping Law and Practice: A Comparative Study*, Ann Arbor 1989.

² See Brian Hindley: *Dumping and the Far East Trade of the EC*, in: *The World Economy*, Vol. 11, No. 4, 1988, pp. 445-463; Christopher Norall: *New Trends in Anti-dumping Practice in Brussels*, in: *The World Economy*, Vol. 9, No. 1, 1986, pp. 97-111; Christopher Norall: *The New Amendment to the EC's Basic Anti-dumping Regulation*, in: *Common Market Law Review*, Vol. 26, No. 1, 1989, pp. 83-101; Ivo Van Bael: *EEC Anti-dumping Law and Procedure Revisited*, in: *Journal of World Trade*, Vol. 24, No. 2, 1990, pp. 5-24.

* The Royal Institute of International Affairs, London, UK.