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## Anti-dumping measures as safeguards: the case of the EC

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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 Nicolaidis\*

## 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.<sup>1</sup> Critics have argued that (a) there is a bias in favour of finding dumping in the methodology used by the Commission;<sup>2</sup> (b) East Asian exporters have been more unfavourably treated than other third-country exporters;<sup>3</sup> (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.<sup>4</sup>

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

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?

<sup>1</sup> 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.

<sup>2</sup> 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.

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Under GATT rules dumping is not illegal, it is merely "actionable". Countries are permitted to take remedial measures restricting imports only when dumping causes injury to domestic industries. Even when there is injury a country has the option not to impose anti-dumping duties. The EC has set itself the additional requirement that the levying of anti-dumping duties must be in the Community's interest.<sup>6</sup>

The purpose of this article is to show that the method of application and effects of the EC's anti-dumping policy are virtually indistinguishable from those of safeguards. To the extent that there is a bias in the Community's regulations, anti-dumping action, like safeguards, would tend to stem the flow of imports from more competitive countries. The article does not argue that the EC has any hidden protectionist objectives. Rather, it questions the purpose of policies which are supposed to control unfair trade practices when in reality they mostly seek to alleviate injury from imports.

It should be stressed, however, that EC policies are not unique in their bias. In a recent study of the US anti-dumping and countervailing policies, Finger and Murray point out that "... the definitions of dumping and subsidy are broad enough that the economics of the unfair trade remedies is effectively the same as the economics of the escape clause."<sup>7</sup> Ultimately, the problem with anti-dumping policies is the ambiguity and the wider than necessary scope of GATT rules.

### Different Objectives

Safeguards (Art. XIX of GATT) are supposed to be temporary measures that give domestic industry "breathing space" to adjust to sudden surges in imports or shifts in comparative advantage. Art. XIX provides an escape route out of a country's GATT obligations when

domestic politics make unacceptable the rapid decline of an industry in the face of foreign competition. Safeguards, by themselves, have little economic usefulness because if anything they impede the efficient allocation of resources.<sup>8</sup>

In contrast, anti-dumping rules are supposed to offset distortions in the international allocation of resources by preventing foreign exporters from exploiting trade barriers, government subsidies and other policies that may discriminate in their favour. Indeed, this is the EC view on the purpose of anti-dumping policy as expressed by the former Commissioner for External Relations Willy de Clercq: "... dumping is considered to be unfair since it is based on an artificial, rather than a true comparative advantage, in the sense that the low price does not necessarily result from cost-efficiency. It has also to be remembered that dumping is made possible only by market isolation in the exporting country ... (so that exports) are often made at a loss, or are financed from the profits made from the same or different products in a protected domestic market."<sup>9</sup>

What is significant about this quotation is the implied link between market structure and the ability to undertake dumping.<sup>10</sup> If dumping is to be sustained for an extended period of time there must exist obstacles to price-equalising arbitrage and the exporter would have to cross-subsidise any loss-making exports through above-normal profits from sales in the home market. If the exporter has any predatory intent he must be capable of sustaining dumping over an extended period of time or at least longer than the period for which import-competing firms can tolerate losses. It follows that if dumping is an objectionable business practice because trade barriers and excessive profits from imperfectly competitive home markets might lead to predatory behaviour, then not all instances of dumping should be condemnable because it

<sup>3</sup> See Brian Hindley, *op. cit.*

<sup>4</sup> See Michael Davenport: *The Charybdis of Anti-dumping: A New Form of EC Industrial Policy?*, Discussion Paper 22, Royal Institute of International Affairs, London 1989; Patrick Messerlin: *The EC Antidumping Regulations*, in: *Weltwirtschaftliches Archiv*, Vol. 125, No. 3, 1989, pp. 563-587; Patrick Messerlin: *Anti-dumping Regulations or Procartel Law?*, mimeo, The World Bank, February 1990; Klaus Stegemann: *EC Anti-dumping Policy: Are Price Undertakings a Legal Substitute for Illegal Price Fixing?*, in: *Weltwirtschaftliches Archiv*, Vol. 126, No. 2, 1990, pp. 268-298.

<sup>5</sup> See Frans Andriessen: *Trade Issues for the Electronics Industry*, speech delivered at the Financial Times 11th conference on world electronics, London, 27 April 1989; Willy de Clercq: *Fair Practice, Not Protectionism*, in: *Financial Times*, 21 November 1988; Rolf Weidemann: *The Anti-dumping Policy of the European Communities*, in: *INTERECONOMICS*, Vol. 25, No. 1, 1990, pp. 28-35.

<sup>6</sup> In practice, however, the Community interest has been interpreted to coincide largely with producers' interests. Occasionally, consumer and user groups are invited to submit their views concerning products under investigation. It is unknown what is made of these views. What is known is that generally producer interests over-ride consumer interests.

<sup>7</sup> Michael Finger, Tracy Murray: *Policing Unfair Imports: The US Example*, in: *Journal of World Trade*, Vol. 24, No. 4, 1990, pp. 39-53, here p. 39.

<sup>8</sup> For an account of the economic role of safeguards see Gary Sampson: *Safeguards*, in: Michael Finger, Andrzej Plechowski (eds.): *The Uruguay Round, The World Bank, Washington 1987*, pp. 143-152; for a review of the conditions imposed by GATT on the use of safeguards see John Jackson: *World Trade and the Law of GATT*, Indianapolis 1969.

<sup>9</sup> Willy de Clercq, *op. cit.*

<sup>10</sup> This raises the question how the EC could initiate investigations against free-trading Hong Kong. There are also several misconceptions revealed in the quotation. A protected market is neither a necessary nor a sufficient condition for temporary or sporadic dumping which occurs as a result of demand or supply uncertainty. Moreover, exports of dumped products need not be made at a loss. Price discrimination is, after all, a profit-maximising strategy. For an extensive review of the factors that enable dumping see Phedon Nicolaides: *The Competition Effects of Anti-dumping Policy*, in: *Journal of World Trade*, forthcoming, 1990.

does not always occur as a result of barriers and excessive domestic profits. Various authors have shown how dumping is caused by short-term or temporary fluctuations either in the domestic or export market.<sup>11</sup>

### Anti-competitive Trade Measures

Anti-dumping rules, however, are applied with little concern about whether dumping would indeed lead to the creation of international monopolies. Because many instances of dumping are innocuous or even beneficial to competition, anti-dumping measures are often unnecessary for defending competition. As will be shown, the majority of EC anti-dumping cases result in trade measures that are anti rather than pro-competitive.

Anti-dumping actions have become, perhaps unintentionally, a substitute for safeguard actions under Art. XIX of GATT. This consequence is not as surprising as it might seem at first glance. For private companies and industry associations, anti-dumping measures are a less "costly" means of seeking protection. They have to show only material injury instead of serious injury and the importing country does not have to compensate exporters as required by Art. XIX. Moreover, anti-dumping measures can be precisely targeted against any particular foreign firm. And, the Community's rules make it easier to demonstrate dumping.

Although anti-dumping policies are defended on the grounds that they are necessary to maintain a system of fair competition, in practice this objective is translated into policies aiming to redress injury from trade. The evidence provided in the rest of the article does not prove beyond any doubt that there was no dumping or that there was no predatory intent. Economic analysis cannot provide such proofs. Instead, it will be argued that, in general, the safeguard function of anti-dumping actions is further revealed by

- the multiple number of countries against which proceedings are initiated for any given product,
- the correlation between target countries and products in which they are competitive exporters, and

- the low rate of repeal of measures when reviews of anti-dumping cases are requested.

Before turning to an analysis of the available data, a fundamental weakness in the logic of existing anti-dumping regulations is identified. This defective logic has led to a methodology whose results stifle competition and, therefore, constitute another element of safeguards that restrict imports regardless of whether foreign firms are more efficient than domestic firms.

### Biased Methodology

The neoclassical view of competition is that it forces firms to eliminate inefficient operations. In the Austrian tradition, there is no preconceived view as to what is the efficient state of the economy. Competition is a means by which entrepreneurs try out their intuition as to what will eventually prove to be the best way of doing business. Either perception of competition rests on the idea that survival in the market place requires that firms continually adjust and adopt new and better methods of research, production, distribution, marketing, etc. Existing anti-dumping regulations have an inherent protectionist element because they do not acknowledge that managers may have different views on investment, consumer needs, market developments, pricing, etc.

EC regulations, and those of other countries, are based on the concept of "normal price". Dumping is the sale of a product at less than its normal price. The problem with this concept is that it is never observed. Foreign prices are always adjusted for the peculiarities of the foreign markets. Hindley,<sup>12</sup> Norall<sup>13</sup> and Van Bael,<sup>14</sup> among others, have argued that some of these adjustments are arbitrary and, therefore, discriminatory. But, what is fundamentally objectionable about the derivation of normal prices is the assumption in prevailing regulations that the full cost of a product can always be unambiguously determined.

The nature of anti-dumping proceedings is such that an exporter cannot merely dispute the validity of the evidence against him but he must also prove that dumping has not occurred. This is intrinsically unfair because it may be impossible to prove that there has been no dumping. For example, there are often many ways in which fixed costs may be allocated over a multiproduct company's operations or production runs.<sup>15</sup> Accounting systems cannot give a unique picture of a company in all possible

<sup>11</sup> See R. Blair, L. Cheng: On Dumping, in: *Southern Economic Journal*, No. 3, 1984, pp. 857-865; S. Davies, A. McGuinness: Dumping at Less than Marginal Cost, in: *Journal of International Economics*, No. 12, 1982, pp. 169-182; W. Ethier: Dumping, in: *Journal of Political Economy*, Vol. 90, No. 3, 1982, pp. 487-506; A. Hillman, E. Katz: Domestic Uncertainty and Foreign Dumping, in: *Canadian Journal of Economics*, Vol. 19, No. 3, 1986, pp. 403-416.

<sup>12</sup> See Brian Hindley, *op.cit.*

<sup>13</sup> See Christopher Norall: *New Trends in Anti-dumping Practice ...*, *op.cit.*; Christopher Norall: *The New Amendment ...*, *op.cit.*

<sup>14</sup> See Ivo Van Bael, *op.cit.*

<sup>15</sup> For a discussion of the problems of allocating costs in multiproduct, multinational firms see Edith Penrose: *Dumping, Unfair Competition and Multinational Companies*, in: *Japan and the World Economy*, Vol. 2, No. 2, 1990, pp. 181-187.

market contingencies. Nor can they indicate a product's normal price when the determination of such a price depends on expectations of future market trends, investors' commitment to a particular company and the management's investment horizon. The belief that normal prices can be derived by examining company accounts is a myth.

Another serious defect in the Commission's methodology (and in GATT's rules as well) is that it is not established whether the magnitude of injury is *proportional* to the margin of dumping. Imports always cause „injury“ to the import-competing industry. Consumers buy imported products because they are cheaper and/or better. When imported products are of a higher quality some injury occurs even if their price is also higher (not dumped). Hence, not all of the injury can be attributed to dumping. The proportionality of dumping and injury is an issue on which GATT rules are silent. They only require that there is causality, a direct link, between dumping and injury.

### EC Anti-dumping Record

Members of the GATT Anti-dumping Code report their anti-dumping action to GATT. Table 1 shows the number of cases notified by the four most frequent users of anti-dumping measures. The EC reports only its action against the other 25 members of the Code.<sup>16</sup> In fact, over the 1980-88 period the EC initiated a total of 349 investigations and concluded 264 investigations with positive finding (duties, price undertakings or other measures). By comparison, during the same period there were 183 cases with positive finding by the US, 134 by Canada and 109 by Australia. These numbers suggest that the EC is stricter in its application of anti-dumping rules because more investigations are concluded with a positive finding.

However, the EC hardly makes any use of countervailing measures while the US resorts to them regularly. The US which uses countervailing measures more often than any other country initiated 389 cases between 1980 and 1988.<sup>17</sup>

It is worth pointing out that information from sources other than GATT provides a different picture for the US. Recently published data by Finger and Murray<sup>18</sup> indicate that the US anti-dumping practice is quite similar to that of the EC. They found that in 1980-88 there were 385 anti-dumping cases with 72% positive findings (‘‘restrictive outcome’’). These data strengthen the argument in this article that anti-dumping provisions need not be intentionally manipulated to provide the import protection sought by industry. Once the rules are biased intentions are irrelevant to the outcomes which invariably seek to alleviate injury rather than to control unfair trade.

Another important difference between the EC and other countries that emerges in the GATT statistics is the number of price undertakings accepted by the EC. About 70% of all cases with positive finding involve price undertakings. This percentage is much higher than that of the other three main users of anti-dumping measures. The enforcement of price undertakings requires monitoring of prices and prior consultations before any change is permitted.<sup>19</sup> To the extent that the monitoring and the consultations entail management of trade, the EC's practice may in fact have a more protectionist effect than the policies of other countries. Furthermore, price undertakings suppress competition more than ad valorem or specific duties because they do not allow improvements in foreign efficiency and productivity to feed through the price mechanism.

Again, it is worth pointing out that the data published by Finger and Murray show similar trends in the US application of anti-dumping rules. During the 1980-88 period, voluntary export restraints (VERs) superseded about 63% of all cases with a positive finding. VERs which maintain low volumes of exports have the same effect on prices as price undertakings. They are equally disruptive of the market mechanism.

### Multiple Sources of Exports

Counting the number of reported cases (each of which refers to a particular product *and* a particular country) is not a very satisfactory method of gaining economically useful information about a country's anti-dumping actions. One way to obtain more meaningful information is to classify such actions in terms of products.<sup>20</sup> Between 1979 and 1988, the EC's anti-dumping action affected 176 different products which fall into four broad categories: (a) chemicals (35%), (b) electronic and mechanical (20%), (c) metal and steel (20%) and (d) miscellaneous (25%). As shown in Table 2, the first three product categories account for three quarters of all anti-dumping action. The fact that the number of products is lower than the number of cases reveals that investigations involve on average more than one country. This is a typical characteristic of safeguards

<sup>16</sup> For a more detailed treatment of the EC anti-dumping regulations see Phedon Nicolaidis: EC Anti-dumping Policy, Tokyo Club Papers, forthcoming, 1991. The data shown in the tables and the arguments in the following sections are drawn from that paper.

<sup>17</sup> See Michael Finger, Tracy Murray, *op.cit.*, p. 44.

<sup>18</sup> *Ibid.*

<sup>19</sup> For an account of how the effective enforcement of price undertakings also requires the cooperation of EC industry associations, see Klaus Stegemann, *op.cit.*

<sup>20</sup> All statistical information in this and following sections has been collected from the Official Journal which was accessed through the JUSTIS-CELEX computerised database.

**Table 1**  
**Anti-dumping Actions,**  
**1 January 1980 – 30 June 1988**

	Cases Ini- tiated	Duties Provi- sional	Defini- tive	Price Under- takings	Positive Findings <sup>3</sup>		
Australia	260	114	88	21	109	(42) <sup>a</sup>	(19) <sup>b</sup>
Canada	250	234	129	5	134	(54)	( 4)
EC <sup>1</sup>	231	80	54	108	162	(70)	(67)
EC <sup>2</sup>	349	—	86	178	264	(76)	(67)
US	342	235	178	5	183	(54)	( 3)

Notes: <sup>1</sup> Actions against Parties to the GATT Code only.

<sup>2</sup> Total number of actions, 1 January 1980 – 31 December 1988.

<sup>3</sup> Definitive duties plus price undertakings.

<sup>a</sup> Percentage of cases with positive finding out of total number of cases initiated.

<sup>b</sup> Percentage of price undertakings out of cases with positive finding.

Sources: GATT (BISD); European Community: Seventh Annual Report of the Commission on the Community's Anti-dumping and Anti-subsidy activities, Brussels 1990.

**Table 2**  
**EC Anti-dumping Actions by Product Category,**  
**1979-88**

(percentage of total in each category)

	Procee- dings	Provi- sional Duties	Defini- tive Duties	Under- takings	No Dumping
Chemical	35	48	45	41	7
Elect., Mech.	20	15	23	11	24
Metal, Steel	20	21	17	17	28
Misc.	25	16	14	31	41
Total	100	100	100	100	100

Source: EC Official Journal.

**Table 3**  
**Geographic Distribution of EC Anti-dumping**  
**Actions, 1979-88**

(percent)

	US & Canada	Far East	Eastern Europe	EFTA	Turkey
Chemicals	26	15	42	3	—
Electronics	12	88	—	—	—
Mechanical	—	45	45	—	—
Metal, Steel	4	11	30	9	—
Textiles	26	13	13	—	26
Wood & Paper	18	5	32	18	—
Misc.	13	16	35	—	—
Cases (1980-88)	9	16	34	4	10 <sup>a</sup>

<sup>a</sup> Figure refers to "other Western Europe" which excludes EFTA.

Sources: EC Official Journal; European Community: Seventh Annual Report of the Commission on the Community's Anti-dumping and Anti-subsidy activities, Brussels 1990.

which aim to protect domestic industry from more efficient foreign competitors. When an industry loses its comparative advantage it usually loses it to emerging exporters from several other countries.

The Commission's latest report on the EC's anti-dumping activity<sup>21</sup> provides further corroborating evidence of the safeguard element in anti-dumping actions. Out of a total of 39 cases initiated in 1988 there were only 9 single product-country cases. The rest named more than one country per product investigated. There was no single product-country provisional duty out of the 28 imposed during that year. Of 18 definitive duties only one related to a single product-country. Finally, all the 8 cases with no injury or no dumping finding referred to multicountry products.

What is striking in the numbers of Table 2 is the low rate of no-dumping findings for chemicals in relation to the high rate of incidence of anti-dumping complaints in that industry. This may mean that the chemical industry is especially vulnerable to dumping or that it is more effective in its complaints. Given the evidence on the cartelized structure of the industry it is more likely that the latter possibility is closer to the truth.<sup>22</sup> It also happens that complaints concerning chemicals have been primarily directed against East European producers. The economic structure of East European countries facilitates the finding of dumping because the Commission does not consider as reliable their domestic prices. Therefore, it relies mostly on its own constructed normal prices.

### Action Against Competitive Exporters

Table 3 shows the geographic and sectoral distribution of cases initiated during 1979-88. There can be seen a close correspondence between the incidence of anti-dumping and the industrial sectors in which these regions have become competitive. Japan and other Far Eastern countries are major exporters of consumer electronics. Nordic countries, the US and Canada are major exporters of wood and paper products. Turkey is a major exporter of textiles. The last row of figures is taken from the Commission's seventh report on the EC's anti-dumping activity. It shows how misleading it is to count the number of cases relating to different countries without taking into account the concentration of these cases in products which are of particular interest to those countries.

The bias in the EC anti-dumping methodology is such

<sup>21</sup> European Community: Seventh Annual Report of the Commission on the Community's Anti-dumping and Anti-subsidy Activities, Brussels 1990.

<sup>22</sup> See Patrick Messerlin: Anti-dumping Regulations or Procartel Law?, op.cit.

that firms from those countries are subject to anti-dumping action not necessarily because they dump so much or so frequently but because dumping is found even when foreign firms are more efficient than EC firms. The celebrated ball-bearings case provides an apt illustration of that bias.

Complaints by the Federation of European Bearing Manufacturers Association (FEBMA) filed during the 1979-86 period led to the initiation of five anti-dumping proceedings against Japan, Poland, Romania and the USSR (1979-82) and against Japan, Singapore and Thailand (1983-86). The investigations found dumping margins ranging between 1% and 63% (unweighted average of 16%) and which resulted in price undercuttings ranging between 12% and 46% (unweighted average of 30%). A comparison of dumping margins and price-undercuttings indicates that on average the dumping margin was smaller than the margin of undercutting. This implies the exporters' home or full-cost price was also lower than the EC price.<sup>23</sup> Under these conditions why would they need to dump? Why would a firm dump by 1% and make itself liable to anti-dumping penalties when it can easily undercut EC firms by at least 11-12% (the difference between the lowest dumping margin and the lowest price undercutting)? How can it be certain that 1% is outside reasonable margins of error? There is no evidence

that the Commission considered that some injury would have occurred anyway and, therefore, not all of it could be attributed to dumping.

### Renewal of Anti-dumping Measures

A firm which is found to be dumping has basically two options: refrain from dumping or attempt to absorb the duties and continue dumping (a likely predatory intention). Price undertakings do not leave much scope for evasion. Most recent cases refer to dumping as sales at less than the normal value of a product. That is, most firms "caught" dumping suffer losses on their exports. An attempt to absorb duties implies that losses will be even greater. There have been allegations that some firms, especially from East Asia, have tried to maintain low prices despite

<sup>23</sup> Proof: There are two possibilities. The foreign full-cost price,  $P_f$ , is either higher or lower than the full-cost European price,  $P_e$ , when expressed in the same currency (the possibility of equality does not affect the argument). It can be proved that  $P_f$  is lower than  $P_e$  because the opposite would contradict the given fact that the margin of dumping is smaller than the margin of undercutting.

Assume that  $P_f > P_e$ . The dumped price of the foreign product in Europe is  $P'_f$ .

If  $P'_f < P_e$ , then  $P_e = P'_f + x$ , and

if  $P'_f < P_f$ , then  $P_f = P'_f + y = P'_f + x + z$

The margin of dumping is

$$D = (P_f - P'_f) / P_f = (x + z) / (P'_f + x + z)$$

The margin of undercutting is

$$U = (P_e - P'_f) / P_e = x / (P'_f + x)$$

Therefore  $D > U$ . This contradicts the given fact that  $D < U$ .

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anti-dumping duties imposed on them. Given that anti-dumping measures last for at least five years those firms must have really "deep pockets".

Suppose that those firms were indeed dumping. How likely is it that they would persist exporting at a loss for five years, especially when they know that repeated dumping could lead to additional duties for another five-year period? Firms may periodically dump in order to dispose of excess stock or attract customers to newly launched products. This kind of dumping, however, is not the same as persistent dumping at a scale that could undermine the viability of import-competing industries. Therefore, normally we would expect firms to stop resorting to dumping as a strategy of market penetration or of capturing market share from domestic firms.

If, however, anti-dumping proceedings are in fact used as a substitute for safeguards to protect inefficient domestic industries, there would be a tendency for renewing anti-dumping measures at the end of their five-year period. Such renewal would be requested for products whose exporters remain a potential threat to EC industry. The procedures for reviewing anti-dumping cases allow for continuation of previously imposed measures not necessarily when there is still dumping but when "the expiry of the measure will lead again to injury or threat of injury". Hence, the decision on whether to allow a measure to lapse is explicitly a safeguard issue. Strong evidence of that is the low rate of repeal of duties or undertakings by reviews. During the five years between 1984 and 1988 93 reviews were opened and 75 were terminated. Of the ones that were terminated only 21% resulted in a repeal of duties or price undertakings. Some reviews are carried out before measures are due to expire. There is, however, no evidence that the outcomes of such reviews are significantly different from reviews carried out for the purpose of determining whether they should be allowed to lapse.

### Anti-dumping and Investment

Because anti-dumping investigations do not consider the state of competition in relevant markets, nor do they examine the business strategies of firms under investigation, they assume that direct investment is undertaken for the sole purpose of circumventing anti-dumping rules. The recent censure of the EC's "screwdriver" provisions by a GATT panel is well known. What is less known is whether the Japanese firms concerned were indeed attempting to evade anti-dumping duties.

There is no way of proving the true intentions of those firms. But there is considerable evidence to suggest that

Japanese firms have been investing in the EC in those sectors in which they have a strong comparative advantage. The four largest sectors of Japanese investment are electrical machinery, transport equipment, general machinery and chemicals. These sectors account for 72% of the stock of Japanese manufacturing investment in the EC (1989). The same four sectors also account for 78% of all Japanese merchandise exports to the EC (1989).

In a recent paper Thomsen and Nicolaides<sup>24</sup> have argued that investment intended to improve market access is usually successful only when the investing firm has unique advantages which enable it to compete effectively with local firms. They have also argued that in the case of Japanese companies the effect of trade barriers and of the "1992" programme is more likely to have been on the timing of investment rather than whether it would have occurred at all. Those companies would have invested anyway.

This line of reasoning implies that to the extent that anti-circumvention rules do not examine what prompts particular investments and to the extent that such rules raise the cost of investment (e.g., required local content), screwdriver regulations have inherent safeguard elements not only against exporters in foreign countries but also against foreign firms operating within the EC.

### Conclusion

The anti-dumping regulations of the EC (with the exception of the parts amendment), and those of other countries, are an example of the intended or unintended protectionism that lurks in many trade policies which appear to comply with the letter of GATT. But, GATT rules are not perfect. This means that the EC should not ignore the economic consequences of its actions simply because they may be legally sanctioned.

The EC, in its attempt to ensure that no one can dump unnoticed, has created a system of rules and procedures which is biased against foreign firms and in favour of finding dumping. In calculating dumping margins it tries to account for differences and peculiarities in foreign markets so that they are not unfairly exploited by foreign firms. As a consequence, it detects dumping where by most independent accounts it does not exist. The EC's methodology has been designed to avoid indeterminate outcomes even when the calculations produce results of questionable economic validity.

<sup>24</sup> Stephen Thomsen, Phedon Nicolaides: Foreign Direct Investment: 1992 and Global Markets, The Royal Institute of International Affairs, June 1990.