

Davis, Lucy

Working Paper

Anti-dumping investigation in the EU: how does it work?

ECIPE Working Paper, No. 04/2009

Provided in Cooperation with:

European Centre for International Political Economy (ECIPE), Brussels

Suggested Citation: Davis, Lucy (2009) : Anti-dumping investigation in the EU: how does it work?, ECIPE Working Paper, No. 04/2009, European Centre for International Political Economy (ECIPE), Brussels

This Version is available at:

<http://hdl.handle.net/10419/174831>

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.



ECIPE WORKING PAPER • No. 04/2009

Anti-dumping investigation in the EU: how does it work?

Lucy Davis

Lucy Davis (lucy.davis@ecipe.org) is a Trade Policy Analyst at ECIPE

ABSTRACT

ANTI-DUMPING RULES ARE flexible and open to political bias. This is a concern repeated all over the world. All jurisdictions tailor their anti-dumping laws to WTO rules, but this still leaves a significant amount of discretion as to how decisions are made. In the EU, the lack of transparency in anti-dumping decision making further heightens suspicions that it is not always driven by sound economic assessment. In the past ten years, EU investigating institutions have been biased towards the imposition of measures once a case has been initiated. Whether this is the result of error in the complex calculations required to establish the existence of injurious dumping, or a less benign political bias towards supporting declining domestic industries, is difficult to establish from an outside perspective. What can be achieved is a rigorous examination of the publicly available information from anti-dumping cases. Investigation reports from the last ten years show repeated laxity in economic analysis and conclusions that are not fully justified by the evidence. When cases are taken to the European Court or the WTO's Dispute Settlement Body (DSB), further errors are exposed. Procedural reform is needed in the investigation process, not least to raise assessment standards and abate suspicions of anti-dumping protectionism.



www.ecipe.org

info@ecipe.org Rue Belliard 4-6, 1040 Brussels, Belgium Phone +32 (0)2 289 1350

INTRODUCTION

THE POLITICAL DEFENCE of anti-dumping measures rests on the elimination of unfair and distortionary trade practices by foreign firms attempting to capture European markets. The practice of dumping, or selling at below production costs, is used as justification for applying high duties on foreign products - duties which often far exceed everyday tariff levels. However, accusations have long been made that the EC's active use of anti-dumping actions itself creates unfair trade barriers for importers seeking access to the European market. In the first instance, any legitimate price advantage they may have through lower production costs runs the risk of being labelled as dumping and unfair trade by their European competitors. Once this accusation has been made, political support for European competitiveness is such that the investigatory process all but guarantees trade protection. The danger is that commercial misuse, combined with manipulation of the legislative process amounts to anti-dumping protectionism.

This paper asks - is the Community's anti-dumping legislation really facilitating justice against unfair trade, or protectionism against fair trade? This is not an easy question to answer, not least because EU anti-dumping investigations are notoriously opaque and ambiguous. However, when anti-dumping cases go to the European Court of Justice (ECJ) or to the WTO's Dispute Settlement Body (DSB), more information becomes public, permitting clearer judgments. Quantitative and qualitative data from all anti-dumping investigations launched by the EC in the past ten years is used, in order to build up a picture of what decisions are being made, how they are being made and what the implications are for foreign companies importing into the EU. Information was gathered from Official Journal records of the investigatory process and expiry reviews, as well as ECJ and DSB case records.

Using this information, the Community anti-dumping legislative process is explored from four related angles - the community-interest clause; decisions to terminate without measures; expiry reviews and disputes before the courts over measures imposed. The EC claims that all anti-dumping investigations are "rigorously and professionally carried out" (European Commission 2006, p. 68). Examination of these four aspects allows appraisal of this statement, and the conclusions highlight areas where rigour is not being applied as stringently as is suggested. This is particularly pertinent to the Community Interest Test, which the EC is not obliged to carry out under international anti-dumping law, but is not currently a well-conducted part of anti-dumping investigations.

Emerging from the analysis is a clear trend. Once a complaint has been made and an investigation initiated, the overriding bias is towards imposition of definitive duties and thereafter to maintain these duties through extension in expiry reviews. Whether by fault or design, low standards of analysis in anti-dumping investigations leave the door open to politically-motivated decision making. As a result, sound economic assessment of 'unfair' trade has not always been the primary basis for measures. The main basis for decisions appears to be curbing fair and legitimate competition from more efficient and competitive foreign rivals. Within this trend, four conclusions are drawn:

1. Community Interest tests are ineffective and lack economic rigour. The EC is not obliged to carry out the test under international anti-dumping law, but available

* The ECIPE Working Paper series presents ongoing research and work in progress. These Working Papers might therefore present preliminary results that have not been subject to the usual review process for ECIPE publications. We welcome feedback and recommend you to send comments directly to the author(s).

evidence suggests that its inclusion in investigations adds little more than positive spin to the decision-making process.

2. ECJ and DSB cases expose repeated errors in anti-dumping investigations. Calculation errors and failure to exercise objective evaluation are common complaints. And, while the ECJ is reluctant to annul measures, several panel rulings by the WTO's DSB, have found EC anti-dumping legislation to be in contravention of multilateral disciplines.
3. Decisions to terminate investigations without imposition of measures are rarely based on Community Interest findings or absence of injury to Community industries. Such decisions usually stem from withdrawal of the complaint by the original complainant, rather than a contrary decision by the EC.
4. When expiry reviews are conducted, the overwhelming majority of measures are extended, some repeatedly and for very long periods of time. Expiry review reports indicate that domestic industries are using anti-dumping protection to re-structure and build up profitability behind a wall of political support to keep measures in place.

The main question that follows such conclusions is whether this bias is due to procedural error and laxity, or intentional manipulation of the process? In reality, these need not be mutually exclusive. And the un-transparent nature of anti-dumping investigation in the EC does little to abate suspicions.

In 2006, ex-Trade Commissioner Peter Mandelson launched the most ambitious attempt to date to generate anti-dumping reform in recognition of these kinds of issues. But reforms were shelved in early 2008, after not only failing to generate political support from all member states, but arguably deepening Community divisions over the continued use of this trade instrument. The EC has also submitted anti-dumping reform proposals to the WTO, advocating greater multilateral scrutiny of initiations and transparency. And yet within Europe, political in-fighting curtailed the last reform effort and there are movements in the opposite direction. Arguments are surfacing for anti-dumping measures on the grounds of labour standards, environmental practices and other regulatory differences, particularly with regard to developing countries. Such arguments are gaining political support and becoming more influential.

Far-reaching reform may not be possible in the current climate. But lower-profile procedural changes, such as raising the standard of economic assessment and facilitating the participation of wider interests in anti-dumping investigations, may be politically more acceptable. And they could have a great effect -- not least in diffusing some of the tensions that increasingly surround anti-dumping cases in the EU.

SECTION ONE: EC ANTI-DUMPING LEGISLATION

THE TWO BASIC texts on which current anti-dumping actions in the EU are based entered into force in March 1996 and October 1997¹. Article VI of the GATT, which forms the basis for the EU legislation, governs anti-dumping measures but EU legislation contains a number of additional provisions, such as the "Community interest test", which go beyond WTO obligations. Anti-dumping legislation, as in all jurisdictions, is based on the rhetoric of "fairness" and establishing "level-playing fields" in global trade.

The Commission holds responsibility for investigating dumping complaints from parties within the European Union. They decide if the complaint is justified and can impose provisional meas-

ures while an investigation is carried out. Three conditions form the basis of these decisions – (1) evidence of dumping; (2) material injury to the Community industry; (3) the interest of the Community, i.e. the costs of taking measures must not be disproportionate to the benefits. It is then the Council of Ministers that decides on definitive anti-dumping duties.

The EC's anti-dumping legislation defines dumping as selling a product in the Community at a price lower than that in its home market, i.e. price discrimination. While this lowers European prices and increases the welfare of EU consumers, it may cause injury to EU producers of the like product. Of particular concern are companies that sell in export markets at very low prices in order to price out competitors and obtain monopoly power, in a practice known as predatory dumping. Once the company has achieved monopoly power, it can raise its prices, and profits.

This is straightforward and appealing rhetoric. But problems arise firstly in establishing that dumping has taken place; secondly in establishing a direct causal link between dumping and injury to Community producers; thirdly in calculating the level of duties to impose; and fourthly that these duties would not harm other economic interests, as part of the EU's self-imposed Community interest clause. Outside the EU, but not only outside the EU, suspicions are generally high that all four of these assessments are open to error and manipulation. The very fact that the Council of Ministers, an elected body, is responsible for decisions on compliance with international rules opens the process to other considerations outside the pure economic concerns stated in the Community rhetoric (Erixon 2007).

On the issue of error, in the first place, price discrimination may be a perfectly legitimate business strategy for a modern global firm that is willing to sell products for a loss while looking to break into a new market, or that creates a lower cost, lower value product, for example (Krugman and Obstfeld 2006). What the EC calls 'price-undercutting', i.e. selling products at a lower price than domestic producers, is not in itself illegal. Furthermore, as it can be difficult to prove that foreign firms charge lower prices to export markets than domestic customers, the EC (and other jurisdictions) will try to calculate a 'fair price' based on estimates of production costs. For a "non-market economy" such as China, which has attracted a particularly large number of anti-dumping accusations in the past ten years, the EC disregards Chinese data and instead uses production costs from other developing countries regarded as market economies in order to calculate the price. If these costs are higher than the price of Chinese products in the European market, China is accused of dumping. This is just one example of the latitude available within anti-dumping law for the application of judgement, which can be open to abuse. And, while it may fulfil the legal justification for anti-dumping duties, it is not an intuitively sound basis for economic policy. Sufficient evidence to prove strategic and harmful dumping by foreign producers is rarely provided in the public realm. As an analyst outside the European institutions, it is very difficult to know whether it is indeed even provided within them.

These problems open up anti-dumping investigations not only to the possibility of error, but also manipulation. The opaque nature of the process further fuels suspicions that internal bias exists towards the imposition of anti-dumping measures as a means of protectionism for European industries faced with rising global competition (Davis 2009). In reference to anti-dumping in the US, Patrick Low argued that "virtually any industry that considers itself adversely affected by foreign competition and presents a completely assembled application to anti-dumping authorities stands a good chance demonstrating that it is under attack." (Low 193, p. 86). Such a statement could well be followed by the words 'whether it is or not'.

The following sections will explore whether this is the case in the EC, i.e. how rigorously anti-dumping claims are investigated. Publicly available information from investigations and case law

are used to look in detail at four specific areas of the anti-dumping process in the EC, how judgments are made and decisions reached.

SECTION TWO: THE COMMUNITY INTEREST CLAUSE

i) What is it?

INTRODUCED AS A public interest clause in 1996, the Community Interest test determines whether the ‘overall interest of the Community’ provides compelling reasons for rejecting anti-dumping measures in a given proceeding in which all of the other requirements have been satisfied. The original rationale was the analysis of all economic interests involved in a particular case – i.e. Community industry, user industries, importers, retailers and consumers – and this is still used by the EC. They state that “the primary purpose of the Community interest test is to determine whether there are any overriding interests against the imposition of measures despite the existence of injurious dumping. This calls for an appreciation of all economic interests in the Community.” (*Farmed Atlantic salmon*, Norway, Chile and the Faeroe Islands, OJ133, 29 May 2003, para. 243). But this has been the subject of much controversy, particularly in several recent high-profile cases in which the integrity of the public interest clause has been called into question e.g. *Footwear with uppers of leather*. China, Vietnam, 2006 OJ L 98, 6 April 2006, p.3). A problem frequently cited is that detailed and accurate assessments of all Community interests, particularly those of consumers and retailers, are difficult to conduct. A situation further complicated by increasing fragmentation of production within global companies, which means they often have both importer and exporter interests. But this is not the whole story.

It is highly questionable whether rigorous attempts are made at all to investigate Community importer and user interests. The Commission argues that any interested party is free to submit economic evidence of injury as a result of proposed anti-dumping measures, but that they often do not do so. Many of these ‘interested parties’ - consumer groups, retailers and user industry groups – however, accuse the Commission of over-complicating the submission process and rejecting evidence that is submitted on ambiguous and unreasonable grounds. They also argue that they receive insufficient notice of application of measures and the deadlines imposed on submissions leaves them insufficient time to present a sound case (e.g. Newman 2007). In short, the Community interest test is seen as nothing more than adding a positive spin to EC anti-dumping investigations, in which the decision to impose measures is usually a foregone conclusion.

ii) Testing the CI Test

A SIMPLE ANALYSIS of the past four years of Community interest testing in EC anti-dumping investigations supports the argument that it is an un-economic and often arbitrary test that presents no significant barrier to the imposition of measures. Thirty-two cases were sampled for the period 2005 - 2008, revealing clear trends in the way in which the Community interest is approached². Table 1 lists common concerns and repetitious investigation findings. Four issues are worth highlighting.

TABLE 1. COMMUNITY INTEREST TEST FINDINGS (2005 – 2008)

CONSUMER, IMPORTER AND USER INDUSTRY CONCERNS	
Expressed opposition to anti-dumping duties	32
Concern about price increases	24
Concern about supply shortages	17
Concern about anti-competitive behaviour	10
INVESTIGATION FINDINGS	
Duties are in the Community industry interest	32
Duties will have “minimal financial impact” on consumers	24
Community industry is not operating at 100% capacity	22
No evidence of anti-competitive behaviour amongst European firms	22
Community industry will go out of business if measures are not imposed	32
“Failure to respond” used as proxy for non-significant impact on consumers and user industries	24
Calculations given for potential injury to user industries	6
TOTAL NO. OF TESTS REVIEWED	32

Source: author's calculations based on Official Journal records, 2005 – 2008

1. LACK OF DETAILED ECONOMIC ANALYSIS

DETAILED CALCULATIONS OF the potential economic injury that anti-dumping measures could cause to user industries and consumers were presented in only six cases. When systematically reading anti-dumping case reports, a shift in language very quickly becomes evident under the “Community Interest” heading. Phrases such as “it is expected that”, “it is likely to be the case that” and “probably will not be affected” are commonplace.

Anti-dumping investigations are currently imbalanced. While the Commission undertakes detailed calculations of dumping, injury and causation on behalf of the complaining industry, the onus is on user industries and other interested parties to provide evidence of injury from anti-dumping duties. “The argument was not supported by any evidence” is another common phrase.

On occasions, the EC is frank about this. For example, “The community interest test is not a cost/benefit analysis in the strictest sense. While the various interests are put in the balance, they are not weighed against each other in a mathematical equation, not least because of the obvious methodological difficulties in quantifying each factor with a reasonable margin of security within the time available.” (*Footwear with uppers of leather. China, Vietnam, OJ L 98, 6 April 2006, p.3*)

However, the fact that six of these tests did involve the Commission undertaking more detailed economic considerations (see table 6) shows that it is possible to apply some fairly simple calculations to Community interests other than those of the industry which initiated the complaint. This begs the obvious question of why it is only done in a handful of cases. A balanced consideration of interests should be made in all cases.

2. EMPHASIS ON BUREAUCRATIC PROCESS OVER DEPTH AND FULLNESS OF INVESTIGATION

IN 24 OF the 32 cases sampled, “failure to respond” was taken as a proxy for lack of significant im-

pact of duties on interested parties. Even where potential injury to consumers or user industries is acknowledged in the investigations, lack of response from these parties invalidates any economic case that could be made against imposing measures. In the 2005 decision to impose duties on polyester filament fabric originating in China for example, "...although measures would be expected to increase the price of imports, importers have not expressed concern about possible measures and it is therefore considered that they would not be significantly affected" (*Certain finished polyester filament fabrics*, China. OJ L240, 12 September 2005, p.1; para. 130). A similar decision was taken in the 2006 investigation of alleged dumping of compressors from China. The investigation concluded in 2008 that anti-dumping measures would have a negative impact on consumers and other economic operators within the EU, but as none had cooperated in the investigation, this conclusion could not be used (*Compressors*, China, OJ L81, 20 March 2008).

The same does not hold true when representatives of the Community industry, i.e. the complainants, fail to supply information. For example, "No Community suppliers of hand pallet trucks have made representations in this investigation by replying to the questionnaire. However, it is clear that if no measures are imposed, several suppliers would be seriously affected and would probably have to close down". (*Hand pallet trucks and their essential parts*, China. OJ L189, 18 July 2005, p.1; para 110. Emphasis added). Apparently no economic 'evidence' was required to validate this conclusion. Even if this is an exception, the same standards of assessment and process should be applied to all interested parties in all cases and not left to speculation.

3. REPETITIOUS, UNFOUNDED, REASONING

IN ALL OF the 32 Community interest tests reviewed, representatives of consumers, importing industries or user industries stated concerns over potential price increases, supply shortages or anti-competitive effects of anti-dumping duties. In all 32 cases, these concerns were refuted by the Commission along very similar lines. Commonly used arguments are - "the objective of anti-dumping is not to close off the Community market from any imports, but to restore a situation of fair trade..."; supply constraints are not a concern because the Community industry is not currently operating at 100% capacity and could therefore increase production. (NB. a highly speculative and ill-investigated claim in most cases); and "the financial impact on consumers is likely to be minimal" (see table 6). None of these arguments is substantially nor satisfactorily backed up by evidence, begging the question - have the EC not investigated the evidence sufficiently or do they have it, but are choosing not to make it public? Answered either way, this question raises accusations of ineptitude or malpractice.

Importer groups have also put forward the argument that anti-dumping measures would benefit only exporting producers in third countries not concerned by the case, rather than the Community industry. That is, duties would have the effect of displacing imports, or diverting trade (For example *Ferro-silicon*, China, Egypt, Kazakhstan and Russia, OJ L55, 28 February 2008; *Plastic sacks and bags*, China, OJ L270, 29 September 2006). This is a compelling economic argument. But again, it is not one that has been properly analysed in any of the investigations looked at in this study.

As a result, all 32 "Community Interest Conclusions" read along similar lines – it is clearly in the Community industry interest to impose duties, and there are no compelling arguments from other interested parties not to impose duties on imports.

4. CONTRADICTIONARY EVIDENCE OF COMMUNITY INDUSTRY EFFICIENCY AND COMPETITIVENESS

IN A NUMBER of the cases reviewed (e.g. Plastic sacks and bags, 2006; lever arch mechanisms, 2006; farmed salmon, 2006...), the opening paragraph states “The Community industry is a competitive and viable industry...” Presumably implying firstly that it would have no reason to employ anti-dumping as a protectionist measure, and secondly that it is worth imposing trade distorting anti-dumping measures in order to preserve. However, all 32 cases at some point employ the contradictory arguments that, should anti-dumping measures not be imposed, European companies would have to cease production (see table 6) or “...it is likely that the deterioration of the already poor situation of the Community industry would continue.” (*Plastic sacks and bags*, China and Thailand. OJ L270, 29 September 2006, p.4; para. 209). In the case of persulphates from the USA, China and Taiwan, there is clear evidence of a European industry in decline. The report states “The Community industry is particularly marked by a loss of revenue..., falling market share and significant decrease in profit.” It warns of “cuts in production, which would therefore threaten employment and investments in the Community.” (*Persulphates*, USA, China and Taiwan, OJ L97, 12 April 2007, para. 159). This does not sound like a viable, efficient industry, able to withstand competition from abroad because of comparative production advantages. Falling European competitiveness in the face of more efficient, lower-cost overseas producers is driving the political agenda on anti-dumping, but there seem to be confused attempts to build this into the justification for final duties without stating explicitly that this is the primary motivation.

iii) Testing the CI test from a retailers perspective

IT HAS ALREADY been noted in the section above that the interests of importers, user industries and consumers are not being fully investigated in the EC’s Community interest test. Only six out of the 32 cases reviewed showed any signal of detailed calculations being made as to how anti-dumping duties would affect their businesses. Taking the ‘test of the CI test’ one step further, the perspective of one group of user industries impacted by anti-dumping measures was examined more closely. Retailers are crucial to the European economy, being the interface between supply and demand. As such, a detailed analysis of all 332 anti-dumping investigations initiated by the EC since 1998 was conducted, to understand the extent to which retailers’ interests have been considered.

TABLE 2. RETAILERS IN THE COMMUNITY INTEREST TEST

YEAR	PRODUCT	OBJECTIONS RAISED BY RETAILERS	CI TEST CONCLUSIONS		
			DUTIES WILL CAUSE PRICE RISES	PRICE RISES CANNOT BE PASSED ON TO CONSUMERS	DEFINITIVE MEASURES IMPOSED
2008	Compressors				1
2007	Polyester staple fibres				
2007	Ironing boards		1		1
2007	Sweet corn		1		1
2007	Strawberries (frozen)		1	1	1
2006	Refrigerators (side-by-side)			1	1
2006	Footwear (with uppers of leather)	1		1	1
2006	Plastic sacks and bags	1		1	1
2006	DVD+/-Rs	1	1	1	
2006	CD-Rs	1	1	1	
2006	Chamois leather			1	1
2006	Plastic sacks and bags	3		1	1
2005	Castings			1	1
2005	Bicycles	1288	1	1	1
2005	Stainless steel fasteners	1	1	1	1
2005	Granular polytetrafluoroethylene resin			1	1
2004	Polyethylene terephthalate (PET)		1		1
2003	CD-Rs				
2003	Salmon	1	1	1	
2002	Ring binder mechanisms			1	1
2001	Lamps (IECF)		1	1	1
2001	Aluminium Foil		1	1	1
2000	Electronic weighing scales	1	1	1	1
TOTAL		1298	12	17	18

Source: author's calculations, based on Official Journal records

Just 38 of all investigations launched in the last ten years have explicitly addressed the concerns and interests of retailers associated with the product in question. Table two lists them all by product³ - 23 in total. Not surprisingly they are concentrated in cases of finished products. They all share a common concern – that anti-dumping duties on imports of products that they sell will decrease supply and push up prices. Depending on the product, there is usually a degree of uncertainty as to how much of this price increase will or can be passed on to consumers, and therefore how much of an impact duties will have on profit margins. In most cases the investigation concluded that it was retailers who would bear the brunt of the cost.

Of the 23 product investigations for which the interests of retailers were addressed, 18 of them dismissed these interests as unimportant and concluded with the imposition of definitive measures. That amounts to 27 individual duties on imports, once all the countries in each product investigation are accounted for. Even in those investigations terminated without the imposition of definitive measures, only 3 linked this decision directly to duties being disproportionately harmful

to retailer and consumer interests, i.e. not in the Community interest (see section three for further details). The one case that stands out in table two is that of bicycles from Vietnam in 2005 – a rare case of strong and unified objection to proposed measures. The Commission received 1287 signed declarations from individual retailers, as well as from one retailer association, claiming that measures against bicycle imports from Vietnam would cause a decline in imports, decreased bicycle sales and consequently a loss of jobs amongst retailers. The main problem they faced was that they could not switch easily from one brand to another because of quality considerations. Definitive measures were imposed anyway (*Bicycles, Vietnam*, OJ L183, 14 July 2005).

iv) Low CI standards

WHAT ALSO EMERGED from this analysis was the finding that 119 of the 332 investigations show no record of any Community interest test being conducted at all. 58 of these resulted in definitive measures being imposed. Again the question must be asked - have the EC not investigated the evidence sufficiently or do they have it and not make it public?

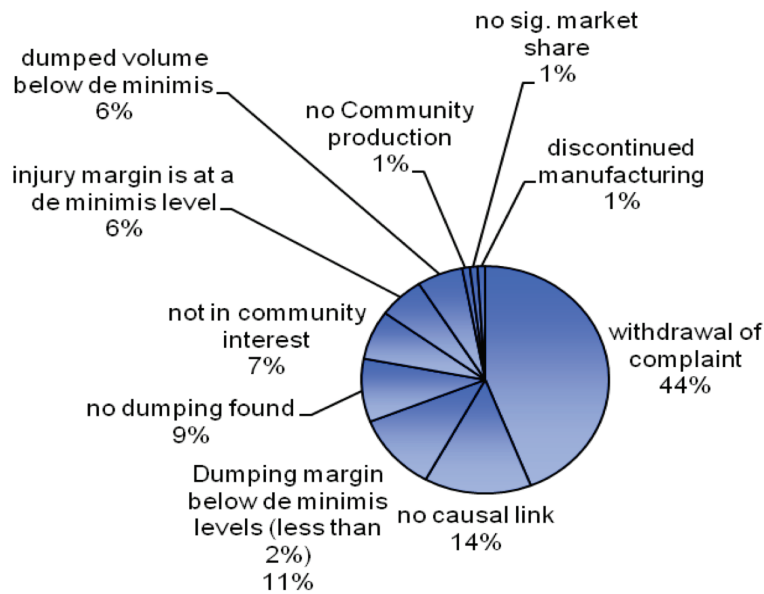
The low standards of assessment applied to the Community Interest test during anti-dumping investigations are only easy to deduce if one takes the time to read this section tucked between Causation and Imposition of Measures. But they do not go unnoticed. In the December 2000 “EC – Tube or Pipe Fittings” DSB case, for example, Brazil challenged the evaluation and findings made in relation to the Community interest. Brazil claimed that the EC did not provide timely opportunities for industrial users of the product under investigation and for representative consumer organisations to provide information which was relevant to the investigation. The EC neither sought such information other than from two gas companies, nor accepted it when it was offered. Brazil’s claims of biased and un-objective assessment were upheld by the Panel and Appellate Body reports in 2003 (WT/DS219/R and WT/DS219/AB/R) which are further detailed in section five below. Brazil is still not satisfied that the EC has fully rectified the measure in question.

The rigour with which the Community interest test is applied is an important consideration. Recent economic analyses suggest that consumer and user costs from anti-dumping measures are usually significantly higher than producer gains (Svensson 2007 and Bratt 2008). But this is rarely the conclusion of official EC Community interest tests, which are arguably neither sound nor economic assessments.

SECTION THREE: TERMINATION WITHOUT IMPOSITION OF MEASURES⁴

ONCE AN INITIAL complaint has been made, anti-dumping investigations typically last around 15 months. Provisional measures may be applied during this period if sufficient evidence of injury has been supplied by the complainant industry. The final investigation report will recommend either continuation into imposition of definitive measures or termination of the case. If calculation errors have been made in the initial dumping complaint, determination of injury or causation, it should be at this point that they are uncovered and investigations are terminated on the grounds that dumping (as officially defined) cannot be established. In the same way, if the Community interest clause is being properly applied, investigations should be terminated if measures are found to be potentially harmful to other Community industries.

FIGURE 1. REASONS FOR TERMINATION OF INVESTIGATIONS WITHOUT IMPOSITION OF MEASURES



Source: author's calculations based on http://ec.europa.eu/trade/issues/respectrules/anti_dumping/stats.htm

i) Terminations on the grounds of withdrawal of complaint:

IN PRACTICE, ONLY one of these reasons has been *commonly* used as grounds for terminating the 110 cases without definitive measures in the past ten years (see figure 6). Almost half the cases – 44% – have been terminated because of withdrawal of the initial complaint, not because of any investigative findings by the EC that the initial complaint was bogus. When this is the case, it is not specified in the publicly available termination reports why the original complainant industry withdrew the complaint. This information would be useful to know. But, in its absence, one plausible reason could be that the investigation process itself, accompanied by provisional measures and the threat of longer-term duties, has been sufficient to rectify the alleged dumping or to price the targeted producer out of the European market. Evidence from expiry reviews is examined in greater detail in section four, but indicates that anti-dumping measures, whether provisional or definitive, provide domestic industries with ‘breathing space’ from foreign competition, within which to re-structure and apply profit-boosting measures. The question is – if they are not competitive within the normal course of trade, should they be granted this luxury? Used in this way, anti-dumping is actually a form of trade protectionism. And the EC’s legislative process supports it.

ii) Terminations on the grounds of Community interest:

ONLY SEVEN OUT of the 110 cases were terminated on the grounds of Community interest. This is a surprisingly low number given the high resistance to anti-dumping measures being vocalised for many years by consumer groups, retailers, distributors and importing industries in particular. These seven cases have involved just three products – DVDs (from China, Hong Kong and Taiwan), CDs (from China, Hong Kong and Malaysia) and Atlantic salmon (from Norway). A closer look at the reasoning for termination without measures shows that interests other than those of the complainant industries were still not a significant motivation in two of these decisions.

The investigations into allegations of dumping of DVDs and CDs were terminated in October and November 2006 respectively, and the decisions were based on very similar justifications.

Both investigations were initiated following an initial complaint in 2005 from the Committee of European CD-Rs and DVD+/-R Manufacturers (CECMA), representing over 60% of total Community production. Both terminations were based on the conclusion that “the imposition of measures would be disproportionate and against the Community interest” (*DVD+/-R, China, Hong Kong and Taiwan*, OJ L293, 24 October 2006, para. 40; *CD+/-R, China, Hong Kong and Malaysia*, OJ305, 4 November 2006, para. 116.) However, the main basis for this conclusion in both cases was that the Community industry only had a marginal market share (0.8% for DVDs and 2% for CDs), was unviable and not able to advantage of any measures imposed and furthermore, that the markets for these products are in any case declining in favour of other media storage techniques, such as USB sticks and MP-3 players. In reality, the decision to terminate was based on this information, with the price impact of duties on importers, distributors, retailers and consumers receiving scant attention in comparison. The negative impact of anti-dumping duties on these interests was again a secondary consideration.

The one exception to this trend was the case of imported Atlantic salmon from Norway, Chile and the Faeroe Islands. Although it bears similarity to the previous cases in that the Community industry had only a small market share (5% during the investigation period), this is the only case from the last ten years that has dedicated serious attention to the interests and concerns of salmon importers and related industries, and as a result concluded that “it is not in the Community interest to apply such measures” (*Farmed Atlantic salmon, Norway, Chile and the Faeroe Islands*, OJ133, 29 May 2003, para. 245). What appears to have made the difference in the case was the approach of representative organisations and bodies on behalf of salmon importer and user groups, which were able to provide opposition strong enough to counter those organisations representing the producer industries. The following organisations expressed opposition:

- The European Consumers’ Organisation (BEUC)
- The Federation of National Organisations of Importers and Exporters of Fish (AIPCE/CEP)
- The Danish Association of Fish Processing Industries and Exporters
- The French Syndicat National de l’Industrie du Saumon Fumé
- SA Direct Ocean
- Norwegian Seafood Federation

Some of these are strong organisations – at the time the Syndicat National represented 15 companies in France, employing 2800 people, and the AIPCE/CEP processed over 60,000 tonnes of salmon per year and employed over 10,000 people. Such strong representation of importers, distributors, retailers and consumers is very unusual in anti-dumping investigations. Whereas complainant industries are usually well-represented (Davis 2009), those who are likely to suffer price increases as a result of duties, generally lack a unified approach. It was not so in this case, which made a critical difference in the final decision. They were however supported by one of the largest Community producers of salmon, Nutreco, who disagreed with the complainants and argued that anti-dumping duties would not promote the efficiency or competitiveness of EU producers. The investigation also contained evidence from previous duties, imposed in 1997, which had distorted the salmon market and had had no recognisable beneficial effects, even for most salmon producers. Nevertheless, interests other than those of the complainant industries were fully considered.

iii) Bias towards imposition of measures

THE 2003 SALMON case is however an exception. On the whole, Community interest has not been a significant factor in anti-dumping termination decisions. And the same laxity and bias towards imposition of measures can be seen elsewhere in termination reports. For example, only nine cases concluded that no evidence of dumping had been found. That is just 2% of the total 332 investigations initiated since 1998. Based on figures of anti-dumping actions from the past decade (Davis 2009), this bias against termination without measures means that once an investigation has been launched, a complainant industry stands a 74% chance of achieving protection against overseas rivals. It is not surprising that anti-dumping has been labelled the ‘protectionist’s weapon of choice’.

Such extraordinary numbers show a clear bias and suggest that anti-dumping investigations suffer from either low standards of assessment or some form of political inclination towards imposing measures, or both. A similar tendency is seen in decisions over the extension of measures beyond their automatic expiry date, as detailed in the following section.

SECTION FOUR: EXPIRY REVIEWS

DEFINITIVE ANTI-DUMPING MEASURES are typically enforced for five years before they expire automatically. However, if Community producers can demonstrate either that the removal of duties is likely to lead to renewed dumping or that the imposition of duties has not had the desired effect of removing the injury, the Commission may reopen its investigation in the form of an expiry review. Over the past decade, 133 expiry reviews have been conducted, while 115 measures have been automatically terminated without request for review (see table 2).

TABLE 3. DEFINITIVE MEASURES TERMINATED AND EXTENDED 1998 – 2008

YEAR	EXPIRY REVIEWS CONDUCTED		MEASURES TERMINATED WITHOUT REVIEW
	MEASURE EXTENDED	MEASURE TERMINATED	
1998	0	4	5
1999	1	3	7
2000	7	4	4
2001	7	6	8
2002	11	6	14
2003	3	5	18
2004	5	3	12
2005	8	0	20
2006	12	6	9
2007	18	2	13
2008	17	5	5
TOTAL	89	44	115

Source: author's calculations based on http://ec.europa.eu/trade/issues/respectrules/anti_dumping/stats.htm, and Vermulst 2008)

The more interesting figure here though is that, once an expiry review has been requested by the industry concerned, 89 times out of 133 the investigation found in their favour and concluded with the continuation of measures. In other words, a complainant industry is twice as likely to be granted continued protection than not, signalling a preference amongst anti-dumping decision makers to continue duties on imports once they are in place.

TABLE 4. EXTENSION DECISIONS BY SECTOR

SECTOR	NO. OF MEASURES EXTENDED
Finished goods	36
Chemicals	33
Input goods / component parts	24
Steel	15
Textiles	14
Metals	11
TOTAL	133

Source: author's calculations, based on http://ec.europa.eu/trade/issues/respectrules/anti_dumping/stats.htm

Looking at a breakdown of these decisions by sector in table 4, it is producers of finished goods (such as electrical products, household products and bicycles) and chemical processing industries that have requested the greatest number of expiry reviews in the first instance, and been granted continuation of measures most often. In all expiry reviews, the changing situation of the Community industry before and during the application of anti-dumping duties is assessed. In the finished goods category, the vast majority of reports document Community industry restructuring, under the protection of import duties on competitors' products. Industries modernised and automated facilities in attempts to improve efficiency, maintain market share and maximise profits. It is explicitly stated that, where the Community industry has not yet completed this process, measures are to be extended in order to allow them to do so. European industrial competitiveness may be a legitimate area of concern for European policy makers, but anti-dumping measures are first and foremost supposed to eliminate injurious dumping, not provide a wall of protectionism for domestic industries to restructure. This confusion of European industrial competitiveness with the purpose of anti-dumping measures has already been seen in the Community interest test. If domestic industries need to make changes in order to compete on modern global markets, they should not be granted political support for using anti-dumping protectionism to do so.

The expiry reviews granting extensions on chemical products also make for interesting reading. Extensions are usually granted on the basis of failure by the Community industry to restore production figures and profitability. However, in several of these cases, import competition has not been proved to be the main influencing factor. For example, potassium chloride production decreased over the period 1998 – 2000 because of (1) exhaustion of the ore in one French mine; (2) the closure of unprofitable mines in Germany and Spain; and (3) the discovery of geological anomalies in one mine (*Potassium chloride*, Ukraine, OJ L112, 11 April 2000). And still, the report manages to find justification for the continuation of import restrictions as a means of reviving this troubled industry. Other cases with different, but equally implausible economic arguments include powdered activated carbon (2002) and potassium permanganate (2001).

All these examples point to European institutions biased towards maintaining measures in force, so as to protect domestic industries in which production advantage has shifted overseas in recent decades. Even with import duties in force protecting them from overseas competitors, many are still experiencing declining production figures, begging the question of whether such inefficient industries are in the best economic interest of the EU. And even where factors other than competition from imports have been shown to be the cause of the decline, the tendency is still towards import protection. The use of trade measures to rectify domestic industrial concerns in this way is not sound economic policy. So, once again, it appears that sound economic assessment is not the overriding factor influencing anti-dumping decision making.

Whether this bias is the result of error or deliberate political manipulation in order to secure industry support, it has been the subject of significant frustration outside the EU for some time. The following section describes the court cases where repeated errors and oversight in anti-dumping assessments have been exposed. The aggrieved companies involved have often accused the EC of deliberate error.

SECTION FIVE: COURT CASES

A REGULATION IMPOSING anti-dumping duties may be challenged in the European Court of First Instance, and the WTO dispute settlement procedure may be used to settle disputes between WTO signatories. Since 1st January 1998, 43 disputes have been brought against the EU before the ECJ and DSB in connection with anti-dumping measures (see Annex 1 for a complete list). The complainants and nature of complaints have been disaggregated in table 5.

‘Assessment errors’ in a case typically include one, or usually more, of the following – incorrect determination of injury; unfair price comparisons and construction of normal values; unsubstantiated causation of injury; erroneous ‘interchangeability’ of like products; and errors in determination of dumping margins. ‘Procedural errors’ typically involve accusations of documents never being sent and ambiguous reasoning for decisions. A number of cases cited both. For example, on 20 October 1999 Swedish Match Philippines Inc., a company incorporated under the laws of the Philippines, alleged the following errors in the EC investigation:

- failure to notify their legal representative in Brussels of the final disclosure document, making it impossible to defend the case effectively and within the prescribed period.
- failure to disclose how the injury margin was assessed in the final disclosure document.
- miscalculation of causation, on account of the very small quantity exported by the defendant and their high unit price compared to other manufacturers in the exporting countries in question. (Case T-171/97, 20 October 1999)

This case sums up well the frustrations about the EC’s approach to anti-dumping proceedings – a mixture of procedural laxity and economic assessment error.

TABLE 5. COMPLAINANTS AND NATURE OF COMPLAINTS IN ECJ AND DSB CASES 1998 - 2008

	COMMUNITY INDUSTRY	EXPORTERS OUTSIDE EU	IMPORTERS WITHIN EU	TOTAL
Assessment errors	4	19	7	30
Procedural errors	3	3	0	6
Exemption from duties	2	1	3	6
Excessive duties	0	1	0	1
TOTAL	9	24	10	43

Source: author’s calculations based on cases lodged before the Court of Justice and DSB, 1998 – 2008.

i) Error

TABLE 6 SHOWS the frequency of the more common assessment errors highlighted in each of the cases. Almost a quarter of cases have involved accusations of errors in the determination of injury and/or failure to provide adequate proof of injury. Erroneous determination of causation runs a

close second. These are two of the most fundamental aspects of the legal definition of dumping, on which the application of duties is justified. Confidence is low that the EC's expertise in these areas is of the quality and standard required when it comes to anti-dumping decisions that can have significant commercial impact.

TABLE 6. ASSESSMENT ERRORS

NATURE OF ERROR	NUMBER OF ACCUSATIONS
Determination or proof of injury	11
Causation	9
Construction of 'normal value'	7
Situation of Community industry	6
Calculation of dumping margin	6
Export price determination	4

Source: author's calculations based on cases lodged before the Court of Justice and DSB 1998 – 2008.

ii) Manipulation

IT IS ALSO significant to note that several applicants have accused the EC of erroneously representing the situation of the Community industry. Such accusations move beyond simple calculation error into the territory of deliberate manipulation of evidence in order to defend domestic producers. For example, in joint cases T-33/98 and T-34/98, brought on 15 December 1999, seamless pipe and tube manufacturers Petrotub S.A. and Republica S.A. of Romania disputed the EC's findings regarding the Community industry. They claimed the assessment of the industry's capacity, production levels, sales volume and profitability were entirely inaccurate. In another case in 2000, a South Korean producer of monosodium glutamate had become subject to anti-dumping duties in 1996, having been accused of price undercutting. The producer not only refuted the evidence on which these claims were made, but provided further evidence that the sole Community producer, Orsan, had themselves engaged in price undercutting so as to create an exclusive market (T-51/96, 30 March 2000). The fact that this case involved just one European producer is not uncommon. There is growing documentation of cases where anti-dumping duties have effectively created a European monopoly by eliminating foreign imports of certain products (Davis 2009). Foreign producers understandably question the validity of these measures, given that anti-dumping legislation is supposed to eliminate market domination.

iii) EU bias

IT IS NOT surprising that the bulk of these complaints come from exporters outside the EU, who have been targeted by anti-dumping measures, and importers within the EU, who have been financially impacted by them. But it would be very surprising if all complainants were mistaken in their perception of errors, whether deliberate or not. And yet, this is precisely what the final ECJ rulings imply. From the past ten years, rulings were found in favour of the applicant in only eight of the forty cases taken to the Court (see table 7). Half of these were applicants from within the Community industry and only three involved the annulment of definitive anti-dumping measures on the basis of assessment or procedural errors.

TABLE 7. CASES WHERE ECJ RULED IN FAVOUR OF THE APPLICANT 1998 - 2008

	APPLICANT	INTEREST IN THE CASE	COURT DECISION
1	Medici Grimm KG, Germany	Community Industry	Damages awarded
2	Ettlin Gesellschaft fue Spinnerei, Weberei AG	Community Industry	Procedural error
3	Comité des industries du cotton, Belgium	Community Industry	Procedural error
4	Koninklijke Philips Electronics NV, Netherlands	Community Industry	Procedural error
5	Fresh Marine Co., Norway	Exporter	Procedural error
6	Mukand Ltd, Isibars Ltd, Ferro Alloys Corp Ltd & Viraj Impoxepo Ltd, India	Exporter	Assessment error
7	Kundan Industries Ltd, Tata Int. Ltd, India	Exporter	Assessment error
8	Aluminium Silicomm Mill Products GmbH, Swiss	Importer	Assessment error

Source: author's calculations based on cases lodged before the Court of Justice 1998 – 2008.

A quick comparison of the numbers in table 6 with the number of favourable rulings in table 7 presents a picture of a European Court reluctant to overturn any anti-dumping decision already made by the Commission or Council. Four favourable rulings out of nine Community industry complaints, compares well to the four out of the 34 complaints by exporters outside the EU and Community importers. Exporters alleging investigatory errors surrounding the anti-dumping duties imposed on them stand little chance of convincing the European Court that its sister institutions are guilty of misconduct.

This includes cases where substantial evidence of assessment error or misconduct was produced, but still dismissed. The aforementioned Romanian exporters of seamless pipes and tubes not only alleged misinformation regarding the situation of the Community industry, they also disputed the method for determining the normal value of similar products, export prices and causation of injury. The Court rejected most of the pleas because of lack of substantiation. But the report from this dispute suggests potential for a much more substantial case had the applicants been represented by a stronger legal team. Looking at the past ten years of anti-dumping disputes at the ECJ, it is questionable whether internal EU bias has not played a part in reinforcing potential infringements of international anti-dumping law. Had the cases been presented outside the EU, i.e. at the WTO, would the findings have been comparable?

iv) WTO rulings

THE EVIDENCE ON this is not particularly forthcoming, because so few cases have made it to the WTO's DSB. When they have though, all have resulted in rulings that the EC has been in contravention of anti-dumping law and some kind of amendment to the EC regulations imposing duties. One agreement was made in 2004 to terminate altogether measures against flat rolled and non-alloy steel products originating in India. India alleged that the determination of dumping and injury, the selection of the sample and the level of duties imposed were inconsistent with the EC's WTO obligations. They also argued that the evaluation of these improper facts was not unbiased or objective. Faced with these allegations, the EC reached a mutually-agreed solution with India to terminate the anti-dumping measure at issue.

The decision to uphold Brazil's 2000 complaint has already been mentioned in section two. The case was hotly contested by both sides and not all of Brazil's allegations were eventually sustained. In the Panel report, circulated on 7 March 2003, the Panel found that the EC had acted inconsistently with its obligations under:

- a. Article 2.4.2 of the Anti-Dumping Agreement in “zeroing” negative dumping margins in its dumping determination; and
- b. Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement in that it is not directly discernible from the published Provisional or Definitive Regulation that the European Communities had addressed or explained the lack of significance of certain injury factors listed in Article 3.4 of the Anti-Dumping Agreement.⁵

The Report of the Appellate Body reversed another decision of the panel, as follows:

...and finds, instead, that the European Communities acted inconsistently with Articles 6.2 and 6.4 of the *Anti-Dumping Agreement*, by failing to disclose to the interested parties during the anti-dumping investigation the information on the injury factors listed in Article 3.4.⁶

These findings contain two significant details. First was the insufficient basis for a positive finding of injury by an objective and unbiased investigating authority. Second was the failure to disclose information regarding the EC producers’ purchase and exports, which precluded the Brazilian exporter in question from verifying the inconsistency of the data used. These kinds of laxity in injury calculation and denial of access to essential facts prior to the imposition of anti-dumping duties are becoming familiar stories. However, neither of these cases is satisfactorily concluded. Brazil and India both accuse the EC of failing to comply with the DSB rulings.

CONCLUSION

THERE IS MUCH evidence from the cases reviewed here to suggest that the EC often sacrifices transparency and accuracy for administrative convenience (Horlick and Vermulst 2005) and may even contain internal elements biased towards imposing and maintaining measures. Anti-dumping duties are popular means with which to protect domestic industries threatened by expanding global markets and more efficient competition from abroad. Unclear and flexible rules mean that international anti-dumping law leaves open a significant element of discretion for determining the imposition of such measures within the EU. The problem is that where judgements are necessary, error is possible. And where error is possible, so is manipulation.

Once an anti-dumping complaint has been brought and an investigation initiated, the Commission and Council are clearly inclined towards imposing measures, and extending them if an expiry review is requested. Whether these decisions are made in the absence of detailed evidence of the full economic costs of anti-dumping duties, or in spite of it, is not possible to fully discern as an outside observer. For other industries within Europe affected by the measures, what this amounts to is a high degree of unpredictability. Importing and retail industries, for example, need to adapt to changes in import flows and price rises that result from anti-dumping duties, but are often left with little or no time in which to do so and can only resort to guessing whether definitive duties will be imposed. It is unlikely that consumers are even aware that their interests are bound up in anti-dumping decisions. The Community interest test – which is meant to investigate on behalf of these groups - clearly lacks economic rigour, leaving the door open to more arbitrary judgements. As result, their interests are seldom granted the consideration that the scale of the economic impact justifies.

The opaque and convoluted nature of the calculations, leading to consistently favourable findings of anti-dumping authorities, only serve to heighten suspicions of internal bias. External review of procedures for establishing the presence of dumping, injury and a causal link between the two

is difficult. Yet, when legal challenges are made, errors in assessment and biased and un-objective evaluation are often identified and, at the WTO, verified by panel findings. From an outside perspective, the anti-dumping investigative process appears to be tailored to the imposition of duties in sectors where European producers are losing comparative trading advantage to legitimate exporters in other parts of the world. Some of these exporters have felt sufficiently aggrieved to bring complaints against measures imposed. At the European Court of First Instance though, they have usually come up against further EU bias. Only a handful have taken cases to the WTO, but this is perhaps a more fruitful route and one that should be taken more in the future.

Political resistance to reform of the EU's anti-dumping legislation has historically been strong, particularly in those countries with significant industries likely to strongly oppose any changes to this most useful of protectionist instruments. In the current global economic climate, a major overhaul of the legislative process is even less feasible. But the string of assessment and procedural problems highlighted in this study amount to a serious issue in European trade policy that needs to be rectified. Addressing some of the technical issues first and foremost would begin to diffuse the tension surrounding anti-dumping. For example, raising standards of economic assessment within the European institutions, increased transparency and finding constructive ways to engage other Community interests in the investigative process. A willingness to consider different options would at least indicate to all those affected by anti-dumping cases that the EU was leaving less open to political judgement in decisions and giving more weight to sound economic analysis.

FOOTNOTES

1. Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community; and Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community.
2. NB. This analysis is based on the only available source of information – Official Journal entries of AD investigations. The results are therefore based solely on what was reported in the 'Community Interest' sections of these entries.
3. NB. Investigations in this study are counted by product and country.
4. Other than automatic expiry.
5. Report of the Panel, 7 March 2003
6. Report of the Appellate Body. 22 July 2003.

REFERENCES

- Bratt, M. 2008. *Anti-Dumping Complaints on Certain Steel Products – the Impact on User Groups*. Kommerskollegium: Stockholm
- Davis, L. 2009. *Ten years of anti-dumping in the EU I: Economic and political targeting*. ECIPE Working Paper 02/2009.
- Erixon, F. 2007. Anti-Dumping in the European Union. In Debroy, B. and Debashis Chakraborty (eds) *Anti-Dumping: Global Abuse of a Trade Policy Instrument*. Academic Foundation: New Delhi.
- European Commission. 2006. *Accompanying document to the 25th Annual Report from the Commission to the European Parliament on the Community's Anti-dumping, Anti-subsidy and Safeguard Activities*.

COM(2007)479, final.

European Commission. *Anti-dumping: List of cases and statistics*. [Online]. Available from: http://ec.europa.eu/trade/issues/respectrules/anti_dumping/stats.htm. [Accessed: March 26th 2009]

Horlick, G. and Edwin Vermulst. 2005. The ten major problems with the anti-dumping instrument: an attempt at synthesis. *Journal of World Trade*. 39(1) pp. 67-73.

Krugman, P. and Maurice Obstfeld. 2006. *International Economics: Theory and Policy (seventh edition)*. Addison-Wesley: United States.

Low, P. 1993. *Trading Free: The GATT and US Trade Policy*. Twentieth Century Fund Press: New York.

Newman, S. 2007. Observations on the European Union Anti-Dumping Regulation. *Global Trade and Customs Journal*. 2(2) pp. 87-93.

Report of the Appellate Body. 22 July 2003. *European Communities – Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil*. World Trade Organisation. WT/DS219/AB/R.

Report of the Panel. 7 March 2003. *European Communities – Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil*. World Trade Organisation. WT/DS219/R.

Svensson, P. and Martin Hvidt Thelle. 2005. *Economic Assessment of the Community Interest in EU Anti-Dumping Cases*. [Online]. Available from: http://www.copenhageneconomics.com/Admin/Public/DWSDownload.aspx?File=%2FFiles%2FFiler%2FPublikationer%2FCopenhagen_Economics_-_Economic_Assessment_of_the_Community_Interest.pdf. [Accessed: 13th February 2009]

ANNEX 1. ALL LEGAL DISPUTES AGAINST THE EU, 1997 – 2008

	DATE	APPLICANT	CASE, PRODUCT & ORIGIN	JUDGEMENT
1	10-Jul-97	Asociacion de Fabricantes de Cemento de EspaAna	1992 Portland cement - Turkey, Romania & Tunisia	Inadmissable
2	25-Sep-97	Shanghai Bicycle Corporation, China	1993, definitive AD measures imposed following a complaint by the European Bicycle Manufacturers Association (EBMA)	Dismissed
3	17-Dec-97	European Fertiliser Manufacturers Association, Swiss	1995 definitive measures amended on Urea from USSR & Czechoslovakia	Dismissed
4	18-Dec-97	Ajinomoto Co. Inc, Japan & The Nutrasweet Company, US	1991 definitive measures on aspartame - US, Japan	Dismissed
5	29-Jan-98	Sinochem Chemicals Import & Export Corp., China	1995 definitive measures on furfuraldehyde - China	Dismissed
6	17-Jul-98	Thai Bicycle Industry Co. Ltd, Thailand	1996 definitive measures on bicycles following an EBMA complaint - Thailand, Indonesia, Malaysia	Dismissed
7	15-Oct-98	Industrie des Poudres Spheriques, France	1994 definitive measures on calcium metal - China, Russia	Dismissed
8	19-Nov-98	Champion Stationary Mfg Co. Ltd, Hong Kong and Sun Kwong Metal Manufacturer, China and US Ring Binder Corp.	1997 definitive measures on ring binder mechanisms - China, Malaysia	Dismissed.
9	12-Oct-99	Acme Industry Co. Ltd, Thailand (microwave ovens)	1995 definitive measures on microwaves - China, Korea, Malaysia, Thailand	Dismissed
10	20-Oct-99	Swedish Match Philippines Inc	1997 definitive measures on gas-fuelled, non-refillable pkcet flint lights - Thailand, Philippines, Mexico	Dismissed
11	28-Oct-99	European Fertiliser Manufacturers Association, Swiss	1995 definitive measures on ammonium nitrate - Russia	Dismissed
12	15-Dec-99	Petrotub SA, Romania	1997 definitive measures on certain seamless pipes and tubes of iron or non-alloy steel - Hungary, Poland, Czech Rep, Romania, Slovak Rep	Dismissed. Although a strong case was presented.
13	30-Mar-00	Miwon Co. Ltd, South Korea	1996 definitive measures on monosodium glutamate - Korea, Indonesia, Taiwan	Dismissed
14	20-Jun-00	Euromin SA, Swiss	1997 definitive measures on unwrought, unalloyed zinc - Poland, Russia	Inadmissable
15	29-Jun-00	Medici Grimm KG, Germany	1998 definitive measures on leather handbags - China	Court ruled in favour of the applicant
16	26-Sep-00	Buechel & Co. Fahrzeugteilefabrik GmbH, Germany	1997 definitive measures on bicycles & certain parts - China	Inadmissable
17	29-Sep-00	International Potash Co., Russia	1998 definitive measures on potassium chloride - Belarus, Russia, Ukraine	Dismissed

18	24-Oct-00	Fresh Marine Co., Norway	1997 provisional measures on Atlantic salmon - Norway	Court ruled in favour of the applicant. EC failure to exercise due care.
19	29-Nov-00	Committee of Cotton & Allied Textile Industries of the EU (Eurocoton)	1997 Council rejection of EC submission for definitive measures on unbleached cotton fabrics - China, Egypt, India, Pakistan, Turkey	Dismissed
20	5-Apr-01	BIC SA France, Flamagas, Spain, Swedish Match, Swiss	2000 repeal of duties on gas-fuelled, non-refillable pocket flint lighters - Japan	Dismissed
21	20-Jun-01	Euroalliages Belgium	1999 termination of proceeding on ferro-silicon - Egypt, Poland	Dismissed
22	19-Sep-01	Mukand Ltd, Isibars Ltd, Ferro Alloys Corp Ltd & Viraj Impoxepo Ltd, India	1998 definitive measures on stainless steel bars - India	Court ruled in favour of the applicant. Regulation imposing duties was annulled.
23	28-Feb-02	British Shoe Corp Footwear Supplies Ltd, UK	1997 definitive measures on certain footwear with textile uppers - China, Indonesia	Inadmissible
24	4-Jul-02	Arne Mathisan SA, Norway	1999 amendment of exemption from duties	Dismissed
25	12-Sep-02	Europe Chemi-Com, Germany	2000 termination of duties on certain large aluminium electrolytic capacitors - China, Korea, Taiwan	Dismissed
26	21-Nov-02	Kundan Industries Ltd, Tata Int. Ltd, India	1998 definitive measures on stainless steel fasteners and parts thereof - China, India, Korea, Malaysia, Thailand, Taiwan	Court ruled in favour of applicant.
27	4-Jul-03	SCI UK Ltd	2000 EC decision that repayment of import duties unjustified	Dismissed
28	8-Jul-03	Euroalliages Belgium, supported by Kingdom of Spain	2001 termination of duties on ferro-silicon - Brazil, China, Kazakhstan, Russia, Ukraine, Venezuela.	Dismissed
29	23-Oct-03	Changzou Hailong Electronics & Light Fixtures Co. Ltd, China	2001 definitive measures on integrated electronic fluorescent lamps	Dismissed
30	28-Oct-04	Shanghai Teraoka Electronic Co Ltd, China	2000 definitive measures on certain electronic weighing scales - China, South Korea, Taiwan	Dismissed
31	17-Mar-05	Ettlin Gesellschaft fue Spinnerei, Weberei AG	1998 Council rejection of EC submission for definitive measures on unbleached cotton fabrics - China, Egypt, Indonesia, Pakistan	Court ruled in favour of applicant. Council's decision annulled.
32	17-Mar-05	Comite des industries du cotton, Belgium	As above	As above
33	17-Mar-05	Koninklijke Philips Electronics NV, Netherlands	2000 Council rejection of EC submission for definitive measures on certain parts of TV camera systems - Japan	Court ruled in favour of applicant on the last point only. Council's decision annulled.
34	26-Jan-06	Medici Grimm KG, Germany	1998 amendment of definitive measures on leather handbags - China	Dismissed
35		Shandong Biochemicals Co Ltd, China	2003 definitive measures on paracresol - China	Inadmissible

36		Moser Baer LTd, India	2003 definitive measures on recordable CDs - India	Dismissed
37		Ritek Corp & Prodisc Technology Inc, Taiwan	2002 definitive measures on recordable CDs - Taiwan	Dismissed
38		Nanjing Metalink Int Ltd, China	2002 definitive measures on ferro molybdenum - China	Inadmissible
39		Aluminium Silicomm Mill Products GmbH, Swiss	2002 definitive measures on silicon - Russia	Court ruled in favour of applicant on injury assessment. Regulation imposing duties annulled.
40		Foshan Shunde Yongjian Housewares & Hardware Co Ltd, China	2004 definitive measures on ironing boards - China, Ukraine	Inadmissible

WTO RULINGS				
1	3-Aug-98	India	Definitive duties on cotton-type bed linen	AD measures violated 4 articles of the ADA. EC amended regulation.
2	21-Dec-00	Brazil	Definitive duties on tube or pipe fittings	AD measures violated 3 articles of ADA. EC reassessed findings & applied with DSB.
3	5-Jul-04	India	Definitive duties on flat rolled iron or non-alloy steel products	Agreement reached between India & EC. EC agreed to terminate.