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PART A

Part. A.

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PO -CH. /NL /0543. Pt.A.

Chancellor's (Lawson) Papers:
Anti-Dumping Policy in the European Community.

DD's: 25 Years

12/4/96.

PO -CH /NL /0543. Pt.A.

21 JUN 1988

dti

the department for Enterprise

The Hon. Alan Clark MP
Minister for Trade

The Rt Hon John Wakeham MP
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Our ref WO2AIK
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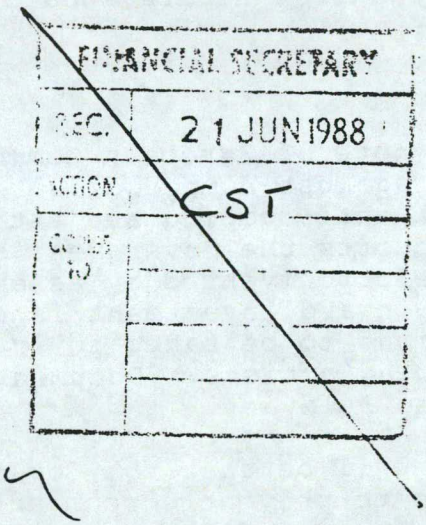
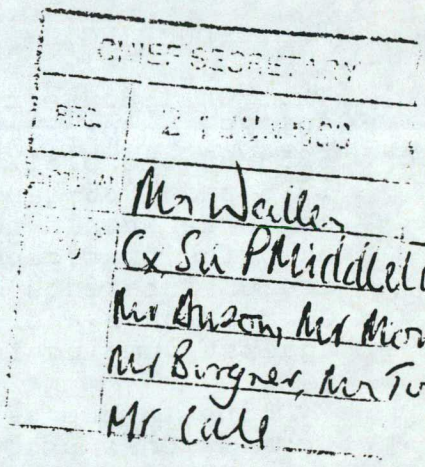
Date 20 June 1988





Dear John

SCRUTINY DEBATE ON ANTI-DUMPING

The House of Commons Select Committee on European Legislation has recommended several EC documents on anti-dumping for debate. These are the new anti-dumping procedures for components intended for assembly in the EEC (18th report, 1986/87), the Commission's 4th annual report on its anti-dumping activities in 1985 (2nd report, 1987/88) and its 5th annual report for 1986 (22nd report, 1987/88). The Committee recommended that these should be debated together, and did not recommend a debate in Standing Committee. In addition amendments to the basic anti-dumping legislation which are currently under discussion in Brussels have been noted as relevant to the debate (23rd report, 1987/88).

The Scrutiny Committee considered the "parts" proposal as a major policy issue with implications for inward investment. The Committee also wishes to take the opportunity of having a general debate on the 2 latest annual reports so as to be clear about the capabilities and limitations of Community anti-dumping legisaltion. There has been no debate on anti-dumping since 1984.

I consider that it is now appropriate for us to arrange a debate on these documents. I agree that a debate on the floor after ten o'clock would be most suitable. There is no specific deadline by which the debate must take place as the "parts" legislation has

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the department for Enterprise

The Rt Hon John Wakeham MP June 1988

already been adopted. However as you mentioned in your letter of 26 February 1988, the Scrutiny Committee has been pressing for debates such as this to take place quickly, and so a debate before the Summer Recess would be desirable.

I propose that the motion for debate should be on the following lines:

"ANTI-DUMPING

That this House takes note of European Community documents Nos 5017/87 on protection against dumped or subsidised imports and 6358/87 and 5151/88 on anti-dumping and anti-subsidy activities in 1985 and 1986; and supports the Government's aim that anti-dumping measures should not be circumvented by assembly operations, whilst ensuring that genuine inward investment is not discouraged; and the UK interests continue to be taken fully into account in the Commission's anti-dumping actions. Document 5532/88 on protection against dumping is also relevant."

My line in the debate will be that the Government supported the Commission's proposals to prevent circumvention of anti-dumping duties by screwdriver-type assembly operations, so long as genuine inward investment is not adversely affected by these measures. The nature of the Commission's investigations has changed substantially since the last debate on anti-dumping in that the products involved have become more sophisticated and cases more complex leading to a need for an increase in the Commission's resources. UK policy has always advocated that trade should be free but fair, and that where unfair trade is causing damage to UK industry the appropriate rules should be vigorously applied.

I am copying this letter to the members of L and OD(E) Committees, Sir Robin Butler, and to the Secretaries of L and OD(E).

ALAN CLARK

Molan/draft/3

FROM: R MOLAN
DATE: 6 July 1988

1. MR P G F DAVIS
2. CHANCELLOR

cc Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Sir G Littler
Mr Lankester
Mr Monck
Mr Burgner
Mr Mountfield
Ms Symes
Mr Tyrie

Ch/ I have shortened the draft.

SCRUTINY DEBATE ON ANTI DUMPING

Mr Clark's letter of 20 June to the Lord President advises of his intention to arrange a debate in the House before the Summer Recess on anti-dumping action taken under EC legislation.

2. The House of Commons Select Committee on European Legislation has recommended several EC documents on anti-dumping for debate. These are the Commission's reports on anti-dumping activities in 1985 and 1986 respectively, and a document describing a recently introduced procedure for imposing duties on components intended for assembly in the EC but imported with the intention of circumventing anti-dumping duties on finished goods. The Scrutiny Committee were particularly interested in the implications for inward investment of the components legislation and have called for a general debate on anti-dumping so as to be clear about the capabilities and limitations of Community legislation.

3. In his letter Mr Clark proposes that the motion for debate should be on the following lines:

> "That this House takes note of European Community documents...; and supports the Government's aim that anti-dumping measures should not be circumvented by assembly operations, whilst insuring that genuine inward investment is not discouraged; and

UK interests continue to be taken fully into account in the Commission's anti-dumping actions."

Mr Clark's intended line in the debate will be that the Government supported the Commission's proposals to prevent circumvention of anti-dumping duties by "screwdriver-type" assembly operations, so long as genuine investment is not adversely affected by these measures. He comments that the nature of the Commission's investigation has changed as the products involved have become more sophisticated and UK policy has always advocated that trade should be free but fair, and where unfair trade is causing damage to UK industry appropriate rules should be vigorously applied.

4. The motion proposed by Mr Clark and the line he intends to take are broadly acceptable. However, the recent case involving the imposition of provisional duties on Japanese printers (discussed in Mr Davis' minute of 14 June to you) highlights certain doubts we have about the justifiability of certain actions pursued by the Commission. Unjustified anti-dumping action - besides shielding domestic producers from healthy competition and depriving consumers of wider choice and lower prices - may have the effect of souring relations with those bringing inward investment to the UK. And the line that "genuine" inward investment should not be discouraged when acting against screwdriver-type assembly operations is inevitably a difficult one to adopt in practice. At a time when many foreign, particularly Japanese, companies are expanding their operations in the EC it would be very difficult, if not impossible, to distinguish between increases in the number of those components imported on one hand to circumvent anti-dumping action and on the other hand those reflecting an expansion in production in the UK which would have occurred anyway. The interests of EC producers will probably carry considerable weight in the minds of the Commission when carrying out investigations in this area and they may sometimes be inclined to draw the distinction on less than objective grounds; and unfortunately they do not reveal the details of their enquiries and DTI claim not to have the resources to monitor more than a proportion of cases.

5. It may be worth sending a short reply to Mr Clark saying that whilst you are generally content with the terms of the motion and

his proposed line, you are concerned that the distinction between "good" and "bad" inward investment raises a number of difficulties and you hope that he will be able to address these convincingly if challenged in the debate. I attach a draft reply for this purpose. In the meantime we will be considering with DTI economists the various ways in which the distinction might be drawn with a view towards persuading DTI to put these thoughts to the Commission as suggestions for improving their methodology.

R MOLAN

aef1.mt/Molan/draft/4

Re type (mark for Chris).

DRAFT LETTER TO:

The Hon Alan Clark MP
Minister for Trade
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

SCRUTINY DEBATE ON ANTI-DUMPING

I have seen your letter of 20 June to John Wakeham ~~on this matter.~~

2. I am generally content with the terms of the motion for the debate which you suggest, and the line which you propose to take. However, ~~I must say that~~ I am ~~somewhat~~ uneasy about some of the questions which might be raised about the implications for inward investment of the anti-dumping measure dealing with components.

3. ~~Although~~ we can to say that our wish is to ensure that genuine inward investment is not discouraged, it ~~must be~~ is extremely difficult, ~~if not sometimes impossible,~~ to distinguish between importation for the purpose of circumventing an anti-dumping action, and ~~those~~ drawn in by an increase in production in the UK under conditions of increased but fair competition. ~~Clearly~~ if we wish to maintain a climate which is friendly to inward investment (and have due regard to the benefits of healthy competition and the interests of consumers), the European Commission will need to operate this policy with great care. ~~Thus,~~ I hope you will feel able to argue that, in practice, this policy can be pursued without repercussions on inward investment, and ~~the UK will do everything in its power~~ to ensure that the Commission ~~will carry~~ out its investigations ~~in this area~~ in a thorough and entirely objective manner.

3. I am copying this letter to John Wakeham, members of L and OD(E) Committees, and to Sir Robin Butler, ~~and to the Secretaries of L and OD(E).~~

NIGEL LAWSON

NH8/57Jo

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

11 July 1988

The Hon Alan Clark MP
Minister for Trade
Department of Trade and Industry
1-19 Victoria Street
LONDON SW1H OET

Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Sir G Littler
Mr Lankester
Mr Monck
Mr Burgner
Mr Mountfield
Ms Symes
Mr Tyrie
MR MOLAN
MR DAVIS

SCRUTINY DEBATE ON ANTI-DUMPING

I have seen your letter of 20 June to John Wakeham.

I am generally content with the terms of the motion for the debate which you suggest, and the line which you propose to take. However, I am uneasy about some of the questions which might be raised about the implications for inward investment of the anti-dumping measure dealing with components.

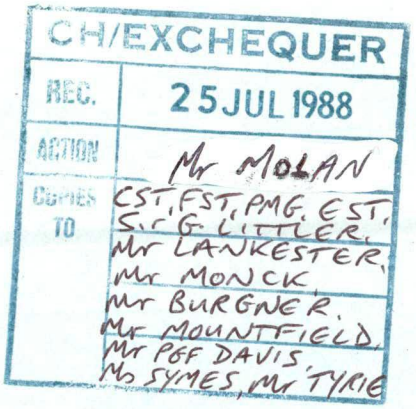
We can indeed say that our wish is to ensure that genuine inward investment is not discouraged. It is extremely difficult, however, to distinguish between importation for the purpose of circumventing an anti-dumping action, and imports stimulated by an increase in production in the UK under conditions of increased but fair competition. If we wish to maintain a climate which is friendly to inward investment (and have due regard to the benefits of healthy competition and the interests of consumer), the European Commission will need to operate this policy with great care. So I hope you will feel about to argue that, in practice, this policy can be pursued without repercussions on inward investment, and that the UK will work hard to ensure that the Commission carries out its investigations in a thorough and entirely objective manner.

I am copying this letter to John Wakeham, members of L and OD(E) Committees, and to Sir Robin Butler.

NIGEL LAWSON

dti

The Hon. Alan Clark MP
Minister for Trade



25/7

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Chancellor of the Exchequer
Treasury Chambers
Parliament Street
London
SW1P 3AG

Direct line 01-215 5144
Our ref WO2ANS
Your ref
Date 21 July 1988

Dear Nigel

Thank you for your letter of 11 July about the proposed scrutiny debate on anti-dumping and your concern about the direction which the debate might take.

When the Commission proposed to add circumvention provisions to the Community anti-dumping regulation - mainly at the behest of the European Parliament - we agreed that it was right to prevent anti-dumping measures from being undermined by the establishment of an assembly operation for the product in question in the Community. However, we were also aware of the risks whereby our substantial genuine inward investment in the UK could be frightened away, and in the dicussions they attended my officials consistently sought to introduce the maximum flexibility into the Community procedures to guard against this.

In the circumvention investigations so far undertaken by the Commission there has been a reasonably balanced outcome. Some assembly operations have been given a clean bill of health under the criteria which are applied in these cases, whilst others have subsequently been able to provide satisfactory undertakings that the criteria are being met. Officials in the Department's Unfair Trade Unit have accompanied the Commission on virtually all of their visits to UK assembly operations and have maintained close contacts with the Commission officials concerned. Furthermore, the DTI Unit has always been prepared to discuss the concerns of the assembly operators with them and has done so on a number of occasions.

dti

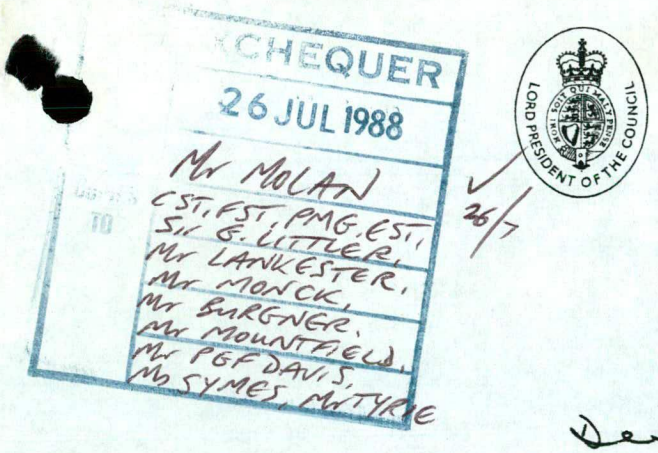
the department for Enterprise

The Rt Hon Nigel Lawson MP July 1988

I entirely agree that it is important for the rules to be applied properly and without causing unnecessary concern to inward investors in general. It is true to say, though, that only those organisations with a history of dumping are likely to be affected by these rules. I believe, therefore, that in the debate, which will take place in Standing Committee next Tuesday, it will be possible to explain that the circumvention provisions do not have the implications you fear that the Commission carries out its functions in an objective manner.

I am copying this letter to John Wakeham, members of L and OD(E) Committees and to Sir Robin Butler.

ALAN CLARK



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

22 July 1988

Dear Alan

SCRUTINY DEBATE ON ANTI-DUMPING

Thank you for your letter of 20 June seeking a debate on the floor of the House before the Recess about a number of EC documents relating to anti-dumping.

As you know, it has not been possible to find time for a debate on the floor of the House, but the Whips are arranging one in Standing Committee during the week beginning 25 July.

I am copying this letter to the members of L and OD(E) Committees and Sir Robin Butler.

Yours ever

JOHN WAKEHAM

The Hon Alan Clark MP
Minister for Trade

Molan/draft/9

64/50

FROM: R MOLAN
DATE: 3 August 1988

1. MR P G F DAVIS
2. CHANCELLOR

cc: Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Sir G Littler
Mr Lankester o/r
Mr Monck
Mr Burgner
Mr Mountfield
Ms Symes
Miss Preston o/r
Mr Tyrie

ANTI-DUMPING

Mr Alan Clark's letter of 21 July to you responds to the concern you expressed in your letter of 11 July about the impact of the so-called "screwdriver assembly" EC legislation on inward investment. We do not think this calls for a reply, though we shall keep an official eye on developments.

BACKGROUND

2. Mr Clark wrote on 20 June to the Lord President advising him that he intended to arrange a debate on EC anti-dumping activities. The House of Commons Select Committee on European Legislation, who had recommended such a debate, had expressed particular interest in the implications of the "screwdriver assembly" legislation for inward investment. This legislation is designed to penalise foreign companies which seek to circumvent anti-dumping duties imposed on their exports of finished products to the Community by assembling the same products within the Community. Mr Clark said that his line in the debate would be that the Government supported the legislation so long as genuine inward investment is not adversely affected by it. In your reply of 10 July you commented that it is extremely difficult to distinguish between components imported for the purpose of circumventing an anti-dumping action and those stimulated by an increase of production under conditions of increased but fair competition. You expressed the hope that the UK will work hard to ensure that the Commission carries out its investigations in a thorough and entirely objective manner.

3. The debate in question took place on 26 July in the Standing Committee on European Community Documents. As it turned out, possible damage to inward investment was not an issue which dominated the short debate which took place.

MR CLARK'S REPLY

4. In his letter 21 July Mr Clark says that DTI are also aware of the risk that inward investment could be frightened away and so they have sought to introduce "the maximum flexibility" into the Community procedures to guard against this. In the circumvention investigations so far undertaken (there only have been three) there has been a reasonably balanced outcome in his view. DTI officials have accompanied the Commission on virtually all of their visits to UK assembly operations and are always prepared to discuss concerns of the assembly operators with the Commission. He agrees that it is important for the rules to be applied properly and without causing unnecessary concern to inward investors. But he adds that only those organisations with a history of dumping are likely to be affected by these rules.

DISCUSSION

5. Mr Clark's comment that only those organisations with history of dumping are likely to be affected by the legislation is not reassuring. Your letter to him was prompted in part by concern about the recent anti-dumping measures taken against imported Japanese printers. If, as some suspect, the Commission are prone to using anti-dumping action as a form of covert protectionism there is every reason to be concerned about follow-up action being taken under the "screwdriver assembly" legislation which will only make matters worse. (The Japanese Government have in fact threatened to refer the legislation to a GATT disputes panel.)

6. The possibility of duties being imposed on goods assembled in the EC arises once definitive anti-dumping duties on the imported product are in force and three criteria are met: the assembly operation is carried out by a company related to the manufacturer subject to that duty, the assembly operation has started or

increased production after the opening of the anti-dumping investigation into the imported goods and the percentage of components imported from the country that has been dumping must account for at least 60 per cent of the assembled goods. If these criteria are met, the Commission may seek undertakings from the company which remove the need to impose duty, eg the company might offer to increase the percentage of locally sourced components used in assembly or give an undertaking on price. If no undertakings are forthcoming the Commission suggests remedies (ie particular levels of duty). The Council of Ministers has to approve the undertakings or suggested duties and is able to consider the particular circumstances in each case and weigh up other factors such as the level of R&D activity brought by the operation to the EC. And it can vote, by a qualified majority, for the Commission to reconsider its proposals or not to impose any penalty. But it will not always be possible for the UK, if it so ~~the~~ desires, to spike the Commissions' guns at this late stage and so the question of whether the investigation should be started in the first place and, if it is, the manner in which it is conducted will be crucial. We will be pursuing with DTI officials possible ways and means of assessing and improving the interpretation of the governing criteria which could be put to the Commission. As regards preventing investigations taking place, DTI officials have told us that they are currently opposing a proposed investigation by the Commission into a Japanese company (NSKB) producing ballbearings in this country on the grounds that the increase in production in the plant which has sparked the Commission's interest had been heralded by the company well in advance of the Commission's original investigation into the imports which had been found to be dumped. It is reassuring that DTI are taking this line but if the Commission press ahead with their investigation and ignore the evidence of the company's future production plans our concern will prove to be justified.

7. In the circumstances there does not appear to be any need for you to reply to Mr Clark. But we will keep an eye on the use of the "screwdriver assembly" legislation as well as pursue the interpretation of the rules with DTI.

R MOLAN

chex.ps/mw/27 **UNCLASSIFIED**

FROM: MISS M P WALLACE
DATE: 23 August 1988

MR R MOLAN

cc Mr P G F Davis

ANTI-DUMPING

The Chancellor has seen and was grateful for your minute of 3 August.

MOIRA WALLACE

84.1/Molan/draft/37 RESTRICTED

FROM: R MOLAN
DATE: 7 February 1989

1. MR LANKESTER
2. CHANCELLOR

We have become increasingly concerned about the growing use of anti-dumping measures by the EC to protect producers and without proper account being taken of the consumer or user interest. On the basis of the attached analysis, we have persuaded DTI to take this up with the Commission. Although achieving reform will not be easy, it is well worth pursuing. But for the time being at least, it would be best if we do this privately rather than publicly.

cc: Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Mr Wicks
Mr Byatt
Mr R I G Allen*
Mr Evans
Mrs Brown*
Mr Melliss
Mr Meyrick
Mr Hood*
Miss Preston*
Mr Tyrie
Mr Call

* without paper

ANTI-DUMPING

At E(CP) on 19 January concern was expressed about the recent use of anti-dumping procedures by the EC and Lord Young was asked to circulate a paper for discussion. Prior to that meeting we had been examining the EC's anti-dumping procedures and the attached paper discusses our analysis and conclusions. The purpose of this note is to advise you of our conclusions and the work which is currently in hand to remedy some of the abuses occurring.

Summary of paper

2. Since its inception, GATT has treated dumping as an act of price discrimination between the home market and export market. In cases where it can be shown that a good is sold at a lower price abroad than at home and that as a result a "material injury" is caused or threatened to an industry in the importing country, an anti-dumping duty may be imposed up to the margin of dumping found.

3. The Community's anti-dumping law broadly follows the GATT provisions. The Commission carries out an investigation only if a complaint is lodged by an EC industry and Member States have little influence over its conduct and have little access to the detailed findings. But any anti-dumping duty proposed by the Commission must be approved by the Council of Ministers before it can be implemented. During the investigation the interests of Community consumers are not regarded as relevant to the establishment either of dumping or of injury. If these two criteria are met, the Commission take a further judgement as to whether a duty would be in the interests of the Community. In principle, this should provide an opportunity for some quantification of both the anti-competitive effects of a duty and the cost imposed on consumers, but in practice this is not done. Once imposed, duties last for five years but can be reviewed after one year.

4. Exporters may avoid duties in some cases by giving price and sometimes quantitative undertakings. Such undertakings are just as protectionist in effect as duties, though the economic cost to the Community is likely to be higher because they generally involve a resource transfer from EC consumers to non-EC producers as well. There is considerable evidence that the origin of some VRAs lies in a desire on the part of exporting countries to avoid anti-dumping duties being imposed.

5. The number of investigations by the Commission has increased sharply since 1987. The products now selected for investigation are more significant in economic terms and include various consumer electronic goods exported from the Far East. This has raised the political profile of anti-dumping cases. Also the Community has recently gone beyond the explicit provisions of GATT and introduced the so-called "screwdriver assembly" regulation which is aimed at producers who are alleged to be circumventing anti-dumping duties by setting up assembly plants within the Community. In correspondence with Mr Clark last summer you expressed some concern about the implications of this regulation for inward investment. Our subsequent analysis has indicated that these are potentially serious as, for example, a possible foreign investor has to take account of the risk that at any time in the future his plant's output may be subject to duties.

6. There is substantial prima facie evidence that the Commission's calculations are biassed towards a finding of dumping and exaggerate the dumping margin when one is found. Our own scrutiny of a selected case (electronic typewriters) bears out this view. The comparison drawn between the export price and the domestic sales price has to be carried out at the same (ex-factory) level of trade; to make such comparison various costs need to be deducted. In doing so, the Commission deduct a greater range of costs from the export price than from the domestic price. In principle, this method can establish dumping where none exists or exaggerate the dumping margin when one is found. Furthermore, where the domestic price has been artificially constructed (because there are no actual sales on the home market to use in the comparison) the rate of profit assumed in the calculation appears to be very high and this tends again to inflate the dumping margin.

7. Leaving aside the bias in the EC's procedures, our view is that there is no general economic argument to suggest price discrimination by exporters is necessarily either anti-competitive or damaging to the importing country's economic welfare. The "unfairness" of dumping relates only to the effect on domestic producers. Consumers benefit from the opportunity to purchase cheap imports. But defenders of the existing provision argue that consumers benefit from anti-dumping action in the long run because it ensures that domestic production and hence competition to imports is maintained. However, this is true only if the action prevents "predatory pricing", ie a deliberate policy by the foreign exporter of setting a price artificially low so as to drive domestic competitors out of the market. But there is no direct relationship between the simple price discrimination which the EC procedure sets out to discover and predatory intent. Price discrimination ought really only to be considered anti-competitive if the export price is lower than the costs of production and marketing. In other words, a cost based rather than a price based test should be used ideally.

8. Despite the flaws which we believe to exist in them, the scope for rewriting the long-standing GATT rules in the current GATT Round are small. Discussions are taking place on possible improvements in the GATT anti-dumping code but as matters currently stand the Community will not be prepared to support these where they restrain the Community's ability to impose duties. The prospect of the Commission proposing changes in the Community's law in the near future are slim and matters have not been helped by the fact that the European Court has upheld the Commission's method of calculating dumping margins. However, certain improvements could be obtained without altering the law. For example, the Commission's methodology for calculating dumping margins could be made more transparent and fairer if the Commission's detailed application of the law was altered. Our view is that the UK should as a minimum press for such changes and ideally should seek more radical improvements.

DTI's position

9. DTI take the view that dumping, as it is presently defined, is a valid concept and consider that price discrimination is sufficient to establish unfair trading. Furthermore they accept the argument run by the Commission that other countries have similar anti-dumping policies and so the EC is not at fault, and point out that DTI Ministers have supported in the past the use of anti-dumping procedures by British industry. However, they do accept that the Commission's methodology for calculating dumping margins could be fairer and more transparent, and that the consumer dimension could be more properly considered when the Community interest test is applied.

Next steps

10. Prior to E(CP)'s discussion, and following consultations with their Ministers and a meeting with Mr Lankester, DTI officials discussed with senior Commission Officials the areas where they thought improvement was possible. The Commission have agreed to give a presentation this week to DTI and Treasury officials to explain in detail their methodology. The plan is that after this

presentation the UK will put some suggestions to the Commission as to how their methodology might be altered so that it can be justified in terms of net economic benefit to the Community. DTI officials may also hold bilateral discussions with the FRG and the Netherlands to see whether they might be willing to support the UK in pressing for changes in the Commission's methodology. When he called on Vice-President Andriessen last week, Lord Young expressed concern about some recent anti-dumping actions. Andriessen acknowledged that some internal procedures might be improved but asked that the UK-Commission dialogue be kept confidential. (The Commission have been vigorously defending their existing procedures in public.) Lord Young agreed to this confidentiality; so it would be inappropriate for public statements to be made on the matter for the time being.

11. We would wish to see the discussions with the Commission as a start towards a higher UK profile on the issue within the Community. Despite all the difficulties of convincing the Commission and others in the Community, we believe that efforts should be made to persuade the Community to approach anti-dumping on a economically justifiable basis. This would involve not only attempting in the short term to change the way in which the Community applies the existing GATT provisions but also in the long term arguing for changes in these provisions which we believe are fundamentally flawed. As an initial practical step the UK might seek to muster a blocking minority, in appropriate cases, in the Council of Ministers when the imposition of duties is proposed by the Commission.

12. When Lord Young circulates his paper to E(CP) on anti-dumping he should in a position to report the outcome of the dialogue with the Commission. Ministers can then decide whether there is anything further which should be done to avoid the abuse of anti-dumping in the future.

R MOLAN

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ANTI-DUMPING POLICY IN THE COMMUNITY

Introduction

1. The European Commission's anti-dumping policy has in the past two or three years become a matter of some controversy. It has recently been criticised in articles in the press and by academic economists, as well as by foreign exporters, for being essentially a powerful protectionist instrument used as a substitute for, or in some cases in addition to the use of tariffs and quantitative restrictions such as voluntary export restraints. These criticisms led to a recent defence of the Commission's policy by Willy de Clercq, EC Commissioner for External Relations, in the Financial Times (Annex 1).

2. This paper examines briefly the background to the Community's anti-dumping policy together with some aspects of the Commission's implementation of it in specific cases, and assesses critically the economic rationale for the policy. It finds that the economic justification for existing anti-dumping policies is very weak; and that there is evidence of bias (even in the context of its existing policy) in the way the Commission calculates the "dumping margin".

Dumping in the GATT

3. Article VI of the GATT broadly defines dumping as exporting below "normal value", where normal value is the price of the product at the same level of trade (eg ex-factory) when destined for consumption in the exporter's home market. (If there are few or no sales of the product in the exporter's home country, the price of exports to a third country or a constructed cost-based domestic price can be used. See Annex 2 for the relevant text.) The underlying concept is therefore one of price discrimination between the home market and the export market.

4. Although dumping as such is not illegal under GATT, it is to be "condemned" according to Article VI if it "causes or threatens to cause material injury" to a domestic industry or "materially retards the establishment" of such an industry. In these

circumstances, an anti-dumping duty may be imposed up to the "margin of dumping", ie the difference between the export price and the normal value. The GATT Anti-dumping Code states that material injury is to be determined solely on criteria related to the importing country's domestic industry, for example, actual and potential decline in output, sales, market share, profits etc. The interests of consumers of the product in the importing country are not mentioned. The code is designed to elaborate the principles contained in Article VI; it is not automatically binding on GATT members but the EC has agreed to be bound by it.

Community Anti-dumping Policy

5. The Community's anti-dumping cases are initiated by EC producers who lodge a complaint with the Commission. (DTI have a division of officials, known as the "Unfair Trade Unit", one of whose functions is to help UK companies prepare such complaints). The Commission consults member states but has a considerable amount of discretion over whether to investigate the complaint. The investigation focuses on whether exports are being sold at a lower price than domestic sales, but if there are no domestic sales or such sales do not permit a proper comparison, a domestic price is constructed. The EC Regulation also allows the Commission to construct an export price as a comparator where "for other reasons the price .... is unreliable"; GATT does not provide such an open-ended criterion.

6. Having established that dumping is taking place (on its criterion of price discrimination), the Commission assesses whether the dumping causes or threatens injury to the Community industry. Injury caused by other factors such as contraction in demand cannot be taken into account. The Regulation gives a list of factors relevant to the assessment of damage or potential damage: output, capacity utilisation, stocks, sales, market share, prices, profits, return on investment, cash flow and employment. The criteria are so broadly drawn that once dumping has been established, it is usually easy to show that the domestic industry has been harmed. (All imports after all harm the competing domestic industry in one way or another).

7. The interests of Community consumers are relevant neither to the establishment of dumping nor of injury, but before deciding to impose an anti-dumping duty, the Commission makes the further judgment whether to do so is in the interests of the Community. In principle, this gives the opportunity to take into account consumer interests and the anti-competitive effects of the duty, but no explicit calculation of the costs and benefits to the Community is made, nor are consumer groups routinely consulted.

8. If an anti-dumping duty is levied, it must apply to the whole Community (as is the case with tariffs), even though the initial complaint may have been raised by producers of the relevant product in only some Member States. Injury has to be shown to have been inflicted on at least a major proportion of EC producers, however, some of whom may not be complainants. The duty need not be as high as the calculated dumping margin, but it often is and the Commission has the power to insist that prices rise by the full extent of the duty imposed. Definitive anti-dumping duties may be reviewed at any time at the request of a Member State or at the initiative of the Commission; or after a year at the request of complainants or those on whom duties have been imposed if they can show that circumstances have changed since the original investigation. Duties are terminated after five years, but the Community industry are given the opportunity to press for renewal if they can show that removal of the duty will cause injury.

9. Exporters may avoid duties by giving satisfactory price and sometimes quantitative undertakings to the Commission. The protectionist effect of such undertakings are however broadly the same as if the duty were imposed, but the benefit of the rental element of higher prices accrues in this case to the exporter and not to the Community. In practice, exporters (particularly Japanese and Korean producers) may negotiate "voluntary" export restraints in order to avoid the possibility of an anti-dumping investigation or such restraints may be imposed unilaterally. Such VERs are of course also protectionist in effect, even though described as voluntary, and it is generally accepted that they impose a significant net cost on the Community.

10. Annex 3 shows the number of investigations undertaken and definitive duties imposed since mid-1980. DTI have told us that they do not collate information on the number of cases or the value of trade currently covered by anti-dumping duties or price undertakings. However, they estimate that UK imports from the relevant countries of those products which were subject to an anti-dumping investigation during 1987 amounted to £440 million.

11. Out of 355 anti-dumping actions between mid-1980 and the end of 1988, 87 resulted in duties and 144 in price undertakings. This appears to imply that in about one third of cases, dumping or injury was not established. However, in some cases a quantitative undertaking was given by the exporter; and a few cases have been ended before the completion of the investigation by the exporter raising his prices and the complaint being withdrawn. No formal price undertakings were given in these latter cases, though the economic effect is of course the same as if they were.

12. The number of anti-dumping investigations decreased between 1985 and 1987 but has risen sharply since mid-1987. Moreover, the evidence is that the products now investigated are more significant in economic terms, with investigations increasingly directed at high technology goods exported from the Far East. Investigations against Japan have long been common. For example, definitive duties were imposed on Japanese computer printers recently despite the fact that the same products were selling at a much lower price in the US. The Commission are now seeking to impose duties on photocopiers made in the US by the Japanese manufacturers whose imports from Japan are already subject to duties; and they have also initiated an investigation against the European assembly plants of some of Japan's producers of certain electronic goods under the so-called "screwdriver" regulation (see paragraph 14 below).

13. Investigations are now being directed for the first time at Korea, particularly in electronic products. Provisional duties of up to 30 per cent have recently been imposed on Korean video recorders and there are six other investigations into Korean goods in progress covering, inter alia, colour televisions and video

tapes. This spate of investigations followed a proposal by the Commission for VRAs to be imposed on some Korean electronic goods. This was rejected by Member States and subsequent recourse to anti-dumping action strongly suggests that this route is seen not simply as a means of dealing with "unfair" trade, but as one of a number of alternative instruments for restricting the entry of imports. (Anti-dumping measures have the same advantage for producers as VRAs compared with other available forms of protection in that they can be targeted at individual countries and even individual companies). There is clear evidence that Korean manufacturers are now imposing "voluntary" restraint arrangements on their exports, with or without any prompting from EC producers, in order to avoid what they see as the worse alternative of an anti-dumping investigation.

14. The Community has recently gone beyond the stated provisions of GATT and introduced the so-called "screwdriver assembly" regulation which is aimed at producers who are alleged to be circumventing anti-dumping duties by setting up assembly plants within the Community. Subject to other criteria, duties can be imposed if the percentage of components which do not come from the country of dumping is less than 40%. In correspondence with Mr Clark last summer the Chancellor expressed some concern about the implications that the regulation had for inward investment. We have followed up this correspondence by examining the regulation in detail in consultation with DTI. Our conclusion from this exercise is that the regulation may provide even greater discouragement to inward investment than was originally thought.

Biasses in the Commission's Methodology

15. The method used by the Commission to determine whether or not dumping is taking place is not straightforward, but there is some evidence that it is biassed towards a finding of dumping and exaggerates the calculated dumping margin. The Commission does not unfortunately publish its detailed calculations in anti-dumping cases, nor are they made available to member governments. Only summary reports of its investigations are published, but further details are given to the foreign exporters

affected and, if an individual case is challenged by a foreign exporter in the European Court, the Commission's procedures and calculations are further exposed to public view. We have been unable to examine all of this evidence, but have looked in a little detail at one particular case - that of electronic typewriters from Japan - which illustrates some of the ways in which the Commission's methodology can bias the results of their investigations.

16. The electronic typewriters case is summarised in Annex 4. Briefly, it appears that there are two main sources of bias in the revised methodology introduced by the Commission in 1984:

i. a greater range of costs were deducted from the export sales prices to reach an ex-factory export price than were deducted from the domestic sales price to reach an ex-factory domestic price. In particular,overheads and selling costs (eg advertising costs) were deducted from the former but not the latter;

ii for companies which did not have a significant level of domestic sales, a high rate of profit of 32.4 per cent was assumed in the constructed domestic sales price (based on the lowest profit margin found amongst companies which did have substantial domestic sales). The difference between this assumed level of profit in the home market and the actual profit rate on export sales was reflected in the dumping margin.

Although the provisional dumping margins arrived at under the previous methodology ranged from 5 to 44 per cent, the new definitive margins were between 31 and 76 per cent. The companies complained to the Commission that the treatment of expenses in the calculations biassed them towards a finding of dumping and exaggerated the calculated dumping margin, but these arguments were rejected on legalistic grounds.

17. In order to show that "injury" had occurred to the domestic industry, evidence that the profits of two EC producers had fallen between 1982 and 1985 was judged sufficient. Duties of between 17 and 35 per cent were imposed.

18. A further source of bias not illustrated by this case occurs in some others. If an exporter sells to some EC markets at prices above the exporter's average domestic price and to other markets at prices below, the higher prices are not allowed to offset the lower ones in the Commission's calculations. The justification for this is apparently that "negative dumping" has no legal existence. The European Court has defended the Commission's practice on the grounds that a foreign firm could dump in one EC country but conceal the fact by charging artificially high prices in another.

The Rationale for Anti-Dumping Policy

19. Anti-dumping policies in general and the Commission's anti-dumping policy in particular have been defended, notably by Willy de Clercq in the Financial Times article reproduced in Annex 1, largely on the grounds that dumping is an inherently unfair trading practice - the word itself is of course pejorative. In other circumstances, price discrimination would be considered unfair only by those discriminated against, ie the consumers who have to pay the higher prices. There is in fact no general economic argument which suggests that price discrimination as such is either anti-competitive or damaging to national economic welfare.

20. Domestic competition policies do not normally concern themselves with differential pricing by companies between geographical areas, and such pricing policies are not considered unfair. Indeed they are accepted as a normal business practice. For example, beer prices charged by individual companies vary widely in different areas of the UK. Enforcing uniform pricing in this context would be seen as an anti-competitive restriction likely to lead to greater local concentration of production. Moreover, such a restrictive policy would be seen as particularly undesirable in those areas where prices were previously lower.

21. The "unfairness" argument thus appears to relate only to domestic producers, and not to consumers. The argument that dumping is unfair would have more force if the test to be applied

before anti-dumping duties could be imposed was that the benefits of the duty to the industry outweighed the costs to consumers, ie the sort of rigorous test that we seek to apply in the UK to trade and industrial policy cases.

22. As it is, the interests of consumers are given a low or zero weight by the Commission. De Clercq, for instance, simply asserts that consumers will benefit from anti-dumping action in the long run because such action will ensure that domestic production and hence competition to imports is maintained. However, this is true only if the action prevents successful "predatory pricing" - ie a deliberate policy by the foreign exporter to set prices artificially low so as to drive domestic competitors out of business, with a view to achieving greater market power and higher prices later. Otherwise the action is simply protectionist and harms consumers. In practice, the existence of anti-dumping policies based on price discrimination may lead to collaborative behaviour between producers - VRAs are a good example of this - with precisely the anti-competitive consequences and costs to consumers which a sensible anti-dumping policy would seek to eliminate.

23. There is of course no necessary relationship between simple price discrimination and predatory intent, and domestic competition policies do not assume that the two are equivalent. There is admittedly some difficulty in identifying anti-competitive pricing behaviour but the Commission's procedures do not even aim to detect it. They are aimed instead at detecting simple price discrimination, whereas detection of anti-competitive behaviour would start <u>in principle</u> with a cost-based test. In other words, if it can be shown that for example the Japanese price in Europe is no lower than the cost of production and marketing (including a "normal" profit), then we would not conclude that behaviour is anti-competitive.

24. Another argument sometimes used to defend anti-dumping policies is that dumping is only made possible by protection of the exporter's domestic market which allows firms to make super-normal profits at home which they can use to subsidise losses elsewhere. This argument may have some validity in the

case of East European and some developing countries, but the main reason why EC exporters sell few electronic typewriters, photocopiers, or dot matrix printers in Japan is the comparative advantage that Japan has built up in such goods. More fundamentally, the EC's procedure does not involve any test of the level of protection afforded to the foreign producer at home nor any test of cross-subsidisation. As the Commission has not based its regulation on these considerations, it cannot invoke them to justify its actions.

25. Finally, it has been argued that anti-dumping policy is a legitimate instrument to use to protect a developing "infant" industry whose establishment would otherwise be "materially retarded". The difficulty with this argument is that in practice, anti-dumping policies are poorly designed for this purpose, giving in many cases very high rates of protection for five years or more. They thus produce a less competitive environment and little stimulus to domestic industries to become more efficient and "grow up".

What can be done?

26. Many of the difficulties with anti-dumping policies originate from deficiencies in the GATT which, it must be said, is not a charter for free trade per se. In principle, the relevant GATT provisions could be improved. However, the possible revision of Article VI is not on the agenda for the Uruguay Round. In the case of the anti-dumping code, the mandate for the Round includes an aim to "improve, clarify or expand" the existing codes. Proposals have been tabled by the Japanese, seeking fairer comparisons between export and import prices, and the Nordics on the determination of "injury". It is too early to say whether such proposals will carry wide support but either way, judging by the De Clercq article, the prospects of persuading the EC between now and the end of the Round in 1990 to support them are not good. (Unless the EC provides its support, such changes will not be secured as a consenus in required for any changes). Nevertheless, if we do not press within the Community for support to be given to changes in GATT, the Commission - and other member states which are happy with current policy - will continue to use the GATT provisions as an excuse for inaction.

27. Given that the European Court has upheld the Commission's current interpretation of the regulation, an attempt to change the EC regulation itself and the Commission's own procedures will be necessary for any improvement. For example, the regulation could be altered (a) to include a tighter definition of injury, (b) to provide an explicit requirement for the interests of consumers to be taken into account when deciding whether the imposition of a duty is in the Community's interest, and (c) to bring the circumstances under which constructed prices can be used strictly in line with GATT provisions. Such a change could only be made if the Commission put forward proposals to this effect and these are ultimately approved by the Council of Ministers.

28. An improvement which would not involve changing the regulation would be a change in the Commission's method of calculating dumping margins to ensure that it is unbiassed. The European Court upheld the method as consistent with the Regulation when it was challenged by aggrieved Japanese exporters, so the legal precedents are not promising, but a useful start would be to get the Commission to give member states more details of its investigations, so as to achieve greater transparency - and perhaps build up evidence for an eventual change in the way it interprets the Regulation. The Commission will say that they cannot pass on such information as it is commercially confidential, but this should not be accepted. Similar information is handled with discretion by DTI and OFT for example in investigating anti-competitive behaviour.

29. The difficulty of persuading the Commission (and some other member states) to change course should not be underestimated. Nevertheless, a start should be made now in persuading the Community of the economic costs of the current policy, lobbying for changes in the regulation and the way it is interpreted, and pressing for more transparency in individual cases. The UK could also oppose the imposition of definitive anti-dumping duties in the Council of Ministers in future anti-dumping cases where we have insufficient evidence of predatory behaviour and/or the interests of consumers have not been given sufficient weight. (If

the UK were to adopt such a stance, to be consistent DTI would probably have to review the functions of the Unfair Trade Unit). It is possible that other member states could be persuaded to join us and form a blocking minority in some cases. The Commission might ultimately be forced to rethink the general thrust of its anti-dumping policy.

Conclusions

30. There are two main problems with current anti-dumping policies in the Community. First, the EC regulation and the GATT provisions from which it derives are based on the concept of price discrimination. There is no general economic justification for an anti-dumping policy based on simple price discrimination when the interests of consumers are taken into account. Also such a policy allows for anti-dumping duties to be imposed in a wide range of circumstances which would not normally be regarded as "unfair trading" and indeed are not so regarded in the context of domestic competition policies. (For example, a situation in which Japanese exporters sell in the Community at a price which fully covers the costs of production and marketing, including a "normal" profit would not be regarded as unfair trading. The use of anti-dumping duties in these circumstances is purely protectionist). We see a real danger that the Commission, while dismantling the more visible barriers to imports in the run up to 1992, will replace some of them with anti-dumping duties. Such a move would be contrary to the government's desire to see the Community pursuing a liberal external trade policy after 1992, and the economic costs to the UK and the EC would be high.

31. Secondly, there is a mounting body of evidence that the Commission's methodology in anti-dumping cases is biassed towards a finding of dumping where no dumping exists and exaggerates the margin of dumping where it may exist.

32. This suggests that in addition to persuading the Commission to achieve greater transparency, and to make a more serious assessment of the consumer interest in anti-dumping cases under the existing methodology, we should aim in the longer term to change the basis of the methodology. This will ultimately involve changes in the GATT Articles. A start can be made now by the UK

taking a higher profile on the issue and attempting to persuade the Commission and other member states that the existing policy is harmful to the Community. In suitable cases, the UK could oppose the imposition of definitive anti-dumping duties in the Council of Ministers and try to build up a blocking minority with sympathetic member states.

EC Commissioner **Willy de Clercq** defends the Community's anti-dumping policy against its critics

Fair practice, not protectionism

As the world's largest exporter, as well as its largest importer, the European Community has a vital interest in maintaining a liberal system of international trade. But liberal trade is only possible, in practice, if industries can be sure that they are adequately defended against unfair trade practices. This is why anti-dumping has become an important feature of the Community's trade policy and why the number of major decisions taken recently has attracted such attention.

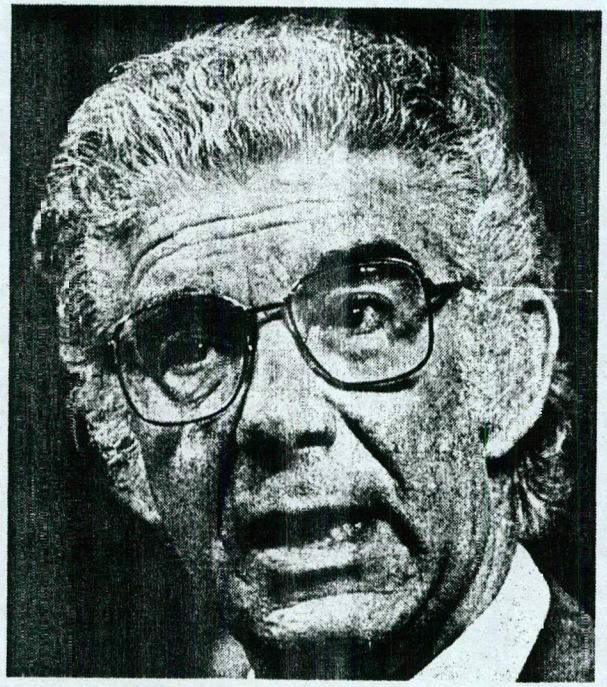
Because the Commission has nothing to hide in this area, it welcomes public debate on its anti-dumping activities. Unfortunately, however, much of the recent press commentary on its actions is exceptionally misleading. To the extent that it results from genuine ignorance or misunderstanding of the Commission's activities, such commentary can be regarded with tolerant amusement. But in other instances, the bias shown often reflects views long advanced on behalf of those found to have dumped which have already been decisively rejected by the European Court of Justice. It seems, therefore, that the dumpers are now using their money to mount a media campaign, as a last resort, and there is a need to react to it.

Even though some academics still indulge in debate on the economic rationale for anti-dumping, the principle that injurious dumping is to be condemned is now firmly embodied in the General Agreement on Tariffs and Trade (Gatt). Moreover, all major trading countries take anti-dumping action – not only the Community, the United States, Canada and Australia, but also most Efta countries, Korea, Japan and Mexico. There are several reasons for this approach, not the least being that 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, due primarily to such factors as high tariffs or non-tariff barriers and anti-competitive practices. This prevents the producers in the importing country from competing with the foreign supplier on his own ground while allowing him to attack their domestic market by sales which are often made at a loss, or are financed from the profits made from the sale of the same or different products in a protected domestic market. If anyone has doubts on the fairness of such action, he should ask the business community whether they consider it fair to compete against exporters who have accumulated super-normal profits while operating behind closed doors and then used these funds to attack the export market.

Naturally, the effect of anti-dumping measures is to increase the price of the dumped product to the consumers. But consumers are also producers, and in that role may require protection against other dumped imports. Also, the consumer's interest in gaining from cheap imports in the short term may be outweighed by his long term interest of ensuring the viability of production in the importing country, especially if the disappearance of this production leads to a lessening of competition there, or if the product is of strategic importance.

The Community has always supported the elaboration of internationally accepted rules in the anti-dumping area, as expressed in the Gatt anti-dumping code, and it has strictly applied these rules. As the Community's major trading partners also base their legislation on the Gatt code, there is considerable similarity in the way that dumping is calculated. The Community's policy in this area, however, differs from those of other countries in one fundamental respect, that is it is *incontestably* by far the most liberal. Thus, in contrast to the practices adopted by its major trading partners:

- The Commission only initiates an anti-dumping procedure on receipt of a satisfactory complaint from the industry affected. Moreover, as many unsuccessful complainants can testify, the complaint is subject to the most rigorous scrutiny before it is accepted, and almost half are rejected.
- The Community does not automatically apply anti-dumping measures, even when dumping and injury have been demonstrated. Before doing so it has to be established whether it is in the Community's interest to take such action. This does not mean that anti-dumping is used to achieve industrial policy objectives, but rather that the legitimate expectation of a community industry to be defended against unfair competition is carefully weighed against the interests of others, including consumers and processing industries, before measures are applied. If the interests of these other parties are overriding then no anti-dumping action is taken.
- Unlike the US authorities, the Commission is not obliged to apply anti-dumping measures at rates which reflect the full margins of dumping established. On the contrary, under Community law the rate is restricted to that necessary to remove the injury caused. In practice, this means that in the majority of cases the duties applied are lower than the margins of dumping found. For example, for photocopiers the highest dumping margin was 60.1 per cent and the duty was only 20 per cent.



- Price undertakings are frequently accepted as an alternative to the imposition of anti-dumping duties. This, in the last two years, of the 45 investigations resulting in the application of anti-dumping measures, 33 were concluded by the acceptance of undertakings whereas only 12 resulted in the imposition of duties.

It will be apparent from the above that the Community's anti-dumping policy in no way resembles the protectionist caricature which is sometimes portrayed. There is no question of the Community using its anti-dumping procedures as a substitute for its industrial policy or to strengthen its hand in bilateral negotiations.

It is probably in connection with the method of calculating the margins of dumping that recent press articles have most repeated in parrot fashion the arguments of the dumpers. These arguments have been so decisively rejected by the European Court of Justice that the challenge to the Commission's methodology in this area has, in the Financial Times' own words, now collapsed.

Also, those criticising the Commission's methods of calculation should compare the dumping margins recently established by the US authorities for ball bearings originating in Japan with the duties applied by the Community on the same products: 26-107 per cent by the US compared with 1-22 per cent by the Community.

Allegations have also been made about the elasticity and obscurity of the Community's anti-dumping procedures, though these are seen within the Gatt as being among the most transparent. This means that during an investigation, the interested parties are given the opportunity to defend their interests to the full, through their right to inspect non-confidential files, to request hearings or confrontations and to request disclosure conferences during which the Commission explains all details of the dumping calculations, including the facts and the method applied. Finally the decisions imposing anti-dumping measures, or closing the investigations, set out in detail the facts and legal considerations on which the findings are based.

Another feature of the Community's legislation is its provisions relating to so-called screwdriver operations. These were necessary in view of the evidence that the duties imposed on imports of certain products were being circumvented.

In discussions prior to their enactment, the authorities of certain exporting countries took the view that the provisions envisaged were too stringent. Community producers, on the other hand, claimed that they were too lax. The Community's main concern, however, was to guard against the flagrant circumvention of anti-dumping duties while ensuring that the provisions did not deter genuine inward investment. This aim seems to have been achieved. Direct investment from Japan into Europe increased by about 90 per cent in the year following the introduction of the provisions. Furthermore, in the investigations carried out, it was found that the assemblers have been able to switch the source of their components with comparative ease and once this happened the Community readily accepted undertakings from the assemblers and removed the duty on the assembled product. Although the Japanese authorities have raised this question within the Gatt, the Community is confident that it will be able to justify its action in this forum.

In any event, the Community is not the only Gatt party to include provisions on circumvention in its legislation, similar provisions being included in the United States 1988 Trade Act. But unlike Community provisions, those of the US may be applied to assembly in third countries as well as in the importing country. Moreover, a wide margin of discretion is left to the administrators and there is no provision for the acceptance of undertakings as an alternative to the imposition of duties on the assembled product.

Finally, it has been reported that between 1980 and 1985 the average *ad valorem* rate of the definitive anti-dumping duties imposed by the Community was as high as 23 per cent. Taken on its own, the statement managed to convey the impression that anti-dumping actions result in a high degree of protection. To give a more balanced picture, it is worth pointing out that almost as many complaints were rejected in the period as those which led to the opening of an investigation. Moreover, definitive duties were only imposed in a fifth of the investigations concluded, and more investigations were terminated without measures being applied than those resulting in definitive duties. In addition, well over twice as many investigations were concluded by the acceptance of price undertakings than by the imposition of duties.

The author is European Commissioner for External Relations

ANNEX 1

ANNEX 2

GATT ARTICLE VI, PARAGRAPHS 1 AND 2

1. The contracting parties recognise that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value if the price of product exported from one country to another:

a. is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or

b. in the absence of such domestic price, is less than either

i. the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

ii. the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference in accordance with the provisions of paragraph 1.

ANNEX 3

EEC - ANTI-DUMPING MEASURES

Period	No. of investigations initiated	No. of definitive duties	No. of price undertakings
7.80-6.81	36	6	12
7.81-6.82	57	10	18
7.82-6.83	46	8	35
7.83-6.84	43	16	19
7.84-6.85	56	7	22
7.85-6.86	19	6	15
7.86-6.87	28	11	20
7.87-12.87 (6 months)	31*	7	3
1.88-12.88	39	16	0
	355	87	144

* This figure includes three investigations initiated in September 1987 pursuant to Article 13:10 of Regulation No. 2176/84, as amended, ie the "screwdriver" regulation.

ANNEX 4

JAPANESE ELECTRONIC TYPEWRITERS - CASE STUDY

1. Following complaints by the Committee of European Typewriter Manufacturers, an investigation into alleged dumping by Japanese firms exporting electronic typewriters to the Community was announced in March 1984. These firms were Brother Industries Ltd, Canon Inc, Sharp Corporation, Silver Seiko Ltd, TEC Tokyo Electric Ltd, Tokyo Juki Industrial Co Ltd, Towa Sankiden Corporation, and Nakajuma All Co Ltd.

Preliminary Investigation

2. For Brother and Silver Seiko, 'normal value,' was the weighted average of domestic prices. Home sales of the other companies were judged by the EC to be insufficient and the Commission constructed 'normal' values for those products. The constructed normal value consisted of

a. all fixed and variable costs of production in Japan

b. selling, administrative, and other expenses

c. a profit margin of 10%

The export sales price used for comparison was the price actually paid for the product by independent EC importers. If the export was to a subsidiary of the Japanese producer, the price used was the price at which the product was first sold to an independent firm, minus the subsidiary's selling costs and a 5% profit margin.

3. Companies protested that the selling, administrative and other expenses incurred by their sales organisations in Japan should not be included in the construction of 'normal value', because the costs of importers into the EC, who were at the same stages of the distribution chain, were not included in the export price. The Commission responded by referring to the minutiae of the regulations that permitted its actions. It did not challenge

the assertion that its treatment of selling expenses was biased towards finding dumping. Its findings were announced in the Official Journal of the European Communities on 22 December 1984. Dumping was found for all of the imports investigated except those of Nakajuma All. Dumping margins found ranged from under 5% to 44%. Injury was shown by noting the fall in profitability of a small number of EC producers and provisional duties were imposed on the products of all the companies except Nakajuma All.

Definitive investigation

4. A second round of investigations produced much higher dumping margins, roughly double those of the first round of investigations. One reason was the use of a rate of profit of 32.4% in constructing a domestic normal value when domestic sales were judged too small, rather than the 10% profit rate used in the preliminary investigation. This value of 32.4% was the lowest observed rate of profit on substantial domestic sales of electronic typewriters. Where the profit rate on domestic sales of a product is greater than the profit rate on export sales to the first independent importer, the Commission's method will add this difference to the dumping margin. Such discrimination need not reflect any predatory intent or any selling below cost, yet is counted as part of a dumping margin by the Commission.

5. Bias in the treatment of expenses emerges clearly from the Commission's Official Journal report (22 June 1985). From the domestic price, only costs strictly necessary to fulfil the obligations of a sales contract were deducted. Advertising, research and development, and the profits of domestic sales companies, were not deducted and were therefore all included in the ex-works domestic price. This was then compared with a constructed ex-works export price from which all costs and profits of intermediaries had been deducted. This point was made by some of the exporters, but again the Commission relied on the wording of the regulations and ignored the evidence that its comparisons were unfair. The Commission said the domestic and export prices it used were at the same level of trade, but this starting point may be biassed because of the more elaborate distribution network in Japan, and a greater range of costs were deducted from the export price than from the domestic Japanese selling price.

6. The Commission discovered dumping margins on the firms' exporting electronic typewriters ranging from 31% to 76% (weighted averages). Injury was shown simply by noting the fall in the rate of profits of two EC producers from 1982 to 1985. This evidence was judged sufficient and no search for any price under-cutting was considered necessary. Duties were set at levels designed to allow the EC industry to make a "reasonable" profit rate of 10%. The average value of duties for each producer ranged from 17% (Tokyo Juki) to 35% (Canon Inc).

7. The final problem was to establish that the duties were in the interests of the Community. The Commission's answer to the point that the Community's consumers would have to pay higher prices was that consumers would benefit from the continuing existence of a viable EC industry. No consumer groups made representations to the Commission, and the interests of consumers were not taken into account.

8. No provisional duties had been imposed on Nakajuma All, as the dumping margin was first estimated to be -1%. The case was re-opened and a dumping margin of 29% was found.

EC puts special duties on S Korea, HK video-tapes

THE EUROPEAN Community is imposing special duties on video-cassettes and video-tape from Hong Kong and South Korea after finding they were being "dumped" in Europe at unfairly low prices, Reuter reports from Brussels.

The EC Commission said yesterday that because of the alleged dumping by Asian competitors, the main EC producers had lost between 9 and 27 per cent on each cassette they sold last year.

The decision to impose provisional anti-dumping duties follows a year-long investigation into imports between January and November 1987. The duties, ranging from 59.3 per cent down to one per cent, apply for four months and can be extended.

The duties reflect the so-called dumping margin, the difference between what the EC Commission considers the "normal value" of the cassettes and the price at which they are exported to the EC.

Imports from Hong Kong and South Korea together surged sixfold from 10.8m units in 1985 to 64.2m in the first 11 months of last year, the Commission said. Their share of the European market went up from 8.7 per cent to 27.9 per cent.

Financial Times

28 . 12 . 88 .

PA Anti Dumping .

anti-dumping case? For example, the Commission is about to increase the price of video tapes. Consumers would like that, if they knew the source of the price rise.

RCJ.

A G TYRIE

cst.rj/docs/8.2.3

RESTRICTED

FROM: A G TYRIE
DATE: 8 February 1989

CHANCELLOR

cc: Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Mr Wicks
Mr Byatt
Mr R I G Allen
Mr Evans
Mrs Brown
Mr Melliss
Mr Merrick
Mr Molan
Mr Hood
Mr Preston
Mrs Chaplin
Mr Call

ANTI-DUMPING

I have seen Mr Molan's note of 7 February.

2. Forcing the Commission to justify anti-dumping duties on economic grounds must be a good idea. But we will have to be very alert and knock down any Commission attempt to use bogus analysis which purports to show a "net economic benefit to the Community".

3. The methodology, if it is robust, will inevitably demonstrate an economic loss. Except in the case of predatory dumping (which is almost never proved) I cannot see how the imposition of anti-dumping duties could ever be of net economic benefit.

4. The Commission have asked for discussions on this to remain confidential. I don't think we should stay bound by that forever. At some stage we should do our own analysis, show the economic costs of anti-dumping duties, get the information into the public domain, and encourage consumer groups to get the message across. Half seriously, why can't some of these groups get Esther Rantzen to investigate some flagrant example of "euro interference and red tape" which is costing British consumers a packet and which originated in an

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225/2

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RJ.

A G TYRIE

EC puts special duties on S Korea, HK video-tapes

THE EUROPEAN Community is imposing special duties on video cassettes and video tape from Hong Kong and South Korea after finding they were being "dumped" in Europe at unfairly low prices, Reuter reports from Brussels.

The EC Commission said yesterday that because of the alleged dumping by Asian competitors, the main EC producers had lost between 9 and 27 per cent on each cassette they sold last year.

The decision to impose provisional anti-dumping duties follows a year-long investigation into imports between January and November 1987. The duties, ranging from 59.3 per cent down to one per cent, apply for four months and can be extended.

The duties reflect the so-called dumping margin, the difference between what the EC Commission considers the "normal value" of the cassettes and the price at which they are exported to the EC.

Imports from Hong Kong and South Korea together surged sixfold from 10.3m units in 1985 to 64.2m in the first 11 months of last year, the Commission said. Their share of the European market went up from 8.7 per cent to 27.9 per cent.

Financial Times

28 . 12 . 88 .

PA Anti Dumping

chex.ps/jmt/18 RESTRICTED

FROM: J M G TAYLOR
DATE: 10 February 1989

MR R MOLAN

cc PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Wicks
Mr Byatt
Mr Lankester
Mr R I G Allen
Mr H P Evans
Mrs M Brown
Mr Melliss
Mr Merrick
Mr Hood
Miss Preston
Mrs Chaplin
Mr Tyrie
Mr Call

ANTI-DUMPTING

The Chancellor was grateful for your note of 7 February, and for Mr Tyrie's note of 8 February.

2. He is content with the action recorded in your note. He agrees with Mr Tyrie that forcing the Commission to justify anti-dumping duties on economic grounds must be a good idea. He does think, however, that we should seek to keep the discussions with the Commission confidential. The Commission will only dig in its heels if attacked. He understands that we are already carrying out our own analysis (Mr Tyrie's paragraph 4).

J M G TAYLOR