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How can Japanese and Central-European exporters to the EU avoid Antidumping duties?

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Abstract

In this paper it becomes clear that in the period 1984-1990 Japan and Central-Europe have been most often alleged of dumping in the EU. One explanation is that these countries have been the most unfair importers in the EU. An alternative explanation is that in the absence of a time-consistent and transparent Antidumping policy it is difficult if not impossible for exporters to the EU to avoid Antidumping measures even if they wanted to. With respect to the Central-European markets we argue that the determination of the dumping margin is difficult to predict. The Commission usually chooses the analogue country suggested by the European complainants. Hereby an incentive is created for European producers to suggest the analogue which will secure an outcome in their favour. This practice makes Central-European exporters to the EU susceptible to the finding of a positive dumping margin. For the determination of the injury margin the crucial factor seems to be the extent to which Central Eruopean exporters undercut the price of a European like product. With respect to the Antidumpng cases against Japan, we show that the dumping margin usually entails a comparison of the price of Japanese home sales and the Japanese export price to the EU. The dumping margin is therefore observable and predictable. The injury margin is determined on the basis of European cost of production which is not observable to the Japanese exporters to the EU. On the basis of cross-case comparisons we indicate the incentives created by the European Antidumping policy. This allows us to discuss optimal strategies for Japanese and Central-European exporters to the EU that want to avoid getting caught in the Antidumping mechanism.

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I. INTRODUCTION

Selling a product at a lower price abroad than at home is called dumping and is considered to be an unfair trade practice. Article VI of GATT stipulates that dumping is a *necessary* but not a *sufficient* condition for Antidumping protection. A supplementary requirement is that the import-competing industry must suffer '*material injury*' or a '*threat of injury*' *caused by* the dumped imports. Previous research on Antidumping proceedings has shown that Antidumping rules are loose which makes them susceptible to discretionary behaviour by European industries and policymakers (Finger, Hall and Nelson, 1982; Tharakan and Waelbroeck, 1994). The absence of a transparent and time-consistent Antidumping policy is bound to have a negative effect on trade traffic and world welfare (Vandenbussche,1993). In this paper we discuss the European Antidumping policy in the light of the uncertainty it introduces for foreign importers. The European Commission's arbitrary choice of the *analogue* country, when the importer to the EU is a non-market economy, and the rule of confidentiality[1] surrounding the *injury investigation* in the European Union make it difficult if not impossible for foreign importers to know what is tolerated and considered as fair trade and what is not. In section II we provide evidence that in the period 1984-1990, Japan and Central Europe have been most often alleged of dumping in the EU. This paper aims to reduce the uncertainty by revealing some of the Commission's practices. We also show that apart from a *country bias* there has been a *sector bias* which characterizes the European Antidumping policy. In section III it becomes clear that the legal definitions of dumping and injury are not well equipped to discriminate between fair and unfair trade from an economic point of view. We discuss two important sources of uncertainty in the Antidumping regulation which explain why

[1] This in contrast to the US where the International Trade Commission, responsible for the injury investigation reveals its procedure

some countries are more prone to Antidumping protection than others. The choice of an analogue country is the most important source of uncertainty for a non-market economy exporter from Central Europe[2] while the calculation of injury margins is the most important one for a Japanese exporter. Behind what seem eratic decision processes at first, we discover a number of regularities by means of cross-case comparisons. We show that in those areas where the Antidumping rules are less transparent, the Commission's decision making is aimed at safeguarding European producers' interest which is not altogether the same as safeguarding the continued survival of the European industry as required by law. Section IV takes a normative point of view and considers a number of implications of the Commission's policy including the incentives it creates for Japanese and Central European traders to avoid European Antidumping duties. Section V concludes.

II. COUNTRY AND SECTOR BIAS

There are different ways to classify Antidumping cases. Either by looking at the defending country or by looking at the product involved. The countries that have been most often alleged of unfair imports in the EU in the period 1984-1990 are Japan and the Central European Markets[3] (CEM): Hungary, Poland and (former) Czechoslovakia. This can be seen in graph 1 which gives a frequency ranking of the countries that have come under investigation as alleged dumpers in the period 1984-1990. Japan and Central

[2] Hungary, Poland and (former) Czechoslovakia have been deleted from the non-market economy list by EC regulation 517/92 of February 1992. This implies that as of February 1992, the technique of the analogue country no longer applies to these Central-European countries. The results we report here for Central-European exporters to the EU in the period 1984-1990 are still relevant today for other non-market economy exporters to the EU, like China and Russia, that are still on the list.

[3] In December 1991 the CEM and the EU signed the Association Agreementsin which both parties agree to strive for free trade. However, it was also agreed to keep the Antidumping mechanism in place.

Europe[4] account for almost 25% or a quarter of all[5] Antidumping cases in that period. One explanation for this *Country bias* in EU Antidumping cases is that Japan and Central Europe have been the most unfair importers. An alternative explanation, which is gaining support[6], is that European industries competing with Japanese and Central European imports are particularly successful in receiving Antidumping protection. The European sectors involved are illustrated in graph 2 and 3. The majority of Antidumping cases against Central Europe involve chemical products such as copper sulphate, potassium permanganate, silicium carbide and artificial corundum. Imports in the Wood and Paper sector rank second with products such as standard wood and fibre building board. Third is the Mechanical Engineering sector with products such as standard electrical motors[7].
The majority of Antidumping cases against Japan involve consumer electronics which belong to the sector of Mechanical Engineering. Next in line is the Iron and Steel sector with products such as ball bearings. In third position is the chemical sector involving semiconductors such as DRAMS[8] and EPROMS[9].

Incidently, according to a study by Jacquemin, Buiges and Ilzkovitz (1989), the sectors involved in Central European and Japanese Antidumping cases appear to be European sectors in danger of monopolization. In section 3 we argue that one of the reasons why imperfectly competitive European sectors are so successful in obtaining Antidumping

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[4]The reason for considering Hungary, Poland and Czechoslovakia as one group is that in more than 80% of these Antidumping cases, two or three of these countries are jointly alleged of dumping the same product. This suggests that these countries tend to export the same type of products to the EU.

[5] All Antidumping cases means newly initiated + review cases + screwdriver cases. A 'review' case means that Antidumping measures have previously been installed but are about to lapse. When the EU industry feels that dumping will resume when the measures lapse it can file a new complaint. Such a case is called a review case.
A 'screwdriver case' involves the imports of parts which are used to assemble products in the EU which can no longer be imported without Antidumping measures. It can only concern assembled products of which the parts constitute more than 60% of the value of the assembled product. In what follows we drop the screwdriver cases from the analysis because they are dealt with in a special way.

[6]see Tharakan and Waelbroeck (1994)

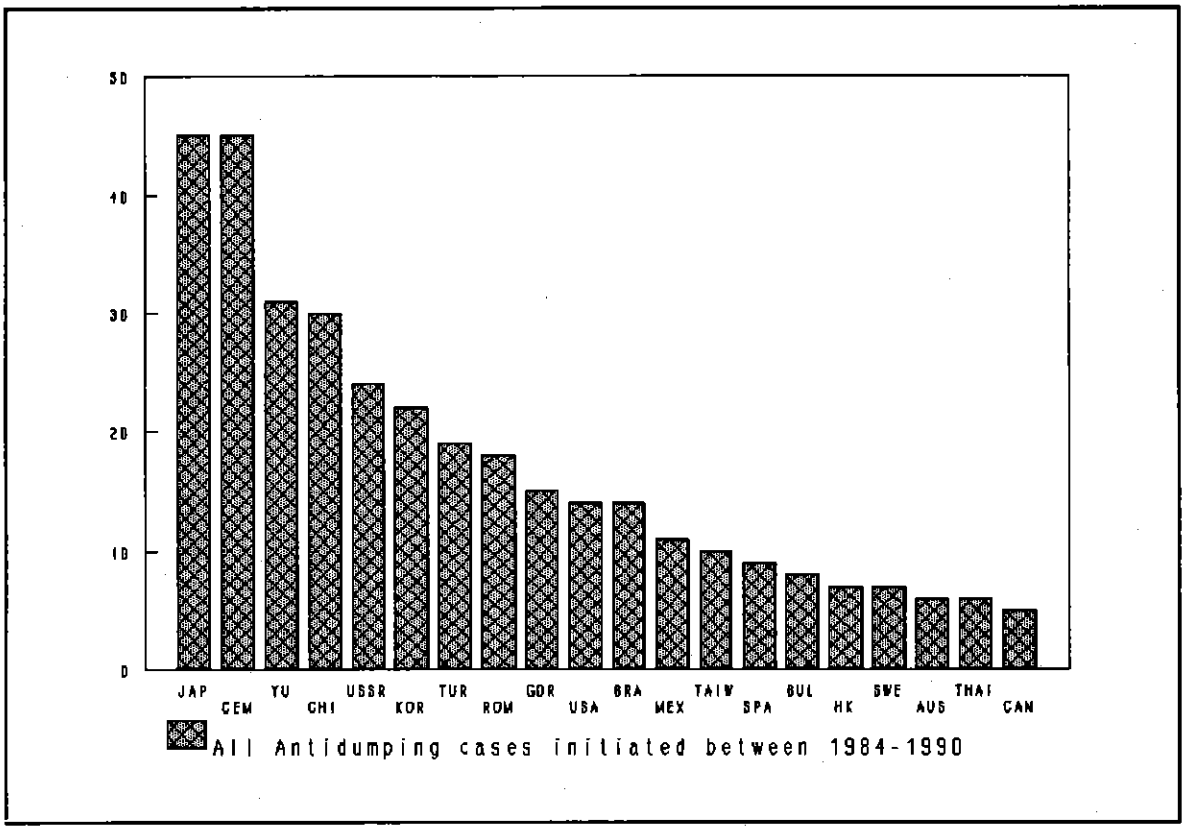
[7] The category 'Others' contains a wide range of different products belonging to different sectors but with only very few cases per sector.

[8] Dynamic Random Access Memory

[9] Erasable Programmable Read Only Memories

protection is that neither the dumping nor the injury investigation are concerned with market structure. This makes it possible for European producers who are in no danger of being driven out of the market but that suffer injury from cheap foreign imports due to erosion of their monopoly power, to file an Antidumping complaint.

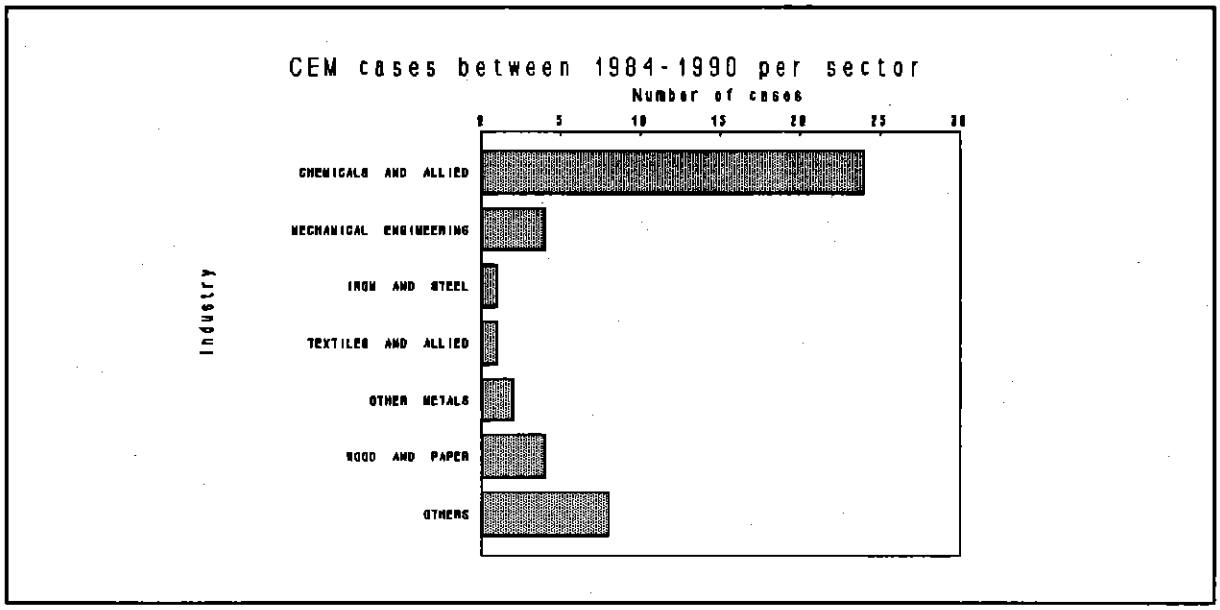
Graph 1: Defendants involved in EU Antidumping cases between 1984-1990(*)



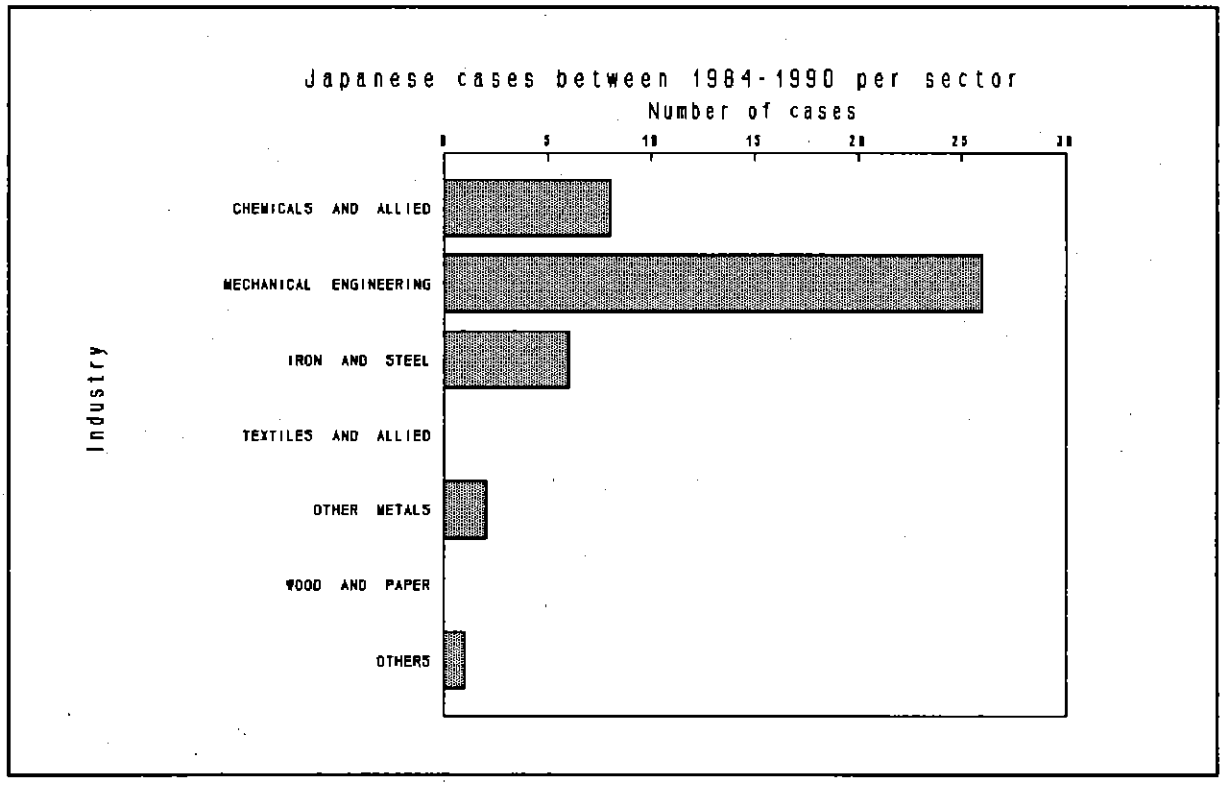
(*) Japan (Jap); Central-Europe (CEM); Yuguslavia (YU); China (CHI); Sovjet-Union (USSR); Korea (KOR); Turky (TUR); Rumania (ROM); German Republique (GDR); United States (USA); Brazil (BRA); Mexico (MEX); Taiwan (TAIW); Spain (SPA); Bulgaria (BUL); Hong kong (HK); Sweden(SWE); Austria (AUS); Thailand (THAI); Canada (CAN)

Source: COMMISSION OF EC, Annual reports on the Community's antidumping and antisubsidy activities, 1983-93

Graph 2: EU sectors involved in Antidumping cases against Central Europe (CEM) between 1984-1990



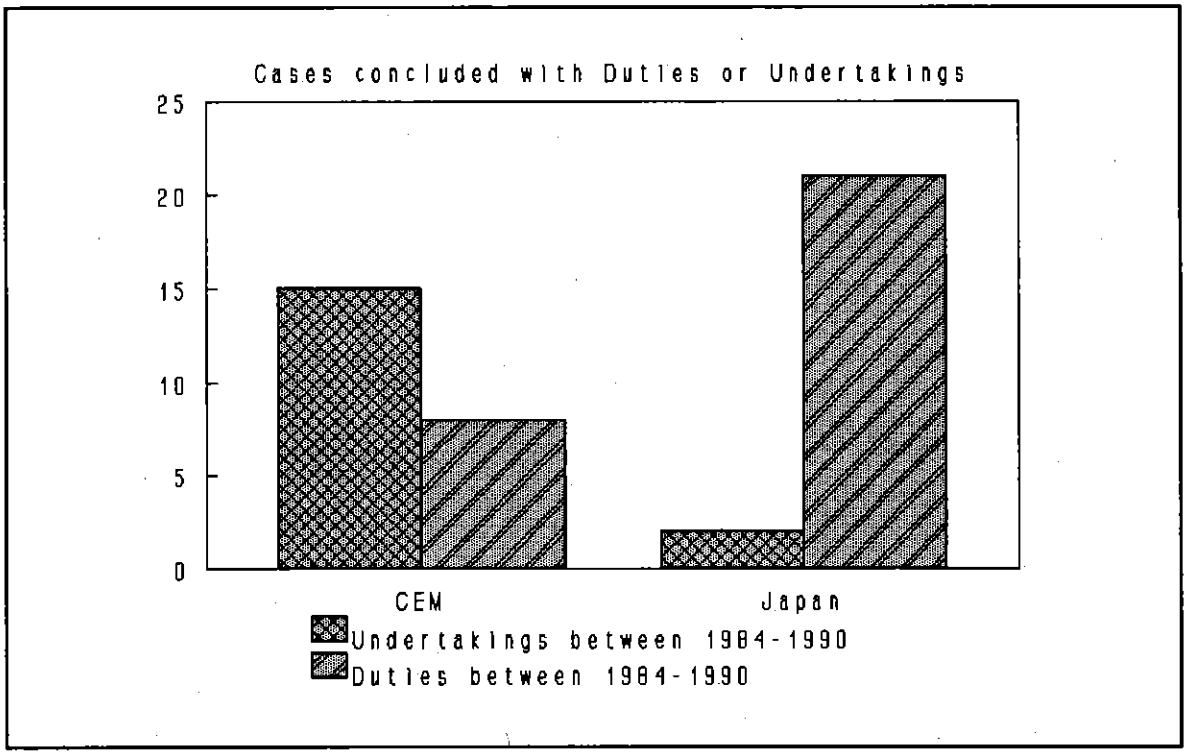
Graph 3: EU sectors involved in Antidumping cases against Japan between 1984-1990



Source: COMMISSION OF EC, Annual reports on the Community's antidumping and antisubsidy activities, 1983-93

An Antidumping case can be concluded with a duty or a price-undertaking. A duty is like a tariff while a price-undertaking is a voluntary price-increase by the foreign importer which can be considered as a non-tariff barrier. It is clear that given the choice, foreign firms will always prefer a price-undertaking to a duty. This is no surprise because with a price-undertaking, foreign importers can pocket the price-increase whereas a duty is collected by the EU as tariff revenue. Nevertheless the Commission is not always inclined to accept price-undertakings. Graph 4 shows that dumped imports from Japan usually face the imposition of an Antidumping duty. In contrast, price-undertakings offered by Central European exporters to the European market are almost always accepted. Whatever the type of measures decided upon by the Commission, it has to be such as to eliminate the injury caused to the European industry. The magnitude of the tariff or non-tariff Anti-dumping measure therefore hinges directly on how injury is measured. This will be discussed in section III B.

Graph 4: Number of Duties and Undertakings against Central Europe and Japan **between 1984-1990**



Source: COMMISSION OF EC, Annual reports on the Community's antidumping and antisubsidy activities

III. DUMPING AND INJURY INVESTIGATION

A. Dumping

Economists agree that the only type of dumping that justifies Antidumping protection is predatory dumping (Hindley,1991). Predatory pricing is aimed at eliminating competitors in the short-run in order to raise prices in the long-run. However, predation can only be a profitable pricing strategy in concentrated industries with a limited number of competitors and substantial entry-barriers (Philips, 1981). The entry-barriers allow the predator to exploit his monopoly position in the long run and to recuperate the opportunity costs of the short-run. An Antidumping policy which can prevent predation from taking place is definitely a good thing and in the interest of world welfare. However, preventing predation is not an easy thing to do mainly because predation reflects an intent of which one can only be sure ex post. Nevertheless economic theory tells us that predation can only take place in concentrated industries with a limited number of competitors and substantial entry-barriers. Therefore we expect any Antidumping legislation, aimed at preventing predatory dumping, to investigate to what extent these market characteristics are present in the industry.

EU regulation 2423/88 stipulates that there is dumping when a firm's export price lies below its *normal value*. With respect to the concept of *normal value* the law makes a distinction between exports from *market economies* and exports from *non-market economies*.

Export country is a market economy

When the export country is a market economy the legislator distinguishes between an export product sold on the domestic market of the export country and one which is not. In the presence of a domestic foreign market, the *normal value* refers to *the price at which the foreign product is sold in the export country* (art 2 B.3a). This is called the *price-test*.

However in the absence of a domestic foreign market, the legislator allows a choice between two alternatives. The first alternative is the use of a *constructed value* which involves *the production costs in the foreign local market plus a 'reasonable' profit margin* (art2 B.3bii). The second alternative in the absence of a domestic foreign market is the *foreign producer's export price to a third country* (art 2 B.3bi).

Export country is a non-market economy

When the Foreign country is a non-market economy other rules for dumping determination apply because it is felt that prices of output and factors of production in non-market economies are determined administratively and reflect neither market value nor cost of production (art 2 B.5). In those cases, an *analogue country* has to be chosen which is a *third country with market economy* with similar characteristics than the non-market economy for the industry concerned. Here the legislator distinguishes between a product which is sold on the domestic market of the *analogue* country and a product which is not. In case of the former the *normal value* is the *price at which the 'like product' is sold in the analogue country* (art2 B.5ai).
When a product is not sold on the domestic market of the analogue country, there are three alternatives for the normal value. The first is the use of a *constructed value* which involves the *production costs of the product in the analogue country plus a reasonable profit margin* (art2 B.5b). The second alternative, in the absence of a market for the product in the analogue country is the *analogue's export price to a third country* (art 2 B.5aii) and the third alternative for the normal value is the *price which is actually paid by the Community for a 'like product'* (art2 B.5c).

Table 1 summarizes the different possibilities for the normal value in Antidumping cases in the presence or the absence of a foreign local market.

Table 1 : Determination of *Normal Value* in European Antidumping legislation

Foreign Local Market	Market Economy	Non-Market Economy
yes	(1) domestic price	(1) domestic price in analogue country
no	(2) constructed value	(2) constructed value in analogue country
	(3) representative export price to third country	(3) representative export price from analogue country to third country
		(4) price actually paid by EU for like product

The *dumping margin* is defined as a comparison between the normal value and the export price to the EU[10]. When the export price lies below the normal value, the Commission regards this as evidence of a positive dumping margin.

Even from the brief outline of the dumping definition it is clear that the EU regulation does not try to discriminate between predatory dumping and other types of dumping. No attempt is made to analyze market structure characteristics. On the basis of this legislation many types of positive price differences between local sales and exports can come under investigation as dumping, including the ones which are not necessarily *unfair* or *harmful* to the EU.

In the majority of European Antidumping cases against Japan in the period 1984-1990, the Commission used the *price test* meaning that in the majority of cases the *normal value* equalled the *domestic price* for the product in Japan. In all the Antidumping cases against Central-Europe in the period 1984-1990 use was made of an *analogue* country for the determination of the normal value. The choice of a suitable analogue country should be based on 'comparability of development level', 'production method used', 'production scales', 'product quality', 'labour costs', 'availability of raw materials' etc. However, a detailed survey of the Hungarian cases in the period 1984-1990 shows that in the majority of cases the Antidumping Committee simply accepted the analogue country suggested by

[10] These two prices have to be considered at the same level of transaction in the distribution chain .

the plaintiff (Table 2). Knowing this, the European industry that filed a complaint, has an incentive to choose an analogue country such that dumping is surely found and a favourable outcome is secured. Only in a minority of cases the initial choice of analogue country was reversed due to objections from the defendants (Table 2 last column). In case 1985 (1), Turkey was suggested as an analogue country by the complaining glass industry represented by the European professional Glass Association CEPIV [11]. It was argued by one of the Hungarian exporters under investigation that the glass sector in Turkey was highly monopolistic and heavily protected in the period of the Antidumping investigation. On the basis of this the Commission decided to take Yugoslavia as an analogue country. The same argument of 'lack of competition' raised by the defendants in case 1984 (2) with respect to the choice of Spain and in case 1981 (1) with respect to the choice of Austria as an analogue country did not affect the Commission's decision. One of the few other exceptional cases where the Commission reversed the decision of the analogue country was in case 1985 (2) where Sweden was initially chosen as an analogue. Sweden had been suggested by the plaintiffs and the Commission used it for the calculation of the provisional duties. The dumping margin amounted up to 208% (Table 2). One exporter alleged of dumping in that case, argued that the affirmative finding of dumping was due to the high labour costs in Sweden. At first the Commission did not take this argument into account. Only after the case had been extended to include Yugoslavia, the Commission decided to take Yugoslavia as an analogue country[12]. As a result of that, the dumping margin dropped significantly to 146%. What this case evidence shows is that for imports coming from a Central-European market, the choice of an analogue country is an arbitrary process biased in favour of European producers and that it is very difficult for a Central-European defendant to reverse that choice. Therefore it is far more difficult for a Central-European exporter to the EU to know the amount of dumping he will be accused of than it is for a Japanese exporter to the EU. Even when a fair non-market economy trader wants to avoid a positive dumping margin, there is no guarantee that he will succeed because dumping margin calculation lies beyond its control.

[11] CEPIV is the Professional Association representing the Glass industry in the EU

[12] Yugoslavia is considered by EU as a market economy. Insiders claim that the decision to remove Yugoslavia from the list of non-market economies was a political decision.

Table 2: Antidumping cases against Hungary (1984-1990)

year	*case*	*product*	*analogue country*	*analogue suggested by plaintiff?*	*objections defendant to choice of analogue?*
1984	(1)	boots with fitted ice skates	Yugoslavia	yes	no
	(2)	copper sulphate	Spain	yes	yes
	(3)	artificial white corundum	Yugoslavia	yes	no
1985	(1)	drawn glass	Yugoslavia	no	yes
	(2)	standard multiphase electric motors	Sweden (prov. duty) ---------- Yugoslavia (def.duty)	no	yes
1986	(1)	copper sulphate	Thailand	no	yes
1987	(1)	urea	Austria	yes	yes
1988	(1)	methanamine	Mexico	yes	no
1989	(1)	NPK-fertilizer	Yugoslavia	yes	no
	(2)	horticultural glass	Spain	no	yes
	(3)	artificial corundum	?	?	?

Source: own compilations on the basis of case reports in the Official Journal

? : no information available in the Official Journal

B. The presence of injury

For the purpose of investigating the *causality* between dumped imports and material injury suffered by the domestic European industry, EU regulation 2423/88 lists a number of injury criteria. In contrast to the rules governing dumping, the injury investigation does not discriminate between exports coming from a market economy or from a non-market economy. In this section it will be shown that particularly the Japanese importers are at a disadvantage. The Commission's practice of calculating injury margins in Japanese cases, in contrast to CEM cases, depends on variables which are not directly observable to Japanese firms. This means that even when Japanese importers would like to avoid injuring the European industry they can never be sure not to be found guilty of trespassing the margin calculated by the EU Commission.

According to the European Antidumping legislation, injury to the domestic industry can be checked on the basis of the following list of criteria irrespective the country of origin of the imports :

a) the (potential) increase in the volume of imports in the EU

b) the price difference between the imports and the European products (price-undercutting)

c) the effect of dumping on the EU industry in terms of production, capacity utilisation, stocks, sales, market share, prices, profits, return on investment, cash flow, employment.

The legislation does not mention any norm or weight per injury criterium. The only

guideline mentioned by GATT is that the list is not exhaustive and that 'no one single criterium can give decisive guidance to determine injury'[13]. Case reports in the Official Journal briefly summarize the different *criteria* that have been considered by the Commission when deciding on the *presence* of injury. Table 3 is a frequency table of the number of times an injury criterium was mentioned in Antidumping cases against Central-Europe and Japan in the period 1984-1990. The frequency *ranking* of injury criteria is quite similar. Apart from the level of *price-undercutting*[14] other criteria like the *change in importers market share in the EU* and *the change in EU production* are among the factors most often mentioned. In section II it became clear that the European industries triggering Antidumping complaints tend to be imperfectly competitive. Nevertheless in the first step of the injury investigation there is no examination of the industry's market structure. Apparently the Commission does neither consider the price-cost margin nor the number of firms in the industry nor the level of concentration. This failure to examine the market structure implies that the Commission is not able to discriminate well between injury suffered as a result of unfair imports with predatory intent and injury caused by a fair trading foreign firm in an imperfectly competitive European industry. In both cases the criteria which have been suggested in the Antidumping legislation to measure the condition of the European industry result in the same symptoms. However in the former case the continued survival of the European industry is at stake, whereas in case of the latter, foreign imports will force European firms to be more competitive leading to an overall increase in European welfare.

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[13] GATT Antidumping code art 3.3

[14] The difference between price-undercutting and price-underselling will be explained later.

Table 3 : Frequency of injury criteria used in Antidumping cases against Central European countries and Japan

Injury criteria	Central Europe[15]		Japan[16]	
CHANGE IN :	number of cases	frequency	number of cases	frequency
Importers market share	24	53%	28	84%
EU market share	13	28%	25	77%
Price-undercuttting	21	46,6%	25	77%
Imports	25	56%	24	73%
EU capacity utilisation	17	38%	22	69%
EU production	22	49%	19	57%
EU sales	18	40%	16	50%
EU profitability	18	40%	16	50%
EU financial loss	0	0%	14	42%
EU price depression	0	0%	12	38%
EU employment	10	22%	12	38%
price underselling	0	0%	12	38%
EU production capacity	9	20%	11	34,6%
EU stocks	6	13,3%	5	15%
EU's ability to invest in R&D	0	0%	5	15%
Importers pricing below cost	0	0%	1	4%
EU cash flow	0	0%	1	4%
EU return on investment	0	0%	2	7%
Exit of EU producers	0	0%	1	4%
Defendant's export capacity	4	9%	0	0%
Defendant's production capacity	5	11%	0	0%
Total number of cases investigated	44	100%	33[17]	100%

Source: own compilations of Antidumping cases reported in the Official Journal

[15] Central Europe includes Hungary, Poland and Czechoslovakia.

[16] Injury criteria were based on 26 EU cases against Japan between 1984 and 1990. Review cases are included but 'screwdriver cases' were excluded.

[17] Of the 45 Japanese Antidumping cases we dropped 6 screwdriver cases and 4 cases could not be traced in the Official Journal which left us with 33 cases to investigate.

The injury criterium which ranks first in the Japanese cases and second in the CEM cases in terms of frequency, is the *change in importers' market share*. It is a common practice of the EU Commission whenever more than one defendant is under investigation for the dumping of the same product, to *cumulate* importers' market shares in the EU. The need for Antidumping measures in order to prevent injury to the domestic industry is hard to defend when individual importers have very small market shares. The cumulation of market shares, can make the argument of protecting EU producers for injurious dumping more acceptable. Table 4 illustrates the considerable differences in the Hungarian cases between individual Hungarian market shares and cumulated market shares. The Commission uses the latter for the determination of injury. Although cumulation does not affect the method used for arriving at injury *margins*, cumulated market shares are referred to in order to stress the *presence* of injury which is a necessary first step before the actual injury margin is calculated.

For example in table 4 it can be seen that in case 1984 (3) the Hungarian market share in the EU had actually decreased during the period of investigation from 4.3% to 1.6%. However Poland and the USSR were also alleged of dumping the same product (artificial white corundum). The cumulated market share of the three defendants had increased over the same period from 5% to 7%, therefore injury was decided upon.

Table 4 : Individual and Cumulated Market Shares in Antidumping cases against Hungary between 1984-1990

year (a)	*case* (b)	*market share Hungarian imports in EU* (c)	*other countries involved* (d)	*cumulated market share of countries in (d) and (c)*
1984	(1)	1980: 3.1 % 1983: 2.8 %	Yugoslavia, Rumania, Czechoslovakia	1980: 38 % 1983: 50 %
	(2)	?	Bulgaria, Poland	1980: 1 % 1983: 9 %
	(3)	1981: 4.3 % 1984: 1.6 %	Poland, USSR	1981: 5 % 1984: 7 %
1985	(1)	?	Turkey, Yugoslavia, Rumania, Bulgaria, Czechoslovakia	1981: 2.8 % 1984: 55 %
	(2)	'a deminimis level' in some years	Bulgaria, Czechoslovakia, GDR, Poland, USSR, Rumania	1982: 23 % 1985: 20 %
1986	(1)	?	Czechoslovakia, Poland, USSR	1982: 16 % 1986: 16 %
1987	(1)	1984: 0.47 % 1987: 0.92 %	Austria, Malaysia, Rumania, USA, Venezuela	1984: 4 % 1987: 11 %
1988	(1)	less than 0.3 %	-	no cumulation
1989	(1)	1985: 0.6 % 1988: 0.88 %	-	no cumulation
	(2)	?	?	?

Source: own compilations of Antidumping cases in the Official Journal

?: no information was provided in the Official Journal of the EU

C. The Calculation of the Injury Margin

How the EU Commission arrives from the list of individual injury criteria to the calculation of an *injury margin* is a confidential matter[18]. At the time when the Antidumping code was under construction at GATT level there were two opposing views regarding injury. On the one hand there were those who felt that when goods are imported at a price not lower than the ruling price in the import market this should not be considered as an unfair practice irrespective of the price level in the domestic market of the exporter. This type of price-discrimination is a perfectly legal practice in the US internal law and is called '*meeting competition*'. Or to put it differently when there is no price-undercutting in the import market there is no injury. However this point of view was outperformed by those who felt that price-undercutting can only be one element among several in the injury investigation[19].

Although the idea of *meeting competition* was dismissed at the outset of the legislation, case evidence shows that it lives on in the European Commission's practice for arriving at the injury *margin*.

VERMULST and WAER (1990) and THARAKAN (1991) have hinted at the fact that the *most preferred method* of the Antidumping Committee for the calculation of the injury margin seems to be the level of *price-undercutting* and *price-underselling*. *Price-undercutting* refers to the price difference between the European product and the foreign 'like

[18] This in contrast to the US where the International Trade Commission, responsible for the injury investigation, reveals its procedure.

[19] Belgian Office for Economic Affairs (1967), The Antidumping code of the GATT, Supplement Monthly Overview nr 9.

product' sold in the EU. *Price-underselling* refers to the price difference between European *target prices* and the price of the foreign like product sold in the EU. A target price is constructed when the Commission feels that European prices have been depressed by the dumped imports. The target price is constructed by adding to the European cost of production a 'reasonable' profit margin for the industry involved.

We have looked at Antidumping cases against the Central European Countries and against Japan in the period 1984-1990 to substantiate this allegation. The results are presented in table 5. Whenever a case is concluded with a 'Duty', the magnitude of the duty is always reported in the Official Journal. The law stipulates that Antidumping measures have to offset the injury margin or the dumping margin whichever is lower. This is called the 'lesser-duty' rule (art 13). Whenever the level of the duty is lower than the dumping margin we know that the duty level gives us information regarding the injury margin which can then be compared to the level of price-undercutting, reported in column 4. However in an 'Undertakings' case the extent of the price-increase is never revealed which leaves us in the dark with respect to the injury margin. Therefore we do not list the 'Undertakings' cases. They do not reveal anything regarding the Commission's procedure.

Of the 45 cases initiated between 1984 and 1990 against the Central European Countries Hungary, Poland and Czechoslovakia, 15 were concluded with undertakings, 8 with duties, 17 were terminated without measures, 3 cases withdrawn and 2 cases could not be traced.

Of the 8 duty cases, there are 6 cases where the injury margin corresponds with the level

of price-undercutting. Of the 18 cases terminated without measures, 12 cases were terminated because of a 'de minimis'[20] injury margin (listed in table 5a). Coincidently those 12 cases (listed in table 5a) all have a level of price-undercutting of 0% or close to zero, which seems to confirm the notion that, price-undercutting is the determining factor in the injury margin calculation. In one of the 6 remaining terminated cases , the request for Antidumping measures from the EU producer, who accounted for 90% of Community production, was dismissed because the EU producer himself had imported the dumped product from Czechoslovakia. For those circumstances, the EU regulation stipulates that the EU producer is excluded from the injury investigation. This explains why no measures were taken although the dumping margin amounted up to 60%. Another case which was terminated without measures concerns the imports of Portland cement from Poland with a dumping margin of 54% and price-undercutting between 5 to 35%. The case was terminated because the market share of the Polish imports in the EU did not constitute more than 2% which, according to the Commission, was not sufficient to cause harm. The same reason for termination applied for two cases concerning NPK-fertilizer from Hungary and Poland and the imports of Single phase electrical motors from Czechoslovakia. One other case was terminated because the Commission did not find evidence of dumping. On such an occasion, the injury investigation is stopped and the findings are no longer relevant.

In the same period there were 43 Antidumping cases initiated against Japan. The so called 'screwdriver cases' (6) were dropped from the case studies. Of the 37 remaining cases, 2 were concluded with undertakings, 22 with duties, 9 were terminated and 4 cases could

[20] 'de minimis' means that the injury is not 'substantial' or 'material'

not be traced. Of the 22 duty cases, we found 5 where the duty was equal to the level of price-underselling and in one case the duty equalled the level of price-undercutting. Those six cases are listed in table 5b. In the cases where the Commission turned to price-underselling it was justified on the basis that the Japanese imports depressed European prices below the European cost of production which resulted in substantial European losses. The Commission constructed a target price consisting of European cost of production and a 'reasonable' profit margin. Then this target price was compared to the price of the Japanese product in the EU. The difference between these two prices was considered to be price-underselling which served as injury margin.

Of the 17 other duty cases, in 9 the duty was set equal to the dumping margin, which is an indication that the injury margin in those cases was higher than the dumping margin. In 8 duty cases the duty neither equalled the dumping margin nor the level of price-undercutting/underselling. For those cases it was impossible to derive the Commission's method for arriving at the injury margin.

Out of the 9 terminated cases, we found 4 cases where the case was ended due to a 'de minimis' (zero or very small) level of price-undercutting/-underselling which we have listed in table 5b. Three other cases were stopped in the absence of dumping. One case concerning Mica was terminated despite a positive dumping margin and considerable price-undercutting. And one case on the imports of Microwave ovens was terminated because the EU industry withdrew the complaint due to 'profound changes in the market place'.

In sum, of the 45 Antidumping cases against Central Europe, 26 cases (8 duty and 18

termination cases) provide us with information regarding the EU's calculation of injury margins and duty levels. Out of these 26 cases, 12 cases were terminated due to the absence of price-undercutting. In 3 cases, the injury margin is the average level of price-undercutting (1985 (2),(3),(4)) and in one case the injury margin is exactly equal to the level of price-undercutting. This means that in 16 out of 26 cases, which is 61 % , the injury margin has been determined on the basis of price-undercutting. This figure clearly supports the allegation that the European Commission has a strong preference for setting injury margins equal to the level of price-undercutting in Antidumping cases against Central-European exporters to the EU.

Of the 37 Japanese cases, 31 cases (22 duties and 9 terminations) can be used to infer the Commission's practice of injury margin determination. Here we have 5 cases where the injury margin is based on the level of price-underselling/undercutting and 4 cases where a termination followed with a level of price-underselling/undercutting equal to zero or close to zero. Together they constitute 9 cases out of 31 which is 29 % where the injury margin is based on price-undercutting/underselling[21]. Although 29% is not sufficient to speak of a majority of cases, the evidence clearly shows that the Commission cherishes the idea of *meeting competition*. A foreign importer who wants to avoid Antidumping duties should be aware of this preference.

In those cases where the Commission has accepted price-undertakings offered by the exporter, we can only guess at the extent of the price increase offered. However in the

[21] In total we have 57 Antidumping cases (31 CEM + 26 Jap) where we can derive information on the injury margin calculation. In 25 cases (=16 CEM + 9 Jap) out of these 57 or in 43%, the level of price-undercutting/underselling appeared to be the most important factor for the injury margin.

light of the previous discussion on duties we suspect the same principles to rule here. Price-undertakings will have to offset price differences with the EU producers if they are to be accepted by the Commission.

We see mainly three reasons why the level of price-undercutting is not an adequate injury measure. First of all, the practice of looking at one injury criterium to the exclusion of all others is against the law. The GATT Antidumping code stipulates that 'no one criterium should give decisive guidance'. Secondly, the level of price-undercutting can only be a crude indicator of injury but lacks discriminating power to be anything more than that. The Antidumping law states that only '*like products*' of domestically produced goods can come under investigation. Art 2 (12) of EU regulation 2423/88 describes a *like product* as ' *a product with comparable physical characteristics*'. The definition of what is considered a *'like product*' often causes disagreement between defendants and plaintiffs in Antidumping cases. Even when products have the same physical attributes, buyers may value them differently. Things like buyers' preferences and 'perceived quality differences' may lead to substantial price divergences between products but they are disregarded by the Commission. In case 1985 (2) against Hungary (table 2) the Commission reported that it compared products which are like products within the meaning of the legislation. However the Commission did not attempt to establish the effect of buyers' preferences, because that would be a 'subjective judgement and difficult to quantify'.

A third reason is that the Commission's practice of setting the duty equal to the level of price-undercutting can induce *rent-seeking activities* both by the European firms and the foreign firms. It is not unthinkable that a European firm seeking alleviation of foreign competition uses its strategic variable price or market share or a combination of both to

make the price difference with foreign imports as wide as possible. A foreign importer, that would be adversely affected by Antidumping measures will want to reduce the probability of protection by closing the price gap with the European product. This will result in upward price revisions by both firms which is very much against the interest of European consumers. The rent-seeking activity induced by the Antidumping mechanism will force European consumers to pay more than under free trade.

Table 5: Antidumping cases against Central European Countries and Japan which reveal rule of thumb.

a) EU versus Hungary(HU) , Poland (PO) and Czechoslovakia (CZ) (1984-1990)

Case	Product	Dumping Margin	Price-undercutting	Injury	Antidumping Measures/ Injury Margins
'84 (1)	Boots with ice skates (HU)	8.6%	0%	no injury	Terminated
(2)	Standard Wood (CZ)	?	0%	no injury	Terminated
(3)	" (PO)	?	0%	no injury	Terminated
'85 (1)	Ball Bearings (PO)	15%	0%	no injury	Terminated
(2)	Stand. electr.motors (CZ)	121%	10 to 50%	injury	Duty : 35%
(3)	" (HU)	146%	20 to 40%	injury	Duty : 35%
(4)	" (PO)	139%	10 to 50%	injury	Duty : 35%
'86 (1)	Potassium Permangan. (CZ)	69%	21%	21%	Duty : 21%
'88 (1)	Fibre build.board (CZ)	?	0%	no injury	Terminated
(2)	" (PO)	?	0%	no injury	Terminated
(3)	Glass Textile Fibres (CZ)	?	0%	no injury	Terminated
(4)	" (HU)	?	0%	no injury	Terminated
'89 (1)	Horticultural glass (CZ)	0%	0%	no inj/ no dump	Terminated
(2)	" (HU)	0%	0%	no injury	Terminated
(3)	" (PO)	0%	0%	no injury	Terminated
'90 (1)	Oxalic Acid (CZ)	0,01%	0%	no injury	Terminated

Table 3 b) EU against Japan between 1984 and 1990

Case	Product	Dumping Margin	Price-undercutting/-underselling (per Japanese firm involved)	Injury	Antidumping Measures/ Injury Margins
'84 (1)	Electronic Typewriters	31% to 76%	Brothers 21% Canon 35% Sharp 32% Silver 21% TEC 21% Juki 17% Towa 20%	injury	Brother 21% Canon 35% Sharp 32% Silver 21% TEC 21% Juki 17% Towa 20% others 35%
'85 (1)	Tube and Pipe fittings	weighted average: 18%	0%	no injury	Termination
'87 (1)	DRAMS	weighted average : 8,5 to 206%	Jap prices were on average lower than EU production costs	injury margin is calculated as the difference between EU production costs and Jap resale prices	Duty : 60%
(2)	Mobile Radio Telephones	?	0%	no injury	Termination
'88 (1)	Wheeled Loaders	?	no material price underselling	no injury	Termination
(2)	Hydraulic Excavators	?	underselling : 1,2%	no injury	Termination
'89 (1)	Ball Bearings >30mm	Inoue 25,3% Koyo 42,2% Nachi 44,6% Nippon 25,3% NTN 50,6%	underselling	injury margin is price-underselling; (EU prod. cost + 8% profit margin) - Jap.resale price	Inoue 6% Nachi 7,7% Nippon 6,5% NTN 11,6% Others 13,7%

Case	Product	Dumping Margin	Price-undercutting/-underselling	Injury	Antidumping Measures/ Injury Margins
'90 (1)	Aspartame	47 Ecu/kg	underselling	injury margin is price-underselling; (EU prod. cost +8% profit margin) - Jap resale price	27,2 Ecu/kg
(2)	Pocket Lighters	Tokai 96,56%	underselling	injury margin is price-underselling; (EU prod. cost+ 15% profit margin) - Jap resale price	Tokai 35,7%

IV. THE INCENTIVES INDUCED BY EUROPEAN ANTIDUMPING POLICY

The case evidence of Antidumping cases against Central-Europe suggests that the European Commission's dumping margin calculation is biased in favour of European producers. Therefore the best strategy for a Central European exporter to avoid Antidumping duties is to focus on the injury margin. Cross-case comparisons show that the most preferred method of injury margin calculation in Central-European cases is the level of price-undercutting. By not undercutting the European prices or in other words by meeting the European competition, Central-European exporters can avoid the Antidumping mechanism or at least reduce the probability of protection. This strategy implies upward price revisions of Central-European products sold in the EU.

For the Japanese firms the dumping margin, in contrast to the injury margin, is relatively easy to control because both elements involved (export price to EU and price in home market) can be observed. Injury margins, however, are far more difficult to predict for Japanese firms because injury margin calculation by the Commission is far less transparent. It often involves the use of target prices. A target prices consists of the European cost of production which is not observable to the Japanese firms. For Japanese firms it may therefore be easier to manipulate the dumping margin. This can be done either by reducing the price in the Japanese home market or by increasing the Japanese export price to the EU or by a combination of both. The former is a good thing for Japanese consumers and world welfare. An increase in the Japanese export price to the EU, however, will reduce European consumers' welfare.

V. CONCLUSION

In this paper we have discussed the European Antidumping policy against Central-Europe and Japan in the period 1984-1990. Although economists agree that predatory dumping is the only type of dumping that justifies Antidumping action, it is clear that the Antidumping legislation is not equipped to discriminate between predation and other types of dumping. This means that even a fair exporter to the EU can get caught in the Antidumping mechanism. A fair trader seeking to avoid Antidumping measures can either try to avoid dumping or to avoid injuring the EU industry since both conditions are required by law before Antidumping protection can be imposed.

The evidence presented in this paper suggests that the Commission's dumping margin calculation for Central-European exporters is biased in favour of European producers. Therefore the best strategy for a Central European exporter to avoid Antidumping duties is to focus on the injury margin. Cross-case comparisons show that EU officials are often using a rule of thumb rather than an economically solid method to arrive at the injury margin. The most preferred method of injury margin calculation in Central-European cases is the level of price-undercutting. By not undercutting the European prices or in other words by meeting the European competition, Central-European exporters can avoid the Antidumping mechanism or at least reduce the probability of protection.

For the Japanese firms the dumping margin, is relatively easy to control because both elements involved (export price to EU and price in home market) can be observed. This in contrast to injury margins. Injury margin calculation in the Japanese cases involves the use of target prices. Target prices consist of the European cost of production which is

not observable to the Japanese firms. Therefore the best strategy for Japanese firms is to focus on the dumping margin.

This paper has shown that the European Antidumping policy creates incentives for foreign exporters to the EU wishing to avoid European Antidumping duties which are likely to result in upward price revisions. This means that the mere threat of Antidumping measures can serve as a means to alleviate European producers from foreign price competition but at the expense of European consumers' welfare.

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