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Author: **Hylke Vandenbussche** (UCL-CORE)-project leader

In collaboration with:

Jozef Konings (KUL-ECON)
Maurizio Zanardi (ULB-ECARES)
Jan Wouters (KUL-ECON)

Responsible Official: **Levente Császi**
Directorate-General for External Policies of the Union
Policy Department
WIB 06 M 55
rue Wiertz
B-1047 Brussels
E-mail: levente.csaszi@europarl.europa.eu

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Short summary

This report discusses the economic and non-economic considerations regarding Trade Defence Instruments (TDI). The "economic" view suggests that the system of TDIs requires fundamental changes both at the level of the WTO and at the level of the EU legislation. Current laws are too vague and allow for too many instances of protection. [1] The "economic view" ranges from a complete abolishment of TDIs at the multi-lateral level to the more moderate view that TDIs can continue to exist provided the definitions of "unfair" dumping and "injurious dumping" are made stricter, limiting its application to very particular instances.

The "non-economic" view is much more in favour of a status quo of the rules. Its advocates feel that unfair dumping has a wider application range than the pure economic definition of predatory dumping. They point out that social and political considerations are also important. The main improvements envisaged by this group are an increase in *transparency, predictability and efficiency* of the rules.

In view of these differences in existing opinions, different paths of reforms are being proposed. While some reforms are agreed upon by all, others are more controversial.

It is generally agreed that fundamental changes to antidumping laws should best be pursued at the multilateral level. Reforms at that level of the WTO are important if only because the number of countries that have adopted Trade defence Laws has doubled over the last two decades.

The current proposals for multi-lateral change appear to *weaken* the injury test in TDIs. These proposals, if accepted, are likely to trigger greater instances of protection. The EU's stance on these proposals will matter in the period ahead and this document may help to create further understanding of the issues involved.

[1] "Economic" and "Non-Economic" view should be regarded as simplifying labels. Their purpose is to distinguish the views embedded in pure economic theory from views with a wider scope including also political and other considerations.

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Executive Summary

Trade Defence Instruments (TDIs) are at the heart of the Political Debate today. These instruments (i.e., antidumping, antisubsidy and safeguard measures) allow the EU to defend its producers against dumped or subsidized imports and other shifts in imports.
The use of these instruments is firmly rooted in the GATT/WTO agreements. The last substantial review of TDIs dates back to 1994. Since then, important developments occurred both in Europe and in the global economy. This triggered substantial debate on the use of TDIs. In order to see if adaptations are necessary, the Commission published on 6 December 2006 a Green Paper on the functioning of the EU's Trade defence instruments and engaged in public consultations with stakeholders. During that process it became clear that no sufficient majority currently exists to support reforms.
Despite the opposing views and the complexity involved, TDIs merit attention. This document aims to explain the issues involved in a way that can improve general understanding.

For the EU-27 to reach a consensus on whether and how to reform TDIs is now more difficult than ever. Member States differ in their production base and specialization. With "Northern" countries being relatively more specialized in the tertiary sector and "southern" and "eastern" countries relatively more specialized in manufacturing, the stance in favour or against stricter application of TDIs runs by and large along the same divide. Opinions differ not only among Member states but also among different groups of economic actors across Member States (EU domestic producers versus outsourcers, upstream producers versus downstream retailers, trade unions versus free trade associations etc.). This all results in a complex web of interest groups and makes the willingness for reforms difficult and "politicized". The difficulty in part finds its origin in the absence of global governance rules in areas like competition and environmental issues. Unilateral import policy is often perceived as the only available option for countries.

This report has mainly three objectives. First, we describe the current EU's Trade Defence laws. Second, we give an overview of the "economic" and "non-economic" arguments on the need for reforms in the debate and contrast this with the current proposal for change that circulate at the level of the WTO. And third, we make a comparative study of the most frequently used Trade defence instrument, i.e. Antidumping, with those of other countries.

Our findings suggest that a wide spectrum of views regarding TDIs exist. But consensus seems to exist on at least three important issues.
First, fundamental changes to the TDI system should best be decided at the level of the WTO. For the EU to pursue a unilateral change in the rules is generally perceived as a "disarmament" that would weaken the EU versus other countries.

Second, the EU's Antidumping agreement already offers additional features largely absent in other countries which are favourable to exporters and to consumers. More in particular the inclusion of the "lesser-duty" rule which results in lowers duties, and the Community Interest clause, which considers consumers' interests, are felt to be strong points of the EU TDI system. They offer the opportunity for more balanced decision-making and as such should be defended at the multi-lateral level in future negotiations.

Third, most if not all actors in the field insist on greater *transparency, predictability and efficiency*. They mainly involve the need for more timely and detailed information during the investigation process for the actors involved.

Apart from the three areas outlined above, opinions vary widely. On issues such as the *dumping* definition, the *injury* definition, the *causality* test, the *like product* definition and the *Community Industry* definition and a number of other issues there is no consensus on whether and how to reform.

It is worth noting that the current proposals for multi-lateral change to the TDI rules imply a *weakening* of the injury test, which would facilitate the use of AD in future. If implemented, these proposals could imply that EU exporters suffer more antidumping protection from "new users" of AD that heavily target EU exports.

For the non-technical reader we include a vademecum at the end of this report with an explanation of terms and concepts specific to the context of TDIs. Since dumping cases represent an overwhelming majority of Trade Defence Instruments (TDIs) our report will predominantly focus on that.

In the Table below we list a number of the key issues involved and we include the "economic" versus "non-economic" view on each of them. By nature, the summary often entails crude generalizations. These will be qualified more inside the report.

Issues in the debate

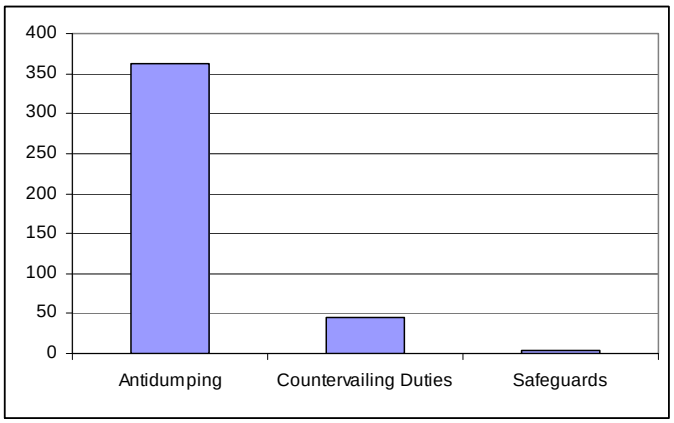
Definition		Economic View	Non-Economic view
Law	• **Unilateral abolishment of Antidumping Law is not an option**. A decision to abandon antidumping laws should be taken at the multi-lateral level of the WTO, not unilaterally by the EU since that would weaken its position.	Agree	Agree
Comparative	• **TDI practices by other countries are worse.** EU rules have favourable features compared to other countries: the "public interest clause", the "lesser-duty rule" and the "Sunset clause" offer opportunities for more balanced decision-making but need to be improved.	Agree	Agree
Transparency	• **Improve Transparency, Predictability and Efficiency.** Transparency, predictability and efficiency surrounding Trade Defence Instruments can be substantially improved.	Agree	Agree
Dumping	• **Definition of Dumping is too wide**. The only type of unfair dumping is predatory dumping. To detect Predatory dumping requires an analysis of the market conditions which are currently not included in the AD rules.	Agree	Disagree
Injury	• **Price-Undercutting is not a good injury measure**. Current AD laws state that a lower foreign price than the EU product causes injury to the domestic EU industry. However, when foreigners "sell cheaper" on the EU market this needs not be unfair but may stem from different demand conditions or differences in perceived quality between technically similar products.	Agree	Disagree
Like Product	• **"Like product" definition is too vague.** To determine whether the foreign imported product is similar to the domestic one, only "technical" factors are considered. It would be better to include a "market-oriented" test of likeliness such as cross-price elasticities	Agree	Disagree
Causality	• **Causal link between dumping and injury is too loose**. More refined techniques such as regression analysis should be used to determine whether injury (evolution of prices, employment or sales in the EU industry…) is mainly driven by the dumped imports or by other factors such as a change in consumer tastes, or consumer confidence or the entry of new substitute products.	Agree	Disagree
Community Industry	• **Community Industry is too vague**. The definition of "Community industry" includes firms with production within the EU territory. EU firms that outsource part of their production to the alleged dumping country now may or may not be included which creates uncertainty. Also, the distribution sector is not included in the Community industry definition which gives rise to conflicting interests amongst different EU firms. Therefore we need a more precise definition of Community industry.	Agree	Disagree
Public Interest	• **Consumers Interest should be more central in the analysis.** Any change in the Trade Defence laws should benefit from the longer experience of competition laws where the interests of the consumer are much more central.	Agree	Disagree

Price-Undertaking	• **Price-Undertakings should be abolished**. Antidumping measures in the form of price-fixing agreements (Price-undertakings) should not be used. They are similar to Voluntary Export Restraints (VERs) which are no longer considered legal trade instruments by the WTO.	Agree	Disagree
Safeguards	• **Antidumping is often used when Safeguards are more appropriate.** The rules to impose safeguards are stricter than for antidumping protection. Therefore it can be tempting for the domestic industry to accuse foreign importers of "unfair" behaviour where in reality it is domestic inefficiencies that are the cause of injury.	Agree	Disagree
Proliferation	• **The Proliferation of TDIs warrants a change of the rules**. The number of countries using AD has doubled over the last two decades. Evidence suggests that "new users" of AD heavily target countries like the EU. AD measures by "new users" have been going up year after year increasingly pushing the EU more in the role of defendant. Therefore it is in the EU's interest to push for reforms at the level of WTO.	Agree	Disagree
Conditionality	• **Conditionality is required in TDIs**. Currently there is no requirement for EU industries to provide evidence of *restructuring* during protection. In particular for safeguards the inclusion of a conditionality condition is warranted.	Agree	Disagree
Voting	• **Voting in the Council should change.** Currently the abstentions are considered as votes in favour of protection. This creates a bias in the institutional rules in favour of protection.	Agree	Disagree
Analogue	• **Choice of Analogue country is not appropriate.** Countries that have non-market economy status i.e. China are often replaced with an analogue country for the calculation of dumping. Analogues are mostly proposed by complainants who entail a risk of inflating protection.	Agree	Disagree
Expiry Review	• **Duties in Expiry Reviews should be refunded**. An expiry review case implies that duties continue during the period of the expiry review investigation which can last up to 15 months. The investigation period is too long especially since the proof required continuing protection beyond the initial 5-year period is less than for a new case. Also, duties paid during the expiry review investigation period should be made refundable whereas now they are not.	Agree	Agree
Duration	• **Duration of AD protection is too long.** The period of antidumping protection is too long and should be shortened from 5 years to 3 years similar to safeguards	Agree	Disagree
WTO proposals	• **Injury, lesser-duty and Public Interest.** The current proposals that circulate involve a weakening of the *injury* test, an abolishment of the *lesser-duty* rule but an introduction of a *Public interest* clause in the AD agreement.		

1. Trade Defence Instruments: description

The EU has three types of Trade Defence Instruments: Antidumping Measures, Countervailing Duties and Safeguard Measures. All of these measures involve the levying of duties or the equivalent thereof on imports from outside the EU. By far the most popular Trade Defence Instruments are Antidumping Measures (Article 6 of GATT). This is illustrated in Figure 1. Over the period 1995-2006, the EU initiated more than 350 antidumping cases, in comparison to around 45 Countervailing duty cases and about 4 Safeguard cases.[2]

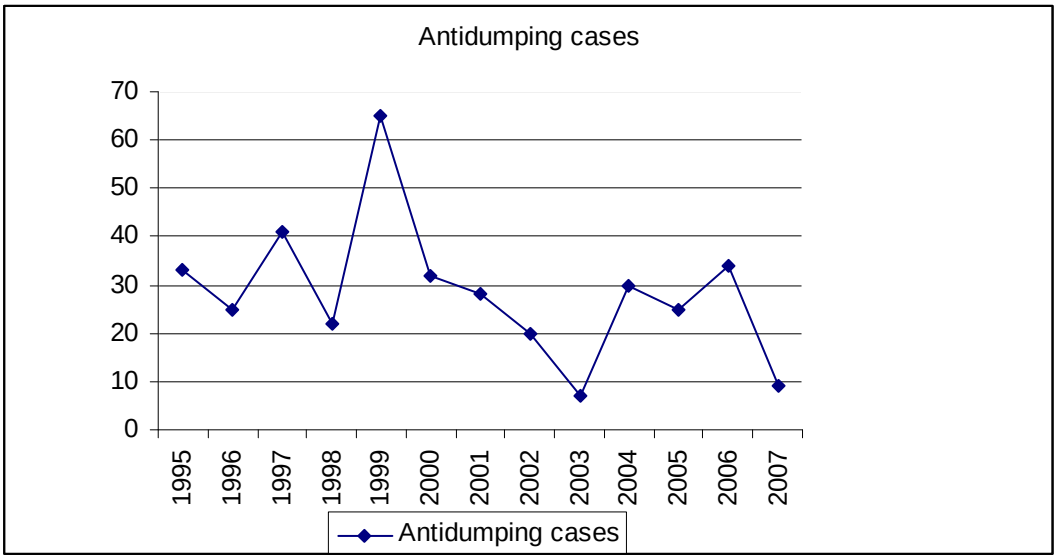
Figure 1: Trade Defence Instrument Initiations by the EU 1995-2006



Source: WTO statistics 1995-2006
Note: During the sample period, the EU enlarged on 1 May 2004. These statistics are calculated on a 15-Member basis for the period 1 Jan 1995-30 April 2004 and on a 25-Member basis for a period 1 May 2004-20 Dec 2006.

As a consequence our discussion will predominantly focus on the EUs Antidumping policy. The popularity of antidumping measures over other TDIs is not a special feature of the EU but characterizes all WTO members. After a record low in 2003, the number of EU antidumping initiations started to rise again although very few cases were initiated in the most recent year as illustrated by Figure 2.

Figure 2: Evolution of EU Antidumping initiations 1995-2007



Source: WTO statistics on Antidumping

[2] An antidumping/countervailing case is counted by products involved not by number of defendants involved.

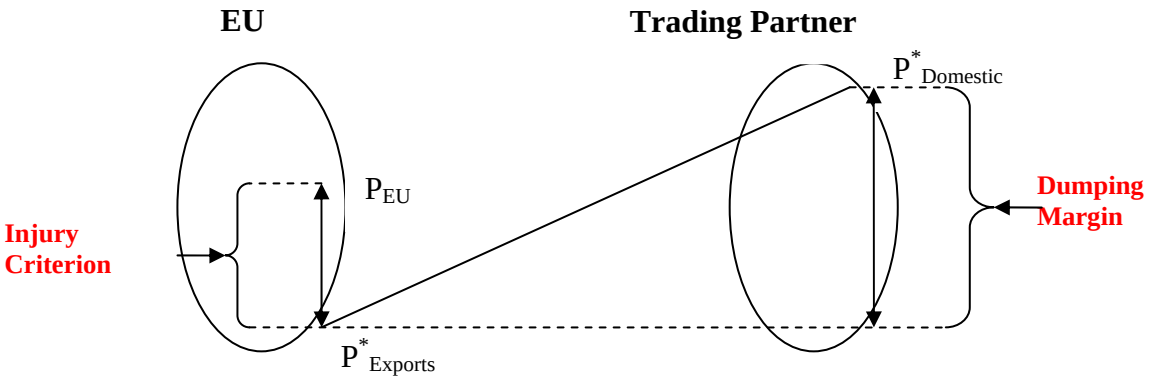
At the time of this report, the AD initiations for 2008 were available only for the first quarter of the year during which the EU commission had initiated 5 new AD cases. A simple extrapolation of this number suggests that 2008 would have around 15 new cases, which is well below the average of initiations over the period 1995-2007 during which on average 28 new Antidumping cases were initiated each year. It is hard to predict whether the number of AD cases will remain low in the years to come. If the last two years are the beginning of a downward trend this could be a reflection of the AD instrument being used with greater care resulting in a lower number of cases. However, current proposals for reform of the AD agreement at the level of WTO include a weaker injury test. These proposals lower the AD hurdle and if accepted could trigger a new wave of AD initiations.

1.1. Dumping and Antidumping Measures in the EU

1.1.1. How is Dumping Measured?

Dumping involves price-discrimination across countries. Or put differently, dumping occurs when a foreign producer sells a product in the EU at a price that is below his sales price in its home market.[3] This is illustrated in the following Figure 3. When the export price of a trading partner with market economy, $P^*_{Exports}$, is lower than the domestic price of the same product $P^*_{Domestic}$, there is dumping. The dumping margin is then defined as the difference between the domestic price (often referred to as *normal value*) and the export price ($P^*_{domestic}$-$P^*_{Exports.}$), independently of the price charged by EU producers in the EU (i.e., P_{EU})

Figure 3: Illustration of Dumping and Injury Margin Calculation in the EU



Legend
P_{EU}: price set by EU producers in EU market
$P^*_{Exporter}$: Price at which imported goods are sold in EU market
$P^*_{Domestic}$: Price set by producer in Domestic market = ”normal value”

When the trading partner is not a market economy, the price in the exporters domestic market is not a market price and thus cannot be used for the comparison. In these cases, it will be substituted by another price. There are still a number of trading partners that have the status of a non-market economy. China for example is a country where the EU

[3] Dumping can also imply selling below cost.

Commission decides on a case-to-case basis whether market economy status applies. In most antidumping cases it is still considered as a non-market economy which results in a different application of the rules. The *normal value* in that case is not the local Chinese price but the price in a third country similar to China but with a market economy which is referred to as an "*analogue country*". The dumping margin is than defined as the difference between the price in the third country and the export price of China observed in the EU ($P_{\text{third country}}$-P^*_{Exports}). Analogue countries selected by the Commission to construct the normal values of Chinese products in the past involved countries like USA, South Korea, Japan and Norway. The choice of the analogue country is crucial for the determination of the dumping margin. While China has been requesting the EU to get rid of the non-market economy status in Antidumping cases which according to them makes them very vulnerable for Antidumping protection, the EU has thus far not granted that request claiming that the Chinese have not fulfilled the related criteria on this point.

The existence of dumping is a necessary condition in order for the EU Commission to impose antidumping measures. However, it is not the only condition. Only dumping that has caused injury to an import-competing EU industry can result in trade protection.

1.1.2. How is Injury Measured?

The definition of Injury to the EU industry in the Antidumping law is defined as 'economic factors that affect the state of the industry such as actual or potential decline in sales, profits, output, market share, productivity, capacity utilization, EU prices, cash flow, inventories, wages, ability to raise capital' but this is not an exhaustive list.[4] However, current practice shows that in most EU Antidumping cases the focus lies on the price-undercutting of EU prices.[5] This can be easily illustrated on the basis of the above Figure 3. Whenever a trading partner sells its product into the EU market at a price P^*_{Exports} that is substantially cheaper than the price charged by EU producers for a similar product, P_{EU}, this is considered to be injury. The injury margin is then defined as the difference between the European price and the Export price of the trading partner at which he sells his product into the EU market (P_{EU}-P^*_{Exports}).

Three key elements in the current antidumping law are vital. One is that the EU product and the imported product have to be "*like products*". Another one is that there needs to be "*a causal link*" between the unfairly dumped imports and the injury to the EU industry[6] and thirdly, the injury analysis is confined to the EU "*Community Industry*" producing like products. In other words, the injury investigation is limited to include only EU producers that produce a similar product than the imported one. In view of their importance we feel that these three elements in the law: "Community Industry", "like product" and "causality between dumping and injury" require a more extensive explanation below.

1.1.3. What is Community Industry?

This definition emphasizes "production" within the EU territory. The EU Community Industry consists of all the EU producers or a majority thereof with production of products similar to the unfairly imported one. EU producers that outsource their production of the

[4] Article 3 of the EU Antidumping Regulation 384/96.
[5] Vandenbussche (1996) ; Vermulst and Waer (1992).
[6] Boltuck (1987)

allegedly dumped product, entirely or partly or that are in some ways connected to the exporters *can* be excluded from the Community Industry definition.[7]

1.1.4. What is Public or Community Interest?

Prices should not go up after Protection. Before antidumping measures can be installed, it needs to be verified that the protection is in the interest of EU consumers which is referred to as the "*Public or Community Interest Clause*". In practice this clause implies that calculations are made to ensure that prices in the EU will not go up after the imposition of the protection.[8] It is worth stressing that currently the EU is one of the few countries to have a Public Interest Clause.

1.1.5. What form do Antidumping Measures take?

Antidumping Duties. When dumping and injury to the Community Industry have been established and the protection is deemed in the Public Interest, the Commission, after approval by the EU Council of Ministers, can impose an antidumping duty which is a border tax. This tax is either an ad-valorem duty or a specific duty. An ad-valorem duty refers to a percentage duty levied on the price, while a specific duty is an amount of Euros that needs to be paid on each unit of unfairly dumped imports. The law prevents foreign firms to absorb the border tax. The purpose of the duty is to eliminate the dumping or injury whichever is the smaller margin of the two (see Figure 3 with dumping and injury margin). This is called the "*lesser-duty*" rule. This is a particular feature of the EU antidumping law and absent in many others.

Price-Undertakings. The exporters accused of injurious dumping can offer the Commission to voluntarily raise the price of their exports to the EU as an alternative for the imposition of a border duty. If the EU Commission agrees that this "price-undertaking" offered is equivalent to the duty and that the exporter is likely to stick to these prices it can accept this offer. Hence no border tax is levied but the exporter pockets the price increase offered. Price-undertakings when accepted by the Commission are preferred by trading partners for that reason. In case of violation of the price-undertaking the Commission has the right to impose a border tax instead. While the use of price-undertakings seems to have gone down somewhat, they remain a popular instrument of the Commission. Over the period 1980-1994, 27% of total measures were Price-Undertakings, in the period 1995-2003, 24% of measures were price-undertakings.[9]

Protection period. The period of AD protection is in principle 5 years. After 5 years AD-measures come to an end. However, EU producers whenever they feel that when duties end

[7] In a recent case on footwear from China and Vietnam, those EU producers that engaged in outsourcing were not included in the Community Industry definition (Swedish National Board of Trade, "Adding value to the European economy. How anti-dumping can damage the supply chains of globalised European companies. Five case studies from the shoe industry". In another case on lightbulbs from China, one of the main EU producers, Philips was against the Antidumping duties since it outsourced a lot of lightbulb production to China for re-imports into the EU. In contrast, a German producer of lightbulbs, Osram that engaged far less in outsourcing was in favour of extending the antidumping protection.

[8] For example in the leather shoe case against China and Vietnam, Peter Mandelson in his speech stated that the Commission had verified that the price of a pair of shoes would go up by no more than 2 Euros which was considered low enough not to hurt consumers interests (http://ec.europa.eu/trade/issues/respectrules/anti_dumping/pr230206_en.htm)

[9] Bown (2006), Global Antidumping Database.

the dumping and injury would resume, can apply to the Commission for an "*expiry review*". This implies that three months before the end of the Antidumping protection, EU producers provide information to the Commission to show that dumping and injury would return once protection would come to an end. During such an expiry review the protection remains in place. If the Commission agrees that taking duties off would imply dumping and injury to resume, it can extend the Antidumping duties for another 5 years. If the outcome of the Commission's analysis is negative, the protection is ended. The current antidumping rules allow for a refund of the duties to the exporters but in practice it can take up to 10 years before any duty collected at the EU border is repaid to the trading partner accused of dumping.[10] The Antidumping protection period is relatively long. Measures are in principle installed for 5 consecutive years. While in the case of safeguards it is only 3 years.

Finally, it is worth pointing out that Antidumping measures duties are country and firm-specific. This is a substantial difference with Safeguards which once imposed apply to all importers. The fact that Antidumping measures target only specific trade partners gives rise to the possibility of trade diversion: while antidumping measures tend to reduce the imports from alleged dumpers, they tend to increase the imports from importing countries not affected by the antidumping protection.[11] This implies that Antidumping measures tend to be less effective in protecting the domestic EU industry than safeguards.[12]

1.1.6. What is the Decision-making Process?

EU industry files dumping complaint. Most cases are initiated by an EU industry that feels adversely affected by a surge in imports. In principle a majority of EU industry has to support the complaint with a minimum standing requirement of 25%. The EU regulation stipulates that "*The complaint shall be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50 % of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25 % of total production of the like product produced by the Community industry*."[13] The support is usually organized through surveys on industry conditions carried out by the professional associations.[14]

Preliminary investigation by EU Commission. The EU Commission first carries out a preliminary investigation based on the dumping, injury and the Public Interest condition. This investigation needs to be finished at the latest 9 months after the AD case initiation otherwise the case automatically expires without protectionist measures. When the preliminary investigation reveals that dumping and injury have been found, preliminary measures can be imposed.

[10] Veugelers and Vandenbussche (1999)
[11] Prusa (1997) documents trade diversion resulting from Antidumping protection for the US; Konings, Springael and Vandenbussche (2001) document trade diversion for the EU
[12] Crowley (2006).
[13] http://ec.europa.eu/trade/issues/respectrules/anti_dumping/legis/adgreg01a.htm#5
[14] For example when EU producers of ball bearings feel that they are injured by dumped imports from Chinese ball bearings, EUROFER the professional association of the EU steel industry can organize a survey to measure the injury in the ball bearing industry through a survey on industry conditions. If the ball bearing producers, that represent more than 50% of the EU production, support the dumping complaint the file is transferred to the Commission.

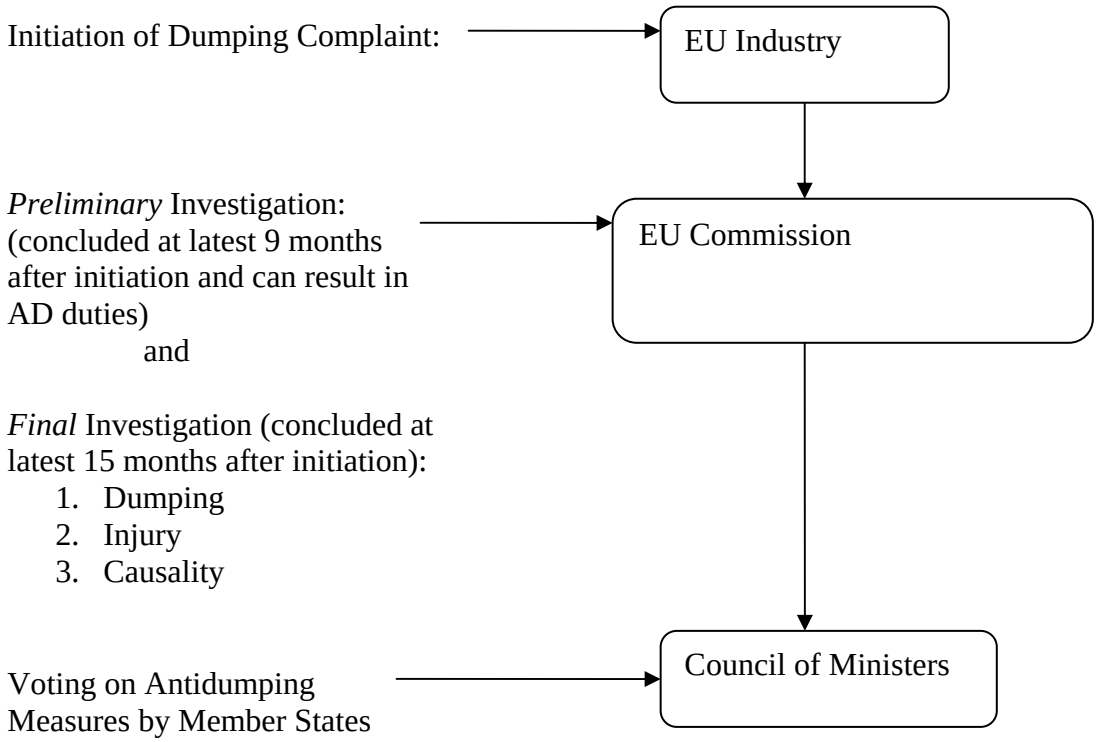
Final Investigation. The final investigation has to be concluded at the latest 15 months after AD initiation after which Antidumping measures can become definitive. This decision-making process is illustrated in Figure 4. First, the EU Commission does the preparatory work. The dumping and injury investigation are carried out along technical procedures outlined in the law. After the investigation, the antidumping case goes to the Council of Ministers where EU countries can vote in favour or in opposition of imposing the protectionist measures. At the level of the Council, over the years there have been substantial disagreements between member states on whether to protect certain EU industries.[15] EU countries like Denmark, Germany, Sweden, Finland, Netherlands, UK and Ireland have a tendency to vote much more against protection than other EU members. The disagreement at the level of the EU Council may reflect a general disagreement with the contents of the current antidumping rules. One of the reasons underlying the Green paper issued by EU trade Commissioner Mr. Mandelson was to reform AD rules in order to secure a larger majority of EU members in support of the rules would help to build a larger consensus when AD cases reach the level of the Council.

WTO Dispute Settlement Cases. A WTO Member, such as the EU, that aims at imposing AD duties needs to respect the substantive (dumping, injury and causal link) and procedural (investigation) obligations spelled out in the WTO Anti-Dumping Agreement.[16] The WTO Member of which the industry is subject to these AD duties can challenge the imposition of AD duties by the EU before the WTO arguing that the imposition of AD duties by the EU did not respect the obligations of the AD Agreement.[17] In that case, the WTO Dispute settlement system provides for consultations between the complaining Member and the EU.[18] If consultations fail, the complaining party can request the *Dispute Settlement Body*[19] to establish a dispute settlement *panel*[20], which will review, at first-instance level, the consistency of the EU's AD measures with the AD Agreement. Both parties can appeal the panel report in which case the *Appellate Body* will review the legal findings and conclusions of the Panel. Subsequently, the Appellate Body report, or the Panel report if the case is not appealed, is adopted by the *Dispute Settlement Body*[21] and should, if a violation is found, be *implemented* by the EU within a reasonable period of time. In recent years there has been a surge in cases going to the WTO Dispute settlement system. However, the total number of antidumping initiations challenged before the WTO Dispute settlement system is still relatively limited. For the US, out of the 417 antidumping initiations over the period 1992-2003, only 29 cases were disputed at the level of the WTO[22]. The EU was involved in only 5 disputes related to AD for the period 1995-2005.

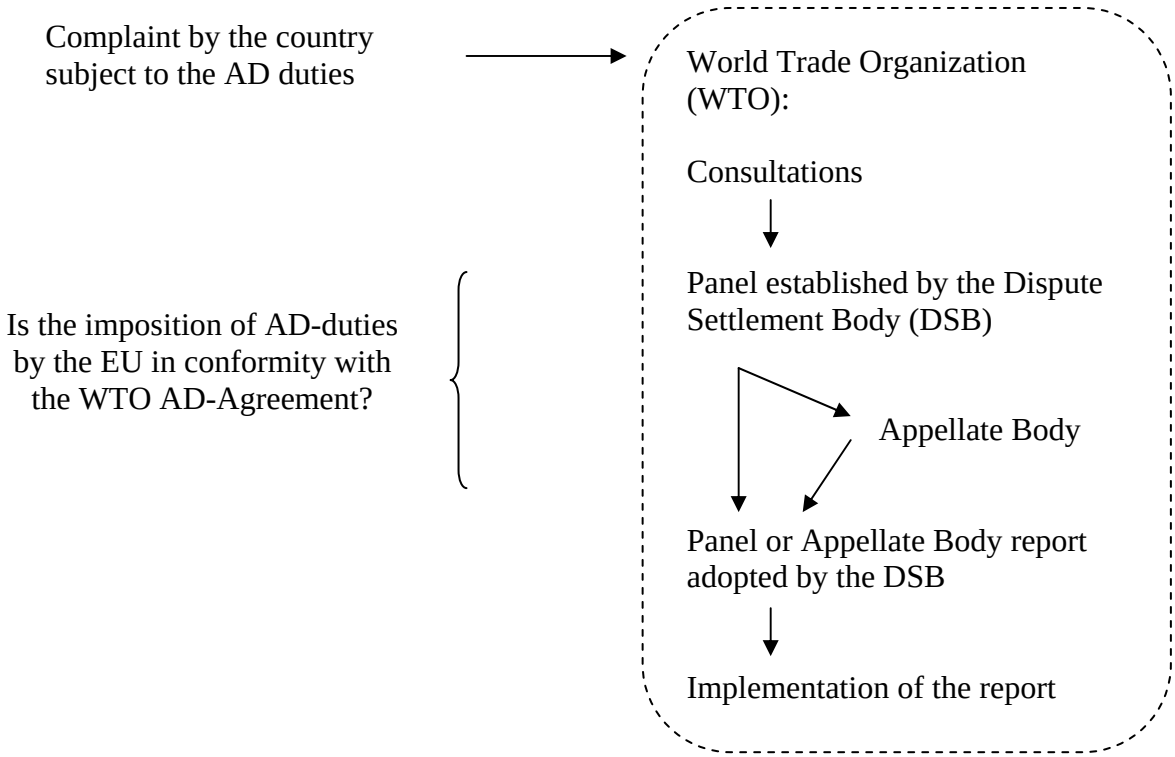
[15] Evenett, S. and Vermulst, E. (2005).
[16] It should be noted that the EU cannot challenge the dumping industry or its government before the WTO. After all, the WTO only regulates governmental behaviour and therefore dumping, which is conducted by private entities, is *not* prohibited by the WTO. The WTO allows its Members, subject to the obligations spelled out in the AD Agreement, to respond unilaterally, by imposing AD-duties, on dumping by foreign companies. In short, the imposition of anti-dumping duties, not dumping as such, is regulated by the WTO.
[17] It should be highlighted that the case should be filed by the government and not by the industry confronted with the AD duties because the WTO dispute settlement system is a government-to-government dispute settlement system.
[18] See Dispute Settlement Understanding and Article 17 of AD Agreement.
[19] The Dispute Settlement Body (DSB) is an emanation of the General Council and all WTO Members are thus in the DSB
[20] The panel is normally composed of three persons
[21] The losing party cannot block the adoption of the report by the Dispute Settlement Body because the report is adopted by inverted consensus, which means that the report is adopted unless all WTO Members reject the report.
[22] Bown (2006)

Figure 4: Decision-making Process and Timing in Dumping Cases

EU level



WTO level: dispute settlement system



1.1.7. "Economic" concerns about Dumping and Injury Definitions

The problem with the current dumping definition according to economists is that it fails to clearly distinguish between "fair" and "unfair" dumping[23]. This allows for the possibility that antidumping rules are used when other types of Trade Defence instruments would have been more appropriate.
Currently all types of price-discrimination across countries with a lower price in the export market classify as dumping. From an economic point of view, price-discrimination is not considered to be unfair dumping. The only type of dumping truly regarded as unfair is *predatory dumping*. This is a pricing practice whereby the exporter has strong market power in his domestic market and when exporting his product he will set a price below the average variable cost of the EU producers for the purpose of driving them out of business.[24] Due to its monopoly position at home the exporter has a "long purse" and can afford to sell below his profit-maximizing price in the short-run. Once the EU competitors are driven out of the market, the foreign predator(s) creates a monopoly position in the EU market and can raise its prices on the EU market to monopoly level which is bad for consumers and would results in clear welfare losses. Obviously for this pricing strategy to be successful, entry barriers in the EU market need to be high to prevent the EU firms once driven out of business to re-enter the market. Also, for the predatory strategy by the exporter to work the EU market prior to its exit has to be a concentrated industry. Otherwise it would take too long before all EU producers drop out of the market.[25]
Research for the US has shown that when antidumping cases are judged by a predation test less than 10% of all US Antidumping initiations qualify as potential cases of predation.[26] The question is than what is going on in the remaining 90% of cases. Economists would say that strictly from an economic point of view these cases would not qualify as unfair dumping and the antidumping instrument is not the correct one to use. Also for the EU, little evidence is found which would suggest that dumping cases are about predatory dumping.[27] Economists further argue that any other type of price-discrimination resulting in a lower price in the import market is beneficial for consumer welfare in the importing country and should therefore not be regulated.

The problem with price-undercutting as an injury criterion is that it does not distinguish well between price differences arising from normal competition and those stemming from unfair behaviour. This is very much related to how "like products" are defined. Currently the definition of a "like product" is based on a technical comparison between the EU product ant the allegedly dumped product. But this ignores the fact that prices also reflect demand conditions where issues of "perception" and "advertising" may matter. Let us give just one example. Some years ago prior to the entry of Hungary, the EU accused Hungary of dumping standard electrical motors on the EU market.[28] The motors were felt to cause injury to the EU industry since the prices of exported Hungarian standard electrical motors were much below those of EU producers. From a technical point of view the two types of motors were considered sufficiently similar to be like products.[29] However, the Hungarian

[23] Unfair dumping is predatory dumping.
[24] Areeda and Turner (1975)
[25] Philips (1983)
[26] Shin (1998).
[27] Bourgeois, J. and Messerlin, P. (1998).
[28] The EU antidumping case on "Standard Electrical Motors " from Hungary. This case is discussed more in detail in Vandenbussche and Wauthy (2000).
[29] In a 2001 AD case involving fluorescent lamps from China, the exporters argued that the lifetime of their lamps were only around 6000 hours while those of EU produced lamps were 8000 hours. However, the Commission decided that the lamps were "alike" since they had the same basic physical and technical characteristics, therefore they were considered like products. Also, in a subsidy case concluded in 2000 on the

producers argued that their motors were perceived to be of a lower quality by the EU public justifying their lower pricing strategy. They argued in writing to the Commission that if they were to set the same price as the EU standard motors there would be very little demand for their motors due to the low quality perception of their motors. The Commission in that case argued that as long as products are technically similar they should be considered as like products. This case shows that such an interpretation put the Hungarian producers at a disadvantage. A duty was imposed that equalled the level of price-undercutting in the EU market by the Hungarian motor (or P_{EU}-P^*_{HU} in Figure 3). Since a duty can not be absorbed by the foreign importer, the Hungarian producer needed to align his price on that of the EU producers. With the Hungarian motors equally expensive than the European ones, after the imposition of duties, the market share of the Hungarians decreased sharply making the duty close to prohibitive. The large drop in demand for Hungarian motors after the EU import duty can only be understood if indeed the Hungarian motor was perceived to be of lower quality by the market which meant that at the same price as the EU one, nobody was interested in buying it.

The problem with causality between dumping and injury is that in general the evidence provided is weak. Case evidence has shown that causality is often believed to exist whenever an increase in the volume of dumped imports coincides with a deteriorating condition in the EU industry. Economists would argue that at best this shows a *correlation* between dumping and injury but not *causation*. A correlation between two variables implies that the two phenomena go hand in hand, however this does not imply that one is caused by another. To see this suppose that the rise in imports of the allegedly dumped product goes hand in hand with a fall in domestic demand in the EU for the domestic like product. This would imply that while dumped imports rise, the state of the EU industry would deteriorate, without however there being necessarily a connection between the two. Another possibility is one where the EU industry has become less and less cost efficient over time relative to its trading partners as a result of low levels of innovation. Again this is likely to result in a surge of imports coinciding with a fall in market share of EU products. But again the imports are not to blame for the condition of the industry. To better distinguish between the injury caused by dumping rather than by other factors, the causality investigation needs to be strengthened. Typically this could be achieved by applying more rigorous techniques such as regression analysis to disentangle the importance of several possible injury factors.[30] In the US in recent years experts' advice has increasingly been more technical (econometrically) oriented.[31]

Econometricians argue that regression analysis is the only way to determine whether dumped imports were *a cause* of injury or the *main cause* of injury. In a 2001 EU case on fluorescent lamps involving China, the Commission argued that "*while community production of lamps increased by 16%, community consumption over the investigation period increased by 117%, and the volume of Chinese imports increased by 216% during the same period*". Despite the EU industry's increase in production, the Commission ruled that the Community industry suffered injury since the EU industry lost market share to the Chinese importers. While the EU may well have been right, an economist is unsatisfied with the Commission's argumentation which at best shows correlation between imports and injury which is not necessarily causation, as argued above. However in the current proposals

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imports of polyester staple fibres (PSF) from Australia and Taiwan, the Commission stated that "*although the potential use and the quality of various PSFs may differ between imported and domestic PSFs, this does not entail any significant differences in the basic physical characteristics of the different types*" and foreign and domestic fibres were considered "alike".

[30] See for example Sapir and Trachtman (2007); Grossman and Wauters (2007), papers presented at the meeting of the American Law Institute at the WTO in Geneva in April 2007.

[31] Prusa, T.J. and Sharp, D.C. (2001).

proposed by the Rules Committee of the WTO, there is no need to quantitatively show that dumping is the main cause of injury, which according to the economic view would involve a serious weakening of the injury standard. These proposals will be discussed in more detail in section 3.2.

The problem with cumulation. For the purpose of calculating injury, the EU commission often *cumulates* import shares. Cumulation is a practice directly related to the *deminimis* levels of imports in order for an antidumping complaint to be eligible for protection. The existence of a deminimis level of injury implies that the level of imports from alleged dumpers must exceed a certain percentage of total imports: "*Proceedings shall not be initiated against countries whose imports represent a market share of below 1 %, unless such countries collectively account for 3 % or more of Community consumption*." Especially when small importers are involved in antidumping cases very often this deminimis condition is not reached when small importers' share of imports is considered individually. However, in many cases the EU cumulates the import market shares of small EU importers in which case the cumulated imports exceed the deminimis conditions and antidumping measures can be decided upon. Knowing that about one third of all worldwide trade is in the hands of multinationals (MNEs) a rationale underlying this rule could be that MNEs with affiliates in many countries would use small exporting countries as export platforms to ship their goods into the EU. If import shares would not be cumulated this would create an incentive to split up production across several export platforms. Through the practice of cumulation this incentive evaporates. However, as a result of this cumulation practice small countries are more vulnerable and can never be quite sure whether they will be accused of dumping or not. For instance in the 2001 EU's AD case on imports of ammonium nitrate, the Polish exporter argued that its imports should not be cumulated with those of Ukraine. The claim was based on the grounds that the Ukrainian imports were price-undercutting EU prices by 12.5% while the Polish imports were only undercutting by 2.1%. The EU Commission argued that a cumulative assessment was appropriate since the joint import share of both countries i.e. 7%was more than de-minimis and therefore both countries would be subject to import duties. The Commission however decided to put higher duties on Ukraine than on Poland in view of the higher level of Ukrainian price-undercutting.

The problem with the Public/Community Interest clause is that it is not strongly enforced. Merely ensuring that prices in the EU do not go up after protection may not always be sufficient to safeguard consumers' interests. Even in the absence of unfair competition from abroad, prices in the EU may be under pressure as a result of normal competition from abroad. Especially in sectors where other countries have a comparative advantage because the production process is labour intensive and where wage costs are much lower than in the EU. Normal competition implies that prices to consumers fall. Even after eliminating unfair dumping practices by some countries, normal competition can imply that prices continue to fall. A "Consumer Interest clause" that merely verifies that prices do not rise after protection can be against the interests of consumers when prices do not fall after antidumping protection. For example in the recent leather shoe case against China and Vietnam, EU trade commissioner Mandelson in his speech stated that the Commission had verified that the price of a pair of shoes would go up by no more than 2 Euros which was considered low enough not to hurt consumers interests. But as explained above, economists would argue that this is not a sufficient condition to guarantee fair prices on the EU market. Also, it has been pointed out by the British retail Confederation that when consumer goods like shoes are involved, it is often the poorest consumers who suffer most from the price increases.

The problem with the Community Industry definition is that who is included or excluded from the EU industry can have very far reaching implications. First, EU producers that outsource are less likely to suffer injury since they benefit from the low prices of the imported goods. Secondly, if EU firms that outsource part of their production are not included in the Community Industry definition, they may be facing antidumping duties when importing the good into the EU. Therefore exclusion of EU producers that outsource has a tendency to inflate the injury attributed to dumping and harms the interests of those EU producers that outsource part of their production. Arguably the definition of EU industry is too strict in focusing on production only. An increasing number of EU producers is outsourcing manufacturing activities to low wage countries but at the same time keeping other activities in the production chain like design, marketing, R&D inside the EU. Hence while for outsourcers most of the manufacturing activity lies outside the EU, a large chunk of total value added is still created inside the EU. Now the EU antidumping law allows for the possibility that outsourcers are included in the definition of Community Industry definition but a tightening of the criteria is needed to regain consensus on this issue.[32] One way to do this would be to put the emphasis on value added rather than on the location of manufacturing activity. A recent study by the National Board of Sweden of the shoe industry revealed that even in the case of low-cost shoes at least 50% of the value added is European even though the manufacturing stage is in China (Isakson, 2007). The fear is that "*antidumping measures would complicate business for globalized EU companies. If the situation gets very bad the solution will not bet to manufacture in Europe but rather to move also the intangible production out of Europe or to cease operations altogether. This would imply a welfare loss for Europe"*.

The interests of the (retailing) distribution sector are not included. The Community Industry definition focuses uniquely on producers. However, the interests of the EU distribution sector do not always coincide with those of EU producers. This became apparent in the EU-China Agreement on Textiles.[33] While EU producers were in favour of duties on the imports of garments like T-shirts, blouses, skirts, pullovers and the like from China, EU distributors like H&M complained that due to the import restrictions they were running out of stocks to sell. Another complaint formulated by the British Retail Confederation at the Green paper's public hearing is that an increasing number of AD cases involve consumer goods which squeeze the margins of retailers rather than adversely affecting consumers. Retailers tend to largely absorb the import duties imposed in order not to pass them on to their consumers.

The problem with Price-Undertakings is that they reinforce the pro-collusive aspects of the AD systems Whenever the EU Commission decides to accept Price-undertakings, it agrees with the proposal of the foreign exporters to pull up their prices to the European level. Several papers have pointed out that price-undertakings can easily degenerate into a collusive pricing practice.[34] In addition a price-undertaking is much more favourable to the foreign exporters since they can pocket the price increase on the EU market. Moreover, the EU may share the preference for a price-undertaking since it will reduce the probability that exporters will want to jump the antidumping duties and engage in Foreign Direct Investment

[32] Article 4 states that 'when EU producers are related to the exporters or importers of the allegedly dumped product, the term 'Community Industry' ***may*** be interpreted as referring to the rest of the producers'.
[33] EU-China Agreement on Textiles 2005-2008.
[34] Various papers show that, in general, AD can lead to domestic and international collusion (see, among others, Belderbos et al., 2004; Messerlin, 1990; Prusa, 1992; Staiger and Wolak, 1989; Vandenbussche and Wauty, 2000; Veugelers and Vandenbussche, 1999; Zanardi, 2004). Messerlin (1990) focuses on the European chemical industry and shows that AD procedures allowed firms to sustain collusion and results in higher profits that more than compensated the fines that these firms had to pay as a result of anti-trust investigation carried out by the Commission.

in the EU market[35] which would fuel the price competition with local EU producers even more. Where an antidumping duty hurts the interests of foreign exporters and as a result can give rise to duty jumping FDI where they set up production facilities inside the territory of the EU to avoid paying the duties, this is far less the case with a price-undertakings. They are considered to be a "softer option" within the antidumping measures since no duty needs to be paid to the Commission but foreign firms can pocket the price increase. However, the externalities arising from them were not well understood. But in the meantime both theoretical and empirical analysis has shown that their effects on consumers are more detrimental than in the case of duties[36].

[35] Empirical studies have shown that the extent of Antidumping protection in an industry increased the probability of inward FDI in that industry (Blonigen, 2002)
[36] Belderbos, Vandenbussche and Veugelers, (2004).

1.1.8. "Economic" views on Areas of Reforms for the current TDI rules

Those that share the "economic" view feel that the system of TDIs requires fundamental changes both at the level of the WTO and at the level of the EU legislation. The current laws are considered too vague and allow for too many instances of protection. The economic views range from a complete abolishment of TDIs at the multi-lateral level to the more moderate view that TDIs can continue to exist provided the definitions of "unfair" dumping and "injurious dumping" are much stricter limiting its application to very particular instances. Below we summarize the potential areas for reform in the current Antidumping Law according to the "economic" view as discussed in the section above.

Table 1: The "Economic view" on Reforms needed in the current Antidumping Law

Definition	**Problem**	**Solution**
Dumping	No distinction between "fair" and "unfair" dumping.	Include a test for unfair dumping i.e. "predation test". This would involve an analysis of market conditions in both EU and exporting country i.e. market concentration and entry barriers
Like Product	Only "technical" factors are considered	Include a "market-oriented" test of likeliness i.e. objectively determine cross-price elasticity
Injury	Price-undercutting is not a good injury margin	Any price comparison should take into account how "alike" the EU and imported products are.
Causality	The link between "unfairly" dumped imports and EU "injury" is weak.	More rigorous economic analysis is required to determine whether "unfair" dumping is main determinant of injury. Regression analysis seems appropriate.
Community/ Public *Interest*	This clause is not well enforced	The consumer test can be developed more rigorously. When prices of EU products do not go up after protection this does not necessarily imply that consumer interests are not violated. A Community Interest clause that requires prices do not go up after protection does not necessarily promote healthy competition. Consumers' interests would be best served if the EU can ensure that after protection EU prices are subject to normal competition even if that implies falling prices.
Community *Industry*	Definition is not in line with global trend of fragmentation of supply chains.	Clearer definitions on who to include or not is warranted with clear decisions on what to do with EU outsourcers and the EU distribution sector.
Price-Undertakings	Leads to price collusion and anti-competitive market structures	Price-undertakings are similar to Voluntary export restraints (VERs). The latter have been abolished by the WTO; therefore the EU may want to consider doing the same with Price-undertakings.
Sunset Clause	5 years for Protection is long	Market conditions change much more rapidly today than before therefore a 3 year protection period seems better, just like in the case of safeguards

The "economic" view is the one defended by the EU consumer organization BEUC. However, this view is not shared by all the actors involved in AD cases.

In section 3 of this report we will contrast this view with the ones held by amongst others EU manufacturers, EU outsources, retailers, Free Trade Associations, trade unions and third countries like China.

1.2. Subsidies and Countervailing Duties

Subsidizing occurs when a foreign government provides financial assistance to benefit the production, manufacture, or exportation of a good (Article 16 of Gatt). If the European Commission finds that an imported product is subsidized by a foreign government and that an EU industry producing a like product is materially injured or threatened with material injury as a result of that subsidy, it can launches an investigation and can ultimately impose a duty on foreign imports to "countervail" the subsidy.

1.2.1. Definition of a Subsidy

Nowhere in Article 16 of GATT 1947 is there any definition whatsoever of the term "subsidy". A subsidies Code was agreed upon in the Tokyo Round, but it still left important issues in the dark. Finally, the Uruguay Round Agreement on Subsidies and Countervailing Measures is generally regarded as having brought a major improvement over previous regimes, because it provides for the first time a definition of 'subsidy', lays down detailed standards for the conduct of countervailing duty investigations and provides a workable definition for subsidies.[37]

In the Uruguay Agreement (*Article 1*) it was determined that a subsidy shall be deemed to exist if:

(1) There is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as 'government'), i.e. where:

(i) A government practice involves a *direct transfer of funds* (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) There is government revenue that is not collected (e.g. fiscal incentives such as tax credits)

(iii) A government provides goods or services *other* than general infrastructure

(iv) A government makes payments to a funding mechanism, or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would in no real sense differ from practices normally done by the government;

Or

(2) There is a form of income or price support (as defined in Article 16 of GATT 1994);

And

(b) A benefit is thereby conferred.

Thus, in order for a subsidy to exist, there must be a *financial contribution* by a government and a *benefit incurred* by foreign exporters.

[37] It should be noted that the Agriculture Agreement contains its own disciplines with respect to subsidization of agricultural products, covered by that Agreement.

1.2.2. Prohibited Subsidies

While the term subsidy is broadly defined, covering a wide scale of governmental support, not all subsidies are prohibited by the WTO. A necessary condition for a subsidy to be prohibited is that it must be *specific*.
There are four types of "specificity" within the meaning of the Uruguay Agreement. These are described in *Article 2*:

Enterprise-specificity. A government targets a particular company or companies for subsidization;

Industry-specificity. A government targets a particular sector or sectors for subsidization.

Regional specificity. A government targets producers in specified parts of its territory for subsidization.

Prohibited subsidies, as defined in *Article 3*, are by definition specific. The rules single out two types of specific subsidies that are prohibited and that can be countervailed: export subsidies and import substitution subsidies.

A) Export Subsidies

Any type of discriminatory measure between exporting and non-exporting firms is considered to be an export subsidy. This could involve a direct subsidy transfer from the government to exporting firms but also lower indirect taxes or lower corporate taxes, lower social welfare charges exemption of import duties for raw materials, more favourable transport costs, for exporting firms is out ruled under the subsidy agreement.

B) Import substitution Subsidies

This second category of prohibited subsidies is defined as subsidies contingent upon the use of domestic over imported goods. Often, these take the form of local content requirements where a foreign government provides a subsidy to those firms that use domestic inputs instead of foreign inputs as intermediates.

Subsidies that are allowed under WTO rules are: 1) non-specific subsidies; 2) narrowly defined R&D, environmental and regional subsidies.

1.2.2. The amount of the subsidy

When a subsidy involves a direct transfer of money from the government to a particular set of firms, its amount may be relatively easily established. However, in many cases subsidies are more "hidden" and their amount is difficult to see. In particular two types of hidden subsidies occur. A first one involves loans granted by state banks that are below market rate. A second one involves exporting firms that obtain preferential tax breaks from the foreign government. In those cases the general principle to establish the amount of the subsidy is based on the benefit to the recipient of the subsidy. An example can illustrate what is meant by that. Suppose a foreign government grants an interest-free loan to a domestic company while the commercial market rate is 7.5%. In such a case, the Subsidies and countervailing duty Agreement states that *the benefit to the recipient* is 7.5% interest even if the cost of the

loan to the government is only say 6%. The reason is that it is the benefit to the recipient that matters, not the cost to the government for the purpose of calculating the subsidy amount. In the EU's case against Korea concerning polyester staple fibres. The Commission determined that Korean exporters received subsidies in the shape of tax credits and reduction of tax liabilities contingent on export performance and the use of domestic products in production. Moreover the producers benefited from loans whose rates were below market rates [38]

The rules surrounding subsidies and "countervailing duties" are very similar to those of the Anti-Dumping Agreement. A countervailing duty (the parallel of anti-dumping duty) can only be imposed after the importing country has conducted a detailed investigation similar to that required for anti-dumping action. There are detailed rules for deciding whether a product is being subsidized (not always an easy calculation), criteria for determining whether imports of subsidized products are hurting ("causing injury to") the domestic EU industry, procedures for initiating and conducting investigations, and rules on the implementation and duration (normally five years) of countervailing measures.

Therefore in view of the similarity between the Antidumping and the Countervailing duty rules, the main concerns and areas for reform are relatively similar (determination of material injury, causality between subsidization and injury, definition of Community industry, public interest clause etc.).

1.3. Safeguard Protection

Apart from "Protection against Unfair Trade", WTO law also provides for the possibility of a country to protect itself whenever **a surge in imports** threatens the existence of an industry by means of safeguard measures (article 19). An import "surge" justifying safeguard action can be a real increase in imports (an *absolute increase*); or it can be an increase in the imports' share of a shrinking market, even if the import quantity has not increased (*relative increase*). Unlike in the case of e.g. anti-dumping measures, safeguard measures do not address a specific pricing behaviour of exporting companies, but a more general increase in imports taking place under certain special circumstances.

For a determination of "increased imports" under the WTO safeguard regime, not any imports increase is sufficient. The provisions set out two main conditions that must be met for the increased imports to justify the imposition of safeguard measures. Firstly, such increase must have occurred "*as a result of unforeseen developments and of the effect of the obligations incurred by*" a WTO Member. Secondly, imports should enter into the importing country "*in such increased quantities and under such conditions* as to *cause or threaten serious injury* to the domestic industry.

The first condition is an important difference with dumping and subsidization. Safeguard measures do not require unfair behaviour on behalf of the exporting country for unilateral trade measures to be imposed. The second condition is relatively similar to the dumping and subsidization code in the sense that there has to be a causal link between the surge in imports and the injury to the domestic industry.

[38] The granting of loans below market rate also lead to a groundbreaking decision by the US to impose for the first time a countervailing duty against imports of "paper sheets" from China in 2007. The main reason was preferential loans from state-owned banks to enterprises in the Chinese paper industry.

However, the type of injury mentioned in the Safeguard Agreement is "**serious injury**". This injury standard has been recognized by the Appellate Body to be "very high" ("exacting") and in particular to be stricter than the "material injury" standard in the *Anti-Dumping and Countervailing duty Agreement.* [39]

Another difference between antidumping measures, countervailing duties and safeguards is that where the first two measures are very selective and targeted at imports from specific countries, safeguards have to be applied in a **non-discriminatory** way. This implies that it protects the EU industry against imports from *all* trading partners in a particular good(s).

Economists criticize the Safeguard rules because there is no "**conditionality**" in place in terms of the restructuring efforts that are made by the domestic industry that is protected by a safeguard. Currently, this requirement only exists if the measure is extended beyond the period of time originally established which cannot be longer that 4 years. In those cases, Article 7(2) of the Safeguards Agreement requires that "there [must be] evidence that the [affected] industry is adjusting."

There is also some criticism on the **investigation period**. Currently, WTO Members have discretion as to the choice of investigation period but its choice may have considerable implications for whether or not a *surge of imports* is present. In particular, in some cases the choice of the beginning of the period (the "base year") may be decisive as to whether the determination of "increased imports" over the entire investigation period will be affirmative or negative.

1.4. Overview of Trade Defence Instruments

The Table below gives a short overview of the three types of Trade Defence Instruments and points out similarities and differences between them. It can be noted that while countervailing duties and safeguards are much less used than antidumping measures, we focus the remainder of this report on the discussion of reforms of antidumping measures.

However, from the discussion above it became clear that there are many overlapping concepts between all three types of trade defence instruments. Therefore, the reforms that will be discussed below are relevant for all TDIs.

[39] The most relevant piece of jurisprudence on this issue is the Appellate Body Report in *US-Wheat Gluten* where it recognized that the standard of "serious injury" is very high and exacting (*see* para. 149).

Table 2: Comparison of Trade Remedies by Type

	ANTIDUMPING	COUNTERVAILING MEASURES	SAFEGUARDS
Legal reference	Article 6 of AD agreement	Article 16	Article 19
Targeted trade	Unfair Trade	Unfair Trade	Fair Trade
Discriminatory nature	Discriminatory	Discriminatory	Non-Discriminatory
Injury requirement	Material Injury	Material Injury	Serious Injury
Injury thresholds	Injury Deminimis	Injury Deminimis	Injury Deminimis
Dumping requirement	Yes	Yes	No
Dumping thresholds	Dumping Deminimis 2%[40]	Subsidy Deminimis 1%[41]	No deminimis
Length of investigation	Investigation period is specified	Investigation period is specified	Investigation period is not specified
Extent of use	Frequent use	Less frequent	Rare
Duration of protection	Duration 5 years[42]	Duration 5 years[43]	Duration 4 years[44]
Form of protection	Duties and Undertakings	Duties and Undertakings	Not specified[45]
Procedures	Many procedural rules	Many Procedural rules	Few Procedural rules

2. "Economic" Considerations versus "other" Considerations on TDI Reforms

The scholarly debate is one where the "economic" view differs from the "non-economic" view. By and large the "economic" view defends the more liberal stance that protection is either not needed (*abolition theory*) or that it can only be used under very strict conditions where dumping is of the predatory type (*predation theory*). In terms of measurement issues, its advocates would generally plead for a more rigorous approach involving the use of more scientific methods such as regression analysis to determine injury and causality.

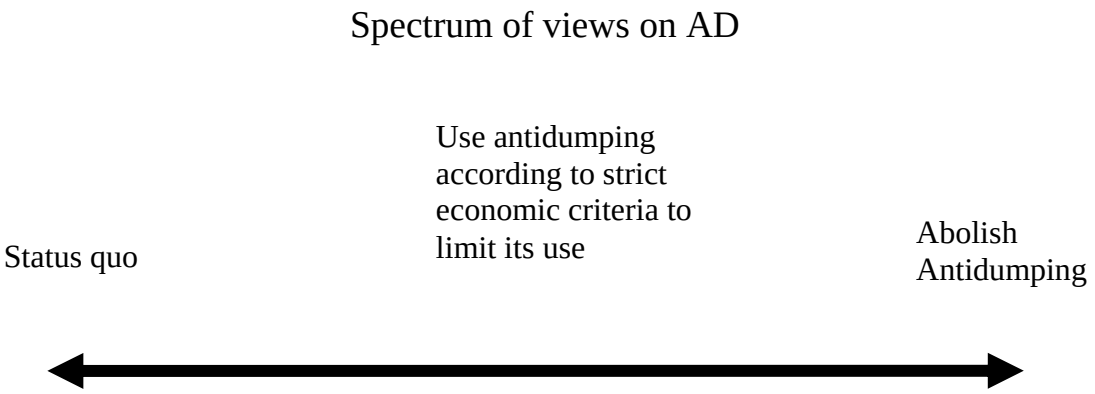
A popular view defended by some is that antidumping policy should be abolished and replaced by a global competition policy. The argument is that antidumping cases usually involve abuse of market power in the country of origin. Currently the only instrument available to importing countries is trade policy. But some argue that it would be better to have a global competition authority instead that could sanction the abuse of market power in the exporting country. When export cartels could be sanctioned directly by a world competition authority, the argument goes that there would be no need for antidumping laws.

Those that disagree with the "economic" view point out that "other" considerations are also warranted and that there are many other instances in which the use of TDIs can be justified. For instance, TDIs are necessary *to level-the-playing field* i.e. to punish countries that subsidize their exports or do not respect social and environmental standards. In fact, the

[40] Expressed as a percentage of the export price.
[41] The deminimis level is 2 percent when the subsidizer is a developing country.
[42] Article 11 AD Agreement.
[43] Article 21 SCM Agreement.
[44] Article 7 Safeguard Agreement.
[45] They typically take the form of duties or quantitative restrictions.

Green paper consultations organized by the EU Commission in the Fall of 2007 revealed that a majority of stakeholders feel that other considerations beyond the pure economic ones matter. Most respondents involved in the consultations agreed with the current AD rules and defend their *Status Quo*.

The views on the need for reforms can be summarized as follows:



The current proposals that circulate at the level of the WTO for reforms of the AD agreement seem to go in the direction of a weakening rather than a strengthening of the AD rules. The proposals suggest a weaker injury test where it suffices to show that dumping is *a* cause of injury rather than *the* cause of injury. Small as the change may seem it can have substantial implications. If accepted, this would imply that it suffices to show that dumping coincides with injury to the domestic industry without worrying about other possible causal factors of injury. A weaker injury test is likely to result in more AD cases passing the hurdle which may ultimately result in more protection. This will be discussed in more detail in section 2.3.

2.1. "Economic" Views

2.1.1. The Abolitionist Theory

It is a popular stance amongst economists that the world would be a better place if there were no antidumping laws. The view is that dumping is beneficial to the importing country therefore it should be allowed and Antidumping should be prohibited. Dumping implies lower prices of foreign goods in the imported market which is good for consumers but bad for the profits of domestic producers. Neo-classical economic analysis will typically reveal that consumer gains from lower prices outweigh producers' losses; therefore aggregate welfare always increases when consumer prices fall. This view puts an ultimate emphasis on consumer welfare and therefore is against any form of trade policy intervention.

Opponents of this view argue that neo-classical economic theory only holds under strict assumptions. One of them being that displaced workers can move freely and instantly between sectors. Neo-classical economic theory assumes that workers that loose their jobs as a result of dumping will soon find another job in another domestic sector. Reality however, shows that this need not be the case. Non-economists therefore are more in favour of using AD and TDIs in general to protect a sector and to avoid large scale unemployment and socially undesirable consequences.

The "economic" response to this would be that better than to protect a sector, efforts should go into re-orienting and training workers to make them more flexible which enhances their chances on the labour market of finding another job. "Economists" typically refer to studies that have shown that countries with more flexible labour markets and a dynamic process of industry creation and destruction tend to grow faster in terms of gross domestic product (GDP). Non-economists would criticize this in turn by arguing that GDP is not a good welfare measure since for example it does not include worker anxiety when faced with a potential lay-off.

Whatever the correct stance on this, if the EU would unilaterally decide to abolish AD, the general view is that it would put itself at a disadvantage. Therefore it seems that a decision on reforms is better taken at the multilateral level of the WTO.

2.1.2. Unfair Dumping is Predatory Dumping

Unfair dumping =Predatory dumping. Current Antidumping law does not verify the conditions whether predatory pricing has occurred. A true test of predation would involve an analysis of the market structure in both the exporting country as well as the EU. The current legal definition of dumping focuses entirely on price-discrimination and according to economists is therefore not equipped to distinguish between fair and unfair dumping. Price-discrimination observed between countries need not be predatory behaviour. Economists point out that there are various reasons why an exporter may want to set a different price in an export market, the most prominent ones involving a different elasticity of demand than in its local market. Price-discrimination occurs very often within the boundaries of one country without that it is considered to be unfair (night shops versus day shops; early versus late flight bookings) and in space (ice-cream on the beach versus two blocks down the road) which are considered to be fair practices. Therefore economists fail to see why international and extra EU price-discrimination qualifies as unfair.[46]

In order to better distinguish fair from unfair trade, the unfair dumping definition and dumping investigation should incorporate at least three additional criteria that should be verified.

1) How monopolized is the exporters' market?
2) The presence of entry barriers in the domestic industry?
3) How concentrated is the domestic market?

As discussed above, predatory dumping, the only type of dumping economists truly consider as unfair, can only be successful in industries where the exporter has a monopoly position at home. This guarantees a long purse for the predator. Predatory dumping can only work when there are only a few domestic rivals in the EU market and when the entry-barriers in the EU industry are high. When the EU domestic industry consists of many firms, a foreign predator may have to wait too long for all of them to go out of business. The degree of market concentration in the EU market can be an indication of how successful a predatory pricing strategy is likely to be. Therefore we would only expect to see predatory behaviour in very concentrated markets. The same applies for entry-barriers. Only industries that are difficult to re-enter once firms decide to exit are in potential danger of predatory behaviour by foreign firms. Entry-barriers typically involve large fixed cost outlays that firms have to incur before they can start production. Without such entry barriers, domestic

[46] Intra-EU trade is not subject to antidumping procedures because of the objective to have a single EU market. Dumping within the EU can only give rise to action from the Commission when it infringes competition rules (i.e., predatory dumping).

rivals could easily re-enter the industry when the foreign predator pulls up its price. In industries without high entry-barriers predatory pricing will not be successful and therefore unfair dumping is unlikely to occur.

Under the current AD rules, market concentration and entry-barriers of an industry are not considered. This according to economists is a major flaw since it is a necessary statistic to distinguish fair from unfair dumping.

To implement the 3 criteria discussed above at the EU level would imply a major unilateral shift. Therefore it would seem that the WTO level would be the more appropriate level to alter the definition of dumping from price-discrimination towards predatory dumping which according to economists is the only type of dumping that should be regulated.

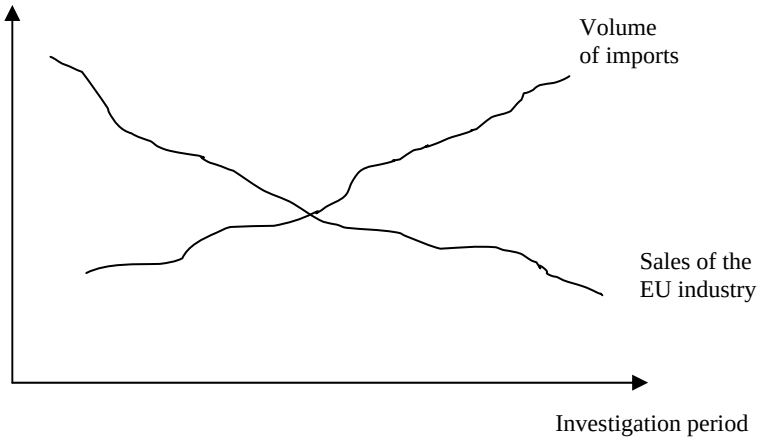
The non-economic view on this would be that there is no need to reduce the scope of the current dumping definition since even in the absence of predatory pricing practices, dumping may still harm the importing country involving undesirable social and other considerations.

2.1.3. Injury Determination with Regression Analysis

Regression analysis is needed to determine Dumping as the main cause of injury. At present in most cases the causality investigation is limited to a trends analysis over the investigation period. Whenever a rise in imports coincides with a fall in domestic industry performance indicators (sales,…) as illustrated below in Figure 5, this is often regarded as sufficient evidence of causality between dumped imports and injury to the domestic industry.

Economists argue that instead of this casual empiricism one should use either economic techniques such as regression analysis or simulation analysis. Either of them would be better suited to disentangle imports from other demand and supply factors affecting the ailment of the domestic industry.[47]

Figure 5: Illustration of Causality Analysis in EU



[47] Prusa and Sharp (2001); Vandenbussche (1996)

Regression analysis can determine whether the evolution of prices, employment, sales in the EU industry is mainly driven by the dumped imports or by other factors. This method allows one to distinguish scientifically between injury resulting from dumping as opposed to injury resulting from other factors such as a change in consumer tastes, a change in consumer confidence, the entry of new substitute products in the market that reduce the demand for the good allegedly dumped etc.. In addition, it takes into account to what extent the imported product and the domestic product are like products without explicitly having to test for it. In the event where the imported product is perceived to be a different product than the imported one, the statistical effect of the dumped imports on the evolution of price, employment, sales,…in the EU industry will not turn out to be significant. A regression model typically is of the form

$$Y_i = \alpha_1 X_1 + \alpha_2 X_2 + \alpha_3 X_3 + \alpha_4 X_4 + \alpha_5 X_5 + errors$$

Y is the firm-level variable that one would like to explain such as the evolution of sales, employment, prices… of firms in the EU industry during the dumping/subsidy period; while the explanatory variables X_j on the right hand side include variables like the volume of imports from abroad from the alleged dumper, the price of substitute products, the evolution of consumer confidence in the country, business cycles,… By means of regression analysis one can determine which of the X_j has most of an effect on Y. If it turns out that the volume of imports is the main factor underlying the drop in EU sales, this would increase substantially the confidence that dumping is the main factor behind the injury.

2.1.4. Injury Determination with Simulation Models

Simulation models can help to establish the link between dumping and Injury. The distinction between the different channels that can cause injury is crucial both in dumping as well as in subsidy cases. An alternative way proposed by economists to better distinguish between different causes of injury is to simulate the industry at hand (Sapir and Trachtman, 2007).[48]

This is illustrated by the example below. In the absence of any knowledge on the market structure, the simple economic assumption of a competitive market can be a starting point. This would suggest that EU prices are determined by the interaction between supply and demand for a product as illustrated in Figure 6. This in not an innocuous assumption but one that would need to be verified empirically before modelling the market structure, as explained more below. Another element is the degree of product differentiation in the market. For expositional purposes we will assume the domestic and an allegedly subsidized product in the market to be homogeneous products in which case we can add them up to get to total supply for the product to the EU market.

The purpose of any quantitative analysis aimed at say measuring the effects of subsidies on EU market prices requires the construction of a counterfactual world. This counterfactual gives an idea of what the price would have been in the absence of subsidies.

In order to construct a counterfactual world it is necessary to have an adequate reference period that is a period with an EU price where there was no dumping/subsidies from abroad.

[48] Software has been developed for these purposes by Boltuck called the CADIC model, see R. Boltuck (1991),"Assessing the Effects of Dumping on the U.S. Industry" in *Policy Implications of Antidumping Measures*, by P.K.M. Tharakan (ed.), North-Holland, 292p.

Figure 6 shows how this reference price P_1 is given by the intersection of the demand and supply curves. The correct position and slope of the demand and supply curve is given by the elasticities of demand and the elasticity of supply respectively. These elasticities are crucial when analyzing the effects of dumping/subsidies on EU prices and would need to be econometrically estimated before the use of a simulation model like the one in Figure 6. Elasticities can be obtained through econometric techniques as long as one has a sufficiently long time span or a sufficiently high frequency of transactions data in a market.[49] Once the elasticities are known, the correct position and slope of the demand and supply can be inferred and a counterfactual world like the one in Figure 6 can be modelled using a structural equations model.

Economists argue that a simulation model of the industry at hand would allow the Commission to distinguish between different scenarios. It shows that prices in the EU can be depressed for several reasons Figure 6 below indicates what happens to the EU supply whenever exporters from abroad receive subsidies by their government. A subsidy implies that each exporter now supplies more goods to the export market for any given price. Or in other words the supply curve in Figure 6 is going to shift to the right. The extent of this shift will depend on the amount of the subsidy. In Figure 6 we show a situation where a foreign subsidy is accountable for the total price-depression from P_1 to P_2 observed in the EU market.

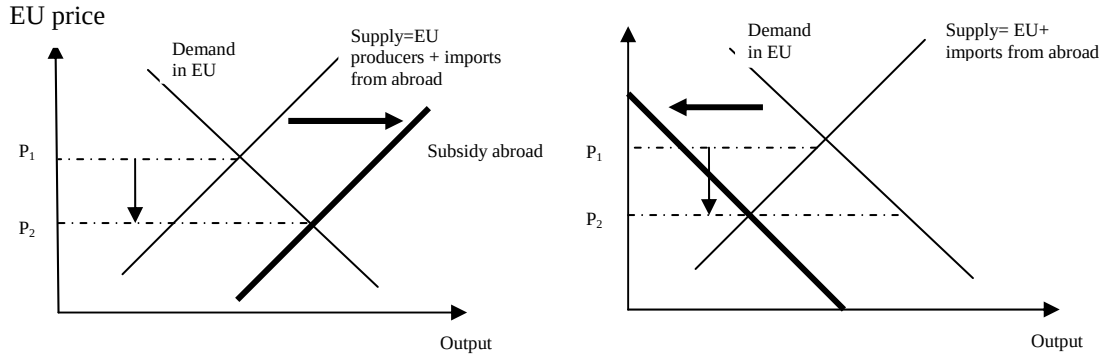
However, economic theory would argue that that demand factors could also have accounted for the fall in the EU market price. This is illustrated in Figure 6. In fact the price movements of substitute products may result in an inward shift of the demand for EU products. In other words rival products on the market may have reduced the demand. In Figure 6 we show a scenario in which the inward shift in EU demand completely accounts for the fall in the price in the EU.

The size of the demand shift will depend on the cross-price elasticity between the domestic and imported product. The cross-price elasticity captures the extent to which the demand for the domestic product is affected by the price of substitute products. Or in other words captures the degree of substitutability between the two types of products and is a parameter that first needs to be estimated econometrically after which its value could be inserted in a structural model like the one presented in Figure 6.

A third possibility is that the EU market price has fallen due to a combination of demand and supply shifts.

[49] See for example Angrist and Krueger (2001) for more details. The estimation of elasticities requires the use of instruments i.e. demand and cost shifters that allow the identification of separate supply and demand curves respectively from using price and quantity data. A typical example of a demand shifter is the price of a substitute product. A typical example of a cost shifter of agricultural products is yield per acre. A demand shifter is used to identify the supply function and a cost shifter is used to identify the demand curve.

Figure 6: Domestic prices under pressure due to foreign subsidization or domestic demand shifts?



Economists argue that a simulation model operating along the lines of the one presented above would also allow more clearly the distinction between subsidies and injury.[50]

Even from the sketchy outline above it should already be clear that the estimation of a structural model with demand and supply parameters involving amongst others elasticities and cross-price elasticities is not an easy thing to do.[51]

Moreover for expositional purposes we have made a number of simplifying assumptions that need not hold. The model used above assumes that the market is relatively competitive and that the price on the market is the outcome of joint demand and supply forces. Or, in other words it assumes that farmers in the market are atomistically small such that their individual output has no effect on markets. However, in reality market conditions could be very different. In order to find out to what extent this assumption is true or violated a thorough analysis of the market structure is required. Does the industry consist of many small firms or are there large firms involved? This matters a lot in terms of industry structure and intensity of competition.

A related issue is the assumption on product differentiation. For simplicity the exposition above assumed that EU and foreign good are like products with little differentiation between them. However, this may not be a realistic assumption. In fact in most markets products are differentiated. Standard models from the literature in industrial economics point out that product market competition is less fierce in more differentiated industries than in homogeneous products.
From an economic point of view it can be argued that a foreign subsidy is likely to have larger price effects when the good is a very homogeneous product than when the industry is characterized by differentiation.

The simple conclusion is that the causality investigation between subsidized exports and injury deserves a more in depth economic analysis. An objective evaluation of the facts by economists would seem warranted. Especially at the level of Dispute Settlement panels one suggestion that has been circulating amongst those in favour of a more economic approach is that the causality investigation should be left to economic experts who will facilitate the decision making at the level of the WTO and put panels in a better position to defend their

[50] H. Vandenbussche (1996).
[51] In the Dispute Settlement case on "Upland Cotton" in 2006 of the US versus Brazil, a simulation model along the lines above was used by the Brazilians to argue that US export subsidy was the cause of a drop in the world price.

decisions vis-à-vis complainants and defendants involved in a case. It will also help them to better pursue the legal objectives of the WTO rules.

Economists argue that their involvement in the causality investigation is foreseen within the context of the existing WTO legislation. Notably the use of Article 13.2 foresees in the possibility to install "economic expert review groups". The purpose of these experts would be to use various alternative methods in the spirit of the one presented above to address the causality issue on the basis of which the Dispute Settlement Panel could base its decision. This would make the Panel equally if not better informed than the parties involved with estimates of the relevant parameters of its own. This would allow the Panel to include the quantitative estimates in its decision making which would largely improve the economic foundations on which it would rest its case.

It has been pointed out that a larger involvement of economic experts is already more common practice in the EU's competition cases and increasingly also in US antidumping cases (Prusa and Sharp, 2001).

2.2."Other" Views on TDIs

2.2.1. Status Quo is best

Up to now we have mainly documented the economic thinking surrounding TDIs. However, it is worth stressing that not everybody agrees with the strict interpretation that economists give to "unfair dumping". Below we also want to include a summary of additional points of view reflecting the arguments of the different agents affected by AD (EU member states, EU producers, EU retailers EU consumers, practitioners, trade unions, trade associations,).

In the course of 2006 the Commission organized the "Green paper consultations" for the purpose of gauging the consensus on the current AD practices and the desire for reforms. Respondents were received from a diverse range of Member states, manufacturers, retailers, import organization, consumer groups and trade unions.

We start with an overview of the arguments presented to the Commission.

TDIs are necessary to ensure the "level-playing field". Antidumping laws are perceived necessary to ensure a level-playing field around the world. This implies that the majority of actors involved feel that countries that do not comply with international rules as laid out by the WTO should be punished. Since the WTO does not have any direct sanctionary power, WTO members (i.e. EU) should be allowed to unilaterally protect their markets against exporters of non-compliance countries. Most common practices of non-compliance indicated in the public consultation were subsidization of firms by their national governments, and the failure of countries to implement adequate social standards and environmental standards. The European Automobile industry, for instance argued that TDIs are one of the few means to ensure that safety standards are guaranteed which is in the interest of consumers. Without TDIs consumers would be exposed to low priced but low quality goods. The Ferro-alloy industry reasoned along the same lines by arguing that in the absence of a global competition policy, low prices need not reflect comparative advantage.

TDIs are necessary to maintain inflow of FDI. European Sectoral Associations[52] defend the status quo of the TDIs for the reason that in that in the absence to do so, the EU would

[52] M. Jones (2007) presentation to European Parliament-INTA Committee, on behalf of the European Association of Metals.

loose foreign investors. Only when the EU makes an effort to ensure that the regulatory framework that investors are subject to in the EU is matched by the EUs defence to impose similar requirements on outside operators gives foreign investors the necessary guarantees to stay.

TDIs are the only option. The General Federation of Italian Industry expressed the opinion shared by many that there is no alternative for the current TDIs. Most respondents agreed that the use of TDIs should be in accordance to the general WTO principles to avoid discretionary practices. On the issue of whether the use of AD should be tempered in favour of greater use of safeguards and countervailing duties, opinions diverge. While the European steel confederation, EUROFER and the Belgian Textiles industry supported such a shift, representatives of the legal profession did not share this view for one because subsidy cases are much harder to prove.

Community Interest Clause offers sufficient balance. Public consultations revealed that with a few exceptions, a majority of stakeholders did not see the need to adjust the definition of Community Interest to better reflect a balance between EU consumers and producers' interest. CEFIC, the association of the EU's chemical industry, and the largest user of AD, argues that since the EU in general offers lower duties than the US, consumers' interests are sufficiently protected. Moreover, they point out that the EU already has adopted a "WTO-plus" package since in many other countries the community industry clause is lacking. But this view was not shared by the European Retailers' confederation. They proved more in favour of putting consumers more central in the analysis, especially in AD cases involving consumer goods. The number of AD cases involving consumer goods is rising and currently constitutes around 15% of all AD cases. The European Trade Union confederation argued that since consumers are also workers, the community industry clause is fine as it is and needs not be enforced more strongly.
In contrast, the EU consumer organization, BEUC, is of the opinion that EU industries that apply for protection typically show a lack of competitiveness and therefore should not be protected. This can be achieved by putting more weight on consumers' interests making TDIs less subject to the capturing by special interest groups.

Community Industry definition does not need revision. A minority of respondents felt that the EU AD law is too vague in its definition of "Community Industry". However, the large majority of respondents seem happy with the definition. The UK steel industry argued on this point that a differential treatment based on ownership is not warranted. The EU Cotton and Textiles Federation however, felt that for firms that partially relocated abroad, the current community industry definition could pose a problem. The Italian shoe federation argued that even outsourcers need to be fair and should abstain from engaging in price-discriminating practices therefore they felt the community industry definition needs no change.

Price-Undertakings can continue to be used. A representative of the Italian government noted that their abolishment would result in more AD measures since Price undertakings are the preferred measure of importers. Also, it was pointed out that the use of price-undertakings is limited to countries that respect social and environmental rules.

TDIs do not need a conditionality clause. A large majority of Green paper respondents rejected the inclusion of a conditionality clause. Such a conditionality clause would require protected EU firms to prove that they had engaged in restructuring during protection. One of the main arguments being that the Commission's role was not to judge the viability of an industry in the case of antidumping and countervailing duty cases.

All in all the Green paper consultations indicated that the large majority of respondents see no need for major changes in the definitions.

However, many respondents indicated a number of very specific areas in which they felt change was needed. Below we list just a couple.

Expiry Review Investigations are too long and duties should be refundable. It was generally felt that duties paid after expiry of the original five year protection period should be refundable in the case the expiry review investigation ended negatively. The legal profession also felt that the rights of exporters are currently violated since they have no right to comment or to make their comments known during the expiry review investigation.

A faster imposition of provisional duties is warranted. A majority of respondents seem in favour of a faster imposition of provisional duties than the current 9 month period.

Filing costs are too high for Small firms. Small and Medium sized enterprises (SMEs) are felt to be particularly vulnerable to unfair practices from abroad. Also they often lack the financial means to file AD complaints. The British Retail Consortium pointed out that SMEs are also vulnerable to antidumping duties since the price hikes that go along with them can largely reduce their sales. Unlike large retailers, small ones can not absorb the duties since this would lower their profitability too much. Therefore in general the TDI system seems to work well for large firms but nor for small firms.

However, the most important area for reform emerging from the Green paper consultations was the improvement of *Transparency, Predictability and Efficiency* of the TDI system.

2.2.2. Transparency, Predictability and Efficiency

The call for more transparency and predictability of the TDI system is coming from practically all economic actors involved. Notably Free Trade Associations[53] and European Sector level Associations[54] have long argued this to be essential.

Transparency. Parties involved in AD proceedings are not all informed in advance that an investigation will be issued. It is not until a "notice" is published in the Official Journal that parties are aware of their involvement. This creates a lot of uncertainty. The same critique applies to the publication of the final measures. There is no notification of the parties involved other than the publication of the final decision in the Official Journal. Moreover, final measures enter into effect the day after the publication.
This claim for transparency was supported by many industrial confederations and retailers involved.

Predictability. Notably the Cotton & Textiles industry argues that with contracts signed 12 months or longer in advance, they would like to know well ahead if the conditions at the time of the contract will continue to exist. Their proposal is that there would be a period of 30 days between publication and implementation of duties. Retailers like Carrefour also expressed a preference for regulations to be made public several months ahead in order to prepare themselves. Currently there are only a few days notice before the duties are

[53] S. Newman (2007), presentation to European Parliament, INTA-committee on behalf of the Free Trade Association
[54] M. Jones (2007), presentation to European Parliament, INTA-committee, on behalf of the European Association of Metals.

implemented. The same request was heard from EUROFER, the European ion and steel industry.

Efficiency. All respondents involved in the Green paper consultations insisted on improving TDIs efficiency. A proposal that was supported by a minority of respondents i.e. EUROMETAUX, the confederation of the metal industry, was the creation of an independent agency of civil servants that would "manage" the application of the TDI rules in order to guarantee consistency, professionalism and the absence of political interference.

2.2.3. Other Improvements envisaged

Other improvements envisaged at the time of the Green paper consultations were:

A change of voting rules in Council: Currently at the level of the Council of Ministers where the final voting on antidumping measures takes place, abstentions are considered as votes in favour of protection. This is considered to be undemocratic and a bias in the system in favour of protection.

An increase in the standing requirement. Most industry confederations opposed an increase in the standing requirement for the support that is needed in the EU industry to file a complaint. Others like the Free Trade Associations argue that instead of the current 25%, a standing requirement of 40 % would be better to prevent that cases where only a minority of EU producers is in favour of protection can file a complaint to the EU Commission.

Expiry Review investigations should be shorter. The 15 month investigation period in the case of expiry review cases is too long since the proof is less than for a new case.

The choice of an analogue country. A third-country like China that currently represents the majority of EU antidumping cases, and that participated in the Green paper consultations, expressed the desire to be treated like a market economy country in the antidumping rules. Currently the market economy status of China is considered on a case by case basis. China would like to be considered as a market economy in every case in order to avoid the appointment of an analogue country in the dumping investigation which raises the probability of positive dumping margins.

Retailers pay the price of protection. The British retail confederation complained that retailers/distributors often bear the burden of the protection. When antidumping cases involve consumer goods, which is increasingly the case, the higher price they pay for importing the foreign goods after antidumping duties are imposed are absorbed in order to keep prices for consumers low.

2.2.4. TDIs can serve as Political and Social Motives

Other non-economic motives that may underlie the use of TDIs are listed below.

TDIs can be used for political reasons. Empirically there seems to be a correlation between the extent to which a country runs a trade deficit with a trading partner and the

number of antidumping duties issued by the country with a trade deficit against the trading partner.[55]

TDIs can be used for Retaliation purposes. Recent empirical evidence seems to suggest that the use of TDIs is often inspired by retaliatory motives. Countries that were heavily targeted in the past by antidumping measures, are more prone to adopt their own antidumping laws.[56] The retail chain CARREFOUR pointed at the possibility of a wider range of countries retaliating against EU AD measures in the future.

TDIs offer a safety net. Countries that engaged in large tariff reductions during multi-lateral negotiations use Antidumping as a safety net form of trade protection whenever an industry is in need of protection. This way the more traditional tariffs are substituted by ad-hoc antidumping measures.

TDIs can be used to protect employment. Labour intensive industries such as *Textiles and Apparel* often demand protection. When many jobs are at stake the public opinion tends to be more favourable towards protection. In the Green paper consultations many industry confederations pointed out how many workers they employ like the German industry federation and the EU's bicycle confederation. They argue that TDIs can and should be used to protect employment. In addition, the European Trade union Federation pointed out that consumers are also workers. Therefore they argue that protecting workers is similar to protecting consumers which is explicitly stated as one of the objectives in the AD agreement.

The Table below briefly summarizes the economic and non-economic view in the reform debate.

[55] Knetter and Prusa (2003)
[56] Vandenbussche and Zanardi (2008)

Table 3: "Economic" and "Non-Economic" Views on TDIs

	Non-EconomicView	**Economic View**
ECONOMIC PRINCIPLES		
Dumping = Predation	No	Yes
Injury test is incomplete	No	Yes
Community Interest test is insufficient	No	Yes
Causality test is insufficient	No	Yes
Community Industry definition needs revision	No	Yes
Conditionality Clause is needed	No	Yes
NON-ECONOMIC PRINCIPLES		
TDIs can serve Political motives	Yes	No
TDIs can serve retaliation motives	Yes	No
TDI can serve as a safety net	Yes	No
TDIs can serve social motives	Yes	No

2.3. Opinions of different Interest Groups involved

In the table below we give a schematic view of the main interest groups involved and the objectives associated with TDIs like antidumping rules.

Table 4: Different Interest Groups and their preferences on Antidumping

INTEREST GROUPS	**Opinion on AD rules**	**Purpose of AD**
Domestic EU producers	STATUS QUO IS BEST	To protect EU production and jobs and to level-playing-field
EU outsourcers	NEEDS CHANGE	Focus should be on EU value-added not EU production
Retailers	NEEDS CHANGE	Needs to be more predictable
Free Trade Associations	NEEDS CHANGE	Standing requirement of 25% needs to be increased
Trade Unions	STATUS QUO IS BEST	To protect EU jobs and consumers
Consumers	NEEDS DRASTIC CHANGES	Put more weight on consumers interests
Member States	DIVIDED	"North" is against, "South" and "East" are in favour
Third Country China	NEEDS CHANGE	Give China market economy status

3. Alternative Paths of Reforms

Instead of reforming the current TDI rules at the EU level, we consider three alternative scenarios below. More in particular we consider whether a wider scope of competition and state aid laws can replace TDIs. Also, we discuss what the options are at the multi-lateral level and finally we discuss the possibility of including a social and environmental clause into the TDI rules.

3.1. Can a wider Competition Policy and State Aid law replace Trade Defence Instruments?

At present trade policy is regulated at the supra-national level of the WTO while competition policy is still very much under the auspices of national governments. One of the reasons for trade policy coordination at the level of WTO is that individual countries may have unilateral incentives to deviate from free trade. Recently the same type of argument has been put forward regarding competition policy. A number of economists have started to advocate the introduction of a 'global' competition policy (Lloyd, 1998) to complement trade policy. This rests on the belief that the openness of a country is not a sufficient guarantee for product market competition and erosion of national monopolies.

Unfair dumping can result from monopoly power in the export market that is not curbed by the competition authority in the exporting country. An export cartel can abuse its market power to drive out competitors in the export market. For this reason it has been suggested that antidumping laws can only be abolished provided they are replaced by competition rules that transcend the national level. This is often what happens in Regional Trade Agreements (RTAs). Research has shown that when countries engage in RTAs, they often abolish antidumping laws between them but instead replace it by a common competition law or agreement.[57] This is also what happened inside the EU. Prior to their EU entry there were a lot of antidumping cases against countries of Central and Eastern Europe. However, once these countries became full EU members, the antidumping law was no longer applicable but EU membership implies that these countries are subject to the EU Competition authority. However, there are other RTAs where antidumping laws have been kept in place and the jurisdictions of national competition agencies segmented like in the case of NAFTA.

The main argument against a global competition policy however, is its political infeasibility since countries are not willing to give up their national sovereignty over competition issues. Nevertheless it is clear that antidumping and antitrust can not be decoupled and that unfair dumping originates in an abuse of monopoly power in the export market. To say it with an example: if China is not enforcing its competition policy properly or is not well equipped to combat international cartels, and goods get dumped on the EU market, one of the few responses available to the EU is its use of trade policy. However, in economic terms the use of trade protection means a second best tool. First best would be to stop the cartel's activities.[58]

3.2. A chance of finding a compromise at multilateral level? Proposals for reform by the Rules-committee.

A fundamental change of TDI laws can only be pursued at the level of the WTO. Unilateral reforms at the level of the EU would make the EU vulnerable and would put it at a serious

[57] Hoekman (1998), Wooton and Zanardi (2005).
[58] Vandenbussche (2000).

disadvantage versus trade partners that would continue to use TDIs.

The recent spread of AD laws especially amongst developing countries has given these countries the capacity to retaliate which may open up opportunities for change at the multilateral level. Until now the political will to change AD laws was largely absent among the developed countries. For many years developing countries have been insisting on a change of the AD rules which they felt were inadequate and were hurting the interests of their exporters. However, the traditional users, notably the US and the EU, until now favoured by and large a Status Quo of the rules. The recent spread of AD laws may however change that attitude. Large Western countries are now themselves often targeted by antidumping measures which may make them more willing to agree on changes in order to avoid a building up/running up of AD protection from developing countries which now adversely hurts the exporters of traditional exporting countries.

To avoid a build up of protection worldwide the changes to TDI at the level of the WTO would need to go in the direction of tightening the rules to the extent that their application is limited to cases where there is clear evidence that unfair behaviour is going on. Moreover, to avoid a further running up of TDIs initiated by developing countries targeted towards developed countries, the rules would need to be clarified leaving less room for discretionary behaviour and offering more guarantees to ensure that "new users" apply the TDI rules in WTO conformity.

A tightening of the AD rules at the level of WTO would make them less subject to rent-seeking from particular sectoral interest groups. One way to accomplish this may be to introduce a *Public Interest Clause* into the WTO AD Agreement and make it compulsory in any AD law. At present, the WTO AD agreement does not require a public interest test for imposing AD duties. However, an effective public interest clause ensures that AD protection can only be imposed when it is in the interest of *all* domestic parties, including (intermediate and final) consumers. At present only a few countries, including the EU, have such a clause. But even for those countries that officially have a public interest clause (e.g., Argentina, Australia, Canada and EU), the enforcement of the Public Interest clause is not adequate. A reform at the level of the WTO agreement on AD entailing a clearer operational definition of Public Interest would ensure two things. First that all countries include such a test into their national AD law and second that countries clearly have to demonstrate the elements involved in the Public interest test (Sapir, 2006). Making Consumers' long term interests the primary objective of TDIs would bring them more in line with competition policy where since long consumer welfare is considered to be the ultimate test to decide on market intervention or not.

However, the current proposals that circulate in the aftermath of the start of the Doha Round seem to go in the opposite direction. These proposals are the work of the so-called "Rules-committee". Most of the revisions are reflected only in the AD Agreement although they are assumed to apply also to the Countervailing duty Agreement, where appropriate. [59]

An important revision involves the determination of injury and the required causation. Currently, the proposals appear to weaken this requirement by suggesting that authorities *need not quantify such injurious effects of weigh the effects of dumped imports against those of other factors*. This implies that it would be sufficient to show that dumping is *a* cause of injury not necessarily *the* cause of injury. This revision would make the injury test weaker instead of stronger and if this revision would be accepted, is likely to lead to more AD cases

[59] www.mondaq.com

passing the injury test and to more complaints being filed and more protection.

A positive note in the proposals is that for the first time WTO Member countries would be required when imposing AD measures to "take account" of comments by "industrial users, suppliers and consumer organizations". However, this proposed "public interest" test could not form the basis for a WTO dispute settlement claim.

Another revision would entail the scrapping of the WTO's preference for the inclusion of a "lesser-duty-rule". The likely consequence of that is that countries will be more inclined to set duties equal to dumping margins which is the system that currently applies in the US and that generally results in higher duties than in the EU.

While the proposals of the Rules group have not been accepted yet, they are likely to ignite a heated debate. Especially the weakening of the injury test and the elimination of the "lesser-duty rule" could imply more worldwide protection.

In our view, the EU has more to gain by supporting proposals that would tighten the injury test rather than weaken it, since currently most AD action is coming from "new users" in developing countries that often target the EU with their measures forcing the EU in the role of third-country. A weaker injury test is likely to result in more protection against EU exporters and clearly not in its interest.

3.3. Social and Environmental Dumping in the TDI Agreement

The issue of whether or not the antidumping agreement should explicitly include the issue of social and environmental dumping is much debated. Currently this exceeds the mandate and purpose for which the WTO was erected. Those in favour of including environmental and social concerns argue that social and environmental issues should be dealt with horizontally i.e. they should not be the exclusive responsibility of a separate set of institutions applying a separate body of law, but that they should rather be included in the programs of all the relevant institutions, including the WTO.

A pragmatically-oriented objection to the inclusion of social and environmental dumping in the WTO system is that this would involve a whole set of new practical challenges such as the establishment of the link between social and environmental norms and unfair trade practices. In view of these measurement difficulties any regulation at the level of the WTO would involve a cryptic description. This would ultimately result in the highly undesirable situation that individual WTO members would use trade measures based on their own specific view of what the appropriate social or environmental standards should be which would severely damage the transparency and predictability of the system.

Proponents of the 'level-playing-fields' approach believe that the best way to achieve both environmental and trade objectives is by the creation of a separate Multilateral Environmental Agreements (MEA) that would work in parallel with the WTO system. But those in favour of a 'horizontal' approach would rather see an embedding of environmental and social concerns in the functioning of the WTO systems which would imply that some reforms to GATT and its related Agreements are indispensable.

A middle of the road position is the parallel but connected systems approach such as that contained in the NAFTA Environmental Side Agreement that enables the NAFTA parties to trigger an investigation by an environmental commission or even an arbitration process if

another party is failing to enforce its environmental legislation and such failure involves goods that compete in the other(s) NAFTA partner'(s') domestic markets.

Parallel to this the EU could consider, similar to NAFTA, to include AD rules in its bilateral Preferential Trade Agreements (PTAs). However, case history shows that this may generate its own set of issues usually referring to jurisdiction issues between the PTA level and the multi-lateral level. This was clearly demonstrated in the Mexico-US case on softdrinks.[60] In this bilateral dispute over antidumping measures imposed by Mexico on US imports, Mexico wanted a NAFTA panel to deal with it but the US refused and the case was brought before a WTO panel. This WTO ruled that since nothing in the PTA bilateral AD agreement prevented it from ruling over the dispute it could rule, a view which was opposed by Mexico that felt that only a NAFTA panel could rule. This case clearly indicated that disputes may be difficult to solve at the bilateral level therefore the WTO level ultimately offers a better guarantee for conflict resolution. Also, the interests of non-parties to the bilateral agreement which may be affected by bilateral AD measures are only considered at the WTO level and usually not at the bilateral level.

4. Statistics on EU Trade Defence Instruments

4.1. Who is targeted by EU?

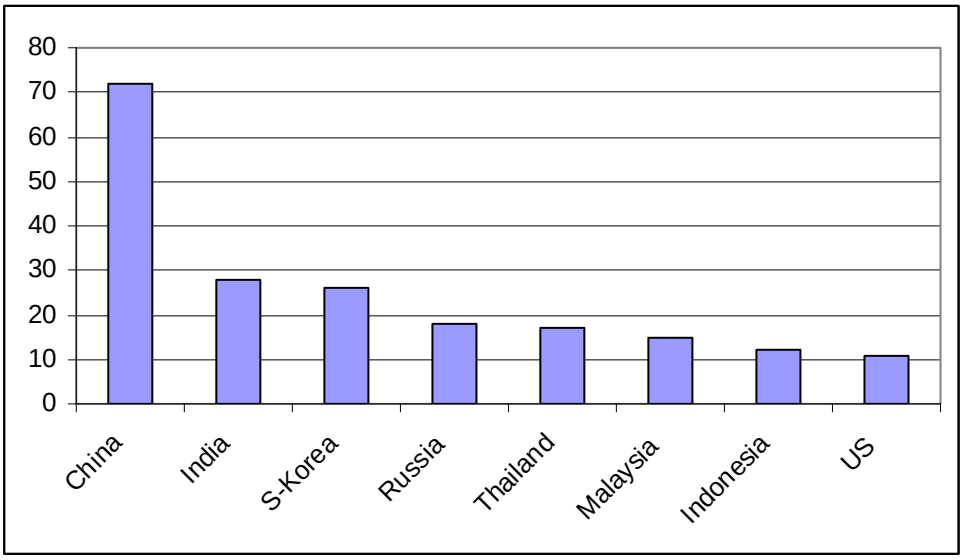
The number one target for EU antidumping action in the past decade has been China. This is illustrated in Figure 7 below where we rank the countries most frequently targeted by EU's antidumping cases in the period 1995-2006. With more than 72 cases initiated against China in that period, the EU is primarily using antidumping action against China. Also India and South-Korea are frequent targets with each around 25 cases initiated against them over the same period. The US also appears amongst the top defenders in EU antidumping cases with more than 10 initiations by the EU against the US in the past decade. It is clear that if cases would be weighted by US$ value of imports, China is even more disproportionally targeted.

The non-market economy (NME) status of China is one factor that has accounted for its vulnerability under EU antidumping policy. Although in the mid nineties, the EU deleted China from the list of NME countries, market economy status is not granted automatically to defending Chinese companies. Only if Chinese exporters can prove that they are operating under market economy conditions, the domestic prices and costs of Chinese exporters will be used to establish the *normal value* rather than information from an *analogue* country. Analogue countries selected by the Commission to construct the normal values of Chinese products in the past involved countries like USA, South Korea, Japan and Norway. It is easy to see that the choice of the analogue country is crucial for the determination of the dumping margin. If the analogue country has local prices that are higher than prices in China, this will result in a higher dumping margin. Research has shown that in most cases, the Commission selects the analogue country suggested by EU complainants.[61] Clearly the incentive structure of the rules is not optimal since EU producers could be tempted to suggest an analogue country with high prices since this would increase the calculated dumping margin and raise the probability of protection. A better practice could for instance be that the Commission would take the analogue country that has the lowest market prices for the allegedly dumped product.

[60] Appellate Body Report, Mexico – Tax Measures on Soft Drinks and Other Beverages, WT/DS308/AB/R, adopted March 24, 2006. This case was discussed in a paper by A. Sapir and W. Davey at the annual ALI-meetings at the WTO in June 2008.
[61] Liu and Vandenbussche (2002)

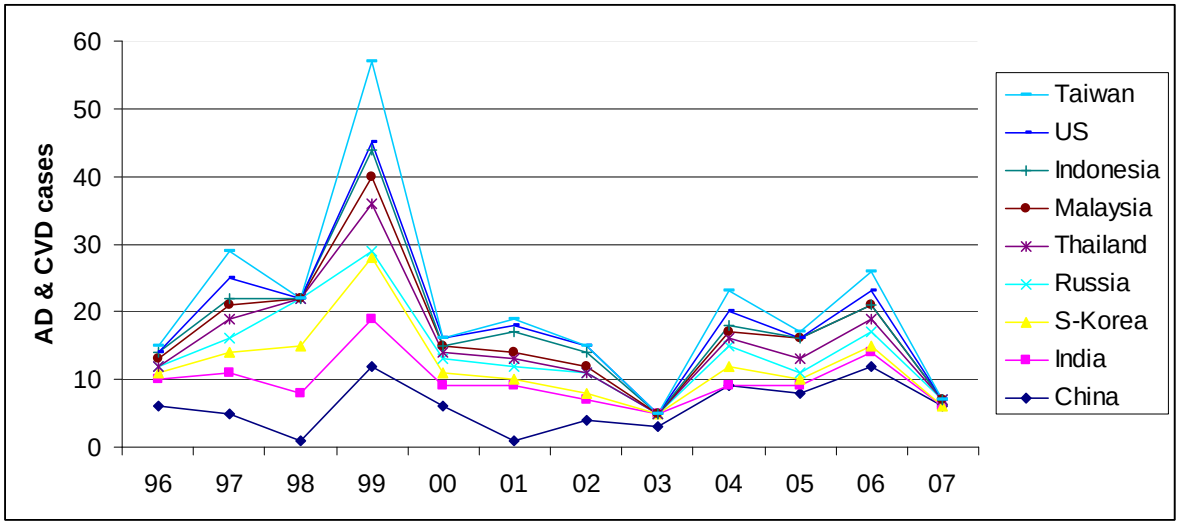
In Figure 8 we show the evolution of AD initiations by target country over time. It can be noted that EU antidumping and subsidy cases against the top 5 target countries have been falling over time. Ever since the spike of cases around 1999, the number of cases has been decreasing with a low in 2007.

Figure 7: Who gets hit most by EU Antidumping Initiations in 1995-2006?



Source: WTO Antidumping Statistics 1995-2006

Figure 8: Who got hit over the past decade?



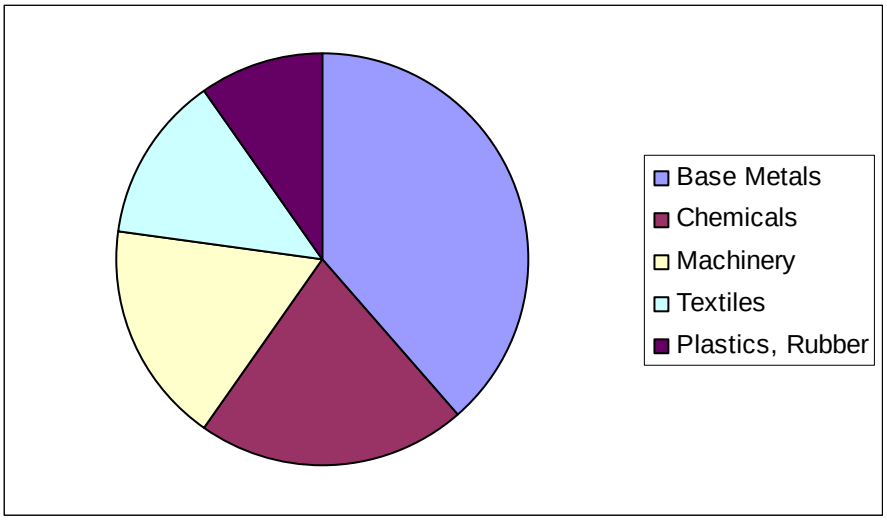
Souce: EU Commission Annual reports on Anti-dumping and anti-subsidy activities

4.2. Sector analysis

In Figure 9 we illustrate the EU sectors that complain most about unfair dumping. We show the top 5 sectors that account for 89% of all EU initiations between 1996-2005. "Base metals" is the sector that initiates most antidumping cases. No less than 118 cases were triggered by the "Base metals" sector. The "chemicals" sector accounts for over 65 dumping cases in the past decade. Other EU sectors with a lot of AD initiations are "machinery", "textiles", "plastics and rubber" and to a lesser extent "wood" and "footwear".

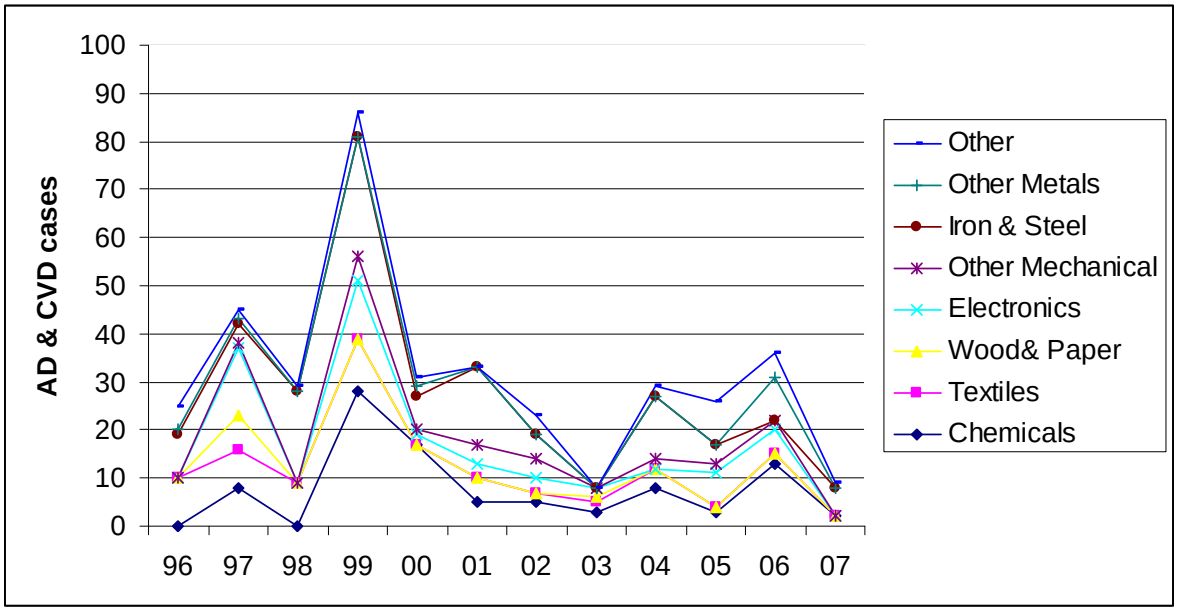
The evolution over time of AD case initiations by EU sector are shown in Figure 10. It appears that the number of cases has been falling in every sector. Most recently filings in "Iron & steel" and "other metals" rank amongst the highest. The downward trend in AD initiations may be reversed if the proposals of the Rules' Committee to reform AD rules at the WTO level are accepted (section 3.2). These proposals involve a weakening of the injury test which would facilitate protection and this is likely to trigger more initiations worldwide.

Figure 9: EU Antidumping Initiations by Sector: top 5 in 1995-2006



Source: WTO Antidumping Statistics 1995-2006

Figure 10: Evolution of EU Antidumping and Subsidy cases by Sector



Source: EU Commission Annual report on Antidumping and Anti-Subsidy activities

4.3. Dispute Settlements

Thus far relatively few antidumping cases are brought to the WTO for a Dispute Settlement procedure (DSU). Bown (2006) reports that of the 417 antidumping investigations that the US initiated over the period 1992-2003, 178 lead to the imposition of antidumping measures, but only 29 were disputed at the level of WTO which is a relatively small fraction of total initiations. The reason for this seems to be that countries prefer to use their own

antidumping instrument as a tool of retaliation. Instead of turning to the WTO to start a DSU procedure they prefer to respond by using antidumping action against the trade partner that previously hit them with antidumping measures. This is what Bown labelled "vigilant justice". The equivalent numbers for the EU are even smaller.

5. Comparative Analysis across Countries

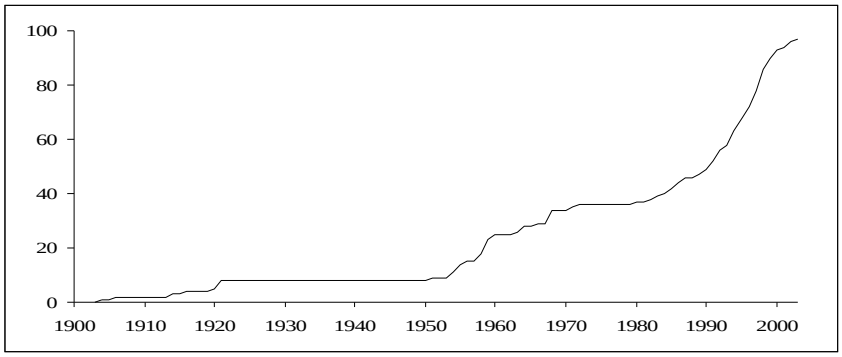
In this section we pursue a qualitative evaluation on the use made by third countries including the US, China, India, Brazil, South Africa, Russia, Canada and Australia.

5.1. Main Users of Antidumping Policy in the World

We start our analysis with three stylized facts.

Antidumping Proliferation. Over the past two decades many, especially developing countries have adopted antidumping (AD) laws. This proliferation mainly took off after 1980. Before, there were only 5 major users of AD: Australia, Canada, EU, New Zealand and the US. These countries have come to be known s the "traditional users". But since 1980 many more countries, the so-called "new users" (Prusa and Skeath, 2002), have started to adopt and use AD laws as illustrated in Figure 11. Between 1980 and 2003, 61 countries introduced an AD law with most adoptions occurring in the second half of the 1990s including countries like China (1997), India (1985), Indonesia (1995), Brazil (1987), Turkey (1989), Mexico (1986) and Russia (1998). Incidentally all these countries used to be developing countries but are now climbing the industrial ladder quickly and are become large players in the global trade arena.

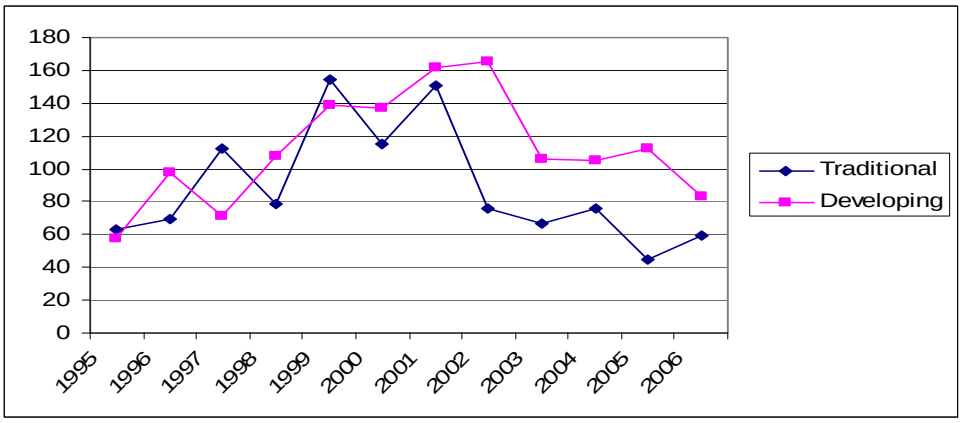
Figure 11: Evolution of the number of countries with antidumping laws



Source: Zanardi (2004)

"New users" of Antidumping. A second stylized fact is that while AD measures by the traditional users have gone down, those by the "new user" have gone up. This is illustrated in Figure 12. Since the year 2000 the total number of initiations by the developing countries persistently exceed the number of initiations by the traditional antidumping users.

Figure 12: Evolution of Antidumping Initiations in Traditional and Developing countries

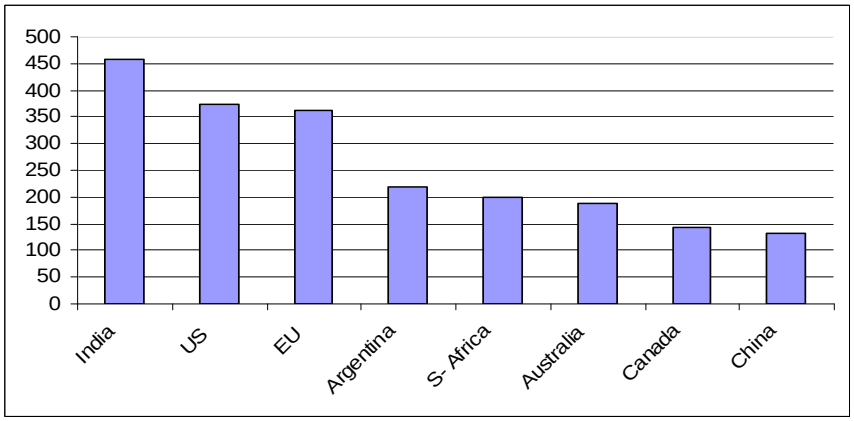


Source: WTO Antidumping Statistics 1995-2006
Note: traditional users: EU, US, Australia, Canada; top 7 developing countries included: India, Brazil, China, S-Africa, Mexico, Argentina, Turkey

For instance, a country like India initiated about 457 AD cases between 1995 and 2006 while during that same period the US initiated 373 and the EU 362. When scaled by the size of imports it turns out that the highest number of AD measures per US$ of imports is now attained by some of these new users.[62]

Figure 13 ranks countries in terms of the number of initiations over the past decade. We clearly see that while "traditional users" still feature prominently amongst the countries using Antidumping frequently, India is the country with the highest number of antidumping initiations. Also it can be noted that other former developing countries like Argentina and S-Africa have filed more AD cases over the past decade than for instance Australia and Canada. The Chinese, despite being the main target of many countries, initiate far fewer antidumping initiations than India but have started to use the antidumping instrument more frequently in recent years.

Figure 13: Top 8 countries of Antidumping Initiations between 1995-2006



Source: WTO Antidumping Statistics 1995-2006

An interesting fact to note is that "new users" predominantly use AD protection against "traditional users", notably the US and the EU. In the words of Dan Ikenson (2002) from the Cato Institute (a think tank in Washington DC) "*the likelihood of continued antidumping*

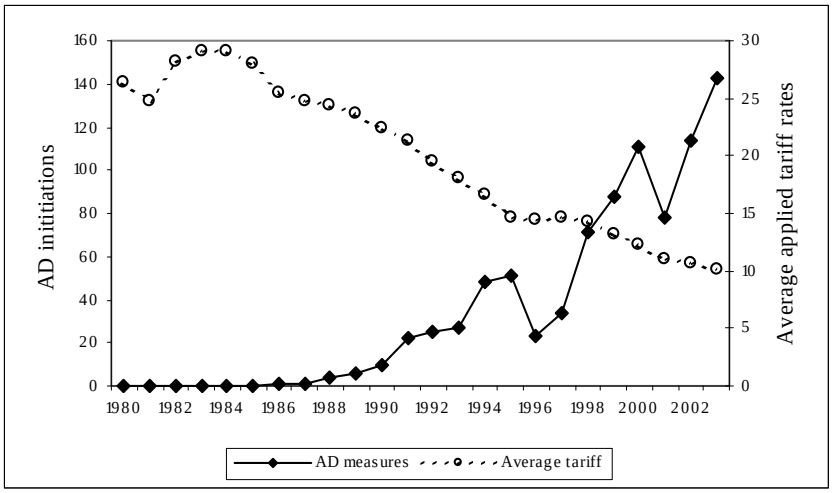
[62] This was shown by Finger, J.M., Ng, F., and Wangchuk S. (2002), "Antidumping as a Safeguard Policy", in Stern, R. (ed.), *Issues and Options for US-Japan Trade Policies*, Ann Arbor: University of Michigan Press.

proliferation poses a significant threat to US export growth (…) the US has become the third largest target of antidumping actions around the world" and a similar argument applies to the EU. American and European firms are now themselves under threat of facing AD actions by developing countries jeopardizing market access to some of the largest growing markets in the world.

Recent research by Vandenbussche & Zanardi (2008) shows that AD law proliferation appears to be driven by "**retaliation motives**". The cumulated number of AD measures a country has received in the past strongly affects the probability of adopting an AD law of its own. However, the adoption of AD laws for strategic retaliatory purposes suggest an abuse of AD laws, since retaliation is not what these rules are designed to combat and thus is a violation of WTO rules.
With these retaliation motives at work, there is a serious risk of loss-loss situations where countries engage in too many unwarranted AD cases. On this ground, it seems that there is an urgent need for a substantial tightening of the dumping and injury criteria that the AD authorities are required to use in determining whether to impose AD duties. Paradoxically, the proliferation of AD laws and the capacity of developing countries to retaliate may also open up opportunities for change. Until now the political will to change AD laws was largely absent among the developed countries. However, the traditional users, notably the US and the EU, have always opposed major changes of the AD law. The recent proliferation of AD may change the attitude of the US and EU and make them more willing to agree on changes in order to avoid a building up/running up of AD protection from developing countries which now adversely hurts the traditional exporters.[63]

Substitution Effect. And finally, a third stylized fact is that worldwide there seems to be a "substitution effect" where more permanent tariffs are traded in for "ad hoc" AD protection (Vandenbussche & Zanardi, 2008). This is illustrated by Figure 15. This suggests that in general countries seem to substitute tariffs by more contingent type of protection instruments like AD duties.

Figure 14: A worldwide substitution effect between tariffs and AD



Source: Vandenbussche and Zanardi (2008)

[63] Wooton and Zanardi (2005)

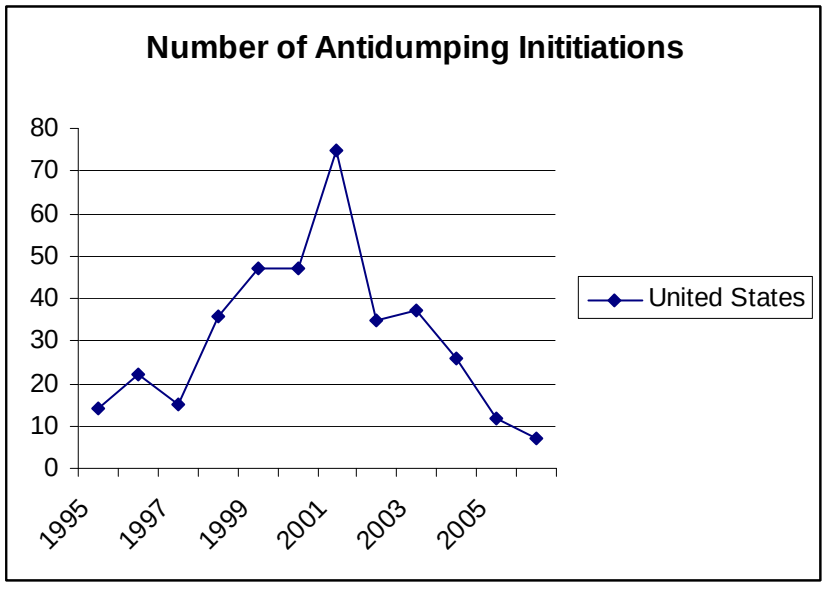
5.2. Use made by Third Countries of TDIs

While space does not permit us to document the use of TDIs for all countries, in what follows we will limit ourselves to compare the EU's use of TDI with some of the main users of TDIs including ***US, China, India, Brazil, South-Africa, Russia, Canada and Australia***. We will document their use of TDIs over time since the entry into force of the Uruguay Agreement in 1996.

A general pattern that emerges from Figures 15 (a to g) is that Antidumping initiations in most countries shown below peaked around 2001-02 after which they came down again to historical lows. The exceptions are India and Brazil where AD measures seem to be on the rise again in recent periods.

Despite the apparent slowdown in the number of antidumping cases in most countries, there is still a need to tighten the Antidumping rules. The reason is that even in the absence of AD initiations, AD laws can still have a deterrent effect on trade flows. Especially when the dumping definition is wider than what economists regard as "unfair" trade, the deterrent effect of AD laws on trade flows may also affect some of the fair trade (most likely resulting in lower volumes being shipped and in an upward pressure on international prices).[64] The only way to avoid this would be to tighten the Antidumping rules to make sure that they only affect or deter "unfair trade" without unjustly penalizing fair trade.

Figure 15a: Number of US Antidumping Initiations



Source: WTO statistics

[64] Pauwels et al. (2001)

Figure 15b: China AD Cases

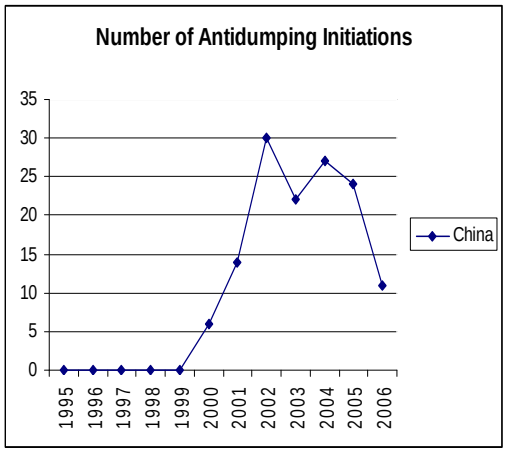
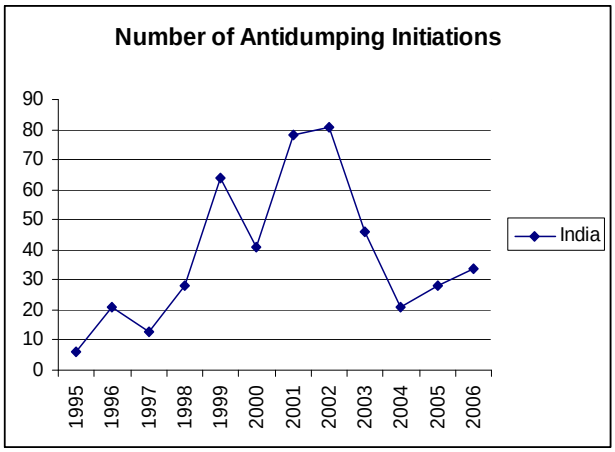


Figure 15c: India AD cases



Source: WTO statistics

Figure 15d: Brazil AD cases

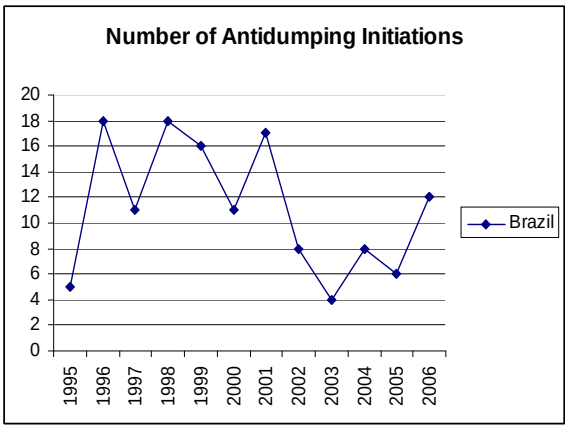
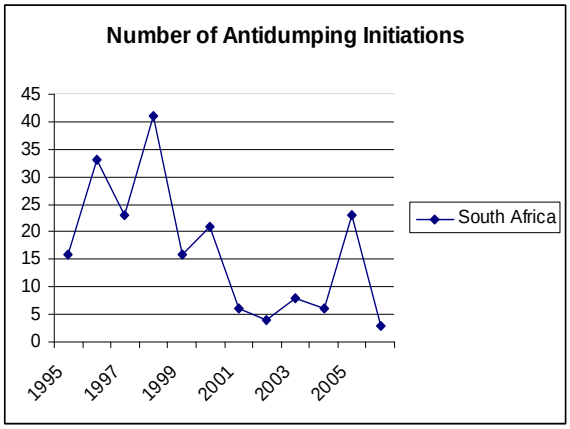


Figure 15e: South-Africa AD cases



Source: WTO statistics

Figure 15f: Canada AD cases

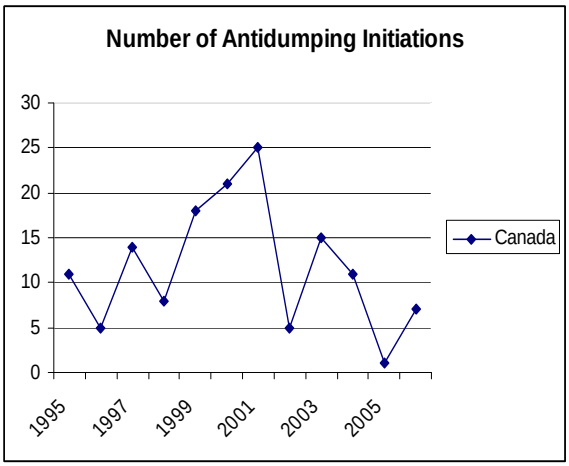
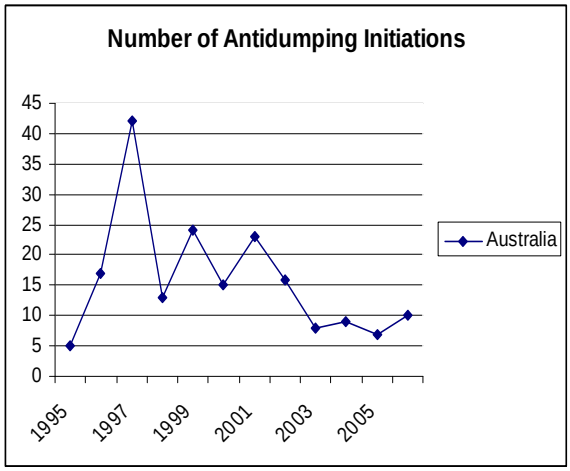


Figure 15g: Australia AD cases



Source: WTO statistics

5.3. A qualitative comparison between the EU and Third countries Antidumping Law

The wave of developing countries that adopted antidumping laws recently all seem to opt for the "US variant" which differs in some important respects from the EU variant. While both variants are WTO legitimate they show some fundamental differences. The main differences are listed in Table 5 below.

Table 5: A Comparative Analysis of EU Antidumping Law with other countries

	EU-variant	**US-variant**
Public Interest Clause	Yes	No
Sunset Clause	Yes	No before 1996, Yes afterwards
Lesser duty rule	Yes	No
Dumping Investigation	EU Commission	Department of Commerce
Injury Investigation	EU Commission	International Trade Commission
Price-Undertakings	Yes	No
Price Agreements after withdrawals	No	Yes
Track	More Political	More Technical

The EU has a Public Interest clause, the US does not. This implies that the EU is in principle better equipped to deal with consumer interests. Considering consumers' interests jointly with producers' interests provides a better welfare indicator that potentially brings EU antidumping policy closer in line with competition policy. The problem in the EU is that at present this clause is not well used and not strongly enforced.

The EU always had a Sunset Clause, the US only recently. While the EU has always limited the duration of the protection period, the US only adopted this clause during the Uruguay Round. Before that, US antidumping protection remained in place for ever unless the defending country would provide evidence that dumping had been reduced. In that case the US administration allowed for an Administrative Review of the duties which could then be lowered.

The EU has a lesser-duty rule, the US does not. The EU Antidumping law limits the magnitude of the antidumping duty by taking the lower of dumping and injury margin. This is not the case in the US where the duty is always based on the dumping margin. As a result the US on average sets higher antidumping duties than the EU. For example in the US the average AD duty over a period of 10 years was about 65 %,[65] while in the EU the average AD border tax has been smaller and around 30%.[66]

On the other hand there are also some disadvantages to the EU variants:

The EU process tends to be more politicized. Research has shown that while both the EU and the US decision-making are not free from political influence, this tends to be more

[65] Blonigen (2003)
[66] Konings and Vandenbussche (2005)

predominant in Europe.[67] The US antidumping variant is considered to be more of a technical track system where decision-making is more rules based.[68] The suspicion exists that Ministers in the EU Council tend to vote in their own country's interest rather than in the general interest of the EU.

The EU uses Price-undertakings frequently. Price-undertakings as such do not exist in the US variant. However, a different phenomenon in the US is that there is a substantial number of cases where the petitions are withdrawn.[69] Whenever an antidumping case is withdrawn by the complaining US industry, the two parties can reach price-agreements outside the antidumping procedure. These price agreements are not made public but we observe that, on average, withdrawn cases show the same trade effects as when duties are imposed (i.e., import flows decrease and prices increase). The suspicion is that out-of-case price-agreements in US cases lead to collusive price device similar to price-undertakings in the EU.

The US practice of "Zeroing". Zeroing is a correction applied to the calculation of the dumping margin which is favourable for the US but unfavourable for its foreign importers. When a dumping investigation involves several products, for each product the US department of Commerce compares the U.S. price with the normal value in the exporters market. When the normal value is higher than the U.S. price, the difference is treated as the dumping amount for that sale or that comparison. When, however, the U.S. price is higher, the dumping amount is set to zero rather than its calculated negative value. All dumping amounts are then added and divided by the aggregate export sales to yield the company's overall dumping margin. Zeroing thus eliminates "negative dumping margins" from the dumping calculation. It is easy to see that the practice of zeroing inflates the overall dumping margins, resulting in higher duties.

The US Byrd Amendment. From 2000 to 2005, the US had a practice in place that was heavily condemned by the WTO. Funds raised from antidumping duties on imports, instead of being incorporated into the US budget, were distributed to the US companies that filed AD complaints. This meant that US firms were compensated for their filing costs resulting in a substantial increase in the number of antidumping complaints. In January 2003, the WTO declared that the Byrd Amendment was considered illegal under the WTO Agreements. The Byrd act has been repealed since.

All in all we can say that the EU variant has a number of advantages over the US variant. The presence of a "*Public interest*" clause offers at least in principle the option to direct the Antidumping Law more in the interest of consumers. The "*lesser-duty*" rule requires that duties are the smaller of dumping or injury margin, which usually results in smaller duty levels under the "EU variant". The "*Sunset Clause*" which limits the length of protection in principle to 5 years is also a more attractive feature of the EU type of Antidumping legislation than in the case where protection continues much longer as was the case under the US type of AD law (until the Uruguay Round).

However, a less attractive feature of the EU type of AD law is the presence of *price-undertakings* which are similar to Voluntary exports restraints (VER) and can result in collusive behaviour (Veugelers and Vandenbussche, 1999).

[67] Evenett and Vermulst (2005)
[68] Tharakan and Waelbroeck (1994).
[69] Prusa (1992) and Zanardi (2004) have shown this.

Countries that have adopted an AD law closer to the "EU type" are in the minority and include amongst others Argentina and Canada. The largest number of countries have adopted a "US type" of AD law including most of the "new adopters" (Vandenbussche and Zanardi, 2006).

The US practices that have been most heavily condemned by economists are "*zeroing*" and the "*Byrd amendment*". It has been argued that their application has given rise to more frequent and more inflated antidumping duties (Ikenson, 2004) than would otherwise have been the case.

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Annex: Vademecum of terms and concepts

Dumping	to bring a product onto the market of another country at a price less than the normal value of that product
Normal value	The actual or constructed price in the local market of the exporter or a country that is similar to the exporter
Analogue country	When the exporting country is a non-market economy, the normal value is based on the price in a market economy country similar to the non-market economy.
Injury to EU industry	A set of factors that reflect the condition of the EU industry after dumping involving actual or potential decline in sales, profits, output, market share, productivity, capacity utilization, EU prices, cash flow, inventories, wages, ability to raise capital' where the law states that this is not an exhaustive list
Causality	The Antidumping law requires that there is a causal relationship between unfair dumping and injury to the EU industry in order for import protection to be imposed
Subsidy	A financial contribution by a government or public body that entails a benefit for firms. Some subsidies, such as *export subsidies* and subsidies contingent upon the use of domestic over imported products are, as a rule, prohibited by the WTO. Other subsidies are not prohibited but when they cause adverse effects to the interests of other countries, the subsidizing country should withdraw the subsidy or take appropriate steps to remove the adverse effects. If the subsidizing country fails to do so, countermeasures commensurate with the degree and nature of the adverse effect may be authorized.
Lesser-duty rule	In the EU the Antidumping duty (=border tax) is set equal to the dumping margin or equal to the injury margin whichever of the two is lower
Community Industry	All or a majority of the EU producers producing a product similar to the allegedly dumped product
Community Interest	A clause that stipulates that Antidumping measures have to be in the interest of the EU community.
Price-Undertakings	Voluntary price increases of the allegedly dumped products by the exporters accused of dumping and injury to the Community Industry
Like Product	A product that is similar to the allegedly dumped product
Sunset Clause	Antidumping measures in principle end after 5 years
De minimis	A threshold level of imports that has to be exceeded in order for the antidumping petition to be valid
Price-Undercutting	When the price of the allegedly dumped product in the EU is smaller than the price of an EU produced product
Price-Underselling	When the price of an EU produced product is depressed as a result of alleged dumping, an EU target price is constructed consisting of the EU cost of production and a "reasonable" profit margin. When the price of the allegedly dumped product lies below the target price of the EU produced product there is price-underselling
Target Price	A price that is constructed whenever the prices of EU produced products are depressed. The target price consists of the cost of production and a reasonable profit margin.
Cross-price	This is a measure of how much the price of imported goods affects the

elasticity	price of EU produced products. This depends on how close substitutes the imported product and the EU product are
Regression analysis	An econometric technique often used in economic empirical analysis to establish whether there is a significant relationship between variables.
Dispute Settlement	When an exporter feels that the EU has not given it just treatment and that certain procedural errors have been made it can turn to the WTO for an appeal of its case. If the case is eligible the WTO sets up a Dispute Settlement panel of experts to investigate the case.
Prohibitive duty	A duty that makes imports too expensive so that imports stop altogether.
Investigation period	For the investigation of dumping and injury the EU Commission can analyze a period or three years preceding the initiation of a case which is called the investigation period
Expiry Review	At the end of a 5 year antidumping protection period, EU producers can ask for an extension of protection if they fear that lifting the protection will resume dumping and injury. The purpose of an expiry review case is that the Commission examines the evidence during which protection stays in place and either rejects the case implying that protection ends or decides in favour of the evidence in which case protection can be extended for another 5 years.