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*Limited\**

**NOTE TO ALL THE MEMBERS OF THE ANTI-DUMPING COMMITTEE AND TO ALL  
DELEGATES TO THE COUNCIL WORKING PARTY ON TRADE QUESTIONS**

**Subject:** Clarification paper *The Community interest test in anti-dumping and anti-subsidy proceedings*

Please find enclosed a revised version of the clarification paper, which takes into account the comments presented in particular by the Danish, Dutch and Swedish Delegations at the Working Party on Trade Questions on 14 December 2005. Modifications concern sections 2.1, 2.3 and footnote 3.

(signed)  
Peter Klein  
Chairman  
Anti-Dumping Committee

Enclosure: clarification paper

Copies: Mr Wenig, Mr Igler (Presidency), Mr Visscher (Council)

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## **The Community interest test in anti-dumping and anti-subsidy proceedings**

### **Executive summary**

This paper describes the legal basis and practice of the Institutions with regard to the Community interest test. It illustrates the practice with examples from recent practice.

The main purpose of the Community interest test is to decide whether there are particular reasons not to impose measures in a given proceeding, despite a finding that the dumped or subsidised imports caused material injury to the Community industry. Since Community interest considerations can lead to the conclusion that a proceeding should be terminated, despite the existence of unfair (dumped and/or subsidised) trade, the standards applied must be high. Given the diversity of situations analysed, it is neither feasible nor appropriate to set clear thresholds above which the imposition of measures may be considered a priori to be against the Community interest.

The Community interest analysis consists of the identification of any compelling reasons which would lead to the clear conclusion that measures would not be in the global interest of the Community. In other words, it must be found that the disadvantage for certain interested parties such as users, importers or consumers, would be clearly disproportionate to any advantages given to the Community industry by the imposition of measures. Although a clear disproportionality finding is relatively rare, a number of cases have been terminated without measures on grounds of Community interest.

It should be underlined that the type of analysis to be carried out in the Community interest test is of an economic nature. Political considerations and arguments relating to broader policy areas (e.g. foreign policy, labour standards, regional policy) are not within the scope of the examination. The Community interest test is also not a cost-benefit analysis in the strict sense. In other words, while the various interests (advantages and disadvantages) are put in balance, they are not weighed against each other in a mathematical equation, not least because of obvious methodological difficulties in quantifying each factor with a reasonable margin of security within the time available.

The Community interest test addresses in particular the viability and future perspectives of the Community industry with and without measures, as well as the likely impact of measures (or their absence) on other interested parties such as importers, suppliers, users or consumers.

The assessment of the impact on interested parties must be made in the light of a proportionality test. When measures are not likely to bring any benefits to the Community industry, any increase in costs for users, importers or consumers - even a very tiny one - would be disproportionate. However, when measures are likely to improve the situation of the Community industry, a certain increase in costs for other parties will generally be considered to be tolerable.

# The Community interest test in anti-dumping and anti-subsidy proceedings

The main purpose of the Community interest test is to decide whether there are particular reasons not to impose measures in a given proceeding, despite a finding that the dumped or subsidised imports caused material injury to the Community industry. Since the application of this test can lead to the termination of a proceeding, despite the existence of unfair (i.e. dumped and/or subsidised) trade, the standards applied must be high. Considerations of Community interest should be overriding in order to prevail over the interest of the Community industry to compete on a level-playing field.

The steps undertaken in the analysis of the Community interest and the parameters to be assessed are clearly set by a consistent practice of the Community Institutions. The micro-economic industrial realities analysed are very diverse, as are the interests at stake. Hence, any thresholds above which the imposition of measures may be considered a priori to be against the Community interest are neither appropriate nor feasible.

## 1. LEGAL BASIS

The legal basis for the Community interest test is Art. 21 of the basic anti-dumping Regulation<sup>2</sup>, which calls for an ‘appreciation of all the various interests taken as a whole’. In this global appreciation, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition is given special consideration. The test to be carried out by the Community Institutions is a negative one, i.e. measures may not be applied where it can be clearly concluded that it is not in the Community interest to apply such measures.

The basic Regulations also specify the procedural aspects of the Community interest test, for instance the fact that any conclusions must be based on substantiated submissions made by interested parties and that these parties have extensive procedural rights and obligations. Finally, the Community interest provisions also set out a non-exhaustive list of interested parties which are directly concerned by the product under investigation. The parties mentioned are the complainants, importers and their representative associations, representative users and representative consumer organisations. Although suppliers are not explicitly mentioned in Art. 21, it is a standing practice to also consider their interests in the global analysis which is required.

Exporting producers are not considered as interested parties in the framework of the Community interest analysis. Nevertheless, the substance of the arguments which they put forward may be examined in order to have a broader, more exhaustive analysis. Furthermore, exporting producers receive final disclosure of the facts and considerations relating to Community interest.<sup>3</sup>

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<sup>2</sup> For anti-subsidy investigations, the legal basis is Art 31 of the basic anti-subsidy Regulation. In the remainder of the text references to anti-dumping should be understood as covering anti-subsidy as well.

<sup>3</sup> Joined Cases T-33/98 and T-34/98 *Petrotub SA and Republica Sa v. Council* [1999] ECR II-3837 (204).

It should be noted that the Community interest test does not reflect any equivalent WTO provision, as the WTO Anti-Dumping Agreement does not require - but neither prevents - a public interest test. It is thus a rather unique feature of EU law. Although some kind of public interest test has meanwhile been included in different forms in the legislation of some other WTO members, the Community appears to be the only WTO member who consistently applies it in such an elaborated and systematic way.<sup>4</sup>

## 2. NATURE AND CONTENT OF THE ANALYSIS

### 2.1. A global proportionality assessment of the economic effect of measures on different groups of interested parties

Once the existence of injurious dumping has been established, there is a presumption for the need to apply measures unless compelling reasons lead to the clear conclusion that these measures would not be in the Community interest.

The analysis required consists, firstly, of an evaluation of the likely consequences of the application or non-application of the envisaged measures on the interests of the Community industry and of other parties covered by the scope of Article 21.<sup>5</sup> This means basically that a prospective assessment has to be made in order to establish for each group of economic operators the likely effect of taking or not-taking measures. While such prognosis has to work with hypotheses, it is not speculative but based on factual data, past experience and evidence. This is not only the case for the Community industry, where the effect of the absence of measures can be deduced from the injury analysis, but also for other parties (e.g. data on past experience can show to what extent users can pass on a cost increase following an increase in the cost of raw materials).

Secondly, all the different interests examined have to be balanced against each other. In other words, it must be found that the disadvantage to the other interested parties would be clearly disproportionate to any advantages given to the Community industry by the imposition of measures. A clear disproportionality finding is relatively rare, as normally the negative impact of measures on certain parties is rather limited as compared to the benefits for the Community industry. Indeed, in the vast majority of cases, the positive effects of measures for the Community industry outweigh the possible negative impact on, for example, users and consumers. If, however, measures would e.g. not bring any benefit to the Community industry, their imposition would always be disproportionate. This would be the case where it is found that the Community industry is not viable anymore, and that even the imposition of measures could not be expected to allow its return to viability. It would also be the case if the Community industry would clearly not benefit from measures for other reasons, e.g. because substitute products would take over. In these particular cases, the application of anti-dumping measures would serve no purpose.

It should be borne in mind that the Community interest is that of the Community of 25 as a whole, intended as a single market. It should not be confused with the national interest

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<sup>4</sup> Other traditional users of the AD instrument, such as US and Australia do not apply a public interest test. The legislation of Canada provides for a public interest test, but it is not applied in such a systematic way as in the EC and its practical impact seems to be rather limited. Some new users (e.g. Argentina, Brazil, Zimbabwe, Malaysia) have also included the possibility to apply some kind of public interest test in their legislation, the contents and effect of which are however unclear.

<sup>5</sup> See Case T-132/2001 *Euroalliages et al. v. Commission* [2003] ECR II-nyp (47).

of individual Member States, nor should it be considered as the mere sum of the interests of the 25 individual Member States. Through their regular contacts with different categories of economic operators, Member States obtain information on the interests of all parties concerned and are well-placed to check the Commission services' evaluation with the feedback from those parties, when taking a position on the interest of the EU 25. However, it should be recalled that information which was not submitted to the investigating authorities, cannot be used as a basis for the findings. Member States have in this respect an important role in encouraging parties with whom they may be in contact, to participate in the investigation and to transmit any relevant information in their disposal to the Commission services.

The type of analysis to be carried out is a micro-economic assessment of the likely impact of the imposition or non-imposition of measures on the directly interested economic operators in the Community. It must focus on the situation of companies likely to be directly affected by the measures. This means that, normally, the analysis will go one step up or down in the chain of economic operators involved in dealing with the product concerned. For products not commonly sold at retail level, consumer organisations are to be involved if they can demonstrate an 'objective link' with the product concerned by the investigation.<sup>6</sup>

It follows from the above, that the Community interest test is not a cost-benefit analysis in the strict sense, i.e. while the various interests (advantages and disadvantages) are put in balance, they are not weighed against each other in a mathematical equation, not least because of obvious methodological difficulties in quantifying each factor with a reasonable margin of security within the time available, and because there is not just one generally accepted model for a cost-benefit analysis.

## 2.2. New investigations and reviews

It should be noted that the Community interest test is not only required in new investigations, but also has to be performed in expiry reviews<sup>7</sup> and full interim reviews. There, the essentially prospective analysis to be carried out, can use concrete evidence of the past impact of existing measures as an important source of information. For example, if it was found in the original investigation that the imposition of measures would in all likelihood not substantially affect users or importers, and none of these parties submits any comments in the review investigation, it can be reasonably concluded that any negative effects on them are negligible.<sup>8</sup> However, the examination of the past impact of measures cannot replace the requirement to carry out a new assessment of the consequences of maintaining measures and the balancing of the interests at stake. Indeed, it cannot be automatically presumed in an expiry review that, even if the likelihood of recurrence of dumping and injury has been established, measures would still be in the Community interest. Since circumstances might have changed, and since the corresponding test in the original investigation took only account of the normal lifetime of measures (i.e. five years), a new analysis of the Community interest is to be

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<sup>6</sup> Case T-256/97 *Bureau Européen des Unions de Consommateurs (BEUC) v. Commission* [2000] ECR II-101.

<sup>7</sup> See Case T-132/2001 *Euroalliages et al. v. Commission* [2003] ECR II-nyp (38 et seq).

<sup>8</sup> See e.g. Expiry review on **magnesium oxide** from China.

performed.<sup>9</sup> It should also be noted that changed circumstances with regard to the Community interest can be a sufficient ground for the initiation of an interim review.<sup>10</sup>

### **2.3. What is not covered by the scope of the Community interest test ?**

The focus of the analysis is on the economic effects on the interested parties. In this respect the question might be raised whether the test should also cover certain broader considerations (e.g. foreign policy, environmental policy, labour standards, regional policy, macro-economic effects of measures) that are sometimes invoked as relevant in the context of the imposition or non-imposition of measures, although the alleged link might be rather indirect.

As a general rule, taking this type of considerations into account would conflict with the precision and technical nature of the investigation and the instrument. Moreover, the above mentioned broader topics are already covered by specific legislation, which includes public interest considerations. Concerns relating to such broader aspects should consequently be addressed by other means than anti-dumping measures, in the appropriate respective context. Indeed, trade defence instruments should not be used as a means to enforce legislation, implement policies or address particular problems in other areas. In any event, the impact of such concerns at the micro-economic level of the interested parties is generally not likely to be material enough to rival with more direct price-related considerations.

For example, in *Lamps* it was argued that the imposition of measures was against the Community energy saving policies, as measures would result in the increase of retail prices for consumers and thus reduce the sales of energy saving lamps. This argument was rejected since the Community interest analysis focuses on the economic impact of measures on the economic operators concerned and the Community industry cannot be expected to bear the costs of the Community energy saving policies through suffering from unfair trade practices. In any event, it was also noted that, in the unlikely event of a price increase, there would still be a strong economic incentive for consumers to buy energy saving lamps.

On the other hand, considerations relating to general policy areas (e.g. environment) might exceptionally indirectly play a role, to the extent that they are linked to, or coincide with, the interests of certain interested parties. For example, in *PSF* it was considered that the imposition of duties would contribute to guarantee the viability of the PSF industry, which holds a central position in the recycling of PET bottles, as they are the main customer of the recycling industry (they consumed 70 % of the recycling of PET bottles during the IP). Since waste management and recycling are a priority of the Community, the measures would thereby also indirectly contribute to the achievement of environmental objectives.

Finally it should be noted that arguments relating to alleged economic advantages in exporting countries (e.g. lower wages) can clearly not be invoked against the imposition of measures, as the Community interest test is performed once a positive finding of dumping has been made.

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<sup>9</sup> See Case T-132/2001 *Euroalliages et al. v. Commission* [2003] ECR II-nyp (58).

<sup>10</sup> For further details on this issue, see Council clarification paper nr. 17.

### 3. THE ANALYSIS OF THE COMMUNITY INTEREST

#### 3.1. Collecting information

As stated above, Community interest findings must be based on concrete evidence collected from interested parties. The data collection and analysis should in precision and procedure resemble that carried out for the other aspects of the investigation, i.e. the establishment of dumping, injury and causal link, in order not to create a big disparity in the investigation. For this information collection, the Commission follows a proactive approach by inviting parties to participate in the Community interest investigation and to reply to the questionnaires sent to them. In particular, all interested parties known to be concerned and the relevant associations are contacted.<sup>11</sup> This includes Community producers, users and consumers, importers and traders, as well as the upstream industry (e.g. providers of raw materials or machinery). The time-scale for the completion of questionnaires is set out in the notice of initiation of an investigation. The Commission services try to accommodate any requests for extension of deadlines and, to the extent possible, and due account being taken of the obligation to ensure a non-discriminatory treatment, also to take into account late submissions of information. When Member States are in contact with economic operators that can provide relevant information, they are strongly invited to encourage them to fully cooperate in the investigation. It must be pointed out, however, that cooperation in this respect is often poor: very often numerous parties do not come forward or do so too late in the investigation. They frequently provide only unsubstantiated or unverifiable information or limit their submission to some mere statements in favour or against the imposition of measures. This hampers a detailed analysis of the economic impact of the measures on the interested parties (e.g. quantification of the likely cost increase for users) and forces the Institutions to resort to the use of (partial) facts available, e.g. from available statistical databases, economic studies, sectoral information or also previous investigations.

#### 3.2. The assessment of the different interests at stake

The interested parties have different, and usually even conflicting, interests *vis-à-vis* the imposition or non-imposition of measures. It is therefore necessary to identify and assess these various interests in order to finally balance them against each other.

Cooperation for each group of economic operators differs significantly from case to case, but is often poor. In cases where within a certain category only a few parties cooperate, special attention must be paid to their representativity for that industry as a whole. For the purpose of the Community interest analysis, the representativity of submissions for the sector concerned does not depend on their number or market share, but rather on

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<sup>11</sup> In order to identify those interested parties and relevant associations, the Commission services use in particular information requested from the Community industry, information collected in other investigations or information which is generally available (databases, sector information, Internet etc.). It should be noted in this respect that there are limits to the information that can be expected to be provided by the Community industry. If, for example, the Community industry was forced to name all its customers in all cases in the annex identifying the users, it would rightly complain that such annex would become an easy way for exporters to get in contact with these customers, which cannot be the purpose.

whether the companies constitute a typical sample of the different categories of economic operators of that sector.<sup>12</sup>

In practice, the following elements are normally addressed:

### ***1) Relevant interests of the Community industry***

#### ***a. Analysis***

When injurious dumping has been established, it can be presumed that anti-dumping measures are not against the interests of the Community industry. The analysis will therefore focus on the proportionality of the measures. Two aspects are particularly important in that respect.

First of all, the viability and future perspectives of the Community industry are looked at. Measures serve a purpose only if the Community industry is viable or has good perspectives to restore its viability and compete on the Community market if measures are imposed. If however an industry does not have the potential to recover and play a role on the Community market in terms of market share, production capacity, technology etc., anti-dumping measures would always have to be considered as disproportionate, even if the negative effect on other interested parties was very small.

Secondly, an analysis must be made of the likely effects of measures, or their absence, on the Community industry. These effects will vary, for instance, depending on whether the Community industry is likely to maintain its price level and increase its market share, as a consequence of the measures, or can rather be expected to raise prices and maintain the current market share with the price increase being passed on to the consumers. Furthermore, particular attention is given to the potential impact of measures, or their absence, on employment. In general, the higher the expected benefits for the Community industry in terms of, in particular, likely increases in sales volumes, market share, prices and profitability, and saved or created employment, the higher the weight of these considerations when balanced against any possible negative effect on other interested parties. If the Community industry would not, or only marginally, benefit from measures, for example because the market share of the dumped imports is likely to be taken over entirely by non-dumped, but equally low-priced imports from third countries, measures would not be justified.

#### ***b. Examples***

*In Laser Optical Reading Systems (LORS), it was found that the Community industry producing disc changers (a component of LORS) was still in a nascent phase. The Community industry was set up in an environment of depressed prices, at a moment when the product was already well-established on the market, i.e. at a very late stage, and was still only reaching a market share of 1,4 % during the investigation period. Under these circumstances, the future perspectives and viability of the Community industry were unclear. Therefore measures were not imposed, also in the light of the fact that any advantages for the Community industry were likely to be minimal given the relatively low level of employment affected, and were clearly disproportionate when weighed against the interests of consumers, importers and traders.*

*Similarly, in the Ferro-silicon expiry review the investigation showed that the Community industry had not been capable of benefiting sufficiently from the measures in place. This was evidenced in particular by its failure to maintain its market share, its deteriorating profit, the*

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<sup>12</sup> See also Case T-132/2001 *Euroalliages et al. v. Commission* [2003] ECR II-nyp (90).



closure of two companies and the reduction of employment in the remaining companies, even though imports from the countries concerned had almost disappeared. At the same time, the Community steel producers had had to bear negative effects of measures in the form of additional costs for many years. Since it was therefore not clear that maintaining measures would provide sizeable benefits to the Community industry, while it would unduly prolong the long-term negative effects for the steel industry, it was concluded that maintaining the measures would be contrary to the interests of the Community industry.

In **synthetic handbags**, it was found that it was not likely that the Community industry would benefit from any anti-dumping measures imposed, since synthetic handbags would in all likelihood be sourced from other third countries, not subject to measures, in the medium term. Consequently, most of the volume and price benefits from anti-dumping measures could be expected to go to exporters in third countries and not to the Community industry. Moreover, the consequences of the non-imposition of measures on employment in the Community synthetic handbags sector were relatively limited (ca. 500 jobs) as compared to the employment in the corresponding distribution sector (ca. 4 100 jobs). Finally, a comparison of the market shares of the Community industry (2 %) and the imports concerned (80 %) indicated that the impact of any measures on importers and traders would be clearly disproportionate to any possible benefit in the short term to the Community industry. Under these circumstances, and in view of the concurring significant impact which measures would have on consumers, importers and traders, no measures were imposed. The situation was, however, completely different for the **leather handbags** industry, which was found to be a viable, competitive industry, holding a significant share of the Community market and adding substantial creative value to the product in the form of know-how, design, innovation and quality. Measures on leather handbags were therefore found to be in the interest of the Community industry.

In **personal fax machines**, it was found that the Community industry continued to invest and to develop its own type of personal fax machine which would be shortly introduced on the market. The imposition of measures would enable the Community industry to maintain and further develop its activities in the Community. Furthermore, the imposition of measures was likely to save around 370 jobs directly linked to the product concerned and to positively affect around 4000 jobs. Overall, based also on other considerations, it was concluded that measures should be imposed.

In **Sulphanilic acid** it was found that there was no reason to doubt the viability and competitiveness of the Community industry under normal conditions of fair trade, even though one of the two Community producers constituting the Community industry had filed for protection from its creditors and its activities were being overseen by an administrator appointed by the Court of Commerce. The latter company would continue to exist for the immediate future and would therefore be in a position to benefit from measures. Moreover, the investigation showed that the Community industry had plans to increase its production capacity in order to meet the growing demand, but that these plans had to be deferred because of the low price level caused by the dumped imports. The imposition of measures would allow the Community industry to increase its sales volume and prices, thereby generating the necessary level of return to justify continued investment. If no measures were imposed, losses of the Community industry would continue and the company mentioned might not survive.

A case involving a vertically integrated industry was **Tungstic oxide and tungstic acid**. After the imposition of measures on tungstic oxide and acid originating in China, the Community industry continued to integrate vertically. The subsequent expiry review showed that most of the sales of the Community industry were captive. In addition, the Community industry was also integrated upstream, and sourced the raw material for tungstic oxide and acid from China as well. In these circumstances, it was not clear to what extent the industry's production chain was at risk in the absence of measures. Moreover, the industry was found to be vulnerable anyway given the very high dependence on supply of raw materials from China. In addition the effectiveness of the measures was doubtful and measures had negative effects on users. However, since already the likelihood of recurrence of injurious dumping was not clearly established, measures were not maintained for that reason, without the Community interest test being decisive.

*In the **Salmon** case it was concluded that the imposition of measures on imports from Chile would be inefficient since the Community industry was not likely to benefit from them. On the one hand, it was doubtful whether measures would lead to a price increase, given the small market share of Chilean salmon and of the Community industry, vis-à-vis other sources that may not increase prices. On the other hand, even if measures were to trigger a price increase to the benefit of the Community industry, the negative effects on other interested parties, and the resulting transfer of wealth to those producers/exporters in countries not subject to measures would greatly exceed the benefit to the Community industry.*

*By contrast, in the **DRAMs** case it was found that the Community industry was viable under normal market conditions. Following substantial rationalisation the remaining producers had made great efforts to keep at the front end of technological developments and were considered to be very competitive in world terms. Their situation had deteriorated sharply due to the subsidised imports from Korea which had led to very low prices. These in turn, had adversely affected the ability of the Community industry to remain profitable and to invest in order to remain competitive. In the absence of measures, the precarious situation of the Community industry would deteriorate to a point where its very existence could be at risk. The disappearance of this technologically advanced industry, with more than 10 000 employees, would have a significant negative effect on employment. Moreover, entry costs in the market are high and re-entry by existing producers or new ones would be unlikely. Therefore, measures, which would re-establish fair competition, were in the interest of the Community industry.*

*The review investigations on **GOES** found that the Community industry was viable and capable of benefitting from the protection offered by the anti-dumping measures. This was shown by its ability to improve its situation and restore a satisfactory level of profitability. Furthermore, the Community industry had made strong efforts to restructure and rationalise its production in order to remain competitive at Community and world level. As it was, however, still in a vulnerable situation, its efforts would be jeopardised if measures lapsed and dumping recurred.*

## **2) Relevant interests of importers and traders**

### **a. Analysis**

Since anti-dumping measures may have a considerable impact on the situation of importers and traders, the likely effect of measures on their economic position has to be considered in the Community interest analysis. In this respect, the mere fact that measures will lead to a cost increase for importers, can as such not be a reason not to impose measures. The analysis will rather focus on elements such as the importance of the product concerned for the business activity of the importers (does it represent only a minor part or a major share of the total turnover of the importers ?), their profit margins and the possibility to pass on cost increases to the purchasers. Furthermore, the availability of alternative sources of supply will be taken into account.

In this context it is often also argued that the Community production is insufficient to meet the entire demand within the Community, and that therefore imports are necessary. This argument is in general not valid as such, as anti-dumping measures are not intended to exclude the dumped imports from the Community market, but to ensure that they compete on a non-dumped or non-injurious price level with other suppliers on the Community market. Moreover, in most cases it is found that the imposition of measures does not lead to any problem of supply. Should there nevertheless be a risk of lack of supply, this would of course have to be taken into consideration in the analysis.

While normally importers will argue that the imposition of measures is not in their interests, it should be noted that this is not necessarily always the case. For certain products, it may happen, for example, that due to the speed of innovation the price of the

dumped imports has fallen to such an extent, that the profit margin of the importers has become too small. In such, admittedly more exceptional cases, the imposition of measures might be also in the interests of importers, as it might lead to an upward adjusted price level. Furthermore, measures can also be in the interest of importers, which also act as traders.

With respect to traders, the potential effect of measures on their situation depends on the product mix of the traded goods. To the extent that they also trade in the Community produced like product, their interests will coincide with those of the Community industry. Therefore, for traders selling both imported and Community produced products, the respective positive and negative effects of measures may often neutralise themselves.

As regards the potential impact on employment, importers will normally be less affected by the imposition of measures than the Community industry in case of non-imposition of measures, since importers in general produce less value added and thus less jobs are normally concerned. Furthermore, they usually also import other products and can in addition switch to other supply sources. Moreover, while employment in the Community industry might include high-qualified jobs requiring special know-how which the Community has an interest to keep, this is usually less the case for importers or traders. The interest of the Community industry might therefore generally prevail. So far there have not been cases where measures were not imposed only on the basis of the interests of importers or traders.

#### **b. Examples**

*In **Glyphosate** it was considered that, since most importers dealt with a range of products other than glyphosate, the impact of measures on their overall business would be limited. Moreover, the price decrease of glyphosate which importers expected if measures lapsed, would only have a limited financial benefit for importers, since they would be forced to pass on the bulk of their cost decrease to their customers due to competition.*

*In **Hollow sections** the investigation showed that the product concerned represented on average about 12 % of the cooperating sampled importers' total turnover. The proportion of employees directly or indirectly involved in the trading of the product concerned represented only 23 % of a total staff of 107 employees of these importers. Furthermore, the low proportion of the product concerned in the total costs of users should make it easier for importers to pass any price increase on to users. Therefore it was concluded that measures would not have a significantly negative effect on importers.*

*In **Bed linen** from Pakistan it was also found that only a small share of the turnover of the cooperating importers was generated by sales of the product concerned and that there were many other sources of supply. Therefore the impact of anti-dumping measures on these importers could be considered as minor.*

*Similarly, in **Welded tubes**, it was concluded that measures were not likely to have a significantly negative effect on the situation of importers/traders in the Community since the product concerned represented on average only 10 % of their total turnover and they were likely to pass any increase in prices of the product concerned on to users.*

*Conversely, in CD-Rs, the imposition of measures was found to be also in the interests of importers. Prices of the dumped imports had decreased to such an extent that a normal trading contribution margin was no longer sufficient to cover the importers' overhead costs. Moreover, the decrease of market prices occurred at such a pace that importers were faced with rapid value deterioration of goods in transit, creating a situation in which the purchase price occasionally exceeded the eventual sales price. Under these conditions it was found that measures would serve the interests of importers by restoring an adequate sales price level on the Community market.*

*In Tube and pipe fittings it was found that a number of importers also traded in Community produced tube and pipe fittings, that only a low number of companies importing from the countries concerned objected to measures and that supplies from third countries with no duty would still be available. Therefore measures would not have a significant negative effect on importers or traders.*

### **3) Relevant interests of suppliers**

#### **a. Analysis**

The likely impact of measures on the upstream industry will mainly depend on the extent to which they are economically dependent on the Community industry.

In principle, the positive effect of measures for the Community industry will have direct positive consequences for the suppliers, especially if both industries closely work together. Similarly, a likely deterioration of the situation of the Community industry will negatively impact on the position of the upstream industry. Thus, considerations regarding the interests of suppliers often reinforce the appreciation of the Community interest in favour of measures.

If the upstream industry also supplies the exporters, the possible negative effects of measures on their position will normally be outweighed by the positive effects on the Community industry, from which they also benefit. The existence of a strongly export-oriented upstream industry may exceptionally also speak against the imposition of measures or can alleviate the negative consequences of the non-imposition of measures.

The interests of upstream suppliers located outside the Community are not taken into consideration in the analysis in line with the treatment of exporters in the exporting country concerned.

#### **b. Examples**

*In PTFE the investigation showed that the majority of raw material suppliers worked closely with the Community industry and derived a high a large part of their turnover (75 %) from sales to granular PTFE producers. Therefore any reduction in the Community industry's purchases would have a significant effect on the situation of suppliers. Moreover, it was argued that without the imposition of measures there was a risk of delocation of the Community industry to third countries. This would force the suppliers to search for clients outside the Community, where they would be in competition with traditional indigenous suppliers of raw materials and face additional export costs, which would further erode their already low profit margins. It was therefore provisionally concluded that the imposition of measures was in the interests of the upstream industry.*

*In **Welded tubes** it was found that the co-operating producers of the main raw material used in the product concerned (hot-rolled coils), which employed around 92 000 people, were likely to face a reduction in demand if no measures were imposed. Moreover, as they had already faced unfair competition in the past, they would have even more difficulties in recovering from past dumping. With the imposition of measures, the upstream industry would continue to benefit from the existence of a demand of hot-rolled coils in the Community. Measures were therefore in their interest.*

#### **4) Relevant interests of users**

##### **a. Analysis**

The interests of the downstream industry, which uses the product under investigation for further processing, will depend on whether they predominantly purchase from the Community industry, from the dumping exporters or from third countries. The degree of their dependence on each of these sources of supply determines the impact of measures. Furthermore, the importance of the product under investigation for the final product manufactured by the users, and the potential cost impact of measures play a crucial role.

The fear for a cost increase and the negative consequences for the user industry resulting therefrom, is typically the main argument invoked by users against the imposition of measures. Any increase in the cost of a processing industry's raw materials may indeed affect its ability to compete with other processors both on the Community market and in third countries. For users which mainly purchase their inputs from the dumping exporters, the negative effects of measures on their cost structure can be considerable.

However, the assessment of the impact on users is often hostage of misconceptions. Since the product under investigation will typically be only one of several input factors for the user industry, it is normal that this latter industry is larger, has higher employment and a larger turnover than the Community industry. Thus, while employment considerations are obviously taken into account, a simple comparison of employment or of number of companies is not appropriate for the analysis. Similarly, it would not be adequate to only consider the absolute amount of likely cost increases for users due to the imposition of measures. Otherwise, the whole exercise would be meaningless, since almost by default no measures would be imposed.

In practice, the investigation will first establish how much the product concerned represents in the cost of production (and not, as interested parties frequently claim the costs of raw materials or cost of manufacturing only) of the users. Thereafter, the likely cost increase following the imposition of measures has to be determined. The latter analysis focuses mainly on two aspects. First of all, in order to determine the likely cost increase, account will be taken of alternative sources of supply. For example, the availability of non-dumped imports from the country concerned, from the Community industry or from third countries, or the existence of exporters with comparatively low anti-dumping duties would allow users to switch to these sources, thereby limiting the effect of measures.

Secondly, the likely cost increase for the users will be determined, as compared to their profitability situation (in other words, the impact on the net margin). In this respect, it is important to consider whether or not the user industry would be likely to pass on any cost increases to the next stage of the economic chain. This, naturally, encompasses a consideration of the competitive situation of the user market. Where users are exposed to strong competition, it may be more difficult or even impossible to pass on a cost

increase. In that scenario the negative impact of measures would carry a relatively high weight in the global assessment, especially if the product concerned represents an important part of the production costs of the users and if their profit margins are already low. If however measures would lead to a general price increase, affecting all economic operators in the same way, the cost increase for the users would be neutralised or at least mitigated. For the assessment of the likely impact of measures on the situation of users, evidence on cost increases in the past can be an important source of information to take into consideration.

The determination of the likely cost increase is often complicated by the lack of full cooperation from the user industry. If no precise information in this respect is provided, conclusions have to be reached on the basis of the facts available, which may not allow a representative, arithmetical quantification of the effects of the measures on the downstream industry. The lack of cooperation from users can indicate that the product concerned represents only a small part of their cost of production and that they would not be significantly affected by anti-dumping measures. In exceptional cases, however, e.g. when SME are involved, low cooperation might also be due to resource considerations. This problem, however, exists also for other aspects of the investigation.

Finally it should be noted that users sourcing from the Community industry can in principle benefit from the improved situation of their suppliers and also have a competitive advantage as compared to other users, which after the imposition of measures will face higher costs.<sup>13</sup> However, to the extent that they compete with companies from third countries that continue to have access to the dumped imports, they can have a competitive disadvantage both in the Community and on third country markets, which has to be taken into consideration in the analysis.

The assessment of the impact on users must be made in the light of a proportionality test. It must take into account the likely positive impact of measures on the Community industry and other interested parties. When measures are not likely to bring any benefits, any increase in costs for users - even a very tiny one - would be disproportionate. However, when measures are likely to improve the situation of the Community industry, a certain increase in costs for users will generally be considered to be tolerable. At the same time, the level of cost increase above which measures would be disproportionate will depend on many factors. These would certainly include the level of competition on the market, the current level of profitability compared to that of the Community industry, the availability of other sources of supply, the employment involved, etc.. Therefore, a fixed threshold above which any increase in costs would be disproportionate cannot be set.

### ***b. Examples***

*In gum rosin from China, it was found that the imposition of measures would lead to a substantial cost increase for users from numerous, high added value industries, supporting a large number of jobs. In addition, the imposition of anti-dumping measures would not be adequate to remove the injury, since it would provoke a significant increase in the price of gum rosin, which would render more expensive substitute products competitive. This would result in a*

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<sup>13</sup> While prices of the Community industry might rise, they will normally not increase to the same extent as the imports plus duty because the Community industry typically benefits from measures via economies of scale. Moreover, it should be recalled that, since prices have often dropped before the imposition of measures, the increase is just a readjustment to the normal price level.

quick penetration of the Community market by those substitute products, with a consequent global increase in costs. In comparison, measures would have only benefited SMEs located solely in one Member State. As the negative effects of measures were therefore disproportionate to the benefits for the Community industry, no measures were imposed.

The following cost increases were found not to be disproportionate in the circumstances of the case:

In **Magnesia bricks** the product concerned represented significantly less than 1 % of total costs; so that the anti-dumping duties would only have a marginal influence on the total costs in the steel making process.

In **PSF** users claimed that they operated in a highly price sensitive market and that even a small cost increase could not be passed on to the final customer due to the already fierce competition in the end-product market. However, it was found that the likely cost increase for the downstream industry would be in the region of 0,40 % so that, even if this could not be passed on to customers, the impact on the financial situation of users would not be significant.

In **PET** it was concluded that the cost of PET for mineral and spring water producers only represented 3 cents at the level of the end-consumer, or 6-10 % of the retail price, which means that a 10 % price increase would entail a possible maximum price increase of 0,6 % to 1 % at the level of the end consumer, if all the costs are passed on. This increase was not considered significant because it could either be absorbed by the downstream industry or passed on to retailers or end-consumers. Similarly, as regards the soft drink producers, the same increase of 10 % of PET prices would entail a minor 0,3 % increase of the price for end-consumers. As this increase is marginal, the users could be expected to be able to pass it on to the retailers and the end-consumers.

In **Sodium cyclamate** the possible financial impact of measures was found to be significantly below 1 % of the total manufacturing costs of the cooperating user, which was not considered to unduly affect the interests of users.

In **Graphite electrode systems** the investigation showed that the possible cost impact on users would be between 0,15 (worst case scenario) and 0,03 % (more favourable scenario), depending on whether the prices of the Community industry and those of the imports concerned would both increase by the level of the duty (between 12 and 20 %), or only the imports would increase by this amount. A cost increase somewhere in the middle of both hypotheses was considered the most realistic scenario as the Community industry had also spare capacities and could therefore increase production (thus achieving economies of scale), while the price increase was likely to be moderate. It was found unlikely that such limited cost increase for the users would seriously affect their financial situation.

In **Urea** it was found that in a worst case scenario, measures would result in an average cost increase of 0,6 % for farmers using urea as their only fertiliser. However, given that importers/traders would probably not pass on the duties in full and that farmers increasingly sourced urea from other countries not subject to measures or from the Community industry, it was found highly unlikely that farmers would feel this full impact. For the same reasons the possible hypothetical impact on industrial users of 3,2 to 4,2 % in the worst case scenario, was not very likely. This was confirmed by the absence of comments by industrial users on this assessment. Therefore, the impact on users was not such as to make the imposition of measures against the Community interest.

In **Sulphanilic acid** the Commission sought to quantify the possible financial impact of measures on users by taking into account both the origins of their sulphanilic acid purchases and its share in their overall manufacturing costs. As measures were based on the dumping margins, it was assumed that prices of imports from the countries concerned would increase by the duties. On that basis it was found that measures would increase the full costs of optical brighteners by somewhat less than 1 % , of dyes and colorants by somewhat less than 1 % and of concrete additives by less than 2 %. For the latter group of users, it was also found that the turnover of products containing sulphanilic acids represented a very small part (less than 5 %) of the total

turnover of the cooperating companies. Overall it was concluded that the imposition of measures would slightly affect the financial situation of users, but would not endanger their overall activities or lead them to relocate their production outside the Community.

In **Zinc oxide** it was found that the imposition of measures would lead to an increase of less than 4 % of total costs for the frit and glaze makers. The investigation showed that they were in a sufficiently strong financial position to be able to absorb this increase, but that they could in all likelihood pass it on to their customers in the tile producing sector. Therefore measures would not have a major adverse impact on their activities.

In **Hot-rolled coils** it was estimated that the imposition of an anti-dumping duty of 8 % may prompt an increase of around 1,6 % in the overall costs of the raw materials for the users. This extra cost would cause an estimated increase in the full cost of production of about 1,1 % given the mix of various sources of purchases and the average value added in the down-stream products. This was found not to be such as to endanger the profitability of the user industry and not to outweigh the positive effects of measures on all other operators in the Community market.

In **Silicon** users opposed the imposition of measures because of the expected cost increase, but did not provide information to allow an assessment of the impact of measures on their costs or profitability. On the basis of the information available, and following on-spot visits, it was found that the cost increase for metallurgical users would be in the order of EUR 11 per tonne of finished product, i.e. by 0,8 %, which was not considered to be against the Community interest.

## **5) Relevant interests of consumers**

### **a. Analysis**

Consumers are situated at the end of the distribution chain and constitute a rather heterogeneous group whose purchasing decisions cannot always be rationalised in commercial terms (e.g. brand loyalty despite the availability of cheaper substitutes). The possible impact of measures on consumers may therefore be difficult to ascertain. Furthermore, it should be noted that anti-dumping measures normally only have a direct effect on the interests of consumers in proceedings concerning consumer goods. For these reasons the interests of consumers will rarely play a decisive role in the Community interest test.

The assessment of consumers' interests will generally concentrate on two factors. First of all, the danger of price increases, which might result from the imposition of anti-dumping measures and which would have to be borne by final consumers should be considered. As for the users, the impact of the imposition of measures on consumers will depend on the extent to which price increases are passed on to final consumers. In a very competitive market, for example, the Community industry may decide not to increase their prices, or importers from the country concerned may have to reduce their profit margin, so that the final impact of measures on consumers remains limited. Price increases will most likely also be insignificant if exporters from the country concerned already have production plants within the Community. On the other hand, it is often rather normal that anti-dumping measures lead to some price increase (directly for the imports from the country concerned, indirectly for the Community industry, which may adjust to the higher price level). This is ultimately the purpose of anti-dumping measures. Finally, it should be noted that price increases are as such not necessarily a valid argument against the imposition of measures, since the short-term advantage of being



supplied with low-priced dumped products may soon disappear, following reduced competition if the Community industry were driven out of the market.<sup>14</sup>

Secondly, the preservation of consumer choice is to be taken into account. The imposition of measures may lead to a restriction of consumer choice if it can be expected that it would result in all or some of the exporters no longer being interested in the Community market. Depending on the level of the measures and the amount of competition this might indeed happen. However, the effect of measures on consumer choice would not be significant if there are many other sources of the product (Community industry, imports from third countries, non-dumped imports from the country concerned), especially if these also offer comparable product types and quality. Moreover, imports from the country concerned should normally also remain available, albeit at higher prices. Finally, there is also no risk of a reduction in consumer choice if exporters from the country concerned have already set up production plants in the Community.

On the other hand, where it is likely that the imposition of measures would not only lead to a reduced choice for consumers but to a real shortage of supply, the interests of consumers may prevail over the interests of the Community industry.

#### **b. Examples**

*In **LORS**, it was found that the imposition of measures was likely to severely limit consumer choice, as many exporters would be likely to withdraw from the Community market after the imposition of measures. The consequent loss of choice in the variety of models available could not be compensated in the foreseeable future by the Community industry. The high market presence of the exporters and the fact that they offered a wide model range comprising high quality products, would mean that, if they were to withdraw, consumers would be deprived of taking advantage of technological variety and development, without any viable alternative for the foreseeable future. In that situation it was found that the interests of consumers by far outweighed those of the Community industry.*

*However, in **personal fax machines** a different conclusion was reached. First of all, the increase in costs due to measures was estimated at 6 ECU a year for consumers, a very moderate amount, which would be even further neutralised by the normal price decreases for this product. Furthermore, the consumer would be able to rely on a growing market supply from the Community industry, which was likely to keep its prices stable. It was therefore concluded that the charge to consumers resulting from the imposition of measures would be moderate compared to the benefits of securing the continuation of industrial activities and employment requiring high qualifications in the Community.*

*In **Ring binder mechanisms I** it was found that in a worst case scenario, i.e. should the cost increase that the users might suffer be passed on in full to the final consumer, this would entail a price increase of a maximum of 4 % for the final consumer. However, it was considered that this was unlikely to occur, since experience showed that each step in the distribution chain was likely to support part of its cost increase in order to stay competitive on its market.*

*In **leather handbags** it was found that the effect of the duty on the consumer in the form of a price increase was not likely to exceed 9 %. It was also considered that, leather handbags being a fashion product, not purchased on a regular basis, consumers did not have a clear perception of the appropriate price, so that a moderate price increase was not likely to affect demand substantially in the long term. Therefore it was not expected that the impact of measures on the consumer would be significant.*

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<sup>14</sup> This problem may not arise if the level of competition from all third countries is high.

*In the **DRAMs** case it was also concluded that consumers would not be significantly affected by the imposition of measures. Even if the DRAMs prices would increase by the full amount of the duty, the impact on the prices of PCs would be limited to around 1 %. However, the effect was likely to be smaller given the chronic overcapacity worldwide.*

*In **Colour television receivers**, it was concluded on the basis of the facts available that the impact of measures on consumers would be limited given the large number of players active in the market, the large number of products which they offered and the high level of price competition between brands.*

## **6) Competition**

### **a. Analysis**

Although not explicitly mentioned in Article 21 of the basic Regulation as a factor to be considered in the Community interest test, the preservation of a competitive situation on the market is a relevant consideration in the context of the assessment of the potential effect of measures on, in particular, the Community industry, users, consumers and suppliers. Indeed, if measures lead to less competition, this may have negative consequences for other parties in terms of increasing prices, reduced choice etc.

The question whether anti-dumping measures could reduce effective competition arises if the Community industry only consists of a limited number of producers with a significant market share. In such situation the danger of reducing competition, creating or strengthening an oligopolistic/monopolistic market structure or a dominant position on the market, must be assessed and taken into account. In this respect, however, the sole fact that a Community producer already has a dominant market position, would not be a reason to consider that his interests are less worthwhile of protection against unfair trade. The maintenance of a dominant position is as such not against the Community interest, as long no abuse is made of such dominant position.

Anti-dumping measures may also prevent the creation of a dominant position of the exporter(s), where dumping practices of the latter are likely to drive the Community industry out of the market if no measures are imposed. In that situation competition considerations would plead in favour of measures. Whether or not the risk of a dominant position of exporters exists depends in particular on the number of exporters and the structure of the exporting market(s) concerned.

In general, the risk of a reduction of competition does not exist if enough alternative sources of supply, in particular imports from third countries, remain to ensure effective competition.

Linked to the risk of a reduction of competition is the fear of a shortage of supply. The argument that the imposition of measures may endanger a sufficient supply of the product concerned is often invoked by the user industry. However, in most cases it is found that measures will not lead to any supply problems because, on the one hand, imports from the country concerned will remain available, albeit at higher prices, on the other hand alternative sources of supply exist from third countries or from the Community industry which may have spare capacity or could increase its capacity. The risk of a supply shortage might also be invoked by other interested parties such as

consumers, but is rarely confirmed by the investigation or by subsequent reviews or monitoring exercises.

If the Community industry has been found to engage in anti-competitive practices, the possible reduction of competition following the imposition of anti-dumping measures must be examined with special care.<sup>15</sup> Obviously, measures to protect a cartel cannot be in the Community interest. However, it should be noted that a past infringement of the EC competition rules is as such not a reason to deprive the Community industry from its rights to obtain relief against dumping practices. Furthermore, if the involvement in anti-competitive practices did not relate to the product concerned, it would not be considered relevant in the context of the anti-dumping proceeding.

### ***b. Examples***

*In **Polysulphide polymers** from the USA it was found that the absence of measures could lead to the withdrawal of the Community industry and thus to a monopoly situation with higher price levels, as only the American exporter would be left on the Community market. Measures would allow the Community producer to stay in the market, thus preserving competition, which was found to be beneficial to users in the long term.*

*In **Glycine** from China (provisional measures), it was found that if the sole Community producer of glycine disappeared from the market, the Chinese exporters would be in a position to supply over 80 % of Community demand, leading to a quasi-monopoly situation. This would in the long term be detrimental to the interest of users. Therefore, measures were provisionally found not to be against the Community interest.*

*Similarly, in **Ring binder mechanisms II** the Community industry was reduced to one company group, after several companies had closed down. Moreover, there were only a few producers of ring binder mechanisms worldwide, mostly Chinese or under Chinese control. In these circumstances, it was considered that should the Community industry cease to exist, this would have negative effects on competition in the Community since users would become almost totally dependent on imports from China and/or from Chinese subsidiaries in third countries. Chinese producers would then have an incentive to substantially increase their price levels which would endanger the competitiveness of user industries.*

*In the **Coumarin** expiry review it had been argued that the existing measures had eliminated Chinese coumarin from the Community market, leading to a monopoly of the sole Community producer. However, it was found that several alternative sources of supply still existed, with Japan and India still having non-negligible market shares, and that there were no indications of anti-competitive practices of the Community producer, whose sales prices had decreased over the period under review. Therefore competition-related concerns were considered not to be a compelling reason against the continuation of the measures.*

*In **Sulphanilic acid** it was found that if measures were not imposed, the Community industry could be forced out of production. This would further reduce the number of suppliers on the Community market, while production outside the Community was already concentrated in relatively few countries. Measures would therefore help to protect the choice of user industries and maintain competition on the Community market.*

*In **Magnesia bricks** from China the user industry had argued that measures would strengthen a market structure consisting of few important producers. However, it was found that the largest*

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<sup>15</sup> In this respect, DG TRADE cooperates with DG COMP in order to determine whether any anti-competitive practices have been established or are being investigated relating to the product subject to examination. As a matter of routine, contact is established in all cases with very few actors on the market.

producer had around 30 % of market share, which was unlikely to be large enough to control and dominate the market. This was supported by the fact that imports from the PRC had eroded this market share. These imports were likely to continue after the imposition of measures. Moreover, there were a number of small producers in the Community and no evidence was provided on how the large players had dominated the market or on other incompetent behaviour.

In **Paracresol** from China one user industry feared that the complainant Community producer could use anti-dumping measures to reinforce its position and possibly dominate supply and price developments. It was found, however, that duties would not result in a significant reduction of competition or a shortage of supply. Imports from China were expected to remain available at competitive prices, as the duties were below the levels of undercutting found. Furthermore, alternative sources of supply from third countries were available. In addition, it was also expected that the Community industry would increase its production and sales. As there would thus still be a sufficient number of major competitors on the market, users and consumers would continue to have the choice of different suppliers. The shortage of supply that appeared after the imposition of provisional measures was found to be due to temporary circumstances, such as technical and management problems, both in the Community and in China, which were unlikely to persist. If on the other hand, no measures were imposed, it was considered that the future of the sole Community producer would be at stake and its disappearance would effectively reduce competition on the Community market. For these reasons it was concluded that measures would not have a decisive impact on users and that there were no compelling reasons not to impose measures.

In **Glyphosate** it was alleged that two Community producers operated a cartel. However, since no sufficient evidence in this respect was provided and no anti-trust proceeding had been initiated, this argument was rejected.

In **Graphite electrode systems** the Community producers had been involved in a cartel and were fined by the Commission several years before the IP. Since the anti-competitive behaviour had been terminated, it was considered that the Community industry should not be deprived of its right to obtain relief against unfair trade practices.

### **3.3. The global appreciation of the different interests as a whole**

The Community interest test requires a global appreciation of different, often contradictory interests. After the effect of imposing anti-dumping measures or, alternatively, maintaining the status quo, has been established for each group of interested parties, the different interests have to be weighed against each other. Negative consequences for one group of economic operators might be outweighed by positive consequences for other parties, and vice versa. In this global appreciation, the degree of participation of a group of economic operators and the quality of the data provided plays an important role.

This evaluation cannot be a mathematical, quantitative comparison according to standard parameters, but has to be performed on a case-by-case basis. It is basically an expression of the principle of proportionality, whereby measures would not be in the Community interest if disadvantages to one group of economic operators would clearly be disproportionate to the advantages enjoyed by another one. Whether this is the case will depend on a number of varying factors which need to be balanced against each other in a prospective assessment. These factors are often interlinked and may carry a different weight depending on the circumstances of the case. Therefore it would not be appropriate nor feasible to define general criteria and thresholds, for instance above or below which there would be a presumption that any impact on users would be minimal.

#### **4. CONCLUSION**

The Community interest test is an important aspect of anti-dumping and anti-subsidy investigations. It requires an assessment of whether there are compelling reasons for concluding that, in spite of a finding of dumping and resulting injury, the imposition of measures would not be in the global interest of the Community. This may be the case if the negative economic impact which measures would be likely to have on one category of economic operators, is disproportionate to any benefits for other groups of interested parties.

The diversity and interlinkage of the interests involved and factors to be taken into account make it impossible to reduce the proportionality analysis to a set of fixed thresholds or pre-determined rules. However, over the years the Institutions have developed a clear practice, reflected in the above examples, which gives guidance on how the Community interest test is interpreted and applied.

## **Annex: list of cases**

**Bed linen:** Council Regulation (EC) N° 397/2004 of 2 March 2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (OJ L 66, 4.3.2004, p. 1).

**CD-Rs:** Commission Regulation (EC) N° 2479/2001 of 17 December 2001 imposing a provisional anti-dumping duty on imports of recordable compact disks originating in Taiwan (OJ L 334, 18.12.2001, p. 8) and Council Regulation (EC) N° 1050/2002 of 13 June 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of recordable compact disks originating in Taiwan (OJ L 160, 18.6.2002, p. 2).

**Colour television receivers:** Council Regulation (EC) N° 1531/2002 of 14 August 2002 imposing a definitive anti-dumping duty on imports of colour television receivers originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand and terminating the proceeding regarding imports of colour television receivers originating in Singapore (OJ L 231, 29.8.2002, p. 1).

**Coumarin:** Council Regulation (EC) N° 769/2002 of 7 May 2002 imposing a definitive anti-dumping duty on imports of coumarin originating in the People's Republic of China (OJ L 123, 9.5.2002, p. 1).

**DRAMs:** Commission Regulation (EC) N° 708/2003 of 23 April 2003 imposing a provisional countervailing duty on imports of certain electronic microcircuits known as DRAMs (dynamic random access memories) originating in the Republic of Korea (OJ L 102, 24.4.2003, p. 7) and Council Regulation (EC) N° 1480/2003 of 11 August 2003 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain electronic microcircuits known as DRAMs (dynamic random access memories) originating in the Republic of Korea (OJ L 21/2, 22.8.2003, p. 1).

**Ferro-silicon:** Commission Decision (EC) of 21 February 2001 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela (OJ L 84, 23.3.2001, p. 36).

**Glyphosate:** Council Regulation (EC) N° 1683/2004 of 24 September 2004 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China (OJ L 303, 30.9.2004, p. 1).

**Glycine:** Commission Regulation (EC) N° 1043/2000 of 18 May 2000 imposing a provisional anti-dumping duty on imports of glycine originating in the People's Republic of China (OJ L 118, 19.5.2000, p. 6).

**GOES:** Council Regulation (EC) N° 151/2003 of 27 January 2003 imposing a definitive anti-dumping duty on imports of certain grain oriented electrical sheets originating in Russia (OJ L 25, 30.1.2003, p. 7).

**Graphite electrode systems:** Commission Regulation (EC) N° 1009/2004 of 19 May 2004 imposing a provisional anti-dumping duty on imports of certain graphite electrode systems originating in India (OJ L 183, 20.5.2004, p. 61) and Council Regulation (EC) N° 1629/2004 of 13 September 2004 imposing a definitive anti-dumping duty and

collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India (OJ L 295, 19.9.2004, p. 10).

**Gum Rosin:** Commission Decision of 10 January 1994 terminating the anti-dumping proceeding concerning imports of gum rosin originating in the People's Republic of China and Taiwan (OJ L 41, 12.2.1994, p. 50).

**Handbags:** Council Regulation (EC) N° 1567/97 of 1 August 1997 imposing a definitive anti-dumping duty on imports of leather handbags originating in the People's Republic of China and terminating the proceeding concerning imports of plastic and textile handbags originating in the People's Republic of China (OJ L 208, 2.8.1997, p. 31).

**Hollow sections:** Commission Regulation (EC) N° 1251/2003 of 14 July 2003 imposing a provisional anti-dumping duty on imports of hollow sections originating in Turkey (OJ L 175, 15.7.2003, p. 3).

**Hot-rolled coils:** Commission Decision No 283/2000/ECSC of 4 February 2000 imposing a definitive anti-dumping duty on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating in Bulgaria, India, South Africa, Taiwan and the Federal Republic of Yugoslavia and accepting undertakings offered by certain exporting producers and terminating the proceeding concerning imports originating in Iran (OJ L 31, 5.2.2000, p. 15).

**Lamps:** Commission Regulation (EC) N° 255/2001 of 7 February 2001 imposing a provisional anti-dumping duty on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China (OJ L 38, 8.2.2001, p. 8) and Council Regulation (EC) N° 1470/2001 of 16 July 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China (OJ L 195, 19.7.2001, p. 8).

**Laser optical reading systems (LORS):** Commission Decision of 21 December 1998 terminating the anti-dumping proceeding concerning imports of certain laser optical reading systems, and the main constituent elements thereof, for use in motor vehicles, originating in Japan, Korea, Malaysia, the People's Republic of China and Taiwan (OJ L 18, 23.1.1999, p. 62).

**Magnesia bricks:** Commission Regulation (EC) N° 552/2005 of 11 April 2005 imposing a provisional anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China (OJ L 93, 12.4.2005, p. 6).

**Magnesium Oxide:** Council Regulation (EC) N° 778/2005 of 23 May 2005 imposing a definitive anti-dumping duty on imports of magnesium oxide originating in the People's Republic of China (OJ L 131, 25.5.2005, p. 1).

**Paracresol:** Commission Regulation (EC) N° 510/2003 of 20 March 2003 imposing provisional anti-dumping duties on imports of paracresol originating in the People's Republic of China (OJ L 75, 21.3.2003, p. 12) and Council Regulation (EC) N° 1656/2003 of 11 September 2003 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of para-cresol originating in the People's Republic of China (OJ L 234, 20.9.2003, p. 1).

**Personal fax machines:** Council Regulation (EC) N° 904/98 imposing definitive anti-dumping duties on imports into the Community of personal fax machines originating in the People's Republic of China, Japan, the Republic of Korea, Malaysia, Singapore, Taiwan and Thailand (OJ L 128, 30.4.1998, p. 1)

**PET:** Council Regulation (EC) N° 1467/2004 of 13 August 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed (OJ L 271, 19.8.2004, p. 1).

**Polysulphide polymers:** Council Regulation (EC) N° 1965/98 of 9 September 1998 imposing a definitive anti-dumping duty on imports of polysulphide polymers originating in the United States of America and collecting definitively the provisional duty imposed (OJ L 255, 17.9.1998, p. 1).

**PSF:** Council Regulation (EC) N° 428/2005 of 10 March 2005 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan (OJ L 71, 17.3.2005, p. 1).

**PTFE:** Commission Regulation (EC) N° 862/2005 of 7 June 2005 imposing provisional anti-dumping duties on imports of granular polytetrafluorethylene (PTFE) originating in Russia and the People's Republic of China (OJ L 144, 8.6.2005, p. 11).

**Ring binder mechanisms I:** Council Regulation (EC) N° 976/2002 of 4 June 2002 imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms (RBM) originating in Indonesia and terminating the anti-dumping proceeding in respect of imports of certain RBM originating in India (OJ L 150, 8.6.2002, p. 1).

**Ring binder mechanisms II:** Council Regulation (EC) N° 2074/2004 of 29 November 2004 imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms originating in the People's Republic of China (OJ L 359, 4.12.2004, p. 11).

**Salmon:** Council Regulation (EC) N° 930/2003 of 26 May 2003 terminating the anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon originating in Norway and the anti-dumping proceeding concerning imports of farmed Atlantic salmon originating in Chile and the Faeroe Islands (OJ L 133, 29.5.2003, p. 1).

**Silicon:** Council Regulation (EC) N° 2229/2003 of 22 December 2003 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of silicon originating in Russia (OJ L 339, 24.12.2003, p. 3).

**Sodium cyclamate:** Commission Regulation (EC) N° 1627/2003 of 17 September 2003 imposing a provisional anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia (OJ L 232, 18.9.2003, p. 12) and Council Regulation (EC) N° 435/2004 of 8 March 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of sodium cyclamate originating in the People's Republic of China and Indonesia (OJ L 72, 11.3.2004, p. 1).



**Sulphanilic acid:** Commission Regulation (EC) N° 575/2002 of 3 March 2002 imposing a provisional anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China and India (OJ L 87, 4.4.2002, p. 28) and Council Regulation (EC) N° 1339/2002 of 22 July 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of sulphanilic acid originating in the People's Republic of China and India (OJ L 196, 25.7.2002, p. 11).

**Tube and pipe fittings:** Commission Regulation (EC) N° 358/2002 of 27 February 2002 imposing a provisional anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia and accepting an undertaking offered by an exporting producer in Slovakia (OJ L 56, 27.2.2002, p. 4) and Council Regulation (EC) N° 1514/2002 of 19 August 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain tube and pipe fittings, of iron or steel originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia (OJ L 282, 24.8.2002, p. 1).

**Tungstic oxide and tungstic acid:** Commission Decision of 20 March 1998 terminating the anti-dumping proceeding concerning imports of tungstic oxide and tungstic acid originating in the People's Republic of China (OJ L 87, 21.3.1998, p. 24).

**Urea:** Commission Regulation (EC) N° 1497/2001 of 20 July 2001 imposing provisional anti-dumping duties on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine, accepting an undertaking offered by the exporting producer in Bulgaria and terminating the proceeding as regards imports of urea originating from Egypt and Poland (OJ L 197, 21.7.2001, p. 4) and Council Regulation (EC) N° 92/2002 of 17 January 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional anti-dumping duty imposed on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine (OJ L 17, 19.1.2002, p.1).

**Welded tubes:** Commission Regulation (EC) N° 540/2002 of 26 March 2002 imposing a provisional anti-dumping duty on imports of certain welded tubes and pipes, of iron or non-alloy steel originating in the Czech Republic, Poland, Thailand, Turkey and the Ukraine (OJ L 83, 27.3.2002, p. 3) and Council Regulation (EC) N° 1697/2002 of 23 September 2002 imposing definitive anti-dumping duties on imports of certain welded tubes and pipes, of iron or non-alloy steel originating in the Czech Republic, Poland, Thailand, Turkey and Ukraine (OJ L 259, 27.9.2002, p. 8).

**Zinc oxide:** Commission Regulation (EC) N° 1827/2001 of 17 September 2001 imposing a provisional anti-dumping duty on imports of certain zinc oxides originating in the People's Republic of China (OJ L 248, 18.9.2001, p. 17) and Council Regulation (EC) N° 408/2002 of 28 February 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain zinc oxides originating in the People's Republic of China (OJ L 62, 5.3.2002, p. 7).