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Circumvention of Antidumping Duties by Importation of Parts and Materials: Recent EEC Antidumping Rules

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Abstract

This Article examines the recent amendments to the EC antidumping Regulation. First, the Article analyzes the compatibility of the Regulation with the GATT and EC antidumping rules. Next, the Article assesses the likelihood that the new provisions will successfully realize their industrial policy goals and sufficiency of the existing procedural framework. The Article concludes that although the new Regulation is compatible with both GATT rules and EC commercial policy, its effectiveness will be limited both by its own terms and by the uncertainty likely to be engendered by the large degree of discretion left to the Community institutions responsible for applying the rules.

CIRCUMVENTION OF ANTIDUMPING DUTIES BY IMPORTATION OF PARTS AND MATERIALS: RECENT EEC ANTIDUMPING RULES

*Jacques Steenbergen**

INTRODUCTION

Trading partners in recent years have expressed increasing concern regarding the circumvention of antidumping duties on manufactured products by the import of parts and materials later assembled in so-called "screwdriver" operations in the country of importation.¹ It is fairly widely held that the dismantling of products into a few components that are easily reassembled can constitute an unfair trade practice. Such activity is unfair, at least to the extent that it leads to a naked circumvention of antidumping duties that are imposed in accordance with applicable international standards and designed to countervail an acknowledged unfair trade practice.

The fight against such circumvention raises, however, a number of delicate legal and industrial policy questions. Component parts and materials are not, at least in the European view, identical to the assembled product. The European Commission and many trade lawyers have traditionally been extremely reluctant to accept a broad interpretation of the concept of "like-product" as used in article 2, paragraph 1, of the General Agreement on Tariffs and Trade ("GATT") Antidumping Code.² This attitude may be explained by the fact that antidumping duties are one of the few unilaterally imposed retaliatory measures permitted under GATT rules. Duties are authorized only if they are imposed in accordance with

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1. See, e.g., Omnibus Trade and Competitiveness Act of 1987, S. 1420, 100th Cong., 1st Sess. § 208 (1987); Trade and International Economic Policy Reform Act of 1987, H.R. 3, 100th Cong., 1st Sess. § 155 (1987).

2. See Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, art. 2, para. 1, O.J. L 71/90 (1980), reprinted in GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS 172 (26th Supp. 1980) [hereinafter GATT Antidumping Code]. For an EC interpretation, see J. BESELER & A. WILLIAMS, ANTI-DUMPING AND ANTI-SUBSIDY LAW: THE EUROPEAN COMMUNITIES 86-88 (1986).

GATT standards, which embody both substantive and procedural safeguards.³ Any broadening of the interpretation of the concept of like-product reduces significantly the value of the buffer against protectionist abuses offered by the successive GATT antidumping codes. If one drops the condition of identity or close comparability of the exported product and the product marketed on the domestic market, dumping can, regardless of the procedural safeguards, far too easily be established.

Industrial policy concerns go beyond the need to avoid the excessive protectionist consequences of frequent imposition of antidumping duties. In the global economy, characterized by increased interdependence, the internationalization of production processes is a fact of life. Most countries try to attract assembly operations or facilities for the production of components. Local involvement in a production process is in principle a desirable economic and industrial goal, and not something to be punished. Any rule regarding the circumvention of antidumping duties by assembly in the country of importation of parts and materials should therefore have a limited scope of application so as to avoid any negative impact on bona-fide assembly operations.

Policymakers in the EC and elsewhere therefore face conflicting demands. On the one hand are the industries injured by circumvention of antidumping duties (and it follows from the imposition of antidumping duties that the industries are by hypothesis suffering a countervailable injury). On the other hand are the industrial policymakers trying to attract foreign investment. Despite the existence of such opposing interests, it can nevertheless be said that from the outset the request for a strengthening of the antidumping rules, in order to limit outright circumvention, met with a relatively favorable reception within the Community. Opposition was limited, even from Member States that traditionally attract assembly operations from multinational corporations⁴ and in those with high unem-

3. See General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, art. VI, 61 Stat. (pt. 5) A23-25, T.I.A.S. No. 1700, at 19-21, 55 U.N.T.S. 187, 212-16 [hereinafter GATT] (substantive law); GATT Antidumping Code, *supra* note 2 (substantive and procedural safeguards); see also E. MCGOVERN, INTERNATIONAL TRADE REGULATION 538-42 (2d ed. 1986) (legal status of Code as of February 1986).

4. This holds true for countries, such as Belgium, that even in the 1920s at times

ployment or the desire to attract industries to comparatively unindustrialized areas where screwdriver operations might naturally be welcome. It was never really questioned *whether* something should be done, not even at the time when there was not yet the beginning of a consensus on *how* it should be done. The Commission, having examined internally a number of alternative approaches, formulated its proposals,⁵ and submitted them without too much preliminary discussion to the Council of Ministers. The Council adopted a substantially unchanged Regulation less than five months after the publication of the Commission's proposals.

This Article examines the recent amendments to the EC antidumping Regulation. The new rules apply to the importation of parts and materials from countries subject to antidumping duties on products manufactured using such components. First, the Article analyzes the compatibility of the Regulation with the GATT and EC antidumping rules. Next, the Article assesses the likelihood that the new provisions will successfully realize their industrial policy goals and the sufficiency of the existing procedural framework. The Article concludes that although the new Regulation is compatible with both GATT rules and EC commercial policy, its effectiveness will be limited both by its own terms and by the uncertainty likely to be engendered by the large degree of discretion left to the Community institutions responsible for applying the rules.

I. *THE AMENDMENTS TO THE EEC ANTIDUMPING REGULATION*

On June 22, 1987, the Council of Ministers adopted Regulation 1761/87,⁶ amending Regulation 2176/84 (EEC antidumping rules),⁷ by introducing a new article 13, paragraph 10. Article 13(10) provides that definitive antidumping duties can be imposed on products that are introduced into the com-

systematically preferred to attract assembly plants rather than to support the then-existing "indigenous" domestic enterprises in sectors such as the automobile industry.

5. O.J. C 67/20 (1987).

6. Regulation 1761/87, art. 1, O.J. L 167/9 (1987) [hereinafter Regulation 1761/87].

7. O.J. L 201/1 (1984), as corrected at O.J. L 227/35 (1984), Common Mkt. Rep. (CCH) ¶ 3821.

merce of the Community after having been assembled or produced in the Community. The new provisions contain, however, significant limitations; duties can be imposed only if:

- assembly or production is carried out by a party which is related to or associated with any of the manufacturers whose exports of a like-product are subject to a definitive anti-dumping duty;
- the assembly or production operation was initiated or substantially increased after the opening of the anti-dumping investigation; and
- the value of parts or materials used in the assembly or production operation and originating in the country of exportation of the product subject to the anti-dumping duty exceeds by at least 50% the aggregate value of the parts or materials used.⁸

The text of Regulation 1761/87 stresses the margin for discretion left to the Community authorities by requiring that account be taken of the circumstances of each case.⁹ Factors to be considered include the variable costs incurred in the assembly or production operation, research and development expenditures, and the technology applied within the Community.¹⁰

New article 13(10) of the EEC Antidumping Regulation further provides that the rate of the antidumping duty levied on the related Community party carrying out the assembly or production of goods shall be the same applicable to the manufacturer of the like-product subject to definitive antidumping duties.¹¹ The amount of the duty collected shall be propor-

8. Regulation 1761/87, *supra* note 6, art. 13(10)(a).

9. *Id.* The EC is systematically opposed to antidumping rules that compel any of the trading partners to impose duties whenever dumping has been established and injury has been proven. Consider also EC reactions to the current U.S. trade bill discussions; the Community considers it necessary, in order for policymakers to be able to make an appraisal of any case, to consider all relevant foreign and commercial policy interests. The need for such provisions is also recognized by a number of U.S. experts. See, e.g., Hemmendinger, *Shifting Sands: An Examination of the Philosophical Basis for U.S. Trade Laws*, in *INTERNATIONAL TRADE POLICY: THE LAWYER'S PERSPECTIVE* §§ 2.02, 2.04 (J. Jackson, R. Cunningham & C. Fontheim eds. 1985); Johnston, *Administrative Relief for Unfair Import Trade: A Proposal for a Unified Statute*, in *INTERNATIONAL TRADE POLICY: THE LAWYER'S PERSPECTIVE* §§ 4.02-.04 (J. Jackson, R. Cunningham & C. Fontheim eds. 1985).

10. Regulation 1761/87, *supra* note 6, art. 13(10)(a).

11. *Id.* art. 13(10)(c).

tional to the amount due on importation of the completed products because the CIF value (cost, insurance, and freight) of the parts or materials relates to the CIF value of the completed product.¹² It is also significant that the Regulation stipulates that the antidumping duties imposed on parts or materials shall not exceed the level required in order to prevent circumvention of the antidumping duty on the finished product.¹³

II. *THE AMENDED REGULATION AND GATT*

The EC approach to circumvention of antidumping duties aims at GATT-compatibility by adhering to a narrow definition of "like-product."¹⁴ Antidumping duties can indeed be imposed only on parts that have actually been used to assemble the products or materials used to manufacture the products subject to antidumping duties.¹⁵ By providing that parts or materials are introduced into commerce only after being assembled, or in other words, that the imported parts were not introduced into commerce as such, the Community approach respects the basic provisions in the GATT Antidumping Code. Both GATT Article VI and the GATT Code provide for the application of antidumping rules when there is a finding that a product has been dumped. In other words, when the product has been "*introduced into the commerce of another country*" at less than its normal value, and the export price is less than the comparable price of the like-product offered for consumption in the exporting country.¹⁶

The underlying argument is that it is irrelevant whether products are *imported* in an assembled form or as components because dumping is injurious only after the product is introduced into commerce. This rationale holds true at least while there has been no sale on the market in the country of importation before assembly or production. It also explains why the scope of application of the new article 13(10) of the antidump-

12. *Id.*

13. *Id.*

14. *See supra* notes 2-3 and accompanying text.

15. Regulation 1761/87, *supra* note 6, art. 13(10)(a).

16. GATT Antidumping Code, *supra* note 2, art. 2, para. 1, O.J. L 71/90 (1980), reprinted in GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS (26th Supp. 1980); *see also* GATT, *supra* note 3, art. VI:1, 61 Stat. (pt. 5) at A23, T.I.A.S. No. 1700, at 19, 55 U.N.T.S. at 212.

ing Regulation is limited to assembly operations by related companies. Where the Community party is related to the exporter, it can indeed be argued that the product is introduced into commerce only when it is first sold to an independent buyer and that all previous transactions should be disregarded as intra-company trade.¹⁷

In this respect, the text of the adopted regulation is even more explicit than the Commission's initial proposal. Regulation 1761/87 provides that, when applying the new antidumping rules, the Council must decide simultaneously that components and materials that may be used in assembling the products subject to antidumping duties and originating from the country of exportation of such product can be considered to be in free circulation only if they are not used for assembling operations.¹⁸ Although this provision may sound cryptic to non-EC lawyers, it may be cogently explained. The Council intends to state unambiguously that while the normal importation procedures are at least partially suspended for parts or materials that are to be assembled into the abovementioned products or that are used for the production of such products,¹⁹ these procedures remain in full force regarding the import of all other parts or materials that could eventually also be used for such assembly or production operations.

Thus, the Council avoided a problem that might have resulted from the EC rules concerning "free circulation." This concept is not identical to "introducing into commerce" and it can be argued that it is not synonymous either with the concept of "importation," although it effectively means importation into the Community market. Article 10 of the EEC Treaty provides that products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and if all applicable duties have been paid.²⁰ In accordance with Article 9(2) of the EEC Treaty, products originating from third countries that

17. Regarding the emphasis on sales to independent buyers, see, e.g., *Electronic Typewriters*, Commission Regulation No. 3643/84, O.J. L 335/43 (1984).

18. Regulation 1761/87, *supra* note 6, art. 13(10)(a).

19. *See id.* art. 13(10)(b).

20. *See Treaty Establishing the European Economic Community*, art. 10, Mar. 25, 1957, 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II), at 6 (official English transl.), 298 U.N.T.S. 11, 19 (1958) (unofficial English trans.) [hereinafter EEC Treaty].

are brought into free circulation in any Member State shall be assimilated in Community commerce with all products originating in Member States.²¹ It was therefore rather difficult to argue that parts, duly imported, and therefore in free circulation in the Community's customs zone, were not yet introduced into commerce. In order to avoid this ambiguity, the new regulation enables the Council to decide that parts subject to antidumping duties have not yet been in free circulation and that, with regard to those parts or materials, the entering into free circulation does not commence with importation but with the "introducing into commerce" as an assembled product.²²

Abuse of the new rules is further protected against by the provision that the amount of duty collected on parts and materials shall not exceed the amount required in order to prevent circumvention of the imposed definitive antidumping duty.²³

Finally, other provisions of Regulation 1761/87 protect against abuse by setting out guidelines to determine indicia of circumvention. These provisions include the requirement that the production was initiated or substantially increased after the opening of the antidumping investigation and the condition that the value of the parts or materials originating in the country of exportation of the product subject to antidumping duty exceeds by at least 50% the value of all other parts or materials used.²⁴

III. *THE AMENDED ANTIDUMPING REGULATION UNDER EUROPEAN COMMUNITY LAW*

The main issue with regard to the compatibility of the amended Regulation with the EEC Treaty concerns the power granted to the Council to decide that parts or materials suitable for use in the assembly or production of products subject to antidumping duties and originating in the country of exportation are not in free circulation to the extent that they will be used in an assembly or production operation.

It should be noted, however, that Article 10 of the EEC

21. *Id.* art. 9(2), 1973 Gr. Brit. T.S. No. 1, at 6, 298 U.N.T.S. at 19.

22. Regulation 1761/87, *supra* note 6, art. 13(10)(c).

23. *Id.*

24. *Id.* art. 13(10)(a).

Treaty provides that products will only be considered to be in free circulation if all applicable customs duties or charges having equivalent effect have been levied.²⁵ Under Community law, antidumping duties are largely subject to the same rules as customs duties.²⁶ Moreover, antidumping duties can be qualified as charges having equivalent effect to customs duties as defined by the Court of Justice under general principles regarding charges having equivalent effect levied in intra-Community trade.²⁷ The Court has defined charges having equivalent effect to customs duties as

any tax demanded at the time of or by reason of importation and which, being imposed specifically on an imported product to the exclusion of the similar domestic product, results in the same restrictive consequences on the free movement of goods as a customs duty by altering the cost price of that product.²⁸

The word "taxes" should be interpreted in the broad sense because the Court ruled that "[e]ven pecuniary charges intended to finance the activities of an agency governed by public law can constitute taxes having equivalent effect within the meaning of Article 13(2) of the Treaty."²⁹

One can therefore conclude that the amended antidumping Regulation is not contrary to the EC rules with regard to the free circulation of goods. This conclusion rests on the reasoning that as long as antidumping duties levied in accordance with the amended Regulation have not been paid, the product subject to such duties has not fulfilled the conditions for entering into free circulation as stipulated in Article 10 of the Treaty.

IV. INDUSTRIAL POLICY ASPECTS

From the point of view of industrial policy, one should ex-

25. EEC Treaty, *supra* note 20, art. 10, 1973 Gr. Brit. T.S. No. 1, at 6, 298 U.N.T.S. at 19.

26. *See, e.g.*, Council Regulation No. 2779/78, art. 2, para. 2, O.J. L 333/5 (1978), as amended by later regulations with regard to the use of the ECU for customs purposes.

27. *Capolongo v. Azienda Agricola Maya*, Case 77/72, 1973 E.C.R. 611, Common Mkt. Rep. (CCH) ¶ 8213.

28. *Id.* at 623, ¶ 12, Common Mkt. Rep. (CCH) ¶ 8213, at 8899.

29. *Id.*

amine the effectiveness of the new rules as an instrument to fight circumvention of antidumping duties, as well as the extent to which these rules may affect the ability of the Member States to generate industrial activity and employment by attracting assembly operations.

With regard to the effectiveness of the new rules, the abovementioned limitations aiming at GATT compatibility restrict the extent to which the Community is able effectively to fight circumvention of antidumping duties. In particular, the condition that assembly or production must be carried out by a party related to or associated with one of the manufacturers whose exports of a like product are subject to definitive antidumping duty limits the forms of circumvention caught by the amended antidumping Regulation. For instance, because small assembly operations are often independent companies, screwdriver operations are not necessarily related to the exporter of finished products. Somewhat paradoxically, the true pirates will therefore be allowed to escape.³⁰

Regarding the impact of the new rules on the establishment of assembly plants, the scope of application may be excessively broad notwithstanding the limits on their effectiveness. Evidence of such broad application may be found in the provision requiring that the value of parts or materials used in the assembly or production operation originating in the country of exportation of the products subject to the antidumping duty must exceed the value of all other parts or materials by at least 50%³¹ (*i.e.*, that the value of imported parts or materials should represent at least 67 % of the value of all other parts or materials). It is still unclear whether in the opinion of the Council the value of all parts and materials equals 100% of the price of the product, or whether the value of all parts and materials equals the price of the product minus other production costs and overhead. Of the two alternatives, the latter seems more technically correct. In either case, it can certainly be argued that an assembly or production operation that uses domestically manufactured parts or material for almost one-

30. It should also be noted parenthetically that Regulation 1761/87 is yet another instance in which EC antidumping law tends to favor the establishment of independent entities responsible for production and distribution functions vis-à-vis integrated, vertically organized companies. *See also supra* note 17.

31. Regulation 1761/87, *supra* note 6, art. 13(10)(a).

third of the total value of all parts and materials is hardly a screwdriver operation. The Council has attempted to meet this criticism by the provision that account shall be taken of the circumstances of each case.

The abovementioned formula should therefore be considered as a minimum criterion for the application of the amended antidumping Regulation.³² The Council cannot, in our opinion, automatically decide that antidumping duties have been circumvented when all three conditions listed in the new article 13(10)(a) have been met. In addition, it should be noted that these conditions do not define the concept of circumvention, even though the Council must also establish that the imposition of antidumping duties on parts and components is necessary in order to prevent circumvention as provided in new article 13(10)(c).

While the new provisions offer substantial guarantees against abuses detrimental to the realization of legitimate industrial policy goals, it cannot be denied that the very availability of the new Regulation causes great uncertainty for potential investors. This reaction is understandable. Both the "value of parts exceeding the value of all other parts by at least 50%" rule and the use of the broad concept of "level of duties required to prevent circumvention" leave substantial discretion to the Council. If the Council wishes to push the scope of application of the new rule to the maximum, it would not be surprising if a substantial percentage of bona fide assembly operations established by subsidiaries of companies in third countries whose products are subject to antidumping duties might also become subject to the imposition of antidumping duties on imported parts or materials.

It is our impression that additional legal certainty can be obtained only by administrative rulings, promulgated before the opening of any antidumping proceeding, that indicate whether a specific assembly or production operation might be characterized as a screwdriver venture. Such rulings should be available at the time the investment in the assembly operation is announced. Unfortunately, the Council and the Commission have not provided for the possibility of granting such rulings. However, Community officials have indicated that the

32. *Id.*

likelihood of an extension of the scope of application of antidumping duties to imported parts and materials may be discussed at the time of the opening of the antidumping proceedings, and that the Commission can be expected to give certain indications in this regard.

Nevertheless, we must conclude that Regulation 1761/87 offers less substantial guarantees against the possible negative impact on the Community's investment climate than it does regarding the GATT-compatibility of the new rules.

V. *PROCEDURAL ASPECTS*

It should be kept in mind that the Community antidumping Regulation creates a division of power between the Commission and the Council of Ministers. Antidumping proceedings are initiated by the Commission, acting upon a complaint brought by private industry, by a Member State, or on its own initiative. The Commission organizes the investigation and may terminate or suspend proceedings by accepting an undertaking. The proceeding is terminated if the Commission submits to the Council a report on the result of a consultation, together with a proposal that the proceeding be terminated, and the Council does not decide otherwise within one month. If the Commission does not propose to terminate the proceeding and no undertaking is accepted, the Commission will impose provisional antidumping duties.

In accordance with Article 10, paragraph 2, of the GATT Antidumping Code, article 11(1) of Regulation 2176/84 states that following the imposition of provisional antidumping duties, the release of the products concerned for free circulation in the Community is conditional upon the provision of security for the amount of the provisional duty. Imposition of provisional duties does not necessarily mean that these duties will be collected.³³ The decision whether provisional duties should be collected is to be taken by the Council of Ministers before the end of the validity of the provisional duties. This period is normally not less than four and certainly no more than six months after the imposition of provisional duties.³⁴

33. Regulation No. 2176/84, *supra* note 7, Common Mkt. Rep. (CCH) ¶ 3821, at 3011-5 to -6.

34. *Id.* art. 11(5), (6), Common Mkt. Rep. (CCH) ¶ 3821, at 3011-5. The Coun-

It is particularly significant that the decision whether or not to impose definitive antidumping duties is taken by the Council of Ministers acting by qualified majority on a proposal submitted by the Commission after consultation.³⁵ New article 13(10), amending Regulation 2176/84, provides only for the imposition of definitive antidumping duties on imported parts and materials.³⁶ As a result of the abovementioned division of powers between the Council and Commission, the extension of the scope of application of antidumping measures to parts and materials can only be decided by the Council on proposal by the Commission. In other words, if the Commission, while preparing its proposals to the Council, does not consider it necessary to extend the scope of application, the Council cannot do so unilaterally. At the same time, however, the Council is not bound to follow the Commission's proposal should it suggest expanding the duties to parts and materials.

It also follows from the general procedural scheme of the Community's antidumping proceedings that the Member States have the ability to express their views regarding an extension of antidumping duties to parts and materials.³⁷ This affords them the opportunity to voice their concerns when they fear that an extension of antidumping duties might have a negative impact on their ability to attract investors.

One might have feared that the new measures would not offer similar procedural safeguards to other interested parties. It is not unusual in the Commission's practice to have some contact with the exporters and/or importers as well as with the plaintiffs when preparing its proposals to the Council regarding the imposition of definitive duties and the collection of provisional duties. However, such contacts are not required under the Community's antidumping rules. Regulation 2176/84 does not therefore provide a procedure to be followed by the Commission when imposing definitive antidump-

cil can decide whether or not to collect provisional duties irrespective of the decision on the imposition of definitive duties.

35. *Id.* art. 12(1), Common Mkt. Rep. (CCH) ¶ 3821, at 3011-5. Consultation refers to the consultation of the Advisory Committee consisting of representatives of the Member States.

36. Regulation 1761/87, *supra* note 6, art. 13(10)(a).

37. The Council is composed of members of the governments of the Member States, and so its decisions are prepared by representatives of the nations affected by imposition of antidumping duties.

ing duties. Additionally, it will not necessarily be possible to discuss the imposition of antidumping duties on imported parts and materials during the administrative proceeding leading to the imposition of provisional duties, if only because one of the conditions for such action is that the assembly or production operation was initiated or substantially increased after the opening of the antidumping investigation.

However, Commission practice since the entry into force of Regulation 1761/87 goes beyond what can be considered as the minimum procedural standards imposed by Regulation 2176/86. In the three cases³⁸ where the Commission has thus far declared its intention to use the recently introduced provision on imports of parts or materials, the Commission organized new administrative proceedings by announcing the initiation of a proceeding in the Official Journal of the European Communities as required under article 7(1) of Regulation 2176/84.

In each case the Commission acted upon complaints by Community industries seeking the imposition of definitive antidumping duties on imported parts and materials used for the assembly of products that were already subject to definitive antidumping duties.³⁹ To date, the Commission has not taken any action with regard to parts and materials used for the assembly or production of products that are subject to provisional antidumping duties. It is therefore not yet clear what procedure the Commission would follow if it were to propose to the Council the imposition of definitive antidumping duties on parts and materials in the same decision by which the Council imposed the definitive antidumping duty on the finished products. Neither is it clear whether the Commission considers the new rules applicable in the case where no definitive antidumping duties have yet been imposed on the finished product. On its face, however, the text of the new Regulation does not rule out the imposition of definitive antidumping duties on

38. See O.J. C 235/2 (1987) (electronic typewriters) (definitive antidumping duties imposed by Council Regulation No. 1698/85, O.J. L 163/1 (1985)); O.J. C 235/3 (1987) (electronic balances) (definitive duties imposed by Council Regulation No. 1058/86, O.J. L 97/1 (1986)); O.J. C 285/4 (1987) (hydraulic excavators) (definitive anti-dumping duties imposed by Council Regulation No. 1877/85, O.J. L 176/1 (1985)).

39. See cases cited *supra* note 12.

parts and materials by a decision taken at the same time as the decision imposing definitive antidumping duties on a finished product.

CONCLUSION

By adopting Council Regulation 1761/87, concerning imported parts and materials and the circumvention of antidumping duties imposed on finished products, the Community took all the necessary steps to ensure the compatibility of the amended Regulation with GATT rules. In doing so, the Commission made certain that the amended regulation would not run counter to the traditional stance of the Community in commercial policymaking and it avoided any undermining of its positions in various disputes, such as those with the United States. For example, the new Regulation does not open the way for a systematic action against upstream dumping; it only aims at circumvention of antidumping duties.

However, the technique adopted in order to ensure GATT-compatibility seriously limits the effectiveness of the new rules as an instrument to avoid circumvention of antidumping duties. The new rules apply only in the case of circumvention by assembly or production operations organized by companies related to or associated with the exporter of the finished product. Consequently, the rules cannot be used against unrelated screwdriver operations. It follows that those wishing to limit the risk of application of the new Regulation should avoid assembly or production by related companies and instead subcontract whenever they fear that the finished product may well become subject to the imposition of antidumping duties and that the assembly or production operation may fall within the scope of application of the amended antidumping Regulation.

At the same time, the text of the new Regulation does not rule out an excessively negative impact on the investment climate in some Member States by discouraging the establishment of assembly operations in the Community. It seems therefore to be in the interest of the Community as well as that of the Member States to organize adequate publicity with regard to the way the Community's institutions intend to apply the new Regulation. Such publicity is necessary because the

concepts used in the text of article 13(10) leave a substantial margin of discretion to the Council of Ministers and to the Commission on whose proposal the Council should act. It certainly seems in the interest of exporters and importers involved in the antidumping proceedings to discuss with the Commission at the earliest possible stage the likelihood of an extension of eventual antidumping duties to imported parts and materials.

Finally, it can be concluded that the new Regulation does not offer substantial procedural safeguards. However, Community practice shows that, at least at the present stage, the Commission intends to go beyond the procedural standards required under the text of the amended antidumping regulation by opening a new administrative procedure allowing for consultation before the imposition of duties by application of the new rules.