

The International Practice of the European Communities: Current Survey

International Trade Developments, Including Commercial Defence Actions in the European Communities XII: 1 July 1996 – 31 December 1996

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Introduction

This is the twelfth in the series of reports on developments in the field of EC international trade law.¹ This report covers developments that occurred during the six-month period from 1 July to 31 December 1996.

I. International Developments

Internationally, the highlights of the second half of 1996 were the Singapore Ministerial Meeting and the Information Technology Agreement.

A. New Generation Trade Issues

In the run-up to the first WTO Ministerial Meeting (9–13 December 1996), much discussion took place both within the Community and within the WTO on the future course of the organization. While the European Community had wanted the meeting to concentrate on stocktaking of the results achieved in the WTO thus far, it also favoured bringing new topics onto the agenda, such as the social clause issue and the environment-trade linkage.²

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1. Previous reports were published in 1/2 *EJIL* (1990) 337–364; 1 *EJIL* (1991) 166–199; 2 *EJIL* (1991) 146–176; 3 *EJIL* (1992) 372–421; 4 *EJIL* (1993) 283–304; 4 *EJIL* (1993) 588–606; 5 *EJIL* (1994) 285–311; 5 *EJIL* (1994) 572–599; 6 *EJIL* (1995) 287–316; 7 *EJIL* (1996) 300–351; and 7 *EJIL* (1996) 571–604.

2. See Vermulst and Driessen, 'Commercial Defence Actions and Other International Trade Developments in the European Communities XI: 1 January 1996 – 30 June 1996', 7 *EJIL* (1996) 573.

The first of these was the most sensitive. In July the European Commission issued a paper on the topic.³ It argued for the inclusion of labour standards in the agenda of the Ministerial Meeting and for the creation of a working party in the WTO to discuss the issue.

B. Singapore Ministerial Meeting

In Singapore the Community achieved only a very qualified success with the inclusion of new trade issues on the WTO's agenda. After protracted negotiations WTO members managed to agree to a Ministerial Declaration. This does not refer to the above 'new issues', other than a passing reference to the importance of core labour standards. However, the Declaration adds that the International Labour Organisation is the proper entity to deal with this matter and, effectively, Asian resistance to the social clause won the day.

This is not to say that nothing new came out of Singapore. The most important WTO members agreed to abolish customs tariffs on some 400 pharmaceuticals. The WTO will establish a working group to study the relationship between investment and competition. The most important achievement, however, was the ITA Declaration.

C. Information Technology Agreement

The Ministers did not manage to sign a finalized agreement in Singapore. However, the main features of the Information Technology Agreement (ITA) have been laid down in the Declaration and the follow-up negotiations have been very successful.

The participants in the WTO have agreed to abolish tariffs on information technology products on the most-favoured-nation (MFN) basis by 2000.⁴ Information technology products include, for example, computers and computer equipment, and virtually all telecommunications equipment. The Decision contains two attachments. The first of these is a list of customs nomenclature (HS) headings which are included in the scope of the deal. The second attachment lists products which are covered wherever they are classified by ITA partners.

In the spring of 1997 the ITA partners submitted tariff reduction schedules and it is expected that the ITA will indeed take off as scheduled on 1 July 1997.

D. Technical Barriers to Trade

The European Commission is preparing the Technical Barriers on Trade (TBT) review. A review of this agreement is foreseen by the WTO Agreement on TBT before the end

³ 'The Trading System and Internationally Recognized Labour Standards', COM(96)402 as revised.

⁴ As one very major exception, the Community agreed to abolish tariffs on HS headings 8541 and 8542 (semiconductors and related items) by 1999.

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of 1997.⁵ The Community considers the 1997 review an important opportunity to improve adherence to the Agreement by other WTO Members. The Community is preparing the review carefully by identifying trade barriers in its major trade partners (see section IV.C below).

As part of the preparation process, Commissioners Brittan and Bangemann presented a policy paper outlining the Community's policy in the field of trade and standards.⁶ Community policy in this field covers four areas: the WTO dimension (implementation of the WTO Agreement on Technical Barriers to Trade);⁷ the conclusion of Mutual Recognition Agreements (MRA); technical assistance programmes to help developing countries to implement the TBT Agreement; and finally, regulatory cooperation.

MRAs are aimed at the mutual recognition of the conformity assessment bodies of the EC and its partners. The texts of the MRA with Australia, New Zealand and Switzerland were finalized. The Commission continues negotiating MRAs with Japan and the United States, and it is further hoped that in the near future an MRA can be finalized with Canada.

II. Accessions, Associations and Free-trade Agreements

A. Associations with Central European Countries: The Europe Agreements

General Developments

On 19 September 1996 the Commission initialled the Interim Agreement with Slovenia.⁸ The Interim Agreement puts into effect the trade-related parts of the association agreement, pending ratification of the latter by the fifteen EC Member States and Slovenia. The Interim Agreement foresees a free trade-area between the EC and Slovenia, with gradual lifting of customs tariffs and quantitative restrictions. It entered into force on 1 January 1997. The free-trade area should be fully in place on 1 January 2001.

Harmonized Rules of Preferential Origin

The Council adopted the new protocol on preferential rules of origin attached to the EC-Czech association agreement.⁹ The protocol will enable 'diagonal' cumulation of origin between the Central European states,¹⁰ Switzerland and the EEA countries (the EC,

5 Article 15.4 of the TBT Agreement.

6 'Community External Trade Policy in the Field of Standards and Conformity Assessment', Communication to the Commission presented by Sir Leon Brittan in association with Mr Bangemann, November 1996.

7 Hereinafter 'TBT Agreement'.

8 OJ (1996) L 344.

9 OJ (1996) L 343/1.

10 Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

Norway, Liechtenstein¹¹ and Iceland). Consequently, it will be easier for manufacturers to benefit from the EC-Czech association agreement, which foresees free trade between the two countries.

The harmonized protocol also brings some smaller, technical changes, the most important ones being the following: all operations conveying origin are now listed per CN heading. In principle, a general 10 per cent allowance on origin criteria is allowed. The protocol no longer allows duty drawback (a no-duty drawback rule was already incorporated in the older protocols with the EFTA countries and the EEA agreement).

The harmonized protocols for the other countries involved (which are *mutatis mutandis* identical) should be published and enter into force in 1997.

B. Customs Union with Turkey

A Decision implementing the EC-Turkey Customs Union Decision was published.¹² The implementing Decision adapts Community customs rules to deal with the EC-Turkish customs union. Furthermore, a corrigendum was published to the Decision implementing the EC-Turkish customs union.¹³

The Community concluded a free-trade agreement with Turkey on trade in coal and steel products.¹⁴ Such products are excluded from the scope of the association agreement and the customs union.

C. Agreements with Former Soviet Republics

The Interim Agreement between Kazakhstan and the Community was adopted by the EC.¹⁵ This agreement puts into effect the trade-related aspects of the co-operation agreement with Kazakhstan. The co-operation agreement foresees trade on MFN-basis¹⁶ and implements the most important GATT rules to the trade between the EC and Kazakhstan. In a separate development, a roughly similar Interim Agreement with Uzbekistan was signed. The Commission proposed to conclude one with Azerbaijan.

The Community also concluded an agreement on trade in steel products with Kazakhstan.¹⁷

11 Liechtenstein will be included only at a later stage.

12 OJ (1996) L 200/14.

13 OJ (1996) L 234/18.

14 OJ (1996) L 227/1.

15 OJ (1996) L 306/49.

16 Like all former Soviet republics, Kazakhstan does, however, enjoy preferences under the Community's GSP.

17 OJ (1996) L 242, corr. OJ (1996) L 244/19.

D. Others

The Community and Chile concluded the EC-Chilean association agreement.¹⁸ The aim of the agreement is, among others, the liberalization of trade and the establishment of a full association between the Community and Chile. The EC concluded a similar agreement with Mercosur (comprising Argentina, Brazil, Paraguay and Uruguay) in 1995. The Community and Chile will negotiate tariff reductions and trade liberalization. It may be expected that these negotiations will be coordinated with similar talks held between the Community and Mercosur.

The EC-Korean Framework Agreement was signed on 29 October 1996.¹⁹

III. Developments in the Field of Anti-dumping Law

A. General Developments

The European Commission adapted its practice *vis-à-vis* non-market economy countries. The Commission habitually determines a single dumping margin and duty for all exporters in non-market economy countries. Under older practice, it was extremely difficult for companies in such countries (mostly China) to convince the Commission that they were independent of the state, and that a separate dumping margin was warranted. The Commission has now established criteria against which it will check whether such separate treatment is warranted.

The amendment of the basic anti-dumping Regulation concerning level of trade was adopted.²⁰ This amendment was caused by the *Audio tapes in cassettes* GATT panel report.²¹

The Community interest criterion laid down in Article 21 of the basic anti-dumping Regulation is gaining importance in anti-dumping practice. It played a very prominent role in the *Unbleached cotton fabrics* proceeding (see below), where the Commission prepared separate questionnaires on the issue for the downstream industry. It is expected that this increased prominence will be a continuing trend.

In a separate development the Commission adopted the basic anti-dumping Regulation for coal and steel products.²²

18 OJ (1996) L 209/1.

19 OJ (1996) C 188/11.

20 OJ (1996) L 317/1.

21 'EC - Anti-Dumping Duties on Audio Tapes in Cassettes Originating in Japan', ADP/136 (unadopted, 28 April 1995). For more details see Vermulst and Driessen, *supra* note 2, at 578-579; for more details on recent developments in the Community's anti-dumping practice, Vermulst and Driessen, 'New Battle Lines in the Anti-dumping War: Recent Movements on the European Front', 3 *Journal of World Trade* (1997) 135-157.

22 OJ (1996) L 308/11.

B. Administrative Determinations

1. Certain polyester yarns (man-made staple fibres) from Turkey (initiation newcomer review), OJ (1996) L 165/19

This newcomer review was initiated at the request of the Turkish company Kipas AS. The duty with respect to Kipas was repealed and imports made subject to registration.

2. Synthetic fibres of polyester from India (initiation newcomer review), OJ (1996) L 165/21

This newcomer review was initiated at the request of the Indian company Viral Filaments Limited. The duty with respect to Viral was repealed and imports made subject to registration.

3. Dihydrostreptomycin from China (notice impending expiry), OJ (1996) C 188/4

4. Certain types of bedlinen from India, Pakistan, Thailand, Turkey (termination), OJ(1996) L 171/27

The proceeding was terminated following withdrawal of the complaint by Eurocoton.

5. Unwrought pure magnesium from Russia, Ukraine (definitive), OJ (1996) L 174/1, (undertakings) OJ (1996) L 174/32

The Commission distinguished between unwrought pure magnesium and unwrought alloyed magnesium in alloyed form and excluded the latter from the scope of the investigation on the ground that neither the producers in the exporting countries nor the Community industry had produced or sold the alloyed variety in any significant quantity.

The dumping margins were 46.5% and 54.5% for Russia and the Ukraine respectively and formed the basis for the imposition of anti-dumping duties in the form of a variable duty. However, the Commission accepted price undertakings from two Russian producers and one Ukrainian producer.

6. Artificial corundum from Hungary, Poland, Czech Republic, Brazil, Slovenia, Russia, Ukraine (notice of expiry), OJ (1996) C 205/5

7. Polyester textured filament yarn from Indonesia, Thailand (extension provisional), OJ (1996) L 178/1

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8. *PET video film from Korea (termination), OJ (1996) L 181/27*

The proceeding was terminated following the withdrawal of the complaint by the EC industry.

9. *Small-screen colour televisions from Hong Kong (notice of expiry), OJ (1996) C 199/4*

10. *Certain magnetic disks (3.5" microdisks) from Japan, Taiwan, China, circumvention by imports from Canada, Hong Kong, India, Indonesia, Macao, Malaysia, Philippines, Singapore, Thailand (termination), OJ (1996) L 186/14*

Imports from Canada, India, the Philippines and Singapore represented only 2.8% of the EC market and less than 3% of total imports on a per country basis and less than 7% for all four countries taken together and therefore could not have caused injury.

As far as Hong Kong, Indonesia, Malaysia and Thailand were concerned, no circumvention was considered to take place.

Only with respect to Macao, where no company cooperated, was circumvention considered likely to take place. However, pursuant to an UCLAF investigation, it had already been decided to impose anti-dumping duties retroactively on Chinese microdisks exported from Macao. Consequently, the Commission found it reasonable to assume that the remedial effects of the anti-dumping measures would not be significantly undermined by imports from Macao.

The proceeding was therefore terminated.

11. *Ring binder mechanisms from Malaysia, China (provisional), OJ (1996) L 187/47*

The Commission established dumping margins of 42.8% and 112.8% for Malaysia and China respectively. However, based on the injury margins, anti-dumping duties were limited to 10.5% and 35.4% for Malaysia and China respectively.

12. *Synthetic fibres of polyesters from India, Korea (amendment), OJ (1996) L 189/10*

This determination followed a newcomer review request by the Indian company Bongaigaon. Unfortunately, the Commission found a dumping margin of 17.5% for Bongaigaon. However, the duty was limited to 13% on the basis of the injury margin.

13. *Polyester staple fibre from Belarus (definitive), OJ (1996) L 189/13*

A definitive anti-dumping duty of 43.5% was imposed.

14. Certain polyester yarns (man-made staple fibres) from Indonesia, produced by PT Indorama Synthetics, refund applications submitted by Aliatex, Aquatex, Burnet, Walker & Co, James North Textiles, Pax Yarns, Retorderie François Schoeters, Rowson & Son, Sethos, Soparil, Symaco, Texelle and Unicom, OJ (1996) L 203/7

In the absence of dumping by Indorama all duly lodged refund applications were granted.

15. Farmed Atlantic salmon from Norway (initiation), OJ (1996) C 253/18

16. Disodium carbonate from the United States (initiation interim review), OJ (1996) C 253/23

This interim review was initiated at the Commission's own initiative.

17. Certain seamless pipes and tubes of iron or non-alloy steel from Hungary, Poland, Croatia (initiation interim review), OJ (1996) C 253/25

This interim review was initiated at the Commission's own initiative.

18. Certain seamless pipes and tubes from Russia, Czech Republic, Romania, Slovak Republic (initiation), OJ (1996) C 253/26

19. Electronic weighing scales from Japan, circumvention by imports assembled in/and or transhipped through Indonesia (initiation), OJ (1996) L 221/47

20. Electronic weighing scales from Japan and Singapore, circumvention by imports of parts thereof assembled in the European Community (initiation), OJ (1996) L 221/50

21. Briefcases and schoolbags from China (corrigendum), OJ (1996) C 255/9

22. Cotton-type bed linen from Egypt, India, Pakistan (initiation), OJ (1996) C 266/2

23. Urea from Venezuela (expiry), OJ (1996) C 275/11

24. Certain thermal paper from Japan (notice of impending expiry), OJ (1996) C 281/13

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25. *Cotton yarn from Brazil, Turkey (notice of impending expiry), OJ (1996) C 281/14*

26. *Ferro-silicon from Brazil (initiation interim review), OJ (1996) C 285/15*

This interim review was initiated at the request of a Brazilian producer which claimed that it was no longer dumping.

27. *Certain polyester yarns (man-made staple fibres) from Taiwan, Indonesia, China, Turkey (notice of impending expiry), OJ (1996) C 290/7*

28. *Video tapes in cassettes from China (initiation expiry review), OJ (1996) C 314/3*

29. *Polyester textured filament yarns from Indonesia, Thailand (definitive), India (termination), OJ (1996) L 289/14, corr. OJ (1996) L 294/27*

The anti-dumping duties imposed were as follows:

Indonesia: PT Panasia Indosyntec 5.4%, PT Polysindo Eka Perkasa 8.8%, PT Susilia Indah 8.3%, others 20.2%;

Thailand: Tuntex 6.7%, Sunflag 13.5%, others 20.2%.

The Indonesian company Indorama was exempted on the ground that its definitive dumping margin was *de minimis*.

The proceeding with respect to India was closed on the basis of its *de minimis* market share.

30. *Oxalic acid from India, China (expiry), OJ (1996) C 348/3*

31. *Unbleached (grey) cotton fabrics from China, Egypt, India, Indonesia, Pakistan, Turkey (provisional), OJ (1996) L 295/3*

The provisional duties imposed were as follows:

China: 22.6%;

Egypt: residual 36.1%, cooperating producers 13.3%;

India: residual 22.7%, Century 17.4%, Coats Viyella 13%, Vardhman 2.7%, Mafatlal 13.4%, Mafatlal Fine 13.4%, remaining cooperating producers 15.9%;

Indonesia: residual 18.3%, PT Apac Inti Corpora 9.6%; Argo Pantex 11.2%; Daya Manunggal 11.2%; Grand Textile Industries 11.2%; Eratex 10.9%; remaining cooperating producers 13.1%;

Pakistan: residual 32.5%; Diamond Fabrics 22.3%; Amer Fabrics 22.3%; Kohinoor Raiwind 30.3%; Kohinoor Weaving 30.3%; Lucky Textile 30.6% (not so lucky this time); Nishat 17%; Nishat Fabrics 17%; remaining cooperating producers 27.9%;

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Turkey: residual 25.2%; Birlik Mensucat Ticaret 13.8%; Söktas Pamuk ve Tarım 17.5%; remaining cooperating producers 15.3%.

32. *Certain polyester yarns (man-made staple fibres) from Indonesia (initiation newcomer review), OJ (1996) L 299/14*

This newcomer review application was lodged by the Indonesian company Yamatex.

33. *Hydraulic excavators from Korea (termination), OJ (1996) L 304/23*

The proceeding was terminated following the withdrawal of the complaint.

34. *Gas-fuelled, non-refillable pocket flint lighters from Korea (expiry), OJ (1996) C 360/2*

35. *Gas-fuelled, non-refillable pocket flint lighters from Japan (initiation expiry review), OJ (1996) C 361/3*

36. *Certain magnetic disks (3.5" microdisks) from the United States (notice name change), OJ (1996) C 368/8*

37. *Stainless steel fasteners and parts from China, India, Malaysia, Korea, Taiwan (initiation), OJ (1996) C 369/3*

38. *Certain semi-finished products of alloy steel from Turkey, Brazil (notice impending expiry), OJ (1996) C 379/11*

39. *Ferro-silico-manganese from China (initiation), OJ (1996) C 381/4*

40. *Ferro-silico-manganese from Russia, Ukraine, Brazil, South Africa (initiation interim review), OJ (1996) C 381/5*

This interim review was initiated at the Commission's own initiative.

41. *Certain large aluminium electrolytic capacitors from Japan (initiation interim review), OJ (1996) C 381/7*

The interim review was initiated at the request of the Japanese producer Rubycon.

42. *Certain seamless pipes and tubes of iron or non-alloy steel from Hungary, Poland, Croatia (notice name change), OJ (1996) C 384/3*

43. *Dihydrostreptomycin from China (notice extension scope), OJ (1996) C 386/9*

44. *Ferro-silicon from Egypt, Poland (notice impending expiry), OJ (1996) C 387/3*

IV. Other Commercial Policy Instruments

A. Countervailing Duties

The Commission initiated an anti-subsidy proceeding against farmed salmon from Norway.²³

Also, a review of countervailing duties on polyester fibres and yarns from Turkey was initiated.²⁴

B. Quota and Safeguard Measures

Textile Products

The Council adopted the second stage of the abolition of quantitative restrictions agreed under the Multi-Fibre Arrangement.²⁵ The WTO Agreement on Textile and Clothes requires the EC to abolish such quota in steps. The first step was taken in 1995.

Some technical amendments were made to the basic textile quota Regulation (3030/93).²⁶ The Commission issued a notice containing the current quantitative quota on textile products in force for 1996,²⁷ and amended quota on imports from North Korea and the former Yugoslav republics (other than Slovenia).²⁸

The Community tacitly renewed its agreement on textile quota with China.²⁹ The 1997 quota are published in the Commission communication. Also, the quantitative limits for textile products under Cat. 13, 159 and 161 imported from China after outward processing arrangements were increased.³⁰

The Community and Vietnam concluded an agreement establishing quantitative limits on certain Vietnamese textile exports to the Community.³¹

On an autonomous basis the Commission imposed quantitative restrictions on textile products from Russia.³² Russia is not a member of the WTO and the bilateral textile agreement with the country expired before the negotiations for a new one were concluded.

Lastly, some smaller technical amendments were published.³³

23 OJ (1996) C 253/20.

24 OJ (1996) C 276/5.

25 OJ (1996) L 314/1.

26 OJ (1996) L 181/15; OJ (1996) L 307/1.

27 OJ (1996) C 323/5.

28 OJ (1996) L 188/4, corr. L 225/11; L 255/4; and L 318/5.

29 OJ (1996) C 387/4.

30 OJ (1996) L 181/7.

31 OJ (1996) L 199/2.

32 OJ (1996) L 333/7.

33 OJ (1996) L 294/26.

Other Products

The Council amended quantitative quota for non-textile products from China.³⁴

The Commission changed the rules on the distribution of quota for importers of certain products from China.³⁵ Such rules are necessary since there are more applications from traditional importers than available quota. The Chinese products concerned are certain footwear, tableware, kitchenware of glass, china or ceramic, and certain toys.

In the field of steel products, the Commission extended prior surveillance measures on certain products into 1997.³⁶ Under the surveillance measures, imports of the steel products listed in the Regulation from non-EFTA and non-EEA countries must be notified.

C. Trade Barriers Regulation

General Developments

1996 was the year of the Community's new assertiveness.³⁷ The Commission conducted an information campaign aimed at making EC companies aware of the possibilities of the Trade Barriers Regulation (TBR). Within the Commission's Directorate-General I a Market Access Division was established. Another interesting tool was the organization of a database on market access problems in third countries.³⁸ The more structured information flow on market access should allow the Commission to more easily have recourse to WTO dispute settlement procedures.

To provide a legal basis for the new approach the Commission proposed a Regulation on improving market access for the EC industry in third countries.³⁹

Administrative Developments

The Commission is studying the regulatory regimes of the machinery markets in Japan, Korea and China.⁴⁰ The studies are intended to be used to enable the Commission to open up these markets for EC producers.

The Commission initiated a proceeding against the United States.⁴¹ The United States changed its rules of origin for textile and apparel products, as a result of which textile and apparel products produced in the Community from imported grey cloth no longer

34 OJ (1996) L 250/1.

35 OJ (1996) L 210/12.

36 OJ (1996) L 329/11. A corrigendum was published concerning the quantitative restrictions on steel from Kazakhstan (OJ (1996) L 244/19).

37 See Vermulst and Driessen, *supra* note 2, at 592.

38 The database can be found at <http://mkacodb.eu.int/>.

39 OJ (1996) C 316/12.

40 OJ (1996) C 221/38.

41 OJ (1996) C 351/6.

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obtain EC origin. As a result, they are subjected to quantitative restrictions in the United States. The proceeding has already led to a formal decision that consultation procedures will be initiated in the WTO's Textile Monitoring Body.⁴²

The Commission terminated a proceeding under the Trade Barriers Regulation aimed at a Turkish import levy called the *Mass Housing Fund levy* after the Turkish authorities phased it out.⁴³

D. Injurious Shipbuilding Instrument

The Commission issued a notice on the level of aid to shipbuilding allowed until new OECD rules enter into force.⁴⁴

E. Anti-Helms-Burton Legislation

The Community reacted furiously against American legislation aimed at economically isolating Cuba (the Helms-Burton Act) and Iran and Libya (the D'Amato Act). The Commission has been adamant that the effective prohibition of companies outside the United States to invest in these countries is an illegal extraterritorial application of national law. The United States argued that the matter was one of national security falling outside the purview of WTO rules.

The Commission initiated WTO proceedings⁴⁵ and simultaneously proposed an anti-extraterritoriality Regulation,⁴⁶ which was adopted later in 1996.⁴⁷ In the spring of 1997 a compromise was reached which makes it unlikely that the legislation will be used in the near future.

Under the anti-extraterritoriality legislation, no judgment of a court or tribunal located outside the Community giving effect to such legislation may be recognized or enforced.⁴⁸ As a principle, compliance with the American laws concerned is even forbidden. Any damages incurred as a result of them may be recovered in Community courts.

F. Other Commercial Defence Laws

The dual-use goods legislation was amended twice.⁴⁹ Dual-use goods are products that may be used for military purposes, the export of which is restricted. In July agreement

42 OJ (1997) L 62/43.

43 OJ (1996) L 326/71.

44 OJ (1996) C 364/2.

45 See the notice in OJ (1996) C 307/4.

46 OJ (1996) C 296/10. See also the notice in OJ (1996) C 276/7.

47 OJ (1996) L 309/1 and 7.

48 Article 4 of the Regulation.

49 OJ (1996) L 176/1; OJ (1996) L 278/1.

was reached on initial elements of the Wassenaar Agreement, which must provide an international framework for dual-use export restraints.

V. Generalized Scheme of Preferences

The investigation into the use of forced labour in Burma continued throughout the second half of 1997.⁵⁰ The Commission held hearings and requested to visit the country (which was refused by the Burmese authorities). The Commission further decided that a complaint against Pakistan would not be pursued, since this country has adopted legislation aimed at combating forced labour and is prepared to discuss the problem.

Some technical changes were made to the industrial and agricultural schemes: Turkmenistan fulfils the administrative formalities for issuing GSP certificates of origin,⁵¹ other changes adapt the GSP to amendments of the customs nomenclature.⁵² Last, the Commission issued notices concerning the graduation of certain product/country pairs from the agricultural and industrial GSP Regulations.⁵³

VI. Court Cases

Case T-208/95, Miwon Co. Ltd vs Commission, Order of the Court of 10 July 1996

In 1990 the Commission imposed anti-dumping measures on monosodium glutamate from, *inter alia*, Korea. The Korean producer Miwon offered a price undertaking, which was accepted. Under the terms of the undertaking, Miwon was not to export to the Community below a certain minimum price.

A few years later, the complainant in the proceeding alleged that Miwon did in fact sell under the minimum price. The Commission initiated a review of the measures and imposed provisional anti-dumping duties on Miwon and the other Korean producers. Miwon subsequently attacked the provisional anti-dumping duty in Court. After the case was filed at the Court of First Instance, the Council imposed definitive anti-dumping duties. The question now arose whether Miwon could still attack the provisional anti-dumping duties.

Miwon argued that the Commission is the sole authority responsible for the Regulation imposing the provisional anti-dumping measures and that, consequently, the Commission's findings are final.

The Court disagreed: the imposition of provisional anti-dumping duties is only part of a procedure which ends with the imposition of definitive measures by the Council.

50 See Vermulst and Driessen, 'Commercial Defence Actions and Other International Trade Developments in the European Communities X: 1 January 1995 - 31 December 1995', 7 *EJIL* (1996) at 332.

51 OJ (1996) C 276/7.

52 OJ (1996) L 333/10 and 12, respectively.

53 OJ (1996) C 353/3 and 5, respectively; corr. OJ (1996) C 390/37.

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These measures are final and, consequently, after the provisional measures have been replaced by definitive anti-dumping measures it is only the latter that can be attacked. The case was therefore terminated.

Case T-161/94, Sinochem Heilongjiang vs Council, Judgment of 11 July 1996

How independent are Chinese exporters? This question already cropped up above when the general developments in EC anti-dumping were discussed. It also was the leitmotiv in two recent Court cases: the case concerning Climax Paper Converters, which is discussed below, and the present proceeding.

Sinochem had offered a minimum price undertaking to the Commission after a review of anti-dumping measures imposed on oxalic acid from (*inter alia*) China. When a new review was initiated, the Commission sent a questionnaire to Sinochem and another Chinese exporter. The latter did not reply to the questionnaire; Sinochem informed the Commission that it had always maintained the undertaking but that, due to the economic reforms in China, there were now many exporters of oxalic acid in China. Some of these might have sold under the undertaking minimum price. Even after the other exporters had also obtained a questionnaire, Sinochem was the only company to submit a questionnaire response. However, the Commission considered this very incomplete and announced that it intended to base its determination on the facts available.

In the provisional review Regulation the Commission treated all Chinese companies as one and noted that the undercutting margin had been based on the data of one cooperating importer. The definitive anti-dumping duties were imposed on the same basis. Sinochem subsequently instituted Court proceedings.

The institutions brought forward some objections to admissibility, the most important one being whether Sinochem was directly and individually affected. The Court's reasoning on this is broadly similar to the judgment in Climax Paper Converters.

The Court follows the Commission in concluding that the information submitted by Sinochem was not sufficiently representative for all Chinese exports, since it constituted only a small part thereof. The Court also simply ignores the question whether Sinochem was sufficiently independent to warrant individual treatment by concluding that a high residual duty for the non-cooperating exporters and a lower duty for Sinochem would entail the risk of circumvention. That conclusion, which is not really argued, begs the question whether Sinochem was indeed so dependent on other exporters or the Chinese state that this was a genuine risk.

The argument, together with the other pleas brought forward by Sinochem, was subsequently dismissed.

Case T-75/96 R, Söktas Pamuk Ve Tarım Ürünlerini Değerlendirme Ticaret Ve Sanayi A.S. vs Commission, Order of the President of the Court of First Instance of 26 August 1996, not yet published

The Commission initiated an anti-dumping proceeding concerning unbleached cotton fabrics from, *inter alia*, Turkey on 21 February 1996.

Söktas attacked the 'decision' to initiate the proceeding and requested damages as well as an injunction from the Court of First Instance that the proceeding be halted as far as it, and Turkey in general, were concerned. Söktas argued that the conditions for initiating anti-dumping proceedings under Article 47 of the EC-Turkish Customs Union Decision were not met.

The President of the Court disagreed: Article 47 merely requires the Community to inform the EC-Turkey Association Council, but does not make the initiation of the case as such dependent on the approval of that Council. Moreover, the sheer initiation does not prejudice the intervention of the Association Council. The injunction was refused.

Case C-61/94, Commission vs Germany, Judgment of the European Court of Justice of 10 September 1996, not yet published

The Community adopted in 1980 the International Dairy Arrangement (IDA), which was concluded under the auspices of GATT. The Commission brought an action based on Article 169 of the EC Treaty against Germany alleging it had failed to fulfil its obligation under the IDA. Germany had allowed the importation under inward processing of dairy products against minimum prices lower than those laid down in that agreement. The Commission held this to be a clear violation of the IDA. Germany, on the other hand, argued that the IDA is not applicable to goods imported under inward processing and that anyway the IDA does not lay down any legally binding obligation as to minimum prices for dairy products.

One interesting issue in view of legal certainty was that Germany's request to the appropriate advisory committee (the '113 Committee') for a clarification of the issue was not yet answered when the Commission brought its Article 169 action. Germany argued that the Commission was precluded from initiating a Court proceeding as long as the 113 Committee had not pronounced upon the issue. The Court concluded that the 113 Committee has a purely advisory task and that therefore Germany's objection in this regard was unfounded.

The Commission's main complaint was accepted. The Court concluded that the IDA did not impose any restrictions in respect of imported dairy products placed under inward processing.

Of some interest is the Court's observation that '[s]ince the purpose of the IDA is to achieve stability on the world market in dairy products in the mutual interests of exporters and importers, the Community must interpret its terms in such a way as to encourage the attainment of the objective pursued'. Detailed and teleological interpretation has been rare in the Court's approach to GATT agreements.

The remainder of the Commission's legal ammunition was rejected.

Case T-155/94, Climax Paper Converters Ltd vs Council, Judgment of 18 September 1996, not yet published

In 1993 the Council imposed a definitive anti-dumping duty of 18.6% on photo albums from China.⁵⁴ That decision was based on the data provided by Climax, a Hong Kong-based company which is the biggest exporter of Chinese photo albums. Other exporters had not cooperated, so that the definitive anti-dumping duty was based on the weighted average of Climax' dumping margin and the dumping margin for other Chinese exporters, which in turn was determined on the basis of the best information available. Climax opposed this duty on several grounds.

First the Council argued that Climax had no *locus standi* to bring a complaint. The Regulation imposing definitive anti-dumping duties – so the Council – was directed against China as a state and not against individual exporters. Consequently, Climax was not individually concerned by the Regulation. The Court did not agree: the institutions had based their findings on data provided by Climax. Indeed, that company took care of the lion's share of exports of photo albums. Climax had been referred to in the Regulation as an exporter. Under these circumstances, the company was individually affected by the measures. Since the national authorities have no discretion in applying the anti-dumping duty, and Climax only sought annulment insofar as the duty affected it, the company was also directly affected.

Climax' first two substantive arguments both related to its claim that it be treated separately on account of its independence from the Chinese state. Although the Court started its reasoning by emphasizing the wide discretion of the Community institutions to assess the factual situation, it then went on to discuss in detail the facts of the case. The Court considered that the relationship between Climax and the Chinese state was 'vague and confused' and that the institutions had not committed any manifest error of judgment.

The last argument concerned the use of best information available by the Commission and the penalizing of Climax (in that company's view) by imposing an anti-dumping duty much higher than the dumping margin of that company. The Court again did not follow the applicant. Imposing anti-dumping duties separately on Climax and on the non-cooperating exporters would in effect mean separate treatment for Climax. Moreover, imposing an anti-dumping duty on all Chinese exporters amounting to the dumping margin of Climax would invite non-cooperation from exporters selling at very low prices.

Case C-84/95, Bosphorus Hava Yollari Turizm ve Ticaret AS vs Minister for Transport, Energy and Communications, Ireland and the Attorney General, [1997] ECR I-3953

Bosphorus is a Turkish air charter company which on 17 April 1992 leased for a period of four years two aircraft owned by the Yugoslav airline JAT (a so-called 'dry lease').

⁵⁴ OJ (1993) L 333/67.

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Bosphorus entered into the agreement in good faith and – because of the UN sanctions against Yugoslavia – paid the rent for the aircraft into blocked accounts. The aircraft were used for flights between Turkey and some Member States and Switzerland. One of the aircraft was impounded in Ireland under Article 8 of Regulation 990/93.⁵⁵ The question put before the Court was whether this provision is also applicable to the situation where an aircraft has been leased for four years.

The Court argued that the wording of Regulation 990/93 does not distinguish between ownership and day-to-day control of an aircraft. Moreover, a strict interpretation of the Regulation contributed to pressure on Yugoslavia, whereas the use of day-to-day operation and control would jeopardize the effectiveness of the embargo measures. Bosphorus' claim that the owner of the aircraft was already sufficiently penalized since the rent was paid into a blocked account and that the impounding violated the principle of proportionality was equally declared unfounded by the Court in view of the important political aims of the Regulation (namely, pressurizing Yugoslavia into accepting the peace plan of the International Conference on the Former Yugoslavia).

55 That provision states that all aircraft in which 'a majority or controlling interest' is held by undertakings in or operating from Yugoslavia must be impounded by the competent Member State authorities.

VII. Appendix: Anti-Dumping Decisions and Regulations

Table Anti-Dumping: 1 July — 31 December 1996						
Product	Exporting Country	Initiation	Provisional Duty	Definitive Duty	Under-taking	Termination; Expiry
Mixed polyester yarns	Taiwan, Indonesia, China, Turkey	L 165/19, L 299/14 (newcomer reviews)		L 203/7 (refunds Indonesia)		C 290/7 ⁵⁶
Synthetic polyester fibres	India, Korea	L 165/21 (newcomer review)		L 189/10 (amendment)		
Dihydro-streptomycin	China	C 386/9 (notice)				C 188/4 ⁵⁶
Bedlinen	India, Pakistan, Thailand, Turkey					L 171/27
Magnesium	Russia, Ukraine			L 174/1	L 174/32	
Artificial corundum	Hungary, Poland, Czech Republic, Brazil, Slovenia, Russia, Ukraine					C 205/5
Polyester textured filament yarn	Indonesia, Thailand, India		L 178/1 ⁵⁷	L 289/14, corr. L 294/27 (Indonesia, Thailand)		L 289/14 (India)
PET video film	Korea					L 181/27
Small-screen colour TVs	Hong Kong					C 199/4

56 Notice of impending expiry.

57 Extension of provisional duties.

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Product	Exporting Country	Initiation	Provisional Duty	Definitive Duty	Under-taking	Termination; Expiry
3.5" micro-disks	Japan, Taiwan, China, circumvention by imports from Canada, Hong Kong, India, Indonesia, Macao, Malaysia, Philippines, Singapore, Thailand					L 186/14
Ring binder mechanisms	Malaysia, China		L 187/47			
Polyester staple fibre	Belarus			L 189/13		
Atlantic salmon	Norway	C 253/18				
Disodium carbonate	USA	C 253/23 (review)				
Seamless steel pipes and tubes	Hungary, Poland, Croatia	C 253/25 (review)		C 384/3 (notice)		
Seamless steel pipes and tubes	Russia, Czech Republic, Romania, Slovak Republic	C 253/26				
Electronic weighing scales	Japan, circumvention by imports assembled in/and or transhipped through Indonesia	L 221/47				

Commercial Defence Actions and Other International Trade Developments

Product	Exporting Country	Initiation	Provisional Duty	Definitive Duty	Under-taking	Termination; Expiry
Electronic weighing scales	Japan and Singapore, circumvention by imports of parts thereof assembled in the EC	L 221/50				
Briefcases and school-bags	China	C 255/9 (corr.)				
Bed linen (II)	Egypt, India, Pakistan	C 266/2				
Urea	Venezuela					C 275/11
Thermal paper	Japan					C 281/13 ⁵⁶
Cotton yarn	Brazil, Turkey					C 281/14 ⁵⁶
Ferro-silicon	Brazil	C 285/15 (review)				
Video tapes	China	C 314/3 (review)				
Oxalic acid	India, China					C 348/3
Unbleached cotton fabrics	China, Egypt, India, Indonesia, Pakistan, Turkey		L 295/3			
Hydraulic excavators	Korea					L 304/23
Pocket flint lighters	Korea					C 360/2
Pocket flint lighters	Japan	C 361/3 (review)				
3.5" micro-disks	USA			C 368/8 (notice)		

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Product	Exporting Country	Initiation	Provisional Duty	Definitive Duty	Undertaking	Termination; Expiry
Stainless steel fasteners and parts	China, India, Malaysia, Korea, Taiwan	C 369/3				
Certain semi-finished products of alloy steel	Turkey, Brazil					C 379/11 ⁵⁶
Ferro-silico-manganese	China	C 381/4				
Ferro-silico-manganese	Russia, Ukraine, Brazil, South Africa	C 381/5 (review)				
Large aluminium electrolytic capacitors	Japan	C 381/7 (review)				
Ferro-silicon	Egypt, Poland					C 387/3 ⁵⁶