# CONTENTS

10	able of Cases	XX111	
Table of Legislation		lix	
Table of Concordance		lxix	
$L_{1}$	ist of Abbreviations	lxxi	
	I INTRODUCTION		
	Historical background and role of anti-dumping in the		
	EC's external trade	I.01	
	Economic rationale	I.06	
	Dumping as price discrimination in international trade	I.06	
	Dumping as selling below cost of production	I.07	
	Traditional economic theory	I.08	
	Shortcomings of traditional economic theory	I.09	
	Can anti-dumping be replaced by competition rules?	I.17	
	No obligation to analyze in an investigation the root cause of dumping	I.18	
	Multilateral rules: GATT and WTO	I.21	
	Article VI GATT 1947	I.21	
	Anti-dumping Agreements	I.24	
	EC legislation	I.34	
	General	I.34	
	Evolution	I.37	
	Scope	I.39	
	Anti-dumping proceedings: main features	I.47	
	Differences with US law	I.54	
	Relationship with other EC law	I.56	
	Enlargement of the Community	I.63	
	II COMMENTARY		
1.	Article 1: Principles		
	Introduction	1.01	
	Conditions for the application of anti-dumping measures (Article 1(1))	1.02	

	'Any dumped product'	1.04
	Injury and causation	1.09
	Release for free circulation	1.10
	'[M]ay be applied'	1.12
	Concept of dumping (Article 1(2))	1.13
	Exporting country (Article 1(3))	1.14
	Like product (Article 1(4))	1.23
	Introduction—'Single product' and 'like product'	1.23
	Are the products subject to investigation one single product?	1.27
	Product definition in anti-dumping law versus market definition	
	in competition law	1.32
	Relevant criteria in order to determine the 'single product'	1.33
	Irrelevant criteria for the determination of the 'single product'	1.36
	Specific problems in the context of determining the 'single product'	1.40
	Are the products alike?—Relevant criteria	1.46
	Irrelevant criteria for the determination of the 'like product'	1.51
	Varying product coverage in the course of the proceeding	
	or in different proceedings	1.54
	Market segmentation	1.58
	Examples	1.66
2.	Article 2: Determination of Dumping	
	Introduction	2.01
	Normal value (Article 2(1) to (6))	2.06
	What is normal value?	2.06
	Exporter's domestic sales price (Article 2(1))	2.13
	Domestic prices of other producers/sellers (Article 2(1),	
	second subparagraph)	2.67
	Constructed normal value (Article 2(3), first alternative)	2.72
	Export price to a third country (Article 2(3), second alternative)	2.75
	Calculation of costs and profits (Article 2(5), (6))	2.77
	Normal value in countries with a hyperinflationary economy	2.177
	Export price (Article 2(8), (9))	2.182
	Introduction	2.182
	Which export transaction?	2.185
	Whose export price?	2.190
	Actual export price	2.200
	Constructed export price	2.202
	Verification	2.236

	Comparison (Article 2(10))	2.237
	General	2.237
	Grounds for adjustments	2.250
	Insignificant adjustments	2.313
	Onus of proof	2.314
	Dumping margin (Article 2(11),(12))	2.321
	Introduction	2.321
	General rule: comparison of normal value and export price	
	on a weighted average basis or on a transaction-by-transaction basis	2.333
	Exception: comparison of weighted average normal value with	
	individual export prices	2.335
	Example: calculation of dumping margins on the basis of the	0 0 10
	various methods	2.343
	Differentiated dumping margins	2.344
	Should the dumping margin be based on all transactions during	0016
	the investigation period or should multiple comparisons be made?	2.346
	Dumping margins for related producers in the exporting country	2.347
	Sampling	2.349
	Residual dumping margins	2.350
	Exports from non-market economy countries—particular aspects	2.356
	General	2.356
	When is a country a non-market economy country?	2.360
	Normal value (Article 2(7))	2.364
	Export price	2.423
	Comparison—adjustments in cases of exports from non-market	_ /
	economy countries	2.425
	Dumping margin	2.437
	Individual treatment ('IT')	2.439
	Market economy treatment ('MET') (Article 2(7)(b), (c))	2.454
3.	Article 3: Determination of injury	
	Introduction	3.01
	Material injury	3.07
	General	3.07
	Volume of dumped imports (Article 3(2), (3))	3.34
	Effect of dumped imports on prices in the Community market	
	for like products (Article 3(2) and (3))	3.42
	Impact of dumped imports on the Community industry	
	(Article 3(2), (5), (6), (7))	3.56
	Causal link	3.89

	Introduction	3.89
	Methodology for establishing a causal link	3.93
	Threat of material injury	3.150
	Material retardation of the establishment of a Community industry	3.155
	Cumulation (Article 3(4))	3.158
	Introduction	3.158
	Imports from two or more countries are simultaneously	
	subject to anti-dumping investigations	3.162
	Margins of dumping more than <i>de minimis</i>	3.164
	Imports from each country not negligible	3.165
	Appropriateness of a cumulative assessment of dumped imports	3.167
4.	Article 4: Community industry	
	Introduction	4.01
	Community companies must be producers of the 'like product'	4.08
	General rule	4.10
	Level of support and level of co-operation	4.10
	Community industry consisting of only one company or concentrated	
	in one Member State	4.17
	State-owned Community producers	4.18
	Producers not covered by the definition of 'Community industry'	4.19
	Introduction	4.19
	Producers related to exporters or importers of the dumped product	4.30
	Community producers importing dumped imports	4.39
	Regional proceedings	4.56
	Article 4(4)	4.61
5.	Article 5: Initiation of anti-dumping proceedings	
	Introduction	5.01
	Initiation of an anti-dumping proceeding on the basis	
	of a complaint (Article 5(1))	5.03
	Form of complaint and representation of complainant	7.03
	Community producers by third parties (Article 5(1), (2))	5.05
	Contents of complaint (Article 5(2))	5.07
	Admissibility of the complaint	5.16
	Notifying exporting countries concerned of the receipt	
	of a complaint (Article 5(5))	5.20
	Consultation of Member States (Article 5(9))	5.23
	Time period for taking a decision (Article 5(9))	5.24

Decision on the admissibility of the complaint	5.27
Withdrawal of the complaint (Article 5(8))	5.31
Initiation of an anti-dumping proceeding on the	
Commission's own initiative (Article 5(6))	5.32
Notice of initiation (Article 5(9), (10))	5.33
Information of parties concerned on the initiation of the proceeding (Article 5(11))	5.38
Extension of the product coverage or the countries concerned in the course of the investigation	5.41
Customs clearance during the anti-dumping investigation (Article 5(12))	5.42
Analogous application of Article 5 with regard to reviews,	
circumvention and absorption proceedings	5.43
End of the anti-dumping proceeding and of the	
investigation	5.44
6. Article 6: The investigation	
Introduction	6.01
Investigation periods (Article 6(1))	6.05
Determination of the periods	6.05
Information relating to a period outside the investigation periods	6.11
Submission of questionnaires (Article 6(2)) as well as other information and views	6.14
Verification visits and other verifications (Article 6(4), (8))	6.21
Assistance of Member States (Article 6(3), (4))	6.25
Hearings (Article 6(5))	6.26
Confrontation meetings (Article 6(6))	6.28
Inspection of the non-confidential file (Article 6(7))	6.31
Duration and conclusion of the investigation (Article 6(9))	6.37
7. Article 7: Provisional measures	
Introduction	7.01
Requirements for the imposition of a provisional anti-dumping duty (Article 7(1))	7.03
Level and types of provisional anti-dumping duty (Article 7(2)	7.06
Collection of the provisional anti-dumping duty (Article 7(3))	
Consultation of Member States (Article 7(4))	7.08

	Immediate intervention requested by a Member State (Article 7(5))	7.09
	Notification to the Council and its powers under Article 7(6)	7.10
	Duration and extension of the provisional anti-dumping duty	
	(Article 7(7))	7.11
	Provisional measures and agreements concluded by the	
	Community with third countries	7.16
8.	Article 8: Undertakings	
	Introduction	8.01
	Substantive conditions for the acceptance of an undertaking	8.06
	Given by an exporter	8.06
	Elimination of the injurious effects of dumping	8.09
	Provisional affirmative determination of dumping, injury,	
	causation–Community interest	8.15
	Practicability of an undertaking	8.17
	Other considerations	8.21
	Particularities concerning quantitative undertakings	8.24
	Content of an undertaking	8.27
	Procedure	8.28
	Conditions for the acceptance of an undertaking	8.28
	Non-confidential version	8.30
	Proposal of an undertaking	8.31
	Consequences should an exporter not propose, or refuse to offer,	
	an undertaking	8.32
	Procedure in case of acceptance	8.33
	Procedure in case of non-acceptance	8.41
	Subsequent change of the terms of an undertaking	8.42
	Monitoring of undertakings (Article 8(7))	8.43
	Violation or withdrawal of undertakings (Article 8(9), (10))	8.44
	Ratio legis—an overview	8.44
	Withdrawal of an undertaking	8.51
	Violation of an undertaking	8.56
	Reasons to believe that there was a violation of an undertaking	8.59
9.	Article 9: Termination without measures and imposition	
	of definitive duties	
	General	9.01
	De minimis dumping margins and negligible injury (Article 9(3))	9.05

General	9.05
Negligible injury	9.07
De minimis dumping margin	9.10
Termination without adoption of protective measures	9.12
'Protective measures'—definition	9.12
Protective measures unnecessary (Article 9(2))	9.13
Legal form of termination without protective measures	9.21
Procedure (Article 9(2))	9.22
Imposition of definitive measures	9.24
Substantive requirements to be met (Article 9(4))	9.24
Procedure (Article 9(4))	9.25
Scope, level and types of an anti-dumping duty (Article 9(4), (5))	9.30
Monitoring of the market after the imposition of duties	9.31
Anti-dumping duties in the case of sampling (Article 9(6))	9.32
Practicability of individual duty rates (Article 9(5))	9.34
Non-discrimination	9.34
Particularities of anti-dumping proceedings concerning	
candidate countries and other trade agreements	9.35
Developing countries subject to investigation	9.40
Introduction	9.40
Constructive remedies	9.41
At which stage of the investigation does Article 15 of the	
WTO Anti-dumping Agreement apply?	9.42
What obligations arise out of the first sentence of Article 15 of the	- / -
WTO Anti-dumping Agreement?	9.43
0. Article 10: Retroactivity	
Introduction	10.01
Definitive collection of provisional anti-dumping duties	
(Article 10(2), (3))	10.04
Condition for the definitive collection of a provisional	
anti-dumping duty	10.06
Exercise of discretion	10.10
Basic rule: no retroactive application of anti-dumping duties	
(Article 10 (1))	10.13
Exceptions to the rule	10.14
Retroactivity in the case of massive dumped imports (Article 10(4))	10.14
Retroactivity in cases of a violation or withdrawal of undertakings	
(Article 10))	10.20

11. Article 11: Duration, review and refunds	
Introduction	11.01
Duration of anti-dumping measures	11.04
Expiry review (Article 11(2))  General  Notice of impending expiry  Scope of an expiry review	11.06 11.06 11.08 11.09
Expiry reviews in practice Examples Initiation of an expiry review and subsequent investigation Conclusion of expiry review Notice of expiry	11.15 11.25 11.29 11.36 11.40
Interim review (Article 11(3))  General  Nature of an interim review  Scope of an interim review  Initiation of an interim review and subsequent investigation  Conclusion of an interim review	11.41 11.42 11.45 11.51 11.61
Newcomer review (Article 11(4))  General  Who is a newcomer?  Scope of a newcomer review  Initiation of a newcomer review and subsequent investigation  Conclusion of a newcomer review	11.64 11.64 11.73 11.75 11.77
Refund proceedings (Article 11(8))  General  Parties to a refund proceeding  Scope of a refund proceeding  Application for a refund  Investigation and conclusion of a refund proceeding  Methodology for the calculation of the refund	11.79 11.80 11.81 11.85 11.90 11.95
Applicable methodology in review and refund proceedings (Article 11(9), (10))	11.104
Changes to regulations imposing anti-dumping measures without carrying out a formal review  Elimination of drafting errors	11.109 11.110
Change of name of an exporter subject to an individual anti-dumping duty  Takeover of an exporter subject to an individual anti-dumping	11.111
duty by another company	11.113

Other changes on the part of exporters	11.115
Imposition of a residual anti-dumping duty	11.116
Clarification of the product coverage	11.117
Regulations possibly tainted by anti-competitive behaviour	11.118
12. Article 12: Anti-absorption	
Introduction	12.01
Scope of an anti-absorption investigation	12.08
Definition of absorption	12.08
Export price	12.10
Normal value	12.11
Calculation of the level of absorption and recalculation of the	
anti-dumping duty	12.13
Procedure	12.16
Initiation of an anti-absorption investigation and	12.10
subsequent investigation	12.16
Conclusion of an anti-absorption investigation	12.24
13. Article 13: Circumvention	
	1001
Introduction and <i>ratio legis</i>	13.01
Legislative history	13.07
Article 13(10) of Basic Regulation 2176/84 and Basic	
Regulation 2423/88	13.07
Anti-circumvention rules in the Uruguay Round	13.10
Compatibility of Article 13 of Basic Regulation 384/96 with the GATT	13.12
Definition	13.14
Introduction	13.14
General definition (Article 13(1))	13.15
Assembly operations, Article 13(2)	13.27
Relationship between circumvention under Article 13(1)	
and circumvention under Article 13(2)	13.42
Procedure (Article 13(3))	13.43
Initiation	13.43
Investigation	13.48
Anti-circumvention measures	13.51
Termination of the investigation without measures	13.61
Exemption certificates (Article 13(4)) and control of end-use	13.62
Exemption certificates (Article 13(4)) and control of end-use  Exemption certificates (Article 13(4))	13.62
Control of end-use	13.67
Relationship of anti-circumvention measures to other EC legislation	13.68

Anti-circumvention measures and review investigations	
provided for in Article 11	13.68
Anti-circumvention measures and suspension	13.72
Anti-circumvention measures and customs law, in particular	
origin investigations (Article 13(5))	13.73
14. Article 14: General provisions	
Introduction	14.01
Anti-dumping duties (Article 14(1))	14.02
Level of anti-dumping duties	14.02
Residual anti-dumping duty	14.49
Form of an anti-dumping duty	14.58
No simultaneous application of anti-dumping and anti-subsidy	
measures based on the same situation; effects of quantitative	
restrictions	14.76
Duty to substantiate arguments as to the duty level	14.79
Form, publication and notification of Community acts	
adopting anti-dumping measures (Article 14(2))	14.80
Special provisions (Article 14(3))	14.82
Suspension of anti-dumping measures (Article 14(4))	14.85
General	14.85
Pre-conditions	14.87
Procedure, duration	14.93
Registration of Imports (Article 14(5))	14.96
Ratio legis and scope of application	14.96
Procedure, form and duration	14.97
Monthly reports of Member States on imports of products affected	14.100
by anti-dumping measures or proceedings (Article 14(6))	14.100
Information requests to Member States for monitoring purposes	1/101
(Article 14(7))	14.101
15. Article 15: Consultation	
Provisions providing for participation of Member States in	
anti-dumping proceedings	15.07
16. Article 16: Verification visits	
17. Article 17: Sampling	
Introduction	17.01

So	cope of sampling (Article 17(1))	17.05
Se	election of sample (Article 17(2))	17.07
	Statistical method	17.09
	Quantitative method	17.12
P	rocedure for the selection of the sample (Article 17(2))	17.26
In	ndividual dumping margins for exporters not included in	17 20
	the sample (Article 17(3))	17.29
N	Ion-co-operation of parties included in the sample (Article 17(4))	17.31
18. A	article 18: Non-co-operation	
In	ntroduction	18.01
N	Jon-co-operation—features	18.03
	Categories of non-co-operation (Article 18(1))	18.03
	Failure to give a computerized response (Article 18(2))	18.06
	Negligible deficiencies (Article 18(3))	18.08
C	Consequences of non-co-operation (Article 18(1), (6))	18.09
Pı	rocedural rules in case of non-co-operation (Article 18(1), (4), (5))	18.11
E	xamples of 'facts available'	18.14
	Calculation of normal value	18.14
	Calculation of export prices	18.20
	Calculation of dumping margin	18.30
	Injury	18.32
	Determination of the level of the residual anti-dumping duty	18.34
	Non-co-operation of suppliers of a co-operating exporting trader	18.35
	Other examples	18.36
19. A	article 19: Confidentiality	
In	ntroduction	19.01
C	Confidential information (Article 19(1))	19.03
N	Ion-confidential summary (Article 19(2))	19.09
Ti	reatment of information whose confidentiality is contested or which is without good reason not accompanied by	
	a non-confidential summary (Article 19(3))	19.13
D	isclosure of general information (Article 19(4))	19.15
W	Tho has to respect confidentiality? (Article 19(5))	19.19
U	se of information received limited to anti-dumping	
	proceedings (Article 19(6))	19.21

20. Article 20: Disclosure	
Introduction	20.01
General	20.03
Disclosure concerning provisional measures (Article 20(1))	20.08
Disclosure concerning definitive measures (Article 20(2) to (5))	20.09
21. Article 21: Community interest	
Introduction	21.01
In what investigations is the Community interest test applied?	21.05
Relevant interests  General  Relevant interests of the Community industry and other	21.06
Community producers	21.09
Prevention of the further aggravation of an already precarious situation for the Community industry or even of its disappearance Relevant interests of the upstream industry	21.11 21.20
Relevant interests of users	21.21
Relevant interests of final consumers	21.33
Relevant interests of unrelated importers and traders in the Community Elimination of trade distorting effects and other relevant interests	21.37 21.38
Irrelevant considerations General	21.45 21.45
Impact of anti-dumping measures on the process of transition in accession countries, association agreements	21.46
Existence of factors other than dumped imports injuring the Community industry	21.47
Adoption of anti-dumping measures would lead to a deterioration of trade relations between the Community and the exporting	01/0
country in question	21.48
Protection of the Community industry by customs tariffs	21.49
Public funding of the Community industry  Allegations that the Community industry is shifting production	21.50
to locations outside the Community	21.51
Import quotas for the product concerned	21.52
General policy considerations	21.53
Exporters' industrial property rights	21.54
Conclusion of a co-operation agreement between the major Community producer and a distribution company which	
previously imported the product concerned	21.55

Community producers form part of bigger industrial conglomerates	
which have sufficient resources to make the necessary investments	21.56
for future generations of the product concerned	21.70
Product concerned only represents a small percentage of Community industry's total turnover	21.57
Adoption of anti-dumping measures makes it impossible to	
pursue a global production and marketing strategy	21.58
Evaluation of the various interests at stake	21.59
Methodology	21.59
Application in practice	21.62
Procedural provisions	21.63
General aspects	21.63
Non-confidential file on Community interest	21.64
Obligation to provide pertinent evidence (Article 21(7)), and nature	
of the information to be submitted	21.65
Imposition of time limits (Article 21(2))	21.67
Verification of information submitted relating to Community interest	21.67
Procedural rights of the parties concerned	21.68
Commission's report on the submissions received from, and the results of the deliberations of, the advisory committee (Article 21(5))	21.77
2. Article 22: Final provisions	
2. Mulicie 22. Miliai provisions	
3. Article 23: Repeal of existing legislation and transitional measures	
4. Article 24: Entry into force	
III JUDICIAL REVIEW	
5. Judicial review: admissibility	
Jurisdiction	25.01
Actions for annulment (Article 230 EC)	25.02
Locus standi—general	25.02
Locus standi—specific cases	25.05
Actions for failure to act (Article 232 EC)	25.53
Actions for damages (Articles 238 and 288(2) EC)	25.56
Interveners	25.57
References from national courts (Article 234 EC)	25.61

26. Substantive grounds for judicial review	
Scope of powers	26.01
Lack of competence	26.04
Infringement of essential procedural requirements	26.05
Infringement of the EC Treaty or of any rule of law relating	
to its application	26.15
Substantive requirements for liability under Article 288(2) EC	26.46
Applications for interim measures (Articles 242 and 243 EC)	26.48
Form of order and execution of judgments	26.52
Coexistence of the WTO dispute settlement system and judicial	
review by the Courts in Luxembourg	26.61
Appendix 1: Council Regulation (EC) No 384/96 as amended Appendix 2: The General Agreement on Tariffs and Trade	823
(GATT 1947)	853
Appendix 3: Agreement on Implementation of	
Article VI of GATT 1994	857
Bibliography	877
Index	885