Producers in the European Communities (EC) filed 352 antidumping petitions between 1994 and 2004. By 2005, the European Commission had made final determinations on 260 of these petitions, imposing duties in slightly more than 70 percent of these cases. The number of antidumping petitions filed in the EC since passage of the Uruguay Round peaked in 1999, and has been significantly lower since, as illustrated in Figure 1.

Legal Procedures

Any interested party may file an antidumping petition with the European Commission on behalf of the Community industry, either directly or through its national government.1 After considering the evidence on dumping and injury contained in the petition, the Commission must decide whether or not to initiate an investigation within 45 days of receiving the petition and publish a notice in the Official Journal of the European Communities.2 In special circumstance, with cooperation of the Member States, the Commission may self-initiate an investigation

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1 An antidumping investigation may be initiated if Community producers who support the petition account for at least 25 percent of total Community production of the like product and have collective output of more than 50 percent of the total production of such products produced by those producers who either support or oppose the petition. The “like product” is defined as a product that is alike to the product under investigation in all aspects or a product with closely resembling characteristics.

2 The Commission is comprised of one representative from each member state of the European Union. The European Council nominates a Commission President, which then must be approved by the European Parliament. Commission representatives are chosen by the Commission President from lists of nominees provided by the member states.
without having received any complaint from the Community industry if it has sufficient evidence of dumping, injury and a causal link between the two.

After initiating an investigation, the Commission conducts simultaneous investigations into (1) whether foreign products are imported at a price lower than the normal value and (2) whether those imports are causing or threatening to cause material injury to the Community industry. The dumping and injury investigations are undertaken by different case handlers within the Trade Directorate of the Commission.

To determine whether the foreign products are imported at a price lower than normal value, the Commission calculates the dumping margin as the difference between a weighted average normal value and a weighted average export price to the Community, or the difference between individual normal values and individual export prices on a transaction-to-transaction basis over the period of investigation, normally a period of not less than six months immediately prior to the initiation of the investigation. In special circumstances, the Commission may compare a weighted average normal value to prices of all individual export transactions to the Community.

The Commission determines the normal value using one of the four methods. Whenever possible, the normal value is calculated using the sales price in the exporting country’s home market. However, if there is an insufficient quantity of sales in the exporting country’s domestic market, the weighted average sales price is below the weighted average unit cost, or the volume of sales below unit cost during the investigation percent is more than 20 percent of the total sales being used to determine normal value, the Commission calculates the normal value using one of the two alternative methods. The Commission may calculate a “constructed” normal value using the exporting country’s cost of production plus a reasonable amount for selling, general and administrative costs and profits, or use the prices of sales from the exporting country to a selected third country. For non-market economy countries, the Commission determines the normal value using either the sales price or constructed value in a selected market economy country, or the price from a selected market economy country to a selected third country which may include the Community. The Commission may also calculate the normal value for a non-market economy country using the adjusted sales price of the like product in the Community, or on any other reasonable basis, if necessary.

The Commission normally calculates a separate antidumping margin for each supplier. If, however, any interested party fails to provide authentic, necessary information within the time limit, or it is difficult to verify the provided information, the Commission may make its determination on the basis of “facts available,” which includes the information submitted in the petition or submitted by interested parties. When the number of suppliers, products or transactions is too large, the Commission may select a sample for the investigation using statistical sampling methods or by choosing those suppliers or products with the largest volume of production, sales or exports on the basis of the information available at the time of the selection. The Commission calculates the dumping margin for those firms not included in the examination using a weighted average margin of dumping established for those suppliers selected in the sample.

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3 The unit cost is defined as production costs plus selling, general and administrative costs.
To determine whether the foreign imports are causing or threatening to cause material injury to the Community industry, the Commission considers the volume of the dumped imports, the effect of the dumped imports on prices of the like product in the Community market, and the consequent impact of those imports on the Community industry. The Commission specifically considers the margin of dumping and its impact on the actual and potential decline in sales, profits, output, market share, productivity, return on investments, employment, and wages in the domestic industry. To ensure that the injury to the Community industry is caused by the dumped imports, the Commission also examines other factors that may be causing injury such as the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the consumption patterns, competition between third country and Community producers, developments in technology, and export performance and productivity of the Community industry.

The Commission should consult with the Antidumping Advisory Committee, which is chaired by a member of the Commission and includes representatives from each member state, prior to making a decision about whether to impose provisional antidumping duties. If the Commission makes a provisional affirmative determination that dumped imports from the country under investigation have caused injury to the Community industry, provisional antidumping duties not exceeding the margin of dumping may be imposed. Provisional duties are imposed in the “Community interest” to prevent further injury to the Community industry.

Note that the Commission defines “Community interest” as the interests of both the Community industry and the end-users or consumers of the product under investigation. In other words, Commission must decide whether the benefits of the antidumping measures to Community producers outweigh the potential costs of the measures to Community consumers of the product under investigation. If the Commission concludes that the imposition of the antidumping measures is not in the “Community interest,” the case is terminated without imposing antidumping duties.

Following a provisional affirmative determination, the Commission continues its investigation on the margin of dumping and injury. If the Commission makes an affirmative final determination, it may impose definitive antidumping measures if the investigation involves coal or steel products. For all other products, the Commission simply recommends that the Council of European Union pass regulations imposing definitive antidumping duties. The Council makes the final decision after consulting with the Antidumping Advisory Committee. As described

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4 Provisional duties are either imposed for a period of either six or nine months. Provisional duties imposed for six months may be extended for an additional three months later in the investigation.

5 For example, in February 2006 the Commission found that imports of leather shoes from China and Vietnam were being sold at prices below normal value and causing material injury to the Community industry. The Trade Commissioner, however, recommended that children’s shoes be excluded from the antidumping measures because a duty on children’s shoes would disproportionately affect families with young children and would not be in the public interest.

6 The Council of the European Union includes ministers of the governments of each of the European Community’s member states. The Council has 321 total votes, which are distributed to member countries through a weighting system in place since 2004. The Council must approve the imposition of antidumping duties by a simple majority of these votes; since 2004, abstentions have been counted as a vote to impose duties. If the Council fails to take action, then no duties are imposed.
above, the Council must take the “Community interest” into consideration when making its final
determination. Antidumping duties cannot exceed the margin of dumping calculated by the
Commission during its investigation. Both provisional and definitive antidumping duties are
collected by all Member States. All decisions must be published in the Official Journal of the
European Communities.

If an exporter promises to revise its prices and stop exporting at “dumped” prices in an
undertaking agreement, the Commission may terminate the antidumping investigation without
imposing provisional or definitive antidumping duties. If the exporter fails to uphold the
undertaking agreement or withdraws from the undertaking agreement, the Commission may
impose a provisional or definitive duty based on the best information available.

Antidumping measures may be suspended by the Commission for a period of nine months to one
year, if after consulting the Advisory Committee the Commission determines that injury to the
Community industry would be unlikely to resume as a result of the suspension. In this case, the
Commission may resume the antidumping measures at a later date if necessary.

The Commission may undertake an interim review after the one year anniversary of imposition
of the definitive measures upon request. If there are new firms in the exporting country which
did not export during the original period of investigation, the Commission calculates individual
dumping margins for them during the review after consulting with the Advisory Committee. In
addition, antidumping duties may be extended to imports of like products from third countries
during these reviews if there is a change in the pattern of trade between third counties and the
Community.

Antidumping duties are usually lifted after five years. During the final year of the five year
period, the Commission must publish a notice announcing the expiration of the antidumping
measures in the Official Journal of the European Communities. The Commission must initiate
an expiry review upon request or on its own initiative to examine whether the removal of the
antidumping measures would be likely to result in the continuation or recurrence of dumping and
injury. The request for an expiry review needs to be made by or on behalf of Community
producers no later than three months before the end of the five year period.

In December 2006, the European Commission launched a review of their antidumping
procedures. Press reports indicate that the European Union wants to change its rules to make it
harder to impose antidumping duties in order to lessen foreign complaints over Europe's
antidumping practices. The Commission is expected to publish recommendations for change in
the Summer of 2007.

*Compliance with the WTO Antidumping Agreement*

Antidumping procedures in the European Communities have been challenged at the World Trade
Organization on three separate occasions. The disputes are summarized below.
On August 3, 1998, India filed a complaint with the World Trade Organization’s (WTO) dispute settlement body (DSB), claiming that the EC’s antidumping investigation and the imposition of antidumping duties on imports of cotton-type bed-linen from India failed to comply with the WTO’s Antidumping Agreement. Specifically, India argued that:

- the EC’s initiation, determination of dumping and injury, and explanation of the findings were inconsistent with the WTO law;
- the EC’s establishment of the facts was not proper and the evaluation of the facts was not unbiased and objective; and
- the EC authority had not taken into consideration the fact that India is a developing country.

The DSB published its finding on October 30, 2000. Although the panel rejected many of the specific complaints filed by India, it found that the EC had violated the WTO’s antidumping agreement when it failed to properly evaluate all relevant factors impacting the state of the domestic industry and included the financial status of firms not in the domestic industry in the injury analysis. The panel also confirmed that the EC failed to explore other possibilities of constructive remedies before applying antidumping duties, as the WTO Agreement specifies should happen when investigations involve developing countries. Finally, the panel ruled that the EC violated the WTO agreement when it engaged in the practice of zeroing when calculating dumping margins during the investigations.7

On March 1, 2001, the Appellate Body agreed that the EC had violated the WTO’s Antidumping Agreement during the course of the investigation as described above. The Appellate Body also found that the EC incorrectly applied administrative, selling and general costs and profits in the calculation of the constructed normal value during the investigation. The DSB adopted both the Appellate Body report and the Panel report, as modified by the Appellate Body report.

On April 5, 2001, the EC accepted the DSB’s recommendations, but noted that it would need a reasonable period of time to implement them. On April 26, 2001, India and the EC informed the DSB that the EC would implement the panel’s recommendations by August 14, 2001. The EC amended the imposition of definitive antidumping duties on imports of cotton-type bed linen from Egypt, India and Pakistan and suspended its application regarding imports originating in India by the deadline. India was not satisfied that the EC’s amended measures brought its antidumping practices into full compliance with the DSB’s rulings and therefore decided to continue to press its claims. On May 7, 2002, India requested the establishment of a compliance panel, and the DSB referred the issue to the original panel on May 22, 2002. On November 29, 2002, the panel ruled that the EC was now in full compliance with its earlier rulings and those of the Appellate Body and dismissed India’s complaint.

7 “Zeroing” is a calculation methodology that ignores the cases of “negative” dumping (or those cases in which the export price is higher than the normal value) when calculating a weighted average dumping margin. The practice of zeroing increases the dumping margin and therefore inflates antidumping duties.
Malleable Cast Iron Tube or Pipe Fittings from Brazil

On December 21, 2000, Brazil filed a complaint with the WTO’s dispute settlement body, claiming that the imposition of definitive antidumping duties concerning imports of malleable cast iron tube or pipe fittings from Brazil failed to comply with the WTO’s Antidumping Agreement. Specifically, Brazil argued that:

- the EC’s establishment of the facts was not proper and its evaluation of these facts was not unbiased and objective in both the provisional and definitive determination; and
- the EC’s evaluation and findings made in relation to the “community interest” was not proper.

On March 7, 2003, a WTO dispute settlement panel found that the EC acted inconsistently with the antidumping agreement in “zeroing” negative dumping margins in its dumping determination. The panel also ruled that the EC did not clearly address or explain the lack of significance of certain injury facts in the published provisional or definitive determination. However, the panel found that the EC did not violate the antidumping agreement regarding Brazil’s other claims.

On July 22, 2003, the Appellate Body upheld most of the panel’s findings but reversed its finding with respect to one issue. In contrast to the panel, the Appellate Body found that the EC failed to disclose to interested parties certain information related to the evaluation of the state of the domestic industry during the antidumping investigation, which was inconsistent with the antidumping agreement. The DSB adopted both the Appellate Body report and the Panel report, as modified by the Appellate Body report.

The EC accepted these recommendations and agreed to implement them by March 19, 2004. On March 17, 2004, the EC informed the DSB that it had fully complied with the recommendations and rulings of the DSB in this dispute within the deadline.

Flat Rolled Iron or Non-Alloy Steel Products from India

On July 5, 2004, India filed a complaint with the WTO’s dispute settlement body concerning the imposition of definitive anti-dumping measures on imports of certain flat rolled products of iron or non-alloy steel ("HR Coils") from India. India argued that the EC did not collect antidumping duties on a non-discriminatory basis on imports from all sources found to be dumped and causing injury. While antidumping measures were in force against imports of HR Coils from India, no measures were taken against imports of the same product from Egypt, Slovakia and Turkey, although the Commission determined that the products imported from the latter three countries were also dumped and causing injury to the Community industry.

On October 22, 2004, India and the EC reached an agreement and informed the DSB that the EC would terminate the measures against imports of HR Coils from India.