

primarily at the national level (i.e. in the U.S.), and then taken into the international agreements (i.e. GATT codes) to provide a cover of legitimacy.

~~26~~ 26  
very good point.  
useful in understanding  
GATT.

Private Rights

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What is characteristic of this newer category of trade policy legislation is that it provides for an elaborate structure of private rights; such rights enable private parties to set the governmental machinery, even the inter-governmental machinery, in operation. In regard to anti-dumping and countervail, there is, in general, little scope for governments to stop the process if a private party states a well-founded complaint and follows the defined procedures, although there are differences in this regard as between the EEC and Canada, on the one hand, and the U.S., on the other.

In the EEC there is an element of discretion in that the application of a definitive anti-dumping duty does require a positive decision, or at least, an assertion, that the "interests of the community call for intervention".<sup>5</sup> In Canada, under the 1968 Anti-dumping Act, and in the 1984 Special Import Measures Act, there is scope for the exercise of discretion, that is, the exemption by Cabinet decision of certain products from the scope of the anti-dumping legislation.<sup>6</sup> Under the 1965-1984 legislation, this was used only to exempt pharmaceutical products from the protection of the anti-dumping system<sup>7</sup> (a case where competition policy considerations were decisive in the application of anti-dumping policy); there was also the special action taken under the executive authority to remit any tax or duty, to limit, on a geographical basis, the application of anti-dumping duties on imports of dumped wide-flange steel beams.<sup>8</sup> (This was an example of regional policy and competition policy considerations being brought to bear on the operation of the anti-dumping system.)

However, in the United States there is, apparently, no executive authority, no authority vested in the President, to exempt a product from the operation of the anti-dumping duty or countervailing duty; the private parties concerned, that is, the domestic producers, may proceed, subject, of course, to the detailed procedural rules, to secure the application of a duty on imports which have been found to have dumped or subsidized, or to bring about an "undertaking" by the exporters concerned to cease dumping, or to cease exporting the products at issue, to the United States or, in regard to subsidized exports, to offset the subsidy or limit the export of the goods at issue. In quite a number of recent high level discussions about the "new protectionism" proposals have been made to "roll-back" protectionist measures; it has been difficult for the economists and officials without trade policy experience to recognize that many so-called "protectionist" measures are, in the United States, a matter of private right.

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Safeguards  
are  
different  
with use

"Escape clause" or GATT Article XIX (Safeguard) cases, are, as we shall consider below, another matter; in all jurisdictions the taking of "safeguard action" against imports alleged to be causing or threatening serious injury to domestic producers is a high-level political decision, not a "technical track" or low level, rule-bound decision.<sup>9</sup>