

CONFLICTING OBJECTIVES AND CONTENDING INTERESTS IN EUROPEAN COMPETITION POLICY

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Paper to the Fifth Biennial International Conference
European Community Studies Association
Seattle, 29 May - 1 June, 1997

We gratefully acknowledge the support of the Economic and Social Research Council
(Awards: L120251011 and L113251029).
We would like to thank Peter Holmes and Helen Wallace for their comments on an earlier
version of this paper. All of the usual caveats apply.

INTRODUCTION

As a horizontal policy, competition policy has implications for most European Community (EC) policies, and other policies often affect competition. Not surprisingly, given their different priorities and processes, these policy objectives may come into conflict. Resolving such conflicts would require decisions about priorities and would have significant implications for different interests. We seek to analyse the EC's capacity for resolving policy conflicts and aggregating contending interests by exploring two cases: the role of the 'Community Interest' in anti-dumping cases;¹ and the Commission's 1995 decision to renew the block exemption from competition rules for motor vehicle distribution.²

Although these cases might at first appear dissimilar, they are in fact quite complementary (see Table 1 for a comparison). Both concern the interaction between trade and competition policies. In the anti-dumping case, we look at how competition (and other) considerations affect decisions to impose measures. In particular we consider developments in the use of the Community Interest clause. In the case of car distribution, the need to administer the EC's trade arrangement with Japan led to certain anti-competitive behaviour being exempted from competition rules. In addition, we also consider how this exemption impedes the completion of the single market in cars. In both cases, the interests of producers are pitted against those of consumers — down-stream users in the anti-dumping case, individuals in the block exemption case — and other economic actors; foreign producers and automobile dealers, respectively.

In both cases the decision-making processes are highly supranational and technocratic. The Commission takes the lead role both in investigating anti-dumping complaints and in implementing competition policy. Within the Commission the different Commissioners and Directorates General (DG) champion their own policy priorities which can lead to significant internal conflicts. The Council of Ministers has no formal role in implementing EC competition policy and in anti-dumping policy takes final decisions, by simple majority, on definitive duties after the Commission has imposed provisional duties. The European Parliament is essentially a

¹ Regulation 3283/94, OJ L 349, 31.12.94. Current regulation in force (without substantive amendments to 1994) one is Regulation 384/96, OJ L 56, 6.3.96 as amended by Regulation 2331/96, OJ L 317, 6.12.96

² Commission Regulation 1475/95.

spectator and commentator, having no formal role in either policy. Only the European Court of Justice (ECJ), another non-majoritarian body, plays a role in both policies, albeit an indirect one. It reviews the Commission's decisions in anti-dumping cases and consistently rules against measures that impede intra-EC trade in cars, particularly barriers to parallel imports.

In both cases, also, policy innovation is constrained. Previous decisions — the regulations on and practice of anti-dumping policy, and the previous granting of a block exemption on car distribution and the trade arrangement with Japan — combined with the concerns of powerful economic interests and the associated preferences of at least some member states, conspire against radical policy innovation. Nonetheless, our analysis indicates that, incrementally, EC policy, driven by the Commission, is developing in a way which is likely to give diffuse interests a greater impact on decisions.

We first consider how the increasing importance being given to the 'Community Interest' clause is affecting anti-dumping decisions, before turning to the politics behind the decision to renew the block exemption, and drawing some conclusions regarding the EC's capacity to tackle thorny issues with apparently inadequate instruments.

Table 1. Comparison of cases

	Block exemption	Anti-dumping
Overarching policy	competition	trade
Competence	exclusive EC	exclusive EC
Decision-making style	supranational	fairly supranational
Decision-making process	proactive	reactive
Key institution(s)	Commission Member States Advisory Committee	Commission Council of Ministers ECJ
Role of member states	formally marginal, in practice significant	increasingly important
Key conflicts in Commission	DGIV v. DGs I and III	DGI (and sectoral DGs) v. DGIV
Policies supported	trade industrial	industrial (and sometimes agriculture)
Policies in conflict	single market consumer	competition
Contending interests	producers v. consumers dealers	producers v. users foreign producers

THE CASE OF ANTI-DUMPING

This section examines firstly the conflicting objectives which may exist between the EC's competition policy and trade policy, most notably its anti-dumping legislation. In particular it considers the extent to which competition factors are taken into account in anti-dumping investigations and the effects on this of recent policy developments. It then goes on to consider the role and influence of contending interests within an anti-dumping decision.

New developments in the policy, particularly in the application of the Community Interest clause, could provide a greater role for competition policy considerations and the interests of parties other than the EC producers. Such an innovation would not, however, be without its critics.³

The anti-dumping legislation is the EC's best-known and most used trade defence instrument (although, even still, it currently applies to less than 1% of the EC's imports). Based

³ e.g. views of UNICE on AD becoming competition investigations. See Agence Europe 23.4.97

on Article VI of the General Agreement on Tariffs and Trade (GATT) agreement, it is designed to counter imports which have an unfairly low price (i.e. are 'dumped') and are causing injury to home producers. According to the GATT, dumping is deemed to have occurred 'if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country'.

When an EC anti-dumping investigation takes place, four basic criteria must be met before measures may be applied :

- 1) There must be **Dumping**
- 2) There must be **Material Injury** to the EC Industry
- 3) Material Injury must be shown to have been **caused** by the Dumping
- 4) If criteria 1-3 are met, the regulation calls for an evaluation of the **Community Interest** before measures are imposed, though this is not precisely defined.

Conflicting interests (for example those of downstream users) and objectives (such as those of competition policy) can come particularly to the fore in the injury analysis and in the consideration of the Community Interest.

It is important here to note the respective roles of the Commission and the member states. The Commission is a highly influential player in so far as it conducts the detailed analysis which goes into an anti-dumping investigation. Furthermore it is empowered to impose provisional measures where it finds that all the above criteria are met. The member states acting through the Council can then make these provisional measures definitive, acting by simple majority on a proposal from the Commission. Given that provisional measures are virtually always made definitive it has been argued that the Council merely rubber-stamps the decisions of the Commission, but this would underplay the role of the member states earlier in the process. During an investigation the Commission is obliged to consult with the Anti-Dumping Advisory Committee (ADAC) at various points. This is comprised of representatives from the member states and thus gives the Commission an indication of the level of support it can expect. Clearly the Commission is unlikely to go as far as imposing provisional measures where it clearly does not have the backing of the member states who would need to approve the measures becoming definitive.

Conflicting Policy Objectives: Competition considerations in trade policy

Anti-dumping and competition policies had similar origins and aims (see e.g. Viner's (1923) seminal work on anti-dumping) and, in a general sense, both policies are designed to remove distortions from the market which can undermine the principle of fair competition. However, they have since diverged and now deal with differing ranges of commercial actions.

Nonetheless, this does not mean that trade policy should be conducted in such a way that as a matter of course it contradicts competition policy aims. Article 3(f) of the Treaty of Rome calls for the 'activities of the Community' to include 'the institution of a system ensuring that competition in the common market is not distorted'. The fact that such a high status is afforded to this in the Treaty would imply that it should also receive a certain priority in the conduct of other policies (e.g. trade).

However, it has been argued (e.g. by Messerlin (1990)) that not only does the anti-dumping legislation in the EC fail to take account of competition issues in its criteria for deciding whether or not dumping is taking place and requires some form of remedy, but that this 'remedial' action can in itself worsen the competitive situation in the EC market. Where a market is cartelised within the EC, therefore, not only is injurious dumping likely to be much easier to find, but the anti-dumping measures are likely to reinforce the cartel by keeping out foreign producers. Clearly if prices are at high levels due to cartelisation in the home market, anti-dumping measures will be an obvious way of ensuring that this cartel is not disturbed by low priced imports. Similarly although the finding of dumping may not be directly related to the cartel, injury in terms of lower prices and decreased market share for the home producers is likely to be more obvious where the starting point is one of restrictive behaviour.

Competition factors are most likely to enter an anti-dumping investigation in the injury analysis, the discussion of the Community Interest and in the decision of the type of measures to impose. There have been significant recent developments in each of these areas. According to the current anti-dumping regulation, material injury to the EC industry can be determined with reference to several factors including (though not exclusively) 'actual or potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting Community prices; actual and potential negative effects on cash

flow, inventories, employment, wages, growth, ability to raise capital or investments'. However, within the terms of the regulation, other factors must be taken into account in order to ascertain how far the injury can be attributed to the dumped imports and how far it may have been caused by other factors. This is an area where the competitive structure of the EC industry may play a part, since a lack of competition in the EC market or anti-competitive behaviour by the EC producers is likely to mean that any injury they face is likely to be less easily attributed to the dumped imports.

The first EEC Anti-Dumping Regulation of 1968⁴ did mention competition considerations as a factor which should be examined within the evaluation of injury. However these did not appear when the anti-dumping regulation was amended in 1979 following the Tokyo Round of GATT negotiations,⁵ nor did they in the new regulations of 1984⁶ and 1988.⁷ However, the anti-dumping regulation of 1994, which followed the Uruguay Round, again includes a reference to these issues. Within the paragraph on factors other than the dumped imports which may be causing injury there is mention of "trade restrictive practices of and competition between the foreign and Community producers".⁸ This could be interpreted as meaning that where there are restrictive practices, such as a cartel, injury to the Community producers would be injury relative to this unfair behaviour and thus not necessarily attributable to the dumped imports. If and how this would be applied in practice however remains to be seen.

The Community Interest criterion is the least mechanical and least well-defined of the tests to be passed before measures may be applied, and has also tended to be the least considered by the Commission. In fact there has only been one case thus far in which an investigation has been terminated on the grounds that measures would not have been in the Community interest.⁹ All the EC anti-dumping regulations have said that measures may be applied where all the criteria regarding dumping, injury and causation are met and the interests

⁴ Regulation 459/68, OJ L 93, 17.4.68

⁵ Regulation 3017/79, OJ L 339, 20.12.79

⁶ Regulation 2176/84, OJ L 201, 30.7.84

⁷ Regulation 2423/88, OJ L 209, 2.8.88

⁸ Regulation 3283/94, OJ L 349, 31.12.94. Current regulation in force (without substantive amendments to 1994) one is Regulation 384/96, OJ L 56, 6.3.96 as amended by Regulation 2331/96, OJ L 317, 6.12.96

⁹ Gum Rosin from China, OJ L 41, 12.2.94,

of the Community call for intervention. Nowhere has it been defined however what the interests of the Community might be, or how potential interests should be weighted. The possible effect on user industries or consumers of anti-dumping measures in terms of higher prices are the major Community interest factors which have been considered here (see below), though issues of a competition nature would also naturally apply. Where measures are proposed, for example, it would seem sensible to ask what the likely effect on the competitive structure of the EC market would be. For example, where the Community industry has an oligopolistic structure it may be that anti-dumping measures may preserve this situation of limited competition. As a result, the Community Interest arguments in favour of action may be that much weaker than where the home market is much more competitive.

The 1994 anti-dumping regulation contains a new Article (21) which gives for the first time a more detailed exposition of what is to be included in a Community Interest analysis and what procedures are to be followed. Among other things (see below) it stresses the need “to eliminate the trade distorting effects of injurious dumping and to restore effective competition”.

When measures are deemed necessary, these take the form of duties or undertakings (whereby the exporters offer to restrict their price to a level sufficient to remove the injury and the Commission decides whether or not to accept them). More than half of anti-dumping measures take the form of undertakings and it would clearly seem to be in the interests of the accused parties to offer them. In both cases, however, competition concerns have been raised in so far as they create formal or informal price floors. Again, the new anti-dumping regulation does take these considerations on board to a degree by stating that “care should be taken that the proposed undertakings, and their enforcement, do not lead to anti-competitive behaviour”.

The Commission's structure and processes, however, can impede the consideration of competition issues in anti-dumping. Although during an anti-dumping investigation DG I (trade) will consult with other parts of the Commission, most notably DG III (industry), there are strict rules restricting the exchange of information between DGs I and IV (competition).¹⁰

¹⁰ Article 19(6) of the 1994 regulation states that “Information received pursuant to this Regulation shall be used only for the purpose for which it was requested”

In practice little consultation takes place between DG I and DG IV in the course of an investigation. It appears DG IV can only respond if a competition case has been opened. As such, even where competition factors are raised during the case, for example, where it is suggested that the competitive structure of the EC industry might make measures against the Community Interest, DG I will itself form an opinion and make a proposal.

Recently, however, there have been some examples of competition issues being taken into account, although it is not yet clear what the long term significance of them might be. Some European Court of Justice (ECJ) decisions, and in particular the opinions of Advocates General have suggested that competition factors should not be ignored by the authorities. These opinions have not necessarily always been taken on board in the final decisions of the ECJ, but reflect a growing willingness to consider competition factors.

In the calcium metal case,¹¹ the complainant was the sole Community producer and was allegedly refusing to supply the importer. In fact, a competition case was taking place in the French courts at the time and the importer thus queried the injury finding before the ECJ. Advocate General Jacobs raised considerable doubts as to the validity of the injury and Community Interest analyses due to competition factors not being sufficiently considered. Most fundamentally he pointed out that "while the Treaty recognises the need for protection against dumping as a necessary evil, that need must not be met without taking account of the objective set out in Article 3(f)".

This case follows an earlier one against paintbrushes from China,¹² where an importer, Nölle, argued that the Community Interest did not warrant measures since the anti-dumping complaint was an attempt to preserve an illegal agreement between the Community producers and to keep independent importers out of the market. It is however Advocate General Van Gerven's Opinion on the Community Interest question which is of importance in this discussion on trade and competition policy. He commented that "on the one hand the object of anti-dumping proceedings cannot be to enforce or encourage practices contrary to the rules on

¹¹ Definitive duties OJ L 271/1989. ECJ Case C-358/89. Opinion of Advocate General delivered 8.4.92. Duties annulled by Judgement of 11.6.92

¹² Definitive duties OJ L 79/1989. ECJ Case C-16/90. Opinion of Advocate General delivered 4.6.91. Duties annulled by Judgement of 22.10.91

competition, and on the other hand anti-dumping measures and proceedings must be prevented from having such an effect". In this case again, however, the ECJ judgement ultimately focused on procedural matters (primarily on the question of the analogue country) rather than offering a decision on these more substantive questions of a competition nature.

Contending Interests : EC producers v. users and foreign producers

An anti-dumping investigation tends to provide some fairly stark conflicts of interests between the affected parties. Historically, home producers' interests have tended to take precedence and it has been suggested that the Community Interest in a case has been equated with the applicants' interest (see e.g. Kulms (1990)). It is certainly true that in the large majority of cases which are opened, the finding is in favour of the complainants and measures are applied. It appears now, however, that growing importance is now being attached to the users and consumers of the product in question who are likely to oppose measures which could raise the cost of the product to them.

The mobilisation of these interests has been strengthening in recent years and the anti-dumping process is now subject to increasingly heavy and well-organised lobbying. The Community Interest clause is the area of the legislation where these interests should be dealt with, although, as has been pointed out, it has been poorly defined and, apparently, has tended to be little considered by the Commission.

Even where users and consumers have argued that they would be damaged by the imposition of measures, decisions have concluded that this cost does not outweigh the benefits of retaining Community production of the product. The published regulations in individual cases have not tended, however, to give any further details of how such conclusions were reached. It seems to have been assumed that not only are the costs to users relatively small, and as a rule more dissipated than the costs to producers of the dumping but also that the retention of the Community industry is per se in the interests of the Community as a whole.

Recent developments, however, suggest that the balancing of different interests within the context of the Community Interest clause is being approached in a more rigorous manner. The new Regulation gives a more explicit indication of what is to be included in the discussion

of the Community Interest and a number of recent cases have gone into far more detail than before in the considering the various interests' arguments. This has been allied to the increased lobbying referred to above. In the case of Soda Ash¹³ for example the Commission and the member states were lobbied very hard by the EC industry and the users (the glass industry). A distinction should be made between on the one hand the provision of detailed evidence for the Commission to address as part of the legal process of an investigation, and on the other more 'political' pressure on the member states and the Commission (including parts other than DG I). In the final regulation, the Commission entered into a detailed analysis of the Community Interest (including an attempt to look at the financial costs of measures to the users), albeit with the eventual conclusion that measures should be adopted. In the February 1997 provisional decision on handbags from China the Commission gave a very extensive discussion of the interests of importers, consumers and other interests. Similarly, in the case of unbleached cotton, the processing industries put forward a strong case and, at least initially (in April 1997), a majority of member states did not support definitive measures. Whilst none of these have yet resulted in the Community not imposing measures on the grounds that the interests of the EC industry were outweighed by those of other parties, the Commission is taking far more account of these in recent cases and many practitioners suggest that a termination on Community interest grounds may soon be possible.

Other policy developments have been designed to promote the significance of the Community Interest clause and clarify its provisions. In December 1996, DG I, with a strong impetus from Trade Commissioner Sir Leon Brittan, issued new guidelines on applying the Community Interest clause including taking a more pro-active approach to information gathering, analysing possible responses of the economic operators involved, considering the competitive state of the relevant markets, and evaluating whether the potential costs are disproportionate to the benefits. It is not yet clear whether these guidelines are going to be regarded favourably by the member states, some of which oppose too broad an extension of the Community Interest analysis, or how far they are already being taken into account by investigating officials, but they give further evidence of the gradual shift towards a more

¹³ Definitive Regulation OJ L 244, 12.10.95

detailed analysis of the various interests involved. Some of the more liberal member states - including the UK, the Netherlands and the new members (particularly Sweden) - tend to oppose imposing anti-dumping measures and hence are receptive to a more rigorous discussion of whether measures really are in the overall interests of the Community. This provides the reformers within the Commission with an important constituency.

An example of this shift is the Commission's use in a number of recent cases (most notably in unbleached cotton) of Community Interest questionnaires similar to those used for the dumping and injury analyses. This means that the Commission is presented with a more formulated set of information, rather than a collection of disparate individual arguments from the parties involved. Of course, the interests opposed to measures in an investigation can inevitably be somewhat more difficult to consider in that they are generally more speculative as they outline what *would* happen were measures to be applied rather than what injury has already occurred. The questionnaires cannot solve this problem but at least provide more systematic information and demonstrate that the Commission is taking a more proactive role.

Summary

Developments in EC anti-dumping policy in recent years, such as the new regulation and the Opinions of the Advocates-General, suggest that there is an awareness of the need to bear in mind conflicting objectives between trade and competition policy even if there has been little explicit consideration of it in recent cases. The new Community Interest article in which this would be addressed also gives a clearer indication as to how pressure from contending interests might be examined. There are initial signs that the Commission is taking a more rigorous approach to balancing these interests. However, it is still not clear how exactly the Community Interest is to be analysed, and the member states are unlikely to offer the Commission too much discretion. Some member states, for example, have opposed the new guidelines, seeing them not as mere points of administrative procedure, but significant policy change requiring legislative changes.

THE RENEWAL OF THE BLOCK EXEMPTION

In 1985 the Commission granted the automobile manufacturers a 10-year block exemption from competition rules with regard to their relationships with their dealers.¹⁴ This exemption ran counter to the Commission's and ECJ's general hostility to vertical restrictions to competition, which is much more vigorous than under US antitrust law because of the implications of such restrictions for economic integration (Petropoulos, 1994). In fact, it was granted initially in order to enable divergent national trade and state aid regimes to coexist (Holmes and McGowan, 1997).

Under the block exemption, car manufacturers and importers are allowed to maintain selective and exclusive distribution systems. Under a selective distribution system only some retailers are considered qualified to sell (and maintain) complex products. Under exclusive distribution agreements, a manufacturer supplies only one distributor in each territory.

In June 1995 the Commission renewed the block exemption from competition rules for motor vehicle distribution. The absence of transitional arrangements meant that scrapping the block exemption immediately was highly unlikely, but an additional important consideration for the renewal was the need to administer the EC's informal trade arrangement with Japan.¹⁵ As a result of the renewal, the completion of the single market in cars has been postponed into the next century. Thus three policies are in conflict: trade policy considerations led to potentially anti-competitive behaviour being tolerated, which in turn will inhibit completion of the single market.

Although the block exemption was renewed, it was modified to the benefit of dealers and consumers (the former's more than the latter's). The modifications do not, perhaps could not, however, resolve the policy conflicts nor satisfy the contending interests.

¹⁴ Commission Regulation 123/85

¹⁵ Karl Van Miert, commissioner for competition policy, when presenting the draft regulation to the college of commissioners, argued that 'Les innovations importantes permettent de mieux équilibrer les relations entre fabricants et concessionnaires tout en tenant compte des exigences de stabilité de l'application de l'accord avec le Japon' (quoted in *EC Competition Policy Newsletter*, 1/3, Autumn/Winter, 1994, p.11).

Conflicting Policy Objectives I: Trade considerations in competition policy¹⁶

Prior to 1991, the economic importance and corresponding political significance of the European car industry meant that it got special treatment in the EC. Not only was the industry's distribution system exempt from competition rules, but there was not a common policy on car imports from Japan. Italy maintained quotas, grandfathered into the Treaty of Rome under Article 115; France's administrative restrictions fell outside Article 115, but were not directly challenged; the UK's producers had negotiated an industry-to-industry restriction on imports, which also went unchallenged;¹⁷ and there were suspicions that Germany was also restricting imports (Holmes and McGowan, 1997).

Once the push to abolish internal borders was on, however, the problem of maintaining these different external trade arrangements became pressing. Consequently, in 1991 the Commission negotiated a common arrangement with Japan to come into effect on 2 January 1993 (Holmes and McGowan, 1997; Smith and Venables, 1991). The Commission persuaded the European industry to accept the application of GATT provisions to automobiles from 2000; the Japanese agreed to restrict their exports in the meantime; and the member states agreed to abolish their national measures in favour of the EC regime.¹⁸ The Commission, however, was constrained by the industry's and the member states' reservations regarding a common import regime, and had to accept national sub quotas within the common regime.¹⁹ There also appear to have been additional assurances by Japan to certain member states, notably France, that Japanese cars, produced in the EC or imported, would not take too much of their markets too quickly.

In order for these sub-quotas and side-deals to have meaning, national markets must be maintained in the absence of internal border controls. The mechanism chosen for the task was the block exemption, which facilitates market segmentation (see below).

¹⁶ This section draws heavily on Holmes and McGowan (1997).

¹⁷ The Commission's refusal to investigate consumer complaints about this agreement led to a case before the ECJ. For details see Frazer and Holmes (1995).

¹⁸ The arrangement was not formally adopted by the Council of Ministers under Article 113 and has no legal force in the EC other than that provided by MITI's administrative guidance to Japanese firms. See Holmes and McGowan (1997)

¹⁹ This is not the only fragmented 'common' trade arrangement. The EC's quotas under the Multi-Fibre Agreement are broken down into national sub-quotas.

Conflicting Policy Objectives II: Exemption from competition rules and the free circulation of goods

More than four years after the deadline for the creation of the single market, the EC car market remains composed of 15 national markets. This fragmentation is evident in the price differentials between national markets. In 1996 more than half of the 78 best-selling models included in the Commission's biannual price survey had price differentials of more than 20 per cent (based on 1 May prices) (*Info-C*, 5, Sept. 1996). Such price differentials require both an underlying economic cause and a market structure that permits it to be maintained (Smith and Venables, 1991). According to the Commission, the manufacturer's exclusive distribution system is one of the factors contributing to that market structure (*Info-C*, 5, Sept. 1996).

Because of the benefits to consumers in terms of qualified sales advice and quality after-sales service, selective distribution is widely accepted as a legitimate restriction on competition (Kovar, 1987; BEUC, 1994), and has been sanctioned by the ECJ. The exclusive aspect of motor vehicle distribution, however, is another story. Although prohibiting a distributor from selling outside his or her territory is incompatible with Article 85,²⁰ under the old block exemption dealers could be forbidden from taking any positive commercial action outside their territories (Kovar, 1987). Furthermore, these car dealership territories do not cross national boundaries. This does not necessarily permit market segmentation, but in practice consumers face numerous obstacles to buying cars abroad; from difficulties having warranties and after-sales service agreements honoured, to excessive delays in delivery, to hidden surcharges for foreign buyers (*beuc in brief*, 9, April 1994). Consequently, exclusive dealership arrangements can help to maintain national price differentials (Smith and Venables, 1991).

Exempting motor vehicle distribution from competition rules, therefore, impedes the completion of the single market in cars, postponing it at least until mid-2002 (the date of the expiration of the new block exemption), almost a decade after the single market was due to be completed.

²⁰ Commission Decision of 23 Sept. 1964; ECJ decision of 13 July 1966, cases No. 56 and 58/64, *Recueil*.

Contending Interests: Manufacturers v. dealers and consumers²¹

The conflicting policy objectives discussed above favour different interests. European automobile manufacturers benefit from the maintenance of restrictions on Japanese imports and from the existence of the block exemption. Japanese manufacturers also benefit from the existence of the block exemption.²² Automobile dealers are constrained by the block exemption. Consumers suffer from reduced competition due to both the import restrictions and the block exemption. In addition, as different Commissioners and DGs are responsible for different policies, the conflicting policy objectives brought them into conflict. Martin Bangemann, the Industry Commissioner, and Brittan, supported the renewal of the block exemption with minimal modifications, albeit for very different reasons, while Competition Commissioner Karel Van Miert sought significant changes. Not surprisingly therefore, agreeing the new block exemption took 15 months rather than the initially anticipated six and was achieved only days before the old exemption was due to expire.

The three principal interests affected by the block exemption, and thus engaged in the debate over its renewal were the automakers, mostly represented by ACEA;²³ the dealers (CECRA); and the consumers (BEUC). The automobile manufacturers wanted the block exemption renewed on essentially the existing terms, arguing that radical reforms could undermine the entire European automobile distribution system, and that there was no need for such reforms (*Financial Times*, 16 Sept. 1994). The automobile dealers sought a renewal of the block exemption, but with significant changes in order to increase their independence from the manufacturers (Groves, 1995). Briefly in 1993 the manufacturers and dealers had found common ground, but the coalition could not contain the two participants' divergent interests and fell apart before the debate on the renewal was really joined. The consumers rejected any economic or legal justification (including the trade arrangement with Japan) for renewal of the exclusive distribution system, but did accept that some form of selective distribution system

²¹ Although the renewal of the block exemption involved a number of non-competition issues, most notably the relationship between dealers and manufacturers, we confine our discussion to the competition aspects of the Regulation.

²² Many of the greatest price differentials between member states are on Japanese models.

²³ At the time Peugeot was not a member of ACEA, and Japanese producers in Europe are excluded from ACEA. The Japanese Automobile Manufacturers Association (JAMA) was consulted by the Commission.

was necessary (BEUC, 1994). More specifically, they wanted the links between sales and servicing and sales and spare parts broken; different brands to be sold at the same outlet; and obstacles to parallel imports to be prosecuted (*beuc in brief*, April, 1994).

Discussion about the renewal of the block exemption began in earnest in early 1994. DG IV's initial draft, which was leaked to *Le Journal de l'Automobile* in May 1994, leaned quite heavily towards the dealers' position, and indirectly the consumers (see Table 2 for the major points through the various proposals). During subsequent negotiations within the Commission, under pressure from DG I, which was concerned about the implications for the arrangement with Japan, and DG III, which was concerned about the implications for the European automobile industry, however, the proposal came to reflect more prominently the interests of the manufacturers, and the Commission's formal proposal adopted in October reflected this shift. Most notably dealers would only be able to sell multiple makes from different sites and the arrangement would last for 10 years.

Table 2 Key measures of the block exemption

	Regulation 123/85	DG IV draft May 1994	Proposal Oct. 1994	Regulation 1475/95
Multiple franchising	no	yes, if it does not interfere with realisation of targets agreed with first manufacturer	yes, if at separate sites under separate management	yes, but can be required to use separate sites under different management, unless can show objective reasons for exemption
Active sales outside territory	can be restricted	no restriction	advertising permitted if not aimed at individual customers	advertising permitted if not aimed at individual customers
Use spare parts from independent manufacturer	must be of 'equal quality'	assumes equal quality unless proved otherwise	burden of proof left ambiguous, but some restrictions on dealers' choice 'black listed'.	burden of proof left ambiguous, but some restrictions on dealers' choice 'black listed'.
Duration	10 years	7 years	10 years, with possible review after 5 years	7 years, with the Commission to report after 5 years

Significantly, however, the proposal made more explicit the prohibition on a number of practices that impeded parallel imports and otherwise restrict competition beyond the scope of the block exemption (Schwarz, 1995). These practices, although technically illegal under the

old block exemption, persisted (*beuc in brief*, 9, April 1994). They include directly or indirectly impeding consumers from buying a car wherever they want in the single market, making dealers' rebates dependent on the destination of the sale and interfering with dealers buying spare parts of equal quality from the supplier of their choice. The change is that the proposal specifically identifies these illegal practices (the so-called 'black list') and introduces the threat that if such violations occur persistently or systematically, the block exemption can be withdrawn.

It was only in November 1994, when the Commission submitted its proposal to its Member States Advisory Committee, that the member governments came formally into the process. As in the anti-dumping case, the member states have a significant informal impact on policy. Apparently, several of the national delegations asked the Commission to introduce further amendments to introduce more competition (*beuc in brief*, 12, Jan. 1995). In addition, in something of surprise intervention, the EFTA Surveillance Authority (ESA)²⁴ indicated its displeasure with the Commission's proposals (ESA, 1994). It came down strongly on the consumers' side arguing that there were not obviously specific circumstances that would support the restrictions on competition in the automobile industry, rather efforts should be made to promote competition and end the fragmentation of the EC market. The ESA did, however, accept the need to prolong parts of the block exemption for five years to permit the industry to adjust to the new competitive environment.

The regulation finally adopted by the Commission in June 1995 differed in two important respects from its October proposal. Both changes favoured consumers. The most important was that the renewal was limited to seven years, rather than the proposed ten. The other was the insertion of a paragraph that prevents the manufacturers circumventing the agreement by taking advantage of the block exemption for franchise arrangements. The Member States Advisory Committee came down in favour of the shorter, seven year, period, with the new member states apparently helping to tip the balance in the consumers' favour.²⁵

²⁴ The EFTA Surveillance Authority is the body charged with implementing the European Economic Area in the European Free Trade Area (EFTA) members.

²⁵ Interview with BEUC, Brussels, 11 July, 1995.

Summary

The renewal of the block exemption did not, probably could not, resolve the conflicting objectives of trade and competition policies and of the drive for the single market. A common trade relationship with Japan was a prerequisite for the creation of a single market in automobiles. Industry concerns and associated member government preferences had meant that temporary sub-quotas had to be part of the deal (Holmes and McGowan, 1997). The block exemption is necessary to administer these sub-quotas, but impedes the creation of the single market. Thus, the single market (at least in cars) had to be postponed to be created.

The renewal of the block exemption also left neither manufacturers nor consumers happy, although dealers, as almost the intermediary interest, benefited. Manufacturers and consumers were both directly engaged in the process and were championed by different member states, and the Commission had to tread a fine line amongst these policy preferences.

Thus, the new block exemption is a limited policy development, within the constraints imposed by economic interests, associated member government preferences, the need to avoid a sudden change in existing commercial relationships, and the imperatives of existing policy commitments regarding Japanese car imports. The course charted by the Commission through these choppy waters focused on prosecuting the worst violations of the free circulation of goods while maintaining the overall system. DG IV with support from within the Member States Advisory Committee was able to steer the Commission towards a shorter duration, giving manufactures only two years to adjust to the more liberal trade regime that would replace the arrangement with Japan after 2000.

CONCLUSION

The Commission is not an independent actor. It is a quasi-autonomous agency responsible, among other things, for: 1) advancing policies and policy changes, and 2) implementing agreed policies. The renewal of the block exemption in car distribution falls into both categories, the former more than the latter. The interpretation of the 'Community Interest' clause falls squarely within the second category, although it might have an effect comparable to a policy

a policy change, as some member states have argued. As a result, the Commission enjoys greater leverage in the anti-dumping case than in the car distribution case.

That said, in both cases the Commission has to negotiate multiple constraints, some of which are due to the path dependence of policy (either internal or external), some of which are due to the preferences of industry and governments. In addition, there have been significant clashes within the Commission as different policy priorities and clientele interests collide. Nonetheless, in both cases policy has shifted, if not dramatically, in a more liberal direction.

Thus, although our policy conflicts have not been resolved and our focal policies still tend to favour producers over other interests, in both cases policy has shifted towards reconciling policy objectives and enhancing the consideration of user and consumer preferences.

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