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Antidumping Laws: The Easy Way to Stay in the Market

Some companies have failed to seize the new opportunities that globalization offers. Finding themselves unable to compete, they turn to government for assistance. Over the course of the past few decades, the means by which these companies can procure government assistance have dwindled. Tariffs and quotas are largely disappearing, and direct subsidies and bailouts, while they still occur, do so much less frequently. Unfortunately, there remain two important outlets for companies to restrict imports and foreign competition. Both deal with import surges. One is the special safeguard law, which will be discussed further later; the other is the antidumping law.

The specific failing of the U.S. antidumping law in the four sectors is discussed below. At the outset, though, a broader look at some of the problems with the law is warranted. While this discussion is limited to U.S. law, it applies to the antidumping laws of many other countries as well. (For detailed references to the material in this section, see Lawrence [ed.] 1998; Hindley and Messerlin 1996; Litan and Boltuck 1991.)

Economists identify a number of different categories of "dumping" actions, related to the underlying motivations of the exporting company (Willig 1998). Market-expansion dumping takes place when there are differences in demand between two discrete and separable markets. Cyclical dumping occurs when a sudden downturn in demands creates a situation of oversupply. State-trading dumping occurs when a nonmarket economy wants to get hard currency or creates an oversupply in an industry due to poor planning. None of these types of dumping is meant to create monopoly conditions. Under most circumstances, economists believe these are relatively benign forms of dumping, unless accompanied by other private market or government practices.

The actions that should most concern proponents of antidumping laws occur when companies engage in dumping in order to increase market

power to such a high degree that they will be able to charge monopoly prices later. Broadly speaking, economists identify two categories of actions that could constitute anticompetitive dumping onto a market.

The first type of market-power dumping is known as "predatory dumping." This occurs when companies export at low prices to drive rivals out of business and obtain monopoly power. Four basic prerequisites are necessary for predatory dumping to take place successfully. First, a country must possess a large market share at home that is protected or serves as a "sanctuary market." Second, there must be an opportunity to invade another market to obtain larger market shares. Third, if there are several producers in the domestic market, they must collude in order to maintain the long-term price hike that is possible after the foreign market firms have been driven out of business. Finally, significant barriers to entry must exist in the industry. If not, the price hike would create strong incentives for competitors to enter the market and undermine the monopolistic position (Willig 1998).

The second form of dumping relates to the expansion of market power and is referred to as "strategic dumping." Strategic dumping combines low export prices with a protected home market to give exporters an advantage in industries with static (fixed R&D and capital expenses) or dynamic (learning by doing) economies of scale. With access to both home and foreign markets, foreign firms gain a cost advantage over domestic firms that are unable to compete abroad. This advantage allegedly eventually gives the exporting firms market power (Hindley and Messerlin 1996).

Assigning motivations to a particular firm's reasons for dumping is difficult at best. Antidumping laws do not require a country to investigate behavior that is consistent or inconsistent with normal competition. All that petitioners must show is that dumping and "unfair" pricing is taking place and that they have been "materially injured" somehow. A brief review of the process illustrates these flaws.

Dumping cases are handled by two U.S. government agencies. The Department of Commerce establishes whether or not dumping is taking place and to what degree. This process is essentially pro forma: Between 1980 and 1997, the department ruled that dumping was taking place in 96 percent of the cases it reviewed (804 of 837 petitions). The case then proceeds to the U.S. International Trade Commission (USITC), which decides whether the U.S. industry in question is suffering injury. If the USITC finds injury is occurring, the dumping companies are required to place a cash

deposit or bond with U.S. Customs equal to the dumping margin determined by the Commerce Department. Provisions are in place to review these findings, and vary by circumstance.

The methodologies, though, upon which these two agencies rely are arbitrary at best and based on faulty methodologies at worst (Ikenson 2001; Lindsey and Ikenson 2002a). First, comparing prices between markets is difficult. In addition to variations on the demand side due to consumer preferences, on the supply side there is tremendous variation in costs of different factors of production, whether it is the cost of inputs or the cost of labor. All of these factors exert great influence on the price of a product in a given market.

Second, there are considerable asymmetries in the methodology used to calculate price differences between markets. Economists have long established that under typical competitive conditions, firms will sell products at marginal, not average, costs. The U.S. antidumping law equates fair value with average costs plus an allowance for profit. It is thus possible for a firm to be selling at exactly the same price as the U.S. firm and be found guilty of dumping.

Third, even if one accepts the methodology used by U.S. government agencies, it is difficult to discern whether or not dumping is taking place at all since the law does not require evidence of the one variable that transcends all forms of market-expanding dumping—a "sanctuary" or protected home market. It seems reasonable to conclude that if dumping can only take place in the context of governments abroad enacting regulations to protect their home market, then these practices should at least be investigated (Hindley and Messerlin 1996).

The failings of the U.S. antidumping law are vividly evident in the four case histories that we turn to now: supercomputers, flat-panel displays, DRAM computer chips, and steel.