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Antidumping and the People's Republic of China: Five Case Studies

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Abstract

The People's Republic of China has been the number one target of antidumping actions filed by the U.S. Commerce Department on behalf of various domestic industries. One reason for this special status is because the PRC is one of the world's lowest cost producers. Because of the cost structure of its industries and economy, as well as the fact that it tends to manufacture products at the low end of the quality scale, it is able to sell a wide range of products for lower prices than most competitors. Furthermore, because it is classified as a nonmarket economy, special rules must be used to determine the cost of production.

It is unlikely that the frequency of antidumping actions will decline in the near future. Indeed, because the antidumping laws are becoming more widespread as a result of their adoption by every country that became a member of the World Trade Organization, it is likely that the number of antidumping actions filed against the PRC will increase in the years to come.

This paper begins with an overview and history of the antidumping laws and proceeds to examine five antidumping actions initiated by the U.S. Commerce Department against the People's Republic of China. The paper concludes with a brief commentary and recommendations.

Introduction

Antidumping laws, which punish foreign producers for selling their products on domestic markets at low prices (McGee 1993), have been in existence for decades. Since the finalization of the Uruguay Round of GATT they have taken on increased importance, and the GATT agreement included an antidumping provision that all signatories must adhere to. Before the recent GATT agreement was concluded, only about 40 countries had antidumping provisions in their domestic laws. After the Uruguay Round, more than 120 countries agreed to adopt and enforce the GATT antidumping laws. In the past few years, the People's Republic of China has been the most frequent target of antidumping actions initiated in the United States.

This paper will examine some recent case studies involving antidumping actions initiated in the USA against the PRC and attempt to determine what the frequent exercise of the antidumping laws might mean for the future.

In the past, there have been many problems with both the theory and enforcement of antidumping laws, especially in the United States. To complicate matters, the antidumping provisions adopted by GATT are somewhat different than the provisions in U.S. law, and it has not yet been determined which set of laws will prevail in antidumping actions initiated in the United States. Some commentators have suggested that adopting the GATT antidumping provisions would amount to a partial abrogation of U.S. sovereignty. Others deny that this would be the case.

Regardless of which set of antidumping provisions is utilized, there are many common features between the GATT rules and the U.S. rules. Many of the weaknesses in the U.S. rules have survived the Uruguay Round.

One of the major criticisms leveled against the U.S. antidumping rules is the subjectivity with which they are applied. In a case involving some Brazilian companies, more than ten different methods were used to determine the cost of production (Bovard 1991: 129). The use of some methods resulted in finding that dumping had occurred, since the selling price in the domestic market was less than the cost of production. Yet if other methods were used, no dumping was found because the cost of production was less than the selling price. Potential targets of antidumping actions never know in advance which cost of production methods will be used to determine whether dumping has occurred, thus injecting major uncertainty into the marketplace (Kaplan et al 1988). It is impossible to predict in advance whether a pricing strategy will result in the triggering of an antidumping action, or whether the antidumping action, once started, will be successful.

Another major criticism of the U.S. rules is the arbitrariness, and the potential abuse that goes with it (McGee 1994: 92-111). The government can demand practically anything and the target of the investigation must comply or face dire consequences. If the target company(ies) produce 99 percent of what is demanded in the format requested, the Commerce Department can reject the entire submission and instead use what it labels the "best information available" (BIA)

which, in practice is often information provided by the domestic producers that initiated the antidumping action. This BIA is often not the best information available, in spite of the name. It is often biased against the target of the investigation and is often based on estimates that violate generally accepted accounting principles or common sense.

In many previous antidumping cases, the Commerce Department has demanded vast quantities of information with a short turnaround time. In a case involving Matsushita, it demanded that 3,000 pages of financial information be translated into English. The demand was made on a Friday afternoon; the deadline was the following Monday morning (Bovard 1991: 136). Rather than comply with this impossible request, Matsushita withdrew the product from the domestic market, which pleased the domestic companies that initiated the action.

In another case, the Commerce Department sent a 66-page questionnaire (in English) to six former Soviet republics and demanded information about their uranium production (Bovard 1992). Aside from the fact that they did not have the information, it would have been illegal to supply it if they did have it. Yet they were punished for failure to comply.

Another problem with the computations used to determine whether dumping has occurred is the method by which prices are determined in an environment with rapidly changing exchange rates (Palmeter 1988). Sometimes, the methods used to compare the foreign currency to the dollar will result in a

finding of dumping where no dumping would otherwise be found. This methodology may prove to be a major problem in many Latin American countries, where inflation has been institutionalized, but could be a problem in China as well, which has a much lower rate of inflation.

Many antidumping actions in the past have compared products that are not strictly comparable, with the result that an antidumping action might find a party guilty where a guilty finding is not warranted. For example, Product A in China might be compared to Product B in the United States even though Product A might be different qualitatively from Product B. The fact that the products are qualitatively different does not mean that there will automatically be some discounting applied to account for the qualitative difference. Where differences are taken into account, the Commerce Department sometimes uses strange comparisons that have no basis in economics.

Where the alleged dumping has been done by companies in a nonmarket economy, the normal methodology is to choose a surrogate country's prices, perhaps with adjustment, as a substitute for the alleged offender's costs, in an effort to determine whether the foreign producer has sold products on the domestic market for less than cost. This faulty methodology invites abuse, and is compounded by the fact that the petitioners are often the ones that choose which country is to be used as a surrogate, and which data from the surrogate country are to be examined. This procedure is especially relevant to cases involving the

People's Republic of China, since the Commerce Department has on many occasions classified the PRC as a nonmarket economy.

The whole concept of selling consistently for less than fair value, or for less than the cost of production, is a curious one. First of all, fair value is determined by the interaction of buyers and sellers. Something is worth whatever someone is willing to pay for it. So asserting that a product can be consistently sold for less than fair value, when buyers and sellers are free to negotiate, is ridiculous on its face. Yet the view that something can be sold for less than fair value is not only the basis for the underlying antidumping theory, but is also punishable, even though both parties to the transaction benefit as a result of the sale. Otherwise, there would be no sale, since parties to a sale do not go into it with the idea of making themselves worse off. Consumers benefit, of course, and antidumping laws were put on the books (supposedly) to increase competition, which benefits consumers.

Selling a product for less than the cost of production is almost never done, and when it is done, it is for a good reason. Any company that sells for less than the cost of production as a general policy will soon go out of business. Furthermore, if something is sold for less than the cost of production, consumers benefit, and since the antidumping laws were passed to benefit consumers, no one should complain, and certainly companies that sell their products to domestic consumers for low prices should not be punished. Yet that is exactly what happens under the present antidumping laws.

The problem with antidumping laws is that they are used by domestic producers to prevent foreign competition. They use the force of government to either prevent foreign competitors from entering the domestic market, or if they do enter, they must either charge high prices or pay a high tariff to the government as a cost of doing business.

One reason why the antidumping laws were passed was to prevent predatory pricing. Yet the antitrust literature of the past few decades has concluded that predatory pricing either doesn't exist, or if it could exist, would benefit consumers (R. McGee 1994:138-9; Koller 1971; J. McGee 1958; Fisher 1987; Armentano 1972, 1990). It doesn't take a rocket scientist to figure it out. If a company drops its price so low as to drive out all competitors, it will gain market share and lose money on every sale. If it is able to force out all competitors, they will stay out only as long as prices remain so low that they would not be able to make a profit by re-entering the market. The only way a predator can prevent competitors from re-entering the market is by keeping its prices abnormally low.

It would probably go out of business if it kept its prices low. But let's say that it was somehow able to stay in business. Consumers would benefit by the lower prices. So it is possible to conclude, a priori, that predatory pricing cannot exist in a free market, or if it did exist, it would benefit consumers. Thus, the a

priori approach meshes completely with the empirical antitrust literature on this point.

Cases

Preserved Mushrooms

This investigation was launched in January 1998 as the result of a request by the Coalition for Fair Preserved Mushroom Trade, which is comprised of L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Avondale, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushroom Canning Co., Kennett Square, PA; Sunny Dell Foods, Inc., Oxford, PA; and United Canning Corp., North Lima, OH. (USITC 1998: A-3, 6). Thirty-six potential PRC exporters and mushroom producers were targeted by the petitioners (A-8). Because China is classified as a nonmarket economy, surrogate country costs were used to estimate the costs of production. In this case, Indian consumption data for materials, labor and energy were used. The petitioners alleged that the mushrooms were being sold for less than the cost of production. Based on information supplied by the Coalition, the preliminary investigation concluded that there was reason to believe that the Chinese mushroom imports were, or were likely to be, sold at less than fair value (A-8).

Carbon Steel Plate

Carbon steel plate investigations are quite popular with the USITC. Since 1980, at least 80 investigations have been launched against companies in

numerous countries that export this product to the United States (USITC 1997a: D-3-6). In November, 1996 the Commerce Department launched the present investigation of Chinese carbon steel plate as a result of petitions filed by Geneva Steel Company and Gulf States Steel, Inc., which alleged that imports from the People's Republic of China, Russia, Ukraine and South Africa are being, or are likely to be, sold in the United States at less than fair value, and that such imports are materially injuring, or threatening material injury to a U.S. industry (USITC 1996a: A-6). At first, it was questionable whether there was sufficient support for the petition, since Section 732(c)(4)(A) of the Tariff Act of 1930 requires that the petition be supported by companies comprising at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. That question was laid to rest when the petition was amended to include support from Bethlehem Steel Corporation, the U.S. Steel Group and the United Steelworkers of America.

Since China is classified as a nonmarket economy, normal value for Chinese production is based on factors of production that exist in some surrogate country. The petitioners selected Indonesia as the primary surrogate country, since Indonesia is at a comparable level of economic development and since it is a significant producer of comparable merchandise. The petitioners were not able to obtain port unloading charges for Indonesia, so they used the lowest charge applicable to Brazil, based on a news article. Overhead, SG&A and profit percentages were estimated using India as the surrogate country. Based on these

data, the Commerce Department estimated the dumping margins to range from 10.01% to 45.84% (USITC 1996a: A-7). Under the terms of the final agreement, Chinese plate exports are limited to 150,000 metric tons between November 1, 1997 and October 31, 1998. Weighted average dumping margins at the final stage ranged from 17.33 percent to 128.59 percent (USITC 1997a: I-2).

Collated Roofing Nails

The Commerce Department launched this investigation as a result of the petition filed in November, 1996 by the Paslode Division of Illinois Tool Works, Inc, which alleged that Chinese collated roofing nails are, or are likely to be, sold in the United States at less than fair value, and that a U.S. industry is likely to be materially injured, or threatened with material injury as a result.

Since China is classified as a nonmarket country, a surrogate country must be chosen for cost comparisons. India was chosen because its per capita gross national product is relatively close to that of China, and because India produces comparable merchandise. Using this information, preliminary antidumping margins ranged from 106.08% to 118.41% (USITC 1997e: A-5 & 6). Final dumping margins ranged from 0 percent to 40.28 percent (USITC 1997b: A-17).

Persulfates

The Commerce Department launched an antidumping investigation of the Chinese persulfate industry as the result of a petition filed in July, 1996 by FMC Corporation of Chicago. Based on an examination of the evidence, it found that

there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports from China (USITC 1996b: v).

Since China is classified as a nonmarket economy, a surrogate country was chosen in order to determine equivalent costs. The petitioner chose India to value factors of production, in this case, since India is the only persulfate producer among surrogate countries that the Commerce Department typically uses for the PRC. Based on comparisons of export prices with the normal values the petitioner constructed from factors of production, dumping margins were determined to range from 15.87% to 182.37% (USITC 1996b: A-6). The final determination found that Chinese persulfates were being, or were likely to be, sold in the United States for less than fair value (USITC 1997c: A-5). Dumping margins in the final determination ranged from 40.97% to 134% (USITC 1997c: A-18).

Brake Drums and Rotors

This investigation was launched as the result of a petition filed by the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket, which consisted of manufacturers from Illinois, California, Pennsylvania and Missouri (USITC 1996c: B-3). The Coalition alleged that Chinese brake drums and rotors were, or were likely to be, sold in the United States at less than fair value. (USITC 1996c: B-4). Since China is classified as a nonmarket economy, India was used as a surrogate country to estimate some Chinese costs (USITC

1997d: A-11). Based on information furnished by the petitioner, the Commerce Department found, at the preliminary level, that the Chinese were guilty, and calculated dumping margins ranging from 46.76 percent to 105.56 percent for brake drums and from 52.08 percent to 62.55 percent for brake rotors (USITC 1996c: B-5). At the final stage, termination agreements were entered into. Dumping margins for brake drums ranged from 0 percent to a China-wide rate of 86.02 percent. For brake rotors, the final margins ranged between zero and 43.32 percent (USITC 1997d: A-17).

Concluding Comments

The antidumping laws are based on a number of faulty premises. For one thing, actual dumping rarely occurs, because if it did, the company that does the dumping would probably go out of business. There are instances where a company sells its products, either in foreign or domestic markets, at less than the cost of production. Where this practice does occur, it is usually for good business reasons -- the alternative to selling below cost may be to not sell at all. This is certainly the case for wilting flowers or aging tomatoes. Very seldom do companies sell at less than cost to drive out the competition with the intent of later capturing market share. The numerous studies that have been done on predatory pricing have either found that predatory pricing does not exist, or if it does exist, it benefits consumers.

Another faulty premise is that dumping is bad for the economy. If a foreign producer does sell below cost, or for a lower price than in its home market

(these are the two criteria for dumping), the practice benefits consumers -- the general public. Domestic producers are harmed, but domestic producers constitute a small minority, although a concentrated one. In practice, the antidumping laws have been used as protectionist clubs by these special interest groups -- domestic producers -- to batter the competition at the expense of the general public.

Another flaw, a philosophical one, is the concept that one producer should be punished for harming another producer. There is a vast difference between being harmed and having your rights violated. For example, if a supermarket opens up across the street from a small, mom and pop grocery store, mom and pop will likely be harmed, but they will not have their rights violated. They have no right to sell products to consumers who do not want to buy from them. But the antidumping laws go a step further down this illogical road. They would punish foreign producers for doing business domestically if there is a mere threat of harm to a domestic industry. Thus, they are punished for something that they merely might do in the future. If such a theory were applied to criminal law in the United States, it would lead to the incarceration of anyone who fits a criminal profile whether they were actually guilty of breaking the law or not. Yet the antidumping laws regularly use such a yardstick to determine whether a foreign producer should be punished.

A number of other flaws too numerous to mention here infect the antidumping laws. But these flaws have been pointed out elsewhere (McGee

1993; 1994). The main point is that antidumping laws have become much more important since the conclusion of the Uruguay Round and the founding of the World Trade Organization. Now, more than 120 countries have these laws at their disposal. The potential for abuse is great and growing. It is reasonable to expect that, as domestic producers in these countries become aware that they can use these laws to prevent foreign producers from offering their goods in domestic markets at low prices, they will make use of these laws, which benefit domestic producers at the expense of the general public. The antidumping laws will become the biggest weapon of protectionists as tariffs and quotas fade away. Reform is not the answer, since these laws are based on incorrect premises. The only solution is outright repeal, the sooner the better.

Unfortunately, it is unlikely that the antidumping laws will be repealed by the WTO and its 120+ signatories in the near future. As a result, antidumping laws will have an increasingly important effect on world trade, especially in the case of China, since the PRC is the number one target of antidumping actions. Antidumping laws can become one of the major challenges to trade with China in the twenty-first century.

The Uruguay Round diminished the effectiveness of tariffs and quotas as protectionist tools, but antidumping laws have become more important. Antidumping laws are likely to become the protectionist tool of choice, and will likely be used to keep Chinese goods out of foreign markets. Thus, a major challenge to trade with China will be how to find ways to conduct business with

China without running afoul of the antidumping laws, or how to circumvent the antidumping laws when they are used to block trade. These laws will likely result in high antidumping duties in many cases. These duties will have exactly the same effect that tariffs had in the past -- they will increase prices to consumers and make Chinese goods less competitive in international markets. In some cases, Chinese goods will not be able to cross borders at all, and thus will have the same effect on international trade as did quotas in the past.

The best solution to this impending problem is outright repeal, as was stated previously. However, until repeal can be accomplished, ways must be found to minimize the adverse effects that the implementation of antidumping laws will have on international trade.

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