APPLICATION OF THE ANTIDUMPING LAWS AGAINST LATIN AMERICAN COUNTRIES: SIX CASE STUDIES AND PROSPECTS FOR THE FUTURE

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ABSTRACT

Antidumping laws have taken on added significance since the conclusion of the Uruguay Round of GATT. Prior to the Uruguay Round, only about 40 countries enforced antidumping laws. After the Uruguay Round, all 120+ signatories have agreed to incorporate antidumping laws into their trade policy.

Both the Uruguay Round and the North American Free Trade Agreement (NAFTA) abolished or reduced tariffs and quotas, which have traditionally been the protectionist tools of choice. Now that these tools have been scaled back, antidumping laws have risen in importance, and are likely to become the most powerful and most often utilized tools of protectionism as domestic producers in more countries feel the pressure of international competition.

The USA has traditionally been one of the most aggressive users of antidumping laws and it is likely that this trend will continue, although other countries will likely increase their use of these laws in the future. This paper examines six recent cases where U.S. producers have invoked the antidumping laws to stifle competition from Latin American producers. The paper concludes that the use of antidumping laws will likely increase in the future as more countries adopt them and that this trend is likely to stifle, rather than enhance, international trade. The author calls for the abolition of all antidumping laws, the sooner the better.

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. Although Latin American countries have not been a major

target of antidumping actions to date, antidumping actions will take on increasing importance in Latin America as the GATT signatories implement the GATT antidumping provisions.

Some recent antidumping cases involving Latin American countries include:

- Broom corn brooms -- Colombia, Honduras and Mexico
- Butt-weld pipe fittings -- Venezuela
- Carbon steel pipe nipples -- Mexico
- Flat-rolled carbon steel products -- Argentina, Brazil and Mexico
- Fresh cut roses -- Colombia and Ecuador
- Fresh tomatoes -- Mexico
- Fresh winter tomatoes -- Mexico
- Oil country tubular goods -- Argentina and Mexico
- Peppers -- Mexico
- Phthalic anhydride -- Venezuela
- Seamless steel pipe -- Argentina and Brazil
- Steel wire rope -- Mexico
- Welded non-alloy steel pipes and tubes -- Brazil, Mexico and Venezuela

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 will survive 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.

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 Brazil 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.

This paper examines some recent cases involving antidumping actions initiated in the USA against countries in Latin America and attempts to determine what the frequent exercise of the antidumping laws might mean for the future.

Cases

Broom Corn Brooms -- Colombia, Honduras and Mexico

Broom corn brooms -- brooms made out of broom corn -- came under attack by the U.S. Cornbroom Task Force and its individual members (USITC 1996b; 1996d). They alleged that imports were being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or a threat thereof, to the domestic industry. Under NAFTA, if, as a result of the reduction or elimination of a duty, an item is imported from Mexico in such increased quantities as to constitute a substantial cause of serious injury, or a threat of serious

injury, to the domestic industry, the domestic industry can ask for provisional relief pending conclusion of the investigation.

Interestingly enough, the Commissioners were split three ways (USITC 1996d). Two commissioners made a negative determination because they thought that the evidence was not clear that the corn brooms in question constituted a serious injury or threat thereof due to the reduction or elimination of a duty provided by NAFTA. Accordingly, they did not think that a delay in taking action would cause damage to the domestic industry that would be difficult to repair (both requirements must be met in order to grant provisional relief). One commissioner thought that the evidence of injury or potential injury was clear, but thought that a delay in taking action would not cause damage to the domestic industry that would be difficult to repair. Three commissioners held that there both was clear evidence of actual or potential injury and that delay would cause damage to the domestic industry that would be difficult to repair.

Between 1991 and 1995, five countries -- Mexico, Panama, Honduras, Colombia and Hungary -- accounted for between 85 and 90 percent of total imports (USITC 1996b:II-16). Mexico led the way, with 1995 imports reaching 388,286 dozen, valued at about $6.7 million, which was equal to slightly more than 40 percent of U.S. domestic production. Total imports that year represented nearly 58 percent of U.S. production. Broom imports as a proportion of U.S. production rose steadily from 1991 to 1995, with the exception of 1992.

One measure of damage is the level of U.S. producers' inventories. Inventory levels, measured by the ratio of end-of-period inventories to production and U.S. shipments -- remained more or less constant during the period 1991-95. Another measure of damage is the change in employment, wages and productivity. From 1991 to 1995, domestic producers experienced a decline in the number of production workers and hours works, although wages paid, hourly wages, productivity and unit labor costs increased.

Income and loss data for U.S. producers showed mixed results. Net sales increased from $28.7 million in 1991 to $33.8 million in 1995. Gross profits rose from $4.5 million to $7.2 million for the same period. But selling, general and administrative expenses increased faster than sales, leading to operating losses in 1994 and 1995.

Flat-rolled Carbon Steel Products -- Argentina, Brazil and Mexico

One of the more publicized antidumping investigations in recent years -- because it involved 21 countries and because it was so obviously protectionist -- was the case involving certain flat-rolled carbon steel products (USITC 1992b; 1993). This action was brought in mid-1992 as a result of petitions filed by Armco Steel Company, Bethlehem Steel Corporation, Geneva Steel, Gulf States Steel, Inc. of Alabama, Inland Steel Industries, Laclede Steel Company, LTV Steel Company, Lukens Steel Company, National Steel Corporation, Sharon Steel Corporation, USX Corporation/U.S. Steel Group, and WCI Steel, Inc. They alleged that industries in the United States were materially injured, or threatened with material injury by reason of these imports. The U.S. International Trade Commission thereupon launched both an antidumping investigation and a countervailing duty investigation.

At least 15 other antidumping or countervailing duty investigations were initiated against foreign producers of this or similar products between 1980 and 1992. Brazilian companies were the targets of investigations in 1981, 1982(2) and 1983(2). Argentina and Venezuela were targets in 1984 and/or 1985. The alleged offenders were usually found guilty of either dumping or of subsidizing their exports, or both. Where investigations were terminated, it was often because the alleged offenders entered into voluntary restraint agreements. (USITC 1992b:I-6-9; USITC 1993:Vol. 2, I-8-11).

In this 1992 investigation, the following Latin American countries were alleged to have the following countervailing duty margins:

- Brazil - 6.15% to 42.28%
- Mexico - 24.14%

Alleged antidumping margins were:

- Argentina - 43.90% to 51.58%
- Brazil - 0.31% to 109%
- Mexico - 22.06% to 152.84%

Ten U.S. producers had alleged 209 instances where they lost sales and 53 times when they lost revenue involving 124 purchasers of flat-rolled carbon steel products. These losses totaled more than 536,000 tons and were valued at more than $300 million. USITC contacts with domestic importers of these products revealed that the reasons for buying the foreign steel was because of quality, availability, price, delivery service, long-term relationship, the only source and to insure additional supply sources. Three purchasers that bought 100% of their steel requirements from foreign producers said they did so because there was no qualified U.S. mill that could make the specific product for their application (USITC 1992b:I-170).

In its final investigation, the Commerce Department found the following subsidies within the meaning of the countervailing duty law(USITC 1993:Vol. 2, E-3-19):

Plate
Brazil 44.66%
Mexico 20.26%

Hot-rolled Products
Brazil 44.66%

Cold-rolled Products
Brazil 44.66%

Corrosion-resistant Products
Brazil 30.39%
Mexico 47.84%

The final investigation assessed the highest antidumping margins alleged in the petition against Argentina, Brazil and Mexico because of their failure to cooperate in the investigation (USITC 1993:Vol. 2, E-20)

Fresh Cut Roses -- Colombia and Ecuador

Several antidumping and countervailing duty investigations have been launched against foreign flower producers over the past 20 years. As is nearly always the case, the investigations were initiated as the result of a petition by domestic producers who were feeling the heat of competition. The final determination in most of these flower cases was negative, meaning no dumping or subsidies were found. But the mere fact that an investigation was initiated resulted in much cost to the many small foreign flower producers, and had a chilling effect on price competition.

Many of these investigations involved one or more Latin American countries. Colombian companies seem to be the most frequent targets of antidumping investigations, although companies in Ecuador, Mexico, Costa Rica, Guatemala, the Dominican Republic and Chile have also been targets (USITC 1995b:II-4-5; Destler 1986, 1992).

One of the interesting things about flower cases is the way the Commerce Department determines whether dumping has occurred. In the 1986-87 fresh flower cases involving Colombia, the Netherlands, Kenya, Chile and Ecuador, it basically considered a fresh flower in Amsterdam and a wilted flower in New York to be equivalent. In other words, a flower monger who tried to sell a wilted flower at a deep discount could be found guilty of dumping for selling below the cost of production or at a lower price than in some foreign market, even though the alternative would be to make no sale at all (Bovard 1991: 120).

In a recent investigation, the Commerce Department investigated producers of fresh cut roses from Colombia and Ecuador to determine whether they were selling their flowers in the U.S. market at less than fair value (USITC 1995b). The investigation was initiated as the result of a petition filed by the Floral Trade Council of Haslett, Michigan, whose members were feeling the pinch of competition. In its final determination, the U.S. International Trade Commission held that no industry in the United States was materially injured, or threatened with material injury as a result of these flowers being sold in U.S. markets. The Commerce Department's preliminary determination had found that the flowers in question were being sold in U.S. markets for less than fair value.

In evaluating the effects of less than fair value imports on prices, the USITC considered whether there had been significant price underselling of imports and whether the imports had a significant depressing effect on prices, or whether they prevented price increases that otherwise would have taken place. Another factor that entered into the deliberations in this case was the fact that there was limited substitutability between the foreign and domestic flowers. Where the foreign and domestic product are highly substitutable, price plays a more important role than where there are substantial nonprice differences.

In this case, there were several nonprice differences between the Colombian and Ecuadorian roses and those grown in the USA. The Colombian and Ecuadorian flowers were characteristically long and thick-stemmed with large blooms and vibrant colors whereas domestic roses tended to have more longevity and freshness. As a result, the USITC found that price played a subordinate role in a buyer's decision to purchase foreign rather than domestic roses. Most of the purchasers interviewed said that domestic roses were inferior in quality and

available to the foreign roses. In many cases, they bought more expensive Colombian and Ecuadorian roses even though cheaper domestic roses were available (USITC 1995b: I-21).

Fresh Tomatoes -- Mexico

This case (USITC 1996c) was filed on behalf of the Florida Tomato Growers Exchange, Florida Fruit and Vegetable Association, Florida Farm Bureau Federation, South Carolina Tomato Association, Gadsden County Tomato Growers Association Accomack County Farm Bureau, Florida Tomato Exchange, Florida Commissioner of Agriculture and the ad hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee and Virginia Tomato Growers. Products covered by this investigation included all fresh or chilled tomatoes except for tomatoes intended for processing. The petitioners alleged that these Mexican imports were, or were likely to be, sold in the United States for less than fair value and that the imports were materially injuring, or threatening material injury to a U.S. industry.

The petitioners argued that home market prices were not always an appropriate measure for determining whether dumping had occurred, since some tomatoes were sold in Mexican markets for less than the cost of production. Thus, constructed value with some adjustments was used instead. The petitioners claimed that the dumping margins using this adjusted constructed value ranged from 12.86% to 273.42 %. The USITC determined, based on its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured because of these imports. In a related case filed the previous month (USITC 1996a) the Commission found that fresh tomato imports were not a substantial cause of serious injury, or potential serious injury, to the domestic industry.

Seamless Steel Pipe -- Argentina and Brazil

This case was concluded in mid-1995. In its final determination, the U.S. International Trade Commission found that an industry in the United States was materially injured by reason of imports of certain seamless carbon and alloy steel standard, line and pressure pipe from Argentina, brazil, Germany and Italy that were sold in the United States for less than fair value. The USITC also determined that a U.S. industry was materially injured because some Italian exporters were subsidized by the Italian government (USITC 1995a).

The period under investigation for the Argentinean company -- Siderca -- was January 1 to June 30, 1994. Siderca decided not to participate in the investigation. Therefore, in accordance with applicable trade law, the USITC used the best information available (BIA), which means it assessed the highest antidumping margins alleged in the petition, which was 108.13% in this case. The USITC determined that Siderca had dumped its product on the domestic market even though it sold its product for a higher price than that of the domestic competition in 23 of the 68 sales included in the investigation.

Sales of the Brazilian companies were also examined for the period from January 1 to June 30, 1994. The antidumping margins assessed on these sales was 125%, even though the Brazilian companies charged a higher price than their domestic competitors in 25 of the 62 sales that were examined.

Welded Non-alloy Steel Pipes and Tubes -- Brazil, Mexico and Venezuela

This investigation was finalized in 1992 (USITC 1992a). In it, the U.S. International Trade Commission determined that an industry in the United States was materially injured as a result of imports from Brazil, the Republic of Korea, Mexico, Taiwan and Venezuela, but not imports from Romania.

In this case, the petitioners alleged that they were damaged both from subsidies and from sales at less than fair value. In the case of the Brazilian producers, the petitioners alleged that the Brazilians had benefitted from a variety of programs that constitute subsidies within the meaning of the countervailing duty law. However, the Commerce Department found in its final determination that Persico Pizzamiglio, S.A. did not use any of the export subsidy programs (BEFIEX, FINEX and PROEX) during 1991, the period under investigation. The Venezuelan companies were also accused of benefitting from subsidies, but no countervailing duty investigation was conducted to determine whether the allegation was true.

The Brazilian companies were not so lucky in the antidumping investigation. There, the Commerce Department determined that, based on the best information available, the weighted-average dumping margins for Persico and all the other producers, manufacturers and producers was 103.38%. It arrived at this determination by comparing the average customs value of imported standard pipe from Brazil during the third quarter of 1991 to price quotations on the home market by Persico, which were obtained by the petitioner through a consultant.

The Mexican companies were assessed a weighted-average dumping margin of 32.62%. This figure was determined based on data provided by Hylsa, S.A. de C.V.. The Commerce Department compared purchase prices of the subject products delivered at border or delivered at border, duty paid, to adjusted ex-works prices to unrelated customers in the home market.

A weighted-average dumping margin of 52.51% was assessed on the Venezuelan companies, based on the best information available. The BIA was provided by the petitioners, which means there was a very high likelihood of bias against the Venezuelan companies.

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. 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.

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