Antidumping Measures under Review

Antidumping actions are widely criticised for being used as a protective device rather than as a means of controlling unfair trade practices. Michael Davenport discusses the complaints and proposals for change brought forward by the affected exporting countries in the current GATT round. Phedon Nicolaides analyses the antidumping policy of the European Community which has recently been the butt of particularly heavy criticism.

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The Economics of Antidumping and the Uruguay Round

A number of writers have discussed the use of antidumping actions as a protective device. This use has been made easier by the lack of precision in Article VI of the GATT and the GATT Dumping Code. Each of the principal users of antidumping actions argues that its own regulations are consistent with the GATT. This is contested by Japan and the NICs who are arguing within the context of the Uruguay Round negotiations that national (including EC) regulations are often arbitrary and even, in some cases, GATT-illegal. In this article the Uruguay Round negotiations are used as a set of topical pegs to hang some general observations about the economics of antidumping policy.

The expansion of the numbers of antidumping procedures since the early 1980s has been well documented. For example Finger gives data by country initiating the procedure and by exporting country from 1980 to 1986. The four countries, Australia, Canada, the European Community (which acts as a single country and GATT contracting party in this as in most areas of trade policy) and the United States accounted for 1276 out of 1288 initiations, and 767 out of 775 affirmative findings, over the period. Procedures against industrial country exporters showed no discernible trend. On the other hand proceedings against both developing countries and non-market economies showed strong if erratic growth.

Table 1 brings the data on initiations up to mid 1989. These data suggest some decline in antidumping activity since the years of 1982 to 1985 (when initiations averaged 221 per year). There could be a number of explanations. Exporting firms may have "learnt their lesson" and consciously priced their exports at levels high enough to avoid provoking antidumping complaints, they may have found ways of circumventing antidumping rules or opportunities for successful dumping have become fewer.

The last of these explanations is implausible. Antidumping policy is officially justified by the need to protect against the predatory goals of low-cost foreign producers who are seeking to eliminate competition from the established domestic producers. However it is difficult to

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2 See Michael Davenport, op. cit; Brian Hindley, op. cit.; Patrick Messerlin, op. cit.

3 Michael Finger, op. cit.
determine whether predatory intent exists and the GATT rules stop short of requiring that there should be proof of predatory intent or of threat to an otherwise competitive market. But there is no reason to suppose that opportunities for undercutting producers in the US, the EC, Canada or Australia have quite suddenly become significantly rarer.

**Negotiations on a New Antidumping Code**

Each country has its own procedures for dealing with alleged cases of dumping, though all are supposedly consistent with the broad rules of Article VI of the GATT and the GATT antidumping code (for signatories to that code). However, since the GATT rules are framed in very broad terms, the national procedures may respect the letter but flout the intention of those rules. The countries most often at the receiving end of antidumping actions – Japan and the NICs (henceforth the "exporting countries") – have brought to the appropriate Uruguay Round negotiating group (that on MTN Agreements and Arrangements) a list of over 100 complaints directed, not so much at the Code itself, but at the national regulations of the importing countries. 4 Much of the exporting countries' criticism of the current national (or EC) regulations alleges a systemic bias against foreign producers in the establishment of dumping and of material injury, or threat of injury, and in the calculation of the dumping margin. Some of the more important of their complaints concern:

- the determination of "normal value";
- the determination of the export price;
- the setting of the antidumping duty;
- the "sunset" clause;
- circumvention; and
- sampling.

**The Determination of "Normal Value"**

In assessing the dumping margin (if any), according to the GATT code, export prices are to be compared with "normal value", which, where such a comparison is possible, is simply the domestic price of the same or like product. Where there are no, or few, sales in the producing country, either the export price on a third market may be used or the normal value may be constructed from cost data plus a "reasonable" profit margin. There has been a growing tendency, especially in the EC, to use "constructed prices", because of the assumption that exports to other markets may have been dumped or simply because of the opportunities for keeping constructed prices to a minimum. The exporting countries want to rule out constructed prices where there are sufficient sales in a third market.

Secondly the "importing countries" (shorthand for the main users of antidumping actions, the US, the EC, Australia and Canada) have adopted the practice of treating sales below the cost of production "over an extended period of time" as "not being in the ordinary course of trade" and therefore not relevant to calculations of normal value. The use of remaining sales above cost may significantly raise the estimate of normal value. Vermulst points out that the "extended period of time" has been whittled down from the business cycle to the past year or, even, the six month investigation period. 5

Comment: Apart from the fact that the legal basis for excluding sales below fully allocated cost is questionable, 6 it is nonsense economically. From an economic point of view selling below average cost in the short run may be perfectly rational, especially in the trough of a business cycle or to offload stocks that are becoming out of date. In the United States price discrimination in domestic commerce is only challenged under the Robinson-Patman Act when sales are made below marginal cost. Even then that would not in itself be sufficient to establish anti-competitive behaviour. There would have to be consideration of the effect on competition in the domestic industry, which in antidumping actions is totally ignored. In general "unfair" competition from abroad is much easier to establish than "unfair" competition from other domestic producers.

**Export Price Determination**

The treatment of such components of cost as administrative and selling expenses has long been a source of contention. Where the importer is "related" to the exporter all marketing expenses ("selling, administrative and other general expenses") and, except in the US, a reasonable profit for the importer are deducted to reach the ex-factory export price. The new proposals would go some way to rationalise and standardise practices in this area. Secondly the four principal antidumping activists currently exclude prices above the normal value ("negative" dumping). This would be ruled out under new proposals of

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4 One group of countries, which has been the subject of a disproportionate number of antidumping actions in the past and to special and particularly exacting regulations, is the Eastern European countries. Unfortunately those who are GATT members have not taken a very active part in the Uruguay Round antidumping negotiations.
