

ANTIDUMPING AND THE PEOPLE'S REPUBLIC OF CHINA : FIVE CASE STUDIES

YEOMIN YOON[#], ROBERT W. MCGEE[#], WALTER BLOCK^{*}

ABSTRACT

The People's Republic of China (PRC) 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 action 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 in 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 to which all signatories must adhere. 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

[#] W. Paul Stillman School of Business, Seton Hall University, New Jersey, USA

^{*} Economics and Finance Department, University of Central Arkansas, USA.

Antidumping and the People's Republic of China.....

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 and U.S. rules. Many of the weaknesses in the U.S. regulations 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 market place (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 (Palmer 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,

Asian Economic Review

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 non market 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.

This doctrine, moreover, reeks of objective costs philosophy, and of its best known variant, the Marxist labor theory of value. Here, things have value insofar, and because of, the objectively priced factors of production such as land or capital, or, for the socialists, particularly labor¹. But this perspective, one would have thought, has long since been confined to the dust bin of history. Things are not valuable because they are composed of valuable inputs. Any housewife who has ever had to throw out a burnt pie or roast full well knows the truth of this. Mud pies and cherry pies cost just about as much to produce as one another, yet one is of great value, the other only for purposes of illustrating economic fallacy. In certain areas of the world one can pick up a diamond merely with the effort (cost) of bending down to the ground; does this mean that the diamond is worth only a little bit given that the cost of obtaining it was so low? If you believe this, you'll believe anything.

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.

¹ For eviscerations of these doctrines, see Bohm-Bawerk, 1884, particularly Part I, Chapter XII, "Exploitation Theory of Socialism - Communism". Also, Rothbond, 1995, especially his criticism of Marx, pp. 297-407.

Antidumping and the People's Republic of China.....

Then, too, there is an even more radical refutation of this dogma. The economic doctrine of alternative or opportunity costs indicates that this phenomenon is essentially a subjective one (Buchanan and Thirlby, 1981; Buchanan, 1969; Rothbard, 1993; Mises, 1966). That is, the cost of any thing is the next best option that must be sacrificed in order to obtain it. As such, no one can in principle know what the cost of anyone else is of anything. The cost of reading this article might be the nap that one could otherwise be taking, the movie one could otherwise be watching, the consulting fee one might otherwise be earning, or whatever. This sort of thing is known only to the economic actor himself, and not to any third party. Sunken costs are but one way of illustrating this concept. No matter what it cost to create a tomato or flower, if it is presently on the verge of wilting or rotting, then it will be sold for whatever it can garner on the market, and the historical or out of pocket costs which were previously undertaken in its production are entirely irrelevant to the decision to sell. Only a government board could take an interest in the original costs of the alternatives foregone in order to create the flower or tomato.

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; Rothbard, 1993; Block, 1977, 1982, 1986, 1994, 1999). 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 reentering 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.

It is no exaggeration to say that the entire anti-dumping hysteria is predicated upon the rationality of the doctrine of predatory pricing. The idea is that the wily, vicious and evil foreigners will sell to us unsuspecting rubes goods at very low prices. Then, when we get "hooked" on their exports, they will suddenly jack up the prices, leaving us high and dry. Were it not for our antidumping laws, the unsophisticated traders in the U.S. would be victimized by the hordes of sweater producers in Bangla Desh, steel mill owners in India, show producers in Gabon.

To put in the idea in this manner is to expose it as fallacious. If there ever were a predatory

-
2. To say nothing of the predator himself, for expecting and counting on such rampant brainlessness on the part of other people.

