CHAPTER 9
ANTI-DUMPING

Under article VI of the General Agreement on Tariffs and Trade (GATT), a member country of the World Trade Organization (WTO) can unilaterally impose anti-dumping duties to protect its domestic industry from imports of 'dumped' goods and offset material injury caused by such imports. Anti-dumping practices, particularly anti-dumping duties, are thus targeted at firms, not governments (unlike countervailing duties), and are therefore not required to be imposed on a most-favoured-nation basis (unlike safeguard measures). These two characteristics make anti-dumping the politically least difficult measure to apply of the trade remedies available to WTO members.

Anti-dumping law originated in Canada at the beginning of the 20th century, out of a need to protect against predatory pricing. But it has since evolved to become the principal protectionist tool (box 9.1). During the first five years of the WTO agreements (1995–99) 1,229 anti-dumping cases were initiated, 66 per cent of them against developing countries (Third World Network, 2001). The rapid liberalization of trade regimes by developing countries has led them to pass anti-dumping legislation and to rely on it heavily, because it is the most effective way to counter increased import competition while still conforming with WTO disciplines.

Although developing countries have dramatically increased their use of anti-dumping measures, they nevertheless remain the main victims of such measures. Anti-dumping actions applied by countries with major markets can have a devastating impact on individual industries, affecting the entire economy and often 'nipping in the bud' emerging competitive industries—with serious consequences for human development. Developing countries have therefore pressed for tighter rules governing the use of anti-dumping measures and for improved provisions on special and differential treatment to take account of their vulnerability. They submitted a large number of proposals in the context of the implementation issues and concerns relating to the Uruguay Round agreements, which will be taken up in the negotiations mandated by the 2001 WTO Ministerial Conference in Doha.

BOX 9.1 THE ORIGINS, INITIAL USE AND EVOLUTION OF ANTI-DUMPING

Canada was the first to introduce anti-dumping legislation, in 1904, to protect its domestic steel industry from predatory pricing by US Steel. New Zealand followed in 1905, Australia in 1906 and the US in 1916, all citing predatory pricing by foreign exporters.

International anti-dumping agreements

The original General Agreement on Tariffs and Trade (GATT) of 1947 set out rules for the imposition of anti-dumping duties under article VI. By the 1960s, however, it became apparent that there was a need to introduce greater discipline in the use of these measures, and the Agreement on the Implementation of article VI (the first anti-dumping code) was negotiated in the closing phases of the Kennedy Round in 1966–67.

In the years between the Kennedy Round and the launching of the Tokyo Round in 1975, the use of anti-dumping measures—by Australia, Canada, the US and the European Community—increased significantly. This led to the negotiation of a second anti-dumping code during the Tokyo Round, which was accepted by a small number of mostly developed countries.

During the Uruguay Round a third anti-dumping agreement was negotiated. Although less than half the members of the World Trade Organization (WTO) have passed anti-dumping legislation, all accepted the agreement under the single undertaking.

Changing pattern of anti-dumping

Through the 1960s GATT members filed only about ten anti-dumping petitions a year. By the 1980s, however, more than 1,600 anti-dumping cases had been filed worldwide. Of these, 95 per cent were filed by the US, Canada, New Zealand, Australia and the European Community. Between 1990 and 1994 the US initiated an average of 53.4 anti-dumping cases a year, almost 25 per cent of the world total and more than any other country. Australia followed closely, initiating an average of 51.2 cases a year, while the European Union filed 34.6 and Mexico 24.6. A total of 16 countries initiated cases during this four-year period.

After the signing of the third anti-dumping agreement, in 1994, the pattern shifted: anti-dumping actions became fair play for developing countries too. These countries now account for half the cases filed. In 2000, for example, the US filed 47 cases, Argentina 45 and India 41. In 2001 India took the lead with 75 cases, followed by the US (74), the European Union (28) and Argentina (26). Since the anti-dumping rules provide a legal form of trade protection under the WTO, developing countries that had liberalized other trade restrictions and lowered tariffs were quick to adopt anti-dumping legislation. Just three years after signing the anti-dumping code, Mexico had filed more than 30 cases. Similarly, Argentina, which filed its first anti-dumping case in 1991, averaged almost 20 cases a year throughout the 1990s. Even so, many least developed countries, including a number of African countries, have complained of their inability to deal with what they perceive as massive inflows of dumped imports.

Source: Finger, 2002; Finger, Ng and Wangchuk, 2001; Grey, 1999; Prusa, 1999; US Congressional Budget Office, 2001.

THE FAULTY ECONOMIC LOGIC OF ANTI-DUMPING—INDUSTRY AND CONSUMERS BOTH SUFFER

Canadian and US domestic antitrust laws prohibit various forms of domestic price discrimination. It is often argued that the two countries' anti-dumping laws, which have influenced the development of anti-dumping legislation worldwide, arose as a means of responding to international price discrimination. But even if one assumes that the arguments for prohibiting domestic price discrimination are valid (though they are often contested), the case for prohibiting dumping is not analogous (Trebilcock and Howse, 1995).

Dumping has economic effects altogether different from those of domestic price discrimination and cannot be treated as an analogous issue. A seller dumps only if it charges its customers in the export market a lower price than it charges its customers in the home market. Therefore, unlike domestic price discriminators, which create both high-price and low-price markets in the country in which they are operating, dumpers can create only a low-price market in the country to which they are exporting (Trebilcock and Howse, 1995). In the case of dumping an importing country benefits from lower prices, which increase the consumer surplus—though at the expense of the producer's surplus.

According to economic theory, when the importing country imposes duties to raise the price to the level in the exporting country, it produces a net loss to its own economy, because the losses to consumers will almost always outweigh any gains to the producers that are thereby protected (Trebilcock and Howse, 1995). This is borne out by empirical evidence. For example, the US International Trade Commission, analysing eight anti-dumping measures by the US, estimated that every dollar of increased profit for producers cost the average consumer US$8.00. And it estimated that removing US anti-dumping and countervailing duty orders would have created a welfare gain of US$1.59 billion for the country in 1991 (Anderson, 1993). The logic behind anti-dumping duties, however, is that otherwise competitive producers should not be put out of business by unfair competition and that if the dumper is attempting to establish a dominant position in the market, dumping will permit it to raise prices later.

Problems with anti-dumping methodology

Anti-dumping actions not only defy economic theory. They also rest on a methodology that suffers from serious problems in several areas: the miscalculations of price differences, the lack of transparency and apparent bias in proceedings and the high cost to defendants of countering the claim, along with the cost to exporting industries and importing consumers when the claim is approved. Vermulst (2000, p. 289) states in a recent United Nations Conference on Trade and Development (UNCTAD) study, '[the notion of unfairness can be said to form the current basis for anti-dumping legislation.'

One of the central problems of anti-dumping methodology relates to the many reasonable instances of a firm's selling its goods below cost—instances that would not be subject to claims under the domestic competition policies of most WTO members. For example, firms may price goods at less than cost to draw down inventories during a recession. Or they may price goods below cost when demand is not yet sufficient to increase economies of scale in production, but demand needs to be attracted. Similarly, a common practice in retail sales involves designating certain products as loss leaders, underpricing them to attract customers, who may then buy higher-priced items (US Congressional Budget Office, 2001).

In the case of domestic firms such non-predatory behaviour is largely legal and unrestricted. But anti-dumping legislation treats foreign firms differently. Differences in the business cycles of two trading countries, or situations in which an exporter lowers prices upon entering a new market to attract customers, become grounds for initiating an anti-dumping action, as do short-term exchange rate fluctuations. As Grey (1999, p. 2) puts it, 'in so far as the anti-dumping system penalizes import trade more severely than similar price discrimination in domestic commerce, [under competition law] the anti-dumping system is protectionist to that extent and by design.' An extensive OECD review of anti-dumping cases in Australia, Canada, the European Union and the US found that 90 percent of the instances of import sales considered to be unfair under anti-dumping rules would never have been questioned under national competition law—that is, if they had been domestic sales by a domestic enterprise. And far fewer than 10 per cent of the anti-dumping cases would have survived the much more rigorous standards of evidence that apply under competition law (OECD, Economics Department, 1996, p. 18).

Another complaint against anti-dumping legislation involves the ways in which anti-dumping is calculated and proved. The investigating authority is supposed to determine, on the basis of a fair comparison, whether an imported good is being sold at less than its normal price in the country of origin. Yet the comparison of the goods between two countries is often asymmetrical because, despite their similarity, they may differ in quality. This problem has especially affected China, which specializes in low-cost, low-quality goods. And China is more vulnerable because it is still subject to non-market economy criteria, which enable importing countries to calculate dumping margins (the amount by which the normal value of a good exceeds its export price or constructed export price) based on the prices in a proxy country. Moreover, as part of its accession to the WTO, China was obliged to accept a 15-year period under which it will potentially be exposed to such methodologies (see Law Press China, 2001).

In addition, when determining whether a good is being sold below cost, the investigating authority may overestimate costs by including extraneous costs. Or if it uses profit margin as a benchmark, it may impose unrealistically high profit margins (Vermulst, 2000). Lindsey (1999), reviewing 141 company-specific dumping determinations by the US Commerce Department between 1995–98, found that the methodology used (constructed cost) overstated profit rates. In no instance for which he found comparable data was the profit rate used less than twice the actual profit rate in the US industry.

EFFECTS OF ANTI-DUMPING ON DEVELOPING COUNTRY EXPORTERS

The initiation of an anti-dumping proceeding alone has a significant impact on the exporting industry targeted whether a claim is found to be valid or not. A government undertaking a dumping investigation can demand vast quantities of information with a short turnaround time. McGee and Yoon (1998) cite the case of an anti-dumping proceeding against the Japanese electronics firm Matsushita in which the US Department of Commerce demanded that 3,000 pages of financial information be translated into English. Although the department made the demand on a Friday afternoon, it imposed a deadline of the following Monday morning. Rather than comply with the request, Matsushita withdrew the product from the US market.

Such tactics can play havoc with resource-constrained developing countries. Empirical evidence shows that anti-dumping measures against developing countries can have an immediate effect on trade flows and prompt importers to seek alternative sources of supply. Even if duties are not finally imposed, the initiation of investigations itself creates a huge burden for developing countries, which feel that they have been 'harassed'. For example, in 1997, the year after the US issued an anti-dumping order against carbon steel, Argentine exports of carbon steel wire rod to that country declined by 96 per cent. Mexican exports of the same product fell by 94 per cent in the year preceding the duty imposition (UNCTAD, 2000, p. 7). In an econometric analysis of US anti-dumping cases Prusa (1999) found that imports fell on average by 15–20 per cent where investigations were dismissed.

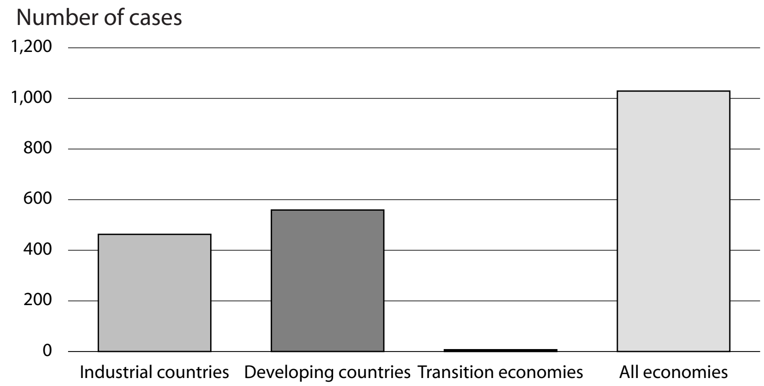
Another example relates to the European Union, which, during 1994–97 repeatedly initiated investigations of grey cotton fabrics originating from China, Egypt, India, Indonesia, Pakistan and Turkey. According to the International Clothing and Textiles Bureau, the European Union's volume of imports of cotton fabrics from these six countries fell by 28 per cent between 1994 and 1997, while the countries' market share fell from 59 per cent to 41 per cent. The case was ultimately dropped, with no anti-dumping duties imposed (UNCTAD, 2000, p. 8).

Similarly, a recent study by the US Congressional Budget Office (2001, p. 18) argues that the effect of the WTO anti-dumping agreement goes beyond the statistics on how many cases are filed, since 'the mere existence of the anti-dumping policy and the knowledge that domestic industries are ready and willing to file cases if competition becomes too fierce can cause foreign firms to compete less aggressively in the US market to avoid having cases filed against them. The same may be true in other countries. And successful anti-dumping cases have caused the value of imports to fall on average by 30–50 per cent (Prusa, 1999). Such cases can have especially severe effects for developing countries.

Although developing countries far outnumber industrial countries, the two country groups initiated almost equal numbers of anti-dumping cases between 1995 and 1999 (figure 9.1). Most striking is the large number of cases against 27 transition economies in Eastern Europe and Asia, most of which (like China) are still exposed

FIGURE 9.1

Anti-dumping initiations, by country group, 1995–99



Source: World Trade Organization data files.

TABLE 9.1

Anti-dumping cases filed against transition economies, 1995–99

Filer group	*Number of cases*
Industrial countries	62
Developing countries	99
Transition economies	3
All economies	164

Source: World Trade Organization data files.

to non-market economy provisions in anti-dumping laws (table 9.1). Finger, Ng and Wangchuk (2001) argue that transition economies face the greatest intensity of cases. A recent case against Vietnam is illustrative (box 9.2). Interestingly, industrial country exporters are the least intensely targeted, while developing country exporters are almost three times as intensely targeted (Finger, Ng and Wangchuk, 2001, p. 6).

Developing countries' growing use of anti-dumping

The use of anti-dumping correlates closely with the openness of an economy. As noted, developing countries undergoing liberalization during the 1990s came to view anti-dumping as a tool for helping to adjust to a liberalized trading regime (indeed, in keeping with this logic, the World Bank encouraged and assisted efforts in several developing countries to draw up anti-dumping legislation). In part because of this, developing countries have come to account for half of all anti-dumping cases initiated (figure 9.2). Moreover, it is feared that without a change in the anti-dumping legislation, it will be the main form of protectionism used in the textile industry from 2005.

BOX 9.2 ANTI-DUMPING ACTIONS AS TRADE HARASSMENT: THE CASE OF VIETNAMESE CATFISH

Developing aquaculture has become central to Vietnam's strategy for obtaining export earnings and providing alternative employment opportunities for poor farmers. A key fishery product has been catfish, which Vietnam began exporting to the US in 1996. By 2001 these imports had reached 9 million pounds, 1.7 per cent of US consumption of catfish.

Despite the limited market penetration, the Catfish Farmers of America launched a strong action against Vietnamese catfish imports, successfully lobbying the US Congress to pass a law specifying that only the species *Ictalurus punctatus*, of the family Ictaluridae, could be labelled *catfish*. Vietnamese catfish is of the family Pangasius. The organization also financed a campaign to convince consumers to buy only domestic catfish, describing Vietnamese catfish as raised in unhygienic conditions. This claim was found to be false by a US Department of Agriculture team that visited the fishery sites in the Mekong delta.

Even though Vietnam's catfish had to be labelled *basa* or *tra*, this did not prevent its catfish exports from growing. That led to the filing of an anti-dumping complaint against frozen fish fillets from Vietnam. Later, the US International Trade Commission determined that there was a reasonable indication that the US industry was threatened by material injury from the imports of 'certain frozen fillets' from Vietnam, sold in the US at less than fair value.

The case, which marks the first anti-dumping complaint against Vietnam, raises two interesting issues. The first relates to whether Vietnam will be treated as a non-market economy for the purposes of the investigation, which would require a special methodology using a proxy country as the basis for price comparisons (India has been proposed as the proxy). This not only would make a positive determination of dumping more likely, but also would have broader and more serious implications for Vietnam's terms of accession to the WTO, now being negotiated. The second issue relates to the definition of like product. While US law establishes that Vietnamese catfish are not catfish for the purposes of labelling, *basa* and *tra* are considered a like product for the purposes of the anti-dumping determination.

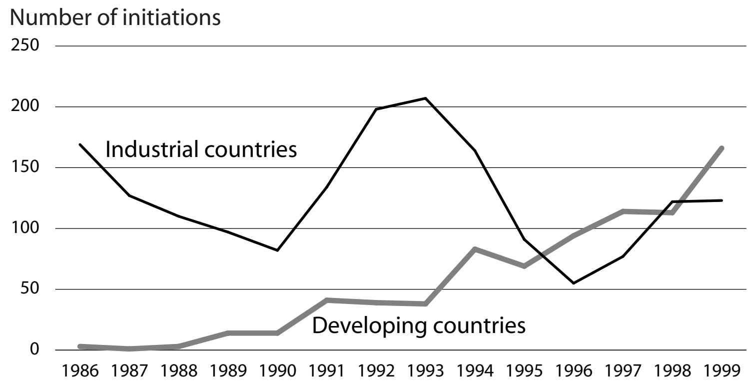
The Vietnamese exporters reportedly are paying a Washington, DC, law firm US$469 an hour to defend their case, while a catfish worker in the Mekong delta earns less than US$35 a month. This striking disparity demonstrates the need for more stringent multilateral rules and special and differential treatment in the form of meaningful thresholds for import shares to protect small developing country exporters and new market entrants from trade harassment.

Source: Nguyen Hong, 2002a, b; *Saigon Times Weekly*, 2002; Duc Dan, 2002; Luu Phan and Huynh Kim, 2002; Luu Phan, 2002; Tan Duc, 2002; *Vietnam News*, 2002a, b, c.

Developing countries face a conundrum: they must seek a balance between their need to export to industrial country markets and their need to protect domestic industries adapting to a free trade environment. For this reason they have chosen not to attack the anti-dumping system itself, but have instead sought to tighten the rules in such a way that their exporters will be less vulnerable to anti-dumping duties. They have made some progress in improving the application of existing provisions on special and differential treatment in their favour in the context of the dispute settlement process and have listed key anti-dumping issues for negotiation in their submissions on the implementation issues and concerns. These include such proposals as higher thresholds for import shares, higher dumping margins for

FIGURE 9.2

Anti-dumping initiations by industrial and developing countries, 1986–99



Source: World Trade Organization data files.

imports from developing countries and greater flexibility for least developed countries in applying anti-dumping measures.

Many developing countries, particularly those in Africa, have complained bitterly about what they perceive as massive dumping into their markets—which they have neither the expertise nor the administrative resources to counter and combat. While some countries, such as the US, have offered to assist them in strengthening their administration in this area, it is not clear that these efforts would be the best use of scarce resources in these developing countries, especially since they may never have the resources to send officials to conduct investigations in the exporting countries.

The way forward

The US remained intransigent against pressure for changes to anti-dumping rules until the WTO Ministerial Conference in Doha, where, as a result of intense pressure, it accepted the possibility of a review and clarification of anti-dumping disciplines with a view to tightening them. Still, the US Trade Act of 2002 creates impediments against any change in US anti-dumping law.

Anti-dumping as a protectionist tool tilts the balance of trade against developing countries, given the bias in industrial countries' legislation and the high costs of initiating and defending against anti-dumping cases. The anti-dumping agreement should be revised and consideration should be given to making other tools available, such as stronger domestic competition policy regimes. This would help reduce the incidence of cases stemming from short-term, natural fluctuations between the price levels of two trading countries as a result of different business cycles, exchange rate fluctuations or different levels of economies of scale in production. It is also vital that the agreement be revised to provide adequate thresholds for import shares in industrial countries, so that developing country industries entering the world market are not 'nipped in the bud' by anti-dumping actions in major importing countries.

Moreover, steps should be taken to eliminate bias in procedures by ensuring technical support to developing countries. This could be done by providing them sufficient time and resources to comply with the requests of an investigating authority. In addition, developing countries could be allowed higher *de minimis* dumping margins and import share thresholds in anti-dumping proceedings involving them (Vermulst, 2000). Revising the anti-dumping agreement to reduce unwarranted cases against developing countries could also help them gain greater benefits from their increased participation in world trade.

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