REPORT Trade

A Guide to Antidumping Laws: America's Unfair Trade Practice

July 21, 1992 30 min read

Bryan Johnson
Visiting Fellow

Introduction

Many American policy makers over the past decade have replaced calls for more free trade with demands for "fair trade." The United States, they say, should keep its markets opened to imports, but must also act aggressively against "unfair" trade practices by foreign businesses and governments. One of the pillars of this "fair trade" approach is a set of so-called antidumping and countervailing duty laws. (Both antidumping laws and countervailing duty laws shall hereinafter be referred to simply as antidumping laws, unless otherwise noted.) Antidumping laws seek to prevent products manufactured overseas from being sold by foreign firms in the U.S. at "less than fair value." Countervailing duties seek to offset the subsidies that foreign governments provide for some exporting firms by imposing duties on the goods these firms export to the U.S.

While duties and restrictions designed to achieve so-called fair trade seem reasonable to many Americans, in reality their effect is anything but fair or beneficial to U.S. consumers. The antidumping laws are confusing and arbitrary,

and in many instances merely allow American firms to secure punitive tariffs against competing importers where no unfair trade practices are involved. Worse, these laws drive up the costs of imported components used by other American enterprises, making their products less competitive in world markets. As a result, American consumers pay higher prices for both imported and domestically produced goods, and American workers find fewer employment opportunities in less competitive American firms.

When an American firm accuses a foreign firm of dumping in the U.S. market, the Commerce Department must compare the price of the good in the home market of the foreign firm and the price it is sold for in the U.S. If the U.S. price does not reflect "fair market value," as determined by the Commerce Department, the foreign firm can be found guilty of dumping.

Complex and Arcane Methods. The problem is that the methods the Commerce Department employs are complex, arcane, and plagued with conceptual and technical problems. And because so many aspects of estimating the fair market value are subjective, it is easy for the Commerce Department to "prove" dumping when in fact no dumping has occurred. This can happen for a number of reasons:

When no government subsidy is involved, the definition of an "unfair" price is arbitrary.

The Commerce Department often will compare the prices of different rather than the identical products, so price comparisons are subjective.

The Commerce Department often will subtract expenses from foreign products sold in the U.S. in making its calculation, but not subtract the same expenses incurred in the home market.

The Commerce Department often neglects to take into account exchange rate fluctuations in its comparative price calculations for the home and export markets.

When determining prices in the foreign market, the Commerce Department sometimes will use an "average foreign price" for a product, which does not take

into account price fluctuations at the time of the sale. Moreover, Commerce often will neglect to take into account the differences in wholesale and retail prices.

In many cases, the Commerce Department requires accused foreign firms to supply a massive amount of information, including business secrets, to determine foreign production costs. If the information supplied is not satisfactory to Department investigators, they may use production cost estimates by different firms in third countries, even though these costs are not comparable to production costs in the home market.

These practices by the Commerce Department routinely result in inaccurate production cost determinations, causing many companies to be found guilty of dumping, even when no such action occurred. In some cases, these questionable practices are simply the product of overzealous officials. But for the most part, these problems are systemic, rooted in the dumping laws themselves.

To promote free trade and thus to give consumers full access to the products they want, the Bush Administration should seek the support of Congress to end harmful dumping determinations that artificially raise the prices of certain imports. Specifically, it should:

- Seek agreement in the current Uruguay Round of General Agreement on Tariff and Trade (GATT) talks for a multi- lateral phase-out of antidumping laws in exchange for stricter limits on government subsidies to industries.
- Commission a study of the damage done to American business and consumers by antidumping laws.
- Propose interim legislation that incorporates the initial intent of the Antidumping Act of 1916.

Antidumping laws originally sought to prevent foreign exporters from using predatory pricing to undermine American businesses. The burden of proof was on the government and American businesses. But these laws have evolved into yet another form of trade protection, which American firms can use to keep out competitors, whether or not they are engaged in unfair trade practices. If the

U.S. is to be the leading advocate of free trade in the world, and keep its own market open as well, it should eliminate its unfair trade practices.

The Evolution of Dumping Laws in the U.S.

According to the U.S. Department of Commerce definition, "dumping" occurs when, "... a good is sold for less than its 'fair value,' generally meaning it is exported for less than it is sold in the domestic market or third country markets or it is sold for less than production cost." (Reference Terms of International Trade, United States Department of Commerce, International Trade Administration, Washington, D.C., July 1987, p. 4.) Since 1897, the U.S. effectively has had antidumping laws on the books, and these laws have enabled the U.S. government to punish firms in other countries that send subsidized exports to the U.S. (Countervailing Duty Law of 1897, 19 U.S.C. 1303.)

It was not until 1916, however, that Congress passed a law specifically targeting dumping. According to the Antidumping Act of that year, for dumping to occur, a "predatory intent" by the exporter must be shown. (Antidumping Act of 1916, 15 U.S.C. 71.) In other words, the exporter must intend to sell its products in the U.S. at below production cost in order to cause material injury to an existing U.S. company. (This act is codified in Section 801 of the Revenue Act of 1916.) This law came in an era in which the federal government also enacted antitrust laws to prevent American enterprises from pursuing similar predatory practices against their domestic competitors.

With the Antidumping Act of 1921, Congress loosened the requirements to permit federal action to keep out foreign products not only if foreign companies engaged in predatory pricing, but merely if their products were deemed to be priced lower than similar American products, regardless of whether predatory pricing was an issue. ("Comparison of U.S. and Foreign Antidumping Practices," United States General Accounting Office, Report No. GAO/NSIAD-91-59, November 1990, p. 8.) This Act forms the basis for America's current antidumping law. The Antidumping Act was incorporated into the 1930 Tariff Act, and later amended by the 1979 Trade Act, the 1984 Trade Act, and the 1988 Trade Act. ("1992 Trade Policy Agenda and 1991 Annual Report of the President of the United States on the Trade Agreements Program," Office of the United

States Trade Representative, Executive Office of the President, Washington, D.C., 1991, p. 78.) These revisions made it easier for American companies to initiate dumping complaints, and for the U.S. government to restrict foreign imports that are sold at lower prices than similar American products.

Several multilateral agreements also have addressed the dumping issue. The Kennedy Round of the General Agreement on Tariffs and Trade (GATT), held between 1963 and 1967, resulted in the GATT Antidumping Code. This code sets out guidelines under which countries may act against foreign firms that practice predatory pricing resulting in material injury to an industry based in the importing country. ("Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade," June 30, 1967, GATT BISD, 15th Supp., 1968, p. 24.) GATT itself does not establish specific definitions of what constitutes dumping or act against countries that dump; it simply creates the guidelines on which countries can adopt their own laws to prevent dumping. The code was amended during the Tokyo Round of GATT, held between 1973 to 1979. ("Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade," April 12, 1979, GATT, BISD 26th Supp., 1979, p. 171.) Of the 103 members of GATT, however, only 25 have signed on to this amended code. (These are: Australia, Austria, Brazil, Canada, Czechoslovakia, the European Community, Egypt, Finland, Hong Kong, Hungary, India, Japan, South Korea, Mexico, New Zealand, Norway, Pakistan, Poland, Romania, Singapore, Spain, Sweden, Switzerland, the United States, and Yugoslavia. The European Community is considered one member, with the exception of Spain, which signed the GATT antidumping code separately.) The Tokyo Round agreement mandates that all antidumping investigations be reported immediately to GATT and that a semiannual report on antidumping cases be forwarded by the signature countries to the GATT Secretariat. ("Use of the GATT Antidumping Code," General Accounting Office, Washington D.C., GAO/NSIAD-90-238FS, July 1990, p. 2.) According to the Code, each signatory can legislate and administer its antidumping code, as long as it conforms to GATT standards. (These standards are explained in Article VI of the GATT Agreement.) As recently as this year, the GATT has found the U.S. violating the intent of international guidelines to which the laws of signatory countries must conform. Specifically, the GATT accused the U.S of making it too easy for American enterprises to

obtain punitive tariffs against foreign products. The U.S. so far has ignored the GATT warning, indicating to other countries that the U.S. does not intend to play fair in trade. ("GATT: U.S. Bars Cheaper Imports," The Washington Times, March 13, 1992, p. C3.)

The Growth in Cases

Recently the number of dumping cases instigated by American businesses using U.S. laws has grown. Many U.S. industries that in the past might have sought trade protection directly from Congress have found this route more difficult as successive GATT rounds have eliminated many forms of direct trade protectionism. U.S. antidumping laws thus have proved to be a more convenient tool to limit competition by denying foreigners access to the U.S. market. The U.S. steel industry, for example, has received trade protection for almost two decades. In 1992, however, the quota system that had protected the U.S. industry expired. As a result, the industry has flooded the Department of Commerce and the International Trade Commission with new dumping complaints.

During the 1980s, 1,456 antidumping cases were reported to the GATT. Australia, the United States, Canada, and the European Community accounted for 95 percent of those cases. The U.S. was responsible for 90 percent of all countervailing duty cases initiated between 1980 and 1986. (Jeffrey J. Schott, "The Global Trade Negotiations: What Can Be Achieved?" Policy Analysis in International Economics #29 (Washington, D.C.: Institute for International Economics, September 1990), p. 17.) In 1980, there were only 83 outstanding U.S. antidumping orders on foreign imports. By 1990, outstanding antidumping orders had increased to 197. In that year, the U.S. government considered 27 dumping complaints, and almost 200 separate dumping orders were, in effect, imposing duties and higher prices on one or more products from 42 different countries. This was up from 84 orders on 23 countries in 1980. (From an unpublished forthcoming study by Keith Anderson, Senior Advisor to the Vice Chairman Anne Brunsdale, International Trade Commission, Washington, D.C.) And in the first ten months of 1991, the number of new dumping complaints considered by the U.S. was more than double the 1990 figure. ("GATT: U.S. Bars Cheaper Imports," The Washington Times, March 13, 1992, p. C3.)

How the U.S. Government Determines "Dumping"ING"

The Investigation Process. The U.S. Department of Commerce and the U.S. International Trade Commission (ITC) jointly administer America's cumbersome antidumping law. The steps in a dumping case are as follows:

1) A U.S. company submits a petition to the International Trade Administration at the Department of Commerce, alleging that a foreign company is dumping its product in the U.S.

2) If the Commerce Department determines that sufficient evidence exits, it will proceed with an investigation.

3) The ITC then may start its own investigation to determine whether there is injury to any domestic companies.

4) If the ITC finds there has been material injury to a U.S. company, the Commerce Department will determine whether the product in question is being sold in the U.S. at "less than fair value," or at a lower price than that sold in the home market or a third country market.

5) If the Department issues a preliminary finding that sufficient evidence of such pricing practices exists, it will direct the U.S. Customs Service to suspend the importation of the product, or require U.S. importers of the product to post a deposit. This bond must be paid to the U.S government in the event that a final determination finds that the product is being sold at less than fair value.

6) The ITC, at this point, must determine if there is any actual material damage to U.S. companies caused by the alleged dumped imports.

7) If the ITC determines that the dumping has caused injury to a U.S. manufacturer, the products then are subjected to "antidumping duties" equal to the amount of the determined dumping margin. The dumping margin is the difference between the price of the "dumped product" and the price the product would sell for if it were being sold at a "fair" price, according to calculations by the ITC. If, however, the ITC finds that there is insufficient evidence, the case is dismissed.

Investigation Methods

When the Commerce Department attempts to determine when a product is being dumped, it compares the "U.S. price" with the product's "foreign market value." The U.S. price is determined by the purchase price when the good enters the U.S., minus packaging costs, import duties, and taxes. In other words, the exporter's sale price will be reduced by the amount of fees paid and other pre-sale costs that result from selling products in the U.S. After this amount is determined, the Commerce Department will then determine if the price reflects a "fair market value" (FMV). The FMV can be determined in three ways, namely:

1) Home Market Price

(19 U.S.C. Section 1677b(1)(A).) The Commerce Department tries to determine how much the same product is sold for in the country where it is manufactured. If the price in the home market is more than the U.S. purchase price, the Department normally finds that dumping has occurred.

2) Third Country Price

(19 U.S.C. Section 1677b(1)(B).) If there are no home market sales of the product, or the sales are so small that it is impossible to determine a market price, the price that the product sells for in a third country may be used. If that price is higher than in the U.S., the Commerce Department normally would find that dumping has occurred.

3) Constructed Value

(19 U.S.C. Sections 1677b(a)(2), 1677b(b), and 1677b(e).) If the market value of the product cannot be determined either by a home market price or a third country price, the Department will rely on a "constructed value." The constructed value method attempts to establish the exact cost of production of the product in question by using "best available information," which includes financial statements and documents on the product and companies in question. If this method is used, the U.S. government requires the foreign company under investigation to provide financial statements, production cost documents, and any other kind of document necessary to determine the costs of production.

If the company does not provide the information in a specified period of time, the Commerce Department will then look to a third country of similar "level of

industrialization" to determine how much "similar" products in that country cost to produce. This might mean that Commerce will ask the U.S. companies that initiated the case to provide information on the accused foreign companies.

When it constructs value, the Commerce Department adds an 8 percent profit margin to its calculated production cost to estimate a "fair" sale price in the U.S. This effectively means that if a foreign company cannot sell its product in the U.S. for at least an 8 percent profit, it likely will be found guilty of dumping. If a foreign company is willing to accept only a 7 percent profit on a shipment of sweaters, for example, the Commerce Department would find it guilty of dumping those sweaters in the U.S.

Problems with U.S. Antidumping Laws

While the federal government claims that antidumping laws help fight unfair trade practices by foreign firms or governments, in reality there are so many problems associated with determining the existence of dumping that the rules themselves turn out to be unfair. Among the difficulties:

1) Defining Unfair Prices
When no government subsidies are involved, there is no economic case for the claim that selling at below cost is an unfair practice. The claim of unfairness usually is based on the fear that a business will use so-called predatory pricing to drive out its U.S. competitors, leaving it to enjoy a monopoly and charge U.S. consumers higher prices. But the world market today is so integrated and competitive that it is virtually impossible for a company to exploit a dominant share of a market for long, if at all. Thanks to freer trade in recent decades, there is little chance of an exporter achieving the power to charge a monopoly price.

Another problem with the concept of unfair dumping is that U.S. firms presumably can cut their prices to "unfair" levels in order to drive their foreign competitors out of the American market. In other words, if the U.S. firm is allowed to "dump" in its own market, the practice is not considered unfair.

Finally, it is a common business practice to sell products at a loss. For example, if a product is not selling well, a business owner might sell below cost in order to

recoup at least some of his investment in the product. Yet when a foreign firm sells below cost in the U.S. market, it is considered to be abnormal and unfair.

2) The Problem of Comparing Products

When a U.S. company charges a foreign company with dumping, the Commerce Department assumes that the products in question are similar. For example, if U.S. farmers charge Colombian farmers with dumping, it is assumed that the American farmers are accusing the Colombians of dumping the identical crop to that produced by the Americans. Yet many U.S. dumping cases against foreign products are initiated by American companies marketing products significantly dissimilar to the products allegedly dumped. In such cases, when the U.S. Commerce Department attempts to determine a "fair market value" for the item in question, it is comparing apples and oranges.

In one 1984 dumping case, for example, an Italian company was found guilty of dumping pads for woodwind musical instruments in the U.S. Yet the smaller, cheaper, and lower quality woodwind pads sold by the Italian firm were meant for the lower lines of instruments in the U.S. market. The firm sold more expensive, higher quality pads for the top-of-the-line woodwind instruments in the Italian home market. When Commerce initiated its investigation, it compared the prices of the two products as though they were identical. (James Bovard, The Fair Trade Fraud: How Congress Pillages the Consumer and Decimates American Competitiveness" (New York, St. Martin's Press, 1991), p. 119; also see Luciano Pisoni Fabbrica Accessori Instrumenti Musicali v. United States Court of International Trade, No. 84-10-01435, June 12, 1986, 640 F. Supp. 255 (CIT 1986).) This was like a foreign country accusing America's General Motors of dumping its cars by comparing the price of an exported Chevette with the price of a luxury Cadillac sold in the U.S. Not surprisingly, the U.S. government found that the Italian company was dumping woodwind pads in the U.S. In defending its actions, Commerce admitted that it did not compare similar products, but then said that it had the prerogative not to do so.

3) Calculating the Costs Associated with Selling

When the Commerce Department attempts to determine the fair market value of a product sold in the U.S., it subtracts various "sales-associated" costs from

the price that the import is selling for in the U.S. For example, packaging costs, import duties, and other taxes are removed from the U.S. selling price. Yet when Commerce seeks to determine the home market value price of the same good, many sales-associated costs are not eliminated. This can make the base price of the good in the country of origin appear artificially higher than its base selling price in the U.S. Thus it gives the incorrect perception the foreign good is being dumped.

In 1989, for example, the U.S. initiated a dumping investigation against imported telephone systems. In one step of its investigation, the Commerce Department deducted the cost of inland freight for Korean phone systems sold in the U.S. while neglecting to subtract the same costs for Korean inland freight. The Korean inland freight was higher because, unlike the shipment of telephone systems to the U.S. that went to a large distributor, the systems in Korea went directly to hundreds of different retailers, increasing the cost of distribution. Thus the price of the product sold in Korea appeared higher than it actually was when compared to the U.S. price.

4) Adjusting for Exchange Rates

When the Commerce Department rules that a product is being dumped, it must determine the dumping margin between the price a product is sold for in the foreign market and the presumed U.S. market price. To be compared, both of these prices must be calculated into U.S. dollars. But this creates a problem. Some business agreements between a foreign company and a U.S. importer use fixed exchange rate contracts. So the selling price in the exporter's home currency will fluctuate according to the current exchange rate, yet production costs remain unchanged. When investigating a dumping case, however, the U.S. government sometimes will use the current exchange rate.

This can give a misleading suggestion of dumping, because in the time between the signing of the contract between the foreign and U.S. companies and the time of actual delivery of goods, the exchange rate between the U.S. dollar and the foreign currency might have changed significantly. Deputy Assistant Secretary Gilbert Kaplan, of the Commerce Department, noted this problem in a 1986 Senate Finance Committee hearing. Explained Kaplan, "If the home market

price is 200 yen and the U.S. price is $1.00 and the exchange rate is 200 yen equal $1.00, there is no dumping. If the yen appreciated against the dollar, however, so that only 150 yen equaled $1.00, unless there was a corresponding change in prices, suddenly the company is dumping by 33 percent, because 200 yen is now worth $1.33." (United States Congress, Senate Committee on Finance, "Remedies Against Dumping of Imports," July 18, 1986 (Washington, D.C.: U.S. Government Printing Office, 1986), p. 35.)

5) Determining the Average Price
When the Commerce Department attempts to determine the price a foreign good is being sold for in its home market, it uses an "average price level," usually calculated over a six-month period. Yet the Department compares this average foreign price with the U.S. price at a specific time, not an average. This can create serious distortions in price comparisons. For example, a product might sell in the U.S. for $100 on a particular date when competition is particularly fierce. But the price of that product in the home market might range from $90 to $150 over a six-month period, for an average of $120. In this situation, the company could be found to be dumping. But the average price in the U.S. over the same six- month period also might be $120, meaning that dumping, as defined by current laws, in fact did not occur.

Another common defect in the Commerce Department price determination is its practice of comparing retail with wholesale prices. A company may export a product to the United States at a large wholesale discount. This is how many American retailers are able to import large quantities of items at cheaper prices than they could obtain from domestic sources that do not sell in similar bulk quantities. Yet the Commerce Department might compare the U.S. wholesale price with the retail foreign price. In a 1985 case involving cellular telephones Commerce compared the price of Toshiba's phones sold to large U.S. wholesale distributors with the price of the same units sold in Japan directly to retailers. Commerce did not adjust for the price difference that resulted from selling in the larger and smaller quantities. As a result, the foreign price appears higher than the U.S. price, allowing a finding of dumping. (Bovard, op. cit., p. 122.)

6) Determining Production Costs

The Commerce Department uses several methods to determine the costs of production of a foreign firm. One method is to require the accused firm to turn over to the U.S. government certain crucial business documents, including trade secrets. A foreign company being investigated by Commerce generally will receive a 50-to-100-page, single-spaced request for information and be allowed only six to eight weeks to comply with the request. During that time, the company must: translate the request in their language for distribution to relevant company employees;

identify sales in U.S. and home market;

identify all expenses related to the production and export of the product;

assign each expense to a specific purpose;

conduct its own investigation on home market and U.S. prices. (Ibid, p. 135.)

Companies competing internationally understandably are not always willing to divulge to the U.S. government their business secrets and other information that could help their U.S. competitors. But even if they are willing to comply, often it is costly, difficult, or impossible for foreign firms to gather such massive amounts of information in the time required. If the Commerce Department does not receive the information in time, it uses alternative methods to calculate production costs. One is to compare production costs of other manufacturers in a third country with a "similar" level of industrialization. This happened in 1986, when a Chinese cookware company accused of dumping its products in the U.S. was unable to comply with Commerce's request for information. In order to determine production costs Commerce compared the company with cookware manufacturers in Thailand. The two countries, however, are hardly on the same level of development. Using purchasing power parity, which takes into account inflation, exchange rates, and other cost of living adjustments, per capita gross domestic product in Thailand is about $3,600, while in China it is $2,600, a $1,000 difference. ("Human Development Report 1992," United Nations, New York, 1992, pp. 127-128.) Even so, the Commerce Department was unable to persuade Thai companies to reveal detailed business information of their

companies. So it then used the prosperous countries of France, Norway, and West Germany for comparing production costs with China. Not surprisingly Commerce came up with rather large dumping margins.

To avoid further dumping charges, some foreign companies found guilty of dumping will raise prices on their products to exceed the acceptable margins determined by the Commerce Department. Yet in some cases, Commerce will change the country previously used for comparison, and again find the foreign company guilty of dumping.

This happened in 1990, when the Commerce Department imposed more duties on manhole covers from China. In 1986 China had been found to be dumping manhole covers in the U.S., based on comparisons of costs of producing those items in Belgium, Canada, France, and Japan. In 1990 the case was reviewed again. This time, the Commerce Department decided to use the Philippine manhole cover industry as its basis for comparison even though the Philippine industry did not use pig iron, a primary ingredient in the Chinese product. Thus the products were not similar. But by changing the basis of comparison, a higher dumping margin could be used against the Chinese. (Bovard, op. cit., p. 133-135.)

Even when a foreign company goes to extraordinary lengths to supply information and cooperate fully with the investigation, the Commerce Department still may say that it is insufficient. In a 1989 case, for instance, SKF of Sweden, a manufacturer of ball bearings, was accused of dumping antifriction bearings into the U.S. market. SKF provided the Department with 150,000 pages of data. Still not satisfied, the Commerce Department gave SKF only one week to make revisions of several clerical mistakes. Then the Department declared several figures in this new material supplied by an SKF subsidiary to be misleading, so it dismissed as erroneous almost all of the material SKF had supplied. Eventually, SKF delivered over twelve tons of information to the U.S. government. But because of the errors the Commerce Department treated SKF as if it had turned over no information at all and imposed a dumping margin of 180 percent on the company's products. (United States International Trade Commission, investigation numbers 303-TA-19, 303-TA-20, and 731-TA-391-399.)

Recent Dumping Cases

With the increase of American dumping investigations in recent years, there have been a number of particularly disturbing cases that have been plagued by questionable procedures and that in some instances have hurt U.S. businesses and consumers. Several of these recent dumping cases underscore the problems with America's dumping laws.

Example: Flat Panel Display (FPD) Screens. In response to a Commerce Department ruling that flat panel display screens, which are used in laptop computers and related products, were being dumped in the U.S. by Japanese companies, the ITC initiated an investigation in February 1991. The ITC in August 1991 found that there was material damage to American producers and thus recommended a 62.7 percent dumping duty on imported screens. This left the American computer industry unable to acquire affordable flat panel displays for their laptop computer production. The problem with this finding: American manufacturers do not even sell certain types of these screens in the U.S. market.

The investigation focused on two basic types of displays -- electroluminescent FPDs and active matrix FPDs. Electroluminescent displays generally are monochrome with lower resolution. Active matrix displays generally are color with higher resolutions. The U.S. has a large electroluminescent display industry and the Japanese share of the U.S. market, at the time of the investigation in 1990, was just 5 percent and shrinking. During the time of the investigation, the small Japanese portion of the U.S. electroluminescent market remained somewhat steady. But it was clear that the Japanese share of the American market in electroluminescent screens was not a threat to the U.S. domestic industry. Still the Commerce Department saw a dumping problem and levied a 7 percent dumping margin.

More significantly, the Commerce Department imposed a 62.7 percent dumping margin for active matrix displays. Yet there is no commercial U.S. active matrix display industry. There are two U.S. companies manufacturing these screens, OIS Optical Imaging Systems, Inc., and Standish Corporation. But their production lines are small and costly, and the firms for the most part supply these screens only to the U.S. government for military uses. In essence, what the Commerce Department and the ITC did was to say that the U.S. active matrix display

industry, made up of two small firms supplying the government, was being materially injured by Japanese firms exporting these displays to large U.S. computer manufacturers who needed them for their laptop computers.

Acting ITC Chairman Anne Brunsdale, who dissented from the opinion, states in the ITC report that, "Apple testified that it considered OIS at the initial stage of its three-part vendor evaluation when deciding which FPD to use in its Macintosh portable. It found that OIS had 'zero high volume manufacturing capability, little customer support experience, zero manufacturing flexibility, zero mass production experience and delivery schedule.' It eliminated OIS at the first stage of consideration." ("Certain High-Information Content Flat Panel Displays and Display Glass Therefor [sic] from Japan," United States International Trade Commission, USITC Publication 2413, Washington, D.C., August 1991, pp. 35-36.) Thus, American computer manufacturers had determined that there was no domestic source for the needed display screens. Therefore they bought their screens from the only available source, the Japanese. Not sharing Brunsdale's view, the majority of the ITC claimed there was dumping. But because of the high duties imposed by the federal government on these high-quality color displays, America's largest computer manufacturers, Apple, Compaq, and IBM, were left with no access to affordable components for their laptop manufacturing, prompting U.S. computer manufacturers to move production facilities overseas or drop out of the market altogether.

Because the decision to impose duties on these display screens forced many American computer manufacturers to pay higher prices for imports, the U.S. government action also resulted in the loss of American jobs. Shortly after the decision to impose duties on active matrix displays, for example, Toshiba Corporation, which had a production facility in Irvine, California, announced that it would shut down the plant and move production back to Japan. The dumping duty only applied to the screens, which Toshiba imported from its Japan production facilities to manufacture laptops in California. Thus, the duty forced Toshiba to fire American workers, close the plant, and begin assembly of laptops back in Japan. And because the duty applied only to the flat panel screens, a

completed laptop computer that included the screen was not subjected to the duty.

Apple abandoned plans to manufacture laptop computers in Fountain, Colorado, in favor of Cork, Ireland, to avoid paying the duties. IBM also announced that it was considering moving its production facilities abroad. ("Did Washington Lose Sight of the Big Picture?" Business Week, December 2, 1991, p. 38.)

Example: Antifriction Bearings. U.S. antidumping laws allow even the smallest American firm to initiate a dumping charge, no matter how much the domestic demand might be for the foreign products in question. This allowed a small U.S. manufacturer of ball bearings, the Torrington Company of Torrington, Connecticut, in 1988 to accuse virtually all of the world's bearing manufacturers with dumping in the U.S. The company claimed that firms in nine countries were acting to undermine Torrington's competitiveness.

On October 1988, the ITC initiated an investigation against bearing manufacturers in Britain, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and West Germany. In a May 2, 1989, press release, Torrington Company President Thomas E. Bennett stated, "There is clear evidence that dumping has caused long-term, fundamental damage across the entire bearing industry, affecting all product types. We will continue to monitor with great vigilance all bearing imports and will not hesitate to take strong action again to challenge additional unfair trade practices that are identified." ("Landmark Dumping Decision Praised by U.S. Bearing Manufacturer," Torrington Company, Torrington, Connecticut, press release, May 2, 1989.)

Yet before the investigation, domestic bearing manufacturers were unable to supply enough bearings to meet domestic demand. In fact, many U.S. manufacturers who use ball bearings in their products testified at ITC hearings that they were unable to find any domestic producers that could fill their orders. Moreover, in the orders that were accepted by domestic ball bearing manufacturers, some companies did not receive shipments in time and in some cases, not at all. Many American users of ball bearings testified in the investigation that Torrington had a long history of failing to supply agreed-upon shipments of bearings. Indeed, the American Manufacturers for Trade in

Bearings released a statement during the investigation declaring that "[f]oreign producers and domestic consumers of antifriction bearings emphasized both delivery and reliability problems in their experiences with Torrington."

Despite this, the Commerce Department found dumping margins ranging up to 212 percent with an average rate of about 60 percent. As a result, the Department established duty rates based on the dumping margins, and many American manufacturers that use ball bearings, like the Briggs and Stratton Company, the General Electric Company, Hewlett-Packard, and IBM, were forced to pay higher prices for imported bearings, because domestic suppliers still could not meet the demand. These duties increased the cost of production of such products as electronic motors, household appliances, office equipment, and power tools, which have been passed along to consumers in the form of higher prices. Increased component costs also have made the products of American firms less competitive abroad.

Torrington still was not satisfied. In 1990, it pressed new charges against firms in thirteen additional countries: Argentina, Austria, Brazil, Canada, China, Hungary, South Korea, Mexico, Poland, Spain, Taiwan, Turkey, and Yugoslavia. This time the ITC threw out the case ruling that no material damage was done. ("U.S. Maker of Ball Bearings Loses New Dumping Case," The New York Times, March 28, 1991, p. D5.)

Example: Uranium. Occasionally a U.S. government agency, rather than a private company will request an investigation. In 1992, for instance, two U.S. government-owned uranium mining companies -- one in Ohio and the other in Kentucky -- requested that the Department of Energy start an action against uranium imports from countries of the former Soviet Union. Until recently, these two companies had a virtual monopoly on uranium production outside the Communist world, allowing them to charge higher prices. The Commerce Department found Kazakhstan, Kirgizstan, Russia, Tajikistan, Ukraine, and Uzbekistan were exporting uranium to the U.S. at a price that was not fair to the U.S. government-owned mining facilities. The Commerce Department attached a 115.82 percent dumping duty on the imports. ("Commerce Dept. Rules Ex-Soviets Guilty of Uranium Dumping," The Washington Post, May 30, 1992, p.

A18.) Unable to obtain information from the republics, the Department used production information supplied by the petitioners, that is, the two government-owned companies and the Department of Energy, and the cost of production in the African country of Namibia to determine the production costs in the former Soviet republics. This is ironic since one justification for American countervailing duty law is to counter government-sponsored or subsidized production and exports from other countries to the U.S.

If the final decision, expected in August, on this dumping case goes against the former Soviet republics, they could be assessed retroactive duties. But the Bush Administration and Congress currently are debating the amount of foreign aid to give to the former Soviet republics. It would be ironic if duties are imposed on these uranium imports, forcing republics to use American foreign aid dollars to pay dumping fines assessed by the U.S. government.

The Retaliation Against U.S. Firms

Many American businesses are growing concerned about the enforcement of international antidumping laws. The U.S. has made extensive use of dumping laws to keep out foreign imports, and other countries have begun to learn that this is a way to introduce protectionist policies without running afoul of the GATT rules. American laws have now become the model for dumping legislation. More and more countries have increased dumping charges against U.S. firms. From 1980 to 1988, for instance, Canada initiated 55 investigations against U.S. companies, Australia initiated 52 cases, the European Community 23 cases, Mexico fourteen, and Argentina six cases, most of these in the past few years. ("Some Big U.S. Companies Favor Loosening Anti-Dumping Laws," The Wall Street Journal, August 31, 1990, p. A2.) Significantly, several countries are using U.S.-style antidumping laws against American products. South Korea, for example, found in 1990 that America's DuPont Chemical Company was dumping plastic resin at prices 30 to 90 percent higher than their home prices. A 40 percent to 50 percent duty was recommended. ("A Korean Firm's Dumping Charge Takes DuPont, Two Others, By Surprise," The Wall Street Journal, November 8, 1990, p. A20.)

What the U.S. Should Do

The procedures used by the Department of Commerce to determine if dumping has occurred are unfair and in many cases result in harm to U.S. firms as well as higher costs to U.S. consumers. To make the procedures fairer, and to help stop the danger of retaliation against U.S. firms, the Bush Administration should:

1) Seek agreement in the current round of General Agreement on Tariff and Trade talks for a multilateral phase-out of dumping laws in exchange for stricter limits on government subsidies to industries

Like the European Community, the U.S. has been unduly stubborn in negotiating certain reforms in the current Uruguay Round of GATT. One such reform is the reduction of excessive use of antidumping laws and countervailing duties. The U.S. is the biggest abuser of such laws. There is an international consensus to limit such laws, but U.S. trade negotiators refuse to consider reform. The Bush Administration, working through the United States Trade Representa-tive's Office, should work hard to modify or dismantle potentially dangerous laws, while pursuing agreements to end government subsidies for exporters.

2) Commission a study of the damage done to American businesses and consumers by antidumping laws Antidumping duties cost the U.S. economy millions, perhaps billions, each year in higher prices, lost jobs, and declining competitiveness. No significant studies on these costs have ever been conducted. The Bush Administration should commission an objective study of these laws to determine the cost incurred from their usage.

3) Propose interim legislation that incorporates the initial intent of the Antidumping Act of 1916

The original intent of America's antidumping legislation was to prevent "predatory pricing" by foreign firms. This required the U.S. government and the petitioning American company to prove that the foreign firm was pricing their product with the specific goal of driving the U.S. company out of business. If this could not be proven, then no dumping duties would be applied to the foreign product. While waiting for an international agreement to end these damaging trade laws, the Bush Administration should propose interim legislation that requires the Commerce Department and the U.S. firm requesting the

investigation to prove that predatory pricing was being utilized. This will eliminate some of the most abusive rulings that occur under current laws.

Conclusion

The United States government is raising costs for American consumers and in some instances undermining American competitiveness, all in the name of fair trade. Supporters of U.S. antidumping laws say such laws are needed to prevent foreigners from destroying American jobs and industries. But in practice the application of these laws in many instances causes more damage and creates more problems than it solves. Thanks to duties imposed as a result of antidumping laws, U.S. manufacturers of such products as computers, medical equipment, and machine tools are paying increased prices for the components they import to manufacture their products, raising production costs and making their exports less competitive in world markets. In some cases, such as computer components, U.S. firms have effectively been denied needed supplies. And many American jobs are lost when domestic manufacturers feel forced to move overseas to avoid high duties on their imported components.

While the Bush Administration has been a strong advocate of free and open trade by supporting such policies as the free trade agreement with Mexico, and the trade liberalization efforts of GATT, it has done little to address counter-productive U.S. trade laws. If the Bush Administration truly wants to make America more competitive and to avoid an increase in back-door protectionism through the wider use by countries of antidumping laws, it will take urgent action to reform the practices of its own officials.

Bryan T. Johnson, former Policy Analyst at The Heritage Foundation

Authors

Bryan Johnson
Visiting Fellow