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SOME IDEAS FOR REFORMING THE COMMUNITY ANTI-DUMPING INSTRUMENT

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Some Ideas for Reforming the Community Anti-Dumping Instrument

By

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Dumping: An economic perspective

In imperfectly competitive markets, profit-maximising firms may charge different prices to different customers, a practice called price discrimination. The most common form of price discrimination in international trade is dumping, a pricing strategy whereby a firm charges a lower price for exported products than it does for the same products when they are sold on the domestic market.

Dumping can only occur if two conditions are fulfilled. First, the industry must be imperfectly competitive, so that firms have market power. That is firms must be able to set prices in the domestic or foreign market rather than take prices as given in both markets. Second, markets must be segmented, so that domestic customers cannot easily purchase products sold at a lower price in foreign markets.

Dumping is considered as an unfair practice in international trade. Economists, however, tend to take a more benign view of price discrimination in general, including dumping. As Paul Krugman and Maurice Obstfeld state in their popular textbook in International Economics,

Finding a balance between competing interests

Given the political necessity of having anti-dumping statutes and the danger of their misuse as protectionist instruments, the real question is how to devise rules that provide the right balance between the interests of domestic producers affected by alleged dumping and those affected by antidumping measures. There are several possible avenues.

- *The ideal (but probably unrealistic) approach*

The ideal solution would be to go back to first principles and recognise that dumping is simply a form of price discrimination, which results from imperfect competition. The traditional economic argument against anti-dumping is simply that “[i]t makes not the slightest difference to the importing country whether the goods come in cheaply because the exporting country enjoys a natural comparative advantage or because they are dumped”. However, there are two circumstances where dumping can be viewed as detrimental to the importing country. The first is when firms in the exporting country are sheltered domestically by weak competition policy which allows high domestic prices. In this case competing firms in the importing country suffer an unfair disadvantage. The second circumstance is when foreign firms practice “predatory or strategic dumping”, setting low export prices in order to drive out competitors and then imposing high monopoly prices in the importing country.³

that the first condition for economic dumping, i.e. market power, is not fulfilled. The key here is the willingness to apply economic reasoning to anti-dumping investigation.

More generally, the Community interest clause and its implementation could be improved. Their deficiency is demonstrated by the fact that the current Community interest test under Article 21 of the EC Anti-Dumping Regulation is hardly ever used to reject anti-dumping measures in cases where dumping and injury have been established. On the contrary, the Community interest clause is typically used to reinforce the case in favour of anti-dumping measures.⁶

Even more problematic is the fact that the Community interest can only be invoked after, rather than during, the determination of dumping. Again, in the *Footwear* case, dumping would not have been found had the Community interest test included an economic assessment of market power taken into account during the determination of dumping.

dumping measure per user or consumer. No wonder that users and consumers rarely respond to the invitation to make themselves known and provide information to the Commission, especially since the time limit for responding is extremely short. The result is that the Commission typically finds that cost of the effect of dumping on the Community industry is “significant”, whereas the cost of the effect of anti-dumping measures on users or consumers is “not significant”.

A more thorough evaluation of the Community interest would require that the Commission employs some of its own resources to identify the users and assess the cost of anti-dumping measures for them on exactly the same dimension as in the analysis of injury to import-competing domestic producers specified in Article 3(5) of the basic Regulation, namely actual and potential decline in sales, profits, employment, and so on.

Second, the Community interest clause could be made more flexible. Under the current rules, the Commission merely has to investigate whether it is in the Community interest to apply certain measures. Pursuant to the basic Regulation, if the measures are not in the Community interest, the Commission must refrain from imposing them. The Commission should not only have to assess whether it is in the Community interest to adopt anti-dumping duties. If the answer is positive, it should also be required to evaluate whether the Community interest calls for specific modalities of those anti-dumping measures or, in analogy to the lesser duty rule, for the imposition of lower duties.

Such more extensive approach to the Community interest would, to a certain extent, endorse and reinforce the Commission’s current practice. Indeed, *de facto*, the Community institutions have already started to apply a more flexible approach by using unconventional modalities in reaction to the increasing pressure from adversely affected domestic parties during anti-dumping proceedings. This could, for instance, be observed in the *Castings* case,⁸ where the Commission has, against its long-standing practice, accepted undertakings from companies that were not granted Market Economy Status or Individual Treatment. Similarly, in the *Footwear* case, domestic producers on the one hand and European companies with stakes in the exporting countries on the other hand were bitterly opposed. This eventually forced the Commission to compromise by adopting highly unconventional measures in form of

A broader application of the Community Interest test would imply that the Commission always has to assess whether a less restrictive measure is more in the Community interest than a more restrictive one.

Obviously, these two directions are not mutually exclusive.

- *Another avenue: Increasing transparency*

It is essential to ensure transparency of anti-dumping proceedings and measures not only in the Community but also elsewhere.

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