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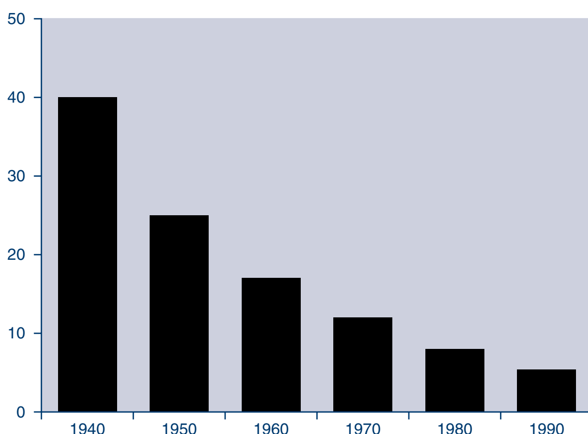
GATT and the New Protectionism

The successful completion of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) has generated much optimism about the future of world trade, and with good reason. If ratified, the accord will not only eliminate tariffs on many goods, but will be the first GATT-round accord to address intellectual property rights, trade in services, and agricultural subsidies.

An important question, however, is how much this new accord can limit future protectionism. When trade liberalization curtails one form of protectionism, new forms appear almost routinely. While GATT agreements steadily reduced tariffs on manufactures (from an average of 40 percent in 1947 to about 5 percent now, as shown in Figure 1), the United States and many other countries were developing other, more arcane administrative and legal barriers.

Figure 1
Tariffs in Industrial Countries



SOURCE: Stoeckel, Pearce, and Banks (1990).

What these barriers imply for *free trade* are sometimes difficult to understand because often they have touched on *fairness* issues. In many countries policymakers—and their supporters in industries that face foreign competition—have devoted much effort to counteract what they define as unfair trade practices by foreign countries. Unfair trade practices are typically thought to include: 1) subsidies on exports by foreign governments and 2) *dumping*, which is the act of selling goods for a lower price abroad than in the home or other markets. To offset foreign subsidies to exports the government of the importing country sometimes erects special tariffs to raise the artificially low prices of these goods. These tariff barriers are referred to as *countervailing duties*. *Antidumping* duties are typically imposed when the government of an importing country suspects that the exporting country is dumping goods on its markets.

The particular circumstances under which countervailing and antidumping actions are used—and the procedures developed to assess the "unfairness" of others' trade practices—have raised suspicions about policymakers' motivations. Perhaps, some have argued, these "fairness" doctrines are vehicles for disguised protectionism.

Allegations of disguised protectionism have become more common as efforts to preserve "fair" trade have multiplied. During the 1960s, GATT member countries initiated fewer than

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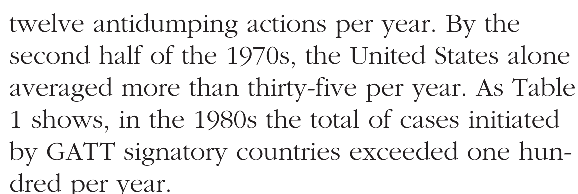
Table 1

Number of Antidumping and Countervailing Duty Cases Initiated, January 1980–June 1989

Country/Group	Jan. '80 Jun. '80	Jul. '80 Jun. '81	Jul. '81 Jun. '82	Jul. '82 Jun. '83	Jul. '83 Jun. '84	Jul. '84 Jun. '85	Jul. '85 Jun. '86	Jul. '86 Jun. '87	Jul. '87 Jun. '88	Jul. '88 Jun. '89	Jan. '80 Jun. '89
Antidumping cases											
Australia	36	61	54	71	70	63	54	40	20	19	488
Canada	26	48	64	34	26	35	27	24	20	14	318
European Community	17	37	39	26	33	34	23	17	30	29	285
United States	37	24	51	19	46	61	63	41	31	25	398
Other developed countries	1	3	2	0	1	0	2	5	9	12	35
Developing countries	0	0	0	0	0	0	3	4	13	14	34
All countries	117	173	210	150	176	193	172	131	123	113	1,558
Countervailing duty cases											
Australia	NA	NA	NA	6	3	5	3	3	0	2	22
Canada	3	3	0	2	3	2	1	4	0	1	19
European Community	1	0	1	3	1	0	0	0	0	0	6
United States	32	17	75	35	22	60	43	11	13	8	316
Chile	0	0	61	33	20	10	11	0	0	0	135
Other countries	0	0	0	1	1	0	0	1	4	0	7
All countries	36	20	137	80	50	77	58	19	17	11	505
Antidumping plus countervailing duty cases											
Australia	NA	NA	NA	77	73	68	57	43	20	21	359
Canada	29	51	64	36	29	37	28	28	20	15	337
European Community	18	37	40	29	34	34	23	17	30	29	291
United States	69	41	126	54	68	121	106	52	44	33	714
Other developed countries	1	3	2	1	2	0	2	6	13	12	42
Developing countries	0	0	61	33	20	10	14	1	3	14	156
All countries	117	132	293	230	226	270	230	147	130	124	1,899

SOURCE: Finger 1993.



twelve antidumping actions per year. By the second half of the 1970s, the United States alone averaged more than thirty-five per year. As Table 1 shows, in the 1980s the total of cases initiated by GATT signatory countries exceeded one hundred per year.

Concerns that "fair" trade laws are vehicles for protectionism have become even more acute with the advent of the Uruguay Round. While rough guidelines for using antidumping and countervailing duties have appeared in past GATT agreements, the Uruguay Round accord has introduced much more formalization and detail to accommodate and codify such retaliation. Moreover, these codifications greatly resemble those of the United States, a principal exponent of antidumping and countervailing measures.

The Uruguay Round's various approaches to addressing government trade policy—lowering tariffs here, sanctioning some types of antidumping actions and countervailing duties there—raise questions about the accord's overall implications for free trade. The related central question addressed in this article is whether the recent changes in GATT will discourage the most protectionist aspects of these administered trade regulations. Because the accord adopts many aspects of U.S. laws and administrative procedures concerning antidumping and countervailing duties, we use the U.S. experience of recent years to assess what may be in store for the world trading environment under the new GATT.

We begin by examining what has been seen as unfair trade, and we discuss the economic arguments for imposing antidumping and countervailing duties. We then outline how fair trade laws have been applied in the United States and discuss why some analysts have claimed that these laws are biased toward protectionism. Finally, we assess the impact of the Uruguay Round of GATT on the application of fair trade laws. We conclude with an outlook for the future of the world trading environment.

When is trade unfair?

The express intention of fair trade laws is to prevent foreign sellers from pricing and selling anticompetitively or predatorily in your country. If foreign exporters sell for less in the United States than at home, or if foreign governments subsidize exports to the United States, U.S. laws and rules accommodate U.S. efforts at retaliation. But is unfair trade really unfair?

Economists often deny that below-cost prices or foreign export subsidies mean unfair trade. After all, if foreign firms want to sell cheaply in the United States, why should U.S. consumers not be allowed the obvious benefit? While this argument recognizes the benefits to consumers, it dismisses the effects of unfair trading on some domestic producers and ignores other arguments against unfair trading practices. Moreover, as Bhagwati (1988) notes, "a free trade regime that does not rein in or seek to regulate artificial subventions will likely help trigger its own demise."

Conversely, in the more concrete world of government policy, both arguments and government policies in support of antidumping and countervailing duties typically place the interests of import-competing industries over the interests of consumers and also over those of producers who use imported inputs. (See the box entitled "Do Fair Trade Laws Protect the Economy?") An analysis of eight antidumping duties imposed by the United States between 1989 and 1990 showed that for each $1 gained by the protected industries, the U.S. economy as a whole lost $3.60, on average (Anderson 1993). Moreover, according to the same study, the cost per job created in the protected industries was $113,800, which is substantially higher than the $14,300 average salary paid for these jobs. The extra cost comes from the higher price consumers must pay for these domestic goods and the less efficient use of domestic resources.

Another argument against unfair trade is that foreign nations can act predatorily to capture domestic markets. But this argument is also subject to criticism. The argument is based on the assumption that once foreign producers capture domestic markets, competitors will not re-enter domestic markets when prices begin to rise. But if foreign producers cannot block domestic producers from re-entering a market after it is captured, they will have to keep their prices at a competitive level to maintain their market share.

Some analysts claim that certain high-tech industries can develop natural barriers to entry that allow them to capture a particular market and

Do Fair Trade Laws Protect the Economy?

While antidumping and countervailing laws may protect particular industries from foreign competition, broader arguments based on the benefits of these measures to the whole economy are typically ill founded. There are basically three arguments for antidumping and countervailing duties. The first is simply that subsidized or dumped imports of textiles, consumer electronics, and automobiles cost domestic textile workers, electronics workers, and auto workers their jobs. In other words, imports cost Americans their jobs and subsidized or dumped imports cost even more jobs.

While it is certainly true that imports of textiles or cars can displace American textile or automobile jobs, it is not true that trade can reduce the number of jobs in a country for any sustained period.

The argument that import subsidies or dumping reduces overall employment reflects an error known as the fallacy of composition—the mistaken belief that what is true for the part is true for the whole. As a matter of simple arithmetic, large increases in imports inevitably cause either an increase in exports or in foreign investment. Generally speaking, if imports of Japanese cars dramatically increase, American exports increase to pay for these goods. Unless foreigners are giving away what they make, Americans cannot get foreign products unless they sell products to foreigners. As a result, the jobs lost in one industry are replaced by jobs gained in another. Jobs would only be lost if foreigners gave everthing away.

Using data on unemployment, imports, and exports, for twenty-three developed countries, Gould, Ruffin, and Woodbridge (1993) find no simple causal link between unemployment and import penetration or export performance. Within countries, imports had the same correlation to unemployment as did exports.

Second, there is the argument that foreign producers sell abroad at below cost because they have a predatory intent to drive out domestic competition. The idea is that once they drive out the competition in the domestic market, they will raise prices and reap monopolistic profits at the expense of the target country. This argument, however, assumes that competitors will not reenter the market once prices rise. If foreign producers cannot block domestic producers from re-entering the market once it is captured, they will have to keep their prices low in order to maintain market share. Prices that cannot be raised obviate the benefits to predatory pricing.

Finally, some arguments are based on new theories of international trade that emphasize monopolistic competition and international oligopolies. These theories focus on international economies of scale, learning curves, and innovation and down play the assumption of perfect competition that lies behind the classical arguments for free trade. In a real world environment, some have argued, other countries might subsidize their industries and capture U.S. markets at the expense of future U.S. income.

Although economists have long recognized the importance of economies of scale, innovation, and international oligopolies, countries have rarely, if ever, been able to capture excess profits from other markets for long. The difficulties with such strategic trade policy arguments are twofold. First, most arguments for subsidies assume they are implemented by a benevolent dictator, rather than political parties representing special interest groups. Most trade policy decisions are not typically made in the best interest of the whole country; usually they are the result of competing political interests. Because of the nature of the policymaking game, it is hard to argue that foreign industry subsidies are a concerted effort to capture domestic markets. Rather, they often reflect some foreign industry's power in capturing its own country's budget.

Second, strategic trade policies are based on theoretical models, but their implementation relies heavily on empirical estimates of industry demand and supply that can vary substantially over time. Rarely have countries acted in a deliberate fashion that actually managed to capture these advantages. For example, some of Japan's biggest success stories (TVs, stereos, and VCRs) were not the industries most heavily targeted by the Japanese government. Moreover, as these products have become even more standardized, production has moved out of Japan to Korea and other Southeast Asian countries. The inability of governments to pick winners is evidenced by some of Japan's failures:

- The Ministry of International Trade and Industry (MITI) first wanted the Japanese automobile industry to produce only trucks and later wanted to limit the number of automobile companies to a few giants in particular, attempting to keep Honda out of the car business. Of course, market forces eventually led MITI to abandon these plans, but the intervention generated costs that could have been avoided. Had MITI been successful, Japan would have paid an enormous price for this policy.
- The Japanese heavily targeted an analog version of high definition television (HDTV), but it appears that digital HDTV—the product of U.S. research and development—will be the industry standard.
- MITI is now investing in cold fusion, a procedure for creating nuclear power that has been debunked by most of the scientific establishment.

These examples and others suggest that even Japan has done a poor job of picking the winning industries.

Table 2
Affirmative Findings by Product in Antidumping and Countervailing Duty Investigations, 1988–92

1988	1989	1990	1991	1992
Stainless steel pipes and tubes	Cellular mobile phone	Aluminum sulfate	Fresh Atlantic salmon	Magnesium
Atlantic salmon	3.5-inch microdiscs	Telephone systems	Industrial nitrocellulose	Softwood lumber
Color picture tubes	Antifriction bearings	Mechanical transfer systems	Mutiangle laser light scattering instruments	Electric fans
Butt-weld pipe fittings	Electrolytic manganese dioxide	Drafting machines	Handtools	Tungsten ore
Forklift trucks	Light-walled rectangular pipes and tubes	Industrial Nitrocellulose	Polyethylene terephthalate film	Shop towels
Electrical conductors	Industrial belts	Sweaters	Gray portland cement	Fresh kiwifruit
Aluminum rods	New steel rails	Gray portland cement	Benzyl paraben	Ophthalmoscopy lenses
Brass sheet and strip	Pork		Sparklers	Steel pipe fittings
Nitrile rubber			Sodium thiosulfate	Rubber thread
Granular polytetrafluoroethylene resin			Flat panel displays and subassemblies	Magnesium
Forged steel crankshafts			Silicon metal	Rayon filament yarn
			Chrome-plated lug nuts	Sulfanilic acid
			Word processors	

SOURCE: International Trade Commission Annual Reports.

keep it. Because of what they learn in the production process, producers may permanently gain a cost advantage as production expands. In other words, by protecting or subsidizing certain industries, a country may gain a permanent cost advantage and, therefore, create a natural barrier to entry. Although this argument is appealing, there is little evidence to suggest that firms or countries actually have been able to take advantage of these benefits or have acted in a manner consistent with pursuing them. As Table 2 indicates, many products subject to antidumping and countervailing duties, such as stainless steel pipes, gray portland cement, or pork, are not typically high-tech industries.

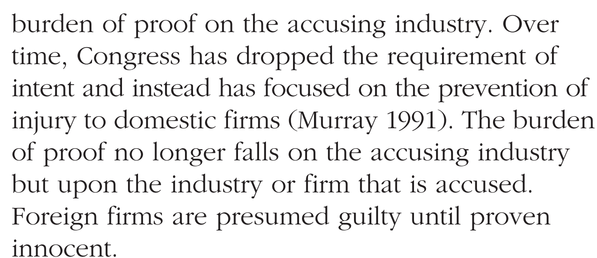
But whether or not government subsidization and predatory pricing are practices that fair trade laws are supposed to address—as the fair trade rhetoric suggests—fair trade laws have been so broadly applied that they sometimes seem to have been used simply to avoid competition. In other words, antidumping and countervailing duties share many attributes of pure protectionism.

Why fair trade laws do not always work as intended: A look at the United States

Contrary to popular notions about dumping, in U.S. law and under present GATT law, dumping is not defined as selling below cost with the intent to capture U.S. markets. Dumping is simply selling at a lower price in the United States than in other markets or selling at below average total costs. Dumping is not defined as predatory behavior. Antidumping actions do not require any evidence of intention to monopolize or otherwise drive competitors out of business.

Opportunities for using the antidumping laws have not always been so unrestricted. Seventy-five years ago dumping remedies required proof that a foreign producer was practicing predatory pricing. That is, the foreign producer had to be selling at a loss and with the intention of driving competitors out of business so as to secure a monopoly. Early U.S. antidumping regulations were, in substance, extensions of antitrust law (Finger 1992).

The antidumping laws of the past placed the



burden of proof on the accusing industry. Over time, Congress has dropped the requirement of intent and instead has focused on the prevention of injury to domestic firms (Murray 1991). The burden of proof no longer falls on the accusing industry but upon the industry or firm that is accused. Foreign firms are presumed guilty until proven innocent.

Under current U.S. law, any industry can approach the Department of Commerce and the International Trade Commission (ITC) and claim foreigners are subsidizing exports or are pricing them lower in the United States than at home. The Department of Commerce investigates the cases, and the ITC determines whether material injury has occurred. Antidumping duties are imposed when foreign merchandise is sold in the United States for less than "fair" value. A duty is assessed equal to the amount by which the estimated foreign market value exceeds U.S. price. Countervailing duties are imposed when a foreign country directly or indirectly subsidizes exports to the United States. A duty is assessed equal to the amount of the subsidy or the amount by which the estimated foreign market value exceeds the U.S. price. (See the box entitled "U.S. Antidumping and Countervailing Duties.")

While antidumping and countervailing duty laws are not inconsistent with the desire to keep trade fair, their current application permits liberal interpretation of what is and what is not fair trade. Below we discuss some of the procedural problems with antidumping and countervailing duties.

Problems with the application of U.S. fair trade laws

In the application of antidumping and countervailing duty laws, small changes can make big differences. Juggling the procedures for constructing fair market prices, for identifying injury to a domestic industry, or for gathering information from foreign firms can substantially change their impact. Over the years, in response to domestic pressures to protect particular industries, these procedures have often changed so as to increase the likelihood of finding against foreign producers and for domestic complainants.

This pattern is not isolated to the United States and, with the passage of time, countries as diverse as Canada, Poland, and Mexico have converged in their procedures for determining antidumping and countervailing duties. By considering how antidumping and countervailing laws are applied in the United States, it may be possible to assess how the new GATT accord will affect their use and effects.

Antidumping laws

Pricing below average costs. Although pricing below average total costs is legal for domestic U.S. firms, the 1974 Tariff Act broadened antidumping law to prohibit foreign exporters from doing the same. It is not unusual for U.S. firms to price below average total cost (but above average variable cost) because of weak sales. This practice allows firms to cover labor costs during periods of weak demand and to avoid shutting down production completely. Moreover, firms that sell new products involving high-tech research and development costs typically price below average total costs during early stages of marketing. As the product becomes more established and volume increases, firms recoup their earlier losses. For example, the new General Motors Saturn factory only became profitable after five years of losses (Bovard 1993). Under U.S. antidumping law, if General Motors were a foreign firm, it would have been prohibited from selling its cars at a competitive price.

Constructed prices. When foreign firms are suspected of pricing at below-average total costs, the Department of Commerce is directed by law to ignore market information about foreign prices. For example, in calculating foreign market value, the Department of Commerce is expected to use a completely constructed foreign market price if it believes that 10 percent of the foreign firm's sales are below the firm's average total costs of production. In such cases, all the market information on actual sales is thrown out and an artificial price is constructed.

One protectionist aspect of this methodology derives from how foreign costs of production are calculated. The law requires that not less than 10 percent be included in such calculations for general expenses plus a minimum of 8 percent for profits. At the very least, an exporter earning less than 8

U.S. Antidumping and Countervailing Duties[1]

The U.S. government imposes antidumping duties if foreign merchandise is sold in the United States for less than fair market value. Less than fair market value sales are those priced below the foreign producer's average total costs or below the price of the good in the home market. The U.S. industry must also be materially injured, which means it has lost sales to foreign producers. Antidumping duties equal the amount by which the estimated foreign market value exceeds the U.S. price.

To determine dumping, agents in the Department of Commerce compare the price charged in the home market (or a third country market if no sales take place in the home country) to the price charged in the United States and the average total cost of production in the foreign market. The home country prices are determined using the value of the exchange rate prevailing at the time the foreign goods are first sold in the United States, rather than the exchange rate prevailing at the time the goods are exported to the United States. If the Department of Commerce suspects that at least 10 percent of domestic sales are below average total costs, data on foreign market prices are not used and a constructed foreign market price is created. In determining injury, the ITC assumes that a foreign firm that sells in the United States at prices below that country's domestic prices will cause injury to the U.S. industry.

Countervailing duties are imposed if a direct or indirect foreign subsidy (referred to as a bounty or grant in U.S. trade laws) is paid for the production or exportation goods to the United States. If the foreign country is a signatory of the GATT antisubsidy code, an injury test is applied. The countervailing duties are set to equal the amount of the net subsidy.

The injury test for countervailing duties consists of studying current and potential harm by imports to an existing U.S. industry. The ITC examines increases in plant closings and unemployment and decreases in capacity utilization and profitability. The ITC also studies general U.S. economic conditions to determine whether imports are responsible for an industry's decline.

[1] We derived these definitions from P.K.M. Tharakan (1991) and Carper and Mann (1994).

percent on its U.S. sales will automatically be found to be dumping. This methodology of calculating costs tends to penalize foreign producers during slack periods when profits may be squeezed. In addition, it punishes foreign producers who simply have lower overall profit margins for the products they sell.

Opportunities for substantial error in calculating foreign costs also arise when foreign exchange rates are used to convert foreign prices to U.S. prices. In a 1989 U.S. case against Venezuela, the United States found a 259.71-percent dumping margin on imports of Venezuelan aluminum sulfate. To reach this finding, U.S. officials calculated prices using Venezuela's official exchange rate of 14.5 bolivars per dollar, rather than the free market exchange rate of 39.5 bolivars per dollar that the company actually used (Bovard 1992, 3).

Even when foreign firms are not suspected of pricing below average total costs, constructed foreign prices can be used. If a foreign-made product is not sold in its home country, comparing home-country with foreign-country prices becomes difficult. In this case a fair market price must also be constructed. For example, Polish made golf carts sold in the United States were a problem for U.S. officials because the Poles did not play golf and did not sell golf carts in Poland. The United States mounted a search for comparable countries whose wages and other costs could be used to reconstruct Poland's hypothetical market price. The choice for a comparable country was Spain, despite its different economic structure and wages that were substantially higher than Poland's (Bhagwati 1988, 5).

Data requirements. Constructed prices are also legally allowed when accused foreign firms do not respond quickly with information requested by the Department of Commerce. It is important to understand the circumstances surrounding these requests because of the implications they have for the continuation of protectionism. When a U.S. firm charges a foreign competitor with dumping, the Department of Commerce requests detailed cost information from the foreign competitor. The Department of Commerce does not simply compare the U.S. and foreign prices but subtracts a number of items from the price of the

foreign good sold in the United States—including U.S. tariffs, insurance, ocean freight, handling and port charges, as well as brokerage and freight charges in the home country. It is not unusual for dumping to be found even when the price of the foreign product is higher in the United States than in the country of origin. The price appears lower during the procedure because the Department of Commerce makes subtractions to the foreign exporter's price but not the U.S. producer's price.

Moreover, just the volume of data the U.S. government requires of foreign firms in such cases can be a deterrent to trade. The Department of Commerce may present an accused foreign firm with a questionnaire as long as one hundred pages that requests specific accounting data on individual sales in the home market, data on sales to the United States, and all the detailed data needed to adjust for tariffs, shipping, selling, and distribution costs. Information must be recorded and transmitted to the Department of Commerce in English and in a computer-readable format within a short deadline stipulated under the U.S. statutes (Murray 1991, 34).[1]

Compliance with these information requests can be difficult, particularly for small firms. If the firm or industry fails to satisfy all requests for information or fails to submit by the specified deadlines, the U.S. law authorizes use of what is called best information available (BIA). BIA typically consists of information provided by the U.S. complainant firm. Arguing that BIA is biased, Baldwin and Moore (1991) show that the average dumping duty based on information from foreign firms was 27.9 percent, compared with a 66.7-percent average with BIA.

Averaging foreign and domestic prices. Even when Congress removes rules that seem to offer a protectionist cast toward governmental determinations of dumping or subsidies, the use of the old procedures may persist anyway. A particularly instructive example involves the determination of dumping through an apples-to-oranges price comparison that was waived in the Trade Act of 1984 but that is sometimes still used anyway.

The procedure involves averaging foreign prices and comparing this average with individual U.S. domestic transactions to determine dumping. Comparing average foreign prices with individual U.S. domestic transactions turns out to mean that even if domestic and foreign prices are exactly the same every day, instances of dumping can be found if prices change at all.

To understand why, suppose that Korean toasters sold in Korea for $23 on Monday, $25 on Tuesday, and $27 on Wednesday and the same kind of toasters were sold in the United States at the identical prices on those same days—$23 on Monday, $25 on Tuesday, and $27 on Wednesday. The average price in Korea over those three days would be $25. But by a comparison of the average price of $25 with the average daily sale in the United States, Monday's price of $23 turns out to be $2 below the average price of $25 in Korea (and also $2 below the average price in the United States, since it is also $25). Under the averaging rule, the discovery that a toaster sold for $23 on Monday when the average Monday-Tuesday-Wednesday price was $25 is grounds for the finding of a $2 (8-percent) "dumping margin." This means that Korea is guilty of dumping and subject to punishment, even though there is no price difference between toasters in Korea and toasters in the United States on any given day.

Price margins. Considering the substantial room for error in calculating foreign prices, the price differentials, or margins, that define dumping are strikingly small. In the United States, a foreign industry is subject to antidumping findings if it sells its products for less than 99.5 percent of what is estimated to be fair market value. Because 99.5 percent of fair market value is 0.5 percent less than 100 percent, this rule is called the 0.5-percent de minimis rule.

Review. Despite legitimate questions about the methodology of calculating antidumping duties, once a dumping duty is imposed, it may remain in force for years without periodic review of whether the foreign country has ceased dumping.

[1] *Using data requests as a from of harassment is not peculiar to the United States. In 1991, Mexico filed an antidumping case against U.S. denim producers and gave U.S. producers fifteen days to fill out a twenty-five-page detailed report on accounting and production processes. The report had to be in Spanish and transported in computer-readable format.*

Countervailing duty laws

Countervailing duty regulations are also susceptible to protectionist biases. The United States imposes countervailing duties on foreign exports that receive government subsidies. Like the antidumping rules, countervailing duty laws represent attempts to create fair trade. But also like the antidumping laws, countervailing duty laws involve procedures that can impede trade. Some of the same biases are common to both antidumping and countervailing actions, such as the use of best information available. Other biases that are unique to countervailing duty laws are described below.

Defining a countervailable subsidy. Many foreign governments, and the United States, subsidize their industries. According to U.S. laws applicable to countervailing subsidies, foreign subsidies are countervailable only if they affect a country's exports. Although a foreign subsidy to restaurants would, therefore, probably not prove countervailable in the United States, some complications over what affects exports do sometimes emerge.

The complications arise when subsidies to an exporter are indirect. Suppose, for example, that the exporter purchases water from a water authority that is subsidized, and that the water authority passes some of its subsidy benefits on to customers in the form of lower water prices. Passing on part of a subsidy in the form of lower prices is typical in many countries, but the foreign producer who benefits may be subject to U.S. countervailing duties. Interestingly, if foreign nations applied these same rules to the United States, agricultural exports from California would be subject to countervailing duties because of de facto federal water subsidies to California farmers.

Accounting procedures. In some cases, simple accounting procedures followed by the United States do not accommodate offsetting foreign taxes that dissipate the effects of foreign subsidies. In the 1983 countervailing duty case against Argentine wool, the United States chose to ignore a 17-percent export tax that more than offset the 6-percent export subsidy that had been deemed actionable. The United States had argued that the two programs—the export subsidy and the export tax—had been enacted under separate laws and that only the subsidy was worthy of attention (Bovard 1992, 17).

To sum up, U.S. antidumping and countervailing duty laws make it easy for domestic firms to seek protection from foreign competitors, even if the behavior of these competitors is not predatory. Recall that the law formerly focused on foreign producers who sold at a loss so as to drive domestic firms out of business. Now U.S. producers have much more liberal grounds for redress. Below, we discuss some of the ways in which the new GATT accord changes the protectionist bias in antidumping and countervailing duty laws.

The new GATT agreement: A new direction?

The Uruguay Round of GATT has adopted antidumping and countervailing duty regulations much like those found in the United States. In countries whose antidumping and countervailing rules were not fully developed, this carryover may lead to more protectionism. But many developing countries have already begun to follow the example of developed countries. In 1992, Brazil imposed 21-percent countervailing duties on powdered milk products from the European Community (GATT 1993). Nevertheless, harmonization of regulations can also lead to greater transparency and less arbitrary implementation. The European Community is now contesting Brazil's action to GATT, claiming that Brazil did not prove that material injury had occurred because of subsidized powdered milk imports.

Besides moving toward more uniformity, the new GATT accord erects roadblocks on some of the United States' and other countries' favorite avenues for protectionism. Although opportunities for protectionist pressures persist under the new GATT agreement, the new accord represents a step toward freer trade.

Antidumping

The new antidumping rules make administered protectionism a bit more difficult to implement, but opportunities remain. One problem, as noted by Finger (1994), is that the new rules (like the old ones) are ambiguous. Indeed, dumping is not defined; only antidumping is. The definition of antidumping, however, is simply a list of specific

restricted actions rather than a complete description of practices that should be followed.[2] But despite its poorly articulated purpose, the agreement does address some procedural problems that have appeared in past antidumping practices.

Areas where protectionist bias is likely to fall. Among the most widely criticized practices in the application of U.S. antidumping laws is the proclivity to construct *fair* market prices when actual market prices are available. As noted, the Department of Commerce can use a completely constructed foreign market price if it suspects that 10 percent of a foreign firm's sales are below some estimate of average total costs of production. Past use of such constructed prices has been shown to increase, by a substantial margin, the likelihood of a finding of illegal dumping. Under the new GATT rules, such prices may still be constructed but are subject to more restrictions. U.S. officials, for example, would be permitted to use a completely constructed foreign market price but they must claim that 20 percent (as opposed to the present 10 percent) of a foreign firm's sales are below some estimate of its costs of production.

The Uruguay Round agreement will also affect the current U.S. 0.5-percent de minimis rule. Under this rule, a foreign firm that is found to have sold its products in the United States for as little as 0.5 percent less than some estimate of fair market value could be subject to antidumping duties. The new GATT accord contains a 2-percent de minimis rule that supersedes the 0.5-percent rule, which may limit the most frivolous actions.

The Uruguay Round agreement also addresses the problem of comparing average foreign market prices to individual domestic sales. Recall that, according to this procedure, individual prices in the United States are compared with average foreign prices. This means that any price fluctuations at all during the investigation can generate an affirmative dumping finding. If a product's prices happened to change during an investigation, prices of the foreign product imported into the United States would, on at least one day, fall below the total-period average. Just as every human cannot have above-average intelligence, there will likewise always be one price that is below the average price that, hence, could result in a dumping finding.

In most cases under the Uruguay Round accord, governments pursuing antidumping investigations agree to compare average foreign prices with average domestic prices and individual foreign sales with individual domestic sales. However, even under the new Uruguay Round agreement, some provisions sanction the apples-to-oranges comparison of average prices to individual prices. The Uruguay Round accord sanctions this practice when a government investigates charges of spot dumping, a dumping category that involves brief dips below fair market prices.

Another detail of the new accord, the dispute settlement mechanism, also warrants attention. The new dispute settlement mechanism may have only a marginal impact in thwarting protectionism overall, but it does contain elements that can thwart protectionism in some cases. Previously, when a country illegally imposed an antidumping or countervailing duty on another country, GATT had little power to investigate the case, let alone discipline the country. Any country, including the country acting illegally, could stop the investigation process. Moreover, even if the case proceeded to a finding of illegality, no discipline could be imposed upon the offending country unless the country itself agreed.

The Uruguay Round accord, however, does not require the offending country to agree either to its investigation or discipline. Moreover, if a country does not implement a GATT panel's recommendations within a certain period, the country that was harmed can seek authorization to retaliate.

Among the most significant moves toward limiting administered protection is a new sunset rule that requires a review of injury each five years after an antidumping order is issued. That is, antidumping actions can no longer continue indefinitely without further review, as has been common

[2] *Finger (1994, 2), moreover, notes that, because the Uruguay Round agreement "wraps specific disputes with a distracting legalese, it represents a distancing from not a step toward, negotiating to reach agreement on the trade restrictions that are now sanctified—falsely sanctified—by the label 'antidumping.' "*

in some countries, including the United States.[3]

More generally, the Uruguay Round enhances freer trade through greater transparency and due process. The agreement makes the antidumping and countervailing duty laws more specific, permitting exporters to form more concrete and accurate expectations about the criteria for fair pricing. The agreement more fully defines avenues for dispute settlement, which also will increase the likelihood of freer trade and can lower the risk to traders. These last details are important because, while U.S. firms have been very active in levying antidumping charges during the past fifteen years, this avenue of combating import competition has become widely used in other countries only more recently and can be expected to increase in the future.[4]

Areas where protectionist bias is unlikely to change. While the new GATT agreement is likely to reduce the protectionist bias in the areas mentioned above, in other areas it will have a smaller effect. The extensive documentation that the U.S. Department of Commerce and other countries impose on foreign producers accused of dumping is not addressed in the Uruguay Round agreement. In the United States, for example, the requirement that foreign firms complete around one hundred pages of documentation in a tight time frame, in English, and in a computer-readable format, is not likely to change. GATT does not reduce countries' opportunities to impose what some have charged are unreasonable and arbitrary demands on foreign producers.

Despite outward appearances to the contrary, another area in which the new agreement is unlikely to change much is in the determination of injury. Traditionally, if the amount of "dumped" imports is not great enough to inflict some measure of material injury to an industry, then antidumping duties are not legal under GATT. But the definition of material injury has been left ambiguous up to now, and broadly subject to each country's interpretation. The typical interpretation is that any foreign sales that displace domestic sales are cause for injury.

In contrast, the new accord defines the line at which dumped imports are to be considered negligible (that is, too small to be injurious and therefore not subject to antidumping duties). The volume of dumped imports defines as negligible (and therefore not subject to antidumping duties) is less than 3 percent of total imports of the product or, if more than one country is subject to a dumping complaint, 7 percent of total imports. If a Japanese automobile maker is selling inexpensive cars in the United States and is alleged to be dumping, but sales of its cars are less than 3 percent of total imports, no duties will be assessed against its exports.

There is reason to suspect that the new negligibility rule will rarely prove much of a constraint upon judgments of injury—and that the rule may prove less restrictive to protectionists than current U.S. rules. Consider the case of a foreign firm that is sole exporter of some product to the United States. Suppose, in this hypothetical case, that U.S. manufacturers make so much of a similar product that the foreign exporter's sales account for only a 0.0001 percent share of the U.S. market. Under the new accord, a dumping suit could be filed against this firm because its share of total imports of this product is 100 percent, even though its share of the domestic market is only 0.0001. That is, the negligibility requirement is 3 percent of total imports, not 3 percent of the total market.

It is hard to know if firms will file complaints about dumping at such a trivial level in the future. It does appear possible that, if such a 3-percent of imports negligibility requirement had been deemed sufficient to determine injury in the past, the number of injury determinations would have been greater than they, in fact, were. Finger (1994, 7) suggests that, had the new GATT 3-percent criterion been the sole standard for evaluating the steel dumping petitions, injury would have been ruled in every case that the United States International Trade Commission rejected in July 1993.

3 Indeed, some antidumping actions have been in force without reconsideration for decades.

4 In the past, both the World Bank and the International Monetary Fund have sanctioned and—at times—even encouraged assistance-seeking developing countries to enact antidumping rules, although antidumping is no longer encouraged.

Although the new GATT accord simplifies the process of disciplining countries that abuse the antidumping and countervailing duty laws, there is little GATT can actually do besides make recommendations. As with the old GATT agreement, even a recommendation to discipline may not be implemented. Moreover, the dispute settlement mechanism will preclude GATT panels from imposing their own judgments of fact or law on national antidumping authorities when the authorities have acted according to their own laws (U.S. Department of Commerce 1994). Finger and Fung (1993, 1) note that since July of 1993, only five GATT panels were able to determine illegal antidumping actions, but not one these actions has since been lifted. This problem is unlikely to change under the new GATT agreement.

Subsidy countervailing actions

Although the Uruguay Round agreement does not define dumping, it does define subsidy, and it differentiates clearly between subsidies that may be countervailed and those that may not. This transparency represents a significant step toward encouraging trade because it lowers the risk of retaliatory surprises. Under the new accord, some subsidies warrant out-and-out prohibition (those that are contingent on export performance or on using domestic inputs), while other subsidies may be grounds for taking actions.[5] This clarification of prohibited, actionable, and nonactionable subsidies may curtail arbitrary actions that governments could otherwise choose to explain away as subject to their needs for flexibility and discretion.

While the transparency of this portion of the accord moves governments toward freer trade, the accord's peculiar perspective on whom and how subsidies benefit foreign producers does not. The accord focuses on the subsidy's benefit to the recipient, without conditioning this focus on the trade impacts of the benefits. Subsidies do not, in fact, necessarily distort trade just because they benefit trading firms. As Francis, Palmeter, and Anspacher (1991) show, subsidies do not distort trade unless they lower the marginal cost of production. That is, subsidies can benefit shareholders without materially influencing the output produced by the firm or the prices it charges.

Table 3 presents a summary of the likely effects of the new GATT accord on U.S. antidumping and countervailing duty actions. As the table summarizes, the overall effect of the accord on U.S. fair trade laws appears to be a modest reduction in the opportunities they offer for out-and-out protectionism.

Conclusions

Despite their limitations, the countervailing duty and antidumping portions of the Uruguay Round accord generally move nations toward freer trade, and it is important to clarify the context in which they do it. Like any broad trade accord, the Uruguay Round accord represents a synthesis of pressures for and against protectionism and, therefore, it includes rules whose effects on trade seem contradictory.

One of the most serious problems in trade liberalization is that, as more transparent forms of protectionism are noticed and then negotiated away, rent-seeking groups devise replacements that are less transparent.[6]

An important incarnation of this phenomenon is administered protection, which often takes the form of countervailing and antidumping actions. This claim should surprise no one, considering that the antidumping and countervailing duty portions of the accord correspond so closely to

[5] *As a reflection of the powerful agricultural lobby found in many countries, the Uruguay Round agreement's actionable subsidies section does not apply to agricultural product subsidies, as mentioned in Article 13 of the Agreement on Agriculture. In past judgments, this exclusion of agricultural subsidies has resulted in peculiar findings. For example, a Canadian program directed toward subsidizing the poorest 5 percent of the population was judged an unfair trading practice, while U.S. federal water subsidies to agriculture in California's Central Valley have not been judged unfair (see Francis, Palmeter, and Anspacher 1991).*

[6] *For a much fuller elucidation of this issue, see Magee, Brock, and Young's discussion of the voter information paradox. According to their theory, as voter opposition to protectionism becomes increasingly sophisticated, political parties respond with higher equilibrium levels of more opaque distortions.*

Table 3
The Uruguay Round of GATT: Effects on U.S. Antidumping And Countervailing Actions

New Rule	Effect
Five-year sunset rule on antidumping duties. After five years, dumping duties will be terminated unless a new review takes place.	Reduces the likelihood of permanent protection being granted to industries when foreign dumping is no longer present.
The level below which dumping margins will be ignored (the de minimis rule) rises from 0.5 percent to 2.0 percent.	Slightly reduces the number of the most frivolous antidumping investigations.
Level at which sales below cost are considered substantial rises from 10 percent to 20 percent.	Slightly decreases the number of cases in which foreign market price information is disregarded. May limit frivolous antidumping findings.
Defines a preference for comparing average domestic prices with average foreign prices or individual domestic prices with individual foreign prices. However, countries can still compare averages with individual prices when spot dumping is alleged.	Slightly decreases opportunity to find dumping when prices are identical in the foreign and home markets.
GATT panels cannot impose their judgments on a country when the country, in its finding of dumping, has acted in an unbiased and objective manner.	May slightly increase the opportunity to find dumping.
Dumped imports from all countries will not be considered injurious to domestic firms if they constitute less 7 percent of total imports.	Unlikely to have a significant effect on dumping actions.
Specifically defines those subsidies and that are prohibited, those that are countervailable, and those that are not countervailable.	Decreases the scope of countervailing actions, reduces the possibility of frivolous cases.

the United States' legal expressions on the same subjects. After all, the U.S. process involves such detail and obscurity that it in one month has involved seventy-two different investigations just on steel imports. Such a process represents far more opportunities for disguised protectionism than tariffs would, even if forty of the seventy-two investigations did not lead to antidumping or countervailing duty actions.

It is in this context that we may see the administered protection portion of the Uruguay Round as liberalizing trade. Countervailing and antidumping actions often represent abstruse attempts to redistribute welfare from consumers to producers. While consumers benefit from the lower prices of foreign suppliers, domestic producers typically can make more money by charging higher prices, and they typically can charge higher prices when they have less competition from foreigners.

But if all this is true, how can it be argued that, on the whole, antidumping and countervailing duty rules in the Uruguay Round accord of GATT represent a move toward freer trade? The Uruguay Round agreement more fully codifies what protectionism is permissible and what is not. The accord provides for dispute settlement and, in a number of cases, offers explicit boundaries between what may and what may not be actionable.

As a result, while the accord includes what Finger refers to as “trade restrictions that are now sanctified,” it also constitutes trade restrictions that are now specified. The transparency of the agreement lowers, as we have argued, the risk of what may otherwise be surprise retaliations. The fuller authority of the dispute settlement mechanism—regardless of how limited this authority remains—increases the likelihood that these rules will be followed.

There is always the possibility that new, even more fully disguised forms of protectionism will replace the old ones. However, despite the attempts of firms to disguise protectionism, world trade has been increasing. World trade as a share of total world gross domestic product grew from 27 percent in 1970 to nearly 40 percent in 1992. Given the increasing importance of trade to most economies, political momentum is likely to favor more open markets. By making any remaining protectionism more transparent, the new GATT accord reinforces the trend toward a more globalized market.

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