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**A Centennial of Antidumping Legislation
and Implementation**

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Introduction and Overview

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A Centennial of Antidumping Legislation and Implementation: Introduction and Overview

Alan V. Deardorff and Robert M. Stern¹

1. INTRODUCTION

A century has now passed since the Government of Canada adopted the first recorded antidumping law in 1904.² The Canadian legislation was soon followed by similar legislation in most of the major trading nations in the industrialized world prior to and after World War I. Antidumping provisions were later incorporated into the General Agreement on Tariffs and Trade (GATT) following World War II. Nowadays, virtually all of the industrialized and developing countries in the world economy have adopted antidumping legislation.

While antidumping actions were implemented in a number of countries prior to World War II, these actions have since come to be increasingly used in the GATT/WTO system by industrialized and developing countries alike. Indeed, it appears that antidumping has become the trade policy of choice to provide administered protection to domestic firms to offset the injury that results from the alleged dumping practices of foreign exporters.

In view of the long and increasingly widespread use of antidumping measures, we decided to mark the centennial of the 1904 Canadian antidumping legislation by organizing a symposium that was held at the University of Michigan, Ann Arbor, on March 12, 2004.³ This symposium featured commissioned papers dealing with antidumping measures in a historical

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² An Act to Amend the Customs Tariff 1897, 4 Edw VIII, 1 Canada Statutes 111 (1904).

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context, theoretical and empirical analyses of the causes and consequences of antidumping measures, reviews of the antidumping experiences of selected major trading nations/regions, and assessment and proposals for reform of antidumping and safeguards provisions in national legislation and institutions and in the GATT/WTO.

2. OVERVIEW OF SYMPOSIUM PAPERS

In this section, we present a brief overview of the issues treated in the individual papers that comprise this issue of *The World Economy*.

Dan Ciuriak, in his paper, “Antidumping at 100 Years and Counting,” notes that the distinction of introducing the first antidumping measure falls to Canada. Actually, at a time when tariffs were not bound, what made the duty special in Canada was that it could be levied administratively, rather than being enacted. It was rather a modest step, with the legislation specifying that the duty be set at the difference between the selling price in Canada and the “fair market value,” which was to be identified with the price at which the goods were sold in the country of production, subject to a cap set at 50 percent of the legislated tariff. There were few other “bells and whistles” insofar as the application of the special duty was limited to goods produced in Canada and subject to adequate domestic supply; there was no injury test.

In historical context, antidumping first made its appearance in an era that was a high season of globalisation, with labour and capital able to move internationally as never before or since, but also an era marked by an awakening of economic nationalism in newly industrializing countries, and by growing angst over the power of large corporations that were emerging to exploit the economies of scale allowed by mass production, which itself was facilitated by the growth of international trade. This is evidenced in the concurrent evolution of anticommon law legislation. Today, in another high season of globalisation, marked by concerns over corporate globalism that evoke those of the earlier era, it is of particular interest to note a major difference: antidumping actions did not proliferate then but are doing so now.

The early integration of antidumping into economic theory as an international counterpart of domestic competition policy has received at least some official ratification in international treaties, and governments see it as a legitimate policy, albeit one in need of international disciplines. However, analysis of the pattern of its use reveals it to be an instrument of political economy, as a convenient alternative to the safeguard option sanctioned by the WTO. Its use in this manner has become a major bone of contention, pitting “free traders” against “fair traders.” While particular decisions have been picked apart and shown to be egregiously at odds with any reasonable economic theory of price discrimination that gives antidumping theoretical legitimacy, the frequent reliance on trade adjustment to correct imbalances generated in the global financial system or in domestic policies, muddies the water for this analysis considerably. Indeed, given that the response of antidumping filings to exchange rate changes is similar to the response to tariff changes, the rise in the number of antidumping actions in the modern era of globalisation may reflect more than just the migration of protection from bound tariffs (now sharply reduced after successive multilateral trade rounds) to unbound contingent protection. It may reflect the behaviour of the global exchange-rate regime as well.

In his paper, “The Rise of US Antidumping Activity in Historical Perspective,” Douglas Irwin notes that most studies of antidumping focus on the period since 1980. By taking a historical perspective especially for the period since World War II, Irwin seeks to address a number of questions, as follows. Is it true that few antidumping petitions were filed prior to 1980? If so, what explains that low level of antidumping activity, given that it is now considered to be an “easy” way for import-competing firms to gain protection? And what economic and political factors explain the shift toward a more intensive use of antidumping remedies over time?

Irwin examines some of the legal and administrative changes in US antidumping policy since its inception and then presents data on the annual number of antidumping investigations over time. He finds that:

- The number of US antidumping investigations conducted in the late 1930s and the late 1950s and early 1960s is surprisingly large and comparable to the post-1980s levels of activity.
- Most US antidumping investigations prior to the 1970s were dismissed by the US Treasury Department as lacking evidence of less-than-fair-value (LTFV) sales; by contrast, now (with the LTFV determination moved to the Commerce Department) virtually all petitions move on to the injury determination stage of the process.
- The increase in antidumping cases since the early 1980s is related to the rise of multiple petitions, i.e., petitions that cite several source countries for dumping the same product in the US market; in fact, the number of products targeted in antidumping cases has fallen since the mid-1980s.
- The proximate determinants of the annual number of antidumping cases are the unemployment rate, the exchange rate, import penetration, and a 1984 legal change that encouraged the filing of multiple petitions.

In their paper, “Dumping in a Global World: Why Product Quality Matters,” J. L. Moraga-González and J-M. Viaene note that current antidumping activities are very different from those observed in the last 100 years of antidumping legislation. While antidumping actions were used primarily by major developed countries until less than a decade ago, they are now the trade policy of choice of developing and transition economies as well.

To understand why some countries have increasingly applied antidumping laws, Moraga-González and Viaene specify a model of vertical intra-industry trade to examine the strategic incentives of exporting firms to undertake dumping. They consider that a product is being

dumped if its export price to a particular country is less than a “normal” value. Their first proxy for normal value is the competing local price according to which unilateral dumping by the low-quality firm in the rich country may be observed. If the standard WTO definition of dumping is used instead – that is, when a company exports a product at a price lower than the price it normally charges in its own home market – then either reciprocal dumping or unilateral dumping by the high-quality firm in the poorer country arises depending on income differences, the height of tariff protection and the level of the exchange rate. For example, a currency depreciation raises the likelihood of attributing dumping to the foreign high quality firm in the country in question. The definition of normal value is therefore crucial, since using different proxies for normal value may lead to different outcomes regarding the identity of the exporting firm that allegedly dumps. It is in this context that product quality matters for exporting firms in different countries.

Thomas Prusa examines the issue of antidumping (AD) proliferation in his paper, “Antidumping: A Growing Problem in International Trade.” He shows that AD is used more frequently, by more countries, and against more products than ever in its history. He reviews AD filing patterns with an emphasis on the scope of countries and industries seeking protection. Recent trends suggest that the widespread embrace of AD protection makes the prospect for AD reform increasingly unlikely. AD is no longer being used solely by high income developed countries. It is increasingly being used by middle-income and even lower-income countries. As worrisome, these new users have chosen to use AD very intensively. Per dollar of imports the new users have filed AD cases up to 15-20 times more frequently than the traditional AD users such as the U.S. and EU.

The rapidly changing set of AD users makes for a complicated negotiation dynamic. In the near term, strong opposition by the U.S. and EU makes reform a highly unlikely outcome. In the longer run, rising use of AD against the U.S. and EU could conceivably weaken their support for AD. Yet, the same trends that might finally cause the U.S. and EU to realize AD is a failed

policy will likely make reform impossible. The new users who have adopted and aggressively embraced AD may decide that it is a policy that they cannot live without.

Given its widespread use, Prusa also reviews the rationales for modern AD. He explains that, despite the rhetoric often bandied about, AD statutes no longer have anything to do with predation or even economically harmful dumping. The predatory-intent provision included in the earliest versions of the law was expunged more than 75 years ago. Ironically, one of the most basic lessons that one must learn about modern AD is that it has nothing to do with what microeconomics says is harmful pricing behavior.

Since AD is not about restraining an economically sensible notion of dumping, what is it about? Prusa argues that there are three factors driving the widespread adoption and use of AD: (1) the considerable discretion involved in AD cases, (2) the fact that AD is GATT/WTO consistent and requires no concessions, and (3) the success of GATT/WTO negotiations in lowering MFN tariffs.

In their paper, “The Politicisation of EC Antidumping Policy: Member States, Their Votes, and the European Commission,” Simon Evenett and Edwin Vermulst focus on the role that EC member states play in deciding whether to impose definitive duties on imports that have been found to be dumped and that are deemed to have injured a European industry. Their focus contrasts with other studies of antidumping protection in Europe, which have emphasized the role of political and technocratic influences on the dumping and injury investigations. Evenett and Vermulst have carried out extensive searches of media outlets and compiled a database that sheds light on the pattern of EC member-state voting on antidumping measures since 1991. They find that, in the late 1990s, numerous disagreements between member states occurred over the merits of imposing antidumping duties. These disagreements may well have been partly responsible for the strong decline in the number of European antidumping investigations initiated after 1999. Perhaps the most important implication of their study is to question the presumption that the

supply of contingent protection should be depoliticised. Recent EU experience is at variance with this presumption.

Claude Barfield, in his paper, “Antidumping Reform: Time to Go Back to Basics,” analyzes and rebuts the legal and economic defences that have been advanced to defend current antidumping regimes. He offers four potential options for reform of the present protectionist system in particular from a US perspective. The first-best option would be to abolish antidumping laws and rely upon national competition laws. If this proves politically impossible, then the current system should at a minimum be revised to force petitioners to prove their case, that is, to demonstrate that government industrial or other policies are providing a sanctuary market for exporting firms, allowing them to raise prices at home while dumping goods abroad. In addition, a public or national interest test should be included at the end of the antidumping process, allowing the national executive to make a “political” decision as to whether antidumping duties will advance the public interest. Finally, over time, both WTO negotiators and national leaders should create a system that substitutes safeguards actions for antidumping actions as the primary “interface mechanisms” to meliorate friction between national economies and to temporarily act against import surges.

In his paper, “Some Remarks on Reforming WTO AD/CVD Rules,” Robert Staiger argues that dumping may be viewed as unfair by the WTO member governments, who place great importance on their ability to prevent dumped imports from entering their markets and injuring their producers. He notes that the traditional starting point for economists is that this position is not sensible, and once this position is rejected, the economist’s traditional advice for reforming WTO antidumping rules follows fairly directly: eliminate GATT Article VI (which affords WTO members the right to impose antidumping and countervailing duties against imports originating from other WTO members). Regardless of the merits of this traditional position, non-economists typically see elimination of GATT Article VI as a non-starter, and so it may be interesting to

consider other starting points. Staiger maintains that this alternative starting position leads to an alternative proposal for reform that is less drastic.

He argues that two features of the WTO antidumping rules as contained in GATT Article VI and elaborated in the WTO Agreement on Implementation of Article VI can be defended: first, these rules give governments the right to impose discriminatory duties on dumped imports; and second, this right is associated with a relatively permissive injury standard. Staiger further argues that a third feature of antidumping rules is potentially problematic, even when viewed from this alternative starting position. This third feature is the lack of compensation provisions of the sort that are widespread throughout other areas of the GATT/WTO.

In particular, Staiger observes that a plausible reason that antidumping actions seem to be so widely abused for protectionist purposes is that they represent a rare instance of essentially unilateral actions that are permissible within the WTO: under the banner of antidumping actions, governments can block imports and provide their industries with import relief without fear of retaliation or demands for compensation from their trading partners. Cognizant of the great potential for abuse of antidumping actions, the WTO Agreement on Implementation of Article VI represents an extraordinarily detailed attempt by WTO member governments to “reign in” this potential through a detailed set of rules governing the acceptable methodologies and procedures for initiating antidumping actions. But Staiger argues that as long as the underlying incentives for abuse remain, governments are likely to continue to find new and increasingly ingenious ways to respond to these incentives without running afoul of the rules. The intent of Staiger’s proposal for reform is to create incentives for the use of antidumping measures that are more in line with a cooperative international environment. And he suggests that, by extending WTO compensation provisions to cover antidumping actions, the WTO might in effect “harness retaliation” and convert it into a tool of international order in the area of antidumping actions.

Robert E. Baldwin argues in his paper, “The Political Economy of Reforming the Antidumping Laws,” that efforts to reform antidumping policies should take into account

concepts of economic fairness. In particular, aside from the alleged damage done to the complainant firms, the effects of antidumping actions on other firms and industries using the products as intermediate inputs should be considered. Examples here include the effects on other industries stemming from granting antidumping protection to the US steel and flat panel display industries. Baldwin also recommends that administration of antidumping laws should require demonstration of the conditions and behaviour of firms in the foreign markets that make the alleged dumping possible. Further, he urges that the support for reform of antidumping measures should come from the policy-oriented studies by academic specialists and from politically influential business and labour organizations and nongovernmental organizations whose interests may be adversely affected by the imposition of antidumping protection.

3. CONCLUSIONS AND IMPLICATIONS FOR ANTIDUMPING REFORM

Antidumping legislation has, it is clear, a long history, and the use of antidumping laws against imports as been going on for a long time as well. Although the increase in antidumping actions by developed countries in recent years is more apparent than real – owing its appearance mainly to the increased used of multiple AD petitions within a single industry – it is also true that both antidumping laws and antidumping actions have proliferated in recent decades by and among developing countries. Even though there is virtual unanimity among economists that dumping is both normal and largely beneficial economic behaviour from the standpoint of consumer welfare, while antidumping duties have all the faults of ordinary protection and more, the use of antidumping measures has become if anything more entrenched in the real world of trade policy towards the end of its first century of existence.

The authors of the essays in this symposium have documented much of this and have then gone on to ask what to do about it. Although we all would probably agree that the best solution would simply be to retract all antidumping legislation, it is doubtful that any of us expect that to happen in the foreseeable future. Antidumping laws serve a purpose, or perhaps several of

them, and powerful political forces stand in the way of eliminating them. Antidumping provides a stronger and more focused means of safeguards protection against surges of imports than GATT-legal safeguards laws (with good reason) permit. Antidumping also formalizes a meaning for “unfair trade” that, though essentially meaningless from an economic standpoint, strikes a chord in public perception. And finally, in spite of its appearance of being constrained by objective administrative rules, antidumping in practice is a potent political tool that governments are able to manipulate in order to satisfy powerful constituents. With all this going for it, antidumping is unlikely ever to be relinquished as an economic policy tool by governments.

If the harm done by antidumping is ever to be reduced, therefore, it will require modifications that acknowledge and address the needs that current antidumping laws are able to satisfy. Several suggestions are offered in these essays, based for example on harnessing rather than denying fairness as a valid economic concern, or on expanding rather than eliminating the role of producer interests in shaping policy. Whether any of these suggestions has a chance of being adopted, we do not know. But it is clear that antidumping will not soon depart from centre stage as a matter of international trade-policy concern.