Volume Title: The Political Economy of Trade Protection

Volume Author/Editor: Anne O. Krueger, Editor

Volume Publisher: University of Chicago Press

Volume ISBN: 0-226-45491-6

Volume URL: http://www.nber.org/books/krue96-2

Conference Date: September 13, 1994

Publication Date: January 1996

Chapter Title: The Effect of Import Source on the Determinants and Impacts of Antidumping Suit Activity

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Chapter URL: http://www.nber.org/chapters/c8724

Chapter pages in book: (p. 85 - 94)

8 The Effect of Import Source on the Determinants and Impacts of Antidumping Suit Activity

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8.1 Introduction

Given the success with which tariff reductions have been negotiated during the postwar period, it is not surprising that the rules which govern the *exceptions* from the negotiated tariff bindings have replaced the tariff bindings themselves as the central focus of international cooperation in trade policy. Nowhere is this change in emphasis more apparent than in the rising friction associated with antidumping law. Accusations that foreign firms are "dumping" products onto the domestic market and the belief that dumping is injurious to the domestic industry are by no means new.[1] Almost eighty years ago, such accusations and beliefs led the United States to adopt its first antidumping legislation, as contained in sections 800–801 of the Revenue Act of 1916. While the original intent of the law was to protect U.S. firms from the "unfair competition" implied by the alleged dumping practices of the highly cartelized and heavily protected German industries of the period (see Viner 1966, 242), antidumping law today seems to elicit a much broader usage.[2]

With the use and abuse of antidumping law now regularly a central concern of both multilateral and bilateral trade negotiations, it is especially important to have as full an understanding as possible of the impact of existing antidump-

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1. Dumping is defined as exporting products to the domestic market at export prices "below fair value," that is, either below the prices of comparable products for sale in the domestic market of the exporting country or below costs of production.

2. This broadening usage was in part facilitated by explicit changes in U.S. antidumping law. For example, under the original U.S. law, predatory intent had to be shown to establish a finding of dumping. However, the Revenue Act of 1921 dropped the intent requirement.

ing laws on the free flow of trade, and of the uses to which antidumping law is put in practice. In this regard, several researchers have challenged the view that antidumping law restricts trade only when antidumping duties are actually imposed, arguing that the threat or even the mere possibility of duties can also affect import flows. Here we explore the differences across import sources of the uses and effects of antidumping law, accounting for both direct as well as possible indirect effects on imports and domestic import-competing output.

In an earlier paper (Staiger and Wolak 1994) we studied three possible channels through which these indirect effects might arise, which, we believe, when combined with the direct effects of duties capture most of the trade effects of antidumping law. We referred to these three nonduty effects as the "investigation effect," the "suspension effect," and the "withdrawal effect." The first refers to the trade distortions associated with ongoing antidumping investigations, the second to the effects of "suspension agreements" (under which investigations are suspended in exchange for a promise by foreign firms to stop dumping), and the third to the effects of petitions that are withdrawn prior to a final determination. Our empirical findings, which reflected data on the timing and outcome of every antidumping investigation that covered a manufacturing industry product in the United States between 1980 and 1985, indicated that the investigation and suspension effects are substantial. Specifically, we found that suspension agreements lead to trade restrictions similar in magnitude to what would have been expected if antidumping duties were imposed instead. We found that the effect of a typical antidumping investigation is to reduce imports during the period of investigation by roughly half the reduction that could be expected if antidumping duties had been imposed from the beginning of the investigation. We found little evidence to support a significant withdrawal effect.

Our focus on the broader trade effects of antidumping law also allowed us to consider the possibility that different firms might file antidumping petitions for different reasons. In particular, we found evidence of two distinct filing strategies that appeared to coexist in the data, and we referred to firms as "outcome filers" or "process filers," depending on which strategy they appeared to be using. Outcome filers are firms that file antidumping petitions in anticipation of obtaining a finding of dumping and the relief that comes with it (either antidumping duties or a settlement agreement). Process filers are firms that file antidumping petitions not to obtain a dumping finding, but rather to obtain the effects that arise solely from the investigation process itself. Our estimates suggested that while outcome filers are by far the dominant users of antidumping law, process filing was the likely strategy used by between 3 and 4 percent of the industries in our sample.

In the present paper we continue this line of research by looking for evidence of differences in the use and impacts of U.S. antidumping law as it is applied to imports from different trading partners. As we discuss in section 8.2, whether an antidumping petition is initiated for process- or outcome-filing reasons should depend not only on the characteristics of the domestic industry

but also on the characteristics of the exporting country or countries against which the petition is filed. In our earlier work we allowed for the possibility that filing strategies might differ across U.S. industries, but we required firms in a given industry to pursue a common filing strategy against foreign imports, regardless of the country of origin. In this paper we allow the filing strategies of firms to be different for different import sources, but we impose the restriction that firms in all U.S. industries pursue the same overall filing strategy. Thus we consider the possibility that U.S. firms may be outcome filers against imports from some countries and process filers against others.

Using this method of analysis we are able to quantify significant differences in filing strategies used by U.S. industries against five sets of trading partner countries. We also are able to quantify the extent of import and domestic output distortions due to the various stages of the suit resolution process for each of these five sets of trading partners. Finally, we are able to distinguish between regions exporting to the United States that are primarily targets of process filings by U.S. industries, as well as those regions that are primarily targets of outcome filings by U.S. industries.

The rest of the paper proceeds as follows. Section 8.2 describes our motivation for including investigation, suspension, and withdrawal effects with the duty effects when quantifying the impact of antidumping law on imports and domestic output. It then describes the different investigation effects expected under outcome- and process-filing strategies. We also discuss in this section why some countries are more likely than others to be the target of process filing by U.S. firms. Section 8.3 then describes our empirical findings. Section 8.4 concludes.

8.2 U.S. Antidumping Law

We begin by making several observations concerning the practice of antidumping law in the United States which may be helpful to keep in mind. First, there are two findings necessary for a determination of dumping: (1) sales of imports at less than fair value (LTFV), and (2) material injury to the domestic industry due to these imports. One government agency is assigned to each of these determinations—the International Trade Commission (ITC) determines injury to the domestic industry and the Commerce Department's International Trade Administration (ITA) makes the LTFV determination. A second point to bear in mind is that for each of these decisions there is a preliminary and final decision made by each agency. The statutory time allotted for the entire investigation ranges from ten months to fourteen months under special circumstances. Finally, except in "critical circumstances" (a condition described more fully below but in practice rarely met), a final determination of dumping will bring the retroactive imposition of antidumping duties on all imports of the relevant products which entered the United States on or after the date of the

preliminary LTFV finding, provided that the preliminary LTFV finding was affirmative (as it was for 93 percent of the products whose investigations made it to this stage of the investigation process between 1980 and 1985). With these general points in mind we now turn to a discussion of the various potential trade distorting effects of antidumping law.

8.2.1 The Trade Effects of Antidumping Law

A simple view of the trade effects of antidumping law would hold that trade flows are affected by antidumping law only when a petition is filed, dumping is found, and antidumping duties are imposed. However, there are a number of reasons to believe that this simple view is inadequate and that many of the effects of antidumping law are indirect and subtle. We now describe three non-duty effects which, we believe, when combined with the effects of duties, capture a major component of the possible trade effects of antidumping law.

The Investigation Effect

First, it is often claimed (see, for example, Dale 1980, 85–86 and U.S. Congress 1978, 12, 278) that imports are restricted during the period in which an antidumping investigation is taking place. There are two broad hypotheses concerning the reasons for and nature of this investigation effect. We refer to these two hypotheses as the "outcome-filer" hypothesis and the "process-filer" hypothesis. According to the outcome-filer hypothesis, the investigation effect reflects actions taken by domestic importers and/or foreign exporters in anticipation of the duties that would be imposed in the event of a final affirmative dumping determination and that would be assessed retroactively back to the date of an affirmative preliminary LTFV determination. That is, as noted above, an affirmative preliminary LTFV determination carries with it the liability of duty assessment for all imports entering thereafter if a final affirmative dumping determination is subsequently made. Consequently, a preliminary finding of LTFV sales would be expected under this hypothesis to lead to a sharp drop in imports, with these trade-restricting effects lasting for the remainder of the investigation period, as long as the petition was perceived as having a reasonable chance of ending in a final dumping determination.

In addition to a drop in imports coming with an affirmative preliminary LTFV determination, the outcome-filer hypothesis carries with it two additional implications. First, in light of the possibility of an affirmative preliminary LTFV determination and a subsequent falloff in import flows, imports might, if anything, be expected to rise somewhat during the first months of the investigation in anticipation of this effect. In fact, evidently anticipating this possibility, U.S. law provides for an assessment of "critical circumstances" under which duties can be imposed retroactively back to the date of filing if the filing of a petition brings with it a significant import surge. For this reason, we would expect any import increase associated with the early stages of an

investigation under the outcome-filer hypothesis to be small. Second, under the outcome-filer hypothesis, any petitions filed without regard to measures important for the final dumping determination would be unlikely to exhibit strong investigation effects, since this hypothesis presumes a significant probability of a final dumping determination and consequent duty imposition. It is for this reason that we refer to this hypothesis as the outcome-filer hypothesis: the strength of the investigation effect under this hypothesis reflects the fear of retroactive duty imposition in the event of an affirmative final determination at the end of the investigation process, and therefore ought to reflect the likelihood that the final outcome will be a finding of dumping.

It is also possible that there are investigation effects that do *not* reflect a significant probability of retroactive duty imposition at the end of the investigation process, but reflect the effects of the investigation process itself. This embodies the process-filer hypothesis. In an earlier paper (Staiger and Wolak 1991) we presented a model in which domestic firms make strategic use of the ongoing antidumping investigation of the pricing and sales practices of foreign firms to prevent the occurrence of price wars which might otherwise be triggered by periods of slack demand and low capacity utilization. Our theory suggests that domestic firms may value the competition-dampening effects of an ongoing antidumping investigation for its own sake, and may file such petitions when capacity utilization is low with no expectation that they would actually result in duties or other remedies. In Staiger and Wolak (1994) we referred to such filers as process filers, and noted that (1) the act of filing ought to have an immediate trade-dampening effect which lasts for the duration of the investigation, distinguishing the investigation effects under process filers from those under outcome filers; and that (2) process filers ought to file antidumping petitions on the basis of low capacity utilization and little else, and in particular should not be concerned with measures important for the final determination of dumping, thus distinguishing the filing behavior under process filers from that of outcome filers.

The Suspension Effect

Turning to the suspension effect, a second way in which antidumping law may restrict trade through nonduty channels is through the effects of so-called suspension agreements, under which antidumping investigations are suspended by the Commerce Department in exchange for an explicit agreement by foreign firms named in the antidumping petition to eliminate sales in the U.S. market at less than "fair value." Since the intent of a suspension agreement is to provide a nonduty alternative by which previous dumping activities can be halted, it would be surprising if there were not a suspension effect in the data. A prominent example involving such a suspension agreement (though not falling in our sample period) was the 1986 U.S.-Japan Semiconductor Trade Agreement.

The Withdrawal Effect

Finally, a third way in which antidumping law may restrict trade through nonduty channels concerns the withdrawal effect.[3] That is, the imposition of antidumping duties or the negotiation of a suspension agreement need not be the only outcomes of an antidumping petition for which postinvestigation relief from imports is secured. In this regard, Prusa (1992) has argued that petitions which are withdrawn by the domestic industry before a final determination can have as restrictive an impact on subsequent trade flows as would be the case if a final determination of dumping had been made and duties imposed. Essentially, Prusa argues that domestic firms can use the threat of antidumping duties, together with the protection from domestic antitrust laws afforded when an antidumping proceeding is in progress, to bargain with foreign firms over domestic market share, and that the antidumping petition is withdrawn by the domestic industry if and when an acceptable bargain is struck.[4]

8.2.2 The Targets of Process Filers

The logic of our process-filer strategy is that domestic firms use the antidumping investigation process to reduce the temptation of foreign firms to cut prices during periods of low capacity utilization. For this strategy to be sensible for domestic firms to pursue over our sample period, several conditions must be met in the country (countries) against which this filing strategy is being used. First, the firms exporting from each country named in the antidumping petition should comprise a significant share of the relevant U.S. market, since otherwise the threat posed by these firms to the profitability of U.S. firms in the event of a breakdown in price discipline is likely to be small. Second, the U.S. market share captured by the firms exporting from these countries should be relatively stable over the sample period, since otherwise the premise of an orderly pricing arrangement, whose breakdown during periods of falling capacity utilization can be avoided through the competition-dampening effects of antidumping investigations, would be in doubt. Third, exporters from these countries should be relatively dependent on the U.S. market for their sales, since otherwise demand shifts in the U.S. market which lead to falling capacity utilization of U.S. firms might not lead to a significant fall in capacity utilization rates for the foreign exporters (and therefore would not

3. In addition, a number of papers (e.g., Anderson 1992, Staiger and Wolak 1992, and Prusa 1988) have suggested that the mere existence of antidumping law can have trade effects even in periods when no petition is filed.

4. Agreements between foreign firms and domestic petitioners are permitted under the Noerr-Pennington doctrine, which provides exemption from prosecution under U.S. antitrust law. Direct conversations between domestic and foreign firms concerning prices or quantities would not be protected, so settlements are typically negotiated through the Commerce Department (Gary Horlick, personal communication, 1989). See Prusa (1992) for a detailed analysis of this exemption and its implications for the effects of antidumping law.

give rise to a significant temptation on the part of foreign exporters to cut prices in the U.S. market).

With these three criteria in mind, the countries likely to be targets of process filings in the United States during our 1980–85 sample period are those whose export production over this period is predominantly destined for the U.S. market and accounts for a relatively large and stable U.S. market share. On this basis, we expect that Canada and Mexico would be the most likely targets of process filings from U.S. firms during our sample period.

8.3 The Uses and Impacts of Antidumping Law

Analyzing the filing behavior against imports from Canada and Mexico as well as against imports from four other regional groupings, we find evidence in the filing behavior and in the nature of the trade impacts which accompany filing to suggest that Canada and Mexico were indeed the most likely targets of antidumping petitions filed under the process-filing strategy during our sample period. That is, the pattern of filing by U.S. firms against imports from Canada and Mexico is primarily predicted by low levels of capacity utilization, and the impact of the investigation on trade flows is to reduce the rate of imports during the entire period of investigation. The regions against which the filing strategy of U.S. firms and the nature of the associated trade impacts seem most consistent with our outcome-filing view of antidumping suit activity are Western Europe and the region composed of Japan and the newly industrialized countries (NICs) of East Asia. That is, the pattern of filing by U.S. firms against imports from these regions is predicted by a broader set of variables which enter into the final determination of dumping, and the impact of the investigation on trade flows is to reduce the rate of imports only at the point of a preliminary LTFV determination.

As for the differing effects of investigation outcomes on postinvestigation imports and domestic output, our parameter estimates imply that the imposition of antidumping duties against any region strongly reduces imports of the products involved, while the response of domestic import-competing output is positive but less precisely estimated. Petitions against a region which are subsequently withdrawn appear to have no lasting effects on imports or domestic output, confirming our earlier findings (Staiger and Wolak 1994). Finally, the paucity of suspension agreements in our sample makes it difficult to assess regional differences in their impacts on postinvestigation imports and domestic output (the Japan-NICs region, for example, did not negotiate any suspension agreements with the United States during our sample period).

We can use our estimates to provide a rough idea of the magnitudes of all the trade-distorting effects, by region and by type of effect, that are associated with the use of antidumping law during our sample period. For our sample of industries and for the six years of available data, the total amount of U.S. import reductions from all investigation effects against Western Europe amounts

of approximately −0.05 percent of total (multilateral) U.S. imports over the sample period, while the total distortions attributable to postinvestigation effects against Western Europe is −1.14 percent of total imports over the sample period. For Japan and the NICs, the distortions to U.S. imports from investigation and postinvestigation effects from petitions against this region amounts to 0.87 percent and −2.31 percent, respectively, of total U.S. imports.[5] For both these regions, the major import distortions associated with the use of antidumping law are attributable to postinvestigation effects. For Mexico and Canada, on the other hand, the relative importance of investigation and postinvestigation effects is reversed: the distortions to U.S. imports associated with investigation and postinvestigation effects of petitions against Mexico and Canada are −0.84 percent and −0.25 percent, respectively, of total U.S. imports. This conforms to our findings that U.S. firms appear to be outcome filers against Europe and Japan and the NICs, and hence the main import restrictions come with the explicit remedies provided by the law (duties or suspension agreements), while U.S. firms appear to be process filers against Mexico and Canada, and hence the main import restrictions come from the investigation effects.

A final implication of our process-filer/outcome-filer distinction is that the frequency with which outcome filers ought to secure duties should be substantially higher than for process filers. To investigate this hypothesis we computed the per-suit level of duty activity against Mexico and Canada, the region against which U.S. firms appear to be process filers. We then repeated this same calculation for Europe and Japan and the NICs, treating this as the aggregate region against which U.S. firms appear to be outcome filers. Dividing the "outcome filer ratio" by the "process filer ratio" yields 3.73, suggesting that in our sample, a product-level antidumping petition is 3.73 times more likely to end in duties when it is filed against firms in Europe, Japan, or the NICs than when it is filed against firms from Canada or Mexico. This result is consistent with the view that suits against Canada and Mexico are filed less for the eventual protection provided by duties than are suits against Europe and Japan and the NICs.

8.4 Conclusion

Our cross-country analysis of the determinants and impacts of antidumping suits has revealed a substantial amount of heterogeneity among the different trading regions. Against Western Europe and Japan and the NICs, the use of antidumping law appears to be consistent with the view that firms file in expectation of obtaining relief via antidumping duties or suspension agreements—

5. The positive boost to U.S. imports associated with investigation effects of petitions against Japan and the NICs reflects the fact that the effect of filing on imports is positive and relatively large and that the effect of an affirmative preliminary LTFV determination, while negative, does not persist long enough to reverse this cumulative positive effect.

outcome filers in our nomenclature. This is suggested by the pattern of filing against these regions, which appears to reflect a concern for meeting the injury requirements necessary to secure a finding of dumping, as well as by the import and domestic output responses to filing and the various phases of the suit resolution process. But we have also argued that a distinctive filing strategy against Canada and Mexico would be expected on a priori grounds, and in particular that Canada and Mexico are the most likely targets of process filing by U.S. firms during our sample period because their export production is predominantly destined for the U.S. market and accounts for a relatively high and stable U.S. market share. We find evidence in the use of antidumping law against Mexico and Canada which is consistent with our process-filer logic, where firms file primarily to obtain the protection afforded during the investigation process itself. This is supported by the pattern of filing against these countries, which appears to be driven primarily by the level of capacity utilization but is unrelated to other observable measures of injury, as well as by the import and domestic output responses to filing and the various phases of the suit resolution process.

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