

Is Antidumping Legislation a Threat to Competition: A Case Study of the US Chemical Industry

by Nisha Malhotra

Executive Summary

The US antidumping legislation provides protection to domestic industries that face dumped imports. Restricting imports by imposing antidumping duties protects domestic firms from predatory pricing by foreign firms. At the same time it reduces competition in the domestic market. In cases where the industry consists only of one or two firms, import restriction can drastically reduce competition faced by domestic firms. This paper looks at the cases filed by the chemical industry to illustrate this possibility. The concentration of industries asking for protection and the impact of import restriction on domestic competition is studied.

1. INTRODUCTION

With increasing globalization it has become important for national governments to set policies strategically and help domestic firms achieve a competitive edge in the international market. One such policy is the antidumping legislation of the United States, which is designed to protect domestic industries from dumped¹ imports in the domestic market.

¹ Dumping is defined as selling a product in the US at a price lower than the price for which it is sold in the home market. In absence of comparable home market sales, sales in a surrogate "third country" may be used. In the absence of sufficient home market and third

A firm or a group of firms in the US can get relief from dumped imports by petitioning to the International trade commission (ITC) and the International trade administration (IA) for an antidumping duty. If dumped imports are found to cause material injury to the domestic industry, an antidumping duty equivalent to the dumping margin is imposed on unfair imports. There has been a dramatic rise in petitioning by US firms over the past decade. This has increased concerns about the abuse of antidumping law and rising trade protectionism. The ITC received around a thousand antidumping petitions during the fiscal years 1980-98. These cases involved \$30 billion in imports from countries subject to investigations.

The method used to compute whether dumping occurs, especially the use of "constructed value", casts a doubt on the use of antidumping to promote free and fair trade. Also, for almost all complaints the ITC finds occurrence of dumping. The system almost seems biased towards the complaining domestic firms. One needs to question whether the petitioning firms are genuinely facing unfair trade or are just shying away from foreign competition. It is possible that these domestic firms are just not productive enough to compete with imports. In such cases, the Antidumping legislation, by restricting imports, threatens global competition.

Will protecting these industries provide a conducive environment for them to grow? Protection of domestic industries is, to some extent, justified for a developing country, which wants to foster the growth of infant industries. Even in such cases it should be a temporary policy and domestic industries should eventually be exposed to international competition. However, for a developed country the long run efficiency of the policy seems dubious. It is unclear whether shielding a domestic industry from international

country sales "constructed value", which uses a cost-plus-profit approach to arrive at normal value is used.

competition will help it to attain comparative advantage in the future.

This AntiDumping (AD) policy, originally designed to support free and fair trade, if not implemented properly can create an environment that discourages competition and prevents growth. Dumler (2001) highlights the role played by the US AD policy in reducing competition in the high-end supercomputers market. "US Commerce Department operating under rules that virtually guaranteed a hostile ruling, with the end result that overseas competitors have been forced out of the US supercomputer market in the name of defending competition".

This paper analyzes the antidumping petitions filed by the chemical industry in the past few years. The chemical industry is the second largest user of the antidumping law after the steel industry. It filed 113 antidumping petitions in the period 1980-1999. Most of the petitioners from the chemical industry were sole producers of the product. That is, these petitioners or firms face very little if any competition in the domestic market.

A characteristic of the chemical industry is its large scale of production, which renders the fixed cost of entering the market very high. This makes it difficult for potential entrants to compete with the incumbent producer in the domestic market. Hence, the sole producers are not likely to face competition at home. In the absence of foreign competition the sole producers of these chemical products might lose incentives to innovate or to reduce costs.

In the next section (2) I briefly discuss the antidumping procedure in the United States. Section (3) highlights the costs and benefits of granting protection to the domestic industries. Section (4) lists cases filed by the chemical industry, and discusses the competitive nature of the product market whose firms file for import relief and section (5) concludes the analysis.

2. ANTIDUMPING PROCEDURE

Under article VI of the General Agreement of Tariffs and Trade countries can impose duties on imports from a particular country or countries to protect domestic industries against dumped imports. An interested party² can file an antidumping petition with IA and the ITC alleging that a domestic industry is materially injured or threatened with material injury by dumped imports. IA determines whether and to what extent dumping is occurring and ITC determines whether the domestic industry is suffering material injury or is threatened with material injury as a result of dumped imports. In case the petition is accepted by the ITC and IA, an antidumping investigation is initiated by the IA.

The petitioner must file on behalf of an industry. IA sends out a questionnaire to the non petitioning producers of the product to determine the extent of support for the petition. The interested party in its petition has to provide a large amount of information about the domestic industry and about the foreign firms importing into the US. The foreign party or the foreign firm named in the dumping allegation is also required to provide large amount of information in defense of the allegations, and has to be present at various hearings. If both the IA and the ITC make affirmative findings of dumping and injury, an AD duty equivalent to the dumping margin is imposed on imports of that product. The duties remain in effect until an interested party calls an administrative review, and the exporter is found to be no longer dumping.

² Interested parties include: 1) a manufacturer, producer, or wholesaler in the US of the product; 2) a certified union or group of workers that is representative of the industry; 3) a coalition of firms, unions, or trade associations that represent the industry

3. PROTECTION - COST AND BENEFIT

Foreign firms can engage in a form of predatory pricing in which they set very low prices in the export market in order to drive domestic producers out of business. This ensures unimpeded entry for these foreign firms in the future in these domestic markets. It becomes essential to regulate such behavior especially in a developing country. Surplus production in a foreign country can be dumped into developing markets where a new industry is being established. If such dumping is not regulated it can hinder industry's development. The new industry, without the size of an established firm may not survive a price reduction and might collapse altogether. The chemical industry being highly capital intensive in nature has a very high fixed cost compared to the variable cost. This makes it difficult for new firms to compete with already established big firms.

The optimum scale of production in the chemical industry is usually very large. A US chemical producer may not be able to operate at the optimum scale if the demand faced in the domestic market is small. Subsequently such a producer will not be competitive enough to sell in the international market. The domestic producer in such circumstances would find it difficult to compete with bigger foreign exporters. It would not be able to match the lower prices offered by bigger foreign firms importing into the US. In this case it might be wise to protect the industry till it is better able to compete in the international market. Once the domestic producer has access to a bigger international market it would be able to produce at an efficient scale of production and compete at lower prices.

However, the above argument assumes a certain pattern of behavior for the protected domestic firm. It assumes that domestic firms would innovate in the absence of import competition. The positive correlation between

competition and innovation is widely accepted. In absence of competition there is little incentive to innovate and grow. Thus, an industry that is promised protection from international competition has the potential to degrade rather than grow. Another assumption inherent in the above argument is that the domestic industry would grow enough to gain comparative advantage in the future. However, the industry might not be able to compete internationally even in the long run, due to lack of natural resources, higher labor cost etc. The industry might just remain in a state of permanent infancy.

Protection does not guarantee optimal behavior from the domestic industry. As an example take the case of the highly protected Australian chemical industry. The firms in the industry undertook investment to diversify to small chemical production units rather than a large-scale production unit. This led to underutilized plants and high costs of production. Quoting from an article published by Acted Consultants. "Sadly, the Altona complex, though very profitable for many years, would have grown substantially more competitive were it not for negotiated deferral of tariff reviews in 1979 by ICI that led to the building of a high cost naphtha cracker at Botany New South Wales that served to divide the small petrochemical industry... A tariff reduction would actually have helped Altona in discouraging that unfortunate investment".³

Another point against the antidumping legislation is the cost incurred by consumers as a result of higher prices for the protected good. Chemicals which serve as intermediate goods raise the cost of production of the final product. The higher cost depending on the demand and supply elasticities of demand and supply, trickle down to the consumers in the form of higher prices. Consumer welfare however, does not play any role in the decision to restrict imports.

³ "Import Tariffs and Protectionism (history)", URL: www.chemlink.com.au, 1997.

TABLE 1
Products for which petitions were filed

Product	Number of cases	year	Number of petitioners
BENZYL PARABEN	2	1990	1
SODIUM THIOSULFATE	4	1990	1
SPARKLERS	1	1990	2
ANTIMONY TRIOXIDE	1	1991	4
HIGH-TENACITY RAYON FILAMENT YARN	2	1991	1
IBUPROFIN	1	1991	1
SULFANILIC ACID	1	1991	1
POTASSIUM HYDROXIDE	3	1992	1
SULFANILIC ACID	2	1992	1
SULFUR DYES	4	1992	1
ARAMID FIBER	1	1993	1
NITROMETHANE	1	1993	1
PHTHALIC ANHYDRIDE	5	1993	4
SACCHARIN	2	1993	1
SEBACIC ACID	1	1993	1
COUMARIN	1	1994	1
FURFURYL ALCOHOL	3	1994	1
GLYCINE	1	1994	2
MANGANESE SULFATE	1	1994	1
POLYVINYL ALCOHOL	4	1995	1
OPEN-END SPUN RAYON SINGLES YARN	1	1996	1
PERSULFATES	1	1996	1
SODIUM AZIDE	1	1996	1
EMULSION STYRENE-BUTADIENE RUBBER	3	1998	2
ACRYLONITRILE BUTADIENE RUBBER	1	1999	2
BULK ASPIRIN	1	1999	1
EXPANDABLE POLYSTYRENE RESINS	2	1999	4
POLYESTER STAPLE FIBER, CERTAIN	2	1999	1
SOLID FERTILIZER GRADE AMMONIUM NITRATE	1	1999	1
SYNTHETIC INDIGO	1	1999	3

4. CHEMICAL INDUSTRY

The main purpose of this paper is to look at the competitive nature of the chemical industry especially for these firms that file for import relief. The paper tries to shed light on the competitive nature of the domestic product market. I look at antidumping cases filed by firms in the chemical industry. The data used in this essay comes from two sources. Antidumping data on petitioning for the period 1990-1995 is provided by Bruce Blonigen, and for the period 1995-1999 the data has been gathered from ITC reports published by ITC.

Table 1, summarizes the antidumping petitions filed with the ITC and ITA. Column 1, lists the products for which the petitions were filed by the US chemical firms. The second column reports the number of AD

cases filed against foreign countries for the import of that particular product⁴. Petitions can also be filed as a group, if more than one firm feels that the industry is being injured by unfair imports. Thus a few firms get together and file a case it reduces the cost of petitioning and also overcomes the free rider issue that might prevent an individual firm from taking action. Table 1 also lists the number of firms that asked for import restriction in a petition. As is evident from the data single firms filed most cases. In 73% of the cases the AD petition was filed by only one petitioner, that is, by a single firm.

⁴ For example, if a US firm files antidumping cases against three countries for the import of 'rice', these would be considered as three cases.

TABLE 2
Number of Producers of the named product

Product	year	Number of producers
HIGH-TENACITY RAYON FILAMENT YARN	1991	8
SULFANILIC ACID	1991	1
POTASSIUM HYDROXIDE	1992	3
ARAMID FIBER	1993	1
NITROMETHANE	1993	2
SACCHARIN	1993	1
SEBACIC ACID	1993	1
COUMARIN	1994	1
FURFURYL ALCOHOL	1994	1
GLYCINE	1994	2
MANGANESE SULFATE	1994	2
POLYVINYL ALCOHOL	1995	3

TABLE 3
Number of cases filed for each product and the decision

Product	year	Number of cases	DECISION
HIGH-TENACITY RAYON FILAMENT YARN	1991	2	A, T
SULFANILIC ACID	1991	1	A
POTASSIUM HYDROXIDE	1992	3	N, N, N
ARAMID FIBER	1993	1	A
NITROMETHANE	1993	1	N
SACCHARIN	1993	2	N, N
SEBACIC ACID	1993	1	A
COUMARIN	1994	1	A
FURFURYL ALCOHOL	1994	3	A, A, A
GLYCINE	1994	1	A
MANGANESE SULFATE	1994	1	N
POLYVINYL ALCOHOL	1995	4	A, A, A, N

This characteristic hints at a lack of competition in the domestic market. From available ITC reports data on the number of firms producing the product in each case was gathered for 40% of the cases. A summary of this data is listed in Table 2. The table illustrates how most of the petitions were filed by highly concentrated industries.

In most cases the single firms filing the petition were the sole producers of the product. Data was available for 21 cases. Of these 21 cases in 9 cases the petitioner was the single producer of the good. In such cases an affirmative decision from the ITC and ITA would eliminate or reduce import competition and subsequently, these firms would face none or very little competition.

Table 3, lists the ITC's final decision for the cases filed. Example: In 1995 four cases were filed (against four different

countries) for 'Polyvinyl Alcohol'. Air Products & Chemicals Inc. filed a petition with ITC and ITA requesting that antidumping duties be imposed against producers of polyvinyl alcohol from Taiwan, the People's Republic of China, the Republic of Korea and Japan. Cases against China, Japan and Taiwan got an affirmative decision. The case against Korea was given a negative decision; ITC decided that the Korean product had a negligible impact on the US industry. Thus, import of Polyvinyl Alcohol from China, Japan and Taiwan would pay antidumping (a 77.4% antidumping duty is to be imposed on Japanese products).

1994 saw an increase in the world supply of polyvinyl alcohol, which pushed the prices down. To what extent the injury to the domestic industry was a result of an increase in overall world supply, or from imports from

the above four countries is a hanging question. In late 1991, Air products had added a 75-million-pound facility at Pasadena, Texas that might have contributed to the excess supply. In cases such as these, restricting import competition can be interpreted as a bail out for a misinformed investment decision by a domestic industry.

Another case where ITC and ITA granted an affirmative decision is that of (PPD-T) Aramid Fibre. The sole domestic producer of Aramid fiber was the petitioner itself, E.I.DuPont. By imposing an AD duty on imports from Netherlands (foreign firm-Akzo/Teijin Twaron) ITC succeeded in discouraging competition in the US market. The world market for Aramid fiber consists only of two producers giving it a duopolistic structure. Thus, Bertrand competition (price competition) would be expected between the two firms where they would gather market share by lowering prices. The affirmative dumping decision was based on such a competitive price cut by Akzo/Teijin Twaron.

In latter years the demand for Aramid fiber rose significantly, exceeding supply. Now both firms are investing in expanding their plant capacities⁵. Restricting the US market⁶ to Twaron has resulted in a division of the international market between the two firms, giving them monopoly power in their own markets. The ITC report supports the above hypothesis. "Strong demand has caused both producers to allocate aramid fiber among various customers." "Both DuPont and

Twaron negotiate with customers individually to price their products based on value-in-use"⁷

US ITC also made an affirmative final determination in the Coumarin case filed by Rhone-Poulenc. It is the only Coumarin producer in Europe and the US, and has also won an AD decision against China under European antidumping laws. China had garnered over 48 percent of the European market while the production of Rhone-Poulenc fell by nearly 60 percent. After the decision imports from china fell significantly, giving Rhone-Poulenc most of the US market.

5. CONCLUSION

The main aim of the paper is to highlight the anti-competitive nature of the US antidumping legislation. By granting import protection to domestic markets with single firms, ITC and ITA might be promoting monopolies at the cost of consumer welfare. This paper raises the following questions. In face of dumped imports should national governments adopt protectionist strategies? Would this protection provide conducive environment for domestic industries to grow or would it discourage competition and distort market conditions? These questions need to be further researched for a better understanding of this issue.

Over the past decade there has been a substantial upsurge in the number of antidumping cases across the world as more and more countries adopt AD legislation. 33 countries were reported to have legislated AD law as compared to 9 countries in 1980. The traditional users (US, EU, Australia, and Canada) now account for only 50% of AD cases as compared to 99% from 1980 through 1985. The spread of AD legislation among various countries makes it even more

⁵ Twaron announced plans to raise capacity at its plant in Delfzijl, Netherlands, by 7,500 tons per year to 18,500 tons per year (operational by 2003). DuPont is investing USD 50 mil to increase production capacity at its plant in Richmond, VA (operational by end-2002).

⁶ The United States is the largest market worldwide for PPD-T aramid fiber, although Europe and other markets are significant.

⁷ The quotes are from "DETERMINATION AND VIEWS OF THE COMMISSION" , USITC Publication No. 3394, February 2001.

important to understand the AD mechanism and its threat to international competition.

REFERENCES

- Blonigen, Bruce A. & Prusa, Thomas J. (2000). Antidumping. *NBER working paper series*, working paper 8398.
- Dumler M. Christopher. (2000). Antidumping laws trash supercomputer competition. Centre for trade policy studies, CATO Institute.
- United States International Trade Commission. (2000). *Determinations and views of the commission-“Certain Expandable Polystyrene Resins from*

- Indonesia and Korea”*. USITC Publication number, 3266.
- United States International Trade Commission. (2001). *Antidumping and Countervailing Duty Handbook*. USITC Publication 3482.
- United States International Trade Commission. (2001). *Determination and views of the commission*. USITC Publication No. 3394.

Author

Author (Nisha Malhotra) is a Graduate Student in Economics at the University of Maryland in College Park, Maryland.