



# The simple analytics of U.S. antidumping orders: Bureaucratic discretion, anti-importer bias, and the Byrd amendment

Simon J. Evenett

*SIAW-HSG, Department of Economics, University of St Gallen, Bodanstrasse 8, 9000 St Gallen, Switzerland  
CEPR, London, UK*

Received 25 June 2004; received in revised form 14 March 2005; accepted 3 August 2005  
Available online 24 March 2006

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## Abstract

Using a standard linear version of the Bertrand duopoly model of competition, I analyse the effect on firm pricing behaviour of three prominent features of the U.S. antidumping system. I identify the circumstances under which these features eliminate dumping entirely as well as their effects on the profitability of the import-competing and foreign firms. The Byrd amendment, which has been the subject of a dispute between WTO members, is found to create price floors for domestic firms and paradoxically to increase the volume and total value of imports.

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*JEL Classification:* F13

*Keywords:* Antidumping; Discretion; Byrd amendment

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## 1. Introduction

As tariffs on manufactured products have fallen with successive rounds of multilateral trade negotiations and the signing of dozens of preferential trade agreements, economic analyses of remaining non-tariff barriers have grown in number (Baldwin, 1970; Laird and Yeats, 1990; Deardorff and Stern, 1998). Anti-dumping statutes and tariffs have featured prominently in this research programme, not least because of the spread of such laws since their introduction 100 years ago, and over the past 20 years in particular (see, for example, the surveys of the relevant literature in Finger, 1993; Blonigen and Prusa, 2001).<sup>1</sup> Moreover, legal practitioners and political

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*E-mail address:* [simon.evenett@unisg.ch](mailto:simon.evenett@unisg.ch).

<sup>1</sup> The global spread of anti-dumping laws and enforcement has been recently documented and discussed in Prusa (2005).

scientists have begun to shed light on the non-market-related determinants of the design and operation of anti-dumping laws and on what might be termed the supply and demand for anti-dumping protection (Boltuck and Litan, 1991; Jackson and Vermulst, 1990; Nivola, 1993; Finger et al., 1982). This relatively restrained scholarly literature has been augmented by blistering critiques and defences of anti-dumping in the print media, at international fora, and elsewhere (see, for example, Bovard, 1991; Mastel, 1998; Eckes, 1995, and just about any open editorial on anti-dumping on the pages of the *Wall Street Journal*).

An important feature of the implementation of anti-dumping laws is that there is considerable room for discretion by administering officials (see, for example, Clarida, 1995; Blonigen, 2003; and the contributions to Boltuck and Litan, 1991). Sometimes this discretion can be exercised in a manner that results in the calculation of foreign market values, dumping margins, and the like that have little or no bearing to the underlying *legal* rationales for the anti-dumping statutes, namely deterring certain types of international price discrimination and foreign market sales below average total costs.<sup>2</sup> This is not to suggest that officials are breaking the law, rather that they may be using the discretion available to them to respond to incentives to supply protection to influential domestic interests and constituencies. Indeed, when the latter are especially aggressive in pressing their case, the weight given to any information supplied by a foreign firm or to the underlying legal concepts that motivate the anti-dumping law may come a poor second and third to the bureaucratic imperative to supply protection. Forward-looking foreign firms may thus want to anticipate the effects of such bureaucratic discretion and temper any expectations as to the likelihood that prices changes on their part may reduce, for example, the likelihood of anti-dumping order being imposed.

This paper focuses on one area where bureaucratic discretion can be very important, namely the calculation of the foreign market value that import prices will be subsequently be compared to *after* an anti-dumping order is put in place, and U.S. administrative practice is used to highlight this point. Although some nations' anti-dumping laws allow for the imposition of *provisional* ad-valorem duties to be levied once an order is imposed, the *final* amount of the duty typically depends on any (non-negative) difference between the implementing agency's estimate of the foreign market value and the prices charged on each import transaction.<sup>3</sup> Using a standard linear Bertrand duopoly model with differentiated products, I show how a foreign firm and its domestic rival might respond to the incentives created by various types of what I term *pure bureaucratic discretion*. By the latter, I mean that the agency sets the foreign market value used for computing the amount of duties owed in a way that is completely independent of (or unrelated to) the foreign firm's pricing behaviour or cost levels.<sup>4</sup> Furthermore, rather than specify the process by which the enforcement agency chooses the foreign market value I show,

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<sup>2</sup> In this regard, the conclusion of one study is worth repeating in full: 'Here we offer a detailed, step-by-step guide to how dumping is defined and measured under current rules. In addition, we identify the many methodological quirks and biases that allow normal, healthy competition to be stigmatized as "unfair" and punished with often crippling high antidumping duties. The inescapable conclusion that follows from this analysis is that the antidumping law, as it currently stands, has nothing to do with maintaining a "level playing field". Instead, antidumping's primary function is to provide an elaborate excuse for old-fashioned protectionism' (Lindsey and Ikenson, 2002).

<sup>3</sup> This is the case in the United States when one affected party asks for an ex-post review of the provisional duties that were originally imposed.

<sup>4</sup> Rather than thinking of the enforcement agency as completely ignoring the either "home market" price of the foreign firm or the latter's average costs, one might consider that the enforcement agency uses whatever legal provisions that it has at its disposal to evaluate data provided by the foreign firm in such a way that validates a pre-conceived foreign market value. Therefore, pure bureaucratic discretion can be associated with the appearance of foreign-supplied information being taken into account.

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