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"Facts available" dumping allegations: when will foreign firms cooperate in antidumping petitions?

Michael O. Moore*

Department of Economics and the Elliott School, George Washington University, Washington, DC 20052, USA

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Abstract

Foreign firms accused of dumping in the World Trade Organization (WTO) system may face punitive duties if they do not cooperate with domestic investigative authorities. The punitive tariffs are typically based on domestic firms' allegations, or so-called "facts available" dumping margins. This paper considers a number of questions relating to "facts available" dumping allegations. Given that governments' use of facts available margins are credible, why do foreign firms still sometimes choose not to cooperate? Furthermore, why do domestic firms, knowing that an administering authority might use their allegations to determine punitive duties, not always announce alleged dumping margins high enough to eliminate all imports? Is it always in the domestic firm's interests to force foreigners not to cooperate and thereby be "punished" with facts available margins? And what is the administering authority's optimal decision concerning compliance costs faced by foreign firms?

JEL classification: F13; K23
Keywords: Antidumping; Facts available; Dumping margin

1. Introduction

Antidumping has been one of the most frequently researched areas of trade policy over the last 20 years. This reflects the fact that antidumping duties are the most common form of import relief under the General Agreement on Tariffs and Trade (GATT) and the current

* Tel.: +1-202-994-6157; fax: +1-202-994-6147.
E-mail address: mom@gwu.edu (M.O. Moore).

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World Trade Organization (WTO) system. Economists have analyzed many aspects of antidumping, both theoretical and empirical.[1]

One area of importance has not received scrutiny in the economics literature. WTO rules (and the GATT before it) allow governments to use dumping margin allegations provided by the domestic petitioners in assessing tariffs on foreign firms that do not cooperate in "unfair trade" investigation. In particular, the Antidumping Agreement concluded in the Uruguay Round of trade negotiations states that:

> In cases in which an interested party refuses access to, or otherwise does not provide, necessary information within a reasonable time or significantly impedes the investigation, [decisions] may be made on the basis of facts available.[2]

An annex to the agreement adds that the authorities will be free to make determinations based on facts "including those contained in the application for the initiation of the investigation by the domestic industry."[3]

The justification for this provision is simple. The calculated dumping margin normally is based on a comparison of the export price with either the price charged in the exporter's home market or its production costs. However, foreign prices or costs are typically privately held information of the exporter so that foreign firms need an incentive to cooperate in an investigation. This incentive in practice has been provided by the potential use of the domestic firm's allegations (called "best information available," or BIA, under the GATT rules) about foreign firms' dumping margin. Because the domestic firm has an obvious incentive to overstate the dumping margin when laying out its case, the exporter faces the possibility of very high duties if it does not cooperate.

Critics of this system's application in the pre-WTO US system have noted that the average dumping margin when BIA was used was much higher than calculated rates. Baldwin and Moore (1991) report that, for the period between 1980 and 1990, the average final dumping margin imposed by the Department of Commerce (DOC), the relevant US authority, using BIA methods was 67% (36 cases), while the average duty based on foreign firm provided information was only 28% (188 cases). One of the main problems in the United States, critics such as Murray (1991), Palmeter (1991) and Finger and Artis (1993) have argued, was that the Department of Commerce often made compliance very difficult for foreign companies (including 200-page questionnaires, tight and inflexible deadlines, requirements to report data using US-style accounting techniques, and on-site investigations of all records by US investigators). In addition, if foreign firms were found by the DOC to be only "partially cooperative," all information provided by the firms could be thrown out, with BIA used in its place. After considering these procedures, many critics saw the BIA provisions as a means by which domestic firms could use the system, not to elicit truthful announcements about foreign costs and

[1] The literature is too large to fully present here. Theoretical analyses include Brander and Krugman (1983), Ethier (1982), Staiger and Wolack (1996) and Hartigan (2000, 2002). Empirical studies include Devault (1993), Finger et al. (1982), Hansen and Prusa (1997), Liebman (2001), Messerlin (1989), and Moore (1992).

[2] Antidumping Agreement (1994), p. 154.

[3] Antidumping Agreement, Annex II, p. 168.