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Anti-dumping and excess injury margins in the European Union: A counterfactual analysis

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Abstract

Previous research has reported evidence of bias in favour of positive injury determinations in anti-dumping procedures of some WTO Members. This raises the question of whether the procedures used also result in inflated *injury margins*. This paper exploits a unique data set of injury margins for 354 EU anti-dumping cases. Application of a counterfactual model yields evidence of excess margins. Results from an econometric analysis suggest that excess injury margins are the result of built-in distortions in estimation procedures, and not due to political economy influences.

JEL classification: F13
Keywords: Excess injury margins; Counterfactual analysis

1. Introduction

Ambiguities in anti-dumping (AD) regulations and practices in general, and those specific to the European Union (EU)[1] in particular, have been subject to extensive analysis (see Finger, 1993; Bellis, 1990; Rycken, 1991; Vermulst, 1987). These studies and evidence from econometric analyses suggest that a major weakness of the system is *injury determination* (see Finger et al., 1982; Schuknecht, 1992; Tharakan and Waelbroeck, 1994). AD regulations of

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[1] The expression 'European Union' (EU) is used throughout to streamline the presentation, although during most of our sample period 'European Communities' (EC) or 'European Economic Community' (EEC) was appropriate.

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World Trade Organization (WTO) Members stipulate that duties can be imposed only in cases where dumping has caused, or threatens to cause, material injury to the like-product (domestic) industry. Article 9.1. of the WTO Anti-Dumping Agreement states, "it is desirable. . .that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry". AD rules of some Members[2] also state that any duty has to be limited to the amount required to eliminate that injury where this is less than the margin of dumping.[3] Furthermore, very low dumping margins should not lead to AD duties.[4] However, the combined effect of these well-intentioned rules is to create a bias in favour of positive injury findings, and inflated injury margins.

Econometric analyses based on the political economy of contingent protection have shown that positive injury findings in the EU (and US) are vulnerable to pressure group influences (see Schuknecht, 1992; Tharakan and Waelbroeck, 1994; Messerlin and Reed, 1995). But the over-estimation of the *margin* of injury has not been analysed so far for large samples. This is an important issue since the decision to impose duties, and their economic effects, clearly depends on injury margins found, which is one of the reasons why injury has attracted interest in the Doha Round.

Our focus is the extent to which excess margins are imposed in the EU. To our knowledge, this is the first analysis of this using such a large sample of cases, and over a period when the European Commission was most actively involved in AD actions (1980–1995). We begin by outlining the methods used by the EU in determining the margin of injury. We then present and evaluate a counterfactual method for injury margin determination that has been used in cases argued before the US International Trade Commission (ITC).[5] We deploy this model to calculate alternative injury margins for all AD cases decided by the EU during 1980–1985. Having calculated margins, we briefly discuss whether the shortcomings of current estimation approaches, and political economy variables put forward by economists can explain the differences between the EU estimated injury margins and those estimated by our model. Our policy-oriented conclusions are set out in the final section.

2. Determination of injury margins in the European Union

2.1. The method followed by the EU

In deciding whether dumping has caused material injury to the like-product domestic industry, the European Commission, like the US Department of Commerce, takes account of a

[2] EU (1994). The reference here is to the Council Regulation (EC) No. 3248/94 of 22nd December 1994. This replaced Council Regulation (EC) No. 2423/88, which in turn replaced Regulation (EEC) No. 2176/84, which replaced Council Regulation (EEC) No. 3017/79. Although there have been further amendments of the Council Regulations, we shall consistently refer to EU (1994) which contains all the Articles which are relevant to this paper. The numbers of the Articles referred to correspond to those in EU (1994).

[3] EU (1994), Article 9.4. "The amount of anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry". India also has the Lesser Duty rule in its statutes. In Australia and New Zealand the administering Authorities have the discretion to use the Lesser Duty rule. The US does not apply a Lesser Duty rule.

[4] According to EU (1994), Article 9.3, "there shall be immediate termination (of the proceedings) where it is determined that the margin of dumping is less than 2% expressed as a percentage of the export price".

[5] Examples in which the CADIC (or its successor COMPAS) type analysis have been performed include: Alcohol from China, Japan and Taiwan: Investigation Nos: 73-1A-726 and 729 (1996); Magnesium from China, Russia and Ukraine: Investigation Nos: 731-1A-696-698 (1995); Soft lumber from Canada: Investigation Nos: 701-1A-312 (1993); etc. Note also that the approach used has been upheld by the Court of Appeals for the Federal Circuit (Document Nos 95-1245, -1257, -1306, -1307). We are grateful to Richard Boltuck for this information.