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ANTIDUMPING FOR SERVICES?

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I. Introduction

The role of services in global production and trade is currently of great interest to governments, businessmen and analysts. This interest is reflected, inter alia, in the fact that for the first time ever services are on the agenda of a global multilateral trade negotiation, the ongoing Uruguay Round. The increasing attention given to services has led to a spate of research on international transactions on services. The topics investigated include the applicability of standard theories of international trade to services; identification of barriers to trade and investment; the effects of intervention and the existence of gains from liberalization; as well as the relevance of the trade policy concepts embodied in the General Agreement on Tariffs and Trade (GATT).[1]

This paper focuses on the last issue, and in particular on the possibility and likely consequences of applying existing antidumping (AD) rules and practices to trade in services. The plan of the paper is as follows. Drawing on the existing literature, Section II briefly reviews the economic effects of AD actions. The focus is both on incentive effects ex ante (i.e., threat effects) and ex post. Section III turns to services, and discusses what implications the distinguishing characteristics of services have for AD policy. AD is, of course, allowed under GATT rules, but the GATT applies virtually exclusively to goods. Services differ from goods, and thus the question arises whether these differences have implications for the applicability and

[1] See Feketekuty (1988) and Stern and Hoekman (1987, 1988) for a discussion of many of these issues and references to the literature.

desirability of AD policies. We conclude that difficulties of measuring and observing services and the need for producer-consumer proximity for services provision to be feasible are likely to result in much greater scope for arbitrary outcomes in services-related AD actions than in goods-related cases. Section IV turns to policy implications, and argues that AD makes very little sense in the services-context, and thus should not be pursued. It then goes on to discuss what type of actions could be taken if it was decided that procedures somewhat analogous to AD should be applicable to trade in services. Concluding remarks are in Section V.

II. Incentive Effects of AD: Background[2]

Antidumping actions are allowed under GATT rules to counter international price discrimination and/or selling below costs of production when such behavior has injured, or threatens to injure, domestic import-competing industries. Dumping occurs when a firm prices a good lower in an export market than it does in its home market (taking into account transport and related costs). This shall be called price-dumping in what follows. Alternatively, if the firm has no or insufficient home market sales, or if sales in the domestic market take place at prices which are below costs of production, dumping occurs if the export price is less than the constructed value, or less than a comparable price in a third country. Constructed value is defined as the cost of production plus a reasonable addition for selling cost and profit. Cost of production refers to what

[2] This section is based in part on Hoekman and Leidy (1989).

economists would call long run average total costs, and not variable or marginal costs. If the export supply price is less than the constructed value, dumping has occurred. To obtain protection, import-competing industries must also show that they are being injured by imports. However, the ("material") injury standard that needs to be satisfied is not a precise one. It is often argued that in practice, investigating agencies may have substantial scope for discretion in terms of determining both the dumping margin and whether injury has occurred. In this Section, we shall focus primarily on the systemic effects of AD, and not on the procedures that are followed.[3]

There are a number of major incentive effects implied by the existence of AD legislation. All of these act to distort the behavior of both consumers and producers, but especially the latter. The distortions of producer behavior include the following. First, by adjusting domestic output an exporting firm can trade off revenue in its home market against expected revenue earned abroad in the event of an AD action. Under plausible conditions it can be shown that when facing the threat of a price-based AD investigation, a firm will have an incentive to increase sales in the home market for any given level of total production (Leidy and Hoekman, 1990). By doing this, the ex post damage of an AD action --if it occurs -- is reduced, as is the probability of an affirmative dumping finding.

Furthermore, the existence of a price-based AD law implies that for the exporting firm the expected marginal revenue in the foreign market declines for any given level of exports. This

[3] For discussions of the procedural aspects of AD actions, see, for example, Caine (1981), Hindley (1988), Norall (1987), and Vermulst (1987).

occurs since the marginal revenue of output allocated to the foreign market is zero in those states where the AD constraint becomes binding. When the AD constraint is binding, ex ante variations in the volume of product shipped abroad can have no effect on the revenue earned in that market ex post. The firm, therefore, has an incentive to reduce shipments to the foreign market for any given level of total production and domestic supply. Thus, the AD threat acts to reduce import competition. Observe, however, that the extent to which import competition declines is diminished to the extent that home-market sales are increased consequent to the introduction of AD legislation.

Under an AD investigation based on constructed value, the exporting firm will not be able to change domestic sales to reduce the dumping margin. This is because long-run average total costs are given and this is usually the basis for the calculation of the dumping margin in such cases. Interestingly, according to Messerlin (1989a), over 90% of recent EC cases against developing countries were based on constructed value. This statistic is consistent with the conclusion in Leidy and Hoekman (1990) that "there exists an incentive for import-competing firms to signal their preference for AD investigations that use an average-cost rule." It is sometimes argued that constructed value based AD is more pernicious than price-based investigations, both because the (potentially) affected exporter has fewer options at his disposal to avoid AD actions, and because they open the door to more ad hoc behavior on the part of investigating agencies.[4]

[4] In general, as AD legislation and procedures are quite complex, there exists a possibility that AD can be used/abused by investigating agencies to maximize the probability of an

Antidumping laws may be used by domestic firms to enforce collusive behavior with foreign firms in the domestic market. Recent research by Messerlin (1989b) and Staiger and Wolak (1989) demonstrates that both in theory and in practice AD threats may be used by imperfectly competitive domestic firms to increase market share in periods of low demand while maintaining higher (i.e., collusive) prices than would obtain otherwise. As the AD threat tends to be a credible one (for reasons discussed in Hoekman and Leidy, 1989), in theory this implies that such tacit collusive outcomes can be maintained without having to actually impose an AD duty. In general, the existence of an AD threat increases the market power of domestic industries and can be expected to result in an increase in their profits. However, these increased profits are outweighed by greater losses to consumers, so that from the perspective of national welfare the country with AD legislation loses.[5]

Another effect of AD threats is that foreign producers will have an incentive to relocate productive facilities. The same factors apply here as in the case where foreign direct investment in the country imposing a tariff is motivated by locating behind the "tariff wall." While causation is difficult to determine empirically, anecdotal evidence is suggestive. For example, apparently Japanese direct investment in the EC increased by 90%

affirmative finding. Such an approach may be driven in part by broader political considerations. To the extent that such a possibility exists, it obviously will influence the attractiveness of initiating an AD case. Hindley (1988, 1989) has made a case that such a situation has prevailed in the EC context, in that EC investigation procedures in certain cases appeared to be biased in terms of both finding dumping and determining the dumping margin.

[5] In this connection, see also the recent investigation by Dixit (1988).

in the year following the introduction of legislation intended to deal with circumvention of AD duties through "screwdriver" or assembly operations (de Clercq, 1988). Additionally, as noted by Webb (1987), AD also embodies incentives to shift production facilities from one foreign location to another. In general, the use of local content rules in conjunction with AD policies will increase efficiency costs even more. One of the more controversial recent developments on the AD-front has been a expansion of the law in certain countries to cover components (input dumping) and the establishment of minimum local content rules. The EC "screwdriver-plant" regulation is again a pertinent example. In general, the result of these production location incentives is likely to be a reduction in competition and more costly production, and thus higher prices for consumers.

The various incentive effects identified above imply that the existence of a AD threat will induce an exporting firm to react ex ante. Ex post, of course, if an AD action materializes, affected firms will be severely constrained. It has been calculated that three years after their imposition, AD measures on average reduce import volumes from the affected countries by about 40%.[6] But, AD actions are discriminatory, and thus will often not be effective once invoked. It is well known that selective protection is usually porous protection, in that incentives are created to circumvent the actions. Thus, the effect is trade diversion and incentives to relocate production.[7]

[6] Messerlin (1989a). See also UNCTAD (1984).

[7] On the ineffectiveness of discriminatory protection in general, see Baldwin, (1982), Crandall (1987), de Melo and Messerlin (1988), and Yoffie (1983). In the specific context of AD, Messerlin (1989a) found for the EC trade diversion effects (both intra- and extra-EC) were substantial.

Because an AD action will hurt the affected exporter, a credible AD threat may be sufficient inducement to persuade exporters to agree to a VER. By doing so the exporter at least is able to capture some of the VER-generated quota rents, while the import-competing firms experience a (short-run) reduction in competition. The problems of VERs are well known. They include the fact that it is not a transparent form of protection and can easily lead to cartelization and monopoly pricing. Of course, these "problems" will be perceived as advantages by import-competing firms.[8]

In summary, a general effect of AD law is to make the world trading environment more uncertain for the exporting firm. This uncertainty leads exporters to recoil from export markets on the margin. To reduce the chance of facing AD procedures, firms will have a tendency to ship less product to the export market (thereby putting upward pressure on the export price), increase sales in the home market (putting downward pressure on the domestic price, assuming a home market exists), avoid underselling of import-competing producers, and relocate productive facilities. The result of all this is that competitive pressure is likely to be reduced as a direct consequence of the existence of AD legislation.[9] This conclusion

[8] In this connection we can also note that AD is sometimes used as a device to monitor existing VERs or minimum price agreements. Steel provides an example. See UNCTAD (1984) and Koulen (1988). Thus, not only can AD be used to enforce implicit collusion (as discussed above), but it can also serve to enforce explicit or formal anti-competitive arrangements.

[9] Hoekman and Leidy (1989). Because the effect of AD laws (threats) and measures is to raise prices in the importing market, this implies the creation of rents for producers paid by consumers. In practice these rents can be quite large (Messerlin, 1989a). It should also be noted that one outcome of the price-fixing effect of AD laws is that firms will be

is strengthened by the recent literature focusing on the use (abuse) of AD to enforce collusive arrangements in specific industries.

III. Applying Current AD Rules to Services: Problems and Likely Effects

The foregoing discussion has painted a rather negative picture of the various possible effects of the existence of AD legislation and its use. The question that then arises is whether similar conclusions can be drawn with respect to the possible application of AD to services.[10] This is not a hypothetical issue. For example, the European Community has recently developed and used a regulation that focuses explicitly on unfairly traded shipping services (Bellis et al., 1988). This section will first review various ways in which services differ from goods, and then go on to investigate the implications of these differences for AD policy.

Generally, there are two major differences between goods and services that are relevant in the context of this paper. First, many services are intangible, and second, they are often not storable.[11] The latter condition implies that consumers and

inhibited from competing on price, and will shift to competing on quality.

[10] We abstract from legal issues pertaining to whether current procedures may be applied to services; whether the EC has the competence to apply trade policy to services; etc. See, for example, Timmermans (1988).

[11] For an authoritative discussion on the differences between goods and services, see Hill (1977). For those unfamiliar with the issues arising in the context of international transactions in services, useful references and a review of the issues can be found in Feketekuty (1988), Sampson and Snape (1985) and Stern and Hoekman (1987, 1988).

producers often have to be close to each other both in space and in time for provision or sale of a service to be feasible.

International transactions in services often must occur via the local establishment of foreign firms in the market of the consumer. The characteristics of services often imply that to be provided or sold, the producer and the consumer need to be in physical proximity to each other. That is, cross-border trade analogous to trade in goods will not be possible. Instead, either the provider will need to move to the location of the demander, or vice versa.[12] As AD actions are focused explicitly on the protection of domestic import-competing industries, in the services-context the question must then be answered what should be understood under "domestic industry" and under "imports."

Presently, foreign-owned firms that have established themselves abroad are considered to be domestic firms for the purposes of AD investigations, as the focus of AD is on injury caused by dumped imports. Such an approach may not be feasible for service industries. One possible constraint is normative. What is the rationale for singling out services that can be traded and exempting those that are provided via establishment? This is a problem especially in those cases where cross-border, "standard" trade is feasible, but some producers have decided to establish abroad. Another possible constraint may be formed by the multilateral agreement on services that is likely to emerge from the Uruguay Round talks. One of the topics for discussion there is how to define trade for purposes of an agreement. If this includes sales by foreign affiliates, the implication might be that actions equivalent to AD will have to focus on foreign

[12] See Sampson and Snape (1985).

producers, no matter where they are located, instead of on imported products.

One problem with focusing on producers instead of products is that there may be no convincing rationale for discriminating between foreign firms that have established a local presence and domestic firms. Presumably both types of firms will be subject to the domestic antitrust or competition laws. Why then should foreign-owned firms face the possibility of AD as well? It has often been noted in the literature that antitrust and AD imply differential standards of behavior for domestic as opposed to international competition. These inconsistencies gain added weight in the services-context. Another practical problem that can be noted in this connection is that it will often be difficult to determine the nationality of the producer, especially in those cases where ownership is distributed across a number of nationalities, including domestic residents. Problems may arise in particular if a large proportion of the firm is locally owned or if the firm is a joint venture.

The intangibility of many, if not most, services leads to measurement difficulties that have implications for AD procedures. In particular, it often will not be straightforward to determine what the unit of output is that is being sold or produced. While this is a problem in itself, it is likely to make it very difficult to implement both cost- or price-based AD investigations. This is because current procedures are based on comparisons between unit prices charged in different markets, or between unit prices and unit costs. Often it will be difficult to establish unit costs or prices for the simple reason that it may not be clear what is being sold. Frequently, the service

that is sold is a bundle of activities or products. The most obvious example is exports of tourism. Furthermore, this bundle may be unique.

It should be recognized that product differentiation tends to be very prevalent for services, and thus there will often be great scope or need for price discrimination. Frequently product differentiation will occur because the services involved are tailored to the needs of the customer. Many services require the producer and the consumer to interact for the provision/sale of a service to be feasible. Because consumers will have varying characteristics, the implication is that the service products involved will be differentiated almost by definition. Given that many services will be unique, it will often be difficult, if not impossible, to find a like product for purposes of comparison.

Difficulties are augmented by the fact that it frequently will be difficult to establish objective criteria that allow the quality of a service to be determined. Price-based AD investigations are constrained to compare identical or like products. In the goods context, in principle - if not always in practice - this is usually not too difficult to do. For services, however, such comparisons require not only that the "unit problem" be resolved, but that units of equivalent quality be compared. In practice this will be very problematical.

AD actions as currently imposed are product-specific, where the product is usually defined very narrowly as one or a number of tariff-line items of the commodity classification used by a country. Such detail is not available in the context of services. Indeed, the only source of comparable statistics on trade in services is a nation's balance of payments. As is well

known, the level of aggregation employed in the balance of payments is very high. Usually information only exists on expenditures by travellers (travel), receipts and payments for the transport of freight (shipment) and people (passenger services), and flows associated with port services. All other services transactions are frequently lumped together in one residual category called "other goods, services, and income." The dearth of detailed statistics is obviously a major constraint on the accurate and objective application of AD actions against foreign service producers.[13]

A consequence of all of the issues that have just been raised is that if AD is to be used on services, a constructed value procedure is likely to be the only feasible one. However, in following such an approach, not only do the problems associated with identifying (measuring) the service "unit" have to be confronted, but additional issues will arise that are similar to those that are familiar from goods-related investigations. Foremost among these is that economies of scale will often be important in many service industries. Thus, fixed costs often may be the major part of total costs, implying that for a certain period prices charged may be below total average costs. This is true especially in cases where learning curves are steep. In that case, maximization of the discounted present value of an expected profit stream may require pricing below current cost, because current production yields not only output,

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[13] For a more extensive discussion of statistics on trade and investment in services, see GATT (1989), Stern and Hoekman (1987) and Hoekman and Stern (1989).

but also cost-reducing experience (i.e., learning).[14]

The characteristics of services will make investigations based on constructed values more difficult and complex than in the case of goods. For example, the allocation of overhead to particular activities may not be possible analytically, because what is produced is often a bundle or joint product. Thus, ad hoc rules of thumb may have to be employed in practice. In general, it appears safe to conclude that the scope for discretion on the part of investigating agencies in terms of determining constructed value is likely to be substantial. This will increase the probability of arbitrary and politically motivated decisions with respect to determining the existence of dumping and injury, as well as the size of the dumping and injury margins. The likely result will be an increase in uncertainty regarding market access, and an increase in the protectionist effect of AD legislation.

The intangibility of services also imposes constraints on possible instruments of protection as well as on procedures. In the context of trade in goods, AD actions generally involve the use of either border measures -- tariffs or quantitative restrictions -- or (price) undertakings by the foreign suppliers. Because of the distinguishing characteristics of most services-- which often will induce provision of the service through means of provider or consumer mobility -- these border measures frequently cannot be employed readily when imposing service-related protection. Thus, alternative instruments such as sales taxes, prohibitions, or subsidies to domestic industries will

[14] Gruenspecht (1988) has analyzed such a situation in the dumping context.

have to be used if the importing government wishes to impose measures. The feasibility (effectiveness) of alternative instruments will depend in part on the type of service involved, particularly the number of alternative modes of delivery that exist. Even where observable cross-border trade occurs, and thus may be reduced by a border measure such as a tax, a quantitative restriction, or a prohibition, such intervention may not be effective if alternative modes of delivery can be employed.

For a number of service sectors it may be quite difficult to impose restrictions on foreign supplied products or sales by foreign owned firms. If trade cannot be observed, intervention will have to focus on sales of the service product (i.e., a tax on consumption) or the activity of producing the service (i.e., a tax on production). However, it may not be feasible to distinguish sales or production of domestic firms from sales or production of foreign-owned firms. Also, specific targetting of new entrants and firms experiencing rapid growth will have a discriminatory effect, in that it exempts those foreign firms that established themselves far enough in the past. As mentioned previously, a general problem is that it may be difficult to distinguish firms using a nationality of ownership criterion, as many firms may be joint ventures or be partly owned by domestic residents.

In conclusion, the application of current AD procedures is likely to lead to many difficulties. In conjunction with the conclusion of Section II that AD policies are likely to lead to numerous distortions, this suggests that attempts to apply AD in the services context are likely to be even more detrimental to national welfare than is the case at present.

IV. Should an AD Policy be Designed for Services?

The original theoretical rationale for AD law can be found in Viner (1923). He argued that AD authority may be needed to protect domestic consumers from predatory (anti-competitive) dumping. The fear was that a foreign firm (or cartel) might deliberately price products low enough to drive existing domestic firms out of business, then establish a monopoly. Once established, the monopolist could more than recoup its losses by exploiting the resulting market power.

As noted by Hoekman and Leidy (1989), for this scenario to occur, the monopolist (cartel) must not only be able to eliminate domestic competition, it must establish a global dominance. Thus, the multinational firm(s) involved must price low in all markets, and be able to deal with the responses of all competitors (price war, for example) during the predation period. Further, even if all competitors worldwide were driven out of business, the predator must be able to prohibit entry in the future.[15] Such barriers to entry usually require the support of a government regulatory agency. It is difficult to conceive of the necessary conditions for predation to be met in most industries, and in practice cases of successful predatory dumping remain virtually undocumented.[16]

More often than not, the predation argument is not the raison d'etre for AD that is invoked by governments. Instead, AD is usually seen by governments as an appropriate response to what

[15] In the case of a cartel, another necessary requirement is that it remains stable. In practice, this requirement has often been difficult to meet for any substantial length of time.

[16] See, for example, Koller (1971) and OECD (1989).

is considered to be an "unfair" trading practice. That is, dumping per se is seen to be unfair. No attention is usually given to why the dumping occurs. We would argue that if dumping is driven only by market forces this cannot be regarded as unfair. Presumably, a necessary condition for unfairness to arise is that foreign exporting firms benefit from an environment that is created or sustained by policies of their government, while such policies are not available to domestic import-competing firms. The implication is that foreign firms need to be "subsidized" in some fashion by their governments (or, alternatively, that domestic firms are burdened by "taxes" that do not affect foreign exporters). For example, if dumping is made possible because foreign exporting firms are sheltered from competition in their home market or benefit from tariffs or NTBs, this could conceivably be viewed as forms of "unfair" (off-budget) aid. Alternatively, foreign exporting firms may benefit from direct subsidies, and perhaps indirect subsidies of various sorts.

It should be noted that these are necessary, and not sufficient conditions for "unfairness" to occur. There may not be any discernable effect on trade at all. It is necessary to be very careful regarding the meaning ascribed to "unfair." In particular, it by no means implies that the policies are contrary to the rules of the GATT. This would obviously depend on the specific policies employed. In the services context, where there is no multilateral agreement concerning trade and domestic policies, what is considered to be unfair by one country may very well be considered as perfectly legitimate by another country. We shall return to this issue below.

The point is that some type of on- or off-budget aid may be the cause of the market segmentation that allows price- or cost-dumping to occur. Thus, when governments speak of unfair trade in the context of dumping, they presumably refer to exports that benefit from "market segmenting" policies. This is unambiguous in the goods context, as such market segmentation is a necessary condition for dumping to occur. Without such separation of markets, arbitrage would ensure that prices across markets are harmonized. In the services context, however, markets will be segmented in any case, whether there is government intervention or not. This is because arbitrage across markets is usually not feasible due to the nonstorable nature of most services. Thus, as mentioned earlier, price discrimination is always an option for individual service providers, as they will price according to the elasticity of demand of consumers in the different markets.

The implication of this is that it will be much more difficult to argue and to demonstrate that dumping of services is the result of explicit or implicit market segmenting policies, given that markets are separated in any event. Nevertheless, government policies may help to further segment markets. If the government of the service exporter restricts participation of foreign providers of comparable services, this is likely to reduce the elasticity of demand facing the service provider in its home market. In general, fewer substitutes implies a lower elasticity of demand, and thus higher prices. Hence, if the service exporter's government restricts the participation (market access) of competing service providers, this enhances the likelihood that dumping will occur. Note, however, that the distortion in this case is different from the one that arises in

the goods context. In the case of goods, government action inhibits arbitrage from occuring, while in the services context intervention has a more indirect effect.

Let us assume for the sake of argument that government intervention in the exporting country has induced dumping, however difficult it may be in practice to prove this. There are then two questions: (1) should there be a reaction to these distortions; and (2) if the answer is affirmative, what form should the reaction take. Whether one should react depends on whether this will increase the importing country's economic welfare. To the extent that dumping is occurring, it is not clear that this will be the case. Given that intervention is likely to lead to an increase in prices, consumers of the product in question will lose, while domestic producers will gain. Numerous empirical studies have shown that in most cases the loss to consumers tends to greatly outweigh the loss to producers. Over time, these static losses will be augmented by the concommittant reduction in competition, incentives to innovate, etc.[17]

The biggest losers of artificially induced or sanctioned dumping are likely to be the exporting country's consumers. Removal of the distortions that allow dumping would usually

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[17] In principle the action taken by foreign governments may result in a transfer of the importing country's consumer surplus and a net increase in foreign welfare. This can occur if an export cartel is formed, for example (Caves, 1979). Such a situation may lead to price-dumping if a small part of the cartels output is allocated to its home market. However, in this case it is not the dumping as such that is a problem. Instead, the problem is the market power that is exerted by the exporters.

increase the welfare of the exporting country.[18] Furthermore, it would benefit third parties as well, as the resulting reallocation of resources would in the longer run increase the country's income and trade.

Invoking AD in response to dumping that is caused by the policies of the exporting firms government is clearly ill-conceived. AD is an inferior instrument to remedy the "unfair" practice because it does not address the source of the problem, i.e., those policies which artificially foster such pricing. To the extent that government induced international price discrimination is considered to be a problem, what is required is that policy changes be implemented at home and abroad that will reduce the scope for it. An AD duty can do little to achieve this end. Even if it could, currently AD investigations in the goods-context do not distinguish between dumping that occurs as a result of government intervention and dumping that is simply the optimal pricing strategy for the foreign exporting firms in a given undistorted market environment. While no information exists regarding the proportion of dumping that is due to government intervention and the proportion that is purely market driven, we expect that even in the absence of intervention dumping of goods will be widespread. There are numerous situations where market forces will make dumping optimal at some point in time (Hoekman and Leidy, 1989). While the issue is an empirical one, and there is clearly great scope for research on this question, once the focus moves to services it becomes much more difficult to separate out the effects of government actions.

[18] Except possibly in the case of monopolistic exporter or an export cartel.

Indeed, it may be impossible in practice. In any event, as argued above, it will rarely be the sole cause of dumping.

Insofar as the underlying problem is market segmentation due to government intervention, the best solution from a world welfare perspective is for the exporter's home government to alter its policies. For example, it could use its anti-trust law to break a monopoly or cartel, or be induced to reduce the level of protection accorded to import-competing industries. As far as services are concerned, the "problem" will usually be due to differences in the regulatory environment. A possibility could then be to attempt to harmonize regulations in the longer run.[19] The political problem, of course, is how to induce the foreign government to follow this route. The most obvious approach is to negotiate directly with the governments concerned.

A constraint on harmonization and bilateral negotiations will be differences in opinion regarding the effect and "legitimacy" of specific policies. Therefore, multilateral agreement on such issues and the approach in general is likely to be required. A major benefit of multilateral negotiations is that it allows parties to agree on which actions of governments might induce dumping to occur. However, it is clear that such negotiations should not be limited to this. Instead, governments should attempt to agree on the broader questions of what constitutes "unfair" intervention.

AD is incapable of addressing the underlying determinants of "unfair" dumping (sources of "unfairness"), i.e., government-sanctioned market segmentation and/or international price

[19] Additionally, attempts could be made to mobilize foreign consumers by informing them about the cost of artificially segmenting international markets.

discrimination. This is the case irrespective of whether the producers or industries sell goods or services. Of course, government intervention and regulation tends to be more prevalent and more stringent for services than for goods-producing industries. However, this does not mean that there will be greater need for AD-type "unfair" trade actions. One reason is that many services will require either long term or temporary establishment of providers in the consuming country. Firms that establish will be subjected to domestic regulations, so that regulatory discrepancies are not relevant.[20]

The conclusion we draw from the foregoing discussion is that it will be very difficult to apply current AD procedures to services, that there are no convincing rationales to do so, and thus that no attempts in that direction should be undertaken. The best approach would be for governments to agree multilaterally on what types of policies should be prohibited and/or countervailable. Even if such an agreement were to emerge in the near future, the approach suggested here might not be followed.[21] Also, achieving multilateral agreement will clearly be a long run affair. Thus, from a practical perspective the question remains as to what policymakers could do if it were to be decided that action analogous to AD should be possible in the case of services.

The problem is what to do in cases where cross-border trade occurs and the governments of foreign exporters create conditions

[20] This presumes that countries follow a policy of national treatment. Of course, in practice this will not necessarily be the case.

[21] Negotiations are currently underway in the context of the Uruguay Round of multilateral trade negotiations.

allowing "unfair" pricing to occur. If, for whatever reason, the approach suggested above is not considered to be feasible, a trade policy response to "unfair" practices would be a second best approach.[22] The goal is then simply to protect the affected industry from trade-related injury, whether this is due to unfair practices (however defined) or not. To the extent that it was considered desirable that trade policies be applicable to services, it is important that procedures be designed to ensure that intervention is in a nation's interest. Services often play an important support and infrastructure role in the functioning of an economy. Transportation, storage, telecommunications, and distribution services are frequently crucial in linking producers to each other and to consumers. The implication of this is that trade policy actions affecting services are likely to have a greater impact on the economy as a whole than actions that pertain to imports of goods. The important linkage and support role of many services implies that it would be very beneficial for nations to investigate the potential effects of intervention in trade. More in particular, the benefits of a public inquiry that focuses on the economy-wide effects of proposed intervention are likely to be quite high. It can be argued that once established, the foreign-owned firm will to all intents and purposes become domestic, as it will create domestic employment, produce domestic value added, and pay domestic taxes. Thus, once established, trade polices should no longer be applicable to these firms.

There are always pressures for protection, and governments

[22] As discussed previously, although trade policy is a sub-optimal instrument in this context, AD is a sub-optimal trade policy.

should be able to intervene. However, intervention should occur in a transparent manner and not be subject to spurious criteria such as dumping. Before undertaking action it is necessary: (1) to determine what could be acceptable criteria (necessary conditions for intervention); and (2) to determine whether intervention or aid is in the interest of the community as a whole. The main policy concern should be to design procedures to deal with trade-related injury in an efficient (i.e., least costly) manner.[23] Following such an approach has implications for research strategies. There is an extensive literature on the theory of optimal intervention. However, this literature has never had much of an impact on policy, in large part because the informational requirements for determining and implementing the optimal policy can rarely be satisfied in the "real" world. What is needed is more research on the design of rules for contingent protection that could be applied in practice, as well as the (incentive) effects of various rules. Furthermore, research could fruitfully focus on the "realities" of a political economy nature that constrain policymakers in both the domestic and the multilateral setting. Often it is not enough to determine what policies could improve on the status quo, but analysis needs to address how such policies could be agreed to or negotiated.

Should there be any criteria for intervening in addition to economy-wide injury (national interest)? Focusing on predation or predatory intent is not very useful. Rules focusing on predatory pricing are likely to inhibit the price competition that is fundamental to the efficient operation of markets.

[23] An initial attempt to address issues of this sort can be found in Hoekman and Leidy (1990).

Indeed, pricing below cost (be it total average costs, variable costs, or even marginal cost) will often not be predatory. In general, if predation is to be the ground for intervention, policies should focus on preventing firms from achieving excessive market power. That is, the incentives to seek to establish a monopoly, be it via a predatory pricing strategy or via alternative means such as collusion, should be minimized. This is a general conclusion to be drawn, as it holds whether there is predatory intent or not. In the literature it is sometimes proposed that in general the appropriate procedure to combat anti-competitive behavior resulting from a strategy of predatory pricing is through anti-trust laws.[24] Such recommendations can be troublesome to implement, however, as they assume that problems related to extraterritorial enforcement can be overcome. But, antitrust laws are likely to be easier to apply to services than to goods. Again, the reason is that many services require the producer to maintain a local presence, which makes it easier for them to be subjected to competition laws.

In addition to economy-wide injury, it could be required that injury be due to actions undertaken by the exporting country's government. This would imply that the goal is not just to protect domestic industry, but also to deal with attempts by governments to shift profits to their countries (along the lines of the new "strategic trade policy"). Of course, small economies will not be able to do much about such practices if they are undertaken by large countries. This points again to the need for multilateral agreement on what policies could be actionable. It also points to the need for multilateral enforcement of

[24] See, for example, Yarrow (1987) and Grey (1986).

agreements. However, this is a subject that is beyond the scope of this paper.

V. Concluding Remarks

In conclusion, AD is an inferior instrument of trade intervention. Its possible application to service industries raises many new difficulties. If current AD procedures were to be applied to international transactions in services, it is clear that there is great scope for arbitrary and politically determined outcomes, rent-seeking, and controversy. Using antitrust and competition laws to deal with potential problems of predatory pricing should, in principle, often be possible in the context of services, because providers will frequently need to move to the location of the consumer. Indeed, to the extent that foreign firms establish themselves in the domestic market, trade policy should no longer be applied to them as they will be subject to domestic regulations and laws. Trade policy is not an efficient or effective instrument to deal with problems underlying dumping, i.e., government actions that allow exporters to dump. It is better to address the source of the perceived problem directly, via negotiations for example. However, such discussions will have to go beyond dumping per se, as this is only one possible result of government induced market segmentation. In any event, our expectation is that in many cases dumping will simply be a rational strategy of exporting firms in a given market environment, and not a consequence of government intervention. This will certainly be the case for most services. To the extent that it is felt necessary to use border measures, the focus should be on trade-related injury

only. Criteria such as dumping should not be imposed.

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