Antidumping And Hte Wto Essay, Research Paper

Antidumping and the WTO

While antidumping doesn’t get a lot of press, it is certainly one of the biggest issues that the World Trade Organization (WTO) is dealing with today. During the recent WTO Ministerial Conference in Seattle, much media attention was given to protesters who were demanding higher environmental standards or international labor standards. Yet, little media attention was given to the issue of dumping. Unseen by the television cameras or news reporters were steel workers and members of other union organizations like the AFL-CIO who were there to defend US antidumping laws. Unbeknownst to much of the general public, antidumping regulation was a major issue in Seattle as it is for the WTO in general. From the inception of the WTO, there has been controversy over antidumping laws from diverse groups.

In 1995, the World Trade Organization was born out of the Uruguay Round of trade talks. The WTO has approximately 140 member countries with new members in the process of joining(WTO website). The WTO can be considered a more formal extension of the GATT (General Agreement on Tariffs and Trade) which has existed for around 50 years. However, the WTO covers trade issues that are not addressed by GATT, such as trade in services and intellectual property rights. The WTO also features binding panel resolutions. Upon joining, countries agreed to accept these rulings; under GATT that was not necessarily true. Still, WTO embodies the same spirit as GATT. It favors trade liberalization and globalization over trade barriers. In particular, one main objective of the WTO is to reduce trade restrictions, and one of the first agreements it reached was a general reduction in tariffs. (Schott, 1). For all of the WTO’s promise to tear down of trade barriers, there is some concern that antidumping procedures are a covert way of hanging on to some of these practices. Since the WTO has come into existence, antidumping cases have flourished.

Adding to the confusion, many cases brought to the WTO panels have not been settled yet. There are many complaints about antidumping procedures. Between January 1994 and July 1995, 238 antidumping measures were enforced by 19 WTO member states(Schott, 221). Most of the countries that enforced these measures were industrialized countries such as the U.S., Australia and members of the E.U.

Under the WTO Antidumping Agreement, dumping is generally defined as selling a product in an export market at a lower price than the product is sold in the exporter’s home country. Dumping can be associated with firms or countries selling goods at less than the marginal cost of production. This action is often called predatory pricing. By keeping their export prices so low, the dumping company can drive its competition out of business so after a time it can gain significant market share, if not outright monopoly. A company is able to do this because in the long run it only has to cover its average variable cost, once it covers its initial fixed costs are covered.

Antidumping is the practice of governments where they place tariffs, quotas or duties on imported goods that they believe are being dumped in the domestic economy.

Technological goods and components, as well as agricultural items are two of the main industries where dumping seems to be most numerous. Consumers are the benefitients of dumping in the short run, the low costs will be appealing to them, and they will buy from the foreign supplier. But as the domestic competitive industries are put out of business, it becomes possible for the foreign firm to increase prices to an appropriate level to maximize profits. Thus, Antidumping can be a necessary measure for countries to enforce in certain cases. On the other hand, if a foreign country dumps products into a market because they have comparative advantage in this particular industry, it might be beneficial to the importing country to specialize in a different area to better achieve their own comparative advantage in the globalized marketplace.

The World Trade Organization neither encourages nor discourages dumping. Rather it only takes action against anti-dumping. The WTO follows the rules of GATT as they read. The Anti Dumping Legislation in GATT reads as such:

Article VI of the GATT provides for the right of contracting parties to apply anti-dumping measures, i.e. measures against imports of a product at an export price below its “normal value” (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing contracting party. More detailed rules governing the application of such measures are currently provided in an Anti-Dumping Agreement concluded at the end of the Tokyo Round. Negotiations in the Uruguay Round have resulted in revision of this Agreement, which addresses many areas in which the current Agreement lacks precision and detail.

In particular, the revised Agreement provides for greater clarity and more detailed rules in relation to the method of determining that a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures. In addition, the new agreement clarifies the role of dispute settlement panels in disputes relating to anti-dumping actions taken by domestic authorities.

On the methodology for determining that a product is exported at a dumped price, the new Agreement adds relatively specific provisions on such issues as criteria for allocating costs when the export price is compared with a “constructed” normal value and rules to ensure that a fair comparison is made between the export price and the normal value of a product so as not to arbitrarily create or inflate margins of dumping.

The agreement strengthens the requirement for the importing country to establish a clear causal relationship between dumped imports and injury to the domestic industry. The examination of the dumped imports on the industry concerned must include an evaluation of all relevant economic factors bearing on the state of the industry concerned. The agreement confirms the existing interpretation of the term “domestic industry”. Subject to a few exceptions, “domestic industry” refers to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

Clear-cut procedures have been established on how anti-dumping cases are to be initiated and how such investigations are to be conducted. Conditions for ensuring that all interested parties are given an opportunity to present evidence are set out. Provisions on the application of provisional measures, the use of price undertakings in anti-dumping cases, and on the duration of anti-dumping measures have been strengthened. Thus, a significant improvement over the existing Agreement consists of the addition of a new provision under which anti-dumping measures shall expire five years after the date of imposition, unless a determination is made that, in the event of termination of the measures, dumping and injury would be likely to continue or recur.

A new provision requires the immediate termination of an anti-dumping investigation in cases where the authorities determine that the margin of dumping is de minimis (which is defined as less than 2 per cent, expressed as a percentage of the export price of the product) or that the volume of dumped imports is negligible (generally when the volume of dumped imports from an individual country accounts for less than 3 per cent of the imports of the product in question into the importing country).

The agreement calls for prompt and detailed notification of all preliminary

or final anti-dumping actions to a Committee on Anti-Dumping Practices. The agreement will afford parties the opportunity of consulting on any matter relating to the operation of the agreement or the furtherance of its objectives, and to request the establishment of panels to examine disputes(WTO-Legal Texts).

By examining the eighteen articles of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994) we can see that there are some discrepancies within examining whether or not a firm is actually dumping into a country. Also the five year maximum for antidumping legislation and enforcement shows that no country can simply enact legislation that is there to stay.

As a result of the WTO’s very complex rules on antidumping, there is some confusion as to when antidumping measures are justified. There have been many questions about whether countries are using the right methods in calculating the margin of dumping and price differences. There is also suggestion that these rules need to be even more specific. It is very difficult in many cases to actually access whether on not a company is actually violating dumping laws. That company may simply have lower cost of production than its foreign counterparts. Even if the company sells its product at a lower price abroad than its does in its home market, it may not necessary be dumping. Factors such as differences in the cost of advertising and selling conditions at home may lead to the discrepancy. Also complex domestic tax structures may also cause the domestic price to be higher than the foreign price. As is the case in many developing nations,skewed market operations and corruption among buyers in the home country may also lead to an artificial inflation of the domestic price( Raghavan). In these cases, one can not simply just compare the face value of the prices in the two countries. The WTO does mandate that these factors be taken into consideration when determining whether or not dumping is ccurring. However, many developing nations and some industrialized nations believe that the industrialized nations do not carry out this obligation in order to gain or keep the political favor of specific groups of voters. Legal experts in these first world nations unfairly pad the cases in favor of their domestic producers. Also many countries, not just the developing nations, contend that the appropriate prices are not be used by [other] developed nations, especially by the US. According to some Japanese analysts, the US only uses a few selective (unrepresentative) price statistics of a few companies in determining the importers’ domestic price. Then, they use this analysis to enact antidumping measures against firms from that country [Japan] in related industries. (Dumler) In possible cases of predatory dumping, other key facts to be looked in to relate to the structure of the industry worldwide and thenumber of firms competing in national markets., economist Christopher Dumler contends. Most antidumping cases involve products and sectors with a considerable number of sellers, and therefore successful predatory pricing strategy is unlikely (Dumler). The steel industry has been a very hot topic in terms of antidumping measures. Historically, the steel industry has been among the major players in many of the US antidumping litigation. In the past few years, steel imports from Russia, Brazil, Japan, and a sprinkling of developing countries have increased by dramatic amounts- by more than 30 percent by late 1998. The US Congress quickly opened up dumping investigations. In March 1999, the US House voted to allow quotas and tariffs on steel imports from various countries. In one case, the Congress to impose duties of over 100 percent on Japanese steel. The US government is also investigating India, Korea, Indonesia, and the Czech Republic and is also threatening antidumping measures. If the Japanese claim that they are simply more efficient is true, the losses produced by the US slapping on tariffs can be shown in the Ricardian trade model. By having the US produce more of a good that it does not have a comparative advantage in producing, it and Japan in general will less well-off. The tariffs and quotas would actually hurt some US industries; the ones that consume steel. Also, one must look at the consumer surplus lost. While one might not think a lot about the consumer surplus loss, it can have a grave impact on the US economy. The automobile industry, construction industries, and the food packaging industries are all other large industries that consume a fair amount of steel. Thus, they would suffer from the increase in price. Griswold in his article “Industry Sets Steel Trap for US Economy” feels that domestic car buyers would be hurt by this increase in steel prices. Also, he believes that an increase in steel prices would make it tougher for huge industries such as General Motors and Caterpillar to compete in world markets. While tariffs benefit the steel industry they certainly do not benefit steel consuming industries.

Although most developing countries believe that antidumping can be legitimate in many cases and would like to use them more for their benefit, they have been vocal about their beliefs that developed countries unfairly are targeting them for antidumping measures. Speaking of behalf of developing countries, trade representatives from Brazil stated in a WTO General Council meeting: “In the period 1987-1997, developing countries were responsible for only 31% of investigations opened. At the same time, they were affected by 62% of the investigations. This situation is even less acceptable given the concentration of measures in some specific sectors where developing countries have developed a competitive industry. One major trading partner [a reference to the USA], for example, in the last ten years, has opened 173 investigations in the steel sector, nearly half of all investigations opened by this Member”( Raghavan ). Thus, developing countries feel that developed countries are trying to keep the third world countries out of their markets. This could result in a stunt of economic growth for these developing countries, as they are unable to develop secure and stable long term industries. “The imposition or even the threat of imposition of AD duties has a serious adverse effect on the functioning of small and medium size firms, resulting in a fall in production, heavy unemployment and declines in incomes and increases in poverty levels.”( Raghavan). more dependent upon their success. And as Ricardian theory shows, a long term decline in the terms of trade will result in a long term decline in real wages. This could mean the developing countries could get poorer and poorer.

The WTO has stated that in cases involving developing countries special attention should be paid to their economic situations when countries consider imposing antidumping provisions: “The WTO’s agreement also calls for ‘constructive remedies’ to be explored.”(Raghavan) However, it is hard to say if this has ever been carried out. India feels that more specific rules should be made for developing nations: “Article 5.8 of the [WTO] AD agreement provides that the volume of “dumped” imports shall be normally regarded as negligible if the dumped imports from a country are less than 3%, unless countries individually accounting for less than 3% collectively account for more than 7%. In view of the liberalization of global trade, and of more and more developing countries entering untapped markets for them, these percentages should be increased to 7% and 15% respectively.”( Raghavan). For third world exporters, they have many handicaps when it comes to fighting anti-dumping cases. One, there is utter paucity of exact information on anti-dumping laws, procedures as per WTO and as practiced by various countries. Two, there are very few legal experts and advisors in this field who have mastered not only the most complicated laws but even the procedures, and also have understood the various complicated technical aspects of WTO and the anti-dumping laws in international trade.

Antidumping measures hit small and medium size firms very hard, because they often don’t have the resources to defend themselves. It is also too expense for firms to pay the astronomical sum of money needed to defend one’s company in the complicated antidumping investigations.-estimated by the Indians to be around 100,000 dollars per investigation. One US legal form was 400 pages long. (Sule). The recent trade round in Seattle has done little to change any antidumping laws. No amount of arm-twisting could get the US to agree to negotiate the WTO’s antidumping laws. With the substantial political pressure from those in the steel industry and other labor unions, 228 U.S. members of the House and Senate signed a document insisting that Clinton and U.S. Trade Representative Charlene Barshefsky should defend existing anti-dumping laws at the WTO meeting in Seattle. The legislation had enough support to pass in the U.S. House of Representatives. Thus, US negotiators flat out refused to discuss any changes to the WTO current laws on antidumping. However, many countries such as Japan and some developing nations tried to tie any discussions of trade involving the Internet, a very important topic for the US, to discussions involving the antidumping laws. The US still refused. The language from some in the US government was very strong regarding the demands for talks about the antidumping laws, especially with regards to Japan . U.S. Under Secretary of Commerce for International Trade David Aaron told the WTO ” If [Japanese and others] don’t back down, then they’ll sabotage the Seattle round We’re just not going to do [negotiate on antidumping]. We can’t do it. We won’t do it”(Reuters). Chile, representing a small developing country, issued their statement about the problem with antidumping laws, a view similar to that of Japan’s: “The aim is to remedy a situation in which anti-dumping measures have in most cases become a projectionist instrument that has nothing to do with anti-competitive behavior”( Schwartz). Among other issues the antidumping controversy may have helped in the futility of the conference and Seattle. Although it was reported that some nations had put antidumping on the preliminary agenda for the next round of trade talks, of course, no finalized agenda was ever approved. So, to date nothing has been done to change or clarify the WTO’s antidumping laws. Moreover there have been few cases on antidumping that the WTO has ruled upon. Japan has filed complaints about antidumping measures placed on its cameras and supercomputers, but the WTO has yet to settle the disputes. Also, South Korea recently filed a complaint with the WTO about US antidumping tariffs against its flat computer screens, invoking the sunset rule that more than five years had elapsed since the US put on the restrictions. The WTO has yet to rule in that case either.

Overall, it seems as if the WTO antidumping agreements need some refinement. There is still much confusion as to whether countries are actually using its standards or not in their dumping investigations. There are many theoretical problems with some antidumping procedures. Allegations of unfair investigations abound. The WTO’s Antidumping Agreement was made to be very complex to help to deal with these problems, it may be too opaque to be able to determine the validity of some antidumping measures. Tariffs and countervailing duties can hurt the domestic countries consumers and can have large negative effects on the small trading partners. This is especially problematic for developing countries that need access to industrialized markets to ensure they can obtain a basis for long-term economic stability and growth and climb out of poverty. The industrialized nations should want this to occur so they don’t have to perpetually give handouts to these developing nations.

No one is suggesting that the US or any other industrialized nation let its industries be unfairly put out of business, if that is truly the case at hand. Still, as the Seattle Round demonstrates, the WTO’s antidumping laws seem to have satisfied too few countries. Given the spirit of its trade barrier reduction goals, the WTO should make consistency one of its main policy making goals.

Bibliography

World Trade Organization Webpage-mainpage

http://www.wto.org/

World Trade Organization webpage – Legal Texts: The WTO Agreements, A Summary

http://www.wto.org/english/docs\_e/legal\_e/ursum\_e.htm#fAgreement

Dumler, Christopher M. “Anti-dumping Laws Trash Supercomputer Competition.” Cato Briefing Papers. 14 Oct. 1997.

http://www.cato.org/pubs/briefs/bp-032.html.

Griswold, Daniel T. “Industry Sets Steel Trap for U.S. Economy.” Cato

Center for Trade Policy Studies Articles. 23 October 1998.

http://www.freetrade.org/pubs/articles/dg- steel.html.

Hindley, Brian and Patrick A. Messerlin. 29 Nov. 1999. http://www.aei.org/bs/bs7306.htm.

“Japan Wants New Trade Talk.” Reuters. 29 Oct. 1999.

http://cnnfn.com/1999/11/29/worldbiz/wires/japan\_wto\_wg/.

Raghavan, Chakravarthi. “Call for Revision of Anti-dumping, Subsidy Rules. ” Third World Network.

http://www.southside.org.sg/souths/twn/title/dump-cn.htm.