

TRADING REMEDIES TO REMEDY TRADE: THE NAFTA EXPERIENCE

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INTRODUCTION

The Leycegui and Cornejo paper is a very useful compendium of trade actions and should be required reading for anyone seeking to understand the arcane world of anti-dumping, countervailing duty and safeguards. The authors have done a first class job of simplifying many complex cases involving multiple countries and obscure products into useful summary tables. Their analysis allows us to discern patterns and reach meaningful conclusions on the operation of NAFTA's trade remedy regime.

Before turning to the important issues raised in the paper, I should declare my biases. I will play the predictable role that is expected of trade policy analysts from Canada and look for ways to reform the NAFTA trade remedy regime. I truly believe that unless we disarm our trade remedy arsenal, we cannot claim to have an open trading regime within North America. If there is any doubt of this, we only have to recall Pieter Kleinschmidt's comments at the workshop on the terrible chill that even the remotest threat of trade action can have on the business activity. The trade remedy arsenal is the largest impediment to free trade within North America and, as such, deserves serious attention.

The problem is quickly becoming bigger than merely a continental one. Antidumping used to be the purview of only a small handful of developed nations. There are now 64 countries with dumping regimes in place and the list continues to grow. India instituted 55 antidumping measures in the year 2000 alone. There is nothing that should better focus a government's mind on anti-dumping reform than the prospect of its exporters being hit with trade actions in every country in which they do business.

The Leycegui and Cornejo analysis provides plenty of material for those contemplating reform of the system. Their statistics on the number of cases initiated and case outcomes raise interesting questions on the importance of institutions and legal standards in the three NAFTA countries. I will consider some of these.

OBSERVATIONS ON THE ANALYSIS AND RESULTS

I was surprised to learn that Canadian initiations were far more likely to end up with a positive ruling and result in the imposition of anti-dumping duties than were the U.S. or Mexican regimes. One explanation could be that Canadian agencies apply a lower dumping and injury threshold. However, the authors note that Canadian determinations were also more likely to be upheld by NAFTA panel review than were those of Mexican or the United States. There are a number of possible reasons for this outcome. It is conceivable that the Canadian Customs and Revenue Agency is more adept at discouraging weak cases than the Department of Commerce. A different standard of review, since NAFTA panels are meant to apply domestic legal standards, could explain Canada's better record with panel reviews. These are important issues when considering the reform of NAFTA's trade institutions.

The paper allows us to consider whether the NAFTA has lessened the use of trade remedy actions within North America. Leycegui and Cornejo conclude that all three countries are far less likely to institute anti-dumping, countervailing duty and safeguard actions against their NAFTA partners than would be suggested by the import statistics. For example, the United States accounts for 65 per cent of Canada's imports but only 21 per cent of its anti-dumping and countervailing duty initiations. Imports from Mexico account for less than 2 per cent of anti-dumping and countervailing duty actions in Canada but 3.5 per cent of Canada's overall imports. Whether this is due to the NAFTA *per se* or for other reasons is difficult to say. Trade actions against NAFTA partners, and particularly against U.S. exporters, tend to be hotly contested and very expensive. This, combined with a possible desire to minimize acrimony in the North American trading

relationship, might explain the proportionately small share of actions against NAFTA partners.

The paper also shows that trade remedy actions initiated by Mexico, Canada and the United States against other NAFTA members are less likely to result in the imposition of duties. The binational review process is one explanation for this. I daresay that a lot more attention to detail probably goes into a determination affecting imports from another NAFTA partner than if the imports originate in India, China or another offshore source. One reason is that exporters from the developing world are less likely to pursue avenues for legal review of injury and dumping determinations. Another explanation is that geographic distances and a lack of knowledge of North American trade institutions make it more difficult for non-NAFTA exporters to present a strong case in the first place.

In the end, whether it is attributable to the NAFTA rules and institutions or whether other factors are at play, the paper suggests that intra-North American trade is more secure from trade remedy actions than trade with other parts of the world. This trend is likely to be reinforced in the future as many other countries implement domestic trade remedy regimes. Imperfect as the Mexican, U.S., and Canadian systems are, they probably provide more balance and procedural fairness than regimes in some other parts of the world.

The paper compiles some valuable time series data as well as information on industries that are the most frequent users of antidumping. While the steel sector is the biggest client overall, agriculture is terribly important in the NAFTA context. There is huge scope for reform here, if the political will exists. Rick Barichello's paper for this workshop outlines the many problems that exist in dumping cases involving agriculture. The first is the use of constructed cost methods for normal value determinations. The constructed cost approach, which makes no sense in economic terms, virtually guarantees astronomical dumping margins. It is inconceivable to think that a commodity product like tomatoes, where a cent or two can make the difference in purchase decisions, would attract dumping margins as high as 76 percent.

CONCLUSIONS

The following conclusions add my own cynical views to Beatriz's much more optimistic and constructive thoughts on what it would take to diminish trade remedy actions among NAFTA partners. In my opinion, a diminishment will occur when:

- There is genuine reform to the regime.

This could happen by changing the way dumping margins are calculated, by introducing a stronger causality test in the assessment of material injury, by providing a clearer definition of material injury by requiring the investigative authority to explicitly take public interest issues such as effects on domestic competition into account, and by establishing a higher standard for reviewing authorities. I am not optimistic that this kind of serious reform will occur in the near future.

- The second way diminishment could occur is by solving the serious over-capacity situation in the steel industry.

It is no secret that biggest customers of the trade remedy system are capital intensive, high fixed cost industries. You don't see the biotech industry looking for antidumping findings. Fix steel through some combination of government action and industry leadership and we will fix a lot of the problem. It follows that if the steel industry is less dependent on antidumping protection, the steel lobby would be less resistant to reforming the system. Only then might it be possible to begin implementing the kinds of changes I listed above.

- Third, trade actions would diminish if we could evolve to a situation of more managed trade.

I don't necessarily mean managed by governments. It could be spearheaded by industry participants on their own. The steel industry has shown signs of uniting against a common foe — Eastern European, Asian and EU exporters— and have tended to leave other NAFTA countries out of recent

trade actions. The recognition that we can find common ground with producers in neighbouring countries, even if it is to unite against other producers, at least constitutes some progress.

- Finally, we must remove subsidies and other distortions that interfere with the natural arbitrage which would otherwise work to equalize prices across borders.

The sugar industry is a case in point. Massive production subsidies, price supports and import barriers in the United States and Europe encourage over-production. The resulting surpluses are sold on world markets, contributing to low and volatile global prices for both sugar and high fructose corn syrup. Dumping actions are one of the only defenses available to producers in unprotected markets. Remove the market distortions and there would be less need for antidumping measures.

Again, my compliments to the authors on a most interesting paper. It is a very useful resource to both practitioners and trade policy analysts looking to improve the NAFTA antidumping regime.