

If an exporter prices his product to meet the requirements of the import market in order to carry out these and other normal competitive practices, he can, nonetheless and unlike his local competitors, run afoul of the importing country's antidumping regime. There is no requirement to determine predatory intent or capability. This is bad economics and bad public policy.

The significance of the predation concept in the antidumping debate is neatly summarized in a 1991 study:

The underlying assumption of the antidumping laws is that dumping is justifiably prevented because its costs, i.e., the injury it causes to producers, exceed its benefits to users who acquire low priced dumped goods. This assumption is reasonable enough if dumping is predatory and hence makes a market less competitive; but it is not if dumping [technically defined as sales below home market price] is nonpredatory and enhances competition. The problem ... is that a law which condemns all "dumping" that causes injury to a domestic industry will invariably snag in its net both predatory and nonpredatory dumping.¹²

Current work in the OECD further underlines the importance of this distinction. One draft study focusses on 387 antidumping cases initiated by European Community authorities between 1980 and 1989 and applies five tests or "screens" in an effort to determine whether predation is likely. The first screen involves a proxy for "dominant position", on the assumption that a foreign firm with a small market share in the EC is not likely to behave as a predator. The first test measures whether all foreign firms subject to a specific antidumping case account for a forecasted aggregate market share of 40% or more. Sufficient data were available to apply this test to 297 of the 387 cases. Of the former number, 205 cases failed to reach the threshold and were eliminated. The second screen filters out cases terminated by negative antidumping determinations, on the assumption that the failure to identify dumping makes it highly unlikely that the trading practice in question can be considered predatory. This test eliminates another 5 cases. The third screen filters out any case involving four or more different foreign countries, given the unlikelihood of joint predatory behaviour due to difficulties in coordinating marketing strategies among firms spread across several countries. This approach eliminates another 50 cases. The fourth test considers the remaining 37 cases and screens out any involving eight or more foreign firms. This filter eliminates 10 more firms. The final screen introduces a quantitative criterion (a high domestic industry concentration level in the EC that might provide an environment in which injury from dumping could

¹² Chambers of Commerce, "Competititon (Antitrust) and Antidumping", p.16.