2. The Devil We Know

Antidumping procedures have been around in one form or another for several generations. Canada helped to invent and, over the years, to refine this instrument. Ours was the first country to enact an antidumping law (in 1904), and we have been among the most active users internationally.[5] The antidumping system has not been utterly irrational as some acerbic critics would portray it. Moreover, there is merit to asking whether the antidumping warts that are visible to all are sufficiently incurable as to require its holus-bolus replacement with the new Grail of national competition regimes.

Yet, the old familiar approach clearly suffers from serious inadequacies that suggest major surgery, at least, is necessary. Dumping occurs when a firm introduces a product into the commerce of another country at less than its "normal value", that is, when the export price is less than the comparable price, in the ordinary course of trade, for the same product when sold domestically in the exporting country. In GATT terms, there are three possible methods for establishing the "normal value" of a specific good: its home sale price, a representative price for the like product when exported to a third market, or a "constructed value" comprising the cost of production (both fixed and variable) plus a "reasonable" amount for administrative, selling and any other costs and for profits. This third approach has become increasingly favoured.[6] In practice, the regulatory authority will use the constructed value approach to build the required value whenever the price of the good in the exporting or third country market is not known, or when the adequacy of such price data is in question.

Antidumping duties may be imposed when the dumped imports (whatever methodology is used to determine "normal value") cause or threaten to cause material injury, or the material retardation of the establishment of, a domestic industry in the importing country. This procedure establishes the necessary "causal link" between the dumped goods and injury to the domestic industry.

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[5] According to a GATT registry, during the period between 1983-84 (July to June) and 1992-93, contracting perties initiated 1,670 entidumping ceses, of which Canade accounted for 225, the U.S. for 430, the EU for 252, Austrelie for e remarkable 472, other developed countries for 72 and developing countries for 166 (with e significent increese in use since 1990).

[6] See Leure D'Andree Tyson, **Who's Bashing Whom? Trade Conflict in High-Technology Industries**, Institute for Internetinal Economics, Weshington, D.C., 1992, p.268; end OECD, "Antidumping and Competition Policy: Competition and the EC Antidumping Reguletions", DAFFE/CLP/WP1(94)1, peregraph 13.