

This concept implies the support of home country authorities through the preservation of tariff and non-tariff barriers, and perhaps a deliberate policy of not enforcing domestic anti-trust policy. To remedy this problem, trade negotiations can lower the tariff and non-tariff barriers protecting the home industry in the exporting country from off-shore competition, thus reducing the scope for supra competitive profits earned at home and used to finance low-cost exports. Within a free trade area or common market, the scope for this form of dumping is reduced. Moreover, greater international cooperation with regard to competition policy (including stronger domestic enforcement) will also be necessary to address this concern adequately (the U.S.'s 1989-90 Structural Impediments Initiative with Japan was a bilateral manifestation of such activity).

Anti-dumping procedures can and do address cases of predatory pricing by exporters in importing countries. On the other hand, competition policy can also combat this problem. More active international antitrust cooperation could make further gains with respect to predatory pricing as well as strategic dumping by seeking to prevent abuse at the source through the greater use of the "positive comity" concept. Under positive comity, if the country where the dumping occurs (or a third country suffering trade diversion because of the dumping) so requests, the country in which the firm undertaking dumping is based accepts the commitment to investigate whether the dumping results from an anti-competitive situation. A September 1991 agreement between the U.S. and the EC includes such a provision. Canada is actively seeking to establish the same procedure bilaterally with the U.S. and the EC.³⁹ We should extend this work to Mexico in light of NAFTA implementation. The ultimate test will come through efforts to extend this pro-active cooperation to Japanese antitrust authorities.⁴⁰

Positive comity could also help to address possible abuses in intra-firm trading, but only as part of a process of greater overall international cooperation among trade and competition policy authorities. Cross-border transfer pricing may include the dumping of imported inputs between the parent company and a subsidiary. Anti-dumping policy has attempted to adapt to this case through the development of rules on circumvention, whereby authorities in the importing country may challenge the operation of so-called screwdriver assembly plants located in the import market if

³⁹ In the case of the U.S., positive comity builds on the cooperative basis already established through a 1984 Memorandum of Understanding on antitrust notification and consultation, and the 1990 Treaty on Mutual Legal Assistance in Criminal Matters.

⁴⁰ A succinct U.S. view on the distance yet to travel to encourage the vigorous application of competition policy in Japan can be found in James F. Rill, "Statement Before the Senate Judiciary Committee Concerning Japanese Competition Policies and the U.S. Response", (July 29, 1992).