

Michigan Journal of International Law

Volume 1 | Issue 1

1979

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Recommended Citation

Gary Saxonhouse, *Antidumping Law in Japan*, 1 MICH. J. INT'L L. 245 (1979).
Available at: <https://repository.law.umich.edu/mjil/vol1/iss1/14>

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Antidumping Law in Japan

GARY SAXONHOUSE

The Japanese antidumping law neither works nor is it practiced. Until very recently, it has been a case of managed economy, with extensive government-business interaction obviating the need to use antidumping laws. While some legislation has been on the books, there's never been an action filed under the available legal framework for antidumping actions.

There are a number of pieces of Japanese legislation, all more than twenty-five years old, which provide a framework for dumping actions. Japan has an antimonopoly law called the Act for Prohibiting Private Monopolies and for Securing Fair Trade.¹ This law was enacted during the occupation period in 1947, and it bears—as one might expect during the American occupation—considerable American influence. It stipulates dumping as a type of unfair trade practice, and states that it involves selling at unfairly low prices. This section of the law is quite symmetrical—it also treats selling at unfairly high prices as an unfair trade practice. In this particular statute no distinction is made on the basis of the domestic or foreign origin of the product. Nonetheless, many Japanese legal commentaries on this unused piece of legislation contend that it is meant to apply to dumping behavior by foreign producers. We don't really know because there has never been any action under the Act.

The law charges Japan's Fair Trade Commission, which is its governmental antimonopoly body, with administering this law. In 1953, the Commission acknowledged that unfair prices are prices which diverge from costs plus normal profits. It then observed, however, that such prices are not necessarily illegal under antitrust law. Only if such prices are injurious to Japanese welfare are they considered disruptive and is action deemed necessary. The Commission has not really defined what is meant by "injurious" or "disruptive"; rather they give one example of what would be injurious and disruptive:—that is, regional price discrimination.

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There is a second piece of Japanese legislation which is part of the legal framework within which dumping actions might be initiated, the Export-Import Trade Act, enacted in 1953.² Article 30 of this Act grants Japan's Ministry of International Trade and Industry full power to intervene in the case of disruptive imports by setting both prices and quantities of these imports. Again, "disruptive imports" are not defined. This particular Act has never been used in connection with dumping, however, there have been many other actions taken under this piece of legislation, and this is a major reason why no specific antidumping actions have ever been initiated in Japan.

The third and probably most relevant piece of legislation is Japan's Tariff Rate Act.³ This Act is quite old; indeed, many sections of it go back to the very early decades of the twentieth century. It specifically enables the Japanese government to impose offsetting duties when imports are coming in at less than fair price. They're allowed to do this in a case where there is damage to existing industries, and, interestingly enough, in a case where such imports constitute an obstacle toward the establishment of a new industry. There is a developmental character to the law, and if import prices are such that they prevent the establishment of an industry, it would appear that action could be taken. Under the United States antidumping law, once dumping is found to have occurred, the duties imposed on the importer are equal to the difference between the imported price and the home market price. But under the Japanese Act, once dumping is found, the duties imposed are equal to the difference between the imported price and what is considered to be the fair price. This same Act allows for an industry petition and industry submission of evidence, and for independent government action. The Act also provides for temporary penalties after the petition has been accepted; if the petition is accepted, the temporary penalties are imposed while the government carries on its investigation. These temporary penalties or duties are limited to a period of six months. And then (as must be common with legislation in all countries), if it is found that there is no dumping, the money collected as a temporary penalty is returned.

If the government does decide, as a result of its investigation, that dumping has actually taken place, the Act provides that the Japanese tariff can be permanently increased. Where dumping occurs for a product which has been subject to a tariff reduction under a GATT agreement, this piece of Japanese legislation provides that Japan should withdraw this product from the agreement. There are quite a few other provisions of this Act which go into how investigations should proceed.

The discussion of these three Acts is, of course, all quite theoretical. In common with many of the statutes all over the world, they're rather sketchy. These three pieces of legislation haven't been fleshed

out at all by actual practice or litigation. The reasons that no dumping actions have ever been initiated in Japan are really not very surprising. Dumping only occurs in markets which are open; if a market is protected only by a nonprohibitive tariff, you will get dumping actions. In Japan, until the early 1970s, for most purposes there were no markets in any product line where there was anything like competition between imports and domestically produced products. Since the early 1970s competition has produced some uncomfortable moments for quite a few Japanese industries, but Japan has until very recently not responded. Japan is in so many instances a target of dumping actions taken by other countries, so for Japan to initiate dumping actions of its own might seem a bit impolitic, and might seem to legitimate the aggressive use of such statutes by others. For example, in 1975 and 1976 when Japanese silk producers were suffering very greatly from competition by Korean and Chinese imports, the Japanese response was really quite different. They negotiated an orderly market agreement, used special government purchasing agencies to deal with the problem, and made no reference to any of the antidumping statutes. That was in 1975 and 1976. In 1977, for the very first time, producers of chemical fertilizers in Japan drew up a petition—or began to draw up a petition—against cheap American imports and presented this petition to the Japanese government, but the government did not act on it and discouraged the Japanese producers from pursuing it. Significantly, even as this was being done, American exporters raised their prices, so it did have some impact. Thus, there was a reaction on the part of the offending party.

This year, also for the first time, Japan's Ministry of International Trade and Industry will actually carry out its first two investigations under the provisions of the Tariff Rate Act. The first investigation will be against ferro-chrome products from South Africa, Sweden and Brazil. There are five Japanese ferro-chrome producers which are now preparing a petition. The Ministry of International Trade and Industry has not discouraged this petition, as happened in the case of chemical fertilizers; and since the European Community and the United States have acted on this product line they probably felt uncomfortable about dismissing out of hand the claims of the Japanese companies. In all likelihood there may be another investigation against Taiwanese and possibly also against American producers of acrylic staple fibers.

As the modes of operation of the Japanese economy continue to more closely resemble those of other advanced industrialized countries, and resemble less a managed economy, there will be increased use of antidumping statutes. Even though the legislation under which many of these actions will be taken bears something of an

American imprint, the procedures will probably reflect more the European flavor of negotiated settlements than the American legalistic practice.

NOTES

1. *Shiteki dokusen no kinshi oyobi kōsei torihiki no kakuho ni kansuru hōritsu*, ROPPYŌ ZENSHŌ 2437 (1978). See generally Imamura, *Dokusen kinshi hō*, HŌRITSU GAKU ZENSHŪ 52 (1968).
2. *Yushutsu-nyu torihikihō*, ROPPYŌ ZENSHŌ 2647 (1978).
3. *Kanzei teiritsuhō*, ROPPYŌ ZENSHŌ 751 (1978).