Annotated Bibliography 1965-78

Michigan Journal of International Law

Follow this and additional works at: https://repository.law.umich.edu/mjil

Part of the International Trade Law Commons, and the Legal Writing and Research Commons

Recommended Citation
Available at: https://repository.law.umich.edu/mjil/vol1/iss1/17

This Bibliography is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
Annotated Bibliography
1965–78

Dumping frequently has been treated in legal literature as a subject comfortably reviewed, from abstract economic theory to administrative practice, within a single law review article or note. As a consequence, many authors produce lengthy overviews, often duplicating the efforts of others.

The annotations below point to areas of particular strengths and weaknesses in the legal writing on the subject from 1965 to 1978. This allows the reader to move quickly to the leading discussions, without undue labor on repetitive pieces. The topical headings should not be considered airtight compartments. As noted, many authors attempt to cover every aspect of the problem.

DUMPING THEORY AND POLICY


Barceló, John J, III. *Antidumping Laws as Barriers to Trade—the United States and the International Antidumping Code*, 57 Cornell L. Rev. 491–560 (1972). Barceló argues that mere price discrimination cannot be regarded as predation; hence, antidumping, as anti-price discrimination law, is protectionist rather than procompetitive. A lengthy review of the Antidumping Code follows, highlighting areas in which conformity with the Code would reduce protectionist potential.


Discussion of economic theory, including Viner's work, notes the destructive potential of dumping as a vehicle of unfair competition; measures classical economic thought against current trade patterns.


General Administration and Procedure


Davis, Frederick. The Regulation and Control of Foreign Trade, 66 COLUM. L. REV. 1428-60 (1966). Introduction to "the administrative law universe of foreign trade regulation." Lucid and comprehensive as to legislative remedies available against foreign merchandise as of 1966.


JACKSON, JOHN H. LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS. St. Paul, Minn.: West Publishing Co. (1977), pp. 691-753. Examines antidumping as one of the functional elements in international economic regulation; integrates national and international antidumping law. Also includes extensive excerpts from I.T.C. decisions.


LAW AND POLICY IN INTERNATIONAL BUSINESS. Effective Enforce-


—. Yearly administrative review of Washington activity includes concise summary of antidumping measures of Treasury, Customs, and ITC. Located at:


McDermid, John F., & Foster, David F. The U.S. International Trade Commission’s 30-Day Inquiry Under the Antidumping Act: Section 201(c)(2), 27 MERCER L. REV. 657–80 (1976). The authors examine the “30-Day Fast-Track” proceedings available to Treasury, comparing the scant legislative history with Treasury and ITC administration of the section. They conclude that Treasury will utilize the “fast-track,” while the ITC discourages use through a literal reading of “possibility” of injury. They also argue that judicial review of fast track determinations is not available.

Metzger, Stanley D., & Musrey, Alfred G. Judicial Review of Tariff Commission Actions and Proceedings, 56 CORNELL L. REV. 285–341 (1971). Assessment by former ITC Chairman and staff counsel, urging more limited scope of judicial review of ITC antidumping determinations. Their argument is set out with extensive quotation from relevant cases; it balances literature which stresses policy considerations in calling for broader review.

measures as encouragement of ITC independence; ITC antidumping powers are incorporated into the analysis.

Schwartz, Warren F. *The Administration by the Department of Treasury of the Laws Authorizing the Imposition of Antidumping Duties*, 14 Va. J. Int'l L. 463–85 (1974). Proposes reforms in Treasury administration of the antidumping laws, including: allowing counsel to evaluate data used by Customs in conducting their investigation; a single agency to determine both LTFV and injury; and limitation of dumping findings to firms with “a significant number of sales in contravention of the law.”


Styn, Ronald L. *Antidumping Act: Administration and Proposals for Change*, 17 Stan. L. Rev. 730–49 (1965). A brief but complete introduction to administration of United States antidumping legislation, including: LTFV determinations, aggregation of complaints and injuries, the meeting-competition defense, retroactive assessment of duties, disclosure of information to the ITC, and judicial review of negative LTFV determinations or injury findings. The author presents a pragmatic approach to fine-tuning the law, yet raises some philosophical questions regarding United States free trade policy.


PRACTITIONERS' GUIDES


de Kieffer, Donald E. *How to Prepare an Antidumping Complaint*, 9 *A.B.A. L. Notes* 67–70 (1973). A practical guide to drafting an antidumping complaint. (Current Regulations should be consulted.)


INJURY STANDARDS

Baier, Lowell E. *Substantive Interpretations under the Antidumping Act*, 17 *Stan. L. Rev.* 409–62 (1965). Well-documented analysis of the traditional Antidumping Act injury criteria. The author compares domestic and international price discrimination law (focusing on the Robinson-Patman Act and the Antidumping Act) and analyzes the compatibility of United States antidumping law with classical ideas of United States trade policy. The article provokes serious reflection on the goals of world trade, the objectives of antidumping law, and the interpretations of the law which will attain trade goals.

import growth or market penetration, domestic output trends, and domestic price trends. He also reviews policy changes of the period, changes designed to increase the number of affirmative injury determinations.

**New York University Journal of International Law and Politics.** *Innovation and Confusion in Recent Determinations of the Tariff Commission under the Antidumping Act,* 4 N.Y.U. Int'l L. & Pol. 212–39 (1971). A critique of the injury determinations of the ITC. The author notes the tension between Treasury and ITC injury determination, concluding that Treasury proceedings are less onerous, yet have the same effect, viz., revision of prices and cessation of LTFV imports.


**Texas International Law Journal.** *The Antidumping Act of 1921: Primary Lead Metal and the Injury Standard,* 10 Tex. Int'l L.J. 357-73 (1975). This Comment treats ambiguities in the language of the Antidumping Act of 1921 in light of the reformulation of the injury standard in *Cast Iron Soil Pipe from Poland* (1967), with special reference to the procompetitive aim of the Act. Maynard examines the legislative history of the Act, and finds that discretionary interpretation of key language (e.g., injury) has permitted the Act to be used as a barrier to imports, allowing United States industries to resist legitimate foreign import competition. He recommends that the Act be amended to clarify its procompetitive aim and to bring it into conformity with GATT.

**University of Pittsburgh Law Review.** *Comparison of Standards for Injury Under Escape Clause Procedure and the Antidumping Act,* 29 U. Pitt. L. Rev. 435-45 (1968). Comment finds little practical difference between antidumping and escape clause injury standards, although causality may be more difficult to show under escape clause provisions.

**Unfair Competition and Antitrust**

Adams, Walter, & Dirlam, Joel B. *Dumping, Antitrust Policy and Economic Power,* 14 Bus. Topics 20–29 (1966). The authors express concern that antidumping legislation is being converted
into a protectionist tool. Fearing a whittling away of competitive guidelines, the authors explore the proposed Herlong-Hartke bill (1965), which would have set a standard based on injury to competitors rather than injury to competition.


**Epstein, Barbara.** *The Illusory Conflict Between Antidumping and Antitrust,* 18 ANTITRUST BULL. 1-22 (1973). In a frequently cited article, Epstein expounds the minority view that antidumping enforcement facilitates a competitive world economy, suggesting that a firm must have monopoly power to dump.

**Fischbach, John T.** *The Need to Improve Consistency in the Application and Interpretation of Section 337 of the Tariff Act of 1930 and Section 5 of the Federal Trade Commission Act,* 8 GA. J. INT'L & COMP. L. 65-80 (1978). The statutory language of § 337 and § 5 are virtually identical. However, the interpretation and enforcement of the statutes by the ITC and FTC is different. The author, an ITC employee, discusses the bureaucratic difficulties encountered by agencies with overlapping jurisdictions and offers suggestions for improvement.

**Hemmendinger, Noel; Barringer, William H.; & Kossl, T. Leonard.** *Section 337: A Case for Repeal or Change,* 8 GA. J. INT'L & COMP. L. 81-114 (1978). This article analyzes the ITC broadening of § 337 to a full-scale antitrust status, encompassing dumping and other unfair means of competition. The authors explore the congressional intent behind the 1974 revision of the Act, concluding that the ITC is overstepping its authority (as was subsequently held in *Welded Stainless Steel*). They forecast a breakdown of ITC proceedings as a result of increased advocacy by counsel in juxtaposition to severe statutory time constraints.

**Hiscocks, R.** *International Price Discrimination: The Discovery of the Predatory Dumping Act of 1916,* 11 INT'L LAW. 227-48 (1977). Hiscox contends that the 1916 Act, resurrected by the *Zenith* case, may be used as an international price discrimination statute on the lines of Robinson-Patman.

ECON. 167-200 (1976). A brief history of the standards, procedures and adjudications of the ITC and its predecessor, the Tariff Commission. It takes the view that § 337 will transform the ITC into a bulwark for the protection of American industry against the onslaughts of foreign and unfair competition.

Kaye, Harvey, & Plaia, Paul, Jr. The Relationship of Countervailing Duty and Antidumping Law to Section 337 Jurisdiction of the U.S. International Trade Commission, 2 INT'L TRADE L.J. 1-77 (1977). This article explores countervailing duty, antidumping and antitrust legislation and the jurisdictional relationship that § 337 has to each. In discussing the interrelationship between the statutes, the authors suggest that ITC jurisdiction should be utilized concurrently whenever a case is not clearly within the scope of other legislation. Extensive use of case materials.

Prosterman, Roy L. Withholding of Appraisement Under the United States Antidumping Act: Protectionism or Unfair-Competition Law?, 41 WASH. L. REV. 315-26 (1966). The withholding of appraisement before a final determination of dumping, the author claims, places an unfair burden on importers and constitutes an effective bar to importation. Reforms are discussed.

Rogers, Robert P. The Illusory Conflict Between Antidumping and Antitrust: A Comment, 19 ANTITRUST BULL., 369-75 (1974). Reply to Epstein (18 ANTITRUST BULL. 1; see Unfair Competition and Antitrust, Epstein). Excursion into economic theory in attempt to show that dumping may enhance, rather than diminish, competition under some conditions.

Rosenthal, Douglas E., & Sheldon, Thomas E. Section 337: A View from Two Within the Department of Justice, 8 GA. J. INT'L & COMP. L. 47-64 (1978). The article traces the development of the ITC's role in antitrust and antidumping enforcement under § 337. It suggests that the ITC is overstepping its jurisdiction by interpreting § 337 as an antitrust statute. The authors are Justice department attorneys.


———. Unfair Competition—Antidumping Act Protects Domestic
Portion of a Multinational Corporation from Unfair Competition by Foreign Branch of Same Corporation, Potassium chloride from France, West Germany, and Canada, 6 TEX. INT'L L. J. 361–67 (1971). The note supports the ITC's evaluation of the purpose of the Act as extending protection to employees of the domestic industry, but finds an additional consideration reflected in the legislative history: protection of domestic consumers against monopoly pricing by foreign producers.


ANTIDUMPING CODE


explains his view of congressional limitations on United States implementation of the Act, reviewing the statutes, resolutions, and legislative history dealing with the Code and outlining several areas of conflict between the Code and United States law. Long cites congressional sources exhaustively.


Shannon, T. F., & Marx, W. F. *The International Antidumping Code and United States Antidumping Law—An Appraisal*, 7 Colum. J. Transnat'l L. 171–202 (1968). Concluding that there was little, if any, authority for the negotiation of the GATT Code, the authors compare the Code with United States law and find several areas of inconsistency, including the timing of the antidumping procedures and the standard of injury in the ITC. The 1974 Trade Act has rendered parts of this article out of date.


**Comparative Law**

through the administration and procedure of each country's antidumping law, pointing out the areas of similarity and difference. EEC Regulation 459/68 and the Antidumping Code have resulted in changes in the landscape since 1965.


Hutchison, Alan D., & Ketchum, Thomas Brian. *Brief in Support of an International Antidumping Agreement*, 112 Cong. Rec. 24,047 (1968). Analysis of the antidumping laws of the parties to GATT, with specific suggestions including: a more explicit definition of "like product"; a more precise definition of "material injury"; uniformity in the procedural guidelines, including reasonable notice and opportunity for the foreign producer to rebut the domestic government's findings. Many of the authors' suggestions can be found in the 1967 Code.


TRADE POLICY


Marks, Matthew J., & Malmgren, Harold B. *Negotiating Nontariff Distortions to Trade*, 7 L. & POL'Y INT'L BUS. 327-411 (1975). This excellent article examines the major nontariff distortions to trade facing United States negotiators as they entered the Geneva Round in February 1975. Marks and Malmgren, formerly with Treasury and the Special Trade Representative, respectively, examine the interaction of national and international policy in subsidies and countervailing duties, dumping
duties, technical standards, government procurement, and agricultural policy. The central substantive problem is definition of legitimate domestic economic measures in view of international trade repercussions. The mandate of the 1974 Trade Act is contrasted with relevant international standards.

