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ANTI-DUMPING LAW IN A LIBERAL TRADE ORDER. By *Richard Dale*. New York: St. Martin's Press. 1980. Pp. xv, 237. \$22.50.

"Dumping" is the colorful and pejorative term used to describe

international price discrimination.¹ Most advanced economies police the import frontier through either domestic antidumping laws or multilateral treaties like the General Agreement on Tariffs and Trade² (GATT). In *Anti-Dumping Law in a Liberal Trade Order*, Richard Dale canvasses existing regulatory approaches and argues that “national and international anti-dumping laws lack solid intellectual foundations and are generally in direct conflict with elementary principles of welfare economics” (p. 1). After reviewing the objectives and efficacy of present practices, he concludes that these laws and agreements are “at best superfluous and at worst an impediment to commerce” (p. 196). Dale’s treatment of this complex subject is both comprehensive³ and analytically sound, and his book is a valuable addition to the sparse literature in the area.

Dale’s premise is that the only legitimate function that antidumping law can serve is preservation of competition in domestic markets.⁴ Most economists would find this premise uncontroversial, if not self-evident. But the history of antidumping legislation and current political realities make it clear that domestic producers and politicians are often more concerned with protection than Pareto optimality.⁵ Dale ably demonstrates that many of the conventional defenses of antidumping law — protecting domestic employment or the balance of trade and preventing unfair competition, for example — are protectionist when reduced to their economic essentials.⁶ He argues that relaxation of antidumping laws would result in a more efficient long-run allocation of resources.

Dale begins his argument by examining the classical categories of

1. The classic work in the field is J. VINER, *DUMPING: A PROBLEM IN INTERNATIONAL TRADE* (1923). For a more recent examination of the subject, see W. WARES, *THE THEORY OF DUMPING AND AMERICAN COMMERCIAL POLICY* (1977).

2. The most recent GATT agreement, commonly referred to as the Tokyo Round, was the seventh in a series of negotiations that started in 1948. See *AGREEMENTS REACHED IN THE TOKYO ROUND OF THE MULTILATERAL TRADE NEGOTIATIONS*, H.R. DOC. NO. 153, 96th Cong., 1st Sess., pt 1 (1979). The U.S. enabling legislation for this agreement was enacted in 1979. See *Trade Agreements Act of 1979*, Pub. L. No. 96-39, 93 Stat. 144 (codified in scattered sections of 5, 13, U.S.C. (Supp. IV 1980), 19, 26, 28 U.S.C.A. (West 1980)).

3. In addition to the excellent international survey of antidumping legislation, Dale places dumping in an historical perspective, pp. 1-12, and he provides a chapter on the special problems involved in dumping cases initiated against manufacturers in socialist or centrally planned economies. Pp. 172-96.

4. “[T]he objective of anti-dumping action, construed in terms of welfare economics, must be to identify temporarily low import prices with a view to avoiding ultimately excessive import prices . . .” P. 11.

5. See e.g., Ehrenhaft, *What the Antidumping and Countervailing Duty Provisions of the Trade Agreements Act [Can] [Will] [Should] Mean to U.S. Trade Policy*, 11 *LAW & POL. INTL. BUS.* 1361, 1364, 1374 (1979) (steel and chemical industries most frequently invoke the antidumping laws, most antidumping cases are ‘pimples on the trade landscape,’ and no data exist to prove that operation of the antidumping laws is necessary to protect domestic industry from ruinous competition).

6. Adams, *Import Restraints and Industrial Performance: The Dilemma of Protectionism*, 1 *MICH. Y.B. INTL. LEGAL STUD.* 34 (1979).

dumping identified in Professor Viner's seminal treatise.⁷ He concludes, as have other commentators, that only predatory dumping poses a significant threat of anticompetitive consequences (p. 10).⁸ The dearth of documented cases of truly predatory dumping supports Dale's contention that this justification, although theoretically sound, is practically tenuous (pp. 10, 31).⁹ Dale also points out the perversity of the tendency of "importing countries generally [to] view with extreme disfavour foreign monopolistic practices leading to differentially low import prices [while] countenanc[ing] such practices when they result in differentially high import prices" (p. 39). The one-way focus of most antidumping legislation reduces consumer welfare by concentrating on nonpredatory import practices while ignoring harmful "reverse dumping" — sales at prices above those prevailing in the exporter's home market.

After establishing a theoretical framework, Dale scrutinizes the GATT antidumping provisions to determine their compatibility with his approach. He concludes that Article VI of GATT is protectionist insofar as it embraces a "diversion of business" standard for the imposition of sanctions. This watered-down injury standard permits GATT signatories to impose antidumping duties whenever domestic market share is reduced, regardless of whether the offending imports are priced above their average variable cost of production. Economists, however, generally concede that selling at or above the average variable cost of production is a rational, nonpredatory pricing strategy where demand varies but productive capacity remains constant.¹⁰ Because he believes that imposing antidumping duties in such situations restricts free trade, Dale calls for reexamination of Article VI (p. 60-61).

One useful feature of the book is its country-by-country review of antidumping legislation. Dale's reading of this legislation comports with his thesis that most antidumping legislation is protectionist. He buttresses this general survey with a chapter that recounts the Ameri-

7. J. VINER, *supra* note 1.

A general classification of (1) sporadic, (2) intermittent, and (3) continuous dumping is accepted in the literature on the subject. P. 8. Intermittent dumping seeks to eliminate competition by lowering prices and subsequently raising them to monopolistic levels. This type of predatory behavior is recognized as the most detrimental form of dumping. Fisher, *Dumping: Confronting the Paradox of Internal Weakness and External Challenge*, 1 MICH. Y.B. INTL. LEGAL STUD. 11, 13 (1979).

8. See, e.g., Barceló, *THE ANTIDUMPING LAW: REPEAL IT OR REVISE IT*, 1 MICH. Y.B. INTL. LEGAL STUD. 53, 65 (1979) (antipredation should be the controlling principle in formulating antidumping policy); Ehrenhaft, *An Administrator's Look at Antidumping Duty Laws in United States Trade Policy*, 1 MICH. Y.B. INTL. LEGAL STUD. 97, 103 (comparative advantage should be bedrock principle of antidumping policy).

9. The unlikelihood of a monopolist using predatory dumping has also been noted by P. LLOYD, *ANTI-DUMPING ACTIONS AND THE GATT SYSTEM 8* (1977) and Barceló, *supra* note 8, at 64-65.

10. See, e.g., P. SAMUELSON, *ECONOMICS* 468 (9th ed. 1973)

can steel industry's efforts to restrict foreign competition. These efforts eventually led to the creation of a "trigger price mechanism" that insulates the industry from cyclical variations in import prices that would be economically beneficial (pp. 164-65).¹¹ Some evidence indicates that several industries, notably steel and chemicals, have been the primary beneficiaries of American antidumping law, but it is not clear that Dale's focus on the steel industry presents a truly balanced picture.

Dale's proposed solution to the dumping debacle is one that will be familiar to many readers: the Areeda-Turner test for anticompetitive pricing.¹² This test incorporates the principle that only prices below marginal variable cost are generally anticompetitive, while prices above that level may represent procompetitive, profit-maximizing behavior. This test would not inhibit beneficial price competition and would tend to force inefficient domestic producers out of markets where they lacked a comparative advantage relative to foreign producers. Dale's solution is consistent with accepted economic wisdom and would, to the extent that the Areeda-Turner test is used in antitrust proceedings, ensure consistency between two areas of law that spring from similar policy concerns.

In the book's concluding section, Dale recommends that national dumping legislation be replaced by a revised "escape clause" under GATT Article XIX (p. 196). He would rely on the escape clause in cases where industries were threatened with severe dislocation as a result of low import prices. The clause would cushion industries and blunt protectionist pressure for more restrictive antidumping legislation. At a minimum, Dale argues, the Areeda-Turner test should be used to ferret out only predatory dumping.

Dale's careful economic analysis of antidumping law should convince the reader of the need for reform. Although the argument in support of his proposed reforms is not as strong as it might be because he does not suggest how to overcome protectionist opposition, this is but a minor flaw. The analysis of current legislation is comprehensive and compelling, and the book should be required reading for anyone interested in attempts to regulate international trade.

11. G. ALLEN, *HOW JAPAN COMPETES* 20-21, 44 (Hobart Paper No. 81 1978) argues that Japan has seldom, if ever, been accused of predatory dumping and that industrial efficiency and a modern industrial structure are the main reasons for the low price of Japan's steel exports.

12. Areeda & Turner, *Predatory Pricing and Related Practices Under Section 2 of the Sherman Act*, 88 HARV. L. REV. 697 (1975). The Areeda-Turner test has also been discussed in the context of dumping by Barceló, *supra* note 8, at 68.