

Some Ethical Aspects of Antidumping Laws

Robert W. McGee

Reasons for the Antidumping Laws

Before the ethical aspects of antidumping laws can be discussed it is necessary to spend some time discussing the antidumping laws themselves, what they are, what they are intended to accomplish, what they actually accomplish and what can and should be done if they do not accomplish what they are supposed to accomplish. All these points have been covered elsewhere in the literature, so this article will merely review and summarize the literature rather than attempt to break new ground. Where new ground will be broken is in the section that discusses some ethical aspects of the antidumping laws that have been all but ignored in both the trade and ethics literature.

Those who support the antidumping laws generally do so for one of two reasons.¹ The dominant reason why antidumping laws were supported in the early days was to prevent predatory pricing. The Antidumping Duty Act of 1916² was passed in response to alleged German predatory dumping during World War I.³

The main problem with the predatory pricing argument is that predatory pricing does not exist. Furthermore, if it did exist, it would benefit consumers, whom the antitrust laws were supposedly designed to protect.⁴ Studies that have been done on this point have been more or less in agreement that predatory pricing behavior is difficult, if not impossible to find, and in the few cases where it might have been found, it has always benefited consumers at the expense of the predator.⁵ James Bovard states that there are no known cases in the last 100 years where predatory pricing has achieved its goal of driving competitors out of existence, followed by the reaping of monopoly profits by the predator.⁶

One might reach a similar conclusion in the absence of studies by a priori reasoning.⁷ Predatory pricing is irrational. The predatory pricing argument begins with the premise that it is possible for a predator to drive down prices to the point where all competitors go out of business, never to return, at which point the predator can increase prices to more than recover former losses and reap monopoly profits. There are several problems with this premise.

For one thing, it is seldom if ever possible for the dominant company in any industry to reduce prices to the point where all competitors go bankrupt, especially if one takes the possibility of foreign

competition into account. In order to drive out all competitors, the predator company would have to be unusually strong financially because it would lose money on every sale it makes. As competitors drop out, it would increase its market share, thus losing money on even more sales.

Even if all competitors were eliminated, there is nothing to prevent them, or others, from reentering the market as soon as the predator starts raising prices. Also, the new market entrants, who bought up the assets of the bankrupt companies for perhaps ten cents on the dollar, would be low-cost producers, and would probably be able to undersell the predator company, which probably has much higher costs of production, and is in a weakened financial position after taking such large losses from making so many sales below cost. Perhaps that is the reason why researchers have been unable to find a single case where predatory pricing has succeeded. Of course, if they were able to find such cases, the fact remains that consumers would benefit, since prices would be abnormally low, and the successful predator would have to keep them abnormally low to prevent others from entering the market. It makes one wonder whether predatory pricing should be punished in the first place, since consumers benefit and since the predator is already suffering from making sales at a loss and is unable to recoup them by raising prices, since doing so would be an invitation for competitors to reenter the market.

Even those who support the antidumping laws are now beginning to admit that they cannot be supported on predatory pricing grounds, although politicians, business and labor leaders still argue that predatory pricing is the reason why we need antidumping laws.⁸ The other reason supporters now use is to level the playing field, especially in cases where foreign governments subsidize their domestic industries or where foreign laws tend to distort the market. The problem with this argument is that the antidumping laws do little or nothing to counterbalance the effects of foreign laws. An even more basic question that might be addressed here is whether governments should even attempt to level the playing field, since reducing comparative advantage works against the interests of consumers and makes all economies work less efficiently. One of the main reasons why trade is good for all participants is because of comparative advantage.⁹ Thus, actions that governments take to reduce comparative advantage are counterproductive from the standpoint of economic efficiency, which will be discussed later in this paper.

Criticisms of the Present Antidumping Laws

The World Trade Organization's antidumping rules are about the same structurally as those of the United States. In fact, the WTO antidumping provisions are modeled after the U.S. rules. The U.S. antidumping laws have been on the books for decades and a vast body of literature has evolved that discusses, analyzes and criticizes the hundreds of antidumping cases that have been resolved over the years. Very little literature exists on the WTO's antidumping rules, since those rules are so

new, and since it takes awhile for an antidumping action to work its way through the WTO process. Thus, the criticisms of the antidumping laws that are made in this section will draw from the vast literature that already exists, which criticizes the U.S. rules, not the WTO rules. However, since the two sets of rules are structurally about the same, the criticisms that have been made of the U.S. rules over the last few decades could just as validly be made of the WTO rules.

Foreign producers run afoul of the antidumping laws if they sell their products in a domestic market for less than fair value. The initial philosophical issue to raise here is "What is fair value?" Another set of philosophical questions would be "Why would anyone sell for less than fair value?" and "If they did, so what?" However, trade attorneys and judges do not ask such philosophical questions. Neither did the members of Congress who started passing antidumping laws nearly a century ago or the GATT (General Agreement on Tariffs and Trade) representatives who incorporated antidumping laws into the Uruguay Round, which resulted in the creation of the World Trade Organization (WTO). Under present rules, a foreign company or industry can be found guilty of dumping if it sells its products on a domestic market for a price that is lower than that charged in its home market, or if it sells its product for less than the cost of production. A company that is found guilty of either practice is deemed to sell for less than fair value, even though the buyer and the seller agree on price, a position that is on extremely weak ground philosophically.

Thus, the initial criticism that could be made is why would anyone want to punish a foreign producer for giving domestic consumers a better deal than the consumers in the foreign country get? Alternatively, one might criticize punishing foreign producers for selling below cost when domestic consumers obviously benefit by such sales. Unfortunately, these criticisms are never made. Yet these criticisms are perhaps the best that could be made of the antidumping laws.

If these criticisms were made, domestic producers would likely counter that their own sales are reduced when foreign producers are allowed to get away with making sales at such low prices. The underlying premise here is that domestic producers are somehow entitled to make sales even when domestic consumers would rather buy from a foreigner. A strong criticism that has been made of the antidumping laws is that they serve to protect domestic producers at the expense of the general public.¹⁰ More on this point later.

A number of criticisms have been made about the process and the way the antidumping laws are applied. For example, the vast majority of antidumping investigations are launched by domestic producers who feel the heat of competition and don't like it. Very few antidumping investigations are initiated at the Commerce Department.

One of the most abusive antidumping investigations ever launched was started by the American steel industry, which convinced the Commerce Department to initiate an antidumping investigation against the steel industries of more than 20 countries.¹¹ The official

reason for the request was because domestic steel producers were harmed by the importation of too much foreign steel. Domestic steel producers accused practically every foreign steel company that made sales in the United States of selling their steel in the United States at less than fair value.¹² When the self-serving nature of this investigation hit the press, the bureaucrats in Washington were so embarrassed that they terminated the investigation. But other countries and industries have not been so lucky.

One series of antidumping investigations that harmed the U.S. computer hardware industry involved the importation of computer chips from Asia. Domestic chip makers were upset that the Koreans and Japanese were selling higher quality chips in the U.S. domestic market for lower prices, so a group of domestic producers petitioned the Commerce Department to launch an investigation of the foreign producers for dumping. The result of the investigation was that the price of computer chips increased dramatically and at least one U.S. computer maker had to close up shop in California and move to the Philippines so it could afford to continue buying the Asian chips that it needed for its computers. Some jobs in the American chip industry were saved but only at the expense of American jobs in the computer hardware industry. The price of computers was also adversely affected, since the cost of producing computers in America increased as a result of the antidumping action. That resulted in increased costs for any company in America that buys computers. Thus, a few domestic chip producers gained, but only at the expense of the computer hardware industry and everyone who buys computers in America. The worst part of this investigation is that the methodology the Commerce Department used to find guilt was inappropriate. It found dumping where no dumping had actually occurred.¹³

Not only the antidumping rules themselves have been labeled unfair but also their application. For example, the accused party is considered guilty until proven innocent. The federal government launches an investigation at the request of the domestic industry, which stands to gain if the accused is found guilty. The accused party may have to spend millions of dollars to gather the necessary documents and defend itself, whereas the domestic producer that asked for the investigation has the federal government do all the work and incur all the cost of going forward with the investigation. The federal government determines what information is required, when it is required and how it shall be delivered. There is no appeal if the federal government deems the submission to be less than adequate. The federal government stands in the position of judge and jury.¹⁴ The targeted company or industry has no recourse.

Matsushita withdrew from an antidumping case involving small business telephone systems, thereby abandoning more than \$50 million in export sales, because of the onerous requirements imposed by the Commerce Department.¹⁵ On a Friday afternoon, it received a demand by the Commerce Department to translate 3,000 pages of Japanese financial documents into English by the following Monday morning.¹⁶ There was no

appeal. It had the choice of full compliance or being hit with an antidumping penalty that would be computed by the Commerce Department with the assistance of the domestic producer that asked that the investigation be initiated.

In another investigation, the Justice Department placed a particularly onerous and burdensome reporting requirement on SKF, a Swedish bearings manufacturer. The Commerce Department demanded, and SKF supplied, information on more than 100 million separate sales. The first submission weighed three tons, was more than 150,000 pages in length, and included more than 4 billion pieces of information.¹⁷ As might be expected, there were a few mistakes in the data, which the company put together in about a week, the amount of time the Commerce Department gave it to respond. About 1% of the data from its German sales were in a form that was not suitable to the Commerce Department, so it ignored all the data the company supplied and worked up its own numbers, using information obtained elsewhere. The result was a 180 percent dumping margin.

Some small companies in Taiwan have also felt the wrath of the Commerce Department because they were not able to supply the information required. In one case, the Commerce Department demanded that the companies respond to a 100-page questionnaire, written in English, which required more than 200,000 pieces of information. The management of one of these companies consisted of a husband and wife team, but the Commerce Department found that lack of sufficient management was no excuse for not responding to the questionnaire. The Commerce Department imposed a duty on another Taiwanese company because it did not supply information; the fact that its factory had burned down and its records destroyed was not a sufficient excuse for failure to provide information. As a result of these and other cases, many Taiwanese sweaters now have a 21.94% dumping duty that, combined with a 34% tariff, makes it very difficult, if not impossible, to compete in the U.S. market. Within a year after the Commerce Department started its investigation of the Taiwanese acrylic sweater industry, more than two-thirds of the Taiwanese companies that produce acrylic sweaters went out of business.¹⁸

This kind of widespread abuse is one reason why representatives from developing countries were so angry at President Clinton's refusal to include reform of the antidumping laws on the WTO agenda at the Seattle meeting in December, 1999. Developing countries are being targeted because their relatively low labor costs place them at somewhat of a competitive advantage over the more developed countries, which have to pay higher wages.¹⁹ The People's Republic of China has been the most frequent target of antidumping actions in recent years.²⁰ Latin American countries have also come under increasing attack.²¹

The antidumping laws have been criticized for the methods they use to compute dumping margins and costs of production and the way comparisons are made between domestic and foreign sales. For example, a company can be found guilty of dumping even if it sells its product for

the same price all over the world if the Commerce Department is allowed to construct target company costs²² or if exchange rates shift.²³ It is possible to be convicted of selling below the cost of production even if the target company actually sold at a 7% profit.²⁴ That is because the Department of Commerce's definition of cost of production includes an 8 percent profit.

The Commerce Department has also found dumping when it compared dissimilar products. For example, it found dumping to have occurred in a case involving an Italian manufacturer of pads for woodwind instruments. It computed the dumping margin by comparing the cost of the smaller pads sold in the United States with those of larger pads sold in Italy. Naturally, the larger pads would sell for more than the smaller pads. Yet the Commerce Department treated the large and small pads as identical, allowing no adjustment in cost due to the size of the pad. It explained away its position by stating that the Commerce Department has unlimited discretion to make or not make adjustments for differences in merchandise.²⁵

Numerous other cases could be cited where the Commerce Department completely disregarded differences in quality in arriving at a dumping margin. It has compared Canadian grade B raspberries sold in the United States to make juice with grade A raspberries sold in Canada to make jam without making any allowances for differences in either quality or market destination, even though the harvesting cost of the inferior quality berries was much lower. It considers a wilted flower in New York to have the same value as a fresh flower in Amsterdam. New forklift trucks sold in Japan are the same as used forklift trucks sold in the United States as far as the Commerce Department is concerned.²⁶

The Commerce Department sometimes compares the prices the exporting company receives in the U.S. market with those it receives in some third country market. Such comparisons are often made when the exporting country does not have much of a home market for its product. It penalized some Korean sweater companies because they sold their sweaters in the U.S. market for a little less than what they sold for in foreign markets. In arriving at its guilty verdict, the Commerce Department ignored several facts — that each shipment of sweaters was a custom order and that there were significant differences in the sweaters the companies shipped to different countries. It merely assumed the sweaters were identical. It also ignored cases where the U.S. price was higher than the price in another country, which had the effect of understating the average U.S. price.²⁷

The Commerce Department regularly disregards sound accounting and economic theory when making comparisons. It has compared U.S. wholesale prices with foreign retail prices. It has disregarded volume discounts. It is inconsistent in classifying costs as direct or indirect. When computing average prices it often disregards domestic sales prices when they are above average and included only those sales that were below average.²⁸ A U.S. General Accounting Office study pointed out these abuses in 1979.²⁹ Yet these practices continue.

Applying Utilitarian Ethics to the Antidumping Laws

Utilitarianism is the ethical philosophy espoused by the vast majority of economists and many philosophers so we will start by applying utilitarian theory to the question of whether antidumping laws are ethical. Basically, utilitarianism aims at the greatest good for the greatest number. Jeremy Bentham, an early proponent of the utilitarian philosophy, said that "...it is the greatest happiness of the greatest number that is the measure of right and wrong."³⁰ Henry Sidgwick, a later utilitarian, extends the philosophy, as follows:

"...an action is right if and only if it brings about at least as much net happiness as any other action the agent could have performed; otherwise it is wrong."³¹

According to Sidgwick's view, an act that increases happiness by 10 percent is unethical if another act could have increased happiness by more than 10 percent.³² Richard A. Posner, one of the leaders of the law and economics movement, seems to indicate that an act is moral if it is efficient.³³ From his view, one may perhaps draw an inference that an act is immoral if it increases inefficiency. A variation on this theme is the wealth maximization view, which holds that "...the criterion for judging whether acts and institutions are just or good is whether they maximize the wealth of society."³⁴

Do the antidumping laws pass the utilitarian test? Do they result in the greatest good for the greatest number? The evidence is stacked against them. The losers seem to outnumber the winners. While one U.S. producer of microchips stands to gain from the imposition of dumping duties on its competitors, its various competitors stand to lose, as does anyone who uses computers, since they would have to pay higher prices if dumping duties were imposed on foreign chip manufacturers. A few steel companies and their workers stand to benefit if dumping duties are imposed on foreign steel producers, but the steel producers in more than 20 countries, as well as their employees, stand to lose, not to mention all the industries in the United States that must now pay higher prices for steel and all the U.S. consumers who purchase products made of steel. The U.S. auto industry would have to pay more for steel, which would make it less competitive in international markets. Thus, autoworkers would also suffer if dumping duties were imposed on foreign steel producers.

If one applies the results of studies that have been made of gains and losses from tariffs and quotas to the antidumping laws, it is possible to estimate the possible gains and losses. Various studies have estimated that where a quota or tariff saves jobs in the domestic economy, job losses tend to exceed gains by a factor of 2 to 3. In other words, for every 10,000 jobs saved in the steel industry, 20,000 to 30,000 jobs are destroyed in the industries that use steel.³⁵ Thus, protectionism results in a

deadweight loss. The losses exceed the gains.

Interestingly enough, a study by the U.S. International Trade Commission, one of the agencies charged with administering the antidumping laws, conducted a study that found that antidumping laws resulted in more losses than gains. It estimated that removing all existing dumping duties would result in a net gain of somewhere between \$1.59 billion and \$2.94 billion.³⁶ That being the case, one wonders why antidumping laws continue to be enforced.

The answer, of course, is because of rent-seeking behavior on the part of domestic producers. Those who stand to benefit from the enforcement of the antidumping law have the ears of the Department of Commerce while those who stand to lose are either foreigners or domestic consumers, who are unorganized, and who probably don't even know that the antidumping laws are reducing their standard of living. Concentrated special interests that have much to gain have more influence than the unorganized majority, who lose much less, per capita, and who cannot be bothered marching on Washington just to save \$5 on the price of a shirt.³⁷

The evidence is clear that the antidumping laws fail the utilitarian test because losers exceed winners. Even if those who stand to benefit from the antidumping laws stand to gain much, while those who lose stand to lose little, the losses exceed the gains in the aggregate. Thus, antidumping laws cannot be condoned on utilitarian grounds.

Applying Rights Theory to the Antidumping Laws

Utilitarian ethics suffers from several deficiencies. One flaw is that it is impossible to compare interpersonal utilities. It is also impossible to precisely measure gains and losses. All calculations must be approximations. But perhaps the main flaw in utilitarian ethics is that utilitarianism totally ignores rights.³⁸ If the gains are deemed to exceed the losses, it does not matter to a utilitarian whether someone's rights get trampled on in the process.

Applying rights theory to the antidumping laws remedies these structural flaws of utilitarianism. According to rights theory, any policy that violates someone's rights (without full compensation, according to some theorists) is automatically an unacceptable policy, even if the overall gains exceed the losses. To use an extreme example to illustrate the difference between utilitarian and rights theory, let's take the case of a sex starved maniac who is just released from prison and who rapes a drunken prostitute who lightly protests and who actually falls asleep during the rape. A utilitarian would say that the act was moral, since the rapist benefited a great deal while the prostitute suffered little, if any, discomfort. A rights theorist would insist that the act was immoral, since the prostitute's rights were violated. The example is extreme, but it illustrates the point and highlights the difference between utilitarian ethics and a rights-based ethics.

That does not mean that any act that does not violate rights is ethical because some such activities may be unethical. For example, no

one's rights are violated if a woman chooses to rent her body for sex. Yet few people would say that prostitution is a moral act. Rights theory merely helps to identify acts or policies that should or should not be prohibited.

Getting back to the case of antidumping laws, it is clear that they violate contract and property rights. Antidumping laws prevent consenting adults from entering into trade and exchanging what they have for what they want. Antidumping laws prevent foreign producers from selling their products in domestic markets, thus depriving consumers from entering into contracts with the parties of their choice and trading their property.

It might be argued that antidumping laws are needed to protect domestic producers from being harmed. Surely, domestic producers would be harmed if foreigners were permitted to sell to domestic customers, especially if the foreign product were either better or cheaper, or both. But being harmed is not the same as having rights violated. There is no right to sell products to people who would rather buy from someone else, even if that someone else were a foreigner. This fact does not change if the foreigner is selling for less than the cost of production or for a lower price than that charged in the home market. Thus, antidumping laws fail the rights test because they must necessarily violate someone's rights.

A Question of Fundamental Fairness

There is also the question of fundamental fairness. The way the antidumping laws are applied often violates concepts of fundamental fairness. There is something fundamentally unfair about being found guilty of dumping if a company charges the same price for its product worldwide. There is something fundamentally unfair about forcing a company to spend perhaps millions of dollars to defend itself, using a process that is stacked against foreigners. There is something fundamentally unfair about being forced to supply vast quantities of documents on short notice as a condition of being allowed to continue selling products to willing buyers.

Concluding Comments

It is clear that the antidumping laws fail the ethical test, whether one applies utilitarian or rights-based rules. They are also fundamentally unfair. If one concludes that the present rules are unethical, then the logical question to ask is "What should be/can be done about it?" If any other alternatives to the status quo would make things even worse, the answer is to do nothing. However, that is not the case here. That leaves us with two other possibilities. The antidumping laws can either be reformed or repealed.

Some commentators who are concerned about the present antidumping laws call for reform. They think that some kind of

antidumping laws are needed to maintain a level playing field or to prevent predatory dumping or to punish foreign producers that receive government assistance or subsidies.

The first two of these arguments have already been discussed in this paper. The level playing field argument does not hold up to analysis because a level playing field is not desirable. Having a level playing field would reduce the natural comparative advantage that would otherwise be present, thus reducing the standard of living and economic efficiency. The result would not be the greatest good for the greatest number, thus violating utilitarian ethics. Furthermore, in order to have a level (or more level) playing field it would be necessary to use the force of government against individuals who have not violated anyone's rights, which is unethical based on rights theory. Thus, the level playing field argument is not tenable, either on utilitarian or rights grounds.³⁹

The predatory pricing argument has been demolished both by theory and experience. Predatory pricing is irrational and empirical studies have found that it does not exist in the real world. Thus, there is no need to pass laws to protect us against this mythical threat that, if it actually existed, would only serve to benefit consumers anyway.

That brings us to the third argument in favor of reform, to counterbalance government support and subsidies of foreign producers. Should foreign producers be punished for receiving assistance from their governments, either in the form of helpful legislation or outright subsidies? Interestingly enough, it is often the same people who make this argument who also want the federal government to grant low-interest loans or tax credits to U.S. businesses or who want to subsidize exports. American farmers⁴⁰ have been subsidized for decades by low-interest loans and price supports, yet when foreign governments do basically the same thing, there is somehow something sinister about it. That is not to condone it, of course, but the irony of the inconsistent positions should be pointed out.

Whether antidumping laws should be used to counter this kind of government activity can be answered by looking to ethical theory. From a utilitarian ethical point of view, antidumping laws would be a good policy choice if such laws resulted in the greatest good for the greatest number. So the obvious question to ask is who benefits and who loses by the status quo and who stands to gain or lose if changes are made to the status quo.

Under the present situation, the foreign producers who are subsidized by their governments are winners, as are consumers in the country that receives the "dumped" goods. The losers are the taxpayers in the foreign country, who have to pay the subsidy one way or another. The domestic producers who lose sales are also adversely affected. On which side does the balance fall? It is not easy to say, given the fact that many people lose a little while a few gain a lot. However, it would not be inaccurate to say that the status quo is inefficient. If the status quo were efficient there would be no need for subsidies. Subsidies reduce efficiency because they take assets from higher value uses and place them in lower

value uses. But it does not logically follow that the U.S. government should use the force it has to change this situation. The inefficiency is present in the foreign country, not in the USA.

American consumers benefit by the foreign government's subsidy. In effect, the foreign government's subsidy of its industry benefits American consumers because it allows them to buy at lower prices than would otherwise be the case. If the U.S. government stepped in to prevent such foreign subsidies to U.S. consumers, it would be doing consumers a disservice from a utilitarian standpoint, and would be violating their rights to property and contract from a rights perspective.

If the antidumping policy were successful in ending the foreign government's subsidy, the foreign producers would lose something and the taxpayers in the foreign country who had been subsidizing the foreign producer would gain because they would no longer have to pay taxes to subsidize a domestic industry. Thus, the U.S. government would be in the interesting position of benefiting foreign taxpayers at the expense of both American consumers and American taxpayers, who have to pay the salaries of the American bureaucrats who are enforcing the antidumping laws and who must pay higher prices for foreign goods as a result of removing the subsidy. It thus seems clear that antidumping laws should not be used to prevent foreign governments from subsidizing their producers even if such laws could actually prevent such activities and even though the subsidy is unfair to the foreign taxpayers who must pay to subsidize American consumers.

Since the status quo has been shown to be an incorrect policy choice, and since none of the reform arguments hold up to analysis, the case for repeal wins by default. But let's not stop there. Let's analyze the repeal option from a utilitarian and rights standpoint.

Repealing the antidumping laws would result in lower prices for consumers. Repeal would also result in higher profits for foreign producers, since they would no longer be excluded from the domestic market. The American businesses that handle the foreign product, such as foreign auto dealerships in Dubuque and Cincinnati, would also benefit rather than being forced out of business. The only losers would be the domestic producers who cannot make sales to domestic consumers in the absence of protection. From a purely utilitarian viewpoint, the winners exceed the losers, so repeal is called for.

The result is the same if one applies rights theory, only for a different reason. Rights theory holds that a policy is inherently bad if it results in someone's rights being violated, and is (perhaps) good if no one's rights are violated. Repealing the antidumping laws violates no one's rights, but keeping them on the books and enforcing them does violate the property and contract rights of consumers and foreign producers. Thus, the case is clear. The only ethical solution is repeal.

Notes:

1. The third reason would be protectionism, but that position is indefensible and self-serving, so we will not explore it here.
2. *Revenue Act of 1916*, chap. 463, §§ 800-1, 39 Stat. 798, codified at 15 U.S.C. § 72.
3. Richard Dale, *Anti-dumping Law in a Liberal Trade Order* (New York: St. Martin's Press, 1980), 12; Jacob Viner, *Dumping: A Problem in International Trade* (Chicago: University of Chicago Press, 1923), 242-246.
4. I say "supposedly" because there is evidence to suggest that antitrust laws were passed to protect producers rather than consumers. There is strong evidence to suggest that antitrust laws are being used as weapons to protect less successful competitors from more successful competitors. For more on this point, see William F. Shughart, II, *Antitrust Policy and Interest-Group Politics* (Westport, CT: Quorum Books, 1990); Jeffrey A. Eisenach and Thomas M. Lenard, editors, *Competition, Innovation and the Microsoft Monopoly: Antitrust in the Digital Marketplace* (Boston: Kluwer Academic Publishers, 1999); Stan J. Liebowitz and Stephen E. Margolis, *Winners, Losers & Microsoft: Competition and Antitrust in High Technology* (Oakland, CA: The Independent Institute, 1999).
5. Ronald H. Koller, "The Myth of Predatory Pricing: An Empirical Study," *Antitrust Law & Economics Review* 4 (Summer 1971), 105-123; John S. McGee, "Predatory Price Cutting: The Standard Oil (NJ) Case," *Journal of Law and Economics* 1 (October 1958), 137-169; D.T. Armentano, *Antitrust Policy: The Case for Repeal* (Washington, DC: The Cato Institute, 1986), 41-44; Dominick T. Armentano, *Antitrust and Monopoly: Anatomy of a Policy Failure*, second edition (New York: Holmes & Meier, 1990), 63, 91, 114, 240.
6. James Bovard, *The Fair Trade Fraud* (St. Martin's Press, 1991), 157.
7. For a discussion of the empirical studies and a priori reasoning approach, see Robert W. McGee, "When Is Pricing Predatory?" *Journal of Pricing Management* 2 (Spring, 1991), 40-43.
8. Greg Mastel, *Antidumping Laws and the U.S. Economy* (Armonk, NY: M.E. Sharpe, 1998), 40, as cited in Brink Lindsey, "The U.S. Antidumping Law: Rhetoric versus Reality," *Trade Policy Analysis* No. 7 (Washington, DC: Cato Institute, August 16, 1999), 3.
9. Some people still do not believe that trade is good for both parties, which raises the obvious question: Why then did they make the trade? For a discussion of the arguments for and against free trade, see Robert W. McGee, "The Trade Policy of a Free Society," *Capital University Law Review* 19 (Spring 1990), 301-341; Robert W. McGee, *A Trade Policy for Free Societies: The Case Against Protectionism* (Westport, CT: Quorum Books, 1994), 3-86.
10. Robert W. McGee, "The Case to Repeal the Antidumping Laws," *Northwestern Journal of International Law & Business*, 13 (1993), 491-562; Michael S. Knoll, "United States Antidumping Law: The Case for Reconsideration," *Texas International Law Journal*, 22 (1987), 265-290.
11. United States International Trade Commission, "Certain Flat-rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan and the United Kingdom," (Investigations Nos. 701-TA-319-354 Preliminary), USITC Publication 2549 (August, 1992).
12. Brink Lindsey, Daniel T. Griswold and Aaron Lukas, "The Steel 'Crisis' and the Costs of Protectionism," *Center for Trade Policy Studies*, April 16, 1999; Daniel T. Griswold, "The U.S. Government's No-Win War on Imported Steel," *Center for Trade Policy Studies*, February 1, 1999; Doug Bandow, "Stealing from Steel Consumers," *Center for Trade Policy Studies*, July 7, 1999.
13. For a discussion of these cases, see Robert W. McGee and Yeomin Yoon, "Technical Flaws in the Application of the U.S. Antidumping Law: The Experience of U.S. - Korean Trade," *University of Pennsylvania Journal of International Business Law*, 15 (Summer, 1994), 259-297; Yeomin Yoon, "The Korean Chip Dumping Controversy: Are They Accused of Violating an Unjust Law?" *North Carolina Journal of International Law & Commercial Regulation*, 19 (Winter, 1994), 247-266.
14. N. David Palmeter, "Torquemada and the Tariff Act: The Inquisitor Rides Again," *International Lawyer*, 20 (1986), 641.
15. Investigation 731-TA-426, listed in I.M. Destler, *American Trade Politics* (Washington, DC: Institute for International Economics, 1992), 393.
16. James Bovard, *The Fair Trade Fraud* (New York: St. Martin's Press, 1991), 136.
17. *Ibid.*, at 137.
18. *Ibid.*, at 139, 155.
19. It should be pointed out that the low cost labor advantage is largely offset by the lack of capital. This point is seldom made, and even less frequently realized, by those who feel threatened by cheap foreign labor.
20. Robert W. McGee, "Antidumping Laws, the World Trade Organization, and the People's Republic of China," *Advances in Chinese Industrial Studies*, 6 (1999), 141-155; Robert W. McGee, "The USA's Assault on Trade with the People's Republic of China: Antidumping Laws as Weapons of Protectionism," in Edward B. Flowers, Thomas P. Chen and Ibrahim Badawi, editors, *Trade and Investment in Asia* (St. John's University: Center for Global Education, 1997), 187-198.
21. Robert W. McGee, "Application of the Antidumping Laws in Latin America: A Review of Recent Cases and Prospects for the Future," in Edward B. Flowers, Thomas P. Chen and Jonchi Shyu, editors, *Interlocking Global Business Systems: The Restructuring of Industries, Economies and Capital Markets* (Westport, CT: Quorum Books, 1999), 275-286.

22. Michael S. Knoll, "United States Antidumping Law: The Case for Reconsideration," *Texas International Law Journal*, 22 (1987), 280.
23. N. David Palmeter, "Exchange Rates and Antidumping Determinations," *Journal of World Trade*, 22 (1988), 73-80.
24. Robert W. McGee, *A Trade Policy for Free Societies: The Case Against Protectionism* (Westport, CT: Quorum Books, 1994), 98-100.
25. Luciano Pisoni *Fabrica Accessori Instrumenti Musicali v. United States*, 640 F.Supp. 255 (CIT 1986). This case was discussed in James Bovard, *The Fair Trade Fraud* (New York: St. Martin's Press, 1991), 119.
26. Robert W. McGee, *A Trade Policy for Free Societies: The Case Against Protectionism* (Westport, CT: Quorum Books, 1994), 105.
27. Bovard, *The Fair Trade Fraud*, supra, at 121-122.
28. Robert W. McGee, *A Trade Policy for Free Societies*, supra, at 108-111.
29. U.S. General Accounting Office, U.S. Administration of the Antidumping Act of 1921 (March 15, 1979), 21.
30. Jeremy Bentham, "A Fragment on Government," in J. Bowring, editor, *The Works of Jeremy Bentham*, vol. 1 (New York: Russell & Russell, 1962), 227 as quoted in William H. Shaw, *Contemporary Ethics: Taking Account of Utilitarianism* (Oxford: Blackwell Publishers, 1999), 8.
31. Quoted in Shaw, supra, at 10.
32. There are several problems with the utilitarian philosophy, such as the inability to measure changes in happiness and the fact that utilitarianism totally ignores rights violations. For more on this point, see Robert W. McGee, "The Fatal Flaw in the Methodology of Law and Economics," *Commentaries on Law & Economics*, 1 (1997), 209-223.
33. Richard A. Posner, *Economic Analysis of Law*, fifth edition (New York: Aspen Law & Business, 1998), 284-285.
34. Richard A. Posner, *The Economics of Justice* (Cambridge, MA: Harvard University Press, 1983), 115.
35. For summaries of these studies, see Robert W. McGee, *A Trade Policy for Free Societies: The Case Against Protectionism* (Westport, CT: Quorum Books, 1994), 65-75; Gary Clyde Hufbauer, Diane T. Berliner and Kimberly Ann Elliott, *Trade Protection in the United States: 31 Case Studies* (Washington, DC: Institute for International Economics, 1986).
36. United States International Trade Commission, "The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements," Investigation No. 332-344, USITC Publication 2900, June, 1995.
37. Time and space do not permit a full discussion of rent-seeking, a phenomenon that has been studied and analyzed by the Public Choice School of Economics for several decades. For an overview and some examples of rent-seeking behavior, see Gordon Tullock, *Rent Seeking* (Aldershot, England: Edward Elgar Publishing, Limited, 1993); Charles K. Rowley, Robert D. Tollison and Gordon Tullock, editors, *The Political Economy of Rent-Seeking* (Boston: Kluwer Academic Publishers, 1988); James M. Buchanan, Robert Tollison and Gordon Tullock, editors, *Towards a Theory of a Rent-Seeking Society* (College Station, TX: Texas A&M University Press, 1980).
38. Discussions on the flaws inherent in utilitarian ethics may be found at Robert W. McGee, "The Fatal Flaw in NAFTA, GATT and All Other Trade Agreements," *Northwestern Journal of International Law & Business*, 14 (Spring, 1994), 549-565; William H. Shaw, *Contemporary Ethics: Taking Account of Utilitarianism* (Oxford: Blackwell Publishers, 1999), 102-132.
39. For a detailed critique of the level playing field argument that was made before the term "level playing field" came into popular use, see Antony Flew, *The Politics of Procrustes: Contradictions of Enforced Equality* (Buffalo: Prometheus Books, 1981).
40. For more on farm subsidies, see James Bovard, *The Farm Fiasco* (San Francisco: ICS Press, 1989).