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

Mr. Dale, a barrister, financial journalist, and lecturer in finance, prepared this analysis of antidumping regulations for the Trade Policy Research Centre (London). The book is divided into eight chapters. The three introductory chapters describe the history of antidumping regulations, examine the development of the economic analysis of the practice of dumping, and survey the different national price discrimination laws. The fourth and fifth chapters concern the provisions of the General Agreement on Tariffs and Trade relating to antidumping measures,[1] the 1967 and 1979 versions of the so-called International Antidumping Code,[2] negotiated under the aegis of the General Agreement, and the administration of antidumping laws in the United States, Canada, and the European Community. The sixth and seventh chapters concern the contemporary friction in international trade caused by the worldwide steel recession and by import competition from non-market economics. The final chapter concludes that "antidumping laws are at best superfluous and at worst a serious impediment to trade."

The traditional concept of dumping involves a foreign producer with a protected home market where the producer exports excess production at lower prices to avoid driving down its prices in the home market. The higher foreign prices are perceived as subsidizing the exports. The price discrimination between the different national markets constitutes dumping. Although low-priced imports are beneficial to consumers in the importing country, they "destabilize the import market and cause domestic producers to shift resources between industries both at their advent and their cessation. As a result, resources are used up needlessly in shutting down starting up domestic operations . . . . Impermanently cheap importation leads to a formidable loss of output. . . ."[3] The practical difficulty of distinguishing between dumping that is per-

[1] General Agreement on Tariffs and Trade, Article VI, October 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 194.

[2] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, *done* June 30, 1967, U.S.T. 4348, T.I.A.S. No. 6431; Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, GATT Doc. MTN/NTM/W/232, *reprinted in* Agreements Reached in the Tokyo Round of the Multilateral Trade Negotiations, H.R. Doc. No. 153, 96th Cong., 1st Sess. 311 (1979).

[3] W. Wares, The Theory of Dumping and American Commercial Policy 76-77 (1977).

manent and that which is impermanent has resulted in the enactment of antidumping measures to reach all dumping that causes or threatens to cause injury to the producers in the importing country. In those cases where the foreign manufacturer's home market is in a state-controlled economy, the foreign market value is often determined by antidumping authorities with reference to export prices to third countries or to the constructed value of the merchandise if produced in a non-State controlled economy. The latter example does not involve any price discrimination.

Dale's general theme is that welfare economics provides the proper frame of reference for assessing the legitimacy of antidumping actions. The choice of this frame of reference, however, preordains Dale's conclusions. The goal of welfare economics is allocative efficiency in domestic markets. Gains to consumers almost always will outweigh the harm to domestic producers competing with dumped imports. Injury to competitors does not constitute injury to competition in the analysis unless consumer welfare is reduced. With this frame of reference, Dale demolishes the intellectual respectability of taking antidumping actions in response to harm caused domestic business competitors on the basis of trade diversion. Dale does not describe how import investigations are conducted by antidumping authorities. Instead, he criticizes the effects of antidumping actions from the perspective of abstract economic principles. This may lead to naive conclusions.

Dale suggests four alternative approaches to alleviate the barriers to international trade caused by antidumping actions taken against low-priced imports. His first recommendations is to repel all national antidumping legislation. He would rely, instead, on Article XIX of the General Agreement, a safeguard provision, and similar municipal legislation aimed at imports from non-market economies for protection against low-priced imports. Article XIX allows the signatories to the General Agreement to impose import restrictions where increases in imports result in injury or the threat of injury to a competing domestic industry. The domestic legislation implementing the Article XIX process is found in sections 201-203 of the Trade Act of 1974.[4] A similar provision concerning imports from Communist nations is found in section 406 of the 1974 act.[5]

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[4] 19 U.S.C. §§ 2251-2253 (1976).

[5] 19 U.S.C. § 2436 (1976).

These laws address only the effects of imports in the United States. It is not necessary to demonstrate that the complained-of imports are dumped to qualify for relief. Relief in safeguard cases consists of increased tariffs or quotas. In contrast, relief in an antidumping case is a special duty to neutralize the margin of difference between the foreign market or other reference price and the price to the United States. Companies subject to a dumping order need only change their prices in one or both markets to remove any margin of difference and to avoid liability for the special duties.

Throughout his survey of United States antidumping proceedings and his discussion of the advantages of safeguard measures, Dale never addresses why businessmen prefer to file dumping cases. The economics of dumping have nothing to do with the phenomenon. Rather, authority to deny relief exists in the safeguard legislation and is absent in the antidumping legislation. Import relief under both sections 201 and 406 is discretionary with the President. The judgment to grant or deny relief is, therefore, political, even though the industry has demonstrated its case for relief to the satisfaction of the U.S. International Trade Commission within the criteria of the Trade Act. However, the antidumping law is not discretionary. If a domestic industry demonstrates material injury within the meaning of the 1979 amendments to the Tariff Act of 1930, the Department of Commerce must issue an antidumping order. This is not a hypothetical distinction. Protection of all domestic producers from foreign competition is not possible, as producers are also consumers interested in lower cost sources for their inputs. Opposition to import restrictions can be formidable. Only politically powerful industries or industries that have timed their import relief proceedings to provide for a political dimension at the time the decision on relief is reached can expect to prevail in safeguard cases.[6] Stephen Hymer, the late Marxist economist, remarked that the cost of ignoring political factors results in an inability to recognize market relationships.[7] The compartmentalized welfare analysis in Dale's book is an example of this inability. The analysis prevents an understanding of either the development or the manipulation of the United States trade legislation authorizing import restrictions.

Intuitively recognizing that producer interests would run counter to the repeal of antidumping legislation, Dale offers a

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[6] *See*, Wallace, Spina, Rawson, & McGill, INTERFACE I 152-53 (1980).

[7] Hymer, ***Discussion-Magdoff's 'Militarism and Imperialism,'*** AM. ECON. REV. 243 (1970).

"second best" approach, which would amend antidumping legislation to deal only with predatory pricing. The exporter's price would violate the law only if it were below the cost of equally or more efficient domestic producers. Again, there are difficulties with the proposed reform. Predatory pricing is usually explained in terms of sacrificing current revenues to obtain monopoly market power in order to charge higher prices in the future. Chicago school antitrust theorists doubt that successful price recoupment is ever likely, raising a serious question as to whether predation can be profitable.[8] Professor Easterbrook has suggested that "there is no sufficient reason to take predation seriously" and that the reason for the recent "blizzard" of predatory pricing theories has less to do with our experiences with predation than with its being the contemporary equivalent of the dragon.[9] He notes that "600 years ago there were a thousand positions on what dragons looked like."[10] Having concluded that predatory pricing, not dumping, may be a problem in international trade, Dale has created an opportunity to prepare a sequel volume demonstrating, within the context of consumer welfare, that predation is not a serious international trade problem either.

Independent of the theoretical issues with respect to the dangers of international predation is the more mundane problem of applying price-cost relationships in an international context. Determining foreign costs of production for discrete products in the face of flexible exchange rates within reasonable periods of time is probably impossible. Inasmuch as international trade is the result of cost differences, the attempt would make little sense.

A third possibility for reforming the antidumping legislation is to change the standard of material injury to a domestic industry to a standard of elimination of competition as proposed by critics of the Robinson-Patman Act.[11] The possibility is an unpopular one,

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[8] Lawrence A. Sullivan has described three schools of antitrust theory. The Chicago school teaches that the only goal of antitrust is the efficient allocation of resources. The Harvard school teaches that in addition to encouraging an efficient allocation of resources, antitrust reduces the need for bureaucratic market intervention. The last group consists of populists, who believe in the dispersion of economic power, not economic efficiency. Sullivan, Book Review, 75 COLUM. L. REV. 1214 (1975).

[9] Easterbrook, *Predatory Strategies and Counterstrategies*, 48 U. CHI. L. REV. 263, 268-76 (1981).

[10] *Id.* at 264.

[11] Dale recognizes that the Robinson-Patman Act is anticompetitive in both intention and effect. His references to the Act should be read as if it had been amended in accordance with proposals in the *Report of the White House Task Force on Antitrust Policy, Neal Report* (Congressional Record, May 27, 1969).

however. Dale acknowledges that the negotiators of the International Antidumping Code specifically rejected an injury-to-competition approach.[12] The lack of legislative standards in the U.S. Antidumping Act, 1921, did permit the United States Department of Justice to intervene in antidumping proceedings on the basis of an argument that the legislative history of the 1921 Act could support a standard of injury to competition.[13] In addition, a strained analogy to the duty of certain federal district courts to read the Robinson-Patman Act in conformity with the antitrust laws concerning the preservation of competition might be relevant to an antidumping statute.[14] However, these rationales disappeared with the repeal of the 1921 Act. The antidumping provisions enacted in 1979 specifically adopted injury criteria that preclude reading an injury-to-competition standards into the United States law.[15]

Dale's final proposal is that antidumping legislation focus not on the low-priced imports that led to the proceeding but on the subsequent high prices to recoup the revenues lost from the dumping. The suggestion is an anachronism. The specter of a huge bureaucracy monitoring the invoice prices of any complained-of imported product and looking for price increases during a period of worldwide inflation is not credible.

Dale's treatment of the international problems with steel production and East-West trade issues, where the concept of price discrimination is useless, is very well done. His descriptions of the negotiation of the 1967 and 1979 International Antidumping Codes are very informative. However, much of his research concerning the decisions of national antidumping laws is dated. As a result, much of the material is informative in a historial sense, but does not necessarily describe current statutes, regulations, and administrative interpretations accurately.

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[12] Dale, at 73.

[13] *Id.* at 56, citing briefs filed with the U.S. International Trade Commission by the U.S. Department of Justice.

[14] *See* Anheuser-Busch v. FTC, 289 F.2d 835 (7th Cir. 1961).

[15] *See* Barcelo, *Subsidies, Countervailing Duties and Antidumping After the Tokyo Round*, 13 CORNELL INT'L L. J. 257, 286 (1980).

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