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Hoist With Their Own *Petard*

How emerging markets use U.S. anti-dumping laws… against America.

BY DUANE W. LAYTON

In the movie *Independence Day,* a computer technician, played by Jeff Goldblum, discovers that the aliens are using our satellites to synchronize their attacks on earth. Much the same thing is happening today in the very real battle taking place between governments and industries over access to markets. As tariffs on goods fall and quotas are removed, numerous developing countries, led by China and India, are using antidumping and other "trade remedy" laws to protect their domestic markets from imports. Who did they learn this from? You got it, America.

The term "trade remedy" refers essentially to three types of legal proceedings that occur at the national level: antidumping, countervailing duty, and safeguards. Each is different, but all have one thing in common—if the requirements of the law are met, the government of the importing country has the right to impose remedial tariffs (and occasionally quotas) that can insulate a domestic industry from most, if not all, import competition for many years.

China and many other developing countries have the United States in their sights.

Throughout most of the twentieth century, the only countries that tended to use trade remedy laws were the United States, the European Union, Canada, and Australia. Occasionally, Argentina, Korea, or some other non-traditional user would attempt to block imports that threatened a strategic industry or a politically powerful domestic interest. In 1996, for instance, Guatemala brought a now-famous antidumping case that targeted imports of cement from Mexico. That case went on to become the first dispute over antidumping duties heard by the

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new World Trade Organization. But for the most part, it was the larger, more industrialized countries that used these laws. They had bound their tariffs at relatively low levels and agreed to eliminate quotas in successive "rounds" of multilateral trade negotiations (e.g., the Kennedy Round). As a result, their domestic industries were exposed to the greatest level of import competition. Meanwhile, the developing countries could continue protecting their most sensitive industries the old-fashioned way—through high tariffs, restrictive quotas, and/or innumerable non-tariff barriers to trade.

The creation of the WTO in 1995 changed everything. Almost overnight, the developing countries that joined the WTO were forced to liberalize their markets in ways they had never done before. Inefficient, often state-owned, industries faced real competition for the first time, including from industries located thousands of miles away in the United States or Europe. "Globalization" was like a train racing down the tracks and the developing countries were passengers whether they liked it or not. They needed some way to protect their most sensitive industries without violating their new WTO obligations. The answer was staring them in the face.

Between 1985 and 1995 (the year the WTO was established), the United States initiated 756 trade remedy actions—more than any other country. Roughly 45 percent of those actions were directed at imports from developing countries. Many of these cases targeted politically sensitive products such as steel. Still others targeted economically important products like flowers from Colombia, orange juice from Brazil, and cement from Mexico. In 2001, the year China joined the WTO, the United States initiated ninety trade remedy actions—many in the form of antidumping actions against imports from China. Since then, China has become the main focus of antidumping actions in the United States and elsewhere around the world. Indeed, between January 1, 2002, and June 31, 2006, 23 percent of all antidumping actions initiated worldwide targeted imports from China.

To say that China, India, and the other major developing countries took note of these developments would be an understatement. They went to school and lessons were learned. After being the target of these actions for more than twenty years, developing countries (again led by India, China, and to some extent Turkey and Argentina) are bringing trade remedy actions in record numbers—and often the United States is a target.

During the first half of 2006, India initiated the most antidumping actions, followed by the European Commission, Australia, Argentina, Indonesia, and Turkey. The United States, during this same period, did not initiate any new antidumping actions. In fact, during 2003–05, the United States initiated only 75 antidumping actions, compared to 95 by India and 73 by China.

China initiated its first trade remedy action in 1997. The case covered newsprint from the United States, Korea, and Canada, and resulted in the application of antidumping duties ranging from 9 percent to 78 percent percent. Since then, China has initiated 133 more antidumping investigations and one safeguard action. All but seventeen have resulted in new duties or other restrictions on imports. Imports of various chemicals, such as methylene chloride, phenol, and ethanolamine, have been the most frequent target. Other targets include steel, paper, and plastics.

Most of China's antidumping actions against the United States fit neatly within the same mold. A petition is filed by a nascent industry in China. One or two formerly state-owned companies dominate the industry. The other producers of the "like" product in China are small and scattered throughout the country. The government's analysis of dumping by the U.S. exporters is relatively sophisticated. At the end of the investigation, the calculations are "disclosed," but details are often missing. The investigators also examine whether the imports are causing or threatening to cause material injury to the Chinese industry, but the economic analysis is crude, at best.

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Several of China's most recent antidumping actions have not targeted imports from the United States. Rumor has it Chinese petitioners are tired of the seemingly endless objections lodged by U.S. lawyers (through local counsel) on their clients' behalf. Others believe the Chinese government is discouraging antidumping petitions against the United States, at least until the current furor over the value of the yuan and the bilateral trade imbalance passes. Whatever the case, one thing is certain. China and many other developing countries have the United States in their sights and will continue using U.S.-conceived trade remedy laws against the United States. ◆