Better the Devil We Know: How Sociology Informs the Debate Over Antidumping Laws

by

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ABSTRACT

Trade and other governmental policy decisions are frequently made based on neoclassical economic theory, which in turn is based on simplifying assumptions that result in unrealistic predictions. In this thesis, I argue that sociology is an important social science that can help to inform economic theory in policy-making. Understanding how social relations affect market actors and institutions is crucial, as markets are themselves composed of social relationships. I present an example using antidumping regulations. Economic scholars have argued that antidumping laws should be abolished based on pure economic theory. I argue that, from a sociological perspective, antidumping laws serve to provide a necessary stabilizer for markets, resulting in controlled competition and greater trade liberalization. Such laws should therefore be maintained.
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Chapter 1: Introduction

Since 1776, if not earlier, neoclassical economics and the theory of comparative advantage have dominated trade and other economic policy discourse. This has led to the creation of the World Trade Organization (“WTO”) and its various agreements, under the main economic argument that free trade is “more efficient than isolation and protectionism,” and that free trade benefits the masses as it increases competition and therefore provides cheaper and better quality products. As a result, antidumping laws are often criticized as trade barriers that not only reduce competition but that go against the spirit of the WTO.

Policy decisions, however, should not be based purely on neoclassical economic theory. The limitation of neoclassical economics is two-fold: first, economic theory relies on a series of simplifying assumptions. These assumptions look at markets as self-contained systems, and individuals as rational self-interested beings with perfect access to information. Unfortunately, markets do not operate in a vacuum, but in fact consist of

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1 In 1776, Adam Smith’s *Wealth of Nations* was published and argued that, where a country has no absolute advantage in anything, no trade will occur with another party. This concept introduces cross-border trade in spite of arguing that no trade should occur unless one country has an advantage in the production of some good or service over the other country. In 1817, David Ricardo introduced the theory of comparative advantage, which argues that, even if one country has no absolute advantage in anything, it still should specialize in whatever it has the least comparative disadvantage in and trade for what it has the greatest such disadvantage. For greater detail on comparative advantage, see Lynne Dallas, *Law and Public Policy: A Socioeconomic Approach*, (Durham: Carolina Academic Press, 2005) at 622-633 [Dallas].


3 *Ibid* at 271.


6 Malloy, supra note 4.
social relationships\(^7\) without which the market could not exist. Any theory that dissociates markets from the relationships underlying them is unrealistic and cannot be the sole consideration in policy-making. Second, the assumptions have resulted in a push towards maximizing competition in markets, without questioning this particular drive towards competition and whether there could be too much of this allegedly good thing.

The social relationships inherent in market activity require that we undertake a sociological analysis to understand market behaviour in order to determine whether antidumping duties are effective or whether they should be abolished. Studying the sociology of markets can help determine what other factors may significantly impact market behaviour. Sociology studies the development, structure, and functioning of human society. A sociological approach will thus take into account other characteristics to do with human interaction that economic theory considers to be irrelevant. Sociology can therefore help to inform economic theory and provide a more realistic conception of market behaviour. Although social relations have often been discussed with respect to trade policies and laws, they have generally been examined indirectly, rather than seen as a focus that can help us understand the many human dynamics inherent in market actor behaviour.

Chapter I of this thesis will begin with a discussion on the economic rationale behind free trade. I will then detail the reasons why such rationales based on pure economic theory are potentially misleading. Chapter II introduces the application of sociology to neoclassical economic theory and the understanding of markets. This chapter will suggest

\(^7\) Swedberg, *supra* note 5 at 108.
certain factors that ought to be considered when making policy decisions on economic matters. Chapter III will take antidumping regulations as an economic policy that could benefit from sociological analysis. Antidumping laws provide a good example of the importance of applying sociology to neoclassical economic theory, as studies have found no economic basis for imposing antidumping duties, and instead suggest that they inhibit competition and should therefore be abolished. By contrast, a sociological approach to economic theory will take into account other factors such as power relations, culture, trust, and government action. This chapter will apply socioeconomic factors in understanding why antidumping duties should persist in the face of global efforts towards free trade.

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Chapter 2: Economic Theory and Free Trade

2.1 Why Free Trade

Proponents of free trade base their arguments on efficiency, which is premised on the theory of comparative advantage. According to economist Paul Krugman, “If there were an Economist’s Creed it would surely contain the affirmations, ‘I believe in the Principle of Comparative Advantage,’ and ‘I believe in free trade.’”9 The theory of comparative advantage holds that it is more efficient for a country to specialize in the goods it produces best and to trade for everything else, than try to produce everything in isolation.10 The object is to produce and trade the goods one has the greatest comparative advantage in (or the smallest comparative disadvantage in), and to import the goods where one has the greatest comparative disadvantage.

This concept is, in turn, grounded in the concept of efficiency. More specifically, efficiency attempts to answer the question of how scarce resources can be most efficiently allocated. The neoclassical economic analysis of social welfare contains two forms of efficiency: Pareto optimality and Kaldor-Hicks efficiency.11 Pareto optimality is achieved where the transaction makes at least a single person better off without making anyone worse off.12 By contrast, Kaldor-Hicks efficiency is where a transaction results in the overall increase of wealth, regardless of whether some individuals may be harmed by the

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10 Tiefenbrun, supra note 2 at 271; Herman Daly & John Cobb Jr., For the Common Good: Redirecting the Economy Toward Community, the Environment, and a Sustainable Future (2d ed. 1994) 209-223 at 209
11 Dallas, supra note 1 at 17.
12 Ibid at 17; Michael Cody, The Corporation is a Social Institution (2010) [unpublished, archived at University of British Columbia Faculty of Law Library] at 208 [Cody]; see also Michael Trebilcock et al, The Law and Economics of Canadian Competition Policy (Toronto: University of Toronto Press, 2003) at 41 [Trebilcock].
transaction.\textsuperscript{13} Pareto optimality is expected to result when there is trade under the concept of comparative advantage, as “it is more economical for a nation to specialize in the goods and services it produces best and to trade for everything else….”\textsuperscript{14} This theory assumes economies to be “characterized by constant returns to scale and perfect competition.”\textsuperscript{15}

Thus free trade policy is economically efficient and beneficial to all parties involved. Liberalized trade then leads to lower prices and higher quality goods. It “increases opportunities to obtain goods and services otherwise unavailable in the importing country…[and] provides cheaper and better quality products to importing nations.”\textsuperscript{16}

\textbf{2.2 The Problem With a Purely Economic Analysis}

The problem with the above argument in favour of free trade is that it is grounded in neoclassical economic theory. Neoclassical economic theory assumes a perfectly competitive market in which the socially optimal amount of a product will be produced at a socially optimal price for that product.\textsuperscript{17} This is known as allocative efficiency. The reasoning is that the more competition there is in a particular market, the lower the price of the product, and the closer that price will be to the marginal cost of production.\textsuperscript{18} On this basis, economic theory promotes competition as a valuable goal of policy-making, especially in antidumping decisions. Economic theory, however, has some inherent

\begin{footnotesize}
\textsuperscript{13} Cody, \textit{supra} note 12 at 208.
\textsuperscript{14} Tiefenbrun, \textit{supra} note 2 at 272.
\textsuperscript{15} Krugman, \textit{supra} note 9 at 132.
\textsuperscript{16} Tiefenbrun, \textit{supra} note 2 at 272.
\textsuperscript{17} Trebilcock, \textit{supra} note 12 at 46-50.
\textsuperscript{18} Ibid.
\end{footnotesize}
deficiencies that make it unsuitable as the sole reasoning behind trade and other economic policy decisions.

Neoclassical economic theory\(^\text{19}\) has become the preferred analysis in policy-making in part because its simplistic assumptions lead to concrete answers or predictions that policy makers are able to then apply when making policy decisions. Neoclassical economic theory makes the following assumptions:

1. People act in their own self-interest
2. People act rationally in the pursuit of their own self-interest ("rational choice theory")
3. People have perfect access to information
4. People and resources are freely moveable
5. There are no artificial restrictions on entry into the marketplace
6. The current distribution of wealth and resources is taken as given.\(^\text{20}\)

Based on these assumptions, when determining how scarce resources are allocated,\(^\text{21}\) it is assumed that an individual will compete for these resources in a rational way that maximizes his or her self-interest.\(^\text{22}\) The market will then ensure that these resources in society achieve their most efficient use.\(^\text{23}\) This main economic question of how scarce

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\(^\text{19}\) While economic theory has certainly developed over the years, neoclassical economic theory continues to be the most frequently used as justification or reasoning behind policy decisions. The entire field of competition law, for example, appears to be based on neoclassical economic theory. For the purposes of this paper, all references to "economic theory" will mean neoclassical economic theory, or economic theory in its pure form, rather than any hybrid of economic theory combined with some other social science.

\(^\text{20}\) Malloy, supra note 4 at 243.

\(^\text{21}\) Cody, supra note 12 at 204. Economics seeks to answer the question of how scarce resources are allocated, based on rational choice theory.

\(^\text{22}\) Cody, supra note 12 at 204.

\(^\text{23}\) Cody, supra note 12 at 196-197.
resources are allocated shows the two key themes behind neoclassical economic arguments: self-interest and efficiency.

2.2.1 Self-Interest

As noted above, neoclassical economic theory assumes that individuals will always act in the pursuit of self-interest; in other words, it assumes that all individuals, everywhere, will act in accordance with rational choice theory. All actors in all markets will act in self-interest to serve the end-goal of maximal efficiency. This assumption gives neoclassical economic theory universal application, making it popular with policy-makers as means to predict how human beings will act or react in certain circumstances. Economics therefore provides an attractive form of justification for policy decisions. For example, the purpose of competition policy is based on the view that there is an ideal supply and demand cross-section where the price will be competitive and no one will suffer dead-weight losses (“perfect competition”). However, this is a direct cause-and-effect prediction, relying on the assumption that human beings are rational, profit-maximizing individuals who are always acting in self-interest and who are not affected by any externalities.

Neoclassical economics operates using an under-socialized concept of human beings. It refuses to consider the effects of externalities such as social structures and social relations on production, distribution, and consumption. The economic conception of a competitive market is one where the social relationships between producers and

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24 Ibid.
25 The two main forms of efficiency, Pareto Optimality and Kaldor-Hicks Efficiency, are introduced above. These concepts are discussed in greater detail later in this paper.
consumers will not directly or noticeably influence supply, demand, prices, or other terms of trade.\textsuperscript{27} Unfortunately, markets cannot be disembedded from society, and society cannot be made subordinate to the market in this way.\textsuperscript{28} The most basic economic dispositions – needs, preferences, and propensities – are dependent on human nature.\textsuperscript{29} Moreover, neoclassical economic theory predictions are based on supply and demand, and demand is itself a social product.\textsuperscript{30} Producers and consumers are influenced by their social relations with others, and their personal characteristics will affect rational choice and self-interest. For example, the iPhone is valued both as a useful telecommunication device and as a status symbol. The consumer’s decision to buy one depends as much on her social relations and self-image as on her considerations of the device’s utility. Thus rational choice theory is not a given. Individuals are often affected by their social relations with others, as well as individual moral concerns which also serve to affect trust relations and subsequent conduct. The market cannot so easily be segregated from society in the manner which neoclassical economic theory postulates.

2.2.2 Efficiency

Neoclassical economics assumes that there is only one way for scarce resources to be allocated, and that is for individuals to act in self-interest such that the market can respond in a manner that maximizes efficiency.\textsuperscript{31} This goal of market efficiency is a recurring theme, but, as with self-interest, it cannot be isolated from the social

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\textsuperscript{27} Ibid at 484. The argument here is that producers and consumers will not noticeably influence these terms of trade beyond the basic purchase and sale transactions. \\
\textsuperscript{28} Cody, supra note 12 at 11; Karl Polanyi, \textit{The Great Transformation}, (Beacon Hill: Beacon Press, 1964) at 60. \\
\textsuperscript{29} Pierre Bourdieu, \textit{The Social Structures of the Economy}, (Cambridge: Polity, 2005) at 8. \\
\textsuperscript{30} Ibid at 89. \\
\end{flushright}
relationships that underlie markets. Economics presumes an idealized market where buyers and sellers have perfect information, and function without any prolonged social contact between one another.\textsuperscript{32} Efficiency is expected to lead to successful market actors, which in turn can lead to increased competition in a market. However, this theme of efficiency may be misplaced, as market participants may well find that actors take certain action for motives that have nothing to do with efficiency.\textsuperscript{33} In addition, the most efficient solution for firms in a market is not always feasible.\textsuperscript{34} In spite of its limitations, efficiency remains a popular concept as it allows for predictions regarding the behaviour of market actors. If all actors are expected to act rationally in self-interest to pursue the most economically efficient result, then it becomes quite simple to predict outcomes in otherwise difficult economic situations. It may also be important to note that there may be other efficiency goals that are not purely economic. One such example is social efficiency. This is a concept that will be discussed later.

There is an additional problem with the neoclassical economic emphasis on efficiency. Both forms of efficiency discussed earlier (Pareto and Kaldor-Hicks) have inherent deficiencies that make them unsuitable as end-goals in policy analyses. Pareto optimality does not deal adequately with the distribution of wealth. A transaction is considered efficient so long as a single party benefits and no one suffers a loss.\textsuperscript{35} More importantly, this type of optimality is a rare occurrence and therefore unrealistic as means to evaluate laws.\textsuperscript{36} Instead, Kaldor-Hicks efficiency is more often used to evaluate laws and public

\textsuperscript{32} Granovetter, supra note 27 at 484.
\textsuperscript{33} Ibid at 504.
\textsuperscript{34} Ibid at 503.
\textsuperscript{35} For a more detailed discussion on the deficiencies of Pareto optimality, see Dallas, supra note 1 at 17-22.
\textsuperscript{36} Ibid at 22.
projects because it requires a cost-benefit analysis. Unfortunately, neoclassical economic theory using Kaldor-Hicks efficiency to gauge a transaction can be used to justify immoral behaviour. An example of this can be found in the decision by General Motors not to recall the Chevy Malibu because it was less costly to pay death settlements than to recall the vehicles and fix the problem. Any transaction becomes justifiable in spite of immorality so long as it has a positive net benefit or wealth maximization outcome.

In looking at both self-interest and efficiency in economics, it is clear that economic theory sees social relations among actors in markets as a “frictional drag that impedes competitive markets.” If producers and consumers will not discernibly affect markets, then it follows that there is no reason to believe their interaction among one another will. However, markets cannot simply be analyzed as though they constitute self-contained systems, and theories about markets cannot so simply dissociate society from the market. Although economic theory has been used to separate moral and social considerations from business efficiency for a long time, to dissociate society from markets using the simplistic assumptions required by neoclassical economics leads to inaccurate predictions. In fact, “in the last 25 years, economics has been spectacularly unsuccessful in its attempts to apply its models and theories to the reality of our

37 Ibid.
38 See also Richard Posner, The Economics of Justice (Cambridge: Harvard University Press, 1991) at 84. For a more detailed discussion of how ethics and morals are separated from business matters, see Cody, supra note 12 at 220.
40 Granovetter, supra note 27 at 484.
41 Swedberg, supra note 5 at 132.
42 Bourdieu, supra note 30 at 7.
43 Cody, supra note 12 at 220.
Social relations and ethical considerations cannot be rendered irrelevant when attempting to predict market behaviour, especially since the market cannot exist without social relationships. Rational choice theory is not a given, as individuals are often affected by their social relations with others, as well as other individual characteristics and concerns which affect trust relations and subsequent conduct. One “always has the ability to make free choice.” The market cannot be so easily segregated from society in the manner which neoclassical economic theory postulates.

45 Swedberg, supra note 5 at 108.
46 Cody, supra note 12 at 313.
Chapter 3: Sociology and Economics

In spite of its shortcomings, neoclassical economic theory should not be abandoned entirely. Although it is flawed at predicting human behaviour in the economic arena, to ignore economic theory in favour of some other social science would be as deficient as economists disregarding social relations in coming to trade and other economic policy decisions. The complicated nature of markets makes them impossible to be understood or explained through a single social theory. Instead, the complexity of society and the market is something that would be better understood through an analysis that develops economic theory by taking into account personal attributes and social relationships. The limitations of neoclassical economic theory have led economics to evolve into various sub-branches, including socioeconomics, evolutionary economics, and behavioural economics.\textsuperscript{47} The focus of this paper is the application of sociology to economics, or socioeconomics.

3.1 Why Sociology

The application of sociology to economics can provide a more accurate picture of markets and thus also more accuracy in predictions. While economics is based on rational choice theory, sociology considers the other end of the spectrum, that of “social beings whose decisions are affected by their social relationships.”\textsuperscript{48} Sociology serves to inform the neoclassical model to more accurately reflect the way markets and its participants act and react. This may provide a more appropriate analysis behind trade policies that can then be better applied in developing antidumping and competition laws.

\textsuperscript{47} Ibid at 235.
\textsuperscript{48} Ibid at 66.
Rational choice theory also cannot be completely abandoned in favour of sociology or any other social science.\textsuperscript{49} Whether or not certain behaviour is rational and in one’s self-interest depends on the goal to be attained. Certain behaviour may seem irrational in the pursuit of an economic goal, but in fact be rational behaviour if we fully understand the situational constraints.\textsuperscript{50} A key difference between a sociological approach and the neoclassical economic one is that economic theory rarely views goals such as sociability, approval, status, and power as rational. Economics thereby limits itself to treating economic interests as the only rational behaviour and viewing all other goals as irrational.\textsuperscript{51} This limitation was caused in part by economist Albert Hirschman, who separated “passions” from “interests,” and claimed that economists specialize in analyzing only behaviour motivated by “interests.”\textsuperscript{52} He assumed that other motives occur in separate spheres that are non-rationally organized, and this notion has led economists to separate economics from sociology on the basis of rational or irrational behaviour.\textsuperscript{53} Examples of non-rational behaviour in a strict economic sense include managers evading audits and fighting over transfer pricing.\textsuperscript{54} However, if viewed in the appropriate social context, this type of behaviour can be more readily interpreted as rational and self-interested.

Efficiency also cannot simply be ignored. Although sociology may postulate goals other than economic efficiency, sociologists recognize that “the social relationships underlying
markets will have efficiency effects.” Moreover, while “social relationships might produce stable outcomes for participants, they might also actually undermine market efficiency.” An example of this would be social relationships leading to trust between actors, contributing to the formation of cartels and thus making other firms more vulnerable as their suppliers begin to charge higher prices. The effects that social relationships can have on efficiency will be discussed in greater detail below. What is important to note here is that efficiency and other themes from neoclassical economics should not be simply dismissed, but rather informed by a sociological analysis.

3.2 Introducing Socioeconomics

The application of sociology to the complicated study of markets has led to the development of a hybrid social science: socioeconomics. Socioeconomics views economic behaviour as a subset of human behaviour that includes both competition and cooperation shaped not only by self-interested rationality, but also by institutions, social bonds, expectations, beliefs and other aspects of human nature and society.

In other words, markets are viewed as embedded in the larger social context, where individuals are constrained in their choices not just by rationality but also by social bonds, beliefs, and expectations. In contrast to neoclassical economics, socioeconomics is capable of emphasizing that the market is not a harmonious place where equilibrium is reached by the forces of supply and demand but that it is a social construction complete with conflict and power struggles between social actors and groups.

55 Fligstein and Dauter, supra note 32 at 120.
56 Ibid at 120.
57 Ibid at 120.
59 Cody, supra note 12 at 159; see also Dallas supra note 1 at 5.
Scholars have “demonstrated that market processes are shaped by social structures.”

Whereas the rational choice theory of neoclassical economics finds social, cultural, and institutional differences between actors, markets, or societies to be irrelevant, socioeconomics seeks to establish the links between economic and social phenomena.

One reason why neoclassical economics chooses to ignore social relations is because it removes the problem of disorder from the economic analysis. The argument is that disorder arises where there are issues of trust or malfeasance. In a competitive market, however, it is assumed that there will not be any problems of mistrust or malfeasance, because actors will simply move to a different trader who will do business on market terms. This means that even if social relations lead to trust issues or misconduct, the social relations are irrelevant as they will not have any effect on a market. The reality is not quite so simple. Trust and malfeasance are factors that play an active role in markets, especially in the face of competition. These factors will be discussed later in this paper.

3.2.1 Socioeconomics and Markets (Or the Sociology of Markets)

The complexity of society, the market, and corporations is something that we likely can never fully understand. Because of this, the application of sociology to market analysis will have its difficulties. Although significant progress has been made in understanding the origins, operations, and dynamics of markets as social structures, separate and distinct

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60 Ibid at 257.
62 Granovetter, supra note 27 at 484.
63 Ibid.
64 Ibid.
65 Cody, supra note 12 at 31.
Theoretical perspectives have emerged. There are three main perspectives: markets as networks, markets as institutions, and markets that are performative. These three perspectives will not be elaborated in detail here, as a detailed discussion of each theory is not necessary for present purposes. What is important to note about the three approaches is that they all view markets as “social arenas where firms, their suppliers, customers, workers, and government interact, and all three approaches emphasize how the connectedness of social actors affects their behaviour.” It is this commonality that makes a socioeconomic approach to understanding markets relevant.

While there are still other approaches to the analysis of the sociology of markets, they continue to share this same vision of markets as being composed of social relationships. In studying the sociology of markets, it seems to be agreed among socioeconomic scholars that “economic life [is] always embedded in social life.” The agreement among the various perspectives in socioeconomics helps to bolster the argument for why neoclassical economic theory alone is insufficient when making policy decisions.

Neoclassical economics looks at markets as consisting simply of exchanges between actors for goods or services. These exchanges involve a price that is determined by

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66 For a more detailed discussion on the main sociological perspectives on markets, see Fligstein and Dauter, supra note 32 at 106.  
67 Ibid at 107.  
68 Ibid.  
69 Ibid. For a more complete analysis of other approaches to socioeconomics, as well as the various theories and arguments that have arisen in the development of contemporary socioeconomics, see Cody, supra note 12 at 300-345.  
70 Ibid at 112.  
71 Ibid.
supply and demand for a commodity without considering how exchange is inherently social. From the perspective of the sociology of markets, this is a problem because

This type of exchange already shows a great deal of social structure. Market actors have to find one another. Money has to exist to allow market actors to get beyond bartering non-equivalent goods. Actors have to know what the price is. Underlying all exchange is that both buyers and sellers have faith that they will not be cheated. Such faith often implies informal...and formal mechanisms (i.e., law) that govern exchange. Furthermore, market actors are often organizations, implying that organizational dynamics influence market structures. Thus markets, by their very nature, “imply social spaces where repeated exchanges occur between buyers and sellers under a set of formal and informal rules governing relations between competitors, suppliers, and customers.” From a socioeconomic point of view, markets involve a whole host of underlying social relationships and arrangements that neoclassical economics chooses to ignore. As market actors are involved daily in social relationships with one another, there are inherent trust, power, and dependence factors that must be considered when deciding whether certain laws created based on pure economic policy ought to be altered or abolished. It is clear that markets are anything but natural, and there are numerous factors that must be taken into account when analyzing the market to determine the best and most effective economic policy.

A socioeconomic approach to markets also changes the understanding of efficiency. As noted earlier, the social relationships involved in markets will have an effect on efficiency. However, instead of looking solely at economic or profit-maximizing efficiencies, socioeconomics takes into account possible social efficiencies (including the self-interest goals discussed earlier) which neoclassical economics often ignores. Social

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72 Ibid at 113.
73 Ibid.
74 Ibid.
75 Swedberg, supra note 5 at 106.
structures can promote traditional efficiencies, or alternatively, could protect inefficient practices. Economic sociology can help to understand how social structures promote or obstruct market efficiencies. As we discuss and apply factors that affect social relations and therefore market activity, the underlying goal of efficiency must be kept in mind.

It seems clear, then, that economic action is embedded in networks of social relations. The success of a firm will depend on uncertain and complicated factors, such as wage contracts, controlled prices, and supply agreements. Moreover, actors in markets are affected by social relations with other actors, and their personal characteristics affect rational choice and self-interest. Thus the market does not run society, but rather is a way for society to satisfy its needs. As a result, social relations will affect both the competition and efficiency objectives of economics, as well as the presumption of self-interest. The complexity of social institutions and their effect on markets makes economic theory attractive to policy-makers, who “have developed a bad habit of not being able to admit that they do not completely understand what is going on.” The simplicity provided by economic theory is addictive, as it allows policy makers to place pure economic goals at the forefront of many policy decisions in spite of the fact that simple economic theories cannot accurately predict social behaviour.

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76 Fligstein and Dauter, supra note 32 at 121.
77 Granovetter, supra note 27; Bourdieu, supra note 30 at 198.
78 Bourdieu, supra note 30 at 197.
79 Cody, supra note 12 at 307-8.
80 Ibid at 31.
81 Ibid at 33.
3.3  **The Goal of Market Action From a Socioeconomic Perspective**

Neil Fligstein has developed what is perhaps the strongest socioeconomic theory of markets to date, as it synthesizes various sociological theories together.\(^{82}\) For this reason, his socioeconomic argument will be the focus of this paper. Fligstein presents a theory of fields within which actors search for stable interactions between competitors, suppliers, and workers, and thereby cause the formation of social structures in markets.\(^{83}\) He explains how the tactics we observe in business are oriented toward producing stable social relations, particularly between competitors. These relationships define fields. Once in place, firms signal one another about their price and product tactics. The relationships define how the market works, what a given firm’s place is, and how actors should interpret one another’s actions. Incumbent firms use the power of their position to undertake strategies that reinforce that position. To survive, challenger firms must find a place in the existing set of social relationships.\(^{84}\)

Fligstein defines markets as “social constructions that reflect the unique political-cultural construction of their firms and nations.”\(^{85}\) Fligstein suggests that the greatest issue individuals and organizations face in markets is uncertainty, and that the “social structures of markets and the internal organization of firms are best viewed as attempts to mitigate the effects of competition with other firms.”\(^{86}\) The goal of markets is therefore stability as opposed to competition.\(^{87}\) A stable market is a successful market, and stability is created by social means, that is, through stable social relationships with customers, suppliers, stakeholders, and competitors.\(^{88}\)

\(^{82}\) *Ibid* at 336. Fligstein combines insights from institutional theory, network analysis, and population ecology. At the same time, he synthesizes different organization theory perspectives.
\(^{84}\) *Ibid* at 18.
\(^{86}\) *Ibid* at 657.
\(^{87}\) *Cody, supra* note 12 at 343.
\(^{88}\) *Ibid* at 336.
The critics of antidumping laws believe that the promotion of competition is the ultimate goal in economic policy decisions. This indicates a disregard both for the dangers of excessive uncertainty in markets and for how individuals and firms may react to instability in markets. While actors in markets have various goals (profits, market share, etc.), the primary goal is to ensure the survival of their firm, as opposed to the efficiency objective espoused by economic theory:

In markets, the goal of action is to ensure the survival of the firm. No actor can determine which behaviours will maximize profits (either a priori or post hoc), and action is therefore directed toward the creation of stable worlds.

The purpose of action in any given market is to “create and maintain stable worlds within and across firms that allow firms to survive.” This is an unsurprising objective. In the face of market instability that threatens the survival of a firm, the firm may take drastic actions that have dire consequences for competition within the market. This will be discussed with reference to antidumping laws later in the paper.

Before analysing the economic consequences of firms fighting for survival in overly competitive markets, it is necessary to discuss the methods through which firms attempt to stabilize markets in order to maximize their chances of survival. Fligstein noted that

Much of the market-making project is to find ways to stabilize and routinize competition. Much of the history of the largest corporations can be read as attempts to stabilize markets for these firms in the face of ruinous competition and economic downturns.

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89 Ibid at 341; Fligstein Markets, supra note 87 at 659.
90 Fligstein Markets, supra note 87 at 659.
91 Ibid at 658.
92 Fligstein 2001, supra note 85 at 5.
He further defines a stable market as one where “the identities and status hierarchy of firms (the incumbents and the challengers) are well known and a conception of control that guides actors who lead firms is shared.”\textsuperscript{93} The social structures in markets help actors manage competition and stabilize their relationships with suppliers, producers, consumers, and competitors.\textsuperscript{94}

### 3.3.1 Conceptions of Control

Social structures are produced through conceptions of control, which are understandings between actors about how markets work, and allow actors to interpret each other’s actions in determining market structure. Conceptions of control serve to create social understandings through which firms can “avoid direct price competition and can solve their internal political problems.”\textsuperscript{95} Incumbent firms will hold this conception of control over other incumbents and new challengers to the market. That is, a status hierarchy exists in a stable market that helps to enforce market social order. This status hierarchy leads incumbents to do what they can to maintain the status quo even while vying for market share. It prevents direct confrontation, as breaking down the “stable order could potentially bring more chaos than would enforcing the ‘way things are done.’”\textsuperscript{96} Thus incumbent firm action is guided by the existing conception of control,\textsuperscript{97} and these firms will continue to take the same kind of action that produced the stable order in the first place if faced with new challenger tactics or new invaders into the market.\textsuperscript{98}

\textsuperscript{93} Fligstein Markets, supra note 87 at 663.
\textsuperscript{94} Fligstein 2001, supra note 85 at 17.
\textsuperscript{95} Fligstein Markets, supra note 87 at 659.
\textsuperscript{96} Ibid at 667.
\textsuperscript{97} Ibid.
\textsuperscript{98} Ibid.
Conceptions of control provide an understanding in markets of what is reasonable behaviour to take against one another, either as an incumbent or a challenger. As Fligstein noted,

The ability to buy and sell freely creates a kind of social chaos as the supply and demand for a given good swings widely and produces pressure on suppliers, producers, and competitors. In the face of this chaos, self-interested actors propose to stabilize interactions by creating cultural understandings for themselves and others, and social links to one another. To the degree that these links buffer the core firms in a market, those firms prosper. To the degree that methods to protect firms exist, they spread to other markets.\(^99\)

Although the goal of this type of behaviour is to bring the market back to the status quo that existed before the challenger invasion, there is also the possibility that efforts to enforce the conception of control in a particular market result in greater danger to competition than antidumping duties themselves. What is important to note is that firms create a status hierarchy (or a conception of control) in a market, and desire to maintain this conception of control. “Markets in which a conception of control never emerges continue to have relatively high rates of firm death, while markets that are able to produce conceptions of control stabilize at lower death rates.”\(^100\) By contrast,

Competitive markets produce instability for both consumers and producers. As unregulated economic exchange increases and prices begin to be set by those exchanges, social relationships are up for grabs, and the firms with the most resources may be able to dictate terms to all others.\(^101\)

### 3.4 Sociological Factors That Affect Markets

As we can see from the above analysis, from a socioeconomic perspective, firm action is directed towards the creation of stable markets,\(^102\) rather than increasing competition. This stability is affected by (and often dictated by) conceptions of control. Conceptions of

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\(^{100}\) Fligstein Markets, supra note 87 at 665.

\(^{101}\) Fligstein 2001, supra note 85 at 19.

\(^{102}\) Fligstein Markets, supra note 87 at 659; Cody, supra note 12 at 341.
control are in turn influenced by a number of sociological factors, including power
relations, culture, trust, and government,\textsuperscript{103} although this list is by no means exhaustive. Markets are “dependent on governments, laws, and larger cultural understandings supporting market activity.”\textsuperscript{104}

3.4.1 Power Relations

The social relationships in a market, namely exchange relationships between producers and consumers, are often influenced by the relative power of the actors over supply of and demand for what is being exchanged.\textsuperscript{105} If the power position of one firm is clearly dominant over another, the other may be likely to leave the market early in order to minimize its losses.\textsuperscript{106} This is especially likely to occur if there is conflict between the two firms, and is also affected by other relationships each of the firms may have developed.

Power relationships are in fact implied in economic theory, as the concern over predatory pricing is a manifestation of exactly this type. If a firm or a group of firms is in a position of power over others in the market, they have the ability to set low prices that can drive out the competition (the “other” firms). The low price is set so that firms are likely to suffer significant losses if they try to compete, and instead of enduring increasing losses, they exit the market earlier rather than later. What economics does not consider is that, even in the face of power relations of this type, there are other social relations that may

\textsuperscript{103} For more detail on these factors, see Dallas, supra note 1; Fligstein and Dauter, supra note 32; and Granovetter, supra note 27. This is not an exhaustive list of sociological factors, but a discussion of some of the main factors that have arisen in socioeconomic writing. Dallas provides a more detailed discussion on various sociological factors and their effects on markets.

\textsuperscript{104} Fligstein and Dauter, supra note 32 at 113.

\textsuperscript{105} Ibid at 114.

\textsuperscript{106} Granovetter, supra note 27 at 502.
affect what a less powerful firm chooses to do. A weaker firm may not have to exit the market in order to minimize losses if it has sufficiently strong relations with other firms, its suppliers, or its consumers, among other actors, as the firm could call upon these relationships to support it and thereby survive.107

Power relations also occur with respect to resource dependency. In a particular market, there are actors who may be more dependent than others on that which is being exchanged. Between firms, this dependency results in the type of power relations discussed above, where weaker firms may exit the market in order to minimize their losses. However, resource dependency also affects relationships between consumers and producers or suppliers. The one who is more dependent on the exchange must “obey the dictates of the supplier/customer or else face extinction.”108 The structure of power relations in a market can determine the conditions in which actors come to decide on purchase and sale prices.109 The stronger actors are able to dictate prices that weaker firms have little option but to follow. Rather than prices being determinant of how the market acts, it is “everything that determines prices.”110 The dominant firm takes initiative with respect to price changes as well as the introduction, distribution, and promotion of new products.111 This is precisely the conception of control discussed earlier.

As seen in this discussion of power relations, power can affect competition. Actors who are more resource dependent are more susceptible to competition. For example, a firm

107 This is the theory of vertical integration, which will be discussed in greater detail later in this paper.
108 Fligstein and Dauter, supra note 32 at 114.
109 Bourdieu, supra note 30 at 197.
110 Ibid at 197.
111 Ibid at 201.
that produces only a single product is less stable against competitors producing the same product. By comparison, if a firm produces multiple products, they are more stable against competitive pressures from multiple product markets. If there are competitors selling one of their products at a lower price (or of higher quality, or otherwise competitive), a multiple product firm is not immediately driven to high losses as this firm has other product sales to fall back upon. They are not totally resource dependent on the exchange of a single product.\textsuperscript{112} This also is one explanation for why new firms are more vulnerable to competition: they may not know what their key resource dependencies are, or they are not able to reliably deliver what people want.\textsuperscript{113} As a result of these power relations, the “social structuring of markets is generally in response to the problems of competition and exchange.”\textsuperscript{114}

\textbf{3.4.2 Culture}

Markets are based on a series of exchange relations between actors. There is no pre-set template for these relations that dictate how a particular actor will behave. Some scholars hold a mechanical conception of how society influences individual behaviour.\textsuperscript{115} These scholars believe that once an individual’s social class is known, their behaviour becomes automatic because individuals are so well socialized.\textsuperscript{116} The reasoning behind this theory is that social influence is an external force, and individuals internalize this force once their social class is known. Once this force is internalized, it will then guide all future actions of that individual.

\begin{itemize}
\item \textsuperscript{112} Fligstein and Dauter, supra note 32 at 115.
\item \textsuperscript{113} Ibid at 119.
\item \textsuperscript{114} Ibid at 115.
\item \textsuperscript{115} Granovetter, supra note 27 at 486.
\item \textsuperscript{116} Ibid at 486.
\end{itemize}
This perception is misguided, as it assumes that there are no externalities that will affect the decisions an individual will make. More importantly, culture is an ongoing process, “continuously constructed and reconstructed during interaction. It not only shapes its members but also is shaped by them, in part for their own strategic reasons.”

Culture is progressive, and must be considered in a progressive manner when evaluating its effects on social relations and market activity. As noted earlier, cultural homogeneity play a role in the formation of cartels. Over time and continuous interaction between parties, the cultures of the various parties may align, and have the effect of either promoting or impeding trade. This provides an edge for existing competitors to merge or otherwise cooperate, should they become vulnerable to excessive competition.

It is also important to understand the cultural meaning and significance behind the products being purchased or sold. What products mean for people can help to explain “how people use money and markets to establish meaning, status, and morality.”

Products can therefore be seen as cultural objects that symbolize or represent certain meanings established through shared understandings. These meanings are inherently negotiated between consumers and producers, and it follows that the meanings help to shape the interpersonal relations involved in market exchange. To conduct this type of analysis on a product-to-product basis is very difficult in more general policy-making. This cannot be directly applied when analysing the costs and benefits of antidumping regulations, as there are far too many products to consider. However, it could be reflected upon more generally in relation to different product markets. Product markets can be

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117 Ibid at 486.
118 Fligstein and Dauter, supra note 32 at 114.
119 Ibid at 115.
120 Ibid.
121 Ibid.
differentiated into classes (for example, luxury goods and basic goods), and each classification can be analyzed to understand what that group of products means to its consumers. Its meaning could then help to explain how changes in output or supply will affect demand in a more realistic manner.

3.4.3 Trust

Associated with power in social relations is the factor of trust. Networks of social relations will often generate trust. Trust is “about power and resource dependence. Firms work to reduce uncertainty and resource dependence by choosing partners who they either know to be reliable or others think are reliable.” Actors generally continue to transact with repeat partners because they have personal knowledge of their reliability and integrity. The belief is that, “if one has close ties to others over long periods of time, one can trust that in any particular transaction, people are less likely to try to cheat one another.”

Trust is actually considered in economic theory through the fundamental problem in game theory of the prisoner’s dilemma. Economic theory would state that rational, self-interested individuals faced with this dilemma would defect, as this is the Pareto-optimal

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122 Bourdieu, supra note 30 at 198.
123 Fligstein and Dauter, supra note 32 at 114.
124 Ibid at 114; see also Granovetter, supra note 27 at 488-490.
125 In the classical Prisoner’s Dilemma, two suspects are arrested by the police. The police do not have sufficient evidence for conviction, and visit the two prisoners (who have been separated) to offer each the same deal. If one prisoner testifies against the other (i.e. defects) while the other remains silent (i.e. cooperates), then the defector will be freed while the other will be given a year-long prison term. If both prisoners remain silent, then both are given a one-month prison term. If they both defect, then each are given a three-month prison term. Each prisoner must decide whether to defect or to remain silent. Each prisoner is also assured that the other will not know of the betrayal before the end of the investigation. In economics, and example of the prisoner’s dilemma can be seen in cartels, where cooperating with the cartel is to hold prices at the higher cartel level, while defecting entails reducing prices and, as a result, stealing business from the other cartel members.
solution. However, trust in the form of fraud or use of force is generally considered irrelevant in a neoclassical economic analysis of transactions. The assumption in economic theory is that self-interested individuals will be prevented from taking fraudulent action because competitive forces will suppress this type of behaviour.\textsuperscript{126} Put another way, in market transactions, the reasoning appears to be that the prisoner’s dilemma would not arise, as one would choose not to be put in such a position to be dependent on another actor’s trustworthy behaviour. Alternatively, if one is placed in this position and malfeasance occurs, then the game would not continue to be played with this fraudulent member. Trust is therefore considered a less important factor in economic analysis, as actors will simply choose others to transact with if there are issues of mistrust or malfeasance. The expectation is that “the pursuit of economic self-interest [is] typically not an uncontrollable ‘passion’ but a civilized, gentle activity.”\textsuperscript{127} Self-interest is the expected rational behaviour, and it would not be rational to transact with untrustworthy individuals.

However, this disregards the fact that the competitive forces economists claim will suppress force or fraud are based on social behaviour. If one wants to continue to do business in a market, it is human motivation that dictates this type of fraudulent behaviour be suppressed. Unfortunately, motivation can also lead to the opposite effect: fraudulent behaviour may appear to be in an actor’s best interests if it is not discovered. Deceitful actions can occur in a market and not be discovered until it is too late. As such, trust becomes of even greater importance in transactions, as transacting with people you trust, either because you have partnered with them in the past or because they have a positive

\textsuperscript{126} Granovetter, supra note 27 at 488.
\textsuperscript{127} Ibid.
reputation (also something that builds from trust), entails less risk. Furthermore, as cross-border transactions become increasingly common, there are trust considerations that arise on an international playing field. These trust relations go beyond corporations to the nations themselves. Trust therefore plays a role in social relations in the market, especially in exchange transactions.

It is also important to note that building social relations of trust is no guarantee of trustworthy behaviour. In fact, there is sometimes greater potential for actors to exploit trust relationships.\textsuperscript{128} A relationship of trust between two parties could lead one party to more easily deceive the other because of this expected mutual goodwill. Moreover, trust can enhance the opportunities for malfeasance, as seen in the case of cartels. In order for a cartel to function, there must be sufficient trust amongst members of the cartel. This is, in fact, one of the arguments for why cartels are normally difficult to form. It is difficult to establish such a level of trust between all the members such that no one cheats. At the same time, however, cultural homogeneity that builds over a series of transactions between parties can increase the level of trust among actors to enhance cooperative efforts. The factors of trust and culture therefore affect power relations as well.

Trust relations can affect exchange transactions in both positive and negative ways. It is a factor that exists in any business relationship, although the degree to which it plays a role differs depending on the type of transaction. As such trust relationships between and among individuals and firms must be considered when trying to understand market behaviour. This is particularly important in the antidumping context, as the economic

\textsuperscript{128} \textit{Ibid} at 491.
arguments both for and against antidumping regulations frequently revolve around concerns over monopolies and cartels.

3.4.4 Government

This seems to be an obvious factor as the argument against antidumping regulations is one that is requesting the government to repeal legislation. However, the economic reasons behind abolishing antidumping duties look at exchange relations as though they operate in a vacuum. Competition characterizes the exchange between actors in a market, as it is a problem for producers to solve “using strategies of cooperation, combination, and product differentiation.”129 Government regulates the degree to which these strategies are successful. In terms of antidumping, one commentator has defined these regulations as “whatever you can get the government to act against under the antidumping law.”130

The role of government becomes even more important when considered in conjunction with power relations. Market actors establish relationships not only with their competitors and customers, but also with government.131 As government plays a major role in regulating competition and other aspects of market activity, it is in the interests of market actors to befriend government agencies. Firms with greater power in the market have a greater chance of co-opting government agencies, thereby helping to secure their own future.132 Moreover, firms that have established strong trust and goodwill relationships with their various counterparts are better able to lobby the government to introduce legislation that is more favourable to their own survival.

129 Fligstein and Dauter, supra note 32 at 115.
131 Fligstein and Dauter, supra note 32 at 114.
132 Ibid at 117.
Government has the ability to affect conceptions of control. The ability of firms to exert market power by creating hierarchies is also limited by government regulation, and “through intended or unintended actions, states can thwart the actions of firms to create stable conceptions of control.” Fligstein suggests that the state should, at the very least, not oppose a conception of control. Government intervention is one manner in which actors can create and enforce stable markets. Incumbents with sufficient hierarchical power (or who hold the conception of control in a market) can get the state to intervene so that the government provides the stable conditions through which actors can “organize, compete, cooperate, and exchange.” Government regulation can change the balance of power in a market, thus involving the state in protective or regulatory legislation can increase the chances of firm survival.

133 Ibid at 116.
134 Fligstein Markets, supra note 87 at 664.
135 Ibid at 658.
136 Ibid at 661.
137 Ibid at 660.
138 Ibid at 659, 664.
Chapter 4: Antidumping Laws as an Example

The importance of applying sociology to neoclassical economic theory can be exemplified in an analysis of antidumping regulations. This section will begin with the purely economic reasons for abolishing antidumping duties. I will then turn to the limitations presented by the economic reasoning, and discuss the effects of eliminating antidumping laws from a socioeconomic perspective.

4.1 The Economic Reasons for Eliminating Antidumping Laws

Dumping occurs when “the imported goods are sold at a price below the comparable price by which they are sold in the home market…or below the cost of production.”139 To establish a case for imposing antidumping duties, the domestic market must have suffered injury as a result of the dumping. Antidumping laws penalize this behaviour by imposing a duty on dumped goods. As such, antidumping duties are in fact a trade barrier. Economic arguments in favour of antidumping laws include preventing predatory pricing and intermittent dumping, but, as I will discuss, these arguments have been discredited. By contrast, a persuasive economic argument has been made against the imposition of antidumping laws as they have the ability to facilitate the creation of cartels and are thereby anti-competitive.

4.1.1 Antidumping Laws and Predatory Pricing

Antidumping regulations are often justified on the basis that they help to prevent predatory pricing.140 Predatory pricing occurs when companies reduce the price of goods

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140 Ibid at 731. See also Jean-Marc Leclerc, “Reforming Anti-Dumping Law: Balancing the Interests of Consumers and Domestic Industries” (1999) 44 McGill L J 111 ¶64 [Leclerc].
in an effort to drive competitors out of the market. Over time, the company committing predatory pricing will gain a monopoly. As a consequence, the company can then sell their product at the monopoly price – clearly a negative effect on consumers. However, this result is unlikely to happen. Hutton and Trebilcock studied thirty cases in which antidumping duties were imposed.\textsuperscript{141} The result of these studies rejected the idea that antidumping duties are justified as a means of preventing predatory pricing, as none of the cases provided evidence of a serious opportunity for a dumper to gain a monopoly in Canada.\textsuperscript{142} In order to establish a monopoly, a dumper must succeed in driving out not only domestic competitors in the marketplace, but also foreign competitors. Unless there are severe barriers to entry into the particular market of the dumper, it will be exceedingly difficult not only to drive out all current and incoming competitors, but also to maintain the monopoly long enough to recover the losses from the original dumping action. There is, in fact, not “a single case where it could be argued convincingly that exporters who were dumping could have hoped to attain a lasting monopoly power to exploit buyers in their importing country.”\textsuperscript{143}

\subsection*{4.1.2 Antidumping Laws and Intermittent Dumping}

Hutton and Trebilcock also considered sporadic or “intermittent” dumping. This type of dumping occurs when “exporters dump for a few months at a time, then stop for a few months, then begin dumping again.”\textsuperscript{144} The danger of intermittent dumping is that

\begin{itemize}
\item \textsuperscript{141} Hutton and Trebilcock, supra note 8 at 130.
\item \textsuperscript{142} Leclerc, supra note 143 ¶ 12.
\item \textsuperscript{143} Klaus Stegemann, \textit{The International Regulation of Dumping: Protectionism Made Too Easy} (Kingston, 1991) at 1-2.
\item \textsuperscript{144} Leclerc, supra note 143 at 5; Michael Trebilcock and Robert Howse, \textit{The Regulation of International Trade}, 3\textsuperscript{rd} ed (New York: Routledge, 2005) at 257 [Trebilcock and Howse]. Trebilcock and Howse discuss how: “Jacob Viner defined intermittent dumping as systematic dumping which lasts for several months or
domestic producers will be forced to restrict production or leave the market during periods of dumping to fend off lower priced imports until the dumper leaves the market. After the dumper leaves the market, domestic producers will then have to charge supracompetitive prices to recover the losses endured during the dumping period. This is difficult both on the producer as well as on the consumer, as they will have to pay higher prices during the producer’s recovery period. However, intermittent dumping is also unlikely to have a deleterious effect on domestic producers. For this to occur, the dumper must have the ability to “substantially disrupt domestic production,” such that consumers would choose to consistently purchase the foreign goods sporadically as they are dumped, and refuse to substitute these goods with the domestic product in between dumping periods. Critics have determined that this situation is unlikely to occur. As well, from a consumer standpoint, the lower priced import could in fact offset the supracompetitive pricing after the dumper leaves, resulting in little total effect on consumers. Sporadic dumping does not, therefore, appear to be an adequate reason for maintaining antidumping duties.

4.1.3 Antidumping Laws and the Facilitation of Cartels

As discussed above, although the theory has been discredited, the concern over predatory pricing is that it could ultimately lead to the foreign producer gaining a monopoly. Cartels also lead to monopoly prices. Cartels function when its members conspire to drive out all other competitors, after which the cartel is able to fix prices at a monopoly level. Cartels

145 Trebilcock and Howse, supra note 147 at 118.
146 Leclerc, supra note 143 at 6.
147 Trebilcock and Howse, supra note 147 at 118.
are therefore not only discouraged, but also considered criminal activity in Canada.\textsuperscript{148} While predatory pricing (and the prevention of monopoly formation) has been put forward as a justification for antidumping laws, it has been suggested that antidumping regulations can in fact facilitate cartels,\textsuperscript{149} directly contrary to the purpose of preventing monopoly formation.

Although both the U.S.\textsuperscript{150} and Canada\textsuperscript{151} have incorporated a per se rule against cartels, price-fixing cartels are in fact difficult to “create, maintain, and enforce.”\textsuperscript{152} Cartels require negotiation and cooperation among those who are party to the cartel. Moreover, cartels require a certain amount of product homogeneity and cultural homogeneity among the participants, high market share per participant, and high barriers to entry.\textsuperscript{153} Product homogeneity will allow the cartel to be governed by a simple set of rules on output and pricing.\textsuperscript{154} Cultural homogeneity makes negotiations and agreement easier to come by between participants.\textsuperscript{155} A high amount of market share is necessary as this reduces the number of participants in the cartel.\textsuperscript{156} The more members there are, the more difficult a cartel is to control and the harder it is to prevent and detect cheating.\textsuperscript{157} High barriers to entry will prevent new firms (whether domestic or foreign) from entering a cartelized market and breaking up the cartel.

\begin{footnotesize}
\begin{enumerate}
\item[148] \textit{Competition Act}, RSC 1985, c C-34 [\textit{Competition Act}].
\item[149] Pierce, supra note 142.
\item[150] \textit{Sherman Act}, 15 USC §1-7 (1890).
\item[151] \textit{Competition Act}, s 45.
\item[152] Pierce, supra note 142 at 736.
\item[153] Ibid at 737.
\item[154] Ibid.
\item[155] Cultural homogeneity helps to foster trust between members as they are of similar minds. As discussed earlier, culture plays an active role in understanding market activity.
\item[156] Pierce, supra note 142 at 737.
\item[157] Ibid.
\end{enumerate}
\end{footnotesize}
As a result of these factors, antidumping laws have the ability to facilitate the conditions conducive to a successful price-fixing cartel. A successful antidumping action “can reduce the number of sellers in a market and increase significantly the degree of concentration of the market.” This reduces the cultural heterogeneity of firms and increases the market share for each firm. As well, antidumping actions or the threat of them can deter non-cartel members from attempting to enter a cartelized market, thereby raising the barriers to entry into the market. The threat of antidumping actions can also help to enforce a cartel and prevent cheating by members. Once firms are successful in their antidumping actions and manage to exclude competitors from the market, they can them implement a “legal cartel by engaging in conscious parallelism.” Conscious parallelism occurs when firms observe their competitors’ behaviour and prices, and determine their own pricing and output decisions based on this knowledge and their own costs of production. This type of conduct is not a violation of competition law. At this point, unless evidence of negotiations about antidumping actions is found to prove cartel-creating intent, the cartel is successful and legal and consumers will suffer the consequences. An example of antidumping laws facilitating a cartel can be seen in the U.S. ferrosilicon case in 1989. Antidumping laws can therefore not only have no

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158 Ibid at 740.
159 Ibid.
160 Ibid.
161 Ibid at 742.
162 Pierce, supra note 142 at 726-7. In this case, three large ferrosilicon producers in the United States met regularly in Pittsburgh at a hotel room in 1989. They worked to create a price-fixing cartel in the United States and in Europe, where they held a large part of the ferrosilicon production market. However, the trend of liberalizing trade and reducing trade barriers meant that there was a reduction in tariffs by various trade treaties permitting ferrosilicon producers in Asia and South America to compete with them in their target markets. As international trade in ferrosilicon increased, a cartel excluding Asian and South American producers would be ineffective, and a cartel including them would be unmanageable. To overcome this obstacle, the cartel members withdrew from the market and refused to sell at prices below the cartel price. This led to a decrease in sales from their domestic plants, and an increase in sales of the non-cartel producers. This was sufficient to support an antidumping complaint in the United States and in the European Economic Community. The result was that antidumping duties were imposed on the
positive effect on the marketplace, but also have an actively detrimental effect of aiding legal cartelization.

4.2 **Questioning The Economic Reasons for Eliminating Antidumping Laws**

The analysis in the previous section seems to indicate that there are no appropriate economic justifications for the imposition of antidumping laws. More importantly, arguments can be made against the existing antidumping legislation. These appear to be strong arguments in favour of abolishing antidumping duties. It does not appear realistic that dumping will lead to foreign firms taking control of markets and establishing monopolies. These arguments, however, are based on neoclassical economic concepts of supply and demand. There is no consideration of the market actor’s desire for stability and the maintenance of the conception of control. Moreover, there is no consideration of how the abolishment of antidumping duties in combination with stringent competition laws in Canada could lead to a change in the balance of power in markets from an established conception of control towards excessive competition and therefore instability.

4.2.1 **Competition**

All of the arguments above are premised on the concept that increasing competition in markets should be the end-goal. Eliminating antidumping duties is expected to increase competition. This is based on the theory of comparative advantage discussed earlier. Economic studies have found that “those countries which have embraced competitive imports, precluding these non-cartel producers from competing in the U.S. and European markets, thereby allowing the cartel members to dominate the ferrosilicon market and sell at cartel (monopoly) prices. The mere threat of bringing new antidumping claims continued to prevent other producers from entering the market, allowing the cartel to maintain their monopoly.
policies have done much better, over a period of decades." The basic concept behind this promotion of competition is to prevent the formation of monopolies. A monopolist is able to set higher prices that create greater dead weight losses. This results in both a transfer of surplus from consumers to producers, and the additional harm that the monopolist is not producing at the socially optimum level. The argument, then, is that competition prevents monopolies, thereby lowering prices of goods and increasing consumer surplus and consumer welfare. For these reasons, economic theory points to competition as an ideal state for the market to strive towards.

The question that arises is why economists are so focussed on maximizing competition at all costs. Although there are clearly benefits to having some level of competition, it seems clear even in countries with well-developed competition laws that competition should not be left unchecked. Canada’s Competition Act provides an example of this, as it seeks to promote competition by prohibiting cartelization even while mitigating it by disallowing actions such as predatory pricing. Every provision in this legislation is phrased in a manner that actively promotes competition, which may be why the mitigation of over-competitive markets is rarely identified. For example, section 79 of the Competition Act effectively disallows predatory pricing. The main purpose of this provision is to ensure that no firm or actor gains a monopoly in a particular market by prohibiting a dominant actor from engaging in anti-competitive acts that have the effect

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164 Trebilcock, supra note 12 at 50-54.
165 Ibid.
166 For an alternative argument in favour of moderate competition, see Li-teh Sun, “Beyond the Invisible Hand: A Case for Moderate Competition” (1998) 25 Int’l J of Social Econ 5.
167 Competition Act, s 45.
168 Competition Act, s 79.
(or are likely to have the effect) of substantially lessening competition in the market.

Inherent in the provision is the recognition that predatory pricing can result in an overly competitive and unstable market, thereby causing certain actors to be driven out of the market.

Although economists have argued that, in the absence of antidumping legislation, predatory pricing is unlikely to occur to so great an extent as to allow the predator to attain lasting monopoly power, it is important to note the clear recognition that over-competition can be a problem, as it calls into question the constant economic focus on promoting and maximizing competition in markets. Unchecked competition can result in instability for firms, as evidenced in the nineteenth century when firms overproduced and sold goods and services under cost, thereby driving one another into bankruptcy.169 Some level of competition is healthy for markets as it leads to product and organizational diversity.170 However, “markets that are characterized by unlimited competition are bad. Human beings, organizations, and society are poorly equipped to deal with the constant change and instability that are created by competitive markets.”171

This calls into question the persistent drive towards maximizing competition that has led economists to argue in favour of abolishing antidumping duties. There have been suggestions that “excessive competition can justify restrictions on free trade and

169 Fligstein 2001, supra note 85 at 5.
170 Cody, supra note 12 at 343.
171 Ibid at 344.
competition for the purpose of stability.”\(^{172}\) And, as discussed, the socioeconomic perspective believes stability to be better market goal.

### 4.3 Applying Socioeconomics to the Elimination of Antidumping Laws

With this in mind, we can now apply the socioeconomic factors that affect social relationships to predict the effect of eliminating antidumping duties from markets. The main effect, of course, is that markets would see an increase in competition. By definition, dumping results in an increase of a particular product, sold at a relatively low price.\(^{173}\) It is important to note that the effect of competition will differ on a product-by-product basis. As such, this particular application of socioeconomics may not be the same for all products. This will not be discussed as it is a paper topic in and of itself; however, it is certainly an area that warrants more research and consideration when applying a socioeconomic approach to policy decisions.

The socioeconomic perspective suggests that, in the face of severe competition (and the resulting instability discussed above), actors will do whatever it takes to survive and re-establish stability. Economic theory seems to posit that actors will reduce prices in order to compete most efficiently with the dumped product. Competition theorists argue that, although some actors may be driven out of the market, this increase in competition will not result in monopolistic behaviour as the more competition that exists, the harder it is for firms to establish a monopoly. However, I suggest that this drive towards survival and stability will lead to greater cooperation between actors and may in fact drive markets

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\(^{173}\) Yu, *supra* note 142 at 310; Pierce, *supra* note 142 at 729.
towards anti-competitive behaviour. If antidumping laws are eliminated, competition will be increased in markets. As a result, the conception of control in each particular market will be disturbed. Market actors will respond to this disruption by taking whatever action is necessary in order to survive and reinstate stability. And “in order to stabilize the existence of a given firm, its owners and managers will do anything to control others.” Incumbent firm action is guided by the existing conception of control, such that firms will take action in order to enforce the “way things are done” and re-establish stable market order. The presence of antidumping laws allows for a level stability and conception of control to exist, even while allowing for some level of competition in markets. Abolishing antidumping duties will throw markets into an unknown instability whereby actors seek to prevent ruinous and unstable competition and re-establish stability to ensure survival.

4.3.1 Horizontal Integration Through Mergers

As noted earlier in the discussion of power relations, two options firms have in severely competitive markets are to exit the market, or to compete and suffer significant losses that may or may not be recovered. However, there is an alternative form of survival: cooperation through horizontal integration. The conception of control that existed before the introduction of excessive competition into a particular market could lead weaker firms to take advantage of any trust relations or cultural homogeneity that had developed over time. Powerful incumbent firms would also be more willing to cooperate if the conception of control is about to be disturbed. Incumbent firms want to re-establish the stable market that existed before dumping occurred. If a market is thrown into a state of entropic competition, rational behaviour dictates that smaller firms exit the market earlier rather

\(^{174}\) Fligstein 2001, supra note 85 at 19.
\(^{175}\) Fligstein Markets, supra note 87 at 667.
than later to minimize losses. By contrast, mergers are considered less economically efficient and less rational as they encompass the risk of greater losses as compared to exiting the market immediately. Cooperation between a strong firm and a weaker firm may not be in self-interest nor the most efficient as the more powerful firm will have to invest resources into a less profitable branch. Moreover, it would seem more efficient to invest the same resources into self-survival rather than take on a smaller actor who may have a very different firm culture and be struggling to compete in this newly unstable market.

A threat to market stability is likely to bring out the factors of trust and culture that neoclassical economic theory ignores. Small actors with resource dependency will have gained, over the course of market activity prior to dumping, some manner of cultural homogeneity with more powerful actors who are more diverse in their products. Although the actors will have different business methods, they both have an understanding of how to market and promote the product in question, and now have a shared desire for survival. The more powerful firm has the additional incentive of preventing the dumper from establishing a strong position in the market, or alternatively driving the dumper out of the market entirely. It therefore is beneficial to both parties to consider cooperating with one another. Moreover, the weaker firm has also established a reputation prior to the market entry of the dumper. This reputation serves to provide some level of trust between the two actors. As noted earlier, firms “work to reduce uncertainty and resource dependence by choosing partners who they either know to be reliable or others think are reliable.”

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176 Fligstein and Dauter, supra note 32 at 114.
This type of integration is not a new idea. Between 1865-1904, the concept of direct control developed in the United States due to unstable markets caused by severe competition and an over-production epidemic.\textsuperscript{177} During this time, “the costs of predatory competition were high…which encouraged managers and entrepreneurs to try to directly control competition through cooperation. Cartels, one form of product-based cooperation were organized.”\textsuperscript{178} The Canadian case of \textit{Ontario Salt}\textsuperscript{179} provides an example of market actors forming a cartel due to unhealthy and excessive competition in order to establish stability and order. This case was decided prior to the \textit{Competition Act}, and the cartel was in fact upheld.\textsuperscript{180} It was argued that the salt cartel was a means of reducing the dangers and harmful effects of excess competition.\textsuperscript{181} Moreover, it was argued that the cartel was in the public interest, as the alternative was insolvency, which would not serve the greater good.\textsuperscript{182}

However, cartelization generally failed because they were illegal and therefore unenforceable.\textsuperscript{183} This led actors to develop a different strategy of direction control: the horizontal merger. “While cartels were illegal, the conventional wisdom at the time was that tight combinations – mergers that created monopolies or near monopolies – were not illegal, even if they were intended to restrain trade.”\textsuperscript{184}

\textsuperscript{177} Neil Fligstein, \textit{The Transformation of Corporate Control} (Cambridge: Harvard University Press, 1990) at 33 [Transformation].
\textsuperscript{178} Ibid at 34.
\textsuperscript{179} \textit{Ontario Salt Co v Merchants Salt Co} (1871), 18 Gr 540 (Ch C).
\textsuperscript{180} \textit{Code, supra} note 178.
\textsuperscript{181} Ibid at 14.
\textsuperscript{182} Ibid at 20.
\textsuperscript{183} Transformation, supra note 183 at 34.
\textsuperscript{184} Ibid at 35.
The Depression in the United States in the 1890s indicated to firms that the problems of competition would not be easily solved.\textsuperscript{185} The war of prices that existed were wars to the death, and provided incentive for actors to “enter into combinations in order to avoid failure or serious depreciation of their interest.”\textsuperscript{186} The U.S. Industrial Commission report made it clear that the chief cause of the major industrial combinations was excessive competition, and that the “desire to lessen too vigorous competition naturally brings [actors] together.”\textsuperscript{187} Competition played the role of forcing actors to rely on trust and homogenous culture and bring themselves together for the sole purpose of survival. If antidumping laws are repealed, the socioeconomic perspective predicts that there would be a flood of products that could lead actors to renew these cooperative efforts, thereby creating large firms in an effort to re-stabilize competition in a market. The merger of firms into large firms by their very definition decreases competition in a market, as the smaller firms are taken over through mergers. As these large firms are created and become more stable, they may also have the effect of making it more difficult for new entrants into markets. The purpose, then, of eliminating antidumping duties and increasing competition is overridden and markets could become less competitive as a result.

It is important to note that cooperation in this manner is not necessarily illegal behaviour under the \textit{Competition Act}. Section 45 prohibits actors from conspiring or agreeing to fix prices, allocate markets for supply or production, or fixing supply or production. If dumping occurs and excessive competition results, cooperating firms could argue that the

\textsuperscript{185} \textit{Ibid} at 59.  
\textsuperscript{186} US Industrial Commission, 1900, vol 1, p 33, cited in \textit{Transformation, supra} note 183 at 60-61.  
\textsuperscript{187} \textit{Transformation, supra} note 183 at 64.
agreement between them was made in order to compete more effectively. This type of cooperation is to ensure greater competition by ensuring survival of the firm in question, rather than an effort to reduce or substantially lessen competition in a market. In addition, cooperating firms may argue that their efforts in fact to increase the value and market of Canadian exports of the product, a defence against section 45.\textsuperscript{188}

**Cartels**

Although cartels are illegal, there is the danger (as seen in the case of *Ontario Salt*) that excessive competition can lead to coordination in this illegal form of horizontal integration. With the trust and culture relations that have developed over time in markets, and an understanding between firms of the status hierarchy that results in market stability, actors may well be more likely to conspire in an effort to survive. This is one manner in which socioeconomics works with neoclassical economics. Self-interested individuals may find it rational to become part of a cartel in order to re-establish stability in the market. The economic ideal that competitive forces will suppress this type of fraudulent behaviour\textsuperscript{189} may not apply in cases where firm survival is at stake. Actors will do whatever it takes to re-establish the conception of control in the face of ruinous competition. Actors are also more likely to trust one another sufficiently to cartelize when economic circumstances become dire.

\textsuperscript{188} *Competition Act*, s 45(5).

\textsuperscript{189} See above at p 16 for the discussion on trust and how economic rationale suggests that fraudulent behaviour will be deterred.
Although cartels can be inferred from circumstantial evidence under the *Competition Act*,¹⁹⁰ this type of conspiracy must still be proven beyond a reasonable doubt. This may be made difficult by the concept of conscious parallelism, discussed earlier in the U.S. ferrosilicon case.¹⁹¹ When extreme competition is introduced into a market in the form of severely low prices of dumped products, incumbent firms will all consciously respond to this challenge. This may make cartels more difficult to discover.

Dumping can therefore serve to incentivize actors into overly co-operative behaviour. Rather than increasing consumer choice and reducing consumer prices, excessive competition can lead market actors to increase their trust in one another sufficiently to drive the dumper out of the market, or the very least to ensure self-survival. The end result, again, is monopolistic behaviour. The desire to re-stabilize a market back to the original conception of control (that is, prior to dumping) will increase trust relations among actors so that the status hierarchy can be reinstated and competition routinized yet again. While economists may be correct that cartels are difficult to form and maintain, competition from dumping could be the incentive that drives members into being loyal to their cartel. The instability caused by excessive competition leads to an unknown result. As firms take action to survive, whether or not the ultimate result is to revert back to the status quo prior to dumping, the danger is that such horizontal integration can lead to even less competition than before. Antidumping laws therefore provide governments and their policy makers with the ability to set the tone of markets. Antidumping duties provide one manner of dictating the level of competition in a market. By contrast, eliminating such laws will lead to unknown instability and, worse still, a potentially anticompetitive result.

¹⁹⁰ *Competition Act*, s 45(3).
¹⁹¹ See *supra* note 167 for a discussion of the Ferrosilicon case.
This dilemma seems to suggest that antidumping laws should be maintained to ensure stable but still competitive markets.

4.3.1 *Vertical Integration*

Vertical integration is another survival option that market actors may use. Producers, distributors, and other members of the supply chain can cooperate to help the firm survive in situations of intense competition. This is possible through the trust relationships that are fostered in markets. For example, producers will have developed relationships with its distributors. This history will be what causes producers to continue to transact with repeat partners as they are now known to be reliable distributors.

Fligstein refers to this as the “manufacturing conception of control.”¹⁹² This manner of control is useful as it does not require one to directly confront one’s competitors, thereby making it less likely to be a violation of antitrust legislation. ¹⁹³ “The manufacturing conception of control is fundamentally a defensive conception oriented toward discouraging competitors from directly competing by making the costs high and the probability of success low.” Vertical integration occurs when firms integrate production in both directions by controlling everything from the “input of raw materials [to] the sales output.”¹⁹⁴ This conception of control provides firms with guaranteed production, transportation, and marketing abilities, thereby making them more competitive and enhancing their likelihood of survival. During the 1920s, there was an increase in vertical integration in the United States, most commonly from oil companies in an effort to stand

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¹⁹² *Transformation, supra* note 183 at 75.
up to Standard Oil.\textsuperscript{195} It was found that “firms that engaged in manufacturing controls were able to stabilize prices, promote their own survival, and enhance their growth.”\textsuperscript{196}

This bit of history provides evidence of vertical integration as a method of overcoming competition. Although the costs of this conception of control are high, in the face of excessive competition, actors must take advantage of any possible competitive edge. Domestic actors will have the benefit of prior relationships along the manufacturing chain and thereby have the ability to vertically integrate if threatened by ruinous dumping. Vertical integration can help firms survive in the face of dumped goods. Combined with goodwill and customer loyalty (results of trust over time), vertical integration may be sufficient to prevent a dumper from competing effectively in the market. The potential result is again a barrier to entry into the market in question. Moreover, distributors may, due to a sense of loyalty and in return for being provided the good at a lower price from the producer, refuse to distribute the dumped goods using excuses such as quality control. For actors to use their trust relationship in order to vertically integrate bypasses the significant hurdle of the \textit{Competition Act}, as this conception of control is generally not considered illegal behaviour in restraint of trade.

Reduced profit is a side effect of vertical integration as producers provide their product to suppliers at a lower price. This diminishes the opportunities for innovation and research, where new and better versions of the particular good may well have resulted. In addition, there is the potential for lower quality control of the good, as the producer must invest its resources into competing with the dumper and producing at the lowest cost possible.

\textsuperscript{195} \textit{Ibid} at 77. For more information on Standard Oil and their consolidation, see pp 99-101.
\textsuperscript{196} \textit{Ibid} at 111.
4.3.3 Government

As noted earlier, there is a relationship between market actors and government through which those actors in a stronger position can lobby or co-opt the government into taking certain actions. An example of this occurred during the Depression in the 1930s, when large firms in the United States sought governmental relief. The Roosevelt Administration was persuaded by these large firms and “suspended the antitrust laws and allowed cartels to set prices for various commodities in order to stabilize them.”

Although this particular recovery measure was unsuccessful, it provides an example of the relationship between powerful market actors and government. It is a strategy for firms interested in controlling their markets to influence the government into regulating prices or taking other action in an effort to control their industry.

Upholding antidumping laws provides the government with a manner of maintaining a healthy level of competition. Although it does regulate (and some would say interfere with) the free market, these laws continue to provide actors with an acceptable level of freedom. Antidumping duties do not prevent market entrants, but rather requires them to enter the Canadian market without, for want of a better analogy, using performance-enhancing drugs. These laws provide the government with the ability to ensure a level playing field for all participants.

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197 Ibid at 117.
198 Ibid.
199 Ibid at 86.
Eliminating antidumping duties therefore has the potential to reduce competition in the long run, because actors want to ensure the survival of their firms. “No actor can determine which behaviours will maximize profits (either a priori or post hoc), and action is therefore directed toward the creation of stable worlds.”

This effort to create and maintain stability will in turn lead firms towards strategies to control price competition through cooperation. The existing power relations and trust relations between producers, suppliers, consumers, and competitors enhances cooperative efforts. Moreover, even with competition laws in effect, actors can find ways to circumvent competition regulations. In the face of extreme competition caused by dumping, actors have an even greater defence that their efforts are not to lessen competition in the market, but rather simply to survive so as to ensure competition persists.

Increasing competition in markets leads to greater instability. Thus market actors are always trying to control competition in order to work toward more stable market situations. If antidumping duties were abolished, there would be an influx of competition in the form of low-priced products, which may cause market actors to take collective action in an effort to survive. These actions can, in turn, reduce competition in the market, thereby eliminating the very reason behind economic support for dumping. Government intervention in the form of our antidumping regulations serves to protect a certain amount of market stability by moderating competition. The argument, therefore, is not that competition should not be promoted, but rather that excessive competition can in fact have a detrimental effect on market stability. This effect comes in the form of market actor cooperation that cannot be easily dismissed by economic theory. From a

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200 Fligstein Markets, supra note 87 at 659.
201 Fligstein Markets, supra note 87 at 660.
socioeconomic perspective, trust, culture, and power relationships help actors cooperate when faced with firm death. Dumping may well be the very incentive needed for actors to take action that ultimately results in domestic monopolies and reduced competition.

Although there is no definitive evidence as to what would result if we eliminate antidumping laws, the fact remains that antidumping duties provide countries and market actors with some measure of regulation of competition. Maximizing competition by the elimination of such duties leads to unknown instability. By contrast, the presence of antidumping laws provides a stable level of competition that does not restrict natural market entry.

4.4 **Antidumping Laws, Socioeconomics, and Free Trade**

The argument I have put forth so far has been that sociological factors should be applied to economic policy decisions, as neoclassical economic theory has many limitations that can be addressed by sociology. Another factor that neoclassical economics does not consider is nationalism and protectionist behaviour. As a result, there is still another strong sociological argument in favour of antidumping laws: the promotion of free trade. This goes beyond the sociological factor of government and their intervention and relationship with domestic market actors, and introduces the more general concept trust and society.

At first glance, antidumping duties appear to be counterintuitive. Antidumping laws by definition restrict trade and seem contrary to the national treatment provisions in the GATT. However, “…it must be remembered that the GATT/WTO is less about free trade
and ultimate economic efficiency, than it is about managed freer trade operating within a politically delineated reality.”202 From a socioeconomic perspective, “‘free’ trade does not and cannot exist; trade is predicated on laws and institutions, and necessarily restricts the choices of some as it expands the choices of others.”203 Antidumping regulations provide governments with the ability to protect certain domestic industries. It is a “safety valve” for governments to retain general support for freer trade.204 Domestic political pressure against foreign invasion into domestic industries would otherwise lead governments to be less amenable to free trade and the very purpose behind the GATT. Safeguards such as antidumping provisions are necessary as a means to achieve greater trade liberalization through compromise.205

One could argue that Canada should take the first step by unilaterally eliminating antidumping duties. However, this is unlikely to be successful without a safeguard against unfair competition provided by other countries. It would be political suicide for the government to abolish antidumping laws, as the government then becomes prey to its opposition, who will “question why protections which can be afforded under the GATT are being denied, considering that trading partners refuse to act in a similar manner.”206 The government is expected to take responsibility for maintaining an order that protects its citizens from exploitation by others.207 Because there is a significant lack of trust and goodwill between the societies of various countries, antidumping regulations become necessary in order to liberalize trade. Although these measures are generally

203 Dallas, supra note 1 at 609.
204 Gay, supra note 208 at 73.
205 Leclerc, supra note 143 at 124.
206 Gay, supra note 208 at 68.
207 Dallas, supra note 1 at 633.
protectionist, without them we may be reduced to “a pre-GATT world of extreme trade restrictions [which] would be far worse.”

4.5 Judicial Recognition of the Problem of Excessive Competition

As noted earlier, the Competition Act inherently recognizes the dangers of over-competition, as exemplified by the predatory pricing provision, which serves to limit competition at some level. Another example of this type of limitation can be seen through the rule of reason that is applied to vertical restraints. This rule was first elucidated in the United States from the case of Standard Oil, and requires one to prove that firms acted unreasonably in the restraint of trade. The leading case on the rule of reason is Leegin, in which the U.S. Supreme Court makes clear that, in some instances, restricting competition can in fact be more economically beneficial. In this case, Leegin adopted a policy that set a minimum resale price for its distributors. They wanted to maintain a certain brand image and reputation that required their distributors to put forward a certain quality of display and to not sell at a discount below the minimum resale price. When one of their distributors began discounting the product below the minimum price and refused to cease, Leegin stopped selling to the store.

The Supreme Court found that this was restraint of trade was reasonable behaviour after applying the rule of reason. Their judgment was based in economic theory, and argued that vertical restraints of this type fostered interbrand competition while restricting

208 Gay, supra note 208; Pierce, supra note 142 at 731.
209 Leclerc, supra note 143 at 125.
intrabrand competition. As such, it had a procompetitive effect. Moreover, they stated that this fostering of interbrand competition could result in increased quality of goods.

However, the Supreme Court also enunciated sociological factors that applied to this economic justification for vertical restraint. The Court found that, without such restraints, there may be free-riders who take advantage of retailers who invest in the atmosphere in which Leegin had requested its products be sold. Customers could then gather the information about the product and then proceed to purchase at a store that did not invest in its showroom or knowledgeable staff and therefore could sell the same product at a discount. The inherent sociological factor is one of culture. Products can symbolize certain meanings through shared understandings. In this case, the product seems to contribute to establishing social status as a luxury product, therefore causing consumers to desire it. However, although there may be brand loyalty, consumers seeking the social status of owning the product will choose the discounted price due simply to common sense.

This is also an argument against the elimination of antidumping duties. Allowing dumped goods could lead to quality control problems, as consumers will naturally tend towards the less expensive product. For domestic actors to compete effectively with the dumper, they would have to reduce the market price of the good and, as a result, have to invest less in certain quality assurances. This could effectively lead to a race to the bottom.

Alternatively, the argument could be made that individuals show brand loyalty due to the trust that develops in the social relationship between consumer and producer.
Increasingly, however, there is the problem of mimicked goods entering markets. If this occurs, the intellectual property problems aside, the real producers of these products could stand to lose a large number of sales. This also leads to a quality control problem as well as affecting the brand reputation.

Whether or not the judiciary and legislature realize it, many of their decisions regarding economic policy require a sociological assessment. The judiciary and legislature apply socioeconomics implicitly, though oftentimes they do so without an explicit socioeconomic analysis. However, in the case of antidumping duties and the focus on maximizing competition, further discussion is warranted. Economic policy decisions cannot be made solely on the basis of neoclassical economic theory, where competition is seen as ultimately competitive, regardless of its extent. In fact, excessive competition can lead to firm death if it is permitted, and the socioeconomic perspective suggests that market actors will avoid this fate by taking whatever action is possible. The application of sociology to economic theory can help to provide a more accurate prediction of how certain policies will affect both the domestic and international economy.
Chapter 5: Conclusion

Sociology can serve to inform neoclassical economic theory to more accurately predict the effects of trade and other economic policies by taking the social relationships inherent in markets into consideration. I suggest that it is important not to simply reject one social science in favour of another, but instead to apply sociology in understanding economic concepts. Antidumping laws provide an example of the importance of taking a socioeconomic approach to policy-making. Although economic scholars have suggested that antidumping duties provide little to enhance trade and instead inhibit competition, a socioeconomic approach suggests that antidumping regulations provide stability to markets while still allowing for competition. Moreover, there is a distinct lack of trust among nations makes antidumping laws a method of liberalizing rather than restricting trade. Although these duties are a type of trade barrier, they also provide a level of stability and regulation that allows for fair competition.

We cannot know for certain whether eliminating antidumping duties and the subsequent influx of competition will be so excessive as to force actors to take anticompetitive action in order to survive. However, allowing antidumping duties to be reasonably applied (as they are today) provides the government with the ability to set a level playing field for all competitors, as well as serving as a method of product quality control. Antidumping duties do not prevent competition, but rather regulate it by providing a stable environment in which market actors can compete. By contrast, their elimination could lead to an excessive level of competition and unstable, entropic markets. Antidumping laws are, therefore, the better devil to know.
Books


Daly, Herman and Cobb Jr., John. For the Common Good: Redirecting the Economy Toward Community, the Environment, and a Sustainable Future (2d ed. 1994).


**Articles**


**Legislation**

*Competition Act*, RSC 1985, c C-34.

*Sherman Act*, 15 USC §1-7 (1890).

**Case Law**


*Ontario Salt Co v Merchants Salt Co* (1871), 18 Gr 540 (Ch C).