

# **GLOBAL ANTITRUST ENFORCEMENT: AN EMPIRICAL ASSESSMENT OF THE INFLUENCE OF PROTECTIONISM**

**Centro de Estudios Públicos - Center of Public Studies  
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**Pierre Cremieux\***

**Edward A. Snyder\*\***

**\*: Managing Principal, Analysis Group and Adjunct Professor,  
Department of Economics, Université du Québec à Montréal**

**\*\*: George Shultz Professor of Economics and Dean, University of  
Chicago Booth School of Business**

# Introduction

## Context:

- 1. Significant Growth in frequency and amount of fines levied by antitrust authorities across many jurisdictions**
- 2. Significant Growth in international trade and reduction in trade barriers**

## Central Question:

*How do antitrust authorities orient their enforcement actions toward foreign and domestic firms?*

## Development of Antitrust Authorities

### **US Sherman Act: 1890**

- Section 1 and Section 2

### **Japanese Antimonopoly Act: 1947**

### **European Economic Community Treaty: 1957**

- Article 81 and Article 82

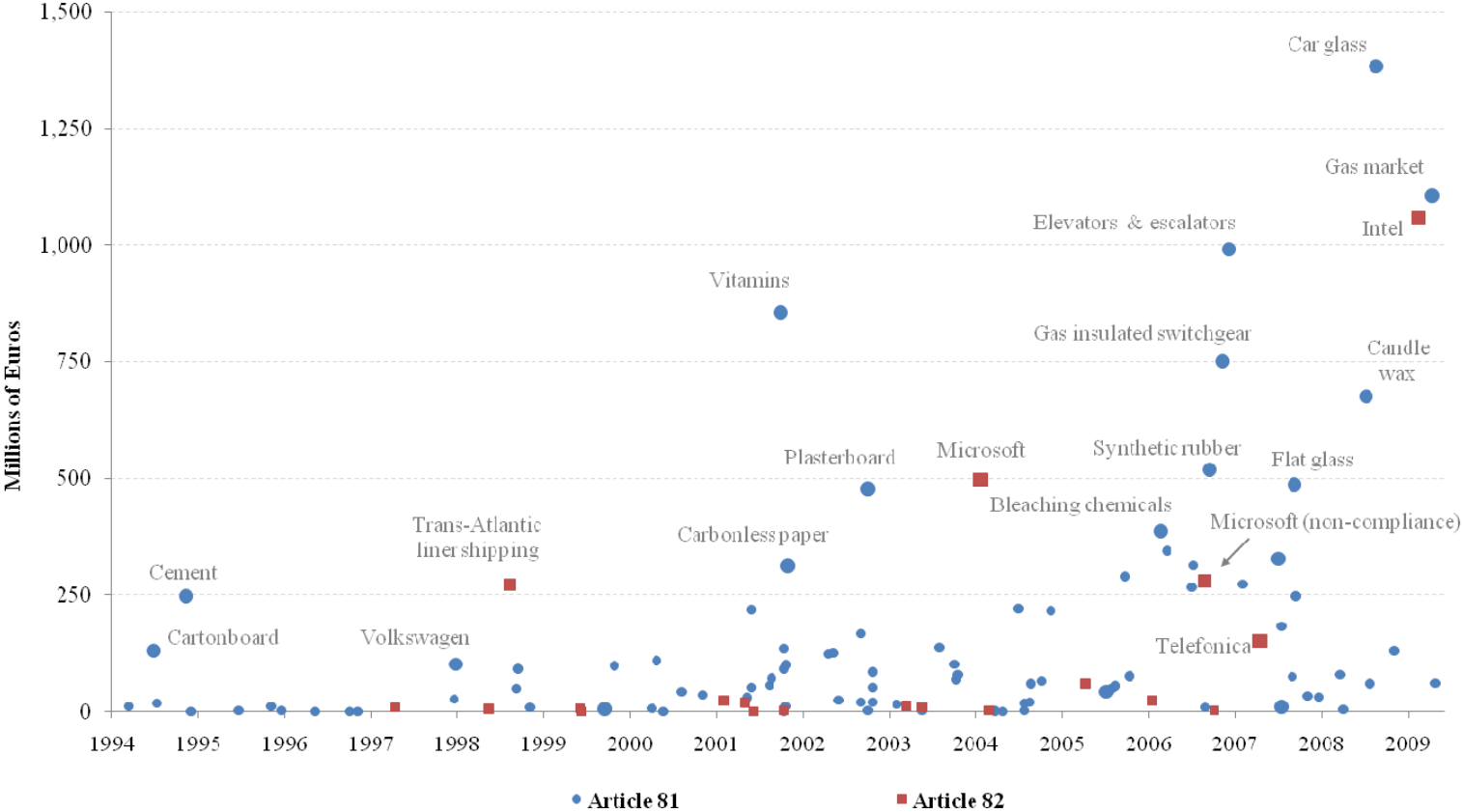
### **Chilean Antitrust Law: 1973**

### **Korean Monopoly Regulation and Fair Trade Law: 1980**

### **Antimonopoly Act in China: 2008**

# Antitrust Activity

Fines Imposed by the EU Under  
**Article 81 (Anti-Competitive Agreements) and Article 82 (Abuse of Dominant Position)**  
 1994 - 2009



**Note:**

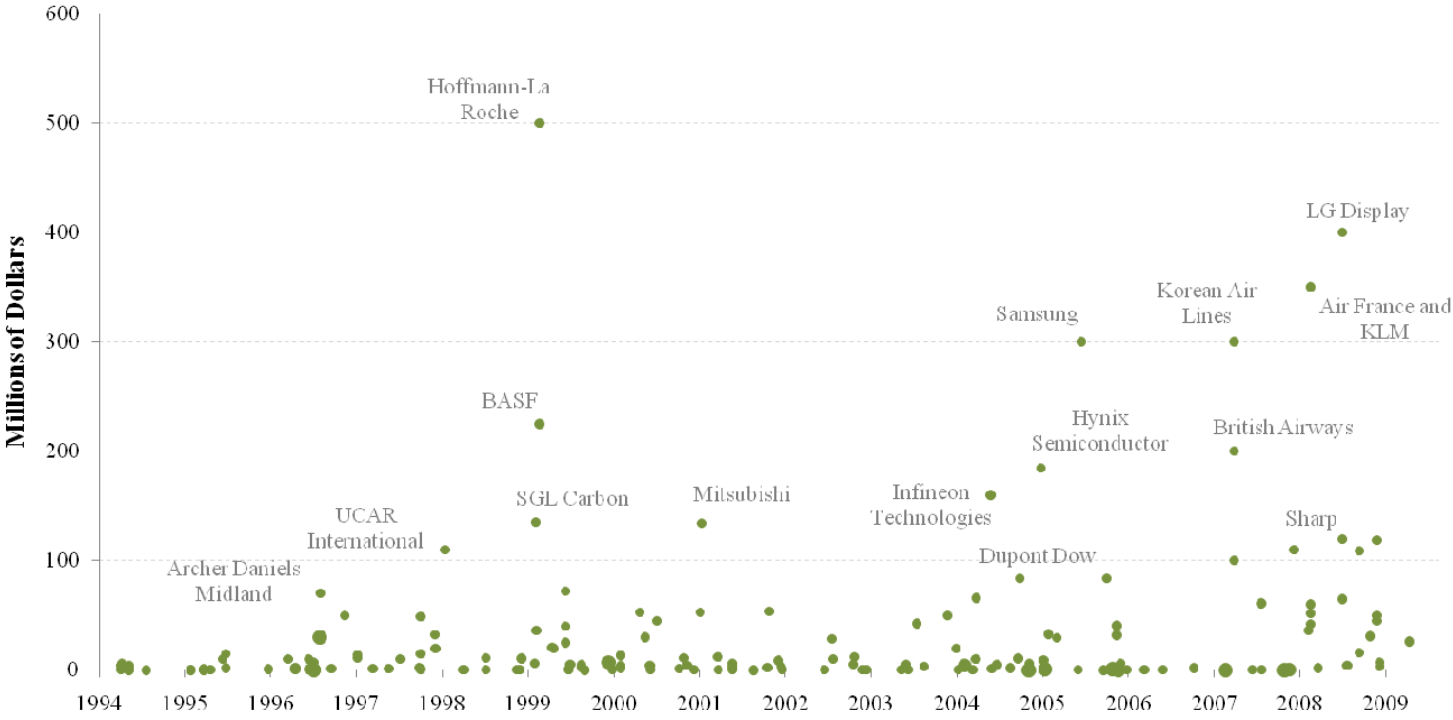
[1] Firms on the leniency program that received no fine are not depicted. 2009 data ends in August

**Sources:**

- [A] European Commission Competition Policy - Antitrust Case Commission Decisions, available at <<http://ec.europa.eu/competition/antitrust/cases/index.html>>.
- [B] European Commission Competition Policy - Annual Reports, 1994-2007, available at <[http://ec.europa.eu/competition/annual\\_reports/](http://ec.europa.eu/competition/annual_reports/)>.
- [C] Press releases by the European Commission Competition Policy, available at <<http://europa.eu/rapid/searchAction.do>>.

# Antitrust Activity

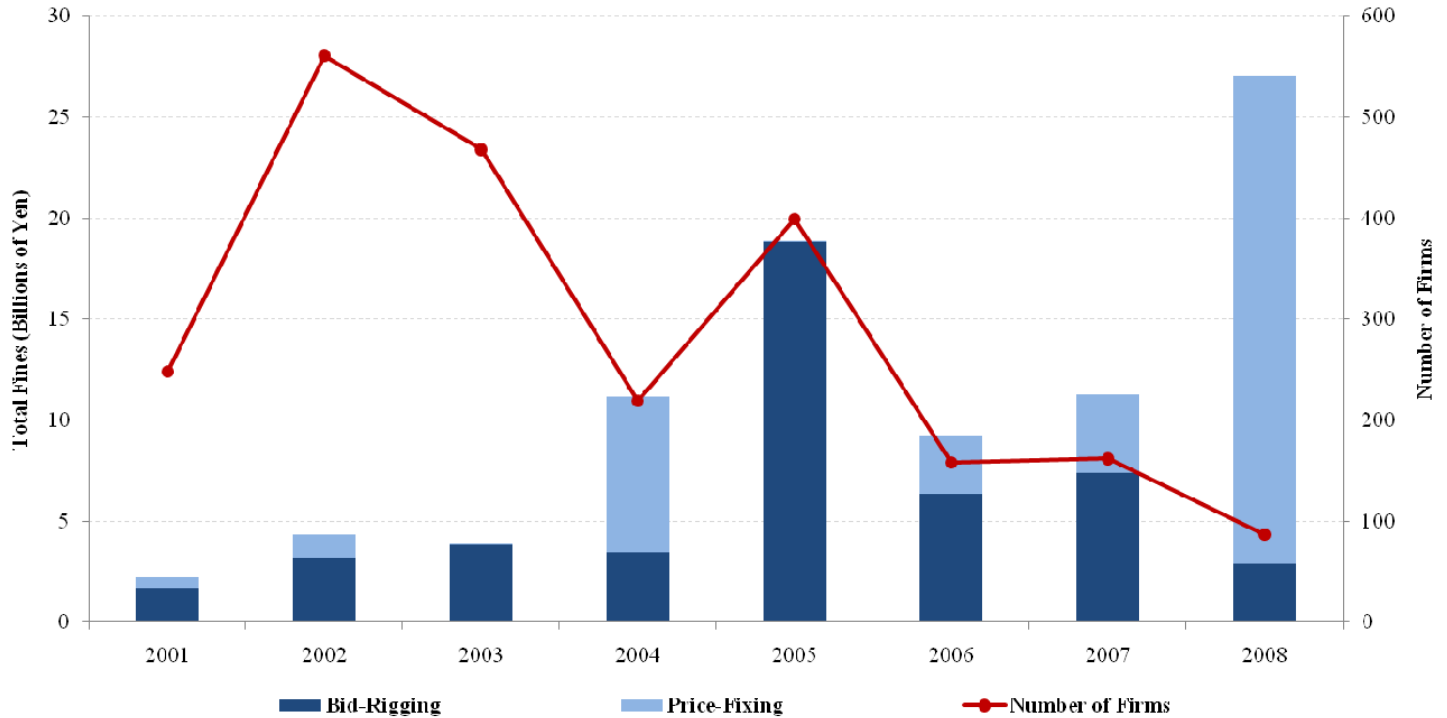
**Fines Imposed by the US-DOJ Under Section 1 of the Sherman Act  
(Anti-Competitive Agreements) 1994 - 2009**



**Note:**  
 [1] Firms that were exempted from fines through the DOJ Leniency Program are not depicted.  
**Sources:**  
 [A] US DoJ, Antitrust Division, "Sherman Act Violations Yielding a Corporate Fine of \$10 Million or More," as of May 22, 2009, available at <<http://www.usdoj.gov/atr/public/criminal/sherman10.htm>>.  
 [B] US DoJ, Antitrust Division, "Annual Report FY 1999," available at <<http://www.usdoj.gov/atr/public/cr/4523.htm>>.  
 [C] DoJ Press Releases, Plea Agreements, Case Information, Indictment, and Briefs for Appellee, available at <<http://www.usdoj.gov/atr/cases.html>>.

# Antitrust Activity

**Total Fines and Number of Firm Fined by the Japan Fair Trade Commission Under the Antimonopoly Act 2001 - 2008**

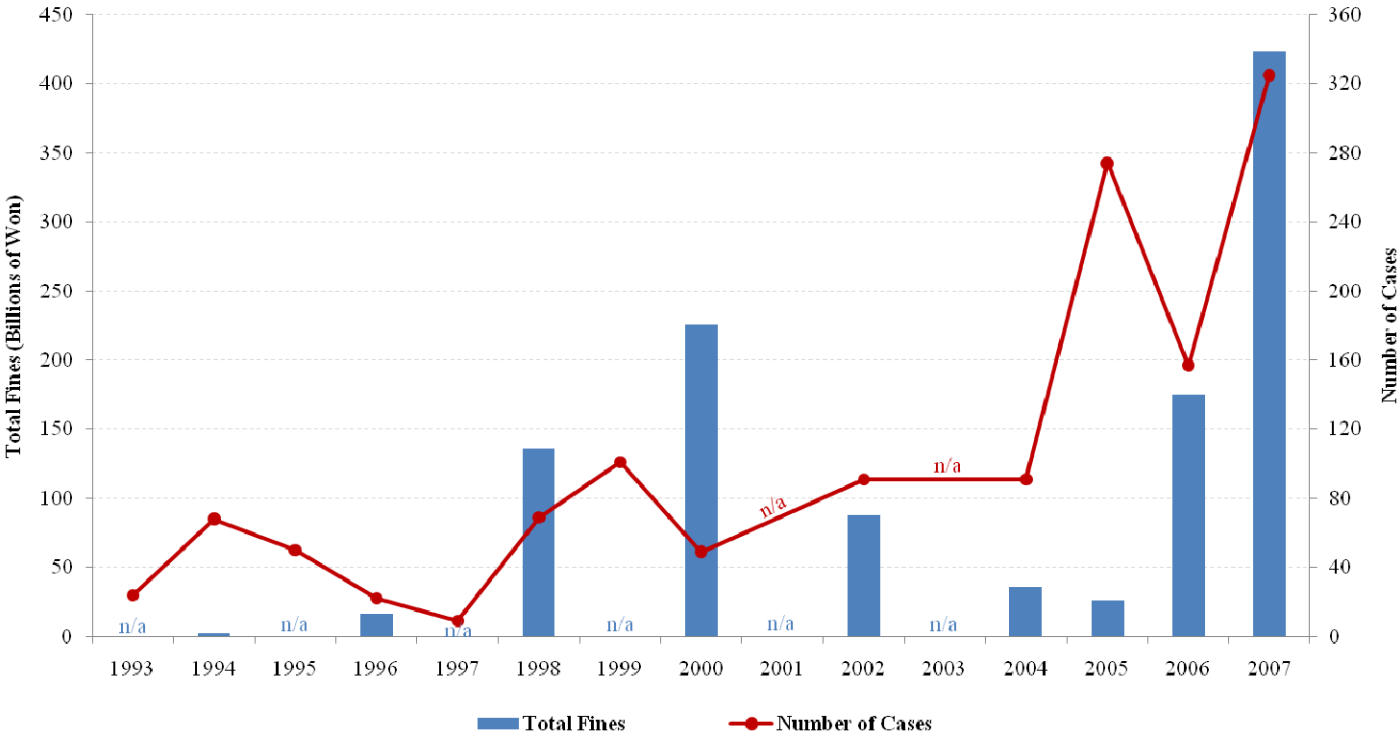


**Sources:**

- [A] Japan Fair Trade Commission, Press Releases, "Enforcement Status of the Antimonopoly Act in FY2008," 2,5 (June 3, 2009), available at <<http://www.jftc.go.jp/e-page/pressreleases/2009/June/090603.pdf>>.
- [B] Japan Fair Trade Commission, Press Releases, "Enforcement Status of the Antimonopoly Act in FY2007," 2,5 (May 21, 2008), available at <<http://www.jftc.go.jp/e-page/pressreleases/2008/May/080521.pdf>>.
- [C] Japan Fair Trade Commission, Press Releases, "Enforcement Status of Antimonopoly Act in FY2006," 2,5 (May 30, 2007), available at <<http://www.jftc.go.jp/e-page/pressreleases/2007/May/070530.pdf>>.
- [D] Japan Fair Trade Commission, Press Releases, "Processing Status of the Antimonopoly Act Enforcement in FY2005," 2,5 (May 31, 2006), available at <[http://www.jftc.go.jp/e-page/pressreleases/2006/June/060611\\_2.pdf](http://www.jftc.go.jp/e-page/pressreleases/2006/June/060611_2.pdf)>.

# Antitrust Activity

**Total Fines and Number of Cases in which Fines were Imposed by the Korean Fair Trade Commission Under the Monopoly Regulation and Fair Trade Act 1993 - 2007**



**Notes:**

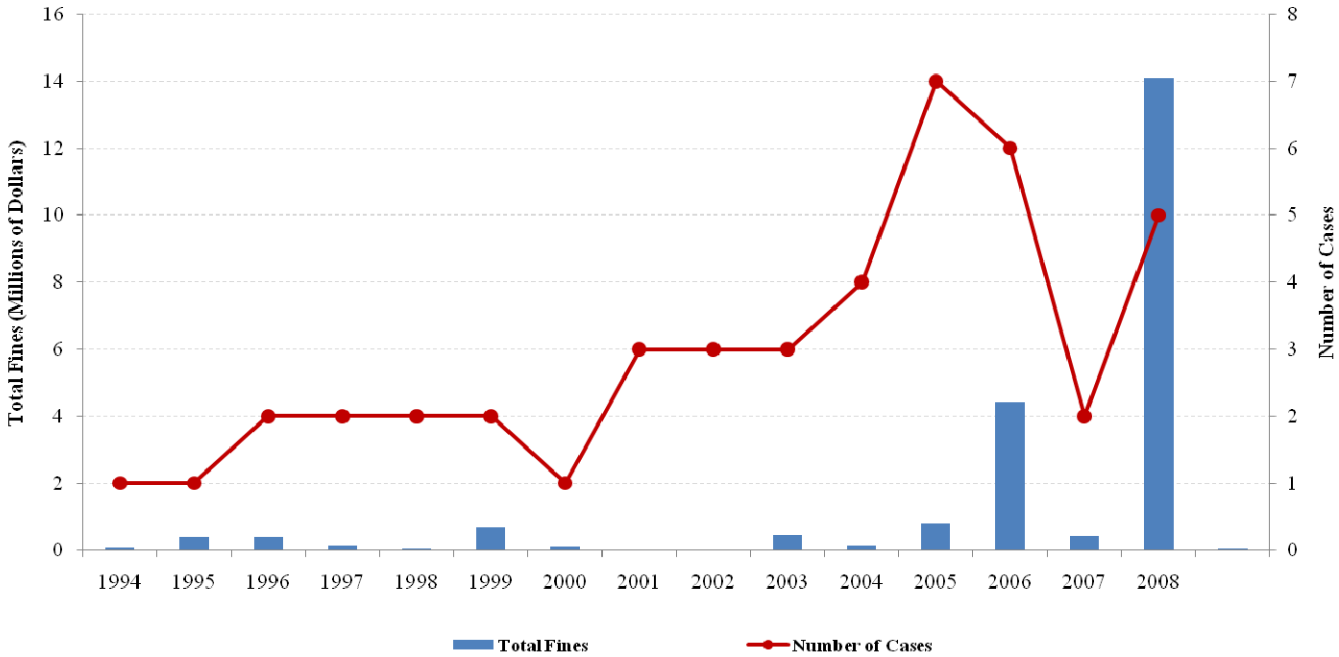
- [1] Data for the years 1994, 1996, 1998, 2000, 2002, 2004, and 2005-2007 were found directly on the KFTC's website.
- [2] Data for the number of cases prosecuted in years 1993, 1995, 1997 and 1999 were found in the KFTC's 1999 Annual Report.
- [3] No data were available for the aggregate level of fines in 1993, 1995, 1997, 1999, 2001 and 2003 or for number of cases prosecuted in 2001 and 2003.

**Sources:**

- [A] Korea Fair Trade Commission, Statistics, "Corrections by Type of Measure," available at <<http://eng.ftc.go.kr/statistic/correction.jsp>>.
- [B] Korea Fair Trade Commission, "Annual Report on Competition Policy Developments in Korea (1999)," 12, 19 (1999), available at <<http://eng.ftc.go.kr/files/bbs/2008/1999.pdf>>.

# Antitrust Activity

**Total Fines and Number of Cases in which Fines were Imposed by the Chilean Free Competition Defense Court under Decree Law 211 (Anti-competitive Behavior) 1994 - 2009**



**Notes:**  
 [1] Original listing of cases between 1994-2004 was provided in an email from the Fiscalía Nacional Económica (FNE) and supplemented by information on the FNE website.  
 [2] All cases between 2004-2009 were found on the website of the Tribunal de Defensa de la Libre Competencia (TDLC)  
 [3] All fine amounts denominated in Unidad Tributaria Mensual (UTM), Unidad Tributaria Anual (UTA) or Unidad de Fomento (UF) were converted into US\$ using statistics provided by the Banco Central de Chile and Servicio de Impuestos Internos (SII).  
**Sources:**  
 [A] Tribunal de Defensa de la Libre Competencia, "Base de Datos Causas Contenciosas," available at <[http://www.tdlc.cl/Portal\\_Base/Web/VerContenido.aspx?GUID=&ID=341](http://www.tdlc.cl/Portal_Base/Web/VerContenido.aspx?GUID=&ID=341)>.  
 [B] Fiscalía Nacional Económica, "Resoluciones de la H. Comisión Resolutiva," available at <<http://www.fne.cl/?content=notes&db=jurisprud&view=7032b29e8be7c5f8425733e005e3c80>>.  
 [C] Banco Central de Chile, Base de Datos Estadísticos, "Unidad Tributaria Mensual (Pesos)," available at <[http://si2.bcentral.cl/Basededatoseconomicos/951\\_455.asp?F=M&S=UTM&LlamadaPortada=SI](http://si2.bcentral.cl/Basededatoseconomicos/951_455.asp?F=M&S=UTM&LlamadaPortada=SI)>.  
 [D] Servicio de Impuestos Internos, "UTA 1975-2008," available at <<http://www.sii.cl/pagina/valores/uta.htm>>.  
 [E] Banco Central de Chile, Base de Datos Estadísticos, "Tipo de Cambio de Dólar Observado Diario (Pesos por un Dólar)," available at <[http://si2.bcentral.cl/Basededatoseconomicos/951\\_455.asp?F=M&S=TC-OBS-DIA&idioma=&c=n&d=2](http://si2.bcentral.cl/Basededatoseconomicos/951_455.asp?F=M&S=TC-OBS-DIA&idioma=&c=n&d=2)>.

## Growth in International Trade

### **Imports of Goods and Services as % of GDP:**

- 1960: 12%
- 1985: 19%
- 2006: 29%

### **Cross-country corporate mergers as a percentage of total world-wide mergers:**

- 1998: 30%
- 2007: 45%

### **Global foreign direct investment:**

- 1970: \$9.9 billion
- 1990: \$204 billion
- 2007: \$2.1 trillion

## Hypotheses on the Nature of Antitrust Enforcement

**Antitrust enforcement actions may**

- 1. exhibit a unified and *neutral* approach to policy in which case factors such as the national identities of firms and their competitors play no role in enforcement actions,**
- 2. be subject to *protectionist* influences in which case the opposite will be true, or**
- 3. exhibit a *domestic orientation*, meaning that enforcement actions are focused on domestic firms for various reasons.**

## Factors Favoring Alternative Antitrust Policy Orientations

### **Factors Favoring Neutral Antitrust Policies:**

- **Multilateral agreements**
- **Fear of retaliation**
- **Search for efficient outcome**

### **Factors Favoring Protectionist Antitrust Policies:**

- **Lack of enforcement of multilateral agreements**
- **Pressure from domestic interest groups**
- **National “Champions” or export industries**

### **Factors Favoring Domestically-Oriented Antitrust Policies:**

- **Differential advantages in investigating domestic entities**
- **Seek to encourage highly competitive domestic firms**

# Global Coordination in Antitrust Policy

## European Union:

“Dedicated cooperation agreements on competition policy” with the US, Canada, Japan and Korea, under which the sides “exchange information and co-ordinate their enforcement activities.” Specifically, each side may ask the other to take enforcement action (i.e., “positive comity”) and to take account of the other’s significant interests when enforcing competition rules (i.e., “traditional comity”)

## United States:

Consults and cooperates on antitrust matters with the EU, Germany, Israel, Canada, Australia, Japan, Brazil, and Mexico

More than twelve Mutual Legal Assistance Treaties (“MLATs”)

## Global:

The International Competition Network (ICN) launched on October 2001 by antitrust authorities from fourteen governments

WTO “Working Group on the Interaction between Trade and Competition Policy” (WGTCP)

“Competition Law and Policy” program at the United Nations Conference for Trade and Development (UNCTAD)

OECD Global Forum on Competition and Competition Committee

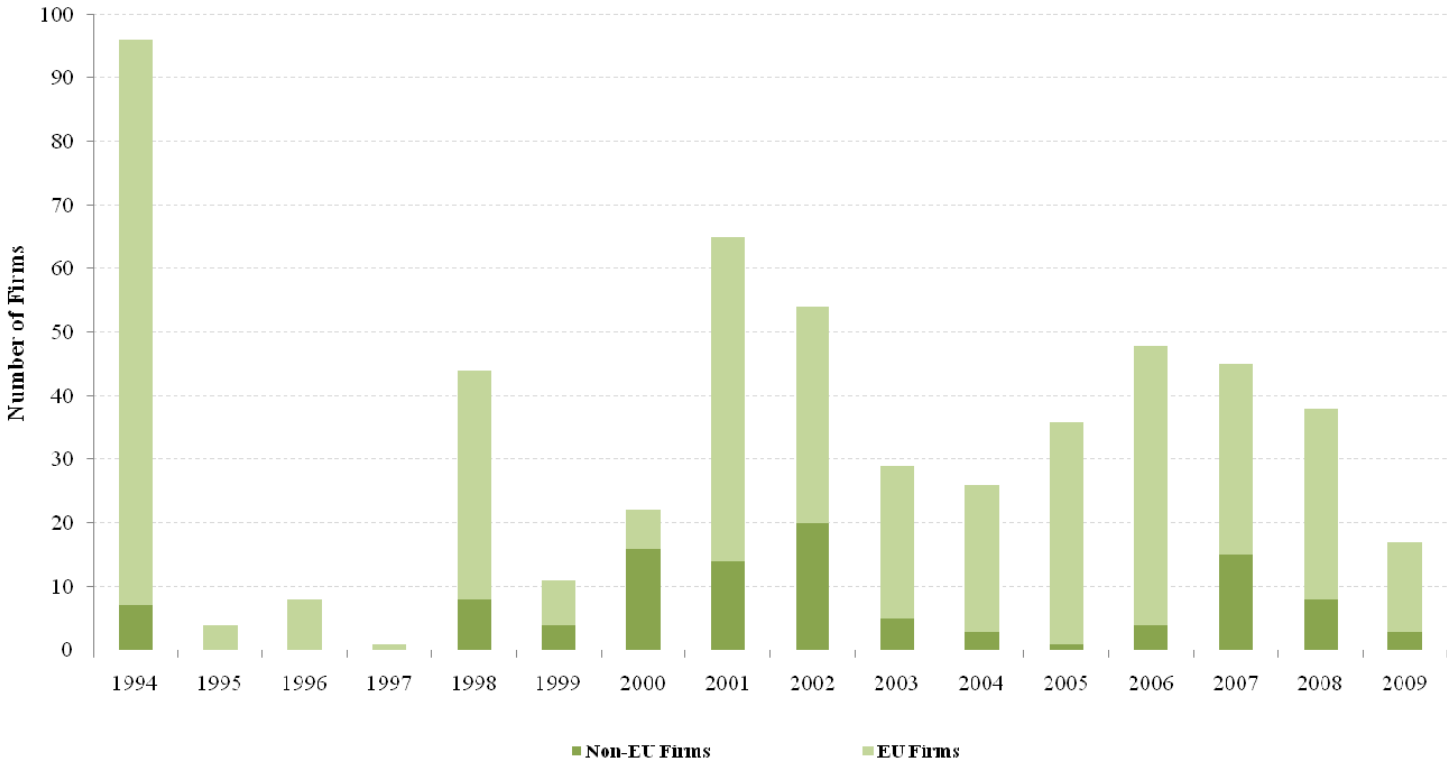
## Tariffs on Chinese Tire Imports

Dave Johnson, Campaign for America's Future (Steel Workers' Union):

“Unfair competition led to the idea of *protecting* our standard of living. Unfair labor costs, kept low by use of child or prison labor, exploitative wages in non-democratic countries, even use of forced labor or slaves undercuts our own companies' ability to compete. Failing to provide worker safety protections, or allowing pollution also provide trade advantages to offshore competitors. So to protect ourselves we imposed tariffs that raised the store price on those goods to prevent them from undermining our own standard of living and safety and pollution standards. We protected our national interest.”

# Antitrust Activity Towards Domestic and Foreign Firms

Number of EU and Non-EU Firms Fined by the European Commission Under Article 81 (Anti-Competitive Agreements) and Article 82 (Abuse of Dominant Position) 1994 - 2009



**Note:**

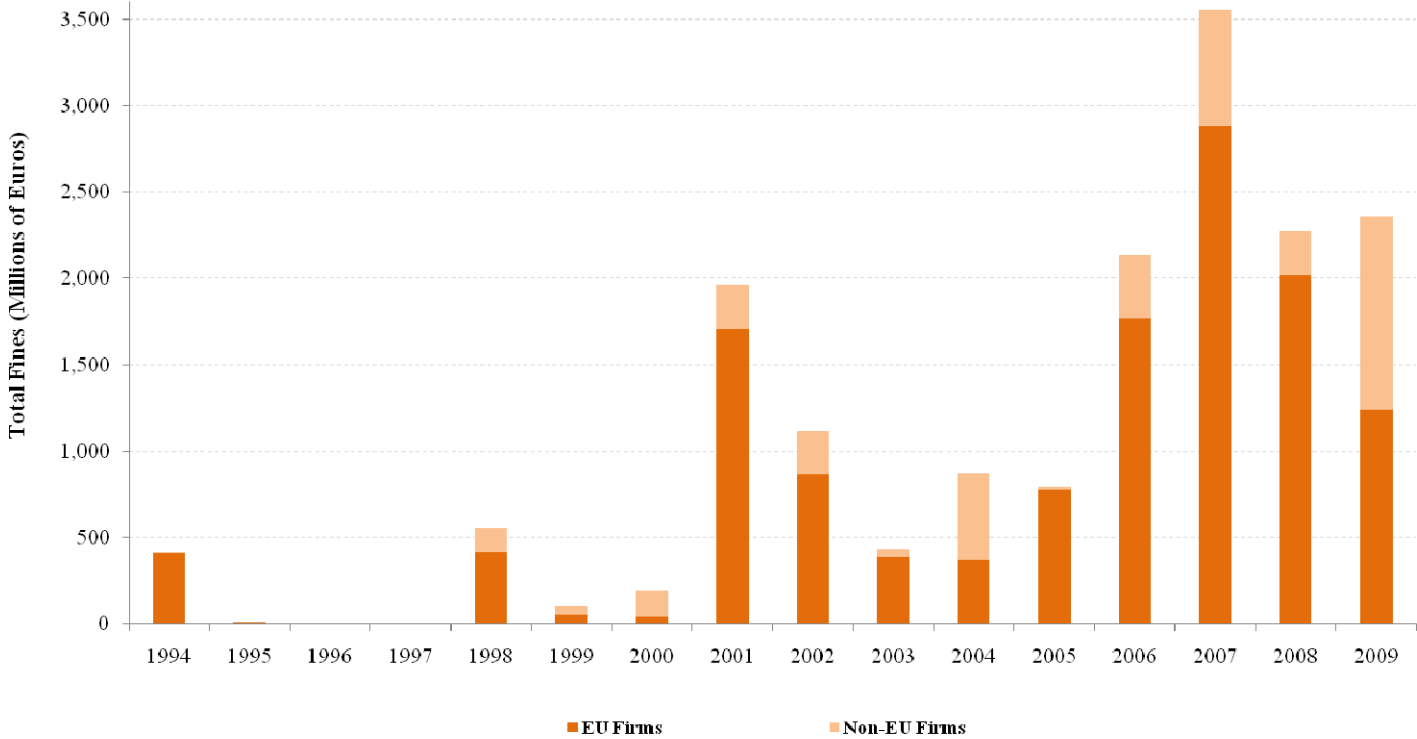
[1] EU firms have been defined as firms established in one of the 27 countries belonging to the European Union as of 2000 as listed on the Europa website. 2009 data ends in August

**Sources:**

- [A] European Commission Competition Policy - Annual Reports, 1998-2007, available at <[http://ec.europa.eu/competition/annual\\_reports/](http://ec.europa.eu/competition/annual_reports/)>
- [B] European Commission Competition Policy - Antitrust Case Commission Decisions (1999 to date), available at <<http://ec.europa.eu/competition/antitrust/cases/index.htm>>
- [C] Press releases by the European Commission Competition Policy, available at <<http://europa.eu/rapid/searchAction.do>>
- [D] Europa website, "European Countries," available at <[http://europa.eu/abc/european\\_countries/index\\_en.htm](http://europa.eu/abc/european_countries/index_en.htm)>

# Antitrust Activity Towards Domestic and Foreign Firms

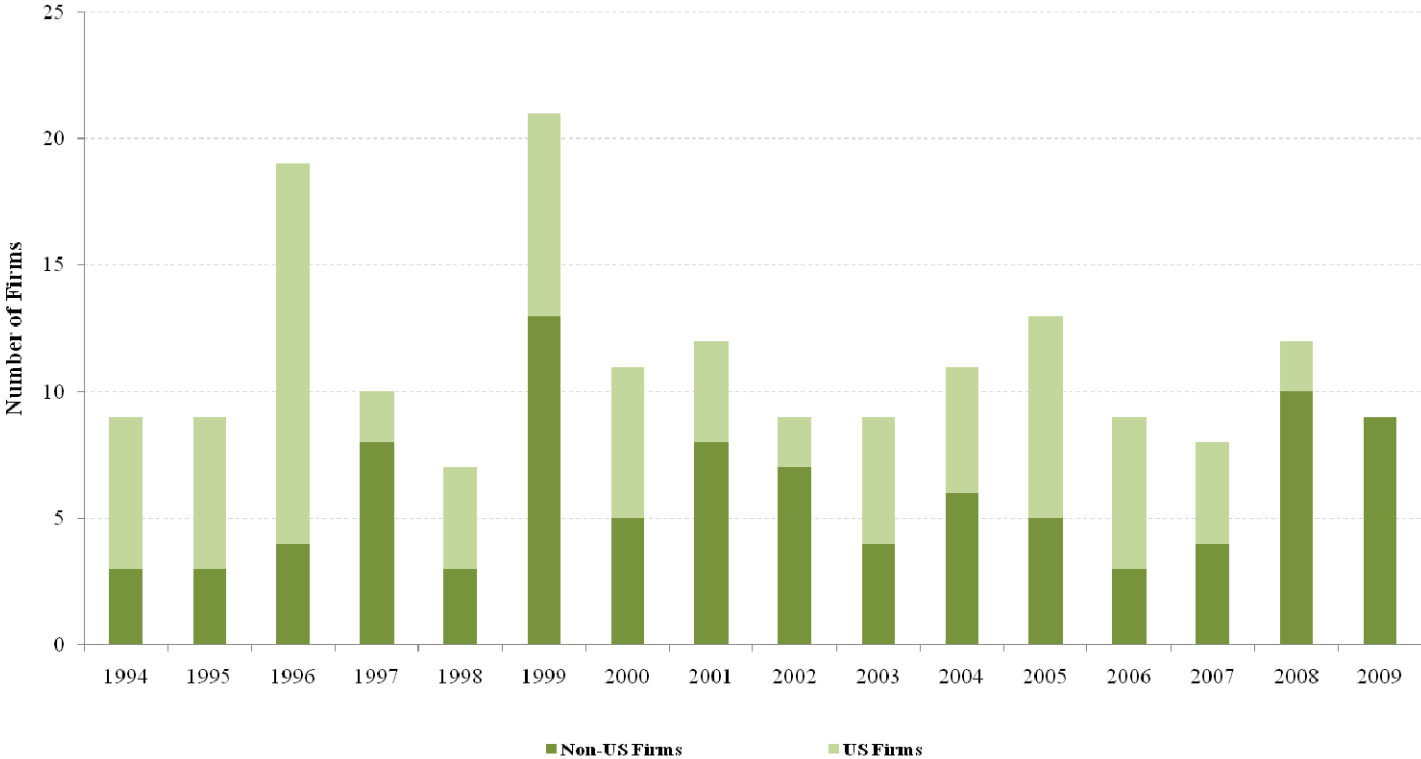
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 [A] European Commission Competition Policy - Annual Reports, 1998-2007, available at <[http://ec.europa.eu/competition/annual\\_reports/](http://ec.europa.eu/competition/annual_reports/)>.  
 [B] European Commission Competition Policy - Antitrust Case Commission Decisions (1999 to date), available at <<http://ec.europa.eu/competition/antitrust/cases/index.html>>.  
 [C] Press releases by the European Commission Competition Policy, available at <<http://europa.eu/rapid/searchAction.do>>.  
 [D] Europa website, "European Countries," available at <[http://europa.eu/abc/european\\_countries/index\\_en.htm](http://europa.eu/abc/european_countries/index_en.htm)>.

# Antitrust Activity Towards Domestic and Foreign Firms

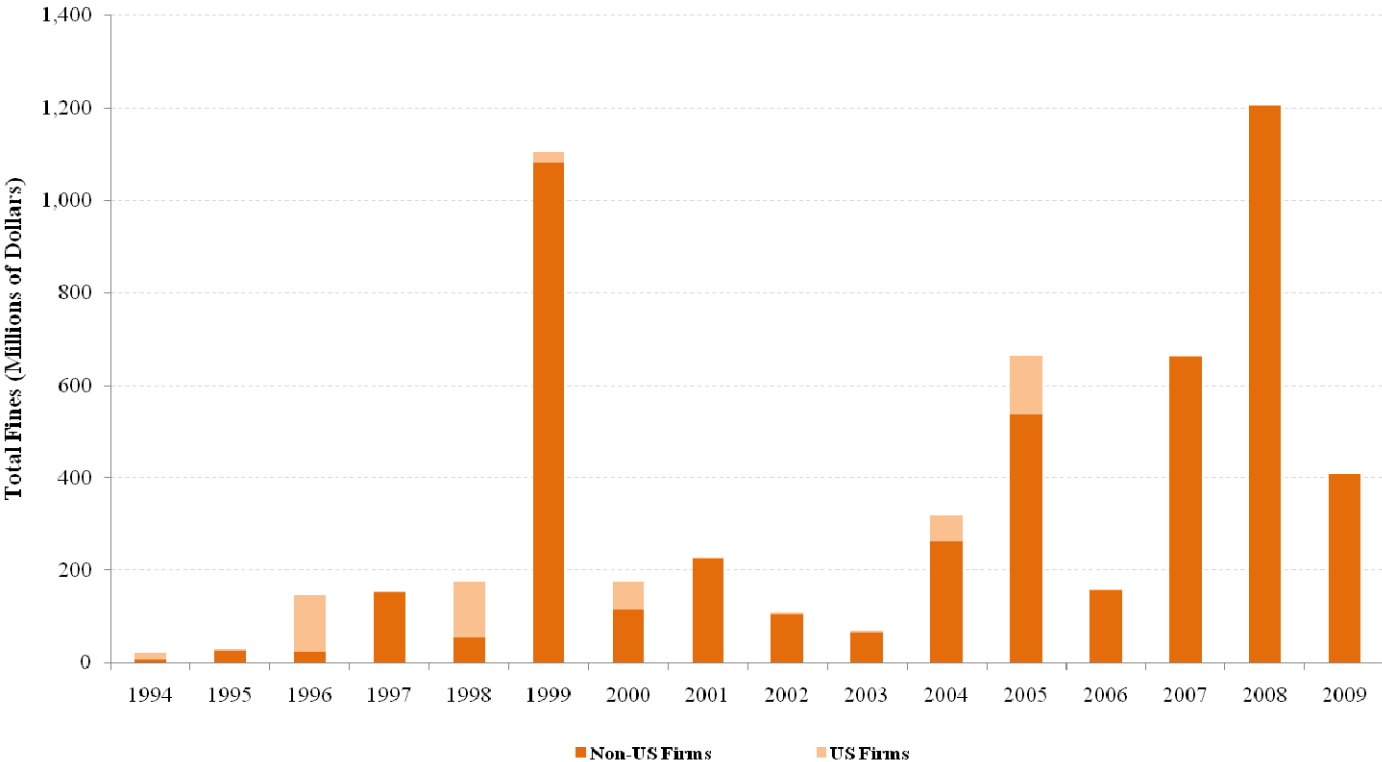
Number of US and Non-US Firms Fined by the Antitrust Division of the Department of Justice Under Section 1 of the Sherman Act (Anti-Competitive Agreements) 1994 - 2009



**Note:**  
 [1] Firms that were exempted from fines through the DoJ Leniency Program were not depicted. 2009 data ends in August  
**Sources:**  
 [A] US DoJ, Antitrust Division, "Sherman Act Violations Yielding a Corporate Fine of \$10 Million or More," as of May 22, 2009, available at <<http://www.usdoj.gov/atr/public/criminal/sherman10.htm>>.  
 [B] US DoJ Antitrust Division, "Annual Report FY 1999," available at <<http://www.usdoj.gov/atr/public/4523.htm>>.  
 [C] DoJ Press Releases, Plea Agreements, Case Information, Indictment, and Briefs for Appellee, available at <<http://www.usdoj.gov/atr/cases.html>>.

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[B] US DoJ Antitrust Division, "Annual Report FY 1999," available at <http://www.usdoj.gov/atr/public/4523.htm>.

[C] DOJ Press Releases, Plea Agreements, Case Information, Indictment, and Briefs for Appellee, available at <http://www.usdoj.gov/atr/cases.html>.

## Testing Antitrust Authorities Orientation of Enforcement Actions

**First Approach: Compare the share of imports in domestic consumption to Antitrust enforcement frequency and intensity**

**Second Approach: Calculate conditional probabilities**

- For example, for a US firm, that probability would be:

$$\Pr(\text{Fined}^{\text{US}} \mid \text{Fined}^{\text{EU}}, \text{US Firm})$$

For an EU firm, the same conditional probability would be:

$$\Pr(\text{Fined}^{\text{US}} \mid \text{Fined}^{\text{EU}}, \text{EU Firm})$$

The two probabilities should be equal if antitrust authorities are neutral and if the firm is selling in both countries.

- Empirical strategy is to estimate the following frequencies:

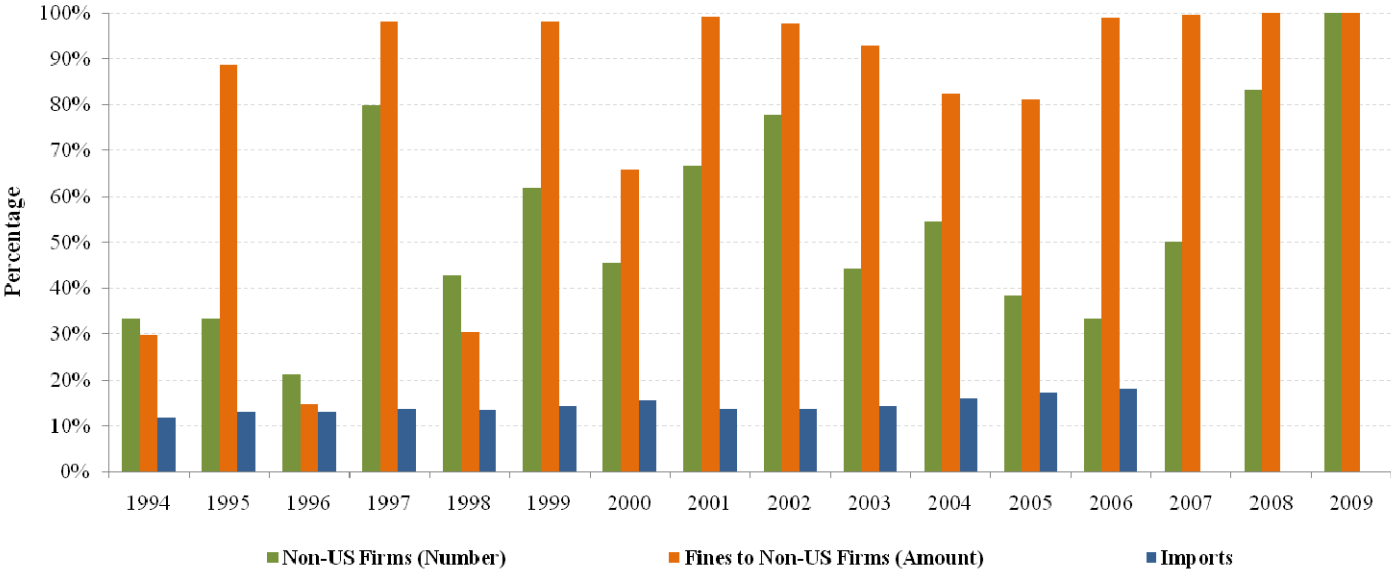
# US firms fined in US and EU

$$\Pr(\text{Fined}^{\text{US}} \mid \text{Fined}^{\text{EU}}, \text{US Firm}) = \frac{\text{# US firms fined in US and EU}}{\text{# US firms fined in EU}}$$

# US firms fined in EU

# First Approach: Antitrust Action Relative to Imports in the US

Domestic and Foreign Antitrust Targeting and Fines Compared to Non-US Firms' Share of Total US Consumption in the United States  
1994 - 2009



**Notes:**

[1] Sales by Non-U.S. Firms were calculated as the sum of total imports of goods and services (less imports from foreign affiliates of U.S. firms) and net payments to foreign parents of direct investment income resulting from sales by their U.S. affiliates. 2009 data ends in August

[2] Total Consumption was calculated as the sum of personal and government consumption expenditures.

[3] These firms do not account for firms that were exempted from fines due to the DOJ Leniency Program.

**Sources:**

[A] US DoJ, Antitrust Division, "Sherman Act Violations Yielding a Corporate Fine of \$10 Million or More," as of May 22, 2009, available at <<http://www.usdoj.gov/atr/public/criminal/sherman10.htm>>.

[B] US DoJ Antitrust Division, "Annual Report FY 1999"

[C] DoJ Press Releases

[D] DoJ Plea Agreements

[E] DoJ Case Information, Indictment, and Briefs for Appellee

[F] U.S. Department of Commerce, Bureau of Economic Analysis, International Economic Accounts, "Ownership-Based Framework of the U.S. Current Account, 1982-2007," available at <<http://www.bea.gov/international/index.htm#header>>.

[G] US Department of Commerce, Bureau of Economic Analysis, National Accounts, "Gross Domestic Product," available at

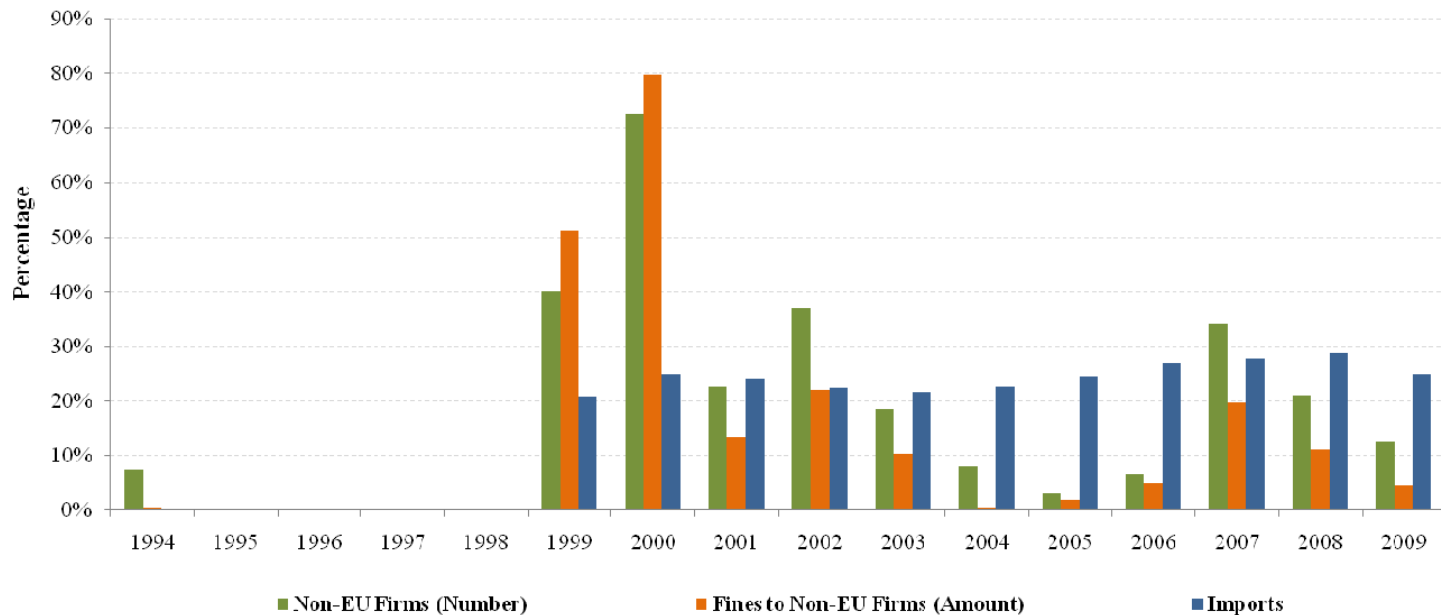
<<http://www.bea.gov/national/nipaweb/TableView.aspx?SelectedTable=5&FirstYear=2008&LastYear=2009&Freq=Qtr>>.

[H] US Department of Commerce, Bureau of Economic Analysis, National Accounts, "Government Consumption Expenditures and Gross Investment," available at

<<http://www.bea.gov/national/nipaweb/TableView.aspx?SelectedTable=98&Freq=Qtr&FirstYear=2007&LastYear=2009>>.

# First Approach: Antitrust Action Relative to Imports in the EU

## Domestic and Foreign Antitrust Targeting and Fines (Article 81) Compared to Non-EU Firms' Share of Total EU Consumption 1994 - 2009



### Notes:

[1] Import Data apply only to the Euro Area (only those 16 countries using the euro as their sole currency). Fines data apply to the 27 countries in the European Union, as listed by the Europa website. 2009 data ends in August.

[2] Import data from 2009 only reflect Q1. No import or consumption data are available for 1994.

[3] Imports as a percentage of consumption are calculated in accordance with the definitions of imports and consumption provided by the European System of Accounts 1995 manual.

[4] Imports are defined as transactions in goods and services (purchases, barter, gifts or grants) from non-residents to residents, where 'residents' are defined as units having a center of economic interest on the economic territory of the euro area - that is, when they engage for an extended period (one year or more) in economic activities on euro area territory. Imports do not include sales by foreign firms located within the euro area.

[5] Consumption is defined as expenditure incurred by resident institutional units on goods or services that are used for the direct satisfaction of individual needs or wants or the collective needs of members of the community. This measure excludes social transfers and items considered in immediate consumption or gross capital formation.

### Sources:

[A] European Commission Competition Policy - Annual Reports, 1998-2007, available at <[http://ec.europa.eu/competition/annual\\_reports/](http://ec.europa.eu/competition/annual_reports/)>.

[B] European Commission Competition Policy - Antitrust Case Commission Decisions (1999 to date), available at <<http://ec.europa.eu/competition/antitrust/cases/index.htm>>.

[C] Press releases by the European Commission Competition Policy, available at <<http://europa.eu/rapid/searchAction.do>>.

[D] European Central Bank, Statistical Data Warehouse, "Imports of Goods and Services," available at <[http://sdw.ecb.europa.eu/quickview.do?SERIES\\_KEY=158.IEAQ.Q15.N.V.P1.Z.SZ.A1.S.Z.X.E.Z](http://sdw.ecb.europa.eu/quickview.do?SERIES_KEY=158.IEAQ.Q15.N.V.P1.Z.SZ.A1.S.Z.X.E.Z)>.

[E] European Central Bank, Statistical Data Warehouse, "Final Consumption Expenditure," available at <[http://sdw.ecb.europa.eu/quickview.do?SERIES\\_KEY=158.IEAQ.Q15.N.V.P3.Z.S1.A1.S1.X.E.Z](http://sdw.ecb.europa.eu/quickview.do?SERIES_KEY=158.IEAQ.Q15.N.V.P3.Z.S1.A1.S1.X.E.Z)>.

[F] Europa website, "European Countries," available at <[http://europa.eu/abc/european\\_countries/index\\_en.htm](http://europa.eu/abc/european_countries/index_en.htm)>.

[G] European Commission, European System of Accounts 1995 Manual, available at <<http://circa.europa.eu/rcd/ssi/nfaccountinfo/data/es95/eu/esa95en.htm>>.

# Second Approach: Conditional Probabilities

**Number of Firms Fined and Conditional Probability of Receiving a Fine  
by Jurisdiction Imposing the Fine and Location of Firm  
1994 - 2009**

*Number of Firms Fined By Jurisdiction Imposing the Fine and Location of Firm*

**Location of firm  
(headquarters of parent company)**

Jurisdiction Imposing the Fine		Location of firm (headquarters of parent company)		
		US	Europe	Rest of World
US DoJ (Sherman §1)  European Union (Article 81)  US DoJ and European Union		89 [A]	38 [D]	43 [G]
		24 0.053 [B]	360 0.802 [E]	65 0.145 [H]
		5 [C]	21 [F]	20 [I]

*Conditional Probability of Receiving Fine*

**Location of firm  
(headquarters of parent company)**

	US	Europe
$\Pr(\text{Fined}^{\text{US}} \mid \text{Fined}^{\text{EU}}, \text{Location})$	21% [C]/[B]	6% [F]/[E]
$\Pr(\text{Fined}^{\text{EU}} \mid \text{Fined}^{\text{US}}, \text{Location})$	6% [C]/[A]	55% [F]/[D]

Note:  
[1] A firm was assigned a location of "Europe" if, at the time of the fine, its parent company was located within one of the 27 countries belonging to the European Union.

# Second Approach: Conditional Probabilities

## Amount of Fines Imposed on Domestic versus Foreign Firms by the US DoJ and European Commission 1994 - 2009

<i>Amount of Fines Imposed by Jurisdiction and Location of Firm</i>		<b>Location of firm (headquarters of parent company)</b>		
		<b>US</b>	<b>Europe</b>	<b>Rest of World</b>
<b>Jurisdiction Imposing the Fine</b>	<b>US DoJ (Sherman §1) (Millions of Dollars)</b>	<b>\$ 881</b> 0.155 [A]	<b>\$ 1,991</b> 0.35109 [B]	<b>\$ 2,799</b> 0.4935 [C]
	<b>European Commission (Article 81) (Millions of Euros)</b>	<b>€ 710</b> 0.05 [D]	<b>€ 11,634</b> 0.8197 [E]	<b>€ 1,849</b> 0.1303 [F]

**Note:**

[1] A firm was assigned a location of "Europe" if, at the time of the fine, its parent company was located within one of the 27 countries belonging to the European Union.

# Second Approach: Conditional Probabilities

## Average and Median Fine Imposed on Domestic versus Foreign Firms by the US DoJ and European Commission 1994 - 2009

<i>Average and Median Fine Imposed by Jurisdiction and Location of Firm</i>		Location of firm (headquarters of parent company)		
		US	Europe	Rest of World
Jurisdiction Imposing the Fine	US DoJ (Sherman §1) (Millions of Dollars)	\$ 9.9	\$ 52.4	\$ 63.6
		\$ 0.4	\$ 15.3	\$ 25.5
		[A]	[B]	[C]
	European Commission (Article 81) (Millions of Euros)	€ 35.5	€ 33.8	€ 26.0
€ 22.7		€ 3.6	€ 4.8	
	[D]	[E]	[F]	

**Note:**

[1] A firm was assigned a location of "Europe" if, at the time of the fine, its parent company was located within one of the 27 countries belonging to the European Union.

## Summary

**The last twenty years have been characterized by the expanding scope of antitrust enforcement and the simultaneous globalization of commercial activity.**

**Antitrust policy may be (i) unified and neutral, (ii) subject to protectionist influences, or (iii) domestically-oriented.**

**We analyzed antitrust enforcement by Chilean, European, Japanese, Korean and US authorities. Because of data limitation, empirical tests of some hypotheses are limited to the EU and the US.**

**We find:**

- 1. Little evidence of protectionist antitrust enforcement.**
- 2. Some evidence of domestically focused antitrust enforcement.**