

## The Decline of the U.S. TV Industry: Trade

Foreign **trade practices** were an important factor in the decline of U.S. television manufacturers. Domestic protection and coordinated pricing policies permitted Japanese firms to sell televisions in the American market at prices substantially below what comparable sets were sold for in Japan. The U.S. response to this dumping was sluggish and ineffective—in part because a statutory change that enabled a more effective response was not made until **1979—exposing** American firms to competition that drove down profit margins and increased the difficulty of making the needed investments to improve their manufacturing. The Japanese Government protected domestic producers **from** imports as **well** as foreign direct investment, and the nation's distribution system acted as a barrier to any firm that could surmount the government's restrictions.

Japanese TV manufacturers have high fixed costs, in part due to their customs of providing permanent employment and of maintaining exclusive distribution outlets. High-volume production was needed to cover these fixed costs but also provided significant economies of scale. Government **fiscal** policies and other factors encouraged heavy investment in plant capacity by Japanese manufacturers—in excess of domestic needs—to achieve these volumes. The large output was sold at a high profit in the protected domestic market and at low- or no-profit abroad: Japanese producers maintained domestic retail prices at least 50 to 60 percent higher than for comparable sets sold in the United States.<sup>1</sup> Imports would have broken this arrangement but were blocked.

The Japanese Government protected the profitability of domestic sales through tariffs, quotas, import and foreign exchange licensing, and restrictions on foreign direct investment. Tariffs on color TV imports were 30 percent in Japan until 1968 compared to 10 to 7.5 percent in the United States over the same period. Commodity taxes were reduced to less than 10 percent on sets entirely of domestic origin, but were maintained at 30 percent on those with larger imported picture tubes. Import certification took much longer and was more costly and stringent than the U.S. equivalent.

The Japanese industry blocked imports by denying distribution through their extensive network of franchised dealers, who carried only one manufacturer's products,

excluding all others. Sales through large retailers also proved difficult. In 1973, for example, Zenith attempted to export to Japan to take advantage of the exceptionally high prices for TVs there, but **MITI** reportedly pressured Zenith's trading partners and retail chains to limit distribution efforts.

As a result of these and other factors, sales of color TV imports in Japan totaled only 16,000 in 1974, 11,000 in 1975, and 452 in 1976—out of total color TV sales of almost 5 million.

At the same time, Japanese sold TVs at rock bottom prices in the United States. To ensure that the impact of this was on U.S. rather than Japanese producers, Japanese firms (including Hitachi, Matsushita, Mitsubishi, Sanyo, Sharp, and Toshiba) **allocated** U.S. retailers among themselves according to the so-called “five company” rule to eliminate **intra-Japanese** competition.

U.S. firms challenged the unfairness of Japanese trade practices, both in courts and through administrative processes. Action was taken on at least five separate fronts.

The first and longest proceeding began in 1968 when U.S. Customs received complaints about dumping violations. In 1971 the Department of Treasury found Japanese producers guilty of dumping,<sup>2</sup> but virtually no duties were collected or other actions taken until Congress overhauled the **antidumping duty law** in 1979.<sup>3</sup> At that point, the Secretary of Commerce negotiated a settlement of approximately \$77 million for **antidumping** duties and other penalties. Zenith, having estimated its own damages as much larger than this, unsuccessfully appealed the settlement. The case was finally closed in 1987 when the government unsuccessfully tried to force Zenith to forfeit the \$250,000 bond it had been required to post in challenging this settlement.<sup>4</sup>

This and subsequent dumping findings against Korea, Taiwan, and Japan (most recently for 1986-87)<sup>5</sup> resulted in the imposition of duties on TVs imported from these countries. Foreign efforts to rescind the duties have failed, but duties have reportedly sometimes been avoided by shipping TVs or components to the United States through third countries. For example, by transshipping through

<sup>1</sup>Kozo Yamamura and Jan Vandenberg, “Japan’s Rapid-Growth Policy on Trial: The Television Case,” *Law and Trade Issues of the Japanese Economy*, Gary R. Saxonhouse and Kozo Yamamura (eds.) (Seattle, WA: University of Washington Press, 1986).

<sup>2</sup>T.D. 71-76.5 Cust. B. and Dec. 151.36 Fed. Reg. 4597(1971).

<sup>3</sup>Kevin Kennedy, *Zenith Radio Corp. v. United States: The Nadir of the U.S. Trade Relief Process*, North Carolina Journal of International Law and Commercial Regulation (1988), vol. 13, p. 226.

<sup>4</sup>*Zenith Radio Corp. v. United States*, 823 F.2nd 518 (Fed. Cir. 1987)

<sup>5</sup>“Television Receivers, Monochrome and Color, From Japan,” 54 FR 13917, 1989.

Mexico, Matsushita was reportedly able to cut its tariff bill from 15 to 5 percent on color picture tubes.<sup>6</sup>

Second, the National Union Electric Corp. (U. S.) filed suit in 1970 and Zenith filed suit in 1974 against eight Japanese firms and their subsidiaries for violations of antitrust and **antidumping** laws. Most of the evidence in the case was ruled inadmissible by the District Court in 1981, including, for example, thousands of pages of documents seized by the Japan Fair Trade Commission in raids on corporate **offices**.<sup>7</sup>

The District Court's decisions were largely reversed by the Third Circuit Court of Appeals, which concluded that there was direct evidence of concerted action among the Japanese, including price fixing, use of the "five-company" rule, and false-invoice-and-kickbacks to avoid U.S. Customs regulations and **antidumping** penalties. The Court recommended that the case be sent to a **jury**.<sup>8</sup>

The Third Circuit Court of Appeals findings were narrowly reversed, 5-4, by the Supreme Court in 1986. The Supreme Court ruled that the direct evidence of concerted action among the Japanese found by the Third Circuit Court was irrelevant, because the Japanese could not have a motive to engage in predatory pricing in the United States—it would require the Japanese to sustain years of "substantial losses in order to recover uncertain gains." "9 Pricing behavior in the Japanese market was also deemed irrelevant to the antitrust charges because 'American antitrust laws do not regulate the competitive conditions of other nations' economies. "1°

The legal arguments notwithstanding, the Japanese firms' actions at issue in the case caused significant damage to U.S. firms. Both U.S. and Japanese firms had to cover their fixed costs. The Japanese Government permitted, if not encouraged, the creation of a protected

domestic market in which the Japanese firms were allowed to recover all of their fixed costs, **free** of any significant foreign competition. Japanese firms could then charge much lower prices in foreign markets, including the United States, while U.S. firms were forced to charge prices that covered their average total costs.

Third, Zenith petitioned the Treasury Department in 1970, requesting the imposition of a countervailing duty to offset the effective rebate of the commodity tax generally due on TVs which Japanese producers were receiving from their government for exports. In 1976, the Treasury Department found that the rebate was neither a "bounty" nor a "grant," either of which would have triggered the imposition of a duty. The decision was upheld unanimously by the U.S. Supreme Court in 1978.<sup>11</sup>

Fourth, in 1972 the U.S. Department of Justice undertook investigations of collusion and of **false-invoice-and-kickback** schemes run by Japanese firms to circumvent U.S. dumping tariffs and **penalties**.<sup>12</sup> In 1977, Justice concluded that there was no evidence of collusion, but it brought charges against a number of **firms** for these kickback schemes. At least one U.S. retailer pled **guilty**,<sup>13</sup> and at least one case was still unresolved in September 1989.<sup>14</sup>

Fifth, in 1976 a GTE request to the U.S. International Trade Commission (**ITC**) to investigate unfair acts by five Japanese firms was dismissed, but a request by **COMPACT**<sup>15</sup> led to a 1977 **ITC** holding that there was injury due to increased imports. While the **ITC** therefore recommended higher tariffs on color TVs, the **Administration** responded instead by negotiating a voluntary Orderly Marketing Agreement.

<sup>6</sup>Committee to Preserve American Color Television, U. S. Congress, House Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, "Recommended Government Policies to promote the Evolution of a U.S. High Definition Television Industry," Committee Print 101E, March 1989.

<sup>7</sup>*Zenith Radio Corp. v. Matsushita Elec. Ind. Co.*, 494 F. Supp. 1190 (1980), 505 F. Supp. 1125 (1980), and 513 F. Supp. 1100 (1981)

<sup>8</sup>"In Re Japanese Electronic Products," 723 F.2d 238 (1983). See also "Japanese Electronic Products Antitrust Litigation," 807 F.2d 44 (1986) for the discussion of the case following the Supreme Court decision.

<sup>9</sup>One legal scholar noted that the Court analysis of predatory intent was in large part based on the most "conservative school of thought in the debate over predation," that of *Bork-McGee-Easterbrook*. See: Randolph Sherman, "The Matsushita Case: Tightened Concepts of Conspiracy and Predation?" *Cardozo Law Review*, vol. 8, p. 1121, 1987.

<sup>10</sup>*Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

<sup>11</sup>*Zenith v. United States*, 437 U.S. 443 (1978).

<sup>12</sup>"Scandals; Kickbacks in Living Color," *Time*, June 13, 1977, p. 63.

<sup>13</sup>David Staelin et al., "The Decline of U.S. Consumer Electronics Manufacturing," Massachusetts Institute of Technology Commission on Industrial Productivity, December 1988.

<sup>14</sup>This case has been back and forth on repeated appeals and remands. 647 F.2d 902 (9th Cir. 1981); remanded to 518 F. Supp. 179 (C. J.). Cal 1981); reviewed 719 F. 2nd 1386 (9th Cir. 1983); cert. den. 104 S. Ct. 1441 (1984); 579 F. Supp. 1055 (C.D. Cal 1984); reviewed 785 F.2d 777 (9th Cir. 1986); cert. den. 479 U.S. 988 (1986); 677 F. Supp. 1042 (CD. Cal 1988); reviewed 866 F. 2nd 1128 (9th Cir 1989).

<sup>15</sup>Committee for the Preservation of American Color TV.