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Dumping of Products and the Law the against Dumping*

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Abstract

The origin of the word "dumping" is unknown. Richard Dale stated that the earliest record of its usage is in early 19th century, it is defined as the act of discarding undesired things in a lump or mass.[1] The term is started to be used in English trade-literature in early 20th century to refer to the situation where products were traded with low prices in foreign markets,[2] as they were undesired products in their country of origin and thus exported in order to get rid of them. Meanwhile, John Jackson recounts that the first man to use the word "dumping" was Adam Smith to describe the situations nowadays known as "export subsidy".[3] the word dumping is now widely used to indicate the custom of price discrimination in international trade, which is also a negative connotation. It is also highly associated with "undesirable" and "unfair" trade practices.

Therefore, the word "dumping" is usually described as an unfair trade practice. It is also a disputable approach that much of the ideally remedial legislation in this field is the result of moral opprobrium related to dumping instead of any objective damage.

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[1]Richard Dale, Anti-Dumping Law in a Liberal Trade Order (Springer, 1980).
[2]Ibid.
[3]Paul Waer and Edwin Vermulst, "EC Anti-Dumping Law and Practice after the Uruguay Round–A New Lease of Life?," Journal of World Trade 28, no. 2 (1994): 5–21.

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1. DUMPING IN ECONOMICS

Jacob Viner provided the most agreeable economic definition of dumping; he was also responsible for numerous contributions to international trade theory. He defined it as price discrimination between national markets. This definition is viewed to be as ambiguous as it presents the idea of the selling of same products in different countries at different prices. Price discrimination may refer to the sale of an identical commodity at different prices and at the same time, it could refer to equipment and machineries that can be utilized for different products production where the resources are transferrable. Price discrimination arises when profit margin or also known as marginal cost’s mark-up differs depending on the products manufactured.[4]

However, the word “dumping” is not usually used broadly. Its usage here refers to differential pricing between the same or considerably similar commodities. It is to be highlighted that price variation at sale point is not predetermined in price discrimination. In 1995, a report in the *Report 01 the Attorney-General's NationalCommittee to Study the Antitrust Laws* pointed out regarding domestic price discrimination: Price discrimination, in the monetary sense, happens at whatever point and to the degree that there are value contrasts for a similar item or administration sold by a solitary vender, and not represented by cost contrasts or by changes in the level of interest, or when at least two purchasers are charged a similar cost notwithstanding contrasts in the cost of serving them.[5]

From an economic point of view, the prices, as well as the total costs applied to each transaction, are required to determine the occurrence of price discrimination between several buyers. Such stipulation is highly related to price differentials in international trade where insurance, packaging, freight and extended credit terms may be

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[4]Dale, *Anti-Dumping Law in a Liberal Trade Order*.

[5]Ibid.

involved. Conversely, the cost of exports may be lowered in comparison to domestic sales as the result of economies of scale from bulk individual orders.[6]

Cost differences must have the full allowance in order to determine the occurrence of price discrimination as well as the phenomenon of dumping. In international trade, price differentials may reflect border tax adjustments as well as incidence of duties. Tariff duties may be imposed by importing countries on a product whereas custom duties may be paid by exporting countries on the imported resources utilized in the production. Likewise, domestic excise taxes to product sale is employed by importing countries while customs duties are exempted by the exporting countries where these imported materials are used for manufacture. To detect the occurrence of dumping, import and other charges imposed by importing country are to be deducted from the export price followed by addition of excise taxes and allowance for exemption from domestic duties.[7]Consequently, the export price is now comparable directly to home market price.[8]

An inclusive definition of price discrimination obviously must contain a time reference and it is customary to dictate that the sales are concurrent or nearly so. Dumping is also treated equally, even though in international trade a substantial amount of time is spent between entering into contractual relations and final delivery. It should be highlighted that for price comparison, the relevant point in time is the date of the contract and not the shipment date.[9]

Dumping as price discrimination between national markets is defined to be between several foreign markets or between foreign and home markets. However, the latter type has triggered the industrialized world to present anti-dumping legislation. Apart from

[6]Ibid.
[7]Ibid.
[8]Ibid.
[9]Ibid.

that, international price discrimination may refer to imposing higher prices for export goods in comparison to home market sales or fixing incredibly low prices in export markets. As indicated by the more conventional vie, du on, when price dumping is in the differing direction the occurrence is described as reverse dumping.[10]

The definition used to describe dumping here requires distinguishing between intra-national and national markets. It is suggested by Viner that in this case, 'national' should include all political units with different customs tariffs; national boundaries would be eliminated within a common market area including European Community. It is safe to assume that dumping will still take place in spite of the lack of protective tariffs. It is also proper to acknowledge political sovereignty than custom areas for the purpose of identification of national markets. There is no apparent difference between price discrimination among member states within a national federation (the United States for example) as well as dumping in international trade. The relationship between granting of export subsidies or official bounties and dumping must be assessed as well. In reality, the difference between the two practices is very obvious as the only thing covered by dumping is differential pricing and not the price differences origin; though these may show some cost variation. Official export subsidization may result to the increment of dumping (also known as bounty dumping at times) but separate legislation usually covers it. According to the General Agreement on Tariffs and Trade (GATT), duties imposed in regards to subsidized imports are known as countervailing duties which are different from anti-dumping duties..[11]

Lastly, dumping from the economic perspective is not equivalent to selling export goods below the cost limit which may or may not be related to price discrimination. However, the objections against dumping includes the selling of imported goods below cost

[10]Ibid.
[11]Ibid.

limit. Therefore, national anti-dumping legislation usually upholds both practices.[12]

2. Dumping IN LAW

Generally, dumping is defined as a phenomenon in national price discrimination where goods in importing country are sold lesser than the price of such goods in the market of the exporting country. In other words, dumping is referred to the price comparison in two different markets. The situation is rarely simplified since a series of complex analytical stages are mostly required to decide on the applicable price in the market of both exporting country (referred to as the "normal value") and importing country (referred to as "export price") respectively in order to achieve appropriate comparison.[13]

2.1. Article VI of GATT and the Anti-Dumping Agreement

Several basic trade principles are provided by the GATT 1994 for the members of the WTO, which includes the "most favored nation" principle. Apart from that, imported goods are free of internal taxes or other taxes imposed on domestic goods, and equal treatment is to be given to both imported and domestic goods under the domestic laws and regulations, as well as the establishment of rules in regards to importation fees and formalities, customs valuation and quantitative restrictions. Establishment of bound tariff rates' schedule is also approved by the members of WTO. Conversely, Article VI of GATT 1994 openly permits imposition of a specific anti-dumping duty on imports from a specific source in excess of bound rates, where there is

[12]Ibid.
[13]"WTO | Anti-Dumping - Technical Information," n.d., https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm.

a possibility of dumping resulting in injuries to the domestic industries or substantially retard the domestic industry's establishment.[14]

The Anti-Dumping Agreement or also known as the Agreement on Implementation of Article VI of GATT 1994 elaborates further on the basic principles stated in it, where it has the authority to oversee the anti-dumping duties on the investigation, the determination as well as application.[15]

> The legal concept of dumping is stated in Article 2 of Anti-Dumping Agreement:
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> "For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country".[16]
>
> "… When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an

[14]Ibid.
[15]Ibid.
[16]"WTO | Legal Texts - Marrakesh Agreement," n.d., https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm.

> appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits."[17]

Dumping is implied to be an action of selling goods to the importing country where the export price is lower than the products' normal value. Both normal value and export price can be determined based on the particular situation occurring in the importing as well as exporting country respectively. According to Article 2.1 of the ADA, "normal value" is comparable to the export price of the supplier to a third country, or the domestic market price of the product in the exporting country, or the production cost in the country of origin. The comparison between export price and normal value follows the economic definition of dumping. Both sale-below-cost and well as price discrimination are included in the legal definition of dumping.[18]

In general, Article 2 of the ADA provided the legal definition which is quite similar to the economic definition of dumping. It is indicated that economic analysis can be used to assess the legal definition of dumping. [19]

When a product is exported at the lower price in comparison to the home market price, the situation is labeled as "dumping" of the product. Is this competition unfair? There are varying opinions so far, although numerous governments refuse such action to protect their local industries. The judgment is not passed by the WTO agreement as it focuses on the government reaction towards dumping. WTO exerts anti-dumping actions which are frequently known as the "Anti-

[17]Ibid.

[18]Tran Viet Dung, "Anti-Dumping, Competition and the WTO System: Implications for Vietnamese Legal Reforms," 2008.

[19]Ibid.

Dumping Agreement. (the focus is solely on reaction towards dumping against the Subsidies and Countervailing Measures Agreement's approach)[20]

Even though legal definitions are more accurate, WTO agreement permits governments to negate dumping when damage is detected in the domestic industry. The government should obtain evidence of the occurrence of dumping followed by calculation of how far the dumping takes place (how much lesser the export price is in comparison to normal home market price), and finally prove that dumping causes damages. [21]

Countries are allowed to act against dumping according to Article 6 of GATT. It is clarified that Anti-Dumping Agreement and Article 6 work together. These articles permit the countries to take action in such a way where GATT principles of binding a tariff are usually broken and trade partners are discriminated. Normally anti-dumping refers to the attempt of damage removal to domestic industry's importing country (or in other words to lower the price to be closer to normal value) by adding extra import duty on a specific product from a certain exporting country.[22]

The calculation of how product is being dumped (either lightly or heavily) can be done in numerous ways. Series of options are narrowed down by the agreement. Three methods are used to determine the normal value of a product; the first method depends on the price found in exporter's domestic market. Other alternatives that may be used are based on the charged price by the exporter in another country or based on the combination of normal profit margins,

[20]"WTO | Understanding the WTO - Anti-Dumping, Subsidies, Safeguards: Contingencies, Etc," accessed December 13, 2016, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm.
[21]Ibid.
[22]Ibid.

exporter's production costs, and other expenses. A method to make a fair comparison between the supposed normal price and export price is also stated in the agreement.[23]

To calculate the extent of product dumping is not sufficient. When the industry in importing country is damaged, only then anti-dumping measures can be applied. A thorough investigation is to be done following the specified rules. This evaluation must cover all related economic factors that have a bearing on the industry state in question. If there is enough evidence that dumping is occurring and damage is incurred on the domestic industry, the price can be increased by the exporting company to a proved level to evade the anti-dumping duty. The procedures are detailed on how anti-dumping cases are to be instigated, how to conduct the investigations and the conditions to be fulfilled that ensure all parties involved have the opportunity to provide evidence. After five years of the imposition date, the anti-dumping measures must expire except when an investigation provides evidence of potential damage caused by the termination of the measure.[24]

When the margin of dumping is extremely low (less than 2% of the exported product's price) as determined by authorities, the anti-dumping investigations are brought to end instantly. Apart from that, other conditions of the termination of the investigation are also fixed. For instance, when the dumped imports' volume is insignificant (i.e. if the volume from a country is lower than 3% of total imports of a particular product even though investigations may continue if many countries, where each supplies less than 3% but the accumulation together is more than 7% of total imports). According to the agreement, the Committee on Anti-Dumping Practices must be informed by the member countries regarding the preliminary and final

[23] Ibid.
[24] Ibid.

anti-dumping actions immediately and thoroughly. The report on every investigation is to be done twice annually. Members are encouraged to discuss with each other when differences arise, or to use the dispute settlement procedure as provided by WTO.[25]

3. Economics Analysis of Dumping

3.1. Price discrimination:

Usually, it is unwise and uninspiring to start with definitions and conceptual arguments. However, the current task will be more apparent if the subject is defined now.[26]

THE DEFINITION

At times, price discrimination is referred as the act of a firm offering homogeneous products while offering to various buyers at various prices.[27]

1. "Selling to different purchasers": It is advised to add "buying from different sources of supply" (because price discrimination may present in both selling and buying) and "leasing and hiring."

2. "Commodity": Among the things to be included are services as well as goods, productive factors as well as products. "At the same time": This means "under given conditions." The transactions do not need to be simultaneous; there is temporal discrimination indeed, such as between weekday and Sunday rates, morning and evening prices, off-peak and high peak rates, off-season and season prices.[28]

4. "Homogeneous": The commodities do not need to be homogeneous; they may be distinguished in many ways and, indeed, in several types of price discrimination differentiation is of the

[25]Ibid.

[26]Fritz Machlup, "Characteristics and Types of Price Discrimination," in *Business Concentration and Price Policy* (Princeton University Press, 1955), 397–440.

[27]Ibid.

[28]Ibid.

essence. "At different prices": To sell different products or qualities with a different marginal cost at the same price, or to buy different factors or qualities of different efficiency at the same price is also discriminatory. Also, there may be price discrimination without price differences; there may be differential pricing that is not discriminatory.[29]

6. "Firm": to prove the existence of price discrimination, at least several firms or the whole industry are needed. For instance, a firm may take part in a discriminatory scheme where different consumer groups via various (subsidiary) different markups are served. Apart from that, a number of railroads may arrange combined through-rates, this is viewed to be discriminatory as compared to those rates charged by the same or other lines.[30]

An exhaustive definition ought to be ambiguous to evade unnecessary clumsiness. Price discrimination may be referred to as the practice of one or more firms selling (leasing) at the disproportionate prices in comparison to the marginal cost of the sold (leased) product or purchasing (hiring) at disproportionate price in comparison to marginal cost of the bought (hired) products. A number of products (or product qualities) are usually produced by firms and sold at discriminatory prices. In other words, discrimination is performed to favor buyers who purchase some commodities and belittle other buyers of higher markup price over marginal cost in comparison to the former. Throughout this discrimination, multiproduct firm switches some of its productive capacity from relatively higher-priced production to relatively lower-priced production. On the other hand, a single-product firm modifies its output from less-favored to the more-favored markets.[31]

The “switching” of output produced or capacity usage is merely metaphoric, or in other words, an imaginary transition

[29]Ibid.
[30]Ibid.
[31]Ibid.

description from no discrimination involved to the practice of discrimination; the comparison of these situations is pictured in the "switching" metaphor.[32]

The allowance of price discrimination concept, from the pricing of identical products or technologically similar products to the pricing of completely different products that are related as they fall under the same control or management, will perhaps be pre-tested as an unlawful departure from tradition.[33]

The justification of price standardization for different products is exactly the same as price standardization for same products but sold to different buyers. To bind the idea of discrimination to homogeneous items has one preferred standpoint: their marginal cost should be the same, so that differences in price are an adequate proof of discrimination. "Rational price determination for the different products of a multi-product firm facing markets with different demand elasticities is price discrimination in the wide sense of the word proposed here".[34]

3.2. MONOPOLY POWER AS A PREREQUISITE

There is a general belief that price discrimination is mainly used "to create a monopoly" as it has been used frequently to stunt the growth of weaker competitors, or worse to kill them off. The fact that the occurrence of monopoly (or at least part of them) allows the occurrence of discrimination to be overlooked in order to believe that price discrimination may result to monopoly where it was nonexistent before. Price discrimination is possibly made to disturb a rival; the simplest scenario would be when a seller agrees to sell at various net prices which may be adequate, less or even inadequate. A complex competition would result to all sellers to accept good orders only and

[32]Ibid.
[33]Ibid.
[34]Ibid.

reject the bad ones to the point where the bad ones improve while the good ones worsen. When the above case does not occur, the market is monopolistic or in other words "imperfectly competitive".[35]

Rationales or motives related to dumping practices are proposed by economists to support the economic analysis of dumping. Furthermore, firms use numerous business motives to keep two different prices for an amount of time in two markets respectively:

Market expansion dumping refers to when products are exported at a lower price in comparison to those charged in the domestic market due to markup cutting as the result of demand with higher price elasticity in markets abroad. Such scenario is the typical dumping type based on price discrimination.[36]

Apart from that, cyclical dumping refers to when products are sold at the lower price (less than "full cost") due to a decrease in demand but marginal variable costs are still covered. In this case, there is a possibility of price discrimination to and not to occur due to products sold at the same low price in both export and domestic markets.[37]

When non-convertible currency is used by state-owned firms in countries to export goods to gain access to hard currency, state-trading dumping occurs. Assessment against export and home prices is irrelevant here because of the lack of convertibility. Another driving force of dumping may be a sophisticated protection in the domestic market. Companies that can gain benefit from considerable economies of scale (whether dynamic or static) and at the same time are functioning in an enormous protected market, would experience lower costs than their foreign rivals. The final type of dumping which is predatory-price dumping occurs when products are sold at such low

[35]Ibid.

[36]José Tavares de Araújo Júnior, Carla Macario, and Karsten Steinfatt, *Antidumping in the Americas,* vol. 10 (United Nations Publications, 2001).

[37]Ibid.

price to force rivals to quit the market in the importing country. Furthermore, products are charged at the higher price to recover the losses it experienced as the result of pushing the rivals out of the competition. Most of the time, economists have a tendency to accept dumping when it is evident to take place as an utterly sensible, rational and legitimate profit-maximizing action.[38]

Furthermore, some economists believe that usually dumping does not reduce global welfare, though at times dumping increases it via enhanced consumer welfare. From all types of dumping mentioned above, most cases of strategic dumping as well as predatory pricing dumping are the only ones that raise welfare problems. However, these two categories of dumping are viewed to be theoretical as most antidumping scenes in reality do not involve dumping as described by these categories.[39]

Conversely, an overall welfare increment in importing country is possible through non-monopolizing dumping (which covers other categories apart from those discussed above). This is going to be more advantageous for buyers than producers when the industry is perfectly competitive. When industries are not utterly competitive, the welfare will not be certain and robust.[40]

3.3. Sale-Below-Cost

As it was stated, dumping may be defined alternatively to be the pricing of exports below the real cost. This definition is due to the fact that unprofitable sales (when sold under cost) except when the sales are covered by other sales above cost in either other markets or periods. For instance, firms are alleged to be charging a higher price in the home market and thus led to exports below cost. In this case, price discrimination has occurred or else all operations are conducted at a

[38]Ibid.
[39]Ibid.
[40]Ibid.

loss. Conversely, exporters are alleged to increase its price in the future and lead to predation. It is disputable that both interpretations are questionable but they seem to be focusing back to why exporting below cost should be denied as dumping.[41]

Various definitions of cost must be distinguished in order to fathom the economics of dumping below cost. The most crucial difference is a comparison between marginal and average cost. Marginal cost measures only the additional units' cost production. Meanwhile average cost (or also known as fully allocated cost) comprises of all costs bore by the firm, divided by the units produced. The difference is more apparent in short-term when only a part of cost fluctuates and the majority of costs components are fixed when the output varies. Efficient pricing behavior and output decisions are based on these marginal costs (also known as short-run variable costs), therefore, a firm's efficient pricing behavior in short-term has experienced a certain fixed cost when entering the market.[42]

When the price offered by a firm is less than average cost, loss on the transaction is incurred by the firm. The greater loss may be experienced when fixed cost is part of that average cost above and therefore must be applied whether or not the products are produced. What makes a difference is whether the value it can get for extra yield surpasses the extra cost of creating it, and this is the thought of peripheral cost. The discussion on dumping below cost would be divided into two parts. Dumping below average cost except the marginal cost is a fairly simple scenario but there are still some noticeable issues that arise and require to be analyzed. On the other hand, dumping below marginal cost is an enthralling occurrence theoretically (not in reality) as it seems to oppose rationality on the part of exporting firms.[43]

[41]Alan V Deardorff, "Economic Perspectives on Antidumping Law," *Jackson, J Y Vermulst*, 1989.
[42]Ibid.
[43]Ibid.

The general formula of firms' business activities from an economic point of view is to maximize profits in the long term. From an accounting perspective, extra product production would result in extra costs of that extra product production (marginal production costs). When part of the fixed costs is recovered through the price offered, this may be viewed as sensible business practice. Or else, firms would be involved in unusual business practice which may disturb the market order and therefore should be constrained and terminated.[44]

Theoretically, such behaviour is relatively simple to explain whereas, practically, assessment of firms' business behaviour is a sophisticated issue specifically in the area of international trade. This is due to the different allocation of costs and structure depending on the accounting methods, management models, social institutions, countries, culture and legislation. Furthermore, the cost identification is even harder in a multi-national, multi-product company.[45]

Appropriate adjustment is required to be made to the national differences prior to even-handed assessment of the sale-below-cost issue in the international area. This is definitely not a simple thing to do as deep knowledge regarding manufacturing processes, production cost and business customs in foreign countries are required. At last, the correct level of costs which is reasonable to infer at when setting a cost is likewise extremely risky. It is disputable among economists which cost to be taken into consideration as a parameter to be "production cost" in order to determine whether production costs are actually covered by the agreed price.[46]

4. Welfare Implications of Dumping

[44]Gabrielle Zoe Marceau, "Anti-Dumping and Anti-Trust Issues in Free-Trade Areas," 1994.
[45]Ibid.
[46]Ibid.

Prior to assessment of welfare implications towards dumping, the welfare aspect of price discrimination within domestic boundaries is examined and the conclusion from the above examination is related to the price discrimination problem within the international area. Furthermore, comparing reverse dumping (another kind of differential pricing) with welfare impacts of dumping in usual sense (where it is assumed that export price is below the home market price) is useful.[47]

There are two differences between price discrimination within national boundaries and dumping: the welfare implication of dumping is varied in each nation state and there are special opportunities in international law regarding discriminatory pricing. Three basic conditions of price discrimination include separability of markets, elasticity of markets and exclusive opportunity for discriminatory pricing. Though global monopoly power could be claimed by only a handful of exporters, it is adequate for international discrimination purpose that monopoly is present in one national market only (typically to be the home market). In international trade, tariff barriers and heavy transport costs support separation of markets and at the same time disallow re-importation of products sold at dumped prices.[48]

In addition, it is safe to assume that elasticities of demand for homogeneous products are highly likely to be different in different national markets rather than within the same market. This is due to the varied competition laws between countries. Furthermore, dumping is applicable to tradable products and does not cover services subjected to price discrimination within national boundaries. The major concern here is the examination of welfare effects of dumping, and both importing and exporting country's perspective must be taken into consideration for such purpose. It is, therefore, appropriate to inspect the effects of dumping in matters of income distribution, output and

[47]Dale, *Anti-Dumping Law in a Liberal Trade Order*.
[48]Ibid.

competition; whereas the output effect on importing country is unrelated.[49]

4.1. IMPORTING COUNTRY POINT OF VIEW

It is frequently observed that the dumping problem in importing country is a conflict of interest between consumers and domestic producers due to the redistributive effects of low-priced imports. This is true in the sense that un-dumped or dumped imports may lower the profitability and/or output of domestic manufacturers. However, this cannot be considered as an effective argument against dumping as well as free trade.[50]

Viner has advanced a more nuanced version of this argument as an example of 'intermittent dumping'. He quotes William Smart to clarify this case: "At any moment, a manufacturer may be put on short time, because a good line is snatched from his fingers by a foreign firm which wishes to get rid of its surplus. But as the dumping is intermittent, employers do not sacrifice their fixed capital and change their trade. They hang on, hoping that it will stop. They go on short-time - which means waste of fixed capital, waste of organization, waste of labor".[51]

Correspondingly, workers do not shift to other trades, they hold on for a short period while hoping that it will indeed be short. The manufacturers are deserved well of the local community. They have done their best to keep the prices and profits low and thus it does not seem fair if they are thrown idle every now and then.[52]

The example above is observed to be different from what people have understood to be the definition of short-run or intermittent

[49]Ibid.

[50]Jacob Viner, *Dumping: A Problem in International Trade* (University of Chicago Press, 1923).

[51]Ibid.

[52]Ibid.

dumping as defined by Viner. According to the interpretation, dumping is characterized to cause a shift in the domestic resources usage, whereas it is seen above that labor and capital are idled and not shifted. This is not an ordinary dispute as the generally-accepted objection is that dumping revolves around adjustment costs that involve moving domestic resources to other productive use. “Viner's purpose in citing Smart is to demonstrate that the benefit of periodically cheap imports to the consumer is outweighed by the detriment to the producer and his employees of periodically enforced idling”. However, if a local producer is pressured to idle his factory, it may mean that the price of dumped imports is lower than the short-run marginal cost. On the other hand, if the foreign exporter is assumed to be a loss minimizer or profit maximizer, it may mean that the short-run marginal cost is lower than the export price. Furthermore, the short-run operating cost of a foreign rival is lower than the producer’s; when there is a surplus in capacity in the industry, a foreign exporter is usually regarded to be more efficient than the other party. When the foreign exporter has higher long-run marginal cost in comparison to local producer, the exporter has cyclical and temporal price advantage where it is seen to be damaging the industrial efficiency.[53]

Based on the concept of ruinous competition, it is not recommended to find supports in academic writings as they are mostly applicable to cyclical competition among local producers as well as cyclically priced imports, regardless dumped or not. In the example quoted by Viner, when foreign exporter does not minimize losses or maximize profits but at the same time has export price lower than short-run marginal cost, it can be concluded that his behavior is predatory.[54]

A local producer is encouraged to keep his plant and labor force idle for periodical price-cutting, this is indeed classified as attempted predation which seems to be difficult to succeed and must

[53]Dale, *Anti-Dumping Law in a Liberal Trade Order*.
[54]Ibid.

involve the would-be predator in pointless and recurrent losses. Such behavior is opposed due to its utter irrationality and not its ominous intent, for which it is highly unlikely to occur in real life. Despite that, this way of selling below cost is deemed to be prohibited.[55]

It can be concluded that the welfare effect of dumping for an importing country is not damaging in both competitive impacts as well as distributive effects (with exception of trivial sense). The case against price discrimination within national boundaries has a stronger appeal in comparison to the arguments regarding general condemnation of dumping.[56]

4.2. EXPORTlNG-COUNTRY POINT OF VIEW

It must be assumed that the monopolist who dumps profits by doing as such, in spite of the fact that on account of promotional and predatory dumping there is a component of hazard in that definitive advantages, on which the loss-making export sales are started, may not appear. Given the benefits of dumping to the exporter, it is important to look at the impact of dumping on the exporter; and the what needs to be determined is whether the home-market price will increase or decrease without dumping.[57]

When the other option to dumping not to trade at all, it can be demonstrated that the home-market price will be less without dumping where the producer's marginal cost is rising; it will be higher without dumping where his marginal cost is falling. It can likewise be illustrated that even where dumping prompts to an increased home market price (because of rising marginal cost), the advantages to the

[55]Ibid.
[56]Ibid.
[57]R A Cocks and Harry G Johnson, "A Note on Dumping and Social Welfare," *The Canadian Journal of Economics/Revue Canadienne d'Economique* 5, no. 1 (1972): 137–40.

producing business, including variable rents, will exceed the loss to consumers.[58]

It ought to be stressed, however, that only intentional dumping is applicable in these circumstances; that is, delivered with a specific end goal to be dumped, as opposed to being sold as excess inventory. In the latter case, dumping must lead to higher home-market price than would be beneficial when there was no trade. However, it is more relevant to compare dumping and simple monopoly rather than between a closed economy and dumping. Professor Robinson has demonstrated that, judged on this premise, dumping may lead to a higher or lower home-market price based on either decrement or increment in the total output and on whether the marginal cost is falling or rising. She added that the demand curve's slope in the export market, however, mainly leads to increase in output under discriminating monopoly. She also stated that 'there are likely to be many cases in which "dumping" of a commodity ... is likely to reduce its home price, provided that marginal costs are falling with increases of output'.[59] In different circumstances, the capacity to discriminate might be essential not simply for export but rather for production where welfare impacts on the exporting nation must be viewed as positive.[60]

When the dumped items are crude materials or producer goods, the buyer in the home-market is set at a competitive disadvantage compared to foreign producers who can purchase at the dumped price. In such circumstance, the discriminating monopolist may offer a refund to home-market buyers who are producing for trade, as where German iron and steel-using enterprises were remunerated by the stee1 cartels at the high home price of steel and iron in the inter-war period. This kind of concessions demonstrate a comprehensive type of price discrimination: it pays the monopolist to

[58]Ibid.

[59]Dale, *Anti-Dumping Law in a Liberal Trade Order*.

[60]Ibid.

settle at lower price for those of its items purposed for export markets where higher demand elasticities occurred in comparison to the home market.[61]

The exporting country mainly objects dumping due to the origin of the products and thus emphasizes the presence of monopoly power in the home market. Exceptions may be made by consumers when higher (monopolistic) prices are charged on them compared to treatment received by purchasers from the foreign market. This consideration results to the proposal made by the United States Industrial Commission earlier this century where import duties should be imposed on goods exported by American producers at dumped prices. Although the proposal was never executed, it is considered whether dumping is less efficient with lower tariffs in the exporting country, in comparison to introducing anti-dumping duties in the importing country. Such an approach is similar to the idea of global welfare through equalizing home market and export prices by aligning the higher price on the lower rather than the opposite.[62]

The inverse approach may be accepted by the exporting country. Where the differentially low export price emerges from competition among producers from home economy, it will be profitable to group the export exercises of these producers all together to take advantage of their total monopoly power in foreign markets and consequently secure a modification of the trade terms of exporting country. To proceed, most nations allow their producer to establish national export cartel for this objective. In such circumstances, dumping might be disposed of by raising the export price to the (monopolistic) home market level in order to provide profit to the exporting country on behalf of importing country.[63]

Where competitive conditions survive in the home market, the foundation of export cartels may prompt to reverse dumping, where

[61]Ibid.
[62]Ibid.
[63]Ibid.

differentially high prices are used to sell exports.From the perspective of the exporting country, this demonstrates the best of both worlds in that monopoly pricing is limited to the export sector, the terms of trade are enhanced and local buyers appreciate the advantages of low home market prices. From the importing country's perspective, in any case, reverse dumping of this kind is obviously hurtful since local shoppers (or intermediate producers, where the imports are of crude materials or products) turn into the casualties of the exporting country's power. In international trade, when considering the national legislation related to price discrimination one should see among the whole dumping issues' most paradoxical aspects is that importing countries usually extremely disfavor foreign monopolistic exercises that result to differentially low import prices. The importing countries are leaning more towards the countenance of such exercises when differentially high import prices occur.[64]

A commercial policy's perversity as one of the clearest guidance of welfare economics become a recurring theme in this study. Before proceeding to a more solid discussion of legislation in this field, some references ought to be made to dumping which appears as price discrimination between foreign export markets. A similar welfare concern applies, however it is intriguing to note that governments have not been totally worried about this kind of practice, aside from the effect it has on promoting discrimination between the exporting country and another importing country. Essentially, an illustrative note to Article XVII of the GA TI, which manages state trading, gives that "charging by a state enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets". Moreover, a high-level state GATT report has observed when considering differential export prices, that it is '...

[64]Ibid.

typical and sensible at various costs to be charged in various markets'. It is hard to perceive any reason of why such conclusion ought not to make a difference similarly to differential pricing as between the home market and the export sector.[65]

5. The Rational Behind Antidumping Laws

Considering that the welfare argument against dumping is so frail and that the troubles of recognizing useful and harmful dumping are so massive, it is important to inquire regarding the justification of governments from the industrialized world to present antidumping legislation. As emphasized by Justice Holmes, we must try to discover what 'felt necessities of the time, prevalent moral and political theories, intuitions of public policy' have prompted to the widespread law's adoption which is not in line with the welfare economics' conventional guidelines. There appears to be multiple clarifications to the concern about dumped imports. The first and most apparent is that the importing country's producer interest is likely to be more accepted than consumer interest. This is borne out by the impact of business groups in supporting national anti-dumping legislation and by the relative latency of consumer groups so far as observing against dumping strategy is concerned. [66]

It is critical at the global level, where the clashing interests of rival national producer groups may fade out, that more emphasis is given to control anti-dumping activity, as reflected in the GATT rules and especially the GATT Antidumping rules. In some cases, however, several areas seem to have reciprocal producer interest in anti-dumping actions. For example, national producers in steel industry have managed to form a monopolistic or oligopolistic pricing structure

[65]Ibid.
[66]Ibid.

in their domestic markets while aiming to guard themselves against allegedly 'ruinous' foreign rivalry. [67]

The second clarification for the commonness of anti-dumping measures is that governments have tended to see such legislation as an admission to protectionist powers which may forestall the requirement for protectionist activity on a more extensive front. Both the Canadian Act of 1904 and the British Act of 1921 seem to have been seen by the concerned government as a method for stifling requests for higher protective tax's and the United States Administration has additionally, every now and then, indicated the nearby association between anti-dumping policy and its capacity to keep up political support for a liberal trading policy. As another student of the dumping issue has saw, ... a coalition of interests supporting liberal trade can truly just be conserved on a premise of what can be shown to be "fair" and useful, so that governments, especially amid recessionary periods, are leaning towards applying anti-dumping obligations to exhibit the "fairness" of their liberal trade position'.[68]

Equity is the third clarification for anti-dumping activity. The concept of fairness is maybe more effortlessly implemented to laws for limiting price discrimination inside national markets, where the most evident imbalance is between the shoppers (or intermediate producers) who pay diverse sums for an indistinguishable item. Corwin Edwards, Professor of Economics at the University of Oregon, has drawn a parallel amongst political and economic ideas of equality in proposing that the Robinson-Patman Act ought to be seen as an application in the economic circle of the political concept of discrimination and unequal treatment. [69]

[67]Ibid.

[68]Peter Lloyd, "Anti-Dumping Actions and the GATT System," *Thames Essays Trade Policy Research Centre (UK)*, 1977.

[69]Dale, *Anti-Dumping Law in a Liberal Trade Order*.

Frederick Rowe, a leading American antitrust legal counselor rejects such an understanding yet himself refers to entries from the legislative documentation of the Act which tends to support Professor Edwards' recommendation in his assessment of the legislative history of the Robinson-Patman Act. For example, the Judiciary Committee of the House of Representatives detailed that 'the purpose of this proposed legislation is to restore, so far as possible, equality of opportunity in business by strengthening antitrust laws and by protecting trade and commerce against unfair trade practices .[70]

It might in this manner be argued that the basis of anti-discrimination laws is founded upon the ideal of equality of opportunity. Comparative ideas are not entirely applicable to the issue of dumping. There is nothing biased, from the importing country’s perspective, about local buyers (or intermediate producers) paying less for an item than their foreign partners. Moreover, the disparity of monopolistic benefits exists just in connection to the foreign exporters' home market and the impact of anti-dumping activity is only to make sure importing countries are protected from monopolistic pricing. Likewise, if there is something unjust about dumping, it must concern the relation of the foreign exporter and the local producer.[71]

The fundamental concept of biasedness, so far as local producers are concerned, which is experienced over and over again in the anti-dumping literature, is that dumping demonstrates 'subsidized competition’. Particularly, the argument is that the super-normal profits which the foreign exporter acquires on sales in his local market are utilized to recessive profits or even losses in the export markets. The charged outcome of this subsidized competition is that efficiency criteria are moved by monopoly power and the implicit guidelines of

[70]Frederick M Rowe, *Price Discrimination Under the Robinson-Patman Act* (Little, Brown, 1962).
[71]Dale, *Anti-Dumping Law in a Liberal Trade Order*.

the business game, which equate efficiency with reward as well as efficiency and merit, are broken. [72]

The sponsorship argument must be related to the three sorts of dumping circumstance. To begin with, where predation is included and export sales are made at a loss, as in price is below short-run marginal cost, there must be an endowment from some source, despite the fact that this might be as external financing or accumulated reserves as opposed to home market sales. As Richard Posner, of the University of Chicago, has opined regarding predatory pricing within local context: “What the predatory sellers may be doing in another market is irrelevant. True, the higher price in the other market may generate profits that the predator could use to finance its below-cost selling. But the possession of funds does not dictate the use to which they will be put. Unless below-cost selling is a profitable activity, the monopolist will not expend funds in its pursuit; and if it is a profitable activity, he should have no difficulty in raising funds to pursue it”.[73]

Also, where the export price is at, or above, short-run marginal cost, however below long-run marginal cost, there must be a subsidy again if the fixed resources of the business are not to be run down. However, such a subsidy may well be inter-temporal in that losses brought about amid recessionary periods are remunerated by high overall revenues amid repetitive upturns. Moreover, there is no subsidy for this situation where the business concerned is adjusting to secular surplus capacity so that the fixed assets’ economic value falls beneath their book value. [74]

At last, exports might be sold at prices which are at, or above, long-run marginal cost, however below long-run average cost. There is no need for financial assistance since the exports are not, other than

[72]Ibid.
[73]Ibid.
[74]Ibid.

being sold at a 'loss'. However, in this situation, a monopolistic local market might be an essential for trading where the export price is less than the exporters' long-run minimum average cost and the business is liable to scale economies. If the decrement of average costs from scale economies increases benefits by more than the "losses" on export sales, it will then pay to serve both markets as a discriminating monopolist.[75]

In this situation, the monopolistic home market might be said to encourage (however not entirely to sponsor) dumping. In any case, the issue with describing such dumping as unjust is that a comparable complaint can be made to the *non-discriminating* monopolist whose local market empowers him to export products at a price which is beneath average cost in the export market taken independently.[76] Besides, dumping of this kind *cannot* be assumed to be transitory since it reflects profit-maximizing conduct and does not include genuine losses; appropriately the "fairness" argument here is in strife with contemplations of economic welfare.[77]

Conclusion:

Normally the Antidumping laws are perceived negatively by many, on allegations that the law is unjust, disrupts businesses and is used as a tool by the states to disallow the products into the markets in order to protect the local industries. However, these laws are good in many ways, especially in instances where a least developing country's industries are unable to compete with the powerful corporations.

[75]Giorgio Basevi, "Domestic Demand and Ability to Export," *Journal of Political Economy* 78, no. 2 (1970): 330–37.

[76]Jacob A Frenkel, "On Domestic Demand and Ability to Export," *Journal of Political Economy* 79, no. 3 (1971): 668–72.

[77]Dale, *Anti-Dumping Law in a Liberal Trade Order*.

These corporations would do anything to protect their interests in the host countries such as product sales below cost.Least developing countries can, by no means, compete with such prices and would inevitably go bankruptand hurt the local economy beyond repair. Therefore, these laws should be perceived more, from a positive point of view, as a means to protect local industries from injury and unjust competition.

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