



An analytical study of the dumping activity in developing countries: between the myth and the reality

**By
Osama Hammad Al Farsi**

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Abstract:

The issue of dumping has become a problem throughout world economic history since the establishment of trading relations between countries. Thus, this study will discuss this issue as a problem faced by a range of developing countries right through the world economy. It will provide a brief clarification for the anti-dumping system's types and motives, and discuss the effectiveness of such system. In addition, the study will explore the extent to which dumping has an impact on the global economy and the economies of developing countries, as well as the issue of whether or not anti-dumping is a means of achieving trade liberalisation. Finally, the methodology employed will be application of general principles to specific case studies including the anti dumping experiences in Saudi Arabia, India and South Africa to reach valuable conclusions.

1. Introduction

The issue of dumping has been a problem throughout world economic history since the establishment of trading relations between countries. Therefore, the World Trade Organization (WTO) considered this issue in the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 (the WTO Anti Dumping Agreement).¹ However, the WTO did not reflect any judgment on the process of dumping. Rather, it focused on the response of the governments to this issue and suggested anti-dumping (AD)

¹ See Curtis Reitz, 'Enforcement of the General Agreement on Tariffs and Trade' (1996) *University of Pennsylvania, Journal of International Economic Law* 17, 557. See also William Loehr, 'Dumping and Anti-Dumping Policy with Applications in Lithuania' (1997) *Consulting Assistance on Economic Reform II*, 3.

actions for countries to consider when combating the dumping activity. As a result, the WTO Agreement sees dumping as an activity that is condemned but is not prohibited if it causes or threatens to cause material injury to a local industry in the importing country.²

Article 6 of the GATT (and the WTO Agreement on the Interpretation of Article 6) has identified the process of dumping as a process that relies on selling goods in an overseas market at a lower value than the real value of the same goods in the local market of the exporter.³ In fact, if a company has engaged in dumping, the GATT/WTO has rules in place that give the country - where the dumped goods are sold – authority to apply AD duties to penalise the company that engages in the dumping activity. Thus, Governments around the world attempt to reduce or avoid the problem of dumping by imposing various measures to protect their domestic industries from this activity.⁴

Nevertheless, Governments in general should consider not abusing the AD actions that the GATT/WTO permits to be applied to non compliant companies. In addition, Governments in developing countries should think twice before imposing such actions for a number of reasons that this study will highlight.

This study will focus on the issue of AD in the developing countries and its consequences on these countries' economies. Therefore, this study will be limited to review of the measures of AD afforded to the Governments and its consequences on the

² See Peter Van den Bossche, *The Law and Policy of the World Trade Organization* (Cambridge University Press, 2005) 42.

³ See Henrik Andersen, *EU Dumping Determinations and WTO Law* (Kluwer Law International, 2009) 120.

⁴ See United Nations, 'Training Module on the WTO Agreement on Anti Dumping', Paper presented to *the United Nations Conference in Trade and Development*, New York and Geneva 2006, 3.

developing countries' economies under the GATT/WTO Agreements and their AD provisions.

Although there exist studies that identified the available measures of AD according to the GATT/WTO Agreements and their provisions, these studies were purely theoretical studies that have not discussed the actual consequences of the application of these measures on the developing countries' economies.

Thus, this study will clarify the process of dumping and its different forms as well as the motives behind these activities. Then it will answer two main questions:

- 1- Does the process of dumping cause unfair and/or restrictive trade between countries/businesses?
- 2- Are anti-dumping measures fair trade practices that facilitate trade liberalization?

To answer these questions, the study will address the measures and consequences of dumping and its impact on the global economy in general and then more specifically on the developing countries' economies. Then, the study will discuss the issue of whether or not AD is a mean of achieving trade liberalisation. The methodology employed will be application of general principles to specific case studies to reach conclusions. Thus, the study will consider the AD experiences in a number of developing countries including the Kingdom of Saudi Arabia, India and South Africa to reflect the answers of both questions with respect to developing countries' experiences.

2. Clarification of Dumping: The forms of Dumping

As the introduction of this study has clarified the meaning of dumping, it is also useful to highlight the forms of this activity. In fact, there is some variation in the divisions and forms of dumping according to the economic literature on this issue. One approach is to divide dumping according to its duration, while others have defined it according to its purpose. This study will address both approaches as follows:

2.1 Dumping According to the Duration

According to this approach, dumping is divided into various categories according to the duration of dumping as being: incidental dumping, temporary dumping and permanent dumping.

2.1.1 Incidental Dumping

Incidental dumping occurs where the circumstances surrounding the dumping can be classified as incidental circumstances.⁵ Namely, incidental dumping occurs when a government or a company disposes of surplus products by sending those products to another market and sells them at a price that is lower than the prevailing market price, or alternatively below the ordinary cost involved in bringing that product to market.⁶

In such circumstances the country or company that is 'dumping' is attempting to obtain some monetary amount for their products, however in doing so they are potentially causing detriment to the local market in the importing country.⁷

2.1.2 Temporary Dumping

The second category is known as temporary dumping, and can be categorized as a form of attack on the domestic market. The company, in such instances, aims at monopolizing the foreign market and eliminating any competitors.⁸

⁵ See Edwin Vermulst and Gary Horlick, 'Problems with Dumping and Injury Margin Calculations in ten User Countries' (2007) *Global Trade and Customs Journal*, Vol 2, 2.

⁶ Ibid.

⁷ See Mohamed Saleh Al-Sheikh; 'الاغراق واثره على التنمية الاقتصادية في 'الدول النامية' [Dumping and its Impact on Economic Development in Developing Countries] (Conference on Legal and Economic Aspects of WTO Agreements, United Arab Emirates, Dubai, 2004) 1315.

⁸ See Jung-Won Hyung, and Kyung-Min Koh, *Competition Law in the Republic of Korea* (Kluwer Law International, 2011) 70.

Temporary dumping can have the effect of eliminating or at least, reducing the market shares of, a competitor. An example of this is when an American company seeks to expand its markets and does so by entering aggressively into the British market by offering a product at a considerably lower price than that which is available to consumers within the British market.⁹ The considerably low price is well below the price that is available within the domestic market, but it is also less than that which is feasible for the American company to make a profit. In effect, the American company is offering the product at such a considerably low rate that it is making a loss. The American company does this for a specified period of perhaps 6 months in order to eliminate its competitors who are wholly unable to match, or compete with, the considerably lower price. Once the American company has succeeded in eliminating or weakening its competitor's market share, it then raises the price of that product back to its ordinary level. In doing so, it now controls a considerably larger market share given that it has weakened its competitors.¹⁰

An example of temporary dumping can be found in the European Commission judgment in May 2003 concerning the telecommunications sector and the broadband market.¹¹ The Commission penalised Deutsche Telecom for having engaged in a margin squeeze in that market. Two months later, the Commission adopted that decision against internet service provider Wanadoo, a subsidiary of France Telecom and, in July

⁹ See Al-Sheikh, above n7, 1318.

¹⁰ See Al-Sheikh, above n7, 1318.

¹¹ See Window On Europe [Fen etre europe], 'Brussels Penalizes Wanadoo Dumping' (17 July 2003) <http://www.fenetreeurope.com/actu/2003/07/a_2332.htm> at 25 November 2012.

2007 it took forceful action against Spanish telecommunications giant Telefónica for having engaged in a margin squeeze abuse in the Spanish broadband market.¹²

The case of Wanadoo is particularly instructive in relation to dumping. On 16 July 2003, the European Commission in Brussels (Belgium) determined that Wanadoo had pursued a policy of planning to dominate a large part of the market, and the Committee noted the significant increase in the market share of Wanadoo from 46% to 75% in the period from late 1999 until October 2002. The Commission imposed a significant financial penalty on the company of \$ 10 million Euros.¹³

2.1.3 Permanent Dumping

Permanent dumping relates to a policy for selling national products to foreign markets permanently or continuously and according to a long-term plan. The ultimate aim of permanent dumping is to sell the product either at a lower price than that being offered in the local market, or at a lower price than cost price.¹⁴

Permanent dumping can lead to a disparity in the global price of a particular product. This is because a company which deliberately dumps its products on a local market while also selling its product in its home market can divide its customers into two different markets.¹⁵ In its home market, the company will sell its products at a relatively high price reflecting inelasticity of demand in the home market. The same company will sell its products at a lower price in the foreign market

¹² Ibid.

¹³ Ibid.

¹⁴ See Hyung and Koh, above n8.

¹⁵ See Hyung and Koh, above n8.

reflecting greater elasticity or fluctuation in demand in the foreign markets.¹⁶

Many examples of permanent dumping can be seen in the operation of US exports and the dumping of those products onto the European market, in particular steel products. The EU investigation into these practices resulted in the EU imposing higher tariffs on imports from the US in December 2002 of up to 25%.¹⁷

2.2 Dumping According to the Motives

There can be multiple motives for dumping, and these motives vary from state to state or from one company to another. Generally, motives for dumping can be divided into:

2.2.1 Offensive Dumping and Defensive Dumping

A company's desire to expand its market share can result in it engaging in the practice of dumping in order to establish new markets in foreign countries. A company may also be motivated by the desire to attract more customers at the expense of its competitors. A company may also be motivated by a desire to maintain its market share in the foreign market (defensive dumping).¹⁸

The desire to develop a foreign market and attract more consumers can be seen in the Saudi Arabian ink industry. Various companies import ink products at a considerably cheaper rate than that which is offered by the relatively large domestic Saudi ink industry. Notwithstanding the fact that the production capacity of the domestic factories is substantial enough to meet the needs of the domestic market, the foreign

¹⁶ See Doreen Bekker, *The Determination of Dumping and the Use of Anti-Dumping Measures in International Trade* (2009) 57.

¹⁷ See Al-Sheikh, above n7, 1321.

¹⁸ See K. D. Raju, *World Trade Organization Agreement on Anti-Dumping* (Kluwer Law International, 2008) 7.

companies continue to import their products.¹⁹ The situation of the auto-battery industry is similar to that of the ink industry within Saudi Arabia. This has led to a belief among Saudi Arabian consumers that it is to their benefit to purchase the imported products given their low price. Further, there is a belief among consumers that it is also beneficial for them to purchase the imported products as they see such products as having been produced according to higher quality standards than the local industry standards.²⁰

A government or company that engages in defensive dumping is well aware that if it is to maintain its share in the foreign market, in the future it will have to somehow compensate for the loss that it has suffered as a result its selling its products at below cost. It will attempt to do this by relying on its ability to raise its prices once it has established a foothold in the market and is able to stabilise its position within that market.²¹

Sometimes, a company that seeks to export its surplus products may be attempting to avoid the effects of a decline in its own domestic market as a result of reduced demand for its products. The company may resort to dumping in order to compensate for this decline in domestic demand. The prospect of selling its surplus or unwanted products at a lower cost in foreign markets may be an attractive proposition. This type of dumping is usually aimed at resolving a short term problem.

¹⁹ See Ismail Ibrahim, 'الحصيني يحذر من ظاهرة الإغراق السلعي للسوق السعودية', [Hussaini warns of commodity dumping phenomenon of the Saudi market] *Alriyad Newspaper*, 18 June 2003 <http://www.alriyadh.com/Contents/18-06-2003/Economy/EcoNews_6555.php> at 25 November 2012.

²⁰ Ibid.

²¹ See Ibrahim, above n19.

2.2.2 Useful Dumping and Beneficial Dumping

Sometimes, the dumping can be beneficial to the importing country if the dumping is a long-term proposition.²² The duration of the dumping will play an important role where the dumping is short-term and would be prejudicial or disruptive to the importing country.²³ However, dumping long-term may be beneficial to the importing country because continued sale of goods at a low price may be a positive for the local consumers in the importing country. The benefits may also extend to the local industry as this may encourage imports for cheap domestic producers and create industries that depend on such imports as raw materials or components.²⁴

3. The Dumping Activities: Measures and Consequences

Dumping has been a serious problem for many years and relates to the establishment of trading relations between countries and the development of those trading relations. The World Trade Organisation Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“the WTO Antidumping Agreement”)²⁵ is a significant reference point for the issue of dumping. Generally, dumping can occur when there is a measure or element of unfairness in the way that a company exports a product and sells it in a foreign market.

The argument that supports unfairness relates to the company exporting that product at a price that is lower than the price that it would normally be sold for in its home market. Governments

²² See Michael Rauscher, ‘On Ecological Dumping’ *Oxford Economic Papers* (1994) 13.

²³ Ibid.

²⁴ See Al-Sheikh, above n7, 1324.

²⁵ See Chad P. Brown, *Department of Economics and International Business School* (Bradeis University, November 2007) 3.

around the world attempt to reduce or avoid the problem of dumping by imposing various measures to protect their domestic industries from this activity. Some countries perceive this as an unfair and restrictive trade practice.²⁶ These nations argue that such practices prevent them from engaging in various markets. This chapter will argue that dumping can, in certain circumstances, be considered fair and proper and should not be considered unfair or restrictive. In other circumstances, the practice can be characterised as unfair and restrictive.

The establishment of a mechanism and system under the World Trade Organisation was a significant step in the AD campaign of many countries.²⁷ The establishment of a system available to governments and companies to challenge their competitors in the event that they are exposed to dumping activities can be seen as a mechanism that can distinguish between neutral dumping practices and harmful dumping practices. The AD Agreement itself does not define dumping as an unfair practice.²⁸ Although it does not provide for a specific definition of the term, the Agreement does provide a mechanism for regulating the imposition of AD measures by countries.²⁹

The WTO AD Agreement provides governments with an opportunity to take action against any activity that the government perceives as dumping, in particular if they consider that such practices are having a detrimental impact on the development of their domestic markets. However, there exist some measures to ensure that the mechanism is somewhat balanced in that there are certain requirements that must be met

²⁶ See Murasoli Miran, 'Anti Dumping – A Perspective' (2001) *India & the WTO*, 1.

²⁷ See Brown, above n25, 2.

²⁸ See M. Rafiqul Islam, *International Trade Law of the WTO* (Oxford University Press, 2006) 197.

²⁹ See Islam, above n28.

before a country can establish its case against the other party that it claims is engaging in dumping. It is not simply a matter of making a claim of dumping; rather, the mechanism requires a government to provide certain evidence and make certain arguments before it can engage the protective mechanism.

The mechanism that countries can utilise in order to avoid dumping or redress any dumping activity that is occurring is set out in GATT (Article 6). The effect of the AD Agreement is that it expands Article 6 and its operation in order to further develop the mechanism aimed at assisting governments or companies to combat the harmful impact of dumping on their domestic markets.³⁰ It is important to understand the operation of the GATT (Article 6) and the AD Agreement together as, in many ways, they operate jointly. The AD Agreement is aimed at achieving a result that is favourable to the domestic industry that is being 'dumped' on.³¹

In order to enable the operation of the AD Agreement and its measures, a government must show that there is a genuine or material injury to the competing domestic industry.³² These requirements have been instituted in order to ensure that there is a threshold test that must be met before the protective mechanisms can be instituted by governments that perceive that they are being harmed. Accordingly, in order to enable the protective mechanism a government must show the following:³³

1. Dumping is, in fact, taking place;
2. The extent of the injury or damage to the domestic industry (i.e. how much lower the price is in the market compared to the home market); and

³⁰ See Brown, above n25, 4.

³¹ Ibid 8.

³² Ibid 7.

³³ Ibid.

3. Injury or damage is actually taking place, or there is a threat that there will be injury or damage to the domestic industry.

While the WTO Agreement provides improved protective measures for countries to consider when facing dumping activities, a number of issues have not being covered effectively in this agreement. For example, The AD Agreement identifies injury as that caused to specific sectors of the local industry, without considering a number of aspects related to public or consumer benefits. The limited concentration on profit-loss to some local producers ignores the economy-wide impact of AD activity. The AD Agreement also leaves a great degree of judgment to the local authorities in charge of the implementation of the Agreement which sometimes affects the results of the AD process.

However, there has been a significant advancement in the evidentiary requirements that are imposed on governments prior to the implementation of AD measures. This came about with the requirement that governments must undertake an investigation into the activities, and further, must consider substantial economic evidence before it can impose a definitive AD measure that restricts imports. Notwithstanding these advanced requirements, there is still a significant amount of government discretion involved in the implementation of AD restrictions. These restrictive measures have been criticised with some arguing that the benefits of such measures are “at best questionable from the perspective of economic welfare”.³⁴

The techniques and methods of dumping are generally a result of industrial overcapacity.³⁵ There is considerable evidence to support the argument that dumping results in considerable damage to domestic industries as a result of their inability to

³⁴ See Brown, above n25, 7.

³⁵ See Islam, above n28, 194.

compete with the significantly reduced price of goods that come into their markets through dumping measures by overseas companies. Therefore, it is important to recognise that in certain instances, dumping can be an unfair method of competition.³⁶ Although it is difficult to define when exactly a dumping measure moves from a neutral practice to a damaging practice, the motive behind the measure is important. Accordingly, dumping is unfair when the motive of the dumping can be identified as a predatory one aimed at establishing a place for the foreign company within the domestic market by ‘injuring and driving out local producers, forestalling or entirely eliminating competition in that target market’.³⁷ It is also important to understand that the unfairness in these situations is not limited to the damage that may be caused to the domestic industry. Rather, the damage can, and does, extend to other social and economic problems such as “widespread economic dislocation and unemployment”.³⁸

Despite the negative impact of dumping on domestic markets, the practice continues and many governments are actively engaged in attempting to prevent the practice not only by instituting AD measures, but also by instituting formal proceedings under the WTO Agreement. There has been a substantial increase in the amount of cases filed in relation to AD.

One particular area where there has been a significant increase in the amount of AD cases is the agricultural industries. Agriculture accounted for 6 percent of AD investigations

³⁶ See Islam, above n28, 194.

³⁷ Ibid.

³⁸ Ibid.

between 1987 and 1997.³⁹ The effect of even one AD situation can cause serious problems for domestic industries.

The negative impact of AD cases can be seen in the 2000 AD case filed by Mexico in relation to the importation of rice from the United States. This case eventually resulted in the introduction of a 10.18 percent AD tariff on all imports of U.S. rice.⁴⁰ The further impact of this case was the fact that U.S. exports of rice to Mexico fell nearly 10 percent between 2000 and 2001.⁴¹ The imposition of AD duties as high as 50 percent in some instances has resulted in a significant reduction in the exports of the United States for goods such as apples, beef, chicken, tomatoes, corn and rice.⁴² On the opposite end of the scale, there has also been a significant benefit to some agricultural industries in the US as a result of the AD regulations. These industries enjoy a measure of protection as a result of U.S. AD regulations on a wide variety of food products, including wheat, raspberries, honey, apple juice, and mushrooms.⁴³

The varying impact on US agricultural industries as a result of AD policies shows that there can be no single answer to the question of whether dumping is unfair or restrictive. There will be instances where there is benefit from the practice; while there will be other instances where there will be significant detriment. The essential point is that there must be some mechanism to allow countries to implement the measures that they believe are necessary and this has been achieved somewhat through the WTO. This chapter has argued that dumping can, in certain

³⁹ See Kara M. Reynolds and Yan Su, 'Dumping on Agriculture: Case Studies in Antidumping' (2005) *American University* 4.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² See Reynolds, above n39.

⁴³ See Reynolds, above n39.

circumstances, be considered fair and proper and should not be considered unfair or restrictive. In other circumstances, the practice can be characterised as unfair and restrictive.

4. Anti-Dumping Measures and Trade Liberalization

The main purpose of the AD Agreement is to establish a workable mechanism aimed at protecting “domestic industries from unfair import trade practices without unreasonably disadvantaging foreign market players, thereby creating a level playing field for all competitors.”⁴⁴ Therefore, there is a real balancing act that must be played out in order for there to be continuing economic growth and development for the benefit of all competitors. The AD measures aim to facilitate trade liberalization however, it is not surprising that they may, in fact, also result in negative consequences. It is not surprising given the balancing act that is required.

The most significant challenge to trade liberalisation is the use of AD duties as a means of achieving trade protection for domestic industries.⁴⁵ It can therefore be argued that AD duties “strengthen rather than mute pressures against liberalization and provide only makeshift, temporary solutions to the underlying problems of monopolies and cartels.”⁴⁶ When such a monopolizing approach is taken by a government or a company it is not surprising that the end result will be one that is not favorable to a particular party. There is also a significant risk that a company that engaged in monopolization or restrictive trade practices is influenced by factors that are not necessarily relevant to the question of whether or not this company can provide a proper and appropriate product to the domestic market. Often a government may be motivated by other factors such as political

⁴⁴ See Islam, above n28, 216.

⁴⁵ Ibid.

⁴⁶ See Islam, above n28, 216.

considerations for implementing restrictions on certain companies from a particular nation or region.

One of the various arguments that are proposed to support the implementation of AD measures and proceedings is the detriment that may be suffered by the domestic industry that is being targeted, as well as the detrimental impact on jobs and unemployment.⁴⁷ This is one of many arguments that have been used to justify the imposition of AD measures around the world. However, it is important to understand and appreciate the consequences of the implementation of AD measures globally. If it is allowed for all nations to implement AD measures that are not in any way restricted, then it will result in a serious decline in the ability of nations to trade. If this is the case, then there can be no trade liberalization mechanisms between countries, such as Free Trade Agreements, because all states will be interested in adopting a protectionist attitude.

The arguments for AD restrictions often fail to consider or acknowledge the beneficial impacts that may arise from the process of dumping. This is a very significant oversight and one that is important to the question of whether or not AD measures facilitate trade liberalization. There can be various benefits for the economy of the importing country such as increased competition, increased range and variety of products, as well as lower prices for consumers in the domestic market.⁴⁸ There are certainly trade-diversionary effects of AD on the domestic market.⁴⁹ These trade-diversionary effects should be considered as a means of balancing any negative impact of AD.⁵⁰ Any trade-

⁴⁷ See Christian Conrad, 'Dumping and Anti-dumping Measures from Competition and Allocation Perspective' (2002) 36(3) *Journal of World Trade*, 563.

⁴⁸ See Conrad, above n47.

⁴⁹ See Islam, above n28, 216.

⁵⁰ See Islam, above n28, 219.

diversionary measures should not go further than addressing any negative impacts of AD. They should not create a situation where there is a clear and deliberate attempt to impose trade protectionism which can only lead to less trade liberalization.

The significance of political motivations for any AD measures and any measures aimed at reducing trade liberalization must not be discounted when considering this issue. It is well known that when there is an increase in trade liberalisation and trade between nations, this can also lead to increased competition for domestic industries.⁵¹ The end result of this can be increased state intervention and interference with the usual flow of trade liberalization. State intervention can take various forms such as pressure from domestic industries, or the public, seeking to prop up uncompetitive and underperforming domestic industries.⁵²

The main principles that underpin the WTO in relation to world trade are focused on achieving positive outcomes for all parties in trade. This overarching principle is significantly threatened, in some instances, when AD philosophy is used to justify certain actions by government. Rafiqul Islam summarizes the dilemma that is faced when he states that the AD process is caught up in a philosophical dilemma.⁵³ Islam argues that the AD mechanisms that are employed by nations result in trade-distortion and negative consequences, which are at odds with the intended WTO principles.⁵⁴

There is a role for AD measures within the global markets and economic trade. However, unrestricted and ineffective AD measures will only continue to result in protectionist attitudes and trade restrictions. There must be some restrictions on the AD

⁵¹ Ibid, 219.

⁵² Ibid.

⁵³ See Islam, above n28, 220.

⁵⁴ Ibid.

measures that a nation can impose. However, these should be measured and should not be exploited. The exploitation of these measures ultimately results in a significant reduction in free and fair trade.

One of the main arguments in support of AD measures being taken by governments is the “detrimental effect on the domestic industry and jobs caused by short term dumping.”⁵⁵ The difficulties that may be faced as a result of dumping can include such things as unemployment, welfare losses that are greater than the gains from cheaper imports, as well as other factors.⁵⁶ The main aim for governments who implement AD measures is to avoid the negative consequences of dumping. Those negative consequences can extend from decreased sales for domestic industries, as well as wider problems for the whole of the economy and society.

AD measures must be understood in light of the guidelines that underpin them. The guidelines and regulations concerning AD measures in the GATT “contain numerous exceptions and ambiguous rules.”⁵⁷ This adds to the difficulty of the situation where there is no global or overarching mechanism to define AD; instead it is left to the domestic authorities to investigate these matters. Accordingly, those authorities are “more or less free to decide which information it includes in its proceedings.”⁵⁸ The investigating authorities are domestic national authorities that are generally concerned with the operation of their own markets and their vested interests. Therefore, there have been cases where economic growth has been adversely impacted as a result of the establishment of investigations of AD. There are

⁵⁵ See Conrad, above n 47, 564.

⁵⁶ Ibid.

⁵⁷ Ibid 568.

⁵⁸ Ibid.

instances where the investigating authorities determine that dumping has occurred where, in fact, no such dumping offences have occurred.⁵⁹ A further factor to consider is the reaction of the domestic authorities in relation to domestic companies who engage in practices that are similar to dumping.

In conclusion, the major decreases in trade volumes and market shares were two of the main reasons behind the AD process. Developing countries have a role in the AD process.⁶⁰ As indicated above, the WTO Agreements are not perfect in every aspect as a number of AD issues have not been effectively addressed. The shortcomings in these agreements result in AD abuse rather than achieving the goals of the agreements.

The essential aim of AD measures is to maintain a balanced and fair marketplace, however some national competition regulation legislation “does not contain any sanction mechanism against dumping in the case of offences by domestic companies.”⁶¹ It can be argued that the end result of many AD measures exceeds the simple aim of avoiding damage that may, or may not be caused by dumping.

Therefore, AD measures when they exceed their stated aim and are used to deliberately prevent free trade and worthwhile competition are not fostering trade liberalization. Even if AD measures can, in some way, contribute to the process of trade liberalization, there will be significant long-term consequences that will flow from these decisions that may impact in a negative way on the local market.

⁵⁹ See Conrad, above n 47, 568.

⁶⁰ See Inge Nora Neufeld, ‘Anti-Dumping and Countervailing Procedures –Use or Abuse? Implications for developing Countries’ (2001) *Policy Issues in International Trade and Commodities Study Series No. 9, United Nations*, 3.

⁶¹ See Neufeld, above n60.

5. Dumping Process in Developing Countries

The impact of dumping on developing countries and their economic circumstances has increased now that many developing nations have moved towards a market economy. This move towards a market economy is in line with the policy of economic liberalization. There will be different effects of dumping from state to state depending on the circumstances of each country. It will also depend on whether or not the dumping affects both the exporting country, as well as the importing country. This section of the study will first discuss and analyse the economic impact on the exporting country in relation to dumping. This will be followed by a discussion of the importing country's obligations under the application of Article VI of the GATT 1994. It is also important to identify those effects when developing countries' exports attract AD duties, and when nations impose AD measures on imports.⁶²

5.1 Effects of Dumping on Exporting Countries

There can be different effects of dumping on the exporting country. On the one hand, dumping can have a positive impact such as on the Petroleum Exporting Countries, as it allows these countries to increase their exports, and provides them with access to hard currency. The dumping can also create job opportunities since the expansion of the export will lead to expansion in the volume of production and this requires more labor. In turn, there will be a scramble for local production resources. In this case, the policy of dumping can lead to increased exports and can have expansionary effects on national economies. Notwithstanding the potential positive impact that dumping can have on some countries, there is also a negative impact that can occur.

⁶² See Al-Sheikh, above n7, 1328.

The process of dumping can cause consumers in the exporting countries to feel negative effects as they may be in a more difficult supply situation than foreign consumers. This is because these local consumers may have purchased a product at a higher price than that paid by foreign consumers in the countries where the dumping is occurring. The welfare of the local economy and consumer is also important to consider, as the increased marginal costs and increased production resulting from the dumping in the foreign market may result in a higher domestic price.⁶³

*5.2 Effects of Dumping on Importing Countries*⁶⁴

The effects of dumping on importing countries will vary according to a number of factors. The importing state may have the benefit of goods at lower prices, and thus it will increase the level of economic well-being at the both individual level and the overall national level. Long term dumping can also have a benefit by providing the domestic economy with the advantage of a regular flow of goods at a low price on an ongoing basis. However if there is a domestic industry, this industry may suffer negative impacts because of the dumping.

The foreign company may gain an unfair competitive advantage over the local producers by reducing the price of the products. This can lead to the reduction or destruction of local industry competition or weaken the state's ability to create goods.⁶⁵

5.3 Effects of Dumping on Developing Countries under the GATT

As part of the application of Article VI of the General Agreement on Tariffs and Trade 1994, member states can impose AD duties provided that they meet certain requirements.

⁶³ See Al-Sheikh, above n7, 1329.

⁶⁴ See Conrad, above n47, 564.

⁶⁵ Al-Sheikh, above n7, 1330.

In fact, the building of competitive domestic industries in developing countries may play an important role in raising the rate of economic growth and an increase in savings and investment, contributing to increased employment.

5.4 Exports of Developing Countries Subject to Fees or Anti-Dumping Taxes⁶⁶

There may result a significant decline in the exports of developing countries as a result of AD measures. Imposing dumping duties on exports from developing countries to increase their prices in foreign markets is likely to lead to lower sales volumes of exported products from the developing countries. The decline in the exports cycle will lead to lower production volumes and lower exports, which exacerbates the unemployment problems faced by developing countries. There are a number of examples of this type of result occurring. The European Union brought a claim in relation to allegations of dumping by Egypt's exports of carbon black as well as the export of fertilizer.⁶⁷

In addition to the difficulties faced by developing countries in foreign markets, other difficulties could exist such as a lack of the necessary economic structure and structural conditions to enable developing economies to resist the negative impacts of

⁶⁶ See Clare Short, 'Anti Dumping and Developing Countries: The Anti-Dumping Agreement Now Risks Becoming a WTO-endorsed Route for Protecting Domestic Industry – A Very Real Danger, Especially in the Wake of the Asian' (2001) *Background Briefing, Department for International Development*, 4.

⁶⁷ See Hani Deean, 'استراتيجية تنمية الصادرات المصرية كإطار قومي لزيادة القدرة التنافسية' [Egyptian exports development strategy as a national framework to increase competitiveness], *Scientific Conference and the twenty-third Egyptian economists entitled "competitiveness of the Egyptian economy"* 8-10 may 2003, Cairo, 11.

dumping.⁶⁸ The developing countries' lack of knowledge in relation to technical and administrative matters is a fundamental reason for the delay in these countries to accelerate the process of industrialization and development.⁶⁹

5.5 Increased Uncertainty and Lower Investment

The indirect effects of dumping on developing countries may be more important than the direct effects on developing countries. There are significant indirect effects that ensue if developing countries remain vulnerable to dumping duties in foreign markets. AD investigations of their products by domestic authorities in developed countries cause significant loss and wasted time as the developing countries are not sure of the outcome of such investigations and how they will end.⁷⁰

5.6 Developing Countries Impose Anti-Dumping Duties against Imported Goods

When developing countries impose AD duties on imported products, this leads to higher prices for these products and local consumer groups are adversely affected by the rise in prices. The extent of this negative effect depends on the level of competition provided by the local producers who produce the same products. This also depends on the existence of other products that can be used as alternatives. This negative impact could occur even in the absence of competitive local industries in the importing countries. In fact, when the imported commodity subject to AD penalty is a raw material, local producers could tend to

⁶⁸ See Al-Sheikh, above n7, 1334.

⁶⁹ See Salah Zinedine, 'دراسة اقتصادية لبعض محددات استراتيجية تشجيع الصادرات المصرية'

[An economic study of some of the determinants of the Egyptian export promotion strategy], (the fourth scientific conference) *Banha University Business School and Tebaa Academy of Integrated Sciences*, 23 - 24 April 2003, 89-91.

⁷⁰ Ibid.

monopolize the domestic market and raise prices, which eventually might cause severe damage to consumers and the national economy.

An example is what resulted in Egypt as a result of the imposition of AD duties on steel imported from Russia, Turkey, Romania and all the Black Sea basin countries. Prices jumped in relation to this product on an ongoing basis and, as the normal price of this product was not to exceed 1,200 Egyptian pounds per ton, the varying prices recorded were over than three thousand pounds per ton. There is no doubt that the Egyptian consumers were adversely affected by these higher prices.⁷¹

5.7 Loss in GDP

A good example of this issue was made in the Report presented at the Ministerial Conference of the WTO in September 2003 to resolve the problem of flooding the Mexican market with American grain.⁷² The Mexican grain sector was in a severe crisis due to the influx of inexpensive U.S. grain. Farmers in Mexico were competing with U.S. producers who receive \$ 10 billion a year in subsidy from their government. This is estimated at more than 10 times the total budget of Mexican agriculture subsidy. This has led to the flow of U.S. imports into the Mexican market sharply reducing the domestic prices. The fall in real prices for Mexican grain is calculated at about 70%

⁷¹ See Tamer Issa, 'مصر، الآثار السلبية من ارتفاع اسعار البناء' [Egypt, the negative effects of the rise in prices of construction materials] *Scientific Conference and the twenty-third Egyptian economists entitled "competitiveness of the Egyptian economy"* 8-10 may 2003, Cairo, 35.

⁷² See Gonzalo Fanjul and Arabella Fraser, 'Dumping without Borders: How US agricultural policies are destroying the livelihoods of Mexican corn farmers' (2003) *Oxfam Briefing Paper, 1* <http://www2.grist.org/gristmill/images/user/2988/oxfam_report_corn.pdf> at 28 November 2012.

since 1994.⁷³ The falling prices and the decline in income for these industries have increased the living difficulties for over fifteen million Mexicans whose livelihoods depend on this crop. The problems faced by Mexican peasants comprise a small part of the crisis facing millions of rural communities in other developing countries. Under the WTO rules there should be a mechanism or process designed to ease the dumping of agricultural exports onto developing countries. The WTO rules should also protect the rights of developing countries and their ability to protect their agricultural sector.⁷⁴

In conclusion, the ambiguity and irregularity in international trading relations, lack of expertise, industrial equipment and financial capacities have more harsh consequences on developing country industries than on developed country industries. As a result, developing countries are less competent to handle the harsh economic consequences caused by AD activities.

6. Examples of the Anti Dumping Experience in a Number of Developing Countries

This section will highlight a number of developing countries' experiences in AD process and the effectiveness of AD systems to confront dumping activities in their jurisdictions.

6.1 The Saudi Arabian Experience with AD

Saudi Arabia is a developing country and one of the member countries of the Gulf Cooperation Council (GCC). In 2004, the GCC adopted a system that aims at combating harmful practices in world trade which includes dumping and government subsidies to exports. The Gulf organization for industrial consultation called for the establishment of a higher authority for combating dumping through this system for two purposes:

⁷³ See Fanjul and Fraser, above n71.

⁷⁴ Ibid.

- 1- Boosting the Gulf stand against foreign companies with respect to dumping cases.
- 2- Reducing unfair competition among Gulf products.⁷⁵

In fact, the importance of the system lies in protecting Gulf industries from unfair competition caused by imported manufactured goods that receive subsidies from their countries of origin.

Therefore, the GCC has set a financial fine to be imposed on the exporting companies which practice dumping. How it is assessed in light of resulting harm on similar industries in the council states is set by the rules.⁷⁶ The GCC has also set the detailed and procedural rules for combating unhealthy practices of foreign trade against the Gulf states and also specifies the required documents for submitting dumping complaints by the injured states. In addition, the system has cleared the steps and measures to be taken for cases resulting from dumping as well as measures to be taken in case of unjustified increases in imports.⁷⁷

The rules and regulations that have been set by the GCC are the structural basics and procedures to organize the financial and commercial relationships between the Gulf area countries (including Saudi Arabia) with the remote parts of the market. In addition, it seeks to increase market efficiency and to assure market ethics; all for the purpose of maintaining the dynamic

⁷⁵ See Anis Alkudaihi, 'مطالبات بإنشاء هيئة خليجية لمكافحة الإغراق والإسراع'، [The Need to Establish a Bind GCC to Combat Dumping Activities in the Gulf Area] *Global News Combined* <<http://globalnewscombined.com/news/514876>> at 1 December 2012. Also see Sabah Abullah Alkraidees, 'Impact of WTO on Saudi Trade, Economy and SME Sector' (2007) *American University of Beirut*, 36.

⁷⁶ See Niven Hussien Shamat, 'سياسات مكافحة الاغراق في العالم العربي'، [The Anti Dumping Policies in the Middle East] (2010) *Centre for Postgraduate Studies Journal*, Alexandria, 4.

⁷⁷ See Shamat, above n76.

increase of the productive, marketing and administrative efficiency for the various products.⁷⁸

There is no arguing that any negative phenomena in the market must be dealt with by preventive and protective policies to keep the problem from spreading. The methods and procedures are restricted to fixing the current existing effects of this phenomenon and to minimize the harmful effects until the problem is eliminated. This system assures that the dumping phenomenon like any other negative phenomena is confronted when a problem is shown to exist.

It is normal to think that these rules and regulations are clear and flexible enough. Of course it is most important to see how effective and efficient implementation of these rules and regulations at any time under any circumstances or facing any kind of variables actually is.

However, there are a range of different views positively and negatively about the current AD system in Saudi Arabia specifically and the Gulf area in general. In fact, the implementation of these rules and their role in confronting dumping activities and the negative impact of the rules on the commercial and economical community in general shows that the system is yet to be proven effective.

There is an example that can be found in the comments made by the Secretary General of the Chamber of Commerce in Taif, Saudi Arabia. The Secretary General identified the existence of a short-term dumping crisis taking place in the iron industry within Saudi Arabia. There was a significant surge in the market price in Saudi Arabia as an indirect result of the lifting of American tariffs by the United States on steel imports to 30%. This prompted producers in Saudi to demand a similar lifting of Saudi tariffs in order to protect their market. They also called for a

⁷⁸ Ibid 5.

tightening of the control mechanisms in relation to imports in the Saudi Arabia.⁷⁹

In addition to the above issues, a number of other factors could affect the system's performance in Saudi Arabia in preventing dumping including the ambiguity and irregularity in international trading relations and lack of expertise among Saudi Arabian personnel. As a result, Saudi Arabia is to a lesser extent competent to handle the harsh economic consequences caused by AD activities than would be the case in more economically developed countries.

6.2 The Indian Experience with AD

India is one of the developing countries and has a powerful trade system. However, this system is not safe from dumping activities.⁸⁰ In fact, the Indian trade system has been changed since 1998 when the Indian Government opened the economy to market forces. As a result, dumping activities became frequent in the Indian trade system and the AD actions and safe guard measures have become more used tools as a reaction to such activities than would be the case in more economically developed countries.⁸¹

This became clear when the *National Board of Trade* in Sweden indicated in its study that India's share in world trade between the years 2001 to 2003 was not more than 0.7%; however its share in AD actions was more than 20% of the world

⁷⁹ See Ibrahim, above n19.

⁸⁰ See Reid M Bolton, 'Anti Dumping and Distrust: Reducing Anti-Dumping Duties under the WTO through Heightened Scrutiny' (2012) *Berkeley Journal of International Law*, Vol 29, 78.

⁸¹ See Mark Wu, 'Antidumping in Asia's Emerging Giants' (2012) *Harvard International Law Journal*, Vol53, No 1, 104.

activity.⁸²

However, the Indian experience with AD is not perfect in every aspect. The Indian AD system has been confronted with inaccurate information about the actual prices of the products sold by exporters in India. For example, there have been 176 cases between the years 1997 and 2003 related to dumping activities and 143 of these cases were related to hiding the normal prices of the products that were being sold inside the Indian jurisdiction by exporters. Price or normal value has become a main difficulty that the Indian government must face in regards to dumping activities and the proper measure of AD that the government should use in this domain.⁸³

As a result, The Government of Bangladesh complained to the WTO's Dispute Settlement Body (DSB) about the Indian AD measures that were imposed on the import of the former's lead-acid batteries. Bangladesh claimed that India was unsuccessful in confirming the actual price of the imported product before applying its AD action. It also claimed that India had been unable to compare between export price and normal price and to determine the actual value for the exported product.⁸⁴

Similarly, the EU demanded WTO consultations with India in early 2003 about its AD measures which affected many countries including European countries. Thus, the EU claimed that the Indian Government does not use systematic AD measures in

⁸² See Welber Barral et al., 'The Use of Antidumping in Brazil, China, India and South Africa – Rules, Trends and Causes' (2005) *National Board of Trade/Sweden*, 35.

⁸³ See Barral, above n82, 44–45.

⁸⁴ See M. A. Taslim, 'Dispute Settlement in the WTO and the Least Developed Countries: the Case of India's Anti Dumping Duties on Lead Acid Battery Import from Bangladesh' (2006) *International Centre for Trade and Sustainable Development*, 4–5.

facing dumping activities. The EU claimed that:⁸⁵

- 1- The determination of the effect of the dumped imports on prices had not been based on positive evidence;
- 2- The Indian investigating authority did not demonstrate that dumped imports were causing the alleged injury, and failed to examine other known factors and ensure that injury caused by those other factors was not attributed to dumping;
- 3- The Indian investigating authority did not properly inform interested parties of the relevant essential facts under consideration;
- 4- The Indian investigating authority did not properly inform interested parties of the reasons why it did not accept evidence or information they had submitted;
- 5- The public notice of information concluding the investigation did not contain all relevant information.

In December 2003, the Indian Government accepted the request of the EU to conduct consultations through the WTO in regards to its AD measures. However, the dispute between India and EU is still pending.⁸⁶

6.3 The South African Experience with AD

In the late nineteenth century, gold mining and diamonds were the main pillars of the industrial sector in South Africa. However, the scenario largely changed in the 1920s when the agricultural sector becomes the main pillar of the South African economy.⁸⁷

⁸⁵ See Barral, above n 82, 47.

⁸⁶ See Chad B. Bown and Patricia Tovar, 'Trade Liberalization, Antidumping, and Safeguards: Evidence from India's Tariff reform' (2011) *Journal of Development Economics*, 118.

⁸⁷ See Beli Pedro, Michael Finger and Amparo Ballivian, 'World Bank Informal Discussion Paper on Aspects of the Economy of South Africa' (1993) *South Africa: Review of Trade Policy*, No. 4, 3–7.

In the 1990s, the South African economic system entered an era with strict protection, which consisted of a complex system of quantitative restrictions on imports, extremely detailed tariffs and surcharges.⁸⁸ However, when comparing South Africa to other developing countries, it will be noticed that South Africa does not have an overly-protected economy especially since the average tariff in the South African system is only 27.5 %.⁸⁹

Thus, the South African AD measures are largely affected by three facts:⁹⁰

- 1- The extensive use of tariff rebates and the management of it on the basis of responses by the tariff authorities and certain policy guidelines.⁷⁴

Normally, the tariff structure comes throughout responses to the demands of the business sector. However, the responsible authorities have the ability to conduct industry reviews that may proactively guide to an adjustment of import tariffs.

- 2- The *non-equality in the African content that has emerged* by the strategy of inward-looking development and the efforts of adding value to South African minerals have succeeded in developing a medium-sized economy in this country. As a result, the South African economy has a high level of concentration and a lack of competition with other African countries' trade systems. This generates fruitful ground for local monopolies and duopolies to apply AD actions to protect their market shares in an environment of higher values than those that would have applied in competitive

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ See Barral, above n 82, 50.

markets.⁹¹

- 3- The ability of large powerful companies to apply considerable lobbying power in aiming to protect their local market share which has caused a market concentration.

The South African Government has tried to guide the trade system towards greater competitiveness and participation in the world economy by lowering protection and expanding the supply side capacity of the economy. Therefore, the South African economy has been changed and developed from being an inward-looking economy to an outward-looking economy and the AD actions have increased noticeably. However, the scope of the South African AD actions has largely focused on the injury suffered by the local producers of like products, with minimum level of attention to the broader impact on the economy in total.

7. Conclusion

WTO Agreements relating to AD are yet to be fully effective in protecting countries' economies from dumping activities. Despite some improvements, WTO regulations still allow AD actions to be abused as instruments to harass exporters and impede trade. Abuse of existing loopholes has been particularly attractive in terms of tariff dismantling. Gaps in the Agreements gave room for multiple interpretations and controversial readings.

This study has shown that imprecise or ambiguous regulations and a high degree of discretion for domestic administrative authorities further led to faulty implementation for AD measures and provisions. The advance of these restrictive business practices, which replace traditional trade barriers, reduce competition and endanger gains from the dismantling of tariffs

⁹¹ See Merle G. Holden, 'Antidumping: A Reaction to Trade Liberalisation or Anti-Competitive?' (2002) *The South African Journal of Economics*, Vol. 70, No. 5, 25.

and growing economic integration. Particularly, developing countries fear that the benefits of trade liberalization could be neutralised by such measures.

Developing countries regard the reform of AD procedures a top priority issue for future multilateral trade negotiations. Their demands need to be addressed. The study has also shown that developing countries are not willing to see their interests disregarded. Ignorance of their demands might not only severely damage the momentum of import liberalization in developing countries but also block consensus in a future round of multilateral trade negotiations.

The examples that have been included in this study about AD experiences in Saudi Arabia, South Africa and India have reflected a number of facts about the AD actions in these countries specifically and developing countries in general.

In fact, these developing countries have been frequent users of AD protection. It is possible to link this to the history of industrial development in these countries and the earlier inward-looking policies of increasingly isolated economies. This has led these countries to provide high levels of market concentration and a tendency for companies to apply for AD protection in economies that have experienced a significant lowering of general tariff protection.

In conclusion, the ambiguity and irregularity in international trading relations, lack of expertise, industrial equipment and financial capacities have more harsh consequences on developing country industries than developed country industries. As a result, developing countries are less competent to handle the harsh economic consequences caused by AD activities.

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