

Chapter 3

Dumping as an economic phenomenon

3 1 The evolution of the term “dumping”

It has long been customary to speak of one market as a ‘dumping ground’ for the “surplus” products of another market when the producers of the latter for any reason sell their commodities in the former at unusually low prices.¹ From this usage it was a natural outcome to speak of selling in a distant market at reduced prices as “dumping”, but the word used in this sense appeared not to have entered into the literature of economics until the first years of the twentieth century.² In 1903 and 1904, the tariff question was the dominant political issue in Great Britain, and in a huge output of polemical literature which marked the tariff controversy.³ The term became well established, and appeared with or without apologetic quotation marks in book after book.⁴

The term “dumping” has since found its way into the economic terminology of the French, German, Italian and probably other languages.⁵ Initially, it had a vague and uncertain meaning, and is still used indiscriminately for such diverse price-practices such as severe competition, customs undervaluation, “bargain”, “sacrifice” or “slaughter sales”, local price-cutting and selling in one national market at a lower price than in another.⁶ In recent years, however, the increased use of the term by academic economists with their creditable tendency towards the exact establishment of terminology and of the development of legislation dealing with dumping and allied price-practices, which made necessary some measure of precision in the differentiation

¹ Viner *Dumping: A Problem in International Trade* (1923) 1.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

between various price practices, have both contributed to the consistency of the usage.⁷ Extensive variations in the use of the term both as to gist and implication are nevertheless still present.⁸

According to Dale,⁹ the origin of the word “dump” is uncertain. Its usage by the early nineteenth century had come to mean the act of throwing down in a lump or mass, as with a load from a cart, and it was then a natural extension to apply the word to the disposal of refuse and to describe as a dumping ground, a market for the disposal of surplus stock.¹⁰ During this time, “dumping” was used in English language trade literature to illustrate loosely a situation in which goods were sold cheaply in foreign markets. Today, however, the term is used intentionally to signify the practice of price discrimination in international trade. The term was applied persuasively to describe almost any situation in which goods were sold abroad at cheap prices, irrespective of the cause of the cheapness, the insinuation being that the goods were unwanted in their country of derivation and were exported only to get rid of them.¹¹ Economists have always defined dumping as transnational price discrimination where prices vary between national markets.¹² Although economists still object in principle, they now accept that dumping may also be defined as transnational sale below costs.¹³ Deardoff admits this new “definition”:

“The definition has broadened over the years, some now consider dumping to include ‘sales

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Dale *Antidumping Law in a Trade and Liberal Order* (1997) 1.

¹⁰ See further Beseler and Williams, who submit that the word “dumping” has been in use since medieval times. It was used to describe the act of getting rid of something unwanted quickly, usually, rubbish. The term began to be used in connection with International Trade at the beginning of the twentieth century, during the intense and often hostile controversies on free trade. See Beseler and Williams *Anti-Dumping and Anti-Subsidy Law: The EC* (1986) 41.

¹¹ Dale *Antidumping Law* 1.

¹² Viner *Dumping* 1. See also Ethier “Dumping” 1982 *The J of Political Economy* 487-506, Stiglitz “Dumping on Free Trade: The U.S Import Trade Laws” 1997 *Southern Economic J* 402-424. Deardoff “Economic Perspectives of Antidumping Law” in Jackson and Vermulst (eds) *Antidumping Law and Practice: A Comparative Study* (1989) 23.

¹³ Marceau *Antidumping and Antitrust Issues in Free Trade Areas* (1994) 11.

below costs', at least presumptively....this alternative criteria for dumping has gradually acquired elevated status of an alternative definition".¹⁴

However, there is no correlation between price discrimination and sales below cost. Sales below cost may occur with or without discrimination and yet, on the other hand discrimination may take place without selling below costs.¹⁵ The term dumping is employed most often, even in careless business language to signify selling the same commodities at different prices in different markets.¹⁶ Commercially, the term is often uncritically extended to cover various types of sales at prices lower than those generally current, even if the prices are uniform to all purchasers.¹⁷

3 2 The conventional definition of dumping

3 2 1 Transnational price discrimination practice

Price discrimination occurs when different units of the same commodity are sold at different prices for reasons not associated with differences in costs or when different units of the same commodity are sold at the same price where costs are different.¹⁸ Dumping therefore refers to a situation where prices are lower in the importing market than in the domestic market of the exporter. According to Marceau¹⁹, different prices between markets presuppose that there are two separate markets²⁰ and one market is less competitive than the other.²¹

¹⁴ Deardoff in Jackson and Vermulst (eds) *Antidumping Law and Practice* 23.

¹⁵ Marceau *Antidumping and Antitrust Issues* 11.

¹⁶ Viner *Dumping* 2.

¹⁷ *Ibid.*

¹⁸ See Clemens "Price Discrimination and the Multi-Product Firm" 1951/2 *Review of Economic Studies* who precisely defined it as "sales of different units at prices which are not proportional to their marginal costs". Cited by Dale *Antidumping Law* 2.

¹⁹ Marceau *Antidumping and Antitrust Issues* 11.

²⁰ According to Marceau, the separation of these markets can be either social, geographical, legal or cultural. Marceau's analysis of price discrimination is further supported by some economists. See for example, Boltuck "An Economic Analysis of Dumping" 1987 *J of World Trade* 45-54; Bello and Holmer "Review & Revocation of Antidumping & Countervailing Duty Orders" 1985 *International Lawyer* 1319-1337 and Ehrenhaft "Protection Against International Price Discrimination: United States Countervailing and Antidumping Duties" 1958 *Columbia Law Review* 44. Marceau states that "classic" price discrimination denotes that:

" (i) Markets are separable. This means customers purchasing the same product in different

3.2.2 Business rationales for price discrimination

Marceau sets out several reasons why an enterprise may want to maintain two different prices, in two different markets for a certain period of time. Following are some of the reasons outlined by Marceau:

- (a) When a firm with market power in the exporting country enters a new market divided by tariff, transport costs, technical standards or other factors, such a firm may maintain lower prices in the new and more competitive market at a profitable level without any desire or capacity to eliminate competition in the new market.
- (b) As a way of achieving economies of scale, be it for promotional reasons or as a way of testing a new product, a producer may need to expand into a more geographical market. If prices are controlled say by a cartel or government in the first market, the reduction of price occasioned by the increased output may take place only in the second market.
- (c) In a period of depression or excess capacity, a producer active in two markets may be able to lower its prices in one market only if prices are regulated by a cartel or government in one of the markets.

markets cannot trade among themselves, thereby equalising the price through arbitrage;

- (ii) The firm has market power in at least some markets. Market power means the firm will not lose all sales if it raises its price. Raising the price will have two effects on the revenue of such a firm: it will increase due to the higher unit price, but fall due to smaller sales volume;
- (iii) The demand curves for different markets have different elasticities (defined as the percentage change in quantity sold caused by a one percent increase in price). This means customers are more responsive to price changes in some markets than in others. The firm will charge a lower price in the market where customers are more price responsive."

See Marceau *ibid*.

21

The elasticity of demand and supply must differ between the two markets. See Marceau *ibid*.

(d) International predation is also another possibility in the sense that a firm without market power may use price discrimination and cross - subsidize a low-price market with profits from a high-price market in order to eliminate competition in the low-price market and eventually reap monopolist profits there.

The first three hypothetical examples outlined by Marceau above, depict a situation where the producer may have the intention of raising its price rapidly when production starts. He (the producer) may not have the capacity to predate, that is, to eliminate competition from all sources in order to collect monopolist profits assuming that firms are driven only by profit-maximization interests.²²

Although the formulation of price discrimination conveys the essential idea of a supplier selling the same product at different prices in different countries, it nevertheless requires some elucidation.²³ Firstly, price discrimination may not only describe the sale of the same commodity at two or more prices; it may also describe the sale of different commodities at prices which are not proportional to their marginal costs.²⁴ In this respect, Dale²⁵ gives an example of a multi-product firm whose machinery and equipment can be freely adapted to the production of different commodities, and whose resources are therefore said to be internally transferable. Price discrimination occurs where the profit margin, defined as the mark up on marginal cost, varies as between the different commodities produced. It is important to note that price discrimination does not presuppose any price variation at the point of sale.²⁶ According to a USA-government-commissioned report:

²² *Ibid.*

²³ *Ibid.*

²⁴ Kessel "Price Discrimination in Medicine" 1958 *J of Law and Economics* 20-53.

²⁵ Dale *Antidumping Law* 2.

²⁶ *Ibid.*

“Price discrimination in the economic sense occurs whenever and to the extent that there are price differences for the same product or service sold by a single seller and not accounted for by cost differences or by changes in the level of demand or when two or more buyers are charged the same price despite differences in the cost of serving them. In order to know when there is or not price discrimination, in the economic sense, between two or more buyers, it is necessary to know not only the price but also the total costs applicable to each class of transaction under comparison”.²⁷

This qualification has particular relevance to price differentials in international trade, where freight, packaging, insurance and extended credit terms may involve the exporting manufacturer in substantial selling costs over and above those associated with home market sales.²⁸ On the other hand, economies of scale arising from large individual orders may tend to lower the cost of exports relative to domestic sales.²⁹ Full allowance must be made for all such cost differences in order to establish whether or not price discrimination, and therefore dumping, is taking place.³⁰ In international trade, price differentials may also reflect the incidence of duties and border tax adjustments. The importing country may impose tariff duties on a product while the exporting country may remit customs duties on imported materials used in its manufacture. Similarly, the importing country normally applies its own domestic excise taxes to sales of the product while the exporting country exempts from its local excise taxes all products destined for export.³¹ Therefore, in order to identify the existence of dumping, import and other charges imposed by the importing country must be subtracted from the export price, and allowance made for exemption from domestic duties and excise taxes by adding back the appropriate amounts. In this way an export price is arrived at which is directly comparable to the home market price.³²

Time reference must be included in any comprehensive definition of price discrimination, and it is customary to specify that the sales in question must be simultaneous or nearly so. In dumping, however, because of the considerable time that

²⁷ Report of the Attorney – General’s National Committee to Study Antitrust Laws 1955.

²⁸ Dale *Antidumping Law* 2.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² Pigou *Economics of Welfare* (1920) 248 – 249.

may elapse in international trade between entering into contractual relations and final delivery, it is important to note that the relevant point in time for the purpose of price comparisons is the date of the contract and not the date of shipment.³³ The definition of dumping as price discrimination between national markets embraces discrimination between two or more foreign markets as well as between home and foreign markets. Much focus will however, be on the second type of discrimination, since it is this practice which has provoked the industrialised world into introducing antidumping legislation as noted in the previous chapter. Price discrimination is therefore possible when a seller is able to identify separate markets for its product and charge a higher price in the market that attaches a greater utility to the product.³⁴ The seller must possess sufficient market power to have some autonomy in its pricing decisions, and there must be some barrier between the markets so that the lower priced goods are not resold in the higher priced market by an arbitrageur.³⁵

Price to price discrimination occurs because the dumping industry enjoys some degree of market dominance in its own domestic market which enables it to maintain a higher price in the home market than export markets.³⁶ This may arise out of protection of the home market from import competition.³⁷ Thus, price discrimination makes a lot of commercial sense even if no profits are made on export sales.³⁸ Dumping therefore becomes, in this respect, a mechanism through which countries may achieve full utilisation of their plants. It enables producers to maximise utilisation rates by

³³ Robinson *Economics of Imperfect Competition* (1933) 209. Pigou reaches a similar conclusion. Cf Pigou *ibid.* Also see Machlup "Characteristics and Types of Price Discrimination" in *Business Concentration and Price Policy* (1955) 397; Edwards "The Analysis of Output under Discrimination" 1950 *Econometrica* Baltimore 163-172 and Scherer *Industrial Pricing: Theory and Evidence* (1970) Chapter 6.

³⁴ Jackson *et al Legal Problems of International Economic Relations: Cases, Materials and Text* (1995) 673.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ This can be achieved through restrictions on market entry or through natural or man-made factors.

³⁸ Jackson *et al Legal Problems of International Economic Relations* 673.

increasing output without causing domestic prices to fall since the surpluses are disposed of outside the domestic market.³⁹

3 3 Transnational sale below costs

In recent years, it has become accepted internationally that antidumping laws apply when an exporter exports goods at prices that do not cover the cost of their production.⁴⁰ Accordingly, the practice of dumping is not only limited to price discrimination, but also encompasses sales below cost of production. At first sight, it may strike one as unfair to sell goods at a price that is below what it costs to produce them. On reflection, however, it is more useful to consider the appropriateness of such activity in light of its duration and motivation.⁴¹ Since a company would fail if it priced its product below cost in the long run, below cost sales are likely to be temporary. The motives for such sales vary. They could be made by the predatory competitor in order to destroy its competition.⁴² According to Jackson *et al* it is more likely that below cost sales occur because:

- (a) The seller wishes to gain market share; or
- (b) The seller believes it is more profitable (in the sense of avoiding even greater losses) to sell goods at a loss in the short run than it is not to sell any goods at all.

A desire to gain market share may be motivated by the existence of unused capacity or by a belief that producers, not having a certain minimum market share will not be able to survive. Whatever the reason, the displacement of a competitor by another is not cause for concern, assuming the behaviour of the winner is not predatory.⁴³ Below-cost dumping can occur because the industry which is dumping possesses a structural characteristic which enables it to export its products below the cost of production for a

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

sustained period without going out of business. Such characteristics vary widely but may include the existence of some form of governmental support, the ability to cross - subsidize losses in one product area with profits made in other areas, or simply because of the availability of enormous resources which make it possible to sell at a loss for an extended period of time.

3 3 1 Rationales for below-cost sales

In Western economics, the first objective of firms is to maximize profits in the long term.⁴⁴ In accounting terms, however, producing an extra good should yield at least the extra costs of producing that extra good- the so called marginal costs of production.⁴⁵ As long as marginal costs are covered, producing at a price where at least some of the fixed costs are recouped can therefore be considered rational and sound business.⁴⁶ According to Marceau it is therefore reasonable for a firm to continue producing without recouping its full costs when for instance:

- (a) the testing and promotion of new products may justify sales below total average costs and even below marginal costs, for a certain period of time;
- (b) the market depresses or there is excess capacity due to an erroneous decision, then an enterprise with high fixed costs may keep on selling below average total costs of production in order to minimise its losses;
- (c) an enterprise is competing to enter a new market. Such an enterprise will be willing to relinquish profits, therefore selling below total variable costs for a while in order to make itself known to consumers with the assumption that it will soon sell at prices that cover full costs;
- (d) an enterprise wants to maximize sales instead of profits without any intention of eliminating competitors. This is objectionable from the point of view of

⁴⁴ *Ibid.*

⁴⁵ Marceau *Antidumping and Antitrust Issues* 13.

⁴⁶ *Ibid.*

competitors because excess output will depress prices but consumers will gain, provided the situation does not turn into predation;⁴⁷

- (e) the uncertainty about new markets leads producers to make decisions on price in contracts before export costs are fully known. Prices may therefore end up not covering marginal or even variable costs. This situation however, represents a wrongful evaluation of the costs rather than a decision not to cover marginal costs.

3 4 Classification of dumping

Economists have debated whether, and if so, under what circumstances dumping takes place.⁴⁸ Viner identifies three types of dumping situations: sporadic or temporary dumping, short-run or intermittent dumping and long term or continuous dumping.⁴⁹

Sporadic dumping is “dumping which is occasional and casual, which occurs only in scattered instances and irregular intervals and which is not the manifestation of a definitely established price-policy on the part of the dumping concern.”⁵⁰ There is a general agreement that under certain rather limited circumstances, there is a clear case for the profitability of dumping to the dumping concern.⁵¹ In the case of sporadic dumping the motivation is to dispose of goods in the short-run to get rid of surplus stock.⁵² When a producer, because of an over-estimate of prospective demand is left with an overstock which it cannot immediately dispose of in the domestic market

⁴⁷ See Williamson “Predatory Pricing: A Strategic and Welfare Analysis” 1997 *Yale Law J* 284-340.

⁴⁸ Krishna “Antidumping in Law and in Practice” 1997 *Policy Research Working Paper* 1823. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=604967 (accessed 14-10-2006).

⁴⁹ Viner *Dumping* 23. All the forms of dumping described by Viner are generally forms of price discrimination. Technically, they all require that the market of origin and the destination market be isolated from one another sufficiently to prevent re-export and thus price equalization. They also require that the market of origin has a lower price of elasticity of demand than the destination market, the implication being that, the former is not perfectly competitive. Assuming that the government of the importing country cannot control the competitiveness of the originating market or the degree of isolation of the two markets, all it can do in response to dumping is to apply boarder measures. See also ANON “Trade Remedies in New Zealand: A Discussion Paper” 1998 in this regard. Available at www.med.govt.nz/templates/MultipageDocumentPage_13611.aspx-90k- (accessed 14/10/06).

⁵⁰ Dale *Antidumping Law* 2.

⁵¹ Viner *Dumping* 110.

⁵² Krishna see fn 48 7.

without making a substantial reduction in its prices, it may be sound policy for the producer to make no change in its domestic prices and to dispose of surplus stock at reduced prices in foreign markets.⁵³

In the case of dumping to dispose of casual overstock, the dumped commodities were already in stock or in process, and were not deliberately produced to be dumped. **Short-run dumping** refers to a practice that lasts for a limited period of time. Exporters, in order to control or compete in foreign markets from time to time, sell goods at a price less than its cost of production. If competitors have been eliminated, the exporters then increase the price as monopolies and gain the highest profits.⁵⁴ This type of dumping differs from sporadic dumping. In this case, the aim of the exporters is to control and dominate foreign markets. It is a practice that is predatory in nature. It progresses systematically and consequently harms the industry of the importing country. When a company possesses monopoly power at home but faces competition overseas, it may also participate in **long-run dumping**. Lack of domestic competition allows the company

⁵³ Viner *Dumping* 110. See further Viner "Dumping As A Method of Competition in International Trade II" 1923 *The University J of Business* 182-190. Viner embarks on a close analysis of instances where during a particular season, a producer finds that sales at the established prices are not running high enough to clear the stocks on hand or in process. He further identifies alternative routes available to the producer faced with this kind of predicament. The producer can either (i) hold over the surplus stock to another season; (ii) reduce prices in its standard markets in order to increase sales; or (iii) dispose of its surplus stocks in some distant or unimportant market at the best prices obtainable, even if these are lower than the prices current in its standard markets. It is highly probable that the producer may be reluctant to hold its surplus stock over to another season, because of the carrying and storage charges, difficulty in financing an over-large inventory, or the danger of deterioration or of change in style in which its products may be subject. Carrying over the surplus stock to another season may be detrimental to the producer in the sense that the surplus products in question (depending on the nature of the product) may lose their novelty and authenticity. A producer may also be averse to reduce its prices in its standard market. Reducing prices on any portion of its sales in this market without making the reduction general to all purchasers, so that any reduction in domestic price will apply to its entire output may not be practicable. In any case, the demand for the producer's product in its standard market may be inelastic, so that a reduction in price whether partial or general, will not have a substantial effect on sales. Also where a producer reduces its prices, it may later on be faced with a dilemma of re-establishing the original price. Re-establishing the original price in this instance may be difficult or even impossible. For any or all of these reasons, a producer may opt to unpack its surplus stock at reduced prices in a minor or hitherto uncultivated market.

⁵⁴ Smit *et al Economics: A Southern African Perspective* (1996) 43.

to sell its product at a high price at home.⁵⁵ Once the product enters the international market, it faces competition from producers in both the host country and other countries. In order to sell the product and earn profit, the producer must lower the price. This form of dumping is generally associated with establishing or maintaining a long-run position in a foreign market. In rare instances, the objective may be to eliminate a competitor in that market.⁵⁶ Where that is the objective, prices will be reduced temporarily and raised after the competitor is eliminated. More often, however, the motivation is not predatory. As a matter of policy, firms can engage in persistent dumping in order to develop secondary markets where they can sell a portion of their production on a regular basis at prices above prime cost, while maintaining higher prices in their protected home market.⁵⁷ Such dumping is, however, not necessarily disruptive.

3 4 1 The economic effects of dumping

Dumping has been recognized as an economic issue for some time. An early and useful example is provided by Viner. He sought to understand the origins and impacts of dumping by considering the motive of the dumping firm, the duration of the dumping and the ability of the domestic industry to adjust to the dumped goods. Dumping is to be distinguished from price discrimination within national boundaries for two reasons. The first reason is that international trade creates special opportunities for discriminatory pricing; and secondly, the welfare implications of dumping are somewhat different in that it is customary to regard each nation state, rather than the world as a whole, as a single welfare unit.⁵⁸

⁵⁵ Ross "The Negative Effects of Trade Barriers on the United States Economy". Available at <http://www.iusb.ed/journal/2000/ross.html> (accessed 18-10-2006).

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Dale *Antidumping Law* 27.

3 4 2 Importing country viewpoint

The practice of dumping has proved to be a matter of controversy among economists. The conventional economic view of dumping is that it benefits the importing country when continuous or permanent, but is potentially injurious when discontinuous or of relatively short duration.⁵⁹ Dumping has the potential of affecting the interests of consumers in the importing country only as it affects the prices prevailing there.⁶⁰ The significance of dumping to the importing country may likewise be considered from the divergent points of view of consumers and producers.⁶¹ Users and consumers are likely to enjoy short-term benefits from dumped imports through low prices, but the condition may be less favourable in the long-run.⁶² In instances where domestic producers are forced to lower production or cease it altogether, competition is reduced and this type of situation is not likely to serve consumer interests in the long-run.⁶³

It is often said that the problem of dumping for the importing country revolves around the conflict of interest between domestic producers and consumers, the conflict being

⁵⁹ Dale *Antidumping Law* 8.

⁶⁰ According to Viner, it must be borne in mind that dumping does not necessarily, and probably does not usually involve selling in the foreign market at prices lower than those prevalent there. The dumper often resorts to dumping only in order to bring his export prices down to the level prevailing in his export markets. Even in instances where the dumper does not accept lower prices than those demanded by his competitors in the market dumped on, his added competition in supplying the demand of that market will tend to force down the prices of his competitors and to necessitate a still further reduction of his own prices. Also in instances where the dumping is intended to introduce a new product to the consumers of a foreign country, or to establish new trade connections, it will necessarily involve the preliminary establishment of a price level lower than would have been current in the absence of dumping. Viner *Dumping* 132.

⁶¹ *Ibid.*

⁶² Jackson *et al Legal Problems of International Economic Relations* 680.

⁶³ From this analysis submitted by Jackson *et al*, one can safely come to a conclusion that the total cessation of the production of a particular product, gives the dumper a total advantage in as far as the determination of prices is concerned. The dumper is at liberty to price the products in any manner it considers fit. This is because total cessation of the production of a particular product consequently reduces competition. The dumper can increase the price of that particular product and because there is no other producer competing with the dumper, the consumer is forced to adhere to the dumper's new price. In effect what this means is that the dumped products will only remain cheaper in as far as the domestic industry continues to produce the same product. Once production ceases, prices are likely to go up, a situation that will not serve consumer interests at all.

engendered by the redistributive effects of low-priced imports.⁶⁴ Dale submits that in a trivial sense, this is true in so far as any imports, dumped or undumped, may reduce the output and/or profitability of local manufacturers. A rather more refined version of this argument has been advanced by Viner as an instance of what he refers to as “intermittent dumping.” In his illustration, he quotes a passage from William Smart:

“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 labour. Similarly, workers do not change into other trades. They put up with short- time, hoping that it will be short. And short-time is wasted time.... They may have done that men can do; kept profits and prices low. It does not seem healthy that, for no fault of theirs they should now and then be thrown idle”.⁶⁵

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.⁶⁶ If the domestic producer is forced to idle his plant this might mean that his short-run marginal cost is above the price of the dumped imports. On the other hand, if we assume that the foreign exporter is a profit maximizer or loss minimizer, then one would expect his export price to be at or above his own marginal cost.⁶⁷ Accordingly, the domestic producer’s short-run operating costs are above those of his foreign competitor, and so long as there is excess capacity in the industry, the foreign exporter must, according to Dale,⁶⁸ be regarded as the more efficient of the two. In instances where the foreign exporter is not maximizing or minimizing losses, but has priced his exports or products below short-run marginal costs, then his behaviour may be viewed as predatory. The introduction of predatory

⁶⁴ Dale *Antidumping Law* 28. See further Beseler and Williams who contend that the existing controversy amongst economists is presumably due to the fact that the monopoly power, which is a necessary condition for the existence of dumping, interferes with the competitive model on which conventional economic theory is based, irrespective of the acknowledged fact that dumping can bring about benefits to the consumer. Beseler and Williams *Anti-Dumping and Anti-Subsidy Law* 45.

⁶⁵ Smart *Return to Protection* (1904) 149-151.

⁶⁶ Dale *Antidumping Law* 28-29.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

behaviour leads to the more general question of how dumping may affect competition in the importing country. Dale⁶⁹ emphasises that the pro-competitive role of price discrimination within national boundaries applies equally to dumping in the international context. This role may be particularly important where there are collusive arrangements in the importing country's domestic market, or in instances where a situation of natural monopoly prevails there.⁷⁰

The practice of dumping has a tendency of promoting a vigorous domestic industry where local price discrimination may consequently endanger it.⁷¹ Thus where discriminatory pricing within a national market may artificially distort the costs purchasers, when these are intermediate producers rather than consumers, thereby threatening injury to secondary-line competition, dumping of raw materials or intermediate goods must necessarily benefit producers in the importing country at the expense of their competitors in the exporting country and elsewhere.⁷² This beneficial aspect of dumping is clearly illustrated by:

- (i) The rapid expansion of the British sugar-using industries in the second half of the nineteenth century based largely on dumped European beet sugar;⁷³
- (ii) the prosperity of the Dutch shipbuilding, machinery and nail industries prior to the First World War attributable partly to dumping of German steel and wire;⁷⁴ and
- (iii) the competitive advantages conferred on the Welsh tin-plate industry at the turn of the century by the dumping of steel by the United States Steel Corporation.⁷⁵

⁶⁹

Ibid.

⁷⁰

See Rodgers "The Illusionary Conflict Between Antidumping and Antitrust: A Comment" 1974 *Antitrust Bulletin* New York. Cited by Dale *Antidumping Law* 29.

⁷¹

Dale *Antidumping Law* 30.

⁷²

Ibid.

⁷³

Viner *Dumping* 57.

⁷⁴

Viner *Dumping* 135.

⁷⁵

Smart *Return to Protection* 152. Cited by Dale *Antidumping Law* 30. The important conclusion

If the dumped commodity is not produced in the importing country and is a commodity that is of great value to the consumer, the dumping is, once again, an undisputable gain to the importing country, provided only that it does not eventually result in the establishment of a monopoly able to extract monopoly prices, or that it does not prevent the introduction of a new industry to which the importing country would be well adapted under normal conditions of international competition.⁷⁶ There is a proposition that if the dumped commodity competes with a domestic product of the importing country, the injury to the domestic producers should be offset against the benefit to the consumers.⁷⁷ A benefit to the consumer is by so much a gain to the country as a whole and that cheap imports are an advantage to the importing country provided that the injury to the domestic industry is not as great as the benefit to the consumer.⁷⁸ A typical example is where the dumped imports do not necessarily injure or hinder the establishment of an industry.

The chief menace of dumping from the point of view of the importing country arises out of intermittent or short-run dumping. This is the type of dumping which is continued steadily and systematically for several months or years and is terminated either when its

drawn by Dale in this regard is that one of the main arguments advanced in support to laws designed to control domestic price discrimination is actually reversed in the case of dumping, where differentially low prices in the importing country have an unambiguously beneficial impact on the competitive status of domestic producers.

⁷⁶ Viner *Dumping* 137. In light of Viner's submission, it is sound to conclude that the importing country will be at an advantage in instances where the product being dumped by the exporter is not domestically produced. This serves as an advantage to the importing country in the sense that a new product would have been introduced into the domestic market consequently placing the consumers in a beneficial position. However, this situation will only remain positive in so far as the introduction of the new product does not act as a hindrance to the establishment of such an industry.

⁷⁷ Viner *Dumping* 138.

⁷⁸ Where the dumping is certain to continue indefinitely or at least for a very long period, the advantage of the dumping to the consumer in the importing country must be accepted as in the long run more important than the injury to the domestic producer. If the domestic industry cannot compete with the dumped imports, it will be in the national interest that it shift its capital and labour to the production of other commodities despite the fact that this shift in question, may be expensive. *Ibid.*

objectives have been attained or have failed.⁷⁹ Short-run dumping, whatever its objective, may result in serious injury to or even the total elimination of the domestic industry.⁸⁰ The gain to the consumer from a short period of abnormally low prices may not be nearly great enough to offset the damage to the domestic industry, including the capital invested therein, the labour which it employs and the managerial ability which directs it.⁸¹ The dumping will be especially likely to result in a net loss to the importing country if it serves to bring about later, the establishment of abnormally high prices, either because it has facilitated the acquisition of monopoly control by the dumper or because the losses incurred by the domestic industry during the continuance of the dumping or the check to its expansion of productive facilities have lessened its willingness to engage in active price-competition within its own ranks or with its foreign rivals.⁸² The disadvantages of intermittent dumping to the importing country have been well stated by Smart⁸³ in a passage which merits quotation in full:

“If we knew that, for all time some kind of foreigner would send us pig iron and steel sheets 50 percent under our price, we should know what to expect, and no one in this country would make pig iron or steel. But what we know is, that this dumped supply will be intermittent and that it will remain cheap so long as we continue making the same goods. Its uncertainty is its evil. When other countries are prosperous, little comes in and our makers get a decent price; when these countries are depressed, in come the dumped goods, and wipe out the profits. I can scarcely believe that this intermittent underselling is a good thing for us. It is not a spur to invention and economy. I hesitate indeed to call it “unfair competition.” But it is not competition that can be counted on and prepared for. No watching and economy of costs will meet it. At any moment, a manufacturer may be put on short time, because a good line is snatched from his finger...”⁸⁴

⁷⁹ Viner *Dumping: A Problem in International Trade* 140.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ Smart *Return to Protection* 149-151.

⁸⁴ Complaints of injury from the importation of foreign prices at dumped prices have been frequent in most of the countries which have important manufacturing industries. Countries such as Great Britain, the USA Canada, Switzerland and Italy. Some of the examples of such complaints are as follows:

- (i) The distress of British sugar refiners as a result of European bounties.
 - (ii) The distress suffered by Italian and Swiss Steel industries as a result of German dumping.
 - (iii) The distress of American alcohol distillers as a result of German official bounties.
- There is according to Viner, sufficient reason to believe that in many cases there was indeed adequate ground for complaint. See Viner *Dumping: A Problem in International Trade* 141.

The impact of dumping on the importing country as a whole is the reverse of the impact on the exporting country.⁸⁵ There may be an immediate advantage through cheap imports but account has to be taken of the total costs of dumping to the domestic economy, that is, lost capacities, lost investments, loss of technology especially in promising or strategic sectors, a shrinking industrial base, the social costs of unemployment and the contraction or elimination of the industries producing the dumped product.⁸⁶ It is evident that a domestic country faced with dumped imports is without a doubt, in an intricate position. The normal reaction to the low prices would be to sell on the exporting producer's home market at equally low prices, but because of access barriers this means of reaction is not always possible.⁸⁷ Instead, it has to reduce its domestic prices to the level of the dumped imports or lose market share.⁸⁸ The position of the importing country becomes even more difficult if the dumper is able to sustain losses on its export business for long periods because of its "guaranteed" home market profits.⁸⁹ The resulting cost increases and losses may also affect the industry's position in third markets. As a result, its overall productivity and investment strength is weakened. Dumping further creates uncertainty for investment.⁹⁰ Accurate investment planning may be frustrated by less efficient competition, with the result that resources in the importing country are wasted.⁹¹ In conclusion, it is submitted that there is indeed a sound economic case against dumping from the point of view of the importing country. This economic case is, however, compelling only in instances where it is rational to suppose that the practice of dumping will result in greater injury to the domestic industry than the gain to the consumers.

⁸⁵ Jackson *et al* *Legal Problems of International Economic Relations* 680.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

3 4 3 Exporting country viewpoint

It must be presumed that a producer who dumps benefits from doing so, although in the case of promotional and predatory dumping, there is an element of risk in that the ultimate benefits on which the loss-making export sales are premised, may not materialise.⁹² Provided its home market is shielded against arbitrage or retaliation, and consequent price drop (which would neutralise the discrimination), dumping can have clear advantages for the individual exporter.⁹³ A profitable home market provides a platform which may be used to operate in export markets at prices much lower than could have been possible without market segregation.⁹⁴ The low export prices generate further sales which in turn lower the cost of production, an advantage which benefits both export and home sales.⁹⁵ Dumping can still have beneficial effects on the dumper even in situations where home market sales are made at a loss.⁹⁶ As long as the dumper covers fixed costs, export sales can be priced as low as variable cost, a strategy which permits production and employment to be maintained in a recession or enables the dumper to obtain considerable advantages when going for economies of scale.⁹⁷ Given the advantages of dumping to the exporter, it is essential to examine the effect of dumping on the consumer. This examination should focus on whether the home market price will be higher or lower in the absence of dumping.⁹⁸ If the alternative to dumping is not to trade at all, it is true that the home-market price will be lower in the absence of dumping where the producer's marginal cost is rising and it will be higher in the absence

⁹² Dale *Antidumping Law* 37.

⁹³ Jackson *et al Legal Problems of International Economic Relations* 679.

⁹⁴ *Ibid.*

⁹⁵ Under such conditions dumping becomes an economic behaviour of great efficiency, the benefits of which do not necessarily reflect a genuine competitive advantage. *Ibid.*

⁹⁶ *Ibid.* See also Khan *et al EC Antidumping Law-A Commentary on Regulation 384/96* (1998) 23.

They submit that dumping can be "profitable" to exporters even in situations where their domestic sales are made at a loss: the increase in turnover generated by the dumped exports helps to reduce the per unit cost of production. The price advantage thus obtained by exporters over domestic producers in the importing market does not however reflect a real comparative advantage (at least in the initial phase when the exporter has just begun to penetrate that market- later on, the additional turnover generated through dumping may result in economics of scale). Under these conditions, dumping can lead to elimination of competitors which are more cost efficient than the dumper and thus result in a loss of economic resources.

⁹⁷ Jackson *et al Legal Problems of International Economic Relations* 679.

⁹⁸ Dale *Antidumping Law* 37.

of dumping where the producer's marginal cost is falling.⁹⁹ Cocks and Johnson¹⁰⁰ contend that even where dumping leads to a higher home-market price, due to rising marginal cost, the benefits to the producing industry, including factor rents, will exceed the losses to consumers.¹⁰¹

In so far as the economy of the exporting country is concerned, the benefits of dumping in this respect are that domestic industries develop capacities which far exceed the national market. This allows high economic growth and high production levels, even in periods of domestic or world-wide recession.¹⁰² Dumping can also have an effect on the exporting country by harming users of the dumped product located in that country. This harm can occur only if the dumped product is an intermediate product, that is, a component of the final product.¹⁰³ In such cases, if users of the dumped product compete with users in the exporting country, those users will have a cost advantage because of their access to the lower priced dumped product and they may be able to sell final products incorporating the dumped components more cheaply, thereby gaining an advantage over competing producers in the exporting country.¹⁰⁴ The significance of this advantage would depend on the importance of the dumped component in the cost of the final product and the extent of the competition between producers in the two countries.¹⁰⁵ The main objection to dumping from the view of the exporting country is that it originates in and therefore signifies the existence of monopoly power in the home market.¹⁰⁶ Consumers may take exception to the fact that they are being charged

⁹⁹ Yntema "The Influence of Dumping on Monopoly Price" 1928 *J of Political Economy* 686-698.

¹⁰⁰ Cocks and Johnson "A Note on Dumping and Social Welfare" 1972 *Canadian J of Economics* 137-140.

¹⁰¹ According to Dale, the above conclusions apply to situations where goods have been deliberately dumped; that is, goods that are specifically produced for the purposes of being dumped rather than goods that are sold as surplus stock. In the latter case dumping must always result in a higher home-market price than would prevail if there was no trade. See Dale *Antidumping Law* 37.

¹⁰² Jackson *et al Legal Problems of International Economic Relations* 680.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ Dale *Antidumping Law* 38.

monopolistic prices, which are by their nature higher, in comparison with buyers in foreign markets, and it was with this consideration in mind that the United States Industrial Trade Commission proposed at the beginning of the twentieth century that import duties should be remitted on goods of a kind exported by American producers at dumped prices.¹⁰⁷

In light of the above discussion, it is interesting to note how the definition of dumping has broadened over the years. Thus, the traditional definition (transnational price discrimination between national markets) has been extended to include sales below cost. It goes without saying that the practice of dumping has proved to be a matter of controversy within the international trade framework as it distorts competition. From the importing country's viewpoint, dumping can have beneficial effects to the consumers as they are likely to enjoy short-term benefits from dumped imports through low prices. The situation may, however, have a negative impact on the ordinary consumer in the long-run. Thus, where domestic producers are forced to either lower or cease production altogether, competition is reduced and consequently the consumer will not be in a favourable position. In such instances the dumper can increase its prices, and such an increase is not likely to serve the interests of the consumer.

3 5 Conclusion

Traditionally, economists have concluded that only predatory pricing is injurious to the importing and exporting countries.¹⁰⁸ According to them, non-predatory cross-subsidisation and threats of dependence on foreign imports should not be the concern of any national administration.¹⁰⁹ The above discussion has demonstrated that predation may not be the only concern of nation. The weakening of an efficient

¹⁰⁷ *Ibid.*

¹⁰⁸ See for example, Gold "Managing Dumping in Global Economy" 1997-1998 *Geo Wash J of Int'l Law and Economics* 503-538; Lazar "Structural/Strategic Dumping: A Comment on Richard Boltuck's 'An Economic Analysis of Dumping'" 1988 *J of World Trade* 91-91 and Hay "The Economics of Predatory Pricing" 1981 *Antitrust Law J* 361.

¹⁰⁹ Marceau *Antidumping and Antitrust Issues* 110.

competitor or the prevention of the establishment of a strategic industry or injurious disturbance of the structure of a market may also be important considerations.¹¹⁰ It is therefore reasonable for states to worry about practices other than predation. Dumping may be evidence of all sorts of anticompetitive activities. It is therefore, what is behind international price discrimination and transnational sales below their full cost of production, which should be a concern. Dumping can be injurious to the importing country because it may succeed in creating or increasing the ability of foreign suppliers to exercise monopoly power over domestic consumers by permanently destroying the productive capability of alternative sources of supply.¹¹¹ As has been highlighted above, the early gains to consumers from the low prices can be more than offset by the latter losses to the same consumers, when the predators, substantially elevate prices in exercising their increase in market power. The immediate advantage to cheap imports may be lost when the exporter decides to increase the prices after having “driven out” substantially all the producers of the “like product”.

¹¹⁰ Rightfully so, domestic competition systems recognise that restrictive business practices and various abuses of market power other than predation are objectionable. This reasoning can be extended to international setting, thus, international predation is not the only reasonable threat for an importing country. *Ibid.*

¹¹¹ Willig “Economic Effects of Antidumping Policy” in Lawrence (ed) *Brookings Trade Policy Forum* (1998) 57.