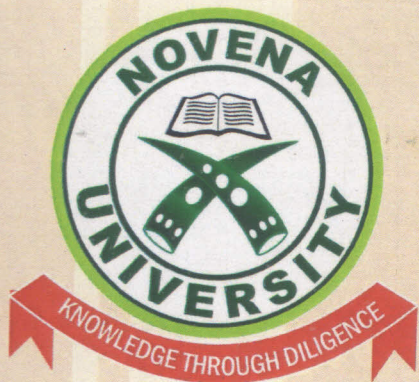




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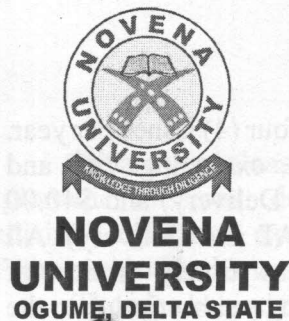
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Economic Rationales for Anti-Dumping Laws of the World Trade Organisation (WTO) Appraised

By

Olatoke J.O. (SAN) Ph.D.*

Abstract

There are three ways in which dumping can be characterized to wit; international price discrimination, predatory pricing or as intermittent dumping. These characterizations, if well founded, each give rise to possible economic justifications for the existence of antidumping laws. This paper appraises the economic rationales for Anti-Dumping Laws of the WTO and the benefit of same to the developing economies.

1.0 Introduction

There are essentially two arguments for prohibiting domestic price discrimination.¹ First, a monopolist's² total output may decrease when it shifts from a single price policy to a discriminatory pricing policy. Because a monopolist sells less output than is optimal, a further decrease in its output might exacerbate the scarcity and impose greater welfare losses on society. Once the monopolist price discriminates between the two markets, some existing customers will be forced out of the higher priced market. The total output produced and sold will decrease if the higher priced market forces out more customers than the lower priced market attracts.

The second argument against allowing price discrimination reflects two forms of social cost imposed on society. The first costs are those that the

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¹ See, Dunlop, Mc Queen and Trebickock, pp 208-10

² Since a monopolist has complete market power and losses from price discrimination will be highest if the discriminator is a monopolist.

monopolist incurs in segregating its markets and computing its customer's elasticity's of demand. If price discrimination were prohibited, resources invested in administering the price discrimination scheme could be put to socially beneficial uses such as product innovation, plant expansion or research and development. Second, according to Posner,³ the lure of monopoly profits induces competing sellers to seek monopolies. Sellers compete with each other to obtain, for example, licence and protectionist legislation in the hope of achieving a monopoly.

In the monopoly contest, sellers may invest resources up to their expected monopoly profits. The monopoly rents gained by the ultimate victor may be wholly offset by the competing sellers. If price discrimination is allowed, expected monopoly profits will be higher, sellers will invest more resources in achieving monopolies and resulting social costs would be higher than under a non discriminatory pricing policy.

These traditional arguments for prohibiting price discrimination are inclusive. Among antitrust scholars there is no consensus on whether domestic price discrimination should be prohibited⁴ First, whether .put will increase or decrease under price discrimination is an empirical question.⁵ In a wide range of perhaps most - circumstances, a Miopolist is likely to maximize profits by price discrimination in a way increases output over that obtaining with a single monopoly price - indeed a perfectly discriminating monopolist will charge each consumer or her reservation price and produce the competitive output 4propriating at consumer surplus in the process.). However, perfect price discrimination is rarely feasible. It entails a

³ Richard posner, (1975) 'The social costs of monopoly and Regulation' 83 J. Pol. Econ. 807.

⁴ The conflicting views are summarized in M.J., Trebillock, 1986 The Common Law of Restraint of Trade (Torono: Carswell,) pp. 364-5.

⁵ Joan Robinson showed that the output effect of price discrimination depend on the shape of consumer demand curves. See *The Economics of Imperfect Competition* (London Macmillan, 1933) PP. 188-93. R. Schmalense, in; *Output and Welfare Implications of Monopolistic Thirds-daggered price Discrimination* (1981) 71 Amer. Econ. Rev. 242, and H. Varian, 'Price Discrimination and Social Welfare' (1985) 75 Amer. Econ. Rev. 870, find that welfare effect also depend on the shape of consumer demand curves. Hence, generalizations about the output and welfare effect of price discrimination are impossible

monopolist acquiring information on every potential customer's elasticity of demand and preventing arbitrage between low-priced and high-priced consumers. Second, while the cost that the monopolist incurs in acquiring and segregating his/her market may be wasteful, if monopolist produces more output under price discrimination those costs may be outweighed by the benefits of the increased output. Third, since some monopolies are efficient, expenditures to secure such monopolies are not wasteful. Be that as it may, what then are the rationales for Anti-Dumping Laws of the World Trade Organisation and is there any harm or benefit of same for the developing economies of Africa? Structured into five sections, section two is on conceptual framework of the paper while section three examines the rationales for Anti-Dumping Laws of the World Trade Organisation. In section four, the paper appraises the benefit of the anti-dumping legislations of the WTO and the paper ends in section five with concluding remarks.

2.0 Conceptual Framework and Definition of Terms

The major focus of this paper is the rationales for Anti-Dumping Laws of the World Trade Organisation and its benefit if any to developing economies. In appreciating the topic, there are some key words that require explanation. The terms are, Anti-Dumping, Rationales, and Developing economies. 'Anti-Dumping' in this study is the WTO enactment aimed at discouraging dumping of essence products by the developed countries in the less developed economies of the world. 'Rationale' simply means reasons for enacting such law and 'developing economies' are the economies that are still struggling to survive, the economies that are predominately raw material producing economies like Nigeria.

3.0 Rationales for Anti-Dumping Laws of the World Trade Organisation

a. International Price Discrimination

The first country in the world to enact anti-dumping legislation is Canada, and there is some evidence that this was prompted by fears of international price discrimination. According to Jacob Viner, Canada's first anti-dumping legislation was a response to the U.S steel corporation's practice of selling its exports at prices substantially below its domestic prices⁶. U.S. anti-dumping laws are also often characterized as a means of responding to international price discrimination.⁷

Both U.S.⁸ and Canada's⁹ antitrust laws prohibit various forms of domestic price discrimination. These laws have intricate and detailed requirements which make the legal definition of price discrimination complex. However, Dunlop, (BJ) D.MC Queen and Mi Trebilcock offered a standard economic definition of price discrimination as follows: It is discriminatory to charge significantly different product prices to two or more customers when there are no sign that differentiate between the costs to the seller of supplying those customers¹⁰. A seller 'price discriminates' when selling an identical product in different markets for different prices. The seller must have some degree of control over the market price (or 'market power') to be able to price discriminate, and the seller will only have market power under conditions of imperfect competition¹¹.

⁶ J. Viner, (1933) *A problem in international Trade* (Chicago: university of Chicago press, P. 86.

⁷ 2 A U.S congressional sub-committee remarked that U.S antidumping laws are designed to free U.S. imports from unfair means of responding price discrimination practices by foreign exporters S. Rep.

No 93 1298, 931(cong. 2d sess. 179, cited in W. Caine, (1981) 'A case for Repealing the Antidumping provisions of the Tariff' 193013 *Law & Plo'y int'l Bus.* 681 P. 682.

⁸ Clayton Act as amended by the Robinson-Patman Act, SS 2,3: 15 Use Para 13 (1988).

⁹ Competition Act, R.S.C. 1985, ch. C-34, SS 50(1) (a), (b).

¹⁰ B.J. Dunlop, D. Mc Queen and M.J. Trebilcock, (1987) *Canadian competition policy A legal and Economic Analysis* (Toronto: Canada Law Book), P. 208.

¹¹ 6 Price discrimination is impossible under perfect competition because sellers who charge a price which is higher or lower than the competitive price will be forced out of the market.

Even if one assumes the validity of the arguments for prohibiting domestic price discrimination (although they are often contested), the reason for prohibiting dumping is not analogous. Domestic price discriminators and dumpers have different effects on the export country. A seller only 'dumps' if it charges a lower price to its export market customers.¹² Therefore, while domestic price discriminators create both a higher priced market and a lower priced market within the same country dumpers create only a lower priced market in the country to which they porting.

However, recent 'revisionist' literature by WTO officials¹³ attempts to provide an economic rationalization for anti-dumping laws by drawing on the persistent and pervasive influence of concepts of reciprocity in international trade relations. This literature argues that international price discrimination is symptomatic of asymmetric market access and economic distortions in exporters' home markets, that anti- duties should properly seek to redress.

An illustrative case is the anti-dumping complaint brought in Canada by General Motors and Ford against Hyundai for allegedly selling s in Canada in the mid-1980s at 36% less than it sold them in South Korea¹⁴. One might argue that it is unfair for domestic automobile manufacturers to lack equivalent access to the Korean market. (The price differential presumably reflected some form of protection of the South Korean market from import competition) Moreover, to the extent that the imposition of anti-dumping duties might induce Hyundai to reduce its home market prices,

¹² It is not 'dumping' for the seller to charge lower prices in its home market than in its export market and this practice is not prohibited by current legislation. See Deardorff, 'Economic Perspectives on Anti-dumping law' in Jackson and Vermulst, P.26

¹³ See Jorge Miranda, (1996) 'Should Anti-dumping Laws Be Dumped?' 28 *law & policy in international Business* 255; Claries Morgan, (1998) 'Competition policy and Anti-Dumping: Is it Time for a Reality Check?' 30 *J. of World Trade* 61.

¹⁴ See *Cars Produced By or on behalf of Hyundai Motor Co.*, Canadian Import Tribunal, 1987; Mathew Kronby, (1991) 'Kicking the tires: Assessing the Hyundai Anti-dumping Decision from a consumer welfare perspective' 18 *Canadian Business* L.J. 95

this would remove the economic distortion in the location of resources reflected in overproduction for export markets and underproduction for the home market.

There are a number of responses to this line of argument. First, it is from clear that the imposition of anti-dumping duties will in many cases remove the distortion in the exporter's home market, the exporter will have to weigh the loss of sales (and profits) in export markets from the imposition of duties against the loss of profit entailed in abandoning supra-competitive pricing in the home market. Second, it is far from clear in most anti-dumping cases that the gravamen of domestic producers' complaints about dumped imports is denial of equivalent access to the exporter's home market; hence this seems a curiously coincidental or means of addressing market access problems in these markets. Third, to the extent that differences in prices between home and export markets are explained by export subsidies from the home country's government, these are not properly the domain of anti-dumping laws but countervailing duty laws. Fourth, to the extent that the price differences between the two markets are explained by trade restrictions (e.g. tariffs or quotas) in the home country's market, then their legality should be addressed directly.

If the home country has high unbound or bound tariffs, it is entitled to maintain these under the GATT/WTO pending mutual negotiations to reduce them. If it is utilizing quotas, these may be objectionable under Article XI (quantitative restrictions). If it has conferred a state-protected monopoly on the exporter, it is entitled to do so provided that it satisfies the non-discrimination conditions of Article XVII (state trading enterprises). If it is a developed country and is seeking to protect and promote an infant industry, it is entitled to do so provided it meets the conditions of Article XVIII. If the home country's domestic competition laws are being applied to the exporter in a preferential way, it is likely to be challengeable under the National Treatment Principle (Article III).

Fifth, operationalizing this focus on market access conditions in exporter's home markets in anti-dumping proceedings seems intractable. If a precondition to imposing anti-dumping duties is a judgment by competition authorities in importing countries that conditions in exporting countries' markets would violate importing countries' domestic competition laws, this would seem a clearly unacceptable extraterritorial application of an importing country's domestic laws. If, on the other hand, this judgment is remitted to competition authorities in exporting countries (many of which, however, do not have such authorities) under a theory of positive comity, their judgments will often be viewed as non-credible and self-serving in importing countries.¹⁵

In short, it is not and never has it been a precondition to international trade that the domestic policy environment in exporting and importing countries be in all respects the same - an extreme version of level playing field or reciprocity concepts- subject to the important explicit constraints on discrimination embodied in the above Article of the GATT.

b. Predatory Pricing

Predatory pricing is the second characterization of dumping that gives rise to an economic rationale for systematically pricing below cost with a view to intimidating and/or eliminating rivals in an effort to bring about a market price higher than would otherwise prevail.¹⁶

¹⁵ For proposals along these lines, see Barnard Hoekman and petros Mavroidis, (1996) 'Dumping, Anti-dumping and Antitrust' 30 J. of world Trade 27.

¹⁶ Dunlop, McQueen and Trebillock, op. cit., p. 208. See generally J.A. Ordover J.A. Ordover and R.D. Willing, 'An Economic Definition of Predation: Pricing and Product Innovation' (1981) 91 Yale L. J.8.

US anti-dumping laws were initially enacted out of a concern for predatory pricing by foreign competitors.¹⁷ Canadian, US and EU antidumping laws penalize predatory pricing in addition to international price discrimination by authorizing the constructed-cost method of calculating the normal value. This penalization of below-cost pricing suggests that predatory pricing may be an additional rationale for current anti-dumping laws.

Canada,¹⁸ US,¹⁹ and EU²⁰'s domestic antitrust laws prohibit predatory pricing. A seller who engages in predatory pricing (the predator) ultimately harms competition by driving other seller from the market and acquiring market power. Once the predator gains market power it restricts its output and captures monopoly profits. Predatory pricing is unlikely to occur frequently.²¹ An extensive antitrust literature agree that predatory pricing is not often an effective means of achieving market power²² and economic theory suggests that systematic below-cost pricing is infeasible and irrational unless certain structural conditions are present.

In order to compensate for the extensive losses suffered while selling at artificially low prices, the predator must achieve a monopoly position by driving its competitors from the market and preventing new competitions from entering. This will be difficult: competitors will only leave the market if there are low barriers to exit, and low exit barriers imply correspondingly low barriers to entry. Thus, even if the predator is successful in driving out its Current competitors, it may face competition from a new wave of competitors, thus precluding recoupment of predator losses incurred.

¹⁷ The original US antidumping law, the Antidumping Act of 1916, 19 USC1673, made Evidence of predatory intent an element of the dumping offence.

¹⁸ Competition Act, R.S.C. 1985, ch C-34,ss 50 (1)(b), 50 (1) (c), and 79.

¹⁹ Sherman Act, as amended by the Robinson-Patman Act. See Hovenkamp, op. cit., pp. 188-90.

²⁰ Articles 85 and 86 of the Treaty of Rome set out the basis for EC competition law.

²¹ This is not to say that predatory pricing will never occur. See Dunlop, McQueen and Trebilcock, op. cit., pp. 220-4; posner, Antitrust Law, PP. 1

²² See e.g. B.S. Yameu, 'Predatory Price Cutting: Notes and Comments' (1972) 15 J.L. & Econ. 129; F. Easterbrook, 'The Limits of Antitrust' (1984) 63 Tax. L. Rev. 1 P. 26 and 'Predatory Strategies and counterstrikes' (1981) 48 University of Chicago L. Rev. 263; J. Mc. Gee, 'Predatory Pricing Revisited' (1980) 23 J.L. & Econ. 289, PP. 295-7.

As Hovenkamp²³ and McGee²⁴ have argued, if the initial competitors are driven into bankruptcy, other sellers may acquire their facilities at fire-sale prices and compete with the predator will succeed in creating a monopoly, the potential gains from predatory pricing are uncertain.

Unhappy rivals may automatically assume predation when a competitor's price is below their costs, disregarding the possibility that the alleged predator's cost is well below theirs and more than covered his price²⁵

In both Canada and the USA, prices below the seller's marginal cost²⁶ or average variable cost²⁷ tend to be presumed predatory, although have experienced some difficulty in measuring those costs.²⁸ Price above average total cost (including fixed costs) are generally presumed non-mandatory. Price between average variable cost and average total cost or may not be predatory, depending on the circumstances, such as (of predatory intent or ability to recoup short-term losses in the long raising prices without being under-cut by remaining competitors or entrants. The rejection of average total cost as an invariable reference point is important because there are many instances in which a may be forced to sell below cost.

²³ Hovenkamp and Silver-Westrick, 'Predatory Pricing and the Ninth Circuit' (1983) *Ariz. St. L.J.* 443 pp. 460-5.

²⁴ Mc. Gee, op. cit

²⁵ P. Areeda and D.F. Turner, (1975) 'Predatory Pricing and Related Practices Under Section 2 of the Sherman Act' 88 *Harvard L. Rev.* 697 p. 698

²⁶ The marginal cost of one unit of output is the amount by which the seller's total costs (for all units of output) increase when that one additional unit of output is produced. Since accountants typically report average costs, not marginal costs, marginal cost is extremely difficult to calculate.

²⁷ The seller's total costs are the sum of its fixed costs and its variable costs. Variable costs vary with the level of output; fixed cost do not. By definition, average variable costs are lower than average total costs.

²⁸ For the Canadian approach see Dunlop, McQueen and Trebilcock, op cit., and R.J. Roberts, (1980) *Anticompetitive and Antitrust* (Toronto: Butterworths,) pp. 172-84.

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For example, in times of slack or declining demand, the seller may not be able to sell enough output to cover all of its costs. As long as the seller price its output above its variable costs, the revenue in excess of its variable costs will defray a portion of its fixed costs. Thus, the seller suffers lower losses than it would by halting production (in which case it would suffer losses equal to fill fixed costs.)

The gains from predatory pricing are even more uncertain in the international arena. For a predator to achieve a monopoly in its export market, it must not only drive out domestic competitors from the export market, but other foreign competitors as well. Foreign producers compete with each other just as vigorously as they compete with domestic competitors in their export markets.²⁹ Thus, the likelihood of one seller achieving a worldwide monopoly is slim, and vigorous competition among foreign competitors implies a small likelihood, in most markets of successful oligopoly formation.³⁰

Although true international predatory pricing (predatory dumping) cannot be expected to occur frequently, where it does occur, it harms competition in the export market. Indeed, predatory dumping is more harmful than wholly domestic predatory pricing because resulting monopoly profits are captured by the foreign exporter. On efficiency grounds, anti-dumping laws are justifiable insofar as they prevent predatory dumping. However, the current antidumping regimes of Canada, the USA and the EU penalize behaviour which may be neither predatory nor prohibited but antitrust legislation. Indeed, Hutton and Trebilcock conclude that of the thirty cases between 1984 and 1989 in which Canada imposed anti-dumping duties, none could be supported on predatory pricing grounds³¹. A recent unpublished study for the OECD of a much larger sample of cases apparently reaches similar conclusions.³²

²⁹ Deardoff, p. 36

³⁰ For further support for this view, see J. Barcelo, (1972) 'Anti-dumping Law as Barrier to Trade-The United States and the International Antidumping Code' Connell L. Rev. 491 pp. 501-3.

³¹ S. Hutton and M.J. Trebilcock, '(1990) An Empirical study of the Application of Canadian Anti-dumping Laws: 'A search for Normative Rationales' 24 J. of world Trade 123 p. 128.

³² See 'Attack on Anti-dumping Law Sparks OECD Row' financial Times, 21 September 1995, p. 16.

Currently, antidumping duties are imposed when 'fully-allocated costs' export market prices. As argued above, below-total-cost pricing not be predatory. Hence, anti-dumping laws penalize conduct by foreigners that is not penalized when engaged in domestic firms.

Moreover, even below-marginal-cost pricing by the exporter need reflect an underlying predatory intention. When the exporter makes introduction decisions, it estimates the price its output will eventually in the export market. As long as the estimated export market price exceeds its marginal cost, it will produce output for sale in the export market. If, owing for example to fluctuating exchange rates or changed market conditions, the actual export market price turns out to be lower than estimated, the exporter will have no choice but to sell its output at best available price. This price may be lower than the ex-ante marginal costs the exporter faced when it made its production decision. However, the exporter will continue to sell in the export market because output is already been produced and it can recoup a portion of its sunk costs by selling its output.

³³ Although the exporter is engaging in below marginal -cost pricing, there is no predatory intention. The exporter is doing what it can to minimize its losses in the face of its inaccurate ex ante estimate of the market price. Hutton and Trebilcock find that frustrated ex ante market price estimate accounted for below- marginal pricing in four antidumping actions initiated in Canada against US exporters.³⁴

Finally, in some cases, below-marginal - cost pricing may actually promote competition. Depending on the product, sellers may engage in below-marginal -cost pricing to compete for market share. Deardorff³⁵ identifies two product characteristics, 'experience' and 'learning by doing,' that make below- marginal- cost pricing likely for some goods.

³³ For a mathematical proof of this result see S.W. Davies and A.J. Mc Guinness, (1982) 'Dumping at Less Than Marginal Cost' 12 J. Int'l Econ. 169 pp. 171-6; see also P. Nicolaides, (1990) 'The competition Effects of Dumping' 24 J. of world Trade 115 pp. 199, 120.

³⁴ Antidumping duties were imposed in each case. Hutton and Trebilcock, op. cit., P. 128.111111

³⁵ Deardorff, op. cit.,

Consumers may pay more for 'experience' goods after their first and sequent purchases than before their first purchase. This is because the mility of 'experience' goods is only discernible after their first use. To induce consumers to sample their goods for the first time, as a marketing strategy, sellers may initially price their goods below their marginal cost.

Sellers will recoup their initial losses once consumers pay more for the on their subsequent purchases.³⁶ Seller's produce 'Learning by doing' goods when they experiment with new technology or new technology or new products. When they first enter the market with new goods, sellers may inefficient and suffer losses. At this point, marginal costs may exceed the sale price. Sellers gradually reduce their cost as they 'learn' more about efficient production methods. In the meantime, they gain a valuable toehold in the market.³⁷

Below-marginal-cost pricing for 'experience' or 'learning by doing' goods is typical for sellers expanding into new markets and cannot be viewed as predatory. In fact, it increases consumer demand, competition, and productive efficiency, and sellers can recoup their costs without acquiring market power. Many sellers, regardless of their degree of market power, may increase their market share by selective below- marginal- cost pricing. These legitimate roles for below-marginal-cost pricing suggest that antidumping laws should not categorically penalize below-marginal cost pricing. Significantly, domestic antitrust laws do not ibit these kinds of activities in

³⁶ This practice is widespread. Bulk mail, for example, often contains free samples. Sellers provide samples hoping customers will be willing to purchase goods after experiencing' sample.

³⁷ It may be object that dumped goods cannot be characterized as 'learning by doing' goods because any technological learning would have the same effect on both the home market and the export market. However, if home market sales were 'insufficient' within the meaning of antidumping legislation, antidumping investigation would examine only the 'fully-allocated costs' of the exporter. If those costs exceeded the export-market price, there would be a positive finding of dumping even if the exporter were merely pricing below-cost (in both markets) to gain technological know-how.

the case of domestic firms.³⁸ In recent years 'revisionist' literature has emerged that seeks to provide an economic rationalization for anti-dumping laws contest this analysis of the constructed cost aspect of anti-dumping laws as inconsistent with notions of predation³⁹. It is argued that European Commission decision in domestic predation cases under EU competition laws have rejected pricing above average variable cost as presumptively non-predatory and have in fact adopted an average total cost test, which is close to the constructed cost test employed in antidumping law, US antitrust law, some of which are consistent with the constructed cost test.

It is then argued that pricing below average total cost is irrational unless a firm plans to exit a market or to doing so only on a temporary basis (e.g. because of depressed demand), or is engaged in predatory behaviour towards its rivals.

Several responses are in order. First, while it is true that courts have taken different positions on appropriate cost test in domestic predation cases, they all nevertheless require proof of some kind that the alleged predator's behavior is in fact predatory—that, it is to say that the intent or effect of its behaviour is likely to entrench or reinforce a market position, permitting it then to behave monopolistically. The constructed cost inquiry in antidumping cases never viewed as .it any of the evidence that in a domestic predation case might be view as demonstrating predatory (monopolizing) intent or effect. For example is it seriously arguable that Hyundai was using supracompetitive profits garnered in its protected South Korean market to finance below-cost exports to the North American market with a view to predating (monopolizing) the latter market? Thus, the argument that the constructed cost test is a close surrogate predation tests in domestic competition or antitrust cases is wholly unpersuasive. It bears repeating that in the OECD and Canadian empirical studies of anti-dumping cases erred to above, few or no cases were found to satisfy conventional economic conceptions of predation.

³⁸ In the USA, the legality of aggressive pricing policies to increase market share has been upheld: *telex corp. v. IBM*, 510F. 2d 894 (10th Cir. 1975). Cert dismissed, Canadian court have also recognized the legitimacy of promotional sales: *R.v Hoffinan-La Roche Ltd.* (1981), 28 O.R. (2d) 164; 109 D.L.R. (3d) 5 at (Ont. C.A.)

³⁹ See Claries Morgan, op. cit

Second, even acknowledging room for debate about the appropriate tests to be applied under competition or antitrust law in domestic predation cases, surely the National Treatment requires that whatever tests are applied to domestic producers should also equally be applied to foreign producers. Manifestly, antidumping laws violate this precept by according domestic producers much greater pricing latitude than that accorded to foreign producers. Domestic firms are rarely found guilty of predation under domestic antitrust or competition law regimes; foreign firms are frequently found guilty of dumping, suggesting the extent of the discrepancy between the two regimes.

More transparently, baseless economic rationalizations for antidumping laws are also advanced in this work.⁴⁰ One is that exporters facing recessions in their home markets may export these recessions to export market at below full cost pricing and thus antidumping duties are a useful anti-cyclical policy. Given that it is at the same time claimed that antidumping duties often affect only about 1% of imports, (let alone GNP), it is difficult to think of a more futile anti-cyclical policy. It is also argued that where importing countries devalue their currency for balance of payment reasons, this objection may be defeated by exporters into their markets adjusting their export prices downwards (below home market prices) to offset the effect of the devaluation and thus to retain market share. Again, given the very small percentage of imports said to be affected by antidumping duties and the large and complex set of forces determine exchange rates, it is difficult to believe that such a strategy could have any discernible impact on the balance of payments. Moreover, domestic producers who use imported inputs may be required to adopt the same strategy in order to remain competitive, yet would not be penalized.

⁴⁰ See George Miranda, *op. cit.*

3.3 Intermittent Dumping

The final characterization of dumping that gives rise to an economic rationale for antidumping laws is intermittent dumping. Jacob Viner defined intermittent dumping as systematic dumping which lasts several months or years at a time.⁴¹ Viner viewed this form of dumping as objectionable because it lasts long enough to injure domestic producer without providing consumers with a constant long run supply of goods⁴². A situation in which intermittent dumping might occur is in the context of oversupply of perishables. Agricultural producers often make planting decisions long before selling their produce. Because of the seasonal nature of supply in agricultural markets, producers often find that they have excess produce and rather than allowing it to rot they sell at low prices. For these agricultural producers, the relevant cost at the time is the cost of packaging and marketing. Hutton and Trebilcock⁴³ find that the only Canadian anti-dumping cases that exhibited any indication of intermittent dumping were agricultural cases. They argue that the case of perishables is not a dumping problem and that agricultural instability should be addressed, if at all, through income stabilization programmes rather than antidumping laws.⁴⁴

Non-predatory intermittent dumping cannot occur unless certain structural conditions are present.⁴⁵ First, exporters must be unable to compete with domestic producers under normal market conditions. Otherwise, exporters would provide a permanent source of supply instead of an intermittent one. Second, intermittent dumping must be so extensive that it substantially disrupts domestic production. The losses incurred by selling below-cost products into export markets make it unlikely that the dumping

⁴¹ Viner, pp 30-1

⁴² For a fuller discussion of intermittent dumping see F. Laser (1989) 'Antidumping Rules following 'The Canada- US Free Trade Agreement'' 23 J. World Trade 45.

⁴³ Four of the thirty case studies exhibited indications of intermittent dumping (Hutton and Trebilcock, p. 61)

⁴⁴ Ibid.

⁴⁵ See Trebilcock and Quinn pp. 108-11

enough to disrupt domestic production. As well, disruption will only occur if domestic purchasers substitute foreign goods for domestic goods. By substituting foreign goods for domestic goods during the intermittent dumping period, domestic purchasers will disrupt domestic production. A possible result, when 'e intermittent dumping period is over, domestic purchasers will charge higher prices than before to recoup their post-intermittent dumping readjustment costs. Domestic producers can avoid the higher price by not substituting away from domestic goods in the first place, although objective action problems may inhibit this response. The conditions necessary for non-predatory intermittent dumping to occur are unlikely to arise. Moreover, the effect of non-predatory intermittent dumping on welfare is ambiguous. When foreign exporters dump, domestic producers may be forced out of the market and if the dumping is only temporary, domestic producers will then have to readjust to fill the vacuum left by the departing dumper.

Be that as it may, adjustment and readjustment of costs incurred by domestic producers unquestionably harm producer's welfare.

⁴⁶ Corporate resources which would go to skills training, expansion, or research and development are diverted to maintaining the producer's market share in the more competitive market. Losses incurred during the dumping period may force some producers into bankruptcy. Since domestic capital markets may be imperfect, the producers forced into bankruptcy may not be the least efficient.⁴⁷ Adjustment and readjustment of costs associated with intermittent dumping may also be passed on to consumers.

⁴⁶ Ibid

⁴⁷ Several studies have shown that the cost of capital in markets with strong import competition and demand fluctuation exceed its cost in markets with constant demand and weak import competition; see W. Wares, The theory of dumping and American Commercial Policy (Lexington MA; Lexington, 1997, pp, 67-73), Anger Sandman, (1971) 'On the Theory of the Competitive Firms under price Uncertainty; 61 *Amar. Econ. Rev.* 65 and Albert Zucker, (1965) On the Desirability of price in stability; An Extension of the Discussion' 22 *Econometrical* 437.

Intermittent dumping harms consumers if they end up paying a higher long-run average price for goods that they would pay if there were no dumping. If intermittent dumping occurs with sufficient frequency that the domestic producer's cost of capital is higher over the long-run (reflecting higher risk) than it would be in the absence of intermittent dumping, this cost will be passed on to consumers. However, the dumping margin may so depress prices during the period of dumping that, notwithstanding the producers increased cost of capital, the consumer ends up paying lower long-run average prices. The net effect of intermittent dumping on consumer welfare is thus uncertain.

Given both the uncertain effect of intermittent dumping on consumer welfare and the low probability of the structural conditions for intermittent dumping being satisfied, it is questionable whether anti-dumping laws should seek to prevent intermittent dumping. In any event, the present antidumping laws of Canada and the United States are ill-adapted to addressing problems of intermittent dumping. Anti-dumping investigations assess dumping margins and material injury without regard to whether the dumping is temporary or permanent. This conclusion is borne out by Hutton and Trebilcock's finding that the possibility of intermittent dumping concerns was present in only four of the thirty Canadian cases they examined in which anti-dumping duties were imposed

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4.0 Any Benefit of the Anti-Dumping law to Developing Economies?

The only known benefit as far as the Anti-Dumping law is concern is that the importing country benefits from low import prices. The consumers in the importing country enjoy more consumer surplus since receive more output at a lower price per unit. When the importing country imposes anti-dumping duties on low-priced imports, its lose these benefits. By increasing the price of dumped goods to the exporter's monopolistic home market price, anti-dumping duties impose supra-competitive prices on consumers in the export market and force them to settle for an inefficiently low level of output.

⁴⁸ Hutton and Trebilcock p. 130.

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⁴⁹ Ibid.

Those consumers who remain in the market pay higher prices and less consumer surplus while some consumers are priced out of the market, generating a weight social cost.

In addition, when dumping occurs, the higher priced market is by definition located in the dumper's home country. The dumper's home country thus bears the dumper's costs of identifying and segregating its markets, and social costs associated with the dumper's monopoly profits. The efficiency losses associated with domestic price discrimination, which drive the arguments for prohibiting price discrimination, are borne entirely by the dumper's home market. Hence, the arguments for prohibiting domestic price discrimination do not justify a corresponding prohibition against dumping. Dumping gives the export country the benefit of the price discriminator's low priced market without the social costs of its high priced market. Even if the importing country were concerned about the dumper's home market abuses through some altruistic motive, forcing domestic consumers to pay the dumper's home monopoly price seems a wholly ineffective response. On this Trebilcock and Quinu wrote

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Although equality of exploitation has a certain egalitarian ring to it, it seems a little difficult to see any other virtues in replicating other people's miseries, particularly when in so doing we are in no way ameliorating the lot of our fellow sufferers.

Despite this however, while the potential reduction in output is an argument in the price discrimination, and whether total world output will rise or under international price discrimination is an empirical question, in case of dumping, prices are by definition lower in the export market, the output available to the importing country is unambiguously higher with dumping, rendering highly problematic the appropriateness of providing any remedy to producers in the latter country on this account. The losses to consumers will almost always outweigh any gain to producers who are thereby protected.

⁴⁹ Ibid.

This is borne out by the empirical evidence.
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5.0 Conclusion

The theoretical exposition of the rationales for antidumping laws reveals that the developing countries are the endangered species in their relationship with the developed countries and their membership of WTO accordingly, they need to be protected by law and legal institutions with the view of redressing the imbalance in the trade relationship where the developing countries are consigned to the nadir of trade or commercial degradation.

⁵⁰ See US International Trade Commission, 'The Economic Effects of Antidumping and Countervailing Duty orders and suspension Agreement' investigation Nos. 332-44. June 1995 estimating that the removal of ADD and CVD orders in 1991 would have created a welfare gain of US \$ 1.59 billion in that year; Anderson, 'Anti-dumping Laws in the United States. Use and welfare consequence' (1993) 27 J. of world Trade 99, analyzing eight antidumping measures and estimating the average consumer cost per dollar of increased profit to US degradation. \$ 8.00.