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**An Economic Assessment of Anti-Dumping Rules**  
— From the Perspective of Competition Laws and Policy —

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**Working Paper**



**KOREA INSTITUTE FOR  
INTERNATIONAL  
ECONOMIC POLICY**

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## **I . Introduction**

While dumping has become a long-time international concern to free and fair trade, it is widely recognized that existing anti-dumping rules failed to satisfactorily curb truly unfair imports or promote fair flow of goods in international trade. Rather, it is often argued that anti-dumping rules have degenerated into a somewhat problematic protective device in international trade. Not surprisingly, anti-dumping laws have received wider attention than any other laws regulating foreign trade. A number of economists have suggested that anti-dumping rules are based on fundamental misconceptions that need to be corrected. In practice, discussions in the past few years have led to increasing skepticism as to the underlying rationale for anti-dumping rules. If no economic rationale for anti-dumping rules can be found, it may be necessary to explore whether there are alternative policy underpinnings for the current rules.

In addressing the topic of “An Economic Assessment of Anti-dumping Rules from the Perspective of Competition Laws and Policy”, much of the discussion in this paper will be centered on the issue of whether anti-dumping rules really make any economic sense. Based on the analysis of the anti-competitive effects of anti-dumping rules, this paper will also suggest reforms for the current rules in the context of competition policy.

While not all the ideas suggested in this paper may be generally accepted in the international arena, I certainly believe that most economists

regard anti-dumping rules as an anti-competitive, protective measure in need of some major reforms.

This paper is organized as follows : Section II discusses the definition of dumping in economic and legal terms, and reviews certain types of dumping and their impacts. Section III first examines some characteristics of existing anti-dumping rules in comparison with other trade measures such as general tariffs and safeguards, and then reviews the legislative background of GATT/WTO anti-dumping laws. In section IV, the rationales of current anti-dumping rules are evaluated from the perspectives of price discrimination, sales below cost and predation. Section V analyzes some major anti-competitive factors in current anti-dumping rules. Section VI then suggests some guidelines for reform of current rules in the context of competition policy. Finally, section VII concludes the paper.

## **II . Dumping : Definition and Types**

### Definition

Article VI of GATT 1994 defines dumping as the sale of products in foreign markets at less than the price at which they are normally sold in the domestic market. The Article stipulates that “a product is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.”

With such a definition, dumping may be understood merely as a form of price discrimination between national markets. However, it is not simple in practice to determine whether dumping has occurred. For example, a complicated adjustment process is required to make a fair comparison between the export price and the normal value. The adjustment should be made in such a way that those two prices can be compared at the same level of trade, normally at the ex-factory level, and with respect to sales made at as close to the same time as possible. Complications also arise in calculating the export price, normal value, and constructed value, etc.

While international anti-dumping regulations define dumping as was defined above, the definition of dumping has broadened somewhat over

the years.<sup>1)</sup> In quantifying the dumping margin, and—more specifically—in determining the domestic price, countries tend to disregard certain home-market sales made at prices below the cost of production. This implies that definition of dumping actually includes sales below costs.

### Types

While dumping may be classified into various types depending on duration or motive, the most widely discussed types are probably sporadic dumping, predatory dumping, and persistent dumping.<sup>2)</sup> Sporadic dumping occurs when a firm tries to temporarily avoid disruption in the domestic market which may be caused by a fall in the price of a certain product. In such a case, firms usually sell the excess products at lower prices in foreign markets. Predatory dumping occurs when a firm tries to drive rivals out of market in order to obtain a monopoly in the importing country. Since both sporadic dumping and predatory dumping usually last for a relatively short period of time, they are often categorized as short-run dumping. In contrast, persistent dumping continues over a longer period. This usually occurs

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1) See Deardorff (1991).

2) While Carlton & Perloff(1994) classifies dumping, according to its motives, into predatory dumping, price discrimination, and reciprocal dumping, Slavator(1993) classifies it, according to its continuity of time as well as motives, into persistent dumping, predatory dumping, and sporadic dumping. In contrast, Willig(1996) classifies dumping, according to its motives, into market-expansion dumping, cyclical dumping, state-trading dumping, strategic dumping, and predatory dumping.

when a firm, operating at its full production capacity, continues to sell a certain product at a lower price in foreign markets to prevent a fall in the price of the same product in the domestic market. Persistent dumping is distinguished from sporadic dumping, in that, it is deliberately designed by the firm for a long-time period.

Viner condemned only short-run dumping, saying that the short time-span does not allow for adjustment of resources, thus possibly causing a misallocation of productive resources in the importing country.<sup>3)</sup> He considers predatory dumping as particularly detrimental to the importing country because it eventually aims for monopoly profits in the importing country through elimination of rivals. In contrast, he considers persistent dumping as beneficial to the importing country because the continuous flow of low-priced imports could raise consumer welfare more than enough to offset the adjustment cost incurred to producers; that is, persistent dumping is considered to last long enough to cause a shift in the use of resources to adjust to the continuous flow of low-priced imports.

However, Viner's analysis on the economic impact of dumping is criticized as being too simplistic. It is often argued that even short-run or intermittent dumping, which does not necessarily amount to predation or inappropriate price manipulation, may be healthy commercial competition. In other words, these types of dumping may not necessarily have a negative

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3) See Viner (1966).



effect on an importing nation: the consumers and the downstream industry may actually benefit from dumping. Furthermore, as the definition of dumping becomes broader and as firms' behavior becomes increasingly diverse and complicated, various types of dumping practiced in the real world may have diverse types of impacts on the importing country or on the global economy as a whole.<sup>4)</sup> For instance, the impact of dumped imports on well-established industrial countries may be inherently different from the impact on economically weak countries.<sup>5)</sup>

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4) See Marceau (1994).

5) Kwang(1995) further suggests that the rationale can also be explained from the perspective of industry sectors: only if dumping is practiced by a powerful foreign producer, e. g., a multinational company, may such a practice have a significant impact on rivals in an importing nation.

### **III . Anti-Dumping Rules : Characteristics and History**

#### Characteristics

Dumping has been condemned as an unfair trade practice in international trade due to its possibility to distort allocation of productive resources and cause market disruptions in the importing country. On these grounds, international rules have allowed an importing country to take anti-dumping actions, at least in cases where dumping causes or threatens to cause material injury to competing domestic industries. These rules, initiated by the GATT, provide a commercial defense with which member countries can counteract unfair trade practice while facilitating or encouraging the liberalization of world trade.

Anti-dumping duties are quite distinct from general tariffs. While the former may be discriminatorily imposed on products exported from certain countries or firms, the latter are usually imposed non-discriminatorily on the products exported from all countries. This distinction reflects the reality that dumping is considered an unfair trade practice and, hence, only those countries or firms exporting dumped products are punished. It is also worthy to note that anti-dumping is quite different from the emergency action called 'safeguard'. Even though both are import-relief measures, anti-dumping is an action taken against dumping which is considered unfair, while safeguard is an action taken against an import-surge, even if

there is no unfairness or wrong-doing on the part of the exporting country. Furthermore, in contrast to anti-dumping, the MFN principle applies to safeguards.

For these reasons, anti-dumping action can be more easily initiated than safeguard action. Furthermore, various concepts and criteria stipulated in the GATT rules were so ambiguous that they give individual countries considerable leeway for abuse of anti-dumping measures. As a result, anti-dumping rules have gradually become a popular tool for trading nations to restrict foreign imports, and hence have been classified as non-tariff barriers in international trade.<sup>6)</sup> While the procedures and rules have become much more transparent through the Uruguay Round negotiations, it is believed that there is still large room for improvement.<sup>7)</sup>

### History

Dumping has raised some international concern since the late-19th century when British manufacturers caused injury to the new American market. In the end, it led to public discussions, and industrialized countries started to make legislative attempts to deal with such practices. Since Canada introduced anti-dumping rules for the first time in 1904, New Zealand(1905), Australia(1906), Japan(1910), South Africa(1914), the

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6) See Palmeter (1991).

7) See Schott (1994).

United States and the United Kingdom(1921) enacted their own rules to deal with dumping practices, particularly concerning predatory dumping.

While the earliest acknowledgement of dumping's negative effect at an international level was made in the 1927 resolution adopted in Geneva by the World Economic Conference, a special provision(Article VI of GATT) was provided when the GATT was negotiated in 1947 in recognition of wide differences among national anti-dumping rules.<sup>8)</sup>

Although the special provision, that is, Article VI of GATT, became the core international rule regarding dumping, many countries still tended to utilize their national anti-dumping regulations as a new barrier to trade, taking advantage of ambiguous rules and criteria of the GATT provisions. Thus, an Anti-Dumping Code, which set forth a series of procedural and substantive rules, was newly negotiated during the Kennedy Round to restrain the abuse of anti-dumping measures. In the context of discrepancies between anti-dumping legislations of trading nations, the 1967 code was aimed at seeking a compromise among its signatories.<sup>9)</sup>

The Anti-Dumping Code was replaced, however, by a new code at the

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8) The special provision was initially signed by the twenty-three developed and developing countries of the GATT in Geneva on 30 October, 1947 and came into effect on 1 January as the original General Agreement.

9) Among others, the elaborations were made in defining the concepts of "industry", "injury" and "causation", with most efforts focusing on defining or clarifying the term "causation".

last stage of the Tokyo Round, which provided symmetry with the drafting of the Subsidies Code. The 1979 Tokyo Round Anti-Dumping Code, officially entitled “Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade”, made up the core of international anti-dumping rules, until the new WTO Anti-Dumping Agreement entered into force in 1995. This new code seeks, first, to unify or harmonize the differences of national anti-dumping laws by further laying down definitions concerning the concepts of “industry”, “injury” and “causation”, and then seeks to abridge the period of procedure in anti-dumping actions.

The new WTO Anti-Dumping Agreement certainly sheds lights on some important issues, including comparison of prices, sales below cost, standing of a petitioner, *de minimis* and cumulation, expiry period of anti-dumping action, etc. Although useful improvements have been made to the code in these respects, it still needs further improvement.

## IV . Economic Rationales for Anti-Dumping Rules

### Price Discrimination

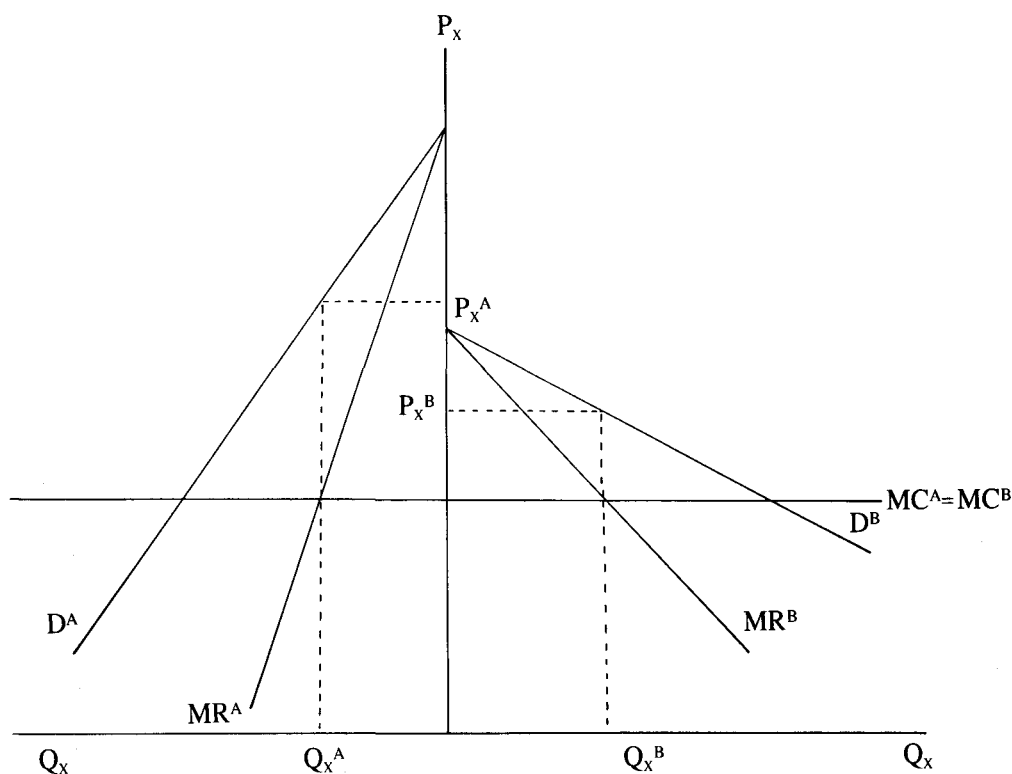
As defined above, dumping is a type of international price discrimination in which a firm charges a lower price in the export market than in the domestic market. In order to see whether dumping should be condemned, let us first examine why dumping occurs.

From an economic perspective, there are two preconditions for a firm to engage in dumping. First, the firm should have a strong monopoly power in its home market; that is, it should be the only, or one of the only, sellers in its home market. Second, the firm should be protected from foreign competition by natural or artificial barriers to trade. Dumping may not exist if there are no barriers to trade due to the arbitrage effect of dumped goods across borders.

When these preconditions are met, it is quite natural for firms to dump, as illustrated in Figure 1. Suppose that a firm in country A exports product X to country B. If the firm exercises a stronger monopoly power in its home market, then it will face a less elastic demand for its product in its home market than abroad. This implies that the demand curve for the product in country A ( $D^A$ ) should be steeper than that in country B ( $D^B$ ). To make the analysis simpler, suppose that the firm also faces the same marginal costs (MC) in both countries. In such a case, the firm should produce the quantity

$Q_x^A$ , at price  $P_x^A$ , in country A and should produce the quantity  $Q_x^B$ , at price  $P_x^B$ , in country B in order to maximize its profits.

**Figure 1. International Price Discrimination**



Hence, dumping is quite a natural phenomenon and is not necessarily unjust in cases where the firm meets both preconditions mentioned above; that is, lower prices in price discrimination are not necessarily the result of price manipulation. For this reason, economists argue that there is no economic justification for anti-dumping rules that condemn all sales of exports at lower prices than home-market sales prices. A better solution is to counteract only specific incidents of unfair trade practices rather than counteract export pricing alone.

Furthermore, as implied in the above illustration, it is not low pricing in the foreign market that should be condemned, but the high pricing in the home market needs to be dealt with. Dumping results from the abuse of monopoly power in the home market, not in the foreign one. Although economic theory suggests that monopoly will lower social welfare in the home country, the low price will increase social welfare of the importing country as a whole. Therefore, anti-dumping policies have no economic justification particularly from the point of view of the importing country.

### Sales Below Costs

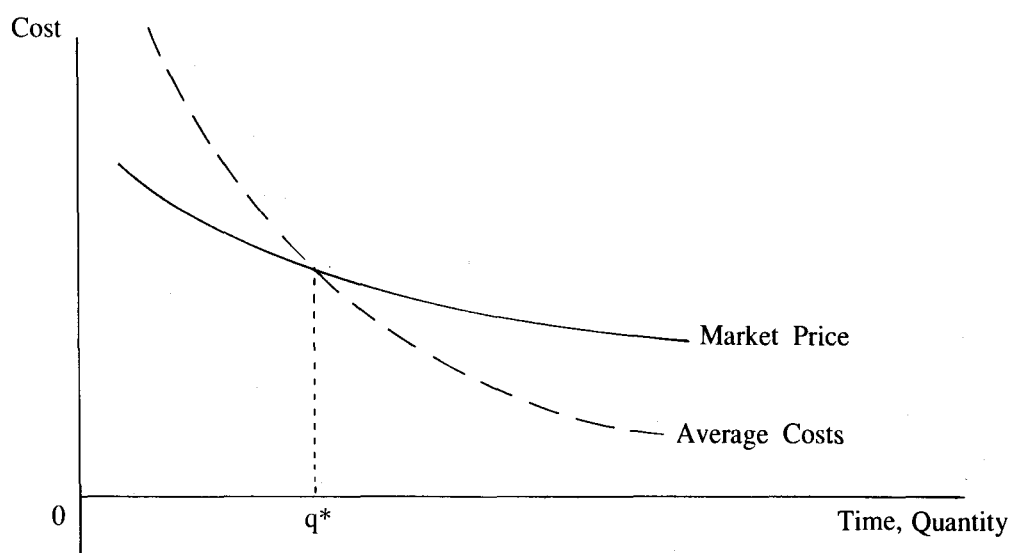
As mentioned above, the definition of dumping has broadened somewhat over the years; many countries tend to disregard certain home-market sales made at a price below the cost of production in estimating the dumping margin.

Sales below costs occur when a firm charges a price below the average costs in an earlier stage of production. It is worthy to note, however, that such price-setting behavior is fairly natural from the economic perspective. When some portion of average costs is fixed, it may be inevitable that a firm sells a product at a price below costs for a certain period or up to a certain level of production. This is because the firm may make a loss in that stage regardless of whether the product is produced or not. Especially in the case of hi-tech products with high fixed costs, it is not unusual that a firm sells products at a price below costs for a certain period in



anticipation of a sharp decrease in the average costs in the near future. (refer to Figure 2) This may be because firms generally determine the price of such products on the basis of profits to be realized from the entire life-cycle of the products as well as recovery of the costs. Therefore, as long as some portion of average costs is fixed, sales below costs are a natural phenomenon for many firms during certain periods. In this sense, there is no economic rationale for restricting dumping solely on the basis that a firm sets a price below costs.

**Figure 2.** Sales below Costs



During the Uruguay Round negotiations, one of the most controversial issues among the GATT contracting parties was the issue of whether sales below costs could be disregarded in the determination of normal value. In the end, it was agreed that sales below costs could be admitted as a normal value under certain conditions. However, it is still perceived that such a

rule may not fully reflect the case for start-up operations and business cycles.

### Predatory Dumping

As previously defined, predatory dumping is a price-setting device practiced by firms to obtain a monopoly status in the importing country by driving rivals out of business. Such behavior is generally condemned because it stems from the profit-earning motive by establishing dominant market power in the importing country. In other words, it is well-perceived that the consumers of an importing country may get some advantage from firms' predation but may eventually suffer when predators recoup their monopoly profits. Such a practice will certainly result in resource dislocation, a rise in the unemployment level and some form of economic deterioration.

However, economists dismiss predatory dumping as so unlikely that anti-dumping action cannot be justified on that ground. For successful predatory dumping, not only do monopolists have to drive rivals out of the market, but they also need to keep out any potential producers. This requires the monopolist to continue charging a price so low that the monopoly gives up its profits forever, which is a scenario that is very hard to imagine. In practice, it is known that successful predatory dumping has not been documented in the history of international trade. Furthermore, it is also well-recognized that it is almost impossible to prove the predatory

intent of a firm. It is also extremely difficult to discern whether a firm is pricing aggressively in order to compete with its rivals, or whether the firm is using aggressive pricing to induce the exit of its rivals to gain a monopolistic position in the market.<sup>10)</sup>

When there is no predatory intent, the imposition of anti-dumping duties may divert efficient exporters to other markets, reducing competitive pressures in the importing country. This may harm only domestic consumers through an increase in the domestic price. Again, it is rather difficult, from an economic perspective, to rationalize anti-dumping policies on the grounds of predatory dumping.

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10) See Willig (1996) who further states that if the aggressively low prices are below avoidable costs, then, predation can be inferred since a firm will never make sales that cost it more than it receives in compensation.

## **V . Anti-Competitive Effects of Anti-Dumping Rules**

As examined in the previous chapter, anti-dumping rules largely lack economic rationale. Economists believe that such practices as price discrimination, sales below costs, and price competition are, in fact, general and natural phenomena in a sound market economy; that is, this type of price-setting should be considered competition-promoting rather than competition-restricting behavior, contributing to consumer welfare and efficient allocation of resources. In practice, such price-setting is not to be regulated under competition laws and policy. The anti-dumping rules which regulate these practices in fact deteriorate competition by protecting domestic industries from foreign competition.

While some major reforms were made in the newly established WTO/Anti-Dumping Agreement, these measures have been criticized for not changing, to any significant extent, the perceived problem of the anti-competitive effects of anti-dumping rules. Main problems can be summarized as follows:

First, the definition of dumping is too mechanical. A firm automatically becomes subject to an anti-dumping investigation if it exports a product at a price lower than the normal value in the home market, regardless of whether there is a predatory intent or not. As a consequence, duties could be being imposed on low but justified pricing. Furthermore, since the criteria for determining the export price and the normal value lack

transparency, the importing country can determine incidents of dumping, at will.<sup>11)</sup> This implies that small changes in methodological rules can yield important advantages for firms contesting dumping cases. That may be a main reason why anti-dumping rules have become the preferred channel for import-competing industries to petition for protection against foreign competition, particularly in industrialized countries (refer to Table 1).

**Table 1. Trends of Petitions for Anti-Dumping Actions by Countries**

(Unit : Cases)

Country	Years	1969~1974	1975~1979	1980~1984	1985~1989	1990~1994 <sup>1)</sup>	Total
	United States		125	140	146	219	231
European Community		19	55	138	101	139	452
Canada		42	74	176	115	88	495
Australia		-	120	242	180	248	790
Others		39	64	10	74	196	383
Total		225	453	712	689	902	2981

Note : 1) As of June 30, 1994

Source : Reports to the GATT Committee on Anti-Dumping Practices

Second, under current rules, national authorities are allowed to exercise a great deal of discretion in determining injury. Even though various indices are specified in the rules for injury determination, there are no specific criteria to determine when those indices signify 'material injury'. More seriously, there is no generally accepted mechanism to

11) In particular, a lack of relevant or meaningful price figures for determining the dumping margin in anti-dumping rules applied to non-market economies leads to arbitrary, unpredictable and often unfair results.

examine the casual relationship between dumping and injury. Therefore, poor performance by firms in the related domestic industries may easily be attributed to the dumped products during economic recession. This would result in a decrease in foreign exports, thus reducing competition in the domestic industries of the importing country.

Third, price undertakings may induce price cartels which would hinder fair price competition. Anti-dumping rules allow exporters to avoid anti-dumping actions if exporters agree to raise their prices. While such agreements are means of suspending ongoing or threatening anti-dumping cases, they can be used to promote anti-competitive behavior. Specifically, such rules may promote cartelization, reflecting the interests of certain producers in the importing country who seek further protection.

Fourth, anti-dumping petitions may induce a motive for voluntary export restraints by exporting firms. Even though Article 11 of the WTO Agreement on Safeguards prohibits certain measures like voluntary export restraints or orderly marketing arrangements, it should be noted that, on many occasions, an exporting country may act unilaterally without any formal indication of an international agreement or even any consensus arrangement. Therefore, as far as the export-restraining effects of anti-dumping actions are concerned, a petition itself may be enough to diminish firms' incentives for active exports, which may in turn naturally lead to voluntary export restraint. Furthermore, it may cause a collusion among exporters and importers; i.e., international cartelization.

Fifth, anti-dumping rules are inconsistent with the WTO's most fundamental principles, i.e., the principles of national treatment and MFN, in that, those rules are applied only to foreign exporters in a selective fashion. Such discriminatory import-restriction will certainly distort competition and trade which should take place based on international comparative advantage.

Sixth, the anti-circumvention provisions of some national anti-dumping rules may deteriorate foreign direct investment activities as well as international trade flows. It may, of course, be necessary for countries to counter the circumvention of their anti-dumping orders if anti-dumping regulations can be justified by any means. However, as repeatedly argued, anti-dumping rules do not make any sense economically, and hence, a restriction on imports coming through a third country or through subsidiary companies within the importing country cannot be justified, especially in a world where production activities are becoming rapidly globalized. Furthermore, the issue of circumvention of anti-dumping orders has become intertwined with the complex issue of rules of origin. Therefore, anti-circumvention provisions may be utilized only as a protective device in cases where international rules of origin do not exist.

## **VI. Reform of Anti-Dumping Rules**

It is a difficult task to locate a precise motive for dumping. Firms may dump to sell excess products, or to survive in an imperfect market where fluctuations in demand prevail, or—at least conceptually—to establish a monopoly status in the market of the importing country. Whatever the motive for dumping may be, dumping is almost an inseparable concept from international price discrimination. This is because dumping occurs only if a firm has dominant market power in its home market and is protected from foreign competition by any trade barriers; that is, the concept of price discrimination in competition policy is, in fact, dumping in trade policy.

It is worthwhile to mention, however, that while all the export sales at a price lower than the home-market sale price are subject to anti-dumping regulations under trade policy, only price-setting behaviors with a predatory intent may be directly subject to regulation under competition policy.

It has been contested in previous chapters that unless predatory intent is confirmed, anti-dumping regulations do not make any economic sense and only have anti-competitive and protective effects. Therefore, anti-dumping regulations are certainly not the optimal response to dumping. The best policy is rather to remove the main cause of dumping; i.e., to break down the monopoly status of firms in the exporting countries. In this respect, the following reforms should be considered in the current anti-dumping rules:



First of all, it is preferable to deal with dumping under competition policy rather than under the current anti-dumping rules. If it is too difficult to abolish all anti-dumping rules, the principles and procedures used in competition policy to deal with price discrimination could be substituted for the relevant part of anti-dumping rules. For example, an investigating authority would be allowed to make a positive dumping determination only when a predatory intent has been confirmed. In addition, the investigating authority would be allowed to make a positive injury determination only when the anti-competitive effects of dumping have been proven. To handle the difficulty of proving a predatory intent, some indices should be developed that reflect the possibility of predation as much as possible. Such indices should include market shares, concentration ratios, and duration of sales below average or marginal costs.<sup>12)</sup> Furthermore, it is very important to consider all relevant economic factors and indices that have a bearing on the state of the industry concerned.

There are some preconditions, however, for effective regulation of dumping practices under competition policy.

First, national treatment must be assured in dealing with all types of unfair price discrimination. There is no reason why regulations of unfair price discrimination should be different between domestic and internation-

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12) It is noteworthy, however, that Davies & McGuinness (1982) explores the possibility that dumping can occur at less than marginal costs for three reasons; uncertainty, pursuance of managerial goals, and strategic entry deterrence.

al settings. This is particularly important in preventing dumping regulations from being abused as a protective measure.

Second, a supra-national system of competition policies should be established. As business activities become more globalized, not only is the linkage among national markets becoming stronger, but business environments are becoming standardized internationally. Thus, there is a need for multilateral rules governing competition policy which all nations can accept. Noting, however, that internationalization of competition policy is a complicated issue, it may be desirable in the interim stage to help all the nations introduce their own competition policies and laws, and then establish a system where those national policies and laws are mutually recognized among the nations.

Third, trade liberalization should be more actively pursued in the multilateral context for effective implementation of competition policy. A great concern from the competition policy point of view is a reduction in competitions resulting from trade barriers and certain trade-restrictive measures. As long as artificial entry barriers exist, it may be almost impossible to expect that unfair price-setting practices could be effectively regulated through competition policy. Free trade will certainly contribute to the restraint of firms' dumping incentives by destroying monopolistic power as well as by creating arbitrage effects on price differentials among nations.

If these conditions are met, dumping practices would be successfully regulated under competition policy, ultimately rendering anti-dumping rules which lack economic rationale obsolete in international trade.

## **VII. Conclusion**

For several decades, international trade-promoting policies have been seen as sound approaches to improving global welfare as a whole. This implies that any trade measures to restrain foreign imports should be deployed on the basis of rationality and fairness.

In this respect, it is extremely important to analyze the nature of dumping in dealing with the problems concerning dumping.

While anti-dumping rules are designed to counter an unfair trade practice, i.e., dumping, it is still difficult to detect the precise motives for dumping. From an economic perspective, anti-dumping rules do not seem to make any economic sense unless there is a predatory intent. In particular, economists argue that such price-setting behaviors as international price discrimination and sales below costs are fairly natural phenomena in a healthy market economy. In fact, economists also argue that anti-dumping rules have only anti-competitive and protective effects by shielding import-competing industries from competition abroad. In this respect, anti-dumping rules are certainly not the optimal response to dumping. It may be best, instead, to deal with dumping under competition policy based on certain criteria stemming from predatory intent and the anti-competitive effects of dumping.

While anti-dumping rules could be incorporated into competition laws

in the end, a complete abolition of the rules may not be feasible in the short run. An interim stage would be required to negotiate harmonization or partial harmonization of competition policies and laws across countries. This way, anti-dumping rules may be gradually phased out, as nations become increasingly dependent on the concepts of competition policy in regulating unfair trade practices.

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