
Is Dumping Still Harmful? New Thinking on Antidumping in the Global Free Trade

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The debate on whether antidumping law should be integrated into competition law is a relatively new but very significant one. Building on prior scholarship, this paper attempts to contribute to the debate by reexamining the fundamental justification of antidumping law. An exploration into the economic theories of dumping and the evolution of antidumping law indicates that the current antidumping system neither serves the broad goal of preventing 'unfair trade' nor functions as a 'quasi-safeguard' mechanism. The only rationale for antidumping law is that it deals with international predatory dumping. Modern competition rules target the same predatory conduct but they are more meticulous than antidumping law and are less susceptible to protectionist abuse. In light of this, the paper advocates the substitution of antidumping law by competition law. To achieve this, the paper suggests a gradual approach. Substitution could first be achieved in bilateral and regional trade areas before being implemented at the level of WTO.

Keywords

Antidumping, Predatory Dumping, Competition, Fair Trade, Interface Theory, Predatory Pricing

Neither the GATT nor the WTO Agreements on the subject set forth any clear explanation of why the practice of 'dumping' is considered 'unfair' so as to

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*warrant remedial measures. Rather the 'unfairness' of the practice appears to have seemed self-evident to legislators and trade negotiators.*¹

I. Introduction

With the proliferation of antidumping laws and actions around the world, the antidumping rules' increasing potential for protectionist abuse has been criticized in almost all of the current literature.² Thousands of pages with various proposals have been written, all of which contain the same purpose of reforming the antidumping system. Most scholars are of the opinion that the misuse of antidumping is mainly due to its arbitrary and biased rules and procedures, so continuous efforts must be made to make them more stringent and transparent, less arbitrary and abusive.³ However, years of efforts at WTO devoted to the Antidumping Agreement ("ADA") seem to suggest that there are no substantial improvements; many of the practices that have been identified as leading to significant protectionist biases remain untouched.⁴ Recently, an increasing number of scholars have started to question the fundamental basis for the existence of the entire antidumping system. They have pointed out that antidumping rules are established based on several false premises without justification from the perspective of competition. In fact, those rules are anti-competitive in many respects. Hence, they argue that further fine-tuning and refining of antidumping policy is not the answer to prevent its misuse. Rather, the antidote to the abuses is competition policy. Efforts should be directed at integrating antidumping with competition. This has become known as the 'substitution debate.'⁵

¹ P. Ehrenhaft, *Is Interface of Antidumping and Antitrust Laws Possible?* 34 GEO. WASH. INT'L L. REV. 367 (2002).

² B.LINDSEY & D. IKENSON, *ANTIDUMPING EXPOSED : THE DEVILISH DETAILS OF UNFAIR TRADE LAW* viii (2003).

³ A. Aggrawal, *The WTO Antidumping Code: Issues for Review in Post-Doha Negotiations*, 99 Working Paper (2003), available at <http://www.icrier.org/pdf/WP99.pdf> (last visited on Apr. 5, 2013)

⁴ B. Hoekman & P. Mavroidis, *Antitrust-Based Remedies and Dumping in International Trade*, 1347 Policy Research Working Paper (1994), available at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1994/08/01/000009265_3970716141633/Rendered/PDF/multi0page.pdf (last visited on Apr. 5, 2013).

⁵ S. Waller, *Bringing Globalism Home: Lessons from Antitrust and Beyond*, 32 LOY. U. CHI. L. J. 113 (2000). See also M.TAYLOR, *INTERNATIONAL COMPETITION LAW: A NEW DIMENSION FOR THE WTO?* 260-285 (2006); A. Knorr, *Antidumping Rules vs. Competition Rules*, Institution for World Economics and International Management (2004), available at <http://www.iwim.uni-bremen.de/publikationen/pdf/W031.pdf> (last visited on Apr. 5, 2013); J. Finger & A. Zlate, *Antidumping: Prospects for Discipline from Doha Negotiations*, Working Papers in Economics (2005), available at http://escholarship.bc.edu/cgi/viewcontent.cgi?article=1184&context=econ_papers (last visited on Apr. 5, 2013); I. Wooton & M. Zanardi, *Trade and Competition Policy: Anti-Dumping versus Anti-Trust* (2002), available at <http://homepages.strath.ac.uk/~hbs03116/Research/Trade%20and%20Competition%20Policy%20Final.pdf> (last visited on Apr. 5, 2013); G. Niels, *What is Antidumping Policy Really About?* 14 J. ECON. SURV. 485