

Anti-dumping duties may be imposed when such imports cause material injury or threaten to cause material injury to, or the material retardation of the establishment of, an industry in the importing country. Canada and the U.S. have been among the most frequent users of anti-dumping duties.

Current anti-dumping law is often portrayed as addressing certain anti-competitive pricing manifestations of restrictive business practices, i.e., abuse of market power. Yet in practice, its reach is much longer. The complexity of the pricing behaviour of firms cautiously emerges in the GATT dumping code in a number of provisions. Thus, there are references to "production and sales in the ordinary course of trade", "due allowance ... for differences which affect price comparability, including differences in conditions and terms of sale", "an evaluation of all relevant economic factors affecting the domestic industry" when determining injury, and the requirement to examine other factors that may be injuring an industry, including "trade restrictive practices of and competition between the foreign and domestic producers". The draft MTN agreement on dumping repeats these homilies.

Genueflection in the direction of recognizing the varying realities of market-place pricing has been considerably less than effective in practice. Relief should be granted to domestic firms facing imports traded by enterprises that can sustain cut-priced (including below cost) sales abroad financed through supra competitive profits earned at home, not when goods are exchanged in the "ordinary course of trade". The worst anti-competitive abuse occurs when such profits permit a firm to charge "predatory" (i.e., below cost) prices for a period of time to drive out competitors, to deter new entrants, or to increase market share. However, predatory pricing is, in reality, relatively rare.³⁵

Overall, anti-dumping regimes have provided poor responses to normal market situations calling for a more sophisticated approach. This is in large part because the factors to be considered when determining the effects of dumping weigh heavily in favour of the firm in the importing country without full regard for its own pricing practices or for the meaning of "ordinary course of trade".³⁶

³⁵ See OECD, Trade Committee, "Interrelationship Between Competition and Trade Policies", TD/TC/WP(92)20/REV1, (December 1992), paragraph 57; OECD, Committee on Competition Law and Policy, "The Economic Effects of Antidumping Policy", DAFFE/CLP/WP1(92)2, chapter 2, p.13.

³⁶ MTN.TNC/W/FA, December 20, 1991, pp.F.5; OECD, DAFFE/CLP/WP1(92)2, chapter 3, p.20; The Committee on Canada-United States Relations of the Canadian Chamber of Commerce and the Chamber of Commerce of the United States, "Competition (Antitrust) and Antidumping Laws in the Context of the Canada-U.S. Free Trade Agreement", March 11, 1991, pp.22-4.