

Dumping – Unfair Trade Practice

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Abstract.

Research background: The Globalisation gradually has removed the protection that has existed to protect producers against unfair trade practices. Existence of imperfect competition within an international trade is presented by descending curve of average costs while increasing economies of scale; it often leads some producers not to adjust the price in relation to the market. In this case, we speak about dumping.

Purpose of the article: The article deals with dumping issue – an unfair trade practice analysing EU trade policy including antidumping, related Slovak legislation, price discrimination and dumping model.

Methods: From a methodological point of view, the article is divided into four parts; description of trade policy, antidumping and its legislation, price discrimination and dumping model. Methods of synthesis, critical thinking and graphical analysis were used.

Findings & Value added: In practice, accounting of different prices to the various consumers is called a price discrimination. The most common type of price discrimination in foreign trade is a dumping. It is a price practice when a company accounts lower price for exported goods compared to the same goods sale at home. World Trade Organization (WTO) allow counter such injury via trade defence instruments (TDIs). The EU TDIs are appropriate to tackle new challenges to international trade, because the Commission had done to modernise the EU's basic Anti-Dumping (AD) Regulations.

Keywords: *dumping; price; international trade; export; trade policy*

JEL Classification: *F12; F13; F19*

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1 Introduction

Dumping is defined as an export of goods for price lower than the production costs; or when the price of exported goods is lower than domestic price of goods; or when the price of exported goods is lower compared to the one priced to the third market. Most of the price discrimination forms are considered as a dumping. Any price discrimination is a dumping, except the situation when the domestic price is the lowest one and all the export prices are in the same level [1].

Price discrimination is a common trade practise. In 1920, Arthur Pigou defined three levels of price discrimination. First model, used also by Dupuit: a company charges each customer with a price that is equal to the customer's maximal willingness to pay for. The second level of price discrimination includes decreasing of price depending on the amount bought or overcoming the obstacle. The third level is based on the splitting the customers according to particular criteria. Rarely, the predator prices are considered as a dumping; what is an initial justification of antidumping legislation within WTO and within EU trade policy [2].

2 Methods

The target of this article, which is part of the defined APPV project output focused on unfair trade practise done by Department of Economic Policy, Faculty of Economics and Management, Slovak University of Agriculture in Nitra, is to describe and to analyse unfair trade practice within food vertical.

From a methodological point of view, the article is divided into four parts; description of trade policy, antidumping and its legislation, price discrimination and dumping model. Methods of synthesis, critical thinking and graphical analysis were used.

3 Results and Discussion

Common commercial policy (CCP) belongs to the oldest politics of the European Community, that has roots in the Treaty of Rome dated 1957 (Article 110-116 and 228 of the EEC Treaty). Common commercial policy is practised only under an exclusive authority of the European Committee (EC) since 1969, when the transitional period for organization of mutual relation within customs union passed. To manage the commercial policy, EC applies trade policy tools applicable within the World Trade Organization (WTO) membership. Article 131 and 133 of the Treaty of Amsterdam defined basic principles of mutual trade policy. Article 133 was consequently adapted by the Treaty of Nice signed on February 26, 2001 and came into force on February 1, 2003. The Treaty of Lisbon made another changes in field of CCP, influencing mainly decision-making and approval procedure. In compliance with this Treaty, the Trade Policy Committee (TPC) was established on December 1, 2009. The main aim of the TPC is to harmonize the decision-making mechanism of trade negotiations with third countries and the rules of the EU internal decision-making. According to CCP principles, the EU member states lost autonomy in relation to the external trade policy; the main task of the TPC is to secure the member states' interests through their defence within this forum; preceded by the Committee 133 until 2009. The TPC is an advisory body of the Council of the European Union and is responsible for multilateral trade matters related to application of the WTO rules and preparation of negotiation positions towards third countries not belonging to the European Union. Currently; CCP is regulated by the Articles 206 and 207 of the Treaty of Lisbon.

Targets of CCP (according to the Article 206 of the Treaty of Lisbon). By establishing a customs union in accordance with Articles 23 to 27, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

One of the major pillars of free movements of goods are customs union principles specified in the Treaty on European Union. Part of the customs union include goods exchange within the internal EU market and it excludes member states to charge tariffs on goods' export and import. Any types of tariffs on import and export of goods within the EU are prohibited. To prevent circumvention of this prohibition, the member states also cannot accept any provisions which could have the same effect similar to the customs, or which could prefer or discriminate any of EU member states.

Execution of Common Commerce Policy is regulated by Article 207 of the Treaty of Lisbon:

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

2. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.

3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 188 N shall apply, subject to the special provisions of this Article. The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

4. For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority.

For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules. This article further defines preparation and conclusion of agreements in the field of trade in cultural and audiovisual services, education, social and health services, and also services in the field of transport. The Council shall also act unanimously in relation to these services. The last part of states that the exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States insofar as the Treaties exclude such harmonisation.

Practical implementation of common commerce policy (CCP) is fully under management of EU bodies. The decisions and regulation issued by EU bodies are fully enforceable in individual member states including compliance the international obligations,

which were accepted by the European Commission and the Council of the European Union on behalf of member states. The Council of the EU accepts the basic decisions about CCP direction and way of running. The European Committee is in charge of practical application of agreed CCP principles, represents EU on the international level and based on the Council of the EU's mandate prepares and concludes agreements on the international level and new agreements related to CCP. The main role of the European Parliament is to approve all international obligations that are agreed by the European Committee. Basic instruments of common commerce policy are: common customs tariffs, trade protection tools and tolls to access the third countries' markets [3].

Dumping price is a price for goods or service significantly lower compared to the same goods or service offered by a competition within the same market. Dumping price is often a price not even covering the costs related to this particular goods or service.

Two interests are observed by dumping prices sale:

- elimination of competition,
- obtaining the share on new market (e.g. entering the foreign company to the domestic market or entering the domestic company to the foreign market).

Act no. 59/1997 on protection against dumping in the import of the goods defines import goods dumping as an import when an export price is lower compared to the price of the same or similar goods in an ordinary shop in the country of export and which can cause a dumping damage to the domestic production sector. Each foreign product sold for lower price where exported compared to the price sold where produced; this is considered as dumping. Price, by which an export price is lower than a common price, is called a dumping range. Protection against import goods dumping:

- exporter accepts an obligation to adjust the export price of dumping goods or to stop import the dumping goods to the Slovak Republic,
- implementing a temporary antidumping tariff,
- implementing a final antidumping tariff.

These measures can be applied if there is a proof that the goods were imported into Slovak Republic with a lower price than a price of goods in a common shop of exporting country; if by applying dumping price a dumping damaged was caused or there is a risk of dumping damage (<https://totalmoney.sk/slovník/D/dumping-dumpingo-va-cena/>).

Antidumping agreement determines the conditions to start, to manage an anti-dumping action and to apply antidumping measures. Common value of the same or similar product represents the product price on the domestic market of exporter; or a combination of exporter's production costs, other costs and profit margin. At least 50% of all producers of the same or similar product have to support a written application to start the proceedings. Domestic producers have to prove there is a dumping, the domestic sector is or could be endangered and that there is a direct relation between the import of dumping goods and caused damage. When there is a threat of damage, there has to be proved that continuing the dumping import directly threaten the domestic production and if there shall not be taken any preventive measure, the significant damage to the domestic sector can be caused.

A research of dumping import is focused on the amount of imports and on the fact if there is a significant increase of dumping import in relation to the production or consumption; or if there is a significant undervaluation of price compared to the price of similar product in the imported country; or if the effect of such imports causes a price decrease; or if it does not stop the prices' increase which would otherwise be applied.

During research of causality between dumping and a caused damage all factors need to be taken in consideration. Factors which influence the condition of domestic production sector (real and possible decrease of products' sale, profit, production, market share, productivity, return on investment, use of capacities, price influencing factors, size of dumping scale, influence to the cash flow, stock, employment, etc.). Antidumping is

stopped, if the dumping scale is lower than 2% of export price of goods or when the volume of dumping import is insignificant. The volume of dumping import is insignificant if the import from one country is below 3% from total import of similar goods; or if the imports from several countries represent less than 3% and cumulatively do not cross 7% of total import of similar goods. The result of anti-dumping could be an implementation of adequate anti-dumping tariff, or an obligation of the exporter that he shall increase the export price or he shall decrease the volume of dumping import to the reasonable level. Anti-dumping measure can be valid only for the period necessary for elimination of caused damage, usually up to 5 years [4].

For example, the United States Department of Commerce sustained the case of apple concentrates imported from China, which were offered at 52% less the cost of production in their country [5]. Recently, the US-Department of Commerce initiated an anti-dumping investigation concerning light paper from China. Germany and Korea alleging dumping percentages of 108% for China. 29%-75% for Germany and 40%-65% for Korea [6].

Existence of imperfect competition within an international trade is presented by descending curve of average costs while increasing economies of scale; it often leads some producers not to adjust the price in relation to the market. In such case, we speak about dumping. In practice, accounting of different prices to the various consumers is called a price discrimination. The most common type of price discrimination in foreign trade is a dumping. It is a price practice when a company accounts lower price for exported goods compared to the same goods sale at home. If the producer sets lower prices at home compared to the prices in foreign countries, the situation is called reversed dumping. To apply the dumping, there have to be fulfilled two conditions:

- the market has to be imperfectly competitive (companies have some market price and there are economies of scale);
- the markets have to be segmented; domestic consumers cannot easily purchase the goods for export.

There are three kinds of dumping:

- sporadic – when the producer wants to get rid of excess goods and does not want to endanger his goods' price at domestic market; or the producer sells on foreign markets where the demand for this type of product is lower and he wants to limit the loss;
- predatory – it involves sale of goods to succeed in foreign market and to eliminate the competition; after reaching good position on market, the prices are increased;
- persistent – it involves consistent selling at lower prices in foreign market compared to the domestic one; mainly due to different overhead costs.

If we want to analyse the dumping model (Fig.1), we make example of monopolistic company. Company is selling goods in two markets: in domestic market represented by demand curve D_D and in the export market. We estimate that the sale on foreign market is highly sensitive to price which goes to the extremes – company can sell as much as wants for price P_F . Horizontal line P_F represents also a demand curve to buy goods (its sale) in foreign (export) market. We describe segmented market. The company can sale goods for higher price on domestic market compared to the foreign one. MC is a curve representing marginal costs for total production sold in any market. To maximize the profit, company has to set the marginal income equal to marginal costs in every market. Marginal income in domestic market is defined by curve MR_D , under curve D_D . Export is done at price P_F , so the marginal income from additional exported unit is exactly P_F . To set the equality of marginal costs and marginal income in both markets, the Q_F amount of product need to be produced. Company sales on domestic market Q_D amount and exports $Q_F - Q_D$.

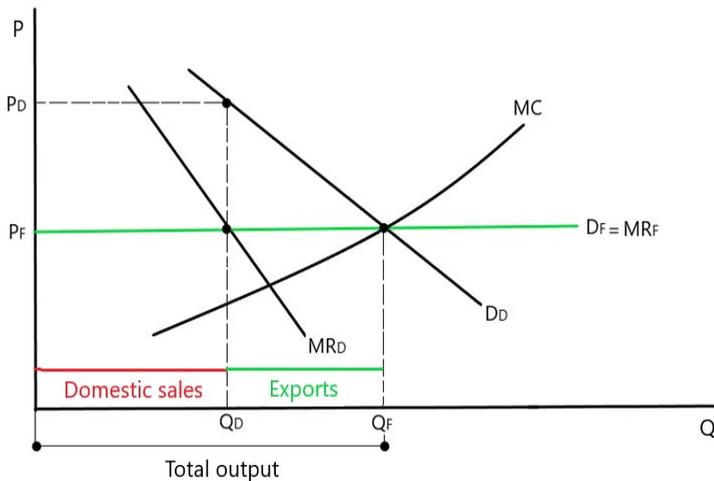


Fig.1. Dumping. Source: Processed on the basic [7, 8].

Production costs of extra unit are equal to P_F , marginal income from export, which is then equal to marginal income from domestic sale. P_D price is higher than P_F price – this indicates a dumping – company is selling goods cheaper abroad compared to domestic market. The cause of dumping is a difference in sale sensitivity to price on domestic and foreign market. We assume the company can increase the sale without decreasing the price, because the marginal income and the price on export market overlap. There can happen a contrast in the domestic market – an increase of sale causes decreases of price. Dumping is an unfair practise in the international trade.

Curious type of dumping is a reciprocal dumping. It is a dumping applied by two companies producing the same goods in the foreign markets. E.g. Economy A would export into economy B wine for special price and economy B would also export special price wine into economy A. Even this is not very usual dumping, it can cause an increase of international trade volume [7, 8].

With enhancement of antidumping law around the world and mainly after the developing countries joined the international trade, the increasing trend for protectionist abuse of antidumping rules was criticized in almost all of the current literature. The scientists claim that fine-tuning and refining of antidumping policy is not the answer to prevent its misuse. Competition policy could be the antidote. This topic was put aside in 2004 within the WTO during Doha Round. However, in 2009 some appeals appeared to connect the trade and the competition policy. Especially the developing countries require introducing competition back into trade to see how this interaction can influence their economic development. WTO antidumping agreement is specific in rules in relation to justification of antidumping legislation. It identifies three main viewpoints on the justification of antidumping law:

- to eliminate “predatory dumping” intended to monopolization;
- protection against “unfair trade” resulted from various market-distortive government industrial policies;
- function as a “quasi safeguard” measure to moderate the effects of different economic structures.

The only legitimate rationale of antidumping law is to deal with international predatory dumping pricing. The alleged arguments for broadly combating “unfair trade” are deceptive and hypocritical, because the antidumping system is not to protect the global free trade [9].

We find that anti – dumping (AD) duties do reduce firm export value and induce exit. They do not affect producer prices, indicating that duties are completely passed through to importers and consumers. Exit is more prominent among small firms than large ones. Interpreted through the lens of our model, this implies that AD duties force out the least efficient exporters, thus increasing the overall competitiveness of Chinese exporters. Effects differ between the EU and the US as the number of exporters reacts more sensitively to EU duties. From a policy perspective, this implies that higher duties are required in the US to achieve the same overall effect. Indeed, product specific US AD duties imposed against China are on average 111 percentage points higher than EU duties. Considering both elasticities as well as duty levels, exports to the US fall on average by 64% following the imposition of AD duties, compared to a 40% reduction for exports to the EU. However, while US duties are on average three times as high as EU duties, their trade dampening effect is only 50% larger [10].

In the presence of multinational corporations, the intended outcome of anti-dumping duties may be difficult to achieve given that producers of the same product may own plants in multiple countries and hence could strategically switch destination markets for their exports [11].

The production costs used for the construction of normal value must reflect the market conditions prevailing in the country of exportation. Such market conditions include government policies and regulations that directly or indirectly affect prices. Therefore, if surrogate prices are employed to counteract price distortions, adjustments to such prices must be made to reintroduce the distortions into the production costs [12].

Regardless of how states implement free trade, the influence of government would still be there to control the market. These regulations that the government would implement can be considered as protectionist policies. Protectionist policies are being implemented by country by the means of protecting local markets from the international market that might risk the domestic industries and might result in the depletion of the nation's sovereignty rate. The protectionist policy can be considered as a barrier towards trade but is essential for the long run [13].

Lower market-entry barriers indeed reduce the number of firms; variation in barriers to competition across countries is primarily driven by barriers to market entry, rather than barriers to starting a firm; and barriers to competition are associated with fewer products per firm [14].

If the trade barriers are removed, the increase in domestic consumption associated with the decrease in domestic price would be fulfilled by imports [15].

When we look at the whole group of countries imposing AD duties against China, we observe that the evolution of trade flows is mainly driven by changes in export quantities, which bear the brunt of the adjustment, while prices show a small increase that appear significant only 4 years after the adoption of the measures. Results for the US are much less precisely estimated: the confidence intervals are larger and we do not find a significant effect on prices in any of the 5 years following the introduction of AD measures. The effect is almost never significant and, in general, we find little evidence of a strong impact of AD duties. On the contrary, results for the EU show a U-shaped evolution that is similar to the one observed for the larger sample of all AD users; here as well the impact on prices is only marginally significant in year $t + 3$, and after 4–5 their inception, AD duties seem to lose a large fraction of their effect [16].

The relationship between export prices and the gains from trade depends substantially on the nature of trade costs. Specifically, among trade cost shocks with equivalent welfare implications, shocks to specific trade costs generated outsized shifts in export prices while shocks to ad valorem trade costs had little impact on these prices [17].

While an individual non-tariff barrier (NTB) does not reduce trade as much as a traditional, trade defence instruments (TDI) taking into account the number of implemented NTBs, their effect on trade is comparable to that of traditional TDIs such as anti-dumping, countervailing duties or safeguards [18].

The benefits (from dumping) of export-oriented agriculture tend to accrue to the largest actors, particularly the grain traders most directly involved in international markets. While farmers' planting decisions are locked in seasonally or even longer, grain traders are set up to react very quickly to changes in markets [19].

The analysis shows that for anti - dumping cases in the United States, petitioning firms or industry actors seeking the imposition of anti - dumping measures have an institutional advantage that makes the opposition much less likely to be successful. support the petitioning parties. Once anti-dumping duties have been established, there may be a potential political coalition across countries between importers and exporters [20].

As many firms produce multiple products, it would also be interesting to study whether there are any reallocations across products within the firm as a result of AD duty. Yet another direction for future research is finding other possible mechanisms through which market access affects firm performance, such as product switching. Finally, while the evidence presented here suggests reduced economies of scale resulting from AD duties as one channel through which targeted firms' productivity is reduced, there could be other channels as well. For instance, firms might decrease their R&D investment as a result of antidumping duties. These additional explorations, however, will require access to more detailed data [21].

They highlight the inefficiency of anti-dumping duties as a trade defence instrument. The temporary protection offered to the "good" import-competing firms translates into minimal gains in terms of productivity, employment and total exports that are limited to the least productive producers. These gains are largely offset by the damage caused by the anti-dumping policy to import-competing firms, mostly the most productive. While the imposition of anti-dumping measures succeeds in limiting exports by Chinese firms to the European Union, it results in an improved productivity and competitiveness of the surviving exporters leading to tougher competitive pressure in the long run [22].

The annual number of antidumping investigations is affected by two macroeconomic factors - unemployment and the exchange rate. Legal and administrative changes in antidumping policy have also had an impact on the number of antidumping cases [23].

AD duties are more effective than tariffs in raising import prices, and therefore the profits of domestic firms. According to our estimates, in order to achieve the same effect that a given AD duty has on the delivered import price, the tariff rate would have to be approximately two times higher than the AD duty [24].

4 Conclusion

The dumping is an example of price discrimination. It is about selling the same product at different prices to different groups of consumers, even in different countries. The same product is sold in one country at a different price than another. According to the WTO, dumping occurs when a company sells its products to foreign consumers at lower prices than to domestic consumers. Stricter definition - sales at prices below production costs. The economic basis of dumping stems from differences in the price elasticity of demand.

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