

# COMMERCIAL ANTI-DUMPING, MEANS TO PROTECT FREE COMPETITION IN INTERNATIONAL TRADE RULES AND ALGERIAN LEGISLATION

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## Abstract:

Free competition is considered a fundamental objective of the global trading system based on free trade. However, dumping can undermine this trading system and is an illegal international trade practice that is anti-competitive. Dumping disrupts market equilibrium and circumvents the laws of supply and demand. Therefore, the fight against commercial dumping is one of the most important tools to protect free competition in the international trading system. In this regard, the World Trade Organisation (WTO) has developed a comprehensive agreement called the Anti-Dumping Agreement, which deals with the implementation of Article VI of the GATT 1994. This agreement establishes strict procedures and measures to protect free international trade competition against dumping and to promote liberalised foreign trade. This study examines the concept of dumping, its types, and how it differs from similar practices, while also examining the mechanisms established to combat dumping under this agreement.

**Keywords:** Dumping, international trade, free competition, antidumping.

## INTRODUCTION:

The global trend towards liberalising international trade in order to stimulate economic growth has created an atmosphere of competition among producers and exporters of goods. This competition is driven by the desire to capture consumer preferences and gain a larger share of the global market in different countries. Some, however, seek to achieve these goals through illegitimate means, such as commercial dumping. Although dumping is based on the principle of price freedom, it has serious negative effects on national economies and disrupts normal trade relations between exporters, importers and domestic producers<sup>1</sup>.

The issue of dumping in international trade has become increasingly important as the global economic system moves towards trade liberalisation. However, trade liberalisation should not be an avenue for gaining competitive advantage through commercial dumping. This realisation has led various countries to establish rules to combat this harmful phenomenon in international trade by adopting protective policies for their domestic industries.

The dangers of commercial dumping therefore necessitate the need to combat it. This is particularly evident in the General Agreement on Tariffs and Trade (GATT)<sup>2</sup>, which was established in 1947, where it was given special importance and became a major part of the negotiations in several rounds. It was effectively translated into the GATT 1994 Agreement and the Anti-Dumping Agreement, which deals with the implementation of Article VI of the GATT. The World Trade Organisation (WTO) is responsible for the enforcement of this Agreement<sup>3</sup>. The Anti-Dumping Agreement covers all aspects related to dumping and enforces strict procedures and measures aimed at safeguarding free international competition against commercial dumping while promoting liberalised foreign trade.

<sup>1</sup> Ben Attia Lakhder, Legal Guarantees for Combating Dumping under the World Trade Organization, Doctoral Thesis, Faculty of Law, Ben Aknoun University, Algeria, 2012-2013, p. 03.

<sup>2</sup> General Agreement on Tariffs and Trade

<sup>3</sup> Yousefi Maamar, Organisation and Protection of International Competition in the Context of Global Trade Liberalisation, Doctoral Thesis, Faculty of Law and Political Science, Abdelhamid Ibn Badis University of Mostaganem, Algeria, 2019/2020, p. 180.



The importance of this study lies in the fact that it attempts to establish the legal basis of the phenomenon of dumping by analysing the provisions of the Anti-Dumping Agreement and to show the extent to which these rules are compatible with the principles of international trade and national legislation. It also aims to consider the interests of the various parties involved in the trade relationship, including the producer, the exporter and the importer.

On the basis of the above, the following question can be posed To what extent are the legal provisions designed to combat dumping in international trade effective?

In order to answer this question, we have taken an analytical approach to the texts of the Anti-Dumping Agreement and examined the position of the Algerian legislator with regard to the measures and actions taken to combat this phenomenon. Accordingly, this study is divided into two parts. The first section discusses the nature of dumping in international trade, while the second section focuses on the mechanisms to combat dumping.

### **First Section: The legal nature of dumping in international trade**

Dumping is considered one of the most important anti-competitive practices in international trade. This is due to its widespread nature and the significant damage it causes, which directly hinders domestic industries and competition. Therefore, in order to understand the risks of dumping, it is necessary to define its concept (first requirement) and to distinguish it from similar practices (second requirement).

#### **1<sup>st</sup> sub-section: The concept of dumping in international trade:**

In order to understand the concept of dumping, it is essential to look at the main definitions from both an economic and a legal perspective (First Subsection). It is also important to highlight the main types of dumping (second subsection).

#### **A) Definition of dumping in international trade:**

Dumping is a form of unfair price competition in international trade<sup>4</sup>. It practically embodies the policy of international discriminatory pricing, also known as price dumping. In this practice, the exporting source reduces the known price of its product in the domestic market in order to gain control of a larger share of the market in the importing country<sup>5</sup>. Dumping is therefore a complex process involving two concepts: an economic concept and a legal concept.

#### **1- The economic definition of trade dumping:**

It is the sale of products in foreign markets at a price below the cost of production or significantly below the price at which they are sold in the domestic market. It can also refer to a strategy used by traders in goods to sell products in foreign markets at reduced prices compared to the normal prices of similar products in the country of origin or export, taking into account all costs and conditions of sale, in order to achieve various objectives, including the reduction of stocks, the full utilisation of human and technical capacities, or the exclusion of competitors in order to monopolise the market<sup>6</sup>. In addition, dumping is defined in case law as the sale of a product in large quantities at prices below the market price in order to dispose of surpluses or to eliminate competition<sup>7</sup>.

Despite the risks associated with dumping highlighted by these definitions, some argue that it has certain beneficial aspects, such as lower prices for consumers of dumped goods. In addition,

<sup>4</sup>- The term "dumping" is not a new concept in the world of international trade, as its use dates back to the nineteenth century, when England practised dumping as an effective means of hindering the growth of American industries during the American Revolutionary War. However, the term became widely used in the 1960s. See Omar Mohammed Hamad, *Monopoly and Unfair Competition: An Analytical Study*, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2009, p. 189.

<sup>5</sup>- Ben Attia Lakhder, *ibid*, p. 16.

<sup>6</sup>- Mohamed Suleiman Qura, *Harmful Practices in International Trade and Ways to Combat Them: Dumping, Unjustified Increase in Imports*, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2015, p. 98.

<sup>7</sup>- Viner Jacob, *The Problem of Dumping in International Trade*, New York: Augustus M. Kelly Publishers, 1966, p. 51.



dumping encourages domestic producers to improve the quality of their similar goods and lower their prices in order to compete<sup>8</sup>.

Based on price, dumping is defined as the sale of a product in foreign markets at a price lower than its selling price in domestic national markets at the same time and under the same conditions of production, taking into account transport costs. Alternatively, cost-based selling is the sale of a product on the foreign market at a price lower than its cost of production. It is the sale of quantities of the product at prices below those prevailing and familiar to consumers as a form of dumping<sup>9</sup>, the distinction between the domestic and foreign market being the distinguishing feature of dumping policy<sup>10</sup>.

The differences between economists in providing a definition of dumping are due to their different adoption of the criterion for the occurrence of dumping. They have relied on two criteria for the occurrence of dumping: the first criterion is selling below the export market price, and the second criterion is that the export price is lower than the cost price<sup>11</sup>.

Dumping is also used to refer to certain meanings, including the policy of selling a product in the export market at a price below the average cost of production. Dumping is also used to describe any competition that threatens the position of domestic products or forces them to lower their prices. There is also what is known as currency dumping, which involves reducing the value of a currency without justification in terms of external accounts or purchasing power, with the aim of increasing the competitiveness of domestic products in international markets. Because of its impact on production and the domestic market of the importing country, the fight against dumping has been seen as a form of protection for domestic products<sup>12</sup>.

In this regard, some aspects of the jurisprudence state the following Dumping is a practice that is condemned and allows an importing country to take certain countermeasures, at least when the dumped goods cause material injury to competing industries in the importing country<sup>13</sup>.

These concepts show that dumping is a method of price competition based on reducing the real value of production costs. It is an international phenomenon involving the movement of goods from the country of origin to the importing country in the context of trade exchange. It is a phenomenon in which traders and foreign companies rely on arbitrary price reductions to gain control of the market<sup>14</sup>.

## **2-The legal definition of dumping:**

Dumping in international trade, although it has economic aspects, cannot be fully understood without reference to the international agreements specifically designed to deal with its effects, the methods used to eliminate fair competition, the methods of calculation and how to combat it<sup>15</sup>.

In terms of international agreements, Article 2 of the Anti-Dumping Agreement<sup>16</sup> under Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 states that a product is considered to be

<sup>8</sup>- Sayyed Taha Badawi, *Economic Legislation in Light of the Latest Legislative Amendments*, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2016, p. 65.

<sup>9</sup>- Abdel Moneim Moussa Ibrahim, *Consumer Protection*, Halabi Legal Publications, First Edition, Lebanon, 2007, p. 121.

<sup>10</sup>- Sayyed Taha Badawi, *ibid*, p. 51.

<sup>11</sup>- Mohamed Mohamed El-Ghazali, *The Dumping Problem: A Comparative Study*, Dar Al-Jame'ah Al-Jadida, Alexandria, Egypt, 2007, p. 16.

<sup>12</sup>- Amal Mohamed Shalabi, *Limiting Monopolistic Practices from a Legal Perspective*, Dar Al-Jame'ah Al-Jadida, Alexandria, Egypt, 2006, p. 27.

<sup>13</sup>- John Howard Jackson, *The World Trading System: Law and Policy of International Economic Relations*, 2nd edition, The Massachusetts Institute of Technology Press, 1997, p. 251.

<sup>14</sup>- Kaderi Lotfi Mohamed Saleh, *Mechanisms for Protecting Competition in International Trade*, Doctoral Thesis, Faculty of Law and Political Science, Mohamed Khider University of Biskra, Algeria, 2017, pp. 286-287.

<sup>15</sup>- Kaderi Lotfi Mohamed Saleh, *ibid*, p. 284.

<sup>16</sup>- Atar Nassima, *The Legal System of Dumping in Light of the Development of International Trade Law*, Master's Thesis, Faculty of Law and Political Science, Abi Bakr Belkaid University, Tlemcen, Algeria, 2013-2014, pp. 27-28.



dumped if the export price of the product from one country to another is less than the comparable price in the ordinary course of trade for a like product when destined for consumption in the exporting country.

According to this agreement, dumping occurs when the foreign exporting country sells the goods in the market of the importing country at a price lower than the selling price of the domestic producers of the same or similar goods. The trade referred to in this agreement is specific to the exporting country, i.e. domestic trade in its local market<sup>17</sup>.

On the other hand, the Algerian legislator is following the international trend to regulate international trade and align its laws with international trade agreements<sup>18</sup>, particularly in view of Algeria's aspirations to join the World Trade Organisation. Several texts have been adopted in this regard, including provisions on dumping and its prevention<sup>19</sup>.

The Algerian legislator defines dumping in Article 8 of Law No. 98-10, which includes the Customs Code<sup>20</sup>, as follows "Any product whose price at the time of export to Algeria is lower than its normal value or the value of a similar product in ordinary trade operations in the exporting country or in the country of origin shall be considered to be dumped".

This is in addition to what is stated in Article 14 of Order No. 03-04 of 19/07/2003, which refers to the general rules applicable to import and export operations<sup>21</sup>. It states: "Anti-dumping measures may be imposed on any product whose export price to Algeria is lower than its normal value or the value of a similar product observed during normal business operations in the country of origin or the exporting country, where its importation threatens or is likely to cause significant harm to a branch of domestic production".

The concept of dumping also includes what is stated in Executive Decree 05/222 of 22.06.2005, which establishes the conditions for implementing the right against dumping and its methods<sup>22</sup>. Article 10 of the Decree states "Dumping occurs when a product from a given country enters the domestic market at a price lower than the normal value of a similar product. The dumping margin is the difference between the export price of this product to the domestic market and the normal value of a similar product".

A review of the previous legal texts shows that the Algerian legislator has adopted the same definition as that contained in Article 2 of the international Anti-Dumping Agreement. This is further confirmed by the provisions of Articles 13 and 14 of Decree No. 05-222, which state that, in the absence of sales in the domestic market of the exporting country, dumping shall be determined by comparing the export price with the price of a similar product exported to another country, or with the cost of production in the country of origin, plus a reasonable amount for administrative, selling, marketing and other expenses<sup>23</sup>.

<sup>17</sup>- Iyad Essam Al-Hattab, *The fight against commercial dumping: Legal Measures in International Laws and Agreements*, Dar Al-Thaqafa, Amman, Jordan, 2011, p. 40.

<sup>18</sup>- Atar Nassima, *ibid*, p. 168.

<sup>19</sup>- Despite the fact that Algeria is not a member of the World Trade Organisation, Algerian legislation has shown great interest in the issue of dumping. This is evidenced by the treatment of dumping in Customs Law No. 98-10, as well as in some of the provisions of Decree No. 03-04 on the rules applicable to import and export operations, and Executive Decree No. 05-222 laying down the conditions and procedures for implementing the right against dumping.

<sup>20</sup>- Law No. 98-10 of 22 August 1998 establishing the Customs Code, Official Journal No. 61 of 1998, as amended and supplemented by Law No. 79-07 of 21 July 1979, p. 6.

<sup>21</sup>- Decree No 04-03 of 19 July 2003 on the rules applicable to import and export operations, Official Journal No 43 of 2003, p. 35.

<sup>22</sup>- Executive Decree No. 05-222 of 15 Jumada Al-Awwal 1426 corresponding to 22 June 2005, specifying the conditions for implementing the right against dumping and its procedures, Official Gazette No. 43 of 2005, p. 16.

<sup>23</sup>- It should be noted that Executive Decree No. 05-222 of 22 June 2005, which specifies the conditions for implementing the right against dumping and its procedures, was implemented in accordance with Decree No.



### **B) Types of dumping practice:**

Commercial transactions characterised by dumping, can be divided into several types according to their duration:

#### **1- The sudden or occasional dumping:**

This type of dumping is associated with unexpected or occasional events, sometimes seasonal, and is known as seasonal dumping. This type of dumping is prevalent in industries with low supply due to high costs<sup>24</sup>. The iron and steel industry is one of the industries most affected by this type of dumping<sup>25</sup> in order to cope with fluctuations in domestic demand<sup>26</sup>.

Initially, this type of dumping is temporary and often results from the accumulation of goods by the producer. The producer is willing to export these goods at prices lower than domestic prices in order to get rid of them and maintain their price in the main market. In this sense, it is similar to the clearance sales carried out by retailers at the end of the year. Because of its temporary nature, this type of dumping usually ends before it attracts much attention and its impact is often limited<sup>27</sup>. The main causes of this type of dumping can be attributed to poor planning, haphazard importation, the lack of a marketing system or the influence of global market instability<sup>28</sup>.

It should be noted that this type of dumping can also occur at the domestic level, known as internal dumping or predatory pricing, when a seller or producer sells below cost in order to dispose of accumulated surplus production. This type of dumping is combated by laws against unfair competition<sup>29</sup>.

#### **2- The persistent dumping:**

This type of dumping is based on market monopolisation, which allows the monopolist to make extraordinary monopoly profits domestically. Consequently, they adopt a policy of price discrimination and sell the product at lower prices in foreign markets, based on their domestic monopoly position. The aim is to reach optimal production levels, benefit from economies of scale and gain more market share<sup>30</sup>.

Therefore, persistent dumping inevitably leads to market monopolisation due to the protection enjoyed by the monopolist. Monopolies typically rely on protection from foreign competition through barriers and tariffs that create monopolies. Dumping, on the other hand, relies heavily on price discrimination. By reducing the price of the product in the foreign market to some extent, foreign demand for the product is increased because the lower price makes it more competitive. Thus, persistent price discrimination between flooded import markets generates higher profits<sup>31</sup>.

Persistent dumping is characterised by the absence of a specific time frame. This type of dumping is often aimed at increasing the market share of the dumper in order to benefit from economies of scale. Consequently, this type of dumping continues over a long period of time as the product is dumped<sup>32</sup>.

#### **3- The temporary (short-term) dumping:**

The purpose of dumping in this case is to achieve a specific objective and ends when that objective is achieved. It involves the lowering of selling prices with the intention of penetrating and winning

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03-04 on the general rules applicable to import operations, which provides precise definitions of the terms contained therein.

<sup>24</sup>- This type of dumping became widespread between the two world wars, when many factories had a surplus of certain goods that they could not sell domestically. They resorted to exporting them and selling them on foreign markets at any price. The main objective of these factories was to get rid of the surplus rather than to win foreign markets, Atar Nassima, *ibid*, p. 42.

<sup>25</sup>- Mohamed Slimane Qurra, *ibid*, p. 106.

<sup>26</sup>- Kaderi Lotfi Mohamed Saleh, *ibid*, p. 295.

<sup>27</sup>- Iyad Essam Al-Hattab, *ibid*, p. 59.

<sup>28</sup>- Benatia Lakhdar, *ibid*, p. 38.

<sup>29</sup>- Mohamed Mohamed El-Ghazali, *ibid*, p. 69.

<sup>30</sup>- Mohamed Slimane Qurra, *ibid*, p. 108.

<sup>31</sup>- Benatia Lakhdar, *ibid*, p. 36.

<sup>32</sup>- Mohamed Mohamed Ghazal, *ibid*, p. 75.



a foreign market, followed by compensation<sup>33</sup>. It can be considered as a form of trade war or unfair trade, whether it is carried out by the dumper in its domestic operations or in its foreign operations, as it leads to a limitation and restriction of free competition among the producers of the dumped product<sup>34</sup>.

This type of dumping practically embodies the concept of unfair trade<sup>35</sup>. Temporary dumping includes dumping with the aim of eliminating a competitor and forcing him out of the market or forcing him into an agreement. There is also defensive or retaliatory dumping, which arises from the desire to retaliate against a foreign dumper, i.e. to eliminate any dumping practices by the other party<sup>36</sup>. Short-term dumping is characterised by the fact that the dumper incurs significant losses but is willing to bear them until its objective is achieved and then seeks to recoup the losses incurred<sup>37</sup>.

In view of the significant risks that this type of dumping, even in the short term, may entail, as it often involves lowering the price of the dumped product below its average cost in order to achieve its objective, it is necessary to combat it by classifying it as a harmful and unfair practice which distorts competition<sup>38</sup>.

## **2<sup>nd</sup> Sub-Section: The distinction between dumping and similar commercial practices:**

Dumping has similarities with certain commercial practices in some aspects, means and results. However, it differs from them in other aspects, which we will explain below:

### **A) The distinction between commercial dumping and price predation:**

Price predation can be defined as offering a price lower than the one that would be achieved in order to increase profits, i.e. a price below the prices that would be set in the absence of predatory intent, with the aim of eliminating totally or partially existing competitors or preventing potential competitors from entering the market<sup>39</sup>.

The process of price predation is manifested in the deliberate and unlawful practices of a particular producer to strengthen its position in the market by temporarily maintaining a price lower than expected, with the aim of hindering other competitors<sup>40</sup>.

Although the concept of price predation overlaps with the concept of dumping in two fundamental aspects, namely the content, i.e. the abnormal reduction of the price level, and the effect, i.e. the obstruction of business activities, there are still significant differences, mainly as follows :

- The policy of dumping is pursued in markets where the exporting producers do not carry out their activities, through the export of goods, whereas the policy of price predation is pursued in markets suffering from predation, i.e. they differ in the location of the relevant activity<sup>41</sup>.

- Dumping is condemned even if it is shown that exporting producers do not intentionally harm other producers, for example by disposing of their excess stocks on the domestic market.

On the other hand, in the context of price predation, producers accused of it are only condemned if they intentionally harm other producers. This is as if they were forced to set the predatory price by market conditions.

<sup>33</sup>- Although temporary dumping is of a temporary nature and is similar to occasional or emergency dumping, they differ in that emergency dumping is aimed at eliminating a surplus of a particular product in order to maintain local market prices without the intention of eliminating competitors. In contrast, short-term temporary dumping is aimed at a specific purpose and ends with the achievement of that purpose, Iyad Essam Al-Hattab, *ibid*, p. 60.

<sup>34</sup>- Mohamed Slimane Qurra, *ibid*, p. 107.

<sup>35</sup>- Kaderi Lotfi Mohamed Saleh, *ibid*, p. 295.

<sup>36</sup>- Omar Mohamed Hamad, *ibid*, p. 200.

<sup>37</sup>- Mohamed Mohamed El-Ghazali, *ibid*, p. 75.

<sup>38</sup>- Benatia Lakhdar, *ibid*, p. 37.

<sup>39</sup>- Abdul Basset Wafa, *Policy of Project Destruction Through Prices and Its Impact on Competitive Markets*, Dar Al-Nahda Al-Arabiyya, Cairo, Egypt, 2001, p. 12.

<sup>40</sup>- Mohamed Slimane Qurra, *ibid*, p. 103.

<sup>41</sup>- Mghawri Shalabi Ali, *Protection of Competition and Prevention of Monopoly from a Legal Perspective*, Dar Al-Nahda Al-Arabiyya, Cairo, Egypt, 2005, p. 160.





-The notion of predatory pricing in most comparative law and contemporary economic thought is primarily focused on selling below the cost of production, as opposed to dumping<sup>42</sup> where the selling price is low but still above the cost of production. They therefore differ in the nature and extent of the reduction<sup>43</sup>.

#### **B) Dumping and predatory pricing:**

The term "predatory pricing" is used to describe domestic dumping. Domestic dumping, or predatory pricing, has earned this description because of the significant damage it causes to the local economy and to those who are subject to it. It is also characterised by its severity in eliminating competitors<sup>44</sup>.

Predatory pricing is defined as setting prices below the cost of production with the intention of harming competitors and eliminating competition<sup>45</sup>. It involves selling goods at prices below their cost of production in order to drive other competitors out of the market, and then returning to sell the products at monopolistic prices<sup>46</sup>. This is considered a form of monopolistic behaviour because it is a policy aimed at reducing prices to the lowest possible level in order to cause harm and eliminate weaker competitors. Once the monopolist gets rid of its competitors, it uses its monopolistic power to raise the prices of its products<sup>47</sup>.

From the above, it is clear that predatory pricing is similar to dumping in that both are prohibited practices under the World Trade Organisation agreements<sup>48</sup>. Both involve selling a product or service below cost or below market price, and both are considered unfair and unacceptable practices. They also have in common that they have a negative impact on the market and competitors because they aim to eliminate competition and drive out competitors<sup>49</sup>.

However, dumping differs from predatory pricing in that the term "dumping" is used specifically in the context of international dumping, while predatory pricing refers to domestic dumping<sup>50</sup>. In the case of predatory pricing, the target of the injury is the domestic market, whereas in the case of dumping, the target of the injury is export markets<sup>51</sup>.

In addition, international dumping involves selling below cost or below market price, while predatory pricing usually involves selling below cost.

In addition, the fight against international dumping is governed by the World Trade Organisation's Agreement on Subsidies and Countervailing Measures, while the fight against predatory pricing is governed by the rules on unfair competition in each country's national legislation<sup>52</sup>. It falls under the methods and procedures adopted by national authorities to protect competition and prevent monopolies, based on the economic ideology adopted by these authorities and the degree of strictness reflected in national competition laws<sup>53</sup>.

It should be noted that the Algerian legislator did not use the term "price burning" or "predatory pricing", but refers to a similar concept, "arbitrarily reduced prices", in Article 2 of Law 03-03 on competition (as amended and supplemented)<sup>54</sup>. Arbitrarily reduced prices are defined as a pricing

<sup>42</sup>- Abdul Basset Wafa, *ibid*, p. 20

<sup>43</sup>- Mghawri Shalabi Ali, *ibid*, p. 161.

<sup>44</sup>- Mohamed Mohamed El-Ghazali, *ibid*, p. 92.

<sup>45</sup>- Mohamed Slimane Qurra, *ibid*, p. 105.

<sup>46</sup>- Mohamed Abdel Halim Omar, Problem of Dumping and Price Undercutting, paper presented at the Eighteenth Symposium held at the Salah Abdullah Kamel Center for Islamic Economics, Al-Azhar University, Egypt, 2009, p. 03.

<sup>47</sup>- Mohamed Mohamed El-Ghazali, *ibid*, p. 92.

<sup>48</sup>- Mghawri Shalabi Ali, *ibid*, p. 161.

<sup>49</sup>- Benatia Lakhdar, *ibid*, p. 43; Mohamed Mohamed El-Ghazali, *ibid*, p. 94.

<sup>50</sup>- Mohamed Mohamed El-Ghazali, *ibid*, p. 94.

<sup>51</sup>- Mohamed Slimane Qurra, *ibid*, p. 106.

<sup>52</sup>- Mohamed Mohamed El-Ghazali, *ibid*, p. 94.

<sup>53</sup>- Mghawri Shalabi Ali, *ibid*, p. 161.

<sup>54</sup>- The criterion of arbitrariness of the price reduction is determined, according to the text of article 12 of the Decree 03-03 on competition, by comparing it with the production, transformation and marketing costs of the



policy adopted by a dominant company that sets the prices of its products or services in such a way as to cause losses, with the aim of excluding one or more competitors from the market or preventing their entry in order to maintain its dominant position<sup>55</sup>.

Some Algerian jurists consider the concept of arbitrariness in offering or practising reduced prices or selling at a price lower than the actual cost to be what is known in international trade as the principle of dumping. Some writings refer to it as "selling at arbitrarily reduced prices". The Algerian legislator currently refers to it as the offering or practice of selling at arbitrarily reduced prices<sup>56</sup>.

### **Second Section: Mechanisms to combat commercial dumping:**

Dumping is considered an unfair trade practice when suppliers lower their prices to uneconomic levels in order to drive local suppliers out of the market. It is therefore necessary to implement mechanisms and measures to combat commercial dumping, primarily through anti-dumping measures as an effective means of preventing this type of unfair competition (first requirement). In addition, a number of measures should be taken against dumping in order to protect the domestic industry (second requirement).

#### **First Sub-Section: Anti-dumping measures:**

The fight against dumping has established procedures and rules outlined in the Anti-Dumping Agreement. When the elements of dumping are present, the competent authorities initiate an investigation to confirm its existence and take appropriate action against it (first sub-requirement). However, these authorities are also obliged to ensure that investigations are objective (second sub-obligation).

#### **A) Conducting an investigation:**

The initiation of an investigation into the existence of commercial dumping is the first step in the investigation process. This is done by the submission of a written request by interested parties to the relevant authorities responsible for conducting investigations in the importing country. The request includes a statement of the existence of the dumping practice and evidence of the injury suffered by the complainant as a result of the practice<sup>57</sup>.

As a general rule, investigating authorities initiate an investigation into the existence of dumping on the basis of a request received. However, in special circumstances, they have the right to initiate the investigation directly, without receiving a written request, if they have sufficient evidence of dumping, injury and a causal link, as provided for in Article 5.6 of the ADA. In Algeria, on the other hand, Article 3 of the Decision of 3 February 2007 provides for the possibility of initiating an investigation to apply the right against dumping on the initiative of the investigating authority<sup>58</sup>.

As can be seen from the text of Article 05 of the Anti-Dumping Agreement, the request submitted must contain a number of pieces of information and data intended to substantiate the seriousness

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product. In other words, the declared price of the product is compared with the total cost of its production, transformation and marketing.

<sup>55</sup>- Arbitrary undercutting refers to the practice of proposing or applying a price lower than that which is actually achieved, with the aim of maximising profits and eliminating all or part of existing competitors or deterring potential competitors from entering the market. However, selling at reduced prices is not always aimed at affecting competition, but may be aimed at attracting customers or improving the institution's position vis-à-vis its competitors, which is legitimate and not prohibited. What is prohibited is the arbitrary use of such discounts. (Source: Belkheiri Hanane, "Arbitrariness in Price Reduction", Academic Journal for Legal Research, Volume 14/Issue 02-2016, pp. 476-477)

<sup>56</sup>- Regarding the protection of competition against arbitrariness in offering or practising reduced selling prices to consumers under Algerian competition law, Laour Badra discusses this issue in the Thinker Journal, Faculty of Law and Political Science, University of Mohammed Khider Biskra, Issue 10, 2014, pp. 360-361.

<sup>57</sup>- Ben Attia Lakhdar, cited above, page 202.

<sup>58</sup>- Leila Meshtar discusses the consolidation of the right against dumping between the Anti-Dumping Agreement of 1994 and Algerian legislation in the Legal and Political Research Journal, Volume 07, Issue 01, 2022, page 1341.





of the request or complaint concerning dumping of similar products in the same market. Furthermore, according to the second paragraph of the same Article, this information must be substantiated and not merely allegations<sup>59</sup>.

Upon receipt of the complaint, the competent authority shall inform the parties concerned of the dumping complaint and collect information and data in order to determine the extent of the dumping. In this regard, Article 06 of the International Anti-Dumping Agreement sets out the procedural steps for the collection of evidence and the conduct of the investigation, including the provision of notice to the interested parties and the affording of reasonable opportunity to submit all relevant evidence relating to the subject matter of the investigation<sup>60</sup>.

The request is rejected and the investigation is terminated immediately if the authorities are satisfied that there is insufficient evidence of dumping or injury to justify proceeding with the case. The investigation will continue if the request is accepted within one year of its initiation, unless there are special circumstances, and will in no case exceed 18 months. In addition, anti-dumping procedures should not impede customs clearance procedures<sup>61</sup>.

#### **B) Investigation guarantees:**

Although the Anti-Dumping Agreement does not require investigating authorities to take into account various aspects of the determination of dumping, injury and the causal link between them in their decision to initiate an investigation<sup>62</sup>, they are required to seek sufficient evidence to justify the initiation of an investigation. This does not mean, however, that they do not provide adequate guarantees for the investigation.

One such guarantee is that the investigating authorities are required to notify the government of the exporting Member upon receipt of a request to initiate an investigation. This notification in itself serves as a procedural guarantee to enable the government of the exporting Party to take the necessary measures, to prepare a written response to the complainant and to collect evidence and proof to refute the allegations made by the complainant<sup>63</sup>.

In addition, the authority in charge of the investigation is required to provide several guarantees to the parties involved in the investigation. In addition to providing them with the full text of the request to open an investigation, they are also required to provide interested parties with access to all non-confidential evidence upon request. In addition, during the investigation period, they must allow these parties to meet with other parties to the dispute to present their case<sup>64</sup>.

It is also clear from the text of Article 3.05 and 3.06 of the Anti-Dumping Agreement that a certain degree of objectivity must be imposed on the ongoing investigative procedures with regard to the examination of the alleged phenomenon of dumping of imported goods or foreign exporting companies. In this regard, accuracy and transparency must be ensured by requiring the investigating authorities to take into account other external factors affecting the performance of local industries, so that dumping is not arbitrarily determined<sup>65</sup>.

#### **Second Sub-Section: Anti-dumping enforcement procedures:**

The Anti-Dumping Agreement gives the affected country, which is suffering the negative effects of dumping, the right to take a range of measures to counter dumping in order to protect its domestic industry. These measures include provisional measures, price undertakings and definitive duties.

#### **A) The provisional measures:**

<sup>59</sup>- Paragraph 2 of Article 5(2) of the Anti-Dumping Agreement describes in detail the product alleged to be dumped, the name of the country or countries of origin or export concerned, the identity of any known source or known foreign producer, and the list of known persons importing the product in question.

<sup>60</sup>- Youssfi Maamar, cited above, page 189.

<sup>61</sup>- Madani Lajal and Taher Brayek, "Combating Commercial Dumping as Contrary to International Trade", *Al-Ijtihad Journal of Legal and Economic Studies*, Volume 07, Issue 01, 2018, page 2012.

<sup>62</sup>- Baouche Delila, "Legal Mechanisms for Combating Commercial Dumping within the Framework of the World Trade Organization", *Journal of Humanities*, Volume 31, Issue 04, 2020, page 527.

<sup>63</sup>- Ben Attia Lakhdar, cited above, page 215.

<sup>64</sup>- Leila Meshtar, cited above, page 1341.

<sup>65</sup>- Kadri Lotfi Mohammed Saleh, cited above, page 315.



Article 07.02 of the Anti-Dumping Agreement, sets out the types of provisional measures that can be taken by the importing country concerned<sup>66</sup>. These measures include, in particular, the provision of a provisional guarantee, which may take the form of a cash deposit or a bond provided by the importer under investigation. It also includes the suspension of customs clearance for the value of the goods under investigation, provided that the normal duty and the estimated amount of the anti-dumping duty are indicated. In addition, a provisional duty is required, provided that the amount of such duty does not exceed the provisionally estimated margin of dumping<sup>67</sup>.

As a general rule, the application of provisional measures should not exceed a period of four months, in particular where the duty or guarantee is equal to the calculated margin of dumping. However, in exceptional circumstances, the period of application of provisional measures may be extended up to a maximum of six months<sup>68</sup>.

#### **B) Pricing Promises:**

Pricing Promises are voluntary commitments offered by exporters, either on their own initiative or at the request of the importing country. Under such promises, the exporter agrees to revise its prices or to cease exports to the importing country concerned at dumped prices, thereby satisfying the investigating authorities in the importing country that the injurious effects of dumping can be eliminated<sup>69</sup>.

Pricing promises can take the form of price adjustments for the goods or products found to be sold in the market at dumped prices, where the exporter or producer increases its prices. Alternatively, they can take the form of a suspension of exports of the dumped products to the markets of the importing country concerned; provided that the investigating authorities are satisfied that such promise will remove the injurious effects of dumping on their markets<sup>70</sup>.

Price promises are the second means of dealing with the threat of price dumping. The Anti-Dumping Agreement, under Article 08.01, allows for the termination or non-imposition of provisional measures or anti-dumping duties if the investigating authorities receive acceptable voluntary promises from any source or product subject to dumping<sup>71</sup>.

#### **C) Final anti-dumping duties:**

<sup>66</sup>- Paragraph 02 of Article 07 of the 1994 Anti-Dumping Agreement states: "Temporary measures may take the form of provisional duties, preferably in the form of a provisional security - cash deposit or bond - equal to the amount of the provisionally estimated anti-dumping duty and in excess of the margin of dumping provisionally estimated. The suspension of customs clearance shall be considered an appropriate temporary measure, provided that the normal duty and the estimated amount of the anti-dumping duty are indicated, and provided that the said period of assessment is subject to the same conditions as other temporary measures".

<sup>67</sup>- Amal Mohamed Shelbi, "Limiting the Mechanisms of Monopoly and Preventing Dumping", cited above, page 77).

<sup>68</sup>- The fourth paragraph of Article 07 of the 1994 Anti-Dumping Agreement states: "The application of temporary measures shall be limited to the shortest possible period, not exceeding four months, or - by decision of the competent authorities - for a period not exceeding six months, on the basis of a request by exporters representing a large percentage of international trade. Where the authorities consider that a minimum duty below the dumping margin would be sufficient to remove the injury, these periods may be six and nine months respectively".

<sup>69</sup>- Amal Mohamed Shalabi, the limitation of monopolistic practices and the prevention of dumping, cited above, pp. 77 and 78.

<sup>70</sup>- Atar Nassima, the same reference, p. 124.

<sup>71</sup>- The first paragraph of Article 08 of the 1994 Anti-Dumping Agreement states: "The suspension or termination of measures or the imposition of temporary measures or anti-dumping duties may be waived upon receipt of satisfactory voluntary undertakings from any source to review or cease its exports to the area concerned at dumped prices, provided that the authorities are satisfied that the effects of dumping will be eliminated. It is preferable for price increases to be less than the dumping margin if they are sufficient to eliminate the resulting injury to the local industry".



Final anti-dumping duties are one of the most important and effective measures against dumping<sup>72</sup>. The importing country has the right to decide whether or not to impose anti-dumping duties, provided that all the conditions for their imposition are met. The importing country also has the right to determine whether the amount of anti-dumping duties imposed will cover the full margin of dumping or less<sup>73</sup>.

In this respect, the Anti-Dumping Agreement gives importing countries and their investigating authorities the possibility to impose provisional duties to protect their domestic industries from dumping practices, after establishing the full responsibility of the source for the existence of dumping and the resulting injury.

However, the unlawful imposition of these duties may lead to the same result as that sought by the source of dumping, i.e. market monopolisation. These duties can be used in an anti-competitive manner to preserve monopolistic interests in the importing country by eliminating free competition<sup>74</sup>.

### CONCLUSION:

This study highlights the significant threat that trade dumping poses to fair competition in international trade and the global economy. It transforms competition from a means of development and progress into an instrument of economic conflict, leading to the exclusion of existing competitors, the closure of markets and the prevention of new competitors. In response to this challenge, the Anti-Dumping Agreement was established as an international agreement for the application of Article 6 of the GATT 1994, with the aim of restoring the international balance between supply and demand that had been disturbed by dumping practices.

A number of findings and recommendations were made in this study:

### RESULTS:

- Dumping poses a serious threat to domestic firms producing dumped goods, as the aim of foreign firms is to eliminate such firms from competition and subsequently raise the prices of goods after securing a market in the target country.
- Trade dumping is considered a harmful practice and one of the main causes of market monopolisation in the importing country. Therefore, combating dumping through clear and effective legal mechanisms is the best way to avoid monopolies.
- The Anti-Dumping Agreement ensures fair competition in international trade by establishing strict international standards to determine the illegality of dumping through a comparison of prices between the exporting and importing countries. It also establishes objective and procedural conditions for dealing with this behaviour.

### RECOMMENDATIONS:

- The fight against dumping requires various prerequisites, including political and legal commitment, in order to lay the foundations for a fair international trade system that does not discriminate between rich and poor countries.
- Given the significant disparity in competitiveness between products from developed and developing countries, it is fair and equitable to include provisions in the Anti-Dumping Agreement that benefit the latter in order to rebalance international trade.
- It is necessary to respect the principle of national sovereignty by allowing countries to adopt national regulatory measures to combat dumping and to defend their economic and commercial

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<sup>72</sup>- Anti-dumping duties represent a departure from one of the basic principles of the World Trade Organisation, namely the principle of the fixing and progressive reduction of customs duties. This approach implies a restriction on the freedom of international trade, which is justified in the face of an illegitimate pattern of behaviour by exporters who export goods at a price lower than their usual value.(Source: Iyad Essam Al-Hattab, quoted above, page 215)

<sup>73</sup>- Mohamed Sulaiman Qurrah, cited above, page 132.

<sup>74</sup>- Ben Attia Lakhdar, previously cited, page 275.



rights, provided that these measures are consistent with the provisions of the Anti-Dumping Agreement.

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