

# The Dumping-Based Unfair Trade in World Trade Organization WTO

Professor Dr. Soroush Niknamian

Ph.D. in Cell and Molecular Biology, CSci (Chartered Scientist), RSciTech (Registered Science Technician), RSci (Registered Scientist) ID: A0008833, Science Council, United Kingdom and Indiana Cancer Consortium (ICC) certified. Registered Researcher in the U.S. Government's System for Award Management. Registered Scientist at National Center for Biotechnology Information. Medical Student at Liberty University, United States of America, Military Medicine. BSc in Mechatronics Engineering and BSc in applied Mathematics.  
E-mail: soroush.niknamian@mycampus.apus.edu

## Abstract

As one of the unfair procedures, dumping acts as a tool for illegal competition used by some of enterprises in foreign market and it can destruct domestic production sectors of importer countries. Whereas general regulations of World Trade Organization (WTO) have emphasized on accepting of free trade system and thus reducing of tariff barriers and required member states to coordinate their economic and legal structures with regulations of this organization so the risk has been increased for occurrence of dumping. The antidumping WTO agreement includes some measures e.g. enforcement and imposing of additional levies to fight against this anti-competitive activity that is taken usually with the request from domestic producers by the governments. The unfair trade procedures are some measures based on unfair method in which the goal and result are creation of disorder in the market and injury to benefits of commercial partners. In these procedures, the competitive potential is noticeably increased for the goods that enjoyed unfair measures. The government may not play role in dumping while the commercial enterprises import their products at price lower than usual value to capture market from their rivals. Thus, this main research question is proposed: What are the foremost strategies in WTO to tackle with dumping problem? In response to the major hypothesis, it has been emphasized on this point that presentation of countervailing duties, subsidies and civil liability are the foremost solution to fight against dumping in WTO.

**Keywords:** *Dumping, Unfair procedures, Antidumping, World Trade Organization (WTO)*

## Introduction

The World Trade Organization (WTO) is an international organization that regulates world trade laws and settles the differences between member states. As one of the unfair procedures, dumping serves as a tool for illegal competition used by some of companies in the foreign markets and it may destroy domestic production sectors in the importer countries. Dumping means selling of goods cheaply in another country and in lower than usual and fair price of the given commodities. Whereas general rules of WTO have been focused in acceptance of world trade system and thus reduction of tariff barriers and they have required

the member states to coordinate their economic- legal structures with the regulations of this organization therefore the risk of occurrence of dumping has been increased. The climate governing over today trade is fully competitive space and presence of several producer and consumer countries has prepared the ground for unfair competition more than ever. Dumping is one of examples of unhealthy competition in world trade scene and it is known as one of the behavioral variables that can affect structure and performance of market. The WTO Antidumping Agreement comprises of several measures e.g. enforcement and imposing of additional levies to campaign against this anti-competitive action that is usually taken with the request of domestic producers by the sovereign states. The general agreement allows the goods-importer country which has been lost by activity of the exporter country to impose antidumping levies for importation of the given goods to this country to compensate for difference of price. A government may act otherwise and designates economic aid or advantage for a product in domestic market so that the given product to become cheaper or more suitable than that similar product in the domestic market. This measure is to grant subsidy if it seriously injures interests of other members states in this agreement it should be restricted and avoided. The economic assistances of government for the goods may be in two types: one is the governmental assistance for lower price of domestically produced goods in the internal market in order to reduce competition between imported goods with this commodity and the other one is when government assists to price of their exported goods as incentive and growth of exportation market. The government may generally and directly contribute to the production; of course, in this case the effect both above-said types will result. The economic contribution and advantages of government may be in forms of money, goods and services and they may be done in different ways e.g. direct assistance to exports, granting of loan to the exporter, exemption of exporters from tax and the like. It should be noticed that in many cases economic assistance of governments to goods is not intended to deal a blow and loss to foreign trade of a country and it has no unfavorable and inappropriate effect in international trade. This means that giving of subsidies is no problematic in some cases but it is favorable, but it is a difficult task to specify dimensions of favorable and unfavorable subsidies. With respect to the aforementioned issues, the main question is that what are the foremost strategies in WTO to struggle with subject of dumping? To respond to this question, we initially review on research theoretical bases and then dumping in WTO regulations and afterwards we will analyze legal strategies to fight against antidumping, legal gaps of dumping and the governing law in WTO and legal tools for campaign against dumping in Iranian legal system and EU.

### **1- Dumping theoretical bases**

Dumping is derived from term 'Dump' that means to sell cheaply and to break price and market and in terminology it denotes sale of a certain commodity in a foreign market under the price resulting from final cost of production of the given commodities in the supplier country in order to acquire advantage in competition with other suppliers of the same

commodities. In international transactions, this term refers to sale of a certain commodity lower than price in the domestic market and also dumping is called to deceptive competition and or discrimination in foreign commerce (Farhang, 2000: 320). Dumping emerges when two conditions satisfy:

- 1) The industry acts partially in competition so that it does not determine price in dictated form and by the market.
- 2) The market acts as guide so that domestic consumers could not use and purchase exported goods because the exported goods are generally supplied cheaper than domestic commodities.

This policy is taken generally by wealthy countries in the world markets and against the retarded nations, particularly in agriculture sector e.g. for wheat, soybean, corn, cotton and rice. The subject of granting of exporting subsidies of agriculture sector to the industrial countries was the main reason for failure in world trade talks held in Cancun (Mexico) in 2003. (Shokouhi, 2002: 87)

This behavior was assumed as a negative practice in GAT member states and they stipulated specific punishments for it in order to protect from their domestic industries and producers. One of the oldest measures taken for antidumping goes back to early 19<sup>th</sup> Ad, when some of sugar producers in Europe asked their governments to support sugar industries. This caused the aforesaid government to codify a formal and antidumping agreement in 1902. Two years later in 1904, Canadian government approved an independent antidumping law and then other European countries and USA also enacted similar laws. Since establishment of WTO (1995) to the early 2004, totally 2416 antidumping cases have been proposed. Only 101 cases were proposed in 2004 out of which about 52 cases were sentenced for antidumping and 19 cases out of 52 cases were proposed by advanced nations and 33 cases by developing countries in WTO to protect from primary industries and occupational opportunities. In 2001, USA offered 44% as dumping rate (e.g. lesser than total cost for wheat production) and this caused third world nations to ask for lack of production of important crops e.g. wheat in their countries given that price of wheat produced domestically might be more expensive than price of the product bought from USA (Taghizadeh Ansari, 2008:1).

Also on 14/08/2007 in Iran, the board ministers agreed to protect from domestic producers by taking antidumping protectionism measures and efforts. According to Article 6 of GATT (1994) and also Article 21 of antidumping agreement, dumping occurs as a commodity enters into trading stream of another country by a price lower than normal value of goods. Therefore, as a commodity is sold by dumping the exportation priced of that commodity is lower than normal value of the given good; namely, the correspondent price of commodity in normal trading stream of market is lower than price of the given similar product for consuming in the exporter country (Taghizadeh Ansari, 2005: 518).

As it observed in the given definitions, the experts could not propose a single basis for concept of dumping. Some groups have defined dumping based on price as criterion and in contrast some others have selected production cost as criterion. The price criterion has major advantages compared to cost criterion. For instance, it is easier to distinguish dumping based on price criterion than criterion of production cost for the commodity in exporter country. Similarly, price criterion can prevent from those cases a country reduces final production cost of commodity by monopoly of market of importer country and at the same time for escaping from antidumping levies through granting specific aids to the domestic producers (Taghizadeh Ansari, 2005: 518).

### **1- Dumping in WTO regulations**

The WTO is an organization that was established for supervision over world trade and liberalization of trade in the world on 1<sup>st</sup> January 1995. This organization follows General Agreement on Tariffs and Trade or so-called GATT that was implemented among various countries in the world in 1947. This agreement was executed for about five decades in the world, but only it covered only subject of goods and did not propose a solution for modern issues in presentation of economic transactions among countries. In addition to supervision over trade laws in different countries, WTO is also responsible for completion of laws for world trade agreements and or bilateral or multilateral rules. The tasks of WTO include legislation and judicial affairs. Whereas WTO is a reference in which trade agreements are approved, the legislative task of this organization is realized and judicial task of this organization is implemented by through difference settlement structure. The headlines of economic goals of the agreement are as follows: upgrading of living level, provision of full employment and developing of production and trade etc. additional in the new organization not only goods sector, but also servicing sector is included as well (Ghorbanpour, 2015: 114).

The historical study witnesses that UK has acted as pioneer in execution of dumping along with other countries (Weiner, 1996: 36). At early 14<sup>th</sup> AD century, this country has tried to delete American producers and acquiring of monopoly of the market by taking deceptive policy and British exports exerted detrimental effects on American domestic industries and stimulated American authorities to conclude bilateral agreement thereby British exporters were required for observance of illegal competition principles. The quick growth of industry in USA encouraged owners of industries in this country for exportation and among them, Canada was one of the first nations that were subject to dumping by USA. Thus, commercial officials of this country (1875) took custom measures and tariffs against importation of American products and finally in 1904 Canada became pioneer in this trend by approval of custom tariff act concerning antidumping. Then New Zealand (1905), Australia (1906) and South Africa (1914) codified their own antidumping regulations. In order to support from American industries against German cartels, USA enacted the first antidumping regulations.

The first international antidumping regulations were codified following to approval of General Agreement on Tariffs and Trade (GATT, 1947). Despite some opposition in 1968, a separate group of regulations were approved for antidumping within GATT framework and then some major revisions were made in national laws in European Community and Canada. Due to opposition from American Congress, these regulations did not become too important. Coincided with the starting of Tokyo Round Talk (1973), some issues were presented about execution of antidumping in Kennedy Round and Tokyo Round of Talks that led to revision in the previous regulations. Finally, during Uruguay Round of Talks (1983-1994), antidumping regulations were turned into one of the main subjects and disagreement existing among the countries concerning modifications of antidumping regulations threatened achievement of Uruguay Round of Talks but at last a new agreement resulted and implemented by starting of activity of WTO in 1995. This multilateral agreement is assumed as binding for all members of WTO and it was replaced with Tokyo multilateral regulations.

## **2- The antidumping trend in WTO**

Similar to legal proceedings, in order to tackle with risky dumping, the countries should start with a group of studies and investigations to prove that hazardous dumping has occurred. Then they should make decision about way of tackling with it and what type of compensatory measures that should be taken. Article 5 of agreement has stipulated conditions and procedure for execution of studies and offered it as a pattern for member states.

Execution of investigation is the first step for taking antidumping measures. According to Articles 1-5 and 1-6 of agreement, investigation is done in two ways: either authorized officials of importer country start investigation or following to written request by domestic industry, such investigations start by the government. If relevant officials decide to start investigation without receiving of written request from a domestic industry under specific circumstances, it is necessary to achieve available evidences and documents about occurrence of dumping and such a dumping has exerted loss to domestic industries and there is also causal relationship among dumping and exerted injury (Khadem Razavi, 2013: 77).

However following to a request from domestic industry in process of starting of investigation, an application should be presented from domestic industry or by them. Similar to any legal action, beneficiary should ask for proceedings. Based on Article 4-5 of agreement, the given request is assumed proposed by or in favor of domestic industry if it is supported by that group of domestic producers whose total production includes more than 50% of total production of the similar commodity manufactured in that sector of domestic industry for which they supported it with the given request. Of course, if that group of domestic producers who have explicitly supported from the given request includes less than 25% of total manufacturing of the similar product in domestic industry, no investigation will start.

The request for initiation of investigation should include evidences of dumping and injury and causal relationship between dumped imports and claimed injury. Any claim may not be solely as adequate without proving it by evidences in terms of agreement. The aforesaid request should include following contents: particulars of both parties; size and value of domestic production of similar commodity by applicant in cases for which the written request should be implemented by domestic industry, type of dumped product; information about sale price of given product for consuming in domestic markets of the country or countries of origin or exporter; information about exportation prices and or if necessary the information about prices the product is resold for the first time to domestic buyer within territory of importer member state at the same prices; information about determination time for the alleged dumping imports; effect of given imports on prices of similar product in domestic market and subsequent effect of these imports on domestic industry (Rahbari, 2009: 41).

Another point mentioned in this investigation is that the investigatory official should avoid from disclosure of the request at the beginning process unless it was decided about starting of investigation. The investigatory officials shall inform the exporter government about receiving of complaint before implementation of antidumping investigations. As investigations started, the authorities should put full written request test at disposal of exporter government. Following to start of investigations, the relevant officials should inform to the beneficiary parties about the information the authorities need and also they were given a suitable opportunity to present in written all documents they assume them as relevant to subject of the given investigation and at the same time the adequate time will be given to them to defend from their interests. The exporters or foreign manufacturers, who receive the questionnaires used in dumping investigation, are given opportunity to respond to it at least 30 days after receiving of questionnaires (Sadeghi, 2012: 94).

The other point, which should be considered in trend of investigations, is related to investigator officials. The investigator officials have been clearly and explicitly determined in the agreement. It is mentioned in endnote of Article 1-2-2- that: 'As term 'authorities' is used in the present agreement it may be interpreted as officials who are positioned at appropriate rank.'

The losing country of dumping can apply for execution of antidumping after execution of full investigations and proving of occurrence of dumping. WTO antidumping agreement specifies the antidumping methods. One of these antidumping methods is to propose a framework for antidumping national regulations in member states. On the one hand, the international procedures and on the other hand international interests have required presence of antidumping national regulations and the governments try to codify effective national regulation and adaptive to WTO.

Adaptation of national regulations to WTO rules that are called compliance condition and assumed as requirements for joining to WTO, is not considered as a barrier against national

political requirements. In addition, the antidumping effective mechanism needs to legislation that has adequate execution potential in efficient implementation of those regulations.

The antidumping duties are also one of the ways for coping with this phenomenon. With respect to principle of free trade and exceptional status for stipulation of antidumping dues, this agreement holds a general rule: 'Antidumping duties will be executed and enforced only within certain period and to some extent it is necessary for thwarting the effect of proceedings as cause of injury.' In order to prevent from probable abuse of countries and avoid these countries from exertion of additional levies over several years as excuse for neutralizing of dumping effect, this agreement has specified permissible time for exertion of final duties in Article 3-11. On the strength of article, 'Any antidumping duties will be terminated not later than 5 years after date of execution (or date of latest revision as per Clause 2 it includes both dumping and damages if revised).' Determination of the given level suggests that following to principle free trade and the spirit governing over WTO regulations, codifiers of regulations of this agreement have looked at dumping duties as an exception and they have tried to restrict its range as possible. The aforesaid duties are enforced within certain period so that implementation of these fees and duties not to remove competition between domestic and foreign producers. The agreement has stipulated condition for automatic waiver or cancellation of antidumping fees and duties for the first time. According to this article, the final antidumping duties will be cancelled not later than 5 years after exertion or date of the latest revision (Khodaeinejad, 2015: 35).

According to Article 2-11 of agreement, decisions are made at the end of antidumping action may be appealed and application for appealing will be proposed to authorities of importer country. Likewise, according to agreement, if reasonable time has passed since date of stipulation of antidumping final dues, the appealing will be done by the request from any beneficiary who proposed affirmative information regarding requirement for revision. The agreement has made application of beneficiary for revision as subject to a reasonable period of time but it is silent about what period is reasonable. This issue causes the stipulated duties by investigation reference to be able to be protested in these periods and to challenge certainty of the given decision.

### **2-1- Measure during proceedings**

Making final decision for dumping requires for execution of full investigations. Nevertheless, addressing to antidumping action does not always proceed through a simple and normal trend and sometimes the problems may occur within proceeding phase for which the addressing reference is required for making duly decision about them. Taking provisional measures, accrual for price and addressing to new exporter or exporters are some important issues which may be proposed during proceedings. If addressing reference primarily discerns dumping has occurred and there is possibility for injury to domestic industry then the addressing reference can take necessary measures to prevent from occurrence of more

injuries temporarily. On the other hand, if exporter is pledged to revise his exportation prices so that it was ascertained for authorities of importer country the hazardous effects of dumping are removed, the proceedings can be terminated without execution of legal actions until final determination of antidumping rights and dues. In addition, it is possible in proceedings phase for dumping actions that another country or countries import the same type of dumped commodity produced by the addressing country therefore it is also necessary to address exports of the given country (Van den Bochette, 2005: 540). Concerning provisional measures, the agreement has anticipated special regulations about taking provisional measures during period of proceedings. Of course, these measures are taken if it is primarily recognized dumping and subsequent injury to domestic industry have realized. According to Article 71 of agreement, the provisional measures can be taken if the relevant officials recognize such measures as necessary to prevent from injury caused during investigations about dumping by stipulation of temporary duties or preferably collateral including security or letter of guarantee equivalent to rate of dumping duties which have been temporarily approximated and this amount should not exceed from dumping margin (2). The provisional measures will not start sooner than 60 days after starting of investigations and provisional measures are executed for short period and will not exceed from 4 months and or it will be 6 months based on decision made by the relevant officials and by the request of exporters who possess noticeable percentage of the given trade (Katouzian, 2008: 56).

The accrual for price is one of the other measures during proceedings. The exporter or exporting country may be pledged to renounce importer country from stipulation of antidumping duties by rise of price of dumped product within investigations. Also in the cases when exported product enjoys non-allowed subsidy, undertaking for accrual means the given government is required for prevention from granting of this class of subsidies (Morkre and Kurt, 1989: 75).

To accept accrual, exporter or exporting country give offer to addressing reference in importer country so that the reference to make decision about acceptance or rejection of it. if it is accepted the accrual will be continued as long as destructive status caused by dumping or subsidy is removed and the accruals are cancelled. If accrual is infringed by the compromiser, the given reference can stipulate provisional duties with respect to circumstances and conditions of the case and if proceedings of action are suspended, suspension is terminated and the case is started to be addressed (Badini, quoted from Thomas and Sharpe, 2001: 36).

Sometimes during addressing to antidumping action, a new exporter or exporters may export the same product to the importer country. Whereas domestic industry has been subject to serious injury or threat by importation of dumped products, importing of the same product even by those exporters dumping is not attributed to them can be risky. This subject is only mentioned in Article 95 of agreement and accordingly the exporters or producers who have exported the given commodity to the importer country in proceedings period may ask the



investigation reference in written to determine dumping margin. Of new exporters can prove their commodities are not related to the goods included in dumping measures, their goods will be excluded from dumping margin.

## **2-2- Antidumping measures**

After implementation of full investigations, the addressing reference stipulates additional custom duties for antidumping. As the conditions are prepared for stipulation of antidumping fees and dues, the authorities of importer country should also decide if additional custom duties to be stipulated and also how much it should be. The principles governing over free trade required agreement to encourage national references to stipulate duties to amount lesser than dumping margin. Namely, it should reduce it if the duties equivalent to level of dumping margin is greater than the amount necessary for removal of given injury.

According to terms of agreement, antidumping duties are stipulated according to two bases: Stipulation of duties ex post facto (retroactive) and prospective determination of dues. If rate of antidumping duties is evaluated by ex post facto basis, duties are paid within 12 months and in any case antidumping duties should not exceed from 18 months since date of request from determination of amount of antidumping dues.

The prospective antidumping duties are realized when national authorities stipulate final or absolute duties for the goods which are imported from now on. In such types of dues, it is predicted for immediate returning of any additional payable fees and duties than dumping margin (Kamari, 2010: 89).

With respect to legal principle of 'Ex post facto of contingent activity', the agreement holds that the provisional measures and final antidumping fees and duties will not enforced for the products before date of binding execution of decisions based on making final or provisional decision and according to legal interpretation they are not retroactive. Nonetheless, under specific conditions, this rule is not observed and duties become retroactive. The time period should be determined for the exerted duties after stipulation of antidumping duties (Kamari, 2010, quoted from Furse, 2008).

With respect to principle of free trade and exceptional status of antidumping dues, agreement stipulates a general rule: 'The antidumping duties will be implemented and applicable only until the time and to extent that they are assumed as necessary for neutralizing the effect of proceedings caused injury.' In order to prevent from probable abuse by countries and avoiding of these countries to stipulate additional levies for several years as an excuse for thwarting of dumping effect, this agreement has specified the allowed period for exertion of final duties in Article 113. By virtue of this article, 'Any type of antidumping duties shall be terminated not later than 5 years since date of exertion (or date of latest revision as per Clause 2 it includes both dumping and damages if revised).' Determination of the given level suggests that following to principle free trade and the spirit governing over WTO regulations,

codifiers of regulations of this agreement have looked at dumping duties as an exception and they have tried to restrict its range as possible. The aforesaid duties are enforced within certain period so that implementation of these fees and duties not to remove competition between domestic and foreign producers. The agreement has stipulated condition for automatic waiver or cancellation of antidumping fees and duties for the first time. According to this article, the final antidumping duties will be cancelled not later than 5 years after exertion or date of the latest revision (Jafari Harandi, 2011: 86).

According to Article 2-11 of agreement, decisions are made at the end of antidumping action may be appealed and application for appealing will be proposed to authorities of importer country. Likewise, according to agreement, if reasonable time has passed since date of stipulation of antidumping final dues, the appealing will be done by the request from any beneficiary who proposed affirmative information regarding requirement for revision. The agreement has made application of beneficiary for revision as subject to a reasonable period of time but it is silent about what period is reasonable. This issue causes the stipulated duties by investigation reference to be able to be protested in these periods and to challenge certainty of the given decision (Badini, 2005: 98).

### **2-3- Anti-circumvention**

Anti-circumvention is one of the problems that may occur after end of proceedings and stipulation of antidumping dues. Circumvention is dodging and the escape from payment of dumping duties by fraudulent techniques e.g. importing of parts and their assemblage (montage of product) and or exertion of small changes in product and or changing of origin of product by multinational companies and the like. Accordingly, the exporter divided the exported product into several parts instead of exporting it as a combined product to escape from payment of antidumping duties and exports the same product in different form; for example, instead of exporting of a vehicle, he imports it in several steps and through exporting of different parts to the foreign country (Dozhankhouy, 2004: 87).

Concern over this issue stimulated European Union and USA to enact national laws in this regard at the end of 1980s and it was even discussed and reviewed in Uruguay Round of Talks, but no agreement was made for it; nevertheless, it was stipulated in Morocco Summit that WTO Antidumping Procedures Committee to hold uniform rules to tackle with such measures as soon as possible. So far no efficient measure has been taken in this regard and therefore there is no specific regulation about anti-circumvention in WTO agreement and other documents. Nonetheless, many developing nations in Latin America have unilaterally enacted national regulations for this purpose (Weir, Tony, 2006: 192).

Utilization from antidumping rules has emerged as one of the trading tools in developing countries while this application is going to increase in these countries. India is one of such nations that use frequently such antidumping rules. Those who vote in favor of antidumping

tariffs believe that this is a tool to support them against cheap imported goods. On the one hand, opposite group to antidumping tariffs believes that imposing of antidumping tariffs may not be in favor of domestic economy of the same country and they imply such rules deprive these communities from enjoying of diversification of goods and reduced final cost. The antidumping regulations should support from smaller industries not basic industries. It is because of the fact that small industries are injured by dumping at maximum level, but supporting from competition in domestic industries should not be only reason for antidumping laws because such laws act as a barrier against development path of free trade and competition. If regulations of antidumping tariffs still deal blow to economy of weaker countries, such blows may lead economic growth to stop in this countries because they will not be able to provide stability and security and economic progress for their own. Even threat to stipulation of such regulations may be followed by detrimental effects in performance of small- and medium-sized enterprises and reducing of production and extensive unemployment and expansion of social poverty. The antidumping laws have been also held by advanced countries in which they support from their industries against cheap imported goods. Even there was great distance between goals of countries where their exports were invaded by antidumping laws from the beginning (i.e. developing nations) on the one hand and the countries these regulations are more utilized (i.e. developed countries) on the other hand.

Developed countries tended to develop these regulations and fight against the methods to move to distance from antidumping laws which might injure their domestic industries. Such offers from countries were totally absolute and radical. The arte of salaries and wages varies in different countries. Economic status and rate of demand are also different. A certain economic rule expresses that the enterprises move with the maximum profitability. The profit is usually going to increase as long as income is higher than cost. Rise of costs in other countries base on pricing may not be accepted according to economic status. Dumping of capital in a certain industry and rise of business in that industry should not be analyzed separately. In other words, it should not be supported from an industry at any cost. Position of developing countries e.g. India is in line with limitation of this agreement. Although deregulation of antidumping may not lead to increase competition and to reduce price for the consumer and to rise production and national income but it is unreasonable for use to hope WTO to do it in near future (Le Tourneau, 2005: 133).

### **3- Legal strategies of dumping**

Antidumping is a tool for fighting against the conditions which have emerged by dumping of goods and trade dues. The antidumping custom tariff is to fight with trade problems caused by dumping to establish fair competition that has been also recognized as permissible by World Trade Organization (WTO). The antidumping is the tools for realization of fair trade conditions not supportive tools of domestic industries. The above-said regulations may only create security for domestic industries to struggle with injuries caused by dumping. As it

mentioned GATT regulations, a government has power to support from the existing enterprises and institutes in the given country but it has no power concerning other markets. Given aforementioned issues, in case of occurrence of consequences caused by dumping goods and deceptive and unfair competitive behavior by a country versus domestic market of importer countries and also proving of injuries exerted through such a measure by domestic industries of the given country or even proving threat to an injury, according to GATT regulations each of contracted parties that accepted antidumping regulations should coordinate their administrative rules, regulations and procedures with WTO antidumping regulations and asks for their rights by enforcement of related regulations in necessary cases. Using of antidumping laws is deemed as one of trading methods in developing nations and antidumping agreement has administered some measures for dumping status including:

### **3-1- Countervailing duty**

It is a method based on which the agreement allowed the countries to stipulate countervailing duty to importing of goods for which they enjoy profit by unfair trade. The countervailing duties are type of importation duties which are stipulated for exporters to compensate consequences of governmental aids. Stipulation of countervailing duties is possible when dumping causes final injury to domestic producer of importer country and causes to change levels of employment, income and production to become unconventional.

The noteworthy point is about GATT member states that regarding exertion of countervailing duties on dumped goods, these duties are stipulated by the governments and amount of such duties is to the level to cover dumping margin (i.e. spread among real price and exporting price); namely, value of goods will be determined according to real price of the given commodity based on foreign contracts between countries. For antidumping, those countries which are not members in GATT if they want to stipulate custom duties and levies they determine it based on the given value of commodity. This tariff stipulation is called compulsive or illusive valuation. We can call countervailing duties the same as custom tariffs. Subject of countervailing duties is implied in Article 6 of GATT agreement. The subject of countervailing duties was also proposed explicitly in Tokyo Round of Talks to tackle with unfair competition and subsidies (Ghanavati, 2015: 455).

### **3-2- Anti-circumvention**

Tackling with anti-circumvention is one the other anti-competitive measures. This measure is a technique based on which the producers of exporter countries of dumped goods circumvent antidumping duties to escape from payment of antidumping duties by observance of formalities while they continue their unfair trading activities. Circumvention is dodging and the escape from payment of dumping duties by fraudulent techniques e.g. importing of parts and their assemblage (montage of product) and or exertion of small changes in product and or changing of origin of product by multinational companies and the like. For instance,

we can express it in this way that in order to escape from payment of the stipulated duties; exporter disassembles the exported product into different parts instead of exporting it as a combined product and then exports the same products within different frameworks (Rahbari, 2009: 66).

At the end of 80s, initially European Union and USA enacted national laws to tackle with anti-circumvention. This issue was also discussed in Uruguay Round of Talks so that it contradicted to Article 3 of GATT (principle of national behavior). With respect to many disputes in Uruguay Round among the member in achieving of agreement and final result they failed to stipulate regulations regarding anti-circumvention and the in a declaration ministers only expressed that it was expected to stipulate uniform regulations about this subject in near future. Only USA and EU have enacted legal regulations in this regard.

### **3-3- Quota**

Quota is one of the anti-competitive measures that are taken as a device to prevent from inadvertent imports. As a result, determination of quota prevents from importing of any similar product to a certain country and by more careful and frequent supervision over custom administrations the importer will not be able to import above-said goods negligently. The quota determination is a technique which has not been explicitly mentioned in antidumping agreement. Only non-member countries can do it because such a practice is in conflict with principle of free trade. It should be noted that quota determination is the same as adaption of essential methods to supporting from domestic industries in countries and it is an objective which has been mentioned in antidumping agreement (Rahbari, 2009: 69).

### **3-4- Civil liability**

Some strategies have been proposed in antidumping agreement and it has determined level of responsibility as well. According to the given agreement, by adding equal duties to dumping margin ore lesser the injury is removed and competition becomes fair. Definition of injury (loss) in aforesaid agreement differs from this definition in domestic laws because it also includes lack of profit. However with respect to the domestic laws in countries, in case of occurrence of injury by dumping, domestic producer can ask for realization of his rights based on injuries exerted by dumping according to rule of prohibition of detriment and domestic laws for civil liability by proving injury. Of course, such measures are not possible as long as we are not members in WTO because rule of prohibition of detriment and domestic laws for civil liability restrict trade relations and also they contradict to principle of free competition and goals of WTO (Ghanavati, 2015: 455).

### **3-5- Offering of subsidy to injured industries**

This is a method based on which WTO non-member states can take antidumping measure. Of course, such a method may be responsive only in short term because a government may

not always support from a certain industry. While subject of granting subsidy has not been implied in antidumping agreement, given it is explicitly in conflict with rules of this organization, if the members take measure in this regard they will be exposed to serious opposition from other members' states.

#### **4- Dumping legal gaps in WTO**

Some dumping related items may be found in WTO rules including Article 6 of GATT or General Agreement on Tariffs and Trade that recommends the countries to avoid from taking such a measures and also expresses some principle to tackle with it. These regulations are especially complex that allows injured country to stipulate additional custom duties for importation of the given goods so that to increase price of goods to the level of rising of production costs for them. However the precondition for enforcement of this law is to present adequate reasons and evidences to prove injury or loss exerted as a consequence of dumping to domestic industry of the given goods. It is the political spirit governing over multilateral trade system in current world that practically deprive poor countries from taking countermeasures against strong trading partners (in terms of political stance). As the cornerstone for capitalist system and market-based economy, competition prescribes acquisition of profit at cost of others if it is generally in favor of society. Therefore, basically the injuries caused by trade competition is deemed as legal in international law but it is assumed as illegitimate in terms of Islamic jurisprudence. If the conditions satisfy for compensation of loss based on governing rules over legal systems, there should be civil liability among trading rivals but today proposing of actions regarding civil liability are increased due to breaking of legal rules for competition every day (Rahbari, 2009: 70).

Today trade of world is implemented according to a series of enacted laws by prominent countries of the world and violation from them will lead to recession and downplaying of commerce in some countries that do not obey the predetermined and imposed procedures to the countries because such countries tend to enter in extensive field of world trade per se since they feel they are on top of the well-to-do nations and claim for modern trade in contemporary world. Term 'antidumping' is one of the excuses that in fact assumed as a solid and defensive wall against weak points and untimely discord of given countries where it will help them under necessary conditions and it includes many protectionism policies for producers in EU member states out of which one can refer to antidumping and anti-subsidiary measures and efforts (Sadeghi, 2012: 81).

By comparison among normal price of the same commodity in foreign market and exportation price (in domestic market) if the price is lower in foreign market, the price spread indicates antidumping practice and it is unreasonable if it exerts loss to foreign market. The general agreement allows the goods importer country that has been lost by activity of exporter country to stipulate antidumping duties to importing of the given goods to that country in order to compensate for difference of that price.

The government may act otherwise and allocates economic aid or advantage for a product in domestic market so that the price of given goods to become cheaper or more suitable in (domestic market). This measure is to grant subsidy that should be limited and avoided if it exerts serious injury to interests of other GATT member states.

The economic aids of government for goods may be in two forms: One is governmental aid to make cheaper domestically produced goods for sale in domestic market so that reduce competition between imported goods with this commodity and the other one is that the government contributes to price of exported goods (the same country) to encourage for growth of exportation market. Of course, the government may generally and directly contribute to production; thus, both of above-said cases will affect it at the same time. The economic contribution and advantages of government may be in forms of money, goods and services and they may be done in different ways e.g. direct assistance to exports, granting of loan to the exporter, exemption of exporters from tax and the like. It should be noticed that in many cases economic assistance of governments to goods is not intended to deal a blow and loss to foreign trade of a country and it has no unfavorable and inappropriate effect in international trade. This means that giving of subsidies is no problematic in some cases but it is favorable, but it is a difficult task to specify dimensions of favorable and unfavorable subsidies (Rahbari, 2009: 77).

There is no consensus over this point that what forms of subsidy should be accepted or not in general agreement and no definition has been generally proposed about legal or legitimate subsidies or illegal and illegitimate subsidies in general agreement and relevant codes that have stipulated some rules for determination of limits or presence of subsidy as well as procedures led to supportive measures.

Given above-said issues and also by considering the subject of trade globalization and developing of climate for free competition, importance and necessity for problem of dumping and antidumping regulations appears.

### **5- Antidumping legal tools in Iranian legal system and EU**

Today with respect to ever-increasing growth of international trade in the world and pervasive trend of this issue in most of nations and also given that the countries may not provide all their needed facilities alone, the necessity for trade with other countries is proposed and subsequently subject of competition in market for a commodity.

It is sometimes possible in competition scene that the world powerful and developed countries to adapt methods versus other countries that are distant from healthy competition sand they may use deceptive and unhealthy trading techniques to achieve their own profits. The aforesaid status has existed in international trade all the time and it is growing. In this chapter, we intend to refer to dumping as breaking of market. Dumping is one of the negative consequences of free trade and it takes place when foreign exporter sells a commodity in

markets of other country at the price very lower than the price of selling the same commodity or similar goods in their domestic market. Despite many advantages, free trade may sometimes create serious threats for developing countries, especially in their industry sector in which dumping is one of such risks (Ghanavati, 2015: 459).

Dumping is led to rising monopoly and market direction to isolation and on the other hand it influences in reducing of market share for domestic enterprises as well as loss to them. Given this point there is requirement for reducing of custom tariffs if a country is accepted in free trade due to joining to WTO, it is possible the countries to be exposed to dumping risk in some cases. Thus, domestic industries need to be supported by legal tools. The presence of specific antidumping regulations causes foreign trade practitioners and international merchants to defend from these rights by awareness from their own rights. World Trade Organization (WTO) has taken some measures about recognition and stipulation of antidumping regulations. There is no specific law in Iran to tackle with this destructive problem except custom affairs act (1971) and Act for joining Iran to agreement regarding trading preferences between developing countries (1991) and some other dispersed articles. Inadequacy of national legal regulations and mechanisms in these fields caused us to conduct comparative study on antidumping in Iranian legal system and EU.

Dumping has been always assumed as one of the controversial problems in the field of international trade. This term entered in world economic literature since the early years of twentieth century. Following to developing of industry at the end of nineteenth century and in link with extension of international trade range to domestic scene of countries, dumping grew pervasively. Since domestic borders were broken and international trade was founded at the limited level, this tendency emerged among merchants to adapt unfair competitive tools to acquire more gains in domestic markets of other countries. In this sense, we can imply UK as the first country that deleted its rival by dumping and took deceptive policy and tried to exit American producers and achieve monopoly of market in this country.

Noticeable advancements resulted since date of conclusion of general agreement to General Agreement on Tariffs and Trade (GATT) in Uruguay Round of Talks about trade competition on the scene of international trade. Given the necessity for entering their members in world trade competition market and risks existing in such a market and in order to prevent from isolation of member states through acceptance of free trade system, WTO and EU regulated integrated and effective laws for antidumping and reducing it. In this regard, they put some measures such as stipulation and imposing of additional antidumping duties on top of their agenda which are usually taken by the request of domestic producer and via governments to guarantee security for their members in the field of competition market. In this sense, we can imply WTO antidumping agreement. With respect to aforesaid points and given fast and wide growth of free competition in world trade and also necessity for such a market it should be noted that Iran not only joined as a member to WTO but also it lacks integrated laws in domestic regulations regarding antidumping.



## Conclusion

Exportation by dumping is one of the unfair trade methods by which exporter sells a product at a price lower than the normal value in the market of importer country. Following to joining of countries to WTO, the member states are pledged not to increase their custom tariffs according to the related tables, but they are obliged to reduce them gradually... when dumping causes exertion of loss to domestic industries of importer country, the importer country can take specific measure against negative dumping consequences to support from its domestic industries where under normal conditions, such measures are in conflict with WTO regulations and terms.

The extensive and growing membership of countries in WTO and acceptance of reducing tariff system, including developing nations, will increase possible risk of exposure to dumping in these countries. Therefore, countries have to change their political policies to tackle with this possible risk. Unlike some of agreements of WTO, antidumping agreement has not assumed any difference among developing countries in expressing percentages and rules and therefore developing countries may not hope for more moderate behavior by developed countries with them.

One of the defects of agreement is to non-determination of deadline necessary for revision in the decisions they made. According to this agreement, if reasonable time passed after date of stipulation of antidumping final duties, it will be revised by application of any beneficiary party that proposes affirmative information which proves requisite for the revision. Implication of reasonable period and lack of specification of certain time interval will cause some problems. Deceptions made by exporters to circumvent antidumping regulations are some of the problems that may occur after proceedings and stipulation of antidumping final duties. There is no specific stipulation to tackle with circumvention in antidumping agreement but the WTO can also enact similar regulations to campaign against deception as it mentioned in Article 13 of EU antidumping regulations. As the cornerstone for capitalist system and market-based economy, competition prescribes acquisition of profit at cost of others if it is generally in favor of society. Therefore, basically the injuries caused by trade competition is deemed as legal in international law but it is assumed as illegitimate in terms of Islamic jurisprudence. If the conditions satisfy for compensation of loss based on governing rules over legal systems, there should be civil liability among trading rivals but today proposing of actions regarding civil liability are increased due to breaking of legal rules for competition every day.

Despite general nature rules of competition rights, one can achieve more efficiently the goals of competition rights by sanctions of private law in some cases. Although WTO tends to trade liberalization among member states, WTO regulations should not be converted into a platform for unjust and unfair trade.

The Iranian regulations are exposed to legal gaps and lack of certain laws regarding dumping. Developing countries including Iran need to support to enter free trade market so that not to exit from competition scene because of dumping problem. Therefore, antidumping rules and countervailing duties are necessary as tools to protect from the given countries in competitive market. Review and rate of adaption on antidumping measures denote this need at high level and using of such rules in international field. With respect to formation of dumping among domestic industries of a country, the necessity is felt for codification of laws as special rules in this regard in domestic scene and if Iran joins to WTO as a member and our domestic industries take step on the scene of free competition market they need to antidumping and protectionism rules to be able to survive in competition field. Thus, we need codifying of more integrated and stronger national regulations concerning antidumping. At present, antidumping regulations include many ambiguities and briefness in Iran. Moreover, we can codify efficient antidumping rules and more integrated strategies by comparative study on antidumping regulations in various countries which are especially more active in employing antidumping tools and nations with economic and legal structure similar to our country. Alternately, acquaintance with antidumping systems in trading account parties of Iran cause the exporters to acquire more knowledge and awareness about their objectives in destination markets and therefore to achieve more opportunities to defend from their interest upon taking anti-competitive measures.

#### **List of references:**

- 1) Badini, Hassan (2005). Philosophy of civil liability, Enteshar Joint Stock Company.
- 2) Khadem Razavi, Ghasem, Zilabi, Somayeh (2013). Analysis of dumping and legal tools to coping with it in Iranian legal system and European Union (EU). Journal of legal knowledge and research, spring & summer. Vol. 3, pp. 58-86.
- 3) Khodayeenejad, Masoumeh, Monadi sefidan, Abdullah (2015). Review of legal gaps and jurisprudential bases resulting from dumping topic in World Trade Organization (WTO) and the governing law. Journal of bar association, spring & summer, vols. 37&38, pp. 17-44.
- 4) Jafari Harandi, Mahshid (2011). Unfair trade by dumping and method of fighting against it in WTO. Journal of private law, 17<sup>th</sup> year, vol. 17.
- 5) Dozhamkooy Ghazalel, Farzad Moradpour (2004). Antidumping requirements in WTO and necessity for codification of relevant domestic regulations, A collection of papers in conference of economic development strategy, Institute of commercial studies and researches.
- 6) Rahbari, Ibrahim (2009). Law for commercial secrets. 1<sup>st</sup> Ed, SAMT Pub.

- 7) Jordan, Patrice (2007). Analysis of case law regarding civil liability, Transl. Majid Adib, 1<sup>st</sup> Ed., Mizan Pub.
- 8) Shokoohi, Majid (2002). Commercial competition law in EU, 1<sup>st</sup> ed., Mizan Pub.
- 9) Shiravi, Abdul Hossein (2010). International trade law. Tehran: SAMT Pub.
- 10) Shiravi, Abdul Hossein, Jafari harandi Mahshid (2010). Unfair trade by dumping and methods of coping with it in WTO. 17<sup>th</sup> year, vol. 17.
- 11) Sadeghi, Mohsen (2012). The addressing reference to antidumping actions in Iranian law: Comparative study in EU and India. Institute of commercial studies and researches. June.
- 12) Farhang, Manouchehr (2000). Glossary of economic sciences. Tehran: Nikan Pub, 8<sup>th</sup> Ed.
- 13) Ghorbanpour, Dhabnam (2015). Process of settlement of differences in WTO. Journal of bar association lawyers. Autumn & winter, vols. 39&40, pp. 111-122.
- 14) Ghanavati, Jalil, Jafari Harandi, Mahshid (2015). Analysis of dumping and method of fighting against in Islamic legal system and Iran, Journal of Jurisprudential studies, series 11, vol. 3, pp. 443-448.
- 15) Katouzian, Naser (2008). Extra-contract requirements, vol. 1, Tehran University Press.
- 16) Kamari, Anvar (2010). Execution of activities in WTO: The system of making decision in GATT and WTO, Journal of commercial reviews, vol. 34.
- 17) Taghizadeh Ansari, Mostafa (2008). EU law, 1<sup>st</sup> ed., Jungle Pub.
- 18) Vauyer, Tony (2004). Antidumping requirements in WTO, Transl. Ghazaleh Dozhmakouy, a collection of papers in conference of economic development strategy, institute of commercial studies and researches.
19. Furse, Mark (2008). Competition Law of EC and UK, Oxford, 6<sup>th</sup> Edition
20. Viner Jacob (1966). Dumping a problem in International Trade, New York, M. Kelley Publishers.
21. Morkre Morris and Kurth H (1989). Determination whether dumped or subsidized. Imports injure domestic industries, Contemporary policy issues, Vol. 7.
22. Le Tourneau, Philippe, 2005, Responsabilié civile professionnelle, Dalloz