



Dumping and human rights issues

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Abstract

One of the worst practices of destroying the domestic industries is dumping and it lets to laws of the economy of a country. With the help and support of United Nations. Many countries have come up with the idea of Anti-dumping, there by restricting the countries from the practice of dumping. Although, when such anti-dumping policies was framed it has affected some basic human rights issues in some or other way. Here, in this article an effort is made how dumping affects the human rights.

Keywords: human rights, domestic industries, dumping

Introduction

Human rights and liberal trade rules are of the same values: individual freedom and responsibility. For example, to adjust the competition, non-discrimination, rule of law; access to courts and adjudication to disputes; promotion of social welfare through peaceful cooperation among free citizens; parliamentary approval of national and international rules. The non-economic values of World Trade Organization law are no less important for the human rights and welfare of citizens than the economic welfare effects of liberal trade. Like the EC, the WTO can and should become an advocate not only of economic freedom, but of human freedom more generally [1].

According to United Nations, Human rights are rights that belong to every person irrespective of nationality, ethnicity, sex, religion or any other status. It belongs to all people by virtue of their humanity, and governments that exclude people of them illegally often face international condemnation or litigation [2]. The role of human rights in trade issues is to make out how trade affects the enjoyment of human rights and how the promotion and protection of human rights takes place among the objectives of trade reform [3].

Human rights are familiar for all on the basis of the essential human dignity of all persons. because of instrumental reason, trade related rights are given to individuals [4]. Individuals are seen as objects rather than as holders of rights. They are empowered as economic agents for particular purposes and in order to promote a specific approach to economic policy, neither as political actors in the full sense nor as holders of a comprehensive and balanced set of individual rights. There is nothing *per se* wrong with such instrumentalism but it should not be confused with the human rights approach.

According to a joint report from the UN Human Rights office and United Nations Development Program (UNDP) Trade agreements always affect the human rights of consumers, residents, workers, those in poverty and others, and on the ability of States to regulate and protect the human rights of their people. However, trade agreements are often negotiated without reference to their impact on the rights to health,

education, food, work, and water [5].

Anti-dumping laws have been around for decades. In recent year Anti-dumping law become more important, and also it increased its importance in the future as a result of the Uruguay Round and the creation of the World Trade Organization. Yet, anti-dumping laws are protecting domestic producers at the expense of consumers because they inherently protectionist. They have a bad effect on price competition and cause the prices on a wide range of products to be higher than would otherwise be the case. In theory and practice, examines the anti-dumping laws from both a utilitarian and human rights context are concluding that, these laws cannot be justified on any reasonable grounds. Calls for their repeal, as sooner its better.

Anti-dumping laws, prevent the foreign producers from selling their products in domestic markets for less than the cost of production or for less than the price they charge in their home market, was different for several generations in one form or another. one of the earliest antidumping laws was in the United States, included in the Revenue Act of 1916 which imposed high revenue on those products which have been made outside the territory of the United States of America and are being imported. They took such an initiative as a primary view to protect the interest of the domestic producers of such similar product.

In this new time, more countries have adopted antidumping laws of their own, and they have stepped up the pace of initiating antidumping investigations. The most important part in the history of Anti-dumping laws was the Uruguay Round of GATT agreement where they rather than abolishing antidumping laws strengthened them there by creating an organization called as World Trade Organization with a primary look as to restrict dumping practices as well as any such other practices which are harmful to smooth and friendly trade between different nations.

In the year of 1992, more than 40 countries had antidumping laws. And also, more than 120 countries took part in the Uruguay Round negotiations, that adopted new antidumping

rules. Since the Uruguay Round reduced tariffs and canceled most quotas, the antidumping laws will rise in importance over time, since they are now the most powerful tool that protectionists can use to keep out foreign products ^[6].

Globalization and Economics

Globalization is a multidimensional event, including “extra complex and interrelated processes that have mobility of their own. It involves a deepening and broadening of rapid trans boundary exchanges due to developments in technology, communications, and media. Such exchanges and interactions occur at all levels of governance and among non-state actors, creating a more interdependent world.

Globalization is not a new phenomenon, although, the forms and technology that spurs it have changed. Newly, globalization is most often linked with economic interdependence, deregulation, and a dominance of the marketplace that includes a shifting of responsibilities from state to non-state actors. Economic globalization goes along with a marked increase in the influence of international financial markets and transnational institutions, including corporations, in determining national policies and priorities. And also, information and communications technology has transpired as a dominant force in the global system of production, although trade in goods, services, and financial instruments are more prevalent than any time in history. Primarily aims of International human rights law to protect individuals and groups from abusive action by states and state agents. The protection and promotion of human Rights is an International attention. The legal relationship between globalization and human rights can be analyzed from the perception of economic regulation and that of human rights law, examining first whether international economic law sufficiently supports or takes into account human rights concerns, then considering the extent to which human rights law takes into account globalization and economic interests. The essential question in relation to both inquiries is whether a human rights system premised on state responsibility to respect and ensure human rights can be effective in a globalized world.

Due to the anti-dumping developments throughout the world, which had led to globalization including the developing states, privatization, deregulation, free trade and trade liberalization and because of globalization the non-state actors like NGO's, multinational companies have more resource than those of many countries.

What is dumping?

In related to international trade, dumping is the export of goods by a country or company of a product at a price that is lower in the foreign market than the price charged in the home market. Dumping Considered as a form of price discrimination, it happens when a manufacturer lowers the price of a good entering a foreign market than it charges domestic customers. The identification of trade dumping can be performed simply by comparing the sales price of a good in its market of origin and the price listed in an importing market. Trade dumping is considered intentional in nature in that the primary purpose is to gain an advantage within the market that imports the goods.

This is done to turn out foreign competitors from the domestic market. When the products are sold at a price lower than the cost of production in the home market, it is called reverse dumping and when there is no consumption of the commodity in the domestic market and it is sold in two different foreign market, out of which one market is charged a high price and the other market a low price. But in the practice, dumping is selling of the product at a high price in the domestic market and a low price in the foreign market.

Origin of the concept of dumping duty

Anti-dumping duty can be defined as a protectionist tariff that a domestic government imposes on foreign imports that it believes are priced below fair market value.

In the United States, anti-dumping duties are imposed by the Department of Commerce and often exceed 100%. The concept of anti-dumping duty finds its roots in the trade practices of 1930s when many countries resorted to dumping of goods into foreign countries at extremely low prices for earning foreign exchange ^[7]. Manipulative currency practices such as devaluation of currency, was very popular in such countries for cost reduction of goods manufactured and traded globally by domestic industries.

The legislations and global level against dumping arose at the end of the nineteenth century as a policy alternative to frequent revision of import tariffs and was used by different countries to protect their domestic industries from the ill effects of dumping. Canada was the first country to launch such measures in 1904 against American firms who were found dumping steel at discriminatory prices. Many Commonwealth countries also followed suit and imposed dumping duties during next ten years on the predatory pricing policies of exporting countries. The perceived threat of predatory practices resulted in the first American legislation against dumping under the Revenue Act of 1916. In 1921 Australia, Great Britain, New Zealand and the United States implemented new statutes regarding dumping. Along with Canada's original legislation, these legislations served as the foundation for Article VI ^[8] of The General Agreement on Tariff and Trade (GATT), 1947 ^[9].

The General Agreement on Tariff and Trade (GATT) 1947 was the first effort to lay down the rules governing International Trade for establishing free trade between countries. When the pros and cons of dumping were examined during formation of GATT, it was found that the dumping itself is not a bad practice but can be a kind of booster to the industry. Dumping was found to be a source of additional revenue to the industry and also benefitted the consumers by availability of goods at cheaper rate. The dumping, therefore, was not prohibited under the GATT but, when dumping was seen causing any kind of injury to the domestic industry by importing country, then, to nullify the effect of dumping, the GATT allowed its signatory Countries to take anti-dumping measures.

The United States of America was the first member nation to address the unfair trade practices of dumping and subsidized exports before the watchdogs of international trade. There was general support for antidumping and countervailing measures, though there were differences on the scope of dumping definition and on retaliatory measures other than anti-dumping

duties. The developing countries favoured a wider definition to include price, service, exchange and social dumping, whereas the developed countries favoured a narrower definition to avoid opening up of a wide range of retaliatory measures. On the question of retaliatory measures, the imposition of quantitative restrictions was finally avoided and antidumping duties were accepted as the right course to neutralize dumping margins. Thus, the first multinational rules and conditions on antidumping under which individual countries were justified in taking defensive measures, were incorporated in Article VI of GATT ^[10].

The rules of anti-dumping were again taken up for discussing during the Kennedy Round Negotiations (1946-1967). The Kennedy Round was the sixth session of General Agreement on Tariffs and Trade (GATT) negotiations held between 1964 and 1967 in Geneva, Switzerland. It was the last GATT round to have tariff reduction as its primary focus ^[11]. However, it was the first GATT round to deal with non-tariff issues, such as dumping. It notably also pioneered a linear style of negotiations. In contrast to the item by item negotiations of previous GATT rounds, many countries offered across the board cuts of a certain percentage on all tariffs of participating countries. The Tokyo Round negotiations (1973-1979) brought revolutionary changes in the injury criteria. The Tokyo Round lasted from 1973 to 1979, with 102 countries participating. It continued GATT's efforts to progressively reduce tariffs. The tariff reductions, phased in over a period of eight years, involved an element of harmonization that is the higher the tariff, the larger the cut, proportionally. Several codes were eventually amended in the Uruguay Round and turned into multilateral commitments accepted by all WTO members.

The anti-dumping provisions found prominence and universal acceptance only after the advent of World Trade Organization (WTO) in 1995. Prior to WTO, there were no restriction on tariff rate and therefore the effect of dumping was offset by high tariff rate. Under the regime of WTO, the trade between the members of WTO was liberalized by lowering the tariff leaving no scope for the member countries to avoid the ill effects of unfair trade practices by hiking tariff rate and this resulted in increased use of anti-dumping measures ^[12].

Prior to the 1980s, only the traditional users like Canada, the United States, the European Union, Australia, and New Zealand were relatively active in pursuing antidumping actions. After the Uruguay Round ^[13] of negotiation, the Anti-dumping code was formulated in the form of The Agreement on Implementation of Article VI of GATT 1994, commonly known as Anti-Dumping Agreement, leading to adoption of antidumping laws by more countries and a surge in the number of antidumping investigations in the last two decades.

The reasons for and the impact of antidumping protection

The liberalization in international trade has progressed at a rapid speed, over the past few decades. While tariffs and quotas have been reduced, anti-dumping, another type of trade barrier, is being used more and more frequent as a measure of protection.

Anti-dumping measures as an exception to the rule of most favoured nation treatment, the utmost care must be taken in invoking them. However, unlike safeguard measures, which

are also instruments for the protection of domestic industry, the implementation of anti-dumping measures does not require the government to provide offsetting concessions or consent to countermeasures taken by the trading partner. This has increasingly led to the abuse of anti-dumping measures. For example, anti-dumping investigations are often commenced based on insufficient evidence, and anti-dumping duties may be retained long after the conditions for their levy have been eliminated. Some countries have applied anti-dumping measures in an arbitrary manner to restrict imports, rather than to achieve the limited, remedial objective authorized in the Agreement. In light of this situation, one of the focal points of the Uruguay Round negotiations was to establish disciplines to rein in the abuse of anti-dumping measures as tools for protectionism and import restriction. Although considerable progress was seen in this process, many countries still express much concern over this abuse.

Why LDC and D.C are badly after the dumped goods?

The less developed countries have the consumer base, and surely they desire, but without free trade that has goods flowing into these countries for sale at affordable prices, at the first, the consumer's ability to pay is less, "every consumer has a set of tastes for the commodities that they can buy in a market, and these tastes are a 'given' in the sense that they are not affected by a change in his income or the change in the price of any commodity ^[14].

Free Trade is to be successful among the less developed countries just when it includes goods, that can be easily purchased, rather than stored in some large inventory for future use. It need to stop in the aspect of examining Free Trade and how it affects the less developed countries to realize that the whole notion of "less developed" stands for the absence of trained and effective labor force.

The concept of Free Trade is good for economic development. The main aim is to bring the third World nations of Latin America, Asia, and Africa into a fair competition with, and economic parity with, the Western countries. Free trade can flourish, many economists, believe because it created a "borderless economy". "Most visibly, the nation state itself that artifact of the Eighteenth and Nineteenth Centuries has begun to crumble, battered by a pent-up storm of political resentment, ethnic prejudice, tribal hatred and religious animosity but as the flow of information creates a growing awareness among consumers everywhere about how other people live, tastes and preferences begin to converge.

Free trade is the prop that now bring the world's economies together. That is the opinion of the powers who attempted to make the WTO meeting provide open markets and access throughout the world. The reason why this is still desirable can be seen in the sheer numbers. "As recently as 1957, the total volume of services and goods traded across national borders was \$57 billion. In 1989, that amount had risen to \$12.7 trillion ^[15].

One of the key factors that led towards free trade economists now clearly needed is education. Economic educators have the considerable job of making clear that tariffs don't protect jobs, and actually they get richer in a market economy by enriching the poor, and by raising living standards through capital formation. The market system is a moral system, a system of

voluntary social cooperation ^[16].

Another positive view of free trade states: to reduce problem in the future, we should aim to create a world in which people are free to buy what they want, live and work where they choose, and invest and produce where conditions seem the most favorable. Would be traders should encounter no restrictions or barriers to trade within and across national borders ^[17].

LDC countries were targeted by the Financial institutions for the new market over developed countries. The role of foreign capital is still not properly defined or proven. "The collapse of the Asian financial markets in 1997 painfully demonstrated the interdependence of economies throughout the world." this, and some tottering economies in Uganda and Nigeria currently, for example, make foreign capital investments in so-called "emerging nations" still risk for some. The entire idea of free trade depends with the concerns of politics, not raw materials or a potential labor force. There are experts who, in looking at some of the political instabilities in the LDCs, still feel that corporations might go ahead with capitalization, provided they are willing to invest large capital or share the risks, even with competitors after the same markets.

Foreign capital plays a far greater role in the development of international companies than it does in the development of emerging nations.

There has been another role required for the flow of foreign capital into less developed countries: environmental issues. "As investors look for the country for the highest return, they are often attracted to places endowed with bountiful natural resources but handicapped by weak or ineffective environmental laws. Many people and communities are harmed as the environment that sustains them is damaged or destroyed villages are displaced by huge construction project. Foreign investment-fed growth also promotes Western-style consumerism ^[18]".

All the economic "good" that foreign capital from the West does, it also has the power to corrupt and upset the balance of both nature and population. World Watch, in its position paper, encourages adding some environmental "conditions" to bilateral and multilateral trade agreements. In one aspect, this environmental concern is already having an effect. "The U.S. Export-Import Bank which provides subsidized loans to other governments for the purchase of U.S. goods and services has taken steps to strengthen its environmental policy. Unfortunately, other nations have not followed suit, causing American investors and companies to lose out on some enormous projects, such as the Three Gorges project in China, which was turned down by the Ex-Im Bank. Foreign capital infusion, however, is not merely aimed at developing countries. Here in the U.S. we are faced with foreign-owned companies in direct competition with American-owned and operated firms. So, capital flows to capital, not merely to where it is most needed. The major concern among many governments and economists about how foreign capital is affecting the world, and if it is somehow changing the balance of trade, and the incursion by overseas interests within the domestic policies of LDCs. Conservative legislators think that the investment in foreign nations, for whatever reason, is disguised foreign aid, and they want to curb it, or eventually

stop it altogether. One reason for this concern is simple:" it has tended to create dependence on the part of the borrower countries and no longer either advance U.S. interests abroad or promote economic development ^[19].

Economic forecasts continue to see more and more capital flowing into the LDCs, even at the possible expense of domestic savings. This can be determined by the fact that more and more American investors, to name just one nation, are investing in multi-national corporations whose capital is now being committed to LDCs. Foreign capital and its usefulness to the development of the LDCs is reflected not merely in the utilization of natural resources, a labor force, and the location for effective and efficient distribution of goods, but on the wants and needs of consumers who, as has been stated in this thesis time and again, are now the wants and needs of a global economy. Again, wanting something and needing something and being able to purchase it are not necessary as closely linked as capital investors might like.

Investing capital in LDC requires time for the profit which means that any investment, grant, or cession should not be consider a quick turn-around opportunity, a get-rich-quick scheme.

The LDCs are seen as being "different" from the Western world because of the religion, habits, customs, history, ethnic and moral standards which may well differ from Western outlook on things. In short, we cannot bind LDCs with our own moral and traditional precepts. As has been said several times now, these nations do not want to be bullied. On the other hand, investors from the West do not want to transfer funds in huge amounts and, at the same time, wink at what they might consider the principals of the deal ^[19].

Of course, with the development of the sort of instantaneous communication and funds transfer, the problem areas are switching from costs in terms of time and real time, to the continued rise of what could be considered "regionalism" ^[20].

Theoretical and practical problems with all antidumping laws

One of the main theoretical problems with all antidumping laws is the basis that antidumping laws can be really a remedy for an unfair trade practice. But where individuals, willing buyers and willing sellers are able to trade what they have for what they want at a mutually agreed upon price, there can be no unfair trade. Unfair trade can happen only where willing buyers and willing sellers are not free to make deals without price, quantity or any such other criteria. That is to say if an exporting country can make a product in a cheaper price as compared to that of the same of a domestic product then it's the duty of the government of that domestic country to provide the raw materials for such domestic industries for the production of such similar like product in a subsidized price so that even the domestic industries can also make the same product at a cheaper rate. Thus, a healthy competition can be promoted rather than imposing heavy duty on importing products.

Another argument which support anti-dumping is that they prevent predatory pricing, Predatory pricing either does not exist, or if it does, it benefits consumers. Studies show that there are no known cases in the last hundred years where a company has dumped its products on the U. S. market,

bankrupted domestic producers, then driven up prices and squeezed consumers for a long period of time.

Any antidumping law encourages foreign suppliers to increase their prices, since by doing so it may be possible to avoid an antidumping action. The mere threat of an antidumping action chills price competition, since foreign suppliers will hesitate to compete too aggressively on price for fear of triggering an antidumping investigation. But no matter how hard they try to avoid such an action, they are not able to totally eliminate the possibility of an antidumping investigation even if they sell their product for the same price worldwide.

The existence of antidumping laws also makes it possible for domestic producers to charge higher prices than would otherwise be possible. That's because antidumping laws make it dangerous for foreign competitors to engage in aggressive price competition. As a result, domestic producers can raise their prices with little fear of being underpriced by foreign suppliers.

Any antidumping law is inherently protectionist because such laws benefit domestic producers at the expense of consumers by limiting foreign competition. There is no way to structure an antidumping law that is not protectionist.

There are also a number of practical problems with antidumping laws. The fundamental problem is trying to determine when dumping has occurred. The rules are not clear at all and there is much space to tactic. Exchange rate shifts can be a subject to companies for penalty even where the same price is charged worldwide. Calculating the cost of production involves many problems. And also, Foreign market prices with compare to the domestic prices can be a problem, especially when the products being compared are only similar but not identical. Different antidumping actions have compared prices of dissimilar products. Some when these price comparisons take account of the differences and sometimes they don't. Price comparisons involving different markets are also not always good matches. Whether to classify certain costs as direct or indirect is not always clear, and the application of the allocation rules is not always consistent.

Human rights violations and anti-dumping

Globalization, has created powerful non-state actors that may violate human rights in ways that were not contemplated during the development of the modern human rights movement. This development poses challenges to international human rights law, because, for the most part, that law has been designed to restrain abuses by powerful states and state agents, not to regulate the conduct of non-state actors themselves or to allow intervention in weak states when human rights violations occur [22].

Intrinsic to globalization is the contemporary legal and institutional framework within which the regimes of international trade, finance, and investment are being conducted. In general, economic globalization has a focus on economic efficiency, the goal being to improve economic well-being through efficient market exchanges.

It is of great concern for the international organization to protect and promotion of human rights. For this purpose, International institutions and scholars have responded with various proposals for strengthening the international regime. First, human rights activists and institutions have begun to put

forwards the importance of human rights law. The Committee on Economics, Social and Cultural Rights (CESCR) has emphasized that, "the realms of trade, finance and investment are in no way exempt from these general principles [on respect for human rights] and that international organizations with specific responsibilities in those areas should play a positive and constructive role in relation to human rights. The CESCR also asserts that competitiveness, efficiency, and economic rationalism must not be permitted to become the primary or exclusive criteria against which governmental and inter-governmental policies are evaluated.

Second, state responsibility has fail to take control of the actions of private due to which considerable attention in the case law of international tribunals and the work of the U.N. has been received. Third, international law is increasingly regulating non-state behavior directly. Fourth, private market mechanisms such as codes of conduct or consumer purchasing schemes have sought to influence corporate behavior. Finally, organizing differently the international governance mechanisms are bringing a variety of international actors together to achieve the desired same goods.

Anti-dumping laws mainly deals with moral but not economic and antidumping laws does not hold any analysis. The only legal function of government is to protect life, liberty and property Governments that go beyond this basic function must, necessarily, violate human rights because they feather the nests of some special interest at the expense of the general public. Yet the human rights aspect of trade regulation is almost never mentioned by the critics.

The human rights aspect of trade is never mentioned because most critics ignored that there is a human rights element. Yet the human rights element is unavoidable. If individuals are not being able to trade the goods of their labor without restriction, their property rights and their human rights, are being violated. Yet that is exactly what happens when some government restricts peoples' ability to buy and sell, either through antidumping laws or with quotas, domestic content laws or other trade barriers.

Domestic producers use antidumping laws as weapon to protect their own products and to punish foreign competitors. The mere threat of an antidumping action places a bad effect on trade and due to which foreign producers are bound to raise their prices otherwise they will be punished for offering their products to domestic consumers for low prices. Domestic producers and foreign producers who want to sell in the domestic market have competing interests. If a foreign producer makes a sale in the domestic market, it is likely at the expense of a domestic producer, who loses a sale. It is a zero-sum game, since one's gain is the other's loss [23].

It is the free will of the domestic consumers from whom they are willing to buy the products and domestic producers have no claim, no property right, to the incomes of domestic consumers. Compelling domestic consumer to buy from the domestic producer is immoral and a violation of human rights. Forcing consumers to pay higher prices is like stealing their labor, since they must work more hours to earn the money to pay the higher prices that result from antidumping laws [24].

It's necessary to protect and ensure human rights and strengthen weak states in the lack the institutions. Such Institutions like independent judiciaries must be formed and

executive power must be brought under the rule of law ^[24].

But newly so many different steps have been taken by various international organizations and countries by relaxing various criteria for dumping. For example, in April 21 2011 European Union (EU) erased anti-dumping duties, shoemakers in east China's Zhejiang Province have shifted from a low-cost strategy to target the high-end EU market. Aokang Group Co. Ltd. one of 1200 Chinese companies affected by the tariffs, is abandoning its low-cost strategy and forging ahead on a new path to avoid being involved in a new round of trade frictions with the EU. Based in Wenzhou, the shoe-manufacturing export hub in east China's Zhejiang Province, Aokang Group, one of China's leading shoemakers, experienced both the rise and fall of shoe exports over the past several years. In October 2006, the EU imposed a two-year 16.5 percent anti-dumping tariff on imports of Chinese leather shoes ^[25]. These measures were introduced in response to Asian footwear being sold below production cost in Europe. The policy was extended and remained in effect until March 31 this year. Prior to the anti-dumping measures, Aokang had once received an order for 1.5 million pairs of leather shoes from GEOX, a well-known Italian footwear brand. Later, the influence of the anti-dumping duties resulted in fewer orders from the buyer, according to Wang Zhentao, Chairman of the Aokang Group ^[26].

The conclusion and suggestion

The Relationship between WTO law and international human rights law is Normative. It is controversial to argue that the WTO itself, as an international organization, has human rights duties, given that it is not a party to any human rights treaties. Some human rights duties arguably arise under customary international law and *jus cogens* ^[27], or under the WTO Agreements themselves ^[28].

According to my opinion as the twenty first century approaches, antidumping laws seem to be gaining ground. More nations are adopting them, and the nations that have adopted them are using them more frequently. Yet, as was shown, all antidumping laws violate human rights. They also reduce overall welfare, since the losses exceed the gains. It might also be argued that those who initiate antidumping actions are acting unethically, since all antidumping actions necessarily violate the property and contract rights of someone. Rules that allow human rights violations to continue should be repealed.

The only way to avoid human rights abuses in the area of trade is to allow individuals to trade what they have for what they want without restriction. Any antidumping law, no matter how well formulated, that prevents individuals from entering into contracts, associating with the sellers of their choice, and trading their property as they see it, violates basic human rights.

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8. Article IV of GATT says: The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or, (b) in the absence of such domestic price, is less than either
 1. The highest comparable price for the like product for export to any third country in the ordinary course of trade, or
 2. The cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.
9. Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability. 2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of 3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise. 4. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such

- product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes. 5. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization. 6. (a) No contracting party shall levy any antidumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.
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 28. *Jus cogens* (from Latin: compelling law; English: peremptory norm) refers to certain fundamental, overriding principles of international law, from which no derogation is ever permitted. The rules of jus cogens (also known as peremptory norm) are derived from the customary international law, and it is a rule or principle which is so fundamental that it binds all states and does not allow any exceptions.
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