ANTI-DUMPING VS. PREDATORY PRICING: DRAWING THE LEGAL LINE IN INTERNATIONAL TRADE

Manali Bansal, Research Scholar, Institute of Law, Jiwaji University, Gwalior, Madhya Pradesh, India

Dr. Sanjay Kulshreshtha, Dean, Institute of Law, Jiwaji University, Gwalior, Madhya Pradesh, India

ABSTRACT

To address unfairly low pricing in international markets, this research study examines the legal and economic differences between predatory pricing and anti-dumping laws. While competition law regulates predatory pricing, which targets dominant enterprises that deliberately cut prices to eliminate competition, anti-dumping is governed by international trade law and seeks to protect domestic industries from harmful imports. Analyzing areas of overlap, particularly in the digital economy where global platforms make enforcement more difficult, the research also identifies key differences in intent, jurisdiction, legal standards, and remedies. Regulatory barriers to adopting classical frameworks in contemporary markets are demonstrated by case studies from the US, the EU, and India. To guarantee uniform, equitable, and financially sound regulation, the paper emphasizes the need for better coordination between trade and competition agencies and urges international cooperation. Harmonizing these frameworks is essential to maintain competitive markets without sacrificing the ideals of free and fair trade.

Keyword: Anti-Dumping Law, Predatory Pricing, International Trade Regulation, Competition Law and Digital Markets

Introduction

In the growing dynamic global economy, countries participate in cross-border commerce to maximize the allocation of resources, boost productivity, and encourage consumer choice. However, such trade also brings difficulties in maintaining equitable market conditions. Anti-dumping laws and controls on predatory pricing are two important legal instruments used to combat unfair pricing practices. Despite addressing the problem of artificially low prices, the two processes operate according to different legislative frameworks, goals, and standards of enforcement. The first is rooted in domestic competition or antitrust law, while the second is derived from international trade law. Due to the complexity, dynamic nature, and international nature of pricing schemes in the era of digital commerce, this duality often results in conceptual overlap and regulatory conflict.[1]

Under both the WTO Anti-Dumping Agreement and the General Agreement on Tariffs and Trade (GATT) 1994, anti-dumping duties are imposed on foreign firms that export products at less than their normal value, thereby harming domestic industry.[2] However, predatory pricing, which is regulated by national competition law regimes, penalizes dominant companies that cut prices to eliminate competitors and then raise prices. Protecting local industries from unfair foreign pricing is the major goal of anti-dumping laws, while predatory pricing is aimed at maintaining market competition and protecting consumer welfare.

In fact, it is often difficult to distinguish between these two frameworks at the legal and economic levels. Inconsistent regulatory strategies, jurisdictional ambiguity, and the deliberate use of anti-dumping law for protectionist purposes present significant policy concerns. Furthermore, the emergence of global digital companies such as Amazon, Uber, and Alibaba has made the regulatory landscape even more complex as these platforms may raise issues under the anti-dumping and competition rules of multiple jurisdictions at the same time.

This research study aims to critically examine the economic and legal differences between predatory pricing and anti-dumping measures. It will assess the main principles of each, look for contradictions and overlaps, and examine the implications for the digital economy. This

[1] Bhattacharjea, A. (2005). Predatory pricing and anti-dumping revisited. *Economic and Political Weekly*, *40*(5), 482-484.
[2] Tharakan, P. M. (2000). Predatory pricing and anti-dumping. *This page intentionally left blank*, 70.

study aims to provide a more logical and coherent way of controlling unfair pricing practices in global trade through case studies and comparative legal analysis.[3]

Conceptual and Legal Framework of Anti-Dumping

Under international trade law, anti-dumping is a trade remedy mechanism that aims to reduce the negative consequences of unfair pricing by foreign exporters. It occurs when a nation exports goods to another nation at a price below their normal value, which is often the exporter's domestic market price. Article VI of the General Agreement on Tariffs and Trade (GATT), 1994 states that dumping is not illegal in itself; rather, it is only actionable if it seriously injures or threatens to seriously injure the domestic sector of the importing country. The main goal is to level the playing field by eliminating harmful pricing practices without impeding legitimate trade.[4]

The legal basis for anti-dumping actions is established under the WTO Agreement on the Implementation of Article VI of the GATT 1994, sometimes known as the Anti-Dumping Agreement or ADA. This agreement outlines procedures and material requirements for initiating investigations, detecting dumping margins, evaluating damages, and enforcing obligations. When the export price of a product is compared to its normal value – which can be the price in the domestic market, the price in a third country, or a price constructed on the basis of cost and profit – the dumping margin is estimated.[5] If the lower export price harms domestic manufacturers, a dumping margin-equivalent anti-dumping duty may be imposed by the importing country.[6]

Typically, the domestic industry files a complaint with a designated entity such as the Directorate General of Trade Remedies (DGTR) in India as part of the procedural process. Investigative actions are taken by this authority to prove dumping, injury, and causal relationships. During the investigation phase, a preliminary duty may be imposed; if the

[3] Lloyd, P. J. (2005). Anti-dumping and competition law. In *The World Trade Organization: Legal, Economic and Political Analysis* (pp. 1666-1681). Boston, MA: Springer US.
[4] Mastara, S. (2016). Anti-dumping or protection: an analysis of competition issues in dumping investigations.
[5] Zaid, Z., Gustiyani, R., & Kirana, A. H. (2022). Can An Anti-Dumping Policy Be Substituted For Predatory Pricing?. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, *4*(2), 179-188.
[6] Bienen, D., Ciuriak, D., & Picarello, T. (2014). Does Antidumping Address "Unfair" Trade?. *The International Trade Journal*, *28*(3), 195-228.

investigation validates the results, a final duty may be imposed. Actions may be evaluated on a regular basis and are often customized to the firm and its products.

Protecting domestic industry from unfair pricing and maintaining international trade regulations are two purposes of anti-dumping duties. Critics say that, especially in industrialized countries, they are often employed as a covert form of protectionism. In fact, the anti-dumping system can also target aggressive but legitimate pricing, resulting in trade distortions. For example, in the case of steel, chemicals, and electronics, India has initiated numerous anti-dumping investigations, some of which are motivated by strategic considerations.[7]

In addition, unlike predatory pricing, anti-dumping laws do not require proof of intent to harm or eliminate competition. When combined with the low bar to prove injury, the lack of an intent requirement renders anti-dumping a more accessible weapon for businesses seeking to protect themselves against import competition. However, as demonstrated in cases such as EC v. Bed Linen (India) and US v. Hot-Rolled Steel (Japan), WTO jurisprudence has emphasized the need for objective assessment and transparency in establishing harm and causation. All things considered, anti-dumping laws are an essential part of global trade regulation. However, their legal implementation requires a careful balance between protecting domestic industries and ensuring that they are not used as a tool of economic nationalism. The complexities and issues associated with anti-dumping become even more apparent when compared to similar domestic doctrines such as predatory pricing.

Conceptual and Legal Framework of Predatory Pricing

Predatory pricing is a type of abusive market behavior in which a dominant company deliberately sets prices below cost to drive out rivals, and then raises prices to recoup the losses. The concept of predatory pricing is strongly linked to the principle of market competition and the protection of consumer welfare, but it is regulated by local competition laws, unlike anti-dumping, which emerges in the context of international commerce. The need to distinguish between hostile competition and genuine predation makes it difficult to prove, even though it is prohibited in many jurisdictions.[8]

[7] Wruuck, P. (2015). The political economy of anti-dumping protection. *Contributions to Economics*.
[8] Giocoli, N. (2014). *Predatory pricing in antitrust law and economics: A historical perspective*. Routledge.

Predatory pricing has different legal bases in different jurisdictions. In the United States two essential components must be demonstrated to make predatory pricing illegal under Section 2 of the Sherman Antitrust Act: (1) prices must be below a reasonable measure of costs, and (2) the company must have a reasonable chance of recovering its losses once competitors have left. Average variable costs (AVC) are used as a benchmark in the Ereda-Turner test, which is often applied by US courts. Abuse of a dominant market position, particularly predatory pricing, is prohibited in the European Union by Article 102 of the Treaty on the Functioning of the European Union (TFEU). Regulators now have greater leeway in determining abuse due to EU jurisprudence, notably in AKZO Chemie BV v Commission, which established a two-tiered approach based on average variable and total expenses.[9]

In India, predatory pricing is defined under Section 4 of the Competition Act, 2002 as the sale of goods or services at a price below cost with the goal of reducing or eliminating competitors. The Competition Commission of India (CCI) has created its own methodology, often demanding a cost analysis report and an assessment of market impact, dominance, and purpose. The Indian framework provides more freedom in digital and service industries while still closely following international standards. The intent to eliminate competition and the possibility of recovery distinguish predatory pricing from typical competitive conduct. If the short-term cheaper price helps customers and does not serve discriminatory purposes, it may be legal. However, proving purpose is challenging, and many governments base their analysis of the pricing system primarily on expert testimony and economic data.[10]

Real-world cases highlight how difficult enforcement is. The Matsushita v Zenith case in the United States set a high standard for demonstrating predatory pricing, requiring clear evidence of quid pro quo. The CCI in India investigated Uber, due to allegations of unfair pricing in the ride-hailing business. The case was eventually dismissed due to lack of dominance. However, as a sign of a more stringent stance, the EU penalized telecom giants for their long-standing below-cost pricing practices. This is significantly harder to enforce in digital marketplaces. The evaluation of prices and intent becomes more difficult due to the bundled or free services offered by IT platforms such as Amazon and Google. In this way, although predatory pricing is subject to different regulations than anti-dumping, it is nonetheless an important anti-competitive conduct. Within domestic jurisdictions, it focuses on consumer harm, market

[9] Leslie, C. R. (2013). Predatory pricing and recoupment. *Colum. L. Rev.*, *113*, 1695.
[10] Crane, D. A. (2005). The paradox of predatory pricing. *Cornell L. Rev.*, *91*, 1.

power, and strategic pricing behavior. To ensure that enforcement keeps up with new business models, regulators are now re-evaluating established tests with the growth of digital markets.[11]

Key Differences Between Anti-Dumping and Predatory Pricing

While both predatory pricing and anti-dumping aim to address the issue of unreasonably low prices, they are based on different legal frameworks and have different policy objectives. It is imperative to understand these differences to prevent regulatory misunderstandings and to guarantee that each legal mechanism is handled correctly in its context.

First and foremost, there are substantial differences in the sources of regulation for each. National customs laws are used to enforce anti-dumping, which has its roots in international trade law and is primarily regulated by the WTO Anti-Dumping Agreement. On the other hand, the Competition Act, of 2002 in India, the Sherman Act in the United States, and Article 102 TFTU in the European Union, all have provisions related to domestic competition or antitrust law that define predatory pricing. Predatory pricing means that domestic companies abuse their position in the local market, while anti-dumping actions often involve foreign exporters. This difference in jurisdiction has real-world implications.[12]

Their evidentiary criteria and legal tests represent a second important difference. Authorities evaluate whether products are being sold below their "normal value" and whether this behavior results in "material injury" to the domestic industry when they take anti-dumping actions. It is not necessary to demonstrate the exporter's intent. On the other hand, intent is crucial in situations involving predatory pricing. Authorities in charge of competition must demonstrate that a dominant company sets prices below cost with the deliberate goal of driving out rivals and then later compensating for the harm by raising prices. When paired with cost benchmarks and market structure assessments, this intent-based approach makes predatory pricing more difficult to demonstrate.[13]

There are also significant differences in remedial procedures. Anti-dumping duties, or tariffs imposed on a particular product and exporter, are the standard measure in anti-dumping cases.

[11] Gifford, D. J., & Kudrle, R. T. (2009). The law and economics of price discrimination in modern economies: Time for reconciliation. *UC Davis L. Rev.*, *43*, 1235.s

[12] Bhati, M. (2023). A Critical Analysis of Anti-Dumping Law vis-a-vis Competition Law. *, No. 1 Int'l JL Mgmt. & Human.*, *6*, 1659.

[13] Baylis, K., & Malhotra, N. (2006). *Predatory Pricing: The Effect of Antidumping on Domestic Competition Policy*. Working Paper, University of British Columbia.

These tariffs are intended to protect the local industry and level out price differences. On the other hand, when predatory pricing is applied, the dominant corporation typically faces fines, injunctions, and other behavioral measures. These can be penalties, directives to stop certain pricing practices, or structural reforms in the worst cases.

Furthermore, the economic goals of the two systems are not entirely compatible. Even though consumers may benefit from cheaper costs, the main goal of anti-dumping is to protect domestic manufacturers from unfair international pricing. In contrast, predatory pricing aims to protect both the long-term competitive process and the welfare of consumers. Anti-dumping laws can therefore sometimes protect inefficient businesses, but predatory pricing laws do not intervene unless there is evidence of long-term harm.[14]

Finally, anti-dumping trials usually have a lower standard of proof. Investigations can be initiated by authorities in response to complaints and preliminary harm findings. Establishing predatory pricing, on the other hand, requires a thorough examination of the market, cost analysis, and evidence of dominance and purpose. Although both predatory pricing and anti-dumping deal with the economic implications of low prices, they operate in different spheres, follow different legal requirements, and have different policy goals. In a global economy, where cross-border digital transactions often raise issues under both regimes at the same time, this divergence becomes more and more relevant.

Overlaps and Conflicts Between the Two Regimes

Predatory pricing and anti-dumping laws are conceptually distinct, but in reality, they are often applied in the same way, especially in complexly interconnected international markets. Regulatory issues brought about by this convergence include the potential for forum shopping, jurisdictional uncertainty, and uneven enforcement. These overlaps have become more pronounced due to the growth of digital platforms and transnational corporations, leading politicians and legal experts to worry about double regulation or regulatory gaps.[15]

Situations where foreign-dominated enterprises export goods at prices below cost in the domestic market pose a major point of contention. Under trade law, such actions can be

[14] Bouziane, C. (2024). COMMERCIAL ANTI-DUMPING, MEANS TO PROTECT FREE COMPETITION IN INTERNATIONAL TRADE RULES AND ALGERIAN LEGISLATION. *Russian Law Journal*, *12*(1), 1727-1739.
[15] Seyffarth, A. S. (2000). THE LINK BETWEEN COMPETITION POLICY AND ANTIDUMPING POLICY.

construed as dumping and under competition law as predatory pricing. For example, when a Chinese tech company sells Smartphone at deep discounts in India, the Directorate General of Trade Remedies (DGTR) can initiate an anti-dumping investigation and the Competition Commission of India (CCI) can initiate a competition investigation. The harm caused to market competition and consumer welfare is investigated by one authority, while the other focuses on the harm caused to Indian manufacturing. Applying both regimes simultaneously risks creating legal ambiguity or, on the other hand, duplication of measures if no authority claims jurisdiction.

Digital marketplaces where prices are dynamic, cross-border, and algorithm-driven, present another area of overlap between the two. These circumstances make it challenging to apply the traditional cost-based standards employed in predatory pricing and anti-dumping. In an effort to increase their market share, platforms such as Amazon, Alibaba, and Uber often operate in multiple countries and offer discounted services. When the subsidized products or services are international, these activities can be seen as dumping; when dominant positions are exploited to suppress local competitors, they can be seen as predatory pricing. Efficient settlement is complicated by the fragmented enforcement environment, which involves competition regulators and trade authorities on opposite sides.[16]

The goals of the policies are also contradictory. Sometimes the well-being of consumers is sacrificed in the name of protecting domestic manufacturers through anti-dumping regulations. In contrast, predatory pricing regulations put the interests of consumers and the long-term health of the market first. This divergence can lead to contradictory results. For example, a foreign company that offers a lower price may be penalized by anti-dumping laws even if it helps customers immediately, and competition law may not find sufficient justification to intervene because there is no intent or quid pro quo. Furthermore, there is no coordination between national competition law enforcement and the WTO dispute resolution process. States' ability to implement concrete policies to address unfair pricing is hampered by this disparity.[17]

Some jurisdictions have attempted institutional coordination despite these obstacles. For example, despite a lack of official integration, India's CCI and DGTR have occasionally

[16] Bi, Y., & Van Uytsel, S. (2015). Could Predatory Pricing Rules Substitute for Antidumping Laws in the Proposed China–Japan–Korea Free Trade Agreement?. *Social Science Japan Journal*, *18*(2), 163-192.
[17] Denner, W. (2013). *The possible interaction between competition and anti-dumping policy suitable for the Southern African Customs Union (SACU)* (Doctoral dissertation, Stellenbosch: Stellenbosch University).

exchanged inputs. In controlling overlap, the EU has demonstrated comparatively more success due to its centralized enforcement through the European Commission. In this way, the confluence of anti-dumping and predatory pricing, particularly in complex, contemporary economies, creates both legal and regulatory issues. To maintain equity without impeding legal competition or cross-border commerce, a more comprehensive strategy is needed; this is covered in more detail in the next section on difficulties presented by digital marketplaces.[18]

Challenges in the Digital Economy and Global Markets

With the rise of the digital economy, traditional trade and market structures have changed, making it more difficult to control pricing behavior. Digital platforms are international in scope, use dynamic pricing, and often provide services at zero or significantly lower costs. Because of these changes, traditional legal frameworks such as anti-dumping and predatory pricing – both of which were previously designed for physical goods and markets with limited geographic reach – no longer apply.[19]

The complexity of evaluating pricing structures in online markets is a major obstacle. Many online businesses use platform-based business strategies, providing essential services for free while earning money from data or advertisements. For example, customers may consider the services of firms such as Google or Meta to be free, making it challenging to apply cost-based criteria that are essential for both predatory pricing analysis and anti-dumping research. Regulators find it difficult to decide in these situations whether low or zero pricing is an unfair trade practice or a reasonable corporate strategy. The worldwide scope of digital services adds another layer of complexity. Comparing export prices with domestic prices at the place of origin is the basis of traditional anti-dumping investigations. On the other hand, global digital platforms may not have a defined "home market" for price comparisons. For example, mobile apps or cloud computing services are often provided internationally at standard prices or with customized reductions. The effectiveness of the current trade remedy law is weakened as a result of ambiguity about the "normal value" of such services for anti-dumping reasons.[20]

[18] Trapp, P., & Trapp, P. (2022). Terminological Overlaps and Conceptual Differences in the Concepts Used in EU Competition and Trade Defence Law. *The European Union's Trade Defence Modernisation Package: A Missed Opportunity at Reconciling Trade and Competition?*, 105-133.
[19] Bown, C. P., & McCulloch, R. (2015). Antidumping and market competition: implications for emerging economies. *Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS*, *76*.
[20] Bown, C. P., & McCulloch, R. (2015). Antidumping and market competition: implications for emerging economies. *Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS*, *76*.

For competition law enforcement, this task is just as important. Even in the apparent absence of below-cost pricing, digital marketplaces often exhibit traits such as network effects, data advantages, and first-mover dominance that can help businesses expand quickly and keep out competitors. In several countries, platforms such as Amazon and Uber have been accused of employing cross-subsidies and algorithmic pricing tactics that can undermine competition. However, since these corporations employ long-term, multi-market strategies, proving predatory intent and recovery is still challenging.

Enforcement is made even more difficult by jurisdictional concerns. When a tech company headquartered in one country implements a pricing strategy, it can affect markets in many other countries simultaneously. Competition law actions are subject to territorial jurisdiction, while anti-dumping investigations are country-specific. The lack of a unified worldwide response to digital pricing practices that may be harmful in multiple jurisdictions is a consequence of this fragmentation.[21]

Regulatory imbalances are another problem. Domestic sectors in developing countries are disadvantaged because they often lack the technical know-how and resources needed to track complex digital pricing trends. Meanwhile, large digital companies are able to leverage legal loopholes and inconsistencies to their advantage. In short, traditional interpretations and implementations of anti-dumping and predatory pricing rules face significant obstacles in the digital economy. To accommodate non-traditional pricing patterns, multinational services, and algorithm-driven initiatives, the current legal framework must change. Without these changes, authorities risk either prosecuting harmful practices too harshly or stifling innovation and access by enforcing them too strictly. These issues require greater international cooperation and unified legal norms.

Towards a Harmonized Legal Approach

Particularly in the current global and digital commerce context, an integrated legal strategy is becoming more and more necessary due to the overlapping issues of predatory pricing and anti-dumping. Large multinational corporations can take advantage of regulatory loopholes, uneven enforcement, and regulatory duplication caused by the existing fragmentation, where trade and

[21] Adam, R. (2023). Predatory pricing for e-commerce businesses from a business competition law perspective. *Journal of Law and Sustainable Development*, *11*(8), e1438-e1438.

competition agencies work separately. Increasing inter-agency cooperation at the national level is one of the most important steps towards standardization. For example, the Directorate General of Trade Remedies (DGTR) and the Competition Commission of India (CCI) should work more closely together in India.[22] Such cooperation can help ensure that local regions and consumers are adequately protected and that there is no conflict in intent or conclusions of unfair pricing investigations.

International organizations such as the WTO, OECD, and UNCTAD could be crucial in creating guiding principles that combine competition and trade policy. While competition law forums could develop frameworks for investigating global predatory activities, the WTO may want to broaden its anti-dumping framework to include digital services and complex pricing schemes. Furthermore, both regimes should emphasize economic analysis. Accurate market data, cost analysis and long-term impact assessments are essential to support legal enforcement. This guarantees that measures applied pursuant to anti-dumping or competition law are fair, appropriate and free from protectionist motivations. In this way, harmonization means aligning legal systems to accept each other's goals, not combining them. A solid strategy that combines shared data, cooperative analysis, and procedural transparency can bring more effective controls on unfair pricing, without compromising the benefits of free trade and healthy competition.[23]

Conclusion and Policy Recommendations

The legal foundations, policy goals, and enforcement strategies of predatory pricing and anti-dumping differ from each other. While predatory pricing has its roots in competition law and seeks to maintain market fairness and consumer welfare, anti-dumping is a trade measure aimed at protecting local regions from unfair foreign pricing. Both systems often handle comparable price issues despite their differences, which can result in practical overlap and legal uncertainty.[24] These overlaps have become increasingly evident and complex in the modern, digital, and multinational economy. When multinational corporations use complex pricing

[22] Anurakti, S., Arora, V., & Narayanan, K. Determinants of Anti-Dumping Petition in the Chemical and Pharmaceutical Sectors in India. *Available at SSRN 4803518*.
[23] Arora, V., & Narayanan, K. (2024). Does opinion really matter: World Trade Organization's members' stance on India's anti-dumping policy?. *International Political Science Review*, 01925121241281939.
[24] James, R. A. (2022). Dumping and Anti-Dumping in India: A Critical Study on DGAD. *Issue 6 Indian JL & Legal Rsch.*, *4*, 1.

mechanisms to operate across nations, regulators find it more difficult to enforce classic legal requirements.

Coordinated legal action is needed to address these issues. The first step in preventing contradictory decisions is for national authorities to establish clear guidelines for cooperation between trade and competition agencies. Second, international organizations such as the OECD and WTO should strive for policy convergence, especially when it comes to pricing regulation in digital trade. Third, when dealing with multinational IT companies, a thorough economic study that takes into account cost structures, market power, and long-term consumer impact is essential for both anti-dumping and competition law enforcement. Finally, nations must be careful that enforcement does not turn into a political or protectionist strategy. Legal actions must be open-ended, supported by facts, and tailored to the harm identified.

In conclusion, even though predatory pricing and anti-dumping policies have different goals, they are inextricably linked to each other. Aligning their application through institutional cooperation and legal clarity will result in more uniform, equitable, and efficient regulation. This is vital to maintaining competitive markets and the integrity of international commerce.