The purpose of this chapter is to explain dumping. Dumping has been called unfair trade (Viner 1966a:8). Unfair because the exporter is perceived to have an artificial rather than a genuine comparative advantage over its competitors in the importing market. Economists have endeavoured to explain how it is possible that such unfair trade can take place. The various economic theories of dumping will be explained in this chapter.

Initially it was argued that dumping was predatory. English exporters were often accused of predatory dumping and intending to “crush” the new fledgling American industries of the 19th century. And it was largely the accusations and fears of predatory dumping that resulted in the various agreements meant to deter dumping. However, Viner (1966a:40) was of the opinion that most of the dumping that took place during the early part of the 19th century was unintentional dumping rather than predatory dumping. In other words, the firms or industries had large stocks which were sold at very low prices because supply was great - there was no intent to destroy or prevent the development of American industries. If producers had surplus products they would sell these products at a low price in other markets which were termed the “dumping-grounds”, but according to him there was no obvious predatory intent (Viner 1966a:1). In fact according to Viner (1966a:36-37; 1966c:375), it was the large-scale production of the Industrial Revolution in England that provided the necessary conditions for dumping - firms were able to price-discriminate.

The main reason why a firm can dump seems to be because it has been favoured above its rivals (foreign or domestic). Trade barriers may be used to protect a firm from foreign competition and government measures may create distortions in the domestic market of the exporter, enabling an exporter to reduce its cost of production or subsidising any losses made on exports or even on domestic sales. But as will be seen in this chapter, defining exactly what dumping is or is not can become quite complex.
3.1 DIFFERENT TYPES OF DUMPING

Viner (1966a:23) classified dumping into different types according to the motives of the dumper and according “to the degree of continuity of dumping.” His classification table (slightly altered) is replicated in Table 3.1. In the explanations that follow it will be assumed that the principal market is the domestic market of the exporter and that any dumping is done in foreign markets, which would then be the subsidiary markets of the dumpers. Two important factors are highlighted by Viner (1966a:30) in the process of classifying dumping, the period over which the dumping takes place and whether or not dumping results in adjustment costs in the importing country.

3.1.1 Type A dumping - to dispose of casual overstock (sporadic dumping)

One reason why a producer may dump is in order to dispose of casual overstock. Sales during a specified period may not be as good as expected and then the producer might find himself or herself with surplus stock. The producer then faces various options with regards this surplus (Viner 1966a:24). He or she may decide to keep the surplus stock until the next “season” but only if this action is feasible - certain products may be out of fashion by the next selling period. Holding over surplus stock could also be costly in terms of storage costs and could imply that the producer might have to cut production during the next period (Viner 1966a:23-24, 110). The producer may try to liquidate the stocks by reducing prices in the domestic market. But even if this is feasible, the producer may be reluctant to reduce prices in this market because it may be difficult to increase prices again in the future, in other words reducing prices in order to sell a surplus may “spoil” the domestic market. On the other hand, the demand in the domestic market may be so price inelastic that trying to reduce the price to increase sales is just not a viable option.
Table 3.1   Classification of dumping according to motive and to continuity

<table>
<thead>
<tr>
<th>Motive</th>
<th>Continuity</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. To dispose of casual overstock</td>
<td>Sporadic</td>
</tr>
<tr>
<td>B. Unintentioned</td>
<td>Sporadic</td>
</tr>
<tr>
<td>C. To maintain connection (or goodwill) in a market in which prices are on remaining considerations unacceptable</td>
<td>Short-run or intermittent</td>
</tr>
<tr>
<td>D. To develop trade connections and buyer’s goodwill in a new market</td>
<td>Short-run or intermittent</td>
</tr>
<tr>
<td>E. To eliminate competition in the market dumped on (predatory dumping)</td>
<td>Short-run or intermittent</td>
</tr>
<tr>
<td>F. To forestall the development of competition in the market dumped on (predatory dumping)</td>
<td>Short-run or intermittent</td>
</tr>
<tr>
<td>G. To retaliate against dumping in the reverse direction</td>
<td>Short-run or intermittent</td>
</tr>
<tr>
<td>H. To maintain full production from existing plant facilities without cutting domestic prices</td>
<td>Long-run or short-run</td>
</tr>
<tr>
<td>I. To obtain the economies of larger-scale production without cutting domestic prices</td>
<td>Long-run or short-run</td>
</tr>
<tr>
<td>J. On purely mercantilistic grounds</td>
<td>Long-run or continuous</td>
</tr>
</tbody>
</table>

Source: Viner 1966a:23

The producer could also try to sell the surplus on a foreign market at the best price obtainable. As long as the producer can cover some costs, this action would be preferable to destroying the surplus, which is another option. If the producer exports at a price lower than the selling price in his or her own domestic market, the normal value, he or she is dumping. However, this type of dumping does not
According to the URAA, Article 2.4, exchange rate dumping is not subject to anti-dumping measures (Grimwade 1996:101). Viner’s (1966a:352) definition of sporadic dumping implies such a short period that it is highly unlikely that this type of dumping will become the object of an anti-dumping investigation. By the time an anti-dumping action has resulted in an anti-dumping duty being imposed, the dumping would be a thing of the past.

Furthermore, Viner (1966a:30) is of the opinion that sporadic dumping, which he referred to as “scattered isolated instances of dumping”, cannot be construed as being injurious to the country dumped on. In other words, sporadic dumping would not cause firms or industries in the importing country to go bankrupt, nor would this type of dumping prevent firms being established in that country. Sporadic dumping would therefore not result in adjustment costs in the importing country, merely a temporary loss of profits. Haberler (1936:300) agreed with Viner that sporadic dumping is of no special interest or major consequence although it might be rather annoying to rivals of the dumper in the importing country.

3.1.2 Type B dumping - Unintentional or accidental dumping

Another type of dumping, which Viner (1966a:31) also classified as sporadic, is unintentional or accidental dumping. A firm may agree to export goods with a certain expected price in mind. But for some reason the firm miscalculates and the actual price ends up being much lower than the expected price and as a result the firm may end up unintentionally dumping (Viner 1966a:24-25). Such a situation could occur if goods are sold on consignment, or could be the result of currency fluctuations or just plain inexperience in pricing a new product (Kostecki 1991:9). Deardorff (1990:33-4) and Davies and McGuinness (1982:171-176) suggest that in such a situation a firm could possibly even end up selling at below marginal cost. But the chances are that such an error will be rectified as soon as possible. As is the case with the previous type of sporadic dumping, unintentional dumping, while being somewhat

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1 According to the URAA, Article 2.4, exchange rate dumping is not subject to anti-dumping measures (Grimwade 1996:101).
annoying to the rivals in the importing country, is not considered to be injurious or significant. Dumping by the previous centrally-planned economies (CPEs) could also be classified as unintentional dumping if costs were not properly allocated or input prices were distorted. But in the case of CPEs the dumping was usually not sporadic. On the contrary, CPEs could dump products over a long period and such dumping was injurious even though it may have been unintentional.

Another group of dumping actions were classified as short-run, intermittent or temporary dumping (Viner 1966a:23; Haberler 1936:300). These dumping actions, types C to G in table 3.1, could continue for long enough to have an injurious effect on producers in the country dumped on and could therefore result in adjustments costs to the importing country. There could also be sufficient time for complainants to go through the necessary procedures to have anti-dumping duties imposed. So these types of dumping could become the object of anti-dumping actions, a fact which on its own may discourage dumping (Ethier 1987:938; Haberler 1936:300).

3.1.3 Type C dumping - to maintain connection (or goodwill) in a market in which prices are on remaining considerations unacceptable

An exporter may export to a market in which prices are very low, much lower than the price that the exporter would like to sell at and much lower than the exporter’s domestic price - the normal value. But in order to keep contact with the buyers in this market the exporter may be prepared to sell at these low prices (Viner 1966a:25). Strictly speaking, this exporter would be dumping because the normal value is greater than the export price ($NV > PX$). But as long as the exporter does not undercut the prices of its rivals in the importing country or export large volumes of the product to that country, it is unlikely that the rivals will initiate anti-dumping actions against such an exporter.

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2 This has become known as the harassment effect (see ch 2, section 2.5.4).
3.1.4 Type D dumping - to develop trade connections and buyer's goodwill in a new market

Dumping could also occur if the exporter wants to access a new market or as later authors suggest, expand market share, using lower prices as a marketing strategy to obtain this goal. For example, low prices are a strategy used to encourage consumers to try a new product (Boltuck 1991:101). Such a strategy may be called promotional dumping. The intention would be to increase prices as soon as the firm has a foothold in the new market.

If a firm is trying to gain access to a new market or is trying to expand its market share it is increasing the competition for its rivals. Suppliers of, for example, electronic products could try to increase market share by what Kostecki (1991:8) terms “a frontal attack on a price leader”. Kostecki called this head-on dumping. Deardorff (1990:37) and Davies and McGuinness (1982:176-177) suggest that dumping to get a foothold in a new market could be highly competitive and could even result in dumping at below marginal cost. More recent explanations of dumping describe this as “predatory dumping to gain dominant market share” or “market share predation without monopolization” (see section 3.2.2) (Belderbos & Holmes 1995:852). Type D dumping would probably be a target of anti-dumping actions because it increases competition for import-competing industries. This type of dumping is not predatory dumping in the strict sense though, because it is assumed that there is no deliberate intention to destroy existing competition in the importing country. In other words, the dumper is not trying to establish itself as a monopoly. But this type of dumping does seem to have many of the traits of predation (Viner 1966a:26).

3.1.5 Predatory dumping (Type E dumping - to eliminate competition in the market dumped on and Type F dumping - to forestall the development of competition in the market dumped on)
If a firm deliberately undercuts prices of existing or potential rivals in the importing market to eliminate (type E) or prevent (type F) competition in that market, then the firm is guilty of predatory dumping (Viner 1966a:26-27). Once the goal of the dumper has been achieved, that is, the competition or potential competition has been eliminated, the firm increases the price of its product, in order to make as high a profit as is possible. The firm is now a monopolist in the foreign market having successfully destroyed any competition. It can now make the expected long-run monopoly profits which will recoup temporary losses made during the short-run predation phase. While consumers in the importing country benefit from the predatory prices, once the firm has established its monopoly, these consumers are faced with monopoly prices and no prospect of any competition. Consumers are therefore much worse off in the long-run as a result of predatory dumping (Hindley 1991:27).

Predatory dumping was the original explanation offered by economists for dumping and is often the justification offered for the existence of anti-dumping regulations and measures. But this explanation has lost favour. Economists have offered some new explanations for predatory behaviour during the last couple of decades, but consensus has not been reached in respect of an acceptable economic explanation for this alleged behaviour (Cass et al 1998:79). Some of the economic theories of predatory behaviour, and specifically predatory dumping, will be discussed in more detail in section 3.2.2.

3.1.6 Type G dumping - to retaliate against dumping in the reverse direction

A rival producer in the importing country may decide to dump similar products into the domestic market of the original dumper as a defence against the original dumping. This type of dumping has become known as reciprocal, retaliatory or defensive dumping (Haberler 1936:300; Viner 1966a:353). Reciprocal dumping could also mean that the same goods are sold back into the original market at prices less than the domestic price of the original dumper. Transport costs are often a barrier to reciprocal dumping of the latter kind.
Brander and Krugman (1983) also used the phrase “reciprocal dumping”, but in a slightly different set of circumstances. In their simple model of Cournot duopoly they show how imperfect competition can result in two-way trade or intra-industry trade between two oligopolistic firms. Each firm believes it can segment its market and that the other firm will keep its output constant. The rivalry between the two firms can result in reciprocal dumping or cross hauling. These firms can dump similar but differentiated products in each others markets. While reciprocal dumping may be a waste in terms of unnecessary transport costs, market size can be increased for both firms and the resultant increase in competition may increase consumer welfare (Winters 1992:60-63).

3.1.7 Type H dumping - to maintain full production from existing plant facilities without cutting domestic prices

According to Viner(1966a:36-37), large-scale production provided the necessary conditions for dumping. The imperfect market conditions such firms operated in meant that domestic demand for the products of a firm was relatively inelastic. If the firm could limit supply on the domestic market and charge high prices, it could maximise excess profits. At the same time the firm would want to operate at full capacity to keep costs at a minimum. But operating at full capacity would mean spoiling the domestic market unless the surplus output could be sold on other markets, in other words, exported. The firm would have less market power in these subsidiary markets than it would have in its domestic market, so the export price would be lower than the normal value (Viner 1966a:27-28). The firm would therefore produce a surplus output over an indefinite period, with the intent to dump the surplus onto export markets.

While dumping to maintain full production is considered to be a more permanent type of dumping than those already discussed, it could also be temporary (Viner 1966a:27-28,30-31). An advantage of this type of dumping if it is long-run or permanent, is that consumers in the importing country are assured of a permanent cheap supply of the product that is being dumped.

If dumping is temporary or short-run, it could impact negatively on the importing country. While the
exporting firm is dumping in order to maintain full production levels, the local firms in the importing country may be forced to close down. When the firm stops dumping, local firms have to start up again. This type of adjustment is a waste of resources and costly to the importing country (Deardorff 1990:28-9; Viner 1966a:30; Winters 1992:140). Such dumping could therefore justifiably be the target of anti-dumping actions.

3.1.8 Type I dumping - to obtain the economies of larger-scale production without cutting domestic prices

If a producer can expand the production plant and at the same time reduce average total costs, it means the producer is able to take advantage of economies of scale (Viner 1966a:28). Such a producer will need to find buyers for the increased output. If the producer is reluctant to increase the supply on its domestic market, it will need to find new markets, in other words it must export. But the price the firm obtains in the subsidiary markets may not be as high as the price it may obtain in its principle market. If this is the case the firm will be dumping. Kostecki (1991:8) called this type of dumping “penetration dumping” and according to him electronic companies like Hitachi, Nippon Electronics, Mitsubishi Electronics and Toshiba used this type of dumping in combination with type D dumping, to capture market share from their American competitors.

As in the case of dumping action type H, type I could be permanent or temporary. However, if a producer has expanded its production plant to take advantage of economies of scale, it is unlikely that the firm would reduce its output levels if it can be avoided. So this type of dumping is likely to be of a permanent nature as long as the producers remain in operation and as long as the producer continues to supply the same buyers. And if the dumping is permanent, consumers in the importing country are assured of a cheap supply of products. The cost of adjustment to the production sector in the importing country, as a result of cheaper dumped imports would be the same as if the dumper had a comparative advantage. Anti-dumping actions against this type of permanent dumping would not be justified from an economic perspective. The need to protect the import-competing industry may arise from its
strategic importance though. However, if the dumping was short-run, the cost of adjustment in the importing country could be more than the short-run benefits accruing to consumers as a result of the temporary supply of cheap products. When the dumping stops, the consumers may no longer have an alternative supply of the products, as there may no longer be local producers in the importing country. (Viner 1966a:31; Winters 1992:140). In the event of type I dumping being temporary, the resultant adjustment costs could justify the call for protection against the dumping.

3.1.9 Type I dumping - on purely mercantilistic grounds

When the purpose of dumping is to stimulate export trade in order to, for example, improve a country’s balance of payments or to improve economic growth, then the government of the exporting country is usually involved. The government could grant direct or indirect assistance to exporters by way of bounties or subsidies on exports or other types of aid like cheap loans or even an over- or undervalued currency. Government aid granted to producers in CPEs in order to stimulate exports could be categorised as this type of dumping (see section 3.2.5). Viner (1966a:29) classified this as dumping as the result of mercantilistic motives. Permanent or long-run dumping may occur and the dumped goods may even be sold abroad at a loss if the state or some other (usually government) body grants an export subsidy or provides other type of aid to a producer (Haberler 1936:300-301). This type of assistance is considered to be unfair, as it creates an artificial advantage for the producer over its competitors. Measures that could be used to counter this type of dumping would be either anti-dumping or countervailing measures. Dumping on purely mercantilistic grounds is not as prevalent as it used to be during the late 19th and early 20th century. But governments do still encourage exports by various means which could be construed as being either direct or indirect aid.

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3 China is currency being accused of undervaluing its currency. Chinese exports are therefore cheaper than they should be which means an unfair trade advantage for Chinese exporters (Mukherjee 2004).
3.1.10 Counter-cyclical dumping

The short-run type of dumping which occurs during business depressions or slumps to get rid of a temporary surplus, has been termed counter-cyclical dumping (Viner 1966a:115; Winters 1992:141). If firms were to decrease production during a depression to avoid surplus production, it would mean laying off workers. Counter-cyclical dumping could therefore be a strategy used to stabilise production levels at full production over the business cycle (Ethier 1982; 1987:938). The use of anti-dumping actions seem to follow an anti-cyclical trend which lends weight to this argument. Business men were practising this type of counter-cyclical dumping during the early 20th century to maintain high prices and full capacity (Viner 1966a:28). Ethier (1982:489) suggests that in the modern “world of uncertainty and sluggish adjustment”, this may still be the most prevalent type of dumping. For example, counter-cyclical dumping was used by the European steel companies during the slump in demand for steel in the mid-1980s (Kostecki 1991:7).

3.2 ECONOMIC THEORIES OF DUMPING BASED ON MARKET PRINCIPLES

The above descriptions of dumping provide some insight into what dumping is, but they do not fully explain why firms are able to dump. Economists have attempted to provide some economic rationale for dumping. In this section the economic theories of dumping for firms based in market economies will be discussed in detail. Dumping by non-market economy countries will be discussed in the following section.

3.2.1 Dumping as price discrimination between different national markets

One theory that could explain dumping is the theory of international price discrimination - a certain type
of pricing practice whereby a firm or industry could charge different prices for the same product in different national markets (Viner 1966a:6). One of these markets would be the main or principal market, usually the domestic market of the dumper, the other would be a subsidiary market, usually the export market. The subsidiary market would be the market into which the product would be dumped. The producer/seller sells the product in the principal market at a price high enough to make monopoly profits and then sells any surplus products in the subsidiary or occasional market at prices lower than those in the principal market (Viner 1966a:6). The export price could even be less than average total cost and still ensure an increase in profits if the producer was facing increasing returns to scale. This type of dumping is called price dumping and is the rationale behind the definition of dumping in the Anti-dumping Agreement.

An exporter could dump its products for a number of reasons as explained in the previous section of this chapter. The exporter may want to get rid of surplus stock, or may want to enter a new market or expand market share. The exporter may be a producer that faces increasing returns to scale and may want to take advantage of this by maintaining full production. On the other hand, the producer may have expanded production capacity and may be battling to sell its products because it overestimated global demand or because the world economy is in a recession. The producer may even be trying to establish itself as a monopolist and so decides to resort to predatory dumping to achieve this goal, or more realistically, may be trying to establish itself as the dominant firm by trying to capture the dominant market share. A producer could practice international price discrimination to allow it to dump onto its export markets for any of these reasons. But according to economic theory, a number of circumstances need to be in place before a firm can price discriminate.

According to the neoclassical economic theory of the firm, a firm will maximise profits if it produces where marginal cost of production (MC) is equal to the marginal revenue received from sales (MR). The price at which the firm sells its products is dictated by the forces of supply and demand on the market for the relevant product. Under the assumption of free and perfect competition, the demand curve for the product would be perfectly elastic and the MR would equal the selling price, P. In order to maximise profits the firm will produce where MC=MR=P (see figure 3.1) and under these conditions the firm will make normal profits, or zero excess profits.
If the assumption of free and perfect competition is relaxed and imperfect competition is assumed, the demand curve for the product that the firm is selling takes on a negative slope and the price elasticity of demand is no longer equal to infinity (Robinson 1946:52). According to the economic theory of the monopolist firm, a monopolist has a certain amount of market power. Assuming that the monopolist wants to maximise profits he/she will aim to produce where marginal revenue (MR) equal marginal costs (MC) (see figure 3.2). But the selling price is now greater than the MR and the monopolist will make more than the normal profits, it will make monopoly or excess profits (Robinson 1946:52-55).
Such a firm may sell its products in two, or more, different markets. The firm could then sell its products at different prices. This practice is known as price discrimination. The monopolist in figure 3.3 has been able to segment his or her total market into two different markets, market_1 and market_2. The demand curve facing the monopolist in market_1 is D_1 and the marginal revenue curve in this market is MR_1. Likewise in the other market the demand and marginal revenue curves are D_2 and MR_2 respectively.
This monopolist wants to maximise profits. So he or she must produce where the marginal cost of production is equal to marginal revenue. But which marginal revenue? It is important to note that this firm is producing in one plant for two separate markets. So there is only one marginal cost curve, MC (Robinson 1946:183; Van den Bogaerde 1981:363). If this monopolist is to maximise profits the marginal revenues in the two separate markets must be the same and equal to the MC. The monopolist must therefore charge different prices in the two markets so that the marginal revenues are the same value. But how is this achieved given our example?

The monopolist produces where the total marginal revenue $\text{MR}_T$ is equal to the MC. In other words the total demand facing the monopolist is the summation of the demand in both markets and the level of production is then determined in the usual way using the total marginal revenue curve, not the two
marginal revenue curves of the individual markets. The points of intersection between MC and the two marginal revenue curves $MR_1$ and $MR_2$ are meaningless (Robinson 1946:183 footnote). Once the profit maximising level of production has been established by $MC=MR_T$, it is this value of $MR$ depicted by the line $EF$ in figure 3.3, that must be obtained in each separate market. The individual prices on each market are obtained by drawing a vertical line from the intersection of $EF$ and the individual marginal revenue curves ($MR_1$ and $MR_2$) in each market, to the relevant demand curves. In this fashion we obtain price $P_1$ in market$_1$ and $P_2$ in market$_2$.

If the two demand curves in figure 3.3 had been iso-elastic, in other words if they had the same price elasticity, the monopolist would have had to charge the same price in both markets (Robinson 1946:185). So this ability to divide one’s customers up into different groups who are willing to pay different prices for the same products is dependent on the price elasticity of demand being different between these groups (Haberler 1936:311; Robinson 1946:181, 186). The group of buyers or the market in which the enterprise has more market power to charge higher prices in order to make excess (monopoly) profits is the principal market of the enterprise. The market(s) in which the enterprise has no or very little market power is/are the subsidiary market(s). The price elasticity of demand is higher in the subsidiary market(s) than in the principal market (Viner 1966a:6). But what would happen if the buyers in the subsidiary market were able to resell the product on the principal market of the enterprise? This selling back of the product will probably drive the price down in the principal market. The firm therefore has to ensure that the market in which it is proposing to sell at high prices, its principal market, is somehow protected from saleback from its other markets.

It is easy to protect the different markets from the possibility of resale or saleback by buyers if the product is a service. For example a doctor could charge different rates according to whether patients are rich or poor, and the patients paying the lower price cannot resell the service to someone else (Pigou 1946:276; Robinson 1946:180; Taussig 1946:224). However, if the product is a good that buyers are able to resell amongst themselves, the firm may not be able to control the market in which it is trying to make excess (monopoly) profits.

The intention of a price-discriminating monopolist is to sell the same product to different groups of
Whether or not the monopolist would increase output by charging different prices on the different markets would depend on whether the demand curves are concave, linear or convex. Pigou (1946:285-288) and Robinson (1946:188,195) dealt with this problem extensively but their discussion is of no consequence to this thesis.

According to Robinson (1946:180) and Taussig (1946:226) price discrimination is most likely to occur when there is a single seller, in other words if there is a monopolist or if there is some agreement between the various sellers, for example a cartel. But it is not necessary for there to be a monopolist or cartel in order for price discrimination to take place. However, there must be some degree of market imperfection. If the markets were operating perfectly there would be perfect or keen competition and then there could be no price discrimination (Robinson 1946:179; Taussig 1946:226; Van den Bogaerde 1981:361). It is the lack of perfect or keen competition which gives a firm some market power which allows it to price discriminate (Viner 1966a:96-97). And one way to prevent or reduce competition is by preventing or reducing imports. For example, the volume of imports could be controlled by means of quotas, in other words the supply of the imported product is controlled. Import tariffs could also be used to reduce the volume of imports as a tariff increases the price of a product - usually to a price that is higher than the domestically produced like product. Price-conscious consumers would then usually transfer their demand for the product to the cheaper domestically produced product.

Under imperfect competition, sellers are usually able to segment or fragment their markets and are then able to charge different prices to the different markets, because when markets are imperfect, buyers may not be able to move readily from seller to seller (Robinson 1946:180; Van den Bogaerde 1981:361). So the degree to which sellers may practice price discrimination depends on the degree of market imperfection.

According to Pigou (1946:279), there are different degrees of price discrimination. If a monopolist could divide his or her total market into separate individual buyers, and the monopolist could charge each buyer a different price according to the demand curve facing the monopolist, this would be perfect or first-degree price discrimination. If the monopolist could divide its total market into blocks of buyers who were prepared to pay the same price for a product this would be second-degree price discrimination.
discrimination. But a monopolist is usually unable to divide its total market at will. There is usually some factor that divides the total market into different groups and the monopolist can choose to take advantage of this imperfection in the market to segment the market and price discriminate. This is known as third-degree price discrimination and this is the type of price discrimination we find in practice (Dale 1980:20-21; Pigou 1946:279; Robinson 1946:185-188).

Different packaging or brand names can be used to segment a market. The snob value of names and labels have been successfully used to encourage rich buyers to pay more for a product which is being sold to other less privileged groups at lower prices (Robinson 1946:180-81, 186). The existence of copyright and patents can be used in a similar fashion to segment markets. Publishers can publish limited first editions at very high prices and then later sell cheaper popular editions of the same book. Patents are used to protect a new product which is initially sold at high prices and which over time as more producers enter the market, get cheaper (Taussig 1946:223-227). A good example of the latter are computers.

Another example that has been used to illustrate market segmentation is that of people buying airline tickets (Glahe & Lee 1981:307). Some passengers, for example business people, may have to purchase a ticket to a specific destination a few days before they fly and they have no option in the matter, they have to fly. Then there are those passengers who want to go on holiday and they can book a few months in advance. Airlines are able to charge these different categories of passengers different prices - a high price to the passengers whose price elasticity of demand for the airline ticket is inelastic, a low price for those who have the time and opportunity to decide whether or not they will fly. But, in this example the products have become differentiated which is not quite the same thing as price discrimination for the same product (Holmes 2000). The difference between price discrimination and product differentiation could be important in an anti-dumping investigation, because a product that is dumped on an export market must be the like product to the product produced and sold by the import-competing industry. If the product produced by the import-competing industry and the imported product are differentiated, it could be argued that the imported product is not a like product and is therefore not being dumped. The complications involved in whether or not a product is a like product will be discussed in more detail in chapter 4.
To summarise, there are certain conditions that must prevail for an enterprise to be able to practice price discrimination successfully.

- The seller must have some monopoly or market power in its principal market. Prices must be responsive to quantities sold, which implies some market imperfection.
- There must be a significant difference between the price elasticities of demand of the different groups of purchasers. Without this difference in price elasticities the enterprise cannot segment its market(s).
- The enterprise must be able to group buyers into different categories (segment its market) without this exercise costing too much.
- The enterprise must be able to prevent the low-price buyers reselling the goods in the principal market of the dumper.


When an enterprise is an international price discriminator, some of its markets are situated in other countries, so its markets are segmented geographically (Robinson 1946:184). Usually the purpose of such an enterprise would be to sell their surplus output in foreign markets at lower prices to avoid lowering prices in their domestic market. The enterprise does not want to “spoil” the domestic market by increasing the supply on this market (Taussig 1946:226; Viner 1966a:74). In order to do this, the producer must have some market power in its domestic market so that it can make monopoly or excess profits in this market. The total market will have been segmented geographically and the seller will usually face more competition in its export markets than in its domestic market so the price elasticity of demand will be more elastic in the subsidiary export market than in the principal market. But without some form of protection the enterprise may not be able to extract excess or monopoly profits in its principal market. If keen competition existed in the principal market, domestic prices would be forced down (Haberler 1936:301-302, 324). Transport costs often act as a barrier to the re-importation of dumped goods so the selling-back of the exported products is usually not a problem. Common barriers used to protect the producer in the country of export are import tariffs or quotas.

Would dumping occur if the enterprise faced keen competition in its principal market? According to Viner (1966a:97), no. According to Viner (1966a:4, 95-97), dumping as a result of price discrimination
can only occur if the enterprise is able to make excess or monopoly profits in its principal market. This type of dumping, also known as price dumping (as opposed to cost dumping, which will be discussed later on in this chapter) is based on the assumption that the normal value is greater than the export price (Cass et al 1998:75). The export price must therefore be cheaper than the price paid for the product in the domestic market of the dumper. If one assumes that the enterprise faces keen competition in its principal market and can therefore only extract normal profits in this market, then this firm must be making losses on its export sales if it is dumping. Or to quote Taussig (in Viner 1966a:123):

The domestic price (higher than the export price) may or may not be a “fair” or normal price, that is, such a price as would bring the usual rate of profit, and would be maintained under competitive conditions. If it is a fair price, then the foreign price being lower, is less than fair. In the long run, the business as a whole then would prove a losing one; the domestic business just pays, the foreign business does not pay.

So it is assumed that imperfect competition or some degree of monopolistic condition in the principal market of the dumper is a necessary condition for price dumping (dumping as a result of international price discrimination). It is also strongly argued that if there was perfect or keen competition in this same market there would be no price dumping. This type of argument evolved into a lengthy debate about the virtues of competition policy as supplement of or complement to anti-dumping and countervailing policies. This debate is briefly discussed later in this chapter (see section 3.5.2).

3.2.2 Predatory dumping

Predatory dumping could be classified as a special case of price discrimination. When a firm deliberately undercuts prices of its rivals in an importing country with the intent to destroy existing or potential competition so that it can establish or maintain a monopoly in that market, then such a firm is guilty of predatory dumping (Viner 1966a:26-27). Once it has established a monopoly or warded off potential competition the firm can increase prices to make monopoly profits. Although consumers in the importing country benefit from low prices in the short-run, consumers are later faced with monopoly prices and
no prospect of any competition. So predatory dumping not only decreases the welfare of producers in the importing country, it also decreases the welfare of the consumers in that country (Hindley 1991:27; Tharakan 1997:5).

Pigou (1946:345-346) was of the opinion that this type of cut-throat competition could be very powerful. But Haberler (1936:300) argued that predatory dumping seldom occurred and warned that accusations of predatory dumping could be used quite effectively to “frighten public opinion into imposing tariffs”. Indeed, accusations of predatory dumping and fear of the effects of such aggressive competition often seem to be the reasons given for the necessity of anti-dumping agreements and legislation (Winters 1992:140-141). But the argument that anti-dumping measures are needed mainly because of the occurrence of predatory dumping seems to be contradicted by the concept of cumulation that is allowed in an anti-dumping investigation, because cumulation implies the existence of other competitors (Nivola 1993:99; Palmeter 1993:188-189).

Although Viner (1966a:120-121) thought that there were enough instances of alleged predatory dumping to lend weight to the argument that predation is possible, feasible and profitable, he suggested that dumping types H (dumping to maintain full production from existing plant facilities without cutting domestic prices) and I (dumping to obtain the economies of larger-scale production without cutting domestic prices) (see sections 3.1.7 & 3.1.8) were far more common types of dumping than predatory dumping. Hindley (1991:27-32) agreed. He maintained that while some cases of dumping could be predatory, especially in highly concentrated industries, a great number of dumping cases occurred in industries that were not highly concentrated. So although many complaints about dumping have been based on the allegation that the dumping was predatory, and although predatory dumping has received much attention from the public, economists generally tend to minimise its importance (Cass et al 1998:79; Ethier 1987:937; Hindley 1991:27-32).

The general argument by economists against predatory dumping is that it is an irrational action. Predation is not the best strategy for an exporter because it means having to destroy every possible rival everywhere in the world. Only then can the firm, now monopolist, increase its prices in order to start making monopoly profits. But as soon as the monopolist increases prices, this action will attract new
rivals (Boltuck 1991:102; Tharakan 1997:5). It is argued that it would be far more rational for a firm to seek accommodation or collude with its competitors (Hindley 1991:29; Winters 1992:140). As Hindley (1991:28) put it, “Predatory pricing is an expensive policy for a seller to pursue.”. But Viner (1966a:120-121) pointed out that in spite of theoretical arguments to the contrary, predatory dumping was an option that some firms took seriously. He also pointed out that it was not necessary for a firm to destroy all its other rivals in the world, merely those that operated in the same regional market.

Milgrom and Roberts (1982:282-283) show in a game theory model that, if one assumes the existence of complete information, accommodating new entrants may be the best (profit-maximising) option for a monopolist. This could happen if potential entrants expect that the threat of predation by the monopolist is not credible - then they will ignore the threat (Kreps & Wilson 1982:255; Milgrom & Roberts 1982:282). The unique perfect Nash equilibrium of such a game is that entry and accommodation will occur. According to the logic of this game, predation would not be a rational nor a profit maximising strategy. An implication of this conclusion is that predatory dumping cannot destroy or prevent competition in the importing country. And if this were the case, anti-dumping duties would be an unnecessary impediment to competition from exports. But the threat of predation may be credible.

By using the same game as above and relaxing the complete information assumption, the logic and the conclusion of the game changes. The past actions of the monopolist become an important guide to potential entrants as to the future behaviour of the monopolist. If a monopolist has a reputation for being aggressive (as shown by past predatory behaviour), this reputation could influence the decision by potential entrants whether or not to enter the market. It is argued that, under the assumption of incomplete information, predatory behaviour can deter entry and that predatory dumping is used to do just that (Kreps & Wilson 1982:256-259; Milgrom & Roberts 1982:284). A firm could invest in excess capacity or export at below cost in order to discourage new entrants or to expand its market share (Belderbos & Holmes 1995:836). Kostecki (1991:8) suggested that the exporting of “newly invented high technology products”, for example video recorders exported from Japan into France during the mid-1980s, was a good example of dumping to discourage new entrants. He called it early arrival dumping.
Another example of dumping that could be classified as predatory (or strategic) dumping was during the 1980s, when leading Japanese manufactures drove a number of US producers out of the semiconductor market and the US became increasingly depend on Japanese suppliers (Nivola 1993:32-33; Tharakan 1997:3-4). The Japanese government also intervened in the industry, organizing a producer cartel, which, together with increased profits as a result of subsequent higher prices, resulted in supra-profits for the Japanese producers. These profits were ploughed into research and development strengthening the position of Japanese producers in relation to US producers even more. While the US producers were not all forced out of the market, the Japanese suppliers succeeded in capturing the dominant semiconductor market share from the US. So the purpose of predatory behaviour could be to just capture the dominant market share without trying to become a monopolist (Bolton, Brodley & Riordan 2000; Belderbos & Holmes 1995:836,840). And contrary to conventional predatory dumping theory, predatory dumping to increase market share may not result in high prices in and monopoly profits earned from the importing country. If the exporter’s intention is to increase market share in order to gain maximum benefit from economies of scale, prices may decrease not increase. And if this exporter is receiving some form of state aid, then prices could be even lower (Belderbos & Holmes 1995:837). In other words, this type of predatory behaviour could result in lower prices for consumers, in the short and the long run.

3.2.3 Selling below the full cost of production

According to the URAA, and previous anti-dumping agreements, if the selling price of a product on the domestic market of the exporter is not reliable, then a normal value may be calculated - taking the full cost of production into account. This method used to determine dumping was used to justify a cost-based definition of dumping included in US trade law in the early seventies. According to the US anti-dumping and countervailing statute, an exporter is dumping if its export price is less than fair value (LTFV). And fair value is equated with normal value and fully allocated cost (Carpenter1999:I-3 ft2;
Cass et al 1998:75-76). According to Horlick (1990:133-134), the “fully allocated cost” test for dumping has become the dominant feature of US anti-dumping law. About 60 per cent of all US anti-dumping cases since 1980 have been based at least in part on allegations of sales below cost.

Economies of scale have become an important factor in the production units of modern times. A firm that would export at below cost of production would usually be a large-scale firm facing increasing returns to scale, the more they increase production the more they benefit from economies of scale (Cunnane & Stanbrook 1983:3; Taussig 1946:183; Viner 1966a:36-37). In order to take advantage of increasing returns to scale these firms produce much more than their domestic market is prepared to purchase. They have a surplus which they need to get rid of in some market other than their principal market. But would it be profitable for a firm to produce these additional goods if it intends to sell them at below the full cost of production?

Taussig (in Viner 1966a:123) argued that a firm would not sell a part of its products at less than average cost over a long period of time. He maintained that at some stage the costs incurred to produce each unit of production had to be included in the selling price of each unit. If a portion of production was constantly sold at below average cost, another portion of the production had to be sold at more than normal profits to make up the loss incurred on the former. Taussig also made the point that should part of the output be sold at a fair value, in other words at a price that provides the firm with normal profits, and the rest of the output is sold below this fair value, the firm would be making a overall loss. So if the firm was consistently selling a part of its output at below the full cost of production or average total costs, and was unable to make up the loss so incurred on its other sales, the firm would have to reconsider its position. According to Taussig then, it is not profitable for a firm to sell some of its output below the full cost of production for any length of time, unless the firm can price discriminate in its principal market to recoup the losses made in subsidiary markets.

Viner (1966a:114) seems to be implying the same thing:

An additional profit will be obtainable from export sales at prices lower than the average cost of production if the reduction in average cost of production per unit resulting from the increase
in output multiplied by the total output before resort to dumping is greater than the excess of the average cost of production after resort to dumping over the export price multiplied by the number of units sold at the dumping price.

He used the following table to explain his reasoning:

Table 3.2  Economies of scale and exporting at below the full cost of production: The importance of price discrimination

<table>
<thead>
<tr>
<th>Total output</th>
<th>Average cost of production</th>
<th>Price</th>
<th>Sales</th>
<th>Total profit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Indirect $</td>
<td>Direct $</td>
<td>Total $</td>
<td>Domestic $</td>
</tr>
<tr>
<td>A) 100 000</td>
<td>1,00</td>
<td>3,50</td>
<td>4,50</td>
<td>4,75</td>
</tr>
<tr>
<td>B) 200 000</td>
<td>0,80</td>
<td>2,80</td>
<td>3,60</td>
<td>4,75</td>
</tr>
<tr>
<td>C) 200 000</td>
<td>0,80</td>
<td>2,80</td>
<td>3,60</td>
<td>3,70</td>
</tr>
</tbody>
</table>

Source: Viner 1966a:125

In scenario A in table 3.2, the firm produces 100 000 units for domestic sale only and its total (excess) profits are $25 000. If by either utilising excess capacity or by expanding its plant, the firm is able to produce 200 000 units, and this firm is able to price discriminate between its domestic and export markets, it can increase its total profits to $105 000 (see scenario B). If, however, the decision makers in the firm charged the same price in both the domestic and export markets, they could be faced with scenario C. The total profit on the domestic sales in scenario B is $115 000, $90 000 more than the total profit of $25 000 in scenario A. Granted the firm experiences a loss on export sales of $10 000 because it is exporting at below average total cost. But the increase in total profit on domestic sales ($90 000) is far more than the loss made on export sales ($10 000), in fact in this example the firm has increased its total profit by $80 000. But why is total profit so much in scenario B? While the average cost of production (cost per unit) decreased when the firm increased production, the selling price in the domestic market has stayed the same as in scenario A. The firm is making very high excess profits in
its domestic market.

Viner (1966a:115) maintains that exporting at a price that is below the average total cost after increasing output under the condition of increasing returns to scale, could even turn a previous loss situation into a profit situation. Let us assume that the highest price our firm could get for its product was $4.45 (in the domestic and foreign markets). The cost structure of the firm remains the same as it was in the previous table.

Table 3.3  Economics of scale and exporting at below the full cost of production: Turning a loss situation into a profit situation

<table>
<thead>
<tr>
<th>Total output</th>
<th>Average cost of production</th>
<th>Price</th>
<th>Sales</th>
<th>Total profit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Indirect $</td>
<td>Direct $</td>
<td>Total $</td>
<td>Domestic $</td>
</tr>
<tr>
<td>A) 100 000</td>
<td>1.00</td>
<td>3.50</td>
<td>4.50</td>
<td>4.45</td>
</tr>
<tr>
<td>B) 200 000</td>
<td>0.80</td>
<td>2.80</td>
<td>3.60</td>
<td>4.45</td>
</tr>
<tr>
<td>C) 200 000</td>
<td>0.80</td>
<td>2.80</td>
<td>3.60</td>
<td>3.70</td>
</tr>
</tbody>
</table>

Source: Adapted from Viner 1966a:125

In scenario A, the firm produces only 100 000 units which are sold on the domestic market at the best possible price ($4.45 in this instance) and it makes a loss of $5 000. If the firm then increases its output to 200 000 units and exports half of its output at a price below average total cost ($3.50), the profit made in the domestic market, still selling at $4.45, more than covers the loss on the foreign market (see scenario B). The firm now makes $75 000 profit ($85 000 profit in the domestic market less $10 000 loss in the export market). Average cost has decreased in the domestic market, but the firm is still selling 100 000 units at a price of $4.45 in its domestic market. The firm is deliberately producing goods to be exported at less than the full cost of production in scenario B. As long as the domestic market is protected, so that the firm can continue to make excess profits in that market, the firm will sell at below
the full cost of production in its export market. In other words, this firm could dump permanently (Ethier 1987:937).

Important to Viner’s argument is that this firm must be able to price discriminate. In other words, this firm is not only facing substantial economies of scale, it is operating in an imperfect, domestic market in which it has enough market power to obtain excess profit (Haberler 1936:300-1; Cass et al 1998:80; Robinson 1946:179-194). So the firm in Viner’s example is both selling at below cost and price discriminating. And it is unlikely that this firm would be prepared to export some of its output at below average total cost if it faced keen competition in its principal market, unless the motive of the firm was not profit maximisation or unless it was receiving some form of state aid, like a subsidy (Deardorff 1990:29).

Some economists argue that a firm may sell at “below full cost of production” when this means less than average total cost (a fair value), but that it is unlikely that a firm would sell at less than marginal (variable) cost. Haberler (1936:300-301) maintained that dumping over a long period was impossible unless the export price covered at least marginal cost. Deardorff (1990:33) seems to agree that dumping at below marginal cost would only occur in the short run and that this type of action would require the sacrifice of short-run profits for some other goal—for example predation. The firm could sell at below short-run marginal cost in order to establish a monopoly so that it can maximize long-run profits (Boltuck 1991:101,114; Deardorff 1990:35). Such a firm sacrifices short-run profits so that it can either destroy or prevent competition. The long-run goal is profit maximization which means once the firm has established a monopoly it will increase prices so that it can make monopoly profits. Although Viner never specifically mentioned dumping at below marginal costs, he made it clear that predatory prices meant cut-throat pricing, implying very low prices. So low that the predator would make a temporary loss on its export sales.

Another example of selling at below marginal cost is very similar to Viner’s type B dumping, namely unintentional sporadic dumping (see section 3.1.2). A firm may make a commitment of sale based on an expected price which at the actual time of sale turns out to be mistaken. The actual selling price may be far less than the expected price, and could even be less than the marginal cost of production. When
the firm made the decision to sell it compared the expected price to its marginal cost and did not expect to be selling at below marginal cost (Deardorff 1990:33). This type of scenario could be the result of uncertainty about the export market (Davies & McGuinness 1982:171-176; Ethier 1987:937). But once the mistake has been recognised, the firm will change its pricing strategy.

Another reason why a firm might sell at below average or even below marginal cost would be to increase its market share. This aggressive market strategy is similar to Viner’s type D classification of dumping - dumping to develop trade connections and buyers’ goodwill in a new market (see section 3.1.4). Deardorff (1990:36-37) argued that while this may seem very much like predation, modern firms operate in imperfectly competitive conditions and firms compete with each other for market share. Low prices are an accepted market strategy to, for example, introduce a new product onto a market. However, there seems to be a fine line between this type of dumping and predatory pricing (Deardorff 1990:36-37; Belderbos & Holmes 1995:836-840). In similar vein, if a firm has sales and not profit maximization as its short-run goal, it could increase sales by depressing prices even to the point of prices being less than marginal cost. This type of marketing strategy benefits consumers in that they pay low prices for the goods they purchase. But this is still dumping (Deardorff 1990:34-35). So it seems that a firm could consider selling some of its output at below the full cost of production, both average or marginal cost, under the following circumstances:

- If the firm could recoup its losses on these below cost sales by making sufficient above-normal profits on the rest of its sales, so that the firm maximises its profits. This would only apply if this firm is able to price discriminate. An appropriate question here would be how is it possible for the firm to price discriminate?

- If the firm’s long-run goal is profit maximisation but its short-run goal is something else and if that firm can recoup its losses on such sales at a later date by increasing prices in the same (or another) market once the short-run goal of the firm has been achieved (if the firm is a predator, wants to break into a new market, wants to introduce consumers to a new product or wants to prevent entry in its principle market). But at some stage these losses have to be recouped if the ultimate goal of the firm is to maximise profits.

- If the firm’s long-run goal is profit maximisation, but its initial costs are very high but will decrease sharply once the firm reaches optimal production levels. This firm could sell at below
cost during the initial stages of production - it could forward price - and still make a profit over the long-run (Tharakan 1997:6-7).

- If the short- and long-run goals of the firm are goals other than profit maximisation. A firm may want to increase its sales or increase its market share to keep its shareholders happy. But in the long run this firm would certainly be trying to make a profit, not a loss. Firms operating in a non-market economy may also have goals other than profit maximization.

- If this firm is receiving some form of state aid that either reduces its costs or subsidises its losses.

- If the firm is unable to find a market for some of its output. Selling at below marginal cost would be preferable to destroying the goods - some sales are better than none if costs are predetermined (Winters 1992:141).

In some anti-dumping cases though, exporters have been accused of dumping below full cost, yet were selling at the same price in the domestic and export markets. This could happen if the selling price in the exporter’s domestic market is deemed to be unreliable. A normal value would then be constructed and it is during this process of constructing a normal value for the exporter that the dumping margin can be captured (see ch 5).

3.2.4. Ethier’s modern theory of dumping

According to Ethier (1982:489; 1987:938) dumping is an important instrument used to stabilise production over the business cycle. Furthermore, international trade takes place in a world of uncertainty and firms may take some time to adjust to changes in market conditions. These are competitive firms which are uncertain about future demand and prices for their products. It is difficult to relocate factors of production out of present industries, in other words adjustment is sluggish. Wages are sticky, which means firms have to adjust labour costs by reducing labour and the ability to reduce labour costs by laying off workers will depend on the structure of the labour market and related employment practices (Ethier 1982:490-1; 1987:938). If demand for their products decreases and firms
are unable to adjust their output accordingly, they have to find alternative markets for their surplus output. Under such circumstances, a firm may sell its surplus at below cost (average total or marginal cost). Even if firms are able to make adjustments in response to temporary fluctuations in market conditions, the ability to dump may allow these firms to avoid these short-run adjustments (Ethier 1982:501). So counter-cyclical dumping could be used as a temporary strategy to stabilise production and employment over the business cycle (Viner 1966a:28; Winters 1992:141).

Hindley (1991:32-39) offered a slightly different perspective. He pointed out that much of the alleged dumping activity that took place during the 1980s was in industries that were not highly concentrated. According to him, neither predatory pricing nor price-discriminating monopoly were the correct explanations for dumping in industries with a low level of concentration. He suggested that firms expanded their production levels to meet what could turn out to be an overestimation of global demand. Producers in certain industries could overestimate regional or global demand for their products during economic booms and expand their production capacity. This capacity expansion results in excess capacity, which translates into surpluses which are dumped (Hindley 1991:32-39). So, in total the world experiences excess capacity. The dumping in the iron and steel industry could be an example of this type of dumping (see ch 7).

Research has shown that dumping often occurs in industries like the iron and steel, chemical and cement industries (see ch 7). These goods are produced in plants which cannot be used to produce any other products and they need to be run at full capacity in order to keep costs at a minimum. Ethier (1982:492) called these “continuous-run plants”. If there is a temporary recession and demand for these products falls, these plants may continue to produce at a level that is cost effective, which means they then have a surplus that has to be sold at reduced prices. The steel industry has often experienced such a surplus. Until the resultant excess or spare capacity is reduced, firms would sell at below cost of production in order to get rid of their surplus output (Hindley 1991:33-34). This type of dumping could be short-run or temporary dumping and is very similar to counter-cyclical dumping - when firms sell at below costs during a slump (Ethier 1987:937; Winters 1992:141).
3.2.5 Dumping as a result of state aid

Another explanation for the ability to dump is if exporters receive some form of state assistance which creates an artificial advantage for them over import-competing industries. For example, export-promotion trade strategies were followed by a number of governments after WWII (Bhagwati 1988:28-32). Such a strategy could include export incentives, like low interest rates on loans, an effective exchange rate, export subsidies, tax credits, or subsidies on imports that are inputs for goods manufactured for export. All these incentives would help to either reduce the cost of production or recoup losses. Producers could also be protected from foreign competition by import tariffs or quotas or some other non-tariff barrier. But any state aid which is meant to encourage production for export, can result in enterprises producing beyond the point where production would be profitable under free trade (Haberler 1936:321). In some cases such export incentives have been used to create a comparative advantage over import-competing industries, in others, state aid has provided producers with an artificial advantage over competitors (Gatsios & Holmes 1998:271-272; Viner 1966a:126).

The purpose of GATT is to slowly phase out protectionism and artificial incentives to international trade - although it is acknowledged that some countries, for example developing countries and countries in transition, may need special and differential treatment. The two GATT agreements that could affect dumping are the Anti-dumping Agreement and the Agreement on Subsidies and Countervailing Measures. The latter agreement provides a complainant with the right to object to export subsidies. But it is only subsidies that are enterprise or industry specific that are covered by the Agreement on Subsidies and Countervailing Measures (GATT Secretariat 1994:265). Export subsidies granted to, for example, state-owned enterprises in planned economies or economies in transition are not necessarily specific to an industry. All enterprises could benefit from for example subsidised electricity, coal and oil. So in certain cases dumping as a result of more general export subsidies or other state aid would be dealt with under the Anti-dumping Agreement.

3.2.6 Dumping as the result of strategic trade policy
Strategic trade policy can be used to explain trade in industries which exhibit increasing returns to scale and which operate in imperfectly competitive markets (Salvatore 2001:298-300; Winters 1992:151). According to strategic trade policy, a nation can create a comparative advantage in certain industries through activist trade (or industrial) policies and protectionism. It is usually in high-technology industries which are subject to high risks, require large-scale production to achieve economies of scale and which give rise to external economies, that these type of policies are applied (Salvatore 2001:298). For example, production of and trade in semiconductors, computers, telecommunications as well as other industries, like the iron and steel industry, that are seen to be important to the economic growth or development of an economy, are often encouraged by strategic trade policies (STPs) or industrial policies.

If a government subsidises production of products for export, or provides other type of financial assistance to producers like cheap loans or tax benefits, or protects the home market from imports reducing the competition in this market, those domestic enterprises which receive the government assistance could gain a comparative advantage over foreign rivals (Gatsios & Holmes 1998: 271-272; Helpman & Krugman 1989:85-90). With support from government, such enterprises can achieve what they could not achieve on their own. Although some would argue that the comparative advantage so gained is a genuine advantage, others, especially the import-competing industries, could and do argue that the advantage gained is artificial and that the products from these enterprises are being dumped. An example will illustrate the problem.

If two firms are trading in the same product, for example cold-rolled steel, and the government in one country commits itself to subsiding its domestic industry, then the firm that is subsidised will be able to undercut the selling price of its foreign competitor. If an enterprise is able to export its surplus production to another country because production costs have been decreased by some type of government intervention, then this enterprise could be accused of dumping. The advantage due to the lower production costs is the result of government intervention and is therefore an artificial and not a genuine comparative advantage. The appropriate action could be either anti-dumping measures or
countervailing measures - depending on whether or not a subsidy is involved. The US International Trade Commission (USITC) maintains that such enterprises are dumping at less than fair value or at less than market value, because the cost of production would be higher if the government had not intervened. Japan was accused of this type of dumping in, for example, the market for semiconductors during the 1970s and 1980s. Many of its producers were able to take advantage of economies of scale because of various types of government financial assistance, as well as being protected from outside competition (Salvatore 2001:298).

The simplest model used to explain this type of dumping is based on Brander and Spencer’s 1985 model of duopoly (Helpman & Krugman 1989: 83-97; Markusen, Melvin, Kaempfer & Maskus 1995:293-295; Winters 1992:147-148). While the assumptions of this simple model are very restrictive, the model does serve to illustrate how government intervention can result in an oligopoly firm increasing its exports. In the model there are two firms, a domestic firm and a foreign firm. Both firms produce a product for which there is no domestic demand in either country, in other words both firms only produce for export on a third market - this oligopolistic model restricts trade to that with a third country in order to isolate the analysis from domestic distortions. Both firms are imperfectly competitive. The firms compete in Cournot fashion, that is, each firm takes the output/sales of its rival as given and based on this information decides its production level so that it maximises profits - where marginal revenue equals marginal cost. The decision to produce is therefore a function of the other firm’s sales and is known as the firm’s reaction function. Each firm’s reaction function is downward sloping.

If government provides the domestic firm with some aid, for example an export subsidy, or some form of protection from imports, then this government intervention would give the domestic firm an artificial edge over its foreign competitors. Or as it is expressed in game theory, government intervention could create a credible threat (Helpman & Krugman 1989:90). If it is assumed that the firms compete in quantities (ie compete in Cournot fashion), then the model explains that a government subsidy on exports would provide an optimal result for the domestic firm. There will be rent shifting from the foreign rival firm to the domestic firm because of the government subsidy (Laussel & Montet 1994:179-80). But if it is assumed that firms compete in prices (ie the Bertrand equilibrium), the model shows the opposite effect and government has to tax exports to move the domestic firm’s reaction curve so it can
become the Stackelberg leader (Laussel & Montet 1994:181-182). In other words, Bertrand competition reverses the Brander-Spencer policy prescription based on Cournot competition (Winters 1992:151-152). This contradiction has become known as the Bertrand paradox (Tirole 1993:209-211). The paradox means that the result of the Brander-Spencer model depends on the type of oligopolistic competition that rules and economists do not necessarily know which applies in any particular market, and so the model cannot provide clarity about which policy instrument to apply.

The above model is slightly different to the reciprocal dumping model of Brander and Krugman (1983) that explains reciprocal dumping under conditions of intra-industry trade. As explained in section 3.1.6, the two oligopolistic firms in the simple model of Cournot duopoly, are dumping differentiated products in each other’s markets. In the model explaining intra-industry trade, it is shown that reciprocal dumping can increase market size for both firms. But one could also assume that the government in one country is able to subsidise or protect its domestic industry. For example, high import tariffs would increase the domestic firm’s market power in its own market and thereby give the firm more leeway to drop its export price in competition with the foreign firm. Export subsidies would also provide an artificial advantage to one firm even though the products are differentiated. Such a firm would be able to dump its exports at prices that are less than the full cost of production.

The strategic trade policy type dumping is similar to Viner’s type I dumping discussed in section 3.1.8 - dumping to obtain the economies of larger-scale production without cutting domestic prices. In order to take advantage of economies of scale the firm needs to increase its output, but if the domestic market is already saturated, the firm would need to increase its exports. The problem is that its competitors, foreign firms, may also face the same situation - this is the current situation in the iron and steel industry. Enterprises may have market power in their domestic markets, but there is competition between oligopolists (or monopolists) based in different countries (Helpman & Krugman 1989:83). And it is often this competition on world markets that causes export prices to be low, rather than any intention by the exporter to dump. In this type of situation, export prices could be lower than normal values, and then, technically speaking, exporters are dumping - one example of how the determination of dumping can be used to the advantage of import-competing industries.
3.3 DUMPING ORIGINATING FROM NON-MARKET ECONOMIES

Although it is conceded that very few firms operate in an almost perfectly competitive environment, it is assumed that there is some competition and that the state plays a minimal role in the economy of the country. This is in contrast to a planned economy in which planners took over the market’s allocative function (Hirsch 1988:466; McKenzie 1990:136).

The ideal of centrally-planned economies (CPEs) was to become self-sufficient, so planned economies did not specialise in areas of manufacture where they had a comparative advantage. Instead, the goal was to manufacture everything the population needed and to import as little as possible (Gregory & Stuart 1995:291-292, 378). So certain areas of production were heavily subsidised or favoured. Trade that took place between the previously planned socialist countries and other countries was channelled through a Ministry and not handled by individual enterprises. (Gregory & Stuart 1995:291-292; Hirsch 1988:466; Wang 1999:121). State-owned and state-controlled monopolies were entrusted with production for international trade (Hirsch 1988:466). Goods were exported in order to pay for necessary imports. But volumes of trade were limited were possible to prevent the influence of market forces. The energy, transport and communication sectors were highly concentrated and heavily subsidised in CPEs because these sectors were vital to the economic development of the economies (Ordover, Pittman & Clyde 1994:317). This type of subsidisation kept prices in the key infrastructure sectors artificially low and contributed to prices and cost data in general being unreliable (Horlick 1990:142). The fact that the currencies of these planned economies were inconvertible made prices even more suspect, even though attempts were made to calculate “shadow” exchange rates (Gregory & Stuart 1995:378; Horlick & Schuman 1984:819; Wang 1999:121).

State-owned enterprises (SOEs) were state or natural monopolies under central planning. Centrally-determined plans dictated the volumes of output, and trade and foreign exchange was allocated by the administration (Hirsch 1988:468). Prices of labour, capital, foreign exchange, and goods and services were centrally determined (Hirsch 1988:468). The plan operated instead of the market. The goals of SOEs in CPEs were to fulfil production targets and maximise employment. Output targets, not profit
objectives, were important in planned economies (Lott 1995:187; Wang 1999:121)). Enterprises
operated to fulfill these output targets, and while the budgets of these firms were not necessarily limitless,
if their expenses were higher than expected or their revenues less than expected, government would
subsidise them, in other words they faced soft budgets.

Exports earned foreign currency revenues which were needed to pay for imports (Horlick & Shuman
1984:819; Lott 1995:187; Wang 1999:121). So it was in the interest of the nation to export any surplus
in order to earn foreign currency as well as to meet output and employment targets. It would be rational
for a government to subsidise exports (directly or indirectly) under these conditions. But not only did
SOEs receive some form of subsidy, they were also protected against competing imports by quotas and
import tariffs.

Planned economies were considered by some to be countries in the process of development. Government plans
included the goal of full employment of labour. It was therefore important that enterprises were kept operating at full production. However, this meant a surplus production which had to be sold. So if a SOE produced more than the domestic market could purchase in order to attain its goals, it would try to sell its surplus on foreign markets. Such a firm would be able to export at below cost if exporting would enable it to obtain its goals, because any losses would be subsidised. A SOE would therefore be in a better position than a profit-maximising enterprise to export at below cost and so cause the eventual exit of its competitors (Lott 1995:198). According to Lott (1995:187), predatory dumping, or any other type of dumping, could help a SOE achieve its goal of output maximisation. Because the price mechanism did not operate according to market forces in a CPE, it was possible for a CPE, like the Soviet Union, to cause injury to certain industries in capitalist economies because they could sell at very reduced prices (Haberler 1936:300). Haberler classified this type of dumping “Russian dumping”.

Prices of the goods manufactured by these state-owned enterprises were considered to be unreliable
and were not used in anti-dumping actions to determine whether or not such an enterprise was dumping
(Cunnane & Stanbrook 1983:1; Horlick & Shuman 1984: 818-9; Meuser 1979:779,785). Instead, the
analogue or surrogate method was used to calculate normal values when these countries were accused
of dumping. Briefly, this entailed using the cost structure of a third country, which was a market economy, and which was as similar as possible to the exporting country, to determine the normal value. The analogue method will be discussed in detail in chapter 6.

Eventually the inefficiencies of the socialist system resulted in economic decline of the socialist economies during the 1970s and 1980s. Pressure was put on the governments to follow economic policies that could improve living conditions for the citizens of those countries (Gregory & Stuart 1995:341). The governments of the East European countries, the Soviet Union and China began to play an active role in stimulating exports. Competing industries in importing countries (initially the US and the EU) began to complain about the cheap products that were gaining access to their markets (Horlick& Shuman 1984:807). Socialism collapsed in Eastern Europe during the late 1980s and in the Soviet Union at the end of 1991. The transition to a market economy began in earnest for these countries. China reformed parts of its economy much earlier than the other socialist countries and has experienced phenomenal economic growth since the mid-1970s, but seems to have retained certain aspects of socialism while allowing market forces to play an important role in its economy (Gregory & Stuart 1995:318, 419). It was important to these countries going through reform or transition to attract foreign direct investment (FDI) and to increase exports and imports. Trade between the former planned economies and other countries grew as the countries in transition incorporated market principles into their economies. Allegations of dumping against the economies in transition increased along with this increase in trade (Bekker 2001:12-13).

Although budgets hardened for SOEs when the economies of their countries began the transition phase, it was sometimes difficult to establish whether goods were being produced by private, semi-private or state-owned enterprises, or whether private enterprises were receiving direct or indirect subsidies. Until such enterprises are completely privatised, non-profit maximising goals could still be more important than profits. A firm that would go bankrupt in a capitalist economy could continue to operate in this type of economy, called a non-market economy (NME). So prices in countries in transition, for example

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6 When these countries were fundamentally changing their economies from a plan to a market system, this was called transition. The term reform was more applicable to the situation when the governments made changes to the economies but they still remained planned economies (Gregory & Stuart 1995:358).
China, could still be distorted by subsidies, controls or import restrictions (Holmes & Kempton 1998:37). Although most of the previously planned or command economies have changed significantly, some are classified as non-market economies (NMEs) because they are still in transition. “The term ‘non-market economy’ is commonly used to describe countries where goods and resources are allocated by government planning agencies rather than by prices freely set in a market” (Wang 1999:120).

The anti-dumping agreements, laws and procedures were based on dumping by enterprises based in market economies (Hirsch 1988:466). Dumping by CPEs and then later by NMEs has been accorded different treatment to goods dumped from market-economy countries partly because the normal values of goods produced in CPEs and NMEs were suspect (see ch 6).

One objection to exports from NMEs, is that NMEs may be able to demonstrate real comparative advantage in an industry that used to be heavily subsidised (Ehrenhaft 1990:307). Some would argue that this is an unfair advantage. Dale (1980:173) suggests that if dumping by NMEs seems to be permanent, which means a reliable source of cheap goods, this should be accepted as a windfall. The fact that prices may not reflect true costs should perhaps not cloud the issue. Another factor which could contribute to cheap exports from NMEs is that many of these countries have the advantage of cheap labour and energy (Cunnane & Stanbrook 1983:1). It has been argued that production is indirectly subsidised, but certain factors of production, especially labour, are often cheap in these countries. Besides, countries in transition are countries that might need to develop their economies. It may be necessary to encourage export industries even if the country does not have a comparative advantage in those industries (Ehrenhaft 1990:307-308). Former natural monopolies which may be privatised or semi state-owned may need to be targeted for stimulus and support (Ehrenhaft 1990:307). But whether or not it is acceptable for a government to distort factor markets indirectly is a complicated issue (Wall 1998:12-14). The plight of countries in transition and developing countries still needs to be addressed in more depth in the multilateral trade agreements. Special and differential treatment for these countries is on the agenda of the latest round of multilateral trade negotiations - The Doha Development Round.

A NME was defined in the US Omnibus Trade and Competitiveness Act of 1988 as “a foreign country
that:

    does not operate on market principles of cost or pricing structures, so that sales of
merchandise in such country do not reflect the fair value of the merchandise” (Ehrenhaft
1990:302).

In 1996, the European Commission agreed to distinguish between two types of companies in a NME. Foreign multinationals, which have their headquarters outside the NME, and other companies like joint-ventures or local producers, that fall under the jurisdiction of the NME authorities (Vermulst & Driessen 1997:143). Standard economic theories of dumping could be applicable to the first category of companies as their headquarters are situated in a market economy. The other types of companies are judged according to criteria like whether there is private investment in the company, whether profits can be freely transferred abroad, whether the company that is exporting is free to set its export prices and quantities, the degree to which a company is free from the influence of the government authorities in the NME, whether or not a country’s currency is convertible and whether or not government has any control over prices (US v Ukraine 2000:4; Vermulst & Driessen 1997:143; Wang 1999:120). Other factors that are considered according to the 1998 Council Regulation (EC) No 905/98, are whether or not production costs and the financial situation of firms are subject to distortions because of the previous economic system that was in place, whether or not “firms are subject to bankruptcy and property laws which guarantee legal certainty and stability” and whether or not exchange rate conversions are market related (Commission of the European Communities 2000a:23).

3.4 THE ECONOMIC EFFECTS OF DUMPING

Member countries of the WTO are given the right under the URAA to levy anti-dumping duties if dumping causes or threatens material injury to an industry in the country dumped on (Ethier 1987:937; Kostecki 1991:9; Winters 1992:140). However, only the injury to the import-competing industries is taken into consideration during the injury part of an investigation. According to economic theory,
though, it is not always easy to ascertain whether or not the net effect of dumping is injurious or beneficial. In fact, it seems more likely that the net effect of dumping could be beneficial to the country dumped on (Dietzel 1905:3).

3.4.1 The effect of dumping on the market of the country dumped on

The principle of free trade implies that there should be competition. Producers are not meant to make abnormal profits and those producers that cannot survive because they are inefficient should not be protected against competition. The lack of competition due to the existence of large firms in many countries has raised concern amongst economists. But international trade provides some competition. If dumping increases competition in the importing country, this is beneficial to the economy, especially if there had not been much competition in that market before dumping took place (Dale 1980:29-32). Consumers in the importing country benefit from the cheaper prices of the dumped goods, particularly if the dumping is permanent (Dale 1980:28-33; Dietzel 1905:3-4). So if dumping increases consumer welfare and competition amongst producers in the importing country, then dumping has some beneficial effects in the importing country (Dale 1980:32). On the other hand, Haberler (1936:314) and Viner (1966a:133,139,357) argued that dumping could be harmful to the country dumped on if dumping occurs intermittently yet for long enough to bring about shifts in production in the importing country, causing adjustment costs.

If dumping is intermittent, short-run or temporary, some producers may be forced to close down. When the dumping stops, which is inevitable if the dumping is short-run, then the consumers in the country dumped on no longer have a supply of that good. New producers will be needed to produce the no longer available goods. Such changes to the supply side of the importer’s economy can be rather costly and such adjustment costs would be a waste of resources (Deardorff 1990:28). Unnecessary adjustment costs would not occur however, if the dumping was permanent (Dale 1980:28-33; Dietzel 1905:3-4). Rival producers in the importing country may have to stop production if they cannot compete with the cheaper dumped imports, which means that some people will lose their jobs and
income. There will be displacement of workers in the importing country and investors’ returns will decrease (Cass et al 1998:80). But, according to conventional economic theory, the displaced factors of production would then have to move to other areas of production where they are more efficient, thereby increasing productivity (Dietzel 1905:5). But, as Denton (1990:468) pointed out, these theories do not take social and political costs into consideration, the workers who lose their jobs may not find alternative employment and the benefit to consumers “may conflict with the long-term national economic interests.” (Krishna 1997:9). In reality the adjustment process in response to increased imports could be very slow and painful and the non-availability of certain types of products could be more than just inconvenient and a waste of resources. It will be argued in more detail in chapters 7 and 8 that some products may be strategically important to all or some countries. For example, staple foods are vital to life and availability is essential, while industries like the iron and steel and chemical industries could be strategically important from a power and security perspective.

Furthermore, dumping could be the result of an exporter’s artificial advantage, which according to conventional economic theory means that resources are being misallocated in the exporting country. Another issue is that changes to trade and industrial policies in the country of export could create uncertainty for investors in the importing country. It could therefore be argued that dumping as a result of such actions should not be allowed.

If the dumped products are producer products or raw materials, in other words not consumer products, the argument for and against dumping becomes even more complex. The cheap dumped products are bought and used by local producers in the importing country, making these producers more competitive than their rivals in the exporting country. Final products in the country dumped on could therefore be cheaper than similar products in the dumping country (Haberler 1936:315). Producers of final products in the dumping country may be the ones to complain because their rivals in the importing country are more competitive, since they have access to the cheaper inputs that are being dumped in their markets. For example, during the late 19th and early 20th century, German iron and steel was dumped onto the Dutch market. The result was that the Dutch shipbuilding industry was supplied with cheap inputs of iron and steel, increasing the competitiveness of this industry (Haberler 1936:315). Essentially though, the problem seems to lie in whether or not the supply of the dumped goods will continue. If a producer is
reliant on the supply of inputs and the supply stops, production stops: “The cessation of dumping may render valueless the capital invested in enterprises which can be profitably operated only if materials are obtainable at dumping prices. An industry rests on an unstable foundation if its existence is dependent upon the continuance of artificially cheap prices for its raw materials” (Viner 1966a:136-137).

In spite of some arguments against dumping, it seems that the importing country as a whole may benefit from permanent dumping, the same way it would benefit from cheaper imports based on genuine comparative advantage. Some people may be hurt by the distributional effects, but that would happen in both these cases (Deardorff 1990:27; Haberler 1936:214; Viner 1966a:138). The increase in the consumers’ surplus may be greater than the decrease in the producers’ surplus, in which case dumping should be allowed. But in some cases the damage done to the economy of the importing country may outweigh the benefits to consumers and then the dumping should be countered. It seems therefore that certain types of dumping should be prevented.

For example, if dumping is predatory it is by definition injurious and should be prevented. If dumping is temporary, the chances are that the net welfare effect will be negative because of the adjustment costs that may be incurred, and it may therefore be wise to prevent the dumping. If dumping is permanent, guaranteeing a supply of cheap goods to the consumers or producers in the importing country, then on balance the dumping could be beneficial to the country being dumped on. The problem is that it is not always clear whether an incidence of dumping is more injurious than beneficial to the importing country. The injury criterion in anti-dumping investigations will be discussed in more detail in the following chapter.

3.4.2 The effect of dumping on the domestic market of the exporter

The consumers in the domestic market of the dumper are the ones who seem to be injured the most by dumping (Cass et al 1998:79; Winters 1992:141). If dumping is the result of international price discrimination (see section 3.2.1), it means that the producer has some market power in its principal market and can charge high prices in its domestic market. And it is often trade barriers within the
exporting country that facilitate that market power in the domestic market of the exporter (Deardorff 1990:28; Viner 1966c:377). Most economists agree that the high prices charged in the domestic market of a price-discriminating firm are to the detriment of the consumers in that economy (Dale 1980:27; Deardorff 1990:25-26; Viner 1966a:97). Monopoly pricing worsens the total welfare of an economy because the disadvantage to the consumers outweighs the advantage of excess profits earned by the “monopolist”.

Viner (1966a:101; 1966b:353) argued differently. He pointed out that such price discrimination occurs because of the market power. It is not the dumping that causes high prices in the domestic market of the exporter and the firm is not charging its domestic consumers a high price in order to dump. The firm has the market power to extract excess profits from its domestic market. Whether or not the firm is dumping, it could charge these high prices in its domestic market. So, according to Viner (1966a:101; 1966b:353), the question, given the high prices in the domestic market of the firm, is whether or not dumping would affect these prices. Viner argued that it would depend on what type of dumping took place. For example, sporadic dumping may “deprive some domestic customers of a bargain sale” but unless dumping actually reduces the supply of goods on the domestic market, dumping would not cause domestic prices to increase (Viner 1966a:101-102). High prices in the domestic market were the result of factors like high import tariffs or a domestic monopoly and not the result of dumping (Viner 1966a:107-108). So, according to Viner, dumping does not injure the consumer in the country of export. And if a firm which faces increasing returns to scale increases production because it is able to dump, the dumping could then result in a decrease in the price in the domestic market of the firm! Consumers in the domestic market would then benefit from the dumping (Haberler 1936:315; Robinson 1946:205-206). Viner (1966a:104-106) therefore argued that consumers in the domestic market of the firm were not necessarily negatively affected by dumping as a result of international price discrimination.

Some firms are able to dump because they receive some form of state aid. It can be argued that dumping as a result of, for example, export subsidies is beneficial to the exporting country because exports are increased, foreign exchange is earned and the increased production creates jobs (Dale 1980:39; Haberler 1936:314-315). But it can also be argued that the granting of export subsidies or
the provision of other forms of state aid diverts resources to areas of production where there is no comparative advantage, thereby misallocating and wasting resources (Haberler 1936:321; Nivola 1993:39). If the products that are being dumped are raw materials or intermediate products, it means that the producers of final products in the foreign market are being supplied with cheap inputs. The producers of final products in the exporting country could then complain because the exports that are being dumped on foreign markets could provide their foreign rivals with a comparative advantage (Viner 1966a:107-109; 1966c:377-378). Dumping may, however, be beneficial to the exporting country during times of recession. Counter-cyclical dumping helps to stabilise production during slumps and keeps people in the exporting country employed. So dumping may cause injury to certain groups of people and may benefit others. But free and fair trade also benefits some and hurts others.

3.5 RESPONSES TO DUMPING

3.5.1 Anti-dumping and countervailing measures

The negotiated, and therefore acceptable, response to dumping is set out in GATT. If it can be proved that an exporter is receiving a (specific) government subsidy, then the import-competiting industry can apply to have a countervailing duty imposed. All other instances of dumping would be addressed by means of an anti-dumping measure. But the anti-dumping agreement in particular has been criticised because it seems that anti-dumping duties have been imposed too easily on products. As a result, anti-dumping measures have not only been imposed against injurious dumping but also against competitive trading. Some proponents of trade liberalisation have argued that competition law would be a more effective way than anti-dumping and countervailing measures to promote free and fair trade (Tharakan et al 1998:1037).

3.5.2 Competition policy
According to economic theory, an exporter would not be able to dump over a significant period if it was operating in a perfectly competitive environment in all its markets. As Taussig (in Viner 1966a:123) pointed out, a producer that is making normal profits in its domestic or principal market by charging $P$ per unit, cannot export at a price lower than $P$ without making a loss on its exports, and normal profits in one market plus a loss in the export market can only equal a total loss. No firm can continue making such a loss indefinitely - unless some other factor comes into play. It is therefore argued that unfair trade is often caused by a lack of keen competition, especially in the home market of the exporter.

According to some, imperfect competition is one of the necessary, if not sufficient, conditions for dumping to take place (Hindley 1991:39; Tharakan et al 1998:1036; Viner 1966a:97). If a producer has market power in its domestic market, it can price discriminate. Such market power could be the result of there being no or very little competition for the producer in its domestic market, or of the producer being protected from outside competition by, for example, import tariffs or quotas. An exporter that receives an export subsidy is also being advantaged by government intervention and would be able to dump its products. In fact, any type of government assistance, be it financial or protective, would alter the competitive balance between the advantaged producer and its rivals.

According to the theory of international price discrimination, it is the high price in the domestic market of the exporter that is the problem, not the low price in the export market. As explained earlier in this chapter, it is the excess profits that the producer earns in its domestic market that allows it to price discriminate in its export market. High import tariffs, a domestic monopoly or any other barrier to entry in the home country of the exporter are amongst the possible causes of high prices in the domestic market of the exporter. Anti-dumping actions taken against the exporter would not change these factors, whereas a strict application of competition law in the exporting country could make a difference and could result in increased competition and therefore lower prices in the domestic market of the exporter. These lower prices would in turn make it less attractive to dump products in the export markets.

Hoekman and Mavroidis (1996:29-30) argue that slack competition laws in Japan allowed Japanese firms to dump products in the US. A vertically integrated distribution system was an effective barrier
to entry to foreigners in the Japanese home market. Had competition laws been strictly applied in Japan, the Japanese producers would not have operated in what was a protected environment and would not have been able to make excess profits in the domestic market (Anderson & Holmes 2002:538; Tharakan et al 1998:1044). If a producer receives some form of state aid, for example cheap loans, tax rebates or an export subsidy, it is possible to export at below cost. This type of government intervention interferes with the competitive process, but would not necessarily be classified as anti-competitive behaviour under competition law. Free marketeers argue that the only way government can promote competition is by completely withdrawing from the economy (Calitz, Siebrits & Mohr 1999:292). However, the opposing view is that government policy is necessary to limit concentration and encourage competition. The objective of competition policy is the maximization of welfare through the efficient allocation of resources. Any attempt to restrict or distort competition including attempts to create a dominant position in a specific market, would have a negative impact on social welfare (Hoekman & Holmes 1999:876).

An advantage of competition law, as opposed to anti-dumping law, is that it focuses on injury to the competitive process (Dutz 1993:210-211). In theory, competition law protects competition and discourages barriers to trade and restrictive business practices, as well as government aid. Anti-dumping and countervailing law on the other hand, tends to protect certain players (Hoekman & Mavroidis 1996:28-29; Morgan 1996:62; Tharakan et al 1998:1036). It has been suggested that instead of having anti-dumping and countervailing laws, competition laws should be strictly applied in all countries, which would mean that both exporters’ and importers’ markets would be checked for imperfect competition and government intervention. Theoretically, such strictly applied competition laws would ensure the necessary competitive environment for maximizing social welfare. However, certain conditions must exist for competition laws to be effective. For example, trade and investment restriction must be eliminated and competition laws and policies must be harmonised. Some countries, especially some developing countries, do not have competition law, so harmonised international competition laws are still a long way off. Until such and other conditions exist, anti-dumping laws cannot be replaced with competition law (Hoekman & Mavroidis 1996:36; Tharakan et al 1998:1035).

It would probably be more practical to have competition law as a complement to anti-dumping and
countervailing law, in others words to make anti-dumping policy more competition friendly (Hoekman & Mavroidis 1996:36). The lack of competition in the exporters’ markets could be one of the preconditions for an investigation (Hoekman & Mavroidis 1996:27-28, 36,45; Tharakan et al 1998:1037). It has also been suggested that both the exporters’ and importers’ domestic markets could be investigated before a case is initiated, because the import-competing industry initiating the investigation could also have market power in its own domestic market (Dale 1980:11; Martin 1999:904; Morgan 1996:76).

While the idea of using competition law criteria as a pre-condition to anti-dumping investigations may be good in theory, such changes to the multilateral trade agreement have to be negotiated between member countries. In addition, according to Niels and ten Kate (1997:38), an analysis by the OECD on anti-dumping practice lead to the conclusion that in most of the anti-dumping cases investigated there was “no plausible threat to competition” and no evidence of predatory pricing. They argued further that most of these cases would not have passed the scrutiny of competition standards, had they been in place. Certain practices, for example cheap loans, cheap inputs or even instances of tacit collusion, which could contribute to an exporter’s ability to dump, could escape a probe into anti-competitive practices. It may also be difficult to impose such a pre-condition, as those in favour of anti-dumping measures may oppose any suggestions which could render these measures more difficult to impose. But other suggestions have been made. For example, Hoekman and Mavroidis (1996:31) and Tharakan et al (1998:1050-3) suggested that anti-dumping policies would be more fair if the public interest test could be strengthened (see ch 4). Finger (1993) on the other hand, argued that the only way in which the maximization of social welfare will be ensured is if a cost-benefit analysis is done during an investigation, of both the alleged dumping and any anti-dumping or countervailing measures imposed on the dumped products.

On a positive note though, some competition issues were addressed during the Uruguay Round. For example, time periods were established for the completion of investigations, provision was made for all

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7 The report on this analysis was a restricted OECD working document, *OECD Committee on Competition Law and Policy, 1995*. The Committee investigated anti-dumping practice in the US, Canada, Europe and Australia.
interested parties to have access to all the evidence, and provision was made for consumers and industrial user interests to make their views known. A rule that requires either transaction-to-transaction comparisons of prices or average-to-average comparisons was also agreed on - although the US seems to have found a way around this latter rule when it comes to reviews (see ch 4) (Morgan 1996:69-75). Other important changes which addressed the concerns of the pro-competition lobbyists were the changes to the dispute settlement process under the WTO, the suggestion that authorities impose the minimum duty necessary to remedy the injury and the instruction to authorities to examine all known factors other than the dumped imports that could be the cause of injury. The interaction between trade and competition policy was included in the original work programme of the Doha Development Round (Anderson & Holmes 2002:531; WTO 2001k). However, the final framework for negotiations was still being negotiated at the time of writing and it seemed that the interaction between trade and competition policy may no longer be on the agenda (BRIDGES weekly trade news digest 2004f:2).

3.6 CONCLUSION

Economists have provided a number of theories that explain how a firm is able to dump its products on an export market, but apart from predatory dumping, none of the theories of dumping really substantiate the need for anti-dumping measures. In fact, economists generally tend to be critical of the imposition of anti-dumping and countervailing measures. However, the multilateral trade agreements are based on the belief that domestic producers have a priority claim to the domestic market (Finger 1990:19-21). Foreign producers must compete fairly for that market, meaning that foreign producers must have a genuine comparative advantage over the import-competing industry. An exporter is able to dump its products if it has an artificial and unfair advantage over the import-competing industry, and if a foreign producer has an unfair and artificial advantage and is causing injury to the import-competing industry, then the import-competing industry is allowed to protect itself against this unfair trade (Cunnane & Stanbrook 1983:2; Finger 1990:19-21).

As already pointed out in the previous chapter, dumping is not prohibited in the Uruguay Round Anti-
dumping Agreement (URAA). The agreement merely provides the right to impose anti-dumping duties to counter the effects of dumping if the said dumping caused or will cause injury (Ethier 1987:937; Winters 1992:140). If a firm or industry decides to initiate an anti-dumping investigation, it must follow certain procedures. These procedures, which are set out in detail in the Uruguay Round Anti-dumping Agreement, will be discussed in the next chapter.