Commercial Dumping in Jordanian Legislation Compared to the WTO Agreement

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Abstract

Economic openness between countries is required to establish free trade and thus lift all restrictions that would violate this freedom. Although deregulation would meet the objectives of many international agreements in this regard, on the other hand, this freedom could harm the interests of some countries and their products in becoming vulnerable to commercial dumping, ie, dumping their products with prices well below those of similar products. Commercial dumping is a legal and economic phenomenon that can only be understood by reference to the international convention for which it was prepared, namely, Agreement on implementation of article vi of the general agreement on tariffs and trade 1994, which attempts to restore international balance to the law of supply and demand. The importance of research is that it highlights the serious problem that the economies of some countries may suffer. Commercial dumping must be confronted with national laws that take account of the economic openness imposed by international conventions and on the other hand take into account the specific situation of each country required by national laws. The research on commercial dumping raises many legal problems, which need to be answered, especially with regard to determining the legal concept of dumping and its motives, its characteristics and implications, and the international and national legal methods to confront it. The purpose of the research is to answer several questions: What is the concept of commercial dumping from the legal point of view and what are its motives and implications? What are the legal means to combat it both globally and in Jordan? Is this understanding reflected in the Jordanian legislation? Is there consistency in the agreement between the Jordanian legislation and the provisions of the WTO Agreement?, and what are the strengths and weaknesses points of What are the strengths and weaknesses of both the International agreement and Jordanian law?

Key Words: Commercial dumping, Anti-Dumping, Jordanian law, article VI of general agreement on Tariffs and Trade of 1994
1. Introduction

The economic openness among states has become necessary to establish a free commercial exchange, and thus waive all restrictions that would hinder such freedom. Even though restriction waiver would lead to the achievement of goals set by many international agreements in this respect, such freedom may, on the other hand, cause a damage to some countries' interests and products by exposing them to commercial dumping; i.e. introducing into their markets products at much less value than their normal value in the concerned country.

As a legal and economic phenomenon, dumping can only be understood through referring to the international agreement for which it was made, which is the International Agreement on applying Article 6 of GATT 1994 (Anti-dumping and parallel duties) that seeks to restore the international balance to the supply and demand law.

2. Research Importance

The research is important because it highlights a serious problem that may be suffered by some countries' economies. Commercial dumping must be confronted by laws considering the economic openness imposed by the international agreements on one hand, and considering the particular situation of each country as required by the national laws on the other hand. That is what has pushed us to discuss this matter, as the power of legal regulation emerges from a good legal handling of such phenomenon, which makes it important.

3. Research Problem

Research on commercial dumping raises many legal issues that entail an answer thereto, especially with regard to defining the legal concept of dumping and its motivations, particulars and effects, as well as the international and national legal methods to face it. The research aims at answering a number of questions: so what is the commercial dumping in a legal sense? What are the motives and effects it has? What are the legal means to combat it, whether globally or in Jordan? Has this thought been reflected in the Jordanian legislation provisions?

Is there a consistency between the contents of the Jordanian legislation WTO Agreement? What are the strengths and weaknesses stated in both the International Agreement and Jordanian Law?

4. Research Methodology

The research methodology is mainly based on the presence and analysis of the legal provisions considering the method of comparison between the Jordanian Legislation and Anti-dumping Agreement of 1994.
5. Dumping Concept

It is determined by Article 2 of the Agreement on applying Article VI of the General Agreement on Tariffs and Trade 1994. Accordingly, A product is to be considered as being dumped if it is introduced into the commerce of a country at less than its comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

This definition presupposes that there are in fact domestic sales of the like product and that such sales are made in the ordinary course of trade. In this context, it is important to remember that, in the first stage, comparisons are made between identical or closely resembling models and that only later is one weighted average dumping margin calculated per producer/exporter. Thus, in the first stage, each exported model is matched to a domestic model, where possible, in order to determine whether a domestic price in the ordinary course of trade exists.

From an international point of view, commercial dumping is an injurious act it lets goods and products in a certain country at less prices than the cost for their delivery to the destined countries in order to cause a direct injury to the similar domestic commodities. As an illegitimate commercial act, it is very different from some commercial act such as illegitimate competition.

The signatories of this agreement were required to orchestrate their national laws in accordance with Article VI of the said agreement which specifically relate with anti-dumping matters. Therefore, the legislator of Jordan, just like in many other countries, tried to confront the commercial dumping problem, and there came the response under the Anti-dumping & support Regulation No. 26 of 2003. In the next year, National Production Protection Law No. 21 of 2004 was enacted.

On the other hand, the National Production Protection Law did not expressly define the commercial dumping. It rather indicates through Article 2 thereof that injurious practices mean the increased imports of a certain product to the Kingdom or the importation of such product at dumping or supported prices.

Article 4 of the Anti-dumping and Support Regulation defines dumping as considering a product dumped if its exportation sale price to the Kingdom (exportation price) is less than its normal price. The difference between the normal value and exportation value is referred to as dumping margin.

Accordingly, we can say that the Jordanian legislator started, through the legislations regulating the dumping, to go in conformity and consistency with the international legislation with respect to combating the commercial dumping.
Consequently, commercial dumping can be defined as introducing products into markets at prices lower than their sale price in the producing country's markets or at a price lower than their sale price in the other foreign country's markets or even a less than the production cost, which leads to an injury to the similar products in the importing country.

In summary, we can say that this definition is quite in line with the definition stated by the Jordanian legislator in the National Production Protection Law, given that he linked the injurious practices, the increased imports of a certain product to the Kingdom, to the severe damage, which has an adverse and comprehensive effect on the domestic producers. Therefore, it is safe to say that in order for a commercial dumping to be done and deemed an illegal commercial act, the following conditions shall be met:

1. There is a dumping act where a product is brought from the country of origin to another country and sold at a similar price or lower price, which can be proved by all means.
2. There is an injury as set forth in Article 2 of the National Production Protection Law, which is defined as a severe injury having an adverse and comprehensive effect on the domestic producers or a material injury that hinders the establishment of a national industry.
3. There is causative relationship between the injury action and outcome; i.e. the hindrance of a national industry.

Article 31 of the Anti-dumping Regulation requires the competent Committee to verify the existence of the causative relationship by proving that the imported products are the reason for the injury occurring or may be occur to the domestic producers through the effects left by such imported products.

In this regard, we must notice that the determination of the dumping act and combating clashes with the concept of competition in the market. Dumping that takes place because the State opens new markets and increases the competition capability by improving the quality and decreasing the price of a commodity is not an injurious to the commercial competition. Such activity is rather favorable for consumers because it lets them get a commodity at low cost. However, if such practice causes or threatens to cause a material injury to a domestic industry, then such activity becomes an injurious practice in the international trade.¹

6. Dumping Motives

The main motive for commercial dumping is to try to control the largest share in markets. Such motive comes from production surplus, which makes a producer reduce the price for products set for exportation. Normally, foreign exporting companies seek such illegitimate practices to overflow the markets and undermine the national production so they end up

dominating those markets and take control over the prices. Another reason for dumping is due to the state tolerating monopolistic structures where the monopoly sells goods abroad at dumping prices in order to maximize profits.

Moreover, free trade and poor control over the imported commodities may be among the key motives for dumping, especially if the State gives up its right to determine the legal protection of the domestic product, or its right to determine the mechanisms of protection from the injurious practices in its international trade.

Finally, it is worth mentioning that the competition between countries to dominate the markets would generate a permanent struggle among them, which explains why the vulnerable countries and domestic producers are exposed to direct invasion by foreign markets.

6.1 Effects of Commercial Dumping?

The act of ‘dumping’ is frowned upon because it is considered as ‘unfair’; because of this, most practitioners agree that there should be legislation to discourage and prevent this from happening. Dumping is deemed to be unfair because the foreign firms are considered to be selling products in the importing country at unfairly low prices.

It appears that anti-dumping has become the trade policy of choice to provide administered protection to domestic firms to offset the injury that results from the alleged dumping practices of foreign exporters.

It is safe to say that the purpose of GATT is to liberalize the international trade, remove all relevant obstacles and establish a state of international trade stability in relation to trade transactions within a legitimate competition frame. However, commercial dumping is an aspect of illegitimate competition due to its injuries caused both domestically and internationally.

Internationally, commercial dumping leads to impairment of the international commercial relations and breach of the international trust and credit. Furthermore, commercial dumping means that there are two parties, one of which is an exporter that is mostly intercontinental companies with global technologies, and the other party is the importer that is mostly a vulnerable domestic company with no technical and technological proficiencies.

In many cases, commercial dumping restrains competition considering it depends on pricing freedom; however, it seriously excludes the domestic competitors, which highly affects the international economy.

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Domestically, commercial dumping means that the imported products compete the domestic products at injurious competitive prices that cannot be encountered by a national competitor. In other words, commercial dumping leads to eliminating competitors from the domestic market and thus minimizing the alternatives and options available for consumers.

This effect can be noticed in the Anti-dumping Agreement on Applying Article VI. It assures in the Preamble thereof that (the Contracting Parities are aware that dumping, via which products of a certain country are introduced into another country's commerce at prices lower than the product's comparable price, is condemned if it causes or threatens to cause a financial injury to the industry of a contracting Party's territory or would hinder a potential domestic industry….)

Domestically too, commercial dumping leads to increasing the unemployment because the companies would be unable to confront such kind of illegitimate competition. In addition, it causes a rise in the prices because it leads to the exclusion of new dealers from the market.

6.2 What are the legal means for Anti-Dumping?
We discuss the legal means assumed by the Jordanian legislator and the Anti-dumping Agreement as follows:
1. Investigating the existence of commercial dumping.
2. Temporary measures for Anti-dumping.
3. Definitive measures for Anti-dumping.

6.3 Investigating the Existence of Commercial Dumping
A country may not start investigating the existence of commercial dumping unless its reasons are there; i.e. it should go through particular stages as follows:

6.3.1 Applying for Protection
Investigations in the existence of a commercial dumping is started upon a written application made to the competent authorities by or on behalf of the domestic industry. This is set out in Article 5/1 of the International Agreement:

(Except as provided for in Paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry)

The Jordanian legislator went in the same direction, as Article 5/A of the Law states that (domestic producers or their representatives may make a written application to the Minister for the necessary measures to confront the injurious practices….). The protection application made by affected domestic producers or their representatives must include the information and evidences of the commercial dumping existence, injury and causative relationship between them.
It is noticeable here that the Jordanian legislator requires, for making his decision to start the investigations, the application to be supported by the domestic producers. However, he did not determine a clear ratio, just like the International Agreement, which requires the application to be made by domestic producers representing more than half the total similar commodity's production. Furthermore, the investigation may not be started where the producers who support such application are less than 25% of the total domestic industry of the similar product.

We believe that the failure to determine such ratio by the Jordanian legislator may lead to a confusion in minimizing the commercial dumping issue because a complaint may be randomly lodged by traders to defame others with no sufficient evidences. Hence, a support of a particular ratio of domestic producers should be required for an application to be acceptable in order to exclude numerous applications that hinder the commercial dumping control.

Protection application must include the complainant's ID and a description of the value and volume of its production of the similar products out of the domestic production, as well as a full description of the product claimed to be dumped, the country to which the questioned product is exported and the importers.

The question is can the authority conduct investigations with no application.

The answer is yes, the competent authority may do so as set forth in the Anti-dumping Agreement where Article 5/6 entitles the competent authorities, in certain circumstances and with no need for an application to be made by the domestic industry, to start investigations if it has sufficient evidences of dumping, injury and causative relationship.

It is also noticeable that the Jordanian legislator entitles the competent authority to perform investigations with no application if it has sufficient evidences of the existence of injurious practices and resulting therefrom.3

6.3.2 Investigation

Generally, and in the absence of special circumstances, an anti-dumping investigation shall only be initiated upon acceptance of a written application by or on behalf of the domestic industry. Only in special circumstances will investigating authorities conduct a self-initiated investigation on behalf of the domestic industry. Under this special provision, the authorities will only proceed if they have sufficient evidence of dumping, injury and a causal link, to justify the initiation of an investigation.

GATT 1994 did not identify the authority competent to conduct investigations; it rather left this mission to laws of the concerned countries. Article 8/1 of Jordan Law clarified that the National Production Protection Directorate at the Ministry of Industry, Trade & Supply

3 Article 7 of the Jordanian National Production Protection Law.
shall start the investigations whether such practices injurious and lead to injury. Information on such injurious practices are collected within a period of time called Investigation Period. Paragraph 2 of the said Article requires the Directorate to give the opportunity to the concerned parties to investigation and parties involved therein to present any evidences or information. They parties may also hold sessions for their statements to be heard and discussed with respect to the said evidences and information. The said Paragraph requires the Directorate to enable such parties to review the information related to the investigation unless the same is confidential.

We think the Jordanian legislator should assign this task to the Judiciary considering it is independent and neutral and considering it has the jurisdiction over such legal actions. Apparently, the International Agreement does not bind the competent authorities to a certain period to make the decision as to investigations. The Agreement seems to have left such matter to the national laws to determine as may be suitable in such events based on their legal systems.

It is a positive action, as the Jordanian legislator sets such period and links the whole matter to a period of time (Investigation Period), including any other period prior to the application date.

In fact, we think this matter is suitable for the case with which we are dealing, as commercial dumping is definitely among the prominent commercial cases related to the movables, which are mostly exposed to damage and rate fluctuations. In such kind of commerce, time is very important; therefore, the matter should be linked to the specific time, so the application investigation period is clear and specific for the application to be accepted or rejected.

Moreover, the competent administrative entity studies the application made thereto within the legal period, and verifies the validity and accuracy of information provided to prove the injurious practices, injury and causative relationship between them. It may also request any other information in relation to the investigation from any party. The Minister may also request any relevant party, whether public or private, to provide him with any information related to the investigation.

Could investigation be ended with no measures being taken?

Investigation may be ended where certain reasons are there as set out in Article 5/8 of the International Agreement. It states that the investigation must be ended immediately if the investigating authority has no sufficient evidences of the existence of dumping or injury.

Investigation shall also be ended if the investigating authorities find that the dumping margin is not too slim or the actual or potential dumped imports or the injury volume is minor; it shall be deemed so if the dumping margin is below 2% of the exportation price. The
dumping volume import volume is minor if the import volume from a certain country is less than 3% of the importing party's imports of the same product are more than 7% of importing party's imports combined.

In reference to Article 11 of the Jordan Law, we can find it specifies the cases where investigation can be ended without taking measures, which are as follows:
First: Upon a submission made by the Directorate, the Minister shall end the investigation if the provided evidences of the injurious practices or injury are insufficient.
Second: If the application is withdrawn and such action is not in conflict with the public interest requirements.
Third: If the Directorate's recommendation confirms the nonexistence of injurious practices or injury.
Fourth: If the dumping margin, support amount or import volume of this product in these two cases is less than a certain limit specified by virtue of the regulations enacted in accordance with this Law.

It is noticeable that, albeit there is a relative compatibility between the cases stated in the International Agreement and in the Jordan Law, we can still find that there are some notes in this respect:

We can notice that the International Agreement does not stipulate the application withdrawal as a case of investigation ending. The reason behind this case can be met upon considering the public interest in the importing country. Taking this case into consideration is left to the national laws as per their interests.

On the other hand, we can find that the Jordanian legislator the application to be withdrawn for ending the investigation, especially if this is not in conflict with the public interest requirements. This is ambiguous; what are the reasons and justifications that allow the application to be withdrawn with no conflict with the public interest, and what is the standard based on which we can determine whether an application withdrawal would or would not realize a public interest.

We believe here that this provision must be amended, especially that sometimes the beneficiary may wish to withdraw the application due to a personal interest and does not want to disclose the reasons for his application withdrawal.

If the investigation is ended in accordance with the reasons stated in Article 11 of the Law, the Minister is bound to take the following decisions:

a. To terminate the urgent taken measures and make a decision to refund the paid duties or provided guarantees.

b. To cancel the undertakings accepted in accordance with the provisions of Article 10 of the Law. Under Article 10, the Minister may decide to end the investigation in the dumping
and support cases at any time without imposing anti-dumping or compensational duties if He agrees on an undertaking made by the imported product exporter in which it undertakes to revise its prices or stop exporting to the Kingdom at dumping or supported prices.

7. Provisional and Final Measures for Anti-Dumping

From an empirical perspective, most countries seek to protect their products by taking a set of procedures to prevent the occurrence of any injury. Such objective pushed the Jordanian legislator, as other legislators, to stipulate the possibility to take provisional procedures, which shall be during the investigation term, and other final procedures to be taken at the end of the investigation and the exporter’s responsibility is evidenced.

7.1 Provisional Measures:

They are a set of procedures taken during the investigation period. Such procedures may be a temporary duty or a guarantee in the form of a cash deposit or a bond equivalent to the temporarily estimated dumping duty.

The Jordanian legislator authorizes the Minister, upon a submission made by the Directorate, to take urgent measures against the imported product subject matter of investigation in the event of injurious practices and an injury in relation thereto.

As for the Anti-dumping Agreement, it allows provisional measures to be taken. Article 7 sets out several conditions requiring the investigating authority to find a positive commercial dumping; a public notice to be made by the investing authorities in this regard; stakeholders to be given sufficient chances to provide information; and for the competent authorities to deem these procedures necessary to prevent the occurrence of an injury during investigation.

It is also noticeable that the Anti-dumping Agreement was clear to determine the conditions to be met for provisional procedures to be taken. Furthermore, it is noticeable that, in contrary with the Jordanian legislator, it requires the lapse of 60 days as of the investigation commencement date for provisional procedures to be applied.

We recommend that such period should be provided for in the Jordan Law to give the stakeholders a sufficient chance to provide information, comments and evidences related to commercial dumping.

As for the forms of provisional measures, we can see that the International Agreement states them as follows:

a. Provisional duty
b. Provisional guarantee under a cash deposit or a bond equivalent to the temporarily estimated anti-dumping duty that does not exceed the temporarily estimated dumping margin.

c. Suspension of the custom assessment of the commodity subject matter of the investigation.
As for the Law of Jordan, we can find that provisional measure form handling was different, as Article 13/b of the Law of Jordan states that "Urgent measure types, period and scope of application shall be determined by virtue of the regulations enacted based on the provisions of this Law."

In reference to the Anti-dumping and Support Regulation No. 26 of 2003, we can see that Article 64/A determines the urgent measure forms that can be taken via duty, cash security or bank guarantee to the account of the Customs Department, provided that they do to exceed the dumping margin or support amount.

The provisional measures must be time-limited. Article 7/4 of the International Agreement requires the provisional procedure application to be limited to the shortest period possible, which must not exceed four months or otherwise six months, provided a decision is made with respect thereto by the competent authorities or upon request made by exporters representing a high percentage of the concerned commerce.

It is noticeable that the International Agreement indicated that the percentage shall be high without defining the same. For us, we think it is enough for an application for provisional measures continuation to be made by producers representing more than 50% of the concerned commerce in order to be accepted.

A for the Jordan Law, we do not find any periods concerning the provisional measures. Rather, the legislator merely states in Article 16 that the Council of Ministers may suspend the taken urgent measures if it has been found that the application led to adverse effects on other domestic producers, consumers or the public interest.

It must be indicated here that the investigation procedures taken by the authorities of the importing country as to dumped products can be suspended without imposing provisional procedures or anti-dumping duties if the exporter or foreign supplier provides satisfactory voluntary price-related guarantees from any exporter to revise its prices or suspend its exports to the concerned territory at dumping prices. It is safe to say that the Law of Jordan does not address case.

7.2 Final Measures

The most important commercial anti-dumping procedure is to impose anti-dumping duties. This procedure shall only be taken a final positive determination is made through investigations that there is a dumping and an injury is caused to domestic production. Antidumping duties are purportedly meant to act as a remedy against imports unfairly "dumped" into another market. There are certain circumstances when countries can—and

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4 Article 8 of general agreement.
should—enact anti-dumping duties to protect their domestic industries from exporters that are able to produce and sell their goods for less than the normal value.

We may say that the legal basis to impose the definitive duties is set forth in Article 8 of the International Agreement, as it requires the competent authorities to consider some conditions before imposing an anti-dumping duty.

The first condition states that the decision to whether impose or not impose anti-dumping duties shall be made by the authorities of the importing country when all imposition requirements are met. The second condition is for the purpose of duty imposition to be valid nationwide and such imposed duty is to be the entire or lower than the margin of dumping if the lower duty is sufficient to eliminate the injury caused to the domestic industry.

Regarding the Law of Jordan, we can see that Article 17 thereof entitles the Minister to impose final measures upon a recommendation made by the Directorate assuring there are injurious practices and an injury resulting therefore. The Minister's decision must include type, volume and application extent of such measures. Such decision shall be submitted within maximum ten days to the Council of Ministers for approval.

We can say that the National Production Protection Law entitles the Minister to determine such duties in such a manner to be sufficient to avoid or eliminate the injury; to enable the domestic producers to suite their situations and adapt to the imported products; and to ensuring the protection of the Kingdom's interests.

In the same Law, the Jordanian legislator states that the anti-dumping duties may not exceed the dumping margin of the difference between the normal value and the exportation price. It also allows such duties to be less than the dumping margin or support amount if they are enough to eliminate the injury.

8. The Question here is what is the Scope of Applying the Definitive Duties?

Article 19 of the Law of Jordan answers the question stating: "Protection measures shall be applied to all imports of the same product regardless of their source; and the anti-dumping duties and compensational duties shall be applied to all imported products for local consumption from the sources proved to practice dumping or receive the support."

As for the definitive duty validity period, it is safe to say that the general rule states that the definitive duties are not to be imposed indefinitely. Notwithstanding the foregoing, the Production Protection Law of Jordan does not determine the definitive duty validity period; it rather referred the same to the regulations made based on the provisions of the Law.

In reference to the Anti-dumping and Support Regulation, Article 75 thereof discusses the expiration of the duty validity period. The anti-dumping duty validity period expires after five
years of its imposition date or the last revision date if such it includes the dumping, support or injury.

8.1 As for Anti-Dumping Agreement, Article 11/3 Therein Stipulates

(Notwithstanding the provisions of paragraphs 1 and 2, any definitive antidumping duty shall be terminated on a date not later than five years from its imposition or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation for recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review).

As such and through the above Article, we can imagine that the definitive duty could remain valid for longer than five years if its cancellation is proved to cause direct injuries to the importing country.

The International Agreement requires the definitive duties to be revised by the competent authorities, whether on its own or upon a request made by a stakeholder, provided such request includes positive information supporting the necessity to revise. Should the authorities determines, as a result of the revision that the injury could continue or reoccur, it shall keep the duties remain in force to encounter the dumping? If they find that the duties are no longer needed, they shall cease to exist immediately.

In all cases, the revision must be performed at as soon as possible within no more than 12 months of the date on which the revision starts.

It is noticeable that the Jordanian legislator does not come up, in the Production Protection Law, with a particular provision in relation to the periodical revision of the definitive duties, which is a legislative defect. Nevertheless, Article 74 of the Anti-dumping Regulation addresses this issue under the revision of the continuity to impose duties. After a certain period following the imposition of duties determined by the competent entity, such entity may, due to certain reasons and justifications, revise the extent to which the imposition of anti-dumping duties are necessary to remain in force, whether by itself or upon a request made by a relevant entity. If such entity finds out, as a result of the revision, that the absence of a reason justifying the continuity of the imposition of duties, it must end such duty immediately.

The Jordanian legislator is credited for binding the investigating authority to revise, either on its own or upon a request made by the stakeholder, the continuity duty imposition, which makes a kind of balance between the exporting country's interest and the importing country's interest.
The provision disadvantage is that it does not define the period that must elapse as of the date of duty imposition so there can be a revision. The provision refers to the period generally; i.e. (a certain period defined by a competent entity). The period should have been limited to one year, or at least six months.

8.2 Retroactivity of Anti-Dumping Duty Imposition

Under Article 10 of the International Agreement, the general rule is to apply duties to products brought to the importing country for consumption after the validity of duty imposition.

Obviously, this rule is not final; it rather includes such exceptions under which the definitive duties may be retroactively imposed on a period prior to the duty imposition decision is made. Such exceptions are as follows:

Anti-dumping duties may be imposed retroactively on the period in which the measures have been imposed if the injury is finally defined or in case of final determination of the injury risk existence. This case excludes the threat of injury or material delay in establishing a domestic industry, and if the dumping imports lead to injury determination in the absence of procedures.

1. If it finds before the injury occurrence that there is a threat of injury or delay in a domestic industry, the investigating authorities may impose the dumping duty retroactively since the date of determination of the risk of damage or establishing a domestic industry, provided any deposit provided during the provisional penalty period imposition shall be returned.\(^6\)

2. The may also impose anti-dumping duties on products imported before no longer than 90 days of the provisional measures application if they determines that:

(1) There is a history of the dumping that caused the injury.

(2) The importer should have been aware that the exporter had been practicing dumping and such dumping would cause injury.

(3) The injury has been caused by a lot of imports in a relatively short time, and would offset the remedial effect of the anti-dumping duties.

As for the Jordanian legislator, it is noticeable that the National Production Protection Law does not include any provisions that remedy the retroactivity of imposing anti-dumping duties. It somehow fails to match the International Agreement in this regard. Nonetheless, all remedies related to the retroactivity of imposing duties are stated in Articles 77-81 of the Anti-dumping Regulation where they address the retroactivity in details in line with the International Agreement.

\(^6\) Article 10/4 of the general agreement.
Nevertheless, we can notice that the Regulation sets certain limits in case of retroactivity where the definitive duty is greater than the paid one, so no difference between them shall be collected. Should the definitive duty is less than the provisional procedure, the difference between them shall be refunded to the exporter in order to make balance between various interests as much as possible.

9. Conclusion

The Jordanian legislator and through the legislation governing dumping, seemed to converge and comply with the international convention on anti-dumping.

The Jordanian legislator's definition of commercial dumping is somewhat similar to that defined in the Anti-Dumping Convention on the application of Article VI, especially as it links harmful practices, namely, the increase in imports from a particular product imported into the Kingdom, And comprehensive on domestic producers.

The Jordanian legislator should have defined a clear percentage of domestic producers to support the request by issuing a decision to initiate an investigation, such as an international agreement that provided that the complaint submitted by local producers accounted for more than half of the total production of the identical commodity. The demand supports less than 25 per cent of the total domestic industry production of a similar product.

The absence of such a percentage by the Jordanian legislator may lead to confusion in the problem of commercial dumping, as the complaint can be filed arbitrarily by some traders in the case of others without complete evidence.

We also note that the International Convention did not obligate the authorities concerned for a certain period to give a decision on the investigation, and it appears that the Convention left this matter to national laws to decide according to their legal systems as appropriate in such cases.

In this regard, we note that the Jordanian legislator was positive in determining this period and linking the entire matter to a period of time (the period under investigation), including any period prior to the date of the request.

Since the international agreement is very clear in requiring the passage of 60 days from the date of commencement of the investigation so that the interim measures can be applied, we believe that such a period should be stipulated in Jordanian law in order to provide the parties with an opportunity to provide information, comments and evidence related to commercial dumping.

We do not find in the Jordanian law any special terms for interim measures, and we believe that these measures should be governed by a certain period. As in the international agreement, the interim measures must be suspended within a period of not more than four
months or for a period not exceeding six months. By the relevant authorities and at the request of exporters representing a large percentage of the trade concerned.

It is noted that the International Convention provided for the need to review the final fees by the competent authorities either on its own initiative or at the request of one of the parties has an interest. While the Jordanian legislator in the law of protection of production did not come with a special text on the periodic review of the final fees, Legislative defect. However, Article 74 of the Anti-Dumping System addressed this issue under the review of the continued imposition of duties.

And we register to the Jordanian legislator that he obliged the investigation authority to undertake, on its own or at the request of the concerned person, to review the continuation of the imposition of fees, which achieves some kind of balance between the interest of the exporting country and the interest of the importing country.

However, the text does not specify how long it should go from the date of imposition of the fees in order to have a review. The text is a year that refers to the period (a specific period to be determined by a competent authority). The first was to set the period by one year or at least six months.

Finally, it is noted that the Jordanian legislator in the law of the protection of national production did not come up with any provisions dealing with the retroactive effect of imposing anti-dumping duties. It was somewhat inconsistent with the provisions of the International Convention in this regard. However, all the retroactive remedies in the imposition of fees in the articles (7-81) of the anti-dumping system, where these materials were exposed in detail and retroactive and not inconsistent with the provisions of the International Convention.

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