

**THE ADEQUACY OF THE COMMON LAW OF THE GCC TO PROTECT
THE SAUDI DOMESTIC MANUFACTURING INDUSTRY FROM
INTERNATIONAL TRADE DUMPING PRACTICES: A CRITICAL
EVALUATION OF THE PROTECTION SYSTEM**

Mohammed Ali Alamri

PhD Candidate in Law, University of Stirling

Previous Master Student at University of East London Email:

MohammedAli41.alamri@gmail.com

ABSTRACT: *The Practice of dumping in the global market is clearly of concern to all trading States, whether importers or exporters. It is a form of price discrimination and unfair competition, affecting a broad range of competing interests, both national and foreign, and products in the captive market. What protects the Gulf market in general, and the Saudi market in specific, from these injurious practices are the legal provisions of the GCC 'Common Law on Antidumping, Countervailing Measures and Safeguard Measures and its Rules of Implementation'. Since the adoption of the GCC Common Law in 2003, almost all dumping complaints did not proceed further than the investigation stage. One possible explanation that might be provided is that there might be no real dumping problems in Saudi market. However, this explanation is difficult to accept, especially because Saudi Arabia had experienced the existence of the problem even before adopting the free market system by becoming a WTO member. Therefore, the aim of this research is to identify the gap between the theory and the application. This requires an investigation of the adequacy of the Common Law so that it can provide a sufficiently protective framework to the Saudi market against the dumping problem. It also requires exploring how the law is applied.*

KEYWORDS: *Dumping, Gulf States, Saudi Arabia, WTO*

INTRODUCTION

Dumping is one of the major problems that concerns States that adopt an open and free trade system. Its harmful effect has led many States to adopt various protection measures to secure their domestic industries and markets. The Gulf States, being members of the World Trade Organisation, adopted a free trade system, and then followed suit in enacting legislation that aims to empower member States to take measures against dumping, subsidy and increase of imports which cause injury to them. However, so far the application of this law is modest since no measures have been taken against any allegations of dumping. This has made it difficult to ascertain the efficacy of such measures and the implementation of the system in GCC countries overall.

Dumping has gained considerable attention from various stakeholders at the international, regional and domestic levels; the contribution of this paper is that it will be dedicated to the examination of the adequacy of the Gulf Cooperation Council (GCC) Common Law in protecting the Saudi domestic industries from the injurious

practices of dumping. It will be argued that, despite the clear evidence of the existence of the dumping problem, there is a deficiency in the application of the law.

To achieve this task, it is necessary first to critically analyse the relevant law (GCC Common Law) to enable a critical evaluation of the application of the law. It will be observed that there are various reasons that led to the modest application so far. First, there is a lack of clarity amongst the different stakeholders about the meaning of dumping. Second, the lack of data base for the businessmen weakened their position towards the authorities. Third, there is a communication gap between some bodies that have an interest in addressing the problem of dumping. Fourth, there is a failure to establish a judicial body as provided for by the GCC Common Law.

Research Background

Dumping is considered to be one of the most injurious practices of international trade and a practice that leads to an unfair competition. In addition, identifying whether dumping exists or not is typically a complicated and time consuming process, as it needs not only an established legal system but also the collaboration of and coordination between different institutions that are involved in the trade process. Many industries and markets, specifically developing States, have suffered from such harmful practices. Saudi Arabia has faced a large number of allegations of dumping upon nations with which it trades, particularly of petrochemical products. Mattar comments ‘the World Bank Global anti-dumping Database shows that there were 6325 anti-dumping initiations and investigations in the world between 1979 and 2012’ (Mattar, 2014). Of course, these do not all involve Saudi Arabia, but nevertheless, as a major producer of oil with significant control over pricing and the creation of dependence, there has been a large contribution to the problem, despite inconsistent statistics confirming or denying this assertion.

In 2005, the Kingdom of Saudi Arabia became a member of the World Trade Organisation (WTO). According to this membership it became bound by the WTO law relating to dumping; i.e. the Agreement on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures.¹ It is important to note that prior to the accession to the WTO, Saudi Arabia had an antidumping legislation dating back to 1962, which was called ‘*Protecting and Encouraging National Industries in Saudi Arabia Law*’.² This law addressed the methods of protecting national industries by using the tariffs and quantitative restrictions on imports of goods that might have negative influence on the Saudi market. The accession to the WTO meant that Saudi Arabia should adapt its law to be compatible with the WTO agreements. Of course, it was not an easy process, especially given that Saudi Arabia’s legal system is based on Islamic law, which is in many aspects different than common law legal systems. During the negotiation process, three main issues were very important for the Saudi negotiators to guarantee. They were: forbidden products, the Zakat tax, and preamble services.

¹ It should be noted that while the WTO law does not prohibit dumping in itself, however, it provides a protection system against the injurious effect of the dumping practice. For more detail, see, Peter Van den Bossche, *The Law and Policy of the World Trade Organisation: Text, Cases and Materials* (2nd edition, Cambridge University Press, 2012) 513

² Ministry of Trade and Commerce, Saudi Arabia, <http://mci.gov.sa/en/AboutMinistry/HistoricalOverview/Pages/default.aspx?PageIndex=3> accessed on 7 February 2015.

Regarding the first category, the negotiations went through critical stages as the officials of the Saudi Arabia wanted to be clear about all those products that are listed as 'immoral' in accordance with Sharia law to avoid any countervailing measures on its products when exported to foreign markets (WTO, 2007). The second issue that the Saudis insisted on is the Zakat system, which is applied only to Muslims. According to this system, Muslims pay 2.5% on their income but non-Muslims are subject to the income tax which is 25% of the income. There were suggestions that this system is discriminatory, since Muslims are offered a favoured position when conducting their trade. Therefore, the Saudis had been advised to unify the Zakat and income tax to ensure that there is no further discriminating influence on international trade (Ayub, 2007). Finally, lengthy negotiations concerned certain kinds of preamble services, namely, insurance and banking. Life insurance, wage insurance, and automobile insurance as well as financial transactions that include interests (called 'Riba' in Islam) are prohibited in the Islamic legal system. Therefore, Saudis wanted to ensure that businesses that were entering the Saudi Market for the first time should restructure their operations to ensure that offered services are in compliance with Sharia Regulations (Ayub, 2007).

In addition to its membership within the WTO, Saudi Arabia is also a founding member of the Gulf Cooperation Council (GCC) which had been established in 1981. According to the Economic Agreement between the States of the Gulf Council,³ a Unified Law on Antidumping, Countervailing Measures and Safeguards Measures and Its Rules of Implementation was adopted in 2003.⁴ In 2004, the Committee of the Industrial Cooperation was assigned to prepare and adopt the implementing regulation of this law. This task was completed by the adoption process of the law and its regulation which took place in the State of Kuwait on 11 October 2004.⁵ After four years of implementation (in 2008), and this period of time, of course, allowed for the identification of the weaknesses of the Unified Law in practice. Therefore, the Permanent Committee on Anti Injurious Practices in International Trade (Permanent Committee), in its fifth meeting, saw it necessary to review and conduct amendments to the law. A 'technical committee' from specialists within the Gulf States was formed to examine the implementation of law and conduct these necessary amendments. In light of the findings of the Technical Committee, the Permanent Committee, in May 2010, recommended that the suggested amendments of the law be accepted. Accordingly, the Industrial Cooperation Committee, in its thirty-first meeting, held in June 2010, agreed upon the regulations of the law and recommended that the Committee of the Financial and Economical Cooperation (CFEC) adopt the amendment of the law. This happened in the CFEC's eighty-sixth meeting, held in Kuwait in November 2010. To that end, there is no case law under the WTO with any countries within the GCC. To make a more complete analysis, this paper will explore other Muslim nations, outside the GCC, who have been involved in litigation under the auspices of the WTO.

³ The Cooperation Council for the Arab States of the Gulf, Secretariat General, The Economic Agreement Between the GCC States, Adopted by the GCC Supreme Council (22nd Session; 31 December 2001) in the City of Muscat, Sultanate of Oman, 2004.

⁴ The Cooperation Council for the Arab States of the Gulf, Secretariat General, The GCC Common Law on Antidumping, Countervailing Measures and Safeguard Measures and its Rules of Implementation, adopted by the GCC Supreme Council 21-22 December 2003.

⁵ *Ibid* (n 6) 7.

Research Problem

As any free and open market, the possibility that the Saudi market could become subject to injurious practices of international trade is very high.⁶ A recent report by Saudi Newspaper revealed that China is dumping huge quantities of unsafe steel products in Saudi Arabia in the absence of effective and efficient regulatory and policing mechanism by the government. The report showed that China steel exports to Saudi Arabia stood at 163,000 tonnes in 2014. According to Raed Al-Ajaji, Chairman of Saudi Universal Metal Coating Company Ltd (UNICOIL) “The problem is not only in these large supplies, which amount to flooding and dumping, but also in the quality of these products”.⁷ A test carried out showed that the coating of most Chinese steel products supplied to Saudi market contained very high levels of lead which is internationally prohibited. Therefore, the dangers of dumping are not strictly economic, but stand to harm consumers of various industries as well.

As has been explained above, what protects the Gulf market in general, and the Saudi market in specific, from these injurious practices are the legal provisions of the GCC ‘Common Law on Antidumping, Countervailing Measures and Safeguard Measures and its Rules of Implementation’.⁸ The Common Law (system) is considered to be important especially for the local industries of the Gulf States because it offers the necessary protection against the harmful practices of international trade, such as dumping, subsidy, and the unjustified increase in the imports, which can injure, threaten, or even hamper the establishment of new industries within the Gulf States.⁹ It

⁶ For more detail, see, Jummah Mohammed Amer and Salah Adeen Abdullaziz Mohammed, *The Phenomenon of Dumping in the Saudi Market, A comprehensive field study of the reasons and the results* (Council of Saudi Trade and Industry Chamber, Department of Research and Economic Studies, 1991 (1412)) 121. In this study it had been found that many foreign companies are involved in dumping practices. For example, many companies from Eastern Asia (Taiwan, Korea, Singapore, China and Japan) and Europe (Italy, Spain, Cyprus, and Athens) all are involved in the dumping practices in the Saudi market. It is important to note that at the time of this study, the relevant systems and regulations that were governing the industrial, marketing and trade activity in Saudi Arabia consists of; (i) Rules related to rationalise/guide imports; (ii) Rule regulating the entrance of imports to Saudi Arabia; (iii) The system of Protecting and encouraging the national Industry; (iv) Tariff protection system; (v) Monitoring system of quality, standards, and measures; (vi) The system of trade agencies; (vii) The foundations for developing the marketing and advertising activities; (viii) Motivating system of exporting national products; (ix) The foundations of developing the production capacity of the national industries.

⁷ See, The Emirate 24 Business News March 16 2014. Available online at: <http://www.emirates247.com/business/energy/china-dumping-unsafe-steel-products-in-saudi-newspaper-2015-03-16-1.584339>. Accessed 04 September 2015.

⁸ It could be said that the adoption of this law was on the basis of the GCC Economic Agreement which considers the Gulf market as a common unified market that aspires to achieve economic integration between its member States. Since the importance of the role of the Gulf industries in the economies of the Gulf States, those states felt the necessity to undertake the necessary measures to protect its industry from the harmful practices of the international trade. Accordingly, the Supreme Council, in its twenty fourth Session, held in Kuwait in 21-22 December 2003, approved the ‘Unified Law’. The main goal of this law is to combat dumping and provide the preventive and compensatory measures that could be applied by the member States of the Gulf Council.

⁹ According to Article 1 of this law ‘the objective of the law is to empower Member States to take measures against dumping, subsidy and increase of imports which cause injury to any GCC industries’.

was hoped that this law would be an effective system to protect the Gulf industry, in light of the accession of the Gulf States to the WTO system.¹⁰

According to Article 7 of the Common Law of the GCC, the bodies that are entrusted with the implementation of the law are the Ministerial Committee¹¹, the Permanent Committee¹² and the Bureau of the Technical Secretariat.¹³ The Financial and Economic Cooperation Committee is the body that is delegated with the function of interpreting and amending the law.¹⁴ Practically speaking, it must be noted that the adoption of the Common Law at the regional level does not mean that it would apply automatically within the member States. Each State is still required to issue its local decree on the adoption of this law. With regard to the first version of the Unified Law, all States, except the State of Qatar, issued local decrees.¹⁵ For example, the Kingdom of Saudi Arabia issued Royal Decree No. (30) on 14 June 2006; Kingdom of Bahrain issued Royal of Decree No. (4) in 2006; United Arab Emirates issued Federal Decree No. (7) 2005; Sultanate of Oman issued Royal Decree No. (39) in 2006; and State of Kuwait issued Amiri Decree No. (25) in 2007. The amended version of the Common Law was only adopted by three States: the Kingdom of Bahrain,¹⁶ the Kingdom of Saudi Arabia,¹⁷ and the State of Qatar.¹⁸ It is also useful to note that the GCC Secretary General plays a significant role in encouraging member States to take the necessary steps towards adopting the law. Many letters have been sent by him to the Ministers of Commerce and Industry in each of the Gulf Governments to encourage them to approve the law.

After approximately twelve years of application/entering into force, an assessment of the effectiveness of the protection system of the Common Law in practice is needed. As has been mentioned above, the drafters' expectations appear to have been too high

¹⁰ The adoption of this law is a response to the requirements of finalising the accession to the Tariff Union in 2003, and the accession of the Gulf States to the WTO which requires its member States to adopt policies and procedures that allows free trade. Indeed, the three WTO Agreements could be considered as an agreed global system which aims to protect national economies from the harmful practices in international trade. It has been pointed out that the Unified Law which could be an alternative for the Gulf States in case it wants to protect its domestic industries is compatible with these agreements.

¹¹ The Ministerial Committee refers to the Cooperation Industrial Committee of the Gulf States which consists of the Ministers of Industry in the GCC.

¹² The Permanent Committee consists of the deputies of trade and industry ministers of the Gulf States.

¹³ Article 7 of the Common Law on Anti-Dumping, Countervailing Measures and Safeguard Measures and its Rules of Implementation. The Bureau of Technical Secretariat has been established in accordance with Article 10 of the Unified Law, which stipulates that the Bureaux 'shall have financial and administrative autonomy by means of a budget annexed to the GCC General Secretariat's budget, and it is directed by a Director General'.

¹⁴ Article 14 of the Common Law on Anti-Dumping, Countervailing Measures and Safeguard Measures and its Rules of Implementation.

¹⁵ It has been pointed out that Qatar did not issue a decree because it was concerned with the outcome of the application of the law by other Gulf States. Official has expressed concerns about the consistency of the law with the WTO agreements. See, Mahfood Nasser Al-Raqqadi, *Examination of the Obstacles to Apply the GCC Common Law of Anti-Dumping, Countervailing and Safeguard Measures and its Role of Implementation* (Project Paper submitted in partial fulfilment of the requirement for the degree of business administration, Open University of Malaysia, 2014) 72.

¹⁶ Royal Decree No. (48) in 2011.

¹⁷ Royal Decree No. (30) in 2006.

¹⁸ Amiri Decree No. (10) in 2013.

and their hopes were too big that this law would provide an adequate protection system to the Gulf market. However, it can be observed that the mechanisms provided by the Common Law have not been tested in its entirety in practice. So far, as of the date of writing, most of the complaints brought before the investigating authorities have been terminated for the same reason: the lack of a serious injury. This might suggest that the legal standards of the determination of the injury in the Common Law are too high. Indeed, reaching such a conclusion requires a thorough analysis of the legal provisions (Article 31-34) and comparing them to the equivalent provisions of the WTO anti-dumping agreement. There does seem to be some shortcomings when this law is tested in application. Perhaps, as suggested by the findings of one study, this shortcoming is due to several obstacles that are facing the application of the law.¹⁹ This issue needs to be further investigated through this study to consider the seriousness of these obstacles and whether they justify this modest result of implementation.

Recently, there are three serious dumping allegations that have been raised by some local stakeholders in Saudi Arabia. The first is a complaint that has been lodged by the GCC domestic industry; namely, the 'Middle East Battery Company' from the Kingdom of Saudi Arabia, which is supported by the 'National Batteries Company' from the Kingdom of Saudi Arabia, and 'Reem Batteries & Power Appliances Co. SAOC' from the Sultanate of Oman. The complainants allege that 'the imports of electric lead-acid accumulators of capacity of 35 up to 115 Amp-hour, whether or not rectangular (including square) of a kind used for starting piston engines (Automotive Batteries) originating in or exporting from the Republic of South Korea...are imported into the GCC market at dumped prices and are thereby causing material injury to the GCC domestic industry of the like product'.²⁰

After considering the accuracy and adequacy of the evidence contained in the complaint, the investigating authority prepared its initial report and referred it to the Permanent committee, which approved the initiation of the investigation and the publication of the notice of initiation in the Official Gazette of the Bureau of the Technical Secretariat for Anti Injurious Practices in International Trade (Official Gazette).²¹ The investigative authority issued, on 22 December 2015, an intention letter which has been submitted to the embassy of South Korea in Riyadh.²²

¹⁹ Al-Raqqadi (n 17) 68-90.

²⁰ Official Gazette, Bureau of Technical Secretariat for Anti Injurious Practices in International Trade in accordance with GCC Common Law of Anti-Dumping, Countervailing Measures and Safeguards, and its Regulations, Notice: Concerning the Initiation of an Anti-Dumping Investigation against the imports of electric lead-acid accumulators of capacity of 35 up to 115 Amp-hour, whether or not rectangular (including square) of a kind used for starting piston engines (Automotive Batteries) originating in or exported from the Republic of Korea, Volume (5) 31 December 2015. P.4.

²¹ Article 3 of the Rules of Implementation of the GCC Common Law on Antidumping, Countervailing Measures and Safeguard Measures. It reads: 'The Technical Secretariat shall, within a period not exceeding thirty (30) working days starting from the first working day subsequent to the receipt of the complaint, examine the accuracy and adequacy of the evidence provided in the complaint and prepare an initial report that will be transmitted to the Permanent Committee together with its recommendations whether to reject the complaint or initiate the investigation'.

²² Official Gazette (n 25) p.6. See also, Cooperation Council for the Arab States of the Gulf, General Secretariat, 'Gulf Cooperation Council Counties Open Anti-dumping Investigation Against Car Batteries Imported From South Korea', 6 January 2016

The second dumping allegations are those made by the National Committee of the Iron Industries in the Saudi's Chambers Committee. According to its Chairman, Shuail Alayad, the Chinese iron is the biggest competitor to the Saudi product and the increase in the quantity of the iron imported led to the dumping stage (Al-Bakmi, 2016). The Sub-National Committee for the Iron Industry in the Council of the Saudi Chambers also warned from the serious consequences that are imposed by the new reality of the global economy on the iron industry sector in the Kingdom. It called all relevant authorities to intervene expeditiously to deal with the surplus production, to impose more than 20% as a protection fees on iron imports, to encourage and support the export of iron to increase its competition capacity and to deal positively with the surplus for the long term.²³ It should be noted that in March 2015, the Chairman of the Committee of the ready-mixed concrete, Yasser Al-Sohimi²⁴, pointed to a similar problem in the same iron industry. He noted that the production capacity of 40 ready-mixed concrete factories in the city decreased by about 50% because of the dumping which is clearly witnessed in this sector.²⁵ According to Al-Sohimi, this is a clear sign of dumping, which needs the adoption of a more applicable formula to stop this injurious practice.²⁶ A third serious dumping allegation is related to Turkish eggs. According to the egg traders in Saudi Arabia, a big fall in the prices of Saudi eggs has been mainly caused by the dumping process of the Turkish eggs, which are less expensive than domestic eggs. This has resulted in the reduction of the local production of eggs. Al-Mahmudy, an investor in the poultry sector, clarified that 'the surplus in the domestic market puts pressure on the price which contributed to its lowering'.²⁷ Furthermore, he explained that as a result of the closure of the borders between Turkey and Russia, the Saudi local market is clearly witnessing the dumping on the market of Turkish eggs.²⁸

With these examples in mind, the questions that arise are: 1) what are the legal procedures that have been applied to address this problem, and 2) how effective have they been?

It should be noted that increased attention has been paid to the seriousness of the dumping problem on the national industry; whether on the level of the Committee of the Saudi Chambers or among Saudi Businessmen and investors. This is evident from the various events that had been organised to discuss the dimensions of the problem and its ramification on the Saudi Market. For example, in the second forum of Saudi exporters which was held in September 2006, Al-Rashed, the President of the Council of Saudi Chambers of Commerce and Industry and also the President of the Chamber of Commerce and Industry in the Eastern Region said that

'the understanding of the anti-dumping phenomenon, its causes and negative impact on the markets of the States which were exposed to dumping, and its impact on the national products, represent a necessity in the light of the growing phenomenon, especially after

²³ Hazen Al-Materi, 'The Iron Industry is threatened...and the Protection Fees support the export', Aukad Journal, available online at: www.new/Issues/20151207/index.htm/ accessed on 28 March 2016.

²⁴ He is also a member of the board of directors of the Chamber of Commerce and Industry in Al-Medina Al-Monawara.

²⁵ Yusuf Al-Saa'di, 'Al-Sohimi: "Dumping" reduce the production of 40 Concrete Factory by 50%', Al-Madinah, Issue No. 19332, 3 March 2016.

²⁶ Ibid (n 28).

²⁷ 'Turkish eggs put pressure on the Saudi eggs that caused lowering its prices', 21 March 2016.

²⁸ Ibid.

the Kingdom's accession to the WTO which should govern the rules and procedures of anti-dumping'.²⁹

The Minister of Trade and Industry, Hashim bin Abdullah Yamani, also pointed out on many occasions that the Ministry is taking seriously the problem of dumping in the Saudi market caused by the imported products. In this regard, he provided that the antidumping system applicable guarantees the priority to the national product and protects it from competition.³⁰

Saudi Arabia is an important country to examine in light of the GCC and WTO antidumping measures: it, along with Bahrain, are the only countries in the GCC that export more than it imports, resulting in a positive trade balance, and also meaning Saudi Arabia is subject to additional, external antidumping measures and tariffs (Kazzi, 2014). The Legal Definition

Aims and Objectives

As has been mentioned above, since the adoption of the GCC Common Law in 2003, almost all dumping complaints did not proceed further than the investigation stage. One possible explanation that might be provided is that there might be no real dumping problems in Saudi market. However, this explanation is difficult to accept, especially because Saudi Arabia had experienced the existence of the problem even before adopting the free market system by becoming a WTO member. Therefore, the aim of this research is to identify the gap between the theory and the application. This requires an investigation of the adequacy of the Common Law so that it can provide a sufficiently protective framework to the Saudi market against the dumping problem. It also requires exploring how the law is applied.

In more detail, the specific objectives of this research are:

- To provide a detailed account of how the Common Law is applied within the GCC countries.
- To explore how the Common Law is applied within non-GCC, but Muslim, countries.
- To identify and analyse the areas in the Common Law that are not consistently interpreted or applied.
- To discuss the reasons for the lack of activation of the Law so far.
- To explore the attitude of the bodies entrusted with the application of the law.
- To shed light on unexplored areas that could be problematic for the enforcers of the law and suggest ways that could solve these problems.

Research Questions

The main question this paper is asking is:

- To what extent does the Common Law of the GCC provides an adequate legal framework to protect the Saudi market in practice rather than on paper?

To answer this main question, some sub-questions must be answered:

²⁹ 'Businessmen and Investors warn from the Effects of Dumping', Al-Yawm Journal, Issue No. 12147, 17 September 2006

³⁰ *Ibid.*

- (i) What are the factors that hampered the activation of the GCC Common Law until 2015?
- (ii) Is the legal framework of the Kingdom, which is based on the principles of Sharia Law, compatible with WTO and GCC concepts of:
 - free trade
 - anti-protectionism and
 - anti-dumping?
- (iii) What changes or additions to the status quo can be introduced by the Kingdom to restrict dumping by other States whilst increasing trade incentives in the global market?

METHODOLOGY

This study examines the adequacy of the Common Law in protecting the Saudi market from the trade dumping problem. To achieve this aim, it is reliant on two methods. First, the doctrinal legal method; by using the standard legal analysis of the 'black letter'. Second, the qualitative research method.

Legal Doctrinal Method

Legal doctrinal methodology had been described by Chynoweth as a method that is 'concerned with the formulation of legal 'doctrines' through the analysis of legal rules' (Chynoweth, 2008). He acknowledges, however, that legal rules which are 'to be found within statutes and cases cannot, in themselves, provide a complete statement of the law in any given situation. This can only be ascertained by applying the relevant legal rules to the particular facts of the situation under consideration'.³¹ Morris and Murphy, additionally, explain that doctrinal analysis is not concerned with the words of the laws to judge the law for being 'inconsistent with wider social values', but to examine whether it is 'vague' which might lead to the 'uncertainty in its application' (Morris and Murphy, 2011). Accordingly, this methodology is necessary to enable the researcher to identify the nature and dimensions of the dumping problem in Saudi Arabia.

In this study, the researcher conducts textual analysis of all relevant provisions of the international, regional and domestic legal documents that are related to the dumping process in the Kingdom. For example, the AD regulation under the WTO agreement and the Islamic law which is applicable in the Kingdom of Saudi Arabia will be analysed. The relevant provisions of the GCC Unified Law will also be analysed to consider whether this law provides sufficient protection to domestic productions from the dumping problem. In order to be able to understand all dimensions of the dumping problem, it is necessary to discuss the case law by analysing, first, the application of the AD and anti-Subsidy under the WTO agreement in relation to some cases from the dispute settlement, and second, the cases which have been filed against Saudi Arabia, specifically by Turkey, India and the EU.

Additionally, this study relies on the studies of scholars and various other publications that are relevant to the topic. The critical analysis of secondary, qualitative data and an

³¹ *Ibid.*

evaluation of the strength and compatibility of Saudi law and levels of protectionism which apply to the protection of the domestic economy will be implemented as well. Saunders et al point out that secondary data generally involves a mix of qualitative opinion based on the collection of quantitative data (Saunders and Lewis, 2009) Some consideration will, therefore, be given to the effect of quantitative studies, especially in critical analysis of academic perspectives and in seeking patterns arising from the interview process described herein. This will facilitate the consideration of the issues and ideas which are discernible from the literature and evidence which arises from such a method of research, as well as developing new and alternative views of the subject (Bryman and Bell, 2011) The nature of the material is considered in the literature review section, and which has assisted in considering the parameters of the paper, with areas for further study.

The study benefits from various documents such as governmental, non-governmental plans, reports, and working papers to evaluate the policies applied at the international, regional and domestic levels. Examples of these documents are: SABIC annual Reports, the Saudi Council of Chambers of Industry and Trade reports; e.g. 'Saudi Arabia and the World Trade Organisation' and 'The Anti-Dumping and Anti-Subsidy in Saudi Arabia', the Saudi Industrial Development Fund, the World Bank reports, and the WTO reports.

Qualitative Research Method

A research paradigm is defined as 'a perspective of research held by a community of researchers that is based on a set of shared assumptions, concepts, values and practices (Johnson and Christensen, 2013). With this concept in mind, the investigation into the effects of dumping and measures to counteract the practice in Saudi Arabia will take account not only of previous studies of the phenomenon, but of the perspectives of domestic stakeholders in a close relationship with, and economic interest in, the success of global trading relationships (Marsh and Furlong, 2002) They know the trading environment from practical experience, and their views will be sought through semi-structured interviews on (i) whether dumping is occurring, (ii) its extent, (iii) the harm it causes to their economic well-being, (iv) the effectiveness of current regulations, and (v) potential improvements required to enhance protection and growth. A positivist approach to the methodology is therefore taken by the author to identify 'a set of assumptions, concepts, values, and practices that constitute a way of viewing reality (McGregor and Murnane, 2010)

It is clear that the methodology is enhanced by the collection of primary, empirical data via the examination of qualitative opinions and perspectives of those involved in, and affected by, the dumping phenomenon. The legal consequences of freedom of trade and protectionist anti-dumping measures, and their impact on domestic market and global market is examined. Indeed, it is necessary to examine the extent to which consumers and the government are actually aware of the practice and the methods of identifying dumping by the harm caused to domestic national development in Saudi Arabia. The approach essentially demands that a scientific method is used in the collection of data; 'if something exists, it exists in quantity and can be measured (Chilisa, B. and Preece, 2009). In the context of this study, which broadly involves critical evaluation of qualitative perspectives as opposed to the quantitative analysis of mathematical

certainty, objective reality can play a key role in the establishment of a ‘truth’. It is nevertheless argued that ‘All theories about the world are seen as grounded in a particular perspective and worldview, and all knowledge is partial, incomplete, and fallible (Maxwell, 2012). The fact that, in this context, there may or may not be an instance of injurious dumping does not mean that differing perspectives and beliefs lack validity. It will, however, impact any action taken by the authorities, but that is primarily a political, legal matter.

Easterby-Smith et al. (2012) consider the sampling process for such investigations, asserting the need for a wholly random choice of those who comprise the sources of information necessary to this study. The conduct of face-to-face interviews has been chosen by the author as the most appropriate method of obtaining perspectives of those integrally involved in the market, from producers to consumers to governing departments. This has the advantage of directing planned questions to industry and state representatives, and expanding upon responses in seeking elaboration and feedback. It allows for control by the researcher of the order and explanation of complex questions (Phellas, 2011).

In the preparation for the meetings, the researcher has remained aware of the potential of introducing bias into the formulation of pre-arranged questions and the manner of their asking. It is not, however, anticipated that bias will result from wishing to please an over-bearing interviewer but respondents of such status as those who agreed to meet the author.³² The semi-structured interview process will highlight the extent of consumer awareness about dumped products and what they consider to be the impact upon them. The semi-structured question basis is chosen over a simply structured process to allow for a free expression of views, opinions and justification on the relationships with international commerce organisations. The pool of representatives of government, industry and consumers relevant to this study is relatively narrow and indeed it is not known to what extent co-operation will be afforded. The task was simplified by promises of confidentiality in responses, and non-attribution of opinions, in accordance with the ethical policy of the University (Matthews, 2010).

The following places and organisations have been visited and interviews were conducted with the relevant authorities in each of these places;

- **Ministry of Trade and Development;** (i) Department of dumping; (ii) The Competition Council (Agency of Foreign Commerce and Agency of Internal Commerce); (iii) The Council of Saudi Chambers of Commerce; (iv) The Saudi Chamber of Commerce in Riyadh (Department of Commercial Sector, Department of Industrial Sector, Arbitration Sector and Settlements, Legal Department, Employment and Training Department, Information Sources Department); (v) The Commission of Development of Saudi Exports.

- **Gulf Cooperation Council- General Secretariat (Anti-dumping practices of International Trade Office),** interviews were conducted with the following; (i) a Delegated Minister; (ii) Officials from the Investigation Office in Dumping Cases; (iii)

³² *Ibid.*

a Counsellor in international trade and dumping cases in the General Secretariat; (iv) a Legal Counsellor in the technical office for anti-dumping.

- **Saudi businessmen, manufacturers, and producers.** At the outset, it should be noted that the Saudi Trade Chamber was not cooperative with the researcher with regard contacting the manufacturers who were harmed by the dumping practice in the Saudi market. Therefore, all of the interviews conducted with this category of stakeholders were personal efforts of the researcher. Companies which had been visited are: (i) Saudi Cement Company, (ii) Al-Rajhi National Company of Iron (interview with its officials), (iii) Al-kadi Company of Agriculture and Poultry, (iv) Al-akahwain (brothers) Company for Poultry, (v) East Company of Plastic Industries, Subic Company (they filed a dumping case against the Chinese iron in the Saudi market), (vi) Saudi Company of Ceramic (they are injured by the dumping of Spanish tiles and the Indian sanitary materials in the Saudi market), (vii) and Al-Rajhi National Company for Industries.

- Manufactories that had been visited are: (i) Middle East Manufactories of Plastic, (ii) Plastic Sector (Interview was conducted with its owner, Mr Ahmed Al-Merbai), (iii) and Medical Equipment Manufacture (interview was conducted with its owner in a commercial gathering).

Saudi Customhouse in Riyadh

- **Saudi Universities;** (i) Imam Mohammed bin Saud University (Economic department); (ii) King Saud University (law and economic departments); (iii) Dar Aluloom University; (iv) The Arabic Open University.

The core of the discussion revolves around whether there is a trade dumping problem in Saudi Arabia, how it is manifested and what are the procedures taken to protect the market from dumping. What the researcher found is the divergence of views between the interviewees about the nature and manifestation of the dumping problem. For example, the officials of the Minister of Trade pointed to a conceptual problem. In their view, the manufacturers and producers do not distinguish between the 'legitimate competition', 'quality and specification', and 'dumping'. In addition, there is no data base for businessmen who filed dumping complaint against foreign products. The reason, according to the Ministry's officials, is that there is no body dedicated for registering complaints, and therefore, they challenge the idea that there are dumping complaints raised in the first place. The interviewees also highlighted a third interesting point that suggests another dimension of the problem; that is the procedures between 'the department of dumping' and 'the competition agency' in the Ministry of Trade are not unified, which could suggest that each body is not informed with the procedures adopted and followed by the other. In their view, this could explain why the complaints of the businessmen, who are allegedly harmed by dumping, have not been received.

In relation to the visits that had been conducted to the Trade Chambers in Saudi Arabia, the researcher was able to reach the following findings; first, there is a lack of understanding amongst the employees within the Chambers about dumping cases and

they justify this lack of understanding by saying that this is something new. Second, there is no data base in Riyadh Trade Chamber that includes the names of the manufacturers and producers who have been injured by the dumping practices. Third, each department, when asked about trade dumping, provide different information about the issue. Fourth, there is a difficulty in acquiring the correct information about dumping issues, this is mainly because the organisational procedures are not unified. It is also important to note the lack of cooperation of the officials of the Trade Chamber with the researcher in sending the questionnaire to the manufacturers and businessmen allegedly injured by dumping practices. However, the researcher had made some personal efforts to reach those allegedly injured by dumping.

To conclude, the significance of using a qualitative research method is that it allows the researcher to interact with the main stakeholders that are involved in the dumping problem to express their fundamental values that might not be clear for an outsider and indeed, it enabled the researcher to build up a comprehensive picture about the scope of the problem in the Kingdom and to know the opinions of the experts about dumping and how far is it affecting the local industry and market. Indeed, the importance of the qualitative methodology as has been suggested by some writers is that it provides “access to the meanings people attribute to their experiences and social worlds” (Miller and Glassner, 2010)

RESULTS OF THE FIELD WORK

Throughout these interviews, many questions were asked. The core of the discussion revolved around whether there is the trade dumping problem in Saudi Arabia, and how it is manifested. What the researcher found is the divergence of views between the interviewees about the nature and manifestation of the dumping problem. For example, the officials of the Minister of Trade pointed to a conceptual problem. In their view, the manufacturers and producers do not distinguish between the ‘legitimate competition’, ‘quality and specification’, and ‘dumping’. In addition, there is no data base for businessmen who filed dumping complaint against foreign products. The reason, according to the Ministry’s officials, is that there is no body dedicated for registering complaints, and therefore, they challenge the idea that there are dumping complaints raised in the first place. The interviewees also highlighted a third interesting point that suggests another dimension of the problem; that is the procedures between ‘the department of dumping’ and ‘the competition agency’ in the Ministry of Trade are not unified, which could suggest that each body is not informed with the procedures adopted and followed by the other. In their view, this could explain why the complaints of the businessmen, who are harmed from dumping, have not been received.

In relation to the visits that had been conducted to the Trade Chambers in Saudi Arabia, the researcher was able to reach the following findings; first, there is a lack of understanding amongst the employees within the Chambers about dumping cases and they justify this lack of understanding by saying that this is something new. Second, there is no data base in Riyadh Trade Chamber that includes the names of the manufacturers and producers who have been injured by the dumping practices. Third, each department, when asked about trade dumping, provide different information about the issue. Fourth, there is a difficulty in acquiring the correct information about the

dumping issues, this is mainly because the organisational procedures are not unified. It is also important to note the lack of cooperation of the officials of the Trade Chamber with the researcher in sending the questionnaire to the manufacturers and businessmen injured by dumping practices. However, the researcher had made some personal efforts to reach those injured by dumping.

When interviewing some Saudi businessmen, manufacturers, and producers, the researcher observed that some of them were not cooperative in discussing the problem and its implications. However, it can be said that the interviews with this category of stakeholders have resulted in two main findings; first, that there is lack of awareness about the meaning of ‘dumping’, ‘legitimate competition’ and ‘quality and specification’. Second, there are no economic blocs between Gulf businessmen to combat trade dumping. The officials of the Saudi Council of Chambers rejected the existence of the trade dumping problem in the Saudi market. They defended their position by providing that there is no trade dumping case filed to the Secretariat General of the GCC. Nevertheless, when answering the researcher’s question about trade dumping in the Saudi market, the researcher observed that they were explaining dumping case that were filled against Saudi petrochemicals products in foreign markets.

The GCC officials have pointed to other different reasons for the lack of clarity about whether there is a dumping problem or not. They see the lack of activation of the ‘Unified Law’ as a reason for the non receipt of any dumping complaint. Additionally, they consider the application of the law in reality as a necessity to judge its effectiveness. Another weakening point of this unified system which had been highlighted is that there is no judicial entity that deals with the dumping case, although the law explicitly provides for that. Finally, the interviewees from the GCC consider the role played by the Gulf States in the WTO in matters relating to anti-dumping as ‘weak’.

To conclude, the significance of using a qualitative research method is that it allows the researcher to interact with the main stakeholders that are involved in the dumping problem to express their fundamental values that might not be clear for an outsider and indeed, it enabled the researcher to build up a comprehensive picture about the scope of the problem in the Kingdom and to know the opinions of the experts about dumping and how far is it affecting the local industry and market. Indeed, the importance of the qualitative methodology as has been suggested by some writers is that it provides “access to the meanings people attribute to their experiences and social worlds”.

CONCLUSION

The study concludes that there is a lack of clarity amongst the different stakeholders about the meaning of dumping. Second, the lack of data base for the businessmen weakened their position towards the authorities. Third, there is a communication gap between the some bodies that have an interest in addressing the problem of dumping. Fourth, there is a failure to establish a judicial body as provided for by the GCC Common Law.

REFERENCES

- Al-Bakmi, F., 'Dumping' the Saudi Market with the Chinese Iron by prices below 50% the Local Market: the National Committee files a judicial Case against the Chinese Companies', *Al-Shark Al-Awsat*, Issue No. 13788, 28 August 2016.
- Ayub, M., *Understanding Islamic Finance* (John Wiley & Sons, New York, 2007).
- Bryman, A. and Bell, E., *Business Research Methods* (3rd OUP, 2011).
- Chilisa, B. and Preece, J., *Research Methods for Adult Educators in Africa* (Pearson South Africa, 2009) 23.
- Chynoweth, P., 'Legal Research' in A. Knight and L. Ruddock (eds.), *Advanced Research Method in Built Environments* (Wiley-Blackwell, 2008) 29.
- Easterby-Smith, M. et al., *Management Research* (4th SAGE, 2012) 223.
- Johnson, B. and Christensen, L., *Educational Research: Quantitative, Qualitative, and Mixed Approaches* (SAGE, 2013) 31.
- Kazzi, H., 'GCC STATES AND TRADE REMEDIES: BETWEEN BENEFITS AND CHALLENGES', *European Law and Politics Journal* (2014), 1(2), pp. 10–27; 12.
- Mark Saunders, Philip Lewis, and Adrian Thornhill, *Research Methods for Business Students* (5th ed Pearson Education 2009).
- Marsh, D. and Furlong, E. 'Ontology and Epistemology in Political Science' in Marsh, David and Stoker, Gerry (eds.), *Theory and Methods in Political Science* (2nd ed, Basingstoke: Palgrave, 2002) 18.
- Mattar, A., Legal Analysis of Anti-Dumping Cases Raised against Saudi Arabia's Petrochemical Products Global (2014) Volume 14 Issue 2, *Journal of Human-Social Science* 17-32, at 19.
- Matthews, L. R.B., *Research Methods: A practical guide for the social sciences* (Pearson Longman, 2010).
- Maxwell, J.A., *A Realist Approach for Qualitative Research* (Sage, 2012) 5.
- McGregor S.L.T., and Murnane, J. A., 'Paradigm, methodology and method: Intellectual integrity in consumer scholarship' (2010) 34(4) *International Journal of Consumer Studies* 419-427, 421.
- Miller, J. and Glassner, B., 'The "Inside" and "Outside": Finding realities in Interviews' in D Silverman (ed.), *Qualitative Research* (3rd edn., SAGE Publications Limited, 2010) 133.
- Morris, C. and Murphy, C., *Getting a PhD in Law* (Hart Publishing, 2011) 31.
- Phellas, C. et al., 'Structured Methods: Interviews, Questionnaires and Observation' in Clive Seale (ed.) 'Researching Society and Culture (3rd ed', Sage, 2011) 183.
- World Trade Organisation, Protocol on the accession of the Kingdom of Saudi Arabia (Cambridge University Press, 2007).