

Is Australia's anti-dumping system causing more harm than good?

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In May 2020 talk of a trade war between Australian and China was ignited by China's decision to impose massive dumping and countervailing duties against Australian exports of barley. The accusation from Canberra was that the dumping duties were a response to Australia's calls for an independent inquiry into China's handling of the coronavirus. We will never know if the claims are true and part of the reason is that China's use of the dumping system is consistent with how the system is used by other WTO members, including Australia.

To understand dumping duties, it is important to understand the WTO rules. When a country joins the WTO it agrees that, subject to certain exceptions, it will treat all other WTO members equally and not raise tariffs against just one member. An exception to this is where dumping is proven.

Under the WTO rules, an Australian exporter engages in dumping where that exporter sells goods to a foreign country at a price that is less than the price at which the same goods are sold in Australia. Dumping is not illegal, or even wrong. In many instances it would be seen as a positive. (How often do Australian consumers complain that imported goods have a higher price in Australia than in foreign markets?) The WTO rules allow a country to impose dumping duties where dumping causes material injury to the local industry of the importing country.

The Chinese investigation into the alleged dumping of Australian barley commenced in 2018. Dumping investigations often exceed a year and it is not surprising that the results of the investigation would be made known in 2020. It may well be that the results were deliberately timed to send a message to Australia in respect of its comments regarding coronavirus. However, given the process had begun in 2018, it is simply not possible that the investigation has connection to a coronavirus inquiry.

If Australia wishes to characterise China's use of the dumping system as a political tool, our politicians need to be willing to answer some hard questions about Australia's own use of the dumping system. In a report from January 2020 the WTO stated:

"Australia is a relatively frequent user of anti-dumping procedures by international comparison. In the period 1995-2018, it initiated 344 anti-dumping investigations and imposed a total of 156 anti-dumping measures, making it the 6th most active WTO Member in the launch of investigations."

As a trade lawyer, I often help importers and exporters tackle dumping duties imposed by the Australian Government on imports from a variety of countries. The countries Australia currently imposes dumping duties on include China, the US, Malaysia, Vietnam, Indonesia, Sweden, Japan, France, Singapore, Greece, Spain and South Africa. Clearly, this is not a list of Australia's political enemies.

The duties apply to range of products and increase the cost of living for all Australians. Products impacted include A4 copy paper, wind towers, power transformers (required to get electricity from power plants to homes), steel pallet racking (found in every distribution centre) and base materials used heavily in construction and manufacture such as aluminium extrusions and steel pipes. The duties can exceed 100% and can effectively kill imports of a product from the target country.

On top of the existing dumping duties, as at May 21 2020, Australia is currently conducting 8 new investigations on goods from Malaysia, China, Sweden, Thailand, USA, Korea, Taiwan, Turkey and Vietnam.

The first reaction to Australia's use of the dumping system will be to claim that duties are only imposed in accordance with WTO rules. The credibility of such claims was severely damaged in December last year when the WTO agreed with Indonesia's claim that Australia had incorrectly imposed dumping duty on Indonesian A4 copy paper. Most importantly, the Australian error that resulted in Indonesia's WTO win, had also infected dumping duties imposed by Australia on Chinese aluminium and steel.

While Australian exports are not often the target of dumping investigations, the

Chinese barley investigation is not unique. The US (even under President Obama) imposed dumping duties against certain Australian exports. India is another country that has targeted Australia. For instance, India is currently investigating the alleged dumping of newsprint in rolls or sheets from Australia.

If Australia wishes to claim that the imposition of dumping duties is the first sign of a trade war, it is important that Australia reviews its own use of the anti-dumping system. The Australian Productivity Commission in 2016 claimed that there was no compelling economic rationale for Australia having an anti-dumping system. It even went as far to say that the system was, on a national welfare basis, making Australia worse off.

This Productivity Commission reached this position prior to China using its own anti-dumping system against Australia. If there is any link between Australia's frequent imposition of anti-dumping measures and the volume of similar claims brought against Australian exporters, the detriment of the system to the overall economy is even greater.

Regardless of whether or not China timed its barley dumping duty announcement for maximum political impact, the reality remains that Australia cannot be a strong critic of another country imposing dumping duties. As a country, Australia is one of the heaviest users of the dumping system and has been found not to have acted in accordance with WTO rules.

Australia is rightly seen as a leader of global trade liberalisation. Its voice as an advocate of free trade will be all the stronger if it revisits its own use of anti-dumping measures. As noted by the Productivity Commission, a total rethink of policy may be required, including whether there is any economic justification for maintaining the system. There will be an urgent need for such a review if Australia's own use of the anti-dumping system results in retaliatory measures from our trading partners.

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