Australia Should Dump its Anti-Dumping Laws

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Dumping is widely thought to be unfair and injurious to Australia's domestic industries. ***Stephen Kirchner****, an Honours graduate in political science of the Australian National University, argues that dumping is generally beneficial to the importing country and that anti-dumping laws harm the prospects for world trade liberalisation.*

Dumping by foreign producers on Australian markets has recently caused much disquiet among recession-hit Australian producers. The federal government has responded by enhancing the operation of Australia's anti-dumping and countervailing legislation. The government claims that Australia now has one of the fastest-acting anti-dumping systems in the world. The Minister for Customs, David Beddall, has claimed that 'Australia has a proven record as being amongst the toughest for anti-dumping measures in the OECD and stands up against any international comparison' (1992). By international standards, Australia is certainly a major user of anti-dumping measures. According to Finger, 'Australia, for several years in the mid-1980s, had more anti-dumping cases than any other country and seems to have regained that position in 1990–91' (1992:122).

The federal opposition advocates a similar anti-dumping system, which, it argues, would result in 'a fairer trading environment' for Australian industry (McLachlan, 1992). The federal Opposition leader recently noted that 'we advocate a much more effective approach to dumping in a clear recognition that market processes can be "exploited" and trading can be "unfair"' (Hewson, 1992:10). Both the government's and the Opposition's policies are consistent with Australia's international obligations under the GATT.

It seems, then, that dumping has few friends, whether at home or abroad. The very term 'dumping' has pejorative overtones. However, it can be argued that so-called dumping is in fact a desirable trade practice that is of potential benefit to the Australian and world economy.

The Meaning of 'Dumping'

The principal authority for the negative view of dumping is Article VI of the GATT, and the associated Agreement on Implementation of Article VI of the GATT, otherwise known as the GATT Anti-Dumping Code. Article VI defines dumping as occurring when 'products of one country are introduced into the commerce of another country at less than the normal value of the products'. However, dumping is 'condemned' only 'if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry'. As the Anti-Dumping Authority (ADA) notes in its most recent annual report, 'neither the Australian legislation nor the GATT Code on which it is based condemns dumping *per se*: each allows action only against dumping which causes or threatens material injury' (ADA, 1992:41). Thus, two criteria — selling below normal value and causing or threatening material injury — must be satisfied before anti-dumping action can be taken under the GATT and under Australia's anti-dumping laws.

'Normal value' refers to the price at which goods are sold on the domestic market of the exporting country or the price obtained in third-country markets when there is no domestic market for the good. The calculation of normal value can be a complicated matter. The ADA must assemble a vast array of information about costs and prices in foreign countries in making these determinations. Often such information is difficult or impossible to obtain (for example, in command economies without freely functioning price systems) and so the authorities are forced to make arbitrary judgments on the basis of the limited information available to them.

Dumped goods are to be distinguished from **subsidised** goods. Dumped goods are sold by the producer at a price designed to maximise profits or minimise losses in a given market. Dumping is thus a simple case of international price discrimination. A firm's profit-maximising/loss-minimising strategy may well involve exporting at a price lower than that obtained on the domestic market or below the total cost of production. Export prices will almost certainly be lower than those obtained on the domestic market if that market is protected in some way. Australia's anti-dumping system also addresses goods subsidised by foreign governments through the imposition of countervailing duties similar in their application to anti-dumping duties. Having established the existence of dumping, the Australian authorities can take action only where the dumping causes or threatens material injury to an Australian industry. Anti-dumping duties can then be applied. A similar test applies to subsidised goods and the imposition of countervailing duties.

The Injury Test

The injury test is a broad one. Dumping does not need to be the sole or principal cause of injury, just one of many possible causes (ADA, 1992:40). In applying the injury test, the ADA may take account of current economic conditions. An economic downturn in Australia will thus increase the scope for anti-dumping measures to be sought by Australian industry. Dumping

complaints reached a peak during the 1982–83 recession, when 100 cases were formally initiated, while the number of complaints formally initiated during 1991–92 was almost three times the number initiated during 1989–90 (Industry Commission, 1992:237–8)(see Table 1). As the Minister for Industry, Technology and Commerce noted in a letter to the ADA at the end of 1991, 'the present state of the law . . . does not prevent the Authority from judging the "materiality" of the injury caused by a given degree of dumping differently, depending on the current economic condition of the Australian industry suffering the injury' (cited in ADA, 1992: Attachment 2).

Injury can be said to occur, notwithstanding continued growth by that industry. The letter cited above also noted that 'a substantial diminution in an industry's rate of growth can be just as serious to the Australian economy as the movement of an industry from growth to decline'. According to a Ministerial directive issued by the Minister for Customs to the ADA in September 1990, 'the Government acknowledges that (rare) cases may occur in which material injury may indeed be caused or threatened even though the Australian industry's profits have not been "materially" reduced and even though the dumped or subsidised imports hold only a small share of the Australian market' (cited in ADA, 1992: Attachment 1). Domestic economic conditions may be as significant in the determination of injurious dumping as the pricing practices of foreign producers.

It is not necessary for dumped goods to have reached Australia for anti-dumping action to be taken against them. The threat of injury is sufficient for anti-dumping duties to be applied, conceivably allowing Australian producers to take pre-emptive action against potential import competition.

The Costs of Anti-Dumping Laws

Dumping is thought to be harmful because it takes market share from Australian industries, to the detriment of profits and wages earned in those industries. Relatively little attention is paid to the costs that anti-dumping duties impose on the Australian economy by denying consumers access to goods at the cheapest available prices (for an examination of the price effects of anti-dumping measures in Australia, see Banks, 1990:37–41). This is not entirely surprising, given that Australia's anti-dumping laws and the GATT rules do not require that any reference be made to the economy-wide implications of dumping and anti-dumping duties. Both are concerned only with industry-specific injury. Although anti-dumping duties can add significantly to costs throughout the economy, this is often thought to be a small price to pay for the sake of Australian industry and employment.

In fact, Australia is invariably worse off for having imposed anti-dumping duties. Lower prices for imports imply an improvement in Australia's terms of trade, which in turn implies an increase in our real national income. The gain to consumers from access to lower prices by way of 'dumping' will almost always outweigh the losses to profits and wages in import-competing industries, since there is a net demand in Australia for the dumped good. So although some producers and possibly entire industries may suffer as a result of dumping, the economic welfare of Australia considered as a whole will have improved. In theory, it is possible to identify a limited range of circumstances in which consumer gains from dumping are outweighed by producer losses (for a discussion of the ambiguous welfare implications of sales below cost, see Deardorff, 1989:29–39); for a discussion of intermittent dumping, see Banks, 1990:18–20). But it is difficult to identify these circumstances in practice and even more difficult to design anti-dumping laws to deal with them exclusively.

Those people who derive their income from an industry that suffers injury as a result of dumping should be obliged to compete with the imported product, or to derive their income from some other activity. Since our national wealth will have increased as a result of access to cheaper goods, other domestic industries should be better off.

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Predatory Dumping

The only case of dumping that might be considered harmful to the importing country is 'predatory' dumping. A foreign producer with monopoly power on world markets could dump with a view to driving domestic producers out of business. The foreign producer could then charge Australians monopoly prices, with subsequent losses to our economic welfare.

But in a more or less liberal world trading environment, cases of predatory dumping have become exceedingly rare, since there are few producers who do not face some competition, real or potential, on world markets. As one observer has commented, 'in modern application anti-dumping measures have almost

exclusively burdened nonpredatory dumping. There seems to be no recorded case of anti-dumping taken against genuine predation' (Barcelo, 1991:313–14). It is significant that neither the GATT nor Australia's anti-dumping laws require the authorities to prove predatory intent in order to take anti-dumping action.

There is no evidence to suggest that Australia is a victim of predatory dumping (Banks, 1990:18). On the contrary, it is more likely that an Australian producer with little domestic competition will seek anti-dumping action against foreign competitors to exploit the domestic market. The Industry Commission recounts how one of two Australian producers of low-density polyethylene sought anti-dumping measures against imports from 16 countries and sourced from no less than 80 overseas companies, with the support of the other Australian producer. The Commission found that in the two years to the end of 1990, '[anti-dumping] complaints were usually initiated by firms which produce all of Australia's production of the relevant good, and that domestic producers commonly sought action against imports from all sources' (1991:193).

Even if Australia were the victim of predatory dumping, anti-dumping duties would not be the best response. As Deardorff has argued, 'if an importing country were to threaten credibly to tax imports only once they become monopolised, and hence to tax away the monopoly profits that are the supposed lure for predatory behaviour, that behaviour would presumably stop . . . [I]t would be unfortunate for the importing country to deprive itself of cheap imports just because of its fear of predation, when means exist for dealing with it later when the predatory intent has already been established' (1989:36). Similarly, if the Australian government wanted to redress the domestic distributional consequences of dumping, a more efficient and honest means of doing so would be through direct fiscal transfers rather than through the imposition of anti-dumping duties.

Is Dumping Unfair?

Dumping is thus supported by standard international trade theory, the same theory that is regularly invoked in support of the abolition of tariff and other trade barriers. But dumping is often treated as a special case, because it is thought to be in some way 'unfair'. However, as Barcelo has commented, apart from predation, 'this author has never found anything else about international price discrimination that could logically be found unfair' (1991:313). In any event, indeterminate notions of 'fairness' are irrelevant to the case for free trade. As Yeager and Tuerck have remarked, '"fair competition" is an end in its own right in a game or a race — true enough — but not in trade. The objective of trade is to get goods on advantageous terms. To interfere with trade because foreigners offer us exceptionally advantageous terms is to reject the very principle of gain from trade' (1983/84:652). The GATT

Table 1
Anti-dumping and countervailing activity, 1986-87 to 1991-92 (number)

	1986-87	1987-88	1998-89	1989-90	1990-91[a]	1991-92[a]
New cases[b]						
Cases under inquiry as at 1 July	44	44	19	16	19	53
New cases commenced	43	29	21	31	73	88
Cases where measures imposed						
• at preliminary funding stage	19	16	9	11	40	70
• at final funding stage	6	8	15	5	12	43
Cases where measures not imposed	37	46	9	23	46	
• at preliminary funding stage						40
• at final funding stage						37
Cases under inquiry as at 30 June						
• Australian Customs Service	44	19	12	10	20	6
• Anti-Dumping Authority	–	–	4	9	33	37
Measures						
Cases subject to measures as at 1 July	183	128	55	24	21	26
New cases subject to measures	6	8	15	5	12	43
Cases where measures removed						
• revocation	57	51	33	3	2	–
• release from undertaking	4	30	13	5	2	1
• lapsed (sunset provisions)	–	–	–	–	3	10
Cases subject to measures as at 30 June	128	55	24	21	26	77

– Nil.
a Figures do not balance due to cases subject to appeal or court-initiated inquiry.
b Cases defined as one commodity by one country.
Source: Industry Commission, 1992.

anti-dumping rules were initially formulated to combat predation, but they have since become confused by notions of 'fair' trade and the political compromises that have governed the outcomes of the GATT negotiations (see Barcelo, 1991: *passim*). Anti-dumping laws have increasingly become a substitute for tariff barriers on the part of producers and countries unwilling to face the implications of lower levels of protection. As one commentator has said, 'anti-dumping is ordinary protection with a grand public relations program' (Finger, 1992:141).

Similar arguments can be mounted in the case of export subsidies, often thought to be the paradigm case of 'unfair' or corrupt trade. Residents in the exporting country are taxed for the benefit of domestic producers, which means that Australians can enjoy cheaper imports at the expense of foreign taxpayers. There would seem to be little point to producing goods yourself when foreign governments are prepared to subsidise your consumption of their exports. The corruption or unfairness of export subsidies is borne almost entirely by taxpayers in the exporting country. Australia loses only to the extent that we seek to keep these subsidised goods out of the domestic market. Of course, dumping by foreign producers on Australia's own export markets and export subsidies paid by foreign governments to our overseas competitors can cause considerable economic loss to Australia. But our own anti-dumping laws cannot do anything about this problem.

Anti-Dumping Laws and Trade Liberalisation

The toughening of Australia's anti-dumping laws and their frequent use as trade barriers around the world (mainly by the US, Canada and the EC) give the impression that concentrated producer interests are prevailing over the dispersed interests of consumers in this matter. Anti-dumping laws are often seen by governments as a minor concession to producer interests in return for their support for the GATT process and other trade-liberalising initiatives. At the same time, however, anti-dumping laws may slow progress in trade liberalisation by helping to perpetuate the myth of 'fair' trade. National anti-dumping laws and the GATT rules from which they derive their legitimacy are at odds with the overall trade-liberalising agenda of the GATT. The more successful the GATT negotiations, the more incongruous the GATT anti-dumping rules will become.

Anti-dumping laws are also coming under pressure as a result of regional free-trade agreements. Under the CER Agreement between Australia and New Zealand, anti-dumping measures are no longer available to Australian or New Zealand producers in respect of goods originating in either country. A similar state of affairs prevails within the EC, while the US-Canada Free Trade Agreement has led to a review of anti-dumping measures between those two countries.

The Garnaut Report concluded that 'by the beginning of the twenty-first century Australia should join the small, high-wage, internationally oriented industrial economies of Europe by removing all anti-dumping measures and causes of action' (1989:215). This is a recommendation the federal government has so far chosen to ignore. The federal opposition is also committed to maintaining our anti-dumping system, despite its policy of 'negligible levels of protection' by the year 2000.

The GATT Code does not require anti-dumping action to be taken and Australia is free to repeal its anti-dumping laws unilaterally. It is to be hoped that the international trading system and Australia's own anti-dumping laws will eventually succumb to the argument put by Frederic Bastiat as long ago as 1845. In his essay 'The Balance of Trade', he said:

> assume, if it amuses you, that foreigners flood our shores with all kinds of useful goods, without asking anything from us; even if our imports are **infinite** and our exports **nothing**, I defy you to prove to me that we should be the poorer for it. (1975:55)

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