AMWU

THE AUSTRALIAN WORKERS' UNION

CFMEU

Issues Paper | Anti Dumping Roundtable | 20 April 2011

Australian Manufacturing Workers Union (AMWU)

The Australian Workers' Union (AWU)

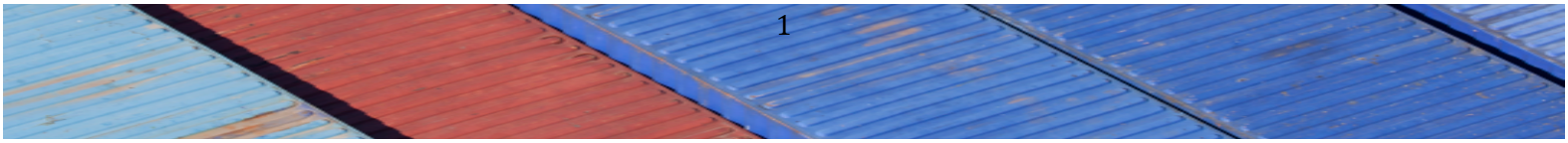
Construction, Forestry, Mining and Energy Union (CFMEU)

ISSUES PAPER

Anti-Dumping Roundtable

20 April 2011

Sydney



Executive Summary

The AMWU, AWU and CFMEU are not prepared to stand idly by and watch otherwise competitive and profitable local industries - sustaining jobs and local communities - succumb to rampant trade malpractices employed by other nations.

The consequences of inaction to adequately address dumping and countervailing to Australian workers, their families and communities are all too familiar following the loss of employment in otherwise good, productive, union jobs.

Australian exporters are world competitive (by definition) and need to adapt to the pressures associated with the two-speed economy (including higher exchange rates and interest rates).

However, the traded goods sector should not also be expected to simply absorb the added costs of illegal trade practices cutting into remaining margins even further.

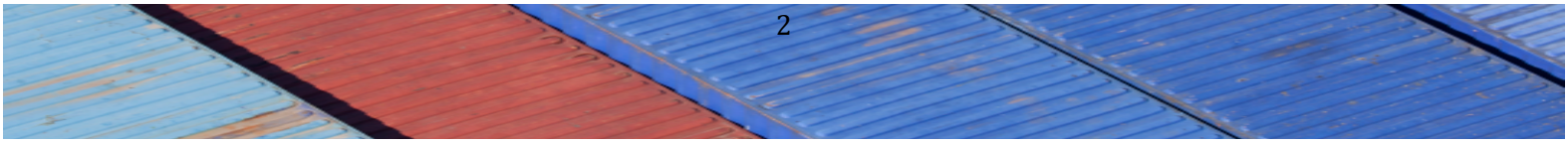
The sustainability of Australia's manufacturing sector is under threat. As a vital first step, Government can help by adopting a strict "rule of law" approach to illegal trade practices, consistent with our World Trade Organization entitlements. This rightly defends local industry in the national interest.

And local industry is worth defending. Australian manufacturing employ at least 5 times the numbers employed in our mines. Including agriculture, it is closer to 7 times that number. Most of our manufacturing sector and agriculture is almost entirely trade exposed. It asks for nothing apart from fair treatment when it comes to our international rights in trade and to be afforded the opportunity to compete on a level playing field.

So let's not be blind to the policy related threats which encircle our local manufacturers and workers – from those countries prepared to subsidise their own and see their output dumped onto our market below cost aimed at driving the local competition out of our market.

A better deal for consumers is an illusion. Short term price cuts come at the expense of local jobs and increased prices over the longer term as local competition is killed off.

This issues paper is aimed at informing debate with many of Australia's major manufacturers and exporters with a key interest in the future approach by the Australian Government to these issues.



The united position of our three unions calls for an improved anti-dumping and countervailing strategy. The roundtable with Australian manufacturers will take forward its own ideas for Government to adopt aimed at enhanced enforcement of Australia's trade rights aimed at avoiding the costs of dumping and subsidies.

Introduction

The Joint roundtable is an AMWU-AWU-CFMEU joint initiative. The Roundtable is in response to the urgent concern of the respective Unions' to the impact of dumping on the jobs of our members employed in the traded goods sector of the Australian economy.

The Unions' welcome the opportunity to share views with industry and to develop a future action plan aimed at addressing dumping and subsidies which proactively responds to this challenge in the interests of Australian workers and industry.

Background

What is the problem?

Many Governments, and in particular the Chinese Government intervenes directly and extensively in their economy benefiting their own industries. According to the WTO rules however, WTO members including China can only do this in a manner that does not cause or threaten to cause injury to foreign suppliers of like goods.

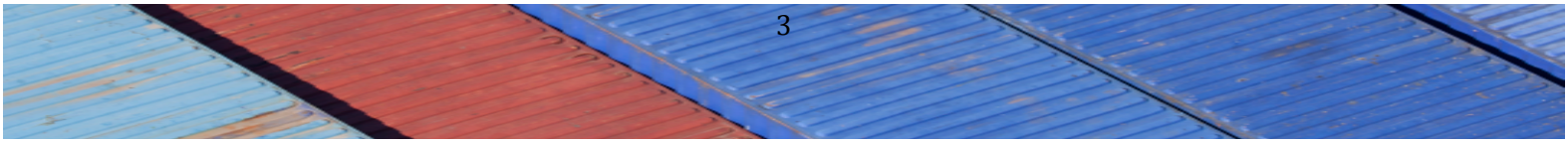
Of any WTO member, China faces the most anti-dumping actions because of dumping of product below "normal value" and for recourse to export subsidies.

There are 2 main ways Australian manufacturers of like goods are injured or threatened with injury by Chinese exporters assisted through government policies:

1) By "dumping"; and

2) Industry subsidies.

The WTO's Anti-Dumping (AD) Agreement and Subsidies and Countervailing Measures (SCM) Agreement enshrine the rights of WTO members to take action against injurious dumping and/or subsidisation in compliance with the WTO rules.



- The AD Agreement governs the application of anti-dumping measures by Members of the WTO;
- The SCM Agreement addresses two separate but closely related topics: multilateral disciplines regulating the provision of subsidies, and the use of countervailing measures to offset injury caused by subsidised imports. The Agreement covers both so-called prohibited and actionable subsidies. For example, export subsidies are prohibited under the SCM Agreement, while actionable subsidies like production subsidies are not strictly prohibited but are actionable (or subject to challenge) under WTO rules, either through multilateral dispute settlement or through countervailing action, in the event that they cause adverse effects to the interests of another Member.

The Australian system and WTO agreements focus exclusively on whether dumping and/or subsidisation has occurred, and whether this has caused or threatens material injury to the local industry producing like goods:

- WTO rules allow a government to introduce import tariffs if domestic companies lose or threaten to lose substantial sales from dumping. In Australia there are two initial tests to meet in order to establish dumping: 1) prove that the 'dumper' is selling below 'normal' or the cost they sell in their own market; and 2) Demonstrate injury to the dumped industry sector;

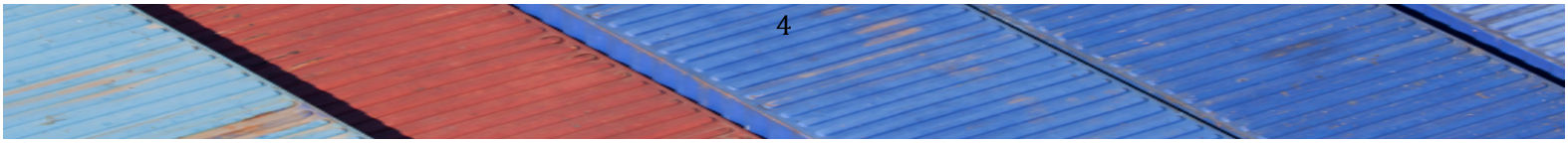
- WTO Members may also, where a domestic industry is injured by imported products benefiting from countervailable subsidies, also apply countervailing duties. In addition, certain subsidies are prohibited under WTO rules.

Dumping:

- Dumping occurs when product is sold locally at less than the cost of manufacture in the country of origin – the so called "normal value" of the good.

- One dumping enabler is state owned or linked enterprises selling below cost to producers (sometimes directly or indirectly affiliated or jointly owned by them) who in turn are able to offer export prices below normal value. That has been the experience of aluminium extruders, steel and forest products manufacturers in Australia. There have been situations of Customs strangely concluding these transactions as 'arms length' or' in the normal course of trade' in some recent anti-dumping investigations.

- A recent anti-dumping investigation regarding forest products confirmed input log prices of imported product at approximately 60% cheaper than comparable domestic log prices in the exporter's market as judged by the International Tropical Timber Organisation (ITTO) and an independent Australian industry expert, yet it was still concluded that this transaction was 'arm's length'.

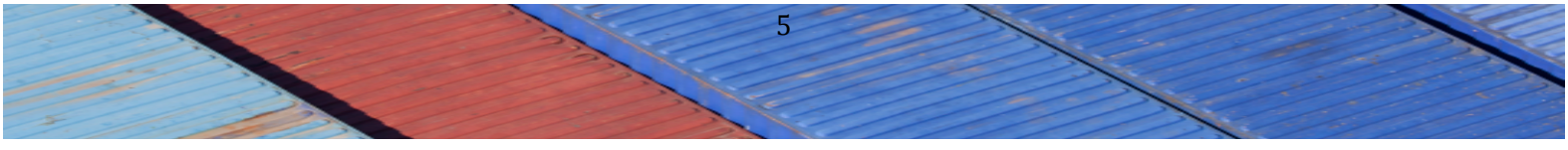


- In the case of forest products, Australian producers are subject and limited by response inhibitors to dumping including tough local competition laws and sustainable management of Australia's forests. This means that the combating of, for instance; artificially lower log input prices in competing countries often relies on an effective anti-dumping and countervailing system.
- In steel, Chinese fully fabricated prices are approximately half what Australian suppliers can produce it for. The Australian Steel Institute estimate the price of steel bought domestically in the Chinese market is approx 30 – 40% cheaper than anywhere else in the world.
- And Capral Limited note that the Chinese aluminium extrusion exporters have only been able to grow significant market share in Australia as a result of being able to purchase primary aluminium from Chinese smelters at a price around 20% cheaper than the rest of the world. And yet, Chinese smelters are recognised as the highest cost producers of aluminium in the world

The reason why competitors can offer dumped prices in Australia is not because they are better at making steel, aluminium or forest products than Australia. It is because its state owned or linked enterprises sell the inputs to their fabricators and manufacturers at less than the cost it takes to produce it, or its normal cost of production. With China, its managed exchange rate, the Yuan is undervalued by approx. 20 – 40%, affording yet another advantage.

Subsidies:

- Cover many industries and deals with specific subsidies, but by way of example, the Chinese steel industry benefits from government policies which break international trade rules.
- The Chinese government has implemented its policy of support for the steel industry by providing the industry with massive subsidies and other forms of assistance, including:
    - Transfers of ownership interests on terms inconsistent with commercial considerations;
    - Conversion of debt to equity in steel companies;
    - Grants to pay for energy and raw materials;
    - Debt forgiveness and inaction regarding non-performing loans;
    - Tax incentives, including a variety of income tax exemptions and reductions for Foreign Invested Entities, firms in Special Economic Areas, and firms that produce for export;
    - Targeted infrastructure development, including government subsidies to build and finance industrial parks;



- Control over raw material prices and exports, including import licensing schemes to control the price of iron ore and export restrictions on coke;
- Manipulation of the value of the Chinese RMB to make Chinese exports artificially cheap;
- Preferential loans and directed credit, including “policy loans” to favored state-owned enterprises on non-commercial terms;
- Import barriers, including high tariffs and other practices that discriminate against foreign equipment and technology; and
- Barriers to foreign investment.

- Australian forest product manufacturers face the situation of competing against firms which receive support through ‘free’ forestry concessions under national legislation and access to export finance facilitation at preferential rates through quasi-autonomous non-government financial institutions.

- Many of these forms of assistance – including export subsidies, domestic content, subsidies, and selective preferential bank financing – appear to violate China’s WTO obligations under the SCM Agreement. Many of the subsidies also violate the commitments China made in its WTO accession agreement, wherein China committed to eliminating immediately all subsidies prohibited under Article 3 of the SCM Agreement.

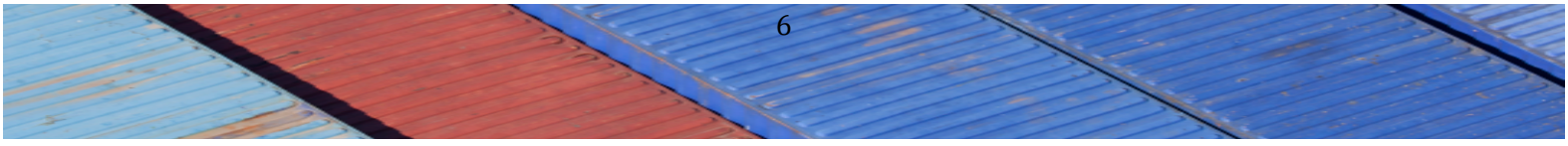
With these kinds of threats, Australia’s anti-dumping and countervailing system is ineffective in preventing injury or the threat of injury to Australian industry. Our current system is simply not up to the task.

What the evidence tells us….

Evidence from anti-dumping cases including Viridian, Capral, Kimberley Clarke/SCA, Carter Holt Harvey/Big River Timbers/Boral among a range of others confirms the extent to which our current regime is letting down home grown competitors to dumped and subsidised products from offshore.

Capral Limited

Over the past 10 years, Chinese dumped and subsidised aluminium extrusions have grown from a very low base to a dominant supply position in the Australian market, capturing around 33% market share.



The Chinese growth has led to a significant under utilisation of Australian extrusion press capacity. There is also an increasing under utilisation of Australian value adding facilities (paintlines, anodising lines and fabrication machines), as the Chinese continue to grow market share.

Unfair Chinese imports have had a significant impact on Australian employment. In 2008 Capral employed 1,350 Australians. This number has now fallen to 900, a reduction of 33% or 450 direct jobs and overall, around 1,800 Australian jobs.

Lesson: Rates of assistance even when successful are nowhere near enough to close the real dumping or subsidy margin.

Viridian

Viridian's upstream business is the sole manufacturer of float glass in Australia, accounting for around 50% of glass volumes sold in Australia. It operates from 2 large scale factories in Dandenong, Victoria, and Ingleburn, NSW, and employs 360 people, producing float glass, laminated glass, mirrors, and toughened door panels.

Viridian instigated an anti dumping case in 2010 for clear float glass against imports from China, Indonesia and Thailand. The findings from the Customs investigators confirmed dumping from China of 11 - 26%, from Indonesia at 3.3 - 22%, and from Thailand at 3.5 - 12%. However, the inquiry was eventually terminated because material injury to Viridian from dumping could not be confirmed.

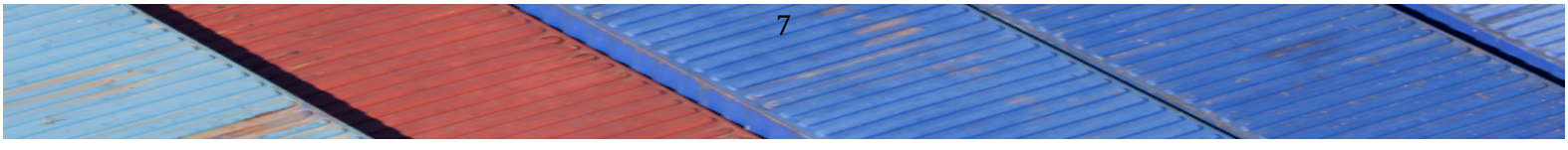
Viridian is appealing against this termination on the basis that price suppression has occurred due to dumping and hence inadequate returns made.

Lesson: Inconsistent application of the law means that there is little predictability on what cases will succeed and on what terms.

Kimberley Clarke/ SCA

The recent toilet paper dumping case (Report 138) and the reinvestigation report (158) have highlighted a serious technical flaw in Australia's anti-dumping system and the appeal process. In the original decision, Customs and Border Protection found that some toilet paper from Indonesia and China was being dumped into Australia causing material injury. In December 2008 the Minister imposed dumping duties.

An appeal led to the Minister calling for a reinvestigation of the findings that were carried out by the TMRO. The main finding of the reinvestigation was that factors other than dumping were more important in causing material injury. Accordingly, the original decision was overturned.



However, under Section 269ZZL(2)(9)(i), in conducting the review Customs and Border Protection must have regard only to information and conclusions based on the relevant information in the original case.

If the conditions of the review do not satisfy this requirement of Section 269, there are no grounds for a technical appeal. As Kimberly Clarke Australia have put the case:

"The current legislative process affords aggrieved parties the ability to raise objections to the TMRO, who can request a reinvestigation. Once customs undertakes such a reinvestigation, should the determination change as has happened in the Toilet Paper case, there is no formal process (to) enable the new aggrieved party to be represented in the change of finding.

There is an option to pursue errors of law through the Federal Court, but this is limited and does not permit review of the merits of the finding.

Some mechanism needs to be provided to enable representations outside a Federal Court appeal of errors of law."

Lesson: Appeals processes need a complete overhaul to ensure that legitimacy of the claimant's case is not undermined by poor appeals processes or their misapplication.

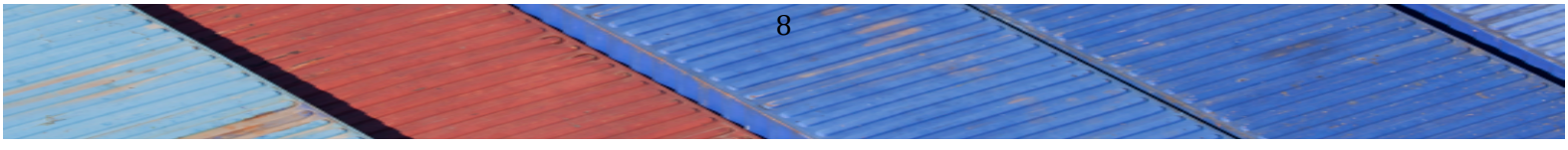
Carter Holt Harvey/Big River Timbers/ Boral

Australian produced domestic market share of plywood production has contracted from 55% in 2000 to 36% in 2009 almost entirely attributed to increased imports from the recently accused dumpers (as opposed to the other main importer, New Zealand)

In this period (2001-2007) China increased production from 1 million to 74 million cubic meters of panels (1/3 of total global demand).

An anti-dumping application was made by the industry against imports from China, Malaysia, Chile and Brazil. It was found that these imports contributed to reduced sales revenue, reduced sales volume, price suppression, reduced profit and profitability, reduced attractiveness to reinvest, deteriorating returns on investment, reduced employment and reduced profitability.

The application was ultimately rejected as dumped plywood from Brazil (8% dumping margin) and China (19.5% dumping margin) was determined to have not caused material injury, as injury was allegedly caused mainly from 'undumped' product imports including from Chile and Malaysia and from the GFC.



It is the view of the applicant industry that product from Chile and Malaysia was determined as undumped erroneously due to a misplaced acceptance that transactions including of inputs and finished product were made by suppliers and exporters in the 'ordinary course of trade' and the sales under question were consistent with 'arms length transactions', despite counter evidence existing.

Evidence of possible countervailing in terms of whether inputs came from free forestry concessions was not adequately taken into account. Whether the products came from illegally logged timber was not considered.

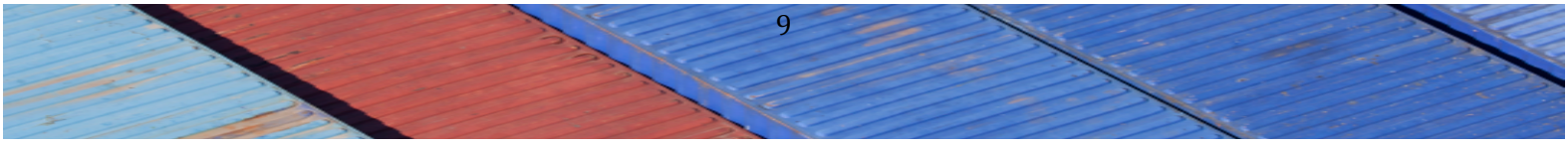
Lesson: If imports are found not to have been dumped but are causing material injury, a justification for the reasons for the lower than expected 'normal value' in the exporter's domestic market is necessary. This is especially the case when acknowledged dumping from other countries occurs and causes injury and there are disputes around the transactions of the 'undumped' product in terms of their suitability to be considered arm's length. New evidence by the applicants should be accepted on an extended time frame in these cases.

Issues

First, Australia recognised China in 2004 as a market economy as part of its WTO accession as a pre-condition to FTA negotiations. This is despite the fact the Chinese government remains intimately involved in the market through its State Owned Enterprises (SOEs), including steel and aluminium production and the forest and forest products industry, and refuses to open large parts of its economy to international competition such as its service industry.

Second, we have failed to implement a range of existing available WTO trade remedies to deal with subsidies under our own local laws.[i] On both counts, other countries are doing things differently and are well ahead, and notwithstanding a recent decision by the WTO's Appellate Body which found partly against US anti-dumping and countervailing actions against China on technical grounds.

Unlike Australia, the US, Canada and the EU have not recognised China as a market economy and are therefore entitled to use a proxy or surrogate price for establishing normal costs of production in China when normal values cannot be easily assessed in China because of the lack of relevant market data. Often India is used, and in the EU's case, prices applicable in the US are used. These regimes are all WTO compliant under China's accession terms.



On the other hand, because of MFN status, Australia must use Chinese domestic prices. This has resulted in only limited and partial application of relatively small dumping duties in some cases.

For example, recently, we have been very concerned at the decision to offer only minimal support for aluminium extruders facing dumped and subsidised product from China particularly given the increased competitive challenge already being posed by the rising dollar and competitive devaluations elsewhere.

This is revealed by the wide disparity between outcomes in terms of dumping margins for our own producers compared to those enjoyed by US and Canadian producers.

In one illustrative case, the same product from the same Chinese manufacturer, (e.g. Guang Ya Aluminium Industries Co) faces a 6 per cent dumping margin in Australia compared to 40 per cent in Canada and 60 per cent in the US.

Our own markets, industries and relative production costs in the US, Canada and Australia are not that different. But what is different is the way the other jurisdictions are facing up and responding to the challenge from China and addressing illegal practices via their dumping regimes.

There are 2 main outcomes from this differentiation in approach between Australia and other advanced economies with major trade flows with China:

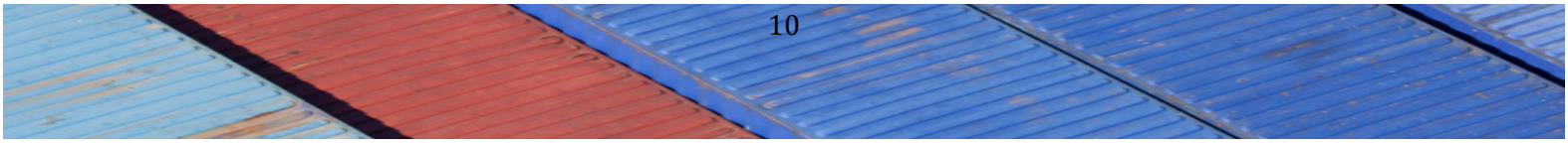
1) There is a competitive benefit to US, Canadian and EU manufacturers relative to Australia's. This damages export opportunities for Australian suppliers; and

2) There is greater likelihood of diversion of dumped product away from Canada, US and EU to Australia as the weakest enforcer of a dumping regime. This is damaging to import competing suppliers.

And the net result is more "hollowing out" of local manufacturing industry compounding competiveness challenges they already face.

The bottom line is Australia could be doing far more to assist local producers deal with the impacts of illegal dumping by taking a proactive stance.

As noted, the second main weakness in Australia's system, not shared by many other WTO members is under the Australian system, certain subsidy measures are simply not considered.



Third, Australia also applies measures to a relatively narrow and diminishing range of basic industrial chemicals, and plastics, base metal products, paper products and processed agricultural products – the bulk of which are inputs to further manufactured products. However, more recently dumping has been occurring in additional "finished" goods such as:

- Solar panels
- Rail track
- Wind towers
- Mining infrastructure (conveyors, crushes, separators and washers),
- LNG Trains modules, (including heavy engineering components like crushes etc); and
- Industrial commercial buildings (structural steel frames).

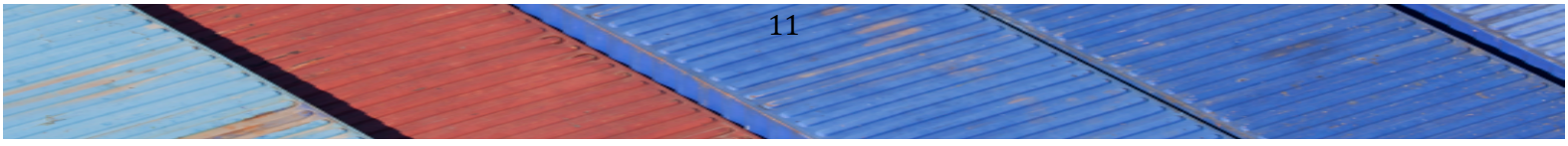
Fourth, our approach to investigations and appeals has lacked technical rigour and due process. This has contributed to firms not applying to have dumping remedied as they have low expectations of success.

Fifth, we do not distinguish between dumping and countervailing duties on export subsidies enough – whereas as the US will run separate investigations on each and apply margins on each, but not run these in parallel as we try and do.

What can we do about it?

The AMWU, AWU and CFMEU have offered a number of policy reforms to the Government responding to the Productivity Commission's Inquiry into Australia's Anti-Dumping and Countervailing System.[ii]

A major policy issue for our combined Unions' is opposition to inclusion of a public interest test. The section below sets out the argument.



Why the Unions oppose the proposed public interest test

In its review of Australia's anti-dumping system the Productivity Commission recommended that a new public interest test should be enacted. If, for example, the imposition of anti-dumping measures against importers could eliminate or significantly reduce competition in the domestic market for the goods concerned, the public interest test would be a trigger for not imposing measures

> "… even where there is found to be dumping or subsidisation which has caused, or threatened to cause material injury."

There are six circumstances proposed, any one of which could trigger the public interest test overriding a dumping finding.

The three unions oppose a mandatory public interest test (PIT). We agree with the DFAT position which strongly suggests that any consideration of a PIT should be linked to the DOHA round of trade negotiations.

This combined unions' submission also opposes the enactment of a new public interest test (PIT) on three additional grounds.

A) There is no need for a new public interest test because it already exists in the form of Ministerial discretion.

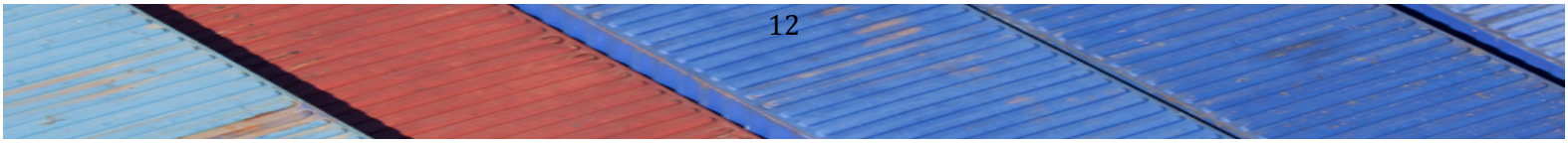
For several decades now the Commonwealth Government has determined that a separate public interest test is not appropriate and that such a test already exists in terms of what national interest considerations the Minister takes into account in taking the decision to impose measures or not impose measures.

The Minister has the discretion to do these things and the courts have upheld that discretion.

The existence of this national interest provision within the context of Ministerial discretion was reaffirmed as recently as August 14, 2009 in the Federal Court of Australia in the Siam Polyethylene Co. Ltd. v. Minister of State for Home Affairs [2009] FCA 837 case.

The public interest test therefore already resides in Ministerial discretion. It is within the Minister's discretion not to impose measures if, for example, such action was likely to eliminate / significantly reduce competition in the domestic market. The fact that such Ministerial discretion has not been utilised reflects the seriousness of dumping actions that cause or threatens to cause material injury to Australian industry and thereby the job and income security of working people, their families and communities.

In Canada, recommendations by the Canadian International Trade Tribunal to the Minister in the public interest, to reduce (not eliminate) dumping duties have only been made five times in the last 22 years (and only 4 of the 5 by unanimous decision). The Australian system can already impose a lower duty and Ministerial discretion to go further exists if required. There is no case for change.



B) There is no need for a new public interest test given the time, costs and risks associated with its introduction relative to the magnitude of the alleged problem and the expected benefits.

To impose the Productivity Commission's six-part public interest test would seriously disadvantage that part of domestic industry that are suffering from dumping.

It would significantly increase the cost of Government to administer the system and the cost for participants to prosecute cases under the PIT.

It would also increase the time of dumping cases by at least 30 days and probably more given that 60% of dumping cases under the current system are granted time extensions.

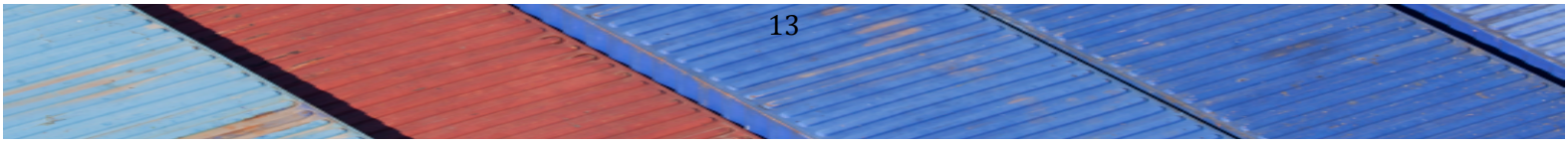
It would also significantly increase the risk of unbalancing the existing system.

Importantly, the additional cost, time and risks associated with introducing a PIT have to be weighed against the benefits:

- During the past decade only around five anti-dumping cases a year result in new measures being applied compared to an average of fourteen in the previous decade.
- During the global financial crisis in 2008-09, a time when dumping increased globally, Australia only initiated eight new investigations and imposed six new measures. During the most active year in previous recessions more than seventy investigations were initiated and fifty new measures introduced (early 1980s and early 1990s).
- It has been suggested with very little detailed analysis that the PIT in the European Union prevents about 10% of dumping cases from having measures introduced. As noted above, in Canada, only 5 recommendations in 22 years have been submitted to the relevant Minister to partially reduce dumping duties.

With the likelihood of measures being imposed in about fifty cases over the next decade, why would it be in Australia's national interest to incur the extra time, costs and risks of a new PIT to prevent measures being introduced in zero to five new cases?

Why would it be in the national interest to do this when national interest considerations already reside in Ministerial discretion and the option of lesser rates of duty already exist?



C) There is a very real possibility that a new public interest test would undermine the checks and balances in the existing system thereby diminishing its legitimacy.

The introduction of a new public interest test would of necessity require countervailing checks and balances, including the introduction of much broader public interest criteria than that proposed by the Productivity Commission.

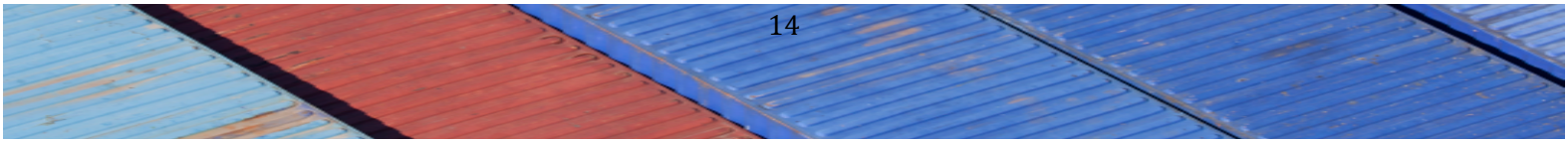
As the CFMEU argued in proceedings before the Commission, there would need to be triple bottom-line accounting criteria regarding labour rights and the environment introduced into a PIT. This is entirely consistent with the ALP Party Platform that reads in part:

> *Labor recognises that economic growth and prosperity arising from increased international trade brings with it the responsibility to promote higher labour and environmental standards for Australia and internationally. Labor will support greater cooperation between the secretariats of the WTO and the ILO on the issue of trade and labour standards.*
>
> *Labor supports the incorporation of core labour standards in all international trade agreements. Labor will outlaw the importation into Australia of goods or services produced with forced or prison labour. Labor will work actively through the WTO and other international trade organisations to combat and overcome the scourges of forced, prison or child labour.*
>
> *Labor is fully committed to the goal of sustainable development. Labor will work towards the removal of environmentally damaging subsidies, and promote mechanisms which can reconcile the interests of environmental protection and open markets.*
>
> *Labor notes the important role and responsibility we have at the Asian Development Bank and supports the inclusion of core labour standards in ADB decision-making including a role monitoring mechanism at the ADB.*

Given the commitment to core labour and environment standards it is a logical extension to extend them into the PIT.

In that context could one seriously envisage an Australian Government telling a group of workers, retrenched because of the injury dumping was having on their industry, that although the overseas importer has an appalling human rights record, breaches ILO core labour standards, engages in devastating/ unsustainable environmental practices, has been shown to be dumping and causing Australian workers to lose their jobs, that it's in the public interest for this to occur and dumping measures not be imposed?

The potential for that sort of an outcome would seriously risk the de-legitimisation of the existing system. It would take use **back into the past** to the environment surrounding highly politicised cases in the 1980s at a time when Australia's **future** trade engagement with China, Asia and emerging markets more generally is vital to the national interest.



Since then, our Unions have also been running our own anti-dumping campaign including the AWU's *Don't Dump on Australia* campaign launched at the AWU's 125th Anniversary National Conference in February 2011.

A range of policy initiatives and legislative reforms have also been developed by the Independent Senator for South Australia, Nick Xenophon in his Customs Amendment (Anti-Dumping) Bill 2011. Our Unions have each provided submissions to the inquiry by the Senate's Economics Legislation Committee on the Bill.

Our Unions welcome the initiatives outlined in the Bill including reversing the onus of proof from exporters to importers, allowing unions to be recognised as interested and affected parties and to petition for reviews by Customs in particular on behalf of smaller employers and to reform appeals policy and practices. Our main interests are:

Resourcing

The amendments should give priority within Customs to necessary funding from reallocation within Customs, machinery of government changes or supplementation to implement the changes fully.

Allowance in the budget should be made for the inclusion of industry experts in investigations to assist career bureaucrats within Customs.

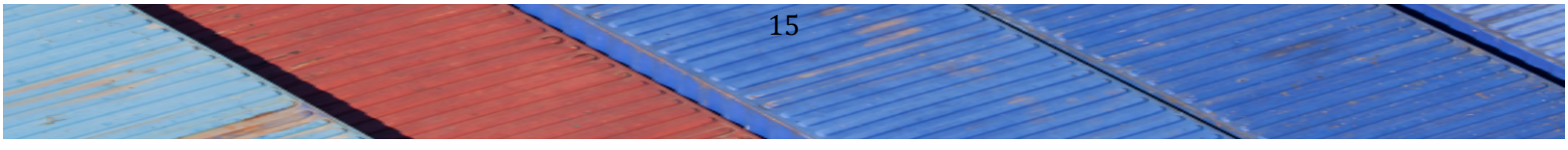
The Minister for Home Affairs should be empowered to obtain budget supplementation as required in order to meet the Bill's objectives, ideally in time for the 2011-12 Budget.

Governance

Legislating to ensure the Trade Measures Branch within Customs (which undertakes the investigations) reports directly to the CEO of Customs. This removes layers of bureaucracy and assists with accountability. The aim is to give greater autonomy and independence of action (from other parts of Customs and Border Protection) through higher prioritisation and resourcing. Machinery of government changes may assist, making the current Branch an expanded Division / Bureau.

In fact a name change to the Trade Measures Bureau would assist in carving out the functions of the Trade Measures Branch within Customs and promote its independence.

The CEO should be required to report on the work of the new Division / Bureau and included in his accountabilities reporting to Parliament.



Appeals

Legislate to increase status of the TRMO to Deputy Secretary level (consistent with statutory powers). Currently the TRMO is drawn from the ranks of AGs at Assistant Secretary level. The current incumbent needs the support of higher status within the bureaucracy, consistent with his role and responsibilities. Note the TRMO responsibility is not his only work, which raises the issue of staff and resourcing. Raising the status of the TRMO would help to address this.

It is also worthwhile on assessing the ability to make TRMO a quasi-judicial appointment to promote independence in line with the intent of amendments.

Other appeals reforms are full supported.

Union as affected or interested party

Unions' fully supports the intent of the amendments such that unions can seek an inquiry on behalf of smaller manufacturers who may not dominate 25 per cent of the market (there are a range of smaller employers for whom the current rules prohibit bringing a complaint). Trade unions should be able to do so on their behalf.

Coverage

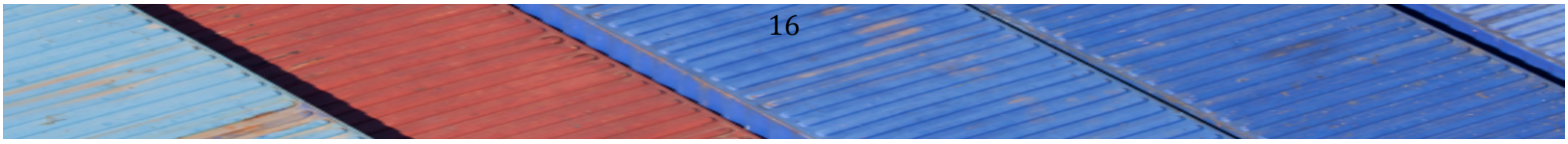
An important aspect of the reform agenda as highlighted in this submission is including subsidies which are currently excluded from examination since non-actionable derogations under Article 8 of the SCM Agreement lapsed in 1999 on:

- Research activities;
- Assistance to disadvantaged regions; and
- Adaptation to new environmental requirements.

The WTO's Agriculture Agreement (AA) is also relevant regarding action against certain agricultural support (derogations on action has also now lapsed).

Section 269TAAC(6) of the Customs Act 1901 (Cth) has not been updated to reflect the fact that Article 13 of the AA (the 'peace clause') and Article 8 of the SCM Agreement have now lapsed.[iii]

Allowance should also be clearly made for separate investigations of dumping and countervailing duties as required.



Compliance

Ensure Customs is monitoring compliance with decisions through mandatory review of decisions and abiding implementation by industry.

Cooperation

Mandate cooperation and information sharing among domestic government agencies (e.g. the ABS, ATO and Customs) facilitating inquiries and allow information sharing with counterpart organisations in other jurisdictions which have valuable intel related to companies and products (e.g. counterpart agencies in the US, Canada and EU).

Review

The review of the implementation of the amendments within 2 years with a view to further amendment as required (also accounting for international developments and WTO). This is aimed at ensuring operational effectiveness and up-to-date Customs Act and is fully supported.

Are there alternatives (to what we are doing currently) we need to consider?

Chinese exports by state owned enterprises could be treated like other state owned enterprises in other developed economies despite China's market economy status.

Despite its MFN status, the US has applied duties on Canadian softwood timber because it believes the Canadian softwood industry receives various subsidies as state owned assets such as stumpage fees. Canada is accused of supplying the US market below the costs of production.

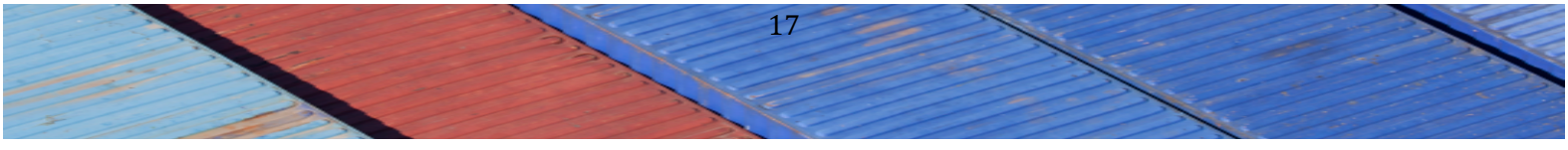
In fact, the US has run both dumping and countervailing subsidy investigations in recent years. In 2006 both countries agreed to a limit on new Canadian timber subsidies through 2013 under the 2006 Softwood Lumber Agreement. Disputes are heard by the London Court of International Arbitration.

Australia and China could strike similar deals in affected sectors – such as steel, and aluminium extrusion and forest products - aimed at limiting the impact of subsidies available to Chinese fabricators and extruders via state-owned enterprises.

Trade relations are based on reciprocity. If progress is not made, we should revert to review China's market economy status for the purposes of anti-dumping investigations.

Review China's market economy status?

If progress is not made in reducing the scale and scope of dumping and subsidies from China, consideration should be given to reviewing China's market economy status for the purposes of anti-dumping and countervailing duty investigations.

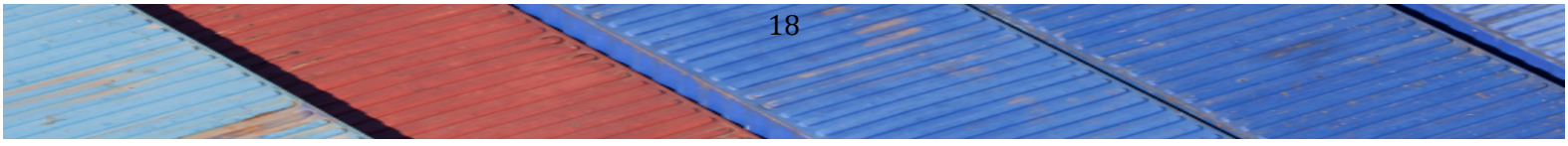


This would free up the Government's ability to apply cost reflective prices to investigations including utilizing proxy values from equivalent market places such as India, consistent with the approach adopted by Canada.

Next steps?

The following statement is offered for consideration by the Roundtable as an agreed set of guiding principles:

- **A properly resourced, independent anti-dumping and countervailing system.**
- **Relevant agencies, in particular Customs and the TRMO must respond proactively to dumping and subsidy complaints and undertake appeals openly, transparently, expertly and fairly;**
- **Improving the culture and technical capabilities of Customs aimed at assisting local industry and compliance with Customs decisions by all parties;**
- **Consider treating Chinese exports via state owned enterprises via separate agreement, like other state owned enterprises in other developed economies consistent with China's market economy status;**
- **Reflect WTO rights in Australia's anti-dumping and countervailing system as legal trade defences rather than industry protection;**
- **Amend the Customs Act to acknowledge that unions should have the right to petition for investigations in particular on behalf of smaller employers;**
- **Strong local content requirements encouraging the local supply chain to manufacture and source locally; and**
- **Oppose any narrow Public Interest test, which undermines anti-dumping measures.**



Conclusion

Our aim is simple. China and other countries must play by the international rules governing trade, investment and labour standards.

As noted recently by a young Australian scholar, "accommodation (of China) does not necessitate abandonment of Australia's core values."[iv]

Australia must enforce its rights to apply effective anti-dumping and countervailing measures to prevent injury and loss to Australian industry and workers.

Our Unions have welcomed the reforms introduced by Senator Xenophon.

We seek to build on these following further consultation with industry in the Roundtable and over the coming months.

Endnotes

[i]

- research activities;
- to disadvantaged regions (even if involving a specific subsidy for particular firms);
- to enable firms to adapt to new environmental requirements; and
- for a variety of agriculturally related purposes, such as pest and disease control, training, marketing and promotion, inspection and advisory services.

WTO member countries are now able to take countervailing action against these subsidies if they cause or threaten material injury. However, Australia has chosen not to update the Customs Act 1901 to reflect the changed status of these subsidies and continues to treat them as not countervailable.

[ii] AMWU-AWU-CFMEU: Maintaining and improving the integrity of Australia's anti-dumping system: Joint submission, August 2010

[iii] (See DFAT submission to PC inquiry for details). DFAT, 'Submission', Productivity Commission Inquiry into Australia's Anti-Dumping and Countervailing System, available online at http://www.pc.gov.au/__data/assets/pdf_file/0010/90199/sub022.pdf. Refer to sections 3.11-3.15 in particular

[iv] Christian Jack, Prime Minister's Australia-Asia Endeavour Award Scholar from the University of Queensland, quoted in Australia-China Connections, 2 December 2010.