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America's Abusive Trade Practices

China has legitimate grievances, too. The WTO often looks askance at U.S. antidumping tariffs.

By James Bacchus

President Trump and U.S. Trade Representative Robert Lighthizer are right: A trade deal with China must end the market distortions of Beijing's illegal, often invisible subsidies, which allow state-owned enterprises and other Chinese companies to secure an unfair advantage. But tariffs won't achieve that goal. Instead the administration should offer to end America's own unfair trade practices, which discriminate against an array of imported Chinese products.

Anti-dumping and other trade remedies that increase tariffs on imports have soared under the Trump administration, and Chinese products have been the target in about 40% of those U.S. investigations. Products affected include everything from aluminum alloy, silk ribbons and rubber bands to, most recently, metal file cabinets and ceramic tile.

The U.S. imposes higher anti-dumping duties on China than on any other country, and these duties have increased over time, particularly as they have been imposed together with duties countering Chinese subsidies. Relief from the burden of this recent surge of trade remedies is at the top of China's agenda.

Some of these U.S. trade remedies are legitimate under the rules of the World Trade Organization. Others, however, reflect the considerable influence on American

administrative outcomes of trade-challenged U.S. industries—an egregious example of American crony capitalism.

During the past 40 years, since responsibility was shifted from the Treasury to the Commerce Department and the U.S. International Trade Commission, America's application of trade remedies has, as my Cato Institute colleague Dan Ikenson has put it, "gradually transformed from one predicated on protecting consumers from collusive or predatory trade practices into a tool to suppress competition in the name of remedying 'injury' experienced by domestic producers."

This shift happened over time as a result of persistent pressure by import-competing domestic industries and their well-placed congressional tribunes from politically pivotal states. Commerce and the International Trade Commission have been heavily influenced by lawyers and lobbyists for U.S. industries seeking trade protection from foreign competition. (One of them, incidentally, was Mr. Lighthizer, an international-trade lawyer in private practice until 2017.) Through various protectionist sleights-of-hand, these agencies sometimes invent a justification for a trade remedy and impose a harsher penalty than the offense warrants.

Dumping occurs when a manufacturer charges lower prices for the same product in an export market than in the domestic market. Determining the existence and severity of dumping thus involves a comparison of prices. In deciding which prices are compared, U.S. anti-dumping rules and practices tend to inflate home-market prices and underestimate export prices.

Below-cost sales in the home market are excluded from any calculation of domestic prices. Discounted domestic sales to the producer's corporate affiliates are excluded. The result, conveniently for protected American interests, is that sales in the U.S. are compared only with the highest-priced sales in the home market.

Price deductions for indirect selling expenses (such as sales staff salaries and overhead) are capped for the home market but not for the export market, which widens the margin of dumping.

Instances in which export prices in the U.S. are higher than home-market prices are ignored in some dumping calculations, through the internationally controversial "zeroing" method. In addition, when there is supposedly no home market—as is often the case with China—fictional home-market prices are constructed using the proxy of prices from third countries, which may not reflect the reality of domestic Chinese pricing.

To the delight of all those seeking protection from foreign competition, all these devices and more increase the likelihood that the U.S. will determine that "dumping" has taken place—and will levy higher dumping duties.

None of these esoteric procedures are likely to come up in a presidential debate or campaign ad. Yet they have enormous economic consequences. Trade distortions resulting from their

use insulate some U.S. industries from perfectly fair foreign competition, increase costs for U.S. industries that use imports in their production, and impose an ever-increasing hidden tax at the cash register for American consumers. This not only harms the Chinese. It also diminishes America's global competitiveness.

The U.S. has lost a long string of WTO cases about its trade remedies—some based on complaints brought by China. Yet U.S. regulators continue to drag their feet on WTO compliance, gravitate toward the outer edges of WTO rules, and find new ways to discriminate against Chinese imports. The prospect of ending these practices could be a powerful inducement for China to abandon its own unfair trade practices.

To be sure, offering a carrot instead of a stick seems alien to the blunt bluster of Mr. Trump's approach to deal-making. But both he and Mr. Lighthizer have said they want a deal that addresses the fundamental problem of Chinese industrial subsidies. Both have claimed that their ultimate goal is free trade. They can prove it by offering to end U.S. abuses of trade remedies in exchange for an end to trade-distorting Chinese industrial subsidies—a deal that would free more trade and create more prosperity for both countries.

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