

WHY IS CHINA THE WORLD'S NUMBER ONE ANTI-DUMPING TARGET?

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Abstract

This paper examines how the inherent weakness and loopholes of anti-dumping laws have allowed multinational enterprises to use it as a weapon to squeeze out new market entrants and strengthen monopoly. Though the benefits of China's trade expansion have been distributed much more broadly than some early industrializers, China has been a number one target of anti-dumping activities in the world. Being a new and relatively efficient new rivalry in the world market may be an important reason. On the other hand, China's development stage and its trade structure also place it at a disadvantage when it comes to anti-dumping activities.

INTRODUCTION

The first anti-dumping investigation against China was launched by the European Community in 1979, immediately after China started opening its economy to the outside world. Since then, the filing of contingent protection measures targeted at China have proliferated at a rapid pace, with anti-dumping actions far more prevalent than other measures such as safeguards. In the 1980s, anti-dumping cases against China averaged 6.3 per year. The number increased to 30.3 per year in the 1990s.² From 1996 up to the present day, China has ranked first in the world in anti-dumping investigations and final measures against its exports. In 2004, there were 48 anti-dumping investigations and 41 final measures against exports from China,³ once again at the top of the list. It is worth noting, however, that in 2004 the gap between China's position at the head of the list and the country in the number two slot, the Republic of Korea, was huge: With its 12 anti-dumping measures against its exports, the Republic of Korea held a distant second place to China's 48 anti-dumping investigations.

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² China is facing non tariff barrier, accessed on 16 July 2003. For details see www.cei.gov.cn.

³ WTO press releases No. 387, 1 November 2004 and No. 406, 19 May 2005.

The cost of anti-dumping activities against Chinese exports is high. From 1979 up to October 2002, 33 countries initiated 544 anti-dumping and safeguard cases and measures against Chinese exports affecting more than 4,000 products with a value of around US\$16 billion.⁴ However, this amounted to only about 5 per cent of China's total exports, and was not extensive enough to cripple the economy.

An analysis follows on the major factors contributing to China's position as number one target of anti-dumping investigations in the world over the past consecutive few years.

I. EXTERNAL FACTORS

I.1. Anti-dumping laws could be used to benefit multinational enterprises and victimize late industrializers

As laws are not amended as frequently as developments take place, it is not uncommon for them to be manipulated and abused by contemporaries. However, when laws are too outdated, they may give rise to incidences of running counter to the very principles on which the law was introduced.

Many countries have amended their anti-dumping (AD) laws in recent years. The WTO Agreement on Anti-dumping was endorsed in 1994, only a relatively short time ago. However, some of the basic economic assumptions of international trade conducted in the 18th century are still the cornerstone of the AD laws. That is what a recent McKinsey study⁵ describes as a "residency-based view of trade", which means that exports are goods and services leaving a nation's borders, regardless of nationality and ownership of producers and service-providers involved, while imports are the mirror of exports. However, these basic assumptions no longer apply to a large part of international trade because of the tremendous changes that have occurred since the days of barter trade and the time when the first anti-dumping laws were introduced. Multinational enterprises (MNEs) have increasingly begun to offshore their production

⁴ *People's Daily*, 24 June 2003: Frequent anti-dumping bangs, perfecting early warning system is a must.

⁵ Farrell et al. (2005)

activities and trade between affiliates and their parent companies have mushroomed.

A significant portion of the goods and services exported from a country do not really belong to that particular country. With FDI, companies no longer need to cross national borders to sell their products. A volume of cross-border trade directly associated with the determination of dumping action no longer accurately reflects actual commercial activities between two trading nations. Not to take these changes and factors into consideration in AD laws may result in the unwelcoming outcome of not meeting the intended purpose of legislators when they enacted the law. Anti-dumping duties were conceived in Canada at the beginning of the 19th century with the intention of maintaining a “level playing field” for domestic industries whose activities essentially took place within national frontiers. Subsequently, they were extended to cover transactions from outside the national borders. However, as pointed out by Richard J. Pierce Jr, globalization and the rise of MNEs has meant that in many cases anti-dumping laws have been administered and manipulated to “facilitate the formation, maintenance, and enforcement of cartels.”⁶

One common feature of anti-dumping laws/agreements is that they have sufficient loopholes to allow MNEs to use them to squeeze out efficient new market rivals. This is one important reason why major newly-industrializing economies (NIEs) experienced a time when they were the targets of contingent protection measures; this came at a time when they underwent fast economic growth and foreign trade expansion, which quite often forced them to set up foreign direct investment (FDI) operations abroad. China has entered such a period, but has not yet developed the capacity to engage in large scale FDI to avoid anti-dumping activities.

The internationalization and segmentation of production chains and the rise of MNEs have rendered anti-dumping laws antiquated. On the whole, anti-dumping laws/agreements have placed countries that have few MNEs and countries that are new entrants to the global market at a very disadvantageous position. MNEs are demanders of export prices and also have the capability to collude against a particular product from a developing country. These enterprises do so by using

⁶ Pierce (1999:2).

contingent protection measures, thereby creating instability and uncertainty for developing countries' exports such as reductions in trade volumes, losing market shares for their goods and, in some cases the countries' totally withdrawing from the market. MNEs have used anti-dumping measures as an instrument to strengthen their monopoly.⁷

The costs of anti-dumping measures on the domestic economies of the targeted countries in terms of financial losses and human suffering when workers are laid off are much larger for developing countries than for industrial countries. For the initiating countries, the protection it affords its domestic producers is limited. It is true that a number of developing countries, including China, have also become major initiators of anti-dumping investigations; however, more often than not, this was because domestic industries find it hard to adjust to a highly competitive environment. Without large MNEs, they are not in a position to use anti-dumping to create a monopoly in a certain market.

I.2. MNEs can jump tariffs and avert anti-dumping via their foreign affiliates

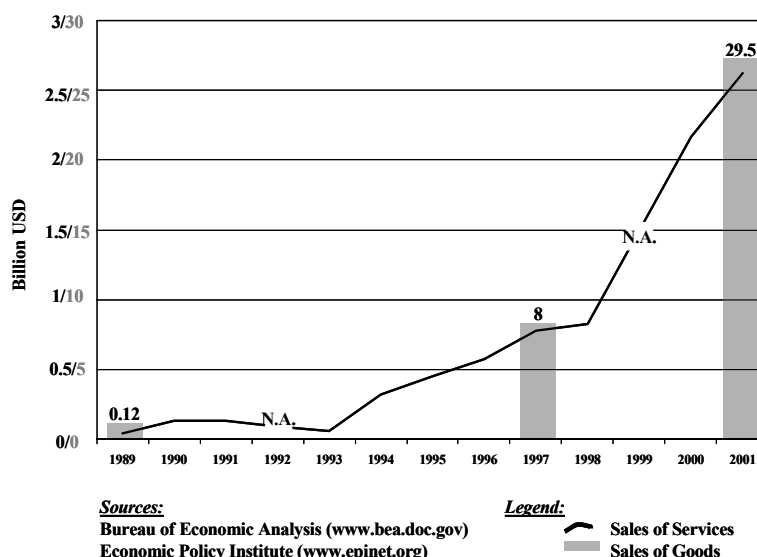
Dramatic changes have taken place in the global economy since the promulgation of the first anti-dumping law in Canada. The rise of MNEs and progress made in technology and communication has fundamentally changed the landscape of global production supply chains. Production is now globalized and segmented. Component and service inputs and assembly operations involved in the production of a traded product can now take place in different countries. The growing integration of national economies, a process known as globalization, is mainly coordinated by MNEs through FDI and, to a lesser extent, by other contractual arrangements. An important part of FDI is market oriented which means that affiliates of MNEs sell products directly to host-country markets, thus jumping both tariff and non-tariff barriers including anti-dumping concerns. This renders outdated the concept of trade balance since it does not cover the goods and services sold by MNEs in FDI host countries, even though these can be very significant.

⁷ Messerlin (2002).

MNE affiliates in host countries are treated as residencies of these countries. Their local sales, regardless of whether they are goods or services, are not considered as exports and are therefore not included in the trade balance. In cases when these affiliates export goods and services produced in the FDI host countries to their home countries, they would be reflected in the trade balance as exports of the FDI host country to the MNE affiliates' home country. According to an article published by McCaughrin (2004) (Figure 1):

Nearly three times as many goods are sold overseas by US foreign affiliates as by US exporters. Incorporating foreign affiliate sales reduces the US deficit by almost a full percentage point of GDP. US multinationals are not alone in relying on affiliates to distribute goods overseas. Japanese multinationals exported \$325bn of goods during the first three quarters of 2003. But on top of that, Japanese affiliates sold an additional \$287bn of goods (excluding sales back to Japan) that are not captured in the trade balance.⁸

Figure 1
SALES OF SERVICES AND GOODS OF UNITED STATES AFFILIATES IN CHINA
1989–2001



⁸ McCaughrin (2004).

So for the MNEs, in addition to the various incentives offered by the host countries, the goods and services sold directly in foreign markets by their affiliates are not included in the bilateral trade balance, thus minimizing domestic political pressure on host countries to take contingent protection against them. This makes for a major criteria to impose contingent protection such as “material injury” to domestic producers, “import surge” and “market disruption” less relevant. Japanese FDI flows to the European Union and the United States in the 1980s were positively affected by the overall increase in the number of anti-dumping actions in the two jurisdictions. This may explain why Japan’s position in the anti-dumping investigations league tables fell from its number one position for the period of 1981–1997 to the fourth position for the period of 1995–2001.⁹ In addition, once production facilities have been set up in these jurisdictions, they can file anti-dumping petitions under local anti-dumping laws against foreign rivals. China, being a developing country, still relies heavily on exports to promote its economic development.

As MNEs have production facilities located in different parts of the world, they are also capable of dodging anti-dumping activities targeted at exports from their affiliates. For instance, if a MNE has had an affirmative anti-dumping ruling against products it has manufactured in China, the MNE could redirect the product to a market other than the one with anti-dumping restrictions in place against the product made in China. Meanwhile, its affiliate located in a third country can export the same product to the complaining country with a product originating from a country other than China. Thus, through trade diversion, the MNE could survive positive anti-dumping rulings without losing market share. In 2003, the United States threatened to levy dumping charges on some colour TV sets made in China, a company such as Philips exported large screen TVs assembled in China to the United States, its Chairman and Chief Executive said that the anti-dumping activity “do not affect Philips operations” as his company “could shift TV production to its Mexico plants” and export to the US market from there.

It needs to be pointed out that foreign funded companies in China can normally be spared anti-dumping litigations or be obliged to pay much lower anti-dumping duties than their Chinese counterparts,

⁹ Zanardi (2004).

as they can prove that they are operating in a market economy environment.

1.2.a) MNEs use “domestic industries” to initiate anti-dumping investigations

Another phenomenon which goes hand in hand with globalization and growing interdependence is that, so-called “domestic industries” are, in many cases, no longer purely domestic. They very often have similar and varied ties with MNEs, e.g. shareholding and contractual assembling operations. They can even sometimes be affiliates of MNEs based in a complaining country. Vested interests give rise to suspicions of collusion to snatch market share from competitors. One example is the anti-dumping investigation against Chinese colour TVs in the United States. As pointed out by the head of the International Brotherhood of Electrical Workers, the trade union supporting the anti-dumping filing, “the majority of TV manufacturing in the U.S. is multinational. There are very few American companies producing TVs.”¹⁰ Labour unions at Sanyo Manufacturing in Arkansas, Sharp Electronics in Tennessee and Toshiba America in New Jersey are all Japanese firms that have a part to play in the case against Chinese TV producers. Because of this, there has been “a widespread suspicion among the China industry that Japanese companies were behind the case.”¹¹ Thus the “domestic industry” is most probably the extension of Japanese multinationals which have invested in the United States market to jump tariffs and anti-dumping measures and are being threatened by the Chinese imports. The possibility exists that Japanese multinationals were using anti-dumping as a weapon to protect their market share in the United States.

1.2.b) MNEs collude in anti-dumping activities to squeeze out new market entrants

MNEs, through their affiliates, often collude with each other to squeeze out new foreign market entrants, particularly new and weak entrants from developing countries. In 1998 Maur wrote that ...

¹⁰ See IBEW website: <http://www.ibew.org/stories/03journal/030708/p12b.htm>.

¹¹ *China Daily*, 20 April 2004: Final ruling fails to surprise. By Dai Yan.

... collusion between firms operating in several countries and deciding to hit jointly a common foreign rival-especially when these firms do not occupy a dominant position in their respective markets could be another hypothesis for explaining multiple overseas petitions. We can imagine that MNE firms meeting in a specific market may agree to coordinate their strategies against a common rival. Some instances of “echoing” could support that hypothesis.¹²

This explains why most NIEs are targets of anti-dumping activities or have experienced a period of intense trade friction with major industrialized countries. China is also going through a period of heavy reliance on foreign trade to promote economic growth and industrialization. The table on ratio of share of anti-dumping investigations and share of export value shows that China’s ratio of share of anti-dumping investigations is very high in relation to its share of world trade. This could support the hypothesis that it is a target of anti-dumping and that China is, in fact, faring worse than NIEs. According to its WTO accession agreement, China will continue to be treated as a non-market economy until 2016. China’s non-market economy status makes it an even easier target of MNE collusion, as “surrogate values” for anti-dumping ruling are always obtained from a third party in “comparable market-economy countries”. MNEs sometimes succeeded in getting companies related to the enterprises in the complaining country to provide surrogate values. Several studies documented cases of collusion against Chinese exports (Maur, 1998). One extreme example of this is the potassium permanganate case when Asturquimica, the sole European producer, filed a complaint in March 1986 against Chinese imports of this product. Asturquimica had been itself previously hit by a duty in a similar procedure in the United States. Asturquimica then asked for the cooperation of Carus Chemicals Co. in order to establish third market value determination in the investigation. Carus Chemicals, precisely the sole United States producer and the firm that petitioned against Asturquimica a few years back, agreed to cooperate. The respondents opposed, in vain, the choice of Carus as surrogate firm.¹³ This is an example of how European enterprises colluded with the United States against Chinese producers.

¹² Maur (1998), p. 17.

¹³ Maur (1998), p.18.

RATIO OF SHARE OF ANTI-DUMPING INVESTIGATIONS AND SHARE OF EXPORT VALUE

Country	Share of anti-dumping investigations in total world investigations (Per cent)				Export share of total world exports (Per cent)				Ratio of share of anti-dumping investigations and the share of export value				
	1981- 1987	1988- 1998	1998- 2002	1981- 2002	1981- 1987	1988- 1998	1998- 2002	1981- 2002	1981- 1987	1988- 1998	1998- 2002	1981- 1987	1981- 2002
China	4.15	10.97	13.59	9.40	1.45	2.36	4.00	2.44	2.86	4.65	3.40	3.85	3.85
Japan	8.88	5.88	4.42	6.50	6.92	8.68	6.98	7.74	1.28	0.68	0.63	0.84	0.84
Republic of Korea	5.16	6.89	7.96	6.58	1.46	2.17	2.51	2.03	3.53	3.18	3.17	3.24	3.24
Taiwan Province of China	4.06	4.60	5.25	4.58	1.20	2.15	2.14	1.84	3.38	2.14	2.45	2.49	2.49
United States	8.71	8.53	4.36	7.64	14.63	11.76	11.90	12.70	0.60	0.73	0.37	0.60	0.60

Sources: UN Comtrade Database, WTO Anti-dumping Gateway (www.wto.org), Zanardi (2002) and UNCTAD calculations.

MNEs are also capable of creating a dumping scenario to take advantage of a protected market after a positive ruling of dumping. There were cases when foreign firms chose to increase the likelihood that trade barriers would be erected against its own industry, as this could be an optimal strategy if the firm could then shift production to the protected country and tariff jump thereby giving them the edge over competing foreign firms unable to engage in FDI. The mechanism is a simple one. When MNEs spot a new efficient entrant to the market, they purposely reduce their sales in that market in order to fabricate a proof of injury in the investigation stage of an anti-dumping petition. Then, after anti-dumping restrictive measure forced the new rival to withdraw from the market, they would re-enter the much more protected market. This is a strategic way for MNEs to maximize their profit margin and optimize their monopoly.

1.2.c) Pressure by MNEs on developing downstream producers could lead to dumping charges

Globalization has hastened the growth of buyer-driven commodity chains that connect advanced country marketing or retail companies with contractors manufacturing in low-cost developing economies.¹⁴ Very often the lead firm is a brand name merchandiser or a large retailer in a developed country which orchestrates the procurement, manufacture and marketing of products manufactured by contractors, and sub-contractors in developing countries. Because of China's cost advantages, in particular low labour cost, China has become an important downstream producer in these global commodity chains. However, one of the constant pressures facing those at the lower end of the commodity chain is the incessant demands by brand name merchandisers and large retail distributors for lower export prices. If these demands are not met the producers risk losing the contracts; and Chinese firms have little bargaining power as they depend on the demands of MNEs. As noted by Gereffi, the powerful influence of the lead firm in shaping contractor relations is indisputable.¹⁵ A recent article by Harney, an excerpt of which is found below, clearly illustrates this unequal relationship:

¹⁴ Frenkel (2001)

¹⁵ Gereffi et al. (1999).

The pressure on Chinese factories, already the lowest-cost factories in the world, to supply goods even more cheaply is enormous. Chan Ka Wai, Associate Director of the Hong Kong Christian Industrial Committee, a working conditions lobbying group, estimates the prices international toy companies and retailers demand when ordering from China have fallen by 30 per cent over the past three years. "... Five years ago, a reasonable profit would have been a gross margin of about 25 per cent" says Mr. Leung, who pays his 7,000 workers an average of RMB 500–600 a month. "Nowadays, all I can get is 5–10 per cent. ..." He adds "We want to work with [the multinationals] because they order such big quantities. But if they keep squeezing us, it may not work."¹⁶

By pressuring Chinese suppliers, these retailers and wholesalers may very well widen their profit margins. However, they also push Chinese suppliers into a very unpleasant anti-dumping petition. All the same, when it comes to anti-dumping investigations, the tendency would be to blame Chinese enterprises for taking away jobs of the complaining countries instead of wholesalers or retailers of the complaining country trying to optimize their bottom lines.

1.2.d) Developing exporters are negatively affected by fight between foreign interest groups

In a number of anti-dumping cases against Chinese enterprises, those enterprises involved were caught between the conflicts of the various domestic interests of the complaining country. Two recent anti-dumping cases inspired by the United States against Chinese wooden bedroom furniture and colour TV illustrate this. In the case for furniture, the United States Department of Commerce noted that the anti-dumping petition on Chinese wooden bedroom furniture has split the furniture manufacturing and retail industries as companies are taking sides in the political battle. The United States Furniture Retailer Association published an article on its website which reveals that the manufacturers, including some petitioners, were responsible for establishing the Chinese furniture export industry years ago by sharing designs and exporting production facilities.

¹⁶ Harney (2004).

They negotiated the lowest possible prices from the Chinese and resold the imported furniture, supplementing their own production lines, to large and small American retailers at a 30 to 40 percent profit. These middleman profits were in addition to the profits they earned by selling the furniture within their own product lines. ... Over the past several years, the Chinese have established direct channels with retailers and other customers in the US. As the petitioners lost their position as middleman they are now attempting to reclaim this role by shutting off Chinese imports by filing the dumping case.¹⁷

When the United States International Trade Commission announced a positive ruling in January 2004, the same article on the website of the United States Furniture Retailer Association added that

Contrary to the domestic producers' claims of protecting and returning jobs to the U.S., these same domestic producers are already setting up importing programs in other countries such as Brazil, Chile, Vietnam and Indonesia. These actions undermine the claims of returning jobs to the US.

The furniture case proves that trade protection, in many cases, should be seen more as a conflict between domestic forces (namely export interests versus import-competing interests) than a conflict between countries.¹⁸ From the initial rulings it seems that manufacturers had greater political influence than retailers. This is most probably because retailers are more fragmented and not as united as manufacturers.

1.2.e) Anti-dumping activities redistribute trade instead of protecting domestic industries

The rise of MNEs and four decades of trade liberalization also render anti-dumping ineffective in protecting domestic industries. Indeed, anti-dumping measures can cost exporters dearly and can even totally exclude them from a market as shown by the European Union anti-dumping rulings against Chinese color TVs and bicycles. Because of this, anti-dumping has risen in prominence as an instrument for imposing import restrictions. However, trade diversion from other producers can fill the vacuum within a very short period of time.

¹⁷ Historical background: Chinese bedroom furniture imports and the United States furniture industry. See for more detail www.furnitureretailers.org.

¹⁸ Messerlin (2002), p. 7.

Modern technology and communication, and segmentation of the production chain can all in one way or another facilitate the process. So what “the injured domestic producers” get from a positive ruling is mostly just a breathing space of very limited duration. On top of this, due to increasing interdependence, anti-dumping actions also have had a negative impact on other interest groups of the complaining country.

As demonstrated in the United States furniture case against China, wholesalers, retailers and wood exporters in the United States suffer at the same time as Chinese furniture manufacturers. The only beneficiaries are the United States furniture manufacturers. For exports with high import contents, the characteristic of Chinese exports, all of the parties involved in the production chain will, to some extent, be negatively affected by anti-dumping rulings. And as shown by the furniture case, more often than not, the type of trade restrictions seen today end up redistributing trade, disproportionately penalizing one country while rewarding another, without necessarily achieving the original objective of protecting the industry intended.

I.3. Trade liberalization, contingent protection and newly industrializing economies

China’s impressive expansion of international trade started in the late 1970s, when two decades of trade liberalization had already resulted in considerably lower tariff levels in many countries. Since then further deepening of trade liberalization has reduced significantly the importance of tariff as a trade barrier. As anti-dumping activities can be invoked relatively easily and selectively compared to other trade measures, and as anti-dumping investigations, regardless of the nature of their final rulings, can lead to almost immediate loss of market share on the part of exporting countries, they have also become the most frequently used trade remedies. By the 1990s anti-dumping had become a major instrument of trade protection for developed countries. Since the WTO Agreements went into effect in 1995, this instrument has become increasingly popular in all countries. So while trade liberalization opens doors for late industrializers, anti-dumping, safeguard, and countervailing measures could also be used to deter or harass late industrializers, and China included.

Both developed and developing country governments have been encouraging and supporting domestic producers to use anti-dumping

as a mechanism to protect their markets. Developing countries started to enact anti-dumping laws and tried to raise awareness on anti-dumping practices. Developed countries have made anti-dumping activities more user-friendly. Some have even provided incentives to the users of anti-dumping measures. In the United States, amendments to anti-dumping law have made it easier for domestic firms to prove the existence of dumping, including extensions of the definition of “less than fair value” to include both international price discrimination and sales below cost.¹⁹ Moreover, the United States has a legislation, the Byrd Amendment, designed to give anti-dumping duties collected by the United States Customs Service to private companies that filed anti-dumping petitions. In the fiscal year 2003, United States Customs and Border Protection paid out US\$190 million in Byrd Amendment claims.²⁰ It is a *de facto* subsidy to anti-dumping petitioners, as indicated in the WTO ruling in April 2004.

Given this kind of international environment at a time when China was going through fast trade expansion, it is not surprising that it has become the world’s number one target for anti-dumping activities. However, as we will see in the next section, China’s specific trade and economic structure has also contributed to the skyrocketing anti-dumping charges against its exports.

II. DOMESTIC FACTORS CONTRIBUTING TO THE UTILIZATION OF CONTINGENT PROTECTION MEASURES AGAINST CHINESE EXPORTS

II.1. Fast trade growth of standard basic goods with heavy market concentration

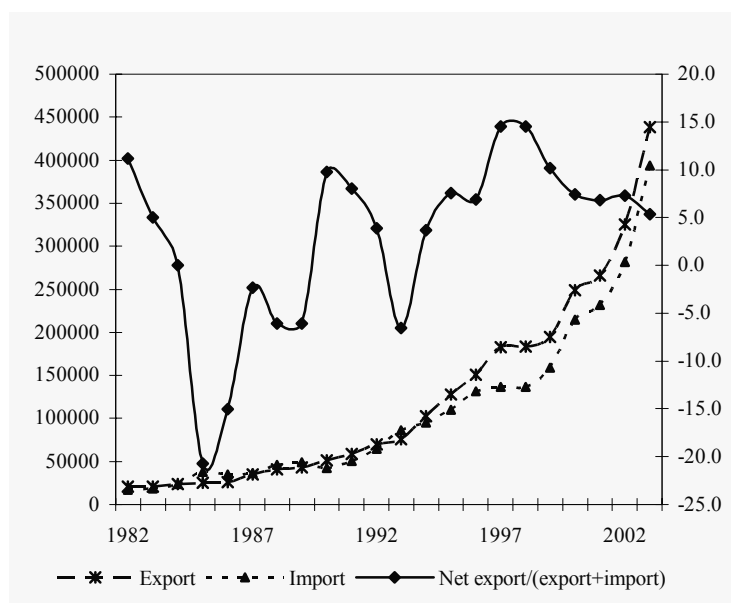
From 1978 to 2002, China’s exports increased around 12 per cent on a year-on-year basis – much higher than the world average (Figure 2). Even so the parallels between China, Japan and the Republic of Korea are overdrawn, as trade expansion by Japan and Korea grew at an even higher rate during their peak periods. China’s trade expansion is ...

¹⁹ Prusa and Skeath (2002:4).

²⁰ See www.cbp.gov/xp/cgov/import/add_cvd/cont_dump/cdsoa_03/ of the United States Customs and Border Protection agency.

... not unprecedented in either its scope or speed. In fact, by some indicators, China's experience is less dramatic than that of Japan and Korea during their period of industrialization and integration with the global economy.²¹

Figure 2
TRADE EXPANSION IN CHINA FROM 1982–2004



Source: IMF DOT, February 2005.

Note: Estimates for 2004 are based on the 9-month cumulative value of 2004 over the same period in 2003. Note on World Exports in EIU: "... in November 2004 (year-to-year) exports grew by 46 per cent."

Moreover, as China is positioned at the lower end of the international supply chain, producing predominantly labour-intensive goods and, as foreign-funded enterprises²² account for around half of its imports and exports, the benefits of its trading with the rest of the world is more spread than those of Japan and the Republic of Korea which have a greater proportion of high-tech exports and have control of

²¹ Rumbaugh and Blancherm (2004:5).

²² Foreign funded enterprises include equity joint ventures, wholly foreign-owned enterprises and joint exploration companies for special extraction industries. They range from large transnational corporations to small and medium-sized enterprises owned mainly by investors of Chinese ethnic origin from East Asia.

almost the entire supply chain for some products. Unlike these two countries, China had welcomed FDI; Chinese exports have high import contents; and the country's current account has been largely in balance, though a surplus on current account overall has been increasing in recent years. However, while it is not an unprecedented, China's sharp increase of trade within a relatively short period of time is still quite remarkable. Not surprisingly, this event has given rise to increasing anti-dumping petitions. Currently, China's large bilateral trade surplus with the United States is a heated political topic in the United States and has led to allegations of currency manipulation and unfair trade practices. All this indicates that China has now entered a stage of intense trade frictions with some of its trading partners, as did Japan in the 1970s.

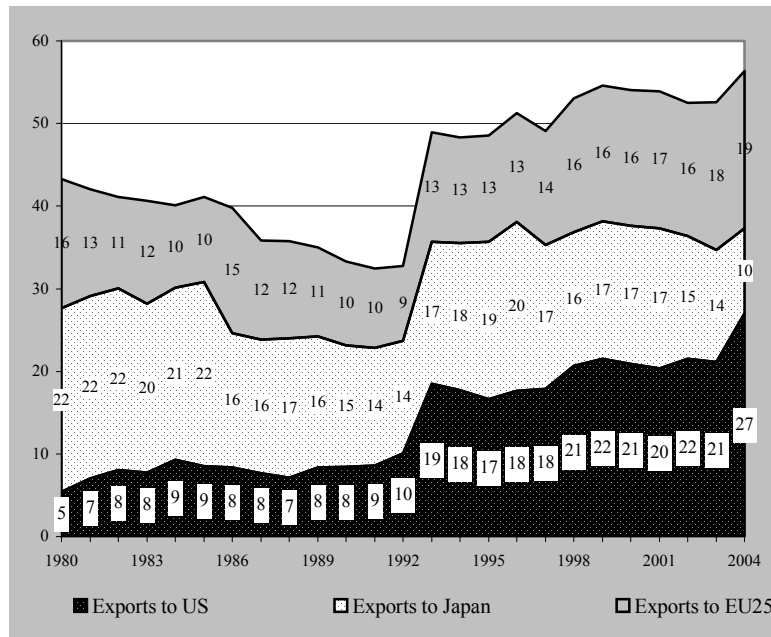
China's trade structure also makes it an easy target of trade protectionist measures. Exports are highly concentrated according to destinations. Although great efforts have been made to diversify, progress has not been as fast as it could have been. The United States, Japan, European Union and Hong Kong (China) still account for 70 per cent of China's exports.²³ For example, 75 per cent of China's textile and apparel exports are concentrated in five markets, i.e. Hong Kong (China), Japan, the United States, the European Union and the Republic of Korea. Another example is furniture export. According to official statistics, China produced nearly US\$20 billion worth of furniture in 2002, of which one-third was exported, half of it to the United States.²⁴ This high reliance on a few markets gives rise to anti-dumping pressure (Figure 3).

As for export product categories, up to the first half of 1990s China's exports had the characteristics of an economy undergoing the initial stages of industrial development. There were almost no brand products and little high value added. Exports were mostly labour intensive and composed of standard and basic products. However, these were also the products of sunset industries in industrialized countries that have become the object of intensive/vigorous anti-dumping claims. Anti-dumping investigations can win time and allow market share for those industries in developed countries to adjust as this normally will take longer with protection. United States anti-

²³ See for more details *China Economic Information Network* at www.cei.gov.cn.

²⁴ *China Daily* (Hong Kong edition), 6 November 2003: Furniture makers to fight dumping charges.

Figure 3
EXPORT DESTINATIONS



Source: IMF DOT February 2005.

Note: Estimates for 2004: based on the 9-month cumulative value of 2004 over same period in 2003. Note on WORLD exports in EIU: "...in November 2004 (year-to-year) exports grew by 46 per cent."

dumping investigations against Chinese steel went on for a whole year and even though the final verdict was in China's favour, the damage was done. Some customers were lost and the stocks of the Chinese enterprises involved went into free fall on the stock market.

According to a Chinese Government source, 70 to 80 per cent of the total anti-dumping investigations against China are concentrated on textiles, chemicals, steel and mineral sectors, all of which are labour intensive and low value added sectors of productivity. Most of these are the sunset industries in developed countries that are at the same time the mainstay industries for countries undergoing the first stages of industrialization. In the past three years, chemicals and metals still ranked foremost for anti-dumping investigations. Messerlin found that anti-dumping measures in metals, chemicals, machinery and electrical equipment, textiles and clothing, and plastics accounted for

75 per cent of the total number of measures.²⁵ He also noticed that these products are characterized by a high proportion of relatively standard production and oligopolistic structures. He suspects that complaining firms use anti-dumping as an instrument to segment the market and squeeze out new rivals.

II.2. The diminishing role of the State

Ironically, although China has been treated as a non-market economy by some of its trading partners, the diminishing role of Government in production planning and the foreign trade has also led to duplicate investments and overcapacity. The Government is no longer directly involved in foreign trade although it continues to monitor its operations at an arms' length. For most export products, the Government's present function is to maintain a registry system. Manufacturers' associations have not acquired the capacity to influence production activities.

An increasing number of Chinese firms in the export sector are operating in a market environment where the purchase of inputs and the raising of finance are founded on commercial principles. Exporting enterprises however have yet to learn to operate more systematically – i.e. by conducting feasibility studies and business planning. Herd behaviour is prevalent; once a producer enters a major market, many others follow. In the process, not much attention has been paid to the overall volume and value increase in the export market. For example, according to United States manufacturers bedroom furniture exports into the country tripled to US\$1.4 billion between 2000 to 2003.²⁶ Further, the United States International Trade Administration data indicate that the export of colour TV into the country had increased from 56,295 units in 2001 to 1,759,684 in 2003 – an increase of over 31 times within a period of three years.²⁷ These huge increases do easily trigger anti-dumping petitions. Thus there is still a lot to learn for the Government to perfect its use of fiscal, financial, legal and administrative measures that are allowed by WTO rules in order to guide the economy to maintain a rational

²⁵ Messerlin (2002).

²⁶ *Business Week*, 21 June 2004: Wielding a heavy weapon against China.

²⁷ Fact Sheet, United States International Trade Administration, Department of Commerce, Anti-dumping Duty orders to be issued on the anti-dumping duty investigation on certain colour television receivers from the People's Republic of China. In: www.ita.doc.gov, accessed July 22 2004.

and balanced increased rate of fixed asset investments and so secure a stable and sustained development of the foreign trade sector.

Many exporting companies lack a good understanding of WTO Rules of Origin. As a result, the “Made in China” label was placed on exports which were, in fact, not really up to the threshold set by the Rules of Origin. This consequently has artificially boosted the actual volume of Chinese exports. With this working environment, the education of exporters and the enforcement of such rules should in principle form part of the Government’s responsibilities.

In addition, the majority of enterprises resort to price competition for market entry and market expansion in both domestic and international markets. Price wars in the Chinese market are sometimes even more intense than abroad and grow beyond the normal bounds of competition which degenerate into a chaotic suicidal turf war among enterprises. Colour television was one of the most notable casualties of price wars, making the Chinese colour television industry one of the most market-oriented in China. Product upgrading and differentiation is yet to be utilized as a tool to capture and maintain market share. A significant part of Chinese exports is still concentrated in such anti-dumping intensive products as textiles, clothing, footwear and travel items. One important reason for this phenomenon is that most of these products have low market entry cost. As product upgrading requires research and development and the recovery of this kind of sunk cost will take time, companies tend to avoid this type of strategic investment. Instead, there is a tendency for domestic entrepreneurs to rush to produce the same products at about the same time, thereafter creating a highly competitive situation. More often than not, exports are priced at extremely low levels with razor thin profits. Some anti-dumping charges may have been well substantiated because intense price competition in China may push enterprises into periods of selling at a loss.

Due to reasons such as lack of funds and the lack of highly skilled human resources, export enterprises still rely on one of the most important absolute advantage they possess when engaging in price competition – low labour cost. Price wars very often end up with raw material suppliers and workers bearing the brunt of cost cutting. For example, in 2003 some 98 million migrant peasants had left their hometowns to seek jobs in urban areas. This movement has presently given China an absolute advantage in terms of cheap labour.

However, keeping wage level very low is not only unethical but such a low level of income also has a negative impact on domestic consumption level. Here again it is the responsibility of Government to enforce minimum employment standards.

II.3. Processing trade is prone to trade frictions

The growing importance of processing trade

China's heavy concentration of exports destinations as well as its dramatic expansion of trade are closely related with the rising importance of processing trade.

Unlike Japan and the Republic of Korea which emphasized the development of their national brands and their own national giants with horizontal and vertical production specialization, i.e. with the entire production process undertaken within their countries, China's trade expansion has relied heavily on processing trade. Although efforts have been made to transform large SOEs into "pillar industries" and then into globally competitive giants, the fact remains that by 2004, China only had 14 companies on the list of Fortune 500 top global firms, all of them SOEs and mainly active in the heavy industry and telecommunication sectors.²⁸ Not only do Japanese companies on the same list dwarf these 14 Chinese SOEs, they also fall significantly behind global leaders in sales revenue, profits and R&D (Nolan 2002). As mentioned in a major survey carried out in 2004 by the British Engineering Employers' Federation (EEF), a major manufacturers' association in the United Kingdom:

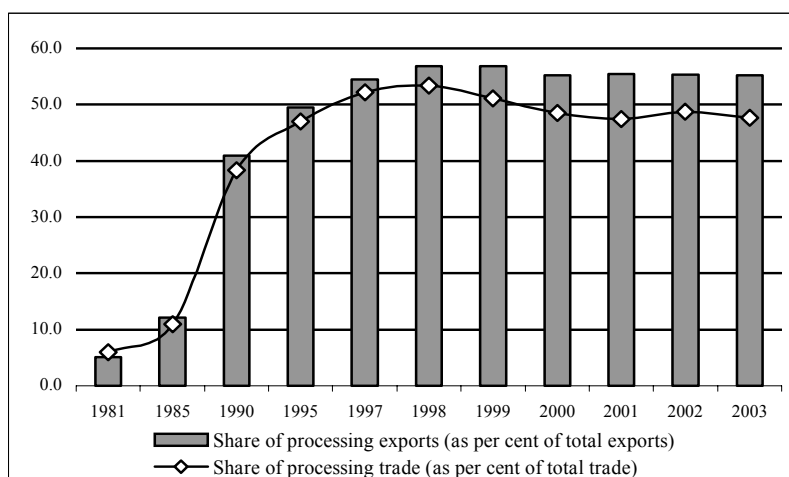
In contrast to the challenges from developed countries, it is likely that UK companies are facing competition from Chinese-based rather than Chinese-owned companies. To date there are few global Chinese companies of note providing UK-based manufacturers with a significant degree of competition. Companies that reported China as a current threat to their business saw this coming through customer demands for lower prices to a much greater degree than competition in the export or domestic markets.²⁹

²⁸ *Oxford Analytica*, 15 March 2005: China: SOE reforms to create national champions.

²⁹ EEF (Engineering Employers' Federation, a manufacturer's organization in the United Kingdom. Where Now for Manufacturing? A survey which is part of a report on the challenges facing the industry. 20 December 2004.

From 1979 to the end of 2003, processing trade grew 243-fold.³⁰ Since 1995 processing trade has been the most important mode of foreign trade in China. Presently around 50 per cent of China's exports are processed (Figure 4). While there is a deficit under normal trade, China's total trade surplus mainly comes from processing trade – processing of imported materials accounts for three quarters of this trade while the remainder is taken up by the processing of material provided by foreign importers of the eventual finished products.

Figure 4
TREND OF PROCESSING TRADE



Source: General Administration of Customs of China.

Processing trade was started by companies in Asian NIEs. Most of them were small-scale companies which concentrated on labour-intensive goods, including goods that were anti-dumping intensive and from sunset sectors. This reflects the famous flying geese model of development with early industrializers moving up the production ladder and passing on the traditional sectors to the latecomers. While upgrading their exports from standard basic products into more differentiated products, Hong Kong (China), Japan, Singapore, the Republic of Korea, and Taiwan Province of China transferred some of their traditional and anti-dumping intensive operations into China where labour and infrastructure costs were relatively cheap. This

³⁰ *China Daily*, 15 January 2004: Processing trade to get a boost.

transfer has provided China with the badly needed job opportunities and has also extended product life cycles and profit margins by cutting production costs. This arrangement represents a win-win situation for both China and NIEs. One drawback however is that it is prone to trade disputes. Processing trade requires high import contents for re-exports. According to Messerlin (2002), the

Five most anti-dumping-intensive HS [harmonized system] sections represent almost 70 per cent of total Chinese imports, opening the possibility that Chinese firms or foreign firms producing in China could table anti-dumping complaints in order to segment world markets... in particular in machinery-electrical equipment and in textiles-clothing.

Messerlin raised one point which deserves further study, namely the question of whether or not China should look into dumping possibilities of those anti-dumping intensive primary and intermediary products imported to China for processing or domestic use.

Around the mid-1990s, the processing trade in China entered into a different stage. This has had a profound change on its export compositions but seemed to further accentuate the imbalance in export destinations. Processing trade, which was formerly exclusively labour-intensive, became rather capital-intensive as overseas businesses invested heavily in manufacturing high-tech products such as computer hardware, chemicals and auto parts. Machinery and electronic products now contribute to over half of China's overall exports and about 70 per cent of the entire processing trade volume. This does not mean China's technological level in these products has reached the competitive levels of developed countries. It is rather that the Chinese firms are mainly responsible for the final stages of the production, a division of labour characterized by lower-wage countries for lower-end production, whereas higher-end activities are focused on countries where costs are higher.

According to the Ministry of Commerce, in 2003 around 80 per cent of the processing trade was financed by overseas investors.³¹ However, the import contents of these exports are quite high and mostly come from Asian countries. The production of these firms in China, however, relies on imports of machineries to set up the operation, and then imports parts and components for processing and

³¹ *China Daily*, 15 January 2004: Processing trade to get a boost.

final assembly. While Chinese workers earn a tiny share of the total value of the products in the form of wages, multinational firms are making handsome profits out of these activities. A major source of imports for assembling and re-exporting are from Asian economies. This type of “vertical specialization” of the production process in the Asian region has resulted in China acquiring an increasingly important role in the final assembly stages of a broad range of export commodities. It has also intensified the heavy reliance on United States and European Union markets – the traditional export destinations for Asian exports.

Trade volume between China and the United States accounted for 5.4 per cent of China's GDP in 1997, but rose to 8.95 per cent in 2003. China is the source for the increasing share of goods exported to United States markets. These same goods were those previously produced by Japan, Taiwan Province of China, Singapore, the Republic of Korea and Hong Kong (China). As a result, China has been running big trade deficits with some Asian economies at the same time that it was experiencing a growing surplus with the United States.

In 2003, Japanese exports to China increased by more than 33 per cent. This was a key factor behind the impressive growth performance in Japan. The Republic of Korea's export to China increased by more than 50 per cent. According to a report published by Morgan Stanley in November 2003, exports to China boosted the total export value of Malaysia, Thailand and Singapore by 20 and 30 per cent. Some economists call this trade pattern as the “relocation of deficits”. To illustrate this phenomenon, one economist cited electronic exports to the United States as an example.

The effect of ‘relocation of deficits’ can best be illustrated by the US trade deficits in electronic products, which increased from US\$50.4 billion in 1998 to US\$88.8 billion in 2002. This group of products is also important because the US deficit in these products with China came up to as much as US\$31.4 billion in 2002, more than one-third of the Sino-US total trade deficit registered in US official figures.... Apparently, US deficits in electronics with China grew by US\$17.0 billion during 1998-2002. However, US deficits with Japan decreased by US\$7.1 billion and those with Taiwan fell by US\$1.5 billion. The ‘relocation of deficits’ thus constituted more than a half of the increase in Sino-US trade imbalance in electronic products.³²

³² Hong Kong (China) edition of *China Daily*, 29 December 2003: It's wrong to blame China for the United States trade deficit, by Thomas M. H. Chan.

Thus, although East Asian exports to the United States declined from 40.1 per cent in 1994 to 32.5 per cent in the first half of 2003, China increased its exports to the United States. After a prolonged debate on whether China's trade surplus had taken jobs away from the United States, the Economic Report of the President of the United States released in February 2004 noted that increased trade with China is not contributing to the increased United States trade deficit with the world, as United States imports from other countries had fallen more quickly than the rise in Chinese imports.

The processing trade has been accompanied by sharp increases in imports for processing and re-exports and gave a tremendous boost to China's nominal export value. The value added of processing trade is narrow. With regard to apparel exports

More than 80 per cent of Chinese apparel exports come from the international joint ventures, which means China is splitting the profits of that business with its foreign partners. China exported 16 billion garments last year, with the export revenue of US\$80.48 billion. That indicates China only earns US\$5 on each exported piece.³³

As a result, the increased trade surplus has been far from being proportionate to the increase of the trade volume. The size of current account balance has been declining. Proportionately, in 2002, the weight of the current account surplus over the entire balance of payments has reduced by close to 40 per cent in comparison with the situation in 2000. Trade surplus as a whole also declined. The surplus of merchandise trade, which is a good indication of the international competitiveness of a country, has also been declining.

II.4. WTO accession condition: Non-market economy status

China's WTO accession protocol states that the country may be treated, on a case-by-case basis, as a non-market economy (NME) for anti-dumping purposes until 2016. The issue of whether or not it is fair to regard China as a NME is not the subject of this paper. However, it needs to be said that being categorized as an NME greatly increases the possibility of a positive dumping ruling and places China at a disadvantage. With this clause in China's accession protocol, the burden to prove "less than normal value" and "material

³³ *China Daily*, 6 April 2004: China not the only beneficiary. By Jian Jiangjing.

injury” would be much lighter. As a matter of fact it has also given rise to abuse as production costs can be calculated according to those that are from a surrogate country. Since the surrogate country had not been chosen by the Chinese, it has often transpired that the countries that were chosen were places where material and labour costs were much higher than in China. For example, in an anti-dumping case petitioned by European companies against colour TV sets exported by China to Europe, the European Union Commission selected Singapore as the surrogate country, where labour cost is 20 times higher than in China. In the recent United States anti-dumping investigations against Chinese TV and furniture, India was chosen as the surrogate country in spite of the fact that India is not a big exporter of TVs and furniture. India is at a similar development stage as China but the production costs of small exporters with no scale production are always higher than those of large exporters. Electronic products, in particular, have high start-up costs and achieving economies of scale is important in order to be competitive.

These realities definitely do not lay the foundation for a fair assessment in anti-dumping cases. There are opportunities to manipulate data which in greater likelihood result in a positive ruling of a case. In addition, an assessment of this kind of data could also result in much higher dumping margins, and lead to higher punitive anti-dumping duties. There is also a domino effect as the whole process can be executed relatively easily and the chances of success are high, this in turn leads to a higher level of anti-dumping incidences.

II.5. Lack of legal capacity to fight against anti-dumping litigations

The lack of legal capacity on the part of Chinese enterprises to respond to anti-dumping investigations abroad is also a factor contributing to the frequency of final anti-dumping measures against Chinese exports. In the past, most of the Chinese exporters were unaware of the anti-dumping process. So when their products were accused of being dumped, their first response was bewilderment and panic. When they learnt of the cost of anti-dumping litigations, they invariably pulled out. As a result, no-response and absentee rulings were quite common, which means affirmative injury ruling was almost a certainty. The lack of qualified staff with good knowledge of the language of the country bringing the case and anti-dumping

practice also prevented Chinese enterprises from defending their interests. In this situation the vulnerability of Chinese farmers is unparalleled because most of them are still not aware about dumping and anti-dumping practices. In addition, China had never had any producer/manufacturers' associations before, nor did it have powerful and effective interest groups which can be found in industrialized countries. When each enterprise fought its own battle, their strength definitely could not match their foreign counterparts.

“Echoing” anti-dumping investigations happen very often to China.³⁴ When a complaint was filed in one country, producers in other countries quickly followed suit. The absence of an immediate response from China after an anti-dumping petition has been filed and the ease with which a positive ruling could be obtained encourages competitors to free ride. This is not only because of fear of trade diversion; it is also a strategic response in order to reduce future competition by eliminating a rival.

II.6. Lack of leverage

The United States and European Union have for many years topped the list of those submitting anti-dumping cases against China. However, as China's exports are highly concentrated in these markets, China does not have much leverage against anti-dumping investigations originating in these markets. Chinese retaliation against anti-dumping activities has been very measured for fear of upsetting major importers, and has thus never constituted a strategic threat to them. The absence of built-in counter-force and credible threat to these markets has placed China at the receiving end of trade restrictive measures. However, with the increase in recent years of both FDI inflows and exports from the United States into China, the situation has, to some degree, been mitigated. China has now even filed anti-dumping cases against the United States.

Prusa (2002) has pointed out that countries generally have significant discretion in the use of anti-dumping law because of the way in which anti-dumping statutes are drafted.³⁵ Thus, countries and individual industries within countries have learned that they can use the laws to their advantage in a variety of ways. So if politically and strategically

³⁴ Maur (1998).

³⁵ Prusa (2002:9).

China-bashing during a United States election year is to their advantage, there would be more anti-dumping activities against China. It has been a routine practice to increase trade frictions between the United States and China every election year.

II.7. Developing countries with similar economic development stage

Even though the total number of anti-dumping investigations initiated worldwide has decreased over the past two years, some large developing countries, including China, have increased their use of anti-dumping mechanism. China is also a target of anti-dumping investigations from developing countries. Since 2002 India has replaced the United States as the number one country in launching anti-dumping investigations against Chinese exports. On average, anti-dumping duties from developing countries are higher than those imposed by industrial countries. One example is Mexico which levied punitive tariffs on Chinese footwear as high as 1,105 per cent.

It needs to be pointed out although there is a fundamental difference between anti-dumping activities between those initiated by the developing countries and developed countries. Developing countries have little capacity to engage in FDI to jump anti-dumping. Nor do these countries have latitude to collude with MNEs to squeeze out new rivals. These countries' major concern is to protect domestic producers since it is not possible to rely on tariff protection vis-à-vis widespread trade liberalization. Developing countries neither have the financial capacity to provide domestic support or subsidies to the same degree as the developed countries.

There are two important reasons behind the increasing anti-dumping investigations from developing countries against Chinese exports. Firstly developing countries, with the support of their Governments, become more aware of anti-dumping procedures. Secondly, being at the same stage of development and with exports coming from similar traditional sectors increases the factor that developing countries may be at loggerheads with one another not only in some international but also in domestic markets. Thirdly, the blatant double standard of developed countries in dumping heavily subsidized agricultural products into developing countries and beyond, and their abuse of anti-dumping have made developing countries think they too have to play the same game.

III. CONCLUSION

There have been a number of criticisms about the methodology used to determine dumping, particularly with regard to its opaqueness and the resulting ease of manipulation. For many years, developed countries have been heavy users of anti-dumping activities to protect their sunset industries, and their MNEs have used anti-dumping as a weapon to strengthen monopoly rather than to enhance a "level play field". The inherent weakness and loopholes of anti-dumping laws are among the reasons why China is a target of anti-dumping activities, as it is a new and relatively efficient new rival in the world market. The WTO is currently negotiating within the Negotiation Group on Rules to further clarify and improve the Agreement on Anti-dumping. According to the Doha Ministerial Declaration which was adopted on 14 November 2001, the ongoing negotiation is "aimed at clarifying and improving disciplines" instead of changing the basic concepts and principles, which means anti-dumping activities will continue to have an important impact on international trade.

The present stage of development and development model of the People's Republic of China has determined that in addition to expanding its domestic consumption, trade expansion is as essential for its economic growth. Its trade structure, with the increasing importance of processing trade, may provide the badly needed job opportunities. This may also allow for the relocation of some sunset industrial sectors, and consolidate and expand the existing heavy concentration of export destinations. Although China's export composition has undergone drastic changes, its role as an assembler and final stage producer does place it at a disadvantage when it comes to anti-dumping activities. In the long run, however, it is necessary for China to shift its export products away from anti-dumping-intensive sectors by upgrading export products from standard products into highly differentiated products. The development of China's own brand of products, and undertaking a horizontal production for some important dynamic products can also minimize exposure to foreign anti-dumping charges against Chinese exports and thereby reduce financial losses. In view of the cost of anti-dumping to the economy, it is now time for China to put into place a screening mechanism as permitted by the WTO accession conditions before engaging itself in new processing trade deals.

The extensive safeguard provisions that are included in China's WTO accession commitments could constrain China's export growth. Moreover, intensified anti-dumping activities against Chinese exports will not only be detrimental to China's trade balance; it will also hurt the world. China's track record for trade and economic performance has shown that the benefits of its trade expansion have been distributed much more broadly than have done some earlier NIEs. This is because in a globalizing world, China's exports rely heavily on foreign capital, imports of primary, intermediary and capital goods.

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