

AN ANALYSIS OF EU ANTI-DUMPING CASES AGAINST CHINA

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In this study, an analysis of Chinese exports to the European Union (EU) of the products subject to anti-dumping duties shows that anti-dumping measures tend to significantly reduce bilateral trade flows. The rise in Chinese exports to EU would have been more than 3 per cent higher without the imposition of 21 anti-dumping duties in 1995-1998. A close investigation of EU anti-dumping cases against China also reveals that calculation of anti-dumping margins suffers from imperfect information and is therefore highly likely to lead to biased rulings. The high rate of termination due to withdrawal of complaints poses the question whether the scheme encourages industries to use it to fight against “fair” competition as opposed to “unfair” competition.

With the reduction in tariff levels under the General Agreement on Tariffs and Trade (GATT), the predecessor of the World Trade Organization (WTO), import-competing industries in developed countries appear to have turned to anti-dumping for protection since the 1980s. If a company exports a product at a price lower than the price it normally charges on its own home market, it is automatically said to be “dumping” the product. Such behaviour can be explained in terms of exporters tolerating initial losses in order to gain market share in the importing country. Under such circumstances, the anti-dumping scheme enables the affected industries in the importing country to lodge a complaint. In response to the complaint, the importing country Government may initiate an investigation. If a case of dumping is established, the importing country Government may take action against the dumping, such as levy a tariff on the concerned products from the exporting country.

For member countries of the WTO, anti-dumping action is governed by the anti-dumping agreement that resulted from the Uruguay Round negotiations. The WTO agreement disciplines anti-dumping actions by providing rules for calculating the amount of dumping, detailed procedures for initiating and conducting anti-dumping investigations, rules on the implementation and duration of anti-dumping measures, and particular standards for dispute settlement panels to apply in anti-dumping disputes.

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A growing body of literature has expressed concern over the explosion in anti-dumping actions since the 1980s (Rugman and Anderson, 1987, Robert and Robert, 1991, Finger, 1993, Jones, 1994, and Krueger, 1995). This research concluded that anti-dumping measures are harmful to the importing country and to the multilateral trading system. It has negative impacts on competition and consumer welfare and involves huge institutional costs for the importing countries. With active anti-dumping and other administrative protection measures, trade policy that is efficient in promoting income growth through trade liberalization takes on the role of redistributing income, policy objectives that can be more efficiently carried out by tax and expenditure policies (Krueger, 1995). However, much less work has been done in analysing the negative impact of anti-dumping measures on exporting countries, mostly developing countries. Lahiri and Sheen (1990) have demonstrated that dumping might not be welfare improving for the dumper. But some case studies in Finger (1993) have found that the effects of anti-dumping measures have had little effect on exporting country industries.

Despite the growing research confirming the negative effects of anti-dumping actions on importing countries, Governments in developed importing countries, nevertheless, tend to give way to pressure from interest groups representing import competing industries, usually over unemployment concerns. Recently, the debate over anti-dumping issues has gained renewed importance as developing country exporters are questioning the way that anti-dumping measures are used.

China, the largest developing economy, has suffered most from anti-dumping measures adopted by the United States and EU. As a consequence, China has started to participate more actively in the process of anti-dumping investigations. This has resulted in some anti-dumping cases terminated without the imposition of duties on Chinese exports.

In the new round of WTO negotiation, some WTO members have requested a review of the anti-dumping regime agreed in the Uruguay Round negotiations. The Deputy US Trade Representative, Richard Fisher was asked to express views on this issue during a Worldnet Dialogue with participants from member countries of the Association of Southeast Asian Nations (ASEAN) in 1999. He responded that it is important to put the anti-dumping issue in perspective. He said less than half per cent of trade volume is subject to anti-dumping actions. If the current anti-dumping regime is removed, its replacement could be even more harmful to the countries concerned due to rising protectionism in textiles and other import competing industries in the US. Such sentiment is likely to be even stronger when the economic cycle experiences one of its periodic downturns in the US. However, he agreed that the current scheme is not perfect and there was a large room for improvement. The EU also claims that anti-dumping duties and price undertakings covered only 0.7 per cent of the total of EU imports in 1998 and its impact on EU trade should not be exaggerated (EC, 2000b).

This study argues that the percentage of imports subject to anti-dumping measures is not a good indicator of the impact of anti-dumping measures on trade, as it tends to underestimate the effects. Even if the impact of anti-dumping measures on trade is not very big from the perspective of developed countries, the impact can be significant from the perspective of the developing countries. The negative impacts of the anti-dumping scheme on the world trading system therefore cannot be dismissed by adducing the rather small quantities superficially affected by it.

I. AN OVERVIEW OF THE EU ANTI-DUMPING SCHEME

The EU believes that common rules and a general acceptance that certain types of behaviour are unfair must underpin the efforts of opening up markets through a multilateral trading system like WTO. While supporting the fundamental principles of WTO, EU is also determined to see that EU businesses are not disadvantaged by the unfair trade practices of others. A set of trade policy instruments that is policed by the European Commission (EC) were designed to restore fair international competition and ensure a level playing field for all producers on the EU and third country markets. Anti-dumping measures is one such trade policy instrument¹ (see appendix 1).

During 1992-1998, EU has, on average, around 90 cases of anti-dumping and anti-subsidy investigations in progress each year. On average about 20 provisional duties were imposed in the cases under investigation and 30 investigations were concluded each year² (table 1).

Out of the concluded cases, a high percentage (38 per cent) was concluded by terminations (table 1). The most common reason for the termination of cases was withdrawal of the complaints by EU industries. Other reasons for terminations were *de minimis* dumping or no injury found. Furthermore, a predominant number of EU anti-dumping and anti-subsidy investigations were against low and middle-income countries. About 85 per cent of investigations initiated during 1992-1999 were against countries classified by the World Bank as low and middle-income countries (table 2). This evidence supports the claim by some developing countries that anti-dumping measures that cost their companies much time and money during the investigation usually end up without any cases against them.

¹ Other EU trade policy instruments include anti-subsidy, trade barriers regulation, and safeguards.

² Anti-subsidy cases are included in the tables because summary statistics on anti-dumping cases are mixed with statistics on anti-subsidy cases in EU annual reports. However, a dominant number of cases are anti-dumping cases. For example, on the current list of EU anti-dumping and anti-subsidy cases as of June 2000, only 33 out of 330 cases were anti-subsidy cases. All the 49 cases concerning China were anti-dumping cases.

Table 1. EU anti-dumping and anti-subsidy cases, 1992-1998

	1992	1993	1994	1995	1996	1997	1998	Average 1992-98
Number of investigations in progress during the period	85	78	94	98	102	99	91	92
Provisional duties imposed during the period	18	16	25	21	11	33	30	22
Total number of investigations concluded during the period	28	27	29	21	48	37	44	33
Investigations concluded by imposition of definitive duty or acceptance of undertakings during the period	16	19	21	13	23	24	28	21
Investigations concluded by terminations ¹ during the period	12	8	8	8	25	13	16	13
Terminated cases as a percentage of total concluded investigations during the period	43	30	28	38	52	35	36	38

Source: EC, *Annual report from the Commission to the European Parliament on the Community's Anti-dumping and Anti-subsidy Activities*, 1996, 1998; EC, anti-dumping and anti-subsidy statistics covering the first three months of 2000.

Note: ¹ Investigations might be terminated for reasons such as the withdrawal of the complaint, *de minimis* dumping or injury, etc.

Although China is not the largest trading partner of EU³, it has been the most frequently investigated trading partner with 46 cases initiated during 1992-1999. India, the Republic of Korea and Taiwan Province of China follow China closely on the anti-dumping and anti-subsidy list of EU. Three large ASEAN economies, Thailand, Malaysia and Indonesia are also among the top ten most frequently investigated exporting countries. In terms of regional distribution, Asian countries accounted for two thirds of EUs anti-dumping and anti-subsidy investigations during 1992-1999 (table 2).

³ China is the fourth largest trading partner of EU in terms of total trade volume. China ranked fourth as a source for EU imports and seventh as a destination for EU exports in 1999.

Table 2. EU anti-dumping and anti-subsidy cases: investigations initiated by country or area of export, 1992-1999

<i>Country or area</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>Sum 1992-99</i>
China	8	4	5	5	6	5	1	12	46
India	–	–	4	1	4	6	7	7	29
Republic of Korea	3	2	–	4	1	3	7	9	29
Thailand	1	2	5	4	–	3	–	7	22
Taiwan Province of China	1	1	1	–	1	4	–	12	20
Malaysia	2	2	2	2	1	2	–	4	15
Indonesia	–	–	4	4	1	1	–	4	14
Russian Federation	3	1	3	1	1	2	–	1	12
Ukraine	2	1	1	1	–	1	2	2	10
Japan	–	1	2	–	–	2	–	4	9
Asia	19	12	26	23	16	29	15	62	202
Share in total	49	57	60	70	64	64	52	72	63
Low and middle income countries	33	18	39	30	22	35	29	65	271
Share in total	85	86	91	91	88	78	100	76	84
Total	39	21	43	33	25	45	29	86	321

Source: EC, *Annual report from the Commission to the European Parliament on the Community's Anti-dumping and Anti-subsidy Activities*, 1996, 1998; EC, anti-dumping and anti-subsidy statistics covering the first three months of 2000.

EU iron and steel, textiles, chemical and electronic industries are the most active in utilising the anti-dumping scheme. Over 75 per cent of investigations were initiated by these four industries during 1992-1999. The EU is the world's largest steel producer, accounting for 21 per cent of world production in 1998 (EC, 1999a). The industry initiated 69 out of a total of 321 anti-dumping and anti-subsidy cases during 1992-1999 (table 3). The textile industry followed closely with 60 cases initiated during 1992-1999. The EU is the world's largest importer and second largest exporter of textiles and clothing products.

As the world's largest producer of chemicals, pharmaceuticals and cosmetics, the EU chemical industry initiated 58 anti-dumping investigations during 1992-1999. The EU is also an important producer of electronic goods, accounting for about 26 per cent of world production in 1998 (EC, 1999b). During 1992-99, the EU electronic industry initiated 56 anti-dumping and anti-subsidy cases (table 3).

Table 3. EU anti-dumping and anti-subsidy cases: investigations initiated by product sector, 1992-1999

<i>Product</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>Sum 1992-99</i>
Chemical and allied	10	5	3	4	–	8	–	28	58
Textiles and allied	–	1	17	4	10	8	9	11	60
Wood and paper	–	–	–	1	–	7	–	–	8
Electronics	13	7	3	7	–	14	–	12	56
Other mechanical engineering	–	2	4	3	–	1	–	5	15
Iron and steel	3	–	7	2	9	4	19	25	69
Other metal	5	5	3	5	1	1	–	–	20
Other	8	1	6	7	5	2	1	5	35
Total	39	21	43	33	25	45	29	86	321

Source: EC, *Annual report from the Commission to the European Parliament on the Community's Anti-dumping and Anti-subsidy Activities*, 1996, 1998; EC, anti-dumping and anti-subsidy statistics covering the first three months of 2000.

II. CHINA AND THE ISSUE OF MARKET ECONOMY STATUS

In addition to the high frequency of EU anti-dumping investigations against China, the non-market economy issue also makes anti-dumping loom in annual bilateral trade talks between China and the EU. Up to April 1998, the EU anti-dumping legislation categorised China as a non-market economy.

For the purposes of establishing normal prices (or home market prices, appendix 1) in dumping investigations concerning China, information on domestic prices and costs is considered unreliable because of the significant distorting effect of state influence and control and the absence of meaningful market signals due to state administration of prices. Therefore in these cases normal value is based on information from companies in another market economy country, the *analogue country*.

The EU anti-dumping legislation specifies that an appropriate market economy (an analogue country) shall be selected in a not unreasonable manner for comparison. However, in practice, due to limited information available at the time of selection and the time limits for anti-dumping investigations (15 months), analogue countries selected for determining home market prices for China have ranged from lower income countries like India to high income countries like Japan and Norway (table 4). For example, in the case of coumarin, the US was selected as the analogue country for China because it was the only market economy country in which it was possible to find a producer willing to provide the needed information.

As many of the analogue countries selected were at a higher stage of economic development compared with China (table 4), the estimation of home market prices was likely to be biased towards the finding of dumping. The labour costs in these analogue countries tend to be higher than labour costs in China.

Since April 1998, individual companies in China have been given an opportunity to prove that they operate in market economy conditions in accordance with certain criteria (see appendix 2). This is to reflect the fact that as a result of on-going reforms in China, individual companies are likely to be operating in market economic conditions and therefore their prices and costs may be appropriate for the

Table 4. Analogue countries selected for the investigation of anti-dumping cases against China, 1996-1998

<i>Cases</i>	<i>Year of initiation</i>	<i>Analogue countries or areas used</i>
Refractory chamottees	1993	USA
Coumarin	1994	USA
Powered activated carbon	1994	USA
Iron or steel tube or pipe fittings	1994	Thailand
Colour TV (review)	1995	Singapore
Glyphosphate	1995	Brazil
Footwear with textile uppers	1995	Indonesia
Footwear with leather or plastic uppers	1995	Indonesia
Ring binder mechanisms	1995	Malaysia
Cotton fabrics unbleached	1996	India
Briefcases and school bags	1996	Taiwan Province of China
Luggage and travel goods	1996	Taiwan Province of China
Handbags	1996	Indonesia
Stainless steel fasteners	1996	Taiwan Province of China
Ferro-silico manganese	1996	Brazil
Personal fax machines	1997	Republic of Korea
Cotton grey fabrics	1997	India
Unwrought unalloyed magnesium	1997	Norway
Thiourea dioxide	1997	Japan
Certain laser optical reading systems	1997	Malaysia
Steel stranded ropes and cables	1998	Norway

Source: EC, *Annual Report From the Commission to the European Parliament on the Community's Anti-dumping and Anti-subsidy Activities, 1996, 1997 and 1998.*

calculation of normal prices. Indeed, market forces determine about 95 per cent of industrial product prices, 90 per cent of retail prices, and 80 per cent of agricultural and raw material prices in China (see the *South China Morning Post*, 17 June 1999).

If a Chinese company can prove that its export activity is not subject to state interference, it can apply for *individual treatment* (for criteria, see appendix 3). When granted individual treatment, the anti-dumping margin of the company concerned will be established by comparing its own export prices and normal prices from the analogue country. This is an option open to exporting producers who may not be able to meet all the criteria for full market economy treatment. A full market economy treatment is granted when a company can show that neither its domestic nor its export activities are subject to state interference. While not granted individual treatment, a countrywide dumping margin is normally calculated for all Chinese firms comparing analogue country prices and importing prices in EU based on the information available.

To meet the deadline for anti-dumping investigations, the EC requests the Chinese exporters concerned to complete a special claim form for market economy status and return it to the EC within three weeks of the initiation of a proceeding. If any information is missing in the completed claim form, or if it is returned late, the claim is automatically rejected.

The success rate of Chinese firms in claiming market economy status has been low. The amendment to EU anti-dumping legislation became effective on 1 July 1998. From July 1998 to October 1999, 27 Chinese companies claimed market economy treatment, but only three were granted the treatment (table 5).

The most common reasons for refusal of market economy treatment were the accounting and auditing standards. Other accounting issues were the valuation of state assets transferred to the companies including land. For those companies with foreign direct investment, the most common reason was prohibition of restriction on domestic sales. Other reasons for refusal of market economy treatment include state suppliers of raw materials, state influence in setting prices, barter trade and majority state ownership.

In these investigations, different Chinese companies failed to meet different criteria of market economy status. In some cases, such as the investigation concerning quarto plates, it was evident that, as a group, the companies that applied for market economy status could in fact meet all the relevant criteria (EC, 2000a).

While the use of Chinese firm's prices tends to lead to under-estimated dumping margins, the non-market economy way of calculation tends to lead to over-estimated dumping margins for many Chinese firms. The difference between the two ways of calculation could be dramatic. For example, in the case of footwear with leather or plastic uppers, individual treatment was granted to one exporter. This resulted in zero anti-dumping duty for the particular exporter while a variable duty to ensure a minimum price of ECU 5.7 per pair was levied on all other exporters. In the case of handbags, two companies were granted individual treatment. This resulted in

Table 5. Market economy status in anti-dumping investigations concerning China

<i>Cases</i>	<i>Number of market economy claims</i>	<i>Number of claims accepted</i>	<i>Reasons for refusal of market economy status</i>
Yellow phosphorus	3	1	<ul style="list-style-type: none"> • No audited accounts provided • State holds directly or indirectly 2/3 majority of shares • One company not an exporter • Suppliers controlled by the state
Malleable cast iron fittings	3	0	<ul style="list-style-type: none"> • No audited accounts provided • Financial situation distorted as a result of improper valuation of assets transferred to the company from the state • State interference in setting salaries and through particular tax rebate
TV tubes	1	0	<ul style="list-style-type: none"> • No audited accounts • Majority of suppliers controlled by the state • No export licence
Coke 80+	1	0	<ul style="list-style-type: none"> • Unreliable accounts not prepared in line with international accounting standards
CD boxes	3	2	<ul style="list-style-type: none"> • Domestic sales prohibited • No legal status in China • No individual company accounts available
Quarto plates	6	0	<ul style="list-style-type: none"> • All companies fully or partially owned by the state • Agreements to purchase raw materials from state owned suppliers • Only nominal fees paid for land-use rights • Barter trade practised
Hair brushes	2	0	<ul style="list-style-type: none"> • No domestic sales allowed
Glycine	6	0	<ul style="list-style-type: none"> • Three of the claimants are not exporting producers of the product concerned • Related companies failed to claim market economy treatment • Incomplete financial statements • Restrictions on domestic sales
Electronic weighing scales	2	0	<ul style="list-style-type: none"> • Restrictions on domestic sales • Companies follow pricing law and consequently sell at loss making prices in China
TOTAL	27	3	

Source: EC, "Proposal for Council Regulation: amending Regulation (EC) No. 384/96 on protection against dumped imports from countries not members of the European Community", Brussels, 15 June 2000

0 per cent duty for one company and 7.7 per cent duty for the other, while the rest of the exporters were levied 38 per cent duties.

Unfortunately, it is not yet possible to investigate the difference between anti-dumping margins for firms with and without market economy status. For the three Chinese firms that were granted market economy status, their cases (CD boxes and yellow phosphorus) were terminated without definitive measures imposed.

III. THE EFFECTS OF ANTI-DUMPING ON CHINESE EXPORTS TO EU

To understand the effects of anti-dumping measures on trade, bilateral trade statistics of the products subject to definitive anti-dumping measures are analysed in this study. On the EU current anti-dumping and anti-subsidy list as of June 2000, 49 out of a total of 330 cases were against China⁴. These cases consisted of:

- 11 cases with definitive measures imposed before 1995;
- 21 cases with definitive measures imposed during 1995-1998⁵;
- 1 case with definitive measures imposed in 1999;
- 10 new cases under investigation with 5 provisional duties imposed; and
- 6 cases initiated since late 1999 terminated without any definitive measures.

Subject to available information and data, this study is only able to look at the trade effect of the new measures imposed during 1995-98. The analysis reveals that anti-dumping measures are generally very trade restrictive. Coincident to the imposition of anti-dumping duties, bilateral trade flows typically reverse their trend of growth from upward to downward. For example, EU initiated an anti-dumping investigation on imports of footwear with textile uppers from China in 1995. Following the investigation, a provisional duty of 94.1 per cent was levied between February and October of 1997. From November 1997, a definitive duty of 49.2 per cent was imposed. Before the imposition of anti-dumping duties, Chinese exports of footwear with textile uppers to the EU had increased from US\$171 million to US\$178 million. Coincident to the levy of the anti-dumping duties, Chinese exports of the products dropped from US\$178 million in 1996 to US\$95 million in 1997 and US\$90 million in 1998 (table 6).

⁴ All 49 cases were anti-dumping cases (no anti-subsidy cases).

⁵ These cases exclude those definitive measures that resulted from reviews of definitive measures imposed before 1995, unless the review led to increased duty or more restrictive measures.

Table 6. Definitive measures and bilateral trade flows 1995-1998

(Million US Dollars)

<i>Cases</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>Fall in bilateral trade flows</i>	<i>Provisional measures</i>	<i>Definitive measures</i>
Textile, clothing and footwear							
Footwear with textile uppers	171.0	178.1	95.1	90.4	1996-98: 87.7	Feb. 97: 94.1 per cent	Nov. 97: 49.2 per cent
Footwear with leather or plastic uppers	263.8	360.9	396.2	312.7	1997-98: 83.5	none	Feb. 98: 0 per cent or variable duty for minimum price of ECU 5.7 per pair
Electronics							
Colour TV	67.7	97.5	39.9	38.2	1997-98: 1.7		Nov. 98: 44.6 per cent
Microwave oven	35.9	36.0	48.6	77.5	0.0	July 95	Jan. 96: 12.1 per cent
Personal fax machines	14.5	16.6	52.7	39.9	1997-98: 12.8	Nov. 97	Apr. 98: 21.2- 51.6 per cent
Metals							
Unwrought unalloyed magnesium	37.4	28.7	53.1	51.0	1997-98: 2.1	May 98: variable duty for minimum price of ECU 2,797 per ton	Nov. 98: variable duty for minimum price of ECU 2,622 per ton
Silicon metal	16.5	27.6	37.1	27.8	1997-98: 9.3		Dec. 97: 49 per cent
Ferro-silico-manganese	63.1	41.1	27.9	1.6	1996-98: 39.5	Sep. 97: 19.6 per cent	Mar. 98: ECU 58.3 per ton
Stainless steel fasteners*	120.5	88.1	75.6	90.6	0.0	Sep. 97: 16.2- 75.7 per cent	Feb. 98: 13.6- 74.7 per cent
Iron or steel tube or pipe fittings	7.5	10.5	14.9	14.3	0.0	Oct. 95	Apr. 96: 58.6 per cent
Other mechanical engineering							
Ring binder mechanisms	3.0	3.5	8.4	11.6	0.0	July 96: 35.4 per cent	Jan. 97: 32.5- 39.4 per cent

Table 6. (continued)

(Million US Dollars)

<i>Cases</i>	1995	1996	1997	1998	<i>Fall in bilateral trade flows</i>	<i>Provisional measures</i>	<i>Definitive measures</i>
Bicycle parts	37.2	51.8	67.2	89.7	0.0		Jan. 97: 30.6 per cent exemptions granted to EU bicycle assemblers
Chemicals							
Artificial corundum	14.8	12.3	11.4	11.6	1996-97: 0.7		Oct. 97: ECU 204 per ton
Refractory chamottees	0.7	0.0	0.0	0.1	1995-97: 0.7	July 95	Jan. 96: variable duty for minimum price of ECU 75 per ton
Coumarin	4.4	1.0	0.6	0.7	1995-97: 3.8	Oct. 95	Apr. 96: ECU 3,479 per ton
Glyphosate	8.5	4.9	2.4	0.8	1996-98: 4.1	Sep. 97: 21.1 per cent	Feb. 98: 48 per cent
Powered activated carbon*	10.7	14.5	12.3	14.1	0.0	Aug. 95	Jun. 96: ECU 323 per ton
Peroxodisulphates	2.5	0.9	0.9	1.1	1995-97: 1.6	95	Jan. 96: 83.3 per cent
Misc. manufactured products							
Handbags	88.8	87.6	85.2	81.0	1996-98: 6.6	Feb. 97: 0-39.2 per cent	Aug. 97: 0-58.3 per cent
Pocket lighter	21.1	19.4	11.3	10.2	1995-98: 10.9		May 95: ECU 0.065 per lighter
Polyolefin sacks and bags	21.8	22.8	20.2	12.5	1996-98: 10.3		Oct. 97: 102.4 per cent
Total					275.3		

Source: China Customs Statistics Yearbook, 1995, 1996, 1997, 1998; EC, list of anti-dumping and anti-subsidy measures, europa.eu.int/comm/trad, accessed 19 June 2000; EC, *Annual Report From the Commission to the European Parliament on the Community's Anti-dumping and Anti-subsidy Activities*, 1996, 1997, and 1998; and EC, *Official Journals*, various issues.

Out of the 21 cases with definitive measures imposed between 1995-1998 (table 6):

- 15 cases showed a fall in bilateral trade flows coincident to the imposition of duties.
- In four cases, bilateral trade flows continued to rise (in one of the cases, bicycle parts, this was due to exemptions from duties for EU bicycle assemblers). Past experience shows that, when measures are considered as insufficient, subsequent reviews are lodged that often lead to more restrictive measures.
- In two of the cases, the pattern of change in bilateral trade flows was not clear. In one case, the bilateral trade flow fell with a time lag. In the other case, the bilateral trade flow fluctuated.

As bilateral trade flows generally tend to fall following the imposition of anti-dumping duties, the notion of the percentage of trade volume subject to anti-dumping measures almost certainly tends to under-estimate the effects of anti-dumping on trade. An appropriate estimation of the effects of anti-dumping duties on trade would be to investigate how the trade flow of the products concerned changes following the imposition of anti-dumping duties. Ideally, the impact can be measured by comparing the actual bilateral trade level with the level it would have grown to without the imposition of the duties. Such an exercise requires the simulation of the growth trends of trade flows. However, before conducting such an exercise, it is useful to calculate the actual fall in bilateral trade flows coincident to the imposition of duties. While omitting the growing trend in trade flows in many cases, the calculation can provide a lower-boundary estimation on how anti-dumping duties affect bilateral trade flows of the products concerned.

In this study, the fall in bilateral trade flows coincident with the imposition of anti-dumping duties is calculated based on Chinese customs data. The calculation results show that the fall in bilateral trade flows coincident to the imposition of definitive measures between 1995-98 amounted to US\$275 million⁶ (table 6). To obtain a sense of the relative size of this number, it is compared with the change in total Chinese exports to EU between 1995-1998. Between 1995-1998, total Chinese exports to EU increased by US\$9,051 million. The fall in Chinese exports to EU coincident to the imposition of definitive anti-dumping duties between 1995-1998 amount to 3 per cent of the total increase in Chinese exports to EU.

As discussed above, this calculation tends to under-estimate the effects of anti-dumping duties on trade as it is based on the actual fall in bilateral trade flows without taking into account the growing trends before the imposition of duties. However, this calculation at least indicates that without the imposition of the definitive

⁶ The falls in bilateral trade flows in the two cases where trade flows exhibited an unclear pattern of change are counted as zero.

duties between 1995-1998, the increase in Chinese exports to EU would have been more than 3 per cent higher.

It may be argued that these falls in bilateral trade flows have been caused by other factors. During the period covered in this study (1995-1998), the Asian financial and economic crisis has indeed been identified as the major factor that led to a modest slackening of the export performance of China. However, statistics also show that, while Chinese exports to Asian economies declined during the crisis, Chinese firms diversified their exports to the EU and US markets. As a result, Chinese exports to EU and US continued to rise during the Asian crisis.

Even though the 21 cases investigated above are only part of the 49 cases on the EUs list of anti-dumping cases against China, they have shown that, from the Chinese perspective, the effects of anti-dumping measures on trade can be much more significant than from EU's perspective.

IV. CONCLUSION

A close investigation of EU anti-dumping cases against China reveals that three issues are important in relation to the impact of anti-dumping measures on trade. First, the calculation of dumping margins is a challenging task. Although great efforts have been devoted to make anti-dumping investigation a fair process, the scheme suffers from imperfect information that is highly likely to lead to biased rulings. In particular, the non-market economy way of calculating dumping margins for China is a practice that has replaced one set of bias (under-estimation) with another (over-estimation).

Second, the high rates of termination due to withdrawal of complaints also poses the question whether the scheme tends to be used by industries to fight against *fair* competition as opposed to *unfair* competition. Investigations and provisional duties levied can be highly disruptive to exporting firms even if eventually no definitive measures are imposed.

Third, as anti-dumping measures tend to significantly change bilateral trade flows, the percentage of imports subject to anti-dumping measures is not a good indicator of the effects of anti-dumping duties on trade. A more appropriate measure of the impact of anti-dumping on trade is to estimate the extent that anti-dumping duties affect bilateral trade flows. In this study, the fall in bilateral trade flows coincident to the imposition of 21 definitive duties was calculated. The results show that the rise in Chinese exports to EU would have been more than 3 per cent higher without the imposition of the duties in 1995-1998. The actual effects of anti-dumping measures on bilateral trade flows should be much bigger, taking into account the effects of all 49 cases against China and the upward trend of the trade flows for most products before the imposition of the duties. Thus, from the perspective of developing country exporters, the impact of the anti-dumping regime on trade can be much more dramatic than from the perspective of developed country importers.

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Appendix 1. EU anti-dumping and anti-subsidy scheme^a

EU's rules to deal with dumping date back to the organization's earliest days. They are targeted at dumped imports that cause significant injury to EU producers. The first anti-dumping and anti-subsidy legislation of EU was enacted in 1968 and has been subsequently modified several times. A new set of rules governing the anti-dumping scheme came into force in 1995 when WTO was established. The new set of rules (updated in 1996) was based on measures agreed under WTO.

According to the new rules, anti-dumping duties can be levied if the following conditions are met:

- a finding of dumping: the export price at which the product is sold on the EU market is shown to be lower than the price on the producer's home market;
- a material injury to EU industry: the imports have caused or threaten to cause damage to a substantial part of the industry within the EU, such as loss of market share, reduced prices for producers and resulting pressure on production, sales, profits, productivity etc.;
- the interests of EU: the costs for EU of taking anti-dumping measures must not be disproportionate to the benefits.

When an industry in EU considers that dumped imports from non-EU countries are causing it material injuries, it may submit a complaint to the EC, either directly or through its national government. The EC then has 45 days to examine the complaint, consult the member states and decide whether or not there is enough evidence to merit a formal investigation. The case will be rejected if there is not enough evidence or if the complainants do not represent at least 25 per cent of the total EU production of the product in question.

Once a case is accepted, the EC will conduct a formal investigation within 15 months. The investigation covers whether or not dumping is taking place, which can be a complex calculation, and also whether dumped imports are causing material injuries to EU industry. Measures may also be imposed if imports are hindering the establishment of a new industry within EU or there is a clear and imminent threat of material injury.

Anti-dumping measures will only take place if they are shown to be in the broader EU interest. Producers, importers, users and consumers are able to present their views.

If the investigation confirms the existence of injurious dumping and if the Community interest test is positive, the EC may, after consulting with member states, impose provisional duties. The duties levied are within the dumping

margin, the difference between the price on the home market (the normal price) and the price charged on the EU market (the export price). The provisional duties may last for six to nine months.

Subsequently, the EC responds to comments by interested parties and discloses information underlying its conclusions. If the initial findings are confirmed after disclosures and verifications, the EC will propose the imposition of definitive duties to the EU Council of Ministers. In the case of coal and steel products, the EC can impose definitive measures itself after consultation with Member States. Definitive duties are valid for five years before they expire.

If the initial findings are not confirmed or dumping is not evident, the proceedings will be terminated without the adoption of any definitive measures.

A regulation imposing anti-dumping duties may be challenged in the European Court of First Instance, and the WTO dispute settlement procedure may be used to settle disputes between WTO signatories.

Source: EC, "Trade Policy Instruments", europa.eu.int/comm/trade/policy, accessed 22 May 2000.

^a EU also takes action against subsidies given by exporting country Governments since they help exporters to reduce production costs and cut the prices of their exports unfairly. Again, WTO agreements allow member countries to adopt anti-subsidy measures. The WTO Agreement on Subsidies and Countervailing Measures disciplines the use of subsidies and regulates the actions countries can take to counter the effects of subsidies. Available statistics on anti-dumping and anti-subsidy are often mixed together.

Appendix 2. Criteria to determine whether or not a company operates in market economy conditions

- Decisions of firms are taken without significant state interference and are made in response to market signals;
- Accounts must be independently audited in line with international accounting standards;
- Production costs and the financial situation of the company is not affected by distortions carried over from the former state-led economic system, barter trade or compensation of debts;
- Companies are subject to bankruptcy and property laws; and
- Exchange rate conversions are carried out at market rates.

Source: EC, 'Proposal for Council Regulation: amending Regulation (EC) No. 384/96 on protection against dumped imports from countries not members of the European Community', Brussels, 15 June 2000.

**Appendix 3. Criteria for individual treatment
(revised version of the year 2000)**

If the following criteria are met, a Chinese company can be granted individual treatment that allows anti-dumping margins to be calculated according to its own export prices and normal prices in the analogue country.

Old criteria applied before the year 2000:

- The majority of the shares should belong to genuinely private companies and no state officials should appear on the board or in a key management position; the fact that a foreign investor controls the company concerned will be considered a relevant indication of independence.
- The land on which the facilities of the company are built should be rented from the state at conditions comparable to those in a market economy country or purchased (e.g. proper contractual lease).
- The company should have the right to hire and dismiss employees and the right to fix salaries.
- The company should have full control over its supply of raw materials and inputs in general.
- The supply of utilities should be guaranteed on the basis of proper contractual terms.
- Proof is given that profit can be exported and capital invested can be repatriated (only in the case of foreign investment, e.g. joint venture).
- The export prices should be determined freely; the fact that export sales are made to a related party located outside the country in question will be a decisive factor.
- Freedom to carry out business activities should be guaranteed, in particular in respect of the following: there should be no restrictions on selling on the domestic market; the right to do business cannot be withdrawn outside proper contractual terms; and quantities produced for export should be determined freely by the company in accordance with the traditional demand of its export markets.

New criteria following a review in the year 2000:

- Exporters are free to repatriate capital and profits (applicable to wholly foreign owned firms or joint ventures).
- Export prices and quantities, and conditions and terms of sale are freely determined, and the majority of the shares belong to genuinely

private companies. State officials appearing on the board or in key management positions should be in a clear minority. The presumption is that a state-controlled company cannot guarantee its independence from state interference, and the burden rests with the exporter to prove otherwise.

- Exchange rate conversions are carried out at the market rate.
- State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.

Source: EC, "Proposal for Council Regulation: amending Regulation (EC) No. 384/96 on protection against dumped imports from countries not members of the European Community", Brussels, 15 June 2000.