The dumping dragon: analysing china's evolving anti-dumping behaviour

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Abstract
China is a major target for anti-dumping measures by both developed and developing countries. Its rapid industrial transition to higher value-added sectors brings it in direct conflict with the US and the EU. Anti-dumping measures have consistently been employed by the US and the EU to protect their domestic markets from encroaching Chinese exports. In the initial few years of joining the WTO, China rarely initiated any complaint in the WTO Dispute Settlement Mechanism (DSM), while facing several complaints itself. This approach has now evolved. China appears to have acquired the knowledge and capacity to access the WTO DSM for safeguarding its interests. As countries attempt to recover from the global financial crisis through an export-led strategy, the likelihood of developed countries using anti-dumping measures and countervailing duties (CVD) to protect their domestic sectors consequently increase. With this background, this paper tracks China's experience in the WTO with reference to anti-dumping disputes (both as a complainant and as a respondent). The recurrence of disputes between China and the US/EU is frequently due to alleged currency manipulation that gives China an "unfair" advantage in exports. This unfairness is then made the basis of anti-dumping measures and countervailing duties. The paper analyses the developments in recent disputes between involving China. Furthermore, this paper aims to anticipate the effects of the 2016 expiry of the non-market methodology that is currently used to calculate dumping margin against Chinese exports. Once free from being subjected to a surrogate method of calculating dumping margin, China can potentially flood the world market with competitively priced exports that could have long-term consequences for industries in the US and the EU and other developed countries.

Introduction

Anti-dumping measures are the WTO-sanctioned trade remedy against the practice of dumping. WTO law does not prohibit dumping but condemns injurious dumping. Dumping is the practice of exporting a product at a price less than normal value from the country of its origin. WTO law aims to regulate use of the response to dumping (anti-dumping measures) by member countries. Historically, anti-dumping measures were frequently employed by developed countries against competing imports from other developed countries. In recent years, however, developing countries have begun to use these measures against both developed and other developing countries. This emerging use coincides with the shifting patterns in global trade. The rising number of investigations conducted by the domestic authorities at the application of the "affected" local industries correspondingly increase the likelihood of an aggrieved country (against whom the anti-dumping measures are imposed) lodging a complaint in the WTO. The WTO then evaluates the merits of the imposition of the measures on

application by the complainant against whom the domestic trade authorities of the respondent country imposed anti-dumping measures. The basic aim behind the WTO regime on anti-dumping is to establish even grounds between the imposing country and the target country. Academic opinion holds that despite the permissibility of anti-dumping measures under WTO law, the WTO members often use anti-dumping as a camouflaged measure for trade protection (Jackson, 1997) (Lester and Mercurio, 2008) (Anderson, 2009) (Ghori, 2012).

The current WTO regime on anti-dumping measures is found in Article VI of the GATT 1994 and the WTO Agreement on Anti-dumping. The basic norm-creating provision is the GATT Article VI, which allows countries to take measures against dumping. The WTO Agreement on Anti-dumping provides an explanation of GATT Article VI. These two operate in consonance to generate a framework of rules to which a WTO member may refer in responding to instances of alleged dumping. This framework is further supplemented by the case law on anti-dumping matters settled to date, whereby the dispute settlement panels constituted by the WTO Dispute Settlement Body (DSB) provide detailed reasoning for their decisions, which reasoning can be applied by future panels in their interpretation and application of the WTO regime on anti-dumping.

As part of its Accession Protocol, China agreed to special commitments concerning a series of specific terms on anti-dumping measures. The application of these China-specific terms enable WTO members (importing goods from China) to use special protections that deviate from the standard WTO rules on applications of trade remedies. This effectively means that China is subjected to discriminatory rules when it comes to the application of trade remedies. As a result, imposition of anti-dumping measures or additional duties becomes easier for importing countries when applying to Chinese imports. Perhaps this explains why China is a frequent target of anti-dumping measures. The paper discusses the evolving anti-dumping behaviour of China ever since its accession to the WTO in 2001. This paper provides an overview of the Chinese anti-dumping landscape. It considers both the latest anti-dumping investigations against China and investigations that China has conducted against its trading partners. Additionally, this paper looks at Chinese behaviour in the WTO as both a target and a user of anti-dumping measures. The paper discusses recent disputes that are in the adjudication stages in the WTO involving antidumping actions (featuring China as either a complainant or a respondent). After discussion of the current disputes, this paper proffers a conclusion to the analysis and attempts to anticipate the use of anti-dumping measures by and against China in the future.

The Chinese Anti-Dumping Landscape

The special terms that China is subjected to with regard to anti-dumping is found in section 15 of the Accession Protocol. The effect of this provision is that importing countries can treat China as a non-market economy for the purposes of anti-dumping measures until 2016. Adoption of the non-market economy methodology results in higher anti-dumping margins because calculation of normal value is done by referring to prices of similar products in surrogate countries. In the past, the US and the EU have frequently adopted this methodology in determining the normal value of the products originating from non-market economies.

Additionally, section 15 of the Accession Protocol provides special terms concerning countervailing duties for Chinese products. CVD are imposed to countervail subsidies granted

by the exporting countries. This trade remedy is covered under GATT Articles VI and XVI and the WTO Agreement on Subsidies and Countervailing Measures. The special terms under the Accession Protocol enables WTO members to employ benchmarks from surrogate countries in determining benefits extended to subsidised products exported from China. There is no expiration for the rules on subsidy calculation for China. Therefore, even after 2016, China would be subjected to surrogate pricing for determining CVD.

The effect of section 15 of the Accession Protocol is that China has been a major target of anti-dumping measures both by developed as well as developing countries. For example, China has faced a total of 152 anti-dumping investigations conducted by fellow WTO Members between 2010 and 2012 (see Table 1 below). Since its accession in 2001 to 2012, China has faced 648 anti-dumping investigations (see Table 1). The leading users of anti-dumping measures against China are the US, EU, Turkey, India, Brazil, Argentina and Mexico (see Table 1).

Table 1: Number of Investigations against China (2010-12 and 2001-09)

Country	Number of investigations against China (2010-12)	Number of investigations against China (2001-09)	Total
Argentina	9	49	58
Australia	6	19	25
Brazil	22	33	55
Colombia	2	24	26
European Union	17	53	70
India	31	89	120
Indonesia	4	8	12
Israel	2	4	6
Japan	0	1	1
Malaysia	2	1	3
Mexico	9	22	31
New Zealand	1	4	5
Pakistan	5	6	11
Peru	2	13	15
South Africa	3	18	21
South Korea	1	16	17
Taiwan	5	4	9
Thailand	9	8	17
Turkey	7	58	65
United States	14	66	80
Uruguay	1	0	1
TOTAL	152	496	648

Source: **Global Anti-Dumping Database, 2012**

The WTO reports that from July 1, 2010 to June 30, 2011, 32 WTO members reported initiating a total of 169 new investigations, with China targeted in 25per cent of all new initiations (WTO, 2011b). Since the 2001 accession until 2012, China has initiated a total of 187 anti-dumping proceedings out of which seven are pending investigations while 180 saw imposition of anti-dumping measures (Global Anti-Dumping Database, 2012). The breakdown of anti-dumping measures initiated by China from 2001 to 2012 inclusive is presented in Table 2.

The data shows that US, Japan, South Korean and the EU are the predominant target of Chinese anti-dumping investigations. The data also shows that China has exclusively focused on

these countries for anti-dumping investigations from 2010 to 2012. However, the overall number of anti-dumping investigations has declined from the initial years of China joining the WTO. For example, China initiated 69 investigations in the first two years of its joining the WTO as compared to 22 from 2010 to 2012.

Table 2: Anti-dumping investigations undertaken by China (2001-12) (initiations by year)

Target country	Total (2001-12)	investigations (2001-03)	Investigations (2004-06)	Investigations (2007-09)	Investigations (2010-12)
US	33	10	9	6	8
Japan	33	13	14	2	4
South Korea	29	16	8	4	1
EU	20	3	5	4	8
Taiwan	16	5	7	4	0
Russia	10	4	4	2	0
Singapore	6	1	4	1	0
Thailand	5	1	1	3	0
Indonesia	5	2	1	2	0
India	5	2	2	0	1
Malaysia	4	2	1	1	0
Germany	3	2	1	0	0
Saudi Arabia	3	0	1	2	0
Netherlands	2	1	1	0	0
France	2	1	0	1	0
South Africa	1	0	1	0	0
UK	2	0	1	1	0
Italy	1	0	0	1	0
Ukraine	1	1	0	0	0
Mexico	1	1	0	0	0
Iran	1	1	0	0	0
Kazakhstan	1	1	0	0	0
Finland	1	1	0	0	0
Belgium	1	1	0	0	0
New Zealand	1	0	0	1	0
TOTAL	187	69	61	35	22

Source: **Calculated from the Global Anti-Dumping Database, 2012**

Contrasting the data presented in Table 1 and Table 2 immediately dispels the notion that China has conducted anti-dumping investigations in a tit-for-tat manner. For example, India has conducted the highest number of anti-dumping investigations against China, but China has only conducted five investigations in turn against Indian imports. The US conducted 80 investigations from 2001 to 2012 and has faced 33 investigations by China during the same period. Similarly, Argentina, Brazil and Turkey have all conducted a high number of anti-dumping investigations against Chinese imports but have not faced counter-investigations by China. Therefore, the retaliatory rationale for initiation of anti-dumping investigations can easily be dismissed for most countries. However, a retaliatory rationale becomes apparent in the conduct of China against the US and the EU, and vice versa. For example, in *China – Certain Iron and Steel Fasteners* (DS407), the EU has raised the impugned provision of Chinese domestic law (Article 56 of the *Chinese Anti-Dumping Regulations*) as being inconsistent with WTO Anti-

Dumping Agreement, the WTO Dispute Settlement Understanding and GATT 1994. Article 56 betrays the retaliatory nature of the impugned measure. It reads:
…where a country (region) discriminatorily imposes anti-dumping measures on the exports from the People's Republic of China, China may, on the basis of actual situations, take corresponding measures against that country (region).

The case involving this matter is still in the consultation stage and has been since May 2010 (see Table 4 below). The majority of anti-dumping measures are accepted by the targeted industries, importers, exporters and the countries as a *fait accompli* on both sides of the disputes. However, some disputes involving China as the respondent and as the applicant have reached the WTO for resolution. In the initial years, China appeared visibly reluctant to take matters to the WTO. It filed its very first complaint in the WTO against the US in December 2003, and then has gone on to file a total of 11 complaints. Out of these 11 complaints, six concerned anti-dumping measures taken by the US and the EU against Chinese imports. China's first anti-dumping dispute in the WTO was against the US in 2007 (see Table 3). Thereafter, China has become increasingly active in the WTO dispute settlement mechanism. This signifies China's rising confidence in enforcing its trade interests against other countries. Table 3 summarises the anti-dumping actions that China has filed since 2007 as applicant against the US and the EU.

Table 3: Summary of Anti-dumping complaints filed by China in the WTO

Year	Respondent	Short Title	Outcome
2007	US	US — Coated Free Sheet Paper (DS368)	Pending
2008	US	US —Certain Products (DS379)	DSB Ruling in favour of China, US granted time until 25 Feb 2012 (extended until 25 April 2012) to bring measures in accordance with WTO law, China objects to US claim that measures brought in line with WTO law (28 Sep 2012).
2009	EU	EC — Fasteners (DS397)	DSB Ruling in favour of China, EU granted time until 12 Oct 2012 to bring measures in accordance with WTO law, China noted the efforts of EU to bring measures in line with WTO law but did not agree with EU claim that it had complied fully with the DSB ruling (23 Oct 2012).
2010	EU	EU — Footwear (DS405)	DSB Ruling in favour of China, EU granted time until 22 Feb 2012 to bring measures in accordance with WTO law. EU reported on 17 Dec 2012 that measures have been brought in compliance with the WTO. China did not agree with EU claim that it had complied fully with the DSB ruling (17 Dec 2012).
2011	US	US — Shrimp and Sawblades (DS422)	DSB Ruling in favour of China, US granted time until 23 March 2013 to bring measures in accordance with WTO law. US reported on 26 Mar 2013 that measures have been brought in compliance with the WTO. China did not agree with the US claim that it had complied fully with the DSB ruling since Anti-dumping duties on Sawblades were not revoked (26 Mar 2013).
2012	US	US — Countervailing and Anti-Dumping Measures (DS449)	Panel composed, dispute still under consideration

Source: WTO, Table of Disputes by Country/Territory

In addition to the complaints that China has filed in the WTO, it has also acted as a respondent to 31 claims filed against it, out of which seven are on impugned anti-dumping measures that China had adopted against other countries. These are summarised in Table 4. It is interesting to note that all of the anti-dumping applications against China were filed in the post-2010 period. It is also noticeable from Table 2 that in the same period Chinese anti-dumping actions were almost exclusively focused on the US and the EU.

Table 4: Summary of Anti-dumping complaints filed against China in the WTO

Year	Applicant	Short Title	Outcome
2010	EU	China — Iron and Steel Fasteners (DS407)	Pending. Parties in consultations since 7 May 2010. EU alleges that the basis of China's measures is not based on the standard prescribed by the WTO but rather is retaliatory in nature.
2010	US	China – GOES (DS414)	Appellate Body ruling in favour of the US. Report adopted by the DSB, China granted reasonable time until 31 July 2013 to bring measures in accordance with WTO law. Follow up assessment pending.
2011	EU	China — X-Ray Equipment (DS425)	Appellate Body ruling in favour of the EU. Report adopted by the DSB, China granted reasonable time until 9 Feb 2014 to bring measures in accordance with the WTO law.
2011	US	China — Broiler Products (DS427)	Panel report circulated. The Panel report mostly upheld US claims against the impugned Chinese measures. Reasonable time for implementation not determined. Case not appealed by China.
2012	US	China – Autos (US) (DS440)	Dispute settlement panel established (23 Oct 2012) following request for consultations (9 Jul 2012). Case pending adjudication
2012	Japan	China – HP SSST (Japan) (DS454)	Dispute settlement panel established (24 May 2013) following request for consultations (20 Dec 2012). Case pending adjudication
2013	EU	China – HP SSST (EU) (DS460)	Consultation stage (13 Jun 2013)

Source: WTO, Table of Disputes by Country/Territory

Data presented in Tables 2, 3 and 4 give a hint of the trade wars brewing between the global trading giants. The US and the EU are attempting to give breathing space to their industries that are competing against the unstoppable onslaught of competitively priced Chinese products. Conversely, China has enhanced its production capacity and capabilities to produce value-added products at a competitive price. It now wishes to protect its industries from import competition from the established industries of the US, the EU, South Korea and other newly industrialised countries. These actions by China are bringing it in direct conflict with its trade partners and its WTO obligations.

Summary of Recent Disputes

China has been making inroads within the value-added markets of the US and the EU ever since its accession in 2001. The obvious victims of the growing share of the export markets were the domestic producers and countries receiving preferential treatment extended by the US and the EU. This section summarises the anti-dumping actions taken against China and decodes the significance of the Chinese response. Additionally, this section further comments on the other latest disputes involving China but not featuring anti-dumping as the *casus belli*.

1 *US – Countervailing and Anti-Dumping Measures* (DS449)

This overarching case effectively sums up the brewing trade hostilities. US Public Law 112-99 effectively allows application of countervailing duties (CVD) to non-market economies. This was held in the *GPX International Tire Corp v US* (the *GPX case*) in the US Court of International Trade (USCIT). However, on appeal the US Court of Appeals for the Federal Circuit (USCAFC) stated that the US Department of Commerce does not have the authority to impose countervailing duties on imports from China in instances where China has already been determined as a non-market economy (USCAFC, 2011). The impugned law extended the powers of imposing countervailing duties and anti-dumping measures on non-market economies to the US Department of Commerce, which it previously lacked, following a finding in the *GPX case* (USCIT, 2010). The US Public Law 112-99 consists of two elements. The first is incorporated in Section 1, which amends the US Tariff Act 1930 to include a provision providing for imposition of countervailing duties on imports from non-market economies. This includes retroactive application to all matters initiated on or after November 20, 2006. This date is significant because this was when the US first initiated CVD proceedings against China.

The second element features in Section 2, of the US Public Law 112-99 which amends Section 777A of the US Tariff Act 1930 by authorising the US Department of Commerce to address the issue of simultaneous imposition of both anti-dumping and countervailing duties on imports from a non-market economy. The amended provision applies prospectively to all anti-dumping and countervailing measures investigations on or after the date of enactment of this law (March 13, 2012). China holds that the measure affects a broad range of exports that amount to USD 7.23 billion (Corr, Ma and Scoles, 2012). China requested consultations with the US concerning the specific application of countervailing measures to non-market economies and countervailing duty determinations made by the US authorities between November 20, 2006 and March 13, 2012 with regard to Chinese exports (WTO, 2012b, 1). The request for consultations also mentions the parallel imposition of anti-dumping measures and countervailing duties (WTO, 2012b, 2). China claims that these foregoing measures breach the WTO Agreement on Anti-dumping and the WTO Agreement on Subsidies and Countervailing Measures (WTO, 2012b, 3-4). Panel has been established and the matter is now sub judice.

2 *China – Broiler Products* (DS427)

This dispute arose out of US ban on Chinese cooked chicken products. China retaliated by imposing prohibitively high anti-dumping duties ranging from 43.1 per cent to 80.5 per cent on poultry products specifically from certain producers (namely, Tyson, Keystone Foods and Pilgrim's Pride) (Miles and Abbott, 2013). For all other broiler exports, a weighted average duty of 64.5 per cent was imposed (Miles and Abbott, 2013). Broiler exports from US sharply declined by 80 per cent following the imposition of these duties (Miles and Abbott, 2013). The US brought this matter to the WTO for adjudication, citing that these measures were inconsistent with

applicable provisions of the WTO Agreement on Anti-Dumping Agreement (WTO, 2011a, Paragraphs 1-4). The US also alleged that the Chinese authorities failed to properly apply the standards associated with anti-dumping investigations, imposition of anti-dumping duties and determination of applicable duty (WTO, 2011a, Paragraphs 14-17). The WTO dispute settlement panel agreed with the US claims and held that China used flawed price comparisons in determining production costs and improperly calculated the weighted average rate (WTO, 2013c, Paragraph 8.1 (i)–(iv)). The panel also held that the Chinese authorities failed to disclose certain information about how it determined the duty rates (WTO, 2013c, Paragraph 8.1 (xi)–(xii)). The case was seen as a major victory by the US government, policymakers and the poultry industry (Talley, 2013).

3 *China – Autos (US)* (DS440)

This case was filed by the US in the WTO over Chinese application of anti-dumping and countervailing duties from two to 22 per cent on US origin automobiles. The US alleges that this imposition violates China's WTO commitments. In particular, the US application alluded to Articles 5.3 and 5.4 of the WTO Anti-Dumping Agreement. The application stated that China failed to examine the degree of support and opposition expressed by the domestic producers of the like product before initiating the anti-dumping investigations (WTO, 2012a, Paragraph 1). The US also alleged that China initiated the investigations with less than 25 per cent support by the domestic industry manufacturing the like product (WTO, 2012a, Paragraph 1). Furthermore, China did not review the accuracy of the evidence furnished in the application and did not adequately disclose the calculations and data used to establish the anti-dumping duty rates it determined (WTO, 2012a, Paragraph 1). Behind the scenes, this case was motivated by US automobile industry pressurising the Obama administration (Landler, 2012). This dispute was followed by the *China – Certain Measures Affecting the Automobile and Automobile-Parts Industries (*DS450) case in September 2012, which involved US alleging that China was granting subsidies and other incentives to its automobile industries that were contingent upon export performance. The US claimed that these measures were in violation of various provisions of the WTO Agreement on Subsidies and Countervailing Measures, China's Accession Protocol and Article XVI of the GATT. Both cases are pending adjudication in the WTO.

4 *China – HP SSST (Japan)* (DS454) & *China – HP SSST (EU)* (DS460)

These two related cases involve anti-dumping measures taken by China on High-Performance Stainless Steel Seamless Tubes originating from Japan and the EU respectively. These steel tubes are used in super heaters and re-heaters of supercritical or ultra-supercritical boilers in power stations (EC, 2013). Japan alleged that the Chinese measures, ranging from 9.2 per cent to 14.4 per cent additional duties, breached a broad range of provisions of the WTO Agreement on Anti-dumping. Japanese exports for this product were reportedly at USD 72 Million in 2011 (GTAI, 2013). In particular, Japan alleged that China did not demonstrate the causal relationship between imports and alleged injury to the domestic industry on an objective examination of relevant evidence before the authorities (WTO, 2013a, Paragraphs 1–3). Japan further alleged that China failed to meet the requirement under Article 3.5 of the WTO Agreement on Anti-dumping, injuries caused by other factors must not be attributed to the alleged dumped imports (WTO, 2013a, Paragraph 3). The EU claims mirror the Japanese claims. The EU claim, amongst other issues, point out that China did not determine the costs of production, administrative, selling and general costs on the basis of actual data by the exporters

of the product under investigation (WTO, 2013b, Paragraph 1). Both matters are in dispute settlement stage following composition of the panels.

Discussions and Conclusions

China's increasing role in anti-dumping cases coincides with its industrial transition to higher value-added sectors. With this transition, China naturally relies on its vast industrial infrastructure and production capacity to achieve economies of scale. This is obviously a classic export-led growth model where a major chunk of production is exported to other countries at competitive prices. At this juncture, China's growth strategy brings it in conflict with other developed and newly industrialised countries. When Chinese exports enter these economies and successfully capture market share to the detriment of existing producers, the knee-jerk reaction of the importing economy is to invoke trade remedies such as anti-dumping measures and/or countervailing measures to "level" the playing field. This is evidenced by the high number of anti-dumping investigations that China has faced in the WTO since its accession (see Table 1).

Conversely, China reacts in somewhat similar manner when the same countries that have levied additional trade duties against its exports attempt to enter the Chinese market. In the initial years since accession, China initiated anti-dumping investigations against several countries but has now focussed its anti-dumping investigations against the US, South Korea, Japan and the EU (see Table 2). The Chinese use of anti-dumping measures has been challenged by these countries as the complainant and as third parties in the WTO on the basis that Chinese imposition of trade remedies are without merit and lack the requisite basis. It must be borne in mind that anti-dumping and countervailing measures can only be imposed after the WTO-mandated standards have been met. Tit-for-tat imposition of these trade remedies is exactly why the WTO has agreements regulating their use. Therefore, China's behaviour will likely continue to attract actions in the WTO dispute settlement system.

For the time being, China seems to be following the retaliatory approach in its trading relations with the US and the EU, as is evidenced by Article 56 of the *Chinese Anti-Dumping Regulations* (see arguments above). It is interesting to note that India, which has undertaken the greatest number of anti-dumping investigations against China (120 investigations from 2001 to 2012), has escaped a retaliatory tit-for-tat treatment that US, South Korea, Japan and the EU have received (China has only conducted five investigations from 2001 to 2012). There can be many reasons behind this phenomenon, but the most likely reason is that Chinese entrepreneurs are not as interested in capturing market share for their wares in the Indian market as compared to the prime markets of the US and the EU. Hence, China has not adopted a retaliatory approach when India has investigated Chinese exports for anti-dumping investigations.

Overall, China has been involved in a total of 42 trade disputes in the WTO either as a respondent or a complainant. This pales in comparison to the US and the EU with 226 and 163 disputes, respectively. The recent anti-dumping disputes discussed in the paper demonstrate China's willingness to employ measures available under the WTO system to safeguard its trade interests. The challenge for Chinese policymakers is to resist the urge to impose anti-dumping measures by way of a retaliatory measure simply because the US and the EU are frequently conducting anti-dumping or countervailing measure investigations. If this trend continues, China will find itself much-maligned in terms of 'unfair' use of a trade remedy designed to prevent 'unfair' trade in the first place!

Lingling He points out an interesting feature in the US and the EU claims against Chinese imposition of anti-dumping measures. The claims lodged by the US and the EU always allege lack of adherence to the WTO-mandated procedural mechanisms in conducting anti-dumping investigations (He, 2012). For example, the focus of complaints in *China – Electrical Steel* was the failure to disclose information pertinent to the investigation. The thrust of the arguments in *China – Broiler Products* was the failure of MOFCOM (the relevant Chinese authority) to establish causal connection between the alleged dumping and the injury to the local industries. In *China – X-ray Equipment* the complaint rested on the failure of MOFCOM to make appropriate adjustments to export price (He, 2012). Lingling He further points out that China tends to focus its challenge on the methods and practices associated with calculation of dumping margin. For example, in a major victory against the established US practice of zeroing[1] following the decision in *US – Shrimp and Sawblades,* the dispute settlement panel ruled that zeroing methodology adopted in the US investigations were inconsistent with the WTO Agreement on Anti-dumping (He, 2012). This victory over established US trade practice shows increased Chinese confidence to assert its rights and protect its trading interests. Additionally, China has also highlighted in *EU – Fasteners* the unfair treatment meted out to products originating from non-market economies (in reality China and Vietnam) through the use of surrogate pricing, which almost always leads to an inflated dumping margin (He, 2012).

The cases highlighted in Table 3 show China possessing heightened awareness of its rights in the WTO. It is noticeable that whenever China has challenged a WTO-inconsistent anti-dumping measure in the WTO, it has won (barring the two pending cases). Also noticeable from the cases highlighted in Table 3 is that China repeatedly asserting that offending measures have not been brought into compliance even after lapse of reasonable time allowed to the implementing parties. This demonstrates China's assertiveness and willingness to prosecute matters beyond the WTO dispute settlement system. China has readily adapted to use of anti-dumping measures, both for and against it. However, until China is subjected to non-market methodology for calculating anti-dumping margin, it will continue to attract anti-dumping investigations from the US and the EU.

After 2016, the use of anti-dumping measures may decline (He, 2012). Therefore, the next few years are critical for the industries of the US and the EU struggling for revival in the post-GFC period. Essentially, the US and the EU are buying time for their industries to get accustomed to increased competition from Chinese exporters after 2016. For their part, the policymakers and government of the US and the EU cannot be blamed for their reactions because they are under constant pressure from industry groups and lobbies to arrest the job losses occurring as a result of increased trade with China. Since, anti-dumping measures have an inbuilt expiry (usually three years with an option to extend for another three), China would most likely face less anti-dumping investigations in the future. The same cannot be said for CVD investigations because there is no mention of any expiry or cap in China's Accession Protocol. Therefore, 2016 and beyond, CVD would likely become the measure of choice for controlling China's exports.

[1] "Zeroing" refers to the much criticised US practice for calculating dumping margins. The process involved subtracting domestic price of the foreign goods with the import price in the US (with adjustments for transport and handling costs). If the result came out negative, the US investigators set the negative differences at zero. Zeroing often resulted in the calculation antidumping margins and consequent duties in excess of the actual dumping.

Research Limitations and Directions for Further Research

This research was conducted by examining disputes involving China on anti-dumping measures from an international trade law and policy perspective. The advantage of the adopted approach is that it examines the trade disputes and occurrences of trade disputes in order to construct a logical prediction of likely disputes in the future. The obvious limitation of the study is the lack of economic analysis on the basis of empirical data. This limitation itself provides directions for future collaborative research that combines analysis of law and policy with economic analysis in order to formulate a comprehensive framework to anticipate China's future anti-dumping behaviour. Such an analysis would prove useful for policymakers and practitioners in the field of world trade law.

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