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REGULATIONS, PRACTICES
AND RESPONSES**

LE Thi Thuy Van & Sarah Y. TONG

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LE Thi Thuy Van & Sarah Y. TONG*

Introduction

Alongside globalization and trade liberalization, anti-dumping has been used increasingly to protect domestic industries from unfair competition in many countries. As reported by the World Trade Organization (WTO), between January 1995 and June 2008, there had been 3305 anti-dumping initiations and 2106 anti-dumping measures applied. In theory, anti-dumping is used to ensure fair competition between domestically produced products and import. In practice, however, it could be misused as a protectionist measure to raise trade barriers. Consequently, unjustified uses of anti-dumping measures distort world trade and affect the exporting countries, especially developing economies such as China.

Indeed, China has been the number one target of anti-dumping cases. A total of 640 anti-dumping cases had been filed against China's exports, between January 1995 and June 2008, roughly 20% of the world total. The economies that initiated the most anti-dumping cases against China include the United States, European Union, Japan, India, and Argentina. Products that are the most often targeted in such cases include base metal, chemical, machinery and electrical appliances, and textile, accounting for 70% of all the cases.

In the late 1990s, China began to formulate anti-dumping rules and use anti-dumping measures to ensure fair competition in its domestic markets. The first anti-dumping regulation was announced in 1997. According to WTO, since the mid-1990s, China has initiated 141 anti-dumping cases, with 108 anti-dumping measures implemented. Economies that were targeted the most in these cases include Japan, South Korea, the US, Chinese Taipei, EU, Russia and Singapore. Products that are the most frequently subjected to China's anti-dumping cases are industrial chemicals, plastics and rubber, and wood pulp and paper.

As a WTO member, China has the privilege of bringing its anti-dumping complaints to WTO's Dispute Settlement Body. However, since China continues to be considered by many WTO members as a non-market economy, it still faces many challenges to defending its business interests in anti-dumping proceedings. Moreover, as a member state, China is obliged to revise and amend its anti-dumping legislation in accordance to WTO's requirements.

* Ms LE Thi Thuy Van is a Visiting Scholar at the East Asian Institute, National University of Singapore and a PhD Candidate in Finance and Banking, Academy of Finance, Vietnam. She would like to thank The World Bank for giving her The Robert S. McNamara fellowship award to support her research in EAI. Dr. Sarah Y. Tong is Assistant Professor at the Department of Economics and Research Fellow at the East Asian Institute, National University of Singapore.

In this paper, we examine the development of China's efforts to formulate and implement anti-dumping rules in the domestic market. We also study China's efforts in protecting its business in anti-dumping cases filed by its trading partners and, more specifically, how these efforts are affected by China's non-market economy status. We end our discussion with some suggestions on how China could enhance its capability in dealing with anti-dumping issues.

Part I. Anti-dumping in the Chinese Domestic Market: Regulations and Implementations

1. China's anti-dumping regulations

(A) Anti-dumping regulations before China's WTO accession

Anti-dumping issues were mentioned in China for the first time in Article 30 of *The Foreign Trade Law of 1994*¹. It stated that, if products were imported at prices below its normal value, thereby causing substantial damage (or threatens to cause substantial damage) to the relevant domestic industries, the State would take necessary measures to eliminate or reduce such damage (or threat of damage). *The Foreign Trade Law of 1994* also specified that the department or agency designated by the State Council shall conduct investigations and make rulings based on relevant laws or administrative regulations. However, the language in the *law* was quite general and there were no subsequent regulations to implement it.

The 1997 Regulations:

It was not until 1997 that the first anti-dumping regulation was adopted in China. On March 23, 1997, the State Council promulgated *The Regulations on Anti-dumping and Countervailing Measures of the People's Republic of China (The 1997 Regulations)*² with immediate effect. This was the first regulation to implementing Article 30 of *the Foreign Trade Law of 1994*.

The 1997 Regulations aimed to ensure fair competition and thus to protect business interests of China's domestic industries. At the same time, *the 1997 Regulations* also included a clause on possible retaliatory measures against discriminatory anti-dumping or anti-subsidy measures targeting China's export.³ In the early to mid-1990s, China lowered its trade barrier considerably in its pursuit to

¹ *The Foreign Trade Law of the People's Republic of China*, adopted at the Seventh Meeting of the Standing Committee of the Eighth National People's Congress on 12 May 1994, was promulgated by Order No.22 of the President of PR China on 12 May 1994 to take effect as of 1 July 1994.

² *The Regulations on Anti-dumping and Countervailing Measures* were issued by the State Council of PR. China on March 23, 1997. Under the Chinese legal system, regulations issued by the State Council are subordinate to laws enacted by the National People's Congress or its Standing Committee, but superior to rules enacted by the Ministries or provisions enacted by the Supreme People's Court.

³ Article 40 of *the 1997 Regulation* states that China may assume corresponding measures against any country or region that adopts discriminatory anti-dumping or anti-subsidy measures against its exports.

join the WTO. As China's trade surged in both export and import, there was a growing need for formulating anti-dumping legislations to ensure fair competition.

The 1997 Regulations consist of 6 chapters and 42 articles, focusing primarily on anti-dumping issue with a number of articles on countervailing duties.⁴ It defines *dumping* as an action when the price of an imported product is less than its normal value. *The 1997 regulations* also provided the methods to determine the normal value and the price of an import. Moreover, it includes provisions on the determination of injuries, as well as anti-dumping investigation procedures and measures. The Ministry of Foreign Trade and Cooperation (MOFTEC) and the Customs Bureau have been designated as the responsible government agencies to jointly investigate the existence of dumping action and to determine the dumping margin. At the same time, the State Economic and Trade Commission (SETC) and the relevant State Council departments shall jointly investigate the existence and extent of injuries.

The 1997 Regulations were China's first formal regulation on anti-dumping issues and thus had a substantial impact on China's anti-dumping legislation. Nonetheless, it still has many limitations and needs to be amended. First of all, the clauses are often too general, abstract and simple, which made it difficult to implement. Second, the investigation procedures are not efficient since the responsibilities of the investigating authorities are not clearly defined and there is no clear timeline. Lastly, *the 1997 regulations* were either not as sufficiently specific as or inconsistent with rules in WTO's Anti-dumping Agreement (ADA)⁵, which made it more difficult for implementation.⁶

Consequently, *the 1997 Regulations* were later modified and amended after China joined the World Trade Organization in 2001.

(B) China's anti-dumping regulations after its WTO accession

On December 11, 2001, China became the 143rd member of WTO after 15 years of negotiations. While enjoying various privileges as a WTO member, such as better access to the world market, China is also obliged to its commitments and to

⁴ Article 36 to 39 of *the 1997 Regulations*.

⁵ WTO's *Anti-Dumping Agreement* (ADA) is the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*. It allows countries to impose anti-dumping duties to protect their producers from damages caused by dumping imports. It includes rules for conducting anti-dumping investigations and applying anti-dumping measures. In a number of areas, China's *1997 Regulations* were inconsistent with WTO's ADA. For example, China's *1997 regulations* did not require that domestic sales used to calculate normal value be "in the ordinary course of trade", as specified in ADA's Article 2.1. Moreover, the *1997 regulations* did not have any provision concerning cumulative assessment of the effects of imports in determining injury, as stated in ADA's Article 3.3. Furthermore, the *1997 regulations* did not accept "price undertakings" as an anti-dumping measure, as detailed in ADA's Article 8. Finally, the *1997 regulations* did not have provision for judicial review of anti-dumping measures, as stated in ADA's Article 13.

⁶ Another obstacle which made it difficult to implement was that *the 1997 regulations* stated that MOFTEC, Customs Authority, SETC and relevant State Council departments could formulate specific measures for its implementation; However, they could not finish the drafting due mainly to policy differences among the agencies (Junji Nakagawa, *Anti-dumping laws and practices of the new users*, London, Cameron May Ltd, 2007).

abide WTO rules. Following its accession, China has revised its anti-dumping regulations and promulgated new rules on anti-dumping to conform with WTO's Anti-dumping Agreement.

The 2002 Regulations:

On November 26, 2001, the State Council issued *The Regulations of the People's Republic of China on Anti-dumping*, which was to take effect on January 1, 2002 (*the 2002 Regulations*), in replacement of the *1997 Regulations* on anti-dumping. Compared to the *1997 Regulations*, *the 2002 regulations* represents a significant improvement. Issues on countervailing measures⁷ are not included in *the 2002 Regulations* and are regulated by separate rules.

The 2002 Regulations consisted of 6 chapters with 59 articles, which covered several provisions on investigations and applications of anti-dumping measures, including *general provisions; dumping and injury; anti-dumping investigation; anti-dumping measure; duration of anti-dumping duties and price undertakings; administrative review; and supplementary provisions*.

Although the regulation maintains the basic structure of the *1997 Regulations*, many changes have been made in the revisions.⁸ For example, there are substantive changes in rules governing the determination of anti-dumping (the definitions of dumping, normal value, export price, and dumping margin) and injury (the factors for examination, definitions and the use of cumulative assessment). In addition, the *2002 regulations* include changes on procedural rules such as the responsible agencies, applicants, duration, anti-dumping measures and review. It also includes articles on using price undertaking as an anti-dumping measure.

According to the *2002 Regulations*, MOFTEC shall be responsible for the investigation and determination of dumping, while SETC shall be responsible for the investigation and determination of injury. The *2002 Regulations* reduce the number of government agencies for formulating specific implementing measures to only MOFTEC and SETC⁹. Following the streamlining and clarification, a number of legal documents have been promulgated for the implementation of the regulation. These include:

- *Provisional Rules on Initiation of Anti-dumping investigation*, promulgated by MOFTEC on 10 February 2002, and effective as of 13 March 2002;
- *Provisional Rules on Questionnaire in Anti-dumping Investigations*, promulgated by MOFTEC on 13 March 2002, and effective as of 15 April 2002;

⁷ *The Countervailing Regulations of the PR China* was promulgated by The State Council on November 26, 2001.

⁸ Gao Lin, *The Evolution of Chinese Anti-dumping Law*, BeiJing GoodWill Law Firm.

⁹ Article 58 of *the 2002 Regulations*.

- *Provisional Rules on Sampling in Anti-dumping Investigations*, promulgated by MOFTEC on 13 March 2002, and effective as of 15 April 2002;
- *Provisional Rules on Disclosure of Information in Anti-dumping Investigations*, promulgated by MOFTEC on 13 March 2002, and effective as of 15 April 2002;
- *Provisional Rules on Price Undertakings in Antidumping Investigations*, promulgated by MOFTEC on 13 March 2002, and effective as of 15 April 2002;
- *Provisional Rules on Refund of Anti-dumping Duty*, promulgated by MOFTEC on 13 March 2002, and effective as of 15 April 2002;
- *Rules on Investigations and Determinations of Industry Injury for Anti-dumping*, promulgated by SETC on 13 December 2002, and effective as at 15 January 2003.

Jointly, the above legal documents have formed a relatively comprehensive framework for conducting investigations and applying measures on anti-dumping. Nonetheless, China's anti-dumping regulations continued to be modified with the latest revision completed in 2004 (known as *the revised 2002 Regulations* or *the 2004 Regulations*).

The 2004 Regulations:

On March 31, 2004, the State Council announced its decision to modify *the Regulations of the People's Republic of China on Anti-dumping*, which was to take effect on June 1, 2004 (*The 2004 Regulations*).

The 2004 Regulations include a number of minor changes to *the 2002 Regulations*. Firstly, *the 2004 Regulations* reflect an institutional change¹⁰ in anti-dumping investigating authorities. The Ministry of Commerce (MOFCOM) shall be responsible for the investigation and the determination of both dumping and injury. Secondly, the revised *2004 Regulations* encourage the authorities to take "public interest" into consideration when accepting an offer of price undertaking (Article 33) and provide that the collection of anti-dumping duty shall conform to the public interests (Article 37). Thirdly, the *2004 Regulations* also stipulate that MOFCOM may take necessary measures to collect retroactive anti-dumping duties after launching an investigation (Article 44).

In addition, the relevant articles of the *Revised Foreign Trade Law of 2004* have also been modified to provide a broader legal basis for the *2004 Regulations*

¹⁰ In March 2003, the MOFTEC went through a reorganization and was renamed the Ministry of Commerce (MOFCOM). The State Economic and Trade Commission (SETC) and State Development Planning Commission (SDPC) were merged into the MOFCOM. These bureaus became the subdivisions of the MOFCOM of China.

with the inclusion of references to anti-dumping investigations.¹¹ References to anti-dumping issues occurring in a third country which harm the interests of Chinese industries are also included.¹²

(C) Determination of import dumping in China

Dumping:

An imported product is regarded as being dumped if it is introduced (in the ordinary course of trade) into China's market at an export price less than its normal value (Article 3, Chapter II, *the 2004 Regulations*).

MOFCOM shall be responsible for the investigation and the determination of dumping.

Normal value:

The normal value of an import into China is defined as the comparable price of a like product¹³ in the exporting country in the ordinary course of trade (Article 4, Chapter II, *the 2004 Regulations*).

In cases where there is no like product on sale in the domestic market of the exporting country (or the price and the quantity of such sales do not permit a fair comparison), the normal value shall be determined in either of the following two ways:

- (a) comparable price of the like product exported to a third country;
- (b) production costs of the like product in the original country plus a reasonable mark-up for expenses and profits.

Export price:

There are three options for determining export price (Article 5, Chapter II, *the 2004 Regulations*):

- (a) the price actually paid for the imported product;
- (b) the price at which the imported product is resold for the first time to an independent buyer (applied in the case where export price does not exist or the price is unreliable);

¹¹ Articles 37, 38, and 39 of *the Revised Foreign Trade Law of the People's Republic of China* were promulgated on April 6, 2004 and took effect as of July 1, 2004.

¹² Article 42 of *The revised Foreign Trade Law of the People's Republic of China* states that "where the export of a product from other countries or regions to the market of a third country causes or threatens to cause material injury to the established domestic industries, or materially retards the establishment of domestic industries, the authority responsible for foreign trade under the State Council may, on the request of the domestic industries, carry out consultations with the government of that third country and require it to take appropriate measures".

¹³ Like product means the product that bears all or many of the characteristics of the product under anti-dumping consideration.

- (c) the price reconstructed by MOFCOM on reasonable basis (applied in the case where the imported product is not resold to an independent buyer or is not resold in the condition as imported).

Dumping margin:

The margin of dumping is the amount by which the export price of an imported product is less than its normal value (Article 6, Chapter II, *the 2004 Regulations*).

Export price and normal value should be compared by fair and reasonable means, taking into consideration various comparable factors which affect price.

(D) Determination of Injury

There are three types of injury: (i) material injury to an established domestic industry; (ii) threat of material injury to an established domestic industry; or (iii) creation of obstacles to the establishment of corresponding domestic industry (Article 6, Chapter II, *the 2004 Regulations*).

MOFCOM shall be responsible for the investigation and determination of injury. It shall examine the following factors to determine injury:

- (a) quantity of dumped imports, both in absolute amount and in market share;
- (b) prices of dumped imports, including any reduction in such prices and the effect on the prices of like domestic products;
- (c) effect of the dumped products on various economic indicator of the domestic industry;
- (d) production capacity, export capacity and “inventory situation” of the exporting country;
- (e) other factors causing injury to the domestic industry.

It is required that there must be a causal relationship between the injury and dumping action.¹⁴

(E) Anti-dumping investigation

A domestic industry, or an individual, or a legal entity or an organization which represents the domestic industry can apply for an anti-dumping investigation. An anti-dumping investigation may be initiated if the application is supported by domestic producers whose output satisfies both of the following conditions (Article 17, Chapter III, *the 2004 Regulations*):

¹⁴ A general requirement on causality is provided in Articles 2, 8 (Item 3), 28 and 37, *the 2004 Regulations*. It is also recognized in Article 30 of *The Foreign Trade Law 2004*.

(a) Above 50% of the total like output is produced by domestic producers expressing either support or opposition to the application;

(b) At least 25% of the total like output is produced by the domestic industry.

(F) Governing Authorities

There are three governing authorities in China that are involved in the investigation and administration of anti-dumping, including: (i) MOFCOM; (ii) Tariff Commission of State Council (TCSC); and (iii) the General Administration of Customs (GAC).

MOFCOM:

MOFCOM is responsible for initiating anti-dumping cases, conducting investigations, and submitting recommendations on anti-dumping measures to TCSC. Within MOFCOM, the investigation function is assumed by two bureaus: the Bureau of Fair Trade for Imports & Exports (BOFT) and the Investigation Bureau for Industry Injury (IBII). BOFT takes charge of dumping margin investigation, while IBII analyses injury to the domestic industry as well as the causal link between the accused and the injury (Appendix Figure 1)

TCSC:

TCSC is responsible for making decisions on the imposition of provisional anti-dumping duties (Article 29, Chapter IV, *the 2004 Regulations*) and definitive anti-dumping duties (Article 38, Chapter IV, *the 2004 Regulations*). In addition, TCSC makes decisions on the refund of extra duties (Article 46, Chapter IV, *the 2004 Regulations*) based on MOFCOM's proposals.

TCSC shall review and decide whether to confirm MOFCOM's recommendations. When MOFCOM's recommendations are confirmed, such recommended measures are final and would be published in MOFCOM's Gazette.

GAC:

GAC is under the direct judiciary of the State Council and is in charge of administering China's customs offices.

GAC's Department of Duty Collection and Administration is responsible for implementing TCSC's decisions on anti-dumping measures including collecting provisional and definitive anti-dumping duties and refunding extra duties (Article 29, 38, and 46, Chapter IV, *the 2004 Regulations*).

(G) Anti-dumping measures

Conditions for applying anti-dumping measures:

Anti-dumping measures shall be applied when the the following two conditions are both satisfied:

- (a) an imported product is dumped into China's market;¹⁵
- (b) the dumping action causes or threatens to cause material injury to an established domestic industry; or causes material obstruction to the establishment of such an industry.¹⁶

If the conditions are satisfied, anti-dumping measures (provisional anti-dumping measures, price undertakings, or anti-dumping duties) are considered for application.

Provisional Anti-dumping measures:

The MOFCOM shall make a preliminary determination on dumping and injury, as well as whether there exists a causal link between dumping and injury; and then publish the preliminary decision. Accordingly, the following provisional measures may be applied (Article 28, Chapter IV, *the 2004 Regulations*):

- (a) Decision on imposing a provisional anti-dumping duty.¹⁷
- (b) Decision on the provision of deposit, bond or other forms of security.¹⁸

The period for applying provisional measures shall not exceed 4 months and, under special circumstances, may be extended to 9 months.

Price undertakings:

Within 45 days after MOFCOM has made a preliminary affirmative determination on dumping and injury caused by the dumping action, the responding exporters may offer price undertakings to MOFCOM to revise their prices or to cease exporting at the dumped price.¹⁹

If such price undertakings by exporters are considered acceptable and conform to public interests, MOFCOM may decide to suspend or terminate the anti-dumping investigation without imposing anti-dumping duties. However, in the case that an

¹⁵ Unless the margin of dumping is less than 2% (Article 27, *the 2004 Regulations*).

¹⁶ Unless the volume of dumped imports is negligible (Article 27, *the 2004 Regulations*). The volume of dumped imports shall normally be regarded as negligible if (i) the volume of dumped imports from a country (region) is less than 3% of total like products imported or (ii) the volume of dumped imports from several countries (regions), which individually accounts for less than 3%, is less than 7% (Item 2, Article 9, *the 2004 Regulations*).

¹⁷ The decision is made by TCSC based on such a proposal from MOFCOM. The Customs shall enforce the decision from the effective date set forth in the public note.

¹⁸ The decision is made by MOFCOM.

¹⁹ Article 31, Chapter IV, *the 2004 Regulations* and Article 3, Article 6, *Provisional Rules on Price Undertakings In Antidumping Investigations*.

exporter violated his undertaking, MOFCOM may decide to resume anti-dumping investigations.

A price undertaking shall become effective from the date of public notice and shall remain in force for 5 years.

Anti-dumping duties:

If a final determination²⁰ establishes the existence of dumping and injury caused by dumping to a domestic industry, an anti-dumping duty may be imposed. The anti-dumping duty shall not exceed the margin of dumping established in a final determination (Articles 37 and 42, Chapter IV, *the 2004 Regulations*).

If the definitive anti-dumping duty in a final determination is higher than the provisional anti-dumping duty paid or payable, the difference shall not be collected. However, in case the definitive duty is lower than the provisional duty paid or payable, the difference shall be refunded or the duty recalculated accordingly.

The period for the levy of an anti-dumping duty shall not exceed 5 years. However, it may be extended as appropriate if the review shows that the termination of the duty would lead to continuation or recurrence of dumping and injury.

(H) Review

China's regulations on anti-dumping provide 3 types of review.

Administrative review:

After an anti-dumping duty has taken effect, MOFCOM may decide to reexamine the necessity of continuing to impose an anti-dumping duty. The review is conducted upon request by an interested party and on the basis of examination of relevant evidence submitted by the interested party, provided that a reasonable period of time has elapsed (Article 49, Chapter V, *the 2004 Regulations*).

Article 51 (*the 2004 Regulations*) also provides that reviews should follow the same procedural rules that apply to investigation, and be completed within 12 months.

Sunset review:

The period for levying an anti-dumping duty shall not exceed 5 years. However, it may be extended as appropriate if reexamination determines that the termination of an anti-dumping duty could lead to continuation or recurrence of dumping and injury (Article 48, Chapter V, *the 2004 Regulations*).

Judicial review:

An interested party may apply for administrative reconsideration or file a lawsuit in the People's Court if it is not satisfied with one of the following (Article 53, Chapter VI, *the 2004 Regulations*):

²⁰ Article 26 (*the 2004 Regulations*) establishes a 12-month investigation period and allows an extension to a maximum of 18 months.

- (a) the final determination of dumping, injury or casual link between the two;
- (b) the decision on whether or not to impose an anti-dumping duty or the decision to impose anti-dumping duty retroactively;
- (c) the decision on a duty refund or imposition of an anti-dumping duty on a new exporter;
- (d) the results of an administrative or sunset review.

In general, China's anti-dumping regulations are by and large in conformity with WTO's provisions, which incorporate the features of and have a similar structure as WTO's ADA. They cover most of the subject matters regulated by ADA, including dumping and injury, anti-dumping investigation, anti-dumping measures, and review. Moreover, through provisional rules or rules, China's regulations provides sufficient guidelines for carrying out investigation and for applying anti-dumping measures, and sometimes even more detailed than WTO's provisions.²¹

However, some of China's provisions on anti-dumping are not as specific as required in WTO's ADA. Examples include (i) provision on dumping margin or comparison between export price and normal value;²² (ii) provisions on provisional anti-dumping measures;²³ and (iii) provisions on information and evidence for an anti-dumping investigation.²⁴

In addition, some of China's provisions on anti-dumping do not reflect necessary requirements as in WTO's ADA, including: (i) provision on decision to

²¹ Articles 32 to 35 of the *Provisional Rules on Initiation of Anti-dumping Investigation* provide details of the timeline and procedure leading to the initiation of an investigation after receiving an application. The WTO's *Anti-dumping Agreement* does not provide deadline by which the authorities shall decide on whether or not to initiate an investigation after accepting an application. *Provisional Rules on Price Undertakings in Anti-dumping Investigation* also provides details on the timeline and procedure (offer, acceptance and fulfilment) of Price Undertakings in China.

²² Article 6 of the *2004 Regulations* provides a reasonable comparison between the export price and normal value of an imported product. However, it does not specify what adjustments are permissible and what types of information are needed to justify adjustments, as is reflected in Article 2.4 of WTO's ADA.

²³ Article 30 of the *2004 Regulations* provides that the period for applying provisional anti-dumping measures shall not exceed 4 months and, under certain circumstances, may be extended to 9 months. However, there is not specification of the "special circumstances", while WTO's ADA states that the "extension of provisional relief for a total 9 months is allowed only when the administering authority examines whether a duty lower than the margin of dumping would be sufficient to prevent injury" (Article 7.4, WTO's ADA).

²⁴ Articles 20 and 21 of the *2004 Regulations* provide that information may be collected by questionnaires, surveys, hearings, and on-site investigations or sending work teams to the relevant country to conduct the investigation (if the relevant country does not raise objection). However, it does not provide detailed procedures or requirements on how the administering authority is to verify such information. Article 6 of WTO's ADA provides details on collecting information and evidences.

initiate an anti-dumping investigation;²⁵ and (ii) provision on preliminary determination and applying provisional anti-dumping measures.²⁶

2. China's Practices on Anti-dumping regulations

According to WTO statistics, China carried out 141 anti-dumping cases between 1997 and June 2008 and implemented 108 anti-dumping measures (Appendix Figure 2). As a new member of WTO, China has become one of major users of anti-dumping rules²⁷.

Before its accession to WTO, China initiated 33 anti-dumping investigations, under the *1997 Regulations*.²⁸ About half of these cases were not reported to WTO Committee on Anti-Dumping Practice because they were terminated before China's accession to the WTO.²⁹ The first anti-dumping investigation was launched in late 1997 on import of newsprints from Canada, USA and South Korea.³⁰

The number of anti-dumping cases has increased sharply since China's WTO accession. China has initiated 121 investigations since 1 January 2002, while imports surged dramatically as a result of continuous trade liberalization. Anti-dumping actions have become an important measure to ensure fair competition and to protect the interests of domestic industries. As a frequent target of anti-dumping challenges in

²⁵ Article 19 of the *2004 Regulations* provides that when MOFCOM decides to initiate an investigation, it shall publish the decision and notify all interested parties (applicants, known exporters and importers, governments of exporting countries or regions, and other interested organisations and parties). It means that the government of exporting countries may not be notified of the application until MOFCOM decides to initiate an investigation. This is different from Article 5.5 of WTO's ADA which requires that the authorities notify the government of an exporting country after receiving an application and before initiating an investigation. It is also different from Article 6.1 of WTO's ADA which provides that "all interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and opportunities to present in writing all evidence which they consider relevant in respect to the investigation question".

²⁶ Article 24 of the *2004 Regulations* provides that MOFCOM shall make a preliminary determination on dumping and injury, as well as on whether there exists a causal link between dumping and injury; and publish the preliminary determinations. Article 28 of the *2004 Regulations* states that provisional measures may be applied if the preliminary determination establishes the existence of dumping and the injury caused by dumping to a domestic industry. These regulations do not reflect the WTO requirement that the provisional duties be justified as necessary to prevent injury being caused during the investigation (Article 7.1 of the WTO's ADA).

²⁷ China ranked seventh in the use of anti-dumping measures (108) during the period of January 1995 to June 2008, following India (372), EU (252), US (245), Argentina (165), South Africa (124), and Turkey (113).

²⁸ Six of the 33 cases were terminated without the imposition of anti-dumping duties due to a negative determination on injury.

²⁹ Junji Nakagawa. "Anti-dumping laws and practices of the new users", 2007.

³⁰ The final determination was rendered on June 3, 1999. Due to the variation in costs and market prices of companies, the US, Canada, and South Korea were subject to anti-dumping duties of 78%, 57-58%, and 55% respectively (Jason Z.Yin. "China: How to fight the anti-dumping war". Selton Hall University, 2003).

foreign markets, China may also use anti-dumping rules to retaliate discriminative anti-dumping measures.

China's anti-dumping investigations are targeted mostly at Japan, South Korea, USA, Chinese Taipei, the EU, Russia and Singapore (Appendix Table 1). Since its WTO accession, China's trade has expanded considerably and the country has become a key export market economy like Japan, South Korea, US, Chinese Taipei and the EU.

Surging trade with these economies has also resulted in a growing number of trade disputes. By 30 June 2008, China had initiated 28 anti-dumping cases against Japan, 23 of which were applied on imports from Japan. This is followed by Korea (with 26 cases and 20 measures applied), US (with 20 cases and 16 measures applied), Chinese Tapei (with 14 cases and 11 measures applied), and EU (with 8 cases and 6 measures applied).

China's anti-dumping cases are mostly on products like industrial chemicals (61.7%), plastics and rubber (18.4%), and wood pulp and paper (6.4%). Of lesser frequency are base metals (3.6%), mineral products (2.8%), and textiles (2.8%). As shown in Appendix Figure 3, industrial chemicals clearly³¹ dominate China's anti-dumping cases, with 87 out of 141 cases initiated since 1997. The sector is also, internationally, the most frequent subject of anti-dumping cases. Generally speaking, chemical products involved in anti-dumping investigations are relatively new to China. Thus China depends on imports and is an attractive market for foreign producers.

Though the chemical industry is China's third largest, following textiles and machinery, China has a trade deficit in the sector,³² In fact, China is the world's second largest consumer of basic chemical products, after the US, and China is heavily dependent on import. With the commitment to lower tariffs on chemicals after its WTO accession, domestic producers in the sector are facing increasing competition from imports. Consequently, the Chinese government has carried out numerous anti-dumping investigations and, in some cases, imposed measures to protect its chemical producers.

Part II. Anti-dumping against China's exports: Cases and Responses

1. Anti-dumping cases against China

China was the number one target of anti-dumping cases, with 640 anti-dumping investigations and 441 anti-dumping measures against exports from China between January 1995 and June 2006 (Appendix Figure 4). These accounted for 20% of the world total of anti-dumping filings. To some extent, it is not surprising as China's trade has expanded rapidly in recent years to become the third largest trading

³¹ The chemical sector involves products like artificial corundum, potassium permanganate, barium chloride, oxalic acid, silicon carbide, and unwrought magnesium.

³² Report on "*Chemical industry in China*", published by Aruvian Research, July 2007.

nation in the world, accounting for 7.7% of the world total in 2007, up from 3.9% before its WTO accession.

The first anti-dumping case against China was filed in 1979 by the EU and the number has since increased rapidly. The average number of anti-dumping cases against China rose from about 6 per year in the 1980s to 30 per year in the 1990s³³ and further to 58 per year for the years after China's WTO accession in 2001,³⁴ Countries that have initiated the most anti-dumping cases against China include developed economies such as the US, EU, Canada, and Australia. A total of 213 cases were filed by these four, accounting for 33% of all the cases against China between January 1995 and June 2008 (Appendix Table 2). Many developing countries have also been active in initiating anti-dumping cases against China. The six leading users, including Argentina, Brazil, India, Mexico, South Africa, and Turkey, initiated 300 anti-dumping cases, accounting for 47% of the total. Together, the top 10 economies have filed 513 anti-dumping cases and applied 350 anti-dumping measures against China's export.

While the anti-dumping cases cover a broad product range of China's exports, a substantial portion of the investigations was targeted at China's steel products and industrial chemicals. Forty-four percent of all the cases involves China's export of base metals and industrial chemicals (Appendix Figure 5), followed by 12% of machinery and electrical equipment export and 8% of textiles export. The filing trends suggest that the labor-intensive and low-skilled intensive manufacturing industries, where China has the greatest comparative advantages, are also the most frequent targets of anti-dumping investigations.

According to WTO, about 70% of all anti-dumping investigations against Chinese export have led to the imposition of some sort of anti-dumping measures. Often, high anti-dumping duties are levied on imports from China by such economies as the US, EU, and Brazil. The average anti-dumping duty against Chinese imports applied by the EU is around 41%, ranging from 10% to 102%³⁵ and that by the US is 54%³⁶. Anti-dumping duties from some developing countries tend to be even higher. For instance, in 2004, Brazil imposed anti-dumping duties on 12 types of Chinese product, of around 77% on average, and ranging from 36% to 203%.

Indeed, the level of anti-dumping duty imposed on Chinese export is often significantly higher than that on imports from other countries. According to WTO Committee's report on anti-dumping practices (March 2002), the average anti-dumping duty that US imposed on imports from China was 47.6% in 2001, compared to 9.6% on imports from South Korea and 6.8% on imports from Taiwan.

³³ Li Yuefen. "Why has China become a target of anti-dumping activities?", 2004.

³⁴ Calculated based on data from WTO statistics.

³⁵ Liu and Vandenbussche. "EU anti-dumping cases against China: An overview and future prospects with respect to China's WTO membership". Catholic University of Leuven, Belgium, 2002.

³⁶ Tianshu Chu and Thomas J. Prusa. "The reasons for and the impact of anti-dumping protection: The case of People's Republic of China". East – West Center, 2004.

Such anti-dumping measures will inevitably impact negatively on Chinese exporters in terms of losses in profits, employment, and market shares. According to a recent study, between 1979 and 2002, China's exports of over 4000 products, worth US \$16 billion, were affected by the 544 anti-dumping and safeguarding cases initiated by 33 countries.³⁷

A case study of an anti-dumping case in the EU against China's export illustrates the negative consequences on China's industries. In 2001, the EU imposed anti-dumping measures against China's export of energy-saving bulbs. China Association of Lighting Industry (CALI) estimates that half of China's energy saving bulb producers went bankrupt immediately (the number of such producers dropped from 4000 to around 2000 in 2001, and further to around 1,400 in 2002). Another example is EU's anti-dumping measures against China's export of footwear (2006).³⁸ Following the application of anti-dumping duties against China's exports of leather shoes in April 2006, Chinese manufacturers were squeezed by both decreasing orders and by the demand from distributors in EU to reduce prices,³⁹ leading to the closure of many smaller enterprises and mass job losses.

In conclusion, China has been, disproportionately, the most frequent target of anti-dumping investigations, by both industrial and developing economies. In many cases, such investigations and subsequent applications of anti-dumping duties and other measures have caused serious negative consequences to Chinese exporting manufacturers.

2. China's responses to anti-dumping challenges

As the world's number one target of anti-dumping cases, China has responded increasingly actively to anti-dumping complaints in recent years. The importance of responding vigorously has been recognized by both the government and the enterprises, especially since China's accession to WTO.

³⁷ Li Yuefen (2007).

³⁸ EU is China's second export market for shoes, accounting for 14.6% of China's total export of shoes, with 800 million pairs in 2004 and 1.25 billion pairs in 2005. Producers from Italy, Spain, and Portugal filed a complaint with the European Commission stating that shoe imports from China rose more than 13 times in some categories, while the average price of Chinese shoes dropped by 28%. Beginning in February 2005, the EU applied a *Licensing and Inspection* mechanism on shoes imported from China. In June 2005, the EU launched a formal investigation on the dumping of leather shoes from China. As a result, on April 7, 2006, the EU imposed a tariff of 4.8% on shoes imported from China (and 4.2% on those from Vietnam). These tariffs were due to increase progressively until they reach the maximum of 19.4% (16.8% for Vietnam) in September, 2006. A definitive anti-dumping duty of 16.5% was imposed on China's footwear export (10% for Vietnams) for two years, starting from October 7, 2006. In 2008, the anti-dumping duty against Chinese export, due to expire on October 7, 2008, was extended to allow a sunset review by the EU, which may last for another 12 to 15 months.

³⁹ For example, a Guangdong based company, which exported 500,000 pairs of shoes to Italy in 2005, was asked (in April 2006) by its Italian distributors to cut the order by half and reduce the price from 25 yuan (US \$3) to 21 yuan (US \$2.5) a pair.
(<http://www1.cei.gov.cn/ce/doc/cenc/200604102233.htm>)

(A) Before China's accession to WTO

Recognize the large and growing number of anti-dumping cases against China's exports, the government promulgated *Rules on Response to Anti-dumping Charges Raised by Foreign Countries against Chinese Export Commodities* in early 1994.⁴⁰ MOFTEC issued *the Rules* to provide a legal foundation for Chinese exporters when defending their legal rights and business interests when being charged with dumping. *The 1994 Rules* were the Chinese government's first legal rules related to responding to anti-dumping charges.

According to *the Rules*, Chambers of Importers & Exporters and Associations of foreign invested enterprises shall organize and coordinate their efforts in response to anti-dumping charges, and designate individuals to the task. The chambers or the associations shall keep MOFTEC informed of the progresses of the legal process and of the problems that have arisen.

When anti-dumping charges are filed against a certain product, the chambers or the associations shall promptly publish a notice on the *International Business* newspaper. The respondents shall immediately register with the local foreign trade commissions⁴¹ or relevant chambers or associations to begin the responding process. Respondents shall be subjected to the coordination of local foreign trade commissions, the chambers, or the associations during the legal proceedings.⁴²

Despite the government's encouragement, Chinese firms rarely respond to anti-dumping investigations. One reason is that *the Rules* were rather general and lacked details. In some cases, the enterprises could not afford the high cost of hiring lawyers and thus forgo the chance of defending their interests through a legal proceeding.⁴³ Often, even when an enterprise did respond to the legal challenges, it was unable to do it in a timely manner. The Chinese producers were not active in

⁴⁰ *The Rules* were issued by the MOFTEC on April 12, 1994.

⁴¹ Local foreign trade commissions refer to foreign trade and economic cooperation bureaus of provinces, autonomous regions, and municipalities (省、自治区、直辖市); or foreign trade and economic cooperation bureaus of cities with separate listing within the planning system (计划单列市).

⁴² Respondents may negotiate and sign "price pledges" or "termination agreements" with responsible departments of foreign countries, and implement these pledges or agreements responsibly. They shall report, regularly or whenever, their implementation of agreements to the chambers or the associations. The chambers or the associations shall monitor and verify such implementations.

⁴³ The no-response status of Chinese firms was observed in many anti-dumping cases. Two examples are the case filed by the US, South Korea, and Japan against China's garlic export (1990s) and the case by Egypt against China's export of ceramics tableware (2001). China is the world's largest garlic producer with annual output of 59 billion tons, about 66% of the world total. In the 1990s, several anti-dumping investigations were filed by the three countries against China's garlic exports. From 1994, the US government decided to apply anti-dumping duties of 376.67% on garlic imported from China for 5 years. In the 5-year review of the case in 1999, no Chinese garlic producers attended the hearing and the high import duty was automatically retained to today. Similarly in the second case, when Egypt filed anti-dumping charge against import of ceramics tableware from China in 2001, none of the 86 enterprises involved responded. Consequently, anti-dumping duty of 305% was arbitrated and the firms were forced to abandon the market all together.

responding to anti-dumping actions due mainly to their lack of experience, knowledge, and financial resources.

Chinese enterprises were not well coordinated⁴⁴ and thus ineffective in presenting their cases during the 1990s. Business associations, which are powerful and effective in industrial countries, did not exist previously for Chinese manufacturers to represent the industries' interests. Consequently, individual enterprises fought their own legal battles which were often unsuccessful. Indeed, a higher percentage of anti-dumping investigations on Chinese exports resulted in the application of anti-dumping measures.

(B) After China's accession to WTO

China's responses to anti-dumping cases have become more active since its accession to WTO due to closer cooperation between the government, industrial organizations, and enterprises.

Provisions on Responding to Actions of Anti-dumping of Export Products:

Together with its accession to WTO, China's MOFTEC promulgated *the Provisions on Responding to Actions of Anti-dumping of Export Products* on October 11, 2001, which took effect on December 1, 2001. It is stated clearly in *the Provisions* that all Chinese enterprises involved in anti-dumping cases shall respond actively to protect their legal rights and business interests.

The Provisions included a chapter with 5 articles specifying the units responsible for organizing and coordinating the responding efforts and their responsibilities. It stated that MOFTEC shall entrust the Chambers of Import & Export and the associations of foreign-funded enterprises with the organization and coordination of the affected enterprises in responding to anti-dumping actions. Under certain circumstances, MOFTEC may entrust other organizations or agencies⁴⁵ with this task.

Requirements for lawyers and the responsibilities of the the organizing units were also stated clearly in *the Provisions*, representing a significant improvement in the legal foundation in responding to anti-dumping cases. The responsibilities of the relevant units were further detailed especially in how they should assist the affected enterprises in their legal proceedings, including filling out the investigation questionnaires, conducting negotiations on price, and retaining lawyers. In addition, the units were required to establish statistic supervision systems for collecting data on the exporting products and to transmit such information to relevant enterprises and government departments as well as to detect early signs of possible anti-dumping investigations against Chinese exports.

⁴⁴ Other reasons include a lack of qualified staff with good knowledge of the language of the country issuing the lawsuits and a lack of anti-dumping practices.

⁴⁵ These include organizations or agencies considered appropriate by local government departments in charge of foreign trade and economic cooperation or by MOFTEC.

The Regulations on Responding to Anti-dumping Cases of Export Products:

In August 2006, China revised its *Provisions* and promulgated *the Regulations on Responding to Anti-dumping Cases of Export Products*⁴⁶.

The Regulations incorporated many important changes, many of which require conformity with WTO rules following China's WTO accession. For example,

- *Foreign Trade Law of the People's Republic of China* was revised in 2004, known as *Foreign Trade Law of 2004*.
- MOFTEC went through a reorganization and was renamed Ministry of Commerce (MOFCOM) in 2003. SETC and State Development Planning Commission (SDPC) were merged into the MOFCOM.
- More details were provided to encourage more active responses from Chinese enterprises to anti-dumping cases.

Similarly to earlier documents, *the Regulations* aim to provide a good legal foundation and assistance to enterprises to protect their legal rights and business interests in anti-dumping proceedings. Under *the Regulations*, the Chambers of Import & Export and other business organizations shall be responsible for coordinating responses for anti-dumping cases. MOFCOM may formulate related policies and measures to promote such responses.

The Regulations listed the key responsibilities of business organizations⁴⁷ in their coordination efforts, including organizing affected enterprises to follow the cases, assisting relevant enterprises in technical issues and in their negotiations of price undertakings, and seeking legal relief in countries where investigations take place. *The Regulations* also stated that, in certain cases, the business organizations may also seek help from MOFCOM.

The Regulations also elucidated the rights and responsibilities of corresponding enterprises. In addition, *the Regulations* specified that enterprises shall manage their export activities, safeguard their export order, collect information on relevant anti-dumping cases and submit such information to the respective industrial organizations promptly. Such information shall also be published by MOFCOM to assist in their efforts in anti-dumping litigations.

Moreover, according to *the Regulations*, China's embassies or consulates, as well as trade offices of diplomatic missions shall track and collect relevant business information in various foreign countries to assist the Chinese firms in anti-dumping cases.

⁴⁶ *Regulations on Responding to Anti-dumping Cases of Export Products* promulgated by Decree No. 12, 2006 of China's Ministry of Commerce and were adopted at the Fifth Commercial Conference of the Ministry of Commerce on May 17, 2006. They were announced on August 14, 2006 and took immediate effect.

⁴⁷ These industrial organizations were called units under *Provisions on Responding to Actions of Anti-dumping of Export Products 2001*.

With *the Regulations*, Chinese enterprises are provided with a more comprehensive legal framework and better technical assistance for responding to anti-dumping charges. This enables Chinese enterprises to be more active and more effective during the legal proceedings.

An early warning system:

To formulate a long term solution to rising anti-dumping charges, China has established an early warning system for government ministries, agencies and business associations to identify early signs and to activate quick responses. The participants of this system include various government agencies such as trade missions in foreign countries, market research institutes, and government ministries.

Dialogues on trade-related issues:

China has held many rounds of negotiation or diplomatic dialogues with investigation countries. The negotiations are carried out at state to state level as well as between industrial organizations.

These negotiations have two main objectives: (i) to suspend anti-dumping investigations; or (ii) to delay the initiation so that Chinese enterprises have more time to prepare for the lawsuits, which may affect the outcome of the cases.

China has established joint-committees on trade with some of its trading partners. The purpose is to enhance state to state dialogues on trade-related issues, such as persuading China's trade partners to recognize China as a market economy, as well as to discuss "appropriate policies and approaches" involving China's non-market status in anti-dumping cases.

Such dialogues have led to a number of positive outcomes. For example, India delayed its initiation against Chinese silk export (2005); Australia recognized China's cement industry as meeting the criteria of a market economy (2002); and Canada recognizing China's automotive replacement glass (ARG) windshields industry as meeting the criteria of a market economy (2001).

Encouraging active enterprises responses:

Statistics show that in 2002, Chinese enterprises were very active in responding to anti-dumping cases, at a response rate of 70% and at an increasing recovering rate. In particular, the response rate to dumping charges from the US and EU was 100%, indicating not only the firms' stronger determination to protect their legal rights and business interests, but also their capacity in responding to such cases.

China first victory came from the anti-dumping case filed by the EU against China's export of disposable plastic gas lighters. In 2003, the European Commission ended its anti-dumping investigation without imposing any measures on China's manufactures, a year after the investigation started.⁴⁸

⁴⁸ EU's anti-dumping investigation against China's gas lighter officially started on June 27, 2002.

Joint efforts by manufacturers also help firms offset the negative impact of anti-dumping measures, as demonstrated in the case filed by EU against China's footwear exports. As a result of an unfavorable ruling, Chinese shoe manufacturers shifted their focus to new markets in Southeast Asia, South America and Oceania, as well as to expanding their domestic sales. As a result, export volume of China's footwear remains relatively stable, despite a sudden drop in the European market. In addition, to overcome the problem of higher tariffs on China's direct export to the EU, Chinese shoe manufacturers also begin to set up overseas operations in Russia, Nigeria, as well as member states in the EU.

Forming alliances with domestic manufacturers is also useful in their response to legal challenges. Following the EU's decision to impose anti-dumping duties on China's footwear export in April 2006, more than 150 of China's shoemakers formed an alliance to defend against the EU's ruling and jointly raised US\$375,000 for making an appeal⁴⁹.

Bringing cases to WTO:

As a WTO member, Chinese producers have the privilege to use WTO's dispute settlement mechanism to resolve trade issues. In some cases, Chinese enterprises have requested that the Chinese government bring their cases to the WTO.⁵⁰

Challenges and difficulties:

Despite various efforts to respond to anti-dumping cases more actively, China is still facing numerous challenges and difficulties.

Often, Chinese enterprises lack experience and knowledge of the rules and legal frameworks governing international trade, as well as expertise in avoiding anti-dumping charges. While many do not recognize the importance of actively responding to anti-dumping charges, most of them also lack financial capabilities.

Moreover, Chinese manufacturers and exporters are highly vulnerable to the the negative consequence of anti-dumping duties, due to their thin profit margins.

⁴⁹ According to an announcement by China's shoe industry alliance, the alliance planned to make a "non-injury defence". They found that the EU's rulings were based on only 6 indicators and there is no solid evidence of injury to the industry in the EU.

⁵⁰ In March 2009, MOFCOM protested strongly against Canada's decision to impose anti-dumping duty rates and countervailing duty rates of aluminum extrusion imports from China. On February 16, the Canada Border Services Agency finalized the anti-dumping duty rates at between 1.7% and 101% for Chinese aluminum extrusion. Chinese enterprises are evaluating Canada's final decision and China Nonferrous Metals Industry has requested that the government ask WTO to probe into the case. ("China opposes Canada's finalization of anti-dumping on aluminum extrusion from China", *China Daily*, March 4, 2009, <http://english.peopledaily.com.cn>). In January, 2009, the EU made a final decision to impose anti-dumping duty on Chinese-made screws and bolts from 26.5% to 85%. China's government and industry express strong dissatisfaction over EU's decision and said it may take the issue to the WTO. They are studying and evaluating this decision before using the right to appeal to the WTO ("China slams EU anti-dumping move, threatens WTO action", *EUbusiness*, 28 January, 2009, <http://www.eubusiness.com>).

Consequently, in many cases, Chinese exports declined sharply following anti-dumping investigations or the imposition of anti-dumping duties.

Another important challenge facing Chinese firms is the daunting task of compiling and providing information required for anti-dumping investigations. Often, the accounting methods used by Chinese enterprises are not consistent with international standards, increasing the difficulties of providing reliable data requested by the investigators.

The challenges to responding to anti-dumping cases are particularly great since China accepted the non-market economies (NME) provision in its Protocol of Accession to WTO.

3. NME Status and its impact on anti-dumping cases

Article 15 of the *Protocol on the accession of The People's Republic of China* recognizes China as a *non-market economy* (NME)⁵¹ for a duration of 15 years from the date of its accession (expiry in 2016)⁵².

NME status significantly put China's anti-dumping cases at a disadvantage: *First*, it leaves Chinese exporters in extremely disadvantageous positions in anti-dumping charges. Since China is regarded as a non-market economy, Chinese enterprises' production costs are not used as the bases for price calculation, while a third country substitute method is adopted by the complaining party in anti-dumping cases.

Consequently, the choice of a substitute country for price calculation may be very subjective and unfair,⁵³ leading to high anti-dumping levies on Chinese

⁵¹ A WTO member may recognize a country as *NME*, either by following the classification of others or by its own unspecified rules. In general, however, there are often a set of criteria used to decide whether a country is a *ME* with respect to whether prices in the country is a reasonable measure for the value of the goods. The following are some of these criteria: (i) Currency of the foreign country is convertible into major currencies; (ii) Output and price are determined by supply and demand, *without significant state interference*. The costs of major inputs reflect substantially the market values; (iii) Salary is established through free negotiations between employees and employers; (iv) Joint ventures or foreign investment is permitted in the country; and (v) Firms have one clear set of basic accounting records which are independently audited in line with international accounting standards.

⁵² Article 15 of the *Protocol on the accession of The People's Republic of China* allows any WTO member, when deciding on applying anti-dumping duties on goods imported from China, to use substitute prices for setting dumping margin against Chinese products. The importing WTO member shall terminate the use of third country substitute price in anti-dumping investigations against Chinese products 15 years after the date of its accession. However, if the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacturing, production and sale of that product, the importing WTO member shall use Chinese prices or production costs for the industry under investigation in determining price comparability.

⁵³ For example, in a recent US investigation on brake rotors, the handling and freight cost was calculated using those in India, which is known to have a higher transport cost than most of its neighbors, and increasing the possibility of an affirmative ruling.

exporters.⁵⁴ Often, countries with much higher labor costs or more developed economies have been used as references for price calculation.⁵⁵ The US and EU are the most frequent users of NME status to calculate anti-dumping duties on China's exports.⁵⁶

Second, the fact that the *NME* status makes it difficult for Chinese enterprises to win the lawsuit, it actually encouraged WTO member states to initiate anti-dumping suits against China. Likewise, it reduced Chinese enterprises' enthusiasm to respond to such cases, thus forming a vicious circle.

Third, China's NME status may set a precedent for potential new members with similar conditions to be subjected to such discriminatory treatments. Vietnam is an example in this category.

Part III. Conclusion

As a large country with low production costs, expanding range of exports and a non-market economy status, it is not surprising that China's exporters have been faced with the largest number of anti-dumping lawsuits, especially since its accession to WTO in 2001.

While responding to the increasing number of anti-dumping cases against its exports, China continues to develop a comprehensive legal system to regulate anti-dumping issues in China's domestic market and anti-dumping issues in foreign markets affecting Chinese firms, especially since its WTO accession. There have been many successful cases due to the joint endeavor of government institutions, business associations and enterprises. However, challenges remain for China to enhance its capacity and effectiveness in defending the interests of its businesses.

First, further revisions and specifications of the regulations are required to be in full conformity with WTO's rules. Some of China's provisions on anti-dumping should be more specific to reflect the requirements of WTO's ADA, such as: (i) provisions on dumping margin or comparison between export price and normal value; (ii) provisions on provisional anti-dumping measures; and (iii) provisions on preliminary determination and application of provisional anti-dumping measures.

Second, the government should provide more support and assistance to Chinese firms for them to actively defend themselves in anti-dumping cases,

⁵⁴ Chinese enterprises are often subject to anti-dumping rates that are much higher than enterprises from other countries in similar cases. For example, in the color television case (2003) initiated by the US, both Chinese and Malaysian producers were subject to anti-dumping investigations but the anti-dumping rates on Chinese enterprises was 78.45% while that on Malaysian enterprises was only 0.75%.

⁵⁵ In the 1990s, Singapore was taken as a reference country for calculating production cost in the EU's anti-dumping charge against China's exports of color television sets. At that time, Singapore's labor cost was more than 20 times higher than that of China. As a result, Chinese products naturally were determined as dumping.

⁵⁶ The United States has classified China as a *nonmarket economy* (NME) since 1981 and employs a special NME methodology to calculate anti-dumping duties.

especially those initiated by the most frequent users of anti-dumping complains such as the US, EU, Japan, Canada, and India. Moreover, the government and the enterprises should also monitor closely its domestic market condition for possible dumping behavior and related industrial injury. If such cases occur, anti-dumping complaints should be filed and investigations initiated.

Third, more efforts should be devoted to achieve recognition of China as a full market economy. The government needs to continue its negotiations with trade partners to recognize China's full market economy status.

Since China's WTO accession in 2001, the government has worked hard to attain a complete market economy status from its trading partners. By February 2008, 77 countries have officially recognized China as a full market economy. However, major industrial economies, such as the US, EU, and Japan, as well as some developing countries, such as India, continue to regard China as a non-market economy. Incidentally, these economies also top the list of initiators of anti-dumping investigations against Chinese exports.

Last but not least, Chinese enterprises are essential in anti-dumping legal proceedings as their interests are affected directly and most seriously by such cases.

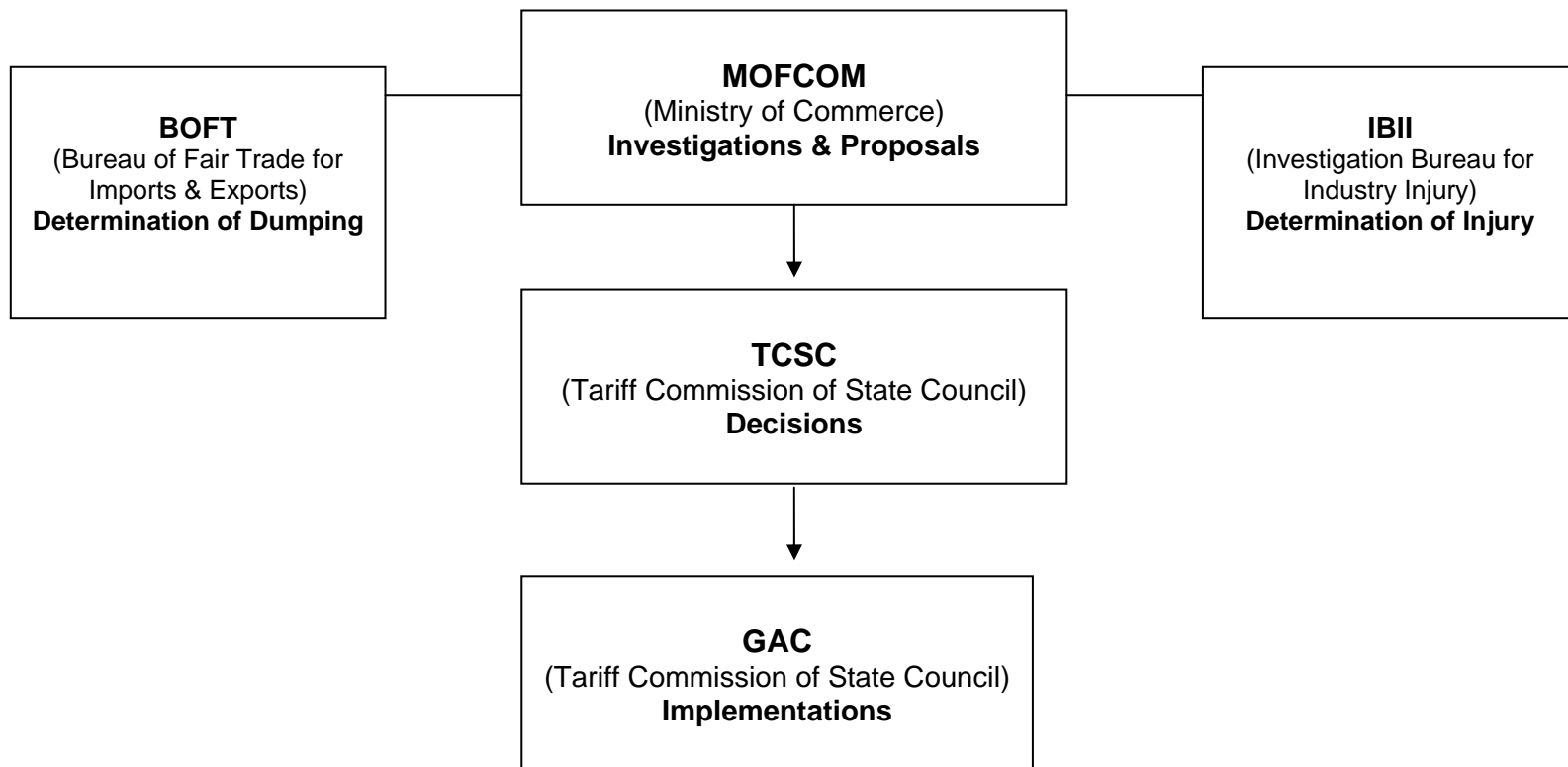
Firms should adopt international accounting and auditing standards in their businesses so that they are able to produce sufficient and reliable data for anti-dumping cases. Moreover, firms should have updated knowledge and good understanding of laws and regulations governing international trade.

In addition, cooperation among Chinese enterprises should be further encouraged, not only to effectively protect the domestic industry but also to respond actively to anti-dumping charges. Under certain circumstances, they should also ask for the government's help in bringing trade disputes to WTO's settlement body to protect their legal rights and business interests.

With such joint efforts as suggested, China could benefit further from its WTO membership while minimizing possible damages caused by anti-dumping challenges.

APPENDICES

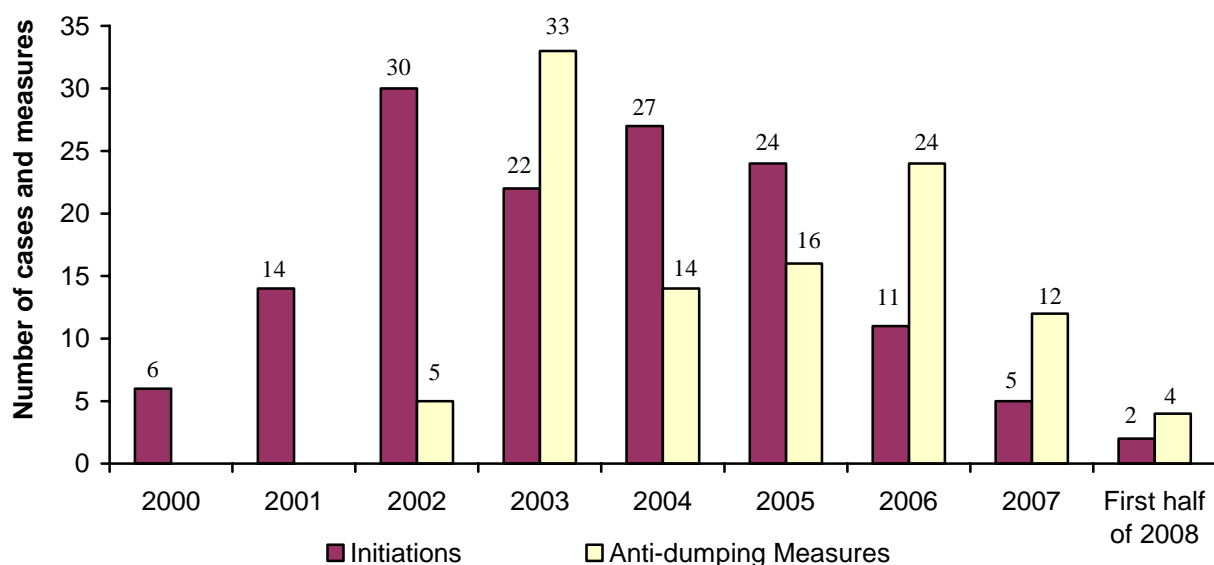
Figure 1 Organization Structure of China's Governing Authorities on Anti-dumping



Source: *The 2002 Regulations of the People's Republic of China on Anti-dumping.*

Figure 2 Anti-dumping Initiations and Measures by China

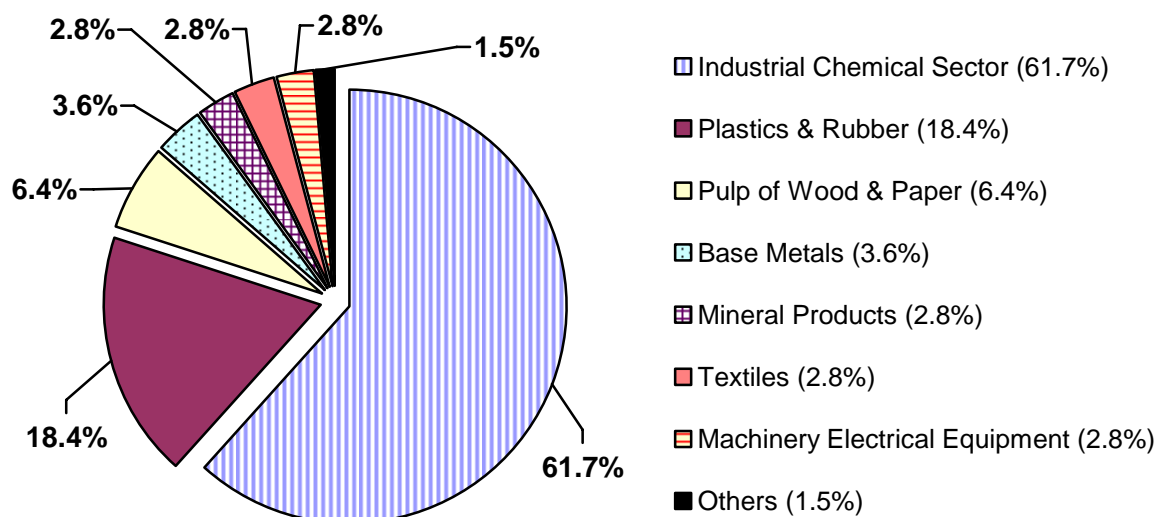
01/01/1995 – 30/06/2008



Source: WTO Secretariat

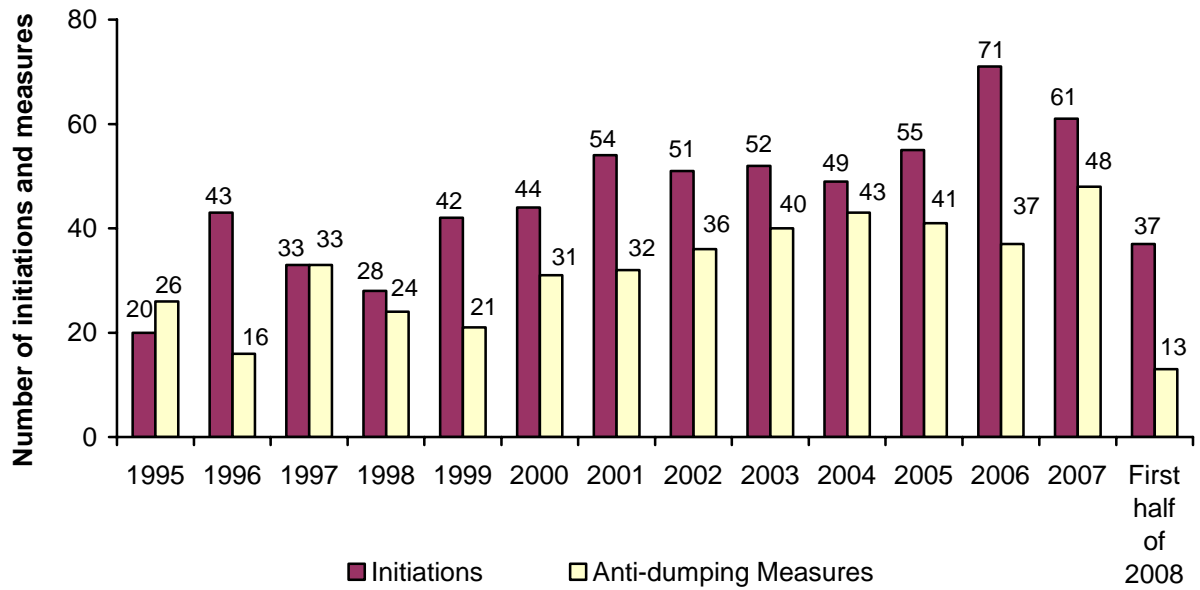
Figure 3 China's Anti-dumping Cases by Sectors

01/01/1995 – 30/06/2008



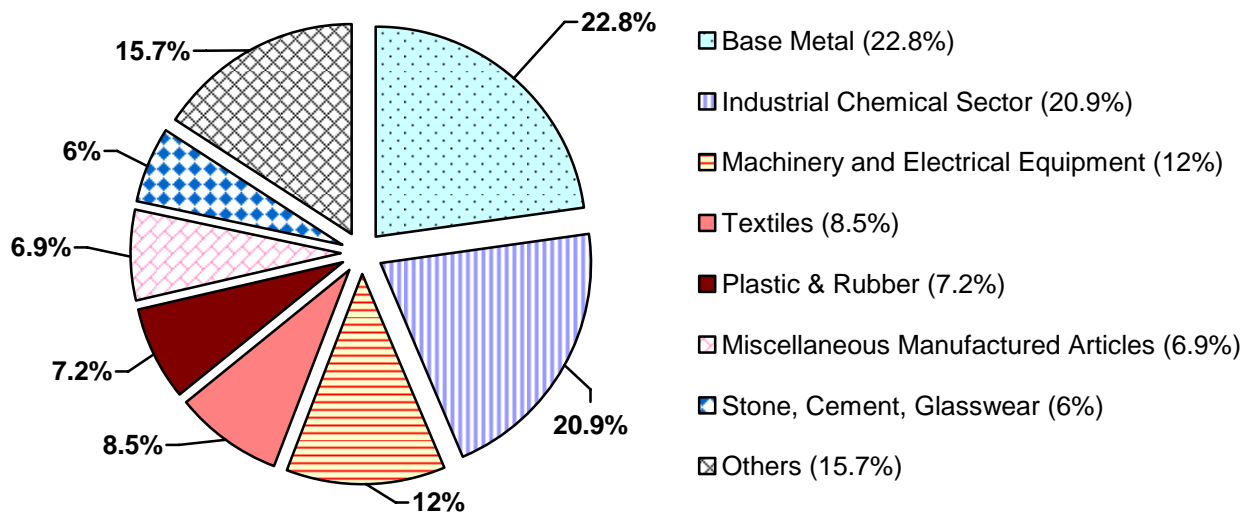
Source: WTO Secretariat

Figure 4 Anti-dumping Initiations and Measures against China
01/01/1995 – 30/06/2008



Source: WTO Secretariat

Figure 5 Anti-dumping Cases by Sectors against China
01/01/1995 – 30/06/2008



Source: WTO Secretariat

**Table 1 China's Anti-dumping Initiations and Measures
against Exporting Countries**

01/01/1995 – 30/06/2008

Exporting Countries		Initiations	Anti-dumping Measures
Total		141	108
1.	Japan	28	23
2.	Korea, Rep. of	26	20
3.	United States	20	16
4.	Chinese Taipei	14	11
5.	European Union	8	6
6.	Russia	8	6
7.	Singapore	6	5
8.	India	4	4
9.	Germany	4	3
10.	Malaysia	3	2
11.	Netherlands	3	2
12.	Indonesia	3	1
13.	United Kingdom	2	2
14.	France	2	1
Others		10	6

Source: WTO Secretariat

Table 2 Anti-dumping Initiations and Measures against China

01/01/1995 – 30/06/2008

Exporting Countries		Initiations	Anti-dumping Measures
Total		640	441
1.	India	108	83
2.	United States	84	55
3.	EU	82	56
4.	Argentina	56	39
5.	Turkey	50	43
6.	Brazil	31	20
7.	South Africa	30	16
8.	Australia	27	10
9.	Mexico	25	15
10.	Korea, Republic of	23	15
11.	Canada	20	13
12.	Colombia	19	11
13.	Peru	18	15
14.	Egypt	13	10
Others		54	40

Source: WTO Secretariat, October 2008