



# China in the World Trade Organization: Antidumping and Safeguards

Patrick Messerlin

## ► To cite this version:

Patrick Messerlin. China in the World Trade Organization: Antidumping and Safeguards. World Bank Economic Review, 2004, 18 (1), pp.105-130. 10.1093/wber/lhh032 . hal-01019907

**HAL Id: hal-01019907**

**<https://sciencespo.hal.science/hal-01019907>**

Submitted on 7 Jul 2014

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

## China in the World Trade Organization: Antidumping and Safeguards

*Patrick A. Messerlin*

---

China finds itself in a unique situation on antidumping and safeguard issues. It is by far the main target of antidumping measures, but (so far) one of the smallest users of such measures. China's World Trade Organization (WTO) accession protocol includes stringent antidumping and safeguard provisions that its trading partners may use against its exports. The article examines three related concerns: how quickly large developing economies can become intensive users of antidumping measures, an evolution raising concerns about China's recent antidumping enforcement; how China could minimize its exposure to foreign antidumping cases, a recipe for both improving trade outcomes and for China's taking a leading role in reforming WTO antidumping; and the opportunities that the Doha Round of trade negotiations offer to China for negotiating stricter disciplines both on WTO contingent protection and on the use by China's trading partners of the special provisions included in China's accession protocol.

---

On November 10, 2001, China was accepted as a full member in the World Trade Organization (WTO). A few weeks earlier, China's chief trade negotiator, Long Yongtu, had put "stricter rules on antidumping" second among China's priorities in the WTO. At that time the United States was still fighting to exclude antidumping from the topics to be discussed at the WTO Doha Ministerial Meeting and the European Union was adopting an ambiguous position.

In the early stages of the negotiations under the Doha Round development agenda, China finds itself in a unique situation on antidumping and safeguard issues. China's WTO accession protocol includes special provisions on antidumping and safeguards that its trading partners may use against Chinese exports. These include continuing use of "nonmarket economy" status in antidumping investigations for 15 years and use of a special "transitional product-specific safeguard"

Patrick A. Messerlin is professor of economics at Sciences Po and director at Groupe d'Economie Mondiale de Sciences Po; his e-mail address is [patrick.messerlin@sciences-po.fr](mailto:patrick.messerlin@sciences-po.fr). The author would like to thank Michael Finger, Will Martin, Edwin Vermulst, and two anonymous referees for useful comments on earlier drafts of this article.

THE WORLD BANK ECONOMIC REVIEW, VOL. 18, NO. 1,

© The International Bank for Reconstruction and Development / THE WORLD BANK 2004; all rights reserved.

DOI: 10.1093/wber/lhh032

18:105–130

provision for 12 years.<sup>1</sup> China is by far the main target of antidumping measures even though it is one of the smallest users of such measures. But the past decade has shown how quickly large developing economies can become intensive users of this instrument, and the evolution of China's antidumping enforcement in 2002 and early 2003 raises concerns in this respect.

Section I of this article describes the current situation with respect to antidumping. It is used massively by only 10 countries (4 industrial and 6 developing), and there is strong asymmetry, best illustrated by China, between countries enforcing antidumping and those targeted by antidumping measures. Section II examines how China could minimize its exposure to foreign antidumping cases—an option that would be a recipe for both improving trade outcomes and for China taking a leading role in reforming WTO antidumping. Section III analyzes China's antidumping regulations and its first cases, including their crucial relationship with the existing web of the U.S. and EU antidumping cases. Section IV examines the opportunities the Doha Round offers to China for negotiating stricter disciplines both on WTO contingent protection and on the use of the nonmarket economy and transitional product-specific safeguard provisions by China's trading partners. The conclusion summarizes the crucial choices to be made by China in antidumping and safeguard policy.

## I. THE CURRENT SITUATION

During the November 2001 WTO Doha Ministerial Meeting, antidumping was perceived as an issue pitting developing economies, anxious to discipline the use of this instrument, against the United States, which was (and still is) reluctant to change its own antidumping regulations. However, a much more complex picture emerges from a close examination of the antidumping measures in force at the end of each year during 1995–2002, which are notified to the WTO Secretariat by WTO members.<sup>2</sup>

### *Antidumping Users and Targeted Countries: A Key Asymmetry*

Examination of the stock of antidumping measures in force shows two main results (table 1). First, the top 10 antidumping users enforce 90 percent of the antidumping measures notified to the WTO, whereas they represent 70 percent of world gross

1. In spring 2002 the European Union and the United States declared that they would consider Russia a market economy for purposes of antidumping. However, the case for introduction of a transitional product-specific safeguard provision in Russia's accession protocol seems open. It would be interesting to make a parallel between the conditions imposed on Japan's accession to the General Agreement on Tariffs and Trade (GATT) and those imposed on China in its accession to the WTO.

2. Tables 1–3 treat measures taken against individual EU member states as one aggregated measure if adopted at the same time and for the same product (data for 2002 are still not complete). Table 4 follows the notifications of EU trading partners, which vary in their treatment of the European Union (as one entity or as a set of distinct member states).

TABLE 1. Top 10 Antidumping Users, 1995–2001 (number of measures in force)

Country or group	1995	1996	1997	1998	1999	2000	2001	2002	Average number by value of imports	Average applied tariff
<i>Industrial countries</i>										
Australia	78	46	40	49	39	44	59	38	0.77	5.8
Canada	79	78	78	65	72	71	85	83	0.38	4.8
European Union	140	138	138	139	159	175	175	183	0.19	4.6
United States	265	271	271	281	282	202	227	239	0.29	4.3
<i>Developing economies</i>										
Argentina	15	30	33	39	45	42	45	60	1.17	13.7
Brazil	21	28	23	28	38	43	49	54	0.51	12.5
India	13	15	24	44	58	94	115	181	1.28	39.6
Mexico	93	92	81	86	80	77	61	55	0.72	12.6
South Africa	12	29	42	56	87	96	94	80	1.81	15.0
Turkey	37	37	34	34	35	14	16	30	0.61	12.7
All other	50	59	84	102	122	117	97	—	0.04	—
China	—	—	0	0	4	8	11	17	0.03	15.8
All countries	803	823	848	923	1,017	975	1,023	—	0.21	—

Note: Measures in force include antidumping duties and undertakings in force as of December 31 of the year. —, Not available.

<sup>a</sup>Average number per \$1,000 of 1997 imports of the user country.

Source: Author's computations based on WTO Reports on Antidumping (G/ADP/N series at [www.wto.org](http://www.wto.org)), WTO trade data, and WTO (2001).

domestic product (GDP) and 50 percent of the world trade. Worldwide antidumping enforcement is thus highly concentrated in fewer than a dozen countries.

Second, the situation prevailing during the Uruguay Round—antidumping users were almost exclusively industrial countries—is no longer true. Six new intensive antidumping users are developing economies (Argentina, Brazil, India, Mexico, South Africa, and Turkey), and they have almost caught up with the four major traditional users. These new users implemented more than a third of the antidumping measures in force in 2002, up from less than a fourth in 1995. Meanwhile, the share of measures of the four traditional users declined from more than two-thirds to half the total number of antidumping measures in force during the period. In another worrisome sign of increasing use of antidumping measures, the remaining developing economies, though still small users individually, together doubled their global share of measures in force during the observation period.

Examination of the stock of antidumping measures in force by targeted country shows a marked asymmetry between antidumping users and targets (tables 1 and 2). The top 10 users are the targets of less than a third of all the measures in force, and the gap between using antidumping measures and being a

TABLE 2. Top 10 Antidumping Targets, 1995–2001 (number of measures in force)

Country or group	1995	1996	1997	1998	1999	2000	2001	2002	Average number by value of exports <sup>a</sup>
<i>Industrial countries</i>									
Australia	5	6	5	6	5	5	5	5	0.08
Canada	19	19	19	19	20	18	8	8	0.08
European Union	77	88	89	102	132	149	99	98	0.13
United States	60	66	66	68	66	62	57	67 <sup>b</sup>	0.09
<i>Developing economies</i>									
Argentina	9	8	7	7	7	7	9	8	0.30
Brazil	48	51	52	45	42	43	34	51	0.85
India	15	15	15	21	29	35	42	44	0.72
Mexico	11	15	17	17	19	21	17	17	0.15
South Africa	7	10	11	11	12	15	16	24	0.39
Turkey	9	9	6	8	10	13	12	18	0.37
All other	543	536	561	619	675	611	724	—	0.29
China	143	148	180	193	202	207	199	212	0.99
All countries	803	823	848	923	1,017	979	1,023	—	0.22

Note: Measures in force include antidumping duties and undertakings in force as of December 31 of this year. —, Not available.

<sup>a</sup>Average number per \$1,000 of 1997 exports of targeted country.

<sup>b</sup>Incomplete estimate.

Source: Author's computations based on WTO Reports on Antidumping (G/ADP/N series at [www.wto.org](http://www.wto.org)) and WTO trade data.

target widened in 2001 and 2002. In sum, antidumping is currently an instrument enforced by a few large countries against the smaller economies of the rest of the world. Thus there is little pressure coming from the rest of the world to urge intensive antidumping users to restrain their actions.

For the top 10 antidumping users, with the exception of Brazil, the domestic interests that are hurt by foreign antidumping measures are smaller than the interests that benefit from antidumping protection. This reflects the well-known economic proposition that views protection more as a conflict between domestic export interests and import-competing interests than as a conflict between countries. To capture this aspect, the number of foreign antidumping measures in force against the exports of a top user can be adjusted by the size of the country's exports (in thousands of U.S. dollars; see table 2). These trade-adjusted measures mirror the intensity of foreign pressures imposed on the export interests of a country, thus giving an indication of the incentives of these export interests to contribute to the opening of domestic markets. These numbers can then be compared with the trade-adjusted antidumping measures in force by the country in question (see table 1), which can be interpreted as an

indication of the strength of the incentives of import-competing interests to induce their government to use antidumping. The observed imbalance between export interests and import-competing antidumping beneficiaries in the top 10 antidumping users suggests that it is unlikely that domestic coalitions in these key users, which are also key WTO players, are strong enough to support antidumping reforms in the WTO.

This situation raises a question that needs to be carefully examined in the future. The data on antidumping measures in force suggest that antidumping measures by the six major developing economy antidumping users impose welfare costs on their own domestic economies that are higher than the costs imposed on industrial economies by their antidumping measures, for two reasons. First is the marked difference between the number of measures imposed by developing and industrial countries once adjusted for trade size. The average number of measures in force per \$1,000 of goods imported (in 1997) by an antidumping user is a better indicator of the potential harm done by antidumping to the domestic economy than the absolute number of measures. This indicator is much higher for developing economies than for industrial countries, ranging from 0.5 for Brazil to 1.8 for South Africa and from 0.2 for the European Union to 0.4 for Canada (with an exception, Australia, at 0.8). These differences would be even larger if the number of antidumping measures were adjusted for the number of tariff lines concerned because developing economies tend to cover many more tariff items with antidumping cases than do industrial countries. The second reason for higher welfare costs is that available information (though not systematic) suggests that antidumping duties enforced by developing countries are, on average, more severe than those imposed by industrial countries—and economic analysis shows that welfare costs increase more rapidly than tariffs do.

### *China's Special Situation*

China has been the main target of antidumping measures—18 percent of antidumping cases in 1995 and almost 20 percent in 2001 and 2002 (see table 2). Examination of the raw number of antidumping measures imposed on Chinese exports by the top 10 antidumping users and the number of measures adjusted for trade value between each trade partner and China (the average number of cases per \$100,000 of exports from China to these users) shows that China is targeted much more by developing economies than by industrial countries (table 3). China is almost exclusively targeted by the top antidumping users, all of them being relatively large economies.

All this raises a key question about China's role in future antidumping activities. Will China follow the same path as other large developing economies, rapidly increasing the number of antidumping cases against other countries? Or will China adopt a different approach, minimizing the use of antidumping

TABLE 3. Share of Antidumping Measures in Force against Imports from China, 1995–2002 (% of total antidumping measures in force by user country)

Country or group	1995	1996	1997	1998	1999	2000	2001	2002	Average share 1995–2001	Average number by value of imports from China <sup>a</sup>
<i>Industrial countries</i>										
Australia	9.0	4.3	10.0	8.2	7.7	4.5	5.1	7.9	7.0	0.7
Canada	7.6	7.7	10.3	10.8	8.3	8.5	10.6	10.8	9.1	1.8
European Union	20.7	21.7	23.2	23.0	20.8	19.4	19.4	15.8	21.2	1.0
United States	12.8	13.7	15.1	14.6	14.5	16.5	18.5	18.0	15.1	1.7
<i>Developing economies</i>										
Argentina	33.3	20.0	30.3	35.9	31.1	21.4	15.6	20.0	26.8	10.0
Brazil	14.3	14.3	21.7	28.6	28.9	25.6	22.4	20.4	22.3	4.7
India	38.5	46.7	33.3	27.3	32.8	22.3	25.2	27.1	32.3	10.7
Mexico	33.3	28.3	40.7	38.4	36.3	35.1	44.3	41.8	36.6	60.3
South Africa	8.3	27.6	28.6	23.2	19.5	18.8	19.1	22.5	20.7	12.0
Turkey	13.5	13.5	14.7	17.6	17.1	14.3	25.0	40.0	16.5	4.4
All other	34.0	28.8	26.2	22.5	18.9	12.8	15.5	—	22.7	—
Total number	143	148	180	193	202	179	199	—	174	—
Percent of all anti-dumping measures	17.8	18.0	21.2	20.9	19.9	18.3	19.5	—	19.4	—

—, Not available.

<sup>a</sup>Per \$1,000 of imports from China.

Source: Author's computations based on WTO Reports on Antidumping (G/ADP/N series at [www.wto.org](http://www.wto.org)) and WTO trade data. The total number of measures is based on Lindsey and Ikenson (2001).

measures and invest its negotiating strength in the WTO in working for stricter antidumping rules, as its chief trade negotiator announced? Clearly, China's decision will have a decisive impact on the evolution of world antidumping enforcement and on WTO trade disciplines more generally.

## II. MINIMIZING CHINA'S EXPOSURE TO FOREIGN ANTIDUMPING

The slow pace of WTO negotiations means that China would likely not be able to get reforms of WTO antidumping rules into play for at least two (more likely four) years. Meanwhile, it will be hard for Chinese authorities to resist pressures from import-competing firms in China that demand more intensive use of antidumping procedures. One possibility: Could China adopt measures minimizing as quickly as possible its exposure to foreign antidumping, alleviating the political costs of playing a reforming role in WTO antidumping rules?

As noted, trade problems are fundamentally domestic conflicts between firms—between export-oriented and import-competing industries. The country-based data discussed sheds no light on this deeper aspect of protection and can even be misleading. For instance, the strong asymmetry between antidumping users and targets shown in tables 1 and 2 could suggest that WTO members would be induced to bring more antidumping cases until the situation is so bad that WTO members collectively adopt stricter disciplines on antidumping. Arguments have already been presented suggesting that the top antidumping users are unlikely to follow this path. Taking firms' behavior into account suggests a darker scenario. Petitioning firms—the driving forces in antidumping enforcement—may lodge antidumping complaints against several key countries to segment the world market in their products (evidence supporting this hypothesis is shown later). In that case the growing use of antidumping measures becomes not an incentive to discipline antidumping use but an incentive for firms to use the measures ever more intensively. Examining these deeper aspects of antidumping protection requires looking at the distribution of antidumping measures in force by sector or product rather than by country.

#### *A Few "Antidumping-Intensive" Sectors*

Antidumping measures are concentrated in a handful of Harmonized Tariff System sections (table 4). Metals, chemicals, machinery and electrical equipment, textiles and clothing, and plastics account for 75 percent of antidumping measures, even though these sectors account for less than half of world trade. These sectors are key sources of exports for dynamic developing economies in the first stages of industrial development, and they tend to have a high proportion of relatively standard products and oligopolistic market structures. Although the metals and chemicals sectors clearly have these features, the other sectors require a closer look, with greater disaggregation. There are few antidumping actions in the machinery and clothing subsectors that are characterized by many firms producing highly differentiated products. Most antidumping actions are in the electrical equipment and textiles subsectors that are characterized by relatively standard products produced by oligopolistic firms.

This pattern strongly suggests that firms use antidumping as a cheap and powerful instrument for segmenting the markets that ongoing or scheduled trade liberalization is making more competitive. It also suggests that antidumping cases are likely to spread to such sectors as clothing that will increasingly experience product differentiation and imperfect competition (based on trademarks, goodwill, distribution channels, and the like). In sum, the observed sectoral pattern of antidumping reflects the increasing "privatization" of trade policy by firms that have enough initial oligopolistic power to use the "procollusion" bias is embedded in antidumping regulations—a key lesson that should be kept in mind when implementing these regulations, in China as elsewhere.



TABLE 4. Antidumping Measures in Force in the World by Section of Harmonized System, 1995–2000

	Number antidumping measures						China					
	1995	1996	1997	1998	1999	2000	Section share (%)	Growth index 1998-2000/ 1995-97	Export pattern	Import pattern	Average applied tariff 2001	Tariff lines with tariffs <10% as % of total tariff lines
Harmonized System section												
15 Metals, metal articles	276	290	305	316	372	401	33.5	117.0	6.7	9.2	9.6	68.6
6 Chemical, allied industry products	201	203	204	210	217	228	21.6	104.1	4.7	8.0	9.4	78.2
16 Machinery, electrical equip.	81	85	94	95	100	81	9.2	116.1	29.2	37.8	14.4	30.0
11 Textiles, clothing	48	60	61	54	70	79	6.4	114.2	19.8	7.4	21.0	12.6
7 Plasters, rubbers	53	54	55	53	66	74	6.1	108.4	3.2	7.3	15.9	18.0
17 Vehicles, transport equipment	42	40	40	42	43	30	4.0	101.6	3.7	2.8	23.8	43.4
13 Articles of stone, plaster, cement	34	37	37	42	44	40	4.0	115.5	1.6	0.8	17.7	12.1
10 Woodpulp, paper, paperboard	18	17	21	44	44	39	3.1	207.6	0.7	3.1	13.4	26.1
4 Prepared foodstuffs	35	31	29	31	28	27	3.1	88.9	2.1	0.8	28.4	15.7

2 Vegetable products	15	19	19	24	23	22	2.1	129.4	2.1	1.9	21.3	29.2
12 Footwear, headwear	21	16	9	17	13	16	1.6	70.3	4.8	0.2	23.2	0.0
18 Optical, cinema instruments	14	11	10	9	20	23	1.5	104.0	3.4	3.6	14.3	30.1
20 Miscellaneous manufactured articles	14	15	14	13	12	14	1.4	89.7	7.1	0.4	20.2	1.2
9 Wood, articles of wood	6	6	6	5	11	11	0.8	122.2	1.1	1.7	9.8	61.9
1 Live animals, animal products	4	3	4	6	7	7	0.5	161.9	1.7	1.0	18.9	21.5
3 Animal, vegetable fats, oils	9	9	9	2	1	1	0.5	44.4	0.1	0.5	40.6	5.9
5 Mineral products	0	0	0	9	9	9	0.5	—	3.7	10.9	4.1	96.3
19 Arms, ammunitions	3	3	3	3	0	0	0.2	66.7	0.0	0.0	13.0	0.0
8 Raw hides, skins, leather products	0	0	1	1	1	1	0.1	—	3.0	1.4	16.4	25.0
14 Gems, jewelry	0	0	0	0	0	0	0.0	—	1.0	0.5	12.6	67.2
21 Art objects	0	0	0	0	0	0	0.0	—	0.2	0.8	10.9	25.0
Total	874	899	921	976	1,081	1,103	100.0	112.0	100.0	100.0	15.8	38.7

Source: Lindsey and Ikenson (2001).

*China's Sensitivity to "Antidumping-Intensive" Sectors*

Does China import a high proportion of products from antidumping-intensive Harmonized Tariff System sections? If so, Chinese authorities are likely to be under strong pressure to impose antidumping measures on such goods, thereby participating in the worldwide segmentation game that is the ultimate goal of antidumping enforcement. The five most antidumping-intensive Harmonized Tariff System sections in table 4 make up almost 70 percent of Chinese imports, opening the possibility that Chinese firms or foreign firms producing in China could present antidumping complaints in order to segment world markets.

China's sensitivity to antidumping-intensive sectors can also be assessed from an export perspective. China's machinery and electrical equipment and textiles and clothing exports are particularly sensitive to worldwide antidumping activity (see table 4). China would appear to have been a target of foreign antidumping measures much more because of intrinsic economic features of its exported products (differentiation level and oligopolistic markets) than because China was not yet a WTO member.

*Chinese Policies to Minimize Exposure to Foreign Antidumping*

This conclusion implies that China should not expect to face fewer antidumping measures in the coming years because of its WTO accession. Rather, China should expect to continue to face a large number of antidumping cases. Of course, WTO membership gives China access to the WTO dispute settlement mechanism, which could provide some relief to Chinese exporters harassed by foreign antidumping. But this relief will probably be only marginal and short-lived. For instance, the 2001 WTO dispute settlement ruling banning use of the averaging method is already being circumvented by alternative procedures (hastily developed by creative petitioners).

A more promising route for minimizing China's exposure to foreign antidumping measures may be China's own policies, beginning with its trade policy. If China's tariffs in antidumping-intensive sectors remain high at the end of its accession period, it may not adopt as many or as severe antidumping measures on imports from the rest of the world in these products (though the analysis in section I shows that the top developing economy antidumping users have not hesitated to add high antidumping measures to still unliberalized trade regimes). But such a tariff policy, far from ensuring fewer antidumping cases against Chinese exports, will facilitate new antidumping measures against exports in antidumping-intensive sectors. High Chinese tariffs will permit high prices in domestic markets in China, making dumping claims against Chinese exporters easier to prove all the more because the exports in question consist mostly of basic products (for which Chinese exporters are likely to align their prices to those prevailing in foreign markets because there are no or small premia for differentiation).

One way to minimize exposure to foreign antidumping would thus be to adopt uniform and moderate tariffs to reduce distortions in the domestic

production pattern (foreign antidumping investigators interpret such distortions as signs of dumping). Although average tariffs for Harmonized Tariff System sections give very imperfect information on the tariff structure (peak tariffs within each section are eroded by low tariffs), they suggest that tariff peaks in China are concentrated in sectors that are not antidumping-intensive activities, with the exception of textiles and clothing (see table 4).

A uniform tariff policy may help China shift the composition of its exports away from antidumping-intensive sectors for another reason. Economies such as Hong Kong (China), Japan, the Republic of Korea, Singapore, and Taiwan (China) reduced their exposure to foreign antidumping measures by upgrading their exported products. One could even argue that foreign antidumping measures accelerated the economic development of these economies by inducing them to shift production more quickly to highly differentiated products in which they anticipated having comparative advantage.

#### *EU and U.S. Antidumping "Echoing" against China's Exports*

Capturing antidumping protection as a market segmentation strategy by a few large firms requires information at the product level, rather than at the aggregated section level of table 4. Table 5 provides such detailed information for EU and U.S. antidumping actions against China. More precisely, it lists EU and U.S. "echoing" cases against China, antidumping cases that targeted the same Chinese exports. The European Union and the United States are the top antidumping users in the absolute number of measures in force, and they are the two largest markets for Chinese exports (15 and 21 percent, respectively).

Echoing cases (58 altogether) constitute 75 percent of antidumping cases initiated against Chinese exports by the United States and 68 percent by the European Union. These cases generally echoed each other within a year or less. All but three of these cases (cycles, hammers, and pocket lighters) resulted in antidumping measures of some kind. Such a large proportion of echoing cases and the similarity of their outcomes are signs that antidumping is a protectionist instrument that petitioners are using in a strategic way to segment the two largest world markets.

Thus, assessment of the welfare costs of antidumping measures should take into account not only the severity of the measures (the high level of antidumping duties or the restrictiveness of quantitative restrictions) but also the dramatic reduction in competition in importing markets. These indirect welfare costs generated by antidumping-caused collusion compound the direct welfare costs generated by the antidumping duties.

Examination of echoing cases also shows that U.S. antidumping duties are on average higher than EU duties: 104 percent compared with 38 percent. However, comparing the measures closely is difficult because of differences in regulations and the lack of sufficiently detailed information. For instance, some EU cases are terminated by the withdrawal of complaints by petitioners. The effective impact is hard to ascertain. It may be limited to the chilling effect

TABLE 5. EU and U.S. Echoing Antidumping Cases against Chinese Products, 1980–99

Year	Initiating country or group	Product	Dumping margin, EU (%)	Positive decisions		Negative decisions		Antidumping duties (%)	
				EU	U.S.	EU	U.S.	EU	U.S.
1992	EU	Antimony trioxide	43.2			noi			
1991	U.S.	Antimony trioxide					N		
1988	EU	Barium chloride	50.1	D				25.8	
1982	EU	Barium chloride	75.0	Ds					
1983	U.S.	Barium chloride					N		
1983	U.S.	Barium chloride			A				14.5
1999	EU	Brushes, hair							
1992	U.S.	Brushes, hair				ep			
1986	EU	Brushes, paint					T		
1992	EU	Brushes, paint	100.0	Und		noi			
1985	U.S.	Brushes, paint			A				127.1
1999	U.S.	Brushes, paint							
1994	EU	Coumarin	50.0	Ds					
1994	U.S.	Coumarin			A				160.8
1991	EU	Cycles	30.6	D				30.6	
1995	U.S.	Cycles					N		
1984	EU	Cycles, chains	45.0	Und				45.0	
1999	EU	Cycles, forks		withdraw					
1999	EU	Cycles, frames		withdraw					
1996	EU	Cycles, parts	30.6	D				30.6	
1999	EU	Cycles, wheels		withdraw					
1992	EU	Ferrosilicon	49.7	D				49.7	
1992	U.S.	Ferrosilicon			A				137.7
1995	EU	Furfuryl alcohol		withdraw					
1994	U.S.	Furfuryl alcohol			A				45.3
1999	EU	Glycine				ep			
1994	U.S.	Glycine			A				155.9
1985	EU	Handtools: hammers				no			
1990	U.S.	Handtools: hammers			A				45.4



on Chinese exporters, forced to export less, or at higher prices, or both, to limit the risk of facing new antidumping complaints. Or if withdrawals reflect merely a lack of cooperation by the domestic industry or a failure to get the minimum number of EU member states to support a proposal to impose measures, they may reflect the fact that EU petitioners have been able to impose quantity or price restraints on Chinese exports on a “private” basis—with the corresponding full-fledged impact that is to be expected from these hidden restraints.

### III. CHINA’S ANTIDUMPING ENFORCEMENT: AT THE CROSSROADS

The following assessment of China’s antidumping regulations and enforcement is provisional. It is constrained by the limited number of ongoing cases (a substantial number of cases are often needed for a robust assessment).

#### *China’s Antidumping Regulations*

China adopted its first antidumping regulations on March 25, 1997 and the guidelines necessary for implementing the law later the same year. Following China’s accession to the WTO, these old regulations were replaced by new regulations in January 2002, along with another set of guidelines (see G/ADP/N/1/CHN1 and G/ADP/N/1/CHN2 at [www.wto.org](http://www.wto.org) and Wang 2003).

China’s regulations follow the usual structure of antidumping legislation: proof of the existence and estimate of the magnitude of dumping and of material injury and proof of the causal relation between dumping and injury. However, they have four striking features. First, many details are left to the detailed guidelines or to case-by-case practice. Although this is common for countries that are adopting their first antidumping regulations, this lack of detail generates legal uncertainty.

Second, China’s regulations include all the (well-known) protectionist biases of the WTO antidumping provisions. Among these are use of the concept of a major proportion of the industry as the threshold level for accepting complaints (a condition that domestic monopolies, oligopolies, or cartels fit much more easily than competitive industries); possibility of ex officio initiation of cases by the Chinese authorities; screening of complaints by the antidumping office, exposing the office to strong and hidden pressures by vested interests; possibility of withdrawal by petitioners, facilitating private collusion between petitioners and defendants; cumulation of imports, facilitating demonstration of injury and widening the geographical scope of protective measures; recourse to constructed normal values when comparable prices are unavailable in the exporting country, enabling manipulation of costs and reasonable profit; a broad definition of the confidentiality of information, limiting the rights of defendants; the possibility of imposing undertakings as antidumping measures and the requirement that antidumping duties be borne by importers (the so-called no absorption provision); the possibility of imposing retroactive antidumping duties where there is a “history” of dumping (that is, recurrent antidumping complaints); and the

possibility of taking “appropriate” measures should foreign firms try to circumvent the antidumping measures.

Third, prior to the 2003 government reform, coordination of the many administrative agencies involved in antidumping investigations was extremely complex. The Fair Trade Administration for Imports and Exports of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) received complaints, decided which to accept, and was involved in the entire process, including investigation. The State Economic and Trade Commission joined MOFTEC in determining the existence of injury at the preliminary stage and conducting the final investigations. The Customs General Administration joined MOFTEC for some parts of the investigations. For the imposition of antidumping duties, MOFTEC presented its proposals to the Tariff Commission under the State Council, which made the decisions. The merger of the State Economic and Trade Commission and MOFTEC in early 2003 brought these two functions into one ministry.

Fourth, the old regulations included the following Article 40: “In the event that any country or region applies discriminatory antidumping or countervailing measures against the exports from the People’s Republic of China, the People’s Republic of China may, as the case may be, take counter-measures against the country or region in question.” It is not known whether this provision led to any cases, but it clearly opened the possibility for China to use antidumping rules as a retaliatory instrument. Article 56 of the new regulations is only slightly more diplomatic: “Where a country (region) discriminatorily imposes antidumping measures on the exports from the People’s Republic of China, China may, on the basis of the actual situations, take corresponding measures against that country (region).”

#### *Antidumping Enforcement by China*

According to information provided by MOFTEC for antidumping cases under the old regulations and on China’s latest notification (G/ADP/N/105/CHN) to the WTO for the cases under the new regulations, 69 cases were initiated between 1997 and May 2003 (table 6). After a slow start in 1997–98, the number of cases increased rapidly, reaching 24 in 2002 and 11 for the first five months of 2003. It is unclear yet whether this simply reflects cases that were in the pipeline for a long time or whether China has begun to follow in the footsteps of the six top developing economy antidumping users (see section I) and will soon become another antidumping-intensive user, endangering its so far successful liberalization.

Although it is too early to know whether China’s initial antidumping measures are representative of future antidumping enforcement, a few observations are in order. First, antidumping measures have been taken in almost all cases, a very high percentage compared with what is generally observed (60–70 percent in industrial countries). Second, the level of the measures adopted by the Chinese authorities is relatively high, although it seems that the most recent measures are less severe than the ones taken under the old regulations. The main countries targeted are industrial and advanced developing economies—not the



TABLE 6. China's Antidumping Measures in Force and Investigations, as of June 30, 2003

Initiation year	Country	Product	Provisional antidumping duties (%)		Definitive antidumping duties (%)	
			Minimum	Maximum	Minimum	Maximum
<i>Cases initiated under old regulations</i>						
1997	Canada	Newsprint	17.1	78.9	9.0	78.0
1997	Korea, Rep. of	Newsprint	17.1	78.9	9.0	78.0
1997	United States	Newsprint	17.1	78.9	9.0	78.0
1999	Russia	Steel, cold-rolled silicon	11.0	73.0	0.6	62.0
1999	Korea, Rep. of	Polyester film	21.0	72.0	13.0	46.0
1999	Japan	Steel, cold-rolled stainless	4.0	75.0	17.0	58.0
1999	Korea, Rep. of	Steel, cold-rolled stainless	4.0	75.0	17.0	58.0
1999	Germany (EU)	Acrylates	24.0	74.0	0.0	0.0
1999	Japan	Acrylates	24.0	74.0	31.0	69.0
1999	United States	Acrylates	24.0	74.0	31.0	69.0
2000	U.K. (EU)	Methylene chloride	7.0	39.0	6.0	39.0
2000	France (EU)	Methylene chloride	28.0	75.0	28.0	75.0
2000	Germany (EU)	Methylene chloride	67.0	67.0	66.0	66.0
2000	Netherlands (EU)	Methylene chloride	10.0	58.0	9.0	57.0
2000	Korea, Rep. of	Methylene chloride	7.0	28.0	4.0	28.0
2000	United States	Methylene chloride	49.0	58.0	49.0	58.0
2001	Japan	Polystyrene	a	a	a	a
2001	Korea, Rep. of	Polystyrene	a	a	a	a
2001	Thailand	Polystyrene	a	a	a	a
2001	Indonesia	Lysine	a	a	a	a
2001	Korea, Rep. of	Lysine	a	a	a	a
2001	United States	Lysine	a	a	a	a
2001	Korea, Rep. of	Polyester, chips	a	a	a	a
<i>Cases initiated under the new regulations</i>						
2001	Korea, Rep. of	Polyester, staple fiber	4.0	48.0	2.0	48.0
2001	Korea, Rep. of	Pet chips	6.0	52.0	5.0	52.0
2001	Indonesia	Acrylates	11.0	24.0	11.0	24.0

2001	Korea, Rep. of	Acrylates	11.0	20.0	2.0	20.0
2001	Malaysia	Acrylates	13.0	38.0	4.0	38.0
2001	Singapore	Acrylates	46.0	49.0	30.0	49.0
2001	Belgium (EU)	Caprolactam	6.0	16.0	6.0	16.0
2001	Germany (EU)	Caprolactam	28.0	38.0	28.0	38.0
2001	Netherlands (EU)	Caprolactam	9.0	18.0	6.0	18.0
2001	Japan	Caprolactam	5.0	21.0	5.0	18.0
2001	Russia	Caprolactam	6.0	29.0	7.0	16.0
2002	Korea, Rep. of	Polyester, film	—	—	0.0	0.0
2002	India	Anhydride, purified	33.0	33.0	b	b
2002	Japan	Anhydride, purified	66.0	66.0	b	b
2002	Korea, Rep. of	Anhydride, purified	14.0	33.0	b	b
2002	Japan	Styrene butadiene	0.0	33.0	b	b
2002	Korea, Rep. of	Styrene butadiene	10.0	27.0	b	b
2002	Russia	Styrene butadiene	16.0	46.0	b	b
2002	Kazakhstan	Steel, cold-rolled products	21.0	48.0	b	b
2002	Korea, Rep. of	Steel, cold-rolled products	9.0	40.0	b	b
2002	Russia	Steel, cold-rolled products	9.0	29.0	b	b
2002	Taiwan, China	Steel, cold-rolled products	8.0	55.0	b	b
2002	Ukraine	Steel, cold-rolled products	12.0	22.0	b	b
2002	Japan	Polyvinyl chloride	32.0	115.0	b	b
2002	Korea, Rep. of	Polyvinyl chloride	10.0	76.0	b	b
2002	Russia	Polyvinyl chloride	34.0	82.0	b	b
2002	Taiwan, China	Polyvinyl chloride	10.0	27.0	b	b
2002	United States	Polyvinyl chloride	25.0	83.0	b	b
2002	Japan	Toluene	19.0	49.0	b	b
2002	Korea, Rep. of	Toluene	6.0	22.0	b	b
2002	United States	Toluene	23.0	28.0	b	b
2002	Japan	Phenol	7.0	144.0	b	b
2002	Korea, Rep. of	Phenol	10.0	10.0	b	b
2002	Taiwan, China	Phenol	7.0	20.0	b	b
2002	United States	Phenol	29.0	29.0	b	b
2003	Germany (EU)	Ethanolamine	b	b	b	b
2003	Iran	Ethanolamine	b	b	b	b

(Continued)

TABLE 6. Continued

Initiation year	Country	Product	Provisional antidumping duties (%)		Definitive antidumping duties (%)	
			Minimum	Maximum	Minimum	Maximum
2003	Japan	Ethanolamine	b	b	b	b
2003	Malaysia	Ethanolamine	b	b	b	b
2003	Mexico	Ethanolamine	b	b	b	b
2003	Taiwan, China	Ethanolamine	b	b	b	b
2003	United States	Ethanolamine	b	b	b	b
2003	European Union	Chloroform	b	b	b	b
2003	India	Chloroform	b	b	b	b
2003	Korea, Rep. of	Chloroform	b	b	b	b
2003	United States	Chloroform	b	b	b	b
69	All cases	Average antidumping duty	17.2	43.4	9.8	23.7

—, Not available.

<sup>a</sup>Status unknown.<sup>b</sup>Ongoing investigations.Source: China Ministry of Foreign Trade and Economic Cooperation, WTO Semi-annual report (G/ADP/N/105/CHN, August 22, 2003, [www.wto.org](http://www.wto.org)).

same pattern observed for the other developing economy antidumping users. Third, the pattern for cases initiated since 2001 is closer to that observed for the other intensive antidumping users. This is most clearly illustrated by the steel cases (echoing the EU and U.S. safeguards) and the ethanolamine cases (observed in several other antidumping users).

The increasingly similar product pattern suggests that China's antidumping enforcement is beginning to join the ongoing process of segmenting world markets through antidumping activity. It also raises issues of the progressive capture of China's trade policy by firms, similar to what is observed in the 10 major antidumping users. In this context it would be important to know whether petitioners are Chinese firms (private or state-owned) or firms with strong links with foreign firms (joint ventures, technical relations, vertical integration) that are experienced in the "art" of antidumping.

#### IV. CHINA'S OPTIONS IN THE WTO NEGOTIATIONS ON CONTINGENT PROTECTION

In its antidumping enforcement, China needs to take into account an issue that the six top developing economy antidumping users have not had to deal with: China's WTO accession protocol incorporates specific provisions on antidumping and safeguards (for a legal analysis, see Vermulst 2000). Seemingly a handicap, these special provisions can be turned into an instrument of positive change. The special provision on antidumping could induce China to negotiate in the Doha Round a more economically sound interpretation of the specific provisions on antidumping. That could create strong incentives in China for restraining its own use of antidumping and for fighting for stricter WTO rules on antidumping. It could give China's trading partners strong incentives to ease their transition period of accession. The special provision on safeguards is more difficult to deal with. This provision is so much at odds with the spirit and rules of the WTO that its use will raise a large systemic risk for the entire WTO.

##### *Linking China's Effective Liberalization to Better Treatment of Its Exports by Antidumping Users*

China's protocol of accession allows its trading partners to use "nonmarket economy" status in their investigations against allegedly dumped Chinese exports for 15 years (until 2017). That status allows antidumping investigators to use proxies for estimating the home market prices or costs of Chinese exports in determining whether dumping took place. Such proxies make the existence of dumping much easier to prove than the rules for market economies, and they inflate the magnitude of the estimated antidumping margins compared to those (already high) imposed on market economies.

A summary of the information available for 208 EU and U.S. antidumping cases initiated between 1995 and 1998 gives a sense of the intrinsic biases of the nonmarket economy procedure (table 7; Lindsey 1999; Messerlin 2000b). The

TABLE 7. Do Antidumping Investigations Really Look at Dumping?

Basis of estimated normal values of exports	U.S. cases (1995–98)		EU cases (1995–97)	
	Number cases examined	Average dumping margins (%)	Number cases examined	Average dumping margins (%)
Price comparisons only	5	3.2	8	22.7
Price comparisons and constructed values	33	14.2	33	24.4
Constructed values	20	25.1	12	25.1
Nonmarket economies	47	40.0	12	45.6
Best available facts	36	95.6	2	74.5
All cases examined	141	44.7	67	29.6

*Source:* Lindsey (1999) for U.S. cases; Messerlin (2000a) for EU cases.

further from pure price comparisons the methodology used for estimating dumping margins, the higher are the estimated margins: from 3 percent (United States) and 22 percent (European Union) under pure price comparisons to 25 percent under various constructed-value methods. Use of nonmarket economy status is clearly linked to the highest dumping margins found (40 percent in the United States and 46 percent in the European Union).<sup>3</sup>

It is almost impossible to eliminate a provision included in a country's protocol of accession. But during the Doha Round it may be possible to negotiate an economically sound interpretation of the use of the nonmarket economy status by WTO members. China and its trading partners have a common interest in establishing the strongest possible link between China's effective liberalization and elimination of the use of nonmarket economy status by foreign antidumping authorities. What is at issue is not the elimination of the nonmarket economy provision itself (impossible to obtain) but its effective use in the future.<sup>4</sup>

The argument aims at mobilizing export interests in both China and the rest of the world during China's period of accession to the WTO. Chinese exporters,

3. For instance, under nonmarket economy status, it is possible to use industrial countries (such as the United States or Sweden) as reference countries for China. That introduces systemic errors about the product and the production process. For instance, it makes no sense to consider, without deep economic analysis, the calcium metal produced in small quantities by a U.S. monopolist for its own use as similar to the calcium metal produced by China and Russia in large quantities for sales on international markets. The U.S. product is likely to have characteristics in terms of quality and availability that make it very different from the Russian or Chinese calcium metal, and it is sold and bought in a market structure that is very different from the markets of its Russian and Chinese counterparts. In the same vein, trying to estimate production costs by combining input prices in industrial countries and input quantities used in a developing economy makes little economic sense.

4. EU and U.S. antidumping authorities have already adopted more liberal interpretations in some cases than the protocol allows. In the European Union, for example, the authorities have accepted individual treatment or market economy status with respect to some Chinese exports.

knowing that they will face less unfair treatment (no use of the nonmarket economy status) in foreign antidumping cases if China is effectively opening its markets in accordance with its accession protocol, will be motivated to monitor China's liberalization more closely and support it more strongly, including through stricter use of antidumping regulations. Foreign exporters, for their part, will support stricter use of antidumping regulations by their own authorities, especially with respect to use of nonmarket economy status, if they believe that they will get more effective and stable access to Chinese markets.

This could be achieved by implementing the following simple rule. Foreign antidumping investigators will automatically grant market economy status to Chinese exporters of any product that meets the three following conditions.

- The Chinese most-favored-nation tariff on the product involved is moderate (say, 10 percent or lower). This threshold tariff will be one of the core components of a more economically sound interpretation of China's nonmarket economy status to be agreed on during the Doha Round. It could be stable over time, or it could increase as time passes—showing an increasing confidence in the ongoing liberalization process among China's trading partners.
- No "core gray-area measures" are imposed on the product by the Chinese authorities. The list of core gray-area measures to be introduced in the interpretation agreement should also be negotiated during the Doha Round. The list should be short (say, specific tariffs, quantitative restrictions, and minimum prices), and only the listed measures should be considered part of the conditions.
- State-owned monopolies shall not engage in distributing the competing foreign and domestic varieties of the product in question. Chinese state-owned monopoly producers are acceptable because as economic analysis shows, a protection granted exclusively by a moderate tariff eliminates the risk of monopoly power of the domestic sole producer.

In 2001, 38 percent of China's tariff lines had *ad valorem* tariffs lower than 10 percent (see table 4). (The fact that the Chinese tariff schedule has only roughly 7,000 tariff lines suggests that it does not offer many opportunities to create narrow niches of protection for carefully defined tariff items.) Applying the three conditions would thus substantially reinforce the rights of Chinese exporters in the antidumping cases lodged in the two Harmonized Tariff System sections with the largest number of antidumping cases. (But China should take the initiative to improve the situation in the other antidumping-intensive Harmonized Tariff System sections, in particular in textiles and clothing.)

These three conditions make it unlikely that Chinese exporters would dump except for economically sound reasons (differences in demand pattern, need to meet foreign demand, or to make Chinese products known in foreign markets). Thus, China's WTO trading partners should grant China at least the unconditional

benefit of market economy status in any antidumping investigations faced by Chinese exports meeting these conditions.<sup>5</sup>

Negotiations on improved implementation of nonmarket economy status for China should be as swift as possible. These conditions can easily be defined on a tariff line (Harmonized Tariff System) basis. For instance, China could notify the WTO on a regular basis of the tariff lines for which these conditions are met (this can easily be included in the general monitoring procedures for China's accession). Cross-notifications by China's trading partners could be added to the process, under the condition that they not slow the process. Finally, weaker variants of the suggestions could be considered, if necessary. For instance, the nonmarket economy status could be eliminated for notified goods only after, say, one year, instead of immediately. However, it is worth noting that any weakening of the suggested approach may have huge costs in terms of decreasing incentives for export interests in both China and the rest of the world to support the transition process of China's accession to the WTO.

### *Stricter Rules on Antidumping*

The desire of China's chief trade negotiator, Long Yongtu, to introduce stricter rules on antidumping is a natural extension of the negotiations on use of the nonmarket economy status proposed here because of the focus on the antidumping rules faced by allegedly dumped exports from market economies. China's efforts to introduce stricter rules on WTO antidumping could follow either of two very different approaches.

A cautious approach would be to table a series of proposals or to support those already tabled in Geneva for improving WTO-based antidumping regulations at the margin. For instance, the following suggestions, derived from proposals tabled in 1999 by the Swedish Kommerzkollegium (1999), could receive China's support:

- Dumping should be the principal cause of material injury.
- Double protection (for instance, antidumping measures imposed on top of quantitative restrictions) should not be allowed.
- Measures should last five years at most (implying stronger limits to review).
- Repeated initiations in a short period of time should not be allowed.
- Cumulation of imports from different countries should be banned or severely restricted, unless they come from the same firms or subsidiaries of the same firms.
- Aggregation of products under the one single product procedure should be severely restricted.

5. It could be argued that market forces in China for these relatively unprotected products could be distorted by Chinese regulations on inputs for such goods (subsidies, for instance). But there are WTO instruments for addressing such an argument (which could be applied to most China trading partners).

- All zeroing practices (using only export transactions that have been found to be dumped in calculating dumping margins) should be banned (all export transactions should be included in the investigation).
- Antidumping authorities should produce disclosure documents.
- Use of the de minimis rule should be expanded in an economically sound way.

Alternatively, China could adopt a bolder approach. Antidumping could take, as often as possible, the form of negotiated “quantitative thresholds” (Messerlin 2000a). WTO members could agree that no antidumping measure should be imposed in cases where the level of injury losses is less than an agreed threshold of the complainants’ revenues for the year(s) used as the reference (predumping) period. An approach based on quantitative thresholds is conceptually equivalent to tariffication. It tends to give a sense of the magnitude of the concessions granted by both sides, bringing antidumping more in line with the usual WTO negotiating techniques. It is also flexible enough to permit incremental reforms, to deliver the progressive liberalization that WTO members are looking for, through progressive increases in the thresholds. This would avoid the current deadlock of binary choices between fully enforcing antidumping regulations and rejecting them totally.

### *The Transitional Product-Specific Safeguard Provision*

China’s protocol of accession includes a transitional product-specific safeguard mechanism, which makes it much easier for WTO members to impose safeguard measures against China’s exports until 2014 (for a detailed description from a legal perspective see Andersen and Lau 2001). In China’s case, all the terms defining the use of safeguard actions in the traditional GATT-WTO context (under Article XIX) have been weakened. There is no requirement of unforeseen circumstances and no most-favored-nation requirement. Only “material” rather than “serious” injury needs to be demonstrated. There are fewer factors related to the condition of the domestic industry, and the causal link between increased imports and injury is weaker.

The most important difference—and potentially the most devastating for the WTO—is that WTO members are given the right, never before offered, to use a trade-diversion clause. As soon as one WTO member implements a transitional product-specific safeguard measure against Chinese exports, all other members can enforce a similar measure at almost no procedural cost (no investigation, no prior notification, no input from Chinese parties). The trade-diversion clause thus means that countries do not have to provide proof substantiating the allegation that Chinese exports will be diverted from the first closed market to the rest of the world.

All these features put the transitional product-specific safeguard at odds with the usual WTO concerns about a fair balance between rights and obligations. The provision is so unbalanced that its use could easily trigger in China feelings similar to those provoked by the unequal treaties of the nineteenth century. The



transitional product-specific safeguard represents a serious systemic risk to the WTO regime.

Although it could be argued that the transitional product-specific safeguard is such a politically aggressive instrument that it would never be used, this seems unlikely. Because of its politically explosive content, this safeguard is unlikely to be initiated by any but a very large industrial country WTO member (the United States, the European Union, or Japan). But once the provision has been triggered, other WTO members that could benefit from the trade-diversion clause will likely do so.

How can China reduce the risk that the transitional product-specific safeguard provision will be invoked? One possibility would be for them to negotiate the same kind of preemptive approach as recommended for the nonmarket economy provision during the Doha Round. WTO members could agree not to use the transitional product-specific safeguard provision as long as Chinese products meet the three conditions presented for use of the nonmarket economy option and to use the normal WTO safeguard provision under Article XIX instead.

#### *Unifying Contingent Protection in the WTO*

Putting antidumping and safeguards on a par would make a lot of sense from the perspective of the global WTO architecture. Most WTO members use antidumping measures as a substitute for safeguard actions for dealing with industries in difficulty. The transitional product-specific safeguard provision strengthens China's stake in seeking substantial improvement in the whole WTO contingent protection regime—both antidumping and safeguards. During the Doha Round, China could try to expand the negotiations on antidumping to safeguards (so far not explicitly included in the Doha negotiating program) to make the entire contingent protection regime of the WTO more consistent.

One promising approach would be to tie together the concept of temporary protection embedded in safeguards and the basic concept of renegotiation under GATT Article XXVIII (Messerlin 2000a). Thus, for instance, at the end of the second period of enforcing a safeguard measure under the current safeguards agreement (based on GATT Article XIX), the country would be required either to renegotiate the tariff on the product subjected to safeguard measures or eliminate the safeguard measure (shifting to antidumping or other trade remedies should be prohibited, in recognition that all instruments of contingent protection are substitutable). This mandatory aspect would help reform safeguard and antidumping procedures back to the transitory protection they were meant to be instead of the permanent protection they have become.

The possibility remains that an integrated approach to antidumping, safeguards, and transitional product-specific safeguard measures would face entrenched hostility from WTO members, in particular from the top 10 users of antidumping provisions. China would then be forced to rely on threats of some kind of retaliation. The least aggressive approach would be for China to announce its intention to systematically use the dispute settlement mechanism

as soon as a WTO member notifies the WTO Secretariat of its intention to use the transitional product-specific safeguard provision. Lawyers tend to overstate the benefits of such an approach by ignoring the full development of the trade conflicts—that is, the political bickering that follows dispute settlement cases (it is almost certain that dispute settlement cases dealing with the transitional product-specific safeguard would leave the two parties in a particularly difficult political situation). A more aggressive approach by China would be based on Article 56 of the new regulations, as discussed earlier. However, such an approach should not ignore the basic principle of deterrence: trade deterrence, like nuclear deterrence, works as long as it remains a threat—it must stop short of action.

## V. CONCLUSION

Two findings of this analysis are particularly important for China. First, the countries that stand to gain most from better discipline on antidumping are the handful of developing economies that have been intensive users of antidumping since the 1995 Uruguay Round. Because the antidumping measures imposed by these developing economies tend to be more frequent and severe than those imposed by industrial countries, these actions hurt developing economies much more than industrial country-imposed antidumping measures harm industrial countries' economies. If China wants to continue to enjoy successful liberalization, it must avoid becoming an intensive user of antidumping.

Second, there are few economic or political forces to act as automatic restraints on the current situation of antidumping enforcement. Major users of antidumping measures have few incentives to reform their very discriminatory use of the antidumping instrument, whereas smaller countries have few incentives to use the antidumping instrument in a retaliatory way.

As a result, China is at a crossroads. One way leads to more intensive use of antidumping for several reasons: as a retaliatory instrument against foreign antidumping, as a tool for China's progressive integration into the worldwide collusive dimension of antidumping (used as an instrument for segmenting world markets for the benefit of large firms), and as a backdoor entry to old-fashioned protection, even at the risk of unraveling its scheduled trade liberalization.

Another way leads to a guiding role for China in arguing for stricter rules on the use of antidumping. As a small antidumping user and a key target of foreign antidumping, China will be one of the main beneficiaries of such a move, which will also help them negotiate an economically sound interpretation of the special provisions on antidumping and safeguards included in its WTO accession protocol. This new interpretation should be based on China meeting a few key and economically sound conditions: low tariffs, no core gray-area measures, no distribution monopolies (see section IV). This interpretation is motivated by strong economic and political arguments. China and its trading partners have a common interest in establishing the strongest possible links between China's effective trade liberalization and agreement not to use these special provisions

against Chinese exporters. This interpretation seeks to mobilize export interests in both China and the rest of the world to their mutual gain during the difficult implementation period of China's accession to the WTO.

#### REFERENCES

- Andersen, Scott, and Christian Lau. 2001. *Hedging Hopes with Fears in China's Accession to the World Trade Organization: The Transitional Special Product Safeguard for Chinese Exports*. Geneva: Powell, Goldstein, Frazer and Murphy.
- Blonigen, Bruce. 2001. "Database on U.S. Antidumping Cases." Online document available at [www.uoregon.edu](http://www.uoregon.edu).
- Lindsey, Brink. 1999. *The U.S. Antidumping Law: Rhetoric versus Reality*. Washington, D.C.: Cato Institute.
- Lindsey, Brink, and Dan Ikenson. 2001. *Coming Home to Roost: Proliferating Antidumping Laws and the Growing Threat to U.S. Exports*. Washington, D.C.: Cato Institute.
- Kommerzkollegium. 1999. *Further Actions within the EU in the Field of Antidumping*. Stockholm.
- Messerlin, Patrick A. 2000a. "Antidumping and Safeguards." In Jeff Schott, ed., *The WTO After Seattle*. Washington, D.C.: Institute for International Economics.
- . 2000b. "An Economic Perspective on Antidumping and Safeguards." Seminar on Antidumping and Safeguards. Ministry of Foreign Trade and Economic Cooperation, Department of International Trade and Economic Affairs, Beijing.
- Vermulst, Edwin. 2000. "Contingent Protection Provisions in China's Draft Protocol on Accession to the WTO." Seminar on Antidumping and Safeguards, Ministry of Foreign Trade and Economic Cooperation, Department of International Trade and Economic Affairs, Beijing.
- Wang, Lei. 2003. "China's New Antidumping Regulations: Improvement to Comply with the WTO Rules." East Associates, Beijing. [[lwang@ealawfirm.com](mailto:lwang@ealawfirm.com)].
- WTO (World Trade Organization). 2001. "Market Access: Unfinished Business, Post-Uruguay Round Inventory and Issues." Special Studies 6. Geneva.