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Beyond ChAFTA: China's (Ab)use of Anti-Dumping Measures

Weihuan Zhou^{*} and Shu Zhang^{**}

Abstract

This article explores China's behaviour in taking antidumping actions against its trading partners with a focus on those actions having been challenged under the WTO dispute settlement mechanism. It argues that the typical motivations behind China's resort to antidumping include protection, retaliation, industrial development, and export promotion. These motivations would likely outweigh China's observance of WTO obligations in deciding whether to impose antidumping measures. Using Australia as a case study, the article shows how the motivations may influence China to take antidumping actions against Australia, which would take away the expected benefits for Australian businesses under the landmark China – Australia Free Trade Agreement. The article offers brief recommendations for foreign governments and exporters on steps they may take to avoid China's antidumping actions.

Keywords: China and Antidumping; WTO dispute; China-Australia Free Trade Agreement

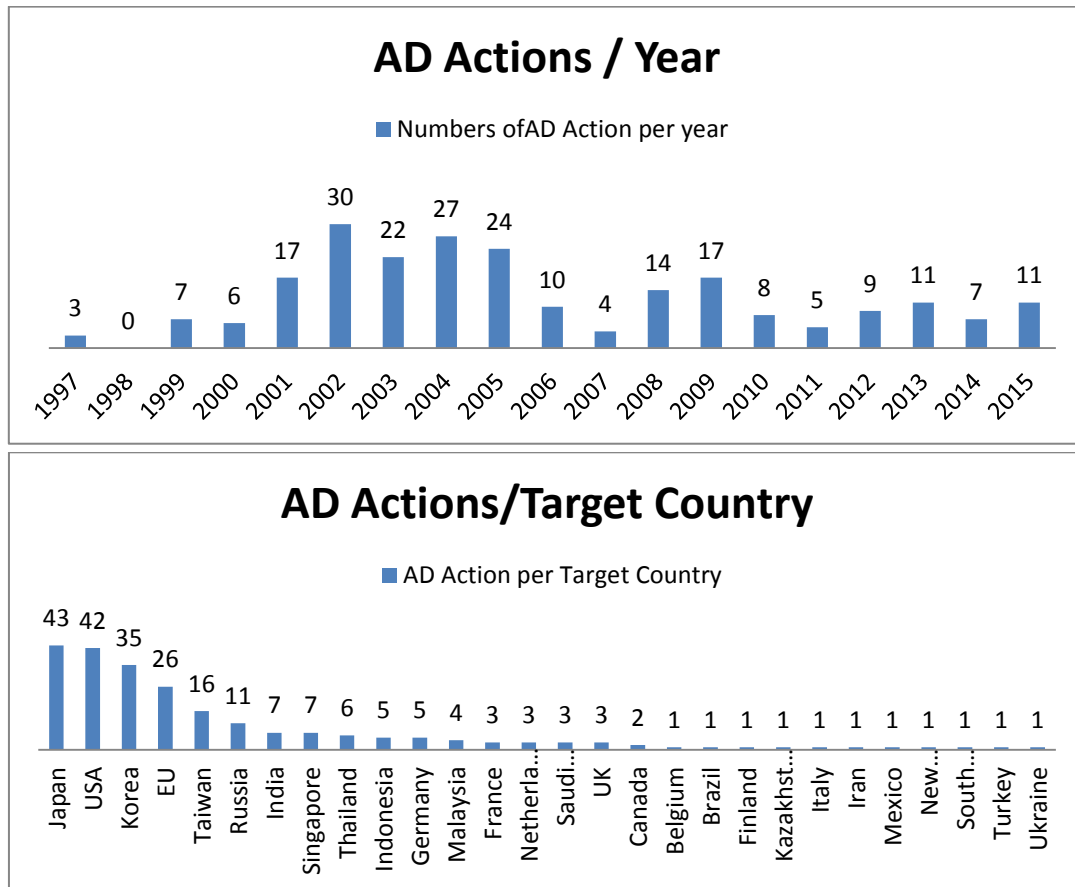
As one of the world's largest trading nations, China has been frequently involved in trade disputes concerning the use of antidumping measures. While dumping and antidumping are governed by the rules of the World Trade Organisation ("WTO"), these rules have been proven ineffective to stop the rapid proliferation of domestic antidumping laws and actions.¹ Over time, antidumping has become one of the most convenient and popular policy tools for governments to respond to protectionist pressure from domestic industries. The use of antidumping is now not limited to the traditional users (i.e. the US, the EU, Australia, and Canada) but has become prevalent among new users.² Undoubtedly, China has become one of the top and most sophisticated users of antidumping. As shown in the diagrams below, by the end of 2015 China has initiated a total of 232 antidumping investigations against exports from 28 countries.

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¹ Vandenbussche and Zanardi 2008.

² Wu 2012, 117-118.



Source: World Bank Global Anti-Dumping Database (1997-2014); China's Ministry of Commerce Website (2015)

Many publications have attempted to explain China's behaviour in taking antidumping actions. While some of them focused on China's use of antidumping in specific cases³ or for specific industries⁴, others sought to explain the motivations behind China's resort to antidumping.⁵ However, none of them have offered a systematic analysis of China's antidumping actions which have been challenged under the WTO. This article undertakes such an analysis which expands the previous studies by exploring not only China's behaviour in some of its most recent antidumping actions but also whether or not the WTO disputes have effectively led to a behaviour change by China. It is observed that the typical motivations behind China's resort to antidumping include protecting domestic import-competing industries, fostering industry development, retaliating against antidumping actions overseas and safeguarding export interests. These motivations would likely outweigh China's observance of WTO obligations in the determination of whether to impose antidumping measures.

³ Moore and Wu 2015.
⁴ Zheng and Abrami 2011.
⁵ Wu 2012; Ghorri 2013.

The observations provide significant implications for China's trading partners. At the time of writing, China has entered into 13 free trade agreements ("FTA").⁶ The China – Australia Free Trade Agreement ("ChAFTA") – China's latest FTA taking effect on 20 December 2015 – is seen as a landmark victory for Australia given the unprecedented tariff concessions made by China.⁷ China commits to cut tariffs by stages over 15 years with an elimination of tariffs for more than 86% of Australian exports on the effective date of the agreement, for around 94% of Australian exports by 1 January 2019 and 96% once ChAFTA is fully implemented. However, like China's other FTAs, the ChAFTA does not discipline the use of antidumping measures and hence leaves room for China to do so to take away the market opportunities and benefits that Australian exporters would expect. While China has not taken any antidumping actions against Australia so far, we submit that China will likely do so based on the four motivations, that is, protection, retaliation, industrial development and exportation. The analysis of China's antidumping behaviour against Australia may well be applicable to the other trading partners of China. Therefore, foreign governments and exporters should take steps to weaken or respond to China's antidumping motivations in order to avoid its antidumping actions.

Motivations Behind Antidumping

Previous studies on why countries resort to antidumping have shown that antidumping actions may be motivated by governments and/or industries/firms. Whether government-motivated or industry/firm-motivated, antidumping has little to do with economically harmful practices but is blunt protectionism.⁸

The "safety valve" theory considers antidumping as a necessary policy tool for governments to overcome the resistance of import-competing industries to trade liberalisation.⁹ That is, in exchange of the industries' support for trade liberalisation, governments would agree to maintain an antidumping mechanism whereby contingent protection by way of temporary tariff increase can be afforded to the industries when needed. Accordingly, a widely accepted motivation concerns the need for countries to use antidumping to counteract the effect of tariff reductions so as to reduce foreign competition for domestic industries.¹⁰ China's introduction of an antidumping regime was also influenced by the same motivation.¹¹ In this regard, an examination of the use of antidumping by China's chemical industry the dominant user of antidumping supportively shows a

⁶ China FTA Network, available at: <http://fta.mofcom.gov.cn/english/index.shtml>

⁷ Minister for Trade and Investment 2015, "Historic China-Australia FTA Enters Into Force", Media Release 20 December, available at: http://trademinister.gov.au/releases/Pages/2015/ar_mr_151220a.aspx

⁸ Prusa 2005.

⁹ Aggarwal 2004.

¹⁰ Vandebussche and Zanardi 2008, 102; Aggarwal 2004.

¹¹ Kennedy 2005, 412.

relationship between the recourse to antidumping protection and tariff reductions.¹² With respect to industries having yet been active users of antidumping, the “safety valve” theory was also found to be applicable.¹³ A related motivation concerns significant import surges a likely consequence of tariff reductions. In such circumstances, antidumping has been used against unwanted import increases and especially those from the largest suppliers.¹⁴

Further, the use of antidumping may depend on the economic and political conditions of industries. Typically, industries with high concentration, such as China’s chemical and steel industries, would be the main users and beneficiaries of antidumping.¹⁵ In contrast, industries with many producers of highly differentiated products, such as machinery and clothing sectors, may not be active in antidumping actions.¹⁶ This is because the former are much better organised to take collective actions and also have higher economic incentives to do so given the larger benefits each firm could obtain from the application of antidumping duties. Such incentives may be further strengthened if the industries are experiencing problems such as substantial import competition and declining industry output.¹⁷ Moreover, the competing interest of downstream industries may also influence antidumping decisions, depending on factors such as the political influence of, and the negative effects of antidumping protection on, these industries.¹⁸ Finally, industries with experience and awareness of the potential benefits of antidumping are more likely to take actions.¹⁹

Finally, antidumping has often been motivated by retaliation or threat of retaliation.²⁰ For example, rising users of antidumping have learned to use this trade weapon to retaliate against antidumping actions taken by the traditional users.²¹ At times, retaliation has been used strategically by exporting countries to deter the potential antidumping actions by importing countries.²² Retaliatory motivation is codified in Article 56 of China’s Antidumping Regulation²³ which states that “where any country / region takes discriminative anti-dumping measures on the exports from China, China may, upon the actual circumstances, take corresponding measures against the country / region.” In practice, as other users of antidumping, China’s resort to antidumping may have also been motivated by retaliation.²⁴

In addition, antidumping has the effect of tilting the condition of competition in favour of protected goods and industries at the cost of imports and exporters. This applies not only to

¹² Bown 2007.

¹³ Wu 2012, 140-142.

¹⁴ Prusa and Skeath 2002.

¹⁵ Vandenbussche and Zanardi 2008, 103.

¹⁶ Vandenbussche and Zanardi 2008, 103; Messerlin 2004, 111.

¹⁷ Bown 2008.

¹⁸ Zheng and Abrami 2011, 377-378.

¹⁹ Wu 2012, 143.

²⁰ Prusa and Skeath 2002; Vandenbussche and Zanardi 2008.

²¹ Vandenbussche and Zanardi 2008, 98-99.

²² Prusa and Skeath 2002.

²³ State Council Decree No. 328 (27 November 2001), as amended by State Council Decree No. 401 (31 March 2004).

²⁴ Debapriya and Panda 2006; Bao and Qiu 2011.

cases where China was a target of antidumping overseas,²⁵ but also to China's use of antidumping to protect domestic industries.²⁶ The protectionist effects of antidumping would create incentives for countries like China to employ antidumping measures and for import-competing industries to lobby for the use of the measures.

China's Use of Antidumping and Response to WTO Disputes

By the end of 2015, China has been a respondent in 34 WTO disputes involving 22 different matters. While China's antidumping actions were not challenged until 2010, there have been seven WTO disputes over such actions since then.

China – Certain Iron and Steel Fasteners

The first WTO dispute over China's antidumping actions – *China – Certain Iron and Steel Fasteners* (“*Fasteners*”)²⁷ in 2009 – arose out of China's provisional antidumping measures on certain iron and steel fasteners from the EU.²⁸ In its request for consultation in 2010, the EU raised a range of WTO-consistency issues.²⁹ However, the dispute ended at the consultation stage and did not go to the WTO adjudication.

The dispute was just one in the chain of retaliatory antidumping and WTO actions concerning fasteners between the EU and China. China is one of the world's largest producers and exporters of fasteners (i.e. screws, nuts, bolts and washers).³⁰ For example, in 2014, China's fastener industry manufactured 7.2 million tons of fasteners and exported 2.8 million tons worth US\$ 5.28 billion.³¹ The EU is one of the top destinations of China's fastener exports, and China being one of the largest export markets for fasteners originating in the EU.³² While China's fastener industry comprises thousands of enterprises³³, the world's largest fastener producers are from the EU and the US.³⁴ In 2007, the EU initiated an

²⁵ Li and Whalley 2010.

²⁶ Wu 2012, 142.

²⁷ *China – Provisional Anti-Dumping Duties on Certain Iron and Steel Fasteners from the European Union*, WT/DS407, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds407_e.htm

²⁸ China's Ministry of Commerce (MOFCOM) Announcement No. 115 on 23 December 2009.

²⁹ *China – Certain Iron and Steel Fasteners*, Request for Consultations by the European Union, G/ADP/D83/1 (12 May 2010).

³⁰ Nan Zhong 2016, “China Wins Fastener Tiff with EU”, *China Daily Europe* (22 January).

³¹ Jinyao Feng 2015, “Hand in Hand for A New Page of China-Europe Fastener Industry”, *Fastener World Europe Special Edition* No. 4.

³² *Financial Times* 2010, “EU Files WTO Complaint against China Over Steel Fasteners”, *EUbusiness* (13 May); *China Fastener Info*, “China's Fastener Imports and Exports for Jan.-Nov. 2015”, available at: <http://www.chinafastener.info/en/news/4417.htm>

³³ See n. 30.

³⁴ *ChinaFastener.com* 2010, “Global Fastener Market Situation and Future Trend Analysis” (14 September).

antidumping investigation against fastener exports from China, which resulted in an imposition of antidumping duties between 26.5% and 85% in 2009.³⁵ China took two actions in response to the EU's antidumping investigation. The first was the initiation of an antidumping investigation into fastener exports from the EU in 2008, which led to the imposition of the provisional antidumping measures challenged by the EU in *Fasteners*. This WTO dispute, therefore, is clearly a retaliatory action taken by the EU aiming to "get China to make changes in the final decision or terminate the investigation".³⁶ The dispute led to a reduction of antidumping duty from 16.8% to 6.1% for KAMAX-Werke Rudolf Kellermann GMBH & Co. KG ("Kamax") the sole cooperating exporter but a duty increase from 24.6% to 26% for all of the other EU exporters.³⁷ Apparently, the EU decided not to continue the WTO proceedings due to the significant duty reduction for Kamax.³⁸ However, other EU exporters including potential ones were to be affected by the duty. Overall, it was estimated that the duty was to affect 140 million Euros (\$240 million) of EU's fastener exports to China.³⁹ China's second action was to bring WTO proceedings against the EU's antidumping actions in 2009, namely, the *EC – Fasteners (China)* dispute.⁴⁰ Losing the case, the EU implemented the WTO rulings by initiating a review of the original antidumping investigations which resulted in a reduction of the original duties to a range from 22.9% to 74.1%.⁴¹ In 2014, the EU initiated a sunset review of the original antidumping duties with a final decision made in 2015 to maintain the duties.⁴² The duties had effectively excluded Chinese fasteners from the EU market cutting their market share from 26% to 0.6%.⁴³ In 2013, China continued the WTO proceedings by challenging the EU's compliance with the WTO rulings in *EC – Fasteners (China)*. On 18 January 2016, the WTO Appellate Body issued its report finding a range of WTO-inconsistencies of the EU's antidumping actions.⁴⁴ In the eyes of China, the WTO rulings would bring an end to the seven-year long and heavy antidumping duties against its fastener exports.⁴⁵ In reality, however, there are ways for the EU to continue the duties while implementing the WTO rulings by, for example, initiating a new investigation or a review of its original investigation. In any case, the final decisions will

³⁵ Ji and Huang 2011, 24; Kong 2012, 43-44.

³⁶ Ji and Huang 2011, 24.

³⁷ MOFCOM Announcement No. 40 on 28 June 2010.

³⁸ European Parliament, "Trade and Economic Relations with China 2012", at 20, available at: [http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2012/491425/EXPO-INTA_SP\(2012\)491425_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2012/491425/EXPO-INTA_SP(2012)491425_EN.pdf)

³⁹ ChinaFastener.com 2010, "China Slaps Anti-dumping Tax on EU Steel Fasteners" (29 June).

⁴⁰ *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds397_e.htm

⁴¹ *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, Status Report, WT/DS397/15 (13 July 2012); Jonathan Stearns 2015, "China Faces Renewal of EU Fastener Duties It Challenged", Bloomberg (28 March).

⁴² Commission Implementing Regulation (EU) 2015/519 of 26 March 2015.

⁴³ See n. 41.

⁴⁴ *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, Recourse to Article 21.5 of the DSU by China, WT/DS397/AB/RW (dated 18 January 2016).

⁴⁵ See n. 31.

unlikely be released within one year for which the duties will remain. In the meantime, China initiated a sunset review of its antidumping duties on fastener exports from the EU in June 2015 with the final decisions to be made in June 2016.⁴⁶

The battle between China and the EU over fasteners has been convoluted including not only retaliatory antidumping actions but also tit-for-tat WTO proceedings. At the government level, the EU ignited the trade war via antidumping actions apparently to protect its struggling fastener industry which was suffering rising cost and declining profit.⁴⁷ Aiming at changing or stopping China's antidumping actions, the ultimate goal of *Fasteners* was to break the rising tariff barriers to the EU's fastener exporters in the massive Chinese market. Thus, it is likely that the industry/firm's influence has played a significant role in the EU's decision to take these actions.

From the perspective of the Chinese government, however, the antidumping actions were unlikely taken for protectionist purposes. China's fastener industry remained strong and growing at the time that it lost almost the entire EU market while facing rising foreign competition domestically.⁴⁸ The high performance of the industry suggests that it was able to endure foreign competition in no urgent need for protection. Rather, China's actions were likely motivated by retaliation so as to show its concerns about the EU's abuse of antidumping duties. Given China's export interests in the EU market, the actions were undoubtedly intended to push the EU to lower or remove the hefty antidumping duties. China's fastener industry is fragmented given the large number of domestic manufacturers. However, the industry consists of a group of major exporters and receives strong support from industry associations – such as the China Chamber of Commerce for Import and Export of Machinery and Electronic Products and the China Fastener Industry Association – in defending its export interests.⁴⁹ Finally, China's WTO actions served an additional objective which was to challenge the EU's discriminatory treatment of China as a non-market economy (“NME”) in antidumping investigations. The issues relating to NME are significant to China as they often lead to the imposition of more and higher antidumping duties against Chinese exports. After decades of economic reforms to promote the transformation from a planned economy to a market economy, it is also in China's interest to be recognised as a full market economy in the global community. Having said the above, China's retaliatory actions have not successfully opened the EU market for its fastener exporters, which indicates the firm resistance of the EU's fastener industry. It is uncertain how the EU is to implement the WTO rulings in *EC – Fasteners (China)(Article 21.5)*; if the industry's influence continues, the EU would be unlikely to significantly reduce the antidumping duties. This would trigger another round of retaliatory actions by China. However, the EU's ongoing consideration of granting

⁴⁶ MOFCOM Announcement No. 18 on 29 June 2015.

⁴⁷ See n. 32.

⁴⁸ Ibid.

⁴⁹ Shengxia Song 2015, “Chinese Fastener Makers urge EU to Drop Tariffs”, *Global Times* (8 April).

China market economy status after 2016⁵⁰ may temporarily ease the tensions between the two giant economies.

China – GOES

The *China – GOES*⁵¹ dispute concerned China's first double-remedy investigations into US steel imports. In 2010, the MOFCOM determined to impose antidumping and countervailing duties on grain oriented flat-rolled electrical steel ("GOES") exported from the US and Russia.⁵² AK Steel Corporation and Allegheny Ludlum Corporation, the only GOES producers in the US, were respectively subject to antidumping duties of 7.8% and 19.9% and countervailing duties of 11.7% and 12%. The "all other" rates were 64.8% on dumping and 44.6% on subsidies. In the same year, the US brought a WTO case challenging various aspects of the Chinese measures.⁵³ China lost the case over a number of substantive and procedural issues and implemented the WTO rulings by initiating a reinvestigation of the matter. The reinvestigation resulted in a reduction of the "all other" dumping rate from 64.8% to 19.9% and the countervailing duty to 3.4% in July 2013.⁵⁴ As the antidumping duties on the two US exporters remained unchanged, the US was unsatisfied with the result of the reinvestigation and continued the WTO proceedings contending that China had failed to implement the WTO rulings in 2014.⁵⁵ In July 2015, the WTO compliance panel found a number of violations of China's reinvestigation decisions. However, it was unnecessary for China to implement the rulings as the duties in dispute expired in April 2015.⁵⁶

Apparently, the US fought hard against China's antidumping and countervailing duties for its two GOES exporters. As GOES are highly profitable steel products and China being a large importer of US GOES, the exporters may have vigorously pushed the US' WTO actions. In the WTO Dispute Settlement Body meeting which adopted the panel's rulings, the US revealed that the duties had effectively driven the US exports out of the Chinese market, while it had over US\$250 million of GOES exports to China previously.⁵⁷ Further, the WTO dispute was observed as serving to force China to change its antidumping and countervailing practices.⁵⁸ However, whether or not China is to make any changes would likely depend on the behaviour and approaches of the other WTO members (particularly the US and the EU) in trade remedy investigations.

⁵⁰ Christian Oliver and Michael Pooler 2015, "Europe Split over Whether to Grant China Market Economy Status", *Financial Times* (28 December).

⁵¹ *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States*, WT/DS414, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds414_e.htm

⁵² MOFCOM Announcement No. 21 on 6 May 2010.

⁵³ *China – GOES*, Request for Consultations by the United States, G/ADP/D85/1 (20 September 2010).

⁵⁴ MOFCOM Announcement No. 51 on 31 July 2013.

⁵⁵ *China – GOES*, Recourse to Article 21.5 of the DSU by the United States, Request for Consultations, WT/DS414/15 (16 January 2014).

⁵⁶ WTO, Dispute Settlement Body, Minutes of Meeting, WT/DSB/M/367 (30 October 2015), 21.

⁵⁷ *Ibid.*

⁵⁸ Prusa and Vermulst 2014(a), 253.

From the perspective of the Chinese government, a likely motivation behind the GOES investigations was to retaliate against the antidumping and countervailing actions frequently taken by the US against China.⁵⁹ The US has long been a top user of antidumping and countervailing measures to protect its domestic steel industry, with the belief that this would benefit the US economy.⁶⁰ Having been the favourite target of these US measures for years, China was too irritated and pressured to remain unresponsive. Just before China's GOES investigations, the US initiated one of its largest antidumping investigations against China targeting at steel line pipes.⁶¹ This investigation became the trigger of China's tit-for-tat actions. China's choice of GOES as the target was a strategic decision, not only because the US had significant export interests in China but also because it was not hard for China to source the same goods from other countries to satisfy the massive domestic demand.⁶² Further, for at least a decade, China's steel industry faced overwhelming antidumping and countervailing actions not only in the US but also in the EU, Australia and India. In recent years, the economic conditions of the industry kept deteriorating due to the slowdown of China's economic growth, weak domestic demand, and overcapacity, amongst other problems.⁶³ In face of the difficulties in both domestic and overseas markets, the industry is likely to strive to push the Chinese government to challenge and retaliate against antidumping and countervailing actions overseas, and in the meantime to take these actions domestically. With a slumping domestic market, China was believed to have attempted to "flood the global market with cut-price [steel] exports".⁶⁴ This has triggered immediate antidumping and/or countervailing actions by countries such as the US (imposing a 256% combined duty)⁶⁵ and India (levying a duty of \$309 per tonne)⁶⁶. Given China's resentment towards such actions and the overwhelming influence of China's steel industry, more tit-for-tat actions by China are reasonably foreseeable. Finally, it should be noted that like the EU, the US also treats China as a NME in antidumping investigations. While the EU has been considering abandoning this practice, the US insists on maintaining it.⁶⁷ The fact that this issue was raised by Chinese President Xi Jinping during his recent visit to Washington⁶⁸ signals that it has

⁵⁹ Ibid., 263.

⁶⁰ Mastel and Szamosszegi 1999.

⁶¹ Kris Maher 2009, "China Probes Imports of U.S. Steel", *The Wall Street Journal* (2 June).

⁶² Prusa and Vermulst 2014(a), 265-266.

⁶³ Jasmine Ng 2016, "China Confirms Steel Industry in Decline", *Financial Review* (20 January).

⁶⁴ Ambrose Evans-Pritchard 2015, "China's Beggar The World Deflation – Global Steel Industry Getting Hammered By Its Steel Dumping", *The Telegraph* (12 August).

⁶⁵ Sonja Elmquist 2015, "U.S. Calls for 256% Tariff on Imports of Steel from China", *BloombergBusiness* (23 December).

⁶⁶ PTI 2015, "Anti-Dumping Duty on Steel Imports from China, 2 Other Nations", *The Economic Times* (7 June).

⁶⁷ Christian Oliver and Shawn Donnan 2015, "US Warns Europe Over Granting Market Economy Status to China", *Financial Times* (28 December).

⁶⁸ William K. Watson 2015, "U.S.-China Relations Hurt by American Antidumping Abuse", *Cato Institute* (2 October).

become one of the most sensitive issues in China's international trade policy and that China will take an increasingly firm stance against the practice.

China – X-Ray Equipment

The *China – X-Ray Equipment*⁶⁹ dispute concerns China's antidumping investigation into x-ray security inspection equipment exported from the EU. In January 2011, the MOFCOM decided to impose a 33.5% antidumping duty on Smiths Heimann GmbH ("Smiths") the only cooperating exporter and 71.8% on all of the other EU exporters of the subject goods ("X-Ray Tariff").⁷⁰ The EU initiated WTO proceedings against China in July 2011 and won the case on most of its claims in February 2013. To implement the WTO rulings, China terminated the antidumping duty but launched a reinvestigation into the same matter in January 2014.⁷¹ At the time of writing, the reinvestigation is still ongoing.

Smiths is a traditional and giant player in both the EU and the world's x-ray equipment market. For example, in 2010 it occupied 80% of the EU's x-ray scanner production⁷² and 32% of the global security inspection equipment market⁷³. However, a Chinese upstart Nuctech Company Ltd. ("Nuctech") grew rapidly into a major competitor.⁷⁴ The growth of Nuctech was supported by China's promotion of the x-ray scanner industry as part of its strategic industrial plan and national security policy.⁷⁵ Thanks to the industrial development policy, Nuctech has become not only the sole major producer in the Chinese market but also a formidable exporter supplying over 130 countries worldwide.⁷⁶ Smiths and Nuctech have, therefore, been competing in both the EU and the Chinese markets, amongst other foreign markets. In 2008, while Smiths' non-medical x-ray equipment exports to China accounted for around 57% of all such exports to China, Nuctech's exports to the EU increased by around 334% compared with the previous year.⁷⁷ To mitigate the impacts of the Chinese imports, Smiths filed an antidumping petition in February 2009, resulting in an imposition of an antidumping duty of 34% in June 2010.⁷⁸ Evidently, China's X-Ray Tariff was motivated by retaliation. The two antidumping actions shared some common features. Apart from virtually the same level of dumping rate, they were both led by domestic firms with an aim to obtain

⁶⁹ *China – Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union*, WT/DS425, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds425_e.htm

⁷⁰ MOFCOM Announcement No. 1 on 23 January 2011.

⁷¹ *China – X-Ray Security Equipment*, Status Report by China, WT/DS425/9 (14 February 2014).

⁷² Council Implementing Regulation (EU) No. 510/2010 of 14 June 2010, Official Journal L150/1 (16 June 2010).

⁷³ Smiths Group PLC 2010 Annual Report, at 18, available at: https://www.smiths.com/siteFiles/resources/documents/smiths_ar_2010.pdf

⁷⁴ Moore and Wu 2015, 248-250.

⁷⁵ See, for example, China's Eleventh Five-Year Plan (2006-2010) and Twelfth Five-Year Plan (2011-2015), available at: http://www.gov.cn/ztl/2006-03/16/content_228841.htm (in Chinese) and <http://www.britishchamber.cn/content/chinas-twelfth-five-year-plan-2011-2015-full-english-version>

⁷⁶ Moore and Wu 2015, 251. The company's information is available at: <http://www.cccme.org.cn/shop/cccme5080/index.aspx>

⁷⁷ *Ibid.*, 272.

⁷⁸ See n. 72.

competitive advantages over each other.⁷⁹ Beyond the common features, China's use of antidumping was closely connected with the government's policy, which demonstrates how China may employ this policy tool for industrial development goals. It is unclear why China did not bring a WTO case against the EU's antidumping action. However, since the EU's WTO litigation lifted the Chinese antidumping duty since February 2014, it led to a *temporary* change of the conditions of competition in favour of Smiths which continued to benefit from the EU's protective tariff. However, these conditions were restored with the expiry of the EU's duty on 17th June 2015 as Smiths did not request for a sunset review of the duty.⁸⁰ With the playing-field levelled now, the MOFCOM's reinvestigation may not continue the X-Ray Tariff as doing so would likely provoke another round of trade war.

China – Broiler Products

The *China – Broiler Products*⁸¹ dispute concerned another Chinese double-remedy investigation into US exports. For five years from 27 September 2010, 33 US exporters of broiler products were to be subject to an antidumping duty from 50.3% to 53.4% and a countervailing duty from 4% to 12.5%, with the “all other” rates being 105.4% on dumping and 30.3% on subsidies (“Chicken Tariff”).⁸² The US commenced WTO proceedings against the Chicken Tariff in September 2011 and received favourable WTO rulings two years later. To implement the WTO rulings, China initiated a reinvestigation of the matter with final decisions made in July 2014 to impose an antidumping duty from 46.6% to 73.8% and a countervailing duty around 4% on 35 US exporters.⁸³ Therefore, while the countervailing duty was significantly reduced, the antidumping rates were increased for some of the US exporters. In 2015, the MOFCOM commenced a sunset review of the duties with final decisions to be made in late 2016.⁸⁴ In the meantime, the US is examining China's reinvestigation of the Chicken Tariff and considering next steps to take.⁸⁵

The *China – Broiler Products* dispute was another escalated trade war between the US and China. The root cause of the war has to do with Section 727 of the US *Omnibus Appropriations Act 2009* which erected a *de facto* ban on the importation of Chinese poultry into the US. This US measure triggered China's WTO action – i.e. the *US – Poultry* dispute – where the WTO tribunal found a number of violations in September 2010.⁸⁶ However, by the time of the WTO rulings, the US measure had expired so that no further actions needed to be taken by the US for implementation. Another US action in the same period concerned the

⁷⁹ Moore and Wu 2015, 240-241.

⁸⁰ Official Journal of the European Union, Notice of the Expiry of Certain Anti-Dumping Measures, (2015/C 199/02), 16 June 2015.

⁸¹ *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*, WT/DS427, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds427_e.htm

⁸² MOFCOM Announcement No. 51 on 27 September 2010 and No. 52 on 30 August 2010.

⁸³ MOFCOM Announcement No. 44 on 8 July 2014.

⁸⁴ MOFCOM Announcement No. 32 on 8 October 2015 and No. 33 on 28 August 2015.

⁸⁵ USTR, “2015 Report to Congress on China's WTO Compliance”, 38.

⁸⁶ *United States – Certain Measures Affecting Imports of Poultry from China*, WT/DS392, see: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds392_e.htm

application of safeguard measures in the form of an additional 35% import tariff on certain passenger vehicle and light truck tyres exported from China (“Tyre Tariff”). China also challenged this action at the WTO but lost the case.⁸⁷ Therefore, the Chicken Tariff was likely intended to target the two US measures above.⁸⁸ The target was chosen for at least two strategic reasons. First, while the US market absorbed one third of China’s total tyre output worth US\$2.2 billion in 2008⁸⁹, the US was the largest exporter of broiler products to China and was estimated to suffer a loss of US\$1 billion due to the Chicken Tariff⁹⁰. Coupled with another retaliatory action China took against US auto exports (which will be discussed below), the impacts of the Chinese actions on the US exports were comparable to the impacts of the US measure on Chinese tyres. China’s actions also demonstrated its ability to undertake cross-sector retaliation and hence its growing sophistication in the use of trade remedies. Second, both the US tyre industry and the Chinese broiler industry were facing economic difficulties at the time.⁹¹ Therefore, the measures taken by the two countries against each other also served to protect the domestic industries from their largest foreign competitors. In the meantime, the measures were also intended to serve their own export interests by pushing the counterparty to remove the prohibitive tariffs. Unfortunately, other than the protectionist purpose, the other objectives were not well served. While the Chicken Tariff remains in place with the possibility to extend for another five years, the US maintains high antidumping and countervailing duties on Chinese tyres.⁹² The fact that neither retaliatory trade remedies nor WTO litigation has effectively lifted the measures indicates considerable protectionist influence from the domestic industries in both countries.

China – Autos (US)

The *China – Autos (US)*⁹³ case concerned China’s double-remedy investigations into certain automobiles (i.e. cars and SUVs) from the US, which resulted in the application of an antidumping duty from 2% to 21.5% and a countervailing duty of 6.2% or 12.9% (“Auto Tariff”).⁹⁴ The MOFCOM determined that the duties were to be imposed for two years from 15 December 2011 to 14 December 2013. The US challenged the Chinese measures at the

⁸⁷ *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China*, WT/DS339, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds399_e.htm

⁸⁸ Prusa and Vermulst 2014(b).

⁸⁹ People’s Daily Online 2009, “Special Safeguard to Cause Overcapacity in China’s Tire Industry”, 18 September.

⁹⁰ Tom Miles and Charles Abbott 2013, “U.S. Wins Trade Dispute with China over Chicken Parts”, 3 August.

⁹¹ Gary Clyde Hufbauer and Sean Lowry 2012, “US Tire Tariffs: Saving Few Jobs at High Cost”, Peterson Institute for International Economics, Policy Brief PB12-9 (April); Stephen McDonnell 2013, “Bird Flu Scare Hits China Poultry Sector”, ABC News (17 April).

⁹² Miles Moore 2015, “U.S. ITC Affirms Duties on Chinese Tires”, Rubber & Plastics News (15 July).

⁹³ *China – Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States*, WT/DS440, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds440_e.htm

⁹⁴ MOFCOM Announcement No. 20 on 5 May 2011 and No. 84 on 14 December 2011.

WTO in July 2012 and received panel's rulings in its favour in June 2014. Before the rulings, however, the Auto Tariff had expired as per the MOFCOM's decision⁹⁵ so that China did not need to take any steps to implement the rulings.

The auto industry is of strategic importance to both the US and China. As noted by the US Trade Representative (USTR), in 2013 the US auto sector had 849,400 workers and a total of \$64.9 billion exports with \$8.5 billion to China "the second-largest export market for U.S. autos (after Canada)".⁹⁶ By estimation, the Auto Tariff affected \$5.1 billion of US auto exports to China in 2013.⁹⁷ For China, the auto industry has long been regarded as one of the fundamental drivers of its economic reforms and growth and thus has received various and continuous policy support and assistances including high tariffs and quotas.⁹⁸ China's accession to the WTO led to significant reductions or removal of the existing trade barriers⁹⁹, creating urgent needs for the government to resort to other measures to protect the industry from rising foreign competition while promoting its exportation. In 2009, China became one of the world's leading auto producers (despite the global economic downturn) and continued to expand its exporting markets including the US while the US auto industry was experiencing considerable economic difficulties.¹⁰⁰ The *China – Autos (US)* dispute was, thus, just one battle in the US-China trade war fighting for markets and competitive advantages for their own domestic auto manufacturers and exporters in line with their respective industrial development goals. For example, the first WTO case against China, brought by the US, the EU and Canada in 2006, concerned China's introduction of discriminatory measures to afford protection to the auto industry right after the auto tariff cuts and removal of auto quotas pursuant to its WTO commitments.¹⁰¹ In 2012, the US brought another WTO case against China challenging China's auto export subsidies.¹⁰² The subsidies appear to be still in place as the parties are negotiating a mutually acceptable solution to the dispute.¹⁰³ In 2009, China initiated WTO proceedings against the US' Tyre Tariff mentioned above. Losing the case, China resorted to an alternative tit-for-tat measure – the Auto Tariff – as a revenge on the US' Tyre Tariff. Thus, the series of US and Chinese actions were motivated by a mix of factors including retaliation, export interests, and industrial development policy. From a legal perspective, the *China – Autos (US)* dispute dealt with essentially the same substantive and procedural shortcomings of China's antidumping and countervailing investigations as the

⁹⁵ MOFCOM Announcement No. 85 on 13 December 2013.

⁹⁶ USTR 2014, Fact Sheet: WTO Case Challenging Chinese Antidumping and Countervailing duties on Certain American-Made Automobiles, 23 May.

⁹⁷ Ibid.

⁹⁸ Harwit 2001.

⁹⁹ Cheong and Yee 2003, 227-228.

¹⁰⁰ Tang 2009.

¹⁰¹ *China – Measures Affecting Imports of Automobile Parts*, WT/DS339, WT/DS340, WT/DS342, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds339_e.htm.

¹⁰² *China – Certain Measures Affecting the Automobile and Automobile-Parts Industries*, WT/DS450, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds450_e.htm

¹⁰³ USTR, "2015 Report to Congress on China's WTO Compliance", 38.

previous cases discussed above.¹⁰⁴ The fact that China continued its practice despite the previous WTO rulings against it suggests that “China has learned from the recalcitrance of other WTO members [typically the US] in bringing their WTO inconsistent policies into compliance.”¹⁰⁵ It also suggests that domestic economic and policy considerations would likely outweigh the need to observe international obligations in China’s political decision-making process.

China – HP-SSST

The goods subject to the *China – HP-SSST*¹⁰⁶ dispute were certain high-performance stainless steel seamless tubes (“HP-SSST”). In November 2012, the MOFCOM decided to impose antidumping duties of 9.2% or 14.4% on Japanese exports of the subject goods and 9.7% or 11.1% on exports from the EU.¹⁰⁷ Japan and the EU commenced WTO proceedings in December 2012 and June 2013 respectively. China lost the cases and is currently in the compliance process.

Since the dispute involved steel products, it was inevitably sensitive and strategically important to all of the parties. The EU had some €90 million exports of the goods to China in 2009, which fell under €20 million in 2012 due to the Chinese antidumping action.¹⁰⁸ The value of Japan’s exports of the goods to China was about US\$ 72 million in 2011.¹⁰⁹ While the export interests of the complainants were at stake, the promotion of HP-SSST production was written in China’s 12th Five-Year Plan (2011-2015) as one of the priorities in the restructure and development of the domestic steel industry.¹¹⁰ The Chinese antidumping action, therefore, had bearing on the industrial development policy. Further, the action was also a typical reaction to the EU’s frequent recourse to trade remedies against Chinese steel exports.¹¹¹ Given the decline and over-capacity of steel industries worldwide, trade battles for markets are unlikely to cease in any short period of time.¹¹² This suggests that in implementing the WTO rulings on *China – HP-SSST*, China may take steps to maintain the protectionist antidumping duties.

China – Cellulose Pulp

¹⁰⁴ WTO, DSB Minutes of Meeting, WT/DSB/M/346 (18 June 2014), 17.

¹⁰⁵ Mitchell and Prusa 2015, 13.

¹⁰⁶ *China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes (“HP-SSST”) from Japan (WT/DS454) and the European Union (WT/DS460)*, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds454_e.htm and https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds460_e.htm

¹⁰⁷ MOFCOM Announcement No. 72 on 8 November 2012.

¹⁰⁸ Global Legal Monitor 2013, “EU Deems Anti-Dumping Duties on Steel imports from China Discriminatory” (13 September).

¹⁰⁹ Japan’s Ministry of Economy, Trade and Industry, News Releases April 2013, available at: http://www.meti.go.jp/english/press/2013/0411_02.html

¹¹⁰ Twelfth Five-Year Plan for Steel Industry, Ministry of Industry and Information Technology No. 480 [2011].

¹¹¹ Financial Times 2013, “Stainless Steel Tubes at the Heart of EU-China Tit-for-Tat” (16 August).

¹¹² The European Steel Association, “Steel Trade Policy Messages”, December 2014.

*China – Cellulose Pulp*¹¹³, the latest WTO dispute against China’s antidumping actions, concerns China’s investigation into cellulose pulp exported from the US, Canada and Brazil, resulting in the application of dumping duties ranging from 16.9% to 33.5% (on the US exporters), 13% to 23.7% (on Canadian exporters), and 6.8%/11.5% (on Brazilian exporters) in April 2014 (“Pulp Tariff”).¹¹⁴ Six months later, Canada challenged the Pulp Tariff at the WTO. The case is currently at the WTO panel stage.

Cellulose pulp is an intermediate product used for the production of viscose fibres which are main materials used in several downstream industries mainly the textile or apparel industry. The pulp industry is one of the few Chinese industries which has been unable to supply the domestic demands due to the lack of forest resources and advanced production technology and hence the shortage of high quality pulp.¹¹⁵ The shortage of supply has intensified due to the rapid growth of the downstream industries such as the fibre industry and the textile industry. For example, China’s fibre industry occupies over 50% of the world’s fibre production.¹¹⁶ In 2010, the fibre industry consumed 1.78 million tons of pulps of which only 880,000 tons were domestically supplied.¹¹⁷ Thus, China has an insignificant share in the world pulp market and has relied heavily on imports from major producing countries to satisfy domestic needs.¹¹⁸ Canada, the complainant in *China – Cellulose Pulp*, had almost half of its annual production of cellulose pulp exported to China in 2013 and was estimated to suffer a C\$20 million (US\$17.7 million) revenue loss due to the Pulp Tariff.¹¹⁹ The Chinese government has committed to promoting the development of the cellulose pulp industry by, for example, listing “large-scale of paper and pulp production line and pulping equipment” as an “Encouraged” project in its *Catalogue for Guiding Industry Restructuring*.¹²⁰ Thanks to the industrial development policy, the pulp industry has been growing with its production capacity soared since 2011 and reached 1.2 million tons by the end of 2014, “making up 17% of the global total”.¹²¹ In 2014, however, the industry was hit by economic downturn of the fibre industry and cheap imports, and suffered a huge loss.¹²²

Accordingly, the Pulp Tariff was inflicted essentially to mitigate the impacts of sluggish domestic demand and import surges on the local industry. At the time, the antidumping action

¹¹³ *China – Anti-Dumping Measures on Imports of Cellulose Pulp from Canada*, WT/DS483, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds483_e.htm

¹¹⁴ MOFCOM Announcement No. 18 on 4 April 2014.

¹¹⁵ Zhuang, *et al.* (undated).

¹¹⁶ Twelfth Five-Year Development Plan for the Textile Industry, 20 January 2012, available at: http://www.china.com.cn/policy/txt/2012-01/20/content_24456823.htm (in Chinese)

¹¹⁷ Application for antidumping measures on Cellulose Pulp Industry, 13 December 2012, available at: <http://images.mofcom.gov.cn/trb/201302/20130206084852203.pdf> (in Chinese), 13-14.

¹¹⁸ Zhuang, *et al.* (undated).

¹¹⁹ Euan Rocha and Lisa Von Ahn 2014, “Canadian pulp makers urge gov’t to pressure China on anti-dumping duties”, REUTERS (16 October).

¹²⁰ *Catalogue for Guiding Industry Restructuring* (2013), Order No. 21 of the National Development and Reform Commission (NDRC).

¹²¹ Research and Markets 2015, “Global and China Dissolving Pulp Industry Report, 2014-2017”.

¹²² *Ibid.*

reconciles with the industry development policy by providing temporary relief for the growing cellulose pulp industry and hence fostering production and technological catch-up. However, in the long run, the development of the industry cannot depend on protectionist policy instruments which would harm its efficiency and competitiveness. In addition, antidumping actions would also be detrimental to the downstream industries which significantly rely on cellulose pulp imports. For example, China's fibre industry strongly opposed the Pulp Tariff which led to a significant increase in pulp price in the Chinese market.¹²³ Consequently, the textile industry, which has already been suffering rising labour costs¹²⁴, would also be affected due to the higher fibre costs that it now has to pay. However, the fact that the Pulp Tariff was imposed despite these demonstrated impacts on the downstream industries suggests that in China, a less concentrated and influential industry (e.g. the pulp industry) may also successfully seek antidumping protection even though the protection is opposed by more concentrated and influential industries (e.g. the fibre industry and the textile industry) as long as the protection serves industrial development policies advanced by the government. That the Pulp Tariff was set at relatively low rates rather than prohibitive rates, however, may reflect the government's considerations of its impacts on the downstream industries.

Conclusions and Implications

The discussions above revealed a number of factors that may influence the decision-making of the Chinese government as to whether to take antidumping actions. These factors are summarised below in order of their potential level of impact:

- (1) the most influential factor would be whether an antidumping action supports a chosen industrial development policy which may be designed to foster the development of a new, or uncompetitive, or declining industry. Such policies often have more than one development goal such as enhancement of efficiency and competitiveness, increase in output and production capacity, technological advancement, export promotion, import substitution, etc. Antidumping actions may be taken if the government holds the view that such actions would contribute to one or more of the goals;
- (2) retaliation has become a major driving force of China's antidumping actions which may be taken in response to not only the abuse of prohibitive antidumping, countervailing or safeguard duties by foreign countries but also discriminative treatment of China in antidumping investigations (e.g. the NME issue) or based on other protectionist policy instruments (e.g. the US *Omnibus Appropriations Act*). Further, tit-for-tat antidumping actions may target the same or different goods as long as they are of great export interests to target countries. In addition to antidumping actions, retaliation may also be undertaken via WTO litigation; and

¹²³ See n. 114, Appendix A.

¹²⁴ Li Jing 2015, "Slowed by Rising Labor Costs, China's Textile Exporters Retool", *China Daily USA* (31 July).

- (3) the interests of domestic import-competing industries and exporters appear to have weighed equally in the decision-making process. While an antidumping action affords protection to the former, a retaliatory action advances the latter's interests. The influence of industries/firms has proven important and effective in pushing for the imposition of antidumping duties and the taking of retaliatory actions. While industries with high concentration and strong support from industrial associations are politically influential, those less concentrated could manage to obtain protection by way of antidumping duties if the other factors mentioned in (1) or (2) also support the application of the duties.

No matter which of the above motivations is behind an antidumping action, the action is likely to target the largest foreign competitors for it to be most effective. Finally, it must be noted that WTO rulings against an antidumping decision may not be effective in changing the decision in any significant way. Both the traditional and new users of antidumping have shown the ability to minimise the impacts of adverse WTO rulings by simply initiating a re-investigation or a review of the original matters. The impacts of WTO rulings may also be avoided by an initiation of a *de novo* antidumping investigation into the same goods exported from the same countries. In short, like the other major users of antidumping, China's behaviour in antidumping actions would unlikely be affected by the obligations to comply with WTO rules or rulings but may well succumb to the other motivations identified above.

A Case Study of Australia

China's antidumping behaviour may have significant implications for its trading partners. This section discusses these implications using Australia as an example. However, these discussions could also apply to the other trading partners of China.

In the past decade, the China-Australia economic relationship developed enormously, culminating in the conclusion of the ChAFTA. With far-reaching market-opening commitments enshrined, the ChAFTA however does not impose WTO-plus constraints on the use of antidumping.¹²⁵ This provides room for increasing recourse to antidumping measures by both countries. While China has already been the largest target of Australia's antidumping actions¹²⁶, it has not taken any such actions against Australia. The reluctance of China to target Australia may have to do with the high complementarity of Australian exports to the Chinese economy.¹²⁷ However, as the implementations of ChAFTA continue, China may well be motivated to do so.

China may use antidumping to mitigate the impacts of surges of Australian imports on domestic import-competing industries. For example, it is observed that Australia's agricultural sector (e.g. beef and dairy) would be the key beneficiary of ChAFTA.¹²⁸

¹²⁵ Article 7.9, Chapter 7 of the ChAFTA, available at: <http://dfat.gov.au/trade/agreements/chafta/official-documents/Documents/chafta-chapter-7-trade-remedies.pdf>

¹²⁶ Zhou 2015.

¹²⁷ Sheng and Song 2008.

¹²⁸ ANZ 2015, "The ChAFTA and Implications for Australian Businesses" (March).

However, in China, the increase in cheap dairy imports has been considered a major cause of the deterioration of the local dairy industry,¹²⁹ and hence the call for antidumping actions¹³⁰. Further, in the aftermath of the food security crisis, the Chinese government has been dedicated to the promotion and restructuring of the industry in support of its concentration.¹³¹ Accordingly, antidumping would be aligned with the industrial development goals. Finally, as the dairy sector is concentrated and receives strong support from the China Dairy Industry Association, it has the political influence required to push for antidumping actions. Like the dairy industry, China's beef industry is also declining¹³² and supported by government policies which aim to enhance the quantity and quality of beef output and to promote related agri-technology¹³³. Antidumping measures would become necessary to preserve the market share of the local industry as foreign competition continues to intensify. In short, import surges as a result of tariff reductions are expected to significantly impact on China's local competing industries and create difficulties for the government to achieve the relevant industrial development goals. It should not surprise if China resorts to antidumping actions to mitigate the impacts in the pursuit of its industrial policies. The targets of such actions are likely to be goods of great exporting interests to Australia which include but not limited to beef and dairy products.

Given Australia's current antidumping practice, there are at least two factors that may trigger China's retaliatory actions. The first concerns Australia's frequent use of antidumping and countervailing measures against Chinese exports. While these measures used to concentrate on steel products, they have expanded to target a wide range of other goods such as wind towers, power transformers, paper, silicon metal, solar panels and modules, aluminium road wheels, stainless steel sinks, etc. for the purpose of protecting major Australian manufacturers or start-ups.¹³⁴ Recently, Australia has applied its newly-created anti-circumvention mechanism predominantly against China, levying significantly higher antidumping duties.¹³⁵ As Australia continues to abuse trade remedies against China for protectionist purposes, the export interests of China would be increasingly affected and the market access for Chinese goods as expected under ChAFTA to be undermined. Consequently, Chinese industries with growing export interests in Australia are likely to lobby the government to take retaliatory antidumping actions. The second factor concerns Australia's treatment of China as a NME in antidumping investigations. While Australia

¹²⁹ KPMG 2015, "China's Milk and Dairy Products Market 2015", available at: <https://www.kpmg.com/CN/zh/IssuesAndInsights/ArticlesPublications/Documents/China-Milk-and-Dairy-Market-2015-201504-c.pdf>

¹³⁰ China News 2015, available at: <http://finance.chinanews.com/cj/2015/01-14/6966894.shtml>

¹³¹ State Council, *Working Plan on Promoting the Merge and Restructure of Infant Formula Milk Power Enterprises*, Guo Ban Fa (2014) No.28 (6 June 2014).

¹³² China Economic Times 2014, available at: http://lib.cet.com.cn/paper/szb_con/249991.html

¹³³ NDRC, *National Plan on Developing the Beef and Sheepmeat Product (2013-2020)*, August 2013.

¹³⁴ Anti-Dumping Commission, Current Cases, available at: <http://www.adcommission.gov.au/cases/Pages/default.aspx>

¹³⁵ Ibid.; Zhou 2016.

recognised China as a full market economy as a precondition for the ChAFTA negotiations¹³⁶, it has consistently treated China as having a “Particular Market Situation” in antidumping investigations, which has the effect of inflating dumping margins and hence antidumping duties.¹³⁷ Given the sensitivity of the NME issue to the Chinese government, Australia’s practice, which reneges on its commitment to grant China the full market economy status, would likely provoke China’s retaliatory actions either by way of antidumping or WTO litigation.

Recommendations

China’s FTA partners or potential ones should be aware that China has become an experienced and skilful user of antidumping for the benefits of its own businesses and industries at the cost of foreign businesses. Given its market potential, China’s antidumping actions could have huge impacts on foreign exporters. For foreign exporters to reap the full benefits of a FTA with China, they should unite to form a stronger constituent and lobby against domestic protectionist actions against China so as to avoid China’s retaliation. To promote exporting interests, foreign governments should constantly monitor the development of China’s industrial policies and analyse their impacts on their businesses and the ways to react. If China initiates antidumping actions, WTO litigation is preferable to retaliatory antidumping measures which are likely to ignite rounds of tit-for-tat actions to the detriment of exporters in all countries involved. As WTO litigation has proven inadequate to change China’s antidumping behaviour, foreign governments should engage in negotiations with China on WTO-plus disciplines on antidumping in FTAs if doing so is also in their own interests.

¹³⁶ *Memorandum of Understanding on the Recognition of China’s Full Market Economy Status and the Commencement of Negotiation of A Free Trade Agreement between Australia and the People’s Republic of China*, 18 April 2005.

¹³⁷ Zhou 2015, 980-987.

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