Reasons for Reforms to The WTO Agreement on The Implementation of Article VI of GATT 1994 in The Doha Round Negotiations:

Is There Any Way out of The Doha Impasse?

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LIST OF ABBREVIATIONS

AB	Appellate Body
AD	Anti-dumping
ADA	Anti-dumping Agreement
CBO	Congressional Budget Office
DDA	Doha Development Agenda
DFQF	Duty-Free Quota-Free
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
ECJ	European Court of Justice
EEC	European Economic Community
EU	European Union
FANs	Friends of Anti-Dumping Negotiations
FDI	Foreign direct investment
FTAs	Free trade agreements
GATT	The General Agreement on Tariffs and Trade
GDP	Gross domestic product
LDCs	Least developed countries
LTFV	Less than fair value
MFN	Most Favored Nation
MEs	Market-Economy Status
MOFTEC	The Ministry of Foreign Trade and Cooperation
NAMA	Non-Agricultural Market Access
NGR	Negotiating Group on Rules
NMEs	Non-Market Economy status
NTMs	Non-tariff measures
OECD	The Organization for Economic Co-operation and Development
R&D	Research and development
SETC	The State Economic and Trade Commission
TNC	Trade Negotiations Committee
TPA	Trade promotion authority
TPM	Trigger Price Mechanism
UK	United Kingdom
URAA	Uruguay Round Agreement Act
USDOC	United States Department of Commerce
USITC	United States International Trade Commission
VER	Voluntary export restraints
WTO	World Trade Organization
W-W	Weighted average-to-weighted average

INTRODUCTION

The World Trade Organization (WTO) Doha Round Negotiations, which began in 2001, are the latest multilateral negotiations that can offer high hopes for making significant progress along the path of trade liberalization, particularly for developing countries.[1] Of all the topics for negotiation, anti-dumping (AD) is one of the most controversial issues. The General Agreement on Tariffs and Trade (GATT) and the WTO have substantially decreased tariff barriers worldwide over the past decades after several negotiating rounds. An increasing number of free trade agreements and unilateral liberalizations have reduced the average tariff levels applied effectively to most products and certain sectors including agriculture.

Moreover, developing and least developed countries (LDCs) benefit from non-reciprocal preferential access to developed and some developing country markets.[2] In 2005, the sixth WTO Ministerial Conference agreed that developed and developing countries that announced themselves in a position to do so would give Duty-Free Quota-Free (DFQF) access to all products from all least developed member countries initially,[3] showing the WTO's commitment to promoting free trade by reducing tariff barriers.[4] Notwithstanding the WTO's effort and successes in free trade, there are still other obstacles. Non-tariff measures (NTMs) have grown and emerged over time as

[1] WTO, Doha Ministerial Declaration of WTO, November 2001. This declaration emphasizes the development perspective of the current Doha Round Negotiations. The main topics of the declaration include agriculture, the relationships between trade and investments, trade and labor standards and environment, etc.
[2] Under some schemes and arrangements, such as the Generalized System of Preferences, the trade preferences under the former African, Caribbean and Pacific Group of Countries- European Community Cotonou Partnership Agreement, and other preferential instruments granted to select countries and groups of countries.
[3] UNCTAD, Handbook on Duty-Free and Quota-Free Market Access and Rules of Origin for Least Developed Countries Part II: Other Developed Countries and Developing Countries. Uniteed Nations, 2018.
[4] WTO, "What is the World Trade Organization?" Understanding the WTO, Basics. https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm.
The function of the WTO is as *"an organization for liberalizing trade. It's a forum for governments to negotiate trade agreements. It's a place for them to settle trade disputes. It operates a system of trade rules…… Where countries have faced trade barriers and wanted them lowered, the negotiations have helped to liberalize trade. But the WTO is not just about liberalizing trade, and in some circumstances its rules support maintaining trade barriers — for example to protect consumers or prevent the spread of disease….. The system's overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side-effects — because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy."*

one of the main barriers to trade.[5] NTMs include different criteria applied to tradable goods. On the one hand, countries use these measures for legitimate public policy reasons. On the other, some measures intend to discriminate against imported products. NTMs are classified into three categories: technical measures, non-technical measures, and export-related measures. Under this classification, AD measures are non-technical measures that are used as a global trade remedy.[6]

The original intention of AD rules was to support free trade by reducing price discrimination. However, in recent decades, there has been phenomenal growth in the use of AD actions. There is plenty of literature on dumping in international trade. Politicians, economists, lawyers, and scholars have all participated in the debate on dumping with a zeal that is unprecedented even as regards trade issues. The proliferation of AD laws increases the intensity of the controversy.[7] The leading participants in this measure include developed and developing countries seeking to keep up with the former. AD investigations increased dramatically during the 1980s. The spread of AD actions to developing countries seems to be a trend rather than a surprise. The number of countries resorting to AD measures has increased, even though AD actions' overall growth rate appears to be slowing down for traditional users. Thus, this phenomenon has led to a search for enhancements to AD rules' discipline in the Doha Round Negotiations.

However, negotiations on AD are at an impasse because negotiators cannot agree with each other's proposals. Some WTO Members like China and India have submitted an important number of proposals to reform the WTO Agreement on the Implementation of Article VI of GATT 1994, known as the Anti-dumping Agreement (ADA), while others like the United States and Egypt want to retain the current ADA. The use of AD measures does not stop because of the deadlock in negotiations. To some extent, the use of AD measures is steadily increasing in international trade. The purpose of the Doha Round AD Negotiations is to clarify the ADA and provide strict global standards for the use of AD measures. There is extensive literature and research on reforms to

[5] Adam Heal and Giovanni Palmioli, "Trade and Non-tariff Measures: Impacts in the Asia-Pacific Region," *Emerging Issues in Trade and Investmen*, no.1 (2015): 4-8.
[6] WTO, "Non-Tariff Measures and the WTO," *WTO Working Papers*, January 2012, https://doi.org/10.30875/5703a171-en.
[7] Thomas R. Howell and Dewey Ballantine, "Dumping: still a Problem in International Trade, National Research Council 1997," in *International Friction and Cooperation in High-Technology Development and Trade: Papers and Proceedings*, ed. Charles W. Wessner (Washington, DC: The National Academies Press, 1997), 326-330.

specific articles of the ADA. There is less explanation for the reasons for reform. Hence, it is essential to inquire into what exactly makes the WTO Members want to reform the ADA. This may help find possibilities for breaking the deadlock in negotiations. This study will begin with theoretical literature on dumping, look at AD laws, and then its focus will move to the ADA within the WTO.

CHAPTER ONE -- OVERVIEW OF DUMPING AND ANTI-DUMPING RULES

From the time of Adam Smith[8] to the signing of the GATT in 1947[9] and the establishment of the current international trading system, producer interests have been the driving force behind all trade. Adam Smith's economic ideas provided a framework for the modern free trade system. He and his followers[10] strongly recommended that public policy provide freedom in international trade and reduce government protections.[11] However, conflicts arise between these economic theories and the realities of international trade.[12] Economists have created comprehensive models for the free

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[8] Adam Smith and William Robert Scott, *An Inquiry into the Nature and Causes of the Wealth of Nations* (London: G. Bell and Sons, 1925), 445-446.
Smith was a Scottish economist, philosopher and author. His most famous book is *The Wealth of Nations*. In this book, he writes about the predatory tactics used by mercantilist powers. He did not use the word "dumping". However, he mentioned mercantilist practices called "bounties" for exports at less than their "natural price and ordinary rate". He also talked about the link between monopolies and mercantilist commercial practices. He mentions that the role of the government should be minimum in free trade. Smith's famous argument is as follows:
"All systems either of preference or of restraint, therefore, being thus completely taken away, the obvious and simple system of natural liberty establishes itself of its own accord. Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man... According to the system of natural liberty, the sovereign has only three duties to attend to: three duties of great importance, indeed, but plain and intelligible to common understandings; first, the duty of protecting the society from the violence and invasion of other independent societies; secondly, the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and, thirdly, the duty of erecting and maintaining certain public works and certain public institutions, which it can never be for the interest of any individual, or small number of individuals, to erect and maintain; because the profit could never repay the expence to any individual or small number of individuals, though it may frequently do much more than repay it to a great society."
[9] GATT, The General Agreement on Tariffs and Trade (GATT 1947), https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm.
Tigani E. Ibrahim, Developing Countries and the Tokyo Round (Khartoum: Development Studies and Research Centre, Faculty of economic and Social Studies, University of Khartoum, 1978) 56-67.
General Agreement on Tariffs and Trade, 30 Oct. 1947. The GATT aims to progressively reduce barriers to trade and trade flow diversions according to free trade principles. Its aim is to increase the economic welfare of its member States. The members of GATT 1947 include: Australia, the Kingdom of Belgium, the United States of Brazil, Burma, Canada, Ceylon, the Republic of Chile, the Republic of China, the Republic of Cuba, the Czechoslovak Republic, the French Republic, India, Lebanon, the Grand-Duchy of Luxemburg, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, Pakistan, Southern Rhodesia, Syria, the Union of South Africa, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.
[10] H. Myint, "Adam Smith's Theory of International Trade in the Perspective of Economic Development," *Economica* 44, no.175 (1977): 231-248. https://doi.org/10.2307/2553648.
[11] Emma Rothschild, "Adam Smith and the Invisible Hand," *The American Economic Review* 84, no.2 (1994): 319-322. http://www.jstor.org/stable/2117851. See also, John A. Conybeare, "Tariff Protection in Developed and Developing Countries: a Cross-Sectional and Longitudinal Analysis," *International Organization* 37, no.3 (1983): 441-467, https://doi.org/10.1017/s0020818300032744.
[12] Dong-Sung Cho and Hwy-Chang Moon, *From Adam Smith to Michael Porter, Evolution of Competitiveness Theory* (Singapore: World Scientific Publishing Co. Pte. Ltd., 2013), 61-99. For example, Adam Smith encouraged buying commodities from foreign countries if their price was cheaper than the same commodity produced by domestic industry.

movement of goods, services, capital and labor across borders. These models have been developed based on a theory of the benefits brought by free trade to all trading nations.[13]

Together with free trade, different kinds of trade barriers appear in various forms, such as traditional tariff barriers[14] and hidden protectionism through non-tariff barriers.[15] These barriers to free trade tend to misallocate economic resources worldwide. Thus, free trade proponents continually argue for demolishing protectionist barriers to international trade.[16] Protectionism often arises when a domestic industry suffers due to different foreign industries. AD measures are some of the most typical representatives of non-tariff obstacles to imports.[17]

A. Theoretical Introduction

I. Definition of Dumping

The word "dumping" has a long history in the international trade literature.[18] However, the meaning of "dumping" varies greatly. Dumping has been a part of the rhetoric of political economics for a long time.[19] Jacob Viner was the first scholar to bring together earlier writings on the subject of dumping, and his viewpoint has become mainstream across all related definitions of dumping.[20] Viner collected examples to define dumping as "price discrimination between national

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[13] Dong-Sung Cho and Hwy-Chang Moon, "National Competitiveness: Implications for Different Groups and Strategies," *International Journal of Global Business and Competitiveness* 1, (2005):1-11.

[14] Vanessa Gunnella and Lucia Quaglietti, "The economic implications of rising protectionism: a euro area and global perspective," *ECB Economic Bulletin* 3, (2019): 1-12, https://www.ecb.europa.eu//pub/economic-bulletin/articles/2019/html/ecb.ebart201903_01~e589a502e5.en.html.

[15] Erdal Yalcin, Gabriel Felbermary and Luisa Kinzius, "Hidden Protectionism: Non-Tariff Barriers and Implications for International Trade," *ifo Center for International Economics*, (2017): 8-18.

[16] Marc Gold, "Managing Dumping in a Global Economy," *George Washington Journal of Law and Economists* 21, no.3 (1988): 503-510.

[17] Jock A. Finlayson and Mark W. Zacher, "The GATT and the regulation of trade barriers: regime dynamics and functions," *International Organization* 35, no. 4 (1981): 561-602.

[18] John Howard Jackson and Edwin Vermulst, *Antidumping Law and Practice: a Comparative Study* (Ann Arbor: The University of Michigan Press, 1992). This book states that the first use of the term "to dump" seems to have occurred in 1868, in the Commerce and Financial Chronicle (VI. 326/I) which stated "…new stock secretly issued (was) dumped on the market for what it would fetch". They suggest that, when tracking down the genesis of the term "dumping" in international trade, the United States congressional debate in 1884 should be focused on.

[19] J. Michael Finger, "Dumping and Antidumping: The Rhetoric and The Reality of Protection in Industrial Countries," *The World Bank Research Observer* 7, no.2 (1992): pp. 121-144, https://doi.org/10.1093/wbro/7.2.121.

[20] Raj Krishna, "Antidumping in Law and Practice," *Policy Research Working Papers*, 1999, https://doi.org/10.1596/1813-9450-1823.

markets."[21] The first example is a sixteenth-century English writer who charged foreigners with selling paper at a loss and then destroying the paper industry in England. The second example took place in the seventeenth century when the Dutch began selling at destructively low prices to eject French merchants from the market.[22] Viner further noted statements from Alexander Hamilton, warning of foreign countries' practices of underselling competitors in other countries. Hamilton regarded this behavior as frustrating to the first efforts made to introduce business into another market with temporary sacrifices or re-compensation.[23] He further emphasized that the export bounty system could be the most significant obstacle to new industries in a country's domestic market.[24]

If a manufacturer sells an identical product in two different markets with two different prices, that constitutes price discrimination. This occurs when producers sell the same commodity in different units at different prices for reasons not associated with differences in costs. Alternatively, producers sell the same merchandise in different groups at the same price but with varying costs. Dumping relates to a situation wherein import market prices are lower than those in the exporter's domestic market.[25]

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[21] Jacob Viner, *Dumping, A Problem in International Trade* (Chicago, IL: The University of Chicago Press, 1923), 321- 343.
[22] J. Michael Finger, "The Origins and Evolution of Antidumping Regulation," *Policy Research Working Paper*, no.783 (1991): 2-5.
[23] Alexander Hamilton, "Report To Congress on The Subject of Manufactures," *Annals of the Second Congress*, (1793): 971-975.
In this report, Hamilton emphasized high tariffs designed to protect American industry from foreign competition, government bounties and subsidies, and promote internal improvements and transportation.
[24] Gold, op.cit. 503-510.
[25] Melvyn B. Krauss, *The New Protectionism: The Welfare state and International trade* (New York: New York University Press, 1978), 68-70. "*According to Article VII of GATT, dumping is defined as the sale of a product abroad at a lower price than charged domestically*." There are extensive economic research and literature focusing on dumping. See also, Rainer M. Bierwagen, *GATT Article VI and the Protectionist Bias in Anti-Dumping Laws* (Deventer: Kluwer Law and Taxation Publishers, 1990), 171. See also, Richard D. Boltuck, "An Economic Analysis of Dumping," *Journal of World Trade* 21, no.45 (1987): 45. See also, Richard D. Boltuck, "Reply to Professor Lazar's Comment on 'An Economic Analysis of Dumping'," *Journal of World Trade* 129*,* no.22 (1988): 129. See also, Fred Lazar, "Structural or Strategic Dumping: A Comment on Richard Boltuck's "An Economic Analysis of Dumping," *Journal of World Trade* 22, no.3 (1988): 91. Much of the recent scholarship emphasizes econometric dumping models. See also, Dan Bernhardt, "Dumping, Adjustment Costs and Uncertainty," *Journal of Economic Dynamics and Control* 8, no.3 (1984): 349-370. See also, James A. Brander and Paul Krugman, "A 'Reciprocal Dumping' Model of International Trade," *NBER Working Paper*, no. 1194 (1983): 20-25. See also, Satya P. Das and Adwait K Mohanty, "Dumping in International Markets and Welfare: A General Equilibrium Analysis," *Journal of International Economics* 17, no. 1-2 (1984):149-157. See also, Stephen W. Davies and Anthony J. McGuiness, "Dumping at Less than Marginal Cost," *Journal of International Economics* 12, no. 1-2 (1982): 169-182. See also, Brian Pinto, "Repeated Games and the 'reciprocal Dumping' Model of Trade," *Journal of International*

The distinctions between these two markets depend on separate geographical, social, or cultural elements. Also, one market is less competitive than another market, thus satisfying conditions for classifying market distinction.[26] Why might a firm want to use price discrimination strategy for a period of time? First, when a firm with market power enters a new market, it may try to maintain product prices low in the new and competitive market. Second, to test a new product, a producer may need to enter a new geographical market.[27] Third, during a recession or when it has excess capacity, a producer that sells merchandise in two or more markets could make the prices lower in one market if the government in the other market regulates prices.[28] A fourth reason is international predation. A firm with market power may price discriminate against a low-price market with profits from a high-price market to eliminate competition in the low-price market.[29]

Economists also accept a definition of dumping as "sales below cost." In international trade, dumping happens "when the sale of products for export is at a lower price than those charged to domestic buyers, taking into account the conditions and terms of sale."[30] A firm sells a like product in an export market at a lower cost than in its home market. Moreover, the "lesser charge" includes two situations: a country exports or sells products in a foreign market for less than either (a) the price in the domestic market, or (b) the cost of making the product.[31] These two definitions have both been accepted in recent AD cases. Sales below cost have gradually become an alternative

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Economics 20, no. 3-4 (1986): 357-366. See also, Daniel Trefler, "Trade Liberalization and the Theory of Endogenous Protection: An Econometric Study of United States Import Policy," *Journal of Political Economy* 101, no.1 (1993):138-160. At least one observer finds these studies "not very helpful because they depend on a number of assumptions which render them useless for day-to-day use as well as for a more general hypothesis."

[26] Gerald Chan, "China and the WTO: Trade Law and Policy," *International Relations of the Asia-Pacific* 4, no.1 (2004): 47-72.

[27] L. Alan Winters, "Trade liberalization and poverty: what are the links?" *The World Economy* 25, no.9 (2002): 1339-1367.

[28] Irina Chervinskaya, "Specificity of anti-dumping regulation for transition countries," *Procedia Economics and Finance* 8, (2014): 144-149.

[29] Shahram Shoraka, "World Trade Dispute Resolution and Developing Countries: Taking a Development Approach to Fair Adjudication in the Context of WTO LAW" (Dissertation, London School of Economics and Political Sciences, 2006).

[30] Philip Slayton, "The Canadian Legal Response to Steel Dumping," *Canada-United States Law Journal* 2, no.13 (1979): 81-94.

[31] Gabrielle Marceau, *Anti-Dumping and Anti-Trust Issues in Free-Trade Areas* (Oxford, U.K.: Clarendon Press, 2001), 25-60.

definition for price discrimination on dumping.[32] However, there is no binding connection between price discrimination and sales below cost.[33] Sales below cost can exist without price discrimination.

II. Dumping Classification

The definition of dumping makes no comment on home market influences when dumping happens. Economists have debated under what circumstances dumping takes place when it occurs.[34] Jacob Viner classified dumping into three categories according to its duration and its allegedly different welfare impacts: Sporadic dumping, short-run or intermittent dumping, and long run or permanent dumping.[35]

1. Sporadic Dumping

Producers use sporadic dumping unintentionally to dispose of surplus products.[36] It exists only for a short time and results from investment and employment decisions.[37] It means the occasional sale of a commodity at below cost or at a lower price abroad than in the home market to unload an unforeseen[38] and temporary product surplus without reducing domestic prices.[39] It occurs when foreign demand for the product is flexible and the producer holds a monopoly position in the local market. The producer's motivation is to establish a position in the foreign market. It means that a producer sells excess merchandise at a reduced price to another country without disrupting its domestic market.[40] Furthermore, this kind of dumping does not cause significant harm to the national market.[41]

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[32] Alan V. Deardorff, "Economic Perspectives on Antidumping Law," in *Antidumping Law and Practice: A Comparative Study,* ed. John H. Jackson and Edwin A. Vermulst (Ann Arbor, MI: University of Michigan Press, 1989), 23-39.

[33] Fritz Machlup, "Characteristics and Types of Price Discrimination," in *Business Concentration and Price Policy,* ed. Universities-National Bureau, (Princeton, NJ.: Princeton University Press, 1955), 395-438.

[34] Richard D. Boltuck, "An Economic Analysis of Dumping," *Journal of World Trade* 21, no.5 (1987): 45-54.

[35] Jacob Viner, "Dumping as a Method of Competition in International Trade. II," *The University Journal of Business* 1, no.2 (1923): 182-190.

[36] Ibid.

[37] Ibid.

[38] Peter D. Ehrenhaft, "Protection against International Price Discrimination: United States Countervailing and Antidumping Duties," *Columbia Law Review* 58, no.1 (1958): 44-76. https://doi.org/10.2307/1119502.

[39] K.D. Raju, *World Trade Organization Agreement on Antiudmping: A GATT/WTO and Indian Legal Jurisprudence*, (Austin, TX: Wolters Kluwer Law & Business, 2008), 9-20.

[40] Toby S. Myerson, "A Review of Current Antidumping Procedures: United States Law and the Case of Japan," *Columbia Journal of Transnational Law* 15, no.167 (1976):168-188.

[41] Rainer M. Beirwagen, and Kay Hailbronner, "Input, Downstream, Upstream, Secondary, Diversionary and Components or Subassembly Damping," *Journal of World Trade* 22, no.3 (1988): 27-59.

2. SHORT-RUN DUMPING

Short-run dumping means to sell a commodity in another country's domestic market. When the irregular dumping period is over, local producers will increase their price far higher than before to offset their adaptation costs during this dumping period.[42] Short-run or intermittent dumping lasts for a limited time, and sellers try to control or compete in the foreign market by selling the commodity at a price that is lower than its production cost. However, these firms will raise the price of the product after removing their competition in the foreign market and becoming a monopoly, and then they will seek exceptionally high profits again.[43] However, domestic purchasers can decide for themselves whether or not to increase the price.[44] The effect of the intermittent dumping on welfare is uncertain. Meanwhile, it is not easy to define the structural conditions that satisfy the requirements of occasional dumping. Hence, it is debated whether AD laws should regulate occasional dumping or not.[45]

3. LONG-RUN DUMPING

Long-run or continuous dumping occurs over an ongoing period. It means the firm continuously sells its part of a commodity at a high price in one country's domestic market and simultaneously keeps the output at a low price in the foreign market.[46] It is possible only if domestic demand for that commodity is less flexible, and foreign demand is highly flexible. This dumping intends to achieve or maintain full production in large-scale economies.[47]

This classification of dumping can help understand the different kinds of dumping and their characteristics and motivations. All the classifications above will provide a yardstick for estimating the type of dumping. It is the very first step to define dumping and to look at the legislation. Viner's

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[42] Michael Trebilcock, Ralph A. Winter, Paul Collins, and Edward M. Iacobucci. *The Law and Economics of Canadian Competition Policy* (University of Toronto Press, 2002), 658-660.

[43] John Bellamy Foster, Robert W. McChesney and R. Jamil Jonna, "Monopoly and Competition in Twenty-First Century Capitalism," *Monthly Review* 62, no.11 (2011). https://monthlyreview.org/2011/04/01/monopoly-and-competition-in-twenty-first-century-capitalism/.

[44] Susan Hutton and Michael Trebilcock, "An Empirical Study of the Application of Canadian Anti-Dumping Laws: A Search for Normative Rationales," *Journal of World Trade* 24, no.3 (1990):130-135.

[45] From an analysis of the influences of the intermittent dumping, they find that the structural conditions that configure intermittent dumping cannot be satisfied. Additionally, they take current Canadian and US AD laws as examples to show the weakness of AD laws for dealing with the problems triggered by intermittent dumping.

[46] Richard Dale, *Anti-Dumping Law in a Liberal Trade Order* (London: Springer, 1980), 56-80.

[47] Reem Anwar Ahmed Raslan, *Antidumping: A Developing Country Perspective* (Alphen aan den Rijn Wolters Kluwer International, 2009), 13-16.

classification method has become the mainstream AD classification.[48] All these three types of dumping have the joint effect of increasing market inefficiencies.[49] Producers are resorting to dumping, which is an alternative to participating in unfair price competition. Producers seek to gain market share by reducing prices below the cost of production and a reasonable profit to achieve profit from a monopoly.[50] Predatory dumping is the most common example of this issue. Over time, with dumping, a producer's long-term benefits will surpass its short-term losses because of its market monopoly in the long term. Further, sporadic dumping is also ineffective because it intends to reduce the losses of competitors.[51]

Viner also argued that predatory dumping would hurt domestic consumers.[52] Therefore, the AD authority may need to protect local consumers against it. Predatory pricing reflects a foreign firm or cartel's first step in its endeavors to expel domestic competitors, to then establish its monopoly and ultimately raise the price of the commodity.[53] "Predatory pricing," thus, refers to the use of short-run price-cutting to exclude rivals on a basis other than efficiency to gain or protect market power.[54] It is a sophisticated form of anti-competitive conduct. It requires the perpetrator to trigger substantial losses or at least forego immediate profits in the hope that they can recoup these losses and more by exercising market power in the future. A predator must consider its market share and whether it at least has the possibility to obtain a sufficient share of the market.[55] If producers are active, they should be able to gain back their losses instead of dumping products into an efficient market.[56]

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[48] Arthur I. Bloomfield, "On the Centenary of Jacob Viner's Birth: A Retrospective View of the Man and His Work," *Journal of Economic Literature* 30, no. 4 (1992): 2052-085. http://www.jstor.org/stable/2727973.
[49] Roger P. Alford, "Why a Private Right of Action Against Dumping Would Violate GATT," *New York University Law Review* 66, no. 696 (1991): 702-710. https://scholarship.law.nd.edu/law_faculty_scholarship/549.
[50] Stephen F. Moller, "Free Trade Realism in the International Market: Towards a Sensible, Privately-Enforced Antidumping Statute," *Santa Clara Law Review* 33, no.4 (1993): 967-977.
[51] Ibid.
[52] Viner, op.cit. 57-66.
[53] Robert W. Staiger and Frank A. Wolak, "The Effect of Domestic Antidumping Law in the Presence of Foreign Monopoly," *Journal of International Economics* 32, no.3-4 (1992): 265-287.
[54] Jonathan Eaton and Leonard J. Mirman, "Predatory Dumping as Signal Jamming", in *Trade, Policy, and International Adjustments*, ed. Akira Takayama, Michihiro Ohyama and Hiroshi Ohra, (Academic Press, 1991), 60-76.
[55] J. Mcgee, "Predatory Pricing Revisited," *The Journal of Law and Economics* 23, (1980): 289 - 330.
[56] Howell and Ballantine, op.cit. 326-330.

Duration is significant when evaluating the effects of dumping. However, the impact of dumping becomes more complicated than the seemingly elementary categorization of dumping.[57] Hence, other economists identify dumping based on its impact on welfare. Recent research on the consequences of dumping has found that both predatory dumping and all forms of strategic dumping are detrimental to the global economy.[58] Robert Willig further classifies five types of dumping under different circumstances where dumping has adverse effects on welfare.[59] These categorizations are market expansion dumping[60], cyclical dumping[61], state-trading dumping[62], strategic dumping[63] , and predatory dumping[64].

Nonetheless, not all economists agree on the existence of predatory dumping.[65] There are two reasons for this. First of all, firms suffer losses over incredibly long periods. Second, predatory dumping requires that a firm establish a global monopoly, which is too complicated to achieve in most industries.[66] Isaac and Smith once did experimental laboratory work try to find evidence of predatory pricing, failing to find any.[67]

There are three necessary conditions required to verify the existence of dumping. First, markets must be segmented to prevent secondary sales in the exporters' home market. Second, export firms

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[57] William A. Kerr, "Dumping: Trade Policy in Need of a Theoretical Make Over," *Canadian Journal of Agricultural Economics* 54, no.1 (2006): 11-31.
[58] Phedon Nicolaides, "The Competition Effects of Dumping," *Journal of World Trade* 24, (1990): 115-131.
[59] Robert D. Willig, "Economic Effects of Antidumping Policy," *Brookings Trade Forum*, (1998): 57-79 https://www.jstor.org/stable/25063121.
[60] Ibid, "*If the exporting firm faces a higher elasticity of demand with respect to price, it can profitably charge a lower mark up in the importing market*."
[61] Ibid, "*The motivation arises from the unusually low marginal costs or opportunity costs of production coupled with substantial excess capacity with little or no use apart from the manufacture of the particular good*."
[62] Ibid, In this situation, the motivation for dumping is the acquisition of hard currency.
[63] Ibid, "*This term describes exports that injure rival firms in the importing country through an overall strategy of the exporting nation that encompasses both the pricing of the exports as well as restraints foreclosing the exporter's home market. If each exporter's share of its home market is of significance then a benefit from a significant cost advantage over any foreign rivals occurs*."
[64] Ibid, "*Dumping that falls under the authority of most Members' competition or antitrust regulations. Here, the exporter is trying to eliminate competition by lowering prices in order to reap higher profits later.*"
[65] Jacob Viner, "The Prevalence of Dumping in International Trade: I," *Journal of Political Economy* 30, no.5 (1922): 655-668.
[66] James C. Hartigan, "Predatory Dumping," *The Canadian Journal of Economics / Revue Canadienne D'Economique* 29, no.1 (1996): 228-39. https://doi.org/10.2307/136160.
[67] Mark R. Isaac, and Vernon L. Smith, "In Search of Predatory Pricing," *Journal of Political Economy* 93, no.2 (1985): 320-345.

must gain sufficient market power to influence the price. Third, the demand in the export market is more flexible than in the home market.[68] Is dumping harmful? Many economists believe dumping is not so detrimental to importing countries, except where its intentions are predatory or strategic.[69] Consumers in the importing country benefit from the lower price of imported products.[70] In economic terms, imposing extra duties to reduce price discrimination only affects the narrow domestic interests of domestic industries but not the whole economy.[71] Furthermore, both consumers and domestic producers may have to pay a higher price or charge more to remain competitive.[72]

High tariffs helped countries drive their economic growth in the late 19th century.[73] Trade amongst industrialized nations increased after this economic growth.[74] Dumping existed before the adoption of AD measures. However, it had less adverse effects on countries because high tariffs limited import competition at that time.[75] Before 1914, export dumping was more widespread in Germany than in other nations.[76] There were two factors that encouraged export dumping by Germany. One factor was high tariffs. Another factor was the organization of large-scale industry into cartels or selling and buying combinations. Moreover, cartels led to dumping.[77] After 1914, some researchers have pointed out that German dumping had predatory motives.[78]

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[68] Bernard M. Hoekman and Micheal P. Leidy, "Dumping, Antidumping, And Emergency Protection," *Journal of World Trade* 23, no.27 (1989): 15-30.
[69] Marceau, op.cit.136-142.
[70] From the importing country's perspective, the importing country benefits from dumping because it acquires access to imported products at a lower price. Although it will hurt some companies that compete with the exporting companies, the importing country benefits overall.
[71] Raj Bhala, "Rethinking Antidumping Law," *George Washionton Journal of International Law & Economy* 29, no.1 (1995). https://ssrn.com/abstract=2916733.
[72] John H. Jackson, *The Jurisprudence of GATT and the WTO: Insights on Treaty Law and Economic Relations* (Cambridge, MA: Cambridge University Press, 2000), 87-100.
[73] Douglas A. Irwin, "Tariffs and Growth in Late Nineteenth Century America," *The World Economy* 24, no.1 (2001): 15-30.
[74] H. Peter Gray, "The Theory of International Trade among Industrial Nations," *Weltwirtschaftliches Archiv* 116, no.3 (1980): 447-70.
[75] Douglas A. Irwin, "Interpreting the Tariff-Growth Correlation of the Late 19th Century," *The American Economic Review* 92, no.2 (2002): 165-169.
[76] Viner, op.cit. 51-55.
[77] Steven B. Webb, "Cartels and Business Cycles in Germany, 1880 to 1914," *Zeitschrift Für Die Gesamte Staatswissenschaft / Journal of Institutional and Theoretical Economics* 138, no.2 (1982): 205-24.
[78] Henri Hauser, *Germany' s Commercial Grip on the World: Her Business Methods Explained* (New York: Garland, 1983). 98. Hauser viewed the German dumping as "*a manifestation of a deep laid conspiracy between the German government and industry to destroy the competing industries of foreign countries*."

Following Viner's comprehensive explanation of predatory dumping, his theory has become the definitive work on this topic. Although Viner's theory emphasized the role of AD to protect home markets and different economic systems, scholars at that time viewed AD laws as an extension of antitrust laws. AD laws aim to combat imports with discriminatory prices, and this partly accounts for the rationale of including them under antitrust legislation.

However, modern AD laws are substantially different from antitrust laws, although they have some similarities. The debate surrounding the difference between AD law and antitrust law is that they focus on different problems.[79] Antitrust laws pay attention entirely to private-sector actions, while AD laws also focus on issues related to the actions of foreign governments,[80] besides the exporters' predatory pricing behavior. In particular, a visible divergence exists in the United States. The United States has antitrust law, which seeks to enhance the interests of consumers, whereas AD law focuses on the producers. Although there are similarities between antitrust law and AD law, they have different focuses and solve different problems.[81] If, for example, the government issues policies leading to trade barriers, subsidies, or lax enforcement of antitrust law over an ongoing period, companies will benefit in the long-run.[82] These sectors are familiar with AD actions in which trade protection and subsidies abound.

For almost one hundred years, international trade policymakers have held the view that dumping is a practice that should be condemned and have allowed implementing dumping countermeasures.[83] Since dumping is a form of price discrimination, exporters will subsequently obtain profits from their monopoly and oligopoly positions and use them to subsidize low-price

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[79] Alan O. Sykes and Richard N. Cooper, "Antidumping and Antitrust: What Problems Does Each Address? [with Comments and Discussion]," *Brookings Trade Forum*, (1998): 1-53.

[80] For example, where the foreign government maintains protected home markets or provides subsidies to domestic industries.

[81] Jorge Miranda, "Should Antidumping Laws Be Dumped," *Law and Policy in International Business* 28, no. 1 (1996): 255-288. AD law and antitrust law has been used separately for decades. One cannot replace the other because their rationale and focus are not the same.

[82] Berbard M. Hoekman and Petros C. Mavroidis, "Dumping, Antidumping and Antitrust," *Journal of World Trade* 30, no.27 (1996).

[83] John H. Jackson, *The World Trading System: Law and Polity of International Economic Relation*s, (The MIT Press, Second Edition, 1997), 251-260. Mr. Jackson states that economists believe that dumping is necessary for exporters to gain benefits through scale of production and subsequent cost reductions. See also, Joan Violet Robinson, *The Economics of Imperfect Competition* (London: MacMillan and Co., Limited, 1969), 205-206. Mr. Robinson's view is that price discrimination can "*only benefit members of the high price markets*".

export sales.[84] In open import country markets, exporters compete unfairly with other domestic producers who cannot afford such low prices. If such dumping harms local market producers in the importing country, under certain circumstances, it could be permissible for the authorities of the importing country to implement dumping countermeasures.[85] The most common reaction is the adoption of AD duties.[86]

Dumping has occurred before countries adopted AD legislation. United States and German firms were the main dumpers around the world in the late 1800s and early 1900s. In the United States, high tariffs protected domestic companies from import competition. Local companies could ask the authorities to charge high domestic prices that they could not maintain on their foreign exports where they faced competition.[87] In Germany, the firms set up cartels to keep high domestic prices that they could not apply to their exports.[88]

Germany's industrial power had a tremendous impact on the enactment of national AD legislation. German's industry held a cartel position in numerous sectors, especially in the chemical and steel industries. German industry held a monopoly in these sectors.[89] Chemical industry dumping resulted in barriers to entry and fixed costs due to its intensive nature. German chemical companies began competing internationally and disposed of surplus stocks. Hence, Germany's dumping

[84] Daniel J Gifford and Robert T. Kudrle, "The Law and Economics of Price Discrimination in Modern Economies: Time for Reconciliation," *Minnesota Legal Studies Research Paper*, no.08-21 (2008): 1235-1255.
[85] Massimo Motta and Fabrizio Onida, "Trade Policy and Competition Policy," *Giornale Degli Economisti E Annali Di Economia*, Nuova Serie, 56 (Anno 110), no.1/2 (1997): 67-97. http://www.jstor.org/stable/23248278.
[86] William A. Kerr and Laura J. Loppacher, "Antidumping in the Doha Negotiations: Fairy Tales at the World Trade Organization," *Journal of World Trade* 38, no.2 (2004): 211-244. For a critique of current WTO negotiations as failing to address the fundamental economic questions of today's AD system. This module focuses on the legal aspects of AD frameworks. Economic analyses and discussions on the welfare implications of dumping or of imposing AD duties are beyond the scope of this module. It is important to remember, however, that the economic basis for current AD practices can be disputed..
[87] Tyler Halloran, "A Brief History of Tariffs in the United States and the Dangers of their Use Today," *Frodham Journal of Corporate & Financial Law*, March 17, 2019. https://news.law.fordham.edu/jcfl/2019/03/17/a-brief-history-of-tariffs-in-the-united-states-and-the-dangers-of-their-use-today/.
[88] Hugh Neuburger and Houston H. Stokes, "The Anglo-German Trade Rivalry, 1887-1913: A Counterfactual Outcome and Its Implications," *Social Science History* 3, no.2 (1979): 187-201.
[89] Stephen, Broadberry, "Explaining Anglo-German Productivity Differences in Services since 1870," *European Review of Economic History* 8, no.3 (2004): 229-62.

received increased scrutiny and created greater political tension than that of other countries, mainly before World War I.[90]

The threats to domestic markets from Germany's dumping facilitated country legislation. Countries gradually enacted domestic dumping laws to protect the regular order of their home markets in the face of harmful dumping. The rationale behind this remedy seems to make total sense. If an exporter tries to use lower prices in a foreign market to drive out domestic producers, AD duties can reduce the harm created by exporters.[91] This conclusion was reached almost simultaneously with the first AD laws coming into effect.[92]

B. ANTI-DUMPING LEGISLATION FROM A HISTORICAL PERSPECTIVE

I. CANADIAN ANTI-DUMPING LAW

By end of the nineteenth century, global industrialization had become more concerned about the domestic effects of international trade. Meanwhile, the tariff structure for international trade had limited application and efficacy.[93] AD laws gradually became a policy alternative.[94] Domestic AD legislation began appearing at the start of the 20th century. On 10 August 1904, the earliest AD statutory provisions in any jurisdiction received Royal Assent in Canada.[95] These measures formed part of the amendments to the Customs Tariff Act of 1897.[96] Before this legislation, authorities could levy special duties for preventing dumping. However, Section 19 of the 1904 Bill introduced a "special obligation on under-valued goods," specifically enacting this "special duty".[97] The 1907

[90] Robert Mark. Spaulding, "German Trade Policy in Eastern Europe, 1890-1990: Preconditions for Applying International Trade Leverage," *International Organization* 45, no.3 (1991): 343-368.
[91] Bernard M. Hoekman and Michel M. Kostecki, *The Political Economy of the World Trading System: the WTO and Beyond* (Oxford, U.K.: Oxford University Press, 2013), 321-325.
[92] Edwin A.Vermulst, "Injury Determinations in Antidumping Investigations in the United States and the European Community," *NYLS Journal of International and Comparative Law* 7, no.2 (1986): 301-421.
[93] Terence P. Stewart, *The GATT Uruguay Round: a Negotiating History 1986-1992* (The Hague: Kluwer Law International, 1999), 560-567.
[94] William S. Fielding, House of Commons Debate Canada 07-06-1904 col. 4365. Fielding was the Finance Minister of Canada. He announced in 1904 that generally and permanently raising tariff walls was unnecessary to deal with temporary dumping cases. The appropriate method was to impose certain duties upon the dumped goods.
[95] Alan V. Deardorff and Robert M. Stern, "A Centennial of AD Legislation and Implementation-Introduction and Overview," *The World Economy* 28, no.5 (2005): 633-640.
[96] United States Congress, *Tariff Acts passed by the Congress of the United States from 1789 to 1897: **I**ncluding All Acts, Resolutions, and Proclamations Modifying*, (Nabu Press, 2012), 565-570.
[97] Dan Ciuriak, "Antidumping at 100 Years and Counting: A Canadian Perspective," *The World Economy* 28, no.5 (2005): 641-649.

amendment to this law provided that any imported product which belonged to a class or kind also manufactured in Canada, would pay additional special duty whenever the price charged for the product in Canada, less the cost of shipment to Canada, was lower than price of the article in the exporter's home market.[98]

The Canadian Minister of Finance proposed the Canadian legislation in a budget speech, offering the following justification: "We find today that the high tariff countries have adopted that method of trade which has now come to be known as [...] dumping […] the trust combine, having obtained command and control of its market and finding that it will have a surplus of goods, sets out to get command of a neighboring market, and to obtain control of a neighboring market will put aside all reasonable considerations with regard to the cost or fair price of the goods; They send the goods here with the hope and expectation that they will crush out the native Canadian industries. Moreover, with the Canadian industries crushed out, what would happen? The end of cheapness would come, and the beginning of dearness would be at hand."[99] This speech determined that dumping could be used to obtain a controlling position in a neighboring market. Hence, the goal of dumping is to reduce or eliminate negative influences in domestic markets.[100]

Canada's AD law intended to address what is known as "predatory dumping". This is where a producer gains a monopoly (or a near-monopoly position) in its home market due to protection from high tariffs and seeks to enter markets in other countries using low export prices to obtain a similar position in those markets.[101] Once a producer gains a monopoly or near-monopoly position in its export markets, the price of the merchandise in the export market will be raised to match monopoly prices.[102] Canada's legislation, to some extent, defined the first systematic national law to deal with dumping issues. It defined dumping, the purpose of implementing AD measures, in

[98] United States Tariff Commission, *Information Concerning Dumping and Unfair Competition in the United States and Canada's Anti-dumping Law* (Washington, D.C.: Washington Government Printing Office, 1919), 21-29.
[99] Ibid, 22-25.
[100] Timothy A. Falade Obalade, "Analysis of Dumping as a Major Cause of Import and Export Crises," *International Journal of Humanities and Social Science* 4, no.5 (2014): 233- 239.
[101] Edwin A. Vermulst, "The Anti-Dumping Systems of Australia, Canada, the EEC and the United States of America: Have Anti-Dumping Laws Become a Problem in International Trade," *Michigan Journal of International Law* 10, no.3 (1989): 764-806.
[102] Gregory Lyon and Du Plessis J J., *The Law of Insider Trading in Australia* (New Jersey: World Scientific, 2009), 5-7.

which situations should duties should be imposed upon exporters to offset the harm caused to the domestic market.[103] The Canadian AD law was the first and was used as a model for other countries' legislation. This law was a reference for other leading trading nations in the industrialized world before and after World War I. Following World War II, AD laws were incorporated into the General Agreement on Tariffs and Trade 1947 (GATT 1947). In recent years, nearly all industrialized and developing countries in the global economy have enacted their own AD laws.[104]

II. New Zealand and Australian Anti-dumping Laws

For the reasons above, the major trading nations followed the example of Canadian legislation and adopted similar laws. New Zealand (1905) and Australia (1906) passed similar measures into law one after the other.[105] However, at the time, New Zealand and Australia implemented AD measures because of competitive pressure from the United States. In New Zealand, this pressure came from International Harvester on both local and British suppliers.[106] In Australia's case, the United States company International Harvester wanted to introduce US and Canadian agricultural machinery into the Australian market.[107]

New Zealand enacted its AD law in 1905. The New Zealand Law created an investigation commission to deal with unfair competition complaints. After this commission made recommendations, AD laws allowed customs officials to provide subsidies to New Zealand and British manufacturers to make up for the exporter's low price.[108] In Australia, AD measures were included in the unfair business practices law in 1901. Australia followed Canada and the United

[103] Nisha Malhotra and Rus. A. Horatiu, "The Effectiveness of the Canadian Antidumping Regime," *Canadian Public Policy / Analyse De Politiques* 35, no.2 (2009): 187-202.
[104] WTO, "Anti-dumping, subsidies, safeguards: contingencies, etc." https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm.
[105] Jackson and Vermulst, op.cit.12-16.
[106] In New Zealand's case, the AD provision was targeted very narrowly at International Harvester: "In 1905 domestic and British manufacturers of agricultural implements complained about the efforts of an American harvester trust to monopolize the New Zealand market by systematic price-cutting to New Zealand purchasers. As a result, the Agricultural Implement Manufacture, Importation and Sale Act was passed, this made provision for a special duty to be applied to the unfairly traded imports. This Act continued in effect until 1915. The first full AD legislation appeared as section 11 of the Customs Amendment Act of 1921."
[107] Bruce C. Daniels, "Younger British Siblings: Canada and Australia GrowUp in the Shadow of the United States," *American Studies International* 36, no.3 (1998): 17-39 .
[108] Martin Garcia and Astrid Baker, "Anti-dumping in New Zealand: A century of protection from "unfair" trade?" *NZIER – NZTC working paper*, no.39 (2005).

States and implemented more specific legislation in the Customs Tariff (Industries Presservation) Act of 1921.[109] After World War II, Australia's laws followed this impetus, providing anti-dumping agreements in GATT and WTO multilateral negotiation rounds.[110] Unlike Canadian and New Zealand AD laws that focused on specific problems (steel in Canada, farm equipment in New Zealand), the Australian AD law regulated a generic solution to the overall problem of dumping.[111] After this, South Africa and Newfoundland passed their own AD laws. Then, no new countries passed AD laws until 1921. There was an outburst of AD laws during that year. Great Britain adopted its first AD law. Meanwhile, the United States,[112] Australia,[113] New Zealand,[114] and Canada[115] amended their old AD laws.

III. United States Anti-dumping Legislation

In the United States, the Wilson Tariff of 1894 made it unlawful for foreign producers to combine or conspire to monopolize the US market.[116] Furthermore, this AD Act confirms that if an exporter sells imported goods at a price lower than their market value in the exporting country, this behavior is illegal.[117] In 1916 legislation was enacted that was a criminal statute with criminal implications, which could subject the guilty party to a prison sentence. The law also focused on proof of exporters intending to limit or restrict competition.[118] This AD law was very similar to a prohibition on predatory pricing for imports.[119] This meant the law was rarely implemented because it is hard for the plaintiff to prove the exporter's "predatory intent".

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[109] Gary Banks, *Australia's Antidumping Experience* (Washington, D.C.: Trade Policy Division, Country Economics Department, World Bank, 1990), 120-135.

[110] Stephen Kirchner, "Time to Dump Australia's Anti-dumping System," *Issue Analysis*, no.141 (2013): 1-13.

[111] Australian Government Report, Department of Industry, Science, Energy and Resources, "Anti-dumping and countervailing system," https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system.

[112] John J. Barceló III, "Antidumping Laws as Barriers to Trade-The United States and the International Anti-dumping Code," *Cornell Law Review* 57, no.491 (1972):498-558.

[113] Ibid, 516-519.

[114] Garcia and Baker, "Anti-dumping in New Zealand: A century of protection from "unfair" trade?" 20-30.

[115] K. C. Mackenzie, "Anti-Dumping Duties in Canada," *Canadian Yearbook of International Law/Annuaire Canadien De Droit International* 4, (1966): 131-160.

[116] Viner, op.cit. 241-245. Viner judges this part of the Wilson tariff as "without practical significance".

[117] Nejdet Delener, "An Ethical and Legal Synthesis of Dumping: Growing Concerns in International Marketing," *Journal of Business Ethics* 17, no.15 (1998): 1747-753.

[118] Aya Iino, "The Blocking Legislation as a Countermeasure to the US Anti-Dumping Act of 1916: A Comparative Analysis of the EC and Japanese Damage Recovery Legislation," *Journal of World Trade* 40, no.4, (2006): 753-776.

[119] Bruce Gregory Arnold, *Antidumping Action in the United States and around the World: an Update* (Washington, D.C.: Congress of the United States, Congressional Budget Office, 2001), 1-3.

United States' AD laws moved in the direction of Canada's statute, giving rise to the AD Act of 1921 that is now encompassed in the Tariff Act of 1930.[120] This law included all the elements now recognized as AD: under which circumstance should duties be imposed, which measures are appropriate remedies, and what effect upon domestic industry will lead to these duties.[121] The law provides procedures to impose AD duties equal to the margin of dumping, which means AD duties are administrative countermeasures against dumping when dumped imports cause "material injury" or the "threat of material injury" to the domestic industry. During the 1920s-30s, AD was not a critical part of the US trade policy because of high import tariffs and shallow import penetration.[122]

Only a few countries had AD laws in the beginning[123]. At that time, existing AD laws were not the preferred instrument for solving import problems. For example, for a long time in the United States, tariffs held a dominant position over AD laws.[124] The United States AD provisions have been a part of the United States trade law for over 80 years yet they have only become prominent over the past three decades.[125] The motivation for implementing AD rules appears when importing countries face competitive pressure from exporting countries. Also, most of these rules are general rather than detailed. Even countries that had AD legislation barely used it. Then the prosperity of international trade made imports and exports more frequent. As of that moment, AD laws gradually began occupying a critical position in domestic legislation.[126]

IV. Article VI of The General Agreement on Tariffs and Trade 1947

The General Agreement on Tariffs and Trade (GATT) resulted from a round of negotiations held in Geneva in 1947 to create an international trade organization. One of the main aims of the GATT

[120] Abraham Berglund, "The Tariff Act of 1930," *The American Economic Review* 20, no.3 (1930): 467-479.
[121] Douglas A. Irwin, "The Rise of US Antidumping Activity in Historical Perspective," *The World Economy* 28, no.5 (2005): 651-668.
[122] Kerry A. Chase, "Imperial Protection and Strategic Trade Policy in the Interwar Period," *Review of International Political Economy* 11, no.1 (2004): 177-203.
[123] The very initial phase means after Canada enacted the first AD law in 1904.The few countries included New Zealand (1905), Australia (1906), South Africa.
[124] Michael Y. Chung, "United States Antidumping Laws: A Look at the New Legislation," *North Carolina Journal of International Law and Commercial Regulation* 20, no.3 (1994): 495-530.
[125] Robert E. Baldwin, "The Changing Nature of United States Trade Policy since World War II," in *The Structure and Evolution of Recent United States Trade Policy*, ed. Robert E. Baldwin and Anne O. Krueger (Chicago, IL: University of Chicago Press, 1984), 5-32.
[126] John B. Rehm, "Developments in the Law and Institutions of International Economic Relations: The Kennedy Round of Trade Negotiations," *The American Journal of International Law* 62, no.2 (1968): 403-434.

was to reduce or eliminate barriers to trade.[127] The Most Favored Nation principle (MFN) and tariff bindings are two fundamental principles of the GATT.[128] Under the MFN principle, all forms of protection of a member country should apply on a nondiscriminatory basis to imports from other nations. Tariff bindings prohibit a state from later raising tariffs it has reduced. The United States AD law was inconsistent with this aim and these two principles. The United States imposed trade barriers by imposing specific duties on imports from firms. The United States insisted that foreign companies selling in the United States market apply the same pricing and not receive subsidies from their governments without demanding the same of the United States firms selling in the United States market.[129] AD duties are different between countries and violate the MFN principle. Moreover, the United States AD duties would violate tariff bindings due to the way they respond to different behavior.[130] However, GATT 1947 included an exception allowing AD duty laws subject to certain limitations.[131] Since the original contracting parties of the GATT agreed to a multilateral trade agreement in 1947, provisions were made at the outset for AD measures in Article VI of the GATT. Many countries consider injurious dumping a big problem. AD measures are against unfair trade, which is related to dumping. Moreover, AD measures could alleviate injury from unexpected increases in fair trade through safeguarding.[132]

Article VI of The General Agreement on Tariffs and Trade 1947 (GATT 1947, Article VI) regulated AD criteria. On the surface, Article VI is apparently at odds with GATT principles. Some analysts believe that part of it may be necessary to gain political support for an open international trade system.[133] The language in GATT 1947, Article VI was relatively short and straightforward. It regulated the rules on AD and Countervailing Duties. It is only a broad outline of the circumstances under which a country could implement actions. The contracting parties agreed on the type of action. The article consists of eight paragraphs, only the first two of which

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[127] GATT, MGT/44/58, "The General Agreement on Tariffs and Trade What GATT is and What GATT has done," 7th Edition, GATT Secretariat, April 1958.
[128] WTO, "Principles of the trading system," https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm.
[129] Jonathan Crystal, "A New Kind of Competition: How American Producers Respond to Incoming Foreign Direct Investment," *International Studies Quarterly* 42, no.3 (1998): 513-543.
[130] Douglas A. Irwin, *Clashing over Commerce: A History of United States Trade Policy* (Chicago, IL: University of Chicago Press, Illustrated edition, November 2017), 124-130.
[131] Patrick M. Moore, "The Decisions Bridging the GATT 1947 and the WTO Agreement," *American Journal of International Law* 90, no.2 (1996): 317-328.
[132] Article XIX of GATT 1947.
[133] Jagdish N. Bhagwati, *Protectionism* (Cambridge, MA: MIT Press, 2000), 34-36.

discuss dumping and AD exclusively.[134]At the formative conferences for GATT 1946 and 1947, it seems the drafting countries[135] reached an agreement on establishing an AD system.[136] The original reference for the AD system was a working document submitted by the United States.[137] Moreover, all the proposals in that document had many similarities to the United States' 1921 Act,[138] and are now in GATT Article VI. During the conferences, the AD topics negotiated focused on a definition for price discrimination, limitations on AD duties, dumping margin, and on the 'material injury' related to the dumped imports.[139]

GATT 1947 included an exclusive article on dumping and AD action. In GATT 1947,[140] dumping is defined as offering a product for sale in export markets at a price lower than the price in the home market.[141] Article VI of the GATT confirms that dumping causes injury, but does not

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[134] GATT 1947, Article VI, paras.1-2, provide in the pertinent part: "1. *The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or, (b) in the absence of such domestic price, is less than either (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit. Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an AD duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1*."

[135] United Nations. Economic and Social Council, Preparatory Committee of the International Conference on Trade and Employment, and Committee V, "Administration and Organization Amended Redraft of Articles 78 (4) and 79 (1) : (Submitted by the United Kingdom Delegation," United Nations Economic and Social Council, November 9, 1946. The following nations attended the meeting of the Preparatory Committee: Australia, Belgium, Brazil, Canada, China, Cuba, Czechoslovakia, France, India, The Netherlands, New Zealand, Union of South Africa, United Kingdom, and the United States.

[136] John J. Barceló III, "A History of GATT Unfair Trade Remedy Law--Confusion of Purposes," *Cornell Law Faculty Publications,* no.517 (1991): 316.

[137] Gabrielle Marceau, "General Presentation of the WTO Agreement," in *Global Governance: The Role of International Institutions in the Changing World,* ed. Chŏng Chin-yŏng (Seoul, Korea: Sejong Institute, 1997), 20-50.

[138] USITC, Dept. of State Pub. no.2598, Commercial Policy Series 93,1946.

[139] William Adams Brown, *The United States and the Restoration of World Trade: an Analysis and Appraisal of the ITO Charter and the General Agreement on Tariffs and Trade* (Geneva: Gatt International Trade Centre, 1964), 110-213. See also, John H. Jackson, *World Trade and the Law of GATT: a Legal Analysis of the General Agreement on Tariffs and Trade* (Indiana:Bobbs-Merrill, 1969), 404-410.

[140] United Nations, "General Agreement on Tariffs and Trade," United Nations, *Treaty Series* 64, no. 814(1950): 187. The GATT defines developing countries as those contracting parties whose economies can only support low living standards and are in the early stages of development, Art. xvr11: l. Whether a contracting party is a developing country is a matter of choice.

[141] GATT 1947, Art.VI (1).

prohibit this kind of dumping.[142] However, these paragraphs in Article VI contain almost all the elements of the AD remedies that would be elaborated on in later bilateral and multilateral agreements, and which are still the subject of ongoing multilateral negotiations.[143] Concepts such as dumping, dumping margin, normal value, ordinary course of trade, export price, constructed "normal value", due allowances or adjustments, like product, material injury, and the threat of material injury are all noted under GATT 1947, Article VI. The brevity of the provision, however, left nearly all the details of implementing rights and obligations under Article VI to the discretion of the Contracting Parties.

This discretion led to significant differences in national AD systems adopted by the Contracting Parties. After passing AD regulations within the first two years of the GATT, the AD provision was not a widely used instrument during the early decades of this agreement.[144] For example, the GATT faced only one AD challenge during the 1950s.[145] However, since 1947, AD has become a prominent topic at the GATT/WTO.[146] Following the Secretariat's study of national GATT AD laws in 1958, a group of experts was established to focus on AD issues and, in 1960, this group agreed on specific common interpretations for ambiguous terms under Article VI.[147] More AD issues arose due to greater experience and increased international trade. This encouraged the Contracting Parties to clarify certain concepts, promote consistency, and prevent abuse of AD remedies. Hence, the Contracting Parties negotiated to elaborate on their rights and obligations under Article VI of the GATT. A series of AD Codes were developed and, eventually, the multilateral WTO AD Agreement.

Article VI entitles the importing Member to implement measures once dumping hurts its home market. The logic behind this approach is based on a definition of dumping as price discrimination

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[142] GATT 1994, Art VI (1).

[143] Jackie M. L. Chan, "Gradualism in the GATT: Strategic tariff bargaining and forward manipulation," *Review of International Economics* 27, no.1 (2019): 220-239.

[144] WTO, "Technical Information on anti-dumping," https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm.

[145] Italy initiated a complaint against Sweden's AD finding against Italian nylon stockings.

[146] Weihuan Zhou and Andrew Percival, "Debunking the Myth of 'Particular Market Situation' In WTO Antidumping Law," *Journal of International Economic Law* 19, no.4 (December 2016): 863-892, https://doi.org/10.1093/jiel/jgw071.

[147] WTO, The GATT years: from Havana to Marrakesh, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm.

practiced by private companies. The GATT addresses political behavior and, therefore, cannot possibly prohibit dumping by private enterprises.[148] Moreover, it is not easy for importing countries to find it in their interest to act against dumping. For example, if their industries benefit from low prices, they will not be active against dumping. The history of the GATT negotiations is somehow the history of negotiating the charter for an international trade organization.[149]

The GATT implemented the first set of tariff reductions. The function of a global trade organization was to provide countries with a framework to coordinate national trade laws.[150] The GATT became a bridge for offering international trade agreements once the international community could not agree on the establishment of an international trade organization.[151] In the beginning, the United States provided the initial documents for negotiating an international trade organization. Furthermore, the United States suggested the framework of AD rules containing most of the provisions of Article VI of GATT.[152] However, in the first two decades of the GATT, the countries did not use AD laws very frequently in international trade.

[148] GATT Analytical Index, 1995,223. "[i]n discussions at the Review Session in 1954-55, in connection with the rejection of a proposal to add a clause specifically obligating contracting parties to prevent dumping by their commercial enterprises, it was agreed to add the following statement to the Working Party's Report: In connection with the effect of Article VI on the practice of dumping itself, they agreed that it follows from paragraph 1 of Article VI, the contracting parties should, within the framework of their legislation, refrain from encouraging dumping, as defined in that paragraph, by private commercial enterprises."
[149] Gold, op.cit. 503-505.
[150] Harald Großmann, Georg Koopmann and Axel Michaelowa, "The New World Trade Organization: Pacemaker for World Trade?" *Intereconomics* 29, (1994): 107-115.
[151] Petros C. Mavroidis, "Taking care of business: the Legal Affairs Division from the GATT to the WTO," in *A History of Law and Lawyers in the GATT/WTO: The Development of the Rule of Law in the Multilateral Trading System*, ed. Gabrielle Marceau (Cambridge, MA: Cambridge University Press, 2015), 236-243.
[152] Ibid.

CHAPTER TWO -- HISTORY OF ANTI-DUMPING RULE NEGOTIATIONS

A. KENNEDY ROUND

Under the patronage of the GATT, multilateral trade negotiations or "trade rounds" have efficiently promoted international trade liberalization. Most of the GATT's previous trade rounds were aimed at the process of reducing tariffs. The GATT came into force in 1948, and the GATT Review Session amended Article VI mainly to include the definition of "injury" in 1955.[153] However, the contracting Members did not value the use of AD rules until 1958. In 1958, the GATT Secretariat published a study of eight countries' laws and practices, including their legislation in the field of dumping.[154] One of the reasons many other countries did not greatly enforce AD laws was the existence of high tariffs. These provided domestic firms with adequate protection.[155]

In the early 1960s, tariff rates were no longer high. Many countries began relying on AD laws when filing complaints and disputes. An increasing number of developing countries in the GATT doubted that existing AD rules caused restrictions and distortions upon international trade.[156] Hence, the Contracting Parties of the GATT selected a group of experts to review whether there are technical questions for using Article VI as a trade remedy and how it could be used. The experts published two reports, which gave rise to the main AD topics[157] during the Kennedy Round between 1964 and 1967.[158]

The negotiations focused on three general problems: (1) no injury test in Canadian law, (2) no precise definitions for substantive AD concepts, (3) the potential to administratively abuse

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[153] Protocol Amending the Preamble and Parts II and III of the Agreement on Tariffs and Trade at Geneva on 10 March 1955. In the meanwhile, the Review Session excluded a proposal from the Scandinavian and German delegations to include a provision requiring the reporting of national AD initiations.

[154] Inge Nora Neufeld, *Anti-Dumping and Countervailing Procedures: Use or Abuse? Implications for Developing Countries* (New York: United Nations, 2001), 65-80.

[155] Spaulding, op.cit. 353-359..

[156] Rorden Wilkinson and James Scott, "Developing Country Participation in the GATT: a Reassessment," *World Trade Review* 7, no.3 (2008): 473-510.

[157] The reports recommended that countries should use AD duties rationally. In addition, governments should be more careful when using AD measures.

[158] Edward L. Symons Jr, "The Kennedy Round GATT Anti-dumping Code," *University of Pittsburgh Law Review* 29, no.482 (1968): 482-486.

procedural delays, uncertainties, arbitrariness.[159] The Canadian government added the injury test to its domestic laws, thus solving the first problem.[160] As the other two issues required developing provisions, the Kennedy Round negotiations did not revise all of them. The Kennedy Round was the first time that the issue of Non-Tariff Measures occupied a critical position.[161]

During the Kennedy Round negotiations on AD, the United States perspective was different from that of other countries,[162] and the United States did not sign the original version of the Code because of political issues. The United States felt the Code was partially inconsistent with its domestic law and ratified only the consistent part.[163] Conversely, many other countries viewed the United States AD laws as unfair.[164] Due to confidentiality of the relevant facts and reasoning, many judgments on many countries due to the United States dumping could not be explained. Therefore, increased transparency was required in the administration of other nations' AD laws.[165]

AD negotiations during the Kennedy Round resulted in the "Agreement on the Implementation of Article VI" (also called "The AD Code" that came into force on 1 July 1968). The Code was only applicable to the signing Contracting Parties. Signatories had to agree to obey its regulations and review their national legislation to bring it in line with the specifications of the Code.[166] However, the Kennedy Round AD Code did not even stipulate a minimum threshold for acceptance for entering into force: Article 13 provided that it would "enter into force on 1 July 1968 for each

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[159] Peter Clark, *A Comparison of the Antidumping Systems of Canada and the USA: a Study Prepared for the Department of Finance, Government of Canada* (Ottawa: Department of Finance, 1996), 6-11.
[160] Rodney De C. Grey, "The Development of the Canadian Antidumping System," *The Canadian Journal of Economics* 8, no.1 (1975): 128-131.
[161] Harry G. Johnson, "The Kennedy Round," *The World Today* 23, no.8 (1967): 326-333.
[162] J.E. Jonish, "Recent Developments in US AD Policy," *Journal of World Trade* 7, no.3 (1973): 316-320. A statement by President Nixon in the second annual review of US foreign policy evinced the US opinion of the AD Code. He declared 'We tightened our administration of the AD laws to protect our industries against unfair pricing by their foreign competitors.
[163] H.M. Applebaum, "The Anti-dumping Laws-Impact on the Competitive Process," *Anti-trust Law Journal* 43, no.3 (1974): 594.
[164] Daneil J. Ikenson, "Antidumping: The Unfair, Unfair Trade Law," *The Deal*, December 23, 2002, https://www.cato.org/publications/commentary/antidumping-unfair-unfair-trade-law.
[165] J. Kodwo Bentil, "Attempts to Liberalize International Trade in Agriculture and the Problem of the External Aspects of the Common Agricultural Policy of the European Economic Community," *Case Western Reserve Journal of International Law* 17, no.3 (1985): 335-387.
[166] A. Negi, "The World Trade Organization and Sustainability Standards," in *Sustainability Standards and Global Governance*, ed. Negi A., Pérez-Pineda J., and Blankenbach J. (Singapore: Springer, 2020), 39-59.

party which has accepted it by that date."[167] In summary, the Kennedy Round AD Code did indeed lead to a new situation. Negotiations could focus on legally separate agreements that added to GATT obligations but without ratifying the GATT's amendment procedures.[168] However, the United States never signed the Kennedy Round AD Code. Therefore, this Code had little practical significance.[169]

B. TOKYO ROUND

From the Kennedy Round on, nationalism and protectionism became more prominent in countries' trade markets, including developed countries as Canada and the United States.[170] With an increasing number of developing countries participating in AD, in 1970, the GATT established a Working Party to examine the problems of developing countries.[171] At the same time, the US imposed a ten percent additional payment on imports in 1971.

Meanwhile, the Commission on International Trade and Investment Policy suggested that the US begin international negotiations on current problems as soon as possible.[172] The United States published a "New Economic Policy"[173] because of its domestic economic crisis and proposed the Trade Reform Act of 1973, which aimed to help American producers increase their competitive capacities in international trade.[174] The European Economic Community (EEC)[175] criticized the United States Tariff Commission's interpretation of the causation and industry requirement

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[167] Kennedy Round Antidumping Code, Article 13, BISD 15S/4-35, April 1968.
[168] David Greig, "The GATT and Multilateral Trade Negotiations," *The Australian Quarterly* 59, no.3/4 (1987): 305-21.
[169] WTO, "Technical Information on Anti-dumping," https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm.
[170] Michael Hart, "Twenty Years of Canadian Tradecraft: Canada at GATT, 1947-1967," *International Journal* 52, no.4 (1997): 581-608.
[171] GATT, "Report on the Working Party on Acceptance of the Antidumping Code," Doc. L/4239, 22 BISD, 1975, 27-28.
[172] William H. Branson, Herbert Giersch and Peter G. Peterson, "Trends in United States International Trade and Investment since World War II," in *The American Economy in Transition,* ed. Martin Feldstein (Chicago, IL: University of Chicago Press, 1980), 183-274.
[173] K.M.Parzych, "The Proposed US Trade Reform Act of 1973," *Journal of World Trade* 9, no.6 (1973): 719-725.
[174] Stanley L. Engerman, "Recent Developments in American Economic History," *Social Science History* 2, no.1 (1977): 72-89.
[175] European Economic Community is an economic union from 1958 to 1993. It was a created by the Treaty of Rome in 1957. Upon the formation of EU in 1993, EEC was made a part of EU and now there is no separate EEC.

provision in the 1921 Act.[176] In 1973 the Bretton Woods monetary system collapsed.[177] It forced the GATT to begin a new round of negotiations to deal with the challenge of protectionism.[178] Negotiations began at a Ministerial Meeting in Tokyo in September 1973, with 102 countries participating.[179] At the beginning of the Tokyo Round, negotiators aimed at lowering tariffs and other trade barriers to expand international trade.[180] Moreover, they tried to ensure that Least Developed Countries (LDCs) gained additional benefits.[181] During the Tokyo Round of Multilateral Trade Negotiations, the committee revised the AD Code. By the time of the Tokyo Round, four main concerns had arisen surrounding the implementation of the 1968 AD Code. First, what is the treatment of "sales at a loss" in the home market when the authority wants to calculate domestic market prices? Second, what are the allowances when comparing domestic and export prices? Third, how to determine material injury? Fourth, who has the right to initiate an AD investigation?

The Tokyo Round negotiations lasted from 1973 to 1979. This Round enacted a new "Agreement on Implementation of the General Agreement on Tariffs and Trade" called "The 1979 Code".[182] The 1979 Code had 25 signatories, with the EEC counting as one.[183] The 1979 Code had only a few amendments based on the 1967 Code. The most significant change in the 1979 Code was substituting a simple "causing test" article for the previous "principal cause" in Article 3.[184] The 1979 Code no longer required that dumping be the leading cause of injury to meet the material

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[176] Angelos Pangratis and Edwin A. Vermulst, "Injury in Antidumping Proceedings-The Need to Look Beyond the Uruguay Round Results," *Journal of World Trade* 28, no.5 (1994): 61-96.
[177] Peter M. Garber, "The Collapse of the Bretton Woods Fixed Exchange Rate System," in *A Retrospective on the Bretton Woods System: Lessons for International Monetary Reform*, ed. Michael D. Bordo and Barry Eichengreen (Chicago, IL: University of Chicago Press, 1993), 461-494.
[178] T.E.Ibrahim, "Developing Countries and the Tokyo Round," *Journal of World Trade* 12, no.1 (1978): 5-10.
[179] Gerald M. Meier, "The Tokyo Round of Multilateral Trade Negotiations and the Developing Countries," *Cornell International Law Journal* 13, no.2 (1981): 239-356.
[180] Thomas R. Graham, "Reforming the International Trading System: The Tokyo Round Trade Negotiations in the Final Stage," *Cornell International Law Journal* 12, no. 1 (1979): 1-40.
[181] Mario A. Kakabadse, "The Tokyo Round and After," *The World Today* 37, no.7/8 (1981): 104-310.
[182] GATT, MTN/NTM/W/232 [hereinafter Tokyo Round Texts], reprinted in President's Message to Congress Transmitting the Texts of the Trade Agreements Reached in the Tokyo Round of the Multilateral Trade Negotiations, HR Doc. no. 153, 96th Cong., 1st Sess. 257, 311, 1979.
[183] Other Parties were: Australia, Austria, Brazil, Canada, Czechoslovakia, Egypt, the EC, Finland, Hong Kong, Hungary, India, Japan, Korea, Mexico, New Zealand, Norway, Pakistan, Poland, Romania, Singapore, Spain, Sweden, Switzerland, the United States.
[184] Stephen D. Krasner, "The Tokyo Round: Particularistic Interests and Prospects for Stability in the Global Trading System," I*nternational Studies Quarterly* 23, no.4 (1979): 491-531.

injury requirement for imposing AD duties. It was not required to prove that dumping was the primary cause of injury when other contributing factors existed.[185] The 1979 Code restated the basic principles of Article VI of the GATT and explained a series of concepts that are closely related to the implementation of AD measures. The 1979 Code also elucidated dispute settlement procedures for establishing a committee on dumping practices.[186] Moreover, it elaborated on certain related legal proceedings. The 1979 Code was an essential step in the development of international AD legislation.

During AD negotiations, the United States, Canada, and Europe shared a common interest in harmonizing their AD procedures, and the AD Code clearly showed the concessions made between Members.[187] The United States agreed to two changes in the AD Code.[188] First, it accepted a higher threshold. Second, it extended the time limit for practicing withholding appraisals of imports to 90 days. As the United States made these concessions, other Members "were forced to accept reciprocal limitations on their freedom of action in AD proceedings".[189] Specifically, Canada accepted GATT Article VI only if it regulated that the injury test was a prerequisite for imposing AD duties.[190] The United Kingdom (UK) had also introduced a basic process into its AD procedures. For example, the authority was to inform importers and exporters if an investigation had begun.

Furthermore, the affected parties needed an opportunity to explain their opinions.[191] The Tokyo Round featured more extensive negotiations on AD than the Kennedy Round and resulted in a

[185] Article 3.3 of the ADA.
[186] Barceló III (1991), op.cit. 311-333.
[187] Ernest H. Preeg, "Traders and Diplomats: An Analysis of the Kennedy Round of Negotiations under the General Agreement on Tariffs and Trade," *American Journal of Agricultural Economics* 53, no. 4 (1971): 167-170. "*The AD code was a balanced agreement ... containing concessions on all sides"; Evans 1971, 261: "The differences between the objectives of the United States on the one hand and of Western Europe (including the United Kingdom) on the other were clear cut. ... In the end, each side achieved a substantial measure of its objectives*."
[188] Reinhard Rode, "The US trade policy towards the EC in the Tokyo round," *Intereconomics* 14, no.5 (1979): 230-236.
[189] Kenneth W. Dam, *The GATT: Law and International Economic Organization* (Chicago, IL: University of Chicago Press, 1977), 175-180.
[190] Article 3 of AD Code.
[191] Article 6.1 and 6.2 of AD Code.

multilateral AD Code.[192] The principles of the Tokyo Round reflected that the attitude of negotiations regarding reciprocity had changed. The Tokyo Round negotiations were based on mutual advantage and mutual commitment with overall reciprocity.[193] This principle greatly reflected United States interests in achieving fairness in competitive opportunities. It is a good sign that the general interest could promote the achievement of reaching an agreement out of these negotiations. This Code contained one significant improvement. It required Members to report AD investigations to the GATT Secretariat through a semi-annual report which opened up AD case filings for one and all. This Code also removed regulations related to the "principal case test". Although only 25 GATT contracting Members signed the Code, it provided a useful general framework for AD investigations.[194]

The Tokyo Round Code faced two obstacles. First, adoption of the AD Code was not compulsory. Second, the AD Code provided only ordinary guidance with a few general standards to national authorities when dealing with AD cases.[195] Furthermore, it still had limitations including, for example, the problem of implementing AD measures and the issue of increased AD actions. These remained unsolved by the 1979 Code. Domestic AD laws lacked transparency on fair pricing, determination of injury, and commitment of all kinds of data. During the 80s, more and more dissatisfaction with existing AD laws arose because they afforded the administrative authorities too much discretion.[196] The problem issue moved from "dumping" to "AD".[197] One theory is that

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[192] John H. Jackson, Jean-Victor Louis and Mitsuo Matsushita, "Implementing the Tokyo Round: Legal Aspects of Changing International Economic Rules," *Michigan Law Review* 81, no.2 (1982): 267-397.

[193] Gilbert R. Winham, *International Trade and the Tokyo Round Negotiation* (Princeton, NJ.: Princeton University Press, 2016), 230-235.

[194] The US is the most important contracting party that signed the Code. It amended its 1979 Act because of implementation of the 1979 Code.

[195] Raj Bhala, *International Trade Law Handbook* (New York: Lexis Pub., 2001), 827-830. The Code does not regulate standards regarding a time period for review or burden of proof. It also does not explain how to use below-cost sales to determine fair import prices. Additionally, it does not state the relationship between cumulative analysis and calculation of normal value.

[196] Kate S. Tomlinson, "United States Legislative Framework For Commercial Relations with Eastern Europe," in *East European Economies: Slow Growth in the 1980's Volume 1. Economic Performance and Policy* (Washington, D.C.: United States Government Printing Office, Joint Committee Print, 1958), 565-580.

[197] Murray C. Kemp, Horst Herberg, and Ngo van Long, *Trade, Welfare, and Economic Policies: Essays in Honor of Murray C. Kemp* (Ann Arbor: University of Michigan Press, 1993), 279-324. See alos, M. Webb, "The Ambiguous Consequences of Antiudmping Laws," *Economic Inquiry* 30, (1992): 437-448. See also, M. P. Leidy, and B. K. Hoekman, "Production Effects of Price- and Cost-Based Antidumping Laws under Flexible Exchange Rates," *Canadian Journal of Economics* 23, (1990): 873-895. See also, J. M. Finger, *The Origins and Evolution of Antidumping Regulation* (Washington, DC: World Bank, Policy, Research and External Affairs Complex, 1991), 120-128. Finger is one of the scholars who shows most such sentiments on AD. "*AD has been economic nonsense from its*

dumping became the only motive under AD law that moved the government to act against it.[198] Another view of AD is that it is a private policy that allows competitors to use State powers to benefit from competition. Through AD policies, domestic competitors always gain benefits and, simultaneously, foreign competitors suffer losses.[199] Other scholars compare the AD to the fox in charge of the henhouse who eats the hens and makes the farmer think it is the way it is meant to be. AD is like a fox that sets trade restrictions and also provides the authority to implement them reasonably.[200]

GATT Members were allowed to regulate the Code's content themselves. If the Code focused sufficiently on the interests of participants, benefits to non-participants were not significant.[201] While the AD Code remained open to be signed by additional Members, the only apparent motivation would be the chance to join the Committee defined under Article 17 of the Agreement. However, there was a more delicate way in which the Code could affect countries that were not yet Members of GATT.[202] The AD Code would be binding on all GATT Members, which would influence behaviors and measures when dealing with these issues with non-member countries. It meant so-called GATT outsiders would eventually participate with the insiders and abide by their terms.

However, this kind of multilateral system could only be successful when AD Code participants were not openly politicized. This might have been true for the Kennedy Round, but was certainly

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beginning, and it has become increasingly non-sensical over its eighty-seven-year life. AD has long been part of the rhetoric of protection. Manipulation of customs valuation has long been part of the arsenal of anti-import weapons. AD is, in substance, another clever way to use customs valuation procedures as a weapon against imports. AD preserves all the old tricks against reform of customs valuation, reforms that now constrain value for assessment of ad valorem customs duties to transactions value. AD makes these tricks even more powerful. As increases of the 'dumping margin' they are fully added (100 percent rate) to import charges; as increases of the 'customs value' they would be added at the ad valorem tariff rate, which even in high-tariff countries is seldom as high as 100 percent."

[198] Thomas J. Prusa, "Policy implications of antidumping measures: P.K.M. Tharakan, ed., (North-Holland, Amsterdam, 1991) pp. xxii + 292, Dfl. 175.00." *Journal of International Economics* 32, no.1-2 (1992):198-200.

[199] Andreas F. Lowenfeld, "Fair or Unfair Trade: Does It Matter," *Cornell International Law Journal* 13, no.2 (1980): 205-219.

[200] Bruce W. Wilkinson, "The Saskatchewan Potash Industry and the 1987 United States Antidumping Action," *Canadian Public Policy* 15, no.2 (1989): 145-160.

[201] Jackson, op.cit. 410. The MFN clause in Article I of the GATT binds parties to the code, including in their actions towards GATT contracting parties who are not parties to the code – an interesting circumstance of non-reciprocity.

[202] Because the AD Code was written as an interpretation of Article VI of GATT, this provision could be accepted as the final interpretation of the GATT. This interpretation will be binding on all GATT parties.

not for the Tokyo Round. The "tight little club of the 1950s" no longer existed in the early 1970s because GATT membership expanded rapidly.[203] More and more countries participated in AD negotiations during the Tokyo Round.[204] The Tokyo Round was the first attempt at reforming the GATT system, resulting in tariff cuts throughout the main industrial markets.

The main negotiators during the Tokyo Round negotiations were the industrialized countries[205] as they play a significant role in AD investigations.[206] A leading focus of the United States during the Tokyo Round negotiations was administrative procedures. Codes relating to countervailing-duty or AD investigation were central to negotiations.[207] One of the main aims of this Round was to make domestic proceedings consistent with these Codes. Members believed that consistency could reduce protectionism, while recognizing that evaluating normal or home market prices was not always pertinent.[208]

Developed countries emphasized their position during negotiations. In the meantime, a discussion on membership in the GATT Committee on AD practices focusing on including more developing countries gained significance.[209] Regarding economic structural differences, the GATT issued a joint declaration on the relationship between developed and developing countries related to AD issues.[210] The essence of this decision was an admission of the role and function of developing

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[203] Robert E. Hudec, "Reforming GATT Adjudication Procedures: The Lessons of the DISC Case," *Minnesota Law Review* 72, no.6 (1988): 1443-1507. The form of the GATT changed because of the European Community, the rise of Japan, and the entry of enough new developing countries. They became the GATT majority and altered the old configuration of GATT members. The new GATT structure used the legal traditions of the 1950s. However, these were rusty from disuse and unfamiliar to the new generation of trade policy officials. All the issues had to be brought to the negotiating table again because of the new members joining GATT. It meant every point of decision had to be confronted again as open to argument.

[204] Alan L. Winters, "The Road to Uruguay," *Economic Journal* 100, no.403 (1990): 1296-1300. "The practice of separate but parallel Codes was re-affirmed and plurilateralism accepted." 102 countries participated in the Tokyo Round.

[205] Several participants in the Tokyo Round proposed a review of the GATT AD Code, which had been negotiated by a group of industrialized countries during the Kennedy Round to improve GATT rules pertaining to sales of goods in export markets at "less than fair value".

[206] Patrick A. Messerlin, "Antidumping Laws and Developing Countries," *Policy Research Paper Series* 16, (1988): 5-10.

[207] Other topics included granting import licenses and assigning values for customs purposes.

[208] Carl J. Green, "The New Protectionism," *Northwestern Journal of International Law & Business* 3, no.1 (1981): 1-20.

[209] GATT, ADP/2, 12 May 1980, Committee on Anti-Dumping Practices - Decisions by the Committee on Anti-Dumping Practices Taken on 5 May 1980.

[210] Ibid.

country governments and economies. With government intervention, export prices can differ from domestic prices. However, this intervention cannot prove the government intends to dump goods.[211] The Tokyo Round Code left several problems unsolved and remained ambiguous.[212]

C. URUGUAY ROUND

I. AN OVERVIEW

More than 1600 cases were filed worldwide during the 1980s. This is at least twice the number filed during the 1970s. AD investigations dramatically increased during the 1980s.[213] Between 1980 and 1985, the four traditional users of AD measures (the United States, the European Economic community, Australia, and Canada) filed over 99 percent of AD cases.[214] As the decade wore on, more and more users filed petitions for the first time. In the early 1990s, new users filed almost 25 percent more petitions, and, by the mid-1990s, petitions had increased by more than 50 percent.[215] This showed that these new users did not know how to use AD rules appropriately, and that. therefore, they needed help and guidance in dealing with these issues when seeking to expand their market access into the developed world.[216] Moreover, after greater participation in the multilateral trading system and struggling with their newfound competition with developed countries, developing countries started to understand they need to fully join the Uruguay Round on AD negotiation.[217]

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[211] Raju, op.cit. 19-25.

[212] M. Koulen, "Some Problems of Interpretation and Implementation of the GATT Antidumping Code," in *Antidumping Law and Practice: A Comparative Study*, ed. John H. Jackson and Edwin A. Vermulst (Michigan: University of Michigan Press,1989), 366-370.

[213] Bruce A. Blonigen, and Thomas J. Prusa. "Antidumping," *NBER Working Paper,* no.8398 (2001): 1-42. https://ssrn.com/abstract=278031. Since 1980, GATT/WTO members have filed more complaints under the AD statute than under all other trade laws combined. Additionally, members now levy more AD duties in any one year worldwide than in the entire period between 1947 and 1970.

[214] Dominick Salvatore and J. Michael Finger, "Antidumping: How It Works and Who Gets Hurt," *Southern Economic Journal* 61, no.1 (1994): 247-250, https://doi.org/10.2307/1060167.

[215] Jorge Miranda, Raul A. Torres and Mario Ruiz, "The International Use of Anti-dumping: 1987-1997," *Journal of World Trade* 32, no.5 (1998): 5-71.

[216] First, new users need guidance to gain legal market access to the rich world. Second, they need to rebuild their import substitution regime as a liberal economic system.

[217] Kofi Oteng Kufuor, "The Developing Countries and the Shaping of the GATT/WTO Antidumping Law," *Journal of World Trade* 32, no.6 (1998): 167-196.

Most countries adopted domestic AD laws during the 1980s to protect their domestic industries based on the Tokyo Round Code.[218] However, as more countries used AD measures, more complaints arose surrounding the Tokyo Round Code. The Committee on AD Practices admitted that some of the interpretation of the Tokyo Round Code was uncertain. For example, a GATT recommendation in 1985 suggested that AD actions must be limited to those cases where future injury is apparent.[219] Although the Ministerial Declaration on the Uruguay Round barely mentioned the 1979 AD,[220] early in the negotiations some GATT Contracting Parties, like Hong Kong, Japan, and the Republic of Korea proposed changes to the 1979 Code. As negotiations unfolded in the Uruguay Round, these contracting parties expressed their dissatisfaction with GATT regulations on AD procedures and substantive rules.[221]

On the one hand, developing countries noted that AD rules should be stricter (1) to restrain the increasing number of AD investigations and (2) to reduce obstacles to entering industrialized markets.[222] Also, many Members were concerned about AD actions implemented by traditional users such as the United States and the EEC. They stated that the United StatesTrade Bill was used as a method of protectionism,[223] and that the EEC's Parts Amendment Regulation from 1987 on preventing the circumvention of goods was problematic.[224] Therefore, developing countries tightened AD rules by submitting proposals for redefining the initiation of investigations, dumping determinations, injury determinations, the public interest rule, and cost calculation methods.[225]

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[218] John J. Barceló III, "Subsidies, Countervailing Duties and Antidumping After the Tokyo Round," *Cornell International Law Journal* 13, no.2 (1981):257-288.
[219] GATT, "Recommendation Concerning Determination of Threat of Material Injury," GATT, B.I.S.D., 32d Supp., 1986.
[220] GATT, "Ministerial Declaration on the Uruguay Round (1986)," GATT Activities 1985, 6-10 (1986). For a brief background of the preparatory activities that led to the adoption of the Declaration,.
[221] Sada Shankar Saxena, "The Uruguay Round: Expectations of developing countries," *Intereconomics* 23, no.6 (1988): 268-276.
[222] GATT, MTN.GNG/NG8/W/46, 3 July 1989. For example, the representative for Hong Kong claimed AD actions were supposed to be used with a high degree of restraint and only in situations where need was clearly evident and based on real tangible economic and social evidence. The submission goes on to argue that AD should be perceived as a narrow exception to the MFN and National Treatment principles of the GATT and that benefits from trade can only be realized when rules are transparent and predictable.
[223] Pietro S. Nivola, "The New Protectionism: United States Trade Policy in Historical Perspective," *Political Science Quarterly* 101, no.4 (1986): 578-585.
[224] Otto Grolig, "The Newly Amended EEC Anti-dumping Regulation: Black Holes in the Common Market," *Journal of World Trade* 21, no.6 (1987): 79-85.
[225] James P. Durling and Matthew R. Nicely, *Understanding the WTO Anti-dumping Agreement: Negotiating History and Subsequent Interpretations* (London : Cameron May, 2002), 122-139.

On the other hand, industries from developed countries that were facing competition from the emerging industries of some developing countries were also interested in the negotiations.[226] They encouraged their government to assume the position of retaining as much as possible of current AD regulations.[227] Developed countries also stated their position on revising some specific rules. The United States and the European Union (EU) were concerned about GATT approval for using the device to prevent the circumvention of AD duties.[228] The EU was also concerned about regulating several procedures employed in AD actions in light of an increasing use of AD laws by other developing countries.[229] AD rules become one of the "central issues" for the Uruguay Round. A lack of agreement among countries on AD rules became the main obstacle to fulfillment of the Round.

AD seemed to be a North-South issue at the beginning of the GATT because developed countries were its main users against developing countries.[230] However, with increasing AD cases between developing countries, AD contains is no longer simply a North-South issue.[231] For example, although the primary AD users were developed countries, from 1995 to 1999, developing countries became very active not only in implementing AD actions but also in their participation in AD dispute settlement cases.[232] The ADA was seen as a trade remedy only to serve the rich and developed industries until the establishment of the WTO.[233] Since developing countries play an increasing role in AD investigations against both developed and other developing countries[234], the

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[226] Tarun Khanna, Krishna G. Palepu and Jayant Sinha, "Strategies That Fit Emerging Markets," *Harvard Business Review* 83, no.6 (2005):63-74. https://hbr.org/2005/06/strategies-that-fit-emerging-markets.
[227] Saul Estrin and Adeline Pelletier, "Privatization in Developing Countries: What Are the Lessons of Recent Experience?" *The World Bank Research Observer* 33, no.1 (2018): 65-102, https://doi.org/10.1093/wbro/lkx007.
[228] John H. Jackson, *Legal Problems of International Economic Relations: Cases, Materials and Text ... with Documents Supplement* (St. Paul, MN: West Pub. Co., 1977), 685-690.
[229] WTO, "Uruguay Round of Multilateral Trade Negotiations (1986- 1994) - Annex 1 - Annex 1A - Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994," (WTO-GATT 1994).
[230] Mark Koulen, "The New Antidumping Code Through Its Negotiating History," in *The Uruguay Round Results : A European Lawyer's Perspective*, ed. Bourgeois, Jacques H. J., Frédérique Berrod and Eric Gippini Fournier (Brussels : Europ. Interuniv. Press, 1995), 151-232.
[231] UNCTAD, "Report of the Expert Meeting on the Impact of Anti-dumping and Countervailing Actions," TD/B/COM.1/34, 2000.
[232]S. Page, M. Davenport, and A. Hewitt, *The GATT Uruguay Round: Effects on Developing Countries* (London: Overseas Development Institute, 1999), 20-45.
[233] Kendall Stiles, "Negotiating Institutional Reform: The Uruguay Round, the GATT, and the WTO," *Global Governance* 2, no.1 (1996): 119-148.
[234] Stefano Inama, "Negotiating Anti-dumping and Setting Priorities among Outstanding Implementation Issues in the Post-Doha Scenario: A First Examination in the Light of Recent Proactive and DSU Jurisprudence,"

ADA is no longer only for the rich countries.[235] Article VI of the GATT authorized the contracting parties to implement AD measures. The ADA concluded at the end of the Tokyo Round contains more detailed rules than before governing the application of such measures.[236] The result of negotiations was a kind of compromise between the contracting parties. Developing countries argued that the absence of precise disciplines in the AD rules had created a potential for abuse. Hence, they asked for more precision in AD rules.[237] The first country that requested AD negotiations in the Uruguay Round was Korea because Korean products were facing excessive AD actions from traditional users.[238] Then other countries including the United States [239], India[240] and Japan[241], filed proposals. Several proposals were put forward by different countries until 1989, and the essence of these proposals was overlapping.[242] In 1990, the GATT put together an informal group for negotiations.[243]

During the Uruguay Round negotiations, the negotiators revised this agreement to make it more detailed and precise, especially regarding certain procedural rules. As a consequence of the Tokyo Round and enactment of the new AD Code, the Committee on AD Practices followed the fundamental principle of Article 14.[244] The 1994 AD Code made considerable progress towards making the rules more suitable and precise for national authorities to follow when conducting AD

UNCTAD/ITCD/TSB/Misc.72 (2002):6. There are even least developed countries on the list of AD users that initiate AD investigations.

[235] Nadia E. Nedzel, "Antidumping and Cotton Subsidies: A Market-based Defense of Unfair Trade Remedies," *Northwestern Journal of International Law & Busines* 28, no.2 (2008): 256. It describes dumping as a rich man's game for powerful industries holding a large market share in developed countries. See also, N. Mankiw and Phillip L. Swagel, "Anti-dumping: The Third Rail of Trade Policy," *Foreign Affairs* 84, (2005): 107-119. AD offers a method to protect favored industries that have powerful lobbies.

[236] WTO, "A Summary of the Final Act of the Uruguay Round. Agreement on Implementation of Article VI." https://www.wto.org/english/docs_e/legal_e/ursum_e.htm#fAgreement.

[237] For example, one of the main debates was around uncertainties in the details for comparing the exporter's home market prices with export prices.

[238] GATT, "Negotiating Group on MTN Agreements and Arrangements," *MTN.GNG/NG8/9*, (1988): 2-5. The EU, US, Canada and Australia initiated AD investigations against Korean products.

[239] GATT, MTN/GNG/NG8/W/22, MTN.GNG/NG8/W/59, 1987 and 1989.

[240] GATT, MTN.GNG/NG8/W/9, 29 January 1989.

[241] GATT, MTN.GNG/NG8/W/48/Add.1, 1990.

[242] GATT, MTN.GNG/NG8/W/26/Rev.2, 1989. Countries asked for restrictions of AD laws, including determination of the existence of dumping, determination of material injury, AD investigation methods, price undertakings, imposition and collection of AD duties, duration, review and termination, anti-circumvention.

[243] GATT, GATT/AIR/2989, 1990.

[244] GATT, GATT Doc.no.ADP/M/1,1980.

procedures.[245] The revised agreement entered into force upon the formation of the WTO[246] on 1 January 1995 and, applied together with Article VI,[247] this ADA is more comprehensive than previous agreements. It aims at increased consistency in the practices of national authorities. Hence, this ADA regulated specific provisions covering a broad range of aspects of the AD law.[248]

Article 1 of the ADA lays down three principles to explain the relationship between Article VI of GATT 1994 and the ADA. First, WTO Members may implement AD actions only when conditions satisfy the rules in Article VI of GATT 1994. Second, they may do so only under investigations that follow ADA provisions. Third, the ADA governs application of Article VI of GATT 1994 whenever a Member takes action under its own AD laws, apart from Article 18.1 ADA, according to which the ADA intends to "interpret" Art. VI GATT 1994.[249] Article VI GATT 1994 allows countries to take action against dumping. The ADA clarifies and expands on Article VI, and both of them operate together to solve AD issues. They allow countries to take action that would typically break the GATT principles of binding tariffs and non-discrimination between trading partners.[250]

Historically, Article VI states that AD action means charging extra import duties on a particular product from a specific exporting country. Its purpose is to reduce the price gap or remove the injury to the domestic industry in the importing country caused by the lower price. However, many critics note that Article VI is an irregularity within the general framework of GATT 1994 because it provides authorities the right to impose tariff restrictions, which is more like a compromise than

[245] Wolfgang Müller, Nicholas Khan, and Hans-Adolf Neumann, *EC Anti-Dumping Law: A Commentary on Regulation 384/96* (Chichester: Wiley, 1998), 98-110.
[246] Article 18.4 of ADA.
[247] Article 1 of the ADA, "An AD measure shall be applied only under the circumstances provided for in Article VI GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement."
[248] Linda M.Young and John Wainio, "The Anti-Dumping Negotiations: Proposals, Positions And Anti-Dumping Profiles," *Estey Journal of International Law and Trade Policy* 6, no.1 (2005): 1-22.

[249] WTO, Anti-Dumping Agreement- Article 1 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.
[250] Hans Mahncke, *The Relationship between WTO Anti-Dumping Law and GATT Non-Discrimination Principles* (Zürich: Schulthess, 2014), 214-220.

a successful negotiation.[251] On the contrary, the ADA has gained more understanding and acceptance. First, all negotiators during the Uruguay Round had to agree to the ADA to obtain membership in the WTO.[252] Second, trade liberalization helped increase pressures from foreign competition on domestic producers, reducing tariffs.[253] The ADA regulates how Members must inform the Committee on AD Practices regarding all preliminary and final AD actions both promptly and in detail. Every year, Members must report on all investigations twice. Members will consult if there are increasing differences.[254] The ADA includes both substantive and procedural provisions. It has three parts and two relevant annexes. Part I, which is the heart of the Agreement, contains Articles 1 to 15. This section contains relevant substantive and procedural provisions on definitions. In particular, this Agreement provides more clarity on rules related to the method for determining a dumped product. Part II includes Article 16 and Article 17. These Articles are related to the establishment of the WTO Committee on AD practices and specific rules for WTO dispute settlement. WTO Members can choose to use the Dispute Settlement Body to settle debates around AD measures. Part III includes Article 18 of the final provisions. Annex I regulates the procedural provision for conducting on-the-spot investigations. Annex II imposes the limitation for using the best information in AD investigations.[255]

II. Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement)

1. Determination of Dumping

In the Uruguay Round in particular, the revised Agreement provided greater clarity in the rules for determining a dumped product.[256] The method is contained in Article 2. In this article, the definition of dumping follows the Tokyo Code. Thus, the definition of a dumped product is when

[251] Marie Louise Hurabiell, "Protectionism Versus Free Trade: Implementing the GATT Anti-dumping Agreement in the United States," *University of Pennsylvania Journal of International Law* 16, no.3 (1995): 567-580. https://scholarship.law.upenn.edu/jil/vol16/iss3/5.
[252] Philip A. Akakwam, "The Standard of Review in the 1994 Antidumping Code: Circumscribing the Role of GA TT Panels in Reviewing National Antidumping Determinations," *Minnesota Journal of International Law* 5, (1996): 277-290.
[253] Terence Stewart, *The World Trade Organization: The Multilateral Trade Framework for the 21st Century and United States Implementing Legislation* (Chicago, IL: American Bar American Association, 1996), 48-75.
[254] Article 6.2 of ADA.
[255] WTO, Anti-Dumping Agreement – Annex II (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.
[256] Nigel Grimwade, "Anti-Dumping Policy after the Uruguay Round-an Appraisal," *National Institute Economic Review* 155, no.1 (1996): 98-105, https://doi.org/10.1177/002795019615500107.

its export price is lower than the price charged by the exporter for sale of the product in its home market.[257] Hence, the key to determining "dumped" products is a comparison between their "export price" and their "normal value". This "normal value" also means the domestic price of the like product. If the export price is lower than the price in the local market, the product is considered dumped. To ensure a fair comparison, the ADA requires that investigating authorities compare according to the same level of trade, with as near as possible sales and for the same period[258] as different allowances[259] affect price comparability.[260]

2. Methodology for Calculating Dumping Margins

Article 2.4.2 provides two primary methods for investigating authorities to calculate dumping margins. The first method is to compare a weighted average normal value with the weighted average export price. The second method is to compare the normal value and the export price on a transaction-to-transaction basis. Simultaneously, the ADA also allows comparing weighted average domestic sales prices to individual export transactions. The authorities should find differences with the export transaction, including different purchasers, regions, or periods. The authorities explain why they cannot take into account these differences in weighted-average-to-weighted-average or transaction-to-transaction comparisons.[261]

The ADA also addressed the issue of currency conversions and exchange rates when calculating dumping margins.[262] The ADA requires that the currency conversion used should be the exchange rate in effect on the date of sale. If there is a direct link between the sale in foreign currency in forwarding markets and the export sale, the investigating authorities should use the exchange rate in the forwarding markets.[263] Furthermore, the ADA requires ignoring exchange rate fluctuations and protects against increased dumping margins. This article makes the methodology more

[257] UNCTAD, "WTO Negotiations on the Agreement on Antidumping Practices," *Technical Paper*, 2005.
[258] Article 2.4 of ADA.
[259] Differences in conditions and terms of sale, taxation, levels of trade, quantities and physical characteristics.
[260] Article 2.4 of ADA.
[261] Article 2.4.2 of ADA.
[262] Chen Yu, "Currency Manipulation and WTO Laws: Should the Anti-Dumping Mechanism be Entirely Dumped?" *Journal of World Investment & Trade* 20, no.6 (2019): 891-915.
[263] Vera Thorstensen and Carolina Müller, "How does International Trade Regulation Addresses Exchange Rates Measures?" *Revista Direito GV* 10, no.2 (2014): 379-416).

detailed to prevent potential abuse by the administering authorities.[264] This change is a significant improvement to the ADA.

3. Sales below Cost of Production

Once investigating authorities determine the export price is higher than the domestic market price, it would be expected that the inquiry would end. However, in practice, dumping exists if the domestic market price is determined to be below the cost of production. There are two consequences if the authorities exclude sales below the cost of production.[265] The first consequence is that the weighted average of the domestic price will be higher, and a finding of dumping could be made. Ignoring such sales may not return enough sales above the cost of production. Also, the authorities cannot determine domestic selling prices. Therefore, sales below the cost of production in the domestic market are also a condition the authorities should take into account.[266] Moreover, this will have an impact on dumping margins. If the investigation includes such sales, the resulting dumping margin will be small. Otherwise, dumping margins will be higher, allowing the authority to impose high AD duties. The ADA entitles the investigating authorities to decide whether to exclude sales below-cost or not.[267] First, the investigation considers an extended period, generally one year. Second, the average selling price must be lower than the weighted average cost in the domestic market. Third, a substantial volume of sales are made below cost.[268] Fourth, costs are not recovered over a reasonable period. Article 2.1 also requires that, if an AD investigation involves a start-up situation, administrative authorities adjust the cost of the subject product. This provision made impressive progress with protecting exporters from inconsistent findings of below-cost sales in start-up situations.[269]

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[264] Gary N. Horlick, *World Trade Organization and International Trade Law: Antidumping, Subsidies and Trade Agreements* (New Jersey: World Scientific, 2014), 25-40.
[265] Petros C. Mavroidis, *Trade in Goods* (Oxford, U.K.: Oxford University Press, 2013), 120-140.
[266] Edwin A. Vermulst, *The WTO Anti-Dumping Agreement: A Commentary* (Oxford, U.K.: Oxford University Press, 2008), 34-36.
[267] WTO, Anti-Dumping Agreement – Article 2 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.
[268] Article 2 of ADA.
[269] Alan F. Holmer, Gary N. Horlick, and Terence P. Stewart. “Enacted and Rejected Amendments to the Antidumping Law: In Implementation or Contravention of the Antidumping Agreement?” *The International Lawyer* 29, no.2 (1995): 483-511.

4. De Minimis Dumping Margins

The ADA clarifies a new dumping margin of 2 percent of the export price. Below this de Minimis dumping margin, investigating authorities cannot impose AD duties. Also, when the volume of the dumped imports is negligible, the investigation should be terminated as soon as possible. A "negligible" volume means the volume of the imports from a single country is less than 3 percent of the product in the domestic market unless countries that individually account for less than 3 percent of imports collectively account for more than 7 percent of imports of like product.[270]

5. Determination of Injury

Article 3 of the ADA contains the method for determination of injury. This Article explicitly rules that the two necessary conditions for determining injury are positive evidence and an objective examination. [271] The objective examination includes (1) the amount of dumped imports and their influence on prices in the domestic market for the like product and (2) the impact of these imports on the domestic producers of like product. To determine injury, the ADA regulates the practice for accumulating imports from different countries. The imports to be accumulated must also be the subject of the investigations. There are two further requirements for imports. First, that the dumping margin of the imports from each country greater than the de minimis level and that their volume is not negligible. Second, the determination for accumulating imports must be based on the conditions of competition between the imported products and on competition between the imported goods and like domestic products.[272] National authorities can impose AD duties when dumping causes or threatens material injury to an established domestic industry. Article 3.7 of the ADA regulates that the determination of a threat of injury must be based on facts and not merely on allegation, conjecture, or remote possibility. This article also states that the situation in which the dumping may cause injury should be foreseeable and imminent. This article provides four factors[273] that investigating authorities must take into account when identifying the existence of a

[270] Article 5.8 of ADA.

[271] UNCTAD, "Training Module on the WTO Agreement on Anti-dumping," UNCTAD/DITC/TNCD/2004/6, *UNITED NATIONS PUBLICATION*, ISSN 1816-5605, 2004.

[272] WTO, Anti-Dumping Agreement-Article 3 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

[273] Article 3.7 of ADA, such factors as: (a) dumped imports rapidly enter the domestic market of the importing country, and this indicates the possibility of substantially increased imports; (b) a significant rate of increase of the exporter's capacity indicating the possibility of increasing dumped exports to domestic markets taking into account the availability of other export markets for absorbing additional exports; (c) Whether the imports will have a depressing

threat of injury. These factors indicate that in cases relating to the threat of injury by dumped imports, authorities initiating AD measures should consider certain elements of analysis.

6. Standing

The ADA includes a new provision on standing, which provides more requirements for administrative authorities to launch an investigation. AD investigations may not begin unless the authorities have determined, based on "an examination of the degree of support for, or opposition to, the application, expressed by domestic producers of the like product," that the application has been filed "by or on behalf of the domestic industry."[274] This provision stipulates that the producers supporting the application should represent no less than 50 percent of the collective output of all producers who can initiate an AD investigation. If the proportion supporting the application is less than 25 percent of the total production of the domestic industry, the producer cannot initiate a petition.[275] Because of this provision, administrative authorities will more seriously investigate the petitioner's standing.

7. Investigation Procedures

To make the process more transparent and detailed, the ADA incorporates new provisions relating to the initiation of an AD investigation than its processor, the Tokyo Code. Applications to initiate an investigation must include evidence of dumping, injury, and a causal link between the dumped imports and the alleged injury. Article 5.2 emphasizes that the evidence must be "sufficient".[276] Furthermore, the authority cannot regard "simple assertion, unsubstantiated by relevant evidence" as sufficient evidence. This Article explicitly stipulates that the information must be provided in

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or suppressing influence on domestic prices, and might increase the demand for future imports; and (d) Inventories of the products under investigation.

[274] WTO, Anti-Dumping Agreement - Article 6 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

[275] The 25 percent is used by Mexico and is the lowest level applied by any "major user" of AD measures. It was taken from a United States proposal tabled on 26 Nov. 1993, just a few weeks before the conclusion of the Uruguay Round Negotiations. Following the ADA, United States law was also amended to require Commerce Secretary to poll the industry if the domestic producers or workers supporting the petition are not more than 50 percent of the total production of the domestic like product. 19. United StatesC 1671a (c) (4) (D) and 1673a (c) (4) (D).

[276] Article 5.2 of ADA.

the application.[277] Other rules in Article 5 also provide detailed requirements for the authorities[278] and specify the duration of the investigation.[279] Article VI of the ADA requires that, after foreign producers or exporters receive the questionnaires in an AD investigation, they have at least thirty days to reply. The 1979 Code did not specifically require response time. However, the AD Committee, in a recommendation adopted by the Contracting Parties in 1983, recommended this as the minimum response time. [280]

Moreover, Article 7 of the ADA stipulates the duration of the provisional measures. Interim measures may be initiated no less than sixty days after initiating the investigation. Besides, interim measures should be also be limited to a period of no more than four months. However, if the exporters bringing the cases represent a significant percentage of the trade involved, provisional measures shall extend no more than six months. In exceptional situations, this period extend to between six and nine months.[281]

8. PRICE UNDERTAKINGS

In the pre- and post-Uruguay Round world, authorities have used another method to restrict "unfair" imports under Article VI, namely, import minimum prices, known in GATT-speak as "price undertakings". Price undertakings are an alternative to imposing AD duties, and are used extensively by the EU.[282] After the Uruguay Round negotiations, the ADA explicitly stipulated

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[277] Article 5.2 of ADA. Information should be provided in the application related to: (a) identity of application, volume and value of domestic production of like product by the applicant. If the application is made on behalf of the industry, application shall provide pertinent information relating to other producers; (b) complete description of dumped product, names of exporting countries, identity of known exporters or foreign producers, list of known importers of the product; (c) information on price of the product which is sold in exporter's domestic market; and (d) information on the evolution of the volume of the dumped imports, its effect on prices in the domestic market and the consequence of imports for the domestic industry.

[278] Article 5.3 of ADA. The authorities shall examine the accuracy and adequacy of the evidence. Article 5.4 stipulates that the authorities shall avoid publicizing the application unless a decision has been made to initiate an investigation. Article 5.5 and Article 5.8 rule that if there is insufficient evidence of dumping or injury, the application should be rejected and any investigation terminated immediately. Additionally, termination will take place when the dumping margin is de minimis, or the volume of dumped imports is negligible.

[279] Article 5.10 of ADA. The duration of the investigation is in one year. In special circumstances, the duration can extend no more than 18 months after initiation.

[280] GATT, "Recommendation concerning the Time-Limits given to Respondents to AD Questionnaires," BISD 30S/30, 1983.

[281] When the authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, this period may be six and nine months, respectively.

[282] Armin Steinbach, "Price Undertakings in EU Antidumping Proceedings-an Instrument of the Past?" *Journal of Economic Integration* 29, no.1 (2014): 165-170.

that the authorities of WTO Members can suspend or terminate AD proceedings if an exporter voluntarily undertakes to revise its prices or cease exports at dumping prices.[283] After a country accepts an undertaking, if the exporter desires or the authorities decide, proceedings can be wound up. If the foreign firm violates the provisions of the agreement, they can restart investigations together with imposing AD duties.[284]

9. Imposition and Collection of Anti-dumping Duties

Under the ADA, imposing AD duties is not mandatory. The authorities of the importing Member can decide whether to impose AD duties when all conditions for imposition are satisfied. AD duties are to be less than the margin of dumping if such lesser duties would be sufficient to remove the injury to the domestic industries.[285] The authority must collect on a nondiscriminatory basis from all sources found to be dumping or causing injury. Nevertheless, imports from sources from which the authorities have already accepted price undertakings are exceptions.[286] The amount of the AD duties shall not exceed the dumping margin.[287]

10. Duration and Review

The 1979 Code had no specific rules limiting the term for imposing AD duties. Before the Uruguay Round ADA, traditional users of AD measures (Australia, Canada, and the EEC, except the United States) had a "sunset" provision regarding time limits on AD duties in their domestic laws or regulations.[288] After the Uruguay Round negotiations, the ADA provides a "sunset" provision regulating that, five years from the date of the authority imposing or last confirming the measures, said authority should terminate the duty. However, if the authorities initiate a review before expiry of the five-year term, and they determine that termination would lead to continuation or recurrence of dumping and injury, the authority will not terminate the duties or undertakings.[289] National

[283] Article 8.1 of ADA.
[284] Michael O. Moore, "VERs and Price Undertakings under the WTO," *Review of International Economics* 13, no.2 (2005): 4-10.
[285] Article 9.1 of ADA.
[286] Article 9.2 of ADA.
[287] Article 9.3 of ADA.
[288] Prior to the Uruguay Round, durations of the continued need for duty were as follows: Australia 2 years, Canada 5 years, EC 5 years. However, in the United States, there is no term limit for imposing AD duties.
[289] Article 11.3 of ADA.

authorities have the burden of determining whether the duty needs to extend beyond five years to prevent continuation or recurrence of dumping and injury.[290]

11. Best Information Available

In contrast with the 1979 Code, there is an exclusive Annex in the ADA to stipulate the application of the best information available. Annex II of the ADA includes the circumstances under which authorities can make use of the best information available and the requirements for the kind of information the authorities can use to make determinations are stricter than those in the 1979 Code.[291] Annex II requires that the authorities should consider all the information available[292] when making determinations. Besides, the authorities should not disregard information submitted to the interested parties' best ability, even though the information may not be ideal in all respects.[293] The authorities must inform any party whose information is not accepted and provide that party with a reasonable period to submit further explanations.[294] If the information the authorities rely on is from a secondary source, the authorities should examine information from other independent sources.[295]

12. Dispute Settlement

The WTO agreement contains an integrated dispute settlement mechanism. The WTO Dispute Settlement Mechanism has proved an essential tool with two functions. First, agreements bring together and build up the global multilateral trading system. However, many commitments need new interpretations to make those agreements easier to understand. The Dispute Settlement Mechanism has the right to interpret those commitments. Second, the interpretations make up for any gaps and ambiguities in the agreements from the point of view of multilateral trade disciplines.[296]

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[290] WTO, Anti-Dumping Agreement - Article 11 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

[291] Michael O. Moore, "'Facts available' dumping allegations: when will foreign firms cooperate in antidumping petitions?" *European Journal of Political Economy* 21, no.1 (2005): 185-204.

[292] Annex II of ADA. "Best Information Available in Terms of Paragraph 8 of Article 6," The information that should be taken into account means information that is verifiable, submitted appropriately and supplied in a timely fashion.

[293] Ibid.

[294] Ibid.

[295] Ibid.

[296] Dan Wei and Magalhães Furlan Fernando de, *Brazil in World Trade: Contingent Protection Measures* (Alphen aan den Rijn: Wolters Kluwer Law & Business, 2012), 130-150.

This mechanism operates as case law to make member actions under those disciplines more predictable and more convincing.[297] The Dispute Settlement Body (DSB) hears complaints from WTO Members about other Members' violations of their WTO obligations.[298] Among other things, the Dispute Settlement Understanding (DSU) authorized the establishment of dispute resolution panels to resolve disputes between WTO Members arising under the Uruguay Round Agreements.[299] It also created the WTO's Appellate Body (AB),[300] which was given the authority to act as an appellate review board for decisions issued by the panels.[301] Since the enforcement of the ADA, the WTO has issued a significant and growing number of dispute resolution reports addressing its meaning, scope, and implementation.[302]

Article 17.4 stipulates detailed descriptions of matters referred to the DSB.[303] Article 17.6 stipulates the specific standards for the panel to review. Article 17.6 (1) is about the assessment of the facts of the matter[304]. Article 17.6 (2) contains the standard of review for issues regarding legal interpretation.[305] This standard requires interpretation according to Article 31 of the Vienna

[297] The WTO provides the framework for the multilateral trading system. Most of time it provides disciplines rather than detailed rules. It is sometimes ambiguous. Moreover, countries enact laws based on the WTO disciplines. This makes implementation differentiated and more complicated. Liberal traders may doubt that the laws are strict. Under this misguided premise, laws will be implemented with prejudice.

[298] Norio Komuro, "The WTO Dispute Settlement Mechanism-Coverage and Procedures of the WTO Understanding," *Journal of World Trade* 29, no.4 (1995): 5-96.

[299] Generally Understanding on Rules and Procedures Governing the Settlement of Disputes art. 1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401 [hereinafter DSU].

[300] D. K. Tarullo, "The Hidden Costs of International Dispute Settlement: WTO Review of Domestic Anti-Dumping Decisions," *Law and policy in international business* 34, (2002): 109, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=351080.
Seven members sit on three-member panels to hear appeals related to panel findings. The AB aims to look at whether the panel ruled according to the agreements and to further support that the practice is consistent with WTO disciplines.

[301] Article 17 of ADA.

[302] WTO, Appellate Body Report, "United States-AD Measures on Certain Hot- Rolled Steel Products from Japan," WT/DS184/AB/R (July 24, 2001) [hereinafter Hot-Rolled Steel]; Appellate Body Report, "European Communities-AD Duties on Imports of Cotton-Type Bed Linen from India (Recourse to Article 21.5 of the DSU by India)," WT/DS141/AB/RW (Apr. 8, 2003) [hereinafter Bed Linen]; Appellate Body Report, "European Communities-AD Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil," WT/DS219/AB/R (July 22, 2003).

[303] Article 17.2 of ADA rules that four kinds of matters should be submitted to the DSB. The first is consultations requested by Members that have failed to achieve a mutually agreed solution. The second is final actions (i) imposing definitive AD duties or (ii) accepting price undertakings taken by the administrative authorities of the importing Member. The third is provisional measures that have an important impact. The final kind is consultations deeming provisional measures inappropriate.

[304] Article 17.6 (i) of ADA. The panel should determine whether the facts established by authorities are appropriate or the evaluation of facts by the authorities is unbiased and objective. If both the establishment is proper and evaluation is unbiased and objective, even though the panel may reach a different conclusion, the evaluation cannot be overturned.

[305] Article 17.6 (ii) of ADA. Interpretation of the relevant provisions of the Agreement made by the panel should be in accordance with the customary rules of interpretation of public international law. If the panel finds more than one

Convention on the Law of Treaties.[306] This means the interpretation of a treaty must consist of the ordinary meaning of the terms of the treaty within their context and in light of the treaty's object and purpose.

The cases reported to the DSB can also have a significant impact on amending or supplementing the implementation of existing multilateral trade disciplines. Many WTO Members, especially developing countries, do not use this mechanism frequently.[307] A few countries have used Dispute Settlement for sophisticated reasons. For example, some developing countries are not familiar with the rights and obligations in the WTO at the beginning of the WTO.[308] Dumping became prevalent with the development of international trade. Some industrialized countries first attempted to create laws against dumping, which causes injury to domestic markets, to maintain the standard market order. The history of AD actions dates back at least one century when Canada implemented such actions for the first time. Countries such as the United States, Australia, and Great Britain included AD legislation in their legal framework.

The development of AD rules began in the early twentieth century with the adoption of national legislation firstly by Canada in 1904, and then by New Zealand, Australia and the United States. The Canadian AD law focused only on low import prices. The original objective of this law was to protect Canadian companies from the steel dumped in Canada by United States companies.[309]

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interpretation for a relevant provision, the panel can be based on one permissible interpretation to support the authorities' measure.

[306] United Nations, Vienna Convention on the Law and Treaties, 1969.

[307] Michael O. Moore and Maurizio Zanardi, "Does Anti-dumping Use Contribute to Trade Liberalization in Developing Countries?" *Institute for International Economic Policy* 42, no.2 (2008): 469-495. General Overview of active WTO dispute settlement cases involving the EU as complainant or defendant and of active cases under trade barrier regulations. Developing countries that have used dispute settlement include Argentina, Brazil, China, Colombia, and India.

[308] Håkan Nordström and Gregory Shaffer, "Access to Justice in the World Trade Organization: The Case for a Small Claims Procedure-A Preliminary Analysis," *World Trade Review* 7, no.4 (2008): 587-640. This article explains the reason why developing countries do not use the mechanism actively. It mentions a lack of sufficient awareness of WTO rights and obligations; inadequate coordination between the government and the private sector; difficulty determining the existence of undue trade barriers and the feasibility of legal challenge; financial and human resource constraints in lodging disputes; and an oft-cited lack of political will to pursue trade disputes due to a fear that trade preferences or other forms of assistance will be withdrawn, or some form of retaliatory action will be taken.

[309] Calvin S. Goldman, "Competition, Anti-Dumping, and the Canada-United States Trade Negotiations," *Canada-United States Law Journal* 12, no.13 (1987): 95-106.

Meanwhile, in the United States, the focus of the 1916 AD Act was only on predatory pricing by foreign exporters,[310] because, after World War I, European companies, notably German firms, tried to gain back their market position in the United States by using predatory pricing.[311] This Act was a criminal statute that required the proclamation of foreign suppliers that resorted to predatory dumping. The United States AD law that closely resembled the Canadian AD law was the 1921 amendment to the AD Act. It was civil legislation that allowed imposing duties to compensate for differences between prices. In the same year, the UK adopted its first AD legislation and Canada, New Zealand, and Australia amended their AD acts.[312]

AD laws took a long time to develop. In the arena of international law, the first international AD law was the General Agreement on Tariffs and Trade 1947, Article VI. Nevertheless, AD seemed to exist in the backwater of trade policy[313] until the 1979 Tokyo Round. The Tokyo Round AD Code included numerous amendments to the AD statute and became the model followed by the ADA.

With the establishment of the WTO, the Uruguay Round ADA became the standard for WTO Members when dealing with the issues related to dumping. The Uruguay Round AD Agreement enhanced the discipline and made many improvements compared to previous AD laws.[314] The Uruguay Round brought about the most significant reforms to the world's trading system since the establishment of GATT after the end of the Second World War. It covered more issues and

[310] Gary Clyde Hufbauer, "Anti-dumping: A Look at US Experience-Lessons for Indonesia," *Peterson Institute for International Economics,* August 20, 1999, https://www.piie.com/commentary/speeches-papers/antidumping-look-us-experience-lessons-indonesia.

[311] K.W. Almstedt, "International price discrimination and the 1916 Anti-dumping Act- Are Amendments in Order?" *Law and Policy International Business* 13, (1981): 747-760. See also, Richard I. Hiscocks, "International Price Discrimination: The Discovery of the Predatory Dumping Act of 1916," *The International Lawyer* 11, no.2 (1977): 227-247.

[312] Hutchison, Alan D., Milo G. Coerper, Arnold M. Greenberg, Walter F. Sheble, and Myron Solter. "Analyses of the Antidumping Laws of the Federal Republic of Germany, France, Italy, and the United Kingdom," *Section of International and Comparative Law Bulletin* 10, no.1 (1965): 14-36.

[313] There is no comprehensive data on pre-1980 AD activity. However, there are still examples that show the frequency of the AD activity before 1980. The traditional AD policy user, the United State did not levy duties in a single AD case during the entire decade of the 1950s. In the 1960s, only 10 percent of AD cases resulted in duties.

[314] Grimwade, op.cit. 102-105.

involved more countries than any previous round.[315] The Uruguay Round ADA has become the most broadly used multilateral agreement on AD issues with the expansion of WTO membership. All WTO Members must use it as a guide for their AD behavior and as a reference for domestic AD legislation.[316] Even countries that are not WTO Members could become targets in AD investigations.[317]

However, after implementation of the ADA, an increasing number of AD actions began appearing amongst WTO trade remedy measures. For example, AD actions were 89.1 percent of the three main WTO trade remedy forms used between 1995 and 2000.[318] The ADA aims to prevent price discrimination. However, petitioners who have lost their comparative advantage over exporters keep abusing AD law. Hence, the requirement to reform the ADA becomes more urgent. The focus of multilateral negotiations is no longer on how to prevent predatory pricing to protect international trade effectively but on how to regulate AD rules to prevent protectionism. Dumping is no longer a central topic on the global negotiating table, but the discussion on AD itself becomes more and more intense.

In the 2001 Doha Declaration[319], Ministers agreed to negotiations to clarify and improve disciplines, which included preserving the basic concepts, principles, and effectiveness of the agreements. The needs of developing and least-developed participants were also essential topics during negotiations. WTO Members submitted a large number of proposals to the negotiating committee on rules and changes to be made to the ADA.

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[315] The Uruguay Round lasted seven and a half years. In the end, 123 countries were taking part in negotiations. The topics covered almost all trade. It was the largest negotiation ever and most probably the largest negotiation of any kind in history. WTO Understanding of "The Uruguay Round",
[316] Muhammad Ijaz Latif, "Uruguay Round of GATT and Establishment of the WTO," *Pakistan Horizon* 65, no. 1 (2012): 53-70.
[317] For example, China entered the WTO in 2001. However, before 2001, China was often the main target of other industrial countries.
[318] Simon J. Evenett and Johannes Fritz, *The Tide Turns? Trade, Protectionism, and Slowing Global Growth: The 18th Global Trade Alert Report* (London: CEPR Press, 2015), 12-19. The share of countervailing duty was used in 7.1 percent of cases while safeguards have been the least frequently used measures in only 3.8 percent of cases.
[319] WTO, WT/MIN(01)/DEC/W/1, 20 November 2001.

Chapter Three -- Doha Round Negotiations on the Anti-Dumping Agreement and Impasse

Debates on AD rulings have become a central topic between AD supporters and objectors in recent decades. Differences exist between the active reformers and conservative defenders of AD legislation. The analysis above showed a considerable increase in both the number of AD cases as well as the number of AD users after the Uruguay Round, which means there are more and more countries involved in the AD issue. A lot of debate also appeared surrounding this situation. There were two contrasting positions. One position viewed this growth as a reflection of trade liberalization. Liberalizing countries can use AD remedies to accommodate demands for protection. The other position viewed this increase as retaliation,[320] meaning that previous victims of the traditional users (the United States, the EU, Canada, and Australia) were using AD laws against their tormentors. Moreover, certain significant cases encouraged the trade ministers of some countries to pay more attention to reforming the anti-dumping system. [321]

A. Ministerial Conference before the Doha Ministerial Conference

I. Ministerial Conference before Doha Round Negotiations

The GATT is extremely familiar to the public as an agreement to reduce or remove harmful influences from unfair trade. It includes plenty of rules authorizing its Members to take action. Among these provisions, Article VI provides the authority to impose AD and countervailing duties. Article XVIII allows restrictions for defending the balance of payments or promoting industrial development. Article XX regulated ten different categories including restrictions to protect human, animal or plant life or health. Based on the history of negotiations, the GATT 1947 agreement allows each country to renegotiate topics they have already negotiated automatically.[322] Further, renegotiation related to reductions could be quicker than other negotiations because of procedures

[320] Bruce A. Blonigen and Chad P. Bown, "Antidumping and Retaliation Threats," *Journal of International Economics* 60, no.2 (2003): 249-273.

[321] Gary N. Horlick, "Anti-dumping at the Seattle Ministerial: with Tear Gas in My Eyes," *Journal of International Economic Law* 3, no. 1 (2000): 179-181. Cases in Europe against textiles from India and Pakistan, a case in the United States against salmon from Chile, and a case in the United States against imports of crude oil from Mexico and Venezuela, all cases that illustrate that AD cases could potentially have negative economic effects upon their domestic economies.

[322] WTO, GATT 1994 – Article XXVIII (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020

known as "sympathetic consideration".[323] The AD was not a majority instrument during GATT negotiations. Moreover, the provisions of the AD regulations were a little controversial. The contracting Members of GATT finally canvassed themselves to use AD regulation across all the GATT Members. There were only 37 AD disputes in 1958.[324]

1. FROM SINGAPORE TO THE SEATTLE MINISTERIAL CONFERENCE

Other international organizations base their decisions on majority votes of their Members.[325] However, WTO decisions depend on consensus among member governments.[326] Before the Doha Round, there was a total of four Ministerial Conferences. The first WTO Ministerial Conference began in Singapore in December 1996.[327] The meeting reviewed the implementation of the Uruguay round agreements and considered recommendations on trade issues.[328] This Ministerial Conference decided: (1) to study the implementation of WTO agreements comprehensively; (2) to establish working groups for studying new areas such as trade and investment, trade and competition, and transparency in government procurement. Members agreed that the working groups should report to the general council within two years.[329] The Singapore Ministerial Conference did not focus much on the ADA. However, issues such as transparency were one of the topics included in further negotiations.[330]

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[323] WTO, GATT 1994 – Article XXIII (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.
[324] GATT 1958, pp.14.
[325] Norman L. Hill, "Unanimous Consent in International Organization," *The American Journal of International Law* 22, no.2 (1928): 319-329.
[326] Eric A. Posner and Alan O. Sykes, "Voting Rules in International Organizations," *University of Chicago Public Law & Legal Theory Working Paper*, no. 458 (2014): 1-23.
[327] World Trade Organization Secretariat, "First WTO Ministerial Conference (MC1): Singapore, 9-13 December 1996," in *WTO Ministerial Conferences: Key Outcomes* (Cambridge, MA: Cambridge University Press,2019), 2-33. doi:10.1017/9781108629874.002.
[328] Singapore Ministerial Declaration, 13 Dec. 1996. In this Ministerial Meeting, the WTO Members agreed on an assessment of the implementation of the WTO agreements, the establishment of working groups on "trade and investment" and "trade and competition" as well as the declaration on Trade in Information Technology Products. Singapore Ministerial meeting successfully reached agreements on service sectors and tariff problems in the area of information technology. This Meeting (a) reached an agreement on the elimination of tariffs in the area of information technology, and (b) decided to continue negotiations on the service sectors for which negotiations had not been completed during the Uruguay Round.
[329] Myriam Vander Stichele, "The Ministerial Conference in Singapore and the Developing Countries, An Introduction," *WTO Booklet Series* 1,1996. https://www.tni.org/es/node/8820.
[330] Simon J. Evenett, "The Failure of the WTO Ministerial Meeting in Cancun: Implications for Future Research," *CESifo Forum* 04, no.3 (2003): 11-17. https://www.ifo.de/DocDL/forum3-03-focus2.pdf. It is worth noting that some WTO members, including the European Union and its Member States, believed before the Cancun ministerial conference that an agreement had been reached at the Doha ministerial conference in 2001 on launching Singapore, and that Cancun would determine the modalities for these negotiations. WTO Members, particularly from Africa,

The Second Ministerial Conference began in Geneva in May 1998.[331] On the specific issue of AD, the Singapore and Geneva conferences focused more on the implementation of the ADA. In response to paragraph 9 of the Geneva Ministerial Declaration,[332] many WTO Members, developing countries in particular, submitted proposals to the third WTO Ministerial Conference held in Seattle in 1999 to include more disciplines in the ADA.[333] However, no Ministerial Declaration was completed during in the Seattle Ministerial Conference. The reasons for the failure of the Seattle Ministerial Conference were complicated. There were gaps in the draft declaration on the negotiating agenda, and the Conference ran out of time. In the Conference Chairperson Charlene Barshefsky, the United States Trade Representative's words,[334] there seemed to be certain reasons for the failure. As to the AD issue, even the Chairperson of the Subgroup for Implementation and Rules, Canadian Trade Minister Pierre S. Pettigrew, did his best to present his text on AD negotiations, but Members did not agree with the overall package of the Round at that time.[335]

2. Preparation Process for the Third Ministerial Conference

Preparations began during the Second Ministerial Conference in Geneva in May 1998. They quickened their pace at the Prime Minister's council in September 1998.[336] Members first submitted a proposal for the project in March 1999. In September 1999, the General Council began collecting viewpoints on a draft declaration in Seattle. This declaration would include, among other

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argued that no such decision had been taken at the Doha ministerial meeting and that the Singapore issue should be resolved after Cancun rather than at Cancun.

[331] The ministerial meeting coincided with the commemoration of the fiftieth anniversary of GATT. The agenda had two main items:1) implementation of the agreement reached during the Uruguay round; 2) future work plan. The ministerial declaration adopted calls for the initiation of a preparatory process for a decision on the working program for the next round of negotiations during the third Ministerial Conference.

[332] WTO, "WTO Geneva Ministerial Declaration," https://www.jus.uio.no/lm/en/html/wto.ministerial.declaration.geneva.1998.html.

[333] The following WTO Members expressed their willingness to tighten the disciplines in the AD agreement: South East Asian Nations (WT/GC/W/205), Brazil(WT/GC/W/269), Chile (WT/GC/W/336), Colombia (WT/GC/W/315), Egypt (WT/GC/W/324), Guatemala (WT/GC/W/330), India (WT/GC/W/200), Japan (WT/GC/W/240), Kenya (WT/GC/W/233), Korea, Republic of (WT/GC/W/235), and New Zealand (WT/GC/W/338).

[334] WTO, "3 December-The Final Day and what happens next," *WTO Briefing Note*, 1999, https://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/resum03_e.htm."*divergences of opinion remained that would not be overcome rapidly... would be best to take a time out, consult with one another, and find creative means to finish the job.*"

[335] The United States strongly opposed these proposals.

[336] Oker Gürler, "Third Ministerial Conference of the WTO and Importance of Agriculture in Trade Talks," *Journal of Economic Cooperation* 21, no.2 (2000): 45-66.

things, an agenda for negotiations. By mid-September, the Members had submitted more than 150 proposals on topics including tariffs, AD, subsidies, safeguards, investment measures, and many other subjects.[337] These recommendations are not specific to the negotiations, but work in progress on other significant issues. Over the previous four years, since the results of the Uruguay Round entered into force, these issues had become a matter of concern to many states.[338]

The Seattle Ministerial Conference included plenary sessions and the Committee of the Whole, as well as four working groups on specialized topics[339] and a group on systematic issues. Discussions proceeded in parallel. Different groups worked separately under the lead of different chairpersons. However, the Conference had no significant contributions to launch a new round of negotiations. No Ministerial Declaration was issued by this conference, no final decisions were reached and many points of contention remained in specific areas.[340]

Members such as Japan, the EU, and many other countries supported the "comprehensive negotiations" framework in many areas,[341] including AD negotiation. A large number of Members, particularly the developing countries, supported strengthening disciplines in the ADA. The Chairman's text of Ministerial Working Group mentioned this item as well. However, it faced strong opposition from the United States.[342] All Members should participate in negotiations, and they should share the benefits and burdens. However, the United States emphasized more the built-in agenda on agriculture and services and labor. In the meantime, India and some other developing

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[337] Phase I of Seattle Ministerial Conference (beginning September 1998: confirmation of issues): A special session of the General Council was held at the end of September 1998, as called for in the Geneva Ministerial Declaration. The council decided to recognize the issues listed in paragraph 9 of the Ministerial Declaration by February 1999. The General Council meets informally once a month, starting in October, to discuss its own issues. These were summarized at a special meeting of the General Council in February 1999.
[338] Myriam Vander Stichele, "Towards a World Transnationals' Organisation?" *WTO Booklet Series* 3, 30 April 1998, https://www.tni.org/es/node/8822.
[339] Agriculture, Market Access, Singapore Agenda and Other Issues, and Implementation and Rules.
[340] Richard L. Bernal, "Sleepless in Seattle: The WTO Ministerial of Novermber 1999," *Social and Economic Studies* 48, no.3 (1999): 61-84.
[341] The comprehensive negotiations framework includes industrial tariffs, investment and a wide range of other areas of interest to Members in addition to the built-in agenda items of agriculture and services.
[342] Committee on Finance, United States Senate, WTO Seattle Ministerial: Outcomes and Lessons Learned, Statement of Susan S. Westin, Associate Director, International Relations and Trade Issues, National Security and International Affairs Division. "The United States argued that re-opening the complex agreement was premature and risked weakening the strength of the existing United States anti-dumping regime. United States negotiators said they would consider holding discussions on how WTO members were implementing the agreement's procedural requirements, but this United States offer attracted limited support."

countries were vehemently opposed to launching a new round of negotiations. Hence, it was hard to reach a consensus on comprehensive negotiations.[343]

The Seattle Ministerial Conference was only the beginning of negotiations.[344] Actual negotiations and work plan would take place in Geneva, where the WTO is headquartered. Ministers at the Seattle Conference proposed a three-year deadline for new negotiations. From experience, ministers realized that it is not always easy to conclude substantial, complex negotiations within a given period. After the Seattle Ministerial Conference, some WTO Members[345] already had a strong desire to launch a new round of negotiations with a comprehensive agenda wherein the AD issue would become an important topic.[346] Some other Members[347] resisted launching a new comprehensive round because they needed more time to adjust the results of the Uruguay Round. However, the launch of a new round was firmly on the agenda because of the failure of the Seattle Ministerial Conference.

B. DOHA ROUND INITIATION PHASE

To resolve the obstacles left by the failure of the Seattle Ministerial Conference, WTO Members started taking action to encourage possible further negotiations. In 2000, WTO Members began to discuss certain knotty issues under the General Council for confidence building purposes.[348] In the

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[343] Bruce Donald, "The World Trade Organization (WTO) Seattle Ministerial Conference, December 1999: Issues and Prospects," *Parliament of Australia Current Issues Brief* 12, 30 November 1999, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib9900/2000CIB12.

[344] Just as the seven-year Uruguay Round was launched at the ministerial conference in 1986 and the six-year Tokyo Round was launched in Tokyo in 1973.

[345] In 1998, an informal group of 15 WTO Members started to meet as "The Friends of a New Round". The group included Argentina, Australia, Chile, Costa Rica, Czech Rep., Hong Kong, Korea, Hungary, Mexico, Morocco, New Zealand, Switzerland, Singapore, Thailand and Uruguay.

[346] Paragraph 9 of the Geneva Ministerial Declaration had stated that the following Ministerial Conference should include "further liberalization sufficiently broad-based to respond to the range of interests and concerns of all Members."

[347] These countries include Cuba, the Dominican Republic, El Salvador, Honduras, India, Indonesia, Malaysia, Nigeria, Pakistan, Sri Lanka and Uganda; subsequently, Jamaica, Tanzania and Zimbabwe.

[348] WTO, WT/GC/44, 12 Feb. 2001. The issues include measures in the favor of least-developed countries, technical cooperation, transitional periods, and establishment of the WTO reference centers in developing and developed countries, to devise a mechanism to look into implementation-related concerns, internal transparency and effective participation of all Members.

The Joint Press Statement of The first Meeting of The ASEAN Economic Ministers and The Ministers of People's Republic of China, Japan and Republic of Korea, Yangon, Myanmar, 2 May 2000. Economic Ministers from these

meantime, proponents of AD negotiations kept pushing for the start of negotiations.[349] In 2001, statements were adopted by some "mini-ministerials"[350] urging a new round with a broad-based agenda at the Doha Ministerial Conference in November.

Moreover, WTO Director-General Mike Moore also showed initiative, planning a series of informal Ministerial Meetings in the summer of 2001 to discuss critical issues on the agenda with certain key countries. The first session was held between 31 August and 1 September in Mexico, and the second was on 14-15 October in Singapore. In these meetings, Ministers discussed key issues on the agenda, including the existing ADA.[351]

Because of the increasing number of AD investigations as stated above and the consequent dispute settlement cases, [352] a universal tendency to abuse AD measures has emerged. Given the possibility that such abuse may hinder free trade, many WTO Members are eager to include AD in the new round's negotiations to strengthen the AD disciplines. [353] Compared to other non-tariff barriers like quotas and technical barriers, AD is not a precise method for evincing protectionism. On the contrary, for maintaining fair competition, AD actions are selective and more justifiable as trade barriers. Exporting countries cannot easily predict AD measures because of the differences between industries and countries.[354]

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countries declared that, to enhance market access for industrial goods, negotiations should improve the existing AD agreement.

[349] Thomas Pedersen, *European and East Asian Regionalism / a Realist Perspective* (Århus: Dept. of Political Science, University of Aarhus, 2003), 60-85.

[350] Organization for Economic Cooperation and Development (OECD) Ministerial Council, May 2001, Quad Trade Ministers' Meeting; June 2001, APEC Meeting of APEC Ministers Responsible for Trade; September 2001, ASEM Economic Ministers' Meeting.

[351] John S. Odell, "Breaking Deadlocks in International Institutional Negotiations: The WTO, Seattle, and Doha," *International Studies Quarterly* 53, no.2 (2009): 273-99.

[352] In this period, a great number of cases were brought under the Dispute Settlement Understanding including several key issues in the ADA. EC-Bed Linen, WT/DS141/R, WT/DS141/AB/R, US-Hot-Rolled Steel, WT/DS184/R, WT/DS184/AB/R, US-Corrosion Resistant Steel Sunset Review WT/DS244/R, WT/DS244/AB/R, US-Oil Country Tubular Goods Sunset Review WT/DS268/R, WT/DS268/AB/R, US- AD Measures on Oil Country Tubular Goods WT/DS282/R, WT/DS282/AB/R, US- Steel Safeguards WT/DS248,249,251,252,253,254,258 and 259.

[353] Japanese Ministry of Economy, "Trade and Industry," Fourth WTO Ministerial Conference, 01 January 2013, 521-537. http://www.meti.go.jp/english/report/downloadfiles/gCT0227e.pdf.

[354] Qinglan Long, "Conflicting Positions but Common Interests: An Analysis of the United States Antidumping Policy Toward China," *Richmond Journal of Global Law & Business* 7, no.2 (2008): 133-152.

I. The Doha Mandate

On November 14, 2001, the Fourth WTO Ministerial Conference began in Doha, Qatar. Ministers from WTO Members agreed to launch a new round of trade negotiations.[355] The Members also decided to work on other issues, in particular the implementation of existing agreements. The name of the entire package was the Doha Development Agenda (DDA).[356] It seemed an excellent opportunity for negotiations that could generally increase the standards of legalization in the WTO as well as in each specific regime. Negotiations took place within the Trade Negotiations Committee (TNC) and its subsidiaries, which are usually regular councils and committees meeting in "special session" or specially created negotiating groups. The chairs of the negotiating bodies report to the TNC presided over by the WTO Director-General, which coordinates their work.[357]

On November 20, the Doha Mandate began with three main characteristics. First, a strict boundary of negotiations; second, an emphasis on precision; third, different Member positions. The first and second characteristics are tied together because Members need only emphasize the precision of the agreements to achieve this strict boundary rather than completely reforming current agreements on a fundamental level.[358] The United States and the EU vehemently opposed negotiating on essential issues. Article 28 of the Doha Ministerial Declaration described that the objective of the negotiations on the ADA is "clarifying and improving disciplines" under the ADA, "while preserving the basic concepts, principles, and effectiveness of these Agreements and their instruments and objectives."[359]

The declaration required that 'all participants in the initial phase of negotiations indicate the provisions, including disciplines on trade-distorting practices that they seek to clarify and improve in the subsequent phase.'[360] Thus, it explicitly limits negotiations on specific subjects.

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[355] Arun Goyal and Noor Mohd, *WTO in the New Millennium: Commentary, Case Law, Legal Texts* (New Delhi: Academy of Business Studies, 2001), 77-79.
[356] Ibid.
[357] WTO, TN/C/M/1, 14 February 2002.
[358] United Nations, UNCTAD XIII DOHA MANDATE and DOHA MANAR, UNCTAD/ISS/2012/1, 2012.
[359] WTO, WT/MIN(01)/DEC/1, 20 Nov.2001.
[360] WTO, WT/MIN (01)/DEC/1, 20 November 2001. "*negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 ..., while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants.*"

In February 2002, the TNC created a Negotiating Group on Rules (NGR) [361] in charge of all negotiations on the ADA. Following the Doha Declaration, 33 participants (the EU is one participant) submitted papers on both substantive and procedural provisions they desired to reform in the ADA. These submissions focused on issues of definition, procedure, and the administration of AD actions.[362]

The function of the ADA is to ensure implementation of the principles regulated in Article VI of GATT to protect fair trade. Though AD laws are theoretically contradictory macroeconomic principles, different countries have accepted them intending to prohibit unfair trade competition.[363] Compared to previous AD rules, the ADA can be considered the most comprehensive. However, there are some obvious fundamental problems with the ADA. For example, the method for calculating dumping margins is inaccurate. Moreover, there is a lack of rules focusing on market distortions. WTO Members brought these questions into the upcoming negotiations.

II. Different Groups of WTO Members during Negotiations

The Doha Round and the GATT/WTO system in general focus variously on a historical and political analysis of trade negotiations, the legal analysis of trade institutions, and the technical-economic analysis of bargaining strategies and the detailed welfare effects of trade. These wide-ranging approaches to WTO rules and negotiations illustrate the complexity of the institution and a multisector multilateral trade negotiation such as the Doha Round.[364] Countries expected gains from trade from a successful negotiation.[365] In the meantime, they also wish to maintain sovereign

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[361] WTO, WT/GC/M/73, 11 March 2002.

[362] Specific submissions include: the determination of dumping and injury, definition of domestic industry, initiation and subsequent investigation, evidence, price undertakings, imposition and collection of AD duties, retroactivity, duration and review, judicial review, developing economy members, consultation and dispute settlement, transparency, and procedural fairness, preserve efficiency of the instrument, clarity and simplify the agreement, public interest, reduce the costs of investigations, harmonization of the AD agreement and the agreement on subsidies and countervailing measures.

[363] The main developed countries already had AD laws before international AD regulations. Prior to the Uruguay Round, there was still a minority of countries with domestic anti/dumping legislation. After enactment of the ADA, more and more developing countries positively regulated anti/dumping laws to be consistent with the international principle and solve dumping issues that damage anc cause harm to established domestic industry. All countries that have anti/dumping law announce they will maintain compliance with GATT Article VI and the ADA.

[364] Robert Howse, "The World Trade Organization 20 Years On: Global Governance by Judiciary," *The European Journal of International Law* 27, no.1 (2016): 9-77.

[365] Joseph Francois, Hans van Meijl, and Frank van Tongeren, "Trade liberalization in the Doha Development Round," *Economic Policy* 20, no.42 (2005): 350-391. See also Inge Kaul, *Providing Global Public Goods: Managing*

control over their domestic adjustments to increased trade, hence the importance of the WTO language of "concessions" balanced against foreign market access, the trophies brought home by a country's negotiator during a negotiating round.[366] However, the fact that Members have repeatedly returned to the negotiating table, debating with one or many adversaries, emphasizes their belief in the importance of trade.[367]

1. Members Favoring Reform of the Anti-dumping Agreement—"Friends of Anti-dumping Negotiations"

The "Friends of Anti-Dumping Negotiations" (FANs) is an informal group comprised of WTO Members. It includes industrialized nations like Korea, Japan, Singapore, Norway, Switzerland, and developing countries like Chile, Brazil, Colombia, Costa Rica, Hong Kong, China, Israel, Mexico, Thailand, and Turkey. It also includes the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu. Other developing countries have been added to this coalition. During the Doha negotiations, the FANs tabled many proposals for tightening disciplines, including, for example, preventing overly burdensome investigations, enhancing transparency, fairness of AD proceedings, and taking into account the particular needs of developing Members.[368] In the "Senior Officials' Statement on AD Negotiations", the FANs explained their motives for submitting proposals. The FANs considered that an abusive use of AD rules against legitimate exports had increased rapidly. Countries were using AD measures to protect their domestic industry. Some abusive practices were unwarranted, and some investigations were repetitive.[369] Many AD measures were inconsistent with the ADA. The FANs believed that these aggressive AD actions negatively influenced market access and economic development at both national and international levels. Further, they argued that trade remedy actions distort economies, and the ADA should require developed countries to provide differential treatment when investigating products

Globalization (New York: Published for the United Nations Development Project by Oxford University Press, 2003), 365-385.

[366] Kyle Bagwell, Petros C. Mavroidis, and Robert W. Staiger, "It's a Question of Market Access," *The American Journal of International Law* 96, no.1 (2002): 56-76.

[367] Kent Jones, *The Doha Blues Institutional Crisis and Reform in the WTO* (Oxford, U.K.: Oxford University Press, 2011), 1-30.

[368] WTO, L/W/6 -AD Illustrative Major Issues; TN/RL/W/10 -Second Contribution to Discussion of the Negotiating Group on Rules on AD Measures; TN/RL/W/28/Rev.1- General Contribution to the Discussion of the Negotiating Group on Rules on AD Measures; TN/RL/W/29- Third Contribution to the Discussion of the Negotiating Group on Rules on AD Measures; TN/RL/W/46- Fourth Contribution to the Discussion of the Negotiating Group on Rules on AD Measures.

[369] WTO, TN/RL/W/66, 06 March 2003.

originating in developing countries. Hence, the FANs key objective in the AD negotiations was clarifying and reforming the current ADA.

2. Members Favoring Maintaining the Anti-dumping Agreement

Traditional users like the United States should also have been interested in clarifying existing rules and their applicability since developing and less developed countries started joining the implementation of ADA. However, the United States government tried hard to keep AD off the Doha agenda at the very beginning. The United States led the opposite camp that supported the preservation of the ADA in the Doha Round Negotiations. At the Seattle Round, the Clinton administration was already prepared to keep AD off the negotiating agenda.[370] Before the Doha Round, the United States government submitted an explanation of the importance of an effective AD regime.[371] However, this efficiency requirement sought the advantages of a balanced playing field for American companies.[372] The Bush administration even developed an AD strategy related to american agricultural producers and other industries that were subject to an increasing number of suits from other countries.[373] The United States is the leading defender of trade remedy laws as legitimate tools. The United States agenda tries to improve the procedural rules of the ADA, such as “transparency, predictability as well as adherence to rule-of-law”.[374] All these procedural disciplines can help free United States firms from suits administered inconsistently with WTO rules.[375] The main aims of the United States are to ensure the rights of Members to use trade remedies are maintained and to intensify rules to prevent circumventions of AD measures.[376]

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[370] G.N. Horlick, *WTO and NAFTA Rules and Dispute Resolution: Selected Essays on Anti-dumping, Subsidies and Other Measures* (London: Cameron May, Ltd, 2003), 395-401.

[371] WTO, TN/RL/W/27, 22 October 2002. Communication from the United States to the WTO Negotiating Group on Rules. “Effective trade remedy instruments are important to respond to and discourage trade-distorting government policies and the market imperfections that result.”

[372] Greg Mastel, *Antidumping Laws and the United States Economy* (London: Routledge, 2016), 20-58.

[373] Charles E. Hanrahan, Beverly A. Banks, and Carol Canada, *United States Agricultural Trade: Trends, Composition, Direction, and Policy* (Washington, D.C.: Library of Congress, Congressional Research Service, 2012), 130-164.

[374] Terence P. Stewart, Amy S. Dwyer, and Marta M. Prado, “Antidumping, Countervailing Duties and Trade Remedies: “Let's Make A Deal"?-Views from a Domestic Practitioner,” *The International Lawyer* 37, no.3 (2003):761-775.

[375] WTO, TN/RL/W/143, 22 August 2003.

[376] Robert E. Baldwin, “Failure of the WTO Ministerial Conference at Cancun: Reasons and Remedies,” *The World Economy* 29, no.6 (2006): 677-696.

Egypt actively supports United States concerns over circumvention and is another defender of AD law. Egypt has been both a GATT and WTO member and is the only active user from Arab countries at the WTO.[377] Egypt is the only Arab country with full experience in the WTO dispute settlement mechanism and often attends WTO ministerial meetings.[378] Egypt considers the significant number of AD suits by developing countries legitimate. Furthermore, AD allegations illustrate the capacity that developing countries have to defend their producers against the measures of developed countries. Egypt believes that elaborating on the ADA will not impede abusive practices, and possibly increase the burden on developing countries.[379]

3. Other Members

Other Members included the EU, Australia, Canada, India, and New Zealand. Some of their proposals supported the FANs. Others submitted independent suggestions to clarify AD rules. The EU may have partly joined the association of developing countries because the EU is also a primary target for AD measures. EU trade officials presented concerns at Doha, primarily concerning significant differences between countries in their interpretation and application of WTO rules in their domestic trade remedy regulations.[380] Australia's position is in the middle of the spectrum. As a traditional AD user, Australia is also an active participant in AD negotiations presenting moderate views to encourage procedural rules like transparency and clarification of AD practices and mandatory regulations that favor one practice over another. Australia also has the goal of providing Australian exporters with fair conditions when facing AD actions.[381] India is gradually becoming one of the most active users as well as a central target of AD laws. In negotiations, India mainly considered that the ADA should provide particular and differential treatment to developing countries. India has also advanced proposals to restrict the use of zeroing to ensure injury and limit profit margins used by national authorities in their determinations of dumping.[382]

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[377] Egypt's first AD activity imposed the definitive AD duties on imports of concrete steel rebar from Turkey in 2001.
[378] Bashar H. Malkawi, "Arab Countries' under Participation in the WTO Dispute Settlement Mechanism," *Flinders Law Journal* 14, no.2 (2012):12-14.
[379] Egypt considers that the elaboration of ADA will bring additional complexity.
[380] WTO, TN/RL/W/13, July 8, 2002.
[381] Australia Government, Department of Foreign Affairs and Trade Submission, *Productivity Commission Inquiry: AD and Countervailing System*, https://www.dfat.gov.au/trade/organisations/wto/Pages/productivity-commission-inquiry-antidumping-and-countervailing-system.
[382] WTO, TN/RL/W/26, 17 October 2002.

During the first phase of the Doha Round Negotiations, the Doha Mandate specified the purpose of negotiations on the ADA. It also clarified the kinds of provisions that participants can submit. During the process, the FANs submitted papers to clarify and reform the current ADA seeking to reduce ADA-inconsistent AD measures and to prevent increasing protectionism. Meanwhile, the United States and Egypt emphasized the importance of the existing ADA and actively supported maintaining it.

Other Members, for example the EU, Australia, and Canada submitted proposals to the NGR, focusing on different ADA rules. Because the FANs is an informal group of Members, some suggestions were presented by all FANs Members, others were submitted by one or several of them. Alternatively, other WTO Members submitted proposals that sided with the FANs or the United States. This clarification of groups only shows that different countries held different opinions. On some specific articles like transparency, Members had very similar ideas for reforming them.

C. THE CONTINUING PHASE OF THE DOHA ROUND NEGOTIATIONS

I. AFTER CANCUN 2003

Negotiations resumed in the spring of 2004. The Framework Agreement in July 2004[383] noted the progress outlined in the report by the chairperson of the NGR to the Trade Negotiations Committee.[384] Until Cancun, negotiations were very formal. However, informal discussions began after Cancun. Elaborated proposals were submitted by Members in the form of JOB documents. The second phase continued until spring 2005.[385] During 2004, the chairpersons of the NGR changed successively.[386]

In 2005, the FANs presented a 'Senior Official' Statement at the negotiating meeting. In this declaration, its proponents emphasized the importance of achieving a reliable outcome in AD negotiations. There were six main objectives. First, to reduce the disproportionate effects of AD

[383] WTO, WT/L/579, 2 August 2004,
[384] WTO, TN/RL/9, 25 June 2004,
[385] WTO, TN/RL/13, 19 July 2005.
[386] On 11 Feburary 2004, H.E. Mr. Eduardo Perez Motta, Ambassador of Mexico, was selected as chairperson of the NGR, succeeding H.E. Mr. Tim Groser. On 3-4 November 2004, H.E. Mr. Guillermo Valles Galmes, Ambassador of Uruguay, was selected as chairperson of the NGR to succeed H.E. Mr. Motta.

measures. Second, to prevent AD measures from becoming permanent. Third, to enhance the procedural rule related to transparency. Fourth, to limit the costs of authorities and respondents. Fifth, to terminate unnecessary investigations at a very early stage. Sixth, to clarify substantial dumping and injury rules.[387] The statement evinces a burning desire by the FANs to improve the ADA as well as to push for the conclusion of negotiations.

II. THE HONG KONG MANDATE

In preparation for the Sixth WTO Ministerial Meeting in Hong Kong in December 2005, the chair embarked upon the third stage in early 2005, including further intensive consultations.[388] At the Hong Kong Ministerial Meeting, Ministers called on participants to take into account (1) the requirement to avoid unwarranted use of AD measures; (2) the desirability of reducing costs; and (3) the complexity of proceedings such as transparency and predictability for both interested parties and authorities. Ministers also pointed out some topics related to AD negotiations.[389] Moreover, WTO Members asked the negotiating group on rules to further "intensify and accelerate the negotiating process".[390] The chairperson studied the Hong Kong declaration, continued consultations within the negotiating group, and expressed his intention in May 2006 to complete an analysis of all the proposals by 2006 and submit consolidated texts in July.[391] However, negotiations focused on the issues of Agriculture and Non-Agricultural Market Access (NAMA) because the Core Members were at a standstill.[392] Because no progress was made in the other areas, the chairperson could not complete his texts. The chairperson expressed his disappointment, but was prepared to resume work at an appropriate time.[393]

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[387] WTO, TN/RL/GEN/44, 13 May 2005.
[388] Yoshifumi Fukunaga, John Riady, and Pierre Sauve, *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (Jakarta: ERIA, 2013), 30-78.
[389] Jun Kazeki, "*Antidumping Negotiations under the WTO and FANs*," *Journal of World Trade* 44, no.5 (2010): 938-939. The Ministers considered AD negotiations should include (1) determinations of dumping, injury and causation, and the application of measures; (2) procedures related to the initiation, conduct and completion of AD investigations; (3) enhancing transparency; and (4) the level, scope and duration of measures.
[390] WTO, WT/MN (05)/DEC, 22 December 2005.
[391] WTO, TN/RL/17, 1 May 2006.
[392] The so-called G6: The United States, the EU, Brazil, India, Australia and Japan.
[393] WTO, TN/RL/19, July 2006.

In light of the prospect of newly revised papers on Agriculture and NAMA in December 2007, the NGR chairperson finally issued a text on 30 November 2007.[394] The text included comprehensive proposals from the Negotiating Group related to all sensitive areas of the ADA. Nevertheless, some WTO Members were not satisfied with this text because it permitted the practice of "zeroing".[395] Many FANs Members, together with other WTO Members, submitted a statement later to criticize imbalances in the text caused by the legalization of "zeroing".[396] These Members asked the chairperson to correct the text. In January 2008, twenty Members submitted a joint proposal to prohibit the practice of "zeroing".[397]

Even with multilateral consultations and informal meetings between January and May 2008; Members were still unsatisfied with the first text issued by the chairperson. Hence, the chairperson issued a working document in April 2008.[398] In this paper, the chairperson listed all the text-based proposals submitted and provided detailed descriptions of positions put forward by Members. The Chairperson was certain the texts needed to be revised, but lacked sufficient basis to do so.[399] This

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[394] WTO, "Draft Consolidated Chair Texts of the AD and SCM Agreements," TN/RL/W/213, 30 Nov. 2007.

[395] "Zeroing" is the prevailing method typically used by the United States to calculate dumping margins. There are a large number of dispute settlement case rules on the zeroing issue. EC Bed Linen (*European Communities- AD Duties on Imports of Cotton- Type Bed Linen from India*, WT/DS141/R, WT/DS141/AB/R), US Softwood Lumber V (*US-Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/R, WT/DS141/AB/R, WT/DS264/RW, WT/DS264/AB/RW), US-Zeroing(EC) (*US-Laws, Regulations and Methodology for Calculating Dumping Margins('Zeroing')*, WT/DS294/R, WT/DS294/AB/R, WT/DS294/RW, WT/DS294/AB/RW), US- Zeroing(Japan) (*US-Measures Relating to Zeroing and Sunset Reviews*. WT/DS322/R, WT/DS322/AB/R, WT/DS322/RW, WT/DS322/AB/RW), US- Shrimp(Ecuador) (*US-AD Measure on Shrimp from Ecuador*, WT/DS335/R), US- Shrimp (Thailand) (*US-Measures Relating to Shrimp from Thailand*, WT/DS343/R, WT/DS343/AB/R), US-Stainless Steel (Mexico) (*US-Final AD Measures on Stainless Steel from Mexico*, WT/DS344/R, WT/DS344/AB/R), US- Continued Zeroing (*US-Continued Existence and Application of Zeroing Methodology*, WT/DS350/R, WT/DS350/AB/R), US-AD Measures on Orange Juice from Brazil(US-AD Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil, WT/DS382/R), US-AD Measures on PET Bags (*US-AD Measures on Polyethylene Retail Carrier Bags from Thailand*, WT/DS383/R), US-Use of Zeroing in AD Measures Involving Products from Korea, WT/DS402), *US-AD Measures on Certain Shrimp from Viet Nam*, WT/DS404/R.

[396] WTO, TN/RL/W/214, 7 Dec. 2007. Regarding this working paper, fourteen Members supported statements on 'zeroing'. Additionally, twenty Members subscribed to this statement in the following working paper TN/RL/W/214/Rev.3,25 Jan.2008.

[397] WTO, TN/RL/W/215 31 Jan. 2008. These twenty Members included: Brazil; Chile; China; Colombia; Costa Rica; Hong Kong; India; Indonesia; Israel; Japan; Korea Republic of; Mexico; Norway; Pakistan; Singapore; South Africa; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand and Viet Nam.

[398] WTO, ADP/AHG/R/23, 29 July 2008.

[399] WTO, TN/RL/W/232, "*Although it remains my firm intention to revise these texts, I do not yet have sufficient basis to do so…I have therefore chosen- as an interim step forward to table this working document…I consolidated all text-based proposals submitted to the Group… The third column summarizes delegations' reaction to the text including a detailed description of positions advanced by delegations, with specific references to any positions submitted in the form of texts*."

working document did not relieve the Members' disappointment. They required concrete textual proposals from the Chairperson or a revision of the initial text.

Pressures arose because of the forthcoming Ministerial Meeting in July 2008. This Ministerial meeting tried to forge a consensus on the modalities of Agriculture and NAMA. Taking this opportunity, many FANs Members and others asked for a revision of the Chair's text as soon as possible after the July Ministerial Meeting.[400] The Chairperson stated that he would circulate a revised draft text on AD if WTO members reached a consensus on the modalities.[401] However, WTO Members did not meet this expectation.[402] Hence, the chairperson did not issue a revision that summer.

III. DRAFT TEXT IN DECEMBER 2008

With the appearance of the economic crisis in September 2008, a growing number of concerns appeared related to protectionist measures.[403] Meanwhile, the FANs again emphasized the importance of AD negotiations and their determination to strengthen ADA disciplines.[404] Moreover, given the progress on the Agriculture and NAMA texts, the chairperson issued a bottom-up text in December 2008.[405] Eleven of the controversial ADA issues were bracketed, including zeroing, sunset reviews, lesser duty rule and the public interest.[406] Since then, the NGR met regularly and systematically discussed these bracketed issues as well as un-bracketed

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[400] WTO, TN/RL/W/233, 8 Jul.2008. This statement was jointly submitted by nineteen Members. "*At the upcoming Ministerial meeting in late July, we call on the WTO Members to urge the Chairman to issue a balanced revised text as soon as possible that shall be the basis for the next stage of negotiations.*"

[401] WTO, TN/C/M/29, 30 January 2009.

[402] WTO, TN/RL/24, 22 March 2010.

[403] Sher Verick, and Iyanatul Islam. "The Great Recession of 2008-2009:Causes, Consequences and Policy Responses." IZA Discussion Paper no. 4934, May 2010. See also Robert C. Shelburne, "The Global Financial Crisis and Its Impact on Trade: The World and the European Emerging Economies." UNECE DISCUSSION PAPER SERIES, no. 2010.2 September 2010.

[404] WTO, JOB (09)/2 of 26 Jan, 2009, WT/TPR/OV/W/1 of 20 Apr.2009, WT/TPR/OV/W/2 of 1 Jul.2009 and WT/TPR/OV/12 of 18 Nov.2009. The FANs considered that, given the economic crisis and a potential rise in protectionist sentiment, WTO Members needed to be aware of a possible increase in AD actions and avoid unwarranted use of those measures. The FANs also stated that AD negotiation is an essential area under DDA and that they would continue negotiations until finally achieving strengthened disciplines.

[405] WTO, TN/RL/W/236, 19 Dec. 2008. *New Draft Consolidated Chair Texts of the AD and SCM Agreements*.

[406] Other issues included: anti-circumvention, causation –non-attribution, product under consideration, material retardation, definition of domestic industry –producers who are importers, information requests to affiliated parties, third country dumping and specific and different treatment for developing countries.

problems[407] and unaddressed issues. The Chairperson held an informal meeting with senior officials on 25 November 2009 before the seventh Ministerial Conference. Before the senior officials' meeting, the FANs submitted a statement recognizing certain progress with the technical discussions in 2009 as well as emphasizing once again the need for a positive outcome regarding controversial issues in the AD negotiations.[408] In the Seventh Ministerial Conference, the Chairperson pointed out that, although priority negotiations focused on Agriculture and the NAMA, negotiations in other areas were also necessary.[409] In 2010, the Chairperson continued technical discussions and reported to the TNC to ask the TNC for a stocktaking exercise concerning the DDA.[410] The Chairperson continued to make an effort to organize AD organization. On 21 April 2011, the Chairperson issued a revised text on the ADA.[411] In this text, the Chairperson followed the 2008 text and described further controversial issues with the ADA. However, this text did not make any changes to the ADA.

D. Debate on Reforming the Anti-dumping Agreement

Unfortunately, Doha Round negotiations on the ADA collapsed. For five years in a row, the WTO made efforts to restart talks after the 2006 deadlock. It also tried to do so six times after launching the Doha Round Negotiations in 2001. The purpose of the WTO system iFns to improve on its predecessor, the GATT. However, the new and improved trading system under the WTO has thus far failed to deliver a significant multilateral trade agreement.

The WTO (especially its Members) suffer under the stalled Doha Round Negotiations. There was no substantial breakthrough after so much effort. Much debate still exists among Members on different articles of the ADA. The following section will focus on the most controversial issues during the Doha Round Negotiation. What are these issues? On which of these issues is it difficult

[407] Un-bracketed issues include: *Allocation of costs* (Article 2.2.1.1), *Use of Exchange rates* (Article 2.4.1), *Model matching* (Article 2.4.3), *Threat of material injury* (Article 3.7), *Prior notice before initiation* (Article 5.5), *No back to back initiation* (Article 5.10), *Maintaining of public file* (Article 6.4), *20 days response time at Disclosures stage* (Article 6.9), *Price Undertakings* (Article 8), *New shipper reviews* (Article 9.5), *Public notice at the stage of initiation and preliminary findings* (Article 12), *On the spot verification* (Annex I), *Use of facts available* (Annex II), *Review of Members' AD policy and practices* (Annex III).
[408] WTO, TN/RL/W/244, 20 Nov 2009.
[409] WTO, "Seventh WTO Ministerial Conference news archive," https://www.wto.org/english/news_e/archive_e/mn09_arc_e.htm
[410] WTO, TN/RL/24, 22 Mar 2010.
[411] WTO, TN/RL/W/254, 21 Apr. 2011, pp. 3-36.

to reach an agreement? Why is it so hard for negotiators to convince each other and figure out a solution that can satisfy them all?

I. MOST CONTROVERSIAL ISSUES DURING THE NEGOTIATIONS

1. ZEROING METHOD

1.1 THE DEFINITION AND PRACTICE OF ZEROING

The ADA regulates that countries have the right to impose AD duties on foreign products that enter their home market at prices lower than the product's normal value on the foreign market. Article 2 of the ADA establishes the parameters for determining the existence and extent of dumping.[412] Article 2.1 defines dumping as when "the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country." Article 2.4 concludes that, for dumping to exist, "a fair comparison shall be made between the export price and the normal value."

Further, Article 2.4.2 provides the methods that constitute a fair comparison.[413] There are two standards of comparison between export prices and the normal value: a "weighted average-to-weighted average" basis and a "transaction-to-transaction" basis. However, this article also allows for a third method: comparison of a weighted average normal value against individual export transactions if specific conditions exist. The method of calculation is essential to determine whether dumping exists and the size of the margin. While its failures have damaged the GATT dispute system in highly prominent cases, the shortcomings of the WTO dispute settlement methodology are most evident in many seemingly minor disputes involving the esoteric practice of zeroing in AD investigations.[414] Zeroing is a calculation method used by the United States to

[412] WTO, "Anti-Dumping Agreement - Article 2 (Jurisprudence)." WTO ANALYTICAL INDEX, Current as of 2020.
[413] Article 2.4.2 of ADA. "*Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.*"
[414] Dan Ikenson, "Zeroing In: Antidumping's Flawed Methodology under Fire," *Free Trade Bulletin*, no.11 (2004): 1-3.

ascertain dumping margins, and then help determine AD duties. Zeroing refers to the practice of replacing the actual amount of dumping that yields negative dumping margins with a value of zero before the final calculation of the weighted average dumping margin for the product under investigation and concerning the exporters under investigation.

In United States law, targeted products must be equal to the dumping margin or "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise."[415] Zeroing happens in the final stage of the dumping determination. A company's entire dumping margins include all dumping amounts that also add to or divide the aggregate export sales amount. Dumping amounts are found by comparing the foreign producer's export prices to their normal value. If the normal value is higher than the export price, the difference will be the dumping amount.[416] However, if the export price is higher than the normal value, the United States authorities will zero out the dumping amount.[417] Zeroing drops transactions with negative margins, thus increasing overall dumping margins and the resulting AD duties applied because only positive dumping margins are included in the dumping calculation. It is also difficult for a company to avoid dumping if the authorities use zeroing to calculate the dumping margin. It makes zeroing a significant irritant for exporters but is highly desirable for import-competing industries.[418]

1.2 THE CONSEQUENCES OF ZEROING

A significant number of critics focus on the practice of zeroing because it inflates the calculated dumping amount and then increases the dumping margin.[419] In recent decades, the WTO AB has

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[415] 19 United StatesCode § 1677 (35) (A) "Dumping margin".
[416] Brink Lindsey and Dan Ikenson, "Reforming the Antidumping Agreement a Road Map for WTO Negotiations," *Trade Policy Analysis*, no.21 (2002): 19-20.
[417] Thomas J. Prusa and Luca Rubini, "United States-Use of Zeroing in Anti-Dumping Measures Involving Products from Korea: It's déjà vu all over again," *World Trade Review* 12, no.2 (2013): 20-36.
[418] Chad P. Bown and Thomas J.Prusa, "U.S Antidumping: Much Ado About Zeroing," *World Bank Policy Research Working Paper*, no.5352 (2010): 1-56.
[419] European Commission MEMO/12/73, "What is Zeroing, Brussels," 6 February 2012. See also, Brian Hindley, "The Draft Doha Round AD Agreement," *Global Trade and Customs Journal* 3, no.7/8 (2008): 231-238. "*Zeroing removes the offsets to such sales that negative margins would provide in a more straightforward averaging calculation. The calculation after zeroing cannot be less than zero and will typically show dumping.*" Linsey and Ikenson stated that if the practice of zeroing is eliminated, the dumping margins will surely be reduced.
Richard H. Clarida, "Dumping: In Theory, in Policy, and in Practice," in *Fair Trade and Harmonization: Prerequisites for Free Trade?* ed. Jagdish N. Bhagwati and Robert E. Hudec (Cambridge, MA: MIT Press, 1996), 357-389. Clarida states that, in the United States, 30% of dumping cases were evaluated during 1979-1986 based on the constructed

received over a dozen disputes involving zeroing, and no ruling has found that this practice is consistent with the ADA. In 1999, India first challenged the EU on zeroing in the EC-Bed Linen case. The panel report states that the practice of zeroing is inadmissible under Article 2.4.2 of the ADA because it changes the price of export transactions in the comparison, and so the comparison is not appropriate.[420] The AB agreed with the findings of the Panel and stated that the practice of zeroing was inconsistent with the ADA.[421] After the publication of the AB report on EC-Bed Linen, the EU altered this practice.

All but one of the remaining cases has involved the United States as a respondent. Unlike the EU, the United States has not yet fully complied with the WTO's decisions. WTO dispute panels and the AB have repeatedly stated that, in the practice of zeroing, the United States has acted inconsistently.[422] In response to the findings in United States-Zeroing (EU), the United States

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value, and that dumping was found in 89% of all those cases. He also states that the constructed value method is now used as a standard method and not as "a last resort" as was previously supposed.

[420] WTO, *EC-Bed Linen*, Panel Report, WT/DS141/R, para. 6.115, "*Article 2.4.2 specifies that the weighted average normal value shall be compared with 'a weighted average of prices of all comparable export transactions'. In this case, the European Communities' calculation of the final weighted average dumping margin for the product did not, in fact, rest on a comparison with the prices of all comparable export transactions. By counting as zero the results of comparisons showing a 'negative' margin, the European Communities, in effect, changed the prices of the export transactions in those comparisons. It is, in our view, impermissible to 'zero' such 'negative' margins in establishing the existence of dumping for the product under investigation, since this has the effect of changing the results of an otherwise proper comparison…As a result, we consider that an overall dumping margin calculated on the basis of zeroing 'negative' margins determined for some models is not based on comparisons which fully reflect all comparable export prices, and is therefore calculated inconsistently with the requirements of Article 2.4.2*."

[421]AB report, EC-Bed Linen, para.55, "*By 'zeroing' the 'negative dumping margins', the European Communities…did not take fully into account the entirety of the prices of some export transactions…the European Communities treated those export prices as if they were less than what they were. This, in turn, inflated the result from the calculation of the margin of dumping…Furthermore, we are also of the view that a comparison between export price and normal value that does not take fully into account the prices of all comparable export transactions – such as the practice of 'zeroing' at issue in this dispute – is not a 'fair comparison' between export price and normal value, as required by Article 2.4 and by Article 2.4.2*."

[422] WTO, *United States-Zeroing (EC)*, Panel Report, WT/DS294/R, paras.7.82-7.86, The Panel concluded that in 15 separate AD investigations, the United States' actions were inconsistent with Article 2.4.2. In these investigations, the United States did not count negative dumping margins when calculating weighted average dumping margins. Furthermore, the panel stated, and the AB (United States-Zeroing (EC), WT/DS294/AB/R, para.222) upheld, that the United States Department of Commerce's (USDOC) practice of using the weighted average-to-average comparison to calculate dumping margins, is inconsistent with Article 2.4.2. United States-Softwood Lumber V, AB, para 142, "the use of Zeroing under the transaction-to-transaction comparison methodology artificially inflates the magnitude of dumping, resulting in higher margins of dumping and making a positive determination more likely. This way of calculating cannot be described as impartial, even-handed, or unbiased. For this reason, we do not consider that the calculation of 'margins of dumping' on the basis of a transaction-to-transaction comparison' requirement within the meaning of Article 2.4 of the ADA."

Department of Commerce (USDOC) announced,[423] "the Department will no longer make average-average comparisons in investigations without providing offsets for non-dumped comparisons."[424] However, the United States has made no change to the practice of zeroing under transaction-to-transaction comparisons.[425] Many WTO AB cases related to the United States's zeroing practice still have no resolution. Until the start of the Doha Round, the WTO has shown no ability to resolve the issue of zeroing.

As a traditional user of zeroing, the United States has treated zeroing as an important issue and insisted on keeping it in the ADA.[426] After the establishment of the WTO dispute settlement body, other Members have challenged the United States many times on its use of zeroing. The most significant dispute against the United States involving the use of zeroing in dumping margins calculations is United States- Final Dumping Determination on Softwood Lumber from Canada. In this case, the panel and the AB both confirmed that the zeroing practice used by the United States to calculate dumping margins was inconsistent with Article 2.4.2 of the ADA.[427]

With the use of "zeroing", dumping margins and their corresponding duties were higher than they otherwise would have been had the practice of zeroing not been applied. Specifically, the AB found that Article 2.4.2 does not allow the use of "zeroing" when the comparison methodology used is the weighted average-to-weighted average (W-W).[428] This decision announced the inconsistency of using the zeroing methodology under the W-W comparison. Hence, the United States changed the W-W method of calculating dumping margins into a simple zeroing comparison between normal value and the price of the exports on a transaction-to-transaction basis. However,

[423] This was no more than an announcement. This change has not been effected.
[424] US Department of Commerce, International Trade Administration, Import Administration, United States Federal Register, Final Modification: Final Calculation of the Weighted-Average Dumping Margin during an AD Investigation.
[425] William W. Nye, "The Implications of 'Zeroing' on Enforcement of United States Antidumping Law," *Journal of Economic Policy Reform* 12, no.4 (2009): 263-271.
[426] The United States ambassador to the WTO, Peter Allegeier said, "It is very serious issue and the United States cannot envisage an outcome to the negotiations without addressing zeroing."
[427] WTO, WT/DS264/29/Add.1 G/L/566/Add.2 G/ADP/D42/2/Add.1, 9 March 2007.
[428] From the WTO AB report, the reasons for prohibiting zeroing in the weighted average-to-weighted average comparison methodology are two-fold. First, "*the 'margins of dumping' established under this methodology are the results of the aggregation of the transaction-specific comparisons of export prices and normal value*". Second, "*in aggregating these results, an investigating authority must consider the results of all of the comparisons and may not disregard the results of comparisons in which export prices are above normal value*."

the practice of zeroing is still the main and only method used by the United States to calculate dumping margins.[429]

1.3 Controversy around the Prohibition on Zeroing

The FANs submitted proposals to prohibit the practice of zeroing in the calculation of dumping margins in all AD proceedings.[430] For FANs Members, the practice of zeroing leads to an "unfair comparison" between the export price and the normal value. This method of calculation can quickly inflate dumping margins and can even, in certain cases, turn a negative dumping margin into a positive one.[431] The FANs' proposals show they fervently desire to forbid the use of "zeroing", [432]no matter the methodology used for calculating dumping margins.[433] Moreover, they wish to prohibit the practice of zeroing not only in initial AD investigations but also in subsequent reviews under Articles 9 and 11.[434] That is to say, the FANs hope to entirely prohibit the practice of zeroing in all AD proceedings under the ADA.

At the same time, India and China also submitted proposals emphasizing the need to revise Article 2.4.2. India's opinion is that the zeroing practice violates obligations under Article 2.4.2. With zeroing, dumping margins are established by means of a comparison between a weighted average normal value and the weighted average prices of all export transactions. This comparison does not fully take into account the prices of all comparable export transactions. Hence, India's submission calls for a clarification of Article 2.4.2 to prohibit such comparisons.[435] Similar to India, the People's Republic of China also proposed banning the practice of zeroing under Article 2.4.2[436] to

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[429] Jacqueline D. Krikorian, *International trade law and domestic policy: Canada, The United States and the WTO*, (Vancouver: UBC Press, 2013), 136-137.
[430] WTO, TN/RL/W/215, 31 January 2008. In this statement, FAN members explicitly pointed out both the basis in Article 2.4.2 and that subsequent zeroing proceedings should be prohibited. These proceedings include Article 9.3.1, Article 9.x, and Article 11.x. None of the proceedings pertaining to the calculation of dumping margins should use the practice of zeroing.
[431] WTO, TN/RL/W/113, 6 June 2003; TN/RL/GEN/8, 14 July 2004; TN/RL/GEN/126, 24 April 2006.
[432] WTO, TN/RL/W/6, 26 April 2002, In this paper, FANs members suggested explicitly ruling out the practice of zeroing in the ADA. TN/RL/W/28, In this paper, the FANs sought to clarify and enhance the rules to prevent abusive AD measures, such as zeroing.
[433] WTO, TN/RL/W/113, 6 June 2003. This methodology includes comparisons on a weighted average-to-weighted average or transaction-to-transaction basis.
[434] WTO, TN/RL/GEN/8, 14 July 2004.
[435] WTO, TN/RL/W/26, 17 October 2002.
[436] WTO, TN/RL/W/66, 06 March 2003.

prevent growing protectionism from the use of this practice.[437] Even the EU, a former user of zeroing, submitted proposals to end the use of zeroing by the United States.[438] The EU has also submitted proposals to prohibit zeroing.

The United States' proposals asked the NGR to further explain other Members' proposals that stated "the comparison should be based on all averages" because Article 2.4.2 does not mention any requirement for the calculation of dumping margins on an average of "all" comparisons.[439] The United States pointed out there is no obligation under Article 2.4.2 that the overall dumping average also be used to calculate dumping margins.[440] Hence, the United States suggested that the NGR should clarify both obligations already agreed to by Members and other areas where there was no agreement yet.[441] Moreover, the United States declared that the obligation under Article 2.4.2 of the ADA applied only in the investigations phase but not to other phases of the AD proceedings. The United States position is that specific rules be provided under Article 2.4.2 to clarify the practice of zeroing. Compared to the FANs' proposals, the United States insists on including the method of zeroing thereunder rather than prohibiting it.[442]

Besides the United States, Egypt also has an opposing opinion on the prohibition of zeroing.[443] One of the significant reasons the FANs seek to prevent zeroing is that this practice is inconsistent with Article VI of GATT 1994 and the provisions of the ADA. Egypt's opinion differs from the FANs' proposals. Egypt wants to not entirely ban zeroing regardless of the dumping determination methodology as well as taking both positive and negative dumping margins into account to prevent

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[437] China's ambassador Sun Zhenyu said that, if all the WTO Members use zeroing, the level of the protectionism of the whole world would increase and that this is obviously not the objective of the WTO. December 12, 2007.
[438] In 2004 and 2007, the EU launched WTO disputes against the US for its use of zeroing. Countries including Brazil, China, Ecuador, Japan, Korea; Mexico, Thailand, and Vietnam followed EU in initiating similar cases.
[439] WTO, TN/RL/W/25, 16 October 2002.
[440] WTO, TN/RL/W/72, 19 March 2003. "*United States believes the Agreement is not clear as to the manner in which the overall weighted average margins are to be calculated. If there are to be any WTO obligations regarding such calculations, they should be the result of an agreement by the Members. Thus, in the process of clarifying the ADA, this Group should consider clarifying both the obligations already agreed to by the Members in this respect, as well as any areas where agreement could not previously be reached*."
[441] Ibid.
[442] Roger P. Alford, "Reflections on US - Zeroing: A Study in Judicial Overreaching by the WTO Appellate Body," *Columbia Journal of Transnational Law* 45, (2006): 196-220.
[443] Nada Hazem and Chahir Zaki, "Mind the Measure: On the Effects of Antidumping Investigations in Egypt," *Journal of African Trade* 7, no.1-2 (2020): 1-14.

protectionism. In Egypt's view, it is redundant to insert a provision prohibiting the practice of zeroing into the ADA because the existing ADA and the dispute settlement mechanism provide sufficient protection to WTO Members.[444]

Moreover, Egypt had an opposing opinion regarding whether to amend Article 2.4. The FANs suggested specifying in this Article, if authorities determined different dumping margins for various portions of the entire period under investigation, that the investigating authorities must establish a single dumping margin for all imports over the entire period of an AD investigation. While Egypt mentioned there was no need to clarify this provision in this respect, they prohibit any determination of different and independent margins for a given period within the term of the investigation.[445]

However, the prohibition on zeroing is still the most controversial topic of the Doha negotiations because of disagreements between the United States and other Members like Egypt. These Members are vehemently opposed to prohibiting the practice of zeroing. Disputes on zeroing are not new to the United States. The EU used zeroing at almost the same time as the United States The first case related to zeroing was brought against the EU.[446] However, the EU suspended the use of zeroing immediately after the WTO panel report confirmed that the EU's zeroing practice was inconsistent with the ADA.[447]

The United States is not first country to face disputes about zeroing. The first case on zeroing in the WTO was brought against the EU.[448] The next question should be why the EU was able to stop using this method after the AB report that determined zeroing violated the ADA. Why can the United States not stop using it? AD authorities in the United States have made only minor efforts

[444] Kofi Oteng Kufuor, "Africa and Anti-Dumping Issues in the Doha Round," *African Journal of International and Comparative Law* 27, no.1 (2009): 166-176.
[445] WTO, TN/RL/W/141, 22 July 2003.
[446] Simon B.C. Lacey, "The EC Bed Linen Dispute: India Challenges the EC's Implementation of the WTO Antidumping Agreement," (March 1, 2001), https://ssrn.com/abstract=1135128.
[447] asuhei Taniguchi, Alan Yanovich, and Jan Bohanes, *The WTO in the Twenty-First Century: Dispute Settlement, Negotiations, and Regionalism in Asia* (Cambridge, MA: Cambridge University Press, 2007), 135-158. See also, Henrik Horn and Petros C. Mavroidis, *The WTO Case Law of 2001 the American Law Institute Reporters' Studies* (Cambridge, MA: Cambridge University Press, 2004), 115-139.
[448] WTO, *EC-Bed Linen*, WT/DS141/AB/R. 08 April 2003

to comply with the AB's report on zeroing. After the AB found that using zeroing in investigations violated Article 2.4 of the ADA, the USDOC eliminated zeroing in the original investigation but kept using it in administrative reviews.[449] There is no question that this change in the United States use of zeroing is not satisfactory to other countries.[450] For example, the EU and Japan subsequently filed a complaint with the WTO against the United States use of zeroing in administrative reviews[451] and then embarked on compliance proceedings.[452] The EU and Japan emphasized their willingness to retaliate against exports from the United States if the United States insisted on maintaining zeroing. On 28 December 2010, the United States Department of Commerce published a Federal Register Notice under section 123(g) of the Uruguay Round Agreement Act (URAA) to request comments on a proposal to amend its methodology for calculating dumping margins and AD duty rates in a review for a parallel investigation methodology.[453] Section 123 applied this guidance in dealing with the situation whenever the WTO determines that United States federal regulations or practices are inconsistent with WTO rules. It regulates that only consultation between the agency and Congress can decide whether to implement WTO decisions.[454] However, the Court of Appeals for the Federal Circuit ruled that the Commerce Department's interpretation of United States law was inconsistent, which means zeroing is not to be used in the original investigation or in the administrative review.[455] United States trading partners have continued bringing zeroing before the courts or dispute settlement bodies. The United States has kept losing these suits.[456] The United States has not won a single zeroing case in

[449] WTO, WT/DS294/AB/RW, 14 May 2009); WTO, WT/DS322/AB/RW, 18 August 2009.
[450] Sungjoon Cho, "No More Zeroing? The United States Changes its Antidumping Policy to Comply with the WTO," *Insights* 16, no.8 (2012): 13-21.
[451] WTO, WT/DS294/AB/RW, 14 May 2009; WTO, WT/DS322/AB/R, 9 January 2007.
[452] Kamal Saggi and Mark Wu, "Yet another Nail in the Coffin of Zeroing: United States-Anti-dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil," *World Trade Review* 12, no.2 (2013): 377-408.
[453] WTO, Anti-Dumping Agreement - Article 9 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.
[454] United States Code, Section 123(g) of the URAA, 19 United StatesC. § 3533(g), the regulation or practice can only be published through a final rule or other modification.
[455] Dongbu Steel Co., Ltd. v. United States (Fed. Cir., Mar. 31, 2011); Jtekt Corp. v. United States, 642 F.3d 1378 (Fed. Cir. 2011). However, the United States Court of International Trade has recently upheld the DOC's revised determination on remand in this issue, concluding that E-Commerce did not abuse its discretion in changing its investigation methodology but not its review methodology in the Final Modification in response to WTO decisions. Union Steel & Dongbu v. United States.
[456] Tania Voon, "Orange Juice, Shrimp, and the United States Response to Adverse WTO Rulings on Zeroing," *ASIL Insights* 5, no.2 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2015565.

the WTO.[457] However, there is no clear sign that the United States will choose to use other methods in place of zeroing.[458] The WTO's legislative history and the technical nature of the zeroing violation likely contribute to the United States feeling that its current policy complies. The United States duty collection system makes it hard for the United States to give up the zeroing method.[459]

2. DEBATE ON THE DETERMINATION OF DUMPIN

2.1 Defining "Sufficient Quantity of Sales"

The second footnote of Article 2.2 of the ADA regulates the conditions under which sales in the domestic market constitute a sufficient percentage of sales to determine normal value. These conditions are when sales of the like product in the domestic market of the exporting country amount to 5% or more of the sales of that product to the importing Member. The FANs submitted proposals to clarify this provision to avoid the test of "representativeness of domestic sales of the like product". This test is a way to artificially reduce the possibility of calculating a normal value based on sales to the domestic market of the exporting country or to artificially increase the use of constructed values.[460]

Moreover, Article 2.2 does not stipulate for what kind of sales application the "sufficient quantity" test is appropriate. In the ADA, whether the test of the "sufficient amount of sales" should apply to the product as a whole or to categories or models of the product under consideration is also unclear. Hence, the FANs asked to define whether this should be implemented for the product as a whole or for its categories.[461]

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[457] Robert Howse and Joanna Langille, "Spheres of Commerce: The WTO Legal System and Regional Trading Blocs- A Reconsideration," *Georgia Journal of International and Comparative Law* 46, no.3 (2018): 649.
[458] Office of the United States Trade Representative, "United States Prevails on "Zeroing" Again: WTO Panel Rejects Flawed Appellate Body Findings," Policy Office, 04/09/2019. Available at: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/april/united-states-prevails-%E2%80%9Czeroing%E2%80%9D.
[459] The US uses a retrospective duty collection system. This means that when goods enter the US, the importer does not pay duties directly. Duties are held on deposit pending a final assessment later. In the case of AD duty, the authorities impose a certain rate per exporter following the first or original investigation. This rate is a cash deposit rate for a period of one year following the imposition of this duty and each import of goods implies such a cash deposit. At the end of the first year, an exporter or importer can request an administrative review, which involves a recalculation of the dumping margin for the year.
[460] WTO, TN/RL/W/29, 15 November 2002.
[461] Manfred Elsig, Bernard Hoekman, and Joost Pauwelyn, "Thinking About the Performance of the World Trade Organization: A Discussion Across Disciplines." in *Assessing the World Trade Organization: Fit for Purpose?* ed. Elsig, Manfred et al. (arg.). (Cambridge, MA: Cambridge University Press, 2017), 12-24.

2.2 Interpreting "Normal Value"

The normal value is a necessary condition for determining dumping margins. However, some Members considered that the ADA regulation for the determination of the normal value is not unique. Australia's position is to examine the issue of the determination of normal value.[462] The FANs emphasized the current lack of ADA regulation on the matter of including home-market sales to affiliates and the calculation of the normal value. Nor does it include any provisions regulating transactions involving affiliated suppliers. They hoped this issue could be addressed. Moreover, the FANs[463] and the United States [464] considered there was no appropriate definition for "affiliation" in the AD Agreement. China requested clear guidelines be established on the approach to treating transactions between affiliated companies in the context of normal value.[465]

2.3 Sales in the Ordinary Course of Trade

Article 2.2.1 establishes standards for the sales of like product in the domestic market. However, WTO Members submitted proposals on certain details of this article. First, the FANs mentioned there is no definition of a "reasonable period" for prices that do not provide for recovery of all costs.[466] Second, the FANs and Australia asked for clarification on whether the investigating authorities should disregard sales below cost during the investigation even when prices provide for recovery of all costs.[467] Canada considered investigating authorities should reject sales of like product in the domestic market for purposes of establishing normal values if these sales do not belong to "the ordinary course of trade" or when, because of a "particular market situation", such sales do not allow for a proper comparison. The Agreement does not guide as to what does not constitute "the ordinary course of trade", except for by reason of price in Article 2.2.1, or what constitutes a "particular market situation.".[468] Canada hoped the ADA could identify how Members have internationalized sales criteria in the ordinary course of trade and the particular market conditions. Canada tried to explore the possibility of further expanding the conditions whereunder authorities cannot exclude sales made at a loss for the purpose of determining normal

[462] WTO, TN/RL/W/86, 30 April 2003.
[463] WTO, TN/RL/W/10, 28 June 2002.
[464] WTO, TN/RL/W/130, 20 June 2003.
[465] WTO, TN/RL/W/66, 6 March 2003.
[466] WTO, TN/RL/W/6, 26 April 2002.
[467] Young and Wainio, op.cit., 3-6.
[468] WTO, TN/RL/W/47, 28 January 2003.

values. Meanwhile, Argentina submitted proposals asking to clarify the producer/exporter sales relationship in the domestic market and for the criteria for this analysis to be established.[469]

3. ANTI-CIRCUMVENTION

Anti-circumvention is a long-time vexation in the area of AD. Only three years after the establishment of the WTO, the WTO Committee on Anti-Dumping Practices put together an informal group focusing on anti-circumvention. The duties of the informal group are to try to enhance the effects of discussions relating to this issue.[470] However, anti-circumvention negotiations in the Uruguay Round were not successful because of a divergence amongst negotiators.

The United States[471] and the EU[472] held common positions on establishing anti-circumvention rules.On the contrary, countries such as Japan, Korea, Singapore, Brazil, and Hong Kong China were doubtful or opposed to them.[473] Therefore, WTO Members revisited this topic during the Doha Round. The Informal Group on Anti-circumvention continued to discuss how to define circumvention as well as how to analyze national provisions related to this issue.[474] The United States, as the most influential supporter of anti-circumvention provisions, submitted four different specialized proposals on the topic.[475] The prevailing position of the United States was to strengthen the rules on the issue or to improve anti-circumvention practices. In the first specialized proposals on anti-circumvention, the United States encouraged the Negotiating Group to treat anti-

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[469] WTO, TN/RL/W/81, 23 April 2003.

[470] Lucia Ostoni, "Anti-dumping Circumvention in the EU and the US: Is There a Future for Multilateral Provisions under the WTO?" *Fordham Journal of Corporate & Financial Law* 10, no.2 (2005): 9-13.

[471] GATT, MTN.GNG/NG8/W/59, 20 December 1989.

[472] GATT, MTN.GNG/NG8/W/28, 21 March 1988; MTN.GNG/NG8/W/74, 21 March 1990.

[473] GATT, MTN.GNG/NG8/7, Meeting of 6-7 June 1988; MTN.GNG/NG8/9, Meeting of 27-28 October 1988, MTN/GNG/NG8/11, Meeting of 17 and 19 July 1989; MTN.GNG/NG8/12, Meeting of 18 and 20 September 1989; MTN/GNG/NG8/14, Meeting of 20-21 and 24 November 1989; MTN.GNG/NG8/15, Meeting of 31 January -2 February and 19-20 February 1990; MTN.GNG/NG8/16, Meeting of 21-22 March 1990;

[474] Office of the United States Trade Representative, 2002 and 2003 Annual Reports. https://ustr.gov/search?q=2002+Annual+Report.

[475] WTO, TN/RL/W/50, 4 February 2003; TN/RL/GEN/29, 08 February 2005; TN/RL/GEN/71, 14 October 2005, TN/RL/GEN/106, 06 March 2006.

circumvention as a priority.[476] The United States then submitted further explanations containing detailed anti-circumvention provisions.[477]

Besides the United States, the EU, Canada, Australia, and Egypt supported the anti-circumvention rules. The EU's proposal encouraged establishing anti-circumvention rules in the ADA to gain legitimacy from the multilateral rules and ensure legal anti-circumvention practices.[478]
Canada[479] and Australia[480] held conservative positions on the use of anti-circumvention rules. Both countries had supported introducing anti-circumvention into the ADA since the Uruguay Round. However, they suggested it should not become an obstacle to traditional business investment and operation.[481] Egypt encouraged establishing multilateral anti-circumvention rules to unify anti-circumvention practices.[482]

Although the Members above tried to push the anti-circumvention issue forward, the FANs, especially Japan[483], Brazil, China, and Hong Kong, China[484] still hold the opposite position. The primary positions of these Members in the negotiation are to rationalize the ADA and make it fairer so as to reduce the abuse of AD action. From their perspective, if anti-circumvention exceeds the scope of the AD definition, it will lead to misuse. Hence, they are set against introducing anti-

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[476] WTO, TN/RL/W/50, 4 February 2003.
[477] WTO, TN/RL/GEN/29, 8 February 2005.
In this proposal, the United States described substantial and procedural rules on anti-circumvention.
Regarding substantial rules, the United States asked for clarifications on the forms of circumvention. Meanwhile, the ADA should establish more uniform and transparent procedures.
WTO, TN/RL/GEN/106, 6 March 2006. In this proposal, the United States amended certain former suggestions, insofar as it (1) clarified the functions of certain key words; (2) revised some explanations related to the imported product; (3) regulated assembly in a third country or in the country of import differently.
[478] EEC, L/6657 - 37S/132, EEC – Regulation on Imports of Parts and Components, Report by the Panel adopted on 16 May 1990. Japan once sued the European Community (EEC) on its anti-circumvention rules because Japan doubted their legitimacy. In the panel report, the panel affirmed that the EEC's anti-circumvention measures "*violated its obligation under Article X: 1 and X: 3 of the General Agreement.*" Thus, the EEC had to discontinue its anti-circumvention practices.
[479] WTO, G/ADP/IG/W/3, 23 October 1997; G/ADP/IG/W/12, 26 October 1998.
[480] Australia Senate Standing Committee on Industry, *Science and Technology, Inquiry into Australia's Antidumping and Countervailing Legislation* (Australian Govt. Pub. Service, 1991), 102-110.
[481] Ian Brown, "The Evolution of Anti-circumvention Law," *International Review of Law Computers & Technology* 20, no.3 (2006): 10-18.
[482] WTO, TN/RL/W/110, 22 May 2003.
[483] WTO, TN/RL/W/51, 5 February 2003.
[484] WTO, TN/RL/W/205, 21 April 2006; TN/RL/W/205/Rev.1, 27 April 2006; TN/RL/W/216, 12 February 2008.

circumvention rules into the ADA. It is apparent that the supporters of anti-circumvention are mostly traditional AD users while its opponents are mostly the targets of AD measures.

II. Major Reform Proposals on Specific Articles

1. Changing Injury Determinations

Some WTO Members mainly focused on the methodology of determining injury by the administrative authorities. Proposals by WTO Members mentioned that regulations in Article 3 on injury determination are not precise and specific.[485] They had four suggestions. First, negotiations should implement procedures to analyze causal relationships between dumping and injury.[486] Second, the descriptions of factors affected by the dumped imports in the domestic industry need clarification.[487] Third, the ADA should specify a definition for "conditions of the competition" for cumulative injury assessment. Fourth, the ADA should establish a definition for the term "causal link". [488] The proposals above show some Members prefer establishing new rules to provide more accurate guidelines, while other members focus more on the clarifying the definitions of terms such as "material injury" or "material retardation". Moreover, the FANs consider that establishing a positive link to dumping before determining injury is essential.[489]

2. Re-definition of Domestic Industry

Proposals from FANs strongly suggested clarifying the definition of the term "domestic industry." They mentioned that there was no clear criteria for defining the term "major proportion" or a definition of affiliation. Moreover, the FANs suggested specifying circumstances considering related party transaction prices in the domestic market unreliable.[490] The FANs, Brazil, and Canada submitted proposals to try to avoid arbitrarily broad definitions of like product.[491]

[485] WTO, TN/RL/W/143, August 22, 2003.
[486] WTO, TN/RL/W/1, 15 April 2002; TN/RL/W/6, 26 April 2002; TN/RL/W/10, 28 June 2002; TN/RL/W/26, 17 October 2002.
[487] Ibid.
[488] WTO,TN/RL/W/66, 6 March 2003.
[489] Eugénia Heldt, "Shaping Global Trade Governance Rules: New Powers' Hard and Soft Strategies of Influence at the WTO," *European Foreign Affairs Review* 22, (2017): 19-36.
[490] WTO, TN/RL/W/10, 28 June 2002.
[491] WTO, TN/RL/W/7, 26 April 2002; TN/RL/W/1, 15 April 2002.

3. MANDATORY "LESSER DUTY RULE"

Article 9.1 of the ADA encourages the authorities not to impose higher AD duties when these are sufficient to offset the injury or threat to domestic industry. On the one hand, many WTO Members, for example the FANs, prefer to amend it and make it a mandatory rather than optional rule.[492] Developing countries especially want to see a mandatory lesser duty rule offered by developed nations to developing countries. It is a part of a "special and differential treatment" package of trade concessions.[493] Australia and the EU supported the FANs' proposal on mandatory lesser duty.[494] They noted that they have already applied the lesser duty rule. On the other hand, the United States found there was no need to make the lesser duty rule mandatory because this approach reflects no increased burden on the parties. In the United States, there is no lesser duty rule or practice. The enactment of the lesser duty rule would require action by Congress.[495] Therefore, the United States stressed that it was not necessary to amend the ADA to make lesser duty a mandatory rule.[496]

4. SUNSET OF ANTI-DUMPING ORDERS

Proposals on Article 11 of the ADA from WTO Members evinced three main opinions. The FANs insist that the sunset provision is a core rule of the ADA, and that therefore it is better to make it mandatory.[497] On the contrary, the EU, United States, and Australia do not consider the sunset provision a fundamental rule, and, therefore, doubt the rationality of automatic termination. Article 11.3 specifies that authorities must terminate every AD measure after five years unless a review by the authorities determines that termination might lead to ongoing dumping or subsequent injury to domestic industry. The FANs proposed that AD measures should automatically terminate after five years.[498] Egypt noted that if the twelve-month time limit outlined in Article 11.4 would also apply to sunset reviews, the authorities could reduce the trade distortion inherent to it.[499]

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[492] WTO, TN/RL/W/6, 26 April 2002; TN/RL/W/26, 17 October 2002; TN/RL/W/13, 8 July 2002.
[493] WTO, TN/RL/W/143, 24 August 2003.
[494] WTO, TN/RL/W/119, 16 June 2003.
[495] Noura Abdelwahab, "Are there Positive Impacts for Adopting Lesser Duty Rule in Anti-dumping Investigations," *EcoMod* 9599, (2016): 16-28.
[496] WTO, TN/RL/GEN/58, 13 July 2005.
[497] WTO, TN/RL/W/45, 27 January 2003.
[498] WTO, TN/RL/W/204, 6 March 2006.
[499] WTO, TN/RL/GEN/118, 21 April 2006.

There seems to be reliable support among WTO Members for mandatory termination of ADA orders within five years, while other Members favor a reasonable provision authorities can consider before extending AD rules. However, other Members criticized the length of time sunset review procedures take to complete and favor a mandatory twelve-month limitation on this period.[500]

5. Initiation of Investigations

Article 5 of the ADA regulates the initiation of investigations. During the Doha Round Negotiations, some WTO Members submitted proposals to revise the conditions for petitions. First, the FANs and India suggested amendments so that AD petitions would require the support of producers accounting for at least 50 percent of domestic production of like product.[501] Second, WTO Members also wished to change the regulations on de minimis margins. Brazil stated that if the margin is de minimis, the authorities should terminate the imposition and collection of AD duties.[502] The FANs and Canada considered increasing the current de minimis level to 2 percent.[503] Third, the FANs suggested increasing the current level of negligible trade volume to 3 percent.[504]

6. Refined Conditions of Evidence

Article 6 of the ADA sets the standards of evidence. The FANs' proposals strongly suggested the authorities should examine the accuracy and the adequacy of proof before initiating an investigation.[505] Furthermore, when sampling exporters or producers they should not ignore information that reveals zero or de minimis AD rates for exporters outside the sample. United States proposals regarding this Article focused on confidential information. First, the United States hoped the ADA could enhance provisions for the protection of confidential information and strengthen provisions whereby national authorities should provide timely non-confidential information to

[500] Ibid.
[501] WTO, TN/RL/W/10, 28 June 2002; TN/RL/W/26,17 October 2002.
[502] WTO, TN/RL/W/7, 26 April 2002.
[503] Ibid.
[504] Ibid.
[505] WTO, TN/RL/W/10, 28 June 2002.

interested parties for their defense.[506] The United States also considered Members should maintain a public record of non-confidential information.[507]

7. Price Undertakings

Article 8 of the ADA allows the use of "satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices" if the investigating authorities are satisfied that the detrimental effects of the dumping no longer exist. First, the FANs and India asked for an explanation of "satisfactory voluntary undertakings".[508] Many other WTO Members favor increasing the use of price undertakings because less damage is done to exporters. Price undertakings also mitigate the injury to domestic producers.

8. Special Requirement for Developing Members

Many developing Members complained that AD actions on their products, as well as illegal dumping in their countries, had already negatively affected their domestic economies. Article 15 of the ADA encourages developed country Members to show "special regard" for the economic situation of least developed and developing country Members as well as using effective remedies instead of imposing AD duties. The FANs have proposed that developing-country Members should include specific provisions that can provide these countries "meaningful special and differential treatment" if they face AD actions.[509]

Suggestions for providing particular regard include requiring developed countries to negotiate mandatory price undertakings when investigating products from developing countries and raising the de minimis threshold. Many developing-country Members believe the cost of initiating AD proceedings under the current requirements of the ADA is prohibitive.[510] To reduce the cost of AD actions for all countries, the EU and Japan suggest standardizing certain investigation

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[506] Laura Puccio, *Calculation of Dumping Margins: EU and US Rules and Practices in Light of the Debate on China's Market Economy Status : in-Depth Analysis* (Brussels: European Parliament, 2016), 12-60.
[507] WTO, TN/RL/W/35, 3 December 2002.
[508] Ibid.
[509] WTO, TN/RL/W/46, January 24, 2003.
[510] Vivian C. Jones, *WTO: Anti-dumping Issues in the Doha Development Agenda* (Columbus: Bibliogov, 2013), 18-25.

proceedings.[511] The United States asked for stronger provisions on special and differential treatment, technical assistance and capacity building, and implementation issues.[512] Article 15 does not explicitly describe the treatment provided to developing country Members. Both developing-country Members and developed-country Members call for strengthening standards.[513]

9. Deeper Transparency and Procedural Fairness

Recommendations on transparency and procedural fairness are general topics for discussion amongst WTO Members.[514] First, traditional AD users like the United States,[515] the EU,[516] Canada,[517] Australia,[518] and New Zealand[519] submitted proposals calling for more transparent and fairer proceedings. In the first phase of the negotiation, the United States emphasized the significance of procedural fairness under the ADA.[520] In the latter stages of the Doha Round, the United States submitted specific proposals aiming at proceedings such as "Access to non-

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[511] WTO, TN/RL/W/138, 17 July 2003.
[512] Keck, Alexander and Patrick Low, "Special and differential treatment in the WTO: Why, when and how?" *WTO Staff Working Paper*, no.ERSD-2004-03 (2006): 20-30.
[513] Constantine Michalopoulos, "The Role of Special Differential Treatment for Developing Countries in GATT and the World Trade Organization," *The World Bank Policy Research Working Paper*, no.2388 (2000), 1-41, https://openknowledge.worldbank.org/bitstream/handle/10986/19819/multi_page.pdf?sequence=1&isAllowed=y.
[514] Since the beginning of the Doha Round, there were more than seventy proposals from different members of WTO on transparency and procedural fairness.
[515] Surendra Bhandari and Jay Klaphake, "United States Trade Policy and The Doha Round Negotiations," *Ritsumeikan Annual Review of International Studies* 10, (2011): 71-93.
[516] Peter Kleen, "So alike and yet so different: A comparison of the Uruguay Round and the Doha Round," *Jan Tumlir Policy Essays*, no.2 (2008).
[517] Sam Laird, "A Round by Any Other Name: The WTO Agenda After Doha," *Development Policy Review* 20, no.1 (2002): 41-62.
[518] Productivity Commission, "Australia's Anti-Dumping and Countervailing System," Inquiry Reports, Productivity Commission Reports, Productivity Commission, Government of Australia, no. 48, 2010, https://ssrn.com/abstract=1647463.
[519] WTO, TN/RL/W/137, 15 July 2003.
[520] Ibid.

confidential information”, [521] “verification”, [522] “preliminary determinations”, [523] and “the disclosure of calculations”.[524]

Compared to the United States proposals for revising procedural fairness, the EU submitted two suggestions from the perspective of supervision to enhance it. The first suggestion was to build an independent group of experts to examine the evidence that led to initiation to reduce the negative impact of unjustified initiations.[525] The second suggestion encouraged deliberation on AD policies and practices of frequent AD users.[526] Canada and Australia positively supported suggestions from the United States and the EU. Both Canada[527] and Australia[528] briefly announced their desire to increase transparency and procedural fairness. New Zealand stressed the importance of transparency in the ADA and suggested developing a guide with more transparency provisions.[529]

Traditional users had a strong desire to strengthen ADA procedures to increase fairness. However, new users such as the FANs held different opinions on procedural fairness. The FANs only submitted proposals on public notices and explanations of determinations at the beginning of

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[521] WTO, TN/RL/W/162 Rev.1 (TN/RL/GEN/13), 20 April 2011; TN/RL/GEN/106, 06 March 2006. In these proposals, the United States encourages creating a mechanism for requesting information. Additionally, this mechanism should provide the exact time and working place for interested members to inquire and copy all the information.

[522] WTO, TN/RL/GEN/15, 15 September 2004. The United States suggested that, before verification, the authorities should adequately inform the firms and exporters to be verified, and provide a verification outline. After verification, the investigating authorities should publish their verification reports.

[523] WTO, TN/RL/W/130, 20 June 2003; TN/RL/GEN/25, 20 October 2004; TN/RL/GEN/108,6 March 2006.
The United States proposes that the investigating authority should make preliminary determinations of dumping and injury and give public notice of them.

[524] Ibid. The United States considers the authorities should disclose dumping margin calculations after preliminary or final determinations.

[525] Submissions by the European Communities, TN/RL/W/13; TN/RL/W/67, *Negotiations on AD and Subsidies-Reflection Paper of the European Communities on a Swift Control Mechanism for Initiations*, ; TN/RL/W/142, *Replies by the European Communities to Questions on TN/RL/W/67 -“Reflection Paper of the European Communities on a Swift Control Mechanism for Initiations”,* 28 July 2003; TN/RL/GEN/109, *Independent Group of Experts for the Enforcement of Initiation Standards*, Submission from the European Communities, 20 April 2006.

[526] WTO, TN/RL/GEN/110, 20 April 2006.

[527] WTO, TN/RL/GEN/21, *Explanations of Determinations and Decisions*, Communication from Canada, 19 October 2004.

[528] WTO, TN/RL/W/23, 15 October 2002; TN/RL/W/43, 24 January 2003; TN/RL/W/59, *Comments from Australia on the Third Contribution from a Number of (Document TN/RL/W/29)*, 11 February 2003; TN/RL/W/62, *Comments from Australia on Canada’s Submission on the AD Agreement (Document TN/RL/W/47)*, 11 February 2003; TN/RL/W/75, *Comments from Australia on the European Communities’ Paper: Reflection on a Swift Control Mechanism for Initiations (Document TN/RL/W/67)*, Submission from Australia, 19 March 2003.

[529] WTO, TN/RL/W/137, *The Role of Transparency in the AD Agreement*, Submission by New Zealand, 15 July 2003.

negotiations.[530] After this, the FANs submitted no uniform proposal. Nevertheless, FANs Members submitted separate proposals for enhancing procedural fairness.[531]

10. Inclusion of the Public Interest

During the Doha Round Negotiations, WTO Members went straight into technical discussions on potential changes to AD rules. In the ADA, there are no precise regulations for "public interest" rules. The ADA only regulates that investigating authorities have the right to decide whether to take AD actions, even if the authorities' findings contain all the conditions required for taking AD measures. Thus, it provides the investigating authorities with possibilities for self-determination.
A proposal from Canada, including an expanded public interest clause, gained the most attention. Canada's proposal suggested revising the ADA to require Members to establish national mechanisms for the authorities performing the inquiry to impose AD duties based on the public interest.[532] The proposals further described details of the clause: (a) any new obligations regarding the public interest should afford sufficient flexibility to Members, and (b) national public interest decisions are the sovereign prerogative of each Member.[533] This internal mechanism does not belong to the dispute settlement body. [534] The proposal also proposes text for potential reforms to

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[530] WTO, TN/RL/W/29, 15 November 2002.
[531] WTO, TN/RL/GEN/102, Proposal on Preliminary Determinations, Paper from Brazil, 3 March 2006; TN/RL/GEN/89, Identification of Parties, Paper from Brazil and United States, 18 November 2005. Brazil's proposals are on defining preliminary determinations and identifying interested parties. Turkey, TN/RL/GEN/63, Proposals on Disclosure of Essential Facts, and Communication by Turkey, 16 September 2005. Turkey's proposal is on disclosure of facts. Norway, TN/RL/GEN/49, Proposals on Issues Relating to Evidence, Public Notice and Explanation of the Determinations under Article 6 and 12 of the ADA, Communication from Norway, 1 July 2005; revised as TN/RL/GEN/49 Add.1 on 14 October 2005; TN/RL/GEN/87, Further Proposals on Issues Relating to Article 6.9 of the ADA, Paper from Norway, 17 November 2005. These proposals encourage a full revision of Article 6 and Article 12 to increase transparency and procedural fairness.
Japan, Korea, Singapore, and Hong Kong (China), TN/RL/W/65 (TN/RL/W/47), Korea's Comments on Canada's Submission on the AD Agreement, 24 March 2003; TN/RL/GEN/69, Further Submission on Issues Relating to the Initiation and Completion of Investigations, Paper from Hong Kong, China, 13 October 2005; TN/RL/GEN/123, revised as TN/RL/GEN/123 Rev.1, Further Submission on Issues Relating to the Initiation and Completion of Investigations, Paper from Hong Kong, China, 27 April 2005; TN/RL/GEN/124, Proposals on Procedure of Providing Non-confidential Application, Communication from Japan, 24 April 2006.
The proposals from these members focused mainly on increasing the fairness of initiation proceedings.
[532] Ibid.
[533] Ibid.
[534] Canada agrees with the view expressed by Hong Kong, China and the other co-sponsors of JOB (05)/136 that any new provisions related to the public interest must not try to prescribe what is or is not in the importing Member's economic interest and that this decision must be left to the importing Member concerned.

Annex III of the ADA whereunder the authorities should consider the public interest when making decisions.[535]

Many Members have similar opinions to Canada. First, the EU has had the community interest clause in its AD regulations for a long time, which means it supports legislation relating to the public interest.[536] The FANs, for example, are firm supporters of this topic. The FANs mentioned the influences of AD actions not only on the domestic industry of importing countries but also on other industrial areas of importing countries.[537]

However, the ADA does not regulate any obligation for authorities to consider the impact of AD actions before making a determination. The FANs suggested bringing a public interest clause into the ADA to ensure the authorities deliberate all related information. This will reduce the negative influence of AD actions.[538] Hence, the FANs' proposal specified inclusion of a public interest clause by including consideration of consumers, producers and importers prior to issuing a the determination.[539]

Although many Members raised questions about enhancing the public interest clause,[540] the United States has vehemently opposed it. The United States wondered (a) whether Members could self-determine standards for the "public interest"; (b) whether Members can self-determine if a rule is in the public interest; and (c) whether the authorities should investigate the public interest as well.[541] These questions showed the United States had strong doubts about the public interest clause. The proposals from Australia were opposed to enhancing the public interest clause.

[535] The proposed public interest clause proposes to include mandatory public interest considerations in the course of an AD investigation. The investigating authority shall consider the impact of these measures on other domestic market operators (e.g. industrial users, traders, consumers, etc.), as well as the interests of the applicant, the impact on market competition and the availability of the relevant products.
[536] WTO, TN/RL/W/13, 8 July 2002.
[537] WTO, TN/RL/W/6, 26 April 2002.
[538] WTO, TN/RL/W/174 (Rev.1), 7 April 2005.
[539] Mateo Diego-Fernandez, "Trade negotiations make strange bedfellows," *World Trade Review* 7, no.2 (2008): 423-453.
[540] WTO, N/RL/GEN/53, 1 July 2005; TN/RL/GEN85, 6 June 2006; TN/RL/W/213, 30 November 2007; TN/RL/W/222, 12 March 2008; TN/RL/W/254, 21 April 2011.
[541] WTO, TN/RL/W/25, 16 October 2002; TN/RL/W/34, 2 December 2002; TN/RL/W/54, 6 February 2003; TN/RL/W/103, 6 May 2003.

Australia's view is that the key to imposing AD actions is not the public interest.[542] The ADA lacks fundamental public interest rules, and so this topic is not necessary for negotiations. Further, the Members' domestic laws should handle the public interest.[543] Egypt holds a similar view to Australia.[544]

The Doha Round Negotiations, when covering AD as a trade remedy, seeks to clarify and improve existing disciplines while preserving the basic concepts and effectiveness of the rules. The timing for the conclusion of the negotiations remains uncertain, although momentum is once again building in the negotiations. The chairperson of the NGR at that moment (Ambassador Valles-Galmes, Uruguay) has received over 150 proposals to reform the ADA. He issued draft-amended texts of the agreements in November 2007 and December 2008, which have underpinned recent negotiations.[545]

A significant number of WTO Members, especially FANs Members, want to reform WTO AD disciplines to strengthen certainty and predictability for exporters and reduce discretionarily for AD authorities to impose AD duties. They have submitted detailed and extensive proposals for reforming the ADA. The United States and Egypt are the leading defenders of the current ADA. There are proposals from FANs that run directly counter to the United States ones. There is still strong debate between FANs Members and the United States
Furthermore, the United States and Egypt are concerned with avoiding any amendments to the ADA that would require changes to their existing AD practices. Even the FANs submitted a statement to push negotiations on AD, but some other Members once again stated that they are not prepared to engage in discussions on reforming the WTO AD rules. Moreover, one prominent member of the WTO, the EU, has focused on other issues like lesser duty rule and the public interest. These issues are controversial as well.

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[542] Rokiah Alavi and Haniff Ahamat, "Predation and Public Interest in the WTO Anti-dumping Duty Determination: A Malaysian Case," *Journal of Economic Cooperation* 25, no.4 (2004): 61-88.
[543] WTO, TN/RL/W/62, 11 February 2003.
[544] WTO, TN/RL/W/79, 24 March 2003. TN/RL/W/101, 6 May 2003.
[545] Baldwin, op.cit., 680-685.

In October 2011, the Chairperson reported on his consultations regarding the status of the Doha Round negotiations. The consultations mentioned that the Doha Round negotiations were at an impasse.[546] This situation has lasted until the present day. To understand the attitudes and positions of WTO Members during the Doha Round Negotiations, a comprehensive overview of AD activity by WTO Members is required.

[546] WTO, Annual Report 2012. https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep12_e.pdf.

CHAPTER FOUR – PATTERNS OF ANTI-DUMPING USE AND THEIR INFLUENCE ON REFORMS TO THE ANTI-DUMPING AGREEMENT

A. ANTI-DUMPING ACTIVITY TRENDS

In recent decades, Members began tracking AD activity and collecting data. Documented AD actions are helpful when researching AD behavior. After the establishment of the WTO in the mid-1990s, the WTO collects reports from Members to record their use of AD activity. However, the WTO cannot trace all AD actions because the information is based on Member reports. Sometimes, the data reported by Members is inconsistent with the number of AD cases that actually took place.[547]

The large, traditional AD users have at least reported their use of AD activity sustainably. However, limited information on the use of AD actions can only show how traditional users implement AD actions. For new users, the WTO database is insufficient for analysis.Fortunately, the World Bank collects comprehensive data and has built a database on AD activity, including almost all the countries that use AD laws. This database is the Global AD Database[548] and is part of the World Bank's Temporary Trade Barriers Database.[549] Therefore, the analysis below will use the World Bank database as the main, but not the only research source.[550]

I. PRE-1980 ANTI-DUMPING ACTIVITY

The establishment of Article VI of GATT 1947, was the first standardized and basic criteria for imposing AD measures under international legislation. During the 1950's GATT, there was only one case about AD. This complaint was brought by Italy against Sweden because the Italian government considered Sweden's AD finding was inconsistent with its obligations under Article VI of GATT.[551] Given the rather broad wording of Article VI of GATT 1947, at the end of the

[547] Bruce A. Blonigen and Thomas J. Prusa, "Dumping and Antidumping Duties," *Handbook of Commercial Policy* 1, Part B (2016):107-159.
[548] Global Anti-dumping Database. https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e.
[549] Chad P. Bown and Meredith A. Crowley, "Emerging Economies, Trade Policy, and Macroeconomics Shocks," *Journal of Development Economies* 111, (2014): 261-273.
[550] Public WTO data on Antidumping activity.https://www.wto.org/english/tratop_e/adp_e/adp_e.htm.
Global Trade Alert, available at: http://www.globaltradealert.org/.
[551] GATT, Swedish Antidumping Duties, L/328 - 3S/81, 23 Fenruary 1955.

GATT Kennedy Round of Multilateral Trade Negotiations in 1968, the Kennedy Round AD Code required clarifying specific fundamental concepts and laying down procedural rules. However, no significant changes were made to the Article. Besides, AD measures remained a minor trade instrument. Firms did not use AD laws frequently for protection against foreign competition.[552] Before 1980, AD disputes worldwide were relatively rare. AD legislation provided a few conditions to satisfy the implementation of AD activities. At that time, the GATT did not ask countries to report their contingent protection actions. Even so, some scholars estimated the number of AD measures. Finger[553] stated there were 37 AD measures in force when the GATT countries first analyzed the number of cases.[554] There were less than 300 AD cases between 1954 and 1974 in the United States. There were only, on average, ten AD actions per year from all GATT Members during the 1950s.[555]

The United States is one of the traditional AD users, and these measures began with the enactment of the 1916 Act. Since the beginning of GATT, United States AD law and its implementation practices were considerable concerns. However, the use of AD policy was not a significant part of United States trade policy during the 1920s and 1930s.[556] The reasons were two-fold. First, import tariffs were quite high at this time, and, second, import penetration was shallow. Even as tariffs started to fall from the mid-1930s domestic producers could use various trade laws to maintain their protection from foreign competition.[557] Table 1 shows the number of AD cases annually from World War II until 1980 in the United States As the most frequent traditional user before 1980, the United States' AD filings were lower, and affirmative injury determinations were lower still. Although the United States initiated AD filings, it found it hard to prove injury. Hence, most AD filings would not reach the stage of final AD measures.

https://www.wto.org/english/tratop_e/dispu_e/gatt_e/54antidu.pdf.

[552] Thomas F. Shannon and William F. Marx, "The International Anti-Dumping Code and United States Antidumping Law--An Appraisal," *Columbia Journal of Transnational Law* 7, no.2 (1968): 171-202.

[553] Finger, op.cit. 2-5.

[554] The statistic does not include data from Canada and New Zealand because they submitted no figures.

[555] Jeffrey J. Schott, *The Uruguay Round: an Assessment* (Washington, D.C.: Institute for international economics, 1997), 27-65.

[556] Simao Davi Silber, "Trade Policy from the 1930s to the Present," in *The Oxford Handbook of the Brazilian Economy*, ed. Edmund Amann, Carlos R. Azzoni, and Werner Baer (Oxford, U.K.: Oxford University Press, 2018), 1-28.

[557] The US Tariff Commission tried to enforce different trade laws to protect domestic industries. For example, Section 337 of the Tariff Act of 1930 authorized the Tariff Commission to investigate allegedly unfair methods of competition relating to imports. Section 336 of the Tariff Act of 1930 provided procedures for changing import duties.

Table 1: Annual Number of Anti-dumping Cases, Products and Injury Determinations for the United States (1947-1980)

		Injury Determinations	
	AD Filings	Affirmative	Negative
1947	1	0	0
1948	3	0	0
1949	13	0	5
1950	15	0	3
1951	6	0	0
1952	5	0	1
1953	9	0	8
1954	14	0	4
1955	15	1	5
1956	18	0	1
1957	41	0	2
1958	13	0	2
1959	45	0	2
1960	33	1	3
1961	32	3	4
1962	16	0	2
1963	42	1	5
1964	27	3	8
1965	22	1	2
1966	16	1	2
1967	9	2	0
1968	13	4	1
1969	21	7	2
1970	23	15	1
1971	22	7	7
1972	39	10	13
1973	27	9	10
1974	10	2	4
1975	14	2	4
1976	22	1	9
1977	19	9	6
1978	47	7	8
1979	41	11	7
1980	16	9	15

Source:GATT Documents[558]

[558] WTO, https://www.wto.org/english/docs_e/gattdocs_e.htm.

After World War II, there were more AD actions than before. However, not many AD cases were filed in any event. Hence, the analysis in this section will focus on the period from 1980 to 2001. There are three reasons for choosing this period. First, AD activities started to increase in the very late 1970s. Few AD actions were reported before this. Second, the trends and patterns of AD activities changed greatly in this period. Third, it is precisely as of the start of the Doha Round Negotiation that trends in AD activity may have significantly influenced the opinions of Members during the negotiation. An analysis of this period may help find the reason Members want to reform the ADA.

This situation of lethargic AD activity changed notably after the Tokyo Round Negotiations.[559] The Tokyo Round Code set out detailed regulations for the process of initiating AD investigations. Moreover, it revised the rules on the definition of "less than fair value". This revision provided broader regulations, including both price discrimination and sales below cost.[560] It also imposed more conditions for determining dumped product. Another change in the Tokyo Round Code was the procedure of proving material injury to domestic industry. The Kennedy Round Code stated that countries could only impose AD when the dumped import was the principal cause of material injury.[561] The Tokyo Round Code found this prerequisite unessential. Therefore, it provided Members a greater range within which to determine dumping facts and encouraged them to bring AD cases. An increase in AD initiations occurred after publication of the Tokyo Round Code.

II. Post-1980 Anti-dumping Activity

1. From 1980 to 2001 (pre-Doha period)

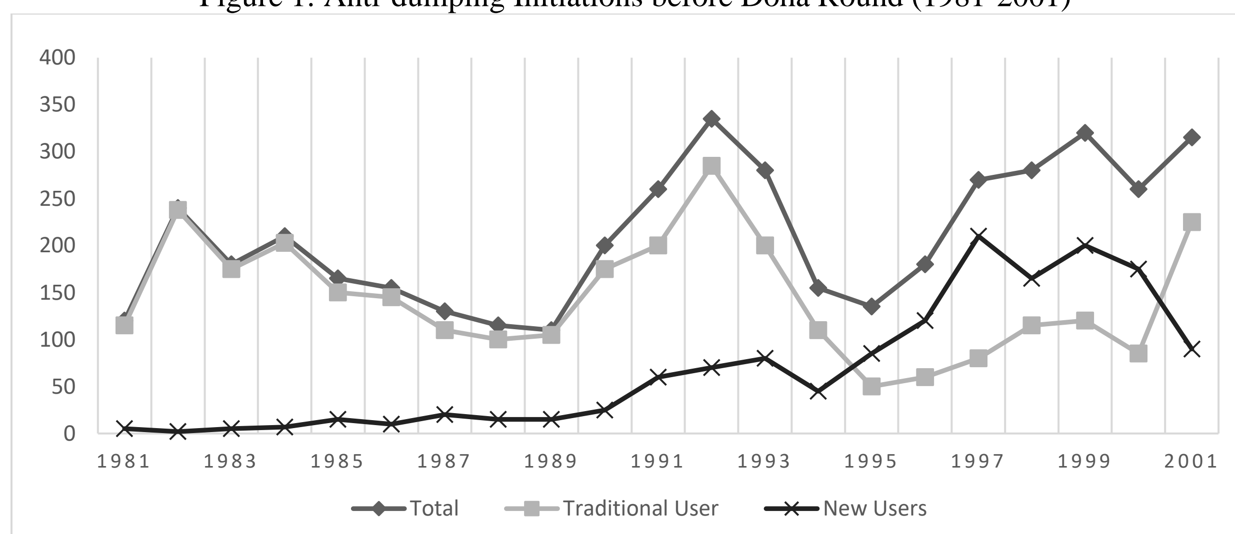
Figure 1 shows the number of investigations filed each year between 1981 and 2001. Because AD initiations fluctuated every year, the figure uses three-year averages to show the trend. The trend of AD activities amongst all users increased overall. However, the bottom line further indicates that new users play a more significant role than traditional users in the growth of AD activities.

[559] Debra P. Steger, *Redesigning the World Trade Organization for the Twenty-First Century* (Ottawa: International Development Research Centre, 2009), 11-50.
[560] Aradhna Aggarwal, "Macro Economic Determinants of Anti-dumping: A Comparative Analysis of Developed and Developing Countries," *World Development* 32, no.6 (2004): 1043-1057.
[561] GATT, BISD 15S/4-35, "Protocols 1964-67 Trade Conference Final Act," April 1968; Gian Paolo Casadio, "The Kennedy Round: Results, reactions and prospects," *Lo Spettatore Internazionale* 3, no.1 (1968): 18-49. https://doi.org/10.1080/03932726808457733.

Moreover, the trend of AD actions by traditional users decreases slightly. It is undeniable that, until the late 1980s, developed countries, and especially the four traditional users (the United States, the EU, Australia and Canada), were the vast majority of AD users. However, developing countries became aggressive AD users after the ADA came into effect.[562]

Figure 1 shows that the total number of AD actions reached a first peak between 1991 and 1992.[563] An economic slowdown appeared because of the 1991 recession.[564] Then AD usage increased again from 1997 to 1998 during the time the Asian financial crisis erupted. Developed and developing countries, especially Asian countries, suffered from this crisis.[565] The number of AD actions dramatically increased after 2000 with the bursting of the dot.com bubble and the terrorist attack.[566]

Figure 1: Anti-dumping Initiations before Doha Round (1981-2001)



Source: Global Anti-dumping Database[567]

[562] Diana Tussie and David Glover, *The Developing Countries in World Trade: Policies and Bargaining Strategies* (Boulder, CO: Lynne Rienner, 1993), 24-68.
[563] Willig, op.cit. 60-65.
[564] Cal E. Walsh, "What Caused the 1990-1991 Recession?" *Economic Review* 2, (1993): 33-48.
[565] Bijit Bora and Inge Nora Neufeld, *Tariffs and the East Asian Financial Crisis* (New York: United Nations, 2001), 12-26.
[566] Dominick Salvatore, "Trade Policy and Internationalisation," in *Knowledge, Innovation and Internationalisation: Essays in Honour of Cesare Imbriani*, eds. Piergiuseppe Morone (Oxford, U.K.: Routledge,2013) , 197-215.
[567] The World Bank, Global Antidumping Database, https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-antidumping-database/resource/dc7b361e.

Table 2 shows the top twenty initiators of AD investigations. The total number of initiations from 1981 to 2001 was 4597 cases. This figure does not adequately include initiations from all countries because some small countries have initiated very few investigations or did not report information on initiations to the WTO. From 1981 to 2001, the four traditional users were still responsible for the majority of AD activity. They initiated 64 percent in total of all investigations. Looking at the late 1990s, it easy to see that some new users have become more frequent users than traditional users. For example, new users like Argentina, India, and South Africa have a greater share than Australia and Canada from 1995 to 2001. AD initiations during this period gradually increased compared to the period prior to 1980.

Table 2: Top 20 Anti-dumping Initiators (1981-2001)

Country	1985-1989	1986-1990	1991-1995	1996-2001	Total	Percent
United States	212	184	260	200	856	18.62
Australia	318	156	234	121	829	18.03
EU(EEC)	235	182	162	205	784	17.05
Canada	188	100	97	93	478	10.4
Argentina			51	150	201	4.37
India	0	0	20	172	192	4.18
Mexico		38	103	39	180	3.92
Brazil		6	65	72	143	3.11
Turkey		12	64	18	94	2.04
New Zealand	2	19	34	30	85	1.85
Chinese Taiwan	2	11	33	27	73	1.59
South Korea		7	16	43	66	1.44
Peru			15	21	36	0.78
Indonesia			0	33	33	0.72
Poland*			0	4	28	0.61
Colombia			12	15	27	0.59
Egypt			0	25	25	0.54
Israel			3	22	25	0.54
China			0	22	22	0.48
Finland	3	12	1	0	16	0.35

Source: Global Anti-dumping Database [568]

[568] An empty cell means the country did not have an AD law in that year. A dot means that no information is available for that year. EEC means the country joined the EEC in that year; from that year onward, its investigations are included in the EEC data.
* Poland initiated investigations in 1992 invoking its customs law, as AD was only implemented in 1997.

During the late 1980s, the total number of AD initiations reached 668 cases. The number of AD cases increased until reaching 1240 in the early 1990s. After a short decrease between 1994 and 1995, AD initiations began growing strongly again. There were 1335 total cases between 1996 and 2001.[569]

Furthermore, new users began playing a significant role in the number of AD initiations. So as to perform a comprehensive analysis of the AD phenomenon, this part only analyzes countries or regions that were already WTO Members. However, some countries were still non-WTO Members at that time,[570] including Chinese Taipei, China, Russia, and Ukraine. Since 1984, Chinese Taipei initiated 73 investigations and ranked twelfth amongst total initiations. The number was higher even than South Korea during the same period. China initiated 22 cases, starting in 1991.

There were also "some 75 additional applications are awaiting action".[571] Many small countries started to use AD activities. Table 2 reports that Costa Rica, Egypt, Lithuania, Nicaragua, Thailand, the Philippines, and Trinidad and Tobago became active. Different countries like Bulgaria, Croatia, El Salvador, Fiji and Latvia have rarely used AD activities. AD use depended on their level of trade liberalization.[572] With more and more new users participating in AD activities, different country groups began implementing AD measures.

AD initiations by country group and period. Between 1980 and 1985, only countries that belong to The Organisation for Economic Co-operation and Development (OECD)[573] initiated AD investigations. No developing countries had AD measures during this period. Upper income developing countries did not start using AD activities until the late 1980s.[574] However, AD

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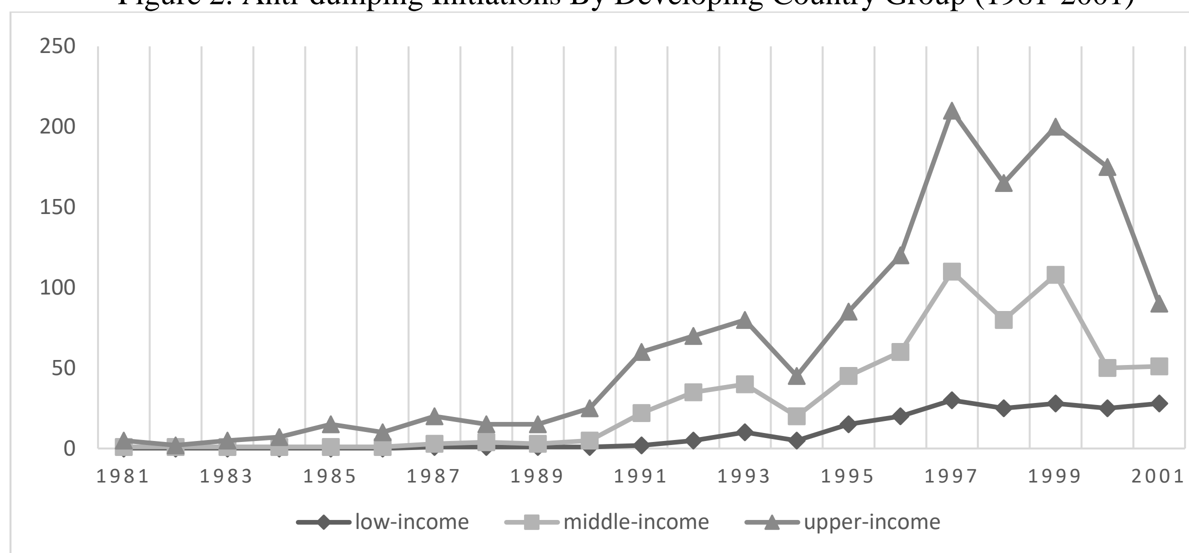
[569] Calculation base on the WTO, Statistics on antidumping. https://www.wto.org/english/tratop_e/adp_e/adp_e.htm.
[570] Miranda and Ruiz, op.cit. 15-25.
[571] Pitman B. Potter, "China and the International Legal System: Challenges of Participation," *The China Quarterly*, no. 191 (2007): 699-715.
[572] Maurizio Zanardi, "Antidumping: What are the Numbers to Discuss at Doha?" *The World Economy 27*, no.3 (2004): 403-433.
[573] The OECD's 37 members are: Austria, Australia, Belgium, Canada, Chile, Colombia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.
[574] Aggarwal, op.cit. 11-15.

initiations among developing country groups increased dramatically, reaching 30 percent of all AD investigations. Furthermore, not only upper income developing countries but also middle and low-income developing countries began joining the AD club. Some literature concluded that the reason for this increase was that developing countries tend to protect their domestic industries.[575] This affluence of AD initiations by low and middle-income developing countries appeared between 1996 and 2000. This was nearly ten times the initiations compared to five years previously. In the meantime, AD activities in developed countries became inactive. New users in developing countries took a greater share of AD activity than ever before. Especially after the enactment of the ADA in 1995, more and more low and middle-income developing countries filed AD petitions.[576] The developed country group is not alone in the AD activity club.

Figure 2 shows trends for AD activity usage also changed amongst the developing country group. Before the Uruguay Round, upper income developing countries initiated most AD investigations. However, the numbers from this group dropped off after establishment of the WTO, while initiations by low and middle-income developing countries attempted to fill the gap left by decreasing actions from upper-income developing countries. Four traditional users were entirely responsible for all AD activity until 1985.

[575] Miranda and Ruiz, op.cit. 30-36.
[576] GATT obligations contained less tariff binding relevant to developing countries. It allowed developing countries to increase tariffs without facing any safeguard or remedy measures. However, WTO obligations bind all members. Once a developing county subscribes to the agreement, it is bound to its tariff rules.

Figure 2: Anti-dumping Initiations By Developing Country Group (1981-2001)



Source: Global Anti-dumping Database [577]

All of these were GATT contracting parties and OECD Members.[578] The first developing country that began implementing AD initiations was Mexico. In the late 1980s, it participated in many AD activities. Other developing countries like Argentina, Brazil, and Colombia gradually joined suit in the early 1990s. Furthermore, middle-income countries like South Africa, Peru, Egypt, Philippines, and low-income countries like India and Indonesia also actively used AD actions. In 1980, there were only four countries that reported AD investigations. In 2000, the number of countries reporting AD cases was 32. Moreover, only five of these were OECD Members. All others were developing countries. This figure also included twelve upper-income countries, nine middle-income countries, and three low-income countries. Though developing countries started to take part in AD actions, it was still not widespread amongst all developing countries in the late 1990s. Again, the overall number of AD initiations by new users increased.

2. The Use of AD actions since 2001 (the Start of the Doha Round)

The trend of AD initiations and measures from 1980-2001 shows a continuous pattern of increase. Especially after the Uruguay Round, the number of AD activities rose dramatically. However,

[577] The World Bank, Global Anti-dumping Database, https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e.

[578] Ari Kokko, Patrik Gustavsson Tingvall and Josefin Videnord, "Which Antidumping Cases Reach the WTO?" *Ratio Working Paper* no.286 (2017): 17-38.

Figure 3 shows that the increase is exceptional until 2001. There is a marked decrease in the use of AD activity after 2002. The literature still does not fully understand the reasons that cause this fluctuation. Some literature tries to describe the causes underlying this situation.One hypothesis argues that the trend of AD investigations shows a counter-cyclical movement between the use of AD activities and global economic recessions after analyzing the number investigations from 1995 to 2009.[579]

A notable increase in AD usage occurred simultaneously with the global financial crisis in 2007-2009. Other research further supports this hypothesis after comparing the trend of AD use with specific economic crisis periods.[580] An observation has been made that once an economic crisis appears, it leads to an increased use of AD actions. In the wake of the global financial crisis, a cyclical increase in AD activities, which usually occurs during periods of economic weakness, resurfaced.

However, this observation is incomplete. Some scholars believe financial crises have a chilling effect on AD actions instead of encouraging their use.[581] Figure 3 shows that AD use began decreasing between 2001 and 2005. The further liberalization of the Doha negotiations may also explain the phenomenon.[582] However, it is easy to see from Figure 3 that increased AD activity occurs not after a recession period but during a pre-recession period, especially during the early stages of a recession. This situation may occur because trade flows decline sharply, leading countries to beat a protectionist retreat.[583]

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[579] Dukgeun Ahn, and Wonkyu Shin, "Analysis of Anti-Dumping Use in Free Trade Agreements," *Journal of World Trade* 45, no.2 (2010): 431-456.

[580] Chad P. Bown, "Taking stock of Anti-dumping, safeguards and countervailing duties 1990-2009," *World Economy* 34, no.12 (2011):1955-1988. Mr. Bown analyze the trend of AD use with comparing the particular time: 1990-1991, 1997-1998 and 2000-2001. Economic crises occurred during these periods. In the meantime, countries use AD activities more frequently than in other periods.

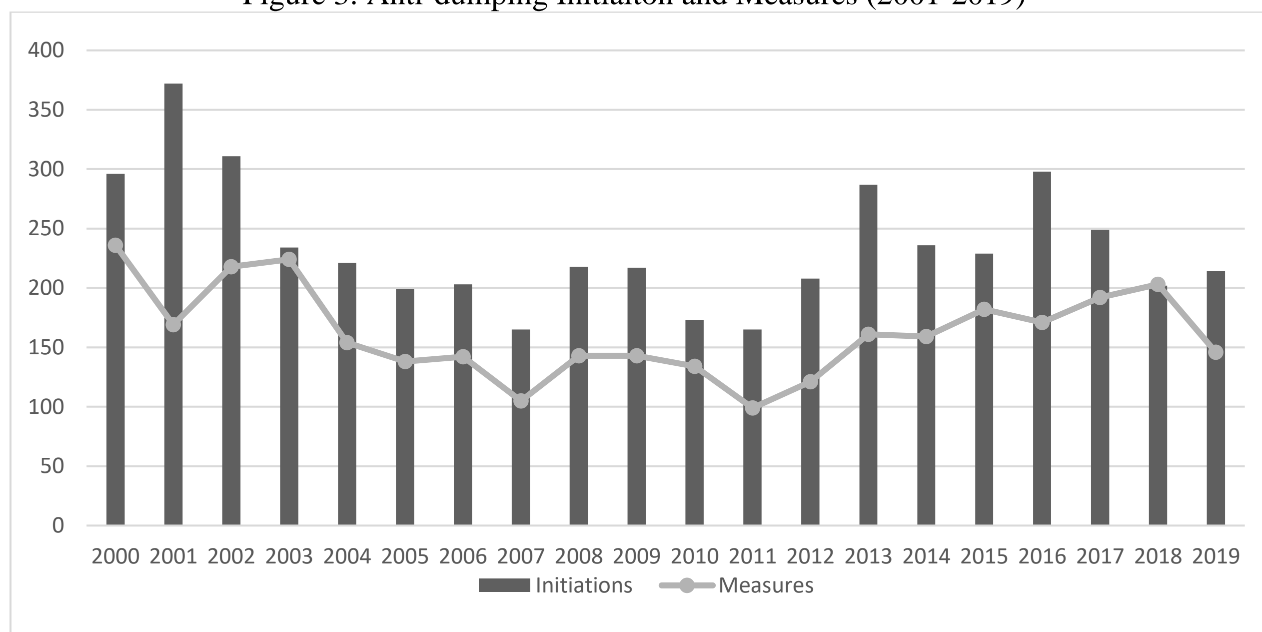
[581] Hylke Vandenbussche, and Maurizio Zanardi, "The global chilling effects of Antidumping proliferation," *LICOS Discussion Papers,* no.167 (2006): 4-30.

[582] Although there is no systematic research on the impact of liberalization negotiations on the use of AD, the statistic did show a decline in AD use after the launch of the Doha Round.

[583] Alan Reynolds, "The Smoot-Hawley Tariff and the Great Depression," *CATO Institute*, May 7, 2016. https://www.cato.org/blog/smoot-hawley-tariff-great-depression.

There is a comprehensive account and deconstruction of the various protectionist forces at work during the Great Depression, as well as other, non-trade policy related factors that contributed to the curtailment of global trade. See also, Jefferey Frieden, "Global trade in the aftermath of the global crisis," in *The Great Trade Collapse: Causes, Consequences and Prospects*, ed. Richard Baldwin (Geneva: VoxEU.org Publication, 2009), 25-30. There is an early

Figure 3: Anti-dumping Initiaiton and Measures (2001-2019)



Source: WTO[584]

AD initiations and metrics show a similar trend from 2001 to 2019. However, there is an exception in Figure 3. In 2003, the number of AD initiations decreased while the number of AD measures increased compared to 2002. This is due to the accretion of judged measures in 2003 and maybe because of "certain benevolence of the regulative authorities toward the petitioner's firms".[585] Moreover, steel products were not subject to AD in 2002-2003. This may be another reason for this exception.[586] Figure 3 shows that from 2002 to 2007, there was a downward trend in AD activity. The number of AD investigations grew from an 11-year low of around 160 to over 200 in 2008. After the financial crisis, the total number of AD initiations and investigations decreased for a short time. Since 2011, AD actions have been used actively again. Which country contributed to reductions in AD use? Looking at the WTO database, it is evident that there is a large reduction in AD activities in the EU, United States, and India.[587] The trend of AD initiations and AD measures

assessment of the potential causes of the trade collapse of 2008-2009, on which the consensus is that it had little to do with changes in trade policy but more to with fundamental demand (income) and supply (credit) factors. It provides a collection of research from early in the crisis that highlights the fears of an impending protectionist backlash.

[584] WTO, Statistic on Anti-dumping. https://www.wto.org/english/tratop_e/adp_e/adp_e.htm.

[585] Ingo Schmidt and Sabine Richard, "Conflicts between antidumping and antitrust law in the EC," *Intereconomics* 27, no.5 (1992):223-229.

[586] Jefferey M. Drope and Wendy L. Hansen, "Anti-Dumping's Happy Birthday?" *World Economy* 29, (2006): 459-472.

[587] Bruce A. Bolnigen, Benjamin H. Liebman and Wesley W. Wilson, "Trade Policy and Market Power: The Case of the US Steel Industry," *NBER Working Paper*, no.13671 (2007):16-37.

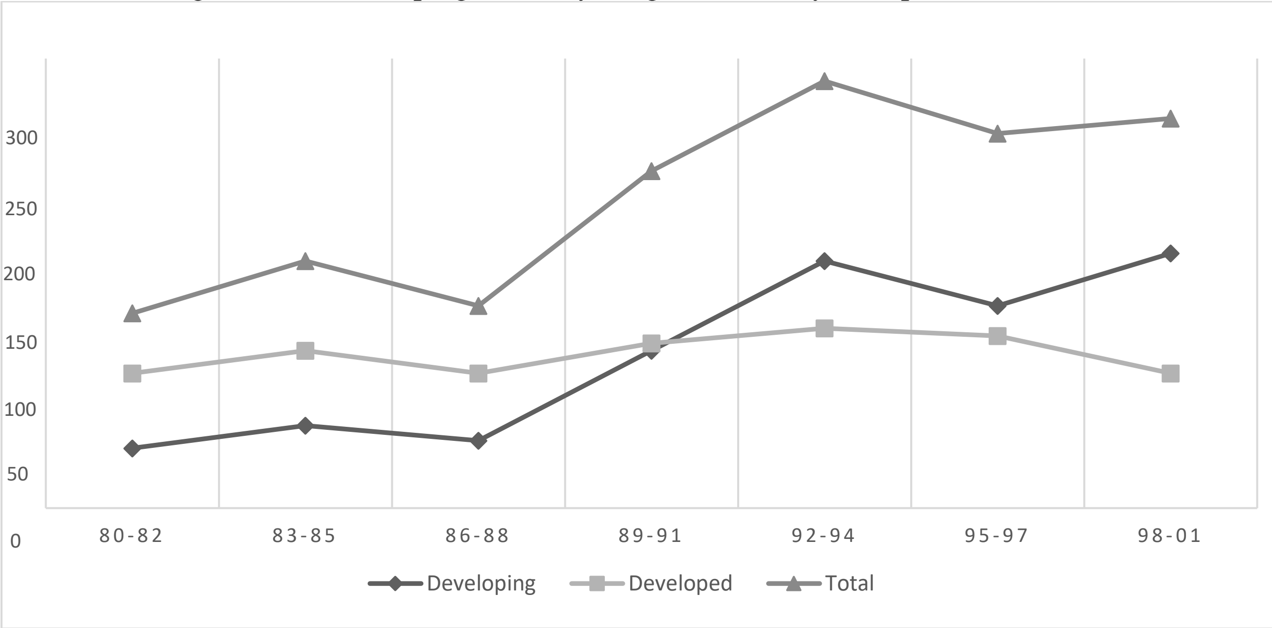
remains stable in the following years. Over the past few years, the amount of AD activity has increased again. It shows that although AD usage trends fluctuate, AD is still actively used. Overall, AD use in recent years remains above average.

B. Main Targets and Sectors of Anti-dumping Measures

I. Targets

The above analysis shows that traditional users are no longer the overall majority of AD initiators. New users have begun filing petitions. In this section, the focus turns to the targets of the AD activities. Which countries contributed more to increases and decreases in AD activity usage trends? Which of them are preferred targets and why? Figure 4 shows the trend of AD targets by country group. The trend for targeted countries by developed countries was more stable than the trend for targeted countries by developing countries. During the 1980s, more developed countries were targets in AD cases than developing countries. However, this trend changed in the late 1980s. Developing countries became more frequent targets of AD activities. From 1995 to 2001, 64 percent of developing countries were targeted in AD cases, while developed countries were only 36 percent of the targets.

Figure 4: Anti-dumping Cases by Targeted Country Group (1981-2001)

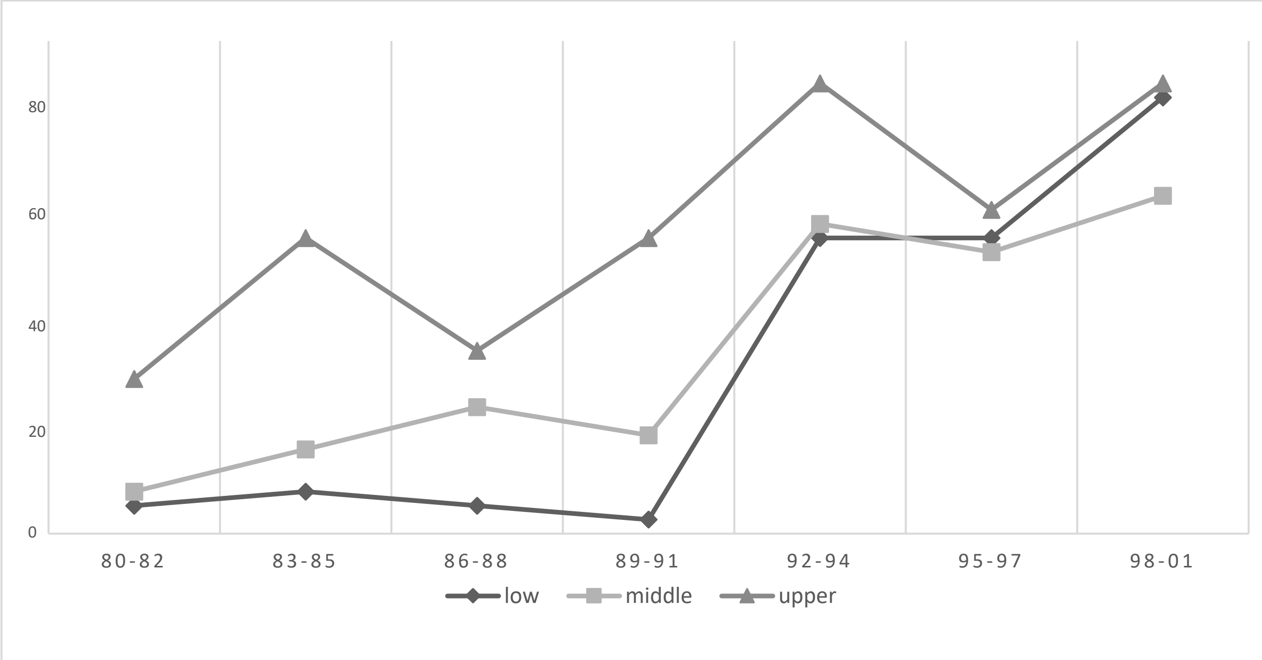


Source: Global Anti-dumping Database[588]

[588] The World Bank, Global Anti-dumping Database, https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e.

Moreover, changes in target countries also arose amongst developing countries. Figure 5 shows that in the 1980s, low and middle-income developing countries were not often targets in anti-dumping cases, while upper income developing countries had more anti-dumping cases brought against them. However, both low and middle-income developing countries showed an overall increase in anti-dumping cases from 1990. Meanwhile, the growth in the number of cases against upper income developing countries was not as dramatic as against others in the developing country group.

Figure 5: Anti-dumping Targets within Developing Country Group (1980-2001)



Source: Global Anti-dumping Database[589]

Table 3 shows the top 20 countries or areas that were targeted by other nations. From 1981 to 2001, 113 countries in total were targeted by AD investigations. Also, the number of target states increased gradually. From 1981 to 1987, 68 economies in total were targets. This grew to 83 in subsequent years from 1988 to 1994. 93 countries were targets from 1995 to 2001. After observing Table 3, it is undeniable that Asian countries frequently appeared at the top of the list. China held first place in the top 40 countries ranking. Furthermore, other Asian countries like South Korea, Japan, Chinese Taipei, and Thailand were amongst the top ten countries that were targets of AD

[589] Ibid.

investigations. Besides these Asian countries, the United States, Germany, Brazil, and the UK filled out the top ten.

Table 3: Top 20 Targets of Anti-dumping Investigations (1981-2001)

1981-1987		1988-1994		1994-2001	
Country	Number	Country	Number	Country	Number
Japan	105	China	137	China	236
United States	103	United States	134	South Korea	137
Germany	72	South Korea	107	United States	101
South Korea	61	Japan	103	Japan	84
Brazil	50	Brazil	75	Taiwan	84
China	49	Taiwan	69	Russia	70
Italy	48	Germany	52	Indonesia	68
Taiwan	48	Thailand	40	India	67
France	45	France	39	Germany	66
United Kingdom	44	India	37	Thailand	64
Spain	43	United Kingdom	35	Brazil	63
Czechoslovakia	41	Hong Kong	32	Ukraine	48
East Germany	32	Italy	31	United Kingdom	39
Canada	31	Belgium	28	Spain	35
Poland	31	Romania	27	Italy	34
Belgium	28	Canada	26	Malaysia	33
Yugoslavia	28	Malaysia	26	South Africa	33
Romania	26	Indonesia	23	France	31
Hungary	24	Singapore	23	Mexico	27
Sweden	20	Poland	22	Turkey	25
New Zealand	19	Russia	22	Netherlands	23
Mexico	17	Spain	22	Poland	22

Source: Global Anti-dumping Database [590]

There is another trend implied by Table 3. China was the favorite target between 1981 and 2001. However, from 1981 to 1987, China only ranked in sixth place. Since 1988, China has continually occupied first place as the most favored target. Meanwhile, Chinese exports have grown fast, and

[590] The World Bank, Global Anti-dumping Database. https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e.

China has moved towards becoming an export-leading country.[591] This probably explains the relationship between exports and their position in AD cases. Developed countries were frequent targets in the early 1980s. 626 AD cases were brought against developed countries, while low and middle-income countries were only targets in 102 cases. However, there was a dramatic increase in developing countries as targets as of the early 1990s. There were 771 cases in which the targets were developing countries. During the 1990s, developing countries were targets more often than developed countries. From 1996 to 2001, the number of AD cases against developing countries almost doubled the number of ones against developed countries.[592] Although developing countries have started to use AD against developed countries, the use of AD is no longer simply a question of traditional users and new users. New users have already begun AD activities. They do not only choose their targets from traditional users and may target other new users of AD activities.[593] Plenty of developing countries are involved in AD cases. This may move the dispute into a "south-south" context.[594] On the one hand, developing countries initiated 1286 cases. Of these, 58% were against other developing countries and 36% of them were against OECD Members. For example, low and middle-income countries initiated around 37% of cases against other low and middle-income countries.On the other hand, OECD Members initiated 51% of cases against developed countries and 49% of cases against developing countries[595] Developing countries mainly targeted developing countries, while developed countries also contributed a significant number of cases against them. It means developing countries have become preferred targets over developed countries. The impact of AD petitions is debatable. Some argue that even if no final AD measures are imposed, AD petitions still hurt imports.[596] Hence, how to discourage the initiation of AD cases or to reduce their profound impact becomes significant. Not all petitions will result in final AD

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[591] Wayne M. Morrison, *China's Economic Rise: History, Trends, Challenges, and Implications for the United States (Washington, D.C.: Library of Congress, Congressional Research Service, 2015), 47-120.*

[592] The World Bank, Global Anti-dumping Database. https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e.

[593] Bown, op.cit.1965-1970. In Bown's research, he calculated that 61% of AD use by developing economies targeted other developing economies in 2002, and this grew to 68% by 2009.

[594] Maurizio Zanardi, "Antidumping: a problem in international trade," *European Journal of Political Economy* 22, no.3 (2006): 591-617.

[595] The World Bank, Global Anti-dumping Database. https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e.

[596] Robert W. Staiger and Frank A. Wolak, " Measuring Industry-Specific Protection: Antidumping in the United States," *Brookings Papers on Economic Activity. Microeconomics* 1994, (1994): 51-118.

duties. The target country can choose to use undertakings as an alternative to stop further AD duties.

Table 4 shows the number of initiations and measures by reporting country ranked by the success rate of their investigations. In the top ten countries, only the EEC out of the traditional users leads with around 74 percent of success imposing the AD duties. Other traditional users like the United States and Canada are much lower on the list. The United States had 59 percent of cases result in AD duties while Canada had 58 percent. Australia only successfully imposed AD duties in 41 percent of cases. On the contrary, new users occupied the top places in the ranking. India, South Korea, and Mexico, for example, not only initiated a significant number of investigations. More than 65 percent of their investigations resulted in final AD duties. This shows that these new users have been very active.

Table 4: Outcome of Anti-dumping Investigations (1980-2001)

Country	Initiation	Duty	Undertakings	Total%
Guatemala	1	1	0	100.00
Jamaica	1	1	0	100.00
Singapore	2	2	0	100.00
Spain	1	1	0	100.00
Thailand	7	6	0	85.71
EU(EEC)	784	343	235	73.72
India	192	138	0	71.88
Finland	16	2	9	68.75
Egypt	25	17	0	68.00
Malaysia	15	10	0	66.67
South Korea	66	26	17	65.15
Mexico	180	103	14	65.00
Venezuela	31	20	0	64.52
Philippines	19	12	0	63.16
United States	856	483	25	59.35
Canada	478	259	20	58.37
Colombia	27	15	0	55.56
Turkey	94	49	0	52.13
Indonesia	33	17	0	51.52

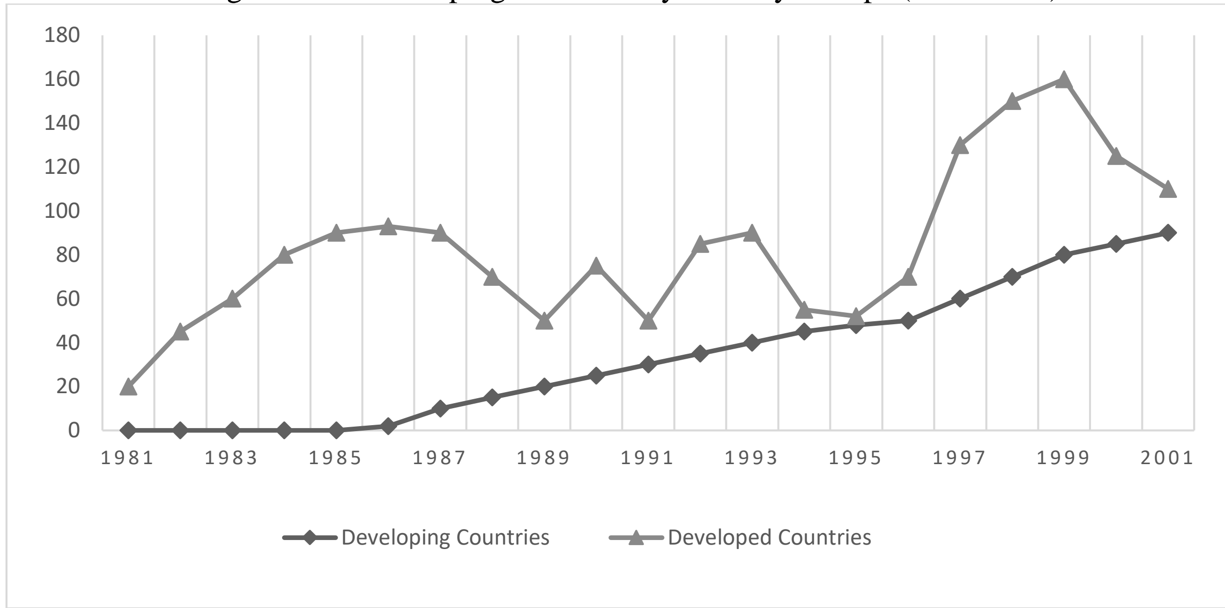
South Africa	230	118	0	51.30
Japan	10	2	3	50.00
Paraguay	2	1	0	50.00
Trinidad Tobago	8	3	1	50.00
Brazil	143	66	5	49.65
New Zealand	85	34	7	48.24
Israel	25	12	0	48.00
Argentina	201	81	10	45.27
Peru	36	15	0	41.67
Chile	17	7	0	41.18
Australia	829	277	63	41.01
China	22	9	0	40.91
Czech Republic	3	1	0	33.33
Nicaragua	3	0	1	33.33
Ukraine	3	1	0	33.33
Taiwan	73	14	6	27.40
Poland	28	6	1	25.00
Sweden	13	0	3	23.08
Total	4,597	2,153	420	55.97

Source: Global Anti-dumping database.[597]

Figure 6 shows the trend of AD measures in force in different country groups over time. The trend of both developed and developing countries using AD measures increased over time. Measures from developed countries decreased over a short period in 1987 and 1992. In contrast, measures from developing countries showed a steady and overall increase after 1987. That developed countries had more AD measures than developing countries shows that they already had extensive experience using them.

[597] The World Bank, Global Anti-dumping Database, https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e.

Figure 6: Anti-dumping Measures by Country Groups (1981-2001)



Source: Global Anti-dumping database.[598]

Table 5 shows an overall AD activities from 1980-1999. It focuses on the proportion of countries using AD activities and when those countries started AD activities. It is obvious that the four traditional users plus other developed countries like New Zealand and Finland dominated AD activities in the early 1980s. Most new users filed very few of the total AD complaints during this period. However, 29 more users, including both developed and developing countries, started using AD activity in the late 1980s. Eleven countries (including Japan, Argentina, Turkey, and Israel)[599] first used AD activities between 1991 and 1993. Eight more countries (including South Africa, Malaysia, and Trinidad and Tobago)[600] started joining the AD club in the following two years. Five countries more (including Egypt, Czechoslovakia, and Nicaragua)[601] became AD users in 1997 and 1998. These countries represented different degrees and levels of economic development.

[598] Ibid.
[599] Including Japan, Argentina, Turkey and Israel.
[600] Including South Africa, Malaysia, and Trinidad and Tobago.
[601] Including Egypt, Czechoslovakia, and Nicaragua.

Table 5: Comparison of Anti-dumping Activity (1980 - 1999)

Country	Proportion of AD Cases 1980-1999	First Use of AD	AD actions against the country before the adoption of own AD statute
United States	44.6%	--	--
Australia	41.5%	--	--
EU	34.4%	--	--
Canada	27.8%	--	--
Mexico	10.4%	1987	10
Argentina	6.3%	1991	16
South Africa	6.1%	1994	20
Brazil	5.5%	1988	55
India	4.2%	1992	16
New Zealand	3.1%	--	--
South Korea	3%	1985	39
China	1.6%	1993	15
Finland	1.5%	--	--
Colombia	1.2%	1991	4
Poland	1.2%	1991	43
Israel	1.1%	1993	13
Indonesia	1.1%	1996	31
Venezuela	1.0%	1993	18
Peru	0.9%	1994	1
Malaysia	0.7%	1995	32
Philippines	0.7%	1993	9
Chile	0.5%	1993	5
Egypt	0.3%	1997	7
Thailand	0.3%	1993	35
Costa Rica	0.2%	1996	1
Trin-Tobago	0.2%	1996	3
Japan	0.1%	1991	164
Czechoslovakia	0.1%	1998	69
Nicaragua	0.1%	1998	2
Panama	0.1%	1998	0
Singapore	0.1%	1994	34
Ecuador	0.1%	1998	2
Guatemala	0.1%	1996	0

Source: Global Anti-dumping database and Prusa and Skeath.[602]

In addition, there is another interesting phenomenon in the last column of this table. This contains,

[602] The World Bank, Global Anti-dumping Database, See also, Thomas J.Prusa and Susan Skeath, "The economic and strategic motives for Antidumping filings," *NBER Working Paper* no.8424 (2001): 5-18. https://www.nber.org/system/files/working_papers/w8424/w8424.pdf.

for every new user, the AD actions against it by another country since the 1980s and prior to the year of its first AD filing. For example, when Mexico passed its AD legislation in 1987, it had been the subject of 10 AD actions. Japan passed AD laws in 1991. However, it had already been the subject of 165 AD measures. Except for Panama and Guatemala, all new users were subject to AD investigations before first enacting their own AD legislation. It illustrates that new users were familiar with the implementation of AD policy before their initial legislation. They had already experienced processes like the calculation of dumping margins or determination of injury. More importantly, they would have the ability to identify countries that once chose them as a target.

II. SECTORS

The analysis above contains the number of AD initiations and measures. This section will focus on the sectors that AD cases have focused on. AD measures are taken in different sectors. Metals, chemicals, machinery and electrical equipment, textiles and clothing, and plastics, account for a significant amount of AD activity. However, these sectors are still not a large part of world trade. Most AD actions are in the electrical equipment and textiles subsectors that are characterized by relatively standard products produced by oligopolistic firms.[603]

This pattern strongly suggests that firms use AD as a cheap and powerful instrument for segmenting markets that ongoing or scheduled trade liberalization is making more competitive. It also indicates that AD activity may spread to other sectors like clothing. It may make the competition more competitive. The observed sectoral AD model reflects the increasing "privatization" of trade policy by companies that initially had sufficient oligopoly power to exploit the "pro-collusion" bias inherent to AD regulations.[604]

From 1980 to 2001, cases were concentrated in resource-intensive and science-based sectors. Base metal and scale-intensive products were the leading sectors in AD cases— base metal products were related to the fact that the steel industry was a frequent target. In the science-based sector,

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[603] Yuefen Li, "Why is China the World's Number One Anti-Dumping Target?" in *Anti-Dumping: Global Abuse of a Trade Policy Instrument*, ed. Bibek Debroy and Debashis Chakraborty (New Delhi: Academic Foundation, 2007), 133-154.

[604] Patrick A. Messerlin, "China in the World Trade Organization: Antidumping and Safeguards," *The World Bank Economic Review* 18, no.1 (2004): 105-129. See also, Will Martin and Elena Ianchovichina, "Economic Impacts of China's Accession to the World Trade Organization," *The World Band Economic Review* 18, no.1 (2003): 11-20, https://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-3053.

scale intensive products include chemicals, plastic, and rubber. These sectors dominated AD petitions before the Doha Round Negotiations.

The resource-intensive sectors were less than 50 percent of cases in the 1980s, and more cases can be found in the science-based sector. However, the share of resource-intensive sectors increased to 60 percent in the 1990s while the share of science-based sectors decreased to around 40 percent. However, the proportion of scale intensive sectors still increased in this area.[605]

Table 6 shows the number of cases in every sector initiated by a country group. First, resource and science-based sectors were causes of AD initiations in all countries. Second, the upper-income countries initiated the majority of AD cases in all sectors. Third, low-income countries initiated more cases in the science-based sector than in the resource-intensive sector. Some other country groups reported a more significant proportion of cases in the resource-intensive sector than the science-based sector.

Table 6: Anti-dumping cases by sector and initiating country group (1981-2001)

Sector	Low-income Country Group	Middle-income Country Group	Upper-income Country Group
Resource Intensive	51	129	347
Labor Intensive	33	21	112
Science-Based	141	129	314
Miscellaneous	5	0	4
Total	230	279	777

Source: Global Anti-dumping database.[606]

Furthermore, Table 7 shows the sectoral distribution of AD initiations by targeted country group. First, resource and labor-intensive sectors were favored by low and lower-middle-income countries. In developing countries, these sectors accounted for 70 percent of total AD cases. In contrast, the science-based sector was most frequently a target for upper-income countries. It illustrates that the upper-income countries (developed countries) have apparent advantages in

[605] The World Bank, Global Anti-dumping Database, https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e.
[606] Ibid.

science-based industries over low-income and middle-income country (developing countries).[607] This triggers other countries to treat this sector as a target.

Table 7: Anti-dumping cases by sector and targeted country group (1981-2001)

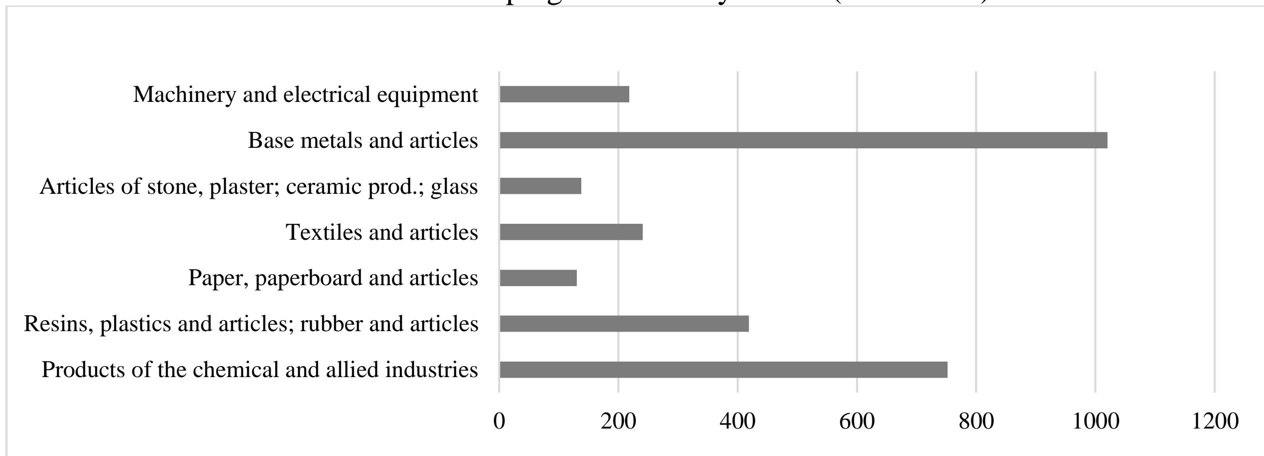
Sector	Low-income Country Group	Middle-income Country Group	Upper-income Country Group
Resource Intensive	236	336	447
Labor Intensive	143	47	100
Science-Based	234	176	398
Miscellaneous	9	1	9
Total	622	560	954

Source: Global Anti-dumping database[608]

As noted above, before the Doha Round negotiations, the Resource Intensive and Science-Based Sectors were already preferred target sectors. Since the Doha Round negotiations, this trend has not changed significantly. Chart 1 shows that the base metal sector, that includes steel and products manufactured from steel, is always the most targeted. Chemical products and plastic products follow and comprise the majority of the product sectors facing AD activities. Chart 1 illustrates that products that seem to be preferred targets for AD activity tend to be primary or intermediate products, used mostly by manufacturing industries. For example, steel pipe and wire are needed by the construction industry. Base metals and articles are essential for automobile manufacturers.[609]

[607] Katherin Marton and Rana K. Singh, "New technologies and developing countries: Prospects and potential," *Intereconomics* 27, no.3 (1992): 133-138.
[608] The World Bank, Global Anti-dumping database. https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e. See also, OECD, op.cit. 11-27.
[609] Vivian C. Jones, *Trade Remedies and the WTO Rules Negotiations* (Washington, D.C.: Library of Congress, Congressional Research Service, 2010), 16-20.

Chart 1: Anti-dumping Measures by Sector (2001-2019)



Source: WTO[610]

Why are these products always at the top of the list of target sectors? First, these industries may receive government support. On the one hand, steel industries are still an essential industrial sector in developed economies.[611] Because of booming global trade, developing countries might soon notice a large ratio of steel exports from developed economies, meaning more of these countries start using AD mechanisms against it. In some developing countries, the government supports steel industries to satisfy requirements for supplying large quantities of steel. Steel industries will further support infrastructure building for national economic development.[612] When the industry enlarges further, the supply of steel products exceeds demand in the domestic market, and these industries begin exporting steel products to foreign markets.[613] However, these industries may also face decreasing market share, fail to measure future competitive capacity, have individual fixed

[610] WTO, Statistic on Antidumping, https://www.wto.org/english/tratop_e/adp_e/adp_e.htm.

[611] Chris Isidore, "Why steel and aluminum tariffs matter to the United States economy," *CNN Business*, March 7, 2018, https://money.cnn.com/2018/02/19/news/economy/steel-aluminum-us-economy/index.html.

In the US for example, as much as 55% of a car's total weight comes from steel, according to the World Steel Association. Roughly, 50% of steel use goes toward buildings and infrastructure, and about 16% of steel goes toward making mechanical equipment.

Monika Draxler, Johannes Schenk, Thomas Bürgler and Axel Sormann, "The Steel Industry in the European Union on the Crossroad to Carbon Lean Production—Status, Initiatives and Challenges," *BHM Berg- und Hüttenmännische Monatschefte* 165, (2020): 221-226.

The EU is the world's largest steel producer. Its output is over 177 million tons of steel a year, accounting for 11 percent of global output. Meanwhile, steel products are used in many downstream industries such as automotive, construction, electronics and mechanical and electrical engineering.

[612] Rachel Tang, *China's Steel Industry and Its Impact on the United States: Issues for Congress* (Washington, D.C.: Library of Congress, Congressional Research Service, 2010), 6-17.

[613] OECD, "Steel Market Development," *DSTI/SC(2020)1/FINAL*, (2020): 10-30. See also Bruce A. Blonigen, "Industrial Policy and Downstream Export Performance," *The Economic Journal* 126, no. 595 (2016): 1635-1659. https://doi.org/10.1111/ecoj.12223.

costs that require continuous manufacturing, or have difficulty adjusting their factories to make items that may be in limited supply.[614] Since the establishment of the WTO, the trend of using AD actions has fluctuated. Table 8 shows that the total number of AD initiations and measures is still notable. Also, base metals and products account for a significant proportion of AD actions.

Table 8: Anti-dumping Initiation and Measures on Metal Products and All Products (1995-2019)

	Base Metals and Articles	All Products	% of Base Metals
AD Initiation	1774	5725	31%
AD Measures	1222	3805	32%

Source: WTO[615]

In conclusion, AD use increased rapidly after 1980. As mentioned above, the four traditional users contributed over 95 percent of AD filings during the 1980s, while new users as a group accounted for less than 5 percent of all cases filed during the same period. While the overall use of AD activities has increased, the most remarkable trend is the change in the type of countries using the law. The AD club was no longer nearly as exclusive. An increasing number of developing countries joined as new users. Developing countries contributed to a notable increase in AD filings. After 1990, the user list of AD stayed steady.

All these new users included nations from different classes of economic development and from all over the world. Developing countries gradually became the most frequent users of AD activity. Within developing countries, not only upper-middle-income countries started using AD actions. Low and lower-middle-income countries became significant AD action users as well. The number of AD cases from new users increased sharply, to the point that increased AD filings by new users eclipsed the behavior of traditional users during the 1990s. New users were familiar with AD activities before finally initiated them because they had already been previously targeted by traditional users. On the one hand, developed countries were no longer only users but also targets for other nations. On the other, developing countries began using AD against the traditional users that once used them as targets. Nonetheless, developing countries filed more AD petitions against

[614] Wilfred J. Ethier, "Dumping," *Journal of Political Economy* 90, no. 3 (1982): 504-510.
[615] WTO Statistic on Anti-dumping.

other developing countries.[616] Although AD activities from traditional users decreased in the 1990s, traditional users were still the most significant users of AD activities. However, scholars considered that merely counting case frequency could not accurately determine whether traditional users are still the most significant users.[617] They believed that intensity was important when measuring the level of AD use. In their research, they measure intensity by calculating the number of filings per dollar of imports.

Compared to the intensity levels of traditional users, new users like Brazil, India, and South Africa were very active in using AD activities. New users seem to be the most intensive users of AD measures. This research illustrated that new users, especially developing countries, have become significant participants in AD cases. Furthermore, it determined the changing roles of different country groups. The rising number of AD cases from developing countries place both developing and developed countries in a situation where they are dealing with more AD issues than before. Hence, during the Doha Round Negotiations, both country groups submitted proposals, and most of the frequent new users asked for a complete reform of the ADA during the Doha Round Negotiations.

C. Motivations for the Use of Anti-dumping Activities

The changing roles of countries in the use of AD cases lead them to submit proposals during Doha Round Negotiations on reforming the ADA. Countries have always claimed that their motivation for using AD actions is a desire to "level the playing field" and "fight unfair trade".[618] However, the dramatic increase in new users raises an obvious question: Are there any other factors that trigger the use of AD activities? Furthermore, what is the relationship between these factors and the opinions of Members during the Doha Round Negotiations?

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[616] P.K.M.Tharakan, "The Problem of Anti-Dumping Protection and Developming Country Exports," *WIDER Working Papers*, no.198 (2000): 4-29.
[617] J. Michael Finger, Francis Ng and Sonam Wangchuk, "Antidumping as Safeguard Policy," World Bank, *Policy Research Working Paper*, no.2730 (2001): 3-24.
[618] Brian Kelly, "The Law and Economics of Simultaneous Countervailing Duty and Anti-dumping Duty Proceedings," *Global Trade and Customs Journal* 3, no.1 (2008): 41-50, https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/3.1/GTCJ2008004.

A comprehensive view of the relationship between dumping and its motivations is required when looking for the motives underlying AD activity. In the theoretical research on dumping, the literature has evolved into two branches that provide opposing views of the relationship between economic fluctuations in the international economy and the existence of dumping. On the one hand, some studies have pointed out that if demand in foreign markets is high, dumping can occur more often.[619] On the other, studies found that there is a connection between dumping and weak foreign demand.[620] Other studies further confirm that weak foreign demand leads significantly to dumping. Notably, weak foreign demand is evidence of weakness in foreign industry.[621] However, recent research supports the theory that weak foreign demand increases the probability of dumping. Over the past few decades, there have been more and more AD actions (both investigations initiated and measures imposed). This increasing trend reflects the growing number of developing and emerging countries participating in the AD system. There are also other reasons.

First, broader trade liberalization places political pressure on governments.[622] Second, trade growth is a significant reason for a more extensive range of imports, which can potentially be subject to AD measures.[623] After viewing recent trends in AD use, the tables have turned to some extent for traditional users. Cases from the United States, which was the most frequent user of AD actions, decreased as a proportion of cases filed during the 1990s compared to the 1980s. Moreover, the United States became one of the favorite targets of other countries. New users like Brazil, Mexico, and South Africa have become the heaviest users.[624] The number of filings by new users increases in a stable manner year-on-year. These marked trends lead countries to reconsider

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[619] Meredith A. Crowley, "Split Decisions in Antidumping Cases," *The B.E. Journal of Economic Analysis and Policy* 1, no.10 (2010): 1-26.
[620] Richard Dale, "Welfare Implications of Dumping," *Anti-Dumping Law in a Liberal Trade Order*, (1980):20-43, https://doi.org/10.1007/978-1-349-05045-1_2.
[621] Ethier, op.cit. 505-507.
[622] Seokwoo Kim, "How Trade Liberalization Affects the Political and Economic Performance of Developing Countries: The Application of a Two-Stage Game Model," *Asian Perspective* 20, no.1 (1996): 163-84. http://www.jstor.org/stable/42704093.
[623] Australian Government, "Developing in Anti-dumping Arrangements," *Productivity Commission Research Paper*, February 2016, https://www.pc.gov.au/research/completed/antidumping-developments/anti-dumping-research-paper.pdf.
[624] ITC, *Business Guide to Trade Remedies in Brazil: Anti-Dumping, Countervailing and Safeguard Legislation, Practices and Procedures* (Geneva: International Trade Centre, 2009), 210-325. See also, Gregory W. Bowman, Nick Covelli, David A. Gantz, and Ihn-Ho Uhm, "Antidumping and Countervailing Duty Law and Practice: The Mexican Experience," *Arizona Legal Studies*, no.10-10 (2010): 267-292. See also, D Bekker, "The Strategic Use of Antidumping in International Trade," S*outh African Journal of Economics* 74, no.3 (2006): 501 - 522.

whether the use of AD actions is in fact simply to prevent unfair trade. AD measures should only arise when a dumping incident occurs. Theoretically, AD measures are imposed in response to unfair trade.[625] Once such unfair trade practices happen, an importing country may take AD action against them. These measures are consistent with GATT and WTO regulations that guide the imposition of AD duties when dumped imports cause material injury to domestic firms.

Trends in AD activities did not directly identify instances of dumping or unfair trading practices. However, indirect evidence can prove the existence of such practices. For example, one would expect that exporting at unfairly low prices would result in significant import volumes and a sharp increase in imports.[626] If trading partners with such trends predominantly bring AD cases, this could be evidence of AD against unfair trade. AD actions are a potential response to these trade-distorting policies. Economists admit that AD is a trade-corrective measure.[627]

Meanwhile, dumping, by definition, is used against unfair trade practices only when the dumping is done with predatory intent, and is harmful to importing countries.[628] From an economists' perspective, the use of AD is justifiable when its purpose is to prevent predatory pricing. And, in economic terms, predatory pricing is when prices are used to help build or achieve monopoly power, restrict competition and injure consumers in the importing country. AD actions focus on this behavior of foreign exporters. AD patterns must be analyzed in detail to find the reasons underlying AD measures. A remarkable phenomenon was that one-fifth of AD filings were against non-market economies between 1980 and 2001. The rules for determining the existence of

[625] In theory, dumping is international price discrimination. The standard theory of AD relies on the existence of dumped products that are sold at a lower price than the price they sell for in their domestic market or than the importer's cost of production.

[626] Walter R. Keithly and Poudel Pawan, "The Southeast United StatesA. Shrimp Industry: Issues Related to Trade and Antidumping Duties," *Marine Resource Economics* 23, no.4 (2008): 459-483.

[627] Linda S. Goldberg et al., *Study Guide to Accompany International Economics: Theory and Policy, by Krugman and Obstfeld, Third Edition* (New York: HarperCollins, 1994), 35-76.

[628] Chad P. Bown and Rachel McCulloch, "Antidumping and Market Competition: Implications for Emerging Economies," *Robert Schuman Centre for Advanced Studies Research Paper*, no. RSCAS 2015/76 (2013): 11-30.
In these three publications, the authors explain that one should view AD actions separately in different situations. Once the dumping harms the interests of domestic suppliers, including all those involved in domestic supply, namely workers and managers, as well as the owners of capital in the importing countries, those importing countries should take AD actions against these kinds of "unfair practices".

dumping are different when the targeted country is in the non-market economy group.[629] In antitrust literature, economists view AD as a tool to promote and protect competition in international trade.

I. Economic Incentives

Studies have explained the reasons for some administrative protection behaviors. They tried to build a fundamental theory in this area from both the theoretical and empirical areas.[630] One of the earliest researchers focusing on AD actions was Feinberg. He used an empirical model to analyze the motivation behind AD filings.[631] Concerning economic incentives, the main aim is to find evidence that AD filings are against the largest suppliers (the "big suppliers" hypothesis) and against suppliers who have the highest percentage change in imports (the "import surge" hypothesis). This section will analyze macroeconomic factors like domestic and foreign Gross domestic product (GDP) growth as well as the real exchange rate to try to find the connection with AD filings.

1. The "Big Suppliers" and "Import Surge" Hypotheses

Before looking at the details of the "big suppliers" hypothesis, it must be mentioned that there is no precise definition of "big". Based on an analysis by Prusa and Skeath, "big" means suppliers who are larger than a specific cut-off percentile.[632] It means that a country might be a significant supplier during one year but not in other years. On the other hand, a country might only be an important supplier for one particular market. They used different import percentiles to show the percentage of AD filings by traditional and by new users. Table 9 shows the percentage of AD activity by "big suppliers" and "import surge" in different percentiles. Big suppliers were the most popular targets for both new users and traditional users. For example, if imports greater than 50 percent is taken to mean a big supplier. 25 percent of new users and almost 100 percent of

[629] Sherman Katz, "Tariffs Are the Wrong Way to Fight Unfair Trade Practices," *Harvard Business Review*, March 08, 2018, https://hbr.org/2018/03/tariffs-are-the-wrong-way-to-fight-unfair-trade-practices.
[630] Michael J. Finger, Keith H. Hall and Douglas R. Nelson, "The Political Economy of Administered Protection," *The American Economic Review* 72, no.3 (1982): 452-466.
[631] Robert M. Feinberg, "Exchange Rate and Unfair Trade," *The Review of Economics and Statistics* 71, no. 4 (1989): 704-707. See also, Hsiang-Hsi Liu and Teng-Kun Wang, "Antidumping, Exchange Rate and Strategic Price Competition by Staged Game," *Theoretical Economics Letters* 4, no.3 (2014): 197-209.
[632] Thomas J. Prusa and Susan Skeath, "Modern Commercial Policy: Managed Trade or Retaliation," in *Handbook of International Trade: Economic and Legal Analyses of Trade Policy and Institutions*, ed. Eun Kwan Choi and James Hartigan (Oxford, U.K.: Blackwell, 2005), 56-81.

traditional users filed AD cases against big suppliers. Compared to the significant supplier hypothesis, the percentage of countries filing AD petitions was much lower. When imports surged over the 50 percent, only around 50 percent of AD cases were filed against them. If we use the 75 percent cutoffs, the proportion of filings against suppliers whose imports have surged will dramatically decrease. Less than 6 percent of cases were filed against importers with surges above the 75 percent. Also, suppliers with import surges over the 90th percentile faced less than 1 percent of AD filings.

Table 9: Percentage of Economic Incentives on Anti-dumping Usage

Big Supplier Criterion	New Users	Traditional Users
Import >50%	96.25%	99.89%
Import >75%	90.12%	97.57%
Import Surge Criterion	New Users	Traditional Users
Import >50%	46.51%	58.37%
Import >75%	3.75%	6.64%

Source: From computations by Prusa and Skeath (2001)[633]

The statistics show that the "big suppliers" criterion is a more critical motivation for AD filings than the "import surge". However, this conclusion is not absolute. Import surges do not occur frequently with large suppliers because they already have a broad import base. Therefore, when the motivation behind the AD case is import surges, one must examine the total imports of such suppliers before reaching a conclusion. AD usage by both traditional and new users suggests that the big supplier hypothesis is justifiable. Meanwhile, import surges can also be a reason that traditional users file AD cases.[634] On the contrary, AD activity by new users has less correlation to import surges.[635]

2. GDP GROWTH AND EXCHANGE RATE

There are economic studies that have tried to measure the economic influences on AD actions, especially AD filings. The first research in this area came from Feinberg,[636] who analyzed the

[633] Prusa and Skeath, op.cit. 7-10.
[634] Joseph E. Stiglitz, "Dumping on Free Trade: The United States Import Trade Laws," *Southern Economic Journal* 64, no.2 (1997): 402-424.
[635] Jeffrey Kucik and Eric Reinhardt, "Does Flexibility Promote Cooperation? An Application to the Global Trade Regime," *International Organization* 62, no.3 (2008): 477-505.
[636] Feinberg, op.cit. 704-707.

relationship between exchange rate fluctuations and AD filings using data from the United States and its four main trade partners.[637] The premise exists that a country files an AD complaint to determine sales of imports at "less than fair value" (LTFV). Feinberg analyzed United States AD filings against four countries from 1982 to 1987. The result showed that a weakened United States dollar increases the number of AD filings. This research illustrates two critical theories. First, currency fluctuations have a more prominent influence on LTFV than on material injury. Second, the LTFV process is more susceptible to being proven. This implies that the exchange rate affects AD filings.

However, this result is inconsistent with another research by Knetter and Prusa, which implies that a weaker domestic currency will increase the number of AD filings.[638] Knetter and Prusa's research provided an economic analysis of AD filing trends for the four traditional countries. They focus on macroeconomic factors in general and fluctuations in the real exchange rate in particular to find how these factors can affect determinations. Theoretically, changes in the real exchange rate can increase or decrease filings based on an AD test that is most responsive to pricing changes.[639] After viewing the filings by traditional users against another 48 countries, they found a close relationship between domestic GDP growth and the number of AD filings. With domestic GDP growth or an appreciation of domestic currency, the number of filings also increases. Unlike domestic GDP growth, foreign GDP growth had no direct connection to the number of AD filings.[640] Knetter and Prusa found out that one standard deviation of real currency appreciation or GDP decline increased AD filings.[641] Moreover, they found a rise in AD cases related to an increase in value of the trade-weighted US dollar.[642]

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[637] Four trading partners: Japan, Brazil, Mexico and Korea.
[638] Michael M. Knetter and Thomas J. Prusa, "Macroeconomic Factors and Antidumping Filings: Evidence from Four Countries," *Journal of International Economics* 6, no.1 (2003): 1-17.
[639] Michael P. Leidy, "Macroeconomic Conditions and Pressures for Protection under Antidumping and Countervailing Duty Laws: Empirical Evidence from the United States," *International Monetary Fund Staff Papers* 44, no.1 (1997): 132-44.
[640] Knetter and Prusa, op.cit. 5-10.
[641] Ibid. Knetter and Prusa used binomial regression to test data from 1980 to 1998 to prove that decreases in GDP increase AD filings by 23 percent.
[642] Ibid.

Knetter and Prusa's study has an apparent conflict with Feinberg's study. They determined that once they had expanded the database to test the relationship between the exchange rate and AD filings, Feinberg's study became very sensitive. Feinberg reanalyzed his study in 2004 using a more extensive database. This time, he followed Prusa's study and made further findings. His research empirically believed that decreases in GDP or depreciations of domestic currency increased AD filings. By enlarging the time frame and increasing the number of subjects of AD filings, he found that petitions always increase with a real appreciation of the dollar.[643] It found an association between AD filings, domestic GDP growth, and real exchange rates. Later studies have supported these findings.[644]

All these studies rely on databases from select traditional users. No analysis focused on new users at that time. Following these studies, other studies expanded the research to new users by examining AD filings in different economic sectors. Prusa found that AD had was associated with fluctuations in both GDP and exchange rates.[645] First, he confirmed that AD filings would increase appreciation of the domestic currency. Second, he found out that the exchange rate impact was smaller for new users than for traditional users. Third, Prusa concluded that domestic GDP growth had a meaningful connection to AD filings. However, the impact is negatively significant. Also, he found that changes in import growth only influenced AD filings for new users and not for traditional users.[646]

Aggarwal expanded the scope of the macroeconomic factors and included not only exchange rates and GDP growth but also the growth rate of industrial value-added, average tariff rates, trade balance as a ratio of total trade, and the number of AD filings against reporting countries in the past. The result of this research showed that all the above factors had a significant effect on AD

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[643] Robert M. Feinberg, "United States Antidumping Enforcement and Macroeconomic Indicators Revisited: Do Petitioners Learn?" *Review of World Economics* 141, no.4 (2005): 612-622.
[644] Mustapha Sadni Jallab, René Sandretto and Robert M. Feinberg, "An Empirical Analysis of US and EU Antidumping Initiation and Decision," *Economics*, March 2005. See also, Bruce A. Blonigen, (2005), "The Effects of (CUSFTA and) NAFTA on Anti-dumping and Countervailing Duty Activity," *The World Bank Economic Review* 19, no.3 (2005): 407-424. See also, Bruce A. Blonigen, "Working the System: Firm Learning and the Anti-dumping Process," *European Journal of Political Economy* 22, (2006): 715-731.
[645] Thomas J. Prusa, "The Growing Problem of Antidumping Protection," in *International Trade in East Asia, NBER-East Asia Seminar on Economics, Volume 14*, ed. Takatoshi Ito and Andrew K. Rose (Chicago, IL: University of Chicago Press, 2005), 352-360, http://www.nber.org/chapters/c0198.
[646] Ibid.

filings for new users.[647] In contrast, only import growth and industrial value-added growth affected traditional users significantly. Both Prusa's and Aggarwal's studies indicate that the macroeconomic events that trigger AD filings are different depending on different levels of economic development. Furthermore, macroeconomic factors and the exchange rate are closely connected to AD filings.[648] They also further influence the success of AD decisions.[649]

3. Other Economic Reasons

Other studies focus on the domestic economy more than on external incentives because domestic factors may be more decisive for triggering AD activity. Several studies point out that the weak domestic economic conditions have an adverse effect on AD filings.[650] First, domestic economic conditions significantly influence AD activity. Unemployment and capacity utilization negatively influence demands for administrative protection.[651] For example, more AD filings occurred with high unemployment rates or low capacity utilization.[652] This trend can be seen often in countries like the United States and other traditional users like the EU, Canada, Australia, and new users like Korea.[653] These countries have experienced this tendency for a long time.[654] In large trading countries like the United States and the EU, unemployment results in frequent AD usage. Domestic

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[647] Aggarwal, op.cit. 18-21.

[648] Mustapha SadniJallab, René Sandretto, Monnet Gbakou, "Antidumping Procedures and Macroeconomic Factors: A Comparison between the United States and the European Union," *Global Economy Journal* 6, no.3 (2006): 22-28.

[649] Gunnar Niels and Joseph Francois, "Business Cycles, the Exchange Rate, and Demand for Antidumping Protection in Mexico," *Review of Development Economics* 10, no.3 (2006): 388-399. This article uses Mexico as an example to determine the influence of macroeconomic forces upon the likelihood of AD activities, both filings and decisions. This outcome matches previous research by Feinberg that found that macroeconomic factors are closely related to AD activities.

[650] William R. Cline, (1989), "Macroeconomic Influences on Trade Policy," *American Economic Review* 79, no.2 (1989): 123-127.

[651] Wendy E. Takacs, "Pressures for protectionism: An empirical analysis," *Economic Inquiry* 19, no.4 (1981): 687-693.

[652] José Antonio Cheibub, Jennifer Gandhi and James Raymond Vreeland, "Democracy and dictatorship revisited," *Public Choice* 143, no.1-2 (2010): 67-101. See also, Michael P. Leidy, "Macroeconomic conditions and pressures for protection under Antidumping and countervailing duty laws: Empirical evidence from the United States," *International Monetary Fund Staff Papers* 44, no.1 (1997): 132-144.

[653] Saad Ahmad, Lauren Gamache and Craig Thomsen, "Can Macroeconomic Factors Predict Antidumping Filings in the United States?" *Office of Economics Working Paper 2018-10-A,* October 2018, https://www.usitc.gov/publications/332/working_papers/ecwp-2018-10-a.pdf.

[654] Bettina Becker and Martin Theuringer, "Macroeconomic determinants of contingent protection: The case of the European Union," *Zeitschrift für Wirtschaftspolitik (Lucius & Lucius, Stuttgart)* 50, no.3 (2000): 350-370. Actually, the conclusions of this paper find, similarly to prior research on the United States, that domestic macroeconomic conditions have a more significant effect on pressures for seeking contingent protections.

economic conditions are closely connected to the frequency of AD actions.[655] This illustrates that the aim of AD actions can be protection of the domestic economy, considering that the infirmity of domestic firms means countries react to the behavior of foreign firms.[656] Meanwhile, authorities can quickly find injury due to uncertain domestic economic conditions, providing more foundations for establishing AD investigations.

Besides economic and strategic considerations, some studies focused on pattern factors like tariff patterns, trade patterns.[657] Many studies mention that increased AD actions might be as a replacement for tariff liberalization.[658] Feinberg and Reynolds found that tariff reductions under the Uruguay Round had a significant impact on the increasing number of AD filings, especially in developing countries.[659] Once a developing country accepts tariff reductions under the Uruguay Round, they prefer to increase their AD activity to protect their domestic industry. However, the promise of tariff reductions negatively impacts AD investigation initiations amongst traditional users.[660] Other studies focused on the impact of trade patterns on AD activity, including both import and export patterns.[661] These studies found that import penetration is positively related to the number of AD activities. After viewing the trend of AD targeted sectors, researchers find that AD often targets research and development (R&D) intensive industries such as the metal, chemical, electronic, and mechanical engineering sectors.[662] Currently, more AD actions are occurring in the R&D sector.[663] R&D and innovation patterns would also lead countries to initiate more AD

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[655] Norbert Funke, "Trends in protectionism: Anti-dumping and trade related investment measures," *Intereconomics* 29, no.5 (1994): 219-225.
[656] Knetter and Prusa, op.cit. 4-7.
[657] Brink Lindsey, "Coming Home to Roost: Proliferating Antidumping Laws and the Growing Threat to U. S. Exports, CATO Institute, *Trade Policy Analysis*, no.14 (2001), https://www.cato.org/publications/trade-policy-analysis/coming-home-roost-proliferating-antidumping-laws-growing-threat-us-exports.
[658] Hiroshi Mukunoki, "Trade liberalization and incentives to implement antidumping protection," *International Review of Economics & Finance* 72, (2021): 422-437.
[659] Robert M. Feinberg and Kara M. Reynolds, "Tariff Liberalization and Increased Administrative Protection: Is There a Quid Pro Quo?" *The World Economy* 30, no.6 (2007): 948-961.
[660] With long-time experience of using AD as a protection method before the Uruguay Round, traditional users viewed tariff reductions not as an exception that needs extra protection from AD activity.
[661] Jai S. Mah, "Antidumping Decisions and Macroeconomic Variables in the USA," *Applied Economics* 32, no.2 (2000): 1701-1709.
[662] Gunnar Niels, "What is antidumping policy really about?" *Journal of Economic Surveys* 14, no.4 (2000): 465-492, https://onlinelibrary.wiley.com/doi/pdf/10.1111/1467-6419.00118.
[663] Kuo-Feng Kao and Cheng-Hau Peng, "Antidumping Protection, Price Undertaking and Product Innovation," *International Review of Economics and Finance* 41, (2016): 53-64. See also, Kaz Miyagiwa, Huasheng Song and Hylke Vandenbussche, "Accounting for Stylised Facts about Recent Anti-dumping: Retaliation and Innovation," *The World Economy* 39, no.2 (2016): 221-235.

measures. Further, the spread of AD activity frequently influences investment in R&D. When a single country implements AD actions, the protected firm reduces its investment in R&D because the targeted firm raises its R&D level.[664] After AD use spreads to other countries, newly protected firms reduce R&D levels according to other firms' increased use of AD actions.[665] However, both firms' investments in R&D suffer more compared to under free trade. In other words, AD protection has an impact on a firm's incentive to invest in R&D.[666]

II. Strategic Motivation

In recent years, the boundaries seem to have become blurred between administrative protection and trade restrictions. Therefore, besides the economic factors, strategic motivations are becoming an essential subject for economic research. This part will focus on the "club effect hypothesis", "retaliation" motives, and the "echoing AD hypothesis", which are factors that have been well-determined factors by economists based on extensive data and cases. The analysis in this section includes AD filing trends for both traditional users and new users.

1. Club Effect

The first definition of the "club effect" comes from Finger when he researched patterns of AD usage. He mentioned that countries that had used AD activities were gathered into a so-called "club".[667] When countries seek to file an AD petition, they prefer to choose targets that are already club members rather than others outside the club. AD filings throughout the 1980s show that the preferred targets of AD filings are countries that also use AD activity. Under the club effect hypothesis, if a country has previously used AD, it is easier for that country to become a target than other countries who have never used AD before. There is strong support for the club effect hypothesis in AD filing trends. Over 80 percent of AD filings by new users choose club members as targets between the 1980s and 1990s.[668] Although the club effect hypothesis is fully supported

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[664] Kazuharu Kiyono, "An Analysis of Antidumping Policies in World Markets for High Technology Products," in *The Political Economy of Trade Conflicts The Management of Trade Relations in the US-EU-Japan Triad*, ed. Franz Waldenberger (Berlin: Springer, 1994), 46-65.
[665] Shenxiang Xie, Mingxin Zhang and Shenglong Liu, "The Impact of Antidumping on the R&D of Export Firms: Evidence from China," E*merging Markets Finance and Trade* 56, no.9 (2020): 1897-1924.
[666] Xiwang Gao and Kaz Miyagiw, "Antidumping protection and R&D Competition," *Canadian Journal of Economics* 38, (2005): 221-227.
[667] James D. Reitzes, "Antidumping Policy," *International Economic Review* 34, no.4 (1993): 745-763.
[668] This analysis is based on the database in the above chart on AD targets.

by the patterns of AD filings, there are differences between traditional users and new users. 87 percent of annual AD filings by traditional users are consistent with the club hypothesis, while only 38 percent of filings from new users are.[669]

2. RETALIATION

Studies by a number of economists contain systematic research confirming the existence of retaliatory motives when countries implement AD activities. Finger mentioned that one of the causes for initiating AD cases might be retaliation.[670] With analysis from Miranda and the United States Congressional Budget Office (CBO), they first documented an increasing number of new users of AD activity. Miranda suggested that developing countries may benefit from the proliferation of AD filings.[671] The CBO paper further confirms the possibility of Miranda's hypothesis and acknowledged that the spread of AD activities might lead to the possible appearance of retaliatory AD actions between countries. Lindsay and Ikenson emphasized that new users gradually became a threat to United States interests. They saw that new users began using AD to protect domestic industries from competition with foreign competitors.[672] Prusa focuses on how United States AD affects trade flows. He also mentioned there are strategic incentives when governments begin to implement AD legislation.[673]

Blonigen and Bown found evidence to support retaliatory incentives among developed countries by using a trigger price model. This model showed that countries would file AD cases to prevent the target country's AD activity.[674] Francois and Niels stated that the purpose of AD activity by new users was to retaliate against countries once the latter chose them as targets.[675] For example,

[669] GATT/WTO, Statistic of Anti-dumping.
[670] Michael J. Finger, "The Industry-Country Incidence of 'Less than Fair Value' Cases in US Import Trade," in *Export Diversification and the New Protectionism: The Experience of Latin America,* ed. Werner Baer and Malcolm Gillis (Bureau of Economic and Business Research, University of Illinois at Urbana-Champaign, 1981), 260-279.
[671] Miranda and Ruiz, op.cit. 20-25.
[672] Brink Lindsey and Daniel J. Ikenson, "Antidumping 101: The Devilish Details of 'Unfair Trade, Law," *Trade Policy Analysis*, no.20 (2001), https://www.cato.org/publications/trade-policy-analysis/antidumping-101-devilish-details-unfair-trade-law.
[673] Thomas J. Prusa, "On the spread and impact of anti-dumping," *Canadian Journal of Economics* 34, no.3 (2001): 591-611.
[674] Blonigen and Bown, op.cit. 255-267. For example, US duties against steel industry products from Canada followed by Canadian cases against like product from the US in 1992 and 1993.
[675] Joseph F. Francois and Gunnar Niels, "Political Influence in a New Antidumping Regime: Evidence from Mexico," *CEPR Discussion Papers* 4297, (2004):1-13. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=516081.

Indian AD investigations against steel products from Canada in 2002 began following investigations of similar products by Canadian AD authorities.[676]

Prusa and Skeath first denied the hypothesis that increased AD usage was based only on increasing unfair trade and proposed that retaliatory incentives triggered the use of AD activity. They then emphasized a "tit for tat" motivation for AD action existing in both developed and developing countries by analyzing patterns of AD usage from 1980 to 1998. They found that the motivation behind almost 70 percent of AD actions by traditional users was retaliation. However, only 30 percent of new users filed AD cases with retaliatory incentives.[677]

Feinberg and Reynolds[678] expanded on previous research into patterns of retaliation. They first confirmed that retaliation contributed to an outstanding share of AD cases. However, patterns of retaliation are a little bit different between traditional users and new users. When the targets include all countries, the retaliation effect is evident and active. However, if the targets are only traditional users, the retaliation effect is not favorable, although there is still a significant number of AD activities. It illustrates that the retaliation incentive is far more significant for new users.[679] Also, they confirmed research by Bown and Crowley that the spread of AD usage could lead to trade deflections by expanding into broader industry categories.[680]

In general, retaliation means a country files AD cases because target countries have previously investigated it. Governments impose AD duties to retaliate against AD duties on their exporters. These are retaliatory incentives for AD activity. For example, if the EU has chosen Mexico as a target for AD filings prior to 1990, Mexico may be more likely to file a case against the EU than against other countries that had not previously investigated it.[681]

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[676] Feinberg and Reynolds, op.cit. 955-957.
[677] Gao and Miyagiw, op.cit. 221-225.
[678] Robert M. Feinberg and Kara M Reynolds, "The Spread of Antidumping Regimes and the Role of Retaliation in Filings," *Southern Economic Journal* 72, no.4 (2006): 15-27, https://ssrn.com/abstract=614864.
[679] Ibid.
[680] Chad P. Bown and Meredith A. Crowley, "Trade deflection and trade depression," *Journal of International Economics* 72, no.1 (2007): 176-201. They use US AD activity as an example and found that AD activity will deflect exports from Japan. It means US AD activity can trigger a substantial export surge to a third country's market. They found clear evidence to determine that AD usage leads to significant distortions in trade flows.
[681] However, EU and Mexico have signed trade agreement since 2000. This agreement has brought man trade benefits to the EU and Mexico. Hence, there was almost no case in the WTO relating anti-dumping between EU and Mexico.

The retaliation incentive shows the flexibility of countries when filing AD petitions. Countries could choose to file AD petitions against former users to compensate for previous AD duties.[682] An unusual situation exists wherein new users are heavier users of retaliation incentives than traditional users. Furthermore, countries prefer to choose essential trading partners, who are already heavy AD users, as targets. On the one hand, traditional users more likely to target new users to protect themselves from the trade deflection effect. On the other hand, new users focus on traditional users because of trade surges.[683] Furthermore, countries who initiate AD actions on other countries for retaliation purposes prove that the targeted countries' market is crucial to the initiating countries' exporters. Only under this situation could retaliation be useful.[684] Higher retaliation capacities arise when one country has many imports from a trading partner that it can threaten to take away.[685] There is a lot of research that has found that once AD activity is initiated with a retaliatory purpose, it can dampen AD behaviors worldwide.[686] With the spread of AD use, there are more opportunities for retaliatory AD actions. Retaliatory AD actions may be more popular compared to legal disputes because they are quick and can offer petitioners direct and specific benefits.[687]

It is clear that the increasing trend of AD activity is inevitable. The more AD actions are used, the more focus will be placed on AD rules. As these laws are imprecise, countries may desire to reform them. If China's use of AD actions as a protectionist instrument continues increasing, how should the United States and EU react? At present, the U United States S and EU still benefit and even gain advantages from international legal criteria. However, in time, these benefits may transfer to

682 Kyle Bagwell and Robert W. Staiger, *Handbook of Commercial Policy* (Amsterdam: Elsevier North-Holland, 2016), 107-159.

683 Wissam Aoun, "Constructivism, Embedded Liberalism and Anti-Dumping Canadian Public Interest Query as Case Study of Embedded Liberalism," *Canada-United States Law Journal* 41, no.1 (2017): 18-45.

684 Michael O. Moore and Mark Wu, "Antidumping and Strategic Industrial Policy: Tit-for-Tat Trade Remedies and the China – X-Ray Equipment Dispute," *World Trade Review* 14, no.2 (2015): 239-286. A firm that implements AD action against a competitor in its home market, is trying to offset losses from its exports abroad that suffer from AD duties. Only when these losses are sufficient can firms ask their government to look for an alternative remedy.

685 Douglas A. Irwin, "Did Late-Nineteenth-Century United States Tariffs Promote Infant Industries? Evidence from the Tinplate Industry," *The Journal of Economic History* 60, no.2 (2012): 335-360.

686 Michael O. Moore and Maurizio Zanardi, "Trade Liberalization and Antidumping: Is There a Substitution Effect?" *Review of Development Economics* 15, no.4 (2011): 601-619.

687 Bown and Corwley, op.cit. 177-180.

other frequent users, like China. Before this happens, the United States and EU may push to reform the ADA to prevent such a possibility.

3. Echoing Anti-dumping

Muar first defined "echoing" as those events wherein different importing countries target similar products from the same exporting country. Muar's research specifically focuses on the connection between AD filings and particular industries across countries. He concludes that there are three reasons why echoing AD happens. First, multinational enterprises monitor AD initiations. Second, echoing AD is triggered with the purpose of trade protection. Third, the proliferation of imitation leads to an echoing behavior.[688] In recent research, Tabakis and Zanardi followed Maur's foundations and expanded the research into AD measures. They determine that echoing AD is widespread nowadays in both developed and developing countries. From their research, political motivation is necessary for applying echoing AD measures to the importer, whose product competes with domestic products and industries. Also, they summarize that traditional users and new users behave differently. Traditional users only react to new users' actions. However, new users will implement echoing AD measures in both country groups.[689]

III. A Weapon of Protectionism

1. Theory and History

The removal of non-tariff barriers did not occur with tariff reductions beginning in 1980.[690] Instead, pressure for non-tariff protections has increased as tariffs have ceased to be a useful tool for industrial countries to block imports, and governments have continued to move in the direction of trade regulation.[691] The AD system gains less support from economists because it lacks plausible

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[688] Jean-Christophe Maur, "Echoing Anti-dumping Cases: Regulatory Competitors, Imitation and Cascading Protection," *World Competition* 21, no.6 (1998): 14-23. https://ssrn.com/abstract=149775.

[689] Chrysostomos Tabakis and Maurizio Zanardi, "Antidumping Echoing," *Economic Inquiry* 55, no.2 (2016):24-26.

[690] Juergen B. Dognes, "Whither international trade policies? Worries about continuing protectionism," *Kieler Diskussionsbeiträge*, no.125 (1986): 3-21.

[691] Jeffrey A. Hart, "Interdependence and Increased Competition among the Industrialised Countries: Implications for the Developing World," *Transformations in the Global Political Economy*, (January 1990): 94-126. See also, M. Shafaeddin, "Trade Liberalization, Industrialization and Development: Experience of recent decades," *TWN Trade & Development Series* 40, (2010): 10-18. See also, UNCTAD, "Trade and Development Report, 1981-2011: Three Decades of Thinking Development," (2012). Given the severe economic recession throughout the OECD countries in the early 1980s, the temptation for industrialized governments to move down the protectionist path must have been great. In Western Europe, growth was slow and unemployment remained stubbornly high. By early 1985, the dollar

foundations for its theoretical economic purpose. However, economic pressure is one of the main reasons that leads to AD activity.[692] Besides the economic motivations, political pressure is similarly significant when analyzing the exhaustive reasons for AD use.[693] Accordingly, many studies focus on the political reasons that might drive AD.[694] The theory of AD as a device for protection exists since the very establishment of the AD system.[695] Plenty of researchers have emphasized that AD filings and investigations are closely associated with protectionist aims. Unlike the retaliation motive above, which focuses on individual exporters or particular products that once brought AD actions against petitioners, protectionism commonly and frequently underlies AD activity.[696] Firms quickly seek to use AD actions in international competition against imports. Since the 1980s, a rising need for administrative protection drove an increase in AD activities. Therefore, this section will analyze the theory of AD use as a protectionist device separate from other reasons leading to AD activity. The legalistic approach explains AD as an instrument to overcome unfair trade. From this perspective, the use of AD could initially enhance welfare when foreign firms use predatory prices as a strategy to hurt their competitors. However, they then increase prices if they achieve a monopoly. Very few scholars support the theory nowadays that this kind of dumping could happen. The majority of researchers illustrate that AD is used in reality for protection.[697]

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had risen sharply in real terms. Exporters from Japan and some newly industrial countries were becoming more competitive.

[692] Patricia Wruuck, *The Political Economy of Anti-Dumping Protection: a Strategic Analysis* (Cham: Springer, 2015), 36-70. See also, Luisa Kinzius, Alexander Sandkamp and Erdal Yalcin, "Global trade protection and the role of non-tariff barriers," *CESifo Working Paper*, no.7419 (2019): 1-40, https://voxeu.org/article/global-trade-protection-and-role-non-tariff-barriers.

[693] Julio J. Nogués and Elías Baracat, "Political Economy of Antidumping and Safeguards in Argentina," World Bank, *Policy Research Working Paper*, no.3587 (2005): 1-40. See also, Douglas Nelson, "The Political Economy of Antidumping: A survey," *European Journal of Political Economy* 22, no.3 (2006): 554-590.

[694] Judith Goldstein and Lisa L. Martin, "Legalization, trade liberalization, and domestic politics: A cautionary note," *International Organization* 54, no.3 (2000): 603-632.

[695] Wendy L. Hansen, "The International Trade Commission and the Politics of Protectionism," *The American Political Science Review* 84, no.1 (1990): 21-46. See also, Michael O. Moore, "Rules or Politics? An Empirical Analysis of ITC Anti-dumping Decisions," *Economic Inquiry* 30, no.3 (1992): 449-466. See also, Wendy L. Hansen and Thomas J. Prusa, "The Economics and Politics of Trade Policy: An Empirical Analysis of ITC Decision Making," *Review of International Economics* 5, (1997): 230-245.

[696] Raymond Vernon, "Trade Policy in the 1980s: An Overview," *International Studies Quarterly* 26, no.4 (1982): 483-510.

[697] Bruce Gregory Arnold, *How the GATT Affects United States Antidumping and Countervailing-Duty Policy* (Washington, D.C.: Congress of the United States, Congressional Budget Office, 1994), 5-60.

Initially, the four traditional users used AD actions as a primary instrument in their trade policy to protect their domestic markets.[698] After 1990, more new users joined the AD user club. Governments looked to alternative methods to restrict trade after GATT and the ADA limited the use of traditional forms of import protection. The use of AD measures is on the rise because there is a lack of other options to protect Members' home markets within the WTO free trade system.[699] Usually, AD measures are aimed at protecting domestic producers against competition from unfairly cheaper imports that foreign firms dump on their domestic markets. However, with the reduction of tariffs and given the frequent use of AD measures, the trade literature has begun treating AD as a weapon of the industry against exporters to help counter the pressure from increasing import competition.[700] In economic theory, AD duties are simply a form of import tariffs. Import tariffs affect competition in the marketplace because its function is to decrease demand for the domestic product.[701]

From a political economy perspective, AD is only used as a tool of protectionism. This protection provides countries the possibility of using tariff-reduction obligations on industries that receive significant injuries from imports.[702] The premise that free trade does not bring unambiguous gains to all sections of the society, implies that some benefit while others lose.[703] Protectionist pressures appear when those that gain cannot compensate those that lose. In principle, the purpose of AD actions should only be to counter unfair trade practices. However, along with the intent to reduce

[698] Gary N. Horlick and Geoffrey D. Oliver, "Antidumping and Countervailing Duty Law Provisions of the Omnibus Trade and Competitiveness Act of 1988," *Journal of World Trade* 23, no.3 (1989): 5-49. In this article, the authors state, "AD as a trade remedy becomes the first choice for seeking protection from imports into the United States". See also, Angelika Eymann and Ludger Schuknecht, "Antidumping policy in the European Community: Political Discretion or Technical Determination," *Economics & Politics* 8, no.2 (1996):111-131. However, the EC used different AD procedures. The result is the same as for the US. The US applies protectionist rules and the EC applies protectionist discretion. Australia occupied the first place of active AD users in the mid-1980s and kept using AD measures regularly in the following years. Canada has used AD as a main trade remedy for almost a century.

[699] Gene M. Grossman and Elhanan Helpman, "Protection for Sale," *The American Economic Review* 84, no.4 (1994): 833-850.

[700] Blonigen and Prusa, op.cit. 21-27.

[701] Robert C. Feenstra, *Advanced International Trade: Theory and Evidence* (Princeton, NJ.: Princeton University Press, 2016), 26-78.

[702] Kyle Bagwell and Robert W. Staiger, "Protection and the Business Cycle," *The B.E. Journal of Economic Analysis and Policy* 3, no.1 (2003): 1-45.

[703] Reinhard Schumacher, "Free Trade and Absolute and Comparative Advantage a Critical Comparison of Two Major Theories of International Trade," *WeltTrends Thesis* I6, (2012): 13-35. https://publishup.uni-potsdam.de/opus4-ubp/frontdoor/deliver/index/docId/6086/file/wtthesis16.pdf.

tariffs and being bound by GATT and the WTO, the function of AD has changed to that of a non-traditional protectionist instrument.[704]

For example, around 68 percent of AD investigations launched between 1998 and 2001 in the EU had problematic economic foundations. This meant that investigations were triggered without economic justification. The statistic for United States AD investigations was around 75 percent.[705] As primary and traditional users at that time, the percentage of AD investigations initiated by the EU[706] and the United States [707] indicate that the purpose of initiating AD investigation is not as a measure against unfair trade. Also, AD actions have spread from a few representative users to nearly all WTO Members, almost 60 different nations.[708] Moreover, some research has found the existence of retaliatory motives, showing that AD investigations play a significant role in the trade war.[709]

Mostly, the purpose of AD measures is to encourage foreign exporters to increase the price of export products. The use of AD illustrates its similarities to other trade barriers and the effects of the economic conditions and political economy determinants show similarities between AD proceedings and traditional protections. There is also evidence showing that AD provides private gains to petitioning companies. Scholars have pointed out that trade protections will increase, especially during challenging economic times.[710] The trend of AD actions shows apparent connections between AD actions and economic difficulties. It illustrates the existence of protectionism. First, with the global economic downturn, there was a steady increase in AD use—

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[704] Devashish Mitra, "The Political Economy of Trade Policy Theory, Evidence and Applications," *World Scientific Studies in International Economics* 51, (2016): 300.
[705] Mustapha Sadni Jallab and James B. Kobak, Jr., "Antidumping as Anticompetitive Practice Evidence from the United States and the European Union," *Journal of Industry, Competition and Trade* 6, no.3-4 (2006): 253-275.
[706] Brian Hindley, "Antidumping policy in the EU A comment to the Green Paper on trade defence instruments," *ECCIPE Policy Brief*, no.03 (2007): 1-11.
[707] Minsoo Lee, Donghyun Park, and Aibo Cui, "Invisible Trade Barriers: Trade Effects of US Antidumping Actions Against the People's Republic of China," *ADB Economics Working Paper Series*, no.378 (2013): 1-21.
[708] P. K. M. Tharakan, "Is Anti-dumping here to stay?*" The World Economy* 22, no.2 (1999): 179-206.
[709] Alberto Martin and Wouter Vergote, "On the role of retaliation in trade agreements," *Journal of International Economics* 76, (2008): 61-77.
[710] John Mark Hanse, "Taxation and the Political Economy of the Tariff," *International Organization* 44, no.4 (1990): 527-551.

previous economic slowdowns since the 1980s related to an increasing number of AD actions.[711] Industries do choose to select AD as a weapon of protection, especially when the economy is undergoing difficult times.[712]

Most recently, there is evidence to show that AD usage increased after the financial crisis in 2008. The financial crisis in 2007 triggered a debate about increasing protectionism, which including the effect of AD measures. This debate led to systematic data collection to show the trend in AD actions.[713] The GTA database collects data on protectionist policies.[714] AD investigations jumped 35 percent in 2008 compared to 2007.[715] In early 2009 this number increased by nearly another 20 percent. Also, the increase in AD investigations resulted in more AD duties imposed. There was a growing trend of investigations that ended with the imposition of AD duties by the end of 2009.[716] This tendency showed that authorities were not applying much scrutiny on a national level because of increasing unemployment. During the recent financial crisis, increasing use of protectionist

[711] WTO Annual Report 2009. Former economic contractions include the bursting of the dotcom bubble, the economic slowdown after 9/11, the Asian financial crisis from 1997 to 1998, the economic recession during the Iraq war from 1991 to 1992 and the debt crisis from 1980 to 1982.

[712] Bruce Yandle and Elizabeth M. Young, "Dumping, Anti-dumping and Efficiency," *Economics*, no.IDP-10 (1987): 3-25.

[713] There are different databases for collecting data on AD measures. For example, the Trade Analysis Information System database, NTM business surveys and the Integrated Trade Intelligence Portal (I-TIP) database. These databases are representative collections of non-tariff barriers and trade defense since the financial crisis.

[714] This database is an initiative of the Centre for Economic Policy Research (CEPR). It is based in London and coordinated by a research team in St. Gallen. It collects protectionist policies implemented worldwide since 2009. A recent comprehensive update was in July 2017. It includes a complete scale of non-tariff barriers. This database covers a total of forty-four different protectionist measures that can affect trade in goods. These include standard trade policies, trade defense measures and non-tariff barriers. It provides sufficient and detailed assessment of trade defense measures, and take AD actions as a significant research object. Until July 2017, the GTA database had recorded over 6,800 protectionist interventions. https://www.globaltradealert.org/latest/state-acts.

This research also uses other databases from the WTO, United Nations Conference on Trade and Development (UNCTAD), the International Trade Center (ITC) and the World Bank. The GTA database is based on non-official government notifications. GTA researchers systematically monitor official government websites and other official sources to depict all policy changes that potentially affect trade. It evaluates whether the policy discriminates against foreign exporters to the benefit of domestic producers. The GTA database reveals when protectionist measures are implemented between two trade partners. It makes very timely data available.

[715] Richard Newfarmer and Elisa Gamberoni, "Trade protection: Incipient but worrisome trends," *Vox EU CEPR,* 04 March 2009, https://voxeu.org/article/tradeprotectionincipientworrisometrends#:~:text=Trade%20protection%20is%20on%20the,beginning%20of%20the%20financial%20crisis. See also, Chad P. Bown, *Self-Enforcing Trade: Developing Countries and WTO Dispute Settlement* (Washington, D.C.: The Brookings Institution, 2009), 26-47. See also, Louise Johannesson, "Supporting Developing Countries in WTO Dispute Settlement," *IFN Working Paper*, no.1120 (2016):15-30.

[716] Nakgyoon Choi, "Economic Effects of Anti-Dumping Duties: Protectionist Measures or Trade Remedies?" *KIEP Research Paper*, no.16-13, 2017, https://ssrn.com/abstract=2916049.

measures was not unexpected.[717] Many scholars predicted that the recent financial crisis would trigger more AD protections. Protectionist tendencies during the great recession of 2008 were very rare.[718] Foreign exporters might pay more attention to regulating export prices considering future AD investigations or even the threat of potential AD investigations and the cost of AD protections. What is the cost of AD protection? What is its impact on countries?

The cost of AD protection is very high in two areas. First, it is difficult for countries to restrain AD use once AD petitions have been brought. A country may benefit from interpreting GATT/WTO standards if they want to protect a specific industry. This behavior encourages other industries to seek similar protections from the WTO.[719] Domestic suppliers prefer AD measures because it provides them with protection without complicated procedures for giving evidence of injury or price practices. Second, AD duties are always very high compared to MFN tariffs. Typically, AD duties are ten to twenty times higher than MFN tariffs. AD protectionism has an enormous impact on trade in this area. AD imposes massive costs not only on implementing countries but also on affected countries.[720] On the one hand, the United States and the EU mainly have costs during the implementation of AD measures. On the other hand, more than 50 percent of trade from affected countries fell once authorities decided to impose AD duties.[721] Second, AD actions can mitigate price competition to some extent. Although exporters make efforts to prevent AD action, the possibility an AD investigation will be initiated still exists. For example, an exporter sells a product for the same price worldwide, but exchange rate fluctuations can make the price

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[717] Chad P. Bown and Meredith A. Crowley, "Self-enforcing trade agreements: Evidence from Antidumping policy," *The American Economic Review* 103, no.2 (2011): 1071-1090, https://www.jstor.org/stable/23469692.

[718] Andrew Rose, "Protectionism isn't countercyclical (anymore)," *VOX EU CEPR*, 27 April 2012, http://voxeu.org/article/protectionism-isn-t-countercyclical-anymore. See also, Hiau Looi Kee, Cristina Neagu, and Alessandro Nicita, "Is Protectionism on the Rise? Assessing National Trade Policies during the Crisis of 2008," *Review of Economics and Statistics* 95. no.1 (2011): 342-346.

[719] Gisele Kapterian, "A Critique of the WTO Jurisprudence on 'Necessity'," *The International and Comparative Law Quarterly 59*, no.1 (2010): 89-127, http://www.jstor.org/stable/25622271.

[720] Michael P. Gallaway, Bruce A. Bonigen, and Joseph E. Flynn, "Welfare costs of the United States Antidumping and countervailing duty laws," *Journal of International Economics* 49, no.2 (1999): 211-244. Their analysis is on the welfare costs of US AD law. They found that AD orders caused almost four billion dollars in economic welfare costs to the United States economy in 1993. This estimate of welfare costs from AD laws is much higher than any other United States import restraint program in 1993 except the Multifiber Arrangement. They determined that welfare costs from AD orders would increase.

[721] Robert W. Staiger and Frank A. Wolak, "Differences in the Uses and Effects of Antidumping Law across Import Sources," *in The Political Economy of American Trade Policy, ed. Anne O.Krueger (* Chicago, IL: University of Chicago Press, 1996), 358-422.

seem lower than the price in some domestic markets.[722] Even though there are fluctuations in the use of AD measures, in the most recent two decades, AD usage trends are still on the rise.

Moreover, AD is favored by policymakers because of its flexibility and ease of initiation.[723] According to different interpretations of AD rules, AD measures can be started quickly under many different circumstances. It makes the list of AD users expand rapidly. The AD club is no longer exclusive. It currently includes Members from every corner of the world and different income levels. With spreading AD use, the traditional users' position has become drastically eroded.

Nevertheless, there is an interesting phenomenon among certain Asia-Pacific countries like the People's Republic of China, South Korea, and India as one of the traditional targets of AD protectionism. During the 1980s Asia-Pacific countries dealt with 30 to 40 percent of AD actions from traditional users.[724] Whether the spread of AD protection changed the position of countries or not, proliferation makes no change in this pattern. The Asia-Pacific countries still dealt with over 40 percent of all AD actions.[725] The only difference is that the initiators of AD actions included both traditional and new users. The AD club is becoming more crowded than it was ever before.

It is convenient in many ways for firms to file or initiate AD actions. To some extent, it increases their chances of protection. First, existing rules provide ample room for interpretation and application. For example, Article VI allows that when the prices of products in the export market are lower, price discrimination exists between the exporter's home market and the export market. However, price differences between the home and foreign market could only show the elasticities of demand between the domestic and foreign markets. There is no evidence that this directly implies unfair trading practices.[726] The definition of dumping does not differentiate between actual

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[722] Robert W. McGee, "The Case to Repeal the Antidumping Laws," *Northwestern Journal of International Law & Business* 13, no.3 (1993): 491-562.
[723] Jürgen Zattler, "Trade policy in developing countries: A new trade policy consensus?" *Intereconomics* 31, no.5 (1996) : 229-236, http://dx.doi.org/10.1007/BF02927154.
[724] GATT Statistic of antidumping.
[725] Ibid.
[726] J. Michael Finger and Andrei Zlate. "Antidumping: Prospects for Discipline from the Doha Negotiations," *The Journal of World Investment & Trade* 6, (2005): 531-548.

predatory cases and other pricing strategies that are not detrimental to fair trade according to economists.[727] Economists estimate that the amount of predation in the United States is less than five percent even for the two most frequent traditional users, the EU and the United States.[728] However, AD activities never stop the world from turning. Also, macroeconomic fluctuations influence the use of AD in emerging economies. Political economy factors play a significant role in AD protectionism alongside the increasing use of AD activity. Several studies point out the "political clout" of industries. For example, the degree of a nation's openness shows off its foreign policy goals as well as its power in the world.[729] A nation pursues protection when its global power faces threats. Notably, political factors have a greater effect during the AD investigation phase.[730]

Given the available data from the United States on AD activities,[731] it seems at least plausible to assume that political influence is not absent from the process in other parts of the world. In United States AD investigation processes, if industries from different districts have Members on the relevant committees overseeing the work of the United States International Trade Commission (USITC), which has the authority to decide dumping injuries, these industries tend to have more possibilities of receiving a favorable decision.[732] Several studies have further proved that this is especially true for industries located in particular constituencies the representative of which chairs the Ways and Means Committee, and who can decide the USITC budget.[733] The financial contributions of petitioning industries to committee Members also have an effect, and makes them more successful at receiving an injury decision. This is evidence that AD is similar to other forms

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[727] Reinhilde Veugelers and Hylke Vandenbussche, "European Antidumping policy and the profitability of national and international collusion," *European Economic Review* 43, no.1 (1996): 1-28.
[728] Reiner Muenker, "Enforcement of unfair competition and consumer protection laws by a private business associationin Germany: the Wettbewerbszentrale," *Journal of Intellectual Property Law & Practice*, April 26, (2015):1-7, https://www.wettbewerbszentrale.de/media/getlivedoc.aspx?id=35283.
[729] Robert O. Keohane, *International Institutions and State Power: Essays in International Relations Theory* (Boulder: Westview Press, 1989), 16-45. See also, Stephen D. Krasner, *Defending the National Interest: Raw Materials Investments and United States Foreign Policy* (Princeton, NJ.: Princeton University Press, 1978), 12-48.
[730] C. Krupp, "Anti-dumping cases in the US chemical industry: A panel data approach," *The Journal of Industrial Economics* 42, no.3 (1994): 299-311. See also, Jeffrey M. Drope, and Wendy L. Hansen, "Purchasing protection? The effect of political spending on US trade policy," Political Research Quarterly 57, no.1 (2004): 27–37.
[731] United States Antidumping and Countervailing Duty Database.
https://darkwing.uoregon.edu/~bruceb/adpage.html#adcvdutydata.
[732] Hansen, op.cit. 30-36.
[733] Wendy L. Hansen, and Tomas J. Prusa, "Cumulation and ITC decision-making: The sum of the parts is greater than the whole," *Economic Inquiry* 34, (1996): 746-769.

of protectionism.[734] According to the function of trade protection to reduce aggregate welfare and benefit only a particular group, trade protection is, in general, a private good.[735] In contrast to other forms of trade protection[736] covering many products or a whole industry, AD protection focuses more narrowly on specific products or exporters. Petitioners for both foreign and domestic competitors ask for AD protection to enhance their competitive position.[737] This indeed means only a small group benefits from AD protection. At the company level, producers gain clear benefits from a reduction in foreign competition.[738] However, if a company loses a case in the final ruling, the firm's value decreases. Therefore, AD protects a particular group of producers against foreign exporters.

2. Effect of Anti-dumping Protection

AD is more a method of protection than a trade remedy. Plenty of studies show that AD measures are effectively used to protect specific petitioners from competition with foreign exporters. Unlike the costs of AD protection, which affect the economy as a whole, the benefits of AD protection are for a small group. When authorities impose AD duties with protectionist purposes, this has the detrimental effect of restricting trade. For example, consumers suffer from higher prices, and downstream producers face higher production costs. Therefore, industry competitiveness is reduced.[739] AD can encourage collusion, which is very problematic for competition.[740] Also, AD triggers adverse welfare effects.[741] AD might channel resources to rent-seeking activities but not

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[734] Nelson,op.cit. 572. He concludes that *"the demand for and supply of AD protection respond to essentially the same macroeconomic, microeconomic and micro-political forces as did classic tariff protection".*

[735] Hongyong Zhang, "Political Connections and Antidumping Investigations: Evidence from China," *China Economic Review* 50, (2018): 34-41.

[736] Other trade protection like multilateral agreements or certain agricultural subsidies.

[737] Sarah J. Marsh, "Creating Barriers for Foreign Competitors: A Study of the Impact of Anti-Dumping Actions on the Performance of United States Firms," *Strategic Management Journal* 19, no.1 (1998): 25-37. According to data from different companies, a successfully filed AD petition is followed by an increase in market capitalization of about forty-six million dollars for petitioning firms.

[738] Nisha Malhotra, "Is Antidumping legislation a threat to competition? a case study of US chemical industry," *Competitiveness Review An International Business Journal incorporating Journal of Global Competitiveness* 16, no.1 (2006): 51-56.

[739] Antoine Bouët and Jeanne Metivier, "Is the WTO Dispute Settlement Procedure Fair to Developing Countries?" *IFPRI Discussion Paper*, no. 01652 (2017), http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/131321/filename/131532.pdf.

[740] Patrick A. Messerlin, "Anti-dumping regulations or pro-cartel law? The EC chemical case," *The World Economy* 13, no.4 (1990): 23-45. See alo, Thomas J. Prusa, "Why are so many antidumping petitions withdrawn?" *Journal of International Economics* 33, no.1 (1991): 1-20.

[741] Hoekman and Kostecki, op.cit.110-127.

to investments in innovation as it reduces pressure for making adjustments and allows inefficiencies to prevail. AD duties are, in general, very high. Some are even greater than 100 percent.[742] This interferes with relationships between trade competitors. When duties are higher than scheduled tariff rates, it can make these relationships prohibitive.[743]

Further studies have pointed out that the value of imports falls on average by one third to one-half.[744] In a recent analysis, scholars have found that AD duties have an impact on trade volumes. They study a particular product market and find that AD use negatively affects aggregate imports because regular AD activity brings market restriction insecurities to trade partners. Growing AD use may narrow market access. It might cause further welfare losses. In a word, these analyses show that AD use negatively affects aggregate welfare costs and is useful to protect targeted groups. The use of AD action corresponds to other forms of trade barriers.[745] Many analyses prove that the influence of economic conditions and political economy determinants upon AD processes is similar to that for traditional protective measures.[746] Notably, trade protection trends are closely related to economic difficulties. When the economy undergoes significant setbacks, protectionism will increase.[747] Similar patterns have been found when observing AD usage trends.

IV. Additional Reasons for AD Use by Developing Countries

First, trade liberalization gains political support for further development. Accession to the WTO requires Members to admit to import concessions and does not allow them to withdraw trade concessions**.** AD measures are exceptions to this principle, and act as a temporary relief or safety valves once domestic industries are participating in international competition, and need an opt-out

[742] Brink Lindsey and Daniel J. Ikenson, *Antidumping Exposed: the Devilish Details of Unfair Trade Law* (Washington, D.C.: Cato Institute, 2003), 15-20. See also, Chad P. Bown, "Trade remedies and the world trade organization dispute settlement: Why are so few challenged?" *World Bank working paper series*, no.3540 (2005): 515-555.
[743] Prusa, op.cit.595-599.
[744] Nogués and Baracat, op. cit. 7-21.
[745] Magdalene Silberberge, Anja Slany and Christian Soegaard, "The Aftermath of Anti-dumping: Are Temporary Trade Barriers Really Temporary?" 20 Feb 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3054988.
[746] J James D. Gwartney et al., *Economics: Private and Public Choice* (Mason: South-Western, 2021), 376-380. Some evidence suggests that AD transfers the gains from AD investigations and measures as private interest to petitioning firms.
[747] Robert Z. Lawrence and Robert E. Litan, "Why Protectionism Doesn't Pay," *Harvard Business Review*, May 1987, https://hbr.org/1987/05/why-protectionism-doesnt-pay.

mechanism to perform necessary adjustments.[748] The purpose of AD measures is to offset the injury to domestic industries from exporters that sell a product at lower than normal value and then benefit from this unfair trade.

Moreover, there are non-economic justifications for AD measures.[749] Hence, AD is also a political necessity. AD actions are closely related to political considerations.[750] With the rapid growth of international trade, imports and exports frequently have to deal with global competition. The governments of emerging countries often struggle with the hardships of domestic industries if they are facing challenges from AD measures.[751] AD measures provide the governments of emerging economies a method to alleviate this political pressure, enabling them to comply with trade liberalization concessions.[752]

Domestic opinion against lowing barriers to imports in developing countries was firm in the past. If no legislative instruments and other protective methods against unfair trade exist, the authorities of developing countries might not have accepted further trade liberalization.[753] Some research has found that increased AD in developing countries is associated with systematic policy changes in light of trade liberalization.[754] Moreover, developing countries try to use other measures, like AD actions, to manage tariffs and non-tariff barriers. Despite some developing countries adopted AD

[748] For example, chemicals and steel are primary industrial AD users in China because they are large, concentrated, state-owned, less involved than other industries in international production sharing or joint ventures and they primarily produce for the domestic market. There was a surge in industrial-chemical products seeking AD protection immediately after China's WTO accession in 2001. See Chad P. Bown, "China's WTO Entry: Antidumping, Safeguards, and Dispute Settlement," in *China's Growing Role in World Trade*, ed. Robert C. Feenstra and Shang-Jin Wei, (Chicago, IL: University of Chicago Press, 2010), 318-337.

[749] Although much controversy remains over whether economic rationales underpinning AD measures have any veracity. There is no clear economic definition for AD measures.

[750] Sheela Rai, *Antidumping Measures: Policy, Law and Practice in India* (New Delhi: PARTRIDGE Publishing, 2014), 36-59.

[751] Charles R. Irish and Shin-yi Peng, "The personalities and Policies Affecting US Trade with East and Southeast Asia: The Implications on the Trade Promotion Authority," *International Trade & Business Law Review* 9, (2005): 45-72.

[752] Will Martin, "Trade Policies, Developing Countries, and Globalization," *Development Research Group*, World Bank, October 9, 2001, https://www.researchgate.net/profile/Will-Martin-5/publication/250652725.

[753] Raslan, op.cit. 33-48.

[754] Gunnar Niels and Andriaan ten Kate, "Anti-dumping Protection in a Liberalizing Country: Mexico's AD Policy and Practices," *The World Economy* 27, no.7 (2007): 969-983. See also, Aradhna Aggarwal, *The Anti-Dumping Agreement and Developing Countries an Introduction* (Delhi: Oxford University Press, 2007), 154-155.

legislation back in the early 1970s and 1980s,[755] these countries did not use AD laws before they reducing their import tariffs in the 1990s. They became heavy AD users because they needed trade remedies to offset their losses from losing their previous high tariff protections.[756]

Previous trends of AD use were always behind the adoption of AD legislations by emerging countries. One explanation for this is that developing countries did not need to use AD measures in the past.[757] However, if import-related barriers do not exist, or the authorities remove import-related barriers, AD measures immediately become replacement measures for domestic governments to deal with the issues of protectionism. The need for the governments of emerging countries to use AD measures increases with those countries' macroeconomic instability.[758] Furthermore, AD measures are also an attractive political tool for governments.[759]

Some scholars have suggested it is suitable for developing countries to regularly open their domestic markets to trade, while focusing more on timing and sequencing issues in trade liberalization.[760] Moreover, non-traditional users preferred to use tariffs in the past if they wanted to take measures against unfair competition. At that time, developing countries lacked essential resources and institutional support to provide the procedural requirements for them to implement trade remedies associated with WTO (GATT) requirements.[761] Hence, most developing countries have enacted AD laws to gain the institutional capacity to seek trade remedies. If a developing country has benefited from the WTO AD mechanism as protection, it will effectively keep using

[755] For example, Brazil, Argentina and Mexico. Argentina implemented its AD Law in 1972, Mexico introduced AD Law in 1986 and Brazil adopted AD Legislation in 1987.
[756] Vinícius de Azevedo Couto Firmea and Cláudio R. FóffanoVasconcelosb, "Evolution in the use of antidumping mechanism after Uruguay round," *EconomiA* 16, no.3 (2015): 321-342.
[757] Dan Wei, "Antidumping in Emerging Countries in the Post-crisis Era: A Case Study on Brazil and China," *Journal of International Economic Law* 16, no.4 (2013): 921-958.
[758] Allah Ditta and Muhammad Azmat Hayat, "Macroeconomic Instability and Its Role on Income Inequality in Developing Countries: A Panel Data Analysis," *Pakistan Economic and Social Review* 55, no.2 (2017): 613-636.
[759] Richard E. Baldwin and Simon J. Evenett, *What World Leaders Must Do to Halt the Spread of Protectionism* (London: Centre for Economic Policy Research, 2008), 47-96.
[760] Rod Falvey and Cha Dong Kim, "Timing and Sequencing Issues in Trade Liberalization," *The Economic Journal* 102, no.413 (1992): 908-924.
[761] WTO, World Trade Report 2009: Trade Policy Commitments and Contingency Measures (Geneva, 2009), at xxi.

this tool.[762] Furthermore, developing countries gain experience and knowledge from the frequent use of AD measures consistent with WTO requirements.[763]

D. IMPACT OF ANTI-DUMPING ACTIVITIES

The flexibility of AD actions makes this trade remedy very popular among countries compared to other trade instruments. Once the investigating authority finds the appropriate conditions, they can impose AD duties immediately without permission from the WTO. AD measures focus on specific importers rather than on countries as a whole. Therefore, AD seems to have less of a trade distortion effect than regular tariffs. The judicial nature of AD investigations means that AD actions are seen as a fair-trade protection mechanism against unfair foreign exports.[764] However, the purpose of using AD actions to prevent unfair, predatory trade has been found to be uncommon. Many criticize AD because it is abused and restricts competition.[765]

The effect is that AD actions are used more as strategic behavior. Participants in AD investigations alter their economic behavior to improve their chances of achieving their preferred outcome.[766] If a foreign supplier is facing dumping allegations, one effective method to reduce the dumping margin is to increase the export price of the products. Another technique is to reduce their sales volume. This will minimize the possibility that the authority will find injury. Both methods can reduce the likelihood of having AD duties imposed.[767] Before trade protections arise, foreign suppliers limit the scale of sales on the local market.[768] During the investigation period, imports fall fast regardless of the final decision reached by the investigation. It has been shown that even initiation of AD investigations has the effect of lowering import volumes.[769] Initiation of AD

[762] Leonardo E. Stanley, *Emerging Market Economies and Financial Globalization: Argentina, Brazil, China, India and South Korea*(New York: Anthem Press, 2018), 124-185.
[763] Antonella Forganni and Heidi Reed, "Circumvention of Trade Defence Measures and Business Ethics," *Journal of Business Ethics* 155, (2019): 29-40. See also, G. D. Sardana, *Enhancing Organizational Performance through Strategic Initiatives: Handbook of Management Cases* (Delhi: MacMillan Publishers India, 2009), 516-528.
[764] Henrik Andersen, "WTO Antidumping Jurisprudence and Rule of Law Challenges," in *Festskrift till Christina Moëll*, ed. Mats Tjernberg, Pernilla Rendahl and Hnrik Wenander (Lund: Juristförlaget I Lund, 2014), 11-33.
[765] Jan Baran, "The Impact of Antidumping on EU trade," *IBS Policy Papers* 12, (2015): 1-22.
[766] Oded Shenkar, Yadong Luo and Tailan Chi, *International Business* (Oxford UK.:Routledge, 2015), 331-433.
[767] Robert M. Feinberg, "Antidumping as a Development Issue," *Global Economy Journal* 11, no.3 (2011): 2-10.
[768] Even when the authorities finally reject an AD case, imports fall around 15 to 20 percent.
[769] Staiger and Wolak, op.cit. 270-275.

actions has an immediate adverse effect upon imports. Legal scholars called this phenomenon the harassment effect.

Even without an AD investigation being initiated, the foreign supplier might still try to use strategic adjustments. Faced with a high potential risk of AD initiation, foreign suppliers might increase prices in advance or try to lower sales to prevent a discovery of dumping. If there are two countries, one that uses AD actions often, and another that uses almost no AD measures, the former country will have fewer exports compared to the latter country due to the "reputation effect" of AD actions.[770] If a foreign supplier and local industry agree on restricting trade, an AD investigation might end. Usually, the agreement is realized as a price undertaking.[771] This means exporters commit to a lower and less aggressive sales policy in exchange for ending the AD investigation.[772] If a foreign exporter makes a price commitment, the AD authority will withdraw its AD petition before the final decision.[773] Consequently, the effect of using price undertakings to have petitions withdrawn can restrict imports in the same way as AD duties.[774]

AD activity has a noticeable trade destruction impact on imports of products that are subject to AD investigations.[775] Take the EU as an example. If AD cases progress until final duties are applied, this will restrict imports from developing countries.[776] Imports from countries impacted by AD measures, increase once AD investigations are begun on those imports. After years, this figure will rise again. Rejected AD investigations have a less destructive impact on trade and imports comparing to the proceedings connected to an agreement. Data from the EU shows that

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[770] Vandenbussche and Zanardi, op.cit.10-15.
[771] The foreign supplier will make a commitment on formal price and notify the AD authority. This commitment is viewed as an informal agreement.
[772] Tim Lloyd, Oliver Morrissey and Geoffrey Reed, "Estimating the Impact of Anti-dumping and Anti-cartel Actions Using Intervention Analysis," *Economic Journal* 108, no.447 (1998): 458-476. This study focuses on the effect of price undertakings with a time series of import prices and volumes. It uses AD cases between EU and Japan to find that price undertakings are related to an overall rise of import prices and a decrease in import volumes from Japan.
[773] Jan Baran, op.cit. 5-15.
[774] Hoekman and Kostecki, op.cit. 115-119.
[775] Shihui Yang and Shao Jun, "Trade destruction and trade harassment effects of US antidumping petitions," *IEEE*, 1 June 2011, https://ieeexplore.ieee.org/document/5881665.
[776] Arastou Khatibi, "The Trade Effects of European Antidumping Policy," *ECIPE Working Paper*, no.7 (2009): 2-13.

just the procedure will have trade destruction effects.[777] Once a company files an AD petition, an influential trade destruction effect already exists, no matter whether final measures are applied or not. However, the decrease in the imports will not immediately follow the investigation but will occur two years later. A trade diversion impact is evident because increased imports only occurred within EU trade but not outside the EU.[778]

Many studies use data from the EU as good examples to confirm the outcome of AD measures. AD use leads to apparent trade destruction, whatever the final decision of the AD investigation is. Moreover, AD actions bring a decrease in imports.[779] However, this does not happen immediately after AD initiation, but after two years. Studies show that AD actions have a trade diversion effect on increased imports. However, this only happens for the imports applied to countries external to the EU. There is no impact on imports applied to countries belonging to the EU.[780] The imposition of AD duties has a trade destruction effect inside five years after initiation, ranging from 20 to 70 percent. The influence of voluntary price undertakings leads to an import decrease of 25 percent to 55 percent. Moreover, a withdrawal proceeding has less or no impact on import volumes.[781] Many studies confirm the existence of trade destruction and trade diversion effects after analyzing the use of AD duties.[782] Several studies explicitly analyze trade diversion effects between named countries and non-named countries.[783] The impact of AD actions does not happen immediately

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[777] Gisela Grieger and Roderick Harte, "EU trade with Latin America and the Caribbean Overview and figures," *European Parliamentary Research Service*, September 2018, https://www.europarl.europa.eu/RegData/etudes/IDAN/2018/625186/EPRS_IDA(2018)625186_EN.pdf.

[778] Gregory Emeka Kwentua, "Trade creation and trade diversion effects in the EU-South Africa Free Trade Agreement" Louisiana State University, *Master Thesis*, 2006, 20-30.

[779] Alexander-Nikolai Sandkamp, "The Trade Effects of Antidumping Duties: Evidence from the 2004 EU Enlargement," *ifo Working Paper*, no.261 (2018): 01-37.

[780] Maria Cipollina and Luca Salvatici, "The Trade Impact of EU Tariff Margins: An Empirical Assessment," *Soc. Sci.* 8, no.9 (2019): 261-270.

[781] Josef Konings, Hylke Vandenbussche and Linda Springael, "Import Diversion under European Antidumping Policy," *Journal of Industry, Competition and Trade* 1, no.3 (2001): 283-299. This study offers three possible explanations for the lower amount of trade diversion in the EU. First, lower duty levels in the EU restrict the benefits of protection to non-named countries. Two, the AD measures are not transparent enough. Exporters from non-named countries are cautious to react in AD cases. Third, there is a higher degree of market fragmentation in Europe than in other countries.

[782] Bodhisattva Ganguli, "The Trade Effects of Indian Antidumping Actions," *Review of International Economics* 16, no.5 (2008): 930-941. See also, Paul Brenton, "Antidumping policies in the EU and trade diversion," *European Journal of Political Economy* 17, (2001): 593-607.

[783] Corinne M. Krupp and Patricia S. Pollard, "Market Responses to antidumping Laws: Some Evidence from the US Chemical Industry," *Canadian Journal of Economics* 29, (1996): 199-227. This study focuses on the US chemical sector from 1976 to 1988 to find the presence of trade diversions in over half of non-named countries. See also, Prusa

after the imposition of the duties but after two or three years after AD initiations. For example, a study shows that imports from the named countries declined 25 percent in the year of initiation but rise to 44 percent two years after AD initiation. This shows the trade destruction effect of AD actions.[784] The trade diversion effect is less intense compared to the trade destruction effect but still very important.[785] Import rates decreased by 18 percent and increased 10 percent the second year after the initiation. Moreover, studies in Mexico show that the imposition of AD duties results in a trade destruction effect.[786] Furthermore, there is a trade deflection effect of AD actions.[787] A study on the impact of United States AD measures on Japanese exports shows that the imposition of AD duties by the United States increases Japanese exports to third markets by over 5 percent. When the United States imposed AD duties on exporters from other countries, Japanese exports also decreased between 5 and 19 percent.[788]

A study of AD impact in the hot-rolled steel sector demonstrates that AD duties have negative trade effects as well.[789] First, this study shows that AD initiation leads to a decline in imports from named countries.[790] The trade destruction effect in the steel industry is more potent than in other industries because the steel sector is one of the favorite sectors for AD actions. This shows that

(2001) covered all US AD cases and found obvious evidence on trade destruction effects on imports from named countries. In addition, a trade diversion effect was found in non-named countries. Brenton, op.cit. 595-599. This study analyzes EU cases from 1989 to 1994 with a series comparison including two years before initiation, the year of initiation and four years after initiation. This analysis contains important evidence that trade diversion effects exist in the EU.

[784] Lucy Davis, "Ten years of anti-dumping in the EU: economic and political targeting," *ECIPE Working Paper*, no.2 (2009): 1-16.

[785] Soonchan Park, "The Trade Depressing and Trade Diversion Effects of Antidumping Actions: The Case of China," *China Economic Review* 20, no.3 (2009): 542-548, https://doi.org/10.1016/j.chieco.2009.03.006.

[786] Gunnar Niels and Adriaan ten Kate, "Antidumping policy in developing countries: Safety valve or obstacle to free trade?" *European Journal of Political Economy* 22, no.3 (2006): 618-638. This analysis shows that the imposition of AD duties results in an average drop in imports to Mexico from the named country by 73%.

[787] Veysel Avsar, "The Anatomy of Trade Deflection," *Economics Research Working Paper Series*, no.23 (2012): 16-26.

[788] Nobuaki Yamashita and Isamu Yamauchi, "Exports and Innovation: Evidence from Antidumping Duties Against Japanese Firms," *ERIA Discussion Paper Series*, no.317 (2019):7-13.

[789] James P. Durling and Thomas J. Prusa, "The trade effects associated with an Antidumping epidemic: The hot-rolled steel market, 1996-2001," *European Journal of Political Economy* 22, no.3 (2006): 675-695. This study has merit in that it focuses on a high level of product and a large number of global suppliers. It has a comprehensive view of the potential impact of AD actions. Moreover, the steel sector is characterized by a high frequency of AD investigations, and can be representative of the impact trends of AD duties upon trade. A strong trade destruction effect may influence the use of AD measures.

[790] Ibid. This study shows that imports from named countries decreased by 74 percent during the first year after initiation to 87 percent during the second year after initiation.

AD proceedings have a greater trade distortion effect upon the steel industry.[791] Exports from non-named countries also decreased during the first year after AD initiation. This is contrary to the trade diversion effect and is more like a so-called "fear effect". It is a different kind of strategic reaction to AD proceedings. AD investigations clear the way for more new AD investigations. Exporters want to reduce the risk of facing further AD investigations, leading them to lower their sales volumes.

Furthermore, a study of the relationship between AD and export activity demonstrates an adverse effect of AD measures on exports. They affect both individual exporters and general trade flows.[792] An analysis reveals that AD from the EU reduced sales volumes of French exports in foreign markets. If a French export has foreign branches, this loss will be more conspicuous. Research on general trade flows shows that AD measures harm exports both to other EU countries and outside the EU.[793] Although this study only uses the EU as a sample, it shows that the presence of AD measures can have a negative influence on trade.[794]
In short, the findings above show that economic factors have a significant impact on AD activities. Both real GDP growth and the exchange rate affect AD initiations. However, real GDP growth is a negative determining factor, while the exchange rate has a positive impact. Moreover, a country's adverse economic circumstance can trigger more AD initiations against other nations. Besides economic considerations, other factors have affected AD activities. Strategic elements also have a significant relationship to AD usage.

For traditional users, both economic and strategic motivations have relevance for their AD actions. However, these factors have different effects upon new users. Economic motivations influence the AD activity of new users less than for traditional users. There are two reasons that can explain this. First, new users prefer to imitate traditional users' methods of filing AD petitions as reactions

[791] Greg Mastel, "The United States Steel Industry and Antidumping Law," *Challenge* 42, no.3 (1999): 84-94.
[792] Josef Konings and Hylke Vandenbussche, "Anti-dumping Protection hurts Exporters: Firm-level evidence," *Review of World Economics* 149, no.2 (2013): 295-320.
[793] For example, export volumes to other EU countries will decrease by 28 percent and exports outside the EU by 37 percent.
[794] Cornelia Furculiță, "Cost of Production Calculation in EU Anti-Dumping Law: WTO Consistent 'As Such' After EU – Biodiesel," *Global Trade and Customs Journal* 12, no.9 (2017): 360-366.

against other countries.[795] Second, it is difficult for new users to confirm economic injury accurately. Strategic motivations can provide better explanations of new users' behavior. This means that, for new users, the motives for their AD activity depend more on strategic considerations. Moreover, club effects and retaliations have a significant influence on an industry level but not on a country level. Echoing AD behavior determines its impact from a political perspective. Both economic and strategic factors have indeed affected AD filings on a national level. The triggering of AD activities cannot only be ascribed to economic motives. Strategic motivations play a significant role, as well — factors like political pressure, national interest, domestic industry protection, and historical relationships.[796]

The analysis above considers protectionism an independent motive for AD use and separate from strategic motivations because this theory is narrower than other, more common strategic reasons due to its focus on particular exporters or specific products. Besides, the protectionist theory has grown up alongside the use of AD. More AD activities make the protectionist theory more plausible. Plenty of studies confirm that AD is used more as a weapon of protectionism than as an efficient trade remedy. In a word, different reasons trigger the use of AD activity. There are macroeconomic reasons, political economy reasons, and strategic reasons. Economic pressures and political pressures both contribute to increasing AD use. All these reasons can underlie AD activities, and some of them could increase its spread. However, sometimes, particular economic or political events will have a chilling effect on AD use. There is still an apparent trend towards growth in AD activity.[797] It is not hard to find appropriate conditions for filing an AD petition or initiating an AD investigation. It is more accessible to begin AD activities rather than to reduce their use.[798] This shows from another side that the AD usage trends are unavoidable. After several rounds of global meetings focusing on lower tariff rates, importing countries choose to use AD measures as an alternative method to decrease import tariffs.[799] Because the WTO has not provided

[795] Leonard E. Santos, Stephen J. Powell, and Mark T. Wasden, *The Compendium of Foreign Trade Remedy Laws* (Washington, D.C.: American Bar Association, Section of International Law and Practice, 1998), 37-77.
[796] Tharakan, P.K.M. and J. Waelbroeck, "Antidumping and countervailing duty decisions in the E.C. and in the United States: An experiment in comparative political economy," *European Economic Review* 38, no.1 (1994): 171-193.
[797] Andre Coelho Vianna, "The Impact of Exports to China on Latin American Growth," *Journal of Asia Economics* 47, (2016): 58-66.
[798] Cecilia Bellora and Sébastien Jean, "Granting Market Economy Status to China in the EU: An Economic Impact Assessment," *CEPII-Policy Brief*, no.11 (2016): 14-20.
[799] Christopher A. Casey, "Trade Remedies: Antidumping," *CRS Report*, no.R46296 (2020): 25-37.

sufficient mechanisms to safeguard countries' measures, they use AD as a device to protect their industries. Hence, economic weakness in a foreign industry is closely associated with an increased probability of AD protection.[800]

Notably, weakness in a foreign industry has a substantial impact on final AD measures. Declining economic conditions in the foreign industry significantly influence the filing of AD petitions and an authority's decision when imposing AD duties.[801] Some previous work on AD illustrates that macroeconomic factors have significant effects. Economic fluctuations and appreciation of an importing country's real exchange rate lead to an increased possibility of AD filings, investigations, and final determinations. AD activity has a strong trade deflection effect.[802] After suffering the initiation of AD investigations, imports will decrease sharply. If an analysis focuses only on the steel market, this reduction will be more substantial than the average. If the case ends with no final AD measures, the deflection effect will exist for only a short time with only some provisional measures.[803]

Additionally, trade suffers from AD measures, both exports and imports. The AD activity, the more trade will suffer. There are different reasons that trigger AD usage, making it impossible to adjust every aspect of the AD system. However, the ADA provides a global framework for implementing AD activities under the legislation, thus reducing the extent of the difficulties for dealing with the problem of AD. To some extent, it seems promising to regulate AD issues. Therefore, most WTO Members positively submitted proposals to reform the ADA during the Doha Round Negotiation.

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[800] Marc Bacchetta and Marion Jansen, "Adjusting to trade liberalization: The role of policy, institutions and WTO Disciplines," *WTO Special Studies*, no.7 (2003): 5-65.
[801] A fall of one standard deviation in foreign employment growth increases the possibility of a petition being filed and final AD duties being imposed by a factor of five (seven).
[802] Xiaojin Wang and Michael Reed, "Trade Deflection arising from United States Antidumping Duties on Imported Shrimp," *Southern Agricultural Economics Association*, no.196978 (2015): 12-27.
[803] Shushanik Hakobyan, "Do Anti-dumping Duties Still Matter? The Curious Case of Aluminum Foil," *World Trade Review* 17, no.4 (2018): 557-574.

CHAPTER FIVE -- DOMESTIC ANTI-DUMPING LAW AND REPRESENTATIVE USERS

AD law has existed for a century, along with debates on its lack of theoretical rationale, its replacement by anti-trust law,[804] its necessity, and its relationship with an increasing number of free trade agreements (FTAs).[805] Ironically, the use and importance of AD law is inversely related to the prevalence and efficacy of FTAs. While FTAs have reduced tariffs and outlaw most import quotas, AD cases have increased these notably.[806] Average tariff levels have fallen dramatically for around fifty years, from 40 percent to 3.9 percent. 43 percent of goods are now exempt from all tariffs.[807] At the same time, the number of successful AD cases filed in the United States alone has increased a staggering 2,500 percent.[808] The geographic scope of AD laws also has increased. New users began joining the AD club in 1980.

However, until 1990, only four traditional users, the United States, Canada, Australia, and the EU, were active in AD initiations.[809] It is necessary to look at the establishment and development of domestic AD laws to understand how the WTO AD standards operate under domestic regimes. The research may offer a further understanding of ongoing negotiations because domestic AD laws may reflect or be affected by the opinions of countries during the Doha Round Negotiations. Besides economic and political reasons, the demand for domestic AD lawmaking might also be a significant reason that states hold different views on the need to reform the ADA.

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[804] Marceau, op.cit. 328-330.

[805] Thomas Prusa, and Robert Teh, "Tilting the playing field: FTAs and the changing pattern of protection," *VOXEU CEPR*, 15 September 2010, https://voxeu.org/article/do-free-trade-agreements-increase-protectionism-towards-non-members.

[806] Ian Wooton, and Maurizio Zanardi, "Antidumping versus Antitrust: Trade and Competition Policy," in *Handbook of International Trade: Economic and Legal Analyses of Trade Policy and Institutions*, *II*, ed. E. Kwan Choi and James C. Hartigan (New Jersey: Wiley-Blackwell; 1st edition 2005), 383-402.

[807] Ahn and Shin, op.cit. 440-445.

[808] Bela Belassa, "Trade Liberalisation and 'Revealed' Comparative Advantage," *The Manchester School* 33, no.2, (1965): 99-123. This study focused on the effects of trade liberalization. Between 1958 and 1965, the United States had only one AD case per year. Until 1990, the United States was involved in an average of 25 AD cases per year. See also, Michael O. Moore and Steven M. Suranovic, "Welfare Effects of Introducing Antidumping Procedures in a Trade-Liberalizing Country," *Journal of Economic Integration* 9, no.2 (1994): 241-259.

[809] Bryan Johnson, "A Guide to Antidumping Law: America's Unfair Trade Practice," *The Heritage Foundation*, July 21,1992, https://www.heritage.org/trade/report/guide-antidumping-laws-americas-unfair-trade-practice.

A. Domestic Anti-dumping Laws

Trade liberalization has made apparent progress over the past half a century at the multilateral level.[810] In the meantime, a tendency towards protectionism awakes once again.[811] While the WTO regime reduced tariffs and quotas worldwide, increased use of other forms of protection began replacing traditional trade policy mechanisms. AD measures are one of the standard alternative instruments. Notwithstanding that the original purpose of AD actions is to deal with unfair trade, AD is now used more as a weapon of protection rather than a trade remedy method from an economic perspective. Countries use AD to uphold the interests of their national industries.

I. The Trend of Adopting and Using Domestic Anti-dumping Laws

Traditional AD users had already enacted AD laws a long time ago, and only the four traditional users, plus New Zealand, had national AD legislation before the 1980s. The spread of AD activity grew dramatically in both developed and developing countries, and followed by an establishment of domestic AD systems, especially in the developing countries. Only thirty-six countries in the world had AD laws in 1980s.[812] Until 2002, the number of states that had AD laws increased to sixty-one. Many developing countries adopted AD laws during this period. In the meanwhile, some of these countries began occupying important positions in the international market. For example, India enacted AD laws in 1985 and had filed over three hundred petitions by 2002. China, which gradually took on a prominent position in the global market, adopted an AD law in 1997. China had initiated over eighty investigations by the end of 2002. During this same period, the United States and the EU initiated 30 cases per year on average. Developing countries have become frequent users of AD activity.

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[810] Takumi Naito, "Growth and welfare effects of unilateral trade liberalization with heterogeneous firms and asymmetric countries," *Journal of International Economics* 109, (2017): 167-173. See also, Mihaly Himics, Thomas Fellmann, Jesús Barreiro-Hurlé, Heinz-Peter Witzke, Ignacio Pérez Domínguez, Torbjörn Jansson, Franz Weiss, "Does the current trade liberalization agenda contribute to greenhouse gas emission mitigation in agriculture?" *Food Policy* 76, (2018):120-129. See also, Hamza Cestepe, Ertugrul Yildirim, Bersu Bhtiyar, "The Impact of Trade Liberalization on the Export of MENA Countries to OECD Trade Partners," *Procedia Economics and Finance* 23, (2015): 1440-1445.

[811] Julien Chaisse, "Rising Protectionism Threatens Global Trade: WTO Law and Litigation in Asia," *Asian Dispute Review* 19, no.3 (2017): 112-118.

[812] Patrick F. J. Macrory, Arthur Edmond Appleton and Michael G. Plummer, *The World Trade Organization: Legal, Economic and Political Analysis* (New York: Springer, 2005), 161-176.

The previous chapter explains trends in AD use, the reasons that trigger AD activities, and the effects of the proliferation of AD measures in industrial and political arenas. In this chapter, the focus will move to the AD legislation from the perspective of national and international law. The ADA, as the single international principle for AD behavior under the WTO framework, has tremendous significance for all WTO Members. The ADA aimed at encouraging countries to reduce tariffs on imported products and end their non-tariff barriers to trade. The position of importer or exporter matters greatly when using AD measures. If WTO Members view themselves as exporters, they might not emphasize the importance of AD measures in their national laws. On the contrary, countries that are importers undoubtedly need assurance of access to trade remedies under national legislation. Many provisions of the ADA show that there is an intensive relationship between exporter and importer interests.[813]

The relationship between the ADA and national AD laws is mutual rather than one-way from the ADA.[814]Since the ADA provides remedies for reacting against dumping injuries, the intense relationship between the interests of importers and exporters are made more apparent. The purpose of AD measures was to eliminate false market signals sent by dumping prices and to try not to bolster an uncompetitive domestic industry. Because of this, requirements under Article VI of GATT 1994 and the ADA are the only affirmative determinations on dumped imports, injuries to domestic production, and the causal link between them, which can lead to a final AD duty.[815] AD rules also limit the amount of AD duties collected according to dumping margins.[816]

While AD use trends shift over time, many countries go back to their AD laws for help with finding injury and unfair trade practices. For example, traditional users have historically relied on their AD laws to control unfairly dumped imports.[817] This has led more countries to adopt national AD

[813] For example, the standing provision in Article 5.4 mentioned that domestic industries rather than particular producers supported AD investigations. Notwithstanding this, footnote 13 to Article 5.4 provides an exception to limitations to protect the interests of fragmented industries involving an extraordinary number of producers, with no ability to coordinate amongst themselves or respond to injury dumping.

[814] C. Satapathy, "WTO Agreement on Anti-Dumping: Misuse and Case for Review," *Economic and Political Weekly* 34, no.32 (1999): 2210-212.

[815] Oisin Suttle, *Distributive Justice and World Trade Law a Political Theory of International Trade Regulation* (Cambridge, MA: Cambridge University Press, 2018), 205-240.

[816] Article VI:2 of the GATT 1994 and Article 9.3 of the ADA.

[817] Terence P. Stewart, *Rules in a Rules-Based WTO: Key to Growth; the Challenges Ahead* (Ardsley, NY: Transnational Publication, 2003), 15-25.

laws to address injurious dumping. Developing countries have also become the primary users of trade remedy laws.[818] AD laws are mainly the most welcome since the ADA sets the international standard for AD use.[819]

South Africa was one of the first developing countries to use AD measures and enact AD laws.[820] South Africa did not actively use AD actions because of apartheid during the 1980s and the 1990s. However, South Africa has sought to lower its tariffs since the mid-1990s.[821] Since then, high levels of market concentration and a tendency for firms to apply for AD protection have increased.[822] All AD measures are based on legislation that reflects the spirit of South Africa's WTO obligations. However, in South Africa, AD protections requirements focus on injury suffered from similar products but not their impact on the entire economy.[823] Another typical example of a developing country is Mexico. As one of the first AD users among other developing countries, Mexico enacted its AD laws shortly after its accession to the GATT in 1986.[824] Since acceding to the GATT, Mexico's national economy began to liberalize and gradually participate actively in the use of AD measures.[825]

India had a similar experience to Mexico. Despite being a contracting member of GATT, India had a highly restrictive trade regime before the Uruguay Round.[826] The government provided a high level of protection through import controls and high duties. Hence, India was not a strong AD

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[818] Christophe Bellmann and Alice V. Tipping, "The Role of Trade and Trade Policy in Advancing the 2030 Development Agenda," *OpenEdition Journals*, Articles and Debates 6.2, 2015, https://journals.openedition.org/poldev/2149.

[819] Terence Stewart, op.cit.16-31.

[820] Aradhna Aggarwal, "The Use of Antidumping in Brazil, China, India and South Africa-Rules, Trends and Causes," *Kommerskollegium/National Board of Trade, Sweden: Report*, 10 Feburary 2002, 49-51. https://www.researchgate.net/profile/AradhnaAggarwal/publication/303406271_The_Use_of_Antidumping_in_Brazil_China_India_and_South_Africa_-_Rules_Trends_and_Causes/links/5741da5d08ae9ace841876da/The-Use-of Antidumping-in-Brazil-China-India-and-South-Africa-Rules-Trends-and-Causes.pdf.

[821] Clive Vinti, "Dumping" and the Competition Act of South Africa," *De Jure Law Journal* 52, no.1 (2019): 207-220.

[822] Gustav Brink, "The 10 Major Problems with the Antidumping Instrument in South Africa," *Journal of World Trade* 39, no.1 (2005): 147-148.

[823] Niel Joubert, "The reform of South Africa's anti-dumping regime." In *Managing the Challenges of WTO Participation: 45 Case Studies*, ed. Gallagher, Peter et al. (arg.), (Cambridge, MA: Cambridge University Press, 2005), 516-531.

[824] Niels and Kate, op.cit. 620-625.

[825] Aggarwal, op.cit.53.

[826] Prakash Narayanan, "Anti-dumping in India - Present State and Future Prospects," *Journal of World Trade* 40, no.6 (2006): 1081-1091.

user until the Uruguay Round provided lower tariff lines as well as more open market access. In the meantime, India amended its AD laws to conform to the ADA, created the legal standards for AD investigations and regulated the imposition of AD duties.[827] With implementation of the Uruguay Round, India's tariffs have reduced sharply, leading to a more liberal market.[828] Therefore, AD usage increased dramatically in India. Likewise, since joining the WTO, China has become very active in using AD measures. As traditional and new users of AD come to the negotiating table in Doha, it is essential to have a clear picture of the use and the extent of the application of AD regulations. There is theoretical literature on the use of AD activity and its effects.

However, studies have paid little attention to the phenomenon of AD laws around the world. Many proposals of WTO Members on the ADA in Doha Round Negotiation provided specific suggestions on the possibility of reforming the ADA. Are there any examples of those Members submitting reform proposals? What role do their national AD laws play? Does domestic AD legislation influence the opinions of WTO Members during negotiations or not? First of all, it is necessary to understand the implementation of AD laws under the WTO framework. How many countries have AD laws? When did they adopt them? What are the possible reasons they have them? Many countries have a long history of domestic AD legislation. However, they did not use it very often in the first decades after adoption.

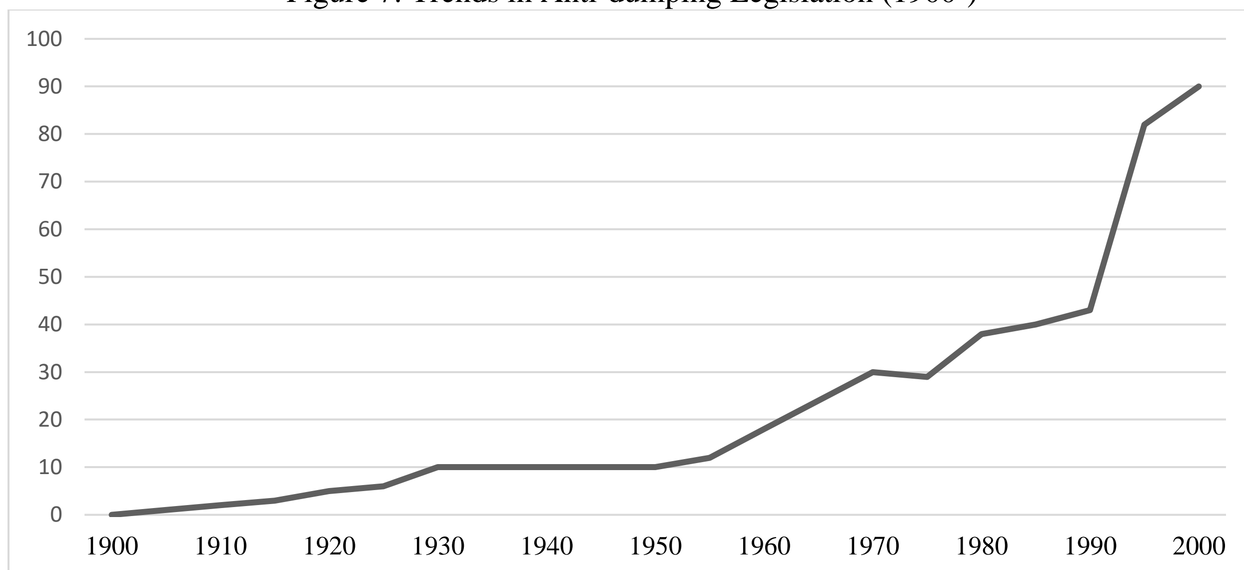
Figure 7 shows country trends from the mid-1950s, as a growing numbers of countries adopted AD laws. The developed world has had AD legislation for a long time. For example, the history of AD laws began at the start of the twentieth century as Canada adopted the first AD laws. Major traditional users followed Canada. After that, there were about thirty years that not many countries implemented AD laws. Since the establishment of Article VI of GATT in 1947, AD began acquiring a global status. More and more countries adopted AD laws under GATT AD principles. Almost all traditional users already had AD laws, whereas only 15 developing countries had them

[827] Prior to Uruguay Round, India's bound tariff lines were only about 6 percent. However, there were plenty of quantitative restrictions on over two thousand tariff lines. Moreover, the Indian government maintained other restrictive import measures to prevent quantitative imports. However, to ensure the success of the Uruguay Round, India agreed to reduce its tariff bindings.

[828] Bown and Crowley, op.cit. 263-267.

at the end of the Tokyo Round negotiations in 1980.[829] After temporarily slow growth, an increasing trend has been in evidence since the 1980s. Since then, the adoption of AD laws by countries has accelerated. The 1980s can be seen as the start of the proliferation of AD laws.

Figure 7: Trends in Anti-dumping Legislation (1900-)

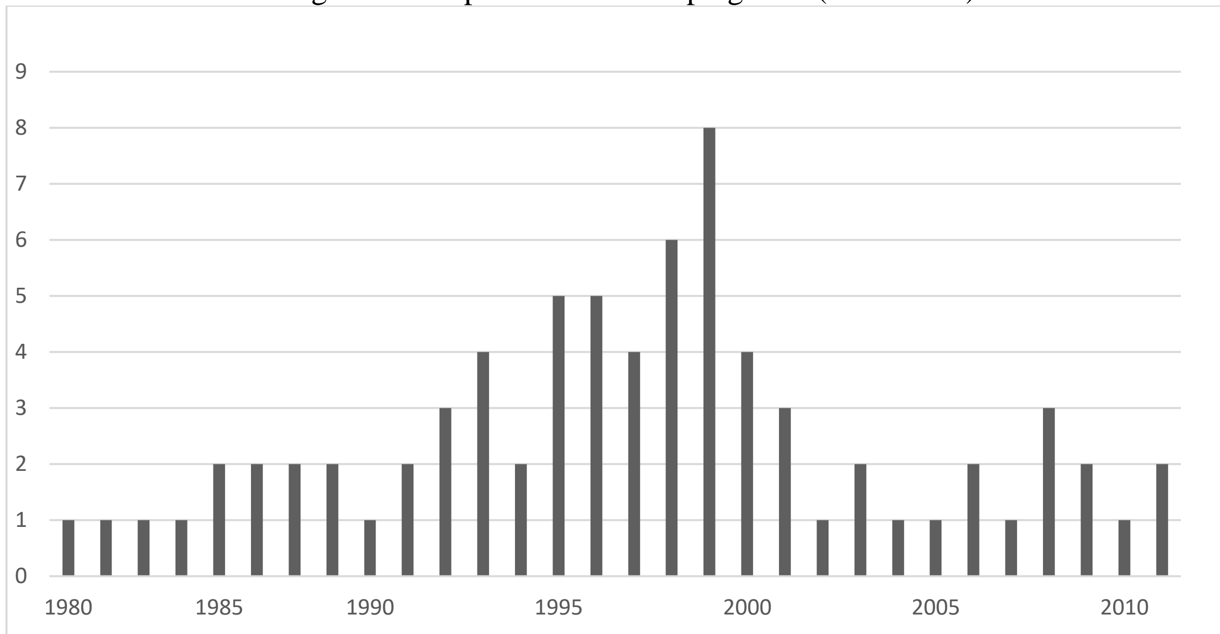


Source: Global Anti-dumping database.[830]

Figure 8 clearly shows the trend of countries adopting AD laws since 1980. Between 1990 – 2000, just prior to the launch of the Doha Round, a large number of countries passed AD laws. This period lasted a short time before and after the adoption of the ADA. This trend matches trends in AD use. AD use also reached a peak, especially between 1995 and 2001.

[829] Gabrielle Marceau, *A History of Law and Lawyers in the GAATT/WTO: The Development of the Rule of Law in the Multilateral Trading System* (Cambridge, MA: Cambridge University Press, 2015), 221-272.
[830] The World Bank, Global Anti-dumping database, https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e.

Figure 8: Adoption of Antidumping Law (1980-2019)



Source: Global Anti-dumping database.[831]

Is there a particular reason for the adoption of AD laws? Alternatively, are there different motives that have a combined impact on the enactment of AD laws? AD is a complicated situation that is related to trade conditions, different importers and exporters, specific product prices, import quantities and other motives. Additionally, political motives frequently affect the extent and frequency of AD use because of each country's different level of development. The research in the previous chapter has already systematically analyzed AD usage. However, are the reasons that trigger the use of AD activities also what motivates the decision to publish AD legislation?

II. Factors Affecting The Adoption and Use of Anti-dumping Law

It is hard to conclude one particular theory explaining the adoption of AD laws. Countries have a right to decide whether to pass AD legislation. Many specific reasons can affect this decision. The analysis in Chapter 4 describes reasons for AD usage. These reasons, to some extent, also explain the reason a country decides to adopt AD law.

[831] The World Bank, Global Anti-dumping database, https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-AD-database/resource/dc7b361e.

1. INSTITUTIONALIZATION REQUIREMENTS

The WTO does not compulsorily require Members to adopt AD legislation to obtain WTO membership.[832] Traditional AD users, such as Canada, the United States, the EU, New Zealand, and Australia, have had AD legislation for a long time. After the widespread use of AD actions in the 1980s, more and more countries seek an institutional guarantee for AD actions. Notably, many states passed AD laws either a few years before or after becoming a WTO Member.

Table 10 shows the list to date of countries with WTO Membership, their adoption of AD Laws, and the first time they used AD laws. There are three different types of AD law use. The first kind is countries that never use AD laws even though they have adopted them, either before or after accession to the WTO. These countries are neither frequent users nor targets of AD actions. The second type is for countries that adopted and used AD law before acceding to the WTO, such as China, Chinese Taiwan, Chile, India, Brazil, Spain, Turkey, and Vietnam. These countries had been targets of AD cases before entering the WTO. They were often the targets of developed countries in AD cases in early decades since the establishment of GATT. They adopted domestic AD laws to react against developed countries' AD investigations. The third type includes countries that established and used AD legislation after entering the WTO, such as Costa Rica, Poland, and Egypt. These countries belong to the new users' club.

Table 10: Country Adoption of Anti-dumping Laws and First Use (1980-2019)

Countries that adopted AD law	WTO Membership	Date of AD Law	Time of first use of AD law
Albania	2000	1999	No info
Armenia	2003	2003	No info
Bangladesh	1995	1995	No info
Belarus	--	1999	No info
Bolivia	1990	1992	never
Brazil	1995	1987	1988
Bulgaria	1996	1993	2002
Cameroon	1995	1998	No info
Chile	1995	1986	1994
China	2001	1997	1997

[832] Constantine Michalopoulos, "World Trade Organization Accession for Transition Economies: Problems and Prospects," *Russian & East European Finance and Trade* 36, no.2 (2000): 63-86.
The WTO provides considerable disciplines for countries or origins that want to join the WTO on how to limit or liberate their trade regime. There are no specific WTO rules regulating whether a country should establish AD legislation for acceding to WTO membership or not.

Colombia	1995	1990	1991
Costa Rica	1990	1996	1996
Croatia	2000	1999	Never
Cuba	1984	1990	No info
Czech Republic	1993	1997	1998
Dominican Rep	1995	2001	never
Ecuador	1996	1991	1997
Egypt	1995	1998	1998
El Salvador	1991	1995	never
Estonia	1999	2002	No info
Fiji	1996	1998	No info
Guatemala	1995	1996	1996
Honduras	1995	1995	Never
Hungary	1995	1994	Never
Iceland	1995	1987	Never
India	1995	1985	1992
Indonesia	1995	1995	1996
Israel	1995	1991	1993
Jordan	2000	2003	Never
Kazakhstan	--	1998	No info
Kyrgyz Republic	1998	1998	Never
Latvia	1999	2000	2001
Lithuania	2001	1998	1999
Mexico	1995	1986	1987
Moldova	2001	20000	Never
Morocco	1995	1997	Never
Nicaragua	1995	1995	1997
Pakistan	1995	1983	2002
Panama	1997	1996	1998
Paraguay	1995	1996	1999
Peru	1995	1991	1992
Philippines	1995	1994	1994
Poland	1995	1997	1997
Romania	1971	1992	Never
Russian Federation	2012	1998	2000
Saudi Arabia	2005	2000	No info
Senegal	1995	1994	Never
Singapore	1995	1985	1994
Slovak Republic	1995	1997	Never
Slovenia	1995	1993	1999
Spain	1995	1982	1984
Chinese Taiwan	2002	1984	1984
Thailand	1995	1994	1994
Trinidad & Tobago	1995	1992	1996
Tunisia	1995	1994	Never

Turkey	1995	1989	1989
Ukraine	2008	1999	1999
Uruguay	1995	1980	1998
Uzbekistan	--	1997	never
Venezuela	1995	1992	1992
Vietnam	2007	1998	1998

Note: “No Info” means there is no precise information in the record of AD law usage in WTO reports. “Never” means that even if a country has AD laws, they have not used them yet.

However, some countries began using AD laws after becoming WTO Members. Countries began to use AD laws close to the date of their WTO membership. This situation may not be a coincidence. It suggests that countries view AD laws as significant if they want to adopt the WTO’s package even if the WTO does not formally require countries to adopt AD laws. Therefore, variables related to the time of WTO membership should show whether institutional factors play a role in explaining a country’s decision to set up an AD regime. Research has shown an anticipation effect of WTO membership that affects AD adoption. It means countries adopt AD laws in the years around their entrance to the WTO. It has further demonstrated that most countries pass AD legislation five years or less after obtaining WTO membership. The further a country is from WTO membership, the smaller this effect is.[833]

2. Retaliatory Motives

One theory that is a reasonable explanation for the growing adoption and use of AD laws is the retaliation theory. There is a large gap between AD rhetoric and AD reality.[834] Recently, a lot of research has found that retaliation motives lead countries, especially new users,[835] to implement more AD actions. Therefore, the recent proliferation of AD laws is part of a “tit-for-tat” strategy wherein countries adopt AD laws because they feel “victimized” by others’ use of AD against their

[833] Dan Ikenson, “United States Abides Global Trade Rules...Just Ignore The Steel Protectionism, Antidumping Abuse, WTO Violations, Etc.” *Forbes*, Jul 16, 2014, https://www.forbes.com/sites/danikenson/2014/07/16/u-s-abides-global-trade-rules-just-ignore-the-steel-protectionism-antidumping-abuse-wto-violations-etc/#7a2afd7b2dc8.

[834] Martin Theuringer and Pia Weiß, “Do Anti-Dumping Rules Facilitate the Abuse of Market Dominance?” *IWP Discussion Paper,* no.2001/3 (2001): 5-28, https://www.econstor.eu/bitstream/10419/39250/1/378730398.pdf.

[835] Aryashree Debapriya and Tapan Kumar Panda, “Antidumping Retaliation-A Common Threat to International Trade,” *Global Business Review* 7, no.2 (2006): 297-311. See also, Veysel Avsar, “Antidumping, Retaliation Threats, and Export Prices,” *The World Bank Economic Review* 27, no.1 (2013):133-148. In particular some of the new AD users like Brazil, China, India and Mexico today were previously heavily targeted in the 1980s and 1990s by AD measures imposed by traditional users like the EU and the US.

exporters. Users that newly adopt AD laws have faced AD action from traditional users in the past.[836] This behavior has alerted countries that have used AD laws against other countries.

3. SAFETY VALVE FUNCTION

What leads a country to be inclined to adopt AD laws? Has compliance with a country's trade liberalization and tariffs commitments decreased their influence? In recent decades, many developing countries have embarked upon trade liberalization reforms before becoming Members of the WTO.[837] Many case studies show that these trade liberalization efforts promote critical structural innovations in their economies and policymaking. Defenders of AD legislation, including those who are fully aware of its disadvantages, have often stated that the adoption of an AD statute acts as a "safety valve" to facilitate some of these changes and to prevent social conflict in specific sectors.[838] This function can also help the government receive political support for maintaining trade liberalization.[839] There are three different kinds of AD safety valves: the temporary-adjustment safety valve,[840] the political support safety valve,[841] and the unfair-trade

[836] Vandenbussche and Zanardi researched all AD initiations/measures received in the current year as well as with total cumulative AD initiations/measures received in the past (from 1980 onwards). Initiations and measures received (cumulative or not) are highly correlated and they perform relatively well, with better results for cumulative measures. Positive and significant signs suggest that a country is more likely to adopt AD laws the more it has been targeted by AD measures in the past. New AD adopters are often countries whose exporters have previously dealt with AD actions by traditional AD users (i.e., Australia, Canada, EU, and US).
In their research, they analyze the number of AD cases related to the US steel sector and EU chemical sector to show that retaliatory motives lead countries to adopt AD laws.
[837] IMF Staff, "Global Trade Liberalization and the Developing Countries," International Monerary Fund, no.01/08, November 2001, https://www.imf.org/external/np/exr/ib/2001/110801.htm.
Razeen Sally, "Developing country trade policy reform and the WTO," *The Cato Journal* 19, no.3 (2000): 403-429.
[838] Finger, op.cit. (2007). Finger has concluded that AD action acts as a poor (or small) man's escape clause.
[839] Niels and Kate, op.cit. 627-629.
[840] WTO, Report of the Panel, "United States—Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia", WT/DS177/R, WT/DS178/R, 21 December 2000. Paragraph 7.77 of the WTO Panel Report stated: "If WTO law were not to offer a safety valve for situations in which, following trade liberalization, imports increase so as to cause serious injury or threat thereof to a domestic industry, Members could be deterred from entering into additional tariff concessions and from engaging in further trade liberalisation. It is for this reason that the safeguard mechanism in Article XIX has always been an integral part of the GATT." This type of safety valve means that domestic industries need temporary protection to get their act together. It is only for industries that are suddenly exposed to external competition.
[841] Thomas L. Hungerford, "GATT: a cooperative equilibrium in a noncooperative trading regime?" *Journal of International Economics* 31, no.3-4 (1991): 357-369. See also, A. R. Dick, "Explaining managed trade as rational cheating," *Review of International Economics* 4, no.1 (1993): 1-16. This kind of safety valve means that AD operates as an effective political bargaining mechanism for governments even though it is less used against unfair trade.

safety valve.[842] The supporters of AD law see it as a suitable instrument and as an insurance policy.[843] In the countries of traditional users,[844] many scholars believe that AD law gains political support so it can act as a safety valve. In the United States, if there were no AD rules, Congress would provide legislative protection that would replace the AD laws.[845]

Developing countries use AD law more like an "unfair-trade safety valve". However, previous studies did not find evidence to prove the extent of the use of the unfair-trade safety valve.[846] Some studies focus on apparent patterns of AD use from 1987 through 1997 then illustrate the possibility that AD helped liberalization in some countries because AD requires governments to enact a rules-based import relief system rather than arbitrary methods.[847] Research on Latin American's AD measures has described examples wherein AD may have played a similar role.[848] For example,

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[842] This type of safety valve means the international trading system needs to use AD as a necessary safety valve to protect it from unfair trade practices. Policymakers, WTO officials and other AD supporters often make this safety valve official.

[843] A. S. Firoz, "US Steel Crisis: 'Free Trade' Dumped," *Economic and Political Weekly* 34, no. 32 (1999): 2220-2222. See also, Shelby Anderson, William Isasi and David Lindgren, "Trade Wars: Anti-Dumping And Countervailing Duty Trends," *Law 360*, October 15, 2018, https://www.cov.com//media/files/corporate/publications/2018/10/trade_wars_anti_dumping_and_countervailing_duty_trends.pdf.

[844] Greg Mastel and Andrew Szamosszegi, "Leveling the Playing Field: Antidumping and the United States Steel Industry," *Economic Strategy Institute*, February 1999, http://www.econstrat.org/images/ESI_Research_Reports_PDF/leveling_the_playing_field.pdf. See also, Vidya Ram, "Brexit may strengthen EU's steel sector," *BusinessLine*, January 19, 2018, https://www.thehindubusinessline.com/opinion/columns/vidya-ram/brexit-may-strengthen-eus-steel sector/article10042458.ece. UK Steel Association to the Parliament's Select Committee on Trade and Industry, July 1st, 1988. The report explained AD as a safety valve against Eastern European steel imports.

[845] Mastel, op.cit. 120-130. If AD laws did not exist, the calls for government intervention and protection would certainly continue, but there would be no fixed criteria for judging claims of fairness and it would probably be left to Congress, not the administrative authorities, to make the decision. The result is that Congress would be more likely to respond when there is a strong political constituency in favor of protection, regardless of its merits

[846] Adriaan Ten Kate, "Trade liberalization and economic stabilization in Mexico: Lessons of experience," *World Development* 20, no.5 (1992): 659-672. Mexico decided to embrace the path of trade liberalization instead of previous import substitution policies in the early 1980s because they suffered through the 1982 debt crisis. The proportion of the domestic output protected by import licenses was reduced from 92 percent to 47 percent after it chose to use AD. The Mexican government pushed through its trade liberalization agenda. It indicated that AD had helped to prevent political backtracking. Furthermore, Mexico jointed the GATT in 1986, and then abolished all remaining official import prices and set a 20 percent import tariff. This tariff was 30 percent lower than the GATT accession protocol. By 1989, this tariff had fallen to 12.5 percent.

[847] Miranda, Torres and Ruiz, op.cit.15-27.

[848] J. Michael Finger, *Safeguards and Antidumping in Latin American Trade Liberalization: Fighting Fire with Fire* (Basingstoke: Palgrave Macmillan, 2006), 113-128. This study finds that careful management of AD procedures can facilitate broader trade liberalization.

Mexico is a typical representative of the new frequent AD users in Latin America[849] and uses AD laws as a safety valve.[850] The Mexican government enacted the Foreign Trade Act in 1985, wherein it underlined the necessity of rules against unfair international trade practices.[851] Together with Mexico, other Latin American countries such as Argentina and Brazil became frequent AD users in the early 1990s after reducing their import tariffs.[852]

Moreover, if a country's political class wishes to participate in negotiations on trade liberalization, they need a mandate from the majority of their voters. How to ensure a majority? It is easier to convince constituents if there is an available alternative for protection after permanently reducing tariffs. The use of AD laws may provide such an option if a reduction of duties in the past has contributed to the decision to adopt AD laws in the future. It is evident that AD laws act as a safety valve. Studies have found that if an economy becomes more open to trade, AD laws can act as a safety valve.[853] It confirms that AD action is indeed a substitute protectionist measure for the reduction of permanent tariffs. It brings about a further dangerous phenomenon.

The adoption of AD laws may lead to welfare losses, which can partly offset earlier gains from trade liberalization.[854] Especially for new users, AD law usage mostly causes trade losses that offset trade increases resulting from past trade liberalization efforts. Although the WTO provides other instruments to help industries that substantially and negatively suffer from trade

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[849] Homer E. Moyer, Jr. and Catherine Curtiss, "Solutions to United States Antidumping and Countervailing Duty Actions against Latin American Companies," *The University of Miami Inter-American Law Review* 21, no.2 (1990): 473-493. See also, Aguila, Emma, Alisher R. Akhmedjonov, Ricardo Basurto-Davila, Krishna B. Kumar, Sarah Kups, and Howard J. Shatz, *United States and Mexico: Ties That Bind, Issues That Divide* (Santa Monica: RAND Corporation, 2012), 53-55. See also, Joseph Francois and Gunnar Niels, "Business Cycles, the Current Account and Administered Protection in Mexico," *Review of Development Economics*, no.10 (2003): 14-20. Mexico used its AD rules extesively after 1987. From 1992 to 1993, there was a dramatic increase in AD investigations.

[850] Ibid. The Mexico's Ministry of Trade and Industry has mentioned that AD rules also compensate for a lack of adequate quality standards and trade regulations to prevent dumping or other unreliable goods from entering after a rapid process of import liberalization.

[851] Article 28 of Mexico Regulations under the Foreign Trade Act, http://www.sice.oas.org/antidumping/legislation/mexico/LCEXT.asp.

[852] Aggarwal (2005), op.cit.49-62.

[853] Lewis E. Leibowitz, "Safety Valve or Flash Point? The Worsening Conflict between United States Trade Laws and WTO Rules," *The Cato Journal*, no.17, November 6, 2001, https://www.cato.org/trade-policy-analysis/safety-valve-or-flash-point-worsening-conflict-between-us-trade-laws-wto.

[854] Vandenbussche and Zanardi, op.cit. 7-10. See also, Reid M. Bolton, "Anti-Dumping and Distrust: Reducing Anti-Dumping Duties under the W.T.O. Through Heightened Scrutiny," *Berkeley Journal of International Law* 29, no.1 (2011): 66-93.

liberalization without the need to prove imports at lower prices, countries usually and frequently prefer using AD actions because AD actions are more natural and have less strict rules compared to other instruments.

4. Political Economy Reasons

Some special interest groups want to achieve rent-seeking behavior through the adoption and use of AD law[855] while trade liberalization has negatively affected their import-competing sectors.[856] For example, steel and chemicals sectors have dealt with many more AD investigations than other areas like textile and agriculture.[857] Indeed, the reason accounting for this situation is complicated. There is no single reason for this situation. For example, both the steel and chemical sectors have undergone long-term development. They have also gained more political attention. At the same time, they have suffered more than other areas under AD laws. Hence, industries in these sectors seek more protection under current AD laws. Another reason may be that these industries have a large number of employees, representing a significant percentage of the voting population. These voters may express their desire to receive protection from the government against import-competing products.[858] A notable observation is that new users also regularly use AD against the steel and chemical sectors.[859] Even though the frequency is not the same compared to traditional users, steel and chemical sectors are still the most involved.[860] The size of the domestic steel and

[855] Mancur Olson, *Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1971), 22-62. See also, George J. Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2, no.1(1971): 137-146. See also, Sam Peltzman, "Toward's More General Theory of Regulation," *Journal of Law and Economics* 19, no.2 (1976): 211-248. See also, J. J. Pincus, "Pressure Groups and the Pattern of Tariffs," *Journal of Political Economy* 83, no.4 (1975): 758-778. These articles state that interest groups will try to gain legislative benefits from tariffs once they pressured by import competition.
[856] K. Gawande and P. Krishna, "The Political Economy of Trade Policy: Empirical Approaches," in *Handbook of International Trade*, ed. Eun Kwan Choi and James Harrigan (Oxford, U.K.: Blackwell, 2005), 46-70.
This article states, *"The capitalists in import-competing sectors want to lobby governments for barriers against imports.*" See also, Arye L. Hillman, "Declining Industries and Political support Protectionist Motives," *The American Economic Review* 72, no.5 (1982): 1180-1187.
[857] Chad P. Bown, "How different are Safeguards from Antidumping? Evidence from the US Trade Policies toward steel," *Review of Industrial Organization* 42, no.4 (2004): 449-481.
[858] Alexandra Guisinger, "Determining Trade Policy: Do Voters Hold Politicians Accountable?" *International Organization* 63, no.3 (2009): 533-557.
[859] Scott Lincicome, "The 'Protectionist Moment' That Wasn't-American Views on Trade and Globalization," *Free Trade Bulletin*, no.72, November 2, 2018, https://www.cato.org/free-trade-bulletin/protectionist-moment-wasnt-american-views-trade-globalization.
[860] On the one hand, new adopters initiated about 32% of all cases in chemicals and about 29% in steel up to 2018. On the other hand, for a traditional user like the US, steel cases over the same period are much more numerous and represent over 48% of all cases whereas chemicals only represent 16% of all cases.

chemical industries and the imports from these sectors could indicate how much these industries seek to use their lobbying power with the government by adopting AD laws.[861]

Political economy pressures in AD issues seek protection for the domestic industry.[862] Therefore, the industries that suffer the most from the AD issues react more actively than other industries that have suffered less from AD issues. There are often worker unions for leading industries in many countries, such as the United States [863], Australia[864] , and Canada.[865] Some associations are sharp and try very hard to guard their workers' interests. Once competition hurts or threatens their industry and further affects their workers, they choose to support trade protection laws. [866] The workers' union is also the source of cost-push inflation, which can harm the competitiveness of domestic companies. Therefore, it is easy to trigger the requirement of using AD laws to protect the domestic industry.[867]

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[861] Steel and chemical sectors received the majority of AD petitions. These industries have influence on governments and benefit most from the adoption of AD laws.

[862] James E. Anderson, "Strategic Lobbying and Antidumping," *Journal of Economic Integration* 9, no.2 (1994): 129-55.

[863] David Shepardson, "United States opens AD probe into steel imports from China, Canada, Mexico-source," *REUTERS*, February 26, 2019, https://www.reuters.com/article/us-usa-steel-investigation/u-s-opens-anti-dumping-probe-into-steel-imports-from-china-canada-mexico-idUSKCN1QF2S1.

[864] Industrial Global Union, "*Australian Workers' Union calls for action on Chinese steel,*" *Industri all global Union*, 28 February, 2017, http://www.industriall-union.org/australian-workers-union-calls-for-action-on-chinese-steel.
This article shows Australian steel workers urging the government to impose AD duties because Chinese steel products hurt the domestic steel industry. Joint Submission from AMWU, The Australian Workers' Union and CFMEU, "Maintaining and Improving the Integrity of Australia's AD System", August 2010. These are three major groups of the Australian workers union. The Australian Manufacturing Workers Union (AMWU), the Australian Workers Union (AWU) and the Construction, Forestry, Mining and Energy Union (CFMEU) represent more than 350,000 workers in virtually every industry, occupation and region across Australia. The AD regime is part of the core business for these unions.

[865] Herwig Hofmann, Gerard C. Rowe, and Alexander Heinrich Türk, *Administrative Law and Policy of the European Union* (Oxford, U.K.: Oxford University Press, 2013), 36-80.

[866] Holly Hart, "USW Strongly Supports United States Steel's Trade Case to Sanction Chinese Unfair and Illegal Practices Affecting Steel Sector: Bold Action is Absolutely Necessary," *CISION PR Newswire*, Apri 26, 2016, https://www.usw.org/news/media-center/releases/2016/usw-strongly-supports-u-s-steels-trade-case-to-sanction-chinese-unfair-and-illegal-practices-affecting-steel-sector-bold-action-is-absolutely-necessary.
See also, Robert E. Scott, "Trump must act now to protect United States steel and aluminum," *Economic Policy Institute*, January 24, 2018, https://www.epi.org/publication/trump-must-act-now-to-protect-u-s-steel-and-aluminum-administration-delays-have-already-heightened-the-import-crisis-for-tens-of-thousands-of-steel-and-aluminum-industry-workers/.

[867] Josef Konings, Hylke Vandenbussche, and Reinhilde Veugelers, "Union Wage Bargaining and European Antidumping Policy in Imperfectly Competitive Markets," *CEPR Discussion Papers*, no.1860 (1998): 10-28.
See also, Josef Konings, Hylke Vandenbussche, and Reinhilde Veugelers, "Unionization and European antidumping protection," *Oxford Economic Papers* 53, no.2 (2001): 297-317.

5. MACROECONOMIC FACTORS

In the previous chapter, macroeconomic factors[868] significantly influenced AD petitions. Small and open economies often have flexible exchange rates, which might be rapidly affected by business cycle fluctuations. Hence, domestic industries might seek protection from AD laws to reduce this negative influence. Moreover, the extent of foreign direct investment (FDI) affects AD behavior.[869] It can also affect the decision to enact AD laws. Globalization provides opportunities for capital flows, which may change the amount of capital entering a country.[870] The amounts a country receives as FDI also influence the extent they need AD laws. The larger the FDI flows, the less possibilities a government has to enact AD laws.[871]

However, economists have shown that macroeconomic factors are not inevitably related to the adoption of AD laws by comparing various macro effects with AD Law adoption trends.[872] These are different from the function of macroeconomic factors in the use of AD actions. Macroeconomic factors influence AD actions but not the adoption of AD laws.[873] One possible reason is that a long time is required before making the decision to enact AD laws. Moreover, the adoption of domestic AD laws requires other policy and strategy drivers. Various factors can affect the decision to adopt AD legislations.

[868] For example, a country's GDP growth, real exchange rate fluctuations.

[869] James A. Brander, and Barbara J. Spencer, "Foreign direct investment with unemployment and endogenous taxes and tariffs," *Journal of International Economics* 22, no.3-4 (1987): 257-279. See also, Alasdair Smith, "Strategic Investment, Multinational Corporations and Trade Policy," *European Economic Review* 31, no.1-2 (1987): 89-96. See also, Massimo Motta, "Multinational Firms and the Tariff-jumping Argument: A Game Theoretic Analysis with Some Unconventional Conclusions," *European Economic Review* 36, no.8 (1992): 1557-1571. See also, Jan I. Haaland and Ian Wooton, "Antidumping Jumping: Reciprocal Antidumping and Industrial Location," *Weltwirtschaftliches Archiv* 134, no. 2 (1998): 340-360. See also, René Belderbos, Hylke Vandenbussche and Reinhilde Veugelers, "Antidumping Duties, Undertakings, and Foreign Direct Investment in the EU," *European Economic Review* 48, no.2 (2004): 429-453.

[870] Sourafel Girma, David Greenaway and Katherine Wakelin, "Does antidumping stimulate FDI? Evidence from Japanese firms in the UK," *Weltwirtschaftliches Archiv* 138, (2002): 414-436.

[871] Yasukazu Ichino, "Antidumping Petition, Foreign Direct Investment, and Strategic Exports," *Research in World Economy* 4, no.1 (2013): 22-34.

[872] For example, a GDP growth change or a real exchange rate change that may affect a country's competitiveness can have less influence on the adoption of AD laws.

[873] Jallab, Sandretto and Gbakou, po.cit. 22-30.

III. EFFECT OF ANTI-DUMPING LAWS

This proliferation of the adoption of AD laws and of the actual use of said laws has a substantial impact on trade. The literature and research on the effect of AD law concentrates mostly on economic impacts, such as its effect on industry, welfare, and international trade. These studies already existed before the adoption of the ADA. At that time, researchers found that AD laws have a trade-inhibiting effect.[874] After analyzing changes in trade before and after the use of AD laws, researchers have found that the adoption of AD laws has a trade-depressing effect. This effect is common among new users. The most recent user's annual imports were curtailed around 8.9 percent due to the adoption of AD practices. Other new users like China,[875] Egypt,[876] and Peru[877] also have an apparent loss of imports.

Another example is India. India's imports rose by 11.3% in the 1991-2001 period because of trade liberalization, but its imports fell by 10.2% after it began using AD actions. This suggests that even though a country can receive benefits from trade liberalization, AD laws and practices can reduce or offset them.[878] AD trade-depressing effects are not restricted only to those specific goods subject to AD measures because the facts show that AD has an overall negative impact on the trade. Although the adoption of AD laws has adverse effects, countries still try to maintain the mechanism so it can be used when they need to react against other countries' unfair trade behavior. Domestic AD laws comply with the ADA for dealing with AD issues inside countries. ADA reform

[874] Dale,op.cit.192-196. In this book, the author mentions that no matter the purpose of AD action, the remedies applied are abnormal and will inhibit trade. A remedial approach to AD offers little protection against predatory exporters, whose ultimate goal of monopolization may presumably be achieved by paying AD duties and continuing to dump. In practice, however, it has been shown that in countries such as the United States, where the importer's liability for AD duties cannot be shifted to the exporter, very different considerations apply. Here there is a deterrent effect, but one which operates inefficiently, for the importer is seldom in a position to know whether or not imported goods are subject to price discrimination.

[875] Weihuan Zhou and Shu Zhang, "Anti-dumping Practices and China's Implementation of WTO Rulings," *The China Quarterly* 230, (2017): 512-527.

[876] Nevine Kamel, "Egyptian government has begun to protect local industry, expect to increase anti-dumping cases in 2018: WTO," *Daily News Egypt*, May 8, 2019, https://dailynewsegypt.com/2019/05/08/egyptian-government-has-begun-to-protect-local-industry-expect-to-increase-anti-dumping-cases-in-2018-wto/.

[877] Casey E. Bean, "Peru Biofuels Annual Peru's biodiesel production expected to resume amidst a CVD investigation of United States ethanol," *GAIN Report*, 20 September 2017, https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Biofuels%20Annual_Lima_Peru_9-20-2017.pdf.

[878] Samir Kumar Singh, "An Analysis of Anti-Dumping Cases in India," *Economic and Political Weekly* 40, no.11 (2005): 1069-074.

will also affect Members' domestic AD laws, especially those Members that frequently use AD practices and participate actively in the Doha Round.

B. Representative Users and Anti-dumping Law and Practice

AD law has existed for over a century. However, most activity and the most dramatic changes have occurred in recent decades. First, the GATT and other agreements gradually abolished the function of AD as a trade barrier. Second, there was a boom of economics papers on dumping and AD policy theoretically and empirically consistent with that increase in usage. Third, AD users have fundamentally changed.[879] Plenty of countries adopted AD laws and increased the use of AD actions around the same as they started down the path of trade liberalization.[880] Over recent decades, WTO Members have submitted plenty of proposals and discussed reducing and reforming the existing WTO AD legal standard.[881]

The United States and the EEC provided the drafts for the first international AD law.[882] At that time, they were the most active users of AD actions[883] , and both benefited from those rules at the very beginning.[884] It is not surprising that legal AD studies have often focused on American and European AD practices. While these Members have plenty of history as well as experience with AD actions, both scholarly and political circles have questioned the positions of the United States and the EU towards the rule of international law in recent decades.

AD laws vary slightly among countries. However, their fundamental rules and procedures follow the United States model.[885] The United States has faced criticism on its role in the international

[879] Adriaan Ten Kate, op.cit. 660-663. See also, Jonathan Lynn, "WTO warns on excessive legal trade safety valves," *REUTERS*, July 22, 2009, https://www.reuters.com/article/us-trade-wto-measures/wto-warns-on-excessive-legal-trade-safety-valves-idUSLK12524020090722.

[880] Countries like South Africa, Malaysia, South Korea and Argentina have had domestic AD laws for a long time, however, they only started using it in the last 20 to 30 years.

[881] List of Proposals Encompassing Negotiations on AD Reform Made during the Rules Negotiation, WTO Documents online. https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx.

[882] Petros C. Mavroidis, Douglas A. Irwin, and Alan O. Sykes, *The Genesis of the GATT* (Cambridge, MA: Cambridge University Press, 2009), 23-50.

[883] The US and the EU have always been on the list of the top ten users of AD measures since the 1980s. See World Trade Organization AD Measures: By reporting Members.

[884] T. P. Bhat, "Globalisation of Anti-dumping and Its Impact," *Foreign Trade Review* 38, no.1-2 (2003): 54-95.

[885] Simon Nicholas Lester, Bryan Mercurio, and Arwel Davies, *World Trade Law: Text, Materials, and Commentary* (Oxford, U.K.: Hart Publishing, 2018), 35-70. See also, Pierce Lee, "Rethinking the Rhetoric of Antidumping: A

legal order even before the presidency of George W. Bush and the terrorist attacks on September 11, 2001. These critics mentioned that the United States has not maintained its role as champion of the international legal order but characterize it at best as ambivalent towards legal constraints and at worst as a "rogue nation".[886] In contrast, the EU has become more active and presents itself as normative. This makes the EU the most active promoter with a stable international legal order.[887] The United States was the primary designer of the multilateral trading system after World War II, enacting rules to restrict arbitrary forms of discrimination.[888] Moreover, the United States helped other countries open their markets. Besides, there was a strict discipline for the United States itself and its behavior. During the first GATT negotiations in the 1940s, the United States made plenty of tariff commitments, which were often asymmetrical. In subsequent negotiations, the United States kept leading the way in making tariff commitments.[889]

The United States maintained its leadership, keeping the GATT moving forward properly. For example, the United States encouraged launching the Kennedy Round and put effort into reaching a positive outcome with a 35 to 40 percent average tariff cut on industrial goods. The United States worked hard during the first decades of the GATT to extend its membership[890] and drove implementation of the non-discrimination principle.[891] The EEC was willing to provide collective

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Response to Mark Wu's Reform Proposal," *Georgia Journal of International and Comparative Law* 42, no.2 (2014): 457-465.

[886] John Francis Murphy, *The United States and the Rule of Law in International Affairs* (Cambridge, MA: Cambridge University Press, 2007), 32-58. See also, Clyde Prestowitz, *Rogue Nation: American Unilateralism and the Failure of Good Intentions* (New York: Basic Books, 2004), 110-135. See also, Philippe Sands, *Lawless World: The Whistle-Blowing Account of How Bush and Blair Are Taking the Law into Their Own Hands* (New York: Penguin Books, 2006), 47-90.

[887] Ian Manners, "Normative Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies* 40, no.2 (2002): 235-258. See also, Liesbeth Aggestam, "Introduction: Ethical Power Europe?" *International Affairs* 84, no.1 (2008): 1-11.

[888] Todd Allee, "The Role of the United States: A Multilevel Explanation for Decreased Support Over Time," in *The Oxford Handbook on the World Trade Organization*, ed. Amrita Narlikar, Martin Daunton and Robert M. Stern (Oxford, U.K.: Oxford University Press, 2014), 67-110. See also, G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars* (Princeton, NJ.: Princeton University Press, 2019), 13-70.

[889] WTO, "Trade in War's Darkest Hour: Churchill and Roosevelt's daring 1941 Atlantic Meeting that linked global economic cooperation to lasting peace and security," https://www.wto.org/english/thewto_e/history_e/tradewardarkhour41_e.htm.

[890] The US made an effort to offer Japan membership in the 1950s. Japan became a WTO Member in 1955.

[891] Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (Oxford, U.K.: Oxford University Press, 2005), 141-190. See also, Eric A. Posner, *The Perils of Global Legalism*, (Chicago, IL: University of Chicago Press, 2009), 41-70.

leadership in the multilateral area until the 1980s. Before the second half of the Uruguay Round negotiations, the EU and the United States bonded to encourage the creation of an organization for world trade. The purpose of this organization was to agree on instruments to provide additional access to the market.[892] At the same time, these instruments would restrict some loopholes that included non-tariff barriers and trade remedies. This organization had the responsibility to improve diplomatic enforcement tools, for example, a new dispute settlement body. The EU and the United States had to make concessions for the partnership to work.[893] As was noted in chapter 4, both the United States and the EU began AD actions a long time ago. Their role in AD activity has moved slowly from dominant users to frequent targets.

Moreover, both the United States and the EU had an essential influence on AD legislation. Many countries followed the main structure of United States AD law to adopt their own AD laws before the establishment of the ADA.[894] The EU provided an example for regulating these rules among a union of countries. Both were important for the expansion of AD legislation. During the Doha Round negotiations, both transatlantic partners failed to exert leadership. They made less effort to put forward joint proposals during the ongoing ministerial conferences after the Doha Round.[895] Both internal and external reasons have led to an absence of leadership in the sense of providing a public good. Internally, export industries are providing less support for opening up to new markets through the WTO.

After WTO negotiations had reached a long-lasting standstill, firms actively suggested that the government seek other instruments or methods to pursue their interests.[896] The EU and United States positions significantly influence the ongoing development of the WTO. Also, the United

[892] These markets include goods, services and protection of intellectual property rights.
[893] Richard H. Steinberg, “Great power management of the world trading system: a transatlantic strategy for liberal multilateralism,” *Law and Policy in International Business* 29, no.2 (1998): 1-15. See also, Manfred Elsig and Jappe Eckhardt, “The Creation of the Multilateral Trade Court: Design and Experiential Learning,” *World Trade Review* 14, no.1 (2015): 13-32.
[894] Craig Thomsen, “Trends in United States Antidumping and Countervailing Duty Petition Filings and the Consequences of Rule Changes, 1993-2013,” *Journal of International Commerce and Economics*, July 2015, https://www.usitc.gov/publications/332/journals/vol_vii_article2_trends_in_us_antidumping_and_countervailing.pdf.
[895] For example, in the Cancun Ministerial Conference in 2003, the United States and EU held opposite opinions on reforming the ADA. There is no obvious progress on reforming the ADA.
[896] Christina L. Davis, “Overlapping Institutions in Trade Policy,” *Perspectives on Politics* 7, no.1 (2009): 25-31.

States and the EU have discarded many other tools with which to protect their domestic industries.[897] AD has advantages compared to the other remaining legal forms of contingent protection such as countervailing duties[898] and safeguards.[899] Unlike other legal forms of contingent protection, petitioners can use AD measures more quickly and efficiently. They have made concessions for AD measures before. Research on their domestic AD laws is therefore important.

As mentioned in previous chapters, retaliatory motives play a role in encouraging developing countries to implement AD actions.[900] However, retaliation is only one reason explaining the use of AD actions by developing countries. There is an apparent gap in the empirical literature related to the new AD legal system. Although all GATT/WTO Members have a similar economic rationale, almost all research has focused only on AD use in the United States and EU.[901] Current empirical research into the United States and the EU has provided useful insights into specific aspects of AD policy, for example, AD methods, the effects of AD, and the political economy aspects. Much of this research will be applicable to all AD regimes.

Nevertheless, new users have characteristics. It is reasonable to hypothesize that their AD regimes might have some differences compared to the United States and the EU. Many developing countries who have actively used AD actions in recent decades underwent a policy shift towards

[897] For example, developing countries can use some combination of high tariffs, import licenses, quotas, and other non-tariff barriers to keep their economies closed.
[898] Countervailing duty is "a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise." GATT, Article VI: 3. AD measures can easily be proven with a wider range of imports. For example, AD measures can be applied against a foreign product and the AD petitioner needs simply to find that the import price is lower than the normal value. In addition, an AD case is more politically acceptable because an AD case has no relationship to a foreign government's behavior. It is only a finding on the foreign firm's behavior.
[899] Agreement on Safeguards, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments-Results of the Uruguay Round, 33 I.L.M. 1125 (1994) [hereinafter Safeguards Agreement].A safeguard is a temporary restriction on imports of a particular product that may be implemented when the domestic industry has been seriously injured or threatened by serious injury as a result of a surge in imports of that product. AD has three advantages compared to safeguards. First, imposing AD duties costs less than safeguards. Second, instead of the narrow circumstances for safeguards, legal standards governing AD are very loose. Third, AD duties can be applied for longer periods than safeguards. A safeguard measure can be kept in place eight years at most. On the contrary, AD duties can remain in effect for as long as the government conducts reviews and finds that they are necessary.
[900] William E. James, "Have Antidumping Measures of EU and NAFTA Members against East Asian Countries Provoked Retaliatory Responses?" *ADB Economics Working Paper Series*, no.144 (2008): 1-19.
[901] Alan O. Sykes, "Trade Remedy Laws," *Law and Economics Working Paper*, no.240 (2005), 1-68.

trade liberalization. Moreover, as favored targets, developing countries have received decades of AD investigations from traditional users. In the Doha Round negotiations, developing countries began expressing their own opinions on how to reform the ADA. The FANs represented most of the developing countries' views on detailed ADA reforms , including both substantial and procedural provisions of the ADA.[902] There is a remarkable similarity amongst developing country positions for modifying the ADA.[903]

In the developing countries group, China's AD practices receive more and more attention. With such significant emerging power, China's opinion has more weight upon negotiations. For example, global trade talks in July 2008 collapsed because China was unwilling to sign on to a compromise by industrialized nations to constitute established trading powers.[904] The economies of the traditional powers were weakened due to the financial crisis. New powers such as China have a significant influence on further global economic growth. China seeks to protect its domestic industries by resorting to international trade law instruments and AD actions are the most common of these.

China has the world's largest population with excellent growth potential and provides cheap labor to the entire world. Before entering the WTO, China was already a significant and favored target. From 1995 to 2000, China faced about 179 AD actions on average per year, including the statistics for Taiwan. The proportion of AD actions would rise to fifty more on average per year. China has always been a favored target for AD activities. Since 1997, China has been the number one target

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[902] Yaning Zhu, "Towards a Better Formulation of the Macroeconomic Determinants of the Number of Antidumping Filings," *Tilburg School of Economics and Management*, 2013, http://arno.uvt.nl/show.cgi?fid=131004.
[903] The comprehensive proposals of most of the developing countries are described in chapter three.
[904] Stephen Castle and Mark Landler, "After 7 Years, Talks Collapse on World Trade," *The New York Times*, July 30, 2008, https://www.nytimes.com/2008/07/30/business/worldbusiness/30iht-30trade.14872987.html.
See also, Paul Blustein, "The Nine Day Misadventure of the Most Favored Nations: How the WTO's Doha Round Negotiations Went Awry in July 2008," *Brookings*, December 5, 2008, https://www.brookings.edu/articles/the-nine-day-misadventure-of-the-most-favored-nations-how-the-wtos-doha-round-negotiations-went-awry-in-july-2008/.
See also, Wei Huo, "Introduction and Critical Analysis of Anti-dumping Regime and Practice in China Pending Entry of WTO: Transition toward a WTO-Modeled Trade Legal Mechanism," *The International Lawyer*, 36, no.1 (2002): 1-13. For the reason China resisted United States entreaties, leading to the negotiations' collapse. In this talk, China seemed to "walk away" from the deal after accepting it. Moreover, many critics said that the US had abandoned the entire deal.

of AD investigations.[905] At the same time, China began actively implementing AD measures.[906] Although China has had such an active role in the use of AD measures, few scholars have focused substantially on its AD regimes at the start of negotiations. Because China is a member of the "new users group",[907] scholars have found that an examination of the similarities amongst the new users group is sufficient to explain AD measures for all Members rather than perform detailed research into every single AD regime**.**[908] Indeed, the Members of the new users' group have similar views on reforming the ADA.[909] However, concerns with developing countries, especially China, have increased with the growth of AD actions, which hurt international trade. Therefore, a detailed understanding of China's AD regime is necessary.

These three Members have had a significant influence on the ongoing negotiations. They are a critical part for achieving success in the negotiations. However, no convergence has been reached among these Members. A comprehensive understanding of the national AD laws of these representative users will be beneficial to understand ongoing negotiations. It may help with finding out whether conflicts exist between domestic AD law and the ADA and whether substantial differences in political culture play a role. However, broad political culture and identity-based explanations tend to over-predict a stark United States and EU contrast and fail to explain other variations.

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[905] According to WTO statistics, China has ranked among the top five users of AD actions since 1997.

[906] WTO Statistics on AD Measures by Reporting Member. China uses AD in a defensive manner to support its own exporters that become the target of other countries' AD actions.

[907] Junji Nakagawa, *Anti-Dumping Laws and Practices of the New Users* (London: Cameron May Ltd., 2007), 26-65. See also, Xin Zhang, *International Trade Regulation in China: Law and Policy* (Oxford, U.K.: Hart Publishing, 2006), 47-86. See also, David R. Grace, Alexia Herwig and Yao Feng, "China's Antidumping Regime, Worth Keeping an Eye on," *World Trade Magazine*, March 2003, https://www.cov.com/~/media/files/corporate/publications/2003/03/oid6344.ashx.
See also, Thomas Weishing Huang, "The Gathering Storm of Antidumping Enforcement in China," *Journal of World Trade* 36, no.2 (2002): 255-283.

[908] Simon J. Evenett, *BRICS Trade Strategy: Time for a Rethink The 17th Report* (London: CEPR Press, 2015): 1-107. The growth of AD actions in developing countries, including China, are triggered by motives of retaliation and as a safety valve.

[909] The FANs aggregate most new users' opinions on how to reform the current ADA.

I. UNITED STATES ANTI-DUMPING LAW

Although the number of AD actions against the United States has increased rapidly over the past two decades, the United States remains strongly opposed to any reforms in the current disciplines of the ADA strongly. United States primary negotiation policy has not changed since 2001. If the WTO wants to successfully reform the ADA, all Members must agree to any new changes. United States intransigence has effectively blocked most proposals of reform. Most Members think the United States is the chief obstacle to AD reform.

1. DEVELOPMENT OF UNITED STATES ANTI-DUMPING LAW

The United States AD regulation is a part of its anti-monopoly legislation. It is regarded as a specific form of anti-competitive behavior on an international level.[910] Existing United States AD statutes began with the AD Act of 1921 to prevent predatory pricing in international trade[911] and reduce the possibility of foreign monopolization in domestic markets.[912] Its provisions were incorporated into the Tariff Act of 1930. Until the 1950s, this act did not change too much after several amendments and final repeal.[913] The fundamental and substantial provisions of the AD Act of 1921 still exist in the new law.[914] The Secretary of the Treasury was responsible for investigating dumping complaints by comparing the United States import price and the imports' fair value. If the product's fair value was higher than the United States import price, the Treasury calculated the difference, which was then used to determine the dumping margin.[915]

Moreover, the Treasury would find evidence to support material injury to United States producers. This step helped the Treasury assess AD duty. The method to measure United States import prices

[910] Viner's theory emphasized that the original purpose of AD legislation was aimed at predation on an international level. Predation means that, by keeping prices are low, monopoly profits will pay for themselves once competitors are eliminated.
[911] Even though the Revenue Act of 1916 also includes AD measures, the provisions make implementation difficult.
[912] Robert E. Baldwin and Anne O. Krueger, *The Structure and Evolution of Recent United States Trade Policy* (Chicago, IL: University of Chicago, 1984), 23-59.
[913] Trade Agreements Act of 1979, 19 United StatesC. § 2501 (repealing the AD Act of 1921).
[914] Thomas E. Johnson, "The Retroactive Application of the Antidumping Act of 1921," *Northwestern Journal of International Law & Business* 1, no.1 (1979): 262-283.
[915] James Pomeroy Hendrick, "The United States Antidumping Act," *The American Journal of International Law* 58, no.4 (1964): 914-34.

was simple.[916] Usually, if transactions between foreign suppliers and United States buyers were independent, the Treasury would directly use the free onboard factory sales price. If not, United States market price could be used as a substitute. United States market prices should be minus import fees, transportation, and market preparation costs. The method for calculating fair value was ambiguous as there was no clear definition for it in the statute. Hence, the Treasury used a commodity's foreign market value as a standard of fair value. If there was no commodity foreign market value, the Treasury used a transaction price, which meant the constructed value could replace the foreign market value.[917] Foreign market value was used as one of the transaction prices. The foreign market value can be easily observed in the exporter's home market. In third-party markets, the foreign market value is not that obvious because of the complexity of the constructed value.[918]

There were a few problems when the Treasury calculated fair value and foreign market value before 1955. There were two main reasons for this. First, it is hard to confirm the existence of injury. Second, companies preferred to choose to accept price assurances from companies that were potentially dumping product. However, the USITC has become the authority that determines injury since 1954.[919] An amendment regulated that any injury decision issued by the USITC must depend on confirmed dumping by the Treasury. It exposed the Treasury's decisions to the public, making the authority adhere more carefully to the process of deciding dumping and injury. The development of trade makes it difficult to see the market prices of central-planned economies. Hence, the values constructed by the Treasury are more reliable.[920]

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[916] Barry Eichengreen and Hans van der Ven, "United States Antidumping Policies: The Case of Steel", in *The Structure and Evolution of Recent United States Trade Policy,* ed. Robert E. Baldwin and Anne O. Krueger (Chicago, IL: University of Chicago, 1984), 67-110. See also, Cliff Stevenson, "US Steel Duties and Safeguard Actions under the WTO," *Trade Hot Topics Commonwealth*, no.11 (2002): 1-8.

[917] Bruce A. Blonigen, "Tariff-jumping antidumping duties," *Journal of International Economics* 57, no.1 (2002): 31-49.

[918]James K. Stronski, "Antidumping, Constructed Value, and Non-Countervailable Subsidies: A Proposed Inclusion of Subsidies in Constructed Value after Al Tech Specialty Steel Corp. v. United States," *Fordham International Law Journal* 11, no.1 (1987): 1-15.
It is very complicated to calculate the constructed value. Because such calculations must include allowances for production costs, costs of preparing the good for shipment and statutory minimums for general expenses and profits.

[919] In 1954, however, an amendment to the AD act assigned responsibility for determining injury to the Tariff Commission.

[920] James Pomeroy Hendrick, "The United States Antidumping Act," *American Journal of International Law* 58, no.4 (1964): 914-934.

Furthermore, the extent of trade growth will affect central-planned economies, especially the observation of market prices. Hence, the Treasury relied more on constructed value whenever it needed to compare price values. Besides, the Treasury had to amend its procedures and this made the practice more complicated. Amendments to AD regulations between 1958 and 1974 aimed at matching established practice and eliminated all reference to competition aspects.[921] The 1974 Trade Act[922] contained essential modifications. The manifest change was in section 205 (b). It provided new circumstances, which meant the constructed value criterion replaced foreign market value.

For example, constructed value calculations can replace the foreign market price if the price of the export product is below the cost of production in the exporters' home market over a long period and in significant quantities. There was still no specific definition on how long the period was and how significant the volume should be. However, this amendment changed the essential meaning of dumping, shifting the focus of AD policies from dumping as price discrimination to dumping as sales below cost.[923]

Constructed value regulations in United States AD law have been discussed for a long time, focusing on their economic effects. Under United States AD law, the constructed value includes the prices permitting the recovery of raw material and production costs.[924] There is a 10% minimum quota for general costs and an 8% minimum for profits. Except for the article on the extended period, there is no other regulation on how the profit margin will change over the business cycle. Hence, the Act makes it hard for companies to manage their prices, especially when they experience unfavorable market conditions. It increases the possibility that the authority will interpret marginal cost pricing as dumping. The 8% profit allowance requires a higher return on

[921] Arnold, op.cit.15-27.
[922] This law is codified in Chapter 12 of Title 19 of the United States Code as part of the Trade Act of 1974 (Public Law 93-618), based on the place of the original version of this statute in that enactment, but most of the 1974 law has been substantially rewritten in the omnibus trade bills enacted in 1979, 1984, 1988, 2000, and 2002, as well as several other laws enacted throughout 2011.
[923] Leon R. Goodrich, "Minnesota Price Discrimination and Sales-Below-Cost Statutes: Should They Be Repealed, Amended, or Left Alone?" *William Mitchell Law Review* 5, no.1 (1979): 13-82,
[924] Powell, Stephen J. Craig R. Giesse, and Craig L. Jackson. "Current Administration of U.S. Antidumping and Countervailing Duty Laws: Implications for Prospective U.S.-Mexico Free Trade Talks." *Northwestern Journal of International Law & Business* 11, no.2 (1990): 177-256.

equity for companies, which have higher debt-equity rations. The general cost benefit has no regulation for changes in the cost structure. These regulations encourage United States producers to take part in AD cases.[925]

Besides, in the case of steel products, other factors exist that may affect the increasing number of AD complaints. Since 1959, the United States had become a net importer of steel products. Until 1968, import rates in the United States market had increased to 17%. The United States was a net exporter before World War II. Since 1959, the United States had become a significant importer of steel products. In ten years, the import share of the United States market had grown more than 15 percent.[926]

Between 1968 and 1973, there was a dramatic expansion of the use of voluntary export restraints (VER) in United States trade policy. The United States had negotiated with the EEC[927] and Japan[928] for the steel industry. The first VER agreements entered effect in 1969.[929] The second of these agreements became invalid in 1974. During the same period, the steel market boom ended.[930] United States producers worked more and more strongly on requirements to further the implementation of voluntary restrictions. However, this seemed not to be successful. The steel industry underwent a difficult situation in 1975 that resulted in a series of unusually low shipments from domestic producers that ended up shrinking profits.[931]

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[925] Matthew J. Marks, "United States Antidumping Laws-A Government Overview," *Antitrust Law Journal* 43, (1973-1974): 580-595.
[926] William H. Branson and Helen B. Junz, "Trends in United States Trade and Comparative Advantage", *Brookings*, no.2 (1971), https://www.brookings.edu/bpea-articles/trends-in-u-s-trade-and-comparative-advantage/.
[927] Kent Jones, "The Political Economy of Voluntary Export Restraint Agreements," *International Review for Social Sciences* 37, no.1 (1984): 82- 101.
[928] Thomas J. Schoenbaum, "Trade Friction with Japan and the American Policy Response," *Michigan Law Review* 82, no.5/6 (1984): 1647-1661.
[929] William McClenahan, "The Growth of Voluntary Export Restraints and American Foreign Economic Policy, 1956-1969," *Business and Economic History* 20, (1991): 180-190.
[930] The United States steel market boom ended between 1972 and 1974.
[931] Robert W. Crandall, *The United States Steel Industry in Recurrent Crisis: Policy Options in a Competitive World* (Washington, D.C.: Brookings Institution, 1981), 16-47.

A new low in the decline of the United States steel industry came in 1977 with an extraordinary decrease in steel products[932] and steelworker unemployment.[933] Hence, the steel industry and workers moved strongly for a newly formed "Steel Caucus", which pushed the government to limit the flow of imports.[934] The Carter administration in 1977 had recommended that the United States steel industry should begin implementing the provisions of the 1974 Trade Act instead of restricting the volume of imports, which seemed to be more useful for keeping the domestic industry away from unfair foreign competition.[935] The proceedings of the Gilmore case indicated that this approach was highly encouraging.[936] After the steel industry filed more than twenty AD complaints, the EEC threatened to retaliate against United States products. At the same time, there were other problems before the Treasury and the International Trade Commission. They had to solve petitions in a required limited period. Thus, the United States administration created a "Steel Task Force" to research the problem and find a solution called the "Trigger Price Mechanism" (TPM),[937] which includes a reference price regime to facilitate the prompt initiation of AD complaints.[938] The Treasury can automatically initiate dumping investigations if the price of

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[932] "Steel Production Declined 3.3% during the Last Week of 1977", *The New York Times*, Jan. 4, 1978, https://www.nytimes.com/1978/01/04/archives/steel-production-declined-33-during-the-last-week-of-1977.html.
[933] Walter Darnell Jacobs, "Rhodesia: Threat to the Peace?" *World Affairs* 130, no.1 (1967): 34-44.
[934] Hans G. Mueller, "The Steel Industry", *The ANNALS of the American Academy of Political and Social Science* 460, no.1 (1982): 73-82.
[935] Douglas A. Irwin, "United States Trade Policy in Historical Perspective," *NBER Working Paper* 26256 (Septermber 2019), https://www.nber.org/papers/w26256.
[936] Thomas R. Howell et al., *Steel and the State: Government Intervention and Steel's Structural Crisis* (London: Routledge, 2019), 22-67. In early 1977, a small United States steel producer called Gilmore in Oregon, filed an AD petition against five Japanese carbon steel plate producers. In September, United States Steel filed the largest AD petition against the Japanese mills. In October, the Treasury Department made a preliminary determination that Japanese producers were dumping carbon steel plate in the United States with a 32 percent margin. Hence, Japanese producers were required to make a deposit through a customs bond for the merchandise in question. The margin must be equal to the dumping margin. Japanese producers increased their market share in the United States from 5.1 percent to 7.9 percent. In a subsequent investigation by the United States International Trade Commission, United States investigators found that Japanese producers penetrated the United States market using an aggressive pricing strategy. The AD actions brought by Gilmore and United States steel triggered a reduction of the pressure from Japanese steel exports on the United States market.
[937] Garry P. McCormack, "The Reinstated Steel Trigger Price Mechanism: Reinforced Barrier to Import Competition," *Fordham International Law Journal* 4, no.2 (1980): 289-229. See also, Jacqueline Nolan-Haley, "Trigger Price Mechanism: Protecting Competition or Competitors," *The Fordham Law Archive of Scholarship and History* 13, no.1 (1980): 1-26. See also, House of Representatives, "Problems in United States Steel Market: Field Hearings Before the Subcommittee on Trade of the Committee on Ways and Means," United States Government Printing Office. President Carter appointed the Secretary of the Treasury for Monetary Affairs to set up a Task Force to research the conditions affecting the United States steel industry and recommend solutions.
[938] Edward Faught, "Efficacy of Topiramate as Adjunctive Therapy in Refractory Partial Seizures: United States Trial Experience," *Epilepsia* 38, no.1 (1997): 24-27.

imported products is lower than the reference price based on the constructed value.[939] Producers had to withdraw current AD filings. If the TPM continued to operate, United States producers must avoid filing new AD applications.[940]Ultimately, the steel industry dropped most AD complaints in early 1978 to ensure successful implementation of the TPM. The TPM played a relatively active role in reducing transatlantic steel trade friction. The conflict of 1977 did not reappear until March 1980.

Nevertheless, the establishment of the Trade Agreement Act in 1979 seemed to be more popular with the United States steel industry than the TPM was.[941] Subsequently, the largest American steel producer, United States Steel Corporation, filed AD petitions against seven European steel producers,[942] which resulted in the immediate halt of the TPM. The purpose of the TPM was to help the government in the administration of the AD Act, especially for the steel industry.[943] However, this was just a compromise to avoid repealing AD law.[944] The steel industry was also dissatisfied with it. The steel industry went back to using AD actions after only two years. This illustrates that the AD system was still the preferred choice of industries when they encountered competition from low priced imports. In 1979, the United States participated in the Tokyo Round. In the same year, the United States Congress passed legislation including manifest changes to AD law. The Trade Agreements Act of 1979, which replace the AD Act of 1921 with a new Title VII

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[939] Mény Yves, *The Politics of Steel: Western Europe and the Steel Industry in the Crisis Years (1974 - 1984)* (Berlin: de Gruyter, 1987), 26-35.

[940] Mark Alan Kantor, "The Trigger Price Mechanism: Limitation on Administrative Discretion under the Antidumping Laws Discretion under the Antidumping Laws," *University of Michigan Journal of Law Reform* 11, no.3 (1978): 443-455.

[941] John Jay Range, "The Trigger Price Mechanism: Does It Prevent Dumping by Foreign Steelmakers," *North Carolina Journal of International Law and Commercial Regulation* 5, no.2 (1980):279-294. Samuel L. Bright and Joseph A. McKinney, "The Economics of the Steel Trigger Price Mechanism," *Business Economics* 19, no.4 (1984): 40-46. The United States steel industry was not satisfied with the TPM. First, the Treasury had kept prices too low, which reduced profits from steel products. Second, the authorities used the mechanism inadequately. Third, the steel industry considered that the TPM did not offer them enough protection.

[942] United States, Federal Register: 45 Fed. Reg. 3557, Jan. 18, 1980, https://cdn.loc.gov/service/ll/fedreg/fr045/fr045013/fr045013.pdf.

[943] Robert Carbaugh, "A Trigger to Limit Dumping," *Business Economics* 17, no.1 (1982): 42-46.

[944] In March 1980, the United States Steel Corporation filed a major dumping complaint against European producers, leading to the suspension of the TPM. This and subsequent petitions were eventually withdrawn after a new set of trigger prices was adopted in October. However, this second understanding lasted even less than the first. In January 1982 the steel industry lodged a new round of 132 complaints under the provisions of both countervailing duty and AD statutes, marking the second suspension and apparent demise of the TPM.

to the Tariff Act of 1930, included various changes mandated by the GATT Tokyo Round agreement.[945]

Two authorities cooperated in AD proceedings under the Tariff Act of 1930. The USITC and the USDOC were responsible for managing AD duty investigations and five-year sunset reviews. Both the USITC and the USDOC played a significant role in these investigations, but they both addressed different issues. The USDOC determined whether the alleged dumping was occurring, and if so, what the dumping margin was. The USITC determined whether United States industry was materially injured or threatened with material injury due to the imports under investigation.[946] If both the USDOC and the USITC concluded with final affirmative determinations on their issues, the USDOC would issue an AD duty order to offset the negative impact of the dumping.[947]

The Trade Agreements Act of 1979 was the most extensive and substantive modification of the United States AD law.[948] It involved three significant amendments to United States AD law (1) it defined the proper rules for LTFV determinations,[949] (2) specified the rules for material injury, and (3) defined the procedures of authorities when seeking to impose AD duties.[950] The United States made significant administrative alterations for requesting AD laws in 1979. It showed the attempts made by the United States Congress to limit the range of decisions reached by the administrative authorities, increase the outlook of relief for petitioners, and enhance possibilities

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[945] United States 96th Congress, Public Law 96-39-JULY 26, 1979. The Trade Agreements Act of 1979 aimed at liberalizing multilateral measures negotiated by participants in the Tokyo Round of the GATT.

[946] United States International Trade Commission, "Antidumping and Countervailing Duty Handbook Eleventh Edition," Publication 3750, January 2005, https://www.usitc.gov/trade_remedy/documents/pub3750.pdf.

[947] United States International Trade Commission, "Understanding Anti-dumping & Countervailing Duty Investigations", https://www.usitc.gov/press_room/usad.htm.

[948] The Act went into effect on January 1, 1980. Before it came into effect, the Agreement on Interpretation and Application of Article VI, XVI, and XXIII of the GATT and the Agreement on Implementation of Article VI of the GATT had come into effect when President Carter signed the Memorandum of December 15, 1979.

[949] Gilbert R. Winham, "The Evolution of the World Trading System-The Economic and Policy Context," in *The Oxford Handbook of International Trade Law*, ed. Daniel Bethlehem, Isabelle Van Damme, Donald McRae, and Rodney Neufeld (Oxford, U.K.: Oxford University Press, 2009), 41-78.

[950] The Trade Agreements Act of 1979. Hearings Before the Subcomm. on International Trade of the Senate Comm. on S. 1376, 96th Cong., 1st Sess. (1979) [hereinafter cited as 1979 Trade Act Hearings]; Administration of the AD Act of 1921: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means, 95th Cong., 2d Seas. (1978) These changes focused on providing more effective and appropriate relief for domestic industries suffering from unfair foreign competition and providing the authorities with a specific definition of their duties. United States. Court of International Trade, "United States Court of International Trade Reports: Cases Adjudged in the United States Court of International Trade," 1 January 1988.

for judicial review. Title I of the 1979 Act substituted the AD Act of 1921. It contains significant regulations that decrease the time limit for investigations and making AD decisions.[951]

Another significant substantive change in the 1979 Act was the use of constructed value. In previous cases, the authorities only used constructed value when there was no possibility to compare the price with a third-country market. However, the 1979 Act allows authorities to use either a third-country price or the constructed value make price comparisons.[952] The United States Treasury Department was first ordered to continue using the third-country market price for comparison whenever possible. The USDOC now has the alternative of using constructed value in two situations. First, when there is evidence that sales cannot cover costs over an extended period and a significant volume. Second, when there is a reduced time limit.[953] However, both American importers and foreign manufacturers object even to the possibility of using constructed value calculations instead of the third-country market prices for comparison.[954]

There are also other procedural changes enacted by the Trade Agreements Act of 1979, including procedures for accepting price assurances,[955] rules for the disclosure of confidential information,[956]

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[951] "Trade Agreements Act of 1979: Hearings Before the Subcommittee on International Trade of the Committee on Finance", United States Senate, Ninety-sixth Congress, First Session, on S. 1376, July 10 and 11, 1979, Part 1, pp. 492. The 1979 Act allocates less time for each stage of AD investigations. In the initial stage, the DOC now has 20 days to check the sufficiency of the allegations of the dumping complaint instead of the 30 days the Treasury Department had under the old regime. The ITC has only 45 days to decide whether indications of injury exist after the initiation of an investigation comparing to the previous 75 days for the Treasury. The time limit for reaching a preliminary determination changed from 7 months to 169 days. Under the new law, the authority must make a preliminary determination of sales at LTFV within 140 or 190 days after initiating an investigation, which is much shorter than the previous law that provided 180 or 270 days. In certain exceptional situations, this time limit can be 90 days. The final determination phase has been shortened from the original nine months to 75 days. An extension of up to 135 days compared to six-months under previous legislation can be granted if the preliminary determination is affirmative or by the petitioner if the preliminary determination is negative.

[952] Linda F. Potts and James M. Lyons, "The Trade Agreements Act: Administrative Policy & Practice in Antidumping Investigations," *North Carolina Journal of International Law and Commercial Regulation* 6, no.3 (1981): 482-526.

[953] Timothy J. Patenode, "The New Antidumping Procedures of the Trade Agreements Act of 1979: Does It Create a New Non-Tariff Trade Barrier," *Northwestern Journal of International Law & Business* 2, no.1(1980): 200-220.

[954] Kiyoshi Kawahito, "The Steel Dumping Issue in Recent United States-Japanese Relations," *Asian Survey* 20, no.10 (1980): 1038-1047.

[955] Under the previous AD law, the Treasury Department had extensive discretion to negotiate and accept undertakings and agreements. The new Act provides specific regulations on the use of agreements and undertakings. The prerequisites for accepting price undertakings are more detailed than before.

[956] Public Law no. 96-39, 93 Stat. 144, § 777(a)(4) (1979). Before the 1979 Act, the agencies had the power to enact all disclosure rules rather than Congress. The new Act extended the scope of this rule and allowed the release of confidential information under a protective order to representatives of interested parties.

and retroactive application of dumping duties under “critical circumstances”.[957] All these amendments to the United States AD Act encourage petitioners to file AD petitions.[958] That same year, the authority entitled to determine dumping changed from the Treasury Department to the USDOC.[959] Although there is criticism of the 1979 Act due to the uncertainty of AD investigations and the possibility of unpleasant effects for certain foreign exporters,[960] it is still the foundation for United States domestic AD law.[961]

After the Trade Agreements Act of 1979, the United States Congress has further amended AD legislation, including with the Trade and Tariff Act of 1984,[962] the Omnibus Trade and Competitiveness Act of 1988,[963] and the Uruguay Round Agreements Act[964]. AD is weighted in

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[957] United States, 19 United States Code §160 (b)(i)(b)(1976), Pub.L.no. 96-39,93 Stat. 144, § 733(e)(1979). Prior legislation granted the Treasury Department the discretion to assess dumping duties retroactively for a period of up to 120 days before the initiation of the AD investigation. The new law allows petitioners to seek retroactive application by making a timely allegation of critical circumstances.

[958] Staiger and Wolak, op.cit. 270-275.

[959] United States, 1979 Trade Act Hearings, at 40; 15 Weekly Compilation of Presidential Documents 1476, reprinted in 44 Federal Register 69.274(1979); 44. Fed.Reg. 74781 (1979). Because of the dissatisfaction with insufficient enforcement, arbitrary decisions, and often delays in the investigation of duties, United States Congress removed the power to investigate LTFV from the Treasury Department and vested that responsibility in an unspecified “administrative authority”, allowing the President to allocate these functions. President Carter transferred the responsibility to DOC, and placed responsibility for all overarching policy decisions with the Office of the Special Representative for Trade Negotiations.

[960] One criticism mentioned that the shortened time limits for dumping determinations prevent effective data collection. For example, constructed value of foreign market value in the LTFV determination is based upon the character of the initial submissions. Further, the time limits affect data collection during the course of the investigation. Another criticism is that the new disclosure provision for confidential submissions could have a discouraging effect on foreign trade. If foreign parties try to defend the confidentiality of their submission, they will pay more in litigation and costs. In a word, the 1979 Act may have negative effects for both AD investigations and for foreign exporters.

[961] Jeffrey B. Sklarof, “United States Antidumping Procedures Under the Trade Agreements Act of 1979: A Crack in the Dam of Nontariff Barriers,” *Boston College International and Comparative Law Review* 3, no.1 (1979): 223-262.

[962] The Trade and Tariff Act of 1984 includes changes for determining fair market price, comparing averages in the home market with the price in the United States market. It contains detailed rules for the International Trade Commission. The Trade Commission has the right to collect the imports of countries that are subject to an AD investigation when determining whether injury exists. Domestic firms will benefit from filing AD petitions against the same product from other countries.

[963] The Omnibus Trade and Competitiveness Act of 1988 expanded the range of allowable products subject to AD orders. It also allowed the United States trade representative to request that a foreign government take action against third country dumping if it is found to be injurious to United States industry. This trade act gained broad bipartisan support. Unlike previous trade legislation after World War II, this act was regulated by the Congress more than by proposals from the Administration. Although the administration objected, the House and the Senate ultimately passed it.

[964] The Uruguay Round Agreements Act was an Act of the United States Congress that implemented in United States law the provisions agreed upon in the Marrakesh Agreement of 1994. The Marrakesh Agreement was part of the Uruguay Round of negotiations, which transformed the General Agreement on Tariffs and Trade (GATT) into the World Trade Organization (WTO).

each amendment to combine United States domestic legislation with the international AD institution. The 1984 Act amended provisions relating to the accumulation of imports and the threat of material injury. The 1988 Act emphasized the importance of avoiding circumvention and modified rules on significant circumstances, material injury, and the threat of material injury.

The most recent revision of AD law by the United States Congress was while the Uruguay Round Negotiations were ongoing, in which the global system against dumping experienced the most substantial changes with a rewrite of the GATT rules. Article VI of the GATT was transformed into an entire system of international AD law with the ADA under the WTO. All WTO Members automatically became participants in the ADA. The United States followed the ADA to enact the Uruguay Round Agreements Act of 1994. This Act amended United States dumping law to make it conform to the revised Article VI in the General Agreement on Tariffs and Trade.[965] For example, this Act changed (1) how the authority should determine the market value, (2) what the guidelines for evaluating start-up costs are, and (3) provided for the review of dumping duties after five years.[966] Amendments to United States domestic AD legislation closely followed the international legal AD system. Specifically, the Uruguay Round Agreements Act of 1994 made substantial changes to comply with the WTO ADA. The United States is always at the forefront of the development or an active follower of international AD legislation.[967] Nevertheless, the United States holds conservative or even opposing opinions on reforming the ADA during the Doha Round Negotiations.[968] Indeed, this is not the first time that the United States has strongly opposed international AD legislation.

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[965] Robert Carpenter, *Antidumping and Countervailing Duty Handbook* (Washington, D.C.: United States International Trade Commission, 2005), 13-60. The Uruguay Round Act amended provisions of law related to issues including material injury, threat of material injury, critical circumstances, regional industry, related parties, and accumulation. There were also some new rules of law related to captive production, negligible imports, and sunset reviews.

[966] Mastel, op.cit. 45-65.

[967] Jappe Eckhardt and Mannfred Elsig, "Support for international trade law: The US and the EU compared," *International Journal of Constitutional Law* 13, no.4 (2015): 966-986, https://doi.org/10.1093/icon/mov056.

[968] United States Congress, Senate Committee on Finance, "Ongoing United States Trade Negotiations: Hearing Before the Committee on Finance United States Senate One Hundred Seventh Congress, Second Session," February 6, 2002.

2. THE UNITED STATES CONGRESS AND ITS INFLUENCE ON ANTI-DUMPING NEGOTIATIONS

The United States Congress has the constitutional responsibility to make legislation to protect United States domestic producers from foreign competition.[969] The Constitution provides the President with the authority to negotiate international trade agreements.[970] Although the President has no specific constitutional power over international commerce and trade,[971] he has a limited degree of discretion and freedom in negotiations.[972] Once the United States adheres to international agreements, United States domestic law and regulations require changes.[973] Therefore, Congress plays a decisive role in the final formulation of relevant legislation. Congress regulates, to some extent, the behavior of the administration in the negotiations,[974] meaning that the United States representatives must consider Congress' opinions if they intend to negotiate trade remedy reform.[975]

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[969] United States Constitution, Art I, Section 8. The United States House of Representatives and the Senate must pass international trade agreements into law through normal legislation. Congress has designed all domestic AD laws, including the Tariff Act of 1930, ch. 337, 46 Stat. 703 (1930) (current version at 19 United StatesC. § 1337 (1988) (stating that unfair methods of competition and unfair acts in the importation of articles into the United States or in their sale are unlawful); Trade Act of 1974, ch. 301, 88 Stat. § 2411 (1974) (codified as amended at 19 United StatesC. § 2411 (1988)) (protecting United States exporters against discriminatory and unreasonable practices); id. § 201 (codified as amended at 19 United StatesC. § 2251 (1988) (providing an escape clause); see also 19 United StatesC. §§ 1671-1671h (1988) (providing countervailing duties); id. §§ 1673-1677h (1988) (creating AD duties).

[970] United States Constitution, Article.II, §2, cl.2. The President has the "Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." Zivotofsky v. Kerry, 135 S. Ct. 2076, 2086 (2015).

[971] United States v. Yoshida Intern., Inc. 526 F.2d 560 (C.C.P.A. 1975) Decided Nov 6, 1975, 526 F.2d at 572 "It is nonetheless clear that no undelegated power to regulate commerce, or to set tariffs, inheres in the Presidency. If the reference in Proclamation 4074 to 'the authority vested in him by the Constitution" was intended to indicate the view that the Constitution vests in the President any power to set tariffs or to lay duties or to regulate foreign commerce, that view was clearly in error. United States Constitution, Art. I, Sec. 8, clauses 1 and 3."

[972] Ibid. 526 F.2d at 582. "It is quite apparent that if, in the maintenance of our international relations, embarrassment — perhaps serious embarrassment — is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved."

[973] Irving McArthur Destler, *Renewing Fast-Track Legislation* (Washington, D.C: Institute for International Economics, 1997), 11-38.

[974] Eugenia S. Pintos and Patricia J. Murphy, "Congress Dumps the International Antidumping Code," *Catholic University Law Review* 18, no.2 (1968): 180-192. Congress members often express their positions through public statements and letters.

[975] Public Law 87.794-OCT. 11, 1962, "Trade Expansion Act of 1962", SEC. 402. REPORTS. Under this act, Congress granted the President authority to sign agreements that negotiated the reduction or elimination of tariffs. It also enlarged the role of Congress in the negotiating process, because the President has to submit review reports to Congress for each concluded agreement and a presidential explanation of the reasons for the necessity of each agreement.

Until the early 1930s, Congress had full power for ruling on United States import tariffs, which was extensively criticized for contributing to the Depression.[976] The Reciprocal Tariff Act gave the President explicit power to participate in international trade negotiations for the first time in 1934,[977] in which the President could execute tariffs for limited periods.[978] Since then, the President took part in bilateral trade negotiations between 1935 and 1945, which resulted in certain bilateral agreements.[979] The President played a crucial role in international negotiations,[980] being permitted to set new tariff rates at levels approved in advance by Congress. This shows that the executive branch played an outstanding role.[981] As the focus of international trade negotiations

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[976] Michael D. Bordo, Claudia Dale Goldin, and Eugene Nelson White, *The Defining Moment: the Great Depression and The American Economy in the Twentieth Century* (Chicago, IL: University of Chicago Press, 1998), 36-74. See also, E. E. Schattschneider, "Politics, pressures and the tariff; a study of free private enterprise in pressure politics, as shown in the 1929-1930 revision of the tariff," *Journal of American History* 23, no.3 (1936): 444-445. See also, Robert A. Pastor, *Congress and the Politics of United States Foreign Economic Policy 1929-1976* (Berkeley: University of California Press, 1982), 16-63.Tariff levels were the most protectionist in the United States history. It showed the protectionist intent of Congress regarding international trade.

[977] United States, The Reciprocal Trade Agreement Act of 1934, March 29, 1934. "[T]he President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States ... is authorized from time to time ... [t]o proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder."

[978] Caitlain Devereaux Lewis, "Presidential Authority over Trade: Imposing Tariffs and Duties," *Congressional Research Service Report*, December 9, 2016, https://fas.org/sgp/crs/misc/R44707.pdf. The President's powers of execution were subject to regular review and renewal.

[979] Harold Hongju Koh, "Congressional Controls on Presidential Trade Policymaking after I.N.S. v. Chadha," *N.Y.U.Journal of International Law & Policy* 18, (1986): 1191-1210.

[980] United States v. Curtiss-Wright Corp. 299 United States 304 (1936) Decided Dec 21, 1936, "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." United States Senate, Reports, Committee on Foreign Relations, vol. 8, p. 24, The Senate Committee on Foreign Relations reported to the Senate how crucial the President is for the international relations "The President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with the greatest prospect of success. For his conduct, he is responsible to the Constitution. The committee consider this responsibility the surest pledge for the faithful discharge of his duty. They think the interference of the Senate in the direction of foreign negotiations calculated to diminish that responsibility and thereby to impair the best security for the national safety. The nature of transactions with foreign nations, moreover, requires caution and unity of design, and their success frequently depends on secrecy and dispatch."

Zivotofsky v. Kerry 135 S. Ct. 2076 (2015) • 192 L. Ed. 2d 83 • 83 United StatesL.W. 4391 Decided Jun 8, 2015. It emphasized the sole role of the President in the negotiations. See also, Charles A. Lofgren, "United States v. Curtiss-Wright Export Corporation: An Historical Reassessment," *Yale Law Journal* 83, no.1 (1973): 1-32. Congress controls commercial policy while both the President and the Senate are authorized to make treaties.

[981] Trade Agreement Extension Act of 1949, Chapter. 678, 62 Stat. 1053, "Left the President with Complete freedom to make tariff cuts without regard for the peril point findings of the Tariff Commission, but required that if the concessions exceeded peril points, those he should give Congress his reasons for the action taken."; Trade Agreements Extension Act of 1958,85th Congress 2d Session, Report NO. 1838." Before negotiations can begin, the President must now give a 6 month peril-point notice-rather than the existing 120 days-of the particular items which he has any

moved to non-tariff trade restrictions such as AD actions instead of tariffs, Congress intended to provide the President with narrow authority to execute non-tariff trade restrictions because these changes would affect domestic law. Congress implements the tariff rate after negotiations are concluded by proclamation but not through legislation.[982] Before the Kennedy Round, the United States Congress showed its displeasure with changes to the AD Code. The United States Congress opposed the 1968 AD Code even before the United States signed it.[983] The United States constitution regulates that Congress has the authority to regulate interstate and international trade. At times, Congress has transferred this power to the President.[984] During the Kennedy Round negotiations, Congress questioned two aspects. First, whether the international AD Code was consistent with the United States AD Act.[985] Second, does the President have the authority to bind the United States to non-tariff measures (AD Code)?[986] Despite the unwillingness of Congress, administration trade representatives still put several topics concerning non-tariff barriers on the Kennedy Round negotiating table.

Congress believed substantial conflicts existed between the GATT AD Code and the United States AD Act. The Tariff Commission pointed out that the AD Act could not apply to the Code even if there was no conflict because the President had no such authority to negotiate in this field.[987] Although the United States participated actively during the Kennedy Round negotiations on

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intention of using in negotiations […] To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder. ”

[982] Trade Agreements Extension Act of 1962, Public Law 87-794-OCT.11, 1962, SEC. 252. “The President shall […] maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements […] shall suspend, withdraw, or prevent the application of benefits of trade agreement concessions to products of such country or instrumentality.”

[983] In 1967, the United States became party to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. The first twelve articles of this agreement became the framework for the International AD Code.

[984] United States Code: Trade Expansion Program, 19 United StatesC. §§ 1801-1991 (1976).

[985] Cong. Rec. S13792-94 (daily ed. September 27, 1967). The Tariff Commission reported to the Committee that the AD Code and the AD Act were in conflict, for example, with Articles 4, 5 and 10 of the Code. Senator Javits found that the wording of the AD Code and the AD Act was different. For example, the AD Act lacked terminology on an escape clause. There was also no clear clause for the consideration of sales at less than fair value and injury. Previous Tariff Commission decisions were not consistent with the AD Code.

[986] Cong. Rec. S6496-98 (daily ed. May 9, 1967), On May 9, 1967. Senator Vince Hartke mentioned that the right to make legislation for an agreement belongs to Congress and not to the Executive.

[987] Eugenia S. Pintos and Patricia J. Murphy, “Congress Dumps the International AD Code”.

sensitive topics relating to AD,[988] the International AD Code performed practically no function inter the United States without the recognition of Congress.[989] Congress refused to change some rules that United States negotiators made commitments to because of congressional concerns about their potential negative effects on domestic law.[990]

Congress was unwilling to grant the President more authority on trade negotiations. Alternatively, Congress enacted the Trade Act of 1974, and allowed the President to join the Tokyo Round of trade negotiations aiming to make way for fair and equal international trade relations.[991] In this Act, a legislative procedure named "trade promotion authority" (TPA-previously called "fast track")[992] was used as guidance to increase the speed of implementing international trade agreements. The President had the right to follow these procedures for ratification and enforcement of such agreements and to negotiate on trade agreements that dealt with non-tariff barriers and other distortions of international trade.[993] The Act required the President to consult with Congress, the Senate Committee on Finance, and all other Committees in both Houses, largely limiting the President's discretion.[994] After the President had submitted proposals on implementing legislation

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[988] United StatesTARIFF COMM'N, REPORT ON S. CON. REs. 38, REGARDING THE INT'L AD CODE 9 (1968) (reprinted in Hearings on International AD Code. Before the Senate Finance Comm., 90th Cong., 2d Sess. 329 (1968) (Appendix)).The United States accepted and signed the Agreement during the Kennedy Round with no reservations, meaning that the United States was internationally obliged to abide by the Code beginning in July 1968.

[989] Congress passed a resolution to guide the Johnson Administration against negotiation on non-tariff commitments. As President Johnson declined the resolution, Congress decreased implementation on changes of non-tariff barriers.

[990] 107TH Congress 2d Session, Report 107-139, "Bipartisan Trade Promotion Authority Act of 2002", Calendar no.319. Congress emphasized that "The Trade Representative is required to keep the congressional advisers currently informed on matters affecting trade policy, possible trade negotiations, and ongoing trade negotiations, as well as changes to domestic law or administration of the law that may be required by trade agreements."

[991] United States Code Chapter 12, Trade Act of 1974, § 2102, "Congressional statement of purpose", Trade negotiations include reforms to rules regulating international trade, fostering of full employment, tariff and non-tariff barriers to international trade, and ensuring equal competitive opportunities for the United States in foreign markets. Ian F. Fergusson and Christopher M. Davis, "Trade Promotion Authority (TPA): Frequently Asked Questions," *Congressional Research Service*, January 2, 2015, http://tradevistas.org/wp-content/uploads/2018/05/TPA-2018-FAQs.pdf. Trade promotion authority (TPA), sometimes referred to as "fast-track", is the process under which Congress provides the President with a limited amount of time to enable the legislature to ratify and enforce certain international trade agreements for consideration under an accelerated legislative process. If the President wants to participate in trade agreement negotiations that require changing United States law, he has to receive permission from the Congress through legislation. Negotiations must go hand in hand with a large number of obligatory notifications and consultations to Congress and other public and private sector stakeholders.

[992] Ian F. Fergusson, "Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy," *Congressional Research Service*, June 15, 2015, https://fas.org/sgp/crs/misc/RL33743.pdf.

[993] United States, Trade Act of 1974, § 2112. "Barriers to and other distortions of trade". The procedures set out in the Act include revisions to House and Senate rules to ensure consideration for implementing legislation. Once the President submits proposals on implementing legislation to Congress, these proposals cannot be revised.

[994] United States, Trade Act of 1974, §151 and 152, and United States Code § 2191, 2192 (1976).

to Congress, it could not be revised.[995] If the non-tariff barrier agreements were to come into effect, Congress must permit their legislative implementation. However, some in Congress realized that there was a potential problem in that the United States' trading partners might not be willing to negotiate a deal that could be subject to countless debates and amendments by Congress.[996] Hence, Congress granted that each chamber could postpone its legislative process and provide a speeded-up remedy. As anticipated, this Negotiating Round concluded with new rules for managing NTBs, including AD procedures.[997]

Congress has believed that existing legal principles are already what is needed to protect fair trade.[998] Before the start of the Doha Round negotiations, the United States Congress clearly expressed that the United States stands firmly against any trade agreement that depends on reforming the current AD regime.[999] Congress passed the Trade Act of 2002 to express its opinion that any change in the ADA will be a threat to or weaken United States AD law and domestic industry.[1000] Under this Act, the President should not sign on to agreements that have the potential to hurt United States domestic companies and workers.[1001]

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[995] This provision aimed to prevent some problems that arose after Kennedy Round. It was urgent that the United States regulate its American Selling Price System for customs valuation of certain imports.
[996] Pastor, op.cit. 88-89. "The Committee recognizes [...] that such agreements negotiated by the Executive should be given an up-or-down vote by the Congress. Our negotiators cannot be expected to accomplish the negotiating goals [...] if there are no reasonable assurances that the negotiated agreements would be voted up-or-down on their merits. Our trading partners have expressed an unwillingness to negotiate without some assurances that the Congress will consider the agreements within a definite time-frame"
[997] In the Trade Agreements Act of 1979, Congress first passed the implementation under the expanded trade agreements authority and expedited procedures.
[998] Communication from the United States to the Working Group on the Interaction Between Trade and Competition, at 3, WT/WGTCP/W/88 (Aug. 28, 1998) "The AD rules are a practical, albeit indirect, response to these trade-distorting policies […] [T]he AD rules simply seek to remove unfairness and create a 'level playing field' for producers and workers."
[999] Colin A. Carter, "Why is There So Much Interest in Trade Remedy Laws," *Agricultural and Resource Economics* 5, no.3 (2002): 1-3.
[1000] In the original Senate TPA bill, Congress was supposed to reject further use of a special voting procedure called "fast-track" for amendments to AD rules. Although the conference committee ultimately did not pass these rules, Congress is ferociously determined to refuse to change the ADA.
[1001] United States, Trade Act of 2002, Public Law 107-210, sec. 2102(b) (14) (A). The President should, in any trade negotiation, "preserve the ability of the United States to enforce vigorously its trade laws, including the AD, countervailing duty, and safeguard laws, and avoid agreements which lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions".

Following the Trade Act, the House of Representatives published a document just prior to the Doha Ministerial Conference to allow the United States Trade Representative to exclude the United States trade remedy laws[1002] from the Doha Declaration.[1003] Senators forming a bipartisan group signed a letter to the President, emphasizing the importance of current AD rules to United States trade policy, and its disagreement with future trade negotiations that would impair the current regime.[1004] Congress has not changed its position on refusing any alteration to the WTO. Four senior United States lawmakers[1005] from the Senate Finance and House Ways and Means Committees wrote a letter to then-President Bush to suggest that he resist a possible WTO ministerial meeting before the end of 2001.[1006]

Nevertheless, if other trade partners could agree to changes that are consistent with Congress' opinion on United States trade, there is a chance for further negotiation.[1007] The United States played a vital role in the success of the Uruguay Round.[1008] At the end of the Uruguay Round, the

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[1002] Congress voted 410 to 4 on a resolution introduced by the United States Trade Representative on how to participate the Doha Round negotiations. 107th Congress, Committee on Ways and Means, United States House of Representatives, "*Overview and Compilation of United States Trade Statutes, 2001 Edition,*" June 2001. The United States Trade Remedy laws includes Countervailing duty (Title VII of the Tariff Act of 1930, as amended (Section 701)), AD (Title VII of the Tariff Act of 1930, as amended (Section 731)), Import Relief (Chapter 1 of Title II of the Trade Act of 1974, as amended (Sections 201-204)).

[1003] H.R. Res. 262, 107th Congress (2001).

[1004] Letter from Senator Max Baucus to President George W. Bush , May 7, 2001, http://usinfo.org/wf-archive/2001/010507/epf108.htm.

The bipartisan group clearly pointed out that AD is "a critical element of United States trade policy" and states that some trading partners maintain unfair trade practices, which keep weakening this law. They further emphasize that the President should be careful to not weaken remedy laws.

[1005] Charles B. Rangel, Chairman of Committee on Ways and Means, Max Baucus, Chairman of Committee on Finance, Jim McCrery, Ranking Member of Committee on Ways and Means, Charles E. Grassley, Ranking Member of Committee on Finance.

[1006] In the letter, the lawmakers mention that other trade partners of the United States keep using AD actions to make AD laws weaker than before.

[1007] United States Senate Committee on Finance, "Finance, Ways and Means Leaders Urge President to Stand Firm on Doha Round", December 02, 2008, https://www.finance.senate.gov/chairmans-news/finance-ways-and-means-leaders-urge-president-to-stand-firm-on-doha-round.

Doug Palme, "Lawmakers warn Bush not to rush into Doha deal", *REUTERS*, December 2, 2008, https://www.reuters.com/article/us-usa-congress-doha/lawmakers-warn-bush-not-to-rush-into-doha-deal idUSTRE4B185I20081202?sp=true.

The letter insists, "Developed and developing countries must commit to meaningful new market access opportunities if congress is to support an agreement." Especially if countries like India, China, Argentina and Brazil are ready to sit down and agree on ways to open up meaningful new trade flows, it might be possible for the United States to accept an agreement. If not, there is other chance that United States will agree with other changes to the WTO.

[1008] Inside United States Trade (24 December 1993), at 7. An interview with Japan's chief negotiator stated that if the United States did not make any compromises on the negotiation, the Uruguay Round would have been in a deadlock. It shows that the United States, to some extent, decided the outcome of negotiations.

United States and other Members reached a consensus on three issues, which greatly contributed to the establishment of ADA. First, they set out respectful criteria for the examination of facts and law in the ADA and that it therefore applies only to AD-related disputes. Second, the term "permissible" in Article 17.6 substitutes the word "reasonable" from the United States proposal.[1009] Third, Article 17.6 of the ADA provides a more widespread application of the deferential standard of review.[1010] Even though Article 17.6 (ii) of the ADA does not comprise a thorough review of the Members' interpretation of the agreement, it explicitly acknowledges the possibility that more than one permissible interpretation may coexist. There are concerns that the panel does not accept more than one explanation.[1011] The Uruguay Round Agreement proved to be positive for the United States[1012] United States Congress comprehensively dealt with the legal effect of the WTO agreements and dispute settlement results in the United States in the Uruguay Round Agreements Act.[1013] Although United States Congress made changes to United States law, it aimed at maintaining effective use of domestic AD legislation to protect domestic industry which may increase public support for other trade liberalization measures.[1014]

Congress's opinion has a significant influence on the performance of the United States Trade Representative at the negotiating table. Because of congressional opposition, the United States administration tried hard to leave AD off the negotiating table during new WTO round negotiations. For example, a critical reason for the unsuccessful launch of a new round at the Seattle ministerial conference in 1999 was that the Clinton administration rejected any compromise on this issue.[1015]

[1009] This change seemed to satisfy the countries, which highly opposed a deferential standard.
[1010] Ministerial Decision on the Review of Article 17.6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, made part of the Uruguay Round Final Act text.
[1011] Matthias Oesch, "Standards of Review in WTO Dispute Resolution," *Journal of International Economic Law* 6, no.3 (2003): 635-659.
[1012] The WTO agreements would increase United States income by more than 100 billion dollars by 2005. All these agreements positively affect the United States
[1013] H.R.5110-Uruguay Round Agreements Act, 103rd Congress (1993-1994), P.L.103-465, https://www.law.cornell.edu/uscode/text/19/3511.
[1014] Vivian C. Jones, "Trade Remedies: A Primer," *Congressional Research Service*, March 6, 2012, https://www.everycrsreport.com/reports/RL32371.html. A main topic on the international negotiating table is how to "enforce rigorously its trade laws". Some supporters of trade remedy law in Congress mentioned that trade remedies are essential for protecting United States domestic industries and workers from increasingly unfair trade competition.
[1015] Kevin Buterbaugh and Richard M. Fulton, *The WTO Primer: Tracing Trade's Visible Hand through Case Studies* (New York: Palgrave Macmillan, 2008), 23-41.

However, the Bush administration still included AD in the Doha Round negotiations in 2001, caving to internal and external pressure.[1016] On the one hand, developing countries clearly indicated that a new round of WTO negotiations would make no further progress without including AD. However, they made a point of the negotiation purpose of campaigning against unfair trade with the current AD system. On the other hand, internal pressure comes from other stakeholders apart from Congress. Stakeholders from United States domestic industries expressed diverse opinions supporting relaxing or reforming the current AD regime. For example, stakeholders from United States domestic retailers and consumer industries prefer withdrawing or reducing the use of AD,[1017] because most of these industries need imports from other countries to supply raw materials for their downstream products.[1018] United States exporters have expressed support for liberalizing AD laws because they face similar actions in different countries and could be affected immediately by trade retaliation if any United States legal decision does not comply with WTO rules.[1019] Notably, some transnational companies stand with reforming AD laws so as to have greater freedom for transferring products at different stages across national boundaries and to improve their future development.[1020] Nonetheless, the United States administration made a significant concession to put AD on the Doha round agenda. Congress has heavily criticized United States negotiators.[1021]

[1016] Nitsan Chorev, "International Trade Policy under George W. Bush" in *Assessing the George W. Bush Presidency: A Tale of Two Terms*, ed. Andrew Wroe and Jon Herbert, (Edinburgh: Edinburgh University Press, 2009), 12-35.
[1017] Aradhna Aggarwal, "The WTO Antidumping Code: Issues for Review in Post-Doha Negotiations," *Indian Council for Research on International Economic Relations*, no.99 (2004), http://icrier.org/wp-admin/images/wto/1408183129_WTO-4.pdf. These industries import raw materials or other inputs for inclusion in their downstream products.
[1018] United States Congress, Senate, Committee on Governmental Affairs. Subcommittee on Oversight of Government Management, "Oversight of United States Position in GATT Negotiations Affecting American Manufacturing Jobs," Hearing Before the Subcommittee on Oversight of Government Management of the Committee on Government Affairs, United States Senate, One Hundred First Congress, Second Session, September 26, 1990, Available at: https://play.google.com/books/reader?id=_HdHZa_SbzYC&hl=en_AU&pg=GBS.PA11.
[1019] Mark Wu, "Antidumping in Asia's Emerging Giants," *Harvard International Law Journal* 53, no.1 (2012): 2-72.
[1020] These companies often accuse users of AD actions of being protectionist and administrative officials of making arbitrary and politically motivated decisions.
[1021] Congress' opinion is that discussions on AD should not even be on the negotiation table in any new round of negotiations. Members of Congress who support trade remedy laws believe that the United States Representative did not make his best effort to keep AD off the negotiation table. They questioned the abilities of the USTR during negotiations.

Hence, conflicts between the United States Congress and the executive branch lead to resistance against launching a new negotiating round or reaching an agreement during negotiations.[1022] The United States Trade Representative Robert Zoellick tried his best to convince Congress to agree on starting a new round.[1023] Ultimately, the United States decided to participate in the Doha Round negotiations. However, United States negotiators are against the majority of proposals that change AD law because they tend to limit the range of WTO negotiations.[1024]

Congress is concerned that WTO AD principles may not properly respect United States domestic agency determinations, primarily when United States trade remedy provisions are ruled inconsistent with the ADA by dispute settlement and AB panels.[1025] In several cases, the WTO has found that provisions of United States AD violate the ADA. For example, two significant cases refer to the relationship between United States domestic law and the WTO agreements. United-States-AD Act of 1916[1026] and United States Continued Dumping and Subsidy Offset Act of 2000 (known as the 'Byrd Amendment') are representative cases.[1027] United States domestic AD legislation was challenged because complainants claimed that United States law runs counter to the ADA and WTO Agreements. The United States domestic AD Act has often faced questions on

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[1022] Over recent decades, Congress has continued enacting various provisions to guide negotiations and the implementation of trade agreements. However, there is no general authority authorizing the President to change tariff rates outside the framework of a specific trade agreement or trade promotion authority.

[1023] On 17 July 2001, Mr. Zoellick sought a new agreement on negotiating authority to solve the Geneva problem. The prerequisite for the new round was that the United States was ready to make some serious concessions. Mr. Zoellick worked closely with Pascal Lamy, from the EC counterpart, to start the new round. They cooperated before the start of a new round to resolve the failures of the Seattle trade talks.

[1024] WTO, Ministerial Declaration, November 20, 2001, WT/MIN (01)/DEC/ 1, para. 28. Emphasis added. The United States government emphasized its intent to include AD negotiations in the Doha Declaration: "In light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving disciplines under the [AD Agreement], while preserving the basic concepts, principles and effectiveness of [the Agreement] and [its] instruments and objectives. . . . In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices that they seek to clarify and improve in the subsequent phase."

[1025] Petros C. Mavroidis, *The Regulation of International Trade* (Cambridge, MA: The MIT Press, 2016), 37-50.

[1026] EC Panel Report, para.7.1 and Japan Panel Report, para. 7.1. In the United States AD Act of 1916 case, the EC and Japan challenged the U.S AD Act of 1916, 15 United StatesC. § 72 as inconsistent with WTO agreements. For example, the EC claimed that the 1916 Act violates Articles VI: 1 and VI: 2 of GATT 1994, Articles 1, 2.1, 2.2, 3, 4, 5 and 17 of the ADA and Article XVI: 4 of the Marrakesh Agreement Establishing the World Trade Organization.

[1027] Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001, Pub. L. no. 106-387, §§ 1001–03, 114 Stat. 1549, 1549A-72 to 1549A-75, repealed by Deficit Reduction Act of 2005, Pub. L. no. 109-171, § 7601, 120 Stat. 4, 154. The Byrd Amendment was named for its proponent, Senator Robert Byrd, and was aimed at restoring fair trade conditions and helping United States industry deal with foreign competition by depositing tariff income from the United States Treasury into their bank accounts.

its rationality when imposing dumping penalties, jurisdiction, and particularly the offset clause, closely related to Articles 17[1028] and 18[1029] of the ADA.

In the United States -1916 Act case, the AB ultimately found a non-conformity between United States law and the WTO agreements. The EU argued that Article 17.4 of the ADA only applies to the procedures for imposing the measures in that provision.[1030] Also, it does not typically exempt AD legislation from review by the dispute settlement mechanism.[1031] The AB mentioned Article 17.1 and 17.2 to indicate that there was no distinction between disputes about AD legislation and those related to the AD measures used to enforce the legislation. It shows that legislation can be challenged under ADA even if the action does not fall under Article 17. The law would still obey Article XVI: 4 of the WTO Agreement.[1032] Hence, the AB recommended that the DSB request that the United States make the 1916 Act compatible with its obligations under ADA. Although the United States stated that it would implement the suggestion from the Panel and the AB, it repeatedly extended the time for adjusting its domestic laws.[1033] Consequently, the United States failed to follow that advice, leading both the EU and Japan to seek relief again from the DSB

[1028] Article 17 of ADA -- “Consultation and Dispute Settlement”.
[1029] Article 18 of ADA -- “Final Provision”.
[1030] European Union, Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, *Official Journal of the European Union*, L176/21, 30.6.2016,
https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R1036&rid=7.
[1031] Panel Report, US-1916 Act (EC), para. 6.168. See also, Panel Report, US-Steel Plate, paras. 7.88-7.89 and 8.3. In this case, the Panel concluded that the “practice” of the US authorities concerning the application of “total facts available” is not a measure, which can give rise to an independent claim of violation of the AD Agreement. See also, Panel Report, US-Section 129(c) (1) URAA, para. 6.22.
[1032] WTO, United States-AD Act of 1916, WTO Docs WT/DS136/AB/R and WT/DS162/AB/R, August 28, 2000.
[1033] WT/DSB/M/91, 30 November 2000, para. 55. WT/DS136/11 and WT/DS162/14, 28 February 2001, para. 45. Annual Report of the Dispute Settlement Body, WT/DSB/26, 12 October 2001, 16-17., Administration faces active year in trade legislation, negotiations. On 23 October 2000, the United States informed the DSB that it would implement the recommendations and rulings of the DSB, noting that it would need a “reasonable period of time” to do so and that it would consult on the matter with the EC and Japan. Such consultations apparently failed and on November 17 the EC and Japan requested that a reasonable period for implementation be determined by binding arbitration (see art. 21.3 (c) DSU). On 28 February 2001, the arbitrator decided that the reasonable period would be ten months after the adoption of the AB report, thus expiring on 26 July 2001. On 24 July 2001, the United States Trade Representative reached an agreement with the Dispute Settlement Body to have the period extended to the end of the ongoing session of the United States Congress or December 31, 2001, whichever date came first. On December 2001, a bill was introduced in the House of Representatives to repeal the 1916 Act.

against the United States in 2002.[1034] In the meantime, the United States enacted the Byrd Amendment that has been heavily criticized and challenged in the WTO DSB.[1035]

The Byrd Amendment was the second case brought against the United States because of inconsistencies between its domestic AD law and WTO Agreements.[1036] Congress passed this Amendment on 28 October 2000, during the Clinton administration. It aimed to offer domestic producers who suffer from AD duties and countervailing duty such as ball-bearings, steel and other metals, household items, and the food sector to offset the cost of "qualifying expenditures".[1037] It modifies Title VII of the Tariff Act of 1930 with a new section that stated: "Duties assessed according to a countervailing duty order, an AD duty order or a finding under the AD Act of 1920 shall be distributed on an annual basis under this section to the affected domestic producers for qualifying expenders."[1038] Such distribution was known as the offset for continued dumping and subsidy. Under this Act, the Congressional Budget Office gave out $231 million in duty revenues in 2001, and the total amount increased over the following years to United States companies that supported filing petitions or suffered under AD duties.[1039] Furthermore, the United States government's planned distribution project for 2005 was for $3.85 billion.[1040]

WTO Members (the EU, Australia, Brazil, Chile, India, Japan, Korea, Indonesia, and Thailand)[1041] first brought a complaint against the Byrd Amendment to the DSB because of its inconsistency with Articles 18.1 and 18.4 of the AD and the GATT. Canada and Mexico asked for a separate

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[1034] WTO, WT/DS/OV/4, 6 February 2002.
[1035] Nagendra V. Chowdary and Jahan Maldar Nusrath, "WTO vs USA: The Byrd Amendment," *IBS Case Development Center Reference*, no.204-190-1 (2004): 1-5.
[1036] Holger Spamann, "The Myth of 'Rebalancing' Retaliation in WTO Dispute Settlement Practice," *Journal of International Economic Law* 9, no.1 (2006): 31-79.
[1037] United States, "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act §1003 repealed by Deficit Reduction Act §7601", *United States Statutes at Large* 118, January 23, 2004, https://www.govinfo.gov/content/pkg/STATUTE-118/html/STATUTE-118-Pg3.htm.
[1038] United States, Trade and Tariff Act of 1988, 105th Congress, 2d Session, Senate Report 105-280, Calender no. 517, July 31, 1998.
[1039] United States Government Accountability Office, Report to Congressional Requesters, "Issues and Effects of Implementing the Continued Dumping and Subsidy Offset Act", September 2005. Before the enactment of the Byrd Amendment, the United States Department of the Treasury received all tariffs into a general revenue fund. Under the new Amendment, these tariffs were directly transferred into the bank accounts of United States companies.
[1040] The Continued Dumping and Subsidy Offset Act 2002.
[1041] European Commission, US Byrd Amendment-WTO says eight WTO Members may retaliate against the US -Joint Press statement by Brazil, Canada, Chile, the EU, India, Japan, Korea, and Mexico, Brussels, 31, August, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_04_1055.

consultation on the same topic with the United States.[1042] They argued that the Byrd Amendment is not a specific measure that can be implemented under WTO agreements.[1043] These Members also claimed that the Byrd Amendment could potentially encourage the domestic firms to file more AD petitions because of the additional financial benefit,[1044] and that this would negatively affect application of standing requirements provided for in the ADA.[1045] For exporters, the process of securing an undertaking with the competent authorities would become more difficult because domestic companies have an interest in objecting to undertakings for the collection of AD duties. Although the panel did not readily find evidence to support the petition increase effect, it still confirmed that the Byrd Amendment was an illegal response to dumping and subsidization, which did not belong under proper WTO trade remedy measures.[1046] The AB supported the Panel to affirm that the United States domestic law infringed its WTO agreements and suggested the United States repeal the Byrd Amendment to comply with WTO obligations before December 27, 2003.[1047] However, the United States failed to comply with this decision within the stipulated time. Inside the United States, divergence over whether to repeal the law was fierce.[1048]

Notwithstanding President Clinton having signed the entire Amendment, he agreed that the Byrd Amendment subsidized selected United States companies over and above an average level, which might lead to a double remedy together with AD/Countervailing Duty (CVD).[1049] He also

[1042] WTO, United States- Continued Dumping and Subsidy Offset Act of 2000, WTO Docs WT/DS217/AB/R and WT/DS/234/AB/R. Article 18.1.
[1043] Douglas Holtz-Eakin, "Economic Analysis of the Continued Dumping and Subsidy Offset Act of 2000," *World Trade Review* 3, no.2 (2004): 272-275.
[1044] For United States companies that have been injured by unfair competition from dumping or subsidies.
[1045] Kara M. Reynolds, "Subsidizing rent-seeking: Antidumping protection and the Byrd Amendment," *Journal of International Economics* 70, no.2 (2006): 490-502.
[1046] WTO, Panel Report, United States-Continued Dumping and Subsidy Offset Act of 2000, paragraph 8.1–8.6, WT/DS217/R, WT/DS234/R (Sept. 16, 2002) (finding "that the CDSOA is inconsistent with AD Articles 5.4, 18.1 and 18.4, SCM Articles 11.4, 32.1 and 32.5, Articles VI: 2 and VI: 3 of the GATT 1994, and Article XVI: 4 of the WTO Agreement."). The measures include definitive AD or countervailing duties, provisional measures, price undertakings and multilaterally sanctioned countermeasures under the dispute settlement system.
[1047] WTO,WT/DS217/R, WT/DS234/R, WT/DS217/AB/R, WT/DS234/AB/R. See also, Mark L. Movsesian, "United States: Continued Dumping and Subsidy Offset Act of 2000. WT/DS217 & 234/AB/R," *The American Journal of International Law* 98, no.1 (2004):150-155.
[1048] David R. Collie and Hylke Vandenbussche, "Anti-dumping Duties and the Byrd Amendment," *LICOS Discussion Papers*, no.149 (2004): 1-15.
[1049] Philip G. Gayle and Thitima Puttitanun, "Has the Byrd Amendment Affected US Imports?" *The World Economy* 32, no.4 (2007): 629-642. This article found that "the Byrd Amendment served to restrict imports only in industries if the competition is weak. And the Amendment always associate with an increase imports in more competitive industries." It illustrates that the remedy did indeed exist. See also, Yang-Ming Chang and Philip G. Gayle, "The

suggested Congress "override this provision, or amend it to be acceptable before they adjourn".[1050] After the AB panel recommended repealing the Byrd Amendment, one Senator submitted proposals to remedy the WTO non-conformity by stopping payment of AD/CVD revenues to companies and using the funds to "help communities adversely affected by trade".[1051] Representative Jim Ramstad expanded on this proposal by suggesting that the Byrd Amendment be repealed and reverting duties to the United States Treasury.[1052] The Bush government also proposed repealing the Byrd Amendment in its budget submissions.[1053] Beyond that, there was little pressure on Congress to pay attention to this issue.[1054] The United States Consuming Industries Trade Action Coalition held a similar opinion on eliminating the Byrd Amendment. They agreed with the view that some domestic industries have already gained protection without the "corporate subsidies" from the Byrd Amendment. Hence, they questioned the legitimacy of the Byrd Amendment and even suggested building a new organization responsible for it.[1055]

Although the official position of the Bush Administration was to repeal the Byrd Amendment, most legislators and supporters of the Byrd Amendment believed it was indispensable and reasonable to insist on the Byrd Amendment.[1056] In Congress, the Byrd Amendment gained firm

Continued Dumping and Subsidy Offset Act: An Economic Analysis," *Southern Economic Journal* 73, no.2 (2006): 530-545. This article finds that if the market is less competitive, the Byrd Amendment becomes an instrument of trade protectionism.

[1050] United States, "Statement by the President: H.R. 4461, The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY 2001", Office of the Press Secretary, 2001, 36 WEEKLY COMP. PRES. DOC. 2669, 2670 (Oct. 28, 2000). President Clinton noted the WTO non-conformity of the Byrd Amendment and suggested that Congress "override this provision, or amend it to be acceptable, before they adjourn".

[1051] United States, Trade Readjustment and Development Enhancement for America's Communities Act of 2003, S. 1299, 108th Congress § 2 (2003). Senator Olympia Snowe proposed complying with the WTO's panel.

[1052] United States, H.R. 3933, 108th Congress (2004). Jim Ramstad said that "Unless we repeal the illegal Byrd amendment, American exports will be vulnerable to retaliation, and the United States will continue to face a difficult task convincing other countries to make their laws comply with international rules".

[1053] United States, Bush Budget Proposal Seeks Elimination of Two Steel Programs, INSIDE United States TRADE, Feb. 7, 2003. See also, Office of Management and Budget. Budget of the United States Government. Fiscal Year 2004, p. 240. In fact, the Bush Administration experienced success with repealing a trade remedy. For example, the AD Act for 1916 was repealed by a vote from the Judiciary Committee.

[1054] According to an interview with a staffer of the Ways and Means Committee, Stephanie H. Lester mentioned that the Bush Administration did not push Congress hard to focus on repealing Byrd Amendment.

[1055] Andrew Platt, "The Fate of Domestic Exporters Under the Byrd Amendment as Case Study for Resuscitating Last in- Time Treaty Interpretation," *Brigham Young University International Law & Management Review* 3, no.2 (2007): 171-212.

[1056] After the President published the proposal, the United States Trade Representative rapidly announced that the DSB panel had a less negative effect on the United States ability to continue applying its AD laws.

support before its enactment and remained popular according to its astonishing relief effect for some domestic industries.[1057] Since Senator Mike DeWine initially introduced the Continued Dumping and Subsidy Offset Act during the 106th Congress as section 61, the purpose of this Act was to relieve the losses of United States producers from the burdensome dumping from foreign producers.[1058] Although the bill did not gain enough support in the Senate Finance Committee to initiate a vote,[1059] Senator Robert Byrd, Chairman of the largest committee in the Senate[1060] and one of the most powerful players in Congress at that moment,[1061] inserted the wording of section 61 into the 2001 Agriculture and Related Programs Appropriations Bill at the last minute to support domestic industries and workers.[1062] Even with some protests,[1063] this Amendment was kept in the final conference report, which finally made it into the United States domestic law.[1064] After the

[1057] Claire Hervey, "The Byrd Amendment Battle: American Trade Politics at the WTO," *Hastings International and Comparative Law Review* 27, no.7 (2003): 131-156.

[1058] Mike DeWine, "Comments in Statements on Introduced Bills and Joint Resolutions," *Congress Record*, no.8 (1999): 497-500. Senator DeWine emphasized that the US should impose a heavier price on dumping and subsidization to relieve steel producers from the double hit from dumping.

[1059] The Senate Finance Committee, which is formed with expertise and jurisdiction on trade matters, may recognize that the "heavier price" and "double hit" may violate the WTO AD Agreement and the Agreement on Subsidies and Countervailing Measures.

[1060] United States, Government Accountability Office, "A Glossary of Terms Used in the Federal Budget Process", September 2005, https://www.appropriations.senate.gov/imo/media/doc/glossary-of-terms-used-in-the-federal-budget-process.pdf. Senator Byrd was at that time Chairman of the Senate Appropriations Committee, the largest committee in the Senate. See also, United States Constitution., Article. 1, § 9 states: "No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time." United States Constitution. Article. 1, § 7, cl. 1 states: "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with the Amendments as on other bills." United States Const. Article. 1, § 8 states: "The Congress shall have power to lay and collect […] duties […] to regulate commerce with foreign nations." This proves the Senate Appropriations Committee has the constitutional authority to draft laws to distribute federal funds together with the House Appropriations Committee.

[1061] Francis X. Clines, "How Do West Virginians Spell Pork? Its B-Y-R-D," *The New York Times*, May 4, 2002, https://www.nytimes.com/2002/05/04/us/how-do-west-virginians-spell-pork-it-s-b-y-r-d.html.
Senator Byrd had been on this Committee since 1959 and had served the longest in the Senate. He was very powerful and used his power with great fanfare, supporting filibusters and pouring billions of federal dollars into West Virginia, the state he works for.

[1062] Senator Byrd's website for a declaration of this support in his own words. He supported the West Virginian steel industry and jobs by using protectionist trade policies and industry support. He declared that he wanted to be West Virginia's billion-dollar Senator. The Chairman of the Conference Committee, Representative Young, approved the amendment because he did not want to fight Senator Byrd in the final days of the appropriations process.

[1063] United States, Congressional Record, 2000. 106 h Cong., 2nd session, Vol. 146, pt. 126. Chairman of the House Ways and Means Committee, Bill Archer, insisted on deleting the amendment before filing the final conference report. In addition, Representative James Kolbe voted against the Bill, which includes the amendment. Senator Don Nickles even pointed out that only a few senators were aware of the existence of this amendment.

[1064] Kara M. Olson and Benjamin H. Liebman, "The Returns from Rent-Seeking: Campaign Contributions, Firm Subsidies and the Byrd Amendment," *Canadian Journal of Economics* 39, no.4 (2006): 1345-1369. Since it took a vote on the entire appropriations bill to reject the Byrd amendment, the bill passed in the House by a margin of 340 to 75 and in the Senate by a margin of 86 to 8. After President Clinton signed it, the bill entered into law. See also, Ibid,

President's first attempt to repeal the law, almost seventy senators jointly wrote a letter to the President reaffirming the significance of the Byrd Amendment for domestic industries to preserve stable employment and competitive ability.[1065]

American steel manufacturing companies benefit the most from the Byrd Amendment.[1066] Besides their defender in Congress, the steel industry that received offset payments from the government opposed the WTO's decision. The President of United Steelworkers wrote members of the Senate to state that the steelworkers' union was firmly against repealing the Byrd Amendment because of its necessity for assisting domestic steel industries.[1067] One popular opinion among supporters is that the United States has the sovereignty to decide its domestic remedy forms instead of giving in to other business partners or WTO dispute settlement, for example,[1068] which they state has no qualifications or authority to manage them.[1069] Senator Byrd questioned critics of the Byrd Amendment who said it lacks reasonable ground.[1070] Other senators had a similar point of view and doubted the implementation of a decision to annul the Byrd Amendment.[1071]

Krikorian, op.cit. 160-167. For example, speaker of the House Dennis Hastert voted on the bill but criticized the amendment act against fundamental negotiating objectives.

[1065] Letter from 69 United States senators to President George W. Bush, February 4, 2003. See also, DER, "Senate Staffers See No Chance of Repeal of Byrd Law Following WTO Condemnation" (Feb. 14, 2003). See also, Letter from Senators DeWine, Byrd, Craig, Rockefeller, Santorum, Daschle, Specter, and Lincoln to Colleagues, Jan. 22, 2004 (on file with author) (writing to advise "continued and exceptionally strong Congressional support for the [Byrd Amendment]"). See also, Christopher DeLacy and Robert K. Tompkins, "Lobbying Restrictions for Federal Contractors - The Byrd Amendment," *Holland & Knight Political Law Blog*, March 18, 2016, https://www.hklaw.com/en/insights/publications/2016/03/lobbying-restrictions-for-federal-contractors--the.

[1066] William J. Davey, "The WTO Dispute Settlement System: How Have Developing Countries Fared," *Illinois Public Law Research Paper*, no.05-17 (2005): 1-21. More than two thousand American companies received payments under the Byrd Amendment, and 46 percent of those companies were steel companies, who had won dumping complaints. There was an influential bipartisan "steel alliance" in both Chambers, including over one hundred members standing for districts with steel companies.

[1067] Leo W. Gerard, "Re: USW opposes the PRINT Act," *United Steelworkers*, May 6, 2003. May 15, 2018, https://www.usw.org/news/media-center/releases/2018/18-05-15-USW-letter-to-Senate-regarding-PRINT-Act.pdf. The Union opposes supports increased trade adjustment assistance. However, this does not mean said assistance can replace the Byrd Amendment's provision of business aid.

[1068] Yong K. Kim, "The Beginnings of the Rule of Law in the International Trade System Despite United States Constitutional Constraints," *Michigan Journal of International Law Michigan Journal* 17, no.4 (1996): 967-977.

[1069] Jesse Klaproth, "Decision by the Arbitrator - United States - Continued Dumping and Subsidy Offset Act of 2000: Payback Is for the Byrds; Arbitrator Allows Eight Countries to Sanction the United States for Application of the Byrd Amendment," *Tulane Journal of International and Comparative Law* 13, (2005): 401-420.

[1070] Senator Byrd thought that critics are talking through their hats… there are no grounds for this provision to be challenged."

[1071] Dan Ikenson, "'Byrdening Relations': United States Trade Policies Continue to Flout the Rules", *CATO Institute Free Trade Bulletin*, no.5, January 13, 2004, https://www.cato.org/free-trade-bulletin/byrdening-relations-us-trade-policies-continue-flout-rules. Senator Max Baucus said, "In the end, this decision may not matter much, as I suspect there is little support in Congress for implementing it."

Moreover, they feel the Byrd Amendment is a supplementary remedy that changes unfair trade laws and redistributes AD/CVD to affected domestic producers to achieve fairness and justice.[1072] Victories under previously unfair trade laws are inadequate because even if a company survives until a dumping or countervailing duty complaint is proved valid, it is nearly impossible for it to regain the same market position it had before.[1073] Also, in response to criticism on the rationality of the Byrd Amendment[1074] and its negative potential to create more AD cases,[1075] its supporters insisted that there was nothing improper and no evidence to confirm it would encourage the exercise of rights that are compatible with the WTO.[1076] Therefore, it was problematic for Congress to change or eliminate a domestic law related to trade remedy laws.[1077] Although only a few United States industries use AD laws, hurting a large number of United States importers and exporters, many members of Congress are reluctant to back down on this issue.[1078]

Eight Members asked the DSB to authorize sanctions against the United States in January 2004, including the suspension of tariff concessions and "related obligations under GATT 1994".[1079]

[1072] H.E. Sheppard, "The Continued Dumping and Subsidy Offset Act (Byrd Amendment): A Defeat before the WTO may constitute an Overall victory for US Trade," *Tulane Journal of International and Comparative Law* 10, (2002): 121-131. Supporters of the Byrd Amendment believe that AD/CVD provides inefficient protection for weak United States industries.
[1073] Adam C. Hawkings, "Anti-dumping Beyond the GATT 1994: Supporting International Enactment of Legislation Providing Supplemental Remedies," *International and Comparative Law Review* 10, no.1 (1999): 149-175.
[1074] United States, "Hearings before US-China Economic and Security Review Commission One Hundred Ninth Congress First Session," United States Government Printing Office, Washington, 2005. Statement of Alan WM. Wolff Partner, Dewey Ballantine LLP. On the criticism on double duties, Mr. Wolff has emphasized that this criticism ignores that any AD/CDV relief is prospective only, and only comes into effect if the domestic industries actually suffer from injury and lost market share over many years. It means relief is possible but not guaranteed.
[1075] Simon J. Evenett, "The simple analytics of U.S. antidumping orders: Bureaucratic discretion, anti-importer bias, and the Byrd amendment," *European Journal of Political Economy* 22, no.3 (2006): 732-749.
[1076] In addition, the purpose of creating WTO AD rules is to provide members with a legal method to protect themselves against unfair trade. It is very appropriate for a domestic industry to use such internationally recognized rights.
[1077] Statement from the Office of the United States Trade Representative, January 16, 2003. In response to the Appellate Body report, the Office of United States Trade Representative published a statement emphasizing that they welcome the part of the report that admits consistency with WTO requirements. Meanwhile, they are reviewing the report. They mentioned that the dispute did not involve underlying United States AD and CVD laws and that the U.S will keep using those laws to ensure United States industries, farmers, and workers operate within an environment of fair competition.
[1078] Yu, po.cit. 895-899.
[1079] Decision by the Arbitrator, United States--Continued Dumping and Subsidy Offset Act of 2000- Recourse to Arbitration by the United States under Article 22.6 of the DSU, WT/DS217/ARB/EEC,WT/DS234/ARB/CAN,WT/DS217/ARB/IND,WT/DS217/ARB/BRA,WT/DS217/ARB/KOR, WT/DS234/ARB/MEX, WT/DS217/ARB/CHL, WT/DS217/ARB/JAP (Aug. 31, 2004). Eight countries including Brazil, the EC, India, Chile, Japan, Canada, Mexico and Korea requested that the WTO DSB allow them to use retaliatory measures. The requesting parties specified that the amount of the annual offset payment constitutes the

They requested the authority to impose additional import duties on United States products or postpone other obligations to the United States. The United States objected to the level of retaliation and requested arbitration under Article 22.2 of the DSU.[1080] The Arbitrator reached a final decision in August 2004.[1081] WTO arbitrators offered a green light for those Members to retaliate against the United States by imposing additional import tariffs on United States exports of up to 72% of the total amount that the Byrd Amendment would pay in the following year for AD/CVD on their products.[1082] Based on payments under the Byrd Amendment for fiscal year 2004, the total suspensions approved for 2005 could be as high as $134 million.[1083] For instance, Canada began levying a 15 percent retaliatory tariff on imports of specific tariff items in May

extent of cancellation or derogation, within which each requesting party may suspend derogation or other obligations. The requests were made jointly, but each Requesting Party can express its opinion separately. The decisions were identical.

[1080] The US has questioned the sanctions calculation from two aspects. First, whether the level of the sanctions includes the degree of specificity. Second, the degree of sanctions of invalidity or derogation must relate to the direct trade effect.

[1081] Arbitrator's Decision, Para.3.7-3.10, 3.14-3.56. The arbitrator first emphasized that the assertion of US is to exclude the level of sanctions from the degree of specificity required under Article 22.2 of the DSU. The requester argues that, under section 22.2 of DSU, there is no need for a "trade effect" test and that the US code specifies the degree of write-off or derogation as the amount to be paid under Byrd Amendment. The arbitrator held that, although the request for suspension submitted by the requesting party could "provide additional information", it met the "minimum specific requirements" of Article 22.6 of DSU. The requester considers that the amount of invalidity or damage is equal to the amount paid under Byrd Amendment. In other words, they argue that they are entitled to the amount given to domestic producers. The arbitrator found that the claimant erroneously equated invalidity or derogation with "violation". It is illogical to use them as interchangeable terms because "violations" lead to "the existence of invalidity or damage. According to Article 3.8 of DSU, a violation is prima facie evidence that an invalidity or derogation has occurred. Thus, a violation by the US creates a presumption that invalidity or damage has occurred, and under Article 3.8 the offending party has an opportunity to refute that presumption by providing contrary evidence. Article 3.8 would be a "theoretical impossibility", if, as the requesters argue, the two were the same concept. The arbitrator painstakingly provided the basis for the distinction between "violation" and "consequences of the violation", and ruled that the requesters were entitled to sanctions only for the consequences of the violation, not for the violation itself. The arbitrator further concluded that (1) a violation is the evidence of invalidity or damage under Article 3.8 of DSU; and (2) if a violation exists, arbitrators can settle the level of invalidity or damage.

[1082] Arbitrator Award in Byrd Amendment Dispute, United States—Continued Dumping and Subsidy Offset Act of 2000, WT/DS217/ARB/ BRA, CHL, EEC, IND, JPN, KOR and WT/DS234/ARB/CAN, MEX, paragraph 1.3, 5.1–5.5 (Aug. 31, 2004). See also European Commission, "US Byrd Amendment – WTO says eight WTO Members may retaliate against the US – Joint Press statement by Brazil, Canada, Chile, the EU, India, Japan, Korea, and Mexico", IP/04/1055, Brussels, 31 August. Australia, Indonesia, and Thailand provided the United States with more time to obey the rules. The WTO's methodology is to calculate additional import tariff levels or other measures against it based on the amount paid to US industries in the most recent annual distribution. Particularly, the degree of authorized retaliatory duties depends upon the trade impact of the latest AD or countervailing duty payments imposed on products from each member. Therefore, the arbitrator developed an economic model to calculate this degree. It is based on the different amounts paid under the Byrd Amendment every year.

[1083] WTO arbitrators authorized additional duties to cover trade totaling up to $0.3 million for Brazil, $11.2 million for Canada, $0.6 million for Chile, $27.8 million for India, $1.4 million, $52.1 million for Japan, $20 million for South Korea, and $20.9 million for Mexico.

2005,[1084] then the EU,[1085] Mexico[1086] , and Japan[1087] followed Canada's lead, imposing 15 percent duties on various products soon afterward.[1088] The three Members[1089] that did not apply for retaliatory permission had agreed to extend their request for retaliatory authority as the United States promised them they could maintain this requesting right and that it would not be blocked.[1090]

Supporters of the Byrd Amendment criticized that not only was the WTO's central finding wrong, but that threats of retaliation were undesirable and not intelligent. They insisted that the Byrd Amendment complied with United States international obligations. They also stated that the Byrd payments were only a part of compensation and not easy to achieve.[1091] This shows that Congress only paid attention to repealing this Amendment when other Members began imposing retaliatory duties. Congress also began facing political pressure within the United States[1092] The legislative record showed that both Trade Representatives and Senators refused to make any alterations.[1093] The effort to abolish the Byrd Amendment gained support on the domestic side.[1094] The Bush Administration stressed its position on repealing the Byrd Amendment on February 7, 2005, in its

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[1084] Products included live swine, cigarettes, oysters and certain specialty fish.

[1085] Affected goods comprised paper products, various types of trousers and shorts, sweet corn, metal frames, and crane lorries.

[1086] Mexico imposed duties of nine to thirty percent on products such as chewing gum, wines, and milk-based products.

[1087] Japan focused on United States imports like steel products and bearings.

[1088] The other four Members (Brazil, India, Chile and Korea) announced that they had postponed concessions.

[1089] These three members were Australia, Thailand, and Indonesia.

[1090] WTO, WT/DS217/R, WT/234/R, 16. September 2002.

[1091] United States (2005), op.cit. 91-95.

[1092] Tudor N. Rus, "The Short, Unhappy Life of the Byrd Amendment," *New York University Journal of Legislation and Public Policy* 10, no.2 (2007): 427-443. Several industries, think tanks, editorial pages, and independent government agencies urged Congress to repeal the Byrd Amendment.

[1093] United States, Congress Budget Office, Economic Analysis of the Continued Dumping and Subsidy Offset Act of 2002.Analysis of the Continued Dumping and Subsidy Offset Act of 2000, at 1-2 2004, https://www.cbo.gov/publication/15324. See also: United States Government Accountability Office, Issues and Effects of Implementing the Continued Dumping and Subsidy Offset Act 1, 2005.

[1094] United States, "Grassley: New Report Makes Case for Repealing the Continued Dumping and Subsidy Offset Act ("Byrd Amendment")", *United States Senate Committee on Finance*, September 26, 2005, https://www.finance.senate.gov/chairmans-news/grassley-new-report-makes-case-for-repealing-the-continued-dumping-and-subsidy-offset-act-byrd-amendment. The Chairman of the Committee on Finance made the comment "highlights a total lack of accountability under the CDSOA. The Bureau of Customs and Border Protection does not have the resources to systematically check every claim for money under the CDSOA. The sad truth is, there's been only one comprehensive audit out of 770 companies that received money under the program. That audit showed that expenses claimed by the company were substantially overstated. Because the amount of money received by a company is directly tied to the amount of expenses claimed by a company, the incentive to overstate qualifying expenses is strong. I suspect that's why company claims approached $2 trillion in 2004. When government provides an incentive to overstate claims and then fails to verify whether the claims made are accurate, it really amounts to open invitation for fraud. Once a company gets the money, there's no way to tell how it's been spent. According to the report, one recipient of funds under the program actually used the money to pay off a home mortgage […] Instead of creating a

budget proposal for the fiscal year 2006.[1095] In September 2005, an amendment to the appropriations legislation was submitted to the Senate to prohibit the distribution of Byrd offset payments unless the distribution of the payments would not conflict with the United States' WTO obligations.[1096] The final achievement came with passage of the Deficit Reduction Act of 2005 on 1 February 2006.[1097] Each congressional committee had the responsibility to decrease spending on programs because of the federal deficit,[1098] ending with an agreement to dismantle the Byrd Amendment. Although the House supported this, the Senate did not.[1099] After debating the issue, a final compromise was reached. Congress would repeal the Byrd Amendment, but duties on goods imposed and filed before October 1, 2007 would still be allocated after collection, under to a transition clause.[1100] Both houses of Congress passed the Deficit Reduction Act by razor-thin margins,[1101] which shows the reluctance of Congress to stop using this Amendment. Both the domestic budget dilemma and international retaliations from trade partners forced Congress to repeal the Byrd Amendment.[1102]

It is hard to press Congress to make even tiny concessions on changing provisions to United States trade remedy laws. It has long been assumed that the United States gets to use its dominant position

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level playing field, the CDSOA distorts competition in the United States, to the detriment of United States firms and their employees. Only companies that supported the original petition for an AD or countervailing duty investigation are eligible to receive funds under the CDSOA. New companies aren't eligible […] The economic distortions go on and on. Economics and sound business practices should serve as the basis for winning or losing marketplace competition, not the government.

[1095] United States, White House Budget Proposal for Fiscal Year 2006. See also, Michelle D. Robinson and Benjamin A. Mandel, "Federal Budget Estimates for Fiscal Year 2006," *Survey of Current Business*, (2005): 14-24.

[1096] Status Report Regarding Implementation of the DSB Recommendations and Rulings in the Disputes United States - Continued Dumping and Subsidy Offset Act of 2000, WT/DS217/16/Add.21, WT/DS234/24/Add.21 (Oct. 7, 2005).

[1097] United States, Deficit Reduction Act of 2005, Public Law no. 109-171, § 7601, 120 Stat. 4, 154.

[1098] "House Moves to Repeal Byrd Amendment," *Barnes/Richardson Global Trade Law*, December 1, 2005, http://www.barnesrichardson.com/?t=40&an=6481. Representative Bill Thomas, chairman of the House committee with jurisdiction over international trade issues, pointed out the necessity of repealing the Byrd Amendment immediately to reduce the deficit and further return AD/CDV duties to the United States Treasury.

[1099] United States, Compare H.R. 4241, 109th Congress § 8701 (2005) (containing provision for the immediate repeal of the Byrd Amendment) with S. 1932, 109th Cong. (2005) (containing no provisions regarding the Byrd Amendment).

[1100] Deficit Reduction Act § 7601. See also, Roger Jones and Gabriel A. Moens, *International Trade and Business Law Review: Volume XI* (Abingdon, Oxon: Routledge-Cavendish, 2008), 290-295.

[1101] United States, The Deficit Reduction Act passed the Senate 51 to 50. The Vice President cast the critical vote to break the impasse. 151 CONG. REC. S14, 202, S14, 221 (2005). The Deficit Reduction Act passed the House 216-214. 152 CONG. REC. H68, H68 (2006). See also, House Reports, 2006, Nos. 733-739, United States Congressional Serial Set, Serial Number 15066, 109th Congress, 2nd Session.

[1102] Eric L. Richards, Scott J. Shackelford and Abbey Stemler, "Rhetoric versus Reality: United States Resistance to Global Trade Rules and the Implications for Cybersecurity and Internet Governance," *Minnesota Journal of International Law 24*, (2015): 159-173.

in international relations, which makes the United States unable to accept the reality of a rules-based system. United States WTO opponents have repeatedly emphasized loss of sovereignty as they push the United States into a more isolationist and power-oriented trade posture.[1103] Congress changes trade remedy laws only when internal and external pressures force them to do so. The purpose of the majority in Congress is to maintain the United States domestic trade remedy laws to protect domestic industries and employment.[1104] The violation of WTO principles by the Byrd Amendment reflects the compliance problem. Disputes over United States AD laws show up the conflict between the mainly free trade principles implemented by the WTO and the generally protectionist United States trade remedy law,[1105] which reflects a central question for negotiations on trade remedy laws: how to adjust different perspectives on the distribution of power between governments and international institutions.[1106]

The Byrd Amendment was a bold protectionist move, which once again illustrated the United States's long-standing opposition to reforming international AD law.[1107] The United States ultimately repealed it because the United States commitment to free trade and international law had become problematic, and United States domestic industries faced WTO authorized retaliation from other trade partners.[1108] However, this was not a victory where the United States complied with WTO AD principles as guidance for its domestic AD laws but rather as an expedient choice to get rid of retaliation.[1109] It entered into effect in 2000, shortly before the beginning of Doha Round. The whole process of repealing the Byrd Amendment took place during the first phase of negotiations. United States Congress sought to put the debate about repeal to Doha Round and

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[1103] Kim, po.cit.170-175.

[1104] Sungjoon Cho, "Remedying Trade Remedies," 13 March 2007, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=969387. See also, Nitsan Chorev, "A Fluid Divide: Domestic and International Factors in US Trade Policy Formation," *Review of International Political Economy* 14, no.4 (2007): 653-689.

[1105] David S. Levine, "Could Overreaction to Cybersecurity Threats Hurt Transparency at Home?" *SLATE*, June 12, 2013, https://slate.com/technology/2013/06/trade-secret-law-reform-to-fight-cybersecurity-could-hurt-transparency.html.

[1106] Steven P. Croley and John H. Jackson, "WTO Dispute Procedures, Standard of Review, and Deference to National Governments," *The American Journal of International Law* 90, no.2 (1996): 193-213.

[1107] Jagdish N. Bhagwati and Petros C. Mavroidis, "The Byrd Amendment Is WTO-Illegal: But We Must Kill the Byrd with the Right Stone," *World Trade Review* 3, no.1 (2004): 119-128.

[1108] 109th United States Congress in December 2005 and January 2006 repealed the amendment.

[1109] Jonathan T. Stoel, "Repeal of the Byrd Amendment - Foreign and Domestic Efforts Result in the End of a WTO-Illegal United States Practice," *Hogan Lovells Global Trade and Customs Journal*, 2007, https://www.hoganlovells.com/en/pdfdownload?page={C0909802-1A4D-4438-BACA-7F386F078635}&p=1.

wait for its outcome. However, they could not wait so long because of trade partner retaliations, meaning they had to remove the Byrd Amendment. It is important to emphasize that the repeal process of the Byrd Amendment showed that Congress resisted changing a domestic trade remedy even once they found domestic industries would suffer from it, illustrating that the purpose of Congress is to maintain the efficiency of its protection from its trade remedies. Despite the divergence between the Executive Branch and Congress on whether to repeal the Byrd Amendment, the essence of their behavior is identical in their quest to protect domestic industries.[1110] This stance further suggests that negotiations on reforming the ADA are unlikely to conclude soon once there are compliance problems. It also shows that compliance issues are part of the causes that led to the impasse in negotiations.

3. MAJOR COMPLIANCE CONTROVERSIES IN UNITED STATES ANTI-DUMPING LAW REGARDING THE ANTI-DUMPING AGREEMENT

There has been widespread criticism of United States AD law for a long time. The United States AD system is commonly considered to be one of the most protectionist and costly in the world. Many Members questioned the conformity with the ADA of certain rules under United States AD law in the Doha Round negotiations. Zeroing was the most controversial topic in the Doha Round that reflects compliance issues between the United States domestic AD legislation and the ADA. Since the USDOC usually finds dumping,[1111] the focus of research in United States AD is the method used for determining injury.[1112] Studies find that both statutory rules and agency-level

[1110] Robert Keith, "The Budget Reconciliation Process: The Senate's 'Byrd Rule'" *Congressional Research Service*, July 8, 2009, https://budgetcounsel.files.wordpress.com/2016/11/crs-the-budget-reconciliation-process-the-senate_s-e2809cbyrd-rulee2809d-bob-keith-rl30862-july-8-2009.pdf.

[1111] Arnold, po.cit. 42-49. The common effect of an AD order is to impose countervailing duties so high that producers in the target country are effectively precluded from selling in the domestic market of the country that issues the AD order. To prevail in an AD proceeding, a complainant must prove that its domestic operations have been injured by dumping. The causation and injury requirements are applied loosely and are regularly manipulated to support findings of causation and injury. Thus, a complainant's primary task is to prove "dumping." U.S complainants are successful in proving dumping in over 90 percent of cases. The reasons for this extraordinary rate of success becomes apparent once it is understood how the DOC decides whether a country is engaged in illegal dumping. In the US AD investigation proceedings, it is easier for the DOC to find dumping than for the USITC to affirm injury. For example, the DOC found no dumping in 7 percent of its final determinations from 1980 to 1994, 24 cases out of 339.

[1112] Richard Boltuck and Robert E. Litan, *Down in the Dumps: Administration of the Unfair Trade Laws* (Washington, DC.: Brookings Institution, 1991), 3-68. This study contains a comprehensive analysis of less than fair value proceedings. Over recent decades, for example, the USDOC has issued only three negative LTFV determinations out of more than 500 determinations. Even during the period that AD actions heavily increased between 1980 to 1994, the USITC made 108 negative injury determination in 315 cases.

discretionary decisions lead to findings of large dumping margins. Specifically, the use of zeroing makes dumping margins outrageously large.[1113] Under the United States statute, the purpose of imposing AD duties is to restore "fair trade" in dumped imports. The United States continues using the "zeroing" method to calculate dumping margins,[1114] which has made average dumping margins in recent decades higher than 50 percent.[1115] The Dispute Settlement Body has further confirmed that zeroing does not conform to the ADA. However, the United States has not amended its domestic AD law to correct zeroing. Without a doubt, the use of zeroing is an unavoidable topic during the Doha Round. It is the most controversial issue in the Doha Round. Although the United States encounters many disputes on zeroing,[1116] some of which already confirm its inconsistency with the ADA, the United States still refuses to correct this practice.[1117]

4. United States Position at The Negotiating Table

AD law is one of the central issues in the main international trade negotiations involving the United States in current decades. United States trade negotiators, like their counterparts, participate in trade negotiations with international foresight. This means that negotiators consider not only the ongoing negotiation but also the potential impact of the negotiation.[1118] Since the start of the Doha Round, the United States has held a conservative and even opposing position on reforming the ADA. Two aspects can explain the cautious attitude of the United States towards changing AD law. On a domestic level, political parties have different opinions on trade remedies. Negotiator behavior during the Doha Round depended upon the attitude of the government. The development of AD laws connects closely to free trade agreements. AD actions are exceptions to free trade.[1119]

[1113] The US DOC usually finds unbelievably large dumping margins. Any argument that AD law has the purpose of ensuring "fair trade" sounds ridiculous when confronted with the US DOC's margins.
[1114] Boltuck and Litan, op.cit. 27-52.
[1115] Ibid.
[1116] WTO, DS 264, United States - Final Dumping Determination on Softwood Lumber from Canada; DS 322, United States - Measures Relating to Zeroing and Sunset Reviews; DS 294, United States - Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing); DS 335, United States - Anti-Dumping Measure on Shrimp from Ecuador; DS 343, United States - Measures Relating to Shrimp from Thailand; DS 344, United States - Final Anti-Dumping Measures on Stainless Steel from Mexico.
[1117] Nye, op.cit. 265-267.
[1118] For example, if United States negotiators agree on one issue in a bilateral agreement, it will have an effect on the same issue in later multilateral negotiations. This means the negotiators must foresee all possibilities for future forums on the same topic.
[1119] Jean-Sébastien Roure, "Trade Remedies -What Business Needs to Know," *International Trade Forum Magazine*, no.3 (2002), http://traeforum.org/Trade-Remidies---What-Business-Needs-to-Know/.

Domestic market stakeholders around the world have lost the opportunity to use traditional protectionist weapons - tariffs and import quotas - and find themselves left with only AD actions as an effective method. Besides, positions on free trade have become more retrogressive after the financial crisis,[1120] intensifying protectionism in the domestic market.[1121] Thus, countries are increasingly using AD actions to guard their domestic industry.

In the United States, although Republicans[1122] and Democrats[1123] have diverse viewpoints on free trade, they have similar opinions on supporting AD law.[1124] The operation of the USITC illustrates that the political parties' views play a significant role in AD. There are two ways that political parties can affect the USITC. First, the Senate must confirm the appointment of new commissioners,[1125] which means political parties can influence the choice of USITC officials. Second, new commissioners communicate regularly with the Senate and Finance committee. Some research reveals that the votes of USITC commissioners depend on the party that appoints them.[1126] Commissioners appointed by Republicans tend to be more protectionist than those appointed by Democrats.[1127]

[1120] Jennifer Steinhauer, "Both Parties Used to Back Free Trade. Now They Bash it," *The New York Times*. July 29, 2016, https://www.nytimes.com/2016/07/30/us/politics/in-time-of-discord-bashing-trade-pacts-appeals-to-both-parties.html. See also, United Nation, "International Trade after the Economic Crisis: Challenges and New Opportunities," UNCTAD/DITC/TAB/2010/2.

[1121] Kathrin Berensmann and Clara Brandi, "The Financial Crisis and International Trade – The Consequences for Developing Countries," *Deutsches Institut für Entwicklungspolitik*, no.13 (2011), 1-4.

[1122] Republicans support increasing all forms of trade, including international trade. Republicans are often friendly towards commerce and trade.

[1123] *United Steelworkers*, "Our History," https://www.usw.org/union/history. See also, "United Steelworkers (USW)", *Labor Union*, https://www.influencewatch.org/labor-union/united-steelworkers/.

Democrats oppose trade agreements and push for labor and environmental provisions to be incorporated into international trade agreements. Labor Unions, especially the United Steelworkers Labor Union, strongly support Democrats.

[1124] Keith Anderson, "Antidumping Laws in the United States: Use and Welfare Consequences," *Journal of World Trade* 27, no.2 (1993): 19-33. From the Kennedy Administration to the Trump Administration, Presidents have repeatedly emphasized their enthusiastic support for free trade and lobbied Congress to approve several important trade agreements. However, during their presidencies, AD orders have dramatically increased.

[1125] Under the law, the same party can appoint no more than three of the six commissioners. In practice, this means the ITC is made up of three Democrats and three Republican commissioners.

[1126] Tommaso Aquilante, "Bureaucrats or Politicians? Political Parties and Antidumping in the US," *Munich Personal RePEc Archive*, no.2016-05 (2015): 1-33, https://mpra.ub.uni-muenchen.de/70359/1/MPRA_paper_70359.pdf.

[1127] Robert E. Baldwin, and C.S. Magee, "Is Trade Policy for Sale? Congressional Voting on Recent Trade Bills," *Public Choice* 105, no.1-2 (2000): 79-101. See also, M.J.Hiscox, "Commerce, Coalitions, and Factor Mobility: Evidence from Congressional Votes on Trade Legislation," *American Political Science Review* 96, no.3 (2002): 593-608. See also, P. Conconi, G. Facchini, and M. Zanardi, "Fast-Track Authority and International Trade Negotiations," *American Economic Journal* 4, no.3 (2012): 146-189.

Besides protecting the United States domestic industry, there are three other possible reasons that the United States supports the use of AD laws. First, AD law allows politicians to appear pro-free trade while retaining the discretion to resort to special protectionism at the request of politically influential voters. One persuasive example is Trump's election victory. Mr. Trump's election strategy was to bring back protectionist roots for trade, which helped him gain votes.[1128] Second, support for AD law provides politicians an upper hand in rhetoric. People might not understand the merits of free trade, but nobody likes dumping. The term quickly leads people to imagine a foreign company that seeks to make use of United States companies and hurt domestic welfare,[1129] especially people from specific industries like the metal industry.[1130] Third, few voters will bother to understand the simple fact that AD laws prohibit behavior that is normal and socially beneficial for any participant in a competitive market. On the contrary, AD law is the same kind of protectionism as high tariffs and low import quotas. In general, the United States is still an unwavering defender of AD actions, meaning the United States will actively participate in multilateral negotiations on AD issues.

Nevertheless, in the specific case of the Doha Round negotiations, the United States upholds the majority of the current ADA instead of supporting proposals to revise it. Both Congress and the Administration believe that any modification to the ADA will have a direct negative effect upon domestic AD law and industries.[1131]

On the one hand, there are apparent gaps between United States domestic AD laws and the ADA on certain specific issues. On issues like the prohibition of "zeroing", there is less possibility that the United States negotiators will make concessions. Even if the trade representative makes

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[1128] Anthony J. Gaughan, "Donald Trump won the presidency because celebrity beats substance," *Qaurtz*, November 9, 2016, https://qz.com/832830/election-2016-how-did-donald-trump-win/. See also, Nick Corasaniti, Alexander Burns and Binyamin Appelbaum, "Donald Trump Vows to Rip Up Trade Deals and Confront China," *The New York Times*, June 28, 2016, https://www.nytimes.com/2016/06/29/us/politics/donald-trump-trade-speech.html.
[1129] James M. Devault, "The welfare effects of United States Antidumping duties," *Open Economic Review* 7, (1996): 19-33.
[1130] Robert W. Staiger, Frank A. Wolak, Robert E. Litan, Michael L. Katz and Leonard Waverman, "Measuring Industry-Specific Protection: Antidumping in the United States," *Brookings Papers on Economic Activity* 1994, (1994): 1-118. See also,Thiemo Fetzer and Carlo Schwarz, "Tariffs and Politics: Evidence from Trump's Trade Wars," *The Economic Journal*, (2020): 1-25, https://doi.org/10.1093/ej/ueaa122.
[1131] United States General Accounting Office, *Free Trade Area of the Americas: Negotiators Move toward Agreement That Will Have Benefits, Costs to United States Economy*, September 2001.

concessions, Congress might refuse to change domestic law. This will make the commitment at the negotiating table empty talk. On the other hand, there are provisions in United States law lacking thorough guidance because of uncertainties in the ADA. On issues like transparency, diversionary, and predictability, the United States has asked the WTO to provide more specific disciplines.[1132] Moreover, the United States supports provisions to restrict the circumvention of AD duties through third-country exporters in keeping with its desire to maintain its AD laws.[1133]

II. European Union Anti-dumping Law and Practice

1. The European Union's Anti-dumping Legal Framework

The EEC[1134] entered the AD user club late because of an upsurge in quantitative import barriers in the 1960s.[1135] There are three sources of EU AD policy. The first source is based upon Article 133 of the Common Commercial Policy, which permits protective external trade actions and includes both substantive and procedural aspects of AD regulation.[1136] However, the Community's original six Members had different views on dumping.[1137] If community Members gained the authority to apply AD actions on their own, it would trigger trade distortions. Therefore, the AD Policy was formulated at the Community level, and the power to implement measures against inter-community dumping trade has transferred from each member to the Community.[1138] The second source is the relevant Council Regulations published by the administration and management layer of the Commission itself, meaning that the European Council and the European Commission work together to rule on EU (EEC) trade policy with general theory, principles, and detailed rules.[1139]

[1132] Randy Schnepf, "WTO Doha Round: Implications for United States Agriculture," *Congressional Research Service*, no.7-5700 (2014), 1-13.

[1133] Young and Wainio, op.cit.11-16.

[1134] EEC is European Economic community was a created by the Treaty of Rome in 1957. Upon the formation of EU in 1993, EEC was made a part of EU and now there is no separate EEC.

[1135] Georg Koopmann, "National protectionism and common trade policy," *Intereconomics* 19, no.3 (1984): 103-110.

[1136] Official Journal of the European Communities, Treaty Establishing the European Community, Nov. 10, 1997, art. 113. O.J. (C340) three. 237 (1997), "[…] shall base on uniform principles, particularly in regard to […] export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies".

[1137] John Hans Beseler and A. Neville Williams, *Anti-Dumping and Anti-Subsidy Law: the European Communities* (London: Sweet and Maxwell, 1986), 27-66.

[1138] Guy Harpaz, "The European Community's Anti-Dumping Policy: The Quest for Enhanced Predictability, Rationality, European Solidarity and Legitimacy," *Cambridge Yearbook of European Legal Studies* 5, (2003): 195-236.

[1139] Treaty Establishing the European Community, Official Journal C325, 24/12/2002 P. 0033 - 0184.
See also, Jana Titievskaia, "EU trade policy- Frequently asked questions," *European Parliamentary Research Service*, October 2019,
https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/642229/EPRS_IDA(2019)642229_EN.pdf.

The first basic EEC AD regulation, Council Regulation (EEC) No 459/68, was drafted in 1968 and simply translated the context of the 1967 Kennedy Round GATT Code.[1140] In the beginning there were few AD cases.[1141] The relationship between competition and AD policies in the EC has been less profound. Article 4 of the 1968 regulation mentions merely that the investigating authority should look at "restrictive business practices" if they want to determine injury and at "competition between EEC producers themselves" if they wish to find a causal link between dumping and injury.[1142] The need for AD measures became more frequent as of the late 1970s. The EEC viewed AD laws as a significant method for restricting imports.[1143] Since then, the EEC has frequently amended the Basic Regulation, making sure to follow GATT/WTO Agreements,[1144] which comprises the EEC's current legal framework for the application of AD measures.[1145]

The European Commission proposes and negotiates, while the Council authorizes the opening of negotiations and decides on the conclusion of trade agreements. The Council announces AD regulations.

[1140] Regulation (EEC) No 459/68 of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community, Official Journal L 093, 17/04/1968.

[1141] Eymann, and Schuknecht, op.cit. 120-127.

[1142] Article 4 of 1968 Basic Regulation.

[1143] Ludger Schuknecht, and Joerg Stephan. "EC Trade Protection Law: Produmping or Antidumping?" *Public Choice* 80, no.1/2 (1994): 143-156.

[1144] Regulation No 3017/79, Regulation No 2176/84, Regulation No 24b 23/88, Regulation No 2383/94, Council Regulation No 3283/94 of December 1994 on protection against dumped imports from countries not members of the European Community, Official Journal L 349, p 0001-0002, as amended by Council Regulation No 1251/95 of 29 May 1995, amending Regulation No 3283/94 on protection against dumped imports from countries not members of the European Community, Official Journal L 122, 02/06/1995 p 0001. Regulation No 384/96, Council Regulation (EC) No 2331/96 of 2 December 1996 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community, Official Journal L 317, 06/12/1996 p 0001; Regulation No 905/98, Council Regulation (EC) No 905/98 of 27 April 1998 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community, Official Journal L 128, 30/04/1998 p 0018. Regulation No 2238/2000, Council Regulation (EC) No 2238/2000 of 9 October 2000 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community, Official Journal L 257, 11/10/2000 p 0002. Regulation No 1972/2002, Council Regulation (EC) No 1972/2002 of 5 November 2002 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community, Official Journal L 305, 07/11/2002 p 0001. Regulation No 452/2003, Council Regulation (EC) No 452/2003 of 6 March 2003 on issues relating to the combination effect between AD or anti-subsidy measures with safeguard measures, Official Journal L 069, 13/03/2003 p 0008-0009. Council Regulation No 2015/478, Council Regulation (EC) No 2015/478 of 11 March 2015 amending Regulation (EC) No 260/2009 on protection against dumped imports from countries not members of the European Community, Official Journal L 83/16,27/03/2015. Regulation No 2016/1037, Council Regulation (EC) No 2016/1037 of 8 June 2016 amending Regulation (EC) No 2015/478 on protection against dumped imports from countries not members of the European Community, Official Journal L 176/55, 30/06/2016.

[1145] Ivo Van Bael and Bellis Jean-François, *EU Anti-Dumping and Other Trade Defence Instruments* (Alphen aan den Rijn: Kluwer Law International, 2011), 12-60. See also, Clive Stanbrook, Philip Bentley, and Joseph Cunnane, *Dumping and Subsidies: the Law and Procedures Governing the Imposition of Anti-Dumping and Countervailing Duties in the European Community* (London: Kluwer Law International, 1996), 50-70. See also, Paulette Vander Schueren, "New Antidumping rules and practice: Wide discretion held on a tight leash?" *Common Market Law Review* 33, no.2 (1996): 271-297. See also, Perter Holmes and Jeremy Kempton, "EU Anti-dumping Policy: A Regulatory

The third source of EU AD policy depends on the rulings of the European Court of Justice (ECJ).[1146] Although the GATT/WTO and the EU are bound together, the ECJ regulates that primary EU law is still superior to GATT/WTO. Meanwhile, the ECJ considers that GATT obligations are not precise enough.[1147] The GATT, therefore, has no direct effect as such.[1148] The ECJ held that EU AD policy and the 1979 AD Code were bound together. The ADA makes remarkable progress beyond GATT. The ADA is more detailed and precise than the previous 1979 AD Code and regulates many direct obligations for signatories. Still, the Council Decision maintains the superiority of EU primary law.[1149] The Commission has sought to refine Regulations in both procedural and substantive articles.[1150] The primary Regulation focuses on dumped imports coming from non-EU member countries.[1151] Between EU Members, the Basic Regulation on dumping applies.[1152]

In the EU, an AD case must go through six steps before reaching final AD duties.[1153] First, a firm or an association of interests must lodge an AD complaint against a section of the producers of

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Perspective," *Journal of European Public Policy* 3, no.4 (1996): 647-664. See also, Edwin A.Vermulst, and B. Driessen, "New Battle Lines in the Antidumping War: Recent Movements in the European Front," *Journal of World Trade* 31, no.3 (1997) 135-157. See also, Robert M. Maclean, Richard J. Eccles, "A Change of Style not Substance: the Community's new Approach Towards the Community Interest Test in Antidumping and Anti-Subsidy law," *Common Market Law Review* 36, no.1 (1999): 123-148.

[1146] Zhong Sheng, "EU Antidumping Policy-A study in the CTV Case," School of Economics and Management Lund University, *Master Thesis*, 2004, 33-34.

[1147] Judson Osterhoudt Berkey, "The European Court of Justice and Direct Effect for the GATT: A Question Worth Revisiting," *European Journal of International Law* 9, (1998): 626-657.

[1148] Alona E. Evans, "International Fruit Co. NV v. Productschap Voor Groenten en Fruit. Cases 20-24/72," *American Journal of International Law* 67, no.3 (1973): 559-578.

[1149] Decision concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-19940, 1994 OJ L336/1: "By its nature, the Agreement establishing the World Trade Organization, including the Annexes thereto, is not susceptible to being directly invoked in Community or Member States Courts."

[1150] Edwin A. Vermulst, *EU Anti-Dumping Law and Practice* (London: Sweet & Maxwell/Thomson Reuters, 2010), 12-20. The Basic Regulation applies to dumped imports from non-EU member countries. See also, Raymond Bertrand, "The European Common Market Proposal," *International Organization* 10, no.4 (1956): 559-574. In the Messina Conference, it is mentioned that A company can only dump in another market to the extent that its own market is protected. Simultaneously and mutually removing trade barriers in the common market will often automatically eliminate dumping problems in the common market..

[1151] Treaty of Rome which ruled out the application of AD measures against dumped products from one member to another, thus creating for the first time in trade history a trade area free of AD measures. It means no measures can be imposed on dumped products between EU members, for example, between Paris and London.

[1152] Treaty of Rome which ruled out the application of AD measures against dumped products from one member to another, thus creating for the first time in trade history a trade area free of AD measures. It means no measures can be imposed on dumped products between EU members, for example, between Paris and London.

[1153] Davis, op.cit. 27-29.

particular exports.[1154] Second, the European Commission decides to accept the complaint and lodge it with an AD advisory committee[1155] made up of member representatives before launching a formal investigation into companies suspected of dumping products onto the EU market.[1156] After this, the Commission should examine the existence of dumping, the injury to europe domestic firms, and the causal link between dumping and injury. Also, the Commission will test whether the imposition of AD duties is consistent with the Community interest.[1157] The Community interest test could prevent the authority from automatically imposing AD duties, which may reduce the negative impact of the imposition when duties would have a disastrous economic impact on third sectors of industry.[1158] However, although the Commission examines the Community interest, it cannot forcefully reject AD activities.[1159] The fourth step is that the

[1154] The EU regulation stipulates that "The complaint shall be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50 % of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25 % of total production of the like product produced by the Community industry." See also, Dirk De Bièvre and Jappe Eckhardt, "Interest Groups and the Failure of EU Antidumping Reform," *Journal of European Public Policy* 18, no.3 (2011): 339-360. "The European Commission considered introducing also the consultation of exporting third countries before the launching of a complaint. This would enable them to evaluate the potential for political friction over their initiation, or alternatively negotiate about so-called price undertakings before starting the investigation."

[1155] Commission of the European Communities, Communication from The Commission to the European Parliament , The Council and the European Economic and Social Committee: Implementation the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility," Brussels, 22.3.2006, COM(2006) 136 final: "If a quarter of the producers of a particular product claim that the foreign producer is dumping, that is, selling the product below the cost of production in the EU market, the Directorate of Trade Defense at European Commission at DG trade council has the obligation to investigate their claim. This means that the producers that determine the size of the industry and the products represented by the complaint. It does this by providing a list of all known community producers of so-called "like" products. Thus, the complainant can meet the eligibility requirements relatively quickly. Companies that produce and import questionable products may be excluded when determining the 25 percent share of community industries. Therefore, manufacturers engaged in outsourcing may be the opponents of this low acceptable threshold. Other economic actors opposing this threshold include consuming industries, importers, retailers, and consumers at large."

[1156] AD Advisor Committee comprises representatives from EU Member. "The role of this committee is to assist the Commission in the exercise of the implementing powers in the area of trade defense instruments, by giving opinions on draft implementing acts. The committee is composed of representatives of all the Member States and chaired by a representative of the Commission. In particular, the Commission seeks the opinion of the committee on the following stages of the investigation: whether or not to impose provisional or definitive measures, whether or not to initiate expiry review proceedings and amendments and extension of existing measures." See at: http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/AD/.

[1157] This means the Commission must consider four different stakeholder groups to appraise the impact of a plausible AD activity. These groups include domestic producers who are complainants, retailers and retail associations, import users and their representative associations, and consumer organizations.

[1158] M. Wellhausen, "The Community Interest Test in Anti-dumping Proceedings of the European Union," *American University International Law Review* 16, no.4 (2001): 1027-1081.

[1159] André Sapir, "Some Ideas for Reforming the Community Anti-dumping Instrument," *Bruegel Policy Contributions*, no.3 (2006): 1-6. In many cases, once dumping and injury are proven and measures are expected to

Commission can consult with the AD Advisory Committee again and decide to impose so-called provisional AD duties.[1160] The Commission must submit a proposal about whether to impose definitive AD duties to the Council. Finally, the Council will discuss the proposal. Only when most of the Council votes to agree with the proposal will definitive duties be imposed.[1161] Before March 2004, if Members abstained from voting, their abstention showed their support for imposing AD duties,[1162] which made it easier to receive a majority vote for imposing AD duties. Besides, EU Members have distinct divergences amongst Members as regards voting for or against using protection. For example, Members such as Denmark, Germany, Sweden, Finland, the Netherlands, Britain, and Ireland are representative of the twenty countries that vote against using protectionism.[1163]

2. European Union Anti-dumping Practice

The EU (EEC) is one of the leading traditional AD users. Of all the trade defense instruments, EU authorities most frequently resort to AD proceedings. After the enactment of the Basic Regulation in 1968, the EU actively filed AD petitions, initiating investigations, and imposing final AD duties.[1164] From 1970 to 1976, the EEC filed only 26 AD investigations, which included both new proceedings and reviews. In early EEC AD enforcement, all actions were terminated by undertakings or because of "changing circumstances" or "further developments in the circumstances", terms that do not indicate whether undertakings, changing market conditions, or other developments led to proceedings being ended.[1165]

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give relief to the complainant industry, it is presumed almost automatically that these measures are in the Community interest.

[1160] Patrick Cirillo, *The Political Economy of Antidumping: Extraordinary Protection* (Genève: Institut universitaire de hautes études internationales, 1993), 12-60. Provisional AD duties are imposed for six months with the possibility of a three-month extension.

[1161] After the investigation, the Council of Ministers of EU countries before whom AD cases are brought may vote for or against the implementation of protectionist measures. At the Council level, for years, there have been major disagreements among member states over whether to protect certain EU industries. Denmark, Germany, Sweden, Finland, the Netherlands, Britain and Ireland were among 20 countries that tended to vote against protectionism compared to other EU members.

[1162] M. Shu, "Domestic Struggles over International Imbalance: The Political Economy of Anti-dumping Governance in the EU," *Fudan Journal of the Humanities and Social Sciences* 1, no.2 (2008): 72-94.

[1163] Simon J. Evenett and Edwin Vermulst, "The Politicization of EC Antidumping Policy: Member States, Their Votes, and the European Commission," *The World Economy* 28, no.5 (2005): 701-717.

[1164] Jeremy Kempton, Peter Holmes, and Cliff Stevenson, "Globalisation of Anti-Dumping and the EU," *Centre on European Political Economy Working Paper*, no.6 (1999): 1-48.

[1165] Klaus Stegemann, "EC Anti-Dumping Policy: Are Price Undertakings a Legal Substitute for Illegal Price Fixing?" *Weltwirtschaftliches Archiv* 126, no.2 (1990): 268-98.

The trend of Commission using AD measures increased remarkably after the late 1970s. From 1977 to 1 January 1995, the EU was one of the heaviest initiators of AD investigations.[1166] Not only did the number of new investigations increase but the number of final duties also rose, meaning that these new AD investigations now resulted in final AD measures more easily compared to the period prior to 1977.[1167] After the establishment of the WTO, the active users of AD activity changed. Table 11 shows the five heaviest initiators of AD investigations after 1995. The EU is still on the list.

Table 11: Top Five Anti-dumping Initiators by Reporting Member (1995-2019.06)

Reporting Member	1995-2000	2001-2005	2006-2010	2011-2015	2016-2019	Total
India	173	255	205	137	168	938
United States	181	186	75	126	147	715
EU	218	109	93	59	36	515
Brazil	79	43	95	175	25	417
Argentina	133	60	78	50	60	381

Source: WTO.[1168]

However, active use of AD initiations by the EU began declining after 2003. Similarly, the trend of United States AD initiation also experienced a downturn from 2005 to 2012. However, the United States dynamically started using AD activity again after 2013. On the contrary, the EU's AD activity, except for the period from 2004 to 2006, has maintained a decreasing trend with the lowest amount of activity in recent years.[1169] Even though the number of EU's initiations has reduced, there are still a number of countries targeted by the EU, including one economy that is currently essential for world trade.[1170]

[1166] WTO AD Database, Developed countries including the United States, European Communities, Australia and Canada were responsible for up to 97 percent of all AD investigations and 98 percent of all measures.
[1167] WTO Statistic of Anti-dumping.
[1168] WTO Statistic on Anti-dumping.
[1169] Erdal Yalcin, Hannes Welge, André SAPIR and Petros C. Mavroidis, "Balanced and fairer world trade defense EU, US and WTO perspectives," *Think tank*, 29 May 2019, https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603480/EXPO_STU(2019)603480_EN.pdf.
[1170] The EU's main targets are countries from the East and Eastern Europe. Its top five target countries are China, South Korea, Japan, Thailand and Russia. These countries are active new users that could implement retaliating AD measures against the EU.

The sectors with the most significant amount of AD cases in the EU and the sectors with the most significant number of AD filings are metals and metal products. They account for over ninety AD initiations between 1995 and 2006.[1171] Chemicals and related products ranked second with 45 cases. These two industry sectors are also the most favored target sectors for many other countries. Although the EU had fewer AD initiations, it still had a significant influence on ongoing negotiations. The EU amended its domestic AD regulations to comply with WTO/GATT AD rulings, which reflected that the EU has sought to solve compliance problems amongst its Members.[1172] These attempts might become a reference for future negotiations.

3. Major Compliance Problems between European Union Anti-dumping Regulations and WTO Law

3.1 Confidentiality Rule and Transparency

One critical problem of the EU's AD system is its lack of transparency. Many AD proceedings are "confidential".[1173] Although the Commission has full access to all relevant case information, other involved parties have partial access to a summary of the complaint.[1174] No provision in the Basic Regulation requires that the authority deny the requirement of interested parties to have full access to all the information. However, this information is not made available to the interested parties under many circumstances, which means the information on AD issues is unclear and ambiguous for the relevant parties. Although the EU's confidentiality rule attempts compliance with Article

[1171] WTO Statistic of Antidumping

[1172] Kiliane Huyghebaert, "Changing the Rules Mid-Game: The Compliance of the Amended EU Basic Anti-Dumping Regulation with WTO Law," *Journal of World Trade* 53, no.3 (2019): 417-432.

[1173] Article 19 of the EU AD regulation. This article regulates the range of confidentiality. It emphasizes that proceedings shall be kept confidential until proceedings begin. If requested, the lawyer's letter and the legal representative's details shall be treated as confidential documents. Only the interested parties have the right to view the questionnaires. As for the non-confidential files, the public has no right to see them. The responses to the non-confidential questionnaire and other submissions are often too unclear to have virtually any meaning. Certification reports prepared by Commission officials are not available to all interested parties. Hearings are one-sided and no formal text or report is available to all interested parties. In the provisional measures phase, the authority informs the members before the interested party. The guidelines applicable to the AD code are "internal" and not open to the public. The authority removes calculation formulas after providing information for disclosure because these formulas are confidential. The decision-making process of the Council and the Commission is not open to the public.

[1174] Article 5 (1) of the Basic Regulation regulates that the Commission "shall make the full text of the written complaint available upon request to other interested parties involved, whilst giving due regard to the protection of confidential material."

12 of the WTO ADA on "public notice and explanation of determinations", it is still inadequate for providing involved parties with sufficient information.[1175]

More importantly, a lack of transparency can have negative consequences. It delegates excessive authority to the Commission, which, as the administrative authority, is the only party to have full access to all the information, which could lead to leakage and abuse.[1176] For example, information on complaints (interim findings, especially) is often leaked before the commencement of a procedure or before the publication of provisional measures (but after the Commission's consultations with EU Members).[1177] Importers rely on information on the progress and likely outcome of investigations to defend their interests properly, and there is no reason to withhold information from them. Such an approach only serves to cast doubt on the impartiality of the Commission's impartial investigation.[1178] The EU's AD system is often a significant reference for building the multilateral AD system throughout past GATT/WTO negotiations.[1179] However, these negative consequences began affecting the industry of EU Members. As a result, EU member countries have begun complaining to the EU about the lack of transparency.[1180] Because of the ambiguity of the ADA, it cannot provide explicit guidelines to solve this problem. Even though some of these issues can be resolved through dispute settlement,[1181] the solution enters effect only between the contesting parties and the related third parties. It is not automatically applicable to all Members under the ADA. Hence, an amendment to the AD legislation would be more appropriate.

[1175] J. Eggert, "Observations on the EU Antidumping Regulation FTA Position for the Expert Meeting," *Foreign Trade Association*, 11 July 2006, https://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_129812.pdf. Article 19 (2) of the EU AD Basic Regulation requires that domestic complainants must submit an unclassified summary of the complaint and include any "confidential" information. This summary should include all the details required to provide a clear understanding to all involved parties.

[1176] Edwin A. Vermulst, "The 10 Major Problems with the Antidumping Instrument in the European Community," *Journal of World Trade* 39, no.1 (2005): 105-113.

[1177] William Schomberg, "EU says investigating report of trade leak," *Reuters*, September 8, 2008, https://uk.reuters.com/article/uk-eu-trade-leak/eu-says-investigating-report-of-trade-leakidUKL714923420080908.

[1178] James A. Taylor and Edwin A. Vermulst, "Disclosure of Confidential Information in Antidumping and Countervailing Duty Proceedings Under United States Law: A Framework for the European Communities," *The International Lawyer* 21, no.1 (1987): 43-70.

[1179] Article 5.5 of ADA. For example, EU choose to keep complaints confidential until initiating a proceeding. The ADA prefers to choose the same method even though there is a high possibility information will be leaked.

[1180] Türk Alexander, Gerard Rowe, and Hofmann Herwig C H., *Specialized Administrative Law of the European Union: A Sectoral Review* (Oxford, U.K.: Oxford University Press, 2018), 60-101.

[1181] Article 6.2 of ADA.

3.2 Dumping Margin Calculation Methodology

Since the EU lost the Bed Linen case[1182] and the Tube or Pipe Fittings case,[1183] it stopped using zeroing as the basic method for calculation because of its lack of conformity with the ADA.[1184] After the Bed Linen case, the Commission issued a Notice in the official journal to state that all exporters subject to existing AD duties can follow WTO AD principles to request a review of the AD measure applied.[1185] It seemed the Commission and the Council would reexamine the exporters dumping margin if it had been calculated using the zeroing method.[1186] However, there are still debates on whether the EU has corrected the zeroing problem.[1187] It continues to use the trade-to-trade basis for comparing the average normal value and export price and uses zeroing for this. In this process, it finds a price difference "model", with the difference depending on the region, period, or the customer, and the dumping margin will be significantly higher after zeroing. Although the EC-Bed Linen AB report was used as the guideline for abandoning zeroing, the ADA lacks an explicit rule on the method for calculating dumping margins.[1188] This means the zeroing method can theoretically fall under Article 2.4.2 of ADA.[1189] For example, although the United States has faced many challenges from other countries, it still insists on using zeroing. Only a revision of the ADA can provide an unambiguous prohibition on zeroing or clear guidance regarding the calculation method.

[1182] WTO, WT /DS/141/AB/R, European Communities-Antidumnping Duties on Imports of Cotton-Type Bed Linen from India, March 1, 2001. The Commission and the Council used the weighted-average-to-weighted-average method as the preferred method for calculating the dumping margin. The Commission and the Council zeroed negative intermediary values before final aggregation, which is inconsistent with the WTO ADA.

[1183] WTO, WT/DS219/R, EC-Tube or Pipe Fittings, 7 Mar. 2003.

[1184] Henrik Horn and Petros C. Mavroidis, *The WTO Case Law of 2003: the American Law Institute Reporters' Studies* (Cambridge, MA: Cambridge University Press, 2013), 30-70.

[1185] Official Journal of the European Communities, C 111, 08 May 2002. Exporters could request a review "in light of the legal interpretations regarding the determination of dumping margins contained in the reports, to request a review on the basis of the Article 2 of the WTO enabling Regulation."

[1186] Henrik Andersen, *EU Dumping Determinations and WTO Law* (Netherlands: Kluwer Law International, 2009), 20-35.

[1187] European Communities Antidumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R, adopted March 12, 2001. India argued to the Appellate Body that, although the EU had rectified the "zeroing" problem, it had failed to ensure that injuries caused by "other factors" are not wrongly attributed to dumped imports, which violates Article 3 of the ADA. In the end, the Appellate Body decided in favor of the EU instead of supporting India's argument. The AB emphasized that the zeroing problem had been definitively resolved in the original proceedings.

[1188] Horn and Mavroidis, op.cit. 32-61.

[1189] Chad P. Bown and Alan O.Sykes, "The Zeroing Issue: a critical analysis of Softwood V," *World Trade Review* 7, no.1 (2008): 121-142.

3.3 Public Interest Test and Lesser Duty Rule

Institutional and methodological differences among WTO Members are common, since, as noted before, in agreeing to specific rules, Members have also secured for themselves adequate discretion under the WTO agreements. Article 9.1 of the ADA emphasizes the discretionary nature of the AD measures, which means that WTO Members may still decide whether to impose AD measures even though they make findings of dumping, injury, and causation. Among the most prominent topics, the EU pays particular attention to the lesser duty rule and the public interest test because (1) both rules may be considered WTO-extra clauses in domestic AD legislation;[1190] (2) the EU has made these two rules mandatory in its internal AD Regulations. The public interest test focuses on assessing the impact of a tariff on other sectors of the economy, while the lesser duty rule deals with adapting tariffs to a level sufficient to eliminate damage to a domestic industry.[1191] In general, the public interest is opposed to the private interest.[1192] It is the impersonal that is privileged over all individual interests.[1193] The ADA only requires that authorities provide information to industrial users and consumer organizations about dumping, injury, and causality.[1194] It does not concern itself with the public interest nor demand a public interest test before imposing AD duties.[1195]

However, EU regulations compulsorily regulate the public interest clause to help authorities reach a final decision to impose AD measures.[1196] It allows the authorities to refuse to impose AD duties if they find that it would be detrimental to the public interest.[1197] The public interest clause requires

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[1190] Yan Luo, *Anti-Dumping in the WTO, the EU, and China: the Rise of Legalization in the Trade Regime and Its Consequences* (Alphen aan den Rijn: Kluwer Law International, 2010), 16-36.

[1191] TN/RL/M/26, Negotiating Group on Rules - Proposal on Like Product and Product under Consideration - Communication from Canada, 01 December 2004.

[1192] Alessandro Romano and Peachya Thammapitagkul, "Antidumping: A Public Interest Not So Much in the Public Interest," *Manchester Journal of International Economic Law* 10, no.1 (2013): 59-77.

[1193] Paul I .A. Moen and Ernst-Ulrich Petersmann, *Public Interest Issues in International and Domestic Anti-Dumping Law: the WTO, European Communities and Canada* (Geneva: Graduate Institute of International Studies, 1998), 36-61.

[1194] Article 6.12 of the ADA.

[1195] C. Satapathy, "Under-Valued Imports and Public Interest: Domestic Rulings Vis-a-vis GATT/WTO Jurisprudence: II," *Economic and Political Weekly* 36, no.5/6 (2001): 445-47.

[1196] Sanford E. Gaines, *Liberalising Trade in the EU and the WTO: Comparative Perspectives* (Cambridge, MA: Cambridge University Press, 2012), 12-34.

[1197] Article 21.1 of the Council Regulation (EC) no. 1225/2009 on protection against dumped imports from non-EU member countries: "A determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers […] where all parties have been given the opportunity to make their views known [...] Measures [...] may

that the authorities consider the interests of all relevant parties including consumers, importers, and downstream producers that may be affected by AD measures.[1198] This clause faces strong criticism that focuses on three aspects. First, this clause is not sufficiently rigorous under economic theory,[1199] making it idealistic and inadequate.[1200] Second, AD law has sufficient automaticity, therefore, there is no need for administrative discretion to restrain it.[1201] Third, the EU public interest test matches the producer's interest to the foreign firm's interest but neglects consumer interest.[1202] However, the EU strongly supports adding public interest to the ADA.[1203] Certain other WTO Members would also like to obtain unilateral discretion on the public interest through reforms to the ADA.[1204]

Article 9.1 of the ADA regulates that "the duty should be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry."[1205] However, because the language lacks a compulsory word like shall or must, it provides Members with broad discretion in this matter. Subject to this article, some WTO Members practice a "lesser duty rule".[1206] This means that the duty may be less than the dumping margin if it is sufficient to offset injury. Within

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not be applied where the authorities [...] In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration […] can clearly conclude that it is not in the Community interest to apply such measures."

[1198] Bruce Douglass, "The common good and the public interest," *Political Theory* 8, no.1(1980): 103-117. See also, Gunn John and Alexander Wilson, *Politics and the Public Interest in the 17th Century* (London: Routledge and K. Paul, 1969), 51-80. See also, Barry M. Mitnick, *The Political Economy of Regulation: Creating, Designing, and Removing Regulatory Forms* (New York: Columbia University Press, 1980), 26-59.

[1199] Jane Johnston, "The public interest: A new way of thinking for public relations*?*" *Public Relations Inquiry* 6, no.1 (2015): 5-22.

[1200] Barry Bozeman, *Public Values and Public Interest Counterbalancing Economic Individualism* (Washington, D.C.: Georgetown University Press, 2007), 101-135. See also, Denise Meyerson, "Why courts should not balance rights against the public interest," *Melbourne University Law Review* 31, no.3 (2007): 873-903. EU AD regulation has the Community Interest clause since the pre Uruguay Round. However, only one case has used the public interest test to affect the Commission's decision.

[1201] Macory, Appleton and Plummer, op.cit.485-529. The United States Congress emphasizes that the AD and countervailing duty laws have automaticity. Hence, executive branch discretion seems unnecessary.

[1202] The EC should adopt more safeguard measures because its frequent use of AD measures is not in the Community interest.

[1203] Patrik Scensson and Martin Hvidt Thelle, "Economic Assessment of the Community interest in EU Anti-dumping Cases," *Copenhagen Economics*, 22 August 2005, https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/3/133/0/Copenhagen_Economics_-_Economic_Assessment_of_the_Community_Interest.pdf.

[1204] Bièvre and Eckhardt, op.cit.345-349.

[1205] Article 9.1 of the ADA. This article regulates that "it is desirable that the imposition of the duty be less than the margin [of dumping], if such lesser duty would be adequate to remove injury to the domestic industry."

[1206] Those Members include Argentina, Australia, Brazil, EC, India, New Zealand, and Turkey.

the WTO framework, the lesser duty rule is not mandatory.[1207] However, EU regulations have made it compulsory.[1208] Some other countries have followed the EU approach in using the lesser duty rule. Together with the improvement of national and international AD rulings, the EU has gradually realized the shortcomings of its AD Regulation. On the one hand, the EU actively participates in multilateral negotiations at the GATT/WTO. On the other, the EU continually modifies its AD Regulations.

4. Amendments to European Union Anti-dumping Regulations

Standard commercial policy was fully applicable and AD action was left to member countries until 1 January 1970. The EEC became a signatory of the first GATT AD Code in 1968. Since then, the first Basic Regulation combined AD with anti-subsidy rules until 1994. Subsequent amendments to this legislation took into account successive GATT Agreements. In a word, development of EEC AD law depends on an increasingly high degree of precision in its substantive rules. These include the determination of dumping, injury, and Community interest, a strong emphasis on "due process" requirements, and strengthening the decision-making process of the Community. Significant legislative attempts have been made to revise AD regulations since 1968:

- The AD Regulation strengthened the role of Community institutions,[1209] specified dumping rules for State-trading countries and introduced the requirement to provide disclosure to parties before initiating AD actions.[1210]
- A separate legal AD instrument for European Coal and Steel products was created.[1211] The legal rule implements the 1979 GATT AD Code and includes more comprehensive classified information in the notices of initiation of AD proceedings and in legal acts accepting undertakings.[1212]

[1207] Of the 32 main users of AD measures, 23 of them do not have a mandatory lesser duty rule.
[1208] Aradhna Aggarwal, "The WTO Antidumping agreement: possible reform through the inclusion a public interest clause", *ICRIER Working Paper*, no.142 (2004): 1-21.
[1209] Regulation (EEC) No 2011/73.
[1210] Regulation (EEC) No 1681/79.
[1211] Recommendation 77/329/ECSC and 3004/77/ECSC.
[1212] Regulation (EEC) No 3017/79 and Recommendation 3018/79/ECSC.

- Specific Rules on investigation periods, on the treatment of confidential information, on procedures in the event of violation or withdrawal of undertakings, on refunds of duties, and on the maximum duration of AD measures with a sunset review procedure.[1213]
- Regulations permitting action against the circumvention of AD duties — provisions for the calculation of normal value and price comparison.[1214]
- Provisions dealing with the absorption of duties by exporters.[1215]
- An exclusive Regulation on AD to make EU law consistent with the ADA. In this regulation, the Community also established criteria and procedures for assessing Community interest and rules on the suspension of AD duties. Moreover, it regulates time limits for investigations and further reforms the Council's decision-making process.[1216]
- Provisions on the implementation of WTO DSU reports concerning AD measures.[1217]
- The Council released Regulation 1644/2001 to amend a Regulation that violated WTO law. A significant change made by this amendment was that zeroing is no longer applied.[1218] The Commission and the Council chose to use the weighted-average-to-weighted-average method instead of using zeroing to comply with WTO AD rulings.[1219]
- One amendment granted Russia market-economy status if they face AD investigations. It allows Russia to use market prices and costs to determine a product's "normal value". It also contains certain clarifications on the notion of related parties (Article 2(1)), the

[1213] Regulation (EEC) No 2176/84.
[1214] Regulation (EEC) No 1761/87.
[1215] Jean-Francois Bellis, Edwin Vermulst and Paul Waer, "Further Changes in the EEC AD Regulation: A Codification of Controversial Methodologies," *Journal of World Trade* 23, no.2 (1989): 21-34. See also, Regulation (EEC) No 2423/88 and Decision 2424/88/ECSC.
[1216] Regulation (EC) No 384/96 and Decision 2277/96/ECSC replace the regulation (EC) No 3283/94.
[1217] Regulation (EC) No 1515/2001 and Decision 2177/84/ECSC. In different cases, the DSB provided guidance for the implementation of AD regulations in the EU. The EU either suspended or terminated the cases. OJ No L 219, 14.8.2001-Bed Linen from India; OJ No L 219, 30.01.2002, Bed Linen from Egypt and from Pakistan; OJ No C 111, 8.05.2002, following the DSB Bed Linen rule, the involved parties have the right to request a review; OJ No L 72, 11.03.2004, certain malleable cast iron tube or pipe from Brazil; OJ No C 127, 24.05.2008, farmed salmon from Norway.
[1218] Regulation (EC) No 1644/2001. In this amendment, the Council mentioned that "The weighted average constructed normal value by type was compared with weighted average export price by type. In compliance with the recommendations of the Report, no 'zeroing' was applied in calculating the overall dumping margin for each company." See also, Official Journal of the European Communities L 227. 23 Aug.2001.
The Council also emphasized that "in case where an exporting producer exported more than one product type to the Community, the weighted average overall dumping margin was determined by computing the dumping found on each type without zeroing 'negative dumping' found on individual types."
[1219] Advocate General Jacobs in Petrotub and Republica v. Council, Case C-76/00 p, ECR 2003, pp. I-79.

determination of costs (Article 2(5)), and the concept of a particular market situation (Article 2(3)) in the Basic Regulation.[1220] Another regulation granted Ukraine market economy status for AD investigations.[1221]

- One amendment of the Basic Regulation provides for the transparency, efficiency, and predictability of the AD instrument. There is also an amendment to how the Council reaches decisions.[1222]
- The Commission adopted a Green Paper for a global European strategy on trade policy framework in 2006.[1223] This paper showed the desire to reform Europe's Trade Defense Instrument, which includes AD rules.[1224] However, the attempt to reform AD rules failed.[1225]
- In December 2017, the EU changed its method for calculating dumped imports if state interference significantly distorts the economy of the exporting country.[1226] The Commission will, in this situation, use undistorted standards to determine the 'normal value'

[1220] Council Regulation (EC) No 1972/2002 of 5 November 2002.
[1221] Council Regulation (EC) No 2117/2005 of 21 December 2005.
[1222] Council Regulation (EC) No 461/2004 of 8 March 2004.
[1223] Commission of the European communities, "Global Europe: competing in the world, A contribution to the EU's growth and job's strategy," Brussels, 4 October 2006. SEC(2006) 1230, Council of the European Union, General Affairs and External Relations General Affairs, Brussels, 13, November 2006.
[1224] Commission of the European Communities, "Green Paper a European Strategy for Sustainable, Competitive and Secure Energy", Brussels, 8.3.2006 COM (2006) 105 final. Trade defense instruments include AD measures, anti-subsidy or 'countervailing duty' policies and safeguards. The latter two instruments were rarely used until 2006. However, and understandably, politically contentious reforms center around AD regulation. Moreover, when the European Commissioner for Trade Peter Mandelson summarized the Green Paper, he asked following questions: "*Do we need to look at new ways of reflecting the interests of retailers as well as consumers when imposing AD duties? Could we be more transparent in the way we handle AD cases? Are we using the right criteria in launching investigations and in defining and implementing AD measures?"*
[1225] Bièvre and Eckhardt, op.cit. 350-351. "In 2006, the European Commission engaged in a reform initiative of the European Union's AD policy in response to a years-long simmering debate. The pro's and contras of the way in which the EU conducts its AD policy – one of the most economically salient and established policy domains under the aegis of the European Commission – had become subject of ever more heated controversy due to the Commission's handling of several AD cases between 2000 and 2005.2 However, after more than 2 years of intense consultations, lobbying coming from diverging societal interests, and heated controversy within Brussels-based institutions, the EU shelved the proposal in January 2008. The aim of the reform was to redefine the mandate of the specialized administrative unit within the European Commission, the Directorate of Trade Defense, endowed with the task of processing individual AD complaints from European producers. The reform would have given more rights to those hurt by the imposition of import duties on allegedly dumped imports. Among those suffering losses from AD measures are importers, down-stream users, and retailers. The reform failed and ended in the legislative status quo." This article finds that there are two main reasons leading to the failure of reform. First, the degree of political mobilization of producer groups is too high. Second, importer and retailer mobilization is too weak.
[1226] European Commission, "Anti-dumping: Recent changes to dumping calculation methodology," https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/anti-dumping/#:~:text=Since%20December%202017%20the%20EU,normal%20value'%20of%20the%20product.

of a product. This change is for all WTO Members where visible market distortions exist.[1227]

- Since June 8, 2018, the EU adopted a new methodology for the determination of normal value in AD cases. The first and most important innovation of the new approach is the abolition of the distinction between Market-Economy Status (MEs) or Non-Market Economy status (NMEs) when calculating normal value for all WTO Members. The new regulation provides an exceptional rule for China and other countries with so-called NMEs.[1228] This new approach is also applicable to all WTO Members, no matter their market status under EU AD rules. Second, the new approach takes into account the possibility that market forces cannot determine prices in exporting countries.[1229] Third, under the new methodology, the commission issues reports on specific market conditions for criteria established in a particular country or sector, which include reports and evidence.[1230] The old NME method and the new NME method are very different.[1231] Fourth, the old AD method allowed using inappropriate prices and costs in third countries with market economies for a product's constructed value. In addition to prices and costs in third

[1227] European Commission, "The EU's new trade defence rules and first country report," Brussels, 20 December 2017. The Commission first proposed a reform of the EU's trade defense instruments in 2013. The Council reached a compromise in December 2016. After a political agreement was reached between EU institutions in December 2017, the Council endorsed the compromise in April 2018. Following final endorsement of the new rules by the European Parliament, the new legislation would enter into force on 8 June. The purpose of the EU's new trade defense is to enable the EU to impose higher duties in some cases by changing the "lesser duty rule"; shortening the investigation period to accelerate AD procedures; increasing transparency and predictability of the system for EU firms; and reflecting the high environmental and social standards applied in the EU.

[1228] Article. 2(7)(b) of Basic Regulation states that the MES clause applies if the exporter can positively demonstrate that it or other exporters have market economy conditions regarding the "like product" concerned. If the EU grants so-called market economy treatment (MET) that is, the use of actual market prices and costs in the exporter's country of origin in determining normal values and export prices, five criteria were defined for this.

[1229] Under the old methodology, this consideration is only for countries with NMEs. As a result, there are severe distortions in the exporting country that make it inappropriate to use domestic prices and costs, and normal values can be determined based on costs of production and sales that reflect undistorted prices. There can be significant distortions when reported prices or costs, including raw material costs, are not the result of free-market forces but caused by government intervention.

[1230] Construction of the normal value used in the new method depends on meeting two legal prerequisites: the existence of significant distortions in a market, and a positive finding that these distortions actually affect domestic prices or costs for exporters.

[1231] The old NME approach relied on the assumption that domestic prices and costs in the country of origin were distorted and could therefore be dismissed unless the exporter proved that market economy conditions applied to its economic sector. Thus, the old NME method provided for the automatic use of foreign benchmarks in determining normal values. Under the new approach, the Commission would be required to obtain firm evidence of major distortions in the exporter's country of origin before taking into account domestic prices and costs and resorting to foreign levels.

countries, the new methodology allows using undistorted international criteria.[1232] Fifth, in the case of new market economy status, constructed normal values depend on prices and costs in third countries under the old methodology. The new amendment regulates that authorities can only ignore domestic prices or costs in the original exporter country if they find significant distortions in domestic prices and costs.[1233]

- Besides changes to the calculation method, the current EU AD legislation amendment also includes the "lesser duty rule".[1234] New AD legislation adjusts for the lesser duty rule. It takes serious raw materials distortions into account. The imposition of AD duties reflects the full amount dumped in this case.[1235]

Amendments to the EU AD regulations focus on stipulating the Commission's obligations and making the procedure more transparent and efficient.[1236] When calculating normal value, the EU tries to follow the WTO ADA to modify its methodology. Under a recent amendment, the expiry of China-specific WTO legal provisions on calculating normal value affects the commission's proposal.[1237] Besides the necessity of revising the AD calculation method, the EU is also attempting to modernize its trade defense instruments.[1238] By amending its AD laws, the EU achieves the following objectives: First, the EU aims to increases transparency and make AD actions more predictable.[1239] Second, the EU wants to improve its efficiency in dealing with

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[1232] The criteria for determining an appropriate third country is different under the old methodology. Under the old method, the third country was selected mainly based on a production volume of similar products. The new approach refers to a similar level of economic development, which is a reference point for current AD laws in the United States.

[1233] Without affecting the entire cost structure of exports in the case of major distortions, it is not appropriate to completely reject the domestic production or sales costs of the exporting country.

[1234] Regulation (EU) 2017/2321 of 2017 (OJ L 338, 19.12.2017) and Regulation (EU) 2018/825 of 2018 (OJ L 143, 30.05.2018). The rule regulates that EU-imposed duties should be lower than the dumping margin, if the duty is adequate to offset the injury to an EU industry. The authorities determine the injury margin using the production costs and reasonable profit margins for the comparable EU industry.

[1235] Erdal Yalcin, Hannes Welge, André SAPIR and Petros C. Mavroidis, "Balanced and fairer world trade defense EU, US and WTO perspectives," *European Parliament Think Tank*, 29.05.2019, https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2019)603480.

[1236] Joris Cornelis, "The EU's Modernization Regulation: Stronger and More Effective Trade Defence Instruments?" *Global Trade and Customs Journal* 13, no.11/12 (2018): 539-543.

[1237] Erdal Yalcin, Gabriel Felbermary and Alexander Sandkamp, "New trade rules for China? Opportunities and threats for the EU," *European Parliament Think Tank*, 23.03.2016, https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2016)535021.

[1238] James Searles, "The European Union's Options for China Dumping Methodology After 11 December 2016," *Global Trade and Customs Journal* 11, no.10 (2016): 430-439.

[1239] Michael J. Hahn and Van der Loo Guillaume, *Law and Practice of the Common Commercial Policy: the First 10 Years after the Treaty of Lisbon* (Leiden: Brill Nijhoff, 2021), 355-380.

retaliatory threats.[1240] Third, the EU seeks to provide clear guidelines on the current controversial issue relating to China's market economy status.[1241]

On the one hand, the EU follows WTO AD principles when revising its AD regulations. On the other, ADA compliance of certain EU AD amendments is challenged. Both sides reflect that compliance problems still exist between the EU internal AD regulations and the WTO ADA. For some issues such as transparency and the lesser duty rule, the EU proposed modifying the ADA during the Doha negotiations. For other issues, including the methodology for constructed normal value calculations, the EU tries to use methods that are similar to the United States.

5. European Union Attitude at the Negotiating Table

As the world's largest regional economy, the EU carries significant weight in multilateral negotiations. The EU sought to improve multilateral disciplines on AD since the beginning of the Doha negotiations for several reasons. First, the EU cannot ignore AD issues because of a surge in AD actions, especially after the EU and its Members have become major AD targets for developing countries. Second, the extensive and expanding use of AD instruments has led to considerable differences in the interpretation and application of existing AD rules by WTO Members. Even though the Dispute Settlement panel and the AB have made an exceptional contribution to the interpretation of the AD agreement,[1242] some of these areas still need further clarification. Third, AD proceedings consume considerable time and effort. The conduct of AD investigations inevitably imposes a substantial human and financial burden on those involved in the investigation, which can lead to dissatisfaction amongst WTO Members. Therefore, there is an urgent need to reduce the administrative burden associated with participation in AD proceedings.[1243]

[1240] Huyghebaert, op.cit.420-425.
[1241] Alexander-Nikolai Sandkamp and Erdal Yalcin, "China's Market Economy Status and European Anti-Dumping Regulation," *CESifo Forum* 17, no.1 (2016): 77-85.
[1242] Thomas A. Zimmermann, "Negotiating the review of the WTO Dispute Settlement Understanding," *MPRA Paper*, no.4498, 17 Aug 2007, https://mpra.ub.uni-muenchen.de/4498/1/MPRA_paper_4498.pdf.
[1243] Pierre Dider, "The WTO Antiudmping Code and EC Practice Issues for Review in Trade Negotiations," *Journal of World Trade* 35, no.1 (2001): 33-54.

Although the EU supported AD negotiations in the Doha Round, it seems unwilling to become more active in preserving the effectiveness of AD. The EU has been more cautions during negotiations and holds a prudent point of view on proposals submitted by the FANs.[1244] Since the progress of the Doha Round seemed obscure, the EU started its new trade policy under the "Global Europe" framework in 2006. This policy aims to help EU companies gain more abilities to compete with foreign competitors.[1245] In recent years, the EU has emphasized that AD rules need to adapt to the complexities of the global market. If the EU wants to guarantee public confidence in fair trade, it must defend AD rules.[1246] The EU's proposed lists of priorities and possible solutions for Doha AD negotiations do not change too much, and include the prevention of unfair use of AD measures, avoidance of excessive tariffs, enhanced transparency, saving, and prevention of circumvention.[1247]

III. MOST FAVORED TARGET--- CHINA

China has played a significant role in the international economy since the 1980s and has grown more than other countries.[1248] Since then, China has become the most powerful economy amongst other developing countries. China is the largest country that has acceded to the WTO since the formation of the trade organization. China underwent a much longer accession process than any other country and had to make many more promises on concessions for access.[1249] Many commentators assumed that its accession would change the dynamics of negotiations.[1250] However, they held different opinions on defining the possible effects of China's accession to the multilateral

[1244] Chiang-feng Lin and Po-Kuan Wu, "The EU's Trade Policy in the Doha Development Agenda-An Interim Assessment on Rules Negotiations," *Archive of European Integration* (17 May 2007): 1-25. http://aei.pitt.edu/8026/.
[1245] Simon J. Evenett, " 'Global Europe': An Initial Assessment of the European Commission's New Trade Policy," *Aussenwirtschaft* 61, no.4 (2006): 377-402.
[1246] Sébastien Jean, Anne Perrot and Thomas Philippon, "Competition and trade: Which policies for Europe?" *Notes du conseil d'analyse économique* 51, no.3 (2019): 1-12.
[1247] Megan Dee, "The EU's Changing Role Performance in the WTO's Doha Round," in *The European Union in a Multipolar World: World Trade, Global Governance and the Case of the WTO* (London: Palgrave Pivot, 2015), 63-89.
[1248] Nicholas R. Lardy, "Issues in China's WTO Accession", *Brookings*. May 9, 2001, https://www.brookings.edu/testimonies/issues-in-chinas-wto-accession/.
[1249] Karen Halverson, "China's WTO Accession: Economic, Legal, and Political Implications," *Boston College International and Comparative Law Review* 27, no.2 (2004): 319-370. See also, Nicholas R. Lardy, *Integrating China into the Global Economy* (Washington, DC: Brookings Inst. Press, 2002), 16-42. China's WTO obligations are broader and deeper than those of other Members. China has not only agreed to comply with the terms of the WTO agreements, but also agreed to a far larger number of rules than those that bind other WTO members.
[1250] Steve Charnovitz, "Mapping the Law of WTO Accession," *GW Law Faculty Publications & Other Works*, 2013, https://core.ac.uk/download/pdf/232644536.pdf.

trade system. On the one hand, some believed China would bring more balance to the WTO because China strengthens the developing countries group. Moreover, China's accession could benefit other trading partners.[1251] On the other hand, some viewed, more negatively, that China's accession could ruin the stable structure of WTO. It could create more obstacles for Members to manage negotiations and reach final agreements.[1252]

At the beginning of the Doha Round Negotiation, China was a silent player as it had just gained WTO membership and had no time to prepare for active participation in the Round.[1253] China was extremely cautious during the early phases of the Doha Round.[1254] China is very different from all the emerging new users because of the rapid development of its trade and because other Members always target it. At the start of the Doha Round, China was not a serious problem for the United States and the EU during negotiations. From a general rule of law perspective, Chinese AD law is compliant with the international WTO standard.[1255] Therefore, even with an increasing number of AD actions from China, no WTO case was ever brought against China's AD law until 2010.

China's participation in negotiations to reform the WTO become more and more active, especially regarding changes to the ADA.[1256] The debate on China's non-market economy status became the most controversial and significant topic in AD. The United States and the EU have explicitly refused to admit China's market economy status. The debate has become more and more

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[1251] Veronika Ertl, and David Merkle, "China: A Developing Country as a Global Power?" *International Reports of the Konrad-Adenauer-Stiftung*, November 15, 2019, https://www.kas.de/en/web/auslandsinformationen/artikel/detail/-/content/china-a-developing-country-as-a-global-power.

[1252] Henry S. Gao, "From the Periphery to the Centre, China's Participation in WTO Negotiations," *China Perspectives* 1, (2012): 59-65.

[1253] China gained WTO membership on November 10, 2001. The Doha Round began in November 2001.

[1254] China took time to observe negotiations rather than actively participate in them. Most of the time, the Chinese delegates would sit quietly and take notes.

[1255] The international AD regime was originally drafted based on the US and the EU standards. Since China entered the WTO, China followed and implemented existing international AD rules without challenging them.

[1256] "On the reform of the WTO Intervention, by H.E. Ambassador Zhang Xiangchen at the Luncheon in Paris Workshop," *Permanent Mission of the People's Republic of China to the World Trade Organization*, November 20, 2018, http://wto2.mofcom.gov.cn/article/chinaviewpoins/201811/20181102808197.shtml.
The ambassador emphasized that now China welcomes reform and tries to push negotiations on reform forward. There are two reasons for this. First, it is necessary to push for reforms in the course of dealing with issues of unilateralism and protectionism. The existing WTO system is not comprehensive enough to maintain or increase global trade liberalization and investment facilitation. Unilateralism and protectionism have increased greatly in recent years. Second, the dispute settlement mechanism needs to be negotiated so it can be more effective for consultations and negotiations.

intense.[1257] The research should now not only look at China as a member of the new users' group but as an individual country and study its AD regime. This could influence WTO Members' opinions on reforming the ADA. China is part of a group of Members that wish to introduce a development dimension into Rules negotiations and are requesting special and differential treatment, especially for developing countries.[1258] The other Members of this group are the FANs, which seek to reform the ADA to limit arbitrary practices by investigating authorities. However, China's position in AD negotiations is a little bit more unusual because China is both the favorite target and is also on the list of active users.

1. CHINA'S ANTI-DUMPING LEGISLATION

China enacted its first specialized AD regulations,[1259] "The Regulations on AD and Countervailing Measures of the People's Republic of China" (1997 Regulations), which came into effect in 1997 and followed the guidelines required to implement WTO law.[1260] The 1997 Regulations defined dumping, provided methods to determine normal value, injury, and the price of imports. It included detailed regulations on investigating and procedures for final measures. For example, different departments were responsible for AD cases. The Ministry of Foreign Trade and Cooperation (MOFTEC) and the Customs Bureau have the right to determine the existence of dumping and dumping margins.

The State Economic and Trade Commission (SETC) and the relevant State Council departments jointly investigate the existence of injury. The objective of the 1997 regulations was to protect China's domestic industries.[1261] Article 40 had a potentially retaliatory purpose, allowing China to respond to discriminatory AD measures against its exports from other countries or regions.[1262] The 1997 Regulation had a considerable influence on Chinese AD legislation. However, it had

[1257] Mathieu Rémond, "The EU's refusal to grant China 'Market Economy Status' (MES)," *Asia Europe Journal* 5, no.3 (2007): 345-356. See also, David Lawder, "United States formally opposes China market economy status at WTO," *Reuters*, November 30, 2017, https://www.reuters.com/article/us-usa-china-trade-wto-idUSKBN1DU2VH.
[1258] Chin Leng Lim and Jiang Yu Wang, "China and the Doha Development Agenda," *Journal of World Trade* 44, no.6 (2010): 1309-1331.
[1259] China first mentioned AD in 1994 in the Foreign Trade Law of 1994.
[1260] This was the first regulation to rule in detail how to implement Article 30 of the Foreign Trade Law of 1994.
[1261] Roselyn Hsueh, *China's Regulatory State: A New Strategy for Globalization* (New York: Cornell University Press, 2011), 36-48.
[1262] LE Thi Thuy Van and Sarah Y. Tong, "China and Antidumping: Regulations, Practices and Responses," *EAI Working Paper*, no.149 (2009): 1-29.

many shortcomings that hinder the implementation of AD laws. For example, its principle of implementation was too general and abstract, it lacked sufficient investigation procedures[1263] and was inconsistent with the WTO ADA.[1264]

After 15 years of negotiations, China finally gained membership of the WTO in 2001. As a premise for joining the WTO, China agreed to amend its AD regulations to abide by the ADA. China also agreed to provide a judicial review of determinations in the process of AD investigations and reviews. Subsequently, China revised the 1997 Regulations and adopted new AD laws after acceding to the WTO[1265] in 2001.[1266]

The State Council drafted new AD legislation to replace the 1997 Regulations in November 2001 under the name "The Regulation of the People's Republic of China on Anti-dumping." It came into effect on January 1, 2002 (2002 Regulations). It includes a law from the Supreme Legislative Organization, Regulations with Administrative Concerns from the Central Government and a set of secondary legislation from different government departments, consisting of six chapters with 59 articles.[1267] It follows the general structure of international AD legislation to prove the existence of dumping, to calculate dumping margins, to find material injury, and to determine the existence of a causal relationship between dumping and injury. Although the 2002 Regulations retain the main structure of the 1997 Regulations, many modifications have been made regarding determinations of dumping and injury,[1268] responsible administrative agencies, duration of duties and price undertakings. One significant change is that the 2002 Regulations clarify the authority of the administrative agencies. MOFTEC is in charge of dumping investigations and

[1263] There were too many agencies. The MOFTEC, Customs Authority, SETC and relevant State Council departments had the right to deal with AD cases. However, there were no uniform rules for those agencies for managing their authority.
[1264] The "1997 Regulations" did not have related rules in the WTO ADA, for example, price undertakings, the assessment of the effects of imports in determining injury, and judicial review.
[1265] China substantially lowered trade barriers for accession to the WTO.
[1266] WTO, G/ADP/ N/1/CHN2/Suppl.1, 18 February 2003.
China obeyed its commitments and conformed to the WTO ADA to receive privileges as a WTO Member and gain better access to the global market.
[1267] The 2002 Regulations include a number of provisions on AD investigations and measures. For example, general principles, dumping and injury, AD investigation processes, how to impose AD measures, how long AD duties last, price undertakings, administrative review as well as supplementary provisions.
[1268] It explains definitions of dumping, normal value, export price, dumping margin, factors for appraising injury and cumulative assessment.

determinations while the SETC investigates and determines the injury.[1269] Besides, several legal documents serve as additional rules for implementation.[1270] In 2004, the Chinese State Council amended the 2002 Regulations. One significant institutional change was that the Ministry of Commerce became the only agency responsible for investigating and determining both dumping and injury.[1271] Another difference is that the regulations encourage the authorities to consider the "public interest" both in price undertakings determinations and in AD duties collection.[1272] The 2004 Regulations provide broader legal references for AD investigations and dumping issues occurring in third countries.[1273]

China's AD legislation has four characteristics. First, there is legal uncertainty under China's AD law. China's AD law is more like a general principle than a detailed guide for solving cases. All AD practices depend on the characteristics of each case. It is like other countries whose first AD laws did not contain detailed guidelines. Second, it is easy to find the protectionist bias of the WTO AD provisions in China's AD law.[1274] For example, China's AD regulations use the concept of a

[1269] Article 58 of the 2002 Regulations.

[1270] China's AD regulation consists of the following: Foreign Trade Law, adopted by the National People's Congress on 12 May 1994 and amended on 6 April 2004; AD Regulation adopted by the State Council on 26 November 2001 and revised on 21 March 2004; Provisional Rules on Public Hearing in AD Investigations, from 16 January 2002; Provisional Rules on Initiation of AD Investigations, from 13 March 2002; Provisional Rules on Sampling in AD Investigations, from 15 April 2002; Provisional Rules Questionnaire in AD Investigations, from 15 April 2002; Provisional Rules on Disclosure of Information in AD Investigations, from 15 April 2002; Provisional Rules on Access to Non-Confidential Information in AD Investigations, from 15 April 2002; Provisional Rules on On-the-spot Verification in AD Investigations, from 15 April 2002; Provisional Rules on Price Undertakings in AD Investigations, from 15 April 2002; Provisional Rules on Interim Review of Dumping and Dumping Margin, from 15 April 2002; Provisional Rules on New Shipper Review in AD Investigations, from 15 April 2002; Provisional Rules on Refund of AD Duty, from 15 April 2002; Provisional Rules on the Procedure of Adjustment to the Product Scope of AD Investigation, from 13 December 2002; Provisions on AD Investigation of Industry Injury, from 17 October 2003.

[1271] The MOFTEC was renamed the Ministry of Commerce (MOFCOM) in 2003. The State Economic and Trade Commission (SETC) and the State Development Planning Commission (SDPC) were merged into the MOFCOM. These agencies became sub agencies of MOFCOM.

[1272] Articles 33 and 37 of *The Revised Foreign Trade Law of the People's Republic of China.*

[1273] Articles 42 of *The revised Foreign Trade Law of the People's Republic of China* mentioned that "where the export of a product from other countries or regions to the market of a third country causes or threatens to cause material injury to the established domestic industries, or materially retards the establishment of domestic industries, the authority responsible for foreign trade under the State Council may, on the request of the domestic industries, carry out consultations with the government of that third country and require it to take appropriate measures."

[1274] Yusong Chen, "Anti-Dumping Laws and Implementation in China: A 16 Year Review After Accession to the WTO," in *The Future of Trade Defence Instruments: Global Policy Trends and Legal Challenges*, eds. Marc Bungenberg, Michael Hahn, Christoph Herrmann, and Till Müller-Ibold (Bazel: Springer International Publishing, 2018): 283-294.

significant proportion of industry as a premise before the authority accepts the complaint.[1275] Third, the authorities' process for determining AD was complicated prior to 2003 because too many agencies were involved in the determination of dumping and injury.[1276] Hence, the Chinese government merged these agencies and unified these two functions into one ministry. Fourth, the AD Regulations contain a potential retaliatory purpose for AD measures.[1277]

China is a non-negligible Member of the WTO. China acceded to the WTO at the Doha Ministerial Meeting in 2001, thereby becoming a WTO member just in time for the Doha Round. Although China gradually became active in the Doha negotiations, it has not become "a leader of diplomacy, with a potential for coalition-seeking".[1278] China has not sought to rebuild the rules of international law.[1279] China acceded to the WTO just in time for the Doha Round. Although China is a WTO Member, it has not become a leader of diplomacy intending to create a coalition.[1280] Instead of acting as a troublemaker, China prefers to act as a mediator between other WTO Members.[1281]

[1275] China's AD legislation includes almost all aspects of the protectionist bias. Its premises for agencies to accept a complaint leads to a situation wherein domestic monopolies, oligopolies, or cartels can adapt much more easily compared to competitive industries; the possibility of litigation by Chinese authorities under their authority; identifying complaints by AD agencies; exposing AD agencies to pressure from vested interest groups; petitioners can withdraw petitions; provides opportunities for private facilitation of petitioners and defendants; limitation of defendants' right; an abstract definition of information confidentiality; the probability of imposing retaliatory AD duties against countries that targeted China in the past; importers should also bear with AD duties; and when foreign companies try to circumvent AD measures, Chinese agencies can implement measures.

[1276] First, MOFTEC is responsible for receiving complaints and deciding whether to accept them. During the investigation, MOFTEC works together with the State Economic and Trade Commission and partly with the Customs General Administration to determine the existence of the injury and an manage the final investigation. MOFTEC also submits proposals about whether to impose AD duties to the Tariff Commission under the State Council.

[1277] Article 40 of the 1997 Regulations and Article 56 of the 2002 Regulations provide the possibility of implementing AD measures as a retaliatory reaction against other countries. Article 40 of the 1997 Regulations states *"In the event that any country or region applies discriminatory AD 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."* Article 56 of the 2002 Regulations states "*Where a country (region) discriminatorily imposes AD 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).*" Article 56 is only a little bit more diplomatic. No case has directly used this Article. However, it provides the possibility for reacting with a retaliatory purpose.

[1278] Elena Ianchovichina and Will Martin, "Impacts of China's Accession to the World Trade Organization," *The World Bank Economic Review* 18, no.1 (2004): 3-27. See also, Thomas Rumbaugh and Nicolas Blancher, "China: International Trade and WTO Accession," *IMF Working Paper*, no. 04/36 (2004), https://www.imf.org/external/pubs/ft/wp/2004/wp0436.pdf.

[1279] Cheong Ching and Hung Yee Ching, *Handbook on China's WTO Accession and Its Impacts* (New Jersey: World Scientific, 2003), 41-62.

[1280] Warwick J. McKibbin and Wing Thye Woo, "The Consequences of China's WTO Accession for Its Neighbors," *Asian Economic Papers* 2, no.2 (2003): 1-38.

[1281] Claude Barfield, "The Dragon Stirs: China's Trade Policy for Asian-and the World," *Arizona Journal of International and Comparative Law* 24, (2007): 93-99. The US and the EU praised China's efforts as a mediator.

Moreover, many countries have a relative view of China as "a constructive member" that focuses on its interests in cooperation with the WTO's goal of increasing multilateral liberalization.[1282]

In the initial stages of negotiations under the Doha Round development agenda, China found itself in a unique situation regarding AD.[1283] Since the establishment of the WTO, China was not only the preferred target for AD cases but also a large country presenting a positive trend in this aspect. China has faced an average of over 30 cases every year since 1995.[1284] China maintains an upward trend with a yearly 4% increase[1285] involving AD cases even when the overall trend of AD activity decreased from 2001 to 2011. China has been targeted by AD measures more times than any other country.[1286]

Perceptions changed somewhat following the collapse of the Geneva "mini-ministerial" conference on 29 July 2008. China played a significant role in AD negotiations due to the size of its trade and economy.[1287] China became the focus of attention because of its massive influence on global trade, security, and the environment.[1288] In recent years, China's main trading partners have begun urging China to increase its level of responsibility.[1289] Before the mini-ministerial, the United States Trade Representative kept expressing "guarded optimism" that China had the potential to lead developing countries in offering compromises.[1290] During the mini-ministerial, China belonged to a group of Members that included Australia, Brazil, the EU, Japan, and the United States. This group replaced the former dominant negotiating group (the United States, the

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[1282] Robert Z. Lawrence, "China and the Multilateral Trading System," *NBER Working Paper*, no.12759 (2006), https://www.nber.org/system/files/working_papers/w12759/w12759.pdf. China is as "a constructive member working to pursue its interests which for the most part correspond to the organization's goals of greater multilateral liberalization."

[1283] Henry S. Gao, "Elephants in the Room: Challenges of integrating China into the WTO system," *Asian Journal of Wto and International Health Law and Policy* 6, no.1 (2011): 137-168.

[1284] Robert W. McGee, "Antidumping laws as weapons of protectionism: Asian case studies," *Manchester Journal of International Economic Law* 5, no.1 (2008):36-69.

[1285] Bown(2011), op.cit. 11-19.

[1286] Firmea and Vasconcelos, op.cit. 325-330.

[1287] Aditya Mattoo and Arvind Subramanian, "A China Round of Multilateral Trade Negotiations," *Center for Global Development Working Paper*, no.277 (December 2011): 1-39.

[1288] James Scott and Rorden Wilkinson, "China threat? Evidence from the WTO." *Journal of World Trade* 47, no.4 (2013): 761-782.

[1289] Laura He, "China urged to play bigger role in setting global commodity prices," *South China Morning Post*, 20 Mar, 2017, https://www.scmp.com/business/markets/article/2080537/china-urged-play-bigger-role-setting-global-commodity-prices.

[1290] The US stated that if China can lead concessions, it is optimistic on the outcome of negotiations.

EU, Japan, and Canada) as the primary negotiating group. Many developing countries expected China to play a leading role in negotiations for developing countries.[1291] However, the Chinese government showed a lack of interest in leading negotiations because of its insufficient experience under the WTO.[1292]

2. China's Anti-dumping Practice

Following its commitments under the WTO agreements (and indeed before its accession), China has been reducing its general levels of tariff protection.[1293] During WTO membership negotiations, China committed to binding tariffs for all products on its market access schedule for goods. [1294] China was already a much preferred target for AD actions before the establishment of WTO.[1295] In recent years, China has become the biggest victim of AD actions from other countries. WTO statistics indicate that since the early 1990s, Chinese export products have attracted around 500 investigations, and over 350 of them ended with AD measures. An examination of the raw number of AD measures imposed on Chinese products shows developing countries favor China as a target over other developed countries.[1296] China is also the favorite target for top AD users, which are mostly large industrial countries.

China was the main target of AD actions implemented between 1995 and 2019 by Argentina, Australia, Brazil, Canada, Colombia, Egypt, the EU, India, Korea, Peru, South Africa, Taiwan, Thailand, Trinidad and Tobago, Turkey, the United States, and Venezuela. Also, China is the

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[1291] Christoph S. Herrmann and Terhechte Jörg Philipp, *European Yearbook of International Economic Law 2012* (Heidelberg: Springer, 2012), 12-78.
[1292] Gao, op.cit. 145-158.
[1293] Graham Boden'13, "China's Accession to the WTO: Economic Benefits," *The Park Place Economist* 20, no.1 (2012): 13-17.
[1294] Lisa Thompson and Pamela Tsolekile de Wet, "BRICS Development Strategies: Exploring the Meaning of BRICS 'Community' and 'Collective Action' in the Context of BRICS State Led Cooperation in South Africa," *Chinese Political Science Review* 2, (2017): 101-113.
[1295] Chunding Li and John Whalley, "Chinese firm and industry reactions to antidumping initiations and measures," *Applied Economics* 47, no.26 (2015): 2683-2698.
[1296] Umair Ghori, "The Dumping Dragon: Analyzing China's Evolving Antidumping Behavior," *The Business and Management Review* 4, no.2 (2013): 114-125. The raw number of AD measures imposed on Chinese exports by the top 10 AD users and the number of measures adjusted for trade value between each trading partner and China. The average number of cases is per $100,000 of exports from China to these users.

leading target for Israel, Jamaica, Japan, Pakistan, the Philippines, Poland, and Ukraine, although none of these countries has imposed more than six AD measures against any other country.[1297]

The growth in China's AD activity between 2001 and 2008 was not explained by a more aggressive retaliatory strategy. In contrast, through 2008, the Chinese government chose to react cautiously to the vast number of AD actions that targeted China.[1298] It has done so even in the face of pressure from the domestic industry to stand up to other governments' protectionist use of AD sanctions.[1299] Although many countries use AD as a mechanism of protection against China, China did not react directly with retaliatory purpose at the time of entering WTO because China understood that retaliation could be used as an effective deterrent strategy.[1300] Usually, China avoids evident trade abrasion with key trade partners. However, the financial crisis affected Chinese exporters and they gradually became more sensitive when dealing with AD actions.[1301]

Furthermore, nationalist trends increased in China as China gained more and more experience with the WTO. This led to more requirements for China to adopt a more energetic attitude against countries that initiate protection mechanisms against Chinese products.[1302] The Chinese government faced domestic pressures pushing the Chinese government to use AD actions to retaliate. Therefore, China's stance on using AD to retaliate became more combative. China has consistently shown a robust attitude towards retaliation since 2009.[1303]

For example, the United States filed a petition against Chinese steel products in 2008. In June 2009, China directly retaliated with an AD investigation against the United States steel

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[1297] Calculation based on the WTO Statistic of Antidumping.

[1298] Gustav Brink, "Anti-dumping and China: Three Major Chinese Victories in Dispute Resolution," *The Comparative and International Law Journal of Southern Africa* 47, no.1 (2014): 1-37.

[1299] Gabriel Felbermayr and Alexander-Nikolai Sandkamp, "The Trade Effects of Anti-Dumping Duties: Firm-Level Evidence from China," *European Economic Review* 122, (2020): 1-20.

[1300] In fact, China has openly threatened retaliation against other countries' use of AD measures against its manufacturers in the past. See Jia Xin, "China calls for EU caution in taking protective measures," *XINHUANET*, 26.03.2018, http://www.xinhuanet.com/english/2018-03/26/c_137067296.htm.

[1301] Ming-Hua Liu, Dimitris Margaritis and Yang Zhang, "The Global Financial Crisis and the Export-Led Economic Growth in China," *The Chinese Economy* 52, no.3 (2019): 232-248.

[1302] J. Whalley, J. Yu, and S. Zhang, "Trade Retaliation in a Monetary-Trade Model," *Global Economy Journal* 12, no.1 (2012): 1-29.

[1303] Thomas Osang and Jaden Warren, "Retaliatory Antidumping by China: A New Look at the Evidence," *Eastern Economic Journal* 45, (2019): 161-178.

products.[1304] Further, during the visit of United States Treasury Secretary, China initiated the AD case with a retaliatory purpose. This behavior increased unhappiness between the United States and China as the trade relationship between those countries became tenser.[1305] China chose to target steelmakers in Ohio and Pennsylvania showing that China had already understood the crucial points of retaliation as these states are significant to the Democratic Party.[1306] Only one month after its reaction against the United States, China filed a complaint against the EU at the WTO regarding the EU's AD duties against Chinese fasteners.[1307] Before this, China had already initiated its own AD investigations against EU fasteners.[1308] China criticized the EU's trade defense rules and called them protectionism.[1309] In September 2009, China filed an AD petition against United States automotive parts and chicken meat to retaliate against the United States AD activity on Chinese tires.[1310] China began changing its restrained attitude towards retaliating against trade partners.

If China retaliated against each case brought by other countries, the number of China's AD actions would be greater. The problem is not that China brought more AD actions to respond to activities against Chinese products. Instead, although China has restrained its use of AD activity, the number of Chinese AD actions is still enormous.[1311] The following question is, what is the consequence if China stops controlling its use of AD actions? Even if the United States and the EU restrain their

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[1304] WTO, G/ADP/N/188/CHN, 9 September 2009.

[1305] Kris Maher, "China Probes Imports of United States Steel," *The Wall Street Journal*, June 2, 2009, https://www.wsj.com/articles/SB124387775878672771. Since the global financial crisis, the trade relationship between China and United States has a noticeable tension. The United States suffered from the crisis with increased unemployment, decrease of substantial economy and trade protectionism. Therefore, the United States become aggressive in its dealings under its trade relationship with China.

[1306] The American companies identified in the petition filed by Chinese steelmakers as allegedly dumping were AK Steel Holding Corp. of West Chester, OH and Allegheny Technologies Inc. of Pittsburgh, PA. Id.

[1307] WTO, WT/DS397/R, 3 December 2010.

[1308] The AD investigation against European producers of certain iron or steel fasteners was initiated on December 29, 2008. See WTO, G/ADP/N/180/CHN, 10 March 2009. This investigation resulted in preliminary AD duties being levied against European producers in December 2009 and final AD duties levied in June 2010. See WTO, G/ADP/N/202/CHN, Semi-Annual Report under Article 16.4 of the Agreement:China, at 2, 1 October 2010.

[1309] "EU anti-dumping abuse harms both China, EU," *People's Daily Online*, August 17, 2009, http://en.people.cn/90001/90778/90857/90861/6729495.html. China's state news agency then issued an English-language release criticizing the EU of engaging in "beggar-thy-neighbor protectionism" and making "an irresponsible move that has abused trade defense rules."

[1310] Keith Bradsher, "China Moves to Retaliate Against United States Tire Tariff," *The New York Times*, September 13, 2009, https://www.nytimes.com/2009/09/14/business/global/14trade.html.

[1311] Weihuan Zhou and Shu Zhang, "Beyond ChAFTA: China's (Ab)use of Anti-Dumping Measures, Forthcoming-China Quarterly," *UNSW Law Research Paper*, no.57 (2016): 1-21.

AD use against China, can China go back to a more restrained position once its domestic industries get accustomed to AD protection. A Chinese expert predicted that China had significant potential to become the most active user of AD actions worldwide. [1312]

Why is China the favorite AD target? The reasons are complex. First, regional Chinese exporters wanted to gain more overseas market share. The policy of the provincial Chinese government of prioritizing the acquisition of foreign exchange encouraged exporters to compete against each other vigorously. In the meantime, local economic conditions in China were weaker than before. China became more and more labor and resource intensive.[1313] This led Chinese exporters to compete overseas by reducing costs. Therefore, Chinese products have competitive advantages in international markets. China's labor rates are around one-twentieth of those in developed countries and one-tenth of those in developing countries.[1314] China also has plenty of natural resources, including minerals and raw materials. These economic advantages result in Chinese producers make traditional labor- or resource-intensive products more efficiently than those in other countries.[1315]

However, those products seem to be comparatively analogous. It provides producers with an inadequate competitive advantage and creates the lowest barriers for producers to enter the market. If one product enters an overseas market successfully, other Chinese manufacturers could quickly enter the same market with similar commodities.[1316] This triggers an intensive price reduction that is a characteristic of competitive markets. In the end, Chinese exporters find themselves competing in price wars against each other.[1317] Local government policies make these destructive price wars among exporters highly likely. The Chinese central government removed export product regulations from provincial government in 1978, which leads to provincial governments

[1312] Interview with the Associate Dean of one of China's leading universities for international economic affairs. (May 2008)
[1313] John Z. Zhang and Dongsheng Zhou, "The Art of Price War: A Perspective From China," *International Journal of China Marketing* 1, no.1 (2010):17-30.
[1314] For example, Mexico and Korea.
[1315] For example, 86.9 percent of Chinese exports currently facing AD investigations by the EU are either labor- or resource-intensive products. Business Alert-EU, Hong Kong Trade Development Council, May 2002
[1316] Katarina Zakic, and Bojan Radisic, "Strategies of Chinese Companies when Entering Global Markets," Economic and Social Development, (May 18/May 19, 2017): 169-180.
[1317] Scott Kennedy, "The Price of Competition: Pricing Policies and the Struggle to Define China's Economic System," *The China Journal*, no.49 (2003): 1-30.

accumulating their foreign exchange as much as possible to ensure the imports they need.[1318] Thus , foreign exchange incomes have become a significant element for measuring the provincial governments' policies and economic achievements. These foreign exchange policies seek to encourage Chinese exporters to sell products at lower prices.[1319]

At the same time, provincial governments have offered subsidies to local manufacturers to drive exports, with the aim of collecting as much foreign exchange as possible. These subsidies lower export prices by offsetting losses from lower prices, which often encourages local companies to beat the prices of their competitors from other provinces.[1320] Provincial policies encourage local government-owned companies to use the low-price advantage. This leads to severe price reductions amongst local producers, resulting in much lower[1321] product prices compared to their price in domestic markets. This, therefore, brings about plentiful accusations of dumping.

Second, producers from foreign countries commonly blame Chinese exporters for dumping even when their export prices are higher than their domestic prices. Many foreign countries are skeptical about the price-setting process in China.[1322] They prefer to choose a comparable price from a third country to calculate the normal value of Chinese exports.[1323] This occurs because of the debate on China's Non-Market Economy Status, which is now the most controversial topic on the negotiating table. Third, many Chinese exporters lack the capacity and experience to safeguard themselves against AD allegations.[1324] Usually, Chinese exporters will give up their right to defend themselves, inspiring other countries to charge more on Chinese products.[1325]

[1318] Machinery and electronic equipment.
[1319] Wayne M. Morrison and Marc Labonte, "China's Currency Policy: An Analysis of the Economic Issues," *Congressional Research Service Report*, no.7-5700 (2013):1-54.
[1320] Peter Navarro, "The Economics of the 'China Price'," *China Perspectives*, no.6 (2006): 13-27, https://journals.openedition.org/chinaperspectives/3063.
[1321] Product prices are normally 20 to 30 percent lower than their domestic market prices.
[1322] Alvaro Cuervo-Cazurra, Yves Doz and Ajai Gaur, "Skepticism of globalization and global strategy: Increasing regulations and countervailing strategies," *Global Strategy Journal* 10, no.1 (2020): 3-31.
[1323] André J. Washington, "Not So Fast, China: Non-Market Economy Status is Not Necessary for the 'Surrogate Country' Method," *Chicago Journal of International Law* 19, no.1 (2018): 260-294.
[1324] Xiaojun Li, "Understanding China's Behavioral Change in the WTO Dispute Settlement System," *Asian Survey* 52, no.6 (2012): 1111-1137.
[1325] Yuefen Li, "Why is China the world's number one Antidumping target," *China in a Globalizing World*, (2004): 75-104.

Fourth, many Chinese companies rarely respond to AD charges because they lack the knowledge on how to deal with them. Most Chinese exporters are medium or small-sized companies that have inadequate experience for dealing with international disputes.[1326] When companies want to defend themselves in an AD case, they need to make detailed information public, including international counterparts' prices, costs, investors, and market shares. Therefore, they need professional consultants and international trade lawyers to collect and analyze all the data. This would help companies put together a suitable response to AD charges. However, all these processes cost a lot of money and time. Many medium or small-sized companies cannot afford such expenditures.[1327] They choose to relinquish their right to defend themselves against AD issues. According to the WTO AD database, 68.6 percent of all AD investigations against China ended with AD measures from 1995 to 2019. This is much higher than the global average.[1328] However, the majority of small and medium-sized Chinese companies did not respond to AD issues.[1329]

On the contrary, some dominant companies normally do react to AD charges. These companies often file petitions for market-economy treatment. However, importing countries prefer to reject those petitions because of potential government influence on exports.[1330] Chinese exporters often remain silent when they encounter AD issues and this encourages importing country producers to use AD as a weapon to strike back against the low prices of Chinese products.[1331] For example, the United States has been the main user of AD laws against agricultural imports from China, including preserved mushrooms, fresh garlic, honey, crawfish tail meat, non-frozen apple juice concentrate, and frozen or canned warm-water shrimp and prawns. AD issues related to fresh garlic

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[1326] WTO, "China seeks special consideration for SMEs in anti-dumping, countervailing probes," 11 October 2017, https://www.wto.org/english/news_e/news17_e/rule_16oct17_e.htm.

[1327] Feng Li and Zhengqiong Lv, "Capability Poverty on Technological Innovation in China's Enterprises Based on the Viewpoint of Anti-dumping," *2010 3rd International Conference on Information Management, Innovation Management and Industrial Engineering*, (2010): 548-552.

[1328] The level of AD investigation resulting in AD measures is, on average, around 50.5 percent. This calculation is based on the WTO AD Database.

[1329] Guocan Wu and Yifei Gong, "The accounting information support and accounting tactics of protecting rights and interests in the anti-dumping responding," *2010 2nd IEEE International Conference on Information Management and Engineering*, (2010): 177-181. See also WTO, "China seeks special consideration for SMEs in Anti-dumping, countervailing probes", 11 October 2017, https://www.wto.org/english/news_e/news17_e/rule_16oct17_e.htm.

[1330] Ka Zeng and Wei Liang, *China and Global Trade Governance: China's First Decade in the World Trade Organization* (London: Routledge, 2017), 12-35.

[1331] Kermit W. Almstedt and Patrick M. Norton, "China's Antidumping Laws and the WTO Antidumping Agreement; (Including Comments on China's Early Enforcement of its Antidumping Laws)," *Journal of World Trade* 34, no.6 (2000): 75-114.

between China and the United States shows how the Chinese exporter's silence influences the United States behavior in AD cases.[1332] There was no chance for Chinese garlic imported to the United States a few years after the start of AD rules.[1333] During this period, the price of the United States garlic stayed stable and continuously increased until the mid-2000s.[1334] The USDOC imposed a countrywide rate of around 377 percent[1335] AD duty on Chinese fresh garlic because there were very few responses by the producer to the dumping charge.[1336] The law firm that helped the United States fresh garlic growers found that it was easy to win the case because of an inadequate response from Chinese companies. Therefore, they advised the the United States honey industry to use this method for dealing with dumping problems by Chinese importers into the United States market.[1337] Moreover, Chinese exports have influenced similar domestic industries in importing countries. The increasing number of AD cases against China shows that Chinese products have become an increasingly frequent target for importing countries.[1338] A growing amount of Chinese low-price exports weakens the competitiveness of domestic companies in importing countries, which encourages these countries to use AD actions to protect their local industries and prevent Chinese products from capturing their market share.[1339]

Fifth, Chinese companies lack sufficient corporate governance and efficient reactions to defend themselves against AD cases, especially during the first decade they began coming up against AD allegations.[1340] Chinese companies generally suffer from weak corporate governance practices and

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[1332] Adams Lee, "Garlic, More Garlic, China Trade and Fairness," *Harris Bricken,* June 7, 2017, https://harrisbricken.com/chinalawblog/30189/.
[1333] Between 1980 and 2005, the United States initiated eight cases against Chinese agricultural imports. Only one case took place in 1982. The US initiated an AD investigation against imports of preserved mushrooms from China in 1982. Another seven cases were brought after 1994.
[1334] Between 2002 and 2007, the volume of Chinese fresh garlic imports into the US increased to 72,000 tons in 2007.
[1335] United States Department of Commerce, International Trae Administration, A-570-831, and Sunset Review, Public Document, Operations VII: JA, August 1, 2017.
[1336] There is only one Chinese company not involved in AD duties, which agreed to supply Chinese garlic in exchange for petitioners agreeing not to request that the DOC conduct another review. There are two opinions on this agreement. One opinion is that this agreement offers domestic industry opportunities to effectively affect trade laws. Another opinion is that the agreement will achieve a win-win result if there is no review from the DOC.
[1337] Colin A. Carter and Caroline Gunning-Trant, "China's Food Exports Face Dumping Laws," *American Journal of Agricultural Economics* 88, no.5 (2006): 1227-1234.
[1338] Tomoo Marukawa, "The economic nexus between China and emerging economies," *Journal of Contemporary East Asia Studies* 6, no.1 (2017): 29-41.
[1339] Bin Jiang and Alexander E.Ellinger, "Challenges for China-the World's largest Antidumping target," *Business Horizons* 46, no.3 (2003): 25-30.
[1340] Ka Zeng and Wei Liang, "US Antidumping actions against China: the impact of China's entry into the World Trade Organization," *Review of International Political Economy* 17, no.3 (2010): 562- 588.

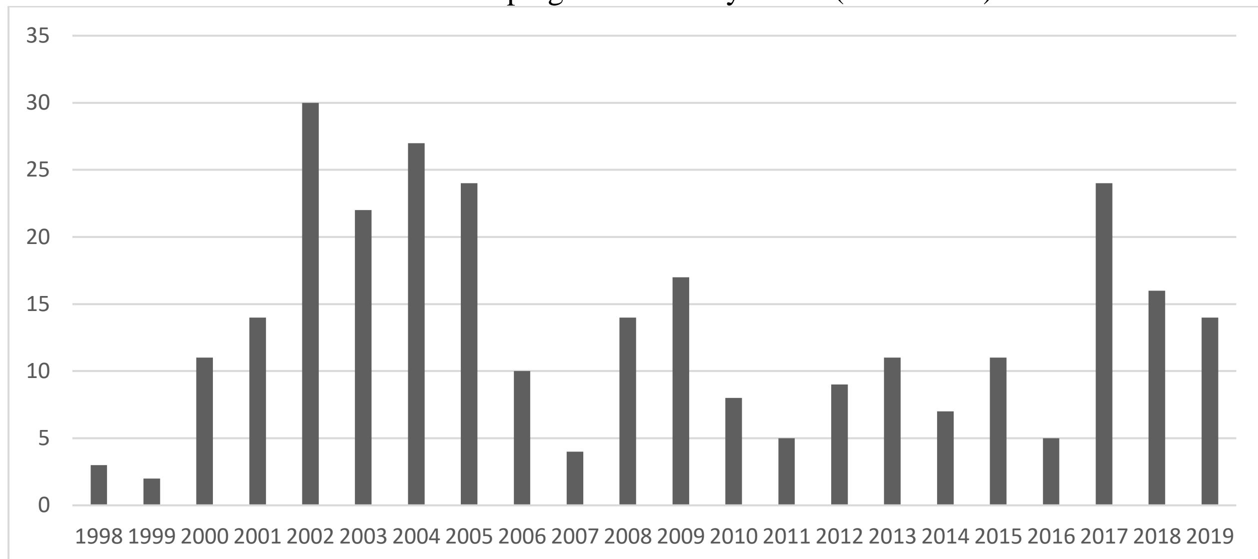
domestic legal infrastructure.[1341] For example, Chinese companies often do not respond promptly to AD cases. The cost of hiring professional lawyers is usually too high for Chinese companies.[1342] In some cases, Chinese companies often ignore AD investigations and do not reply at all. China's AD legal system has a short history compared to other industrial countries like the United States and the EU as it only began in 1994.[1343] The principles of traditional Chinese legal culture include maintaining harmony, zero litigation, and mediation. Hence, Chinese companies prefer not to use litigation to respond to AD investigations.[1344] For example, between 1994 and 1998, out of all 53 AD issues related to China, none of them was filed by China. [1345] China was the only country that did not file AD cases out of the top-ten target countries of AD actions. FDI also affects the initiation of AD investigations against Chinese exports.[1346] These motives result in more and more AD activity against China. Compared to its high frequency as a target for investigations, China is not an active AD user.

Chart 2 shows that China began initiating AD investigations in 1998. At that time, China was not a member of the WTO and was making an effort to join it. There are three periods that China is very active. The first period is from 1998 to 2001. The second period is 2007 to 2009; and then China becomes active again after 2016. However, the number of actions was not very high. China became the world's leading manufacturer in 2010, a title held by the United States for more than a century. A year later, China became the world's second-largest exporter and third-largest importer of goods and services. From 1995 to 2011, China initiated around 190 AD actions. The number of AD initiations decreased from 2003 to 2007 except in 2004. However, the number of new AD initiations began increasing after 2007. During 2008-2009, the number of AD

[1341] Yan-Leung Cheung, Ping Jiang, Piman Limpaphayom and Tong Lu, "Corporate Governance in China: A Step Forward," *European Financial management* 6, no.1 (2010): 94-123.
[1342] Xenia Matschke, and Anja Schottner, "Antidumping as Strategic Trade Policy Under Asymmetric Information." *CESifo Working Paper*, no.2536 (2009): 1-35.
[1343] The Foreign Trade Law of the People's Republic of China. China first mentioned AD issues in Article 30 of The Foreign Trade Law of 1994. This law was adopted at the Seventh Meeting of the Standing Committee of the 8th National People's Congress on 12 May 1994, enacted by no.22 Order of the President of PR China and took effect on 1 July 1994.
[1344] Deyong Shen, "Chinese Judicial Culture: From Tradition to Modernity," *Brigham Young University Journal of Public Law* 25, no.1 (2011): 131-141, https://core.ac.uk/download/pdf/217064399.pdf.
[1345] See the list of AD disputes: https://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm.
[1346] Tianshu Chu and Thomas J. Prusa, "The Reasons for and the Impact of Anti-dumping Protection: The Case of Peoples' Republic of China," *East-West Center Working Papers*, no.69 (2004): 1-37.

investigations steadily increased.[1347] China's share of imports has been increasingly affected by AD investigations including import-value measures.

Chart 2: Anti-dumping Initiations by China (1995-2019)



Source:WTO[1348]

A crucial question comes after the increase in China's initiations of AD investigations. What is China's role in upcoming AD activities? Will China increase its use of AD actions as quickly as other large developing countries? Is there any change in China's domestic AD legislation resulting in a growth of AD allegations? What will be China's future position at the WTO negotiating table? Will the Chinese negotiator focus on making AD rules stricter? China's experience at the WTO might be a good indication for determining China's future AD use. Therefore, it is necessary to take a brief look at how China participates in the WTO DSU in AD cases. It may explain the further step China will choose in dealing with AD issues. China has a significant influence on the evolution of AD improvements internationally. Although China has no plans to lead the developing countries group, China's opinion is representative of the WTO general trade disciplines.

[1347] Piyush Chandra, "China: A Sleeping Giant of Temporary Trade Barriers?" *Economics Faculty Working Papers*, no.17 (2011): 1-37.
[1348] WTO Statistic on Anti-dumping.

3. Compliance Issues Between China' Anti-dumping Law and the Anti-dumping Agreement

China agrees with some proposals by the FANs that promote reforms to the ADA. China's AD legislation has many compliance problems with WTO AD rulings. Many provisions in China's AD law face criticism, such as the absence of definitive deadlines, [1349] lack of transparency,[1350]immature judicial review,[1351] inaccurate calculation methods,[1352] request for

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[1349] AD investigations in China are lengthy. The AD Regulation provides that the authority shall conclude all investigations within 12 months after their initiation except for special circumstances under which the investigation can be extended to no more than 18 months. However, in practice, almost all final determinations so far have been reached within 18 months and, on average, it took 11 months to issue a preliminary determination. Lengthy procedures increase the burden upon participants who find it hard to prepare for the results of the investigation. For example, the unpredictable timeline of the preliminary determination makes it difficult to plan for provisional dumping measures. Since the WTO AD Agreement does not provide for definitive timelines for investigations either except as regards the final determination, an improvement of the ADA provisions seems a better choic

[1350] In China, four aspects reflect the lack of transparency. First, no access to confidential information is available under protective order. Second, disclosures do not contain sufficient information and formulas to recalculate dumping margins. Third, there is no public access to the MOFCOM manual for applying AD legislation. Fourth, no access to staff reports is available under protective order and the MOFCOM decision-making process is confidential. The lack of transparency weakens the ability of interested parties to defend their interests under the investigation. The attorneys of the interested parties do not have access to confidential information available under protective order, while non-confidential filings and government reports are generally useless. Furthermore, respondents find it virtually impossible to challenge the dumping margin calculation due to a lack of sufficient disclosed information. This lack of transparency grants excessive powers to the investigating authorities and makes it difficult for interested parties to challenge their determinations. China hopes that an improvement of WTO AD Agreement could significantly help solve the transparency issue.

[1351] Xiaochen Wu, *Anti-Dumping Law and Practice of China* (Alphen aan den Rijn: Wolters Kluwer, 2009), 12-90. Judicial review of AD determinations is still in its infancy in China. Ever since the People's Supreme Court published the Judicial Review Rule in 2002, no AD determinations have been submitted for judicial review. Interested parties are reluctant to bring determinations to the court, not only because the excessive discretion of the investigation authorities and lack of transparency make it difficult for them to challenge the determination but also because the Judicial Review Rule has its own shortcomings. According to the Judicial Review Rule, China courts shall only review the legitimacy of the AD determinations by the investigating authorities and, in addition to some procedural deficiencies, determinations can only be removed when there is a lack of major evidence. The regulation could offer a more detailed principle to ensure the WTO compliance. For example, a standard of review, time limits, participation rules and other rules by the Chinese authority.

[1352] Yeomin Yoon, Robert W. McGee and Walter Block, "Antidumping and the People's Republic of China: Five Case Studies," *Dumont Institute for Public Policy Research Working Paper*, no.98.2 (1998): 1-15. As with most AD systems in other countries, 20 percent sales below cost tests are also applied in China AD investigations and a failure to pass such test often results in the adoption of constructed normal values. The costs of each individual model must be calculated because the test is on a model-by-model basis. Since the calculations are very complicated and involve a lot of allocations, making changes to the allocation methodology will be a tricky business and may lead to increased model cost and failure to pass the 20 percent sales below cost test. Furthermore, for the purpose of calculating constructed normal values, certain profit margins shall be applied to the cost of production. Preferably, the profit margin of the respondent itself is used, but if the profit margin is negative, a "reasonable" profit margin will be applied by the investigating authority. There are several ways to calculate the profit margin of the respondent itself. For example, the profit margin of the company as a whole, of the division that manufactures the target product or even of the individual product itself. If any of these profit margins is negative, the investigating authority will use its discretion to apply a "reasonable"' profit margin. Because of the lack of a clear standard for calculation, the constructed normal value is often unpredictable and arbitrary. Further clarification in the ADA seems a preferable solution to this problem.

lesser duty rule,[1353] domestic adjustment,[1354] and public interest.[1355] China hopes to find clear guidance from the WTO in these areas. However, some provisions of the ADA are inconclusive, which has led China to align itself with the FANs and propose reforms to the ADA.

Before China acceded to the WTO in 2001, it had already faced many AD actions from different Members, especially developed countries. China faced more AD actions after entering the WTO.[1356] Over the last two decades, China has become the favorite target for AD measures. Moreover, favorite sectors expanded from metal and chemical products to other industries like agriculture and textile. Thus, China has sought to include items on sustainability and development into the ADA reform process since the start of the Doha Round.[1357] Moreover, the debate over China's non-market economic status has taken center stage at the negotiations as of December 2016.[1358]

Almost all the insufficiencies of the Chinese AD system result from inadequate guidelines in the WTO ADA. These problems typically occur in nearly all other countries. Compared to the EU and the United States AD systems, China's AD system is very young. However, China's AD practice

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[1353] In some other AD systems, both dumping margin and injury margin will be calculated for each investigation and the lesser duty will be applied. The doctrine behind the so-called lesser duty rule is that domestic industry shall only be remedied to the extent it is injured. Therefore, it is notable that in cases where dumping margins are very high, injury margins seem reasonable. China's AD system does not introduce the lesser duty rule that would give participants another reasonable option to defend their interests. Since the ADA does not include the lesser duty rule and China's AD legislation closely follows the letter of the ADA, a change to the ADA seems necessary in this case.

[1354] In practice, the investigating authority seems reluctant to accept allowable adjustments to normal value proposed by respondents for fair comparison. Adjustments for level of trade, differences in quantity, differences in quality are rarely accepted. In some cases, the investigating authority may itself apply such adjustments to calculate disputable dumping margins. There is no specific definition for the types of adjustments. MOFTEC practice should include the requirement from ADA Article 2.4 that it not impose an unreasonable burden of proof.

[1355] The amended AD Regulation in 2004 clearly provides that AD duties must comply with the public interest. Before this amendment, public interest was not a legal consideration in AD determinations. It was said that in the cases where public interest was really an issue, a finding of no-injury was an alternative for the public interest criteria. However, the newly amended AD Regulation only defined the principle of public interest. It does not provide any definite criteria for evaluating the public interest. For example, in cases where the interests of the domestic industry are different to the public interest, what standards will be adopted to evaluate which interest has higher priority?

[1356] Loren Brandt, Johannes Van Biesebroeck, Luhang Wang and Yifan Zhang, "WTO Accession and Performance of Chinese Manufacturing Firms," *American Economic Review* 107, no.9 (2017): 2784-2820.

[1357] Adam Soliman, "China's Anti-Dumping Regime and Compliance with Anti-Dumping Principles: An Analysis Using Agricultural Dumping Case Studies," *University of Miami International and Comparative Law Review* 21, no.2 (2014): 242-262.

[1358] James J. Nedumpara and Weihuan Zhou, *Non-Market Economies in the Global Trading System The Special Case of China* (Puchong, Selangor D.E: Springer Singapore, 2018), 36-76.

has increased rapidly in recent years. This has helped the Chinese investigating authority to gain more experience. It is easy to see that, if the ADA can be improved successfully, it will provide China with specific guidance to amend its domestic AD system.

The most controversial topic relating to China's AD legislation in recent years has focused on China's NMEs under United States AD law when calculating normal value. The ADA allows the authorities to determine the margin of dumping by "constructing" the value of the investigated product in the domestic market if the product is from NMEs.[1359] After the Kennedy Round, Article 2 of the 1968 AD Code allowed price comparisons to be made under specific market conditions without using domestic prices in the exporting country.[1360] Besides, the 1968 AD Code also made clear that the provision should not bias the 1955 interpretative note.[1361] The Tokyo Round and Uruguay Round reiterated this provision.[1362]

More and more countries have gained membership since the establishment of the WTO, including NMEs.[1363] The different treatment for calculating dumping margins for MEs and NMEs has given rise to more concerns than before. ADA allows particular price comparisons for determining dumping margins, which means Members can choose the method of comparison themselves. However, the ADA does not contain specific terms relating to NMEs. Some powerful Members such as the United States and the EU specified the use of methodologies for NMEs within their domestic AD laws.[1364] The United States authorities use a different method whereby they use the

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[1359] Agreement on Implementation of Article VI of the General Agreement on Tariffs] and Trade 1994, Apr. 15, 1994, art. 2.2, WTO Agreement, Annex 1A, Legal Instruments-RESULTS OF THE Uruguay Round,33 I.L.M. 1125 (1994). A product's AD margin is usually determined by comparing the price of the product in the domestic market of the exporting country with the price of the product at the time of export. Article 2.2 of the ADA regulates that if there is a particular domestic market situation in the exporting country, a constructed value can be used in the comparison. Authorities calculate the home market values of the product by adding production costs to a reasonable sum of administrative costs, marketing costs, and profits.
[1360] Article 2 (d) of the 1968 AD Code.
[1361] Francis G. Snyder, *The EU, the WTO and China: Legal Pluralism and International Trade Regulation* (Oxford, U.K.: Hart Publishing, 2010), 241-245.
[1362] This article was followed by the 1979 AD Code, which was agreed upon in the Tokyo Round. In the 1994 Uruguay Round, the 1955 Interpretative Note was reaffirmed and cited as the so-called the second AD Note: that is, as the second Supplementary Provision to Subparagraph 1 of Article VI of GATT 1994.
[1363] The United States DOC defined the Czech Republic and Slovakia as such in 1998 and revoked that status in 2000. Hungary and Latvia have similar experiences of gaining market economy status from the DOC. However, neither China nor Romania have succeeded in achieving the ME status.
[1364] Yan Cai and Eun-Mi Kim, "A Study on the Non-market Economic Treatment of WTO Trade Remedies: A Focus on Case Analysis," *Journal of International Trade and Commerce* 13, no.3 (2017): 157-175.

input costs of a "surrogate" third country in their AD investigations to calculate the dumping margin.[1365] The United States AD law contains an explicit definition for NMEs.[1366] This method is greatly criticized because it is arbitrary and biased against NMEs.[1367] Unlike the United States, the EU AD law does not contain clear terms defining NMEs but provides an explicit list of countries to which a particular procedure will apply.[1368]

China has long argued its NMEs in certain developed countries like the United States and the EU. First, after years of reform, it argues the United States should not consider it an NMEs because of the market orientation of its economy.[1369] Second, the calculation method will expand the dumping margin or cause more labor costs.[1370] Despite the strong argument from China on this issue, China agreed to accept treatment as a "non-market economy" in its WTO accession protocol for a fifteen-year period after its accession.[1371] Section 15 of China's WTO accession protocol includes the restricted AD content that other trading partners may use against Chinese exports. Most of the

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[1365] John H. Jackson, "State Trading and Nonmarket Economies," *The International Lawyer* 23, no.4 (1989): 891-908.This article describes the surrogate price methodology for constructed value under United States AD law.

[1366] According to Section 771 (18)(A) of the Tariff Act 1930, a "non- market economy" is "any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise." See also, Hyerim Kim and Dukgeun Ahn, "Empirical evidence on surrogate country method for non-market economy: US AD policy towards China", The World Economy, 10 April 2019.

[1367] William P. Alford, "When is China Paraguay an Examination of the Application of the Antidumping and Countervailing Duty Laws of the United States to China and Other Nonmarket Economy Nations," *Southern California Law Review* 61, (1987): 79-88.

[1368] Council Regulation (EEC) no. 925/79 of 8 May 1979, OJ L 131/1, 29.5.1979; Council Regulation (EEC) no. 2532/78 of 16 October 1978, OJ L 306/1, 31.10.78. Countries on the list include Bulgaria, Hungary, Poland, Romania, Czechoslovakia, the GDR, the USSR, Albania, Vietnam, North Korea, Mongolia, and the People's Republic of China.

[1369] Li Wei, "Towards Economic Decoupling? Mapping Chinese Discourse on the China-US Trade War," *The Chinese Journal of International Politics* 12, no.4 (2019): 519-556. The Chinese foreign trade minister Wu Yi criticized United States AD investigations against Chinese products. The treatment of the Chinese market as a non-market economy is also inappropriate. See also, Elena Ianchovichina and Will Martin, "Trade Liberalization in China's Accession to the World Trade Organization," *Policy Research Working Paper*, no.2623 (2001): 1-35. China reiterated that the imposition of NME AD rules on China was unacceptable as it failed to recognize China's extensive achievements in economic reforms and was discriminatory and unfair to Chinese exporting industries and companies.

[1370] Jeffrey M.Telep and Richard C. Lutz, "China's Long Road to Market Economy Status," *Georgetown Journal of International Law* 49, (2018): 694-708. See also, Katarzyna Kaszubska, "Rethinking China's Non-Market Economy Status Beyond 2016," *ORF OCCASIONAL PAPER*, no.107 (2017):1-22.

[1371] WTO, Article 15 of Accession of the People's Republic of China, "Price Comparability in Determining Subsidies and Dumping", WT/L/432. The protocol allows a WTO member to use a "methodology that is not based on a strict comparison with domestic prices or costs in China."

negotiations for Section 15 were bilateral between the United States and China. This was also the most contentious issue between the two countries.[1372]

Ultimately, China committed to accepting the use of the NMEs methodology in AD investigations against Chinese products until December 11, 2016, in the interest of successfully acceding to WTO membership.[1373] This commitment was towards all WTO Members regarding AD cases.[1374] Since then, China has tried to comply with the conditions of an MEs to help Chinese exporters receive fairer treatment in trade remedy cases. In early 2004, some countries started granting China MEs.[1375]

However, the United States and the EU are two major AD users that insist on maintaining China's NMEs, because they can see, from other country's examples, the potential disadvantages for their domestic industries.[1376] For instance, Australia acknowledged China's MEs in 2004 as a prerequisite for a bilateral trade agreement[1377]because Australia considered that the benefits of improved market access to China would offset the potential losses from reduced dumping duties.[1378] Consequently, Australia has been grappling with a surge in imports from China.[1379]

[1372] WTO, WT/DS516/13, European Union-Measures Related to Price Comparison Methodologies: Communication from the Panel,17 June 2019. Opening Statement by Ambassador Zhang Xiangchen as a part of the Oral Statement of China at the First Substantive Meeting of the Panel in the Dispute (China Opening Statement), 6. Dec. 2017.
[1373] Hongyi Harry Lai, "Behind China's World Trade Organization Agreement with the USA," *Third World Quarterly* 22, no.2 (2001): 237-255.
[1374] Weihuan Zhou and Delei Peng, "EU- Price Comparison Methodologies (DS516): Challenging the Non-Market Economy Methodology in Light of the Negotiating History of Article 15 of China's WTO Accession Protocol," *Journal of World Trade* 52, no.3 (2018): 505-534.
[1375] Timothy R. Heath, "China's Evolving Approach to Economic Diplomacy," *Asia Policy*, no.22 (2016): 157-192. New Zealand (April 16, 2004), Singapore (May 15, 2004), Malaysia (May 29, 2004), Australia (April 20, 2005).
[1376] Shuang Zhao and Scott Kennedy, "China's Frustrating Pursuit of Market Economy Status: Implications for China and the World," in *From Rule Takers to Rule Makers: The Growing Role of Chinese in Global Governance*, Scott Kennedy and Shuaihua Cheng (Bloomington, IN: Research Center for Chinese Politics & Business, Indiana University, 2012), 63-70. Research Centre for Chinese Politics and Business and International Centre for Trade and Sustainable Development. More than seventy countries have recognized China's ME status through FTAs, including New Zealand, Peru, Chile, Australia and ASEAN countries.
[1377] Trade and Economic Framework Agreement between Australia and China, 2003.
[1378] Weijia Rao, "China's Market Economy Status under WTO Antidumping Law after 2016," *Tsinghua China Law Review* 5, (2012-2013): 152-167.
[1379] Francisco Urdinez and Gilmar Masiero, "China and the WTO: Will the Market Economy Status Make Any Difference after 2016?" *The Chinese Economy* 48, no.2 (2015): 155-172.

Countries like the United States and the EU face pressure from their national industries and workers.[1380] For example, trade unions in the United States and the EU strongly object to changing China's NMEs since they realize the potential increase in imports might have a greater negative influence upon their home markets.[1381] If China's market status is changed to MEs, more Chinese imports will enter the United States market, leading to potentially massive harm to United States domestic industries. This would severely damage the United States economy and even its national security.[1382] Therefore, Members like the United States ,[1383] the EU,[1384] India, and Mexico pay more attention to their political choices. They still question the interpretation of section 15 and maintain their legal discretion.[1385] China has challenged the United States and the EU NMEs' treatment before the Dispute Settlement body. The Panel and AD report states that the EU[1386] and the United States [1387] methodology is more like a double remedy and is utterly inconsistent with

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[1380] Gisela Grieger, "Protection from dumped and subsidized imports," *European Parliament Think Tank*, February 15, 2018, https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI%282017%29595905.

[1381] Viktoria Dendrinou, "Thousands to Protest in Brussels against China Steel Trading," *The Wall Street Journal*, Feb.14, 2016, https://www.wsj.com/articles/thousands-to-protest-in-brussels-against-china-steel-trading-1455450843. Thousands of steelworkers, who have lost jobs or suffer from the overcapacity and overproduction in the Chinese steel sector, gathered for a demonstration in Brussel to ask authorities to object to the suggestion to change China's NME status. See also, Brooke Ringel, "Commerce Continues China's Status as a Non-Market Economy," *Trade and Manufacturing Monitor*, October 31, 2017, https://www.ustrademonitor.com/2017/10/commerce-continues-chinas-status-as-a-non-market-economy/.

[1382] Alexander Polouektov, "Non-Market Economy Issues in the WTO Anti-Dumping Law and Accession Negotiations Revival of a Two-tier Membership?" *Journal of World Trade* 36, no.1 (2002): 1-37.

[1383] K. William Watson, "Will Nonmarket Economy Methodology Go Quietly into the Night?: United States Antidumping Policy Toward China after 2016," *Cato Institute Policy Analysis*, no.763 (2014): 1-17.

[1384] Ching-Wen Hsueh, "The limits of a legal approach in resolving EU-China trade disputes on non-Market economy status", in *Law and Diplomacy in the Management of EU-Asia Trade and Investment Relations*, ed. Chien-Huei Wu and Frank Gaenssmante (London: Routledge, 2019), 154-173. EU did agree that China had made progress in providing a "clear platform for fulfilling the criteria of market economy", which shows the possibility that the EU may grant China ME status one day. The EU has political concerns when granting a country ME status. For example, the EU granted Russia and Ukraine market economy status for political reasons.

[1385] Charles de Marcilly and Angéline Garde, "Status of market economy to China: What political answers can be given to this legal straitjacket?" *Foundation Robert Schuman*, 18/04/2016, https://www.robert-schuman.eu/en/european-issues/0389-status-of-market-economy-to-china-what-political-answers-can-be-given-to-this-legal-straitjacket.

[1386] WTO, DS397, European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds397_e.htm. The inconsistency between the EU's domestic law and WTO law. This study not only provided a legal analysis but also provided actual individual dumping margins for each firm to prove that China suffers due to its NME status.

[1387] WTO, WT/DS/379/AB/R, 11 March 2011. It focuses on issues such as double remedy, public body determination, and out of country benchmarking. Particularly, they used economic calculation methods to show how AD and CVD were determined and when "pass-through" caused a double remedy problem.

WTO principles.[1388] However, the United States does not consider the WTO's position when dealing with the issue of China's NME treatment.[1389]

Section 15 of China's Accession Protocol only regulated the 15-year time limit, without a clear explanation of the situation after its expiration, which allows countries to have different interpretations.[1390] Because of the absence of a WTO AD principle, WTO Members classify a country as an NMEs in their domestic AD laws.[1391] It makes the debate between countries more and more contentious. The discussion on NMEs reflects that (1) the ADA does not provide an effective method for Members to calculate normal value, (2) the legal inconsistency between domestic AD law and the ADA hinders AD usage and triggers more conflict between Members in the dispute settlement body. Although Members prefer to seek a solution through bilateral negotiations,[1392] future reforms to the ADA could help solve the problem, or, at lease, provide a more accurate standard for calculation.

4. China's Attitude towards Negotiations

China is a new user of trade remedies, and enacted its first AD legislation in 1997. After 15 years of marathon negotiations, China finally gained WTO membership in November 2001 at the 4th Ministerial Conference.[1393] At the same Conference, the Members launched the first Doha Round negotiations.[1394] Since then, China has had to abide by the ADA and Article VI of the GATT 1994

[1388] Gary Clyde Hufbauer and Cathleen Cimono-Isaacs, "Looming US-China Trade Battles? Market Economy Status (Part II)," *Peterson Institute for International Economics*, March 9, 2015, https://www.piie.com/blogs/trade-investment-policy-watch/looming-us-china-trade-battles-market-economy-status-part-ii.

[1389] Telep and Lutz,op.cit.695.

[1390] Terence P. Stewart, *China's Compliance with World Trade Organization Obligations: a Review of China's 1st Two Years of Membership: a Report Prepared for the United States-China Economic and Security Review Commission* (Ardsley, NY: Transnational Publishers, 2005), 10-55.

[1391] James J. Nedumpara, "China's market economy status in WTO: In a state of abeyance," *Financial Express*, July 8, 2019, https://www.financialexpress.com/economy/chinas-market-economy-status-wto-state-abeyance/1636350/. Some legal interpretations state that China will not gain ME status automatically after the end of fifteen years.

[1392] Polouektov, op.cit.10-15. As a matter of principle, the issue of the second supplementary provision to Article VI must be put on the agenda for an eventual new round of MTNs. Among dozens of proposals on the clarification, modification or amendment of ADA provisions put forward in connection with the Ministerial Meeting in Seattle (1999), none dealt with the NME issue, which illustrates a preference for bilateral solutions.

[1393] John H. Jackson and James V. Feinerman, "China's WTO Accession: Survey of Materials," *Journal of International Economic Law* 4, no.2 (2001): 329-335. Before and after China's accession to the WTO, Members devoted plenty of essays, manuscripts and articles to issues relating to China from economic, political or legal aspects.

[1394] China joined the WTO at the fourth Ministerial Conference in Doha, Qatar. At that same time, the Doha Round negotiation was launched.

principles as well as supplementary provisions.[1395] Thus, China modified its AD legislation to comply with WTO AD principles on 1 January 2002.[1396] At the start phase of the Doha Round, China silently joined the negotiations.[1397] After years of being a favorite target for AD activity, China participated actively in the negotiations on the ADA. On the one hand, there are compliance problems between China's AD legislation and WTO AD principles. Without clear guidance from the WTO ADA plus a lack of experience enacting trade remedy laws, China's AD legislation has several shortcomings.[1398] Other Members also questioned[1399] China's domestic AD legislation on issues such as registration requirements,[1400] disclosure of non-confidential information,[1401] and injury assessment.[1402] China's Accession Protocol regulates China's market status. Different interpretations of this argument depend on this protocol but on no other agreement. This issue seems to have no connection to ADA reforms. In essence, the argument on China's market status revolves around its method for calculating dumping margins. The lack of explicit direction from the ADA and Article VI of GATT 1994 means Members can have contrasting interpretations. Bilateral negotiations between China and the United States and China and the EU on this issue still present the most difficulties. If Members began negotiating reforms to the ADA from a multilateral perspective, it might be possible to resolve this issue on a fundamental legal basis. As a result, China began asking for a stricter AD principle from the WTO in the Doha Round. Meanwhile, China has used AD activities more and more in recent years. China's domestic AD legislation has a different level of uncertainty, leading China to ask for stricter discretion on WTO principles for investigating authorities.

[1395] Article 6 of the GATT AD rule.

[1396] Ka Zeng, *China's Foreign Trade Policy The New Constituencies* (London: Routledge, 2009), 12-36.

[1397] China submitted its first negotiating proposal six months after its accession. During most of the initial phase of the Doha Round, China preferred to observe but not actively participate the negotiations.

[1398] Wu, op.cit.20-50.

[1399] Under Section 18 of China's WTO Accession Protocol, the WTO AD Committee has the right to review China's implementation of the ADA every year. Members can ask questions on China's domestic ADA legislation and practices.

[1400] In 2006, Japan questioned the China's MOFCOM's registration requirement. China send questionnaires only to registered exporters. For those not on the registered list, MOFCOM has applied an all-others margin. This is a duty for companies that have not responded to the questionnaire. Usually, after a specific dumping margin is given to each designated company, the authorities classify "all other companies" and apply a uniform dumping margin as the case may be.

[1401] The US and the EU asked China to guarantee the disclosure of non-confidential information, which could provide more transparency on its use of AD law.

[1402] The US and the EU mentioned that injury determination by MOFCOM based on non-confidential information includes too many inadequate details to allow a reasonable understanding. They pointed out that China always uses an index other than the total figure to find injury.

C. Similarities and Differences between the Anti-dumping Agreement and Domestic Anti-dumping Law

WTO Members can flexibly decide how to implement WTO AD rules. This gives Members the flexibility to adopt their own domestic AD laws. National AD law, to some extent, should be consistent with WTO AD principles, or at least not contradict them. Not surprisingly, AD systems have various interpretations among countries. These differences affect both law-making and practical AD use. They can also impact administrative and compliance costs. There are similarities as well as differences between countries' AD laws. The diversity of domestic political pressures faced by Members will influence the AD investigation process.

First, AD users are representatives of different bureaucratic groups in AD investigations. AD behavior is more like a mirror that reflects a government's options. The political pressure placed on Members will affect the opinions and practices of the executive authority when dealing with AD issues. It depends on the independence and political strength of the different Members. Although investigative bodies are supposed to be independent, they are still subject to political pressures.There is sufficient literature demonstrating the economic factors that determine injury based on other research.[1403] The early studies emphasized the institutional characteristics and political economy dynamics of the administrative procedure, which often behaves as a method for protectionism. Besides economic discretion, most studies also focus on how political pressures influence outcomes. Many studies reveal that political pressure is an essential reason underlying AD actions. Although researchers differ regarding the methods of evaluating political force, all of them find that the non-statutory factors are essential.[1404] Political pressure shows up an apparent prejudice against individual trading partners.[1405]

[1403] Finger, Hall and Nelson, op.cit. 458-460.

[1404] Moore (1992), op.cit. 451-457. See also, DeVault, op.cit. 20-25. These studies all find that industries with production facilities in the districts of oversight members fare better before the Commission. To put the relative impact into perspective, Hansen and Prusa's estimates imply that an additional oversight representative increases the probability of success by about 8%. Hansen and Prusa also find that PAC contributions to oversight members also improve an industry's chances, which suggests that political pressure is generated not just by employment concerns, but also by re-election financing concerns.

[1405] Ibid. The studies find that US cases against Western European countries are biased toward rejection. By contrast, cases against Japan and non-market economies are far more likely to result in duties. Non-market economies fare particularly poorly at the USITC, a finding due in part to the fact that rules for non-market economies are particularly protectionist.

Second, the authority makes AD decisions relying upon two different jurisdiction systems. On the one hand, countries like the United States and Canada have two authorities, which are individually responsible for dumping determinations and injury determinations. On the other hand, there are countries that have a single authority making both determinations.[1406] One reason for this bifurcated system is that determinations might be more objective if two independent authorities ratify the allegation. On the contrary, unified systems reduce resource use and prevent conflicting judgments.[1407] If the authorities are subject to domestic political pressure, both systems will result in biased decisions.[1408]

Third, Members have varying transparency requirements.[1409] This variety depends on the country and is problematic, especially for new users. For example, many new users do not explain their calculation methodology and the methodology underlying their determinations.

Fourth, the level of confidentiality varies across countries. The investigating authority has the right to collect confidential business information.[1410] However, not all countries allow all interested parties free access to this data. In the EU and Australia, for example, only the investigating authorities have full access to all relevant information. The interested parties only receive a

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[1406] Sungjoon Cho and Thomas H. Lee, "Double Remedies in Double Courts," *European Journal of International Law* 26, no.2 (2015): 519-535.

[1407] For instance, with two separate agencies involved, one agency can define competitive products narrowly in order to maximize duties and the other agency can define relevant competition broadly to maximize employment and profit loss.

[1408] Seth Kaplan, "Injury and Causation in USITC Antidumping Determinations: Five Recent Approaches," in *Policy Implications of Antidumping Measures*, eds.Tharakan P.K.Mathew (Amsterdam: North-Holland, 1991), 143-173. Kaplan provides an excellent description of the USITC's decision-making process. Two key ideas emerge. First, agency discretion is paramount. Although Commissioners must look at statutorily defined factors, such as employment and the volume of imports, there is no precise formula for when material injury is due to dumped imports. Somewhat like the definition of pornography, they apparently know injury when they see it. Second, formal economic analysis is rarely performed. "Trends analysis" is common, but this essentially means eyeballing charts and tables and confirming profits and employment are down. If imports have also increased, a connection of causality is assumed. See also, Robert S. Pindyck and Julio J. Rotemberg, "Are Imports to Blame? Attribution of Injury under the 1974 Trade Act," *Journal of Law and Economics* 30, no.1 (1987): 101-122. See also, Gene M. Grossman, "Imports as a Cause of Injury: The Case of the US Steel Industry," *Journal of International Economics* 20, no.3-4 (1986): 201-223. These studies develop methods for assessing whether imports have caused injury to a competing United States industry. Both approaches suggest that the USITC is far too willing to attribute injury to imports. There appears to be no serious attempt to disentangle the injurious effects of dumped imports from other sources. There is no evidence, however, that either paper has had any impact on actual Commission practice.

[1409] WTO, Anti-Dumping Agreement-Article 5 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 20.

[1410] Confidential business information includes firm-specific pricing and volume shipments, identity of purchasers.

summary of the description.[1411] On the contrary, Canadian and the United States domestic laws allow legal counsel but not the interested parties to have access to all the confidential information.[1412]

Fifth, most users require a preliminary injury determination before deciding on imposing AD duties.[1413] However, many new users start collecting duties only a few days after the authority accepts the AD petition. Generally, a preliminary injury determination allows the interested parties sufficient time to file an effective strategy.[1414] The fall in trade during the investigation period alone will benefit the domestic industry. Therefore, other countries are more tolerant of allowing temporary protection. It is not surprising other countries will file AD cases.

Sixth, different levels of AD duties are imposed. The United States and Canada seek to levy the full AD duty. This means that, if the authority makes a confirmed determination of dumping, this will lead to a complete cessation of imports from the target countries. Other countries require that AD duties should be lower than the dumping margin if the lesser duty is sufficient to offset the injury from dumping.

Although countries have similar AD rules, they implement these rules differently. Hence, there is no unified standard and procedure to implement this continuation among countries. Besides, discrimination exists in some countries when applying the rules. These countries prefer to enter into trade agreements with specific trade partners.[1415] For example, Singapore and New Zealand have signed a free trade agreement that regulates a de minimis dumping margin of 5 percent. Negotiations between Chile, Canada, Australia, and New Zealand prohibit taking AD action against each other. The stringency of the individual country's system differs according to the understanding of each country. For example, Chile's AD measures are different. Chile only applies

[1411] Jackson and Vermulst, op.cit.121-138.
[1412] Taylor and Vermulst, op.cit.56-62.
[1413] Prakash Narayanan, "Injury Investigations in 'Material Retardation' Antidumping Cases," *Northwestern Journal of International Law & Business* 25, no.1 (2004): 37-67.
[1414] Staiger and Wolak, op.cit. 358-422. This study uses US industry data to demonstrate the effect of AD petitions on trade.
[1415] Countries trigger less AD petitions against free trade agreement members. In addition, AD investigations apparently decrease the same year a free trade agreement is enacted.

AD measures for one year and does not allow continuation. Japan has broader organizational principles for AD actions, which requires that investigations be conducted by teams of relevant officials from a cross-section of economic, finance, and industry portfolios instead of a standard AD authority. This principle results in a lower use of AD measures by Japan.[1416]

[1416] Benjamin H. Liebman and Kasaundra Tomlin, "World Trade Organization sanctions, implementation, and retaliation," *Empirical Economics* 48, (2015): 715-745.

CHAPTER SIX -- CONCLUSION

There is no other economic rationale for AD laws except the theory of predatory pricing. However, AD legislation still exists, and AD actions are used actively. The only reasonable explanation for AD legislation should be the need for fairness. However, the abuse of AD actions demonstrates that it has become more of a burden on and a method of protectionism for the international community. Why is AD policy still standing strong? First, AD laws have a strong political background. The definition of AD as a "method to defend domestic industries from the injurious unfair trade practices by foreign industries" contains a sense of righteousness. AD has created many interests, not only among domestic industries and their political representatives but also among the officials and lawyers directly involved in the policy.[1417]

Second, there is no appropriate policy that could replace the AD policy. Many researchers suggest using competition law to replace AD law.[1418] However, opposing opinions emphasize the disadvantages of competition policy. For example, there are no international standards for using competition law, although there is now some consensus on price discrimination and predatory pricing. Furthermore, international competition rules lack an institutional framework for implementation and enforcement. Although AD policies have some defects, it is not simple to remove them.

According to the Doha Mandate, negotiations aim to clarify and improve the disciplines.[1419] Participants select the provisions they want to clarify and bring them into the negotiations. The Doha Round negotiation on AD intends to achieve two goals. One is to clarify the ruling itself. Another is to promote compromise among groups of Members.

[1417] Niels,op.cit. 470-481.

[1418] Daniel J. Gifford, "Rethinking the Relationship between Antidumping and Antitrust Laws," *American University International Law Review* 6, no.3 (1991): 277-323.

[1419] WTO, WT/MIN(01)/DEC/1, 20 November 2001. The negotiations aim to "clarify and improve disciplines" while "preserving the basic concepts, principles, and effectiveness of these agreements" and "taking into account the needs of developing and least-developed participants".

A. Motives of WTO Members for Reforming the Anti-dumping Agreement

First, many economists has analyzed AD seeking to understand its economic rationale. Critiques of AD in the existing literature focus primarily on two issues: the lack of a sound economic rationale for AD and AD welfare costs. The critical commentary from economists is that, except for exceptional circumstances, dumping is a reasonable business practice. The basic definition of AD states that the intention of AD is to deal with price discrimination. However, price discrimination is a rational and universal competitive response of producers to overseas markets where the elasticity of demand is higher than in the domestic market.[1420] In cases where the constructed-value determines the normal value of the product, the product sold abroad at a price less than the cost of production is also subject to AD liability.[1421] This method of determining dumping excludes the company's cost structure, which makes selling below cost rational once marginal revenues from the sale surpass the products' marginal cost.[1422] In general, economists have emphasized that dumping is sensible on both domestic and international levels. Hence, AD and its related legislation lack the support of economic theory on predatory pricing.[1423]

However, AD actions have developed with trade liberalization and become a frequently used trade remedy method, following the spread of AD legislation enactment. Since the GATT provided international AD principles based on the major AD users' domestic AD regulation, it has offered GATT/WTO Members a reference for managing their domestic AD law. The dispute settlement panel and appellate body report, in certain cases, has also provided guidance for Members to modify their domestic AD law once domestic provisions become incompatible with WTO standards. However, Members do not follow WTO rulings without question. On the contrary, Members question the WTO AD rulings. Together with increasing AD use, Members have focused

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[1420] John J. Barceló III, "Antidumping Laws as Barriers to Trade-The United States and the International Antidumping Code," *Cornell Law Review* 57, no.4 (1972): 498-558.
[1421] 19 United StatesC. § 1673 (2011) (providing for the imposition of AD duties on imports sold in the United States "at less than... fair value" when such imports cause or threaten to cause "material injury" to a domestic industry or "materially retard" the "establishment of a domestic industry". See also Council Regulation 1225/2009, art. 1.1, 2009 O.J. (L 343) 51, 53, "An AD duty may be applied to any dumped product whose release for free circulation in the Community causes injury."
[1422] Roy Ruffin and Paul R. Gregory, *Principles of Microeconomics* (Boston: Addison-Wesley, 2001), 12-50.
[1423] Alan O. Sykes, "Comparative Advantage and the Normative Economics of International Trade Policy," *Journal of International Economic Law* 1, no.1 (1998): 49-82.

their attention on the certainty of WTO AD principles. Chapter 3 elaborated on the proposals from different Members for reforming specific articles. It shows that the ADA lacks accurate descriptions in many aspects associated with both substantial and procedural provisions. It illustrates that the ADA is obscure and not precise enough to provide a benchmark for Members to implement AD activities. Both substantive and procedural articles in the ADA receive sharp criticism from Members. However, the WTO has not provided a convincing explanation. The ADA is the criterion for AD activity, which means that its precision plays a critical role in directing the effective use rather than the abuse of AD actions. However, the ambiguity of the ADA drives Members to seek its reform.

Second, AD actions are not simply a legal issue. Different reasons can affect the use of AD actions. These reasons are diverse, and can include economic reasons, strategic requirements and political considerations. For example, a country's GDP may influence the use of AD activity. A need for retaliation might lead to the imposition of AD duties. Chapter 4 illustrated that the motives triggering AD use are multiple and complicated. These motives, to some extent, decide the form and range of AD actions. No single cause can easily conclude the why, how, and extent of AD actions. After Members realize the adverse effects of some AD measures, they begin finding solutions to reduce or eliminate those harmful influences. However, the reasons for AD initiations are varying. It is hard to focus on one specific motive for AD action. Hence, countries start looking for help from AD legislation, which provides them with a straightforward guide to solving the issue. They begin reviewing the statute that regulates AD behavior. Countries hope that AD laws will provide them with precise guidance. Economic and strategic requirements prompt the use of AD actions, resulting from reforms to the ADA in the WTO.

Third, the United States and the EU provided the primary legal disciplines for building an international legal AD regime to assist them with creating a protectionist instrument with legal sanctions. The legal standard governing international trade law on AD laws was shaped by the United States and the EU to serve their interests in creating a legally sanctioned protectionist instrument. As this instrument was frequently used against China and, to a lesser extent, India, some were concerned that as these developing countries rose in prominence, they would seek to eliminate, or at the very least, pare back their permissive legal standards. Instead, as noted earlier,

India and China have readily accepted and embraced the existing WTO legal standard, as defined by the traditional powers. Although the ADA is imprecise and ambiguous, this does not mean that a single domestic AD law can replace it. Furthermore, the average Member's AD laws show that no domestic AD law performs without problems when dealing with AD activities. However, domestic AD laws still exist because they are not in direct violation of legal obligations under the ADA.[1424] The diversity of domestic AD law that interprets the ADA offers countries more freedom when implementing AD practices, which leads to an abuse of AD activity. Both traditional users and new users suffer under the misuse of AD practices. The problems of domestic AD laws mentioned above only reflect differences in technical approaches rather than an overall opinion regarding AD. Compliance problems exist in specific articles but not in the integrated criteria of the ADA. Although the WTO has searched for a long time, the ADA remains unchanged. It reflects (1) the Members' different views on the role of AD; and (2) attempts to maintain a balance between country commitments and discretion. Thus, Members seek to move back to the ADA framework to find a solution. However, the ADA cannot provide them with detailed principles as guidance. WTO Members have wanted to reform the ADA since the Doha Round.

B. SUGGESTION FOR NEGOTIATIONS ON REFORMING THE ANTI-DUMPING AGREEMENT

There are three groups involved in negotiations. The first group is known as the FANs. It includes many developing countries whose export companies are subject to AD investigations and wants negotiations to focus on refining and amending regulations under the ADA. The FANs submitted most of the proposals on reforming the ADA to fix some of the flaws and restrict random practices by investigating authorities. The second group involved in negotiations comprises developed countries such as the United States and developing countries such as Egypt. They want to maintain the basic concepts and principles of current AD rules. This group is unwilling to further debate the

[1424] Article 6.4 of the ADA states, "The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in [Article 6.5], and that is used by the authorities in an AD investigation, and to prepare presentations on the basis of this information." It does not mention written rejoinders to the opposing party's presentation. Article 6.9 of the ADA states, "The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures." Id. art. 6.9. Indian and Chinese decisions reveal the "essential facts" but may not disclose the reasoning or interpretation behind these facts. This, however, is not required under the existing language.

present ADA even though they agreed to launch the Doha Round. However, they emphasize that their position is to limit amendments to the ADA. The third group includes developed countries like the EU, Canada, Australia, and developing countries like China and India. They have their own specific requirements for the negotiations. For example, the EU has stressed its request for including the public interest rule. Canada and Australia have proposed amendments on transparency. All three traditional users agree with the need to clarify the ADA. However, these amendments should not conflict with their domestic laws. Although they participate in negotiations, these countries are relatively conservative about reforming the ADA. China and India have asked for careful consideration of the demands of developing countries and LDCs.[1425]

The Doha Negotiations become complex at the international level with regard to finding a compromise among Members. It is no longer acceptable for a few major developed countries to submit treaties and expect the rest of the world to follow their initiative. Therefore, negotiations must use a bottom-up approach, involving all participating countries, including developing countries, in drafting and discussing reforms to the ADA to address the realities of multilateral trade negotiations and achieve the objectives of the Doha round. At the start of the Doha Round, the pressure to reform the rules as a result of the increasing use of AD measures already existed. For example, the FANs emphasized that, in many cases, AD measures are more protectionist than aimed at legitimate competition in domestic markets.[1426] In recent years, the pressure has become greater.

Even if the total amount of AD activity reduced compared to the amount before the Doha Round, countries still suffer from this behavior. AD users increase the number of AD duties. The target countries can lose more value, and this will lead to severe retaliation. For example, the situation between China and the United States in recent years is representative of this. China lost a lot of economic value. This led to direct retaliation and more AD activity. Second, there is still no solution for the most important debates. Some of them, for example, the prohibition on zeroing and the regulation of the lesser duty rule, are even more important than before. Third, China's

[1425] For example, this group demands special and differential (S&D) treatment for developing countries.
[1426] WTO, Briefing note: Negotiations on rules — anti-dumping and subsidy disciplines (including fisheries subsidies) and regional trade agreement, Tenth WTO Ministerial Conference, Nairobi, 2015, https://www.wto.org/english/thewto_e/minist_e/mc10_e/briefing_notes_e/brief_antidumping_e.htm.

market status has become the most contentious topic in recent years because of increasing AD activity between China and the EU and China and the United States. Fourth, some Members have transferred their attention from a multilateral AD regime to bilateral free trade agreements. For example, the EU and Japan have reached an understanding on trade cooperation. Since then, there has been no more tariffs between them. This is not a good sign for further multilateral negotiations.

Members must look to the ADA to maintain a stable multilateral AD system. From the above chapters, it is evident that negotiations for reforming the ADA are a complicated and systemic issue. It is not easy to reach a simple conclusion on how to solve this problem because it relates to many different reasons. Those reasons include economic change, strategic choice, and legal conformity. None of this is easy for negotiators to reach an agreement on. Only when all Members can reach an agreement on each issue, will a complete reform of the ADA be possible. This seems to be complicated for Members as the conflict around the detailed provisions of the ADA becomes more and more controversial. However, this does not mean we should entirely abandon the ADA. Until now, there has been no better guidance than the WTO ADA for providing so many Members a method to deal with AD issues.[1427] The ambiguity of the ADA impedes the efficiency of AD actions. Economic and strategic incentives trigger a pattern of using AD actions more regularly. The compliance problem complicates negotiations because a divergence exists between Members' domestic AD legislation and the ADA.

After the Doha Round's impasse, the WTO has made various attempts to promote negotiations to change the current ADA. Such change will depend on the willingness of WTO Members, especially the more economically influential Members. In the negotiations, most of the controversial proposals are substantive rules. These rules will be affected by legal, political,

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[1427] Yunling Zhang, "Challenges to the WTO and a Trade Facilitation Agreement," in *The Doha to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration*, ed. Yoshifumi Fukunaga, John Riady and Pierre Sauvé, (An ERIA-UPH-WTI e-book,2012), 29-49. "It is vital to keep the multilateral trading system working and effective since no the other institution can serve the needs of both the developed and developing economies." Professor Gary Hawke, he pointed out "A central role of the WTO would be to ensure that the rules agreed by these mega-agreements are not incompatible, and continually simplifying them where possible into a single set of rules". See also, Vo Tri Thanh, Central Institute for Economic Management, Vietnam, "Reflections on the Role of WTO in a New Context", he pointed out that members have to turn to the Doha Round for a more coordinated framework to maintain trade liberalization. This is only done at a multilateral level.

economic, and many other reasons. Therefore, it isn't easy to find a breakthrough in the negotiation of these rules in a short time.

Apart from most controversial issues such as zeroing or China's non-market economic status, there are some common demands among Members for reforming the ADA. Members have similar requests regarding transparency, lesser duty rule, and sunset review. Some Members holding similar requirements on these topics pushed for negotiations, while other Members were still reluctant to join negotiations only if said negotiations includes some "core" Doha Round issues such as agriculture, non-agricultural market access, and services.[1428] The negotiation of ADA reforms is complicated, it is necessary for Members to sit down and talk. The WTO has emphasized the significance of adapting and staying relevant[1429] and has attempted to encourage completing the incomplete Doha negotiations.[1430] Nonetheless, some delegations are already losing confidence in further AD negotiations.[1431] Although the complexity of the reasons for AD reform makes the future of negotiations unpredictable, the WTO and some Members[1432] still make an effort to encourage continued talks among Members.

In recent years, significant changes have taken place in the world economy and trade: the Brexit,[1433] the increased establishment of regional free-trade agreements of The Regional

[1428] WTO, "FANs push transparency, due process, but members reluctant to engage in rules negotiations", 25 June 2015, https://www.wto.org/english/news_e/news15_e/rule_25jun15_e.htm. See also, WTO, "Agriculture meeting marks "turning point" as negotiations enter decisive stage, chair says", 26 November 2019, https://www.wto.org/english/news_e/news19_e/agri_03dec19_e.htm.
[1429] WTO, "Eighth China Round Table underlines contributions of accessions to WTO reform", 9 December 2019, https://www.wto.org/english/news_e/news19_e/acc_05dec19_e.htm.
[1430] WTO, "Eighth China Round Table underlines contributions of accessions to WTO reform", 9 December 2019, https://www.wto.org/english/news_e/news19_e/acc_05dec19_e.htm.
[1431] WTO, "'Clear interest' in securing outcomes in rules negotiations for 2017 Ministerial", May 25 2016, https://www.wto.org/english/news_e/news16_e/rule_25may16_e.htm. A number of other delegations indicated that they see no prospect for progress on anti-dumping in the NGR.
[1432] WTO, "WTO members exchange views on rise in anti-dumping actions", 27 April 2017, https://www.wto.org/english/news_e/news17_e/anti_10may17_e.htm.
"Members exchange views, concerns on recent anti-dumping actions", 25 October 2017, https://www.wto.org/english/news_e/news17_e/anti_25oct17_e.htm.
For example, the FANs, EU, Japan, China, and some other members still put their hope in the WTO to conclude or make progress with further negotiations.
[1433] Steven Brakman, Harry Garretsen and Tristan Kohl, "Consequences of Brexit and options for a 'Global Britain' ," *Regional Science* 97, no.1 (2018): 55-72.

Comprehensive Economic Partnership,[1434] and the Compressive and Progressive Agreement for Trans-Pacific Partnership.[1435] The Covid-19 pandemic represents an unparalleled disruption to the global economy and world trade.[1436] All these gradually weaken globalization and multilateral cooperation.[1437] Besides, the WTO dispute settlement suspension means that the WTO's existential crisis is looming large.[1438]

As the only international trade organization, how far can the WTO go? Will agreements under the WTO gradually lose their effect? These issues are challenging for the WTO.[1439] Perhaps the negotiation on ADA will be an opportunity for the WTO to reconnect Members. The purpose of this paper is to provide a comprehensive analysis of the reasons for reforming the ADA and for the impasse of the related Doha Round negotiations to make it possible for further negotiation. There is already thorough research on every specific article of the ADA. Further research should find an appropriate point for Members to restart negotiations.

[1434] The Regional Comprehensive Economic Partnership (RCEP) is a free trade agreement between the Asia-Pacific nations of Australia, Brunei, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Thailand, and Vietnam.

[1435] The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), also known as TPP11 or TPP-11 is a trade agreement among Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

[1436] Sébastien Jean, "How the COVID-19 Pandemic Is Reshaping the Trade Landscape and What to Do About It," *Intereconomics* 55, no.3 (2020): 135-139.

[1437] Bernard Hoekman and Charles Sabel, "Open Plurilateral Agreements, International Regulatory Cooperation and the WTO," *Global Policy* 10, no.3 (2019): 297-312.

[1438] Jeffrey J. Schott and Euijin Jung, "The WTO's Existential Crisis: How to Salvage Its Ability to Settle Trade Disputes," *Peterson Institute For International Economics Policy Brief* 19-19, December 2019, https://www.piie.com/sites/default/files/documents/pb19-19.pdf.

[1439] Aleksej Pavlovič Kireev and Chiedu Osakwe, *Trade Multilateralism in the Twenty-First Century: Building the Upper Floors of the Trading System through WTO Accessions* (Cambridge, MA: Cambridge University Press, 2017), 26-68.

BIBLIOGRAPHY

BOOK

Aggarwal, Aradhna. *The Anti-Dumping Agreement and Developing Countries an Introduction*. Delhi: Oxford University Press, 2007.

Aguila, Emma, Alisher R. Akhmedjonov, Ricardo Basurto-Davila, Krishna B. Kumar, Sarah Kups, and Howard J. Shatz. *United States and Mexico: Ties That Bind, Issues That Divide*. Santa Monica: RAND Corporation, 2012.

Allee, Todd. "The Role of the United States: A Multilevel Explanation for Decreased Support Over Time," in *The Oxford Handbook on the World Trade Organization*, edited by Amrita Narlikar, Martin Daunton and Robert M. Stern, 67-110. Oxford, U.K.: Oxford University Press, 2014.

Andersen, Henrik. *EU Dumping Determinations and WTO Law*. The Netherlands: Kluwer Law International, 2009.

Andersen, Henrik. "WTO Antidumping Jurisprudence and Rule of Law Challenges," in *Festskrift till Christina Moëll*, edited by Mats Tjernberg, Pernilla Rendahl and Hnrik Wenander, 11-33. Lund: Juristförlaget I Lund, 2014.

Arnold, Bruce Gregory. *Antidumping Action in the United States and around the World: An Update*. Washington, D.C.: Congress of the United States, Congressional Budget Office, 2001.

Arnold, Bruce Gregory. *How the GATT Affects U.S. Antidumping and Countervailing-Duty Policy*. Washington, D.C.: Congress of the United States, Congressional Budget Office, 1994.

Australia Parliament Senate, *Standing Committee on Industry, Science Technology, Inquiry into Australia's Anti-Dumping and Countervailing Legislation*, Australian Govt. Pub. Service, 1991

Bael, Ivo Van, and Bellis Jean-François. *EU Anti-Dumping and Other Trade Defence Instruments*. Alphen aan den Rijn: Kluwer Law International, 2011.

Bagwell, Kyle, and Robert W. Staiger. *Handbook of Commercial Policy*. Amsterdam: Elsevier North-Holland, 2016.

Banks, Gary. *Australia's Antidumping Experience*. Washington, D.C.: Trade Policy Division, Country Economics Department, World Bank, 1990.

Bierwagen, Rainer M. *GATT Article VI and the Protectionist Bias in Anti-Dumping Laws*. Deventer: Kluwer Law and Taxation Publishers, 1990.

Baldwin, Robert E. "The Changing Nature of U.S. Trade Policy since World War II." in *The Structure and Evolution of Recent U.S. Trade Policy*, edited by Robert E. Baldwin and Anne O. Krueger, 5-32. Chicago, IL: University of Chicago Press, 1984.

Baldwin, Robert E., and Anne O. Krueger. *The Structure and Evolution of Recent U.S. Trade Policy*. Chicago, IL: University of Chicago Press, 1984.

Baldwin, Richard E., and Simon J. Evenett. *What World Leaders Must Do to Halt the Spread of Protectionism*. London: Centre for Economic Policy Research, 2008.

Beseler, John Hans, and A. Neville Williams. *Anti-Dumping and Anti-Subsidy Law: the European Communities*. London: Sweet and Maxwell, 1986.

Bhagwati, Jagdish N. *Protectionism*. Cambridge, MA: MIT Press, 2000.

Bhala, Raj. *International Trade Law Handbook*. New York: Lexis Pub., 2001.

Bora, Bijit, and Inge Nora Neufeld. *Tariffs and the East Asian Financial Crisis*. New York: United Nations, 2001.

Bordo, Michael D., Claudia Dale Goldin, and Eugene Nelson White. *The Defining Moment: The Great Depression and the American Economy in the Twentieth Century*. Chicago, IL: University of Chicago Press, 1998.

Bown, Chad P. *Self-Enforcing Trade: Developing Countries and WTO Dispute Settlement*. Washington, D.C.: The Brookings Institution, 2009.

Bown, Chad P. "China's WTO Entry: Antidumping, Safeguards, and Dispute Settlement," in *China's Growing Role in World Trade*, edited by Robert C. Feenstra and Shang-Jin Wei, 318-337. Chicago, IL: University of Chicago Press, 2010.

Bozeman, Barry. *Public Values and Public Interest Counterbalancing Economic Individualism*. Washington, D.C.: Georgetown University Press, 2007.

Brown, William Adams. *The United States and the Restoration of World Trade: An Analysis and Appraisal of the ITO Charter and the General Agreement on Tariffs and Trade*. Geneva: GATT International Trade Centre, 1964.

Branson, William H., Herbert Giersch and Peter G. Peterson. "Trends in United States International Trade and Investment since World War II." in *The American Economy in Transition,* edited by Martin Feldstein, 183-274. Chicago, IL: University of Chicago Press, 1980.

Boltuck, Richard, and Robert E. Litan. *Down in the Dumps: Administration of the Unfair Trade Laws*. Washington, D.C.: Brookings Institution, 1991.

Buterbaugh, Kevin, and Richard M. Fulton. *The WTO Primer: Tracing Trade's Visible Hand through Case Studies*. New York: Palgrave Macmillan, 2008.

Carpenter, Robert. *Antidumping and Countervailing Duty Handbook*. Washington, D.C.: United States International Trade Commission, 2005.

Chen, Yusong. "Anti-Dumping Laws and Implementation in China: A 16 Year Review After Accession to the WTO," in *The Future of Trade Defence Instruments: Global Policy Trends and Legal Challenges*, eds. Marc Bungenberg, Michael Hahn, Christoph Herrmann, and Till Müller-Ibold, 283-294. Bazel: Springer International Publishing, 2018.

Ching, Cheong, and Hung Yee Ching. *Handbook on China's WTO Accession and Its Impacts*. New Jersey: World Scientific, 2003.

Cho, Dong-Sung, and Hwy-Chang Moon. *From Adam Smith to Michael Porter, Evolution of Competitiveness Theory.* Singapore: World Scientific Publishing Co. Pte. Ltd., 2013.

Chorev, Nitsan. "International Trade Policy under George W. Bush" in *Assessing the George W. Bush Presidency:*

A Tale of Two Terms, ed. Andrew Wroe and Jon Herbert, 12-35. Edinburgh: Edinburgh University Press, 2009.

Cirillo, Patrick. *The Political Economy of Antidumping: Extraordinary Protection*. Genève: Institut universitaire de hautes études internationales, 1993.

Clark, Peter. *A Comparison of the Antidumping Systems of Canada and the USA: A Study Prepared for the Department of Finance, Government of Canada*. Ottawa: Department of Finance, 1996.

Clarida, Richard H. "Dumping: In Theory, in Policy, and in Practice," in *Fair Trade and Harmonization: Prerequisites for Free Trade?* edited by Jagdish N. Bhagwati and Robert E. Hudec, 357-389. Cambridge, MA: MIT Press, 1996.

Crandall, Robert W. *The U.S. Steel Industry in Recurrent Crisis: Policy Options in a Competitive World*. Washington, D.C.: Brookings Institution, 1981.

Dam, Kenneth W. *The GATT: Law and International Economic Organization*. Chicago, IL: University of Chicago Press, 1977.

Dale, Richard. *Anti-Dumping Law in a Liberal Trade Order*. London: Springer, 1980.

Deardorff, Alan V. "Economic Perspectives on Antidumping Law." in *Antidumping Law and Practice: A Comparative Study,* edited by John H. Jackson and Edwin A. Vermulst, 23-39. Ann Arbor, MI: University of Michigan Press, 1989.

Dee, Megan. *The European Union in a Multipolar World: World Trade, Global Governance and the Case of the WTO*. London: Palgrave Pivot, 2015.

Destler, Irving McArthur. *Renewing Fast-Track Legislation*. Washington, D.C: Institute for International Economics, 1997.

Durling, James P. and Matthew R. Nicely, *Understanding the WTO Anti-dumping Agreement: Negotiating History and Subsequent Interpretations*. London: Cameron May, 2002.

Eaton, Jonathan and Leonard J. Mirman. "Predatory Dumping as Signal Jamming." in *Trade, Policy, and International Adjustments*, edited by Akira Takayama, Michihiro Ohyama and Hiroshi Ohra, 60-76, Academic Press, 1991.

Eichengreen, Barry, and Hans van der Ven. "U.S. Antidumping Policies: The Case of Steel", in *The Structure and Evolution of Recent U.S. Trade Policy,* edited by Robert E. Baldwin and Anne O. Krueger, 67-110. Chicago, IL: University of Chicago Press, 1984.

Elsig, Manfred, Bernard Hoekman, and Joost Pauwelyn. "Tnking About the Performance of the World Trade Organization: A Discussion Across Disciplines," in *Assessing the World Trade Organization: Fit for Purpose?* edited by Elsig, Manfred et al. (arg.). Cambridge, MA: Cambridge University Press, 2017.

Evenett, Simon J. *BRICS Trade Strategy: Time for a Rethink The 17th Report*, London: CEPR Press, 2015.

Evenett, Simon J., and Johannes Fritz. *The Tide Turns? Trade, Protectionism, and Slowing Global Growth: The 18th Global Trade Alert Report,* 12-19. London: CEPR Press, 2015.

Feenstra, Robert C. *Advanced International Trade: Theory and Evidence*. Princeton, NJ.: Princeton University

Press, 2016.

Finger, Michael J. *The Origins and Evolution of Antidumping Regulation*. Washington, DC: World Bank, Policy, Research and External Affairs Complex, 1991.

Finger, Michael J. *Safeguards and Antidumping in Latin American Trade Liberalization: Fighting Fire with Fire*. Basingstoke: Palgrave Macmillan, 2006.

Finger, Michael J. "The Industry-Country Incidence of 'Less than Fair Value' Cases in US Import Trade." In *Export Diversification and the New Protectionism: The Experience of Latin America,* ed. Werner Baer and Malcolm Gillis (Bureau of Economic and Business Research, University of Illinois at Urbana-Champaign, 1981), 260-279.

Frieden, Jefferey. "Global trade in the aftermath of the global crisis." In *The Great Trade Collapse: Causes, Consequences and Prospects*, edited by Richard Baldwin 25-30. Geneva: VoxEU.org Publication, 2009.

Fukunaga, Yoshifumi, John Riady, and Pierre Sauve. *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration*. Jakarta: ERIA, 2013.

Gaines, Sanford E. *Liberalising Trade in the EU and the WTO: Comparative Perspectives*. Cambridge, MA: Cambridge University Press, 2012.

Garber, Peter M. "The Collapse of the Bretton Woods Fixed Exchange Rate System." in *A Retrospective on the Bretton Woods System: Lessons for International Monetary Reform*, edited by Michael D. Bordo and Barry Eichengreen, 461-494. Chicago, IL: University of Chicago Press, 1993.

Gawande, K. and P. Krishna. "The Political Economy of Trade Policy: Empirical Approaches," in *Handbook of International Trade*, ed. Eun Kwan Choi and James Harrigan, 46-70. Oxford, U.K.: Blackwell, 2005.

Goldberg, Linda S., Maurice Obstfeld, Paul R. Krugman, and Michael W. Klein. *Study Guide to Accompany International Economics: Theory and Policy, by Krugman and Obstfeld, Third Edition*. New York: HarperCollins, 1994.

Goldsmith, Jack L. and Eric A. Posner. *The Limits of International Law*, Oxford, U.K.: Oxford University Press, 2005.

Goyal, Arun, and Noor Mohd. *WTO in the New Millennium: Commentary, Case Law, Legal Texts*. New Delhi: Academy of Business Studies, 2001.

Gwartney, James D., Richard Stroup, Russell S. Sobel, and David A. Macpherson. *Economics: Private and Public Choice*. Mason: South-Western, 2021.

Hahn, Michael J., and Van der Loo Guillaume. *Law and Practice of the Common Commercial Policy: the First 10 Years after the Treaty of Lisbon*. Leiden: Brill Nijhoff, 2021.

Hauser, Henri. *Germany' s Commercial Grip on the World: Her Business Methods Explained*. New York: Garland, 1983.

Hanrahan, Charles E., Beverly A. Banks, and Carol Canada. *U.S. Agricultural Trade: Trends, Composition, Direction, and Policy*. Washington, D.C.: Library of Congress, Congressional Research Service, 2012.

Herrmann, Christoph S., and Terhechte Jörg Philipp. *European Yearbook of International Economic Law 2012*.

Heidelberg: Springer, 2012.

Hoekman, Bernard M., and Michel M. Kostecki. *The Political Economy of the World Trading System: the WTO and Beyond*. Oxford, U.K.: Oxford University Press, 2013.

Hofmann, Herwig, Gerard C. Rowe, and Alexander Heinrich Türk. *Administrative Law and Policy of the European Union*. Oxford, U.K.: Oxford University Press, 2013.

Howell, Thomas R. and Dewey Ballantine. "Dumping: still a Problem in International Trade, National Research Council 1997." in *International Friction and Cooperation in High-Technology Development and Trade: Papers and Proceedings*, edited by Charles W. Wessner, 326-330. Washington, DC: The National Academies Press, 1997.

Howell, Thomas R., William A. Noellert, Jesse G. Kreier, and Alan Wm. Wollf. *Steel and the State: Government Intervention and Steel's Structural Crisis*. London: Routledge, 2019.

Horlick, Gary N. *WTO and NAFTA Rules and Dispute Resolution: Selected Essays on Anti-dumping, Subsidies and Other Measures*. London: Cameron May, Ltd, 2003.

Horlick, Gary N. *World Trade Organization and International Trade Law: Antidumping, Subsidies and Trade Agreements*. New Jersey: World Scientific, 2014.

Horn, Henrik, and Petros C. Mavroidis. *The WTO Case Law of 2001 the American Law Institute Reporters' Studies*. Cambridge, MA: Cambridge University Press, 2004.

Horn, Henrik, and Petros C. Mavroidis. *The WTO Case Law of 2003: the American Law Institute Reporters' Studies*. Cambridge, MA: Cambridge University Press, 2013.

Hsueh, Roselyn. *China's Regulatory State: A New Strategy for Globalization*. New York: Cornell University Press, 2011.

Hsueh, Ching-Wen. "The limits of a legal approach in resolving EU-China trade disputes on non-Market economy status." in *Law and Diplomacy in the Management of EU-Asia Trade and Investment Relations*, editd by Chien-Huei Wu and Frank Gaenssmante, 154-173. London: Routledge, 2019.

Ibrahim, Tigani E. *Developing Countries and the Tokyo Round*. Khartoum: Development Studies and Research Centre, Faculty of economic and Social Studies, University of Khartoum, 1978.

Ikenberry, G. John. *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*. Princeton, NJ.: Princeton University Press, 2019.

ITC. *Business Guide to Trade Remedies in Brazil: Anti-Dumping, Countervailing and Safeguard Legislation, Practices and Procedures*. Geneva: International Trade Centre, 2009.

Irwin, Douglas A. *Clashing over Commerce: A History of U.S. Trade Policy*. Chicago, IL: University of Chicago Press, Illustrated edition, November 2017.

Jackson, John H. *World Trade and the Law of GATT: a Legal Analysis of the General Agreement on Tariffs and Trade*, Indiana: Bobbs-Merrill, 1969.

Jackson, John H. *Legal Problems of International Economic Relations: Cases, Materials and Text ... with Documents Supplement*. St. Paul, MN: West Pub. Co., 1977.

Jackson, John H. *The World Trading System: Law and Polity of International Economic Relation*s. The MIT Press, Second Edition, 1997.

Jackson, John H. *The Jurisprudence of GATT and the WTO: Insights on Treaty Law and Economic Relations*. Cambridge, MA: Cambridge University Press, 2000.

Jackson, John H., and Edwin Vermulst. *Antidumping Law and Practice: a Comparative Study*. Ann Arbor: The University of Michigan Press, 1992.

Jones, Kent. *The Doha Blues Institutional Crisis and Reform in the WTO*. Oxford, U.K.: Oxford University Press, 2011.

Jones, Roger, and Gabriel A. Moens. *International Trade and Business Law Review: Volume XI*. Abingdon, Oxon: Routledge-Cavendish, 2008.

Jones, Vivian C. *Trade Remedies and the WTO Rules Negotiations*. Washington, D.C.: Library of Congress, Congressional Research Service, 2010.

Jones, Vivian C. *WTO: Anti-dumping Issues in the Doha Development Agenda*. Columbus: Bibliogov, 2013.

Joubert, Niel. “The reform of South Africa's anti-dumping regime.” In *Managing the Challenges of WTO Participation: 45 Case Studies*, edited by Gallagher, Peter et al. (arg.). 516-531. Cambridge, MA: Cambridge University Press, 2005.

Kaplan, Seth. “Injury and Causation in USITC Antidumping Determinations: Five Recent Approaches.” in *Policy Implications of Antidumping Measures*, edited by Tharakan P.K.Mathew, 143-173. Amsterdam: North-Holland, 1991.

Kaul, Inge. *Providing Global Public Goods: Managing Globalization*. New York: Published for the United Nations Development Project by Oxford University Press, 2003.

Kemp, Murray C., Horst Herberg, and Ngo van Long. *Trade, Welfare, and Economic Policies: Essays in Honor of Murray C. Kemp*. Ann Arbor: University of Michigan Press, 1993.

Keohane, Robert O. *International Institutions and State Power: Essays in International Relations Theory*. Boulder: Westview Press, 1989.

Kiyono, Kazuharu. “An Analysis of Antidumping Policies in World Markets for High Technology Products,” In *the Political Economy of Trade Conflicts the Management of Trade Relations in the US-EU-Japan Triad*, edited by Franz Waldenberger, 46-65. Berlin: Springer, 1994.

Kireev, Aleksej Pavlovič, and Chiedu Osakwe. *Trade Multilateralism in the Twenty-First Century: Building the Upper Floors of the Trading System through WTO Accessions*. Cambridge, MA: Cambridge University Press, 2017.

Koulen, Mark. “Some Problems of Interpretation and Implementation of the GATT Antidumping Code.” in *Antidumping Law and Practice: A Comparative Study*, edited by John H. Jackson and Edwin A. Vermulst, 366-370. Michigan: University of Michigan Press,1989.

Koulen, Mark. “The New Antidumping Code Through Its Negotiating History.” in *The Uruguay Round Results: A European Lawyer’s Perspective*, edited by Bourgeois, Jacques H. J., Frédérique Berrod and Eric Gippini Fournier, 151-232. Brussels: Europ. Interuniv. Press, 1995.

Krasner, Stephen D. *Defending the National Interest: Raw Materials Investments and U.S. Foreign Policy*. Princeton, NJ: Princeton University Press, 1978.

Krauss, Melvyn B. *The New Protectionism: The Welfare state and International trade*. New York: New York University Press, 1978.

Krasner, Stephen D. *Defending the National Interest: Raw Materials Investments and U.S. Foreign Policy*. Princeton, NJ: Princeton University Press, 1978.

Krikorian, Jacqueline D. *International trade law and domestic policy: Canada, The United States and the WTO*, Vancouver: UBC Press, 2013.

Lardy, Nicholas R. *Integrating China into the Global Economy*. Washington, DC: Brookings Inst. Press, 2002.

Lester, Simon Nicholas, Bryan Mercurio, and Arwel Davies. *World Trade Law: Text, Materials, and Commentary*. Oxford, U.K.: Hart Publishing, 2018.

Li, Yuefen. "Why is China the World's Number One Anti-Dumping Target?" in *Anti-Dumping: Global Abuse of a Trade Policy Instrument*, edited by Bibek Debroy and Debashis Chakraborty,133-154. New Delhi: Academic Foundation, 2007.

Lindsey, Brink, and Daniel J. Ikenson. *Antidumping Exposed: The Devilish Details of Unfair Trade Law*. Washington, D.C.: Cato Institute, 2003.

Luo, Yan. *Anti-Dumping in the WTO, the EU, and China: The Rise of Legalization in the Trade Regime and Its Consequences*. Alphen aan den Rijn: Kluwer Law International, 2010.

Lyon, Gregory, and Du Plessis J. *The Law of Insider Trading in Australia*. New Jersey: World Scientific, 2009.

Marceau, Gabrielle. *Anti-Dumping and Anti-Trust Issues in Free-Trade Areas*. Oxford, U.K.: Clarendon Press, 2001.

Marceau, Gabrielle. *A History of Law and Lawyers in the GAATT/WTO: The Development of the Rule of Law in the Multilateral Trading System*. Cambridge, MA: Cambridge University Press, 2015.

Marceau, Gabrielle. "General Presentation of the WTO Agreement." in *Global Governance: The Role of International Institutions in the Changing World,* edited by Chŏng Chin-yŏng, 20-50. Seoul, Korea: Sejong Institute, 1997.

Machlup, Fritz. "Characteristics and Types of Price Discrimination." in *Business Concentration and Price Policy,* edited ny Universities-National Bureau, 395-438, Princeton, NJ.: Princeton University Press, 1955.

Macrory, Patrick F. J., Arthur Edmond Appleton, and Michael G. Plummer. *The World Trade Organization: Legal, Economic and Political Analysis*. New York: Springer, 2005.

Mahncke, Hans. *The Relationship between WTO Anti-Dumping Law and GATT Non-Discrimination Principles*. Zürich: Schulthess, 2014.

Mastel, Greg. *Antidumping Laws and the U.S. Economy*. London: Routledge, 2016.

Mavroidis, Petros C. *Trade in Goods*. Oxford, U.K.: Oxford University Press, 2013.

Mavroidis, Petros C. *The Regulation of International Trade*. Cambridge, MA: The MIT Press, 2016.

Mavroidis, Petros C. "Taking care of business: The Legal Affairs Division from the GATT to the WTO," in *A History of Law and Lawyers in the GATT/WTO: The Development of the Rule of Law in the Multilateral Trading System*, edited by Gabrielle Marceau, 236-243. Cambridge, MA: Cambridge University Press, 2015.

Mavroidis, Petros C., Douglas A. Irwin, and Alan O. Sykes. *The Genesis of the GATT*. Cambridge, MA: Cambridge University Press, 2009.

Mény Yves. *The Politics of Steel: Western Europe and the Steel Industry in the Crisis Years (1974 - 1984)*. Berlin: de Gruyter, 1987.

Mitnick, Barry M. *The Political Economy of Regulation: Creating, Designing, and Removing Regulatory Forms*. New York: Columbia University Press, 1980.

Moen, Paul I.A., and Ernst-Ulrich Petersmann. *Public Interest Issues in International and Domestic Anti-Dumping Law: the WTO, European Communities and Canada*. Geneva: Graduate Institute of International Studies, 1998.

Morrison, Wayne M. *China's Economic Rise: History, Trends, Challenges, and Implications for the United States*. Washington, D.C.: Library of Congress, Congressional Research Service, 2015.

Müller, Wolfgang, Nicholas Khan, and Hans-Adolf Neumann. *EC Anti-Dumping Law: A Commentary on Regulation 384/96*. Chichester: Wiley, 1998.

Murphy, John Francis. *The United States and the Rule of Law in International Affairs*. Cambridge, MA: Cambridge University Press, 2007.

Nakagawa, Junji. *Anti-Dumping Laws and Practices of the New Users*. London: Cameron May Ltd., 2007.

Nedumpara, James J., and Weihuan Zhou. *Non-Market Economies in the Global Trading System The Special Case of China*. Puchong, Selangor D.E: Springer Singapore, 2018.

Negi A. "The World Trade Organization and Sustainability Standards." in *Sustainability Standards and Global Governance*, ed. Negi A., Pérez-Pineda J., and Blankenbach J. 39-59. Singapore: Springer, 2020.

Neufeld, Inge Nora. *Anti-Dumping and Countervailing Procedures: Use or Abuse? Implications for Developing Countries*. New York: United Nations, 2001.

Olson, Mancur. *Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge, MA: Harvard University Press, 1971.

Pastor, Robert A. *Congress and the Politics of U.S. Foreign Economic Policy 1929-1976*. Berkeley: University of California Press, 1982.

Prestowitz, Clyde. *Rogue Nation: American Unilateralism and the Failure of Good Intentions*. New York: Basic Books, 2004.

Prusa, Thomas J. "The Growing Problem of Antidumping Protection," in *International Trade in East Asia, NBER-East Asia Seminar on Economics, Volume 14*, edited by Takatoshi Ito and Andrew K. Rose, 352-354. Chicago, IL: University of Chicago Press, 2005, http://www.nber.org/chapters/c0198.

Page, S., M. Davenport, and A. Hewitt. *The GATT Uruguay Round: Effects on Developing Countries*. London: Overseas Development Institute, 1999.

Pedersen, Thomas. *European and East Asian Regionalism / a Realist Perspective*. Århus: Dept. of Political Science, University of Aarhus, 2003.

Posner, Eric A. *The Perils of Global Legalism*, (Chicago, IL: University of Chicago Press, 2009), 41-70.

Puccio, Laura. *Calculation of Dumping Margins: EU and US Rules and Practices in Light of the Debate on China's Market Economy Status: in-Depth Analysis*. Brussels: European Parliament, 2016.

Prusa, Thomas J. and Susan Skeath. "Modern Commercial Policy: Managed Trade or Retaliation." In *Handbook of International Trade: Economic and Legal Analyses of Trade Policy and Institutions*, edited by Eun Kwan Choi and James Hartigan, 56-81. Oxford, U.K.: Blackwell, 2005.

Ruffin, Roy, and Paul R. Gregory. *Principles of Microeconomics*. Boston: Addison-Wesley, 2001.

Rai, Sheela. *Antidumping Measures: Policy, Law and Practice in India*, New Delhi: PARTRIDGE Publishing, 2014.

Raju, K. D. *World Trade Organization Agreement on Anti-Dumping: a GATT/WTO and Indian Legal Jurisprudence*. Austin, TX: Wolters Kluwer Law & Business, 2008.

Raslan, Reem Anwar Ahmed. *Antidumping: A Developing Country Perspective*. Alphen aan den Rijn Wolters Kluwer International, 2009.

Robinson, Joan Violet. *The Economics of Imperfect Competition*. MacMillan and Co., Limited, 1969.

Salvatore, Dominick. "Trade Policy and Internationalisation." in *Knowledge, Innovation and Internationalisation: Essays in Honour of Cesare Imbriani*, edited by Piergiuseppe Morone, 197-215. Oxford, U.K.: Routledge,2013.

Sands, Philippe. *Lawless World: The Whistle-Blowing Account of How Bush and Blair Are Taking the Law into Their Own Hands*. New York: Penguin Books, 2006.

Santos, Leonard E., Stephen J. Powell, and Mark T. Wasden. *The Compendium of Foreign Trade Remedy Laws*. Washington, D.C.: American Bar Association, Section of International Law and Practice, 1998.

Sardana, G. D. *Enhancing Organizational Performance through Strategic Initiatives: Handbook of Management Cases*. Delhi: MacMillan Publishers India, 2009.

Schott, Jeffrey J. *The Uruguay Round: An Assessment*. Washington, D.C.: Institute for international economics, 1997.

Shenkar, Oded, Yadong Luo, and Tailan Chi. *International Business*. Oxford UK.:Routledge, 2015.

Simao Davi Silber, "Trade Policy from the 1930s to the Present," in *The Oxford Handbook of the Brazilian Economy*, edited by Edmund Amann, Carlos R. Azzoni, and Werner Baer, Oxford, U.K.: Oxford University Press, 2018.

Smith, Adam, and William Robert Scott. *An Inquiry into the Nature and Causes of the Wealth of Nations*. London: G. Bell and Sons, 1925.

Staiger, Robert W., and Frank A. Wolak. “Differences in the Uses and Effects of Antidumping Law across Import Sources,” *in The Political Economy of American Trade Policy,* edited by Anne O. Krueger, 358-422. Chicago, IL: University of Chicago Press, 1996.

Stanbrook, Clive, Philip Bentley, and Joseph Cunnane. *Dumping and Subsidies: The Law and Procedures Governing the Imposition of Anti-Dumping and Countervailing Duties in the European Community*. London: Kluwer Law International, 1996.

Stanley, Leonardo E. *Emerging Market Economies and Financial Globalization: Argentina, Brazil, China, India and South Korea*. New York: Anthem Press, 2018.

Steger, Debra P. *Redesigning the World Trade Organization for the Twenty-First Century*. Ottawa: International Development Research Centre, 2009.

Stewart, Terence P. *The GATT Uruguay Round: A Negotiating History (1986-1992)*. The Hague: Kluwer Law International, 1999.

Stewart, Terence P. *The World Trade Organization: The Multilateral Trade Framework for the 21st Century and U.S. Implementing Legislation*. Chicago, IL: American Bar American Association, 1996.

Stewart, Terence P. *Rules in a Rules-Based WTO: Key to Growth; the Challenges Ahead*. Ardsley, NY: Transnational Publication, 2003.

Stewart, Terence P. *China's Compliance with World Trade Organization Obligations: a Review of China's 1st Two Years of Membership: a Report Prepared for the U.S.-China Economic and Security Review Commission*. Ardsley, NY: Transnational Publishers, 2005.

Suttle, Oisin. *Distributive Justice and World Trade Law a Political Theory of International Trade Regulation*. Cambridge, MA: Cambridge University Press, 2018.

Snyder, Francis G. *The EU, the WTO and China: Legal Pluralism and International Trade Regulation*. Oxford, U.K.: Hart Publishing, 2010.

Tang, Rachel. *China's Steel Industry and Its Impact on the United States: Issues for Congress*. Washington, D.C.: Library of Congress, Congressional Research Service, 2010.

Taniguchi, Yasuhei, Alan Yanovich, and Jan Bohanes. *The WTO in the Twenty-First Century: Dispute Settlement, Negotiations, and Regionalism in Asia*. Cambridge, MA: Cambridge University Press, 2007.

Tomlinson, Kate S. “U.S. Legislative Framework for Commercial Relations with Eastern Europe,” in *East European Economies: Slow Growth in the 1980's Volume 1. Economic Performance and Policy,* 565-580. Washington, D.C.: U.S. Government Printing Office, Joint Committee Print, 1958.

Trebilcock, Michael, Ralph A. Winter, Paul Collins, and Edward M. Iacobucci. *The Law and Economics of Canadian Competition Policy*. University of Toronto Press, 2002.

Türk Alexander, Gerard Rowe, and Hofmann Herwig C H. *Specialized Administrative Law of the European Union: A Sectoral Review*. Oxford, U.K.: Oxford University Press, 2018.

Tussie, Diana, and David Glover. *The Developing Countries in World Trade: Policies and Bargaining Strategies*. Boulder, CO: Lynne Rienner, 1993.

U.S. Congress, *Tariff Acts passed by the Congress of the United States from 1789 to 1897: Including All Acts, Resolutions, and Proclamations Modifying*. Nabu Press, 2012.

U.S. Tariff Commission, *Information Concerning Dumping and Unfair Competition in the United States and Canada's Anti-dumping Law.* Washington, D.C.: Washington Government Printing Office, 1919.

Viner, Jacob. *Dumping, A Problem in International Trade*. Chicago, IL: The University of Chicago Press, 1923.

Vermulst, Edwin A. *The WTO Anti-Dumping Agreement: A Commentary*. Oxford, U.K.: Oxford University Press, 2008.

Vermulst, Edwin A. *EU Anti-Dumping Law and Practice*. London: Sweet & Maxwell/Thomson Reuters, 2010.

Viner, Jacob. *Dumping: A Problem in International Trade*. Fairfield, NJ: A.M. Kelley, 1991.

Wilson, Gunn, and John Alexander. *Politics and the Public Interest in the 17th Century*. London: Routledge and K. Paul, 1969.

Winham, Gilbert R. *International Trade and the Tokyo Round Negotiation*. Princeton, NJ.: Princeton University Press, 2016.

Winham, Gilbert R. "The Evolution of the World Trading System-The Economic and Policy Context," in *The Oxford Handbook of International Trade Law*, edited by Daniel Bethlehem, Isabelle Van Damme, Donald McRae, and Rodney Neufeld, 41-78. Oxford, U.K.: Oxford University Press, 2009.

Wei, Dan, and Magalhães Furlan Fernando de. *Brazil in World Trade: Contingent Protection Measures*. Alphen aan den Rijn: Wolters Kluwer Law & Business, 2012.

Wooton, Ian, and Maurizio Zanardi. "Antidumping versus Antitrust: Trade and Competition Policy." in *Handbook of International Trade: Economic and Legal Analyses of Trade Policy and Institutions, II*, edited by E. Kwan Choi and James C. Hartigan, 383-402. New Jersey: Wiley-Blackwell; 1st edition 2005.

World Trade Organization Secretariat. "First WTO Ministerial Conference (MC1): Singapore, 9-13 December 1996," in *WTO Ministerial Conferences: Key Outcomes,* 2-33. Cambridge, MA: Cambridge University Press, 2019. doi:10.1017/9781108629874.002.

Wruuck, Patricia. *The Political Economy of Anti-Dumping Protection: a Strategic Analysis*. Cham: Springer, 2015.

Wu, Xiaochen. *Anti-Dumping Law and Practice of China*. Alphen aan den Rijn: Wolters Kluwer, 2009.

Zeng, Ka. *China's Foreign Trade Policy the New Constituencies*. London: Routledge, 2009.

Zeng, Ka, and Wei Liang. *China and Global Trade Governance: China's First Decade in the World Trade Organization*. London: Routledge, 2017.

Zhang, Xin. *International Trade Regulation in China: Law and Policy*. Oxford, U.K.: Hart Publishing, 2006.

Zhang, Yunling. "Challenges to the WTO and a Trade Facilitation Agreement," in *The Doha to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration*, edited by Yoshifumi Fukunaga, John Riady and Pierre Sauvé, 29-49. An ERIA-UPH-WTI e-book, 2012.

Zhao, Shuang, and Scott Kennedy. "China's Frustrating Pursuit of Market Economy Status: Implications for China and the World." in *From Rule Takers to Rule Makers: The Growing Role of Chinese in Global Governance*, Scott Kennedy and Shuaihua Cheng, 63-70. Bloomington, IN: Research Center for Chinese Politics & Business, Indiana University, 2012.

CASE

Dongbu Steel Co., Ltd. v. United States, Fed. Cir., Mar. 31, 2011.

Corp. V. United States.
Jtekt Corp. v. United States, 642 F.3d 1378 , Fed. Cir. 2011.

GATT/WTO DOCUMENTt

ADP/1, Committee on Anti-Dumping Practices - Information on Implementation and Administration of the Agreement, 29 January 1980.

ADP/2, Committee on Anti-Dumping Practices - Decisions by the Committee on Anti-Dumping Practices Taken on 5 May 1980, 12 May 1980.

ADP/M/1, 06 March 1980, Committee on Anti-Dumping Practices - Minutes of the Meeting of the Committee on 22 January 1980

BISD 15S/4-35, Protocols 1964-67 Trade Conference Final Act, April 1968.

G/ADP/15, Chair's Report to the Council for Trade in Goods on Transitional Review of China,13 November 2006.

G/ADP/IG/W/3, Topic 1-An Approach to the Definition of Circumvention, 23 October 1997,

G/ADP/IG/W/12, Topic 1-What Constitutes Circumvention? 26 October 1998.

G/ADP/ N/1/ CHN2/Suppl.1, Notification of Laws and Regulations under Articles 18.5 and 32.6 of the Agreements: People's Republic of China, 18 February 2003.

G/ADP/N/180/CHN, Semi-Annual Report under Article 16.4 of the Agreement: China, 10 March 2009.

G/ADP/N/188/CHN, Semi-Annual Report under Article 16.4 of the Agreement: The People's Republic of China, 9 September 2009.

L/328 - 3S/81, Swedish Antidumping Duties, 23 February 1955.

L/4239, Working Party on Acceptance of the Anti-Dumping Code - Report of the Working Party on Acceptance of the Anti-Dumping Code, 04 November 1975.

L/6657 – 37S/132, EEC – Regulation on Imports of Parts and Components adopted 16 May 1990, 22 March 1990.

MIN.DEC, Ministerial Declaration on the Uruguay Round, 20 September 1986.

MTN.GNG/NG8/W/9, Uruguay Round - Group of Negotiations on Goods (GATT)- Negotiating Group on MTN Agreements and Arrangements - Communication from India, 30 September 1987.

MTN.GNG/NG8/W/22, Uruguay Round - Group of Negotiations on Goods (GATT)- Negotiating Group on MTN Agreements and Arrangements - Communication from the United States, 14 December 1987.

MTN.GNG/NG8/W/26, Uruguay Round-Group of Negotiations on Goods (GATT)-Negotiating Group on MTN Agreements and Arrangements-Checklist of Issues Raised in the Negotiating Group on MTN Agreements and Arrangements-Note by the Secretariat, 02 March 1988.

MTN.GNG/NG8/W/28, Communication from the European Communities - - Uruguay Round-Anti-Dumping Code, 21 March 1988.

MTN.GNG/NG8/W/48, Uruguay Round-Group of Negotiations on Goods (GATT) - Negotiating Group on MTN Agreements and Arrangements - Submission of Japan on the Amendments to the Anti-Dumping Code, 03 August 1989.

MTN.GNG/NG8/W/59, Uruguay Round - Group of Negotiations on Goods (GATT) - Negotiating Group on MTN Agreements and Arrangements - Communication from the United States – Proposal for Improvements to the Anti-Dumping Code, 20 December 1989.

MTN.GNG/NG8/W/74, Uruguay Round - Group of Negotiations on Goods (GATT) - Negotiating Group on MTN Agreements and Arrangements - Communication from the European Communities to the GATT Uruguay Round - Anti-Dumping Code, 21 March 1990.

MTN.GNG/NG8/9, Uruguay Round - Group of Negotiations on Goods (GATT) - Negotiating Group on MTN Agreements and Arrangements - Meeting of 27 - 28 October 1988 - Note by the Secretariat, 16 November 1988.

MTN.GNG/NG8/11, Uruguay Round - Group of Negotiations on Goods (GATT) - Negotiating Group on MTN Agreements and Arrangements - Meeting of 17 and 19 July 1989 - Note by the Secretariat, 14 August 1989.

MTN.GNG/NG8/12, Uruguay Round - Group of Negotiations on Goods (GATT) - Negotiating Group on MTN Agreements and Arrangements - Meeting of 18 and 20 September 1989 - Note by the Secretariat, 13 October 1989.

MTN.GNG/NG8/15, Uruguay Round - Group of Negotiations on Goods (GATT) - Negotiating Group on MTN Agreements and Arrangements - Meeting of 31 January - 2 February and 19 - 20 February 1990, 19 March 1990.

TN/RL/W/1, Negotiating Group on Rules - Improved Disciplines under the Agreement on Subsidies and Countervailing Measures and the Anti-Dumping Agreement - Communication from Canada, 15 April 2002.

TN/RL/W/6, Negotiating Group on Rules - Anti-Dumping: Illustrative Major Issues - Paper from Brazil; Chile, Colombia, Costa Rica, Hong Kong, China, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Thailand and Turkey, 26 April 2002.

TN/RL/W/10, Negotiating Group on Rules - Second Contribution to Discussion of the Negotiating Group on Rules on Anti-dumping Measures - Paper by Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea; Norway; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Singapore; Switzerland; and Thailand, 28 June 2002.

TN/RL/W/13, Negotiating Group on Rules - Submission from the European Communities Concerning the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement), 08 June 2002.

TN/RL/W/21, Negotiating Group on Rules - Adverse Trade and Conservation Effects of Fisheries Subsidies - Communication from the United States, 15 October 2002.

TN/RL/W/23, *Comments on Document TN/RL/W/10 on AD Measures*, Paper from Australia, 15 October 2002.

TN/RL/W/25, Negotiating Group on Rules - Questions from the United States on Papers Submitted to the Rules Negotiating Group, 16 October 2002.

TN/RL/W/26, Negotiating Group on Rules - Second Submission of India (Anti-Dumping Agreement), 17 October 2002.

TN/RL/W/27, Negotiating Group on Rules - Communication from the United States - Basic Concepts and Principles of the Trade Remedy Rules, 22 October 2002.

TN/RL/W/28, General Contribution to the Discussion of the Negotiating Group on Rules on AD Measures, Paper from Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea; Mexico; Norway; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Singapore; Switzerland; Thailand; and Turkey , 15 November 2002.

TN/RL/W/29, Negotiating Group on Rules - Third Contribution to Discussion of the Negotiating Group on Rules on Anti-Dumping Measures - Paper from Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Japan; Korea; Norway; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Singapore; Switzerland; Thailand; and Turkey, 15 November 2002.

TN/RL/W/34, Second Set of Question from the United States on Papers Submitted to the Rules Negotiating Group, from the United States, 2 December 2002.

TN/RL/W/35, Negotiating Group on Rules - Investigatory Procedures under the Anti-Dumping and Subsidies Agreements - Submission by the United States, 03 December 2002.

TN/RL/W/36, Negotiating Group on Rules - Morocco's Views on the Negotiations on the Rules and Disciplines of the Agreement on Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures - Communication from the Kingdom of Morocco, 04 December 2002.

TN/RL/W/43, Comments from Australia on the United States' Paper on Investigatory Procedures under the AD and Subsidies Agreements (TN/RL/W/35), Submission by Australia, 24 January 2003.

TN/RL/W/46, Negotiating Group on Rules - Fourth Contribution to the Discussion of the Negotiating Group on Rules on Anti-Dumping Measures - Paper by Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Korea; Japan; Mexico; Norway; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Singapore; Switzerland; Thailand and Turkey, 24 January 2003.

TN/RL/W/47, Negotiating Group on Rules - Submission from Canada Respecting the Agreement on Implementation of Article VI of the GATT 1994 (the Anti-Dumping Agreement), 28 January 2003.

TN/RL/W/50, Circumvention Communication from the United States, 4 February 2003.

TN/RL/W/51, Negotiating Group on Rules - Questions Pertaining to the United States' Paper on Basic Concepts and Principles of the Trade Remedy Rules, 05 February 2003.

TN/RL/W/54, Third Set of Question from the United States on Papers Submitted to the Rules Negotiating Group, 6 February 2003.

TN/RL/W/59, Comments from Australia on the Third Contribution from a Number of (Document TN/RL/W/29), 11 February 2003.

TN/RL/W/62, Comments from Australia on Canada's Submission on the AD Agreement (Document TN/RL/W/47), 11 February 2003.

TN/RL/W/63, Negotiating Group on Rules - Senior Officials' Statement on Anti-Dumping Negotiations, 12 February 2003.

TN/RL/W/65 (TN/RL/W/47), Korea's Comments on Canada's Submission on the AD Agreement, 24 March 2003.

TN/RL/W/66, Negotiating Group on Rules - Proposal of the People's Republic of China on the Negotiation on Anti-Dumping, 06 March 2003.

TN/RL/W/72, Negotiating Group on Rules - Identification of Certain Major Issues under the Anti-Dumping and Subsidies Agreements, 19 March 2003.

TN/RL/W/75, Comments from Australia on the European Communities' Paper: Reflection on a Swift Control Mechanism for Initiations, 19 March 2003.

TN/RL/W/79, Negotiating Group on Rules - Preliminary Comments and Questions by the Arab Republic of Egypt on the Contributions Submitted in the Framework of the Doha Negotiations on the Anti-dumping Agreement and on the Agreement on Subsidies and Countervailing Measures - Submission from Egypt, 24 March 2003.

TN/RL/W/81, Negotiating Group on Rules - Communication from Argentina, 23 April 2003.

TN/RL/W/86, General Contribution to the Discussion of the Negotiating Group on Rules on the Antidumping Agreement, Submission from Australia, 30 April 2003.

TN/RL/W/101, Egyptian Paper Containing Replies to Questions posed by Australia in Document Number TN/RL/W/73, 6 May 2003.

TN/RL/W/103, Fourth Set of Question from the United States on Papers Submitted to the Rules Negotiating Group, 6 May 2003.

TN/RL/W/110, Negotiating Group on Rules - Identification of Issues under the Anti-Dumping Agreement that Need to be Improved and Clarified within the Current Negotiations on WTO Rules Second Submission of the Arab Republic of Egypt, 22 May 2003.

TN/RL/W/113, Negotiating Group on Rules - Proposal on Prohibition of Zeroing - Paper from Brazil; Chile; Columbia; Costa Rica; Hong Kong; China; Israel; Japan; Korea; Mexico; Norway; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Singapore; Switzerland and Thailand, 06 June 2003.

TN/RL/W/119, Negotiating Group on Rules - Proposal on Lesser Duty - Paper from Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea; Mexico; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand and Turkey, 16 June 2003.

TN/RL/W/130, Negotiating Group on Rules - Further Issues Identified under the Anti-Dumping and Subsidies Agreements for Discussion by the Negotiating, 20 June 2003.

TN/RL/W/137, The Role of Transparency in the AD Agreement, Submission by New Zealand, 15 July 2003.

TN/RL/W/138, Proposals on Cost Saving in AD Proceedings," Submission from the European Communities and Japan, 17 July 2003.

TN/RL/W/141, Comments of the Arab Republic of Egypt on Further Contributions Submitted in the Framework of the Doha Round Negotiations on the Agreements on AD and Subsidies and Countervailing Measures. Communication received from the Permanent Mission of Egypt, 22 July 2003.

TN/RL/W/143, Negotiating Group on Rules - Note by the Chairman - Compilation of Issues and Proposals Identified by Participants in the Negotiating Group on Rules, 22 August 2003.

TN/RL/W/162, Rev.1 (TN/RL/GEN/13), Prompt Access to Non-Confidential Information (Articles 6.4 Agreement on AD Practices and 12.3 Agreement on Subsidies and Countervailing Measures), Communications from the Unites States, 20 April 2011.

TN/RL/W/171, Negotiating Group on Rules - Senior Officials' Statement - Communication from Brazil, Chile, Colombia, Costa Rica, Hong Kong, China; Israel, Japan, Korea, Rep. of; Mexico; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Thailand and Turkey, 15 February 2005.

TN/RL/W/174 (Rev.1), Public Interest, Paper from Chile; Costa Rica; Hong Kong, China; Israel; Japan; Korea, Rep. of; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and Thailand, 7 April 2005.

TN/RL/W/205, Circumvention, Paper from Hong Kong, China, 21 April 2006.

TN/RL/W/205/Rev.1, Circumvention, Paper from Chile and Hong Kong, China, 27 April 2006.

TN/RL/W/213, Draft Consolidated Chair Texts of the AD and SCM Agreement, 30 November 2007.

TN/RL/W/214, Negotiating Group on Rules - Statement on "Zeroing"' in the Anti-Dumping Negotiations - Statement of Brazil; Chile; China; Costa Rica; Hong Kong, China; India; Japan; Korea, Rep. of; Mexico; Norway; Singapore; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and Thailand, 07 December 2007.

TN/RL/W/215, Negotiating Group on Rules - Prohibition of Zeroing - Statement of Brazil; Chile; China; Colombia; Costa Rica; Hong Kong, China; India; Indonesia; Israel; Japan; Korea, Rep. of; Mexico; Norway; Pakistan; Singapore; South Africa; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and; Thailand; and Viet Nam, 31 January 2008.

TN/RL/W/216, Proposed Provision of Anti-circumvention, Statement of China; Hong Kong, China; Pakistan, 12 February 2008.

TN/RL/W/222, Negotiating Group on Rules - Public Interest - Communication from Colombia; Hong Kong, China; Israel; Japan; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, 12 March 2008.

TN/RL/W/232, Negotiating Group on Rules - Working Document from the Chairman, 28 May 2008.

TN/RL/W/233, Negotiating Group on Rules - Statement on Anti-Dumping Negotiations - Communication from Brazil; Chile; China; Colombia; Costa Rica; Hong Kong, China; Indonesia; Israel; Japan; Korea, Rep. of; Malaysia; Mexico; Norway; Pakistan; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand and Viet Nam, 08 July 2008.

TN/RL/W/236, Negotiating Group on Rules - New Draft Consolidated Chair Texts of the AD and SCM Agreements, 19 December 2008.

TN/RL/W/244, Negotiating Group on Rules - Statement on the Anti-Dumping Negotiations - Communication from the Friends of Anti-Dumping Negotiations (FANs), 20 November 2009.

TN/RL/W/254, Negotiating Group on Rules - Communication from the Chairman, 21 April 2011.

TN/RL/9, Negotiating Group on Rules - Negotiating Group on Rules - Report by the Chairman to the Trade Negotiations Committee, 25 June 2004.

TN/RL/13, Negotiating Group on Rules - Report by the Chairman to the Trade Negotiations Committee, 19 July 2005.

TN/RL/GEN/15, Conduct of Verifications (ADA Article 6.7& Annex I and ASCM Article 12.6 & Annex VI), Communication from the United States, 15 September 2004.

TN/RL/17, Negotiating Group on Rules - Report by the Chairman to the Trade Negotiations Committee, 01 May 2006.

TN/RL/19, Negotiating Group on Rules - Report by the Chairman to the Trade Negotiations Committee, 27 July 2006.

TN/RL/24, Negotiating Group on Rules - Report by the Chairman to the Trade Negotiations Committee, 22 March 2010.

TN/RL/M/25, Negotiating Group on Rules - Preliminary Determinations (Article 6 ADA & Article 12 ASCM) - Communication from the United States, 20 October 2004.

TN/RL/M/26, Negotiating Group on Rules - Proposal on Like Product and Product under Consideration - Communication from Canada, 01 December 2004.

TN/RL/GEN/8, Negotiating Group on Rules - Prohibition of Zeroing - Communication from Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea; [...]Kinmen and Matsu; and Thailand, 14 July 2004.

TN/RL/GEN/21, Explanations of Determinations and Decisions, Communication from Canada, 19 October 2004.

TN/RL/GEN/25, Preliminary *Determinations (Article 6 ADA & Article 12 ASCM)*, Communication from the United States, 20 October 2004.

TN/RL/GEN/29, Negotiating Group on Rules - Circumvention - Communication from the United States, 08 February 2005.

TN/RL/GEN/46, Negotiating Group on Rules - Issues Related to Article 6.10, Including "Limited Examination" and Article 9.4 "All Other's Rate" - Paper from Brazil, Chile, H[...], Kinmen and Matsu and Thailand, 10 June 2005.

TN/RL/GEN/49, Proposals on Issues Relating to Evidence, Public Notice and Explanation of the Determinations under Article 6 and 12 of the ADA, Communication from Norway, 1 July 2005.

TN/RL/GEN/53, Negotiating Group on Rules - Further Submission on Public Interest - Communication from Hong Kong, China; Israel, Japan, Korea, Rep. of; Norway, Singapore, Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and Thailand, 01 July 2005.

TN/RL/GEN/58, Future Comments on Lesser Duty Proposals, 13 July 2005.

TN/RL/GEN/63, Proposals on Disclosure of Essential Facts, and Communication by Turkey, 16 September 2005.

TN/RL/GEN/69, Further Submission on Issues Relating to the Initiation and Completion of Investigations, Paper from Hong Kong, China, 13 October 2005.

TN/RL/GEN/71, Negotiating Group on Rules - Submission on Circumvention - Communication from the United States, 14 October 2005.

TN/RL/GEN/85, Negotiating Group on Rules - Public Interest - Paper from Canada, 17 November 2005.

TN/RL/GEN/87, Negotiating Group on Rules - Further Proposal on Issues Relating to Article 6.9 of the ADA - Paper from Norway, 17 November 2005.

TN/RL/GEN/89, Identification of Parties, Paper from Brazil and United States, 18 November 2005.

TN/RL/GEN/90, Access to Non-Confidential Information, Paper from the United States, 17 November 2005.

TN/RL/GEN/102, Proposal on Preliminary Determinations, Paper from Brazil, 3 March 2006.

TN/RL/GEN/106, Negotiating Group on Rules - Circumvention - Paper from the United State, 06 March 2006.

TN/RL/GEN/108, Disclosure of Essential Preliminary Legal and Factual Considerations (Mandatory Preliminary Determinations) (ADA Article 6, ASCM Article), Paper from the United States, 6 March 2006.

TN/RL/GEN/110, Transparency of AD Activity, Submission from the European Communities, 20 April 2006.

TN/RL/GEN/118, Duration of Review Investigations, 21 April 2006.

TN/RL/GEN/123, revised as TN/RL/GEN/123 Rev.1, Further Submission on Issues Relating to the Initiation and Completion of Investigations, Paper from Hong Kong, China, 27 April 2005.

TN/RL/GEN/124, Proposals on Procedure of Providing Non-confidential Application, Communication from Japan, 24 April 2006.

TN/RL/GEN/126, Negotiating Group on Rules - Proposals on the Prohibition of Zeroing - Communication from Japan, 24 April 2006.

TN/RL/GEN/133, Negotiating Group on Rules - Disclosure of Calculations in Preliminary and Final Determinations - Communication from the United States, 24 April 2006.

WT/DSB/26, Dispute Settlement Body, 12 October 2001.

WT/DSB/M/91, Minutes of Meeting, 30 November 2000.

WT/DS136/R, United States-Anti-dumping Act of 1916 Complaint by the European Communities, Report of the Panel, 31 March 2000.

WT/DS136/AB/R and WT/DS162/AB/R, United States- Anti-dumping Act of 1916, 28 August 2000.

WT/DS136/11 and WT/DS162/14, United States- Anti-dumping Act of 1916, 28 February 2001.

WT/DS141/R, European Communities – Anti-dumping Duties on Imports of Cotton – Type Bed Linen from India - Report of the Panel, 30 October 2000.

WT/DS141/AB/R, European Communities-Antidumping Duties on Imports of Cotton-Type Bed Linen from India, March 12, 2001.

WT/DS177/R, WT/DS178/R, United States- Safeguard Measures on Imports of Fresh, Chilled or Frozen Lam Meat from New Zealand and Australia, 21 December 2000.

WT/DS184/AB/R, United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan - AB-2001-2 - Report of the Appellate Body, 24 July 2001.

WT/DS217/R, WT/DS234/R, United States- Continued Dumping and Subsidy Offset Act of 2000, Report of the Panel, 16 September 2002.

WT/DS217/AB/R, WT/DS/234/AB/R, United States - Continued Dumping and Subsidy Offset Act of 2000 - AB-2002-7 - Report of the Appellate Body, 16 January 2003.

WT/DS217/ARB/EEC, United States-Continued Dumping and Subsidy Offset Act of 2000 (Original Complaint by ECC), 31 August 2004.

WT/DS217/ARB/IND, United States-Continued Dumping and Subsidy Offset Act of 2000 (Original Complaint by India), 31 August 2004.

WT/DS217/ARB/BRA, United States-Continued Dumping and Subsidy Offset Act of 2000 (Original Complaint by Brazil), 31 August 2004.

WT/DS219/AB/R, European Communities - Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil - AB-2003-2 - Report of the Appellate Body, 22 July 2003.

WT/DS221/R, United States - Section 129(c) (1) of the Uruguay Round Agreements – Panel Report, 4 September 2002.

WT/DS234/ARB/CAN, United States- Continued Dumping and Subsidy Offset Act of 2000: Recourse to Arbitration by the United States under Article 22.6 of the DSU, 31 August 2004.

WT/DS244/R, United States - Sunset Reviews of Anti-dumping on Corrosion – Resistant Carbon Steel Flat Products from Japan - Report of the Panel, 14 August 2003.

WT/DS244/AB/R, United States - Sunset Reviews of Anti-dumping on Corrosion – Resistant Carbon Steel Flat Products from Japan - Report of the Appellate Body, 15 December 2003.

WT/DS264/29/Add.1 G/L/566/Add.2 G/ADP/D42/2/Add.1, United States- Final Dumping Determination on Softwood Lumber from Canada, 9 March 2007.

WT/DS268/R, United States - Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentina (DS268), 16 July 2004.

WT/DS282/R, United States - Anti-dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico, 20 June 2005.

WT/DS294/AB/R, United States- Laws, Regulations and Methodology for Calculating Dumping Margins (“zeroing”), 18 April 2006.

WT/DS294/AB/RW, United States - Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") - Recourse to Article 21.5 of the DSU by the European Communities- Report of the Appellate Body, 14 May 2009.

WT/DS316/AB/R, European Communities and Certain Member States - Measures Affecting Trade in Large Civil Aircraft - AB-2010-1 - Report of the Appellate Body, 18 May 2011.

WT/DS322/AB/RW, United States Measures Relating to Zeroing and Sunset Reviews - Recourse to Article 21.5 of the DSU, 18 August 2009.

WT/DS379/AB/R, United States- Definitive Anti-dumping and Countervailing Duties on Certain Products from China, 11 March 2011.

WT/DS397/R, European Communities-Definitive AD Measures on Certain Iron or Steel Fasteners from China: Report of the Panel, 3 December 2010.

WT/DS516/13, European Union-Measures Related to Price Comparison Methodologies: Communication from the Panel,17 June 2019.

WT/DS/OV/4, Update of WTO Dispute Settlement Cases, 6 February 2002.

WT/GC/44, General Council - Annual Report (2000), 12 February 2001.

WT/GC/W/205, General Council - Preparations for the 1999 Ministerial Conference - Agreement on Implementation of Article VI of GATT 1994 - Proposal under Paragraph 9(a)(i) of the Geneva Ministerial Declaration Communication from Malaysia on behalf of ASEAN Members, 14 June 1999.

WT/GC/W/233, General Council - Preparations for the 1999 Ministerial Conference - Contribution to the Preparatory Process - Communication from Kenya, 05 July 1999.

WT/GC/W/235, General Council - Preparations for the 1999 Ministerial Conference - Agreement on Implementation of Article VI of the GATT 1994 - Proposal under Paragraph 9 9(a)(i) of the Geneva Ministerial Declaration Communication from Korea, 6 July 1999.

WT/GC/W/240, General Council - Preparations for the 1999 Ministerial Conference - Proposal on Anti-Dumping - Communication from Japan, 06 July 1999.

WT/GC/W/269, General Council - Preparations for the 1999 Ministerial Conference - The Anti-Dumping Agreement - Communication from Brazil, 26 July 1999.

WT/GC/W/315, General Council - Preparations for the 1999 Ministerial Conference - Proposals Regarding the Anti-Dumping Agreement - Communication from Colombia, 14 September 1999.

WT/GC/W/324, General Council - Preparations for the 1999 Ministerial Conference - Agreement on Anti-Dumping - Communication from Egypt, 20 September 1999.

WT/GC/W/330, General Council - Preparations for the 1999 Ministerial Conference - Proposal on Anti-Dumping - Communication from Guatemala, 23 September 1999.

WT/GC/W/336, General Council - Preparations for the 1999 Ministerial Conference - Special Safeguards (SSGs) - Communication from MERCOSUR (Argentina, Brazil, Paraguay and Uruguay), 23 September 1999.

WT/GC/W/338, General Council - Preparations for the 1999 Ministerial Conference - Agreement on Implementation of Article VI of the GATT 1994 - Proposal under Paragraph 9 9(a)(i) of the Geneva Ministerial Declaration Communication from New Zealand, 23 September 1999.

WT/L/432, Accession of the People's Republic of China, 23 November 2001.

WT/L/579, Doha Work Programme - Decision Adopted by the General Council on 1 August 2004, 2 August 2004.

WT/MIN(01)/DEC/1, Ministerial Declaration, 20 November 2001.

WT/MN (05)/DEC, Doha Work Program: Ministerial Declaration, 22 December 2005.

WT/WGTCP/W/88, 28 August 1998, Communication from the United States.

WTO, GATT 1994 – Article XXVIII (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

WTO, GATT 1994 – Article XXIII (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

WTO, Anti-Dumping Agreement - Article 1 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

WTO, Anti-Dumping Agreement - Article 2 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

WTO, Anti-Dumping Agreement-Article 3 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

WTO, Anti-Dumping Agreement – Article 6 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

WTO, Anti-Dumping Agreement – Article 9 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

WTO, Anti-Dumping Agreement- Article 11 (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

WTO, Anti-Dumping Agreement - Annex II (Jurisprudence), WTO ANALYTICAL INDEX, Current as of: December 2020.

WTO, World Trade Report 2009: Trade Policy Commitments and Contingency Measures (Geneva, 2009).

WTO, Annual Report 2009, https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep09_e.pdf.

WTO, Annual Report 2012. WTO, WTO Annual Report 2012, https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep12_e.pdf.

GATT, The General Agreement on Tariffs and Trade (GATT 1947), https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm.

WTO, "What is the World Trade Organization?" Understanding the WTO, Basics, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm.

WTO, "Anti-dumping, subsidies, safeguards: contingencies, etc." https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm.

WTO, "Principles of the trading system," https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm.

WTO, "Technical Information on anti-dumping," https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm.

WTO, "The GATT years: from Havana to Marrakesh," https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm.

WTO, "Technical Information on Anti-dumping," https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm.

WTO, "A Summary of the Final Act of the Uruguay Round. Agreement on Implementation of Article VI." https://www.wto.org/english/docs_e/legal_e/ursum_e.htm#fAgreement.

WTO, "WTO Geneva Ministerial Declaration," https://www.jus.uio.no/lm/en/html/wto.ministerial.declaration.geneva.1998.html.

WTO, "3 December-The Final Day and what happens next," *WTO Briefing Note*, 1999. https://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/resum03_e.htm.

WTO, "Seventh WTO Ministerial Conference news archive," https://www.wto.org/english/news_e/archive_e/mn09_arc_e.htm.

WTO, "FANs push transparency, due process, but members reluctant to engage in rules negotiations", 25 June 2015, https://www.wto.org/english/news_e/news15_e/rule_25jun15_e.htm.

WTO, "Agriculture meeting marks "turning point" as negotiations enter decisive stage, chair says", 26 November 2019, https://www.wto.org/english/news_e/news19_e/agri_03dec19_e.htm.

WTO, "Eighth China Round Table underlines contributions of accessions to WTO reform", 9 December 2019, https://www.wto.org/english/news_e/news19_e/acc_05dec19_e.htm.

WTO, "Eighth China Round Table underlines contributions of accessions to WTO reform", 9 December 2019, https://www.wto.org/english/news_e/news19_e/acc_05dec19_e.htm.

WTO, "'Clear interest' in securing outcomes in rules negotiations for 2017 Ministerial", May 25 2016, https://www.wto.org/english/news_e/news16_e/rule_25may16_e.htm. A number of other delegations indicated that they see no prospect for progress on Anti-dumping in the NGR.

WTO, "WTO members exchange views on rise in Anti-dumping actions", 27 April 2017, https://www.wto.org/english/news_e/news17_e/anti_10may17_e.htm.

WTO, "Members exchange views, concerns on recent Anti-dumping actions", 25 October 2017, https://www.wto.org/english/news_e/news17_e/anti_25oct17_e.htm.

WTO, "Trade in War's Darkest Hour: Churchill and Roosevelt's daring 1941 Atlantic Meeting that linked global economic cooperation to lasting peace and security," https://www.wto.org/english/thewto_e/history_e/tradewardarkhour41_e.htm.

WTO, "China seeks special consideration for SMEs in anti-dumping, countervailing probes," 11 October 2017, https://www.wto.org/english/news_e/news17_e/rule_16oct17_e.htm.

WTO, "Browse by date", https://www.wto.org/english/docs_e/gattdocs_e.htm.

WTO, "Statistic on Antidumping", https://www.wto.org/english/tratop_e/adp_e/adp_e.htm.

JOURNAL ARTICLE

Abdelwahab, Noura. "Are there Positive Impacts for Adopting Lesser Duty Rule in Anti-dumping Investigations." *EcoMod* 9599, (2016): 16-28.

Ahmad, Saad, Gamache, Lauren., and Thomsen, Craig. "Can Macroeconomic Factors Predict Antidumping Filings in the United States?" *Office of Economics Working Paper 2018-10-A,* October 2018, https://www.usitc.gov/publications/332/working_papers/ecwp-2018-10-a.pdf.

Ahn, Dukgeun., and Shin, Wonkyu. "Analysis of Anti-Dumping Use in Free Trade Agreements." *Journal of World Trade* 45, no.2 (2010): 431-456.

Aggarwal, Aradhna. "Macro-Economic Determinants of Anti-dumping: A Comparative Analysis of Developed and Developing Countries." *World Development* 32, no.6 (2004): 1043-1057.

Aggarwal, Aradhna. "Patterns and Determinants of Antidumping: A worldwide perspective," *Indian Council for Research on International Economic Relations, New Delhi Working Papers*, no.113 (2003):1-47.

Aggarwal, Aradhna. "The Use of Anti-dumping in Brazil, China, India and South Africa: Rules, Trends and Causes," *Kommerskollegium/National Board of Trade, Sweden*: Report (2005-02-10): 1-81. https://www.researchgate.net/publication/303406271.

Aggarwal, Aradhna. "The WTO Antidumping Code: Issues for Review in Post-Doha Negotiations," *Indian Council for Research on International Economic Relations*, no.99 (2004), http://icrier.org/wp-admin/images/wto/1408183129_WTO-4.pdf.

Aggarwal, Aradhna. "The WTO Antidumping agreement: possible reform through the inclusion a public interest clause", *ICRIER Working Paper*, no.142 (2004): 1-21.

Aggestam, Lisbeth. "Introduction: Ethical Power Europe?" *International Affairs* 84, no.1 (2008): 1-11.

Akakwam, Philip A. "The Standard of Review in the 1994 Antidumping Code: Circumscribing the Role of GA TT Panels in Reviewing National Antidumping Determinations." *Minnesota Journal of International Law* 5, (1996): 277-290.

Applebaum, H.M. “The Anti-dumping Laws-Impact on the Competitive Process.” *Anti-trust Law Journal* 43, no.3 (1974): 594.

Alavi, Rokiah, and Haniff Ahamat. “Predation and Public Interest in the WTO Anti-dumping Duty Determination: A Malaysian Case.” *Journal of Economic Cooperation* 25, no.4 (2004): 61-88.

Alford, Roger P. “Why a Private Right of Action Against Dumping Would Violate GATT,” *New York University Law Review* 66, no.696 (1991): 702-710. https://scholarship.law.nd.edu/law_faculty_scholarship/549.

Alford, Roger P. “Reflections on US - Zeroing: A Study in Judicial Overreaching by the WTO Appellate Body.” *Columbia Journal of Transnational Law* 45, (2006): 196-220.

Alford, William P. “When is China Paraguay an Examination of the Application of the Antidumping and Countervailing Duty Laws of the United States to China and Other Nonmarket Economy Nations.” *Southern California Law Review* 61, (1987): 79-88.

Almstedt, Kermit W. “International price discrimination and the 1916 Anti-dumping Act- Are Amendments in Order?” *Law and Policy International Business* 13, (1981): 747-760.

Almstedt, Kermit W., and Patrick M. Norton. “China’s Antidumping Laws and the WTO Antidumping Agreement; (Including Comments on China's Early Enforcement of its Antidumping Laws).” *Journal of World Trade* 34, no.6 (2000): 75-114.

Anderson, James E. “Strategic Lobbying and Antidumping.” *Journal of Economic Integration* 9, no.2 (1994): 129-55.

Anderson, James E. “The Steel Trigger Price Mechanism.” *Economic Commentatry*, ISSN 0428-1276, May 17, 1982,

Anderson, Keith. “Antidumping Laws in the United States: Use and Welfare Consequences.” *Journal of World Trade* 27, no.2 (1993): 19-33.

Anderson, Shelby, Isasi, William., and David Lindgren. “Trade Wars: Anti-Dumping And Countervailing Duty Trends.” *Law 360*, October 15, 2018, https://www.cov.com//media/files/corporate/publications/2018/10/trade_wars_anti_dumping_and_countervailing_duty_trends.pdf.

Aoun, Wissam. “Constructivism, Embedded Liberalism and Anti-Dumping Canadian Public Interest Query as Case Study of Embedded Liberalism.” *Canada-United States Law Journal* 41, no.1 (2017): 18-45.

Aquilante, Tommaso. “Bureaucrats or Politicians? Political Parties and Antidumping in the US.” *Munich Personal RePEc Archive*, no.2 (2015): 1-33, https://mpra.ub.uni-muenchen.de/70359/1/MPRA_paper_70359.pdf.

Avsar, Veysel. “The Anatomy of Trade Deflection.” *Economics Research Working Paper Series*, no. 23 (2012): 16-26.

Avsar, Veysel. “Antidumping, Retaliation Threats, and Export Prices.” *The World Bank Economic Review* 27, no.1 (2013):133-148.

Bacchetta, Marc, and Marion Jansen. “Adjusting to trade liberalization: The role of policy, institutions and WTO Disciplines.” *WTO Special Studies*, no. 7 (2003): 5-65.

Baran, Jan. “The Impact of Antidumping on EU trade.” *IBS Policy Papers* 12, (2015): 1-22.

Barceló III, John J. “Antidumping Laws as Barriers to Trade-The United States and the International Anti-dumping

Code." *Cornell Law Review* 57, no.491 (1972): 500-516.

Barceló III, John J. "A History of GATT Unfair Trade Remedy Law--Confusion of Purposes." *Cornell Law Faculty Publications*, no.517 (1991): 1-15.

Barceló III, John J. "Subsidies, Countervailing Duties and Antidumping After the Tokyo Round." *Cornell International Law Journal* 13, no.2 (1981): 257-288.

Baldwin, Robert E. "Failure of the WTO Ministerial Conference at Cancun: Reasons and Remedies." *The World Economy* 29, no.6 (2006): 677-696.

Baldwin, Robert E. and C.S. Magee. "Is Trade Policy for Sale? Congressional Voting on Recent Trade Bills." *Public Choice* 105, no.1-2 (2000): 79-101.

Bagwell, Kyle, Petros C. Mavroidis and Robert W. Staiger. "It's a Question of Market Access." *The American Journal of International Law* 96, no.1 (2002): 56-76.

Bagwell, Kyle, and Robert W. Staiger. "Protection and the Business Cycle." *The B.E. Journal of Economic Analysis and Policy* 3, no.1 (2003): 1-45.

Barceló III, John J. "Antidumping Laws as Barriers to Trade-The United States and the International Antidumping Code." *Cornell Law Review* 57, no.4 (1972): 498-558.

Barfield, Claude. "The Dragon Stirs: China's Trade Policy for Asian-and the World." *Arizona Journal of International and Comparative Law* 24, (2007): 93-99.

Bean, Casey E. "Peru Biofuels Annual Peru's biodiesel production expected to resume amidst a CVD investigation of U.S. ethanol." *GAIN Report*, 20 September 2017, https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Biofuels%20Annual_Lima_Peru_9-20-2017.pdf.

Becker, Bettina., and Theuringer, Martin. "Macroeconomic determinants of contingent protection: The case of the European Union," *Zeitschrift für Wirtschaftspolitik (Lucius & Lucius, Stuttgart)* 50, no.3 (2000): 350-370.

Beirwagen, Rainer M., and Kay Hailbronner. "Input, Downstream, Upstream, Secondary, Diversionary and Components or Subassembly Damping." *Journal of World Trade* 22, no.3 (1988): 27–59.

Bekker, D. "The Strategic Use of Antidumping in International Trade." S*outh African Journal of Economics* 74, no.3 (2006): 501 - 522.

Belassa, Bela. "Trade Liberalisation and 'Revealed' Comparative Advantage." *The Manchester School* 33, no.2 (1965): 99-123.

Belderbos, René, Hylke Vandenbussche and Reinhilde Veugelers. "Antidumping Duties, Undertakings, and Foreign Direct Investment in the EU." *European Economic Review* 48, no.2 (2004): 429-453.

Bellis, Jean-Francois, Edwin Vermulst and Paul Waer. "Further Changes in the EEC AD Regulation: A Codification of Controversial Methodologies." *Journal of World Trade* 23, no.2 (1989): 21-34.

Bellmann, Christophe., and Alice V. Tipping, "The Role of Trade and Trade Policy in Advancing the 2030 Development Agenda," *OpenEdition Journals*, Articles and Debates 6.2, 2015. https://journals.openedition.org/poldev/2149.

Bellora, Cecilia, and Sébastien Jean. “Granting Market Economy Status to China in the EU: An Economic Impact Assessment.” *CEPII-Policy Brief*, no.11 (2016): 14-20.

Bentil, J. Kodwo. “Attempts to Liberalize International Trade in Agriculture and the Problem of the External Aspects of the Common Agricultural Policy of the European Economic Community.” *Case Western Reserve Journal of International Law* 17, no.3 (1985): 335-387.

Berensmann, Kathrin, and Clara Brandi. “The Financial Crisis and International Trade – The Consequences for Developing Countries.” *Deutsches Institut für Entwicklungspolitik,* no.13 (2011), 1-4.

Berglund, Abraham. “The Tariff Act of 1930.” *The American Economic Review* 20, no.3 (1930): 467-479.

Berkey, Judson Osterhoudt. “The European Court of Justice and Direct Effect for the GATT: A Question Worth Revisiting.” *European Journal of International Law* 9, (1998): 626-657.

Bernal, Richard L. “Sleepless in Seattle: The WTO Ministerial of November 1999.” *Social and Economic Studies* 48, no.3 (1999): 61-84.

Bernhardt, Dan. “Dumping, Adjustment Costs and Uncertainty.” *Journal of Economic Dynamics and Control* 8, no.3 (1984): 349-370.

Bertrand, Raymond. “The European Common Market Proposal.” *International Organization* 10, no.4 (1956): 559-574.

Bhagwati, Jagdish N., and Petros C. Mavroidis. “The Byrd Amendment Is WTO-Illegal: But We Must Kill the Byrd with the Right Stone.” *World Trade Review* 3, no.1 (2004): 119-128.

Bhala, Raj. “Rethinking Antidumping Law.” *George Washionton Journal of International Law & Economy 29,* no.1 (1995), https://ssrn.com/abstract=2916733.

Bhandari, Surendra, and Jay Klaphake. “U.S. Trade Policy and The Doha Round Negotiations.” *Ritsumeikan Annual Review of International Studies* 10, (2011): 71-93.

Bhat, T. P. “Globalisation of Anti-dumping and Its Impact.” *Foreign Trade Review* 38, no.1-2 (2003): 54-95.

Bièvre, Dirk De., and Jappe Eckhardt. “Interest Groups and the Failure of EU Antidumping Reform.” *Journal of European Public Policy* 18, no.3 (2011): 339-360.

Blonigen, Bruce A. “Industrial Policy and Downstream Export Performance.” *The Economic Journal* 126, no.595 (2016): 1635-1659. https://doi.org/10.1111/ecoj.12223.

Blonigen, Bruce A. “The Effects of (CUSFTA and) NAFTA on Anti-dumping and Countervailing Duty Activity.” *The World Bank Economic Review* 19, no.3 (2005): 407-424.

Blonigen, Bruce A. “Working the System: Firm Learning and the Anti-dumping Process.” *European Journal of Political Economy* 22, (2006): 715-731.

Blonigen, Bruce A. “Tariff-jumping antidumping duties,” *Journal of International Economics* 57, no.1 (2002): 31-49.

Blonigen, Bruce A., and Thomas J. Prusa. “Antidumping,” *NBER Working Paper,* no.8398 (2001): 1-42. https://ssrn.com/abstract=278031.

Blonigen, Bruce A., and Thomas J. Prusa. “Dumping and Antidumping Duties.” *Handbook of Commercial Policy* 1, Part B (2016): 107-159.

Blonigen, Bruce A., and Chad P. Bown, “Antidumping and Retaliation Threats.” *Journal of International Economics* 60, no.2 (2003): 249-273.

Blonigen, Bruce A., Benjamin H. Liebman and Wesley W. Wilson. “Trade Policy and Market Power: The Case of the US Steel Industry.” *NBER Working Paper*, no.13671 (2007): 16-37.

Blustein, Paul. “The Nine Day Misadventure of the Most Favored Nations: How the WTO's Doha Round Negotiations Went Awry in July 2008,” *Brookings*, December 5, 2008, https://www.brookings.edu/articles/the-nine-day-misadventure-of-the-most-favored-nations-how-the-wtos-doha-round-negotiations-went-awry-in-july-2008/.

Bloomfield, Arthur I. “On the Centenary of Jacob Viner's Birth: A Retrospective View of the Man and His Work.” *Journal of Economic Literature* 30, no.4 (1992): 2052-085.

Boden, Graham’13. “China’s Accession to the WTO: Economic Benefits.” *The Park Place Economist* 20, no.1 (2012): 13-17.

Bouët, Antoine., and Metivier, Jeanne. “Is the WTO Dispute Settlement Procedure Fair to Developing Countries?” *IFPRI Discussion Paper*, no.01652 (2017), http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/131321/filename/131532.pdf.

Bolton, Reid M. “Anti-Dumping and Distrust: Reducing Anti-Dumping Duties under the W.T.O. Through Heightened Scrutiny.” *Berkeley Journal of International Law* 29, no.1 (2011): 66-93.

Boltuck, Richard D. “An Economic Analysis of Dumping.” *Journal of World Trade* 21, no.45 (1987): 45.

Boltuck, Richard D. “Reply to Professor Lazar's Comment on ‘An Economic Analysis of Dumping’.” *Journal of World Trade* 129, no.22 (1988): 129.

Boltuck, Richard D. “An Economic Analysis of Dumping.” *Journal of World Trade* 21, no.5 (1987): 45-54.

Bowman, Gregory W., Nike Covelli, David A. Gantz and Ihn-Ho Uhm. “Antidumping and Countervailing Duty Law and Practice: The Mexican Experience.” *Arizona Legal Studies*, no.10-10 (2010): 267-292.

Bown, Chad P. “Taking stock of Anti-dumping, safeguards and countervailing duties 1990-2009.” *World Economy* 34, no.12 (2011):1955-1988.

Bown, Chad P. “Trade remedies and the world trade organization dispute settlement: Why are so few challenged?” *World Bank working paper series*, no.3540 (2005): 515-555.

Bown, Chad P. “How different are Safeguards from Antidumping? Evidence from the US Trade Policies toward steel.” *Review of Industrial Organization* 42, no.4 (2004): 449-481.

Bown, Chad P. “Emerging Economies and the Emergence of South-South Protectionism.” *Journal of World Trade* 47, no.1 (2011): 1-44.

Bown, Chad P., and Thomas J. Prusa. “U.S Antidumping: Much Ado About Zeroing.” *World Bank Policy Research Working Paper*, no.5352 (2010): 1-56.

Bown, Chad P., and Meredith A. Crowley. “Emerging Economies, Trade Policy, and Macroeconomics Shocks.”

Journal of Development Economies 111, (2014): 261-273.

Bown, Chad P., and Meredith A. Crowley. "Trade deflection and trade depression." *Journal of International Economics* 72, no.1 (2007): 176-201.

Bown, Chad P., and Meredith A. Crowley. "Self-enforcing trade agreements: Evidence from Antidumping policy," *The American Economic Review* 103, no.2 (2011): 1071-1090, https://www.jstor.org/stable/23469692.

Bown, Chad P., and Rachel McCulloch. "Antidumping and Market Competition: Implications for Emerging Economies," *Robert Schuman Centre for Advanced Studies Research Paper,* no. RSCAS 2015/76 (2013): 11-30. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2686555.

Bown, Chad P., and Alan O. Sykes. "The Zeroing Issue: a critical analysis of Softwood V." *World Trade Review* 7, no.1 (2008): 121-142.

Bradsher, Keith. "China Moves to Retaliate Against U.S. Tire Tariff." *The New York Times*, September 13, 2009, https://www.nytimes.com/2009/09/14/business/global/14trade.html.

Brakman, Steven, Harry Garretsen and Tristan Kohl. "Consequences of Brexit and options for a 'Global Britain'." *Regional Science* 97, no.1 (2018): 55-72.

Brander, James A., and Barbara J. Spencer. "Foreign direct investment with unemployment and endogenous taxes and tariffs," *Journal of International Economics* 22, no.3-4 (1987): 257-279.

Brander, James A. and Paul Krugman. "A 'Reciprocal Dumping' Model of International Trade." *NBER Working Paper*, no.1194 (1983): 20-25.

Brandt, Loren, Johannes Van Biesebroeck, Luhang Wang and Yifan Zhang. "WTO Accession and Performance of Chinese Manufacturing Firms." *American Economic Review* 107, no.9 (2017): 2784-2820.

Branson, William H., and Junz, Helen B. "Trends in U.S. Trade and Comparative Advantage", *Brookings*, no.2 (1971), https://www.brookings.edu/bpea-articles/trends-in-u-s-trade-and-comparative-advantage/.

Brenton, Paul. "Antidumping policies in the EU and trade diversion," *European Journal of Political Economy* 17, (2001): 593-607.

Broadberry, Stephen. "Explaining Anglo-German Productivity Differences in Services since 1870." *European Review of Economic History* 8, no.3 (2004): 229-62.

Bright, Samuel L., and Joseph A. McKinney. "The Economics of the Steel Trigger Price Mechanism." *Business Economics* 19, no.4 (1984): 40-46.

Brink, Gustav. "The 10 Major Problems with the Antidumping Instrument in South Africa." *Journal of World Trade* 39, no.1 (2005): 147-148.

Brink, Gustav. "Anti-dumping and China: Three Major Chinese Victories in Dispute Resolution." *The Comparative and International Law Journal of Southern Africa* 47, no.1 (2014): 1-37.

Brown, Ian. "The Evolution of Anti-circumvention Law." *International Review of Law Computers & Technology* 20, no.3 (2006): 10-18.

Cai, Yan., and Kim, Eun-Mi. "A Study on the Non-market Economic Treatment of WTO Trade Remedies: A Focus on

Case Analysis." *Journal of International Trade and Commerce* 13, no.3 (2017): 157-175.

Casadio, Gian Paolo. "The Kennedy Round: Results, reactions and prospects." *Lo Spettatore Internazionale* 3, no.1 (1968): 18-49, https://doi.org/10.1080/03932726808457733.

Casey, Christopher A. "Trade Remedies: Antidumping." *CRS Report*, no.R46296 (2020): 25-37.

Castle, Stephen, and Mark Landler. "After 7 Years, Talks Collapse on World Trade." *The New York Times*, July 30, 2008, https://www.nytimes.com/2008/07/30/business/worldbusiness/30iht-30trade.14872987.html.

Carbaugh, Robert. "A Trigger to Limit Dumping." *Business Economics* 17, no.1 (1982): 42-46.

Carter, Colin A. "Why is There So Much Interest in Trade Remedy Laws." *Agricultural and Resource Economics* 5, no.3 (2002): 1-3.

Carter, Colin A., and Caroline Gunning-Trant. "China's Food Exports Face Dumping Laws." *American Journal of Agricultural Economics* 88, no.5 (2006): 1227-1234.

Cestepe, Hamza, Ertugrul Yildirim and Bersu Bhtiyar. "The Impact of Trade Liberalization on the Export of MENA Countries to OECD Trade Partners." *Procedia Economics and Finance* 23, (2015): 1440-1445.

Collie, David R. and Hylke Vandenbussche. "Anti-dumping Duties and the Byrd Amendment." *LICOS Discussion Papers*, no.149 (2004): 1-15.

Chandra, Piyush. "China: A Sleeping Giant of Temporary Trade Barriers?" *Economics Faculty Working Papers* no.17 (2011): 1-37.

Chu, Tianshu, and Thomas J. Prusa "The Reasons for and the Impact of Anti-dumping Protection: The Case of Peoples' Republic of China." *East-West Center Working Papers*, no.69 (2004): 1-37.

Commission, Productivity. "Australia's Anti-Dumping and Countervailing System." *Inquiry Reports*, Productivity Commission Reports, Productivity Commission, Government of Australia, no.48, 2010, https://ssrn.com/abstract=1647463.

Cornelis, Joris. "The EU's Modernization Regulation: Stronger and More Effective Trade Defence Instruments?" *Global Trade and Customs Journal* 13, no.11/12 (2018): 539-543.

Conybeare, John A. "Tariff Protection in Developed and Developing Countries: a Cross-Sectional and Longitudinal Analysis." *International Organization* 37, no.3 (1983): 441-467, https://doi.org/10.1017/s0020818300032744.

Corasaniti, Nick., Burns, Alexander., and Appelbaum, Binyamin. "Donald Trump Vows to Rip Up Trade Deals and Confront China." *The New York Times*, June 28, 2016, https://www.nytimes.com/2016/06/29/us/politics/donald-trump-trade-speech.html.

Chaisse, Julien. "Rising Protectionism Threatens Global Trade: WTO Law and Litigation in Asia." *Asian Dispute Review* 19, no.3 (2017): 112-118.

Chan,Gerald. "China and the WTO: Trade Law and Policy." *International Relations of the Asia-Pacific* 4, no.1 (2004):47-72.

Chan, Jackie M. L. "Gradualism in the GATT: Strategic tariff bargaining and forward manipulation." *Review of International Economics* 27, no.1 (2019): 220-239.

Chang, Yang-Ming., and Philip G. Gayle, "The Continued Dumping and Subsidy Offset Act: An Economic Analysis." *Southern Economic Journal* 73, no.2 (2006): 530-545.

Charnovitz, Steve. "Mapping the Law of WTO Accession." *GW Law Faculty Publications & Other Works*, 2013, https://core.ac.uk/download/pdf/232644536.pdf.

Chase, Kerry A. "Imperial Protection and Strategic Trade Policy in the Interwar Period." *Review of International Political Economy* 11, no.1 (2004): 177-203.

Cheibub, José Antonio, Jennifer Gandhi and James Raymond Vreeland. "Democracy and dictatorship revisited." *Public Choice* 143, no.1-2 (2010): 67-101.

Chervinskaya, Irina. "Specificity of anti-dumping regulation for transition countries." *Procedia Economics and Finance* 8, (2014):144-149.

Cheung, Yan-Leung, Ping Jiang, Piman Limpaphayom and Tong Lu. "Corporate Governance in China: A Step Forward." *European Financial management* 6, no.1 (2010): 94-123.

Cho, Dong-Sung, and Hwy-Chang Moon. "National Competitiveness: Implications for Different Groups and Strategies." *International Journal of Global Business and Competitiveness* 1, (2005):1-11.

Cho, Sungjoon. "No More Zeroing? The United States Changes its Antidumping Policy to Comply with the WTO." *Insights* 16, no.8 (2012): 13-21.

Cho, Sungjoon. "Remedying Trade Remedies," 13 March 2007, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=969387.

Cho, Sungjoon, and Thomas H. Lee. "Double Remedies in Double Courts." *European Journal of International Law* 26, no.2 (2015): 519-535.

Chorev, Nitsan. "A Fluid Divide: Domestic and International Factors in US Trade Policy Formation." *Review of International Political Economy* 14, no.4 (2007): 653-689.

Chowdary, Nagendra V., and Jahan Maldar Nusrath. "WTO vs USA: The Byrd Amendment." *IBS Case Development Center Reference*, no.204-190-1 (2004): 1-5.

Choi, Nakgyoon. "Economic Effects of Anti-Dumping Duties: Protectionist Measures or Trade Remedies?" *KIEP Research Paper*, no.16-13, 2017, https://ssrn.com/abstract=2916049.

Chung, Michael Y. "U.S. Antidumping Laws: A Look at the New Legislation." *North Carolina Journal of International Law and Commercial Regulation* 20, no.3 (1994): 495-530.

Cline, William R. "Macroeconomic Influences on Trade Policy." *The American Economic Review* 79, no.2 (1989): 123-27.

Clines, Francis X. "How Do West Virginians Spell Pork? Its B-Y-R-D," *The New York Times*, May 4, 2002, https://www.nytimes.com/2002/05/04/us/how-do-west-virginians-spell-pork-it-s-b-y-r-d.html.

Conconi, P., G Facchini and M. Zanardi. "Fast-Track Authority and International Trade Negotiations." *American Economic Journal* 4, no.3 (2012): 146-189.

Crowley, Meredith A. "Split Decisions in Antidumping Cases." *The B.E. Journal of Economic Analysis and Policy* 1,

no.10 (2010): 1-26.

Crystal, Jonathan. “A New Kind of Competition: How American Producers Respond to Incoming Foreign Direct Investment.” *International Studies Quarterly* 42, no.3 (1998): 513-543.

Cuervo-Cazurra, Alvaro, Yves Doz and Ajai Gaur. “Skepticism of globalization and global strategy: Increasing regulations and countervailing strategies.” *Global Strategy Journal* 10, no.1 (2020): 3-31.

Das, Satya P., and Adwait K. Mohanty. “Dumping in International Markets and Welfare: A General Equilibrium Analysis.” *Journal of International Economics* 17, no.1-2 (1984):149-157.

Daniels, Bruce C. “Younger British Siblings: Canada and Australia Grow Up in the Shadow of the United States.” *American Studies International* 36, no.3 (1998): 17-39.

Dale, Richard. “Welfare Implications of Dumping.” *Anti-Dumping Law in a Liberal Trade Order*, (1980): 20-43. https://doi.org/10.1007/978-1-349-05045-1_2.

Davey, William J. “The WTO Dispute Settlement System: How Have Developing Countries Fared.” *Illinois Public Law Research Paper*, no.05-17 (2005): 1-21.

Davies, Stephen W., and Anthony J. McGuiness. “Dumping at Less than Marginal Cost.” *Journal of International Economics* 12, no.1-2 (1982): 169-182.

Davis, Christina L. “Overlapping Institutions in Trade Policy.” *Perspectives on Politics* 7, no.1 (2009): 25-31.

Davis, Lucy. “Ten years of anti-dumping in the EU: economic and political targeting.” *ECIPE Working Paper*, no.2 (2009): 1-16.

Davis, Lucy. “Antidumping investigation in the EU: how does it work?” *ECIPE Working Paper*, no.04 (2009), https://ecipe.org/wp-content/uploads/2014/12/anti-dumping-investigation-in-the-eu-how-does-it-work.pdf.

Deardorff Alan V., and Robert M. Stern, “A Centennial of AD Legislation and Implementation-Introduction and Overview.” *The World Economy* 28, no.5 (2005): 633-640.

Debapriya, Aryashree, and Tapan Kumar Panda. “Antidumping Retaliation-A Common Threat to International Trade.” *Global Business Review* 7, no.2 (2006): 297-311.

DeLacy, Christopher, and Robert K. Tompkins. “Lobbying Restrictions for Federal Contractors - The Byrd Amendment.” *Holland & Knight Political Law Blog*, March 18, 2016, https://www.hklaw.com/en/insights/publications/2016/03/lobbying-restrictions-for-federal-contractors--the.

Delener, Nejdet. “An Ethical and Legal Synthesis of Dumping: Growing Concerns in International Marketing.” *Journal of Business Ethics* 17, no.15 (1998): 1747-753.

Dendrinou, Viktoria. “Thousands to Protest in Brussels against China Steel Trading.” *The Wall Street Journal*, Feb.14, 2016, https://www.wsj.com/articles/thousands-to-protest-in-brussels-against-china-steel-trading-1455450843.

DeWine, Mike. “Comments in Statements on Introduced Bills and Joint Resolutions.” *Congress Record*, no.8 (1999): 497-500.

Devault, James M. “The welfare effects of U.S. Antidumping duties.” *Open Economic Review* 7, (1996): 19-33.

Dick, A. R. “Explaining managed trade as rational cheating.” *Review of International Economics* 4, no.1 (1993): 1-16.

Dognes, Juergen B. “Whither international trade policies? Worries about continuing protectionism.” *Kieler Diskussionsbeiträge*, no.125 (1986): 3-21.

Donald, Bruce. “The World Trade Organization (WTO) Seattle Ministerial Conference, December 1999: Issues and Prospects.” *Parliament of Australia Current Issues Brief* 12, 30 November 1999, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib9900/2000CIB12.

Diego-Fernandez, Mateo. “Trade negotiations make strange bedfellows.” *World Trade Review* 7, no.2 (2008): 423-453.

Ditta, Allah, and Muhammad Azmat Hayat. “ Macroeconomic Instability and Its Role on Income Inequality in Developing Countries: A Panel Data Analysis.” *Pakistan Economic and Social Review* 55, no.2 (2017): 613-636.

Draxler, Monika, Johannes Schenk, Thomas Bürgler, and Axel Sormann, “The Steel Industry in the European Union on the Crossroad to Carbon Lean Production—Status, Initiatives and Challenges.” *BHM Berg- und Hüttenmännische Monatschefte* 165, (2020): 221-226.

Drope, Jefferey M., and Wendy L. Hansen. “Anti-Dumping's Happy Birthday?” *World Economy* 29, (2006): 459-472.

Drope, Jefferey M., and Wendy L. Hansen. “Purchasing protection? The effect of political spending on US trade policy.” Political Research Quarterly 57, no.1 (2004): 27-37.

Durling, James P., and Thomas J. Prusa. “The trade effects associated with an Antidumping epidemic: The hot-rolled steel market, 1996-2001.” *European Journal of Political Economy* 22, no.3 (2006): 675-695.

Eckhardt, Jappe, and Mannfred Elsig. “Support for international trade law: The US and the EU compared.” *International Journal of Constitutional Law* 13, no.4 (2015): 966-986, https://doi.org/10.1093/icon/mov056.

Ehrenhaft, Peter D. “Protection against International Price Discrimination: United States Countervailing and Antidumping Duties.” *Columbia Law Review* 58, no.1 (1958): 44-76. https://doi.org/10.2307/1119502.

Eggert, J. “Observations on the EU Antidumping Regulation FTA Position for the Expert Meeting.” *Foreign Trade Association*, 11 July 2006, https://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_129812.pdf.

Elsig, Manfred., and Jappe Eckhardt, “The Creation of the Multilateral Trade Court: Design and Experiential Learning”, *World Trade Review* 14, no.1 (2015): 13-32.

Engerman, Stanley L. “Recent Developments in American Economic History.” *Social Science History* 2, no.1 (1977): 72-89.

Ertl, Veronika, and David Merkle. “China: A Developing Country as a Global Power?” *International Reports of the Konrad-Adenauer-Stiftung*, November 15, 2019, https://www.kas.de/en/web/auslandsinformationen/artikel/detail/-/content/china-a-developing-country-as-a-global-power.

Estrin, Saul, and Adeline Pelletier. “Privatization in Developing Countries: What Are the Lessons of Recent Experience?” *The World Bank Research Observer* 33, no.1 (2018): 65-102, https://doi.org/10.1093/wbro/lkx007.

Ethier, Wilfred J. “Dumping.” *Journal of Political Economy* 90, no.3 (1982): 504-510.

“EU anti-dumping abuse harms both China, EU.” *People's Daily Online*, August 17, 2009, http://en.people.cn/90001/90778/90857/90861/6729495.html.

Evans, Alona E. “International Fruit Co. NV v. Productschap Voor Groenten en Fruit. Cases 20-24/72.” *American Journal of International Law* 67, no.3 (1973): 559-578.

Evenett, Simon J. “The Failure of the WTO Ministerial Meeting in Cancun: Implications for Future Research.” *CESifo Forum* 04, no.3 (2003): 11-17. https://www.ifo.de/DocDL/forum3-03-focus2.pdf.

Evenett, Simon J. “‘Global Europe’: An Initial Assessment of the European Commission's New Trade Policy,” *Aussenwirtschaft* 61, no.4 (2006): 377-402.

Evenett, Simon J. “The simple analytics of U.S. antidumping orders: Bureaucratic discretion, anti-importer bias, and the Byrd amendment,” *European Journal of Political Economy* 22, no.3 (2006): 732-749.

Evenett, Simon J., and Edwin Vermulst. “The Politicization of EC Antidumping Policy: Member States, Their Votes, and the European Commission.” *The World Economy* 28, no.5 (2005): 701-717.

Eymann, Angelika, and Ludger Schuknecht. “Antidumping policy in the European Community: Political Discretion or Technical Determination.” *Economics & Politics* 8, no.2 (1996):111-131.

Falvey Rod, and Cha Dong Kim. “Timing and Sequencing Issues in Trade Liberalization.” *The Economic Journal* 102, no.413 (1992): 908-924.

Faught, Edward. “Efficacy of Topiramate as Adjunctive Therapy in Refractory Partial Seizures: United States Trial Experience.” *Epilepsia* 38, no.1 (1997): 24-27.

Feinberg, Robert M. “Exchange Rate and Unfair Trade.” *The Review of Economics and Statistics* 71, no.4 (1989): 704-707.

Feinberg, Robert M. “Antidumping as a Development Issue.” *Global Economy Journal* 11, no.3 (2011): 2-10.

Feinberg, Robert M. “U.S. Antidumping Enforcement and Macroeconomic Indicators Revisited: Do Petitioners Learn?” *Review of World Economics* 141, no.4 (2005): 612-622.

Feinberg, Robert M., and Kara M. Reynolds. “Tariff Liberalization and Increased Administrative Protection: Is There a Quid Pro Quo?” *The World Economy* 30, no.6 (2007): 948-961.

Feinberg, Robert M., and Kara M. Reynolds. “The Spread of Antidumping Regimes and the Role of Retaliation in Filings.” *Southern Economic Journal* 72, no.4 (2006): 15-27, https://ssrn.com/abstract=614864.

Felbermayr, Gabriel, and Alexander-Nikolai Sandkamp. “The Trade Effects of Anti-Dumping Duties: Firm-Level Evidence from China.” *European Economic Review* 122, (2020): 1-20.

Fergusson, Ian F. “Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy.” *Congressional Research Service*, June 15, 2015, https://fas.org/sgp/crs/misc/RL33743.pdf.

Fergusson, Ian F., and Christopher M. Davis. “Trade Promotion Authority (TPA): Frequently Asked Questions.” *Congressional Research Service*, January 2, 2015, http://tradevistas.org/wp-content/uploads/2018/05/TPA-2018-FAQs.pdf.

Fetzer, Thiemo, and Carlo Schwarz. "Tariffs and Politics: Evidence from Trump's Trade Wars." *The Economic Journal*, (2020): 1-25, https://doi.org/10.1093/ej/ueaa122.

Finger, J. Michael. "Dumping and Antidumping: The Rhetoric and The Reality of Protection in Industrial Countries." *The World Bank Research Observer* 7, no.2 (1992): 121-44. https://doi.org/10.1093/wbro/7.2.121.

Finger, J. Michael. "The Origins and Evolution of Antidumping Regulation." *Policy Research Working Paper Series* 783, (1991):2-5.

Finger, J. Michael, Francis Ng, and Sonam Wangchuk. "Antidumping as Safeguard Policy." World Bank, *Policy Research Working Paper*, no.2730 (2001): 3-24.

Finger, J. Michael, Keith H. Hall, and Douglas R. Nelson. "The Political Economy of Administered Protection." *The American Economic Review* 72, no.3 (1982): 452-466.

Finger, J. Michael, and A. Zlate. "Antidumping: Prospects for Discipline from the Doha Negotiations." *The Journal of World Investment & Trade* 6, (2005): 531-548.

Finlayson, Jock A. and Mark W. Zacher. "The GATT and the regulation of trade barriers: regime dynamics and functions." *International Organization* 35, no.4 (1981): 561-602.

Firoz, A. S. "US Steel Crisis: 'Free Trade' Dumped." *Economic and Political Weekly* 34, no.32 (1999): 2220-2222.

Firmea, Vinícius de Azevedo Couto, and Cláudio R. FóffanoVasconcelosb. "Evolution in the use of antidumping mechanism after Uruguay round." *EconomiA* 16, no.3 (2015): 321-342.

Forganni, Antonella, and Heidi Reed. "Circumvention of Trade Defence Measures and Business Ethics." *Journal of Business Ethics* 155, (2019): 29-40.

Foster, John Bellamy Robert, W. McChesney, and R. Jamil Jonna. "Monopoly and Competition in Twenty-First Century Capitalism." *Monthly Review* 62, no.11 (2011). https://monthlyreview.org/2011/04/01/monopoly-and-competition-in-twenty-first-century-capitalism/.

Francois, Joseph, Hans van Meijl, and Frank van Tongeren. "Trade liberalization in the Doha Development Round." *Economic Policy* 20, no.42 (2005): 350-391.

Francois, Joseph F., and Gunnar Niels. "Political Influence in a New Antidumping Regime: Evidence from Mexico." *CEPR Discussion Papers* 4297, (2004):1-13. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=516081.

Francois, Joseph F., and Gunnar Niels. "Business Cycles, the Current Account and Administered Protection in Mexico." *Review of Development Economics*, no.10 (2003): 14-20.

Furculiță, Cornelia. "Cost of Production Calculation in EU Anti-Dumping Law: WTO Consistent 'As Such' After EU – Biodiesel." *Global Trade and Customs Journal* 12, no.9 (2017): 360-366.

Funke, Norbert. "Trends in protectionism: Anti-dumping and trade related investment measures." *Intereconomics* 29, no.5 (1994): 219-225.

Gao, Henry S. "From the Periphery to the Centre, China's Participation in WTO Negotiations." *China Perspectives* 1, (2012): 59-65.

Gao, Henry S. "Elephants in the Room: Challenges of integrating China into the WTO system," *Asian Journal of WTO*

and International Health Law and Policy 6, no.1 (2011): 137-168.

Gao, Xiwang, and Miyagiw, Kaz. “Antidumping protection and R&D Competition.” *Canadian Journal of Economics* 38, (2005): 221-227.

Gallaway, Michael P., Bruce A. Bonigen, and Joseph E. Flynn. “Welfare costs of the U.S. Antidumping and countervailing duty laws.” *Journal of International Economics* 49, no.2 (1999): 211-244.

Ganguli, Bodhisattva. “The Trade Effects of Indian Antidumping Actions.” *Review of International Economics* 16, no.5 (2008): 930-941.

Garcia, Martin, and Astrid Baker. “Anti-dumping in New Zealand: A century of protection from “unfair” trade?” *NZIER-NZTC working paper*, no.39 (2005): 11-37.

Gaughan, Anthony J. “Donald Trump won the presidency because celebrity beats substance.” *Qaurtz*, November 9, 2016, https://qz.com/832830/election-2016-how-did-donald-trump-win/.

Gayle, Philip G. and Thitima Puttitanun. “Has the Byrd Amendment Affected US Imports?” *The World Economy* 32, no.4 (2007): 629-642.

Gerard, Leo W. “Re: USW opposes the PRINT Act.” *United Steelworkers*, May 6, 2003. May 15, 2018,https://www.usw.org/news/media-center/releases/2018/18-05-15-USW-letter-to-Senate-regarding-PRINT-Act.pdf.

Ghori, Umair. “The Dumping Dragon: Analyzing China’s Evolving Antidumping Behavior.” *The Business and Management Review* 4, no.2 (2013): 114-125.

Gifford, Daniel J. “Rethinking the Relationship between Antidumping and Antitrust Laws.” *American University International Law Review* 6, no.3 (1991): 277-323.

Girma, Sourafel, David Greenaway, and Katherine Wakelin. “Does antidumping stimulate FDI? Evidence from Japanese firms in the UK.” *Weltwirtschaftliches Archiv* 138, (2002): 414-436.

Graham, Thomas R. “Reforming the International Trading System: The Tokyo Round Trade Negotiations in the Final Stage.” *Cornell International Law Journal* 12, no.1 (1979): 1-40.

Gray, H. Peter. “The Theory of International Trade among Industrial Nations.” *Weltwirtschaftliches Archiv* 116, no.3 (1980): 447-70.

Green, Carl J. “The New Protectionism.” *Northwestern Journal of International Law & Business* 3, no.1 (1981): 1-20.

Greig, David. “The GATT and Multilateral Trade Negotiations.” *The Australian Quarterly* 59, no. 3/4 (1987): 305-21.

Grey, Rodney De C. “The Development of the Canadian Antidumping System.” *The Canadian Journal of Economics* 8, no.1 (1975):128-131.

Grieger, Gisela, and Roderick Harte. “EU trade with Latin America and the Caribbean Overview and figures.” *European Parliamentary Research Service*, September 2018, https://www.europarl.europa.eu/RegData/etudes/IDAN/2018/625186/EPRS_IDA(2018)625186_EN.pdf.

Grolig, Otto. “The Newly Amended EEC Anti-dumping Regulation: Black Holes in the Common Market.” *Journal*

of World Trade 21, no.6 (1987): 79-85.

Grossman Gene M., and Elhanan Helpman. "Protection for Sale." *The American Economic Review* 84, no.4 (1994): 833-850.

Großmann, Harald, Georg Koopmann and Axel Michaelowa. "The New World Trade Organization: Pacemaker for World Trade?" *Intereconomics* 29, (1994): 107-115.

Gold, Marc. "Managing Dumping in a Global Economy." *George Washington Journal of Law and Economists* 21, no.3 (1988): 316.

Goldman, Calvin S. "Competition, Anti-Dumping, and the Canada-U.S. Trade Negotiations." *Canada-United States Law Journal* 12, no.13 (1987): 95-106.

Goldstein, Judith, and Lisa L. Martin. "Legalization, trade liberalization, and domestic politics: A cautionary note." *International Organization* 54, no.3 (2000): 603-632.

Goodrich, Leon R. "Minnesota Price Discrimination and Sales-Below-Cost Statutes: Should They Be Repealed, Amended, or Left Alone?" *William Mitchell Law Review* 5, no.1 (1979): 13-82.

Gifford, Daniel J. and Robert T. Kudrle. "The Law and Economics of Price Discrimination in Modern Economies: Time for Reconciliation." *Minnesota Legal Studies Research Paper*, no.08-21 (2008): 1235-1255.

Grace, David R., Alexia Herwig, and Yao Feng. "China's Antidumping Regime, Worth Keeping an Eye on." *World Trade Magazine*, March 2003, https://www.cov.com/~/media/files/corporate/publications/2003/03/oid6344.ashx.

Grieger, Gisela. "Protection from dumped and subsidized imports." *European Parliament Think Tank*, February 15, 2018, https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI%282017%29595905.

Grimwade, Nigel. "Anti-Dumping Policy after the Uruguay Round-an Appraisal." *National Institute Economic Review* 155, no.1 (1996): 98-105, https://doi.org/10.1177/002795019615500107.

Grossman, Gene M. "Imports as a Cause of Injury: The Case of the US Steel Industry." *Journal of International Economics* 20, no.3-4 (1986): 201-223.

Gunnella, Vanessa, and Lucia Quaglietti. "The economic implications of rising protectionism: a euro area and global perspective." *ECB Economic Bulletin* 3, (2019): 1-12.

Gürler, Oker. "Third Ministerial Conference of the WTO and Importance of Agriculture in Trade Talks." *Journal of Economic Cooperation* 21, no.2 (2000): 45-66.

Guisinger, Alexandra. "Determining Trade Policy: Do Voters Hold Politicians Accountable?" *International Organization* 63, no.3 (2009):533-557.

Haaland, Jan I., and Ian. Wooton. "Antidumping Jumping: Reciprocal Antidumping and Industrial Location." *Weltwirtschaftliches Archiv* 134, no.2 (1998): 340-360.

Hakobyan, Shushanik. "Do Anti-dumping Duties Still Matter? The Curious Case of Aluminum Foil." *World Trade Review* 17, no.4 (2018): 557-574**.**

Halloran, Tyler. "A Brief History of Tariffs in the United States and the Dangers of their Use Today." *Frodham Journal of Corporate & Financial Law*, March 17, 2019. https://news.law.fordham.edu/jcfl/2019/03/17/a-brief-history-

of-tariffs-in-the-united-states-and-the-dangers-of-their-use-today/.

Halverson, Karen. “China's WTO Accession: Economic, Legal, and Political Implications.” *Boston College International and Comparative Law Review* 27, no.2 (2004): 319-370.

Hamilton, Alexander, “Report To Congress on The Subject of Manufactures.” *Annals of the Second Congress*, (1793): 971-975.

Hansen, Wendy L. “The International Trade Commission and the Politics of Protectionism.” *The American Political Science Review* 84, no.1 (1990): 21-46.

Hansen, Wendy L., and Thomas J. Prusa. “The Economics and Politics of Trade Policy: An Empirical Analysis of ITC Decision Making.” *Review of International Economics* 5, (1997): 230-245.

Hansen, Wendy L., and Thomas J. Prusa. “Cumulation and ITC decision-making: The sum of the parts is greater than the whole.” *Economic Inquiry* 34, (1996): 746-769.

Hanse, John Mark. “Taxation and the Political Economy of the Tariff.” *International Organization* 44, no.4 (1990): 527-551.

Hart, Holly. “USW Strongly Supports U.S. Steel’s Trade Case to Sanction Chinese Unfair and Illegal Practices Affecting Steel Sector: Bold Action is Absolutely Necessary.” *CISION PR Newswire*, April 26, 2016, https://www.usw.org/news/media-center/releases/2016/usw-strongly-supports-u-s-steels-trade-case-to-sanction-chinese-unfair-and-illegal-practices-affecting-steel-sector-bold-action-is-absolutely-necessary.

Hart, Michael. “Twenty Years of Canadian Tradecraft: Canada at GATT, 1947-1967.” *International Journal* 52, no.4 (1997): 581-608.

Hart, Jeffrey A. “Interdependence and Increased Competition among the Industrialized Countries: Implications for the Developing World.” *Transformations in the Global Political Economy*, (January 1990): 94-126.

Hartigan, James C. “Predatory Dumping.” *The Canadian Journal of Economics / Revue Canadienne D'Economique* 29, no.1 (1996): 228-39. https://doi.org/10.2307/136160.

Harpaz, Guy. “The European Community’s Anti-Dumping Policy: The Quest for Enhanced Predictability, Rationality, European Solidarity and Legitimacy.” *Cambridge Yearbook of European Legal Studies* 5, (2003): 195-236.

Hawkings, Adam C. “Anti-dumping Beyond the GATT 1994: Supporting International Enactment of Legislation Providing Supplemental Remedies.” *International and Comparative Law Review* 10, no.1 (1999): 149-175.

Hazem, Nada, and Zaki, Chahir. “Mind the Measure: On the Effects of Antidumping Investigations in Egypt.” *Journal of African Trade* 7, no.1-2 (2020): 1-14.

He, Laura. “China urged to play bigger role in setting global commodity prices.” *South China Morning Post*, 20 Mar, 2017, https://www.scmp.com/business/markets/article/2080537/china-urged-play-bigger-role-setting-global-commodity-prices.

Heal, Adam, and Palmioli Giovanni, “Trade and Non-tariff Measures: Impacts in the Asia-Pacific Region.” *Emerging Issues in Trade and Investment,* no.1 (2015): 4-8.

Heath, Timothy R. “China’s Evolving Approach to Economic Diplomacy.” *Asia Policy*, no.22 (2016): 157-92.

Heldt, Eugénia. “Shaping Global Trade Governance Rules: New Powers’ Hard and Soft Strategies of Influence at the

WTO." *European Foreign Affairs Review* 22, (2017): 19-36.

Hervey, Claire. "The Byrd Amendment Battle: American Trade Politics at the WTO." *Hastings International and Comparative Law Review* 27, no.7 (2003): 131-156.

Hill, Norman L. "Unanimous Consent in International Organization." *The American Journal of International Law* 22, no.2 (1928): 319-329.

Hendrick, James Pomeroy. "The United States Antidumping Act." *The American Journal of International Law* 58, no.4 (1964): 914-934.

Himics, Mihaly, Thomas Fellmann, Jesús Barreiro-Hurlé, Heinz-Peter Witzke, Ignacio Pérez Domínguez, Torbjörn Jansson, and Franz Weiss. "Does the current trade liberalization agenda contribute to greenhouse gas emission mitigation in agriculture?" *Food Policy* 76, (2018):120-129.

Hindley, Brian. "The Draft Doha Round AD Agreement." *Global Trade and Customs Journal* 3, no.7/8 (2008): 231-238.

Hoekman, Bernard M. and Micheal P. Leidy. "Dumping, Antidumping, And Emergency Protection." *Journal of World Trade* 23, no.27 (1989):15-30.

Hoekman, Bernard, and Charles Sabel. "Open Plurilateral Agreements, International Regulatory Cooperation and the WTO." *Global Policy* 10, no.3 (2019): 297-312.

Holmer, Alan F., Gary N. Horlick, and Terence P. Stewart. "Enacted and Rejected Amendments to the Antidumping Law: In Implementation or Contravention of the Antidumping Agreement?" *The International Lawyer* 29, no.2 (1995): 483-511.

Holmes, Perter, and Jeremy Kempton. "EU Anti-dumping Policy: A Regulatory Perspective." *Journal of European Public Policy* 3, no.4 (1996): 647-664.

Holtz-Eakin, Douglas. "Economic Analysis of the Continued Dumping and Subsidy Offset Act of 2000." *World Trade Review* 3, no.2 (2004): 272-275.

Horlick, Gary N. "Anti-dumping at the Seattle Ministerial: with Tear Gas in My Eyes." *Journal of International Economic Law* 3, no.1 (2000): 179-181.

Horlick, Gary N., and Geoffrey D. Oliver.. "Antidumping and Countervailing Duty Law Provisions of the Omnibus Trade and Competitiveness Act of 1988." *Journal of World Trade* 23, no.3 (1989): 5-49.

"House Moves to Repeal Byrd Amendment." *Barnes/Richardson Global Trade Law*, December 1, 2005, http://www.barnesrichardson.com/?t=40&an=6481.

Hiscox, M.J. "Commerce, Coalitions, and Factor Mobility: Evidence from Congressional Votes on Trade Legislation." *American Political Science Review* 96, no.3 (2002): 593-608.

Howse, Robert. "The World Trade Organization 20 Years On: Global Governance by Judiciary." *The European Journal of International Law* 27, no.1 (2016): 9-77.

Howse, Robert, and Joanna Langille. "Spheres of Commerce: The WTO Legal System and Regional Trading Blocs-A Reconsideration." *Georgia Journal of International and Comparative Law* 46, no.3 (2018): 649.

Huang, Thomas Weishing. “The Gathering Storm of Antidumping Enforcement in China.” *Journal of World Trade* 36, no.2 (2002): 1-15.

Hudec, Robert E. “Reforming GATT Adjudication Procedures: The Lessons of the DISC Case.” *Minnesota Law Review* 72, no.6 (1988): 1443-1507.

Hufbauer, Gary Clyde. “Anti-dumping: A Look at US Experience-Lessons for Indonesia.” *Peterson Institute for International Economics,* August 20, 1999, https://www.piie.com/commentary/speeches-papers/antidumping-look-us-experience-lessons-indonesia.

Hufbauer, Gary Clyde, and Cathleen Cimono-Isaacs. “Looming US-China Trade Battles? Market Economy Status (Part II).” *Peterson Institute for International Economics*, March 9, 2015, https://www.piie.com/blogs/trade-investment-policy-watch/looming-us-china-trade-battles-market-economy-status-part-ii.

Hungerford, Thomas L. “GATT: a cooperative equilibrium in a noncooperative trading regime?” *Journal of International Economics* 31, no.3-4 (1991): 357-369.

Hutchison, Alan D., Milo G. Coerper, Arnold M. Greenberg, Walter F. Sheble, and Myron Solter. “Analyses of the Antidumping Laws of the Federal Republic of Germany, France, Italy, and the United Kingdom.” *Section of International and Comparative Law Bulletin* 10, no.1 (1965): 14-36.

Hutton, Susan, and Michael Trebilcock. “An Empirical Study of the Application of Canadian Anti-Dumping Laws: A Search for Normative Rationales.” *Journal of World Trade* 24, no.3 (1990):130-135.

Hurabiell, Marie Louise. “Protectionism Versus Free Trade: Implementing the GATT Anti-dumping Agreement in the United States.” *University of Pennsylvania Journal of International Law* 16, no.3 (1995): 567-580. https://scholarship.law.upenn.edu/jil/vol16/iss3/5.

Huyghebaert, Kiliane. “Changing the Rules Mid-Game: The Compliance of the Amended EU Basic Anti-Dumping Regulation with WTO Law.” *Journal of World Trade* 53, no.3 (2019): 417-432.

Hillman, Arye L. “Declining Industries and Political support Protectionist Motives.” *The American Economic Review* 72, no.5 (1982): 1180-1187.

Hiscocks, Richard I. “International Price Discrimination: The Discovery of the Predatory Dumping Act of 1916.” *The International Lawyer* 11, no.2 (1977): 227-247.

Huo, Wei. “Introduction and Critical Analysis of Anti-dumping Regime and Practice in China Pending Entry of WTO: Transition toward a WTO-Modeled Trade Legal Mechanism,” *The International Lawyer*, 36, no.1 (2002): 1-13.

Ianchovichina, Elena, and Martin, Will. “Impacts of China's Accession to the World Trade Organization.” *The World Bank Economic Review* 18, no.1 (2004): 3-27.

Ianchovichina, Elena, and Martin, Will. “Trade Liberalization in China’s Accession to the World Trade Organization,” *Policy Research Working Paper*, no.2623 (2001): 1-35.

Ibrahim, T.E. “Developing Countries and the Tokyo Round.” *Journal of World Trade* 12, no.1 (1978): 5-10.

Ichino, Yasukazu. “Antidumping Petition, Foreign Direct Investment, and Strategic Exports.” *Research in World Economy* 4, no.1 (2013): 22-34.

Leidy, Michael P. “Macroeconomic Conditions and Pressures for Protection under Antidumping and Countervailing

Duty Laws: Empirical Evidence from the United States." *International Monetary Fund Staff Papers* 44, no.1 (1997): 132-44.

Iino, Aya. "The Blocking Legislation as a Countermeasure to the US Anti-Dumping Act of 1916: A Comparative Analysis of the EC and Japanese Damage Recovery Legislation." *Journal of World Trade* 40, no.4 (2006): 753-776.

Ikenson, Dan. "U.S. Abides Global Trade Rules...Just Ignore The Steel Protectionism, Antidumping Abuse, WTO Violations, Etc." *Forbes*, Jul 16, 2014, https://www.forbes.com/sites/danikenson/2014/07/16/u-s-abides-global-trade-rules-just-ignore-the-steel-protectionism-antidumping-abuse-wto-violations-etc/#7a2afd7b2dc8.

IMF Staff, "Global Trade Liberalization and the Developing Countries." International Monerary Fund, no.01/08, November 2001, https://www.imf.org/external/np/exr/ib/2001/110801.htm.

Inama, Stefano. "Negotiating Anti-dumping and Setting Priorities among Outstanding Implementation Issues in the Post-Doha Scenario: A First Examination in the Light of Recent Proactive and DSU Jurisprudence." *UNCTAD/ITCD/TSB/Misc*.72 (2002):6.

Industrial Global Union, "*Australian Workers' Union calls for action on Chinese steel*." *Industri all global Union*, 28 February, 2017, http://www.industriall-union.org/australian-workers-union-calls-for-action-on-chinese-steel.

Ikenson, Dan. "Zeroing In: Anti-dumping's Flawed Methodology under Fire." *Free Trade Bulletin*, no.11 (2004): 1-3.

Ikenson, Dan. "'Byrdening Relations': U.S. Trade Policies Continue to Flout the Rules", *CATO Institute Free Trade Bulletin* no.5, January 13, 2004, https://www.cato.org/free-trade-bulletin/byrdening-relations-us-trade-policies-continue-flout-rules.

Irish, Charles R., and Shin-yi. Peng. "The personalities and Policies Affecting US Trade with East and Southeast Asia: The Implications on the Trade Promotion Authority." *International Trade & Business Law Review* 9, (2005): 45-72.

Irwin, Douglas A. "Tariffs and Growth in Late Nineteenth Century America." *The World Economy* 24, no.1 (2001): 15-30.

Irwin, Douglas A. "The Rise of US Antidumping Activity in Historical Perspective." *The World Economy* 28, no.5 (2005): 651-668.

Irwin, Douglas A. "Did Late-Nineteenth-Century U.S. Tariffs Promote Infant Industries? Evidence from the Tinplate Industry." *The Journal of Economic History* 60, no.2 (2012): 335-360.

Irwin, Douglas A. "U.S. Trade Policy in Historical Perspective." *NBER Working Paper* 26256 (September 2019), https://www.nber.org/papers/w26256.

Irwin, Douglas A. "Interpreting the Tariff-Growth Correlation of the Late 19th Century." *The American Economic Review* 92, no.2 (2002): 165-169.

Isaac, R. Mark, and Vernon L. Smith. "In Search of Predatory Pricing." *Journal of Political Economy* 93, no.2 (1985): 320-345.

Jackson, John H. "State Trading and Nonmarket Economies." *The International Lawyer* 23, no.4 (1989): 891-908

Jackson, John H., Jean-Victor Louis, and Mitsuo Matsushita. "Implementing the Tokyo Round: Legal Aspects of Changing International Economic Rules." *Michigan Law Review* 81, no.2 (1982): 267-397.

Jackson, John H., and James V. Feinerman. "China's WTO Accession: Survey of Materials." *Journal of International Economic Law* 4, no.2 (2001): 329-335.

Jacobs, Walter Darnell. "Rhodesia: Threat to the Peace?" *World Affairs* 130, no.1 (1967): 34-44.

Jallab, Mustapha Sadni, RenéSandretto, and Robert M. Feinberg. "An Empirical Analysis of US and EU Antidumping Initiation and Decision." *Economics*, (March 2005): 10-35.

Jallab, Mustapha Sadni, René Sandretto, and Monnet Gbakou. "Antidumping Procedures and Macroeconomic Factors: A Comparison between the United States and the European Union." *Global Economy Journal* 6, no.3 (2006): 22-28.

Jallab, Mustapha Sadni, and James B. Kobak, Jr. "Antidumping as Anticompetitive Practice Evidence from the United States and the European Union." *Journal of Industry, Competition and Trade* 6, no. 3-4 (2006): 253-275.

James, William E. "Have Antidumping Measures of EU and NAFTA Members against East Asian Countries Provoked Retaliatory Responses?" *ADB Economics Working Paper Series*, no.144 (2008): 1-19.

Jean, Sébastien. "How the COVID-19 Pandemic Is Reshaping the Trade Landscape and What to Do About It." *Intereconomics* 55, no.3 (2020): 135-139.

Jean, Sébastien, Perrot, Anne, and Philippon, Thomas. "Competition and trade: Which policies for Europe?" *Notes du conseil d'analyse économique* 51, no.3 (2019): 1-12.

Jiang, Bin and Ellinger, Alexander E. "Challenges for China-the World's largest Antidumping target." *Business Horizons* 46, no.3 (2003): 25-30.

Johannesson, Louise. "Supporting Developing Countries in WTO Dispute Settlement." *IFN Working Paper,* no.1120 (2016):15-30.

Johnson, Harry G. "The Kennedy Round." *The World Today* 23, no.8 (1967): 326-333.

Johnson, Thomas E. "The Retroactive Application of the Antidumping Act of 1921." *Northwestern Journal of International Law & Business* 1, no.1 (1979): 262-283.

Johnston, Jane. "The public interest: A new way of thinking for public relations*?*" *Public Relations Inquiry* 6, no.1 (2015): 5-22.

Jones, Kent. "The Political Economy of Voluntary Export Restraint Agreements." International Review for Social Sciences 37, no.1 (1984): 82- 101.

Jones, Vivian C. "Trade Remedies: A Primer." *Congressional Research Service*, March 6, 2012, https://www.everycrsreport.com/reports/RL32371.html.

Jonish, J.E. "Recent Developments in US AD Policy." *Journal of World Trade* 7, no.3 (1973): 316-320.

Kakabadse, Mario A. "The Tokyo Round and After." *The World Today* 37, no.7/8 (1981): 4-310.

Kamel, Nevine. "Egyptian government has begun to protect local industry, expect to increase anti-dumping cases in

2018: WTO," *Daily News Egypt*, May 8, 2019, https://dailynewsegypt.com/2019/05/08/egyptian-government-has-begun-to-protect-local-industry-expect-to-increase-anti-dumping-cases-in-2018-wto/.

Kantor, Mark Alan. "The Trigger Price Mechanism: Limitation on Administrative Discretion under the Antidumping Laws Discretion under the Antidumping Laws." *University of Michigan Journal of Law Reform* 11, no.3 (1978): 443-455.

Kao, Kuo-Feng, and Cheng-Hau Peng. "Antidumping Protection, Price Undertaking and Product Innovation." *International Review of Economics and Finance* 41, (2016): 53-64.

Kapterian, Gisele. "A Critique of the WTO Jurisprudence on 'Necessity'." *The International and Comparative Law Quarterly 59*, no.1 (2010): 89-127. http://www.jstor.org/stable/25622271.

Kaszubska, Katarzyna. "Rethinking China's Non-Market Economy Status Beyond 2016." *ORF OCCASIONAL PAPER*, no.107 (2017):1-22.

Kate, Adriaan Ten. "Trade liberalization and economic stabilization in Mexico: Lessons of experience." *World Development* 20, no.5 (1992): 659-672.

Katz, Sherman. "Tariffs Are the Wrong Way to Fight Unfair Trade Practices." *Harvard Business Review*, March 08, 2018, https://hbr.org/2018/03/tariffs-are-the-wrong-way-to-fight-unfair-trade-practices.

Kawahito, Kiyoshi. "The Steel Dumping Issue in Recent U.S.-Japanese Relations." *Asian Survey* 20, no.10 (1980): 1038-1047.

Kazeki, Jun. "*Antidumping Negotiations under the WTO and FANs*." *Journal of World Trade* 44, no.5 (2010): 938-939.

Kempton, Jeremy Peter holmes, and Cliff Stevenson. "Globalisation of Anti-Dumping and the EU." *Centre on European Political Economy Working Paper*, no.6 (1999): 1-48.

Kerr, William A. "Dumping: Trade Policy in Need of a Theoretical Make Over." *Canadian Journal of Agricultural Economics* 54, no.1 (2006): 11-31.

Kerr, William A., and Laura J. Loppacher. "Antidumping in the Doha Negotiations: Fairy Tales at the World Trade Organization." *Journal of World Trade* 38, no.2 (2004): 211-244.

Keck, Alexander, and Low, Patrick. "Special and differential treatment in the WTO: Why, when and how?" *WTO Staff Working Paper*, no. ERSD-2004-03 (2006): 20-30.

Kee, Hiau Looi, Cristina Neagu, and Alessandro Nicita. "Is Protectionism on the Rise? Assessing National Trade Policies during the Crisis of 2008." *Review of Economics and Statistics* 95. no.1 (2011): 342-346.

Keith, Robert. "The Budget Reconciliation Process: The Senate's 'Byrd Rule'." *Congressional Research Service*, July 8, 2009, https://budgetcounsel.files.wordpress.com/2016/11/crs-the-budget-reconciliation-process-the-senate_s-e2809cbyrd-rulee2809d-bob-keith-rl30862-july-8-2009.pdf.

Keithly, Walter R., and Poudel Pawan. "The Southeast U.S.A. Shrimp Industry: Issues Related to Trade and Antidumping Duties." *Marine Resource Economics* 23, no.4 (2008): 459-483.

Kelly, Brian. "The Law and Economics of Simultaneous Countervailing Duty and Anti-dumping Duty Proceedings." *Global Trade and Customs Journal* 3, no.1 (2008): 41-

50,https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/3.1/GTCJ2008004.

Kennedy, Scott. “The Price of Competition: Pricing Policies and the Struggle to Define China's Economic System.” *The China Journal*, no.49 (2003): 1-30.

Khanna, Tarun, Krishna G. Palepu, and Jayant Sinha, “Strategies That Fit Emerging Markets.” *Harvard Business Review* 83, no.6 (2005): 63-74. https://hbr.org/2005/06/strategies-that-fit-emerging-markets.

Khatibi, Arastou. “The Trade Effects of European Antidumping Policy.” *ECIPE Working Paper*, no.7 (2009): 2-13.

Kleen, Peter. “So alike and yet so different: A comparison of the Uruguay Round and the Doha Round.” *Jan Tumlir Policy Essays*, no.2 (2008): 1-23.

Knetter, Michael M., and Thomas J. Prusa. “Macroeconomic Factors and Antidumping Filings: Evidence from Four Countries.” *Journal of International Economics* 6, no.1 (2003): 1-17.

Kim, Seokwoo. “How Trade Liberalization Affects the Political and Economic Performance of Developing Countries: The Application of a Two-Stage Game Model.” *Asian Perspective* 20, no.1 (1996): 163-184. http://www.jstor.org/stable/42704093.

Kim, Yong K. “The Beginnings of the Rule of Law in the International Trade System Despite U.S. Constitutional Constraints.” *Michigan Journal of International Law Michigan Journal* 17, no.4 (1996): 967-977.

Kinzius, Luisa, Alexander Sandkamp, and Erdal Yalcin. “Global trade protection and the role of non-tariff barriers. *CESifo Working Paper*, no.7419 (2019): 1-40, https://voxeu.org/article/global-trade-protection-and-role-non-tariff-barriers.

Kirchner, Stephen. “Time to Dump Australia’s Anti-dumping System.” *Issue Analysis*, no.141 (2013): 1-13.

Klaproth, Jesse. “Decision by the Arbitrator - United States - Continued Dumping and Subsidy Offset Act of 2000: Payback Is for the Byrds; Arbitrator Allows Eight Countries to Sanction the United States for Application of the Byrd Amendment.” *Tulane Journal of International and Comparative Law* 13, (2005): 401-420.

Koh, Harold Hongju. “Congressional Controls on Presidential Trade Policymaking after I.N.S. v. Chadha.” *N.Y.U.Journal of International Law & Policy* 18, (1986): 1191-1210.

Komuro, Norio. “The WTO Dispute Settlement Mechanism-Coverage and Procedures of the WTO Understanding.” *Journal of World Trade* 29, no.4 (1995): 5-96.

Konings, Josef, Hylke Vandenbussche, and Linda Springael. “Import Diversion under European Antidumping Policy.” *Journal of Industry, Competition and Trade* 1, no.3 (2001): 283-299.

Konings, Josef, and Hylke Vandenbussche. “Anti-dumping Protection hurts Exporters: Firm-level evidence.” *Review of World Economics* 149, no.2 (2013): 295-320.

Konings, Josef, Hylke Vandenbussche, and Reinhilde Veugelers. “Union Wage Bargaining and European Antidumping Policy in Imperfectly Competitive Markets,” *CEPR Discussion Papers*, no.1860 (1998): 10-28.

Konings, Josef, Hylke Vandenbussche, and Reinhilde Veugelers. “Unionization and European antidumping protection.” *Oxford Economic Papers* 53, no.2 (2001): 297-317.

Kokko, Ari, Patrik Gustavsson Tingvall, and Josefin Videnord. “Which Antidumping Cases Reach the WTO?” *Ratio*

Working Paper, no.286 (2017): 17-38.

Koopmann, Georg. “National protectionism and common trade policy.” *Intereconomics* 19, no.3 (1984): 103-110.

Krasner, Stephen D. “The Tokyo Round: Particularistic Interests and Prospects for Stability in the Global Trading System.” I*nternational Studies Quarterly* 23, no.4 (1979): 491-531.

Krishna, Raj. “Antidumping in Law and Practice.” *Policy Research Working Papers*, 1999. https://doi.org/10.1596/1813-9450-1823.

Krupp, C. “Anti-dumping cases in the US chemical industry: A panel data approach.” *The Journal of Industrial Economics* 42, no.3 (1994): 299-311.

Krupp, C., and Patricia S. Pollard. “Market Responses to antidumping Laws: Some Evidence from the US Chemical Industry.” *Canadian Journal of Economics* 29, (1996): 199-227.

Kufuor, Kofi Oteng. “The Developing Countries and the Shaping of the GATT/WTO Antidumping Law.” *Journal of World Trade* 32, no.6 (1998): 167-196.

Kufuor, Kofi Oteng. “Africa and Anti-Dumping Issues in the Doha Round.” *African Journal of International and Comparative Law* 27, no.1 (2009): 166-176.

Kucik, Jeffrey, and Reinhardt, Eric. “Does Flexibility Promote Cooperation? An Application to the Global Trade Regime.” *International Organization* 62, no.3 (2008): 477-505.

Lacey, Simon B.C. “The EC Bed Linen Dispute: India Challenges the EC's Implementation of the WTO Antidumping Agreement.” (March 1, 2001). https://ssrn.com/abstract=1135128.

Lardy, Nicholas R. “Issues in China’s WTO Accession”, *Brookings*. May 9, 2001, https://www.brookings.edu/testimonies/issues-in-chinas-wto-accession/.

Latif, Muhammad Ijaz. “Uruguay Round of GATT and Establishment of the WTO.” *Pakistan Horizon* 65, no.1 (2012): 53-70.

Lai, Hongyi Harry. “Behind China’s World Trade Organization Agreement with the USA.” *Third World Quarterly* 22, no.2 (2001): 237-255.

Laird, Sam. “A Round by Any Other Name: The WTO Agenda After Doha.” *Development Policy Review* 20, no.1 (2002): 41-62.

Lawrence, Robert Z., and Litan, Robert E. “Why Protectionism Doesn’t Pay.” *Harvard Business Review*, May 1987, https://hbr.org/1987/05/why-protectionism-doesnt-pay.

Lawder, David. “U.S. formally opposes China market economy status at WTO.” *Reuters*, November 30, 2017, https://www.reuters.com/article/us-usa-china-trade-wto-idUSKBN1DU2VH.

Lawrence, Robert Z. “China and the Multilateral Trading System.” *NBER Working Paper*, no.12759 (2006), https://www.nber.org/system/files/working_papers/w12759/w12759.pdf.

Lawrence, Robert Z., and Robert E. Litan. “Why Protectionism Doesn’t Pay.” *Harvard Business Review*, May 1987, https://hbr.org/1987/05/why-protectionism-doesnt-pay.

Lazar, Fred. "Structural or Strategic Dumping: A Comment on Richard Boltuck's 'An Economic Analysis of Dumping'." *Journal of World Trade* 22, no.3 (1988):91.

Lee, Adams. "Garlic, More Garlic, China Trade and Fairness." *Harris Bricken,* June 7, 2017, https://harrisbricken.com/chinalawblog/30189/.

Lee, Minsoo, Park, Donghyun, and Cui, Aibo. "Invisible Trade Barriers: Trade Effects of US Antidumping Actions Against the People's Republic of China." *ADB Economics Working Paper Series*, no.378 (2013): 1-21.

Lee, Pierce. "Rethinking the Rhetoric of Antidumping: A Response to Mark Wu's Reform Proposal." *Georgia Journal of International and Comparative Law* 42, no.2 (2014): 457-465.

Leibowitz, Lewis E. "Safety Valve or Flash Point? The Worsening Conflict between U.S. Trade Laws and WTO Rules." *The Cato Journal*, no.17, November 6, 2001, https://www.cato.org/trade-policy-analysis/safety-valve-or-flash-point-worsening-conflict-between-us-trade-laws-wto.

Leidy, M. P. "Macroeconomic conditions and pressures for protection under Antidumping and countervailing duty laws: Empirical evidence from the United States." *International Monetary Fund Staff Papers* 44, no.1(1997): 132-144.

Leidy, M. P., and B. K. Hoekman. "Production Effects of Price- and Cost-Based Antidumping Laws under Flexible Exchange Rates." *Canadian Journal of Economics* 23, (1990): 873-895.

Levine, David S. "Could Overreaction to Cybersecurity Threats Hurt Transparency at Home?" *SLATE*, June 12, 2013, https://slate.com/technology/2013/06/trade-secret-law-reform-to-fight-cybersecurity-could-hurt-transparency.html.

Lewis, Caitlain Devereaux. "Presidential Authority over Trade: Imposing Tariffs and Duties," *Congressional Research Service Report*, December 9, 2016, https://fas.org/sgp/crs/misc/R44707.pdf.

Li, Chunding, and John Whalley. "Chinese firm and industry reactions to antidumping initiations and measures." *Applied Economics* 47, no.26 (2015): 2683-2698.

Li, Feng, and Zhengqiong Lv. "Capability Poverty on Technological Innovation in China's Enterprises Based on the Viewpoint of Anti-dumping." *2010 3rd International Conference on Information Management, Innovation Management and Industrial Engineering*, (2010): 548-552.

Li, Xiaojun. "Understanding China's Behavioral Change in the WTO Dispute Settlement System." *Asian Survey* 52, no. 6 (2012): 1111-1137.

Li, Yuefen. "Why is China the world's number one Antidumping target." *China in a globalizing world*, (2004): 75-104.

Liebman, Benjamin H., and Kasaundra Tomlin. "World Trade Organization sanctions, implementation, and retaliation." *Empirical Economics* 48, (2015): 715-745.

Lim, Chin Leng, and Jiang Yu. Wang. "China and the Doha Development Agenda." *Journal of World Trade* 44, no.6 (2010): 1309-1331.

Lin, Chiang-feng, and Po-Kuan Wu. "The EU's Trade Policy in the Doha Development Agenda-An Interim Assessment on Rules Negotiations." *Archive of European Integration*, 17 May 2007, http://aei.pitt.edu/8026/1/wu-p-04f.pdf.

Lindsey, Brink. "Coming Home to Roost: Proliferating Antidumping Laws and the Growing Threat to U. S. Exports, CATO Institute, *Trade Policy Analysis*, no.14 (2001), https://www.cato.org/publications/trade-policy-analysis/coming-home-roost-proliferating-antidumping-laws-growing-threat-us-exports.

Lindsey, Brink, and Daniel J. Ikenson. "Reforming the Antidumping Agreement a Road Map for WTO Negotiations." *Trade Policy Analysis*, no.21 (2002): 19-20.

Lindsey, Brink, and Daniel J. Ikenson. "Antidumping 101: The Devilish Details of 'Unfair Trade, Law." *Trade Policy Analysis*, no.20 (2001), https://www.cato.org/publications/trade-policy-analysis/antidumping-101-devilish-details-unfair-trade-law.

Lincicome, Scott. "The 'Protectionist Moment' That Wasn't-American Views on Trade and Globalization." *Free Trade Bulletin*, no.72, November 2, 2018, https://www.cato.org/free-trade-bulletin/protectionist-moment-wasnt-american-views-trade-globalization.

Liu, Hsiang-His, and Teng-Kun Wang. "Antidumping, Exchange Rate and Strategic Price Competition by Staged Game." *Theoretical Economics Letters* 4, no.3 (2014): 197-209.

Liu, Ming-Hua, Dimitris Margaritis, and Yang Zhang. "The Global Financial Crisis and the Export-Led Economic Growth in China." *The Chinese Economy* 52, no.3 (2019): 232-248.

Lofgren, Charles A. "United States v. Curtiss- Wright Export Corporation: An Historical Reassessment." *Yale Law Journal* 83, no.1 (1973): 1-32.

Long, Qinglan. "Conflicting Positions but Common Interests: An Analysis of the United States Antidumping Policy Toward China." *Richmond Journal of Global Law & Business* 7, no.2 (2008): 133-152.

Lowenfeld, Andreas F. "Fair or Unfair Trade: Does It Matter." *Cornell International Law Journal* 13, no.2 (1980): 205-219.

Lloyd, Tim, Oliver Morrissey, and Geoffrey Reed. "Estimating the Impact of Anti-dumping and Anti-cartel Actions Using Intervention Analysis." *Economic Journal* 108, no.447 (1998): 458-476.

Lynn, Jonathan. "WTO warns on excessive legal trade safety valves." *REUTERS*, July 22, 2009, https://www.reuters.com/article/us-trade-wto-measures/wto-warns-on-excessive-legal-trade-safety-valves-idUSLK12524020090722.

Maher, Kris. "China Probes Imports of U.S. Steel." *The Wall Street Journal*, June 2, 2009, https://www.wsj.com/articles/SB124387775878672771.

Marcilly, Charles de., and Angéline Garde. "Status of market economy to China: What political answers can be given to this legal straitjacket?" *Foundation Robert Schuman*, 18/04/2016, https://www.robert-schuman.eu/en/european-issues/0389-status-of-market-economy-to-china-what-political-answers-can-be-given-to-this-legal-straitjacket.

Marks, Matthew J. "United States Antidumping Laws-A Government Overview." *Antitrust Law Journal* 43, (1973-1974): 580-595.

Martin, Alberto, and Wouter Vergote. "On the role of retaliation in trade agreements." *Journal of International Economics* 76, (2008): 61-77.

Marukawa, Tomoo. "The economic nexus between China and emerging economies." *Journal of Contemporary East Asia Studies* 6, no.1 (2017): 29-41.

Matschke, Xenia, and Anja Schottner. "Antidumping as Strategic Trade Policy Under Asymmetric Information." *CESifo Working Paper*, no.2536 (2009): 1-35.

Mattoo, Aditya, and Arvind Subramanian. "A China Round of Multilateral Trade Negotiations." *Center for Global Development Working Paper*, no.277 (December 2011): 1-39.

McClenahan, William. "The Growth of Voluntary Export Restraints and American Foreign Economic Policy, 1956-1969." *Business and Economic History* 20, (1991): 180-190.

McCormack, Garry P. "The Reinstated Steel Trigger Price Mechanism: Reinforced Barrier to Import Competition." *Fordham International Law Journal* 4, no.2 (1980): 289-339.

McGee, Robert W. "The Case to Repeal the Antidumping Laws." *Northwestern Journal of International Law & Business* 13, no.3 (1993): 491-562.

McGee, Robert W. "Antidumping laws as weapons of protectionism: Asian case studies." *Manchester Journal of International Economic Law* 5, no.1 (2008):36-69.

Mackenzie, K. C. "Anti-Dumping Duties in Canada." *Canadian Yearbook of International Law/Annuaire Canadien De Droit International* 4, (1966): 131-60.

Maclean, Robert M., and Richard J. Eccles. "A Change of Style not Substance: the Community's new Approach Towards the Community Interest Test in Antidumping and Anti-Subsidy law." *Common Market Law Review* 36, no.1 (1999): 123-148.

Mah, Jai S. "Antidumping Decisions and Macroeconomic Variables in the USA." *Applied Economics* 32, no.2 (2000): 1701-1709.

Malhotra, Nisha. "Is Antidumping legislation a threat to competition? a case study of US chemical industry." *Competitiveness Review An International Business Journal incorporating Journal of Global Competitiveness* 16, no.1 (2006): 51-56.

Malhotra, Nisha, and A. Rus Horatiu. "The Effectiveness of the Canadian Antidumping Regime." *Canadian Public Policy / Analyse De Politiques* 35, no.2 (2009): 187-202.

Malkawi, Bashar H. "Arab Countries' under Participation in the WTO Dispute Settlement Mechanism." *Flinders Law Journal* 14, no.2 (2012):12-14.

Manners, Ian. "Normative Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies* 40, no.2 (2002): 235-258.

Mankiw, N., and Phillip L. Swagel. "Antidumping: The Third Rail of Trade Policy." *Foreign Affairs* 84, (2005): 107-119.

McKibbin, Warwick J., and Wing Thye Woo. "The Consequences of China's WTO Accession for Its Neighbors." *Asian Economic Papers* 2, no.2 (2003): 1-38.

Marsh, Sarah J. "Creating Barriers for Foreign Competitors: A Study of the Impact of Anti-Dumping Actions on the Performance of U.S. Firms." *Strategic Management Journal* 19, no.1 (1998): 25-37.

Martin, Will. "Trade Policies, Developing Countries, and Globalization." *Development Research Group*, World Bank, October 9, 2001, https://www.researchgate.net/profile/Will-Martin-5/publication/250652725.

Martin, Will, and Elena Ianchovichina. "Economic Impacts of China's Accession to the World Trade Organization." *The World Band Economic Review* 18, no.1 (2003): 11-20.

Marton, Katherin, and Rana K. Singh. "New technologies and developing countries: Prospects and potential." *Intereconomics* 27, no.3 (1992): 133-138.

Mastel, Greg. "The U.S. Steel Industry and Antidumping Law." *Challenge* 42, no.3 (1999): 84-94.

Mastel, Greg, and Szamosszegi, Andrew. "Leveling the Playing Field: Antidumping and the U.S. Steel Industry." *Economic Strategy Institute*, February 1999, http://www.econstrat.org/images/ESI_Research_Reports_PDF/leveling_the_playing_field.pdf.

Maur, Jean-Christophe. "Echoing Anti-dumping Cases: Regulatory Competitors, Imitation and Cascading Protection." *World Competition* 21, no.6 (1998): 14-23. https://ssrn.com/abstract=149775.

Mcgee, J. "Predatory Pricing Revisited." *The Journal of Law and Economics* 23, (1980): 289 - 330.

Meier, Gerald M. "The Tokyo Round of Multilateral Trade Negotiations and the Developing Countries." *Cornell International Law Journal* 13, no.2 (1981): 239-356.

Messerlin, Patrick A. "Antidumping Laws and Developing Countries." *Policy Research Paper Series* 16, (1988): 5-10.

Messerlin, Patrick A. "China in the World Trade Organization: Antidumping and Safeguards." *The World Bank Economic Review* 18, no.1 (2004): 105-129.

Messerlin, Patrick A. "Anti-dumping regulations or pro-cartel law? The EC chemical case." *The World Economy* 13, no.4 (1990): 23-45.

Meyerson, Denise. "Why courts should not balance rights against the public interest." *Melbourne University Law Review* 31, no.3 (2007): 873-903.

Michalopoulos, Constantine. "World Trade Organization Accession for Transition Economies: Problems and Prospects." *Russian & East European Finance and Trade* 36, no.2 (2000): 63-86.

Miranda, Jorge. "Should Antidumping Laws Be Dumped." *Law and Policy in International Business* 28, no.1 (1996): 255-288.

Miranda, Jorge, Raul A. Torres, and Mario Ruiz. "The International Use of Anti-dumping: 1987-1997." *Journal of World Trade* 32, no.5 (1998): 5-71.

Michalopoulos, Constantine. "The Role of Special Differential Treatment for Developing Countries in GATT and the World Trade Organization." The World Bank Policy Research Working Paper, no.2388 (2000), 1-41, https://openknowledge.worldbank.org/bitstream/handle/10986/19819/multi_page.pdf?sequence=1&isAllowed=y.

Mitra, Devashish. "The Political Economy of Trade Policy Theory, Evidence and Applications." *World Scientific Studies in International Economics* 51, (2016): 300-310.

Miyagiwa, Kaz, Huasheng Song, and Hylke Vandenbussche. "Accounting for Stylised Facts about Recent Anti-dumping: Retaliation and Innovation." *The World Economy* 39, no.2 (2016): 221-235.

Moller, Stephen F. “Free Trade Realism in the International Market: Towards a Sensible, Privately-Enforced Antidumping Statute.” *Santa Clara Law Review* 33, no.4 (1993): 967-977.

Moore, Patrick M. “The Decisions Bridging the GATT 1947 and the WTO Agreement.” *American Journal of International Law* 90, no.2 (1996): 317-328.

Moore, Michael O. “Rules or Politics? An Empirical Analysis of ITC Anti-dumping Decisions.” *Economic Inquiry* 30, no.3 (1992): 449-466.

Moore, Michael O. “VERs and Price Undertakings under the WTO.” *Review of International Economics* 13, no.2 (2005): 4-10.

Moore, Michael O. “Facts available’ dumping allegations: when will foreign firms cooperate in antidumping petitions?” *European Journal of Political Economy* 21, no.1 (2005): 185-204.

Moore, Michael O., and Steven M. Suranovic. “Welfare Effects of Introducing Antidumping Procedures in a Trade-Liberalizing Country.” *Journal of Economic Integration* 9, no.2 (1994): 241-259.

Moore, Michael O., and Maurizio Zanardi. “Does Anti-dumping Use Contribute to Trade Liberalization in Developing Countries?” *Institute for International Economic Policy* 42, no.2 (2008): 469-495.

Moore, Michael O., and Maurizio Zanardi. “Trade Liberalization and Antidumping: Is There a Substitution Effect?” *Review of Development Economics* 15, no.4 (2011): 601-619.

Moore, Michael O., and Mark Wu, “Antidumping and Strategic Industrial Policy: Tit-for-Tat Trade Remedies and the China - X-Ray Equipment Dispute.” *World Trade Review* 14, no.2 (2015): 239-286.

Morrison, Wayne M., and Marc Labonte. “China’s Currency Policy: An Analysis of the Economic Issues.” *Congressional Research Service Report*, no.7-5700 (2013):1-54.

Motta, Massimo. “Multinational Firms and the Tariff-jumping Argument: A Game Theoretic Analysis with Some Unconventional Conclusions.” *European Economic Review* 36, no.8 (1992): 1557-1571.

Motta, Massimo, and Fabrizio Onida. “Trade Policy and Competition Policy.” *Giornale Degli Economisti E Annali Di Economia*, Nuova Serie, 56 (Anno 110), no.1/2 (1997): 67-97. http://www.jstor.org/stable/23248278.

Movsesian, Mark L. “United States: Continued Dumping and Subsidy Offset Act of 2000. WT/DS217 & 234/AB/R.” *The American Journal of International Law* 98, no.1 (2004):150-155.

Moyer, Homer E. Jr., and Catherine Curtiss. “Solutions to U.S. Antidumping and Countervailing Duty Actions against Latin American Companies.” *The University of Miami Inter-American Law Review* 21, no.2 (1990): 473-493.

Mukunoki, Hiroshi. “Trade liberalization and incentives to implement antidumping protection.” *International Review of Economics & Finance* 72, (2021): 422-437.

Muenker, Reiner. “Enforcement of unfair competition and consumer protection laws by a private business associationin Germany: the Wettbewerbszentrale.” *Journal of Intellectual Property Law & Practice*, April 26, (2015):1-7, https://www.wettbewerbszentrale.de/media/getlivedoc.aspx?id=35283.

Myint, H. “Adam Smith's Theory of International Trade in the Perspective of Economic Development.” *Economica* 44, no.175 (1977): 231-248. https://doi.org/10.2307/2553648.

Myerson, Toby S. “A Review of Current Antidumping Procedures: United States Law and the Case of Japan.” *Columbia Journal of Transnational Law* 15, no.167 (1976):168-188.

Naito, Takumi. “Growth and welfare effects of unilateral trade liberalization with heterogeneous firms and asymmetric countries.” *Journal of International Economics* 109, (2017): 167-173.

Narayanan, Prakash. “Anti-dumping in India - Present State and Future Prospects.” *Journal of World Trade* 40, no.6 (2006): 1081-1091.

Narayanan, Prakash. “Injury Investigations in ‘Material Retardation’ Antidumping Cases.” *Northwestern Journal of International Law & Business* 25, no.1 (2004): 37-67.

Navarro, Peter. “The Economics of the ‘China Price’.” *China Perspectives*, no.6 (2006): 13-27, https://journals.openedition.org/chinaperspectives/3063.

Nedzel, Nadia E. “Antidumping and Cotton Subsidies: A Market-based Defense of Unfair Trade Remedies.” *Northwestern Journal of International Law & Busines* 28, no.2 (2008): 256-270.

Nedumpara, James J. “China’s market economy status in WTO: In a state of abeyance.” *Financial Express*, July 8, 2019, https://www.financialexpress.com/economy/chinas-market-economy-status-wto-state abeyance/1636350/.

Nelson, Douglas. “The Political Economy of Antidumping: A survey.” *European Journal of Political Economy* 22, no.3 (2006): 554-590.

Neuburger, Hugh, and Houston H. Stokes. “The Anglo-German Trade Rivalry, 1887-1913: A Counterfactual Outcome and Its Implications.” *Social Science History* 3, no.2 (1979): 187-201.

Nicolaides, P. “The Competition Effects of Dumping.” *Journal of World Trade* 24, (1990): 115-131.

Niels, Gunnar. “What is antidumping policy really about?” *Journal of Economic Surveys* 14, no.4 (2000): 465-492. https://onlinelibrary.wiley.com/doi/pdf/10.1111/1467-6419.00118.

Niels, Gunnar, and Joseph Francois. “Business Cycles, the Exchange Rate, and Demand for Antidumping Protection in Mexico.” *Review of Development Economics* 10, no.3 (2006): 388-399.

Niels, Gunnar, and Andriaan ten Kate. “Anti-dumping Protection in a Liberalizing Country: Mexico’s Antidumping Policy and Practices.” *The World Economy* 27, no.7 (2007): 969-983.

Niels, Gunnar, and Andriaan ten. Kate. “Antidumping policy in developing countries: Safety valve or obstacle to free trade?” *European Journal of Political Economy* 22, no.3 (2006): 618-638.

Nivola, Pietro S. “The New Protectionism: U.S. Trade Policy in Historical Perspective.” *Political Science Quarterly* 101, no.4 (1986): 578-585.

Nogués, Julio J., and Elías Baracat. “Political Economy of Antidumping and Safeguards in Argentina.” World Bank, *Policy Research Working Paper*, no.3587 (2005): 7-21.

Nolan-Haley, Jacqueline. “Trigger Price Mechanism: Protecting Competition or Competitors.” *The Fordham Law Archive of Scholarship and History* 13, no.1 (1980): 1-26.

Nordström, Håkan, and Gregory Shaffer. “Access to Justice in the World Trade Organization: The Case for a Small Claims Procedure - A Preliminary Analysis.” *World Trade Review* 7, no.4 (2008): 587-640.

Nye, William W. “The Implications of ‘Zeroing’ on Enforcement of U.S. Antidumping Law.” *Journal of Economic Policy Reform* 12, no.4 (2009): 263-271.

Obalade, Timothy A. Falade. “Analysis of Dumping as a Major Cause of Import and Export Crises.” *International Journal of Humanities and Social Science* 4, no.5 (2014): 233- 239.

Odell, John S. “Breaking Deadlocks in International Institutional Negotiations: The WTO, Seattle, and Doha.” *International Studies Quarterly* 53, no.2 (2009): 273-99.

OECD. “Global Anti-Dumping Trade Initiations and Measures Taken, 1995-2015.” *OECD Business and Finance Outlook*, 2017, 11-27. https://doi.org/10.1787/9789264274891-graph20-en.

OECD, “Steel Market Development. *DSTI/SC (2020)1/FINAL,* (2020): 10-30.

Oesch, Matthias. “Standards of Review in WTO Dispute Resolution.” *Journal of International Economic Law* 6, no.3 (2003): 635-659.

Olson, Kara M., and Benjamin H. Liebman. “The Returns from Rent-Seeking: Campaign Contributions, Firm Subsidies and the Byrd Amendment.” *Canadian Journal of Economics* 39, no.4 (2006): 1345-1369.

“On the reform of the WTO Intervention, by H.E. Ambassador Zhang Xiangchen at the Luncheon in Paris Workshop.” *Permanent Mission of the People’s Republic of China to the World Trade Organization*, November 20, 2018, http://wto2.mofcom.gov.cn/article/chinaviewpoins/201811/20181102808197.shtml.

Ostoni, Lucia. “Anti-dumping Circumvention in the EU and the US: Is There a Future for Multilateral Provisions under the WTO?” *Fordham Journal of Corporate & Financial Law* 10, no.2 (2005): 9-13.

Osang, Thomas, and Jaden Warren. “Retaliatory Antidumping by China: A New Look at the Evidence.” *Eastern Economic Journal* 45, (2019): 161-178.

Palme, Doug. “Lawmakers warn Bush not to rush into Doha deal”, *REUTERS*, December 2, 2008, https://www.reuters.com/article/us-usa-congress-doha/lawmakers-warn-bush-not-to-rush-into-doha-deal idUSTRE4B185I20081202?sp=true.

Pangratis, Angelos, and Edwin A. Vermulst. “Injury in Antidumping Proceedings-The Need to Look Beyond the Uruguay Round Results.” *Journal of World Trade* 28, no.5 (1994): 61–96.

Park, Soonchan. “The Trade Depressing and Trade Diversion Effects of Antidumping Actions: The Case of China.” *China Economic Review* 20, no.3 (2009): 542-48, https://doi.org/10.1016/j.chieco.2009.03.006.

Parzych, K.M. “The Proposed US Trade Reform Act of 1973.” *Journal of World Trade* 9, no.6 (1973): 719-725.

Patenode, Timothy J. “The New Antidumping Procedures of the Trade Agreements Act of 1979: Does It Create a New Non-Tariff Trade Barrier.” *Northwestern Journal of International Law & Business* 2, no.1 (1980): 200-220.

Peltzman, Sam. “Toward’s More General Theory of Regulation.” *Journal of Law and Economics* 19, no.2 (1976): 211-248.

Reynolds, Kara M. “Subsidizing rent-seeking: Antidumping protection and the Byrd Amendment.” *Journal of International Economics* 70, no.2 (2006): 490-502.

Pincus, J. J. “Pressure Groups and the Pattern of Tariffs.” *Journal of Political Economy* 83, no.4 (1975): 758-778.

Pindyck, Robert S., and Julio J. Rotemberg. "Are Imports to Blame? Attribution of Injury under the 1974 Trade Act." *Journal of Law and Economics* 30, no.1 (1987): 101-122.

Pinto, Brian. "Repeated Games and the 'reciprocal Dumping' Model of Trade." *Journal of International Economics* 20, no.3-4 (1986): 357-366.

Pintos, Eugenia S., and Patricia J. Murphy. "Congress Dumps the International Antidumping Code." *Catholic University Law Review* 18, no.2 (1968): 180-192.

Platt, Andrew. "The Fate of Domestic Exporters Under the Byrd Amendment as Case Study for Resuscitating Last in-Time Treaty Interpretation." *Brigham Young University International Law & Management Review* 3, no.2 (2007): 171-212.

Posner Eric A., and Alan O. Sykes. "Voting Rules in International Organizations." *University of Chicago Public Law & Legal Theory Working Paper*, no.458 (2014): 1-23.

Potter, Pitman B. "China and the International Legal System: Challenges of Participation." *The China Quarterly*, no.191 (2007): 699-715.

Potts, Linda F., and James M. Lyons. "The Trade Agreements Act: Administrative Policy & Practice in Antidumping Investigations." *North Carolina Journal of International Law and Commercial Regulation* 6, no.3 (1981): 482-526.

Preeg, Ernest H. "Traders and Diplomats: An Analysis of the Kennedy Round of Negotiations under the General Agreement on Tariffs and Trade." *American Journal of Agricultural Economics* 53, no.4 (1971): 167-170.

Polouektov, Alexander. "Non-Market Economy Issues in the WTO Anti-Dumping Law and Accession Negotiations Revival of a Two-tier Membership?" *Journal of World Trade* 36, no.1 (2002): 1-37.

Powell, Stephen J. Craig R. Giesse, and Craig L. Jackson. "Current Administration of U.S. Antidumping and Countervailing Duty Laws: Implications for Prospective U.S.-Mexico Free Trade Talks." *Northwestern Journal of International Law & Business* 11, no.2 (1990): 177-256.

Prusa, Thomas J. "Policy implications of antidumping measures: P.K.M. Tharakan, ed., (North-Holland, Amsterdam, 1991) pp. xxii + 292, Dfl. 175.00." *Journal of International Economics* 32, no.1-2 (1992): 198-200.

Prusa, Thomas J. "On the spread and impact of anti-dumping." *Canadian Journal of Economics* 34, no.3 (2001): 591-611.

Prusa, Thomas J. "Why are so many antidumping petitions withdrawn?" *Journal of International Economics* 33, no.1 (1991): 1-20.

Prusa, Thomas J., and Luca Rubini. "United States-Use of Zeroing in Anti-Dumping Measures Involving Products from Korea: It's déjà vu all over again." *World Trade Review* 12, no.2 (2013): 20-36.

Prusa, Thomas J., and Robert The. "Tilting the playing field: FTAs and the changing pattern of protection." *VOXEU CEPR*, 15 September 2010, https://voxeu.org/article/do-free-trade-agreements-increase-protectionism-towards-non-members.

Prusa, Thomas J., and Susan Skeath. "The economic and strategic motives for Antidumping filings." *NBER Working Paper* no. 8424 (2001): 5-18. https://www.nber.org/system/files/working_papers/w8424/w8424.pdf.

Ram, Vidya. "Brexit may strengthen EU's steel sector." *BusinessLine*, January 19, 2018, https://www.thehindubusinessline.com/opinion/columns/vidya-ram/brexit-may-strengthen-eus-steel sector/article10042458.ece.

Range, John Jay. "The Trigger Price Mechanism: Does It Prevent Dumping by Foreign Steelmakers." *North Carolina Journal of International Law and Commercial Regulation* 5, no.2 (1980):279-294.

Rao, Weijia. "China's Market Economy Status under WTO Antidumping Law after 2016." *Tsinghua China Law Review* 5, (2012-2013): 152-167.

Rehm, John B. "Developments in the Law and Institutions of International Economic Relations: The Kennedy Round of Trade Negotiations." *The American Journal of International Law* 62, no.2 (1968): 403-434.

Reitzes, James D. "Antidumping Policy." *International Economic Review* 34, no.4 (1993): 745-763.

Rémond, Mathieu. "The EU's refusal to grant China 'Market Economy Status' (MES)." *Asia Europe Journal* 5, no.3 (2007): 345-356.

Reynolds, Alan. "The Smoot-Hawley Tariff and the Great Depression." *CATO Institute*, May 7, 2016. https://www.cato.org/blog/smoot-hawley-tariff-great-depression.

Richards, Eric L., Scott J. Shackelford, and Abbey Stemler. "Rhetoric versus Reality: U.S. Resistance to Global Trade Rules and the Implications for Cybersecurity and Internet Governance." *Minnesota Journal of International Law 24*, (2015): 159-173.

Ringel, Brooke. "Commerce Continues China's Status as a Non-Market Economy." *Trade and Manufacturing Monitor*, October 31, 2017, https://www.ustrademonitor.com/2017/10/commerce-continues-chinas-status-as-a-non-market-economy/.

Robinson, Michelle D., and Benjamin A. Mandel. "Federal Budget Estimates for Fiscal Year 2006." *Survey of Current Business*, (2005): 14-24.

Rode, Reinhard. "The US trade policy towards the EC in the Tokyo round." *Intereconomics* 14, no.5 (1979): 230-236.

Romano, Alessandro, and Thammapitagkul, Peachya. "Antidumping: A Public Interest Not So Much in the Public Interest." *Manchester Journal of International Economic Law* 10, no.1 (2013): 59-77.

Rose, Andrew. "Protectionism isn't countercyclical (anymore)." *VOX EU CEPR,* 27 April 2012, http://voxeu.org/article/protectionism-isn-t-countercyclical-anymore.

Rothschild, Emma. "Adam Smith and the Invisible Hand." *The American Economic Review* 84, no.2 (1994): 319-322, http://www.jstor.org/stable/2117851.

Roure, Jean-Sébastien. "Trade Remedies -What Business Needs to Know." *International Trade Forum Magazine*, no.3 (2002), http://traeforum.org/Trade-Remidies---What-Business-Needs-to-Know/.

Rumbaugh, Thomas, and Nicolas Blancher. "China: International Trade and WTO Accession." *IMF Working Paper*, no.04/36 (2004), https://www.imf.org/external/pubs/ft/wp/2004/wp0436.pdf.

Rus, Tudor N. "The Short, Unhappy Life of the Byrd Amendment." *New York University Journal of Legislation and Public Policy* 10, no.2 (2007): 427-443.

Saggi, Kamal, and Mark Wu. "Yet another Nail in the Coffin of Zeroing: United States - Anti-dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil." *World Trade Review* 12, no.2 (2013): 377-408.

Salvatore, Dominick, and J. Michael. Finger, "Antidumping: How It Works and Who Gets Hurt." *Southern Economic Journal* 61, no.1 (1994):247. https://doi.org/10.2307/1060167.

Sally, Razeen. "Developing country trade policy reform and the WTO." *The Cato Journal* 19, no.3 (2000): 403-429.

Sandkamp, Alexander-Nikolai. "The Trade Effects of Antidumping Duties: Evidence from the 2004 EU Enlargement." *ifo Working Paper*, no.261 (2018): 01-37.

Sandkamp, Alexander-Nikolai, and Erdal Yalcin. "China's Market Economy Status and European Anti-Dumping Regulation." *CESifo Forum* 17, no.1 (2016): 77-85.

Satapathy, C. "WTO Agreement on Anti-Dumping: Misuse and Case for Review." *Economic and Political Weekly* 34, no.32 (1999): 2210-212.

Satapathy, C. "Under-Valued Imports and Public Interest: Domestic Rulings Vis-a-vis GATT/WTO Jurisprudence: II." *Economic and Political Weekly* 36, no.5/6 (2001): 445-47.

Schattschneider, E. E. "Politics, pressures and the tariff; a study of free private enterprise in pressure politics, as shown in the 1929-1930 revision of the tariff." *Journal of American History* 23, no.3 (1936): 444-445.

Schmidt, Ingo and Sabine Richard. "Conflicts between antidumping and antitrust law in the EC." *Intereconomics* 27, no.5 (1992):223-229.

Schnepf, Randy. "WTO Doha Round: Implications for U.S. Agriculture." *Congressional Research Service*, no.7-5700 (2014), 1-13.

Schoenbaum, Thomas J. "Trade Friction with Japan and the American Policy Response." *Michigan Law Review* 82, no.5/6 (1984): 1647-1661.

Schumacher, Reinhard. "Free Trade and Absolute and Comparative Advantage a Critical Comparison of Two Major Theories of International Trade." *WeltTrends Thesis* I6, (2012): 13-35,https://publishup.unipotsdam.de/opus4ubp/frontdoor/deliver/index/docId/6086/file/wtthesis16.pdf.

Schuknecht, Ludger, and Joerg Stephan. "EC Trade Protection Law: Produmping or Antidumping?" *Public Choice* 80, no.1/2 (1994): 143-156.

Scott, Robert E. "Trump must act now to protect U.S. steel and aluminum." *Economic Policy Institute*, January 24, 2018, https://www.epi.org/publication/trump-must-act-now-to-protect-u-s-steel-and-aluminum-administration-delays-have-already-heightened-the-import-crisis-for-tens-of-thousands-of-steel-and-aluminum-industry-workers/.

Shafaeddin, M. "Trade Liberalization, Industrialization and Development: Experience of recent decades." *TWN Trade & Development Series*, 40 (2010): 10-18.

Shannon, Thomas F., and William F. Marx. "The International Anti-Dumping Code and United States Antidumping Law--An Appraisal." *Columbia Journal of Transnational Law* 7, no.2 (1968): 171-202.

Shen, Deyong. "Chinese Judicial Culture: From Tradition to Modernity." *Brigham Young University Journal of Public*

Law 25, no.1 (2011): 131-141, https://core.ac.uk/download/pdf/217064399.pdf.

Sheppard, H.E. "The Continued Dumping and Subsidy Offset Act (Byrd Amendment): A Defeat before the WTO may constitute an Overall victory for US Trade." *Tulane Journal of International and Comparative Law* 10, (2002): 121-131.

Shepardson, David. "U.S. opens AD probe into steel imports from China, Canada, Mexico-source." *REUTERS*, February 26, 2019, https://www.reuters.com/article/us-usa-steel-investigation/u-s-opens-anti-dumping-probe-into-steel-imports-from-china-canada-mexico-idUSKCN1QF2S1.

Schomberg, William. "EU says investigating report of trade leak." *Reuters*, September 8, 2008, https://uk.reuters.com/article/uk-eu-trade-leak/eu-says-investigating-report-of-trade leakidUKL714923420080908.

Schueren, Paulette Vander. "New Antidumping rules and practice: Wide discretion held on a tight leash?" *Common Market Law Review* 33, no.2 (1996): 271-297.

Searles, James. "The European Union's Options for China Dumping Methodology After 11 December 2016." *Global Trade and Customs Journal* 11, no.10 (2016): 430-439.

Singh, Samir Kumar. "An Analysis of Anti-Dumping Cases in India." *Economic and Political Weekly* 40, no.11 (2005): 1069-074.

Shu, M. "Domestic Struggles over International Imbalance: The Political Economy of Anti-dumping Governance in the EU." *Fudan Journal of the Humanities and Social Sciences* 1, no.2 (2008): 72-94.

Sklarof, Jeffrey B. "United States Antidumping Procedures Under the Trade Agreements Act of 1979: A Crack in the Dam of Nontariff Barriers." *Boston College International and Comparative Law Review* 3, no.1 (1979): 223-262.

Sykes, Alan O. "Comparative Advantage and the Normative Economics of International Trade Policy." *Journal of International Economic Law* 1, no.1 (1998): 49-82.

Sykes, Alan O. "Trade Remedy Laws." *Law and Economics Working Paper*, no.240 (2005), 1-68.

Slayton, Philip. "The Canadian Legal Response to Steel Dumping." *Canada-United States Law Journal* 2, no.13, (1979): 81-94.

Smith, Alasdair. "Strategic Investment, Multinational Corporations and Trade Policy." *European Economic Review* 31, no.1-2 (1987): 89-96.

Soliman, Adam. "China's Anti-Dumping Regime and Compliance with Anti-Dumping Principles: An Analysis Using Agricultural Dumping Case Studies." *University of Miami International and Comparative Law Review* 21, no.2 (2014): 242-262.

Staiger, Robert W., and Wolak, Frank A. "The Effect of Domestic Antidumping Law in the Presence of Foreign Monopoly." *Journal of International Economics* 32, no.3-4 (1992): 265-287.

Staiger, Robert W., and Wolak, Frank A. "Measuring Industry-Specific Protection: Antidumping in the United States." *Brookings Papers on Economic Activity. Microeconomics* 1994 (1994): 51-118.

Staiger, Robert W., Frank A. Wolak, Robert E. Litan, Michael L. Katz, and Leonard Waverman. "Measuring Industry-Specific Protection: Antidumping in the United States." *Brookings Papers on Economic Activity.*

Microeconomics 1994, (1994): 1-118.

"Steel Production Declined 3.3% during the Last Week of 1977." *The New York Times*, Jan. 4, 1978, https://www.nytimes.com/1978/01/04/archives/steel-production-declined-33-during-the-last-week-of-1977.html.

Stegemann, Klaus. "EC Anti-Dumping Policy: Are Price Undertakings a Legal Substitute for Illegal Price Fixing?" *Weltwirtschaftliches Archiv* 126, no.2 (1990): 268-98.

Steinbach, Armin. "Price Undertakings in EU Antidumping Proceedings-an Instrument of the Past?" *Journal of Economic Integration* 29, no.1 (2014): 165-170.

Steinberg, Richard H. "Great power management of the world trading system: a transatlantic strategy for liberal multilateralism." *Law and Policy in International Business* 29, no.2 (1998): 1-15.

Steinhauer, Jennifer. "Both Parties Used to Back Free Trade. Now They Bash it." *The New York Times*. July 29, 2016, https://www.nytimes.com/2016/07/30/us/politics/in-time-of-discord-bashing-trade-pacts-appeals-to-both-parties.html.

Stevenson, Cliff. "US Steel Duties and Safeguard Actions under the WTO." *Trade Hot Topics Commonwealth*, no.11 (2002): 1-8.

Stichele, Myriam Vander. "The Ministerial Conference in Singapore and the Developing Countries, An Introduction." *WTO Booklet Series* 1,1996. https://www.tni.org/es/node/8820.

Stichele, Myriam Vander. "Towards a World Transnationals' Organisation?" *WTO Booklet Series* 3, 30 April 1998. https://www.tni.org/es/node/8822.

Stigler, George J. "The Theory of Economic Regulation." *Bell Journal of Economics and Management Science* 2, no.1 (1971): 137-146.

Stiglitz, Joseph E. "Dumping on Free Trade: The U.S. Import Trade Laws." *Southern Economic Journal* 64, no.2 (1997): 402-424.

Stoel, Jonathan T. "Repeal of the Byrd Amendment - Foreign and Domestic Efforts Result in the End of a WTO-Illegal U.S. Practice." *Hogan Lovells Global Trade and Customs Journal*, 2007, https://www.hoganlovells.com/en/pdfdownload?page={C0909802-1A4D-4438-BACA 7F386F078635}&p=1.

Stronski, James K. "Antidumping, Constructed Value, and Non-Countervailable Subsidies: A Proposed Inclusion of Subsidies in Constructed Value after Al Tech Specialty Steel Corp. v. United States." *Fordham International Law Journal* 11, no.1 (1987): 1-15.

Spamann, Holger. "The Myth of 'Rebalancing' Retaliation in WTO Dispute Settlement Practice." *Journal of International Economic Law* 9, no.1 (2006): 31-79.

Spaulding, Robert Mark. "German Trade Policy in Eastern Europe, 1890-1990: Preconditions for Applying International Trade Leverage." *International Organization* 45, no.3 (1991): 343-368.

Sapir, André. "Some Ideas for Reforming the Community Anti-dumping Instrument." *Bruegel Policy Contributions*, no.3 (2006): 1-6.

Saxena, Sada Shankar. "The Uruguay Round: Expectations of developing countries." *Intereconomics* 23, no.6 (1988): 268-276.

Scensson, Patrik, and Martin Hvidt Thelle. “Economic Assessment of the Community interest in EU Anti-dumping Cases.” *Copenhagen Economics*, 22 August 2005, https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/3/133/0/Copenhagen_Economics__Economic_Assessment_of_the_Community_Interest.pdf.

Scott, James and Rorden Wilkinson. “China threat? Evidence from the WTO.” *Journal of World Trade* 47, no.4 (2013): 761-782.

Silberberge, Magdalene, Anja Slany, and Christian Soegaard. “The Aftermath of Anti-dumping: Are Temporary Trade Barriers Really Temporary?” 20 Feb 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3054988.

Stiles, Kendall. “Negotiating Institutional Reform: The Uruguay Round, the GATT, and the WTO.” *Global Governance* 2, no.1 (1996): 119-148.

Stewart, Terence P., Amy S. Dwyer, and Marta M. Prado. “Antidumping, Countervailing Duties and Trade Remedies: "Let's Make A Deal"?-Views from a Domestic Practitioner.” *The International Lawyer* 37, no.3 (2003): 761-775.

Sykes, Alan O., and Richard N. Cooper. “Antidumping and Antitrust: What Problems Does Each Address? [with Comments and Discussion].” *Brookings Trade Forum*, (1998): 1-53.

Symons Jr, Edward L. “The Kennedy Round GATT Anti-dumping Code.” *University of Pittsburgh Law Review* 29, no.482 (1968): 482-486.

Tabakis, Chrysostomos, and Maurizio Zanardi. “Antidumping Echoing.” *Economic Inquiry* 55, no.2 (2016):24-26.

Takacs, Wendy E. “Pressures for protectionism: An empirical analysis.” *Economic Inquiry* 19, no.4 (1981): 687-693.

Tarullo, D. K. “The Hidden Costs of International Dispute Settlement: WTO Review of Domestic Anti-Dumping Decisions.” *Law and policy in international business* 34, (2002): 109, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=351080.

Tharakan, K.M. “The Problem of Anti-Dumping Protection and Developming Country Exports.” *WIDER Working Papers*, no.198 (2000): 4-29.

Tharakan, K.M. “Is Anti-dumping here to stay?” *The World Economy* 22, no.2 (1999): 179-206.

Tharakan, K.M., and J. Waelbroeck. “Antidumping and countervailing duty decisions in the E.C. and in the U.S.: An experiment in comparative political economy.” *European Economic Review* 38, no.1 (1994): 171-193.

Telep, Jeffrey M., and Richard C. Lutz. “China’s Long Road to Market Economy Status.” *Georgetown Journal of International Law* 49, (2018): 694-708.

Theuringer, Martin, and Pia Weiß. “Do Anti-Dumping Rules Facilitate the Abuse of Market Dominance?” *IWP Discussion Paper*, no.2001/3 (2001): 5-28, https://www.econstor.eu/bitstream/10419/39250/1/378730398.pdf.

Thomsen, Craig. “Trends in U.S. Antidumping and Countervailing Duty Petition Filings and the Consequences of Rule Changes, 1993-2013.” *Journal of International Commerce and Economics*, July 2015, https://www.usitc.gov/publications/332/journals/vol_vii_article2_trends_in_us_antidumping_and_countervailing.pdf.

Thompson, Lisa, and Pamela Tsolekile de Wet. “BRICS Development Strategies: Exploring the Meaning of BRICS ‘Community’ and ‘Collective Action’ in the Context of BRICS State Led Cooperation in South Africa.” *Chinese*

Political Science Review 2, (2017): 101-113.

Thorstensen, Vera, and Carolina Müller. "How does International Trade Regulation Addresses Exchange Rates Measures?" *Revista Direito GV* 10, no.2 (2014): 379-416).

Titievskaia, Jana. "EU trade policy-Frequently asked questions." *European Parliamentary Research Service*, October 2019, https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/642229/EPRS_IDA(2019)642229_EN.pdf.

Trefler, Daniel. "Trade Liberalization and the Theory of Endogenous Protection: An Econometric Study of U.S. Import Policy." *Journal of Political Economy* 101, no.1 (1993):138-160.

Taylor, James A., and Edwin A. Vermulst. "Disclosure of Confidential Information in Antidumping and Countervailing Duty Proceedings Under United States Law: A Framework for the European Communities." *The International Lawyer* 21, no.1 (1987): 43-70.

Urdinez, Francisco, and Gilmar Masiero. "China and the WTO: Will the Market Economy Status Make Any Difference after 2016?" *The Chinese Economy* 48, no.2 (2015): 155-172.

United Steelworkers, "United Steelworkers (USW)", *Labor Union*, https://www.influencewatch.org/labor-union/united-steelworkers/.

United Steelworkers, "Our History," https://www.usw.org/union/history.

Van, LE Thi Thuy, and Sarah Y. Tong. "China and Antidumping: Regulations, Practices and Responses." *EAI Working Paper*, no.149 (2009): 1-29.

Vandenbussche, Hylke, and Maurizio Zanardi. "The global chilling effects of Antidumping proliferation." *LICOS Discussion Papers*, no.167 (2006): 4-30.

Veugelers, Reinhilde, and Hylke Vandenbussche. "European Antidumping policy and the profitability of national and international collusion." *European Economic Review* 43, no.1 (1996): 1-28.

Vermulst, Edwin A. "Injury Determinations in Antidumping Investigations in the United States and the European Community." *NYLS Journal of International and Comparative Law* 7, no.2 (1986): 301-421.

Vermulst, Edwin A. "The Anti-Dumping Systems of Australia, Canada, the EEC and the United States of America: Have Anti-Dumping Laws Become a Problem in International Trade." *Michigan Journal of International Law* 10, no.3 (1989): 764-806.

Vermulst, Edwin A. "The 10 Major Problems with the Antidumping Instrument in the European Community." *Journal of World Trade* 39, no.1 (2005): 105-113.

Vermulst, Edwin A., and B. Driessen. "New Battle Lines in the Antidumping War: Recent Movements in the European Front." *Journal of World Trade* 31, no.3 (1997) 135-157.

Vernon, Raymond. "Trade Policy in the 1980s: An Overview." *International Studies Quarterly* 26, no.4 (1982): 483-510.

Vianna, Andre Coelho. "The Impact of Exports to China on Latin American Growth." *Journal of Asia Economics* 47, (2016): 58-66.

Viner, Jacob. "Dumping as a Method of Competition in International Trade. II." *The University Journal of Business* 1,

no.2 (1923): 182-190.

Viner, Jacob. “The Prevalence of Dumping in International Trade: I.” *Journal of Political Economy* 30, no.5 (1922): 655-668.

Vinti, Clive. “Dumping" and the Competition Act of South Africa.” *De Jure Law Journal* 52, no.1 (2019): 207-220.

Voon, Tania. “Orange Juice, Shrimp, and the United States Response to Adverse WTO Rulings on Zeroing.” *ASIL Insights* 5, no.2 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2015565.

Walsh, Cal E. “What Caused the 1990-1991 Recession?” *Economic Review* 2, (1993): 33-48.

Wang, Xiaojin, and Michael Reed. “Trade Deflection arising from U.S. Antidumping Duties on Imported Shrimp.” *Southern Agricultural Economics Association*, (2015): 12-27.

Washington, André J. “Not So Fast, China: Non-Market Economy Status is Not Necessary for the ‘Surrogate Country’ Method.” *Chicago Journal of International Law* 19, no.1 (2018): 260-294.

Watson, K. William. “Will Nonmarket Economy Methodology Go Quietly into the Night?: U.S. Antidumping Policy Toward China after 2016.” *Cato Institute Policy Analysis*, no.763 (2014): 1-17.

Webb, M. “The Ambiguous Consequences of Antiudmping Laws.” *Economic Inquiry* 30, (1992): 437-448.

Webb, Steven B. “Cartels and Business Cycles in Germany, 1880 to 1914.” *Zeitschrift Für Die Gesamte Staatswissenschaft / Journal of Institutional and Theoretical Economics* 138, no.2 (1982): 205-24.

Wei, Dan. “Antidumping in Emerging Countries in the Post-crisis Era: A Case Study on Brazil and China.” *Journal of International Economic Law* 16, no.4 (2013): 921-958.

Wei, Li. “Towards Economic Decoupling? Mapping Chinese Discourse on the China-US Trade War.” *The Chinese Journal of International Politics* 12, no.4 (2019): 519-556.

Wellhausen, M. “The Community Interest Test in Anti-dumping Proceedings of the European Union.” *American University International Law Review* 16, no.4 (2001): 1027-1081.

Whalley, J., Yu, J., and S. Zhang. “Trade Retaliation in a Monetary-Trade Model.” *Global Economy Journal* 12, no.1 (2012): 1-29.

Willig, Robert D. “Economic Effects of Antidumping Policy.” *Brookings Trade Forum*, 1998, 57-79. http://www.jstor.org/stable/25063121.

Wilkinson, Bruce W. “The Saskatchewan Potash Industry and the 1987 U.S. Antidumping Action.” *Canadian Public Policy* 15, no.2 (1989): 145-160.

Wilkinson, Rorden, and Scott, James. “Developing Country Participation in the GATT: a Reassessment.” *World Trade Review* 7, no.3 (2008): 473-510.

Winters, L. Alan. “Trade liberalization and poverty: what are the links?” *The World Economy* 25, no.9 (2002):1339-1367.

Winters, L. Alan. “The Road to Uruguay.” *Economic Journal* 100, no.403 (1990): 1296-1300.

Wu, Mark. "Antidumping in Asia's Emerging Giants." *Harvard International Law Journal* 53, no.1 (2012): 2-72.

Wu, Guocan, and Gong, Yifei. "The accounting information support and accounting tactics of protecting rights and interests in the anti-dumping responding." *2010 2nd IEEE International Conference on Information Management and Engineering*, (2010): 177-181.

Xie, Shenxiang, Mingxin Zhang, and Shenglong Liu. "The Impact of Antidumping on the R&D of Export Firms: Evidence from China." E*merging Markets Finance and Trade* 56, no.9 (2020): 1897-1924.

Xin, Jia. "China calls for EU caution in taking protective measures." *XINHUANET*, 26.03.2018, http://www.xinhuanet.com/english/2018-03/26/c_137067296.htm.

Yalcin, Erdal, Gabriel Felbermary, and Luisa Kinzius. "Hidden Protectionism: Non-Tariff Barriers and Implications for International Trade." *ifo Center for International Economics*, (2017): 8-18.

Yalcin, Erdal, Welge, Hannes, Sapir, André, and Mavroidis, Petros C. "Balanced and fairer world trade defense EU, US and WTO perspectives." *European Parliament Think Tank*, 29.05.2019, https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2019)603480.

Yalcin, Erdal, Felbermary, Gabriel, and Sandkamp, Alexander. "New trade rules for China? Opportunities and threats for the EU." *European Parliament Think Tank*, 23.03.2016, https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2016)535021.

Yamashita, Nobuaki, and Isamu Yamauchi. "Exports and Innovation: Evidence from Antidumping Duties Against Japanese Firms." *ERIA Discussion Paper Series*, no.317 (2019): 31-46.

Yandle, Bruce, and Elizabeth M. Young. "Dumping, Anti-dumping and Efficiency." *Economics*, no.IDP-10 (1987): 3-25.

Yang, Shihui, and Jun, Shao. "Trade destruction and trade harassment effects of US antidumping petitions." *IEEE*, 1 June 2011, https://ieeexplore.ieee.org/document/5881665.

Yoon, Yeomin, Robert W. McGee, and Walter Block. "Antidumping and the People's Republic of China: Five Case Studies." *Dumont Institute for Public Policy Research Working Paper*, no.98.2 (1998): 1-15.

Young, Linda M., and John Wainio. "The Anti-Dumping Negotiations: Proposals, Positions and Anti-Dumping Profiles." *Estey Journal of International Law and Trade Policy* 6, no.1 (2005): 1-22.

Yu, Chen. "Currency Manipulation and WTO Laws: Should the Anti-Dumping Mechanism be Entirely Dumped?" *Journal of World Investment & Trade* 20, no.6 (2019): 891-915.

Zakic, Katarina, and Radisic, Bojan. "Strategies of Chinese Companies when Entering Global Markets." Economic and Social Development, (May 18/May 19, 2017): 169-180.

Zanardi, Maurizio. "Antidumping: What are the Numbers to Discuss at Doha?" *The World Economy 27*, no.3 (2004): 403-433.

Zanardi, Maurizio. "Antidumping: a problem in international trade." *European Journal of Political Economy* 22, no.3 (2006): 591-617.

Zattler, Jürgen. "Trade policy in developing countries: A new trade policy consensus?" *Intereconomics* 31, no.5 (1996): 229-236, http://dx.doi.org/10.1007/BF02927154.

Zeng, Ka, and Wei Liang. "US Antidumping actions against China: the impact of China's entry into the World Trade Organization." *Review of International Political Economy* 17, no.3 (2010): 562-588.

Zhang, Hongyong. "Political Connections and Antidumping Investigations: Evidence from China." *China Economic Review* 50, (2018): 34-41.

Zhang, John Z., and Dongsheng Zhou. "The Art of Price War: A Perspective from China." *International Journal of China Marketing* 1, no.1 (2010):17-30.

Zhou, Weihuan, and Shu Zhang. "Anti-dumping Practices and China's Implementation of WTO Rulings." *The China Quarterly* 230, (2017): 512-527.

Zhou, Weihuan, and Shu Zhang. "Beyond ChAFTA: China's (Ab)use of Anti-Dumping Measures, Forthcoming-China Quarterly." *UNSW Law Research Paper*, no.57 (2016): 1-21.

Zhou, Weihuan, and Delei Peng. "EU- Price Comparison Methodologies (DS516): Challenging the Non-Market Economy Methodology in Light of the Negotiating History of Article 15 of China's WTO Accession Protocol." *Journal of World Trade* 52, no.3 (2018): 505-534.

Zhou, Weihuan, and Andrew Percival. "Debunking the Myth of 'Particular Market Situation' In WTO Antidumping Law." *Journal of International Economic Law* 19, no.4 (December 2016): 863-892, https://doi.org/10.1093/jiel/jgw071.

Zhu, Yaning. "Towards a Better Formulation of the Macroeconomic Determinants of the Number of Antidumping Filings." *Tilburg School of Economics and Management*, 2013, http://arno.uvt.nl/show.cgi?fid=131004.

Zimmermann, Thomas A. "Negotiating the review of the WTO Dispute Settlement Understanding." *MPRA Paper*, no.4498, 17 Aug 2007, https://mpra.ub.uni-muenchen.de/4498/1/MPRA_paper_4498.pdf.

OFFICIAL DOCUMENT

Australian Government, Department of Industry, Science, Energy and Resources, "Anti-dumping and countervailing system," https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system.

Australian Government, "Developing in Anti-dumping Arrangements," *Productivity Commission Research Paper*, February 2016, https://www.pc.gov.au/research/completed/antidumping-developments/anti-dumping-research-paper.pdf.

Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control.

Commission Regulation (EC) No 2383/94 of 30 September 1994 amending Regulation (EEC) No 2219/92 laying down detailed rules for the application of the specific supply arrangements for Madeira relating to milk products and establishing the forecast supply balance.

Commission of the European Communities, Communication from The Commission to the European Parliament, The Council and the European Economic and Social Committee: Implementation the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility," Brussels, 22.3.2006.

Commission of the European Communities, "Green Paper a European Strategy for Sustainable, Competitive and Secure Energy", Brussels, 8.3.2006 COM (2006) 105 final.

Commission Recommendation No 3004/77/ECSC of 28 December 1977 modifying Recommendation 77/329/ECSC on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Coal and Steel Community.

Commission Recommendation No 3018/79/ECSC of 21 December 1979 on protection against dumped or subsidized imports from countries not members of the European Coal and Steel Community.

Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (Codified version).

Council Regulation (EC) No 452/2003 of 6 March 2003 on measures that the Community may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures.

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community.

Council Regulation (EC) No 905/98 of 27 April 1998 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community.

Council Regulation (EEC) No 925/79 of 8 May 1979 on common rules for imports from State-trading countries.

Council Regulation (EC) No 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters.

Council Regulation (EC) No 1644/2001 of 7 August 2001 amending Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan and suspending its application with regard to imports originating in India.

Council Regulation (EEC) No 1681/79 of 1 August 1979 amending Regulation (EEC) No 459/68 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community.

Council Regulation (EEC) No 1761/87 of 22 June 1987 amending Regulation (EEC) No 2176/84 on protection against dumped or subsidized imports from countries not members of the European Economic Community.

Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community.

Council Regulation (EC) No 2238/2000 of 9 October 2000 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community.

Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community.

Council Regulation (EEC) No 2532/78 of 16 October 1978 on common rules for imports from the People' s Republic of China.

Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community.

Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community.

Council Regulation (EC) No 1972/2002 of 5 November 2002 amending Regulation (EC) No 384/96 on the protection against dumped imports from countries not members of the European Community.

Council Regulation (EC) No 2117/2005 of 21 December 2005 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community.

Council Regulation (EC) No 461/2004 of 8 March 2004 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community and Regulation (EC) No 2026/97 on protection against subsidised imports from countries not members of the European Community.

European Commission, MEMO/12/73, "What is Zeroing, Brussels," 6 February 2012.

European Commission, L/6657 - 37S/132, EEC – Regulation on Imports of Parts and Components, Report by the Panel adopted on 16 May 1990.

European Commission, US Byrd Amendment – WTO says eight WTO Members may retaliate against the US - Joint Press statement by Brazil, Canada, Chile, the EU, India, Japan, Korea, and Mexico, Brussels, 31, August, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_04_1055.

European Union, Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, *Official Journal of the European Union*, L176/21, 30.6.2016, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R1036&rid=7.

Judgment of the Court (Fifth Chamber) of 9 January 2003. Petrotub SA and Republica SA v Council of the European Union. Appeal - Protection against dumping - Determination of the dumping margin - Choice of the 'asymmetrical' calculation method - Article 2.4.2 of the Agreement on Implementation of Article VI of the GATT - Statement of reasons - Determination of normal value - Taking into account of sales made using compensation - Statement of reasons, Case C-76/00 P.

Japanese Ministry of Economy, "Trade and Industry," Fourth WTO Ministerial Conference, 01 January 2013, 521-537, http://www.meti.go.jp/english/report/downloadfiles/gCT0227e.pdf.

Mexico Regulations under the Foreign Trade Act, http://www.sice.oas.org/antidumping/legislation/mexico/LCEXT.asp.

Official Journal of the European Communities, C 111, 08 May 2002.

Office of the United States Trade Representative, "United States Prevails on "Zeroing" Again: WTO Panel Rejects Flawed Appellate Body Findings," Policy Office, 04 September 2019.

Office of the United States Trade Representative, 2002 and 2003 Annual Reports. https://ustr.gov/search?q=2002+Annual+Report.

Regulation (EEC) No 459/68 of the Council of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community.

Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidized imports from countries not members of the European Union.

Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports.

Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union.

Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union.

Regulation (EEC) No 2011/73 of the Council of 24 July 1973 amending Regulation (EEC) No 459/68 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community.

Treaty Establishing the European Community, Official Journal C340,10/11/1997.

Treaty Establishing the European Community, Official Journal C325, 24/12/2002 P. 0033 - 0184.

The World Bank, Global Antidumping Database, https://datacatalog.worldbank.org/dataset/temporary-trade-barriers-database-including-global-antidumping-database/resource/dc7b361e.

United States,19 U.S.Code § 1677 (35) (A) "Dumping margin".

United States., Trade Agreements Act of 1979, 19 U.S.C. § 2501 (repealing the AD Act of 1921).

United States, Federal Register: 45 Fed. Reg. 3557, Jan. 18, 1980, https://cdn.loc.gov/service/ll/fedreg/fr045/fr045013/fr045013.pdf.

United States 96th Congress, Public Law 96-39-JULY 26, 1979.

United States International Trade Commission, "Antidumping and Countervailing Duty Handbook Eleventh Edition," Publication 3750, January 2005, https://www.usitc.gov/trade_remedy/documents/pub3750.pdf.

United States International Trade Commission, "Understanding Anti-dumping & Countervailing Duty Investigations", https://www.usitc.gov/press_room/usad.htm.

United States Senate, 96th Congress, "Trade Agreements Act of 1979: Hearings Before the Subcommittee. on International Trade of the Committee on Finance", First Session, on S. 1376, July 10 and 11, 1979.

United States, Public Law No. 96-39, 93 Stat. 144, § 777(a)(4) (1979).

United States, 19 U.S. Code §160 (b)(i)(b)(1976), Pub.L.No. 96-39,93 Stat. 144, § 733(e)(1979).

United States, 1979 Trade Act Hearings, at 40; 15 Weekly Compilation of Presidential Documents 1476. reprinted in 44 Federal Register 69.274(1979); 44. Fed.Reg. 74781 (1979).

United States, U.S. Code § 1337 - Unfair practices in import trade.

United States, U.S. Code § 2411 - Actions by United States Trade Representative.

United States, U.S. Code § 1671 - Countervailing duties imposed.

United States, U.S. Constitution, Article. II, §2, cl.2.

United States, United States v. Yoshida Intern., Inc. 526 F.2d 560 (C.C.P.A. 1975) Decided Nov 6, 1975, 526 F.2d at 572.

United States, Public Law 87.794-OCT. 11, 1962, "Trade Expansion Act of 1962", SEC. 402. REPORTS.

United States, U.S. v. Curtiss-Wright Corp. 299 U.S. 304 (1936) Decided Dec 21, 1936.

United States, Zivotofsky v. Kerry 135 S. Ct. 2076 (2015) • 192 L. Ed. 2d 83 • 83 U.S.L.W. 4391 Decided Jun 8, 2015.

United States, Trade Agreement Extension Act of 1949, Chapter. 678, 62 Stat. 1053.

United States, Trade Agreements Extension Act of 1962, Public Law 87-794-OCT.11, 1962, SEC. 252.

United States Code: Trade Expansion Program, 19 U.S.C. §§ 1801-1991 (1976).

United States, Cong. Rec. S6496-98 (daily ed. May 9, 1967), On May 9, 1967

United States, 107TH Congress 2d Session, Report 107-139, "Bipartisan Trade Promotion Authority Act of 2002", Calendar No.319.

United States, Trade Act of 1974, § 2112.

United States, Trade Act of 1974, §151 and 152, and U.S. Code § 2191, 2192 (1976).

United States, Trade Act of 2002, Public Law 107-210, sec. 2102(b) (14) (A).

United States, H.R. Res. 262, 107th Congress (2001).

United States, Senate Committee on Finance, "Finance, Ways and Means Leaders Urge President to Stand Firm on Doha Round", December 02, 2008, https://www.finance.senate.gov/chairmans-news/finance-ways-and-means-leaders-urge-president-to-stand-firm-on-doha-round.

United States, H.R.5110-Uruguay Round Agreements Act, 103rd Congress (1993-1994), P.L. 103-465, https://www.law.cornell.edu/uscode/text/19/3511.

United States, "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act §1003 repealed by Deficit Reduction Act §7601", *United States Statutes at Large* 118, January 23, 2004, https://www.govinfo.gov/content/pkg/STATUTE-118/html/STATUTE-118-Pg3.htm.

United States, Trade and Tariff Act of 1988, 105th Congress, 2d Session, Senate Report 105-280, Calendar No. 517, July 31, 1998.

United States, "Statement by the President: H.R. 4461, The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY 2001", Office of the Press Secretary, 2001, 36 WEEKLY COMP. PRES. DOC. 2669, 2670, Oct. 28, 2000.

United States, Trade Readjustment and Development Enhancement for America's Communities Act of 2003, S. 1299, 108th Congress § 2, 2003.

United States, H.R. 3933, 108th Congress, 2004.

United States, Bush Budget Proposal Seeks Elimination of Two Steel Programs, INSIDE U.S. TRADE, Feb. 7, 2003.

United States, Office of Management and Budget. Budget of the United States Government. Fiscal Year 2004.

United States, Government Accountability Office, "A Glossary of Terms Used in the Federal Budget Process", September 2005, https://www.appropriations.senate.gov/imo/media/doc/glossary-of-terms-used-in-the-federal-budget-process.pdf.

United States, Congress Budget Office, Economic Analysis of the Continued Dumping and Subsidy Offset Act of 2002.Analysis of the Continued Dumping and Subsidy Offset Act of 2000, at 1-2 2004, https://www.cbo.gov/publication/15324. See also: U.S. Government Accountability Office, Issues and Effects of Implementing the Continued Dumping and Subsidy Offset Act 1, 2005.

United States, "Grassley: New Report Makes Case for Repealing the Continued Dumping and Subsidy Offset Act ("Byrd Amendment")", *United States Senate Committee on Finance*, September 26,2005, https://www.finance.senate.gov/chairmans-news/grassley-new-report-makes-case-for-repealing-the-continued-dumping-and-subsidy-offset-act-byrd-amendment.

United States, White House Budget Proposal for Fiscal Year 2006.

United States, Deficit Reduction Act of 2005, Public Law No. 109-171, § 7601, 120 Stat. 4, 154.

United States, Compare H.R. 4241, 109th Congress § 8701 (2005).

United States, House Reports, Nos. 733-739, United States Congressional Serial Set, Serial Number 15066, 109th Congress, 2nd Session, 2006.

United States, "Hearings before US-China Economic and Security Review Commission One Hundred Ninth Congress First Session," United States Government Printing Office, Washington, 2005.

United States General Accounting Office, *Free Trade Area of the Americas: Negotiators Move toward Agreement That Will Have Benefits, Costs to U.S. Economy*, September 2001.

United Nations, Economic and Social Council, Preparatory Committee of the International Conference on Trade and Employment, and Committee V, "Administration and Organization Amended Redraft of Articles 78 (4) and 79 (1): (Submitted by the United Kingdom Delegation," United Nations Economic and Social Council, November 9, 1946.

United Nations, "General Agreement on Tariffs and Trade." United Nations, *Treaty Series* 64, no. 814(1950):187-190.

United Nations, Vienna Convention on the Law and Treaties, 1969.

United Nations, UNCTAD XIII DOHA MANDATE and DOHA MANAR, UNCTAD/ISS/2012/1, 2012.

United Nations, USITC, Dept. of State Pub. No. 2598, Commercial Policy Series 93,1946.

United Nations, UNCTAD, "WTO Negotiations on the Agreement on Antidumping Practices," *Technical Paper*, 2005.

United Nations, UNCTAD, "Training Module on the WTO Agreement on Anti-dumping," 2012.

United Nations, UNCTAD/DITC/TNCD/2004/6, *UNITED NATIONS PUBLICATION*, ISSN 1816-5605, 2004.

United Nation, "International Trade after the Economic Crisis: Challenges and New Opportunities," UNCTAD/DITC/TAB/2010/2.

United Nations, UNCTAD, "Trade and Development Report, 1981-2011: Three Decades of Thinking Development," 2012.

THESIS

Kwentua, Gregory Emeka. "Trade creation and trade diversion effects in the EU-South Africa Free Trade Agreement." Master Thesis, Louisiana State University, 2006.

Zhong, Sheng. "EU Antidumping Policy- A study in the CTV Case." Master Thesis, School of Economics and Management Lund University, 2004.

Shoraka, Shahram. "World Trade Dispute Resolution and Developing Countries: Taking a Development Approach to Fair Adjudication in the Context of WTO LAW." Dissertation, London School of Economics and Political Sciences, 2006.