

**Anti-Dumping Wars: An Empirical and Comparative  
Analysis of Unfair Trading Suits by China, India,  
Canada, the United States and the European Union,  
1995-2011**

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# **Anti-Dumping Wars: An Empirical and Comparative Analysis of Unfair Trading Suits by China, India, Canada, the United States and the European Union, 1995-2011**

**Daniel Drache and Yin Jiyuan**

This paper focuses on the empirics and strategies of anti-dumping investigations by national authorities. It will examine the United States of America (US), India, China, and Canada and their increasing reliance on this controversial policy instrument, as governments are faced with new global competitive pressures. For two decades, China has been the most targeted country for anti-dumping suits in the world. The anti-dumping strategy of China will be analyzed; the anti-dumping case study of the World Trade Organization (WTO) solar panel dispute between China and the US, and between China and the European Union (EU) provides an important insight into the use of anti-dumping as a competitive strategy by some of the world's most powerful economies. Finally, we make some suggestions on ways to help Chinese firms improve their win-rate in the anti-dumping wars.

## **1. Anti-Dumping: A Prominent Feature of Trade Multilateralism**

The act of dumping is defined as selling goods at less than fair market value. Anti-dumping is designed to be a frontline remedy against unfair trading practices and is intended to stop the dumping of goods into another nation's market. This legal form of protectionism is safeguarded by the WTO, although it is not sufficiently recognized as being legitimate and important. Many countries including Canada, US, and Australia have had anti-dumping statutes for more than a century. Experts have

criticized these statutes as a most undesirable phenomenon that penalizes consumers; they have, in Tomer Brunde's words, "negative global effects."

The present anti-dumping code has its origins in Article VI of the General Agreement on Tariffs and Trades (GATT) 1947 and occupies a prominent place in settling disputes in economic matters. It gives countries facing trade injury the right to protect jobs and industries as well as impose duties and tariffs on goods that have been dumped, sold below production cost in their country of origin. When anti-dumping becomes "a problem in international trade" it can be 'managed' by the WTO legal codes and undertakings. Anti-dumping duties are justified when there is evidence of "abnormal and temporary cheapness." Today, this legal standard is accepted by all member states of the WTO.

The process of determining injury includes a complex legal standard and administrative procedures. Member countries are required to comply with the WTO code and its substantive rules regarding determination, injury, causation and circumvention measures. Many ambiguities remain in the WTO disciplines about international price discrimination and the effect of international monopolies with hardball competitive strategies. This has not diminished states' appetite to use this powerful trade measure. Countries continue to grapple with the fallout from abnormal and temporary cheapness on industries and job loss. In theory, anti-dumping laws have to balance foreign exporter interests against the welfare of domestic import competing groups. However, the legal process may not live up to this high standard in the eyes of the foreign competition. Governments are not indifferent to

below-production-cost exports aimed at driving out domestic firms in order to reap monopoly rents for foreign producers. Mankiw and Swagell, in their hard hitting critique in *Foreign Affairs*, call it the ‘third rail of trade policy’ because politicians do not dare to touch it out of fear of being punished by the electorate. Those who do are often rebuked by angry consumers and voters.

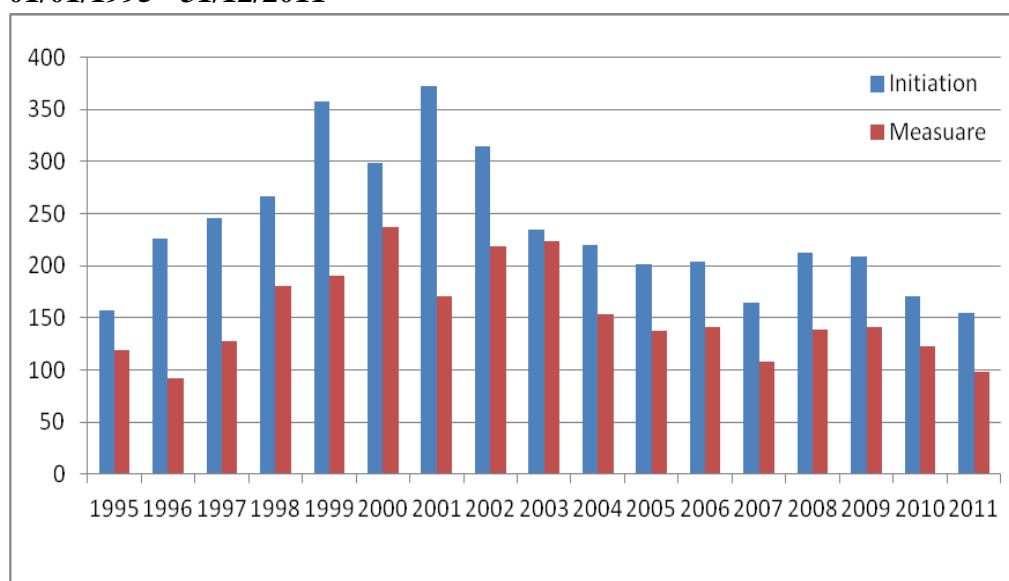
Ostensibly, preserving jobs and firms against imports selling at below fair value is a counterweight to the market distorting practices of trade liberalization. Analytically, dumping charges raise difficult questions about the independence and transparency of the investigating tribunals, the size of the award, the quality of jurisprudence and why the WTO’s much stronger dispute resolution mechanism has not increased the disciplinary measures available against other countries. Instead, there has been a dramatic shift both in usage of anti-dumping and other measures more closely tied towards domestic social forces. Many experts such as Stiglitz see this as an unanticipated reaction against the domestic neoliberal policies and priorities that have framed the judicial culture of global governance institutions, often at the expense of jobs and employment. For others, they see it as a monster of the recidivist state and the misuse of the statute continues to violate its legitimate purpose. As a global governance issue anti-dumping policies have become a major point of contention in the failed Doha Round trade negotiations.

## **2. The Explosion of Anti-Dumping Suits**

Since the WTO came into existence, there has been a explosion of anti-dumping lawsuits. There were 4010 anti-dumping initiations from 1995 to 2011.

Over 60 percent lead to penalties being imposed by national governments against competitors; there were 2601 cases definite measures implemented in the total of 4010 anti-dumping cases.

**Figure 1: Anti-dumping Initiation and Measures. By Reporting Member 01/01/1995 - 31/12/2011**



Note: Initiation means the country which launch anti-dumping investigation. Target means that country is subject to a punitive ad hoc duty to provide relief to its industries or firms.

Source: Computations based on WTO Secretariat Rules division database, 2012.

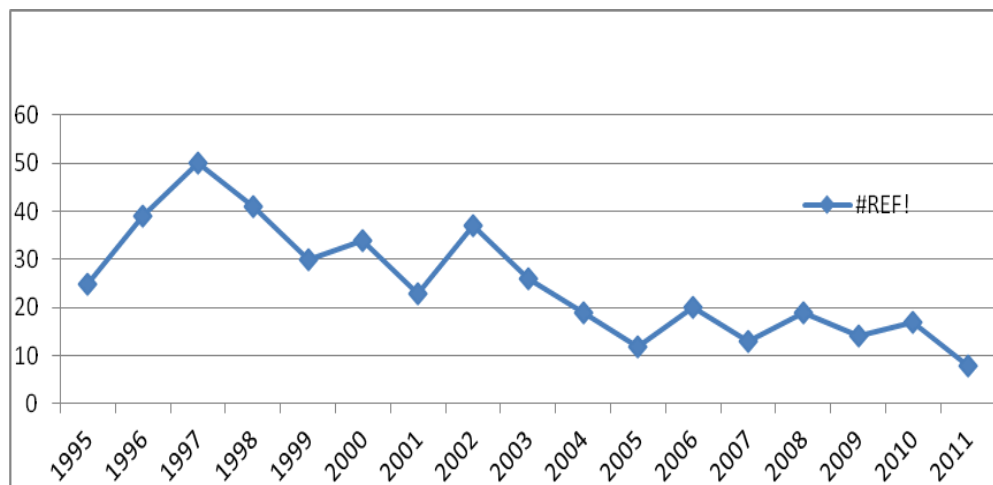
More broadly, the explosion of anti-dumping suits by emerging market economies, developing countries and industrialized economies is a phenomenon in its own right. For many Global South critics like Nitsan Chorev and B.S. Chimni, anti-dumping policies reflect the legal failure of the WTO to have a more flexible and accessible dispute settlement system for the Global South. Seventy percent of the WTO's members have never filed a complaint against another member with the high profile disputes resolution mechanism. A majority of the WTO's members have

neither the expertise, nor the resources to bring forth a case. For Dani Rodrik and others, anti-dumping measures are tied to new social forces at the domestic level and are a product of the structural transformation of the world trading system—with many losers in the race to be competitive. Between these competing theories, if one idea stands out it is the increase in anti-dumping tariffs and other measures that, in Picciotto's words “gives states legitimate enforcement powers when it cannot secure assistance from others (2011, 27).” The state has always had a large role in the management of the world's trading rules. In the aftermath of the global financial crisis that assertive role seems to be larger than ever. Governments are expected to protect jobs and industries when major problems from imports arise.

In the recent period, an unprecedented number of countries have turned to anti-dumping and countervail remedies to expand their policy space at a time of retrenchment. In total, there have been 4,010 anti-dumping investigations and 2667 measures since the WTO was established. By contrast, a total of 427 trade disputes were brought to the high profile WTO dispute resolution system during this period. In 2011, new trade disputes to the WTO at a time of global uncertainty amounted to only 8 notifications for consultations under the Dispute Settlement Understanding (DSU), which is the lowest in the history of the WTO. Overall, the number of complaints has been declining since 1997 when 50 notifications were filed. Since then, there has been a dramatic drop in cases filed: 30 in 1999, 28 in 2003, 12 in 2005, 19 in 2009. These numbers demand attention, not only because the volume in new activity is much reduced, but also because it comes at a time when a majority of WTO members have

found other means to address long-term structural change.

**Figure 2: Chronological List of Disputes Cases (1995-2011)**



Source: Computations based on WTO Secretariat Rules division database, 2012.

### **3. Analysis of Anti-dumping Data**

#### **3.1 Initiation and Target**

Most anti-dumping cases have been initiated by developed countries before 1995, with the US and EU being the most prolific users of anti-dumping policy tool. However, the share of cases initiated by developed countries has been falling and those initiated by developing countries, rising. Before 1985, no cases were initiated by developing countries; developed countries were the sole users of anti-dumping strategies and policies. Since then, however, the situation has changed dramatically, with India, South Africa and Argentina being the most active users of anti-dumping

(Grimwade 2009).

**Table 1: Anti-dumping Initiations (North VS South)**

Member	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
Global North	82	92	138	98	166	131	168	87	92	59	52	74	65	50	57	39	55	1531
Global South	75	134	108	168	192	167	204	228	142	135	149	130	100	163	152	132	100	2479
Global Total	157	226	246	266	358	298	372	315	234	220	201	204	165	213	209	171	155	4010

Source: Computations based on WTO Secretariat Rules division database, 2012.

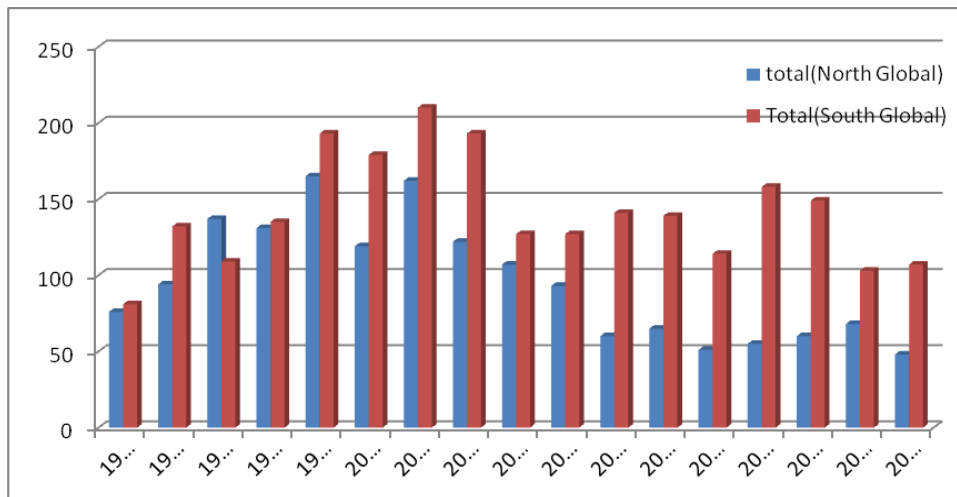
Table 1 shows the trends of worldwide anti-dumping actions over the past 17 years. Since the number of anti-dumping initiations is characterized by wide yearly fluctuations, the follow observations can be made:

- In the late of 1990s to 2001, the use of the anti-dumping sharply increased.
- Before 2001, the total number of the anti-dumping initiations between the North and the South was roughly equal.
- Since 2002, the Global South have been using the law more aggressively than



the North.

**Figure 3: Anti-dumping Targeted (North v. South) 1995-2011**



Source: Computations based on WTO Secretariat Rules division database

Figure 3 shows the trends of worldwide anti-dumping targets over the past 17 years. The number of anti-dumping targets is characterized by significant variations in the number of anti-dumping initiations. In the late of 1990s, the use of anti-dumping sharply increased, as global competition increased. The total number of anti-dumping targets in the North and the South from 1995 to 1999 is almost the same. After 2000, the Global South has been targeted more than the North. Significantly, this trend applies to investigations by other South countries that launched more cases against other Southern members than they brought against the North.

**Table 2: Anti-dumping Initiations (Main country or group)**

Reporting Member	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
United States	14	22	15	36	47	47	77	35	37	26	12	8	28	16	20	3	15
European Union	33	25	41	22	65	32	28	20	7	30	24	35	9	19	15	15	17
China				3	2	11	14	30	22	27	24	10	4	14	17	8	5
India	6	21	13	28	64	41	79	81	46	21	28	35	47	55	31	41	19

Source: Computations based on WTO Secretariat Rules division database

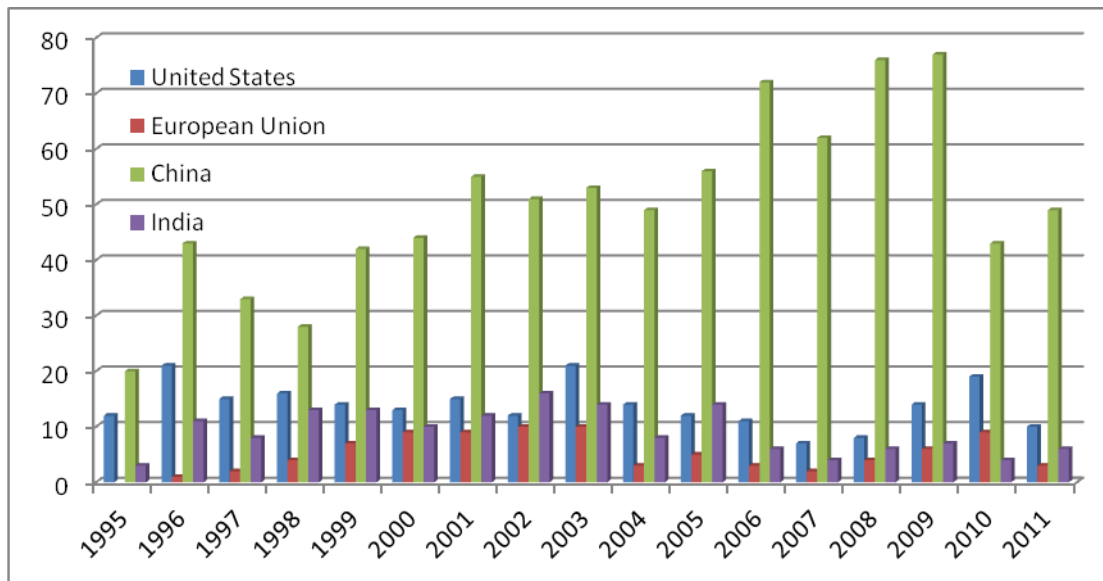
Table 2 shows the trends of the main countries anti-dumping actions over the past 17 years.

The follow observations can be made:

- In the late of 1990s, the use of the anti-dumping initiatives sharply increased, especially in India and the US. China began to use the instrument from 1998 onwards.
- From 2002 to 2011, the number of the anti-dumping initiations declined everywhere except for India.
- India has always been the largest user of anti-dumping policy; China utilizes these policies the least with a lifetime total of 191 since 1998, an average of 13

cases annually.

**Figure 4: Anti-dumping Targeted (Main Countries)**



Source: Authors computations based on WTO Secretariat Rules division database

Figure 4 and Table 2 reveal the following:

- China been targeted more often than US, EU and India combined. By comparison, the EU has been targeted the least.
- When we compare Figure 4, Figure 2 and Table 2, we can see that although most of anti-dumping initiations are brought against China, anti-dumping by other major countries are very few by comparison (though often the amounts of money at stake are significant). The contrast between the Asian regional powers is striking. India is an aggressive user of anti-dumping investigations

but, surprisingly is seldom targeted.

- Firms from China are less equipped to cope up with the complexities and costs of the anti-dumping actions. Lack of expertise, lack of financial resources and lack of manpower are some of the obstacles they face. As a result, many Chinese enterprises may choose not to defend themselves before foreign tribunals. It is therefore likely that many cases against Chinese capitalists result in definitive tariff measures being imposed.

**Table 3: Share of the Main Country Anti-dumping Users and Targets 1995-2011**

Share	United States	European Union	China	India	Group(four countries)	Total
Initiations	11.4%(458)	10.9%(437)	4.8%(191)	16.4%(656)	43.5%(1742)	4010
Targets	5.8%(234)	2.2%(87)	21.3%(853)	3.9%(155)	33.2%(1328)	4010

Source: Computations based on WTO Secretariat Rules division database

China was the number one target of anti-dumping cases, with 843 anti-dumping investigations and 630 anti-dumping measures against exports from China between January 1995 and December 2011. These accounted for 21.3% (843/4010) of the world total of anti-dumping filings, and 24.2% (630/2601) of the world total anti-dumping measures. To some extent, it is not surprising as China's trade has expanded rapidly in 2012 to become the single largest trading nation in the world.

The first anti-dumping suit against China was filed in 1979 by the EU. The average number of anti-dumping cases against China rose from about 6 per year in the

1980s, to 30 per year in the 1990s (Li, 2007) and then to nearly 60 per year for the years after China's WTO accession in 2001. Among the thirty countries that have initiated the most anti-dumping cases against China, are developed countries such as the US, EU, Canada, Australia, and developing countries such as India, Argentina, Turkey, Brazil, South Africa, Mexico. These four leading developed countries account for 32.8% (276/843) of all the cases against China from January 1995 to June 2011. These six leading developing countries account for 48.2% (406/843) of the total. Together, these ten countries account for 81% of the total anti-dumping cases initiated against China. The following table gives a further breakdown of the dynamics of anti-dumping in the North and the South.

**Table 4: Anti-dumping Initiation and Target**

Share in Total %	North	South	Total
Initiations	38%(1531)	62%(2479)	100%(4010)
Targets	40%(1613)	60%(2397)	100%(4010)

Source: Computations based on WTO Secretariat Rules division database

**Table 5: Anti-dumping Initiations VS Targets: Reporting Member  
01/01/1995 - 31/12/2011**

		Targets		
		Share of North	Share of South	Total
Initiations	North	35% (531)	65% (1000)	38%(1531)
	South	38% (967)	62% (1512)	62%(2479)
	Total	37%(1498)	63%(2512)	100%(4010)

Source: Computations based on WTO Secretariat Rules division database

Table 4 and Table 5 show:

- The number of initiatives and targets in the South are nearly double those initiated in the North.
- In the initiations, cases proved to be highly versatile. The North filed 35% of anti-dumping actions against other Northern economies, and 65% of the time against the South. Conversely, the South initiated 38% cases against the North and the other 62% were against other Southern countries.

**Table 6: Anti-dumping Initiations: By Reporting Member 01/01/1995 - 31/12/2011**

	Targets	from North	from South	from China	from USA	from EU	from India	Initiations
North	1498	531	967	152	158	95	316	1531
South	2512	1000	1512	39	300	342	340	2479
China	853	322	531		107	107	147	191
US	234	63	171	34		15	33	458
EU	87+	4	83	17	0		48	437+
India	155	71	84	4	23	33		656

Note: The number of EU anti-dumping cases does not include all cases brought by EU members countries cases

Source: Computations Based on WTO Secretariat Rules division database

Table 6 shows the anti-dumping dynamics between global super powers or trade blocs. Significantly the number of cases initiated by India and the US has been greater than the number of cases targeted against them in all time periods. The number of targets in China is 853 cases, but China only initiated 191 anti-dumping actions. Taken together, Southern countries launched 2479 cases, out of which around 61% (1512) were against other Southern countries; the remaining 39% (967) were against Northern countries. Conversely, the North launched 1531 cases, out of which roughly

35% (531) were against other Northern countries; the rest were against Southern countries. The rivalry between China and the US is seen in the number of anti-dumping cases between these two economic giants: 107 cases of the 853 cases against China as targets were initiated by the United States. In the meantime, China just launched 34 anti-dumping cases against the US.

### 3.2 Measures and Sectors

**Table 7: Anti-dumping Measures (Total and Main Country): By Exporting Country 01/01/1995 - 31/12/2011**

Exporting Country	Measure	Targets	Success Rate (%)
Total	2601	4010	64.9(average)
China	630	853	73.9
India	94	155	60.6
United States	136	234	58.1
European Union	56	87	64.4

Source: Computations based on WTO Secretariat Rules division database

The ‘success rate’ of anti-dumping initiations is calculated as the ratio of definitive measures to initiations with a one-year lag. It represents the probability that an initiation ends in definite measure, which includes both anti-dumping duty and price undertakings. Normally, there is one year lag between initiation of an anti-dumping investigation and when definite measures are taken.

There are 2601 cases definite measures implemented in the total 4010 anti-dumping cases from 1995 to 2011. The average success rate was 64.9%. In the four main countries trade policies that we examined, the anti-dumping measures rate against China is higher than the average of the world total. By contrast, the US has the

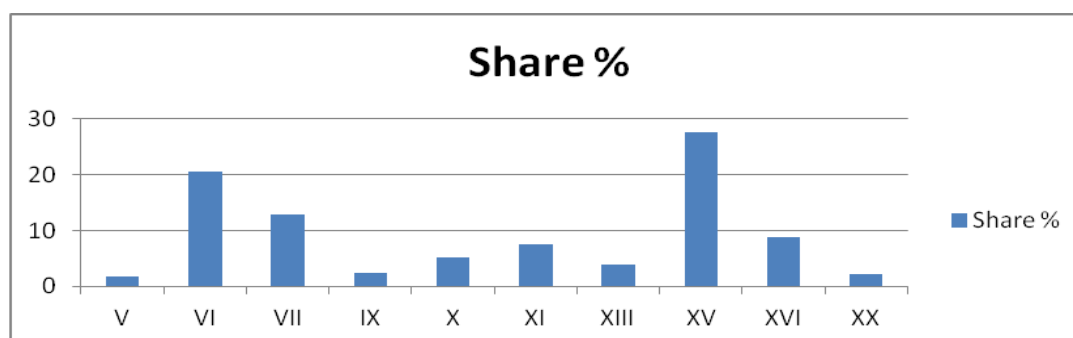
lowest. This may be because Chinese firms are seldom interested in spending their time and resources on defending themselves when cases are brought forth. In contrast, few countries want to launch a trade war with the US.

**Table 8: Top 10 Anti-dumping Sectorial Distribution of Initiations:  
By Reporting Member 01/01/1995 - 31/12/2011**

Reporting Member	V	VI	VII	IX	X	XI	XIII	XV	XVI	XX	Total
Total	73	825	513	91	208	303	153	1103	349	86	3704/4010
Share %	1.8	20.6	12.8	2.3	5.2	7.6	3.8	27.5	8.7	2.1	92.4/100
Rank	10	2	3	8	6	5	7	1	4	9	

Source: Computations based on WTO Secretariat Rules division database

**Figure 5: Top 10 Anti-dumping Sectorial Distribution of Initiations:  
By Reporting Member 01/01/1995 - 31/12/2011**



Source: Computations based on WTO Secretariat Rules division database

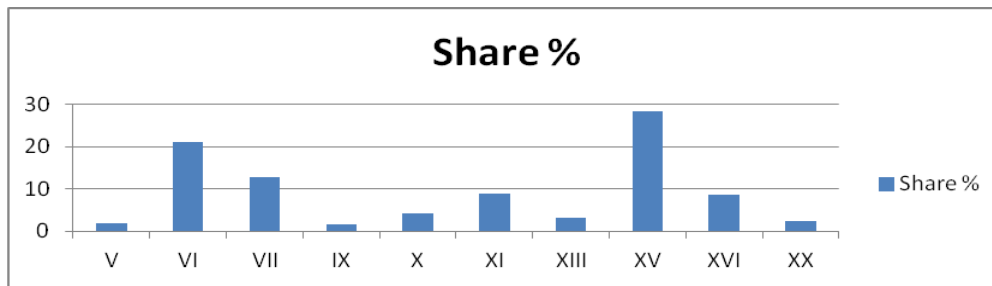
**Table 9: Top 10 Anti-dumping Sectorial Distribution of Measures:  
By Reporting Member 01/01/1995 - 31/12/2011**

Reporting Member	V	VI	VII	IX	X	XI	XIII	XV	XVI	XX	Total
Total	47	549	330	44	108	234	85	735	222	63	2417/2601
Share %	1.8	21.1	12.7	1.7	4.2	9.0	3.3	28.3	8.5	2.4	93/100
Rank	9	2	3	10	6	4	7	1	5	8	

Source: Computations based on WTO Secretariat Rules division database

**Figure 6: Top 10 Anti-dumping Sectorial Distribution of Measures:  
By Reporting Member 01/01/1995 - 31/12/2011**





Source: Computations based on WTO Secretariat Rules division database

Altogether, Tables 8 and 9 and Figures 5 and 6 show that the top ten manufacturing sectors shared 92.4% and 93% of the anti-dumping cases (initiations and targets combined). These ten sectors include: base metals and articles, products of the chemical and allied industries, resins, plastics and articles, rubber and articles, machinery and electrical equipment. The majority of cases were initiated and measured in the resource-intensive and science-based sectors. Within the resource-intensive sector, the leading sector targeted was base metal which could be due to a very high incidence of anti-dumping filings in the steel industry. In the science-based sector, chemicals, resins, plastic and rubber dominated anti-dumping filings over the period 1995-2011. There are various possibilities as to why anti-dumping cases might be concentrated in these sectors. Miranda et al. (1998) argued that, “the world markets for steel, base chemicals and plastics are highly cyclical. Thus, at the bottom of a cycle, firms operating in these markets may turn to pricing sales below cost (16).” It is also possible that in the downturn, domestic firms in importing countries use anti-dumping laws to protect themselves. Since there is a very high probability of affirmative injury findings during this period (before their home country investigating panel), they rush to file anti-dumping cases.

**Table 10: Anti-dumping Sectorial Distribution of Initiations: By Exporting Country 01/01/1995 - 31/12/2011**

Exporting Country	I	II	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XV	XVI	XVII	XVIII	XX	Total
Total	54	56	55	73	825	513	5	91	208	303	32	153	1103	349	41	48	86	4010
China	2	11	4	14	170	56	5	17	22	75	19	54	213	106	20	17	48	853
India	1	3			40	24			3	19	2	4	48	10			1	155
EU	1	2		1	47	16			7	2			8	1		2		87
US	9	6	5	6	95	50		5	16	5		2	15	10	2	3	3	234

Source: Computations based on WTO Secretariat Rules division database

### 3.3 Trading Blows: China and the US Rivalry

The US is China's leading trade partner and Washington is one of the most active users of anti-dumping measures against its trade partners. The US litigated 107 anti-dumping investigations out of 843 investigations brought against China in more than a decade of acrimonious trade disputes.

**Table 11: China and US Anti-dumping Practices, Compared**

	Investigation and Measures	Cases	Last time	Average AD Duty Rate	Whether countervailing

US against China	Investigation	107			
	Measures	90(84.1%)	more than 5 years	106.3 (1999-2011)	most of them 98.2(1999-2011)
China Against US	Investigation	34			
	Measures	26(76.5%)	5	43.5 (1999-2011)	<b>None</b> <b>(1999-2011)</b>

Source: Computations based on WTO Secretariat Rules division database

Table 11 shows the final measures imposed by anti-dumping tribunals in the US and China and the “success ratio” of firms that petition for relief between 1995 and 2011. The US is an aggressive user of anti-dumping investigation cases against China. Washington brings nearly four times as many cases against China’s 90 filings while China is a moderate user of this trade weapon, with only 26 initiations.

From 2000-2011, the average anti-dumping duty rate imposed by the US against China was a harsh 106.3%. Most of the anti-dumping measures had an average countervailing duty rate of 98.2%. Surprisingly, all of the anti-dumping measures imposed by China against the US did not include any countervailing duty; WTO regulations prohibit the implementation of the same damage dual measures to offset dumping or subsidies consequences (See Table 11). By comparison in the 34 anti-dumping investigations brought by China against the US, 26 measures imposed an average anti-dumping duty rate of 43.5%, less than half the US anti-dumping duty rate.

Research has shown that most of the investigations initiated by private firms would not necessarily lead to final measure for either lack of evidence of dumping or injury (Neufeld, 2001). In contrast to the increased volume of anti-dumping investigations, the success ratio (defined as the composition of final measures) is

relatively low. According to Neufeld (2001), out of all anti-dumping investigations initiated in 1998, only 11.6% resulted in the imposition of final measures. The 1999 data shows an even lower ‘success level’ of 5.4%. For the US cases, 80% of those investigations that ended without final measures were due to a lack of injury, and another 6.6% of investigations found no dumping. For EU cases, among all investigations without final measures, 22% were due to lack of injury, 26% were withdrawn, and 22% were terminated for expiry of the deadline to impose a definitive measure. In the past seven years, the US and the EU have been leading parties frequently imposing final measures on their trading partners, especially partners in developing economies (Yin 2003; WTO 2002).

### **3.3.2 Duration**

All of the anti-dumping measures initiated by China against the US lasted 5 years. However, most of those initiated by the US against China have lasted more than 5 years; some have even lasted more than 30 years to date. For example, the US imposed anti-dumping duty on the Greige polyester cotton print-cloth from China beginning in September 1983, and they continue to impose this duty until now. Nevertheless, as a general rule, Article 11.3 of the WTO anti-dumping Agreement provides that orders should be revoked after five years unless there is a “continuation or reoccurrence of dumping and injury.”

In this case, the anti-dumping measures are actually being used as a long-term non-tariff barrier to prevent domestic producers from trade competition. There were a total of 90 anti-dumping duty orders imposed by the US against China in effect as of

December 31, 2011. Among the 90 cases, some started to be in effect in the 1980s.

Two cases related to cotton cloth and towels were in effect as early as 1983; they are Greige polyester cotton print-cloth and cotton towel.

The longevity of the final anti-dumping measures imposed constitutes a severe problem. In the US, the average duration of final duties was more than 9 years. The oldest duty still is in force for more than 32 years as of 2001. More recently over 90% of all US anti-dumping duties lasted more than 5 years (Neufeld, 2001).

### **3.3.3 AD Duty level**

In the 107 investigations of the US against China, 4 petitions were withdrawn by the complainant and 5 lawsuits resulted in negative determinations, finding that dumping had not occurred. Four cases found that dumping had occurred, but because there was no injury, no anti-dumping duty was imposed. Ninety cases have been measured, and imposed anti-dumping duty rate from 1.67% to 429.95%. In one case, the anti-dumping duty rates varied by exporter, some of them lower than average and some firms higher than average, as high as 400%. Many times, Chinese exporters are afraid to respond or get involved and are, therefore, subject to adverse inferences. In the past, this lack of response could be attributed to a lack of familiarity with US law.

The fundamental causes for the disadvantage of the Chinese enterprises and their low winning rate in anti-dumping cases with the US lie in the loss of enterprise internal control that runs through the whole process of enterprise operation activities. Many industries, who respond inactively, do not respond for two inter-connected

reasons: they are afraid to engage in a lawsuit and they are afraid of the financial costs associated with a lawsuit (Fangcheng and Xinglong 2010). In recent years, more and more Chinese enterprises have been responding actively to anti-dumping lawsuits, because placing an anti-dumping case on file and investigating it does not necessarily mean that dumping is justified. By providing legal evidence, they improve their chances of gaining a just settlement. Otherwise, if the Chinese enterprises refuse to respond or respond passively, high punitive tax rate will be levied against their products. The threat of punitive taxes is a potential reason to spur of Chinese enterprises to actively defend themselves against anti-dumping lawsuits.

For example, in a 2003 anti-dumping lawsuit initiated by the US against Chinese television sets, the anti-dumping duty rates for Changhong, TCL, Konka, and Xoceco TV sets were set at 26.37%, 21.25%, 9.69%, and 5.22% respectively. The weighted average duty rate of other enterprises that responded to anti-dumping lawsuits was 22.94%, while for those who did not respond to anti-dumping lawsuits they faced a punishing tariff of 78.45%. Despite the punitive tariff rate, Konka and Xoceco, two major Chinese television manufacturers, retained their exporting markets while other enterprises were rejected.

### **3.3.4 China's Non-Market Economy Status**

According to the agreement of China's accession to the WTO, the US does not have to treat China as a market economy until 2015. It did not have to establish the case in terms of proof of 'dumping' and 'material injury.' Instead, it has the right to

determine the fair value price for Chinese goods in order to determine the amount of the anti-dumping duty needed. Under US law, a dumping margin represents the percentage by which the fair-value price exceeds the export price. In the past, it was determined by the pricing policy of a third country market. The WTO anti-dumping agreement specifies three ways to calculate the product's normal price in order to determine the dumping margin. Usually, it is based on the price in the exporter's domestic market. When this cannot be used, two alternatives are available: the price charged by the exporter in another country, or a calculation based on the combination of the exporter's production costs, other expenses and normal profit margins (WTO Anti-Dumping Agreement Article 2.2).

#### **4. The Chinese Antidumping Strategy**

Since 1994, China has been the number one target for anti-dumping initiatives in the world. Chinese governments and enterprises should have their own strategies and policies to fight the anti-dumping wars. The following are suggestions for Chinese enterprises and government.

##### **4.1 Promote And Participate into the Reform of AD Agreement.**

As a member of WTO and the largest export country in the world, China should actively promote and participate in the reform of WTO Agreement and its undertakings with the US and the EU. First of all, the requirements for opening an anti-dumping investigation should be tightened by raising the threshold for the determination of 'dumping.' Given the significantly lower labour costs and other factor endowments, there should different dumping margins set for developed and

developing economies. Furthermore, as Neufeld proposed (2001), unjustified anti-dumping investigations should be eliminated. A stricter test of injury should be conducted before the opening of an investigation and the injury determination should be on a firm-specific basis. Any country's anti-dumping laws should be based on the WTO rules.

#### **4.2 Being Active in the Anti-dumping Club**

Chinese government and Chinese enterprises should pay much more attention to their own markets for possible dumping behaviour of foreign companies and related industrial injury. Instead of remaining passive anti-dumping targets, they should be armed with the anti-dumping regulations and be more active in initiating anti-dumping investigations against unfair trade practices of their trading partners. They should encourage and assist Chinese firms in actively defending themselves in litigations, especially those litigations initiated by developed countries like the US and EU.

#### **4.3 Active Use of Anti-dumping Instrument**

China should actively use the anti-dumping instrument to protect and defend its domestic industries. As we know, there were 843 anti-dumping investigation cases against China from 1995 to 2011. However, China only initiated 191 investigations against other countries during that time. They should encourage their enterprises to respond to other country's anti-dumping investigations and to file more anti-dumping lawsuits. As well Chinese companies will need government support to pay the legal costs of these proceedings.



#### **4.4 Assistance of the Government in Anti-dumping Actions**

The two main reasons Chinese firms rarely respond to anti-dumping investigations are that a) they are not familiar with the anti-dumping rules and regulations and b) they do not have the financial resources to afford the high cost of legal proceedings. The Chinese government should provide anti-dumping-related legal services and financial support to the domestic exporters. The government should provide domestic enterprises with training on anti-dumping instruments; assist them in responding to allegations of dumping, in initiated an investigation against foreign dumping, as well as responding to other unfair competition. The government should train more attorneys who are able to master the WTO anti-dumping rules and codes, as well as the anti-dumping laws of other countries. The Chinese government should use the anti-dumping duties collected to support the Chinese enterprises under investigation for anti-dumping practices in foreign jurisdictions.

### **5. A Case Study of the Solar Panel EU-China Dispute**

#### **5.1 Background:**

With the development of the world economy, more clean energy is needed, and solar is an important form of this clean energy. Solar electricity production is a good financial investment, and becomes increasingly so, as more people and companies invest in it. Solar panel and solar electricity production equipment business has been a rapid developmental frontier in the past decade.

Because of China's technical expertise required in producing solar panels, and as a result of a competitive market, two-thirds of solar panels production worldwide

capacity are produced China. The worldwide glut of solar panels, which has lasted nearly two years, is partly the result of big government-backed investments in factories in China. Worldwide, solar companies have the capacity to manufacture between 60 and 70 gigawatts worth of solar panels a year, yet demand in 2013 is only expected to be approximately 30 gigawatts. Consequently, a dozen solar panel manufacturers in the US and a dozen in Europe have declared bankruptcy, having either failed, or cut back production after finding that they were unable to cover their costs at the current low prices for solar panels.

**Table 12: Solar Production Companies Bankruptcy**

Name	Employees	Country	Main product	Date of Bankruptcy
Solarday S.P.A	51200	Italy	photovoltaic module	08/04/2012
NS Solar Material		Japan	raw material for polycrystalline silicon solar cells	09/2012
Ralos New Energies AG		Germany	photovoltaic system	02/2012
Scheuten Solar	2000	Germany	photovoltaic module	02/2012
Sun Concept	100	Germany	Photovoltaic system design, installation and operator	03/2012
Energy Conversion Devices Inc		US	Thin-film solar panels	04/2012
Evergreen Solar Inc.		US		2011
Solyndra		US		2011
Spectra Watt		US		2011
Odersun	260	Germany		2012
Solarhybrid		Germany	Photovoltaic (pv) manufacturing	21/03/2012
Q-Cells		Germany	solar cell	03/04/2012

Source: Collections based on WTO Secretariat Rules division database

From 2011, the US and EU started a solar panel trade war with China on the grounds that the Chinese panels were being sold below cost. The United States Department of Commerce set anti-dumping duties ranging from 18.32 percent to 249.96 percent on solar-energy cells imported from China, the result of a complaint brought by the American unit of Bonn-based SolarWorld AG (SWV).

Separately, the Department of Commerce set higher final anti-subsidy tariffs on Chinese producers because the US claims the Chinese were violating trade rules with their own government subsidies. China set a rate of 15.97 percent on solar cells made by Trina, up from a preliminary rate of 4.73 percent imposed in March; they set a rate of 14.78% for those made by Suntech, up from 2.9 percent. An anti-subsidy tariff of 15.24 percent was imposed on solar goods from other Chinese exporters.

Meanwhile, the EU launched an anti-dumping investigation into Chinese solar panels covering alleged dumping dating back to September 2012. The complaint was filed in July 2013 by a group of 25 producers of solar gear, including companies from Germany, Italy and Spain. It is the biggest anti-dumping claim ever filed by the EU. The investigation is expected to last 15 months, and in its preliminary finding the EU ruled against Chinese firms finding imposed temporary tariffs until a final determination was made.

The Department of Commerce believes that the Chinese government has provided unfair support for its domestic solar-manufacturing industry, leading to a

price collapse that caused US plants to shut. They set duties of 18.32 percent on the value of Trina Solar imports after finding its goods were sold, or “dumped,” in the US below cost. The Department set 31.14 percent preliminary penalties on the company’s merchandise. Suntech, the world’s largest solar-power equipment maker, faces anti-dumping duties of 31.73 percent, compared with a rate of 31.22 percent set in May 2012.

## **5.2 Suntech Bankruptcy**

With the worldwide solar companies bankrupted, it has become increasingly difficult for the US and EU to use anti-dumping instrument against solar enterprises. Until 2012, Suntech Power Holdings was the world’s largest producer of solar panels. They announced the bankruptcy of their main Chinese subsidiary on March 20, 2013; a stark illustration of the declining fortunes of the global solar industry.

Suntech’s Wuxi subsidiary was the first big Chinese solar group to declare insolvency and the world’s biggest such bankruptcy, following a string of failed western solar companies including Q-Cells in Germany and Solyndra in the US.

Suntech Power Holdings Co. Ltd. employed more than 10,000 employees, including more than 100 scientists working directly with solar panels, and they even set up a small solar panel assembly factory in Arizona. Their income rapidly rose and peaked in 2010. The main market of their products is the US and EU, and China dominates the market with its competitively priced solar panels. However, a tenfold expansion of Chinese solar panel manufacturing capacity from 2008 to 2012 pushed

down the price of solar panels by approximately 75 percent, which undermined the economics of the business. Suntech almost lost the US market after the US imposed anti-dumping and anti-subsidy duties from May 2011. Although Suntech's bankruptcy is not the only reason that the US and the EU started anti-dumping disputes with China, the imposition of duties caused Suntech to lose its hold on the foreign markets, which precipitated their bankruptcy.

In the 4<sup>th</sup> quarter of 2011, Suntech held 38% of the share of the US market. In the 1<sup>st</sup> quarter of 2012, this percentage dropped by 15, to 23%. Part of this decrease can be accounted for due to the rapid expansion of natural gas production in the US and a curtailment of subsidies in the EU, both of which hurt solar panel prices.

According to Jenny Chase, the Head of Solar Analysis at Bloomberg New Energy Finance, "what the Suntech case shows us is that the Chinese companies are not too big to fail... We are entering a period of great difficulty for Chinese solar manufacturers (Hook 2013)."

China is the world's biggest producer of solar panels, but the sector is suffering due to overcapacity, after a rapid expansion fuelled by cheap loans and preferential government policies. US-listed Suntech is emblematic of the country's swift entry into, and then dominance of, the market.

Their bankruptcy is a sign of the worldwide consolidation of the solar industry, which has been crippled by a glut of products on world markets and Western tariffs on Chinese products. It also signals China's unwillingness to continue to subsidize

struggling manufacturers in the industry, which is contributing to the steep decline of its green energy pursuits.

The final contributor to Suntech's bankruptcy is that most of the cost of a solar panel lies in building the factory, not in operating the equipment to produce the panels themselves. When the industry is severely overcapacity, each company continues running their factories to cover their tiny operating cost. They continue to pay at least a small portion of the interest on the loans they took out to buy the costly factory equipment. With every company pursuing this autonomous approach, the entire industry loses money and virtually no single business is able to cover its full interest costs.

In order to bring the supply and demand of solar panels back into a place of balance and equilibrium, hundreds of solar companies are likely going to need to fail. Suntech's bankruptcy will be one among many needed to bring the supply for solar energy back in line with the demand. These company failures will slow the fall in prices and, as demand recovers, allow companies to justify buying new equipment. Thereafter, companies will be able to introduce the innovations that will ultimately be needed for solar power to compete with fossil fuels.

## **6. Conclusion**

The popular perception is that anti-dumping is highly controversial as an instrument of public policy because it penalizes the consumer and creates a state-managed playing field. From a political economy perspective, unfair trading

practices injure industries and dumping goods threatens the employment of workers. It is not surprising, then, to see many countries increasingly relying on anti-dumping initiatives in a highly competitive age. Over time, it has become a front-line strategy against predatory pricing and other state strategies to gain unfair access to export markets when the export sector is the lynch pin of a country's growth strategy in a globalized world. Since 1995, there has been an explosion of anti-dumping suits. From 1995 to 2011, there have been more than 4000 anti-dumping suits brought by countries, compared to less than 400 trade filings in the fifteen years prior to that, with the WTO in Geneva. The trend is that countries are relying not only on the WTO's dispute resolution mechanism as a front-line legal instrument, but have increasingly turned to their national investigative trade tribunals instead with their own standards and jurisprudence.

For this reason, this paper has examined empirically the practices and strategies of the core members of the global anti-dumping club composed of China, US, EU and India and other countries as well. What we found is that China, the industrial workshop of the world, is the leading target of anti-dumping complaints by its trade rivals and competitors. China was the number one defendant, the target of 843 antidumping investigations and having 630 anti-dumping measures leveled against them between January 1995 and December 2011. This is not surprising since the EU, the US and India have relied on anti-dumping initiatives as a short-term stopgap against the pressures of structural change resulting from highly volatile market conditions. Just as Jacob Viner predicted when he wrote his classic book on

the subject, currency differentials create unfair advantage for Chinese or other producers. Countries cannot remain indifferent to asymmetrical market conditions. For economies in the Global South with their labour intensive industries employing hundreds of thousands workers, the cost of governments 'doing nothing' is a public policy disaster and unsustainable in the mid- and long-term.

Our study has also examined the win/lost rates of filing anti-dumping complaints before domestic investigatory bodies. Our analysis reveals a wide divergence in practice and standards. There were 2601 cases definite measures implemented in the total 4010 anti-dumping cases from 1995 to 2011. The average success rate was 64.9%.

It is hard to pinpoint bias and identify low standards when comparing US, EU, Indian and Chinese jurisprudence. Each has their own rules and procedures to gather evidence and make a legal determination following WTO's code and standards. There is large variation in practices between countries with different legal systems and institutional norms. There are many examples where authorities act in their national interest and they do not accept the critique that their investigative bodies are compromised. As a general conclusion, we found that countries follow the WTO code on anti-dumping procedures, rules and regulation, but that there are significant national differences of interpretation of some of the codes. More analysis and research is required to identify the shortcomings of the divergent practices and rules of evidence.



We know that WTO's case jurisprudence is also uneven in addressing complex issues of the environment, labour standards and state subsidies to name but a few trade hot spots that leading commentators such as Robert Howse, Diana Tussie and Amit Ray have analyzed in their research into WTO case law. While it is the case that WTO rules support a high standard of jurisprudence, countries face uncertain outcomes in going before a trade tribunal. In the Brazil-US cotton dispute, it took almost a decade for Brazil to force the US to remove its punitive tariffs and in the end it spent millions of dollars in legal fees. The compromise accepted by WTO jurisprudence is that the US pays Brazil 'injury' protection compensation and has kept its cotton subsidies flowing to US producers. Legalized protection has a place in trade governance however controversial.

The most important part of the study focuses on China's use of anti-dumping initiatives. Two trends are discernible. First, given its global prominence as the 'workshop of the world,' China is the most targeted country. This antagonism is not exclusively North-South, as China and India are also trade rivals and competing to dominate Asia's regional economy. Secondly, we were quite surprised to find that there are 843 anti-dumping investigation cases against China from 1995 to 2011. Yet, China initiated only 191 investigations against other countries. According to trade theory, China should be retaliating and leveling the playing field. But it has not done so, contrary to orthodox trade theory. We need a better explanation of Chinese trade strategy. It does not appear to be driven by a dynamic of equivalent retaliation.

Instead, it is a strategy that seeks to negotiate differences and propose alternative

arrangements between trade rivals. The solar panel dispute illustrates the complexity of China's two level games. On one hand, it is committed to the protection and reorganization of its troubled but lucrative multi-billion dollar solar panel export industry. On the other hand, it succeeded in negotiating an informal alliance with Germany to head off punitive EU tariffs that were recommended by the EU Commissioner. If there is no resolution of the solar panel conflict, the European consumer and the Chinese solar panel industry would have had to pay a heavy price. The dispute is ongoing and it now appears likely that there will be a negotiated settlement limiting Chinese exports to the EU over the coming months. Managed trade, not freer trade is the pragmatic standard of the day.

Finally, we have seen how China employs anti-dumping policies as a market defensive mechanism working to advance its commercial interests. China is not indifferent to the 'Anti-China Syndrome' fuelled by the success of its low wage export-led strategy. As the US and EU continue to struggle with their declining global competitiveness, it serves their national interest to 'punish' Chinese industries that are too aggressive in winning market shares. For instance, Canadian steel producers were not allowed more than three percent of the US steel market even after NAFTA promised unimpeded access for Canadian producers. If Canada's steel industry exceeded this 'unwritten rule', they would inevitably face anti-dumping allegations and suffer penalties. The battle for market share is most intense when world tariffs are at historic lows and global marketing chains are ruthless in cutting costs. Highly volatile market dynamics post-2008 financial crisis has intensified competition

between China with the world's largest economy and the advanced capitalist world.

Anti-dumping is a barometer of the new world order and needs to be mapped and tracked rigorously.

**Notes:**

**HS Section Name:**

<b>HS</b>	<b>Section Name</b>
I	Live animals and products
II	Vegetable products
III	Animal and vegetable fats, oils and waxes
IV	Prepared foodstuff; beverages, spirits, vinegar; tobacco
V	Mineral products
VI	Products of the chemical and allied industries
VII	Resins, plastics and articles; rubber and articles
VIII	Hides, skins and articles; saddlery and travel goods
IX	Wood, cork and articles; basketware
X	Paper, paperboard and articles
XI	Textiles and articles
XII	Footwear, headgear; feathers, artif. flowers, fans
XIII	Articles of stone, plaster; ceramic prod.; glass
XIV	Pearls, precious stones and metals; coin
XV	Base metals and articles
XVI	Machinery and electrical equipment
XVII	Vehicles, aircraft and vessels
XVIII	Instruments, clocks, recorders and reproducers
XX	Miscellaneous manufactured articles

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