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The Application of a 'Market Share' Test to Antidumping Cases in China – Seeking a New Development Model via the Interaction of Trade and Competition

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ABSTRACT: *The relationship between trade and competition has always been very subtle. The economic crisis of 2009 has once again triggered calls for greater coherence between the two, especially for developing countries. Among various underlying issues, antidumping law no doubts poses the most serious challenge (i.e. the 'substitution' debate). In order to conduct a systematic examination, besides normative arguments, empirical studies are also very important. By applying a 'market share' test to antidumping cases in China, this paper extends the existing empirical research, which directly applies competition standards to antidumping cases, to one more significant country which has not yet been examined.*

I. INTRODUCTION

'The main subject for discussion at present should not be the dilemma between protectionism and free trade. Right now, the debate on competition must be framed within the search for a new development model.'¹ In the wake of the economic crisis of 2009, when most trade policymakers remain concerned with seeking a satisfying answer to the question 'can protectionism protect trade?'², some, especially those from the developing countries, are looking at another antidote. They once again call for the introduction of competition into trade, so as to explore a new development model and seek to answer the question 'how can the interaction of competition and trade policy contribute to economic development?'³ For instance, in 2010, Latin American trade and competition officials have recommended creating a regional working group on trade and competition within the Latin American and Caribbean System (or SELA, its Spanish acronym).⁴ How to better link competition with trade to assure

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¹ UNCTAD, 'Conclusions and Recommendations of the Regional Seminar on Trade and Competition: Prospects and Future Challenges for Latin America and the Caribbean' (2009), p2, See http://www.unctad.org/sections/ditc_ccpb/docs/ditc_ccpb0019_en.pdf.

² 'Can protectionism protect trade?', *WTO Forum* (2009), See http://www.wto.org/english/forums_e/debates_e/debate21_e.htm.

³ 'How can the interaction of competition and trade policy contribute to economic development?', *WTO Forum* (2009), See http://www.wto.org/english/forums_e/debates_e/debate19_e.htm.

⁴ 'Trade and competition in Latin America and Caribbean discussed', *UNCTAD News* (2010), See <http://www.unctad.org/Templates/Page.asp?intItemID=5469&lang=1>.

development gains, or rather, how to integrate the current controversial trade mechanisms with gradually improving but as of yet unsophisticated competition mechanisms, is a new challenging project that confronts each developing country, including China.

Among the various issues underlying the relationship between trade and competition, antidumping law no doubts poses one of the most serious challenges. According to Spencer Weber Waller, 'One would be hard pressed to find a scholar steeped in competition law and policy that supports current antidumping rules. Most would prefer their outright replacement with a competition-based regime that could address any serious instance of dumping that actually harms consumers and the process of competition.'⁵ This debate about how to integrate antidumping in competition is the so-called 'substitution' debate.⁶

To examine this new but very significant issue⁷, besides normative arguments, empirical studies are also very important. As Gunnar Niels pointed out, 'A more thorough understanding is needed of what would happen if competition standards were applied to antidumping cases', and 'the economic case against antidumping law would be strengthened if such research confirmed earlier findings that the overwhelming majority of dumping practices does not imply any danger to competition or efficiency.'⁸ A series of such studies have been conducted with regard to the traditional heavy users of antidumping. For instance, Shin (1998) analyzed 282 antidumping investigations in the U.S. between 1980 and 1989.⁹ A similar empirical study concerning the EU was made by Messerlin.¹⁰ OECD (1996) also

⁵ See Spencer Weber Waller, 'Bringing Globalism Home: Lessons from Antitrust and Beyond' (2000) 32 *Loyola University Chicago Law Journal*, p113

⁶ See more, Martyn D Taylor, *International Competition Law: A New Dimension for the WTO?* (Cambridge Univ Press Inc. 2006), pp260-285; Andreas Knorr, 'Antidumping Rules vs. Competition Rules' (2004), *Institution for World Economics and International Management*, pp1-19, <http://www.iwim.uni-bremen.de/publikationen/pdf/W031.pdf>; J Michael Finger & Andrei Zlate, 'Antidumping: Prospects for Discipline from Doha Negotiations' (2005), *Working Papers in Economics*, pp1-38, http://escholarship.bc.edu/cgi/viewcontent.cgi?article=1184&context=econ_papers; Claude Barfield, 'Antidumping: Time to: (1) Go Back to Basics; And (2) Politicize the Final Outcome; Or (3) Substitute Safeguards for Antidumping Actions' (2004), *Paper Prepared for the Centennial of Anti-Dumping Legislation and Implementation Symposium*, pp1-40, <http://fordschool.umich.edu/rsie/Conferences/ADSym/Barfield.pdf>.

⁷ For example, according to Lloyd, the point of view, which re-examines dumping from the point of view of a form of business conduct that might be subject to competition law, is relatively new but it is causing a fundamental rethinking of the economics of anti-dumping actions. See P J Lloyd, 'Anti-dumping and Competition Law', in *II The World Trade Organization: Legal, Economic and Political Analysis* (Patrick F J Macrory et al, eds, Springer 2005), p69.

⁸ See Gunnar Niels, 'What is Antidumping Policy Really About?' (2002) 14 *Journal of Economic Surveys* 486. This question has also been raised in other papers, for instance, 'this leads to an interesting question: How many AD cases would lead to the imposition of sanctions, if antitrust rules had been applied instead?' See Knorr (note 6 above), p13; 'The opposition of international trade economists to the use of anti-dumping action to counter cross-border price discrimination has been supported by the empirical findings on the pattern of dumping actions.' See Lloyd (note 7 above), p75.

⁹ According to her research, an examination of the antidumping investigations initiated in the 1980s indicates that only 39 cases were brought in industries that exhibited substantial domestic and foreign market concentration, which represent 14 percent of the sample which would have to be examined further, seeking for example for the existence of market entry barriers as another necessary precondition for successful predatory practice. See Hyun Ja Shin, 'Possible Instances of Predatory Pricing in Recent U.S. Antidumping Cases', in *Brookings Trade Forum* (Robert Z Lawrence, ed., Brookings Institution Press 1998), p94.

¹⁰ Of the 658 cases initiated between 1980 and 1999, only 461 can be subjected to his first screen of examination because they are the only ones for which information on foreign market shares in the EC markets is available in the official proceedings. Moreover, the examination result of this empirical study showed that, only 2% of 461 cases initiated between 1980 and 1987 are candidates for closer examination on predation grounds. See Jacques H J Bourgeois & Patrick A Messerlin, 'The European Community's Experience', in *Brookings Trade Forum* (Robert Z Lawrence, ed, Brookings Institution Press 1998), p144.

conducted a survey on 'antidumping cases potentially involving monopolizing behavior', focusing on the U.S., Canada, Australia, and EU mainly during 1980s to 1990s.¹¹ A more recent survey on the U.S. and the EU was done by Vincent Aussilloux et al.¹² By contrast, with respect to the new heavy users of antidumping actions, such as Mexico, Argentina, Brazil, India, and South Africa,¹³ only a limited number of studies have been conducted.¹⁴ Hence, the empirical research should be extended to more cases and countries.¹⁵

This paper attempts to extend the empirical research to China, one of the most important new heavy users that have not been examined yet. As the number one target of antidumping actions in the world, China has recently begun to make increasing use of antidumping actions itself. From 1997 until the end of August, 2010, China initiated and awarded final decisions in forty-nine antidumping cases.¹⁶ Another fifteen cases have been filed and are still pending.¹⁷ Simultaneously, China has also devoted itself to promoting competition legislation and enhancing its enforcement. At the core of China's competition system is the Chinese Antimonopoly Law, which was entered into force in 2008.¹⁸ Together with other literature, this paper also intends to help China in its search for a new development model and an answer to the question 'how can the interaction of competition and trade policy contribute to economic development?'

¹¹ According to its statistics, the antidumping measures imposed by the U.S. (1979-1989) total 282, with 35 potential cases of monopolizing dumping. The antidumping measures imposed by Canada (1980-1991) are 92 in total and there is no potential monopolizing dumping. The antidumping measures imposed by Australia (1988-1991) total 20, with 5 potential cases of monopolizing dumping. The antidumping measures imposed by the EU (1980-1989) number 270, with 23 potential cases of monopolizing dumping. See 'Trade and competition: Frictions after the Uruguay Round' (1996), *Working Papers No. 165 of OECD Economic Department*, pp1-34, <http://titania.sourceoecd.org/vl=2289142/cl=18/nw=1/rpsv/cgi-bin/wppdf?file=5lgsjhvj86q5.pdf>.

¹² The empirical study by Aussilloux et al. covering 1998-2002 cases shows that 31% of the antidumping procedures introduced by the EU appear to have a theoretical economic foundation in terms of likely anticompetitive effects, and 24% of the procedures engaged by the U.S. during this period have economic foundation in terms of likelihood of anticompetitive effects. See Vincent Aussilloux et al. 'Antidumping as Anticompetitive Practice: Evidence from the United-States and the European Community', p16, <http://www.ios.neu.edu/iioe2004/papers/s6k3.pdf> (last visited September 16, 2010).

¹³ Take China for example, from 1995-2009, China was subject to antidumping measures in 538 cases. Among them, 77 cases were initiated by the U.S., 66 by the EU, 12 by Australia, and 17 by Canada. All of the remaining cases (more than 300 cases) were initiated by developing countries, including 98 by India, 49 by Argentina, 51 by Turkey, 17 by South Africa, 27 by Brazil, 16 by Mexico and so on. For the most recent Statistics See http://www.wto.org/english/tratop_e/adp_e/ad_meas_rep_exp_e.xls.

¹⁴ For example, Merle Holden investigated the antidumping cases of South Africa (1991-1998) and concluded that 3% of the successful applications were likely to have involved anticompetitive behavior on the part of the foreign suppliers. See Merle Holden, 'Anti Dumping: A Reaction to Trade Liberalisation or Anti Competitive?', p17, <http://www.essa.org.za/download/papers/004.pdf> (last visited September 16, 2010).

Aradhna Aggarwal applied certain economic criteria of predatory dumping to antidumping investigations in India between 1993 and 2001 and found they were met in a few cases. See Aradhna Aggarwal, 'Anti Dumping Law and Practice: An Indian Perspective' (2002), *Indian Council for Research on International Economic Relations*, pp 9-20, <http://www.icrier.org/pdf/antiDump.pdf>.

¹⁵ See Niels (note 8 above), p486.

¹⁶ For the purpose of discussion in this paper, the number of antidumping cases in the following discussion refers to one product from all of the investigated countries.

¹⁷ See the updated information on the website of Ministry of Commerce of the People's Republic of China Bureau of Fair Trade for Imports and Exports, <http://gpj.mofcom.gov.cn/d/r.html> (last visited September 16, 2010) Since these 15 antidumping cases are still under investigation, only the 49 cases that have already been finally determined are examined in this paper.

¹⁸ CHINESE ANTIMONOPOLY LAW was just adopted at the 29th session of the Tenth National People's Congress on August 30, 2007, and will take effect on August 1, 2008.

To that end, Section II following this introduction elaborates the basic instrument chosen to be applied in this empirical study, i.e. a 'market share' test. Section III defines the specific 'market share' requirements under Chinese Antimonopoly Law. Next, in Section IV and V, these requirements are applied to all of the forty-nine antidumping in which a final awarded was rendered between 1997 and 2010, to investigate whether the majority of dumping practices in China does or does not imply any danger to competition. This paper concludes that, in line with the empirical findings in most other countries, in China, only 8.16% of the antidumping cases that were analyzed are candidates for further examination on predation grounds.

II. 'MARKET SHARE' TEST

Unlike other issues in competition law, such as mergers, some consensus has been reached with respect to price discrimination and predation.¹⁹ To be more concrete, there are four basic elements in the determination of predatory pricing under competition law: market power, intent of monopoly, cost calculation and injury to competition.²⁰ In the proof of each element, many factors need to be taken into consideration, which indicates that there are actually various tests through which competition requirements could be applied to antidumping cases. This paper intends to conduct the empirical study of China by testing one specific factor, i.e. market share.

Applying a 'market share' test means to focus on market power, the primary element in the determination of predatory pricing. The essential idea behind this is the consistency with the methodology applied by most scholars. For instance, in her empirical study of antidumping cases in the U.S., Shin focused on the first element (market power) instead of the complicated cost calculation. A cost-based approach to determine the outcome of antidumping investigations was discarded because it did seem to be a practical and implementable strategy. A more readily administrable test for harmful dumping is one that searches the market for structural characteristics that should exist for predation to be a profitable strategy in the long run.²¹ Only if these structural characteristics are found to exist should more complicated calculations be made.²²

Based on this approach, in Shin's studies, first of all, those antidumping cases that were simultaneously applied to the exports of several countries could easily be eliminated.²³ This is because, if there are multiple exporters from a single country or exporters from several countries, successful coordination both in bearing the initial losses during the predatory period and in the later recoupment of these losses becomes increasingly difficult in a market

¹⁹ See also Niels (note 8 above), p485.

²⁰ Attempted monopolization requires: (1) specific intent to control prices or destroy competition; (2) predatory or anti-competitive conduct directed towards that end, and (3) a dangerous probability of successful monopolization. In the third requirement for attempt to monopolize, that of dangerous probability, there is de facto prerequisite for a high threshold of market power. See Gabrielle Marceau, *Anti-dumping and Anti-trust Issues in Free-trade Areas* (Oxford Univ Press Inc. 1994), p262.

²¹ See Shin (note 9 above), p84.

²² *Ibid* p85.

²³ *Ibid* p86.

where they would all be active.²⁴ Secondly, after the elimination of the cases under the above circumstances, the concentration of the market and the industries was examined in the remaining antidumping cases.²⁵ Through completing these steps, Shin then draws conclusions on the possibility of predatory pricing in antidumping cases of the U.S. during a certain period.²⁶ This kind of test is quite popular and was followed by Messerlin and the other aforementioned scholars in conducting similar studies with respect to other countries.

After having decided in this paper to focus on market power to conduct a similar study as Shin's, the next important issue is what kind of specific test should be applied to make it feasible, as there are many factors in evaluating market power. In Shin's empirical study, the Herfindahl index, developed in economics, was applied to examine the market concentration of the U.S. as well as the foreign seller concentration.²⁷ By contrast, in this paper, given the specific context of China, it is decided to introduce apply a 'market share' test.

In almost all of the major countries, market share plays an important role in the assessment of market power.²⁸ More importantly, as shall be further analyzed in the immediately following section, the newly-enacted Chinese Antimonopoly Law even empowers the competition authorities to apply certain presumptions based on market share to determine that a company has dominant market power. For all of the above reasons, this paper decides to apply a 'market share' test to China, to examine how many antidumping cases would also be considered as possibly unlawful under competition law, in terms of possessing a dominant market power as necessary precondition for successful predatory practices.

²⁴ *Ibid* pp86-87.

²⁵ *Ibid* pp87-89.

²⁶ *Ibid* pp94-97.

²⁷ *Ibid* pp87-89.

²⁸ Once the relevant product and geographic markets are determined, market share of the firm or firms under review or investigation is determined. Whether a firm enjoys a dominant position in a relevant market depends on its share of that market. Market share, coupled with the ease or difficulty of entry into a market, is used as a surrogate for determining a firm's monopoly power.

In the EU, a 50 percent and sometimes 40 percent market share translates into dominance, especially if the next largest firms lags far behind. The EU takes the view that a dominant position can generally exist when a firm has a market share of 40-45 percent, although dominance may exist even if the market share is 20-40 percent.

The U.S., unlike the EU, measures market power and its possible increase microeconomically by considering the relevant factor in the specific context. The supreme court has held, however, that monopoly power could be inferred from a market share of 80 percent. Where barriers to market entry are high, other courts have required less market share for a finding of monopoly power. In the U.S., courts consistently find that a market share of less than 70 percent is insufficient to establish dominance, and that a market share of less than 40 percent virtually precludes a finding of monopoly.

In Canada, in the context of a predatory pricing investigation, the Predatory pricing enforcement guidelines issued by the Director of investigation and research in 1992 note that 'it is unlikely that an alleged predatory with a market share of less than 35% would have the ability to unilaterally affect pricing.' Pursuant to the PPEG, the first step in a predatory pricing claim is to define the relevant product and geographic market. However, it has been observed that: 'the PPEG are only guidelines that are not binding on courts. Consequently [sic], the Canadian definition of ... markets in judicially considered predatory pricing cases may not be clearer than in the U.S.'

See Kevin C Kennedy, *Competition Law and the World Trade Organization: The Limits of Multilateralism* (Sweet & Maxwell 2001), pp229-230.

III. 'MARKET SHARE' REQUIREMENTS UNDER THE CHINESE ANTIMONOPOLY LAW

The conduct of low-price sale, i.e. predatory pricing, is prohibited under Article 17(2) of Chinese Antimonopoly Law, where it is defined as one of the instances of the anti-competitive conduct 'Abuse of a Dominant Market Position'.²⁹ In this paper, the specific competition requirements under the new antimonopoly law shall be applied to examine antidumping cases.³⁰

To be more concrete, in terms of the assessment of a dominant market position, Chinese Antimonopoly Law provides two methods. One is set forth in Article 18, which is an overall examination of dominant market position by taking market share, competition situation, ability to control the sales market and other factors into consideration.³¹ Moreover, in order to save enforcement costs and to exercise an efficient supervision, Article 19 of the Chinese Antimonopoly Law, recognizing the important role of market share and referring to the experiences of Germany and Korea, provides a way to presume a dominant market

²⁹ According to CHINESE ANTIMONOPOLY LAW, Article 17(2): Undertakings of a dominant market position shall not abuse their dominant market positions to conduct following conducts: (2) Sell commodities at prices below cost without legitimate reasons.

³⁰ Actually in China, the low-price sale issue is also addressed in the previous competition rules, including CHINESE UNFAIR COMPETITION LAW 1993 and CHINESE PRICE LAW 1997. In the CHINESE UNFAIR COMPETITION LAW 1993, Article 11 stipulates that, a business operator shall not, for the purpose of pushing out their competitors, sell their commodities at prices lower than costs. Any of the following shall not be deemed as an unfair competition act: (1) Selling perishables or live commodities; (2) Disposing of commodities near expiration of their validity duration or those kept too long in stock; (3) Seasonal sales; or (4) Selling commodities at a reduced price for the purpose of clearing off debts, change of business or suspension of operation.

Besides, CHINESE PRICE LAW, Article 14 (2) also stipulates that the operators shall not commit the following unfair price acts including: dumping at the lower-than-the-cost price and disrupting the normal production and management order to the detriment of national interests or the lawful rights and interests of other operators for the purpose of squeezing out other competitors or of sole occupancy of the market in addition to the disposal of such commodities as fresh and living commodities, seasonal commodities and overstocked commodities at reduced prices in accordance with law.

According to relevant Chinese officers, with the enactment of Chinese Antimonopoly Law, the relevant amendments towards harmonizing Chinese Unfair Competition Law and Chinese Antimonopoly Law have been carried on, and the basic principle of the amendments is to delete all of the overlap parts in the previous Chinese Unfair Competition Law. However, as to the overlap issue of predatory pricing, up till now, there still lacks a common understanding. See Email from Ma Zhengping, Office Worker, *The Commission for Legal Affairs under the Standing Committee of the National People's Congress*, to Bi Ying, LL.D. Candidate, *Kyushu University* (Apr 24, 2008) (on file with the author) In terms of this issue, there are two groups of opinions in China. One group is of the opinion that as predatory dumping can be taken as either an unfair competition conduct or a restraining competition conduct, it has been regulated in both laws. See Wang Xiaoye, 'Fan longduan Fa Yu Fan Buzhengdang Jingzheng Fa De Yitong' [The Differences between Antimonopoly Law and Law Against Unfair Competition] (2007-07-11), *The Blog of China Commerce*, http://blog.sina.com.cn/s/blog_4da7948501000kmw.html; The other group is of the opinion that, with the enactment of Chinese Antimonopoly Law, such conducts as administrative monopoly, predatory dumping and so on should be regulated only under the antimonopoly law other than unfair competition law. See Huang yong, 'Fanlongduan Fa Chutai Falv Dingwei Yu Falv Xietiao Jueding Chengbai' [The legal Status and Legal Harmonization of Antimonopoly Law] (2007-09-02), *Legal Daily*, http://www.legaldaily.com.cn/0705/2007-09/02/content_692323.htm.

In this paper, from the perspective of the basic principle of the harmonization work, as well as the consistency with the usual practice of most of the other countries, it is decided to only focus on predatory pricing under the new Chinese Antimonopoly Law.

³¹ CHINESE ANTIMONOPOLY LAW, Article 18: The following factors will be taken into consideration in finding dominant market position: (1) Market share in relevant market, and the competition situation of the relevant market; (2) Ability to control the sales markets or the raw material purchasing markets; (3) Financial status and technical conditions of the undertaking; (4) The degree of dependence of other undertakings; (5) Entry to relevant market by other undertakings; (6) Other factors related to find a dominant market position.

position on the basis of the relevant market share.³² According to Article 19(1), a business operator may be presumed to have a dominant market position in cases where:

- (1) The relevant market share of one undertaking accounts for 1/2 or above;
- (2) The joint relevant market share of two undertakings accounts for 2/3 or above;
- (3) The joint relevant market share of three undertakings accounts for 3/4 or above.³³

In light of the above prerequisites, particular attention should be paid to two essential indices in applying a 'market share' test to antidumping cases. They are:

- (1) The number of targeted exporters from targeted countries (how many have registered after filing the case, and/or have submitted required documents). In line with Shin's approach, our focus shall be on those cases involving not more than three exporters. In other words, antidumping cases that deal with more than three countries, or less than three countries but involving more than three exporters, will be taken out of further examination.
- (2) The relevant market share of targeted exporters and, in particular, whether it exceeds 1/2, 2/3 or 3/4 under each circumstance. This allows us to identify dumping cases that may also be deemed to be harmful under competition law.

For convenience of discussion in the following part, the forty-nine antidumping cases (1997-2010) shall be divided into two groups according to the number of targeted countries. Group I refers to those cases that involve two or more targeted countries, whereas Group II refers to those cases involving only one targeted country. Before moving to the discussion, three limitations need to be mentioned. First, it is not the intention of this paper to clearly define 'market' and check relevant market share in each particular case. In this study, 'market' refers to the whole importing country (domestic market of China). Secondly, in cases where there is lack of data or information, the number of exporters shall be presumed to be zero. Lastly, no further investigation shall be conducted into the cases set forth in Article 19(2), which provides that 'undertakings with a market share of less than 1/10 will not be deemed as occupying a dominant market position even if they fall within the scope of second or third item in Section 1'.

IV. ANTIDUMPING CASES INVOLVING TWO OR MORE TARGETED COUNTRIES

Group I shall be dealt with first. Thirty-nine out of the forty-nine antidumping cases involve two or more countries or areas. Among them, thirty-one cases deal with four or more exporters from two or more countries or areas and hence shall be eliminated. The remaining eight cases, which may either deal with two or three exporters from two

³² Both Korea and Germany apply the similar presumptive method, with the only difference in the specific market share. In order to save the cost to enforce the law as well as to execute an effective supervision over undertakings, China also applies the similar presumptive method, as in Article 19. As long as the undertaking has reached the regulated market share, the relevant administrative authority can conjecture its dominant position, since market share is a very important factor in judging the dominant position. Both the U.S. and the EU have the requirements similar to Article 18, but they do not have the same presumptive method as provided in Article 19. See *Zhonghua Renmin Gongheguo Fanlongduan Fa Shiyi* [The Interpretation of Chinese Antimonopoly Law] (An Jian, ed, Law Press 2007), pp184-185.

³³ See CHINESE ANTIMONOPOLY LAW, Article 19.

countries or areas, or three exporters from three countries or area, will be subject to further examination. The eight cases are:

- (1) The No. 8 L-Lysine Monohydrochloride Case³⁴
- (2) The No. 29 Trichloroethylene from Russia and Japan³⁵
- (3) The No. 32 Benzofuranol from Japan, the EU and the U.S.³⁶
- (4) The No. 33 Disodium 5'-Inosinate from Japan and Korea³⁷
- (5) The No. 36 Catechol from the U.S. and Japan³⁸
- (6) The No. 37 Polybutylene Terephthalate Resin from Japan and Taiwan Area³⁹
- (7) The No. 38 Wear Resistant Overlay from the U.S. and the EU⁴⁰
- (8) The No. 41 Nonyl Phenol from India and Taiwan Area⁴¹

As to the number of exporters, there are three targeted exporters in 6 cases (No. 8, 32, 33, 37, 38 and 41⁴²). As to the remaining two cases (No. 29 and 36), although both of them involve two countries (Japan and Russian in No. 29; Japan and the U.S. in No. 36), there were no exporters from Japan to either register or submit any document. Hence in this study, the number of exporters in the above two cases shall be presumed as one.⁴³ To sum up, the eight

³⁴ See the No. 8 L-Lysine monohydrochloride Case, Public Announcement No. 23 in 2002 of Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China, Chinese version available at: <http://china.findlaw.cn/fagui/jj/27/157859.html>.

³⁵ See the No. 29 Trichloroethylene case, Public Announcement No. 37 in 2005 of Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38875>.

³⁶ See the No. 32 Benzofuranol case, Public Announcement No. 7 in 2006 of Ministry of Commerce of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38884>.

³⁷ See the No. 33 Disodium 5'-Inosinate Case, Public Announcement No. 24 in 2006 of Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38885>.

³⁸ See the No. 36 Catechol Case, Public Announcement No. 32 in 2006 of Ministry of Commerce of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38886>.

³⁹ See the No. 37 Polybutylene Terephthalate Resin Case, Public Announcement No. 42 in 2006 of Ministry of Commerce of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38889>.

⁴⁰ See the No. 38 Wear Resistant Overlay Case, Public Announcement No. 93 in 2006 of Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China, Chinese version available at: <http://www.cacsc.gov.cn/news/newshow.aspx?str1=2&articleId=38891>.

⁴¹ See the No. 41 Nonyl Phenol Case, Public Announcement No. 11 in 2007 of Ministry of Commerce of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38894>.

⁴² The No. 8 L-Lysine Monohydrochloride Case is dealing with three countries, including the U.S., Korea, and Indonesia, it is determined as no injury and there is no information about market share in the preliminary decision. The market share information of the No. 8 case as follows refers to the statistics in 'Zhongguo Rushihou Tiqi De Shouli Fanqingxiao Tingzhenghui Jingxindongpo' [The First Soul-Stirring Hearing of Antidumping Investigation After the Entry of the WTO] (2002-12-30), WTO Reference Center in China, http://www.wtoinfo.net.cn/cgi-bin/onlineews_read.php?id=234&catalog_id=8&flag=2.

In the final decision of the No 38 Wear Resistant Overlay Case, it only mentioned about the changes of market share without pointing out the exact statistics. Besides, there are also no other information sources concerning this point. Due to lack of information on the market share, further examination cannot be done to the No. 38 Wear Resistant Overlay Case.

⁴³ The general information about the number of registered as well as that of submitted exporters within the 8 cases are as follows:

In the No. 8 Case, L-Lysine Monohydrochloride from the U.S., Korea, and Indonesia:
-Register: 3 -Submit: 3

In the No. 29 Case, Trichloroethylene from Russia and Japan:
-Register: 1 from Russia ('Usoliekhimprom' LLC); 0 from Japan

cases can be divided into two categories: the No. 29 Case and the No. 36 Case, dealing with one exporter shall be subordinated to Article 19(1), Term 1, to see whether ‘the relevant market share of one undertaking accounts for 1/2 or above’, whereas the remaining four cases involving three exporters will be examined under Article 19(1), Term 3, to see whether ‘the joint relevant market share of three undertakings accounts for 3/4 or above’.

-Submit: 1 from Russia (‘Usoliekhimprom’ LLC)

In the No. 32 Case, Benzofuranol from Japan, the EU and the U.S.:

-Register: 1 from Japan (Nichino Co.); 1 from the EU (Borregaard Italia SpA); 1 from the U.S. (FMC Corporation)

-Submit: 1 from the U.S. (FMC Corporation)

In the No. 33 Case, Disodium 5'-Inosinate from Japan and Korea:

-Register: 1 from Japan (Ajinomoto Co.), 2 from Korea (Daesang Co. and CJ Co.)

-Submit: 1 from Korea (Daesang Co.)

In the No. 36 Case, Catechol from the U.S. and Japan:

-Register: 1 from the U.S. (Rhodia Inc.); 0 from Japan

-Submit: 1 from the U.S. (Rhodia Inc.)

In the No. 37 Case, Polybutylene Terephthalate Resin from Japan and Taiwan Area:

-Register: 2 from Japan (Mitsubishi Chemical Corporation and GE Plastics Japan Ltd.); 1 from Taiwan Area (Chang Chun Plastics Co., Ltd)

-Submit: 1 from Taiwan Area (Chang Chun Plastics Co., Ltd)

In the No. 38 Case, Wear Resistant Overlay from the U.S. and the EU:

-Register: 1 from the U.S.(MW Custom Papers LLC), 2 from the EU (Papierfabrik Schoeller & Hoesch GmbH & Co KG and Papeteries de Mauduit Mill)

-Submit: 1 from the U.S. (MW Custom Papers LLC), 1 from the EU (Papierfabrik Schoeller & Hoesch GmbH & Co KG

In the No. 41 Case, Nonyl Phenol from India and Taiwan Area:

-Register: 1 from India (Schenectady Herdillia Limited) , 2 from Taiwan Area (Formosan Union Chemical Corporation, and China Man-Made Fiber Corporation)

-Submit: ditto.

The following step is to further examine the market share in each of the 8 cases.

Table A:

Exporter	Case	Market Share					
1	No. 29	Year	1999	2000	2001	2002	2003
		Data ⁴⁴	24.61	42.23	50.05	47.15	53.85
	No. 36	Year	2001	2002	2003	2004	
		Data	1.09	9.19	48.2	49.39	
3	No. 8	Year	2000				
		Data	63				
	No. 32	Year	2001			2004	
		Data	64.43			84.21	
	No. 33	Year	2002		2003		2004
		Data	46		61		64
	No. 37	Year	2001			2004	
		Data	26.78			45.12	
	No. 38	Lack of Data					
	No. 41	Year	2002			2005	
		Data	27.68			49.67	

According to the above statistics, in No. 29 Trichloroethylene case, the market share of 2003 reached 53.85%, which is above 1/2. In the No. 32 Benzofuranol Case, the total market share is increased from 64.43% in 2001 to 84.21% in 2004, which exceeded the requirement of 3/4. Therefore, in the investigation of the cases involving two or more countries, setting aside one case for lack of data (No. 38), only two cases present a risk of market monopolization or anticompetitive effects and thus seem suitable for further investigation.

V. ANTIDUMPING CASES INVOLVING ONLY ONE TARGETED COUNTRY

This part will examine Group II. Ten out of forty-nine antidumping cases deal products from one single country or area. Five out of ten cases, involving four or more targeted exporters, are ruled out.⁴⁵ Only the remaining five cases need further examination, including:

⁴⁴ Date (%).

⁴⁵ The general information about the number of registered as well as that of submitted exporters within the 10 cases are as follows: It deals with 2 registered and submitted exporters in the No. 2 Cold-rolled Steel Plate Case,

- (1) The No. 2 Cold-rolled Steel Plate from Russia⁴⁶
- (2) The No. 14 Catechol from the EU⁴⁷
- (3) The No. 42 Potato Starch from the EU⁴⁸
- (4) The No. 43 Paper for Electrolytic Capacitor from Japan⁴⁹
- (5) The No. 44 Sulfamethoxazole from India⁵⁰

With regard to the number of exporters, special attention needs to be given to the No. 44 Sulfamethoxazole Case. Although two Indian exporters are involved in this case, i.e. Virchow Laboratories Limited and Andhra Organics Limited, the two companies held shares in each other during the investigation. The board of directors was almost identical, and the affiliation was close enough to influence and control the sale as well as the price of the products.⁵¹ Hence the two companies are considered together as one exporter.

To sum up, the five cases can be divided into three categories: the No. 44 Sulfamethoxazole Case which is deemed to involve only one exporter, shall be subordinated to Article 19(1), Term 1, to examine whether 'the relevant market share of one undertaking accounts for 1/2 or above'; The No. 2 Cold-rolled Steel Plate Case, the No. 14 Catechol Case and the No. 43 Paper for Electrolytic Capacitor Case, which involve two exporters, shall be examined under Article 19(1), Term 2, to assess whether 'the relevant market share of one undertaking accounts for 2/3 or above'; The No. 42 Potato Starch Case will be submitted to Article 19(1), Term 3, to determine whether 'the relevant market share of one undertaking accounts for 3/4 or above'.

the No. 14 Catechol Case, the No. 43 Paper for Electrolytic Capacitor Case, and the No. 44 Sulfamethoxazole Case; It deals with 3 registered and submitted exporters in No. 42 Potato Starch Case; It deals with 7 registered but only 4 submitted exporters in No. 3 Polyester Films Case, 5 registered and submitted exporters in No. 9 Staple Fiber Case, 7 submitted exporters in No. 10 Glycol-modified PET Case, 15 registered but 9 submitted exporters in No. 25 Nylon 6.66 Case, 58 registered but only 1 submitted exporter in No. 49 Certain Iron or Steel Fasteners Case.

⁴⁶ See the No. 2 Cold-rolled steel plate Case, Public Announcement No. 8 in 2000 of Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38842>.

⁴⁷ See the No. 14 Catechol Case, Public Announcement No. 41 in 2003 of Ministry of Commerce of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38856>.

⁴⁸ See the No. 42 Potato Starch Case, Public Announcement No. 8 in 2007 of Ministry of Commerce of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38893>.

⁴⁹ See the No. 43 paper for Electrolytic Capacitor Case, Public Announcement No. 30 in 2007 of Ministry of Commerce of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/cacs/news/newshow.aspx?str1=2&articleId=38895>.

⁵⁰ See the No. 44 Sulfamethoxazole Case, Public Announcement No. 48 in 2007 of Ministry of Commerce of the People's Republic of China, Chinese version available at: <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38896>.

⁵¹ *ibid.*

The following step is to further examine the market share in each of the five cases.

Table B:

Exporter	Case	Market Share				
		Year	2002	2003	2004	2005
1	No. 44	Data ⁵²	16.85	23.26	37.85	57.53
2	No. 2	Year	1995	1996	1998	
		Data	41	33.4	31.8	
	No. 14	Year	1999	2000	2001	
		Data	75.98	80.19	91.90	
	No. 43	Data	Around 20			
3	No. 42	Year	2002	2003	2004	2005
		Data	26.54	28.71	17.63	39.01

According to the statistics above, in the No. 44 Sulfamethoxazole Case, the market share of the affiliated two exporters, Virchow Laboratories Limited and Andhra Organics Limited, reached 57.53% in 2005, which indicates that the two affiliated exporters as a whole can be presumed to have a dominant market position under Term 1. In the No. 14 Catechol Case, the total market share of the two exporters, i.e. Rhodia Organique SAS Borregaard and Italia SpA, is 75.98% in 1999, 80.19% in 2000 and 91.90% in 2001, which exceeds 2/3. This indicates that the two exporters can be assumed as having a dominant market position under Term 2. Therefore, in the analysis of the cases involving only one country, only two cases can be considered as having the possibilities of abusing a dominant position through low-price selling.

VI. CONCLUSION

By applying a 'market share' test to antidumping cases in China, this paper extended the current empirical research, which directly applies competition standards to antidumping cases to one more significant country which has not yet been analyzed. The results indicate that, of all the antidumping cases that have been initiated and in which a final decision was rendered during 1997 to 2010, there are only four out of the forty-nine (8.16%) antidumping cases, including the No. 14 Catechol Case, the No. 29 Trichloroethylene case, the No. 32 Benzofuranol Case and the No. 44 Sulfamethoxazole Case, that are candidates for closer examination on predation grounds, and might also be considered as unlawful under Chinese Antimonopoly Law. Such results are consistent with similar empirical studies

⁵² Date (%).

conducted with respect to other countries. Together, this body of empirical research suggests that most of the antidumping cases are targeted as harmless or totally healthy competitive conduct. From the perspective of competition law and based on the empirical studies, subjecting antidumping to competition agencies or even substituting antidumping with competition is definitely a better option to avoid its long-criticized protectionist abuse and to contribute to economic development. Nevertheless, before making the final conclusion, more thorough and deeper examinations from various other perspectives are indispensable.

The relationship between trade and competition has been well-established, complex and controversial.⁵³ The economic crisis of 2009 has once again triggered calls for greater coherence between the two policies. How to better link competition with trade to assure development gains is a new challenging project that confronts each country, and developing countries in particular. Building on existing scholarship, by probing into antidumping, the most controversial issue in such a project, this paper is also intended to help China in seeking a new development model and answering the question ‘how can the interaction of competition and trade policy contribute to economic development?’.

⁵³ See note 3 above.

Appendix: Table of Chinese Antidumping Cases (1997- Aug 2010)

NO.	Initiation Time	Targeted Product	Targeted Exporter		Market Share
1	1997.12.10	Newsprint	Register: 6 (1 importer)	Canada: 5 Korea: 1 The U.S.: 0	Lack of Data
			Submit: 6	Canada: 5 Korea: 1 The U.S.: 0	
2	1999.12.30	Cold-rolled Steel plate	Register: 2	Russia: 2	1995: 41%
			Submit: 2	Russia: 2	1996: 33.4% 1998: 31.8%
3	1999.4.16	Polyester Films	Register: 7	Korea: 7	1996: 13.9%
			Submit: 4	Korea: 4	1997: 21.9% 1998: 28%
4	1999.6.17	Cold Rolled Stainless Steel Sheet	Register: 18		1995: 53.74%
			Submit: 15	Korea: 6 Japan: 9	1996: 62.35% 1997: 54.08% 1998: 63.67%
5	1999.12.10	Acrylic Ester	Submit: 16 (5 importers)	Japan: 10 The U.S.: 3 Germany: 3	1996: 18.30% 1997: 23.95% 1998: 31.29% 1999: 28.52%
6	2000.12.20	Dichloromethne	Submit: 6	Korea: 1 British: 2 The U.S.: 1 Holland: 1 France: 1	1998: 42.23% 1999: 39.78% 2000: 51.56%
7	2001.12.6	Polystyrene	Submit: 15	Korea: 6 Japan: 4 Thailand: 5	1998: 45.27% 1999: 34.24% 2000: 30.26%
8	2000. 9.29	L-Lysine Monohydrochlouide	Submit: 3	The U.S.: 1 Korea: 1 Indonesia: 1	Lack of Data

9	2001.8.3	Staple Fiber	Submit: 5	Korea:5	Lack of Data
10	2001.8.3	Glycol-modified P ET	Submit: 7	Korea: 7	Lack of Data
11	2001.10.10	Acrylic Ester	Register: 9		1998:5.92%
			Submit: 5	Korea: 1 Malaysia: 1 Singapore: 2 Indonesia: 1	1999:15.01% 2000:21.84% 2001:31.85%
12	2001.12.7	Caprolactam	Submit:9	Japan: 4 Belgium: 1 Germany: 1 Holland: 1 Russia:2	1999:62.27% 2000:54.93% 2001:60.03%
13	2002.2.6	Coated Art Paper	Register: 15		1999:41.36%
			Submit: 15 (4 importers)	Korea: 8 Japan: 2 The U.S. &Finland: 5	2000:25.92% 2001:23.78%
14	2002.3.1	Catechol	Register: 2		1999:75.98%
			Submit: 2	The EU: 2	2000:80.19% 2001:91.90%
15	2002.3.6	Purified Anhydride	Submit 3	Korea: 3 India: registered but not submitted Japan: neither registered nor submitted	1998:34.08% 1999:29.16% 2000:26.97% 2001:21.11%

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16	2002.3.19	Styrene Butadiene Rubber	Register: 9		1999:20.44%
			Submit 9	Russia:3 Korea: 2 Japan: 3 Claimed no sales:1	2000:20.95% 2001:18.11%
17	2002.3.23	Cold Rolled Steel Products	Register: 18		1999:36.17%
			Submit: 16	Russia: 3 Korea: 4 Ukraine: 2 Kazakstan: 1 Taiwan Area: 6	2000:35.06% 2001:37.91%
18	2002.3.29	Polyvinyl Chloride	Register: 20		2001: 34.38%
			Submit: 15 (1 importer, 1 affiliated, and 2 agencies)	The U.S.: 2 Japan: 5 Taiwan Area: 3 Korea: 2 Russia: 2	
19	2002.5.22	Toluene Diisocyanate	Submit: 6	The U.S.: 2 Japan: 2 Korea: 2	1999:81.27% 2000:77.06% 2001:73.09%
20	2002.8.1	Phenol	Register: 5		1999:19.76%
			Submit: 5 (1 importer)	Japan:1 Korea: 1 Taiwan Area: 2 The U.S.: not submitted	2000:23.36% 2001:42.53% 2002: 41.50%
21	2002.9.20	MDI	Register: 5		Lack of Data
			Submit: 5	Japan:3 Korea: 2	

22	2003.5.14	Monoethanolamine & Diethanolamine	Register: 6		2000:55.93%
			Submit: 5	The U.S.: 2 Iran: 1 Malaysia: 1 Taiwan Area: 1 Mexico & Japan: registered but not submitted	2001:60.78% 2002:75.71%
23	2003.5.30	Chloroform	Register: 9		1999:66.37%
			Submit: 2	The EU: 1 (others not submitted) India: 1 Korea: & The U.S.: not submitted	2000:66.06% 2001:63.45% 2002:59.93%
24	2003.7.1	Dispersion Unshifted Single-Mode Optical Fiber	Register: 9		2000:57.14%
			Submit: 6 (2 affiliated)	The U.S.: 2 Korea: 2 Japan: not Submitted	2001:66.95% 2002:50.80% 2003:46.82%
25	2003.10.31	Nylon 6, 66 Filament Yarn	Register: 15		2000:19.90%
			Submit: 6	Taiwan Area: 6 (sample)	2001:22.03% 2002:31.88% 2003:37.80%
26	2003.11.10	Chloroprene Rubber	Register: 6		Above 32%
			Submit: 4	Japan: 2 The EU: 2 The U.S.: not submitted	
27	2003.12.17	Hydrazine Hydrate	Register: 4 (1 withdrew)		Lack of Data
			Submit: 3 (1 affiliated)	Korea: 1 France: 1 Japan & The U.S.: not submitted	

28	2004.3.21	Unbleached Kraft Liner/Linerboard	Register: 22		2001:18.91%
			Submit: 11(1 association)	The U.S.: 3 Thailand: 4 Taiwan Area: 3 Korea: not submitted	2002:17.06% 2003:14.97%
29	2004.4.16	Trichloroethylene	Register: 1		1999:24.61%
			Submit: 1	Russia:1 Japan: neither submitted or registered	2000: 42.23% 2001:50.05% 2002:47.15% 2003:53.85%
30	2004.7.16	Dimethylcyclosilox ane or Cyclic dimethyl siloxane	Register: 7		2000:76.55%
			Submit: 4	Japan: 1 The U.S.: 1 British: 1 Germany: 1	2001:73.18% 2002:71.89% 2003:68.38%
31	2004.8.10	Ethylene-Propylen e-non-conjugated Diene Rubberzz	Register: 5		2001:33.27%
			Submit: 5	The U.S.: 3 Korea:1 Holland: 1	2002:35.34% 2003:33.40%
32	2004.8.12	Benzofurano	Register: 3		2001:62.43%
			Submit: 1	Japan & The EU: price undertaking The U.S.: 1	2004:84.21%
33	2004.11.12	Disodium 5'-Inosinate, Disodium 5'-Guanylate and Disodium 5'-Ribonucleotide	Register: 3		2002:46%
			Submit: 1	Korea: 1 (the other not submitted) Japan: not submitted	2003:61% 2004:64%
34	2004.12.28	Epichlorohydrin	Register: 9 (1 importer)		2000:46.02%
			Submit: 7	Russia: 2 Korea:2	2001:44.24% 2002:41.22%

				Japan: 2 The U.S.: 1	2003:41.86% 2004:49.38%
35	2005.4.13	Polyurethane	Register: 14		2001:34.31%
			Submit: 7 (1 affiliated)	Japan: 1 Singapore: 1 Korea: 3 Taiwan Area: 1 The U.S.: neither registered but not submitted	2002:44.04% 2003:34.33% 2004:25.32%
36	2005.5.31	Catechol	Register: 1		2001:1.09%
			Submit:1	The U.S.: 1 Japan: <i>neither</i> registered or submitted	2002:9.19% 2003:48.20% 2004:49.39%
37	2005.6.6	Polybutylene Terephthalate Resin	Register: 3		2001:26.78%
			Submit: 1	Taiwan Area: 1 Japan: registered but not submitted	2002:25.46% 2003:43.02% 2004:45.12%
38	2005.6.13	Wear Resistant Overlay	Register: 3		Lack of Data
			Submit: 2	The U.S.: 1 The EU:1	
39	2005.10.14	Butanols	Register: 12		2001:51.37%
			Submit: 9 (1 affiliated)	Russia: 3 The U.S.: 1 South Africa: 1 Malaysia: 2 Japan: 1 The EU: not submitted	2002:59.24% 2003: 59.49% 2004: 65.08% 2005:50.48%

40	2005.9.15	Octanol	Register: 9		2001:43.69%
			Submit: 6	Korea: 2 Saudi Arabia: 1 Japan: 3 The EU & Indonesia: registered but not submitted	2002:47.47% 2003:47.18% 2004:49.38% 2005:32.93%
41	2005.12.29	Nonyl Phenol	Register: 3		2002:27.68%
			Submit: 3	India: 1 Taiwan Area: 2	2003:38.99% 2004:45.67% 2005:49.07%
42	2006.2.6	Potato Starch	Register: 5		2002:26.54%
			Submit:3	The EU: 3	2003:28.71% 2004:17.63% 2005:39.01%
43	2006.4.18	Paper for Electrolytic Capacitor	Register:2	Japan: 2	Above
			Submit:2	Japan: 2	20%
44	2006.6.16	Sulfamethoxazole	Register :2	India:2	2002:16.85%
			Submit:2	India:2	2003:23.26% 2004:37.85% 2005:57.53%
45	2006.8.30	Bisphenol-A	Register: 10		Above 40%
			Submit: 8	Japan: 2 Korea:2 Singapore:1 Taiwan Area: 3	
46	2006.11.22	Methyl Ethyl Ketone	Register: 4		2002: 36.94%
			Submit: 2	Japan: 2 Taiwan Area & Singapore: registered but not submitted	2003:42.68% 2004:28.52% 2005:29.49%

47	2007.3.9	Acetone	Register: 8		2003:28.02%
			Submit: 8	Japan:2 Korea:2 Singapore:1 Taiwan Area: 3	2004:23.40% 2005:34.60%
48	2008.11.10	Adipic Acid	Register:7		2005:26.42%
			Submit:6	The U.S.:1 The EU:3 Korea: 2	2006:30.94% 2007:39.92% 2008:37.63%
49	2008.12.29	Certain Iron or Steel Fasteners	Register:58		2005 :5.75%
			Submit:1		2006 :7.75% 2007:9.80% 2008:9.75%