

The Interaction of Trade and Competition Policy in the Globalization Process – A Survey of “Consumer Interest” in Chinese Antidumping Context

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“Recent studies with a public policy perspective have focused on the importance of the possible relationship between competition policy and trade policy. Under this perspective, the issue is relevant in the current context of the rapidly growing integration of the world economy and of the worst international economic crisis that humanity has had since the Great Depression.”¹

INTRODUCTION

Along with the globalization process, the distinction between trade and competition, two seemingly unrelated different kinds of policy, has become somewhat blurred. Especially after the economic crisis in 2009, when most trade policymakers remain busy in seeking a satisfying answer to the question of whether “protectionism can protect trade”,² some once again call for introducing competition into trade, so as to explore a new development model of “how the interaction of competition and trade policy can contribute to economic development”.³ How to better link competition with trade to assure development gains, or rather, how to integrate the current controversial trade mechanism with a gradually globalized but yet unsophisticated competition mechanism, is a new challenging project that confronts each country and beckons us to dedicate more.

Towards that aim, among various issues underlying such, a thorough examination of each specific manifestation of the interface between the two policies in each domestic context is also indispensable. Orientating itself in the most controversial manifestation thereunder, i.e., antidumping versus competition policy, as well as focusing on the relationship between antidumping and consumer interest (the essential concern of

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¹ See UNCTAD, *The interface between trade, competition policy and development* (2009), 1.1, http://www.sela.org/attach/258/EDOCs/SRed/2009/04/T023600003430-0-The_interface_between_trade_competition_policy_and_development.pdf.

² “In the wake of the economic crisis, parliaments around the world are faced with a variety of pressures from both the business community and the general public who are seeking protection from the economic recession and its social consequences.” See http://www.wto.org/english/forums_e/debates_e/debate21_e.htm (last visited March 10, 2011).

³ See http://www.wto.org/english/forums_e/debates_e/debate19_e.htm (last visited March 10, 2011).

competition policy), this paper attempts to contribute to the current debate and fill in the gaps in the literature by providing a survey of consumer interest in Chinese antidumping context. As the number one target of antidumping actions in the world, China has just begun to use antidumping actions in an increasing way. From 1997 until 2010, China has already initiated and awarded its final decisions in fifty antidumping cases.⁴ Another sixteen filed cases are still pending.⁵ Simultaneously, China has also devoted itself to promoting competition legislation and enhancing its enforcement. As the core of the competition system, Chinese Antimonopoly Law has recently been published in 2007.⁶ Combined with other series of literature, this paper also intends to help China in its search for a new development model of "how the interaction of competition and trade policy can contribute to economic development".

To this end, Section II discusses general antidumping versus competition policy, in terms of safeguarding consumer interest. Section III examines the consideration of consumers in the current Chinese antidumping rules, and Section IV continues to elaborate the consideration of consumers in all of the fifty antidumping cases initiated and finally awarded during 1997 to 2010 in China. This paper concludes the current state of conflict between antidumping and consumer interest in China, and hence calls for more research and efforts devoted to integrating trade and competition policy in this aspect, in order to achieve a better development model in the globalization process.

I. "CONSUMER INTEREST": ANTIDUMPING VERSUS COMPETITION POLICY

One of the main concerns of modern competition laws and policy is to safeguard consumer interest.⁷ Generally speaking, competition policy includes the set of measures and instruments used by governments that establish the conditions of competition.⁸ As to the objectives of competition policy, for hundreds of years, countries have designed

⁴ For convenience of discussion in this paper, the number of antidumping cases is calculated according to the number of targeted products.

⁵ See <http://gpj.mofcom.gov.cn/d/r.html> (last visited March 10, 2011).

⁶ CHINESE ANTIMONOPOLY LAW was adopted at the 29th session of the Tenth National People's Congress on August 30, 2007 and took effect as of August 1, 2008.

⁷ For example, Kennedy stated in his book that "Antitrust law...focuses on the maintenance of open markets, the promotion of competition, and the maximization of consumer welfare." See Kevin C. Kennedy, *COMPETITION LAW AND THE WORLD TRADE ORGANIZATION: THE LIMITS OF MULTILATERALISM* 235 (Sweet & Maxwell 2001).

Taylor also recognized that: "competition law gives pre-eminence to considerations of economic efficiency... Competition is viewed as a means of disciplining firms, reducing their market power, and thus ensuring that the market forces of supply and demand operate more effectively and efficiently in allocating global resources... Competition law seeks to lessen power imbalances between firms to ensure that all firms have an equal opportunity to compete on their merits. Competition law also prevents producers from using certain business practices to capture additional wealth from consumers... Indeed, competition laws are commonly drafted so as to favour the interests of end consumers over the interests of producers." See Martyn D. Taylor, *INTERNATIONAL COMPETITION LAW: A NEW DIMENSION FOR THE WTO?* 264 (Cambridge Univ. Press Inc. 2006).

Roland considered that although consequently it seems to be difficult to define certain objectives for an international competition law agreement, more and more convergence of objectives between countries has been noted within the last decade. Therefore, he deemed that certain common main objectives, such as economic efficiency, market integration and consumer welfare could be defined for an international agreement, while it may be advisable to pursue other minor goals through separate government policies. See Roland Weinrauch, *COMPETITION LAW IN THE WTO: THE RATIONALE FOR A FRAMEWORK AGREEMENT* 30 (Wien: NWV Neuer Wissenschaftlicher Verlag 2004).

⁸ See Roland Weinrauch, *supra* note 7, 18.

various competition policies and laws which have been influenced by varying economic, social and cultural needs and interests, whereas only certain major themes among those different objectives stand out and are shared by the majority of countries.⁹ Greatly influenced by the economic efficiency approach, one of the main common objectives of modern competition laws and policy is the promotion of allocative and dynamic efficiency.¹⁰ During the last two decades achievement of economic efficiency has been regarded as a means to safeguard consumer interest and to maximize consumer welfare.¹¹

For instance, strongly favored by the Chicago school that argued for a purely economic construction of the law, the U.S. competition policy has a strong orientation towards consumer welfare.¹² As to the EU, Neelie Kroes, the Commissioner for Competition, stated that "defending consumers' interests is at the heart of the Commission's competition policy", which reflected the importance of competition policy to consumers, and the importance of consumer welfare when implementing competition policy.¹³

In respect of antidumping laws and policy, consumer interest is not within the main concern. On the contrary, with no well-founded rationale, antidumping rules are susceptible to such rent-seeking (domestic producers) as having sufficient vested interests and resources to lobby governments successfully for favorable antidumping policies, to protect against the so-called "unfair" foreign competition.¹⁴ As a consequence, the protection of domestic industries by imposing antidumping duties, lifting the price of imported goods, is always ignored and at the cost of the consumer welfare. Joseph Stiglitz, a Nobel Prize winner and former chief economist at the World Bank, highlighted the anti-competitive effects of antidumping law: "Perpetuating unfair trade laws [including antidumping law] that are themselves unfair thus imposes substantial burdens on our consumers and on our most efficient exporters while protecting our least efficient import-competing firms."¹⁵ Some empirical studies of such negative effects on consumers have also been conducted.¹⁶

⁹ *Ibid*, 24-25.

¹⁰ Competition policy has had, and sometimes still has, different objectives, including decentralization of economic power, the protection of small firms, and fairness. Only more recently has efficiency instead of fairness arguably become the main objective of competition in most countries. US competition policy especially has gone through an important learning process. See Gunnar Niels, *What is Antidumping Policy Really About?* 14 JOURNAL OF ECONOMIC SURVEYS (2002), 467, 481, <http://www.blackwell-synergy.com/links/doi/10.1111/1467-6419.00118>.

¹¹ See Roland Weinrauch, *supra* note 7, 25-27.

¹² Bork stated in his famous book "The Paradox Antitrust" that: "the argument of this book, of course, is that competition must be understood as the maximization of consumer welfare or, if you prefer, economic efficiency. See Robert H. Bork, *THE PARADOX ANTITRUST: A POLICY AT WAR WITH ITSELF* 427 (The Free Press 1993).

¹³ See John Madill and Adrien Mexis, *Consumers at the heart of EU competition policy*, COMPETITION POLICY NEWSLETTER (2009), 1, 1, http://ec.europa.eu/competition/publications/cpn/2009_1_7.pdf.

¹⁴ See Martyn D. Taylor, *supra* note 7, 269.

¹⁵ See José Tavares De Araujo Jr., *Legal and Economic Interfaces between Antidumping and Competition Policy*, CEPAL-SERIE COMERCIO INTERNACIONAL (2001), 1, 10, <http://www.eclac.cl/publicaciones/xml/0/9040/ld1685i.pdf>.

¹⁶ See more, "The primary economic cost of antidumping measures is the increased cost of imports. Consumers have to buy higher-cost domestic goods instead of lower-cost foreign goods." See Roland Weinrauch, *supra* note 7, 60.

"This anticompetitive behavior is the real threat. Dumping of foreign product does not hurt U.S. consumers; rather, antidumping laws do...Antidumping laws are a form of backdoor protectionism that has been abused by certain U.S. companies with the support of the Commerce Department. This behavior is costly to

(footnote continued on next page)

It is notable that, in quite a few circumstances the dumped product is a raw material or semi-finished product, consumers are often the downstream producers other than the final consumers. Similarly, antidumping is also likely to conflict with competition policy in that the availability of materials at low prices may enable smaller firms producing finished products to compete more strenuously with large and integrated firms controlling the domestic source of supply. Therefore, permitting such dumping is likely to lower prices to all consumers.¹⁷

II. "CONSUMER INTEREST" IN CHINESE ANTIDUMPING RULES

Following the example of other major countries, "safeguarding the interests of consumers" is clearly set forth as one of the main purposes of Chinese Antimonopoly Law 2007 in Article 1 thereof.¹⁸ Hence the issue that lies ahead is how "consumer interest" is considered in Chinese antidumping context. There are two sub-issues therein, one is whether Chinese antidumping rules have given any consideration to consumers, and the other is whether Chinese antidumping cases have given any consideration to such. This section deals with the former sub-issue first.

According to differences in their binding force, Chinese Antidumping rules can be divided into three levels: law, regulations, as well as provisional rules and stipulations. Chinese Foreign Trade Law 1994 in Article 30, referred to antidumping for the first time.¹⁹ In order to implement that Article, Antidumping and Anti-subsidy Regulations of the People's Republic of China ("Regulation 1997") was promulgated by the State Council on 25 March 1997. China, in anticipation of its eventual accession to the WTO at that time, seems to have drafted this regulation to comply with the rules of the WTO

import-using industries and consumers, and is agitating U.S. trade partners whose markets are sought by U.S. business." See Dan Ikenson, *Antidumping Laws Hurt American Consumers*, CATO INSTITUTE (2001), 1, 1, <http://www.freetrade.org/node/222>.

"America imposes dramatic costs on both its own economy and consumers to provide partial, indirect relief to a limited number of domestic industries." See Spencer Weber Waller, *Bringing Globalism Home: Lessons from Antitrust and Beyond*, 32 LOYOLA UNIVERSITY CHICAGO LAW JOURNAL (2000), 113, 131.

¹⁶ For example, one report shows that of about 250 antidumping petitions filed by the U.S. steel producers since 1980, around 100 are still enforced twenty years later. At present, they "protect" less than 0.1 % of the U.S. labour force at an estimated 40% cost-penalty to steel consuming sectors employing more than fifty times as many workers. Similar efforts in the 1980s to protect the U.S. car industry cut consumers' real incomes between 3.50 and 5.50 dollars for each dollar of added profit; each job saved cost consumers between 93,000 to 250,000 dollars per year. Comparable figures can be found for most economies delaying adjustments while claiming to benefit from free trade. See Ralf Boscheck, *The Governance of Global Market Relations: the Case of Substituting Antitrust for Antidumping*, 24 WORLD COMPETITION (2001), 41, 54.

¹⁷ See Comment, *The Antidumping Act—Tariff or Antitrust Law?*, 74 THE YALE LAW JOURNAL (1965), 707, 713.

¹⁸ CHINESE ANTIMONOPOLY LAW 2007, Article 1: This Law is enacted for the purpose of preventing and restraining monopolistic conducts, protecting fair competition in the market, enhancing economic efficiency, safeguarding the interests of consumers and social public interest, promoting the healthy development of the socialist market economy.

¹⁹ FOREIGN TRADE LAW 1994, Article 30: Where a product is imported at less than normal value of the product and causes or threatens to cause material injury to an established domestic industry concerned, or materially retards the establishment of a particular industry, the State may take necessary measures in order to remove or ease such injury or threat of injury or retardation.

Antidumping Agreement ("ADA").²⁰ Though this regulation contained a few articles regulating countervailing duties, most articles dealt with antidumping.²¹

As China acceded to the WTO on 11 December 2001, in order to bring its domestic antidumping law into conformity with WTO ADA, the State Council promulgated the Regulations of the People's Republic of China on Antidumping on 26 November 2001, which entered into force on 1 January 2002 ("Regulation 2002"). Regulation 2002 consisted of six Chapters and fifty-nine Articles, which covers most of the subject matters regulated by WTO ADA.²² Following Regulation 2002 were a series of relevant provisional rules and stipulations on each specific implementing measure.²³ Upon this regulation becoming effective, Regulation 1997 was replaced.

In 2004, Chinese Foreign Trade Law, as the basis for both Regulation 1997 and Regulation 2002, was revised. Meanwhile, Regulation 2002 was also revised ("Regulation 2004"). Regulation 2004 basically uses the same language as its predecessors. It reflects institutional changes in antidumping investigating authorities, and some substantive changes like taking the "public interest" into consideration.²⁴ This is the current version of Antidumping Regulation in China. To sum up, the current effective antidumping rules in China include: Chinese Foreign Trade Law 2004, Regulation 2004, as well as a series of relevant provisional rules and stipulations.

Focusing on the current Chinese antidumping rules, especially referring to

²⁰ See ANTI-DUMPING LAWS AND PRACTICES OF THE NEW USERS 29 (Junji Nakagawa ed., Cambridge Univ. Press 2007).

²¹ REGULATION 1997 consisted of six chapters and 42 articles, amongst which three chapters are dealing with antidumping. Chapter II dealt with dumping and injury (Article 3 to 10); Chapter III dealt with antidumping investigation (Article 11 to 21); Chapter IV dealt with antidumping measures (Article 22 to 35).

²² REGULATION 2002 consisted of six chapters and 59 articles. Chapter II dealt with dumping and injury (Article 3 to 12); Chapter III dealt with antidumping investigation (Article 13 to 27); and Chapter IV dealt with antidumping measures (Article 28 to 47); Chapter V dealt with duration and review of antidumping duties and price undertakings (Article 48 to 52).

²³ The relevant provisions rule and stipulations on each specific implementing measure include:

- PROVISIONAL RULES ON PUBLIC HEARING IN ANTIDUMPING INVESTIGATIONS
- PROVISIONAL RULES ON INITIATION OF ANTIDUMPING INVESTIGATIONS
- PROVISIONAL RULES ON QUESTIONNAIRE IN ANTIDUMPING INVESTIGATIONS
- PROVISIONAL RULES ON SAMPLING IN ANTIDUMPING INVESTIGATIONS
- PROVISIONAL RULES ON DISCLOSURE OF INFORMATION IN ANTIDUMPING INVESTIGATION
- PROVISIONAL RULES ON ON-THE-SPOT VERIFICATION IN ANTIDUMPING INVESTIGATIONS
- PROVISIONAL RULES ON ACCESS TO NON-CONFIDENTIAL INFORMATION IN ANTIDUMPING INVESTIGATIONS
- PROVISIONAL RULES ON PRICE UNDERTAKINGS IN ANTIDUMPING INVESTIGATION
- PROVISIONAL RULES ON NEW SHIPPER REVIEW IN ANTIDUMPING INVESTIGATIONS
- PROVISIONAL RULES ON REFUND OF ANTIDUMPING DUTY
- PROVISIONAL RULES ON INTERIM REVIEW OF DUMPING AND DUMPING MARGIN
- PROVISIONAL RULES ON THE PROCEDURES FOR ADJUSTING PRODUCT SCOPE IN ANTIDUMPING INVESTIGATION
- RULES ON PUBLIC HEARING WITH REGARD TO INVESTIGATIONS OF INJURY TO INDUSTRY
- RULES ON INVESTIGATIONS AND DETERMINATIONS OF INDUSTRY INJURY FOR ANTIDUMPING
- RULES ON INVESTIGATIONS OF INDUSTRY INJURY FOR ANTIDUMPING
- PROVISIONS ON CERTAIN QUESTIONS CONCERNING THE HEARING AND HANDLING OF INTERNATIONAL TRADE ADMINISTRATIVE CASES
- PROVISIONS ON CERTAIN ISSUES CONCERNING THE APPLICABILITY OF LAWS IN THE HEARING AND HANDLING OF ANTIDUMPING ADMINISTRATIVE CASES.

²⁴ See *supra* note 20, 33.

Regulation 2004, there is no mention of "consumer" throughout the entire text. Nevertheless, the consideration may be given to the "consumer" via attributing it to "other interested organizations and parties" hence deemed as one factor of "public interest". For instance, Regulation 2004, Article 19 states that Ministry of Commerce of the People's Republic of China ("MOFCOM"), in charge of antidumping cases, shall publish the decision to initiate an investigation and notify the applicants, the known exporters and importers, the governments of the exporting countries (regions) and "other interested organizations and parties".²⁵ Article 37 stipulates that if a final determination establishes the existence of dumping and injury caused by dumping to a domestic industry, an antidumping duty may be imposed. Collection of antidumping duty shall conform to the "public interest".²⁶

Linked to this, the relevant rights and obligations of interested parties in the antidumping investigation have been specified in Articles 19, 20, 21, 22, 23 and 25 of Regulation 2004 respectively.²⁷ Articles 33 and 37 have required both the price undertakings and antidumping duties to conform to public interest.²⁸ Accordingly, in

²⁵ REGULATION 2004, Article 19: MOFCOM shall publish the decision to initiate an investigation and notify the applicants, the known exporters and importers, the governments of exporting countries (regions) and other interested organizations and parties (hereinafter collectively referred to as 'the interested parties').

²⁶ REGULATION 2004, Article 37: If a final determination establishes the existence of dumping and injury caused by dumping to a domestic industry, an antidumping duty may be imposed. Collection of antidumping duty shall conform to public interest.

Comparing with the previous Regulation 1997 and Regulation 2002, one of the major differences is the "public interest" clause in the new Regulation 2004. The reason for this is to give considerations to the lower-level industries and the final consumers. See *Xin Fangxingxiao Tiaoli Jinqi Zhengshi Shishi: Jiang Gengjia Guanzhu Gonggong Liyi* [The New Antidumping Regulation is Taking Effect From Today On: More Attention Will be Paid to Public Interest], CRIONLINE, EYESHOT OF FINANCE & ECONOMICS (2004-06-02), <http://big5.cri.cn/gate/big5/gb1.chinabroadcast.cn/1827/2004/06/02/521@180554.htm>.

²⁷ The related rules include:

REGULATION 2004, Article 20: MOFCOM may conduct investigation and collect information from interested parties by, among others, sending questionnaires, using samples, holding public hearings and making on-the-spot verification. MOFCOM shall provide opportunities for all interested parties concerned to present their views and supporting arguments...

REGULATION 2004, Article 21: An interested party shall provide authentic information and relevant documentation to MOFCOM in the process of the investigation. In the event that any interested party does not provide authentic information and relevant documentation, or does not provide necessary information within a reasonable time-limit or significantly impedes the investigation in other ways, MOFCOM may make determinations on the basis of the facts already known and the best information available...

REGULATION 2004, Article 22: An interested party may request MOFCOM to treat the information it provided as confidential if it considers that any disclosure of such information would create significantly adverse effects. MOFCOM shall treat the information submitted by the interested party as confidential if they consider that the request for confidentiality is justifiable, and shall require the interested party to provide non-confidential summaries thereof. The confidential information shall not be disclosed without the permission of the interested party submitting it...

REGULATION 2004, Article 23: MOFCOM shall allow the applicant and interested parties to have access to the information relevant to the investigation, provided that the information has not been treated as confidential...

REGULATION 2004, Article 25: In cases where a preliminary determination on dumping, injury and the causal link between the two is affirmative, MOFCOM shall carry out further investigations on dumping, the margin of dumping, injury and its degree, and, on the basis of their findings, make final determinations respectively. The final determinations shall be published.

Before the final determinations are made, MOFCOM shall inform all known interested parties of the essential facts on which the final determinations are based...

²⁸ REGULATION 2004, Article 33: If considering that price undertakings made by exporters are acceptable and conform to public interest, MOFCOM may decide to suspend or terminate the antidumping investigation without applying provisional antidumping measures or imposing antidumping duties. The decision to suspend or terminate the antidumping investigation shall be published by MOFCOM...

China, from the perspective of antidumping rules, consumers can submit relevant information, present their views or supporting arguments in antidumping investigations. And in cases where there is a strong opposition from consumers, price undertakings or antidumping duties might be suspended due to nonconformity to public interest.²⁹

III. "CONSUMER INTEREST" IN CHINESE ANTIDUMPING CASES

As analyzed in the section above, Chinese antidumping rules have given certain consideration to consumers. The following step is to explore in practice, whether consumers supported or opposed antidumping investigations? Whether the relevant authorities have given any concern to consumers' interests before imposing antidumping duties? Are there any cases lifting antidumping duties by taking consumers' interests into consideration? This section aims to provide an overall examination of such sub-issue.

One notable characteristic of Chinese antidumping cases is that intermediate chemical products have occupied an overwhelming majority of the products investigated.³⁰ More than thirty antidumping cases out of fifty are concerned with the downstream chemical producers instead of the final consumers, such as acrylic ester, polystyrene, and phenol etc. Therefore in China, the conflict between domestic producers and consumers is mainly manifested by the conflict between the upper and the lower producers.

For convenience of discussion in the following section, fifty antidumping cases will be divided into three groups according to the different outcomes of investigations, i.e., definitive measures (to impose antidumping duties); price undertaking (to revise the exporting prices or to cease exports to the area at the dumped prices rather than antidumping duties); as well as termination (failing to be proved, or no injury, or no dumping, or the case is withdrawn). Each group shall be investigated respectively.

A. GROUP I: CASES SUBJECT TO ANTIDUMPING DUTIES

The thirty-nine antidumping cases subject to antidumping duties will be examined first. According to the final administrative decisions of MOFCOM, the words

²⁹ Besides Regulation 2004, a few regulations concerning the procedures in antidumping investigation, such as disclosure of information, injury investigation, also have "public interest" clause. See Wang Yijin, *Fanqingxiao Zhong De Gonggong Liyi Wenti Yanjiu* [Public Interest Clause in Antidumping], PAPER COLLECTION FOR THE 10th ANNIVERSARY OF CHINESE ANTIDUMPING LEGISLATION AND PRACTICE (2007-12-26), <http://gpj.mofcom.gov.cn/article/subject/fqx/subjectaa/200712/20071205305198.html>.

³⁰ Two reasons for the concentration of antidumping investigations on chemical products could be given. The first reason is that China significantly lowered the tariffs of chemical products when it acceded to the WTO. The tenth five-year plan in 2001 promised to nurturing and development of such industries as the steel, petrochemical, chemical and synthetic fiber industries, and stated that Chinese government would actively make use of antidumping measures to achieve this goal. The second reason for this is due to the peculiar characteristics of the chemical industry itself. Chemical products, particularly such general-purpose products, are subject to price fluctuation in international markets when their international market prices go down, their export prices to China also go down, which makes the initiation of antidumping investigation easily acceptable. Besides, as the chemical industry is an upstream industry with fewer products categories, it is relatively easy to specify the product scope subject to investigation. See *supra* note 20, 71-72.

"opportunities have been provided for the relevant interested parties concerned to present their views and supporting arguments" have appeared in almost all of the decisions. However, only in the following five cases have the objections of consumers been specified, whereas in the rest of the thirty-four cases, neither their views nor supporting arguments have been stated in the final decisions, let alone the reasons for taking or not taking their interests into consideration. Based on this, one can conclude that the impression that consumer interest is not within major concern in the final decisions and hence often ignored.

*The No.22 Monoethanolamine & Diethanolamine Case*³¹

In the No.22 Monoethanolamine & Diethanolamine Case, the downstream industry of Glyphosate and that of Coconut Diethanol Amide are the main consumers. Both of them were strongly against the antidumping measure. The downstream industry of Glyphosate is of the viewpoint that the domestic output of Monoethanolamine & Diethanolamine is far enough from satisfying the needs of the downstream industry. The import of Monoethanolamine & Diethanolamine is not the main reason for the injury of domestic industry. Simply for protecting such domestic industry as lags behind whereas totally ignoring the interests of agriculture and farmers, the imposition of antidumping duties is not in conformity to public interest.³²

Similarly, the downstream industry of Coconut Diethanol Amide stated that the main reason for the downstream producers to import Monoethanolamine & Diethanolamine from abroad is that the domestic production cannot satisfy the needs, either in quality or in quantity. If antidumping duties were imposed on the imported products, the downstream industry might go into crisis, which could result in the market dominance of the downstream products again by the foreign industries.³³

Neither of the complaints has stopped MOFCOM from taking definitive measures. MOFCOM stated in the final decision that there are three main reasons to reject their viewpoints. Firstly, as to the downstream industry of Glyphosate, the producing method of using Monoethanolamine & Diethanolamine as the raw materials has only occupied 23% of the whole Glyphosate industry, whereas the rest of the 77% adopted another raw material. Therefore the imposition of antidumping duties would not have a big influence on the main industry.³⁴ Secondly, for those who use Monoethanolamine & Diethanolamine, around 51.3% of the products are processing materials supplied by clients, so the imposition of antidumping duties would not have too much negative influence on them.³⁵ Thirdly, the fundamental purpose of antidumping is to maintain

³¹ See Public Announcement No. 57 in 2004 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=38867>.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

normal competitive process of Monoethanolamine & Diethanolamine in the Chinese market. Only under a fair and ordered competitive process could the downstream industry make profits. Consequently, imposition of antidumping duties is in conformity with public interest.³⁶

*The No.29 Trichloroethylene case*³⁷

In the No.29 Trichloroethylene case, the downstream industry expressed their objections towards the antidumping measure. Since the domestic output of Trichloroethylene cannot satisfy the needs of downstream industry, the imposition of antidumping duties would injure the interests of us, the downstream industry.³⁸ MOFCOM rejected taking their interests into consideration by simply stating that the imposition of antidumping duties is aimed at correcting the unfair trade conduct, i.e. low-price dumping. It does not mean completely restraining the import, so as not to have substantial influence on the downstream industry.³⁹

*The No.33 Disodium 5'-Inosinate Case*⁴⁰

In the No.33 Disodium 5'-Inosinate Case, the main viewpoints of the downstream industry include: as the only domestic producer, the output of the applicant cannot satisfy the needs of downstream industry, the imposition of antidumping duties is not in conformity with public interest.⁴¹ The reasons for MOFCOM to reject are: although the current output of the applicant cannot satisfy the needs of the downstream industry, the antidumping measures only involve those products from Japan and Korea. There are still imported products from the other countries, which could fill the vacancy and ensure that neither the import quantity nor domestic price be substantially influenced.⁴²

*The No.35 Polyurethane Case*⁴³

In the No.35 Polyurethane Case, the downstream industry feels anxious of the influence of the antidumping investigation on the export of the downstream textile

³⁶ *Ibid.*

³⁷ See 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>.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ The full name of this chemical product is Disodium 5'-Inosinate, Disodium 5'-Guanylate and Disodium 5'-Ribonucleotide, hereinafter referred to Disodium 5'-Inosinate for short. See 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>.

⁴¹ *Ibid.*

⁴² See 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/cacs/news/newshow.aspx?str1=2&articleId=38885>.

⁴³ See Public Announcement No. 74 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=38890>.

products.⁴⁴ MOFCOM is of the opinion that the domestic production of polyurethane, either the output or assortment or the quality, can satisfy the needs of the downstream industry.⁴⁵

The No.38 Wear Resistant Overlay Case⁴⁶

In the No.38 Wear Resistant Overlay Case, the downstream industry is strongly against the imposition of antidumping duties and applying for the suspension of the antidumping duties immediately. The main reasons are: the quality of the domestic produced Wear Resistant Overlay is lower than that of the imported products, and the quantity of the domestic products cannot satisfy the needs of the downstream industry. Furthermore, the imported products are not the main causation of material injury to the domestic industry, whereas the competition among domestic producers themselves is.⁴⁷ MOFCOM rejected it by stating that antidumping is aimed to maintain a normal fair trade order, and that it will not consist of a barrier to the normal import.⁴⁸

Summary

Judging from the viewpoints of consumers in the aforementioned five cases, it can be seen that in China, though the situation is different in each case, the objections of the downstream industries towards antidumping measures which restrained the import and brought about the rising price, are commonly shared but totally ignored in the final administrative decisions. Furthermore, the main complaint of the downstream consumers against antidumping actions is more or less the same: since the domestic output cannot satisfy the needs of downstream industry, by restraining the import, the imposition of antidumping duties is likely to have negative effects on the normal operation of the downstream industry, which include lack of raw materials, the addition of an extra productive cost, less competitiveness than their foreign competitors, higher price for final consumers, etc. This is where antidumping conflicts with the interests of consumers the most in current China.⁴⁹

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ See 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.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38891>.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Apart from the above five cases, as to the rest thirty-four cases, though the reactions of the downstream industries towards antidumping measures were ignored in the final administrative decisions, the general negative effects of antidumping actions on them have been detected and brought about an intensive discussion in China. For instance, in the No. 26 Chloroprene Rubber Case, representative of the downstream industry, the secretary-general Gong Beifan of the industry association was strongly against the antidumping investigation. He stated that there are only two domestic producers of Chloroprene Rubber currently, the total year yield of which is 40,000 ton. While the demand of the downstream industry is about 60,000 ton to 70,000 ton, which means 20,000 ton to 30,000 ton are depending on imports. Therefore the imposition of antidumping duties would result in the lack of raw material and disrupt the interests the downstream industries. Gong Beifan also pointed out that using antidumping measures to prevent or limit the imports cannot guarantee the market share of the domestic producers. The correct way is to improve its own technical abilities and raise the quality of their products that can compete with imported

(footnote continued on next page)

In reply to the above complaints, MOFCOM did not deny the existence of this conflict in each case. However, it insisted the imposition of antidumping duties, which included but not limited to: the scale of the influenced downstream industry is not large; the influence is not substantial; the import is still possible from the other countries, etc. Amongst them, the term "fair competition" or "fair trade" has been used more than once. MOFCOM argued that we need to first correct the unfair dumping and rebuild the ordered competitive process, and then downstream industry's interest will be taken into consideration. Such an argument seems persuasive at first glance as it is understandable that unfair practices should be corrected first, but the problem is that the premise of the argument, i.e., all of the dumping practices are unfair or harmful, is still arguable. MOFCOM just simply borrowed the problematic premise of antidumping without further analysis. A deeper examination and a more comprehensive investigation into the cost and benefit of the whole chain of industries and consumers in the long term, might lead to an opposite conclusion that we should not ignore the conflict with consumers' interests.

B. GROUP II: CASES SUBJECT TO PRICE UNDERTAKINGS

The second step is to look into these cases subject to price undertaking to examine whether the interests of consumers have been within the main consideration to accept price undertaking rather than impose antidumping duties. In China, price undertakings

products. The situation was much more serious for those downstream industries whose main raw resources are depending on imports. Lu Qiting, the chief director of Kangda Chemical Limited Company, has also complained that the imposition of antidumping duties has forced the company into very difficult position, since 30% to 40% of the raw materials were coming from imports. See *Fanqingxiao Zhenying Xian Yiyin, Gong Beifan: Wo Butongyi Fanqingxiao* [Gong Beifan: I don't Agree on Antidumping], www.smedl.gov.cn (2008-3-31), http://www.smedl.gov.cn/main/News_info_detail.asp?info_id=32769.

Take the No.45 Bisphenol-A Case for another example. In the antidumping investigation, Hongcang Electronic Material Limited Company of Guangzhou City, Qihua Chemical Engineering Limited Company of Dalian City, Baling Petroleum Limited Company, Sanmu Corporation Group, Hengyuan Chemical Engineering Limited Company of Huangshan City and so on, representatives of the downstream industries of Bisphenol-A, have provided a host of datum to prove that antidumping investigation has caused material injury to them, including the highly increased cost of the raw material, the issue of unemployment, and threat from their foreign competitors. Due to the strong objection of the downstream industry, the petitioner, Lanxing Company, first withdrew in September 2005. However, it applied for antidumping investigation again in February 2006, and the strong objection of the downstream industry has not prevented MOFCOM from making a definitive decision this time. See *Wosheng Shouci Canjia Jinkou Fanqingxiao Tingzhenghui* [The First Time For Industries of Our Province to Participate in Antidumping Hearing], The Bureau of Commerce of Anhui Province (2005-2-2), <http://www.ahbofcom.gov.cn/Item.asp?ArticleID=32fo3q2005915164358>.

See more, Bin Jiancheng, *Zhongguo Shouci Fanqingxiao Cuoshi Zhixing Xiaoguo Pinggu* [The Effectiveness Evaluation on the First Antidumping Application in China], 9 *WORLD ECONOMY* (2003), 38, 38-43; Zhu Qinghua, *Zhongguo Fanqingxiao Gonggong Liyi Yuanze De Shijian* [The Enforcement of Public Interest Principle in Chinese Antidumping Procedures], 2 *JOURNAL OF CENTRAL UNIVERSITY OF FINANCE & ECONOMICS* (2008), 58, 58-62; Bao Xiaohua, *Zhongguo Shishi Fanqingxiao Cuoshi De Jingji Xiaoying Fenxi* [The Analysis of Economic Effects on Antidumping Application in China], 1 *ECONOMIC REVIEW* (2004), 16, 16-19; Liu Weidong, *Jinkou Fanqingxiao: Tedian, Chengxiao Yu Duice* [Features, Effects and Countermeasures of Antidumping on Import], 1 *INTERNATIONAL ECONOMIC COOPERATION* (2005), 17, 17-19; Jin Xiaocheng, *Fanqingxiao Zhong Gonggong Liyi Yuanze De Fali Fenxi—Cong Gongping Zhengyi De Shijiao* [The Jurisprudence of Public Interest in Antidumping—From the Perspective of Just and Fair], 5 *CONTEMPORARY LAW REVIEW* (2007), 21, 21-26; (Ma Xiangmin & Liu Fuli, *Jinkou Fanqingxiao Dui Shangxiayou Chanpin De Yingxiang—Jiyu Woguo Zaozhiye Fanqingxiao De Fenxi* [The Effects of Antidumping Actions on Upstream and Downstream Industries—Analysis of the Paper Industry], 125 *MODERN ECONOMY* (2007), 80, 80-85 etc.

were accepted only in four cases, including the No.4 Cold Rolled Stainless Steel Sheet Case, the No.18 Polyvinyl Chloride Case, No.23 Chloroform Case, and the No.32 Benzofuranol Case.⁵⁰

*The No.4 Cold Rolled Stainless Steel Sheet Case*⁵¹

In the No.4 Cold Rolled Stainless Steel Sheet Case, the downstream industry was strongly against the antidumping measures. And in this case the market share of the import is very large: 1995-1998: 53.74%, 62.35%; 54.08%; 63.67%. Restraining foreign import might result in lacking of raw materials or putting up the price, which would harm the downstream industry. Under this situation, instead of imposing antidumping duties, the antidumping authorities decided to accept price undertaking with the main exporters.⁵²

*The No.18 Polyvinyl Chloride Case*⁵³

In the No.18 Polyvinyl Chloride Case, there are twenty registered exporters in total, nineteen of which were subject to antidumping duties. Price undertaking was accepted by MOFCOM to apply to only one Russian exporter.⁵⁴ Therefore the application of price undertaking in this case has not affected the main export and cannot be referred to as in consideration of public interest.

*The No.23 Chloroform Case*⁵⁵

In the final decision of the No.23 Chloroform Case, the negative effects, including the increase of price and insufficiency of supply, on the downstream industry was taken into consideration by MOFCOM, and price undertakings with five out of seven submitted exporters were accepted in this case, "considering the interests of both parties".⁵⁶ The relevant administrative authority, in the final decision, was of the opinion that after taking the interim antidumping measure, the market price of the

⁵⁰ According to Regulation 2004, consumers can be taken into consideration as "public interest" in deciding whether to accept price undertaking. Amongst the four cases, the No. 4 case and the No. 18 case were actually initiated before Regulation 2004 taking into effect, when there was no legislative requirement to evaluate "public interest". However, the related information shall be further examined to see their concerns with consumers.

⁵¹ See Public Announcement No. 15 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=38844>.

⁵² This case is said to have a great influence on the downstream industry. See Beijing Huanzhong & Partners, *Zhongguo Buxingang Lengzha Baoban Fangqingxiao An* [The Cold Rolled Stainless Sheet Antidumping Case], CHINA TRADE REMEDY INFORMATION (2004-4-26), <http://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=37844>.

⁵³ See Public Announcement No. 48 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=38447>.

⁵⁴ *Ibid.*

⁵⁵ See Public Announcement No. 81 in 2004 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=38868>.

⁵⁶ *Ibid.*

investigated products has risen to some extent, but the domestic supply is comparatively lacking, which has a certain influence on the downstream industry. Therefore, taking the interests of both upstream and downstream industries into consideration, accepting price undertaking with five foreign producers is decided.⁵⁷

*The No.32 Benzofuranol Case*⁵⁸

In the final decision No.32 Benzofuranol case, it was stated by MOFCOM that, in order to "keep moderate competition" in the domestic market, price undertaking was agreed and signed with the main exporters in the U.S. FMC company and the Japanese Farm Chemical Company, rather than imposing antidumping duties.⁵⁹ In China, the consideration of "public interest" is normally linking with the interests of downstream industries. However in this case, it refers to the competitive condition of the relevant products in the domestic market.⁶⁰ Such an uncommon consideration may relate to the specific characteristics of this case.

Benzofuranol is one of the downstream products of Catechol. In 2002, imported Catechol products were subject to an antidumping investigation and imposed with antidumping duties, the No.14 Catechol Case, which incurred an upsurge of the prices of Catechol.⁶¹ The costs of its downstream products were also increased simultaneously, which drove the Benzofuranol industries into a very difficult position. It is only for protecting themselves from the negative effects brought by the upper industries that domestic Benzofuranol industries also petitioned for antidumping investigation. This is usually called cascading contingent protection.⁶² Accordingly, in this case, it is most likely for preventing the occurrence of similar incidents in the chain reaction that MOFCOM decided to accept price undertaking to mitigate the negative effects of imposing antidumping duties. From this viewpoint, the consideration of taking a price undertaking in this Benzofuranol case is also for balancing the upper and the lower interests of the industries.

Summary

In China, agreements of price undertakings are seldom agreed or signed between the main exporters and MOFCOM. Up till now, price undertaking measures instead of

⁵⁷ *Ibid.*

⁵⁸ See 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>.

⁵⁹ *Ibid.*

⁶⁰ See Zhu Qinghua, *Zhongguo Fangqingxiao Shidian* [10 Years of Chinese Antidumping], IBDAILY.COM.CN, INTERNATIONAL BUSINESS DAILY (2007-12-10), <http://ibdaily.mofcom.gov.cn/show.asp?id=175457>.

⁶¹ See 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/cacs/news/newshow.aspx?str1=2&articleId=38856>.

⁶² See e.g., Li Meigui, Lian Xuhai & Liu Yanhong, *Fangqingxiao Cuoshi Dui Xiaoyou Qiye De Changye Guanlian He Jifaxing Baohu Yingxiang—Yi Linbenfen He Finanfen An Weili* [The Linkage and Cascading Contingent Protection of Antidumping Measures with Downstream Industries—Taking Catechol Case and Benzofuranol Case for example], 6 FINANCE & ECONOMY (2006), 59, 59-60.

imposing antidumping duties have been taken in only four out of fifty cases. It is found that in three out of the four cases, i.e., the No.4 Cold Rolled Stainless Steel Sheet Case, the No.23 Chloroform Case, and the No.32 Benzofuranol case, price undertakings were accepted by taking the interests of downstream industries into consideration.

C. GROUP III: CASES SUBJECT TO TERMINATIONS

The third step is to examine the rest of the seven cases subject to termination, to see whether there are any cases refusing or lifting antidumping duties by taking consumers' interests into consideration. As introduced above, of the seven cases, in one case (the No.25 Nylon 6.66 Filament Yarn Case), all registered exporters are determined as either no dumping or having a dumping margin less than 2%; two cases (the No.21 MDI Case and the No.31 Ethylene-Propylene-non-conjugated Diene Rubber Case) are terminated because of the withdrawal of the antidumping petitioners; the rest of the four cases (the No.7 Polystyrene Case, the No.8 L-Lysine monohydrochloride Case, the No.39 Butanol Case, and the No.40 Octanol Case) are determined as no injury.

Commencing from Regulation 2004, there is a possibility to terminate antidumping investigation for the consideration of "public interest", however, there have been no final decisions up until now that refused or lifted antidumping duties directly due to that reason, let alone for the consideration of consumers.⁶³ How about those "withdrawal", "no dumping" or "no injury" cases? Whether the virtual reason is for the consideration of the downstream industry or not deserves further examination. The investigation indicates that some weight has been given to downstream industries in certain cases.

*The No.21 MDI case*⁶⁴

The No.21 MDI Case ends up with the petitioner withdrawing from the antidumping investigation. Guo Xingtian, the manager of the petitioner, Yantai Wanhua Company, explained in a newspaper interview that there are three reasons for withdrawing this antidumping application. The first one is that after the antidumping investigation, the exporters from Japan and Korea have enhanced the price, so the market order has been gradually recovered.⁶⁵ The second one is that Yantai Wanhua Company has already taken the chance of antidumping investigation

⁶³ Only in the No. 17 Cold Rolled Steel Case, MOFCOM decided to suspend antidumping duties for a while after the affirmed final decision. The reason was not for public interest but because this product was subject to both antidumping and safeguard at that time. Since the relevant safeguard measures have already been taken, the antidumping duties were suspended. Later on, antidumping duties still continued to be imposed after the termination of safeguard measures. See *supra* note 60.

⁶⁴ See Public Announcement No. 66 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=38862>.

⁶⁵ See *Yantai Wanhua Qisu Chesu Fei Zuoxiu, Fanqingxiao Jianshu Zhide Siliang* [The Withdrawal of Wanhua Yantai is not just for Making a Show. Antidumping Deserves more Consideration], SECURITIES TIMES (2003-12-08), <http://stock.jrj.com.cn/news/2003-12-08/000000705752.html>.

to quicken its development.⁶⁶ The third important reason is concerned with the downstream industry. As the only domestic producer, Wanhua's current output cannot satisfy the needs of downstream industry and nearly 70% of domestic output depends on the import. So the imposition of antidumping duties will definitely harm the interests of the downstream industry.⁶⁷ This indicates that the interests of consumers have been given some consideration in the terminated antidumping cases.

It is worth noting that during the process of hearing, major representatives of the downstream industries considered that the domestic output cannot satisfy the needs of the downstream industry and antidumping duty would increase the productive cost for them, whereas a few others favored antidumping duties.⁶⁸ For those rare proponents, they did not deny the future increase of their cost in the wake of imposing antidumping duties, instead they believed that the current low cost is temporary, which means, it will not last long because once the foreign competitors achieve the monopoly position the price of the raw material will be even higher.⁶⁹ However, such an argument incorrectly quoted predatory dumping theories and hence is untenable. In order to condemn predatory dumping, its existence should be proved first. Modern application of antidumping has far deviated from this theoretical basis and thereby cannot achieve this. It is incorrect to simply use part of the predatory dumping theories to support antidumping measures.

*The No.8 L-Lysine Monohydrochloride Case*⁷⁰

Apart from the No.21 MDI "withdrawn" Case, the No.8 L-Lysine Monohydrochloride "no injury" case also deserves discussion. The analysis of "no injury" in this case is less persuasive comparing with that of the other three "no injury" cases. According to the requirements under Article 8 of the Antidumping Regulation 2004, MOFCOM normally refers to thirteen kinds of datum, including output of domestic industry, quantity of sales, price of sales, income of sales, profit before tax, market share, terminal inventory, average year salary per person, the rate of unemployment, the rate of operation, the rate of return on investment, net cash flow and the development of domestic industry.⁷¹ According to the different variations of the

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ See Material No. 9 of the Hearing of Industry Injury Investigation of MDI, Chinese version available at: <http://www.cacs.gov.cn/cacs/news/xiangguanshow.aspx?articleId=39237>.

⁶⁹ See Material No. 8 of the Hearing of Industry Injury Investigation of MDI, Chinese version available at: <http://www.cacs.gov.cn/cacs/news/xiangguanshow.aspx?articleId=39237>.

⁷⁰ See 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://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38784>.

⁷¹ REGULATION 2004, Article 8: The following factors shall be examined in the determination of injury caused by dumping to a domestic industry:

(1) whether the volume of dumped imports, including the volume of dumped imports either in absolute terms or relative to the production or consumption of a like domestic product, has been increasing significantly, or the possibility of a significant increase in dumped imports;

(2) the effects of dumped imports on prices, including the price undercutting by the dumped imports, or

(footnote continued on next page)

aforementioned thirteen kinds in each of antidumping cases, the relevant final decisions of the injury will be made. In the other three "no injury" cases, all of the thirteen kinds of datum consistently show that there is no material injury on domestic industry. However, in the No.8 case, some of the datum like the output of domestic industry, quantity of sales, price of sales, income of sales etc. are first going down then going up, and some of the datum like market share are going down, and even some of the datum like profit before tax, the rate of return on investment are negative.⁷² It seems not so convincing to make a "no injury" decision in this case.

A further examination of this case suggested that the petitioners of this case are quite different from the other cases. The defendants are exporters from the U.S., Korea, and Indonesia. The petitioners are Chuanhua Weizhisu Company and Quanzhou Daquan Company, both of which are joint ventures.⁷³ In fact, 70% share of Chuanhua Weizhisu Company is owned by Weizhisu Japanese Company, and one of the main shareholders of Quanzhou Daquan Company is Zhengda Thailand Company.⁷⁴ There are actually no domestic Chinese industries involved in this case. Accordingly, in this "Foreigner v. Foreigner" case, MOFCOM gave more concerns to the final consumers of L-Lysine Monohydrochloride, the farmers. Because once the antidumping duties are imposed, the price will correspondingly raise, which is really a burden for the domestic consumers. This is possibly the real reason for MOFCOM to make a less unconvincing "no injury" decision.⁷⁵ This case indicates that interests of consumers can be "conditionally" considered by antidumping authorities.

CONCLUSION

Orientating itself in the hot debate of antidumping versus competition policy, as

the significant suppressing or depressing effects on the price of a like domestic product, etc.;

(3) the consequent impact of the dumped imports on the relevant economic factors and indices of the domestic industry;

(4) the production capacity or export capacity of the exporting country (region) or the country (region) of origin, and inventories of the product under investigation;

(5) other factors that may cause or have caused injury to a domestic industry.

The determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

When determining the injury caused by dumping to a domestic industry, the determination shall be based on positive evidence, and the injuries caused by factors other than dumping must not be attributed to dumping.

⁷² For all of the 13 kinds of datum, it was decided in the final decision that: "output of domestic industry" is first down then up, "quantity of sales" is first down then up, "price of sales" is first down then up, "income of sales" is first down then up, "profits before tax" are minus, "market share" is decreasing, "inventories" is decreasing, "average salary per year" and "unemployment rate" are not changing very much, "operation rate" is not enough, "rate of return on investment" is negative, "cash flow" is increasing, "development of domestic industry" is not influenced. See 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://www.cacs.gov.cn/news/newshow.aspx?str1=2&articleId=38784>.

⁷³ *Ibid.*

⁷⁴ See Li Hong & Tian Li, *Fangqingxiao Zai Quanguoxing Jingzhengzhong De Zhanlue Wenti—Siliaoji Laianuan Fangqingxiao An Yongan* [The Strategic Issue of Antidumping in the Global Competition—Reflections on the L-Lysine Monohydrochloride Antidumping Case], 9 CHINA COLLECTIVE ECONOMY (2002), 39, 39.

⁷⁵ Interview with Soga Takashi, Manage Partner, Soga Uryu & Itoga Law Firm in Tokyo, Japan (September 13, 2007).

well as focusing on the relationship between antidumping and consumer interest (the essential concern of competition policy), this paper conducted a comprehensive investigation into "consumer interest" in Chinese antidumping context which has not been touched upon yet. It concludes in three fold as follows:

1. Although there is no mention of "consumer" through the whole text of Chinese antidumping rules, consideration may be given to the "consumer" by attributing it to "other interested organizations and parties" and taking it as one factor of "public interest". Accordingly, in antidumping investigations, consumers can submit the relevant information, present their views or supporting arguments, and if there is a strong opposition from consumers, price undertakings or antidumping duties might be suspended due to nonconformity to public interest.
2. Antidumping cases involve much conflict with the interests of consumers in practice. In China, such conflict has two features. The first one is in the group of consumers. Consumers are mostly the downstream chemical producers instead of the final consumers. The second one is in the content of conflict. The conflict is not only about putting up the price, adding an extra productive cost for the downstream industry, higher price for the final consumers, but also includes that due to that domestic output cannot satisfy the needs of downstream industry, the imposition of antidumping duties result in restraining the import and thereby may cause a lack of the raw materials for the downstream industry.
3. Chinese antidumping authorities have not given serious consideration to the conflict with consumer interest in antidumping cases. There are no final decisions that refused or lifted antidumping duties due to the reason of public interest, let alone for the interests of consumers. In most cases that imposed antidumping duties, the interests of consumers are not within the main concern in the final decision hence totally ignored. Only in a few cases, MOFCOM did admit the conflict, but using simply and unconvincing arguments to reject that consideration. Besides, agreements of price undertakings are seldom signed between the main exporters and MOFCOM, and only in three out of four cases they are signed for balancing the interests of the upstream and downstream industries. In the "withdrawn", "no dumping" or "no injury" cases, the interests of consumers might be one of the factors or conditionally considered in terminating antidumping measures.

The relationship between trade and competition has been well-established, complex and controversial.⁷⁶ The economic crisis in 2009 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. Combined with other series of literature, through probing into antidumping, the most

⁷⁶ See http://www.wto.org/english/forums_e/debates_e/debate19_e.htm (last visited March 10, 2011).

controversial issue beneath such a project, and identifying its conflict with consumer interest, the main concern of competition policy, this paper called for more research and efforts devoted to integrate trade and competition policy in this aspect, via which it also intended to help China in its search for a new development model of "how the interaction of competition and trade policy can contribute to economic development".