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Analysis of the Use of Anti-dumping in the Current Trend of Regionalism

지역주의 추세 하에 반덤핑 절차 사용에 대한 분석

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Analysis of the Use of Anti-dumping in the Current Trend of Regionalism

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Abstract

Analysis of the Use of Anti-dumping in the Current Trend of Regionalism

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This paper deals with probably one of the most frequently debated issues in the international trade nowadays - anti-dumping. The main body of the paper mainly consists of three parts. To begin with, the paper reviews the laws on anti-dumping within the GATT and WTO system, to be specific, Article VI of GATT 1947 and Anti-dumping Agreement in the 1994 WTO legal texts. Next, considering the recent trend of a proliferation of regional trade arrangements (RTAs), especially an explosion of free trade agreements (FTAs), this paper proceeds to look at the regulations on anti-dumping in those free trade agreements where in most cases, anti-dumping issues are touched upon. And in this section, a survey will be conducted regarding the rules for anti-dumping in the FTAs concluded by China and Korea.

Finally, after finishing all these textual analyses, this paper will turn to an empirical study in a purpose of examining the relationship between the enactment of such FTAs and anti-dumping actions. As expected, an adverse relationship is found between them.

Keywords: anti-dumping, WTO, regional trade agreements, free trade agreements, empirical study

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이 논문은 최근 국제무역에서 논쟁이 가장 뜨거운 이슈 중 하나인 반덤핑을 다룬다. 본문은 주로 세 부분으로 구성되어 있는데 먼저 첫 부분에서 GATT 및 WTO 체계 중 반덤핑 관련 법률, 구체적으로 GATT 제 6 조 및 1995 년 발효에에 WTO 협약 중의 반덤핑 협약을 돌이켜 본다. 그리고 최근 지역무역협정 (RTA), 특히 자유무역협정 (FTA)이 폭발적으로 체결되고 있다. 이들 협정문 중 대부분이 반덤핑에 관한 내용이 담겨 있는 현실을 감안해서 이 논문은 첫 부분을 이어 FTA 중 반덥핑 관련 규정을 연구하고자 한다. 이런 규정들을 정리하고 구체적으로 연구하기 위하여 이 챕터에서 중국 및 한국이 체결한 FTA 를 대상으로 FTA 협정문에서 반덤핑을 어떻게 다스리고 있는지에 관한 조사를 실시한다. 위의 텍스트 분석이 끝난 뒤 마지막으로 이 논문은 FTA 체결과 반덤핑 조사의 관계를 검증하기 위하여 실증 연구를 진행한다. 예상대로 부정적인 관계가 발견되었다.

키워드: 반덤핑, WTO, 지역무역협정, 자유무역협정, 실증 연구

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ABBREVIATIONS

AD	Anti-dumping
ADA	Anti-dumping Agreement
CVD	Countervailing Duties
EC	European Community
EU	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
IMF	International Monetary Fund
RTA	Regional Trade Agreement
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
US	United States
WTO	World Trade Organization

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Chapter I. Introduction

1.1 Background

Anti-dumping (AD hereinafter), one of the trade remedy issues, has been a big concern recently. A large number of countries around the world are whether launching AD investigations or imposing AD measures against other countries every year. In reality, China and South Korea nowadays take the first and second place respectively in the WTO AD initiations list (sorted by responding countries from 1995 to 2016) released by WTO.[1] China overwhelmingly records a total of 1170 cases, more than three times that of the second biggest AD target country - Korea (384).

On the other hand, however, in the past 20 years, China initiated a total of 231 AD investigations, and Korea 131, taking the seventh and twelfth place respectively. Interestingly, Korea has initiated AD investigations against China for 27 times during the period, consisting more than 20 percent of Korea's whole AD initiations, whereas China has sent 20 AD filings to Korea, taking up around 10 percent. This indicates that AD has been a serious issue in the bilateral trade between the two countries. Meanwhile, India (818), the United States (593) and European Union (485) are the three heaviest users of AD procedures currently. In sum, China and Korea are both the biggest targets of AD investigations, and simultaneously, heavy users of AD procedures.

Furthermore, the past two decades has also witnessed a great explosion of regional trade

[1] WTO Statistics on anti-dumping, available at https://www.wto.org/english/tratop_e/adp_e/adp_e.htm

agreements (RTAs) worldwide, *inter alia*, the conclusion of an increasing number of FTAs, mostly bilateral. In most cases, these FTAs cover the issue of AD, and dominant numbers of them allow the use of AD in the FTA provisions, notwithstanding some scholars' heated debate over whether AD should be allowed in such RTAs because of the divided interpretation of certain languages in WTO laws ruling the establishment of FTAs.

In the recent concluded FTA between China and Korea (officially signed on 1 June 2015), the AD issue is touched upon undoubtedly. Chapter 7 of the China - Korea FTA handles trade remedies, section B of which basically deals with anti-dumping and countervailing duties, which provides additional restrictions regarding AD on the basis of WTO AD regulations, indicating that China and Korea have recognized the seriousness of AD issue in their bilateral trade and were trying to regulate AD actions more rigorously. So far, China has concluded and enacted 14 FTAs, with 9 more FTAs being negotiated. Korea on the other hand, has 15 FTAs in effect and 5 under negotiation. In all these FTAs, AD is discussed and in most cases, more specific and restrictive rules in addition to WTO AD rules are supplemented. It seems interesting and of great significance to find out if the enactment of such FTAs will affect the employment of AD procedures and in what manner. Therefore, in this paper, I would like to first focus on how anti-dumping is provided in WTO legal texts and how it is regulated in FTAs. Finally I will try to figure out the relationship between FTAs and AD actions quantitatively by conducting an empirical study.

1.2 Literature Review

Various researches have been done to discuss the phenomenon of a spread of AD actions worldwide and its subsequent impacts. Maurizio Zanardi (2004)[2] asserted that various new users, especially developing countries, joined the traditional users (e.g. US, Canada, EC, Australia, New Zealand) of AD and the role of these new users are becoming more and more important. Thomas J. Prusa (2005)[3] analyzed the possible reasons accounting for the proliferation of AD, and he also provided two scenarios - 'AD cold war' and 'AD epidemic'. However, he argued that 'AD epidemic' scenario was much more likely to materialize with the reason that AD cases are almost always initiated by industries, not by governments. Actually, Thomas J. Prusa (2001)[4] held fairly negative views against the booming of AD. He regarded the increasing trend of AD as "genie out of the bottle", and according to his calculation results, AD duties lead to a fall of 30-50 per cent in the value of imports. Bown, Chad P (2008)[5] investigated the determinants of industry pursuit of AD across nine major developing countries in the period of 1995-2002. Consequently, he provided evidence that AD use is consistent with industry characteristics predicted by the WTO's evidentiary requirements, the theory of endogenous trade policy and macroeconomic shocks. On the whole, one significant characteristic of these articles is that a majority of them adopt the econometric methodology to examine their hypotheses. Besides, more monographs on the interpretation of AD regulations under GATT and WTO system will be mentioned later in the

[2] Zanardi, M. 2004. "Anti-dumping: What are the Numbers to Discuss at Doha?". *The World Economy* 27(3): 403-433.

[3] Prusa, T.J. 2005. "Anti-dumping: A Growing Problem in International Trade". *The World Economy* 28(5): 683–700.

[4] Prusa, T.J. 2001. "On the Spread and Impact of Anti-dumping". *Canadian Journal of Economics* 34(3): 591–611.

[5] Bown, Chad P. 2008. "The WTO and Antidumping in Developing Countries". *Economics & Politics* 20(2): 255-288.

first part of the paper's main body.

In addition, a large number of case studies have been conducted on the FTAs concluded by China and Korea regarding specific and substantive topics in trade and trade laws, for instance, TRIPS, TBT, SPS, etc. In the case of China - Korea FTA, Heng Wang (2016)[6] asserted that rule development of the China - Korea FTA will probably encounter the challenges of further market liberalization, regulatory cooperation and coherence, and sector-specific challenges. The author added that the key is to strike a proper balance between economic integration and regulatory autonomy. She seems to lie much weight on the political economic side. Others mostly analyzed the possible impacts to certain regions or countries after enacting RTAs/FTAs, for example, "The China-Led East Asia Free Trade Agreement and its Regional Conflicts" by Jung Ryun Hong (2008), "The Economic Impacts of Free Trade Agreements in Korea" written by Jae Kyu Lim (2011).

With regard to the possible effects of FTAs on AD activities, Prof. Ahn and Shin (2011)[7] asserted that on the one hand, conclusion of FTAs increases the use of AD measures as AD is probably the most practical and legitimate non-tariff tool so far, by which FTA contracting parties are able to protect their domestic industries from the increasing flow of imports from their FTA counter parties. On the other hand, however, Prof. Ahn also argued that FTA is supposed to reduce the use of AD since one primary purpose of signing FTAs is to boost free

[6] Wang, Heng. 2016. "The Challenges of China's Recent FTA: An Anatomy of the China-Korea FTA". *Journal of World Trade* 50(3): 417–446.

[7] Ahn, Dukgeun, and Shin, Wonkyu. 2011. "Analysis of Anti-dumping Use in Free Trade Agreements". Journal of World Trade 45(2): 431–456.

trade among contracting countries instead of raising trade barriers. In this paper, an empirical study was also conducted and a negative relationship was found between them.

1.3 Significance of the Research

Although in recent years, numerous papers and monographs have been dealing with anti-dumping issues under the WTO system, however, most of them are discussing the trend of AD proliferation, as well as an analysis on its impact to world trade system in a relatively macro and broad perspective. Also, FTA has been another hot trade issue nowadays. A large number of scholars have already conducted various case studies on China-Korea FTA, FTAs concluded between China and other countries, and FTAs signed by Korea with other countries as well, covering a variety of trade issues like rule of origin, intellectual property, TBT(technical barriers to trade), etc. However, very few of them combine the topics of AD and FTA together, neither do they try to examine the relationship between them.

Therefore, this research is believed to be significant in the sense of combining the two topics together and conducting an empirical study to examine the relationship between them in a comparatively micro perspective with the most updated data and information. Also, this research aims to provide some policy implications, albeit trivial, to policy makers.

1.4 Research Methodology

The research will start with an textual analysis of the AD rules within the GATT/WTO system by reviewing GATT/WTO regulations dealing with AD issues. Several key issues in the AD investigations will be discussed in detail. Besides, to make the paper more understandable and persuasive, the statistics newly issued by WTO will also be utilized and cited in this section.

Then the research will continue to conduct a comparative analysis on the use of AD in the FTAs concluded by China and Korea by looking at the official texts of FTAs signed by China/Korea with other countries.

Finally, an econometric model will be set up to examine the relationship between FTAs and AD activities. The data set will probably be downloaded from the websites of WTO, IMF, World Bank, UN Comtrade, etc. The data set will include annual total AD filings, bilateral AD initiations and bilateral trade value between China/Korea and its FTA counter parties, GDP growth rate, etc. After running the regressions, empirical analysis will be conducted.

1.5 Structure of the Paper

To introduce the structure this paper, first of all, in Chapter II, I am going to have an overview of AD within the GATT/WTO system, starting with a review of the world AD actions and disputes that have emerged in the past two decades and their evolution. Then I will move on to introduce GATT Article VI, which served as the only international trade law to deal with issues related to AD and countervailing duties in pre-WTO period. After that, the

negotiation process and the main content of Anti-dumping Agreement (ADA), which is included in the 1994 WTO legal texts, will be introduced.

In Chapter III, I will turn to look at the use of AD rules in the free trade agreements concluded between China, Korea and other counter parties. My aim is to figure out the similarities and differences between them, and try to find some implications by such comparison.

In Chapter IV, furthermore, an empirical study will be conducted on the frequently debated question: can the conclusion of FTAs function to reduce the use of AD actions between FTA contracting parties? My preliminary hypothesis is that FTAs play a role in mitigating AD activities after such FTAs come into force.

At the end of the paper, some policy implications and conclusions will be concluded.

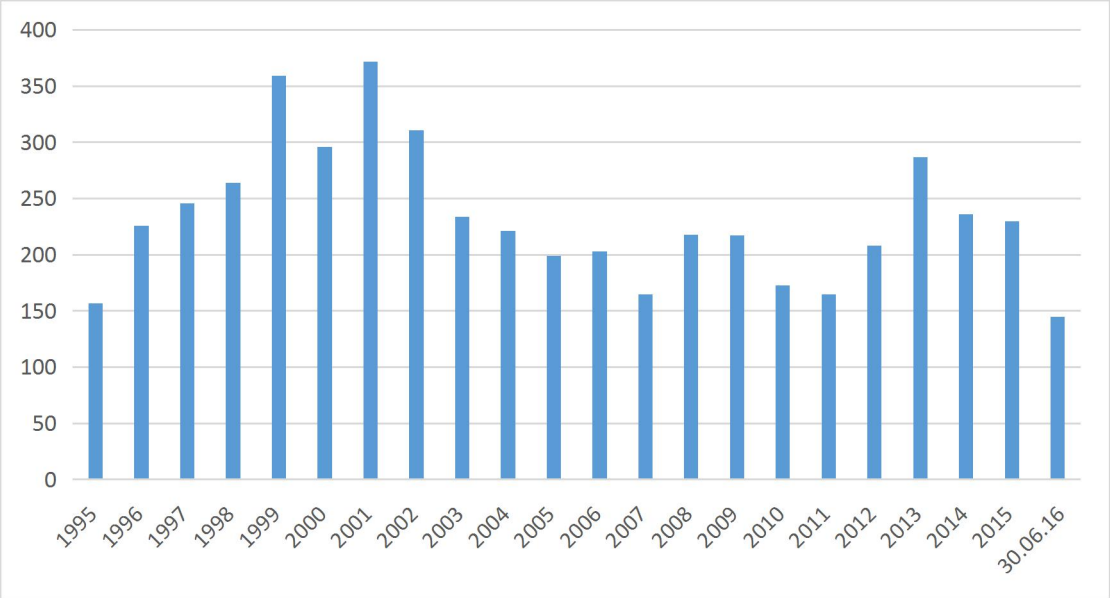
Chapter II. An Overview of Anti-dumping within the GATT/WTO System

2.1 An Overview of World Anti-dumping Actions and Disputes

The Figure 1 below illustrates the annual AD investigation initiations that are notified to the WTO from 1995, the year when WTO was established, to the first half of 2016. We can observe a surge of AD initiations since the birth of WTO in the late 1990s. It culminated in 2001, after that the total number of AD initiations per year started to decline. However, after

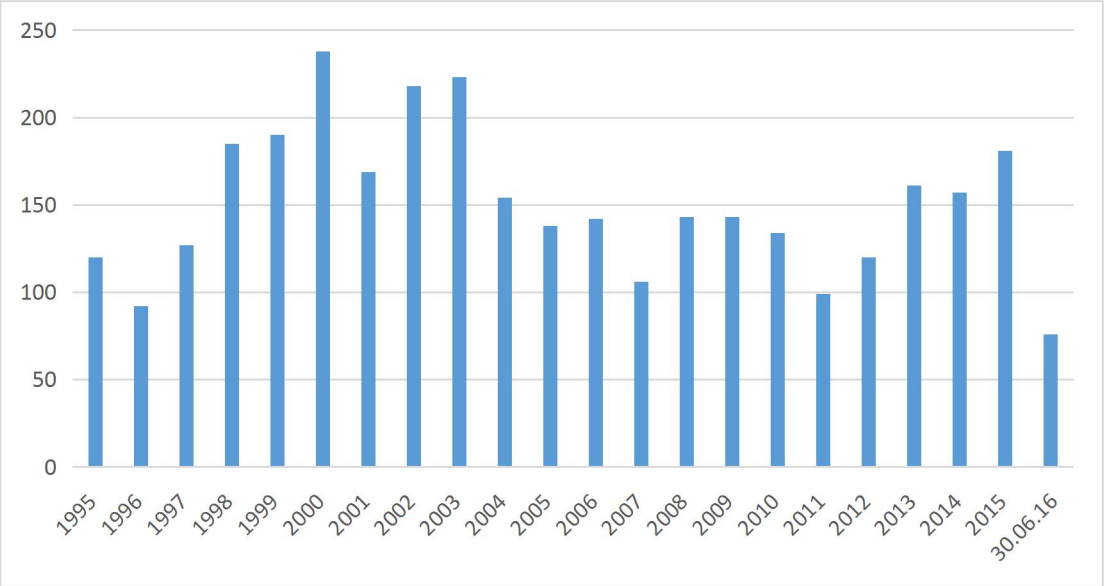
the outbreak of global financial crisis in 2008, it began to show a sign of revival. In total, the past two decades has witnessed a total of 5132 AD initiations, more than 200 investigations per year. Although the AD investigations do not always end up with actual measures consequently, in general there are still 3316 initiations finally entering into the stage of implementing AD measures. Figure 2 shows a similar trend as figure 1, but since normally an AD investigation lasts for six months to a year, naturally there is a time lag between initiating an AD investigation and the final imposition of AD measures. Additionally, unless an investigation shows that termination of the measure would cause injury, AD measures are supposed to expire five years after the date of imposition.

Figure 1 Anti-dumping Initiations by Year from 1995 to 2016



Source: WTO

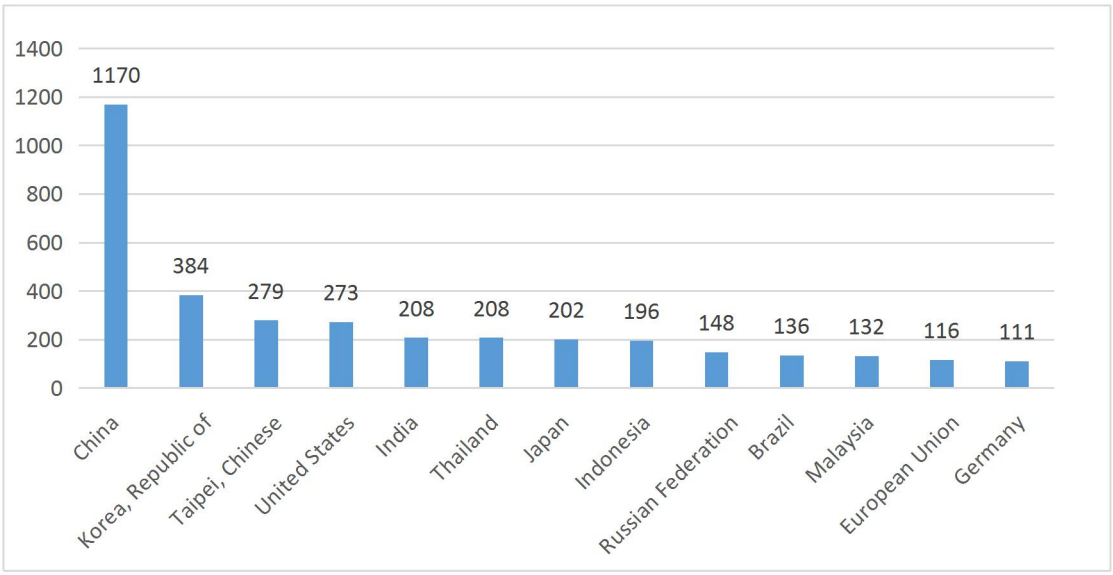
Figure 2 Anti-dumping Measures by Year from 1995 to 2016



Source: WTO

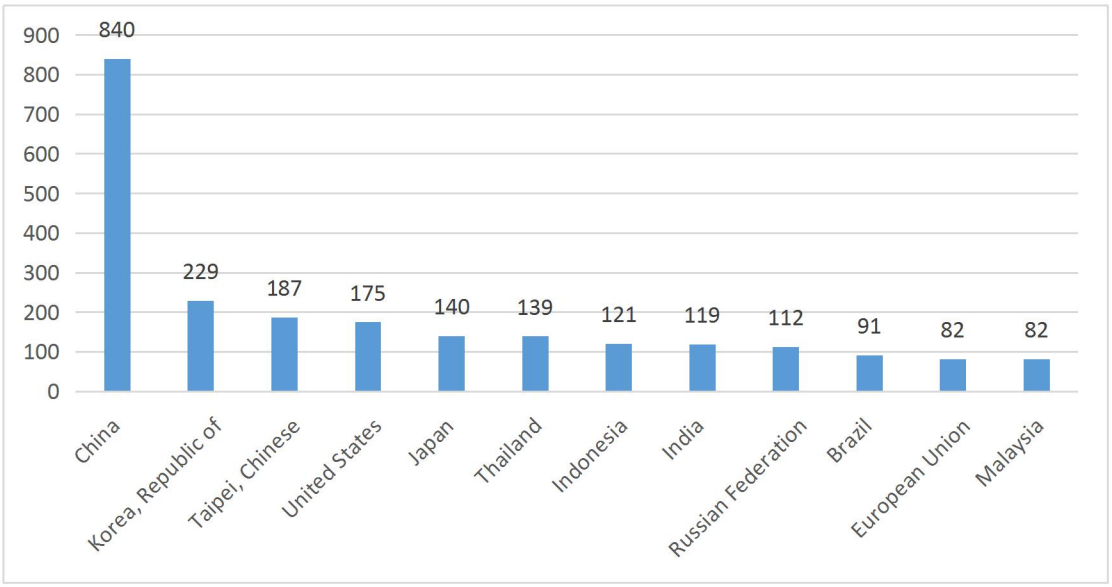
If we look at the AD initiations list sorted by exporting countries, i.e. the countries whose exporting products are considered at issue and are under investigations by the importing countries, noticeably, China is the biggest target, recording 1170 alone, accounting for more than one fifth of the total initiations, more than three times that of the country follows. If considering further the fact that China gained its accession into WTO in November of 2001, this result will seem to be a lot more startling. And the graph illustrating AD measures by exporting countries almost shows no difference. China has been overwhelmingly subject to a total of 840 enforceable AD measures, more than a quarter of the world total. These statistics directly show how serious the AD issue is in China, which can be regarded as the biggest stumbling block in China's exports, especially in such sectors like steel products. South Korea is the second largest AD target in the world. Like China, Korea is greatly distressed by AD issues.

Figure 3 Anti-dumping Initiations: By Exporter 1995.1.1 - 2016.6.30



Source: WTO

Figure 4 Anti-dumping Measures: By Exporter 1995.1.1 - 2016.6.30



Source: WTO

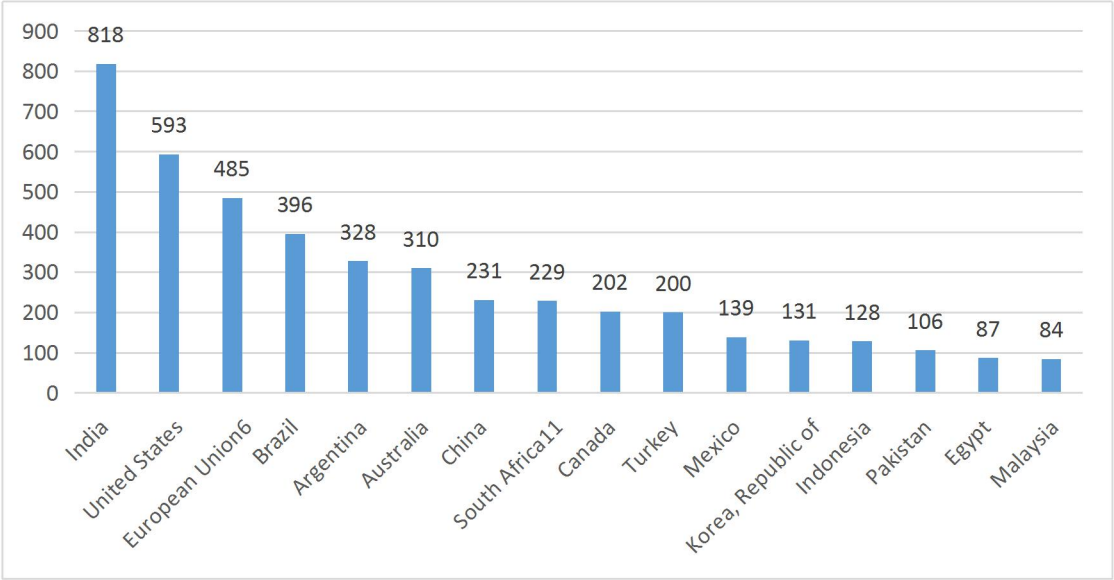
Nevertheless, when sorting the data by reporting countries, meaning the importing countries which initiate the AD investigations, interestingly, China is ranked seventh, and Korea twelfth among the most frequent users of AD procedures, a total of 231 and 131

investigations respectively, far less than the AD filings they responded to during the same period. It is also worth noticing in this figure that India is shown as the heaviest user of AD, having sent 818 AD filings, even ahead of the United States (593), EU (485), Australia (310) and Canada (202), the developed countries and also former frequent AD users. As a matter of fact, during the period from July 1980 to June 1988, the AD actions of the United States, Australia, Canada and EC constituted 97.5% of world total AD actions.[8] However, as has been shown in this graph, the story is much different in the recent two decades. Developing countries like India, Brazil, Argentina and so forth are utilizing AD procedures more and more frequently. Especially, as has been argued by Michael Trebilcock et. al (2013), when adjusted for the trade size, the AD measures per billion US dollars of importations is even higher in developing countries than in developed countries.[9]

Figure 5 Anti-dumping Initiations: By Reporting Member 1995.1.1 - 2016.6.30

[8] M. J. Trebilcock, R. Howse, and A. Eliason. 2013. "Antidumping laws." In *The Regulation of International Trade*, p333. New York: Routledge.

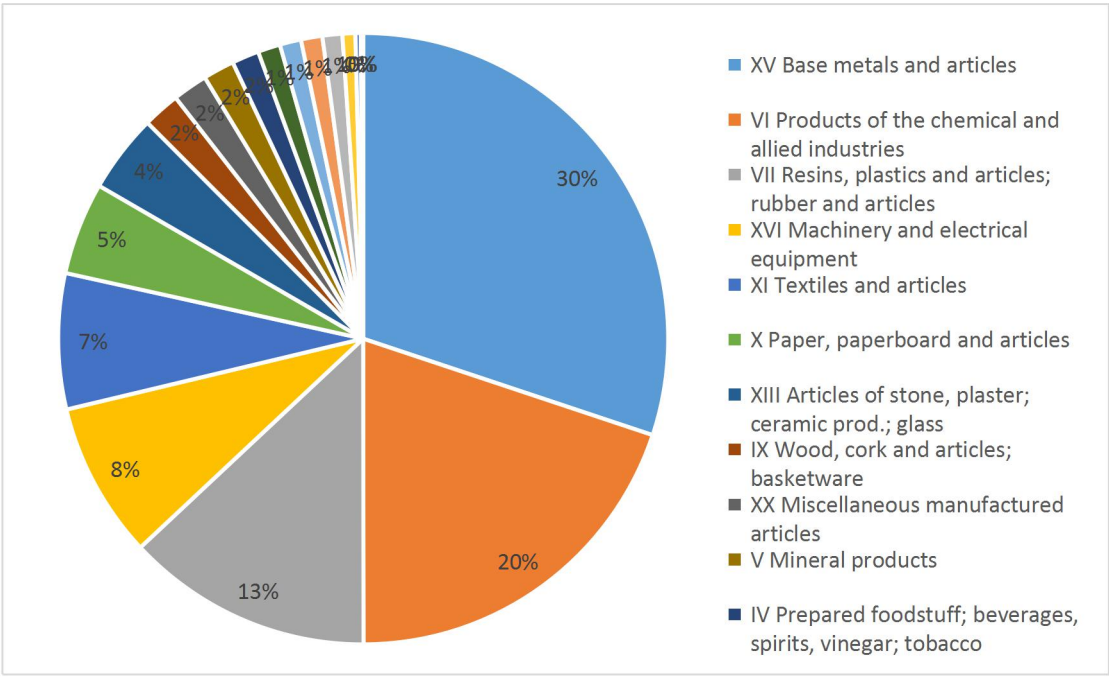
[9] M. J. Trebilcock, R. Howse, and A. Eliason. 2013. "Antidumping laws." In *The Regulation of International Trade*, p333. New York: Routledge.



Source: WTO

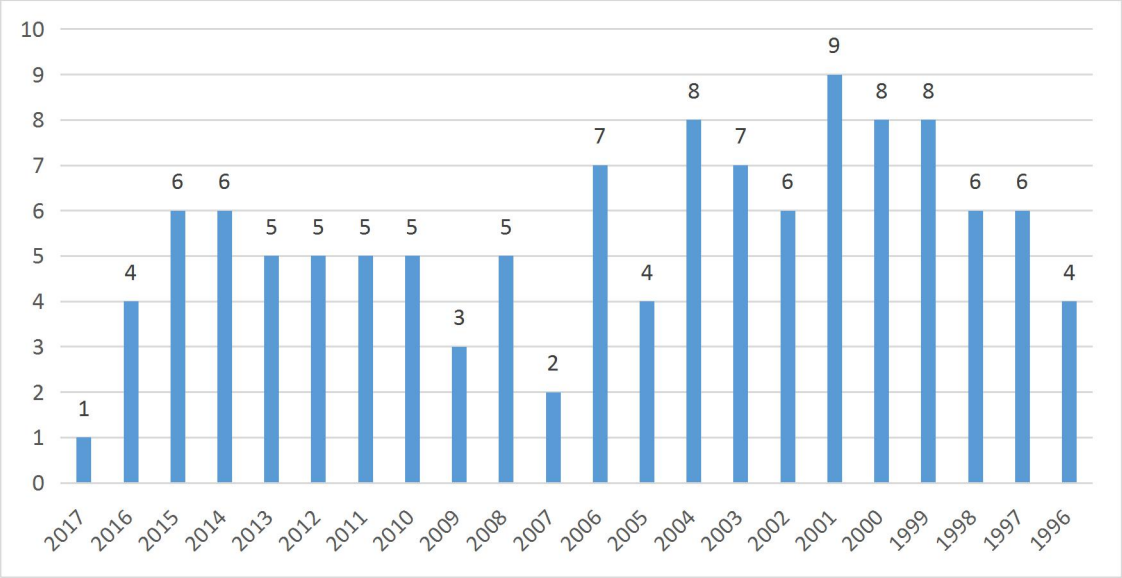
With regard to the sectors that are most frequently involved in the AD actions, base metals and articles take the first place, taking up 30 percent of the total AD investigations, followed by chemical products (20%), resins, plastics and rubber (13%), machinery and electrical equipment (8%), and textiles (7%). See Figure 6.

Figure 6 Anti-dumping Initiations: By Sector 1995.1.1 - 2016.6.30



Source: WTO

Figure 7 WTO Trade Disputes Involving AD from 1996 to May 2017



Source: WTO

Figure 7 shows the annual WTO trade disputes involving AD, which are counted based on the requests for consultations by the WTO parties since the establishment of WTO in 1995. Seemingly, since 2006, the AD disputes turned to be stable, staying at a relatively low level compared to the first decade after WTO came into being. The most recent and still ongoing dispute case is *European Union - Anti-Dumping Measures on Certain Cold-Rolled Flat Steel Products from Russia.*[10] As illustrated in Figure 6, this case involves the sector, which is most vulnerable to AD actions - the base metals sector.

2.2 Article VI of GATT 1947

The Article VI of General Agreement on Tariffs and Trade (GATT 1947) provides the

[10] See more at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds521_e.htm

regulations dealing with anti-dumping and countervailing duties in international trade.[11] Amongst the whole seven paragraphs, to begin with, paragraph 1 provides the determination of dumping:

> "1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another
>
> (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
>
> (b) in the absence of such domestic price, is less than either
>
> (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
>
> (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.
>
> Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability."

According to this language, before imposing anti-dumping duties on the products exported by a contracting party, at least two key issues need to be considered first:

(1) Whether dumping of the products from an exporting country is occurring in the importing country's market?

(2) Whether it "causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry?"

To handle the first issue, obviously, one has to compare the export price of the alleged

[11] See more at General Agreement on Tariffs and Trade.

"dumped" product with "normal price", the price which is defined in Paragraph 1 (a)(b). And it seems even much more complicated to deal with the second issue, which entails checking the "material injury", as well as the "causality". However, this article was obviously too ambitious to cover probably the most complicated and difficult trade issue of the time with no more than three pages. Although it was significant in terms of providing multilaterally-agreed principles to all the contracting parties, still in real practice, it appeared to be too ambiguous and macro, leading to different interpretation and application by different countries. As the development of world trade, it was imperative that contracting countries started negotiating on a more operative and feasible agreement to make up the current defect. Naturally, in the following five decades, negotiations on anti-dumping never failed to be one of the most important agendas for a couple of rounds, such as Kennedy Round in the 1960s, Tokyo Round in the 1970s, and Uruguay Round in the 80s and 90s, and probably the most fiercely disputed trade issue.

Fortunately, in the Uruguay Round, the parties were able to finally reach an agreement that sets forth the implementation of anti-dumping actions in a comparatively detailed sense. The following section (section 2.3) will look at the negotiation and the contents of the agreement closely.

2.3 Anti-dumping Agreement

2.3.1 The negotiation process of ADA

People became interested in dumping issues as early as the 1920s as they began to realize that anti-dumping laws had the potential to serve as trade barriers, two decades after the establishment of the first national anti-dumping laws.[12] Actually, Canada enacted the first AD regulation in 1904.[13] The binding international rules on anti-dumping were then developed and included in 1947 General Agreement on Tariff and Trade(GATT 1947) as Article VI. Nevertheless, Article VI only covers dumping of goods and another flaw of it is that the wording is vague, leading to inconsistent interpretation and application. For example, the "industry", "like product" that require more explanations were not articulated in detail in the text. These problems definitely led to contracting parties' negotiations on more detailed and practical codes.

The first such code was later adopted and came into force in 1967 during the Kennedy Round, known as 1967 Agreement on the Implementation of Article VI of the GATT (the Anti-dumping Code). As the name suggests, through a total of 17 articles, it basically elaborates detailed criteria and procedures for the implementation of anti-dumping actions.[14] Nevertheless, one thing to note is that the United States actually failed to sign the Code in the end, with the reason that its domestic legislation, to be exact, US Anti-dumping Act is partly

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[12] Vermulst, Edwin A. 2005. "Introduction." In *The WTO Anti-dumping Agreement*(2005), p2. New York: Oxford University Press.

[13] Michael J. Finger. "The Origins and Evolution of Antidumping Regulation." *World Bank Policy, Research, and External Affairs Working Papers Series* WPS 783 (1991) p.3

[14] R.M. Bierwagen. 1990. *GATT Article VI and the Protectionist Bias in Antidumping Law*. p23. Deventer, the Netherlands: Kluwer.

inconsistent with the Code, with regard to the issues such as the test for causality and US, and therefore Congress was unwilling to revise their laws. Consequently, this code finally turned out to be not as practical as thought.

It was followed by 1979 Code, which was adopted in the Tokyo Round. The new Code made some modifications to the former one. First of all, the requirements for causality, which gave rise to discrepancy between the US Act and the Code, became looser. Secondly, concerning the injury, the factors that are to be considered while evaluating the impact of the dumping were explicitly laid out, and this section is handled in Article 3 of the 1979 Code.[15] These improvement made the 1979 Code a better guidance for countries to operate against dumping notwithstanding the fact that it was more like a broad framework.

However, in practice, the 1979 Code was still to some extent incomplete and ambiguous. To make things worse, only the 27 Parties to the Code were bound by its requirements.[16] This endogenous defect caused, or facilitated a proliferation of trade disputes revolving anti-dumping, increasing tension between developed countries, newly industrializing countries (NICs) and developing countries. Hence, anti-dumping came as an important agenda during the Uruguay Round. As a result, an agreement on anti-dumping was finally reached and it was embodied as part of the General Agreement on Tariffs and Trade 1994.

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[15] M. J. Trebilcock, R. Howse, and A. Eliason. 2013. "Anti-dumping Laws" In T*he Regulation of International Trade*. P335. New York: Routledge.

[16] WTO. "Technical information about anti-dumping". Accessed on April 20, 2017. https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm

2.3.2 Introduction to ADA

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (known as Anti-dumping Agreement) included in the General Agreement on Tariffs and Trade 1994 (GATT 1994) Annex 1A, is part of the Single Undertaking,[17] clarifying and expanding Article VI. Typically the two operate together in dealing with AD issues within the framework of WTO nowadays. [18]

Besides, Anti-dumping Agreement is probably considered as the most complex and technical agreement of WTO. The texts of the agreement are divided into three parts, including eighteen sub-articles, along with two annexes. To begin with, part I contains fifteen articles, covering a wide range of contents in detail, to be specific, "principles", "determination of dumping", "determination of injury", "determination of domestic injury", "initiation and subsequent investigation", "evidence", "provisional measures", "price undertakings", "imposition and collection of anti-dumping duties", "retroactivity", "duration and review of anti-dumping duties and price undertakings", "public notice and explanation of determinations", "judicial review", "anti-dumping action on behalf of a third country", "developing country members". It seems impossible and too ambitious for me to enclose all the topics in detail in this thesis, instead I will try to cover several key elements that are necessary to determine dumping, injury, and causality.

According to the Article 1 (Principles) of GATT Article VI, "an anti-dumping measure

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[17] Bown, Chad P. 2008. "The WTO and Antidumping in Developing Countries". *Economics & Politics* 20(2), p263.

[18] WTO. "Introduction to anti-dumping in the WTO". Accessed on April 19, 2017 https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm

shall be applied only under the circumstances provided for in Article VI of GATT 1994".[19] This language on the one hand, permits anti-dumping measures by individual countries towards the imports that may threaten or hurt their own domestic industries, on the other hand, however, it actually strictly confines and limits the scope of applying such instrument.

Dumping

Article 2 (Determination of Dumping), coming as probably the most important section of GATT Article VI, sets out the rules to determine whether the products concerned are dumped by foreign exporters or not and to what extent, i.e. the margin of dumping. The Article 2.1 provides that:

> "...a product is to be considered as being dumped, i.e. Introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country."

Following this article, to identify whether dumping is occurring, several key elements need to be considered, or in other words, several "evidentiary requirements" should be satisfied. To begin with, the "like product". Nevertheless, Article 2.1 does not define the meaning for "like product", but Article 2.6 does though only in a few words. Article 2.6 sets outs that:

> "the term "like product" shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration."

[19] WTO Legal Texts, p147, Article1.

Typically, the product under consideration is defined by both descriptive language and technical national and international standards, the widely accepted one like HS code.[20] However, in the real dumping investigations, it is still frequently disputed while identifying whether the corresponding product in the importing country are "like product" compared with the product under consideration. There are a great number of WTO dispute cases over this issue. After all, if the product is finally defined not as the "like product", then when calculating the domestic industry injured, this product will not be counted.

The second concept calling for attention is "export price". In most cases, it is based on the transaction price at which the exporter export the product to the importing country. However, it may happen that the export price is "unreliable". According to Article 2.3,

> "In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine."

As is mentioned in Article 2.3, if the export price is not available or not reliable, authorities are authorized to "construct" the export price based on the price at which the product under consideration is first sold, and simultaneously "allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be

[20] Vermulst, Edwin A. 2005. "Dumping" In *The WTO Anti-dumping Agreement*. p13. New York: Oxford University Press.

made." (ADA Article 2.4)

The third element to be considered is "normal value". It is normally based on the price of the like product in the exporter's domestic market. When this cannot be used, two alternatives are available — the price charged by the exporter in a third country, or a calculation based on the combination of the exporter's production costs, plus a reasonable amount for administrative, selling and general costs and for profits.[21]

In determining the normal value, several points need to be noted. Probably the most important and complicated one may be that domestic sales should be made in the "ordinary course of trade" referred to in Article 2.1. The Article 2.2.1 states that prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade, and thus may be disregarded in determining the normal value.[22] In this case, normal value has to be constructed. However, if such sales account for less than 20 percent of the total domestic sales, then they are perceived as unsubstantial and thus will be taken into consideration. Furthermore, according to ADA footnote 2, sales of the like product destined for domestic consumption should constitute no less than 5 percent of the sales of the product under consideration to the importing country. Less than 5 percent will be recognized as insufficient for a proper comparison. If the above conditions with respect to the "ordinary course of trade" and domestic sales volume of the like product cannot be satisfied, then a representative export price of the like product to a third country or a constructed value will be adopted for a proper comparison.

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[21] See Anti-dumping Agreement Article 2.2.

[22] See Anti-dumping Agreement Article 2.2.1.

Another concern over the determination of normal value is the non-market economy status. In light of ADA Article 2.7 and the second Supplementary Provision to Article VI paragraph 1, it states that in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.[23] Such country is regarded as a "non-market economy" and normal value will be taken from a third country that is market economy. Trade disputes regarding defining alleged "non-market economy" status, and the use of "surrogate" have been surging since the language is somehow ambiguous and these issues are closely related to the calculation of dumping margin. More detailed agreements should be supplemented to settle this problem and to avoid actions that are contradictory to WTO 's fair trade principle.

After determining the normal value and export price, a fair comparison should be made between them at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. (ADA Article 2.4)

Injury

Ant-dumping Agreement Article 3 (Determination of Injury) is another article worth scrutinizing. Article 3 and Article 4 mainly touch on the topic of injury. In summary, four dimensions need to be looked into while determining the injury: the like product, domestic

[23] See more in Anti-dumping Agreement Article 2.7.

industry, material injury and causal link between dumped products and the material injury.

To begin with, after embarking on the investigation, so-called "like product" should be first determined. The alleged "like product" has already been covered when discussing the determination of dumping above. Again, it is provided for in ADA Article 2.6, and is regarded as a concept of great importance since it is the basis of determining which companies constitute the domestic industry, and that determination in turn governs the scope of the investigation and determination of injury and causal link.[24]

In the next step, "domestic industry" is ought to be explicitly defined. As mentioned earlier, the definition of domestic industry is handled in a separate article - Article 4 (Definition of Domestic Industry). The Article 4.1 writes that

> "...the term 'domestic industry' shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products..."

In this language, the domestic industry is recognized as the whole like products, or a major proportion of the total such products in terms of domestic production. Two exceptions are raised: (1) The first one deals with the situation where producers are related to the exporters or importers, or themselves are importers of the products allegedly dumped.[25] Under such circumstance, those producers may not be treated as domestic industry; (2) The second exclusion refers to a specific case where the territory of a Member is divided into several

[24] WTO. "Technical information on anti-dumping". Accessed on April 26, 2017. https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm

[25] See Anti-dumping Agreement Article 4.1 (i).

isolated markets, and each such markets may be deemed as a separate industry (known as "regional industry") if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In this case, existence of injury may be found despite the fact that a major proportion of the domestic industry is not injured on the condition that there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.[26]

When it comes to the imposition of duties on the dumped products in regional industry, the following key points need to be minded in accordance with Article 4.2: (1) the products in question should be destined for final consumption to that area; (2) importing Member may levy the anti-dumping duties without limitation, even if it be a constitutional law of the Member, only if (a) the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given, and (b) such duties cannot be levied only on products of specific producers which supply the area in question.[27]

Then, it is time to check the "material injury". ADA footnote 9 rules that the term "injury" shall, unless otherwise specified, be taken to mean *material injury* to a domestic industry, *threat of material injury* to a domestic industry or *material retardation* of the establishment of such an industry. Among these three types of injury, *threat of material injury* is well defined

[26] See Anti-dumping Agreement Article 4.1 (ii).

[27] Anti-dumping Agreement Article 4.2.

in Article 3.7. Plus, Article 3.1, as a general article, provides that "a determination of injury for purposes of Article VI of GATT 1994 shall be based on *positive evidence* and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products." The following three articles (Art. 3.2, 3.3, 3.4) further articulate the issues concerning how to assess or evaluate the volume, effect and the impact of the dumped imports respectively. With respect to the volume and effect of the dumped imports, Article 3.2 writes:

> "3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance."

Prominently, the phrase "significant" is repeated for four times in such a short paragraph, indicating that the injury degree is considered in the evaluation. However, the problem is that the injury degree has not been explained explicitly, for instance, in a quantitative manner. Hence, this is prone to be very controversial when faced with a real dumping case. Regarding the examination of the impact of dumped imports on the domestic industry, Article 3.4 especially points out that all relevant economic factors and indices having a bearing on the state of the industry shall be evaluated, and several factors are exemplified. Nevertheless, it

adds that the list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance, meaning that other factors may also be assessed if necessary.

Article 3.3 is worth noting as well. It refers to a circumstance where more than one country are engaged in the investigations for dumped imports. This article regulates that the effects of dumped imports may be "cumulatively" assessed if it is judged by the authorities that "*(a)* the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product." (ADA Article 3.3)

Causality

Finally, the causal link between the dumped imports and the injury to the domestic industry is required to be demonstrated. In this regard, in accordance with Article 3.5, examining all the relevant evidence is necessary. Article 3.5 also requires that any known factors other than the dumped imports that may be relevant should be examined and simultaneously the injuries caused by these other factors must not be attributed to the dumped imports. Factors like the volume and prices of imports not sold at dumping prices and so forth are exemplified. Therefore, it is necessary for the investigation authorities to develop analytical methods for determining what evidence is or may be relevant in a particular case, and for evaluating that evidence, taking account of other factors which may be causing

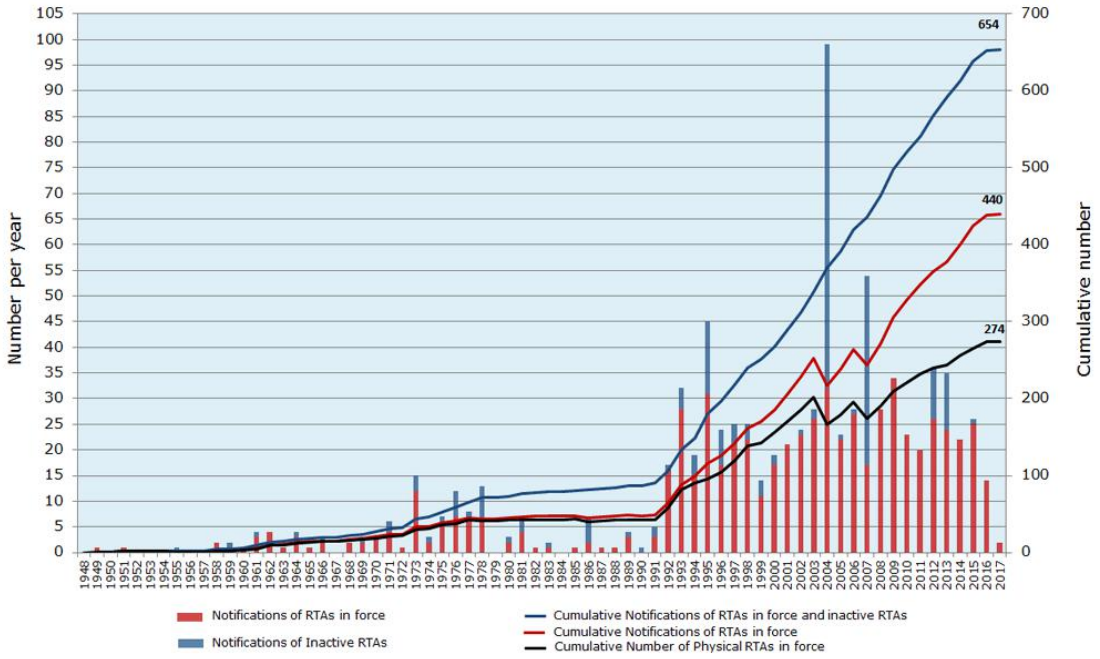
injury.[28]Conceivably, it will take a lot of time and energy for the investigation authorities to accomplish all these work. However, concerning the surging anti-dumping actions around the world currently, they seem to enjoy this time-consuming job thanks to the huge economic benefits that may be shifted to the country.

Chapter III. A Survey of the Anti-dumping Rules in China and Korea's FTAs

Recently, with the stuck Doha Round and consequent malfunction of multilateral trade system, i.e. WTO, regional trade arrangements, especially bilateral free trade agreements have been surging. Figure 8 shows the evolution of RTAs in the world that are notified to GATT/WTO since GATT period. It is clearly shown in the figure that since the beginning of 1990s, RTAs in the world started to skyrocket. By region, countries in the European region have concluded RTAs the most, followed by countries in East Asia and South America.

Figure 8 Evolution of Regional Trade Agreements in the World, 1948-2017

[28] WTO. "Technical information on anti-dumping". Accessed on April 28, 2017. Available at https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm



Source: RTA Section, WTO Secretaries, 5 May 2017.

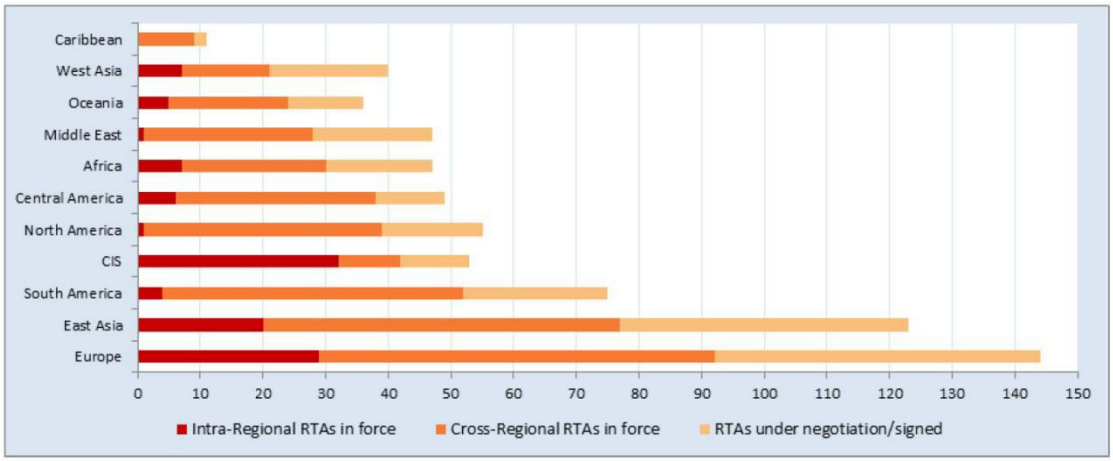
Note:

- Notifications of RTAs: goods, services & accessions to an RTA are counted separately.

- Physical RTAs: goods, services & accessions to an RTA are counted together.

- The cumulative lines show the number of notifications/physical RTAs that were in force for a given Year.

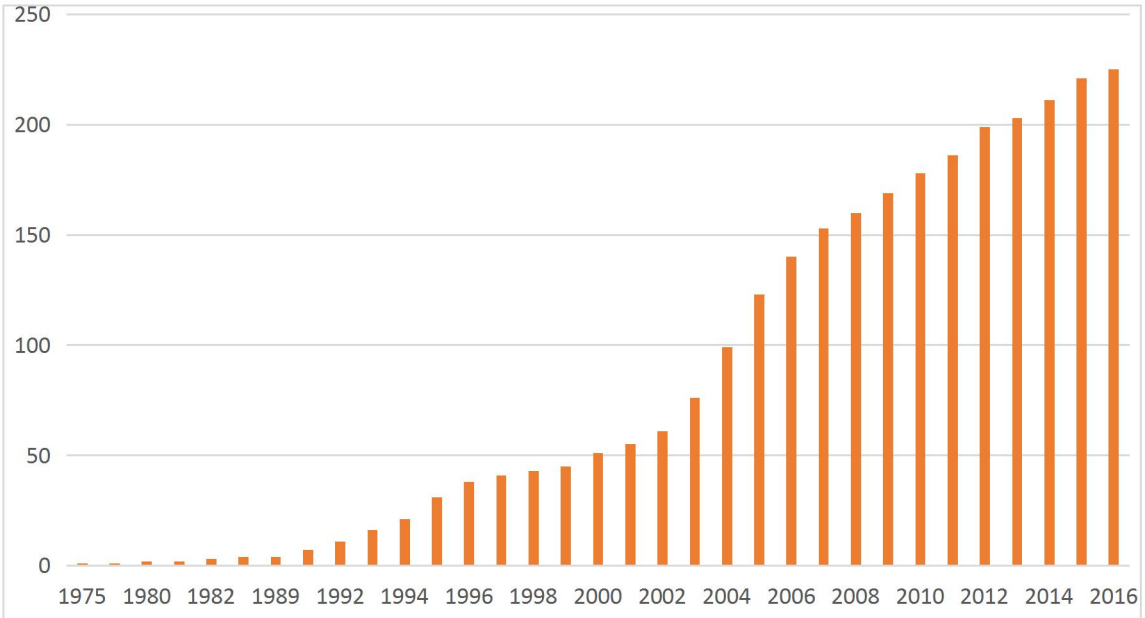
Figure 9 RTAs in force, and under negotiation by region (as of December 2016)



Source: WTO

Figure 10 shows the evolution of FTAs in Asia by year. Apparently, this graph illustrates a noticeable trend similar to the world total. Since 1990s, especially the early 2000s, FTAs have been proliferating in Asia. More accurately speaking, in 1991, only 7 FTAs were signed, while as of 2016, a total of 225 FTAs are whether under negotiation, or in effect or ready to come into force, having achieved a drastic increase of more than 30 times in just 25 years! This suggests that Asian countries are much in favor of FTAs. Beyond that, we can also observe from this graph that the total number of FTAs is still on a rapid and stable rise in recent years. This reality therefore entails paying careful attention to the phenomenon continuously, as well as conducting related studies in a deeper and wider sense. Furthermore, when looking into the statistics for Asian region by country/economy, Singapore concludes a total of 31 FTAs up to January 2017, taking the first place, followed by India and Korea, and China comes as the fifth largest FTA signing country in Asia.

Figure 10 FTAs for Asian countries 1975-2016 (cumulative)

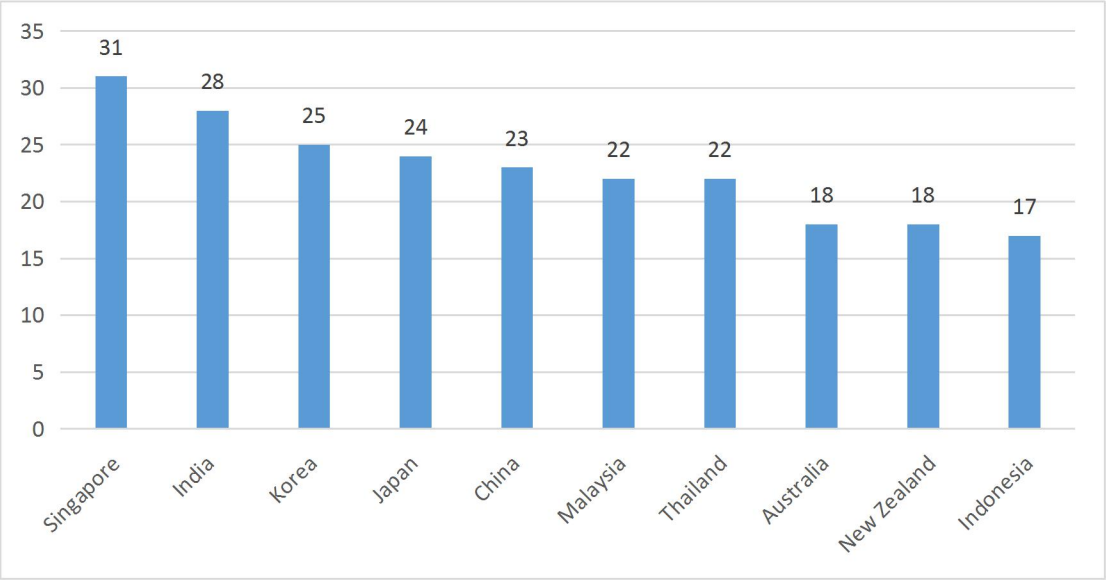


Source: Asian Development Bank

Notes: FTAs that are under negotiation, signed and in effect and signed but not yet in effect are all counted in this figure.

The data are collected as of January 2017.

Figure 11 FTAs by Asian Country/Economy



Source: Asian Development Bank

Notes: FTAs that are under negotiation, signed and in effect and signed but not yet in effect are all counted in this figure.

The data are collected as of January 2017.

Nowadays, it seems that with the world trade turning increasingly complicated, FTA texts accordingly tend to include as much contents as possible. For instance, China - Korea FTA texts are consist of 22 chapters, covering various trade topics, including SPS (Chapter 5), TBT (Chapter 6), e-commerce (Chapter 13), intellectual property rights (Chapter 15) and trade remedies (Chapter 7). Additionally, GATT 1947 Article XXIV 8 (b) sets forth that

"A free-trade area shall be understood to mean a group of two or more customs

territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories."

Because of such language, a large number of scholars are debating over whether AD procedures should be allowed in the FTAs since the AD rule is definitely one of the restrictive regulations of commerce mentioned in this article. However, in reality, a great deal of FTAs and customs unions still maintain AD and other trade remedies.[29] Besides, Jee Hyung Lee (2011) also mentioned that in some cases, regional trade arrangements adopt trade remedy rules that are divergent from the WTO system.[30] According to Lee (2011), typically, the AD regulations within the FTA texts can be categorized into three types, the first type is completely consistent with WTO AD rules, denoted as "WTO-AD"; the second type is one attaching additional texts on the basis of WTO AD, named "WTO-AD Plus"; the third is entirely eliminating AD measures in the FTA texts, called "AD Abolition".[31] So here I am going to take a closer look at the rules regulating AD in the FTAs concluded by China and Korea one by one, and figure out whether AD is still allows, if so, whether revisions are made to WTO AD and how AD rules are newly developed in such FTAs.

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[29] Jee Hyung Lee. 2011. "The Future of Anti-dumping Rules in a Prospective China-Korea Free Trade Agreement". 국제경제법연구 9(2): p330.

[30] Jee Hyung Lee. 2011. "The Future of Anti-dumping Rules in a Prospective China-Korea Free Trade Agreement". 국제경제법연구 9(2): p325.

[31] Jee Hyung Lee. 2011. "The Future of Anti-dumping Rules in a Prospective China-Korea Free Trade Agreement". 국제경제법연구 9(2): p330-p331.

3.1 A Survey of Anti-dumping Rules in China's FTAs

Table 1 China's FTAs

China's FTAs	Signing Date	Enacting Date	Category
Hong Kong (CEPA)[32]	2003.6.29	2003.6.29	AD Abolition
Macao (CEPA)	2003.10.17	2003.10.17	AD Abolition
CN-ASEAN	2004.11.29	2005.1.1	WTO-AD
CN-Chile	2005.1.18	2006.10.1	WTO-AD
CN-Pakistan	2006.11.24	2007.7.1	WTO-AD
CN-New Zealand	2008.4.7	2008.10.1	WTO-AD Plus
CN-Singapore	2008.10.23	2009.1.1	WTO-AD Plus
CN-Peru	2009.4.28	2010.3.1	WTO-AD Plus
Taiwan (ECFA)[33]	2010.6.29	2010.9.12	WTO-AD Provisionally
CN-Costa Rica	2010.4.8	2011.8.1	WTO-AD Plus
CN-Iceland	2013.4.15	2014.7.1	WTO-AD
CN-Swiss	2013.7.6	2014.7.1	WTO-AD Plus
CN-Australia	2015.6.17	2015.12.20	WTO-AD Plus
CN-Korea	2015.6.1	2015.12.20	WTO-AD Plus

Source: China FTA Network, Available at http://fta.mofcom.gov.cn/english/index.shtml

As of April 2017

As is shown in the above table, as of April 2017, China has concluded 14 FTAs with 14 economies and regions. Among the 14 FTAs, three of them were signed between mainland

[32] CEPA stands for Closer Economic Partnership Arrangement between mainland China and Hong Kong, mainland China and Macao.

[33] ECFA is short for Economic Cooperation Framework Agreement, signed between mainland China and Taiwan.

China and Hong Kong[34], Macao[35], and Taiwan[36] respectively. The Closer Economic Partnership Arrangement between mainland China and HK, mainland China and Macao both set out that any contracting party shall not impose AD anti-dumping measures on the imported products from the other party, a complete cancellation of AD. This is very significant in the sense that these two FTAs are the only ones proposing a complete abolition of the AD use amongst all the FTAs concluded by China so far. However, such practice is understandable if we take into consideration the implicit political significance these two agreements will have to mainland China, Hong Kong Special Administrative Region and Macao Special Administrative Region. Actually, in both official texts of the two FTAs, the principle of "Following one country, two systems", as well as the principle "To achieve mutual benefit, complementary advantages and common prosperity" are reinforced.

As for Economic Cooperation Framework Agreement between mainland China and Taiwan, the situation is a bit different. There is so-called "Early Harvest Program"[37] for goods and services in order "to accelerate the realization of the objectives of this Agreement". In this program, the tariff reductions and Provisional Rules of Origin shall be implemented according to Annex I and II within six months after the entry into force of this Agreement. Besides, provisional trade remedy measures in this program "refer to measures provided for in sub-paragraph (5) of paragraph 2 of Article 3 of this Agreement",

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[34] "CEPA between Mainland China and Hong Kong", Available at http://tga.mofcom.gov.cn/article/zt_cepanew/subjectaa/200612/20061204078587.shtml

[35] "CEPA between Mainland China and Macao", Available athttp://tga.mofcom.gov.cn/article/zt_cepanew/subjectdd/200612/20061204086091.shtml

[36] "ECFA between Mainland China and Taiwan", Available at http://tga.mofcom.gov.cn/article/zt_ecfa/subjectii/201007/20100707004065.shtml

[37] Mainland China - Taiwan ECFA, Chapter 4 "Early Harvest".

which includes the measures set forth in *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, the *Agreement on Subsidies and Countervailing Measures* and the *Agreement on Safeguards* of the WTO, and the safeguard measures between the two Parties applicable to the trade in goods between the two Parties.[38] To put it simple, for now, the contracting parties shall follow WTO rules regarding trade remedies, including AD, etc. However, it simultaneously stipulates in this article that Parties agree to "conduct consultations on an agreement on trade in goods no later than six months after the entry into force of this Agreement". Till now, no any additional agreement with respect to trade remedy measures have been established yet. Nevertheless, considering the arrangements of CEPA, it is very likely that future trade agreements on trade remedy measures, including AD and CVD, between mainland China and Taiwan will be much aggressive and liberal.

Those FTAs concluded with ASEAN[39], Chile[40], Pakistan[41] and Iceland[42] by China all belong to the WTO-AD category, meaning that they basically follow GATT Article VI and ADA. One common characteristic for these FTAs is that except for Iceland, they were all signed in the early 2000s, following the conclusion of CEPA, the first FTA China concluded. Of these FTAs, China-ASEAN FTA seems to be a little complicated. On 4 November 2002, China signed Framework Agreement on Comprehensive Economic

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[38] Mainland China - Taiwan ECFA, Chapter 2 "Trade and Investment", Article 3.2 (5).

[39] China - ASEAN FTA, Available at http://fta.mofcom.gov.cn/dongmeng/annex/hwmyxieyi_en.pdf

[40] China - Chile FTA, Available at http://fta.mofcom.gov.cn/chile/xieyi/myxd_en.pdf

[41] China - Pakistan FTA, Available at http://fta.mofcom.gov.cn/pakistan/xieyi/zqshxieyi_en.pdf

[42] China - Iceland FTA, Available at http://fta.mofcom.gov.cn/iceland/xieyi/xieyizw_en.pdf

Cooperation between ASEAN and China with ten ASEAN member countries.[43] The agreement also includes an early harvest program for goods trade, providing an interim framework for tariff reductions and eliminations. Afterwards, Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China[44] (which entered into force on January 1, 2005), and later Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Cooperation[45] (entering into force on 1 July 2007) were additionally signed. Particularly, specific commitments made by every member are included in these FTAs.

Another point worth noting concerning China-ASEAN FTA is that although in Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China, the Parties "agree and reaffirm their commitments to abide by the provisions of the WTO disciplines on...anti-dumping measures..."[46], yet Article 14 of this agreement provides that "each of the ten ASEAN Member States agrees to recognize China as a full market economy". If so, the calculation of dumping margin may probably be affected. Therefore, if judged rigorously, China-ASEAN FTA may be regarded as WTO-AD Plus instead.

Finally, the remaining 7 FTAs are all categorized as WTO-AD Plus, which were mostly concluded after 2008. Obviously, many of these FTA Parties were engaged in a

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[43] Note: 10 ASEAN countries include Singapore, Malaysia, Thailand, Indonesia, Brunei, Cambodia, Laos, Myanmar, Philippines, and Vietnam.

[44] Available at http://fta.mofcom.gov.cn/dongmeng/annex/hwmyxieyi_en.pdf

[45] Available at http://fta.mofcom.gov.cn/dongmeng/annex/fwmyxieyi_en.pdf

[46] Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China, Article 7, Available at http://fta.mofcom.gov.cn/dongmeng/annex/hwmyxieyi_en.pdf

large number of AD actions against China, for instance, Korea, Australia, New Zealand and Peru. After scrutinizing the FTA texts, the rules regarding AD in the FTAs with Swiss[47], New Zealand,[48] and Singapore[49] are almost identical. In addition to the commitments to abide by WTO AD rules (GATT Article VI and ADA), they also stress in particular that one Party should notify the other Party as soon as possible "following the acceptance of a properly documented application from an industry in one Party for the initiation of an anti-dumping investigation in respect of goods from the other Party and before proceeding to initiate such investigation."[50] This is simply a minor complementary rule in terms of the procedures of initiating AD investigations against the FTA counter parties. Similarly, China-Australia proposes holding High Level Dialogue on Trade Remedies in order to enhance dialogue and consultations in matters of AD between the two Parties. Moreover, the languages on AD are almost the same in China-Costa Rica FTA[51] and China-Peru FTA[52]. Regarding these two FTAs, in addition to the WTO AD rules and the notification requirement mentioned earlier, they also supplement the articles that require providing time frames, procedures and any documents necessary for the offering of an undertaking. Furthermore, they also stipulate explicitly the investigation authorities for each FTA contracting party.

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[47] China-Swiss FTA, Available at http://fta.mofcom.gov.cn/ruishi/xieyi/xieyizw_en.pdf

[48] China-New Zealand FTA, Available at http://fta.mofcom.gov.cn/newzealand/doc/wenben/wenben_en.pdf

[49] China-Singapore FTA, Available at http://fta.mofcom.gov.cn/singapore/doc/cs_xieyi_en.pdf

[50] China-Swiss FTA Article 5.2, Available at http://fta.mofcom.gov.cn/ruishi/xieyi/xieyizw_en.pdf

[51] China-Costa Rica FTA, Available at http://fta.mofcom.gov.cn/gesidalijia/xieyi/xieyizw_08_en.pdf

[52] China-Peru FTA, Available at http://fta.mofcom.gov.cn/bilu/annex/bilu_xdwb_05_en.pdf

The most recent signed FTA between China and South Korea is probably the most complicated one in terms of AD regulations. To begin with, it reaffirms obligations under WTO AD rules and requires notifications and consultations between the Parties. Beyond that, it also supplies several substantial articles, for example, the methodology in determining the dumping margins, procedures for price undertakings, cumulative assessment, and *de minimis* standard, etc. It also sets forth public hearings and disclosure of essential facts and considerations, as well as requires the establishment of Committee on Trade Remedies.[53] Like this, much different from other WTO-AD Plus FTAs, this FTA sets a series of detailed rules with respect to AD and CVD, indicating that both countries are really serious about AD and CVD issues in their trade.

Overall, most FTAs concluded by China follow the WTO rules on AD. Some of them only add a few procedural rules to the basic WTO rules. Nevertheless, the most recent China-Korea FTA supplements much more articles on AD and CVD probably due to the fact that these two countries have suffered too many AD and CVD actions in the past two decades. Three exceptions are FTAs signed between mainland China and HK, Macao, and Taiwan, where AD measures are aggressively prohibited in CEPA, and hopefully the forthcoming modified ECFA. Personally, this is more or less under political consideration to enhance the unification of "One China". However, chronologically, China is seemingly switching to include more restrictions on AD and other trade remedies in its FTA texts.

[53] China-South Korea FTA, Available at http://fta.mofcom.gov.cn/korea/korea_special.shtml

3.2 A Survey of Anti-dumping Rules in Korea's FTAs

South Korea concluded and enacted 15 FTAs in the past one and a half decades. Following the criteria mentioned above, I made the following list showing the categories each of these FTAs belongs to. As we can see, unlike China, almost all the FTAs signed by Korea, except for Korea-Chile[54] and Korea-ASEAN FTA[55], are WTO-AD Plus type, meaning that additional restrictive languages on AD are mostly supplemented into Korea's FTA texts.

Table 2 Korea's FTAs

Korea's FTAs	Signing Date	Enacting Date	Category
KR-Chile	2003.2	2004.4.1	WTO-AD
KR-Singapore	2005.8	2006.3.2	WTO-AD Plus
KR-EFTA	2005.12	2006.9.1	WTO-AD Plus
KR-ASEAN	2006.8	2007.6.1	WTO-AD
KR-India	2009.8	2010.1.1	WTO-AD Plus
KR-EU	2010.10.6	2011.7.1	WTO-AD Plus
KR-Peru	2011.3.21	2011.8.1	WTO-AD Plus
KR-USA	2007.6	2012.3.15	WTO-AD Plus
KR-Turkey	2012.8.1	2013.5.1	WTO-AD Plus
KR-Australia	2014.4.8	2014.12.12	WTO-AD Plus

[54] Korea-Chile FTA, Available at http://www.fta.go.kr/main/situation/kfta/lov5/cl/2/

[55] Korea-ASEAN FTA, Available at http://www.fta.go.kr/main/situation/kfta/lov5/asean/2/

KR-Canada	2014.9.23	2015.1.1	WTO-AD Plus
KR-China	2015.6.1	2015.12.20	WTO-AD Plus
KR-New Zealand	2015.3.23	2015.12.20	WTO-AD Plus
KR-Vietnam	2015.5.5	2015.12.20	WTO-AD Plus
KR-Columbia	2013.2.21	2016.7.15	WTO-AD Plus

Source: Korea FTA Comprehensive Support Portal, available at http://ftahub.go.kr/main/

With regard to those WTO-AD Plus FTAs, in addition to WTO AD rules, to begin with, Korea-Singapore FTA especially prohibits zeroing when calculating the dumping margins and suggests applying the "lesser duty".[56] In addition to a requirement on notification to the other Party, Korea-EFTA FTA also proposes a "lesser duty".[57] Besides, it also stipulates that after 5 years' implementation of this agreement, the Parties will discuss the need to maintain the possibility of taking AD measures, and from then on biennial reviews will be conducted.[58] On the other hand, this language suggests that there is a possibility that AD may be prohibited in the future.

In the Korea-India CEPA, basically, it prohibits the zeroing and proposes a lesser duty, as well as regulates the termination of the AD investigations.[59] Another point worth noting is that in Article 2.13 General Provision, Paragraph 2(e), it states that an inclusion of further AD

[56] Korea-Singapore FTA Article 6.2 Paragraph 3

[57] Korea-EFTA FTA Article 2.10 Paragraph 1

[58] Korea-EFTA FTA Article 2.10 Paragraph 2

[59] Korea-India CEPA Article 2.17, 2.18

disciplines may be possible on a negotiation basis between the Parties, making the AD rules more open and probably more restrictive. In Korea-EU FTA, again notification is emphasized, besides, a series of substantial regulations, like lesser duty, *de minimis* standard, cumulative assessment are included.[60] It also shows an effort to take public interests into consideration in the text. Next, Korea-Peru FTA mainly adds more rules regarding the AD investigation procedures.[61] An imposition of lesser duty is also required. As for Korea-USA FTA, it emphasizes the notification and consultations between them, and provides further rules on price undertaking.[62]

The Korea-Turkey FTA[63] rules concerning AD are almost the same as Korea-EU FTA despite that the order and the way of delivering the rules are a little different. Korea-Australia FTA[64], Korea-New Zealand FTA[65] AD regulations are almost identical to that in Korea-USA FTA. With respect to Korea-Canada FTA, it stipulates that notification and consultations shall be made before initiating AD investigations. Furthermore, it adds more disciplines on the lesser duty and price undertakings.[66] Similarly, Korea-Vietnam FTA concerning AD includes rules on lesser duty, prohibition of zeroing, notification and consultations, price undertakings, cumulative assessment, and investigation after termination resulting from a review.[67] Finally,

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[60] Korea-EU FTA Section D

[61] Korea-Peru FTA Section C Article 8.9

[62] Korea-USA FTA Section B Article 10.7 Paragraph 3, 4

[63] Korea-Turkey FTA Section C

[64] Korea-Australia FTA Section C

[65] Korea-New Zealand FTA Section B

[66] Korea-Canada FTA Article 7.7

[67] Korea-Vietnam FTA Section B

abolition of zeroing, lesser duty rule and notification and consultations are included in Korea-Columbia FTA.[68]

To sum up, compared to China's FTAs, Korea's FTAs tend to provide more substantial disciplines, such as lesser duty rule, prohibition of zeroing, cumulative assessment, price undertaking on AD in particular. Besides, some of Korea's FTAs leave the regulations on AD open to future modifications, such language is seldom seen in China's FTAs. However, additional regulations on notification and consultations to enhance transparency and efficiency are similar in both China and Korea's FTAs. Beyond that, considering the recent trend of AD rules in China's FTAs, the possibility that China chooses to include more specific and substantial AD rules in its future FTAs is high.

Chapter IV. Empirical Study on the Relationship between Anti-dumping and FTAs

Having accomplishing the surveys on the rules concerning AD in China and Korea's FTAs, this paper moves on to examine the relationship between the enactment of these FTAs and the AD actions (primarily AD initiations). According to Ahn and Shin (2011)[69], the conclusion of FTAs is regarded as a double-edged sword: for one thing, it may increase AD actions because of FTA parties' intention to protect the domestic industries from the soaring imports from the

[68] Korea-Columbia FTA Section B

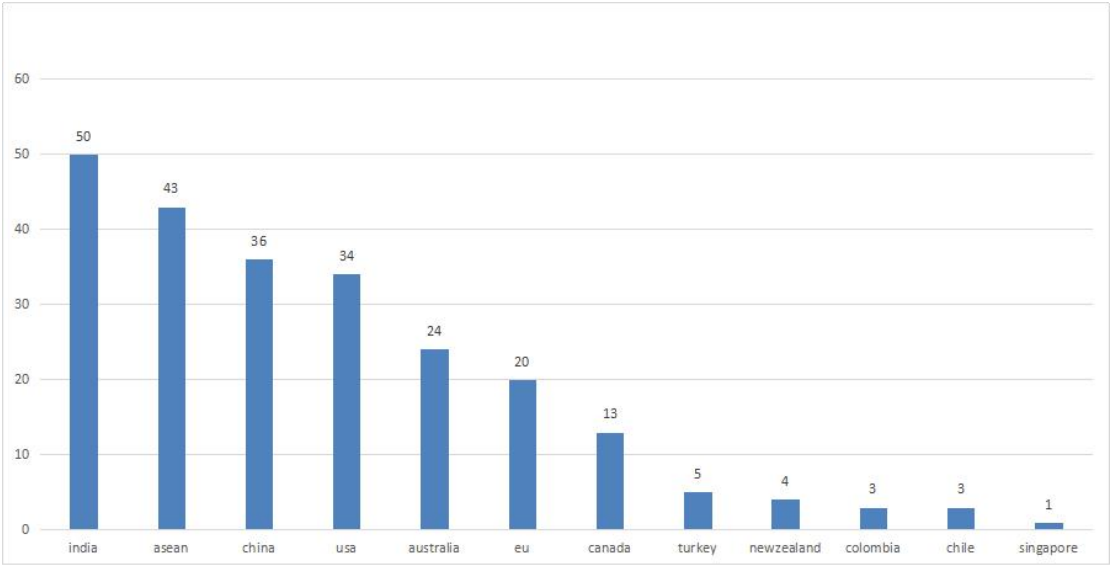
[69] Ahn, Dukgeun, and Shin, Wonkyu. 2011. "Analysis of Anti-dumping Use in Free Trade Agreements". *Journal of World Trade* 45(2): 431.

FTA counter parties. For another, however, it is somehow likely to reduce the use of AD considering the objectives of concluding a FTA. However, as one result of the empirical study in Ahn and Shin's article, to be sure, that there is a reverse relationship between FTA and AD activities.

4.1 Preliminary findings from Korea and China's evidence

Figure 12 demonstrates the aggregate AD initiations on a bilateral basis between Korea and its FTA contracting parties from 2001 to 2016.[70] India, ASEAN and China are the top three countries among all the FTA parties that engaged in the most AD investigations with Korea. In the case of China, China had most AD investigations with FTA counter parties like ASEAN, Korea, and Australia (Figure 13).

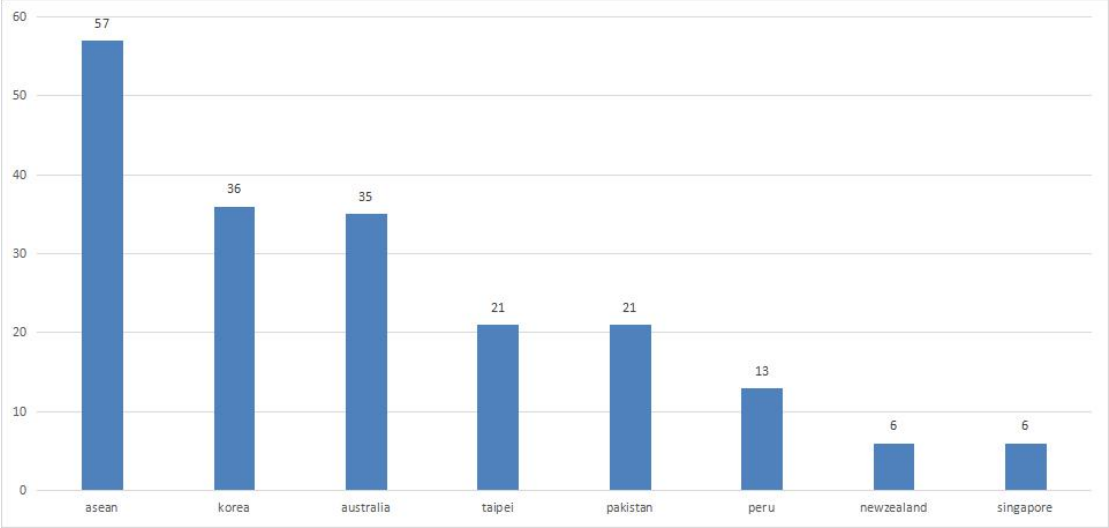
Figure 12 Total Bilateral AD Initiations between Korea and its FTA Counterparties, 2001.7.1-2016.6.30



[70] Note: Both the AD investigations initiated by Korea and its counterparties are counted in.

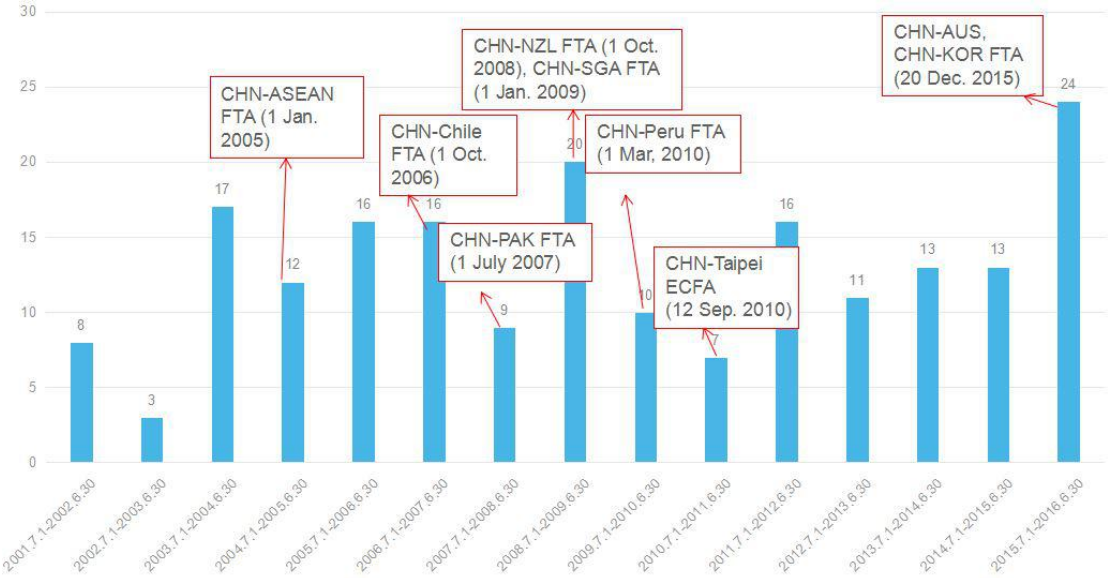
Source: WTO “Annual Reports of the Committee on Anti-dumping Practices to the General Council”

Figure 13 Total Bilateral AD Initiations between China and its FTA Counter parties, 2001.7.1-2016.6.30



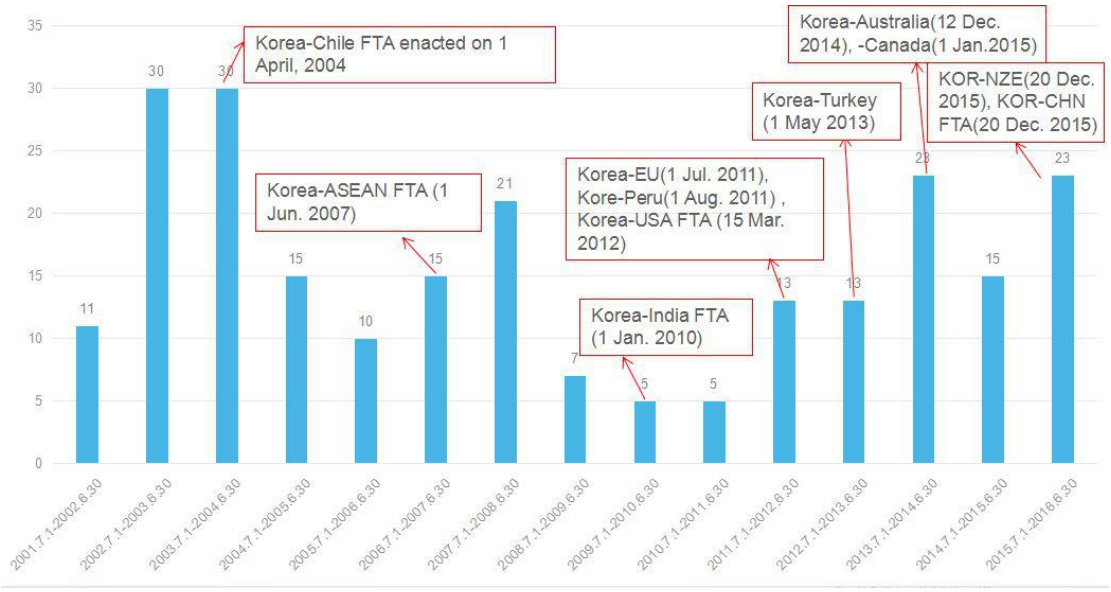
Source: WTO “Annual Reports of the Committee on Anti-dumping Practices to the General Council”

Figure 14 Bilateral AD Initiations between China and its FTA Counter parties, 2001.7.1-2016.6.30



Source: Ibid. Made by the author.

Figure 15 Bilateral AD Initiations between Korea and its FTA Counter parties, 2001.7.1-2016.6.30



Source: Ibid. Made by the author.

Figure 14 shows the number of bilateral AD investigations between China and FTA counter parties by year. In the graph, the enactment date of several FTAs concluded by China and the parties that most frequently get engaged in AD investigations with China are also marked. During the period starting from 2009 to June of 2015 when most FTAs were concluded, except for 2015, it did show a slight diminishing of AD activities between China and its FTA contracting parties compared to the period before 2009. The data for Korea and its FTA counter parties are handled the same way (Figure 15). Notwithstanding that the data turn out more volatile, a decline in AD investigations can be observed in the following one or two years after the enactment of a FTA. Nevertheless, these findings solely by observing the

bar charts are too vague to be reliable and we cannot draw a conclusion for sure in an imprudent manner unless other factors are excluded, such as bilateral trade value, GDP growth rate, etc. Therefore, in the following sections, I am going to apply a more scientific and prevalent method - econometric regression to examine the relationship between AD investigations and FTAs. And based on these preliminary findings, my temporary expectation is that there should be a negative relationship between them.

4.2 Setting up the econometric model

In order to better examine the relationship between the enactment of FTAs and AD investigations (initiations), the related data for 11 economies, to be specific, India, USA, EU, Australia, China, Canada, Turkey, Korea, Pakistan, Peru, New Zealand (sorted by the frequency of AD use)[71] with a time series from 1994 to 2015 are selected. As a matter of fact, among these 11 countries and economies, 7 are FTA partners of Korea (India, USA, EU, Australia, China, Canada, Turkey) and heaviest AD users around the world. 5 countries are FTA partners of China (Korea, Pakistan, Peru, New Zealand).

With regard to the dependent variable, the number of bilateral AD initiations is assigned as the dependent variable. Since the AD initiation number is discontinuous, allegedly count variable, it may not be appropriate to employ OLS (Ordinary Least Squares) aggression,

[71] See Figure 5

instead, negative binomial regression seems to be more suitable.[72]

As for independent variables, it seems necessary to include some macroeconomic factors as control variables which are very likely to affect AD use as well. Among those macroeconomic factors, first of all, trade value is considered. As has been mentioned previously, the signing of FTAs may cause an increase in AD activities due to the partners' intention to protect their domestic producers in import-competing sectors from the possible injury as a consequence of increasing imports from FTA counter parties. Thus, bilateral import and export value will be examined.

Second, according to Knetter & Prusa (2003), a slump in economic activity in the importing country can cause domestic firms' poor performance and consequently increase the findings of material injury[73], which is crucial in the decision regarding whether to launch AD investigations or not. Besides, this article also provided another interpretation, that a weak economy in importing country may lead exporting countries to lower their exporting prices. So in this regard, GDP growth rate should be included as another control variable. However, Knetter & Prusa (2003) also added that injury is usually determined over the 3 years preceding the filing, therefore it is plausible to use the average GDP growth rate of the AD filing year t0, t-1 and t-2 year. Likewise, the trade value will be collected on a 1 year lag basis for this examination.

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[72] Ahn, Dukgeun, and Shin, Wonkyu. 2011. "Analysis of Anti-dumping Use in Free Trade Agreements". *Journal of World Trade* 45(2): 441.

[73] Michael M. Knetter & T.J. Prusa, "Macroeconomic Factors and Antidumping Filings: Evidence from Four Countries", *Journal of International Economics* 61, No. 1 (2003), 1–17.

Furthermore, the total number of AD actions against FTA partners by all other WTO member countries will be taken into account as an "indicator of partner countries' vulnerability of exportation to AD investigations".[74]

Finally, FTA dummy variable is included. When FTA is enacted, FTA=1, or else FTA=0. Consequently, the regression model can be follows:

$$ADijt = \alpha + \beta 1 Ln(IMij(t-1)) + \beta 2 Ln(EXij(t-1)) + \beta 3(GDPGRi(t0) + GDPGRi(t-1) + GDPGRi(t-2))/3 + \beta 4 ADjt + \beta 5 FTAijt$$

Note: $ADijt$ denotes the number of AD initiations by country i against FTA counter party j in year t.

$IMij(t-1)$ denotes the import value of country i from country j in year (t-1).

$EXij(t-1)$ denotes the export value of country i to country j in year (t-1).

$GDPGRi(t0)$, $GDPGRi(t-1)$, $GDPGRi(t-2)$ represent the GDP growth rate of country i at year t0, t-1 and t-2 respectively.

$ADjt$ represents the total AD investigations country j respond to in year t.

$FTAijt$ represents whether the FTA between country i and country j is in force.

Table 3 Summary of Variables

Variable Name	Variable Clarification	Expected Relationship	Data Source
bad	Bilateral AD investigations between FTA partners	Dependent variable	WTO
tad	The total number of AD actions against FTA partners by all other WTO member countries	+	WTO

[74] Ahn, Dukgeun, and Shin, Wonkyu. 2011. "Analysis of Anti-dumping Use in Free Trade Agreements". *Journal of World Trade* 45(2): 440.

lnim	Logrithm of year t-1 imports from partner	+	UN COMTRADE
lnex	Logrithm of year t-1 exports to partner	-	UN COMTRADE
rgdpgr	Real GDP growth rate of the past three years from the investigation initiating year	-	World Bank Data Bank
fta	Dummy variable (fta=0 if it is not yet enacted, or else fta=1)	-	Korea FTA Comprehensive Support Portal

4.3 Statistical summary of the data

There are a total of 462 samples (Table 4), while the total samples for bilateral AD initiations are 418. This is because the time series selected ranges from 1994 to 2015, and the bilateral AD initiation data reported by China are only available after 2001 when China gained its accession into the WTO. Besides, the AD initiation data for Pakistan are available from 2003. The maximum bilateral AD investigations per year were initiated by Pakistan against China in 2015. In 2015, China responded to 81 AD investigations from other WTO members in the world, the most among the countries examined in the study.

Table 4 Statistical Summary of Variables

Variable	Obs	Mean	Std. Dev.	Min	Max
bad	418	0.866	1.380	0	10
tad	462	18.729	20.937	0	81
lnim	462	22.062	1.796	17.439	25.706
lnex	462	22.045	1.776	17.439	25.706

fta	462	0.190	0.393	0	1
rgdpgr	462	5.497	3.175	-0.763	13.712

4.4 Empirical results

Primarily, five sets of negative binomial regression were run and the results are shown in Table 5 and Table 6 below. Regression I is an aggregate one. Regression II is one with Korea as the target country for AD investigations. In Regression III, Korea is the reporting country. Regression IV is one for China and its FTA counter parties, and finally Regression V is for Korea and its FTA counter parties.

With respect to the empirical results, first of all, the coefficient for annual total AD investigations toward the target country from all the WTO members is positive and very significant in Regression I. Actually, in all the five regressions, the results for this variable are the same, indicating a positive relationship between the total AD investigations and bilateral AD investigations from FTA partners. In other words, countries which suffer more AD investigations from the world also tend to be subject to more investigations from their FTA partners.

Furthermore, with regard to the relationship between FTAs and AD actions, a negative relationship has been observed, and the result is significant at 5 percent level. This result confirms the hypothesis I made above, indicating that conclusion of FTAs reduces the AD initiations between FTA contracting parties by 51% in Regression I. This conclusion is

reinforced by the results in Regression II and IV, where the coefficients for this variable are both significantly negative as well, and the reduction effect is a reduction by 58% and 66% respectively.

Unfortunately, the results for variable import value, export value and GDP growth rate are all insignificant in the aggregate regression. For variable “lnim”, the coefficient is insignificantly positive in Regression I, however, in Regression III where Korea is treated as the reporting country, the coefficient is positive and significant. This is probably because that, according to the literature mentioned earlier, Korea is worried about the possible harm on its domestic industries caused by the increasing imports and use the non-tariff barrier - AD to protect them. But interestingly, in Regression II where Korea is treated as the AD target instead, the result for this variable is significantly negative, meaning that even though the imports from Korea increase in the countries like USA, EU, China, Canada, India and Australia, these countries tend not to increase AD investigations against Korean products. In my view, these countries are large economies and the imports from Korea only constitute a small share of their total imports, so they do not bother to initiate AD investigations, which may deteriorate the bilateral relationship politically.

As for variable “lnex”, although it is not significant in Regression I, IV and V, it does show a significantly positive result in Regression II and a significantly negative result in Regression III. One interpretation for the positive relationship in Regression II between exporting value and bilateral AD from FTA partners is that the countries with huge exporting value are prone to be subject to more AD investigations. And as a retaliatory measure, these exporting countries tend to file more AD against the counter parties. For the negative result

for exporting value shown in Regression III, it means that Korea tends to file less AD investigations to its trade partners when it increases its exports. As far as I am concerned, the reason may be that Korea is concerned about the possible retaliation from its counter parties, since the exports of Korea to these large economies take up most of Korea' total exports, and thus Korea voluntarily reduces the AD investigations against these countries.

Finally, with respect to GDP growth rate, a negative relationship is found in the aggregate regression and the regression between China and its FTA counter parties, consistent with my previous expectation, but it is insignificant. Nevertheless, in Regression III and Regression V, the results are significantly positive, especially for Regression III, which means that if GDP growth rate increases by 1%, the AD investigations initiated by Korea will increase by 34%. One explanation may be that as the GDP grows faster, the imports and exports will accordingly increase. And as is shown in Regression III, the AD positive effect caused by increasing imports (1.048) is larger than the negative effect caused by increasing exports (-0.693). Therefore, the aggregate effect is positive.

Dependent Variable: Bilateral AD	Reg. I (aggregate)	Reg. II (Foreign countries as reporting countries, Korea as target)	Reg. III (Korea as reporting country)
tad	0.024***	0.070***	0.017**
	(0.004)	(0.014)	(0.008)
lnim	0.134	-0.432***	1.048***
	(0.086)	(0.134)	(0.393)

lnex	0.057	0.431***	-0.693**
	(0.086)	(0.108)	(0.392)
fta	-0.511**	-0.575**	0.058
	(0.205)	(0.264)	(0.565)
rgdpgr	-0.021	0.029	0.344***
	(0.037)	(0.032)	(0.099)
constant	-4.822***	-0.727	-11.343***
	(1.147)	(1.496)	(3.791)
Number of observations	418	147	132
Fixed variance parameter (alpha)	1.154	0.258	0.206
	(0.214)	(0.130)	(0.308)
Log likelihood	-502.715	-218.584	-82.981

Table 5 Negative Binomial Regression Results I, II, III

Note: * means that the result is significant at 10% level, ** - significant at 5% level, and ***- significant at 1% level.

Table 6 Negative Binomial Regression Results IV, V

Dependent Variable: Bilateral AD	Reg. IV (between China and its FTA counter parties)	Reg. V (between Korea and its FTA counter parties)
tad	0.027***	0.033***
	(0.007)	(0.009)
lnim	-0.084	0.175
	(0.156)	(0.115)
lnex	0.184	-0.015
	(0.165)	(0.101)
fta	-0.658**	-0.080

	(0.205)	(0.266)
rgdpgr	-0.024	0.080**
	(0.060)	(0.038)
constant	-3.232**	-4.658***
	(1.480)	(1.528)
Number of observations	176	279
Fixed variance parameter (alpha)	0.866	1.096
	(0.273)	(0.239)
Log likelihood	-200.859	-351.253

Note: Ibid.

4.5 Limitations of the Empirical Study

Notwithstanding that the empirical tests finally show part of the results as presumed, regarding the impact of FTAs particularly, still some outcomes regarding the macroeconomic factors are contradictory to the literature and are hard to interpret. For further study, it may be better to add more samples to the data set and divide the countries into for example developing and developed country groups based on the developing level, or divide the countries according to their economic scale.

Second, in these empirical tests, other factors like political relationship or other political and social elements have not been taken into consideration. However, these factors are themselves difficult to catch and define.

Chapter V. Conclusions and Policy Implications

An explosion of FTAs has been a prominent feature of the current world. Although many scholars are still doubting the possible impact of the enactment of FTAs on AD actions, the empirical study in this paper actually has shown a negative relationship between enacting FTAs and AD investigations. If this result reflects the facts, then hopefully we can expect that less AD investigations will emerge in the future if the recent trend of FTA proliferation continues. Or to put it another way, AD actions can be reduced through governments' efforts to conclude more FTAs with the trade partners.

Furthermore, the AD rules provided in FTA texts entails more scrutiny and studies. Currently, an abolition of AD use in FTAs seems to be impossible and unfeasible, actually, most FTAs concluded by Korea are regulating AD with more restrictive rules on the basis of abiding by GATT Article VI and Anti-dumping Agreement. And China is showing a similar tendency in its recent FTAs as well. Probably for now, the best choice for AD regulations are WTO plus - more explicit and restrictive regulations on most disputed AD issues, such as zeroing, lesser duty, etc. Thus more studies need to be conducted to deal with such substantial trade issues.

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