State, Business Interests, and China’s Use of Legal Trade Remedies

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The emergence of China as a major trade and manufacturing center of the world has resulted in growing trade confrontation between that nation and other advanced industrial states in recent years. Not only have Chinese firms been subject to a large number of antidumping actions from abroad, but Beijing also increasingly had to respond to trade challenges from its old and new rivals alike over an expanding array of trade issues.\(^1\) While bilateral negotiation approaches remain a policy option for Beijing, China is increasingly turning to other legal trade remedies, such as antidumping duties, safeguard measures, and the dispute settlement procedures of the World Trade Organization (WTO) to address its trade grievances. If, in the past, China has primarily pursued a diplomacy-negotiation-oriented approach to dispute resolution, responding unilaterally to foreign demand for trade liberalization,\(^2\) it is now increasingly able to resort to its own domestic legal trade remedy laws and the rules of the WTO to settle trade disputes. Indeed, China’s use of fair trade laws is starting to resemble their use by other major users of these tools. The growing frequency with which Beijing utilizes legal trade remedies therefore represents an important departure from China’s traditional reliance on diplomatic route to trade dispute resolution and promises to have a major impact on China’s interactions with its trading partners.

This paper explores the motivations, manifestations, and implications of China’s turn toward legal trade remedies by examining a few recent developments in China’s foreign trade policy, including, specifically, China’s antidumping actions and China’s reactions to the U.S. steel safeguard measure. It will be argued that at the level of the state, the move toward the utilization of legal trade remedies has been driven by a desire to use the institutionalized rules and procedures provided by the legal for a to restrain the United States’ unilateral exercise of power and to retaliate against perceived unfair foreign trade practices against Chinese firms. But
while the Chinese government has played a major role pushing for the turn toward such a trade strategy, domestic industries have largely shaped the pattern in which were remedies were deployed. Importantly, while import-competing industries such as chemical and steel which have both experienced significant import surge in recent years have been active users of legal trade remedies, the preferred policy instruments of these two industries have differed as the chemical industry has resorted to antidumping measures far more frequently than the steel industry. This paper argues that the contrasting responses of the steel and chemical industries can be explained by the different market conditions confronted by firms in these two sectors. Factors such as employment, profitability, and the structure of imports and exports may differently affect the tendency of the chemical and steel companies to seek trade protection.

In addition, industry conditions influence the resolution of China’s antidumping disputes. While Chinese industries have won most of the AD cases, foreign firms have also obtained favorable outcomes in cases under several situations: a) where downstream users of the dumped products lodge complaints against the AD duties due to the higher input prices the duties incur; b) where the foreign firm has substantial investment in China and hence possess greater bargaining leverage vis-à-vis the Chinese authorities; or c) where the buyers of the products engage in export processing and hence were exempt from the import duties. Under these circumstances, the case outcome favors foreign firms as the final rulings often yield no evidence of dumping by foreign firms or only result in minimal dumping margins. Consequently the linkages created by China’s increasing enmeshment in the world economy have created forces in favor of openness in trade disputes, reducing the effectiveness of trade protection the state provides to domestic industries.
To support the above contention, this paper examines three substantive issue areas that have captured spotlight in China’s foreign trade policy in the past few years, including antidumping (AD), and China’s reactions to the U.S. steel safeguard action. The legal trade remedies this paper examines include not only the rules of the WTO but also China’s domestic trade remedies (such as antidumping and safeguards) that Chinese authorities have more recently incorporated into their trade policy arsenal. The first part of this paper provides an overview of China’s use of legal trade remedies and argues that Chinese authorities have come to view the use of legal trade instruments as a way of constraining the United States’ unilateral exercise of trade power during the era of bilateral negotiations. The subsequent sections argue that even though the state has consciously pushed for the use of legal trade remedies, the actual pattern of the deployment of these remedies is highly influenced by business actors. Specifically, by examining the heavy concentration of China’s AD duties in the chemical sector and the outcomes of the settlement of AD cases, this part of the paper points to the growing influence of business interests on China’s use of legal trade remedies. The paper concludes by discussing the implications of such an emerging trade strategy based on the use of legal trade remedies for China’s trading partners.

The State and the Turn toward the Use of Legal Trade Strategy

This section makes the argument that the Chinese state has played an important role in the decision to pursue the legal route to trade dispute resolution which has come to be viewed as offering several advantages over the ad hoc, bilateral route to dispute resolution. Indeed, most of
the trade negotiations between China and the United States during the 1980s and 1990s were
carried out either through bilateral talks or under the framework of Section 301 of U.S. trade law.
The Chinese leadership’s inability to pursue dispute resolution under other fora (such as dispute
resolution under the WTO) substantially constrained Beijing’s room of maneuver, leaving ad hoc
diplomatic negotiations as Beijing’s primary means for dealing with its trading partners.
However, such diplomatic route to dispute resolution allowed the United States to unilaterally
shape the negotiation agenda and challenge Chinese policy. While Beijing did not always make
the concessions demanded by the United States during these negotiations, it nevertheless found
itself in a very disadvantaged position, having had to respond to U.S. demands on an ad hoc
basis. For example, the United States challenged Chinese textile policies that led to the surge of
low-cost Chinese textile products in the U.S. market, culminating in a move to unilaterally
impose quota restrictions on textile imports from China. The United States also exerted pressure
on China under Section 301 of U.S. trade law, threatening to impose sanctions on Chinese
products unless that country modifies its practices hindering U.S. producers’ access to the
Chinese market. Finally, the United States has threatened to revoke China’s Most-Favored-
Nation (MFN) status unless that country removes its market access barriers and enhancing its
protection of U.S. intellectual property rights (IPRs), in addition to improving its human rights
practices.4

In part due to the perceived disadvantages of diplomatic routes to dispute resolution, legal
trade remedies, including the rule-based WTO multilateral forum, have come to be viewed by
Chinese leaders as offering a viable alternative to bilateral negotiations with the United States.
In particular, legal trade remedies were seen to offer several advantages over the bilateral route of dispute resolution.

First, resort to legal trade remedies offered the prospect of restraining the unilateral exercise of power by more powerful countries. Importantly, the option to resort to legal trade remedies allow a developing country such as China to force its more powerful trading partners to come to the negotiation table and discuss issues of interest to itself. As such, it prevents more powerful countries from dominating the agenda of discussion, allowing China to operate on a more level playing field with its trading partners. Moreover, compared to the bilateral approach, the legal route to dispute resolution has the advantage of adjudicating disputes on the basis of a set of relatively standard and clear rules and criteria. For example, antidumping duty investigations follow more or less technical criteria and thus have the advantage of minimizing political interference. The dispute settlement process of the WTO similarly brings a set of impartial standard and rules that are accepted by all member countries to bear on the parties to a dispute. Negotiations conducted within an institutional context therefore privileges legal over political criterion. Additionally, joining a multilateral trade organization and acquiring the ability to file a legal WTO complaint provides a state with a distributive tactic it otherwise does not have as a nonmember. The underlying goal of the WTO dispute settlement system is to encourage the parties to negotiate solutions between themselves. Turning the dispute over to a neutral arbitrator in Geneva can therefore be considered as a move in a bilateral dispute negotiation, or a distributive tactic intended to worsen the defendant’s alternative to agreement and force unilateral policy changes from the defendant. In this sense, the dispute mechanism of the WTO presents an alternative course of action in case of the failure of bilateral negotiations.
Indeed, Beijing’s decision to pursue entry into the WTO clearly reflected the Chinese leadership’s desire to operate in a rule-oriented environment that would allow it to operate on a level playing field with the United States. The rhetoric of Chinese officials indicate that even though Chinese leaders were clearly aware of the constraints that WTO entry places on China’s autonomy and policy choices, they nevertheless recognized that WTO entry, by offering an institutionalized form of cooperation, would allow them to effectively and legitimately defend China’s economic interests. For example, in his comments on the effects of multilateralism in 2004, Chinese Vice Foreign Minister Wang Yi noted that “multilateralism … is an important means to resolve international disputes…. It is also the best way to promote democratic and law-based international relationships.” Similarly, in his speech to the United Nations General Assembly in 2003, China’s Foreign Minister Li Zhaoxing stated that “multilateral cooperation … should become the principal vehicle in the handling of international affairs.” These pronouncements clearly indicate that Chinese leaders have come to view multilateralism as an effective means for advancing China’s interests in both the security and the economic realms.

Second, the multilateral forum allows Chinese leaders to achieve their objectives of domestic economic reform. As the country became closely integrated with the world economy, Chinese leaders have come to see multilateral policymaking as a means of preventing other countries from adopting policies that may negatively affect the Chinese economy or of binding themselves to market liberalization. In particular, as the multilateral framework oftentimes allows countries to make cross-sector linkages for trade liberalization and as it could invoke reputational and normative pressures to bear on countries that fail to live up to their obligations, it had the potential of binding the Chinese leadership vis-à-vis their domestic constituencies and
encouraging recalcitrant ministries and officials to engage in reforms that they otherwise would be unwilling to undertake.

Third, the resort to legal trade remedies could also be viewed as part of China’s domestic legal reforms. Since the early 1990s, the Chinese government has sought further reform of its domestic legal structure to emphasize the rule of the law. Just as in other policy areas, Chinese leaders have come to see attempts to engage in institutionalization of domestic rules and procedures as part and parcel of the reform of its domestic legal system.  

Thus, the embracement of legal trade remedies could be viewed as a conscious choice of Chinese leaders. Indeed, the Chinese government had undertaken institutional reforms so as to harmonize China’s domestic political institutions more in line with the requirements of the WTO. For instance, the WTO Affairs Section was established under the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), now transformed into the Ministry of Commerce (MOC) to handle WTO-related issues. The Chinese government also devoted substantial monetary and human resources to beef up the institutional capacity of that agency. Along similar lines, Beijing has paid greater emphasis to develop greater familiarity with the rules of the WTO and, as will be detailed below, instituted an antidumping regime so as to better defend the interests of Chinese industries. These institutional changes formed the organizational foundation for Chinese leaders to pursue a rules-oriented trade strategy.

**Business Interests and the Emerging Pattern of Trade Protection in China**

While the Chinese state was favorably disposed toward the use of legal trade remedies, it will be argued that sectoral interests have largely shaped the way in which China’s legal trade
remedies were deployed. This section presents evidence of the influence of domestic industries on China’s trade policy. It argues that China’s use of legal trade remedies largely reflected the ability of China’s large import-oriented industries to influence the policy process as large, heavily concentrated industries such as steel and chemicals have dominated China’s use of antidumping measures. In addition, the steel industry has been an active user of China’s newly developed safeguard provisions. In other words, even though Beijing has played an important role promoting the shift from bilateral negotiation approaches to a rules-based negotiation approach, business interests have greatly influenced the pattern of the deployment of legal trade instruments in China. This section highlights the influence of sectoral interests in China’s trade policy both by examining the sectoral incidence of China’s AD actions and China’s use of the safeguard measure. It also considers the channels through which business interests managed to influence the government’s trade policy.

An important manifestation of China’s emerging trade strategy revolving around legal trade remedies is its increasing invocation of antidumping duties against foreign firms. A number of studies (e.g., Huang 2002; Messerlin 2004; Kennedy 2005a) have provided detailed account of the development of China’s antidumping regime. Most of these studies suggest that like many other developing countries which adopted AD laws in part to retaliate against the rising incidence of AD petitions by foreign countries, China implemented its own antidumping regulations out of a desire to defend the legitimate interests of Chinese industries. These studies (e.g., Kennedy 2005b) also suggest that even though China’s antidumping regime has a number of deficiencies such as using the concept of the “major proportion” of the industry as the threshold for accepting complaints, the lack of transparency of the AD investigation procedure,
and the privileged position domestic applicants enjoy over foreign respondents, etc., it nevertheless has increasingly come to resemble AD systems in advanced industrialized states.\textsuperscript{11}

Of more interest to this paper than the development of China’s antidumping regime is the sectoral pattern of AD initiations in China. As will be shown below, while China’s antidumping measures closely mirror foreign AD actions directed against Chinese firms, they were also tilted disproportionately in favor of China’s heavily concentrated, import-competing industries such as steel and chemical industries.

Several characteristics of the AD suits initiated by China are noteworthy. First, most of the petitioners in these suits are domestic firms instead of foreign-invested ones and state-owned enterprises have been disproportionately favored. For example, of the thirty-four AD suits China initiated between November 1997 and November 2004 for which the identity of the petitioners is known, only three involve joint ventures.\textsuperscript{12} In 1999, together with several other domestic chemical companies, DuPont Foshan Hongji filed an antidumping suit against polyester film imported from South Korea. In 2001, a new Sino-American joint venture – Zhanjiang Xinzhongmei Chemial Co., Ltd.) participated in an antidumping suit against polystyrene from against South Korea, Japan, and Thailand. In the same year, a Japanese-invested company, Sichuan Ajinomoto Co., and another Hong Kong invested firm, Fujian Quanzhou Daquan Lysine Co., joined several other Chinese firms in an antidumping suit against lysine imported from the United States, South Korea, and Indonesia. The last two cases were dismissed as Chinese authorities only found evidence of dumping, but not of injury by the alleged foreign firms.

Second, and more important, the major sectors in which the Chinese government has initiated antidumping suits pertain to chemicals and steel, two industries that have also become
the prime targets of antidumping investigation from abroad. Between the initiation of the antidumping law in 1997 and 2006, the Chinese government has launched forty-five antidumping investigations against a broad array of foreign products, ranging from newsprint, cold-rolled silicon steel sheets, polyester films, and acrylates, etc. Figure 1 presents the sectoral composition of China’s AD cases. It shows that industries such as chemical, steel, and paper have dominated the use of the AD instrument in China. The chemical industry, in particular, has taken up the lion’s share of China’s AD duties, accounting for two-thirds of all AD initiations in China.¹³

The initiation of AD duties in the chemical and steel industries can in part be explained by the high level of import competition both industries have been confronted with in recent years. As both industries have a strong domestic orientation and lack competitiveness internationally, import competition in recent years has posed a major challenge to both industries. Table 1 and Table 2 present the percentage change in exports and imports of China’s key industrial sectors. As the data illustrates, annual percentage change in imports in the steel

**Table 1: Sectoral Composition of China’s Antidumping Duties**

<table>
<thead>
<tr>
<th>SECTOR</th>
<th>COUNT</th>
<th>PERCENT (%)</th>
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<tbody>
<tr>
<td>Chemical</td>
<td>30</td>
<td>67</td>
</tr>
<tr>
<td>Paper</td>
<td>5</td>
<td>11</td>
</tr>
<tr>
<td>Steel</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>Textiles &amp; Apparel</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>Light Industry</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Electronics</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Pharmaceuticals</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>45</td>
<td>100</td>
</tr>
</tbody>
</table>
industry ranged anywhere from 20.87 percent to 67.85 percent between 1999 and 2003 and from 5.36 to 71.58 percent in the chemical industry during the same period. While industries such as automobiles and electrical machinery are similarly characterized by import surges, increases in imports in these industries were matched by reasonably strong growth in exports, which arguably dampened the tendency of these industries to seek trade protection. The steel and chemical industries’ domestic orientation and lack of export competitiveness therefore reinforced both industries’ vulnerability to import penetration.

Table 2: Annual Percentage Change in Exports of Key Sectors (1995-2003)

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Chemical</td>
<td>0.05</td>
<td>11.48</td>
<td>2.74</td>
<td>3.68</td>
<td>16.34</td>
<td>9.93</td>
<td>14.22</td>
<td>66.29</td>
</tr>
<tr>
<td>Paper</td>
<td>-12.57</td>
<td>23.92</td>
<td>-1.00</td>
<td>-6.57</td>
<td>16.11</td>
<td>-38.36</td>
<td>15.17</td>
<td>35.01</td>
</tr>
<tr>
<td>Auto</td>
<td>1.53</td>
<td>26.08</td>
<td>21.39</td>
<td>2.91</td>
<td>41.86</td>
<td>0.49</td>
<td>12.42</td>
<td>47.82</td>
</tr>
<tr>
<td>Steel</td>
<td>-35.52</td>
<td>24.07</td>
<td>-37.93</td>
<td>-13.90</td>
<td>75.64</td>
<td>-37.66</td>
<td>3.08</td>
<td>48.11</td>
</tr>
<tr>
<td>Footwear</td>
<td>6.62</td>
<td>20.17</td>
<td>-1.69</td>
<td>3.42</td>
<td>13.49</td>
<td>2.50</td>
<td>9.85</td>
<td>16.82</td>
</tr>
<tr>
<td>Textiles</td>
<td>-2.54</td>
<td>23.55</td>
<td>-6.27</td>
<td>1.92</td>
<td>19.65</td>
<td>0.93</td>
<td>16.08</td>
<td>26.79</td>
</tr>
</tbody>
</table>

Source: China Statistical Yearbook (various years).

Indeed, China’s steel industry has experienced major difficulties in recent years. Even though China was one of the world’s major producers of steel, it has had to import the high-grade steel it cannot produce domestically. China’s increasing domestic demand for steel products, fueled by its economic development, had resulted in rising imports. While China primarily exports low-grade steel to the world market, its low-grade steel exports were not competitive internationally and, as a result, has led to sluggish steel exports. As Table 1 shows, the annual percentage change in steel exports had fluctuated greatly since the mid-1980s. Indeed, between
1996 and 2000, China’s steel imports amounted to over 1000 ton per year. While China’s imports of steel products increased by 7.87% and 70.64% between 2000 and 2001, China’s steel exports dropped by 23.6% and 46.37% during the same period.\footnote{14}

In light of rising imports and bleak export outlook, the steel industry had taken the initiative to urge the Chinese government to relieve industry plight. Large state-owned enterprises were by far the most vocal actors in this effort. In terms of domestic policy measures, the steel industry has for a long period of time pushed for reform of China’s import regime, which allowed certain importers to get away from nominal tariffs under pre-specified conditions. At the same time that they sough to halt imports through domestic policy instruments, steel companies resorted to legal trade instruments to address their concerns. While China’s entry into the WTO and the tariff reductions associated with it increased the competitive pressure faced by the steel industry, it nevertheless allowed national governments to engage in contingent protection in case of import surges caused by unfair foreign trade practices.

Table 3: Annual Percentage Change in Imports of Key Sectors (1995-2003)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chemical</td>
<td>0.10</td>
<td>-1.07</td>
<td>7.20</td>
<td>27.31</td>
<td>28.73</td>
<td>5.36</td>
<td>-2.85</td>
<td>71.58</td>
</tr>
<tr>
<td>Paper</td>
<td>27.99</td>
<td>16.42</td>
<td>4.16</td>
<td>10.49</td>
<td>-0.48</td>
<td>-7.90</td>
<td>13.34</td>
<td>6.19</td>
</tr>
<tr>
<td>Auto</td>
<td>-0.28</td>
<td>0.09</td>
<td>4.39</td>
<td>7.53</td>
<td>6.11</td>
<td>57.06</td>
<td>14.99</td>
<td>52.00</td>
</tr>
<tr>
<td>Steel</td>
<td>15.61</td>
<td>-10.69</td>
<td>-3.75</td>
<td>22.57</td>
<td>33.59</td>
<td>14.47</td>
<td>20.87</td>
<td>67.85</td>
</tr>
<tr>
<td>Footwear</td>
<td>4.40</td>
<td>0.56</td>
<td>-18.72</td>
<td>5.15</td>
<td>4.58</td>
<td>2.81</td>
<td>-7.60</td>
<td>23.03</td>
</tr>
<tr>
<td>Textiles</td>
<td>5.47</td>
<td>3.18</td>
<td>-16.39</td>
<td>-3.27</td>
<td>18.97</td>
<td>-1.84</td>
<td>4.51</td>
<td>13.53</td>
</tr>
<tr>
<td>ElecMach</td>
<td>4.32</td>
<td>-4.66</td>
<td>8.91</td>
<td>23.89</td>
<td>35.05</td>
<td>13.23</td>
<td>30.01</td>
<td>39.89</td>
</tr>
</tbody>
</table>

Source: China Statistical Yearbook (various years).
The antidumping statute provided another avenue for steel companies to address their concerns. Between 1999 and 2002, the steel industry initiated three dumping charges. In 1999, Wuhan Iron and Steel filed an AD suit against Russian steel companies for dumping silicon steel in the Chinese market. Also in 1999, Taiwan Iron and Steel, Shanghai Pudong Iron and Steel, and Shaanxi Jingmi (Precision) Group initiated an AD investigation into stainless steel from Japan and South Korea. Baoshan Iron and Steel, one of China’s major steel producers, reportedly weighed in on behalf of the complainants due to its growing stainless production.\(^\text{15}\)

In the third case, three powerful steel companies, Baoshan Iron and Steel, Anshan Iron and Steel, and Wuhan Iron and Steel launched an AD complaint against cold-rolled steel coils and strips imported from Russia, South Korea, Ukraine, Kazakhstan, and Taiwan.

China’s first action in the WTO, the steel safeguard trade dispute, provides another illustration of the influence of the steel industry in China’s trade policy. Just as the utilization of antidumping measures was a relatively recent development in China’s foreign trade policy, China has only more recently resorted to the use of safeguard measures. Prior to its entry into the WTO, China lacked its own safeguard regulations and an internationally accepted instrument against import surges, even though it was also able to undertake retaliatory actions in response to safeguard measures directed against Chinese imports.\(^\text{16}\) It was only after its entry into the WTO that China had been required to abide by the WTO’s detailed procedures governing consultations and dispute resolution over safeguards. Indeed, China did not introduce its operational legislation as required by Article 32 of its Foreign Trade Law until December 31, 2002, shortly after the country’s accession into the WTO (Jung 2002: 1039-1040).
At first glance, China’s safeguard regulations seem to closely follow the language of the WTO’s Safeguard Agreement. However, legal scholars (Jung 2002: 1041) suggest that a closer examination of China’s safeguard procedures would indicate that the Chinese regulations are both less detailed and more vaguely worded, which provided the relevant authorities with greater discretion in terms of investigation procedures and transparency. In terms of the administration of safeguard measures, China follows a dual-track enforcement system in which the jurisdiction over examination of the existence of the increased quantities of imported products resides with the MOFTEC, now being amalgamated into the Ministry of Commerce, whereas primary statutory authority over the determination of injury is vested with the State Economic and Trade Commission (SETC).

It is noteworthy that even though its safeguard regulations have been in place for only a relatively short period of time, the Chinese government has proceeded quickly to invoke safeguard procedures. The event leading the Chinese to undertake their first provisional safeguard measure was a decision by the United States to impose safeguard measures on 14 imported steel products on March 5, 2002, a decision undertaken in an effort to aid the troubled U.S. steel industry. As the U.S. action generated substantial opposition from its trading partners, leading many nations to respond in kind by raising their steel tariffs, China, too, joined the chorus and, on March 26, 2002, just a few months after its accession into the WTO, lodged a complaint against the United States with the WTO’s Dispute Settlement Body (DSB).

While Beijing’s swift move to file a WTO complaint may be explained by its large market size which afforded it sufficient economic leverage to withstand the effect of counterretaliation or by China’s desire to use trade policy instruments to address perceived unfair
foreign trade practices targeted at Chinese firms, it could be argued that the Chinese
government’s invocation of the safeguard measure in the steel case again reflected the ability of
the steel industry to lobby the government for trade relief. As mentioned above, China was one
of the world’s largest producers of steel, trailing only behind the European Union and the United
States. But although imports amounted to only 17.8 percent of China’s domestic demand in
2001, steel imports in the first quarter of 2002 nevertheless surged by 34 percent relative to the
same period of the previous year. Confronted with such a sharp increase in imports, the Chinese
steel industry, spearheaded by the China Iron and Steel Association (CISA) and leading Chinese
steel companies such as Baoshan Iron and Steel and Anshan Iron and Steel, subsequently made
strong demand that the government take appropriate trade policy measures in response to the
United States’ institution of “safeguard” tariffs (Jung 2002: 1042). In addition to the CISA, the
China Chamber of Commerce similarly joined this effort to push for more action.

It was against this backdrop that the Chinese government had moved swiftly to resort to
the rules of the WTO to protect the interests of its key domestic industries. Invoking its rights
provided for by the WTO’s Safeguard Agreement, the Chinese government announced its
intention to retaliate against the United States. On May 17, 2002, China, along with countries
such as the European Union, Japan, and Norway, preliminarily notified to the Council for Trade
in Goods that it would retaliate against certain steel products should the U.S. safeguard measure
fail to maintain a substantially equivalent level of concession. According to the Chinese
notification, since the U.S. safeguard measure affected $395 million in Chinese steel exports and
the tariffs collected for these goods would have amounted to $95.5 million, China’s proposed
retaliatory tariffs were intended to affect roughly the same amount of U.S. exports. Shortly
after this move, on May 21, 2002, MOFTEC announced that it would impose a provisional safeguard measure in the form of tariff quotas on certain steel imports in order to ameliorate the repercussions that the ongoing global steel trade war has had on the Chinese steel industry.

Essentially, China has invoked a two-pronged strategy in imposing the safeguard measure. First, China argues that its steel safeguard measure was largely a response to the United States’ repeated invocation of protectionist trade measures against steel imports between 1998 and 2001, which constituted “unforeseen developments.” According to the Chinese, the U.S. action not only resulted in an increase in U.S. steel imports, but also led China’s trading partners such as the European Union to impose safeguard measures against steel imports. Unlike the EU’s claim that the surge in EU imports could be directly attributed to the reduction in U.S. imports, the Chinese could plausibly argue that China has become the only remaining market with the ability to absorb a sufficient amount of steel imports due to the safeguard measures imposed by the U.S. and the EU. In this sense, then, even though just like the EU, China has used “unforeseen development” as a justification for its safeguard measure, its legal ground may be even stronger than that of the European Union (see Jung 2002: 1050).

With regard to the requirement regarding “import increase” for the imposition of a safeguard measure, China argued that its total imports of the steel products in question had grown sharply by 24.48 percent between 1999 and 2000, and 24.16 percent between 2000 and 2001. If evaluated against the stipulations of the appellate body that the surge in imports should be “recent enough, sudden enough, sharp enough, significant enough, both qualitatively and quantitatively” to meet the requirement with regard to “import increase,” then China’s affirmative finding of import increase would appear to have considerable validity.
Nevertheless, regardless of the legality of the measure China undertook in response to the U.S. safeguard measure, China’s rule-oriented approach poses a clear challenge to the conventional wisdom that, given the substantial adjustment period necessary for implementing the new commitments accompanying a WTO membership, a country that has only very recently acceded to that organization ought to be more prudent in invoking its trading rights conferred by the WTO agreements, given the substantial adjustment period necessary for implementing the new commitments accompanying a WTO membership. As emphasized earlier, one cannot fully understand the Chinese government’s invocation of the safeguard measure without also understanding its desire to shield the import-competing sectors of its economy from trade challenges from abroad. Given that many of China’s domestic industries have yet to confront the challenges of market liberalization, there is every possibility that the Chinese leadership may continue to engage both its domestic rules and the rules of the WTO to defend its own economic interests.

In short, the above discussion of the sectoral pattern of China’s AD activities reveals the growing ability of heavily-concentrated state-owned enterprises in import-competing sectors to influence the pattern of China’s AD initiation in a way that would help to ward off foreign competitive pressure. The Chinese government’s increasing willingness to come to the defense of such industries as chemicals and steel is therefore indicative of the increasing bias that Chinese foreign trade policy has displayed toward large and heavily concentrated import-competing enterprises.

III. Explaining the Dominance of the Chemical Industry in China’s AD Initiations
As mentioned above, even though both the chemical and steel companies have been confronted with a high level of import increases in recent years, the responses of the two industries to import penetration were nevertheless somewhat different. As mentioned earlier, even though both the chemical and steel industries were main users of China’s AD statutes, the chemical industry has nevertheless dominated China’s use of the AD instrument, accounting for two-thirds of all AD cases initiated by China. The question that merits further investigation, then, is why the chemical industry has resorted to antidumping duties far more frequently than a similarly capital-intensive and concentrated industry such as steel. The following discussion suggests that the answer to this question can be found in different industry conditions. Specifically, the chemical industry differs from the steel industry not only in terms of profitability and employment, but also in terms of the structure of exports and imports.

First, one plausible argument about the concentration of AD actions in the chemical industry is that Chinese firms may be using AD as a retaliatory strategy against foreign AD actions against China. Previous research (e.g., Messerlin, 2004) suggests that such industries as chemical, metals, machinery, and electrical equipment can be considered as “antidumping-intensive” sectors with a relatively high frequency of AD initiations as they are not only characterized by oligopolistic market structures and relatively standard products, but also constitute key sources of export growth for many rapidly developing countries. The concentration of AD duties in a few “antidumping-intensive” sectors worldwide may therefore reflect the trend toward the segment of the world market whereby firms with sufficient oligopolistic power lodge similar complaints in several key industries.
Indeed, while the chemical industry has initiated the most AD duties in China, it also happens to be the largest target of AD suits directed against China by foreign firms. For instance, in terms of the sectoral incidence of U.S. AD actions against China, the chemical industry represented one of the largest initiators of AD suits against Chinese firms. Of the fifty-six AD suits the United States launched against Chinese exports between 1983 and 1995, nineteen (or thirty-two percent) were targeted at the chemical sector. Sixteen out of fifty-six cases were directed at the metals industry.\textsuperscript{20}

Similarly, the chemical industry was one of the primary targets of E.U. antidumping actions against China. Although the main focus of E.U. antidumping actions against China has shifted from chemical, mineral-ores and machinery sectors in the earlier 1980s to electronics (such as microwave ovens, color televisions, and cathode-ray color television tubes, etc.) and mechanical goods (such as bicycles and its parts, ring binder mechanisms, roller chains, and photo albums, etc.) in the late 1990s, cases involving exports of Chinese chemicals and ores still amounted to about half of the total E.U. AD actions against China. Moreover, as the most frequent initiator of AD suits against China, the chemical sector alone accounted for 37.8 percent of total E.U. antidumping cases against China between 1979 and 2000.\textsuperscript{21} To the extent that about 70 percent of China’s total imports happen to fall within the top antidumping-intensive sectors (i.e., metals, chemicals, textiles, and plastics), this ought to have increased the pressure faced by Chinese authorities from both domestic firms and joint ventures to initiate antidumping disputes.\textsuperscript{22} Indeed, the rapid growth in foreign AD actions against China in the chemical industry has led officials of the China Chamber of Commerce of Metals Minerals and Chemicals Importers and Exporters (CCCMC) to warn that foreign dumping measures toward China would
likely paralyze the nation’s burgeoning petrochemical sector, which was still in its infancy.23 A trade lawyer in China similarly commented that the surge in foreign AD actions against China has increased the incentive of local chemical companies to “resort to legal means to fight the intended dumping in order to defend their legitimate interests.”24 In short, from the point of view of arguments that emphasize the dominance of the antidumping-intensive sectors, the concentration of China’s AD duties in such sectors as chemicals may have reflected a pattern of reciprocal dumping where firms engage in AD actions as a retaliatory strategy.

But while explanations emphasizing the influence of “antidumping-intensive” sectors in China’s AD petitions are plausible, they still cannot help us understand why the chemical and steel industries, which are both antidumping intensive sectors, have nevertheless demonstrated very different propensity with regard to the use of the AD instrument. The following section tentatively proposes that, in order for us to explain this puzzling pattern, one may have to take into account the different structures of these two industries in terms of ownership and market segmentation.

First, even though both the chemical and steel industries are predominantly controlled by the state, there is nevertheless a greater number of state-owned enterprises in the chemical industry. In addition, the chemical industry has a greater number of employees and more of the state-controlled enterprises in this sector are experiencing financial losses. According to statistics published by the Bureau of Statistics of China Bureau, there are 2,084 firms in the chemical materials and manufactured products industry in 2005 that are either controlled by the state or have state shareholding. Of these firms, 597 are reportedly to be loss-making, with a total loss of 4.62 billion yuan. In comparison, in the same year there are about 353 firms in the
ferrous metals industry. Sixty of these firms are reportedly loss-making, with a loss of 0.08 billion yuan. In addition, the chemical industry has about 1,321,500 employees, compared to only 205,100 in the nonferrous metals industry. Moreover, chemical industry production oftentimes requires even heavier investment than steel production. Therefore the vested interests of bureaucratic actors in the chemical sector are arguably even more overpowering than that of the bureaucratic actors in the steel sector. An official from the Ministry of Commerce interviewed suggests that the chemical industry and its representative bureaus and agencies have more effectively tapped on the privileged position the industry enjoyed during the era of centralized planning and avail of existing institutional channels to influence China’s AD process. In other words, while China’s AD process has become more open, transparent, and institutionalized, the process nevertheless advantages Chinese industries with large employment or have experienced financial difficulties.

Second, while both the steel and chemical industries have experienced strong import penetration in recent years, the steel industry nevertheless has a higher degree of reliance on imported products, especially in the high-end category. As mentioned above, even though China is a large exporter of low-grade steel, it cannot produce the high-grade steel it needs at home and hence have had to rely on imports to satisfy its domestic demand in those areas. Especially with regard to certain specialty steel, China still needs to satisfy its own domestic demand for imports. The greater demand of the steel industry for specialty steel which China cannot produces at home could therefore have reined in the temptation of the industry to seek trade protection. And even in safeguard case where China did impose its own tariffs on foreign products, opposition from China’s steel importers and large downstream users of these products against the sharp rise
in production costs has led the Chinese government to scale back the number of products targeted by the initial AD action.\textsuperscript{27} Hence even in a sector such as steel where the state presumably has strong interest to protect the domestic industry, domestic producers’ reliance on those products that China cannot produce efficiently may have tempered the industry’s aggressive behavior.

In short, this section tentatively proposes that industry conditions are relevant for understanding the pattern of China’s AD initiations. In particular, the number of state-owned enterprises in a sector, the size of employment, the financial situation of an industry, or the patterns of trade in a sector may be associated with the probability that an industry will seek trade protection through China’s newly acquired legal trade instruments. Future research could probe even further into these questions and develop more systematic accounts of how industry-related variables affect an industry’s propensity to seek trade protection via the legal route.

Business Influence on the Settlement of China’s AD cases

Kennedy (2005a) suggests that the AD investigations initiated by China have not always led to an outcome favorable to the domestic industry, even though the procedures for AD investigations in China presumably favor the domestic industry. While Kennedy identifies downstream users of the products under AD investigation as an important ally of foreign respondents and hence a source of openness in trade disputes, it appears that foreign investment foreign investment or the tax exemption status of the end users of the products targeted by AD actions also play an important role in explaining the varying degree of Chinese producers’ success in AD cases. The next question this chapter addresses is why some antidumping cases
have ended with only minimal dumping duties charged on the foreign producer or were
eventually withdrawn by the Chinese authorities. In doing so, it presents several scenarios in
which the case outcome has not necessarily tilted in favor of Chinese firms.

First, in line with the findings of Kennedy (2005a), downstream users of the products
under AD investigation often stand to lose from the higher prices that the dumping margins
would induce and, as a result, have voiced opposition to imposing AD duties on foreign products.
The case involving acrylates was relevant in this respect. In this case, Chinese downstream users
opposed the rise in the price of key products as the dumping margins would substantially
increase the costs of their inputs. Due to its high absorption rate, acrylic acid has often been used
in the production of diapers. Diapers made with acrylic acid in them not only more quickly
absorb waste products, they also help to lock them in place until the next diaper change. The
antidumping charge therefore raised the price of key inputs for diaper producers and led them to
oppose the dumping charges. Hence, once the proposed AD duties were announced, downstream
users in the diaper industry maintained that the duties were unduly high and that the industry was
unreasonably hurt by the rise in price of their key inputs. Diaper producers, through
organizations such as the China Association of Textile Industry, which represents producers of
industrial textiles, subsequently lobbied the Ministry of Commerce against the increase in the
price of their key inputs. According to officials of a major association representing the chemical
industry, opposition from producers and their representative associations played a key role in
explaining the final case outcome.28 Thus, when downstream users of a product lodge opposition
to the dumping margins, the case outcome is less likely to be tilted in favor of domestic firms.
Third, China’s AD actions are also often influenced by the political clout of the foreign firm named in the AD petition. Given the importance of foreign direct investment for economic development and the damage that a high-profile trade dispute could potentially exert on an important bilateral relationship such as U.S.-China trade relations, Chinese authorities have sometimes balked at imposing AD duties on firms with sufficient political or economic clout. While the influence of firms with investment in China does not dictate the outcome of a particular case, it nevertheless has an important bearing on how the case is handled by the authorities.

The literature on the influence of foreign direct investment postulates that global capital flows can be a source of openness in the international political economy. The literature on “quid pro quo investment,” (e.g., Bhagwati et al., 1987; Blonigen and Feenstra, 1997), for instance, suggests that foreign direct investment, by creating employment and income in the host country, may appease host country firms and government, thereby reduce the probability that domestic firms may seek trade protection. The literature on the bargaining relationship between MNCs and developing countries suggests that the leverage of a foreign firm vis-à-vis the host country government could be dependent on the size of the host market, the need of the developing country for advanced technology, and the specific character of the foreign investment undertaken. In the Chinese case, while the Chinese government has incentives to protect its own domestic industry, the need to attract foreign investment, especially in sectors where nascent industrial capabilities are insufficient and where the infusion of foreign know-how and technology would benefit local industrial development, could have necessitated a more generous treatment of the foreign firm.
The optical fiber case involving Corning nicely illustrates such a dynamic. In July 2003, two Chinese companies, Yangtze Optical Fiber and Cable Company Ltd. and Jiangsu Fasten Photonics Co. Ltd. initiated an AD petition against foreign optical fiber produces such as Corning, Samsung, and a number of smaller companies from Japan and the United States, alleging the latter of dumping single-mode optical fiber products in the Chinese market. However, the fact that the Corning accounts for overly thirty percent of China’s domestic optical fiber market and that optical fiber was the most technologically advanced product targeted by China’s AD suit soon elevated this case to a major trade dispute between China and the United States. While Corning reportedly provided Chinese authorities with detailed information and cooperated in the AD investigation, an official involved in the AD investigation hinted that considerations about the impact that a hefty dumping margin would have on an already highly contentious U.S.-China relationship had influenced the final AD decision. In the end, while Corning was ruled to have dumped in the Chinese market, the company received a minimal antidumping tax of 1.5 percent on the ground that the dumping volume was small. Other named foreign companies did not fare nearly as well as Corning and were assessed dumping duties ranging from 7 to 46 percent. The result disappointed domestic producers and representatives of the optical fiber industry association, who argued that the final decision did very little to stave off imports and protect the industry from foreign competition. It also “prompted suggestions that the central government was ‘selling out’ to U.S. interests.”

Finally, the effectiveness of the AD duties could also be reduced due to the tax exemption status of enterprises engaged in export processing. Many buyers of chemical products qualify for special duty concessions as they sell their products to manufacturers who engage in
processing of raw materials for exports to the world market, or what the Chinese call “sanlai yibu.” As they were already exempt from import duties and so would not be affected by the increase in tariffs, the dumping margins consequently had very little impact on these firms and on market equilibrium. Consequently, in some sectors, even though AD duties were initially proposed or even imposed, the duties have turned out to have negligible impact on the domestic industry. In these cases, while China might have won a legal victory against foreign respondents, the AD duty has done very little to alter industry conditions. For instance, in the synthetic resins and synthetic fibers sector, only about 30 percent of China’s imports bear full chemical import duties as a result of tariff concessions. Thus, in December 2002, Beijing went ahead and announced its decisions to impose antidumping duties on imports of acid ester from Singapore, South Korea, Malaysia, and Indonesia. While the dumping margins amounted to as much as 46 percent, only a portion of the targeted companies to China was affected as their customers in China use imported acrylate to produce goods for export and, as a result, qualify for special duty exemptions. For example, representatives of one of the companies hit by the proposed AD duty, Singapore Acrylic Ester, commented that the duties would impact only 60 percent of the company’s sales to China. In part given the lack of substantive effect the AD duties had on the Chinese market, the MOC lowered the AD duties from 11 to 3 percent in 2005, three years before the duties were set to expire. Consequently, even though in this case, China has imposed antidumping margins on the foreign firm the AD duties produced very little substantive results for the domestic industry. In other words, even though Chinese firms have be considered to have won a legal victory, the substantive results of the implementation of the AD ruling indicates that China’s domestic industry has received few tangible benefits from trade protection.
In short, the above discussion suggests that the final outcome of China’s AD investigations were not always tilted in favor of Chinese firms, albeit for very different reasons. Lobbying from downstream users, the clout of the foreign firm and the importance of its foreign investment to the Chinese economy, or the special tax exemption status of many Chinese users have heavily influenced the way through which AD duties were deployed. Hence, the increasingly open nature of the Chinese economy has provided points of leverage for foreign respondents, in some cases reducing the effectiveness of protection provide by the Chinese state to struggling domestic industries.

Conclusions and Policy Implications

As the above analysis of the recent trade actions undertaken by China has shown, China’s trade diplomacy is undergoing a subtle shift from one based on power to one oriented toward legal rules. Beijing has invoked both its domestic laws and the rules of the WTO to protect Chinese industries from the vicissitudes of the international marketplace. Moreover, China’s large, concentrated state-owned industries in import-competing industries have availed of China’s newly acquired trade instruments to lobby for trade protection. These actors were able to influence China’s trade policymaking process due to the strong ties with the state they developed during the era of centralized economic policymaking and their importance to the Chinese economy.

Moreover, it should be noted that domestic industries have largely shaped the way in which the AD instrument was deployed. While China’s large and heavily concentrated import-competing industries have dominated the use of such instruments, the choice of the policy
instruments have also differed. As the above analysis shows, the chemical industry, with a larger employment and more profit loss, has tended to resort to the AD instrument to a much greater extent than industries similarly confronted by import competition such as the steel industry. The analysis therefore suggests that industry-level variables matter and that industries that enjoy considerable political clout, are considered important to the future development of the national economy, or occupy a privileged position within the domestic political economy will increasingly seek trade protection.

Finally, it should be noted that the previous discussion suggests that in terms of the settlement of antidumping disputes, China’s AD rulings have not always resulted in outcomes favorable to domestic produces due to opposition from (both domestic and foreign) downstream users, the importance of the foreign firm’s investment in the Chinese market, or the tax exemption status of the buyers of the targeted products. Such a changing trend therefore suggests that one has to find the sources of open trade policy in China’s increasing integration into the world economy.

In terms of the implications of this study, it should be noted that in spite of its more recent embracement of legal tactics, China’s more active use of legal remedy laws may signal an important change in the basic orientation of Chinese trade policy. Beijing’s imposition of the steel safeguard measure and the increasing frequency of its AD imposition suggest that China may indeed resort to the rules-oriented rather than the power-oriented negotiation approach more frequently in the future.

Such a changing trend of China’s trade diplomacy ought to offer some important lessons for China’s trading partners. In particular, China’s active engagement with the AD statute and
the rules of the WTO suggests that it is increasingly using these legal trade remedies to protect its domestic industries. Regardless of whether China would win a WTO suit with its trading partners in the future, such an active embracement of legal trade remedies is likely to exert a positive effect both on China’s social and legal systems and on the international community. Domestically, such aggressive legalism may enhance the participation of legal scholars and the policy and academic community’s participation in the interpretation of legal rules and principles, including the rules of the WTO and, consequently, facilitate compliance with and honoring of legal norms and principles governing trade relations.

Internationally, since China can now legitimately question the legality of the trade actions of other countries before the WTO and therefore evade unilateral market-opening pressure from foreign countries, it is important that China’s main trading partners such as the United States recognize that a bilateral approach for dealing with China may no longer work as effectively as it had in the past. Instead, they will increasingly have to adjust to this emerging trend in Chinese trade diplomacy and adopt corresponding measures to deal with the Chinese over such disputes as antidumping or safeguards. Moreover, to the extent that China can now provide legal justifications for the challenges it mounts to foreign trade measures, it is equally important that China’s major trading partners come up with adequate legal defense for their actions. Continuing to pursue the WTO’s legalized route to dispute resolution may provide a valuable service in this respect because the trade dispute resolution mechanisms of the WTO ought to offer enhanced legitimacy to the trade actions of major players, allowing them to better defend their economic interests and deflect criticisms of uneven-handedness in dealing with rapidly growing countries such as China. In this sense, a more legalistic approach may also work to the
benefit of China’s major trading partners by prodding China to uphold its commitments without increasing the risks of full-scale trade wars.
In recent years, China has had to respond to either restrictive trade measures imposed by its trading partners (such as Japan’s imposition of safeguard measures against Chinese agricultural and textile products in 2001) or trade complaints filed against it within the context of the World Trade Organization (such as a case brought by the United States against China regarding the latter’s value-added tax on integrated circuits in early 2004). Other countries, such as Brazil and the European Union, have also threatened to take trade disputes with China to the WTO. See, for example, “Brazil may take trade dispute with China to WTO,” ABC Radio Australia, June 21, 2004; “EU Warns WTO Action Imminent Unless China Lifts Coke Restrictions,” EU Business, May 14, 2004.

For example, most of U.S.-China trade negotiations prior to China’s accession into the WTO were conducted on a bilateral basis or under Section 301 of U.S. trade law. The trade disputes that took place prior to China’s entry into the WTO therefore relied primarily on the use of diplomatic routes to dispute resolution.

See the chapter by Scott Kennedy in this volume for an elaboration of this point and for a detailed list of China’s AD case outcomes.

For a detailed account of U.S.-China trade negotiations in the 1980s and 1990s, see Zeng, 2004.

On this point, see Davis 2006.

Davis 2006.


Interview.

See Kennedy 2005a.


14 Han 2003, p.149.


16 For example, in the Korea-Garlic dispute, in response to the announcement in May 2000 that South Korea would adopt definitive safeguard measures on garlic imports from China, China’s MOFTEC retaliated against imports of Korean mobile telephones including vehicle mobiles sets and polyethylene as of June 2000.


18 Ibid.

19 For instance, up until the late 1980s, Japan has chosen to bypass the rule-oriented approach based on WTO norms and instead relied on a bilateral case-by-case approach in dealing with its trading partners. In fact, Japan has rarely resorted to the GATT dispute settlement mechanism to resolve trade disputes with its trading partners.

20 Compiled from statistics published by the United States International Trade Commission.


24 Ibid.


26 Interview with an MOC official, June 2006.

27 See the Kennedy Chapter in this volume.


29 Author’s interview, June 2006.


REFERENCES