The Trade Remedy System in Taiwan

Ming-Tse Wu

and

Tain-Jy Chen

Chung-Hua Institution for Economic Research

January 2006
The Trade Remedy System in Taiwan

I. Evolution of the System

Taiwan did not become a member of the World Trade Organization (WTO) until January 2002, and it did not even have a foreign trade law until 1993. However, Taiwan has been well integrated into the world trade system since the early 1960s. The combined value of its exports and imports has constantly exceeded the value of its GDP. Although Taiwan has generated a trade surplus in most years, the large volume of its imports has inevitably impacted some domestic industries to the extent that some import relief measures are called for.

A rudimentary idea of trade remedies was incorporated in the Customs Law of 1967. Article 46 of that law empowers the government to impose a countervailing duty on imported goods in the event that such goods are (1) subsidized by a foreign government, or (2) sold at such a low price so as to harm the domestic industry. However, no rules were established to implement the countervailing provision in the Customs Law. While several cases were filed by industry pursuant to this provision, because of the lack of procedural rules, no official investigation was initiated in relation to these cases and the government eventually imposed some import control measures to appease the industries that had filed the complaints. Later, after the Antidumping Code and the Subsidies Code were adopted in the Tokyo Round of the GATT negotiations, Taiwan signed a bilateral agreement with the U.S. in 1978, pledging to accept these codes despite the fact that Taiwan was not a member of the GATT. In return, the U.S. offered to extend its concessions under the GATT to Taiwan in accordance with the most favored nations (MFN) principle. In May 1982, Taiwan amended the Customs Law to establish the conditions and procedures for implementing anti-dumping and countervailing duties in line with the Tokyo Round.
codes. For the first time in Taiwan’s legal history, dumping and subsidy cases were
treated separately in the Customs Law. Nevertheless, relevant provisions for
safeguarding measures pursuant to Article 19 of the GATT were still missing.
Following the amendment of the Customs Law, a Customs Tariff Commission was
established in August 1982 within the Ministry of Finance to be in charge of the
reviewing and processing of antidumping and countervailing cases. However, the
Commission did not become active until July 1984 when the rules governing the
semi-litigation procedures for handling antidumping and countervailing duty cases
were officially issued (Lin 1987). Due to a lack of transparency, studies on the
operations and decisions of the Customs Tariff Commission during this period were
limited.

Taiwan officially applied to join GATT in 1990 and as a part of the institution
building in preparation for WTO membership, Taiwan promulgated the Foreign Trade
Law in February 1993. For the first time, safeguard measures to assist the industry in
the course of normal trade were written into the law. The Foreign Trade Law also
mandated the establishment of a separate commission to be in charge of the
investigation and determination of industry injury, independent of the administrative
branch of the government, while the Customs Tariff Commission was solely
designated to be engaged in fact finding in regard to abnormal activities related to
imports, such as dumping, subsidies, or extraordinary import surges in the case of
safeguard procedures. The Commission in charge of injury determination was named
the International Trade Commission (ITC), its bifurcated system apparently being
modeled after the U.S.

II. The Structure of the Current System

The current trade remedy system is anchored by two commissions, namely, the
Customs Tariff Commission (CTC) and the International Trade Commission (ITC). The CTC is in charge of the determination of dumping margins, the existence and the degree of subsidization, and the surge of imports pursuant to the safeguard measures. The CTC is also empowered to proactively revise the customs duties if the circumstances dictate this revision, even in the absence of trade remedy petitions. It also determines the retaliatory tariffs to be imposed on foreign countries in the case of trade retaliations.

The CTC consists of seven members who are government officials as well as 4-6 outside members. The seven government officials include the Vice Ministers of Finance and Economic Affairs, the Deputy Director of the Council for Economic Planning and Development (CEPD), the Deputy Director of the Council of Agriculture, and the Chiefs of the following four agencies: the Bureau of Foreign Trade, the Industrial Development Bureau, the Bureau of Customs Revenue, and the Bureau of Customs Administration. Outside members usually consist of trade and legal experts from academia. A maximum of six outside members ensures that the CTC is dominated by official opinions. The Commission is chaired by the Vice Minister of Finance, and its decisions are made by majority voting. In the case of a draw, the chairperson has the casting vote.

In comparison, the ITC consists of five official members and 8-10 outside members. The five official members include the Minister of Economic Affairs, the Deputy Minister of Finance, and the Deputy Directors of the following three agencies, namely, the Council for Economic Planning and Development, the Council of Agriculture, and the Council of Labor Affairs. Outside members include trade, industry, legal and tax experts from academia. It is worth noting that neither commission has any industry-related persons as commissioners. The ITC is chaired by the Minister of Economic Affairs. Judging from its constituent members, the ITC is
meant to be independent of government opinion in determining whether there has been industry injury. Unlike the CTC whose decisions are made by a single majority, the ITC’s decisions are determined by a two-thirds majority.¹

When individual firms or industry associations file a complaint regarding dumping or a subsidy, the application goes to the CTC. The CTC examines the documents and the representation requirement² together with the evidence presented in order to decide whether to pursue the case. The decision is to be made within 40 days. If the case is accepted, the case first moves to the ITC for an injury decision. The ITC normally has 40 days to collect relevant data, conduct necessary investigations, and make a preliminary decision. If needed, the length of the investigation can be extended by 20 days. A public hearing involving interested parties is mandated in the investigation process. If a positive decision is made, the ITC has to decide whether to recommend a temporary trade relief measure, and then the case goes back to the CTC for a decision on the dumping margin or the size of the subsidy. If a negative decision is made by the ITC, the case is closed.

After a preliminary positive determination of industry injury, the CTC has 70 days to make the investigation and decision on dumping margins or subsidy percentages. The decision is to be made in two steps. A preliminary determination of the dumping or subsidy allows the CTC to decide on whether to impose a temporary duty on the imported goods based on the recommendation of the ITC, while sending the case to the second-stage investigation. However, even if the CTC makes a negative preliminary determination, the case will still go to the second stage for final determination. If the CTC indeed finds no evidence of dumping or a subsidy in the

¹ A two-thirds majority is required to make a positive or negative decision. In the case of a deadlock, the Commission has to collect more data or engage in more deliberation to come up with a decision.
² In line with the WTO regulations, a minimum of 25 percent of output value must be represented by the complaint firms in order to file a case.
final determination, the case is closed at that point.

When a case passes the final determination of the CTC, it then moves back to the ITC for the final determination of injury. The ITC has 40 days to give the final say. Again, a negative decision will close the case, and a positive decision will provide grounds for the imposition of an antidumping or countervailing duty. The CTC will decide the amount of the duty to be imposed based on its findings regarding the duty margin or subsidy proportion. The case will then go to the Cabinet (Executive Yuan) meeting for eventual approval. The Cabinet can lower or eliminate the duty altogether for the sake of the “public interest.” However, they have not done this so far.

In principle, the CTC’s investigation is simply technical and the ITC’s investigation is more judgmental. The injury test involves not only the reading of the data but also the causal-effect analysis of the injury claim. The commissioners mainly rely on “trends analysis,” using charts and tables for comparison and contrast. Personal discretion is paramount, just like the case in the U.S. (Kaplan 1991). Although the Ministry of Economic Affairs often positions itself as the custodian of the industry and tends to lean towards protecting the industry once a complaint is filed, academic members tend to be more neutral in their opinions. Outside members in both the CTC and the ITC serve the commission on a part-time job basis. In the case of the ITC, investigations are always directed by an appointed academic member who can order the staff of the Commission to collect the data that he or she deems necessary.

Whereas antidumping and countervailing cases are jointly determined by the CTC and the ITC with separate jurisdictions regarding the decision area, the safeguard cases are exclusively handled by the ITC. When a safeguard case is filed by individual firms or industry associations, the case goes to the Ministry of Economic Affairs rather than the Ministry of Finance. The Ministry has 30 days to determine the legitimacy of the case. If accepted, the case goes to the ITC for investigation. The ITC
normally has 120 days to make a decision. If the case involves perishable agricultural products, the decision time is shortened to 70 days; and if the case involves textiles imported from China, the decision time is 90 days. Taiwan’s trade law provides three relief measures for safeguard cases: the customs surcharge, import quotas, and trade assistance measures, which include financing guarantees, R&D subsidies, assistance for job replacement, job retraining, and other assistance measures deemed necessary to help the industry restructure itself.

III. Trade Remedy Cases

From 1984 to 2004, there were in total 45 antidumping cases filed with the authorities. There was no single countervailing or safeguard case filed during this period. The first safeguard case ever filed was filed in August 2005, and concerned a surge in the importation of towels from China. The statistics partly reflect the Taiwan industries’ unfamiliarity with countervailing and safeguard measures. They also partly reflect the relatively weak position of the Taiwanese government in the world trade system as both countervailing and safeguard cases involve government-to-government consultations. Among the 45 antidumping cases filed over the 20-year period from 1984-2004, 27 cases were filed before the ITC was established and 18 were filed under the jurisdiction of the ITC. Despite the promulgation of the Trade Law and the establishment of a specialized institution, namely, the ITC, to deal with grievances within industry, the protectionism-oriented antidumping cases did not increase. In fact, the ITC often went out to promote the trade remedy system to enhance the public awareness of the protection measures available.

Of the 27 antidumping cases filed during the pre-ITC era extending from 1984 to 1993, only five cases received a positive decision whereby an antidumping duty was imposed. Two cases were determined to be negative, five cases ended up with a
price-undertaking agreement with the accused parties, and 15 cases were terminated due to incomplete documentation or withdrawn by the complainants themselves after filing. This indicates that, during this period, Taiwan’s industry was largely unfamiliar with the antidumping procedures and that the government preferred administrative arrangements over juridical processing in handling the cases.

Of the 18 cases filed in the post-ITC period from 1994 to 2004, only six cases were determined to be positive, ten cases were determined to be negative, and two cases were withdrawn by the complainants after filing. This suggests that the promulgation of the Foreign Trade Law in 1993 did not increase the degree of trade protection, but it increased the industry’s familiarity of the antidumping procedures.

Table 1 lists the countries that have been targeted by the 45 antidumping cases filed in Taiwan. It can be seen that Korea was targeted the most frequently, being involved in 16 cases, followed by Japan with 11 cases. This clearly suggests that Korea and Japan present the most imminent threat to industries in Taiwan as they are major suppliers of Taiwan’s industrial imports. After Korea and Japan, only Brazil and the U.S. have been involved in more than 5 cases, and the remaining cases have been sparsely distributed among various countries. Korea was targeted at a disproportionately high rate probably because Korea’s products were close substitutes for Taiwan’s.

Table 2 lists the 11 antidumping cases that have been determined to be positive and consequently antidumping duties have been imposed. It can be seen that five of these cases involve steel-related products, four involve petrochemical-related products, and one product in each of the paper and the cement industries. All of these industries are characterized by an oligopolistic market structure in Taiwan. It is interesting to note that domestic oligopolies seem to receive more favorable treatment in terms of the industry injury test compared to pure monopolies. For example, in the case of the
steel industry, all five affirmative cases involved oligopolies. Although two H-beam cases were filed by the dominant firm in the industry, Tung-Ho, the industry itself was also oligopolistic in nature with some small domestic competitors. Tung-Ho is the only steel maker owning an integrated production facility to produce H-beams from steel scraps. Other domestic producers fabricate H-beams from hot-rolled steel plates. These two cases received a positive decision mainly because Tung-Ho was a start-up steel mill in integrated production, and the Commission felt that some foreign producers were engaging in a predatory pricing strategy to deprive the start-ups of the opportunity for growth.

IV. The Decision-making Pattern of the ITC

In this section, we will analyze the decision-making pattern of the ITC since its inauguration in 1994. As previously stated, the ITC is dominated by members from academia. The tenure for each term is 3 years, and each Commission member can serve up to 2 terms. The academic member oversees the investigation in each case. He conducts public hearings, directs the ITC staff to collect relevant data, and supervises the writing up of the final reports to be submitted to the Commission for deliberation. Although the case is eventually determined by equal voting on the part of all the commissioners, the leader presiding over the case does have a certain degree of influence over the decision through the collection and presentation of relevant data.

During the first decade of the ITC, i.e. 1994-2004, a total of 18 antidumping cases were filed, but only 6 cases received a positive decision, which was followed by the imposition of antidumping surcharges. Of the 6 cases, 4 were related to the steel industry. In fact, of the 18 cases filed, 9 involved some steel products. Apart from the 4 cases that received a positive determination, there were 5 other steel-related cases that received a negative decision. These negative cases are listed in Table 3 for
comparison. The steel industry, in fact, accounted for half of the ITC’s work, and from an analysis of these cases, we can probably sense the philosophy of the ITC. A study on the U.S. cases suggests that the steel industry is treated more favorably in the antidumping litigation, with a 30% greater probability of receiving protection than non-steel cases (Blonigen and Prusa 2001). The Taiwan cases do not exhibit such a bias, however. The reason why the steel industry was active in filing antidumping petitions is not because it expected more favorable treatment from the authority, but probably because the industry became familiar with the antidumping measures due to its frequent involvement in the U.S. antidumping proceedings as an accused party. Between 1980 and 2000, Taiwan’s steel industry was accused by its U.S. counterparts of dumping at least 11 times.3

Taiwan’s steel industry, like that in the rest of the world, can be divided into three layers. On the top is the upstream industry of integrated steel mills, among which China Steel Co. dominates the sector as the only blast furnace producer using iron ore and coke as the inputs. China Steel constantly accounts for half or more of the steel output in Taiwan. There are a few small mills of the electric-arc furnace variety, which use steel scraps as the main input. These mills usually concentrate on niche products to differentiate themselves from the dominant China Steel. For example, Tung-Ho Steel, which filed two antidumping suits, is a specialized producer of structural steel beams (H-beams) used in construction. In the middle stream of the industry are the producers of hot-rolled or cold-rolled steel products, including sheets, rolls, bars, and wire rods, etc. This segment of the industry is also characterized by an oligopolistic structure. Several antidumping cases have been filed. In the downstream part of the

3 Taiwan’s steel industry was filed for dumping in the following areas in chronological order: cold-rolled carbon steel sheet, corrosion-resistant carbon steel, stainless steel wire rods, stainless steel round wire, stainless steel plate, stainless steel sheets and strips, cold-rolled carbon steel, hot-rolled steel products, stainless steel bars, structural steel beams (H-beams), and cold-rolled steel products. In addition, there have been numerous downstream steel products such as pipes and pipe fittings that have been implicated in dumping cases.
industry, there are a large number of steel-based producers, such as those in metal fabrication, machinery, and automobile-related products. The downstream industries are characterized by nearly perfect competition and no antidumping suits have ever been filed.

China Steel Co., together with some smaller producers, filed an antidumping suit against the importation of steel plates from Brazil, the Ukraine and Russia in November 1998. This was the time of a global slump in the steel industry. The case was rejected even though the CTC confirmed that the accused parties were indeed guilty of selling their products below the normal value, with a dumping margin ranging from 4.5% to 38.7%. The ITC rendered a positive determination on industry injury in the preliminary investigation but negated the determination in the final investigation. It is typical for the ITC to render a positive determination in the preliminary stage just to keep the case going to avoid a misjudgment being made against the domestic industry due to time pressure. In the meantime, to reduce the risk of a misjudgment being made against the importers, the ITC has never allowed a temporary protection measure in any case that has been determined to be positive in the preliminary investigation. In the case of steel plates, the ITC cited the lack of evidence that the domestic price had been suppressed by imports, despite the fact that the quantity of imports had increased significantly in absolute terms during the period under investigation. More importantly, the China Steel Co. had consistently been profitable during the period in which the dumping was occurring, although the level of profits had declined somewhat. It is apparent that China Steel’s profitability had been affected negatively by dumped imports, but the negative effect had not reached a level of “material injury,” according to the ITC report.\footnote{Final Investigation Report on Dumping of Steel Imports from Brazil, Ukraine, and Russia, March 2000.} Absolute profitability seemed
to be the key consideration in the ITC determination in this case. The U.S. experience also reveals a pattern in that antidumping protection is only offered to industries with negative profits. DeVault (1993) argued that this is a result of a “bifurcated” injury test whereby the USITC first determines that there is an injury and then determines the role of imports.

By contrast, two antidumping cases filed by an upstream steel producer of Tung-Ho, which held a similar position to the China Steel Co. in H-beams, both received positive determinations. The first case was filed against imports from Australia, Korea, Poland and Russia in July 1996, and the second case was filed against imports from Japan two years later. In fact, China Steel’s filing of the case may have been encouraged by a favorable decision rendered in the H-beam cases. Unlike China Steel, which is a well-established and steadily profitable company, Tung-Ho was a new entrant to the H-beam industry and had been generating losses since the commencement of its operations, despite its dominant position in the domestic market. The ITC cited the impact of dumped imports in suppressing the domestic price, thus pushing Tung-Ho into the red despite its over 60% market share. The ITC members were concerned about the impediments posed by imports to the establishment of a viable H-beam industry in Taiwan, although it was apparent that low prices also prevailed in the rest of the world due to a global recession in the steel industry at the time. The surge in exports from the former Soviet bloc partially explained the worldwide decline in steel prices.

It is interesting to note that when the ITC rendered a positive decision on the first H-beams case against Australia, Korea, Poland, and Russia, some critics argued that Tung-Ho left out Japanese imports in the antidumping suits deliberately as a tacit means of colluding with the Japanese exporters to jointly monopolize the domestic market. Trade theories suggest that antidumping can act as a mechanism to facilitate
or sustain tacit collusion (Staiger and Wolak 1989; Prusa 1992). Tung-Ho later filed an antidumping suit against the Japanese imports.

Aside from the three cases involving upstream steel products, the remaining suits were filed by mid-stream steel producers. There were two cases filed by stainless steel makers, one filed in November 1994 against Japanese imports, and the other filed in October 2002 against German and Italian imports. The first case succeeded, but the second case failed. The first case was filed by Gloria Material Technology Co. (Rong-Kang), a new start-up in the stainless steel business, against the imports of stainless steel bars and wire rods from Japan. The case earned the sympathy of the ITC because the complainant had been struggling against the much larger and more established competitors from Japan, like Daido and Sumitomo. The Japanese makers were suspected of engaging in predatory pricing to preempt the breathing room for new entrants, as they had monopolized the Taiwan market before Rong-Kang and other local producers entered the industry.

By contrast, the second case was filed by a relatively well-established company called Yeh-Lien, which owned integrated production facilities for stainless steel products. It produced hot-rolled stainless sheets partly for its own use and partly for resales to downstream users for cold-roll processing. In fact, Yeh-Lien was the only domestic producer of hot-rolled sheets, competing mainly with European imports. Because Yeh-Lien also produced its own cold-rolled products, it tended to compete with its customers, who in turn, naturally liked to seek alternative supply sources. In the public hearing conducted for this case, virtually all downstream users spoke against Yeh-Lien regarding its abuse of the monopoly position and the need for unimpeded import competition. Although Yeh-Lien did incur a loss in the year before

---

5 Gloria Material Technology Co. (Rong-Kang) was established in 1993 as a specialty steel company with an electric-arc furnace.
the case was filed, its opponents argued that the loss was minor compared to the losses suffered by its downstream users. In the end, the Commissioners sided with the downstream users and the petition for protection was turned down.

The remaining four cases in the steel industry were filed by the same complainant, the Taiwan Association of Steel Wires and Cables, which represents one major segment of the downstream steel industry. Only one case resulted in a positive determination, the other three cases being rejected. The successful case was filed in August 1998 against the imports of uncoated stress-relieved steel wires for pre-stressed concrete from Korea, India and Spain. Both Korea and India were assessed antidumping duties, but Spain escaped with a de-minimus amount of imports. The three unsuccessful cases all involved a similar, yet distinctive, product involving uncoated stress-relieved steel strands for pre-stressed concrete. Three cases were filed against Brazil, India and Argentina on the same occasion, against Korea, Thailand and Malaysia on another occasion, and finally against Indonesia. All ended with the same negative decisions. Apparently, the country from which the imports are obtained is not the issue, but rather the product is the issue. However, what causes steel wires to differ from steel strands?

Stress-relieved steel wires are used in the construction of precast concrete piles, posts, poles, or pipes, and the like. Stress-relieved steel strands are used in spanned bridges or tunnels. The main outlet for both products is the same – public construction projects. However, steel wires have wider applications in smaller projects, and hence their users are situated in a competitive market. By contrast, steel strands are restricted to specialized applications in larger projects, and hence their sales are virtually limited to public procurement projects. It should be obvious that the quality requirement of steel strands is also higher than that of steel wires. Domestically, both steel wires and strands have been produced by the same group of companies. The ITC was willing to
extend a level of protection to steel wires but not to steel strands, partly out of concern for the quality of public projects, and partly because of the nature of the transactions. Because the predominant mode of transactions involving steel strands is tender competition for public projects, dumping that could occur is at most a sporadic rather than recurring practice. The fact that different importers were accused in the three cases filed at different times suggests that sporadic dumping was taking place. If an antidumping duty is to be levied on the accused importers, it will prevent the importers from participating in the tender competition for public projects in the following five years. The domestic competition mechanism will thus be greatly impaired. If the cases are to be subject to an administrative review as circumstances change, as is mandated by law, what would be the appropriate time for such a review? Is the time following the project bidding the appropriate time? These considerations have made giving an affirmative decision regarding the steel strands cases difficult.

Several characteristics distinguish the post-ITC cases from the pre-ITC cases. First, the price-undertaking agreement has almost disappeared altogether. The only price-undertaking case was the H-beam case brought against Australia, Korea, Poland and Russia in July 1996. The case was initiated only three years after the complainant – Tung-Ho – had started producing hot-rolled steel H-beams. The case received a positive preliminary determination in 1997, which was followed by a price-undertaking agreement between the accused parties and the Taiwan government. The price-hike following the undertaking allowed Tung-Ho to register a positive profit in 1997. We could not tell whether Tung-Ho was only interested in obtaining a preliminary determination to orchestrate a price deal, but the price-floors agreed to by the exporters from Poland, Russia and Korea were soon broken in 1998, and Tung-Ho once again fell into the red. This was also the time of the Asian financial crisis and the currency values of Korea and Russia were at very low levels. At the request of
Tung-Ho, the case was reopened by the ITC. Australia was spared because it had faithfully kept to the price-undertaking agreement. The volume of Australian imports was also very small, a mere 2.2% in the period under investigation.

Second, after the ITC made a positive preliminary decision regarding industry injury, no single case was rejected due to the lack of evidence regarding dumping, except for a few de-minimus cases. This indicates that the key to the decision was industry injury, and not dumping. In fact, the industry learned of this fact quickly. The lawyers of the defendants usually focused their efforts on proving that the complainants were not injured, or that the injury was not caused by dumping.

Third, the upstream-downstream relationship played an important role in the injury decision. It is a common practice that downstream users of the products involved are called to the public hearings and their interests are carefully safeguarded. If downstream users are exporters competing in international markets, it is very difficult for the producers of upstream products to obtain a trade protection measure. This is a consistent principle in Taiwan’s policy making as Taiwan has traditionally been an export-oriented country (Chen and Ku 1999). In fact, the cases that received a positive determination (Table 4) were all to do with products that were oriented toward domestic consumption even after further processing.

Fourth, it has been more than 10 years since the ITC was established in 1994. Three antidumping cases were brought up for sunset reviews, and one of them was awarded an extension of protection. The other two cases were terminated at the end of the fifth year. There were seven occasions on which the exporters, on whom were levied antidumping duties, petitioned for an administrative review of the case based on changes in circumstances, but only two cases succeeded in revoking the original
decisions. This indicates that the ITC has been cautious in either shortening or lengthening the length of the trade protection. Two repealed cases related to the petrochemical industry were due to dramatic changes in the global business cycle.

V. The Effects of Antidumping Measures

According to the regulations in Taiwan, antidumping duties expire automatically in five years unless the original complainants file a petition for extension and receive a favorable review from the ITC. Up to now, three cases have been petitioned for extension and two have been rejected. The two rejected cases were the H-beam cases filed by the same complainant – Tung-Ho Steel. In the first case, a 6.12% antidumping duty was imposed on imports from Poland, beginning in December 1988, a 34.65% duty on imports from Russia, and a 31.48% duty on imports from Korea. In addition, Australia was bound by a price-undertaking agreement. After the imposition of antidumping duties, imports from Poland and Russia promptly ceased, as did the imports from Australia, even though there was no antidumping duty imposed in this last case. This suggests that the previous “dumping” activities emanating from these countries were sporadic. Taiwan was not a regular export market for countries like Poland, Russia and Australia, and dumping was nothing but a temporary measure to dispose of surplus products during the global recession. The Korean imports also declined steadily following the imposition of antidumping duties. In 1998, imports of H-beams from Korea totaled 34,896 tons. After the antidumping duty was levied, import volume drastically decreased to 237 tons in 1999. In the subsequent years, imports amounted to 638 tons in 2000, 225 tons in 2001, and only 36 tons in 2002, respectively. Furthermore, during the first three quarters of 2003, when the ITC was

---

6 The first case was the polypropylene case directed against imports from both Korea and Japan that was filed in April 1994. The second case was the HDPE/LDPE case against Korea filed in May 1994. Both cases were repealed in April 1995, and therefore lasted only one year.
conducting a sunset review of the case, the Korean imports ceased altogether. This indicates that, even for a regular exporter like Korea, the antidumping duty was very effective in discouraging imports.

The second case was against the H-beam imports from Japan, which was the major supplier to Taiwan before Tung-Ho embarked on the production of this product. The antidumping duties were levied in December 1999, and ranged from 10.24% to 24.42% depending on the producer.7 In 1999, Japanese imports of H-beams amounted to 42,867 tons. After antidumping duties were levied, the volume of imports declined to 17,681 tons in 2000, increased somewhat to 21,026 tons in 2001, declined again to 13,975 tons in 2002, and to only 2,717 tons in 2003. This decline was not as consistent as in the Korean case, but there is no doubt that the absolute level of imports markedly decreased.

Japanese imports are more resilient because of the perceived high quality of the Japanese products by Taiwanese users, and the traditionally strong business bonds between Taiwanese users and Japanese steel makers. Although the quantity of imports has declined, the price of imports has remained at low levels. The average price of imported H-beams from Japan was NT$7,700 in 1999, and after the antidumping duty was imposed, the import prices were NT$7,680, NT$7,720, and NT$7,900 in the following three years, respectively. The change in the import price was negligible. There was no evidence of an import price increase due to the “investigation effect” (Staiger and Wolak 1994), either. The average prices of imported H-beams from Japan were NT$10,714, NT$9,575 and NT$9,024 per ton in 1996, 1997, and 1998, respectively. The antidumping case began to be investigated in November 1998, and was concluded in December 1999. The average import price dropped to NT$7,700 in

7 In August 2002, Tung-Ho filed a petition for administrative review, accusing the Japanese producers of increasing the dumping margins. This review led to an increase in the antidumping duty levied on one of the Japanese producers, Sumitomo, from 10.24% to 44.15%
1999 during the core course of investigation. The continuing fall in world steel prices in 1996-2002 was a result of the business cycle. The import price suddenly shot up to NT$10,210 in 2003, but was driven by an unexpected global recovery in the steel market as opposed to being caused by antidumping duties. However, due to a decrease in the quantity of imports, the effect on the domestic price was quite visible. Between 1998 and 2003, the domestic price of H-beams increased by as much as 91.1%. This suggests that Japanese imports were close substitutes for domestic products. The absolute decline in the quantity allowed Tung-Ho to capture a larger market share and to enhance its scale of production, therefore lowering the unit cost. As a result, Tung-Ho was able to garner a small profit in the first year (1999) after the antidumping duties came into effect.

The only antidumping case that received a favorable sunset review to extend antidumping duties beyond the five-year normal protection period was the art paper case against Japanese imports. The case resulted in the levying of an antidumping duty ranging from 8.21% to 44.58%, beginning in July 2000. Five years later, the ITC determined that the domestic industry was free of injury under the protection but that the injury would re-emerge if antidumping duties were to be removed. Following the imposition of antidumping duties, the quantity of imported art paper from Japan declined from 3,572 tons in 2000 to 2,576 tons in 2001, to 2,864 tons in 2002, and to 2,738 tons in 2003. However, in 2004, the imports resurged to 4,085 tons. The main reason for the resurgence in imports was the removal of the MFN import tariff on art paper after Taiwan joined the WTO in 2002. During the 2000-2004 period, along with the decline in import quantity, there was also a quality shift among the Japanese imports towards the higher quality segments of art paper. Before antidumping duty

---

9 As a result of Taiwan’s zero-for-zero tariff commitment upon its WTO entry, the tariff on art paper was cut from the pre-WTO level of 7% to 5% in 2002, to 3.1% in 2003, and to 0% in 2004.
was imposed, imported art paper from Japan was concentrated in the A2 grade, a middle-range grade. After the antidumping duty was levied, the imports shifted to the higher quality grades of A0 and A1, since the Taiwanese producers were unable to match the Japanese quality in these segments.

During the protection period, Taiwan’s art paper industry went through a restructuring process. Two of the less efficient producers exited the industry, thus reducing the number of existing firms from five to three. On the Japanese side, two of the four Japanese producers on which were levied the highest antidumping duties stopped exporting art paper to Taiwan. The other two Japanese producers continued to export to Taiwan with a larger volume to partially replace the vacuum left by the exiting ones. Because of the shift in the imports from Japan toward higher quality segments, the opportunity was created for mid-quality art paper to be imported from Korea and China. Although the domestic producers were also able to capture a larger market share and to improve their profitability, the benefits were limited due to trade diversion.

The ITC cited two reasons for the extension of antidumping duties after the deadline: (1) Japanese exporters had not ceased dumping after the imposition of antidumping duties; and (2) the ITC predicted that Japanese producers would shift their exports back to the A2 grade if the antidumping duty was to be removed, given the fact that the A2 grade accounted for 93% of the output of the Japanese industry and that it had been exported to other countries in large quantities. Japan had also been found guilty of dumping this product in China as well. The ITC considered Taiwan to be a vulnerable target for dumping given its tariff on art paper of zero.

The case suggests that domestic art paper producers did not enhance their competitiveness during the protection period. Between 2000 and 2005 when antidumping duties were in effect, two paper mills exited the art paper industry. The
other three paper mills remained in the industry, but little new investment was injected to enhance the productivity or quality of the products. The two leading companies, Yong Feng Yu and Cheng-Lung, were more busy making overseas investments in China and Southeast Asia than investing to upgrade their facilities at home.

What differs in the art paper case from the H-beam case was that the former is a declining industry while the latter is an emerging industry. In the case of an emerging industry, an antidumping measure allows the industry to enlarge the scale of production and provides the industry with an opportunity for learning by doing. Both scale economies and learning lower the unit cost of production. At the time of the sunset review, the MFN tariff on H-beams had also been reduced to zero, just like the art paper, but the domestic industry was judged to be strong enough to stand up to foreign competition. In the case of a declining industry, although trade protection allowed the industry to make a small profit, the industry was not willing to invest in new equipment or new technology, for it did not foresee the future growth potential to justify such an investment. Instead, the industry engaged in foreign direct investment and outsourcing to reduce the costs of production.

VI. Conclusions

The experience of Taiwan’s trade remedy system indicates that antidumping is the predominant relief measure preferred and practiced by the government. In fact, there has never been a case filed for a countervailing measure against a subsidy by a foreign government, and only very recently has there been a case filed for safeguard measures. Between 1984 and 2004, there were 45 cases filed for antidumping measures, of which 11 cases were determined to be positive, whereupon an antidumping duty was assessed. The refinement of the trade remedy system in 1994 to separate the assessment on dumping or subsidy from the test for industry injury
improved the objectivity of the system, which was manifested by the government’s refraining from using price-undertaking agreements to settle the case. The establishment of the ITC in 1994 as an independent agency to conduct the injury test did not lead to more antidumping suits, either.

All of the antidumping cases filed in Taiwan involved oligopolistic industries. Steel and petrochemical products dominated these cases. In the post-1994 era, the cases that received a positive determination all involved products that were domestically consumed even after further processing. Products that are processed for export purposes or are incorporated into exported commodities are unlikely to be protected by the system. In Taiwan, if the downstream industry is exposed to international competition, the upstream suppliers are unlikely to be protected even if import dumping occurs.

Many antidumping cases were filed in the middle of an industrial recession, where the accused parties were involved in sporadic dumping because of surplus capacity. Theoretically, this type of dumping activity will automatically stop once the industry recovers from the recession. However, an antidumping duty imposed at this time is very effective in discouraging sporadic imports. If the aim of an antidumping measure is to provide breathing room for the domestic industry during the bad times, suppressing such imports seems to be justified. On the contrary, exporters that intend to maintain a long-term relationship with Taiwanese customers will strive to maintain a minimum amount of exports even in the presence of antidumping surcharges. A normal trading relationship will resume once the antidumping protection period comes to an end.

The concept of “like product” plays an important role in the determination of injury, just like the experiences in other countries. The concept is often employed to segment markets in the assessment of a causal relationship between dumping and
injury. However, sometimes market segmentation goes beyond the boundaries of products. For example, the business model also matters. In the case of the U.S.’s antidumping investigation of Taiwanese DRAM (dynamic random access memory) products, a segmentation was made between the products used in OEM (original equipment manufacturing) markets and in DIY (do it yourself) markets. Similarly, in Taiwan’s investigation of DRAM imports from the U.S., a segmentation was made between the DRAM sold under its own brand, and the DRAM made under a foundry service contract.\textsuperscript{10} Furthermore, the quality of a product may also segment the market. If the quality of the product is not distinguished, an antidumping duty will have the effect of shifting the imported products towards the higher-quality segments. If the domestic producers are unable to match the quality of the imports, then antidumping charges will only lead to simultaneous price increases in both high-quality and low-quality products with a limited effect on the scale of domestic production. If scale economies are important in affecting cost competitiveness, which is often the case, the benefits of antidumping surcharges in this case will be transitory, because once the surcharges are removed, the market structure will revert back to its original state.

\textsuperscript{10} The case was filed in March 1999 by the Taiwan Semiconductor Association and received a negative determination.
Table 1

Number of Taiwan’s Antidumping Cases According to Country: 1984-2004

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of cases</th>
<th>Country</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Korea</td>
<td>16</td>
<td>Thailand</td>
<td>2</td>
</tr>
<tr>
<td>Japan</td>
<td>11</td>
<td>Spain</td>
<td>2</td>
</tr>
<tr>
<td>Brazil</td>
<td>8</td>
<td>Italy</td>
<td>2</td>
</tr>
<tr>
<td>USA</td>
<td>7</td>
<td>Germany</td>
<td>2</td>
</tr>
<tr>
<td>Indonesia</td>
<td>5</td>
<td>Argentina</td>
<td>1</td>
</tr>
<tr>
<td>South Africa</td>
<td>4</td>
<td>Ukraine</td>
<td>1</td>
</tr>
<tr>
<td>Russia</td>
<td>2</td>
<td>Pakistan</td>
<td>1</td>
</tr>
<tr>
<td>Poland</td>
<td>2</td>
<td>Saudi Arabia</td>
<td>1</td>
</tr>
<tr>
<td>India</td>
<td>2</td>
<td>Mexico</td>
<td>1</td>
</tr>
<tr>
<td>Australia</td>
<td>2</td>
<td>Malaysia</td>
<td>1</td>
</tr>
<tr>
<td>Canada</td>
<td>2</td>
<td>Philippines</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: Taiwan International Trade Commission.
Table 2

Antidumping Cases with a Positive Determination

<table>
<thead>
<tr>
<th>Countries targeted</th>
<th>Commodity</th>
<th>Duty imposed</th>
<th>Implementation period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>Sodium dithionite</td>
<td>45.76%</td>
<td>1992.12.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>~1999.2.10</td>
</tr>
<tr>
<td>Brazil</td>
<td>Nitrocellulose</td>
<td>32%</td>
<td>1994.2.25</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>~1999.4.15</td>
</tr>
<tr>
<td>Brazil</td>
<td>Iron and no-alloy steel bars &amp; wire rods</td>
<td>19.66%~31.6%</td>
<td>1994.4.25</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>~1999.5.6</td>
</tr>
<tr>
<td>Korea, Japan</td>
<td>Polypropylene</td>
<td>Japan: 5.16%~68.71%; Korea: 4.77%~35.01%</td>
<td>1994.6.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>~1995.4.22</td>
</tr>
<tr>
<td>Korea</td>
<td>High-density &amp; low-density polyethylene</td>
<td>HDPE: 4.17%~9.45%; LDPE: 6.10%~6.51%</td>
<td>1994.5.16</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>~1995.4.22</td>
</tr>
<tr>
<td>Japan</td>
<td>Stainless steel bars &amp; rods</td>
<td>SUS304, SUS304L: 59.46%~63.53%;</td>
<td>1996.4.16</td>
</tr>
<tr>
<td></td>
<td></td>
<td>SUS316, SUS316L: 77.26%</td>
<td>~2001.5.8</td>
</tr>
<tr>
<td>Australia, Korea,</td>
<td>Hot-rolled H-beam steel</td>
<td>Poland: 6.12%; Russia: 34.65%;</td>
<td>1998.12.14</td>
</tr>
<tr>
<td>Russia</td>
<td></td>
<td>Korea: 31.48%; Australia: price</td>
<td>~2004.6.14</td>
</tr>
<tr>
<td></td>
<td></td>
<td>undertaking</td>
<td></td>
</tr>
<tr>
<td>Korea, India, Spain</td>
<td>Uncoated stress-relieved steel wires for pre-stressed concrete</td>
<td>India: 6.10%~9.95%; Korea: 25.39%~42.38%;</td>
<td>1998.12.14</td>
</tr>
<tr>
<td>Japan</td>
<td>Hot-rolled H-beam steel</td>
<td>10.24%~24.42%</td>
<td>1999.12.10~</td>
</tr>
<tr>
<td>Japan, Indonesia</td>
<td>Art paper</td>
<td>Japan: 8.21%~44.58%; Indonesia:</td>
<td>2000.7.20~</td>
</tr>
<tr>
<td></td>
<td></td>
<td>de-minimus exclusion</td>
<td></td>
</tr>
<tr>
<td>Philippines, Korea</td>
<td>Portland cement &amp; clinker</td>
<td>Philippines: 42.0%~104.48%; Korea:</td>
<td>2002.7.19~</td>
</tr>
<tr>
<td></td>
<td></td>
<td>110.99%~126.81%</td>
<td></td>
</tr>
</tbody>
</table>

Source: Taiwan International Trade Commission.
<table>
<thead>
<tr>
<th>Countries targeted</th>
<th>Product</th>
<th>Date of filing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil, India, Argentina</td>
<td>Uncoated stress-relieved steel strands for pre-stressed concrete</td>
<td>1997.8</td>
</tr>
<tr>
<td>Brazil, Ukraine, Russia</td>
<td>Steel plate</td>
<td>1998.11</td>
</tr>
<tr>
<td>Korea, Thailand, Malaysia</td>
<td>Uncoated stress-relieved steel strands for pre-stressed concrete</td>
<td>2000.10</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Uncoated stress-relieved steel strands for pre-stressed concrete</td>
<td>2001.7</td>
</tr>
<tr>
<td>Germany, Italy</td>
<td>Hot-rolled stainless steel rolls</td>
<td>2002.10</td>
</tr>
</tbody>
</table>

Source: Taiwan International Trade Commission.
References


