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William E. James

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Abstract

The paper examines antidumping initiations and measures since the founding of the World Trade Organization on 1 January 1995. The antidumping initiations and measures undertaken by and against the members of the North American Free Trade Agreement (NAFTA) and the European Union (EU) vis-à-vis Japan and 10 other major East Asian economies are compared with total initiations and measures undertaken against all foreign suppliers. The antidumping actions relative to global trade shares (both exports and imports) are used to derive measures of the intensity of use of antidumping. The bilateral trade and antidumping activity data are compared for 11 Asian countries and their partners in NAFTA and the EU. These indicators reveal that NAFTA and EU members use antidumping actions more intensively against East Asia than the trade shares of Asian countries alone would suggest. Separately, additional data on bilateral incidence of antidumping initiations and measures are organized into three discrete time periods: 1990–1994, 1995–1999, and 2000–2004 using the Global Antidumping Database (Version 3.0). One expects the initiations and measures of East Asia against partners in NAFTA and the EU to rise if the East Asian economies have been retaliating. Three case studies of other possible forms of retaliation involving the WTO dispute resolution mechanism and industry-specific antidumping threats involving Asian complainants versus partners in NAFTA are presented. In particular, the paper seeks to demonstrate that, in the parlance of game theory, current antidumping arrangements are a negative sum game. Some reform measures that might be applied to limit the damage are proposed.

I. Introduction and Motivation

Previous research (James 2000) has demonstrated that East Asian economies have been singled out for discriminatory antidumping (AD) actions by the traditional users of AD as a protectionist device. There is a huge asymmetry between the East Asian economies and traditional users (Australia, Canada, European Union [EU], New Zealand, and United States [US]) in using AD. In AD procedures, the first step is to file a formal complaint against a foreign supplier or multiple foreign suppliers covering a single country or two or more countries. The complainant is usually a private domestic firm that competes with the foreign suppliers in the domestic market and the complainant starts by filing a petition with the AD authority. In the US case, the Department of Commerce (DOC) and the International Trade Commission (ITC) are the responsible authorities, and both institutions are involved in AD procedures. After the petition is filed and accepted, the ITC makes a preliminary ruling on whether or not dumping is affirmed. If the finding is positive, the DOC then issues questionnaires to the foreign supplier(s). This procedure (an AD initiation or investigation) requires a formal response from the accused foreign entities. Between 1987 and 1997, 10 East Asian economies were named in 836 AD investigations or initiations out of a global total of 2,196 total investigations, or 38.1% of all initiations compared with a world export share of 27.9%. In the case of a positive final determination of dumping (in the US case this is the decision of the ITC based on whether or not domestic industry suffers injury or the threat of injury from those accused of dumping) an AD definitive measure (usually a penalty tariff equal to the so-called dumping margin) is applied against shipments of the foreign suppliers. Of 1,034 AD measures taken globally over the same period, East Asia was on the receiving end of 437 or 42.3%. In contrast, East Asian countries carried out only 102 initiations (4.6% of the total) and implemented only 42 measures (4.1% of the total), far less than the region's share in global imports over this interval (19%).¹

The literature in recent years has pointed to the possibility that traditional users of AD may face foreign retaliation through the channel of foreign industry reciprocal claims of dumping against the industry in the traditional users (AD initiations and AD measures) in

¹ These data are compiled from the World Trade Organization homepage (www.wto.org); see also the compilations by Miranda, Torres, and Ruiz (1998). These data may understate the actual situation because many AD petitions that are withdrawn prior to completion of an investigation are not counted in the total even though such petitions have a chilling effect on trade (Prusa 1992).

countries with AD regimes (Blonigen and Bown 2001).² A second channel of retaliation is to challenge AD actions and laws under the World Trade Organization (WTO) dispute settlement mechanism (DSM) by WTO member countries (Blonigen and Bown 2001). In the case of the US there is evidence that the threat of foreign retaliation influences the decisions of the US AD authorities and is also a growing concern for US exporters who may lobby intensively for restraint in use of AD initiations and measures (Blonigen and Bown 2001, Lindsey and Ikenson 2003).

In this paper the analysis covers the interval since the WTO came into being (1995 through mid-2008). Section II updates the data on the intensity of use of AD initiations and measures using WTO AD information from the WTO website. Detailed bilateral AD data are now available from the Global Antidumping Database (GADD) (Version 3.0) and are used in Section III to examine the likelihood that East Asian countries may have begun to use the AD channel to retaliate against the largest traditional users in the two largest regional trading blocks—the EU and the North American Free Trade Agreement (NAFTA) comprising Canada, Mexico, and US). Case studies of retaliation under the WTO DSM as well as an example of “reciprocal dumping initiations” are presented in Section IV, and Section V concludes with some observations about what the findings might indicate for future actions and reforms of AD in the WTO.

II. Asymmetries in the Use of Antidumping: East Asia vs. Traditional Users

An AD intensity index (see Appendix in James 2000) is applied to total reported AD initiations and measures of the WTO for a sample of 11 East Asian Member countries, NAFTA member countries, and the EU. First an export-weighted measure of the intensity with which AD initiations are used against the sample countries and groupings is presented (Table 1). The major finding for initiations is that the large asymmetry in the use of AD initiations prevails with Asian sample member countries facing an intensity measure of 2.27 (127% more than their share in world exports) compared to 0.45 (55% less than the share in world exports) for the traditional users. Similarly, in the case of the intensity of AD measures against the sample Asian countries (Table 2), the index takes a value of 2.30 compared with a value of only 0.43 for the traditional users. This means that relative to shares in world exports, Asian member countries of the WTO are nearly five times as likely to be implicated for dumping and to have measures taken against them than are NAFTA and EU member countries.

² Antidumping initiations and measures by industry and trading partner are available at the WTO homepage. However, matching these data with bilateral trade data at the detailed ten-digit level is left for future work.

Table 1. Economies Affected by Antidumping Initiations: Comparing Shares in Initiations and in Exports, 1995–2008

Affected Member Economy	Initiations Against A	Share in Total		Export Value (US\$ billions) C	Export Share D	Intensity Measure (E=B/D) E
		Initiations (percent) B				
China, People's Rep of.	640	19.36		6,338.78	5.94	3.26
Korea, Rep. of	247	7.47		2,802.99	2.63	2.84
Taipei, China	182	5.51		2,068.09	1.94	2.84
Japan	142	4.30		6,762.23	6.34	0.68
Hong Kong, China	24	0.73		277.39	0.26	2.79
North East Asia, Subtotal	1235	37.37		18,249.48	17.10	2.18
Indonesia	140	4.24		933.40	0.87	4.84
Malaysia	85	2.57		1,480.15	1.39	1.85
Philippines	10	0.30		479.66	0.45	0.67
Singapore	44	1.33		1,267.08	1.19	1.12
Thailand	136	4.11		1,146.79	1.07	3.83
Viet Nam	23	0.70		284.99	0.27	2.61
Southeast Asia, Subtotal	438	13.25		5,592.07	5.24	2.53
East Asia, Subtotal	1673	50.62		23,841.55	22.34	2.27
Canada	34	1.03		3,813.13	3.57	0.29
Mexico	40	1.21		2,247.13	2.11	0.57
US	183	5.54		10,768.19	10.09	0.55
NAFTA	257	7.78		16,828.45	15.77	0.49
EU	574	17.37		42,174.99	39.53	0.44
Traditional User, Subtotal	831	25.14		59,003.44	55.30	0.45
World	3305	100.00		106,699.73	100.00	1.00

Note: 2008 data are for January to June. For Hong Kong, China; Singapore; and Taipei, China only domestic exports are included.
Sources: International Monetary Fund *Direction of Trade Statistics* (CD-ROM) December 2008; CEIC Data Company Ltd.;
WTO *Statistics on Anti-Dumping*, available at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm; all downloaded 28 January 2009.

The People's Republic of China (PRC) has the largest number of initiations and measures taken against any member country in the WTO and faces the further difficulty that, under the terms of its WTO Accession Protocol, it is treated as a nonmarket economy. This enables plaintiffs to ignore prices within the PRC and to use prices of third countries to be used for like products that the PRC is accused of dumping. By the intensity measure two countries in Southeast Asia are targeted more intensely by initiations and AD duties relative to their export shares than is the PRC. For initiations, Indonesia (4.84) and Thailand (3.83) are experiencing higher levels of harassment relative to their export shares than is the PRC (3.26). In both these cases AD initiation intensity is increased relative to the measure found in 1987–1997 (James 2000), while for the PRC, the intensity measure has fallen slightly in 1995–2008 compared with the previous interval. For AD measures, Indonesia (4.18) and Thailand (3.62) are also relatively more intensely harassed than is the PRC (3.52). Similarly, the intensity of use of AD measures have

risen sharply in the more recent period against Indonesian and Thai products than for 1987–1997; and again in the case of the PRC, the intensity with which duties have been applied has become relatively less intensive.

Table 2. Economies Affected by Antidumping Measures: Comparing Shares in Measures and in Exports, 1995–2008

Affected Member Economy	Share in Total		Export Value (US\$ billions)	Export Share	Intensity Measure (E=B/D)
	Measures Against A	Measures (percent) B			
China, People's Rep of.	441	20.94	6,338.78	5.94	3.52
Korea, Rep. of	146	6.93	2,802.99	2.63	2.64
Taipei, China	118	5.60	2,068.09	1.94	2.89
Japan	105	4.99	6,762.23	6.34	0.79
Hong Kong, China	13	0.62	277.39	0.26	2.37
North East Asia, Subtotal	823	39.08	18,249.48	17.10	2.28
Indonesia	77	3.66	933.40	0.87	4.18
Malaysia	49	2.33	1,480.15	1.39	1.68
Philippines	6	0.28	479.66	0.45	0.63
Singapore	30	1.42	1,267.08	1.19	1.20
Thailand	82	3.89	1,146.79	1.07	3.62
Viet Nam	14	0.66	284.99	0.27	2.49
Southeast Asia, Subtotal	258	12.25	5,592.07	5.24	2.34
East Asia, Subtotal	1081	51.33	23,841.55	22.34	2.30
Canada	13	0.62	3,813.13	3.57	0.17
Mexico	26	1.23	2,247.13	2.11	0.59
US	112	5.32	10,768.19	10.09	0.53
NAFTA	151	7.17	16,828.45	15.77	0.45
EU	344	16.33	42,174.99	39.53	0.41
Traditional User, Subtotal	495	23.50	59,003.44	55.30	0.43
World	2106	100.00	106,699.73	100.00	1.00

Note: 2008 data are for January to June. For Hong Kong, China, Singapore, and Taipei, China only domestic exports are included.
 Sources: International Monetary Fund *Direction of Trade Statistics* (CD-ROM) December 2008; CEIC Data Company Ltd.;
 WTO *Statistics on Anti-Dumping*, available at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm; all downloaded 28 January 2009.

An important finding is that the application of AD definitive measures as a percentage of initiations against Asian countries has risen sharply comparing 1995–2008 with 1987–1997 (from 52% to 65% of the initiations). This confirms the conjecture (James 2000) that the Agreement on Antidumping, by making “voluntary export restraints” or voluntary restraint agreements illegal among WTO member countries, would lead to a higher incidence of definitive measures (including duties and price undertakings) relative to initiations. Price undertakings are used more sparingly than duties but in either case the methods used to calculate the required increase in a “dumped” product’s selling price in the export market to make it equal to the price in the home market (“margin of dumping”) is quite dubious (Lindsey and Ikenson 2003).

Looking at the intensity of use of AD initiations and definitive measures relative to import shares provides a complementary measure of intensity of use by the sample countries. The import-weighted measure indicates the propensity of a WTO member to resort to AD as a protectionist device against imports. In this there is little difference between Asia and traditional users as groups. For initiations the propensity is 0.64 for Asia as a whole compared with 0.54 for traditional users (Table 3). However, there are very substantial differences within the sample countries in each group. In Asia, Republic of Korea (hereafter Korea), (1.33); Indonesia (3.65); Malaysia (1.13); Thailand (1.13); Philippines (1.05); and, ominously, PRC (0.86) are among the most intense users of initiations. Japan (0.04) by contrast is quite reluctant to resort to initiations despite the fact that it is the largest importer in the Asian sample. NAFTA members Canada (1.28), Mexico (1.22), and US (0.78) are the traditional users with relatively high propensities to launch AD initiations. The intensity of use by Asia of AD initiations has increased sharply—has more than doubled—in the period 1987–1997, a finding consistent with the possibility that AD initiations are being used in retaliation against traditional users.

Table 3. Intensity of Use of Antidumping Initiations Relative to Import Share, 1995–2008

Reporter	Number of Initiations A	Share of Initiations (percent) B	Value of Imports (US\$ billions) C	Share of Imports D	Intensity Measure (E=B/D) E
China, People's Rep of.	141	4.27	5,438.04	4.94	0.86
Korea, Rep. of	107	3.24	2,676.20	2.43	1.33
Taipei, China	13	0.39	1,918.08	1.74	0.23
Japan	6	0.18	5,593.10	5.08	0.04
Hong Kong, China	0	–	974.82	0.89	–
North East Asia, Subtotal	267	8.08	16,600.25	15.08	0.54
Indonesia	67	2.03	611.38	0.56	3.65
Malaysia	43	1.30	1,262.74	1.15	1.13
Philippines	17	0.51	540.85	0.49	1.05
Singapore	na	na	2,144.23	1.95	na
Thailand	39	1.18	1,147.01	1.04	1.13
Viet Nam	0	–	347.81	0.32	–
Southeast Asia, Subtotal	166	5.02	6,054.02	5.50	0.91
East Asia, Subtotal	433	13.10	22,654.27	20.58	0.64
Canada	143	4.33	3,733.08	3.39	1.28
Mexico	94	2.84	2,568.18	2.33	1.22
US	414	12.53	17,688.78	16.07	0.78
NAFTA	651	19.70	23,990.05	21.79	0.90
EU	413	12.50	42,057.50	38.20	0.33
Traditional User, Subtotal	1064	32.19	66,047.55	59.99	0.54
World	3305	100.00	110,096.76	100.00	1.00

Note: 2008 data are for January to June. For Hong Kong, China and Taipei, China only retained imports are included.

Sources: International Monetary Fund *Direction of Trade Statistics* (CD-ROM) December 2008; CEIC Data Company Ltd.; WTO *Statistics on Anti-Dumping*, available at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm; all downloaded 28 January 2009.

There is also little to separate Asia from the traditional users when it comes to the intensity of application of definitive measures, with Asia's propensity of 0.62 only slightly above that of traditional users 0.54 (Table 4). Indonesia (2.91), Thailand (1.28) Korea (1.09), Malaysia (1.04), and PRC (1.04) are relatively intense in the application of definitive measures as are Mexico (1.65) and Canada (1.23) among the traditional users. These findings also are consistent with a pattern that may indicate retaliatory AD measures on the part of Asian WTO member countries.

Table 4. Intensity of Use of Definitive Measures Relative to Import Share, 1995–2008

Reporter	Number of Measures A	Share of Measures (percent) B	Value of Imports (US\$ billions) C	Share of Imports D	Intensity Measure (E=B/D) E
China, People's Rep of.	108	5.13	5,438.04	4.94	1.04
Korea, Rep. of	56	2.66	2,676.20	2.43	1.09
Taipei, China	4	0.19	1,918.08	1.74	0.11
Japan	3	0.14	5,593.10	5.08	0.03
Hong Kong, China	0	–	974.82	0.89	–
North East Asia, Subtotal	171	8.12	16,600.25	15.08	0.54
Indonesia	34	1.61	611.38	0.56	2.91
Malaysia	25	1.19	1,262.74	1.15	1.04
Philippines	9	0.43	540.85	0.49	0.87
Singapore	2	0.09	2,144.23	1.95	na
Thailand	28	1.33	1,147.01	1.04	1.28
Viet Nam	0	–	347.81	0.32	–
Southeast Asia, Subtotal	98	4.65	6,054.02	5.50	0.85
East Asia, Subtotal	269	12.77	22,654.27	20.58	0.62
Canada	88	4.18	3,733.08	3.39	1.23
Mexico	81	3.85	2,568.18	2.33	1.65
US	245	11.63	17,688.78	16.07	0.72
NAFTA	414	19.66	23,990.05	21.79	0.90
EU	269	12.77	42,057.50	38.20	0.33
Traditional User, Subtotal	683	32.43	66,047.55	59.99	0.54
World	2106	100.00	110,096.76	100.00	1.00

Note: 2008 data are for January to June. For Hong Kong, China and Taipei, China only retained imports are included.

Sources: International Monetary Fund *Direction of Trade Statistics* (CD-ROM) December 2008; CEIC Data Company Ltd.; WTO *Statistics on Anti-Dumping*, available at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm; all downloaded 28 January 2009.

There are still major asymmetries between the two groups of member countries, with Asia having a far lower propensity to use AD initiations and measures against others than those others are using against Asia, while traditional users' well-oiled machinery for AD is far more in evidence in the asymmetry measure (Table 5).

The comparison of AD initiations and measures relative to global trade shares may be misleading. The relationship may not capture the true extent of the asymmetry, instead, the shares in AD initiations and measures relative to the shares of partners in bilateral trade flows (measured as a share of the reporter's imports from all foreign suppliers) may better capture differences in intensity of use.

Table 5. Symmetry Ratio: Antidumping Initiations and Measures, 1995–2008

	Initiations	Measures
China, People's Rep of.	0.22	0.24
Korea, Rep. of	0.43	0.38
Taipei, China	0.07	0.03
Japan	0.04	0.03
Hong Kong, China	–	–
North East Asia, Subtotal	0.22	0.21
Indonesia	0.48	0.44
Malaysia	0.51	0.51
Philippines	1.70	1.50
Singapore	–	0.07
Thailand	0.29	0.34
Viet Nam	–	–
Southeast Asia, Subtotal	0.38	0.38
East Asia, Subtotal	0.26	0.25
Canada	4.21	6.77
Mexico	2.35	3.12
US	2.26	2.19
NAFTA	2.53	2.74
EU	0.72	0.78
Traditional User, Subtotal	1.28	1.38
World	1.00	1.00

Note: 2008 data are for January to June. The ratio is the number of initiations or measures undertaken by the economy or region (Tables 3 and 4) versus the number of initiations or measures received by the same economy or region (Tables 1 and 2).

Sources: International Monetary Fund *Direction of Trade Statistics* (CD-ROM) December 2008; CEIC Data Company Ltd.; WTO *Statistics on Anti-Dumping*, available at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm; all downloaded 28 January 2009.

The intensity of use of AD initiations relative to the share of Asian partners in imports of NAFTA–EU (Table 6) is more than two and a half times greater than trade shares would alone suggest (2.55), although the variation across Asian partners is quite large. For AD measures by NAFTA–EU members versus Asian partners relative to the share of NAFTA–EU imports (Table 7) the findings are similar (2.52, with quite a wide variation across the 11 Asian partners). The relatively low incidence of initiations and measures relative to import shares found in the cases of Hong Kong, China; Japan; and Singapore may reflect the composition of shipments in more advanced products that do not compete directly with sensitive industries in the NAFTA–EU. In addition, the relatively sophisticated legal expertise in these countries and their industry's ability to bring sufficient resources

to answer AD petitions by NAFTA–EU member countries may deter AD initiations. The very high intensity of NAFTA–EU measures against other Asian countries (Indonesia, Thailand, and Viet Nam) possibly reflects a higher proportion of sensitive products in their shipments to the NAFTA–EU markets.

Table 6. Shares in NAFTA–EU AD Initiations and Imports, 1995–2008

Affected Member Economy	NAFTA–EU Initiations Against A	Share in Total Initiations (percent) B	Value of NAFTA–EU Imports (US\$ billions) C	Share in Total NAFTA–EU Imports D	Intensity Measure (E=B/D) E
China, People's Rep of.	213	20.02	4,079.56	6.18	3.24
Korea, Rep. of	66	6.20	1,026.28	1.55	3.99
Taipei, China	55	5.17	713.45	1.08	4.79
Japan	45	4.23	3,261.16	4.94	0.86
Hong Kong, China	4	0.38	384.66	0.58	0.65
North East Asia, Subtotal	383	36.00	9,465.12	14.33	2.51
Indonesia	33	3.10	329.66	0.50	6.21
Malaysia	22	2.07	640.44	0.97	2.13
Philippines	3	0.28	256.49	0.39	0.73
Singapore	3	0.28	518.73	0.79	0.36
Thailand	29	2.73	451.64	0.68	3.99
Viet Nam	12	1.13	127.39	0.19	5.85
Southeast Asia, Subtotal	102	9.59	2,324.35	3.52	2.72
East Asia, Subtotal	485	45.58	11,789.47	17.85	2.55
World, Total	1064	100.00	66,047.55	100.00	

Note: 2008 data are for January to June.

Sources: International Monetary Fund *Direction of Trade Statistics* (CD-ROM) December 2008; CEIC Data Company Ltd.; WTO *Statistics on Anti-Dumping*, available at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm; all downloaded 28 January 2009.

In contrast to NAFTA–EU, the Asian countries' use of AD initiations is nearly proportional to the share of NAFTA–EU suppliers in the imports of these countries with the intensities of initiations (0.93—Table 8) and measures (0.96—Table 9) both close to unity. The PRC has a relatively high intensity of use of initiations and measures and this may reflect the beginnings of retaliatory AD action since the WTO accession of the PRC in late 2001. This issue can be examined in Section III. The asymmetry in bilateral initiations and measures is much greater than for global AD initiations and measures (compare Table 10 with Table 5). The gap may be set to close however, and this is what is examined in Section III using the GADD.

Table 7. Shares in NAFTA–EU AD Measures and Imports, 1995–2008

Affected Member Economy	NAFTA–EU Measures Against A	Share in Total Measures (percent) B	Value of NAFTA–EU Imports (US\$ billions) C	Share in Total NAFTA–EU Imports D	Intensity Measure (E=B/D) E
China, People's Rep of.	141	20.64	4,079.56	6.18	3.34
Korea, Rep. of	29	4.25	1,026.28	1.55	2.73
Taipei, China	31	4.54	713.45	1.08	4.20
Japan	32	4.69	3,261.16	4.94	0.95
Hong Kong, China	0	-	384.66	0.58	-
North East Asia, Subtotal	233	34.11	9,465.12	14.33	2.38
Indonesia	23	3.37	329.66	0.50	6.75
Malaysia	13	1.90	640.44	0.97	1.96
Philippines	2	0.29	256.49	0.39	0.75
Singapore	1	0.15	518.73	0.79	0.19
Thailand	27	3.95	451.64	0.68	5.78
Viet Nam	8	1.17	127.39	0.19	6.07
Southeast Asia, Subtotal	74	10.83	2,324.35	3.52	3.08
East Asia, Subtotal	307	44.95	11,789.47	17.85	2.52
World, Total	683	100.00	66,047.55	100.00	

Note: 2008 data are for January to June.

Sources: International Monetary Fund *Direction of Trade Statistics* (CD-ROM) December 2008; CEIC Data Company Ltd.; WTO *Statistics on Anti-Dumping*, available at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm; all downloaded 28 January 2009.

Table 8. Intensity of Use of AD Initiations against NAFTA–EU Relative to Share in Imports, 1995–2008

Reporter	Number of Initiations against NAFTA–EU A	Share in Total Initiations (percent) B	Value of Imports from NAFTA–EU (US\$ billions) C	Share of Imports from NAFTA–EU to Total Imports D	Intensity Measure (E=B/D) E
China, People's Rep of.	42	29.79	1,218.88	22.41	1.33
Korea, Rep. of	33	30.84	720.29	26.91	1.15
Taipei, China	2	15.38	534.20	27.41	0.56
Japan	1	100.00	1,772.32	31.69	3.16
Hong Kong, China	0	-	508.72	15.50	-
North East Asia, Subtotal	78	29.77	4,754.42	25.10	1.19
Indonesia	9	13.43	143.33	23.44	0.57
Malaysia	6	13.95	345.71	27.38	0.51
Philippines	1	5.88	152.65	28.22	0.21
Singapore	0	-	587.96	27.42	-
Thailand	6	15.38	238.70	20.81	0.74
Viet Nam	0	-	40.92	11.76	-
Southeast Asia, Subtotal	22	13.25	1,509.27	24.93	0.53
East Asia, Subtotal	100	23.36	6,263.69	25.06	0.93

Note: 2008 data are for January to June.

Sources: International Monetary Fund *Direction of Trade Statistics* (CD-ROM) December 2008; CEIC Data Company Ltd.; WTO *Statistics on Anti-Dumping*, available at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm; all downloaded 28 January 2009.

Table 9. Intensity of Use of AD Measures against NAFTA–EU Relative to Share in Imports, 1995–2008

Reporter	Number of Measures against NAFTA–EU A	Share in Total Measures (percent) B	Value of Imports from NAFTA–EU (US\$ billions) C	Share of Imports from NAFTA–EU to Total Imports D	Intensity Measure (E=B/D) E
China, People's Rep of.	32	29.63	1,218.88	22.41	1.32
Korea, Rep. of	15	26.79	720.29	26.91	1.00
Taipei, China	0	–	534.20	27.41	–
Japan	0	–	1,772.32	31.69	–
Hong Kong, China	0	–	508.72	15.50	–
North East Asia, Subtotal	47	27.49	4,754.42	25.10	1.09
Indonesia	4	11.76	143.33	23.44	0.50
Malaysia	10	40.00	345.71	27.38	1.46
Philippines	0	–	152.65	28.22	–
Singapore	0	–	587.96	27.42	–
Thailand	4	14.29	238.70	20.81	0.69
Viet Nam	0	–	40.92	11.76	–
Southeast Asia, Subtotal	18	18.37	1,509.27	24.93	0.74
East Asia, Subtotal	65	24.16	6,263.69	25.06	0.96

Note: 2008 data are for January to June.

Sources: International Monetary Fund *Direction of Trade Statistics* (CD-ROM) December 2008; CEIC Data Company Ltd.; WTO *Statistics on Anti-Dumping*, available at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm; all downloaded 28 January 2009.

Table 10. Symmetry Ratio: Antidumping Initiations and Measures, East Asia vs. NAFTA–EU, 1995–2008

Reporter	Initiations	Measures
	Against NAFTA–EU	
China, People's Rep of.	0.20	0.23
Korea, Rep. of	0.50	0.52
Taipei, China	0.04	–
Japan	0.02	–
Hong Kong, China	–	–
North East Asia, Subtotal	0.20	0.20
Indonesia	0.27	0.17
Malaysia	0.27	0.77
Philippines	0.33	–
Singapore	–	–
Thailand	0.21	0.15
Viet Nam	–	–
Southeast Asia, Subtotal	0.22	0.24
East Asia, Subtotal	0.21	0.21
	Against East Asia	
Canada	9.60	14.00
Mexico	33.00	22.00
US	5.74	5.13
NAFTA	6.88	6.41
EU	3.44	3.53
NAFTA–EU, Subtotal	4.85	4.72

Note: 2008 data are for January to June. The ratio is the number of initiations or measures undertaken by the economy or region versus the number of initiations or measures received by the same economy or region.

Sources: International Monetary Fund *Direction of Trade Statistics* (CD-ROM) December 2008; CEIC Data Company Ltd.; WTO *Statistics on Anti-Dumping*, available at http://www.wto.org/english/tratop_e/adp_e/adp_e.htm; all downloaded 28 January 2009.

III. Antidumping Contagion Spreads to Asia: Evidence on Retaliatory Antidumping Use

Since the completion of the Uruguay Round and the establishment of the WTO there has been an explosion in the use of AD. New users have dominated this trend and the number of users shot up from just 12 in 1993 to 18 in 1995, and by 2007 had reached 41 WTO member countries (WTO 2008). Between 1995 and 2000 new users instituted 210 AD definitive measures against traditional users—an increase of 192% (Lindsey and Ikenson 2003). The use of AD by new users against each other also dramatically increased (Miranda, Torres, and Ruiz 1998). The WTO database shows that the number of AD initiations between 1995 and 2007 peaked during the world recession of 2001 at 366 with definitive measures reaching an average of 217 in 2002–2003, the highest level since the WTO was established. These data demonstrate that AD had become contagious.

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT 1994) or Antidumping Agreement (ADA) requires member countries to file reports every six months providing information on investigations and definitive measures.³ These reports have been compiled in the case of 19 member countries that filed on schedule and that provided sufficient detail into the GADD Version 3.0 (Bown 2007). Fortunately, the database includes the traditional users we are concerned with in this paper (NAFTA members and EU) as well as for five of the East Asian economies (PRC; Indonesia; Japan; Korea; and Taipei, China). Thus, the GADD includes five of the East Asian economies that have been the most victimized by the traditional users in NAFTA and the EU. The GADD provides a wealth of information that can be exploited to assess the pattern of AD initiations and definitive measures bilaterally between the traditional users and East Asia in order to see if the patterns are consistent with the retaliatory use of AD by East Asia.

Bilateral AD initiations and measures are compiled for each pair of partners available in the GADD for three discrete 4-year intervals (1990–1994, 1995–1999, and 2000–2004) in order to see if any clear patterns emerge that might indicate retaliatory AD actions on the part of the Asian countries individually.⁴ The discrete time periods chosen reflect (i) pre-WTO period when traditional users dominate AD actions (1990–1994); (ii) post-Uruguay Round period (1995–1999); and (iii) peak period of WTO AD actions by all users (2000–2004). The expected pattern would be for East Asian actions to increase monotonically against the traditional users in periods 2 and 3 over period 1. Retaliation may also be consistent with some reduction in AD actions by traditional users relative to period 1 but not necessarily monotonically. The reason is that in period 3, AD actions may have increased as a result of the sharp downturn in the business cycle in the traditional user countries associated with the recession of 2001.

³ See Macrory (2005) for a detailed evaluation of the Agreement on Antidumping.

⁴ These bilateral AD actions are shown in Tables 11b and 12b.

The bilateral patterns are summarized between East Asia and NAFTA members (Table 11a) and East Asia and the EU (Table 12a) respectively. The bilateral pattern between the US and East Asia (Table 11a) clearly follows a pattern consistent with retaliatory AD actions by East Asia with initiations and measures rising steadily in periods 2 and 3. There is also a clear trend to closing the gap and reducing the asymmetry between the partners in the use of AD action. This pattern holds weakly for Canada and Mexico but overall is very clear for NAFTA and East Asia taken as groupings. Clearly, the PRC and Korea have been the most active in implementing AD actions against NAFTA, mainly against the US. The use of AD actions by the PRC has clearly accelerated since the accession to the WTO in late 2001. One of PRC's main motives for joining the WTO in the first place was to eliminate discriminatory treatment particularly in the area of AD (Wang and Wang 2005).⁵ In the case of NAFTA the level of AD action slows in period 2 relative to period 1 but then picks up in period 3, possibly because of the pressures created by the recession that began in 2001 in the US but that also hit Canada and Mexico.

Table 11a. Bilateral Antidumping Initiations and Measures: East Asia and NAFTA Partners

Reporter	Exporter	1990–1994		1995–1999		2000–2004	
		Initiations	Measures	Initiations	Measures	Initiations	Measures
US	East Asia	100	61	60	39	67	39
East Asia	US	4	2	11	6	19	16
Canada	East Asia	11	7	8	6	28	17
East Asia	Canada	2	0	1	1	4	2
Mexico	East Asia	34	20	9	8	11	10
East Asia	Mexico	0	0	0	0	1	1
NAFTA	East Asia	145	88	77	53	106	66
East Asia	NAFTA	6	2	12	7	24	19

Note : See Table 11b for a detailed breakdown of NAFTA member countries and East Asian countries AD actions against one another.

Source: Global Antidumping Database Version 3.0, available: www.brandeis.edu/~cdown/global_ad/.

The pattern of AD actions is even more dramatic in the case of East Asia with the EU (Table 12a). A monotonic rise in initiations and measures in periods 2 and 3 virtually eliminated the asymmetry between the EU and East Asia that is very striking in period 1 by period 3. The EU has moderated its use of AD against East Asia, and there may be a link between this behavior and the threat of East Asian retaliatory AD actions. As was the case for NAFTA, the PRC and Korea have been most active in using AD actions against EU member countries.

⁵ For example, prior to accession Mexico imposed across the board AD duties on the PRC's products of between 300% and 1000% without the need for consultations. The PRC still faces difficulties as it may be treated as a "non-market economy" up to the end of 2016 under the Protocol of Accession (Wang and Wang 2005).

Table 11b. Bilateral Antidumping Initiations and Measures: East Asia and NAFTA Partners

Reporter	Exporter	1990–1994		1995–1999		2000–2004	
		Initiations	Measures	Initiations	Measures	Initiations	Measures
US	KOR	21	12	14	5	9	5
KOR	US	2	2	7	4	3	2
Canada	KOR	3	2	3	2	4	2
KOR	Canada	0	0	0	0	2	2
Mexico	KOR	4	1	1	1	1	0
KOR	Mexico	0	0	0	0	0	0
NAFTA	KOR	28	15	18	8	14	7
KOR	NAFTA	2	2	7	4	5	4
US	PRC	41	28	16	12	40	28
PRC	US	0	0	2	2	16	14
Canada	PRC	2	1	3	2	16	11
PRC	Canada	0	0	1	1	0	0
Mexico	PRC	25	18	4	3	9	9
PRC	Mexico	0	0	0	0	1	1
NAFTA	PRC	68	47	23	17	65	48
PRC	NAFTA	0	0	3	3	17	15
US	TAP	14	6	11	8	7	2
TAP	US	2	0	2	0	0	0
Canada	TAP	4	3	1	1	7	3
TAP	Canada	2	0	0	0	2	0
Mexico	TAP	4	0	3	3	1	1
TAP	Mexico	0	0	0	0	0	0
NAFTA	TAP	22	9	15	12	15	6
TAP	NAFTA	4	0	2	0	2	0
US	Japan	24	15	19	14	11	4
Japan	US	0	0	0	0	0	0
Canada	Japan	2	1	1	1	1	1
Japan	Canada	0	0	0	0	0	0
Mexico	Japan	1	1	1	1	0	0
Japan	Mexico	0	0	0	0	0	0
NAFTA	Japan	27	17	21	16	12	5
Japan	NAFTA	0	0	0	0	0	0
US	Indonesia	0	0	7	4	6	3
Indonesia	US	0	0	1	0	1	1
Canada	Indonesia	1	1	3	1	1	1
Indonesia	Canada	0	0	1	0	0	0
Mexico	Indonesia	0	0	0	0	1	1
Indonesia	Mexico	0	0	0	0	0	0
NAFTA	Indonesia	1	1	10	5	8	5
Indonesia	NAFTA	0	0	2	0	1	1

TAP = Taipei, China; KOR = Korea, Rep. of; PRC = China, People's Rep. of; US = United States.

Source: Global Antidumping Database Version 3.0, available: www.brandeis.edu/~cdown/global_ad/.

Table 12a. Bilateral Antidumping Initiations and Measures: East Asia and EU

Reporter	Exporter	1990–1994		1995–1999		2000–2004	
		Initiations	Measures	Initiations	Measures	Initiations	Measures
EU	KOR	11	9	18	7	6	4
KOR	EU	6	1	8	7	10	10
EU	PRC	25	21	29	14	23	20
PRC	EU	0	0	1	1	16	16
EU	TAP	7	3	12	7	4	3
TAP	EU	1	0	4	1	3	1
EU	Japan	15	11	6	4	1	1
Japan	EU	1	0	0	0	0	0
EU	East Asia	58	44	65	32	34	28
East Asia	EU	8	1	13	9	29	27

TAP = Taipei, China; KOR = Korea, Rep. of; PRC = China, People's Rep. of; EU = European Union.

Note: See Table 12b for a detailed breakdown of EU member countries that the East Asian countries took AD action against.

Source: Global Antidumping Database Version 3.0, available: www.brandeis.edu/~cdown/global_ad/

Table 12b. Bilateral Cases of AD Actions by Asian Member Countries against the EU

Reporter	Exporter	1990–1994		1995–1999		2000–2004	
		Initiations	Measures	Initiations	Measures	Initiations	Measures
China, People's Rep. of	France					2	2
China, People's Rep. of	Netherlands					3	3
China, People's Rep. of	Germany			1	1	3	3
China, People's Rep. of	UK					2	2
China, People's Rep. of	Belgium					1	1
China, People's Rep. of	Finland					1	1
China, People's Rep. of	EU					4	4
China, People's Rep. of	EU	0	0	1	1	16	16
Taipei, China	Germany					1	0
Taipei, China	Poland	1	0	1	1	1	1
Taipei, China	Spain			2	0		
Taipei, China	Italy			1	0	1	0
Taipei, China	EU	1	0	4	1	3	1
Japan	Norway	1	0				
Japan	EU	1	0				
Korea, Rep. of	France	3	1	1	1	1	1
Korea, Rep. of	UK	1	0	1	1	0	0
Korea, Rep. of	Germany	1	0	3	2	1	1
Korea, Rep. of	Belgium	1	0	0	0	2	2
Korea, Rep. of	Netherlands	0	0	2	2	0	0
Korea, Rep. of	Bulgaria	0	0	1	1	0	0
Korea, Rep. of	Poland	0	0	0	0	1	1
Korea, Rep. of	Italy	0	0	0	0	2	2
Korea, Rep. of	Spain	0	0	0	0	3	3
Korea, Rep. of	EU	6	1	8	7	10	10

EU = European Union, UK = United Kingdom.

Source: Global Antidumping Database Version 3.0, available: http://www.brandeis.edu/~cdown/global_ad/

The fact that Indonesia; Japan; and Taipei,China were not found to be highly active AD users against NAFTA and EU members does not mean that they have had no recourse to retaliatory actions in response to AD initiations and measures taken against them by traditional users and the same can be said for Hong Kong, China and possibly other Asian countries. These WTO members may have preferred to use the WTO DSM as the instrument of retaliation. In other cases, these countries may have used the very threat of initiating AD action in retaliation successfully so that a petition that is filed with the AD authority is withdrawn before a full investigation is undertaken. As was noted above, many AD petitions are withdrawn before they result in a full-blown investigation because the parties arrive at a “voluntary” arrangement to fix prices and restrict trade (Prusa 1992). These voluntary arrangements have only become illegal among WTO member countries since the Agreement on Antidumping entered into force in 1995. Korea and PRC have elected to use both channels. A case study approach is used in Section IV to examine how retaliation through the DSM may have been chosen instead of AD by East Asian countries that are reluctant to use AD actions such as Japan. In addition, a case of reciprocal dumping involving semiconductors between the US and Taipei,China is discussed in order to demonstrate the use of the mere threat of AD action in a retaliatory fashion.

IV. Use of the WTO DSM and AD Threats as Case Studies of Retaliation

Two case studies of use of the DSM as a channel of retaliation against AD laws and practices involving Asian member countries as complainants against a traditional user of AD (i.e., the US) and one example of the use of the threat of AD action by an Asian member against a traditional user (again the US) are considered.

A. Dispute DS217 United States: Continued Dumping and Subsidy Offset Act of 2000

This dispute over a piece of US AD legislation, known popularly as the Byrd Amendment, was brought to the DSM by 11 complainants (the most that have ever signed on to contest another member country’s legislation) including Indonesia, Japan, Korea, and Thailand. Hong Kong, China was among the seven members that reserved their third party rights in this dispute. A panel report was issued on 16 September 2002 that found the Byrd Amendment to be inconsistent with the obligations of the US under GATT 1994, a ruling that was subsequently upheld by the Appellate Body on 16 January 2003. The thrust of the complaint was that, in the words of James and Parsons (2005, 145):

The Byrd Amendment adds insult to injury by awarding the duties paid to the complainant rather than the US Treasury Department.

In 2001, under the Byrd Amendment an estimated US\$231 million was distributed to companies that had filed AD complaints, plus another US\$330 million in 2002, and about US\$240 million in 2003, according to a press release from the then EU Trade Commissioner, Pascal Lamy (EU 2003). The award of AD duties to US companies that filed the successful petition is in clear violation of the Subsidies and Countervailing Measures Agreement as well as the Antidumping Agreement (ADA) of GATT 1994. The US Congress voted to repeal the amendment in 2005 under threat of retaliatory suspension of concessions worth hundreds of millions of US dollars by several of the complainants, Japan in particular. This was a clear case of success in using the DSM as a channel of retaliation against US AD law and procedures.⁶

B. Dispute DS322 United States: Measures Relating to Zeroing and Sunset Review

The Government of Japan was the complainant in the case against the US practice of zeroing—where in calculating the “dumping margin”, those sales that are at higher prices in the foreign market (in the US) compared with sales taking place in the domestic market (sales in Japan) are excluded. This practice makes it possible to generate positive dumping margins even when in reality there is no such margin or even a negative dumping margin. Examples of the practice are provided by Lindsey and Ikenson (2003, 70–2). Japan brought the case to the WTO in 24 November 2004 citing 16 specific instances of the US DOC using zeroing.⁷ The strategy was to avoid tackling this practice on a case-by-case basis but rather to challenge it generally and so to remove any loopholes that the US might exploit. The panel report issued on 20 September 2006 upheld Japan’s claim that zeroing could be challenged and that the practice violated US obligations as it is inconsistent with Article 2.42 of the ADA under GATT 1994 (WTO 2008). Upon appeal, the Appellate Body upheld the decision on 9 January 2007 and found that the practice of zeroing is inconsistent with US commitments and obligations under both the ADA under Articles 2.1, 2.4, and 2.4.2; and Articles 9.1–9.3 and 9.5. The US was found to have used zeroing in calculating dumping margins for purposes of “Sunset Reviews” in 11 periodic reviews it has conducted to date. The US failed to revise its legislation within a reasonable time so that on 10 January 2008 Japan requested authorization to suspend concessions on a certain volume of products of export interest to the US. The US filed an appeal over the level of suspensions and the matter is currently referred to arbitration. The failure of the US to eliminate the practice is worrisome, as Robert Zoellick (former US Trade Representative) had pointed out (quoted in Ikenson 2004, 3):

⁶ As of 2008 Senator Byrd, author of the Amendment, was trying to reinstate it (Cherniak 2008).

⁷ India; Taipei, China; and a few others asked to join in the consultations in December of that year.

Our ability to demand that others follow the trade rules is strengthened when the United States addresses cases we lose.

Ikenson (2004, 2) shows in actual US AD cases the use of zeroing inflated the dumping margin in 17 of 18 cases and generates positive dumping margins in five cases where otherwise no dumping margin exists. Of these 18 AD actions, eight were against Taipei,China and five were against Japan. In four of the cases against the former the product in question was semiconductors (dynamic random access memories [DRAMs] or static random access memories) and inflated the margin of dumping by as much as 69% in DRAMs and 297% in static random access memories. The authorities in Taipei,China have found an alternative channel with which to challenge US AD practice.

C. The DRAM Dumping Battle: Using the Threat of Reciprocal Antidumping Action

Micron Technology—one of the largest US producers of DRAMs—filed an AD petition against competitors from Taipei,China in October 1998 claiming its losses that year (US\$234 million on sales of US\$3.0 billion compared with a net profit of US\$332 million in the previous year on sales of US\$3.5 billion) were caused by dumping although imported DRAMs from Taipei,China accounted for only about 10–13% of US market imports of DRAMs or about US\$450 million in 1998 (Duffy 1998 and Burns 1999). In December 1998, the US DOC voted unanimously to levy penalty duties on four producers from Taipei,China, a move that was confirmed by an injury determination by the US ITC in May 1999. AD duties ranging from 8% to 69% were to enter into force in the US in October 1999.

Counter claims were then made in Taipei,China that Micron was selling DRAMs at 46% less than the price of domestic sales, which led to the semiconductor industry association taking action against Micron by bringing its own AD petition before the Executive Yuan, about the same time as the injury determination in Washington. The authorities found in September 1999 that Micron had been dumping and set AD duties at 62% (Texas Instruments and IBM were also named in the petition). The immediate response was a fall in Micron's share price and rapid backtracking by the Commerce Department and the ITC. In November 1999 the ITC reversed itself and found that there was no injury or threat thereof and the case was quietly abandoned. The case illustrates how reciprocal retaliatory threats can be used in certain circumstances. Ironically, most industry experts point out that Micron's sales in Taipei,China were quite small and that manufacturers of DRAMs there were more than willing to drop the case against Micron once the ITC reached its decision that no injury had been caused by DRAMs from Taipei,China.

V. Conclusion: Is Retaliation Likely to Lead to Reform or Abstinence in Use of AD Action?

The proliferation of the number of WTO members using AD and the tendency for AD actions to rise in periods of economic weakness are cause for concern.

In the AD arena there are now many more gladiators than before the establishment of the WTO. It could be that, after an initial period of proliferation of AD actions, the players will choose to use AD action more sparingly. Certainly, the moves of new users to undertake AD petitions against traditional users appear to be leading to moderation in the use of AD action by some traditional users—particularly in the case of the EU. It is too soon to tell if this outcome will hold generally, as new users are also ramping up AD action against one another (a subject for further research). There are few countries that have been disciplined in the use of AD action to the same extent that Japan has. Japan stands out for its reticence to use AD action and its willingness to trust the DSM in the WTO. How long the trust will last depends on the actions of other members and especially the US and EU. Future research on the industry-specific use of AD actions comparing more detailed bilateral trade data will also shed additional light on the subject.

Antidumping is costly and tends to reduce trade in volume and to undermine competition where it is practised. It is costly in its own right in terms of scarce human resources in international trade negotiations and jurisprudence. For these reasons reform is still on the agenda of the WTO. However, it must be noted that member states that engage in discriminatory trade practices—AD and bilateral free trade agreements—may become more reluctant to liberalize under the multilateral banner of the WTO (Limao 2006 and Bhagwati 2008). Therefore, the push for a successful conclusion to the Doha Development Agenda including reform of AD remains in grave doubt.

The reform agenda is complex. For example, Lindsey and Ikenson (2003) list 20 reform proposals in the chapter that concludes their book, yet point out that even these do not address all the flaws in AD as it is now practised. They propose a litmus test for attaining consensus for reform at the WTO would be to redefine the basic objective of the Agreement on Antidumping so as to allow members to use AD actions as an offset against market-distorting government policies that create artificial advantages. There is likely to be difficulty in coming to such a consensus, however. There are policies that are adopted ostensibly for purposes of achieving equity objectives or for redistributing income that may also distort competition—farm supports come to mind as an example. Hence, it is unlikely that members will agree to a sweeping reform of AD by redefinition of the basic objective.

If that is the case then more work should be done to make the practice of AD more predictable and consistent—such as by eliminating practices such as zeroing and by

establishing greater transparency in accounting practices, injury determination, and in making AD action compliant with each member country's own antitrust and competition laws.

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About the Paper

William E. James writes about the proliferation of antidumping initiations and measures in the years since the formation of the World Trade Organization (WTO). The number of users has increased to over 40 in 2007 compared with just 12 in 1993. East Asian economies had been relatively abstemious in the use of antidumping but this has changed. Traditional users of antidumping in the European Union and North America have intensively targeted East Asian exporters in their antidumping actions, and this may have provoked a retaliatory response—their own exporters are now confronted increasingly with antidumping actions of East Asian trade partners—particularly since the accession of the People's Republic of China to the WTO in 2001. Japan remains reluctant to use antidumping but has found other channels through which to challenge antidumping laws and practices of the traditional users. This makes it clear that reform of antidumping will be an important future task for the WTO.

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