

Analysis and Evaluation of WTO Anti-Dumping Agreement: A Case Study of China's Anti-Dumping Measures on Japanese Stainless Steel

Linze Song *

Sheffield Hallam University, Sheffield, S1 1WB, The United Kingdom

* Corresponding Author Email: 1912100309@mail.sit.edu.cn

Abstract. This paper undertakes a comprehensive analysis and evaluation of the World Trade Organization (WTO) Anti-Dumping Agreement, focusing on the specific case of China's imposition of anti-dumping measures on stainless steel products imported from Japan, as exemplified by the WTO DS601 case. The study critically examines key provisions within the Anti-Dumping Agreement and assesses their practical application through the lens of the mentioned case. By delving into the case's background, the WTO expert panel's findings, and the perspectives of both China and Japan, this research sheds light on the strengths and weaknesses of the agreement. The study contributes to a deeper understanding of the efficacy of the WTO's anti-dumping framework and provides insights for future improvements in international trade regulations.

Keywords: WTO; Anti-Dumping Agreement; international trade law; WTO DS601 case.

1. Introduction

Dumping, the trade behaviour of exporting products to another country at a price lower than their normal value, has been a long-term concern in the realm of international trade. It disrupts fair competition and distorts market dynamics, often leading to adverse impacts on domestic industries. In the contemporary global trade landscape, the World Trade Organization (WTO) plays a significant role in regulating and addressing such trade practices. Against this backdrop, this paper delves into the intricacies of the WTO Anti-Dumping Agreement through a focused analysis of the case involving China's imposition of anti-dumping measures on stainless steel products imported from Japan, as highlighted by the WTO DS601 case.

In 2019, China accused Japan, South Korea, and Indonesia of selling stainless steel products at unfairly low prices in its market, harming local industries. To counter this, China's Ministry of Commerce (MOFCOM) imposed anti-dumping tariffs on these imports, lasting five years and ranging from 18.1% to 103.1% [1]. Japan disagreed, citing a lack of evidence that its exports affected Chinese prices. The WTO formed a panel in 2021 to investigate, and by June 2023, the panel ruled that China's anti-dumping measures hurt Japan's interests under the agreement, urging China to align with its terms.

The case not only serves as a lens through which to scrutinize the Agreement's efficacy but also underscores the significance of a well-functioning anti-dumping framework in ensuring fair trade practices. This study holds significance in unraveling the practical implications of the Anti-Dumping Agreement within the context of a real-world trade dispute. By dissecting the China-Japan stainless steel case, the research sheds light on the Agreement's strengths and limitations, offering valuable insights for policymakers and practitioners navigating the complex landscape of international trade.

Methodologically, the research adopts a case study approach. By meticulously analyzing the DS601 case, including viewpoints from both China and Japan within the WTO panel's decision, the study provides a comprehensive evaluation of the Agreement's practical application.

The paper's structure is designed to facilitate a coherent understanding of the subject. It begins with an introduction framing the context and significance of the research. Subsequently, the paper analyzes the core principles of the WTO Anti-Dumping Agreement and relevant provisions of GATT 1994, as referenced in the DS601 case. The focus then shifts to the case study itself, untangling the backdrop, points of contention, and the decisive pronouncement of the WTO panel. Building upon

this analysis, the paper evaluates the strengths and weaknesses inherent in the Anti-Dumping Agreement, offering informed recommendations for its refinement. In conclusion, the paper synthesizes its findings, encapsulating central takeaways and their implications for international trade policies. It contemplates potential avenues for enhancing anti-dumping frameworks and their contribution to maintaining a balanced global economic order.

In essence, this paper's exploration of the WTO Anti-Dumping Agreement through a specific case study contributes to both scholarly inquiry and practical trade regulation considerations, fostering a deeper understanding of the complexities inherent in fair trade practices.

2. Overview of WTO Anti-Dumping Agreement

2.1. Background and Objectives of the Anti-Dumping Agreement

The role of WTO in maintaining the trade order has become increasingly important, reducing the demand for bilateral negotiations to settle trade issues, especially trade disputes[2]. In order to fight against with these behaviour jeopardized the domestic economy, market and industry, Anti-Dumping Agreement emerged. It provides how to establish whether an importing country can initiate an anti-dumping investigation against a corresponding commodity from another exporting country. Levying anti-dumping duties is a means to punish dumped goods. The difference of varies greatly from country to country. For instance, while the US mandates anti-dumping duties same as the entire dumping margin, the European Community (EC) allows for a lower imposition [3].

In general, the Anti-Dumping Agreement is the result of compromise. It is necessary to establish three factors to carry out anti-dumping measures between countries. Firstly, determination of dumping. Secondly, determination of Injury. Thirdly, it is proved that there is a causal relationship between dumping and injury, and only when the above three points are met at the same time can anti-dumping measures be implemented.

2.2. Analysis of Key Provisions of the Anti-Dumping Agreement

2.2.1 Article 2

Dumping, as outlined in Article 2, entails a meticulous three-fold assessment: establishing the appropriate export product value, adjusting for specific circumstances to facilitate comparison, and ultimately determining the presence of dumping. In the section of 'particular market situation', it is necessary to emphasize that Article 2.2 provides an alternative theory of calculation of normal value only if the sales do not allow for a appropriate comparison[4]. In other words, the "particular market situation" affects domestic prices in order to make a proper comparison of export prices impossible. Therefore, as long as the market effects on imports and exports are the same, even in extreme cases, they do not meet this situation under Article 2.2.

2.2.2 Article 3.1

Article 3.1 centers on the concept of injury, referring to the detrimental effects on domestic industries stemming from investigated dumping practices. This refers to harm inflicted upon the entire industry producing similar products in the importing country, rather than isolated manufacturers. According to regulation, there are three kinds of injury to a domestic industrial area: material injury to an existing industry, the threat of material damage to existing domestic industries, and substantial obstacles to industry establishment. The provision mandates an objective examination of the amount of dumped import volume, its influence on domestic prices, and the consequent impact on domestic producers.

2.2.3 Article 3.2, 3.3, 3.4, 3.5

Articles 3.2 to 3.5 further elucidate the injury evaluation process. Article 3.2 supplements Article 3.1, providing a supplementary interpretation of the objective examination content: Any one or more of these factors may not provide appropriate guidance for decision making. Article 3.3 introduces the

concept of cumulative assessment, allowing the concurrent evaluation of dumped imports' impact from multiple countries under specific conditions. Article 3.4 emphasizes a comprehensive evaluation of various economic indicators when examining dumped imports' influence on domestic industry, encompassing elements such as sales, profits, output, and market share. Article 3.5 underscores the need for a substantiated causal link between dumping and injury, obliging importing countries to meticulously analyze all pertinent evidence.

2.2.4 Article 4.1, 6.5, 6.5.1, 6.9, 12.2, and 12.2.2

These articles within the Anti-Dumping Agreement intricately address procedural matters, bolstering transparency and protecting sensitive information. Article 4.1 furnishes a fundamental definition of "domestic industry," essential for determining anti-dumping measures' applicability [5]. It recognizes exceptions when dealing with certain relationships and unique market circumstances.

Articles 6.5, 6.5.1, and 6.9 diligently balance confidentiality and openness. These articles underscore the importance of guarding classified information, while simultaneously requiring the provision of non-confidential summaries to offer insight into confidential submissions. The aim is to ensure transparency while respecting the need for confidentiality.

Articles 12.2 and 12.2.2 emphasize transparency in decision-making. They mandate the publication of determinations and conclusions, ensuring that crucial findings are widely disseminated. Article 12.2 elaborates on public notices for affirmative and negative decisions, while Article 12.2.2 underscores comprehensive disclosure in public notices of investigation conclusions or suspensions.

3. Analysis and Evaluation of WTO DS601 Case

Transitioning from the comprehensive examination of key provisions in the Anti-Dumping Agreement, this section now pivots to the heart of the matter – the WTO DS601 case. The case, a focal point of this research, scrutinizes the implementation of these provisions in a real-world context, particularly in the realm of anti-dumping measures imposed by China.

In this case, Japan identified the disputed measures as MOFCOM Announcement No. 9 of 2019 and Announcement No. 31 of 2019 and all relevant documents thereof. Under these measures, China has imposed tariffs of anti-dumping on imports of certain steel products from Japan. What China determines to be dumping and the implementation of relevant measures are the focus of the dispute in this case.

3.1. Panel's Main Findings

Within the WTO DS601 case, Japan has presented several critical contentions that warrant close examination. These contentions revolve around MOFCOM's imposition of anti-dumping measures and its approach to specific aspects of the case, thereby generating multifaceted points of dispute.

3.1.1 Definition of the domestic industry

First of all, Japan claims concerning about the definition. In this survey, MOFCOM defined the domestic industry as local producers that account for "major proportion" of the intact domestic production of similar goods, namely stainless steel billets, coils and sheets [6]. For Japan's challenge, the Panel deliberated upon the representativeness of this definition vis-à-vis the entire Chinese domestic industry. While Japan argued that this definition inadequately encapsulated the nuances among these product categories, the Panel's assessment, however, found Japan's evidence to be insufficient to decisively dispute the industry's representativeness.

3.1.2 Cumulation analysis and comparative effects

A second contention arises from MOFCOM's utilization of a cumulation analysis – an evaluation of cumulative effects from subject imports. According to the Anti-Dumping Agreement, Japan contested the consistency of this analysis with the stipulations. The dispute centers on whether MOFCOM adequately justified the cumulative assessment, considering competition dynamics

between domestic goods and imported products. The review of Panel about this claim recognized Japan's challenge but ultimately determined that Japan could not definitively demonstrate MOFCOM's inconsistency with the specified Articles.

3.1.3 Price effects and procedural integrity

Japan's third contention pertains to MOFCOM's consideration of price effects. This issue revolves around the objective assessment of the impact on prices. Japan argues that MOFCOM's analysis lacked objectivity, drawing attention to inadequacies in the consideration of positive evidence and the broader price depression findings.

The Panel's assessment acknowledges Japan's concerns and substantiates some of these claims, indicating instances where MOFCOM's procedures were inconsistent with Anti-Dumping Agreement stipulations. Specifically, MOFCOM's failure to ensure price comparability across product category and its misunderstanding of price comparability principles were highlighted. In addition, Japan can demonstrate that MOFCOM's price impact analysis for a particular series is not based on objective empirical review and therefore does not comply with Articles 3.1 and 3.2.

3.1.4 Examination of impact

Japan's fourth contention revolves around MOFCOM's examination of the impact of relevant imports and domestic industry conditions. Japan believed that MOFCOM did not objectively review relevant evidence such as sales prices of domestic products and sales volumes, market shares of domestic industrial area and return on investment. The Panel's investigation affirmed some of Japan's concerns, indicating inconsistencies in MOFCOM's conclusions and findings related to the domestic industry's situation.

3.1.5 Causation determination

Lastly, Japan challenged MOFCOM's causation determination, contending that the alleged damage to the domestic industry resulted from a combination of factors, including the dumping of imported products and the rise in nickel prices. Japan argued that MOFCOM's analysis failed to objectively establish a causal link as stipulated in Articles 3.1 and 3.5. The Panel's analysis found merit in Japan's claim, highlighting MOFCOM's inconsistencies in establishing causation, especially regarding its reliance on price effect and impact analysis.

3.2. Panel's Decision

After the above analysis and interpretation by the Panel and the mutual debate between China and Japan, the Panel reached the following conclusions:

Under Article 3.8 of the DSU, where there is a breach of an obligation assumed under the applicable agreement, China's conduct is deemed invalid. The Panel concludes that as long as the relevant measures are inconsistent with the anti-dumping agreement, it can be found that the current measures have "invalidated or impaired" Japan's benefits under this Agreement. The Panel recommended that China bring its measures in line with its obligations with its obligations under the Anti-Dumping Agreement.

3.3. Evaluation of the Panel's Decision

The Panel's decision in the WTO DS601 case marks a significant milestone in the realm of international trade dispute resolution, shedding light on the intricate dynamics of anti-dumping measures and their implications.

3.3.1 Strengths of decision

The decision demonstrates the effectiveness of the WTO's dispute settlement mechanisms in upholding the principles of fairness and adherence to international trade agreements. By meticulously analyzing the contested measures and their alignment with the Anti-Dumping Agreement, the Panel

showcases the robustness of the multilateral trading system in addressing trade grievances. This reaffirms the WTO's role as a paramount institution for the resolution of trade disputes.

Furthermore, the Panel's reliance on a comprehensive analysis of provisions within the Anti-Dumping Agreement underscores the importance of legal clarity and precision in international trade agreements. The decision serves as a precedent for interpreting key aspects of the agreement, contributing to a better understanding of its provisions and implications. This enhances the predictability and stability of global trade relations.

The Panel's recognition of the interconnectedness of economic factors, market dynamics, and legal obligations is commendable. By considering diverse indicators and their impact on the domestic industry, the decision reflects a holistic approach to trade dispute resolution. This approach takes into account the intricate interplay between economic realities and legal norms.

3.3.2 Limitations and implications

While the decision offers a comprehensive assessment of the case, it also highlights certain challenges and areas of complexity. The interpretation of causation, for instance, underscores the intricate task of establishing a direct link between dumping and material injury. This raises questions about the adequacy of current causation criteria in capturing the multifaceted dynamics of international trade.

Moreover, the decision's emphasis on the consistency of domestic industry definitions and price comparability underscores the importance of clear and objective methodologies. However, it also opens avenues for nuanced debates on the subjective nature of such determinations. Striking a balance between legal precision and contextual flexibility remains a delicate task.

The Panel's recommendation for China to bring its measures in line with the Anti-Dumping Agreement raises practical questions about implementation and compliance. While the decision offers a normative framework, its effectiveness hinges on the willingness of member states to align their practices with these recommendations. The broader challenge lies in ensuring consistent and timely adherence to such rulings.

3.3.3 Broader implications

The Panel's decision reverberates beyond the specific case, offering insights into the ongoing evolution of international trade law. It underscores the vitality of a trading system with rule based in managing complex trade relations. As countries continue to navigate the intricacies of global commerce, the decision sets a precedent for equitable resolution of disputes and adherence to agreed-upon trade norms.

4. Evaluation of the WTO Anti-Dumping Agreement

Building upon the comprehensive analysis of the specific example in the previous section, this segment delves into a broader evaluation of the WTO Anti-Dumping Agreement. The Agreement, while designed to maintain a level playing field in global trade, exhibits both strengths that contribute to equitable commerce and areas that warrant refinement.

4.1. Advantages of the Anti-Dumping Agreement

According to the analysis of the above cases and the actual situation, it can be seen that the Anti-Dumping Agreement has obvious advantages. First, it can promote fair competition and maintain market order. Its criteria for determining the degree of dumping and injury are very complete. For example, in determining dumping, through the different types of prices, the definition of the relevant domestic market regime and the different analysis of the domestic industry.[7]. These will affect the determination and confirmation of the degree of dumping in a country, so that the judgment from the perspective of all aspects can reflect the promotion of fair competition and the maintenance of market order.

The Agreement's robust framework for evaluating dumping practices reflects its commitment to holistic analysis. By incorporating various aspects, it encourages a comprehensive examination that goes beyond narrow interpretations. This, in turn, cultivates a trading environment where competition is balanced and market integrity is upheld.

4.2. Shortcomings and Areas for Enhancement

Nonetheless, the Anti-Dumping Agreement is not without shortcomings. A notable concern is the extended processing time of cases. The case of DS 601, spanning approximately two years for research and trial, underscores the need for a more streamlined dispute resolution process. While the complexity of each case warrants a thorough assessment, it is imperative to establish reasonable timeframes to ensure timely resolutions without compromising accuracy.

Another discernible limitation lies in the lack of distinct provisions catering to developing countries [8]. The absence of specific rules to address the unique circumstances of these nations can undermine the equitable application of the Agreement. Additionally, the deficiency in preventing retaliatory responses poses a challenge, potentially perpetuating cycles of disputes without offering effective solutions [6].

4.3. Tailoring the Agreement for Emerging Economies

In the context of evolving global trade dynamics, particularly in emerging economies like China, it becomes imperative to adapt the Anti-Dumping Agreement to contemporary realities. As China's economic structure and governance system deviate from traditional market economies, there is a need to address China's distinct position in international trade. While China is integrated into the WTO and has embraced market principles, it maintains certain unique characteristics due to government involvement in business enterprises [9].

This necessitates a reevaluation of the Agreement to include provisions that specifically address challenges posed by emerging economies. Incorporating conditions for analyzing internal industries of emerging nations could offer a more nuanced approach. This would enable tailored treatment methods in the face of emerging industries, ensuring a balanced application of anti-dumping measures while acknowledging unique economic circumstances.

5. Conclusion

In conclusion, in the above DS 601 case, the Panel finally drew the result through the analysis of the case, which reflected the applicability of the Anti-Dumping Agreement and their understanding of relevant laws and regulations. At the same time, it also lays the research foundation for the similar cases encountered in the future.

Furthermore, based on the study of this case, the determination of dumping is not only the determination of the damage to the domestic industry and the impact on price fluctuations, but also the determination of the causal relationship between the two, which must be fully satisfied before the anti-dumping investigation can be carried out.

As we contemplate the complexities of the global trade milieu, this investigation urges for a nuanced understanding of the interplay between trade dynamics and regulatory frameworks. The DS 601 case elucidates that the Anti-Dumping Agreement, with its inherent strengths and limitations, is a cornerstone of equitable commerce. Nonetheless, its continuous refinement remains indispensable to ensure its aptness and efficacy in the face of evolving trade paradigms. In this light, this study advocates for ongoing dialogue and collaboration among WTO members to fortify the Agreement's capacity to foster a fair and balanced global trading environment.

References

- [1] 'MOFCOM Announces Final Ruling on Anti-dumping Investigation against Stainless Steel Billet and Hot-rolled Stainless Steel Plate/Coil' (MOFCOM, July 23 2019 - 09:24 BJT) <MOFCOM Announces Final Ruling on Anti-dumping Investigation against Stainless Steel Billet and Hot-rolled Stainless Steel Plate/Coil ->
- [2] Mohammad Ali Taslim. Dispute Settlement in the WTO and the Least Developed Countries: the Case of India's Anti-Dumping Duties on Lead Acid Battery Import from Bangladesh. ICTSD, 2017.
- [3] Ahn D, Chun HJ. Evolution and Limitations of the Lesser Duty Rule Under the WTO Anti-dumping Agreement. *Journal of World Trade*, 2022, 56(6): 985 – 1012.
- [4] Huyghebaert K. Changing the rules mid-game: the compliance of the amended EU basic anti-dumping regulation with WTO law. *Journal of World Trade*, 2019, 53(3) :417-432.
- [5] China v Japan [June 2023] WTO DS601 <directdoc.aspx (wto.org)>
- [6] Feinberg RM, Reynolds KM. How do countries respond to anti-dumping filings? Dispute settlement and retaliatory anti-dumping. *The world economy*, 2018, 41(5):1251-1268.
- [7] Mattoo A, Rocha N, Ruta M, editors. Handbook of deep trade agreements. World Bank Publications, 2020.
- [8] Koul AK. Guide to the WTO and GATT. Kluwer Law International; New Delhi, 2005.
- [9] Nedumpara JJ, Zhou W. Introduction: Non-market Economies in the Global Trading System—The Special Case of China. *Non-market Economies in the Global Trading System: The Special Case of China*, 2018:1-1.