CENTER FOR TRADE POLICY STUDIES

Nonmarket Nonsense

U.S. Antidumping Policy toward China

by Daniel Ikenson

Executive Summary

It is impossible to talk about trade policy these days without the conversation turning almost immediately to China. Since China's accession to the World Trade Organization in December 2001, U.S.-China trade has increased by 91 percent to a whopping $231 billion in 2004—a growth rate more than six times greater than that between the United States and the rest of the world.

Vested in the harmony of U.S.-China trade relations are countless workers and consumers in both countries and investors around the world, who benefit from the burgeoning business relationships and supply chains that have evolved to wed the strengths of both economies. The Bush administration seems to recognize this reality, and has thus far been a fairly adept steward of the relationship, choosing not to indulge every protectionist wish to thwart Chinese imports. But in stark contrast to its broader restraint in the face of anti-China protectionist pressure, the Bush administration has adopted an unabashedly bellicose approach to China with respect to antidumping policy.

Although the White House has little discretion to intervene and block the imposition of antidumping duties—like it has in safeguards cases—it absolutely holds sway over the policy direction of the Department of Commerce. The administration should take a hard look at its antidumping policy toward China, particularly the DOC's absurd nonmarket economy methodology, as well as some dubious rules changes that the agency is considering. An honest assessment will lead to the conclusion that U.S. antidumping policy is undermining the otherwise laudable efforts of the administration to keep the U.S.-China trade relationship on sound footing.

Daniel Ikenson is a trade policy analyst with the Cato Institute's Center for Trade Policy Studies.

CATO INSTITUTE

U.S. antidumping policy is undermining the otherwise laudable efforts of the administration to keep the U.S.-China trade relationship on sound footing.

Introduction

The U.S.-China trade relationship has evolved rapidly into one of the world's most consequential. Since China's accession to the World Trade Organization in December 2001, two-way trade has increased by 91 percent to a whopping $231 billion in 2004—a growth rate more than six times greater than that between the United States and the rest of the world.

Behind these figures are billions of dollars of international investment; thousands of joint production operations; technology-sharing arrangements; intricate transnational supply chains; and burgeoning business relationships that benefit workers, consumers, and investors in both countries, as well as in others. Meanwhile, there are important geopolitical objectives advanced by this developing relationship. An ever-increasing number of economic and strategic interests is vested in the harmony of trade relations between the United States and China.

The Bush administration seems to recognize this reality, and has thus far been a fairly adept steward of the relationship. It shepherded the final phase of China's accession into the WTO. It had the wherewithal to reject calls for import restraints in response to alleged currency manipulation and unfair labor practices. It deemed contrary to the U.S. economic interest and thus rejected tariffs prescribed by the U.S. International Trade Commission in three China-specific safeguard cases.[1] And it successfully negotiated resolution to an issue regarding a Chinese semiconductor tax that discriminated against U.S. producers without requiring formal WTO adjudication.

But there have been some notable exceptions to this otherwise forward-looking strategy. Chief among them is arguably the administration's position on antidumping policy toward China. In stark contrast to its broader restraint in the face of anti-China protectionist pressure, the Bush administration has adopted an unabashedly bellicose approach to antidumping matters.

The U.S. Department of Commerce, the agency that administers the antidumping law, seems to regard blocking Chinese imports as a measure of its success. An area of its website that touts trade achievements boasts that "the Commerce Department has already put in place nearly as many antidumping orders against China (21) as the previous Administration had in eight years (25)," and that "the Commerce Department initiated the largest cases against China ever on imports of TVs, furniture and shrimp, valued at over $1.5 billion."[2] Since January 2001, the first month of the Bush administration, there have been 32 antidumping investigations launched against China. That is almost triple the number of investigations against the next most frequent target during this period, India (12), and amounts to one new investigation every 45 days.

Although the White House has little discretion to intervene and block the imposition of antidumping duties—which it has in safeguards cases—it absolutely holds sway over the policy direction of the DOC. The administration should take a hard look at its antidumping policy toward China, particularly the DOC's absurd nonmarket economy (NME) methodology, as well as some dubious rules changes that the agency is considering. An honest assessment will lead to the conclusion that U.S. antidumping policy is undermining the otherwise laudable efforts of the administration to keep the U.S.-China trade relationship on sound footing.

Antidumping's Fatal Flaw

The U.S. antidumping law is one of the most contentious features of American trade policy. Defended as a tool necessary to redress unfair trade and to "level the playing field," the reality is that the law, as administered, is incapable of distinguishing between unfair and fair trade. As a result, normal, unobjectionable, international trade, and the foreign and U.S. companies involved, are punished unjustly on a routine basis.

Under the law, evidence of price discrimination or selling at prices below the full cost of

production—often perfectly rational, profit-maximizing, and legal pricing strategies—is considered proof of the existence of some unfair competitive advantage. Yet, there is no mechanism by which to distinguish price differences attributable to an unfair advantage from those attributable to legitimate strategies. That absence of analytic rigor virtually guarantees innocent victims, when the authorities should be applying antidumping rules with precision to avoid or at least minimize such collateral damage.

In previous research, Cato Institute scholars have documented in detail just how divorced the antidumping law and its administration is from any theoretical justification for its existence.[3] That research also identified numerous procedures undertaken by the administering authorities that reflect an inherent bias in favor of finding affirmative evidence of dumping.[4] In hopes of remedying these problems, Cato scholars proposed a number of reforms designed to narrow the gap between antidumping rhetoric and reality, to remove the methodological bias, and to minimize the collateral damage that should be unacceptable to any fair-minded observer.[5] Nowhere is this lack of precision and disregard for any semblance of due process more evident than where it concerns so-called nonmarket economy methodology.

Nonmarket Economy Methodology

The DOC employs NME methodology in antidumping cases against a few countries, but China is by far its largest victim.[6] The general presumption implicit in NME methodology is that in centrally planned economies, prices are unreliable because nonmarket forces intervene to influence supply-and-demand decisions. Thus, prices do not reflect true supply and demand and should be considered an inadequate benchmark in measuring price discrimination or selling below cost.

Despite the dramatic market-oriented reforms instituted in China over the past quarter-century, China's WTO accession protocol allows members to use an antidumping "methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the product with regard to manufacture, production and sale of that product."[7]

That exemption, which allows WTO members to treat China as an NME, expires in 2016. However, members can graduate China as a whole, or any of its industries individually, to market economy status anytime before then. While the DOC has formal standards and procedures by which it can designate Chinese industries as "market-oriented industries," it has never done so despite compelling evidence in some cases that it should.

Designating industries as "market oriented" or graduating countries from NME to market economy status is purely a matter of administrative discretion. Neither statutory changes nor judicial review is required. Thus, the Bush administration could exercise its discretion to graduate China to market economy status at any time, as it did for Russia and Kazakhstan in 2002 and Lithuania and Estonia in 2003.

In NME cases the DOC attempts to estimate what prices would be if the country's economy were market based. It does so by determining the quantity of inputs (e.g., labor, electricity, materials) required to produce the subject product and then valuing those inputs using wage rates, usage rates, and prices of material inputs prevailing in some third country. It then combs the financial statements of select third-country companies, culling figures to serve as approximations for selling, general, and administrative expenses, as well as profit rates. These figures are consolidated with all the other constituent cost components to produce an estimated normal value, which serves as the benchmark to which U.S. price is compared. Thus, affirmative dumping findings do not reflect price discrimination or selling below cost, but rather differences between an exporter's price in the U.S. market and a fictitious hodgepodge of estimated components serving as a proxy for his home market price.

Affirmative dumping findings do not reflect price discrimination or selling below cost, but differences between an exporter's price in the U.S. market and a hodgepodge of estimated components serving as a proxy for home market price.

Rampant Discretion

The outcome in NME cases is dictated by a series of subjective decisions: the selection of the surrogate country and the selection of surrogate values. Each party to the proceeding pursues a results-oriented argument: petitioners seek selection of the least efficient producers and the highest input valuations, while respondents advocate selection of the most efficient producers and the lowest input valuations. Meanwhile, the DOC adjudicates each point of contention throughout the process, seemingly unfazed by the farcical nature of the process.

In the recent high-profile case concerning *Wooden Bedroom Furniture from China*, the mandatory respondents reported "anywhere from 60 to upwards of 100 factors of production which required the Department to evaluate and obtain values for over 500 company-specific factors of production."[8] These factors were valued using Chinese purchase prices for those inputs that were sourced from a market economy, and Indian import prices for those inputs that were produced in China, unless such information was found unreliable or otherwise unusable. One such component for which usable Indian data were unavailable was—of all things—wood, an obviously important input for wooden furniture. Thus, Russian import prices served as the basis for valuing this input.

Fidelity to accuracy is not a hallmark of NME methodology.

For its final determination in the furniture case, the DOC published a 373-page "Issues and Decisions" memorandum summarizing the voluminous arguments made by interested parties, and offering an explanation for the DOC's position on each. Much of the document is devoted to adjudicating positions concerning the appropriate surrogate values to use for items such as mirrors, glass, screws, handles, hinges, hooks, tape, styrofoam, particle board, cardboard, packing material, selling expenses, and profit.

In its memorandum, the DOC reports: "This investigation has presented a host of complex issues with respect to HTS [Harmonized Tariff Schedule] categories and factor valuations, given the hundreds of inputs that are necessary to produce the subject merchandise. It is important to recognize that the breadth of the information we have requested in this investigation is substantial. We have balanced that recognition with the importance of ensuring that the information we receive is adequate for purposes of calculating an *accurate* antidumping margin."[9]

Fidelity to accuracy is not a hallmark of NME methodology. For most of the factors of production in the *Furniture* case, the DOC relied on Indian import statistics to calculate *estimates* for their average cost to Chinese producers. It is not difficult to conceive of myriad reasons—including producer size, economies of scale, size of purchases, mix of purchases, import sources, and so on—why such estimates would be significantly unrepresentative of an individual Chinese company's costs. Furthermore, in most NME cases, the surrogate's import statistics do not comport precisely to the description of the NME input. They are often overly broad or too specific.

In the *Furniture* case, with respect to valuing cardboard, a respondent proposed using HTS category 4808.90.00, which covers imports of "other paper and paperboard corrugated." The respondent argued that the petitioner's proposal for this input, HTS 4808.10.00, described as "corrugated paper/paperboard whether or not perforated," was too broad because it included "perforated" paper, which it did not use. But the DOC agreed with the petitioner's choice because it covered corrugated paper, the use of which was observed during verification. Although the descriptions of both HTS categories covered corrugated paper, the DOC rejected the respondent's choice because "the Department did not indicate in its verification report . . . whether Dorbest used perforated or non-perforated cardboard."[10] Thus, the DOC's surrogate choice was too broad, and probably exaggerated the input value since perforating represents a cost that the respondent company did not incur.

With respect to hooks, connectors, and hinges, the respondent argued for use of an import classification category that described these inputs as "made of iron," disagreeing with

the petitioner's choice for a category that included "hinges of brass" because the respondent's hooks were made of iron, not brass. The DOC departed from both choices, explaining that the respondent's selection was no longer a valid HTS category, selecting a category that covered hinges made of different types of metal, since the respondent did not specify the type of metal used in its hinges. For hooks and connectors, the DOC opted for a category described as covering "mountings, fittings and similar articles" that are "suitable for furniture." The same argumentation and adjudication process continued for many other input valuations, often leading to the selection of import classifications that did not correspond precisely, or even reasonably closely, to the input descriptions.

To obtain financial data to complete the selling expense and profit rate components of the benchmark, the DOC took a straight average of the ratios of nine Indian furniture producers. In this process, it excluded the profit figures from one such company because it showed no profits—a practice that increased the overall profit rate. And using a straight average, as opposed to a production-based weighted average, the financial experience of smaller producers (which are usually higher-cost producers) was given equal weight.

The DOC's practice of selectively excluding companies with zero or negative profit from just the profit calculation, and then straight-averaging the sample companies' results, causes an inflation of the normal value benchmark in most cases. But to harp on these particular shortcomings in a methodology that is wrought with inequities would give the perception that a few tweaks could remedy the whole regime. That would be a colossal understatement of the problem.

Prior to the selection of surrogate values, the selection of surrogate country is often determinative of the outcome. As with selection of surrogate values, the DOC has considerable leeway in deciding which surrogate country to use and is guided by general rules in its decision. The statute requires that the country selected be, to the extent possible, at a stage of economic development comparable to the NME country and a significant producer of comparable merchandise. But the surrogate does not have to be at a stage of economic development that is most comparable to the NME country, nor do the producers in that country have to produce the most comparable merchandise. The DOC has ample latitude in selecting the surrogate.

Beyond the selection of surrogate country and surrogate values, the process is further corrupted by the availability of alternative sources of data purporting to represent the same values. Often, those values are very different because of slightly diverging commodity descriptions, different valuation methods at the border, or different time periods represented by the data. But again, the DOC ultimately decides which data series to use.

The confluence of decisions regarding surrogate country, surrogate values, data reliability, selection of company financial statements, and many more discretionary issues necessarily precludes the calculation of an "accurate" dumping margin. How can a figure based on the sum of dozens or hundreds of estimates—each having its own limitations by virtue of being over-inclusive, under-inclusive, or otherwise unrepresentative—be regarded as accurate? The answer is that it cannot. Slight deviations from any of these decisions can lead to dramatically different results. Furthermore, this methodology carries the unavoidable consequences of being administratively burdensome and hugely expensive to respondents, petitioners, and the U.S. government.

At best, the process is capable of generating random results. But the fact that NME methodology produces consistently higher dumping margins than those obtained pursuant to market economy methodology suggests that the DOC exercises its discretion in a manner that is often adverse to respondents.[11] There has to be a better way.

The principal difference between market economy and NME cases is that in the former, the results are at least marginally reflective of the actual sales and cost experiences of the foreign respondent companies. But there are considerable differences too with respect to the

The confluence of decisions regarding surrogate country, surrogate values, data reliability, selection of company financial statements, and many more discretionary issues precludes the calculation of an "accurate" dumping margin.

determination of antidumping rates for those companies not specifically investigated.

The Hierarchy of NME Duty Rate Assignments

In NME investigations, exporters are assigned one of three types of antidumping duty rates: "individual," "Section A," or "countrywide." Individual rates are reserved exclusively for companies selected by the DOC to be mandatory respondents. These companies[12] are relatively fortunate in that they are among the few given the opportunity to defend themselves individually. Mandatory respondents that demonstrate an absence of government control over their export operations are entitled to an individual antidumping rate, which is based on the information provided in their own questionnaire responses.

The corollary to the fact that NME methodology is unrepresentative is that its treatment of uninvestigated companies is patently unfair.

Exporters not selected as mandatory respondents are entitled to demonstrate that they too are free from government control over their export activities. These companies are required to submit responses to Section A of the DOC's questionnaire (which seeks general information about the producers and their operations) and to submit a request for "separate rates" treatment. If they demonstrate an absence of government control over their export operations, then they are assigned a "Section A" rate, which is equal to the weighted-average of the rates calculated for the mandatory respondents, excluding those rates that are zero, de minimus[13], or based entirely on "facts available."[14] Companies that fail to demonstrate such freedom and those that do not respond fully to DOC's information requests are assigned the "countrywide" rate, which is usually the higher of the highest rate calculated for the mandatory respondents or the dumping margin alleged in the petition.

Even though NME cases feature the use of surrogate values as proxies for home market price, the individual rates calculated for mandatory respondents can differ because of different selling prices in the U.S. market and because of different production processes or input supply chains. An NME company that produces all of its inputs will have surrogate values assigned to those components, while a company that imports some of its components from a market economy may have the acquisition cost used for those components.[15]

To appreciate how severely this process runs contrary to traditional conceptions of due process, consider the *Furniture* case. The petition in that case featured allegations of dumping by a single Chinese company. The DOC issued questionnaires to seven mandatory respondents, six of which qualified for their own individual rates. Additionally, it determined that 112 of the companies applying for a Section A rate (the weighted-average rate) demonstrated an absence of government control and qualified for that rate. All the rest were assigned a prohibitive rate, culled straight from the petition, of 198.08 percent.

In a brief filed with the DOC, the petitioner in the furniture case acknowledged that the Chinese industry likely comprises 30,000 to 300,000 producers of subject merchandise.[16] Thus, a petition launched on the basis of allegations that one single Chinese company was dumping sufficed to ensnare an entire country of exporters and prospective exporters, the overwhelming number of which were not entitled to a full investigation of their data, with a prohibitive, countrywide, guilt-by-association rate. Thus, the corollary to the fact that NME methodology is unrepresentative is that its treatment of uninvestigated companies is patently unfair.

In market economy cases, uninvestigated companies are assigned the weighted-average rate of the investigated companies automatically. The only companies potentially subject to receiving the antidumping rate alleged in the petition—something referred to as an "adverse facts available" rate—are those that are given the opportunity to present their data and make their cases, but are found, ultimately, to be uncooperative.

In NME cases, uninvestigated companies must demonstrate entitlement to the weighted-average rate. Thus, they are required to expend resources simply to qualify for the average rate—or more precisely to avoid the puni-

tive countrywide rate—even if a full review of their data would exonerate them entirely and even though companies in market economy cases automatically qualify. Instead, NME companies that are not individually investigated or that do not qualify for the average rate are automatically assigned an adverse facts available rate. In the *Furniture* case, the weighted-average rate was 6.65 percent, while the adverse facts available-based countrywide rate was 198.08 percent. There are likely thousands of prospective exporters who were assigned this adverse rate—an outcome that puts the U.S. market out of reach to many of them indefinitely.

Recently, the Chinese government submitted comments to the DOC pointing out that the adverse facts available rates, which serve as the countrywide rate in NME cases, are often prohibitive. The submission indicates that "Chinese country-wide rates have exceeded 100 percent ad valorem in one-half of AD cases initiated against Chinese imports since 1995, with an average rate of 112.85 percent."[17] It contrasts this figure to the "all others" rate calculated in market economy cases and finds it to be 3½ times greater than the 32.03 percent average prevailing in those cases. These distinctions are even more pronounced in certain cases where China and at least one market economy country were targeted.

China and Malaysia were the targets of a recent case involving *Color Television Receivers*. The countrywide rate for uninvestigated Chinese companies that did not qualify for the Section A rate was 78.45 percent, while the rate for uninvestigated Malaysian firms was 0.75 percent. In a case involving *Collated Roofing Nails*, Chinese, Korean, and Taiwanese exporters were investigated. The countrywide rate for China was 118.41 percent, while the average all-others rate for Korea and Taiwan was 2.68 percent. In *Structural Steel Beams*, the countrywide rate for China was 89.17 percent, but the average all-others rate was only 6.14 percent for the exporters in six market economies.

The Chinese submission also compares countrywide and Section A rates from the same cases and finds the 112.85 percent average of the former to be two and a half times higher than the 44.15 percent average of the latter. That average difference is far less acute than the differences observed in the *Furniture* case, where the countrywide rate was nearly 30 times greater than the Section A rate. But several recent cases show a wide divergence in these rates. In *Malleable Iron Pipe Fittings*, the countrywide rate was 111.36 percent, 10 times higher than the Section A rate of 11.18 percent; in *Automotive Replacement Glass Windshields*, the countrywide rate was 124.5 percent, 13 times higher than the Section A rate of 9.84 percent; in *Polyvinyl Alcohol*, the countrywide rate was 97.86, 15 times higher than the Section A rate of 6.91.

From Bad to Worse

The persistent and extreme divergence between the Section A rate and the countrywide rate in NME cases underscores the incentive of Chinese exporters to qualify for the former. Since the DOC's selection of mandatory respondents is so limited as to preclude most companies from defending themselves properly, the only hope against being shut out of the U.S. market completely is to obtain a Section A rate. But despite the expected inaccuracies inherent in NME methodology generally, and the obvious unfairness of penalizing exporters with countrywide rates based on adverse facts available, the DOC is considering changes to its policies that could make it more difficult for Chinese—and other NME exporters—to obtain the Section A rate.

In May 2004 the DOC issued a *Federal Register* notice seeking comments on the consideration it was giving to changing its "separate rates" practice.[18] Citing the administrative burden it endures under current rules, and hinting that it has perhaps been too liberal in its allowance of the Section A rate, the DOC submitted that it "has received increasing numbers of requests for separate rates from section A respondents in recent years and is facing an exceptionally large number of such requests in

The DOC is considering changes to its policies that could make it more difficult for Chinese—and other NME exporters—to obtain the Section A rate.

An analysis of final DOC antidumping decisions between July 1995 and May 2004 reveals that 439 of 442 Chinese companies, representing approximately 50 industries, successfully demonstrated an absence of government control.

two ongoing investigations [*Furniture and Shrimp*]."[19] In that notice, the DOC cites the concern that it "lacks the resources to evaluate the typically large number of section A respondents which request a separate rate,"[20] and that "current implementation of the separate rates test may not offer the most effective means of determining whether exporters act, de facto, independently of the government in their export activities."[21]

The DOC's request for comments suggests it hopes to reduce significantly the number of companies qualifying for the Section A rate. But such a policy change would be unnecessary, unjustifiable, unfair, and unduly provocative.

If the DOC is really concerned about its enormous administrative burden processing applications and determining qualifications for the growing number of companies seeking Section A status, it should simply reverse the burden of proof. Rather than consider all companies subject to government control and require proof to the contrary as qualification, it should assume all companies are free from control and give petitioners the opportunity to provide evidence to the contrary. Companies that petitioners believe are subject to control and for which credible evidence in support of that premise is provided can then be scrutinized by the DOC. Clearly the number of Section A questionnaires—and the number of administrative review requests from Chinese companies seeking to extricate themselves from the countrywide rate—would decline significantly, easing the DOC's administrative burden.

The evidence accumulated during the 13-year course of this separate rates policy indicates that most companies that apply for the Section A rate do in fact demonstrate an absence of government control, and qualify for that rate. An analysis of final DOC antidumping decisions between July 1995 and May 2004 reveals that 439 of 442 Chinese companies, representing approximately 50 industries, successfully demonstrated an absence of government control and received an individual or Section A rate.[22] Thus, it would not be a radical departure, but a natural evolution of policy for the DOC to reverse the burden of proof.

The chief motivation for nonmandatory respondent companies to seek the Section A rate is that the countrywide rate, based on adverse facts available, is almost always prohibitively high. But companies that are not mandatory respondents in market economy cases automatically qualify for the all-others rate, which is an average calculated just like the Section A rate. Thus, the DOC is not overburdened with requests to qualify for the average in these cases. To complain about the administrative burden caused by its separate rates practice, the DOC should have a legitimate justification for its continuation. But when company after company, in industry after industry, in investigation after investigation can demonstrate an absence of government control, there is a rather strong argument that the separate rates practice is unnecessary, punitive, and should be abandoned by reversing the burden of proof.

Unfortunately, it appears such logic is unappealing to the DOC. On December 28, 2004, the DOC announced in the *Federal Register* its decision to change its separate rates practice by requiring nonmandatory NME respondents to demonstrate entitlement to the average rate through an application process. While it is unclear at this point whether the application process will be more burdensome than the present requirement of responding to Section A of the DOC's antidumping questionnaire, one of the express purposes of the change is to raise the threshold of eligibility. Attached to the notice is a "Draft Application," which the DOC is proposing to use. According to its description, "the draft application was designed *to take into account concerns that the separate rates test could be improved to be a better measure of the export independence of firms*."[23] Considering the success Chinese companies have had demonstrating an absence of government control over their export activities, a "better measure" can only mean a threshold that is more difficult to meet.

Senseless Provocation

Under U.S. law, an antidumping measure is supposed to be remedial, not punitive. The

application of antidumping rates based on adverse facts available to companies that have not demonstrated that they warrant such treatment can only be considered punitive. The WTO Antidumping Agreement (ADA), which specifies limits on the actions member countries can take to redress dumping, states that rates of duty calculated for non-investigated companies cannot be based in whole, or in part, on adverse facts available.

Notwithstanding the special circumstances of China's WTO accession, which give WTO members license to deviate from the ADA in certain respects, the DOC's current separate rates practice contravenes the ADA's express prohibition of assigning rates based on adverse facts available to uninvestigated companies. Subjecting more Chinese exporters to this questionable practice would be needlessly provocative.

In its comments to the DOC, the Chinese government noted, "Implicit in China's concession to allow WTO members, including the United States, to continue calculating ADD margins on an alternative basis for no more than 15 years . . . was the understanding that a WTO member would not unilaterally modify its existing ADD margin calculation methodology, and effectively calculate margins for all Chinese companies—with the exception of a select few—on a more adverse basis than it had in the past."[24] The submission suggested that any decision to make qualification for separate rates status more difficult would amount to a nullification of China's benefits as a WTO member, and could inspire China to "exercise its right under Article XXIII, General Agreement on Tariffs and Trade 1994 [i.e., to seek WTO dispute resolution]."[25]

In addition to the possibility of WTO dispute settlement, there is the specter of Chinese retribution. In its June 1 submission to the DOC, the Chinese government "suggests" that the DOC should be mindful of the goal of further facilitating the development of the bilateral economic and trade relationship. Its comments include a reminder that China "has paid very close attention to the issue of protection of intellectual property rights, which is a matter of concern to the U.S."[26] It then implies a parallel between U.S. antidumping administration and China's commitment to intellectual property rights enforcement. "In light of the vast commitment of manpower resources by China necessary to control this agreed upon problem, China does not understand how the U.S. can attempt to justify a change in practice on eligibility for separate rate status for Chinese exporters involved in antidumping proceedings based solely on the DOC's claimed shortage of manpower and a large workload."[27]

The document also highlights other efforts by China to further develop a healthy bilateral relationship, such as the "many delegations"[28] that China has sent to the United States to purchase goods and services. It also suggests that the "United States should consider the impact of any policy change on its export-oriented industries,"[29] reminding the DOC that China has an antidumping law, too. While some may be inclined to write off these comments as unrelated threats, such comments remind the DOC—and, indeed, U.S. policymakers—that trade policy is a package deal. And in the present case, U.S. antidumping policy runs the distinct risk of undermining the administration's broader goals of encouraging China to continue liberalizing its own market.

Conclusion

U.S. antidumping policy toward China is anachronistic, unfair, and inconsistent with the Bush administration's objective of making progress with China on issues that really matter. U.S. antidumping abuse is a matter over which China is growing increasingly agitated, yet the DOC is considering changes that would make bad policy worse. Failure to abandon such considerations, if not reverse course entirely, would be needlessly provocative and would undermine the administration's ability to encourage China to do better in other, more important areas, like intellectual property rights enforcement and services liberalization.

While many bemoan the U.S. trade deficit with China—even though mutual exchange

U.S. antidumping policy runs the distinct risk of undermining the administration's broader goals of encouraging China to continue liberalizing its own market.

China is a rapidly growing market from which U.S. exporters cannot afford to be excluded, yet provocative U.S. antidumping policies threaten just that.

benefits parties on both sides of the transaction—there is much less attention paid to the growing success of U.S. exporters to China. Since China's WTO accession at the end of 2001, U.S. commodity exports to China have increased by 81 percent. By comparison, U.S. commodity exports to the rest of the world increased by only 10 percent during that time. China is a rapidly growing market from which U.S. exporters cannot afford to be excluded, yet provocative U.S. antidumping policies threaten just that.

Granting China market economy status, gradually designating its qualifying industries as "market oriented," or simply reversing the presumption of government control would buy the United States an enormous amount of political and moral capital to encourage China to accelerate its own reforms and commit China further to the bilateral relationship. Such a change in policy would in no way undermine the ability of U.S. industries to seek and obtain antidumping duties, but it would reign in an abusiveness that squanders U.S. trade leadership. The antidumping law is effective enough at squelching imports—even without resort to NME methodology. Thus, liberalizing antidumping practice toward China would be a costless investment in the future.

The Bush administration deserves generally high marks for its handling of the trade relationship with China. It should move now to remedy the serious blot on its record that antidumping policy represents.

Notes

1. The China-specific safeguard refers to Section 421 of the Trade Act of 1974, which became law as part of the U.S.-China Relations Act of 2000 (H.R. 4444).

2. U.S. Department of Commerce website, http://www.commerce.gov/opa/press/2004_Releases/October/Free%20and%20Fair%20Trade/Free%20and%20Fair%20Trade_Leveling%20the%20Playing%20Field.htm.

3. See Brink Lindsey, "The U.S. Antidumping Law: Rhetoric versus Reality," Cato Trade Policy Analysis no. 7, August 16, 1999.

4. See Brink Lindsey and Dan Ikenson, "Antidumping 101: The Devilish Details of 'Unfair Trade' Law," Cato Trade Policy Analysis no. 20, November 26, 2002.

5. See Brink Lindsey and Dan Ikenson, "Reforming the Antidumping Agreement: A Roadmap for WTO Negotiations," Cato Trade Policy Analysis no. 21, December 11, 2002.

6. Nonmarket economy methodology is also used in cases involving Vietnam and some of the former Soviet Republics. Of the 292 antidumping orders in place as of October 2004, 67 are NME cases, and 57 of those 67 are against China.

7. "Protocol on the Accession of the People's Republic of China to the World Trade Organization," World Trade Organization, November 23, 2001, Para 15(ii), http://docsonline.wto.org/DDFDocuments/t/WT/L/432.doc.

8. Jeffrey A. May, Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, "Issues and Decision Memorandum for the Less-Than-Fair-Value Investigation of Wooden Bedroom Furniture from the People's Republic of China," November 17, 2004, p. 41.

9. Ibid., p. 160 [emphasis added].

10. Ibid, p. 170.

11. See Lindsey, "The U.S. Antidumping Law," Table 2, p. 8.

12. The number of mandatory respondents varies from case to case, as there appear to be no guidelines or thresholds based on export value or volume.

13. In this context, de minimus is defined as any rate less than 2 percent.

14. Facts available refers to a methodology whereby estimates, averages, approximations, or mere allegations are used as surrogates for the company's actual data.

15. If the DOC has reason to believe that an input purchased by the NME producer from a market economy source benefits from a subsidy (usually determined by whether a U.S. countervailing duty order exists against the product from that country), then the acquisition cost may be rejected.

16. May, p. 14.

17. Government of the People's Republic of China, Bureau of Fair Trade for Imports and Exports, Ministry of Commerce, Submission to the U.S. Department of Commerce, "Separate Rates Practice in Antidumping Proceedings Involving Nonmarket

Economy Countries," June 1, 2004, p. 5.

18. This is how the DOC refers to its practice of assigning separate rates (as opposed to a country-wide rate) to companies demonstrating entitlement to them.

19. Department of Commerce, International Trade Administration, Request for Comments, "Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries," 69 FR 24119, May 3, 2004.

20. Ibid.

21. Ibid.

22. Chinese Furniture Industry Antidumping Response Coalition, Submission to the U.S. Department of Commerce, "Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries," June 1, 2004, p. 7.

23. Department of Commerce, International Trade Administration, Announcement of Change in Practice and Request for Comments, "Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries" (emphasis added).

24. Government of the People's Republic of China, Bureau of Fair Trade for Imports & Exports, Ministry of Commerce, Submission to the U.S. Department of Commerce, "Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries," Oct15, 2004, p. 10.

25. Ibid.

26. Government of the PRC, June 1, 2004, p. 2.

27. Ibid.

28. Ibid.

29. Ibid, p. 25.

CENTER FOR TRADE POLICY STUDIES

The mission of the Cato Institute's Center for Trade Policy Studies is to increase public understanding of the benefits of free trade and the costs of protectionism. The center publishes briefing papers, policy analyses, and books and hosts frequent policy forums and conferences on the full range of trade policy issues.

Scholars at the Cato trade policy center recognize that open markets mean wider choices and lower prices for businesses and consumers, as well as more vigorous competition that encourages greater productivity and innovation. Those benefits are available to any country that adopts free trade policies; they are not contingent upon "fair trade" or a "level playing field" in other countries. Moreover, the case for free trade goes beyond economic efficiency. The freedom to trade is a basic human liberty, and its exercise across political borders unites people in peaceful cooperation and mutual prosperity.

The center is part of the Cato Institute, an independent policy research organization in Washington, D.C. The Cato Institute pursues a broad-based research program rooted in the traditional American principles of individual liberty and limited government.

For more information on the Center for Trade Policy Studies, visit www.freetrade.org.

Other Trade Studies from the Cato Institute

"The Case for CAFTA: Consolidating Central America's Freedom Revolution" by Daniel Griswold and Daniel Ikenson, Trade Briefing Paper no. 21 (September 21, 2004)

"Ready to Compete: Completing the Steel Industry's Rehabilitation" by Dan Ikenson, Trade Briefing Paper no. 20 (June 22, 2004)

"Protection without Protectionism: Reconciling Trade and Homeland Security" by Aaron Lukas, Trade Policy Analysis no. 27 (April 8, 2004)

"Job Losses and Trade: A Reality Check" by Brink Lindsey, Trade Briefing Paper no. 19 (March 17, 2004)

"Trading Tyranny for Freedom: How Open Markets Till the Soil for Democracy" by Daniel T. Griswold, Trade Policy Analysis no. 26 (January 6, 2004)

"Threadbare Excuses: The Textile Industry's Campaign to Preserve Import Restraints" by Dan Ikenson, Trade Policy Analysis no. 25 (October 15, 2003)

"The Trade Front: Combating Terrorism with Open Markets" by Brink Lindsey, Trade Policy Analysis no. 24 (August 5, 2003)

CATO INSTITUTE