

Chinese Corporate Finance and International Trade Disputes

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In breaking with a 23-year-old policy of not applying countervailing duties (CVD) to imports from non-market economies (NME), the US Department of Commerce (DOC) has begun to level the tariff against a specific kind of Chinese-made paper. In addition to marking a significant departure in long-standing US trade policy, it is in fact the first time such penalties have been imposed on imports from economies considered non-market oriented.

A Technical Disparity?

The US DOC, while until now refraining from accessing CVDs to products originating in non-market economies, has often and aggressively employed anti-dumping tariffs as its primary instrument in redressing international trade practices judged to be uncompetitive, predatory or unfair. Currently, the US has 61 such orders against imported Chinese products. Dumping duties have been the favored, if not default, remedial instrument by US trade officials in dealing with Chinese imports as the duty is nominally geared to "correct" pricing engineered to be "distortive" (below production cost or below the home-market price) so as to "level the playing field" in line with domestic market norms. A 1984 appeals court decision established precedent that the DOC was legally sanctioned to reject CVD petitions aimed at NME exports as the conceptual foundation for such tariffs (subsidization and resource misallocation) were essentially terms, in a centrally planned economy, unable to be reasonably delimited-conceptually void of meaning. Since the 84' ruling, the DOC has only applied CVDs to imports originating in economies considered market-based, leaving regulators recourse only to anti-dumping orders with which to foster a more competitive US market and protect domestic industry.

Confrontation Brewing

Commerce Secretary Carlos M. Gutierrez supported the decision noting the extent of China's economic development and reform saying, "The China of today is not the China of years ago. Just as China has evolved, so has the range of our tools to make sure Americans are treated fairly." Though the US still officially classifies China a non-market oriented economy, its centrally planned features have certainly in recent years receded considerably-enough apparently for US regulators to believe it possible to locate, calculate and compensate for the extent of government subsidies. Thus perhaps as US policy officials understand their CVD application as a necessary and justified act to account for China's continued growth and unique economic circumstances, the move was immediately decried in China as an "unacceptable" violation of their free-trade agreements running counter to the spirit of bilateral dialogue. Some Chinese critics have found a double injustice in the act as the US refuses to classify China as a market economy but will now penalize it as if it were one.

Political Calculus

The decision was likely not an easy one for Washington. Some believe the move was designed to at once appease a growing protectionist sentiment and head off a more punitive, comprehensive measure increasingly favored by the now Democratic-led Congress. The CVD application was greeted by US domestic manufactures of all stripes as a much needed and long over due

corrective measure and it is likely to spawn a bevy of fresh CVD petitions from similar industries most vulnerable to Chinese competition. The EU has also increased its application of protective tariffs aimed at China launching a record number of Chinese trade probes including those to counter suspected government subsidies. China for its part has promised in response to "protect its own legitimate rights" and whether that means applying similarly protective duties to foreign imports or establishing new (or perpetuating old) trade barriers, these kinds of protective initiatives and its attendant rhetoric are nearly unavoidably antagonistic.

It is important, especially with respect to these new American CVDs, that Chinese exports are not additionally subject to anti-dumping duties which would effectively make them unviable in the US market. US business interests in China, understanding the delicacy of the issue and recognizing its potential combustibility, have strongly advocated that any CVD laws be coupled with a clear prohibition against this kind of "double counting", which, if not prevented, could well foster a marketplace equally uncompetitive (if not more so) than if the original distortive practices went uncorrected.

Constructive Engagement

At the beginning of the month, Under Secretary of Commerce for International Trade Franklin L. Lavin, laid out the "five pillars" around which the DOC has built its China-related trade strategy. The "pillars" rightly emphasize a process-oriented, rule based, balanced approach, including bilateral negotiations and WTO processes. The necessary addition of "trade remedies", however, effectively allows either side to nullify their cooperative efforts and at any time and for any reason erect paralyzing trade barriers at the others expense. Their significance is thus vast and it remains manifestly unclear which are the parties that stand to benefit. In the current case, it appears only the American manufacturer (in his role as manufacturer) will collect short-term benefits as consumers will no longer enjoy the fruits of uninhibited competition among providers and American enterprises both at home and in China are liable to incur similar regulatory penalties. The domestic political calculus at the root of these increasingly intractable considerations will not, anytime soon, go away. Trade contentions, more positively, should be understood as natural byproducts of robust and vibrant trade relationships and not as sporadic surrenders to malice.

In the meantime, however, foreign businesses with China-operations can only encourage and hope that it is the goal of both parties to, as far as possible, detach the trade relationship from the political whims of Washington and Beijing so as to ensure a stable, transparent and mutually beneficial economy.