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**Trade Disputes between China and the EU**  
**—An Overview and Its Implications**

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## **Preface**

The motivation of writing on China-EU trade disputes derived from a long-time thinking on China's position in the modern world.

As a country with the biggest population for the last 18,000 years, ranking 1<sup>st</sup> in terms of GDP until the last two centuries, what's surprising is the reaction of other countries in the world to the "re-emergence" of China. In terms of trade, I believe there are political concerns behind the often-shocking trade disputes, or trade frictions. So I did a research trying to figure out the facts in this regard and the political and economic implications of such phenomenon. I had a great time writing this paper. And I believe this is going to be a landmark in my life.

This last ten months is the most adventurous and fruitful I have ever had. I'd like to extend my sincere gratitude to some people.

I could not have been here without the help and guidance of Ms. Sandy Lamelle. She introduced me to the world of European thoughts, dynamics and beauty. I am deeply indebted to her kindness.

I am forever indebted to my parents who have always believed in me and trusted me in everything I do.

My thanks go to my thesis advisor, Professor Laurent Beachler, without whose inspiration I could not have come this far. His understanding and attentive direction impressed me, and his academic devotion and professionalism inspired me truly.

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I am grateful to have met my girlfriend Ms. Miao Ying, who is a wonderful companion in good and bad times.

Last but not least, a wineglass raised in toast to my friends and colleagues who shared friendship with me, inspired me with their insight and talent, and impressed me with their personality: KHANOVA Aygul, RUGGIERI Elisa, ÇINTESUN Recep, AVCI Yusuf, KHALILOVA Leyla, MALJKOVIĆ Marta, LUTA-DUMITRASCU Daniel, NAMAZOVA Nilyufer, POCHON Marie, KAYHAN Gozde, HARIEDY Inez, BENHADDOU Sophia, CRUZ AROCA Paulina, PEREZ URIZARBARRENA Xabier, BAIBAKPAEVA Aiganym, KULJANIN Dragan, KOGER Julia, GOTTSCHALCK Nicole, ALHENDAWI Ahmad, RUGGERI Damien, SANCHEZ SLIK Gonzalo, KAYKILMAZ Sibel, PABST Swantje, SALIASI Redi, COSIO Grecia, IFTIKHAR Madiha, SALINSCHI Eugeniu, and JUDE Sorana Cristina.

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## Abstract

China and the EU are of major weight in today's world economy. These two trading partners are involved in big volume trade which not only benefits consumers on both sides, but also brings about frictions in many forms. Simple as it seems, however, I believe there are deeper political implications (which are suspected to be of protectionist nature) behind these trade disputes besides the straightforward economic influences.

The EU is losing its comparative advantage in many industries. And that's where trade defense instruments, such as anti-dumping, are most employed. On the other hand, the EU is a flagship in areas concerning sustainable development, green technology, intellectual property rights protection, etc.. And that's where new forms of trade barriers are emerging, such as technical barriers to trade and intellectual property rights protection. Its ambition to once again dominate the developing agenda at the international level is becoming a major factor on its act of posing non-tariff trade barriers to developing countries, in this study, especially China.

This paper focuses on three major disputed areas, namely, anti-dumping, technical barriers to trade, and intellectual property rights protection, to reveal how the EU is trying to protect its domestic industries at the expense of trade. Under the title of technical barriers to trade, a part is included to introduce a new type of technical barriers to trade, the green barriers.

This paper is a positive study of the current situation in China-EU trade. It does not aspire to point out the solution to reduce or further eliminate trade frictions. However, it does scrutinize the causes and the up-to-date dynamics of these frictions and provide factors that may hinder the exacerbation of such frictions.

This paper contains three chapters. The first chapter is dedicated to providing a general introduction to China-EU trade. The detailed facts will help readers get necessary information for further discussion on respective arguments. The second chapter is divided into three parts, providing a thorough examination of the three major disputed trade areas, anti-dumping, technical barriers to trade, and intellectual property rights protection. The third chapter, which is also the last chapter, concludes the findings of this study and examines the underpinning factors that keep these trade frictions from exacerbating.

**Key Words:** China-EU Trade; Trade Disputes; Anti-Dumping; Technical Barriers to Trade; Green Barriers; Intellectual Property Rights.

## Chapter 1 China-EU Trade as We Know Today

Taken as a whole, the European Union is the biggest economy in the world. In 2010, the Gross Domestic Production of EU was 16280 billion USD, 1.1 times that of the US, and 2.5 times that of China. It goes without saying that EU is of much significance to China's economy. As the biggest trading partner, the first source of technology, and the third source of foreign investment, EU is also the biggest "trouble-maker" to China in terms of employing anti-dumping and other trade defense instruments.

China has been one of the world's fastest-growing economies and has emerged as a major economic and trade power since the introduction of the Reform-and Opening-up policy in 1978. In 2010, China became the second largest economy of the world, behind the US. China is now the largest merchandise exporter, second largest merchandise importer, second largest recipient of foreign direct investment (FDI), and the largest holder of foreign exchange reserves.<sup>1</sup>

According to the World Economic Outlook released in April 2011, the International Monetary Fund (IMF) predicted that China's GDP will rise from \$11.2 trillion in 2011 to \$19 trillion in 2016, based on "purchasing power parities"(PPP), while the US' economy will increase from \$15.2 trillion to \$18.8 trillion, which means that China's economy will surpass the economy of US in 2016.<sup>2</sup> While for the outlook of the EU, the same report several months later delivered news that was not so rosy. In its outlook report of 2012, the IMF reports that "In a highly uncertain environment dominated by tension from the euro area sovereign debt crisis, risks to growth are mainly to the downside."<sup>3</sup>

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<sup>1</sup> See Wayne M. Morrison (Specialist in Asian Trade and Finance), "China's Economic Conditions, Congressional Research Service", available at <<http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA511980>>.

<sup>2</sup> See "Tensions from the Two-Speed Recovery Unemployment, Commodities, and Capital Flows, World Economic Outlook Reports by the International Monetary Fund", April 2011. available at <<http://www.imf.org/external/pubs/ft/weo/2011/01/pdf/text.pdf>>.

<sup>3</sup> See "World Economic Outlook Reports by the International Monetary Fund", September 2011. p78. available at <<http://www.imf.org/external/pubs/ft/weo/2011/02/pdf/text.pdf>>.

## 1.1 China-EU Trade as We Know Today

The establishment of EU's trading status as China's biggest trading partner was in 2004. Prior to 2004, Japan was the biggest trading partner of China for a consecutive 11 years. In 2004, Poland, Hungary, and the Czech Republic and ten other states became EU member states, which made the EU a union of 25 states. It is against this backdrop and with a rapid growing economic environment that EU substituted Japan. In July, 2011, China replaced the US and became the biggest trading partner of the EU for the first time, which made both parties the biggest trading partner of each other.<sup>4</sup> Although the dynamics of statistics later suggested otherwise, it is of no doubt that China and EU are becoming more and more dependent on each other in terms of trade.

These two major economies in the world, in possession of such economic scales and with such current situations and possible outlooks, are trading everyday on large scale. Since China is a large export market for developed countries and the least developed countries alike, its export-led economy is very sensitive to international turbulences, let alone trade protectionism. However, taking a look at the past, it is easy to see that China has been a major target for investigations of trade disputes, among which anti-dumping accusations stand out.

China is considered by the EU its "single most important challenge for EU trade policy".<sup>5</sup> Trade disputes of various forms and impact are hitting the headlines of the world major media. However, all of these disputes start with the simple facts of China-EU trade.

China's rise in terms of economy and trade has led to a substantial increase in China-EU economic ties. According to China trade data, taking data in 2011 for example, the value of imports and exports by EU (27 member states) reached 4,474 billion USD, an increase of 18.1% of that in 2010. The exports valued 2,130 billion

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<sup>4</sup> See "China surpasses U.S. as EU's top trade partner: MOC", *Xinhua News*, Oct. 16th 2011, available at <[http://news.xinhuanet.com/english2010/china/2011-10/16/c\\_131194386.htm](http://news.xinhuanet.com/english2010/china/2011-10/16/c_131194386.htm)>. Last accessed: 24 June, 2012.

<sup>5</sup> See "China-Bilateral Relations" Trade Home, European Commission, *available at* <<http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/china/>>.

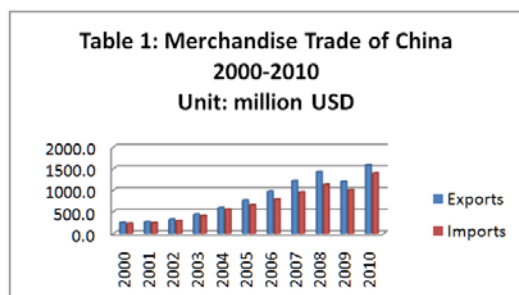


USD, increased by 19.2%, and the imports totaled 2,344 billion USD, increased by 17.2%. China enjoyed a surplus of 214.3 billion USD, increased by 0.9% than in 2010.<sup>6</sup>

Many EU based companies, like US and South Korean companies, have extensive operations in China in order to broaden their commerce in the booming Chinese market and to make the best of lower-cost labor for export-oriented manufacturing. These companies have enjoyed local hospitality and economic benefits while creating countless jobs, which in turn helped raising the living standard of the locals.

## 1.2 Major Facts about China-EU Trade

The total trade volume of China has increased by leaps and bounds. Ranking 32<sup>nd</sup> in 1978 with a value of import and export of only 20.6 billion USD, China's trade volume accounted for less than 1% of the world's total.<sup>7</sup> As is indicated in the charts below, in 2010, the total value of China's import and export reached 2.974 trillion USD, 144 times as much as that in 1978, averaging an annual growth of 16.8%. In



(Made by the author, based on consolidated statistics from WTO trade data).

2010 the total value of China's export was 1.5778 trillion U.S. dollars, showing a 17.2 percent annual growth on average, and the total value of its import was

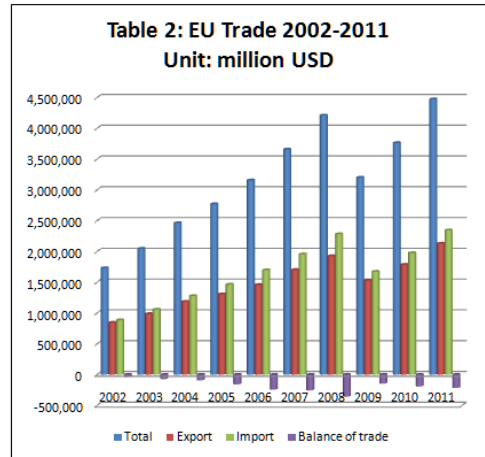
1.3962 trillion U.S. dollars, showing a 16.4 percent annual growth on average. In 2010, the total volumes of China's export and import accounted for 10.4 percent and 9.1 percent of the world's total, respectively. By the end of 2010 China had been the world's largest exporter and second-largest importer for two consecutive years.<sup>8</sup>(See Table 1)

<sup>6</sup> See “2011 年欧盟货物贸易及中欧双边贸易概况(Merchandise Trade of the EU and China-EU Trade 2011)”, available at <[http://countryreport.mofcom.gov.cn/record/view.asp?news\\_id=28409](http://countryreport.mofcom.gov.cn/record/view.asp?news_id=28409)>.

<sup>7</sup> See “China's Foreign Trade”, Information Office of the State Council, The People's Republic of China. December 2011, available at <[http://www.china.org.cn/government/whitepaper/node\\_7143951.htm](http://www.china.org.cn/government/whitepaper/node_7143951.htm)>.

<sup>8</sup> *Ibid.*

According to the data by Eurostat, the total volume of China-EU trade in 2011 is 593.97 billion USD, increased by 13.6% than that in 2010. Export to China by the EU amounts to 188.12 billion USD, increased by 26.4%. Import from China by the EU accounted 405.85 billion USD, increased by 8.6%. A deficit of 217.73 billion USD on the side of EU was witnessed, decreased by 3.2%



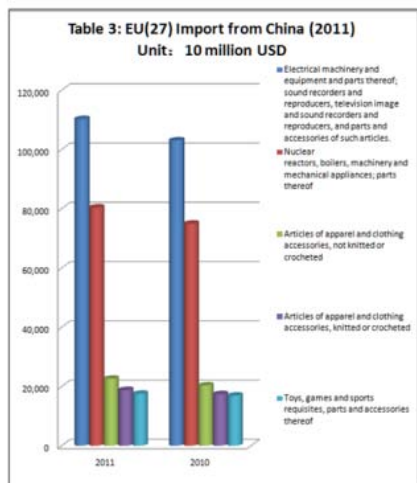
(Made by the author based on the statistics in Figure 1)<sup>9</sup>

on the basis of 2010. All this makes China the second biggest trading partner of EU and the first import source. (See Table 2)

A change in the structure of goods of China's trade has been witnessed. From exporting primary products, manufactured goods, light industrial products, and textile products in the 1980s, and mechanical and electronic products in the 1990s, China now is exporting more and more high-tech products, of which electronic and information technology commodities have been expanding increasingly.

In the past, import from China were mainly textile products, shoes, bags, toys, plastic commodities, coal and coke, lighting facilities, and other low value-added products. Now the picture has been repainted. From 2002 onwards, China has shifted its deficit in high-tech products trade to surplus.<sup>9</sup>

In the table below, it is shown that the top five commodities in China- EU trade are:



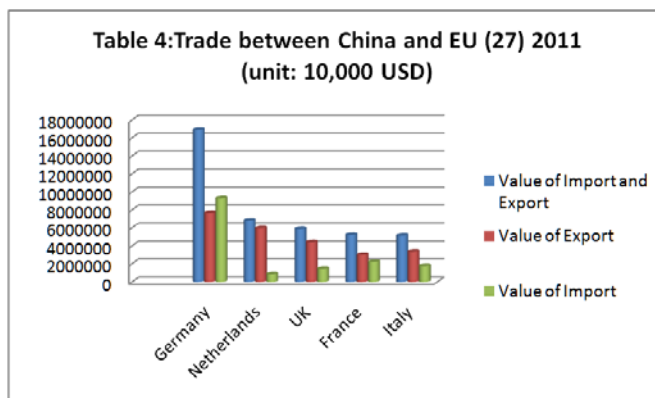
(Made by the author based on the statistics in Figure 2)<sup>9</sup>

- 1) Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles;
- 2) Nuclear reactors, boilers, machinery

<sup>9</sup> Huang Hui, *Sino-EU Trade Conflicts*, Social Sciences Academic Press(China) 3, (2005).

and mechanical appliances; parts thereof, 3) Articles of apparel and clothing accessories, not knitted or crocheted, 4) articles of apparel and clothing accessories, knitted or crocheted, and 5) toys, games and sports requisites, parts and accessories thereof.<sup>10</sup>(See Table 3) It is still obvious that China is still the major low value-added products provider to the EU.

China has managed to maintain a stable relation with the major countries in the EU, among which Germany, the Netherlands, the UK, France and Italy are its major trading partners. It indicates the match and balance of commodities

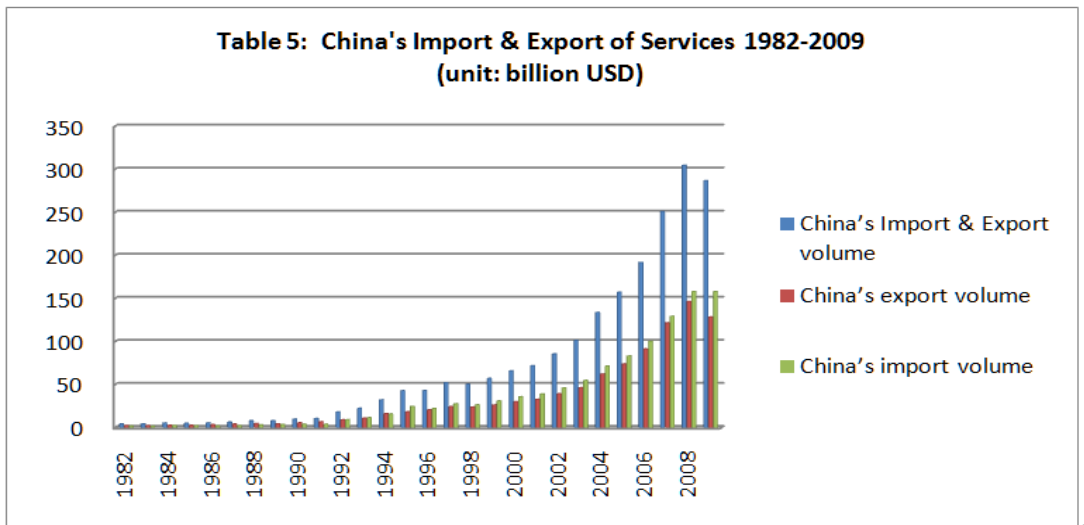


(Made by the author based on the statistics in Figure 3)

between China and these countries. (See Table 4)<sup>11</sup> For example, Germany is the biggest trading state with China in the EU.(See Figure 4 in Appendix) In 2011, the major commodities Germany exported to China are high-tech, knowledge-intensive products. While the major commodities Germany imported from China are low value-added, labor-intensive products. (See Figure 5 in Appendix) China and Germany are making the best of their comparative advantages in producing and exporting what they are best at providing while importing what they are less efficient in producing. Germany has a strong advantage in high-tech industry, especially in products that have high requirement for craftsmanship, high-technology and precision, while China has its edge in its cheap labor market. Labor-intensive industry is its trademark in the world competition. By maintaining a close trading partnership, both parties can enjoy the best outcome.

<sup>10</sup> Note: Unlike the EU using the Standard International Trade Classification to categorize its import and exports goods, the General Administration of Customs of the People's Republic of China also uses its own categorizing system under the guidance of *The Harmonized Commodity Description and Coding System*. See <<http://www.jkck.com/epaper/hgml.htm>> and <<http://www.impexp.com/>>.

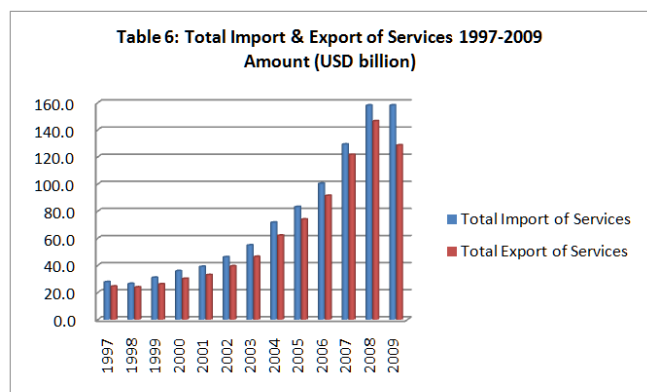
<sup>11</sup> See “2011 年 1-12 月中国与欧洲国家贸易统计表 (Trade between China and EU (27) 2011)”, Department of European Affairs, MOFCOM, available at <<http://ozs.mofcom.gov.cn/aarticle/date/201203/20120308026926.html>>.



(Made by the author based on statistics in Figure 6)<sup>12</sup>

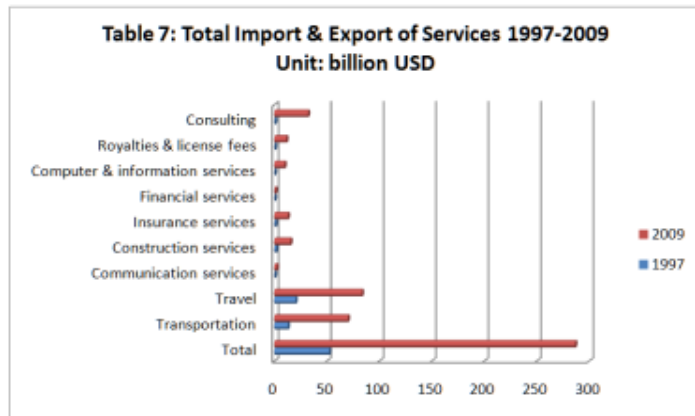
Apart from merchandise trade, China is relatively weak in services trade. However, it's worth noting that this situation is being changed rapidly. In 1982, total value of China's export and import of services was 4.4 billion USD, accounting for barely 0.6% of the world total volume. However, in 2009, this number jumped to 286.7 billion USD, occupying 4.5% of the world total volume. (See Table 5)

China's trade in tourism, transport and other fields has maintained a steady growth momentum. China's cross-border services in construction, communications, insurance, finance, and computers and information have been growing rapidly. From 2001 to 2010 China's total services trade value (excluding government services) witnessed a growth from 71.9 billion USD to 362.4 billion USD, increased more than five folds. China's proportion in world services trade exports rose from 2.4% to 4.6%, worth 170.2 billion USD in 2010, and soared from the 12th place in the world to the 4th; China's proportion in world services trade imports increased from 2.6% to 5.5%, worth 192.2 billion USD in 2010, moving from the 10th in the world to the 3rd.<sup>12</sup>(See Table 6)



(Made by the author based on statistics in Figure 7)<sup>12</sup>

<sup>12</sup> Note: 1, According to the definition of trade in services by WTO, China's trade in services data does not include government services. 2, Source: The WTO's International Trade Statistics Database, Data released by the Ministry



(Made by the author based on statistics in Figure 8)

Even though trade in services has soared tremendously, it is important to notice the gap in services industries between the two partners. Imbalance is huge between service sectors in China. This imbalance is

well demonstrated in the competitiveness of such sectors in China-EU trade. China is pretty uncompetitive in financial services and communication services in the world level. (See Table 7) This is due to policy concerned reasons which will be illustrated in later chapters. The biggest changes in total trade value lie in departments of transportation, travel and consulting, which are relatively advanced in the EU. This fact can also lead to future cooperation between the two partners.

One should bear in mind that even though China is adjusting its policy towards trade, it still holds several industries close to its vest. Non-tariff barriers are set up, which shuts the door for foreign companies to access to a number of services sectors including construction, banking, insurance, telecommunications, and postal services, etc. Export restrictions on raw materials have also been viewed as a major trade obstacle.

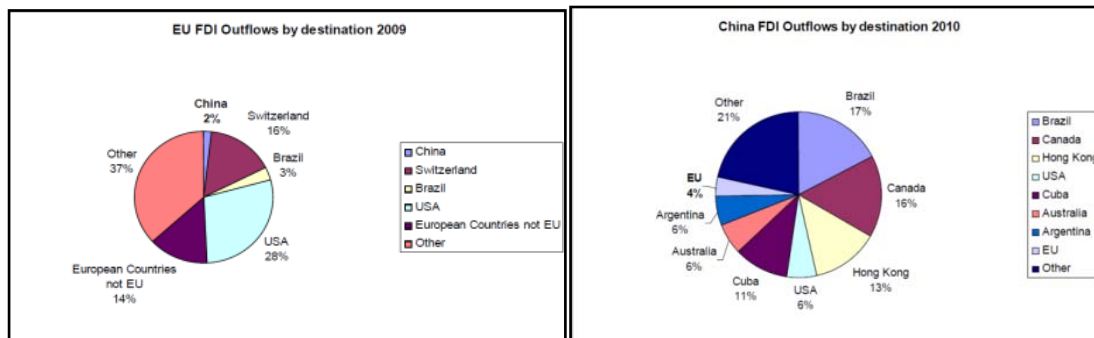
EU and China are dedicated to cooperative and investment-related activities. Ever since 1978, EU has been an important source for foreign direct investment (FDI) and technical support to China. According to a report, in the first eight month of 2011, foreign direct investment from the EU in China soared to 4.562 billion USD, increased by 3.28% than that in 2010. Approximately 1132 enterprises were set up in China by the EU, increased by 8.53%.<sup>13</sup> Another report shows that the EU is the

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of Commerce, MOFCOM, *available at* [http://tradeinservices.mofcom.gov.cn/upload/2012/01/19/1326933973418\\_281088.xls](http://tradeinservices.mofcom.gov.cn/upload/2012/01/19/1326933973418_281088.xls).

<sup>13</sup> See “2011年1-8月全国吸收外商直接投资情况(Foreign Direct Investment (Jan.-Aug. 2011))”, Department of Foreign Trade, MOFCOM, Sep20th 2011, *available at* [http://fec.mofcom.gov.cn/article/xwdt/gn/201109/1255606\\_1.html](http://fec.mofcom.gov.cn/article/xwdt/gn/201109/1255606_1.html).

largest foreign investor in China (20% of FDI into China), yet this represents less than 3% of the EU's total overseas FDI. And Chinese FDI into EU currently only represents less than 1% of all FDI into the EU. (See charts)<sup>14</sup>



However, as more and more rich people in China become interested in investing in the EU and a bunch of merger deals have been witnessed in the last years, it is reasonable to say that foreign direct investment on both ways will play a bigger role in the future.<sup>15</sup> Alongside with foreign direct investment, cooperation in various areas has boosted and strengthened the tie between China and the EU. Under the framework of EU-China Economic and Trade Joint Committee and later the EU-China High Level Economic and Trade Dialogue, China and EU are now seeking for cooperation in trade, environmental protection, energy, and information technology, etc.. Dialogues and practical cooperation in such areas are bringing about positive products.

<sup>14</sup> See Rubinacci L. (Head of Unit, Investment, Directorate-General for Trade), "The EU-China Investment Relationship-Recent Development & Future Policy Options", available at

<[http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc\\_147974.pdf](http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_147974.pdf)>. Last accessed: 24 June, 2012.

<sup>15</sup> See "Chinese investment in Europe: Streaks of Red", *The Economist*, Jun 30th 2011, available at <<http://www.economist.com/node/18895430>>. Last accessed: 24 June, 2012.

## Chapter 2 An Overview of China-EU Trade Disputes

This chapter deals mainly with China-EU trade frictions. It aims to sort out the areas where trade disputes are most concentrated, the industrial sectors involved, the countermeasures adopted by both sides, and the rooting causes. It also tries to throw light upon the repercussions of such disputes, and potential solutions to avoid exacerbation resulting in damages.

As analyzed in the first chapter, China and EU trading in such tremendous volume and with such a close tie to one another begs for questions concerning trade frictions. EU is one the first regions and countries that started trade dispute investigations with China.

Trade frictions concern various industrial sectors. From the low-end sectors like footwear, toys, textile, to high-end and high value-added sectors including machinery, communication facilities, etc.. It is noticed that frictions in China-EU trade have spread from singular commodities to multiple sectorial clusters, from merchandise goods to merchandise services.

The General Agreement on Trade and Tariffs (GATT), later developed into the World Trade Organization (WTO), is aiming at establishing global rules of trade between countries, ensuring that trade flows as smoothly, predictably and freely as possible. However as stated in its annual report, WTO is not only about opening markets and knocking down trade barriers, in some circumstances “its rules support maintaining trade barriers-for example, to protect consumers or prevent the spread of disease”.<sup>16</sup> Concerning merchandise goods, these trade barriers come in two forms: tariff barriers and non-tariff barriers. Tariff barriers consist of tariff reduction, tariff classification, tariff peaks, and tariff quotas. Non-tariff barriers are comprised of import licensing, export licensing, import quotas, import prohibition, technical barriers to trade, export restrictions, government procurement, subsidies, voluntary

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<sup>16</sup> See “WTO Annual Report 2011”, p2, available at <[http://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/anrep11\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep11_e.pdf)>.

export restraints, domestic content regulations, the operations of import State Trading Enterprises, sanitary and phytosanitary measures, anti-dumping, countervailing, safeguards and other trade remedy measures. Concerning trade-related investment, access restrictions, tax discrimination, and foreign ownership restrictions are the major trade barriers. Concerning merchandise services trade, access restrictions, and foreign ownership restrictions are the major barriers. Another main area of trade frictions lies in intellectual property rights protection.

What's worth noting is that as awareness of environmental protection is rising and climate change policy-making is becoming active, a new form of protectionism is coming into sight, green barriers. On this front, EU is keen on promoting The EU Emissions Trading System (EU ETS)<sup>17</sup>. The latest move is to implement a pan-European minimum tax on pollution permits which will have a severe impact on foreign airline companies and is received with intensive accusation from its trading partners, notably the US, China and India.<sup>18</sup> Another prominent example is EU ban on seal products. Out of humanitarian compassion and the animal welfare aspects of the seal hunt, the EU has adopted strict rules in this domain since "doubts have been expressed about some of the methods used for hunting seals."<sup>19</sup> In the light that several EU member states were considering, or had already introduced, national legislative measures to ban the import and use of seal skins and seal products, EU adopted an implementing regulation which finalized its resolution to ban import of seal products from Canada,<sup>20</sup> which even further led to Canada's threatening appealing this case to the WTO.<sup>21</sup> Similar story with China in the 1990s when the EU banned the import of appliances using chlorofluorocarbons (CFCs), a family of chemicals that damage the earth's ozone layer, let in cancer-causing ultraviolet rays

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<sup>17</sup> See Emission Trading System, Climate Action, European Commission, *available at* <[http://ec.europa.eu/clima/policies/ets/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/index_en.htm)>.

<sup>18</sup> See "Not Free to Fly", *The Economist*, Feb. 8th 2012, *available at* <<http://www.economist.com/blogs/schumpeter/2012/02/china-and-europes-emission-trading-scheme>>.

<sup>19</sup> See Environment, European Commission, *available at* <[http://ec.europa.eu/environment/biodiversity/animal\\_welfare/seals/seal\\_hunting.htm](http://ec.europa.eu/environment/biodiversity/animal_welfare/seals/seal_hunting.htm)>.

<sup>20</sup> See "E.U. Finalizes Seal Product Ban--Canada Still Clueless", PETA Files, Jul. 27 2009, *available at* <<http://www.peta.org/b/thepetafiles/archive/2009/07/27/EU-Finalizes-Seal-Product-BanCanada-Still-Clueless.aspx>>. Last accessed: 24 June, 2012.

<sup>21</sup> See "Europe Votes to Ban Seal Product Trade", *The Guardian*, May. 5<sup>th</sup> 2009, *available at* <<http://www.guardian.co.uk/environment/2009/may/05/eu-bans-seal-products>>. Last accessed: 24 June, 2012.



from the sun. This act caused China's refrigerator exports plummeted by 59%.<sup>22</sup>

In this chapter, attention is given to the three major dispute areas, **anti-dumping**, **intellectual property protection**, **technical barriers**, due to statistical reference and their political influences.

## 2.1 Anti-Dumping

For the past ten years, China has been the target for the largest number of antidumping measures of any country in the world. Researchers worry that with the ongoing economic downturn in Europe, antidumping has become even more in use for protectionist ends.<sup>23</sup> This concern holds plausible ground.

The history of modern antidumping law starts with the 1947 GATT agreement which led to the 1994 agreement to establish the World Trade Organization. WTO promotes fair trade between countries by setting trading rules, opening up markets, and settling trade disputes. It allows its members three tools, namely antidumping, antisubsidy (countervailing), and safeguard measures, to protect their economy from malicious external competition. However, these tools are open to abuse. As a report on the ten years of antidumping practice in the EU, trends were revealed that antidumping has been used as “a protectionist measure against rising global competition”.<sup>24</sup>

According to the GATT, Article VI<sup>25</sup>, the definition of the act of dumping is where “products of one country are introduced into the commerce of another country at less than the normal value of the products”. However, dumping itself does not necessarily cause anti-dumping countermeasures unless it fulfils other provisions

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<sup>22</sup> See “Future Freezers: Chinese Struggle to Reduce CFC-Consumption”, *Business Library*, available at <[http://findarticles.com/p/articles/mi\\_m0JQP/is\\_292/ai\\_30309653/](http://findarticles.com/p/articles/mi_m0JQP/is_292/ai_30309653/)>. Last accessed: 24 June, 2012.

<sup>23</sup> See Li Chunding, Whalley John, “Chinese Firm and Industry reactions to Antidumping”, available at <<http://voxeu.org/index.php?q=node/5770>>. Last accessed: 24 June, 2012.

<sup>24</sup> See Lucy Davis, “Ten Years of Antidumping in the EU: Economic and Political Targeting”, ECIPE Working Paper No. 02/2009, available at <<http://www.ecipe.org/publications/ten-years-of-anti-dumping-in-the-eu-economic-and-political-targeting/>>.

<sup>25</sup> See Article VI, GATT(1994), available at <<http://www.worldtradelaw.net/uragreements/gatt.pdf>>.

which are 1) these products are sold under their normal value, 2) it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry, and 3) there is a direct cause-and-effect relation between the above two provisions.

In the European context, anti-dumping measures can be taken before certain conditions are met which are 1) imports must be dumped, 2) there must be material injury to the Community industry producing the like product, 3) the dumped imports must be a cause of the injury, and 4) anti-dumping measures must not be against the Community interest.

Comparing the conditions of EU and the WTO framework, a prominent difference is to be noticed. In EU's context, the last condition implies the possibility of connivance. Such exception is in the interest of the EU community, which is a direct evidence of political influence on implementation of trade policy.

Anti-dumping, acknowledged and authorized by the WTO, is considered a universal measure to protect domestic industry from unfair competition. Its legitimate nature, easy implementation, and anti-retaliatory characteristic have made it a widely-used tool among states worldwide. By the end of 2011, 427 disputes had been filed by WTO members since the creation of this organization in 1995<sup>26</sup>, among which 90 disputes cases cite the agreement on anti-dumping (Article VI of GATT 1994) in the request for consultations.<sup>27</sup>

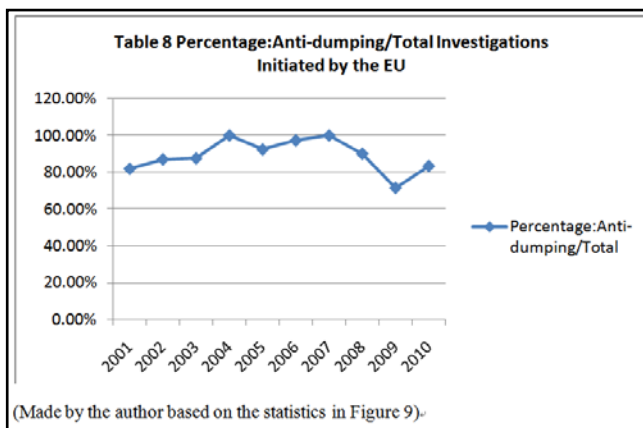
EU has been an enthusiastic user of anti-dumping investigations towards its trading partners. From 2001 to 2010, EU Commission has filed, in total, 606 trade investigations concerning anti-dumping, anti-subsidy, expiry reviews, interim reviews, exporter reviews, anti-circumvention investigations, anti-absorption investigations, and safeguard investigations, etc.. Of this accumulative calculation, there are 199 anti-dumping investigations, accounting for a big proportion of the total number of

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<sup>26</sup> See "WTO Annual Report 2012", p85, available at <[http://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/anrep12\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep12_e.pdf)>.

<sup>27</sup> See WTO website, at <[http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_agreements\\_index\\_e.htm?id=A6](http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A6)>.

investigations, and this percentage has been constantly high.(see Table 8) Excluded are those cases where provisional measures are imposed but not extended to further definitive measures.



By examining the statistics of the last ten years, tendencies below are emerging.

1, Asian countries are becoming the major targets of EU's anti-dumping efforts, China in particular.

2, Targeted products of anti-dumping investigations are concentrated in sectors where European comparative advantage is declining and Chinese industry is flourishing.

3, Once an anti-dumping investigation is launched, definitive measures are the most likely outcome.

For the convenience of further discussion, the following methodology issues are thus adopted. Anti-dumping investigation cases are not only sorted by countries and regions but also by industrial sectors. Numbers of cases resulting in definitive measures or terminated without definitive measures are presented because of their potential political implications. Data of respective countries is calculated based on the original reports by the EU, WTO Secretariat, and the Ministry of Commerce PRC and the General Administration of Customs of the PRC with explicit reference.

### 2.1.1 China as the Major Target of the EU Anti-Dumping Investigations

In most of China-EU trade dispute cases, China is yet to be a mature user of law. For the moment, China is an inactive respondent to most of EU's accusations. The EU's basic anti-dumping Regulation complies with the EU's international obligations

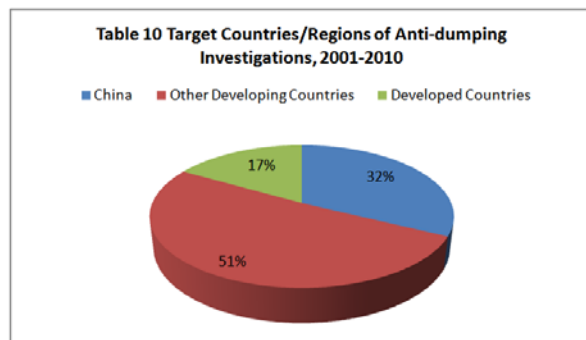
– in particular the WTO Anti-Dumping Agreement.<sup>28</sup> Under the WTO dispute settlement mechanism, 90 anti-dumping cases have been dealt with since the founding of the WTO in 1995.<sup>29</sup> On 31 December 2010, a total 124



(Made by the author based on statistics in Figure 9)-

anti-dumping and 11 countervailing measures were in force in the EU with 57 investigations on-going<sup>30</sup>. Due to China’s growing international trade volume and growing size of the economy, it is not surprising that China is never absent in EU’s anti-dumping investigation in the last decade. Investigations launched against China constitute a considerable part of the total number. (See Table 9)

This current situation is against the backdrop that the majority of EU’s anti-dumping targets are developing countries. In the 1970s, when Japan is on the rise, it was a favorite target for anti-dumping accusations.



(Made by the author based on the statistics in Interim Report of the European Commission 2004 and 2010, [http://trade.ec.europa.eu/doclib/docs/2005/february/tradoc\\_116804.pdf](http://trade.ec.europa.eu/doclib/docs/2005/february/tradoc_116804.pdf), [http://trade.ec.europa.eu/doclib/docs/2010/january/tradoc\\_145673.pdf](http://trade.ec.europa.eu/doclib/docs/2010/january/tradoc_145673.pdf)).

Now, Asian countries, especially China, are becoming favorite targets. (See Table 10)

<sup>28</sup> See European Commission website, at <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence/anti-dumping/>.

<sup>29</sup> See WTO website, at [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_agreements\\_index\\_e.htm?id=A6#selected\\_agreement](http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A6#selected_agreement).

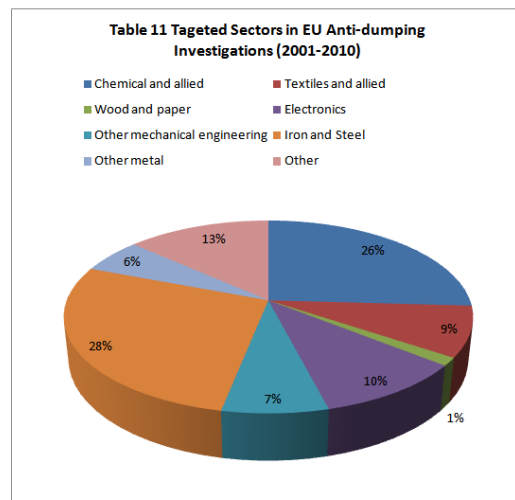
<sup>30</sup> See “Interim report 2010/12”, European Commission, p2, available at [http://trade.ec.europa.eu/doclib/docs/2010/january/tradoc\\_145673.pdf](http://trade.ec.europa.eu/doclib/docs/2010/january/tradoc_145673.pdf).

### 2.1.2 Anti-Dumping and EU's Achilles' Heel

Targeted products of anti-dumping investigations are concentrated in sectors where European comparative advantage is declining and Chinese industry is thriving.

According to reports prepared by the European Commission for the view the European Parliament, the five most favorite anti-dumping targeting sectors through 2001 till 2010 are Iron and steel (62 cases), Chemical and allied (58 cases), Electronics (23 cases), Textiles and allied (19 cases), and other mechanical engineering (16 cases). (See Table 11) From a comprehensive perspective, anti-dumping measures and investigations are launched most frequently in the

chemicals and metals sectors and industrial component parts comprised of semi-transformed raw materials. It should also be taken into account that many component parts are made from steel, for example, pipes and tube fittings and hot-rolled coils. It is discovered that investigations concerning these products are involved in the steel industry.



(Made by the author based on the statistics in Interim Report of the European Commission 2004 and 2010, [http://trade.ec.europa.eu/doclib/docs/2005/february/tradoc\\_116804.pdf](http://trade.ec.europa.eu/doclib/docs/2005/february/tradoc_116804.pdf), [http://trade.ec.europa.eu/doclib/docs/2010/january/tradoc\\_145673.pdf](http://trade.ec.europa.eu/doclib/docs/2010/january/tradoc_145673.pdf))

Put against the backdrop of overall trade volume between China and the EU, it is obvious that the most targeted sectors happen to be the major importing sectors from China. In 2011, the key import products from China are electrical machinery and equipment, and mechanical appliances (190.63 billion USD), textiles and raw materials (52.09 billion USD), and furniture and toys (35.83 billion USD), accounting for 68.6% of EU's total import from China.<sup>31</sup> Another feature worth noting is that EU's import of cheap metals and products, chemical and products, and plastics and rubber also embraced growth in 2011; the margins of growth respectively are 26.2%, 22.7%, and 22.4%.<sup>32</sup>

<sup>31</sup> See Figure 2

<sup>32</sup> See "2011 年欧盟货物贸易及中欧双边贸易概况(Merchandise Trade of the EU and China-EU Trade 2011)", available at <[http://countryreport.mofcom.gov.cn/record/view.asp?news\\_id=28409](http://countryreport.mofcom.gov.cn/record/view.asp?news_id=28409)>.

Historically, EU has been enjoying great benefits from its traditional strong industries in metals, chemicals, and other raw materials used in heavy industries. But three reasons led to its decline in influence on the international market. One is that these sectors have been greeted by competitors from the emerging countries, Asian countries in particular. The other is that EU's shift to services trade characterizes the export profile of the EU. Last but not least, such sectors have been major areas of low efficiency and high opportunity cost, especially in terms of environmental costs. Such trends are indicated in the dynamics of production in the following areas, mining and extraction of coal and crude petroleum, textiles, leather and related products, chemical and chemical products, and electrical equipments.<sup>33</sup> However, China enjoys comparative advantages in many low value-added commodity production industries. For example, due to factors such as undervalued currency, public subsidies, and more importantly a huge domestic market that "enables economies of vast scale and scope",<sup>34</sup> the government investment in infrastructure, and low labor cost, China's comparative advantage is best demonstrated in textile industry.

To counter international competition, European manufacturers have to adjust and adapt to become more innovative and competent. Many European companies have done an excellent job adjusting their strategies and get back their share in the world business, especially those from Northern Europe. However, some companies are not so keen on making changes and rolling with the waves. According to a report, this situation is particularly true for "companies producing textiles and footwear, despite a decade of quotas on products from China and other countries."<sup>35</sup> Since quotas, as a tariff trade barrier, are not what's to be dealt with in this paper, it is of our interest to pay fair attention to the plausible assumption that with Europe losing its edge in certain sectors, there are two options at hand to maintain what is best for its interest, to foster growth and innovation, or to provide shelter with no obvious evidence against its intention. And apparently, anti-dumping as a trade defense instrument is a perfect tool to achieve favorable results. As argued in the report, "rather than anti-dumping measures being utilized to combat offensive pricing tactics by companies exporting consumer products to the EU, they are instead being used to

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<sup>33</sup> See Figure 10

<sup>34</sup> Hufbauer, Wong, and Sheth, *US-China Trade Disputes: Rising Tide, Rising Stakes*, Washington DC, Institute for International Economics, 36, (2006).

<sup>35</sup> See J. Eggert, "Observation on the EU Anti-Dumping Regulation FTA Position for the Expert Meeting", Brussels, Jul.11th 2006, p1, available at <[http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_129812.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_129812.pdf)>.

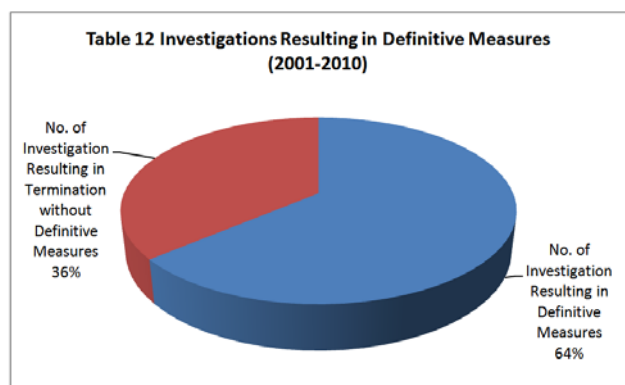
protect European manufacturers from competitive, non-European companies...It is certainly arguable that quotas are a form of protectionism, but it is equally arguable that anti-dumping measures are as well.”<sup>36</sup>

The lower input costs in the developing countries promise them an advantage in international competition which in return puts Europe at an unfavorable place in trade. In regard to production level and pricing, these developing countries thus become favorite targets in EU’s anti-dumping accusations. What’s more, as the comparative advantage fades and the internal shift continues, EU is using anti-dumping measures to counter external competition in an attempt to shelter its domestic industries. Pointed out in a report, “Of the 269 completed investigations, metals, chemicals and steel have all seen more than 70% of investigations resulting in definitive measures.”<sup>37</sup> It therefore shows that the sectors where EU is losing its competence are those most likely to be imported from developing countries yet at the same time most likely to foster anti-dumping investigations. Besides, these sectors are also those where definitive duties have been most likely to be imposed upon the completion of investigations.

### 2.1.3 EU’s Measures in Practice

Once an anti-dumping investigation is launched, definitive measures are the most likely outcome.

In the EU, once the Commission receives a valid complaint from a Community industry providing “*prima facie*” evidence that exporting producers from one or more countries are dumping a particular product into



(Made by the author based on the statistics in Figure 9).

<sup>36</sup> *Ibid.* p2.

<sup>37</sup> See Davis Lucy, “Ten Years of Anti-Dumping in the EU: Economic and Political Targeting”, *ECIPE Working Paper*, p7, available at <[http://www.ecipe.org/media/publication\\_pdfs/ten-years-of-anti-dumping-in-the-eu-economic-and-political-targeting.pdf](http://www.ecipe.org/media/publication_pdfs/ten-years-of-anti-dumping-in-the-eu-economic-and-political-targeting.pdf)>.

the EU and causing injury to the Community industry”,<sup>38</sup> it launches an investigation which can only end in two forms, measures be definitively imposed, or the case be terminated without measures. In the past ten year, among the 199 anti-dumping investigations, 127cases resulted in definitive measures being imposed, accounting for 63.82% of total investigations initiated. (See Table 12)

Another fact about the imposition of definitive duties on exports from China is that mostly the duties are very high. “In many cases, the measures are prohibitive.”<sup>39</sup> It is reported that the average anti-dumping duty is around 41%, ranging from 10 to 102%. For example, in the case study later in this chapter, among more than 1,440 ceramic tiles exporting producers involved in the EU market, only five producers were imposed duties rating from 26.3% to 36.5%, with another 97 producers being imposed duty rating 30.6%. All the other more than 1320 producers, which did not reply to the investigation, were imposed duties rating 69.7%. (See Case Study)

The consequence of such duties is usually devastating. Such duties do not only pose threat to specific producers, but rather, they often form a block of a whole industry in a market. The loss in competitiveness for these industries usually results in the loss of a market share which is obtained from years’ of marketing and hard work. Therefore, the motive of EU’s imposition of retaliatory duties is in question whether they aim to promote fair trade or just to shelter its own producers and block trade.

#### **2.1.4 A Paradoxical Picture of Anti-Dumping**

There are three questions to ask about anti-dumping in EU’s practice.

Does it help promote fair trade?

Does it help create a more competitive domestic market?

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<sup>38</sup> See European Commission website, at

<<http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence/anti-dumping/investigations/#referrer-1>>.

<sup>39</sup> See Chu Tianshu and J. Prusa Thomas, “The Reasons for and the Impact of Antidumping Protection: The Case of People’s Republic of China”, Economic Series No. 69, *East-West Center Working Papers*, April 2004, p7, available at

< <http://www.eastwestcenter.org/download/3042/31993/ECONwp069.pdf> >.



Does it qualify as a strategic tool to push china to be a market economy?

Technical definitions aside, the act of “dumping” is quite obscure in itself. It is undertaken by exporters who make decisions of pricing based on their individual judgments. The pursuit of benefits is the driving force in carrying out dumping, yet the motives are various in forms. Dumping can take place when there is a glut of certain products in the domestic market, or when there is an opportunity of obtain and enlarge foreign market in certain commercial areas. However, for the former, the thoughts on opportunity cost are at core, and for the latter, it is a mentality of mercantilism that takes the wheel. Dumping is a form of unfair competition. Some manufacturers sell at foreign markets at a lower price than their local competitors but can still maintain benefit since they are backed up by government subsidies.<sup>40</sup> Some take advantage of the lower price of their products and swipe out the local competitors. Once they become monopolies, they can raise the price and handle the local market at their wills. It must be acknowledged that dumping more than often brings devastating harms to the local economy and sometimes disturb the order of the importers’ domestic markets. There is a potential that dumping can damage the economic order of the importers with abnormally low pricing and aggressive marketing strategies.

Put in the context of anti-dumping practices in China-EU trade, one may ask the following questions: Why are there more and more anti-dumping measures taken against Chinese exporting producers? What are the influences of such measures? Do these measures promote fair trade or restrict it?

To answer the first question, several factors come into sight in regard to both parties. These include the competition between Chinese and European producers, the non-market-economy treatment towards China, and the complicated ownership structure of Chinese companies. Concerning the EU, factors that lead to frequent anti-dumping disputes include the well established institutions and legal system, the

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<sup>40</sup> Note: Chinese exporters can get support from the government in many ways, including low-interest loans, value-added tax rebate, franchise in certain economic areas, etc.. See Navarro Peter, “Economy: The Economics of the ‘China Price’”, *China Perspectives*, 68 / November- December 2006, available at <<http://chinaperspectives.revues.org/3063#authors>>. Last accessed: 24 June, 2012.

concentrated nature of the market structure of the EU producers, and the trade deficit that the EU has been running against China.

Even though China adopted the Opening-up and Reform policy three decades ago, at which period the restructuring of enterprises was one of the key reform measures, till now, the ownership of state-run enterprises is still complicated. Big state-run enterprises in China are known to be operating under supervision from the government. They get softer budget constraints than most private firms since they are either subsidized by the state or enjoy tax or credit arrears.<sup>41</sup> The complication of the ownership of state-run enterprises in China therefore makes it possible that these companies can lower their cost and still benefit at lower selling prices.<sup>42</sup> The emphasis on whether a product is produced and sold under free market economy or the manufacturer is manipulated by the state is misleading in the decision of the normal value in anti-dumping investigations. However, this is what counts most in the EU practice as seen in most of the cases over the years.

The complication of the ownership of state-run enterprises is also one of the causes that lead to the generally lower prices of Chinese export products. According to Uruguay Round Agreement- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 Article 2.7, “This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.”<sup>43</sup> The explanation of this article is that:

*“a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another*

*(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,*

*(b) in the absence of such domestic price, is less than either*

*(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or*

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<sup>41</sup> See Everaert G. and Vandebussche H., “Does Protection Harden Budgets Constraints?” (2001), *LICOS Discussion Paper 8/2001*, Catholic University of Leuven (KULeuven), p25, available at < <http://www.econ.kuleuven.be/licos/publications/discussion-papers/dp/dp98.pdf> >.

<sup>42</sup> See Xiong Jianmin, “倾销与反倾销问题辨析(On Dumping and Anti-Dumping)”, *Qiye Jingji*, Vol.8, 2011, Mar. 26<sup>th</sup> 2012, available at < <http://www.kesum.com/Article/ltzcyj/fqx/201203/150845.html> >.

<sup>43</sup> See WTO website, at <[http://www.wto.org/english/docs\\_e/legal\\_e/19-adp\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm)>.

(ii) *the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.*”<sup>44</sup>

According to this regulation, the prices of exported products are more than often considered lower than the local price in the European market. This is exactly why in most anti-dumping investigations, the EU has adopted a third country, i.e. an analogue country, to estimate the normal value of the dumped products, which in many cases is not appropriate due to the fact that most of the involved companies are not state-run enterprises and their operation is totally independent from the governments’ interference.<sup>45</sup> This fact in particular has harmed Chinese exporters in the injury decision process. As one report said, “the less than fair value pricing decision is made according to technical criteria set down in the law, while the injury decision is made under condition of more discretion.”<sup>46</sup>

Another issue resulting in the likely lower prices is the value of RMB. The exchange rate of Chinese currency has been at debate for a long time. China is accused of manipulating the exchange rate of RMB in order to keep an advantage in production cost. “China’s exports to the EU have also benefited from the currency alignment of the Chinese renminbi to the dollar, which has given them an important competitive advantage. China is now moving towards increased flexibility in its currency regime, which should help shift the balance to higher levels of domestic consumption”, reported by the EU<sup>47</sup>. However, according to the Economist, this resentment on China’s exchange rate regime is anything but fair. In an article it is shown that the Chinese currency is not as undervalued as people might think, and therefore the influence of this factor on EU’s depiction of China’s dumping is not as strong an argument as it seems.<sup>48</sup>

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<sup>44</sup> See p9, GATT(1994), available at <<http://www.worldtradelaw.net/uragreements/gatt.pdf>>.

<sup>45</sup> See “中国产品被反倾销的几个深层次问题(Thoughts on Anti-Dumping against Chinese Products)”, *China.Org*, Jun.2<sup>nd</sup>2005, available at <<http://www.china.com.cn/chinese/zhuanti/fzpd/879209.htm>>. Last accessed: 24 June, 2012.

<sup>46</sup> See Nelson Douglas, “The Political Economy of Antidumping: A Survey(prepared for the joint Murphy Institute/Leverhulme Centre GEP conference on the 100th Anniversary of Antidumping)”, p18, available at <<http://www.tulane.edu/~dnelson/PAPERS/ADPEsurvey.pdf>>.

<sup>47</sup> See “Global Europe: EU–China Trade and Investment — Competition and Partnership”, External Trade, European Commission, p8, available at <[http://trade.ec.europa.eu/doclib/docs/2006/november/tradoc\\_131234.pdf](http://trade.ec.europa.eu/doclib/docs/2006/november/tradoc_131234.pdf)>.

<sup>48</sup> See “Just Yuan More: The Economist's Real Yuan-Dollar Exchange Rate”, *The Economist*, Nov. 5th 2010,

China's non-market-economy status is another issue that breeds vulnerability of Chinese exporters in anti-dumping investigations. China obtained membership of the World Trade Organization in September 2001 after 15 years of negotiations. However, unlike most other member states, China will only be treated as a market economy starting 2016, according to WTO rules.<sup>49</sup> The vulnerability of China as a non-market economy is that according to the regulation directing EU's trade disputes settlements, there is different treatments between those exporting countries which are considered to have the status of being a market economy and those that are not.

In the practice of anti-dumping in the EU, to determine the dumping margin requires the comparison between the importing price and the domestic price of products in exporting countries, in this case China. However, in the second Ad Note to Art. VI:1 of the GATT 1994 that when a country is not a market economy, the domestic prices can not represent the real cost and value of the products, therefore are not appropriate in determining the dumping margin.<sup>50</sup> According to the WTO, it is not always appropriate to determine costs and prices in the anti-dumping investigations when difficulties come up in comparing the domestic Chinese prices and the export prices.<sup>51</sup> The WTO law left China's market economy status to member countries. Even though "the EU could be obligated to grant China market economy status if EU law contained specific criteria of a market economy on the date of the China's accession to the WTO, and China fulfilled those criteria", however, "no market economy criteria for China are found in the EU Regulations".<sup>52</sup> This leaves a window for arbitrary standards by the EU while China is vulnerable to them.

Since China is at mercy of the EU in choosing an analogue country, or a surrogate country, in determining the dumping margin in anti-dumping investigations,

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available at

<[http://www.economist.com/blogs/dailychart/2010/11/economists\\_real\\_yuan-dollar\\_exchange\\_rate](http://www.economist.com/blogs/dailychart/2010/11/economists_real_yuan-dollar_exchange_rate)>. Last access: 24 June, 2012.

<sup>49</sup> See "The Myth of China and Market Economy Status in 2016", *NCTM*, available at <<http://worldtradelaw.typepad.com/files/oconnorresponse.pdf>>.

<sup>50</sup> See p47, GATT(1994), available at <<http://www.worldtradelaw.net/uragreements/gatt.pdf>>.

<sup>51</sup> See "Report of the Working Party on the Accession of China, WT/ACC/CHN/49", Oct.1<sup>st</sup> 2001, para. 150, available at <<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan002144.pdf>>.

<sup>52</sup> Andersen Henrik, *EU Dumping Determinations and WTO Law*, Wolters Kluwer294(2009).

the analogue countries are not always appropriate as argued by Henrik Andersen. Andersen argues that in determining an appropriate analogue country, eight factors must be considered and fulfilled. They are 1) the analogue country must have the same economic level with China; 2) there must be competition in the analogue country; 3) the sale must be representative; 4) the production processes must be similar; 5) qualities of the products do not have to be the same, but close; 6) there must be a similar level of access to raw materials; 7) labor costs must be similar; and 8) the value of the currency must be harmonized.<sup>53</sup> In many cases, the prices in an analogue country are often higher than those in China due to the factors mentioned above. “This means that when the comparison is made between the normal value and the export price the level of dumping is likely to be higher.”<sup>54</sup> And the dumping margin will therefore be determined higher.

Disagreements from Chinese exporters have been pronounced only to encounter unfavorable responses from the EU. Although strong-worded denial of unfair treatment on the EU’s side is often put forward, the EU fails to explain explicitly how its differentiated practice on Chinese exporters are in line with WTO agreements. For example, in the case of Granular Polytetrafluoroethylene (PTFE), the Commission stated:

*In this respect it should be noted that the current investigation, including the assessment of whether an exporting producer operates under market economy conditions, is made in accordance with the applicable provisions of the basic Regulation, which are fully in line with WTO obligations.*<sup>55</sup>

As argued Henrik Andersen, since the WTO rules do not provide any guidelines about market economy conditions, and there is wide discretion to the investigating authorities to set up criteria for market economic treatment, “the wide discretion

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<sup>53</sup> *Ibid.* p.p. 323-331.

<sup>54</sup> See O’Connor Bernard, “Market-Economy Status for China Is Not Automatic”, 27 November 2011, *available at* <<http://www.voxeu.org/index.php?q=node/7345>>. Last accessed: 24 June, 2012.

<sup>55</sup> Granular Polytetrafluoroethylene (PTFE), Commission Regulation (EC) No. 862/2005 of 7 Jun. 2005 imposing provisional anti-dumping duties on imports of granular PTFE originating in Russia and the People’s Republic of China, OJ L 144, 8 Jun. 2005. Pp. 11-36, recital 31.

seems to be fully exercised in the EU practice”.<sup>56</sup> In his opinion, at least there are two aspects that are in obvious violation to WTO rules. One aspect is the lack of uniformity in EU practice on price differentiation, which is too randomly treated and is in conflict with the fairness principle, since the criteria are not employed even-handedly, as the reason for rejecting market economy treatment in one instance is reversed in the other instance. The other aspect is the situation where the criteria have been met, but the information is insufficient- and until sufficient information is provided, the Chinese exporters will be treated under non-market rules.<sup>57</sup>

Despite the repeated appeal to the EU from Chinese politicians in recent years, and China’s strong resolution and noteworthy performance in carrying out reforms in its economy, the EU has once and again turned it down<sup>58</sup>. In a report on 28 June 2008, the European Commission clearly concluded that China is not yet a “market economy”. It further listed four conditions for China to fulfill: reduce state interference of companies; increase level of compliance with accounting law; ensure equal treatment in bankruptcy law and respect for property and intellectual property rights; and apply market rules in the banking sector.<sup>59</sup> As is commented in a paper, “the fact that the conditions are quite subjective shows that the EC is reluctant to forgo the leverage that can be used to punish China for noncompliance or induce China to give more concessions.”<sup>60</sup>

Emerging from the case study in this paper shows another factor that invites further more anti-dumping investigation by the EU: the ratio of participation of Chinese exporters. In most EU anti-dumping investigations, very limited participation of Chinese exporters is witnessed. As examined in a paper, “in 1980s, targeted Chinese companies largely ignored the demand for information by the Commission.

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<sup>56</sup> Andersen Henrik, *EU Dumping Determinations and WTO Law*, Wolters Kluwer 319(2009).

<sup>57</sup> *Ibid.* p341.

<sup>58</sup> See “General and Market Reports: EU Still Refusing Market Economy Status for Mainland China”, Issue 20, 2006 (29 September), available at <<http://info.hktdc.com/alert/eu0620e.htm>>, and, “China losing interest in early 'market economy' status”, Dec.16<sup>th</sup>2010, available at <<http://euobserver.com/884/31528>>. Last accessed: 24 June, 2012.

<sup>59</sup> See European Parliament website, at <<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-009874&language=EN>>.

<sup>60</sup> See Kong Qingjiang, “Trade Disputes Between China and the EU”, *EAI Background Brief No. 416*, Dec.4 2008, p6, available at <<http://www.eai.nus.edu.sg/BB416.pdf>>.

In earlier 1990s, occasionally there was limited cooperation from Chinese companies. However, in the instances where Chinese companies responded, documentation often had been incomplete and untimely.”<sup>61</sup> Even though this report was written almost ten years ago, the situation remains almost unchanged. For example, in the investigation on ceramic tiles originated in the PRC, among all interested 1440 plus Chinese companies, less than 120 replied and participated in the investigation. The degree of participation was less than 10%. The shadowed cause of this phenomenon is that most charged companies are small and medium-sized companies which lack the ability to get involved in the investigation. Their concern with cost and individual losses compromise their resolution to protect their interests.<sup>62</sup> Regardless of this fact, the Commission, however, should not interpret the lack of a response as an indication that “there are no objections to the imposition of duties or that the imposition of duties would be in the best interest of the Community”.<sup>63</sup>

The EU, as a frequent user of trade defense instruments, is more acquainted to legal processes and anti-dumping management. Since the foundation of the World Trade Organization, alongside with the US, the EU has been the most active shapers and users of this legal system. As an attempt to establish its own trade dispute settlement mechanism, the EU took three major moves: “first, it has become more active in its use of international trade law to pursue market access abroad, reflecting a more outward-looking trade policy than an inward protectionist one. Second, the European Commission’s Trade Directorate General (DG) has dedicated more resources to law, creating a new dispute settlement unit in 1998 and working more closely with the Commission’s Legal Service. Third, in order to use the system effectively, the Commission has sought to work closely with private businesses and

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<sup>61</sup> See Liu Xiang, Vandenbussche Hylke, “EU Antidumping Cases Against China: An Overview and Future Prospects with Respect to China’s WTO Membership”, p14, *available at* <<http://ideas.repec.org/p/lic/licosd/11902.html>>.

<sup>62</sup> See “中国企业应诉欧盟反倾销困难重重(Hard to React to EU’s Anti-Dumping Investigations)”, *CNII*, Aug. 4<sup>th</sup> 2010, *available at* <[http://www.cnii.com.cn/index/content/2010-08/04/content\\_783182.htm](http://www.cnii.com.cn/index/content/2010-08/04/content_783182.htm)>. Last accessed: 24 June, 2012.

<sup>63</sup> See J. Eggert, “Observation on the EU Anti-Dumping Regulation FTA Position for the Expert Meeting”, Brussels, Jul.11th 2006, p5, *available at* <[http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_129812.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_129812.pdf)>. Last accessed: 24 June, 2012.

trade associations.”<sup>64</sup> The very detailed direction on how to file an anti-dumping complaint and the timely response by the European Commission proved to be efficient and economic, while such situations are beyond imagination by Chinese exporters since the Countervailing Regulation of The People's Republic of China<sup>65</sup> was in effect from January 1<sup>st</sup>, 2002, with clumsy implementation and modest promotion among the manufacturers.<sup>66</sup>

Comparing the participation of non-governmental entities, it is considered that “the concentrated nature of the EU industries involved in filing anti-dumping cases against China is another explanation for the frequent occurrence of China in EU anti-dumping statistics.”<sup>67</sup> Even though due to geographical and national differences, the European single market plays an important role in integrating industries. In many cases, one or two big companies represent almost half of the total production of Europe, sometimes, as where there is a monopoly, the representation is 100% of the total production<sup>68</sup>. Such situation is also illustrated in the case study.

Studies also show the possibility of anti-dumping mechanism as an instrument to harass foreign competitors since the convenience and low economic cost of filing an anti-dumping investigation.<sup>69</sup> Besides, there is also a potential for legislative abuse on the EU side.<sup>70</sup>

On China’s side, its efforts in reduce trade barriers over the last twenty years has resulted in the growth of China’s exports and imports. The deepening and expanding trade relation between China and the EU has brought lower prices to EU citizens and

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<sup>64</sup> Shaffer Gregory, “What’s New in EU Trade Dispute Settlement? Judicialisation, Public-Private Networks and the WTO Legal Order”, *Journal of European Public Policy*, Volume 13, Issue 6, 2006, p 832-850.

<sup>65</sup> See “Countervailing Regulation of The People's Republic of China”, available at <<http://www.fdi.gov.cn/pub/FDI/zcfg/zh/xzfg/P020060619553246560958.pdf>>.

<sup>66</sup> See “商务部召开中国反倾销立法与实践十周年国际研讨会(International Forum on Legislation and Implementation of Anti-Dumping in China), Jun.25 2007, *MOFCOM*, available at <<http://www.mofcom.gov.cn/aarticle/ae/ai/200706/20070604820787.html>>. Last accessed: 24 June, 2012.

<sup>67</sup> See Liu Xiang, Vandenbussche Hylke, “EU Antidumping Cases Against China: An Overview and Future Prospects with Respect to China’s WTO Membership”, p18, available at <<http://ideas.repec.org/p/lic/licosd/11902.html>>.

<sup>68</sup> *Ibid.* p25.

<sup>69</sup> See Finger, J. Michael (1981). “The Industry-Country Incidence of Less-than-Fair-Value Cases in US Import Trade”, *Quarterly Review of Economics and Business*; V.21-#2, pp. 260-279. Available at <<http://www.nber.org/chapters/c11210.pdf>>.

<sup>70</sup> Behboodi Rambod, *Industrial Subsidies and Frictions and World Trade: Trade Policy or Trade Politics?* London and New York, Routledge, 128, (1994).



producers. It also enables both sides to use their resources in a more efficient manner. Even though both sides are benefiting from these trade activities, a trade deficit on EU's side is hard to ignore. And this big deficit, even though there's a trend of decreasing, has been a major concern of many EU policy makers.

The EU runs a considerable trade deficit with China, about 217.73 billion USD in 2011, decreased by 3.2% on the basis of 2010. It is true that the speed at which this deficit is growing has triggered criticism, increasingly alarmist in tone, and demands for actions to be taken to correct this imbalance. No wonder some researchers are alarmed and advocate the fixation of this imbalance, saying "the current imbalance... reflects structural realities in the Chinese economy that are not sustainable."<sup>71</sup>

However, according to the data released by the Ministry of Commerce in China, China runs a trade deficit with most of its trading partners, most notably, about 48 billion USD in 2005 with its Asian partners. EU has benefited a lot from trade with China. "The notion that a bilateral deficit represents a problem is simply bad economic".<sup>72</sup> The huge deficit on EU's side does not just reflect its current account imbalance, but rather, it mirrors "the replacement of other countries' exports to the EU."<sup>73</sup> The market formerly occupied by exporters from other countries is now taken by Chinese exporters, which is not a big threat to the EU.

With regard to the sustainability of Chinese economic structures, research has shown that to a certain extent, China does behave in the way economic theory as well as Western politicians always have recommended. The on-going domestic reform is backed by external liberalisation and export orientation. China has been careful with external capital-market liberalisation, which is also one (of several) textbook recommendation(s).<sup>74</sup>

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<sup>71</sup> See "It's Time for European Leaders to Make the Repairs: Peter Mandelson, Senior Advisor, Lazard", *Economic Times*, Dec 3rd 2011, available at <[http://articles.economictimes.indiatimes.com/2011-12-03/news/30471771\\_1\\_eurozone-european-union-member-states](http://articles.economictimes.indiatimes.com/2011-12-03/news/30471771_1_eurozone-european-union-member-states)>. Last accessed: 24 June, 2012.

<sup>72</sup> See Erixon Fedrik, "The Commission's New Trade Strategy: Ideological and Economic Foundations, The Future of the EU Trade Policy", March 2011, p22, available at <<http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=41691>>. Last accessed: 24 June, 2012.

<sup>73</sup> See "General and Market Reports: EU Still Refusing Market Economy Status for Mainland China", Issue 20, 2006 (29 September), available at <<http://info.hktdc.com/alert/eu0620e.htm>>, and, "China losing interest in early 'market economy' status", Dec. 16<sup>th</sup> 2010, available at <<http://euobserver.com/884/31528>>. Last accessed: 24 June, 2012.

<sup>74</sup> See Freytag Andreas, "Should Europe Really Worry about Its Trade Deficit with China?", May 19th 2008, available at

These considerations have their influences on the trend of usage of anti-dumping trade defense instrument. Even though statistics show a disappointing fact that there are more and more anti-dumping measures taken on Chinese export producers, as proclaimed by Mr. Fredrik Erixon, “all this boils down to a simple observation: Europe’s stake in China is too big for Europe to even consider punitive trade strategies against China as a way to get China to open its market more (which China should do)”<sup>75</sup>.

## 2.2 Technical Barriers to Trade

Technical barriers to trade are one of the non-tariff trade barriers. They are mostly implied on merchandise goods. According to the definition given by the World Trade Organization, technical regulations and standards should be met by producers in order to cater to consumers’ demand for safe and high-quality products, and for the sake of environmental protection. In addition to the mandatory requirements of regulations and voluntary nature of standards, another technical process if carried out to ensure the implementation of certain technical requirements, the Conformity assessment procedures, which include testing, verification, inspection and certification, etc..<sup>76</sup>

As noted by the World Trade Organization, these technical requirements bear the potential of being used as protectionist measures towards trade competitors or simply as trade barriers to market access. It is noted that “in the absence of international disciplines, a risk exists that technical regulations and standards could be adopted and applied solely to protect domestic industries.” Besides, “non-transparent and discriminatory conformity assessment procedures can become effective protectionist tools.”<sup>77</sup> It is also pointed out in a research that “Although TBT measures most often pursue legitimate policy goals, and are thus an essential part of the sovereign authority of governments, they may be designed in such a manner as to serve to protect

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<<http://www.voxeu.org/index.php?q=node/1150>>. Last accessed: 24 June, 2012.

<sup>75</sup> See Erixon Fedrik, “The Commission’s New Trade Strategy: Ideological and Economic Foundations, The Future of the EU Trade Policy”, March 2011, p22, available at

<<http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=41691>>. Last accessed: 24 June, 2012.

<sup>76</sup> See “Agreement on Technical Barriers to Trade”, p118, available at

<[http://www.wto.org/english/docs\\_e/legal\\_e/17-tbt.pdf](http://www.wto.org/english/docs_e/legal_e/17-tbt.pdf)>.

<sup>77</sup> See WTO website, at <[http://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_info\\_e.htm](http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm)>.

domestic producers from foreign competition, being more trade restrictive than necessary to achieve their policy objectives. Such measures may form significant barriers to trade.”<sup>78</sup>

Some researchers suggest that technical barriers are important in shaping trade flows between countries and industries<sup>79</sup>. Despite the fact that internal tariffs and trade quotas were abolished with the creation of customs unions in the 1960s, and the Single Market Act of 1986 was achieved to create the Single European Market by the end of 1992 due to the existing many trade barriers (especially non-tariff barriers such as technical barriers to trade), research shows that within the EU, even today, technical barriers still play a considerable role in impeding intra-EU trade, accounting for 5% of quantitative contribution in explaining various variation in trade integration, with policy factors explaining 7% (which is far from negligible) and public procurement such as Schengen and the euro only very minor roles.<sup>80</sup>

The EU has been a flagship on the front of using technical barriers to trade, boasting the idea of economic and further political integration in Europe. However, even in such an integrated market, technical barriers still account for a big part of trade impediment, it is only reasonable to argue this trade defense instrument is frequently employed to counter foreign import once the EU deems necessary. As is argued by Richard Baldwin, in the case of Europe, such barriers have become more and more visible over time, especially since tariff barriers were completely eliminated by 1968, in addition, such barriers are a predominant concern in today’s global trade negotiations.<sup>81</sup> In regard to the WTO, in particular it precisely seeks to ensure that “technical regulations and standards, including packaging, marking and labeling

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<sup>78</sup> See Prevost Denise, “Sanitary, Phytosanitary and Technical Barriers to Trade in the Economic Partnership Agreements between the European Union and the ACP Countries”, ICTSD EPAs and Regionalism Programme, August 2010, p4, available at: <<http://dspace.cigilibrary.org/jspui/bitstream/123456789/29671/1/Sanitary,%20Phytosanitary%20and%20Technical%20Barriers%20to%20Trade%20in%20the%20Economic%20Partnership%20Agreements%20between%20the%20European%20Union%20and%20the%20ACP%20Countries.pdf>>.

<sup>79</sup> Baldwin Richard (2000), “Regulatory Protectionism, Developing Nations, and a Two-Tier World Trade System”, Brookings Trade Forum, *Washington: Brookings Institution*, p.p.237-293.

<sup>80</sup> See Chen and Novy, “Many Trade Barriers Remain High in the EU”, Jan. 27th 2009, available at <<http://voxeu.eu/index.php?q=node/2831>>. Last accessed: 24 June, 2012.

<sup>81</sup> *Ibid.*

requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade”.<sup>82</sup> It should be clarified that it is the trade barriers in the name of technical reasons that should be avoided rather than general technical barriers to trade which are, as long as they coincide with relevant regulations in the WTO Agreement on Technical Barriers to Trade, to be criticized.

As a result of norms, mainly regulations and standards that have an impact on the sale of goods in some market by requiring specific product characteristics or production processes, Technical barriers to trade are characterized by its complexity in making, high cost in implementing, and disputable impact on trade.

In the context of China-EU trade, we shall examine the practice of Technical barriers to trade within the context.

### **2.2.1 It Is Complicated: the EU’s Dedication to Technical Barriers to Trade**

Due to reasons like local customs, tastes, and concerns with safety, environmental protection, animal rights, and sustainable development prospect, technical barriers to trade are laid in order to regulate exports from foreign producers. As one major factor in regard to market access, the World Trade Organization was the first to take into account such a factor that may have a negative impact on international trade. In GATT 1947, there is only a general reference to technical standards and regulations enclosed in Article III, XI, and XX, binding that the contracting parties should apply equal treatment of imported products in accord with national regulations and standards.<sup>83</sup> As practice over time, a GATT working group which was set up to evaluate the impact of non-tariff barriers in international trade concluded that “technical barriers were the largest category of non-tariff measures

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<sup>82</sup> Note: Agreement on Technical Barriers to Trade (p117). This agreement, negotiated during the Uruguay Round, is an integral part of the WTO Agreement.

<sup>83</sup> See Article III, XI, and XX, GATT(1994), available at <<http://www.worldtradelaw.net/uragreements/gatt.pdf>>.

faced by exporters.”<sup>84</sup> The current most widely quoted international agreement on technical barriers to trade is the Agreement on Technical Barriers to Trade (TBT), or the Standards Code. It settles down rules to follow in the preparation, adoption and application of technical regulations, standards and conformity assessment procedures.

Just like with anti-dumping mechanism in the EU, even though Agreement on Technical Barriers to Trade (TBT) is the main international instrument adopted in this area till now, EU sought to structure its system with unifications. Complying in major content with the Standards Code, the EU system is most famous for its guiding principle of drafting such policies and regulations, the “precautionary principle”. It was first released in Communication from the Commission on the Precautionary Principle in 2000, establishing that in practice the principle is defined, not treaties. Its scope is defined “much wider and specifically where preliminary objective scientific evaluation, indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the high level of protection chosen for the Community”<sup>85</sup>. However, the motive for passing such a strategic policy is more than the benevolent sympathy for the health of either human beings or natural entities. It goes further into the political sphere as a tool to preempt new market. Why so? As revealed in an American report, the technical barriers to trade premised on the precautionary principle are preventing many American products from entering the European market. The regulations and standards set up for the alleged benevolence are actually “ignoring free market principles, such rules arguably also violate the terms of three WTO agreements: the Sanitary and Phytosanitary (SPS) Agreement; the Technical Barriers to Trade (TBT) Agreement; and the General Agreement on Tariffs and Trade (1994)... in addition, environment, health, and safety regulations and standards... are being used to further the EU’s global economic agenda under the guise of ‘sustainable development’ as articulated by the various agencies and programs of the United Nations”.<sup>86</sup>

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<sup>84</sup> See WTO website, at <[http://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_info\\_e.htm](http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm)>.

<sup>85</sup> See “Communication From The Commission: On The Precautionary Principle”, available at <[http://ec.europa.eu/dgs/health\\_consumer/library/pub/pub07\\_en.pdf](http://ec.europa.eu/dgs/health_consumer/library/pub/pub07_en.pdf)>.

<sup>86</sup> See Kogan Lawrence, “Europe, China and the Use of Standards as Trade Barriers: How Should the US Respond?” p1, June 3 2005, available at <<http://www.itssd.org/Correspondences/LKogan-ITSSDtestimony-6-3-05-HouseScienceComm.pdf>>.

It is put quite plainly by Wolfgang Clement, former Federal Minister of Economy and Labour of Germany, the biggest exporter in the EU, saying that “standardization (as one of the three technical barriers to trade ) is also extremely relevant for the individual participants in economic processes, since *whoever makes the standards controls the market*. In times of increasing globalization and rapid technological development, the role of standardization in opening up new markets will become increasingly important.”<sup>87</sup> Reality proves him right.

Argued by Achille Bassilekin, if there is one area where the European Community shows real dynamism, both at the level of Community bodies and the bodies of the Member States, it is in drafting standards aimed at strengthening the domestic market and protecting EU consumer.<sup>88</sup> However, the complexity of preparing, adopting and applying technical rules or standards are so complex that they have more than often become barriers hindering trade. Explained in her paper, the complexity comes partly from the multi-facet structure of legislation. European Community rules (directives and regulations) coexist with those enacted by another six supranational institutions<sup>89</sup> recognized by the European Commission, the 27 EU Member States’ normalization bodies, and also by various intra-state (regional, local, private) normalization bodies. Depending on the area, some national or local standards appear to be stricter than European Community rules. Taking into consideration that these regulatory bodies’ jurisdiction is sometimes overlapping, even contradicting, the efficiency of implementation is less than satisfactory. The regulations or standards drafting process may be time-consuming and perplexing, but the impact they have on exporters are more of an inconvenient one.

It is difficult to estimate the impact on international trade of the need to comply with foreign technical regulations and standards, as is recognized by the World Trade Organization, it certainly involves significant costs for producers and exporters.<sup>90</sup> The cost can be attributed to various sources, e.g. translation of foreign regulations

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<sup>87</sup> See Clement Wofgan, “Opening Statement: German Standardization Strategy, Standardization in Germany Helps Business and Society Strengthen, Develop and Open Up Regional and Global Markets”, p4, available at <[http://www.din.de/sixcms\\_upload/media/2896/DNS\\_english%5B1%5D.pdf](http://www.din.de/sixcms_upload/media/2896/DNS_english%5B1%5D.pdf)>.

<sup>88</sup> See Bassilekin Archille, “Facing European Community Technical Barriers to Trade: What Options for ACP Countries?”, ICTSD, available at <<http://ictsd.org/i/news/tni/68541/>>.

<sup>89</sup> Note: See Directive 98/34. Regarding normalization, the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC); regarding standardization, the European Telecommunications Standards Institute (ETSI) and the ECMA (Association of Information Manufacturers and Publishers Producing in Europe); and regarding logistics, the European Article Numbering-Uniform Code Council (EAN, UPC, GSI).

<sup>90</sup> See WTO website, at <[http://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_info\\_e.htm](http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm)>.

and standards, modification in producing process to keep in pace with the filing and modifying of these regulations and standards. What's more, the efforts to comply with such rules can prove valueless when they are amended by the importers, which is anything but rare. The adaptation costs can easily outweigh the costs of conformity assessment which is also time-consuming and expensive. In practice, in order to get access to the EU market, Chinese exporters have to comply with the standards and regulations. To do so, a process of conformity assessment is undertaken. However, the cost of such assessments are covered by the exporters, which can accumulate to a remarkable amount.

Another concern is about the transparency of these technical barriers to trade. In a highly technologically advanced world, information usually has an importance that defines life or death. For exporters, market access normally means the success of their business. In the case of China and EU trade, market access depends mainly on compliance to the technical barriers to trade. In OECD countries, databases are founded to house the constantly growing content and volume of regulations and standards in its member countries in an attempt to achieve information sharing and pre-warning. However, according to a research done by the OECD, the databases in the concerned countries (Canada, the EU, Mexico, South Korea, and the US) are often incomplete and that the lack of a harmonized international format made it impossible to obtain a systematic international perspective on which standards are used, for which regulatory objectives, and with which links to standards used internationally. Sometimes the regulatory objectives were not even stated<sup>91</sup>. In other words, there is a lack of transparency.

In the practice of China-EU trade, it is observed that even though EU practices mostly coincide with international regulations and standards, there are many cases where this coincidence is not consistent, or complete. Different regulators take initiative to introduce in new regulations and standards which are hard to comply with due to the time limit and cost of adaptation.

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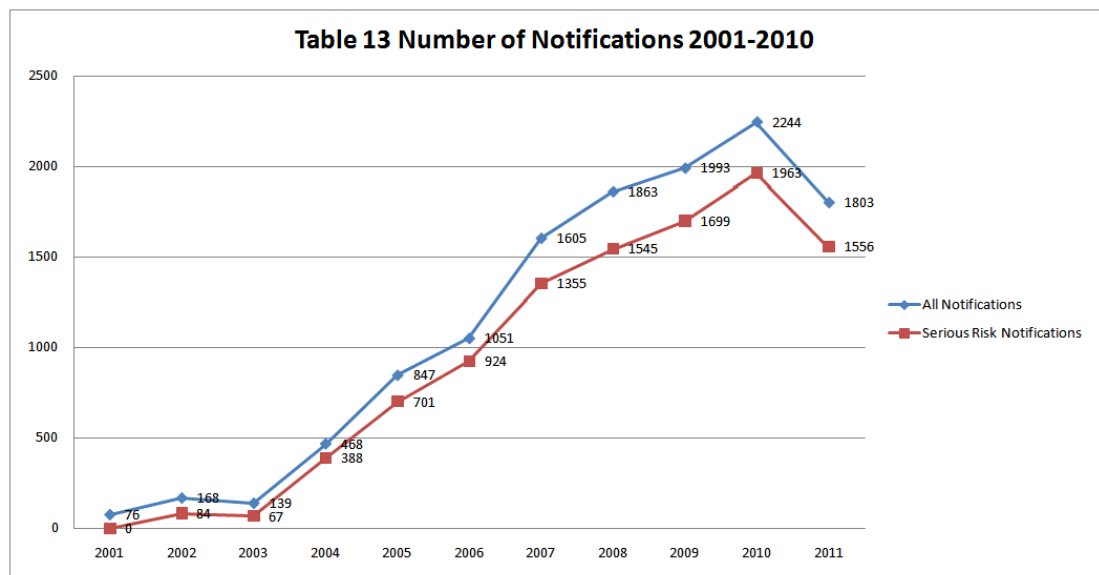
<sup>91</sup> See Fliess and Schonfeld, "Using International Standards in Regulations, OECD Provides a New Tool for Governments", available at <[http://www.astm.org/SNEWS/MJ\\_2011/images/5\\_6\\_11\\_perspective.pdf](http://www.astm.org/SNEWS/MJ_2011/images/5_6_11_perspective.pdf)>.

## 2.2.2 Technical Barriers to Trade in Practice

To examine the harm done by technical barriers to trade, due to the fact that accurate data in value loss is hard to collect, in this paper, I would like to refer to the absolute value of notifications filed by EU Member States surveillance authorities and the supranational authorities and released by the two most notable institutes of the EU in the area to illustrate how technical barriers to trade have been put into practice in China- EU trade.

In order to ensure that communication on technical regulations and standards are well circulated not only among EU member states, but more importantly between EU and its trading partners, the RASFF (Rapid Alert System for Food and Feed) and RAPEX (the Community Rapid Information System for non-food products) are in place. In this paper, attention is going to be paid majorly to statistics concerning non-food products. By examining the statistics, several characteristics and trends are thus revealed.

1, The number of notifications and the measures taken over the years.

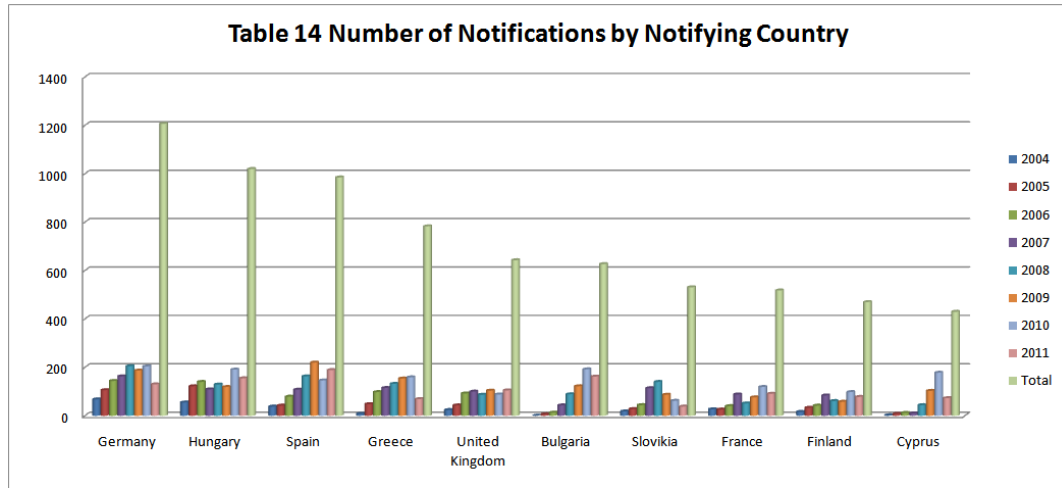


(Made by the author based on statistics in PAPEX Annual Reports, 2006 & 2011).

Over the years, the notifications keep piling up. As shown in Table 13, the total number of notifications filed by EU member states and the EEA countries peaked in 2010, with a total number of 2244. The number of notification for serious risks also



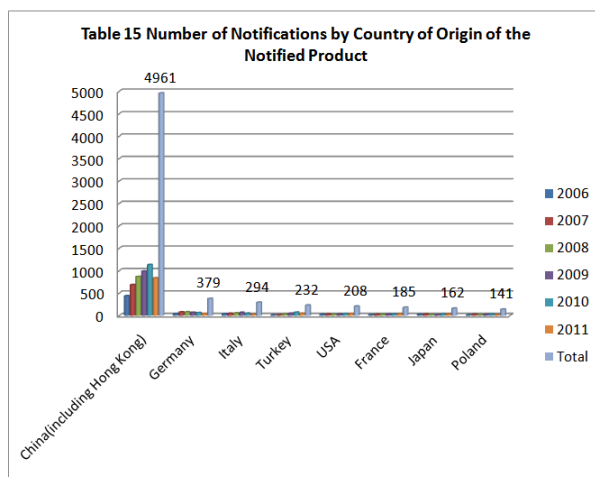
reached pinnacle with 1963 notifications. The sudden dip in 2011 is taken notice of by the PAPEX and recorded as a decrease “for the first time”. It is attributed, partly, to budget cuts and subsequent resource constraints in the national administrations.<sup>92</sup>



(Made by the author based on statistics in Figure 11)

2, The big trading countries in the EU are also those that most frequently initiate TBT notifications.

Examined in Chapter 1, the biggest trading countries with China in the EU are Germany, Netherlands, UK, France and Italy. Shown in Table 14, the top five countries in filing notifications concerning technical barriers to trade are Germany, Hungary, Spain, Greece, and UK. France ranks 8<sup>th</sup>. Germany is the most frequent user of technical barriers to trade.



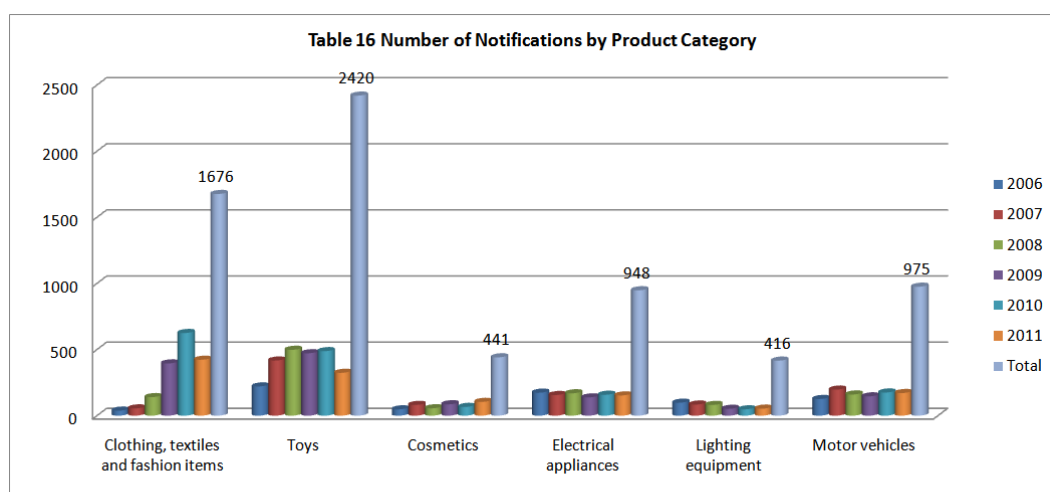
(Made by the author based on statistics in Figure 12)

3 The most targeted country has always been China.

It may look rather shocking at first glance, but the most favorite target country of technical barriers to trade is and has always been China. (See Table 15) In 2010, the number

<sup>92</sup> See “Keeping European Consumers Safe, 2011 Annual Report on the Operation of the Rapid Alert System for Non-Food Dangerous Products PAPEX”, available at <[http://ec.europa.eu/consumers/safety/rapex/docs/2011\\_rapex\\_report\\_en.pdf](http://ec.europa.eu/consumers/safety/rapex/docs/2011_rapex_report_en.pdf)>.

of notifications targeting China reached a historic high of 1134 cases. Although this number dipped in 2011(still accounting for 54% of all the notifications), China is the undisputed favorite target of the EU. It is concluded in the 2011 Annual Report of PAPEX that this phenomenon resulted from the “significant market penetration of Chinese-manufactured consumer products in European markets”. The immediate claim that “products are checked according to the same stringent safety requirements regardless of their origin, usually based on typical risks associated with the product category”<sup>93</sup>, however, confuses readers as somewhat an halfhearted excuse.



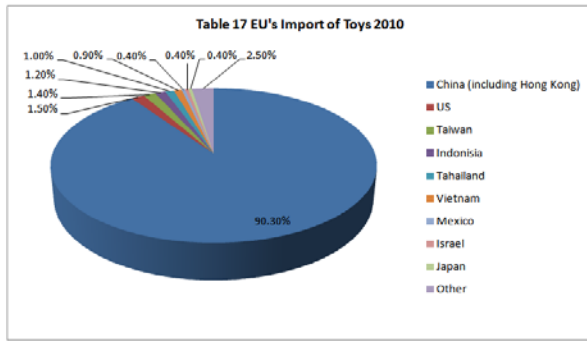
(Made by the author based on statistics in Figure 13).<sup>94</sup>

#### 4 The most targeted products and sectors.

Shown by the data available from 2006 to 2011, the top 6 targeted products are 1) toys, 2) Clothing, textiles and fashion items, 3) motor vehicles, 4) electrical appliances, 5) cosmetics, and 6) lighting equipment. In 2011, the product categories most frequently notified were 1) clothing, textiles and fashion items (423 notifications, 27%), 2) toys (324 notifications, 21%), 3) motor vehicles (171 notifications, 11%), 4) electrical appliances and equipment (153 notifications, 8%), and 5) cosmetics (104 notifications, 7%)<sup>94</sup>. (See Table 16) Put in the same picture with EU’s import of toys, one should notice that China has been the single biggest supplier of toys to the European market. (See Table 17) Due to the high presentation of import in toys and

<sup>93</sup> *Ibid.* p 20.

<sup>94</sup> *Ibid.* p26.



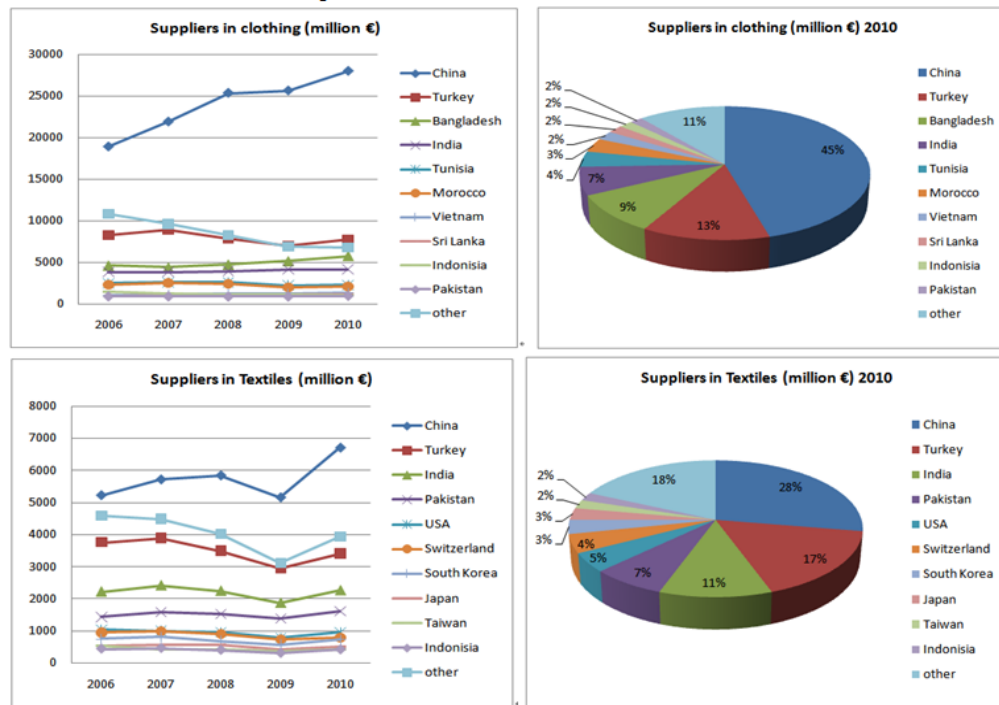
(Made by the author based on statistics in 2010 Facts and Figures Toy Industries of Europe (TIE), available at: [http://ec.europa.eu/enterprise/sectors/toys/files/factsheets/tie\\_facts\\_and\\_figures\\_2010\\_en.pdf](http://ec.europa.eu/enterprise/sectors/toys/files/factsheets/tie_facts_and_figures_2010_en.pdf))

the large number of notifications concerning the origin of the products is China, the EU admits one way or another that “Chinese toys are over-represented among dangerous products found on the market.

Improvements in the safety of Chinese products will therefore have an important effect.”<sup>95</sup> Yet it denies such phenomenon has anything to do with the protectionist feature of EU’s technical barriers to trade policy.

In other importing areas, such as clothing and textiles, statistics show that the total volume of importing from China is increasing in the time period of 2006-2010, so is the share of clothing and textiles originated in China in the European market. (see Table 18) Such trend is not to be dismissed in the analysis of the correlation of trade volume, market share and the number of notifications concerning such products.

Table 18 Statistics on textiles and clothing<sup>4</sup>

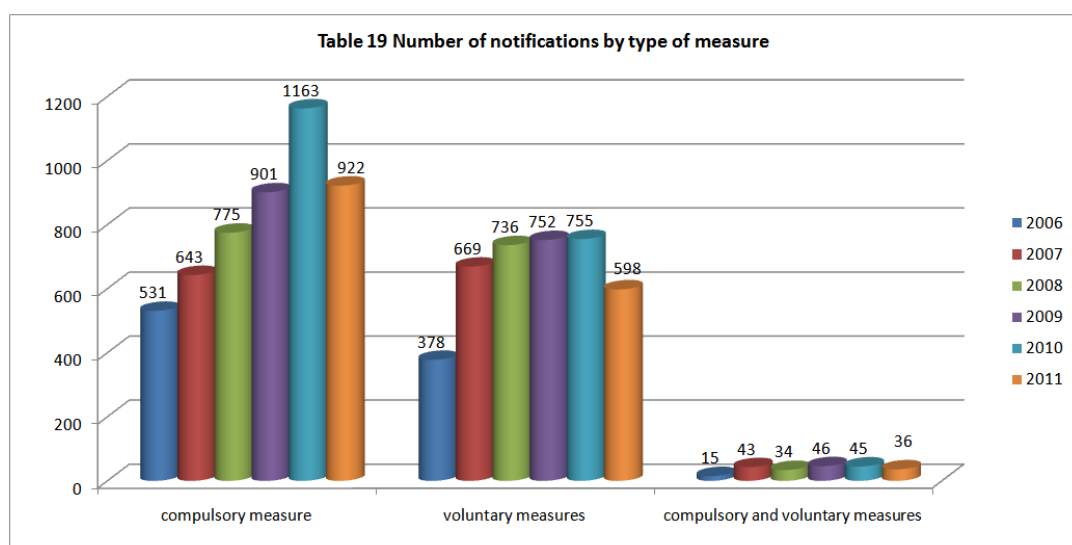


(Made by the author based on the statistics in Figure 14)<sup>4</sup>

<sup>95</sup> See “China and product safety: frequently asked questions”, at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/299&format=HTML&aged=0&language=EN>.

Even though there is a lack of respective data on notifications on specific products, the implication of such statistics proves self-evident.

When it comes to the measures taken after notifications are filed, the national authorities and the exporters adopt two kinds of measures, the preventive restrictive measures which are compulsory and the voluntary measures by the exporters which cause no less loss than the former one. A correlative trend in the numbers of total notifications and the number of notifications resulting in compulsory and voluntary measures can be seen in Table 19.

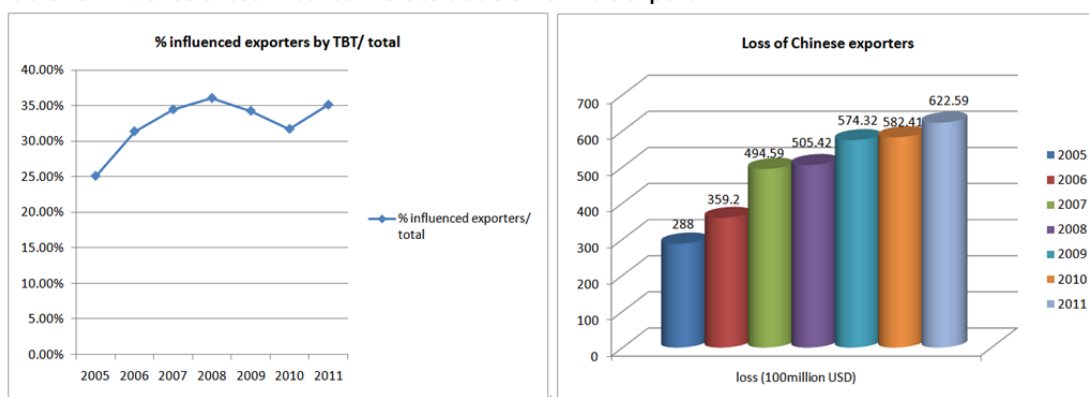


(Made by the author based on the statistics in Figure 15)

Due to the fact that in order to protect the reputation of exporters and avoid destructive impact on certain exporting goods, information about technical barriers to trade is not released as sectorally specific as in the case of anti-dumping studies. Harder to quantify but just as real, the harm brought by technical barriers to trade is no less than that by anti-dumping and other non-tariff trade barriers. According to annual report by the General Administration of Quality Supervision, Inspection and Quarantine of the People’s Republic of China, technical barriers to trade are taking their toll on China’s export. An increasing number of export producers are negatively affected by such barriers and the total loss from this phenomenon is growing bigger and bigger. As a matter of fact, the Ministry of Commerce of the People’s Republic of China even attributed the decrease in total export value in 2009 to the frequent

deployment of technical barriers to trade<sup>96</sup>. As shown in a report by the Ministry, before entering WTO, 80% of all the trade barriers against China were technical barriers. Now, influence on export due to anti-dumping reasons account for only 1% of total export, while this number is 25% by technical barriers. Technical barriers to trade have surpassed anti-dumping measures and become the first barrier to China's export.<sup>97</sup> (See Table 20)

Table 20 Influence of technical barriers to trade on China's export.



(Made by the author based on the statistics in Figure 16).

### 2.2.3 Penny Wise, Pound Foolish: A Strive to Occupy

A penny less of low price imported commodities means a penny more European customers have to pay for high price products. To put it in a larger context, the loss derived from technical barriers to trade is just as obvious and loud to the EU as it is painful and intensely-felt to China. Then why are they still so frequently employed? What can be done to relieve the current situation?

The decrease of notifications in 2011, as explained by the RAPEX Annual Report due to budget cut in the EU, shows that posing technical barriers is not one the top priorities of the EU, but it has a major influence on EU's trade policy and other external policies. A major motive to pass so many directives concerning regulations, standards and conformity assessment is the enthusiasm and ambition of setting rules for international trade.

<sup>96</sup> See “技术性贸易措施严重影响中国出口(Technical Barriers to Trade Affect China's Exports)”, Dec. 29<sup>th</sup> 2010, MOFCOM, available at <<http://chinawto.mofcom.gov.cn/aarticle/e/r/201012/20101207337202.html>>. Last accessed: 24 June, 2012.

<sup>97</sup> Huang Hui, *Sino-EU Trade Conflicts*, Social Sciences Academic Press(China) 158, (2005).

Talks have been around for quite some time. *The Economist* was among the first to discover the discreet plan of the EU. In 2007, when American software empire Microsoft was fined 899 million euro by the European Commission for defying a 2004 order from Brussels to lower prices for software competition<sup>98</sup>, this newspaper claimed “Brussels is becoming the world’s regulatory capital”.<sup>99</sup> As illustrated before, even if a product is safe according to certain standards passed by international standardization bodies such as ISO, it still needs to be examined by the EU bodies for market access because the EU does not acknowledge international standards in many cases. To solve this conundrum, there are two alternatives, either comply with the EU standards, or comply to your only national standards as long as they comply with the EU rules. These two things are exactly what China has been doing.<sup>100</sup>

The political motive behind the seemingly economic and good-willed effort to regulate and standardize is hard to ignore. As argued in a paper, the “regulatory contest”, which was heatedly discussed through the last decade, “end(s) up with regulatory domains characterized by contested political discourses”.<sup>101</sup> In a speech by former Commissioner of Commerce, Lord Peter Mandelson put it straight and clear that “the EU is about using our continental strength to shape the world, using our collective weight to match that of other powers in the 21<sup>st</sup> century... It is the rules of the single market which give us the foundation to *export our rules and standards around the world*”<sup>102</sup>. To meet this end, various means are employed. These means, including the three major forms of technical barriers to trade, are all underpinned by

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<sup>98</sup> See “EU Hits Microsoft with Record Antitrust Fine”, *France 24*, available at <<http://www.france24.com/en/20080227-eu-hits-microsoft-with-record-antitrust-fine-software-competition>>. Last accessed: 24 June, 2012.

<sup>99</sup> See “Charlemagne: Brussels Rules OK”, *The Economist*, Sep. 20th 2007, available at <<http://www.economist.com/node/9832900>>. Last accessed: 24 June, 2012.

<sup>100</sup> See Chen Shumei, “欧盟技术性贸易壁垒的形成及对我国的启示(On the Formation of EU’s Technical Barriers to Trade and Its Impact on China)”, *Journal of Southeast University (Philosophy and Social Science)*, Jan. 2003, Vol. 5 No. 1, available at <<http://lib.cqvip.com/qk/83687X/200301/7286497.html>>.

<sup>101</sup> Radaelli Claudio, “The Puzzle of Regulatory Competition European Studies”, *Jnl Publ. Pol.*, 24, 1, 1-23, Cambridge University Press.

<sup>102</sup> See “Openness, Trade and the European Union”, Speech by Peter Mandelson at the Chambre de Commerce et de l’Industrie, Paris, Jun.30 2007, available at <[http://trade.ec.europa.eu/doclib/docs/2007/july/tradoc\\_135131.pdf](http://trade.ec.europa.eu/doclib/docs/2007/july/tradoc_135131.pdf)>. Last accessed: 24 June, 2012.

the guiding “precautionary principle”.

This principle enables the EU to take actions as long as it finds potential risk in consumer products even before any scientific evidences are soundly proved. It gives the EU the pre-emptive initiative to affect trade of certain goods. However, what’s at question is who is to decide whether these measures taken on the premise of “precautionary principle” are standing on solid scientific and economic ground? The answer is the EU. To put it in a simple way, the EU makes rules, the EU takes actions according to the rules it makes, and the EU cannot be held accountable since it takes such measure to “prevent potential risks” when these risks are not even considered as risks by third party regulatory and standardization bodies. This subjective decision-making process is against market liberalization rules and EU democratic principles;<sup>103</sup> however it stands on the basis that the EU gets to decide what is best for European customers. Meanwhile, by practicing this principle, the EU is gradually ruling out other regulatory competitors, the US in particular. Put forward quite flatly, an American official says flatly that the EU is “winning” the regulatory race, adding: “And there is a sense that that is their precise intent.”<sup>104</sup> As argued by Mark Schapiro in his book on EU regulations and their impact on American exports, with more and more rigorous criteria being posed by the EU, and the EU rules sweeping the world, this trend “threatens to leave American industry trailing their increasingly ‘green’ European competitors”.<sup>105</sup>

Judging from the most targeted products (toys, clothing, textiles and fashion items, motor vehicles, electrical appliances, cosmetics, and lighting equipment), it can be concluded that most of the targets are sectors where the comparative advantage of Europe is declining. As globalization unfolds, industrial specialization develops. The

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<sup>103</sup> See Kogan Lawrence, “EU Hides Behind 'Private' Standards in Effort to Secure Global Regulatory Control”, available at

<[http://www.itssd.org/GTCJ\\_03-offprints%20KOGAN%20-%20Discerning%20the%20Forest%20from%20the%20Trees.pdf](http://www.itssd.org/GTCJ_03-offprints%20KOGAN%20-%20Discerning%20the%20Forest%20from%20the%20Trees.pdf)>.

<sup>104</sup> See “Charlemagne: Brussels Rules OK”, The Economist, Sep. 20th 2007, available at <<http://www.economist.com/node/9832900>>. Last accessed: 24 June, 2012.

<sup>105</sup> Schapiro Mark (2009), “Exposed: The Toxic Chemistry of Everyday Products and What's at Stake for American Power”, *Chelsea Green Publishing*, p183.

industrial phase featuring high-pollution, low wage, low technology, and intensive labor is fading in Europe and thriving in emerging economies. With China a strong competitor in such sectors, it is of the interest of the EU to protect its producers on the one hand and to safeguard its consumers on the other. Setting technical barriers to trade is a method to “protect domestic market”.<sup>106</sup>

This leads us to examining the technological progress of China in producing the goods in the sectors mentioned above. To be frank, in many ways, China is lagging behind the par of Europe, even though trying as hard. As a country hosting many outsourcing and off-shoring multi-national corporate, China is still lack of innovation ability. Incompetent in patent and intellectual property rights, China is facing fiercer and fiercer competition from external producers.<sup>107</sup> In the 12<sup>th</sup> Five Year Plan of China’s Social and Economic Development, there is a whole part on technological innovation and reinvigorating the country through education and human resource development.<sup>108</sup> In another part, it emphasized the importance of shifting trade mode and development model to a more environmental friendly, low environmental cost direction. It points out the future of Chinese economy, a future similar to the one with Japan, South Korea and other economies that were under unfair treatment imposed by the old industrialized countries.

China’s vulnerability lies not only in its incompetence of meeting standards posed on export products, but also in keeping pace with the dynamics of EU rules. According to a Mr. Wei Jianguo, Deputy Administer of Ministry of Commerce of the People’s Republic of China, the cost of complying with the EU standards and regulations and the process of conformity assessment is simply “too much”. He also pointed out the two difficulties face by Chinese exporters, “a lack of information on

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<sup>106</sup> See Jiang Ningchuan, “Effect of Technical Barriers to Trade on Chinese Textile Product Trade”, *International Business Research*, Vol. 1, No. 3, July 2008.

<sup>107</sup> See “技术性贸易壁垒渐成贸易保护主义主要手段(Technical Barriers to Trade Are Becoming Major Tools for Protectionism)”, Xinhua News Agency, Oct. 11 2007, *available at* <[http://news.xinhuanet.com/fortune/2007-10/11/content\\_6861210.htm](http://news.xinhuanet.com/fortune/2007-10/11/content_6861210.htm)>. Last accessed: 24 June, 2012.

<sup>108</sup> See 中华人民共和国国民经济和社会发展第十二个五年规划纲要(China’s 12th Five-Year Plan for National Economic and Social Development (FYP) (2011-2015)).



foreign rules, and a lack of workable solutions”.<sup>109</sup> It is estimated that in just 2004 there were more than 1649 documents of regulations, standards, and conformity assessment notified by member states to the World Trade Organization, including hundreds and thousands of pages. And this number keeps growing over the years.

#### **2.2.4 Green Barriers to Trade**

As awareness of environmental protection and eco-friendly technologies keep rising alongside the deduction of tariff trade barriers, new forms of restrictive and preventive measures are taken for protective purposes and protectionist ends. Since non-tariff trade barriers such as anti-dumping, anti-subsidies, and safeguard measures are open to retaliatory countermeasures, technical barriers, especially technical regulations and standards related to environmental and safety issues are becoming more and more popular among developed countries.

Trade and environment, two topics seemingly so farfetched, were linked together as environmental issues such as climate change and Ozone layer depletion came to the public eyes and technological development became a monopoly of developed countries. On the one hand, higher and stricter requirements on imported products do have a positive side for public health and ecological-related benefits; on the other hand, it is hard and irrational to overlook the practical barriers posed on developing countries whose technology and awareness of meeting higher standards are yet to be at the same level with their developed peers.

Technically, the term “Green Barriers to Trade” is yet to be recognized by the international academia. Very little literature on such topic is found in the English world. It was coined by Chinese researchers to refer to specific trade barriers imposed on export on the grounds of environmental and food safety issues in order to deliberately or unintentionally restrict foreign exports. Green barriers come in many

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<sup>109</sup> See “魏建国副部长在商务部首批《出口商品技术指南》发布会上的讲话(Speech by Wei Jianguo, Deputy Minister of Commerce, on the Release of “Guide for Export Products on Technical Standards””, May 10<sup>th</sup> 2005, available at <<http://sms.mofcom.gov.cn/column/ldjh.shtml>>. Last accessed: 24 June, 2012.

forms, the major ones being green tariff, green standards, package requirements, sanitary and quarantine inspection system, green market access, “green anti-dumping”, “green anti-subsidy”, mandatory green labeling, ISO14000 registration<sup>110</sup> and so on<sup>111</sup>. Meanwhile the green products consist of products made with recycled content, more species-friendly, more energy-saving, products that use fewer pesticides, involve less harmful effluents, or fewer toxic chemicals in the production process, or other intrinsic or extrinsic factors. To define them, standards on international and national level are introduced. Some standards define how a product is made or how it performs, and others define product characteristics. “In the environmental field, many standards are provided by ecolabeling programs, some of which are connected to governments and many of which are not.”<sup>112</sup>

China has so far been a major target of EU’s green trade barriers. When interviewed by Xinhua News Agency in a conference in Brisbane, Australia, Mr. Sha Zukang, Under-Secretary-General for Economic and Social Affairs, said that “‘Green economy’ was brought up by developed countries mainly because after the post-industrial revolution development, they went through social and environmental crises. They pioneered in governance of enhancing social welfare and protecting the environment. In this sense, developed countries have gone through the period of economic development-social development-environmental protection. But developing countries are not in sync with developed countries. And that’s where the opinion on green economy differs. ... At a time when many developing countries are still in the beginning of industrialization, it is rather difficult for them to apply the same standards in drafting their green economy strategies. ... We should not let green economy become a fig leaf of ‘green barriers’.”<sup>113</sup>

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<sup>110</sup> Note: In 1996, International Standard Organization (ISO) issued ISO 14000 Environment Management System international standard, but many countries established their own standards according to local conditions.

<sup>111</sup> See “绿色壁垒的来龙去脉(Green Barriers)”, Xinhua News Agency, Apr. 17<sup>th</sup> 2002, *available at* <[http://news.xinhuanet.com/fortune/2002-04/17/content\\_361465.htm](http://news.xinhuanet.com/fortune/2002-04/17/content_361465.htm)>. Last accessed: 24 June, 2012.

<sup>112</sup> See Earley Jane, “Green Procurement in Trade Policy Background Report”, *LLC*, p5, *available at* <[http://www.cec.org/Storage/50/4219\\_green-procurement-in-trade%20Policy\\_en.pdf](http://www.cec.org/Storage/50/4219_green-procurement-in-trade%20Policy_en.pdf)>.

<sup>113</sup> See “专访联合国副秘书长沙祖康(Interview: Mr. Sha Zukang, Under-Secretary-General for Economic and Social Affairs)”, Xinhua News Agency, translated by the author, May 15<sup>th</sup> 2012, *available at* <[http://news.xinhuanet.com/world/2012-05/15/c\\_111954425.htm](http://news.xinhuanet.com/world/2012-05/15/c_111954425.htm)>. Last accessed: 24 June, 2012.

On the opening ceremony of the Stockholm+40- Partnership Forum for Sustainable Development, Chinese Premier Wen Jiabao reflected on the Declaration on the Human Environment and the Action Plan for the Human Environment and appealed that in order to enhance international cooperation and improve global governance on sustainable development, “e should strike a balance between the three pillars of sustainable development, namely, economic growth, social progress and environmental protection, and we should not confine ourselves to carrying out environmental treatment only. We should adhere to the principle of common but differentiated responsibilities and ensure that developing countries have equitable right to development and assume responsibilities that are compatible with their capacity. We should respect the independent right of all countries to sustainable development, and increase the representation and voice of developing countries in the global governance mechanisms on sustainable development.” He warned that “Attempt to erect green barriers should be rejected.”<sup>114</sup> The volume of trade between China and EU member states and the broadening scope of trade products make it prominent that non-tariff trade barriers are having a more and more negative impact economically and politically, with green barriers being a new type.

In order to answer to the urgent call of environmental protection and promote sustainable development, the Ministerial Decision on Trade and Environment held in 1994 lay the foundation of the interlink between trade and environment. The WTO’s Committee on Trade and Environment (CET) was thus founded.

As discussed earlier, green barrier is actually a part of technical barriers to trade with a certain amount of emphasis on environmental and safety concern. Disputes cases are thus integrated in technical barriers literature. Here in this paper, I would like to point out three main directives of the EU which set the ground for its practice in such area: the WEEE Directive (2003 on waste electrical and electronic equipment), the ROHS Directive (2003 on the restriction of the use of certain hazardous

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<sup>114</sup> See “Speech by H.E.Wen Jiabao Premier of the State Council of the People’s Republic of China At Stockholm+40--Partnership Forum for Sustainable Development”, Ministry of Foreign Affairs of the People’s Republic of China, *available at* <<http://www.fmprc.gov.cn/eng/wjdt/zyjh/t930953.htm>>. Last accessed: 24 June, 2012.

substances in electrical and electronic equipment), and the REACH Directive (2007 on the registration, evaluation, authorization and restriction of chemicals).

These three directives have been accused due to three of their characteristics: rigorousness in implementing, discrimination nature, and broadness of scope.

These three directives are the benchmark of EU's practice in setting green rules and regulating trade. The specific rules enclosed in the directives are strict in nature and rigorous in implementing. For example, in ROHS Directive, it is codified that since evidence shows that "significant parts of WEEE (waste electrical and electronic equipment) will continue to be found in the current disposal routes... even if WEE were collected separately and submitted to recycling processes, its content of mercury, cadmium, lead, chromium VI, PBB and PBDE would be likely to pose risks to health or the environment".<sup>115</sup> In other words, the measures on the collection, treatment, recycling and disposal of waste electrical and electronic equipment set out in WEEE Directive are still not enough to meet the ends of environmental and safety protection. However, this directive implicitly employed the methodology that all hazardous substances used in the production of electrical or electronic products should be substituted as long as feasible. REACH Directive takes this methodology even further. It codified the duty of producers in the supply chain, stating "Any actor in the supply chain of a substance or a preparation shall communicate the following information to the next actor or distributor up the supply chain:

(a) new information on hazardous properties, regardless of the uses concerned;

(b) any other information that might call into question the appropriateness of the risk management measures identified in a safety data sheet supplied to him, which shall be communicated only for identified uses."<sup>116</sup>

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<sup>115</sup> See "Directive 2002/95/EC Of The European Parliament And Of The Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment", 13.2.2003 EN Official Journal of the European Union L 37/19, *available at* <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:037:0019:0023:en:PDF>>.

<sup>116</sup> See "Corrigenda Corrigendum to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive

This means as long as there is any hazardous substance, no matter it is a button on a coat or a zipper in a pair of jeans, this product is banned and withdrawn from the market and the cost are borne by the exporters. Green barriers to trade as a part of technical barriers to trade are getting more and more important in international trade domain. It has a big repercussion in China's textile export. Research found that EU's regulation of prohibiting Nitrogen Dye (which is widely used in textile industry) influenced more than 70% apparel enterprises in China.<sup>117</sup> Moreover, the cost of registration, according to the REACH Directive, is also very high. It is estimated by China Textile Engineering Society that the registration fee for chemicals used in textile industry is 30,000 euro for 1-10 tons, 150,000-350,000 euro for 10-100 tons, 400,000-850,000 euro for 100-1000 tons, and 400,000-1million euro for 1000 plus tons.<sup>118</sup>

The discrimination feature is another important characteristic of the three directives. It is derived from the technical standards of these directives. Bearing in mind the technological gap between developed and developing countries, the high standards in production is in itself an obstacle to producers and exporters in developing countries. It is true that the innumerable technical standards and regulations have a positive influence in the progress of developing countries, but the convergent process costs dearly. In other words, exports from foreign countries to the EU, which is most famous for setting rules, "may face environmental regulations as trade barriers."<sup>119</sup>

As EU becomes more and more concerned with environmental issues and safety issues, the scope of the directives is widening in coincidence. They raise strict rules

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76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (Official Journal of the European Union L 396 of 30 December 2006)", Article 34, *available at* <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:136:0003:0280:en:PDF>>.

<sup>117</sup> See Jiang Ningchuan, "Effect of Technical Barriers to Trade on Chinese Textile Product Trade", *International Business Research*, Vol. 1, No. 3, July 2008.

<sup>118</sup> See "REACH: 纺织业绿色新门槛(New Barrier to Textile Industry)", *Infor.texnet.com.cn*, Jan.11 2007, *available at* <<http://news.texnet.com.cn/content/2007-01-11/80083.html>>. Last accessed: 24 June, 2012.

<sup>119</sup> See Honda Keiichiro, "The Effect of EU Environmental Regulation on International Trade: Restriction of Hazardous Substances as a Trade Barrier", March 2012,p4, *available at* <<http://www.ide.go.jp/English/Publish/Download/Dp/pdf/341.pdf>>.

on procurement, production, packaging, selling, and retreatment, not only to the products, but also applied to upstream and downstream industries. For example, the REACH Directive included more than 30,000 chemicals and more than 5 million manufactured goods in the downstream industries (including textiles industry, light industry pharmaceutical industry) into EU's registration, assessment, and licensing systems.<sup>120</sup>

In EU's practice of green barriers to trade, an inconsistency in its policy exists. For example, in WEEE and ROHS Directive, environmental concerns run through the whole production process and are assessed in the final products. However, this practice is not always strictly followed. The common aim of "the protection of human health and the environment" is not demonstrated when it comes to the environmental cost of the exporting countries, which makes all these directives and other EU rules hypocritical. For example, rare earth elements are widely used in the production of high-tech appliances which are a prioritized industry of the EU.<sup>121</sup> The extraction of rare earth causes serious pollution of the environment. Due to the fact that China provides almost 90% of rare earth in the international market and EU relies on China's export, EU alongside with other countries such as the US and Japan has more than once accused China of posing quotas on rare earth export when the motive of this act on China's side is to protect the environment.<sup>122</sup> This can serve as evidence that EU's concern with environmental and safety issues are just a part of its act of posing green barriers to trade. The political motive of protect its domestic industry should not be ignored. Another latest example is EU's effort to promote sustainable development by implying carbon tax on airline companies. The protest to and suspect of taxing the world is at heated discussion. The core problem is not only about EU's jurisdiction to tax foreign companies, but also whether this act would lead to a new round of trade

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<sup>120</sup> Dong Li, Zhao Yongning, "欧盟新绿色贸易壁垒及其对我国出口贸易的影响(The Impact of EU's New Green Barriers to China's Export)", *Journal of Yunnan Finance & Economics University*, Vol. 25, No. 5, pp 43-44.

<sup>121</sup> See "Eighth Report on Potentially Trade Restrictive Measures October 2010-September 2011" European Commission, p12, available at <[http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc\\_148288.pdf](http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc_148288.pdf)>.

<sup>122</sup> See "U.S., EU, Japan Take on China at WTO Over Rare Earths", Reuters, Mar 13<sup>th</sup> 2012, available at <<http://www.reuters.com/article/2012/03/13/us-china-trade-eu-idUSBRE82C0JU20120313>>. Last accessed: 24 June, 2012.

war, using new forms of barriers. A question that might be able to test and clarify EU's motive of whether a pure benevolent act of protecting the earth or to make the best of setting rules and therefore rule out other competitor is "if this carbon tax was first initiated by countries like China, would the EU comply with it without a fight?"

## **2.4 Intellectual Property Rights**

The influences of the protection of intellectual property rights (IPR) on China-EU trade are mainly attributed to the unsatisfactory law enforcement in China and the scrutiny of EU policy. Knowledge, ideas, inventions, and designs, etc. are playing a more and more significant role in trade. The value added to the products like medicines, cultural products, producing lines and so on, is based more on input of knowledge and expertise rather than the concrete labor input. To ensure the rights of creators of such intellectual property, protection is needed. According to the World Trade Organization, the major forms of IPR fall into two categories: copyright and rights related to copyright, and industrial property. Under the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the following areas are covered and protected: copyright and related rights; trademarks, including service marks; geographical indications; Industrial designs; patents; layout-designs (topographies) of integrated circuits; and undisclosed information, including trade secrets.<sup>123</sup>

Intellectual property rights protection evolves as the development of an economy moves from labor-intensive manufacturing phase to technology-intensive and knowledge-based phase. In the case of China and EU, the development gap results in various trade disputes related to intellectual property rights. China, even though the second biggest economy in the world, is still a developing country with a limited innovation capacity and a rather low GDP per capita, while the EU is featured by its contribution to modern technology and innovation. EU's accusing China for infringement in IPR lies in the fact that China cannot jump from a developing country

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<sup>123</sup> See WTO website, at <[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm7\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm)>.

to a developed one overnight. Efforts are being made to improve this situation but patience is still necessary. As indicated in a report on China's IPR protection, the author claims that "a country may face conflicts and challenges while making the transition to a more developed IPR regime. Achieving the benefits of a strong IPR regime may involve incurring short-run costs. These costs include short-term and regional unemployment as labor shifts from infringing activities, and higher prices for consumer goods. These costs may create short-term disincentives for enforcing and upholding IPR laws. They will also tend to create divergent interests among different sectors of the economy and among different regions of a country."<sup>124</sup> Unfortunately, in this case, China is the focus.

China is not a fair player in the area of IPR protection, but the EU is not a good-willed contender either. The EU sees the potential threat from the emerging economies on its domestic industries. It deploys anti-dumping, technical barriers to trade and other forms of non-tariff barriers to buffer international competition, while using IPR protection to cushion competition in high-end industries. In an EC commissioned report on the EU's IPR enforcement strategy in third countries, it is explicitly stated that "the comparative advantage of the EU economy lies increasingly in high-value-added and intellectual-property-incentive goods and services, in the context of increased international trade and investment and of the emergence of new economies such as China and India."<sup>125</sup>

In this part, I will briefly introduce the evolution of IPR protection regimes in the EU level and the international level, the selected area where the most disputed cases are seen, and the shortcomings of the current policies concerning IPR protection in the EU and China.

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<sup>124</sup> See Sepetys and Cox, "Intellectual Property Rights Protection in China: Trends in Litigation and Economic Damages", *NERA*, Jan.20 2009, available at <[http://www.nera.com/67\\_5402.htm](http://www.nera.com/67_5402.htm)>. Last accessed: 24 June, 2012.

<sup>125</sup> See "Evaluation of the Intellectual Property Rights Enforcement Strategy in Third Countries, Final Report Volume I -Main Report", Nov. 2010, p i , available at <[http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc\\_147053.pdf](http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_147053.pdf)>.



### 2.4.1 Intellectual Property Rights Protection Regimes

The protection of IPR was brought up as the international trade took off in the 19<sup>th</sup> century. In order to avoid infringement of industrial creations and inventions, two conventions came into existence, the Paris Convention for the Protection of Industrial Property of 1883, and the Berne Convention for the Protection of Literary and Artistic Work of 1886. A special organization was created to administer these two conventions alongside with several other agreements and treaties. The World Intellectual Property Organization (WIPO), a UN agency, was founded in 1967.

At the end of the Uruguay Round of WTO negotiations, it was recognized by the participating countries that IPR would be an issue closely linked to future international trade development. Therefore, under the WTO framework the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement was signed in 1994. It sets the basic principles of IPR for all member countries and numerates the minimum standards concerning the protection of IPR.

In the international level, another four organizations are also frequently involved in the protection of IPR: the World Customs Organization (WCO) in combating counterfeiting; the International Criminal Police Organization (Interpol) in fighting counterfeiting and piracy; the World Health Organization (WHO) in handling counterfeiting pharmaceuticals, and the Council of Europe in promoting the awareness of tackling counterfeiting of medical products and similar crimes that threaten public health.

In the EU level, a set of initiatives have been filed to upgrade, harmonize and implement IPR within the EU since early 1990s. The first effort was made to harmonize national laws in the EU. The first EU legislative document specifically addressing the issue of enforcement and border measures is the 1986 Council Regulation 3842/86 “laying down measure to prohibit the release for free circulation of counterfeit goods”<sup>126</sup>. Later, Regulation 3295/94 and Regulation 1383/2003 took

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<sup>126</sup> See Database of European Law, at <<http://eur-law.eu/EN/Council-Regulation-EEC-3842-86-1-December-1986,130158,d>>.

this effort further, establishing more specific rules such as the provisions of customs detention of goods suspected to be counterfeit. A Green Paper on Combating on Counterfeiting and Piracy in the Single Market was released in 1998. Harm to the single market from the disparities between the national systems of IPR was addressed. Following this green paper, an ambitious Action Plan was proposed in the end of 2000, laying the foundation for EU's first collective and synthesized enforcement document, the Enforcement Directive (Directive 2004/48/ EC on the enforcement of IPR)<sup>127</sup> and an amended version of the Customs Regulation,<sup>128</sup> and a Strategy for the Enforcement of Intellectual Property Rights dedicated to the situation in third countries.<sup>129</sup> This marks the aggressive action by the EU to protect to protect its interest overseas.

The EU passed, in a chronicle order, 1) Communication From The Commission To The Council, The European Parliament And The European Economic And Social Committee on a Customs response to latest trends in Counterfeiting and piracy,<sup>130</sup> 2) Communication From The Commission To The European Parliament, The Council And The European Economic And Social Committee An Industrial Property Rights Strategy for Europe,<sup>131</sup> 3) Council Resolution on a Comprehensive European Anti-counterfeiting and Anti-Piracy Plan,<sup>132</sup> 4) Council Resolution on the EU Customs Action Plan to combat IPR infringements for the years 2009 to 2012,<sup>133</sup> and 5) Communication From The Commission To The Council, The European Parliament And The European Economic And Social Committee on Enhancing the enforcement of intellectual property rights in the internal market.<sup>134</sup> These directives are the foundation of EU's IPR practice.

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<sup>127</sup> See <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:195:0016:0025:en:PDF>>.

<sup>128</sup> See <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994R3295:EN:HTML>>.

<sup>129</sup> See "Strategy for the Enforcement of Intellectual Property Rights", available at <[http://trade.ec.europa.eu/doclib/docs/2010/december/tradoc\\_147070.pdf](http://trade.ec.europa.eu/doclib/docs/2010/december/tradoc_147070.pdf)>.

<sup>130</sup> See <[http://ec.europa.eu/taxation\\_customs/resources/documents/comm\\_native\\_com\\_2005\\_0479\\_3\\_en\\_acte.pdf](http://ec.europa.eu/taxation_customs/resources/documents/comm_native_com_2005_0479_3_en_acte.pdf)>.

<sup>131</sup> See <[http://ec.europa.eu/internal\\_market/indprop/docs/rights/communication\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/rights/communication_en.pdf)>.

<sup>132</sup> See <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:253:0001:0002:EN:PDF>>.

<sup>133</sup> See <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:071:0001:0007:EN:PDF>>.

<sup>134</sup> See <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0467:FIN:EN:PDF>>.

## 2.4.2 Counterfeiting and Piracy

To evaluate to what extent EU is implementing IPR protection enforcement is difficult due to two reasons, the intrinsic complication and the incomplete and often inaccurate data.

Legal documents on IPR protection are passed at two levels, the EU and the member states. Despite the efforts made by the EU to harmonize IPR laws in these member states, it is still noted when it comes to IPR enforcement disparities are still a big issue. For example, the measures taken by member states to preserve evidence when an IPR infringement is suspected vary from one to another in member states. In extreme, some member states do not even employ such measures since there is insufficiency in IPR laws. The disparities between the IPR systems in member states are a serious setback to the EU's effort of IPR enforcement. They are "prejudicial to the proper functioning of the Internal market and make it impossible to ensure that intellectual property rights enjoy an equivalent level of protection throughout the Community". Besides, they "also lead to a weakening of the substantive law on intellectual property and to a fragmentation of the internal market in this field."<sup>135</sup>

A lack of reliable statistics in specific areas is still at issue. In the process of this paper, I tried to find data on certain cases where IPR infringement is believed to exist, cases where lawsuits were filed, and cases where definitive measures were taken and implemented, only to find that such data is still yet to be categorized from the general reports prepared by the European Commission and released as reports on customs enforcement of IPR. The lack of information is attributed to many reasons, one of which is the fact that sometimes member state authorities do not communicate IPR enforcement data to the Commission, and sometimes certain data is not in the recording scope of member states. In line with the legislative process concerning IPR protection in the EU, the Commission and the member states are planning to develop

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<sup>135</sup> See "Corrigendum to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004), Official Journal L 195 , 02/06/2004 P. 0016 – 0025", available at <[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R(01):EN:HTML)>.

an EU database to serve as a comprehensive provider and storage of statistics, however, the start of operation is planned for the second quarter of 2012.<sup>136</sup>

However, China-EU trade disputes concerning IPR can still be indicated and illustrated relying on the indicator of one of EU's top priorities in this area where the losses are estimated to be the biggest, counterfeiting and piracy.

Counterfeiting and piracy have a big influence on governments, enterprises and consumers. The frequent violation of IPR in ways of counterfeits and pirated goods hinders innovation strategy to boost economy, threatens social welfare since such acts almost always are linked with corruption and disruption of the society. The existence of counterfeit and pirated goods is a threat to genuine goods. They disturb normal sales and licensing, ruin the reputation of good companies, and set a bad model for new start companies to follow since the costs of counterfeit and pirated goods are low and the benefits are usually high. The risk such goods pose on consumers is both in regard to health and safety.

The scope of counterfeiting and piracy is so big that consequently the loss and damage it causes is also considerable. A study shows that counterfeit and pirated products are "being produced and consumed in virtually all economies, with Asia emerging as the single largest producing region".<sup>137</sup> Thus examining counterfeiting and piracy will give us a general picture of the real situation in IPR protection and show us the general trends of its dynamics if there is any.

Customs data are so far one of the main sources available in the field of counterfeiting and piracy. The data needed are mainly from the Commission's reports on EU customs enforcement of intellectual property rights. The time period ranges from 2000 to 2010 with certain data missing for 2002 and 2011 due to reasons that cannot be identified.

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<sup>136</sup> See "Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border-2010", available at [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/statistics\\_2010.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2010.pdf).

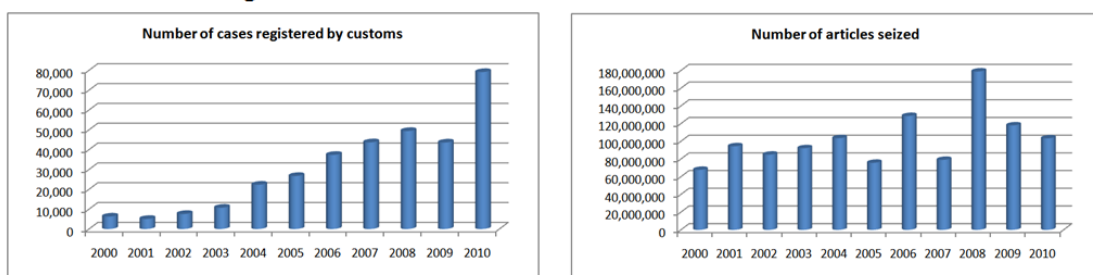
<sup>137</sup> See "The Economic Impact of Counterfeiting and Piracy: Executive Summary", OECD, p5, available at <http://www.oecd.org/dataoecd/21/20/40896133.pdf>.

As an endeavor to combat counterfeiting and piracy, the EU Council adopted Council Resolution on the EU Customs Action Plan to combat IPR infringements for the years 2009 to 2012 in 2009. Statistics of customs interceptions of articles suspected of IPR infringement are communicated from customs in member states to the EU and published yearly. These statistics reveal the evolvement of EU enforcement and the interactive dynamics between EU and its trading partners. The following features and trends are discovered by examining these statistics.

1 The total number of customs detentions is increasing over the years.

The number of cases registered by customs in member states kept increasing for six consecutive years starting from 2002 from 7,553 to 49,381 cases in 2008. A soar in case numbers was witnessed in 2010, making record high 79,112 cases. The drop of case number in 2009 was attributed to the global economic downturn and its effect on international trade which was significant. However, according to the Commission, “the number of custom’s interventions remained at a relatively high level compared to former years.”<sup>138</sup> The rise in cases in 2010 is unprecedented and this rise is believed to be linked to “increased sales via the internet”.<sup>139</sup> (See Table 21)

Table 21 Number of registered cases and detained articles



(Made by the author based on the statistics in Figure 17).

Concerning the number of detained articles the total number varies from year to year due to the cases resulting from suspected infringement of IPR in industries like DVD/CD, medicines and cigarettes. The sudden increase in 2008 was a result of

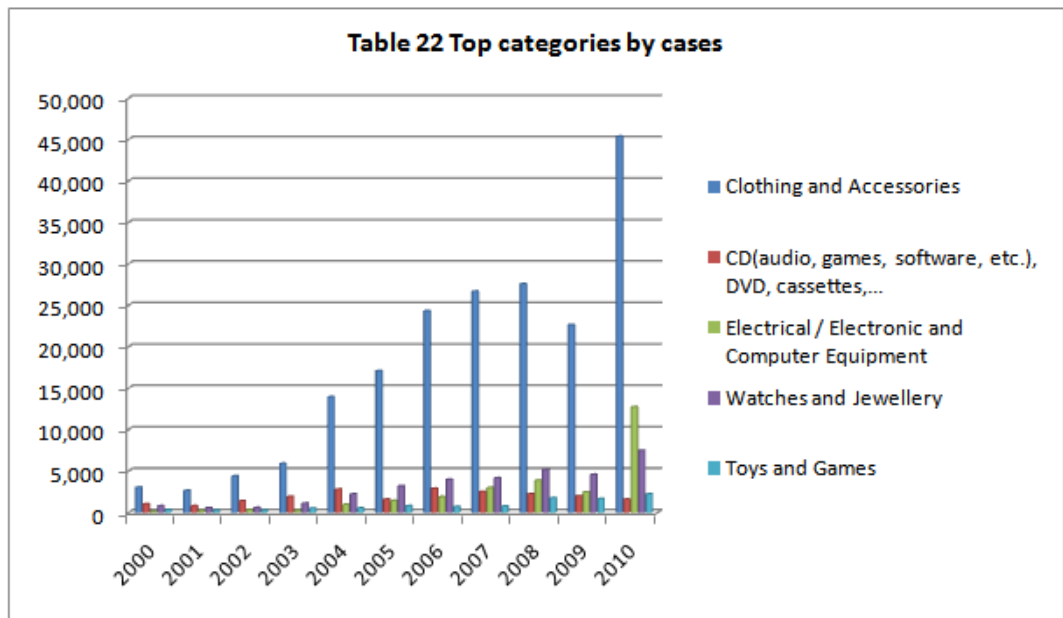
<sup>138</sup> See “Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border-2010”, p2, available at [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/statistics\\_2009.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2009.pdf).

<sup>139</sup> See “Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border-2008”, p2, available at [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/2009\\_statistics\\_for\\_2008\\_full\\_report\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2009_statistics_for_2008_full_report_en.pdf).

increase in number of detained DVD/CD with a total of 79 million, accounting for 44% of the entire amount followed by cigarettes (23%) and clothing and accessories (10%).<sup>140</sup> In 2010, the total number of detained articles dropped but this does not mean the IPR infringement concern is eased. For the first time, the customs administrations of the member states submitted details concerning the value of the detentions to the Commission. Since counterfeited goods do not count on their producing costs to sell at a good price but rather on their theft and copying of the originals, their value is much lower than the originals. But they are mostly sold at a similar price to the originals in the market. According to the report, total values of 1,110,052,402 euro goods were detained in 2010.<sup>141</sup>

## 2 The categories of detained products (See Table 22)

Over the years, the top 5 categories of goods detained by the customs of member states are 1) clothing and accessories (including sportswear, ready-to-wear clothing, bags, sunglasses, shoes, etc.), 2) CD(audio, games, software, etc.), DVD, cassettes, 3) electrical / electronic and computer equipment, 4) watches and jewellery, and 5) toys and games.



(Made by the author based on the statistics in Figure 17)<sup>140</sup>

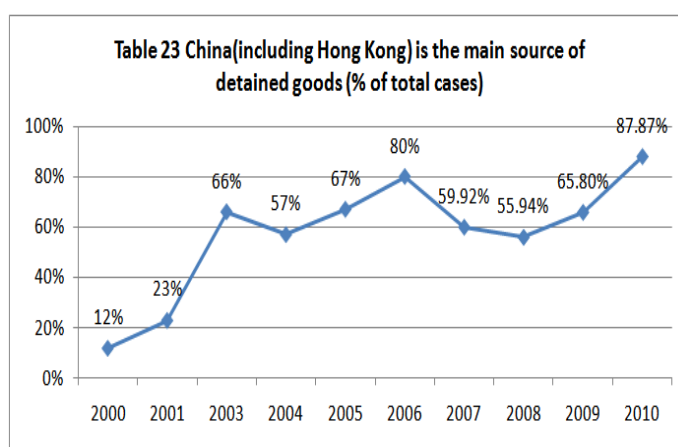
<sup>140</sup> See “Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border-2010”, p11, available at [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/statistics\\_2010.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2010.pdf).

<sup>141</sup> See “Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border-2010”, p25, available at [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/statistics\\_2010.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2010.pdf).

Number of cases concerning clothing and accessories soared from 3,035 in 2000 to 45,367 in 2010, a 15 fold increase. Cases concerning DVD/CD, a major form of literary products and information technology, the number of cases does not change drastically. However, the number of articles detained is staggering in most years. For example, 79,170,506 articles were detained in 2008. Even though this number dropped to 3,582,780 in 2010, the total value of this category still mounted to a tremendous 33,560,759 euro.

### 3 The main source of counterfeit and pirated goods is China (See Table 23)

China is the only country that's listed in the annual report of European Commission as a source of detained goods by customs of member states where IPR infringement is suspected. Even though the proportion of



(Made by the author based on the statistics in Figure 18)<sup>142</sup>

IPR infringing goods originated from China varies on a yearly basis, what does not change is that China is more and more frequently labeled as the first major source of such goods. In 2001, cases involving goods from China accounted for 23%. This number changed to 87.87% in 2010. With the total volume of trade between China and EU increasing alongside the growth of this indicator, it is implicitly reasonable to presume that the total value of these goods has increased tremendously even though such data is not available.

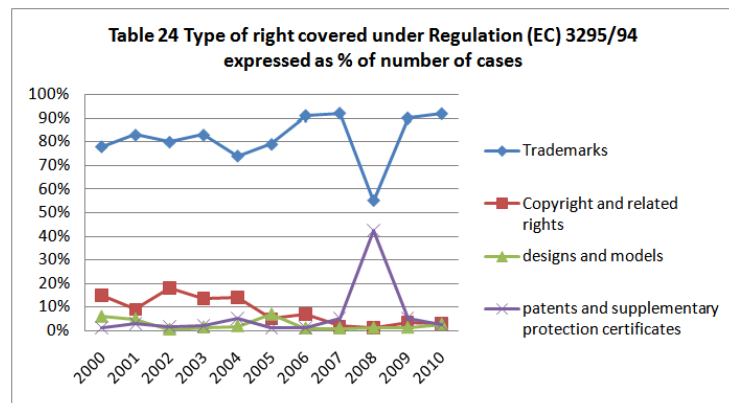
It should be noted that China is the main source country for IPR infringing goods, but in certain categories, other countries also account for a big part. For example, in 2008, Indonesia was the main source for foodstuff and beverages, while the United Arab Emirates was for cigarettes and India for medicines.<sup>142</sup>

<sup>142</sup> See "Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border-2008", p2, available at

#### 4 The main IPRs involved in the cases (See Table 24)

The four main rights covered under Regulation (EC) 3295/94 are trademarks, copyright and related rights, designs and models, patents and supplementary protection certificates. In comparison to the other three rights, cases involving trademarks infringement have been of great majority of the total number. Its sudden drop in 2008 was due to the drastic rise of case number involving patents and supplementary protection certificates. It is indicated explicitly in the report of 2008, “Due to the large amount of intercepted CDs and DVDs, mainly based on patent law, there was an enormous increase on infringements on patents compared to 2007. Leaving aside the CDs and DVDs, the figures would be comparable overall to last year’s (2007) figure.”<sup>143</sup>

Besides the four rights mentioned above, new types of rights are emerging from the cases such as plant variety right and geographical indications. It is worth



(Made by the author based on the statistics in Figure 19).<sup>144</sup>

noting that such rights were introduced to the Community long ago (e.g. the plant variety right was taken by the EU Council in 1994<sup>144</sup>) yet have never been cited before until very recently<sup>145</sup>. This opens the possibility that new types of rights may be cited to promote IPR protection while the traditional ones have already caused considerable disparities between developed and developing countries over their practical influence on trade. In another way, it is still to be confirmed whether the EU is seeking new forms of IPR to protect its domestic business and contain its trading partners.

<sup>143</sup> [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/2009\\_statistics\\_for\\_2008\\_full\\_report\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2009_statistics_for_2008_full_report_en.pdf).

<sup>144</sup> *Ibid.* p2&19.

<sup>145</sup> See “Council Regulation (EC) No 2100/94 of 27 July 1994 On Community Plant Variety Rights”, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1994R2100:20080131:EN:PDF>.

<sup>145</sup> See “Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border-2010”, p20, available at

[http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/statistics\\_2010.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2010.pdf).



### **2.4.3 The Ends of the Rope: Politics of IPR Protection**

Disputes found in the area of IPR protection in China-EU trade is more about political pressure the EU posed on China to promote policy-making and enforcement improvement. After years of adaptation ensuing China's entry to the WTO, it is in EU's interest to see a mature competitor in terms of IPR protection since economic damage costs much more for the party with high technology and IPR protection regime. The losses include damage of reputation, loss of patent and licensing fees, losses of revenues that would have been gained from the sales which are replaced by counterfeit and pirated goods, technology edge and the bargaining power of pricing, etc..

As found in the study of counterfeiting and piracy, the type of goods involved in this violation of IPR usually indicates the stances of economies in handling such cases. Economies with an edge of high technology and IPR regime are more likely to adopt and improve scrutinized IPR protection rules and laws whereas their less developed counterparts are more likely to be weak in IPR law enforcement and legislation. This is the case of China and the EU. The EU member states are mostly famous for technological advancement and turning this advancement into financial gains. China lacks innovative incentives and abilities even if the government is doing its best to better this situation.<sup>146</sup>

In the examination of IPR infringement, the following findings can be relevant to addressing possible solutions.

#### **China at the crossroad**

IPR protection usually evolves in a typical route where an economy moves from labor-intensive manufacturing stage with poor IPR protection high-tech, knowledge-intensive stage with a good performance in IPR protection. These two extremes often feature imitation and innovation respectively. For an economy like

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<sup>146</sup> See "Chinese Universities form Alliance to Boost Innovation", Xinhua News Agency, Oct.19 2011, *available at* <[http://news.xinhuanet.com/english2010/culture/2011-10/19/c\\_131200881.htm](http://news.xinhuanet.com/english2010/culture/2011-10/19/c_131200881.htm)>. Last accessed: 24 June, 2012.

China, with a tremendous economy scale and an improving legislative regime, it is believed to be at crossroads, where hard decisions are to be made and changes are to be ensuing.

What China faces now is a choice between long-term benefits and short-term gains. An economy benefits from imitation in its early phase of development where original technology innovation is not available<sup>147</sup>. The low cost of pirating and high benefits of enjoying the reputation of the pirated commodities combine to prove attractive and practical for companies to save the R&D costs and sell under other companies' brands. This short term benefits may be good for revenue books and the national current account, but it hinders future development and competitiveness of national economy. The low protection of IPR will undermine companies' efforts and incentive to develop new products and technology. Its repercussion in trade will in turn affect the reputation of a country's export goods. According to Solow–Swan growth model, technological and capital input are the long-term driving force of growth. As a matter of fact, the short-term gains are at the expense of a country's long-term benefits.

China's poor performance in IPR law enforcement results from an incremental approach of IPR protection and a fragmented judicial system. The Chinese government takes an incremental approach towards IPR protection. Comparisons between current situation in China and the early stages of developed countries are often made. For example, it is often believed that "China is now simply following the economic development paths of Hong Kong, Japan, Singapore, South Korea, Taiwan—or even Germany and the United States. It is only a matter of time before China will be converted from a pirating nation to a country that respects intellectual property rights."<sup>148</sup>

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<sup>147</sup> See Cox and Sepetys, "Intellectual Property Rights Protection in China: Trends n Litigation and Economic Damages", *SSRN* 2009, p3, available at <[http://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID1330619\\_code1048985.pdf?abstractid=1330619&mirid=1](http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1330619_code1048985.pdf?abstractid=1330619&mirid=1)>.

<sup>148</sup> See Yu Peter K., "Intellectual Property, Economic Development, And The China Puzzle", *Drake University*

IPR law enforcement follows two tracks in China, the administrative one and the judicial one. Even though improvements have been made to perfect these two systems, the scrutiny of them are still not satisfactory. In these two enforcement procedures, IPR violations are not addressed strongly enough to restrain further occurrences. It is established that “both fines and economic damages claimed and awarded, even at the extremes, are low compared to those found in the United States and other industrialized countries. In many cases, these damages provide little deterrent and are merely considered a cost of doing business.”<sup>149</sup> This has been a major concern of the EU as well. It has a direct influence on foreign direct investment. Many companies find it hard to do business in China because “the relative lack of the rule of law and widespread government corruption in China limit competition and undermine the efficient allocation of goods and services in the economy.”<sup>150</sup>

China has an urgent need of high technology. Its pursuit of technology are demonstrated and fulfilled in two major ways, technology transfer and international acquisitions. Cooperation between China and the EU has been long established. Joint venture enterprises are a contributor to China’s technological advances. However, core technology is still held close to the vest of its foreign holders even if limited information is conferred according to China’s law forcing the foreign shareholders to transfer part of their IP to their Chinese partners. Simply using licensing as a solution is not sufficient.<sup>151</sup> That’s partly why Chinese companies are pursuing international acquisition anticipating a hold of technological breakthroughs. In recent years, several prominent cases imply more and more cases of their nature, among which are a Chinese carmaker Geely’s acquisition of Volvo from Ford,<sup>152</sup> and Lenovo’s merger of IBM laptop department. As researchers found, “assessment of acquired firms’

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*Law School*, 2007, p1, available at <<http://www.law.drake.edu/academics/ip/docs/ipResearch-op1.pdf>>.

<sup>149</sup> Cox Alan, Sepetys Kristina, Intellectual Property Rights Protection in China: Trends in Litigation and Economic Damages, THOMSON/WEST, March 2006, p407.

<sup>150</sup> See Morrison Wayne M., “China’s Economic Conditions, Jun. 24 2011, p22, available at <<http://www.fas.org/sgp/crs/row/RL33534.pdf>>.

<sup>151</sup> See “IPR in China: Guidance for Researchers”, Euraxess, p5, available at <[http://ec.europa.eu/research/era/pdf/ipr-in-china-guidelines\\_en.pdf](http://ec.europa.eu/research/era/pdf/ipr-in-china-guidelines_en.pdf)>.

<sup>152</sup> See “Chinese carmaker Geely completes Volvo buyout from Ford”, Guardian, Aug. 2<sup>nd</sup> 2010, available at <<http://www.guardian.co.uk/business/2010/aug/02/volvo-ford-chinese-carmaker-geely>>. Last accessed: 24 June, 2012.

complementary knowledge can be extremely beneficial”.<sup>153</sup>

Even though cooperative programs have been initiated between China and the EU concerning IPR protection and technology transfer, improvements in this area is still yet to be profound enough to relieve the already serious tension between the two parties on this issue. It is viewed as important to “improve the technology transfer mechanism in efficiency, interaction and policy support, to give more specific efforts on IPR protection and to encourage and assist more enterprises, especially SMEs, to participate in the technology transfer business”.<sup>154</sup>

### **The EU and its ambitious plan**

In Europe 2020 Strategy put forward by the EU, it states clearly that the three mutually reinforcing priorities are smart growth, sustainable growth and inclusive growth. The link between economic growth and technological and capital input is nothing but obvious. The illustration of smart growth (developing an economy based on knowledge and innovation) is actually a plea for more stringent IPR protection and more scrutiny on information-related cooperation with its trading partners.

The EU has a target of investing 3% of GDP in R&D.<sup>155</sup> With such a big devotion to boost economic growth by promoting technological breakthroughs and innovation, it is very likely that the protection of the outcomes will be ironclad and the exploitation of these innovations will be exhaustive. Based on the current protection regime of the EU over its IPR and the unsparing law enforcement against suspected IPR violations by EU’s trading partners, it is only logical to expect an upgraded practice system of the EU.

The awareness of IPR is rather high in the EU. Not only the national authorities

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<sup>153</sup> See Zou Huan and Ghauri Pervez N., “Learning through international acquisitions: The process of knowledge acquisition in China”, *Management International Review*, Volume 48, Number 2 (2008), 207-226, DOI: 10.1007/s11575-008-0012-1, p211, available at <<http://www.springerlink.com/content/g3651p0456440621/>>.

<sup>154</sup> See Liu Zheng-Ping, “Technology Transfer Collaboration between EU and non-EU member countries: perspectives from Chinese TTO”, Oct. 5 2009, available at <<http://blogs.ec.europa.eu/ERAconference09/technology-transfer-collaboration-between-eu-and-non-eu-member-countries-perspectives-from-chinese-tto/>>. Last accessed: 24 June, 2012.

<sup>155</sup> See “EUROPE 2020: A strategy for smart, sustainable and inclusive growth”, Communication From The Commission, p10, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>>.

implement relative rules in a routine manner, but also individual companies are encouraged to use IPR as a tool to normally protect their legitimate interest and occasionally, even more and more frequently, to block their foreign competitors in the European market. In the first case, for example, the European Commission issued new guidelines on patents and licensing which explain its practices and create “safe harbors” so that domestic companies can be assured that “they are acting within the law... to create a balance between protecting incentives to innovate and protecting competition.”<sup>156</sup> In the second case, it has been noticed that a trend of preemptive patenting is taking form in the EU. China follows a first-to-file system for patents. It means patents are granted to those who file first, even if the filers are not the inventors. This poses a conundrum when Chinese companies go to the European market as many European multinational companies have preemptively registered the trademarks of major Chinese enterprises in their respective countries. “This can effectively block potential Chinese competitors from using their own brand names when they begin selling in markets outside of China.”<sup>157</sup> An infamous example concerns a Chinese company called Hisense was sued by a Germany company called Bosch-Siemens. In this case, Hisense (China) registered its world-renowned trademark in 1993, while Bosch-Siemens preemptively registered in Germany a trademark called “HiSense” (with a capital “S”) in 1999. The case was finalized by Hisense agreeing to pay Bosch-Siemens approximately 6.5 million USD to use its own brand name in the European market<sup>158</sup>. This case shows only the tip of an iceberg. According to China Daily, over 100 Chinese trademarks were maliciously registered in Japan and some 200 in Australia. By Bosch-Siemens, more than 5 Chinese companies’ trademarks were preemptively registered in Germany, further blocking competition.<sup>159</sup>

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<sup>156</sup> See “Intellectual Property and Competition Policy in The Biotechnology Industry”, OECD Jun.2005, p3, available at < <http://www.oecd.org/dataoecd/36/4/35040373.pdf> >.

<sup>157</sup> Cox Alan, Sepetys Kristina, Intellectual Property Rights Protection in China: Trends in Litigation and Economic Damages, THOMSON/WEST, March 2006, p410.

<sup>158</sup> See “Firms Awake To Fact They Must Protect Trademarks”, China Daily, Apr.7 2005, available at <[http://www.chinadaily.com.cn/english/doc/2005-04/07/content\\_431975.htm](http://www.chinadaily.com.cn/english/doc/2005-04/07/content_431975.htm)>. Last accessed: 24 June, 2012.

<sup>159</sup> See “中国商标屡遭境外抢注,有关企业亟须加强防范(Pre-emptive Registration of Chinese Famous Brands Is Getting More and More Frequent)”, People’s Daily (Overseas), Mar.2<sup>nd</sup> 2005, available at <<http://legal.people.com.cn/GB/42732/3212715.html>>. Last accessed: 24 June, 2012.

From a progressive point of view, EU' hard-line approach to IPR protection simply ignore the needs of developing countries, which therefore imposes trade barriers though well-disguised yet real. In an extreme circumstance, the least developed countries lack innovation ability and funds. Their development outruns the need for better IPR protection.<sup>160</sup> The ignorance and indifference towards developing agendas of developing countries in the EU policy is also demonstrated by its objectives on IPR enforcement in these countries. For example, the Commission Strategy for the Enforcement of IPRs in Third Countries in 2004 announced rather confusing objectives, including supporting EU rights holders, strengthening EU trade and external investments, generating or supporting EU jobs, and benefiting or protecting EU consumers, which is later assessed as “conflicting” and “not clear what the objectives may be with regard to third country stakeholders.”<sup>161</sup> It is still to be judged whether the EU is really taking other countries well being into consideration, but there is no doubt that the interest of the EU is profoundly treasured and carefully guarded to the utmost details where infringement may occur. The latest act of EU's consideration of ratifying a new international agreement on IPR protection, the Anti-counterfeiting Trade Agreement (ACTA), is expected to raise IPR protection to a new level with stricter rules, heavier sanctions, larger jurisdiction of customs examination, and bigger scope of supervision.<sup>162</sup> This may result in a bigger disparity between EU alongside with other developed countries and China alongside with other developing countries, which may leave future convergence even harder to achieve.<sup>163</sup>

On the other hand, the developing countries are not on an equal position on the negotiating table with the EU. The asymmetric access to information and the imbalance in negotiation capacity are not only an intrinsic flaw in building up the

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<sup>160</sup> See Brenner Carliene, “Intellectual Property Rights and Technology Transfer in Developing Country Agriculture: Rhetoric and Reality”, OECD 1998, p42, *available at* <<http://www.oecd.org/dataoecd/19/15/1922525.pdf>>.

<sup>161</sup> See “Evaluation of the Intellectual Property Rights Enforcement Strategy in Third Countries, Final Report Volume I -Main Report”, Nov. 2010, p27, *available at* <[http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc\\_147053.pdf](http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_147053.pdf)>.

<sup>162</sup> See European Commission website, *at* <<http://ec.europa.eu/trade/tackling-unfair-trade/acta/>>.

<sup>163</sup> See “ACTA Debated at WTO; Petitions and Letters Fly in Brussels”, Intellectual Property Watch, February 29 2012, *available at* <<http://www.ip-watch.org/2012/02/29/acta-debated-at-wto-petitions-and-letters-fly-in-brussels/>>. Last accessed: 24 June, 2012.

international IPR protection regime, but also a big obstacle for further cooperation. As observed, “developing countries are particularly vulnerable having starved to the limit of their negotiating capacity”,<sup>164</sup> and thus their developing agenda is not articulated.

Like managing technical barriers to trade, one of the solutions is to converge to the EU rules. Despite the major differences in Chinese judicial system and legislation, China is adopting mature IPR protection rules developed in the EU to improve its own IPR regime. The basic conception of IPR is further developed to suit China’s practical situations. Cooperation between Chinese and EU authorities and multi-level organizations is also playing an important role in promoting communication, training assets in IPR area, understanding one another’s legislation and learn from each other’s practices. Among these programs the EU-China Project on the Protection of Intellectual Property Rights (IPR1&2) are a big success.<sup>165</sup>

It is probably not fair to criticize being right, but it is also unfair to not to criticize being inappropriate. There is no doubt that the future world should embrace better protection of IPR, which is the current goal of the EU. But how to achieve that goal requires wisdom, understanding, resolution, and most of all, cooperation. Trade links countries together, developing countries and developed ones. If poor enforcement of IPR protection is not improved in developing countries, their developed counterparts will definitely be negatively influenced. However, if the developed countries do not take into account the real situation and needs of developing countries and employ stringent and unrealistic measures, the result will, most likely, not be any better.

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<sup>164</sup> Wei Shi, *Intellectual Property in the Global Trading System: EU-China Perspective*, Heidelberg, Springer, 61, (2008).

<sup>165</sup> See EU-China Project for the Protection of Intellectual Property Rights (IPR 2) website, at <<http://www.ipr2.org/>>.

## **Chapter 3 Conclusion**

Based on the findings in former chapters, a conclusion is thus reached: the most disputed areas in China-EU trade are anti-dumping, technical barriers to trade (Green barriers), and intellectual property rights protection; anti-dumping serves EU's interest by protecting its domestic industries where the comparative advantage is declining; technical barriers to trade alongside with intellectual property rights protection serves EU's interest by protecting its sunset industries and gaining edges and advantages in new legislative areas in the international level; all of these three disputed areas are open to accusations of protectionism which is a frequently employed tool for meeting political ends.

However, the prospect of China-EU trade may have a different look. China's entry to the WTO marked a new type of partnership and trading relation with the EU. Ever since 2001, EU has been pushing China towards being a mature player in trade, to take it objectively, by policy and partly by trade disputes. Even though trade frictions often have big effect on not only the directly involved parties, but more likely as observed the sectoral players, China and EU has always worked their way out of the disputes and moved forward. To take a look at the motivations behind the solutions may shed some light upon a future, progressive and better China-EU trade relation.

### **3.1 Message between the Lines**

#### **Support of policy**

The EU, as a frontrunner of trade liberalization, has been promoting fair trade, open of market, transparency of international trade regime, and progressive and normative framework of legal systems. Its active participation in decision-making in the international level and initiating new rules in new areas has not only benefited itself but also other players. In the Trade Policy Review of the European Union, it



states that “the EU has a significant interest in undertaking further trade and investment liberalization, in line with its recognition that an open trade regime is vital to enhance external competitiveness and economic growth.”<sup>166</sup> Even though it should be noted that EU is passionately setting the rules and it is unreasonable if it does not want to promote such rules.

The EU has launched several trade policies over the years. Ever since the first strategic policy towards China was filed by the European Commission in 1995, a series of strategic policies have been playing an important role in promoting, controlling, and adjusting China-EU trade over the years. It was established in the strategy that after the end of the Second World War, China, unlike Japan made its mark as an economic power and the Soviet Union survived as a military giant, was in the midst of “sustained and dramatic economic and social change at home” and was becoming “part of the world security and economic system”<sup>167</sup>. China, in the very beginning, was considered to be a cornerstone in Europe’s external relations, not only with Asia, but also in a global level. The EU released a new policy paper in 2003 entitled “A maturing partnership - shared interests and challenges in EU-China relations” after a series of policy papers towards EU-China relation.<sup>168</sup> Just one month later, China also filed “China's EU Policy Paper” seeking “to enhance China-EU all-round cooperation and promote a long-term and stable development of China-EU relations.”<sup>169</sup> These two documents opened doors for further and wider communication, cooperation and participation in not just trade but also other areas of China-EU relation.

Under the influence of these policies, the EU-China High Level Economic and Trade Dialogue (HED) was developed to usher in communication between authorities

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<sup>166</sup> See “Trade Policy Review Report by the Secretariat European Union”, World Trade Organization Trade Policy Body, Jun. 1st 2011, p.vii, *available at* <[http://www.wto.org/english/tratop\\_e/tp348\\_e.htm](http://www.wto.org/english/tratop_e/tp348_e.htm)>.

<sup>167</sup> See “A Long Term Policy for China-Europe Relations”, Communication of the Commission, 1995, p7, *available at* <[http://eas.europa.eu/china/docs/com95\\_279\\_en.pdf](http://eas.europa.eu/china/docs/com95_279_en.pdf)>.

<sup>168</sup> See “A maturing partnership - shared interests and challenges in EU-China relations”, Commission Policy Paper For Transmission To The Council And The European Parliament, 2003, *available at* <[http://europa.eu/legislation\\_summaries/external\\_relations/relations\\_with\\_third\\_countries/asia/r14207\\_en.htm](http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/asia/r14207_en.htm)>.

<sup>169</sup> See “CHINA'S EU POLICY PAPER, October 2003”, Ministry of Foreign Affairs of the People’s Republic of China, Oct.13<sup>th</sup> 2003, *available at* <<http://www.fmprc.gov.cn/eng/topics/ceupp/t27708.htm>>.

of both parties.<sup>170</sup> These dialogues have been a good stage for decision-makers to provide impetus of trade and cooperation in a wider range of areas.

### **A bigger picture in mind**

What China and the EU are today has a decisive stance in shaping what the future may look like. Reflecting on the past reveals that even at the roughest times when trade frictions affected diplomatic and civil relations between the two parties, a sense of a bigger picture helped the two parties to weather the storms.

China's rise, economically, socially, militarily, and politically, will have a significant impact on the current world. The EU, in the light of trade, is concerned with China's sustainability of its economic growth. An economy based on cheap labor may be part of the reason for the trade deficit. But this situation is very likely to change over the next decade.

Two factors may have a shifting power to influence China-EU trade. The first is the demographic trend of China and its repercussions. A lack of young workers is becoming more and more obvious. China's cheap labor, the once impetus of growth, is becoming its challenge, not only to economic growth, but also to its social system. As indicated by the Economist, China is growing old before it gets rich. The problems brought by demographic transition, even though not only faced by China but also other developed countries, "will weigh down its growth rate—to say nothing of the immense social challenges they will bring."<sup>171</sup> However, this is not simple. Most people think China's growth is a result of its surplus in trade. According to studies, this is not true. China's growth mainly depends on investment<sup>172</sup> and spending.<sup>173</sup> In a special report on China's economy in The Economist shows that "asked to name the big wheel that keeps China's economy moving, many foreign commentators would

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<sup>170</sup> See "EU and China Start High-Level Economic and Trade Talks", Apr. 25th 2008, available at <<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/648&type=HTML>>. Last accessed: 24 June, 2012.

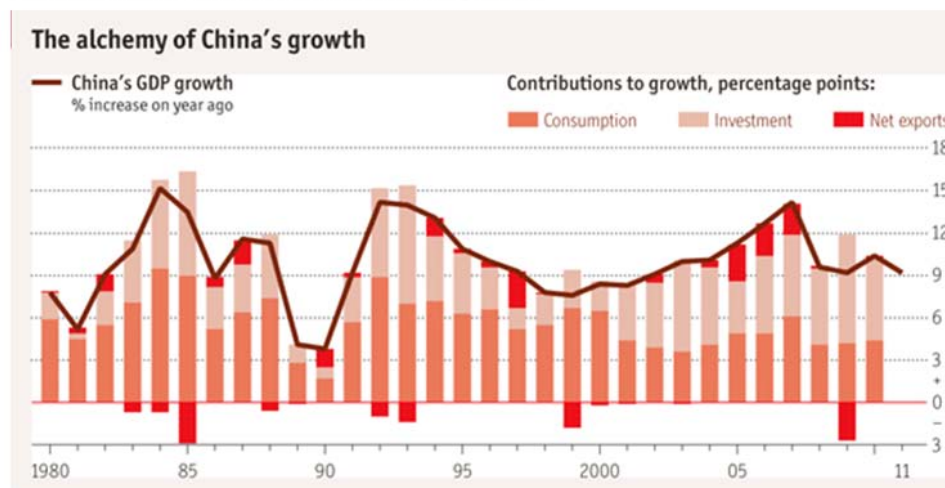
<sup>171</sup> See "China's Achilles Heel", *The Economist*, Apr 21st 2012, available at <<http://www.economist.com/node/21553056>>. Last accessed: 24 June, 2012.

<sup>172</sup> See "Prudence without a Purpose", Special Report: China's Economy, p8, *The Economist*, May 26<sup>th</sup>-June 1st, 2012.

<sup>173</sup> See "Two Twists in the Dragon's Tail", *The Economist*, Jan 21st 2012, available at <<http://www.economist.com/node/21543176>>. Last accessed: 24 June, 2012.

say exports, but the contribution of foreign demand to China's growth has always been exaggerated, and it is now shrinking....It is investment, not exports, that leads China's economy".<sup>174</sup> (See Table 25) To exaggerate the influence of trade in contributing to China's growth is just as wrong as overlooking it. The shift of growth model is inevitable and China has recognized the urgency. The significance of such shift is, however, yet to be identified.

Table 25 Contribution to China's economic growth



(Source: Pedalling Prosperity, *The Economist*, available at <http://www.economist.com/node/21555762>.)

The other factor is in line with Europe 2020 strategy. EU's growth mainly relies on technological advancement, knowledge-based innovations, legislative frameworks and implementation of coherent rules of laws. Its comparative advantages are declining in traditional labor-intensive manufacturing industries. However, its effort in innovation and setting standards and rules in new economic areas may provide a big opportunity in the future. In a Special Report of the Economist, a Third Industrial Revolution is said to be brewing. This revolution features high-tech manufacturing, which is the comparative advantage of developed countries, notably the EU. Although statistical researches have not been undertaken, the aim of such a new trend accords with Europe 2020 strategy which pictures a smart and sustainable growth in the EU. The relation between China's new demographic shift and EU's growth strategy interconnect as stated by the report, "as Chinese wages rise (due to the growing

<sup>174</sup> See "Pedalling Prosperity", Special Report: China's Economy, *The Economist*, p4, May 26<sup>th</sup> -June 1st 2012.

scarcity of cheap labor), some production is moving back to the rich world.<sup>175</sup>”

### **A pragmatic approach to trade frictions**

The EU is not always a coherent and consistent entity. Its federalist nature determines its incompetence in common policy field especially when it comes to high politics. It is vital to keep this in mind when it comes to understanding the dynamics of China-EU trade, especially when it hit rocks. The just-appointed foreign minister of France, Laurent Fabius said in his speech in 2008 that “Individually, European countries do not have enough weight to tackle some major worldwide problems and particularly to deal efficiently with China. We must build the institutions, or at least the ways and means, that will enable us to carry weight when we discuss with other parts of the world.” He also pointed out that there was a need for a more pragmatic approach to China EU economic relations and he held a different opinion when others argued that “Europeans are blaming the Chinese for their own failure to be competitive on global markets”, saying “the reality is complex”.<sup>176</sup> Truly it is complex due to different political, social and economical systems. However, as trade and investment is the core of China EU relation, the two parties have always kept a very pragmatic attitude towards good and bad times.

It should be pronounced that even though the political and sometimes sentimental repercussion of trade frictions is much larger than the economic loss itself, these frictions are just hobbling China-EU trade, rather than ending it. What this paper wants to achieve is not exaggerating the effects of such frictions and disputes and by doing it, end it, but rather to present a realistic picture of the current situation and point out the possibility of smoothing trade activities and sorting out policies. According to Chinese Academy of Social Sciences, “the mainstream of China-EU trade is healthy, 98% of the bilateral trade is normal, with trade friction accounting for only 2% of the total”.<sup>177</sup> Even though it discreetly worded that China-EU trade

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<sup>175</sup> See “*The Boomerang Effect*”, Special Report: Manufacturing and Innovation, *The Economist*, p7, April 21<sup>st</sup>-27<sup>th</sup>, 2012.

<sup>176</sup> See Fabius Laurent, “Europe and China: The Challenges Ahead”, Sep.24 2008, available at <<http://www.laurent-fabius.net/article1121.html>>. Last accessed: 24 June, 2012.

<sup>177</sup> Chen Xin, et al., “*A Literature Review of the European Economic Studies in China*”, Working Paper Series on

frictions, unlike China-US or China-Japan trade disputes, are not always associated with “strong political overtones”, concluded by this paper, this falls into a over conservative judgment.

Despite communication of personnel, dialogues between high-level authorities, cooperative projects, and academic activities, both parties have been promoting communication at various levels, aiming to deepening understanding and building up trust. However, this is not enough. There is a tendency that an asymmetric communication is affecting the institutionalization of China-EU trade. As shown in this paper, even with the Strategic Partnership policy in place since 2003, trade frictions have not decreased at all. Talks without political backing are hard to present fruitful results. “EU member states for their part play their own, often competing, strategies in China, which has complicated the game.”<sup>178</sup> Both parties should draw lessons from past experiences, especially those unsuccessful ones. The EU will have to realize even more that it needs a more pragmatic attitude to deepen and smoothen its trade relation with China by implying common supranational policy and harmonizing differential national policies.

Another inconvenient fact may be that the EU should change its method of dealing with China. Over the years, the west has been trying to promote its developing, social, and political model in China only to find itself in frustration and failure. The capability to maintain high-speed growth over three decades, the more and more assertive stance in international affairs, the more and more ambitious plan of getting its hand all over the world, have shaped a new image of China. If the EU does not take this shift of role into account, it is hard to say whether China-EU relation is in for a peak or a valley. As noted by a European researcher:

*“Beijing has become more active in setting up its own multilateral channels to further its national interests and own norms. China no*

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European Studies Institute of European Studies, *Chinese Academy of Social Sciences*, Vol. 5, No. 4, 2011, p17.

<sup>178</sup> See Dreyer and Erixon, “An EU-China Trade Dialogue: A New Policy Framework To Contain Deteriorating Trade Relations”, *ECIPE Policy Brief*, 2008, p3, available at <[http://www.ecipe.org/media/publication\\_pdfs/an-eu-china-trade-dialogue-a-new-policy-framework-to-contain-deteriorating-trade-relations.pdf](http://www.ecipe.org/media/publication_pdfs/an-eu-china-trade-dialogue-a-new-policy-framework-to-contain-deteriorating-trade-relations.pdf)>.

*longer considers itself an outsider that should crawl back into its shell and steer clear of a global political system dominated by the West. All this puts into question the EU's conditional policy towards China, which is based on the assumption that China can be socialized and persuaded to incorporate Europe's post-modern values. The way ahead seems to be for Europe to opt for a more pragmatic approach, which takes stock of the changes in the underlying power and identity relations between the EU and China.*"<sup>179</sup>

### **3.2 Partners or Rivals**

To sum it up, the political implication of China-EU trade frictions lies mainly in EU's fear of losing competitiveness and China's fear of economic losses. Unlike trade frictions between China and other countries, such as the US or Japan where there is always a concern of political interests, EU "has no strategic military commitments or alliances in the Asia Pacific, and it seems highly unlikely China would threaten the remaining small territorial outposts in the possession of European powers in the Asia Pacific".<sup>180</sup> There is more to look forwards to as long as the two parties join hands in seeking a mutually beneficial trade relation and widening cooperation in areas where there are common interest. As said in a policy briefing dealing with the future of China-EU relation, "the EU and China can give their relations a much-needed fillip by thrashing out an agenda for practical cooperation in the many areas where their interests converge rather than collide."<sup>181</sup>

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<sup>179</sup> See Gustaaf Geeraerts, "China, the EU, and the New Multipolarity", *European Review*, Vol. 19, No. 1, 57–67 2011 *Academia Europæa*, p57, available at

<<http://www.vub.ac.be/biccs/site/assets/files/apapers/China,%20the%20EU%20and%20Multipolarity-2.pdf>>.

<sup>180</sup> See Gill and Murphy, "China-Europe Relations: Implications and Policy Responses for the United States", *A Report of the CSIS Freeman Chair in China Studies*, May 2008, pIX, available at

<http://csis.org/files/media/csis/pubs/080507-gill-chinaeuropereleations-web.pdf>

<sup>181</sup> See "Europe and China: Rivals or Strategic Partners?", *Friends of Europe policy briefing*, p5, available at <<http://www.friendsofeurope.org/portals/13/Events/EPS/2011/China/Policy-Briefing-EU-China-Summit.pdf>>.

## Appendix

### Case Study: Ceramic Tiles Originated in the PRC

The European Union is an important market for ceramic tiles originated in China. According to China Ceramic Industry Association (Foshan), ceramic tiles produced in Foshan and exported to the EU had maintained a growth rate of 78.6%, an average increase rate in export value of 84.2% from 2001 to 2010. The EU is the second largest market for Foshan ceramic tiles from 2007 to 2009. However, since the EU imposed definitive anti-dumping duties, from January to October, 2011, Foshan exported 26,850,000 m<sup>2</sup> of ceramic tiles, with a total value of 160 million USD, an decrease in quantity of 24.45% and 20.1% in value.<sup>1</sup>

The EU passed a Council Regulation imposing definitive anti-dumping duties against imports of ceramic tiles originated in China on September 15, 2011.<sup>2</sup> The anti-dumping investigation was initiated by the European ceramic tiles manufacturer's Association (CET). More than 100 Chinese exporters were involved in the investigation and imposed duties.

In the investigation period from 1 April 2009 to 31 March 2010, the investigation was initiated by the CET against its counterparts in China which was not represented properly in the investigation process. It is recorded in the Council Regulation that the CET was on behalf of producers representing a major proportion, in this case more than 30% of the total Union production of ceramic tiles. In the EU market, ceramic tiles production is a much segmented industry. On EU's side, all segments (i.e. small, medium-sized and large companies) were represented in the sample of the investigation. There were approximately 500 producers scattered across Europe represented by the CET. On China's side, only two producers which were claimed to

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<sup>1</sup> See “‘欧盟对华陶瓷反倾销’追踪报道(On EU's Anti-Dumping Investigation on Ceramic Tiles Originated in China)”, *Yangcheng Wanbao(YCWB)*, Dec.16<sup>th</sup> 2011, available at <<http://home.163.com/11/1216/01/7LC0CM8E00104JJR.html>>.

<sup>2</sup> See “Press Release – 15 September 2011 Imposition of definitive anti-dumping duties on EU imports of ceramic tiles from China”, *The European Ceramic Industry Association*, available at <<http://cerameunie.eu/en/doc/55/11%2009%2015%20CET%20Press%20Release.pdf>>.

be collectively the third biggest exporter to the EU market were included in the sampling. Although later several Chinese parties continued to claim that there was discrimination between the treatment of Chinese exporting producers and the Union producers in choosing the respective samples, such claim was rejected. At last, both the cooperating parties and the Chinese authorities were given the opportunity to comment on the proposed sample.

In the process of investigation, since China is not acknowledged by the EU as a market economy, individual treatment and examination was undertaken. Only eight cooperating Chinese exporters claimed their pursuant to Article 17(3) of the basic Regulation and only one exporting producer was given individual examination.

Due to the fact that China's non-market-economy status hinders the decision of normal value of the export against the domestic price in China, the EU chose the US as the analogue country regardless of the competitiveness of Chinese domestic ceramic tiles market and the differentiated US market. Another rank fact is that most of the 1440 plus ceramic tile producers were small and medium-sized companies which pursued benefit at a level that selling at a price lower than the cost was impossible. Besides, these companies lacked the ability to participate in the sampling and the investigation process. It turned out that only 120 out 1440 companies replied to EU's investigation, less than 10%. It is against this background that the dumping margin was calculated. The definitive dumping margins for the cooperating sampled producers, expressed as a percentage of the CIF Union frontier price, duty unpaid, were as follows:

<b>Company/group name</b>	<b>Definitive dumping margin</b>
<b>Shandong Yadi Co. Ltd</b>	36,5 %
<b>Xinruncheng Group</b>	29,3 %
<b>Wonderful Group</b>	26,3 %
<b>Heyuan Becarry Co. Ltd</b>	67,7 %



To establish an anti-dumping accusation, material injury must be presented. The investigation found that the lower price of Chinese ceramic tiles had occupied a fair share of the Union market and injured the industry of the importing party. It also revealed undercutting levels between 43.2% and 55.7%, as defined as the weighted average sales prices of the Union producers to unrelated customers on the Union market, adjusted to an ex-works level, compared per product type to the corresponding weighted average prices of the imports from China to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for the existing customs duties, post-importation costs and level of trade.

To decide the causation of dumping and injury, several interested parties upheld that ceramic tiles from China cater the market for homogeneous products while the Union industry produces to order, in smaller batches, besides, Chinese and the Union industry are not in competition due to the fact that the Chinese operate in the low to mid-end segment while the Union industry operates in the mid to high-end segment. Therefore, the imports of ceramic tiles from China couldn't have caused injury to the Union industry. However, the EU rejected such claims by stating that similarities between Chinese and European ceramic tiles were examined "carefully", and found without further questions. At last, the EU concluded that none of the arguments submitted by the interested parties demonstrates that the impact of factors other than dumped imports from China is such as to break the causal link between the dumped imports and the injury found. Confirmation of causation was thus established.

In regard to the interest of the community, it was concluded that the dumped imports from China had a negative impact on the Union market, consumer purchasing and retail shop supplies. Therefore, it was in accord with the community interest to impose definitive measures on the dumped imports.

When calculating the amount of the anti-dumping duty necessary to remove the effects of the injurious dumping, it was considered that the duty should be so calculated to allow the Union industry to cover its costs of production and achieve a reasonable profit. It was considered that this reasonable profit, before tax, shall be what was achieved by an industry of this type under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Union. In this case, the profit was assessed by reference to the profitability of 3.9% that the Union

industry achieved in 2007. The injury margins are shown as follows:

<b>Company</b>	<b>Injury margin</b>
<b>Group Wonderful</b>	58,5 %
<b>Group Xinruncheng</b>	82,3 %
<b>Shandong Yadi Ceramics Co. Ltd</b>	66,6 %
<b>Heyuan Becarry Ceramic Co. Ltd</b>	58,6 %
<b>All other cooperating producers</b>	65,0 %
<b>Residual</b>	82,3 %

As a result, a definitive anti-dumping duty was imposed. The rate is shown as below:

<b>Company</b>	<b>Duty</b>	<b>TARIC Additional Code</b>
<b>Dongguan City Wonderful Ceramics Industrial Park Co., Ltd; Guangdong Jiamei Ceramics Co. Ltd; Qingyuan Gani Ceramics Co. Ltd; Foshan Gani Ceramics Co. Ltd</b>	26,3 %	B011
<b>Guangdong Xinruncheng Ceramics Co. Ltd</b>	29,3 %	B009
<b>Shandong Yadi Ceramics Co. Ltd</b>	36,5 %	B010
<b>Companies listed in Annex I<sup>3</sup></b>	30,6 %	
<b>All other companies</b>	69,7 %	B999

Later revealed by Chinese press, the investigation launched by the EU further showed the practical benefit of such investigations for the good of domestic industries. In the next several months, South Korea, Argentina, Peru, and Brazil all launched anti-dumping investigation against Chinese ceramic tiles.

<sup>3</sup> See "Regulations Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 Imposing A Definitive Anti-Dumping Duty And Collecting Definitively The Provisional Duty Imposed On Imports Of Ceramic Tiles Originating in the People's Republic of China", available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:238:0001:0023:EN:PDF>>.

It is also worth noting that among more than 1,440 ceramic tiles exporting producers involved in the EU market, only the above five producers were imposed duties rating from 26.3% to 36.5%, with another 97 producers being imposed duty rating 30.6%. All the other more than 1320 producers, which did not reply to the investigation, were imposed duties rating 69.7% in a, at least, five-year period. This case devastated ceramic tile industry of China, especially those small and medium-sized enterprises.<sup>4</sup>

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<sup>4</sup> See “欧盟对中国征收反倾销税重创佛山陶瓷业(Deep Impact: EU’s Imposing Anti-Dumping Duties Devastates Ceramic Industry in Foshan)”, *Xinhua News Agency*, Nov.16<sup>th</sup> 2011, available at <[http://www.gd.xinhuanet.com/newscenter/photo/2011-11/16/content\\_24134493.htm](http://www.gd.xinhuanet.com/newscenter/photo/2011-11/16/content_24134493.htm)>.

## Appendix

**Figure 1 Merchandise Trade of the EU(27) 2000-2010 (unit: million USD)**

	Total	same period of the previous year/ %	Export	same period of the previous year/ %	Import	same period of the previous year/ %	Balance of trade	same period of the previous year/ %
2001	—	—	—	—	—	—	—	—
2002	1,731,410	—	845,756	—	885,654	—	-39,898	—
2003	2,045,943	18.2	987,243	16.7	1,058,700	19.5	-71,456	79.1
2004	2,463,786	20.4	1,186,228	20.2	1,277,558	20.7	-91,330	27.8
2005	2,771,600	12.5	1,307,192	10.2	1,464,407	14.6	-157,215	72.1
2006	3,156,526	13.9	1,457,852	11.5	1,698,674	16.0	-240,823	53.2
2007	3,659,127	15.9	1,702,604	16.8	1,956,524	15.2	-253,920	5.4
2008	4,210,788	14.7	1,927,278	13.1	2,283,509	16.0	-356,231	35.1
2009	3,201,427	-24.3	1,528,578	-20.6	1,672,849	-27.4	-144,272	-62.1
2010	3,763,931	17.2	1,786,273	16.6	1,977,657	17.7	-191,384	29.0
2011	4,474,412	18.1	2,130,028	19.2	2,344,383	17.2	-214,355	0.9

Note: Sorted by the author, based on the statistics released by the General Administration of Customs of the People's Republic of China

**Figure 2 EU(27) Import from China 2011 (unit: 10 million USD)**

HS Code	Commodity	2011	Same Period in 2010	Same period in 2010(%)	Of that in 2010(%)
Chapter	Total	405,847	373,845	8.6	100.0
85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	110,233	103,023	7.0	27.2
84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	80,400	74,930	7.3	19.8
62	Articles of apparel and clothing accessories, not knitted or crocheted	22,616	20,326	11.3	5.6
61	Articles of apparel and clothing accessories, knitted or crocheted	18,780	17,407	7.9	4.6
95	Toys, games and sports requisites, parts and accessories thereof	17,543	16,905	3.8	4.3

Note: 2011 年欧盟货物贸易及中欧双边贸易概况(Merchandise Trade of the EU and China-EU Trade 2011), available at [http://countryreport.mofcom.gov.cn/record/view.asp?news\\_id=28409](http://countryreport.mofcom.gov.cn/record/view.asp?news_id=28409).

**Figure 3 Trade between China and EU (27) 2011 (unit: 10,000 USD)**

Country/ Region	Value of Import and Export	Value of Export	Value of Import	Cumulative increase or decrease more than the same period last year		
				Total of Import and Export	Export	Import
Germany	16,915,115	7,643,471	9,271,644	18.9	12.3	24.9
Netherlands	6,815,308	5,950,001	865,307	21.3	19.7	33.6
UK	5,868,499	4,412,511	1,455,988	17.2	13.8	28.8
France	5,207,639	2,999,685	2,207,954	16.4	8.5	29.1
Italy	5,128,415	3,369,771	1,758,644	13.6	8.2	25.6

Note: Sorted by the author, based on the statistics released by the General Administration of Customs of the People's Republic of China

**Figure 4 Germany's Export to China (Jan-Jun, 2011) (unit: million USD)**

HS Code	Commodity	2011 Jan-Jun	Same period in 2010	Cumulative increase or decrease that in 2010/ %	% of that in 2010
Chapter	Total	44,312	33,280	33.2	100.0
84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	13,699	9,162	49.5	30.9
87	Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof	11,551	8,695	32.9	26.1
85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	5,857	4,712	24.3	13.2
90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	2,549	1,760	44.9	5.8
88	Aircraft, spacecraft and parts thereof	1,254	1,692	-25.9	2.8
39	Plastics and articles thereof	1,226	1,048	16.9	2.8
73	Articles of iron or steel	784	737	6.4	1.8
29	Organic chemicals	552	493	12.1	1.3
74	Copper and articles thereof	539	572	-5.8	1.2
30	Pharmaceutical products	535	332	61.1	1.2

**Figure 5 Germany's Import from China (Jan-Jun, 2011) (unit: million USD)**

HS Code	Commodity	2011 Jan-Jun	Same Period in 2010	Cumulative increase or decrease more than that in 2010/ %	% of that in 2010
Chapter	Total	43,831	38,258	14.6	100.0
85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	10,960	9,974	9.9	25.0
84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	8,494	7,670	10.7	19.4
89	Ships, boats and floating structures	2,646	3,604	-26.6	6.0
62	Articles of apparel and clothing accessories, not knitted or crocheted	2,576	2,035	26.6	5.9
95	Toys, games and sports requisites, parts and accessories thereof	1,850	1,085	70.6	4.2
94	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings	1,682	1,543	9.1	3.8
61	Articles of apparel and clothing accessories, knitted or crocheted	1,662	1,369	21.4	3.8
90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	1,034	848	22.0	2.4
64	Footwear, gaiters and the like; parts of such articles	1,002	752	33.3	2.3
73	Articles of iron or steel	996	743	34.1	2.3

Note: Figure 4 and Figure 5 are based on “2011 年 1-6 月德国货物贸易及中德双边贸易概况 (Merchandise Trade of Germany and Trade between China and Germany)”, Department of European Affairs, MOFCOM, Mar 21<sup>st</sup> 2012, available at <[http://countryreport.mofcom.gov.cn/record/view.asp?news\\_id=26478](http://countryreport.mofcom.gov.cn/record/view.asp?news_id=26478)>.

**Figure 6 China's Import & Export of Services 1982- 2009 (unit: 100million USD)**

Year	China's Import & Export volume	China's export volume	China's import volume
1982	4	2.5	1.9
1983	4.3	2.5	1.8
1984	5.4	2.8	2.6
1985	5.2	2.9	2.3
1986	5.6	3.6	2.0
1987	6.5	4.2	2.3
1988	8.0	4.7	3.3
1989	8.1	4.5	3.6
1990	9.8	5.7	4.1
1991	10.8	6.9	3.9
1992	18.3	9.1	9.2
1993	22.6	11.0	11.6
1994	32.2	16.4	15.8
1995	43.0	18.4	24.6
1996	43.0	20.6	22.4
1997	52.2	24.5	27.7
1998	50.4	23.9	26.5
1999	57.2	26.2	31.0
2000	66.0	30.1	35.9
2001	71.9	32.9	39.0
2002	85.5	39.4	46.1
2003	101.3	46.4	54.9
2004	133.7	62.1	71.6
2005	157.1	73.9	83.2
2006	191.7	91.4	100.3
2007	250.9	121.6	129.3
2008	304.5	146.5	158.0
2009	286.7	128.6	158.1

Note: 1 According to the definition of trade in services by WTO, China's trade in services data does not include government services.

2 Source: The WTO's International Trade Statistics Database. Data released by the Ministry of Commerce, PRC



**Figure 7 Total Import & Export of Services 1997-2009 (unit: billion USD)**

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Total Import of Services	27.7	26.5	31.0	35.9	39.0	46.1	54.9	71.6	83.2	100.3	129.3	158.0	158.1
Total Export of Services	24.5	23.9	26.2	30.1	32.9	39.4	46.4	62.1	73.9	91.4	121.7	146.4	128.6

Note: 1 According to the definition of trade in services by WTO, China's trade in services data do not include government services.

2 Source: The WTO's International Trade Statistics Database, Data released by the Ministry of Commerce, PRC.

**Figure 8 Total Import & Export of Services 1997-2009 (unit: billion USD)**

	1997	2009
<b>Total</b>	<b>52.22921</b>	<b>286.707152</b>
Transportation	12.89914	70.1428926
Travel	20.20424	83.376672
Communication services	0.56159	2.40781119
Construction services	1.79923	15.3304288
Insurance services	1.21998	12.90513
Financial services	0.35221	1.16271752
Computer & information services	0.31482	9.7442784
Royalties & license fees	0.59828	11.4947235
Consulting	0.81448	32.0392568

Note: 1 According to the definition of trade in services by WTO, China's trade in services data does not include government services.

2 Source: The WTO's International Trade Statistics Database. Data released by the Ministry of Commerce, PRC.

**Figure 9 Statistics on Trade Investigations Initiated by the EU**

	No. of investigations	No. of Anti-dumping Investigations	Anti-dumping/Total	No. Resulting in Provisional Measures	No. Resulting in Definitive Measures	No. Terminated without Definitive Measures	No. of Anti-dumping Measures in Force	No. of Anti-dumping Investigation against China
2001	33	27	81.82%	18	12	12	174	1
2002	23	20	86.96%	15	25	2	174	4
2003	8	7	87.50%	9	3	21	156	3
2004	29	29	100%	5	9	2	137	9
2005	26	24	92.31%	15	19	10	135	8
2006	36	35	97.22%	13	13	16	134	12
2007	9	9	100%	12	12	9	127	6
2008	20	18	90%	5	16	3	128	6
2009	21	15	71.43%	9	9	10	135	7
2010	18	15	83.33%	9	9	8	124	8

Note: Consolidated data based on the Interim Reports of the European Commission, 2001-2010

**Figure 10 Industrial Production EU-27 by Activity Annual Rate 2000-2010**

Nace code and label	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total industry	4.3	0.2	-0.2	0.5	2.4	1.4	4.1	3.7	-1.6	-13.7	6.9
Intermediate goods	5.9	-1.3	-0.2	0.4	2.9	1.0	4.8	4.0	-3.4	-18.3	9.6
Energy	1.6	0.6	0.3	1.0	1.2	-0.6	-0.8	-0.9	-0.3	-6.0	2.4
Capital goods	6.1	1.0	-1.6	0.3	3.9	2.8	6.5	6.8	-0.1	-19.5	9.4
Durable consumer goods	4.5	-1.5	-4.0	-1.8	2.0	0.2	5.9	3.1	-4.8	-15.2	4.5
Non-durable consumer goods	0.8	1.2	1.2	0.3	0.7	1.6	2.6	1.9	-1.5	-2.6	3.1
05 Mining of coal & lignite	-0.7	-1.9	-4.1	-2.3	-1.8	-5.5	-0.6	-4.3	-1.8	-12.1	-3.0
06 Extraction crude petroleum & natural gas	-3.7	-3.9	0.6	-4.4	-4.4	-8.2	-7.6	-3.3	-3.9	-7.8	-3.2
07 Mining of metal ores	2.3	-7.2	-9.7	-4.8	3.0	0.1	-2.6	1.5	0.2	-8.5	12.4
08 Other mining & quarrying	4.1	-0.9	1.0	0.3	-0.6	2.7	6.4	1.5	-8.5	-20.6	4.1
09 Mining support service activities	:	:	:	:	:	:	:	:	:	:	:
10 Food products	1.2	1.2	1.9	0.2	2.2	2.4	1.5	2.0	-0.6	-1.0	2.4
11 Beverages	-0.5	2.6	2.6	1.6	-2.5	1.3	4.2	1.5	-2.0	-2.6	-1.3
12 Tobacco products	-8.6	-2.9	-0.9	-6.9	-6.4	-4.0	-4.9	2.3	-16.9	-3.0	-5.9
13 Textiles	0.3	-3.1	-4.8	-3.4	-4.7	-3.8	-0.7	-1.3	-9.7	-17.4	8.5
14 Wearing apparel	-5.4	-4.1	-10.7	-6.1	-4.9	-8.9	2.4	2.4	-3.4	-11.2	0.7
15 Leather & related products	-2.2	-5.2	-7.5	-7.2	-11.4	-9.1	-1.8	-1.6	-7.6	-13.0	3.0
16 Wood & wood products	6.9	-4.2	0.5	2.4	3.4	0.1	4.3	1.9	-8.7	-14.2	3.9
17 Paper & paper products	3.6	-2.3	3.4	1.7	3.2	-0.3	3.6	2.7	-3.5	-9.2	6.1
18 Printing & reproduction of recorded media	0.9	-2.3	-0.1	-1.3	1.4	2.3	0.4	0.6	-2.5	-7.2	1.7
19 Coke & refined petroleum products	4.7	0.4	-2.7	2.0	4.9	-0.8	1.6	-0.4	3.1	-7.8	0.2
20 Chemicals & chemical products	3.5	-0.9	2.7	-0.2	3.3	1.6	3.6	2.8	-3.2	-11.0	9.8
21 Pharmaceuticals	5.2	10.4	8.9	5.3	-0.2	4.8	6.3	1.8	1.1	3.4	5.9
22 Rubber and plastics	5.0	-0.5	0.0	1.9	1.7	0.8	4.1	4.4	-4.4	-13.8	7.9
23 Other non-metallic mineral products	3.9	-0.6	-1.7	0.5	1.8	0.8	4.4	2.0	-6.7	-18.8	2.6
24 Basic metals	4.1	-0.7	0.1	-0.5	4.9	-0.6	5.7	0.7	-2.7	-26.8	18.8
25 Fabricated metal products	6.7	0.3	-0.5	0.8	2.6	1.6	5.0	5.9	-2.2	-22.2	7.4
26 Computer, electronic & optical products	12.7	-5.5	-6.6	1.5	7.7	4.6	10.1	11.4	2.6	-15.1	11.3
27 Electrical equipment	9.5	-0.1	-3.0	-2.3	3.1	1.2	8.4	4.8	-0.1	-20.7	11.2
28 Machinery and equipment n.e.c.	6.0	1.4	-2.1	-0.8	4.1	4.0	8.4	8.4	2.1	-26.1	10.4
29 Motor vehicles, trailers & semi-trailers	7.0	2.3	0.8	2.0	5.2	1.8	3.1	6.2	-5.9	-24.2	21.1
30 Other transport equipment	0.6	0.9	-4.1	1.4	0.9	2.7	9.1	3.9	4.7	-6.1	-2.8
31 Furniture	:	:	:	:	:	:	:	:	:	:	:
32 Other manufacturing	4.9	3.7	2.5	-0.8	1.7	1.2	5.0	2.1	-1.2	-5.9	8.0
33 Repair and install. machinery & equipment	4.9	0.4	-3.7	-0.7	4.7	1.7	9.2	3.7	5.0	-8.9	3.8
35 Electricity, gas, steam & air con.	3.4	2.3	0.7	2.9	2.2	2.1	1.0	-0.7	0.1	-4.8	4.3

Note: Annual rate of change industrial production for the EU and for the Member States 2000-2010, working day adjusted, Source: Eurostat, available at [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php?title=File:Industrial\\_production\\_EU-27\\_by\\_activity\\_annual\\_rate\\_2000-2010.png&filetimestamp=20110727085442](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Industrial_production_EU-27_by_activity_annual_rate_2000-2010.png&filetimestamp=20110727085442).

**Figure 11 Number of Notifications by notifying country**

Norway			3	8	8
Liechten			0	0	0
Iceland			0	0	0
United	24	43	92	100	87
Sweden	18	10	18	15	38
Finland	16	33	42	84	61
Slovakia	18	28	44	114	140
Slovenia	4	18	9	27	27
Romania		0	6	16	4
Portugal	8	42	11	18	17
Poland	8	15	17	43	114
Austria	4	13	6	13	17
Netherla	0	14	21	48	33
Malta	0	7	1	3	1
Hungary	55	122	140	109	129
Luxemb	0	1	1	2	0
Lithuani	37	18	36	31	35
Latvia	0	3	4	13	13
Cyprus	2	8	12	10	44
Italy	2	2	6	43	38
France	27	26	40	88	51
Spain	38	42	79	108	163
Greece	8	48	98	115	132
Ireland	11	18	14	33	23
Estonia	7	15	12	20	20
Germany	68	106	144	163	205
Denmark	10	3	4	23	9
Czech	17	40	43	50	30
Bulgaria	0	6	13	43	89
Belgium	5	10	8	15	17
	2004	2005	2006	2007	2008

12	10	8	49
0	0	0	0
0	0	1	1
104	88	105	643
29	27	14	169
58	98	78	470
87	62	38	531
8	20	21	134
0	20	30	76
33	39	54	222
102	68	51	418
21	29	14	117
73	38	40	267
14	19	33	78
119	191	155	1020
1	5	9	19
27	44	20	248
16	28	28	105
103	178	73	430
33	88	27	239
76	119	91	518
220	146	189	985
154	159	69	783
20	23	29	171
13	16	18	121
187	204	130	1207
32	25	48	154
32	13	13	238
122	192	162	627
3	14	8	80
2009	2010	2011	

Note: Based on consolidated data released by RAPEX Annual Reports, *available at* [http://ec.europa.eu/consumers/safety/rapex/stats\\_reports\\_en.htm](http://ec.europa.eu/consumers/safety/rapex/stats_reports_en.htm).

**Figure 12 Number of Notifications by Origin of the Notified Product**

	China(including Hong Kong)	Germany	Italy	Turkey	USA	France	Japan	Poland
2006	440	42	38	12	27	19	26	14
2007	689	79	48	16	31	26	33	30
2008	869	82	57	33	29	30	22	19
2009	990	70	68	48	33	30	15	24
2010	1134	63	51	73	43	36	34	34
2011	839	43	32	50	45	44	32	20
Total	4961	379	294	232	208	185	162	141

**Figure 13: Number of Notifications by Product Category**

	Clothing, textiles and fashion items	Toys	Cosmetics	Electrical appliances	Lighting equipment	Motor vehicles
2006	38	221	48	174	98	126
2007	55	417	81	156	84	197
2008	140	498	56	169	81	160
2009	395	472	86	138	52	146
2010	625	488	66	158	48	175
2011	423	324	104	153	53	171
Total	1676	2420	441	948	416	975

Note: Figure 12 and Figure 13 are based on consolidated data released by RAPEX Annual Reports, available at [http://ec.europa.eu/consumers/safety/rapex/stats\\_reports\\_en.htm](http://ec.europa.eu/consumers/safety/rapex/stats_reports_en.htm).

**Figure 14: Statistics on Suppliers in Textiles and Clothing**

Top 10 Suppliers in Textiles (million €)							
	2006	2007	2008	2009	2010	share	% growth 2006/2010
extra-EUR	21453	22318	21063	17653	21742	100	1.4
China	5225	5721	5848	5157	6719	28.2	28.6
Turkey	3756	3887	3485	2947	3402	17.2	-9.4
India	2223	2414	2248	1879	2263	11.2	1.8
Pakistan	1421	1580	1511	1378	1597	7.4	12.4
USA	1046	1003	966	796	961	4.6	-8.1
Switzerland	946	985	904	743	791	4.5	-16.3
South Korea	738	802	678	564	717	3.4	-2.9
Japan	550	569	572	412	518	2.9	-5.8
Taiwan	523	411	426	366	423	2.1	-19.1
Indonesia	439	460	401	305	416	2.0	-5.3
Other	4,586	4,486	4,024	3,106	3,935	18.5	
Top 10 Suppliers in clothing (million €)							
	2006	2007	2008	2009	2010	share	% growth 2006/2010
Extra-EUR	55596	58096	59514	57357	61359	100	10.4
China	18910	21899	25340	25623	27973	45.6	47.9
Turkey	8249	8915	7877	6999	7713	12.6	-6.5
Bangladesh	4622	4408	4741	5138	5755	9.4	24.5
India	3815	3834	3899	4107	4155	6.8	8.9
Tunisia	2470	2572	2583	2262	2311	3.8	-6.4
Morocco	2373	2545	2393	1997	2091	3.4	-11.9
Vietnam	1028	1129	1248	1198	1339	2.2	30.2
Sri Lanka	972	1043	1125	1164	1176	1.9	21
Indonesia	1426	1196	1122	1088	1035	1.7	-27.4
Pakistan	909	909	884	893	980	1.6	7.7
other	10,822	9,646	8,302	6,888	6,831	11	

Note: Consolidated data based on Statistics on textiles and clothing, available at <[http://ec.europa.eu/enterprise/sectors/textiles/files/statistics/textiles\\_en.pdf](http://ec.europa.eu/enterprise/sectors/textiles/files/statistics/textiles_en.pdf)>.

**Figure 15 Measures Taken on Technical Barriers to Trade**

	compulsory measure	voluntary measures	compulsory and voluntary measures
2006	531	378	15
2007	643	669	43
2008	775	736	34
2009	901	752	46
2010	1163	755	45
2011	922	598	36

Note: Consolidated data based on RAPEX Annual Report 2006-2011, *available at* [http://ec.europa.eu/consumers/safety/rapex/stats\\_reports\\_en.htm](http://ec.europa.eu/consumers/safety/rapex/stats_reports_en.htm).

**Figure 16 Influence of Technical Barriers to Trade on China's Export**

	% influenced exporters/ total	loss (100million USD)
2005	25.10%	288
2006	31.40%	359.2
2007	34.50%	494.59
2008	36.10%	505.42
2009	34.30%	574.32
2010	31.74%	582.41
2011	35.16%	622.59

Note: Consolidated data based on “中国技术性贸易措施年度报告(2011)(Report on Technical Barriers to Trade (2011))”, *General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China*, Nov. 1<sup>st</sup> 2011, *available at* <http://www.aqsiq.gov.cn/>.



**Figure 17 Number of Cases Registered by Customs and Articles Seized by Product Type**

2	Number of articles seized	3,012,508	3,168,081	185,481,140		6,930,942
	1	Number of cases registered	34	2,032	45,367	
2	Number of articles seized	3,022,482	4,802,340	14,755,704		6,292,154
	0	Number of cases registered	42	1,942	22,622	
2	Number of articles seized	2,434,959	4,588,317	17,742,298	1,109,197	5,224,716
	0	Number of cases registered	80	2,134	27,562	4,358
2	Number of articles seized	1,924,896	6,103,171	17,783,130	1,441,502	5,025,682
	0	Number of cases registered	64	1,504	26,670	3,255
2	Number of articles seized	1,185,649	1,676,409	14,361,867	1,210,196	4,315,338
	0	Number of cases registered	54	1,093	24,297	3,254
2	Number of articles seized	5,228,896	694,633	10,982,915	3,003,630	4,261,900
	0	Number of cases registered	50	632	17,068	3,544
2	Number of articles seized	4,432,161	784,268	7,827,951	1,017,597	1,572,446
	0	Number of cases registered	53	214	13,928	4,070
2	Number of articles seized	1,489,908	1,009,879	3,876,271	404,092	1,323,259
	0	Number of cases registered	17	116	5,891	1,217
2	Number of articles seized	841,259	112,132	9,243,074	378,252	3,067,583
	0	Number of cases registered	13	37	4,380	1,677
2	Number of articles seized	4,106,663	26,417	4,782,672	340,432	1,795,834
	0	Number of cases registered	18	36	2,628	595
2	Number of articles seized	2,340,334	92,650	4,622,181	573,212	1,876,068
	0	Number of cases registered	10	76	3,035	718
	Foodstuffs, alcoholic and other drinks		Perfumes and cosmetics	clothing and accessories	a) Sportswear	b) Other clothing (ready-to-wear..)

175,945,379	2,604,819	1,503,521	1,537,738	3,582,780	1,572,127
6,343	18,550	3,516	12,714	1,577	7,471
3,890,485	4,573,065	1,385,534	2,114,645	6,417,435	1,828,913
5,188	5,785	2,814	2,444	1,968	4,577
4,999,714	6,408,671		5,461,751	79,170,506	1,539,202
6,348	5,389		3,870	2,221	5,130
6,290,642	5,025,304		3,894,584	3,298,813	1,787,016
6,547	5,837		2,993	2,502	4,148
8,793,123			3,136,578	15,080,161	943,819
11,066			1,885	2,880	3,969
3,717,386			4,082,175	9,703,059	516,240
6,830			1,417	1,569	3,188
5,237,908			5,018,351	18,523,664	491,588
5,342			951	2,785	2,201
2,148,921			602,677	32,616,560	674,327
2,611			243	1,898	1,098
5,797,238			1,810,238	11,975,237	424,168
1,045			305	1,388	572
2,646,406			1,129,844	39,727,512	746,942
720			190	785	543
2,172,901			358,137	8,842,075	3,488,748
617			112	1,005	796
c)Clothing accessories( bags, sunglasses, ..)	d)Shoes	Mobile phones including parts and technical accessories	computer equipment(comp uters, screens,...)	CD(audio, games, software, etc.), DVD, cassettes,....	Watches and jewellery
			Electrical / electronic and computer		

7,367,414	23,265,007	42,820,662	3,200,492	103,306,928
2,199	2,281	108	1,812	79,112
7,226,986	25,293,036	40,985,038	11,464,381	117,989,298
1,640	2,007	140	3,374	43,572
4,963,016	12,209,326	41,907,847	8,891,056	178,908,278
1,758	2,975	445	3,207	49,381
4,685,037	8,357,699	27,161,056	4,081,056	79,076,458
744	2,583	418	2,045	43,671
2,370,894	13,287,274	73,920,446	2,711,410	128,631,295
678	1,682	300	497	37,334
1,891,981	9,431,647	32,641,243	560,598	75,733,387
770	1,630	232	148	26,704
18,106,924	6,773,242	41,588,030		103,546,179
517	1,346	316		22,311
12,333,868	6,370,702	33,244,507		92,218,700
497	820	130		10,709
1,124,756	28,059,765	31,360,411		84,951,039
261	508	89		7,553
1,565,578	42,325,869	0		94,421,497
269	587	0		5,056
6,819,113	41,227,308	0		67,790,546
324	895	0		6,253
Toys and games	Other goods (medicine, car parts,...)	cigarettes	Medicines	Total EU

Note: Consolidated data based on “Statistics of customs detentions recorded at the external borders of the EU”, available at <[http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/)>.

**Figure 18 Breakdown by Provenance or Origin of Goods (EU)**

	2000	2001	2003	2004	2005	2006	2007	2008	2009	2010
China(Including Hong Kong)	12%	23%	66%	57%	67%	80%	59.92%	55.94%	65.80%	87.87%
Thailand	26%	23%								
US	11%	3%								
Czech Republic	13%	4%								
Turkey	6%	8%			4%	1%	4.92%	2.46%	1.10%	1.44%
Poland	5%									
Taiwan		3%	2.50%	7.50%				10.32%	1.90%	
Malaysia			3%							
Pakistan										
India				4%	2%	1%	2.71%	1.44%	2.30%	3.48%
United Arab Emirates			2%	3%	4%	5%	2.01%	12.34%	14.60%	0.66%
Benin			2%							
Georgia							2.51%			
Switzerland							2.06%			
Syria								1.90%		
Japan								1.87%		
Egypt									4.50%	
Cyprus									4.10%	
Moldova										2.06%
Other	27%	36%	25%	29%	23%	13%	25.87%	13.74%		4.13%

**Figure 19**  
**Breakdown by Type of Right Covered under Regulation (EC)3295/94 Expressed as % of Number of Cases**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Trademarks	78%	83%	80%	83%	74%	79%	91%	92%	55%	90.05%	91.82%
Copyright and related rights	15%	9%	18%	13.50%	14%	5%	7%	2%	1%	3.57%	2.98%
designs and models	6%	5%	0.50%	1.50%	2%	7%	1%	1%	1%	1.32%	2.86%
patents and supplementary protection certificates	1%	3%	1.50%	2%	5%	1%	1%	5%	43%	4.99%	2.28%
Data not communicated	0	0	0	0	5%	8%	0	0	0	0.00%	0
Plant Variety right	0	0	0	0	0	0	0	0	0.08%	0.05%	0.01%
Supplementary protection certificate	0	0	0	0	0	0	0	0	0	0.02%	0
Geographical Indications	0	0	0	0	0	0	0	0	0	0	0.05%

Note: Figure 18 and Figure 19 are consolidated data based on “Statistics of customs detentions recorded at the external borders of the EU”, available at [http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/).

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