



Bachelor Thesis
Spring 2010

**Anti-dumping as protectionism in the EU?
- A case study of shoe imports from China and Vietnam-**

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Abstract

The use of anti-dumping actions has increased in recent times with ever more countries imposing the duties. A number of motives for this action are considered in this thesis, with an overall focus on competition. However, it is suggested that this form of action closely resembles protectionism, and is inherently more damaging than the actual effects of the dumping. To test this theory, an empirical study has been conducted in relation to the European Union (EU) anti-dumping investigation of a case concerning shoe imports from China and Vietnam. This study resulted in the conclusion that these duties were imposed on protective grounds. The timeframe of analysis was focussed on the short-term, although this timeframe did not yield sufficient evidence to make a definitive conclusion of the short-term effects of trade diversion caused by anti-dumping measures.

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1 Introduction

When a country floods a trading partners market, it can result in unfair competition and damage production in the importing country. To prevent injury caused by dumping, the importing country can impose counter measures such as anti-dumping duties. The last thirty years these anti-dumping actions have become the most commonly used trade barrier. The duty is of protective nature and can have a big impact on the quantity imported and the price of the import. The duties are imposed based on injury reported by the domestic firms and can be a measure used to control competition in domestic markets. This can lead to losses both for the importing and exporting countries, and influence the consumer's everyday life with less competitive markets and higher pricing (Raafat and Salehizadeh, 2002).

This thesis offers a definition of anti-dumping and description of the EU's investigative process when given an anti-dumping complaint. This is then analyzed in relation to a case study of the EU against China and Vietnam, commencing in 2005 with duties imposed in 2006 and 2008. The analysis will show the potential short-term effects the anti-dumping measures have on importing quantity and price at different stages of their implementation. This analysis is made for the targeted countries subjected to the duties, China and Vietnam, but also on the three largest footwear exporters to the EU, not included in the anti-dumping measures, Brazil, Indonesia and India. Facilitated by the analysis of the aforementioned countries, this thesis argues that eventual trade diversion can be traced. This thesis will also provide an analysis of how anti-dumping actions affect the EU's domestic production and trade diversion, by looking at production and trade within the EU as is portrayed in the case study.

The result showed that short-term effects caused by the measures were hard to trace, and to investigate the impact on measures like this more long-term analysis is preferable. However, some indications of trade diversion and declining quantity from the countries subjected to the measures were found.

This empirical study has been conducted using data sourced from the Eurostate database, and it has been analyzed in an 8 digit level according to the Eurostate CN-number classification. It should be noted that for the purpose of this report, the

People's Republic of China will be referred to simply as China. The remainder of the thesis is organized as follows. First dumping is defined and the effects of the counter measures are described. Then the anti-dumping case concerning the EU and shoe imports from China and Vietnam follows. The thesis ends with an empirical analysis of the effect the anti-dumping measures have on EU trade.

2 Dumping and anti-dumping: A general overview

2.1 Definition of dumping

Dumping occurs when a product produced in one country is sold in another country for less than its normal value, and can result in what is referred to as injury to the domestic industry in the import country. The value of the exported product is considered to be less than its normal value when the price is lower than the price of a like product sold on the exporting country's domestic market. If similar products don't exist on the exporter's domestic market, dumping is claimed if the exported product value is less than the price of a like product exported and sold in a third country, or less than the cost of production after adding suitable selling cost and profit (GATT, article VI). A like product is identical to the product under consideration, or in absence of such, a product alike in all respects, with significant similarity in characteristic.¹

Products can be unintentionally dumped, however in most cases this is part of the firm's business strategy. Two common reasons for dumping are price discrimination, and pricing just enough to cover average variable cost during periods of low demand. Another key dumping motive is to make a product the market leader or attempt to establish a monopoly on the export market. The exporters can also set a lower price than the production cost if trying to enter the importing countries market or trying to realize economies of the scale. Dumping can give a firm access to larger markets with more output, helping the firm reach an optimal scale of production. Another reason for dumping is to gain a larger market share in the importing country in a short period of time (Hoekman and Kostecki, 2001, p 319-321). Most of these reasons for

¹ COUNCIL REGULATION (EC) No 384/96 of 22 December 1995
on protection against dumped imports from countries not members of the European Community

dumping are driven by market structures, business cycles or the characteristics of the products. Hoekman and Kostecki (2001, p. 321) claim that only one dumping strategy is a potential threat to welfare in the importing countries; predation. Predation occurs when a foreign exporting firm or cartel prices the products low enough to drive domestic firms out of business and establish a monopoly. After establishing a monopoly, the firm can then exploit the market and make up for its losses. To establish a monopoly on the importing market the foreign firm has to prohibit entry by new competitors. In order to prohibit entry by other firms, the foreign firm has to either have a global monopoly or make the government in the importing country impose or tolerate entry restrictions. Ninety percent of all anti-dumping investigations would never have been launched if the criteria for the injury was based on potential threat to competition and not based on injury to the competitors (Hoekman and Kostecki, 2001, p. 321). In other words, it is argued that sound economic policy would see an emphasis on encouraging 'competition', not 'competitors'.

Anti-dumping laws are not included in WTO policy. Instead, they merely give guidelines to offset the effects of dumping. The fact that the WTO does not prohibit dumping gives an indicator that dumping may not be a great problem. Common business strategy used by an exporting firm, or even normal business cycles, can be often described as dumping. Dumping does not decrease the welfare in the importing countries, as long as the foreign firm does not successfully establish a monopoly on the market. This potentially harmful unfair competition should be fought by competition laws, not with anti-dumping duties.

2.2 Anti-dumping measures and their effects

2.2.1 Anti-dumping

To prevent dumping a country can impose an anti-dumping duty. The imposed duty cannot exceed the margin of dumping for the concerned product (GATT, article VI). The dumping margin is the difference between the export price and the actual normal value (Farr, 1998, p. 18). Anti-dumping measures can only be imposed if evidence that the dumping has caused or threatens to cause material injury to the domestic import-competing industry. The evidence must be based on objective examination of

the concerned import volume, the effect of dumping on prices in domestic market, and the effect on like products (Hoekman and Kostecki, 2001, p. 317).

2.2.2 Expected effects of anti-dumping

The purpose of an anti-dumping duty is to recover growth and stability in a domestic market injured by the negative effects of excess commodity importation. This can be achieved by increasing the price for the imported commodities and decreasing the quantity of imports to the domestic market (Niels, 2003). Put simply, by removing some competition originating outside of the domestic market. As with protective trade measures, anti-dumping tends to decrease the volume imported from the targeted country. This decrease is the intended outcome. However, unfortunately the duty may also result in rising imports from a third country. The degree of this trade diversion shows the effectiveness of the duty imposed (Lasagni, 2000). Anti-dumping duties decrease imported quantities from the targeted countries and increase the price for this import.

Empirical studies have shown that import quantity and share of total imports are most noticeably affected in the first or second year after imposing the duties, and the effect on unit value is greatest in the second year after imposing the duties. Dumont and Cuyvers (2005) argue that the impact on import quantity is lower than the impact on import shares, showing the potential trade diversion effect. These effects vary with the size of the measure imposed. Trade diversion is a term often used in customs union theory, where it is used to describe a phenomenon that occurs when the imports from a member country in the customs union replace imports from a third country (Derado, 2008). This redirection in exports is not due to efficiency or comparative advantages, but because of a tariff. In anti-dumping cases the 'members' can be other exporters that, prior to the imposition of the duties, had a higher import price. Trade creation takes place when imports from an importer not subjected to the duty replace the domestic production and meet larger demand. The new importer can allocate resources more efficient and specialized according to the comparative advantage that can take place due to larger markets, and this can in-turn benefit welfare. On the contrary, trade diversion decreases the welfare by shifting the imports from a low-cost

source to a dearer source (Derado, 2008). The overall effect of joining a customs union or from imposing a duty depends on the size of the trade creation and the diversion. A trade creation larger than the diversion gives a positive overall effect, and vice versa.

Despite the purpose of supporting the domestic producers within the country imposing the duties, trade diversion, caused by the duties, tends to benefit a third country and its export sector rather than the producing sector in the imposing country (Gulati, Malhotra and Malhotra, 2005). The duties therefore are often unable to fulfill their purpose. The imposing country may also suffer from lower overall imports as the third country is unable to meet the same quantities previously imported (Gulati, Malhotra and Malhotra, 2005). Anti-dumping actions are discriminatory as the duties are applied specially to the targeted country, but suppliers of the same product from non-targeted countries or the producers within the domestic market are not subjected to the duties (Brenton, 2001). To use discrimination as a base for trade barriers can lead to retaliation from targeted countries and other trade related issues as will be discussed further in latter sections. Anti-dumping duties may have negative spillover effects in sectors and on products not directly subjected to the duties due to the threatening effect (Vandenbussche, 2006). A study by Brenton (2001) shows that when anti-dumping measures are imposed by the EU towards a third country, the import can be diverted towards non-member countries but also toward members, thereby increasing the intra-EU trade. These trade diverting anti-dumping duties can lead to increased import quantities from third countries and also lower the price for these imports due to a larger supply. If EU imposes the duties trade diversion is likely to increase the quantities traded between the members.

2.2.3 Difficulties in assessing dumping

One major problem in proving that dumping has occurred could be determining the injury on the domestic market or the potential threat. The injury caused, supposedly by dumping, may have occurred because of inefficient domestic production, unfair domestic competition, or poor allocation of resources and therefore be a national failure rather than a consequence of trade. Another difficult question when claiming

injury is how far back evidence of dumping can be traced, and how much of that dumping has caused today's injury. Using a third country to establish the normal value of the product is often difficult, as finding a country with similar market conditions, in a way so as to not affect the outcome in a bias manner is often challenging.

2.2.4 Is anti-dumping really a good idea?

“Anti-dumping constitutes straightforward protectionism that is packaged to make it look like something different. By calling dumping unfair, the presumption is that anti-dumping is fair and thus a good thing. This is good marketing, but bad economics. From an economic perspective there is nothing wrong with most types of dumping. Anti-dumping is not about fair play. Its goal is to tilt the rules of the game in favor of import-competing industries.” (Hoekman and Kostecki, 2001, p. 322)

As mentioned in section 2.2.3, it is difficult to assess the injury on the domestic market; a common loophole used by domestic firms. The methodologies used for calculating the dumping margins can be used in such way so the normal value rises and the export price decreases, giving a larger dumping margin than there actually is. Another means of manipulating the data is removing the higher cost imports from datasets. This is a common practice which investigators justify by claiming that dumping should not be hidden by higher cost imports, even if they represent a legitimate portion of imports (Hoekman and Kostecki, 2001, p. 324). Domestic firms can also manipulate the injury criteria or try to meet the criteria by lowering productivity. Firms can blame declining trends on dumping when in fact these trends are a result of normal business cycles, thereby claiming the need for duties on grounds of false evidence. The reduction in productivity that firms might purposely undertake to meet the dumping criteria causes more damage to the domestic market than the actual dumping. Anti-dumping can also have a cascading effect, if an upstream industry is protected by a duty the downstream industry buying this input may get injured by high pricing and low competition and will therefore have incentive to apply for more protective action. This can encourage cartelization along the production stream or hurt other industries needing to buy a protected input, resulting in higher price faced by the consumers (Hoekman and Kostecki, 2001, p. 324). Anti-dumping

duties give domestic firms the incentive to deliberately lower productivity and use trends not caused by dumping, as evidence to meet the criteria for injury by dumping.

As Prusa and Blonigen (2001) state, firms in the exporting country can often change the pricing strategies and thereby avoid being subjected to the duty. They also point out that exporting firms can relocate the production to a third country or to the domestic market and hence, bypass the duty. The sometimes limited effect of import duties are argued on these grounds, as the result can be that no physical return from the duties is ever collected by the imposing country. All that is achieved is a magnitude of administrative costs, and the damaging increased level of competition remains. Another problem is the misuse of the counter actions. Anti-dumping action can be justified to fight unfair import competition, but studies have shown that lately many anti-dumping cases are initiated based on strategic motives rather than fighting unfair trade (Dumont and Cuyvers, 2005). The strategic motives can be based on a will to cease the import from a specific country, or can be based out of concern from domestic producers. Many motives can resemble discrimination, yet bypass WTO non-discriminatory rules.

In an economic sense, as portrayed in the above analysis, anti-dumping measures appear to be increasingly counterproductive. The duties give incentive to domestic firms to lower productivity and manipulate injury. This reduction in productivity can be more damaging to the domestic market than any actual dumping, and there is clearly significant incentive for domestic firms to falsely exaggerate injury. Anti-dumping is caused by a fear of competition and not by a fear of dumping. The protective duties lower the competition on a market and raise the producer's surplus. Firms subjected to anti-dumping duties can avoid the duties by relocating production or increasing the price, therein reducing the imposed dumping margin. This action will also increase the price on the domestic market. Anti-dumping is more and more likely to be used for retaliation and as a strategy to reduce competition. This is clearly a misuse to fight competition, based on false evidence, and paid for by the domestic consumer.

2.3 Global anti-dumping pattern

Since the 1980's, anti-dumping measures have been the most commonly used protective trade barrier with over 5000 anti-dumping duties imposed. China, with its growing trade volume and economic development has lately been a target for a lot of these duties, incurring a loss of ten billion dollars due to anti-dumping actions. The EU is largely responsible for this increased use of such measures towards China, with 36.5 % of the total numbers of investigations filed against Chinese imports. China is the largest receiver of dumping complaints from the EU (Xu and Tang, 2009). Despite increased import volumes on Chinese markets where Xu (2007) claims dumping has occurred, few anti-dumping cases have originated in China. China's ratio of anti-dumping investigations is 25 times lower than the EU and 14.4 times lower than India (Xu, 2007).

Between 1981 and 2001, developed economies such as Australia, the EU, the United States and Canada stood for 64% of anti-dumping investigations, a tendency that has slowly changed direction since 1995. During the period 1995- 2001, India, South Africa and Argentina joined the developed countries and imposed anti-dumping measures larger than Australia and Canada. The trend also showed that former countries subjected to these actions launched more and more anti-dumping measures against their trading partner. These trading partners are often the ones that originally imposed the duties in previous years (Drysdale and Findlay, 2006). It is proposed on these grounds that if such protective measures are imposed in retaliation, for example to Chinese trade, China will then likely respond with similar restrictions toward the EU and increase the country's ratio of filing counter investigations. A well know case using retaliations in trade is the US-EU cases in bananas (1993) and beef (1996). Bloenigen and Bown (2003) support the significant impact that the threat of retaliation has on the use of anti-dumping duties. In their research, they show that the US most often denies petitions about anti-dumping investigations towards firms from countries that use protectionist anti-dumping policies, or with a history of dispute with the US through the WTO. This shows that anti-dumping measures can have a dampening effect, by countries hesitating to file anti-dumping investigations towards some countries.

3 Anti-dumping in the EU

In 2005 China and Vietnam were accused of dumping shoes with leather parts on the EU's market. Duties were imposed during 2006 and in 2008 the duties were renewed. In February 2010, China filed a complaint to the WTO Dispute Settlement body (DSB). The EU defended the imposition of duties and claimed that the duties were imposed to fight unfair competition. This section will first give a short description of how the EU deals with anti-dumping complaints. The background of the case and the investigations made by the commission, first in 2005 and then again in 2008, are then described. The section concludes with China's complaint to the WTO DSB and some of the known effects of the imposed duties.

3.1 EU practice

Any natural or juridical person or association in the EU can submit a complaint about dumping to the commission, or to a member state that then forward the complaint to the commission. A member state can put forward a complaint on behalf of its industry, and then the commission informs all the member states after receiving the complaint. The complaint has to consist of information including the product, price, market and volume and it must provide evidence of how the import has influenced these factors. If the commission finds the evidence sufficient, a notice is published in the Official Journal together with the evidence.² The Official Journal is available on the EU's web page. The investigation must include the dumping and injuries covered during a period no shorter than six months. The commission sends out questionnaires to known importers and exporters to gather relevant information and gives them 30 days to reply. Individual member states are obliged to acknowledge the investigation if needed (Farr, 1998, p. 49). If the complainant industry can negotiate a price undertaking with the importers so the import price rises, the commission may close the investigations. In some cases a provisional duty can be imposed by the commission on the import after at least 60 days of the investigation.³ Definite anti-dumping duties can be imposed by the Council of Ministers when it is proven that

² COUNCIL REGULATION (EC) No 384/96, of 22 December 1995 on protection against dumped imports from countries not members of the European Community, Article 5

³ COUNCIL REGULATION (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, Article 7

dumping has occurred and caused injury to the domestic industry. A simple majority in the Council of Ministers have to vote in favor of imposition of a duty. A rule imposed in 2008 holds, if a member is absent at the voting, it counts as a vote in favor for the imposition. Prior to 2008, abstentions by a member counted as a vote against the proposition. Shiteng and Yiheng (2009) argue that this rule increases the number of imposition of anti-dumping duties. The duties cannot exceed the dumping margin and might be reduced provided the duty is enough to remove the injury from the domestic industry. The definite measure lasts for five years starting with the imposition, or five years from the date for conclusion of the recent review (Farr, 1998, p.70). This duration can be changed if the commission states a different time frame. If one of the countries concerned is a non market- economy (NME), the value of the product will be determined by using an appropriate market-economy third country.⁴ The anti-dumping duties can be challenged in the European Court of First Instance or in the WTO Dispute Settlement Body (DSB) if the target is a member of the WTO.

3.2 The case of anti-dumping measures on shoes from China and Vietnam

3.2.1 Background: The situation in 2005

Until 2005, the imports of shoes from China and Vietnam were restricted by an import quota and the domestic industry could compete with the imports (EU). The quota on Chinese footwear imports was removed on January 1st 2005 according to the WTO Agreement on Textile and Clothing (ATC). This agreement was to abolish all quotas imposed on WTO members. Bilateral agreements were also established for non WTO members, such as Vietnam, where quotas also were removed in early 2005 (EU). After abolishing the quotas, The European confederation of the footwear industry (CEC) suspected that China and Vietnam were dumping shoes with leather parts on the EU market. This suspicion was based on a dramatic increase in imports from China and Vietnam and a decline in the unit price in shoes from both countries. The CEC and the Commission claimed that this trend could be traced back to 2001, despite import restrictions.

⁴ COUNCIL REGULATION (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, Article 7

During the period 2001-2005, Chinese imports of leather shoes to the EU increased by approximately 1000%. In comparison, Vietnamese exports to the EU of the same commodities increased by only approximately 100%. This relatively small increase in the Vietnamese export volume is mostly due to the competition from China. The average unit price of leather shoes from China and Vietnam dropped by 31% and 20% respectively, with an average of 27% during 2001-2005. The price the consumer faced during this period of time remained stable or rose slightly (Eurostat and Commission data). The dramatic increase in imports from China and Vietnam resulted in an overpricing faced by the consumers and the exporters gained a larger profit. The shoe market in the EU was estimated to be 2.5 billion pairs in 2005, and the market of leather shoes covered 35% of the overall shoe market in the EU. The Chinese import volume of leather shoes was 206 million pairs and the import volume from Vietnam was 119 million pairs (Eurostat and Commission data). Leather shoes imported from China and Vietnam in 2005 stood for approximately 13 % of the total EU shoe market. This is viewed as a sufficient percentage to affect the domestic market, as this represents 52% of the total leather shoe market in the EU.

3.2.2 Anti-dumping investigation on shoes origin from China and Vietnam

On the 30th may of 2005 a complaint was lodged by the CEC. This complaint was based on the above mentioned facts, being an increased quantity imported and decreased import prices, although the consumer price remained stable. The CEC acted on behalf of producers standing for 40% of the total production of leather shoes in the community. This led to an investigation concerning the period between April 1st 2004 and March 31st 2005 and looked for possible dumping and injury to European producers. An examination of trends relevant for injury was also conducted for the period from 1st January 2001, to the end of March 2005. These trends are covered in section 3.2.1. The investigation covered mainly sandals, boots, urban footwear and city shoes with uppers made from leather (see Appendix). Children's shoes and shoes made for sporting activities involving a special technology, STAF, were excluded from the investigation and the anti-dumping measurements.⁵ To establish the normal value of the concerned commodities, the investigation had to use a third country since

⁵ L 98/52 Official Journal of the European Union 6.4.2006

China and Vietnam were not granted the status of a market economy. This was because all of the companies had state intervention or non-standard accounting, and did not operate in conditions for a market economy status. Instead the industry in China and Vietnam worked under other conditions such as non-commercial loans and grants from the government, restrictions on selling to the domestic market, and improper valuation of assets (EU). The investigation found that the production and the domestic market of shoes with leather parts in Brazil showed no difference to the production in China or Vietnam and therefore Brazil was used to establish the normal value. The investigations also made the conclusion that production in the community didn't differ from the production in the concerned countries, and that the commodities were interchangeable for the consumers regardless of country. The dumping margin as a percentage of the CIF import price at the community border was 21.4% for China and 64.0% for Vietnam.⁶

The domestic production within the community comprised 8000 producers, with 80 % of the production taking place in Portugal, Spain and Italy. Most of the member states have some kind of shoe manufacturing industry, and therefore are affected by the dumping. The extension of the injury caused by dumping was based on both microeconomics and macroeconomic grounds. From a microeconomic perspective, stocks, sales price, cash flows, profitability, and return on investments were among the factors that were under consideration. From a macroeconomic view, the investigation evaluated issues like production, sales volume, market share, employment and productivity etc⁷. Production in the community went down by more than 30% during the investigation period, from 223 million pairs in 2001, to 146.9 million pairs in 2005. Due to the decrease in production, 1000 companies were forced to shut down. The sales volume of producers within the community dropped by around 50 million pairs, around 33%, and their market share decreased by more than 9 percentage points, from 27.1% to 17.9%. The investigation found that employment decreased by 31% since 2001 and 26,000 jobs were lost in the shoe industry concerned. The investigation also mentioned that 700 companies had to cease production prior to the investigation taking place, and therefore are not included in the report from the investigation. Including these companies more than 43,000 jobs were

⁶ L 98/52 Official Journal of the European Union 6.4.2006

⁷ Ibid.

lost. Footwear is made on order and it is a labor intensive commodity. Hence, a decrease in sales volume, due to fewer orders, will translate to a decrease in labor force in the sector and a rise in unemployment rates. Productivity, expressed as the sales volume divided by the work force remained stable, since both volume and labor force decreased. During the same time period the average unit sales price declined by 7.2%. Other financial factors weakened between 2001 and the investigation period, for example, the cash flow declined by 60% and the investments undertaken by the concerned companies decreased by 50%.⁸

The investigation considers all of the shoes in question imported from the concerned countries, and the ones produced within the community and their sales channels identical. Within this timeframe the dumped imports from China and Vietnam more than doubled as the sales volume from producers in EU decreased by 30%. The average sales price also declined by 30% and the market share for China and Vietnam increased by almost 14 percentage points, from 9.2% to 22.8%. The investigation concluded that the above mentioned injuries were caused by dumped imports and with anti-dumping measures the European footwear industry would recover sufficiently. The suggested anti-dumping duties were 16.8% for Vietnam and 19.4% for China commencing September 15th 2006.⁹ Before imposing the definite duties, provisional duties were in force from the 6th of April. Table 1 shows the schedule for the provisional and definite duties.

Table 3.1 Duties imposed

	Apr 6 – Jun 1	Jun 2 – Jul 13	Jul 14 – Sep 14	Sep 15 (Definite Duty)
China	4.8%	9.7%	14.5%	19.4%
Vietnam	4.2%	8.4%	12.6%	16.8%

Source: Eurolex

⁸ L 98/52 Official Journal of the European Union 6.4.2006

⁹ L 98/52 Official Journal of the European Union 6.4.2006

The anti-dumping duties were binding for all of the member states and were in force for two years.¹⁰ Almost all of the companies investigated in China and Vietnam were nominated by the countries government, and the Chinese companies covered 15% of total Chinese production of shoes (EU).

To summarize, the commission's investigation found that dumping by China and Vietnam had caused injury to domestic production, and to recover from this injury the EU imposed duties (Table 3.1). The injury, as expressed by the EU Commission, appears to be due to a lack of ability to compete with these more labor intensive economies, and this anti-dumping investigation has a protective nature. Vietnam and China are labor intensive economies likely to have comparative advantage in the footwear industry, and be able to produce and sell cheaper products than the EU. Imposing the duties shows a will to protect the domestic production from cheaper imports.

3.2.3 Request for review

On the 30th of June 2008 the CEC asked for a review and a prolonged duration for the imposed anti-dumping duties. CEC claimed that a removal of the duties would re-establish dumping and cause injury to the domestic industry. A new investigation took place where Brazil once again provided the normal value for the concerned product. The investigation used a period of 15 months and started from the date of notification in the Official Journal of the European Union.¹¹ The evidence was based on a period of time when the EU had imposed duties against China and Vietnam. The domestic production within the EU, according to the Commission, was still harmed. The new investigation found that anti-dumping measures should continue and that the CEC statement that a removal of duties would damage production within the European Union was correct. The anti-dumping duties for China were set at 16.5% and 10% for Vietnamese exporters. The Commission claims that the duties were imposed for a 15 month period and during this time the shoe industry in the EU will 'undertake adjustments for higher productivity and implement new business models'. The

¹⁰ L 275/41 Official Journal of the European Union 6.10.2006

¹¹ C 251/2 Official Journal of the European Union 13.10.2008

resolution came into force on October 3rd 2008, the day of publication in the Official Journal of the European Union.¹²

To summarize, in 2008 the CEC asked for a renewal of the duties and new duties were imposed, despite the duties being lower for the imports from both countries than it was in 2006. The new investigation in 2008 found that domestic production in the EU still was injured by the imports from China and Vietnam. Domestic production was harmed even whilst a restriction on imports from the dumping countries existed. Here it is argued that this may be due to the domestic shoe producer's lack of ability to compete as a result of inefficiency in production, and not increased imports.

3.2.4 China complains to the WTO

On the 4th of February 2010 China filed a complaint to the WTO Dispute Settlement Body (DSB) about the EU's anti-dumping duties on shoes with leather parts. China claimed that the anti-dumping duties were inconsistent with the GATT provision on Anti-Dumping Agreement (1994). According to China, the anti-dumping measures violated the market economy treatment, and the normal value established by the European Union was unfairly calculated. China also objected to the choice of third country, Brazil, and questioned the European Union's objectivity when examining the effects of dumped imports on prices in the domestic market. The complaint also included that the anti-dumping duties levied on the Chinese exporters were not imposed on a non-discriminatory basis, as duties for the Vietnamese exporters were lower although the dumping and injury margins from Vietnamese exporters was greater than from Chinese exporters. China also claimed that the request for a review made by the EU on the 8th of October 2008, was inconsistent with the Anti-Dumping Agreement and the GATT, 1994. According to China, the EU once again failed to examine the evidence objectively and to base the evidence on adequate grounds (WTO).

The trade spokesman for the EU Commission, Director General Trade John Clancy, defended the anti-dumping duties on shoes with leather parts the same day China filed their complaint to the WTO, stating that the duties are not about protection, but

¹² L 352/67 Official Journal of the European Union 30.12.2009

fighting against unfair trade. Furthermore, dumping had occurred and harmed the domestic industry and the measures were the right thing to do (EU business). On March 31st 2010 a consultation was held between China and the EU in the WTO but no resolution to the dispute was found. After this consultation, China requested an establishment of a panel in the DSB but the EU opposed this wish. Since this opposition the case has progressed not further.

To summarize, China filed a complaint to the WTO DSB about the EU imposition of anti-dumping duties on shoes with leather parts, based on inconsistency with the GATT and discrimination. The EU defended the action, claiming the duties were imposed to fight unfair competition. The reason for the discrimination could have been the larger quantity China exported to the EU giving it a larger influence on competition. China also questioned the EU's objectives in choosing Brazil as a third country for establishing normal value. This supports the statements in section 2.2.3 and 2.2.4 that an anti-dumping investigation can be based on questionable evidence. To use evidence and impose duties that the targeted country considers to be not objective or unfair can put a lot of stress on the EU's relations with its largest exporter.

3.2.5 Summary and discussion of the case

In 2005 the CEC launched a complaint that dumping by China and Vietnam had occurred after the abolishment of quotas. The commission found that the domestic production had been injured and this was because China and Vietnam had dumped imports on the domestic market. The injury the commission noticed was lost jobs, a decrease in product, and productivity and declining sales volume. Based on this injury the Commission imposed duties in 2006. In 2008 the CEC asked for a request of review and the Commission once again found injury in the domestic production and new definite duties were imposed. In early 2010 China filed a complaint to the WTO DBS based on inconsistencies with GATT and discriminatory grounds since the duties were higher for China than for Vietnam, despite the lower dumping margin for Chinese imports.

Table 3.2 Important stages in the investigation

Stage of the investigation	Time	Description
Launching of complaint	May 30, 2005	Complaint launched by the European confederation of the footwear industry (CEC). The CEC argued that dumping by China and Vietnam caused injury to EU's domestic production.
Start of investigation	July 7, 2005	The investigation by the Commission started on concerned products imported from China and Vietnam
Imposition of the first provisional duties	April, 6, 2006	The first of three stages of phasing in the duties were imposed on Chinese and Vietnamese imports: 4.8 % for China and 4.2 % for Vietnam
Imposition of definite duties	September, 15, 2006	The definite duties were imposed on the concerned countries 19.4% for China and 16.8% for Vietnam
Request for review	June, 30, 2008	The CEC asked for prolonged duration of definite duties on imports from China and Vietnam. The CEC claimed that the domestic production was still injured from this import and more time to recover was needed.
Imposition of definite duties	October, 3, 2008	New definite duties were imposed based on evidence the Commission found. 16.5% for China and 10% for Vietnam
Complaint filed by China	February 4, 2010	China filed a complaint to the WTO DSB about the European Union's anti-dumping duties on shoes with leather parts. China claimed that the anti-dumping duties were inconsistent with the GATT provision on Anti-Dumping Agreement (1994).

Note: all of the provisional duties can be seen in table 3.1

I argue that the injury the commission found in 2006 and 2008 was not caused by imports dumped by China and Vietnam but because of the domestic production's lack of ability to compete with low cost imports and inefficient production in the Union. The imposition of the anti-dumping duties were based on protective grounds and not based on the will to fight unfair competition. A clear evidence for this argument is the statement the commission made in the Official Journal 2008 that during the period of duties production in the EU would 'undertake adjustments for higher productivity and implement new business models'.¹³ In other words, the domestic producers are not able to compete with the imports even though they are restricted, so they have to implement new business models and undertake adjustments for higher productivity. It is suggested on these grounds that the EU is using the anti-dumping measures to insulate domestic production to allow enough time for these new, more productive business models to come into effect.

¹³ L 352/67 Official Journal of the European Union 30.12.2009

The CEC claims that after the abolishment of the quotas in 2005, the import price decreased by 25%, yet the price paid by consumers remained stable, with the only effect being an increased profit made by the importers. The best alternative for consumers would be minimizing the gap between the import price and the price faced by the consumers by lowering the latter. To only increase the import price does not benefit the consumers; it only results in increased producer surplus and may not give an overall positive net welfare. If the import price is lower than the cost of production in the EU, a relocation of resources and increased efficiency should take place in the domestic production. The duties imposed in 2006 and 2008 are suspected as protective trade barriers that benefit the domestic producers who are incapable of competing with low cost production from labor intensive countries. The consumers still face the same prices. The position held by this thesis is that China filed the complaint fairly to the WTO DSB. It is not hard to see the lack of objectivity in the anti-dumping investigations made by the Commission, nor hard to wonder why the duties were lower for Vietnamese imports despite the two countries exporting identical products.

In section five an empirical analysis is made to investigate the effects the different stages of the anti-dumping action (Table 3.2) have on the quantities imported to the EU from China, Vietnam, and a third country.

4 The EU's footwear imports

China and Vietnam are the two largest shoe suppliers to the EU, measured both in Euro's and quantity. The three countries with the largest share of imports after China and Vietnam are Brazil, India and Indonesia. These countries are used in the empirical analysis in the following section.

Table 4.1 and 4.2 give an overview of the EU's largest shoe suppliers and the growth in imports from 2005-2008, but also the growth during the 2007-2008 periods. Table 3.1 shows the growth in imports measured in Euros, for Indian, Indonesian and Brazilian imports was larger than the growth for Vietnamese or Chinese imports. This

confirms that competition is not being damaged, as imports from these countries not accused of dumping are able to continue growing. An interesting notation is that the countries share of imports measured in pairs is not the same as the import share measured in Euro's. This indicates that shoes from China and Vietnam are low-cost commodities.¹⁴

Table 4.1 Imports to the EU (€)

Euros	%Share 2008 imports	% Growth 07-08	% Growth 05-08
EU-27	100.0	2.3	20.4
China	45.4	2.3	20.8
Vietnam	17.4	8.3	7.9
India	7.4	1.0	37.2
Indonesia	5.4	9.1	35.7
Brazil	3.9	8.0	33.6
Tunisia	3.5	5.7	28.9
Thailand	1.9	-14.5	3.0
Morocco	1.8	0.2	28.2
Bosnia-Herz.	1.5	7.6	68.2
Switzerland	1.5	10.5	43.3

Source: Eurostat

Table 4.2 imports to the EU (Pairs)

Pairs	%Share 2008 imports	% Growth 07-08	% Growth 05-08
EU-27	100.0	-3.0	25.9
China	72.6	-4.0	34.8
Vietnam	11.9	4.5	7.6
Indonesia	3.1	17.3	47.2
India	2.7	0.7	25.9
Brazil	1.4	-1.4	11.3
Tunisia	1.0	4.2	21.0
Turkey	1.0	-23.5	-22.0
Thailand	1.0	-19.8	-17.8
Morocco	0.6	-10.4	0.8
Cambodia	0.6	-1.0	94.8

Source: Eurostat

¹⁴ Romania and Bulgaria joined the EU in 2007 and were not in the Union at the time of the case. However, this may be due to the negligible share of Bulgarian and Romanian imports at only 3 % of total imports to the EU.

5 Empirical Investigation

5.1 Method

The purpose of the analysis herein is to see what impact different stages in the anti-dumping investigation, and the procedures following the investigation, have on the quantity imported and the price for the imports. Import price is calculated by dividing the value of the import by the quantity of the import. The price is expressed in Euro's per kilogram. Import quantities are not expressed using pairs of shoes as this unit value is not included in available data. The quantity and price used in the analysis are the total import volume and the total value of all products concerned.

Table 3.2 in section 3.2.4 shows the different stages in the process, the first 6 stages of which are used in the analysis. Data for the remaining stages was not yet available as the investigation is not yet concluded. The complaint was launched on May 30th 2005, and the request for review took place on June 30th 2008. The effects at these stages are observed in the quantities imported during June 2005 and July 2008. The primary countries analyzed were Vietnam and China, the targets for the anti-dumping measures, but also India, Indonesia and Brazil. The five countries included are the largest exporters of shoes to the EU (see Table 4.1 and 4.2) and by looking at exporting countries other than Vietnam and China possible trade diversion can be traced. The following analysis also investigates the effect the anti-dumping measures on intra-EU trade and domestic production in the EU. This will be made by using the first 6 stages in table 3.2 which shows the anti-dumping measures benefit producers in the EU.

The effects of the duties are determined by calculating the percentage change on the quantity imported of the concerning products and on the price per kilo for this import. The percentage change is calculated for the total quantity of imports and for the average price per kilo. To achieve a short-term perspective on the changes in the imports a two month period is used.

5.2 Effects of anti-dumping measures

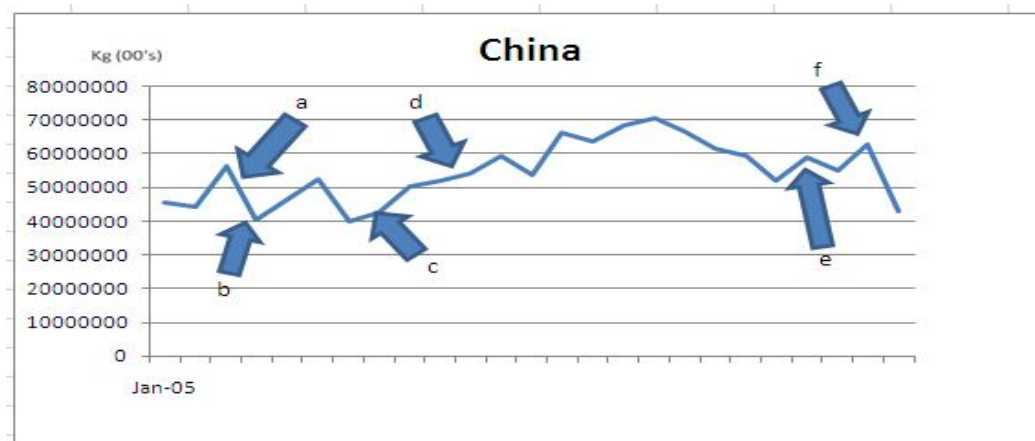
5.2.1 China and Vietnam

The expected effect on the targeted countries at the time of imposing the duties is a decrease in quantity imported to the EU. The price for the imported quantity is expected to increase. At the other stages (not including the imposition of duties) the effects are uncertain, but it is likely that at these stages a decline in the import quantity from China and Vietnam also occurs and the price rises.

Quantity Effects

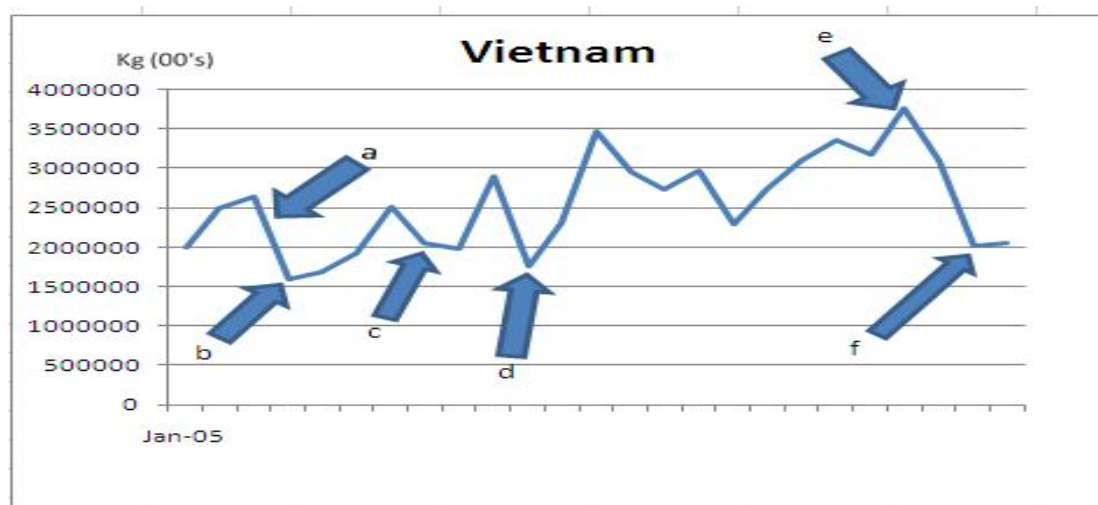
The analysis shows that during the first stage in the anti-dumping process, launching of the complaint, there was a negative effect on quantities imported from targeted countries (see Figure 5.1 & 5.2, 'a'). The request for review in 2008 had the same effect (see Figure 5.1 & 5.2, 'e'). When the investigation was initiated the quantity imported rose for both countries (see Figure 5.1 & 5.2, 'b'). When EU imposed the provisional duties, Vietnam experienced a fall in export quantities (see Figure 5.2, 'c'). In contrast, Chinese exports experienced the opposite, with a growth in quantity (see Figure 5.1, 'c'). After imposing the definite duties in 2006, the imported quantities from both countries rose, although Vietnam experienced a larger increase (see Figure 5.1 & 5.2, 'd'). The imposing of duties in 2008 had only a declining effect on the imported quantity from China (see Figure 5.1, 'f'), but not on the quantity imported from Vietnam (see Figure 5.2, 'f').

Figure 5.1 Quantity imported to the EU from China, 2005-2008



Source: Eurostat

Figure 5.2 Quantity imported to the EU from Vietnam, 2005-2008



Source: Eurostat

Table 5.1 The effects on quantities imported (%)

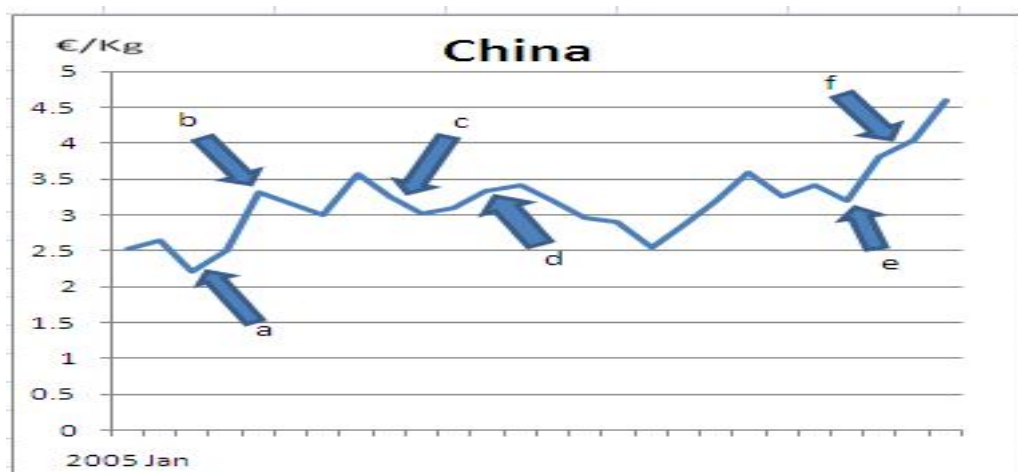
	June 2005	July 2005	April 2006	Sept 2006	July 2008	Oct 2008
China	- 8	15	18	10	- 6	- 32
Vietnam	-2	5	-4	31	-18	2

Source: Own calculations

Price Effects

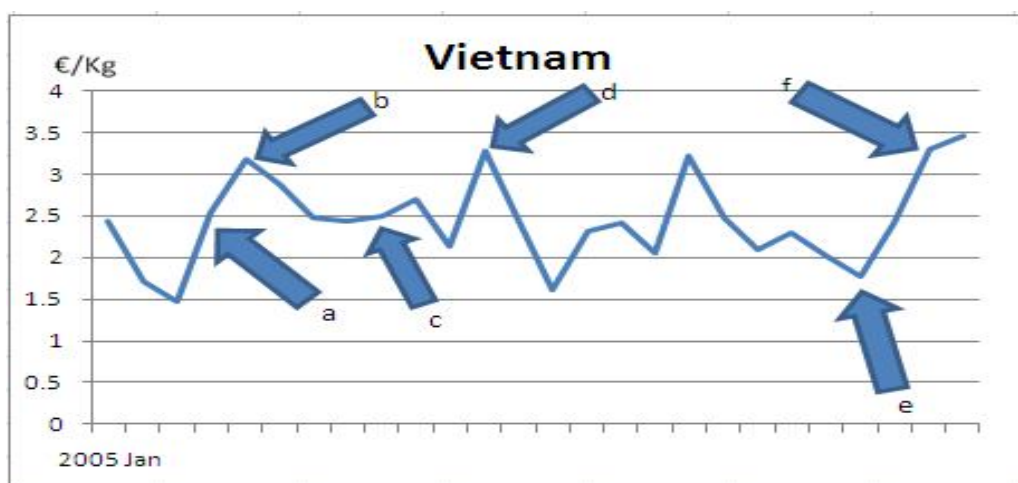
At the first stage, launching of the complaint, the price per kilo rose for the imported quantities from both countries (see Figure 5.3 & 5.4, 'a'). At the 'initiating the investigation' stage, the price per kilo for imported quantities from Vietnam declined (see Figure 5.4, 'b'), yet the price per kilo for Chinese imports fall (see Figure 5.3, 'b'). When the EU imposed the first provisional duty, Vietnam experienced a growth in the price (see Figure 5.4, 'c'), yet the price for Chinese imports fell (see Figure 5.3, 'c'). At the time of imposing the definite duties in 2006, the price per kilo for Vietnamese imports fell (see Figure 5.4, 'd'), whilst the price per kilo for quantities imported from China rose (see Figure 5.3, 'd'). At the stage of the request of review and imposition of the definite duties in 2008, the price per kilo for Chinese and Vietnamese imports rose (see Figure 5.3 & 5.4, 'e' & 'f').

Figure 5.3 Price per kilo on quantities imported to EU from China, 2005-2008



Source: Eurostat

Figure 5.4 Price per kilo on quantities imported to EU from Vietnam, 2005-2008



Source: Eurostat

Table 5.2 The effect on price per kg (%)

Price	June 2005	July 2005	April 2006	Sept 2006	July 2008	Oct 2008
China	25	2	-7	2	19	14
Vietnam	14	-5	8	-25	36	19

Source: Own calculations

Interpreting the results

The quantity from both countries fell at the stage of launching the complaint and request of review. From a trade economics point of view, this could be an interesting phenomenon. In the short term, duties would not be necessary to influence trade patterns, lodging a complaint is enough. This could also be interesting because the outcome of a complaint or a review is uncertain and may not result in duties. Because of the high probability of an investigation resulting in actual duties being enforced (65%)¹⁵ merely instigating the investigation is enough for many exporters to take an evasive strategy. At the time of the investigation beginning, quantities from both countries rose. Based on this fluctuation, it is suggested that export strategies, in anticipation of forthcoming trade barriers, may include increasing export levels in an effort to avoid these barriers prior to their actual initiation. The size of the changes are not large enough to consider significant, and thus are regarded as inconclusive (see Table 5.1).

The anti-dumping measures imposed in 2006 did not appear to limit import quantities from any of the countries. China experienced a significant increase in quantity imported at the imposition of provisional and definite duties (see Table 5.1). After the imposition of the definite duties Vietnam also experienced a notable change as imports rose by 31%. One possible explanation to the unexpected increase in quantity at this point can be that the size of the duties were not as big as expected and therefore did not have an immediately declining effect. It can also be evidence that the time periods for implementation are longer. At the time of the imposition of definite duties in 2008, the quantities fell for China but rose for Vietnam. China experienced a fall of 32%, which appears to be significantly related to the duties.

The results indicates that the imposition of definite duties in 2006 did not have a declining effect as expected, but the definite duties in 2008 had a significant negative effect on Chinese imports. The overall prices for Chinese imports increased as is to be expected from a country subjected to anti-dumping measures (see Table 5.2).

¹⁵ <http://www.wto.org>

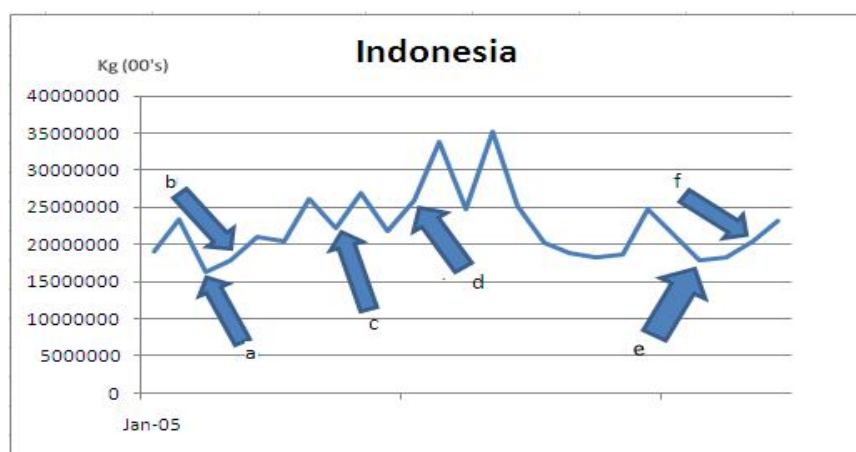
5.2.2 Effects on third countries

During the stages where the duties are imposed, diversion towards a third country is expected. In these stages, India, Indonesia and Brazil are third countries with shoe imports to the EU. Trade diversion increases the quantities imported and lowers the price for these imports due to the larger supply on the market. At the stages in the anti-dumping process not including imposition, the expected effects are to increase quantities imported and lower prices. This expectation is based on the assumption that the potential threat of imposing duties will shift the origin of the products and cause trade diversion.

Quantity Effects

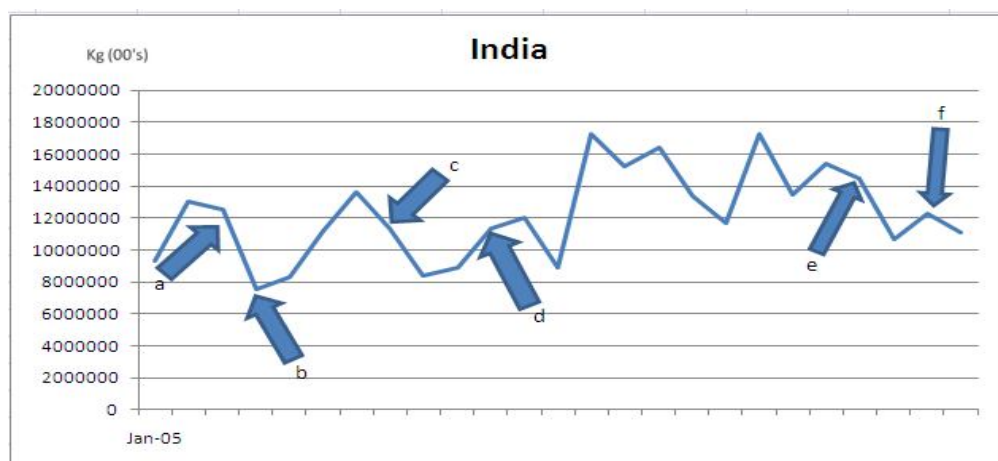
When the anti-dumping complaint was launched the quantity imported from Indonesia rose (see Figure 5.5, 'a'), whereas the opposite was the case for India (see Figure 5.6, 'a'). The quantity remained stable for Brazil (see Figure 5.7, 'a'). At the time of initiating the investigation, the quantities imported from the three countries rose (see Figure 5.5, 5.6 & 5.7, 'b'). The imposing of provisional duties had a positive impact on import quantities from both Indonesia and Brazil (see Figure 5.5 & 5.7, 'c'), but did not affect India in this manner (see Figure 5.6, 'c'). The imposing of definite duties in 2006 had a positive impact on the quantities imported from Indonesia and India (see Figure 5.5 & 5.6, 'd'), but not on quantity imported from Brazil (see Figure 5.7, 'd'). The request for review had positive effects only on quantity imported from Indonesia (see Figure 5.5, 'e'). The imposing of the definite duties in 2008 increased only the volume imported from Indonesia (see Figure 5.5, 'f').

Figure 5.5 Quantity imported to the EU from Indonesia, 2005-2008



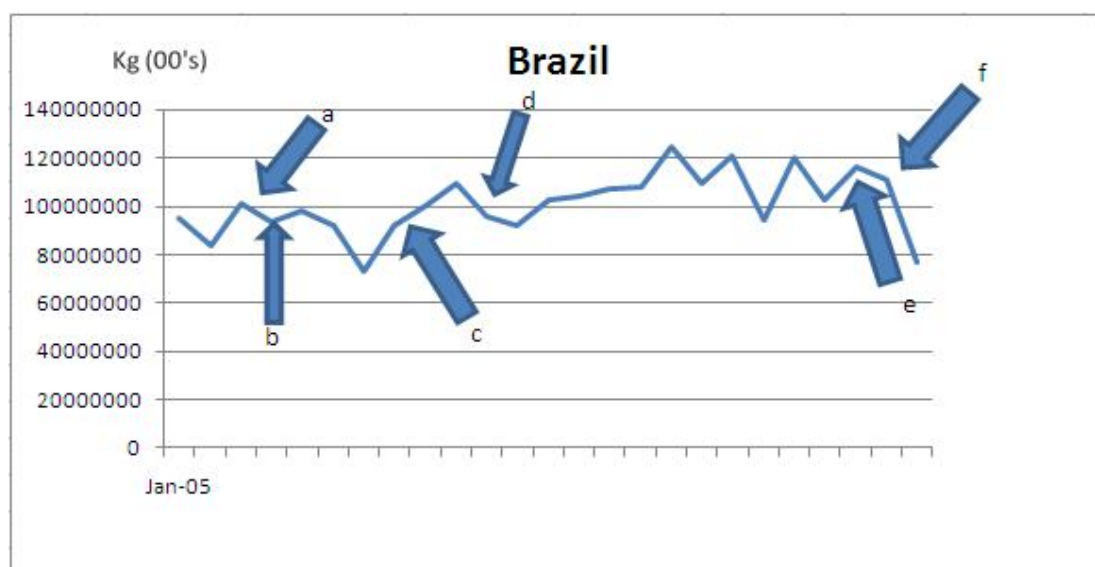
Source: Eurostat

Figure 5.6 Quantity imported to the EU from India, 2005-2008



Source: Eurostat

Figure 5.7 Quantity imported to the EU from Brazil, 2005-2008



Source: Eurostat

Table 5.3 The effects on quantity per kg (%)

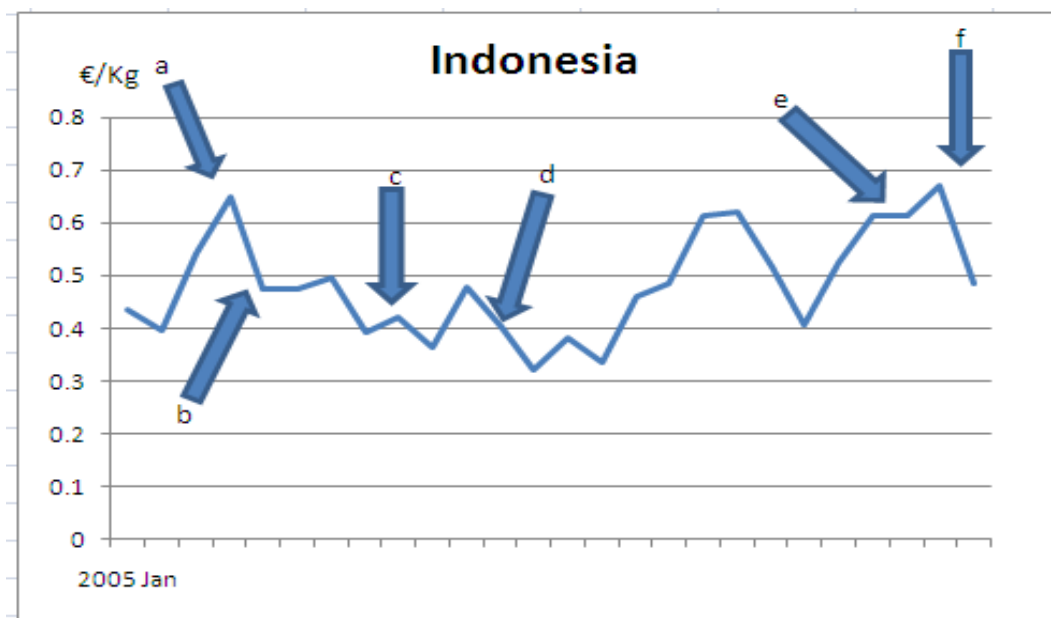
Price	June 2005	July 2005	April 2006	Sept 2006	July 2008	Oct 2008
Brazil	0	4	9	-4	-6	-32
India	-45	9	-26	6	-26	-10
Indonesia	45	17	21	30	2	14

Source: Own calculations

Price Effects

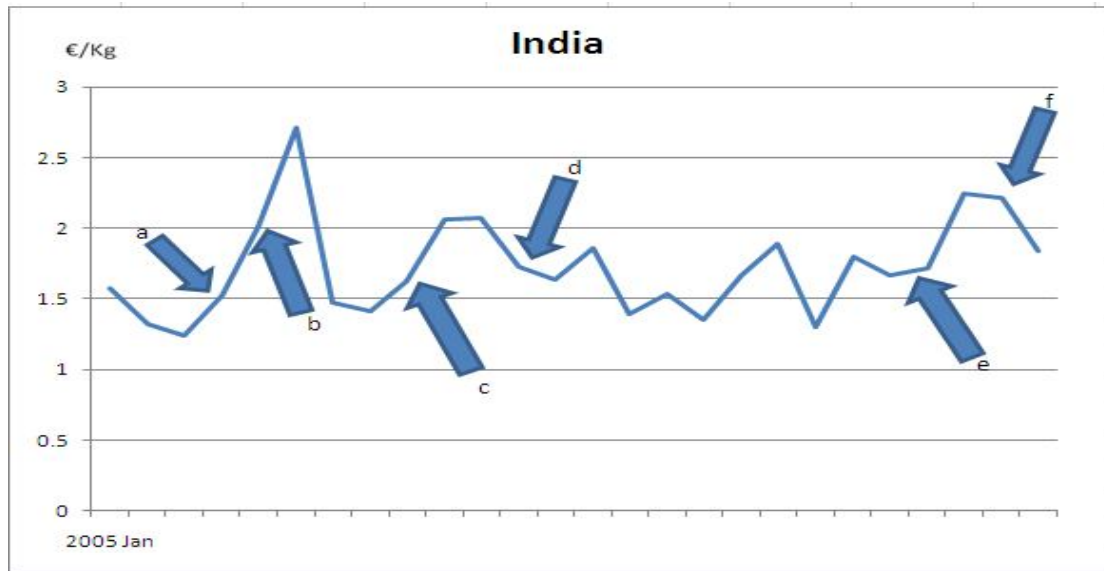
When the anti-dumping complaint was launched the price for imports from Indonesia and Brazil fell (see Figure 5.8 & 5.10, 'a'), whereas the price rose for Indian imports (see Figure 5.9, 'a'). At the time of initiating the investigation the price per kilo for all three countries rose (see Figure 5.8, 5.9 & 5.10, 'b'). With the imposing of duties, provisional as well as definite, there was a negative effect on the price per kilo on the quantity imported from Indonesia (see Figure 5.8, 'c', 'd' & 'f'). The definite duties in 2006 had a negative impact on the pricing of Brazilian imports, whereas the imposing of duties in 2008 had a positive impact on the imports from Brazil (see Figure 5.10, 'd' & 'f'). The imposing of duties had a negative impact on the price per kilo for all India exports, with the exception of provisional duties in 2006 (see Figure 5.9, 'c', 'd' & 'f').

Figure 5.8 Price per kilo on quantities imported to EU from Indonesia, 2005-2008



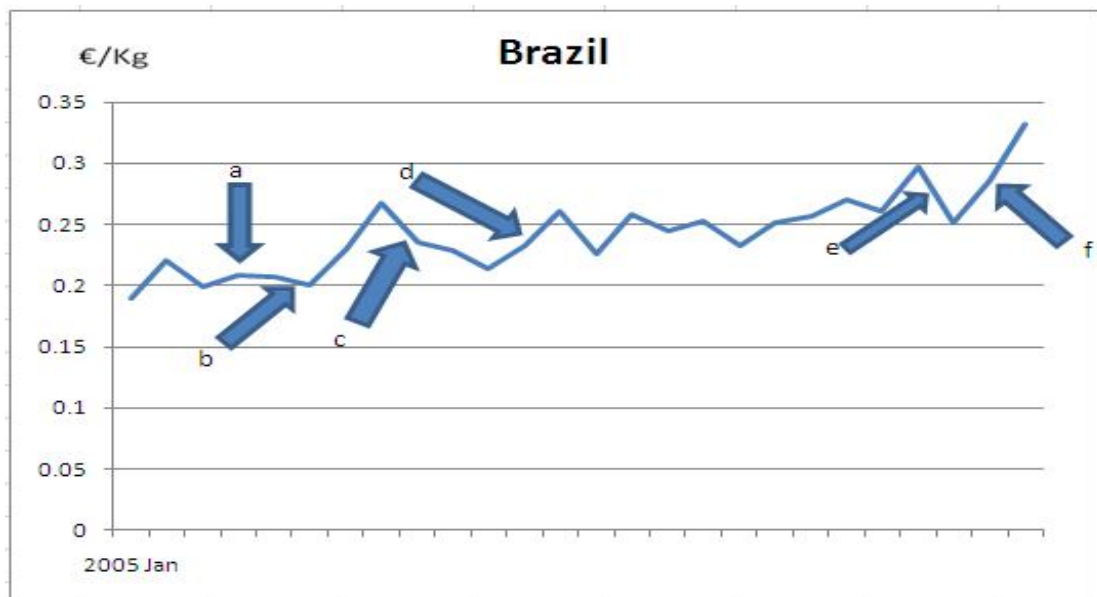
Source: Eurostat

Figure 5.9 Price per kilo on quantities imported to EU from India, 2005-2008



Source: Eurostat

Figure 5.10 Price per kilo on quantities imported to EU from Brazil, 2005-2008



Source: Eurostat