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by Willemien Viljoen

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## Trade remedies and safeguards in BRICS countries

*by Willemien Viljoen*

### Key point summary

Trade remedies are legal instruments countries use to protect their domestic industries against foreign imports. Traditionally, trade remedies consist of anti-dumping measures, countervailing duties and safeguards. Over the last decades there has been a significant change in the countries that implement and are affected by anti-dumping measures, countervailing duties and safeguards. Since the launch of the Uruguay Round of Multilateral Trade Negotiations there has been a significant change in the number and variety of countries using trade remedies and safeguards. Prior to the Uruguay Round the primary users of these instruments were developed countries. However, the composition has changed dramatically over the last decades. Since 1995 developing countries have become the main users of both anti-dumping measures and safeguards, while developed countries have always been the main users of countervailing duties. It also seems that developing country exports have always been the main target of anti-dumping and countervailing investigations by all other World Trade Organisation (WTO) member countries.

The BRICS countries (Brazil, Russia, India, China and South Africa) are some of the most prominent users of trade remedies and safeguards. Out of all the developing countries these are also the economies mostly affected by anti-dumping measures, countervailing duties and safeguards, especially exports from China. The statistical databases of the WTO on anti-dumping measures, countervailing duties and safeguards show the prominent role BRICS countries play in the utilisation of multilateral trade remedies and safeguards:

- Between 1995 and June 2012 China was affected by 24% of all anti-dumping measures implemented by other WTO members – the most measures implemented on the exports of a WTO member over the time period.
- India not only implemented the most anti-dumping measures of all WTO members between 1995 and June 2012, but also the greatest number of safeguards between 1996 and April 2012.

- 47% of all countervailing measures implemented after 1995 were on exports from BRICS countries, mostly China and India.

## 1. Introduction

Provision is made for the implementation of trade remedies and safeguards in the General Agreement on Tariffs and Trade (GATT) 1994 and various WTO agreements on the multilateral level and in regional agreements on the bilateral level. The aim of trade remedies is to increase the duty on a specific import product and to make the domestic market less attractive for foreign imports. These measures provide governments with the necessary flexibility to temporarily rescind from the commitments made under a liberal trade policy. Trade remedies traditionally consist of safeguards, anti-dumping duties and countervailing measures. Safeguard mechanisms provide temporary relief from import surges; anti-dumping measures counteract unfairly low prices on import products; and countervailing duties (CVD) counteract subsidies. The purpose of anti-dumping and countervailing measures is to address unfair imports into a domestic market from a specific importing country, while safeguards are implemented when a surge in imports, under fair trade conditions, causes harm to the domestic industry of the like product.

Brazil, Russia, India, China and South Africa are seen as some of the fastest growing economies in the world. The implementation of trade remedies and safeguards on the exports of these countries can have a significant effect on these countries' ability to penetrate and gain market share in certain foreign markets. However, the use of anti-dumping measures, countervailing duties and safeguards by the BRICS countries can also have a significant impact on the ability of foreign producers to gain access into these growing markets.

The aim of this paper is to look at the use of multilateral trade remedies and safeguards with Brazil, Russia, India, China and South Africa as either exporting or reporting WTO member countries in order to establish their role and importance in the utilisation of these measures. In order to attain this goal the paper briefly provides an overview of anti-dumping measures, countervailing duties and safeguards as legal instruments to protect domestic industries against foreign imports, followed by an analysis of the change in dynamics of developing versus developed countries' utilisation of these instruments since the Uruguay Round of Multilateral Trade Negotiations. The focus of the paper then shifts to a broad analysis of anti-dumping measures, countervailing duties and safeguards with the BRICS country grouping as implementing and exporting countries. The final section of the paper

provides a comprehensive overview of the domestic laws, regulations and rules applicable to trade remedies and safeguards in each BRICS country and a statistical analysis of anti-dumping measures, countervailing duties and safeguards on the multilateral level with Brazil, Russia, India, China and South Africa as reporting and exporting countries.

## **2. Background: Anti-dumping measures, countervailing duties and safeguards**

Trade remedies are legal instruments which can be used by countries to protect their domestic industries against foreign imports. These measures can be taken when countries determine that foreign producers are resorting to certain unfair trade practices. Traditionally, trade remedies include anti-dumping measures, countervailing duties and safeguards. However, strictly speaking, safeguards are not trade remedies because these measures are not implemented to remedy unfair trade, but utilised when there is a surge of imports, under fair trade conditions, which caused harm to the domestic industry.

Anti-dumping measures and countervailing duties counteract unfairly low prices charged in the importing market due to dumping by foreign firms or subsidisation by foreign governments. The aim of these measures is to limit either the size of the dumping or the subsidisation to level the playing field between domestic and foreign producers in the same market. Anti-dumping and countervailing measures allow countries to take action against unfair competition to offset the unfair and anti-competitive practices of dumping and subsidisation.

Anti-dumping measures and countervailing duties are unilateral remedies which can be implemented subsequent to an investigation and determination in accordance with the applicable multilateral agreements of the WTO and the national laws and regulations of the implementing country. On the multilateral level, the utilisation of anti-dumping measures are governed by Article VI of GATT 1994 and the Agreement on Implementation of Article VI of GATT 1994 (the Anti-Dumping Agreement (ADA)), while the use of countervailing duties also falls under the ambit of Article VI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Although dumping is not prohibited by WTO law, GATT 1994 and WTO law allow for remedial action to be taken against these measures when it causes or threatens to cause material injury to the domestic industry which produces products similar to those being imported.

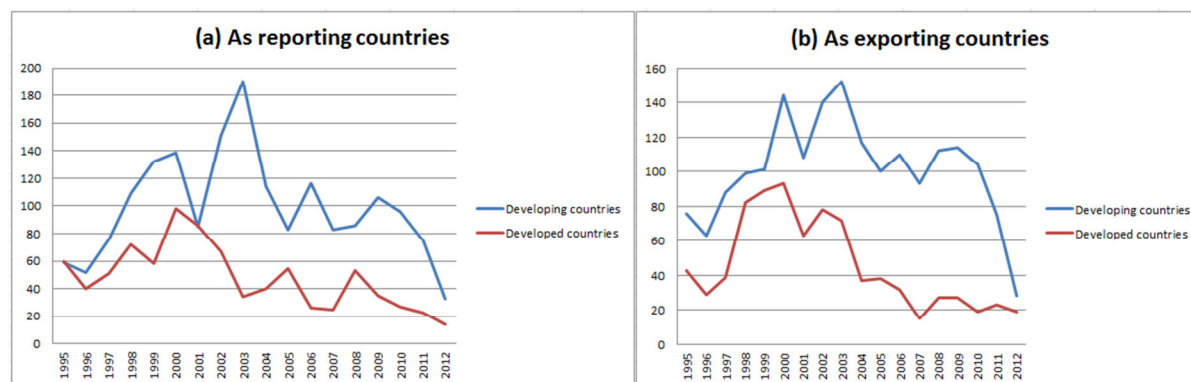
Countervailing measures can be implemented when subsidised imports give foreign competitors an unfair competitive advantage over domestic producers, often undercutting domestic prices. Through the implementation of countervailing duties, the duty applicable to the subsidised imports is increased, restoring any imbalance caused by the subsidisation.

Safeguards protect the domestic industry of the importing country against a significant increase in imports under fair trade conditions. These measures act as a 'safety valve' by providing temporary relief to a domestic industry which has incurred serious injury. The implementation of safeguards is governed by Article XIX of GATT 1994 and the WTO Agreement on Safeguards and provides a mechanism to temporarily reimpose protection when liberalisation imposes unexpected political burdens on the importing nation.

### **3. Use of Anti-dumping and trade remedies by developing countries**

Over the last decades there has been a significant change in the countries that implement and are affected by trade remedies and safeguards. Since the Uruguay Round of Multilateral Trade Negotiations was launched and the WTO Agreements on anti-dumping measures, countervailing duties and safeguards entered into force there has been a significant change in the number and variety of countries using these measures. Prior to the Uruguay Round the primary users of trade remedies and safeguards were developed countries, including Australia, the European Union (EU) and the United States (US). The WTO statistical databases on implemented anti-dumping measures, countervailing duties and safeguards give an indication of how the composition of countries utilising these measures have changed over the last decades. The databases on anti-dumping measures and countervailing duties provide data from 1995 until June 2012 according to affected and implementing countries. The data on safeguards range from 1996 to April 2012. The data was then divided into developing and developed countries according to the country classifications utilised by the United Nations (UN). The figure below depicts two graphs. The first indicates the number of anti-dumping measures which have been implemented by developing and developed countries over the time period. The second shows the number of anti-dumping measures which have been implemented against the imports of developing versus developed countries.

**Figure 1: Anti-dumping measures by exporting and reporting countries**

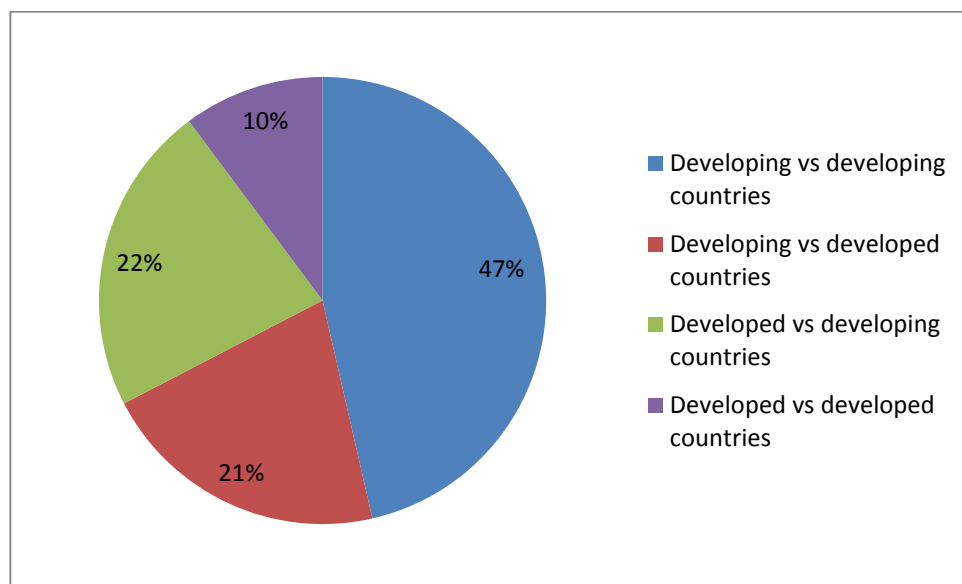


Source: WTO Statistics on anti-dumping measures (2013a)

Figure 1(a) shows that there has been a shift from the traditional users of anti-dumping measures. Prior to 1995 developed countries were the main users of these measures. Between 1990 and 1999 50% of the anti-dumping investigation was initiated by the EU, Australia, the US and Canada. Developing countries accounted for 39% of anti-dumping investigations over the same time period. However, there has been a significant increase in the amount of anti-dumping duties implemented by developing countries since 1995. Between 1995 and June 2012 developing countries implemented 67% of all anti-dumping measures, while developed countries accounted for only 33% of all final anti-dumping duties. India, Argentina and China are the three developing countries which have most utilised anti-dumping measures, accounting for 32% of all anti-dumping duties implemented between 1995 and June 2012.

Figure 1(b) shows how developed and developing countries have been affected by the implementation of anti-dumping measures. It seems that the imports of developing countries have always been the target of anti-dumping investigations. Between 1990 and 1999 anti-dumping investigations targeted the exports of developed countries in 35% of all cases, while 66% of investigations were against the exports from developing countries. Between 1995 and June 2012 anti-dumping measures were implemented on the exports of developing countries in 69% of all cases, while 31% of all measures were implemented on the exports of developed countries. Exports from China have mainly been targeted by anti-dumping measures, accounting for 24% of duties imposed over the time period.

**Figure 2: Anti-dumping measures: developing versus developed countries**



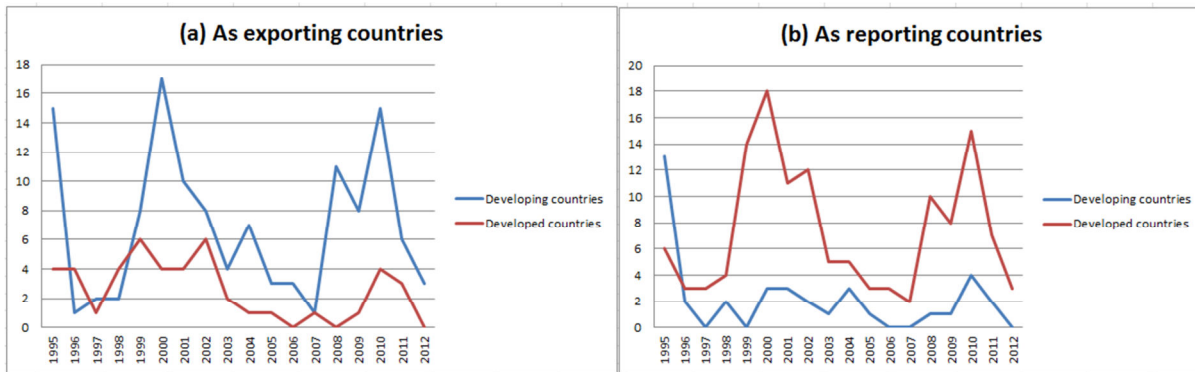
Source: WTO Statistics on anti-dumping measures (2013a)

Although developing country exports have always been a target for anti-dumping measures, traditionally these measures were imposed by developed countries. This dynamic has also changed drastically over the last decades. Figure 2 shows that there has been a shift from developed countries targeting the exports of developing countries to developing countries targeting the exports of other developing countries. Out of all the measures implemented between 1995 and June 2012 47% of these measures were implemented by developing countries on the exports of other developing countries, while in 21% of all cases developing countries targeted the exports of developed countries. Developing country exports are still the main target for anti-dumping measures implemented by developed countries with developed countries targeting exports of other developed countries only in 10% of all anti-dumping measures implemented over the time period.

Over the last decades there has also been a change in the use of countervailing measures. Although developed countries have remained the main users of countervailing measures, the most significant change over the last decades has been the fact the vast increase in countervailing duties, implemented by developed countries against the exports of developing countries. Figure 3 below shows developing versus developed country exports affected by countervailing measures between 1995 and June 2012 and countervailing duties implemented by developing versus developed countries over the time period.



**Figure 3: Countervailing measures by exporting and reporting countries**

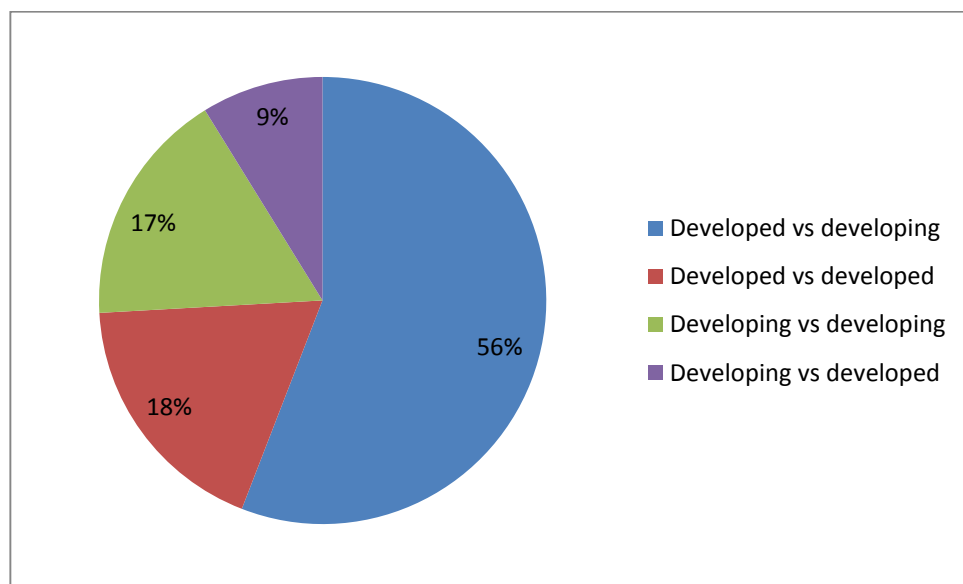


Source: WTO Statistics on countervailing measures (2013b)

Figure 3 (a) shows that since 1999 developing country exports have been the exports mostly affected by countervailing duties. Prior to 1999 the majority of countervailing duties were implemented on the exports of developed countries. Between 1995 and June 2012 developing country exports were affected by 73% of all countervailing duties, while only 27% of countervailing measures targeted the exports of developed countries. The developing countries mostly affected by these measures over the time period were China and India.

Figure 3 (b) shows that developed countries have always been the main users of countervailing duties. Between 1995 and June 2012 developed countries implemented 78% of the total countervailing measures implemented by all WTO member countries, while only 22% of these measures were implemented by developing countries. The US, EU and Canada were the main users of countervailing duties over the time period accounting for 34%, 18% and 11%, respectively of all measures between 1995 and June 2012.

**Figure 4: Countervailing measures: developing versus developed countries**

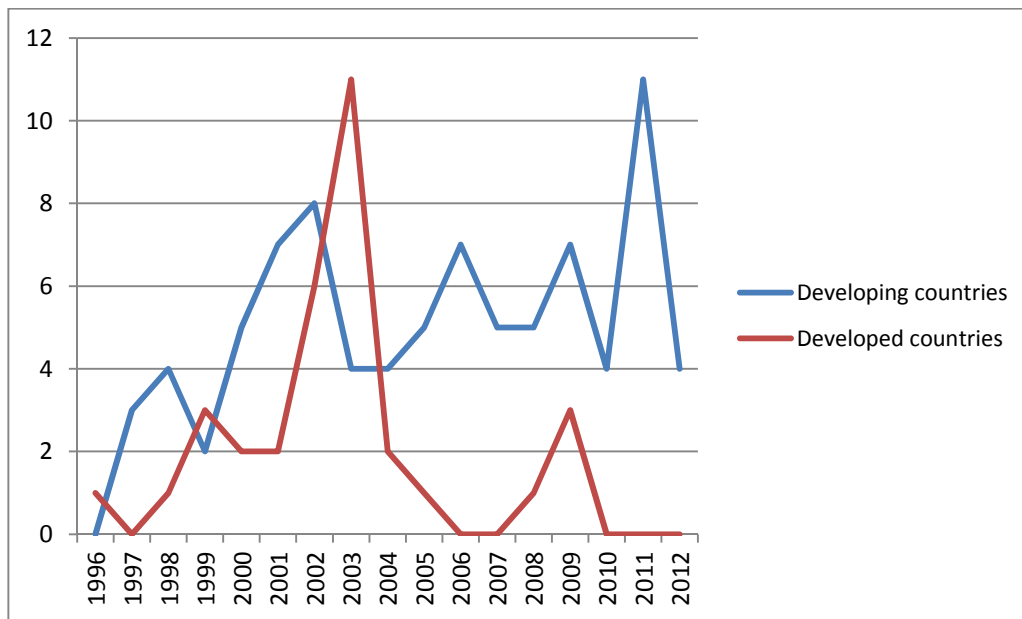


Source: WTO Statistics on countervailing measures (2013b)

The dynamics regarding developing versus developed countries' use of countervailing measures are shown in Figure 4. Most of the countervailing measures implemented over the time period have been by developed countries against the exports of developing countries followed by developed countries implementing measures against the exports of other developed countries. Developing countries have mostly also implemented countervailing duties against the exports of other developing countries.

Figure 5 shows the use of safeguard measures by developing and developed countries between 1996 and April 2012. The graph shows that developing countries were the main users of safeguards over the time period, except for one year between 2003 and 2004. Between 1996 and April 2012 developing countries implemented 78% of the total safeguard measures by all WTO member countries, while developed countries only implemented 28% of all measures. The developing country which implemented the most safeguards was India, while the US was the developed country which used the most safeguard measures over the time period.

**Figure 5: Developed versus developing countries implementing safeguards**



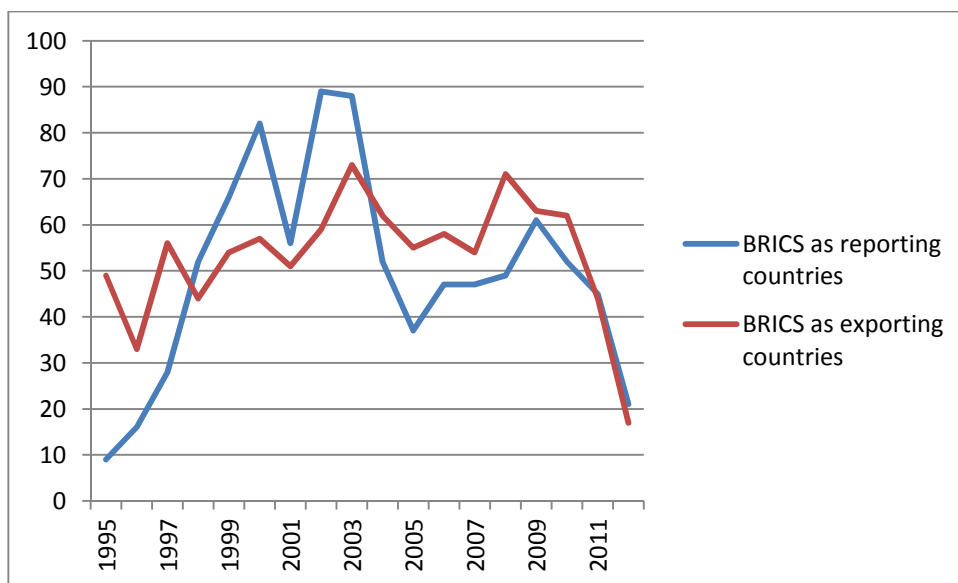
Source: WTO Statistics on safeguards measures (2013c)

#### 4. Trade remedies and safeguards in BRICS countries

The BRICS countries are some of the most prominent users of trade remedies and safeguards. Out of all the developing countries these are also the economies mostly affected by anti-dumping measures, countervailing duties and safeguards, especially China. The WTO databases on anti-dumping, countervailing and safeguards depicts the role Brazil, India, China and South Africa played in the use of these measures between 1995 and June 2012 (1996 and April 2012 for safeguards). The databases have limited to no data available on measures implemented by Russia and affecting Russian exports. The WTO database on anti-dumping measures by exporting countries does provide data on how Russia has been affected by anti-dumping measures implemented by other WTO member countries. However, the databases contain no information regarding anti-dumping measures implemented by Russia and countervailing measures and safeguards with Russia as exporting and reporting country. Due to the lack of data on Russia in the WTO databases the data below only includes Russia in the BRICS countries as exporting countries.

Figure 6 shows the number of anti-dumping measures implemented by all BRICS countries and the anti-dumping measures affecting BRICS exports between 1995 and June 2012. Over the time period BRICS countries were affected by 36% of all anti-dumping measures implemented by other WTO member countries and implemented 34% of all measures. The figure shows that since 2008 there has been a significant decrease in the number of measures implemented against the BRICS countries, while there has also been a significant decrease in the number of measures implemented by the BRICS countries on the exports of other WTO members since 2009. Out of all the BRICS countries India (18%) implemented the majority of the anti-dumping measures, followed by China (6%) and Brazil and South Africa (5% each). The BRICS countries affected by anti-dumping measures implemented on their exports are China (24%), Russia and India (4% each), Brazil (3%) and South Africa (2%).

**Figure 6: BRICS anti-dumping measures as exporting and reporting countries: 1995 - 2012**

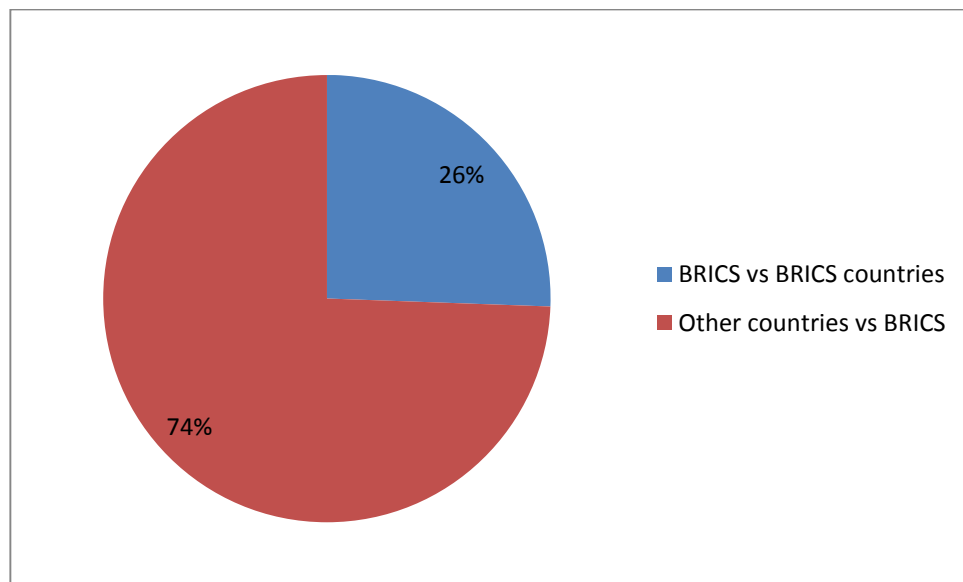


Source: WTO Statistics on anti-dumping measures (2013a)

Figure 7 below shows the number of anti-dumping measures affecting BRICS countries which have been implemented by other BRICS countries and non-BRICS countries. Between 1995 and June 2012 a total number of 962 anti-dumping measures were implemented on BRICS export products. Of these measures 26% were implemented by BRICS countries on the exports of other BRICS countries, while 74% were implemented by non-BRICS countries. The majority of the anti-dumping measures implemented by BRICS countries on BRICS exports were implemented by India and Brazil on exports

from China. Over the time period China implemented only 9 measures against Russia and 4 against India, while South Africa implemented 18 measures against China, 12 against India, 4 against Brazil and 2 against Russia.

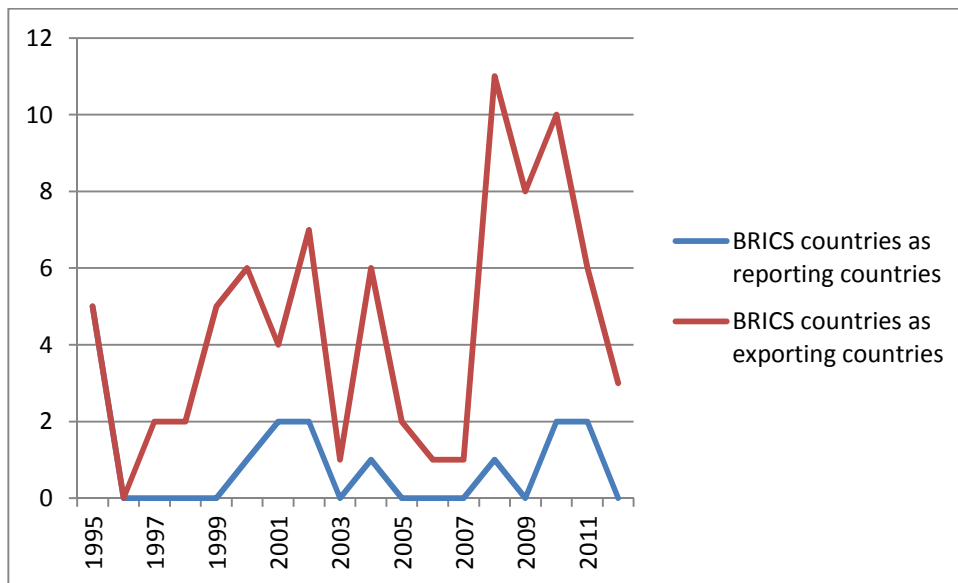
**Figure 7: Anti-dumping measures: BRICS versus other countries**



Source: WTO Statistics on anti-dumping measures (2013a)

Compared to the data on anti-dumping measures, the data on countervailing measures reveals a similar pattern: between 1995 and June 2012 BRICS countries were not major users of countervailing measures, but were greatly affected by these measures implemented on their exports by non-BRICS countries. Over the time period exports from BRICS countries were affected by 47% of all countervailing measures implemented by WTO member countries, while only 9% of the total number of measures was implemented. The BRICS countries mostly affected by these measures were China and India, while Brazil and South Africa were the countries which initiated the most countervailing measures in the BRICS country grouping.

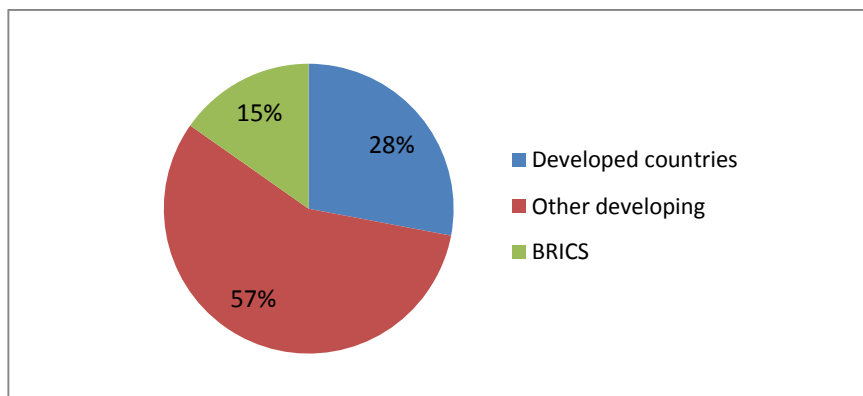
**Figure 8: BRICS countervailing measures as exporting and reporting countries: 1995 - 2012**



Source: WTO Statistics on countervailing measures (2013b)

The majority of the BRICS countries were not major users of safeguard measures between 1996 and April 2012, accounting for 18 safeguards over the time period. However, India is an exception accounting for 14 of the total 18 BRICS safeguards. This is not just the most safeguards implemented by all BRICS countries, but also the highest number of safeguards implemented by all WTO member countries between 1996 and April 2012. Figure 9 below shows the percentage of measures implemented by developed countries, other developing countries and BRICS countries. Out of all three these groupings, other developing countries, mostly Indonesia and Turkey, implemented the majority of the safeguards measures followed by developed countries, generally the US and lastly BRICS countries.

**Figure 9: BRICS safeguard measures: 1996-2012**



Source: WTO Statistics on safeguards measures (2013c)

## 5. Trade remedies and safeguards by individual BRICS countries

### 5.1 Brazil

An increase in the use of trade defence measures was shown for Brazil after the Uruguay Round of Multilateral negotiations. This can be attributed to rapid tariff liberalisation, the growth in imports of finished products after the Uruguay Round, domestic lobbying for trade protection due to an increase of foreign imports, and the democratisation of Brazil which has led to the increased organisation of pressure groups.

Through the Presidential Decree 1355 of December 1994 the WTO agreements on trade remedies were incorporated into the Brazilian legal system. Federal Act no. 9019 of March 1995 established the competent authorities responsible for the investigation of allegations of dumping and subsidisation and the administrative procedures applicable to such investigations. The Secretary of Foreign Trade is the authority which must decide whether an anti-dumping investigation will be initiated and is responsible for the review process. The Department of Trade Defence is responsible for conducting the dumping investigation after which recommendations are made to the secretary to either terminate the investigation or to the Chamber of Foreign Trade to impose anti-dumping duties. Anti-dumping investigations are undertaken under two working groups, depending on the product under investigation. One working group is focused on investigations pertaining to agricultural and husbandry products, while the other focuses on intermediary products.

The table below shows the domestic laws, regulations and rules applicable to the implementation of anti-dumping measures, countervailing duties and safeguards in Brazil.

**Table 1: Domestic laws, regulations and rules applicable in Brazil**

Title	Date	Description
Decree 1355	1994	Incorporating the Uruguay Round of Agreements regarding dumping, subsidies and countervailing measures and safeguards into the domestic law of Brazil
Decree 1602	1995	Regulates the administrative process regarding anti-dumping duties
Decree 1751	1995	Regulates the administrative process regarding subsidies and countervailing measures
Decree 1488	1995	Regulates the administrative process regarding safeguards
Law 9019/95	1995	Provides for the implementation of anti-dumping measures and countervailing duties
Decree 1936	1996	Amendment to Decree 1488 and establishes that safeguard will be applied as an increase in import tax
Circular 20/96	1996	Complaint requirements for an countervailing investigation
SECEX Circular 19	1996	Complaint requirements for a safeguard investigation
CAMEX Resolution 9	2001	Establishes the Technical Group on Commercial Defence
SECEX Circular 59	2001	Establishes the rules on confidential information, deadlines and non-market economies in trade remedy investigations
Directive 46	2011	Establishes some additional procedural formalities regarding anti-dumping investigations
Resolution 13	To be implemented in 2013	Establishes the Technical Group for Public Interest Assessment to determine the suspension or modification of anti-dumping measures, compensatory measures and waivers for reasons of public interest

Source: WTO documents on anti-dumping, countervailing and safeguard notifications (2013d)

### 5.1.1 Anti-dumping measures and countervailing duties

In the Brazilian system of anti-dumping the preliminary examination of an application takes place within 20 days of the submission of an application. Within 30 days from the communication informing an applicant of the preliminary examination an investigation is initiated, while a preliminary determination is given within a minimum of 60 days from the initiation. A final determination can be expected within a year after the investigation has been initiated.



The Market Economy Status (MES) status of China and the usage of public interest factors, the lesser duty rule and price undertakings in Brazil are the following:

- The Chamber of Foreign Trade can take into account public interest factors when an anti-dumping duty has been imposed or a price undertaking negotiated. In exceptional circumstances, due to the national interest, the Chamber can decide to suspend an imposed anti-dumping measure, disapprove a negotiated price undertaking or apply a measure of a different amount than was recommended.
- In 2003 Brazil afforded MES to Russia and in November 2004 China, along with 20 other countries, was also granted MES. Prior to granting MES to China, the normal value of Chinese imports was determined by looking at a third country market economy. The normal value determinations Brazil used include the export price of imports from the US to Canada or from the US to Japan.
- Brazilian domestic legislation does not contain a mandatory lesser duty rule, but authorities take the view that prices of the domestic like product and foreign product must be taken into account. Thus, the Department of Foreign Trade may consider the prices which the domestic industry should have used in normal trade conditions. This price can also be lowered if the department is of the view that the dumping margin will provide excessive protection to the domestic industry.
- The domestic legislation of Brazil allows for the application of price undertakings when dumping takes place, instead of the imposition of anti-dumping duties. Price undertakings have been used in 10% of anti-dumping investigations and mainly when the exporting countries are Mercosur members (Argentina, Brazil, Uruguay and Paraguay) or associated members.

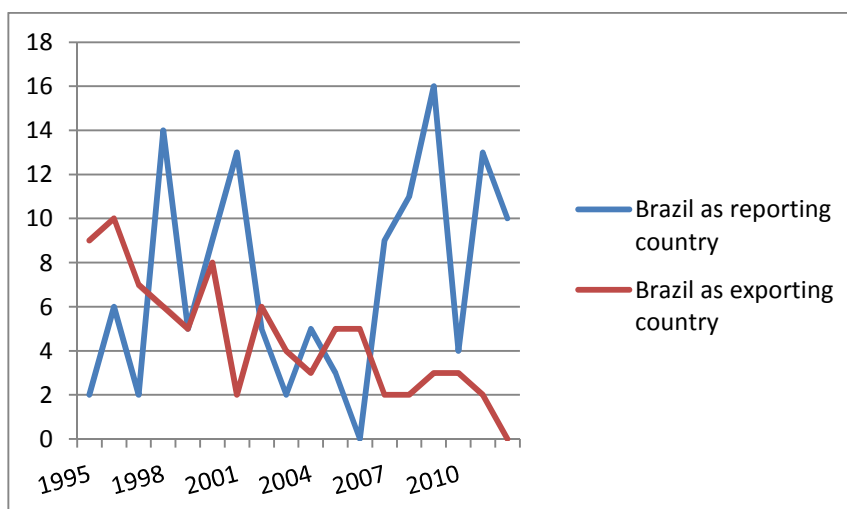
It does not seem that the use of trade defence measures by Brazil will be reduced any time soon. On the contrary, the Ministry of Development has issued a strategy to accelerate the pace of anti-dumping investigations to ten months and prioritises the use of specific duties rather than ad valorem duties as appropriate anti-dumping measures (Barral and Brogini 2005).

### 5.1.1.1 Anti-dumping measures

Although exports from Brazil were not greatly affected by anti-dumping measures between 1995 and June 2012, Brazil is one of the major users of anti-dumping measures. Over the time period Brazilian exports were affected by 3% of all anti-dumping measures implemented by WTO member countries and implemented a total of 129 anti-dumping measures (5% of total measures) on imports from other WTO countries. The WTO database indicates two distinct patterns in regard to final anti-dumping measures with Brazil as either the implementing or affected country. Figure 10 below shows these distinct patterns. Between 1995 and June 2012 there was a steady decline in the number of anti-dumping duties imposed on goods exported from Brazil. The highest amount of anti-dumping duties imposed on Brazilian exports was a total of 10 final duties in 1996. After 1996 there was a steady decline in anti-dumping investigations targeting the exports of Brazil with no measures in place in the first half of 2012.

The data on Brazil as a user of anti-dumping measures shows a completely different picture. From 1998 to 2006 there was an overall decline in the use of anti-dumping measures by Brazil, from 14 anti-dumping measures implemented in 1998 to no measures implemented in 2006. However, since 2006 there was a significant increase the number of anti-dumping measures Brazil implemented on the imports of other WTO countries, reaching the highest number of anti-dumping measures (16 measures) over the time period in 2009.

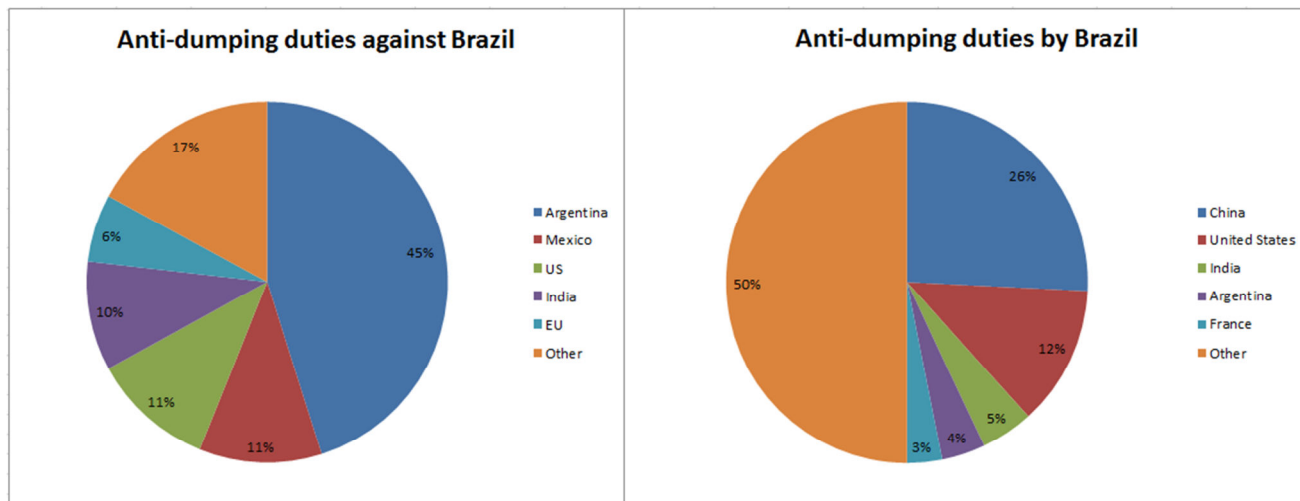
**Figure 10: Final anti-dumping duties with Brazil as reporting or exporting country:1995-2012**



Source: WTO Statistics on anti-dumping measures (2013a)

Figure 11 below shows those countries which have targeted the imports of Brazil in anti-dumping investigations and the countries against which Brazil has implemented anti-dumping measures.

**Figure 11: Anti-dumping measures by reporting and affected countries: 1995-2012**



Source: WTO Statistics on anti-dumping measures (2013a)

Brazilian exports have mostly been targeted by anti-dumping measures implemented by other developing countries. The countries which have implemented the majority of measures on Brazilian exports are Argentina (45% of total measures), Mexico (11%), the US (11%), India (10%), and the EU (6%). The Brazilian products which have mostly been affected by measures implemented by other WTO countries are base metals (44%), machinery (15%), plastic products (12%), paper products (5%) and textiles and clothing (5%).

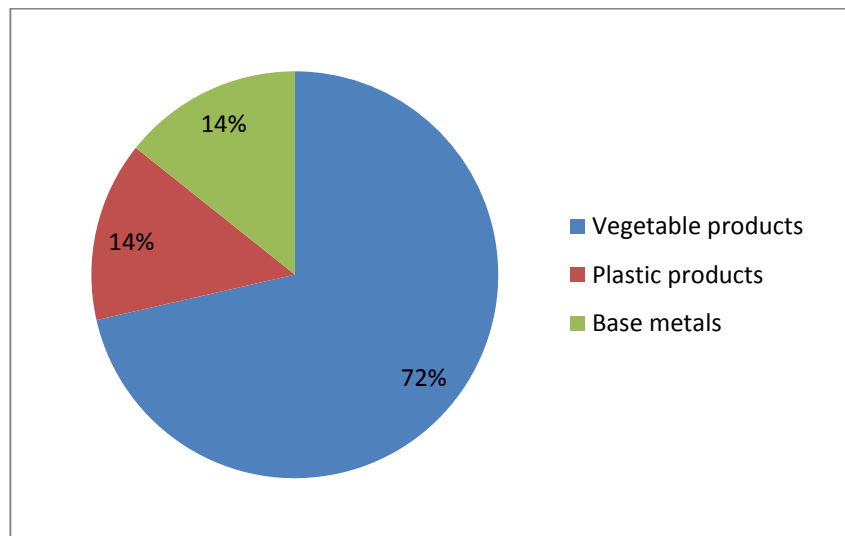
Brazil has mainly targeted the imports from other developing countries with anti-dumping investigations, implementing the majority of measures on imports from China (26%), US (12%), India (5%) and Argentina (4%) between 1995 and April 2012. These measures were mainly implemented on imports of base metals (19%), plastic products (17%), chemical products (16%), textiles and clothing (12%) and paper products (9%).

#### 5.1.1.2 Countervailing duties

Between 1995 and June 2012 Brazil implemented a total of seven countervailing measures against other WTO countries and was affected by eight countervailing duties against its exports over the time period. Brazil implemented countervailing duties in 1995 (five measures) and one measure each in 2004 and 2008. Figure 12 below shows the import products mainly affected by Brazilian

countervailing duties. The measures were mainly implemented on vegetable products (five measures), plastic products (one measure) and base metals (one measure) all imported from developing countries. Over the time period measures were implemented against imports from India (two measures) and one measure each against imports from the Ivory Coast, Indonesia, Malaysia, the Philippines and Sri Lanka.

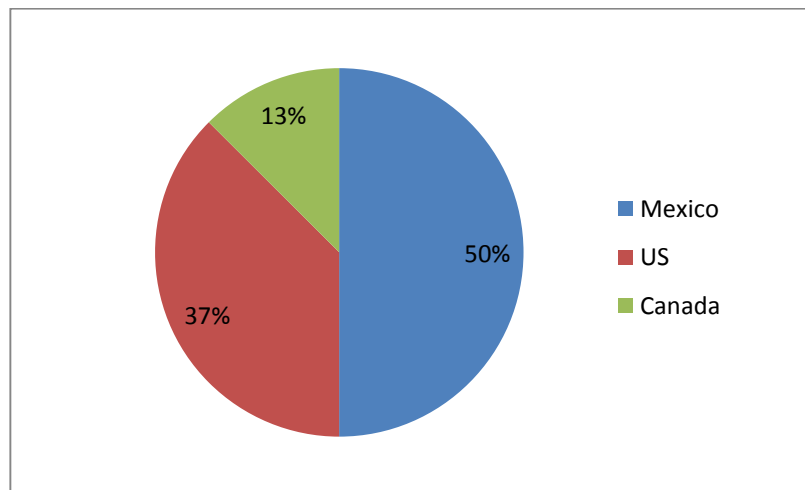
**Figure 12: Import products affected by Brazilian countervailing duties: 1995-2012**



Source: WTO Statistics on countervailing measures (2013b)

Although countervailing duties implemented by Brazil have only been against the imports of developing countries, there is an even split between developed and developing countries targeting Brazilian exports in countervailing investigations.

**Figure 13: Countries implementing countervailing duties against Brazilian exports: 1995-2012**



Source: WTO Statistics on countervailing measures (2013b)

Figure 13 shows that out of the eight countervailing duties implemented on Brazilian exports Mexico implemented 50%, the US 37% and Canada 13% of all measures between 1995 and June 2012. These measures were all implemented on Brazilian exports of base metals in 1995 (four measures) and two measures each in 2000 and 2002.

### 5.1.2 Safeguards

Brazil is not a great user of safeguard measures. Between 1996 and April 2012 a total number of 118 safeguards were implemented by all WTO member countries of which Brazil implemented only two measures, one in 1997 and one in 2002. These measures were implemented against imports of vegetable products and miscellaneous manufactured articles.

## 5.2 Russia

Russia together with Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan are members of the Eurasian Economic Community (EurAsEC) within which Russia, Belarus and Kazakhstan formed a customs union parallel with the EurAsEC in 2010. The relationship between the customs union and the EurAsEC can be described as a double-layer integration process. On the regional level the EurAsEC countries have created a regional trade agreement with its own institutions and legal framework where member countries committed to create a free trade area. Within the structure of the EurAsEC, Russia, Belarus and Kazakhstan committed to create a customs union and later a Common Economic Space (CES). The customs union makes use of the existing structures of the EurAsEC, but has also created some of its own bodies to exclusively cater for the needs of the customs union. The customs union is a single customs territory with a Common External Tariff (CET), a Common Customs Code, harmonised non-tariff regulations, common sanitary and phytosanitary requirements, common principles and rules on technical regulations and common trade remedies law regulating goods imported from third-country parties.

The body responsible for implementing anti-dumping measures, countervailing duties and safeguards in the Russian market is the designated body of the customs union. The legal basis for the implementation of trade remedies and safeguards is the Agreement on the Application of Safeguard, Anti-Dumping and Countervailing Measures with respect to Third Countries of 25 January 2008 (General Rules). The implementation of trade remedies and safeguards during the transition period is governed by the Agreement on the Application of Safeguard, Anti-dumping and Countervailing

Measures in Transitional Period of 19 November 2010 (Transitional Rules). These agreements stipulate that the Customs Union Commission will undertake the function of the customs union's common investigating authority and will be the body responsible for deciding whether or not to implement final duties. Although the power to conduct investigations have been transferred to the Commission, the investigative function of the Commission has been delegated to the existing investigating authorities of each customs union member country with the Commission only responsible for having the final decision on whether or not to impose a duty.

The table below shows the domestic and regional laws, regulations and rules applicable to the implementation of anti-dumping measures, countervailing duties and safeguards in the Russian markets against imports from non-customs union countries.

**Table 2: Domestic and regional laws, regulations and rules applicable in Russia**

Title	Date	Description
Agreement on the application of safeguards, anti-dumping and countervailing measures against third countries	2010	The substantive and procedural requirements for the implementation of anti-dumping measures, countervailing duties and safeguards on imports from third country parties
Agreement on the application of safeguard, anti-dumping and countervailing measures in transitional period	2010	Implementation of anti-dumping measures, countervailing duties and safeguards on third countries in the period of transition to a customs union
Customs Union Commission Decision No. 339	2010	Decision regarding the implementation of safeguards, anti-dumping measures and countervailing duties in the common customs territory of the customs union within EurAsEC
Protocol of 19 November 2010	2010	Protocol on granting authority to conduct an investigation and the data containing confidential information for the purpose of the investigation prior to implementing safeguards, anti-dumping measures and countervailing duties in relation to third countries
Decision of the Eurasian Economic Commission Board No. 1	2012	Decisions on the issues of safeguards, anti-dumping measures and countervailing duties in the common customs territory of the customs union
Provisions on confidential and proprietary information	2012	Provisions on the use and protection of confidential and proprietary information of limited distribution in the body responsible for investigations
Regulations and Draft Decisions of the Eurasian Economic Commission	2012	Regulation making and draft decisions of the EEC for safeguards, anti-dumping measures and countervailing duties
Board of Eurasian Economic Commission Decision No. 44	2012	Decisions regarding some issues important to the protection of the domestic market

Source: WTO documents on anti-dumping, countervailing and safeguard notifications (2013d)

The general rules have been in force since 1 July 2010 and are based on the provisions in the WTO agreements on anti-dumping, subsidies and countervailing measures and safeguards. The transitional rules came into force on 19 November 2010 and are applicable to specific areas in the general rules during the transition period: investigation procedures, expedited review of national measures, customs procedures, confidential information, and the transmission of the investigating functions to supra-national level. During the transitional phase any anti-dumping, countervailing or safeguard investigation is the duty of the national authority of each member country (Ministry of Industry and Trade in Russia, Ministry of Foreign Affairs in Belarus and Ministry of Economic Development and Trade in Kazakhstan) with the Customs Union Commission responsible for the imposition and cancellation of duties and the review of any remedial measures. When the customs union came into force there was a number of national trade remedy and safeguard duties in force which will remain in force for the transitional period, but are subject to expedited review. The expedited review can have two distinct outcomes. The first is that the review determines that the measure in place must lapse after the initial implementation period by which the national duty will stay in place until it lapses. The second is that the review finds that the measure must be extended beyond the initial implementation period which means that the national measure will remain in force and become a supra-national measure applicable to imports into the common customs territory. There is no time frame to determine the termination of the transitional period. However, the period will come to an end when all the relevant functions are transferred to the relevant supra-national body, all expedited reviews are completed and the methodological document regarding the procedures and calculations in respect of trade remedies in the supra-national body are completed.

### **5.2.1 Anti-dumping and countervailing measures in Russia**

The general provisions of the customs union regarding anti-dumping and countervailing measures are similar to the provisions in the WTO Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures. Seeing that Russia is a member of a customs union with a CET and common rules on trade remedies and anti-dumping and countervailing investigation, during and after the transitional period it must comply with the requirement of domestic industry in the context of a customs union. Implementing an anti-dumping measure or a countervailing duty must aim to remedy any harm caused or threatened to the market of the common customs territory which includes producers in Russia, Belarus and Kazakhstan.

The MES status of China and the usage of public interest factors, the lesser duty rule and price undertakings in Russia are the following:

- There is no obligation on the Customs Union Commission and the domestic investigating authorities to consider any public interest factors when considering the implementation of an anti-dumping duty. There is no mention of any public interest factors in the general or transition measures of the customs union.
- Russia has granted China MES.
- The provisions regarding a lesser duty are similar to those in the WTO Anti-dumping Agreement. The investigating authority can impose a duty less than the dumping margin if it will be sufficient to remedy any injury caused. However, no obligation is placed on the authority to implement a lesser duty where applicable.
- The general provisions of the customs union allow the Customs Union Commission to approve a price undertaking. However, even though a price undertaking has been accepted an anti-dumping investigation can be continued on the request of an exporter or by the decision of the investigating authority.

#### **5.2.1.1 Anti-dumping measures**

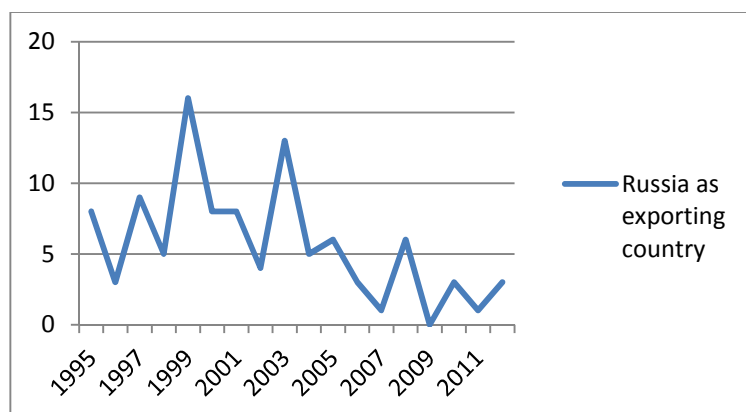
Due to Russia's accession to the WTO only in 2012 the information available on trade remedies and safeguards affecting and implemented by Russia in the WTO database is limited. The database has no information available on countervailing duties, safeguards and anti-dumping measures implemented by Russia. The WTO database has information only on those anti-dumping measures which have been implemented on Russian exports. In order to provide a more comprehensive picture on anti-dumping and safeguards in the Russian market, additional information was sourced from Global Trade Alert (2013). Although the data range is from 2009 until 2013 the focus is only on final duties imposed and not on investigations launched. Thus, the data on anti-dumping measures and safeguards implemented by Russia provides information on these measures between 2009 and the end of 2011.

Figure 14 below shows the anti-dumping measures implemented on Russian exports from 1995 and June 2012 (WTO database (2013)). Over the time period 4% of all anti-dumping duties targeted exports from Russia with a total number of 102 final duties imposed against Russian exports by all



WTO members. Between 1999 and 2009 there was a steady decline in the number of duties imposed on Russian export products, decreasing from 16 measures in 1999 to no measures in 2009. However, it seems that there is renewed interest in anti-dumping measures against Russian exports with three measures in place during only the first half of 2012.

**Figure 14: Anti-dumping measures against Russia: 1995-2012**



Source: WTO Statistics on anti-dumping measures (2013a)

There is more or less an even share between anti-dumping measures implemented by developed and developing countries. Between 1995 and 2012 55% of all anti-dumping measures against Russian exports were implemented by the EU (16%), India (15%), China (9%), Ukraine (8%) and the US (7%) and were mostly implemented on base metals (61%), chemical products (20%), plastic products (10%) and non-metallic minerals.

**Table 3: Anti-dumping measures implemented by Russia: 2009-2012**

Date	Product Sector	Affected country
2009	Base metals	China
		China
	Textiles and clothing	Ukraine
	Machinery	Ukraine
2010	Base metals	China
2011	Base metals	Ukraine
		Ukraine
	Machinery	China

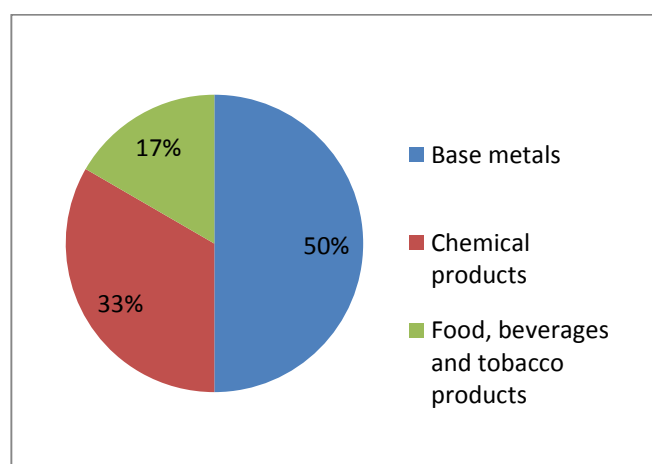
Source: Global Trade Alert (2013)

Table 3 shows the number of anti-dumping measures implemented by Russia according to the Global Trade Alert (2013). Between 2009 and 2011 Russia implemented eight anti-dumping measures against imports from Ukraine and China in three product sectors: base metals, machinery, and textiles and clothing.

### 5.2.2 Safeguards

Russia is an active user of safeguard measures. Between 2009 and 2011 Russia implemented six safeguard measures on base metals (50%), chemical products (33%) and food, beverages and tobacco products (17%) (Figure 15).

**Figure 15: Import products affected by Russian safeguards: 2009-2012**



Source: Global Trade Alert (2013)

Although six measures implemented over a three-year period do not seem to show significant use of safeguard measures the picture changes when we compare the information to the data available in the WTO safeguards database. Between 1996 and April 2012 a total of 118 safeguards were implemented by all WTO member countries of which India (14 measures), Indonesia (13 measures) and Turkey (13 measures) were the main implementing countries. Between 2009 and 2011 the only WTO member country which implemented more safeguards than Russia was Indonesia with 9 safeguards. Given the short time period and the limited availability of Russian data, this does seem to indicate that Russia will become a major user of safeguard measures in the WTO.

## 5.3 India

India had a very restrictive trade regime prior to 1991 with domestic industries given high levels of protection through import controls and tariffs. After 1991 India systematically opened its market to

international competition. In 1992 the first anti-dumping investigation was initiated in India with the number of anti-dumping investigations slowly increasing up until 1997. Between 1997 and 1998 there was a significant increase in the utilisation of anti-dumping measures to protect India's domestic industry, currently making India one of the most prolific users of anti-dumping measures compared to other developing as well as developed economies. Although India has never implemented a countervailing measure, out of all the WTO member countries India is the top user of safeguard measures, implementing a total of 14 safeguards between 1995 and the end of April 2012 (WTO 2013).

The table below shows the domestic laws and regulation of India applicable to trade remedies and safeguards. Prior to the Uruguay Round of Trade Negotiations the implementation of anti-dumping measures, countervailing duties and safeguard measures were governed by the Customs Tariff Act of 1975 Sections 9, 9A, 9B, 9C (anti-dumping and countervailing) and 8B and 8C (safeguards). After the Uruguay texts were signed these sections were amended by the Customs Tariff (Amendment) Act of 1995 (anti-dumping and countervailing) and the Finance Bill of 1997 (safeguards).

**Table 4: Domestic laws, regulations and rules applicable in India**

Title	Date	Description
The Customs Tariff Act	1975	Provisions on anti-dumping, countervailing and safeguards
The Customs Tariff (Amendment) Act	1995	Amendment of the provision to align them with the WTO rules
Finance Bill	1997	Amendment of the Customs Tariff Act, 1975 regarding safeguards
Customs Tariff (Identification and Assessment of Safeguard Duties) Rules	1997	Procedural and administrative requirements regarding safeguards
Notification No. 103/98 – Customs and Notification No. 62/99 – Customs	1998 and 1999	Identification of countries as developing countries regarding the Customs Tariff Act, 1975 in respect of safeguard measures
Customs Notification No. 24/2006	2006	Amendment of the countervailing rules
The Customs Tariff (Identification, Assessment and Collection of Anti-Dumping duty on Dumped Articles and for Determination of Injury) Amendment Rules	2012	Amendment of the anti-dumping rules
Safeguard Measures (Quantitative Restriction) Rules	2012	Rules regarding quantitative restrictions applied as a safeguard measure

Source: WTO documents of anti-dumping, countervailing and safeguard notifications (2013d)

### 5.3.1 Anti-dumping and countervailing duties

The Directorate General of Anti-dumping and Allied Duties, as part of the Ministry of Commerce and Industry, is the national authority responsible for investigating allegations of dumping and subsidies and making recommendations on whether duties should be imposed to the Central Government. The Department of Revenue is the body ultimately responsible for the decision to implement anti-dumping and countervailing duties.

The first detailed provisions regarding the procedure and formalities for conducting anti-dumping and countervailing investigations and imposing duties were the Customs Tariff (Identification, Assessment and Collection of duty or Additional Duty on Injury) rules and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Bounty-fed Articles and for the Determination of Injury) rules which were notified in 1985. These Anti-dumping Rules and Countervailing Duty Rules were amended in 1995 to align them with the provisions of the WTO agreements on anti-dumping and countervailing. Subsequently these rules have been amended various times (in 1999, 2001, 2002, 2003, 2006, 2011 and 2012).

The MES status of China and the usage of public interest factors, the lesser duty rule and price undertakings in India are the following:

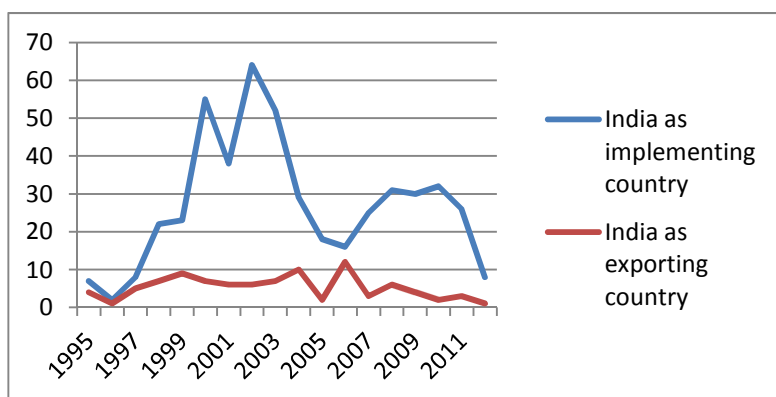
- Public interest factors do not form a major component of any anti-dumping investigation and determination.
- India is yet to afford MES to China. India has a hybrid approach to anti-dumping measures on imports from China. Under normal circumstances these anti-dumping investigations will be conducted by constructing the normal value of the imports on the basis of the price in a third country market economy. However, if it is shown that market conditions do prevail for one or more firms subject to an investigation, the investigation authority can apply rules which are normally reserved for investigations pertaining to imports from market economies.
- The Central Government is obliged to apply a lesser duty in the context of restricting an anti-dumping duty to the lower of the dumping margin or the injury margin. An injury margin is calculated in each case as the difference between the fair selling price due to the domestic industry and the landed cost of the product under consideration. If the injury margin is less than the dumping margin, the maximum anti-dumping duty to be applied is that of the injury margin and not the dumping margin.

- In accordance with the domestic laws price undertakings can be utilised. However, a price undertaking will not be accepted before a preliminary determination has been made and in if it will be impracticable or unacceptable for any reason to rather accept a price undertaking than implement an anti-dumping duty.

#### 5.3.1.1 Anti-dumping measures

India is an active user of anti-dumping measures and implemented 18% of all anti-dumping measures between 1995 and June 2012. These are the most anti-dumping measures implemented by any WTO member country during the time period. According to Figure 16 India always implemented more anti-dumping measures than those measures implemented against India's exports. From 1995 until 2002 there was a significant increase in the number of measures implemented by India with an overwhelming 64 anti-dumping measures in place on foreign imports in 2002. Between 1995 and June 2012 only 95 anti-dumping measures were implemented against India's exports. The number of measures reached its maximum in 2006 (12 anti-dumping measures) after which there was a steady decline in measures against India's exports.

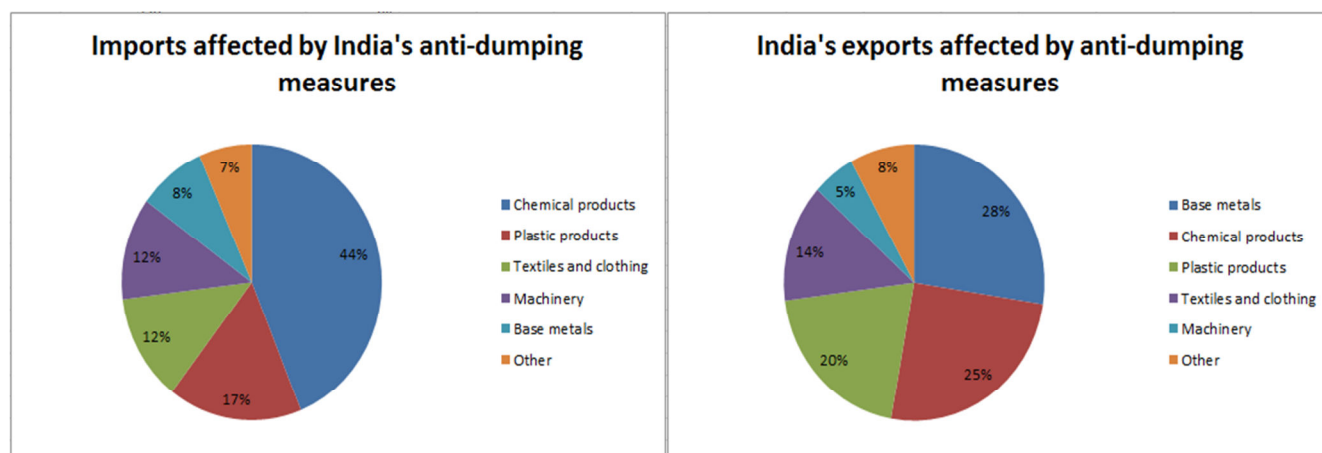
**Figure 16: Anti-dumping measures with India as implementing and affected country: 1995-2012**



Source: WTO Statistics on anti-dumping measures (2013a)

India's anti-dumping measures have mostly been concentrated in five product sectors. These are chemical products, plastic products, textiles and clothing, machinery, and base metals. Measures implemented on these sectors accounted for 93% of the total anti-dumping measures implemented by India between 1995 and June 2012. These measures were mainly imposed on imports from other developing countries, with the majority of the measures implemented on imports from China (25%), Chinese Taipei (8%), Republic of Korea (7%), EU (7%) and Thailand (5%).

**Figure 17: Product sectors affected by anti-dumping measures: 1995-2012**



Source: WTO Statistics on anti-dumping measures (2013a)

Over the time period anti-dumping measures imposed on India's exports were also highly concentrated with 92% of all measures implemented on base metals, chemical products, plastic products, textiles and clothing, and machinery (Figure 17). The majority of these measures were implemented by other developing countries (63%), including South Africa, Turkey, Argentina and Brazil, with only 37% of these measures implemented by three developed countries (the EU, US and Canada).

### 5.3.1.2 Countervailing duties

Between 1995 and June 2012 India did not implement any countervailing duties; however, 31 countervailing duties were implemented on India's exports over the time period. Developed countries (the EU, US and Canada) implemented 77% of these measures, while other developing countries (South Africa, Brazil and Turkey) implemented 23% of these duties. The majority of these measures were implemented between 1995 and 2004 (26 countervailing duties) with only five measures implemented after 2004.

All countervailing duties implemented on India's exports were imposed on exports of six product sectors: base metals (48%), plastic products (19%), chemical products (16%), clothing and textiles (6%), machinery (6%) and paper products (3%).

### 5.3.2 Safeguards

India has been the most prolific user of safeguard measures among all WTO developed and developing member countries. Between 1996 and April 2012 India imposed 14 of a total of 118

safeguard measures. These measures were mainly implemented on chemical products (86%) with one safeguard each implemented on plastic products and vegetable products, respectively.

#### 5.4 China

China has been a member of the WTO since 22 December 2001. Three important provisions regarding anti-dumping measures, countervailing duties and safeguards implemented on Chinese exports are included in China's Accession Protocol to the WTO:

- The treatment of China as a non-market economy for the purpose of anti-dumping investigations
- The use of alternative benchmarks in countervailing investigations of Chinese exports
- The application of special safeguards only applicable to Chinese exports.

In terms of anti-dumping investigations of products imported from China by other WTO member states the Accession Protocol states that the investigating authority of a WTO member country can use either domestic prices or costs of the industry under investigation to determine the normal value of the imports or an alternative methodology. An alternative methodology (or non-market methodology) can be utilised if the producers under investigation cannot show that market economy conditions prevail in the manufacturing, production and sales in the industry being investigated for dumping and producing the like product in the Chinese market. According to the protocol this recourse to non-market methodologies is set to expire in 2016. However, some countries (Brazil, Russia and South Africa) have already chosen to treat China as a market economy for the purpose of anti-dumping investigations and apply the methodology to determine the normal value set out in Article 2 of the WTO Anti-Dumping Agreement. Currently India is the only BRICS country which has not yet recognised China as a market economy, using a hybrid approach to conduct anti-dumping investigations on Chinese exports.

Prior to the WTO accession China was essentially 'exempt' from the countervailing laws of most WTO member countries. However, this was changed by Article 15(b) of the Accession Protocol which specifically states that WTO members must utilise the relevant provisions of the WTO Agreement on Subsidies and Countervailing Measures to determine the existence and scope of subsidisation, unless special difficulties arise in doing so. In this case WTO countries can use alternative benchmarks to

measure the degree of subsidisation which can include benchmarks external to China, including commercial lending rates in third-party countries.

The Accession Protocol also allows WTO members to adopt domestic laws and regulations that provide for a special safeguard to only be applied to Chinese exports for a period of 12 years after China's accession. In the case of a special safeguard measure a WTO member country can request consultations with China to seek a mutual beneficial solution when it is determined that products from Chinese origin are imported in such increased quantities or under such conditions that cause or threaten market disruptions to the domestic producers of the like product in the importing country. If the consultations result in an amicable resolution the importing country can withdraw concessions or limit imports for the extent necessary to mitigate the market disruptions caused by the surge in Chinese imports.

In terms of anti-dumping measures, countervailing duties and safeguards implemented by China on imports from other WTO member countries, the Ministry of Commerce is the domestic industry responsible for all trade remedy and safeguard investigations and initial determinations. These investigations are required to take place in accordance with Chinese domestic laws, regulations and rules, including the Anti-dumping Regulations, Countervailing Duty Regulations and Safeguard Regulations. China has a significant number of domestic regulations and provisional rules which governs the substantive and procedural requirements for investigations of foreign imports. These domestic laws, regulations and rules are included in Table 5 below.



**Table 5: Domestic laws, regulations and rules applicable in China**

Title	Date	Description
Foreign Trade Law of the People's Republic of China	2004	Law regulating foreign trade including trade remedies and safeguards implemented on foreign imports
Antidumping Regulations of the People's Republic of China	2004	Substantive and procedural requirements for implementing anti-dumping measures on foreign imports
Countervailing Duty Regulations of the People's Republic of China	2004	Substantive and procedural requirements for implementing countervailing measures on foreign imports
Safeguard Regulations of the People's Republic of China	2004	Substantive and procedural requirements for implementing safeguards on foreign imports
Provisional Rules on Initiation of Antidumping Investigations	2002	Rules on conducting an anti-dumping investigation
Provisional Rules on Antidumping Investigations by Questionnaire	2002	Rules on the questionnaire required for an anti-dumping investigation
Provisional Rules on hearings in Antidumping Investigations	2002	Rules regulating hearings in anti-dumping investigations
Provisional Rules on Sampling in Antidumping Investigations	2002	Circumstances under which an anti-dumping investigation by sampling can take place
Provisional Rules on On-the-Spot Verification of Antidumping Investigations	2002	Rules on on-the-spot verifications by officials to information and materials
Provisional Rules on Information Disclosure in Antidumping Investigations	2002	Rules regarding access to information by interested parties
Provisional Rules on Access to Non-Confidential Information of Antidumping Investigations	2002	Rules on access to non-confidential information
Provisional Rules on Price Undertakings in Antidumping Investigations	2002	Rules on voluntary price undertakings by exporting countries
Provisional Rules on new Shipper Review of Antidumping Investigations	2002	Rules regarding the review of countries, exporters and importers who did not export the product in question during the investigation period
Provisional Rules on Refund of Antidumping duty	2002	Rules on refunds where the duty paid was higher than the actual dumping margin
Provisional Rules on Interim Review of Dumping and Dumping Margins	2002	Rules regarding the interim review of anti-dumping duties already in place
Rules on Information Access and Disclosure in Industry Injury Investigations	2002	Rules on the disclosure of information during the investigation
Rules on Antidumping Industry Injury Investigations and Determinations	2002	Rules on determining injury to a domestic industry
Rules for Hearings on Industry Injury Investigations	2002	Legal rights and obligations of the interested parties during public hearings

Title	Date	Description
Rules of the Supreme People's Court on Certain Issues Related to Application of Law in Hearings of Antidumping Administrative Cases	2002	Administrative law regarding the court's capability to hear issues pertaining to anti-dumping law

Source: WTO documents on anti-dumping, countervailing and safeguard notifications (2013d)

#### 5.4.1 Anti-dumping and countervailing measures

Anti-dumping and countervailing issues were first introduced in Chinese law in 1994 through the Foreign Trade Law of 1994. The first anti-dumping and countervailing regulations were adopted in 1997 when the Regulations on Anti-dumping and Countervailing Measures of the People's Republic of China were promulgated by the State Council. These regulations aimed to ensure fair competition and protect the domestic business interest of China's domestic industries.

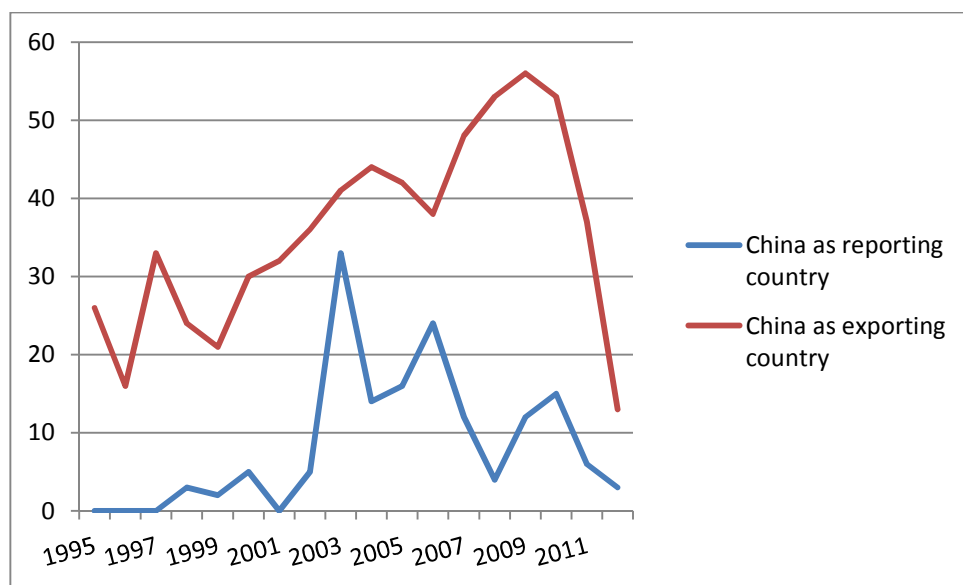
The regulations consist of six chapters and 42 articles which mainly focused on anti-dumping measures with only a limited number of articles on countervailing duties. Dumping was defined as an action when the price of an import product is less than its normal value. The regulations further contained the provisions on the determination of injury and the normal value and the price of an import and the procedures of an anti-dumping investigation. However, these regulations had various shortcomings: the clauses were very broad, general, abstract and simple; the investigation process was poorly defined with no specific timeline; and the regulations were in some instances inconsistent with WTO law. This necessitated the amendment of the regulations after China acceded to the WTO in 2001.

##### 5.4.1.1 Anti-dumping measures

Between 1995 and June 2012 China was one of the major users of anti-dumping measures, ranking fifth out of all WTO members implementing these measures. Over the same time period Chinese exports were also the products mainly targeted by anti-dumping investigations by all other WTO member countries. Figure 18 shows the use of anti-dumping measures with China as importing (reporting) and exporting country over the time period. The data shows that there was a steady increase in the number of anti-dumping measures implemented against Chinese exports between 1999 and 2009. Between 2001 and 2003 there was a drastic increase in the number of measures implemented by China on imports from other WTO member countries with a gradual decrease in Chinese anti-dumping measures since the end of 2003. The majority of measures on Chinese exports

were implemented by other developing countries (67% of all measures on Chinese exports), including India (19%), Brazil (12%) and Argentina (10%). The Chinese product sectors mostly affected by these measures were base metals (23%) and chemical products (22%).

**Figure 18: Anti-dumping measures with China as reporting and exporting country: 1995-2012**



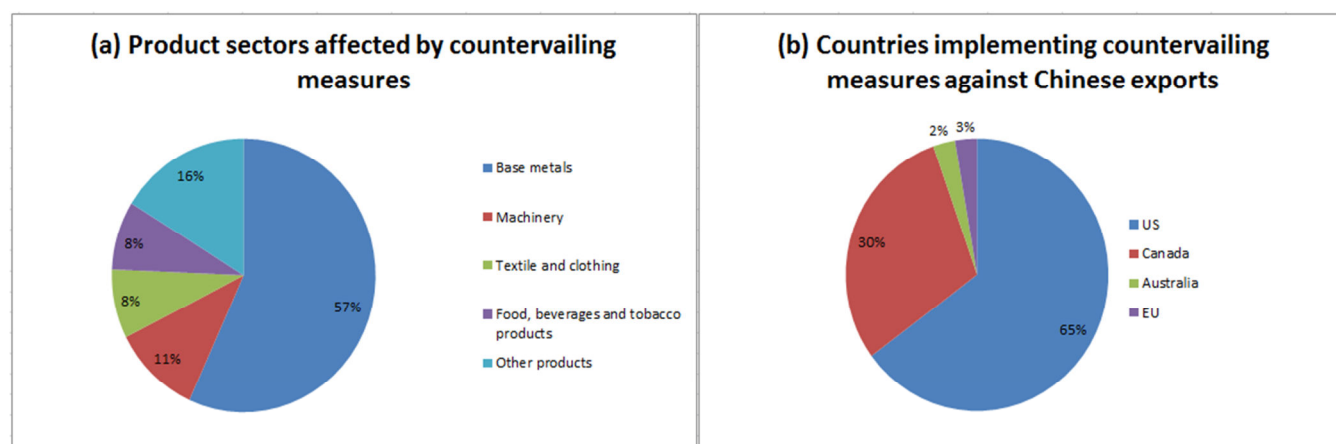
Source: WTO Statistics on anti-dumping measures (2013a)

Between 1995 and June 2012 China imposed slightly more anti-dumping measures on imports from developed countries (54%) than on imports from other developing economies (46%). The developed countries mostly affected by Chinese anti-dumping measures were the US (18%), Japan (17%) and the EU (8%). China mainly implemented anti-dumping measures on imports of chemical products (53%), plastic products (23%), base metals (7%) and textiles and clothing (6%).

#### 5.4.1.2 Countervailing measures

China is the country mostly affected by countervailing measures between 1995 and June 2012 (22% of all measures over the time period). All countervailing measures implemented against Chinese exports were implemented between 2005 and June 2012 with the majority of measures implemented in 2008 and 2010. Figure 19 below shows two graphs: the first depicts the Chinese product sectors affected by countervailing measures, while the second shows the countries which implemented all countervailing duties on Chinese exports. The data shows that Chinese exports of base metals, machinery, textiles and clothing, and food, beverages and tobacco products were the products which were mostly affected by countervailing measures implemented by the US, Canada, Australia and the EU over the time period.

**Figure 19: Countervailing measures on Chinese exports: 1995-2012**



Source: WTO Statistics on countervailing measures (2013b)

Between 1995 and June 2012 China only implemented four countervailing measures. These measures were implemented on live animal and animal products, vegetable products, base metals and miscellaneous manufacture goods imported from the US (three countervailing duties) and the EU (one countervailing duty).

#### 5.4.2 Safeguards

China is not a major user of safeguard measures. Between 1996 and April 2012 China only implemented one safeguard in 2002 against imports of base metals.

#### 5.5 South Africa

South Africa's use of anti-dumping measures dates back to 1914 when the Customs Tariff Act introduced the concept of anti-dumping actions. Since then South Africa has become one of the most active users of anti-dumping measure, especially since the 1990s. This can be explained by the tariff and trade liberalisation which took place after the isolation of the apartheid era.

The International Trade Administration Act (ITA Act) of 2002 and the International Trade Administration Commission (ITAC) Anti-Dumping Regulations regulate the implementation of anti-dumping measures in South Africa. ITAC is an independent agency which is responsible for the decisions regarding anti-dumping measures. ITAC is supported by investigators which are responsible for the dumping determination and injury analysis. Their reports are submitted to the commission which is obliged to take decisions. A report on the final finding by the commission is submitted to the Minister of Trade and Industry and if accepted published in the Government Gazette.

The table below provides the South African domestic laws and regulations applicable to all anti-dumping, countervailing and safeguard investigations and measures on foreign imports into the South African (Southern African Customs Union – SACU) market.

**Table 6: Domestic laws and regulations applicable in South Africa**

Title	Date	Description
Customs and Excise Act No. 91	1964	Contains basic provisions on trade remedies and safeguards
Board on Tariffs and Trade Act No. 107	1995	Contains basic provisions on trade remedies and safeguards
International Trade Administration Act No. 71	2004	Detailed provisions regarding anti-dumping, countervailing and safeguards
Anti-Dumping Regulations	2004	Detailed provisions on the substantive and procedural requirements regarding anti-dumping investigations and measures within the SACU domestic industry
Countervailing Regulations	2005	Detailed provisions on the substantive and procedural requirements regarding countervailing investigations and measures within the SACU domestic industry
Safeguard Regulations	2005	Detailed provisions on the substantive and procedural requirements regarding safeguard investigations and measures within the SACU domestic industry

Source: WTO documents on anti-dumping, countervailing and safeguard notifications (2013d)

South Africa is part of SACU, which is a customs union and apart from South Africa includes Botswana, Lesotho, Namibia and Swaziland (BLNS). The 2002 SACU Agreement makes provision for new institutions within SACU for the implementation of trade remedies. The Tariff Board will be a supra-national SACU body which will be responsible for the consideration of submissions by the member states' national bodies and for making recommendations to the Council of Ministers. ITAC will function as the national body of South Africa, but the Tariff Board and national bodies of BLNS must still be established.

### 5.5.1 Anti-dumping measures and countervailing duties

According to the ITA Act and the Anti-dumping Regulations, the domestic market which must be considered in the dumping and injury analysis is not just the South African market, but the SACU market. However, due to South Africa's dominant position in SACU, anti-dumping investigations are mostly concerned with the South African market and South African firms seeking import protection. Although the relevant target market is the SACU market, the members of SACU are individual members of the WTO and thus South Africa and not SACU reports investigations to the WTO.

The differences between the Brazilian anti-dumping application and that of South Africa is based on the facts that South Africa only recently granted MES to China and that the public interest does not play a role in determinations.

- ITAC does not have a predetermined list of countries which are considered to be non-market economies. Non-MES is applied to socialist economies and was applied to China prior to 2007. Prior to its being granted MES by South Africa in 2007, China was considered to be the most important source of 'unfair' trade originating in a non-market economy in terms of the value of trade and the perception of its competition against imports by South African producers.
- Although there is no formal obligation on ITAC to apply a lesser anti-dumping duty under full cooperation, the commission does apply it in practice. The Anti-Dumping Regulations define a lesser duty as a payment or duty 'imposed at the lesser of the margin of dumping or the margin of injury, and which is deemed to be sufficient to remove the injury caused by the dumping'.

The price disadvantage of the domestic industry is seen as being the 'margin of injury'. The amount by which the price of the import product is less than the selling price of the SACU product is accepted as the price advantage.

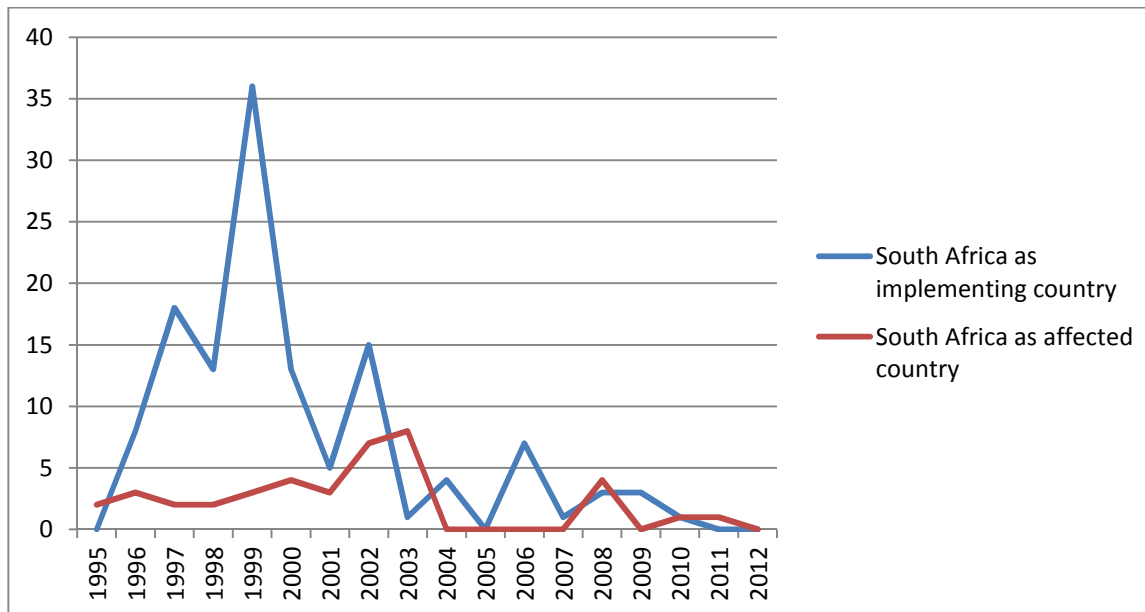
- The economic impact of anti-dumping measures on consumers and industries (public interest considerations) is not considered by ITAC when it makes a recommendation to implement anti-dumping duties.
- The Anti-Dumping Regulations allow for the application of a price undertaking instead of the implementation of an anti-dumping duty. However, South Africa has not used price undertakings in the past and it is expected that it may not be utilised much in future either (McCarthy 2005).

#### **5.5.1.1 Anti-dumping measures**

South Africa is one of the main users of anti-dumping measures. Between 1995 and June 2012 South Africa implemented 128 anti-dumping duties, over the same time period South African exports to all WTO members were affected by 40 anti-dumping measures. There was a dramatic increase in measures imposed by South Africa between 1995 and 1999, from no measures in 1995 to 36 measures in 1999. However, after 1999 there has been a steady decline in the number of measures

imposed by South Africa on foreign imports. Between 1995 and 2003 there was a steady increase in the number of anti-dumping duties imposed on South African exports, reaching a maximum number of eight measures in 2003 after which measures on South African exports significantly decreased (Figure 20).

**Figure 20: Anti-dumping measures with South Africa as reporting and exporting country: 1995-2012**



Source: WTO Statistics on anti-dumping measures (2013a)

Of the 40 anti-dumping duties imposed on South African exports, 55% were imposed by developed countries (mostly the US, the EU and Canada) and 45% by other developing countries (mostly India, Argentina and Brazil). These measures were imposed on exports in four product sectors: base metals (75%), chemical products (18%), food, beverages and tobacco products (5%) and non-metallic minerals (3%).

The 128 anti-dumping measures South Africa imposed on foreign imports over the time period were mainly implemented on imports of base metals (26%), plastic products (20%), chemical products (15%), non-metallic minerals (11%) and textiles and clothing (9%). These measures were mostly aimed at imports from China (14%), the Republic of Korea (13%), India (9%), Germany (6%) and Chinese Taipei (5%).

### 5.5.1.2 Countervailing duties

Between 1995 and June 2012 South Africa implemented five countervailing measures, while four countervailing duties were implemented on South African exports over the same time period. All four measures implemented on South Africa exports were imposed prior to 2002, by two countries (New Zealand and the US) on two product sectors (food, beverages and tobacco products, and base metals). The five measures South Africa implemented were imposed between 2000 and 2002. These countervailing duties were implemented against imports of base metals, chemical products, plastic products, and textiles and clothing from India (four measures) and Pakistan (one measure).

### 5.5.2 Safeguards

South Africa is not a significant user of safeguard measures and only implemented one safeguard measure in 2007 on the imports of chemical products.

## 6. Conclusion

The basic premise of trade remedies and safeguards is to increase the import duty of a specific product to make the importing market less attractive for foreign imports. However, the scope and purpose of these instruments are much wider than this: the goal of anti-dumping measures and countervailing duties is to address unfair imports into the domestic market from a specific exporting country, while a safeguard measure provides temporary relief to the domestic industry when a surge in imports, under fair trade conditions causes or threatens harm to the domestic industry of the importing country. However, the rationale for utilising trade remedies and safeguards as a remedy to protect the domestic industry against harm has long been a point of contention, with many economic writers indicating that these instruments are merely used as a protectionist tool to protect inefficient domestic industries against foreign competition.

The use of anti-dumping measures, countervailing duties and safeguards as either a remedy to adequately afford protection to a domestic industry against harm or purely as a protectionist tool can have a significant impact on the ability of producers to access markets opportunities in foreign markets. This is especially so if foreign competitors want to gain access to emerging markets, like the BRICS countries which are regular users of these measures. The majority of BRICS countries are



major, if not the main, users of mainly anti-dumping measures and safeguards limiting access to their domestic markets. However, the other side of the coin also rings true: the utilisation of trade remedies and safeguards on the exports of BRICS countries can also hamper these countries' ability to increase their share of global exports and enhance economic growth. This is particularly the case for China and India due to the fact that their exports face regular anti-dumping measures and countervailing duties implemented by some of their main WTO trading partners. As emerging economies the BRICS countries, both as implementing and affected countries, play a pivotal role in the utilisation of multilateral anti-dumping measures, countervailing duties and safeguards, which may have a significant impact on trade opportunities in these emerging countries and for exports of these economies in various foreign markets.

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## **Multilateral Agreements**

Agreement on Safeguards

Agreement on Subsidies and Countervailing Measures

Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994  
(Anti-Dumping Agreement)

General Agreement on Tariffs and Trade 1947

General Agreement on Tariffs and Trade 1994

## **National laws, regulations and rules**

### **Brazil**

Presidential Decree 1355 of December 1994

Federal Act No 9019 of March 1995

### **Russia**

Agreement on the Application of Safeguard, Anti-Dumping and Countervailing Measures with respect to Third Countries of 25 January 2008

Agreement on the Application of Safeguard, Anti-dumping and Countervailing Measures in Transitional Period of 19 November 2010

### **India**

Customs Tariff (Amendment) Act of 1995

Customs Tariff (Identification, Assessment and Collection of duty or Additional Duty on Injury) rules of 1985

Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Bounty-fed Articles and for the Determination of Injury) of 1985

Customs Tariff Act of 1975

Finance Bill of 1997

## **China**

Foreign Trade Law of 1994

Regulations on Anti-dumping and Countervailing Measures of the People's Republic of China of 1997

WTO Accession Protocol of 2001

## **South Africa**

International Trade Administration Act of 2002

International Trade Administration Commission Anti-Dumping Regulations of 2004

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