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The Future of International Trade Governance in a Protectionist World: Theorizing WTO Negotiating Perspectives

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THE FUTURE OF INTERNATIONAL TRADE GOVERNANCE IN A PROTECTIONIST WORLD: THEORIZING WTO NEGOTIATING PERSPECTIVES

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Abstract: The current United States Administration will face considerable challenges in the key areas of international trade law and policy. In order to understand the future international trade architecture for the coming decade, including in the World Trade Organization (WTO), it is essential to understand the drivers of key trade strategies in leading economies. This article explains the reasons why and the extent to which the negotiating perspective of a country is determined by its ability to penetrate in global value chains, embrace tariff reforms, and face the trade balance consequences. These abilities may in turn influence a country's willingness to impose anti-dumping or subsidies and countervailing measures. Given the employment generation capability of the manufacturing sector and the consequent domestic economic compulsions, the WTO negotiations on freeing trade in this category have progressed slowly. The Non-Agricultural Market Access (NAMA) negotiations to reduce the high bound tariff to address tariff "overhang" reached a stalemate in the last decade due to diverging perspectives of developed and developing countries. In addition, developed countries have ceased using contingency measures as policy instruments, and leading developing countries are taking refuge by doing the same. In this context, this article explores the tariff and contingency policies of two key developed countries (United States and European Union) and developing countries (China and India), to gauge each country's willingness for future reforms. The perspective regarding manufacturing competitiveness differs significantly among these countries, which also shapes their manufacturing policy interventions. This article concludes that, given the trade and industrial policy choices made by these countries in recent past, it would be difficult to reach a WTO-induced multilateral trade agreement on NAMA.

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INTRODUCTION

In recent years, trade policy dynamics have shaken the foundations of international trade law and governance, in particular at the World Trade Organization (WTO).[1] The objective behind the establishment of the WTO in 1995 was to secure a stable, transparent, and predictable framework for facilitating cross-border movement of goods, services, service providers, and investment. The provisions included in the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS) encouraged Member countries to commit to certain reforms in 1995, to achieve greater predictability. Accordingly, for the trade in goods, as decided at the Marrakesh Agreement (1994), these countries made significant progress by "binding" their tariff lines by 1995.[2] The bound tariff, which is the maximum import duty permissible on a product in a country, was subject to periodic negotiations and downward revisions. The Member countries were entitled to set their applied duties freely, subject to the condition that they do not pass the upper limit set forth by the WTO provisions.[3] The reforms in the developed countries were expected to reduce the proportion of imports facing international peak tariff

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[1] *See generally* William Alan Reinsch, *Salvaging the World Trade Organization*, CTR. FOR STRATEGIC & INT'L STUD. (Jan. 22, 2019), https://www.csis.org/analysis/salvaging-world-trade-organization; Jennifer Hillmann, *A Reset of the World Trade Organization's Appellate Body*, COUNCIL ON FOREIGN REL. (Jan. 14, 2020), https://www.cfr.org/report/reset-world-trade-organizations-appellate-body. *See also* Kristen Hopewell, *Trump & Trade: The Crisis in the Multilateral Trading System*, 26 NEW POL. ECON. 271, 271–82 (2020); RAJ BHALA, *Why the WTO Adjudicatory Crisis Will Not Be Easily Solved: Defining and Responding to "Judicial Activism," in* THE APPELLATE BODY OF THE WTO AND ITS REFORM, 111, 111–12 (Chang-fa Lo et al. eds., 2020).

[2] *See, e.g.*, Liliana Foletti et al., *Smoke in the (Tariff) Water*, 34 WORLD ECON. 248, 248–64 (2011); David Laborde & Will Martin, *Formulas for Failure? Were the Doha Tariff Formulas Too Ambitious for Success?*, 14 WORLD TRADE REV. 45, 45–65 (2015).

[3] Pablo Klein-Bernard & Jorge A. Huerta-Goldman, *The Cushioned Negotiation: The Case of WTO's Industrial Tariff Liberalization*, 46 J. WORLD TRADE 847, 847–48 (2012).

(IPT) from seven to five percent.[4] Conversely, the proportion of developing country exports to their developed counterparts, subjected to IPT, were expected to decline from nine to five.[5] This disciplining of the tariff structure of WTO Members, in both developed and developing nations, created more certainty in the world trading system and facilitated cross-border trade flows.[6]

During the Uruguay Round negotiations, the participating countries agreed to bind their tariff lines (i.e., to set an upper limit on the applied tariff rate). It was expected that the member countries would agree to negotiate their bound tariff rates at reasonable intervals and to lower them accordingly, to ensure a reduction of protectionist intent. However, the expectation on periodic reforms of the bound tariffs have remained unfulfilled so far. Taking note of the member's concerns, the fourth Ministerial Meeting of the WTO at Doha (2001) pledged to control the protectionist tendencies through reforms based on modalities decided through mutual consensus.[7] There have been several rounds of negotiations to reform the Agricultural and Non-agricultural Market Access (NAMA) provisions in the aftermath of the Doha Ministerial (2001),[8] but given the difference in perspective among Member countries

[4] In trade literature, a tariff rate above fifteen percent is defined as International Peak Tariff. U.N. CONF. ON TRADE & DEV'T DIV. ON INT'L TRADE & COMMODITIES, KEY STATISTICS AND TRENDS IN TRADE POLICY 2019: RETALIATORY TARIFFS BETWEEN THE UNITED STATES AND CHINA, at 9, U.N. Sales No. E.20.II.D.13 (2020). *See generally* Amanda McBratney, *Post-WTO China: Competition and Technology Transfer Laws in the 'New' Socialist Market Economy*, 12 ASIA PAC. L. REV. 1, 1–30 (2004).

[5] WORLD TRADE ORG., TRADING INTO THE FUTURE 16 (2nd ed. 2001), https://www.wto.org/english/res_e/doload_e/tif.pdf; *see also*, Prabhash Ranjan, *Industrial Tariff Reduction: Why the Best Might Still Turn Out to Be the Worst?*, 42 J. WORLD TRADE 953, 953–66 (2008); Patrick Messerlin & Erik van der Marel, *Polly Wants a Doha Deal: What Does the Trade Community Think?*, 10 WORLD TRADE REV. 551, 551–55 (2011).

[6] Kym Anderson, *Contributions of the GATT/WTO to Global Economic Welfare: Empirical Evidence*, 30. J. ECON. SURVEYS 56, 56–92 (2016).

[7] World Trade Organization, Ministerial Declaration of 14 November 2001, WTO Doc. WT/MIN (01)/DEC/1 (2001) [hereinafter Doha Declaration].

[8] For more information on the Doha Round, see Genevieve Dufour & David Pavot, *WTO Negotiations: The Unfinished Doha Development Agenda and the Emergence of New Topics*, 15 GLOB. TRADE & CUSTOMS J. 244, 244 – 51. *See also* Dejen Yemane Messele, *The Doha Negotiation Deadlock: Implications for the Future of Multilateralism*, 1–14 (Addis Ababa Univ. Sch. of L. Working Paper No. 3089718, 2017), https://ssrn.com/abstract=3089718 or http://dx.doi.org/10.2139/ssrn.3089718.

on the "coefficient[9]" to be adopted, the reforms remain elusive.[10] The delays in the reform process caused three specific concerns.

First, the countries reduced the applied tariff rates significantly from 1995 to 2020. The widened gap between the bound tariff set in 1995 and the annually fluctuating applied duties is termed as "tariff overhang" or "tariff water" in trade literature.[11] The wider "tariff overhang" enables countries to increase applied tariffs in a WTO-compatible manner, on the basis of perceived threats.[12] In particular, the world has witnessed a series of global and local recessions since the United States sub-prime crisis in 2008 to 2009. Many WTO Members have embraced "deglobalization" by increasing tariffs, albeit temporarily.[13] The recourse to higher tariff barriers and lower trade volume became evident from recent trends, with serious consequences for WTO-induced trade-led growth process.[14]

Second, given the slow progress of the WTO Doha Round negotiations, including the pending bound tariff reforms, the attractiveness of entering into regional trade agreements (RTAs) has grown during the last two decades.[15] Apart from the bilateral trade treaties and regional trade agreements, three major mega-regional trade forums surfaced during the last decade, namely: the Trans-Pacific Partnership (TPP) agreement, the Transatlantic Trade and Investment Partnership (TTIP), and the Regional Comprehensive Economic Partnership (RCEP). However, the mega-regional blocs have faced their own challenges with the United States' pull-

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[9] Coefficients are part of the mathematical method to negotiate on tariffs reduction. "Tariff reductions for industrial products would be made using a 'simple Swiss' formula with separate coefficients for developed or for developing country members. But whereas the coefficient for developed members will be the same applicable to all of them, there will be a menu of options for developing members that will apply according to the scale of the flexibilities they choose to use. The lower the coefficient the higher the flexibilities and vice versa. A Swiss formula produces deeper cuts on higher tariffs." *Non-agricultural market access (NAMA)*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dda_e/status_e/nama_e.htm.

[10] The entire focus of the WTO negotiations subsequently shifted to determining "coefficients," i.e., the number by which the reforms should take place. A detailed discussion of the negotiations on "coefficients" has been undertaken in Section 1A. *See* Sonia E. Rolland, *Redesigning the Negotiation Process at the WTO*, 13 J. INT'L ECON. L. 65, 65–110 (2010); David Laborde et al., *Implications of the Doha Market Access Proposals for Developing Countries*, 11 WORLD TRADE REV. 1, 1–25 (2012); Sebastian Hess & Stephan von Cramon-Taubadel, *A Meta-Analysis of General and Partial Equilibrium Simulations of Trade Liberalization under the Doha Development Agenda*, 31 WORLD ECON. 804, 804–40 (2008).

[11] The tariff rates imposed by the member countries on imported varieties are known as applied duties. Applied duties can change over the years, in line with the appropriate level of protection for domestic industries as decided by the policymakers.

[12] KYLE HANDLEY ET AL., RISING IMPORTS TARIFFS, FALLING EXPORT GROWTH: WHEN MODERN SUPPLY CHAINS MEET OLD-STYLE PROTECTIONISM (Bd. of Governors of the Fed. Rsrv. Sys., 2020).

[13] Harold James, *Deglobalization: The Rise of Disembedded Unilateralism*, 10 ANN. REV. FIN. ECON. 219, 220, 229–31 (2018).

[14] *See* Pablo D. Fajgelbaum et al., *The Return to Protectionism*, 135 Q. J. ECON. 1, 1–55 (2020).

[15] Shujiro Urata, *Mega-FTAs and the WTO: Competing or Complementary?*, 30 INT'L ECON. J. 231, 231–37 (2016).

out from TPP in January 2017,[16] followed by India's pull-out from the RCEP in November 2019.[17] Economic concerns dominated the pull-out decisions. The United States was concerned with perceived unfair arrangements[18] and India was concerned with a growing manufacturing trade deficit.[19] While the concluded regional trade agreements (RTAs) led to considerable intra-bloc trade reforms, close observers raised apprehensions that the future blocs, particularly the mega-regional forums, would compete with the multilateral reform process and slow down the pace and effectiveness of WTO negotiations.[20]

Third, historically developed countries had been the major users of the contingency provisions, namely: anti-dumping and countervailing duties.[21] Member countries can protect their domestic interests against unfair trade practices, such as dumping, through "contingency" measures, as allowed under the corresponding WTO provisions.[22] The applied tariff reforms over the last two and a half decades, under the influence of multilateral, regional, and unilateral motivations, have exposed developing countries to rising import flows. A number of developing countries are now

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[16] PASHA L. HSIEH, TRADE STRATEGIES OF THE TPP-11 COUNTRIES: ASIAN REGIONALISM IN TURBULENT TIMES, 20–30 (Singapore Mgmt. Univ. ed., 2017).

[17] Surendar Singh & Ram Singh, *Domestic Sources of India's Trade Policy Preferences in RCEP Negotiations*, 54 J. WORLD TRADE 503, 503 (2020).

[18] Daniel C.K. Chow et al., *How the United States Withdrawal from the Trans-Pacific Partnership Benefits China* 2 (Univ. of Pa. J. of L. & Pub. Aff., Working Paper No. 451, 2018).

[19] Press Release, Ministry of Com. & Indus., India Exploring Trade Agreements with USA & EU; FTAs with Japan, Korea & ASEAN being Reviewed; No Trade Agreements in a Hurry Says Piyush Goyal (Nov. 5, 2019) (on file with the Press Information Bureau).

[20] Chad P. Bown, *Mega-Regional Trade Agreements and the Future of the WTO*, 8 GLOB. POL'Y 107, 107–12 (2017).

[21] Dumping is a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country. As explained by the WTO, "[i]f a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be "dumping" the product. Is this unfair competition? Opinions differ, but many governments act against dumping in order to defend their domestic industries. The WTO agreement does not pass judgement. It focuses on how governments can or cannot react to dumping. It disciplines anti-dumping actions, and it is often called the "Anti-Dumping Agreement." This singular focus contrasts with the approach of the Subsidies and Countervailing Measures Agreement. *See Understanding the WTO: The Agreements: Anti-Dumping, S ubsidies, Safeguards: Contingencies, etc.*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e /whatis_e/tif_e/agrm8_e.htm (last visited Oct. 14, 2021). The countervailing duties are relevant where a country decides to launch its own investigation and ultimately charge extra duty (known as "countervailing duty") on subsidized imports that are found to be hurting domestic producers. The WTO Agreement on Subsidies and Countervailing Measures "disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies. Under the agreement, a country can use the WTO's dispute-settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects. Or the country can launch its own investigation and ultimately charge extra duty ("countervailing duty") on subsidized imports that are found to be hurting domestic producers." *See Subsidies and Countervailing Measures*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/ scm_e/scm_e.htm (last visited Oct. 20, 2021). *See also* INGE NORA NEUFELD, ANTI-DUMPING AND COUNTERVAILING PROCEDURES: USE OR ABUSE?: IMPLICATIONS FOR DEVELOPING COUNTRIES, at 1–33, UNCTAD/ITCD/TAB/10, U.N. Sales No. E.01.II.D.6 (2001).

[22] *See* Derk Bienen et al., *Does Antidumping Address "Unfair" Trade?*, 28 INT'L TRADE J. 195, 197–99 (2014).

on par with their developed counterparts in their use of these contingency measures, often targeting imports coming from other developing countries.[23] Moreover, misuse of these provisions is often cited at the WTO dispute settlement forum.[24] The delayed disciplining of the contingency provisions, particularly in the times of recession and rising protectionist sentiment, presents a major challenge for the global trading system.[25]

Notwithstanding the delays in bound tariff reforms, a major outcome of the applied tariff reforms over the last two decades has been the considerable expansion of international production networks (IPNs), which connect the manufacturing sectors across a wider range of countries. The fragmentation of sequential production blocs enables multinational corporations (MNCs) to locate various parts of their global value chain (GVC) of manufacturing activities in suitable locations across countries. The process is facilitated by tariff reforms, including both WTO-induced and RTA-led initiatives. During this period, participation of developing country in IPNs and GVCs has significantly increased. This participation facilitates growth in their manufacturing sectors, "without having to develop complete products or value chains."[26] However, possible recourse to deglobalization measures (e.g., tariff rise, changes in trade policies influencing supply chains), particularly in the post-COVID period, might lead to a degree of disruption in the International Production Networks (IPNs).[27] The post-pandemic responses may continue to influence the future trade policy deliberations in the long run, although to a varying degree in different countries.[28]

Global economic turbulence can facilitate multilateral trade policy reforms. A case in point is the conclusion of the Uruguay Round (1986-94), the eighth round of multilateral trade negotiations conducted within

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[23] Jong Woo Kang & Dorothea Ramizo, *Impact of Antidumping Measures on International Trade: Growing South-South Tensions?*, 29 J. INT'L TRADE & ECON. DEV. 334, 334 (2020); Julien Chaisse & Debashis Chakraborty, *Normative Obsolescence of WTO Anti–Dumping Agreement—Topography of the Global Use and Misuse of Anti-Dumping Measures*, 6 ASIAN J. INT'L L. 233, 237–38 (2015).

[24] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 art. 17, *adopted* Dec. 15, 1993, 1868 U.N.T.S. 201.

[25] WORLD TRADE ORG. ECON. RSCH. & STAT. DIV., WORLD TRADE REPORT 2009: "TRADE POLICY COMMITMENTS AND CONTINGENCY MEASURES" (2019), https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report09_e.pdf.

[26] PRZEMYSLAW KOWALSKI ET AL., PARTICIPATION OF DEVELOPING COUNTRIES IN GLOBAL VALUE CHAINS IMPLICATIONS FOR TRADE AND TRADE-RELATED POLICIES 11 (Tudy Witbreuk et al. eds., 2015).

[27] ORG. FOR ECON. COOP. & DEV., *Covid-19 and International Trade: Issues and Actions*, at 1–7 (June 12, 2020), https://www.oecd.org/coronavirus/policy-responses/covid-19-and-international-trade-issues-and-actions-494da2fa/.

[28] Lukasz Gruszczynski, *The Covid-19 Pandemic and International Trade: Temporary Turbulence or Paradigm Shift?*, 11 EUR. J. RISK REGUL. 337, 342 (2020).

the framework of the GATT.[29] Initially, negotiations on reform modalities were progressing slowly. However, the 1990–91 period was marked with several disruptive events, leading to a global economic downturn. For example, the Gulf War and oil price uncertainty, breakdown of the USSR, credit crunch in the United States, banking crisis in Scandinavian countries, bursting of an asset price bubble in Japan, and so on.[30] In the post-1991 period, the urge to conclude the Uruguay Round for facilitating a trade-led recovery was strong in both developed and developing countries. It is an interesting question whether the current post-COVID scenario might hasten the much-delayed bound tariff reform process. It can be argued that a country's perspective towards multilateral tariff reforms may be critically influenced by its trade performances (e.g., trade balance, gainful GVC participation). Given this background, the current analysis intends to explore the interrelation between trade performance, orientation towards contingency measure adoption, and the resulting urge to go for multilateral tariff reforms. To understand the orientation across development profiles, this article focuses on the merchandise trade experiences of two developed countries (European Union and United States) and developing countries (China and India). The article demonstrates that the negotiating perspective of a country (multilateral and regional) is determined by ability to penetrate in GVCs, tariff reforms, and trade balance consequences, which may influence the willingness of the country to impose AD/SCM. The analysis is organized as follows. First, the article covers the WTO discussions regarding bound tariff reforms and the positions held by key countries. Second, the article discusses the negotiations on the reform of contingency measure provisions. Third, the article analyzes the country-level scenario on tariff reforms, GVC participation, and recourse to trade remedy measures. Finally, based on the findings, the article concludes with key policy conclusions on the future of WTO NAMA negotiations.

I. NAVIGATING TRADE LAW NEGOTIATIONS: THE NAMA TARIFF REFORM

The NAMA negotiations were aimed at substantially reducing tariff levels and other non-tariff barriers (NTBs) on imports and exports of most goods, except for food products and cotton, while complying with the objectives of the GATT and accounting for varying needs of different

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[29] *See generally* Greg Mastel, *A Pragmatic Approach to Free Trade*, *in* AMERICAN TRADE LAWS AFTER THE URUGUAY ROUND 3, 6–8 (Rachel Hines ed., 1st ed. 1996). *See also* Hao Wu, *Customs Cooperation in the WTO: From Uruguay to Doha*, 51 J. WORLD TRADE 843, 843–57 (2017).

[30] Carlos Arteta et al., *What Happens During Global Recessions?*, *in* A DECADE AFTER THE GLOBAL RECESSION: LESSONS AND CHALLENGES FOR EMERGING AND DEVELOPING ECONOMIES 55, 57–90 (M. Ayhan Kose & Franzika Ohnsorge eds., 2020).

members. While negotiations before the Uruguay Round were largely centered around ad valorem tariff reductions of developed countries, the Uruguay Round saw developing countries rally for a more comprehensive approach by binding commitments on tariffs and NTMs and expanding the scope of covered sectors.[31] In 2001, the Doha Round directed the implementation of the same to the Negotiating Group on Market Access (NGMA).[32] Given that developing countries have a significantly higher proportion of their GDP derived from the manufacturing sector,[33] the outcomes of the NGMA had particular importance to them.

A. The Post-Doha Period

In the post-Doha period, the negotiations on NAMA gathered momentum and the Member countries broadly agreed to embrace a non-linear, formula-based tariff reform schedule. It was agreed in the Doha Development Agenda (DDA) that the interest of the developing countries would be protected by considering, ". . . the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII bis of GATT 1994 . . ."[34] In other words, lower tariff cuts were promised for developing countries in exchange for the commitments, which are undertaken by the developed countries. Application of a Swiss-type bound tariff reduction approach emerged for this purpose:[35]

$$T_1 = \frac{X * T_0}{(X + T_0)}$$

Where T_1 is the final tariff, X is the given coefficient and T_0 is the initial tariff.

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[31] Murali Kallummal, *NAMA Negotiations under the WTO: Real Concerns?*, 34 SOC. SCIENTIST 34, 34–35 (2006).

[32] The third Ministerial meeting of the WTO at Seattle in 1999 failed due to the difference in negotiating perspectives between developed and developing countries. At the fourth Ministerial meeting of WTO at Doha in 2001, the WTO Members agreed to re-launch the negotiations based on mutual consensus on reform modalities to be agreed upon. The discussions are known as Doha Round.

[33] *International Trade Statistics 2005*, WORLD TRADE ORG., https://www.wto.org/english/res_e/statis_e/its2005_e/its05_toc_e.htm (last visited Nov. 2, 2021). *See also* Wang Chao, *China's Preferential Trade Remedy Approaches: A New Haven School Perspective*, 21 ASIA PAC. L. REV. 103, 103–117 (2013).

[34] Doha Declaration, *supra* note 7.

[35] The bound tariffs are defined as the upper limits on applied duties for each product, as agreed by the Member countries in their schedule of commitments at the conclusion of the Uruguay Round of GATT. Under no circumstances can a country impose an applied duty in excess of the committed bound rates.

The importance of the coefficient to be used is as follows. With the non-linearity involved, if a coefficient of five is adopted for the reform, then irrespective of the initial bound rate (e.g., 50% or 100%), the final bound rate in a member country would always be lower than the coefficient considered. Given the importance of manufacturing sector in employment creation and the political economy,[36] the determination of the coefficient emerged as a major point of contention in future negotiations.

During negotiations, China proposed an interesting modification to the base Swiss formula, attempting to secure benefits from its relatively reformed tariff profile. The introduction of A and P in the formula provided China an advantage vis-à-vis other developing countries in the following manner:[37]

$$T_1 = \frac{(A + B * P) * T_0}{(A + P^2) + T_0}$$

Where, T_1 and T_0 are the final and initial bound rates respectively, A is the simple average of base rates, P is the peak factor ($P = T_0 / A$), and B is the adjusting coefficient (e.g., for the years 2010 and 2015, B would be three and one respectively). It can be shown that, by application of this formula, a country characterized by already lower import tariff rates (i.e., deeper reforms) would not face a steep tariff cut. In addition, the proposal supported the basic principle behind the sectoral approach but added that "[m]embers shall be free to decide their participation in light of their own needs."[38]

In Annex B of the Cancún Ministerial Text (2003) draft, the Chair's Draft Elements of Modalities (TN/MA/W/35/Rev.1) were cited. The draft focused on several aspects for future reforms.[39] First, it proposed bound duty reduction or elimination, on all non-agricultural products.40 Second, 2001 was proposed as the base year for the most favored nation (MFN) applied tariff.41 Third, reform of the unbound tariff lines was proposed by twice considering the MFN applied rate in the base year as its basis. For incentivizing countries who had already undertaken deeper reforms in the base year, an MFN applied rate lower than 2.5% or 5% was recommended as the basis. 42 Fourth, now termed the sectoral approach, "a sector

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36 Simeon Alder et al., *Competitive Pressure and the Decline of the Rust Belt: A Macroeconomic Analysis* (Nat'l Bureau of Econ. Rsch., Working Paper No. 20538, 2014).

37 *See* People's Republic of China's Proposal, *Negotiating Group on Market Access—Market Access for Non-Agricultural Products*, WTO Doc. TN/MA/W/20 (Dec. 24, 2002).

38 *Id.* ¶ 6.

39 *Draft Elements of Modalities for Negotiations on Non - Agricultural Products*, WTO Doc. TN/MA/W/35/Rev.1 (Aug. 19, 2003) [hereinafter *Draft Elements*].

40 *Draft Elements*, *supra* note 39, ¶ B(6).

41 *Id.*

42 *Draft Elements*, *supra* note 39, ¶ (B)(7).

elimination approach is proposed with appropriate flexibilities for developing countries, in order to eliminate and bind all tariffs on products of particular export interest to developing and least-developed country participants." The following sectors were proposed for setting final bound duty at "zero" under the sectoral approach: Electronics & Electrical goods; Fish & Fish products; Footwear; Leather goods; Motor Vehicle parts & components; Stones, Gems, & Precious Metals; and Textiles & Clothing, with mixed interest on each among the developed and developing countries.43 Fifth, LTFR was promised in terms of longer implementation periods and flexibility of options to keep certain percentage of tariff lines unbound.[44] Finally, tariff reductions were proposed by a line-by-line basis, using the following formula (Girard formula):[45]

$$t_1 = \frac{B * t_a * t_0}{(B * t_a + t_0)}$$

Where, t_1 would be the final ad valorem bound rate, t_0 is the initial bound rate, t_a is the average of the bound rates, and B is a coefficient with a unique value to be determined by the participants.

B. The Derbez Draft Flexibilities

The "Derbez draft" (or Draft Cancún Ministerial Text) provided further flexibilities by not forcing tariff binding or reduction commitments on the least developed countries (LDCs) in the immediate future.[46] However, it was heavily criticized by developing countries for not addressing their concerns. Two strong criticisms deserve mention. First, the draft did not identify a value of "B," leaving the negotiation open-ended. Second, the sectoral approach, which proposed setting tariff rates equal to zero in seven manufacturing sectors, was considered a violation of LTFR, as it would lead to developing countries conceding a higher degree of tariff concessions.[47] The pace of negotiations suffered and mistrust among the developing countries grew further when, Annex B was presented to the WTO General Council in July 2004 and the text was found

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43 *Id.* ¶ B(9).

44 *Id.* ¶ B(11)(a).

45 *Id.* ¶ B(7).

46 The "Derbez draft" was distributed at the Cancún Ministerial Conference in 2003. *See* World Trade Organization, Preparations for the Fifth Session of the Ministerial Conference, Draft Cancún Ministerial Text Second Revision of 13 September 2003, WTO Doc. JOB(03)/150/ Rev.2 [hereinafter Cancún Ministerial Text].

47 Suparna Karmakar, *New Contours of India's Multilateral Engagement*, 2 LAW & DEV. REV. 1, 17–19 (2009).

to be exactly the same as that which had been rejected by developing countries at Cancún.[48]

The NAMA negotiations aimed to minimize or remove tariffs. It was also stated that the coverage of the products subjected to tariff reforms must be extensive and without prior exclusions. Further, special needs and preferences of developing countries and LDC participants were to be considered, even by less than full reciprocity of reduction agreements. Therefore, developing countries were authorized to reduce tariffs to a lesser degree than developed countries and for a longer period of time.

Developing countries could choose: (1) lesser formula cuts of up to 10% of their tariff lines, which represented up to 10% of their import value; or (2) to not apply formula cuts, or leave unbound tariff lines, for up to 5% of their tariff lines representing up to 5% of their import value.[49] Developing countries with a binding coverage of less than 35% would be exempt from formula reductions, but instead would contribute by binding their tariffs at an average level.[50]

The Derbez text also noted the importance of exploring the balance between the privileges of developed countries and those of newly acceded countries. More liberalization in this context could also be pursued by newly acceded countries. With respect to the sectoral approach, aimed at reducing tariffs in selected industries, participants from the least-developed countries were not expected to implement the formula cuts or to take part in the sectoral approach.

The NAMA negotiations gradually revolved around the determination of the coefficient "B," which would shape the extent of tariff reduction. Conversely, the European Union and the United States submissions sought stronger commitments from developing countries. The European Union's proposal of applying a single coefficient (X = 10) for both developed and developing countries was considered too stringent by the developing countries. As a non-linear formula has been adopted for the tariff cut, by the Swiss tariff-reduction formula, the new bound tariff rate would always be lower than the coefficient used. As the European Union called for the selection of a small coefficient to be the only coefficient for applying the tariff cut, many developing countries feared that their new bound rate would fall significantly below the current level of applied tariffs across sectors. This would force them to implement an immediate reduction of the applied tariff, with grave consequences for their national

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[48] *See* JOHN HILARY, THE DOHA DEINDUSTRIALIZATION AGENDA: NON-AGRICULTURAL MARKET ACCESS NEGOTIATIONS AT THE WTO 10, https://www.wto.org/english/forums_e/ngo_e/posp47_nama_e.pdf.

[49] *A Simple Guide—NAMA Negotiations*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/markacc_e/nama_negotiations_e.htm (last visited Nov. 2, 2021).

[50] *Id.*

interest.[51] The developing countries were therefore worried that the small coefficient, as proposed by the EU, would marginally lower bound tariff in the developed countries, while leading to a sharp decline of the same in their territories. The United States agreed to offer a limited flexibility by suggesting ten and fifteen for developed and developing countries respectively.[52] The focus in developed countries on single formula or two close coefficients was guided by the significant tariff overhang[53] in leading developing countries, namely, Brazil, Egypt, India, Malaysia, and South Africa.[54] This contrasted with the United States' opposition to the single formula approach of the Uruguay Round, allowing required flexibilities for developing countries.[55]

In contrast, the possibility of a sharp fall in bound tariffs raised concerns among developing countries regarding an impending violation of Special and Differential Treatment (SDT). In line with the concern expressed by other developing countries, India emphasized the need to adopt two different coefficients for developed and developing countries, to secure the LTFR commitment.[56] The country also collaborated with several other developing countries through the NAMA-11 forum[57] regarding the need for extending SDT to developing countries.[58] Moreover, as part of the Argentina, Brazil, and India (ABI) forum, developing countries stressed the adoption of the Girard formula (i.e., a modified Swiss) for tariff cuts. The proposal also argued that the unbound tariff lines, in the post-binding period, should not be subjected to formula cuts.[59] This perspective received support from other developing countries

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[51] MOONSUNG KANG, UNITED NATIONS ESCAP, FORMULAS FOR INDUSTRIAL TARIFF REDUCTION AND POLICY IMPLICATIONS (2005), https://www.unescap.org/sites/default/files/polbrief5.pdf.

[52] Communication from the United States, *Swiss Formula with Dual Coefficients*, WTO Doc. JOB(05)/36 (Mar. 21, 2005).

[53] "The excess of a country's tariff binding over its applied tariff, called tariff overhang, reflects the amount of flexibility available to a country at a point in time. The model's predictions about the relationship between tariff bindings, tariff overhang, and country characteristics can then be tested empirically." Mostafa Beshkar et al., *Tariff Binding and Overhang: Theory and Evidence*, 97 J. INT'L ECON. 1, 2 (2015).

[54] HILARY, *supra* note 48, at 14.

[55] MARTIN KHOR & GOH CHIEN YEN, THE WTO NEGOTIATIONS ON NON-AGRICULTURAL MARKET ACCESS: A DEVELOPMENT PERSPECTIVE 10 (Third World Network 2006).

[56] *See* Communication from India: Addendum, *Market Access for Non-Agricultural Products*, Doc. TN/MA/W/10/Add.3 (Apr. 10, 2003).

[57] A negotiating group of developing countries at the WTO negotiations on NAMA whose common agenda was protection of developing country interests. The member countries included: Argentina, Venezuela, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa, and Tunisia. Communication from Egypt et al., *Market Access for Non-Agricultural Products*, WTO Doc. TN/MA/W/31 (Mar. 25, 2003).

[58] *Id.*

[59] *See* Communication to the Negotiating Group on Non-Agricultural Market Access from Argentina, Brazil and India, *Market Access for Non-Agricultural Products*, WTO Doc. TN/MA/W/54 (Apr. 15, 2005).

as well.[60] The Hong Kong Ministerial Declaration summarized the ongoing debate as follows:

> . . . many Members engaged in an exchange on the basis of an approach with two coefficients. In the context of such debates, the coefficients which were mentioned for developed Members fell generally within the range of 5 to 10, and for developing Members within the range of 15 to 30, although some developing Members did propose lower coefficients for developed Members and higher coefficients for developing Members. In addition, a developing country coefficient of 10 was also put forward by some developed Members. However, while this discussion of numbers is a positive development, the inescapable reality is that the range of coefficients is wide and reflects the divergence that exists as to Members' expectations regarding the contributions that their trading partners should be making.[61]

While it became apparent that developing countries were not going to accept a single formula approach, a compromise of two coefficients posed issues as well, as "[a] 'Swiss formula with two coefficients' will be in violation of paragraph 14 of the HK Declaration.[62]" In the next couple of years, the Negotiating Group on Market Access (NGMA) of the WTO remained busy in reaching common ground, with submissions pouring in from the both sides of development spectrum.[63] In February 2008, the WTO attempted to reach a compromise by proposing the following formula to be applied on a line-by-line basis:[64]

$$t_1 = \frac{(a \; or \; b) * \; t_0}{(a \; or \; b) + \; t_0}$$

Where t_1 and t_0 are the final and initial bound duties, a = 8 – 9: coefficient for developed countries and b = 19 – 23: coefficient for developing countries.

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60 *See* Communication from Malaysia, *Negotiating Group on Market Access—Proposal for Treatment of Unbound Tariffs,* WTO Doc. JOB(05)/86 (May 26, 2005).

61 World Trade Organization, Ministerial Declaration: Annexes of December, 2005, WTO Doc. WT/MIN(05)/DEC.

62 Prabhash Ranjan, *Industrial Tariffs and South Asia: Interpreting for Development* 19 (Ctr. for Trade & Dev. (Centad), Working Paper No. 5, 2006).

63 The negotiations covered wider grounds, e.g., the question of preference erosion for the LDCs. However, the current paper focuses on the tariff reform coefficient question, involving key developed and developing countries.

64 World Trade Organization Negotiating Group on Market Access, *Draft Modalities for Non-Agricultural Market Access*, WTO Doc. No. TN/MA/W/103 (Feb. 8, 2008).

The February 2008 draft also called for the binding of unbound tariff lines by applying a constant, non-linear mark-up of twenty or thirty, considering 2001 as base year for subsequent tariff reductions. Developing countries were allowed certain flexibilities in terms of applying a lower level of formula cuts and thereby keeping, as an exception, a certain percent of tariff lines unbound. While the participation in sectoral initiatives was noted as non-mandatory, it was clarified in the draft that, "Such initiatives shall aim to reduce, harmonize or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, over and above that which would be achieved by the formula modality, on products of export interest to developing Members." But despite potential export gains, the sharp tariff reduction possibilities made the draft much less attractive to developing countries from the Global South.[65] Developed countries interest in the draft waivered as well; the European Union and United States were unhappy with the flexibilities incorporated therein.

Given the lukewarm responses and the subsequent negotiations, NGMA came out with another revised draft modalities in December 2008,[66] with the following tariff reform formula:

$$t_1 = \frac{\{a\ or\ (x\ or\ y\ or\ z)\} * \ t_0}{\{a\ or\ (x\ or\ y\ or\ z)\} + \ t_0}$$

Where t_1 and t_0 are the final and initial bound duties, a = 8: coefficient for developed countries and x = 20, y = 22, z = 25: coefficient for developing countries, to be chosen as provided in paragraph 7.

Paragraph 7 of the "December 2008 Draft"[67] put forward by the NGMA of the WTO defined the detailed flexibility provisions involving developing countries for adopting a particular coefficient. For instance, to adopt x = 20, the permissible options were:

> . . . less than formula cuts for up to 14 percent of non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed 16 percent of the total value of a Member's non-agricultural imports; or, keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to 6.5 percent

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65 David Laborde, *Sectoral Initiatives in the Doha Round*, *in* UNFINISHED BUSINESS? THE WTO'S DOHA AGENDA 277, 277–79 (Will Martin & Aaditya Mattoo eds., 2011).

66 Revision, *Fourth Revision of Draft Modalities for Non-Agricultural Market Access*, WTO Doc. No. TN/MA/W/103/Rev.3 (Dec. 6, 2008).

67 WTO AGRICULTURE: NEGOTIATIONS, CHAIRPERSON'S TEXTS 2008 (Dec. 9, 2008), https://www.wto.org/english/tratop_e/agric_e/chair_texts08_e.htm.

> of non-agricultural national tariff lines provided they do not exceed 7.5 percent of the total value of a Member's non-agricultural imports.

Similar conditionalities were proposed in lieu of using coefficients 22 and 25 as well. Essentially, choosing a higher tariff reform coefficient would force developing countries to adopt deeper reform commitments otherwise. In addition, while participation in sectoral reforms remained non-mandatory, it was noted that:

> . . . for some Members, sectoral initiatives that reach a critical mass of participation will help to balance the overall results of the negotiation on non-agricultural market access, which includes the coefficients in paragraph 5 and the levels of flexibilities and related provisions of paragraph 7. At the time of establishment of modalities, the Members listed in Annex 7 have agreed to participate on a self-identified basis, in negotiating the terms of sectoral tariff initiatives, with a view to making them viable.

Finally, the draft advocated binding of unbound tariff lines by applying a constant, non-linear mark-up of twenty-five percent, by considering 2001 as base year, for subsequent tariff reductions.

C. WTO Negotiations in a Stalemate

While there has been significant work and some progress since the Hong Kong Ministerial Declaration, the member States missed the deadline set in the Hong Kong Declaration.[68] Issues in NAMA that still need to be discussed, include the following:

- Members continue to disagree as to what products should be included in the Modalities of NAMA.
- LDCs are removed from the implementation of a tariff reduction formula. However, a reduction in the margin of choice enjoyed by LDCs and, by extension, their access to the market to developing and developed countries would "erode" if tariffs are substantially lowered for goods of export interest to LDCs.
- Members are split about how to handle unbound tariff mark-ups.

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[68] Addendum, *Textual Report by the Chairman, Ambassador Luzius Wasescha, on the State of Play of the NAMA Negotiations*, WTO Doc. No. TN/MA/W/103/Rev.3/Add.1 (Apr. 21, 2011).

- The Draft of Modalities of July 2007 proposed specific flexibility recommendation, but no consensus was found.
- The revised Draft Modalities clarify that progress was made in the detection, analysis, and categorization of NTBs. It should be noted that, in general, LDCs have not informed their NTBs and have not been consistently involved in discussions on NTBs, although this is an area that is supposed to affect LDC's market access.

The United States has recently called for a "broad reset" of the WTO tariff commitment, arguing that the presently obsolete tariff decisions are stuck in a place that no longer serve the political choices and economic conditions of the Member States. The overall simple average bound rate of the United States is currently 3.4%, which is among the lowest for major developed countries and has remained relatively unchanged for more than a decade. By comparison, the average tariff levels for India and Brazil are 50.8% and 31.4%, respectively.[69] Moreover, India has proposed that the upper tariff limits for several products of interest, namely information technology products, be renegotiated at the WTO.[70] These proposed steps present a lucrative opportunity for the domestic sector under initiatives such the "Make-in-India" and "Atmanirbhar Bharat Abhiyan," in which India has promoted its domestic production of goods in selected manufacturing segments. The United States has noted that under the "Make-in-India" initiative, the government has raised duties on two broad groups of products to encourage domestic production: (1) an assortment of labor-intensive products; and (2) electronics and communications devices, including mobile phones, televisions, and associated parts and components.[71] Similarly, the industrial policies introduced under the "Made in China 2025" initiative have already caught the eye of United States policy makers. These policies include tax preferences, forced joint ventures, and the devolution of subsidies might fluctuate distort prices in other developing economies and further benefit the Chinese entities.[72] Qualitative steps, which affect United States businesses trading in China,

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[69] WORLD TRADE ORG. ET AL., WORLD TARIFF PROFILES 2020 (2020). *See also* Julien Chaisse & Mitsuo Matsushita, *Maintaining the WTO's Supremacy in the International Trade Order—A Proposal to Refine and Revise the Role of the Trade Policy Review Mechanism*, 16 J. INT'L ECON. L. 9 (2013). *See also* Jaydeep Mukherjee, Julien Chaisse & Debashis Chakraborty, *Deconstructing Services and Investment Negotiating—A Case Study of India at WTO GATS and Investment Fora*, 14 J. WORLD INV. & TRADE, 44, 44–78 (2013). *See also* Wei Yin, *Challenges, Issues in China-EU Investment Agreement and the Implication on China's Domestic Reform*, 26 ASIA PAC. L. REV 2, 170–202 (2018).

[70] Asit Ranjan Mishra, *India Seeks Tariff Renegotiations at WTO*, MINT (Dec. 17, 2020), https://www.livemint.com/news/india/india-seeks-tariff-renegotiations-at-wto-11608139820851.html.

[71] ROBERT E. LIGHTHIZER, THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2019 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 236 (2019).

[72] KAREN SUTTER, CONG. RSCH. SERV., IF 10964, "MADE IN CHINA 2025" INDUSTRIAL POLICIES: ISSUES FOR CONGRESS (2020).

have been proposed by both the United States and China. But the first signs of a ceasefire were seen when the two sides signed the Phase One Agreement in January 2020, which formally negotiated the rollback of tariffs, the extension of trade purchases, and renewed obligations on intellectual property, transfer of technologies, and currency activities.

II. TRADE REMEDIES: THE NEED TO REMEDY REFORM

In 2001, the Doha Development Agenda (DDA) set a goal to clarify and improve disciplines under the Anti-Dumping/Subsidies and Countervailing Measures (AD/SCM). Ever since the constructive engagement of these Measures was achieved in the WTO Hong Kong Ministerial in 2005, there have been several continued discussions in 2007 and 2008 based on the AD/SCM drafts. However, in 2010, it was reported that a "consensus" was unlikely to be achieved easily.[73] The issue has remained contentious due to the polarized opinions among member countries within the DDA. Some nations have advocated for anti-dumping and other reforms, while others have opposed them. Another contentious issue has been the disputed Non-Market Economy (NME) status of China, which rests on the differences in interpreting section 15(a)(ii) of China's WTO accession protocol. The United States Department of Commerce continues to give China the NME status,[74] despite some stakeholder groups advocating against this designation to avoid complicating trade relations with China.[75]

A. Trade Remedy Measure Negotiations

The United States has participated in bilateral and multilateral forums with its trading partners to resolve trade-related issues.[76] To address potential adverse consequences, United States federal laws allow for trade relief initiatives on "unfair" foreign trade policies in the domestic market. These may include safeguard measures such as anti-dumping and countervailing duties or reduction of the influx of reasonably priced imports that impair national security. In fact, with each of its trade agreements, the United States has held bilateral negotiations to resolve

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[73] CONG. RSCH. SERV., R40606, TRADE REMEDIES AND THE WTO RULES NEGOTIATIONS 1 (2010).

[74] Mirek Tobiáš Hošman, *China's NME Status at the WTO: Analysis of the Debate*, 20 J. INT'L TRADE L. & POL'Y 1, 7 (2021). *See also* WAYNE M. MORRISON, CONG. RSCH. SERV., IF 10385, CHINA'S STATUS AS A NONMARKET ECONOMY (2019). On the broader issues raised by China NME status, *see* Yenkong Ngangjoh-Hodu & Tianzhu Han, *China's Market Economy Dilemma and its Interplay with EU Anti-Dumping Law*, 27 ASIA PAC. L. REV 1, 102–26 (2019).

[75] Hošman, *supra* note 74, at 1–20.

[76] *See* Weihuan Zhou, *China's Litigation on Non-Market Economy Treatment at the WTO: A Preliminary Assessment*, 5 CHINESE J. COMPAR. L.345, 345–64 (2017).

conflicts and to increase consumer reach for United States companies. More often, however, the United States has reverted to a multilateral forum for the resolution of trade disputes established by the WTO or its precursor, the General Agreement on Tariffs and Trade (GATT). As part of the dispute settlement process, WTO members may seek authorization to retaliate if trading partners maintain measures determined to be inconsistent with WTO rules.[77]

B. China's Non-Market Economy Status

The question of the nature of the Chinese economy—or more precisely the question of whether China operates as a market economy—is complex. Until now, China has been treated as a non-market economy (NME). In fact, Chinese exports are still subject to special conditions imposed when China joined the WTO in 2001. Under the formal legal criteria at the time, China did not meet the criteria of a market economy; this resulted in the provisional implementation (for fifteen years) of specifically binding anti-dumping measures. These provisions expired in December 2016. However, the fundamental problem is that the criteria used to determine these market mechanisms are individually specified by the countries because the WTO does not offer any formal definition. As a result, each WTO member can have its own definition, which results in very heterogeneous treatments of Chinese exports. In fact, the NME methodology is an arbitrary and punitive instrument.[78] Without much surprise, this complex situation led to disputes between China and many other key members such as the European Union, the United States, and Japan.

On an appeal from China, the WTO Dispute Settlement Body agreed in 2016 to stay proceedings on a trade dispute, launched by China against the European Union, regarding China's non-market economy position in anti-dumping proceedings.[79] In the late 1990s, China was a mid-sized economy and many WTO members, most prominently the United States, made China's effort to join the multilateral organization very difficult. This may have been the hardest accession deal in the history of the GATT/WTO. The major point of discussion during the accession talks was

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[77] ANDRES SCHWARZENBERG, CONG. RSCH. SERV., IF 10958, U.S. TRADE DEBATES: SELECT DISPUTES AND ACTIONS (2021).

[78] James J. Nedumpara, *China's Market Economy Status in WTO: In a State of Abeyance*, FINANCIAL EXPRESS (July 8, 2019), https://www.financialexpress.com/economy/chinas-market-economy-status-wto-state-abeyance/1636350/.

[79] *See generally* Weihuan Zhou, *China's Litigation on Non-Market Economy Treatment at the WTO: A Preliminary Assessment*, 5 CHINESE J. COMP. L. 345 (2017). *See also* Weihuan Zhou, *The Issue of 'Particular Market Situation' Under WTO Anti-dumping Law, in* NON-MARKET ECONOMIES IN THE GLOBAL TRADING SYSTEM 185, 198–200 (James Nedumpara & Weihuan Zhou eds., 2018).

the treatment of China as a non-market economy (NME) after its entrance into the WTO.[80] These WTO negotiations will enforce the main values of supply and demand for goods and services in the markets, without being limited by government intervention.

In anti-dumping situations, the non-market economy technique allows countries, who agrees to undertake WTO anti-dumping investigations, the extra freedom to disregard domestic costs and rates. For the last few decades, this technique has been used indiscriminately against China.

When domestic transactions are defined as inaccurate or irregular, expense and sales data are often used in the creation of home market rates. Chinese costs and rates have been routinely dismissed or disregarded in most anti-dumping proceedings, on the grounds of the special treatment of NMEs. Most anti-dumping bodies have also looked at "surrogate" or third-country evidence in assessing the Chinese costs and prices. As several criticisms against the United States' practice of duty determination under NME scenario surfaced,[81] the Chinese representation against the same have hardened as well.

C. Recent WTO Cases on Tariff & Contingency Measures

Under the Marrakesh Agreement of 1994, a protesting member may, in the case of a trade dispute between WTO members, request the creation of a tribunal composed of three persons to decide on the dispute.[82] The panel is responsible for reviewing the accuracy of the suspected infringement of WTO agreements and providing a report to be addressed by the parties to the conflict, after the adoption by the Dispute Settlement Body (DSB). If one of the parties to the dispute does not recognize the panel's report, it will bring an appeal before the Appellate Body against the panel's legal conclusions. A three-member chamber hears each appeal; this panel may retain, amend, or reverse the legal decisions of the panel. Recent tariff cases with ongoing proceedings in the WTO are:

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[80] "The issue of China's market economy status (MES) has been described as 'the mother of all trade issues now.'" Antonia Hmaidi, *Is China a Market Economy?*, BERTELSMANN STIFTUNG (Jan. 22, 2016), https://ged-project.de/globalization/is-china-a-market-economy/; *see* Hošman, *supra* note 74, at 1–20; *see also* Ngangjoh-Hodu & Han, *supra* note 74, at 74.

[81] Adam Williams, *What a Dump! The Current State of Antidumping Duty Calculations in Non-Market Economy Cases*, 32 EMORY INT'L L. REV. 433, 438 (2018).

[82] William J. Davey, *The First Years of WTO Dispute Settlement: Dealing with Controversy and Building Confidence*, *in* A HISTORY OF LAW AND LAWYERS IN THE GATT/WTO: THE DEVELOPMENT OF THE RULE OF LAW IN THE MULTILATERAL TRADING SYSTEM 353, 368–73 (Gabrielle Marceau ed., 2015).

- China's Anti-Dumping and Countervailing Duty measures on Barley from Australia.[83]
- Colombia's Anti-Dumping Duties on Frozen Fries from Belgium, Germany, and the Netherlands.[84]
- India's Tariff Treatment on Certain Goods in the Information and Communications Technology Sector, where Taiwan claimed that India's measures appear to be inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994. Subsequently, the consultations were joined by Japan, the U.S., Singapore, Canada, and the European Union.[85]

Contingency mechanisms, or legal "stop valves," enable countries to cancel or waive trade agreements and affect the global economy if the WTO is exploited for protectionist purposes. The most recently settled disputes on these measures were between the European Union and Russia, and Australia and Indonesia, regarding alleged breaches of anti-dumping agreements.

The dispute between the European Union and Russia concerned two aspects of the European Union's anti-dumping practice: (1) the adjustment, by the European Commission, of input costs incurred by investigated producers and exporters; and (2) specific determinations made by the European Union in two Expiry Reviews. The Panel disagreed with Russia that the European Union had breached the Anti-Dumping Agreement by finding that there was a likelihood of recurrence of dumping and injury if the anti-dumping measures were to lapse.[86]

The dispute between Australia and Indonesia concerned Australia's anti-dumping measures imposed on A4 copy paper exported from Indonesia, following an investigation by the Australian Anti-Dumping Commission. One of Indonesia's claims in this dispute concerned a clause of the Anti-Dumping Agreement, which Australia had allegedly breached. The Panel recommended that Australia bring its measure into conformity with its obligations under the Anti-Dumping Agreement. However, the Panel denied Indonesia's request to suggest ways in which Australia could implement the recommendations.[87]

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[83] Communication from Canada, *China—Anti-Dumping and Countervailing Duty Measures on Barley from Australia*, WTO Doc. WT/DS598/3 (Jan. 6, 2021).

[84] Note by the Secretariat, *Colombia—Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands*, WTO Doc. WT/DS591/4 (Aug. 26, 2020).

[85] Note by the Secretariat, *India—Tariff Treatment on Certain Goods in the Information and Communications Technology Sector*, WTO Doc. WT/DS588/8/Rev.1 (Nov. 24, 2020).

[86] Panel Report, *European Union—Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia (Second Complaint)*, WTO Doc. WT/DS494/R (July 24, 2020).

[87] Panel Report, *Australia—Anti-Dumping Measures on A4 Copy Paper*, WTO Doc. WT/DS529/R (Dec. 4, 2019).

III. UNDERSTANDING THE GROUND REALITY: TOPOGRAPHY OF TARIFF POLICIES

This section delves into the actualities of tariff policies by first analyzing the current sectoral trend in policies originating in the European Union, the United States, China, and India, respectively. The second subsection discusses with the surge in participation of these countries in Global Value Chains (GVCs), the resulting economic effects, and the reasons for the difference in these effects between the four countries. The last subsection discusses the scenario and dynamics of their contingency interventions.

A. The Tariff Scenario

To understand the possible orientations of the four leading economies (China, the European Union, India, and the United States) towards future reforms, it is necessary to analyze the trends in their tariff policies. Long time-series data on sector-level tariff patterns can be drawn from the World Integrated Trade Solution (WITS) Database.[88] A total of sixteen sectors at the harmonized system (HS)[89] two-digit classification (i.e., at the Chapter level) have been identified for this analysis, all of which are heavily traded and crucially integrated with Global Value Chains.[90]

The analysis was conducted in the following manner: The tariff data from WITS at the Harmonized System (HS) two-digit level were obtained in both simple and weighted average forms. The Simple Average Tariff (SAT) was reached by dividing the sum of all the applied tariff lines in a country within the selected product category by the number of tariff lines.

The Weighted Average Tariff (WAT) was computed in the following manner. The applied tariffs at HS six-digit, Sub-Heading level, were first multiplied by the sectoral import shares under the corresponding product lines. Then the trade-weighted tariffs were added together to derive

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[88] The WITS database provides detailed data on tariffs, non-tariff barriers, value of imports, and other trade-related categories for 223 countries. The data is available from 1962 onwards. WORLD BANK, WORLD INTEGRATED TRADE SOLUTION (WITS), http://wits.worldbank.org/.

[89] Among industry classification systems, Harmonized System Codes are commonly used throughout the export process for goods. The Harmonized System is a standardized numerical method of classifying traded products. It is used by customs authorities around the world to identify products when assessing duties and taxes and for gathering statistics.

[90] The value chain represents the set of basic and supporting activities and processes necessary to produce and deliver a product or service through all phases of its life cycle, from design to use. *See* Vilas Pathikonda & Thomas Farole, *The Capabilities Driving Participation in Global Value Chains* 2–3 (World Bank, Working Paper No. 7804, 2016).

the WAT.[91] The current analysis obtained the SAT and WAT data as computed by WITS.

Suppose for a sector, for example leather products, the WAT is found to be higher vis-à-vis the SAT. This can occur only when higher tariff rates are being applied by a certain country on products characterized by relatively higher import flows. In other words, the relatively lower WAT level over SAT level implies that a higher proportion of trade is taking place through relatively freer tariff lines, indicating deeper reforms. Hence, an observed higher WAT for a sector in a country signifies greater protectionist intent. The use of trade-weighted applied tariffs, rather than simple applied tariffs, is to gauge whether trade is taking place through the lower-duty tariff lines. For all the four members, China, the European Union, India, and the United States, the average applied tariffs between 2001–2010 and 2011–2018 have been compared to understand the changes in the tariff rates over time. While the former period denotes the Doha Round negotiation phase, the latter period shows the stalemate era.

The orientation of these four WTO Members towards tariff-led protectionist policies can be observed in Tables 1 and 2. Table 1 presents the tariff profile for developed countries. Several observations can be noted for the European Union. First, barring the exception of inorganic chemicals, pharma, and copper, the WAT is higher as compared to the SAT, underlining the trade policy orientation.[92] Second, the average WAT is more than five percent during the second period, but only for apparel and footwear products, illustrating the bloc's orientation to protect relatively labor-intensive sectors. Finally, in only five industries, namely inorganic and organic chemicals, footwear, copper products, machinery, and equipment, has the average WAT risen in the latter period, indicating a growing protectionist intent.

The situation in the United States is also observed from Table 1. The United States differs from the European Union in terms of policy orientation. First, barring the exception of the inorganic chemicals and plastic sector, for all the HS codes up to 64 (i.e., footwear), the WAT is higher than the corresponding SAT. In other words, the United States' tariff protectionism is more pronounced in the low-to-mid capital-intensive segments. Second, in the post-2011 period, the average WAT only crossed five percent for leather, apparel, and footwear products. Finally, in a total of nine sectors—inorganic chemicals, plastic, rubber, leather, apparels,

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[91] MIA MIKIC & JOHN GILBERT, TRADE STATISTICS IN POLICYMAKING—A HANDBOOK OF COMMONLY USED TRADE INDICES AND INDICATORS 102–03 (United Nations Econ. & Soc. Comm'n for Asia & the Pac. rev. ed. 2009) (2007).

[92] *See* Asif H. Qureshi, *Interpreting Exceptions in the WTO Agreement: Lessons from the New Haven School*, 22 ASIA PAC. L. REV. 3, 3–23 (2014).

footwear, iron and steel products, and machinery and equipment—the average WAT increased in the latter period.

Table 2 presents the tariff scenario for China and India. First, for China, the WAT is higher than the corresponding SAT, but only in the case of copper products, vehicles, and transport equipment and other instruments. Second, the WAT is lower than 5% in the second period, but only in the case of inorganic and organic chemicals, pharmaceuticals, iron and steel, machinery and equipment, and electrical equipment. Finally, the average WAT increased in the latter period, but only for iron and steel articles, and copper products.

Yet, for India, the WAT is only higher than the SAT in pharmaceuticals, rubber, leather, and footwear. Additionally, the average WAT in post-2011 period is lower than 5% only in case of copper products and electrical equipment. Finally, for all the sectors, the average WAT is observed to be in decline in the latter period.

A few observations regarding the tariff profile of these four countries deserve mention. First, as observed from the raw data, all the four countries have witnessed a general increase in applied tariff rates in several sectors during the last two years. Second, among the developed countries, tariff activism[93] is relatively higher within the United States, though tariff on pharmaceutical imports is quite reformed in both the European Union and the United States. Third, the general European Union-United States orientation is towards the protection of low-to-mid tech products, which are of primary export interest for developing countries. Fourth, the incidence of a higher WAT is less acute for China and India, when compared to their developed counterparts. As the developed countries are generally characterized by lower-than-average customs tariffs on their import flows, it is possible that, for several product groups, the importations might be happening despite higher tariffs. One possible reason behind this is the presence of skewed demand patterns in the import market. Alternatively, the products characterized by lower duties might also have certain NTBs on the imports, which either prohibit or restrict import flows within these categories.[94] Finally, despite a rise in certain sectors, both China and India witnessed a general decline in average WAT rates, showing an orientation towards tariff reforms. This observation underlines the prevailing protectionist intent in these four leading players, albeit to varying degrees.

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[93] "Tariff activism" can be perceived to be operational in a country if there are several instances of interventions by the policymakers to protect the national interest through the tariff instrument, at the behest of the primary or manufacturing sector players or lobbying groups.

[94] Gianluca Orefice, *Non-Tariff Measures, Specific Trade Concerns and Tariff Reduction,* 40 WORLD ECON. 1807, 1807–1835 (2017).

One prime distinction between the four WTO Members selected for the current analysis, however, is reflected in the status of their non-agriculture tariff binding. This is evidenced from the following: China (100%), European Union (100%), India (70.1%), and the United States (100%).[95] While the other three countries (China, the European Union, and the United States) need not bother with the choice of the NAMA coefficient, India may be concerned with the selection of a tariff binding formula and the immediate implications on the corresponding applied duties. Previously, with the Indian position in mind, during the NAMA negotiations the European Union proposed that, "all WTO Members other than the least developed countries [must] have as close to 100 percent bindings as possible."[96] The United States also has taken note and put pressure on India, as ". . . nearly 30 percent of India's non-agricultural tariffs remain unbound."[97] During 2019 and 2020, the pressure on India was particularly high, when the then United States President Donald Trump used the expression "Tariff King" while referring to the country.[98] India, however, has long tried to negotiate breathing space through the introduction of flexibility in WTO provisions, where, "developing countries must have the freedom to leave unbound up to ten percent of the tariff lines that were hitherto unbound and were considered sensitive or strategically important."[99] Given the reservations towards a possible sharp decline in manufacturing tariffs, the Indian policymakers have so far adopted a cautious approach in setting manufacturing tariff and other policies. Most of the recent manufacturing sector related policy deliberations in India (e.g., a high level of import tariffs, complexities in product standards, local content requirements mandated under the "Atmanirbhar Bharat Abhiyan" and so on) need to be viewed in this broader context.[100] Both the developed as well as developing economies have expressed concerns over these practices during the recent Trade Policy Review meeting on India in January 2021.[101]

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95 WORLD TRADE ORG., *supra* note 69.

96 European Communities, *Market Access for Non-Agricultural Products*, WTO Doc. No. 02-6017 (Oct. 31, 2002).

97 LIGHTHIZER, *supra* note 71.

98 Amitendu Palit & Deeparghya Mukherjee, *India's Tariffs and Implications for Indo-US Trade Prospects*, 575 INST. S. ASIAN STUD. 1, 2 (2019).

99 Anwarul Hoda & Monika Verma, *Market Access Negotiations on Non-Agricultural Products: India and the Choice of Modalities* 23 (Indian Council for Rsch. on Int'l Econ. Rel., Working Paper No. 132, 2004).

100 *Govt fixes minimum percentage of local content in 55 chemical, pesticides*, BUS. STANDARD (June 2, 2020), https://www.business-standard.com/article/economy-policy/govt-fixes-minimum-percentage-of-local-content-in-55-chemical-pesticides-120060201321_1.html.

101 Sidhartha, *China raises India's FDI checks at WTO*, TIMES INDIA (Jan. 7, 2021, 9:58 A.M.), https://timesofindia.indiatimes.com/business/india-business/china-raises-indias-fdi-checks-at-wto/articleshow/80146401.cms.

Table 1: Comparing the Effective Applied Tariff (AHS) Reforms—European Union and the United States[102]

Description	European Union				United States			
	Simple Average Tariff		Weighted Average Tariff		Simple Average Tariff		Weighted Average Tariff	
	2001-10	2011-18	2001-10	2011-18	2001-10	2011-18	2001-10	2011-18
Inorganic Chemicals	2.23	2.31	1.50	1.63	1.50	1.51	0.59	0.70
Organic Chemicals	2.10	2.45	2.35	2.82	2.71	2.83	3.19	3.04
Pharmaceuticals	0.00	0.00	0.00	0.00	0.06	0.12	0.00	0.00
Plastic Articles	2.11	2.42	3.53	3.52	2.80	3.07	2.34	2.63
Rubber Articles	0.97	1.09	1.57	1.44	1.27	1.37	1.73	1.87
Leather Products	1.19	1.48	3.22	2.88	5.15	5.07	7.88	8.14
Apparels, knitted or crocheted	5.52	4.44	6.32	5.52	12.20	9.83	11.52	10.85
Apparels, not knitted or crocheted	5.22	4.31	7.14	6.21	9.27	7.51	8.79	8.89
Footwear Products	4.55	4.04	8.34	8.86	9.23	7.95	11.45	11.99
Iron and Steel	0.75	0.13	0.81	0.17	0.39	0.13	0.30	0.13
Articles of Iron and Steel	0.66	0.76	1.37	1.33	0.99	1.05	1.02	1.09
Copper Products	1.50	1.45	0.49	0.52	1.35	1.46	0.66	0.68
Machinery and Equipment	0.47	0.62	0.63	0.69	0.77	0.85	0.45	0.51
Electrical Machinery and Equipment	0.79	0.88	1.62	1.01	0.95	1.08	0.67	0.64

[102] Computed by Authors from WITS.

Vehicles and Transport Equipment	2.28	2.29	6.54	4.27	1.43	1.59	1.15	1.11
Various instruments	0.52	0.57	0.86	0.65	0.94	0.95	0.64	0.55

Table 2: Comparing the Effective Applied Tariff (AHS) Reforms—China and India[103]

Description	**China**				**India**			
	Simple Average Tariff		**Weighted Average Tariff**		**Simple Average Tariff**		**Weighted Average Tariff**	
	2001-10	**2011-18**	**2001-10**	**2011-18**	**2001-10**	**2011-18**	**2001-10**	**2011-18**
Inorganic Chemicals	5.47	4.54	6.24	3.85	17.76	6.76	15.17	5.93
Organic Chemicals	5.90	4.96	5.68	3.43	17.58	6.80	15.69	6.01
Pharmaceuticals	4.86	3.71	4.59	3.42	18.22	9.26	18.71	9.61
Plastic Articles	9.31	6.38	8.86	5.21	18.33	8.43	17.76	7.23
Rubber Articles	11.18	9.11	13.12	7.87	18.88	9.52	19.46	9.94
Leather Products	14.79	11.22	13.64	9.74	18.78	9.25	18.88	9.70
Apparels, knitted or crocheted	16.39	12.25	13.14	8.34	19.52	8.34	19.36	8.22
Apparels, not knitted or crocheted	16.77	12.51	15.28	11.46	20.78	8.05	20.30	6.23
Footwear Products	18.09	14.18	14.60	6.04	18.61	10.21	18.64	10.23
Iron and Steel	5.68	4.74	4.88	3.63	21.10	6.35	21.17	5.12
Articles of Iron and Steel	9.79	8.16	7.55	7.72	18.73	9.21	18.69	9.06

[103] Computed by Authors from WITS.

Copper Products	6.13	5.03	7.55	7.72	16.50	6.10	15.78	4.07
Machinery and Equipment	7.99	6.01	5.24	3.54	15.71	6.59	13.68	5.51
Electrical machinery and Equipment	7.71	5.35	3.26	1.34	14.55	6.56	10.55	3.61
Vehicles and Transport Equipment	16.69	11.63	22.43	19.19	30.96	22.57	27.34	14.88
Various instruments	6.96	5.03	7.23	5.14	15.19	6.78	14.37	5.93

B. The GVC Participation Scenario

The last two decades have witnessed a sharp rise of trade flows in intermediate products and parts and components, due to the growth of cross-country GVCs. On the one hand, the deepening of the resulting international production networks (IPNs) has been facilitated by cross-country contract manufacturing arrangements.[104] On the other hand, continued tariff reforms of a wider variety of products have led to enhanced trade opportunities. The IPNs often develop and deepen following a "hub-and-spoke" model, where the global firms from the "center" enter into linkages with supplier networks developed in the peripheries. The "success" of a country in the IPN can be explained by several factors. First, a country characterized by demand-side advantages (e.g., market size) can emerge as a major production and assembly hub. Second, inherent supply-side advantages (e.g., lower labor cost, skilled labor availability, resource-intensity) play a key role in determining location choices of the developed countries' multinational corporations (MNCs). Third, an improved business climate (e.g., smoother FDI and tax norms) and a trade facilitation scenario (i.e., rules of origin harmonization, better connectivity with key markets, RTAs with wider set of countries) help countries emerge as IPN hubs.[105] This was observed by the Global Value

[104] The International Production Networks (IPNs) can be defined as spread of production blocks, specializing in different stages of production, across countries. *See generally* Jayant Menon, *Supporting the Growth and Spread of International Production Networks in Asia: How Can Trade Policy Help?* (Asian Dev. Bank, Working Paper No. 112, 2013).

[105] *See generally* JAVIER LÓPEZ-GONZÁLEZ & PRZEMYSLAW KOWALSKI, GLOBAL VALUE CHAIN PARTICIPATION IN SOUTHEAST ASIA: TRADE AND RELATED POLICY IMPLICATIONS 13 (L. Y. Ing & F. Kimura eds., 2017).

Chain Development Report, noting that the US, Germany, China, and Japan were among the major production hubs.[106]

The economic effects of participation in the IPNs are ambiguous. After an initial tariff reform, either unilaterally or through RTAs, a country may experience rising imports of intermediate inputs and parts and components, to be used in the export segment. In that case, the foreign value-added content (FVA) of exports may increase sharply, resulting in a possible long-term trade deficit. Such negative repercussions on trade balance and, in turn, on employment creation, might lead to a demand for the protection from the lesser value-added segments in the domestic industry. Yet, if the inherent advantages within a country strengthen the domestic production of intermediate goods, the vibrant supplier network will facilitate the relocation of foreign MNCs to a country with the objective of value chain integration with domestic companies. In that case, total exports, as well as the domestic value added to the (DVA) content of exports, would eventually increase and result in a trade surplus and employment benefits. Such success may inspire domestic lobbying groups to embrace further reform measures and motivate governments to enter into newer RTAs. This improved economic standing may also motivate the governments that benefit from an improved trade balance to explore newer RTAs.[107] In other words, the realized gains, as reflected through trade balance and labor market adjustments, can significantly influence a country to make commitments at future multilateral trade rounds.

The DVA content scenario for sectoral exports in any given time period across key economies can be compared by using various versions of the Organization for Economic Cooperation and Development's (OECD) Trade in Value Added (TiVA) database.[108] The latest TiVA data from December 2018 provides information on the export value-added by source, for sixty-four economies, including all OECD and G20 countries, the European Union, and a significant number of East Asian, Southeast Asian economies and emerging nations from 2005 to 2015. By appropriately matching the country-level input-output tables (which may be published with different periodicity and industrial classifications), data on thirty-six aggregated sectors are provided

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[106] DAVID DOLLAR ET AL., GLOBAL VALUE CHAIN DEVELOPMENT REPORT 2019: TECHNOLOGICAL INNOVATION, SUPPLY CHAIN TRADE, AND WORKERS IN A GLOBALIZED WORLD 9 (David Dollar et al. 2019).

[107] *See generally* Michael Sampson, *The evolution of China's regional trade agreements: power dynamics and the future of the Asia-Pacific*, 34 PAC. REV. 259, 259–289 (2021); Mitsuo Matsushita, *Regionalism and the Disciplines of the WTO: Analysis of Some Legal Aspects under Article XXIV of the GATT*, 13 ASIA PAC. L. REV. 191, 191–201 (2005).

[108] *See* Rashmi Banga, *Linking into Global Value Chains Is Not Sufficient: Do You Export Domestic Value Added Contents?*, 29 J. ECON. INTEGRATION 268, 268–297 (2014).

in the OECD-TiVA database. The present analysis draws data from the 2018 TiVA database for six key manufacturing sectors, namely: textile, apparel, and leather; chemicals and non-metallic mineral products; base metals; computers, electrical machineries and electricals; machinery and equipment; and transport equipment.[109] It may be noted that all of these sectors are characterized by deeper participation within global IPNs.[110] The DVA content data is then compared for select countries between two periods, namely 2005–2010, a period characterized by NAMA negotiations, and 2011–2015, a phase when NAMA reforms moved backstage. The results are summarized in Tables 3–6.

For each of the four countries, the value-added in sectoral exports by source country and group is reported in percentages, as computed from the TiVA data on origin of value added in gross exports. The numbers are interpreted in the following manner. For instance, regarding China during 2005–2010 and 2011–2015, as captured in Tables 3A and 3B respectively, the DVA content (i.e., proportional value of domestic intermediate products) of total exports in the textile, clothing, and leather categories was 85.54% and 88.20%, respectively. In other words, the DVA content has increased for China in the latter period, as the country's dependence on imported parts and components in proportional terms declined. Conversely, the FVA content for the same product from the European Union (28) declined from 2.05% to 1.71%, indicating China's shrinking input dependence on the developed country bloc.

The value-addition scenario for developed countries is summarized in Tables 3A–3B and 4A–4B. First, in Tables 3A and 3B, it is observed that the DVA content has decreased for the European Union (28) in all six product categories, signifying rising penetration by foreign suppliers into its upstream manufacturing value chains. Second, barring the exception of the computer, electronics, and electrical equipment, the shares of Association of Southeast Asian Nations (ASEAN)[111] and North America has generally increased in the

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[109] ORG. FOR ECON. COOPERATION AND DEV., *Trade in Value Added (TiVA) 2018 ed: Principle Indicators*, https://stats.oecd.org/Index.aspx?datasetcode=TIVA_2018_C1#.

[110] *See* Pathikonda & Farole, *supra* note 90 at 2, 11–13.

[111] The Association of Southeast Asian Nations (ASEAN) is a regional intergovernmental organization made up of ten member states. Established by Indonesia, Malaysia, the Philippines, Singapore, and Thailand in 1967, it later welcomed Brunei, Cambodia, Myanmar, the Lao People's Democratic Republic, and Vietnam to its ranks. ASEAN is based on an extroverted growth model (openness to trade and FDI) and has solid growth drivers (including a sizeable market, with 650 million inhabitants or nine percent of the world population, and a young population, urban and connected). Bringing together very open economies, it contributes around eight percent to world trade. The amount of inward foreign investment, at 149 billion USD in 2018, is comparable to inward FDI in mainland China. ASEAN is also one of the regions in the world

FVA content of European Union exports. Third, the FVA content from South Korea, China, and India has increased, underlining the rising contribution from relatively low-cost economies. The FVA content has also grown in Brazil and Russia, which are both key emerging economies. Finally, the declining shares of Japan further underline the importance of cost considerations. The strengthening job market restrictions in several European countries and its adverse influence on labor migration may be noted in this context.[112]

The value-addition scenario for the United States has been summarized in Tables 4A and 4B respectively, from which the following observations emerge. First, barring the exception of computer, electronics, and electrical equipment, for all other sectors, the DVA content has declined in the United States. Second, the FVA content is generally declining from the European Union (28) and Japan, countries that are relatively high-cost economies. Finally, all the low-cost partners, namely China and India, have deepened their participation in the United States' value chains. However, a mixed trend emerges for Brazil and Russia. The lower value-addition has left a mark in the recent trade policy deliberations, as reflected in the "America First" interventions. It has been observed over the last decade that several developed countries have provided incentives to local companies, who had previously relocated parts of their production and assembling facilities in a low-cost economy (also called "offshoring"), to return home ("backshoring").[113] The backshoring of manufacturing and assembling activities can create local employment on one hand and enhance the domestic value addition in gross exports on the other. Apart from the trade war with China, the United States

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that is best integrated into global value chains (notably electronics, textiles, and automobiles). The level of development of ASEAN countries today is very heterogeneous, with an average per capita income of around $4,600, ranging from $1,200 for Burma to $65,000 for Singapore. According to the World Bank classification, based on gross national income, the region has six "lower middle income countries" (Laos, Cambodia, Burma, Vietnam, Philippines, and Indonesia), two "upper middle income countries" (Thailand, Malaysia) and two "high income countries" (Brunei, Singapore). *See* JULIEN CHAISSE & SUFIAN JUSOH, THE ASEAN COMPREHENSIVE INVESTMENT AGREEMENT: THE REGIONALIZATION OF LAWS AND POLICY ON FOREIGN INVESTMENT 265 (2016).

[112] *See* Fredrik Erixon & Razeen Sally, *Trade, Globalisation and Emerging Protectionism Since the Crisis* (European Centre for Int'l Pol. Econ., Working Paper No. 02, 2010).

[113] It is a usual commercial practice of leading corporations to relocate some part of its production or services operations in an overseas market, where the labor or raw material costs are cheaper vis-à-vis the comparable figures in the home country. This phenomenon is known as offshoring. On the other hand, the procedure of bringing the offshore production or services back in the home country of the corporation is known as reshoring, onshoring, inshoring, or backshoring. *See* Lydia Bals, Anika Daum & Wendy Tate, *From Offshoring to Rightshoring: Focus on the Backshoring Phenomenon*, 15 AIB INSIGHTS 3 (2015); ALESSANDRO BARONCELLI, VALERIA BELVEDERE & LUIGI SERIO, OFFSHORING VERSUS RESHORING? RATHER, SHOULDN'T IT BE RIGHTSHORING?, *in* RESHORING OF MANUFACTURING 39–56 (Alesessandra Vecchi ed., 2017).

has also imposed tariffs on steel and aluminum exports from the European Union, to which the bloc has responded with proportionate retaliations.[114] It has also withdrawn the Generalized System of Preferences[115] benefits from Indian exports citing concerns, "including high tariffs on motorcycles and telecommunication products, price control on medical devices such as coronary stents and knee implant components, unfavorable treatment against United States dairy products and unfair rules against e-commerce companies and requirements for data localisation." [116] In retaliation, India slapped retaliatory tariffs on twenty-nine United States export products, but delayed its execution in anticipation of a future trade agreement.[117]

The value-addition scenario for the developing countries is summarized in Tables 5A–5B and 6A–6B. An interesting dynamic involving China emerges from Tables 5A and 5B. First, the DVA content has increased for China in all the product categories, signifying the evolving maturity of the local manufacturing sector in intermediate segments. Second, the shares of North America and Europe have generally decreased in China's

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[114] Maria Demertzis & Gustav Fredriksson, *The EU Response to US Trade Tariffs*, INTERECONOMICS 260, 266 (2018), https://www.bruegel.org/wp-content/uploads/2018/10/EU-Response-US-Trade-Tariffs.pdf.

[115] The Generalized System of Preferences (GSP), instituted in 1971 under the aegis of United Nations Conference on Trade and Development (UNCTAD), "has contributed over the years to creating an enabling trading environment for developing countries. The following fifteen countries grant GSP preferences: Armenia, Australia, Belarus, Canada, the European Union, Iceland, Japan, Kazakhstan, New Zealand, Norway, the Russian Federation, Switzerland, Turkey, United Kingdom, and the United States of America. Challenges arise for beneficiaries in fully exploiting the market access opportunities available under these schemes, including in effectively meeting the rules of origin requirements. Following the WTO Hong Kong Ministerial Decision in 2005 in which members agreed that developed countries and developing countries in a position to do so would grant duty-free and quota-free market access for exports of LDCs, improvements were made to various GSP schemes and/or new schemes for LDCs were launched. Subsequent ministerial decisions, including that taken at MC10 in Nairobi, in December of 2015, reaffirmed the continued importance of this issue for LDCs' trade and development prospects. The provision and utilization of trade preferences is a key goal the Istanbul Program of Actions adopted at the UN LDC IV in 2013, as further reaffirmed in SDGs Goal 17. The objective of UNCTAD's support on GSP and other preferential arrangements is to help developing countries—particularly LDCs—increase utilization of GSP and other trade preferences and in turn promote productive capacity development and increased trade. Such support includes raising awareness and enhancing understanding among exporters and government officials in beneficiary countries of the trading opportunities available under the schemes; strengthening understanding of technical and administrative regulations and laws governing preferential market access, particularly rules of origin; and disseminating relevant information for users of GSP and other preferential schemes. Support is also provided to providers of preferences in improving their preferential schemes." *Generalized System o f Preferences*, UNCTAD, https://unctad.org/topic/trae-agreements/generalized-system-of-preferences (last visited Oct. 24, 2021). *See also* Anupa Sharma, Jason Grant & Kathryn Boys, *Truly Preferential Treatment? Reconsidering the Generalised System of (Trade) Preferences with Competing Suppliers*,72 J. AGRIC. ECON. 500, 500–524 (2020).

[116] R. Rajesh Babu, *On the Legality of the United States Action of Terminating India's GSP Status*, 55 FOREIGN TRADE REV. 119, 120 (2020).

[117] Asit Ranjan Mishra, *As US Delays Withdrawing GSP Benefits, India Postpones Retaliatory Tariffs,* MINT (Feb. 5, 2019), https://www.livemint.com/politics/policy/as-us-delays-withdrawing-gsp-benefits-india-postpones-retaliatory-tariffs-1556766723738.html.

manufacturing value chains, signifying the displacement of these actors. Third, even the shares of RTA partners (ASEAN, Japan, and South Korea) have declined in the FVA content, barring a minor exception involving ASEAN, specifically regarding base metals. Fourth, the FVA from India is increasing in the textile, apparel, and leather sector, signifying its import dependence in relatively low-value products. Finally, in an interesting observation, the FVA content from Brazil has increased Chinese exports. While the inherent competitiveness has aided the Chinese performance, the underlying role played by fiscal and financial stimulus to the Chinese exporters is noteworthy.[118] One of the drivers behind the launch of the "Made in China 2025" initiative has been the urge to consolidate its advantages in high-tech manufacturing. While this move would enable China to emerge as the dominant global player in this segment, the possible threats to other countries' exports is noteworthy.[119]

Tables 6A and 6B summarize the value-addition set-up for India. First, the average DVA has increased in only two sectors: textile, apparel and leather, and chemicals and non-metallic mineral products. This indicates a growing industrial consolidation in low-to-mid tech product segments. Second, the value-content from Europe has declined in all categories, signifying the displacement of high-cost suppliers from India GVCs. Third, shares from the United States have declined only in textile, apparel, leather, chemicals, and non-metallic mineral products. This indicates the deepening of Indian participation in United States GVCs, in relatively high-tech product groups. Fourth, the FVA from ASEAN and South Korea, also known as the RTA partners, has generally increased for all product groups. Fifth, there has been a general decline in the FVA content in Indian exports from Brazil and Russia, its emerging country partners. Finally, the FVA has generally increased from China and South Korea, countries which enjoy an economy-of-scale advantage. The value-addition dynamics from the "East," particularly China, have recently shaped India's cautious steps and eventually the RCEP pull-out decision.[120] The trade deficits in key manufacturing segments had

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[118] Erixon & Sally, *supra* note 112. *See also* Julien Chaisse, Debashis Chakraborty & Biswajit Nag, *The Three-pronged Strategy of India's Preferential Trade Policy: A Contribution to the Study of Modern Economic Treaties*, 26 CONN. J. INT'L L. 415, 454 (2011).

[119] Jost Wübbeke et al., *Made in China 2025: The Making of a High-tech Superpower and its Implications for Industrial Countries*, 2 MERCATOR INST. FOR CHINA STUDIES 1 (2016). *See* Julien Chaisse & Luan Xinjie, *Why Will China Establish a Government-Sponsored Response Mechanism in Countervailing Games?* 10 J. WORLD INV. TRADE 227 (2009).

[120] *See* Biswajit Dhar, *India's Withdrawal from the Regional Comprehensive Economic Partnership*, 54 ECON. AND POL. WKLY. 64 (2019).

emerged as a particular concern for India.[121] The country has subsequently launched the 2014 "Make-in-India" initiative to revitalize and consolidate a wide range of domestic manufacturing sectors.[122]

The economic explanation of the observed DVA trend is as follows. Since the 1990s, the following two decades witnessed a shift from the developed country value chains to the production blocks located in developing countries (e.g., China or Mexico). The relocation of the leading MNCs from developed countries to developing countries can be explained by these corporations' urge to take advantage of the lower costs in these locations (e.g., labor cost and raw material cost).[123] Subsequently, however, a reversing trend has emerged in the European Union and the United States, which can be explained both by growing economic nationalism[124] and narrowing cost advantages.[125] India has experienced a degree of domestic consolidation in the low-to-mid segment in recent times, but remains dependent on foreign parts and components in the more technology-intensive categories.[126] China on the other hand, has considerably strengthened its input tier in the entire manufacturing sector.[127]

The diverging success patterns in the GVC participation of the four selected countries can also be partially explained by their regional trade policies. The European Union's trade policy towards its neighboring countries is covered under the general framework of the European Union's RTAs, as well as the European Union Free Trade Agreements (FTAs).[128] There are

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121 *See generally* Sudip Chaudhuri, *Manufacturing Trade Deficit and Industrial Policy in India*, 48 ECON. AND POL. WKLY. 42–44 (2013).

122 *See* GOV'T OF INDIA, *Made in India*, https://www.makeinindia.com/sectors (detailing sector wise policy environment under current scheme).

123 DOLLAR ET AL., *supra* note 106.

124 Daniel C. K. Chow, Ian M. Sheldon & William McGuire, *The Revival of Economic Nationalism and the Global Trading System*, 40 CARDOZO L. REV. 2133 (2019); Jeromin Zettelmeyer, *The Troubling Rise of Economic Nationalism in the European Union*, PETERSON INST. INT'L. ECON. (Mar. 29, 2019), https://www.piie.com/blogs/realtime-economic-issues-watch/troubling-rise-economic-nationalism-european-union. *See also* Julien Chaisse, Georgios Dimitropoulos, *Special Economic Zones in International Economic Law: Towards Unilateral Economic Law,* 24 J. OF INT'L. ECON. L. 229 (2021) (discussing four types of unilateralism in State practice: "classical unilateralism, embedded unilateralism, sustainability unilateralism, and national security unilateralism").

125 John A. Pearce II, *Why domestic outsourcing is leading America's reemergence in global manufacturing*, 57 BUS. HORIZONS 27, 29 (2014).

126 *See generally* Isabelle Joumard et al., *Challenges and Opportunities of India's Enhanced Participation in the Global Economy* (Org. for Econ. Coop. and Dev., Working Paper No. 1597, 2020).

127 *See generally* Chunjiao Yu & Zhechong Luo, *What are China's real gains within global value chains? Measuring domestic value added in China's exports of manufactures*, 47 CHINA ECON. REV. 263, 264 (2018).

128 Sevil Acar & Mahmut Tekçe, *Multilateralism or Bilateralism: Trade Policy of the EU in the Age of Free Trade Agreements*, *in* PROCEEDINGS OF THE CONFERENCE ON EMERGING ECONOMIC ISSUES IN A GLOBALIZING WORLD 272, 273 (Oguz Esen & Ayla Ogus eds., 2008).

currently twenty-four RTAs in the European community, another eight signed but not yet in force, and eleven under negotiation. Most of these treaties are with various countries' regional organizations. Additionally, the number of countries covered by European Union-centric RTAs is now substantial and is expected to increase. The RTAs vary in scope and coverage; they also vary to the extent the trade laws are inserted into other non-trade provisions. While there are comparatively few substantive service obligations currently included, a range of projected deals is still under discussion. These will include services and the expansion of certain existing RTA services agreements. A section of the literature notes that Foreign Direct Investment (FDI) inflows lead to a decline in demand for domestic inputs and consequently lowers the DVA content in exports for both old and new European Union members.[129] Moreover, since 2016, rising labor costs are another major challenge for the bloc.[130]

One the one hand, the United States has witnessed a sharp decline in the manufacturing sector. Specifically, "90% of the manufacturing that lies outside the computer and electronics industry has seen its real GDP fall substantially." At the same time, its productivity growth has been slow, leading to relatively modest employment growth.[131] While the country made significant tariff reforms through RTAs since the 1990s (e.g., NAFTA), discussions during recent renegotiations indicate a growing protectionist intent. [132] While the United States' integration with Canada through bidirectional IPNs [133] continues, its participation in the IPNs of several other countries is waning.[134]

On the other hand, the experiences of China and India, the two developing countries considered in this analysis, have been mixed. A considerable amount of FDI inflows in China, predating its WTO membership, developed its production base and sharpened its domestic

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[129] *See* Nataša Vrh, *What Drives the Differences in Domestic Value Added in Exports Between Old and New E.U. Member States*, 31 ECON. RSCH. 645, 645–57(2018).

[130] European Commission Press Release 143/2018, Eurostat, Annual Growth in Labor Costs at 2.6% in Euro Area (Sept. 14, 2018).

[131] Martin Neil Baily & Barry P. Bosworth, *US Manufacturing: Understanding Its Past and Its Potential Future*, 28 J. ECON. PERSP. 3, 3 (2014).

[132] Robert A. Blecker et al., *Trumping the NAFTA Renegotiation: An Alternative Policy Framework for Mexican-United States Cooperation and Economic Convergence*, 1 REAL-WORLD ECON. REV. 94, 96–99 (2017). *See also* Matsushita, *supra* note 107.

[133] International Production Network (IPN) / Global Production Network (GPN) refers to the process of deep-rooted international linkages among firms through interconnected nodes, which integrates the players located in different production blocs placed across different countries. For a detailed discussion on IPN/GPN, *see* Neil M. Coe & Henry Wai-chung Yeung, *Global Production Networks: Mapping Recent Conceptual Developments*, 19 J. ECON. GEOGRAPHY 775, 775–801 (2019).

[134] DOLLAR ET AL., *supra* note 106.

competitiveness and export capabilities.[135] Over the years, China played an aggressive RTA strategy by entering into trade agreements with several partners in East Asia, Southeast Asia, and Latin America.[136] The opportunity to access a wider market enabled the Chinese firms to enjoy scale economies with low-cost advantage,[137] allowing the country to opt for deeper tariff reforms. This deep RTA participation strategy contributed significantly to the long-term enhancement of the DVA content of Chinese exports.[138]

Conversely, the manufacturing productivity growth in India has been slower compared to other Asian economies. This is due to distortions in the form of restrictive regulations on entry, expansion, labor-related provisions, and exit options.[139] While the country has significantly improved the ease of doing business in recent times,[140] the readiness towards the use, adoption, and adaptation of frontier technologies in India has remained modest compared to the corresponding figures in China and other Asian neighbors[141], which influence the pace of technology transfer to the country. In the last ten years, the country has opened up through a number of RTAs with partners located in East, Southeast, and South Asia, but has only witnessed a moderate presence in Asian IPNs to date.[142] The country's recent reluctance to commit to the expansion of the Information Technology Agreement products (ITA-2), in light of the modest performance of the ITA-1 products, is also notable.[143] While the tariff reforms initially led to a fall in DVA content,[144] a rise in more recent periods reflects a certain degree of domestic consolidation after the launch of the "Make-in-India" scheme. However, the worries on the

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135 *See* Wanda Tseng & Harm Zebregs, *Foreign Direct Investment in China: Some Lessons for Other Countries* (Int'l Monetary Fund, Policy Discussion Paper No. 02/3, 2002).

136 Henry S. Gao, *China's Strategy for Free Trade Agreements: Political Battle in the Name of Trade*, *in* EAST ASIAN ECON. INTEGRATION 104, 104–20 (Ross p. Buckley et al. eds., 2011).

137 Pravakar Sahoo & Abhirup Bhunia, *China's Manufacturing Success: Lessons for India* (Inst. of Econ. Growth, Working Paper No. 344, 2014).

138 Jie Zhang et al., *Measuring the Domestic Value Added in China's Exports and the Mechanism of Change*, 4 ECON. RSCH. J. 124, 124–137 (2013).

139 Sean M. Dougherty et al., *What is Holding Back Productivity Growth in India? Recent Microevidence*, 2009 OECD J. ECON. STUD. 1, 14 (2009).

140 *Ease of Doing Business*, MAKE IN INDIA (last visited Nov. 2, 2021), https://www.makeindia.com/eodb.

141 UNITED NATIONS CONF. ON TRADE AND DEV., TECHNOLOGY AND INNOVATION REPORT 2021 (2021).

142 *See* Biswajit Nag, Trade*, Investment and Economic Development in Asia: Empirical and Policy Issues, in* TRADE, INVESTMENT AND ECONOMIC DEVELOPMENT IN ASIA: EMPIRICAL AND POLICY ISSUES 49, 52 (Debashis Chakraborty & Jaydeep Mukherjee eds., 2016).

143 Rashmi Banga, *Implications of Signing Information Technology Agreement (ITA-1) and Expansion of ITA (ITA-2)* (Ctr. For WTO Stud. Indian Inst. of Foreign Trade, Working Paper No. CWS/200/57, 2020).

144 C. Veeramani & Garima Dhir, *Domestic Value Added Content of India's Exports: Estimates for 112 Sectors, 1999-2000 to 2012-13* (Indira Gandhi Inst. of Dev. Rsch. Working Paper No. 008, 2017).

employment front continues in India,[145] along with the growing trade deficits across several sectors. Given this scenario in the domestic market and the outlook towards reforms through RTAs,[146] it is unlikely that India will be proactive in embracing tariff reforms in the future.

Table 3A: European Union (28)'s Production Integration in GVCs—Contribution of Value Added by Source in Exports (%) (2005–2010)[147]

Source Country for VA (%)	Exporting Country: European Union					
	Textile, Apparel and Leather	Chemicals and non-metallic mineral products	Basic Metal and Fabricated Metal Products	Machinery and Equipment	Computer, Electronics and Electrical Equipment	Transport Equipment
OECD Members	89.76	87.34	88.84	93.38	90.33	93.19
Japan	0.42	0.53	0.52	0.91	1.49	1.28
South Korea	0.22	0.15	0.20	0.30	0.93	0.56
United States	1.16	2.65	2.02	2.00	3.29	3.27
Brazil	0.30	0.23	0.84	0.31	0.27	0.33
China	2.13	0.61	0.96	1.36	3.00	1.37
India	0.71	0.25	0.26	0.24	0.25	0.27
Russia	0.69	2.75	2.16	1.08	0.94	0.93
ASEAN	0.66	0.49	0.54	0.46	1.16	0.55
Eastern Asia	2.98	1.44	1.85	2.83	6.24	3.47
EU (15)	81.37	76.58	76.59	83.71	75.95	79.36
EU (28)	88.24	81.30	83.20	88.12	83.05	86.31
EU (13)	6.87	4.72	6.61	4.41	7.10	6.95

[145] *See* K. P. Kannan & G. Raveendran, *From Jobless to Job-loss Growth: Gainers and Losers during 2012–18*, 54 ECON. & POL'Y. WKLY. 38 (2019).

[146] *See* Ila Patnaik & Radhika Pandey, *RCEP would've led to flood of imports into India. Reform is a better way to boost exports*, THEPRINT (Nov. 20, 2020), https://theprint.in/ilanomics/rcep-wouldve-led-to-flood-of-imports-into-india-reform-is-a-better-way-to-boost-exports/548051/.

[147] Constructed by authors from OECD TiVA data (OECD, 2018).

North America	1.34	3.13	3.00	2.41	3.73	3.82
Europe	89.69	86.70	86.85	90.56	85.26	88.40

Table 3B: European Union (28)'s Production Integration in GVCs—Contribution of Value Added by Source in Exports (%) (2011–2015)[148]

Source Country for VA (%)	Exporting Country: European Union					
	Textile, Apparel, and Leather	Chemicals and non-metallic mineral products	Basic Metal and Fabricated Metal Products	Machinery and Equipment	Computer, Electronics and Electrical Equipment	Transport Equipment
OECD Members	87.28	84.07	87.20	91.94	88.76	91.58
Japan	0.32	0.48	0.45	0.76	0.99	0.99
South Korea	0.23	0.19	0.23	0.32	0.77	0.61
United States	1.21	3.20	2.38	2.09	2.93	3.40
Brazil	0.30	0.28	1.15	0.36	0.30	0.34
China	3.31	0.99	1.39	2.13	4.11	2.15
India	0.79	0.35	0.33	0.33	0.32	0.39
Russia	0.96	3.73	2.23	1.08	0.98	1.01
ASEAN	0.76	0.61	0.54	0.55	1.10	0.66
Eastern Asia	4.01	1.80	2.26	3.46	6.45	4.01
EU (15)	78.83	72.17	74.11	81.45	74.10	76.54
EU (28)	86.34	77.46	81.48	86.98	82.68	85.00
EU (13)	7.51	5.29	7.37	5.53	8.59	8.45
North America	1.42	3.76	3.44	2.51	3.41	3.95
Europe	87.99	83.87	85.24	89.42	85.04	87.17

[148] Constructed by authors from OECD TiVA data (OECD, 2018).

Table 4A: United States' Production Integration in GVCs—Contribution of Value Added by Source in Exports (%) (2005–2010)[149]

Source Country for VA (%)	Exporting Country: United States					
	Textile, Apparel, and Leather	Chemicals and non-metallic mineral products	Basic Metal and Fabricated Metal Products	Machinery and Equipment	Computer, Electronics and Electrical Equipment	Transport Equipment
OECD Members	91.98	88.57	92.50	93.54	94.53	93.92
Japan	0.75	0.63	0.90	2.12	1.13	2.88
South Korea	0.39	0.20	0.34	0.56	0.53	0.74
United States	85.33	78.93	82.25	81.61	87.69	80.37
Brazil	0.30	0.39	0.53	0.41	0.20	0.40
China	3.54	0.76	1.52	2.48	2.31	2.29
India	0.78	0.18	0.25	0.26	0.14	0.25
Russia	0.21	0.40	0.69	0.41	0.26	0.34
ASEAN	0.68	0.40	0.39	0.56	0.76	0.58
Eastern Asia	5.01	1.73	3.02	5.56	4.46	6.30
EU (15)	2.86	2.70	3.04	4.26	2.14	4.56
EU (28)	2.99	2.81	3.20	4.49	2.26	4.80
EU (13)	0.13	0.10	0.16	0.23	0.12	0.24
North America	87.23	84.36	86.94	85.44	89.99	84.71
Europe	3.39	3.52	4.16	5.22	2.73	5.41

[149] Constructed by authors from OECD TiVA data (OECD, 2018).

Table 4B: United States' Production Integration in GVCs—Contribution of Value Added by Source in Exports (%) (2011–2015)[150]

Source Country for VA (%)	Exporting Country: United States					
	Textile, Apparel, and Leather	Chemicals and non-metallic mineral products	Basic Metal and Fabricated Metal Products	Machinery and Equipment	Computer, Electronics and Electrical Equipment	Transport Equipment
OECD Members	89.57	87.97	92.04	91.82	94.45	92.09
Japan	0.60	0.44	0.81	1.79	0.68	2.09
South Korea	0.39	0.19	0.48	0.73	0.45	0.88
United States	83.42	78.15	81.86	80.09	88.91	79.52
Brazil	0.24	0.45	0.61	0.43	0.18	0.43
China	5.53	1.06	2.20	3.96	2.93	3.73
India	1.09	0.22	0.31	0.34	0.15	0.34
Russia	0.23	0.39	0.61	0.38	0.19	0.36
ASEAN	0.85	0.41	0.48	0.70	0.61	0.74
Eastern Asia	6.80	1.81	3.76	6.89	4.42	7.11
EU (15)	2.51	1.95	2.87	4.05	1.65	4.25
EU (28)	2.65	2.05	3.06	4.34	1.77	4.55
EU (13)	0.14	0.10	0.19	0.29	0.12	0.30
North America	85.29	84.82	86.54	83.93	90.96	83.67
Europe	3.07	2.69	3.92	5.07	2.17	5.21

[150] Constructed by authors from OECD TiVA data (OECD, 2018).

Table 5A: China's Production Integration in GVCs—Contribution of Value Added by Source in Exports (%) (2005–2010)[151]

Source Country for VA (%)	Exporting Country: United States					
	Textile, Apparel, and Leather	Chemicals and non-metallic mineral products	Basic Metal and Fabricated Metal Products	Machinery and Equipment	Computer, Electronics and Electrical Equipment	Transport Equipment
OECD Members	7.74	9.79	12.10	13.61	21.57	14.00
Japan	2.10	2.44	2.26	3.51	6.20	3.49
South Korea	1.40	1.53	1.13	1.65	4.83	1.62
United States	1.32	1.85	1.42	1.93	3.64	2.47
Brazil	0.28	0.32	1.06	0.51	0.32	0.43
China	85.54	78.12	77.07	77.95	64.46	78.40
India	0.29	0.33	0.83	0.43	0.34	0.35
Russia	0.40	0.87	0.78	0.65	0.54	0.60
ASEAN	1.22	1.70	1.42	1.49	4.24	1.37
Eastern Asia	90.52	83.44	81.41	84.60	80.55	84.84
EU (15)	1.97	2.38	2.30	3.55	4.11	4.05
EU (28)	2.05	2.49	2.43	3.72	4.33	4.27
EU (13)	0.09	0.11	0.13	0.18	0.21	0.22
North America	1.54	2.24	2.07	2.41	4.20	2.91
Europe	2.58	3.56	3.37	4.65	5.30	5.10

[151] Constructed by authors from OECD TiVA data (OECD, 2018).

Table 5B: China's Production Integration in GVCs—Contribution of Value Added by Source in Exports (%) (2011–2015)[152]

Source Country for VA (%)	Exporting Country: United States					
	Textile, Apparel, and Leather	Chemicals and non-metallic mineral products	Basic Metal and Fabricated Metal Products	Machinery and Equipment	Computer, Electronics and Electrical Equipment	Transport Equipment
OECD members	5.53	7.64	10.63	10.86	16.83	11.66
Japan	1.01	1.39	1.21	1.99	3.48	1.92
South Korea	0.83	1.10	0.75	1.31	4.20	1.20
United States	1.13	1.60	1.37	1.72	2.80	2.52
Brazil	0.34	0.40	1.23	0.60	0.40	0.49
China	88.20	80.50	78.60	80.90	70.33	81.10
India	0.47	0.26	0.30	0.26	0.28	0.25
Russia	0.36	0.91	0.77	0.58	0.53	0.53
ASEAN	1.18	1.55	1.47	1.48	3.73	1.32
Eastern Asia	90.73	83.69	81.03	85.16	81.90	85.02
EU (15)	1.62	1.96	1.73	2.64	3.33	3.48
EU (28)	1.71	2.08	1.88	2.83	3.57	3.74
EU (13)	0.09	0.12	0.14	0.19	0.24	0.26
North America	1.33	1.93	2.02	2.19	3.33	2.98
Europe	2.19	3.17	2.81	3.67	4.61	4.49

[152] Constructed by authors from OECD TiVA data (OECD, 2018).

Table 6A: India's Production Integration in GVCs—Contribution of Value Added by Source in Exports (%) (2005–2010)[153]

Source Country for VA (%)	Exporting Country: United States					
	Textile, Apparel, and Leather	Chemicals and non-metallic mineral products	Basic Metal and Fabricated Metal Products	Machinery and Equipment	Computer, Electronics and Electrical Equipment	Transport Equipment
OECD Members	6.38	8.09	17.71	15.47	19.75	15.66
Japan	0.56	0.58	0.92	0.98	1.41	1.22
South Korea	0.40	0.43	0.71	0.78	1.25	0.95
United States	1.47	1.80	2.25	2.34	3.37	2.99
Brazil	0.13	0.39	0.45	0.31	0.31	0.29
China	2.32	1.87	2.50	2.66	4.48	2.77
India	82.19	55.91	63.40	70.44	62.45	70.37
Russia	0.50	0.75	1.31	1.18	1.21	1.03
ASEAN	1.33	2.10	3.01	1.84	2.69	1.90
Eastern Asia	3.72	3.16	4.51	4.84	7.95	5.40
EU (15)	2.54	2.81	4.69	4.63	5.62	5.31
EU (28)	2.69	3.01	4.96	4.89	5.92	5.62
EU (13)	0.15	0.20	0.27	0.27	0.30	0.31
North America	1.72	2.34	2.96	2.92	4.05	3.54
Europe	3.45	4.11	6.90	6.76	8.04	7.29

[153] Constructed by authors from OECD TiVA data (OECD, 2018).

Table 6B: India's Production Integration in GVCs—Contribution of Value Added by Source in Exports (%) (2011–2015)[154]

Source Country for VA (%)	Exporting Country: United States					
	Textile, Apparel, and Leather	Chemicals and non-metallic mineral products	Basic Metal and Fabricated Metal Products	Machinery and Equipment	Computer, Electronics and Electrical Equipment	Transport Equipment
OECD Members	5.17	7.48	16.49	15.95	19.83	14.15
Japan	0.43	0.53	0.91	0.98	1.14	1.12
South Korea	0.44	0.51	0.81	0.92	1.18	1.02
United States	1.18	1.65	3.01	3.61	4.91	3.07
Brazil	0.15	0.42	0.68	0.52	0.60	0.45
China	3.10	2.38	2.89	3.40	5.14	3.69
India	82.49	58.35	63.13	67.20	59.98	69.33
Russia	0.35	0.58	1.14	1.16	1.45	0.94
ASEAN	1.35	2.16	3.75	2.64	2.73	2.25
Eastern Asia	4.28	3.71	4.94	5.69	8.08	6.27
EU (15)	1.98	2.61	3.79	4.31	5.42	4.55
EU (28)	2.11	2.80	4.02	4.56	5.72	4.82
EU (13)	0.13	0.19	0.23	0.25	0.30	0.27
North America	1.40	2.31	3.94	4.40	5.91	3.71
Europe	2.68	3.69	5.66	6.33	8.02	6.32

C. Contingency Scenarios

As observed in Tables 1 and 2, the European Union, the United States, China, and India have all reduced their tariff barriers over the last two decades.

[154] Constructed by authors from OECD TiVA data (OECD, 2018).

However, a rising trend has appeared in the last couple of years. The evidence from existing literature shows that, with the decline in tariff barriers, a simultaneous demand for contingency protection usually rises from the domestic manufacturing industries.[155] Anti-dumping investigation in a country can be triggered by a multitude of factors. On the one hand, a rise in import flows, a dwindling income level, and a financial crisis can intensify protectionist demands from the domestic industry.[156] On the other hand, the contingency actions are usually higher in capital-intensive sectors,[157] as garnering support (i.e., ensuring that complaining firms collectively account for more than 50% of the domestic production) for the investigation is easier. There is also a need to see which sectors witness higher incidence of contingency interventions in the European Union, the United States, China, and India and its interlinkage with the tariff reform process. When the European Union and the United States were regular users of the contingency provisions, beginning at the inception of the WTO, China, and India were among the targeted exporters.[158] However, in recent periods, these two countries have "learnt" from their past experiences and emerged as major users of the contingency provisions.[159]

As noted in Table 1, the European Union imposed higher WAT for a wide range of commodities from 2011 to 2018, namely organic chemical, plastic and rubber, leather and footwear, garments, iron and steel, machinery and equipment, electrical equipment, vehicles and transport equipment and instrumentations. The corresponding sectors for the United States included

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[155] Chad P. Bown & Patricia Tovar, *Trade Liberalization, Antidumping, and Safeguards: Evidence from India's Tariff Reform*, 96 J. DEV. OF ECON. 115, 115–116 (2011). *See also* Luisa Kinzius, et al., *Trade Protection and the Role of Non-Tariff Barriers*, 155 REV. WORLD ECON. 603, 604 (2019), https://doi.org/10.1007/s10290-019-00341-6; *see* Yuhe Wang, et al., *Total Factor Productivity Growth and its Contribution: Lessons from the Chinese Construction Industry Pre- and Post-2008 Financial Crisis*, 27 ENG'G, CONSTR. & ARCHITECTURAL MGMT. 2911, 2925 (2020); Zhaohui Niu, et al., *Non-tariff and Overall Protection: Evidence Across Countries and Over Time* 154 REV. WORLD ECON. 675, 697 (2018).

[156] *See* Rou Li, *The Research on Factors Which Affect Anti-Dumping Investigation: Based on Probit Model*, 13 INT'L J. BUS. & MGMT. 252, 252 (2018).

[157] The relationship between capital-intensity of a sector and anti-dumping activism therein started emerging in India two decades ago. *See* Aradhna Aggarwal, *Anti-Dumping Law and Practice: An Indian Perspective* 31 (ICRIER, Working Paper No. 85, 2002).

[158] In the initial years after WTO inception, India was primarily a complainant at the WTO dispute settlement forum on Anti-Dumping investigations. Yet a decade later, India gradually emerged as a respondent in the same. *See generally* Julien Chaisse & Debashis Chakraborty, *Implementing WTO Rules Through Negotiations and Sanctions: The Role of Trade Policy Review Mechanism and Dispute Settlement System*, 28 U. PA. J. INT'L ECON. L. 153 (2007). *See also* Debashis Chakraborty & Dipankar Sengupta, *Learning through Trading? India's Decade Long Experience at WTO*, 12 SOUTH ASIAN SURV. 236 (2005). The trend becomes clearer in the subsequent period, as observed from, Debashis Chakraborty & Julien Chaisse, *Tightrope Walk Between Faith and Skepticism: India's 'Contingency Plan' for Free Trade*, 15 ASIAN J. WTO & INT'L HEALTH L. & POL'Y 91, 150 (2020).

[159] Mark Wu, *Antidumping in Asia's Emerging Giants*, 53 HARV. INT'L L. J. 1, 4 (2012).

organic chemical, rubber, leather and footwear, garments, and iron and steel. Table 2 indicates that China harbors a protectionist intent towards copper products, vehicles and transport equipment and instrument sectors. In India, similar protection has been extended only to pharmaceuticals, rubber, leather, and footwear segments. In the following analysis, this article links the tariff dynamics in these economies with their AD and SCM activisms, by obtaining the data from the corresponding WTO databases.[160] The results are summarized in Table 7.

It is noted from Table 7 that the European Union has primarily intervened in each sector receiving tariff protection through the AD route, namely: chemical products (Section VI), plastic and rubber (Section VII), base metal (Section XV) and machinery and equipment (Section XVI). Comparatively, SCM measures have been used against plastic and rubber products (Section VII) and base metal (Section XV) imports. In the United States, all the sectors receiving protection through the tariff policy (i.e., higher WAT) have been subjected to contingency interventions as well. The SCM interventions have been more pronounced in case of base metal (Section XV) imports. On the other hand, China happens to be a heavy user of AD for chemical products (Section VI) and plastic and rubber products (Section VII). It has also been involved in SCM activism for chemical products. In July 2020, China's Ministry of Commerce (MOFCOM) noted that non-market conditions exist in the United States' energy and petrochemical sector.[161] This can be considered a strategic response to the continued use of the NME provision by the United States against China. Finally, in India, the commonality between the protectionist intent by the tariff scale and its observed AD interventions by sectors (Sections VI, VII, XV, XVI) are evident. In particular, India has predominantly imposed the AD duties on intermediate products, which correspond to its interest in protecting low-value labor-intensive segments.[162] The primary target of India's AD actions has been the Chinese firms, who are exporting these low-to-mid tech intermediate products (falling under Sections VI, VII, XV, XVI).[163]

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[160] *Anti-Dumping*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/adp_e/adp_e.htm; *Subsidies and Countervailing Measures*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/scm_e/scm_e.htm.

[161] Zhiguo Yu & Sandeep Thomas Chandy, *The US is now a "Non-Market Economy"—Anti-Dumping Ruling by China*, INT'L ECON. L. & POL'Y BLOG (July 18, 2020), https://ielp.worldtradelaw.net/2020/07/the-us-is-now-a-non-market-economy-anti-dumping-ruling-by-china.html.

[162] *See* Surojit Gupta & Sidhartha, *Hardly any finished goods incur anti-dumping duties*, THE TIMES OF INDIA (Jan. 18, 2021), https://timesofindia.indiatimes.com/business/india-business/hardly-any-finished-goods-incur-anti-dumping-duties/articleshow/80320715.cms.

[163] *See* Debashis Chakraborty & Julien Chaisse, *Tightrope Walk Between Faith and Skepticism: India's 'Contingency Plan' for Free Trade*, 15 ASIAN J. WTO & INT'L HEALTH L. & POL'Y 91, 150 (2020).

Table 7 also sheds light on an interesting phenomenon. The WITS data indicates that the countries over the last two and half decades have increased the number of duty-free lines across product categories, which has lowered the average sectoral tariffs and signified reforms. However, the higher WAT vis-à-vis the corresponding SAT figures in several country-product combinations reveals that actual imports in a substantial range of lower duty tariff lines remain relatively low, possibly because of certain NTBs.[164] Currently, the deeper contingency interventions in these sectors, considered to be "reformed" on the tariff scale, underline the potential threat to the WTO reform process for the following reason. While these tariff lines characterized by lower duties indicate lesser protection in terms of direct import duties, they might still receive the "compensating" protectionist cover through AD/SCM measures. In this framework, assessing the process of "tariff reset" without adequately addressing the possible misuse of contingency instruments would be analogous to measuring the size of an iceberg by its tip.

Adverse trade outcomes in the aftermath of tariff reforms, such as growing trade deficits, can lead to readjustments in domestic industries, which would in turn adversely influence the labor markets. The political economic currents associated with decline in domestic output level and growing unemployment can lead to build-up of protectionist pressures, which are reflected in recourse to contingency measures.[165] In Table 8, this article presents a synthesis of trade remedy instruments and trade balance scenarios for the European Union, the United States, China, and India to understand the influence of trade outcomes on policy measures. For this purpose, the average AD/SCM initiations and measures are matched over five periods since WTO inception, namely: 1995–2000, 2001–2005, 2006–2010, 2011–2015, and 2016–2019, with a corresponding trade deficit scenario for each. Among the developed regions, the European Union has not faced many AD or SCM cases as an exporter, though it has frequently adopted such policies on its imports since 1995. However, as an importer, European Union activism has reduced since 2000. In fact, the European Union's trade deficit sharply declined between 2006 and 2010, a period over which AD/SCM activism declined at a slower rate. Subsequent improvement in trade balance has facilitated lower adoption rates of these contingency instruments.

In contrast, the United States' trade deficit has consistently worsened since 1995. As a policy response, the recourse to AD/SCM measures since 2011–2019 has increased sharply, which can be attributed to the growing

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164 Foletti et al., *supra* note 2, at 248–64.

165 Mustapha Sadni Jallab, *The Political Influence of European and American Antidumping Decisions: Some Empirical Evidence*, 6 ECON. BULL. 1, 2–5 (2007).

reach of the defensive interests.[166] The United States AD actions on Chinese exports deserve mention in this context.[167] Moreover, United States trade disputes with India on the SCM front has shown interesting movements in recent years.

In China, though exports have increasingly been subjected to SCM activism since 2001, the imposition of AD measures have come down post-2011. This reflects the success of its RTA policy, as China received a commitment from all its preferential trade agreement partners[168] in return for extended market access not to consider it as NME in future trade discords.[169] The incidence of AD measures on Chinese exports declined further from 2016 onwards, given the change in its WTO sanctioned status as a market economy. The trade remedy measures on its exports, however, did not dampen the rise in China's trade surplus over the years. Additionally, China has increased both AD and SCM initiations on imports, which have been attributed to the emergence of protectionist orientations. It has been noted that the rise in such contingency activism in China is non-retaliatory in nature. Specifically, this activism is not initiated against a particular partner to "echo" the AD protectionism launched against Chinese exports in their territory.[170] Nonetheless, it poses a concern for the partner countries, as China's legal system has been criticized for its lack of transparency and procedural fairness.[171]

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[166] Prashant Desai & Robert M. Feinberg, *Are US Anti-dumping Cases Being Crowded Out by Other Forms of Protectionism?* 19 J. INT'L TRADE L. POL'Y 1, 3 (2020). *See also* Nancy Williams, *The Resilience of Protectionism in U.S. Trade Policy*, 99 B.U. L. REV. 683 (2019).

[167] Minsoo Lee, Donghyun Park & Aibo Cui, *Invisible Trade Barriers: Trade Effects of US Antidumping Actions against the People's Republic of China*, 1–21 (ADB Econ. Working Paper No. 378, 2013) (explaining that United States enterprises will continue to frequently use antidumping laws to reduce the fierce import competition from the PRC's exporters). In fact, other countries benefit from the antidumping actions of the United States against the PRC. Most of the protective effects of antidumping measures are offset by the increased imports from the countries other than the PRC. Overall, the impact of antidumping measures is insignificant on the total imports to the United States. However, the antidumping measures do achieve some purpose: they effectively increase the prices of the products concerned, especially prices of imports from the PRC.

[168] *See Fee Trade Agreements*, ASIA REGIONAL INTEGRATION CENTER, https://aric.adb.org/fta-country. As per the Asian Development Bank's Asia Regional Integration Centre (ADB-ARIC) database, China has participated in a total of 47 free trade agreements (including the operational and ongoing arrangements). The concluded trade agreements are spread across continents.

[169] YANLIN SUN & JOHN WHALLEY, CHINA'S ANTI-DUMPING PROBLEMS AND MITIGATION THROUGH REGIONAL TRADE AGREEMENTS, CIGI PAPERS NO. 70 (2015).

[170] Wu, *supra* note 159, at 39.

[171] Adam Soliman, *China's Anti-Dumping Regime and Compliance with Anti-Dumping Principles: An Analysis Using Agricultural Dumping Case Studies*, 21 UNIV. MIA. INT'L COMPAR. L. REV. 241, 263 (2014). *See also* Ma, Jingyuan and Sokol, D. Daniel*, Procedural Fairness in Chinese Antitrust, in* ANTITRUST PROC. FAIRNESS (D. Daniel Sokol & Andrew T. Guzman eds., forthcoming), https://ssrn.com/abstract=3270296; Julien Chaisse, *Deconstructing the WTO conformity obligation: A theory of compliance as a process*, 38 FORDHAM J. INT'L L. 57 (2015).

In line with the United States, the trade deficit has worsened for India, with serious consequences for its manufacturing sector.[172] Also, like China, India experienced a decline in AD measures on its exports between 2007 to 2012, and the series registered an upward movement afterwards. The SCM measures on the other hand had risen during 2014, 2016, and 2017.[173] On the whole, there has been a sharp increase in the adoption of both AD and SCM measures on its imports since 2016, a period when India's trade deficit also widened. The sectors seeking AD protection in India have also generally experienced the negative effects of trade liberalization, and the frequent use of the contingency measures on imports is directed to lower the competitive edge of the foreign players.[174] Moreover, the anti-dumping investigation in India is found to be susceptible to retaliatory intent and industry lobbying.[175] In light of these evolving dynamics, the Indian AD provisions need to be less ambiguous and in line with global practices.[176] On the other hand, the increasing use of SCM measures against Indian exports is a function of the evolving export facilitation-related policy frameworks.[177]

When joining the WTO, many developing countries were largely underprepared to fathom its legal architecture and fully preempt the potential challenges.[178] As a result, they have often faced market access challenges in terms of contingency measures imposed on their exports in the initial days of WTO membership.[179] Subsequently, leading developing countries, wiser from their past experiences, took recourse to the contingency measures themselves.[180] Table 8 reflects an interesting example of this type of "learning by suffering" model, as represented by India and China. These two economies have reformed their import tariffs since 2001, but simultaneously faced a high incidence of AD and SCM measures on their exports. The rise in AD activism

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[172] Sudip Chaudhuri, *Import Liberalization and Premature Deindustrialization in India*, 50 ECON. & POL. WKLY. 60, 60 (2015).

[173] Chakraborty & Chaisse, *Tightrope Walk Between Faith and Skepticism*, *supra* note 158, at 104–105.

[174] *See* Wu, *supra* note 159, at 38.

[175] Sagnik Bagchi, Surajit Bhattacharyya, & K. Narayanan, *Anti-dumping Initiations in Indian Manufacturing Industries*, 16 SOUTH ASIA ECON. J. 278, 281 (2015).

[176] *See* Bhumika Billa, *Strategising Protectionism: An Analysis of India's Regulation of Anti-Dumping Duty Circumvention*, 10 TRADE, L. DEV. 417, 431 (2018).

[177] *See* Parthapratim Pal & Arpita Mukherjee, *Special Economic Zones Face the WTO Test*, 53 ECON. & POL. WKLY. 20, 20–1 (2018).

[178] *See* Gregory Shaffer, *The challenges of WTO law: strategies for developing country adaptation*, 5 WORLD TRADE REV. 177, 182 (2006).

[179] P.K.M. Tharakan, *The Problem of Anti-Dumping Protection and Developing Country Exports* 6–7 (United Nations Univ., WIDER Working Paper No. 198, 2000).

[180] *See generally* Julien Chaisse & Debashis Chakraborty, *Normative Obsolescence of WTO Anti-Dumping Agreement—Topography of the Global Use and Misuse of Anti-Dumping Measures*, 6 ASIAN J. INT'L L. 223 (2016).

witnessed in these two countries since 2016 has taken place in sectors characterized by both high and low tariff barriers. It is important to keep in mind that the United States often engages in discussions about trade remedies as a defensive measure, often against China. However, in this scenario, the United States may be worried about the trade remedies that could be applied against it and seek to strike down any misapplied anti-dumping duties.[181] Therefore, the recent Anti-Dumping Ruling in which China went as far as to treat United States as a non-market economy needs to be viewed in this wider canvas.[182] For these reasons, the call made by the former United States Trade Representative Robert E. Lighthizer in 2020 for a global reset of tariffs[183] is likely to find other allies who would support this stance.

Table 7: The Contingency Universe by Sectoral Interventions (01/01/1995 to 12/31/2019)[184]

Section	Description	Anti-Dumping Duty Interventions by Importer Country					Countervailing Duties Interventions by Importer Country				
		China	EU	India	U.S.	Total	China	EU	India	U.S.	Total
I	Animal Products	2 (2)	8 (4)		15 (11)	61 (32)	1 (1)	3 (2)		4 (1)	16 (6)
II	Vegetable Products	3 (1)	2 (2)		15 (10)	65 (38)	3 (1)			4 (1)	13 (9)
III	Animal or Vegetable Fats and Oils			1 (0)		15 (3)					8 (5)
IV	Prepared Foodstuffs, Beverages and Tobacco	3 (1)	2 (1)		10 (10)	80 (51)	2 (1)			12 (4)	38 (17)

[181] Minsoo Lee, Donghyun Park & Aibo Cui, *Invisible Trade Barriers: Trade Effects of US Antidumping Actions against the People's Republic of China*, 1–21 (ADB Econ. Working Paper No. 378, 2013).

[182] *See generally* Zhiguo Yu & Sandeep Thomas Chandy, *The US is now a "Non-Market Economy"—AntiDumping Ruling by China*, INT'L ECON. L. POL'Y BLOG (July 18, 2020), https://ielp.worldtradelaw.net/2020/07/the-us-is-now-a-non-market-economy-anti-dumping-ruling-by-china.html.

[183] Ben Winck, *The White House steps up trade aggression, calls for 'broader reset' of global tariffs*, BUS. INSIDER INDIA (June 17, 2020), https://www.businessinsider.in/stock-market/news/the-white-house-steps-up-trade-aggression-calls-for-broader-reset-of-global-tariffs/articleshow/76427243.cms.

[184] Constructed by the authors from WTO ADA and SCM Databases.

V	Mineral Products	4 (4)	6 (6)	16 (7)	10 (4)	94 (59)		6 (3)		7 (5)	14 (9)
VI	Chemical Products	151 (123)	97 (66)	398 (321)	99 (66)	1164 (836)	5 (3)	6 (2)	3 (2)	29 (16)	58 (31)
VII	Plastics and Rubber	55 (45)	36 (20)	131 (104)	67 (42)	772 (495)		17 (9)	3 (1)	23 (14)	60 (28)
VIII	Leather Products		4 (2)			5 (2)					
IX	Wood Products		9 (9)	15 (14)	5 (5)	110 (62)			5 (0)	6 (4)	12 (5)
X	Paper Products	19 (16)	2 (2)	20 (12)	21 (15)	283 (168)		1 (1)		12 (8)	18 (10)
XI	Textiles and Textile Articles	7 (6)	43 (23)	98 (74)	19 (14)	409 (285)		13 (5)		5 (3)	27 (9)
XII	Footwear, Headgear etc.		9 (7)	1 (1)		35 (23)					1 (0)
XIII	Articles of Stone, Plaster, Cement	2 (2)	17 (7)	29 (23)	7 (5)	243 (157)		7 (2)	1 (0)	3 (1)	11 (3)
XIV	Gems and Jewelry					1 (0)			1 (0)		1 (0)
XV	Base Metals	25 (24)	198 (137)	115 (68)	390 (285)	1809 (1289)	1 (1)	24 (12)	8 (3)	133 (89)	253 (159)
XVI	Machinery and Electrical Equipment	3 (1)	58 (32)	96 (67)	39 (24)	453 (294)		7 (5)	1 (1)	13 (9)	29 (20)
XVII	Vehicles and Transport Equipment	2 (2)	11 (9)	8 (7)	10 (4)	65 (49)	1 (1)	2 (1)		5 (2)	13 (6)
XVIII	Various Instruments	8 (5)	1 (2)	7 (6)		64 (40)					
XIX	Arms and Ammunition										

XX	Miscellaneous Manufactured		12 (3)	3 (2)	8 (7)	105 (75)				4 (3)	5 (3)
XXI	Works of Art etc.										
Total		**284 (232)**	**515 (332)**	**938 (706)**	**715 (502)**	**5833 (3958)**	**13 (8)**	**86 (42)**	**22 (7)**	**260 (160)**	**577 (320)**

Table 8: A Comparative Analysis of Trade Policy Outcome[185]

Country	Trade Policy and Outcome	1992-94	1995-00	2001-05	2006-10	2011-15	2016-19
China*	Anti-Dumping Initiation (As Exporter)		34.7	52.2	66.8	64.0	58.7
	Anti-Dumping Measure (As Exporter)		25.3	38.8	50.0	45.2	55.0
	Anti-Dumping Initiation (As Importer)		5.3	23.4	10.6	8.6	18.0
	Anti-Dumping Measure (As Importer)		3.3	17.0	13.4	7.2	13.3
	Subsidies and Countervailing Initiation (As Exporter)		-	2.0	6.8	7.4	16.3
	Subsidies and Countervailing Measure (As Exporter)		-	2.0	6.8	7.4	16.3
	Subsidies and Countervailing Initiation (As Importer)		-	-	2.0	1.5	1.7
	Subsidies and Countervailing Measure (As Importer)		-	-	2.0	2.0	1.0

[185] Constructed by the authors from WTO, ADA, SCM Databases, and WITS. Note: In the last column, the average trade Balance for China was computed for the 2016–2018 period.

	Trade Balance (USD Billion)	-0.82	28.90	71.04	312.45	466.58	522.43
EU	Anti-Dumping Initiation (As Exporter)		4.6	7.4	4.8	5.4	5.0
	Anti-Dumping Measure (As Exporter)		2.5	6.0	2.4	5.2	3.7
	Anti-Dumping Initiation (As Importer)		36.3	21.8	18.6	11.8	9.3
	Anti-Dumping Measure (As Importer)		24.7	14.0	10.8	7.4	6.0
	Subsidies and Countervailing Initiation (As Exporter)		1.5	1.0	1.0	1.0	-
	Subsidies and Countervailing Measure (As Exporter)		1.5	1.0	1.0	1.0	-
	Subsidies and Countervailing Initiation (As Importer)		8.0	3.3	3.0	3.8	3.0
	Subsidies and Countervailing Measure (As Importer)		4.0	2.0	2.0	2.0	1.7
	Trade Balance (USD Billion)			-95.74	-259.22	-45.32	7.17
India	Anti-Dumping Initiation (As Exporter)		9.7	12.8	5.4	11.2	8.0
	Anti-Dumping Measure (As Exporter)		5.5	6.2	5.4	5.0	6.7
	Anti-Dumping Initiation (As Importer)		28.8	51.0	41.0	27.4	44.3
	Anti-Dumping Measure (As Importer)		19.5	40.2	26.6	24.2	32.3
	Subsidies and Countervailing Initiation (As Exporter)		2.8	3.8	1.3	1.5	3.3

	Subsidies and Countervailing Measure (As Exporter)		2.8	3.8	1.3	1.5	3.3
	Subsidies and Countervailing Initiation (As Importer)		-	-	1.0	1.0	9.5
	Subsidies and Countervailing Measure (As Importer)		-	-	-	-	3.0
	Trade Balance (USD Billion)	-2.41	-8.39	-18.16	-96.57	-151.59	-174.34
United States	Anti-Dumping Initiation (As Exporter)		15.2	14.6	11.8	9.6	7.3
	Anti-Dumping Measure (As Exporter)		9.0	8.6	6.4	8.0	4.7
	Anti-Dumping Initiation (As Importer)		30.2	37.4	15.0	25.2	40.7
	Anti-Dumping Measure (As Importer)		22.8	21.0	12.8	10.8	35.7
	Subsidies and Countervailing Initiation (As Exporter)		1.0	-	2.0	1.5	1.0
	Subsidies and Countervailing Measure (As Exporter)		1.0	-	2.0	1.5	1.0
	Subsidies and Countervailing Initiation (As Importer)		6.7	6.4	6.6	14.8	21.7
	Subsidies and Countervailing Measure (As Importer)		4.2	6.0	6.3	5.0	16.3
	Trade Balance (USD Billion)	-166.58	-324.29	-686.52	-893.43	-964.09	-1122.34

D. Trade Globalization is Not Ending—Trade is Changing

Events with long-term global ramifications, such as the United States-China Trade war and COVID-19 outbreak, often lead to transitions in supply chains from one country to another.[186] The United States-China trade war has forced the world economy to witness major production and supply chain uncertainty, as well as innovation risks.[187] Gradually, the United States and China have begun searching for alternatives to their dispute. Through signing the Phase 1 Trade Agreement in January 2020, an acceleration of this trade dispute was thwarted.[188] This trade agreement was meant to be a first step in a longer-term, phased stabilization of trade ties between the United States and China, taking into account the key United States complaints regarding Chinese economic practices.[189] Although trade in the Phase 1 agreement is yet to be fully developed, the settling of trade tensions between the United States and China has been a boost to capital markets and has helped global economic sentiment.

Along with sixteen other nations including China, the European Union recently announced that it agreed to establish a body to bypass the United States' blockage of the appeals body of the WTO.[190] The announcement notes that the WTO's working conflict resolution mechanism is of utmost importance to the rules-based trading system. It also stated that an autonomous and unbiased stage of appeal must continue to be one of its core features. Regionalization is certainly a better option than economic domination, but—relative to globalization—it would only be a second-best approach which would lead to macroeconomic welfare losses.[191]

In light of the recent policy dynamics of key WTO members, a few other points become evident from the earlier tariff negotiations trends. The

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[186] *See* Yukon Huang & Jeremy Smith, *In U.S.-China Trade War, New Supply Chains Rattle Markets*, CARNEGIE ENDOWMENT INT'L PEACE (June 24, 2020), https://carnegieendowment.org/2020/06/24/in-u.s.-china-trade-war-new-supply-chains-rattle-markets-pub-82145.

[187] Dan Steinbock, *U.S.-China Trade War and its Global Impacts*, 4 CHINA Q. INT'L STRATEGIC STUD. 515, 535 (2018).

[188] Andrew Mullen, *US-China trade war: phase one trade deal largely a 'failure', as purchases fall well short of targets*, SOUTH CHINA MORNING POST (Feb. 8, 2021), https://www.scmp.com/economy/china-economy/article/3120986/us-china-trade-war-phase-one-trade-deal-largely-failure.

[189] *See generally* Chad Hart & Lee L. Schulz, *The Phase One Trade Deal: Projections and Implications*, 2020 AGRIC. POL'Y REV. 5, 5 (2020).

[190] *International trade dispute settlement: WTO Appellate Body crisis and the multiparty interim appeal arrangement*, at 5 (2021), https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI (2021) 690521; *see also* European Commission, *EU and 15 World Trade Organization members establish contingency appeal arrangement for trade disputes* (Mar. 27, 2020).

[191] L. Alan Winters, *Regionalism versus Multilateralism* 11 (World Bank Pol'y Rsch., Working Paper No. 1687, 1996).

major developed countries, e.g., the EU and United States, pressed for a low coefficient for both developed and developing countries for two reasons. First, the average tariff in developed countries had already dropped down to around five percent. Second, the additional reforms, through adoption of a smaller coefficient (say, lower than ten), was not going to threaten developed countries in terms of immediate reductions in applied tariffs. Conversely, as the average tariff in several developing countries (particularly in South and East Asia and Africa) is generally above 10%[192], the low coefficient of ten would have obligated them to immediately and sharply reduce their applied tariffs. In contrast, the formula proposed by China—who was forced to undertake deep cuts in bound tariffs as a precondition before the 2001 accession—sought credit for early reforms. However, the developing countries considered the possible forced reduction in applied tariff profile in the period, after reforming their respective bound tariff lines, by implementing the formula as a violation of SDT and threat to their sovereignty.[193] Now, in the post sub-prime crisis period, the average tariff has either remained somewhat constant or is increasing in developed countries while showing an increasing trend from 2015 onwards in their developing counterparts.[194] The failure to reach an agreement on the coefficient has lowered global welfare, though has also served the protectionist intent of the individual countries.[195]

Additionally, thanks to the tariff overhang and with the deepening of deglobalizing forces, the initial support for the sectoral initiative is likely to wane in all countries. For instance, post COVID-19, given the disruption of growth dynamics, the demand for tariff protections may intensify in many countries and cut across the development profile. A rise in tariff protection in 2020–2021 has been noticed across major countries.[196] Several countries have already intervened to augment the consolidation of domestic manufacturing players in the production process, as seen in China ("Made in China 2025"),[197]

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192 UNCTAD, *supra* note 4, at 8.

193 Ranjan, *supra* note 62, at 4–5.

194 UNITED NATIONS PRESS, KEY STATISTICS AND TRENDS IN TRADE POLICY 2019 11 (2020) https://unctad.org/system/files/official-document/ditctab2019d9_en.pdf. *See also Trading for Development in the Age of Global Value Chains,* World Bank, https://www.worldbank.org/en/publication/wdr2020 (2020).

195 *See generally* David Laborde & Will Martin, *Non-agricultural Market Access*, *in* WORLD BANK, UNFINISHED BUSINESS? THE WTO'S DOHA AGENDA, 55 (Will Martin & Aaditya Mattoo eds., 2011).

196 *See* Robert S. Laurssa & Lisa Raisner, *Tariffs in the Time of COVID-19*, SHEARMAN & STERLING (Apr. 9, 2020), https://www.shearman.com/perspectives/2020/04/tariffs-in-the-time-of-covid-19; *see also* Vivek Kaul, *The Dangers of India's Rising Tariff Walls*, MINT (Feb. 13, 2020), https://www.livemint.com/news/india/the-dangers-of-india-s-rising-tariff-walls-11581521558549.html.

197 Wübbeke et al., *supra* note 119, at 50.

the European Union ("A New Industrial Strategy for Europe"),[198] India ("Atmanirbhar [self-reliant] Bharat Abhiyan")[199] and the United States ("America First").[200] Under these circumstances, even for the original perpetrators of the sectoral initiative under NAMA, moving ahead will be a tough decision. It is anticipated that the trade reforms under the wings of existing RTAs may continue given the expected finite reciprocal benefits. However, embracing the multilateral reforms would remain a more difficult choice given the potential trade balance and labor market adjustment related uncertainties.[201]

Finally, the perception in developing countries on the violation of SDT and LTFR, as well as the perceived import threats, have been the major reasons behind the stalemate at the NAMA negotiations.[202] It may be acknowledged that the unbound tariff lines in developing countries (e.g., India) primarily consist of labor-intensive, low-to-modest competitive segments. Binding these presently unbound lines by selecting a thin mark-up and a "normal" year as the base, may lower the applied tariff on these commodities. This, in turn, may end up deepening import flows. As many of the low skill-intensive products are already characterized by trade deficits[203] in India, this reform may also be politically difficult to accept.

CONCLUSION

The key question is, how strong is the urge for WTO-led manufacturing tariff reforms in the current context? As this article explains, perceived self-interest plays a crucial role in determining the quest for multilateralism. The experience of the United States, the European Union, India, and China, in terms of past tariff reforms and the reflected competitiveness patterns (i.e., DVA dynamics and trade balance scenario), indicate a close correspondence

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198 *See Strategy of Industrial Policy 2020 Vision*, EUROPEAN COMM'N (2014–20), https://ec.europa.eu/growth/tools-databases/regional-innovation-monitor/policydocument/strategy-industrial-policy-2020-vision-epi-0.

199 *See PM gives a clarion call for Atmanirbhar Bharat*, PRESS INFO. BUREAU (May 12, 2020), https://pib.gov.in/PressReleseDetail.aspx?PRID=1623391.

200 *See* David J. Lynch, Jeanne Whalen & Laurie McGinley, *Trump takes a first step toward returning medical supply chains to the U.S.*, WASHINGTON POST (July 11, 2020), https://www.washingtonpost.com/business/2020/05/19/trump-takes-first-step-toward-returning-medical-supply-chains-us/.

201 *See* Ashok Parikh, *Relationship Between Trade Liberalization, Growth, and Balance of Payments in Developing Countries: An Econometric Study*, 20 INT'L TRADE J. 429, 435 (2006); *see also* Jiandong Ju, Yi Wu & Li Zeng, *The Impact of Trade Liberalization on the Trade Balance in Developing Countries*, 57 IMF STAFF PAPERS 427, 428 (2010).

202 Ranjan, *supra* note 62, at vii–viii.

203 *See* Sakshi Aggarwal & Debashis Chakraborty, *Labour Market Adjustment and Intra-Industry Trade: Empirical Results from Indian Manufacturing Sectors*, 15 J. S. ASIAN DEV. 238, 258 (2020).

between the two. China as a "winner" has been open to the reform question, while still trying to consolidate the existing advantages through its recent domestic policy supports of the "Made in China 2025" initiative. The negotiating standpoints of the other three countries discussed in this article, have been shaped by their DVA dynamics and trade balance scenario. Both the United States and India are keen on reviving their manufacturing segments through concerted policy measures. Given the stagnation in the DVAs across sectors, and the adverse trade balance scenario, it will be difficult for developed countries such as the European Union and United States to accept a relatively higher tariff profile for their developing counterparts. Yet, for India, stagnation in DVA patterns, coupled with worsening trade deficits, would compel the country to push for a dual coefficient at NAMA forums that is in line with its past positions.

The perception of "fairness" of these practices in the exporting country and the policy orientation in the importing country, complicates the relationship further. The European Union and the United States are not the first actors which have used the NME methodology toward China. The NME methodology against China is already being used by many anti-dumping organizations. The poor drafting of China's WTO accession protocol provided the probability that China's market economy status would not be easy. In fact, multiple legal assessments at the end of the 15-year transition period denied automatic market economy treatment. Several WTO participants also have the firm position that China has not made market reforms compliant with its WTO obligations. India, however, has not officially taken a position on China's NME status. There is no substantial opportunity or compulsion for other anti-dumping implementers to change their strategy automatically given the fact that the corresponding WTO lawsuit has been postponed. For companies pursuing anti-dumping concessions against Chinese imports, this may be a welcome relief. The United States' push for a "tariff reset" and India's AD activism on Chinese exports should be viewed in this wider context.

Thus, given the recent focus towards consolidation of domestic manufacturing segments and the potential threats from augmented imports, it is unlikely that WTO members would commit heavily on the NAMA front in the multilateral forums. However, the revival of the WTO Appellate Body in the post-Trump era and speedy resolution of the manufacturing tariff and contingency measures disputes will be crucial to maintaining trust in the multilateral reform process and revitalizing future negotiations.