

# LEGALIZED BACKSLIDING: THE PRODUCT UNDER CONSIDERATION IN THE WTO ANTI-DUMPING AGREEMENT

*Yan Cai, Eunmi Kim, Zhuoqi Teng & Yuantao Fang\**

## ABSTRACT

*The scope of “product under consideration” (hereinafter “PUC”) is the basis for conducting an anti-dumping investigation. However, the World Trade Organization (hereinafter “WTO”) Anti-Dumping Agreement does not provide any explicit details about this definition; the result is that many issues remain in legal limbo. This study aims to reveal the legal and politico-economic problems arising from the ambiguity of the PUC definition, suggesting alternatives for its amendment. To this end, we conduct analyses of the cases of EC — Fasteners and EU — Footwear. Our legal analyses reveal that both the “internal likeness” claim and the “cross-likeness” claim would be rejected by the Panel. Our politico-economic analyses highlight that the WTO Anti-Dumping Agreement acts as a form of “legalized backsliding” which allows investigating authorities to abuse their broad discretion to satisfy protection-seeking interest parties in determining the scope of PUCs. This study recommends either inserting substantive and procedural provisions to determine PUCs in the Anti-Dumping*

---

\* Yan Cai, Associate Professor, College of Commerce, Hebei University of Economics and Business. Eunmi Kim (corresponding author), Visiting Researcher, Institute of Oriental Medicine Industry, Daegu Haany University. Zhuoqi Teng, Assistant professor, College of Business Administration, Henan Finance University. Yuantao Fang, Assistant professor, School of Finance, Shanghai Lixin University of Accounting and Finance. The authors can be reached at: yancai2020@126.com; eunmi@jbnu.ac.kr; tengzhuoqi@hafu.edu.cn, 20190060@lixin.edu.cn. This research is supported by the “Funding Projects for the Introduction of Overseas Talents in Hebei Province (C20210108)”.

*Agreement as the best option or inserting them in Free Trade Agreements as the second-best option.*

**KEYWORDS:** *product under consideration, anti-dumping, EC — Fasteners, EU — Footwear, internal likeness, cross-likeness*