

Dumping margin is at the heart of findings by importing countries of the existence of dumping practices, as well as in setting the duty they may apply. This paper sets out the different methods of calculation in use as well as possible modifications that could be applied. It focuses on the case of China, in the context of the forthcoming decision on whether the country should gain market economy status.

On this topic, see also other EPRS publications: Gisela Grieger, '[Major EU-China anti-dumping cases](#)', May 2016; Laura Puccio, '[Granting Market Economy Status to China: An analysis of WTO law and of selected WTO members' policy](#)', November 2015.

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EXECUTIVE SUMMARY

Dumping is defined as a trade practice through which an exporter sets the price of a product for export at below the normal value on the domestic market in the country of production. Under World Trade Organization (WTO) law, dumping is considered an unfair trade practice which importing countries can counter by introducing an antidumping duty, as long as they prove: (1) the existence of dumping, (2) the existence of serious injury to the domestic industry, and (3) a causal link between dumping and that injury. In EU law, the European Commission also investigates whether it is in the EU interest to apply antidumping duties in a case. The dumping margin is the difference between the price used under normal market transactions in the exporting country market (or 'normal value') and the export price. WTO law prohibits antidumping duty higher than the dumping margin, therefore the dumping margin represents the highest level of antidumping duty the importing country can impose.

The dumping margin calculation is therefore fundamental for two reasons: (1) it is the first requirement for introduction of an antidumping measure. Indeed, the importing country needs firstly to prove that dumping has occurred, and dumping is found whenever the dumping margin is higher than *de minimis* (i.e. more than 2%); (2) it will define the upper boundary of the antidumping duty if applied. However, the method for dumping margin calculations differs depending whether the country of export is considered a market economy or a non-market economy (NME), and NME methodologies normally lead to higher antidumping duties. The differences in the way dumping margins are calculated for market economies and NME are at the centre of the current debate on Market Economy Status for China. In the framework of the debate as to whether the WTO will impose an obligation to grant Market Economy Status (MES) to China from December 2016, the European Commission has launched a consultation on the possibility of granting MES to China. There are several options available to adapt calculation methods for antidumping investigations against Chinese firms.

China is currently treated as an NME. In an NME, domestic prices are considered unreliable, leading to an alternative approach for the calculation of normal value, which relies on a surrogate country for the calculation of the normal value. Traditionally, the NME approach resulted in one single antidumping rate for all companies. As transition economies evolved, differentiated treatment for companies that could prove some freedom from the state began, either through granting individual treatment (IT) or market economy treatment (MET). The European Commission applies the market-economy approach to those companies that prove compliance with MET requirements. After the EC-Fasteners case before the WTO, individual treatment was granted to all firms selected in the sample during the investigation. The former country-wide rate became the residual antidumping duty rate for companies not selected in the sample and not receiving MET or individual examination. The EU and US approach to calculating dumping margins for NME countries are very different in several aspects: (1) the selection criteria for the surrogate country, (2) the main method used to compute the normal value in the surrogate country, and (3) how specific duties are granted. An empirical analysis of NME, IT and MET rates in EU investigations against China from 1982 to 2014 shows that: (1) MET has not been granted since 2010, showing a restrictive stance in applying MET; (2) NME rates tend to be substantially higher than MET rates and are on average higher than IT rates. The NME residual rates in US antidumping investigations are substantially higher than the EU.

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List of main acronyms used

AD	Antidumping
CVD	Countervailing duties
GATT	General Agreement on Tariffs and Trade
MES	Market Economy Status
MET	Market Economy Treatment
MOE	Market-oriented enterprise
MOI	Market-oriented industry
NME	Non-market economy
IT	Individual Treatment
IE	Individual Examination
COOP	Cooperative firms
COOP+CVD	Cooperative firms also subject to countervailing duties
WTO	World Trade Organization

1. Introduction to antidumping and dumping margins

Dumping is defined as an unfair trade practice through which an exporter sets the price of exports below the price for the same goods under normal conditions of trade when sold domestically in the exporting country. Dumping is considered in international trade law to give an unfair competitive advantage to the exporting company that can lead to injury to competitors in the importing country. In order to offset the dumping effect, the WTO allows importing countries affected to introduce antidumping duties. The WTO sets the substantial and procedural conditions for their introduction in article VI of GATT and the related Antidumping Agreement.¹ The EU implements the WTO principles and applies antidumping measures following Council Regulation (EC) No 1225/2009 (hereafter referred to as the basic Antidumping Regulation).² To introduce an antidumping duty the importing country will have to prove in WTO law: (1) the existence of dumping, (2) the existence of a serious injury to the importing country industry; and (3) prove a causal link between dumping and injury. In EU law, beyond dumping and injury causation, the European Commission investigates whether it is ultimately in the EU interest to apply antidumping duties in a case. Provided all these tests obtain positive results, the European Commission can introduce antidumping duties as long as they are not greater than the dumping margin.

The dumping margin is the difference between the price used in the framework of normal market transactions in the importing country market or 'normal value' and the export price. In EU law, the dumping margin is compared to the injury margin in order to determine the dumping duty. Indeed, the EU applies the 'lesser duty rule', following which the duty will correspond either to the dumping margin or to the injury margin, depending on which one is the lowest. The injury margin represents the level of duty

¹ The [WTO Antidumping Agreement](#).

² [Council Regulation \(EC\) No 1225/2009](#) (the basic Antidumping Regulation).

needed to remove the injury caused. It is normally computed by comparing the export price and EU domestic price. The 'lesser duty rule' is applied in the EU because antidumping must be applied in a manner that is 'appropriate' to offset or prevent injury from dumping. Therefore, if the injury margin is less than the dumping margin, the duty will be set at the level of the injury margin. However, since WTO law prohibits higher duties than the dumping margin, if the injury margin is higher than the dumping margin, the dumping duty will still need to be set at the level of the dumping margin.

Table 1: Examples of the 'lesser duty rule'

Case examples	Dumping Margin (residual rate for all other firms)	Injury Margin	Dumping duty applied to firm (residual rate for all other firms)
Certain aluminium road wheels (China) ³	67.6%	22.3%	22.3%
Monosodium glutamate (China) ⁴	39.7%	63.7%	39.7%

Source: Regulations 964/2010 and 1187/2008.

The dumping margin calculation is therefore **fundamental for two reasons** in antidumping investigations:

- (1) firstly, finding evidence of dumping is the first requirement for the introduction of an antidumping measure and, in order to find dumping, the dumping margin must be higher than *de minimis* (i.e. more than 2%);⁵
- (2) secondly, the dumping margin will define the upper boundary of the antidumping duty if applied.

However, the method for dumping margin calculations differs if the country of export is considered a non-market economy.

Since the opening of non-market economies (NMEs) to international trade, a distinction between NMEs and market economies has been established in international trade law⁶ for antidumping (AD) investigations. The main reason for this distinction lies in the importance of determining domestic prices for the calculation of a normal value, in order to assess the dumping margin. In a NME, domestic prices are considered unreliable for determining the normal value of the goods in the country, as prices are distorted by government intervention. Therefore international trade law allows for the use of alternative methodologies for the calculation of normal values in AD

³ [Council Implementing Regulation \(EU\) No 964/2010](#) of 25 October 2010, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium road wheels originating in the People's Republic of China, (2010) OJ L 282/1.

⁴ [Council Regulation \(EC\) No 1187/2008](#) of 27 November 2008 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of monosodium glutamate originating in the People's Republic of China, (2008) OJ L 322.

⁵ The Commission will terminate any investigation or will not impose an antidumping duty on a company whose dumping margin is *de minimis*, i.e. less than 2% following Article 9(3) of the basic Antidumping Regulation.

⁶ The distinction between NME and market economy was introduced via the second paragraph to the [addendum to Article VI of GATT](#), which was added in 1955, and allows the use of a different methodology to calculate normal value for countries having 'a complete or substantially complete monopoly of trade and where prices are fixed by the state'. The distinction was then developed in domestic legal frameworks. See: Van Bael and Bellis, EU anti-dumping and other trade defence instruments, Wolters Kluwer, 2011.

investigations against companies located in NMEs. These alternative methods to calculate normal values will have an impact on the dumping margin and the level of duty applied.

The status of China as a non-market economy in transition is enshrined in section 15 of China's WTO accession protocol. Unless Chinese firms can prove that they operate under market economy conditions, alternative methodologies can be used to assess the Chinese normal value. Using NME alternative methodologies to calculate the normal value may lead to higher antidumping duties.⁷ China has argued that, after December 2016, there would be a legal obligation for all WTO Contracting Parties to grant Market Economy Status (MES) to China. For this claim, China relies on the fact that part of section 15 of the Protocol allowing for NME methodology, namely section 15(a)(ii), is due to expire after 11 December 2016. This Chinese interpretation of section 15 remains highly controversial.⁸ In the framework of the debate on whether there is a WTO obligation to grant China MES, the European Commission has launched a consultation and is considering several options to adapt the calculation methods for antidumping investigations against Chinese companies.

2. Market economy status versus non-market economy status

2.1. Obtaining Market Economy Status in the EU

The basic Antidumping Regulation creates a presumption that the countries mentioned in the footnote to Article 2(7)(a)⁹ and the WTO countries mentioned in Article 2(7)(b)¹⁰ should be treated as NME. This presumption allows the European Commission to apply a different methodology to calculate antidumping margins for these countries. Currently, the EU grants Market Economy Status (MES) only to transition economies that are connected to an EU integration programme, particularly the enlargement process or the Neighbourhood Policy. The first transition countries to receive MES were therefore central and eastern European countries which are now EU Member States. Indeed obtaining the status of a functioning market economy is one of the Copenhagen criteria for accession to the EU. These countries graduated through the adoption of the '*acquis communautaire*' that implies the implementation of rules fundamental to the good functioning of a market economy (including company law and intellectual property rights (IPR), among others).¹¹ Outside the EU enlargement context, MES has also been granted to Russia and Ukraine.¹² While both Ukraine and Russia were said to

⁷ See the GAO study undertaken on US anti-dumping duties: United States Government Accountability Office, [US-China Trade – Eliminating Non-Market Economy Methodology would lower Antidumping duties for some companies](#), January 2006.

⁸ See section 2.2.1 of this paper or refer to: Laura Puccio, [Granting Market Economy Status to China: An analysis of WTO law and of selected WTO members' policy](#), DG EPRS, European Parliament, November 2015; Barbara Barone, [One year to go: The debate over China's market economy status \(MES\) heats up](#), Policy Department of the Directorate General for External Policies, European Parliament, December 2015.

⁹ Albania, Armenia, Azerbaijan, Belarus, Georgia, North Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan and Uzbekistan.

¹⁰ The People's Republic of China, Vietnam and Kazakhstan.

¹¹ See for more details the [chapters of the *acquis*](#).

¹² For Russia, see: Council [Regulation \(EC\) No 1972/2002](#) of 5 November 2002, amending Regulation (EC) No 384/96 on the protection against dumped imports from countries not members of the European Community; for Ukraine, see: Council [Regulation \(EC\) No 2117/2005](#) of 21 December 2005

have made substantial progress towards market economy, the main reason for their upgrade was political, as a lever to encourage their accession to the WTO.¹³

A NME applying to be granted economy-wide MES must prove, in the EU, that it meets five criteria. These five criteria required to obtain MES in the EU are:¹⁴

- (1) a low degree of government influence in the allocation of resources and in decisions of enterprises;
- (2) an absence of distortions in the operations of the privatised economy;
- (3) the effective implementation of company law with adequate corporate governance rules;
- (4) effective legal framework for the conduction of business and proper functioning of a free-market economy (including IPR, bankruptcy laws ...); and
- (5) the existence of a genuine financial sector.

For the moment, six countries have submitted requests to the European Commission to obtain economy-wide MES: China, Vietnam, Armenia, Kazakhstan, Mongolia and Belarus.¹⁵ Three reports have been published assessing the achievements made toward MES by China (2008),¹⁶ Armenia (2009),¹⁷ Vietnam (2010)¹⁸ and Mongolia (2014).¹⁹ None of these countries met all five criteria. While Vietnam and Kazakhstan requested a renewed assessment and Mongolia submitted new documentation in 2014, China did not request a new assessment.²⁰

In the framework of the current debate on whether the WTO imposes an obligation to grant MES to China from December 2016 (see next section),²¹ the European

amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community.

¹³ Press Release of 29 May 2002, 'EU announces formal recognition of Russia as "Market Economy" in major milestone on road to WTO membership', [IP/02/775](#); Joint [Statement](#) held at the EU-Ukraine Summit on 1 December 2005; The substantial progress achieved by Ukraine toward market economy can also be implied from the [2005 EU Ukraine Action Plan](#).

¹⁴ For a deeper analysis of these criteria see: Laura Puccio, [Granting Market Economy Status to China: An analysis of WTO law and of selected WTO members' policy](#), DG EPRS, European Parliament, November 2015.

¹⁵ Commission staff working document accompanying the Report from the Commission to the Council and the European Parliament on the 32nd Annual Report from the Commission to the Council and the European Parliament on the EU's anti-dumping, anti-subsidy and safeguard activities, [COM\(2015\) 43 final](#), 4 February 2015.

¹⁶ Commission staff working document on progress by the People's Republic of China towards graduation to market economy status in trade defence investigations, [SEC\(2008\) 2503 final](#), 19 September 2008.

¹⁷ Commission staff working document on progress by Armenia towards graduation to market economy status in trade defence investigations, [SEC\(2009\) 1681 final](#), 18 December 2009.

¹⁸ Commission staff working document on preliminary assessment of the Socialist Republic of Vietnam's request for graduation to market economy status in trade defence investigations, [SEC\(2010\) 122 final](#), 5 February 2010.

¹⁹ European Commission, Report from the European Commission to the Council and the European Parliament – [33rd Annual Report](#) from the Commission to the Council and the European Parliament on the EU's Anti-dumping, Anti-subsidy and Safeguard activities (2014), Brussels, 3 August 2015.

²⁰ *ibid.*

²¹ On the debate and literature on the subject refer to: Laura Puccio, [Granting Market Economy Status to China](#): An analysis of WTO law and of selected WTO members' policy, DG EPRS, European Parliament, November 2015; Barbara Barone, [One year to go](#): The debate over China's market

Commission has launched a consultation on the possibility of granting MES to China.²² If the European Commission decides to grant MES to China, a proposal for amending the basic Antidumping Regulation must be submitted to the Council and the European Parliament. Indeed granting MES to China means amending Article 2(7) (b) of the basic regulation. Such an amendment must follow the ordinary legislative procedure provided for under Article 207 TFEU for regulations within the remit of EU competence in common commercial policy.

2.2. The debate on MES and the options for reform in normal value computation for China

2.2.1. Summary of the debate on section 15(a) of China's WTO Accession Protocol

Under section 15(a) of the Chinese WTO Accession Protocol,²³ China can be treated as a non-market economy (NME) in antidumping proceedings if Chinese firms cannot prove that they operate under market economy conditions. Under section 15(d), China can obtain permanent economy-wide Market Economy Status if it proves that it complies with the definition of Market Economy enshrined in the WTO Contracting Parties' domestic legal frameworks.

China has argued that after 2016 a legal obligation exists for all WTO Contracting Parties to grant MES to China.²⁴ To make this claim, China relies on the fact that part of section 15 of the China's WTO Accession Protocol allowing for NME methodology, namely section 15(a)(ii), expires after 11 December 2016. However, China's interpretation of section 15 remains highly controversial.²⁵ In particular, the *chapeau* (introduction) of section 15(a) of the China's WTO Accession Protocol, which allows a Contracting Party to choose to use alternative calculation methodologies in Chinese antidumping investigations, remains unchanged by the 2016 deadline. The same applies to section 15(d) of China's WTO Accession Protocol, which provides that, to obtain economy-wide Market Economy Status, China must comply with the Contracting Parties' domestic definition of Market Economy Status. The latter two arguments are supported by countries which do not wish to grant early market economy status to China until it complies with the legal requirements for a market economy enshrined in their domestic antidumping laws.

economy status (MES) heats up, Policy Department of the Directorate General for External Policies, European Parliament, December 2015.

²² [Consultation](#) on the methods used in the EU's antidumping procedures concerning China.

²³ For the full accession protocol, see the [WTO website](#).

²⁴ Some academics support this interpretation: Rao Weijia, China's Market Economy Status under WTO Antidumping Laws after 2016, *Tsinghua China Law Review* vol. 5, 2013; J. Cornelis, China's Quest for Market Economy and its impact on the Use of Trade Remedies by the European Communities and the United States, *Global Trade and Customs Journal* vol. 105(2), 2007; H. Detlof & H. Friedh, The EU Treatment of Non-Market Economy Countries in Antidumping Proceedings, *Global Trade and Customs Journal* vol. 265(2), 2007; Y. Yu, Rethinking China's Market Economy Status in Trade Remedy Disputes after 2016: Concerns and challenges, *Asian Journal of WTO and International Health Law and Policy* vol. 8, 2013.

²⁵ Bernard O'Connor, [Market-economy status for China is not automatic](#), Vox (CEPR policy portal), 27 November 2011; [full interpretation](#); B. O'Connor, [The Myth of China and Market Economy Status in 2016](#), NCTM, 2015; .C. Tietje, K. Nowrot, [Myth or Reality? China's Market Economy Status under the WTO Anti-dumping Law after 2016](#), Policy Papers on Transnational Economic Law No 34, December 2011.

In a widely cited 'Vox' column,²⁶ O'Connor suggests that this interpretation is incorrect for two reasons. Firstly, full granting of MES as foreseen by the first sentence of section 15(d) provides for the inapplicability of the whole section 15(a), while the second sentence of section 15(d) only sets an expiry date for paragraph (a)(ii). Indeed, the possibility for NME treatment is to be found not only in paragraph (a)(ii), but also in the *chapeau* to section 15(a) (see box 2), the latter remaining unaltered by the 2016 deadline. Moreover, the second sentence of section 15(d) has no legal effect on the applicability of the rest of section 15(d), including the procedure to grant economy-wide or industry-wide MES, which still requires China to comply with domestic law requirements. Therefore, according to this interpretation, the 2016 expiry of section 15(a)(ii) does not entail automatic granting of MES to China.

O'Connor considers that with respect to the legal implications of the expiry of section 15(a)(ii), its only effect would be that the domestic authorities of the importing country may choose which methodology to use, should Chinese companies fail to prove that market conditions prevail in their market.²⁷ In reality, such a choice already exists, as section 15 does not oblige the importing country to apply NME methodology. Therefore, O'Connor sees no impact from the expiry of paragraph (a)(ii).

Another possible interpretation of the legal implications of a 2016 section 15(a)(ii) expiry is that it would imply a change in the burden of proof. Before expiry, if Chinese companies cannot prove that they are entitled market economy treatment, they are presumed to operate under non-market economy conditions; with the expiry of section 15(a)(ii) this presumption also falls. After 2016, the importing country must prove that the Chinese companies still operate under non-market economy conditions. This approach is similar to that used in Canada for prescribed countries.²⁸

There are therefore three main strands of interpretation regarding the post 2016 amendment of section 15 of the Chinese Protocol: (1) the amendment signifies granting MES to China; (2) the amendment does not substantially change section 15 of the Chinese Protocol; (3) the amendment changes the burden of proof in claims for market economy treatment granted to Chinese companies (currently the burden is with the Chinese firms).

2.2.2. Options for reform of the calculation methodologies used by the EU in Chinese antidumping investigations

In a paper issued by the European Commission in February 2016, three options were put forward regarding the 2016 amendment of section 15 of the Chinese Protocol.

- The **first option** considers leaving EU legislation unchanged. The dumping margin would be calculated as explained in section 4 of this paper, below. As suggested by the European Commission, this option would certainly trigger the introduction of a dispute settlement procedure in the WTO by China. It is hard to imagine that the dispute settlement body (DSB) would consider an amendment of section 15 as having no substantial effect, and therefore it is highly probable that the DSB will consider the EU regulation to be in violation of

²⁶ Bernard O'Connor, [Market-economy status for China is not automatic](#), Vox (CEPR policy portal), 27 November 2011; [full interpretation](#).

²⁷ B. O'Connor, [The Myth of China and Market Economy Status in 2016](#), NCTM Association d'Avocats, 2015.

²⁸ Laura Puccio, [Granting Market Economy Status to China: An analysis of WTO law and of selected WTO members' policy](#), DG EPRS, European Parliament, November 2015.

WTO rules. That may lead to compensation if, and only if, the DSB does consider the EU in breach of WTO law and the EU does not implement the DSB decision.

- The **second and third options** envisaged by the European Commission both consider granting MES to China. The dumping margin calculation would then follow the rules explained in section 3 of this paper. In the second option, MES would be granted without mitigating measures, whereas in the third option the EU would introduce mitigating measures.
- The second option without mitigating measures would rely on tools existing within the current regulatory framework. This option could, for example, rely on adjustment when constructing the normal value under Article 2(5) of the basic Antidumping Regulation, to take into account left-overs from the old non-market economy system, as was the case for Russia. However, after the case on Biodiesel brought before the WTO by Argentina, the European Commission would have to change the way it implements such adjustments and it would have to assess whether costs need to be adjusted on an individual basis (see explanation in section 3.2, below).
- The mitigating measures envisaged in the third option would include 'grandfather' provisions, i.e. safeguarding the definitive antidumping currently in place. The option would then have to strengthen trade defence instruments such as antidumping and anti-subsidies. However, until the European Commission improves definition of these mitigating measures, they remain difficult to analyse, in particular whether such measures would be in line with WTO law.

Finally, a **fourth option**, which was not envisaged by the European Commission, relies on the third interpretation of the consequences of the 2016 amendment of China's WTO accession protocol, and hints at a reversal of the burden of proof for obtaining market economy treatment. Under this option, China would be treated as a prescribed country, i.e. Chinese companies would be treated as operating in a market economy, unless importing market companies prove that that a particular Chinese market/company is still operating as in a non-market economy. The system would place the burden of proof on domestic firms to prove that non-market economy conditions prevail. This is the approach used in Canada, for example.²⁹

Box 1 – The European Parliament Resolution on China's Market Economy Status

The European Parliament adopted a resolution on 12 May 2016 stating that 'until China meets all five EU criteria required to qualify as a market economy, the EU should use a non-standard methodology in anti-dumping and anti-subsidy investigations into Chinese imports in determining price comparability, in accordance with and giving full effect to those parts of Section 15 of China's Accession Protocol which provide room for the application of a non-standard methodology', and calling on the Commission to make a proposal in line with this principle and 'to coordinate with the EU's major trading partners, including in the context of the upcoming G7 and G20 summits, on how best to ensure that all provisions of Section 15 of China's Accession Protocol to the WTO that remain in force after 2016 are given full legal meaning under their domestic procedures, and to oppose any unilateral granting of MES to China'.³⁰ All the above-mentioned options (with the exception of option 1) would require an amendment of the Antidumping Regulation and therefore require participation of the Parliament as co-legislator.

²⁹ Laura Puccio, [Granting Market Economy Status to China](#): An analysis of WTO law and of selected WTO members' policy, DG EPRS, European Parliament, November 2015.

³⁰ European Parliament resolution of 12 May 2016 on China's market economy status ([2016/2667\(RSP\)](#)).

3. Dumping margin calculations for market economies

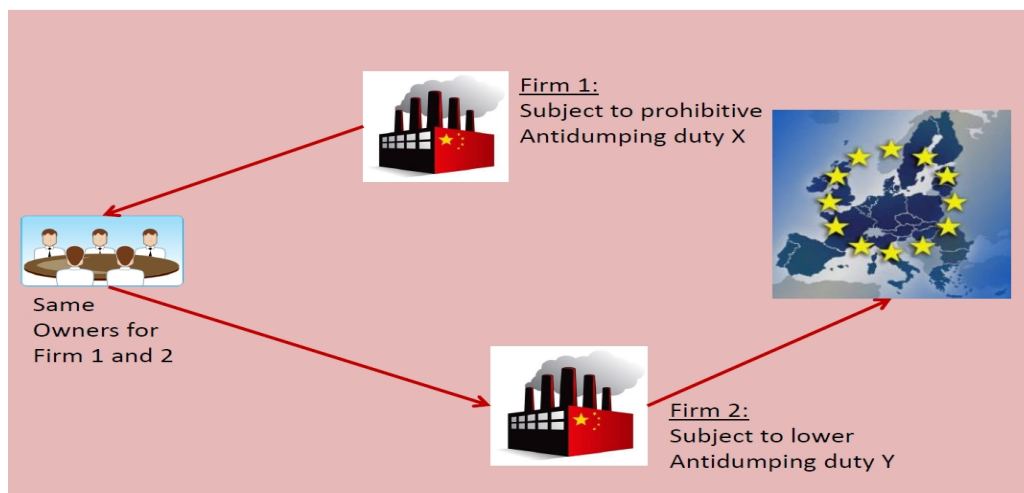
3.1. An overview of dumping margin calculations for market economies

In the framework of China's MES debate, if the European Commission pursues option 2 and 3, and China receives MES, then dumping margin calculations would follow the normal methodology applicable to market economies. In the proposed option 4, market economy methodology would also be the rule, however under this latter option, if the domestic industry proves that Chinese companies are not operating under market economy, the rules for NME could still be applied.

Under market economy conditions, the dumping margin is defined as the difference between the normal value paid for the goods in domestic sales for the exporting market and the export price of like goods to the EU. Dumping margins are expressed in percentage terms of the cost, insurance and freight (CIF) export price³¹ of the product. The dumping margin should normally be calculated for each individual company. However, it is sometimes impossible administratively to compute dumping margins for all firms and therefore individual rates are calculated for sampled firms only.³²

Companies that are related as part of a group are normally counted as a single entity in order to avoid circumvention of antidumping via a subsidiary firm receiving a lower duty. Figure 1 shows the possibility of circumventing antidumping duties if related firms receive different antidumping duties, for this reason a single antidumping duty applies to all related firms.

Figure 1: Circumvention of antidumping by related firms



Source: DG EPRS.

To calculate the dumping margin, the European Commission needs firstly to calculate the normal value and the export price.

³¹ CIF price is the price including cost, insurance and freight costs; in other words the CIF price of goods includes all production costs, as well as all costs incurred to transport the goods to customers in the importing country. The CIF price is the usual price used for assessment of import duties in customs valuation.

³² See Article 17 of the basic antidumping regulation. Non-sampled firms can ask for individual examination under article 17(3) of the basic antidumping regulation, however this cannot be granted if 'the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time'. Thus granting of individual examination is rather rare.

- (1) The first approach to calculating normal value in market economies is to investigate the price for the same product(s) as the dumped exports paid or payable in the ordinary course of trade in the exporting country, i.e. paid by **independent** customers in the exporting country (Article 2(1) of the basic Antidumping Regulation).

There are three circumstances where such a price may be disregarded for the investigation (see box 2).

Box 2: Circumstances where transaction prices may be disregarded (Article 2(3) of the basic Antidumping Regulation):

(a) there are no, or insufficient, sales in the domestic market of the exporting country; sales are normally considered insufficient when they represent less than five percent of the export by volume to the European Union.

(b) there are no, or insufficient, sales of the like product 'in the ordinary course of trade'; sales are not in the ordinary course of trade, when: (i) they are below costs, (ii) are between associated parties, (iii) sales have compensatory arrangements.

(c) such sales do not permit proper comparison; for example in the case of different market segments, which would imply different costs (for example targeting a niche market in the exporting market and not in the domestic market). In such cases the European Commission will check whether the product is not sold in the same market segment in the exporting country versus the European Union or whether the product is sold on several different market segments in the exporting country while sold in one particular niche in the European Union (*Polysulphide polymers*);³³ different sales channels have also been taken into account (*Compact disk players, Car radios*).³⁴

If one of these three reasons is verified, then alternative methods to calculate normal values can be used. These include:

- (2) domestic prices of other producers in the same exporting country;
- (3) the constructed normal value, using normal costs of production as reported in accounting records (see subsection 3.2);
- (4) the export prices in the course of ordinary trade, to an appropriate third country provided these prices are representative. In *Colour television receivers*³⁵ the European Commission rejected the use of the export price to third countries because the products were not fully comparable. The European Commission seems to prefer constructed values to export prices to third countries because of the suspicion that these might also be dumped (this was one of the grounds for rejection of the export price values in *Bicycles*).³⁶

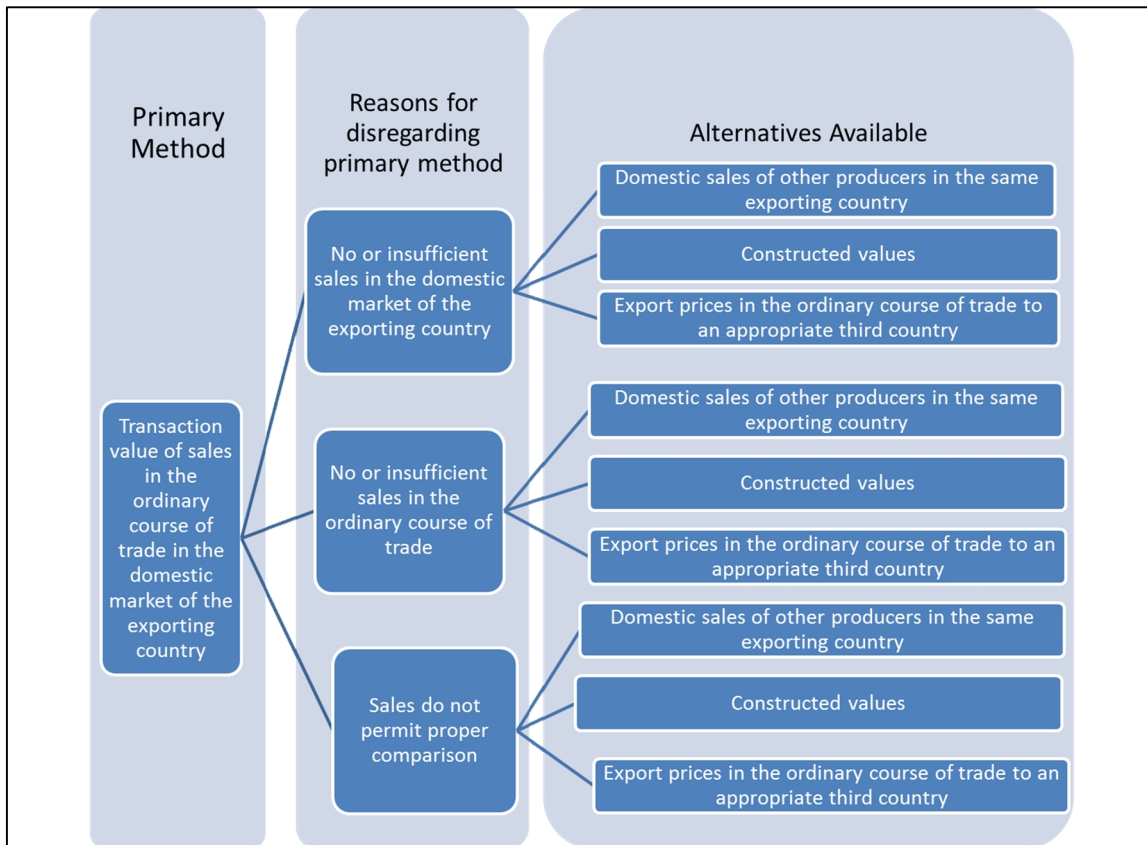
³³ [Polysulphide polymers \(USA\)](#), 1998, OJ L 255/1.

³⁴ [Compact disk players \(Japan, Korea\)](#), 1989, OJ L205/5; [Car radios \(Korea\)](#), 1992, OJ L 34/8.

³⁵ [Colour television receivers \(Malaysia, China, Korea, Singapore, Thailand\)](#), 1994, OJ L 255/50.

³⁶ [Bicycles \(Vietnam, China\)](#), 2005, OJ L 183/1.

Figure 2: Methods to calculate normal values in antidumping investigations involving market economies



Source: DG EPRS.

There are two alternative methods for calculating export prices in individual export price determinations:

- (6) The first method is to find the actual export price paid or payable for the product when sold for export from the exporting country to the EU (Article 2(8) of the basic Antidumping Regulation);
- (7) The second method is to construct the export price (Article 2(9) of the basic Antidumping Regulation). This method is used only when there is no export price or the price appears to be unreliable because of some association or compensatory arrangement (for example the exports are sold in the EU via an associated importer).

As the dumping margin calculation entails a comparison between normal value and export price, these two values must be comparable, in order to comply with the idea of 'fair comparison'. Therefore, the European Commission must make the comparison at a similar level of trade and in respect of sales made, also checking similarities in time, as well as other differences which might affect comparability such as: physical characteristics of the product; import charges; discounts; insurance; currency conversion.³⁷

³⁷ A non-exhaustive list of these elements can be found in Article 2(10) of the basic Antidumping Regulation.

3.2. Constructed normal values and production costs adjustments: the Russian and Argentinian WTO cases

Normal value can be constructed whenever sales prices cannot be used. Normal value should normally be constructed using costs of production as reported in accounting records. However, pursuant to Article 2(5) of the basic Antidumping Regulation, if the European Commission considers that such costs are unreliable because they are distorted, it can introduce adjustments.

These adjustments are those used in investigations where the exporting country is a transition country that has been granted MES but still presents some leftover from the non-market economy system, for example. **These are the types of adjustments that the European Commission could envisage to apply to China if China obtains MES.** These adjustments could be used both for options 2 and 3, mentioned in section 2.2.2 of this paper.³⁸

To give an example, these adjustments are used in Russian cases to disregard, for example, energy costs. In the antidumping investigation on the imports of welded tubes and iron and non-alloy steel pipes, the European Commission had to construct normal values, usually using production costs reported in the accounting records including energy costs. However, in this case the European Commission decided to disregard the energy costs reported in the accounting reports as it 'found that the domestic gas price paid by the exporting producers was around 30% of the export price of natural gas from Russia. In this regard, all available data indicated that domestic gas prices in Russia are regulated prices, which are far below market prices paid in unregulated export markets for Russian natural gas. Since gas costs were not reasonably reflected in the exporting producer's records as provided for in Article 2(5) of the basic Regulation, they had to be adjusted accordingly.' The Commission therefore replaced the costs reported in the accounting records with an adjusted value. 'In the absence of sufficiently representative, undistorted gas prices relating to the Russian domestic market, it was considered appropriate to base the adjustment, in accordance with Article 2(5) of the basic Regulation, on the basis of information from other representative markets. The adjusted price was based on the average price of Russian gas when sold for export at the German/Czech border (Waidhaus), adjusted for local distribution costs. Waidhaus is the main hub for Russian gas sales to the EU, which is both the largest market for the Russian gas and has prices reasonably reflecting costs. It can therefore be considered to be a representative market within the meaning of Article 2(5) of the basic Regulation.'³⁹ Russia, considering these adjustments in violation of WTO law, brought a case before the WTO.⁴⁰ However, the panel has not yet issued its report.

These kinds of adjustments are also used in other cases not involving transition economies. This is, for example, the case of Argentina. Like Russia, Argentina also brought a claim before the WTO, considering the use of these adjustments in violation of WTO law.⁴¹ The Dispute Settlement Body Panel Report was circulated in March 2016.

³⁸ These adjustments can also be used whenever market economy treatment is granted to one or more firms under option 1 or option 4.

³⁹ [Certain welded tubes and pipes of iron or non-alloy steel](#), (Belarus, China, Russia and Ukraine), 2015, OJ L 20/6.

⁴⁰ European Union – [Cost Adjustments](#) Methodologies and Certain Antidumping Measures on Imports from Russia (DS474).

⁴¹ [EC-Antidumping Measures on Biodiesel from Argentina](#) (DS473).

Argentina made two claims: (1) one against Article 2(5) of the basic Antidumping Regulation as such, and (2) against the use of Article 2(5) adjustments in constructing normal values in the framework of the *Biodiesel* antidumping investigation.⁴² The first claim against Article 2(5) of the basic Antidumping Regulation as such was **rejected** by the panel. The panel acknowledged that Article 2(5) was almost a transcription of WTO law and that the European Commission has **discretion** to disregard, for the calculation of constructed normal value, the costs recorded in the producer accounting record, whenever those costs were found to not reasonably reflect the cost of production. The WTO also acknowledged that the European Commission had wide discretion to replace the recorded cost with other reasonable costs, including third country costs. However, the panel considered that the European Commission violated WTO law on several grounds in the manner in which it applied those adjustments in the framework of the *Biodiesel* case. The main grounds for violation was that the European Commission should have assessed whether costs recorded in **each** producers' records were unreasonable before adjusting them; the European Commission cannot undertake a generalised assessment of whether costs for that product are unreasonable in the country.

This panel ruling appears to have the following implications for the European Commission's practice of adjusting normal values:

- (1) the European Commission will still be allowed to make adjustments to costs in order to construct normal values, whenever it can prove that the cost recorded in the accounting records of the producer do not reflect production costs, or if they do not comply with general accepted accounting standards;
- (2) such assessment must be made on an individual basis for each producer. In other words, generalised assessment on the basis of a country's particular situation (including in the case of new market economies) is forbidden. The panel conclusions are in line with the conception of dumping as a company practice which therefore must be assessed at the company level by calculating antidumping margins on an individual basis and leading to a company-specific duty.

The conclusion of this panel report has consequences for the European Commission's application of these types of adjustments to newly-established MES countries. This could be the case if China obtains MES status and the EU wants to apply adjustments to constructed normal values to account for distortions in the economy.

3.3. Option 3 and parallel Chinese antidumping and anti-subsidy investigations

The third option considered by the European Commission would grant China MES, but with some mitigating measures. Inter alia, this option would consider a greater role for anti-subsidy investigations. The EU already carries out parallel antidumping and anti-subsidy investigations against Chinese firms. Annex 8.2 provides a list of the antidumping cases initiated by the EU against China with a parallel anti-subsidy case, recorded in the World Bank Global Antidumping Database.⁴³

In his report on the [Assessment of trade defence policy decisions for 2014](#), Edwin Vermulst pointed out, among other issues, the increased use of countervailing

⁴² [Biodiesel \(Argentina, Indonesia\)](#), 2013, OJ L 315/2.

⁴³ Bown, Chad P., 'Global Antidumping [Database](#)', World Bank, June 2015; Bown, Chad P., 'Global Countervailing Duties [Database](#)', World Bank, June 2015.

duties (or anti-subsidy duties)⁴⁴ against China. Initially, it was not EU practice to initiate anti-subsidy investigations against NME countries. The same presumption was also present in the USA. The reason for this (at least in the USA, but probably also in the EU) was that the state was presumed to be the owner of the company and therefore it made no sense to initiate an anti-subsidy investigation. However, with the rising evolution toward transition economies, and the acknowledgement that some firms receiving public funds and subsidies can no longer be considered state-owned enterprises, the issue of Chinese firms' overcapacity was linked to state subsidisation and could be subject to countervailing measures. The USA then initiated anti-subsidy investigations against China (the first case started in 2007); the EU followed suit in 2010.

The main problem of anti-subsidy for NME countries is ensuring compliance with the prohibition of double-remedy under WTO law when anti-subsidy cases are started in parallel to antidumping proceedings.⁴⁵ In the EU, where both an antidumping duty and a countervailing duty are applied to companies, an antidumping duty is imposed with the countervailing duty discounted, in order to avoid a double imposition.

4. Differences in dumping margin calculations for non-market economies

Currently China is treated as a non-market economy (NME). In NME domestic prices are considered unreliable and therefore an alternative approach to the calculation of normal value is adopted, involving the selection of a third country market economy or surrogate country for the computation of normal values. Traditionally, investigations against NME countries also resulted in one single antidumping rate against all NME firms; one single dumping margin was calculated as if all firms belonged to the same corporation, the state.

As the transition economies evolved, differentiated treatment began for selected firms that could prove some degree of freedom. In the EU, this was done by granting individual treatment (IT), or market economy treatment (MET), to said firms. Market economy treatment (MET) basically applies the market-economy approach to calculate the firm-specific duty, while firms receiving IT receive a firm-specific duty, but the normal value used to compute such a duty is based on the values determined for the surrogate country.

IT was initially granted only to firms that complied with some requirements.⁴⁶ As a consequence of the *EC-Fasteners* case in the WTO, the requirements to obtain

⁴⁴ In WTO law, two types of subsidies are prohibited, export subsidies or local content subsidies. Other specific subsidies (i.e. subsidies not given to the economy as a whole) are actionable subsidies and can give rise to countervailing duties in the importing country if the latter country proves that (1) the imports from that firm benefited from a actionable subsidy, (2) there is injury suffered by the importing country, (3) there is a causal link between the injury and the subsidised imports. In EU law, the Commission will also look at whether it is in the Union interest to apply such a duty.

⁴⁵ [US – AD and CVD from China](#), DS379.

⁴⁶ IT was originally granted on a case-by-case basis without codified requirements. The practice was extremely restrictive until requirements were formally introduced in 2002. Comparing the criteria for IT before and after 2002 (until 2012) with those of MET, we found that the IT requirements were much more restrictive before 2002 than IT criteria post-2002 (before the 2012 reform of IT). Moreover, the pre-2002 requirements were more comprehensive, recalling the current MET criteria to a certain extent. The reform of IT criteria in 2002 led to a clearer distinction between MET and IT.

individual treatment were declared in violation of WTO law. In the *EC-Fasteners* case,⁴⁷ the Appellate Body confirmed that Article 6.10 of the Antidumping Agreement requires an investigating authority to calculate individual dumping margins for each foreign exporter or producer. As in the EU, IT for NME countries was subject to the fulfilment of certain requirements by firms (former Article 9(5) of the basic Antidumping Regulation), the Panel and the Appellate Body considered article 9(5) of the EU Antidumping Regulation in violation of WTO law. The EU then amended its Antidumping Regulation in 2012⁴⁸ and made individual treatment compulsory at least for sampled firms. Individual treatment (IT) is limited to a sample of firms whenever the number of exporting firms is such as to render the calculation of margins for all the exporting firms during the limited investigation period impossible.⁴⁹ Other firms not sampled could request individual examination.⁵⁰ The former country-wide rate became the residual antidumping duty rate for firms not selected and not having received MET or individual examination.

Table 2 – EU dumping margin calculation methodologies for China

	Normal Value	Export Price	Dumping margin	Dumping duty
NME approach	Surrogate country approach	Single rate	Single	Country-wide rate or Residual rate
IT approach	Surrogate country approach	Differentiated rate	Firm-specific	Firm-specific
MET	Domestic values	Differentiated rate	Firm-specific	Firm-specific

Source: EPRS.

In particular while MET firms had to prove they operated as though in a market economy, IT firms had to prove that they were independent in export terms only. That distinction justified why IT firms were only given an individual dumping margin, instead of an additional MET approach for the computation of their normal values.

For the pre-2002 requirements see: [Communication from the Commission](#) to the Council and the European Parliament on the treatment of former non-market economies in anti-dumping proceedings and a proposal for a Council Regulation amending Council Regulation (EC) No 384/96. Proposal for a Council Regulation (EC) amending Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community, COM(97) 677 final, 12 December 1997.

For the post-2002 requirements that were then codified in Article 9(5) of the basic Antidumping Regulation and were amended in 2012, see the [2009 version](#) of the Regulation.

⁴⁷ European Communities — Definitive Anti-Dumping Measures on Certain Iron or [Steel Fasteners](#) from China (DS397). See for a summary of the Fasteners antidumping investigation and case: Gisela Grieger, [Major EU-China anti-dumping cases](#), DG EPRS, European Parliament, May 2016

⁴⁸ [Regulation \(EU\) No 765/2012](#) of the European Parliament and of the Council of 13 June 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community, 2012 OJ L 237.

⁴⁹ Sampling is done following the rule in Article 17 of the basic Antidumping Regulation.

⁵⁰ See Article 17(3) of the basic Antidumping Regulation. However, individual examination cannot be granted if 'the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time'. Thus it is rather rare that individual examination is actually granted.

4.1. Non-market economy and the surrogate or analogous country approach

The alternative EU approach to calculating normal values for NME residual rates and for IT rates relies on the identification of an analogous market economy country.⁵¹

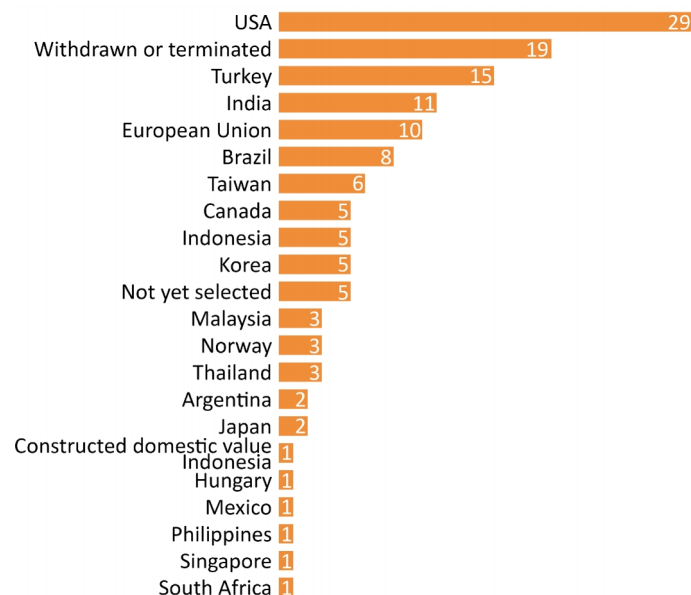
The criteria in the EU for the selection of an analogous country are **mainly**:

- the comparability of the production volume of like products in the non-market economy country and in the potential analogous country,
- the representativeness of domestic sales (transactions) as compared to exports of the product originating in the non-market economy country,
- the level of competition in the domestic market of the analogue country,
- the comparability of access to raw material and energy,
- the readiness of exporters in the potential analogue country to cooperate in the investigation.

Other criteria may also be taken into account (such as, for example, economic development), but the above criteria have priority in the Commission's assessment; this is because the primary methodology for computing the normal value uses the price of a like product sold in the analogous country and therefore production and representativeness of domestic sales are important factors in its computation.

Figure 3 below shows the analogous country chosen in original investigations against China. The USA is the country most frequently chosen, followed by Turkey, India, and the European Union.

Figure 3 – Analogous country chosen in original investigations for Chinese firms not granted MET



Source: DG EPRS, Members' Research Service data (see annex 8.2 below for details) on the basis of the investigations list provided by the Commission and data collected by the authors from the Official Journal.

European Union data are often used as a last resort option when: either there is no adequate analogous country,⁵² or if the third-country firms do not collaborate.⁵³

⁵¹ Article 2(7)(a) of the basic Antidumping Regulation

⁵² See: *Dicyandiamide (China)*, 2007 OJ L 296/1; *Lever Arch Mechanism (China)*, 2006 OJ L 205/1.

⁵³ See: *Aluminium Radiators (China)*, 2012 OJ L 310/1; *Candles (China)*, 2009 OJ L 119/1.

Obviously, using data from developed countries such as the USA and the EU presents issues in terms of comparability of their labour markets. Therefore, adjustments are made to account for differences in labour market costs or other differences.

The normal value is then computed in a similar way as for any market economy country, using the normal value of the analogous country (see box below).

Box 3 – Normal value for NME and IT firms:

Once an analogous country has been selected, the normal value for NME and IT firms is determined via the following methodologies, by way of exclusion:

- the domestic price of the like product in the analogous third market economy country, or
- the constructed normal value of the like product in the analogous third market economy country, or
- the export price of the like product in the analogous third market economy country to other countries, including the Union, or
- European Union prices, or
- other reasonable basis as determined in Article 2(7)(a).

Box 4 – The export price in IT, MET and NME⁵⁴

For IT, MET and NME approach, export prices are computed for individual firms in the same way as in market-economy countries (see section 3 above). In the case of the NME approach, the individually calculated export prices are then averaged in order to compute the single NME residual rate for those firms that do not get IT or MET.

4.2. Market economy treatment for selected firms

Market Economy Treatment (MET) provides for the application of the normal market economy methodology for the calculation of the dumping duties of firms (or industries), located in China, Vietnam, Kazakhstan and any NME country that is a member of the WTO (hereafter referred to as 'special non-market economies'),⁵⁵ if these firms (or industries) can prove that they operate under market economy conditions following the requirements contained in Article 2(7)(c). This rule was introduced in 1998, and initially exclusively for China and Russia,⁵⁶ because of the efforts of the two economies toward transition to a market economy. In section 15 of the Chinese [protocol](#) of accession (2001), it is also stated that, if Chinese firms (or a group of firms) can prove that they operate under market economy conditions, then MET must be applied.

The burden of proof lies on the exporting firms of the 'special non-market economy', which must prove they comply with each of the five criteria under Article 2(7) (c) of the basic Antidumping Regulation (see box 4 below). Each of the criteria is considered independently and therefore failing one of these criteria means MET cannot be granted.

⁵⁴ Article 2(8) to 2(10) of the basic Antidumping Regulation.

⁵⁵ Article 2(7) (b) of the basic Antidumping Regulation.

⁵⁶ Russia then received Market Economy Status in 2002 and therefore Russian firms no longer need to prove the requirements of article 2(7) (c) in order to obtain MET. Press Release, 'EU announces formal recognition of Russia as "Market Economy" in major milestone on road to WTO membership', [IP/02/775](#), 29 May 2002.

Box 5 – Article 2(7) (c) of the basic Antidumping Regulation

Article 2(7) of [Council Regulation \(EC\) No 1225/2009](#): ' c) A claim under subparagraph (b) must be made in writing and contain sufficient evidence that the producer operates under market economy conditions, that is if:

- decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant state interference in this regard, and costs of major inputs substantially reflect market values,
- firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,
- the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts,
- the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms, and
- exchange rate conversions are carried out at the market rate.'

- The first criterion requires the company to be independent from the state in its structure and capital, as well as under no influence from the state, in order to ensure freedom to take business actions in accordance with market-economy-driven decisions. Normally ownership by the state or presence of state officials in managing positions will be presumed to be state interference in the business activity of the firm. In its interpretation of the first criteria under article 2(7) (c), the Court of First Instance clarified that the requirement of operating 'without significant state interference' does not entail that government cannot maintain any kind of shares in the privatised companies; however, the decisions undertaken by the government as minority shareholder within the company must follow commercial considerations and not create distortions in the market operations of the company.⁵⁷
- The second criterion requires that accounting standards are in line with international accounting standards; the firm must show that it follows sound accounting standards and practices and that its accounts practices cannot be influenced by the state. The Commission relies on auditors' reports to make an assessment of the firm practice.
- The third criterion concerns production costs and financial situations unaffected by state distortions; this criterion may include, inter alia, consideration on the acquisition of land, infrastructures, and machinery, and whether these have been determined by the state or acquired at abnormally low prices from the state. This criterion also includes considerations such as: barter trade, compensation of debt schemes, subsidies, loans made under abnormal conditions.
- The fourth criterion concerns bankruptcy and property laws. This criterion seems to be the simplest to obtain and would mainly only rule out major state-owned enterprises which have special derogations.
- The fifth criterion demands the exchange-rate convertibility at market rate level. Obviously, in order to assess compliance with this criterion, the

⁵⁷ Case T-498/04, *Zhejiang Xinan Chemical Industrial Group Co. Ltd v. Council of the European Union*, 17/06/2009.

Commission does not consider decisions that are taken by the Chinese government (such as in the conduct of its monetary policy) and for which the individual firm has no responsibility.⁵⁸

Often, requests for MET were rejected because of:

- failure to adequately comply with the second requirement on accounting standards, records and audit;
- failure to comply with procedural requirements, such as late submission of the questionnaire reply;
- confidentiality of part of the accounts and audit reports;
- if one firm is associated with a firm that does not qualify for the requirements, then the entire group of associated firms would fail the test for MET because of the risk of circumvention of the duty and the fact that associated firms are considered as one.

If the firm is granted MET, then the normal value of the firm will be determined as it is done for a market economy (see section 3). The export price will also be determined individually as it is done in sampled firms for a market economy country (see further explanation in section 3).

In the framework of the Chinese MES, if an option 4, inspired by the 'prescribed country' approach used in Canada, were to be considered, that would imply a reversal of the burden of proof, i.e. MET would be automatically granted to Chinese firms unless domestic firms of the importing country could prove the Chinese firms do not operate under market economy conditions; in the latter case the NME approach would apply.

5. Comparison between the EU and US approach to antidumping investigations for non-market economies

United States antidumping law is covered by the Trade Act of 1930 (the Act)⁵⁹ as amended by subsequent laws. The specific rules applying to non-market economy (NME) countries in the USA are contained in section 771(18) of the Act and in department regulation 19 CFR 351.408.⁶⁰

In US law, two institutions are responsible for antidumping investigations: the Department of Commerce (DOC) deals with the dumping margin calculation (and therefore is the institution dealing with the distinction between NME and market economy countries) and the US International Trade Commission is responsible for analysing material injury.

As was previously the case in the EU, the USA normally applies an NME-wide rate to exporters from NME countries, unless these qualify for separate rates. However the conditions for separate rates are extremely different to those applied by the EU. The calculation of normal value also differs from the EU approach.

Individual rates are given to exporters in NME who can prove *de jure* and *de facto* absence of government control with respect to their **export activities**. This approach is similar to Individual Treatment in the EU, focusing on independence in the export side

⁵⁸ *Trichloroisocyanuric Acid* (China, USA), 2005 OJ L 89/4.

⁵⁹ [Trade Act of 1930](#).

⁶⁰ [Regulation 19 CFR 351.408](#).

of the business. In order to request and qualify for separate rate status in an investigation or administrative review, a company must have exported the subject merchandise to the United States during the period of investigation or review, and it must provide information responsive to the following considerations:

- Absence of *de jure* control: The Department of Commerce (DOC) considers the following *de jure* criteria in determining whether an individual company may qualify for a separate rate: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralising control of companies; and 3) any other formal measures by the government decentralising control of companies. For the *de jure* consideration some Chinese laws have been found to be important for the assessment (see box 6 below).

Box 6 – Chinese laws taken into account in the *de jure* assessment:⁶¹

- Company Law of the People's Republic of China (PRC), effective 1 January 2006;
- PRC Foreign Trade Law, effective 1 July 2004;
- PRC Administrative Regulations Governing the Registration of Legal Corporations;
- PRC Enterprise Legal Person Registration Administrative Regulations of 13 June 1998;
- PRC Law on Chinese-Foreign Cooperative Joint Ventures;
- Regulation Governing Rural Collectively-Owned Enterprises of the PRC of 1990;
- PRC Law on Industrial Enterprises Owned by the Whole People, adopted on 13 April 1988 (The Industrial Enterprises Law);
- Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises of 1992 (Business Operation Provisions); and
- The Organic Law on Village Communities in the PRC (A Village Committee Law).

- Absence of *de facto* control: Typically, the DOC considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions; 1) whether the export prices are set by, or subject to the approval of, a governmental authority; 2) whether the respondent has authority to negotiate and sign contracts and other agreements; 3) whether the respondent has autonomy from the central, provincial and local governments in making decisions regarding the selection of its management; and 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Because of the number of applications for separate rates, the Act gives the DOC discretion to limit examination of separate rate claims to a reasonable number of such companies, if it becomes impossible to examine all claims. In such a case the DOC may:

- investigate a sample of exporters, producers or types of products that are statistically valid (sampling approach);
- investigate exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined.

In the latter case, the DOC will assign exporters not selected as mandatory respondent with a weighted average of the individual rates calculated for the mandatory respondents (excluding any zero, *de minimis*). In the former case, i.e. sampling, the average is computed including zero and *de minimis*.

⁶¹ US Department of Commerce, [Antidumping Manual](#) 2015.

Apart from the possibility of individual treatment, the US system has no real equivalent to the EU's MET. Indeed, the USA can apply market economy treatment, but to an industry and not to a single producer as in the EU. The Market-Oriented Industry (MOI) test, developed by the DOC in its practice (it is not legally codified), consists of a three-pronged test:⁶²

- For the merchandise under investigation or review, there must be virtually no government involvement in setting prices or amounts to be produced ('Prong 1');
- The industry producing the merchandise under investigation or review should be characterised by private or collective ownership ('Prong 2');
- Market-determined prices must be paid for all significant inputs whether material or non-material (e.g., labour and overhead) and for all but insignificant proportions of all the inputs accounting for the total value of the merchandise under investigation or review. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant ('Prong 3').

To the author's knowledge, since its inception in the *Lug Nuts from China* investigation of 1992⁶³ until 2014, the MOI test was never found to be positive, meaning that ultimately market economy treatment was never granted to a Chinese industry.⁶⁴ The MOI test was considered a farce by some analysts.⁶⁵ This has prompted requests for [MOE](#) testing, i.e. a Market-Oriented Enterprise test that, as in the case of the EU MET, would allow market economy treatment for single enterprises.⁶⁶ A consultation on this was launched in 2007,⁶⁷ but no information is available regarding its outcome. As it is not mentioned in the antidumping manual of 2015, it seems to have had no effect. Until the present, WTO challenges to the current US system have focused on two other issues, zeroing⁶⁸ and the double remedy issue,⁶⁹ and the absence of an MOE test had not per se been challenged in the WTO. This might be the case for two reasons: (1) ultimately a lot of Chinese firms do obtain the separate rate treatment mentioned above, and (2) section 773 (1) of the Act allows applications in certain circumstances of market economy methodologies to determine normal value for NME countries. So

⁶² US Department of Commerce, [Antidumping Manual](#) 2015.

⁶³ *Lug Nuts From China*, 57 FR at 15053-55.

⁶⁴ K. William Watson, [Will Nonmarket Economy Methodology Go Quietly into the Night?](#) US antidumping policy toward China after 2016, Policy Analysis Cato Institute, n°763, 28 October 2014.

⁶⁵ *ibid.*

⁶⁶ Aaron Ansel, [Market Orientalism](#): Reassessing an Outdated Anti-Dumping Policy Towards the People's Republic of China, Brooklyn Journal of International Law, vol. 35 issue 3, 2010.

⁶⁷ Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprise; Request for Comment, Department of Commerce, [72 FR 60649](#), 25 October 2007.

⁶⁸ Before computing the antidumping duty, normal values and export prices are compared. Zeroing is the practice by which any negative found (i.e. in the comparison normal values is found to be smaller than the export price) are automatically set to zero. Not accounting for negatives obviously raises the probability of finding dumping as long as some comparisons are found to be positive (i.e. export prices smaller than the normal value). An example of this can be found in a Commission [note](#) on the issue.

⁶⁹ [US — Countervailing and Anti-Dumping Measures](#) on certain products from China, DS449; [United States — Laws, Regulations and Methodology for Calculating Dumping Margins](#) DS294; [United States — Use of Zeroing in Anti-Dumping Measures Involving Products from Korea](#), DS402.

legally, it would seem to be possible for the DOC to apply a MOE test, even though in practice this has not taken place. However, more recently, in the WTO dispute *United States – Certain Methodologies and their application to antidumping proceedings*, China challenged the requirements to obtain separate rates in US law; a panel has been established but has still to issue its report.⁷⁰

Another fundamental distinction between the EU and US models is how NME value is determined. The USA also uses a surrogate country but the US methodology differs substantially, both in the selection of the country as well as in the actual calculation of the normal value.

For the selection of the surrogate country, the EU accentuates the comparability of the NME country and the market economy surrogate in terms of production volume first, whereas the USA firstly places the entire accent on comparability in economic development.

Section 773(c)(4) of the Act states that the DOC should select, as far as is possible, a country that is:

- at a level of economic development comparable to the NME;
- a significant producer of a comparable product.

How to select the surrogate country is further defined in the Department Regulation.⁷¹ Economic level comparability is defined in terms of GNI data. The DOC first selects countries of comparable economic level to create a potential list of surrogate countries. Then the DOC will analyse them to determine which country is a producer of comparable merchandise. If a country produces identical merchandise, it qualifies as producer of comparable merchandise; however in cases where no identical merchandise can be found, comparable merchandise is defined in terms of products having similar production processes, end uses and physical characteristics. Once producers of comparable merchandise are defined, the DOC determines which country is a **significant** producer of a comparable merchandise. The significant producer is not determined (as in the EU) by comparison with the volumes produced and traded by the NME, but is defined in terms of characteristics of world production. The selection of the significant producer is also made on the basis of the availability of data. Ultimately, if none of the comparable countries selected have sufficient data available, an expanded list of potential surrogate countries is drawn. Because of the different approach in selecting the country, the surrogate country most used by the USA for comparison with China is India, as opposed to the USA in the case of EU investigations against China.

The normal value is also computed differently to EU cases. The EU selects its surrogate country mainly on the basis of like product production volumes because ultimately it always tries firstly to employ like product domestic prices in the surrogate country. Other methods, such as constructed values, are used only if transaction prices cannot be used; for that the EU uses similar approaches to compute the normal value of the surrogate country as the one used for an antidumping investigation involving a market economy country. In the USA instead, the level of a country's development is more important in selecting the surrogate country, as ultimately the price will be constructed using a cost factor approach (constructed value approach). The factors of production

⁷⁰ United States — [Certain Methodologies](#) and their application to anti-dumping proceedings, DS471.

⁷¹ [19 CFR 351.408](#).

included are (though this is a non-exhaustive list): labour hours, materials, energy and utilities and overhead factors, general expenses and profit.⁷²

Table 3 – Main Differences in the EU-US approach to calculating dumping margin for NME countries

Main Issue	EU	US
Main criteria for selection of the surrogate country (not the only criteria, but certainly the first criteria considered)	Comparability of production volume of like product	Comparable level of development of the potential surrogate country
Primary method of computation of normal value	Transaction sales in the surrogate country's domestic market (constructed value or other alternative methods are used only if transaction sales cannot be used, for example because they are insufficient ...)	Constructed value
Granting of IT	For all sampled firms	Only for firms who can prove <i>de jure</i> and <i>de facto</i> absence of government control with respect to their export activities
MET	For firms	For industries only (not available for firms)

Source: DG EPRS.

6. An empirical analysis of dumping calculation methodologies used in antidumping investigations against China

6.1. Empirical analysis of EU antidumping investigations against China⁷³

Figure 4 shows the evolution of granting of MET and IT to Chinese firms. The graph shows the percentage, in total investigations initiated that year that were not terminated or withdrawn, of investigations initiated in a certain year in which at least one firm has received IT (in orange), or in which at least one firm has received MET (in blue) in the original investigation. Investigations are calculated in this briefing on the basis of their initiations dates instead of the date of the definitive measure, as the law applicable to the case will be dictated by the initiation year. For example there might have been cases for which the measure was adopted in 2012 but that were initiated in 2011. In these investigations IT was not yet affected by the changes introduced by the 2012 reform of the antidumping measure,⁷⁴ which made IT compulsory for all sampled firms. Thus, by taking the initiation year instead of the measure, we can better distinguish those investigations that were affected by the legal change.

In the sample used in Figure 4, IT starts in 1992. At that time, it was not based on a legal amendment but was due to practice. Therefore, in our data IT appears since 1991

⁷² *ibid.*

⁷³ Description of the data used in this and the next section is provided in annex 8.2. For an overview of key EU antidumping cases against Chinese firms, see: Gisela Grieger, [Major EU-China anti-dumping cases](#), DG EPRS, European Parliament, May 2016.

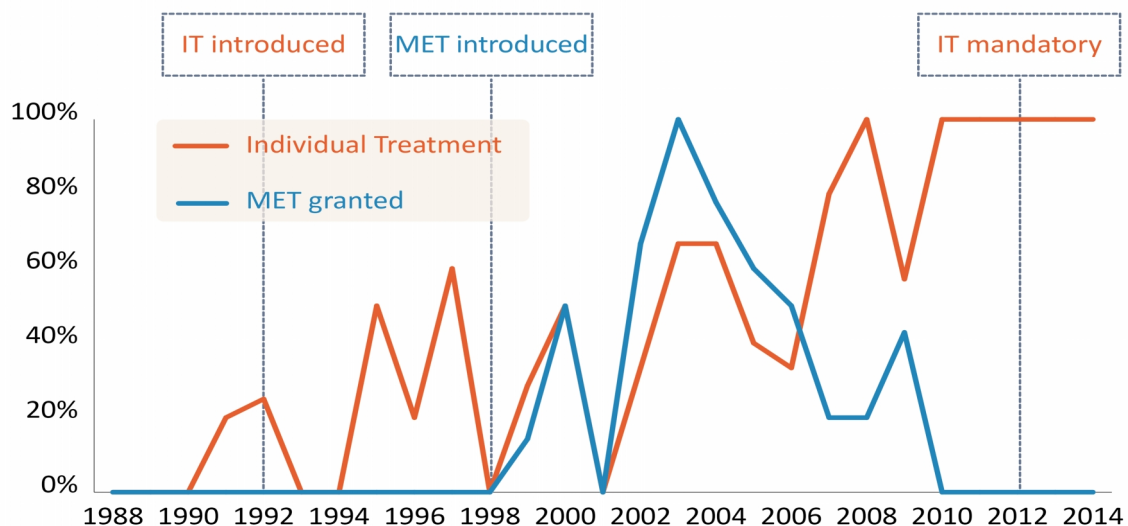
⁷⁴ [Regulation 765/2012](#).

because those cases were initiated in 1991 and the measure was taken in 1992. The legal codification of the IT requirements in 2002 only was applicable to investigations initiated after that legal amendment. Indeed, the effect of the 2002 codification and simplification is clearly visible in the graph. After 2010, IT was always granted to at least one firm; from 2012, following the WTO *EC-Fasteners* case, a legal amendment made IT compulsory for all sampled firms.

MET was introduced via legal amendment only in 1998. The use of MET picked up substantially in the investigations initiated between 2002 and 2005, where more than 50% of the investigations had at least one firm receiving MET in the original investigation. After 2005, the percentage of investigations where MET was granted to at least one firm in the investigation fell below 50% of the investigations initiated that same year. In the investigations initiated between 2010 and 2014, no MET was granted, while IT was always granted at least to one firm and, since the 2012 reform, to all sampled firms at least.

It is possible that one of the Chinese reasons for urging MES is linked to the difficulty that Chinese firms are experiencing in obtaining MET. After 2010, the Commission seems to have taken a very restrictive stance toward granting MET. Indeed the reason MET was not granted in the investigations analysed from 2010 to 2014 was not absence of requests by Chinese firms (in over 17 investigations analysed during that period, in only four investigations did Chinese firms not provide a request for MET).⁷⁵ MET rates are usually much lower than NME and lower than IT rates; MET rates also followed a decreasing trend from their introduction in 1998 to 2010 (see Figure 5, 6 and 7).

Figure 4 – Percentage of investigations in which IT and MET were granted to at least one firm in total investigations initiated in a particular year



Source: DG EPRS, Members' Research Service data (see annex 8.2 for details of the data creation) on the basis of the investigations list provided by the Commission and data collected by the authors from the Official Journal.

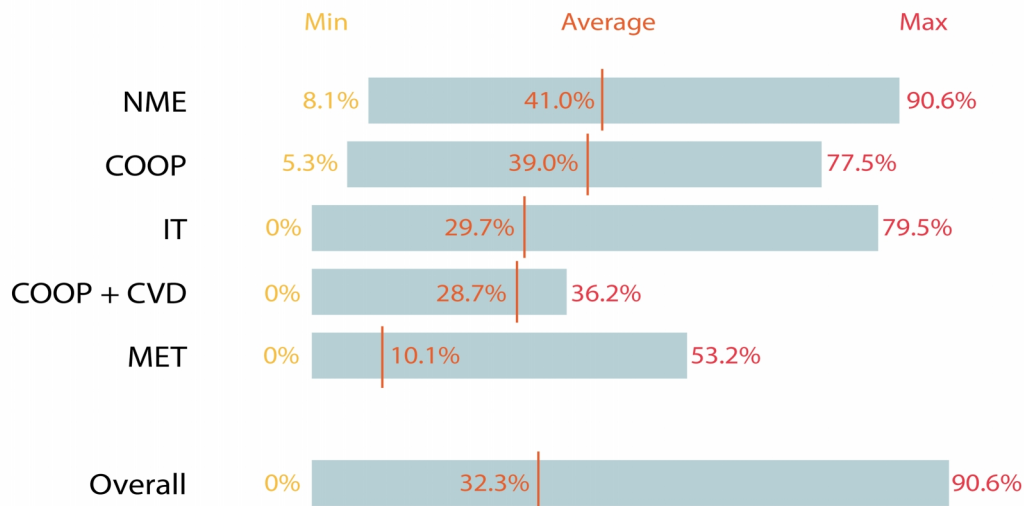
Figure 5 shows the average duty level given as well as the MIN and MAX for each methodology to compute the dumping margin.

⁷⁵ DG EPRS, Members' Research Service data (see annex 8.2 for details of the data creation) on the basis of the investigations list provided by the Commission and data collected by the authors from the Official Journal.

Methodologies accounted for in the analysis are:

- NME for normal methodology employed for non-market economy treatment,
- IT for Individual Treatment (or individual examination),
- MET for Market Economy Treatment,
- COOP refers to the discounted antidumping duty imposed on cooperative firms, and
- COOP+CVD refers to the further discounted antidumping duty imposed on firms which are simultaneously subject to countervailing duties.

Figure 5 – Average, minimum and maximum duty level by methodology (NME, IT, MET) or 'discount' factor (COOP or COOP+CVD)



Source: DG EPRS, Members' Research Service data created (see annex 8.2 for details of the data creation) on the basis of the firms' level specific antidumping duty list per EU investigations, provided by the World Bank in its Global Antidumping Database,⁷⁶ and data collected by the authors from the Official Journal.

The result confirms that the highest average duty is that applied with NME methodology (41%), followed by the average AD duty found for COOP firms (39%), then the average AD duty for IT (29.7%). The lowest average is given to MET firms (around 10% average duty). The overall average AD duty found (32.3%), is closest in value to the average duty imposed for IT. Average AD duty for cooperative firms to which countervailing duties apply is actually slightly lower than the average AD duty imposed on IT firms. However those firms are also subject to countervailing duty (CVD), therefore their final average duty level could be higher, although the final duty level after imposition of the AD plus the CVD duty has not been verified in this analysis.

The minimum and maximum duties actually imposed using the diverse methodologies, allows to infer some conclusions regarding distribution and range. NME has the biggest range and the highest minimum and maximum duty level. While the average of AD duty applied to COOP firms is higher than the average duty applied to firms obtaining IT, the range is bigger for IT duties. The latter were found to span from 0% duty to 79.5%, whereas COOP duties were found to vary from 5.3% to 77.5%. However the duties are more evenly distributed around the mean for duties imposed on COOP firms, while the distribution is skewed toward the lower boundary in the case of IT duties. Cooperative firms which are also imposed with countervailing duties have duties spanning from 0% to 36.2%. However distribution is clearly skewed towards the left, as 50% of values are found between 36.2% and 28.7%. When looking closer at the data, we see that

⁷⁶ Bown, Chad P., 'Global Antidumping Database', World Bank, June, 2015.

COOP+CVD duties appear only in two cases: the first case assigned COOP+CVD duties of 0% to seven firms⁷⁷ and the second assigned COOP+CVD duties of 36.20% to 23 firms,⁷⁸ thus skewing the distribution toward the top. Really appraising the way in which COOP+CVD duties are given would require more data. The range of MET duty spans 0% to 53.2%, however distribution is clearly skewed towards the right, as 50% of values are between 0% and the 10.1% average.

In Table 4, we compare our results with those of previous studies. Our results are close to those of the IFO Institute (2015), with the only exception that of the MET value which we found to be closer to the Detlof and Friedh findings. The reason for this might be that, as shown in Figure 4 above, MET were particularly used between 2002 and 2004. The latter years correspond more or less to the Detlof and Friedh sampled years, while they are not part of the IFO study sample. Our sample, covering both periods, is thus skewed toward the average of the period between 2000-2005 found by Detlof and Friedh.

Table 4 – Comparison of average duty by methodology in different studies⁷⁹

STUDY	Sample of the study	MET	IT	NME
Detlof and Friedh (2006)	2000-2005	11%	24%	39%
IFO Institute (2015)	Sample of AD measures in force from 2005-2010	7%	30%	42%
Maurizio Zanardi⁸⁰	2005-2014	7.32%	31.01%	43.61%
EPRS, Members' Research Service	World Bank list of EU antidumping measures and firm-specific duties from 1981-2013 (initiation years)	10.1%	29.7%	41%

Figure 6 shows the evolution of the average *ad valorem* duty applied per methodology in different periods of time. A total average is also given as well as information on the number of investigations considered per period. The periods considered are as follows: the first period ends in 1991, as 1992 represents the consolidation of the IT practice in EU law; the second period ends in 1997, as in 1998 MET is introduced; the third period ends in 2001, as from 2002 IT was simplified; the fourth period ends in 2006, this

⁷⁷ [Certain Organic Coated Steel Products \(China\)](#), 2013 OJ L73/1.

⁷⁸ [Cristalline Silicon Photovoltaic Modules and Key Components \(China\)](#), 2013 OJ L325/1.

⁷⁹ Beyond the DG EPRS data, table 2 reports data found in Detlof and Friedh (2006) and by the IFO Institute (2015). Detlof and Friedh (2006), [The EU Treatment of Non-Market Economy Countries in Antidumping Proceedings](#), Kommerskollegium; the IFO institute data come from the following Policy Department for External Policy Study: Yalcin, Felbermayr, Sandkamp (2015), [New Trade Rules for China? Opportunities and Threats for the EU](#), European Parliament Policy Department for External Policy.

⁸⁰ Maurizio Zanardi intervention at the DG EXPO (European Parliament) Workshop [Market Economy Status for China after 2016](#), March 2016.

choice is due to Figure 2 above, as 2007 represents an intersection point, where MET and IT frequency lines cross, because of the decreasing use by the EU of MET and the increasing granting of IT. Finally, the fifth period ends in 2011, as 2012 is the year the EU law was reformed to comply with the WTO *EC-Fasteners* case. Particularly interesting trends are given by the IT line, the MET line and the total average line. The IT line shows an increasing average duty rate throughout the period, thus the increasing use of IT has not been followed by lower IT rates. Instead the MET line shows a decreasing average duty up to the moment in which MET was no longer granted (see Figure 2 above). The total average shows a strong decrease in the average duty in the period 2002-2006, where both MET and IT were granted more generously throughout the investigations, but then rose again when MET were no longer given. While the total average starts off very close to the NME rate in the first period, it falls below the IT line in the period of maximum use of IT and MET, then stabilises closer to the IT line in the last period, when IT becomes compulsory for all sampled firms.

Figure 6 – Average *ad valorem* antidumping duty per methodology over six periods of time and number of investigations considered by period of time

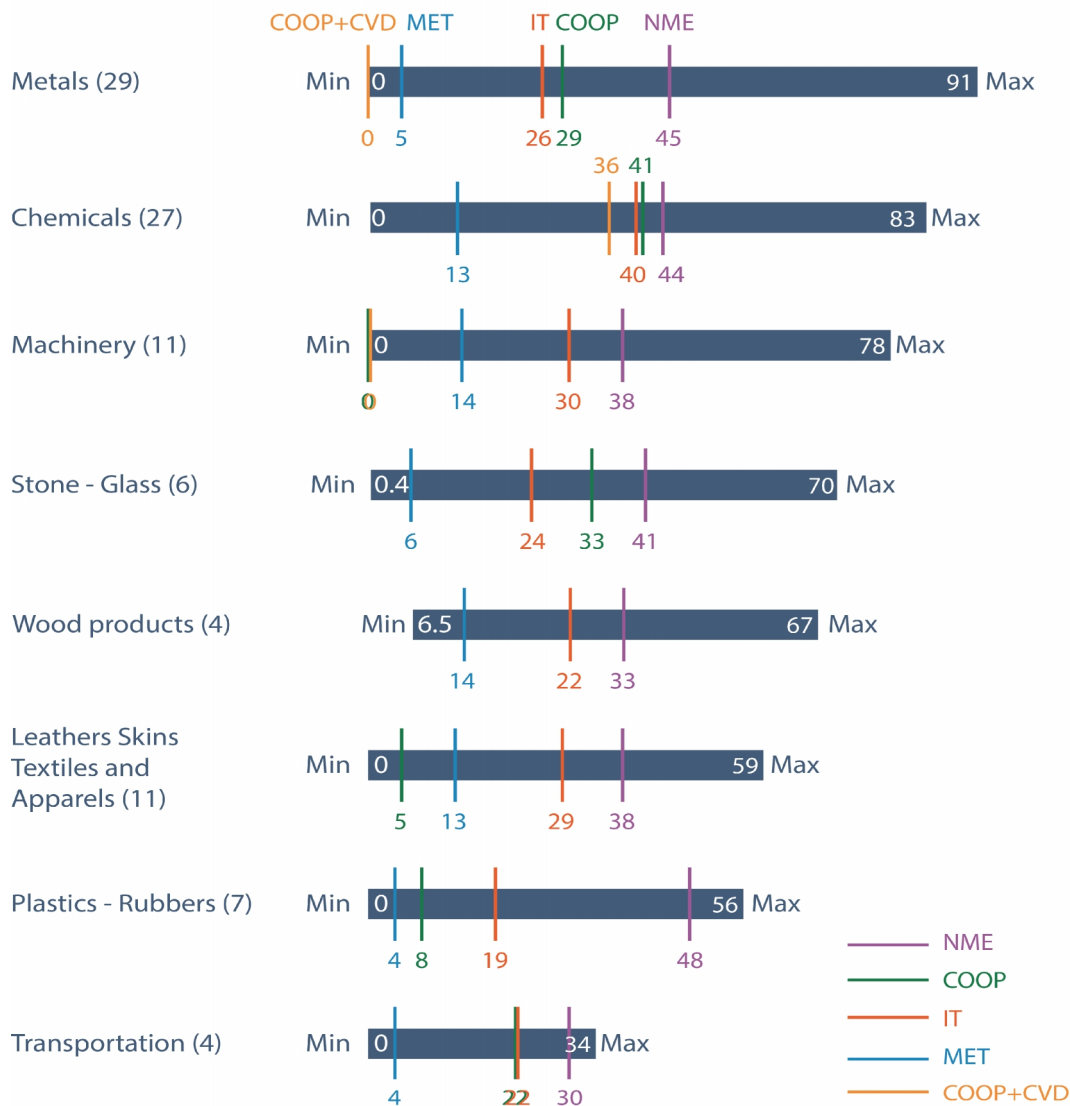


Source: DG EPRS, Members' Research Service data created (see annex 8.2 for details of the data creation) on the basis of the firms' level specific antidumping duty list per EU investigations provided by the World Bank in its Global Antidumping Database⁸¹ and data collected by the authors from the Official Journal.

Figure 7 shows an average *ad valorem* duty per sector and per methodology as well as maximum and minimum duty found in the sectors. The number in parenthesis next to each sector corresponds to the number of investigations per sector taken into account. When the COOP+CVD duty is equal to zero, that simply means that the injury margin was already covered by the countervailing duty and therefore, in order to avoid double imposition, the antidumping duty imposed on those firms, who were subject to countervailing duties, had to be equal to zero.

⁸¹ Bown, Chad P., 'Global Antidumping Database', World Bank, June 2015.

Figure 7 – Average *ad valorem* duty (in percentage) per antidumping methodology per sector⁸²



Source: DG EPRS, Members' Research Service data created (see annex 8.2 for details of the data creation) on the basis of the firms' level specific antidumping duty list per EU investigations provided by the World Bank in its Global Antidumping Database⁸³ and data collected by the authors from the Official Journal.

6.2. A comparison between EU and US investigations and antidumping measures against China

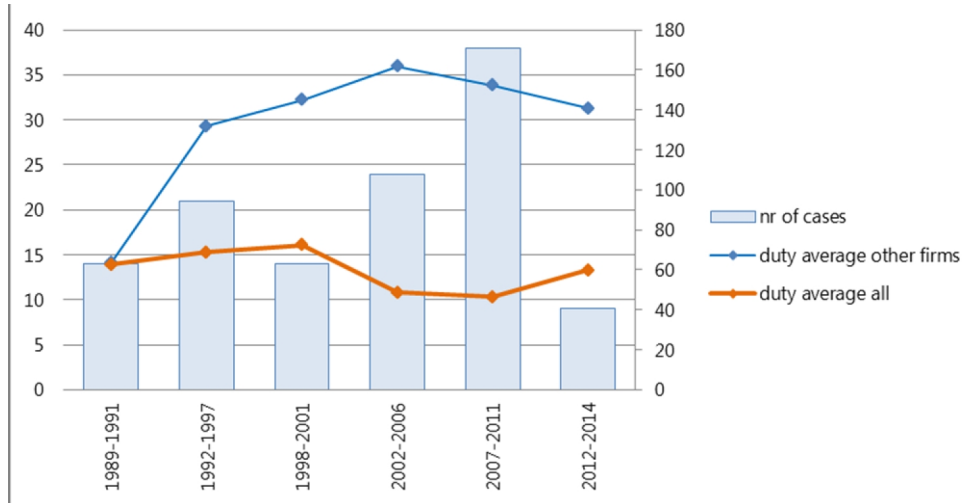
Below, we provide some data to analyse how (and if) *de facto* EU-US differences impact the outcome for Chinese firms. The first graph shows the evolution per year (taking into account the year of the investigation of the dumping measure as reference year) of the average antidumping duty. Two different average antidumping duties have been computed: the first, only considering the residual dumping duty value (i.e. the NME value that applies to any firm not granted a firm-specific duty, in the graphs called 'duty average other firms'), the second average considers both NME and firm-specific duties (in the graphs referred simply as 'duty average all'). For the USA, separate rates substantially lower the average duty throughout the period.

⁸² The HS2 codes used in the different sector breakdown are specified in annex 8.3 of this study.

⁸³ Bown, Chad P., 'Global Antidumping Database', World Bank, June, 2015.

We note that in general **US rates are higher than EU rates**; EU average dumping duty rate is almost never raised over 70%, while the US rate goes over 200%. However, on this last point we need to concede that EU data do neglect non-*ad valorem* (NAV) duties. It is possible that equivalent *ad valorem* values of such NAV duties might be higher than 70%.

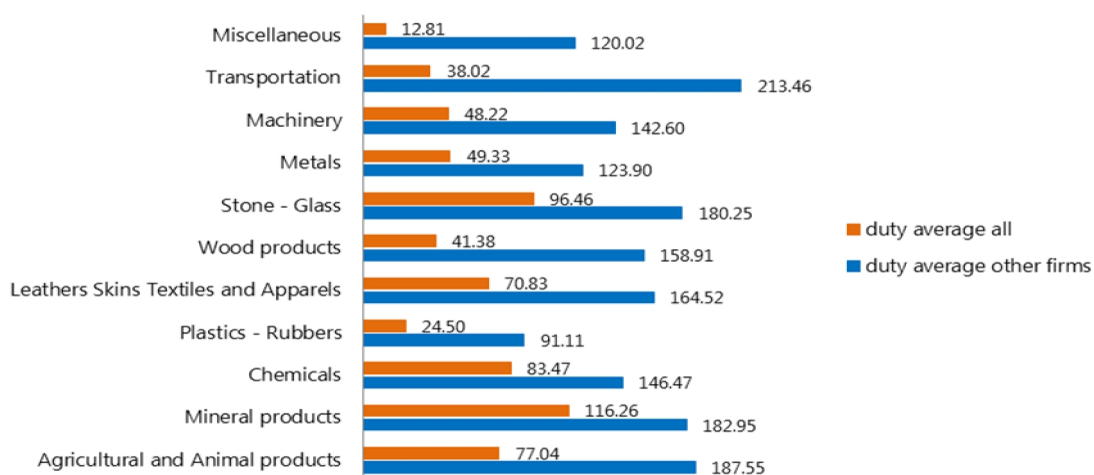
Figure 8 – US antidumping cases against China (by period breakdown)



Source: DG EPRS using data from Bown, Chad P., 'Global Antidumping [Database](#),' World Bank, June 2015.

Figure 8 shows the breakdown by periods to give a clearer trend. The dates used for the breakdown of the periods are the same as those used previously for the EU and are thus more relevant to the development of EU law, whose antidumping law regarding NME has been amended more frequently. For the US data, NME average duties increased up to 2006, then began falling. Conversely, average duties including firm-specific trend decrease slightly over the same period of time, but rise slightly after 2011. Figure 9 gives an overview of the average duty rates per sector in US measures against China.

Figure 9: US antidumping cases against China: average duty per sector



Source: DG EPRS using data from Bown, Chad P., 'Global Antidumping [Database](#),' World Bank, June 2015.

Table 5 looks at the breakdown of data per sector in EU and in US antidumping cases against China (i.e. including those neglected because values were expressed in NAV,

values were missing, or the investigations were withdrawn).⁸⁴ We see that both for the EU and the USA, the main sectors concerned by antidumping measures are chemicals and metals. Table 3 verifies how many products at the lower disaggregated level (HS6 level of the Harmonised System)⁸⁵ were actually similar in the EU and US investigations against China for all investigations.⁸⁶ In the first case (data in Table 3), it can be noted that only 84 out of 358 and 275 HS6 unique product codes affected by antidumping investigation against China respectively in the USA and in the EU, are similar products at HS6 level. This shows that while the same sectors where antidumping investigations are important in the EU and US, the products involved are not necessarily the same when looking at the lower disaggregated level.

Table 5 – Products listed in antidumping cases against China (unique occurrence of HS6 codes) in the World Bank Global Antidumping Database counting all investigations⁸⁷

Sectors	Listed in US file	Listed in EU file	Listed in both files
Agricultural and Animal products	14	8	1
Chemicals	44	44	16
Leathers Skins Textiles and Clothing	29	53	1
Machinery	40	31	6
Metals	129	73	39
Mineral products	2	5	2
Miscellaneous	15	9	3
Plastics – Rubbers	19	7	3
Stone – Glass	7	30	3
Transportation	20	6	4
Wood products	39	9	6
Total	358	275	84

Source: DG EPRS using data from Bown, Chad P., 'Global Antidumping [Database](#),' World Bank, June 2015.

⁸⁴ Goods are classified internationally following the Harmonized Commodity Description and Coding System generally referred to as 'Harmonized System' or HS. The HS divides products into two-digit chapters (called HS 2 level), four-digit headings (HS4) and six-digit subheadings (HS6). The HS2 level is the least disaggregated in the HS system. Several HS2 codes will be part of the same industrial sector. The HS2 codes used for the definition of different sectors for Table 5 are specified in annex 8.3 of this study.

⁸⁵ As mentioned in the previous footnote, the Harmonized Commodity Description and Coding System generally referred to as 'Harmonized System' or HS divides goods at the six-digit subheading (HS6). This is the lowest disaggregation level of the HS system. Product codes beyond these six-digits are not harmonised internationally (so product codes at eight or 10 digit level are not easily comparable across countries). The HS6 level of product classification is used here to compare the Chinese products affected by EU and US antidumping investigations.

⁸⁶ Thus in this table, investigations against Chinese products that were not used for the calculation of average antidumping duty are included. Indeed in the average antidumping duty calculations given, obviously investigations which were terminated or for which data on dumping duties was missing or where the dumping duty was expressed in terms of non-*ad valorem* duty (or specific duties and or those expressed as tiered duties) were omitted.

⁸⁷ The table therefore also includes investigations for which duties are missing or non-*ad valorem* tariff rates, or investigations withdrawn without imposition of duties. It does not refer to the sample of investigations used for the analysis of duties (for which only those investigations with *ad valorem* duties are accounted).

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8. Annexes

8.1. EU cases against Chinese firms having both antidumping and countervailing duties⁸⁸

Antidumping case identifier	Product	Year	Related Countervailing Duty
EUN-AD-709	Coated Fine Paper	2010	EUN-CVD-70
EUN-AD-714	Wireless Wide Area Networking (WWAN) Modems	2010	EUN-CVD-71
EUN-AD-736	Certain Organic Coated Steel Products	2011	EUN-CVD-76
EUN-AD-747	Crystalline Silicon Photovoltaic Modules and Key Components	2012	EUN-CVD-79
EUN-AD-751	Solar Glass	2013	EUN-CVD-82
EUN-AD-755	Stainless Steel Cold-rolled Flat Products	2014	EUN-CVD-88

8.2. Data created and used for the statistics in this paper

This comparison of EU-US investigations uses data provided by the World Bank on EU and US antidumping investigation as part of the Global Antidumping Database created by Chad Bown.⁸⁹ The Global Antidumping Database provides data regarding antidumping measures issued by a certain number of countries who are antidumping users. For the EU and the USA, the data provides information on both the definitive antidumping measure issued on specific firms and the antidumping imposed on all other firms (the NME antidumping, or residual duty).

Beyond the World Bank data, two extra datasets were created to provide a deeper understanding of the EU approach to antidumping investigations against China.

The first dataset was created using the list of investigations provided by DG Trade in spreadsheet format (the version downloaded and used in our data dates from August 2015 onwards). The version of the list of investigations used for these graphs was updated to August 2015.⁹⁰ On the basis of this list, data were created regarding: (1) the analogous country used to calculate normal value for Chinese firms which were not granted MET; (2) a dummy variable specifying whether at least one of the firms investigated and requesting MET or IT actually received MET or IT. Data is based on information provided in the Official Journal of the European Union (OJ), looking at the definitive measure used in the original investigation. Information on provisional measures was only looked at when the definitive measure reconfirmed the findings of the provisional measure. For three investigations initiated in 2014, we had reference only to the provisional measures and therefore the provisional measures were used to codify the variables regarding the dumping calculations methodologies. Changes

⁸⁸ Bown, Chad P., 'Global Antidumping [Database](#)', The World Bank, June; Bown, Chad P., 2015, 'Global Countervailing Duties [Database](#)', The World Bank, June 2015.

⁸⁹ The World Bank [Global Antidumping Database](#); Bown, Chad P., 'Global Antidumping Database', The World Bank, June 2015.

⁹⁰ Spreadsheet with list of trade remedies measures issued by the European Commission (version used in this study is from August 2015).

following review of the antidumping measures were not taken into account. The data collected gives a good initial picture of the choice of the analogous country in Chinese antidumping investigations, as well as the evolution of the application of MET and IT treatment.

A new variable was then created in a copy of the World Bank spreadsheet listing EU firm-specific antidumping duties applied to Chinese firms. The new variable gives information regarding the methodology adopted to compute the antidumping duty, as well as adding the duty applied to exporters not receiving MET and IT treatment to that file. To create this data, as well as the previous data, information was used from the definitive antidumping measures⁹¹ as found in the EU Official Journal. Here too, data has been compiled only on the basis of original investigations and measures; review of the antidumping measures was not taken into account.

8.3. Sector breakdown

HS	sector
1-24	Agricultural and Animal products
25-27	Mineral products
28-38	Chemicals
39-40	Plastics – Rubbers
41-43 and 50-67	Leathers Skins Textiles and Clothing
44-49	Wood products
68-71	Stone – Glass
72-83	Metals
84-85	Machinery
86-89	Transportation
90-97	Miscellaneous

⁹¹ Information in provisional measures was used every time the latter was not modified by the definitive measure and the definitive measure referred to it, or if the definitive measure was not yet issued.

The calculation of the dumping margin is fundamental for two reasons in antidumping investigations: firstly it is a fundamental requirement for the introduction of an antidumping measure; in order to find dumping the dumping margin has to be greater than *de minimis* (i.e. less than 2%); secondly it defines the upper boundary of the antidumping duty if applied. The method for dumping margin calculations differs depending whether the country of export is considered a market economy or a non-market economy. This paper looks at the differences in the methods for calculation of dumping margin and in particular normal values in investigation against exporters in a market economy and against exporters in non-market economies. It also looks at the differences in the European Union and United States approaches towards non-market economies, and uses empirical analysis to see how different methodologies are used in investigations against China, before concluding on the policy options provided for in the framework of the 2016 amendment of section 15 to China's Protocol of Accession to the World Trade Organization.

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