universität wien

MASTER THESIS

Titel der Master Thesis / Title of the Master‘s Thesis

“Anti-dumping as an EU trade defence instrument”

verfasst von / submitted by

Sabina Mursalli

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

Master of Laws (LL.M.)

Wien, 2016 / Vienna, 2016

Studienkennzahl lt. Studienblatt / Postgraduate programme code as it appears on the student record sheet:	A 992 548
Universitätslehrgang lt. Studienblatt / Postgraduate programme as it appears on the student record sheet:	Europäisches und Internationales Wirtschaftsrecht / European and International Business Law
Betreut von / Supervisor:	Univ.Prof.Dr.Dr.hc. Peter Fischer

Abstract

The growth of world trade sometimes can result in anti-competitive behavior between countries. In a such situation, countries need to apply trade defence instruments in order to establish fair trading conditions. The EU also uses such instruments for the protection of Union industry. As an important part of EU trade defence policy, anti-dumping measures are applied in order to prevent the situation of "dumping".

In this thesis, I will discuss the anti-dumping measure as an EU trade defence instrument in a theoretical and practical context . My main purpose is to give general information about anti-dumping system under the EU law and also to focus on concrete cases in order to see how anti-dumping measures are imposed in practice.

In the first chapter of thesis, I will firstly cover the main issues concerning the EU anti-dumping system, including general concepts, determination of dumping, calculation of injury, Union interest, steps of EU anti-dumping procedure, provisional and definitive measures as an outcome of investigation and circumvention rules in order to make an overview of EU anti-dumping rules.

In the second chapter, I am going to analyze two anti-dumping cases against China in order to realize how anti-dumping rules are applied in concrete cases and what kind of questions can occur regarding the non-market economy status of China and the nature of the anti-dumping measures.

Through the thesis, it can be found that although EU anti-dumping rules comply with international obligations, notions of " Union interest" and " lesser duty rule" are special features of EU anti-dumping system. It is clear that China is by far the most targeted country of EU anti-dumping investigations. Although China claims that AD measures against that country are discriminatory and serve for protectionism purposes, transparency and scrutiny during AD investigations prove that the objective of such measures is elimination of unfair trade practices. On the other hand, basing on the distortions in the governance of Chinese economy, it can be confirmed that application of non-market-economy rules to the China is not discriminatory and has justification.

Abstract

Entwicklung des Welthandels ruft bei den manchen Ländern Anti-Konkurrenzverhalten hervor. Bei solchem Fall sind die Länder gezwungen, entsprechende Handelsschutzmittel einzusetzen, damit gerichtliche Konkurrenz wiederherzustellen. EU setzt auch solche Mittel ein, um ihre Industrue zu verteidigen. EU setzt Anti-Dumping-Maßnahmen als Bestandteil ihrer Verteidigungspolitik durch, um den Dumping-Zustand zu verhindern.

In dieser These werde ich die Anti-Dumping-Maßnahmen als Verteidigungsmaßnahme des Handels der EU im theoretischen und praktischen Kontext durchsprechen. Mein Ziel ist die Erteilung der Information über Anti-Dumping-Maßnahmen im Rahmen des EU-Rechtes und Analyse der Anwendungsmöglichkeiten der Anti-Dumping-Maßnahmen in Praxis.

Im ersten Kapitel werde ich über Anti-Dumping-System, einschl. allgemeine Begriffe, Feststellung des Anti-Dumpings aufgrund Anti-Dumping-Regel, Berechnung der Schaden, Interesse der EU, Phasen der Anti-Dumping-Prozeduren der EU, bedingte und absolute Maßnahmen der Anti-Dumping-Forschung die Information erteilen.

Im zweiten Kapitel beabsichtige ich die Anwendung der Anti-Dumping-Vorschriften in konkreten Gerichtssahen und den Wirtschaftsstatus der Nichtmarktwirtschaft von China, Natur der Anti-Dumping-Maßnahmen und 2. Gerichtssachen über Anti-Dumping zu analysieren.

Als Zusammenfassung der Thesis wird festgestellt, dass ungeachtet der Anwendung der Anti-Dumping-Maßnahmen nicht gemäss den Anti-Dumping-Verpflichtungen der EU das Interesse der EU und wenige Gebühr eigenartige Eigenschaften dieses Systems sind. Es ist klar, dass China als Zielland der Anti-Dumping-Maßnahmen. Ungeachtet der Ansprüche über Diskriminationscharakter der Anti-Dumping-Maßnahmen und Protektionismus von China wird vertiefte Erforschung der Anti-Dumping-Maßnahmen durch EU bestätigt, dass Ziel solcher Maßnahmen die Verhinderung der nicht gerichtlichen Fälle ist. Andererseits berufend auf Verletzung bei der Wirtschaftsverwaltung in China kann bestätigt werden, dass Nichtwirtschaftsstatus gegen China keinen Diskriminationscharakter trägt.

List of Abbreviations

EU	European Union
WTO	World Trade Organization
Basic Regulation	Council Regulation (EC) 1225/2009
Art.	Article
ECJ	European Court of Justice
OJ	Official Journal
R&D	Research and Development
Eurostat	European Statistic
GATT	General Agreement on the Trade and Tariffs
IP	Investigation period
MET	Market Economy Treatment
IT	Individual Treatment
PRC	People's Republic of China
CIF	Cost, Insurance and Freight
SME	Small or Medium Enterprise
DDS	Delayed Duty System
ADA	Agreement on Implementation of Article VI of General Agreement on Tariffs and Trade
AD	Anti-dumping
DSB	Dispute Settlement Body

Table of contents

Introduction

"In the absence of international competition rules and of other rules associated with well functioning markets trade defence instruments are the only possible means of protecting our industry against unfairly traded goods."[1]

European Commissioner for Trade, Karel De Gucht.

Globalization of international trade sometimes can cause to the unfair trade practices. Effective and reliable trade defence instruments can be applied in order to prevent such situation. The EU is one of the main users of trade defence instruments according to the WTO and EU Law.

Anti-dumping constitutes a central part of EU trade defence policy as a most commonly used instrument. As a temporary measure, it is applied in a case whether a product is exported to the EU market in a lower price compared to the normal value of the product. The main objective of anti-dumping duty is to establish a " level playing field" in the trade.[2] Following that principle, investigation of claims of dumping by exporting producers in non-EU countries is a responsibility of the European Commission.

The main text on which the EU anti-dumping actions are based is EU's basic anti-dumping Regulation that was adopted on 30 November 2009. That Regulation is based on the provisions of GATT.

The European Commission makes annual reports to the Council and the European Parliament regarding the EU's anti-dumping, anti-subsidy and safeguard activities. According to the 33rd annual report of Commission, " in 2014, 0,29% of total imports into the EU were affected by anti-dumping or anti-subsidy measures. At the end of 2014, the EU had 81 anti-dumping measures in force."

Taking into account the significance of EU anti-dumping policy, my objective is to discuss theoretical and practical aspects of EU anti-dumping system in this thesis.

The first chapter of the thesis, will give a general overview of the EU anti-dumping law.

The second chapter will focus on analysis of two anti-dumping cases which have been concluded with imposition of definitive measures. One of them is " anti-dumping measures on certain footwear from China and Vietnam", the second will be "anti-dumping measures on

[1] Karel De Gucht, European Commissioner for Trade; Oral questions, European Parliament. Speaking Points: Anti-dumping cases state of play and perspectives. Strasbourg, 24 November 2010. <http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_147051.pdf > accessed 10 June 2016

[2] <http://www.kommers.se/In-English/Areas-of-Expertise/Trade-defence-instruments-/Review-of-EU-Trade-Defence-Instruments-in-Brief/> accessed 10 June 2016

ceramic tiles from China". Decision regarding analysis of above mentioned cases, bases on two important grounds:

- The main target of EU anti-dumping investigations is China.
- Non-market-economy status of China makes extra questions about anti-dumping duties.

In a broad sense, it can be mentioned that, China is the second trading partner of the EU with 12,5% of total share.[3] It provides the EU with a wide range of industrial and consumer goods. China has accessed to the WTO on 11 December 2001 and following the membership, has made reforms in the economy. However, there are still some problems which should be implemented according to the WTO commitments. In a such situation it is not surprised that, most of the EU anti-dumping investigations are against China.

On 17 March 2016, Cecilia Malmström, Commisioner for Trade made a speech on the above mentioned issue as follows:[4]

" We must all acknowledge that the nature of China's economic model causes problems for European firms, both those operating in China and those operating here in Europe and in the global markets. There are additional ways China's approach creates an uneven playing field, whether through the financial system or subsidies or discriminatory approach to regulation. The distortions in the Chinese economic governance model are numerous and widespread. That's why the EU has for many years urged the Chinese government to become more of a regulator than a participant in its economy. And this is why we have supported China's efforts with economic reforms."

The second important issue concerning the anti-dumping cases against China is its non-market economy status. Such situation makes extra problems for the anti-dumping investigations.

Based on the above mentioned issues, I will focus on the analysis of two complex anti-dumping cases against China.

Although this thesis can not cover all features of EU anti-dumping policy, I hope it can make a small contibution to the comprehension of general characteristics of EU anti-dumping system in terms of theoretical and practical aspects.

[3] EU-China relations 2015 and beyond. March 2015.
<https://www.businesseurope.eu/sites/buseur/files/media/imported/2015-00194-E.pdf> accessed 11 June 2016
[4] European Commission Trade Defence Conference. Speech of Cecilia Malmström, Commissioner for Trade: Trade defence and and China: Taking a careful decision. 17 March 2016, Brussels

Anti-dumping system under the EU law

General concepts

Dumping

The meaning of dumping is referred to the case of price discrimination, where the identical product is sold cheaper in the importing country than the exporting country. According to the EU's Basic Anti-dumping Regulation, 'a product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country'.[5]

Anti-dumping

As dumping leads to unfair trade practice, countries use anti-dumping measures to prevent such practice. According to the Article 1(1) of the Basic Regulation, 'an anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury'. Consequently, we can see that, anti-dumping measures can only be applied in the following conditions:

- Products should be exported at dumped prices by the exporting country
- Such import should result in an injury for the EU
- There should be a causal link between dumping and injury.
- The anti-dumping measure must not be against the Union interest

Determination of dumping

In order to take measure to tackle the situation of dumping, first of all, existence of dumping has to be verified. According to the rules of Basic Regulation, determination of dumping consists of the following phases:[6]

- determination of "normal value"

[5] Council Regulation (EC) 1225/2009 on protection against dumped imports from countries not members of the European Community [2009] OJ L 343/51, art 1(2).
[6] Van Bael & Bellis, EU Anti-Dumping and Other Trade Defence Instruments (5th edn, Kluwer Law International, 2011) 31.

- determination of "export price"
- comparison of "normal value" and "export price"
- calculation of the dumping margin

Normal Value

Article 2(1) of the EU basic anti-dumping Regulation states that 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country. This is a basic rule for the normal value determination of the products originating in market economy countries. On the other hand, the above mentioned rules are not used in all circumstances. The following situations lead to the disregard of domestic market price:

1. when there is no or insufficient sales of the like product in the exporting country [7]. Art. 2(2) of the Regulation provides that, sales are sufficient for the normal value determination if ' such sales volume constitutes 5% or more of the sales volume of the product under consideration to the Community'.
2. 'when there are no or insufficient sales of the like product [8] in the ordinary course of trade'. [9] This ground is important in order to provide that, the price for the determination of normal value expresses normal trade conditions. According to the Council Regulation, circumstances under which the sale does not reflect the ordinary course of trade include:
    - ' sales at prices below unit production costs (fixed and variable) plus selling, general and administrative costs, only if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time'.[10]
    - sales between associated parties [11]. According to the Regulation, sales between these parties can be taken into consideration for the determination of the normal value if it is not made as a result of such relationship.
    - sales between parties that have a compensatory arrangement[12]. Although definition of "compensatory arrangement" has not been stated under the rules of

[7] Article 2(1) of the Basic Regulation
[8] Article 1(4) of the Council Regulation defines that, ' like product means a product which is identical, that is to say, alike in all respects , to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration'.
[9] Article 2(3) of the Basic Regulation.
[10] Article 2(4) of the Basic Regulation.
[11] Van Bael & Bellis (n6) 47.
[12] Article 2(1) of the Basic Regulation.

Regulation, the meaning of it has been covered in the case law by 'processing, texturing and conversion operations'.[13]

3. when 'because of the particular market situation such sales do not permit a proper comparison comparison'.[14] In Goldstar case, the ECJ referred to this rule for the final decision, pointing out that, obsolete models could not be used for the normal value determination.[15]

Alternative ways of normal value determination

a) Practice of other sellers or producers. Article 2(1) of the Regulation states that, 'where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers'.
b) Constructed value. If there is no sale by other producers that can be used for normal value determination, or their price is not appropriate for such determination, Article 2(3) of the Regulation will be applied. According this Art. of Regulation, in such situation, the normal value of the like product can be determined ' on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits'. The most important disadvantage of constructed value is that, the result of such calculation bases on assumptions regarding expenses which can lead to the free appreciation of Union Institutions. In order to prevent this situation, EU has implemented directions of Uruguay Round Agreement regarding determination of constructed value in the Regulation.[16]

Article 2(5) of the Regulation provides the following requirements regarding the calculation of expenses:

i. Statement of party under investigation will be used in order to calculate constructed value if the given data complies with the general accounting principles of that country and such record has been obtained using the reasonable expense of production and sale.
ii. If the costs don't comply with the above mentioned requirement, according to the same Article of Regulation ' they shall be adjusted or established on the basis of the costs of other producers or exporters in the same country or, where such information

[13] Van Bael & Bellis (n6) 53.
[14] Article 2(3) of the Basic Regulation.
[15] Van Bael & Bellis (n6) 57.
[16] Van Bael & Bellis (n6) 60.

is not available or can not be used, on any other reasonable basis, including information from other representative markets'.

The basic rule for determination of selling, general and administrative expenses (SGA) has been stated in the Article 2(6) of the Regulation. According to this Art. amount shall be based on 'actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporter or producer under investigation'. Alternative ways of SGA determination can be used if the previous rules do not lead to cost determination. According to the Article 2(6) of the Regulation these ways include:

- ✓ the weighted average of the actual amounts determined for other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
- ✓ the actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporter or producer in question in the domestic market of the country of origin;
- ✓ any other reasonable method.

c) Export price to a third country. As an alternative way of normal value determination, it can also be applied whether domestic sale price can not be used for the determination. Article 2(3) of the Basic Regulation states 2 requirements for using this method for calculation:

- ➢ The third country should be appropriate.
- ➢ Export prices should be representative.

Export Price

Export price constitutes the second step of dumping determination. Basic Regulation points out 2 ways of export price determination:

1. Actual export price. Article 2(8) of the Regulation defines actual export price as a ' price actually paid or payable for the product when sold for export from the exporting country to the Community'.
2. Constructed export price. Article 2(9) of the Basic Regulation specifies certain conditions under which the export price may be determined. These circumstances include:
   - ➢ There is no export price. It means that, the actual export price has not been defined as a part of export transaction.

- Association or compensatory agreement between exporter and importer makes the export price unreliable.

Whether above mentioned two circumstances exist, constructed export price has to be defined. Regulation[17] states 2 methods of constructing export price.

i. According to the basic method, ' the exported price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer'. This method can be applied if conditions for reselling and importing are same.
ii. Alternative method can be used if requirements for basic method are not complied. According to the Regulation, in such case constructed export price can be based on ' any reasonable basis'.

According to the Article 2(9) of the Basic Regulation, the items for which adjustment can be made include:

- Usual transport, insurance, handling, loading and ancillary costs;
- Customs duties, any anti-dumping duties and other taxes payable in the importing country by reason of the importation or sale of the goods;
- A reasonable margin for selling, general and administrative costs and profit.

Comparison of "normal value" and "export price"

The third stage of normal value determination is fair comparison between normal value and export price. Article 2(10) of the Basic Regulation states special requirements for the comparison step:

- The same level of trade
- Possible the same time for the sales made
- Examination of factors that can have an impact on the price comparability

The same Article of Regulation further provides that, ' where the normal value and the export price as established are not on such a comparable basis due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability'. This article also points out some principles concerning adjustments. These principles include:

[17] Article 2(9) of the Basic Regulation

a) Burden of proof. One of the most important questions regarding adjustments is that who has a burden of proof. The answer of this question is that, the claim regarding adjustments has to be made by the party, who has an obligation to indicate that the claimed adjustments concern elements which has an impact on the price comparability.[18]
b) Prohibition of duplication. Article 2(10) sets a requirement that, ' any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade'.

Additional requirements regarding adjustments has been included under the Article 2(10) (a)-(k) of the Basic Regulation. These rules include:

- Physical characteristics. As can be seen from the definition of like product that, if there is no identical product, the item with the similar characteristics will be taken into consideration as an alternative. Article 2(10)(a) of the Regulation states that, ' the amount of the adjustment shall correspond to a reasonable estimate of the market value of the difference'. This statement provides Union institutions with a right of wide choice regarding adjustment.
- Import charges and indirect taxes. According to the 2(10)(b) of the Regulation, following evidence should be provided for the adjustment:
  - the amount of import charges and indirect taxes borne by the product sold on the exporter's domestic market and by the materials physically incorporated therein
  - they are not collected or refunded regarding the product exported to the Union.
- Discounts, rebates and quantities. Although, discounts and rebates literally mean that, deduction is made in the price of items, it can also alternatively provide procurement of other products. The practice of Union institutions concerning discounts and rebates has helped to form a concept under which condition deduction can be made. According to this concept, we can see that, such discounts and rebates can be made in a case whether ' they consist of goods which by their nature are connected with the product under consideration'.[19]
- Level of trade. Article 2(10)(d)(i) of the Regulation points out conditions under which adjustment for differences in levels of trade should be made as following:
  - The level of trade between export price, including constructed export price and normal value is different

[18] Van Bael & Bellis (n6) 107.
[19] Ibid 113.

- Such difference has an impact on price comparability and prices of seller in the market of the exporting country.

The same Article of Regulation also states that, ' the amount of adjustment shall be based on the market value of the difference'. According to Article 2(10)(d)(ii) of the Regulation, absence of the relevant levels of trade in the exporting country or link of certain functions to levels of trade other than that used in comparison, leads to the use of special adjustment.

- Transport, insurance, handling, loading and ancillary costs.
- Packing
- Credit. Article 2(10)(g) of the Regulation states that, ' an adjustment shall be made for differences in the cost of any credit granted for the sales under consideration, provided that it is a factor taken into account in the determination of the prices charged'. Cases regarding this issue make clear that, for the application of credit adjustment, written agreement regarding terms between seller and customer has to be made in advance.[20]
- After sales-costs. Article 2(10)(h) of the Regulation provides that ' an adjustment shall be made for differences in the direct costs of providing warranties, guarantees, technical assistance and services, as provided for by law and/or in the sales contract'. This statement is important for two main reasons:[21]
  - As a claim regarding costs of warranties and technical service can be lodged after the date of sale process, it is the Union Institutions' obligation to define adjustments concerning costs incurred during the investigation period regarding the sale which has been taken place before investigation.
  - Adjustment is limited with post-sale costs.
- Commissions. Article 2(10) (i) of the Regulation provides that ' an adjustment shall be made for differences in commissions paid in respect of the sales under consideration'.
- Currency conversions. Article 2(10)(j) of the Regulation provides three principles regarding currency conversions:
  - Rate of exchange on date of sale. The main principle is that, in a case where conversion of currency has to be done for price comparison, rate of exchange on the date of sale will be used, which is the date of invoice.
  - Rate of exchange in forward sales. The above mentioned Article of Regulation further provides as an exception that ' if a sale of foreign currency on forward

[20] Van Bael & Bellis (n6) 119
[21] Ibid 119-120

markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used'.

- Exchange rate fluctuations. According to this rule of Regulation, fluctuations in exchange rates will not be taken into consideration and exporters will have 60 days to express the situation of sustained movement in exchange rates within investigation process.

- Other factors

Dumping margin

Calculation of dumping margin is the last step of dumping determination. According to the Article 2(12) of the Regulation dumping margin is ' an amount by which the normal value exceeds the export price'. Article 2(11) of the Regulation provides the following rules concerning the calculation of dumping margin:

- The existence of margins of dumping during the investigation period shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the Union, or by a comparison of individual normal values and individual export prices to the Union on a transaction-to-transaction basis.
- The second sentence of the same Article states that, a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Union, if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the methods specified in the first sentence of this Article would not reflect the full degree of dumping being practiced.

There are 4 rules of the comparison of normal value and export price for dumping margin calculation:

1) General rule which is called symmetrical method of comparison. This method is based on the above mentioned first part of Article 2(11) which contains both weighted average and individual basis of comparison. Transaction-to-transaction basis has never been used for comparison by Union Institutions. They have always tended to use the method of model-by-model basis which consists of comparison of weighted average normal value to weighted average or individual export price.[22]

[22] Van Bael & Bellis (n6) 131

2) Asymmetrical method of comparison. This method is based on the second sentence of Article 2(11) of the Regulation which limits the use of this way of comparison to specific conditions.
3) "Zeroing"[23]. According to this method, export price and normal value are compared several times and a total result is defined of such comparison. If the result of this comparison is negative, it will be evaluated with zero. As this method does not take into consideration the negative result, it has an impact on dumping margin as exaggerating power.
4) Sampling. This principle has been included under the Article 17 of the Basic Regulation.

Article 17(1) of the Regulation states that:

'In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.'

Article 17(2) of the Regulation provides that:

'The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation, to enable a representative sample to be chosen.'

Non-market economy countries

Rules used to the determination of normal value regarding the non-market economy countries are different compared to the countries with market economy status.

Which conditions are required in order to be granted market economy status? These criterias include the follows:[24]

[23] Van Bael & Bellis (n6) 136

[24] < http://www.fta-intl.org/sites/default/files/FTA%20Position%20Paper%20(19.11.15)%20-%20To%20ME%20or%20not%20to%20ME%20-%20China's%20status%20after%2011%20December%202016.pdf> accessed 3 March 2016

- Impact of the government on the allocation of resources and control over the enterprises must be low
- The state must not intervene the enterprises linked to privatisation
- Rules applied for the companies must be transparent and non-discriminatory
- Effective laws should exist for the bankruptcy cases and protection of property rights
- The government must not interfere to the functioning of authentic financial sector

Non-market economy countries are divided into three groups by Basic Regulation:

1. This group consists of countries which were the member of the WTO when the anti-dumping procedure commenced. Producers in this countries have a right for the claim of MET.
2. The second group consists of countries including China, Kazakhstan and Vietnam where economy has been made some changes for the adaptation to the market economy rules. This group has also right for MET.
3. The third group includes non-market economy countries[25] where normal value is defined on the basis of market economy third or analogue country according to the Article 2(7) of Regulation. Although producers in these countries can not claim for MET, they have right for individual treatment.

Normal value determination for imports from traditional non-market economy countries consists of three steps:[26]

1) First of all, analogue country has to be defined in order to use the price or constructed value of the like product of that country for normal value determination.
2) Specific method has to be defined for the determination of normal value in the analogue country.
3) In some cases adjustments has to be made for calculation of normal value.

Article 2(7)(a) of the Regulation provides rules regarding the selection of analogue country:

- ✓ An appropriate market economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection.

[25] Basic Regulation defines these countries as Azerbaijan, Belarus, North Korea, Tajikistan, Turkmenistan, Uzbekistan.
[26] Van Bael & Bellis (n6) 145

- ✓ Taking into account time limits, where appropriate, a market economy third country which is subject to the same investigation shall be used.

The following methods are used for the determination of normal value according to the Article 2(7)(a) of the Regulation:

- Price of the like product in a market economy third country
- Constructed value of the like product of the market economy third country
- Export price of the market economy third country
- If the above mentioned methods are not possible, any reasonable basis can be used.

Normal value determination for imports from special non-market economy countries

There are specific rules for countries with "special market status" for the recognition as non-market economy countries. Claim of exporting producers of such countries for market status are considered on a case-by-case basis. If the export producer is a part of group that consists of several companies, all of them should provide evidence for the claim of MET. The requirements for exporting producers with special market status have been provided by the Article 2(7)(c) of Regulation as following:

- Decision of firms regarding prices, costs and inputs, including for instance raw materials, costs of technology and labor, 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
- Exchange rate conversions are carried out at the market rate.

If the above mentioned requirements can be met by the producers of countries with 'special market economy status', normal value shall be determined according to the rules applicable to market economy countries.

Determination of injury

Existence of injury is one of the main requirements for the use of anti-dumping measures. Article 1(1) of the Basic Regulation points out that ' an anti-dumping duty may be applied to any dumped product whose release for free circulation in the Union causes injury'. What does injury mean? According to the Article 3(1) of the Regulation, unless otherwise specified, injury will mean as material injury as following:

- Actual material injury
- Threat of material injury
- Material retardation of the establishment of a Union industry

Although Regulation does not state the definition of material injury, Article 3(2) states that ' a determination of injury must be based on positive evidence and involve an objective examination of':

- The volume of dumped imports
- The effect of the dumped imports on prices in the Union market for like products
- The consequent impact of those imports on the Union industry

The volume of dumped imports

Article 3(3) of the Regulation point out that ' with regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Union'. As seen from the above mentioned statement, not all imports, only dumped imports from the investigated country are taken into consideration for the determination of injury. Unlike the absolute terms, examination of import volume in market share requires assessment of the Union consumption. On the other hand, sales by the Union producers for the internal use which is all called "captive market" is an exception to the above mentioned rule. This exception has been stated in the decision of the Court of Justice in Gimelec[27] case as following:

- An exception to this rule can be justified only in so far as the market concerned shows a clear separation between a "captive market" and the "free market", since in such a case sales on the "captive market" do not come into competition with products sold on the "free market" and can not therefore be subject to the effects of any dumping.

[27] Case C-315/90 Groupement des Industries des Materiels d'Equipement Electrique et de l'Electronique Industrielle Associee (Gimelec) and Others v. Commission [1991] ECR I-5589, para 23

"De minimis" test is an important factor that should be taken into consideration for the determination of volume of import. According to this the requirements of this test, imports from the investigated country will not cause injury if import from the investigated countries is below the de minimis threshold, and also import from the same countries is not above the second threshold. Article 5(7) of the Regulation states that ' proceedings shall not be initiated against countries whose imports represent a market share of below 1%, unless such countries collectively account for 3% or more of Union consumption.

Price of dumped imports

Examination of effect of dumped imports on prices is the second step of injury determination. Article 3(3) of the Regulation provides that:

> ' With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent rice increases, which otherwise would have occurred, to a significant degree'.

Price undercutting shows whether the price of domestic products is higher compared to the price of imported products. The main rule of price undercutting calculation is making a comparison between the average sale price of certain dumped products of investigated country and the average price of the like products in the Union.[28] This comparison has to be made at the same level of trade. If the situation of price undercutting does not exist, injury can still be determined in cases called "price depression" and "price suppression. Price depression means that, the price of dumped imports makes the domestic products to be sold in a price which does not cover all expenses and profit. Price suppression is a situation in which imported products hinder the increase of prices of domestic products.

Effect on the Union industry

Impact of the dumped imports on the Union industry is the third element that has to be taken into consideration for the injury determination. Article 3(5) of the Regulation points out this factor:

> 'The examination of the impact of the dumped imports on the Union industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry, including the fact that an industry is

[28] Van Bael & Bellis (n6) 290

still in the process of recovering from the effects of past dumping or subsidization, the magnitude of the actual margin of dumping, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilization of capacity; factors affecting Union prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments'.

Threat of material injury

Article 3(9) of the Regulation states that ' a determination of threat of material injury shall be based on facts and not merely on an allegation, conjecture or remote possibility'. It further provides the factors that are important for injury determination as following:

- 'A significant rate of increase of dumped imports into the Community market indicating the likelihood of substantially increased imports
- Sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Community, account being taken of the availability of other export markets to absorb any additional exports
- Whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports
- Inventories of the product being investigated.'

Causality

The last step of injury determination is that, a casual link should exist between dumping and injury. There are two tests for the examination of casualty; positive and negative test. According to the positive test, material impact of the imports under consideration on the Union industry should be proved. This rule has been stated by the Article 3(6) of the Regulation as following:

> 'It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the dumped imports are causing injury within the meaning of this Regulation. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph 3 are responsible for an impact on the Union industry as provided for in paragraph 5, and that this impact exists to a degree which enables it to be classified as material.'

Unlike positive test, the main objective of negative test is to prove that negative effect of various factors does not arise out of the imports under consideration. According to the provision of Article 3(7) of the Regulation regarding the negative test, ' known factors other than the dumped imports which at the same time are injuring the Community industry shall also be examined to ensure that injury caused by these other factors is not attributed to the dumped imports under paragraph 6'. Although Regulation has stated specific provisions concerning these tests, it is very difficult to distinguish factors having impact on the Union industry.

Article 3(4) of Regulation points out special rule for the situation of imports from more than one country as follows:

> 'Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that: (a) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in Article 9(3) and that the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the like Community product'.

The above mentioned situation can be based on two issues:

- Imports from several exporters of the same exporting country. In a such case, determination of injury shall be made on a general basis, which means that the harmful impact of individual imports shall not be evaluated individually. However, this practice does not deprive the Commission of the right of individual assessment.
- Imports from several exporting countries. In a such situation, imports can be cumulated or assessed individually depending on the details of case.[29]

Union interest

According to the Basic Regulation, one of the important requirements for the use of anti-dumping measures is the existence of certain situation, in which 'the Community interest calls for intervention'. Article 21(1) states that:

> 'A determination as to whether the Community interest calls for intervention shall be based on appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers, and a determination pursuant to this

[29] Van Bael & Bellis (n6) 335

Article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph 2.'

Article 21(1) further provides some factors that should be considered for the examination of Union interest:

- The need to eliminate the trade distorting effects of injurious dumping
- Restore effective competition

The interests of the following parties should be taken into consideration for the examination of Union interest:

- Union industry
- Consumers
- Users
- Importers

1.2. Anti-dumping procedure

1.2.1. Initiation

EU anti-dumping procedure can be initiated upon the complaints of ' any natural or legal person, or any association not having legal personality, acting on behalf of the Union industry.'[30] Article 5(2) of the Regulation provides some requirements regarding the content of complaints which should be laid down:

- Identity and position of the complainant
- Information about the object of the complaint, exporter and importer
- Information regarding the prices of the dumped product in the exporting country and importing country
- Information regarding the injury to Union industry by the dumped product

The complaint should be in a written form and also complainant should refer to the reasonable facts. In most cases, complaints are submitted directly to the Commission. According to the Article 5(3) of the Regulation, 'the Commission shall examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation'. Consultation is made by the Commission too examine the evidence submitted by the complainant. If the result of this consultation is that, the presented

[30] Article 5(1) of the Basic Regulation

evidence is not sufficient, complaint will be rejected by the Commission.[31] Whether the complainant consider that, complaint will be rejected for the reason of insufficient evidence, complaint has right to withdraw the claim before such decision is taken.

Although in most cases anti-dumping proceedings are initiated upon the complaint of Union industry, Commission has also right to initiate a proceeding upon its own decision in certain situations.[32]

One of the main issues is to be able to make a difference between the invalid complaint and one which is contrary to the procedural requirements. First of all, requirement regarding the right of representativity of complainant should be met. According to the Regulation, the complaint should be submitted by or on behalf of the Union interest. If the above mentioned requirement is not met, the complaint will be invalid. The result will be the same, even if the Commission had no information about the failure of representativity principle at the time of initiation.

According to the Article 5(7) of the Regulation, ' proceedings shall not be initiated against countries whose imports represent a market share of below 1%, unless such countries collectively account for 3% or more of Community consumption'.

Whether as a result of consultation, it is decided to initiate a proceeding, according to the Regulation, the Commission must:

- Publish a notice in the Official Journal of the European Union regarding the initiation of an investigation
- 'Advice the exporters, importers and representative associations of importers or exporters known to it to be concerned, as well as representatives of the exporting country and the complainants, of the initiation of the proceeding'.[33]

The notice of initiation should give adequate data regarding the important elements of case, including the product concerned, identity of the complainant and exporting country.[34] Parties are

[31] Ibid, Article 5(7)

[32] In Certain parts of television camera systems (Japan) [1999] OJ (38) 2, Commission took a decision to initiate a proceeding upon its own initiative, referring to the data which was clear during the preceding investigation. The information regarding the injury to the Community industry by the dumped products concerned was sufficient for Commission to initiate a proceeding. Also, Union producers also supported the claim of Commission and presented additional evidence regarding the injury by dumped products and casual link between dumping and injury.

[33] Article 5(11) of the Regulation

[34] A change of the name of exporting country is out of question. Case C-177/96, Belgian State v. Banque Indosuez and Others and European Union, [1997] E.C.R. I-5659, par. 21 states that ' since the geographical origin of the products is the relevant criterion with regard to anti-dumping duties, a change in the name or political organization of the geographical area referred to as the country of origin or of export in a decision imposing a

provided with the right to submit their views in a specific time period. Also, the notice provides information regarding the date of oral hearing by the parties.[35]

Basic Regulation does not state any principle regarding the obligation of Commission for the decision of which method of dumping margin calculation shall be used. But the Commission has an obligation to inform about the initiation of proceeding to the exporters that will be affected.

Article 5(11) of the Regulation provides that ' where the number of exporters involved is particularly high, the full text of the written complaint may instead be provided only to the authorities of the exporting country or to the relevant trade association'.

Investigation

The main task of Commission is to conduct investigation and take a decision whether to terminate anti-dumping proceeding or proceed and take appropriate actions. In most cases, Commission carries out investigations itself, but sometimes the help of experts can be important for the investigation.[36] Article 6(1) of the Regulation provides that ' for the purpose of a representative finding, an investigation period shall be selected which, in the case of dumping shall, normally, cover a period of no less than six months immediately prior to the initiation of the proceeding.' But in some cases, this period can be extended under specific circumstances. In Ammonium Nitrate case[37], the investigation period had to 16 months for the agricultural reasons. The reason of such situation was to examine two agricultural seasons to get broad information about market.

Investigation regarding the determination of dumping and also injury is conducted at the same time. Whether the exporters can prove that they have not induced the injury, investigation for the dumping determination will be terminated. In addition, Commission will also stop the investigation, if there is clear evidence that export has not caused to dumping and also dumping margin does not comply with the de minimis requirement.

Article 6(9) of the Regulation states that ' investigations shall in all cases be concluded within 15 months of initiation'.

---

provisional or definitive anti-dumping duty has no impact on the economic purpose of the duty imposed and can not therefore by itself remove products originating in that geographical area from the duty's field of application'.

[35] Article 5(10) of the Regulation

[36] In Dead-burned naturel magnesite (China, North Korea), [1986] OJ (L 70) 41, as the information of parties regarding the comparative elements of products was contradictory, Commission had to rely on the help of experts.

[37] Ammonium Nitrate (Poland, Ukraine), [2000] OJ, (L187) 12.

The interested parties have right to make comment regarding the dumping. The view of parties will be submitted to the Commission as a reply to the presented questionnaire. The following information is mainly requested in the questionnaire:[38]

- Sales in domestic and export markets
- Volume
- Stock
- Investments during the period of last three years

The above mentioned list is not exhaustive. Parties are free to add the data which they consider is important for the investigation.

Article 6(2) of the Regulation points out that ' parties shall be given at least 30 days to reply'.

But there can be such situation that, parties want to present additional information after the expiry of the deadline. Such situation even can lead to the rejection of original reply as invalid.[39]

There can be such situation in which the exporting country is a non-market economy country. In such case the Commission has right to get requested data from producers in the analogue country. Such request should provide sufficient justification.

Unlike the above mentioned idea, in Anti-Dumping Duties on Imports of Certain Paper from Indonesia[40], WTO Panel, argued that although , deadline for the submission of data by the interested parties can be reasonable in order to comply with the time limit of the investigation, on the other hand, such information should not be disregarded in every situation.[41] WTO Appellate Body pointed out in US-Hot-Rolled Steel that, if the additional data is presented in a reasonable period despite the fact that deadline has expired, such information should be assessed. The WTO Panel stated that:[42]

> 'In sum, a "reasonable period" must be interpreted consistently with the notions of flexibility and balance that are inherent in the concept of "reasonableness", and in a manner that allows for account to be taken of the particular circumstances of each case.

[38] Van Bael & Bellis (n6) 464
[39] In Certain electronic weighing scales (Japan) [1993] OJ (L104) 4, at recital 27, Commission stated that ' it is essential for replies to questionnaires, and significant corrections to them, to be submitted within the reasonable period provided for this purpose, as a considerable amount of preparatory work and analysis of replies must be carried out by the investigating authorities prior to the verification visit'. Referring to this statement, data submitted by the exporter was rejected.
[40] WTO Panel Report, Korea-Anti-Dumping Duties on Imports of Certain Paper from Indonesia, WT/DS312/R, 28 November 2005
[41] Ibid par.7.49
[42] Van Bael & Bellis (n6) 471

In considering whether information is submitted within a reasonable period of time, investigating authorities should consider, in the context of a particular case, factors such as: (i) the nature and quantity of the information submitted; (ii) the difficulties encountered by an investigated exporter in obtaining the information; (iii) the verifiability of the information and the ease with which it can be used by the investigating authorities in making their determination; (iv) whether other interested parties are likely to be prejudiced if the information is whether other interested parties are likely to be prejudiced if the information is used; (v) whether acceptance of the information would compromise the ability of the investigating authorities to conduct the investigation authorities to conduct the investigation expeditiously; and (vi) the numbers of days by which the investigated exporter missed the applicable time-limit.'[43]

Supporting evidence submitted by the foreign exporters upon the request of Commission officials includes:[44]

- For sales (export or domestic)
  i. Invoices

Invoices shall be used to make a comparison of information regarding sales between invoice and response. Documents of payment, shipping will be also examined.

  ii. Sales ledger. It helps to insure that no invoice has been excluded.
  iii. Company books

The company books are used to learn the link between sales ledger and turnover information.

  iv. Allowances. It is used for justification of adjustments.
- For cost of production
  a. Company internal records

These records are important for the submission of information concerning the cost of production.

  b. Invoices

Article 17(1) of the Regulation states that ' in cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited

[43] WTO Panel Report
[44] Van Bael & Bellis (n6) 488-489

to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available'.

Sampling can be used concerning the:

- Parties
- Types of products
- Transactions

Basic Regulation provides interested parties with certain rights. Such rights include:

✓ Access to the file and confidentiality[45].

Article 6(7) of the Regulation states that interested parties ' may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, which is relevant to the presentation of their cases, not confidential, and that it is used in the investigation.'

According to the Article 19(1) of the Regulation, ' any information which is by nature confidential or which is provided on a confidential basis by parties to an investigation, shall, if good cause is shown, be treated as such by the authorities.'

✓ Hearing

The interested parties are provided with the right of hearing according to the Regulation, including an oral hearing and adversarial meeting.

✓ Disclosure

Interested parties and representatives of exporting countries have right to ask for the disclosure of the data which the provisional measures of the Commission base on.

Protective measures

According to the Article 7(1) of the Regulation, provisional measures can be imposed if:

- Proceedings have been initiated in accordance with Article 5

[45] Article 19(1) of the Regulation defines confidential information as ' information that its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information'.

- The interested parties have been provided with chances to present information and express their opinions in accordance with Article 5(10)
- A situation of dumping and injury to the Union industry has been determined
- Union interest calls for intervention
- Provisional duties shall be imposed no earlier than 60 days and no later than nine months after the initiation

Whether finding of the preliminary investigation is that, dumping has caused an injury to the Union industry, Commission can impose provisional measures. According to the Article 7(2) of the Regulation, ' the amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established, but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Union industry'.

The Commission can impose provisional anti-dumping duties either on its own attempt or upon the request of a Member State.[46] Consultation should be made with Member States before taking such decision.

Decision of provisional measures is followed by the report to the Council and Member States about it. Decision of provisional duties can be rejected by a qualified majority of the Council.

Article 7(3) of the Regulation states that ' provisional duties shall be secured by a guarantee, and the release of the products concerned for free circulation in the Union shall be conditional upon the provision of such guarantee'.

Provisional measures lasts for six months, but there is a possibility to be extended for the following three months by the Commission.

Commission should present its offer regarding the imposition of definitive measures to the Council, one month before when the validity of decision regarding the provisional measures will be expired.

According to the Article 14(5) of the Regulation, the Commission has right to require the registration of the product under investigation by the custom authorities. "Registration of import"

[46] Article 7(5) of the Regulation points out that ' where a Member State requests immediate intervention by the Commission and where the conditions in paragraph 1 are met, the Commission shall within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping duty shall be imposed.'

means that, cash deposit or guarantee can not be applied to the imported products which have been registered. [47]

The Basic Regulation makes possible the registration of imports in the following circumstances:[48]

- Breach or withdrawal of undertakings
- Retroactive imposition of definitive duties
- New exporter reviews
- Anti-absorption reviews
- Anti-circumvention investigations

Registration of import can last up to maximum nine months. Decision regarding such registration, can be taken by the Commission, either on its own initiative or upon the request of the Union industry that has satisfactory evidence for the use of such measure.'[49]

In the following cases, anti-dumping proceeding will be terminated without imposition of protective measures:[50]

- Where the complaint is withdrawn, unless termination would not be in the Union interest[51]
- Imposition of protective measures in not appropriate for the reason that, there is existence of dumping, injury to the Union interest or dumping margin or import volume is below de minimis rule
- Protective measures do not comply with the Union interest

If one of the above mentioned conditions exist, the Commission will consult about the decision of termination the Committee and whether the Committee does not oppose such decision, the proceeding will be terminated.

Outcome of the investigation

First of all, it should be stated that " lesser duty rule" can be applied by the European Commission whether conditions are appropriate for it. According to this rule, Commission

[47] Van Bael & Bellis (n6) 513
[48] Van Bael & Bellis (n6) 514
[49] Article 14(5) of the Regulation.
[50] Van Bael & Bellis (n6) 515
[51] Article 9(1) of the Regulation

should impose lower duty compared to the dumping margin if it is sufficient to eliminate the injury caused to the EU industry.

According to the Article 9(4) of the Regulation, if a result of final determination is that, there is a dumping and injury, and Union interest calls for intervention, the Council can impose definitive measures on the basis of a proposal by the Commission.

Article 10(2) of the Regulation states that:

> ' Where a provisional duty has been applied and the facts as finally established show that there is dumping and injury, the Council shall decide, irrespective of whether a definitive anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitively collected.'

The possibility of collection of provisional duties depends on the grade of definitive duty. Whether a definitive measure is higher than the level of provisional measure, collection of difference will not be applied.[52] Imposition of definitive anti-dumping measures is possible under the following circumstance:

- ✓ The date of import of products concerned should be maximum 90 days before the date of application of provisional measures

Definitive duties can not be used regarding the product imported before the date of initiation of investigation.

Article 8(1) of the Regulation states that:

> ' Upon condition that a provisional affirmative determination of dumping and injury has been made, the Commission may accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices or to cease exports at dumped prices, if, after specific consultation of the Advisory Committee, it is satisfied that the injurious effect of the dumping is thereby eliminated.'

Proposal regarding the undertaking is made by the Commission, but it does not mean that, exporter is obliged to accept it. One of the main conditions for the acceptance of undertaking is 'provisional affirmative determination of dumping and injury'.[53]

The investigation will be terminated whether:

[52] Article 10(3) of the Regulation
[53] Article 8(2) of the Regulation

- ✓ The result of consultation concerning undertaking is positive
- ✓ Advisory Committee does not reject the undertaking

Article 11(1) of the Regulation points out the temporary character of anti-dumping measures and states that they can remain in force ' as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.'

A definitive duty shall remain in force during the period of five years since the date of imposition or the date of the last review regarding the dumping and injury.

Circumvention

According to the Article 13(1) of the Regulation, extension of anti-dumping measures to imports from third countries of like products is possible ' whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or past thereof, when circumvention of the measures in force is taken place.'

Article 13(1) of the Regulation defines the meaning of circumvention as follows:

> 'A change in the pattern of trade between third countries and the Community or between individual companies in the country subject to measures and the Community, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2.'

Article 13(2) of the Regulation includes the following operations to the circumvention:

- o The operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures
- o The parts constitute 60 percent or more of the total value of the parts of the assembled product except that in no case shall be circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25 percent of the manufacturing costs
- o The remedial effects of the duty are being undermined in terms of the prices

- Quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

EU Anti-dumping Case Study

Anti-dumping measures on certain footwear from China and Vietnam[54]

Background

Before 2005, the decade quota system was applied to the footwear import from China and Vietnam, so that, EU industry could compete with the shoe imports. On January 1st of 2005, quota system was removed according to the WTO Agreement on Textile and Clothing (ATC) , which led to the situation of sudden increase of footwear import from China.[55] According to the Agreement, removal of quotas could only apply to the WTO member countries. Unlike ATC, bilateral agreements contained the statement regarding the abolition of quotas imposed on non WTO members, also including Vietnam. The elimination of quota system according to the above mentioned agreements strengthened the role of China and Vietnam in the internal market of the EU as a provider of footwear. The dominant role of two mentioned countries in the footwear sector made extra problems for the EU companies competing in the same sector. Because of the above shown situation, EU companies lodged a claim before the Directorate for Trade Defense of the European Commission for the application of anti-dumping measures on the import of Chinese and Vietnamese footwear.

Initial investigation

On 30 may 2005, the European Confederation of the Footwear Industry (CEC) lodged a complaint before the Commission according to the Article 5 of the Council Regulation of 384/96[56] on behalf of producers substituting approximately 40% of the total footwear manufacture of the Community. The complaint contained following statements:

- Imports of certain footwear with uppers of leather, originating in the People's Republic of China and Vietnam are being dumped
- Such dumping causes material injury to the Community Industry.

[54] Certain footwear with uppers of leather (People's Republic of China, Vietnam), 2006 O.J. (L 98) 3, recital
[55] Jappe Eckhardt, Business Lobbying and Trade Governance: The case of EU-China relations (1st edition, European Administrative Governance Series, 2015) 73.
[56] Council Regulation (EC) 384/96 on protection against dumped imports from countries not members of the European Community [1995] OJ L 056. Article 5 of this Regulation states that ' except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry.'

After detecting that, there was sufficient evidence regarding the anti-dumping situation, on 7 July 2005, the European Commission decided to initiate the anti-dumping proceeding officially.[57]

On 23 February 2006, while the investigation was going on, EU Trade Commissioner Peter Mandelson made a speech regarding the first phase of investigation process and acknowledged that serious facts had been found concerning a state intervention, dumping and injury. He stated in his speech that:[58]

> " There is compelling evidence of serious state intervention on a large and strategic industrial scale in the footwear sector in China and Vietnam. Along with wide evidence of substantially flawed accounting practice, we have found clear evidence of non-commercial loans or capital grants from the state to producers; improper evaluation of assets; non-commercial rates for land use and important tax breaks for exports. These disguised subsidies allow Chinese and Vietnamese producers to export leather shoes to Europe at below the true cost of production in their own countries. Natural comparative advantage is being topped up with anti-competitive behavior."

Following the above mentioned statements, Commissioner recommended the imposition of provisional duties of 19,4% for China and 16,8% for Vietnam.

Eurostat and Commission pointed out the following numbers regarding the import of Chinese and Vietnamese shoes:[59]

- Between 2001 and 2005, the percentage of increase in Chinese leather shoe import to the EU was +1000%, while this number was +95% for Vietnam
- In comparison with the above mentioned numbers, during the period 2004 and 2005, increase in the import of Chinese shoes to the EU constituted +450%. During the same period, for the reason of competition with China, the percentage of increase in the shoe import was 1% for Vietnam.
- The percentage of fall in average unit price for Chinese shoes between 2001-2005 was ---32%, while for Vietnamese shoes these figure was -20%

The investigation period proceeded from 1 April 2004 to 31 March 2005. The following type of shoes included investigation process:[60]

[57] Official Journal of the European Union C 166/14, 7 July 2005.
[58] European Commission Press Release Database, Speech /06/119 <http://trade.ec.europa.eu/doclib/docs/2006/february/tradoc_127604.pdf > accessed 10 April 2016
[59]< http://trade.ec.europa.eu/doclib/docs/2006/february/tradoc_127600.pdf> accessed 10 April 2016

- ✓ Mainly sandals, boots, urban footwear and city shoes

Children's shoes and also 'STAF' (special technology athletic footwear), that is shoe used for sport activities and has a special technology doesn't include the scope of investigation.

Analogue country was used for the determination of normal value for China and Vietnam, which can be applied to imports from non-market economy countries and to the extent MET can not be granted according to the Article 2(7) of the Basic Regulation. Following above shown Article, discussions were made for selection of analogue country in order to determine normal value. As a result of contacts with some suggested countries, one Indian, two Indonesian and eight Brasilian producers agreed to participate in the investigation. Some parties argued that Brazil could not be used as an analogue country for the following reasons[61]:

- Socio-economic and cultural developments are different in Brazil compared to People's Republic of China (PRC) and Vietnam
- Labor costs are higher in Brazil than PRC and Vietnam
- Cost structure is different between Brazil and the above mentioned countries in terms of Research &Development and design.

The above shown arguments were discussed during investigation and it was found that:

- Differences between cultural developments do not make sense for the choice of analogue country. In addition, economic differences also do not take into consideration, if other factors comply with standard of analogue country determination. It is clear that, there are differences between non-market-economy country or economy in transition and market-economy-country by nature.
- Difference of labor costs between countries is irrelevant, as it is a part of economic development. As mentioned above, economic development is not taken into account for the choice of analogue country.
- The possibility of use of adjustments for costs makes irrelevant the differences between cost structures of countries concerned.

Taken into account all statements, Brazil was the most suitable country for normal value determination.

[60] Official Journal of the European Union L 98/3, 6 April 2006
[61] Official Journal of the European Union L 98/3, 6 April 2006

During investigation, dumping margin was defined as following:[62]

- The dumping margin as a percentage of CIF import price was 21,4% for China
- The same element was 64,0% for Vietnam.

According to the Article 3(5) of the basic Regulation, the Commission investigated all economic factors causing injury to the Community industry. These factors were divided into two groups:[63]

- *Macro-economic factors*. These factors include:
  - Production. Amount of production declined from 223 million pairs in 2001 to 146,9 million in 2005, which means that 30% decrease has occurred in terms of production. This trend made 1000 companies shut down.
  - Sales volume and market share. Sales volume declined by 50 million, while market share dropped from 27,1% to 17,9% during the period 2001-2005.
  - Employment. It was concluded that, employment dropped by 31% compared to the figures of 2001. Loss of 26000 jobs within shoe industry confirms this decrease trend.
  - Productivity. Unlike the above mentioned factors, productivity almost remained stable between 2001-2005.
  - Growth. Between 2001 and investigation period, Community industry faced a decline in a sales volume, which caused 9% drop in terms of market share. However, during the same period imports from China and Vietnam into Community market increased twofold and as a result of it they acquired 14% of market share.

Analysis of macro-economic factors reveals that, especially decrease of sales volume and market share reflected the injury. Shoe production bases on orders which means that, it also had an adverse impact on the production and employment.

- *Micro-economic factors.* These factors include:
  - Stocks. Impact of stock on the determination of injury is little, as production takes place on order.
  - Sales prices. Between 2001 and the investigation period, the percentage of decrease in terms of sale price was 7,2%.
  - Cash flow, profitability. The cash flow dropped by 60% during the period 2001-2005, which mostly affected to SMEs.

[62] Ibid

[63] Commission Regulation (EC) No 553/2006 on imposing a provisional anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam [2006] OJ L 98/3, recital 175.

- Investments. As financial situation of Community producers was at a low level between 2001 and the IP, investments also dropped by 50%.
- Employment. Between 2001 and the IP, a trend of decrease in a sale volume caused a drop in production, which means that as a result of it the percentage of employment also declined. 26000 jobs were lost between those years.

Analysis of micro-economic factors disclosed that, decrease in terms of cash flow and profit had a negative impact on individual companies. Between 2001 and the investigation period more than 1000 companies were shut down.

All the above mentioned factors proved the material injury according to the Article 3(5) of the basic Regulation.

On 6 April 2006, the Commission announced that, provisional anti-dumping measures would be applied on imports of certain footwear with uppers of leather originating in China and Vietnam.[64] The rate of provisional anti-dumping duties were stated in the Article 1 of the Commission Regulation[65] as following:

From 7 April 2006 until 1 June 2006

- For the People's Republic of China - 4.8%
- For Vietnam - 4,2%

From 2 June until 13 July 2006

- For the People's Republic of China - 9,7%
- For Vietnam - 8,4%

From 14 July until 14 September 2006

- For the People's Republic of China - 14.5%
- For Vietnam - 12.6%

From 15 September 2006

- For the People's Republic of China – 19.4%
- For Vietnam – 16.8%

[64] Official Journal of the European Union L 98/3, 6 April 2006
[65] Commission Regulation (EC) No 553/2006 on imposing a provisional anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam [2006] OJ L 98/3

According to the Article 3 of the Commission Regulation, above mentioned duties would be applied for a period of 6 months.

On 7 July 2006, the European Commission offered the EU's Anti-dumping Advisory Committee to organize a new meeting regarding the anti-dumping measures imposed on the shoes imported from China and Vietnam after the expiration of provisional anti-dumping duties. But it was clear that, proposal would not be welcomed by the countries of Southern Europe.

The Commission offered that, "deferred" duty system should be applied as a definitive measure and such application could be possible whether defined import thresholds were attained. On Commission's point of view, since that proceeding had " distinct and exceptional" attributes, proposed system would be the best solution. The Commission proposed that:[66]

- 140 million pairs of Chinese leather shoes and 95 million pairs of Vietnamese leather shoes imported annually to the EU shall not be subject to anti-dumping duties, they will only pay import duties.
- The delayed duty system (DDS) shall exist according to the import license-based system. This means that, although the above mentioned amount of shoes will be anti-dumping duty free, they should get import licenses. DDS system will function from the date of 1 April 2007.
- The country wide anti-dumping duties will be 23% for Chinese shoes and 29,5% for Vietnamese shoes,
- Children's footwear should also cover the scope of anti-dumping measures.
- Special technology athletic footwear (STAF) should not be subject to the anti-dumping measures. In addition, minimum value for excluded STAF should be EUR 7,50.

On 20 July 2006, the proposal of Commission regarding "deferred duty system" was discussed at the session of the Anti-Dumping Advisory Committee, but was rejected by Italy, Spain, France, Poland and Portugal.

On 30 August 2006, a new meeting was held concerning the imposition of definitive anti-dumping measures. According to the proposal of European Commission, anti-dumping duties would be 16,5% for China and 10% for Vietnam. EU spokesman for Trade Peter Power stated at that meeting that:[67]

[66] <http://info.hktdc.com/alert/eu0615.htm> accessed 20 April 2016
[67] <http://trade.ec.europa.eu/doclib/docs/2006/august/tradoc_129935.pdf> accessed 20 April 2016

‘ This case is complex and highly sensitive. It affects a variety of economic interests in Europe and in different Member States. The Commission was asked to launch this investigation and did so in accordance with Community law. The investigation was both thorough and exhaustive. The Commission has fulfilled its obligations and its responsibilities and has brought forward a sound proposal. It is now for Member States to debate their position among themselves. It is not first or foremost the Commission’s role to seek a political balance but to reflect the facts as required by EU law.’

On 5 October 2006, a new proposal of the European Commission was accepted by Council with 13 votes against 12 and Council Regulation[68] was adopted regarding the imposition of anti-dumping definitive measures. Recital 288 of the Regulation stated that:

‘ The level of the definitive anti-dumping measures should be sufficient to eliminate the material injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found.’

Article 1 of the Council Regulation pointed out the amount of definitive anti-dumping duties as follows:

- For the companies of People’s Republic of China definitive anti-dumping duties will be 16,5%, except one company called “ Golden Step” whose anti-dumping duty was 9,7%
- For all companies of Vietnam the amount of definitive measures will be 10%.

Article 2 of the Council Regulation stated that:

‘ The amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation No 553/2006 of 27 March 2006 shall be definitively collected at the rate definitively imposed by the present Regulation. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.’

The definitive anti-dumping measures were binding for all Member States for a period of 2 years.

Anti-circumvention investigation

[68] Council Regulation (EC) No 1472/2006 on imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People’s Republic of China and Vietnam [2006] OJ L 275/1

On 5 September 2007, the European Commission launched an investigation regarding the possible circumvention of anti-dumping measures imposed on China through Macao SAR according to the Article 13(3) of the basic Regulation after consulting the Advisory Committee.

Commission justified the initiation of investigation according to the following grounds of recital 5 of the Commission Regulation:[69]

- ' a significant change in the pattern of trade involving exports from the People's Republic of China and Macao SAR to the Community has taken place following the imposition of measures on the product concerned, and that there is insufficient due cause or justification other than the imposition of the duty for such a change '
- ' the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. There is sufficient evidence that this increase in imports is made at prices well below the non-injurious price established in the investigation that led to the existing measures.'
- " the Commission has sufficient prima facie evidence at its disposal that the prices of the product under investigation are dumped in relation to the normal value previously established for the product concerned.'

The investigation covered the period between 1 July 2006 and 30 June 2007. During investigation information was analyzed from 2004 till the end of investigation period.

The investigation confirmed that there was circumvention of anti-dumping duties on the shoes with upper leather from China according to the Article 13(1) and 13(2) of the basic Regulation. All 8 companies failed circumvention test according to the above mentioned Articles of basic Regulation. As a result of investigation, on 29 April 2008 Council Regulation[70] was adopted concerning the definitive anti-dumping measures imposed on the shoes concerned imported from Macao.

Article 1 of the Council regulation stated that:

[69] Commission Regulation (EC) No 1028/2007 on initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather originating in the People's Republic of China by imports of certain footwear with uppers of leather consigned from Macao SAR, whether declared as originating in Macao SAR or not, and making such imports subject to registration, [1027] OJ L 234/3

[70] Council Regulation (EC) No 388/2008 on extending the definitive anti-dumping measures imposed by Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather originating in the People's Republic of China to imports of the same product consigned from the Macao SAR, whether declared as originating in the Macao or not [2008] OJ L 117/1

> ‘ The definitive anti-dumping duty applicable to “ all other companies” imposed by Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather or composition leather as defined in Article 1 of Regulation (EC) No 1472/2006 originating in the People’s Republic of China, is hereby extended to certain footwear with uppers of leather or composition leather as defined in Article 1 of Regulation (EC) No 1472/2006.’

The expiry review

Since the Regulation regarding the imposition of definitive measures on imports of certain footwear originating in China and Vietnam had defined the date ‘7 October 2008’ as an expiration date of anti-dumping duties, the request for the extension of measures had to be lodged three months before the expiration date.

The European Federation of the Footwear Industry (CEC) lodged a request for a review in accordance with Article 11(2) of the basic Regulation[71] on 30 June 2008.

The ground for the request was that, expiry of definitive anti-dumping duties would cause to perpetuation and repetition of dumping and injury to the Community industry.

On 17 September 2008, meeting of Anti-dumping Committee was held concerning the expiry review. 15 out of 27 of trade experts from member states rejected the expiry review. Although result of vote was not binding, but it had to be taken into consideration by the Commission. Following this meeting, Secretary General of EuroCommerce, Xavier R.Durieu stated that:[72]

> ‘ Now we expect a clear signal from the Commission that the duties will expire on 8th October. We need clarity as soon as possible. Three weeks before the foreseen expiry, importers and retailers are still left unsure about the tariffs they will be charged at the border.’

On 26 September 2008, the European Commissioner for Trade Peter Mandelson said that, he would initiate a review procedure according to the EU law.

After detecting that, existing facts were sufficient for initiation of a review process, the Commission initiated a review according to the Article 11(2) of the basic Regulation on 3

[71] Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community [1995] OJ L 56

[72] <http://www.geocities.ws/badentinit/Eurocommerce/scarpe_cinesi_lowcost.pdf> accessed 30 April 2016

October 2008.[73] Scope of investigation was to determine whether expiry of anti-dumping duties could result in continuation or recurrence of dumping and injury.

Review investigation period covered the period from 1 July 2007 until 30 June 2008. The facts from 1 January until the end of investigation period were analyzed in order to confirm whether they were sufficient for likelihood of recurrence of injury.

On 22 December 2009, Council Regulation[74] was adopted as a result of investigation. Recital 133 of Regulation stated arguments of some parties regarding the continuation of dumping as follows:

- Export from China and Vietnam during the period of April 2006 and end of the RIP had decreased
- The main reason of decline was a fall of production in both countries because of imposed anti-dumping duties
- Import prices of products concerned had increased was in a stable price
- For the reasons mentioned above, continuation of dumping can not be justified

However, rejected above mentioned arguments were rejected at the Recital 134 of Regulation as follows:

> ' These arguments do not change the finding that substantial dumping margins were found for the RIP and that those margins cover large volumes of imports with large Union market shares. It was therefore concluded that a continuation of dumping has taken place in respect of the product concerned originating in the PRC and Vietnam.'

Article 1.4 of the Regulation stated that:

> ' The definitive anti-dumping duty of 16.5% and applicable to imports from " all other companies" in the People's Republic of China is hereby extended to imports of the products described in paragraph 1 consigned from the Macao SAR or not. '

According to the Article 2 of Regulation, it would be in force for a period of 15 months.

[73] Commission Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam [2008] C 251/ 12
[74] Council Implementing Regulation (EU) No 1294/2009 on imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 [2009] OJ L 352/1

On 4 February 2010, China asked consultations regarding anti-dumping duties imposed on certain footwear imported from China. China's Ministry of Commerce stated that, " China believes that the anti-dumping investigations and the findings made by the EU violated various obligations under the WTO, and consequently caused damage to the legitimate rights and interests of Chinese exporters."[75]

Main arguments of China included:

- Calculation of dumping margin for investigation was pointless, biased and discriminatory since China had taken into account for calculation entirely which was inconsistent with WTO rules.
- Council regulation regarding the imposition of definitive measures was unfair for the reason of wrong calculation of dumping margins
- Extension of anti-dumping duties as a result of review investigation did not comply with the Anti-dumping agreement. Notwithstanding that the EU's Advisory Committee had rejected the proposal concerning extension of duties, anti-dumping measures were extended for a period of 15 months.

EU trade spokesman John Clancy answered the above mentioned statements as follows:

' Anti-dumping measures are not about protectionism, they are about fighting unfair trade. The decision to impose measures was taken on the basis of clear evidence that dumping of Chinese products has taken place and that this is harming the otherwise competitive industry.'[76]

On 31 March 2010, consultation was held between China and the EU, but the dispute could not be settled.

On 5 July 2010, the Director-General composed a panel upon a request of China. Because of considerable arguments and statements of parties participated in the dispute, the panel could only submit its report to the parties on 27 July 2011.[77]

On 28 October 2011, report of the panel was presented to the Member States.

Panel found that:[78]

[75] <http://www.ictsd.org/bridges-news/bridges/news/china-brings-anti-dumping-case-against-eu-in-shoe-dispute> accessed 3 May 2016
[76] Ibid
[77] <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds405_e.htm> accessed 4 May 2016
[78] <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds405_e.htm> accessed 4 May 2016

- Application of Article 9(5) of the basic Anti-dumping (AD) Regulation was inconsistent with the Article 6.10, 9.2 of the Anti-dumping Agreement[79] (ADA). Both Articles of ADA provides the principle ' individual treatment for imposition of anti-dumping duties'. However, Article 9(5) of the AD Regulation stated that " individual exporting producers in non-market economy countries which do not receive market economy treatment pursuant to point (c) of Article 2(7) of the Basic Anti-Dumping Regulation will be subject to a countrywide duty rate unless such exporters can demonstrate that they meet the conditions for individual treatment." Application of anti-dumping duties on a country-wide basis violated the above mentioned Articles of ADA.
- Determination of amount for administrative, selling and general costs was made inconsistently with the Article 2.2.2 (iii) of the AD Agreement.
- Articles 6.5 and 6.5.1 of the AD Agreement were violated in the original investigation. [80]

All other claims of China were dismissed by the Panel.

On 23 May 2012, China and the EU defined the expiration date for measures that had to be taken by the EU for implementation of DSB (Dispute Settlement Body) recommendations.

Following a decision of Panel, amended form of Basic Anti-Dumping Regulation was adopted on 13 June 2012. Article 9(5) of the reformed AD Regulation[81] provided that:

> ' An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except for imports from those sources from which undertakings under the terms of this Regulation have been accepted.
>
> The Regulation imposing anti-dumping measures shall specify the duty for each supplier or, if that is impracticable, the supplying country concerned. Suppliers which are legally distinct from other suppliers or which are legally distinct from the State may nevertheless

[79] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 [1994] OJ L336. Article 6(10) of ADA states that " the authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation."

[80] According to the Article 6.5 of the AD Agreement, " any information which is by nature confidential, or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities." However, in the original investigation, some information presented was treated confidentially without any sound cause provided. In addition, Article 6.5.1. of the AD Agreement provides that, " the authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof." Inconsistent with mentioned Article, the EU did not require non-confidential summary for confidential information.

[81] Regulation (EU) No 765/2012 of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community [2012] OJ L 237/1

be considered as a single entity for the purpose of specifying the duty. For the application of this subparagraph, account may be taken of factors such as the existence of structural or corporate links between the suppliers and the State or between suppliers, control or material influence by the State in respect of pricing and output, or the economic structure of the supplying country.'

Conclusion

It is clear from the analysis of the case "Anti-dumping measures on certain footwear from China and Vietnam" that, this case had complicated aspects. Therefore, I could cover only main issues of the case.

First of all, factual background of the dispute was discussed. Then legal part of the case was examined which helped to understand practical aspects of anti-dumping duties and proceeding. The following primary questions were answered in this dispute:

- Was there sufficient evidence for the initiation of anti-dumping investigation?
- Which factors led to the injury?
- How was Community Industry affected by that injury?
- Was a selection of Brazil as an analogue country right for determination of normal value?
- Why expiry review was held?

Discussion of above mentioned questions enlightened the key issues of the case. It made clear that, dumping by PRC and Vietnam caused injury to the domestic footwear industry of the EU. As a result of that injury, domestic production of the EU could not compete with the import from China and Vietnam. Therefore, anti-dumping duties were imposed for overcome unfair competition. Since expiration of definitive measures could re-establish the situation of dumping, they were extended by the expiry review.

Secondly, complaints of China to WTO Dispute Settlement Body were examined in this case study. According to China, rules regarding normal value determination for non-market-economy countries were applied inconsistent with WTO rules. Moreover, China argued that anti-dumping measures were discriminatory and unfair compared to lower duties imposed on Vietnamese products. Review of Chinese claims by Panel led to the change in the Article 9(5) of the EU Basic Antidumping Regulation. However, not all claims of China was accepted by Panel.

In my opinion, anti-dumping measures imposed in the original investigation served to the fair trading conditions. Those measures were not applied for protective purpose as claimed by China.

On the other hand, some decisions can still be argued in this case. Most of them arise from non-market-economy status of China. In any case, there will be some clueless points. The main reason of those questions is complex and specific legal nature of the Case.

Anti-dumping measures on import of ceramic tiles from China

Background

Ceramic tiles industry has a leading role for Union industry with a turnover of 9 billion euro and 75,000 employees. Existence of approximately 500 companies in this industry is very essential for providing people with jobs at local level. Important features of EU ceramic tiles, such as novelty and distinctive design help that industry to compete with other countries.

However, between 2007 and 2010, Union industry faced a decrease in ceramic tiles consumption, which caused to the decline of Union profit. Unlike it, market share of Chinese imports began to increase during that period. That situation made extra problems for the EU companies existing in the ceramic tiles industry.

Initial investigation

On 7 may 2010, the European Ceramic Tile Manufacturers' Federation (CET) lodged a complaint on behalf of 69 producers indicating approximately 30% of EU ceramic tile production. Presented complaint covered the following claims:

- Imports of ceramic tiles originating in the People's Republic of China are being dumped
- Such situation leads to the injury to the Union industry.

After analyzing evidence presented by the complainant, the Commission decided that provided facts were sufficient for the initiation of anti-dumping investigation. Following the consultation of the Advisory Committee, European Commission initiated anti-dumping investigation regarding the import of Chinese ceramic tiles.[82]

According to the Notice of Commission published on June 19, product subject to the dispute was " glazed and unglazed ceramic mosaic cubes and the like, whether or not on a backing."

[82] European Commission Notice of initiation of an anti-dumping proceeding concerning imports of ceramic tiles originating in the People's Republic of China [2010] C 160/06.

Investigation period proceeded from 1 April 2009 until 1 March 2010. However, investigation of factors which were important for determination of injury covered the period from 1 January 2007 to the last day of investigation period.

As a part of investigation, MET (market economy treatment) claim forms were sent to exporting producers in China. Although some producers requested for IT (individual treatment), they had an obligation to fulfill MET requirements.

On 16 March 2011, Commission Regulation[83] was adopted regarding the result of initial investigation. During investigation it was found that:

- Only one company within the group called "Wonderful Group" requested MET, while another company requested for IT and didn't complete MET requirements. Therefore, that group was not provided with MET.
- Becarry Group could not define export sales on its own decision because of State interference. Such situation caused to the rejection of MET and also IT claim by Commission.
- Shandong Yadi Ceramics Co. Ltd could not provide the Commission with appropriate information regarding the owner of establishment capital. Moreover, because of the detected accounting deficiency it was not granted MET.
- Shandong Yadi Ceramics Co. Ltd, Xinruncheng Group and Wonderful group met all criterias for IT.

In the Notice of European Commission concerning the initiation of anti-dumping proceeding, Commission had stated that the USA could be appropriate analogue country for normal value determination. The investigation unclosed that the USA was a competitive market for ceramic tiles for the following reasons:[84]

- Physical characteristics of ceramic tiles originated in the USA were identical with those in China.
- Likeness of production process between the USA and China was also logical ground.

Some parties argued that the USA could not be used as a third country for the following grounds:

- Ceramic tiles production in the USA mainly served for domestic market compared to the China

[83] Commission Regulation (EU) No 258/2011 imposing a provisional anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China [2011] OJ L 70/5
[84] Commission Regulation (EU) No 258/2011 , OJ L 70/10, recital 49

- The role of the USA was not significant for the total ceramic tile market in comparison with leading role of China
- There were tough quality requirements and non-tariff obstacles for the products imported from China

However, above mentioned statements were rejected by Commission as follows:

- Various types of ceramic tiles were produced in the USA including products which were same with Chinese ceramic tiles
- Role of the USA in the overall ceramic tile production was comparable with China
- The proportion of Chinese ceramic tile import was significantly high in the USA. Therefore, it made clear that existed standards did not have impact on imports from China.

Taking into account above mentioned arguments, the USA was chosen as an analogue country for normal value determination by the Commission.

Recital 58 of the Commission Regulation, adopted on 16 March 2001, stated the following statement regarding the normal value determination:

> ' Normal value was constructed by adding to the cost of manufacturing of the US producer its SG&A and profit. Pursuant to Article 2(6) of the Basic Regulation, the amounts for SG&A and profit were established on the basis of the actual data pertaining to production and sales in the ordinary course of trade of the like product of the US producer.'

Above mentioned Regulation provided different ways of dumping margin calculation according to the Basic Regulation as follows:

- 'Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margins for the sampled cooperating exporting producers granted IT were established on the basis of a comparison of a weighted average normal value established for the analogue country with each company's weighted average export price of the product concerned to the Union as established above.'[85]

[85] Commission Regulation (EU) No 258/2011 OJ L 70/11, recital 62.

- ‘ The dumping margin for other cooperating exporting producers in China, not included in the sample, was calculated as a weighted average of the sampled exporting producers’ dumping margins, in accordance with Article 9(6) of the Basic Regulation’.[86]
- ‘ The dumping margin for the cooperating exporting producer in China, included in the sample but not granted IT (Heyuan Becarry Ceramics Cl. Ltd), was also calculated as described above in recital 64.’[87]
- ‘ The country-wide dumping margin applicable to all other non-cooperating exporting producers in China was established by using the highest of the dumping margins found for a representative product type from a cooperating exporting producer.’[88]

On the basis of the above mentioned rules, dumping margins were defined as follows:[89]

1. For cooperating sampled exporting producers granted IT:
   - Group Xinruncheng – 35.5%
   - Shandong Yadi Ceramics Co. Ltd – 36,6%
   - Wonderful Group – 26.2%
2. Sample Weighted Average for the cooperating exporting producers not included in the sample or not granted IT – 32,3%
3. Residual for non-cooperating exporting producers – 73.0%

During investigation, the Commission investigated all economic factors that led to the injury to the Union Industry. Two kind of factors were examined:

- Macroeconomic factors. They cover the following elements:
  - Production. Union production dropped by 32% during the period concerned. The greatest percentage of decline happened between 2008 and 2009 with 23%. Numbers for this indicator between 2009 and investigation period (IP) were stabil.
  - Production capacity and capacity utilization. Production capacity of the Union also saw the decline trend during the period concerned. Between 2007 and 2008, dropped by 5% and during 2008 and IP production capacity decreased by 2%. In comparison, during 2007 and the IP capacity utilization faced the decline trend with 27%.
  - Sales volume and market share. During the period considered, both sales volume and market share faced a decline trend with 30% and 1% respectively.
  - Employment. Between 2007 and the IP, percentage of employment dropped by 16%.

[86] Ibid, recital 64
[87] Ibid, rec.65
[88] Ibid, rec. 66.
[89] Ibid, rec.63 and 67

- Productivity. Following the decline trend in production, productivity decreased by 19%.

- Microeconomic factors. These indicators include:
  - Stocks. The percentage of stocks increased by 37% between 2007 and the IP. The main reason of increase in terms of stock was that, in order to compete with import from China, the Union industry had to increase stocks.
  - Sales prices. This element also faced an increase tendency during the period concerned (10%). However, such trend could not help the Union industry to get profit.
  - Profitability. Since, the cost of production was higher than sales prices, it caused to the decline of profitability. That indicator decreased to 0,4% in the IP and saw the lowest percentage in 2009.
  - Cash flow. The above mentioned trends had a negative impact on cash flow. During 2007 and the IP, the percentage of cash flow dropped by 54%.
  - Investments. During the period 2007-2010, numbers declined by 28% in terms of investments made by Union industry annually.

Analysis of above mentioned factors showed that, increase of market share of Chinese imports, decline trend in terms of profitability, investments and cash flow were important indicators of injury to the Union industry.

Recital 111 of the Commission Regulation stated that:

> ‘ Considering the above, it is provisionally concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the Basic Regulation.’

In addition, recital 141 of the above mentioned Regulation pointed out that:

> ‘ As the financial situation and profitability of the Union industry is not strong enough to withstand further price pressure exerted by dumped imports that considerably undercut their prices, this would lead very likely to the progressive demise of a large number of Union producers.’

Investigation made clear that, there was a causal link between injury to the Union industry and the dumped imports from China.[90]

[90] Commission Regulation (EU) No 258/2011 OJ L 70/21, rec. 135.

On 16 March 2011, the Commission took a decision regarding the application of provisional anti-dumping duties on imports of ceramic tiles originated in China.

According to the Article 2 of the Commission Regulation, " the rate of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and manufactured by the companies below would be":

Guangdong Xinrucheng Ceramics Co. Ltd – 35.5%
Shandong Yadi Ceramics Co Ltd – 36.6%
Dongguan City Wonderful Ceramics Industrial Park Co. Ltd – 26.2%
Guangdong Jiamei Ceramics Co. Ltd – 26.2%
Qingyuan Gani Ceramics Co. Ltd – 26.2%
Foshan Gani Ceramics Co. Ltd- 26.2%
Companies listed in Annex 1 – 32.3%
All other companies – 73%

According to the Article 3 of the Regulation, it would be applied in all Member States.

Following the Commission decision about the application of provisional measures, interested parties were granted rights to present their opinions concerning provisional findings. Subsequently, parties were submitted essential information regarding:

- The objective of Commission concerning imposition of definitive anti-dumping duties
- Important finding that such decision could be based on
- The period within which interested parties could present their views .

Main arguments of parties included the following statements:[91]

- Since the USA was not competitive in a global ceramic tiles industry and the proportion of production was significantly low, it could not be used as an analogue country for normal value determination[92]
- In comparison with China, production volume of the USA was not clear. Therefore, production costs of products concerned could not be compared between China and the USA.[93]

[91] Council Implementing Regulation (EU) No 917/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China [2011] OJ L 238/1.
[92] Ibid, OJ L 238/6, recital 55
[93] Ibid, OJ L 238/7, recital 73

- Categorization of imports of certain Chinese products was fulfilled wrongly. Moreover, some transactions from China had been ignored for dumping margin calculation.[94]
- Since the market share of the EU ceramic tiles remained stable, the decline trend of Union consumption could not be an indicator of injury to the Union industry.[95]
- The real cause of problems within Union industry was an economic crisis.[96]

Above shown claims of interested parties were dismissed by the Commission basing on the following grounds:

- The existence of local companies in a ceramic tiles industry of the USA was a proof for the competitive nature of the US market. In addition, absence of non-tariff barriers showed that there was no any obstacle for competition.[97]
- No one could refer to the production volume of cooperating producer of the US for the reason that such kind of information was confidential.
- The Chinese company had been informed about the miscategorization of keratin products imported to the EU. Moreover, reclassification of those products was made for normal value determination.
- Stability of the Union market share did not mean that there was no adverse impact of decline of consumption. It was clear that market share was not an only role factor for injury assessment. [98]
- The investigation proved that, despite the fact that, there was an economic crisis, import of Chinese products to the EU could go on. In fact, China had a power to preserve its major role in a tough economic situation.[99]
- On the other hand, aggressive price policy of China had a negative impact on Union industry before economic crisis. According to that fact, one could see that absence of difficult economic situation could not prevent the Union industry from material injury.[100]

During investigation, injury margins were defined as follows:[101]

- Group Wonderful – 58,5%
- Group Xinruncheng – 82,3%

[94] Ibid, OJ L 238/8, recital 78-79
[95] Ibid, OJ L 238/13, recital 135
[96] Ibid, OJ L 238/15, recital 155
[97] Council Implementing Regulation (EU) No 917/2011, OJ L 238/6, recital 59
[98] Ibid, OJ L 238/13, recital 136
[99] Ibid, OJ L 238/15, recital 159
[100] Ibid, recital 162
[101] Ibid, OJ L 238/18, recital 196

- Shandong Yadi Ceramics Co. Ltd – 66.6%
- Heyuan Becarry Ceramics Co Ltd – 58.6%
- All other cooperating producers – 65.0%
- Residual – 82.3%

On 12 September 2011, 3109th Council meeting was held in Brussels. " Ceramic tiles" case also included to the list of debated items. As a result of that meeting, Council Implementing Regulation was adopted regarding the imposition of definitive duties on import of ceramic tiles from China.

The president of CET, Mr. Alfonso Panzani pointed out about the imposition of definitive anti-dumping duties that:[102]

> ' The introduction of duties serves to re-establish a fair level of competition so that EU ceramic tile producers can continue to compete in Europe, at least as much as they successfully do on export markets. We welcome these measures which level the playing field against Chinese unfairly priced imports.'

The President of Cerame-Unie, Mr. Alain Delcourt added that:

> ' The result of the procedure shows the added value for the industry to cooperate at European level under a complex and thorough investigation requiring the involvement of many actors, both on the side of the EU institutions, EU member states and the industry.'

On 15 September 2011, that Regulation was published on the Official Journal of the European Union.

According to the Article 2 of the Council Regulation:

' The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and manufactured by the companies listed below shall be as follows:'

- Dongguan City Wonderful Ceramics Industrial Park Co. Ltd – 26,3%
- Guangdong Jiamei Ceramics Co. Ltd – 26,3%
- Foshan Gani Ceramics Co. Ltd – 26.3%
- Guangdong Xinruncheng Ceramics Co. Ltd – 29,3%
- Shandong Yadi Ceramics Co. Ltd – 36,5%

[102] <http://cerameunie.eu/media/1396/11-09-15-cet-press-release.pdf> accessed 30 May 2016

- Companies listed in Annex 1 – 30,6%
- All other companies – 69,7%

Article 2 of the above mentioned Regulation pointed out that:

‘ Amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EU) No 258/2011 imposing a provisional anti-dumping duty on imports of ceramic tiles originating in the People’s Republic of China, shall be collected. The amounts secured in excess of the amount of the definitive anti-dumping duties shall be released.’

Council Regulation would be directly applicable in all Member States.

On 18 December 2015, Notice[103] of the European Commission was published in the Official Journal of the EU. According to that Notice, whether review was not initiated, definitive anti-dumping duties on imports of certain ceramic tiles originated in China would expired on 16 September 2016. Recital 2 of the Notice pointed out the following statement:

‘ Union producers may lodge a written request for a review. This request must contain sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury.’

However, above mentioned request could be presented up to three month before the expiration date.

On 2 October 2012, Gani Group lodged a request for a partial interim review according to the Article 11(3) of the Basic Regulation. Claim of that group based on the following statements:

- Shareholding cooperation between Gani group and Wonderful group had stopped on March 2011
- Change of circumstance made the application of single duty rate unsuitable

Following the consultation with Advisory Committee, the Commission decided that there was sufficient evidence for the partial interim review.

On 31 January 2014, Notice [104]of initiation of partial interim review was published in the Official Journal of the EU. According to the recital 8 of the Notice the investigation would be

[103] European Commission Notice of the impending expiry of certain anti-dumping measures [2015] OJ C 425/13
[104] European Commission Notice of a partial interim review of the anti-dumping measures applicable to imports of ceramic tiles originating in the People’s Republic of China [2014] OJ C 28/09???????

concluded " within 15 months of the date of the publication of this notice in the Official Journal of the European Union."

As a part of procedure, questionnaires were sent to the companies within Gani group, namely Foshan Gani Ceramic Co. Ltd and Qingyang Gani Ceramic Co. Ltd. None of them required the application of rules according to the market economy treatment.

Investigation of dumping was conducted for the period from 1 January 2013 to 31 December 2013. The USA was chosen as an analogue country for the determination of normal value.

During review investigation, it was found that:[105]

- Wonderful group had sold its shares which it had possessed in the Gani group.
- There was no any corporate or structural connection between above mentioned groups
- Since the relationship between Wonderful and Gani group had changed dramatically, single duty rate was not appropriate for the objective of anti-dumping measures.
- Above shown facts made clear that there was a need for the imposition of separate duties.

The second step for investigation was an assessment of situation which was essential for dumping margin review. Recital 25 of Commission Implementing Regulation specified the circumstance between Wonderful group and Foshan group as follows:

- They did not share production facilities
- They did not share sales companies
- They did not subcontract for each other

Thus, it was confirmed that the situation which was important for the review of dumping margins had not changed.

Recital 27 of the above mentioned Regulation stated that:

' In these specific circumstances, the Commission considered that the cessation of the relationship did not change the functioning of each of the two groups in any way that has a bearing on the calculation of their dumping margins. Therefore, amending these dumping margins on the basis of new calculations is not warranted under Article 11(3) of the basic Regulation.'

[105] Commission Implementing Regulation (EU) 2015/409 amending Council Implementing Regulation (EU) No 917/2011 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China [2015] OJ L 67/25, recital 22-23

Recital 28 further pointed out that " the separate dumping margins calculated in the original investigation should be imposed as individual duties. These dumping margins are 13,9% for the Gani group and 32,0% for the Wonderful group."

Taken into consideration above mentioned statements, the European Commission adopted Commission Implementing Regulation regarding amendments to the Regulation No 917/2011 and it was published in the Official Journal of the EU on 12 March 2015.

Changed anti-dumping duty rates were stated in the Article 1 of Implementing Regulation as follows:

- Dongguan City Wonderful Ceramics Industrial Park Co. Ltd and Guangdong Jiamei Ceramics Co. Ltd 32,0%
- Qingyuan Gani Co. Ltd and Foshan Gani Ceramics Co. Ltd 13,9%

Conclusion

In the above mentioned case I tried to cover all steps of the EU anti-dumping proceeding on imports of certain ceramic tiles from China. Although, the expiry date of imposed measures is 16 September 2016, there are some issues that are argued.

First of all, I would like to describe the arguments of Jonas Kasteng, Trade Policy Adviser of Sweden based on the report published by the National Board of Trade in 2012.[106] He claimed that anti-dumping duties imposed on Chinese ceramic tiles were inappropriate according to the following statements:

- Between 2009 and 2010, there was an increase in terms of the average price of imported Chinese products which was an important indicator for the assessment of dumping.
- It was clear form the statistics that, the main reason of the injury experiencing by the EU ceramic tiles industry was a decrease of demand and production due to the economic crisis.

It is clear that, above mentioned arguments were based on economic factors. However, as I mentioned in the steps of proceeding, all economic indicators were taken into account for the determination of dumping.

As can be seen from the Commission Implementing Regulation concerning the imposition of definitive duties, investigation team confirmed that, increase of import price was a general trend,

[106] Jonas Kasteng, Paving the Way for Unfair Competition: The Imposition of EU Anti-Dumping Duties on Ceramic Tiles from China, National Board of Trade, February 2012

therefore could not be only linked to the Chinese products.[107] Also, impact of economic crisis on consumption and production was not disregarded by the Commission for the assessment of dumping. In fact, based on the facts it was confirmed that, import from China would cause to injury even without the existence of an economic crisis.

In my opinion, factual and legal issues of the case are sufficient for the justification of the anti-dumping duties imposed on Chinese products. Although some people argued that anti-dumping duties imposed on ceramic tiles from China limited the competition, I would argue that, objective of such measures was to protect the ceramic tiles industry from unfair import of goods.

[107] Council Implementing Regulation (EU) No 917/2011 OJ L 238/10, recital 109

Conclusion

As can be seen from the main chapters of the thesis, this study was set out to analyze the concept of "anti-dumping duty" as an EU trade defence instrument and examined theoretical and practical aspects in this context.

In the EU system, anti-dumping is regulated by the basic anti-dumping Regulation which complies with WTO obligations. However, unlike the WTO rules, the EU legislation requires the additional condition for the use of anti-dumping duties, namely " Union interest". According to that requirement, anti-dumping duties can be applied if they are not against the Union interest. Common conditions include determination of dumping, injury and casual link between them.

The leading role in the EU anti-dumping investigations belongs to the European Commission. It can initiate an investigation upon the complaints of producers or on its own initiative. Moreover, the Commission ensures the efficiency of the anti-dumping measures. In most cases, ad valorem duties are imposed, which demonstrates the percentage of the import value of the product concerned.

One of the main distinctive features of the EU anti-dumping system is "lesser duty rule". According to this rule, the European Commission should impose a lower duty if it is sufficient to remove the injury caused to the Union industry. This rule ensures that the rate of imposed anti-dumping duty does not excess the necessary level of duty for the elimination of injury.[108]

As has been noted in the case study, two main questions that are arised in the anti-dumping investigations are about the treatment to the countries with non-market economy status and the nature of the anti-dumping measures. AD cases discussed in this thesis contains arguments of China regarding the above mentioned problems.

However, it is clear that distortions taking place in the economic governance of China are contrary to the criterias of market economy. Insufficiency of economic reforms by government makes the use of non-market economy rules during anti-dumping investigations inevitable. In a such case, use of analogue country and adjustments for the calculation of normal value during anti-dumping investigations is valid and does not cause to the discriminatory or unfair decision.

Nowadays, disputes regarding the non-market-economy status is still going on. The subject of the arguments is an interpretation of Section 15 of Chinese WTO Accession Protocol. China

[108] The lesser duty role in trade defence investigations, National Board of Trade, Sweden, 2013

claims that, as the provision of Section 15 has expired on 11 December 2016, it should be granted market-economy status.

In 17 March 2016, Cecilia Malmström, Commissioner for Trade made a speech regarding the above mentioned situation. She offered three options of dumping calculation in the future. The first option was the way applied until today, the second offer was the removal of China from the list of non-market-economy countries without any condition and the third one was the change of the method of calculation following the changes to the legislation.[109]

I consider that, application of the current rule for the dumping calculation will be the best option whether China does not accomplish all necessary conditions for the market-economy status. In fact, removal of China from the list of non-market-economy countries can make problems for the trade defence system of the EU.

The second issue that has been argued in the thesis was the nature of anti-dumping measures. In both cases analyzed in the second chapter, China claimed that anti-dumping measures imposed by the EU, limited the competition.

In my opinion, as can be seen from the facts of cases that, the use of anti-dumping measures in both cases served the protection of EU interests against unfair trade practices. The objective of such measures was removal of trade distorting effects of dumping caused by the countries concerned. On the other hand, transparency and scrutiny principles applied during investigations also confirm the reliability of anti-dumping measures.

Thus, as a most widely used form of trade defence instrument of the EU, anti-dumping measures are imposed to eliminate obstacles for fair trading conditions. The absence of international competition authority for the regulation of anti-competitive practices highlights the significance of such measures. The use of anti-dumping duties bases on the principles of efficiency, rigorousness and compliance with international trade rules. However, steps regarding the increase of transparency and predictability should be proceeded for the credibility and efficiency of anti-dumping investigations as mentioned in the proposal of the Commission.[110]

[109] European Commission Trade Defence Conference. Speech of Cecilia Malmström, Commissioner for Trade: Trade defence and and China: Taking a careful decision. 17 March 2016, Brussels

[110] Edwin Vermulst, Olivier Prost, Workshop, Modernisation of the EU's trade defence instruments. Directorate-General for external policies. April, 2014. <http://www.europarl.europa.eu/RegData/etudes/workshop/join/2014/433842/EXPO-INTA_AT(2014)433842_EN.pdf> accessed 15 June 2016

Bibliography

Books:

Van Bael & Bellis; EU Anti-Dumping and Other Trade Defence Instruments, 2011, 5th edn, Kluwer Law International.

Themitokstoklis K. Giannakopoulos; A concise guide to the EU Anti-Dumping/Anti-Subsidies Procedures, 2006, Kluwer Law international

Qingjiang Kong; China-EU Trade Disputes and Their Management, 2012, World Scientific Publishing Company

Luo, Yan; Anti-dumping in the WTO, the EU and China: the rise of legalization in the trade regime and its consequences, 2010, Kluwer Law International

Müller, Wolfgang, Khan, Nicolas, Scharf, Tibor; EC and WTO anti-dumping law: a handbook, 2009, 2nd edn, Oxford University Press

Sebastian Farr; EU Anti-Dumping Law: Pursuing and Defending Investigations, 1998, Copenhagen Business School Press

Official documents:

Council Regulation (EC) 1225/2009 on protection against dumped imports from countries not members of the European Community [2009] OJ L 343/51

Commission Regulation (EC) No 553/2006 on imposing a provisional anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam [2006] OJ L 98/3

Council Regulation (EC) No 1472/2006 on imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam [2006] OJ L 275/1

Commission Regulation (EU) No 258/2011 imposing a provisional anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China [2011] OJ L 70/5

Commission Regulation (EU) No 258/2011 imposing a provisional anti-dumping duty on

imports of ceramic tiles originating in the People's Republic of China [2011] OJ L 70/5

Report:

Jonas Kasteng; Paving the Way for Unfair Competition: The Imposition of EU Anti-Dumping Duties on Ceramic Tiles from China, 2012, National Board of Trade

Articles:

Zheng Lu, Tianqin Yan, Xianq Deng; EU-China Economic Relations: Interactions and Barriers; Review of European Studies, 2014, Vol.6, No.4; Canadian Center of Science and Education

Lucy Davis; Anti-dumping investigation in the EU: how does it work?, European Centre for International Political Economy (ECIPE), 2009, No.4.

Mai, Y.H.; An analysis of EU anti-dumping cases against China, Asia Pacific development journal, 2003, vol.9(2)

Dunoff, Jeffrey L, Moore, Michael O.; Footloose and duty free? Reflections on European Union-Anti-dumping measures on Certain Footwear from China; World Trade Review, 2014, vol.13(2)

Liu Yinan; The EU's Anti-dumping actions against Chinese products; International Journal of Management and Economics, 2014

Internet sources:

http://ec.europa.eu/trade/

http://ec.europa.eu/eurostat

http://trade.ec.europa.eu/tdi/