« The Surrogate Country System for WTO Antidumping Investigations against Non-market-economy Countries: China as an Example»

by

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Abstract

This thesis examines the Surrogate Country System adopted by WTO members in their antidumping investigations against non-market-economy (NME) countries. In this paper, the Author points out that the existing relevant WTO regulations can easily become importing countries' tool of protectionism. Meanwhile, the obvious legal gap in the WTO laws helps the protectionism by leaving large discretion to importing countries. To reveal the irrationalities of the Surrogate Country System, this paper uses China, a typical NME country, as a sample to display how the system is applied in practice. Then, the paper examines the irrationalities of existing regulations. Towards above issues, the Author puts forward several proposals in Chapter 4. The Author argues for distinguishing transformational countries from NME countries. In cases involving transformational countries, the Author proposes a three-step methodology to calculate the normal value. The Author also provides several strategies for Chinese Government and exporters.
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Introduction

Since the late 1970s, antidumping measures have been frequently used as a remedy against unfair competition under the World Trade Organization (WTO) system\(^1\). Since the establishment of the WTO in 1995, 4230 antidumping initiations have been recorded\(^2\).

Over time, antidumping duties, which were originally designed to address unfair competition of exporting companies, have become a form of protectionism abused by many importing countries\(^3\). For the past 17 years, China has been the primary target of antidumping proceedings in the world. Of the 4230 WTO antidumping initiations, 916 of them have been launched against China\(^4\). These proceedings against China have been launched by the four historical developed economy users of antidumping measures (the United States, Canada, Australia, the European Union); More recently, India has been an active user of antidumping measures against Chinese products. Scholars in China explain this phenomenon in different ways. The most prominent reason is based on the non-market-economy (NME) status of China.

According to the theory of free trade, domestic prices of products in a NME country cannot reflect the normal value in the “ordinary course of trade” as required by the WTO regulations. Thus, in an antidumping proceeding involving a NME country, the importing country is empowered to use the prices of a third country – known as a “surrogate country”- as the comparable price to calculate the “normal value”.

Unfortunately, WTO does not provide detailed instructions on the application of the surrogate country system. Consequently, methodologies of choosing a surrogate country and calculating antidumping duties are formulated under domestic legal regimes of importing countries.


\(^3\) Idem

\(^4\) The secondary target is North Korea, 306 of 4023 initiations. *See* The 2012 Antidumping Initiations Report
Professor Chad. P. Bown claims that such methodologies are highly likely to result in more
determinations of dumping and much higher antidumping duty rates\(^5\).

In China’s 2001 WTO Accession Proposal, China was required to commit that it would be
considered as a non-market-economy (NME) country until 2016. The requirement was based on
the perspective that Chinese economic market was controlled or manipulated by the government,
directly or indirectly. As a result, prior to 2016, in antidumping initiations against Chinese
products, importing countries are able to adopt the Surrogate Country System which was
designed for NME countries. Therefore, this system empowers an importing country to choose a
third country as a surrogate country when it launches an antidumping investigation proceeding
against Chinese products. The proceeding is adjudicated by the domestic antidumping authorities
of the importing country under its domestic laws. The third country is normally nominated by the
initiating companies of the importing country. The investigated exporters are given the
opportunity to object the nomination by pointing out its inappropriateness and suggest their own
third country. Hence, if the respondent (the exporters) do not raise an objection, the nomination
of the local companies will be adopted. If the antidumping investigation ends with a positive
conclusion, the importing country will impose an antidumping duty on investigated products.
During such a process, the Chinese government cannot actively participate in, because it might
be accused of interfering internal affairs of another sovereign country. Nevertheless, the Chinese
government can be involved if the investigated Chinese exporters request support from their
country, or if the Chinese government seeks to settle the dispute by negotiation. Or, China can
directly challenge an antidumping investigation in the WTO Dispute Settlement system.
Unfortunately, both Chinese exporters and the Chinese government have been reluctant to
actively participate in antidumping investigations in importing countries, or raise disputes before
the WTO Dispute Settlement Body (DSB). The negative attitude of both Chinese exporters and
the Chinese government is determined by many reasons. For example, in earlier years, Chinese
exporters did not have enough financial resources to undertake an overseas legal proceeding.

And China did not have a responsible authority to respond to antidumping investigations against China until 2004. The Chinese government might have thought it is a “waste” of time and money on the cases that they could not win under regulations governing the Surrogate Country System. I will explain these issues in detail in later chapters.

After a brief introduction to the WTO antidumping laws in Chapter 1, I will focus on China in Chapter 2. I will describe the situation that China now faces. I will illustrate the causes and effects of such a situation in Chapter 3. Then, in Chapter 4, I will specially focus on the Surrogate Country System by examining the US and the EU domestic Surrogate Country System regulations. In Chapter 4, I will criticize the Surrogate Country System in general and I will point out the legal gap in the existing WTO Surrogate Country System. In Chapter 5, I will provide a new methodology to fill the legal gap in the WTO regulations. I will also provide some suggestions to Chinese producers and the Chinese government, so that they can mitigate the unfavorable effects of the present Surrogate Country System.
Chapter 1
Antidumping Laws in the GATT/WTO System

1.1 History of Antidumping Laws in the WTO System

Antidumping actions first originated in the Canadian domestic legal system under an Act of 1904, which introduced the legal idea of "special duty on under-valued goods". Similar measures came into force in many other developed countries over the next few years, for example, in New Zealand (1905), Australia (1906)\(^6\), and the USA (1916)\(^7\).

Antidumping provisions were officially adopted by the WTO in the international sphere in Article VI of the General Agreement on Tariffs and Trade 1947 (the GATT 1947). According to Article VI, a product of one country is considered to be “dumped” when it is “introduced into the commerce of [an importing] country at less than the normal value of the products”. Here, the ‘normal value’ refers to, according to Technical Information on Antidumping, WTO, “the price of the product at issue, in the ordinary course of trade, when destined for consumption in the exporting country market. … [w]hen there are no sales in the domestic market. … [t]he Agreement provides alternative methods for the determination of normal value in such case”\(^8\). Among these alternative methods, using third country prices as normal value is also one of the options. The conduct of dumping “is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry”. However, because adequate protection for domestic industries was ensured by various other instruments (for example, tariffs and quotas), antidumping investigations, antidumping orders and countries/regimes introducing antidumping were not widely used until the late 1970s\(^9\).

In the Tokyo Round, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 was reached, commonly referred to as the 1994 Antidumping

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\(^6\) Dan Ciuriak, “Anti-dumping at 100 Years and Counting: A Canadian Perspective”, *The World Economy* (May 2005), 28 (5), 641-642

\(^7\) The US Anti-Dumping Act of 1916

\(^8\) “Technical Information on Antidumping”, WTO, online: WTO <http://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm>

\(^9\) Michael Trebilcock (2011), Chapter 6, 61
Agreement. It is a multilateral agreement binding all WTO member states. Its Article 2.1 provides a more detailed definition of “dumping”. A product is to be considered as being dumped when it is “introduced into the commerce of another country at less than its normal value”, which occurs “if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country”. Three standards are used to identify dumping. They are 1) exporters sell investigated products lower than the normal value in the importing market; 2) the producers in the importing market suffer substantial injury; 3) there is causation between the injury and the conduct of exporters.

Other provisions in Article 2 provide detailed regulations with regard to other special conditions of dumping, including determinations of injury and causality, provisional measures and imposition of antidumping duties.

Antidumping duties are by far “the most frequently used measure in the trade remedy arsenal”\textsuperscript{10}. During the period of 1995 to 2012, there have been 4230 initiations of antidumping proceedings in total\textsuperscript{11}. India, followed by the US, were the leading initiators of antidumping measures\textsuperscript{12}.

1.2 Rationales for Antidumping Duties

Typical dumping cases involve geographic price discrimination/price differences. Namely, the same products are sold of lower prices in export markets than they are in the domestic market. This is unusual because the price in foreign markets should be higher than it is in the domestic market due to additional costs, such as transportation costs\textsuperscript{13} and exporting/importing taxes. As a result, exporters are accused of artificially underpricing their products in a foreign market, so that they can drive the local firms out of the market and predatorily take over the market. Predatory pricing is prohibited because it interferes with the basic principles of fair trade. Even after domestic authorities have taken antidumping measures and the prices of involved products have

\textsuperscript{11} The 2012 Antidumping Initiations Report (\textit{Supra} Note 2)
\textsuperscript{12} Trebilcock (2011), Chapter 6, 61
\textsuperscript{13} Trebilcock (2011), Chapter 6, 70
recovered, domestic companies may find it difficult to reenter the market. While the country loses the industry, local customers also lose their access to cheaper products because the prices go up dramatically after predatory exporters have taken control of the importing market. Meanwhile, the importing market’s order has been destroyed. Nobody in an importing market may benefit from predatory pricing. Hence, predatory pricing is prohibited in many countries’ domestic competition or antitrust laws. For the same rationale, it should also be prohibited in international trade. However, in reality, “a study by Hutton and Trebilcock of the thirty cases between 1984 and 1989 in which Canada imposed antidumping duties found that none could be supported on predatory pricing grounds.” A similar conclusion can be found in an unpublished OECD paper as well. Regardless of the consequent damage, predatory pricing should at least be prohibited in theory. However, after we accept this perspective, does it follow that all types of dumping should be banned, even if it is not caused by predatory pricing? I would give a positive answer. One rationale is that motivation is not a key component to identify dumping. As long as exporters have sold their products at prices lower than normal value, and their conduct has caused damage to an importing market, these exporters should take the responsibility for their behavior.

On the contrary, some commentators argue that antidumping duties should only be imposed when producers dump products at predatory prices. Aside from motivations, price discrimination may be caused by many non-artificial factors, such as price elasticity, or dramatic currency appreciation. Because exporters should take the responsibility only for their own behavior, it is


15 Trebilcock (2011), Chapter 6, 71


19 The situation may happen like this. Exports from State A enter the market of State B, when the currencies of State A and B are stable. Suddenly, the currency of State A rises and nothing changes in State B. Namely, the currency of State A is more valuable at the moment. Consequently, if the selling price in the State B stays still, its value will be lower than the normal value in the domestic market (the exporting market). However, currency appreciation does not make exporters to pay more in their domestic market. It is not reasonable for them to raise their price in the importing market since they do not have extra costs and they do not know how currency will
irrational to ask them to pay for the damages caused by changes of the global market itself, especially the changes happened out of their control.

It is still controversial whether dumping can be exempted for certain reasons. The question is more complicated since there is a trend that antidumping measures are used as tools of protectionism by some countries. It is easier to identify dumping if all forms of price discrimination are considered as dumping.

I consider that as long as exporters’ conduct has caused serious material injury to the importing market, antidumping duties should be imposed as a remedy, while they should not be punished if the price discrimination happens for reasons not caused by involved exporters. Meanwhile, even if dumping is identified, other factors should be taken into consideration to determine the duty rates. Other factor may include motivation, or if investigated parties have done remedial measures after they committed dumping.

After a brief introduction of the contemporary WTO antidumping laws, I will focus on antidumping investigations and dispute settlement (DS) processes against Chinese products, and the unfavorable situation that China faces in these proceedings.

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float in the future. However, in this case, according to the test in the existing antidumping law, exporters’ non-feasance can also be identify as dumping and these exporters are still responsible for any damages caused.
Chapter 2
China’s Unfavorable Situation in WTO Antidumping Proceedings

2.1 China as the Primary Target in WTO Antidumping Proceedings

Antidumping measures were originally designed as a trade remedy to prevent unfair competition. However, in many respects, antidumping measures have become “the protectionist remedy of choice” against low-price importing products.

China has been a victim of these protectionist antidumping measures. This is reflected in antidumping cases against Chinese products. “Since 1999, the number of new investigations against Chinese exports from the four historical developed economy users of antidumping measures (United States, EU, Canada, and Australia) has leveled off at roughly twenty per year.” Up to 2012, more than 30 countries have opened 916 antidumping initiations in the WTO against Chinese products, which accounts for 23 percent of all WTO antidumping investigations. The second largest target is Republic of Korea (North Korea), which has been the subject in 306 antidumping initiations. “Although the WTO has reported an overall decrease in anti-dumping investigations and measures, China remains the most frequent subject of new investigations.”

“The sheer number of anti-dumping cases against China has made it apparent that China is perceived as a threat to many other WTO member”, which has made it as the primary target in contemporary antidumping measures.

20 Trebilcock (2011), Chapter 6, 61
21 Bown (2010), 6
24 Idem, Tanczos(2008), 78
2.2 Reasons for China as the Primary Antidumping Investigations Target

I have provided a brief description of the situation that China faces in the WTO antidumping investigation proceedings against Chinese products. I will outline several possible reasons for this situation\textsuperscript{25}.

An obvious reason that I will point out, but not discuss and bate, is that China has been the biggest exporting country in the world for several years. The more products China sells to the world, the more conflicts may happen between it and its competitors. This is also one point that should be taken into consideration when we talk about the reasons for China facing more WTO antidumping investigations.

2.2.1 Chinese Exporters’ Dumping

It is true that some Chinese producers dump their products in importing countries’ markets. This was especially true in the initial stage of China’s opening-up and reform. In some cases, Chinese producers commit predatory dumping in order to dominate the importing market with super-low prices; in other cases, dumping might be caused by other factors, such as massive product surpluses. After the economic revolution of China in 1978 (China’s Reform and Openness\textsuperscript{26}), a large group of Chinese domestic producers were deceived by the rapid development of manufacturing development. They blindly replicated the trend and produced goods in greater quantities. This resulted in a massive product surplus in the domestic market, when supply eventually outstripped demand in related markets. Consequently, in order to survive and to recover as much of their costs as possible, Chinese domestic producers tried to develop overseas markets by providing their goods at extremely low prices, which essentially caused dumping in the foreign markets.

\textsuperscript{25} See reasons discussed in this chapter in \textit{Group Economics Research}, 2007 (28), 134-135

\textsuperscript{26} China’s Reform and Openness is a long-standing transforming process starting from 1978 by Deng Xiaoping. This revolution is still ongoing now and “openness” of China is considered as a principle national policy. China’s accession to the WTO can be regarded as one step of China’s Reform and Openness. It is believed that China may use the WTO as a track to be involved in global trading, considering the WTO is an authoritative international trading organization with more than 250 member states.
Chinese exporters dumped in foreign markets more frequently in the early stage of China’s Reform and Openness after 1978, which triggered importing countries’ antidumping investigations against Chinese products. One possible explanation would be that Chinese producers were not familiar with international trade regulations when they initially entered the global trading market. In the early stage of China’s Reform and Openness, Chinese producers were exposed to a complex body of international trading regulations. It took time for them to understand the rules and trading systems of importing countries. In addition, dumping was not illegal in China until 1994\(^\text{27}\). Hence, they were probably not aware of the illegality of dumping.

I do not consider this as an acceptable explanation. Chinese producers cannot be excused from antidumping duties (or any other international trade obligations) because they did not have knowledge of the rules in the foreign market or the international trading market. It is their duty to be aware of relevant regulations before they enter any foreign market. Also, regardless of the motivation, these exporters should take the responsibility for the damages they have caused to importing markets.

In the 2001 China’s WTO Accession Proposal, China agreed to incorporate the WTO trading regulations into China’s legal system, including the WTO antidumping laws. With the decree of the new Chinese Antidumping Regulations (2004), Chinese domestic exporters have a clearer understanding about dumping, antidumping measures and the WTO antidumping laws\(^\text{28}\). Therefore, compared with the early stage of China’s Reform and Openness, Chinese producers’ dumping diminished after its 2001 accession. Yet, while dumping is diminishing, antidumping investigations against China are increasing. Does it reveal the fact that some countries are

\(^{27}\) The first relevant provision appears in Article 30, Foreign Trade law of the People’s Republic of China 1994, which was decreed in both Chinese and English. Article 30, Foreign Trade law of the People’s Republic of China 1994, Where a product is imported at less than normal value of the product and causes or threatens to cause material injury to an established domestic industry concerned, or materially retards the establishment of a particular domestic industry, the State may take necessary measures in order to remove or ease such injury or threat of injury or retardation.

\(^{28}\) I believe that domestic producers do not have an accurate understanding of the WTO antidumping laws until those rules became a part of Chinese legal system and written in Chinese, instead of English. It is because language is clearly one of the barriers of understanding. Also, Chinese Antidumping Regulations is basically a copy of the WTO antidumping laws, so that Chinese exporters can have a general sense about the WTO antidumping laws from Chinese domestic regulations.
intended to protect local markets by initiating more antidumping investigations against China? Possibly. I will continue with this topic in 2.2.3.

2.2.2 Non-market-Economy Status and Surrogate Country System

According to Annex I of the GATT 1947, a country should be considered a non-market economy if interested parties in its market are not independent of others and price is not the sole consideration. In this situation, the importing country is given the discretion to “designate a surrogate country and use the price there as a comparable price to calculate the normal value of products exported from non-market economies.”

When China applied for accession to the WTO in the early 1990s, China was required to agree that it would be automatically considered as a non-market-economy (NME) until 2016. This requirement rested on the basis that China was transforming from a planned economy to a market economy. And China’s market prices were substantially decided, controlled or manipulated by the state, directly or indirectly, through macro-control policies and various other economic policies and the existence of state-owned(or state-controlled) enterprises.

Unfortunately, the WTO provisions do not provide further instructions about how to choose a surrogate country. Therefore, the methodology is largely regulated by relevant domestic antidumping laws. Such methodology varies from one state to another. The most typical ones are the US surrogate country regime and the analogous EU regime.

Under both regimes, an importing country has the discretion to identify a third country as the surrogate country and use the prices in this country as a comparable normal value. Producers from both exporting and importing counties have the right to suggest third countries. Both parties can request for a hearing before antidumping authorities make their choice. Yet, antidumping authorities of the importing country have the decision-making power to reject these parties’

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29 Paragraph 1.2, Ad Article VI, Annex I of the GATT 1947
31 Accession of the People’s Republic of China, WT/L/432, Decision of 10 November 2001
32 The EU regime is also known as the analogous country system. But I would like to use the term “the Surrogate Country System” to stand for both the EU and the US regimes, to avoid the confusion about the terms. Apart from the different names, the EU and the US regimes are very similar to each other in theory. I will give detailed description in next chapter.
suggestions. No regulations mention whether parties in a case can appeal if it is not satisfied with authorities’ choice of third country. In addition, both regimes adopt the principle that the identified country will be considered as a surrogate country unless the investigated party provides sound evidence showing the inappropriateness. Further, the EU sets a time limit for investigated parties to make their comments. The investigated parties are given 10 days after the EU publishes the chosen surrogate country.

These methodologies may seem rational to some degree. Yet they are also general, flexible and ambiguous. They can be utilized in an arbitrary and unfair way as a form of protectionism. And they will result in more determinations of dumping and much higher duty rates.

In a case, when an importing country rejects a party’s suggestion and chooses a third country, it does not necessarily provide a convincing reason for its choice. When it is inappropriate, the choice will not be changed unless the investigated party provides compelling evidence to show the inappropriateness. However, it would be extremely difficult for an investigated party to collect information on the domestic economic market of a third country, considering the two states maybe geographically remote from each other or the third country may not be willing to provide data about its domestic market. In addition, the time limit in the both regimes makes it more difficult for the investigated party to collect any such information.

For example, the US imposed antidumping duties on Chinese solar panel products in October 2012. The investigated parties from China suggested that India was an appropriate surrogate country because India had a substantial and comparatively mature solar industry. However, the US Department of Commerce (the USDOC, one of the authorities responsible for the US antidumping investigations) refused and used Thailand as a surrogate country, as suggested by the US industry. Thailand had a much younger solar industry. So the solar panel products were sold at a much higher price in Thailand, which caused a larger dumping margin, and higher antidumping duties on Chinese solar panel products. The USDOC did not make public their reason for supporting the US industry’s suggestion. Hence, it remains arguable whether the solar product prices in Thailand are comparable prices. One commentator points out that the real

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33 EC Regulation No 1225/2009 on protection against dumped imports from countries not members of the European Community. Article 2.7(a); Hereinafter “EC Regulation No 1225/2009”

34 idem. However, the time limit can be extended with agreement.
purpose of the US antidumping investigations is to protect the small and medium US local companies\textsuperscript{35}. This is to say the USDOC would choose the third country which provides more protection to its domestic industry, regardless of the suggestions made by investigated parties, even though this may cause an unnecessarily high antidumping duty on the products of foreign exporters. If this is true, it means that the US is using antidumping duties as a protectionist measure to protect its domestic market by setting up more trade barriers for foreign competition.

2.2.3 Some Countries Use Antidumping Measures as a Protectionist Remedy

As mentioned above, the methodology can be used as a protection remedy due to its arbitrariness and ambiguity. But, are some countries doing so in practice? More specifically, are some countries using antidumping measures as a protectionist strategy against China? My response is affirmative and I support my answer by comparing China and other NME antidumping proceeding targets.

I find support for my affirmative response in Professor Chad P. Bown’s report (2005). From Table 2 in Bown’s report (Annex 2), we find that, from 1995 to 2004, China remained the No. 1 target of US and EU antidumping investigations\textsuperscript{36}. After China’s 2001 accession, more EU investigations targeted China even though the total average amount of the EU antidumping initiations decreased (during 1995-2001, 36 to 37 cases per year, during 2002-2004, 25 cases per year). Moreover, according the Table 2, a large percent of these investigations ended with antidumping duties, 71.4 percent in all US antidumping cases and 65.4 percent in all EU cases in 1995-2001 period. Nevertheless, in all the antidumping cases initiated by the US and the EU, only about half of them ended with measures, 53 percentage in the US cases and 61 percentage in the EU ones. In addition, it is also significant that average antidumping duty against China was 131.77 percentage during 1995 to 2001. The number increased to 148.38 from 2002 to 2004. As Professor Bown pointed out, the average duty against China was almost twice as high as the average facing all exporters\textsuperscript{37}. “These combined features of the data for the US use of


\textsuperscript{36} Bown (2010), Table 2

\textsuperscript{37} Bown (2010), 9
antidumping indicate that, in practice, antidumping in the United States has resulted in discriminatory treatment of imports from China relative to other source countries during the 1995 to 2001 period” 38.

I have not been able to find more recent data in professional reports. Hence, in the following paragraphs, I will compare the number of initiations against China and that of the initiations against other NME countries.

At present, only a small number of WTO member states are considered as NME countries. Besides China, other NME WTO members include Tajikistan39, Vietnam and Russia. Additionally, the EU, as a major antidumping measures user, also identifies several NME WTO observer countries in its domestic regulations40, including “Azerbaijan, Belarus, North Korea, Tajikistan41, Turkmenistan and Uzbekistan”. According to the WTO Anti-dumping Initiation report 2012 (see Annex 1), from 1995 to 2012, there were 38 initiations against Vietnam, 127 against Russia, 22 against Belarus, 306 against North Korea (Republic of Korea), and 3 against Uzbekistan42. Although I have mentioned seven countries here, I do not consider many of them as comparable to China. Among these seven countries, North Korea receives most investigation, although it is not a WTO member or an observer country. I am not surprised because, understandably, if a country is reluctant to open its market, it will be considered as a NME state and it will receive a large number of antidumping investigations. Although North Korea is a typical NME country, I am not convinced North Korea is a comparable case to China. This is because Chinese economy is apparently more market-based and China is more involved in international trade. Accession to the WTO can be considered as proof that China wants to open its market and to transform itself into a market economy. In the other six countries as listed, three of them are observer countries (Azerbaijan, Uzbekistan and Belarus), while the rest countries are WTO members, including Tajikistan, Vietnam, and Russia. According to this WTO report (Annex 1), there is no available data for antidumping investigations against Azerbaijan and

38 Bown (2010), 8
39 Tajikistan became WTO member in March, 2013. Hence, I will still consider it as an observer country for the purpose of comparison in this paper.
40 EC Regulation No 1225/2009, Article 2.7(a) note (1)
41 Tajikistan became WTO member in March, 2013. So it is still in the EU regulations now.
42 Unfortunately, I did not find the data for Azerbaijan and Tajikistan
Tajikistan. And, Vietnam, Belarus, Uzbekistan have much smaller exporting volume than China. Therefore, it is reasonable to expect that they will be less targeted. In short, the only comparable sample country is Russia. Even though it became a WTO member only in 2012, it has been dealing with the WTO/GATT for more than twenty years. Russia has several similarities with China. It was a socialist state, as China was. It is in the process of economic transformation, as China is. And it has large exporting volume\(^{43}\) as China does.

In practice, Russia is not always considered as a NME state. In 2002, both the EU and the USA announced their recognition of the market economy status for the Russia Federation\(^{44}\). Since then, Russia has been considered as a transforming country in WTO antidumping investigations. Therefore, in each antidumping case against Russian products, the market-economic condition of local industry involved is required to be evaluated.

Given the above facts, I have to question —— why is China not recognized as a transformational country while it has so many similarities with Russia? I am not convinced by the excuse that China committed to be a NME state in its WTO Accession Proposal. The contemporary global economy changes rapidly. In the past 12 years, the Chinese market has experienced several reforms. It is irrational to adhere to a commitment made 10 years ago and to ignore the fact that Chinese market is not as substantially controlled by the State as it used to be. I argue that the market status of investigated industry should be evaluated in each antidumping case against Chinese products. I will develop this perspective later in Chapter 4.

The recent solar panel case serves as an instructive example in another way. The EU initiated antidumping investigation into similar solar panel products six months after the US launched its investigation. There is no obvious evidence that the US and the EU have reached an agreement to suppress Chinese products. Yet, in reality, Chinese solar products manufacturers now have to defend themselves in both the US and the EU investigations. It is hard to know if some countries

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\(^{43}\) Russia is the eighth top exporting country in 2012, see “List of countries by exports”, Wikipedia, Online <http://en.wikipedia.org/wiki/List_of_countries_by_exports>. According to Wikipedia, “[t]his is a list of countries by exports, based on the The World Factbook of the CIA. The sums listed include re-exports that constitute the majority of the activity in smaller post-industrial countries”.

\(^{44}\) The USA announcement is available online <http://www.ma-rbc.org/news/item_economy.html>.

The information about the EU announcement is available at Chicago Tribune, online: <http://articles.chicagotribune.com/2002-05-30/news/0205300282_1_eu-leaders-russia-president-vladimir-putin>
build secret alliances against Chinese products by using antidumping investigations and duties as protectionist measures.

2.2.4 China’s Inadequate Involvement in Antidumping Proceedings

When working on the 2001 Chinese’s WTO Accession Proposal, “[t]he representative of China expressed concern with regard to past measures taken by certain WTO Members which had treated China as a non-market economy and imposed anti-dumping duties on Chinese companies without identifying or publishing the criteria used, without giving Chinese companies sufficient opportunity to present evidence and defend their interests in a fair manner, and without explaining the rationale underlying their determinations, including with respect to the method of price comparison in the determinations. In response to these concerns, … WTO Members would comply with the following:

…

b) The importing WTO Member should ensure that it had notified its market-economy criteria and its methodology for determining price comparability to the Committee on Anti-Dumping Practices before they were applied.

c) The process of investigation should be transparent and sufficient opportunities should be given to Chinese producers or exporters to make comments, especially comments on the application of the methodology for determining price comparability in a particular case.

d) The importing WTO Member should give notice of information which it required and provide Chinese producers and exporters ample opportunity to present evidence in writing in a particular case.

e) The importing WTO Member should provide Chinese producers and exporters a full opportunity for the defence of their interests in a particular case.

f) The importing WTO Member should provide a sufficiently detailed reasoning of its preliminary and final determinations in a particular case.”

According to the above commitments, Chinese exporters should be given full opportunity to learn about the methodology for determining price comparability (namely, the surrogate country

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system), as well as to make comments on it and defend themselves in the application of the methodology. Considering the situation that China faced prior to 2001, these all appear to represent major progress, although the representative of China failed to mention what should happen if the investigating authorities of the importing country ignored Chinese exporters’ comments in order to protect its local industries.

At present, the major antidumping measures users, such as the US and the EU, have included the methodologies of determining price comparability as a part of their domestic legislations. Hence Chinese producers are given full information about the methodologies. Also, Chinese exporters are given the chance to comment on the application of the methodologies. For example, both the US\(^\text{46}\) and the EU\(^\text{47}\) regulations provide that the investigated exporters are given the opportunity of a hearing and to provide their comments before the antidumping authorities make their determinations.

Nevertheless, although main importing countries have built up comparatively developed methodologies for NME exporting countries in antidumping cases, both the Chinese government and investigated Chinese corporations are reluctant to be involved in antidumping proceedings and to take advantage of the methodologies.

On the one hand, especially in early cases, corporations were absent in most antidumping investigation proceedings. The situation has improved now, but not much. It is understandable to some extent since overseas legal proceedings are time-consuming and costly for corporations. Meanwhile, corporations have no idea how possible it is that they can achieve a negative determination or cease an antidumping investigation. Yet these corporations overlook the fact that their absence in investigations may be more costly. According to Section 776 of the Tariff Act of 1930 (19 USC 1667e), if an interested party has failed to cooperate and provide information, the administering authority may use an inference adverse to the interests of that party\(^\text{48}\). In fact, in many cases, it is exactly such a reluctant attitude of Chinese exporters that results in adverse inferences against China, which leaves China in a passive position in antidumping proceedings.

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\(^\text{47}\) EC Regulation No.1225/2009, Article 21.2 & 3
\(^\text{48}\) Similar rules exist in most antidumping regimes.
On the other hand, the Chinese government is also reluctant to become involved in antidumping proceedings. First, before China’s 2001 accession, the government did not help Chinese exporters to respond antidumping investigations. Furthermore, although Chinese products are subject to high antidumping duties, and although China has faced 916 WTO antidumping initiations since 1995, China only appealed to the WTO DSB in six antidumping cases (DS368/DS379/DS397/DS405/DS422/DS449, as listed in Figure 1) before 2012. It is hard to understand why China has been so passive.

Table 1 – The WTO Antidumping Cases Appealed by China to the DSB

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
<th>Party</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>DS379</td>
<td>United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (Complainant: China)</td>
<td>United States</td>
<td>19 September 2008</td>
</tr>
<tr>
<td>DS397</td>
<td>European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (Complainant: China)</td>
<td>European Communities</td>
<td>31 July 2009</td>
</tr>
<tr>
<td>DS405</td>
<td>European Union — Anti-Dumping Measures on Certain Footwear from China (Complainant: China)</td>
<td>European Union</td>
<td>4 February 2010</td>
</tr>
<tr>
<td>DS422</td>
<td>United States — Anti-Dumping Measures on Shrimp and Diamond Sawblades from China (Complainant: China)</td>
<td>United States</td>
<td>28 February 2011</td>
</tr>
<tr>
<td>DS449</td>
<td>United States — Countervailing and Anti-dumping Measures on Certain Products from China (Complainant: China)</td>
<td>United States</td>
<td>17 September 2012</td>
</tr>
</tbody>
</table>

One explanation is that Chinese domestic administrative system was not developed to support Chinese exporters in WTO antidumping cases. Before 2001, China was not a WTO member, thus it could not complain to the WTO DSB. It was also not clear which domestic institution was responsible for responding antidumping cases against China. Hence no authority was designed to support Chinese exporters. After China’s 2001 accession, the Chinese Ministry of Commerce (CMC) has been assigned as the responsible authority for the antidumping cases that China complains about and responses in the WTO. Yet, it took several years for the CMC to start working because the entire Chinese governmental system and legal system were experiencing a fundamental reform to be consistent with the WTO rules, as required in the China’s Accession Proposal and such reform is not accomplished overnight.
Nevertheless, after CMC starting practically involving itself in antidumping cases against China, the Chinese government still appears to be reluctant to participate in antidumping proceedings or to appeal to the WTO DSB for the high antidumping duties imposed on Chinese products. One possible reason is that China is a new member of the WTO and seeks to avoid disputes or conflicts with other WTO members. This view, in my opinion, reveals that China has not fully understood the WTO and the international trade relation. Dispute settlement process is an important option to solve conflicts between states. It helps to remove trading barriers and to ensure that international trade flows as smoothly, predictably and freely as possible.

I believe that there must be other reasons. Potential profit is a determinative factor for the Chinese government to actively fight for its producers. In early cases, most investigated Chinese products were from labor-incentive industries, such as footwear, weaving bags. The profits in these industries were not large enough for the Chinese government to “waste” too much governmental resources in WTO antidumping proceedings. In addition, even if the Chinese government had have attended, it was still highly possible that these small exporters would quit the importing markets before disputes were settled, because they could not afford the high primary antidumping duties. The situation has changed somewhat in recent years. China has appealed to the WTO DSB for the importing countries’ determinations in six cases so far (Figure 1). Three of the six cases involved both dumping and subsidies issues. These investigated industries appear to be very important to China, so that the Chinese government financially supported and subsidized them. Therefore, it is understandable that the Chinese government was more willing to respond to these cases, to save its supported industries. Besides, in cases involving both antidumping and anti-subsidy investigations, China would face both antidumping and anti-subsidy duties if it lost the case. This fact gave China one more reason to actively participate into the antidumping proceedings. In the other three cases, the complainant countries were intended to target the entire Chinese industries of relevant products. China could not afford to lose the entire exporting market of any industry.

Another reason is that China does not want to lose cases. In many cases, the Chinese government knows it will lose before the cases start. It might be because the Chinese producers actually

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49 The main goal of the WTO, online: WTO <http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr00_e.htm>
committed dumping or because the exporters received subsidies from the Chinese government. In the latter circumstance, if the Chinese government admits that it provided subsidies, it will face anti-subsidy duties, which are as high as antidumping duties; if it denies subsidizing the exporters and claims that the exporters were actually borrowing money or purchasing goods from the government, the amount of money (the alleged subsidies) should be calculate as a part of the cost of the exporters. That is to say, the domestic price will increase and the importing countries will be able to easily prove that the Chinese producers were dumping in their markets by selling products lower than the domestic prices. Hence, the Chinese government is in a dilemma and its strategy is mostly to avoid the WTO proceedings. In addition, the Chinese government may be afraid of losing more cases. China sought the WTO membership for ten years. Chinese people and Chinese producers had high expectation for the potential benefits brought by the WTO accession. Nevertheless, benefits come with costs as well. The dramatic inflation (especially housing prices) and the currency appreciation of RMB have led Chinese exporters to suffer serious economic losses. They have started questioning whether the accession to the WTO was a good decision. I speculate that the Chinese government may seek to avoid disputes so that China will appear to face fewer problems. Especially, it does not want to lose a case which it has initiated. For the same reason, the Chinese government seldom appeals to the WTO DSB about the importing countries’ determination in their domestic antidumping proceedings, so that it will not embarrass itself before its people and may receive fewer challenges from its own people.

Regardless of the causes, without the support of the Chinese government, Chinese exporters are placed in an overwhelmingly asymmetrical relationship with the domestic producers of importing countries in antidumping proceedings. The absence of Chinese government and Chinese corporations’ participation also contribute to more positive determinations in antidumping investigations initiated by other WTO members.

The situation appears to be improving slightly. In several cases, investigated corporations have managed to terminate investigations by setting up alliances with each other. Also, CMC is

\[\text{In most cases, such an alliance is set up by industry associations; in other cases, it may be initiated by one of the corporations that are under investigation that time.}\]
more engaged in the proceedings. When a new investigation is initiated, CMC will gather investigated exporters to discuss their response strategies. It provides data to support the argument that the investigated industry operates in a market-economy context, so that local price should be taken as the normal value. CMC will also assist the corporations to collect information from the domestic tax system to calculate the domestic market price. Or when a surrogate country is chosen, CMC will help the corporations to negotiate with the chosen country to get access to its domestic data. Thus, the investigated corporations may achieve some relief by suggesting a normal value to the investigation authority, especially when the authority wants to protect its local enterprises by accepting their excessively calculated normal value.

Apart from dealing with antidumping proceedings, Chinese government’s participation makes it also possible to settle disputes “out of the court” in alternative ways, such as negotiation and mediation.

In brief, all the factors outlined here work together to make China the primary target of WTO antidumping cases.

China is treated as a NME country in antidumping investigations initiated by WTO member states. Yet, the GATT does not provide detailed instructions to guide the methodology of choosing a proper surrogate country. It leaves large room for investigating countries to design the methodology. The trend is that more antidumping cases against Chinese products have been initiated. It might be due to China’s increasing export volume. It might be due to Chinese exporters dumping in foreign markets. It might also be because some countries are using antidumping measures as a protectionist tool against China, by designing and applying an arbitrary methodology for choosing a surrogate country. In protectionist cases, China and Chinese exporters’ passive attitude makes the situation worse. In early cases, Chinese exporters normally failed to suggest a third country to the importing countries’ antidumping authorities. In more recent cases, Chinese exporters are more active in responding to investigations. Nevertheless, unfortunately, the Chinese government still does not fulfill its duty properly. Six appeals from China to the WTO DSB versus 916 initiations against China is not an acceptable number for Chinese exporters. As China is still in its transformation to a market economy, domestic producers need more guidance and support from their government.
In this paper, I will mainly focus on the Surrogate Country System and the involvement of China and Chinese exporters, because I believe these are the main reason that China is in such an unfavorable situation.

Given that China agreed to be treated as a NME country until 2016, its unfavorable situation in WTO antidumping investigations caused by applied methodologies will continue. The situation may change after 2016. Tietje and Nowrot\textsuperscript{51} give a positive answer in their paper in 2011. They provide two reasons. First, after 2016, the burden of proof shifts to other WTO members if they are not convinced that China is a market economy at that time. It is a matter of fact that China does no longer monopolize or substantially monopolize its trade, or fix its domestic prices. Nevertheless, there are concerns that other WTO members may request other restraints, considering that it is also a fact that the Chinese market is not totally free from Chinese government’s control and manipulation.

In Chapter 4, I will argue that China should be considered as a transformational country and the market economy status of involved industry should be evaluated individually in each antidumping investigation. If this was the case, China would face a more fair methodology. However, if Chinese exporters are determined to operate in non-market conditions, China will face more severer economic losses. This is because, in the context of increasingly global economic integration, more Chinese products will be involved in international trade, which puts more of the profits of the China producers and Chinese domestic market in danger of being targeted in protectionist antidumping investigations.

\section*{2.3 Consequences of China’s Unfavorable Situation in Antidumping Proceedings}

The most direct consequence is that massive levels of antidumping duty have been imposed on Chinese exports. Furthermore, loss of market share in the importing market is a common result. For example, in the color TV case (the EU vs. China, 1988), after a 44.6 percentage antidumping

duty was imposed on Chinese TVs, Chinese color TVs nearly disappeared from European markets.

Moreover, even if a panel or the Appellate Body rules in favor of China in some cases, antidumping investigations themselves still lead to Chinese exporters’ immediate loss of market share in an importing market. This is because provisional antidumping duties are imposed on the Chinese products before disputes are settled in the WTO DS system. Not all Chinese exporters can afford such a duty. Hence, some of them decide to leave the importing market before they lose more money; while some of others stay in the foreign market but raise their prices. With higher prices, their market share falls. In some extreme cases, small Chinese exporters are “forced” to quit and leave the exporting market in the early stages of investigations, simply because they cannot survive with such limited market share. This phenomenon occurs more often in low-cost industries since most exporters in such industries are small- or medium-sized-companies with fewer resources.

In addition, an anti-dumping investigation in one country normally results in chain reactions. Following the first initiator, other countries with a market for similar Chinese imports can easily launch an investigation on the same (or similar) basis. For example, the US initiated an antidumping investigation against Chinese solar panel products in early 2012. Six months later, the EU announced that they would also launch antidumping investigations on similar products for similar reasons.

With or without intending to do so, countries initiating an antidumping investigation and countries considering initiating an antidumping investigation form a virtual alliance against particular Chinese products. One advantage would be that, if one of these countries ends its investigation with a positive determination, every initiator can take the determination as a precedent and conclude its investigation on the same or similar basis. Following this logic, China may lose its market in multiple countries after one country initiates an antidumping investigation against Chinese products. After being targeted for almost two decades, China (both Chinese exporters and the Chinese government) has started to complain that western countries seek to
protect local producers by continuously initiating antidumping investigations and imposing excessively high antidumping duties by utilizing China’s NME status and choosing surrogate countries arbitrarily. In the following chapter, I will focus on the China’s NME status and the Surrogate Country System.

52 In some cases, several importing countries may initiate investigations with prior agreement, in order to be qualified as co-plaintiff in the following WTO DS proceedings. In other cases, launching countries do not explicitly express their willingness to form an alliance to sanction dumping conduction. One country normally launches new investigations following other countries, as the EU did in the solar panel case in 2012.
Chapter 3  
GATT/WTO Rules for Non-Market-Economy Countries

Considering China’s consent to be automatically treated as a NME country, it seems pointless to argue whether China should be considered as a NME country here\textsuperscript{53}. Thus, I will focus on the NME status of China and the surrogate system applied in antidumping cases owing to its NME status.

I will begin with an examination China’s NME status. In the second part, I will introduce the Surrogate Country System, and also describe the US and the EU regulations of the Surrogate Country System. In the third part, I will critique the existing surrogate country regimes.

3.1 Non-Market-Economy Status of China

The NME status of China is determined on the basis that China’s economic market is controlled or manipulated by the government, directly or indirectly.

Undeniably, in the early days of the People's Republic of China (The PRC), China was a non-market economy, dominated by state-owned enterprises and the government. However, since the opening policy of Deng Xiaoping in 1978, China claims that it is transforming from a non-market economy to a market economy, albeit with “Chinese characteristics”. Witnessing the rapid economic growth of China in the last thirty years, western economic commentators no longer insist that China remains a NME country, although they do not declare that China has become a market economy. It is reasonable to consider that China is in the transformation process and the economic status of China should be reconsidered\textsuperscript{54}.

Nowadays, most industries in China are market-based, as required in China’s WTO Accession Proposal. The government provides macro-controlling guidance. It tries to keep the market independent of other powers. It is clear that China has sought to transform the market into a free trade market by opening the market and introducing a large amount of foreign competitors into

\textsuperscript{53} The purpose of this paper to examine the antidumping cases where China is treated as a NME country. Therefore, I consider this question pointless to discuss here for the purpose of this paper. The questions is definitely meaningful for what China will face after 2016.

the Chinese market. Chinese government is also promoting new policies to privatize some state-owned enterprises and downsize of the rest, except for the fundamental infrastructure industries, such as telecommunication, electricity, hydropower, etc.

The situation is more complicated than it appears. On the one hand, we insist that a market should operate independently, which is a core value of a market economy state. On the other hand, I argue that the Chinese market has not grown mature enough to operate mainly on itself. In the process of transformation, the market itself has experienced several troubles, such as the inflation and bubble economy. Obviously, before the market could operate functionally itself, it desires the ‘help’ of the government. Before the China’s 2001 accession to the WTO, expressions such as “free market” and “market economy” are no more than terms of western economic management theories. The Chinese market, as well as Chinese merchandisers, learn these terms through their experience in trade with foreign companies in a global market. Without sufficient ‘interference’ of the government, it would be an almost impossible job for the market itself to accomplish the transformation in fifteen years (from 2001 to 2016, as required in the China’s 2001 Accession Proposal) while the same process took most western developed countries decades. To be clearer, my point is that the transformational process of China’s market will happen more smoothly if the Chinese government gives more guidance and support to the market. Meanwhile, it is also beneficial to the global trade if the Chinese market could complete the transformation in a shorter period.

Another point worthy of mention is that almost all pillar industries, which have crucial influence to China’s economic development, are state-owned or state-backed. This seems a model that China would like to apply in its way to capitalism. Economists identify this model as a new type of capitalism: State Capitalism.

A special report of The Economics, “The Visible Hand” (January 2012), provides a brief description of state capitalism of the emerging world. The report mainly focuses on typical cases of China, Russia and Brazil. According to the special report, state capitalism refers to an economic system which “tries to meld the powers of the states with the powers of capitalism. It depends on government to pick winners and promote economic growth. But it also uses capitalist
tools such as listing state-owned companies on the stock market and embracing globalization.\textsuperscript{55} State capitalism has only been developed for about a decade, but it has been proved to a big success in countries such as China, Russia and Brazil. It also claims “some of the world’s most powerful companies. The 13 biggest oil firms [in the world] … are all state-backed…. [And] successful state firms can be found in almost any industry”.

Such obvious success makes China believe “state-directed firms as a way-station on the road to liberal capitalism; rather,… a sustainable model”. But the special report also questions whether this could be a good model, especially when we discuss in a bigger picture of the global economic system. The special report addresses that, instead of combining the best of both state powers and capitalism, state capitalists actually intent “to avoid some of the pitfalls of earlier state-sponsored growth”\textsuperscript{56}.

It is still too early to say whether China will be a market-economy country in 2016. But it is for sure that China will not be recognized as a NME country that time, considering the changes have happened in the Chinese market. In my personal view, I identify China as a country in transformation, which is a concept different from a NME country. I consider this concept will be more accurate in antidumping cases involving countries that are not market-economy states. I will describe my opinions in Chapter 4.

3.2 The Surrogate Country System

In Jane Smith’s recent legal overview of US trade remedy laws and NME countries\textsuperscript{57}, she provides a legal summary of existing WTO regulations on the surrogate country. GATT 1947 is a main source of the Surrogate Country System, and it is interpreted in detail in cases decided in the WTO DS system.

According to GATT 1947, Annex I, Ad Article VI, para.1 subpara. 2, a country should be considered as a NME country if it “has a complete or substantially complete monopoly of its trade and … all domestic prices are fixed by the State… special difficulties may exist in

\textsuperscript{55} “The Visible Hand”, The Economics, 21 January 2012
\textsuperscript{56} Idem
determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.” “Importing countries have thus exercised significant discretion in calculation of normal value of products exported from non-market economies.58” This is to say, in antidumping cases involving producers from an recognized NME exporting state, the importing country is given the discretion to consider a proper methodology to calculate the normal value of products exported from non-market economies.

The prevalent methodology employs the Surrogate Country System, also known the analogous country system under the EU regime. In Smith’s report, she introduces the explanation of the WTO Appellate Body (AB) in a recent case. In the EU-Steel Fasteners AB Report59, the AB declares that the GATT provision “allows investigating authorities to disregard domestic prices and costs of such an NME in the determination of normal value and to resort to prices in a market economy third country60”.

In short, guided by the GATT provision, in antidumping cases investigated by the authorities of importing countries, the Surrogate Country System entitle the antidumping authorities to identify a third market-economic country as a surrogate country. The methodology of choosing a surrogate country is regulated under the domestic antidumping regulations of initiating countries. Therefore the methodology varies from nation to nation, although the substantive rules are similar. Rules for the Surrogate Country System under the US and the EU regimes are the most fully developed. In this paper, I will examine the US and the EU rules, in order to provide a general idea of the Surrogate Country System.

59 Appellate Body Report, European Communities—Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, WT/DS397/AB/R (2011); Hereinafter “EU - Steel Fasteners AB Report”
60 Steel Fasteners (EU-China) AB Report, Para 285
3.2.1 The US Regulations of the Surrogate Country System

In a US antidumping investigation, a surrogate country is chosen by the US antidumping authority, the United States Department of Commerce (the USDOC). The main legal resource is 19 USC § 1677b (2006), 61-Normal value (C),

“(1) In general,
If—

(A) the subject merchandise is exported from a nonmarket economy country, and
(B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined under subsection (a) [ie. Determination of Normal Value] of this section, the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.”

In 19 USC §1677b, para (C), subpara. (2), provides a supplementary provision that, if the authority does not find adequate information to determine “the normal value of subject merchandise under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which merchandise that is—

(A) comparable to the subject merchandise, and
(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, is sold in other countries, including the United States.”

Based on these provisions, in antidumping cases involving NME countries, the US Surrogate Country System adopts the test known as the “factors of production” approach. It requires “that the amount of each factor input be taken from a market economy country”62. The “factors of production” approach requires the investigating authority to consider the following factors: “(1)

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61 US Code, Title 19, Chapter 4, Subtitle IV, § 1677b. Normal value; Hereinafter “19 USC §1677b”
62 Jane Smith (2013), 2-4
hour of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation.  

This is not an exhaustive list. The USDOC has a large discretion to include other factors into the list. As Smith points out in her overview, the Omnibus Trade and Competitiveness Act of 1988 (OTCA) also supports the USDOC’s “broad claims of discretion, indicating that [US]DOC is to determine on a case-by-case basis whether the available information permits the use of the standard methodology or whether a different approach is warranted.”

Within its discretion, the USDOC states that it will consider “value factors in the following order of priority: (1) prices paid by the NME manufacturer for items imported from a market economy; (2) prices in the primary surrogate country of domestically produced or imported materials; (3) prices in one or more secondary surrogate countries reported by the industry producing the subject merchandise in the secondary country or countries; and (4) prices in one or more secondary surrogate countries from sources other than the industry producing the subject merchandise.”

Comparing the four new factors as stated by the USDOC (hereinafter “the USDOC statement”) to the precious factors in 19 USC §1677b (hereinafter “19 USC §1677b”), the changes are significant. The 19 USC §1677b focuses on the cost structure of an investigated product in a surrogate market economy, while the USDOC statement focuses more on the market price of the product in transnational trading between the NME state and a market economy, or between the primary surrogate country and other surrogate country/countries. Are the changes appropriate? My response is negative.

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63 19 USC 1677b. (C) para.(3)
65 Jane Smith (2013), 3-4, and it’s Note 22, which is “S. Rep. No. 100-71, 100th Cong., 1st Sess., 108 (1987) (stating that the bill ‘does not prohibit the [DOC] from using its normal methodology for determining foreign market value in cases regarding nonmarket economy countries. If information submitted by a nonmarket economy country to the [DOC] permits foreign market value to be determined accurately using the normal methodology, then the Committee expects such methodology to be used by the [DOC].’; see also Conf. Report No. 100-576, 100th Cong., 2d Sess. 591 (1988).”
I am not seeking to exclude the factors mentioned in the USDOC statement. These points are also helpful to determine the normal value in an antidumping investigation. The part I disagree with is that the USDOC statement should not ignore the 19 USC §1677b. After all, we are trying to calculate the domestic price in a chosen market, so that it can be considered as the “domestic price” in the NME market. The price in transnational trade is one way to reflect the normal value, but it should not be shift our attention from the real domestic market.

Regarding to 19 USC §1677b para(C), subpara.(4)\textsuperscript{67}, when evaluating the factors of production, the antidumping authority should consider the factors in a country that “at a level of economic development comparable to that of the [investigated] nonmarket economy country\textsuperscript{68}.”

Connecting this provision with the previous factors, I argue that the purpose of the previous factors is not only to guide the determination of normal value. The previous factors also work as the criteria of the choosing a proper third country. The chosen market should have some similarity with the NME country in the previous factors, so that the data from the chosen country will be meaningful in determining the normal value in current cases.

Unlike 19 USC §1677b, the USDOC statement begins directly with the steps after the third country has been chosen and goes straight to the part of identifying the normal value. Such a change means that the process of choosing a surrogate country completely depends on the discretion of the US antidumping authority, namely the USDOC.

As a remedy, the interested parties can propose third countries to the USDOC in a hearing before the final determination of dumping\textsuperscript{69}. For example, in an antidumping investigation involving China, a NME country, the USDOC will choose a third country itself or on the suggestion of the complaining party (or parties). If the Chinese party considers the choice is inappropriate, it is entitled to complain about the choice in the hearing. The choice can be revised if the investigated producers provide sound evidence for its inappropriateness. Despite this remedy, the final determination power belongs to the US antidumping authority. It can simply reject Chinese

\textsuperscript{67} 19 USC §1677b (2006), (C), para (4) states: “The administering authority … shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are —— (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.”

\textsuperscript{68} 19 USC §1677b (2006), para (4), sub para (A)

\textsuperscript{69} 19 USC § 1677c (2006) - Hearings
exporters’ suggestion by finding that the evidence provided is inadequate to prove its inappropriateness.

It is true that China can appeal to the WTO over the improper choice of surrogate country. Nevertheless, as mentioned, until very recently most Chinese companies were not willing to represent themselves in antidumping investigations. And the Chinese government has been reluctant to appeal to the WTO about improper choices of surrogate country\(^70\). Consequently, according to the adverse inference principle, the choice of the USDOC will be adopted if there is no objection, and no appeal in the WTO DS system.

In brief, on the one hand, the US Surrogate Country System does not provide a clear and detailed methodology for choosing a surrogate country. The choice largely depends on the discretion of the US antidumping authority. Such a regime leaves much scope for the US government so that it can over-protect its local industries by producing more positive determinations and imposing larger amount of antidumping duties. On the other hand, China’s lack of participation in antidumping investigations derives Chinese exporters of a chance to argue for themselves and to cut losses as much as possible.

### 3.2.2 The EU Regulations of the Surrogate Country System

The main regulation resource of the EU Surrogate Country System can be found in IEC Regulation No 1225/2009 (The EU AD Regulation), Article 2. 7 (a) parpa 1. The general regulation is as follows.

> “In the case of imports from non-market economy countries [note: Including Azerbaijan, Belarus, North Korea, Tajikistan, Turkmenistan and Uzbekistan.], normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.”

In terms of the methodology of choosing a surrogate country, the EU regime has a clearer instruction in its regulation. It adopts the “not unreasonable” approach. Para.2 of Art 2.7(a) requires that “[a]n appropriate market economy third country shall be selected in a not

\(^{70}\) See the reasons discussed in Chapter 2
unreasonable manner”, based on “any reliable information made available at the time of selection.” The interested parties can also request a hearing if they think not all the views and information have been presented to the authorities71. To request a hearing, the applicant party should provide information “supported by actual evidence which substantiates its validity”72.

Regardless of the different wording, the EU Surrogate Country System is substantially similar to the US model. The antidumping authorities have discretion in choice of surrogate country. The parties are given the opportunity to request a hearing with evidence to show the “unreasonableness” of the choice. Without objection from the parties, the decision of authorities will be adopted. Also similarly, the large discretion of the authority and Chinese parties’ lack of participation are the main factors which puts China into a disadvantaged position in antidumping cases.

Besides the similarities, there is one difference worth mentioning here. Article 2.7(b) & (c), the EU AD Regulation provides an alternative to the Surrogate Country System. According to this provision, “[i]n anti-dumping investigations concerning imports from Kazakhstan and any non-market-economy country which is a member of the WTO at the date of the initiation of the investigation, normal value shall be determined in accordance with paragraphs 1 to 6”, if investigated parties can provide sufficient evidence to show that “the producer operates under market economy conditions”. This is to say, apart from objections to the authorities’ choice of surrogate country, the investigated party from a NME market is entitled to argue for withdrawing the application of the Surrogate Country System. To prove that the industry is operating under market economy conditions, the investigated parties from a NME state should submit a claim with full explanation from these five perspectives,

“- decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values,

71 EC Regulation No 1225/2009, Article 21.2 & 3
72 EC Regulation No 1225/2009, Article 22.7
- firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,
- the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts,
- the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms, and
- exchange rate conversions are carried out at the market rate.”

After the Commission (the major EU antidumping authority) reviews the evidence, it will decide whether to accept the claim. If the Commission determines that there is insufficient evidence to support the claim, namely the producers are considered to operate under NME conditions, the Surrogate Country System will be applied to the case. And this determination will “remain in force throughout the investigation”\footnote{EC Regulation 1225/2009, Article 2.7(c) para. 7}.

One of the merits of this provision is it considers the fact that some NME WTO members are in transition to market economies. Therefore, not all industries in these countries are operating under NME conditions. This provision provides the exporters which operate in a free market with an opportunity to exclude the application of the Surrogate Country System. Thus, the following question is why Chinese exporters do not take advantage of this provision in antidumping cases initiated by the EU. Assuming that Chinese producers submit a claim that their industry operates under market conditions, one reason that the EU Commission may possibly use to refuse Chinese parties’ claim is China is consent to be automatically considered as a NME country until 2016 in its WTO Accession Proposal. This seems to be a sound reason. Yet, I disagree with this view. As I argued in previous chapter, China’s consent cannot be a reason to deprive Chinese exporters of being treated in a fair way in antidumping investigations. As long as all the exporters from other NME WTO members are given the opportunity to use this provision, there is no reason to exclude Chinese producers.
3.2.3 A New Trend in Case Law

It is clear that Chinese exporters have realized that they have no chance of winning a case if they do not participate in antidumping proceedings. However, not all Chinese exporters have the capabilities and enough human and financial resources to practice their participation in foreign countries.

In this part, I will introduce the case of Certain Non-Frozen Concentrated Apple Juice from China (NFCAJ)74. This is a special case because it is the first and only investigation that Chinese exporters have won so far. It also provides some meaningful directions to other Chinese exporters who are facing antidumping investigations.

In the case of NFCAJ, the exporters responded to the investigation actively in an unprecedented way. “Chinese firms brought the case to the US Court International of Trade (CIT) on the basis that the surrogate country used, namely India, was an inadequate source for determining the cost of production, because India was not a significant producer of apple juice. Therefore, it was not comparable to China”75. In the end, the USDOC accepted China’s arguments and used Turkey as a surrogate country, as originally suggested by Chinese firms76.

This “was the first instance where Chinese firms won a case by responding to anti-dumping investigations”77. As a result, this case is seen as a turning point for China in dealing with anti-dumping measures imposed by the US. “It is also important because it set a new precedent whereby the US methodology for dealing with China’s non-market economy could be questioned”78.

However, this is the only case ending with the victory of China’s companies. In most subsequent cases, the choice of a surrogate country is still arbitrary. Chinese producers still have difficulties

74 See the discussion of this case generally in Tanczos (2008), supra Note 23
76 Redetermination of Yantai Oriental Juice Co., et al., v. United States and Coloma Frozen Foods, Inc., et al., International Trade Administration (DOC), Court No. 00-07-00309, November 2002, 7-9, online:<http://ia.ita.doc.gov/remands/02-56.pdf>
77 Nivola (1993), 85
78 Nivola (1993), 86
in demonstrating inappropriateness of the chosen third country, especially without full assistance of the Chinese government.

Briefly, in antidumping investigations against Chinese products, active participation of investigated parties is helpful in preventing antidumping authorities from making choices arbitrarily. Yet, with the absence of clear provisions under the WTO system and the assistance of the Chinese government, the decisions of most antidumping investigations will remain unfavorable to Chinese exporters.

3.3 Irrationalities of the Surrogate Country System

3.3.1 The Inappropriateness of the Choice of a Surrogate Country

Neither the US nor the EU provides clear criteria for choice of a third country. I accept that the criteria for a third country should be different in each case, because each case involves different types of products, different corporations and different industries. Thus, it seems that the only standard of a third country in the Surrogate Country System is comparability. However, what is “comparable”? Apparently, comparability is too vague to be a proper criterion for determining a third country. If there is no detailed provision for selecting third countries, in most cases more than one country would be appropriate as a third country. Then, how to choose one, or how to exclude the others, becomes a problem.

Compared with discussing how to accurately identifying a third country, I prefer to make the point that, strictly speaking, perfect “surrogate” country does not exist. Each market is unique. Also the commercial relationship between one country and another is unique and unduplicated. Even though countries in the same area may be like each other in many ways, it does not qualify one of them as a surrogate country of another, let alone if one is a market economy while the other is a non-market economy.

To be more specific, India is frequently used as a surrogate country in antidumping investigations against Chinese products. No doubt, these two countries are comparable in some respects. However, it does not follow that they are identical to each other in a particular sector of trading. For example, India is particularly developed in telecommunication industries. Therefore, the prices of cell-phone components in India are much lower than those in China; while, in terms of textile products, China enjoys more advantages.
Certainly, we cannot and need not find an identical market. But how “comparable” the surrogate country should be is an unavoidable question. This is the reason that in the next chapter, I will propose an alternative methodology to solve this problem.

3.3.2 The Inaccuracy of Collected Data

Even if a comparable surrogate country can be found in theory, more problems remain in the process of data collection. The surrogate price is calculated by producers and authorities in the surrogate country. The accuracy of the surrogate price can be influenced by multiple factors, such as the economic policies in the surrogate country, the average cost of labor and raw materials or the level of popularity of products in the domestic market. Also, the accuracy largely depends on whether exporters in the surrogate country are willing to provide relevant data and information. It is hard to convince the third country to do so, because the ongoing antidumping proceeding has nothing to do with the third country, or its exporters. And the third country may achieve nothing after it releases all the information about its domestic market. There are few reasons why a third country would wish to be involved into a legal proceeding which has no relation to itself. Hence, considering so many variable factors, the accuracy of the surrogate price is questionable.

3.4 The Legal Gap in the WTO Surrogate Country System Regulations

Scholars and Chinese exporters have commented on the irrationalities of the Surrogate Country System and have provided their criticisms of the system. However, it appears that no one has questioned whether the Surrogate Country System should be applied to China. In this part, I will focus on the irrationality of applying the Surrogate Country System to China according to the existing WTO regulations.

There are few WTO regulations about the surrogate country system. The only two relevant rules can be found in the GATT 194779 and Technical Information of Antidumping on the WTO website (hereinafter “Technical Information”). The Technical Information provides more detailed direction. According to the Technical Information, “[i]n the particular situation of

79 See above in Chapter 3.2
economies where the government has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, GATT 1994 and the [Antidumping] Agreement recognize that a strict comparison with home market prices may not be appropriate. Importing countries have thus exercised significant discretion in the calculation of normal value of products imported from non-market economies.”

This provision only covers the cases which involve an exporting country “where the government has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State”. Yet of the economies where only a part of the domestic market is controlled by the State, or where the domestic market is influenced by the State indirectly? The present WTO regulations do not provide a clear answer. China is not the only WTO member state which promised to promote itself as a market-economy country. It is to say, there are several countries that are in the process of economic transformation. Strictly speaking, for these transformational countries, the above provision should not be applied.

In addition, WTO regulations also do not cover the methodology for choosing a third country or determining third country price 80.

In short, there are no detailed instructions in the existing WTO antidumping regulations on the Surrogate Country System. Consequently, importing countries have large discretion to design and apply the surrogate country system in their domestic regulations. This makes it easier for importing countries to use the system as a form of protectionism. In the next chapter, I will build up a system on basis of this critic. More detailed provisions are urgently needed to fill the legal gap and to support the present WTO antidumping regulations.

Chapter 4
Proposals

In this Chapter, I will provide proposals mainly from two different perspectives. The first perspective focuses on the existing WTO regulations which relates to the so-called surrogate country system. The second is how China and Chinese exporters can minimize their potential losses in antidumping initiations.

4.1 Proposals for Improving the WTO Surrogate Country System

As analyzed in previous chapter, no detailed instructions can be found in the existing WTO antidumping regulations on the surrogate country system. Therefore, in order to fill the legal gap. I suggest that the WTO General Council should bring forward a new proposal for establishing more detailed and practical provisions on the surrogate country system. The new provisions are proposed as an amendment to the 1994 Antidumping Agreement.

I propose that the new provision at least solve two questions. First, should we apply the surrogate country system in all cases involving a NME exporting country? Or, should we distinguish NME countries and transformational countries? Second, if we distinguish these types of countries, what kind of methodology should be applied to measure the normal value as the domestic market in antidumping initiations?

In short, my answer is that we should distinguish these two types of countries and we should build up a new methodology for cases involving transformational countries. The first question is a precondition to the second question. Without distinguishing NME countries and transformational countries, my proposal described below is not able to be properly applied.

My answer to the first question is based on two reasons. First, the current WTO regulations only cover economies where markets are substantially controlled or dominated by the State. Thus, there is no existing regulation targeting economies which are in the process of transformation from non-market to market economies. Second, the existing methodologies applied by the WTO members treat NME countries and transformational countries in the same way, which irrationally
denies the progress that has been made by latter countries. It ignores the fact that part of the market in a transformational country is free. Hence, I argue that a new methodology should be introduced to treat NME countries and transformational countries differently. This requires a more evidence-based investigation methodology which is consistent with the fundamental goals of the WTO.

In fact, presently, Russia is recognized as a transforming country in WTO antidumping investigations. In 2002, both the EU and the USA announced their recognition of the market economy status for the Russia Federation. However, considering the actual situation in Russia, the market-economic condition of local industry involved is required to be evaluated in each antidumping case against Russian products. However, apparently, Russia is not alone. More countries are going through the same procession, including all the new WTO members which were/are NME states, such as Tajikistan, Belarus, Uzbekistan, and so on. To be qualified as a WTO member, such a country will definitely go through the process of transformation. And during the transformation, the surrogate country system will be automatically applied in all antidumping investigations against its products, unless the initiator announces its acceptance of this country as a market economy. It is unfair and irrational to treat such a transformational country as a non-market economy when its domestic market is not substantially controlled by the State. Hence, I propose here that transformational countries should be treated differently from NME countries. Russia is not an isolated case. These “transformational countries” need a new methodology urgently.

The next question is how to identify these transformation countries. What should the criteria be? Before going into detail, I wish to emphasize that the new methodology I describe here should only be an exception, specially designed for the WTO members which are in the process of transformation from non-market to market economies, namely transformational countries. Therefore, only a small group of WTO new members will be subject to this new methodology. Transformational countries in this context only include the new WTO members which were NMEs before their accession to the WTO and have promised in their accession proposals to

81 The USA Announcement, online: <http://www.ma-rbc.org/news/item_economy.html>
transform to market economies over an agreed period of time. And the methodology will only be applied in antidumping initiations during the period from a transformational country’s accession to the time that it is officially recognized as market economy in the WTO, or by the importing country which initiates an antidumping investigation.

To respond to the second question, I would like to propose a three-step proceeding specially for antidumping cases involving transformational economies. In this proceeding, I will introduce a new system ——Surrogate Corporation System. If this proceeding is added to the existing WTO antidumping regulations, it will serve as a model for antidumping cases involving transformational countries. Hopefully, when this proceeding is well-developed in future, it will be incorporated into domestic antidumping regimes of WTO member states. One point I would like to emphasize here is that this proceeding is not designed to deprive importing countries of their discretion in creating and applying their domestic regulations. It only intends to provide more protection for exporting countries from importing countries abusing their discretion.

The surrogate corporation system is a part of three-step proceeding. I will start with a brief introduction of the proceeding, and I will then describe the surrogate corporation system in detail.

As I display in the Figure 2, the proceeding is composed of following steps.

Step 1: Do the investigated parties operate in market economic conditions in their home market?

Step 2: If yes, the normal methodology in the 1994 Antidumping Agreement will be applied; If not, the surrogate corporation system will be adopted.

Step 3: If a comparable corporation cannot be found, the surrogate country system will be adopted.

This proceeding will only be introduced when the antidumping authority of a WTO member state initiates a domestic antidumping proceeding involving exporters from a transformational country.

As I noted above, the market in a transformational country is partially free. This it to say a certain number of corporations and industries operate in free market-economic conditions. Hence, when an antidumping investigation is initiated, the first step is to inquire whether the
involved exporters operate in market conditions in their domestic market. Exporters will be requested to provide evidence if they claim a positive answer. The importing country’s authorities should examine and verify the evidence provided by the investigated parties and give a primary determination about the domestic market status of the exporting country. If the determination is positive, the investigated parties will be treated as exporters from a market economy, and the regular methodology in the 1994 Antidumping Agreement will be applied. Normal value will be calculated on the basis of domestic market in that transformational country. If the determination is negative, the proceeding will move to the second step.

In the second step, when it has been determined that the investigated exporters do not operate in a market-economic environment, the surrogate corporation system will be applied.
The surrogate corporation system is not a methodology created by me. It has been mentioned in several articles by Chinese commentators. However, in almost all the papers, the authors only briefly mentioned the idea that surrogate corporation(s), rather than a surrogate country, should be chosen as a third party to calculate the normal value. Since there is no detailed description of such a methodology, I will propose a surrogate corporation system in this paper. I acknowledge that the system described in the following paragraphs is rudimentary, and there are many details to be resolved.

The basic rationale of the surrogate corporation system is similar to the surrogate country system, as I described in previous chapters. They both target antidumping cases which involves exporters operating in NME conditions. They both consider that the domestic prices of investigated produces are not able to reveal normal value. They both choose to adopt a qualified third-party’s data for calculating normal value. But the difference is that the surrogate country system chooses data in another country while the surrogate corporation system chooses data from other companies which operate in the same country, same market and same industry. In addition, the price of one corporation may not reveal the normal value of the like products in the whole market. Thus, a group of third parties will be involved, rather than one third party in the surrogate country system. Under the surrogate corporation system, normal value will be determined by an average price calculated with data from all the market-economic corporations from the same industry, including foreign and local producers.

To identify qualified third corporations, we need to develop some criteria. First of all, the chosen corporations should be independent of all but market disciplines. They should produce same or similar products. They should have the same or similar scale of production. Therefore, theoretically, the most ideal comparable corporation(s) would be main competitors of the investigated parties in their home market. Similar exporting volume may be one of the factors to

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82 See Guohua Zhang, NME and Surrogate Country System in the US and EU Antidumping Law ——and Chinese Strategies, “欧美反倾销法中的“非市场经济”和“替代国”制度研—兼论我国的应对策略, May 2011, (Title is translated by the author.), online: <http://images.mofcom.gov.cn/gpj/accessory/201105/1305529016296.pdf>; See also, Ying Guo, Surrogate Country System in the International Antidumping Practices“国际反倾销实践中的替代国制度研究”, Southwest University of Political Science and Law, 2009 LLM Thesis, Chapter 4.3 (The title is translated by the Author); See also, Ting Dong, The Research on the US Surrogate Country System against China “美国对华反倾销中替代国制度研究”, Dalian Marine University, 2006 LLM Thesis, Chapter 5.2 (The title is translated by the Author);
describe the similarity of third companies, but there is no need to list it as a mandatory standard. It is the domestic price that we are measuring here, which has limited relevance with exporting volume.

I recommend the surrogate corporation system for several reasons.

First, unlike the surrogate country system, the surrogate corporation system admits the progress achieved by transformational countries in their internal reforms. As I mentioned, transformational countries are a special group of countries. While a part of their markets is free, some industries or some levels of the market remain under the control or direction of the state. The surrogate country system denies all the achievements of transformational countries, and overgeneralizes what these countries have not done. The world economy has changed in many ways since the original surrogate country system was adopted in the GATT 1947. The surrogate country system is not adequate to solve the problems that we are facing today. The surrogate corporation system is an updated version of the surrogate country system. It adopts a similar rationale, but provides a more appropriate methodology to transformational countries. From another perspective, the application of the surrogate corporation system may even encourage these so-called NME countries to push their reform more actively and efficiently. Presently, a NME country normally starts the transformation with its reforms in legal and governmental systems. Such reforms are necessary and urgent. But they are very difficult to be implemented in practice, especially for a transformational country which is lacking in experience. This may result in many problems, such as new policies that are applied and interpreted in inaccurate ways, or the new policies themselves do not fit practical conditions or the needs of the market. The surrogate corporation system will lead a transformational country to focus on first-line manufacturers and give them more support and space to operate freely in the market.

Second, the prices of third corporations in the same market are much more comparable than that of a third country. Obviously, each country in this world is unique. It is extremely hard to find markets of two countries that are the same, no matter how similar their markets are and how geographically close they are. Comparatively speaking, corporations in the same country can provide more comparable and meaningful data to calculate the normal value of products in that country. The surrogate corporation system uses the corporations in the same market as a comparison. These corporations are physically located in the same market. They include foreign
corporations which manufacture in the domestic market, and local companies which produce the same or similar goods. The key point is that the chosen corporations operate under similar policies (considering the regional disparities) and the same geographic market. Therefore, the price of these companies would be more accurate to calculate the normal value. If we can choose a sample which develops in the same environment, why would we choose a sample from a different market?

Third, the surrogate corporation system makes it easier for all involved parties to collect data and other evidence. Under the surrogate country system, a third country is involved in many procedures of an antidumping proceeding. Evidence from a third market is needed for proving the similarity and comparability of this third country. This is to say, the cooperation of the third country also has significant influence to the accuracy of the collected data. If the third country refuses to provide complete data, the surrogate country system will not be functional or fair. In short, an antidumping case will be more complicated when it involves a third country because the result of an antidumping proceeding can be affected by this third country. Compared to the surrogate country system, the surrogate corporation system avoids such a uncertain element. Data of investigated products will only be collected in two markets, the importing and exporting country. It helps to simplify the procedures and makes the sources of evidence more predictable. Also, to argue for a more advantageous determination, the exporting country will provide as much evidence as they can. Hence, the surrogate corporation system also helps to minimize potential negative influence caused by a third country and insufficient collection of evidence.

No system is perfect. Despite the merits of the surrogate corporation system as described above, the following points should be considered for choice of surrogate corporations. As I mentioned, the market in a transformational country is only partially free. Thus, not all the corporations in the domestic market are appropriate choices. At least, the following possibilities should be taken into consideration. 1) If the investigated companies in an antidumping investigation occupy a substantial part of the domestic market in the exporting country, the rest of the industry may not be representative of the whole industry. In this case, the antidumping case will move on to the third step; 2) When the interested parties identify a group of appropriate third corporations, their prices will be introduced to calculate the normal value of domestic market in market conditions. Subsidies and other forms of support from the state should be taken into consideration. For example, subsidies can be considered as a part of cost paid by the government. This is to say,
when we calculate the normal value, the part paid by the government should be added upon the current price on the domestic market. It is also possible that the chosen third corporations enjoy different types of governmental support. For example, in China, importing goods in some industry enjoys lower tax or more tax refund because China has sought to attract more foreign investment in a short time. Meanwhile, the Chinese government generously supports domestic pillar industries which are crucially important to the economic development of China, such as industries of energy, mining and heavy metals. In addition, the Chinese government has also provided a large amount of budget to support infant industries as well as small and medium corporations in labor-intensive industries. It is clear that these types of support are legal and rational. Nevertheless, while the support does not influence these chosen third corporations’ market-economic statuses, the support from the state may make their prices unable to reveal the normal value accurately. Hence, when calculating the normal value on the basis of data from these corporations, all kinds of governmental support, monetary or material, should be calculated as a part of cost, since they all can be considered as money or resources borrowed from the State. After re-evaluation, we will get more accurate numbers which can be considered as domestic prices without subsidies.

As we can see here, it is possible that there are no appropriate surrogate corporations in the domestic market of an investigated exporting country. In this case, the proceeding will move on to the third step —— the surrogate country system. That is to say, the surrogate corporation system is the priority methodology of antidumping cases involving transformational corporations, and the surrogate country system serves as a supplement to the surrogate corporation system.

In terms of the surrogate country system, the key problem is choice of surrogate country. The existing US and EU regimes are the most developed regimes and they can be taken as samples. It is possible to combine these two regimes and modify a template methodology on the basis of them to amend the 1994 Antidumping Agreement.

New provisions for choice of surrogate country should outline the criteria of a qualified comparable third country. According to a WTO report for China’s Accession Proposals, the representative of China proposed a general methodology for choosing a proper third country. He stated that it should be a market economy “that [was a] significant [producer] of comparable
merchandise and that either was at a level of economic development or costs to be utilized in light of the nature of the industry under investigation”\textsuperscript{83}. These criteria were agreed by other WTO members, who also committed that their domestic methodologies would be similar to those described as above. These points were utilized in Chinese exporters’ defense, as discussed above in the NFCAJ case. Although the NFCAJ case has been settled, these criteria are not included in the US or any other methodology.

I argue that it is the time to bring these criteria into code. They can be introduced as a part of an amendment to the 1994 Antidumping Agreement. For a further step, how to identify a “significant producer of comparable merchandise”? The rationales of the US “factors of production” approach can be applied here. Factors such as volume of production or global market share should be taken into consideration. Certainly, this is not a fixed list. The list of factors of production should be modified for special conditions of each case and the industries it involves.

4.2 Proposals for China and Chinese Exporter facing Antidumping Proceedings

My suggestion for China and Chinese Exporters can be generalized into three points —— no dumping, active participation and aggressive appeals.

4.2.1 Chinese Exporters Should Ensure No More Dumping

The most obvious solution to avoid antidumping duties is no dumping. For a long time, price cutting has been the main strategy of Chinese exporters. They rely on small profit but quick returns to extend their overseas markets. The strategy is not unreasonable. But it increases the possibility of dumping, especially for those exporters which receive governmental subsidies.

Both importing and exporting countries, including China, have difficulties in fixing this problem. For exporting countries, they have limited control over what their exporters do in another market. For importing countries, they can only take measures after dumping is reported to them. Therefore, this problem can only be fixed by exporters themselves.

In this case, compared to Chinese governmental institutions, I believe that industrial alliances should play a more important role in helping exporters to understand and comply with a foreign market’s antidumping regulations. An industrial alliance is more familiar with the special circumstances of its main exporting markets, its industry as well as its exporters. Industrial alliances can help Chinese exports to have a thorough understanding of domestic antidumping laws before they enter a foreign market. Industrial alliances may provide help by translating antidumping regulations of main importing markets, holding employee training, or providing legal consulting service. At present, most industrial alliances in China are voluntary. As a result, they can do no more than providing information and advice. Also, when a new antidumping investigation is initiated, these alliances are not able to present their industries as functionally as they were expected to. Therefore, I propose that these industrial alliances should be given more power. For example, instead of a volunteer membership, an industrial alliance can include more mandatory provisions in its articles, such as no predatory dumping, and actively participating in overseas antidumping proceedings. Also, an industrial alliance may require a certain amount of entrance membership fee and/or annually membership fees, as sources of the alliance funds. As returns, the alliance shall employ groups of professionals to provide more services to its members. Also, the most important function of an industrial alliance should be representing its members in overseas antidumping proceedings and playing a role as a bridge between its members and official organizations, including but not limited to the Chinese government, the government of initiating countries as well as international organizations like the WTO. To give an industrial alliance more virtual power, its article may include a provision which states that if one of its members violates a mandatory provision (For example, a member company dumps in a foreign market intentionally.), its membership will be revoked, its entrance membership fee will not be refunded and the alliance will not represent this member in any proceeding.

I understand that this proposal may seem too ideal, since the Chinese government is highly unlikely to allow an industrial alliance to obtain such wide powers and it is hard to persuade all companies in an industry to agree with such a membership article. Yet, this might be a way to mitigate the present issues. To be clearer, when the Chinese government is reluctant to provide direct support to its exporters in overseas antidumping investigations, these exporters at least can rely on their industrial alliance, as an organization of their own.
4.2.2 China Exporters Should Actively Participate in Antidumping Proceedings

In the past, Chinese enterprises refused to represent themselves for many reasons. Now, most of them have realized their mistake, while some of them still worry about the cost of representing themselves in another country and the difficulties of collecting evidence from a third country. Especially, small and medium corporations normally have a clear view that they cannot afford the proceeding themselves.

Commentators have provided two possible solutions. First, investigated exporters can seek for help from industry alliances. As I argued above, an industrial alliance may use membership fees to help exporters in overseas proceedings. Second, Chinese exporters can also request more support from the State. After an antidumping case is initiated, the involved industry should actively discuss the case with the Chinese Ministry of Commerce (CMC, Chinese antidumping authority). They can apply for a consultant team from the government to assist them in properly responding to the proceedings. They also can apply for financial support from the state, so that they do not need to worry about the heavy expenses of continuing to participate in their proceedings.

Apart from the above suggestions, I also propose that Chinese exporters should regularly collect the local prices and other information about their peers in other countries. Thus, when the complaint suggests an improper third country in an antidumping initiation, Chinese exporters can provide sufficient evidence to illustrate the inappropriateness within the required time limits.

Also, in case my three-step procedures (or similar procedures) are adopted in the future, Chinese exporters should start establishing a database to collect information of all exporting corporations in their industry, so that when an antidumping proceeding is initiated, Chinese exporters will

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84 See the analysis in Chapter 2
have sufficient evidence to prove that they operate in market conditions, and their prices should be measured by normal regulations in the 1994 Antidumping Agreement. Or, even if they do not operate in market conditions, exporters can suggest introducing the surrogate corporation system and identify comparable third corporations with support from collected data.

4.2.3 The Chinese Government Should Also Actively Participate in Antidumping Proceedings

Generally speaking, the Chinese government should actively participate in antidumping proceedings in two ways —— active negotiation and aggressive appeals.

Negotiation should focus on the following perspectives.

First of all, China should put forward their proposals to the WTO General Council and request the creation of an appropriate WTO antidumping system for transformational countries, such as the three-step proceeding I have proposed in this paper. Apart from that, the Chinese government should also negotiate actively with other WTO member states, especially the US and the EU, for recognizing the market-economic status of China as early as possible. If China is recognized as a market economy, there is no need to worry about the negative effects of the surrogate country system.

Secondly, when an antidumping initiation begins, the Chinese government should also play it role as a negotiator, to seek for a more efficient solution to antidumping investigations. This is especially important in cases involving Chinese exporters which have received state subsidies, because these corporations may either face antidumping duties or anti-subsidy duties, or both. Thus, it appears that the only way for Chinese exporters to avoid duties is through negotiation.

The ongoing solar panel case can be considered an example. The solar panel industry is one of the infant industries extensively supported and invested by the State. The whole industry enjoys governmental subsidies in both monetary and material ways. After antidumping investigations were initiated in Europe, the Chinese government has announced that it reserves its right to appeal to the WTO because it knows the China will lose the case before it starts. To shorten the proceeding, China choses to negotiate with the EU producers by pointing out that releasing antidumping duties on Chinese exporters will not save their business and will cause significant extra economic losses. Given a second thought, imposing antidumping duties on Chinese solar
Panel products may have negative effects on the EU economics for following reasons. 1) The EU Antidumping duties on Chinese solar panel industry will trigger a trade war between two countries. At present, most Chinese solar panel producers import raw material and facilities from European companies. “In 2011, China imported 360 million US dollar silver paste and 764 million US dollar polycrystalline silicon from Germany. In the past few years, China has imported 10.8 billion facilities from European countries.” If Chinese solar panel industry is subject to heavy duties, they may leave the European market and stop importing material and equipment from Europe as well. Thus, even if European solar panel industry wins the case, other industries in the European market may suffer losses, which may be even more than the profits that solar panel industry could make. 2) “The inexpensive solar panels from China have helped the [EU] solar industry survive cutbacks of the subsidies by the cash-strapped governments.” They also encouraged the EU market to adopt more solar products. This is to say, if the inexpensive Chinese solar panels are forced to leave the EU market now, European consumers will have to pay much more for products of similar or even worse quality. Forcing Chinese solar energy producers to leave the European market may increase the cost for Europe to push forward its energy policies. In short, if the EU imposes antidumping duties on Chinese solar panel industry, it is going to result in a lose-lose scenario.

Unfortunately, the negotiation between China and the European Commission did not manage to present the imposition of antidumping duties. On June 4th, the EU Trade Commissioner Karel De Gucht announced the decision to impose provisional anti-dumping measures, an average tariff of 47.6%, on imports of solar panels from China. Yet the voice of the Chinese government and Chinese exporters has won some support from the EU member states. “A majority of the EU governments oppose a plan to impose hefty duties on solar panel imports

86 “EC initiates antidumping investigation against Chinese solar panel products and 300,000 employees may be influenced”, Chengdu Business, 7 Sept 2012 (The title is translated by the Author). The Author codes the analysis of negative influences to the European market here by translating and revising the original paper.
87 *Idem*
89 *Supra* Note 86
from China, a survey of member states showed on Monday [May, 27th, 2013], undermining efforts by Brussels to pressure Beijing over its trade practices.\(^{91}\)

Yet, in the last weekend of July, 2013, just before the duty was actually imposed on the Chinese producers, a piece of news surprised the world. The EU and China respectively announced that they had reached a settlement by negotiation over the case of Chinese solar panel exports. Chinese exporters have promised “a minimum price for Chinese panels of €0.56, or $0.74 per watt”\(^{92}\) and the EU have promised not to imposed the “punishingly high tariffs that the European trade commissioner, Karel De Gucht, had threatened to impose, beginning early next month”\(^{93}\). In addition, there was a rumor that China might return the “favor” by ceasing the antidumping investigation on EU wine\(^{94}\). So far, the Chinese government has not officially stated that it will terminate the investigation.

China’s victory in this case does not mean that negotiation is the only way to settle disputes. Apart from negotiation, aggressive challenges before the WTO Dispute Settlement Body (DSB) is also an alternative option. As I mentioned in Chapter 2, in cases involving only small and medium corporations, the Chinese government does not wish to spend large amount of resources to support these corporations and bring challenges to the WTO DSB, since it can only expect limited benefits. And, in cases involving corporations subsidized by the State, China seems to be convinced that it will lose the antidumping cases anyway, so it gives up on bringing a complaint. However, I consider that these factors should not stop China from taking advantages of the WTO dispute settlement system. China can complain that producers or the antidumping authority in an importing country do not have sufficient evidence to initiate or conclude antidumping investigation. If so, it is highly possible that the domestic antidumping investigation will be suspended until the dispute is resolved in the WTO dispute settlement system.


\(^{92}\) Supra Note 8

\(^{93}\) Idem

In conclusion, I have described a special three-step proceeding for antidumping cases against exporters from transformational countries. The key reason that I propose such a proceeding is to admit the progress achieved by transformational countries in their market status reform. Thus, I have proposed new methodology, the surrogate corporation system, in the proceeding. In addition to my proposal for the existing regulations, I have also suggested some countermeasures for Chinese exporters and the Chinese government, so that they can mitigate the economic losses and other negative effects that they may suffer in antidumping proceedings against China.
Chapter 5

Conclusions

In this paper, I have generally examined the existing antidumping regulations for the Surrogate Country System. I focus on both the WTO regulations and the relevant domestic regulations. Although antidumping is a transnational or international issue, with the absence of general principles and instructions from the WTO, most regulations relevant to the Surrogate Country System can only be found in domestic antidumping regimes.

In later chapters, I have described the most well-developed legal models for the Surrogate Country System, namely the US regime and the EU regime. Meanwhile, I also have pointed out the legal gap in the present WTO system. Without sufficient guide and restraint of the WTO regulations, domestic methodologies may be used as tools of protectionism.

With regard to the legal gap, I have proposed a three-step test as a model methodology. I do not argue that this model is perfect or sample. Yet, this can be a beginning point for consider how we can fill up the WTO legal gap of special regulations in antidumping cases against NME countries.

Apart from above proposal, I also have provided some suggestions to Chinese exporters and the Chinese government. For the government, it should pick up more responsibilities in many aspects, from promoting a mature and opener market to helping exporters to prepare for overseas business, from actively negotiating with importing countries when antidumping investigations are initiated to appealing to the WTO DSB when negotiation does not work as expected. For Chinese exporters, they have observed the accomplishments they may achieve through actively participating in antidumping proceedings. In the same chapter, I have suggested that industrial associations can play more important roles. They may help exporters to learn about new importing countries. They may restrain exporters’ conduct of dumping by establish punishment regimes in their industries. And, most importantly, they may act as a collective representative for investigated exporters in antidumping proceedings.
Annex 1

### Anti-dumping Initiations: Reporting Member vs Exporting Country 01/01/1995 - 31/12/2012 (Revised)

<table>
<thead>
<tr>
<th>Exporting Country</th>
<th>Belarus</th>
<th>China</th>
<th>European Union</th>
<th>Korea, Republic of</th>
<th>United States</th>
<th>Uruguay</th>
<th>Venezuela, Bolivarian Republic of</th>
<th>Total</th>
</tr>
</thead>
<tbody>
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<td>Belarus</td>
<td>6</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
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<td>22</td>
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<td>China</td>
<td>111</td>
<td>24</td>
<td>3</td>
<td>112</td>
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<td>9</td>
<td></td>
<td>916</td>
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<tr>
<td>European Union</td>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>92</td>
</tr>
<tr>
<td>Korea, Republic of</td>
<td>32</td>
<td>28</td>
<td>3</td>
<td>32</td>
<td>1</td>
<td></td>
<td></td>
<td>306</td>
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<td>Russian Federation</td>
<td>11</td>
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<td>11</td>
<td>2</td>
<td></td>
<td></td>
<td>127</td>
</tr>
<tr>
<td>United States</td>
<td>36</td>
<td>16</td>
<td>13</td>
<td></td>
<td>3</td>
<td></td>
<td></td>
<td>244</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Viet Nam</td>
<td>6</td>
<td>7</td>
<td></td>
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<td></td>
<td>38</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>200</strong></td>
<td><strong>451</strong></td>
<td><strong>113</strong></td>
<td><strong>11</strong></td>
<td><strong>469</strong></td>
<td><strong>7</strong></td>
<td><strong>31</strong></td>
<td><strong>4230</strong></td>
</tr>
</tbody>
</table>

Parameters
- Reporting Member: All Members
- Exporting Country: All Countries
- Initiation Date: 01/01/1995 to 31/12/2012

Type of Investigation: Original

The table has been revised for the purpose of this paper. Only the data have been analyzed in the paper are displayed here.

Original resource available at:

### Table 2. Historical User Antidumping against China, 1995-2001 and 2002-2004

<table>
<thead>
<tr>
<th>AD-imposing country, years</th>
<th>Exporting country target</th>
<th>Antidumping investigations (share of total)</th>
<th>Investigations resulting in measures (share of target country's investigations)</th>
<th>Only country named in investigation (share of target country's investigations)</th>
<th>Mean margin (%), conditions imposed</th>
<th>Share of AD-imposing country import market (rank)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>U.S., 1995-2001</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 China</td>
<td>31 (0.13)</td>
<td>21 (0.68)</td>
<td>13 (0.42)</td>
<td>131.77</td>
<td>0.08 (5)</td>
<td></td>
</tr>
<tr>
<td>2 Japan</td>
<td>24 (0.10)</td>
<td>16 (0.67)</td>
<td>7 (0.29)</td>
<td>65.21</td>
<td>0.13 (3)</td>
<td></td>
</tr>
<tr>
<td>3 EU</td>
<td>24 (0.10)</td>
<td>12 (0.50)</td>
<td>5 (0.21)</td>
<td>18.07</td>
<td>0.19 (2)</td>
<td></td>
</tr>
<tr>
<td>4 Korea</td>
<td>19 (0.08)</td>
<td>9 (0.47)</td>
<td>2 (0.11)</td>
<td>17.73</td>
<td>0.03 (7)</td>
<td></td>
</tr>
<tr>
<td>5 Taiwan</td>
<td>16 (0.07)</td>
<td>10 (0.63)</td>
<td>2 (0.13)</td>
<td>12.55</td>
<td>0.03 (6)</td>
<td></td>
</tr>
<tr>
<td>All other</td>
<td>124 (0.52)</td>
<td>57 (0.46)</td>
<td>18 (0.15)</td>
<td>68.63</td>
<td>0.54</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>238 (1.00)</td>
<td>125 (0.53)</td>
<td>47 (0.20)</td>
<td>66.16</td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td><strong>U.S., 2002-2004</strong></td>
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<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
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<td>25 (0.26)</td>
<td>19 (0.76)</td>
<td>13 (0.52)</td>
<td>148.38</td>
<td>0.13 (3)</td>
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</tr>
<tr>
<td>2 India</td>
<td>9 (0.09)</td>
<td>3 (0.33)</td>
<td>2 (0.22)</td>
<td>40.43</td>
<td>0.01 (14)</td>
<td></td>
</tr>
<tr>
<td>3 EU</td>
<td>8 (0.08)</td>
<td>2 (0.25)</td>
<td>0 (0.00)</td>
<td>15.09</td>
<td>0.19 (1)</td>
<td></td>
</tr>
<tr>
<td>4 Japan</td>
<td>6 (0.06)</td>
<td>2 (0.33)</td>
<td>3 (0.50)</td>
<td>91.29</td>
<td>0.09 (5)</td>
<td></td>
</tr>
<tr>
<td>5 South Africa</td>
<td>5 (0.05)</td>
<td>0 (0.00)</td>
<td>3 (0.60)</td>
<td>.</td>
<td>0.00 (27)</td>
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</tr>
<tr>
<td>All other</td>
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<td>16 (0.37)</td>
<td>8 (0.19)</td>
<td>36.10</td>
<td>0.58</td>
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<td><strong>Total</strong></td>
<td>96 (1.00)</td>
<td>42 (0.44)</td>
<td>29 (0.30)</td>
<td>88.83</td>
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<td><strong>EU, 1995-2001</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
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<td>36 (0.14)</td>
<td>19 (0.53)</td>
<td>16 (0.44)</td>
<td>59.52</td>
<td>0.06 (4)</td>
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</tr>
<tr>
<td>2 India</td>
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<td>15 (0.63)</td>
<td>6 (0.25)</td>
<td>52.84</td>
<td>0.01 (20)</td>
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<tr>
<td>3 Korea</td>
<td>21 (0.08)</td>
<td>9 (0.43)</td>
<td>6 (0.29)</td>
<td>27.51</td>
<td>0.02 (9)</td>
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</tr>
<tr>
<td>4 Thailand</td>
<td>14 (0.06)</td>
<td>10 (0.71)</td>
<td>1 (0.07)</td>
<td>33.83</td>
<td>0.01 (21)</td>
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</tr>
<tr>
<td>5 Taiwan</td>
<td>13 (0.05)</td>
<td>8 (0.62)</td>
<td>6 (0.46)</td>
<td>26.15</td>
<td>0.03 (7)</td>
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<tr>
<td>All other</td>
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<td>91 (0.64)</td>
<td>13 (0.09)</td>
<td>40.80</td>
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<td><strong>Total</strong></td>
<td>250 (1.00)</td>
<td>152 (0.61)</td>
<td>48 (0.19)</td>
<td>42.40</td>
<td>1.00</td>
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</tr>
<tr>
<td><strong>EU, 2002-2004</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 China</td>
<td>16 (0.28)</td>
<td>15 (0.94)</td>
<td>10 (0.63)</td>
<td>61.99</td>
<td>0.10 (2)</td>
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<tr>
<td>2 Russia</td>
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<td>3 (0.50)</td>
<td>1 (0.17)</td>
<td>30.70</td>
<td>0.05 (5)</td>
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<tr>
<td>3 Vietnam</td>
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<td>1 (0.25)</td>
<td>7.70</td>
<td>0.00 (40)</td>
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<tr>
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<td>2 (0.67)</td>
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<td>0.16 (1)</td>
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<td>2 (0.67)</td>
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<td>0.04 (6)</td>
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<td>All other</td>
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<td>4 (0.46)</td>
<td>23.59</td>
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<td><strong>Total</strong></td>
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<td>35 (0.61)</td>
<td>20 (0.35)</td>
<td>43.18</td>
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</tbody>
</table>

Note: Antidumping data compiled from Bowen (2007). HS system import data from Comtrade. EU import data is extra EU imports only. *For consistency, this table only allows for one “EU” entry for each product-specific investigation, hence total number of investigations and imposed measures may differ from table 1 due to aggregation of EU member cases per investigation."


Table 2. (cont) Historical User Antidumping against China, 1995-2001 and 2002-2004

<table>
<thead>
<tr>
<th>AD-imposing country, years</th>
<th>Exporting country target</th>
<th>Antidumping investigations (share of total)</th>
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<th>Only country named in investigation (share of target country's investigations)</th>
<th>Mean margin (%), condition measures imposed</th>
<th>Share of AD-imposing country import market (rank)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia, 1995-2001</td>
<td>EU</td>
<td>23 (0.18)</td>
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<td>11 (0.48)</td>
<td>0.23 (1)</td>
<td>0.03 (10)</td>
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<td>Indonesia</td>
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<td>5 (0.36)</td>
<td>0.07 (4)</td>
<td>0.04 (6)</td>
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<td>2 (0.15)</td>
<td>7 (0.54)</td>
<td>0.02 (11)</td>
<td>1.00</td>
</tr>
<tr>
<td></td>
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<td>5 (0.45)</td>
<td>2 (0.18)</td>
<td>0.01 (13)</td>
<td>0.03 (10)</td>
</tr>
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<td>5 (0.56)</td>
<td>3 (0.33)</td>
<td>0.57</td>
<td>1.00</td>
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<td>18 (0.33)</td>
<td>11 (0.20)</td>
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<tr>
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<td></td>
<td>Total 125 (1.00)</td>
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<td>39 (0.31)</td>
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<td>6 (0.24)</td>
<td>2 (0.33)</td>
<td>3 (0.50)</td>
<td>0.23 (1)</td>
<td>0.04 (7)</td>
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<td>2 (1.00)</td>
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<td>Thailand</td>
<td>2 (0.08)</td>
<td>1 (0.50)</td>
<td>0 (0.00)</td>
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<td>All other</td>
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<td>0 (0.00)</td>
<td>0.57</td>
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<td></td>
<td>Total 25 (1.00)</td>
<td>15 (0.60)</td>
<td>9 (0.36)</td>
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<td>1.00</td>
</tr>
<tr>
<td>Canada, 1995-2001</td>
<td>EU</td>
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<td>5 (0.45)</td>
<td>3 (0.27)</td>
<td>45.90</td>
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<tr>
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<td>U.S.</td>
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<td>7 (0.70)</td>
<td>8 (0.80)</td>
<td>42.80</td>
<td>0.67 (1)</td>
</tr>
<tr>
<td></td>
<td>China</td>
<td>10 (0.11)</td>
<td>6 (0.60)</td>
<td>5 (0.50)</td>
<td>45.17</td>
<td>0.03 (5)</td>
</tr>
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<td></td>
<td>Brazil</td>
<td>5 (0.06)</td>
<td>3 (0.60)</td>
<td>1 (0.20)</td>
<td>28.00</td>
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<tr>
<td></td>
<td>Taiwan</td>
<td>5 (0.06)</td>
<td>3 (0.60)</td>
<td>0 (0.00)</td>
<td>49.90</td>
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<tr>
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<td>All other</td>
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<td>31 (0.63)</td>
<td>3 (0.06)</td>
<td>35.76</td>
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<td>Total 90 (1.00)</td>
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<td>Canada, 2002-2004</td>
<td>China</td>
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<td>135.00</td>
<td>0.02 (6)</td>
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<tr>
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<td>U.S.</td>
<td>2 (0.07)</td>
<td>1 (0.50)</td>
<td>1 (0.50)</td>
<td>165.00</td>
<td>0.61 (1)</td>
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<tr>
<td></td>
<td>Mexico</td>
<td>1 (0.04)</td>
<td>1 (1.00)</td>
<td>0 (0.00)</td>
<td>98.09</td>
<td>0.04 (5)</td>
</tr>
<tr>
<td></td>
<td>All other</td>
<td>12 (0.44)</td>
<td>6 (0.50)</td>
<td>0 (0.00)</td>
<td>76.18</td>
<td>0.26</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total 27 (1.00)</td>
<td>16 (0.59)</td>
<td>4 (0.15)</td>
<td>81.80</td>
<td>1.00</td>
</tr>
</tbody>
</table>

Note: Antidumping data compiled from Bown (2007). HS system import data from Comtrade. EU total import data is extra-EU imports only.
*For consistency, this table only allows for one “EU” entry for each product-specific investigation, hence total number of investigations and imposed measures may differ from Table 1 due to aggregation of EU member cases per investigation.

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