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Protectionism in the era of globalisation

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PROTECTIONISM IN THE ERA OF GLOBALISATION

THE MISUSE OF ANTI-DUMPING INSTRUMENTS FROM AN EU PERSPECTIVE

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Protectionism in the Era of Globalisation: the misuse of anti-dumping instruments from an EU perspective.

Proefschrift ter verkrijging van de graad van doctor aan Tilburg University,
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door

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Abstract

The purpose of the dissertation at hand is to contrast the AdA (Agreement on the Implementation of Article VI of the GATT'94) with anti-dumping investigations carried out by and against the EU. It has been usual to suppose that WTO Members apply the AdA's flexible rules in a protectionist manner. However, hardly any treatise on contingent protection is concerned with this facet of global trade law. The question, also, of the volume of dumped imports, in the sense of negligibility, the impact of geopolitical factors, the extent of protectionism and malpractices in the review phase, has scarcely been examined. Is it true that anti-dumping instruments are being misused in view of the flexible rules of the Anti-dumping Agreement? For, admittedly, malpractices have been forthcoming ever since the WTO came into being. Sharp distinctions are made through a critical examination of inspection documents on the one hand and sixty-six charts which scrutinise every section of the investigative process on the other. The study identifies contingent protectionism in sectors of geopolitical importance, tit-for-tat in the imposition of anti-dumping measures and partiality in the various rates of duties. Furthermore, it identifies malpractices in the determination of negligibility, normal value, export prices, injury and margins of dumping. The findings shed new light on the functioning of the US International Trade Administration, the DG Trade EU and the PRC Trade Remedy Investigation Bureau. Finally, a solution is sought through the formulation of a new general theory on the detection of sales outside the natural course of world trade and a definition of sales within the ordinary course of trade.

Preface

The dissertation at hand is chiefly addressed to trade-defence professionals. Hopefully it is accessible to others. It is highly technical in nature and deals with the complex presupposition that the rules of the Anti-dumping Agreement of the WTO (Agreement on the Implementation of Article VI of the GATT'94) are applied in a protectionist manner. I myself in writing a consultation paper for directorate H of DG Trade EU back in 2013, and through my work at the Trade and Economics section of the EU Delegation to Singapore, became intrigued by this presupposition and found occasion to examine its validity as fully and distinctly as I can. Throughout the completion of that quest, I have found support through my family, my friends, my colleagues and two persons in particular – for which I am grateful.

Herewith, I wish to acknowledge my great obligations to Professor Panagiotis Delimatsis and Professor Julien Chaisse. I find myself much obliged to these Gentlemen's ever-ensuing promotiveness and unwavering support throughout the completion of the dissertation. In particular I will keep the fine, trade-related talks with Professor Panagiotis Delimatsis, at his office in Tilburg, in very good memory.

COMNENUS, G.A.

21 *January* 2020

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WTO – Appellate Body reports

- Appellate Body Report, Brazil – Measures Affecting Desiccated Coconut, WT/DS22/AB/R, adopted 20 March 1997, DSR 1997:I, p. 167
- Appellate Body Report, Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products, WT/DS103/AB/R, WT/DS113/AB/R, and Corr.1, adopted 27 October 1999, DSR 1999:V, p. 2057
- Appellate Body Report, China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States, WT/DS414/AB/R, adopted 16 November 2012, DSR 2012:XII, p. 6251
- Appellate Body Report, China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audio-visual Entertainment Products, WT/DS363/AB/R, adopted 19 January 2010, DSR 2010:I, p. 3
- Appellate Body Report, EC Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, DSR 1998:I, p. 135
- Appellate Body Report, European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India, WT/DS141/AB/RW, adopted 24 April 2003, DSR 2003:III, p. 965
- Appellate Body Report, European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil, WT/DS219/AB/R, adopted 18 August 2003, DSR 2003:VI, p. 2613
- Appellate Body Report, European Communities – Regime for the Importation, Sale and Distribution of Bananas, WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, p. 591
- Appellate Body Report, India – Patent Protection for Pharmaceutical and Agricultural Chemical Products, WT/DS50/AB/R, adopted 16 January 1998, DSR 1998:I, p. 9
- Appellate Body Report, Japan – Taxes on Alcoholic Beverages, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, DSR 1996:I, p. 97

- Appellate Body Report, Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products, WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, p. 3
- Appellate Body Report, Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice, WT/DS295/AB/R, adopted 20 December 2005, DSR 2005:XXII, p. 10853
- Appellate Body Report, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, p. 4697
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- Appellate Body Report, United States – Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R, adopted 19 February 2009, DSR 2009:III, p. 1291
- Appellate Body Report, United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany, WT/DS213/AB/R and Corr.1, adopted 19 December 2002, DSR 2002:IX, p. 3779

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- Panel Report, European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, adopted 12 March 2001, as modified by Appellate Body Report WT/DS141/AB/R, DSR 2001:VI, p. 2077
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- Panel Report, European Communities – Anti-Dumping Measure on Farmed Salmon from Norway, WT/DS337/R, adopted 15 January 2008, and Corr.1, DSR 2008:I, p. 3
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- Panel Report, European Union – Anti-Dumping Measures on Certain Footwear from China, WT/DS405/R, adopted 22 February 2012, DSR 2012:IX, p. 4585
- Panel Report, Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico, WT/DS156/R, adopted 17 November 2000, DSR 2000:XI, p. 5295
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- Panel Report, Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala, WT/DS331/R, adopted 24 July 2007, DSR 2007:IV, p. 1207
- Panel Report, Mexico – Definitive Countervailing Measures on Olive Oil from the European Communities, WT/DS341/R, adopted 21 October 2008, DSR 2008:IX, p. 3179
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- Panel Report, United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea, WT/DS179/R, adopted 1 February 2001, DSR 2001:IV, p. 1295
- Panel Report, United States – Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/R, adopted 31 August 2004, as modified by Appellate Body Report WT/DS264/AB/R, DSR 2004:V, p. 1937
- Panel Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/R and Corr.1, adopted 6 November 1998, as modified by Appellate Body Report WT/DS58/AB/R, DSR 1998:VII, p. 2821
- Panel Report, United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Recourse to Article 21.5 of the DSU by Argentina, WT/DS268/RW, adopted 11 May 2007, as modified by Appellate Body Report WT/DS268/AB/RW, DSR 2007:IX, p. 3609
- Panel Report, United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina, WT/DS268/R and Corr.1, adopted 17 December 2004, as modified by Appellate Body Report WT/DS268/AB/R, DSR 2004:VIII, p. 3421

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- 81 FR 63, January 4, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-533-863] Certain Corrosion-Resistant Steel Products From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 69, January 4, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-475-832] Certain Corrosion-Resistant Steel Products From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 75, January 4, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-026] Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 78, January 4, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-878] Certain Corrosion-Resistant Steel Products From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 5098, February 1, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-028] Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination
- 81 FR 10583, March 1, 2016 DEPARTMENT OF COMMERCE International Trade Administration [(A-489-824)] Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 10585, March 1, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-880] Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 10587, March 1, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-201-847] Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 11741, March 7, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-533-865] Certain Cold-Rolled Steel Flat Products From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures
- 81 FR 11744, March 7, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-412-824] Certain Cold-Rolled Steel Flat Products From the United Kingdom: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures
- 81 FR 11747, March 7, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-588-873] Certain Cold-Rolled Steel Flat Products From Japan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances
- 81 FR 11751, March 7, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-029] Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances
- 81 FR 11754, March 7, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-351-843] Certain Cold-Rolled Steel Flat Products From Brazil: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 81 FR 11757, March 7, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-881] Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 12072, March 8, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-821-822] Certain Cold-Rolled Steel Flat Products from the Russian Federation: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination

- 81 FR 15222, March 22, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-588-874] Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 15225, March 22, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-421-813] Certain Hot-Rolled Steel Flat Products From the Netherlands: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures
- 81 FR 15228, March 22, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-883] Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 15231, March 22, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-489-826] Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 15235, March 22, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-351-845] Certain Hot-Rolled Steel Flat Products From Brazil: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 81 FR 15241, March 22, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-602-809] Certain Hot-Rolled Steel Flat Products From Australia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 15244, March 22, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-412-825] Certain Hot-Rolled Steel Flat Products From the United Kingdom: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures
- 81 FR 24818, October 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-885] Phosphor Copper From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances
- 81 FR 28824, May 10, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-533-86] Welded Stainless Pressure Pipe From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 36867, June 8, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-535-903] Circular Welded Carbon-Quality Steel Pipe From Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures
- 81 FR 36873, June 8, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-523-812] Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 36876, June 8, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-032] Certain Iron Mechanical Transfer Drive Components From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 36881, June 8, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-520-807] Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 36884, June 8, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-552-820] Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 36887, June 8, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-122-856] Certain Iron Mechanical Transfer Drive Components From Canada: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 48741, July 26, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-033] Large Residential Washers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination
- 81 FR 56584, August 22, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-036] Certain Biaxial Integral Geogrid Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination
- 81 FR 61186, September 6, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-040] Truck and Bus Tires From the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination
- 81 FR 64135, September 19, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-042] Stainless Steel Sheet and Strip From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances
- 81 FR 65337, September 22, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-351-847, A-791-822, A-489-828] Certain Carbon and Alloy Steel Cut-to-Length Plate From Brazil, South Africa, and the Republic of Turkey: Affirmative Preliminary Determinations of Sales at Less Than Fair Value

- 81 FR 69786, October 7, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-044] 1,1,1,2-Tetrafluoroethane (R-134a) From the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair Value and Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination
- 81 FR 75806, November 1, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-886] Ferrovandium From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures
- 81 FR 76916, November 4, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-045] 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination
- 81 FR 78776, November 9, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-049] Ammonium Sulfate From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value
- 81 FR 79416, November 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-433-812] Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria: Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination
- 81 FR 79420, November 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-583-858] Certain Carbon and Alloy Steel Cut-to-Length Plate From Taiwan: Preliminary Determination of Sales at Less Than Fair Value
- 81 FR 79423, November 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-475-834] Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Determination of Critical Circumstances, and Postponement of Final Determination
- 81 FR 79427, November 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-588-875] Certain Carbon and Alloy Steel Cut-To-Length Plate From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 79431, November 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-423-812] Certain Carbon and Alloy Steel Cut-To-Length Plate From Belgium: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 79437, November 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-427-828] Certain Carbon and Alloy Steel Cut-To-Length Plate From France: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 79441, November 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-887] Certain Carbon and Alloy Steel Cut-To-Length Plate From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 79446, November 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-428-844] Certain Carbon and Alloy Steel Cut-to-Length Plate From the Federal Republic of Germany: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 81 FR 79450, November 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-047] Certain Carbon and Alloy Steel Cut-To-Length Plate From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 3452, November 16, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-552-821] Certain Tool Chests and Cabinets From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures
- 82 FR 9195, February 3, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-580-889] Diocetyl Terephthalate From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination
- 82 FR 9711, February 8, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-475-835] Finished Carbon Steel Flanges From Italy: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 82 FR 9719, February 8, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-533-871] Finished Carbon Steel Flanges From India: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 82 FR 9723, February 8, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-469-815] Finished Carbon Steel Flanges From Spain: Preliminary Determination of Sales at Less Than Fair Value
- 82 FR 11531, February 24, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-455-805] Emulsion Styrene-Butadiene Rubber From Poland: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 11534, February 24, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-201-848] Emulsion Styrene-Butadiene Rubber From Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 11536, February 24, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-580-890] Emulsion Styrene-Butadiene Rubber From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures

- 82 FR 11538, February 24, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-351-849] Emulsion Styrene-Butadiene Rubber From Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 12791, March 7, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-489-829] Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 12796, March 7, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-588-876] Steel Concrete Reinforcing Bar From Japan: Preliminary Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 12800, March 7, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-583-859] Steel Concrete Reinforcing Bar From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 28629, June 23, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-051] Certain Hardwood Plywood Products From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part
- 82 FR 29833, June 30, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-122-857] Certain Softwood Lumber Products From Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 42794, September 12, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-821-824, A-520-808] Certain Carbon and Alloy Steel Wire Rod From the Russian Federation and the United Arab Emirates: Affirmative Preliminary Determinations of Sales at Less Than Fair Value, and Affirmative Preliminary Determination of Critical Circumstances for Imports of Certain Carbon and Alloy Steel Wire Rod From the Russian Federation
- 82 FR 42796, September 12, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-822-806] Carbon and Alloy Steel Wire Rod From Belarus: Preliminary Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 47466, October 12, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-351-850] Silicon Metal From Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 47471, October 2, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-602-810] Silicon Metal From Australia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 47475, October 12, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-403-805] Silicon Metal From Norway: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Preliminary Determination of No Shipments, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 47697, October 13, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-122-859] 100- to 150-Seat Large Civil Aircraft from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 50377, October 31, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-489-831] Carbon and Alloy Steel Wire Rod From Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Negative Determination of Critical Circumstances
- 82 FR 50377, October 31, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-823-816] Carbon and Alloy Steel Wire Rod From Ukraine: Preliminary Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 50379, October 31, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-560-830] Biodiesel From Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 50381, October 31, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-475-836] Carbon and Alloy Steel Wire Rod From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 50383, October 31, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-791-823] Carbon and Alloy Steel Wire Rod From the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Preliminary Determination of No Shipments
- 82 FR 50386, October 31, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-580-891] Carbon and Alloy Steel Wire Rod From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Negative Determination of Critical Circumstances
- 82 FR 50389, October 31, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-469-816] Carbon and Alloy Steel Wire Rod From Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Determination of Critical Circumstances, in Part
- 82 FR 50394, October 31, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-357-820] Biodiesel From Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part
- 82 FR 50394, October 31, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-412-826] Carbon and Alloy Steel Wire Rod From the United Kingdom: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances
- 82 FR 50858, November 2, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-053] Antidumping Duty Investigation of Certain Aluminum Foil From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination

- 82 FR 51213, November 3, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-055] Carton-Closing Staples From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures
- 82 FR 53456, November 16, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-056] Certain Tool Chests and Cabinets From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 55558, November 22, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-428-845] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the Federal Republic of Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 82 FR 55561, November 22, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-475-838] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 55564, November 22, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-580-892] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 55567, November 22, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-533-873] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, in Part, Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 55571, November 22, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-441-801] Cold-Drawn Mechanical Tubing From Switzerland: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination, and Extension of Provisional Measures
- 82 FR 55574, November 22, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-058] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination
- 83 FR 660, January 5, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-893] Fine Denier Polyester Staple fibre From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 662, January 5, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-533-875] Fine Denier Polyester Staple fibre From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 665, January 5, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-060] Fine Denier Polyester Staple fibre From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 668, January 5, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-583-860] Fine Denier Polyester Staple fibre From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 784, January 8, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-549-833] Citric Acid and Certain Citrate Salts From Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Critical Circumstances Determination, in Part, and Postponement of Final Determination and Extension of Provisional Measures
- 83 FR 787, January 8, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-423-813] Citric Acid and Certain Citrate Salts From Belgium: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 791, January 8, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-301-803] Citric Acid and Certain Citrate Salts From Colombia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 3677, January 26, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-469-817] Ripe Olives From Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 4901, February 2, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-894] Certain Tapered Roller Bearings From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 4903, February 2, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-583-861] Low Melt Polyester Staple fibre From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 4906, February 2, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-895] Low Melt Polyester Staple fibre From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value,

Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures

- 83 FR 7145, February 20, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-062] Cast Iron Soil Pipe Fittings From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination and Extension of Provisional Measures
- 83 FR 11960, March 19, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-122-861] Certain Uncoated Groundwood Paper From Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 13244, March 28, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-064] Stainless Steel Flanges From People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 13246, March 28, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-533-877] Stainless Steel Flanges From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 19689, May 4, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-535-905] Polyethylene Terephthalate Resin From Pakistan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 19691, May 4, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-560-832] Polyethylene Terephthalate Resin From Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 19694, May 4, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-896] Polyethylene Terephthalate Resin From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 19696, May 4, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-583-862] Polyethylene Terephthalate Resin From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 19699, May 4, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-351-852] Polyethylene Terephthalate Resin From Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 20035, May 7, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-533-879] Polytetrafluoroethylene Resin From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 20039, May 7, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-066] Polytetrafluoroethylene Resin From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 22948, May 17, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-067] Forged Steel Fittings From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures
- 83 FR 22954, May 17, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-475-839] Forged Steel Fittings From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures
- 83 FR 22957, May 17, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-583-863] Forged Steel Fittings From Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value
- 83 FR 31949, July 10, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-071] Sodium Gluconate, Gluconic Acid, and Derivative Products From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value
- 83 FR 39058, August 8, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-075] Certain Plastic Decorative Ribbon From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value
- 83 FR 43640, August 27, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-484-803] Large Diameter Welded Pipe From Greece: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 83 FR 43644, August 27, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-077] Large Diameter Welded Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value
- 83 FR 43646, August 27, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-489-833] Large Diameter Welded Pipe From the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 83 FR 43649, August 27, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-122-863] Large Diameter Welded Pipe From Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 43651, August 27, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-897] Large Diameter Welded Pipe From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

- 83 FR 43653, August 27, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-533-881] Large Diameter Welded Pipe From India: Preliminary Determination of Sales at Less Than Fair Value
- 83 FR 44567, August 31, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-079] Cast Iron Soil Pipe From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 83 FR 45213, September 6, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-069] Less-Than-Fair-Value Investigation of Rubber Bands From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances
- 83 FR 45220, September 6, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-549-835] Rubber Bands From Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 51436, October 11, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-552-823] Laminated Woven Sacks From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value
- 83 FR 54568, October 30, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-082] Certain Steel Wheels From the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value
- 83 FR 54713, October 31, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-533-883] Glycine From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures
- 83 FR 54717, October 31, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-549-837] Glycine From Thailand: Preliminary Determination of Sales at Not Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination
- 83 FR 54718, October 31, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-588-878] Glycine From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination
- 83 FR 58540, November 20, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-084] Certain Quartz Surface Products From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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- 81 FR 3101, January 20, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-560-828] Certain Uncoated Paper From Indonesia: Final Determination of Sales at Less Than Fair Value
- 81 FR 3105, January 20, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-471-807] Certain Uncoated Paper From Portugal: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances
- 81 FR 3108, January 20, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-602-807] Certain Uncoated Paper From Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part
- 81 FR 3112, January 20, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-022] Certain Uncoated Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value
- 81 FR 3115, January 20, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-351-842] Certain Uncoated Paper From Brazil: Final Determination of Sales at Less Than Fair Value
- 80 FR 34893, June 18, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-570-016] Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part
- 80 FR 28955, May 20, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-580-874] Certain Steel Nails From the Republic of Korea: Final Determination of Sales at Less Than Fair Value
- 80 FR 28959, May 20, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-583-854] Certain Steel Nails From Taiwan: Final Determination of Sales at Less Than Fair Value
- 80 FR 28969, May 20, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-557-816] Certain Steel Nails From Malaysia: Final Determination of Sales at Less Than Fair Value
- 80 FR 28972, May 20, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-523-808] Certain Steel Nails From the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value
- 80 FR 29622, May 22, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-552-818] Certain Steel Nails From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value
- 80 FR 51779, August 26, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-570-018] Boltless Steel Shelving Units Pre-packaged for Sale From the People's Republic of China: Final Determination of Sales at Less Than Fair Value
- 80 FR 61362, October 13, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-489-822] Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value
- 80 FR 61366, October 13, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-580-876] Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value
- 80 FR 68846, November 6, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-274-806] Melamine From Trinidad and Tobago: Final Determination of Sales at Less Than Fair Value

- 80 FR 68851, November 6, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-570-020] Melamine From the People's Republic of China: Final Determination of Sales at Less Than Fair Value
- 81 FR 8682, February 22, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-602-808] Silicomanganese From Australia: Final Determination of Sales at Less Than Fair Value
- 81 FR 13319, March 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-122-855] Certain Polyethylene Terephthalate Resin From Canada: Final Determination of Sales at Less Than Fair Value
- 81 FR 13327, March 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-533-861] Certain Polyethylene Terephthalate Resin From India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances
- 81 FR 13331, March 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-024] Certain Polyethylene Terephthalate Resin From the People's Republic of China: Final Determination of Sales at Less Than Fair Value
- 81 FR 13336, March 14, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-523-810] Certain Polyethylene Terephthalate Resin From the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value
- 81 FR 32721, May 24, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-588-873] Certain Cold-Rolled Steel Flat Products From Japan: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances
- 81 FR 32725, May 24, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-029] Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances
- 81 FR 35303, June 2, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-878] Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances
- 81 FR 35313, June 2, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-583-856] Certain Corrosion-Resistant Steel Products From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part
- 81 FR 35316, June 2, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-026] Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part
- 81 FR 35320, June 2, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-475-832] Certain Corrosion-Resistant Steel Products From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part
- 81 FR 35329, June 2, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-533-863] Certain Corrosion-Resistant Steel Products From India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances
- 81 FR 42314, June 29, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-028] Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances
- 81 FR 44946, July 29, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-351-843] Certain Cold-Rolled Steel Flat Products From Brazil: Final Determination of Sales at Less Than Fair Value
- 81 FR 47347, July 21, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-880] Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Determination of Sales at Less Than Fair Value
- 81 FR 47352, July 21, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-201-847] Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Final Determination of Sales at Less Than Fair Value
- 81 FR 47355, July 21, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-489-824] Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value
- 81 FR 49929, July 29, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-412-824] Certain Cold-Rolled Steel Flat Products From the United Kingdom: Final Determination of Sales at Less Than Fair Value
- 81 FR 49938, July 29, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-533-865] Certain Cold-Rolled Steel Flat Products From India: Final Determination of Sales at Less Than Fair Value
- 81 FR 49950, July 29, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-821-822] Certain Cold-Rolled Steel Flat Products From the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part
- 81 FR 49953, July 29, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-881] Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value
- 81 FR 53406, August 12, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-602-809] Certain Hot-Rolled Steel Flat Products From Australia: Final Determination of Sales at Less Than Fair Value
- 81 FR 53409, August 12, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-588-874] Certain Hot-Rolled Steel Flat Products From Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

- 81 FR 53419, August 12, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-580-883] Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value
- 81 FR 53421, August 12, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-421-813] Certain Hot-Rolled Steel Flat Products From the Netherlands: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances
- 81 FR 53424, August 12, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-351-845] Certain Hot-Rolled Steel Flat Products From Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part
- 81 FR 53428, August 12, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-489-826] Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value
- 81 FR 53436, August 12, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-412-825] Certain Hot-Rolled Steel Flat Products From the United Kingdom: Final Determination of Sales at Less Than Fair Value
- 81 FR 66921, September 29, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-533-867] Welded Stainless Pressure Pipe From India: Final Determination of Sales at Less Than Fair Value
- 81 FR 75026, October 28, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-523-812] Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value
- 81 FR 75028, October 28, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-535-903] Circular Welded Carbon-Quality Steel Pipe From Pakistan: Final Affirmative Determination of Sales at Less Than Fair Value
- 81 FR 75030, October 28, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-520-807] Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value
- 81 FR 75032, October 28, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-032] Certain Iron Mechanical Transfer Drive Components From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value
- 81 FR 75039, October 28, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-122-856] Certain Iron Mechanical Transfer Drive Components From Canada: Final Affirmative Determination of Sales at Less Than Fair Value
- 81 FR 75042, October 28, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-552-820] Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value
- 81 FR 87544, December 5, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-351-847, A-791-822, A-489-828] Certain Carbon and Alloy Steel Cut-to-Length Plate From Brazil, South Africa, and the Republic of Turkey: Affirmative Final Determinations of Sales at Less Than Fair Value and Affirmative Final Determinations of Critical Circumstances for Brazil and the Republic of Turkey
- 81 FR 90776, December 15, 2016 DEPARTMENT OF COMMERCE International Trade Administration [A-570-033] Large Residential Washers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances
- 82 FR 3284, January 11, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-036] Certain Biaxial Integral Geogrid Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value
- 82 FR 8399, January 25, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-038] Antidumping Duty Investigation of Certain Amorphous Silica Fabric From the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value, and Final Affirmative Determination of Critical Circumstances
- 82 FR 8403, January 25, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-049] Ammonium Sulfate From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 8510, January 26, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-047] Certain Carbon and Alloy Steel Cut-To-Length Plate From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 8599, January 27, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-040] Truck and Bus Tires From the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances
- 82 FR 9716, February 8, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-042] Antidumping Duty Investigation of Stainless Steel Sheet and Strip From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances
- 82 FR 12192, March 1, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-044] 1,1,1,2 Tetrafluoroethane (R-134a) From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part
- 82 FR 12433, March 3, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-580-885] Phosphor Copper From the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances
- 82 FR 14874, March 23, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-580-886] Ferrovandium From the Republic of Korea: Final Determination of Sales at Less Than Fair Value

- 82 FR 14876, March 23, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-045] 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Final Determination of Sales at Less Than Fair Value
- 82 FR 16345, April 4, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-475-834] Certain Carbon and Alloy Steel Cut-to-Length Plate From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances
- 82 FR 16349, April 4, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-588-875] Certain Carbon and Alloy Steel Cut-to-Length Plate From Japan: Final Determination of Sales at Less Than Fair Value
- 82 FR 16360, April 4, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-428-844] Certain Carbon and Alloy Steel Cut-to-Length Plate From the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value
- 82 FR 16363, April 4, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-427-828] Certain Carbon and Alloy Steel Cut-to-Length Plate From France: Final Determination of Sales at Less Than Fair Value
- 82 FR 16366, April 4, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-433-812] Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances
- 82 FR 16369, April 4, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-580-887] Certain Carbon and Alloy Steel Cut-To-Length Plate From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination
- 82 FR 16372, April 4, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-583-858] Certain Carbon and Alloy Steel Cut-To-Length Plate From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances
- 82 FR 16378, April 4, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-423-812] Certain Carbon and Alloy Steel Cut-To-Length Plate From Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part
- 82 FR 18108, April 17, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-469-815] Finished Carbon Steel Flanges From Spain: Final Determination of Sales at Less Than Fair Value
- 82 FR 23192, May 22, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-489-829] Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value
- 82 FR 23195, May 22, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-588-876] Steel Concrete Reinforcing Bar From Japan: Final Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 28824, June 26, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-580-889] Diocetyl Terephthalate From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances
- 82 FR 29481, June 29, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-475-835] Finished Carbon Steel Flanges From Italy: Final Determination of Sales at Less Than Fair Value
- 82 FR 29483, June 29, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-533-871] Finished Carbon Steel Flanges From India: Final Determination of Sales at Less Than Fair Value
- 82 FR 33045, July 19, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-580-890] Emulsion Styrene-Butadiene Rubber From the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part
- 82 FR 33048, July 19, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-351-849] Emulsion Styrene-Butadiene Rubber From Brazil: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances
- 82 FR 33061, July 19, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-455-805] Emulsion Styrene-Butadiene Rubber From Poland: Final Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 33062, July 19, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-201-848] Emulsion Styrene-Butadiene Rubber From Mexico: Final Affirmative Determination of Sales at Less Than Fair Value
- 82 FR 34925, July 27, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-583-859] Steel Concrete Reinforcing Bar From Taiwan: Final Determination of Sales at Less Than Fair Value
- 82 FR 51806, November 8, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-122-857] Certain Softwood Lumber Products From Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances
- 82 FR 53460, November 16, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-570-051] Certain Hardwood Plywood Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part
- 82 FR 56214, November 28, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-822-806, A-821-824, A-520-808] Certain Carbon and Alloy Steel Wire Rod From Belarus, the Russian Federation, and the United Arab Emirates: Affirmative Final Determinations of Sales at Less Than Fair Value and Partial Affirmative Finding of Critical Circumstances
- 82 FR 61255, December 27, 2017 DEPARTMENT OF COMMERCE International Trade Administration [A-122-859] 100- to 150-Seat Large Civil Aircraft From Canada: Final Affirmative Determination of Sales at Less Than Fair Value

- 83 FR 2135, January 16, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-823-816] Carbon and Alloy Steel Wire Rod From Ukraine: Affirmative Final Determination of Sales at Less Than Fair Value
- 83 FR 2141, January 16, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-791-823] Carbon and Alloy Steel Wire Rod From the Republic of South Africa: Affirmative Final Determination of Sales at Less Than Fair Value and Affirmative Finding of Critical Circumstances
- 83 FR 8835, March 1, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-560-830] Biodiesel From Indonesia: Final Determination of Sales at Less Than Fair Value
- 83 FR 8837, March 1, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-357-820] Biodiesel From Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part
- 83 FR 9282, March 5, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-053] Certain Aluminum Foil From the People's Republic of China: Final Determination of Sales at Less Than Fair Value
- 83 FR 9829, March 8, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-403-805] Silicon Metal From Norway: Affirmative Final Determination of Sales at Less Than Fair Value, Final Determination of No Sales, and Final Negative Determination of Critical Circumstances
- 83 FR 9835, March 8, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-351-850] Silicon Metal From Brazil: Affirmative Final Determination of Sales at Less Than Fair Value
- 83 FR 9839, March 8, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-602-810] Silicon Metal From Australia: Affirmative Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances in Part
- 83 FR 13228, March 28, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-891] Carbon and Alloy Steel Wire Rod From the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances
- 83 FR 13230, March 28, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-475-836] Carbon and Alloy Steel Wire Rod From Italy: Final Determination of Sales at Less Than Fair Value
- 83 FR 13233, March 28, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-469-816] Carbon and Alloy Steel Wire Rod From Spain: Final Determination of Sales at Less Than Fair Value, and Final Determination of Critical Circumstances, in Part
- 83 FR 13236, March 28, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-055] Carton-Closing Staples From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 13249, March 28, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-489-831] Carbon and Alloy Steel Wire Rod From Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances
- 83 FR 13252, March 28, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-412-826] Carbon and Alloy Steel Wire Rod From the United Kingdom: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances
- 83 FR 15361, April 10, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-552-821] Certain Tool Chests and Cabinets From the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 15365, April 10, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-056] Certain Tool Chests and Cabinets From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 16289, April 16, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-475-838] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part
- 83 FR 16293, April 16, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-441-801] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Switzerland: Final Determination of Sales at Less Than Fair Value
- 83 FR 16296, April 16, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-533-873] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 16319, April 16, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-892] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, Final Affirmative Determination of Critical Circumstances
- 83 FR 16322, April 16, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-058] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value and Final Determination of Critical Circumstances, in Part
- 83 FR 16326, April 16, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-428-845] Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the Federal Republic of Germany: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 24737, May 30, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-533-875] Fine Denier Polyester Staple fibre From India: Final Affirmative Determination of Sales at Less Than Fair Value

- 83 FR 24740, May 30, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-060] Fine Denier Polyester Staple fibre From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 24743, May 30, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-893] Fine Denier Polyester Staple fibre From the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 24745, May 30, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-583-860] Fine Denier Polyester Staple fibre From Taiwan: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 25998, June 5, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-549-833] Citric Acid and Certain Citrate Salts From Thailand: Affirmative Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances in Part
- 83 FR 26001, June 5, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-423-813] Citric Acid and Certain Citrate Salts From Belgium: Affirmative Final Determination of Sales at Less Than Fair Value
- 83 FR 26002, June 5, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-301-803] Citric Acid and Certain Citrate Salts From Colombia: Affirmative Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances
- 83 FR 26959, June 11, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-064] Stainless Steel Flanges From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 28193, June 18, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-469-817] Ripe Olives From Spain: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 29092, June 22, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-894] Certain Tapered Roller Bearings From the Republic of Korea: Final Determination of Sales at Less Than Fair Value
- 83 FR 29094, June 22, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-895] Low Melt Polyester Staple fibre From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part
- 83 FR 29099, June 22, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-583-861] Low Melt Polyester Staple fibre From Taiwan: Final Determination of Sales at Less Than Fair Value
- 83 FR 33205, July 17, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-062] Cast Iron Soil Pipe Fittings From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part
- 83 FR 36519, July 30, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-583-863] Forged Steel Fittings From Taiwan: Final Determination of Sales at Less Than Fair Value
- 83 FR 39412, August 9, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-122-861] Certain Uncoated Groundwood Paper From Canada: Final Determination of Sales at Less Than Fair Value
- 83 FR 40745, August 16, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-533-877] Stainless Steel Flanges From India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstance Determination
- 83 FR 47876, September 21, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-071] Sodium Gluconate, Gluconic Acid, and Derivative Products From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 48278, September 24, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-560-832] Polyethylene Terephthalate Resin From Indonesia: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part
- 83 FR 48281, September 24, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-535-905] Polyethylene Terephthalate Resin From Pakistan: Final Determination of Sales at Less Than Fair Value
- 83 FR 48283, September 24, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-580-896] Polyethylene Terephthalate Resin From the Republic of Korea: Affirmative Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part
- 83 FR 48285, September 24, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-351-852] Polyethylene Terephthalate Resin From Brazil: Final Determination of Sales at Less Than Fair Value
- 83 FR 48287, September 24, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-583-862] Polyethylene Terephthalate Resin From Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part
- 83 FR 48590, September 26, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-066] Polytetrafluoroethylene Resin From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value
- 83 FR 48594, September 26, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-533-879] Polytetrafluoroethylene Resin From India: Final Affirmative Determination of Sales at Less Than Fair Value
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- 80 FR 487, January 6, 2015 DEPARTMENT OF COMMERCE International Trade Administration [A-570-992] Monosodium Glutamate From the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order
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- 80 FR 63537, October 20, 2015 DEPARTMENT OF COMMERCE International Trade Administration [Court No. 12-00296] Final Redetermination Pursuant to Court Remand, Wheatland Tube Co. v. United States
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- 83 FR 29748, June 26, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-583-864] Steel Propane Cylinders From Taiwan: Termination of Less-Than- Fair-Value Investigation
- 83 FR 31734, July 9, 2018 DEPARTMENT OF COMMERCE International Trade Administration [A-570-831] Fresh Garlic From the People's Republic of China: Initiation of Semi-annual Antidumping Duty New Shipper Review; 2017-2018

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- Notice of initiation of an anti-dumping proceeding concerning imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (2018/C 284/08)
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- COMMISSION IMPLEMENTING REGULATION (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/1777 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/1977 of 11 November 2016 imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel) of circular cross-section of an external diameter exceeding 4064 mm originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/2005 of 16 November 2016 imposing a provisional anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/2303 of 19 December 2016 imposing a provisional anti-dumping duty on imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1444 of 9 August 2017 imposing a provisional anti-dumping duty on imports of certain corrosion resistant steels originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1480 of 16 August 2017 imposing a provisional anti-dumping duty on imports of certain cast iron articles originating in the People's Republic of China

- COMMISSION REGULATION (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China, and amending Implementing Regulation (EU) 2018/163
- COMMISSION IMPLEMENTING REGULATION (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/671

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- COMMISSION IMPLEMENTING REGULATION (EU) 2016/1159 of 15 July 2016 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and produced by Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/1246 of 28 July 2016 imposing a definitive anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/1247 of 28 July 2016 Imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/2081 of 28 November 2016 re-imposing a definitive anti-dumping duty on imports of oxalic acid originating in the People's Republic of China and produced by Yuanping Changyuan Chemicals Co. Ltd
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/141 of 26 January 2017 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/336 of 27 February 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/649 of 5 April 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/659 of 6 April 2017 amending Implementing Regulation (EU) 2017/141 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/763 of 2 May 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain lightweight thermal paper originating in the Republic of Korea
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/804 of 11 May 2017 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1019 of 16 June 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1146 of 28 June 2017 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1578 of 18 September 2017 amending Implementing Regulation (EU) No 1194/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1795 of 5 October 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Serbia
- COMMISSION IMPLEMENTING REGULATION (EU) 2018/140 of 29 January 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cast iron articles originating in the People's Republic of China and terminating the investigation on imports of certain cast iron articles originating in India
- COMMISSION IMPLEMENTING REGULATION (EU) 2018/186 of 7 February 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain corrosion resistant steels originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2018/1579 of 18 October 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163

- COMMISSION IMPLEMENTING REGULATION (EU) 2018/1711 of 13 November 2018 amending Council Implementing Regulation (EU) No 1371/2013 as regards the date of application of the exemptions granted to Indian exporting producers
- COMMISSION IMPLEMENTING REGULATION (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163

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- COMMISSION IMPLEMENTING DECISION (EU) 2016/1072 of 29 June 2016 terminating the anti-dumping proceeding concerning imports of certain ceramic foam filters originating in the People's Republic of China
- COMMISSION IMPLEMENTING DECISION (EU) 2016/2133 of 5 December 2016 terminating the anti-dumping proceeding concerning the imports of certain manganese oxides originating in Brazil, Georgia, India and Mexico
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/679 of 10 April 2017 terminating the absorption reinvestigation concerning imports of stainless steel cold-rolled flat products originating in Taiwan without amending the measures in force
- COMMISSION IMPLEMENTING DECISION (EU) 2017/957 of 6 June 2017 terminating the anti-dumping proceeding concerning imports of purified terephthalic acid and its salts originating in the Republic of Korea
- COMMISSION IMPLEMENTING DECISION (EU) 2018/82 of 4 June 2018 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Egypt and Ukraine
- COMMISSION IMPLEMENTING DECISION (EU) 2018/928 of 28 June 2018 terminating the re-opening of the investigation concerning the judgments in joined cases C-186/14 P and C-193/14 P in relation to Council Regulation (EC) No 926/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China and Commission Implementing Regulation (EU) 2015/2272 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING DECISION (EU) 2018/1037 of 20 July 2018 terminating the anti-dumping proceeding concerning imports of low carbon ferro-chrome originating in the People's Republic of China, Russian Federation and Turkey
- COMMISSION IMPLEMENTING DECISION (EU) 2018/1306 of 27 September 2018 terminating the anti-dumping proceeding concerning imports of certain stainless steel wires originating in India
- COMMISSION IMPLEMENTING DECISION (EU) 2018/1193 of 21 August 2018 terminating the anti-dumping proceeding concerning imports of silicon originating in Bosnia and Herzegovina and in Brazil
- COMMISSION IMPLEMENTING REGULATION (EU) 2018/1570 of 18 October 2018 terminating the proceedings concerning imports of biodiesel originating in Argentina and Indonesia and repealing Implementing Regulation (EU) No 1194/2013

EU - Undertakings

- COMMISSION IMPLEMENTING DECISION (EU) 2015/87 of 21 January 2015 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/415 of 21 March 2016 withdrawing the acceptance of the undertaking for two exporting producers and repealing Decision 2008/577/EC accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/454 of 15 March 2017 withdrawing the acceptance of the undertaking for four exporting producers under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measure
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/941 of 1 June 2017 withdrawing the acceptance of the undertaking for two exporting producers under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1408 of 1 August 2017 withdrawing the acceptance of the undertaking for two exporting producers under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline

silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures

- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1497 of 23 August 2017 withdrawing the acceptance of the undertaking for one exporting producer under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1524 of 5 September 2017 withdrawing the acceptance of the undertaking for two exporting producers under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1570 of 15 September 2017 amending Implementing Regulation (EU) 2017/366 and Implementing Regulation (EU) 2017/367 imposing definitive countervailing and anti-dumping duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China and repealing Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1589 of 19 September 2017 withdrawing the acceptance of the undertaking for one exporting producer under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures
- COMMISSION IMPLEMENTING DECISION (EU) 2018/351 of 8 March 2018 rejecting undertakings offered in connection with the anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine

EU - Reviews

- COMMISSION IMPLEMENTING REGULATION (EU) 2015/82 of 21 January 2015 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 and of partial interim reviews pursuant to Article 11(3) of Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/83 of 21 January 2015 imposing a definitive anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/110 of 26 January 2015 imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, the People's Republic of China and Russia and terminating the proceeding for imports of certain welded tubes and pipes of iron or non-alloy steel originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/519 of 26 March 2015 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/865 of 4 June 2015 imposing a definitive anti-dumping duty on imports of certain pre- and post-stressing wires and wire strands of non-alloy steel (PSC wires and strands) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/1518 of 14 September 2015 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/1846 of 14 October 2015 imposing a definitive anti-dumping duty on imports of wire rod originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/1934 of 27 October 2015 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/2272 of 7 December 2015 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/2384 of 17 December 2015 imposing a definitive anti-dumping duty on imports of certain aluminium foils originating in the People's Republic of China and terminating the proceeding

for imports of certain aluminium foils originating in Brazil following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

- COMMISSION IMPLEMENTING REGULATION (EU) 2016/703 of 11 May 2016 imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/1046 of 28 June 2016 imposing a definitive anti-dumping duty on imports of certain molybdenum wires originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/1160 of 15 July 2016 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/94 of 19 January 2017 imposing a definitive anti-dumping duty on imports of sodium gluconate originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/109 of 23 January 2017 imposing a definitive anti-dumping duty on imports of certain aluminium road wheels originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/325 of 24 February 2017 imposing a definitive anti-dumping duty on imports of high tenacity yarns of polyesters originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/367 of 1 March 2017 imposing a definitive anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 11(3) of Regulation (EU) 2016/1036
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/422 of 9 March 2017 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/648 of 5 April 2017 imposing a definitive anti-dumping duty on imports of okoumé plywood originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/724 of 24 April 2017 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/942 of 1 June 2017 imposing a definitive anti-dumping duty on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1171 of 30 June 2017 imposing a definitive anti-dumping duty on imports of melamine originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1188 of 3 July 2017 imposing a definitive anti-dumping duty on imports of certain coated fine paper originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1759 of 27 September 2017 imposing a definitive anti-dumping duty on imports of barium carbonate originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1993 of 6 November 2017 imposing a definitive anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China as extended to imports of certain open mesh fabrics of glass fibres consigned from India, Indonesia, Malaysia, Taiwan and Thailand, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/2179 of 22 November 2017 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/2206 of 29 November 2017 imposing a definitive anti-dumping duty on hand pallet trucks and their essential parts originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/2230 of 4 December 2017 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

- COMMISSION IMPLEMENTING REGULATION (EU) 2018/607 of 19 April 2018 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating in the People's Republic of China as extended to imports of steel ropes and cables consigned from Morocco and the Republic of Korea, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2018/921 of 28 June 2018 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/110 of 26 January 2015 imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, the People's Republic of China and Russia and terminating the proceeding for imports of certain welded tubes and pipes of iron or non-alloy steel originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/1361 of 6 August 2015 repealing the definitive antidumping duty imposed on imports of certain candles tapers and the like originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/2384 of 17 December 2015 imposing a definitive anti-dumping duty on imports of certain aluminium foils originating in the People's Republic of China and terminating the proceeding for imports of certain aluminium foils originating in Brazil following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/278 of 26 February 2016 repealing the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not
- COMMISSION DECISION (EU) 2017/206 of 6 February 2017 terminating an expiry review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/82 of 21 January 2015 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 and of partial interim reviews pursuant to Article 11(3) of Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/409 of 11 March 2015 amending Council Implementing Regulation (EU) No 917/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/1350 of 3 August 2015 amending Council Implementing Regulation (EU) No 461/2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/1507 of 9 September 2015 amending Council Implementing Regulation (EU) No 1371/2013 extending a definitive anti-dumping duty imposed on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports consigned, inter alia, from India, whether declared as originating in India or not
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/90 of 26 January 2016 amending Council Implementing Regulation (EU) No 102/2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia, in Ukraine following a partial interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/306 of 3 March 2016 amending Implementing Regulation (EU) No 1283/2014 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the Republic of Korea and Malaysia following an interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/1077 of 1 July 2016 imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China following an expiry review under Article 11(2) and a partial interim review under Article 11(3) of Council Regulation (EC) No 1225/2009
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/220 of 8 February 2017 amending Council Implementing Regulation (EU) No 1106/2013 imposing a definitive anti-dumping duty on imports of certain stainless steel wires originating in India following a partial interim review under Article 11(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/12 of 6 January 2016 terminating the partial interim review of the anti-dumping and countervailing measures applicable to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China
- COMMISSION IMPLEMENTING DECISION (EU) 2016/1176 of 18 July 2016 terminating the partial interim review concerning imports of certain threaded tube or pipe cast fittings of malleable cast iron originating in the People's Republic of China and Thailand
- COMMISSION IMPLEMENTING DECISION (EU) 2016/2229 of 9 December 2016 terminating the partial interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of the anti-dumping measures applicable to imports of sodium gluconate originating in the People's Republic of China, limited to one Chinese exporting producer, Shandong Kaisen

- COMMISSION IMPLEMENTING REGULATION (EU) 2017/367 of 1 March 2017 imposing a definitive anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 11(3) of Regulation (EU) 2016/1036
- COMMISSION IMPLEMENTING DECISION (EU) 2018/52 of 11 January 2018 terminating the partial interim review concerning imports of certain threaded tube or pipe cast fittings of malleable cast iron originating in the People's Republic of China and Thailand
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/49 of 14 January 2015 amending Council Implementing Regulation (EU) No 1106/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India and amending Council Implementing Regulation (EU) No 861/2013 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/782 of 19 May 2015 amending Council Implementing Regulation (EU) No 917/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China, by adding a company to the list of producers from the People's Republic of China listed in Annex I
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/1019 of 29 June 2015 amending Council Implementing Regulation (EU) No 1106/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India, amending Council Implementing Regulation (EU) No 861/2013 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India and repealing Commission Implementing Regulation (EU) 2015/49
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/1821 of 9 October 2015 amending Council Implementing Regulation (EU) No 1106/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India and amending Council Implementing Regulation (EU) No 861/2013 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/2081 of 28 November 2016 re-imposing a definitive anti-dumping duty on imports of oxalic acid originating in the People's Republic of China and produced by Yuanping Changyuan Chemicals Co. Ltd
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/423 of 9 March 2017 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by Fujian Viscap Shoes Co. Ltd, Vietnam Ching Luh Shoes Co. Ltd, Vinh Thong Producing-Trading-Service Co. Ltd, Qingdao Tae Kwang Shoes Co. Ltd, Maystar Footwear Co. Ltd, Lien Phat Company Ltd, Qingdao Sewon Shoes Co. Ltd, Panyu Pegagus Footwear Co. Ltd, PanYu Leader Footwear Corporation, Panyu Hsieh Da Rubber Co. Ltd, An Loc Joint Stock Company, Qingdao Changshin Shoes Company Limited, Chang Shin Vietnam Co. Ltd, Samyang Vietnam Co. Ltd, Qingdao Samho Shoes Co. Ltd, Min Yuan, Chau Giang Company Limited, Foshan Shunde Fong Ben Footwear Industrial Co. Ltd and Dongguan Texas Shoes Limited Co. implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1146 of 28 June 2017 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1578 of 18 September 2017 amending Implementing Regulation (EU) No 1194/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia
- COMMISSION IMPLEMENTING REGULATION (EU) 2018/28 of 9 January 2018 re-imposing a definitive anti-dumping duty on imports of bicycles whether declared as originating in Sri Lanka or not from City Cycle Industries
- COMMISSION IMPLEMENTING DECISION (EU) 2018/928 of 28 June 2018 terminating the re-opening of the investigation concerning the judgments in joined cases C-186/14 P and C-193/14 P in relation to Council Regulation (EC) No 926/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China and Commission Implementing Regulation (EU) 2015/2272 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009
- Notice of termination of the partially re-opened proceedings concerning imports of zeolite A powder originating in Bosnia and Herzegovina
- COMMISSION IMPLEMENTING REGULATION (EU) 2015/392 of 9 March 2015 terminating a 'new exporter' review of Council Implementing Regulation (EU) No 1389/2011 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China, re-imposing the duty with regard to imports from the exporter and terminating the registration of these imports

- COMMISSION IMPLEMENTING REGULATION (EU) 2018/49 of 11 January 2018 amending Council Implementing Regulation (EU) No 501/2013 following a ‘new exporter’ review pursuant to Articles 11(4) and 13(4) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

Abbreviations

A-A.....	Anti-absorption
A.U.V.....	Average Unit Value
A.B.....	Appellate Body
A.C.P.....	Average Cost of Production
A.-D.....	Anti-Dumping
AdAC.....	Anti-Dumping Advisory Committee
Adj.....	Adjusted
A-C.....	Anti-circumvention
A.C.I.....	Anti-circumvention investigation
A.d.A.....	Anti-dumping Agreement
A.O.R.B.....	Any Other Reasonable Basis
Basic A.D.R.....	European Union's Basic Anti-dumping Regulation
B.-2-B.....	Business to Business
B.R.I.C.....	Brazil, Russia, India, China
B.R.....	Brazil
B.i.H.....	Bosnia and Herzegovina
B.I.I.....	Bureau of Industry Injury Investigation (P.R.C.)
C.A.D.P.....	Committee on Anti-Dumping Practices (W.T.O.)
C.A.W.P.R.....	China's Accession Working Party Report
C.A.P.....	China's Accession Protocol
C.C.C.M.E.....	China Chamber of Commerce for Import and Export of Machinery and Electronic products
C.C.C.T.P.....	Cost of the Closest Cheaper Type of Product
C.C.R.P.....	Cost of the Closest Resembling Product
C.I.F.....	Cost Insurance Freight
C.N.....	Combined Nomenclature
C.S.....	Serbia and Montenegro
C.O.M.....	Cost of Manufacturing
Com.....	Commission
Coun.....	Council
Cont'd.....	Continued

C.o.O.....	Country of Origin
C.V.....	Constructed Value
C.V.A.T.....	Carousel Value Added Tax (Fraud)
C.V.D.....	Countervailing Duties
D.S.S.....	Dispute Settlement System
D.S.U.....	Dispute Settlement Understanding
D.G. Trade E.U.....	Directorate General for Trade of the European Union
E.B.I.T.D.A.....	Earnings before Interest, Taxes, Depreciation and Amortization
E.B.T.....	Earnings before Taxes
E.C.....	European Commission or European Communities
E.Cs.....	European Communities
E.G.....	Exempli Gratia
E.P.....	Export Price
Est.....	Estimate
E.U.....	European Union
EU28IV.....	Import Volume of the 28 member states of the European Union
Ex.W.....	Ex Works
Eurofer.....	European Confederation of Iron and Steel Industries
F.A.....	Facts Available
F.C.A.....	Free Carrier
F.E.R.....	Foreign Exchange Rate
F.o.B.....	Free on Board
FYROM.....	Former Yugoslav Republic of Macedonia
G.A.A.P.....	Generally Accepted Accounting Principles
G.E.....	Georgia
H.F.P.S.C.R.B.....	High Fatigue Performance Steel Concrete Reinforcement Bars
RFSP.....	Rolled Flat Steel Products
H.K.....	Hong Kong
I.A.....	Inter Alia
I.A.S.....	International Accounting Standards
I.D.....	Identifier

I.E.L.....	Injury Elimination Level
Imp.....	Imposed
I.N.....	India
I.R.....	Iran
ISLS.....	Islands
I.T.A.....	International Trade Administration
I.T.....	Individual Treatment
I.T.C.....	International Trade Centre
L.D.R.....	Lesser Duty Rule
L.H.I.T.....	Lowest and Highest Individual Treatment
M.E.....	Market Economy
M.E.T.....	Market Economy Treatment
M.F.N.....	Most Favoured Nation
M.I.P.....	Minimum Import Price
M.o.D.....	Margin of Dumping
M.of.Com.....	Ministry of Commerce of the People's Republic of China
M.oM.....	Month on Month
M.o.U.....	Margin of Undercutting
M.X.....	Mexico
N.M.E.....	Non-Market Economy
N.I.V.....	Non-materially Injurious Value amount of imports
N.V.....	Normal Value
O.E.C.D.....	Organisation for Economic Cooperation and Development
O.E.M.....	Original Equipment Manufacturer
P.C.N.....	Product Control Number
P.i.C.O.I.....	Price in Country of Import
P.u.C.....	Period under Consideration
P.u.I.....	Period under Investigation
PR.....	Profit in the Ordinary Course of Trade
P.R.C.....	Peoples Republic of China
P.R. of China.....	Peoples Republic of China

Prod.Com.....	Production Communautaire
P.u.C.....	Period under Consideration
Ref.....	Reference
R.I.P.....	Review Investigation Period
R.o.I.....	Return on Investments
R.U.....	Russia
S.A.....	South-Africa
Sa.A.....	Saudi-Arabia
SG&A.....	Selling, General and Administrative expenses
So.A.....	South-Africa
S.T.A.F.....	Special Type Athletic Footwear
S.G. & A.....	Selling, General & Administrative Costs
S.O.C.....	Supranational Oversight Council
TARIC Code.....	Integrated Tariff of the European Communities Code
T.D.I.....	Trade Defence Instruments
T.O.....	Turnover
T.P.M.....	Target Profit Margin
Trans.a.W.A.....	A transposed Weighted Average (Dumping Margin)
U.A.....	Ukraine
U.A.E.....	United Arab Emirates
U.F.L.....	Union Frontier Level
U.K.....	United Kingdom
U.N.....	United Nations
U.S.C.B.P.....	United States Customs Border Protection
U.S.D.o.C.....	United States Department of Commerce
U.S.I.T.A.....	United States International Trade Administration
V.I.P.....	Vertical Integrated Producer
Vs.....	versus
W.A.....	Weighted Average
W.A.-E.P.....	Weighted Average of the Export Price
W.A.-I.T.....	Weighted Average to Individual Transactions
W.A.-N.V.....	Weighted Average of the Normal Value

W.As.....	Weighted Averages
W.A.-Sa.Mo.....	Weighted Average of sampled WA-WA margins of dumping
W.A.Sha.W.A.....	WA of shares of (un)related sales applied on (intra-holding) (un)related sales prices
W.A.-W.A.....	Weighted Average to Weighted Average
W.I.V.....	World Import Volume
2004 Regulation	Anti-dumping Regulation of the People's Republic of China

INTRODUCTION

1 Introduction

1.1 Context of the research at hand: a sequence of historical events

HAVE NAMED this dissertation *Protectionism in the Era of Globalisation* and affix an emphasis to the phrase *in the era*. The purpose of this choice is to contrast the existence of submerged protectionism throughout the gradual liberalisation of the world's multilateral trading system.¹ The era of globalisation jump-started in the aftermath of the Second World War, after representatives of countries convened in 1944 in Bretton Woods to conceptualise a fair share of how global trade would be effectuated today.² The liberalisation of trade intertwined domestic economies and amplified global economic interdependence into where it ostensibly serves as a bulwark against the re-ignition of a world war.³ Liberalisation is off under-estimable importance.⁴

Global trade volumes bloomed ever after the Bretton Woods conference, yet freer trade also implied that domestic industries of countries became susceptible to injury caused by unfair trading practices adopted by foreign exporting producers. An omniprevalent unfair trading practice would be dumping. Dumping occurs when the international transfer of goods in significant volumes below their normal value causes material injury to the domestic industry of an importing WTO Member producing an identical, comparable or closely resembling product.⁵ To counter the injurious effect of dumping, WTO Members are granted discretion to impose anti-dumping duties (so-called 'contingent protection'), usually in the form of ad valorem cash deposits which are to be paid at the border upon importation.

The rationale behind the imposition of contingent protection seems the restoration of an equilibrium wherein a domestic industry could compete with foreign exporting producers on a fair footing – prior to the occurrence of dumping.⁶ Yet, whereas the imposition of contingent protection may serve as a safeguard against unfair trading practices applied by foreign exporting producers, it may also constrain any heightened transfer of commodities at intermittent intervals of domestic demand. Any resulting

¹ Chaisse, Julien, and Tsai-Yu Lin, eds. *International economic law and governance: essays in honour of Mitsuo Matsushita*. Oxford University Press, 2016, p. 372, "there is a great deal of protectionism in the USA and the EU".

² Mavroidis, Petros C. *The Regulation of International Trade: GATT*. Vol. 1. MIT Press, 2016, p. 7. However, Frieden, Jeffry. "The political economy of the Bretton Woods Agreements." *Boston, Harvard University*, 2017, p. 3 identifies how the first of ages of globalisation prevailed from "the 1870s until World War I broke out in 1914".

³ Frieden, Jeffry A. "The modern capitalist world economy: A historical overview." *The Oxford Handbook of Capitalism*. Oxford University Press, 2012, p. 31 read "protectionism, financial disarray, and currency volatility".

⁴ Burstein, Ariel, and Marc J. Melitz. *Trade liberalization and firm dynamics*. No. w16960. National Bureau of Economic Research, 2011, p. 284 has argued that trade liberalization increases returns for types of firm activities.

⁵ Bossche, Peter. *The law and policy of the World Trade Organisation: text, cases and materials*. Cambridge University Press, 2008, p. 513 gives the description "dumping is a situation of international price discrimination". Matsushita, Mitsuo. "Some International and Domestic Antidumping Issues." *Asian J. WTO & Int'l Health L & Pol'y* 5 (2010): p. 260: a) causal relationship between b) dumping and c) material injury to the domestic industry.

⁶ Mankiw, N. Gregory, and Phillip L. Swagel. *Antidumping: The third rail of trade policy*. in *Foreign Aff.* 84, 2005, p. 108 holds that it rather concerns an opaque way of protecting favoured industries that have powerful lobbies.

friction in the natural evolution of cross-border supply dis-utilises the very foundation whereupon contingent protection rests: to shield domestic supply curves from foreign price movements at injurious quantities.⁷ On the contrary, in the sketched situation the imposition of contingent protection would rather generate the very injury it supposedly counters – albeit not in the industry under consideration, but in the allied industries further down the supply chain.⁸ In this line of thought, there existed a need to draft a clear set of rules of thumb which divert the imposition of anti-dumping duties from any natural oscillation of international trade volumes.⁹ A first draft for this, which was never signed by the USA, came about in the Kennedy Round of 1967 when contracting parties to the General Agreement on Trade and Tariffs conceptualised some of the very first anti-dumping codes.¹⁰

To ensure that anti-dumping duties would not be imposed invariably to the level playing field for companies to compete, WTO Members enshrined the set rules of thumb in what eventually became the WTO Agreement on the Implementation of Article VI of the GATT'94 (the Anti-dumping Agreement).¹¹ Yet the global trade rules of the Anti-dumping Agreement grant a tacit leeway to authorities to determine whether AD duties should be imposed.¹² Albeit within a set of restrictive combinations, authorities of WTO Members can, if they wish, render the outcomes of anti-dumping investigations into conformity with the best interests of their constituency.¹³ Which tendency shaped the field of discussion into this open system for WTO Members to pluck from? Presumably, the *raison d'être* behind this deferential stance was to prevent the Anti-dumping Agreement from becoming too rigid and thus inoperable.¹⁴ Exactly this leeway often causes governments to be reputed of applying the Anti-dumping Agreement's flexible rules in a protectionist manner, but empirical evidence appears scarce.¹⁵ The attempt to elucidate this problem is one of the main themes of this dissertation. The

⁷ Czako, Judith, Johann Human, and Jorge Miranda. *A handbook on anti-dumping investigations*. Cambridge University Press, 2003, pp. 75 and 76 on the considerations of whether to impose definitive anti-dumping duties.

⁸ Martin, Lisa L., ed. *The Oxford handbook of the political economy of international trade*. Oxford University Press, 2015, pp. 124-125 on how global supply chains have influenced the landscape for contingent protection.

⁹ Gilbert R. Winham in Ravenhill, John. *Global political economy*. Oxford University Press, 2017, p. 118 explains how the first anti-dumping code from 1963-67 was designed to help standardize national anti-dumping policies.

¹⁰ Mavroidis, Petros C., and Petros Mavroidis. *Trade in goods*. Oxford University Press, 2007, p. 24 on the round.

¹¹ Matsushita, M., Schoenbaum, T. J., Mavroidis, P. C., & Hahn, M. (2015). *The World Trade Organisation: law, practice, and policy*. Oxford University Press., p. 379 on the legal framework of anti-dumping in the GATT / WTO.

¹² Wruuck, Patricia. *The Political Economy of Anti-dumping Protection*. Springer International Publishing: Imprint: Springer, 2015, p. 47: the leeway results from vaguely defined provisions at a national and an international level.

¹³ Posner, Eric A., and Alan O. Sykes. *Economic foundations of international law*. Harvard University Press, 2013, p. 277 GATT limits antidumping duties to cases where dumping is causing or threatening to cause material injury.

¹⁴ Heather A Hazard. *Resolving disputes in international trade*. Harvard University, 1988, p. 53: the "flimsy constitutional basis and institutional weakness" of the GATT implied that the rules of the GATT are called "rigid".

¹⁵ For an example where the practice is accused: Cass, Ronald A., and Keith N. Hylton. *Laws of creation: property rights in the world of ideas*. Harvard University Press, 2013, p. 197

dissertation at hand endeavours to uncover all the fundamental discrepancies which exist between the Anti-dumping Agreement and implementation of contingent protection by inspection authorities.

1.2 The innovative character of the research at hand

a. A unique method to detect retaliation, protectionism and misuse of contingent protection

The research at hand would be the first to detect the misuse of trade defence instruments via graphs. Remarkable examples thereof can be found in paragraphs 3.1.c, 3.2.a and 3.2.b, which point out the retaliatory effect of anti-dumping measures imposed by and against the EU. On the one hand these graphs display the amount of measures which were withdrawn from and imposed on EU imports and exports. On the other, these graphs juxtapose Members on whose exports the EU initiated the most anti-dumping measures against Members who initiated the most anti-dumping measures on imports originating in the EU. Furthermore, in paragraphs 3.1.d and 3.2.c the prevalence of protectionism in the PRC, the EU and the USA is measured by graphing the extent wherein anti-dumping measures have been imposed per chapter of the harmonised nomenclature. An exceptional and unique example on the detection of the misuse of contingent protection would be the spider plot in paragraph 3.4.b. Therein the misuse of anti-dumping instruments is detected through the correlation between rates of duty on the one hand and the phase of the investigation (preliminary or definitive), the breadth of duty (country-wide or individual) and the amount of impositions per country of origin on the other.

b. A new general theory on the detection of sales outside the natural course of world trade

By graphing the world import share into EU28 of commodity numbers of Members contracted in several investigations, paragraphs 3.3.a and 5.4.b point out how the current method for determining negligibility fails to take note of the nature of the global trade curve. A redefinition of negligibility which takes the nature of the global trade curve into account is conceptualised in paragraph 3.3.b. The concept, to be written out in a fuller theory, redefines negligibility into a means to detect commodity numbers wherein dumping prevails, thus enabling contingent protection to reach a fuller potential as a means to optimise the international exchange of goods. Instead of the static import share at a specific moment in time, the new theory would analyse the nature of the global trade curve through the difference between the percentual change of import volumes from the country of origin on the one hand and the rest of the world on the other. The theory presumes that, provided that there are more than a few importers, the whole world would not dump a product at the same time. In light of this presumption, any significant change in import from a country which surpasses that of the world would be suspicious. Because absolute volumes are incomparable, the theory would look at the percentual changes. The variable from which the changes in import volume from the world and the

country of origin are calculated would be the average of the new import volume and the old import volume. The old volume would be calculated as the average of an x amount of older import volumes.

c. A new type of zeroing is detected and coined with the term: diffracting

It would appear that a residual dumping margin which only takes account of a fraction of the margins of dumping of all sampled exporting producers – such as the newly identified practice of "diffracting" – is neither based on a "statistically valid sample", as is required per the chapeau of Article 6.10, nor based on a "fair comparison" between export price and normal value, as is required per Article 2.4 and by Article 2.4.2 of the WTO Anti-dumping Agreement. Therefore, paragraph 4.3.b researches the extent wherein investigating authorities have applied the newly identified form of zeroing: diffracting.

d. A new rationale against inflated analogue normal values and deflated export prices

Paragraphs 4.4 and 4.5 provide first-of-their-kind analyses of the misuse of market economy treatment by inspection authorities as a means to inflate the margins of dumping through normal values in third countries at higher levels of development than the country of origin. Furthermore, it would be the first to substantiate the inflation of margins of dumping where export prices and normal values have been established at different levels of trade – to that end see paragraphs 4.3.c and 4.7a.

e. A redefinition of sales in the ordinary course of trade

The dissertation is the first to furnish a clear and concise definition of "sales in the ordinary course of trade". The exact meaning of this phrase, which is highly important in the calculation of the normal value, has been a point of contention. An explication of the definition can be found in paragraph 4.6.b. The redefinition reads as follows:

'Sales are *only* in the ordinary course of trade if they are *either* made:

- at prices above the *per unit cost* (the sum of fixed and variable production costs per unit plus overhead, administrative, selling and general costs per unit) *or*
- at prices below *per unit cost* above the weighted average *per unit cost* for the period of investigation if the latter sales are made in less than six months at *either*
 - a volume of less than 20 % of the total volume of sales used for the determination of normal value *or*
 - a weighted average *per unit cost* of all sales used to determine normal value which does not surpass the weighted average selling price of all sales used to determine normal value.'

1.3 Hypothesis: contingent protection has often served as a figment

Within this dissertation, hedonism hypothetically substitutes or steers achievement of purpose under the Anti-dumping Agreement in the effectuation of contingent protection by WTO Members. In line with this putative narrative, the dissertation presumes that the surge of protectionist policies – in the run up to the 2018 China-United States-EU trade war¹⁶ – is fuelled by economical and geopolitical interests rather than a genuine understanding of the Anti-dumping Agreement. It scrutinizes this assumption by ascertaining whether the outcome of anti-dumping investigations in practice runs on the actions of exporting producers and the relative disadvantage suffered by third parties to their transactions.¹⁷ In other words, the research analyses whether the Anti-dumping Agreement does not merely serve as a figment for WTO Members to satisfy their own ideal economic situation rather than as a set rules of thumb to counteract unfair trading practices adopted by foreign exporting producers.

The dissertation at hand embarks from the hypothesis that discrepancies exist between WTO induced exigencies for anti-dumping procedures and the actual appraisal of "real," or "natural" actions of exporters exporting goods from and towards the EU. It embarks from this stance on two presumptions. First and foremost, it appears that the thirty-one anti-dumping disputes brought up for adjudication by the WTO Appellate Body never concerned two WTO Members litigating in the name of interests adverse to those of their own economic constituency.¹⁸ On the contrary, WTO Members appear to be rather continent where it concerns interference in any unnatural course of trade which befits their constituency. Furthermore, how else could one perceive the comprehensive, self-seeking schemes of contrivances, established under the umbrella of the Anti-dumping Agreement ever since its inception?¹⁹ Schemes, such as the proscribed practice of zeroing, clearly contrived in a consummate manner towards a non-causal end to be reached, rather than a desire to abide with the prescripts of the Anti-dumping Agreement, an impartial valuation of a sequence of events and a pre-ordained outcome of A-D investigations.²⁰ Furthermore, safeguards against a distressing and persistent

¹⁶ Heo, Uk, and Terence Roehrig. *The Evolution of the South Korea–United States Alliance*. Cambridge University Press, 2018, p. 263: it has been suggested that the trade war was borne out of the PRC's currency manipulation.

¹⁷ Aggarwal, Aradhna. *The anti-dumping agreement and developing countries: An introduction*. Oxford University Press, 2006, p. 184 provides insight on an apparent enormous potential for misuse of anti-dumping instruments.

¹⁸ Cottier, Thomas. *International trade regulation and the mitigation of climate change*. Cambridge University Press, 2010, p 195 - of course this does not imply that the WTO only legislates on controversial anti-dumping issues. It also legislates on small and detailed agreements negotiated within different WTO committees: such as the recommendation of the Committee on Anti-Dumping Practices regarding times-frames to be taken into consideration for the determination of negligence of import volumes G/ADP/11.

¹⁹ See for instance the 18 disputes concerning the proscribed practice of zeroing, brought up for adjudication by WTO AB over the past decade - Prusa, Thomas J., and Edwin Vermulst. "United States–Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand: a cat in the bag." *World Trade Review* 11.2 (2012): p 257

²⁰ With respect to the proscribed practice of zeroing please see Appellate Body Report, *United States – Continued Existence and Application of Zeroing Methodology*, WT/DS350/AB/R, adopted 19 Feb. 2009, DSR

discrepancy between the legitimate and observable course of anti-dumping investigations appear rather obedient. Various phrases in the Anti-dumping Agreement, most notably "the ordinary course of trade" within the determination of transactions to be incorporated in calculus of normal value, convey significant leeway for sensuous impression in the eventuation of conduct. Various intricate phrases and terms furnish leeway to investigative authorities of WTO Members to formulate the valuation process and fail to promulgate a strict decision-making process which is uniform and unalterable.²¹ The leeway even extends into the dispute settlement system of the WTO. In the absence of a clear understanding of "the ordinary course of trade", the Appellate Body in recital 139 of US- Hot Rolled Steel even went so low to succumb to a WTO Member's clear misinterpretation in this phrase:

"Generally, sales are in the ordinary course of trade if made *under conditions and practices* that, for a *reasonable period of time prior to the date of sale* of the subject merchandise, have been *normal* for sales of the foreign like product. (emphasis is added)" ²²

Nothing could be less true than this crude mutilation of a perfectly construed provision. Albeit formulated a bit cryptic, the text of Article 2 of the Anti-dumping Agreement holds that: 'Sales are *only* in the ordinary course of trade if they are *either* made: at prices above the *per unit cost* (the sum of fixed and variable production costs per unit plus overhead, administrative, selling and general costs per unit) *or* at prices below the same *per unit cost* above the weighted average *per unit cost* for the period of investigation if the latter sales are made in less than six months at *either* a volume of less than 20 % of the total volume of sales used for the determination of normal value *or* a weighted average *per unit cost* of all sales used to determine normal value which does not surpass the weighted average selling price of all sales used to determine normal value.'. Unsurprisingly, the main body of critiques on the Anti-dumping Agreement would be failure to postulate uniformity towards WTO Members, most notably with respect to the effectuation of its various paragraphs into sound practice.²³ Presumably, the absence of a uniform understanding gave birth to the quite utilitarian

2009: III, 1291. Zeroing occurs when negative dumping margins within subgroups for the determination of an overall margin are factored in as zero, thereby resulting in a lesser overall margin. See Bernard M. Hoekman, Michel M. Kostecki "The Political Economy of the World Trading System" *Oxford University Press* (2009), p 452

²¹ Hoekman, Bernard M., and Michel M. Kostecki. *The political economy of the world trading system: the WTO and beyond*. Oxford University Press, 2009, p 173 has assumed that "Trade is considered not to be ordinary if over an extended period of time (a year) a substantial quantity of goods is sold at less than average total costs.".

²² Appellate Body Report, *United States - Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, 4697 – the GATT provides ample guidelines on determining *like products*, which in combination with discretionary powers often leads to irreconcilable results. – reference: Cottier, Thomas, and Petros C. Mavroidis. *Regulatory Barriers and the Principle of Non-discrimination in World Trade Law: Past, Present, and Future*. Vol. 2. University of Michigan Press, 2000, p 363

²³ Gardiner, Richard K. *Treaty interpretation*. Oxford University Press, USA, 2015, p. 485 has pointed out that "In the application of the Anti-dumping Agreement, the Appellate Body has adopted an approach which views the reference to 'permissible interpretations' as requiring the interpretative process to be interrupted at a point where differing 'permissible' interpretations have been revealed." Prescription demarcates every permissibility.

approaches of WTO Members' investigative authorities. Where the utilitarian approach of investigative authorities contravenes the Anti-dumping Agreement, the dissertation at hand traces out the practical amenability of WTO induced exigencies within the effectuation of contingent protection. Where it uncovers anomalies in the practical implementation of the Anti-dumping Agreement, the dissertation will try to ascertain whether these anomalies exist as a mere matter of coincidence or as a matter of identity – by and against the EU. From the onset it seems, however, that the legitimacy of the end and outcome of anti-dumping investigations or their serviceability to a smooth-functioning multilateral trading system, is altogether a mere by-function in the range of incentives by which investigative authorities are prompted to work in the direction where their efforts take them. In practice, contingent protection appears vendible: it concerns a trade-off wherein WTO Members consult each other's offer in seeking gain through bargain.²⁴ This hedonistic, utilitarian approach towards contingent protection presumes that WTO Members' actions are primarily driven by the algebraic sum of individuals' economic interests.²⁵ It is a presumption which will be put to the test by analysing whether the discrepancies between the provisions of the Anti-dumping Agreement and their effectuation into practice are primarily driven by the interests of WTO Members themselves. Felicitous examples of the variables which the dissertation scrutinizes in this regard are:

- the divergence between average final country-wide ad valorem rates applied on the country of origin *vice versa* the average rates imposed provisionally on cooperating producers contracted in a sample (a utilitarian consequence would be that the latter is less than former);
-
- the artificial determination of normal value²⁶ through analogue country producers' sales to their domestic markets respectively construction of normal value through their cost structures instead of abidance with the explicit requirement in Article 2.2 of the Anti-dumping Agreement to determine normal value for non-market economies via comparable export prices of the like products exported from the NME-country-of-origin to any third countries;²⁷

²⁴ Read: consultations between the relevant *competition authorities* - Hoekman, Bernard & Mavroidis, Petros C., "Antitrust-based Remedies and Dumping in International Trade" *C.E.P.R. Discussion Papers* (1994), p 14

²⁵ See Prusa T., Vermulst, E. (2019). United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China: Nails in the Coffin of Unfair Dumping Margin Calculation Methodologies. *World Trade Review*, 18(2), 305 on an analysis of the most recent AB ruling on result-oriented dumping margin calculation methodologies

²⁶ A problem often associated with these and other determinations is the lack of transparency, see Horlick, Gary, and Edwin Vermulst. "The 10 major problems with the anti-dumping instrument: An attempt at synthesis." *Journal of World Trade* 39.1 (2005): 69

²⁷ The need to refrain from the use of analogue country or similar methodologies as the basis for normal value calculations in AD proceedings targeting China has been pointed out in Vermulst, Edwin, Juhi Dion Sud, and Simon J. Evenett. "Normal value in anti-dumping proceedings against China post-2016: are some animals less equal than others?." *Global Trade and Customs Journal* 11.5 (2016): 225. We argue that it has been proscribed.

- the inclusion of sales by analogue country producers which are related to complainants in the determination of normal value (their relationship would make these prices unreliable);
- every persistent failure to include domestic sales by producers in analogue countries²⁸ whose level of economic development approximates the level of economic development in the non-market economies of origin:²⁹ a chief and grievous impediment to the exigency of comparability in the transposition of normal values (reputedly, deliberate mischief will exist if producers in analogue countries which account for higher levels of economic development are more often included to determine normal value: generates broader margins of dumping);
- tit-for-tat in the inception of anti-dumping investigations and the imposition of anti-dumping measures (for instance through an analysis of a juxtaposition between the seven Members who on whose imports originating in the EU - and the seven Members on whose exports towards the EU the EU - initiated the most anti-dumping measures per multiple quinquennia);
- the evolution of the extent wherein anti-dumping measures are withdrawn from and by EU28;
- the extent wherein exports of exporting producers from economies of WTO Members whose export volume account for larger shares of imports are subject to more and / or higher rates;
- the extent wherein imports into EU28 and the USA which originate in either one of the five BRICS economies (Brazil, Russia, India, China and South-Africa) are subjected to more and /or higher rates in sectors which have higher strategic importance (such as steel and chemicals);³⁰

²⁸ Michalopoulos, Constantine. *The integration of transition economies into the world trading system*. The World Bank, 1999, p. 22 : "Moreover, once the target of an investigation, the procedures used to determine whether dumping has occurred in "non-market" economies are usually different than those applied to other countries. Because it is assumed that prices and exchange rates in centrally planned economies did not reflect true opportunity costs, "surrogate" or "analogue" countries' costs and exchange rates are used for the determination of "normal" value, against which the actual price is measured. This introduces the possibility for arbitrariness and non-transparency."

²⁹ Matsushita, Mitsuo, et al. *The World Trade Organisation: law, practice, and policy*. Oxford University Press, 2015, p. 393 explains the rationale behind the possibility to transpose normal values for non-market economies: "Where all domestic prices are fixed by the State, special difficulties may exist in 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.

WTO members have tried to cope with this issue by allowing antidumping authorities to disregard domestic prices of the non-market economies and substitute them with prices constructed from data in a surrogate third country. For example, if Country A is regarded as a non-market economy, the domestic prices of that country are disregarded by the anti-dumping authority of Country B, the importing country. The authority in Country B then uses economic data such as prices and costs of production in Country C (a third country) that is a market economy and constructs the domestic price of Country B. The price constructed in this way is used to calculate the dumping margin of products exported from Country B."

³⁰ Especially in light of the aftermath of the global credit crisis of 2008, which by some has been perceived as a rebalancing of the world economy towards the biggest of the BRICS, China: Claessens, Stijn, Simon J. Evenett, and Bernard M. Hoekman. *Rebalancing the global economy: A primer for policymaking*. CEPR, 2010, p. 73

- the extent wherein six-digit commodity numbers are simultaneously subject to anti-dumping measures where it concerns chapters of the harmonised system nomenclature which are more often subjected to anti-dumping measures;³¹
- the artificial inflation of all-others rates through the country-wide transposition of the anti-dumping rates imposed on sampled exporting producers which account for the highest margin of dumping (on the premises of false criteria (such as a high level of cooperation / import share belonging to exporting producers contracted with the lowest margin of dumping) rather than transposition of the weighted average of all sampled cooperating exporting producers);³²
- the deliberate imposition of duties on imports into weak performing sectors of strategic importance (such as the steel and allied industries in the USA and the EU and the chemicals and allied industries in China);³³
- inconsistencies in the construction of the cost of production; administrative, selling and general costs and profits for types of products which remain unsold by contracted analogue country producers – especially where it reflects a tendency to include types with a higher cost structure in order to inflate the normal value (likely on the premises that it concerns a more comparable product or that it concerns the "cheapest alternative" for which some further "adjustments" need to be made);³⁴
- the annual sum of month-on-month changes in the import share of products subjected to anti-

³¹ Hoekman, Bernard M., and Petros C. Mavroidis. *World Trade Organisation (WTO): Law, Economics, and Politics*. Routledge, 2007, p 35 : "For tariff commitments to be contracted, a common language to describe goods is required. The same goods can be described in different ways (chair, seat, office furniture, etc.), and language in and of itself adds to the complication (chair, chaise, sedia, Stuhl, stoel, etc.). The Harmonized System (HS) supplies the common language. The HS is a classification system for goods that has been elaborated in the World Customs Organisation (WCO), an international Organisation with headquarters in Brussels, Belgium. The function of the HS is to describe goods in a multilaterally agreed manner. Product descriptions are expressed in digits: the fewer the number of digits, the more generic the product-category (for example, at the two-digit level one might find the term "motor vehicles"); the higher the number of digits, the more specific the product-category (for example, at the eight-digit level, one might find something like "passenger cars weighing less than 2 tons and with an engine not exceeding 1.5 litres, with a catalytic converter"). The HS plays a key role in the operation of the WTO as it defines the scheduling of tariff commitments (concessions) at the six-digit level."

³² The result of the country-wide impositions is that duties are imposed on exporters which were unknown to the investigating authority once the anti-dumping duty was imposed: Mavroidis, Petros C. *Trade in goods*. Oxford University Press, 2012, p 467

³³ With respect to the strategic importance of the steel industry to EU28, see for instance the recommendations of the High-level Round Table on the future of the European Steel Industry, 12 February 2013, *Ref. Ares(2015)3397296 - 14/08/2015*

³⁴ Vermulst notes that the calculation of constructed normal values involves a variety of calculation and allocation choices (for instance with respect to what constitutes a "reasonable" profit margin, which makes them "unpredictable and arbitrary", compared to price-based normal values. - Edwin Vermulst & F. Graafsma, *Customs and Trade Laws as Tools of Protection: Selected Essays*, (Cameron May 2005), p 983

dumping measures from countries of origin of exporting producers (relative to the world import volume) in the years prior and posterior to the initiation of anti-dumping measures by the Directorate General for Trade of the EU;³⁵

- the likely inexactness of domestic industry support for the initiation of anti-dumping procedures, for instance where it primarily concerns indirect support from business associations which account for little more than 25 per cent of the domestic industry producing products comparable to or closely resembling the product under consideration³⁶
- the evolution of the annualised differences between the percentual month-of-month changes in absolute import volumes of countries of origin of products subjected to anti-dumping measures on the one hand and the simultaneous percentual month-on-month changes in absolute import volume of the rest of the world of the same type of products in time-lags prior and posterior to the initiation of anti-dumping measures by DG Trade EU on the other;
- inconsecutiveness in the non-attribution of injury to factors with a bearing on the state of the domestic industry other than dumped imports in the break-the-causal-link analyses³⁷ - explicitly where the varying attribution yields higher returns of micro-economic and macro-economic injury for the imports under consideration.³⁸ The assessment would research whether the following variables are factored in:³⁹
 - contraction of domestic demand (for instance due to global internet and digitisation);

³⁵ Bown, Chad P. *Global antidumping database version 1.0*. The World Bank, 2005, p 14 : DG Trade EU, or the Trade Directorate of the European Commission initiates and executes the anti-dumping investigations in the EU.

³⁶ Mavroidis, Petros C., Patrick A. Messerlin, and Jasper M. Wauters. *The law and economics of contingent protection in the WTO*. Edward Elgar Publishing, 2010: "Art. 5.4 AD lays down the standing requirements for domestic industry filing an application. It prevents WTO Members from initiating an investigation unless a certain statutory percentage of the domestic industry producing the like product supports the application, such that the application can be considered to have been made 'by or on behalf of the domestic industry'. There are two thresholds to be met simultaneously, a 50 per cent and a 25 per cent support threshold. First, the application needs to be supported by those producers whose collective output is more than 50 per cent of the total production of that portion of the domestic producers expressing an opinion in favour or against the initiation. Second, the producers expressly supporting the initiation need to represent at least 25 per cent of total production, that is, not less than 25 per cent of the production of all domestic producers whether expressing an opinion on the initiation or not."

³⁷ Pangratis, Angelos, and Edwin Vermulst. "Injury in Anti-Dumping Proceedings—The Need to Look Beyond the Uruguay Round Results." *Journal of World Trade* 28.5 (1994): p 62 argues that the calculation of the injury threshold should be a very precise exercise rather than the mere "interpretation and combined evaluation of complicated economic relations involving company related parameters"

³⁸ Mavroidis, Petros C., Patrick A. Messerlin, and Jasper M. Wauters. *The law and economics of contingent protection in the WTO*. Edward Elgar Publishing, 2010, p 19 questions the extent wherein macroeconomic variables have an impact on a-d complaints and finds *par exemple* that even though exchange rate fluctuations which are not timely adjusted may increase a finding of dumping likewise decrease a finding of injury.

³⁹ Vermulst, Edwin A., and Folkert Graaflmsa. *WTO disputes: anti-dumping, subsidies and safeguards*. Cameron May, 2002, p 155 : effects caused by these factors must be excluded from the determination of *material injury*.

- imports from third countries or third parties;⁴⁰
- export performance (volume, value and average price of exports) of the domestic industry to unrelated customers;⁴¹
- fluctuating cost of product concerned/like product;
- capacity utilisation rate of the domestic industry;
- competitiveness (for instance new substitutes/ efficiency of the domestic industry);
- related-party sales which never left the captive market (the effect of transfer pricing on calculated margins of undercutting and underselling);
- crises (economic, financial, (supra-)national, sector-specific);
- non-complainant fraction of the domestic industry causes or outperforms the injury of the complainants;
- non-efficient decisions adopted by the management and a lack of investments in research and development;
- cost of compliance with regulatory requirements (*inter alia* anti-dumping duties imposed on domestic producers in third countries);
- decrease in prices of the like product on the global market;
- self-inflicted injury from imports by the domestic industry;
- non-injurious quotas in trade agreements;
- the effect of CVAT fraud through shell companies;
- exchangeability of products under investigation;
- price decreases of domestic interchangeable and domestic products;
- branded vs. non-branded sales;

⁴⁰ Chow, Daniel CK, and Thomas J. Schoenbaum. *International Trade Law: Problems, Cases, and Materials*. Wolters Kluwer Law & Business, 2017, p. 192: some scholars believe however that the assessment of all other factors is not a *conditio sine qua non* for any determination of injury, their rationale hereafter: "We believe that, depending on the facts at issue, investigating authority could reasonably conclude, without further inquiry into collective effects, that "the injury . . . ascribe[d] to dumped imports is actually caused by those imports, rather than by the other factors." At the same time, we recognize that there may be cases where, because of the specific factual circumstances therein, the failure to undertake an examination of the collective impact of other causal factors would result in the investigating authority improperly attributing the effects of other causal factors to dumped imports. We are therefore of the view that an investigating authority is not required to examine the collective impact of other causal factors, provided that, under the specific factual circumstances of the case, it fulfils its obligation not to attribute to dumped imports the injuries caused by other causal factors."

⁴¹ Matsushita, Mitsuo, et al. *The World Trade Organisation: law, practice, and policy*. Oxford University Press, 2015, p. 395: some scholars believe that the assessment of all other factors is a prerequisite: "Article 3.5 of the Antidumping Agreement requires that national antidumping authorities shall examine any known factors other than the dumped imports which injuring the domestic industry'. In Thailand-H-Beams (ref) one of the issues was the meaning of 'any known factors'. Poland, the petitioner, argued that the government applying an antidumping measure must on its own look for any factor other than dumping that may have caused material injury to a domestic industry. The Panel, however, found that the term 'any known factors' includes only causal factors that are raised before the national antidumping authorities by interested parties in the investigation."

- competition between domestic VIPS and domestic external input sourcing producing companies in the same sector;
 - impairment booking;
 - a force majeure with bearing on production, capacity utilisation, sales, market share and productivity figures;
 - technical evolution of the product under investigation (decreased weight of sold items);
- The varying inclusion of micro- and macro-economic indicators with bearing on the state of the domestic industry into the material injury margin analysis.⁴² The assessment comes down to whether any of the following micro- and macroeconomic indicators are not factored in on a consecutive basis:⁴³
- production;
 - production capacity;
 - capacity utilisation;
 - sales volume;
 - market share and growth;
 - employment;
 - productivity and growth;
 - magnitude of the actual dumping margin;
 - recovery from past dumping
 - stock /inventories;

⁴² Just like in the SCM agreement, investigating authorities are obliged to evaluate all indicators and a positive finding does not require a downward trend in every indicator - Matsushita, M., Schoenbaum, T. J., Mavroidis, P. C., & Hahn, M. (2015). *The World Trade Organisation: law, practice, and policy*. Oxford University Press, p. 417

⁴³ Van Bael, Ivo, and Jean-François Bellis. *EU anti-dumping and other trade defence instruments*. Kluwer Law International BV, 2011, p. 258 provides us insight into the applicability of macro- and micro-economic indicators: "WTO Panels and the WTO Appellate Body also emphasized that the injury factors are not to be examined on an individual basis but in connection with one another. For instance, in *Korea - Certain Paper*, the WTO Panel noted that data gathered by the investigation authority must be evaluated in a context and in connection with one another, rather than a 'mechanical exercise of enumeration'.

The Commission classifies the economic factors laid down in Article 3(5) AdA into macro-economic indicators and micro-economic indicators. The data on the macro-economic indicators relate to all Union producers, while the data on the micro-economic indicators relate to the sampled Union producers. Macro-economic indicators normally refer to production, production capacity capacity utilization, sales volume, market share, growth, employment, productivity, the magnitude of the dumping margin and recovery from past dumping. As regards the micro-economic indicators, they prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investment and ability to raise capital.

As stated above, Article 3(5) AdA in fine expressly provides that the list of factors is not exhaustive, nor can one or several of these factors necessarily give decisive guidance. However, a survey of the decisions shows that certain injury factors such as decreased profitability or losses, drop in sales and/or market share and effect on prices are given more weight than others."

- profitability;
- cash flow;
- investments;
- return on investment;
- stocks/inventories;
- labour cost/wages;
- unit cost;
- ability to raise capital and the average unit prices;
- cost of goods sold to the domestic industry;
- sales prices.

Any proposition which diverts from a full assessment of all indicators would have to confuse that every indicator would be positioned to determine what real injury does and does not correspond to. Any diversion from a full assessment would explicitly not be legitimised through the supposition that an indicator would not be in the position to determine whether injury corresponds to dumping. The fundamental objection to this supposition would be that it presupposes that the objective of an assessment of a single indicator is to determine injury. There is fault therein since the mere analysis of a single indicator would not suffice to conclude the existence of dumping. Labour for instance, might be unable to render wages into a level equal to the output. Likewise, imperfect mobility may underlie a failure to exact price effects of dumped imports into reduction of money-wages and unemployment. Resistance of labour may in the short-run raise an insuperable bar to any reductions of money-wages until it appears likely to transform into a decrease in employment. In this simple line of thought the struggle about money wages would already distort the determinability of the injurious effect of dumped imports on wages in the short run. Yet the interval of distortion on the indicator would also be dependent on other forces of the economic system. Industries with higher reserves might have the tendency to give in to the struggle over money wages over a longer period. It seems though that in the short run every trade-union might resist any significant effectuation of dumping into the injury indicator wages, however small. On the other hand, trade unions would unlikely strike whenever the general costs of living rise. By virtue of the aforementioned reasoning it seems that the injurious effect of dumping cannot be seen on the premises of a single or a few indicators alone. On the contrary, it appears that the injurious effect of dumping ought to be analysed through a conjoint examination of all injury indicators as a whole.⁴⁴

⁴⁴ Porges, Amelia, Friedl Weiss, and Petros C. Mavroidis. *Guide to GATT law and practice: analytical index*. Vol. 1. Bernan Assoc, 1995, p 241. The importance of this finding is stressed in the Report of the Group of Experts on "Anti-dumping and Countervailing Duties": with respect to the injury concept it stressed that anti-dumping measures should only be applied when material injury, i.e. substantial injury, is caused or threatens to be caused.

1.4 Outline of the research at hand through six working hypotheses

a. *The six working hypotheses*

Throughout various segments of the introduction, a general hypothesis is distinguishable on the premises of the following working hypotheses:

- geopolitical factors have a decisive impact on the course and outcome of anti-dumping proceedings;⁴⁵
- import volumes are neither always determined nor determinable through the prescripts of the WTO;⁴⁶
- imposed anti-dumping rates do not always accurately correspond to actual dumping margins;
- normal value and the export price are not always determined in line with the methods prescribed by the Anti-dumping Agreement;
- the materiality of injury to the domestic industry as a causal effect of the importation of dumped imports is not always discerned nor discernible from those of all other injurious factors;
- malign output in the determination of whether dumping persists, extends well beyond the provisional and final phase of anti-dumping investigations into the expiry, (partial) interim, new shipper / exporter reviews, anti-circumvention and anti-absorption investigations

These six working hypotheses conjunct into the overarching assumption that anti-dumping instruments are not only employed as a means to shield the domestic industry from material injury

⁴⁵ Bown, Chad P. *Self-enforcing trade: developing countries and WTO dispute settlement*. Brookings Institution Press, 2010, p. 3-4 argues that the WTO provides a forum where geopolitical allies can " achieve harmonious economic, legal and political solutions to" most trade disputes without impairing their overall trade and non-trade relations, without inflicting substantial costs on other WTO Members, or burdening the trading system more broadly.

⁴⁶ Andersen, Henrik. *EU dumping determinations and WTO law*. Kluwer Law International BV, 2009, p 134 explains the representativeness test of the European Commission:

"Pursuant to Article 2.2 of the basic Regulation, domestic sales volume below 5% of the export sales volume to the EU may be disregarded. Such sales are not regarded as representative in finding a proper normal value. In Commission and Council practice, there is a two-step approach when determining whether domestic sales are representative. The EU authorities will first test all domestic sales of the like product against all exported sales. This examination is not based on types. It is an examination of the overall scope of the product under consideration.

If domestic sales volume is below 5% of export sales volume, the domestic sales are not considered representative and are therefore disregarded. If domestic sales volume of the like product is or exceeds 5% of the export sales volume, the second 5% test is carried out. The second 5% test is based on the different types of products that all fall under the generally defined product category.

The EU institutions can, according to their own practice, disregard domestic prices if the second test is not passed by the producer. An example is *Synthetic Fibres of Polyesters I*, where the Council stated:

Although the company's total domestic sales of the like product constituted more than 5 % of the volume of export sales to the Community, it was found that for the product type sold to the Community the domestic sales volume for the corresponding type was below this threshold and the prices could not be considered representative for the market concerned."

caused by the importation of goods in representative volumes at CIF frontier prices significantly lower than the prices applied in the domestic industries of the exporting producers⁴⁷ or other ways to determine normal value but also from the general effects of imports on the domestic industry – especially where it concerns domestic industries of geopolitical importance to the importing Member.

b. Chapter two: The Procedure under the WTO Anti-dumping Agreement

Chapter two provides a general introduction to the WTO Anti-dumping Agreement through literature and case-law. It kicks off through an explication of the procedure under the WTO Anti-dumping Agreement. It discusses the scope of the agreement, the application to, initiation and eventual course of anti-dumping investigations. Under "the course of an investigation" it looks at the rights of parties and investigating authorities, the determination of the importation of dumped goods, the causation analysis and the threat of injury to the domestic industry. Paragraph four and five discuss the different types of measures and how they are imposed, collected and reviewed. Finally, paragraph six discusses the role of the Committee on Anti-dumping Practices.

c. Chapter three: Anti-dumping Practices in the EU, the PRC and the USA

In theory, if it were true that investigative authorities had the propensity to accommodate an indeterminate range of determinants to curtail imports to their liking, then surely there would not be an equilibrium in the level of impositions on imports falling within the various chapters of the harmonised nomenclature. Surely, unless one presupposes that dumping prevails in specific industries alone – which seems unlikely because it concerns a private action. At most minor deviations would be visible over the long run. It is therefore that the impact of geopolitical factors, the first working hypothesis, on the course of anti-dumping proceedings will be analysed by means of the chapters within the harmonised nomenclature and the six-digit commodity numbers of goods whereon anti-dumping measures were imposed by EU28 over the course of January 2015 until November 2018. In line therewith chapter three scrutinises the relationship between the countries of origin and the EU by delving into the propensity to retaliate through patterns of goods subjected to investigations by the European Commission.⁴⁸ The propensity for initiations to counter initiations on the efflux of goods

⁴⁷ Delimatsis, Panagiotis. *International trade in services and domestic regulations: necessity, transparency, and regulatory diversity*. OUP Oxford, 2007, pp. 55-56: this is one of the various definitions of dumping: the central point to all of the definitions is the concept of price discrimination in different markets and dumping is particularly questionable where it concerns predatory intent: the intent to bankrupt competitors in foreign markets through a temporary low-price policy (so-called *strategic dumping*)

⁴⁸ Mavroidis, Petros C., *Trade in Goods*, 2nd edition, *Oxford University Press* (2012), p. 414, argues that A-D measures may be applied by Members as an alternative means to retaliate since raising unbound duties is unfavourable due to the limitation that the increase would have to apply on a MFN basis (and thus is unsuitable as a means to retaliate on one source of production) and thus risks alienating a number of its trading partners. Of course A-D measures would have to be applied in an MFN fashion against all exporters found to dump in

towards the country of origin will be scrutinised over the course of 2010 towards November 2018 within the first and second paragraph of chapter three.

An inference on the "psychological characteristics" of investigation authorities within geopolitical factors at interplay will be sought through a matrix of analyses on countries of origin subjected to anti-dumping investigations by the EU over the course of 2015 until November 2018. Amongst others, the variability of HS2es and CN6es designated by the less-than-fair-value investigations⁴⁹ of the US International Trade Administration as injurious to domestic industries of the United States as well as the EU's by the Directorate General for Trade of the European Union and the PRC's by the Ministry of Commerce of the People's Republic of China will be scrutinised in chapter 3. The former, latter and last will be seen over the course of 1990 until November 2018. Conclusions will be sought through a juxtaposition of all the anti-dumping disputes within the WTO which have been initiated by the EU per respondent and against the EU per complainant over the course of January 1995 until November 2018. Furthermore, over the course of January 2001 until 2018 the evolution, under the first and second paragraph of chapter 3, of the extent wherein EU28 import volume is expressed per centage of the extra EU28 world import volume, will be scrutinized. The aim is to infer whether the volumes fall into a position which substantiates whether any geopolitical factors have interplay on the extent wherein anti-dumping authorities apply contingent protection. Within the same node, to facilitate any eventual comparison, the amount of anti-dumping measures withdrawn from, imposed by, withdrawn by and imposed against the EU will be disentangled over the years January 2000 until November 2018.

The third paragraph of chapter three shall pave the first steps towards a new general theory on the optimisation of international exchanges of goods through the counteraction of dumping. The actual theory and its validity fall outside the scope of this research. It would serve as primer towards a more inclusive method for the detection of undesirable imports which cause material injury to the domestic industries of an importing Members through a variety of problems: hold-up, price depreciation, decreasing profit and bulking stocks to name a few. The current method appears flawed because it necessitates investigative authorities to dampen down the impact of factors other than dumped imports on indicators of injury to the domestic industry. Flawed after all because, for instance, it appears sheer impossible to de-attribute the causal effect of other factors from the injury indication of an overwhelming spontaneous accumulation of stocks. In a wild plethora of other factors, it appears

some particular manner - Horn, Henrik, and Petros C. Mavroidis. "Economic and legal aspects of the Most-Favored-Nation clause." *European Journal of Political Economy* 17.2 (2001): p 5

⁴⁹ Leidy, M. P., and B. M. Hoekman. "Inter-Industry Linkages and Cascading Contingent Protection." *Research Seminar in International Economics, University of Michigan Working Papers*. No. 275. 1991, p 12 – in the US based model the technical requirement for obtaining A-D protection differs from the EU based model in that dumped imports must be charged at a price that is "less-than-fair-value".

insufficient to retract that such spontaneity is a mere causal effect of the combined increase in liquidity-preference on the turning point of an economic boom. Hence, all factors will have to be retracted and their accurate effect will have to be de-attributed. A full retraction and de-attribution seems quite impossible. A better non-attribution seems insufficient though. This research strives to formulate the first steps for a new general theory which makes non-attribution of injuries irrelevant.

The sketch for a new general theory on the determination of dumping will first be explored by looking at the average annualised month-on-month import share of imports into EU28 on which the EU initiated A-D measures. The research takes place within the interval 2010 until November 2018 by:

- 1) collecting absolute month-on-month import volumes into the domestic market for consumption of the European Union belonging to CN6 codes whereof the exporting producers became subject to antidumping measures. There will be two types of import volumes who are collected: those who originate in the country of origin versus those who originate in the world.
- 2) expressing the afore import volumes from countries of origin as a percentage from the world
- 3) adding up the afore expressions and dividing them by twelve (thereby averaging it per year)

The sketch for a new general theory on the optimization of trade exchanges through the imposition of contingent protection will be worked out for the interval of January 2010 until November 2018 by:

- 1) collecting absolute month-on-month import volumes into the domestic market for consumption of the EU belonging to CN6 codes whereof the exporting producers became subject to antidumping measures. Two types of import volumes are collected: those who originate in the country of origin and those who originate in the world except the former one.
- 2) deducting the afore import volumes per month from the afore import volumes in the previous month and dividing that outcome with the import volume in the previous month. The results will be the percentual month-on-month changes in import volume.
- 3) deducting the afore percentual changes from countries of origin from the percentual changes from the world except the countries origin. The result will be the difference in month on month percentual change.
- 4) accumulating the afore different percentual changes per year. The result will be the difference in the annualised month-on-month percentual change.

Any annualised different percentual change which exceeds one hundred per cent would be deemed to be unnatural and injurious to the domestic industry producing a comparable or closely resembling product. This threshold might be far from ideal yet the ideal threshold falls out of the legal discipline in this dissertation. To determine whether the imports should become susceptible to anti-dumping measures, the persistency of the shock effect would have to be assessed over a longer period, for instance 8-10 years, to understand the nature of the imports. Arguably, an imposition would not be warranted if it is short lived. Nevertheless, for matters of practicability, two distinctions will be made under the third paragraph of chapter 3: natural differences in percentual changes in import volumes (on which anti-dumping measures should not be applied) and unnatural differences in percentual changes of import volumes (on which anti-dumping measures should be applied). The concept will furnish an alternative answer to the validity of the second hypothesis on whether the import volumes are not always determined through exigencies which the anti-dumping agreement postulates. In the same node, the share of imports whereon EU28 initiated anti-dumping measures will be scrutinized – over the same period, in the manner stipulated above. Other factors which will be assessed within the matrix of geopolitical interplay, all to be found in the first and second paragraph of chapter three, are: chapters of the harmonised nomenclature belonging to EU-exports in the USA subjected to anti-dumping measures over the course of January 1978 until November 2018; percentual deviations from the equilibrium in between the extents of import and export volume into EU28; over the years 1990 until November 2018: commodity numbers whereon anti-dumping measures were imposed by the PRC; countries of origin of exporting producers whose imports were subjected to anti-dumping proceedings in the USA and the EU over the course of 1990 until November 2018; the chapters of the harmonised nomenclature of exports from the EU which were subjected to anti-dumping measures in the PRC over the course of January 2000 until November 2018 and the USA over the course of 01-01-1987 until 01-11-2018; the initiation of anti-dumping measures over the course of January 1978 until November 2018 by and against the EU; CN6es and chapters of the harmonised nomenclature belonging to goods whereon the PRC and the USA over the course of January 1990 until November 2018 imposed anti-dumping measures; the countries of origin of exports *vice versa* EU exports whereon the PRC initiated anti-dumping measures over the course of January 1990 until November 2018 to measure whether any relative impairment in the former versus the latter might indicate impartiality (the latter also applies to the USA over the year 1980 until November 2018); and finally, chapters of the harmonised nomenclature whereon the PRC initiated anti-dumping measures over the years 2000 until November 2018 *vice versa* chapters of the harmonised nomenclature whereon EU28 and the USA over the years 2000 up until November 2018 initiated anti-dumping measures.

Any pattern within the positive respectively negative divergence of aggregated averages of provisional rates imposed on individually sampled exporting producers⁵⁰ *vice versa* the definitive rates imposed on a country wide level per chapter of the harmonised nomenclature which yields significant deviations from the equilibrium will be employed as a factor to determine the actual correspondence between anti-dumping rates which are imposed and the actual dumping margins. It will be confirmed in the fourth and fifth paragraph of chapters two whether this third hypothesis succeeds or fails. From a EU28 perspective, the countries of origin of products whereupon individual rates, other co-operator rates and all-others rates were imposed will be compared over the course of January 2015 until November 2018. The same goes for EU28 over the same type of rates within the same time-frame where it concerns averages of provisional and definitive duties classified per double digit commodity number of the harmonised nomenclature. Another variable to be included in the matrix of factors on the correspondence between anti-dumping rates which are imposed and actual dumping margins, are the imports into the PRC whereon the Ministry of Commerce imposed anti-dumping duties over the course of January 2015 until November 2018.⁵¹

Impositions of the Trade Remedy Investigation Bureau of the PRC will be scrutinised through a spider plot which denotes the average heights of all types of ad valorem rates imposed per Member *pro rata* over the course of January 2015 until November 2018. Partiality in setting the rates of duty by the Ministry of Commerce of China over the course of January 2015 until November 2018 will definitely have been assumed at the end of paragraph four in chapter three under the following two conditions:

- every average provisional ad valorem rate per HS chapter lays lower than their average definitive ad valorem rate for exporting producers sampled into their countries of origin⁵²
- the average rate of provisional and definitive duties imposed upon samples of exporting producers per country of origin rises progressively with the amount of anti-dumping measures which are imposed upon these samples of exporting producers per country of origin

Other variables to be analysed within the gambit of the third working hypothesis concern the nature of the relation between averages of different types of rates imposed by the EU over the course of January 2015 until November 2018 and the average final ad valorem rate of duty imposed by the US

⁵⁰ Sampling occurs when anti-dumping duties which are imposed are calculated as an average of different companies' dumping margins: Cottier, Thomas, and Petros C. Mavroidis. *Regulatory Barriers and the Principle of Non-discrimination in World Trade Law: Past, Present, and Future*. Vol. 2. University of Michigan Press, 2000 p. 362

⁵¹ Palmeter, N. David. *The WTO as a Legal System: Essays on International Trade Law and Policy*. Cameron May, 2003, p 21 explain how in the current system anti-dumping rates in first instance do not always accurately reflect the actual dumping margins

⁵² Tharakan, PK Mathew. "The problem of anti-dumping protection and developing country exports." *WIDER Working Papers (UNU)* (2000), p 14 on the differences between provisional and definitive measures

International Trade Administration over the same period. The cross-elasticity between these two variables will protract further inferences on the desirability or validity of the (average) Union industry support for anti-dumping investigations in the EU. In the case of tit-for-tat, the prisoners' dilemma would imply that the Union industry support for a continued imposition should decrease over the long run.⁵³ That could be true if the decrease of averages of different types of rates imposed by the EU over the course of January 2015 until November 2018 reflects into the average decrease of the final ad valorem rate of duty imposed by the US International Trade Administration over the same time period.

The (average) Union industry's support for anti-dumping investigations will be scrutinized over the period January 2015 until November 2018. Focal points of attention will be the percentages of Union industry support and whether these percentages are representative or whether it primarily concerns associations which are contracted in multiple investigations and which only indirectly represent the domestic industry. Furthermore, the use of sampling of importers, exporting producers and the Union industry will be scrutinized over the years 2015 until November 2018.⁵⁴ Whenever sampling abounds, it would be mandatory to scrutinize the ability to artificially inflate the margins of injury and dumping.

If from a group of cooperating exporting producers only those producers are sampled who accrue for a significant share of products comparable to or closely resembling the product under consideration which originate from the same country of origin, then transposition of dumping margins found within the sample on a country-wide level would be representative unless only the highest sampled dumping margin is transposed country-of-origin-wide.⁵⁵ In this scenario the country-of-origin-wide dumping margin would only be representative if the exporting producer which accounts for the broadest dumping margin would also account for a representative share of the total volume of comparable or closely resembling products which are imported from the country of origin. If the latter is not the case while the sample is representative,⁵⁶ then the weighted average of the margins of dumping would need to be transposed to meet the prerequisite of a fair comparison in article 2 of the Anti-dumping Agreement. The general hypothesis may succeed or fail on the analysis of whether this practice exists.

⁵³ Bown, Chad P. *The World Trade Organisation and antidumping in developing countries*. The World Bank, 2006, p 8 on the existence of tit-for-tat in antidumping procedures

⁵⁴ Vermulst, Edwin A., and Folkert Graafsma. *WTO disputes: anti-dumping, subsidies and safeguards*. Cameron May, 2002, p 137-138 on the eligibility of sampling to determine the volume of imports attributable to "dumped" imports

⁵⁵ Arguably, this concerns a conniving form of zeroing: Vermulst, Edwin A. *Customs and Trade Laws as Tools of Protection: Selected Essays*. Cameron May, 2005, p 349

⁵⁶ Vermulst, Edwin A. *Customs and Trade Laws as Tools of Protection: Selected Essays*. Cameron May, 2005, p 357 on representativeness: "In contrast to the ADA rule, the EC anti-dumping legislation applies a 1 per cent market share rest"

d. *Chapter four: Essentials of Anti-dumping Investigations*

In line with the Appellate Body's opulent practice to affix new terms such as "zeroing" to malign practices, for matters of practicability within this dissertation, a new form of malign practice has been coined with the term *diffracting*.⁵⁷ It has been coined diffracting because it concerns the diffraction of all dumping margins other than the highest dumping margin(s) of sampled exporting producers from vectoring into the average country-of-origin-wide dumping margin. The practice is malign when the level of cooperation (expression of the import volume of all sampled cooperating exporting producers per centage of the total import volume from the country of origin, hereafter named Ω) is not evenly diffracted at the aperture where the highest margin of dumping is diffracted for transposition into the artificial country-of-origin-wide margin of dumping. On the contrary, Ω of all sampled cooperating exporting producers would in this example be misused as a means to justify representativeness of the transposed highest dumping margins in the sample of cooperating exporting producers. Diffracting clearly contravenes the prerequisite of a fair comparison between the export price and normal value under paragraph 4 of Article 2 of the Anti-dumping Agreement.⁵⁸ The contravention exists because investigating authorities can modulate the ground for transposition of the highest margin of dumping by simply excluding cooperating exporting producers with lower import shares from the sample, thereby inflating the level of cooperation of the sampled cooperating exporting producer with the highest margin of dumping. The investigation authorities can do this because it will have no further

⁵⁷ The term diffraction was derived from another field of science: Diebold, Michael P. *Application of Light Scattering to Coatings: A User's Guide*. Springer, 2014, p 10-11 : diffraction "occurs when light passes *near* an object, as opposed to reflection and refraction, which occur when light *strikes* an object. The diffraction phenomenon is based on the fact that a photon of light is not a point-like object, but instead occupies a volume of space." Likewise, investigating authorities diffract sampled margins of dumping from vectoring into the country-wide margin of dumping through the exclusion of the smallest sampled margins of dumping.

⁵⁸ Matsushita, Mitsuo, et al. *The World Trade Organisation: law, practice, and policy*. Oxford University Press, 2015, p 389 provides an excellent example of the need to make this *fair comparison* with respect to exchange rate fluctuations:

"When comparing the normal value and the export price, the former is often denominated in the domestic currency and the latter in a foreign currency. The problem is that the exchange rate between those two currencies fluctuates, and this fluctuation affects the price comparison. Suppose, for example, a Japanese auto company exports a car to the United States; the domestic sales price is ¥2,000,000; and the export price is US\$20,000 at the exchange rate of US\$1=¥100 that prevails when the car is shipped from the factory. The auto company exports the car to its subsidiary in the United States, and the subsidiary sells it to a dealer there. This sale may take place three months later, and the exchange rate may be US\$1=¥50.

If the price comparison is made when the car is shipped from the factory, there is a parity of prices (¥2,000,000 (domestic price) = US\$20,000 (export price)). But if the price comparison is made when the car is sold to a dealer, the export price will still be US\$20,000 but the domestic sales price of ¥2,000,000 will be calculated as US\$40,000. There is no dumping in the former situation, but there is dumping in the latter. This is called 'technical dumping'. This hypothetical indicates that, for a fair price comparison, it is important to establish the exchange rate that is used when comparing prices.

In comparison of domestic and export prices, the exchange rates prevailing on the date of sale must be used. The date of sale is defined as the date of contract, date of purchase order, date of order confirmation, or date of invoice. If a dumping margin is created through fluctuations of the exchange rate, exporters are allowed a six-month period in which to make adjustments of domestic and export prices."

bearing on the country-of-origin-wide transposition, since that only relates to the highest margin of dumping in the sample of cooperating exporting producers. In this vein, investigative authorities can transpose a relatively higher margin of dumping which relates to an insignificant fraction of import on a country-of-origin-wide scale if they are conniving enough to include other cooperating exporting producers in the sample which represent a significant import share of the total import volume of the product under consideration from the country of origin. For the sake of fair clearance, a transposition of a representative margin of dumping would have to rest on both of the following two presumptions:

1. if the margin of dumping of only one sampled cooperating exporting producer is transposed to the country-wide level, then the import share which relates to that specific exporting producer (the level of cooperation) must be high for it to be representative and thus legitimate
2. if the import volume of all (sampled) cooperating exporting producers expressed as a percentage of the total import volume of the like product from the country of origin is applied as a justification for a country-wide transposition of the margin of dumping, then the margin of dumping must be the weighted average of the margins of dumping of all sampled cooperating exporting producers because in the absence of a causal relationship between the share of imports and the margin of dumping, the former cannot serve as a justification because the lack of an actual causal relationship between both invalidates representativeness.

In sum, diffracting is assessed since a high level of cooperation in the country-of-origin wide share of imports does not exist as a ground for representativeness *per se* since the transposed variable (highest dumping margin within the sample of cooperating exporting producer) does not *per se* connote a high country-of-origin-wide import share when the sample of cooperating exporting producers as a whole connotes to a high country-of-origin-wide import share of products that are identical to, comparable to or which closely resemble imports from the country of origin of the product under consideration.⁵⁹

⁵⁹ Matsushita, Mitsuo, et al. *The World Trade Organisation: law, practice, and policy*. Oxford University Press, 2015, p 387 explains through the Appellate Body's reasoning in *EC-Bed Linen* on the matter that indeed a weighted average of all (sampled) exporting producers is a prerequisite to representativeness by virtue of the fact that the use of a weighted average is only contemplated in a case where there is only one exporting producer (implying that it is a prerequisite when exporting producers are in the plural:

"Appellate Body report, *EC-Bed Linen*. The question arises as to whether an interpretation that denies the possibility of calculating the normal value if there is only one other exporter or producer of like products in the country of origin is a reasonable one. This situation is not incomprehensible, and it is a duty of Panels and the Appellate Body to formulate an interpretation that can deal with all situations that may arise." and "India objected on the ground that Article 2.2.2(ii) uses the term 'weighted average' to calculate constructed value. The Panel ruled that the wording of Article 2.2.2(ii), 'weighted average', includes the singular and that, therefore, using data from one exporter or producer in the country of origin is permissible. India appealed this ruling to the Appellate Body. The Appellate Body reversed this ruling for the following reasons.

The Appellate Body stated that 'weighted average' in Article 2.2.2(ii) precludes an interpretation that 'other exporters or any producers' in the plural can include a singular case. It concluded:

Singular diffracting as a method to calculate the country-of-origin-wide margin of dumping would not conform to the principle of representativeness, enshrined in the second paragraph of Article 2 of the Anti-dumping Agreement. After all, if the margin of dumping is calculated on the basis of prices which relate to an insignificant share of the total import volume of the like product from the country-of-origin, then the thus established margin of dumping would neither be representative and should in that case not be eligible for transposition on a country-of-origin-wide scale, regardless of whether other sampled cooperating producers could conjoin in a high import share. This reasoning appears true because since the dumping margins of other sampled cooperating producers are not being transposed, their representativeness seems irrelevant to the transposition. The representativeness of margins of dumping established by the European Commission over the course of 2015 until November 2018 will be investigated in paragraph three of chapter four. Other factors to be analysed in the context of an accurate correspondence between anti-dumping rates and actual margins of dumping concern the analogue country choices for market economy treatment.

An immediate prerequisite which stands out on the choice for analogue country producers would be their comparability.⁶⁰ First, a transposition of the price for the like product of the exporting producer in the country of origin of the products concerned through the price applied by producers to their domestic market in third countries would be an ineligible method to calculate normal value. Ineligible because the limitative list of methods ex Article 2 of the Anti-dumping Agreement would, through exclusion, proscribe transposition of sales prices applied by producers in analogue countries. By defunct because the second paragraph of article 2 by exclusion states that the first two permissible pathways through which investigative authorities are eligible to attain normal value of a product under consideration when there are no sales of the like product in the country of origin of the product are:

"the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or

We disagree with the Panel that the concept of weighted averaging is relevant only when there is information from more than one other producer or exporter available to be considered. We see no justification, textual or otherwise, for concluding that amounts for SG&A and profits are to be determined on the basis of the weighted average some of the time but not all of the time."

⁶⁰ The comparability works in multiple ways. For instance Mavroidis, Petros C., Patrick A. Messerlin, and Jasper M. Wauters. *The law and economics of contingent protection in the WTO*. Edward Elgar Publishing, 2010, pp 57, 58 points out to the need for comparability between the export price and the normal value in order to attain a fair comparison: "The AD Agreement does not contain an exhaustive list of the kinds of adjustments or allowances that must be made to ensure a fair price comparison. Art. 2.4 AD reflects a mere indicative list, and requires that due allowance shall be made for any not explicitly listed differences which are also demonstrated to affect price comparability. By way of example, we refer to the report of the Pipe Fittings, in which the Panel accepted that due allowance could be made for packing expenses, an item not explicitly mentioned in Art. 2.4 AD. In sum, if there is (i) a difference between the exported product and the imported product and (ii) this difference affects the comparability of the price, adjustment needs to be made."

with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits"

Nevertheless, countries might be keen on using analogue countries to determine the normal value, especially where it concerns analogue countries with a higher level of development than the country of origin of the product under investigation. The result of the choice for an analogue country with a higher level of development would likely be that any prices which are applied by producers on the domestic market of the analogue country are higher and thus correspond to a higher normal value and an increased likelihood of dumping. Thus, the dissertation will research the level of development of analogue countries which were chosen for market economy treatment over the course of January 2015 until November 2018, the countries of origin wherefore the European Commission chose analogue countries over the course of January 2015 until November 2018 and also the denial of market economy treatment per criterion & other reasons over the course of January 2015 until November 2018.⁶¹ The results of this analysis will demarcate the extent wherein malfeasance persists within the decision-making process of the European Commission with respect to analogue countries.

The working hypothesis on whether normal value and the export price are determined in line with the methods prescribed by the Anti-dumping Agreement will be researched in paragraphs six and seven of chapter four. It will be researched by looking into the methods which have been applied by the Directorate General for Trade of the EU in establishing the export price and the normal value over the course of January 2015 until November 2018. Inferences on the materiality of injury to the domestic industry as a causal effect of the importation of deemed dumped imports will be made under paragraphs ten to thirteen of chapter 4. Part and parcel of these inferences are any indeterminate non-attributions of injury to factors with a bearing on the state of the domestic industry other than dumped imports in the break-the-causal-link analyses, especially where the attribution yielded higher marginal

⁶¹ Cottier, Thomas, and Petros C. Mavroidis. *State Trading in the Twenty-First Century: The World Trade Forum*. Vol. 1. University of Michigan Press, 1998, p 117 also questions the eligibility of the surrogate country methodology: "The Working Party language, which is permissive, might seem to provide for transition from non-market to market economy treatment at the discretion of the importing country: the importing country "may" use prices in the exporting country, "or a value for that product constructed on the basis of the price for a like product originating in another country". However, the stronger case suggests that it does not apply to transition economies. The language is simply the language of a Working Party concerning the application of the second Supplemental Provision to Article VI:1, which is relevant only when a state has a complete or substantially complete monopoly of its trade, and when all domestic prices are fixed by the state. While it may be arguable whether the degree of a less than complete state monopoly of trade is substantial, the word "all" with regard to control over domestic prices is quite specific. Unless the state fixes all prices, the Supplemental Provision does not apply. If it does not apply, Article 7 of the Agreement, which refers to it, is not relevant, and normal value, by the terms of the Agreement, must be determined in accordance with the remainder of Article 2. It is not at all clear that Article 2 permits the surrogate country methodology currently used in the United States for non-market economies that may be WTO Members, let alone transition economies."

returns of micro-economic and macro-economic injury for the imports under consideration.⁶²

The non-attribution assessment, which includes all variables which are listed in the first heading of the introduction, will be made in paragraph eleven of chapter four.⁶³ It will cover the period January 2015 until November 2015 and include provisional and definitive implementing regulations of the European Commission. The European Commission's variable inclusion of micro- and macro-economic injury indicators with a bearing on the state of the domestic industry into the material injury margin analyses which are carried out over the course of January 2015 until November 2018, will be put to the test in paragraph ten of chapter four.⁶⁴ Focal point of attention therein will be whether the indicators, which have been listed at the beginning of the introduction are applied consecutively and consistently. The last topic related to the fifth working hypothesis looks at determinations of the European Commission on the target profit margin to eliminate injury over the course of January 2015 until November 2018.⁶⁵ The focal point of attention there will be whether the height of the target profit margin is reasonable.

⁶² Mavroidis, Petros C., Patrick A. Messerlin, and Jasper M. Wauters. *The law and economics of contingent protection in the WTO*. Edward Elgar Publishing, 2010, p 109 points out that Art. 3.4 AdA requires investigating authorities to reasonably analyse and thoroughly evaluate the state of the domestic industry and clarifies the term evaluate which appears in Art. 3.4 AdA through para. 7.314 of the Panel report on EC - Tube or Pipe Fittings:

"An 'evaluation' is a process of analysis and assessment requiring the exercise of judgment on the part of the investigating authority. It is not simply a matter of form, and the list of relevant factors to be evaluated is not a mere checklist. As the relative weight may naturally vary from investigation to investigation, the investigating authority must therefore assess the role, relevance and relative weight of each factor in the particular investigation. Where the authority determines that certain factors are not relevant or do not weigh significantly in the determination, the authority may not simply disregard such factors, but must explain their conclusion as to the lack of relevance or significance of such factors. The assessment of the relevance or materiality of certain factors, including those factors that are the decision, must therefore be at least implicitly apparent from the determination. Silence on the relevance or irrelevance of a judged to be not central to given factor would not suffice. Moreover, an evaluation of a factor, in our view, is not limited to a mere characterisation of its relevance or irrelevance. Rather, we believe that an 'evaluation' also implies the analysis of data through placing it in context in terms of the particular evolution of the data pertaining to each factor individually as well as in relation to other factors examined."

⁶³ See Vermulst, Edwin A., and Folkert Graafsma. *WTO disputes: anti-dumping, subsidies and safeguards*. Cameron May, 2002, p 158, 159 on the exact extent of the non-attribution analysis

⁶⁴ See Tharakan, PK Mathew. "The problem of anti-dumping protection and developing country exports." *WIDER Working Papers (UNU)* (2000), p 10 on the general operational problems related to the determination of injury, and the calculation of the margin of injury.

⁶⁵ Vermulst, Edwin A. *Customs and Trade Laws as Tools of Protection: Selected Essays*. Cameron May, 2005, p 409 provides viable critique on the EC's calculation of the target profit margin:

"First of all it should be noted that the calculation of the profit margin on target turnover is necessarily incorrect if it does not take the economies of scale into account (namely allocation of fixed costs over greater production and sales quantities and hence savings in unit costs). Indeed the costs on current turnover cannot simply be extrapolated to a target turnover in a linear way.

Second, the basic assumption in assuring the EC industry its target profit amount would seem to be that it is not sufficient to apply the normal profit rate on current turnover because this does not take into account that the current turnover may be insufficient. Domestic producers should be immediately enabled to effect a price increase on current sales which will enable them to achieve the total profit amount which they would have achieved had they been selling at full capacity with a normal profit rate. Therefore, the necessarily implied

e. Chapter five: Aside and after Anti-Dumping Investigations in EU28

Chapter five has been devoted to the sixth working hypothesis: whether malign output in the dumping determinations persists beyond the provisional and definitive phases of anti-dumping investigations. One of the topics which will be addressed in this chapter is the rationale behind the decisions of the European Commission to terminate anti-dumping investigations over the course of January 2015 until November 2018. Furthermore, undertakings will be scrutinized by *inter alia* looking at their outcomes over the same time-frame. Other topics concern the different types of EU complainants in anti-dumping investigations initiated over the course of January 2015 until November 2018; the amount, outcome and pro-activity of reviews, anti-absorption and anti-circumvention investigations in the EU over the course of January 2015 and November 2018 (this includes (partial) interim reviews). The fifth chapter provides an assessment of the methods of circumvention which are subjected to anti-circumvention investigations in the EU over the years 2015 until November 2018. Where discrepancies between the EU Basic Anti-dumping Regulation and the WTO Anti-dumping Agreement persist, this final chapter of the research will provide instances to conciliate the provisions of the Basic Anti-dumping Regulation with the precepts which are codified through the Anti-dumping Agreement.

f. Chapter six: Conclusion and Recommendations

Chapter six concludes the research and provides recommendations. Where the European Commission contravened principles enshrined in the Anti-dumping Agreement, an answer will be sought to whether the contravention stems from a discrepancy between the Anti-dumping Agreement and its implementation into the Basic Anti-dumping Agreement. Where possible, the dissertation will make recommendations wherewith the EU's anti-dumping practice can be brought into conformity with the precepts which are codified through the Anti-dumping Agreement. Where the analysis of anti-dumping essentials by the Directorate General for Trade of the EU is not applied consistent on a consecutive basis, the text provides recommendations for ways to uniform the investigation process.

1.5 Necessity of the research at hand in respect of prior research

Hardly any literature elaborates on that most abiding problem of global trade law: countries' ability to misuse AD duties in a trade protectionist manner under the Anti-dumping Agreement of the WTO and its implemented version, the Basic Anti-dumping Regulation of the EU. A leading work in this field of science would be "*WTO Influence on EU Law: Too Close for Comfort?*" by Pieter-Jan Kuijper and Jan Hoffmeister.⁶⁶ Yet, their work seems primarily focused on the general interaction of actors rather than

assumption is that the domestic producers' market share will be static, despite the considerable price increase imposed upon the competing dumped imports."

⁶⁶ Kuijper, Pieter Jan, and Frank Hoffmeister. "WTO Influence on EU Law: Too Close for Comfort?." *Between Autonomy and Dependence*, TMC Asser Press, 2013. 131-158.

a fully fledged quantitative and qualitative assessment of every phase of the anti-dumping process. However, the general inferences on the extent wherein the implementing regulations within the EU conform to the standards which are set by the WTO are insightful and helpful within the course of this research. It would be interesting to compare the results of this research with prior findings on the existence and absence of discrepancies between WTO exigencies and their implementation in the EU.

A primer in this field of science would also be Christian Burckhardt's work on "*The European Union as an actor in international trade relations*."⁶⁷ Even though this work provides a thorough understanding of and helpful insight into the geopolitical interface in the field of trade relations, it fails to provide insight into how this interface comes to exact fruition within the inceptive, initiated, provisional, definitive and review phases of trade defence investigations. The iconic work by Patrick Messerlin and Geoffrey Reed on "*Antidumping Policies in the United States and the European Community*" primarily looks at points of convergence in anti-dumping investigations carried out by the US International Trade Administration and the European Community.⁶⁸ The main finding that both indeed manifestly converge, has laid the basis for an inclusion of the USA within the scope of this research. The rationale behind this choice was that it would be insightful to compare EU28's anti-dumping practice with a WTO Member with who its anti-dumping practices allegedly (read, Messerlin) converge a lot on the one hand and a WTO Member with whose anti-dumping practices EU28's allegedly differs a lot. The choice for the former has fallen on the USA due to the piece written by Messerlin, while the choice for the latter fell on the PRC due to its different level of economic development and economic structure. The choice to include China was further strengthened through the findings in the piece "Disciplining the Use of TDI against China through WTO Dispute Settlement." by Edwin Vermulst.⁶⁹ Therein it was found that the PRC, within its relatively short time as WTO Member, more than any other WTO Member positions itself as policy maker within the decision-making process of the WTO. From a relatively inactive Member, the PRC appears to position itself as one of the lead complainants in trade defence cases. Vermulst's findings gave the impulse for the inclusion of the PRC's trade practice in this research.

Next to Messerlin's epic work would be the delight of Tharakan on "Political Economy and Contingent Protection".⁷⁰ In the first place, this work has played a pivotal role in the decision to start this research.

⁶⁷ Burckhardt, Christian. "The European Union as an actor in international trade relations." *Global Power Europe*-Vol. 2. Springer Berlin Heidelberg, 2013. 271-289.

⁶⁸ Patrick A. Messerlin and Geoffrey Reed, "Antidumping Policies in the United States and the European Community," *The Economic Journal*, Vol. 105, No. 433 (Nov., 1995), pp. 1565-1575

⁶⁹ Vermulst, Edwin, and Brian Gatta. "Disciplining the Use of TDI against China through WTO Dispute Settlement." *Global Trade & Cust. J.* 7 (2012): 143.

⁷⁰ P. K. M. Tharakan, "Political Economy and Contingent Protection", *The Economic Journal*, Vol. 105, No. 433 (Nov., 1995), pp. 1550-1564

The clear instances of how, where and when the political economy behind contingent protection can work through has further confirmed the need to search for hard evidence in every phase of the investigation process. Furthermore, its findings further incentivised the decision to include the USA in this research. It turns out that the tenure for renewal of US Trade Commissioners within the US International Trade Administration would be nine-years. The rather long tenure and the Commissioners' perception of how decisions affect job prospect might play an important role in their decision-making.

A crucial piece in the related field would be "*The EU in trade policy: From regime shaper to status quo power*" by Dirk De Bièvre & Arlo Poletti.⁷¹ It looks at the evolution of the EU in global trade politics and more particularly how the process of economic integration has shaped its capacity to contain liberalisation in certain sectors of its economy. The piece has been instrumental to this research in that it confirms that the EU acts as a global player within the multilateral trading system. The findings by Dirk De Bièvre and Arlo Poletti corroborate the need to analyse geopolitical interplay on abuse of trade defence instruments by and against the EU as an entity rather than on an EU member state level.

The revamp of Jannaccone's classic theory before Viner by Cantono Simona and Roberto Marchionatti has been quintessential in understanding how dumping works.⁷² Taking it back to the roots, Simona and Marchionetti provide essential insights on the workings behind dumping through one of the very first pioneers in the field. Even though this work builds upon the same geopolitical paraphernalia of protectionism which will be included in this research, it likens with all other aforementioned works in omission of hard evidence on the extent wherein and manner where through protectionism pervades every phase of the current anti-dumping practices which are applied in the EU, the USA and the PRC.

⁷¹ Dirk De Bièvre and Arlo Poletti, "The EU in trade policy: From regime shaper to status quo power", Falkner, Gerda and Müller, Patrick (eds.) (2013): *EU Policies in a Global Perspective: Shaping or taking international regimes?* Routledge, London and New York.

⁷² Cantono, Simona, and Roberto Marchionatti. "Dumping As Price Discrimination: Jannaccone's Classic Theory Before Viner." *Journal of the History of Economic Thought* 34.02 (2012): 193- 218.

CHAPTER TWO

2 The Procedure under the WTO Anti-dumping Agreement⁷³

2.1 Scope of the Anti-dumping Agreement

All actions against dumped imports by the authorities of Members have to be taken in accordance with the provisions set forth in Article VI of the GATT'94 and the AdA unless a reservation thereto is made with the consent of the other Members. This is notwithstanding the fact that other Articles of the GATT'94 may also apply to anti-dumping procedures.⁷⁴ The annexes of the AdA are an integral part thereof. All treaty terms have to be interpreted by taking into account their context and the object and purpose of the AdA.⁷⁵ The AdA applies to investigations and reviews of existing measures that are a subsequent result of applications thereto after the subject Member ratified the WTO Agreement. National laws, regulations and administrative procedures must be brought into conformity with the provisions of the AdA as soon as the WTO Agreement goes into force for the subject Member and the Committee on Anti-dumping must be kept informed on changes in (& the administration of) domestic laws and regulations relevant to the AdA.

2.2 Application to and Initiation of an Investigation

Prior to the initiation of an investigation into the extent, degree and effects of deemed dumped imports, investigating authorities examine whether sufficient, relevant, adequate and accurate⁷⁶ evidence in order to substantiate the existence of dumped imports which cause injury to the domestic industry is at hand or submitted through an application. The application must be supported by producers whose aggregate output constitutes both 50 per cent or more of the total output of producers expressing support for or opposition to the application⁷⁷ and 25 per cent or more of the total domestic production of the like product. The application must contain all reasonable accessible information relating to the identity of applicant(s) or them on behalf of whom the application is submitted;⁷⁸ a full description of the dumped product; the names of the country or countries wherefrom the subject product originates and the names of intermediate countries of export if there are any; the identity of all known exporters, foreign producers and importers of the subject product;

⁷³ A significant part of this chapter has been incorporated from Comnenus, George. *Anti-dumping investigations applied in USA, EU, PRC*, Tilburg University, 2013, p 7

⁷⁴ Such as for instance the MFN principle: Panel Report, EU – Footwear (China), para. 7.100.

⁷⁵ AB Report, China –Publications and Audiovisual Entertainment Products, para. 348.

⁷⁶ "On-site verification is certainly one method by which an investigating authority may satisfy itself as to the accuracy of information in the application, it is by no means the only method of doing so and not required in any case. Taking into consideration different sources of information, verifying them when possible and cross-checking them against one another is a reasonable methodology in this respect." : Panel Report, E.U. – Footwear (China), para. 7.428.

⁷⁷ Also named "by or on behalf of the domestic industry"; has to be determined before the initiation and cannot be proven retroactively.

⁷⁸ Associations of domestic producers of the like product also fall hereunder.

an overview of the manner as to how the export price was determined;⁷⁹ all known information that relates to the export prices or if used, the first independent downstream resell prices; all known information that relates to the evolution of the allegedly dumped imports which is necessary in order to make a proper determination of dumping and finally a full description of the volume and the value of the domestic production of the like product of the applicant or them on behalf of whom the application is submitted.

Investigating authorities may publicize the application after determining that sufficient reasons exist to initiate an investigation. Before the initiation of the investigation yet after the determination of a properly construed application, investigating authorities must notify the government of the exporting Member of the receipt of an application.⁸⁰ In the decision to initiate an investigation and during the investigation from the date of allowance of the provisional measures, evidence of both dumping and injury has to be considered simultaneously. As soon as investigating authorities are satisfied that enough evidence is at hand to initiate an investigation, a public notice and a notion of the initiation of an investigation have to be given to Member(s) of which the products are subject to such investigation and to other interested parties known to the investigating authorities to have an interest in the investigation. Parties with an interest in the product under investigation are for instance exporters, importers and foreign producers of the product under investigation, domestic producers of the like product, trade or business associations whereof the majority of Members consist out of either one of the aforementioned parties, the government of the exporting Member and domestic or foreign parties who investigating authorities admit as interested parties.⁸¹ A public notice or notion of the initiation of an investigation must state: the name of the country wherefrom the product is exported; the name of the product which will undergo an investigation; the date of the initiation of the investigation; the basis whereupon the application alleges the existence of imported products at dumping prices; a summary of all factors that allege the existence of injury as a subsequent result of dumped imports; an address to which interested parties may direct written representations; and time-limits wherein interested parties are eligible to express their viewpoints on the subject matter.

The application and an investigation must be rejected respectively terminated promptly if investigating authorities find evidence to be insufficient to establish either dumping or injury. The aforesaid must occur immediately⁸² when the margin of dumping accounts for less than 2 per cent of

⁷⁹ If a constructed value is used, the calculation thereof also has to be provided

⁸⁰ The manner as to how to notify has not been specified within the AdA and thus it may be oral or in writing.

⁸¹ Also named "interested parties".

⁸² In this stage the investigation may be well advanced.

the established export price;⁸³ when the actual or potential volume of dumped imports individually⁸⁴ accounts for less than 3 per cent and collectively⁸⁵ accounts for less than 7 per cent of the aggregated volume of imports of the like products in the importing Member;⁸⁶ or when the actual or potential injury to the domestic industry is negligible.⁸⁷

The investigating authorities of a third country requesting action on behalf of a third country have to apply to the government of an importing country to institute an anti-dumping action on behalf of that third country by supplying price information that alleges injury to the domestic industry as a result of deemed dumped imports. The investigating authorities of the importing country may delegate the subject action after they have considered the application by assessing the effect of the alleged dumping on their domestic industry and after the Council for Trade in Goods has given its approval to delegate. The government of the third country has to cooperate with the importing country in order for the importing country to obtain any information it requests on the subject matter.

2.3 The Course of an Investigation

a. Rights of Parties and Investigating Authorities

Member(s) and interested parties whose products are subject to a determination by investigating authorities or whose products are influenced by the acceptance of a price undertaking or any other interested parties who have a stake in the outcome of a preliminary or final determination by investigating authorities have to receive a public notice or report of the occurrence of any of the three aforesaid events. A public notice has to provide sufficient details on findings and conclusions which are related to all issues of fact and law that are to be considered material⁸⁸ by the investigating authorities who are in charge of investigating the deemed trade infringement. Investigations into deemed trade infringements must be concluded within one year, with an eligible extension of 6 months under special circumstances.⁸⁹ Investigating authorities have to inform all related parties of (written) evidence requirements in the process of the investigation. The minimum response period on

⁸³ Also named *de minimis* margin of dumping.

⁸⁴ Individually means from one Member.

⁸⁵ Collectively means when multiple Members are involved.

⁸⁶ Also named a "negligible" volume.

⁸⁷ The AdA is not succinct on when injury is "negligible".

⁸⁸ The ordinary meaning of the word "material" as written in the chapeau of Art. 12.2 of the AdA is "important, essential, relevant". "A material issue is an issue that has arisen in the course of an investigation that must necessarily be resolved in order for an investigating authority to be able to reach a determination. The words "have led to" ex Art. 12.2.2 of the AdA implies those matters on which a factual or legal determination must necessarily be made in connection with the decision to impose a definitive anti-dumping duty." Panel Report, *E.C. – Tube or Pipe Fittings*, paras. 7.423-7.424.

⁸⁹ The AdA does not provide a limitative list on when special circumstances occur.

questionnaires⁹⁰ is 30 days, with extension possibilities upon consideration of eligible causes. Non-confidential evidence must promptly be distributed among all interested parties participating in the investigation.⁹¹ As soon as an investigation is initiated, the non-confidential part of the application thereto is forwarded to all known exporters of the deemed dumped products, the investigating authorities of the exporting member and all other interested parties who request thereto.

Interested parties may request investigating authorities to enable them to meet parties with adverse interests in order to defend their stance. In the obligatory compliance therewith, investigating authorities are obliged to be succinct in not disclosing confidential information and in operating to the parties' convenience. Investigating authorities are obliged to provide interested parties full opportunities to present their case orally⁹² within a reasonable time-frame and to timely⁹³ provide all

⁹⁰ "The term "questionnaire" in the meaning of Art. 6.1.1 of the AdA refers to one kind of document in an investigation. In determining what that document might be, the context thereof must suggest that it refers to the initial comprehensive questionnaire issued in an anti-dumping investigation to each of the interested parties by an investigating authority at or following the initiation of an investigation, which questionnaire seeks information as to all relevant issues pertaining to the main questions that will need to be decided (namely on the aspect of dumping, injury and causation between the two aforementioned factors, for which *an sich*, different questionnaires may be sent).": Panel Report, *E.C. – Fasteners (China)*, para. 7.574. A request for information that is the first request for information does not *ipso facto* qualify it as a questionnaire in the sense of Art. 6.1.1 of the AdA: Panel Report, *E.C. – Fasteners (China)*, para. 7.576.

⁹¹ The obligation to promptly distribute information is subject to the requirement to protect confidential information ex Art. 6.1.2. AdA: Panel Report, *E.U. – Footwear (China)*, para. 7.580.

⁹² This "due process" right of Art. 6.2 of the AdA does not mean that respondents are necessarily entitled to submit relevant evidence, attend hearings, or participate in the inquiry as and when they choose: AB Report, *U.S. – Oil Country Tubular Goods Sunset Reviews*, para. 241. Nothing in Art. 6.2 of the AdA requires investigating authorities to actively disclose information to parties: Panel Report, *E.C. – Fasteners (China)*, para. 7.481. The extent to which interested parties' rights reek under Art. 6.2 AdA remains unaffected after the fulfilment of investigating authorities' obligation to provide for such meetings: interested parties have "liberal" opportunities to defend their interests under Art. 6.2 of the AdA: AB Report, *U.S. – Oil Country Tubular Goods Sunset Reviews*, para. 241.

⁹³ The following interpretations apply to the four requirements ex Art. 6.4 of the AdA which are "timeliness", "relevance", "non-confidentiality" and "usability" of information: "The timeliness of the opportunities must be assessed in the light of parties' right to prepare their presentations on the basis of disclosed information. Information that relates to issues which fall under the discretion of investigating authorities and are to be considered or are considered by investigating authorities during the course of an anti-dumping investigation is presumed to fall within the scope of Art. 6.4 of the AdA Information that qualifies as "confidential" under the AdA may not be disclosed.": Panel Report, *E.C. – Salmon (Norway)*, para. 7.769. "Information is "used" by investigating authorities if it forms part of the information that is relevant to a particular issue that is before an investigating authority in making its determination.": AB Report, *E.C. – Tube and Pipe Fittings*, para. 147. The relevance of information is to be determined on the basis of issues to be considered by investigating authorities under the AdA: AB Report *E.C. – Tube and Pipe Fittings*, paras. 145-146. A *prima facie* case of violation of Art. 6.4 AdA requires the complainant to demonstrate an interested party's request to see information in the sense of Art. 6.4 AdA that was rejected or not granted in a timely fashion: Panel Report, *Korea – Certain Paper*, paras. 7.196 and 7.300. Unlike the requirement to inform all interested parties ex Art. 6.9 of the AdA, Art. 6.4 of the AdA contains no obligation for investigating authorities to actively inform or disclose information to interested parties: Panel Report, *E.U. – Footwear (China)*, para. 7.603. The obligation to make information available ex Art. 6.4 of the AdA only applies to the extent that interested parties make a request thereto: Panel Reports, *E.C. – Fasteners (China)*, paras. 7.480 and 7.497; and *Korea – Certain Paper (Article 21.5 – Indonesia)*, para. 6.87. "Information" in the sense of Art. 6.4 of the AdA does not include methodologies, reasoning, analysis and

essential, non-confidential information used by investigating authorities that enables parties thereto.⁹⁴ Only written submissions thereof must be taken into account by investigating authorities. Parties withholding from presenting may thereby not be prejudiced by investigating authorities.

Any⁹⁵ information⁹⁶ can be confidential by virtue of its nature if disclosure thereof will for instance generate significant competitive disadvantages or have a significantly adverse effect for the person supplying the information or for the person from whom that person acquired the confidential information; or by virtue of a request thereto by parties⁹⁷ who submitted the information. Confidential information must be treated confidential by authorities provided that a good cause⁹⁸ therefore is shown. Disclosure of confidential information needs specific permission of the party who submitted it. Confidential information must, upon a request thereto by investigating authorities, be submitted by interested parties in a non-confidential summary that allows for a sufficient general grip on the

determinations of investigating authorities: Panel Reports, *E.C. – Fasteners (China)*, para. 7.539; and *U.S. – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina)*, para. 7.124.

⁹⁴ This requirement is not absolute as it must be "practicable" for investigating authorities to provide interested parties opportunities to see the subject information; it only concerns information that is "relevant" for parties in the presentation of their case; it must be "used" by investigating authorities in the presentation of their case; it does not concern information that is "confidential" ex Art. 6.5 AdA: this text is merged from AB Report, *E.C. – Tube or Pipe Fittings*, para. 142; and Panel Reports, *E.C. – Fasteners (China)*, para. 7.479; and *Korea – Certain Paper (Article 21.5 – Indonesia)*, para. 6.82

⁹⁵ "The modifier "any" in Art. 6.5 of the AdA implies a broader scope of information than the scope of information that is modified or qualified by other phrases in Articles 6.5 – 6.8 of the AdA and does not *a priori* exclude names of interested parties. Furthermore, provided "good cause" is shown, there is no limit to the type or nature of information that may be treated as confidential in anti-dumping investigations." Panel Report, *E.U. – Footwear (China)*, para. 7.673. Art. 6.5 of the AdA does not address the confidential treatment of methodologies used and determinations made by investigating authorities during their investigations since the subject determination of eligibility of confidentiality is addressed in Art. 12.2.2 of the AdA: Panel Report, *E.C. – Fasteners (China)*, para. 7.530. "Art. 6.5 of the AdA obliges investigating authorities to preserve the confidentiality of information wherefore confidential treatment is granted and no derogation from this obligation is allowed except for when the party that submitted the confidential information authorizes its disclosure. Furthermore Art. 6.5 of the AdA does not permit an investigating authority to disclose information which would indirectly constitute the disclosure of confidential information." Panel Report, *E.U. – Footwear (China)*, paras. 7.705-706.

⁹⁶ "Even though the Shorter Oxford English Dictionary, (Oxford University Press, 2007), p. 1379 tends to preclude names in the determination of what constitutes "information", it does not exclude, *a priori*, names from the scope of "any" information that may be treated as confidential in the sense of Art. 6.5 of the AdA. This rationale counts the more when the disclosure of names of companies equals the disclosure of their status as a complainant or supporter of a complaint in an investigation." Panel Report, *E.U. – Footwear (China)*, para. 7.671. In the subject Oxford definition the Panel pointed out that there is no reason to conclude that the identity of companies cannot constitute "knowledge or facts communicated about a particular subject".

⁹⁷ Trade associations who act on behalf of participants in the domestic industry may also make a request for confidential treatment of information: Panel Report, *E.U. – Footwear (China)*, para. 7.694.

⁹⁸ "In order to determine whether there is a good cause to warrant confidential treatment of information, an assessment must be made in light of the circumstances of each investigation and each request for confidential treatment." Panel Report, *E.C. – Fasteners (China)*, para. 7.451. The extent to which there exists a "good cause" to grant confidential treatment, depends on the "nature of the subject information wherefore confidential treatment is requested": Panel Reports, *E.C. – Fasteners (China)*, para. 7.451; *Korea – Certain Paper*, para. 7.335; and *Mexico – Steel Pipes and Tubes*, para. 7.378. The evidence which is required to confirm whether a "good cause" exists is dependent on the nature of the good cause which is deemed to exist: Panel Report, *E.C. – Fasteners (China)*, para. 7.451.

contents of the confidential information. If the aforementioned summarization seems impossible to the parties whereto the request is made, investigating authorities need to be notified thereof and viable reasons as to why summarization is impossible must be provided.⁹⁹

Investigating authorities are free to discard information whereof it cannot be ascertained that the content is correct and whereof a request for confidentiality is not warranted, provided that the supplier thereof is unwilling to make the information public or authorize its disclosure in generalized or summarized form.¹⁰⁰ If an interested party refuses investigating authorities access to information within a reasonable timeframe or significantly impedes the investigation, investigating authorities may¹⁰¹ satisfy themselves to the accuracy of the facts at hand in order to conclude the preliminary and final determination.¹⁰²

Investigating authorities may initiate an investigation in the territory of Members in order to verify information that is already known to them or to obtain new information if the firms under investigation agree therewith and if government officials of the subject Member have been notified of the intention thereto.¹⁰³ Investigating authorities subsequently need to disclose the non-confidential findings to all parties with a deemed broad interest in being kept informed of essential

⁹⁹ The Panel in Panel Report, *E.U. –Footwear (China)*, para. 7.674 considers the interpretation "If interested parties cannot summarize confidential information, investigating authorities are obliged to request a statement as to why this is impossible." to be consistent with the balance that Art. 6.5.1 of the AdA tries to achieve between confidential treatment of information and the transparency of the investigation and proceedings as was promulgated in Panel Report, *E.C. – Fasteners (China)*, para. 7.515, citing Panel Reports, *Mexico – A.D. Duties on Steel Pipes and Tubes from Guatemala*, para. 7.379; *Guatemala – Cement II*, para. 8.213; and *Mexico – Olive Oil*, para. 7.89.

¹⁰⁰ This indirect form of being able to reject confidentiality requests was chosen instead of the possibility of arbitrary rejection of confidentiality requests by the composers of the AdA: "Art. 6.5.2. of the AdA does not impose any affirmative obligation on investigating authorities to examine whether or not confidential treatment is warranted. The determination of confidentiality of information falls under the chapeau of Art. 6.5 of the AdA and thus Art. 6.5.2 of the AdA cannot be the basis of a claim in a situation where investigating authorities have found that a request for confidentiality is warranted.": Panel Report, *E.U. –Footwear (China)*, para. 7.675.

¹⁰¹ "In order for an investigating authority to make a preliminary or final determination on the basis of "facts available", one of the two following conditions must be satisfied: (i) an interested party must refuse access to or fail to provide necessary information within a reasonable period of time, or (ii) an interested party must significantly impede the investigation. Even when one of the subject requirements is fulfilled, the choice as to whether a determination on the basis of the "facts available" will be made, is left to the discretion of the investigating authorities.": Panel Report, *E.U. –Footwear (China)*, para. 7.816 When it has not become apparent that the conditions for resorting to "facts available" are fulfilled, the investigating authority must take into account the subject information that is provided by the interested parties in response to a request by an investigating authority: Panel Report, *E.C. – Salmon (Norway)*, para. 7.34; AB Report, *U.S. – Hot-Rolled Steel*, para. 81; Panel Report, *U.S. – A.D. and Countervailing Measures on Steel Plate from India*, para. 7.55.

¹⁰² "Annex II to the AdA is an integral part of Art. 6.8 of the AdA and therein par. 3 states one circumstance wherein the conditions for resorting to "facts available" will not be fulfilled." : Panel Report, *E.U. –Footwear (China)*, para. 7.819.

¹⁰³ The notification to the subject Member is not obligatory when the Member on forehand expressed no objections to the investigation.

facts¹⁰⁴ leading up to the definitive imposition of measures, in order to enable the subject parties to defend their interest. Customs clearance may not be hindered as a subsequent result of an anti-dumping proceeding. B-2-B industrials using the subject product and organizations representing consumers buying the product have to be allowed to provide relevant information on dumping, injury and causality to the investigating authorities. Therefore investigating authorities have to provide all the help they can and investigating authorities have to take account of the incapability of parties to supply the requested information.

b. Determination of the Importation of Dumped Goods

Products with an extra-national origin are dumped when the export price wherewith they were transacted into an importing country¹⁰⁵ lays below¹⁰⁶ either 1) the comparable price of products which are identical, i.e alike in all aspects or show close resemblance with the product under consideration¹⁰⁷ and which are transacted in the ordinary course of trade in the domestic market for consumption of the exporting country 2) a comparable price of the like product when exported to an appropriate third country if the subject price is representative or 3) the production costs aggregated with a reasonable amount of overhead, administrative, selling and general costs and for profits of like products in the country of origin^{108,109}. The price under 2) is eligible to be used in the aforementioned comparison when either the volume of domestic sales accounts for less than 5 per cent of the sales of the product under consideration to the importing Member;¹¹⁰ or when sales of the like product in the ordinary course of trade in the domestic market of the exporting country are absent; or when a particular market situation does not allow for a proper consideration through value 1).¹¹¹

¹⁰⁴ Essential facts are those that underlie the findings of dumping, injury and a causal link: AB Report, *China – G.O.E.S.*, para. 234.

¹⁰⁵ Also named "export price", to be found in for instance the commercial invoice, bill of lading and letter of credit.

¹⁰⁶ The extent whereto is named 'margin of dumping'. The calculation thereto for direct sales to unrelated customers: "(normal value at ex-factory level – export price at ex-factory level)/ denominator: (C.I.F. or F.o.B. export price * 100)".

¹⁰⁷ In the absence of such a product any other product which although not alike in all respects, has characteristics closely resembling those of the product under consideration may be used instead. The overarching term for these products is "like products"; products with differences that impact the price or cost are normally taken out. This definition which can be found in Art. 2.6 AdA does not apply to the determination of the scope of the product under consideration: see inter alia Panel Report, *U.S. – Final Dumping Determination on Softwood Lumber from Canada*; and Panel Report, *Korea – Certain Paper*; and Panel Report, *E.C. – Salmon (Norway)*.

¹⁰⁸ Also named "normal value". Option 2 is named "third country exports" and 3 is "constructed normal value".

¹⁰⁹ In Panel Report, *U.S. – Anti-Dumping Measures on certain Shrimp from Vietnam*, para. 7.213 the Panel reads AB Report, *U.S. – Corrosion-Resistant Steel Sunset Review*, para. 127 to stand "for a more general proposition that the margin of dumping calculated or relied upon by an investigating authority in the context of the application of the disciplines of the AdA must be calculated consistently with Art. 2 AdA and its various paragraphs." It theretofore also implied the context of the ineligibility to use zeroing methodology in Art. 2 AdA to apply to a determination of the "all others" rate in administrative reviews.

¹¹⁰ Unless a lower volume is proven to be sufficient to make a proper consideration.

¹¹¹ Also named the "market viability test", sales below costs are used therein.

The margin of dumping is determined by either comparing the weighted average normal value and the weighted average export price of all comparable export transactions;¹¹² or by comparing the normal value and export prices on a transaction-to-transaction basis;¹¹³ or by comparing the weighted average normal value with individual export prices of separate transactions.¹¹⁴ The last mentioned comparison is eligible to be used if amongst different purchasers, in different regions or during different time-periods, there are significant differences to be found in the pattern of export prices which cannot be taken into account properly by means of the first two options. The comparison between the normal value and the export price must be fair.¹¹⁵ The normal value and the export price are comparable if they are established through indexes at the same level of trade¹¹⁶ in as far as possible coinciding moments of sale;¹¹⁷ and if they are adjusted for merits due to any differences on the aspect of *inter alia*¹¹⁸ conditions and terms of sale, taxation, levels of trade, quantities and physical

¹¹² Increasing export prices to surpass the normal value in order to offset the extent of dumping of transacted export prices that lay thereunder in the computation of the weighted average dumping margin is ineffective if investigating authorities reset negative dumping amounts to zero. Direct or indirect "zeroing" through "inter-type determinations" or "multiple averaging periods" can generate a breach of the margin of dumping threshold of two percent if a single extant in the exterior thereof exists and is therefore prohibited, for "model zeroing" see AB Report, *U.S. – Softwood Lumber V*, para. 102.

¹¹³ In this method, transactions on or at nearly coinciding moments shall be individually compared with each other.

¹¹⁴ The use of either one of these options is necessary to classify the comparison as conducted in a "fair manner".

¹¹⁵ This is a "general obligation" for investigating authorities that "informs all of Article 2, but applies, in particular to Art. 2.4.2 A.D.A" which is specifically "made subject to the provisions governing fair comparison in Art. 2.4 AdA": AB Report, *U.S. – Hot-Rolled Steel*, paras 166- 168, 178. The fair comparison requirement does not apply to the determination of either the normal value or the export price yet only oversees the comparison between both after they have been determined: Panel Report, *E.U. – Footwear (China)*, para. 7.265. The "fair comparison obligation" places an obligation on interested parties to demonstrate that there is a difference affecting price comparability when they make a request for "due allowances": Panel Reports, *E.C. – Fasteners (China)*, para. 7.298 and *E.C. – Tube or Pipe Fittings*, para. 7.158. A *prima facie* case of violation of Art. 2.4 AdA requires the complainant to demonstrate that due allowance had to be made for (i) a difference (ii) which affected the price comparability of the normal value and the export price (iii) which had not been taken into account by the investigating authorities: Panel Report, *Korea – Certain Paper*, para. 7.138 and Panel Report, *E.C. – Fasteners (China)*, para. 7.298. Investigating authorities are allowed to divide the products under investigation into different groups or categories of goods sharing common characteristics within the like product for the purpose of making due allowance for differences affecting price comparability. Subsequently, investigating authorities are allowed to make separate price comparisons for each of these subdivisions and take differences in price comparability for each of these subdivisions separately into account. Investigating authorities may choose to use the aforementioned methodology or a combination with any other methodology as long as it satisfies the requirement that due allowance is made for differences that have been demonstrated to affect price comparability in order to ensure that the art. 2.4 AdA obligation to make a "fair comparison" is fulfilled: Panel Report, *E.C. – Fasteners (China)*, para. 7.297.

¹¹⁶ Normally this is the ex-factory level: the level at which the products left the factory. All costs incorporated in the selling price thereafter such as air freight, ocean freight, inland freight, container drayage, documentation marine insurance etc. need to be net back to the ex-factory level if incorporated in the terms of sale. This information was taken from p. 14 of the U.N. Conference on Trade and Development Module on Dispute Settlement under the W.T.O., 3.6 Anti-dumping Measures by Edwin Vermulst.

¹¹⁷ The moment of sale occurs when the material terms thereof are established and can *inter alia* be found in the contract, purchase order, invoice or order confirmation.

¹¹⁸ Investigating authorities therein need to be succinct in avoiding duplicative adjustments for different factors.

characteristics to a level wherein both prices are comparable.¹¹⁹

If an imported product is merely transhipped through, not produced in or does not have comparable prices in an intermediate country of export, its normal value is to be based on comparable domestic prices in the country of origin. If imported products originate from a country wherein independent market forces had no bearing on the generation of the cost and price thereof, the normal value has been determined via comparable costs and prices in a surrogate / analogue¹²⁰ country.¹²¹

Sales prices above fixed and variable production costs per unit plus overhead, administrative, selling and general costs per unit are in the ordinary course of trade. Sales under aforesaid costs per unit are in the ordinary course of trade if prices are above the weighted average per unit cost for the period of investigation if concluded in less than six months at either a volume less than 20 % of the total sales volume used to determine of normal value or at a weighted average per unit cost of all sales used to determine normal value under the weighted average price of all sales used to determine normal value.

Overhead, administrative, selling, general costs and costs for profits are to be based on i) actual data related to production and sales arisen in the ordinary course of trade of like products by the exporter or the producer subject to the investigation or, in absence thereof, ii) actual amounts pertaining to sales and production of the same general category of products which were incurred and realized by the subject exporter or producer in the domestic market of the country of origin or iii) the weighted average of actual amounts of produced and sold like products in the domestic market of the country of origin which were incurred and realized by exporters or producers which are subject to another investigation¹²² or iv) any other reasonable method which does not establish an amount of profit that

¹¹⁹ This list which is contained in Art. 2.4 AdA is just an indicative list of differences that might affect price comparability as all differences that affect price comparability are the object of an "allowance"; AB Report, *U.S. – Hot-Rolled Steel*, para. 177. Allowances can for instance be made based on differences in transport costs, ocean freight an insurance cost, handling, loading and ancillary costs, packing costs, credit costs, warranty and guarantee costs and commissions, R&D and design costs. The investigating authority may make any "due allowance" by applying any methodology that seems suitable to it as Art. 2.4 AdA contains no obligations on which methodology to use in determining the amount of allowances; Panel Report, *E.C. – Fasteners (China)*, para. 7.297.

¹²⁰ "The term "analogue country" as such does neither appear in the AdA nor in Art. VI GATT'94". Furthermore there is no reference to be found on the procedure or criteria for the selection of an analogue country.

¹²¹ The analogue / surrogate analysis is likely to increase the normal value in comparison with a low "non-market" export price, thereby increasing the margin of dumping and thereby the likelihood that anti-dumping duties become eligible to be imposed. In the case Panel Report, *US – Anti-Dumping Measures on certain Shrimp from Vietnam*, it appeared that USDoC considered Viet Nam a non-market economy and therefore applied ratios for overhead, selling, general and administrative costs and profits through the multiplication of quantities of factors of production used by the Vietnamese subject exporters/producers based on their actual production experience with prices of each such factor of production on the basis of prices prevailing in a "surrogate" "market economy" namely Bangladesh.

¹²² "Ordinary course of trade" only applies to i, ii and iii and the term "weighted average" in iii requires more than 1 exporter / producer subject to the investigation.

exceeds the amount of profit that would normally be realized in the ordinary course of trade by other producers or exporters through the sale of products which classify as being of the same general category in the domestic market of the country of origin.

Costs need to be calculated; through use of records of the exporter or producer under investigation, in accordance with the G.A.A.P. of the exporting country, whilst reasonably reflecting production and sale costs, by considering all posited evidence that relates to the proper allocation of costs which is proven to have been historically utilized by and available to the producer or exporter during the time-frame of investigation, by giving due allowance to non-recurring items of cost which might have a benefit to future and/ or current production and with appropriate adjustment for temporary fluctuations in costs due to start-ups during the time-frame of investigation. The start-up costs must be determined at the end of the start-up period or when this period extends beyond the time-frame of the investigation, the most recent costs which can reasonably be taken into account.

In case there exists an association or a compensatory agreement between the exporter, the importer or a third party,¹²³ investigating authorities need to use the first downstream resell price of a distributor to an independent buyer instead of the export price or in absence thereof, the export price which seems reasonable to the investigating authorities.¹²⁴ Furthermore, in case of use of a resell price to an independent buyer in the country of importation, costs including duties and taxes which were incurred between the moment of importation and resale and for profits accruing should¹²⁵ to be taken into account only if the price comparability has been affected, whereby the normal value has to be adjusted to a level which incurs the level of trade and the constructed export price or make due allowances as warranted under paragraph 4 of Article 2 of the AdA.¹²⁶ Furthermore, the use of converted currencies needs to be taken into account by using the rate of exchange on the date of the sale unless a rate of exchange exists in the forward sale. General fluctuations in exchange rates over the period of the deemed dumping of imported products are to be ignored. Investigating authorities must give exporters at least 60 days to adjust their export prices to standards which reflect sustained movements in exchange rates during the period wherein the deemed dumped import is investigated.

¹²³ Classified as an "unreliable export price" which is presumed not to be concluded at arm's length.

¹²⁴ Also named "constructed export price" used for "transfer pricing reasons": increases the likelihood of dumping.

¹²⁵ Investigating authorities are not obliged to do this; Panel Report, *U.S. -Stainless Steel*; because higher exportation costs lead up to a higher export price which decreases the extent of the margin of dumping.

¹²⁶ When the normal value incorporates costs of distribution because the exporter of like products acts as distributor in the domestic market, whilst the importer in the exporting country acts as distributor and thereby incurs the costs and profits of distribution as a result whereof the export price does not incorporate costs and profits of distribution, the normal value must be determined by deducting the distribution costs and profits thereof in order to classify both values at the same level of trade and thus comparable.

Investigating authorities, as a rule, determine individual margins of dumping. When the amount of subject exporters, producers, importers or types of products makes individual treatment impracticable, investigating authorities may limit their examination to: a reasonable number of interested parties or products by using samples that are statistically valid on the basis of information available to the investigating authorities at the time of the selection; or the largest percentage of volume of the exports from the subject country which can reasonably be investigated.¹²⁷ The choice of samples is preferably chosen in consultation with and with the consent of subject exporters, producers or importers. Any exporter or producer which was not initially selected for sampling yet who submits all necessary information for individual treatment on time for it to be taken into account, shall receive individual treatment in as far as its admittance does not prevent a timely completion of the investigation or becomes unduly burdensome to the investigating authorities.

c. Causation Analysis and (the Threat of) Injury to the Domestic Industry

Injury can either exist out of material injury¹²⁸ to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.¹²⁹ In order to demonstrate¹³⁰ that dumped imports¹³¹ have caused¹³² material injury¹³³ to the domestic industry

¹²⁷ "The use of the "largest volume option" does not guarantee that the companies selected for examination will be representative for the exporting industry as a whole, yet the representativeness is a not a requirement under Art. 6.10 AdA." Panel Report, *E.U. – Footwear (China)*, paras. 7.200, 7.216. An investigating authority is not required to revise the selection it used for its sample when the scope of the investigation changes: Panel Report, *E.U. –Footwear (China)*, para. 7.219.

¹²⁸ The determination of injury must be made with regards to the complete domestic industry: AB Report, *U.S. – Hot-Rolled Steel*, para. 190.

¹²⁹ Art. 3.1 AdA does not oblige investigating authorities to use a specific methodology in the conduct of an injury analysis; AB Report, *Mexico – Anti-Dumping Measures on Rice*, para. 204 and Panel Report, *E.C. – Salmon (Norway)*, paras. 7.128-7.129. This results into discretion for investigating authorities in choosing the methodology that will be used for the purpose of the injury analysis, subject to the conditions of "positive evidence" and objective examination; AB Reports, *E.C. – Bed Linen (Article 21.5 – India)*, paras. 111 and 113; and *Mexico – Anti-Dumping Measures on Rice*, para. 204. "The same rationale applies to the use of a sample for purpose of the injury determination.": Panel Report, *E.U. –Footwear (China)*, para. 7.358. "A sample that is not sufficiently representative of the domestic industry as a whole is not likely to allow for such an unbiased investigation, and therefore may well result in a determination on the question of injury that is not consistent with the requirements of Article 3.1 of the AdA": AB Report, *U.S. – Hot-Rolled Steel*, para. 193. An investigating authority which takes into account information that relates to a sample for the purpose of determining injury is not precluded from including companies which were not included in the sample and subsequently may take into account information that relates to the companies which were excluded in the sample in as far as it is relevant for the determination: Panel Report, *E.C. – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, para. 6.181; AB Report, *E.C. – Tube or Pipe Fittings*, para. 112; and Panel Report, *E.C. – Tube or Pipe Fittings*, para. 7.326.

¹³⁰ This is classified as the "causation analysis" and requires an investigating authority to make a definitive determination on the basis of 'all relevant evidence' before it: AB Report, *China – G.O.E.S.*, para. 130.

¹³¹ Imports with zero or "de minimis" margins of dumping need to be excluded from the injury analysis.

¹³² "Pursuant to Art. 3.5 of the AdA, investigating authorities must establish a causal link between dumped imports and injury to the domestic industry in order to be enabled to impose and maintain an A-D-duty.": AB Report, *U.S. – Anti-Dumping Measures on Oil Country Tubular Goods*, para. 117.

¹³³ The Injury Investigation Period over which injury is analysed is preferably set at a minimum of three years.

producing the like product, investigating authorities must consider¹³⁴ through an objective examination¹³⁵ of positive evidence¹³⁶ A) whether there exists a significant increase in dumped imports in absolute terms or relative to production or consumption in the importing member which by means of their volume, price or both effected in¹³⁷ B) a significant price undercutting¹³⁸ as compared with the price of a like product in the importing Member or otherwise¹³⁹ effected in a significant price depression¹⁴⁰ or a price suppression¹⁴¹ of significant price increases which otherwise would have occurred in the market of importation for like products¹⁴² or, upon absence of available data which permit the separate identification of the domestic production of the like products;¹⁴³ the production of the narrowest group or range of products;¹⁴⁴ C) the impact¹⁴⁵ of the subject imports on unrelated¹⁴⁶ domestic producers of the like products as a whole or those domestic producers whose collective

¹³⁴ Investigating authorities have no obligation to make a final determination on the volume and price effects of imports on domestic prices: Panel Report, *Thailand – H-Beams*, para. 7.161 and Panel Report, *Korea – Certain Paper*, para. 7.253 and para 7.242, yet on investigating authorities rests the obligation to reflect their consideration of price effects in relevant documentation: AB Report, *China – G.O.E.S.*, para. 158.

¹³⁵ "Objective" requires good faith, fundamental fairness, unbiasedness and neutrality to party interests: AB Report, *U.S. – Hot Rolled Steel*, para. 193.

¹³⁶ "Positive" requires evidence to be affirmative, objective, verifiable and credible: AB Report, *U.S. – Hot Rolled Steel*, para. 192. The examination is not limited to evidence posited by parties. The obligations of "positive evidence" and an "objective examination" must "be met by every investigating authority in every injury determination": AB Report, *E.C. – Bed Linen*, para. 109 regardless of whether the issue is raised by an interested party in the investigation: Panel Report, *Mexico – Steel Pipes and Tubes*, para. 7.259.

¹³⁷ The effect of the vector of subject import prices, subject import volumes or both on domestic prices needs to be considered. A reliance on either one of the aforementioned vectors does not support an inference that a lesser factor may by itself be insufficient to sustain such a finding, or that the use of both vectors might be insufficient to sustain it: AB Report, *China – G.O.E.S.*, para. 216. The final determination must indicate how the two vectors interacted or whether the effect of either prices or volume alone could sustain the finding of a significant price effect: AB Report, *China – G.O.E.S.*, para. 219.

¹³⁸ The percentage of injury margin can be found by making the following calculation: ((price domestic producer-price exporter)/price exporter * 100).

¹³⁹ The wording "or" and "otherwise" indicates that elements relevant to the consideration of significant price undercutting may differ from those relevant to the consideration of significant price depression and suppression: AB Report, *China – G.O.E.S.*, para. 137.

¹⁴⁰ Percentage of injury margin: (target price domestic producer-price exporter) / price exporter * 100. The target price consists out of the per unit cost plus a reasonable amount of profit.

¹⁴¹ Concepts of price suppression and price depression can overlap: AB Report, *U.S. – Upland Cotton*, para. 351.

¹⁴² This involves the examination of the effects of the dumped imports: neither one nor several of these factors can give decisive guidance.

¹⁴³ Separate identification takes place on the basis of criteria such as the production process, producers' sales and profits.

¹⁴⁴ This includes the like product for which the necessary information can be provided. Also named "product line exception": allows for a broader analysis of effects of dumped imports on the industry: for instance when only data related to the whole classical shoes industry exists instead of merely the classical leather shoes industry.

¹⁴⁵ The examination hereof does not require an investigating authority to demonstrate that subject imports are causing injury to the domestic industry.

¹⁴⁶ Related producers exist when on a legal or operational level there exists direct or indirect control: by the producer over the exporter / importer or vice versa (also when the producer is the importer); over both by a third person; or by both over a third person if this led to behaviour that is different to unrelated producers.

output constitutes a major proportion of the total domestic production of those products¹⁴⁷ by i.e.¹⁴⁸ evaluating: all relevant economic factors¹⁴⁹ and indices having a bearing on the state of the industry;¹⁵⁰ factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth and the ability to raise capital and investments.¹⁵¹ The effects of all factors except for extra-national dumped imports which are known to cause injuries¹⁵² to the domestic industry need to be taken out of the causation analysis.¹⁵³

¹⁴⁷ Also named "domestic industry".

¹⁴⁸ None or several of the following factors is able to give decisive guidance, which means that it is necessary to make an overall evaluation of the subject information in its context and to substantiate how the facts under consideration support the determination: Panel Report, *Mexico – Definitive Countervailing Measures on Olive Oil from the E.C.*, para. 7.372; Panel Report, *E.C. – Bed Linen*, paras. 6.163 and 6.213; and Panel Report, *E.C. – Tube or Pipe Fittings*, para. 7.329.

¹⁴⁹ Apart from the factors in Art. 3.4 of the AdA which are supposed to be of relevance and therefore have to be taken into consideration in all cases, investigating authorities are required to evaluate "all relevant economic factors": AB Reports, *E.C. – Tube or Pipe Fittings*, paras. 146 and 156; *U.S. – Hot-Rolled Steel*, para. 194; and *Thailand – H-Beams*, paras. 125-128. Other factors than those listed in Art. 3.4 AdA may be relevant factors as well: AB Report, *U.S. – Hot-Rolled Steel*, para. 194. In the obligatory consideration of all factors incorporated in Art. 3.4 AdA, some factors may turn out irrelevant or insignificant for the subject determination on the basis of the nature of the subject product and industry: Panel Report, *E.U. – Footwear (China)*, para. 7.413. Furthermore, not all relevant factors neither the majority thereof need to show negative development in order to make an eligible determination of injury: Panel Report, *E.C. – Tube or Pipe Fittings*, para. 7.329; and Panel Report, *E.C. – A.D. Duties on Imports of Cotton-Type Bed Linen from India*, para. 6.163.

¹⁵⁰ Examples hereof are actual and potential declines in sales, profits, output, market share, productivity, return on investments or utilization of capacity.

¹⁵¹ A collection of all data related to all the subject factors and a complete evaluation thereof is mandatory.

¹⁵² The plural use of the word injuries implies that multiple factors might simultaneously cause injury to the domestic industry and investigating authorities are precluded from attributing injuries that are caused by other factors than dumped imports to the dumped imports: AB Report, *E.C. – Tube or Pipe Fittings*, para. 175. Art. 3.5. of the AdA does not require investigating authorities to research and examine on their own initiative the effects of all possible factors except for imports which may be causing injury to the domestic industry: Panel Report, *Thailand – H-Beams*, para. 7.273. Investigating authorities are only obliged to perform the subject examination if the factor is known to the investigating authority; is a factor other than dumped imports; and causes injury to the domestic industry simultaneously with dumped imports: AB Report, *E.C. – Tube or Pipe Fittings*, para. 175. The AdA does not prescribe how factors become known to investigating authorities, yet a factor can inter alia become known to investigating authorities through notification of interested parties during the time-frame wherein the investigation lasts: Panel Reports, *Thailand – H-Beams*, para. 7.273; and *E.C. – Tube or Pipe Fittings*, para. 7.359. If an investigating authority subsequently finds the allegation to be unfounded, it may discard the subject other factor in its consideration: AB Report, *E.C. – Tube or Pipe Fittings*, paras. 177-178.

¹⁵³ Examples hereof are the volume and prices of imports which were not sold through prices at a dumping level, the cyclical contraction in demand or changes in consumer behaviour or preferences, trade restrictive practices (for instance export restraint agreements) of and competition between the foreign and domestic producers, technical developments and the export performance and productivity of the domestic industry. The subject analyses are also named "non-attribution analysis" and "break the causal link analysis". Even though investigating authorities are obliged to take the effects of those factors which may be causing injury to the domestic industry into consideration ex art. 3.5 of the AdA, they is no guidance on which methodology investigating authorities must apply in the analysis of such factors or on how to investigating authorities must "separate and distinguish" the effects of those other factors causing injury from the effects of dumped imports: AB Report, *U.S. – Hot-Rolled Steel*, para. 178; AB Report, *E.C. – Tube or Pipe Fittings*, para. 189; AB Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada – Recourse by Canada to Article 21.5 of the DSU*, para. 154. In Panel Report, *E.U. – Footwear (China)*, para. 7.483 the Panel noted on the aspect of "separation and distinction" and causality that the investigating authority must reach "reasonable conclusions" by acting unbiased and objective towards facts, arguments before it and

The examination under A), B) and C) does not require investigating authorities to conduct a “fully-fledged an exhaustive analysis of all known factors that may cause injury to the domestic industry, or to separate and distinguish the injury caused by such factors.”¹⁵⁴ The volume and prices of the subject imports and their consequent impact must conjointly be taken into account when determining injury to the domestic industry.¹⁵⁵

Cumulative assessment of the effect of multiple imports is allowed if they are simultaneously subject to anti-dumping investigations,¹⁵⁶ if their margin of dumping exceeds 2 per cent of the established export price,¹⁵⁷ if their separate volumes account for more than 3 per cent of the aggregate volume to be accorded to like products in the importing Member,¹⁵⁸ and if on the basis of conditions of competition between imported products and between imported products and the like domestic products cumulative assessment is appropriate.¹⁵⁹ A threat of injury is found when the prospective likelihood of a substantial increase in dumped imports which generate a threat of injury¹⁶⁰ is

explanations given. Herein the Panel has to be succinct on not replacing their judgment for that of the investigating authority: a *prima facie* case requires more than merely posing evidence, legal argument is also a prerequisite: AB Report, *U.S. – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, para. 140.

¹⁵⁴ Yet the investigating authority, in order to fulfil the obligation to base its consideration on positive evidence through an objective examination, has to take into account evidence which calls into question the explanatory force of subject imports for significant depression or suppression of domestic prices for the purpose of understanding whether subject imports indeed had a depressive or suppressive effect on domestic prices: AB Report, *China – G.O.E.S.*, para. 152.

¹⁵⁵ AB Report, *E.C. – Tube or Pipe Fittings*, para. 115. The use of sampling in making an injury determination is not forbidden because there is no specific provision allowing for the use of sampling: Panel Report, *E.C. – A.D. Measure on Farmed Salmon from Norway*, para. 7.126. The same rationale applies to a price comparability determination for individual producers on the basis of samples to determine whether “market conditions” prevail in the domestic industry wherein they take part.

¹⁵⁶ Cumulative assessment is allowed but not required: AB Report, *E.C. – Bed Linen (Article 21.5 – India)*, para. 144. The thought behind cumulative assessment is that dumped imports have an impact on the domestic industry as a group: AB Report, *E.C. – A.D. Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, para. 116.

¹⁵⁷ A margin of dumping thereunder is called “de minimis” ex Art. 5 paragraph 8 AdA

¹⁵⁸ A volume thereunder is called “negligible”.

¹⁵⁹ As the AdA contains no answer to the question as to which factors might be relevant for determining whether cumulative assessment is appropriate on the aspect of “conditions of competition”, the matter has been under consideration by the Working Group on the Implementation of the Committee on Anti-Dumping Practices yet remained unfruitful: documents G/ADP/W/410, G/ADP/AHG/R7, G/ADP/W/93, and G/ADP/W/121 and revs. 1-4. For proposals on the subject matter in the DOHA Development Round see Document TN/RL/W/143. Investigating authorities must consider the particular conditions of competition in the market place as part of the broader analytical framework that enables the determination if it is appropriate to cumulatively assess two markets ex Art. 3.3 of the AdA: Panel Report, *E.C. – Tube or Pipe Fittings*, para. 7.241. The fulfilment of obligations for investigating authorities under Articles 3.2 and 3.3 of the AdA does not absolve investigating authorities from the obligation act consistently with Art. 3.1 of the AdA: AB Report, *E.C. – Bed Linen (Article 21.5 – India)*, para. 145. Thus, in executing their right to perform a cumulative assessment, investigating authorities must still perform an “objective assessment” on the basis “positive evidence”.

¹⁶⁰ Herein the threat in relation to factors under the “impact assessment” also has to be evaluated. The assessment of factors with an impact that has to be taken out of the causation analysis is not mandatory yet has to be determined on a case-to-case basis.

foreseeable through the imminent occurrence of i.e.:¹⁶¹ a significant increase of dumped imports; a sufficiently freely disposable or substantial increase in the exporter's capacity to produce 'dump-able' products; the importation of products at prices which significantly depress or suppress domestic prices; or a significant increase of inventories of products at dumping prices.

After a separate determination of injury due to dumped imports destined for final consumption in an isolated sub-market of a Member,¹⁶² the imposition of duties on these separate imports is eligible unless a Member's constitution outlaws the levying¹⁶³ of sub-anti-dumping duties or when this is impossible. Then unlimited levying on imports into the whole Member's market becomes eligible if the subject importers did not promptly cease the dumped imports in an adequate way or did not give assurances ex Article 8 AdA. Therefore, the investigating authorities must first provide opportunities. In case the markets of two or more Members, as a subsequent result of intensive integration of those characteristics which enable markets to qualify as a single market, can be considered to have merged into a unified domestic market, it will have to be considered as such for purposes of determining the effects of imports of dumped products therein in relation to the domestic production of the like product.

2.4 Trade Defense Instruments

a. Preliminary Determination and Provisional Measures

The imposition of provisional measures takes place after an investigation ex Article 5 AdA with a subsequent public notification thereof is initiated. The imposition of provisional measures is a causal result of a preliminary determination wherein the existence of injury as a causal result of dumped products is confirmed and must spring forth out of the necessity to prevent further injury to the domestic industry during the time-frame wherein the investigation lasts. Provisional measures can take the form of; a provisional duty that equals the dumping amount; securities in the form of cash deposits or bonds to the amount that equals un-imposed provisional duties; and the withholding of an appraisement wherein the estimated amount of the duty is indicated. All conditions that apply to provisional measures, apply equally to its different types.

Provisional measures may not be imposed earlier than 60 days before the initiation of the investigation and must be withdrawn as soon as possible. The imposition may not last longer than four months with a maximum extension of either six months upon investigating authorities' positive

¹⁶¹ None of these factors can give decisive guidance.

¹⁶² This is the case if domestic producers sell all or almost all of their production to a market's demand which is not substantially supplied by other producers in the market falling under the territory of the same Member.

¹⁶³ Levying means the definitive or final legal assessment or collection of a duty or tax.

confirmation of a request thereto by exporters which represent a significant percentage of trade in the subject product or nine months for the purpose of examining whether a duty at an amount which is lower than the amount that has been determined in the margin of dumping might be sufficient to remove the injury to the domestic industry. Rules on the imposition or collection of anti-dumping duties apply equally to provisional measures.

A public notice of the imposition of provisional measures has to contain or make available through the use of a separate report; sufficiently detailed explanations for the preliminary determinations on dumping and injury, a reference to the matters of fact¹⁶⁴ and law which have led to arguments being accepted or rejected and while giving due regards to the protection of confidential information; the names of the suppliers, or when this is impracticable, the supplying countries involved, a description of the product which is sufficient for customs purposes, the margins of dumping established, a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value ex Article 2 AdA, considerations relevant to the injury determination ex Article 3 AdA and the main reasons leading to the determination.

b. Final Determination and Definitive Measures

Provisional measures¹⁶⁵ may not be applied on products which enter the domestic market for consumption before the investigating authorities; made a preliminary decision to initiate an investigation to determine the existence, degree and effect of any alleged dumping upon a written application by or on behalf of the domestic industry or by the investigating authorities themselves if they have sufficient evidence of dumping, injury and a causal link, and a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments; a preliminary affirmative determination of dumping and consequent injury to a domestic industry has been made; determine that such measures are necessary to prevent injury being caused during the investigation.

Anti-dumping duties may not be imposed on products which enter the domestic market for consumption before the investigating authorities made a final decision on; whether or not to impose an anti-dumping duty in case all requirements for the imposition of anti-dumping duties have been fulfilled; whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less. The exceptions to the aforementioned general rules are;

¹⁶⁴ This does not require investigating authorities to disclose all the factual information that is before them, yet oversees the facts that are necessary for interested parties to understand what the factual basis is whereon the imposition of final measures was decided: AB Report, *China – GOES*, para. 256.

¹⁶⁵ Usually takes the form of a security in the sense of a bank guarantee.

.I. Exception to the general prohibition to retroactively levy anti-dumping duties on products that entered for consumption in the period between the date wherefrom provisional measures were imposed and the final determination.

The extent of a dumping amount, that is determined in a final determination, which was eligible to be collected in the time frame wherein provisional measures were imposed and that arose with either; 1) injury that occurred in the subject time-frame as a causal result of dumped imports or 2) injury that would have occurred if provisional measures would not have been imposed in order to offset a threat of injury or material retardation that was found by means of a preliminary determination A) may be levied by means of a final anti-dumping duty insofar as it lays below, or B) must lead to either i) a recalculation of the duty or ii) a reimbursement to those who incurred the provisional measure insofar as it lays above: the amount of provisional duties that were paid or the amount estimated for the purpose of the security in as far as it relates to the period wherein provisional measures were applied.

.II. Exception to the general prohibition to retroactively levy anti-dumping duties on products that entered for consumption in the period between the date wherein a threat of injury or material retardation has been determined and the final determination.

With respect to a final determination of a threat of injury or material retardation wherefore no provisional measures were imposed that prevented the occurrence of injury, the imposition of a definitive anti-dumping duty is eligible from the date wherein a threat of injury or material retardation has been determined whereby, just as is the case when a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

.III. Exception to the general prohibition to retroactively levy duties on products that entered for consumption prior to the initiation of the investigation.

When an importer was or should have been aware that he was importing dumped products that might cause injury to other participants in the domestic industry in a time frame of 90 days prior to the date of application of provisional measures or when there is a clear history of dumping which caused injury in the subject timeframe, investigating authorities may, after giving the importers concerned an opportunity to comment, levy a definitive anti-dumping duty on the subject products that entered for consumption in the subject 90 days if they determine that the injury arose due to massive dumped imports of the subject product in a relatively short time, which in light of the timing and the volume of the dumped imports and other circumstances¹⁶⁶ is likely to seriously undermine the remedial effect of the definitive anti-dumping duty that is to be applied. As soon as investigating authorities have

¹⁶⁶ Such as for instance a rapid build-up of inventories of the imported product.

sufficient evidence that the aforementioned conditions are satisfied, they may withhold appraisements or assessments after the initiation of the investigation insofar as this is necessary to retroactively collect the subject anti-dumping duties.

Less sales with a high export price decrease the weighted average or individual transacted export price. As a subsequent result thereof the difference with the normal value increases. Therefore the chance that the 2 % limit of the dumping margin is crossed is increased. A subsequent result thereof is that the chance increases that dumping will be established. A subsequent result thereof is that the chance that the imposition of anti-dumping measures becomes eligible increases. If investigating authorities would definitively collect a definitive duty level that equals a provisional duty that is lower than the whole definitive duty, they would not collect an amount that is eligible to be collected over the period covering the provisional duties, namely the difference between the higher definitive duty and the lower provisional duty. In the opposite situation, if investigating authorities would not reimburse the difference between a higher provisional duty and a lower definitive duty, they would hold an amount that turns out not eligible to have been collected in the period covering the provisional duties. If the provisional duty is lower than the definitive duty, it may be collected definitively. However, if it is higher than the definitive duty, only the lower definitive duty level may be collected for the period covering the provisional duties.

c. Imposition, Collection and Review of Duties

The decision whether and to what extent of the margin of dumping anti-dumping duties must be imposed in order to offset the injurious effect to the domestic industry as a subsequent result of dumped imports is left to the discretion of investigating authorities. It is desirable that the imposition will be acceptable to all Members and that its extent is lesser than the margin of dumping if this allows the injury to the domestic industry to be eliminated. Developed country Members have to explore and give special regards to possibilities of constructive remedies to developing country Members before they apply anti-dumping duties which will affect the essential interests of developing countries.

The collection of anti-dumping amounts must be appropriate and non-discriminatory towards all injurers except for those of whom a price-undertaking is accepted. The injurers must be named whilst the duties are collected unless practicability allows no choice but to name the country or countries of origin or export of multiple injurers instead. The anti-dumping amounts may not exceed the margin of dumping that had been established in conformity with the provisions of Article 2 AdA.¹⁶⁷ A

¹⁶⁷ "Throughout the whole of the AdA and Art. VI GATT'94, the margin of dumping must necessarily be established on the basis of all export transactions of a given exporter" whereby all the results of all intermediate comparisons of a given exporter such as for instance multiple comparisons for individual transactions or groups of transactions must be aggregated regardless of whether the export price exceeds the normal value in any of

retrospective analysis of levied duties must be concluded as soon as possible within 18 months from the moment of a request thereto.¹⁶⁸ Ineligible levied anti-dumping amounts must be refunded promptly.¹⁶⁹ If a refund is impossible within 90 days, investigating authorities must, upon request thereto, provide an explanation therefore. Prospective levied anti-dumping duties must be refunded promptly¹⁷⁰ in as far as it exceeds the margin of dumping yet in any case within 18 months¹⁷¹ after an evidenced request for a refund by the subject importer is made in as far as it exceeds the actual margin of dumping. The calculation of margins of dumping for the purpose of refunding is subject to rules used in the most recent determination or review of dumping.

Reimbursements for ineligibly levied duties on first downstream resell prices must take into account; changes in the normal value; changes in costs that were incurred between importation and resale and movements in the resale price which are duly reflected in the subsequent selling prices. When conclusive evidence on the aforementioned is provided, deductions for the amount of anti-dumping duties paid must not be taken into account in the calculation of the export price.

Anti-dumping duties that are collected on imports of producers that were not included in an individual margin-of-dumping-determination¹⁷² yet that were determined through an examination of statistically valid samples of a reasonable number of interested parties or products, or the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, may not exceed the weighted average margin of dumping with respect to the selected producers or exporters or, when the amount of the anti-dumping duty is determined through the prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers which have not been individually examined. In establishing the "all others rate" investigating authorities must disregard zero margins, *de minimis* margins and margins that were determined on facts available whereby an

the subject individual transactions, Panel Report, *U.S. – Anti-Dumping Measures on certain Shrimp from Vietnam*, para. 7.4; AB Report, *U.S. – Softwood Lumber V*, paras. 92-100; *U.S. – Zeroing (EC)*, para. 126; AB Report, *U.S. – Softwood Lumber V (Article 21.5 – Canada)*, para. 122; AB Report, *U.S. – Zeroing (Japan)*, paras. 108-110, 115, 151; AB Report, *U.S. – Stainless Steel (Mexico)*, paras. 97-99; AB Report, *U.S. – Continued Zeroing*, paras. 276-287.

¹⁶⁸ A normal time-frame herein is 12 months. The observance of these time-limits might be impossible when the subject product undergoes judicial review proceedings.

¹⁶⁹ A normal time-frame herein is within 90 days after the final determination.

¹⁷⁰ The prompt refund must be provisioned by investigating authorities.

¹⁷¹ A normal time-frame herein is 12 months. The observance of these time-limits might be impossible when the subject product undergoes judicial review proceedings.

¹⁷² The rate so established is also named the "all others rate".

interested party refused access to information within a reasonable time-frame or significantly impeded the investigation.¹⁷³

Relative to normal duty assessment and review proceedings in the importing Member, investigating authorities must promptly initiate and on an accelerated basis carry out a review for the purpose of determining individual margins of dumping for products of exporters or producers whereon anti-dumping duties were imposed yet who did not import the subject product during the time-frame of investigation and who have evidenced to be unrelated to exporters or producers in the exporting country on whose products anti-dumping duties were levied. No anti-dumping duties may be imposed on exporters or producers under review yet appraisements may be withheld and guarantees may be requested to ensure, as the review might turn out, retroactive levying of anti-dumping duties to the date wherefrom the review was initiated.

2.5 Aside and after the Investigation

a. Price Undertakings

Exporters may voluntarily or upon suggestion¹⁷⁴ by the investigating authorities of the importing Member eliminate dumping practices by either ceasing the import of dumped products or by increasing the prices of dumped imports to the extent that is necessary to eliminate the margin of dumping.¹⁷⁵ The export price must be increased insofar as is necessary to eliminate injury to the domestic industry of the importing Member, thereby preferably remaining under the dumping amount,¹⁷⁶ yet never exceeding the margin of dumping. When the injurious effect to the domestic industry is eliminated, the investigating authorities must suspend or terminate the proceeding unless the exporter so desires or the investigating authorities so decide.

If investigating authorities subsequently detect a negative dumping amount or negative injury, the undertaking will automatically be adjusted to the new level unless the negative determination primarily exists due to a price undertaking, in which case investigating authorities may require the undertaking to be maintained for a reasonable period consistent with the provisions of the AdA as

¹⁷³ AB Report, *U.S. – Hot Rolled Steel*, para. 126: There is a "lacuna" in this law because it does not explain how the "all others rate" has to be calculated when all mandatory respondents are excluded from a limited examination because they turn out to have either zero or *de minimis* margins of dumping or margins of dumping that had to be based on facts available. The aforementioned lacuna in what methodology to follow does not impede on obligations in Art. 9.4 A.D.A for investigating authorities when setting the "all others" rate: AB Report, *U.S. – Zeroing (E.C.) (Article 21.5 – E.C.)*, para. 453. One of these obligations is to determine the margins of dumping which are used instead of the zero or *de minimis* margins respectively margins based on adverse facts, in accordance with Art. 2 AdA.

¹⁷⁴ Yet never through force.

¹⁷⁵ Also named "price undertaking".

¹⁷⁶ Also named the "lesser duty rule".

well as afterwards, when an affirmative determination of dumping and injury is made. Undertakings may not prejudice investigating authorities in the investigation except for that a threat of injury may remain imminent upon absence thereof. Investigating authorities may request importers to hand in a periodical update of information on the fulfilment of accepted price undertakings. If a violation is detected, the immediate imposition of provisional measures and levying of final duties on products that entered for consumption in 90 days prior to the application of such provisional measures is eligible in as far as it oversees imports that violated the undertaking.

A public notice of the termination or suspension of an investigation following the acceptance of an undertaking has to include, or otherwise make available through a separate report, the non-confidential part of this undertaking. The aforesaid requirement also applies mutatis mutandis to the initiation and completion of reviews ex Article 11 AdA and to decisions to apply duties retroactively ex Article 10 AdA. A public notice of conclusion or suspension of an investigation in the case of an affirmative determination¹⁷⁷ providing for the imposition of a definitive duty or the acceptance of a price undertaking has to contain or otherwise make available through a separate report, with due respect to the confidentiality of information; all relevant information on the matters of fact¹⁷⁸ and law, all reasons which have led to the imposition of final measures, all reasons which have led up to the acceptance of a price undertaking, the information described in paragraph 2.1, reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers and the basis for any decision which has been made under subparagraph 10.2 of Article 6 of the AdA.

¹⁷⁷ "If the subject determination was substantively inconsistent with the relevant legal obligations, the adequacy of the notice is meaningless. When the decision wherefore a public notice is given is substantively inconsistent with requirements under the AdA, it is not necessary to assess whether the public notice is insufficient with Art. 12.2.2 AdA since it does not add anything to the finding of a violation of the AdA, it does not resolve the dispute any further and it does not add to the understanding of obligations under the AdA". Panel Reports, *E.C. – Bed Linen*, para. 6.259, *E.C. – Fasteners (China)*, para. 7.544; *E.C. – Salmon (Norway)* paras. 7.831-834; and *Mexico – Steel Pipes and Tubes*, para. 7.400. The text of Art. 12.2.2 AdA provides that it does not allow the incorporation of information that is confidential during the time frame wherein the investigation lasts: Panel Report, *Korea – Certain Paper*, paras. 7.210, 7.314-316. A later notice or report may refer to or incorporate matters that were addressed in previously published reports or notices: Panel Report, *U.S. – Oil Country Tubular Goods Sunset Reviews*, para. 7.252. "The nature and content of the explanation that is given on the determination in the public notice may well differ depending on the nature of the determination in question: Panel Report, *E.C. – Fasteners (China)*, para. 7.547.

¹⁷⁸ This does not require investigating authorities to disclose all the factual information that is before them yet oversees the facts that are necessary for interested parties to understand what the factual basis is whereon the imposition of final measures was decided: AB Report, *China – G.O.E.S.*, para. 256. The relevant information on the matters of facts oversees the various elements that an investigating authority is required to examine in order to substantiate dumping injury and causal between the two. On the aspect of the injury analysis the subject criteria can inter alia be found in articles 3.1, 3.2, 3.4 and 3.5 AdA. The obligation of the subject public notice is triggered once there is an affirmative determination providing for the imposition of definitive duties.

b. Sunset Reviews and Altered Circumstances

A review of the need for a continued imposition of an anti-dumping duty might be initiated upon an initiative of the investigating authorities themselves or when, after the elapse of a reasonable period of time, interested parties request a review which is substantiated by positive information. The request of review by interested parties can either oversee an examination by the investigating authorities as to whether a continued imposition of the subject duty is necessary to offset dumping, an examination by the investigating authorities as to whether the injury to the domestic industry is likely to continue or recur if the duty would be removed or varied or the request can oversee both of the aforesaid examinations.¹⁷⁹

As soon as it becomes evident to the investigating authorities that an anti-dumping duty is no longer warranted, the duty has to be terminated immediately. This occurs when it becomes clear that the dumped imports which were causing injury to the domestic industry are no longer existent, when the investigating authorities accept price undertakings ex Article 8 AdA, when a review turns out that the imposition of the anti-dumping duty is no longer necessary or when the maximum time-frame for imposition of an antidumping duty lapses.

The maximum time-frame for imposition of anti-dumping duties is set as five years from either the moment of imposition of the anti-dumping duty or from the moment of review which covers both the dumping and the injury. An exception to the maximum time-frame may be made when investigating authorities determine within a reasonable period of time prior to the end of the subject time-frame, in a review initiated before that date on their own initiative or upon a duly substantiated request thereto by or on behalf of the domestic industry that the expiration of the duty would be likely to result in a continuation or recurrence of dumping and injury.¹⁸⁰ During the time-frame in which the

¹⁷⁹ Also named the "likelihood of dumping determination".

¹⁸⁰ "Art. 11.3 AdA does not prescribe any particular methodology to be used by investigating authorities in making a likelihood determination except for the word "likely" which requires evidence that demonstrates that dumping would be probable upon termination of the duty. Furthermore Art. 11.3 AdA does not prescribe an investigating authority to make a new injury determination ex Art. 3 AdA in the context of an expiry review. The injury determination in an original investigation differs in nature from the injury determination in an expiry review in that the former requires the existence of material injury to the domestic industry due to dumped imports whilst the latter requires the determination of whether expiry of an antidumping measure will likely lead to continuation or recurrence of injury. When investigating authorities rely on previously calculated margins of dumping for the purpose of concluding that there is a likelihood of continuation or recurrence of dumping, the calculation of these margins must conform to the disciplines of Art. 2.4 AdA which in turn has a bearing on the consistency of a likelihood determination with Art. 11.3 AdA. A margin of dumping that is inconsistent with WTO obligations does not render a sunset review inconsistent with 11.3 AdA unless the margin of dumping was relied upon in support of the likelihood-of-dumping or likelihood of injury determination. The same goes for a reliance on an injury determination with regards to Art. 3 AdA. Furthermore the words "review" and "determination" suggest that investigating authorities must act with an appropriate degree of diligence and arrive at a reasoned conclusion on the basis of information gathered as part of a process of reconsideration and examination, thereby giving full opportunity to all interested parties to defend their interests and thereby giving notice of the process

anti-dumping duty is under review, a period which normally does not exceed 12 months, the investigating authorities are eligible to withhold the termination of the anti-dumping duty. With respect to the aforementioned period of five years, the date of imposition of anti-dumping measures is deemed to be not later than the date of ratification of the WTO Agreement by the Member unless domestic legislation in force when the Member ratified the WTO Agreement contains a clause on the date of initiation of the imposition of anti-dumping measures that provides otherwise.

If a Member state has national legislation relating to anti-dumping procedures in place, it has to maintain judicial, arbitral or administrative tribunals or procedures for the purpose, i.e., of the prompt review of administrative actions relating to final determinations on anti-dumping procedures and reviews of determinations ex Article 11 AdA which are independent of the investigating authorities carrying out the subject determination or review.

c. Consultation and Dispute Settlement

The dispute settlement understanding is applicable to all the provisions relating to the applicability, consultations and settlement of disputes within the Agreement on the Implementation of Article VI of the General Agreement on Trade and Tariffs 1994, except for as far the Dispute Settlement Agreement is excluded from applicability therein.¹⁸¹ In case a Member makes a representation on a matter which affects the operation of the Agreement on the Implementation of Article VI of the General Agreement on Trade and Tariffs 94, another Member has to afford sympathetic consideration thereof and the other Member has to afford adequate opportunities for consultation of the matter therein. With the aim of reaching a mutually satisfactory resolution of the matter, a Members is allowed to request in writing consultations with another Member, who hitherto has to afford sympathetic consideration, if

and reasons for determination." The aforementioned text was merged together from: AB Report, *U.S. – Carbon Steel*, para. 88, AB Report, *U.S. – Continued Zeroing*, fn. 418; AB Report, *U.S. – Corrosion-Resistant Steel Sunset Review*, paras. 106-107, 111-112, 127, 130, 149; AB Report, *U.S. – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, paras. 180, 278-280, 284-285, 359; AB Report, *U.S. – Laws, Regulations and Methodology for Calculating Dumping Margins*, para. 390; and AB Report, *U.S. – A.D. Measures on Oil Country Tubular Goods (OCTG) from Mexico*, paras. 119, 151-152, 181. "Investigating authorities are not obliged to establish the existence of a causal link between likely injury and likely dumping. Investigating authorities are merely required to demonstrate the nexus between the expiry of the duty and the recurrence or continuation of dumping and injury which enables the investigating authorities to demonstrate the former is likely to lead to the latter: AB Report, *U.S. – A.D. Measures on Oil Country Tubular Goods*, para. 108. "Furthermore, a causal link between dumping and injury does not need to be re-established in the expiry review as the expiry review ex Art. 11.3 of the AdA is a "distinct" process with a "different" purpose from the original investigation." AB Report, *U.S. – Anti-Dumping Measures on Oil Country Tubular Goods*, para. 118. In alike manner as with the injury determination in the original investigation, the causal link which was established in the original investigation must upon use in the expiry review conform to the subject provisions of Art. 3.5 of the AdA on the aspect of the "non-attribution analysis" in order to comply with Art. 11.3 of the AdA: Panel Report, *E.U. – Footwear (China)*, para. 7.495.

¹⁸¹ The section "Consultation and Dispute Settlement" in the AdA is applicable to Panel proceedings while the standard of review ex Art. 17 AdA is exclusively applicable to Panels in the context of an A.D. dispute: Panel Report, *E.U. – Footwear (China)*, para. 7.35.

it considers that any benefit accruing to it, directly or indirectly, under the AdA is being nullified or impaired, or that the achievement of any objective is being impeded, by the subject Member(s).

If consultations were unable to generate a solution which is mutually agreeable to the Members who are part of the dispute,¹⁸² a Member is allowed to refer the subject matter to the Dispute Settlement Body if the investigating authorities of the importing country have levied definitive anti-dumping duties or if they have accepted price-undertakings. Referral of the subject matter to the Dispute Settlement Body is also allowed when it is evident that a provisional measure has a significant impact on the subject imported deemed dumped products whereby the Member who requested consultations considers that the imposition thereof is contrary to the provisions of Article 7.1 AdA. Upon request of the complaining party, the Dispute Settlement Body has to establish a panel to examine the matter¹⁸³ based on a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded and based on the facts which are made available in conformity with appropriate domestic procedures to the investigating authorities of the importing Member.¹⁸⁴

¹⁸² Consultations are obligatory before referring the subject matter to a Panel ex art. 6.2 D.S.U. Ex art. 6.2 D.S.U. the measures and claims identified in a Panel request form the basis for the terms of reference for a Panel ex art. 7.1 D.S.U. and must be sufficiently clear to give a grip on the Panel's jurisdiction and to allow for the due process objective of notifying all subject parties of the nature of the complaint: AB Report, *Brazil – Measures Affecting Desiccated Coconut*, p. 22; AB Report, *United States – Continued Existence and Application of Zeroing Methodology*, para. 161. Therefore a Panel must examine whether a Panel request complies with the letter and spirit of Art. 6.2 D.S.U. on the basis of the text of a Panel request read as a whole: AB Report, *E.C. – Regime for the Importation, Sale and Distribution of Bananas*, para. 142 and AB Report, *U.S. – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, para. 127 by inter alia assessing whether the Panel request contains "a brief summary of the legal basis of the complaint sufficient to present the problem clearly" on a case-by-case basis by assessing the nature of the Articles listed therein: AB Report, *Korea – Dairy*, para. 130 & para 124 and whether the opposite party might have been prejudiced by the formulation of the Panel request: Panel Report, *E.C. – Definitive A.D. Measures on Certain Iron or Steel Fasteners from China*, para. 7.15 & AB Report, *U.S. – Carbon Steel*, para.127.

¹⁸³ "A Panel may find disputed aspects to be consistent with the AdA if investigating authorities established facts properly, evaluated facts in an unbiased and objective manner and made their determinations through a permissible interpretation of relevant treaty provisions." See AB Report, *U.S. – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*, para. 93 on a clarification of a Panel's standard of review of the facts pursuant to Articles 11 D.S.U. *juncto* 17.6 AdA & AB Report, *U.S. – A.D. Measures on Certain Hot-Rolled Steel Products from Japan*, para. 54-59 on a clarification of the relationship between Articles 11 D.S.U. *juncto* 17.6 AdA.

¹⁸⁴ The Member claiming a violation of a provision of the AdA by another Member has to assert and prove its claim to such an extent that in the absence of effective refutation by the responding Member, the Panel is obliged to rule in favour of the complaining Member (also named a *prima facie* case). A *prima facie* case is one which in the absence of effective refutation by the defending party, requires a panel, as a matter of law, to rule in favour of the complaining party presenting the *prima facie* case": AB Report, *E.C. Measures Concerning Meat and Meat Products (Hormones)*, para. 104. In case sufficient evidence is adduced to raise a presumption that what is claimed is true, the burden of proof shifts to the other party to adduce sufficient evidence to rebut the presumption, yet it is generally for each party to prove facts it claims: AB Report, *U.S. – Measures Affecting*

Upon examination of the facts of the matter, the panel is not allowed to overturn the investigating authorities' evaluation, provided the panel determines that the investigating authorities made a proper establishment thereof and that the facts were evaluated in an unbiased and positive manner.¹⁸⁵ If the Panel, for instance through the obligatory interpretation of the relevant provisions of the AdA in accordance with customary rules of interpretation of public international law,¹⁸⁶ establishes that a relevant provision of the AdA can be interpreted in different ways, it has to hold the investigating authorities' measure in conformity with the AdA, in case the imposition, levying or collection thereof is eligible under one of the subject interpretations.¹⁸⁷ The panel is bound to the same confidentiality requirements as the investigating authorities upon disclosure of subject information thereto. Upon request of confidential information which is not eligible for distribution by the panel, the latter is obliged to provide a non-confidential summary thereof if this is authorized by the person, body or investigating authority which is providing the information.

2.6 Committee on Anti-Dumping Practices

The Committee on Anti-Dumping Practices is composed of representatives who elect their own Chairman and meets at least twice a year or at the request of any Member in order with the provisions of AdA. The Committee carries out different duties which the AdA or individual Members assign to it. Furthermore the Committee has to act as a consultant for Members on all matters which relate to the operation of the AdA or the furtherance of the objectives thereof. The WTO Secretariat acts as the secretariat to the Committee. The Committee has the right to set up new subsidiary bodies in as far as it deems them appropriate for fulfilling tasks which are assigned to it. After informing a Member of the intention thereto, the Committee and its subsidiary bodies may consult and try to obtain information from any source in the subject Member that they deem appropriate. Members have to report directly to the Committee on Anti-dumping duties all preliminary or final antidumping actions

Imports of Woven Wool Shirts and Blouses from India, p. 14; AB Report, *Canada – Dairy*, para. 77; AB Report, *E.C. – Hormones*, para. 104.

¹⁸⁵ In the assessment of the standard of review of disputes under the AdA brought before the Panel, Articles 11 D.S.U. and 17.6 AdA must be applied in conjunction with each other with respect to both the factual and the legal aspects of the dispute. Panel Report, *EU–Footwear (China)*, para. 7.4-7.5.

¹⁸⁶ "It is generally accepted that these rules can be found in Articles 31-32 of the Vienna Convention of the Law of Treaties": Panel Report, *U.S. – A.D. Measures on certain Shrimp from Vietnam*, para. 7.4 and AB Report, *India – Patents*, para. 46. In the first place the interpretation of provisions has to be based on the text of the treaty, yet the context of the treaty also plays a role: AB Report, *Japan – Taxes on Alcoholic Beverage*, p. 11.

¹⁸⁷ A Panel first has to apply customary rules of interpretation to the AdA ex Art. 3.2 D.S.U. to see what is yielded by a conscientious application of such rules including those codified in the Vienna Convention. Only thereafter will a Panel be able to determine whether a relevant provision of the AdA admits of more than one permissible interpretation in which case the Panel has to find the measure to be in conformity with the AdA if it rests upon one of those interpretations: AB Report, *U.S. – Continued Zeroing*, para. 271. It is neither required nor condone to impute into a treaty words that are not there or concepts that are not intended: AB Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products*, para.45.

taken before they are instituted in order for the Secretariat of the Committee to make the report available for inspection by the other Members and in order to submit a semi-annual basis, through an agreed standard form, reports of anti-dumping actions which will have been taken within the preceding six months. The Council for Trade in Goods has to be informed annually of developments through annual reviews by the Committee on the implementation and operation of the AdA, taking into account the objectives thereof.

CHAPTER THREE

3 Anti-dumping practices in the EU, the PRC & the USA

3.1 Anti-dumping investigations

The European Commission can initiate anti-dumping investigations into the existence, degree and effect of any alleged dumping on its own initiative or through the receipt of a complaint.¹⁸⁸ An anti-dumping investigation is initiated within forty-five days after the receipt of a valid complaint which contains enough evidence of the importation of dumped products causing injury to the domestic industry producing the like product. Complaints can be lodged by natural persons, legal persons and associations without legal personality who represent the domestic industry on a European or an EU member state level. Alongside the initiation of proceedings comes the public notification wherein the decision of the European Commission to initiate the investigation has been explicated. Therein interested parties can *inter alia* find an overview of the commodity numbers of the harmonised nomenclature belonging to products whereof the imports are subjected to anti-dumping proceedings.

Figure 2. HS chapters of goods whereon the EC initiated A-D investigations: 01-01-2015 until 01-11-2018

Source: the author's calculations based on notices of initiation from the EUR-lex database

¹⁸⁸ Panels, reading Article 5.3 in the context of Article 5.3 of the A.d.A. have consistently held that evidence which relates to the questions of dumping, injury and a causal link between the former and the latter are a prerequisite to the initiation of an anti-dumping investigation. Tejeda, Marco T. Molina. "The Regulation of International Trade: The GATT and the WTO Agreements on Trade in Goods, Volumes 1 and 2 by Petros C. Mavroidis Cambridge, MA: The MIT Press, 2016." *World Trade Review* 16.4 (2017): 766-771, P 145

The extent wherein chapters of the harmonised nomenclature belong to products whereupon anti-dumping investigations were initiated by the EC in the period January 2015 until November 2018 is diagrammed in figure two on the previous page. The diagram indicates that the European Commission is most active in the protection of iron, steel and related industries from dumped imports. This would make sense since iron, steel and related industries are traditionally seen as sectors of geopolitical strategic importance.¹⁸⁹ It also concerns sectors where the domestic industry support for anti-dumping measures is likely to be very high.¹⁹⁰

A complaint must be lodged by or on behalf of the industry of the European Union.¹⁹¹ Theretofore the aggregate output of Union producers who support the application must account for more than 50 % of the aggregate output of Union producers who expressed support for or opposition to the complaint and for 25 % or more of the total Union production of the like product. Proceedings may not be initiated if products originate in countries whereof the volume of imports have an import share of less than 3 %, unless such countries collectively account for an import share of 7 % or more.¹⁹²

In figure two, anti-dumping investigations directed towards products which fall under multiple six-digit commodity numbers were treated separately to the extent wherein their HS2 code differed.¹⁹³ Moreover, investigations directed towards products originating in multiple countries were treated separately to the extent wherein the imports under consideration originated from multiple WTO Members. Furthermore, anti-dumping investigations which were re-opened partially were treated as separately initiated anti-dumping investigations.¹⁹⁴ In order to provide a better insight into the extent wherein different anti-dumping investigations were initiated by the European Commission in the period January 2015 until November 2018, table one, to be found on the next page, provides an overview of all the anti-dumping investigations which were initiated in the period under consideration.

¹⁸⁹ Lesser, Ian O. *Resources and strategy*. Springer, 1989, p 49 – this has been the perception since the end of the second world war, which was won by the allied powers due to "their superiority in iron, steel and foodstuffs".

¹⁹⁰ Several sources report how the EU Steel and allied industries have been under threat and subsidized for years now, see *inter alia*: Fruehan, R. J. "Critical assessment of advanced iron smelting processes." *Iron & steelmaker* 30.2 (2003): 48-60, pp 10-12 / Johnson, Debra, and Colin Turner. *European business*. Routledge, 2015, p 142 / Lawrence, R. *Crimes and Punishments?: Retaliation under the WTO*. Peterson Institute, 2003, p 73

¹⁹¹ Chow, Daniel CK, and Thomas J. Schoenbaum. *International Trade Law: Problems, Cases, and Materials*. Wolters Kluwer Law & Business, 2017, p 251

¹⁹² Blonigen, Bruce A., and Chad P. Bown. "Antidumping and retaliation threats." *Journal of International Economics* 60.2 (2003), p 15 (with respect to the *de minimis* import share of three per cent

¹⁹³ Michalopoulos, Constantine. *Developing Countries in the WTO*. Springer, 2001, p 258 : HS2 stands for the two-digit level of product categories within the harmonised nomenclature (there are 99 chapters)

¹⁹⁴ Kuijper, Pieter Jan, et al. *The law of EU external relations: cases, materials, and commentary on the EU as an international legal actor*. OUP Oxford, 2013, p 593 on the conditions for the European Commission to reopen anti-dumping investigations

Table 1. A-D investigations initiated by the European Commission: 01-01-2015 until 01-11-2018

ANTI-DUMPING INVESTIGATIONS INITIATED BY THE EUROPEAN COMMISSION		
<i>January 2015 until November 2018</i>		
Product	Country of Origin	Notice N°
2015 (8 initiations)		
Zeolite A powder	Bosnia and Herzegovina	(2015/C 17/06)
Rebars	the PRC	(2015/C 143/13)
Cold-rolled flat steel products	the PRC and the Russian Federation	(2015/C 161/07)
Aspartame	the PRC	(2015/C 177/07)
Sodium cyclamate	the PRC	(2015/C 264/04)
Certain ceramic foam filters	the PRC	(2015/C 266/07)
Stainless steel fittings	the PRC and Taiwan	(2015/C 357/05)
Manganese oxides	Brazil, Georgia, India and Mexico	(2015/C 421/08)
2016 (14 initiations)		
Certain seamless pipes and tubes of iron or steel	the PRC	(2016/C 58/10)
Hot-rolled flat products of iron or steel	the PRC	(2016/C 58/08)
Heavy plate of steel	the PRC	(2016/C 58/09)
Lightweight thermal paper	South Korea	(2016/C 62/07)
Concrete reinforcement bars and rods	the Republic of Belarus	(2016/C 114/04)
Oxalic acid	India and the PRC	(2016/C 148/06)
Hot-rolled flat products of iron or steel	Brazil, Iran, Russia, Serbia and Ukraine	(2016/C 246/08)
Purified terephthalic acid and its salts	the Republic of Korea	(2016/C 281/11)
Stainless steel cold-rolled flat products	Taiwan	(2016/C 291/07)
Seamless pipes and tubes of iron or steel	the PRC	(2016/C 331/03)
Threaded tube or pipe cast fittings of cast iron	the PRC and Thailand	(2016/C 398/10)
Corrosion resistant steels	the PRC	(2016/C 459/11)
Cast iron articles	the PRC and India	(2016/C 461/07)
Biodiesel	Argentina and Indonesia	(2016/C 476/04)
2017 (7 initiations)		
Low Carbon Ferro-Chrome	the PRC, Russia and Turkey	(2017/C 200/09)
Ferro-silicon	Egypt and Ukraine	(2017/C 251/04)
New and rethreaded tyres for buses or lorries	the PRC	(2017/C 264/13)
Tartaric acid	the PRC	(2017/C 296/04)
Certain stainless-steel wires	India	(2017/C 334/03)
Electric bicycles	the PRC	(2017/C 353/06)
Silicon	Bosnia Herzegovina and Brazil	(2017/C 438/12)
First three quarters 2018 (6 initiations)		
Open mesh fabrics of glass fibres	the PRC and India	(2018/C 171/05)
Solar glass	Malaysia	(2018/C 174/09)
Hot-rolled steel sheet piles	the PRC	(2018/C 177/05)
Biodiesel	Argentina and Indonesia	(2018/C 181/05)
Mixtures of urea and ammonium nitrate	Russia, Trinidad and Tobago and the USA	(2018/C 284/08)
Welded tubes pipes, hollow profiles of iron or steel	Macedonia, Russia and Turkey	(2018/C 347/06)

Note that by clicking on the names of the products whereupon the anti-dumping investigations in table one were initiated, a direct link to the website of the DG for Trade of the EU is opened. On the website an overview of the progress of each of the subject investigations is provided. Furthermore, note the direct links to the website of the DG for Trade of the EU in table one wherein the official notices of the initiation of the anti-dumping investigation by the European Commission are published.

Whilst comparing the amount of anti-dumping investigations which were initiated by DG Trade EU with the amount of less-than-fair-value investigations in table two, initiated by the US International

Trade Administration, it directly stand out that the US International Trade Administration by far includes more countries per investigation. Furthermore, it becomes clear that the US ITA has initiated far more investigations over the same period. Furthermore, it appears that both the USA and the EU primarily investigate imports of products which relate to the chemicals and steel and allied industries.

Table 2. Less-than-fair-value investigations initiated by the US-ITA: 01-01-2015 until 01-11-2018

LESS-THAN-FAIR-VALUE INVESTIGATIONS INITIATED BY THE US INTERNATIONAL TRADE ADMINISTRATION <i>January 2015 until December 2018</i>		
Product	Country of Origin	Notice N°
2015 (11 initiations)		
Certain Uncoated Paper	Australia, Brazil, PRC, Indonesia, and Portugal	80 FR 8608
Silicomanganese	Australia	80 FR 13829
Certain Polyethylene Terephthalate Resin	Canada, PRC, India, and Sultanate of Oman	80 FR 18376
Certain Corrosion-Resistant Steel Products	Italy, India, PRC, South-Korea, and Taiwan	80 FR 37228
Hydrofluorocarbon Blends Components	PRC	80 FR 43387
Heavy Walled Rectangular Welded Carbon Steel Pipes Tubes	South-Korea, Mexico, and Turkey	80 FR 49202
Certain Cold-Rolled Steel Flat Products	Brazil, PRC, India, Japan, South-Korea, Netherlands, Russia, UK	80 FR 51198
Certain Hot-Rolled Steel Flat Products	Australia, Brazil, Japan, South-Korea, Netherlands, Turkey, UK	80 FR 54261
Welded Stainless Pressure Pipe	India	80 FR 65696
Circular Welded Carbon-Quality Steel Pipe	Sultanate of Oman, Pakistan, Philippines, UAE, Vietnam	80 FR 73708
Certain Iron Mechanical Transfer Drive Components	Canada, PRC	80 FR 73716
2016 (18 initiations)		
Large Residential Washers	PRC	81 FR 1398
Certain New Pneumatic Off--Road Tires	India, PRC	81 FR 7073
Certain Biaxial Integral Geogrid Products	PRC	81 FR 7755
Certain Amorphous Silica Fabric	PRC	81 FR 8913
Truck Bus Tires	PRC	81 FR 9434
Stainless Steel Sheet Strip	PRC	81 FR 12711
Tetrafluoroethene	PRC	81 FR 18830
Phosphor Copper	South-Korea	81 FR 19552
Ferrovandium	South-Korea	81 FR 24059
Hydroxyethylidene-1, 1-Diphosphonic Acid	PRC	81 FR 25377
Certain Carbon Alloy Steel Cut-To-Length Plate	Austria, Belgium, Brazil, France, Germany, Italy, Japan, South Korea, PRC, SoA, Taiwan, Turkey	81 FR 27089
Ammonium Sulphate	PRC	81 FR 40665
Diocetyl Terephthalate '	South-Korea	81 FR 49628
Finished Carbon Steel Flanges	India, Italy, Spain	81 FR 49619
Emulsion Styrene-Butadiene Rubber	Brazil, South Korea, Mexico, Poland	81 FR 55438
Steel Concrete Reinforcing Bar	Japan, Taiwan, Turkey	81 FR 71697
Certain Hardwood Plywood Products	PRC	81 FR 91125
Certain Softwood Lumber Products	Canada	81 FR 93892
2017 (21 initiations)		
Certain Aluminium Foil	PRC	82 FR 15691
Silicon Metal	Australia, Brazil Norway	82 FR 16352
Biodiesel	Argentina Indonesia	82 FR 18423
Carbon Alloy Steel Wire Rod	Belarus, Italy, South-Korea, Russia, South Africa, Spain, Turkey, Ukraine, UAE, UK	82 FR 19207
Carton-Closing Staples	PRC	82 FR 19351
Certain Tool Chests Cabinets	PRC, Vietnam	82 FR 21523

Certain Cold-Drawn Mechanical Tubing of Carbon Alloy Steel	Germany, India, Italy, South-Korea, PRC, Switzerland	82 FR 22491
100- to 150-Seat Large Civil Aircraft	Canada	82 FR 24296
Fine Denier Polyester Staple fibre	PRC, India, South-Korea, Taiwan, Vietnam	82 FR 29023
Citric Acid Certain Citrate Salts	Belgium, Colombia, Thailand	82 FR 29828
Ripe Olives	Spain	82 FR 33054
Low Melt Polyester Staple Fibre	South-Korea, Taiwan	82 FR 34277
Certain Tapered Roller Bearings	South-Korea	82 FR 34477
Cast Iron Soil Pipe Fittings	PRC	82 FR 37053
Certain Uncoated Groundwood Paper	Canada	82 FR 41599
Stainless Steel Flanges	India, PRC	82 FR 42649
Titanium Sponge	Japan, Kazakhstan	82 FR 43939
Polyethylene Terephthalate Resin	Brazil, Indonesia, South-Korea, Pakistan, Taiwan	82 FR 48977
Polytetrafluoroethylene Resin	India, PRC	82 FR 49587
Forged Steel Fittings	PRC, Italy, Taiwan	82 FR 50614
Common Alloy Aluminium Sheet	PRC	82 FR 57214
January until December 2018 (18 initiations)		
Sodium Gluconate, Gluconic Acid, Derivative Products	France, PRC	83 FR 516
Certain Plastic Decorative Ribbon	PRC	83 FR 3126
Large Diameter Welded Pipe	Canada, Greece, India, PRC, South-Korea, Turkey	83 FR 7154
Cast Iron Soil Pipe	PRC	83 FR 8053
Rubber Bands	PRC, Sri Lanka, Thailand	83 FR 8424
Laminated Woven Sacks	Vietnam	83 FR 14257
Certain Steel Wheels	PRC	83 FR 17798
Glycine	India, Japan, Thailand	83 FR 17995
Certain Quartz Surface Products	PRC	83 FR 22613
Steel Propane Cylinders	PRC, Taiwan, Thailand	83 FR 28196
Steel Racks	PRC	83 FR 33195
Certain Steel Wheels 12 to 16.5 Inches in Diameter	PRC	83 FR 45095
Strontium Chromate	Austria, France	83 FR 49543
Refillable Stainless-Steel Kegs	PRC, Germany, Mexico	83 FR 52195
Mattresses	PRC	83 FR 52386
Aluminium Wire Cable	PRC	83 FR 52811
Polyester Textured Yarn	India, PRC	83 FR 58223
Magnesium	Israel	83 FR 5533

Pursuant to the initiation of anti-dumping investigations, the European Commission sends questionnaires to interested parties.¹⁹⁵ Interested parties are *inter alia* Union producers of the like product and exporters respectively importers of products whereof the entrance for free circulation into the domestic market for consumption of the European Union has been subjected to any anti-

¹⁹⁵ Mavroidis, Petros C. *The Regulation of International Trade: GATT*. Vol. 1. MIT Press, 2016, p 153 "The counterpart to the rights and duties of IAs are of course the rights and duties of interested parties. The term "interested parties" is defined in Article 6.11 of AD, and includes all of the following:

- (i) An exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association, a majority of the members of which are exporters, or importers of such product;
- (ii) The government of the exporting member;
- (iii) A producer of the like product in the importing member or a trade and business association, a majority of the members of which produce the like product in the territory of the importing member

This list shall not preclude members from allowing domestic or foreign parties other than those mentioned here to be included as interested parties. Categories (i) and (ii) refer, of course, to the entities threatened with the imposition of duties, whereas category (iii) should comprise entities interested in imposing AD duties."

dumping investigation. The date wherein these questionnaires are sent coincides with the date of the publication of the notice of the initiation of the anti-dumping investigation.¹⁹⁶ In order to provide an example of how a questionnaire looks like, one which was disseminated by the European Commission on 28 September 2018 to interested parties in a newly opened case on welded tubes pipes, hollow profiles of iron or steel from Macedonia, Russia and Turkey is annexed at the end of this dissertation.

Questionnaires provide exporting producers which originate from countries which the European Union *a priori* considers to be non-market economies the opportunity to provide evidence to rebut the presumption that they are not operating under market economy conditions. The European Union *a priori* considers the economies of Albania, Armenia, Azerbaijan, Belarus, the PR of China, Georgia, Kazakhstan, North-Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Viet-Nam not to be operating under market economy conditions.¹⁹⁷ Parties who do not reply to the questionnaires are usually considered not to be cooperating with the investigation and therewith run the risk of becoming subjected to a higher "all-others" or "country-wide" rate.

Pursuant to the receipt and verification of data related to the various aspects of the preliminary determination on whether the importation of dumped products causing material injury to the domestic industry of the European Union exists, the European Commission can decide to terminate an anti-dumping investigation or it can decide to impose provisional anti-dumping measures. The maximum time-frame wherein the European Commission is obliged to conclude anti-dumping investigations is fifteen months after the date of the initiation of the anti-dumping investigation.¹⁹⁸

Another task of the European Commission is to advise the Council of the European Union as to whether the provisional anti-dumping measures must be imposed definitively or whether the proceeding should be terminated without the imposition of definitive anti-dumping measures. The European Commission ex Article 5 (3) of the Basic Anti-dumping Regulation is restrained to initiate only those investigations wherefore it determined on the basis of an examination of the accuracy and adequacy of evidence that is either at hand or provided in complaints, that there is sufficient evidence to justify the initiation of an investigation into the extent, degree and effects of imported products which are deemed to be dumped. In the same vein, figure two also tends to indicate that the majority

¹⁹⁶ Vermulst, Edwin A. *Customs and Trade Laws as Tools of Protection: Selected Essays*. Cameron May, 2005 p 822: "Questionnaires are lists of questions addressed to the main interested parties, i.e. foreign producers/exporters, related and unrelated importers and domestic producers. The responses to the questionnaires, as verified, form the basis for the calculations of dumping and injury."

¹⁹⁷ Vermulst, Edwin A. *Customs and Trade Laws as Tools of Protection: Selected Essays*. Cameron May, 2005 p 986 footnote 12

¹⁹⁸ Matsushita, Mitsuo, et al. *The World Trade Organisation: law, practice, and policy*. Oxford University Press, 2015, p 383

of cases wherefore sufficient evidence was at hand or furnished by or on behalf of domestic industry in the period under consideration, relate to the metal and chemical industry of the European Union. However, this does not necessarily imply that the aforementioned sectors suffered the most injury as a causal result of the volume effect, price effects or impact of the importation of dumped like products. After all it might *inter alia* turn out that the alleged injury must be attributed to other factors than the importation of dumped products, that the injury is immaterial, that there is no threat of material injury, that there is no retardation of the establishment of a domestic industry producing the like product, that the margin of dumping is *de minimis*, that the volume of dumped products from the CoO is negligible or that price depression, suppression or undercutting would be insignificant.¹⁹⁹

Figure 3. A-D measures initiated in the EU versus the rest world: 01-01-2010 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

In order to furnish a general overview of the current global trend with respect to the amount of initiated anti-dumping measures (for the purpose of inferring conclusions with respect to the amount of anti-dumping investigations which are initiated in the European Union) figure three shows the evolution of the amount of anti-dumping measures which were initiated by the European Union in a juxtaposition to the amount of anti-dumping measures which were initiated by all other Members in the rest of the world. In order to give a clear overview of the global trend with respect to the initiation of anti-dumping measures, the normal period under consideration has been extended in figure three and encompasses the time-frame January 2010 until November 2018. Figure three indicates that the

¹⁹⁹ Mavroidis, Petros C., Patrick A. Messerlin, and Jasper M. Wauters. *The law and economics of contingent protection in the WTO*. Edward Elgar Publishing, 2010, p 95

relative extent wherein anti-dumping measures are initiated in the European Union in comparison to the rest of the world is decreasing. The amount of initiated anti-dumping measures decreased nearly 50 per cent over 2011 to 2017, while the amount of initiated measures of the world except the EU remained relatively stable. Figure three tends to indicate that the increase in the amount of initiated anti-dumping measures might have coincided with the aftermath of the financial crises of 2009 and 2010. If the same trends are discernible in the aftermath of another crisis, it might indicate that a certain proportion of initiations of anti-dumping measures might be influenced by other factors than the importation of dumped products which cause injury to the domestic industries of WTO Members.

In the execution of anti-dumping investigations, the European Commission performs a standard "non-attribution" and "break-the-causal-link" analysis with respect to the "other" injurious factor "financial / economic crisis".²⁰⁰ Therein sometimes the extent wherein the domestic industry incurred injury which was inflicted by the financial / economic crisis instead of being attributable to the importation of dumped goods is assessed. Changes in the amount of anti-dumping investigations which were initiated by the European Commission within the time-frame January 2015 until November 2018 can perhaps best be understood by looking into shifts in the total extra EU28 import volumes of products entering the domestic market for consumption of the European Union in the period of investigation.

a. Correlation between import volumes and contingent protection in EU28 - BRICS

Figure four, which is graphed on the next page, provides an overview of the total import volume of extra-EU28 products which were imported for free circulation into the domestic market for consumption of the European Union during the period January 2001 until November 2018. Since the import volumes for the last month of 2018 were not yet available from the database of Eurostat, a prognosis for the last month of 2018 on the basis of the first one of 2018 was made. Figure four tends to indicate that the relative evolution of extra EU28 import volumes into the EU follows the trend of the amount of anti-dumping investigations which are initiated by the European Commission. We see a general decrease in the extent wherein EU28 import volume can be expressed as a percentage of extra-EU28WIV. The decrease can be retracted to the crisis years. We can perhaps infer that the purchasing power of EU28 decreased in par with the total volume of initiated anti-dumping measures. Furthermore, the year 2015 and the prognosis for the year 2018 show relatively low amounts of extra EU28 import volumes entering the domestic market for consumption of the European Union while the

²⁰⁰ Mavroidis, Petros C. "The Regulation of International Trade, Volume 1: GATT." (2016), p 719 : Panels have accepted the "break the causal link" methodology (whereby an IA will examine whether certain factors have broken the causal link between dumped imports and injury suffered) as adequate to deal with the obligation to "separate and distinguish" the injurious effects of dumped imports from the injurious effects of other known factors, see the panel report on China-HP-SSST at §7.200

Figure 4. EU28 Import Volume as % of Extra-EU28 World Import Volume: 01-01-2001 until 01-01-2018

Source: author's calculations based on merged statistics from Eurostat Data Explorer, UN Comtrade & the ITC

overall period connotes to the relatively lowest amount of initiated anti-dumping investigations in figure three. These findings might corroborate the presumption that the extent wherein the whole domestic industry of the European Union is dependent on or in competition with imported products originating in extra EU28 countries bore some effect on the total amount of initiated anti-dumping investigations, albeit rather minor. However, since both trends do not coincide, they do not argue against the assumption that the European Commission genuinely initiates anti-dumping investigations for the sole purpose of countering dumping. They would rather corroborate that the EC does not simply apply contingent protection as a figment to enrich the Union's industry through trade barriers.

In order to gain a clear understanding of the causes which determine the extent wherein anti-dumping investigations are initiated on the importation of products which originate in various WTO Members, it would be necessary to first discern the extent wherein anti-dumping investigations were initiated by the European Commission on the importation of products originating in BRICS countries *vice versa* the rest of the world. Figure five, which can be found on the next page, gives an overview of the countries of origin of the products whereupon the European Commission initiated original anti-dumping investigations in the period January 2000 until November 2018. It is discernible within figure 5 that the majority of original anti-dumping investigations which were initiated in the period January

2000 until November 2018 concerned goods which originate in Brazil, Russia, India & the PR of China.²⁰¹

Figure 5. CoO of goods subjected to A-D investigations by the EC: 01-01-2000 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP and the notices of initiation from the EUR-Lex database

Of the total amount of original anti-dumping investigations which were initiated upon the importation of products originating in BRICS countries in the quinquennia under consideration, the vast majority is directed against the importation products which originate in the PR of China. Furthermore, products which originate in BRICS countries have come under scrutiny of the Directorate General for Trade of the EU over the quinquennia since the year 2000 to such an extent, that they form the majority of initiations (growing from 38 percent in quinquennium 2000-2005 to 58 percent in "quinquennium" 2015-2018). The latest trends tend to show that the European Commission, through evidence that is either at hand or submitted by or on behalf of the Union industry, considers the PR of China to be the

²⁰¹ Bown, Chad P. *Self-enforcing trade: developing countries and WTO dispute settlement*. Brookings Institution Press, 2010, p 4 on the need for figure 5: "However, the South-North disputes that Brazil, India, and China have initiated to enforce their access to export markets also do not tell the full WTO story. A complete examination of the WTO caseload reveals, unsurprisingly, a reciprocal pattern in disputes involving emerging economies. Just as these emerging economies have become larger exporters and thus intent on WTO to enforce their market access abroad, other WTO members have similarly acted to enforce their own access to the newly valuable import markets of these emerging nations. The result is a number of North-South disputes: Brazil and China have faced upwards of ten WTO challenges from developed countries, and India has faced at least eighteen."

foremost BRICS country of origin of dumped imports causing injury to the Union industry. Even though figure five gives no clear indication of the extent wherein imported products originating in BRICS or non-BRICS countries are actually being dumped in EU28, it might provide a slight indication of the expectancy of the European Commission in the period January 2000 until November 2018 with respect to WTO Members which are to be considered the main sources for dumped products. In order to gain any further insight into the extent wherein initiated anti-dumping investigations on BRICS countries were generally based on expectations rather than on facts, figure six graphs the extent wherein the BRICS countries as a whole and individually account for the total share of goods imported into the EU.

Figure 6. Import share per CoO of goods imported into the EU: 01-01-2000 until 01-11-2018

Source: the author's calculations based on Eurostat Data Explorer

The trend in the quinquennial extent between the import share of products entering the domestic market for consumption of the EU from BRICS countries *vice versa* the world appears mutual to the trend in the quinquennial extent wherein the amount of anti-dumping measures is imposed on products originating in BRICS countries *vice versa* the world. Figure six tends to indicate that the total import share of products originating in the PRC has more than doubled over the quinquennial course from 2000 until 2018. The increasing share of products originating in the PRC tends to indicate that exporting producers from the PRC have gained further strategic leverage over the Union industry. The Directorate General for Trade of the EU might have tried to counter the subject strategic leverage by

doubling the amount of anti-dumping investigations on imports of goods which originate in the PRC. The converging trends in figure five and figure six purport to infer that a higher import share of products entering the domestic market for consumption of the EU implies a likely increase in the amount of initiated anti-dumping measures. This would be a first indication that geopolitical factors, such as leverage through imports shares, may persist in the interplay of factors which determine whether products from a specific a country of origin are being subjected to anti-dumping measures. After all, any correlation between a higher import share and increased dumping does not exist *per se*.

b. Correlation between anti-dumping investigations in the EU vs the rest of the world

The current situation, wherein a large share of original anti-dumping investigations is initiated on products which originate BRICS countries, is likely to continue when we look at the significant increase of the total import volume into the EU of products which originate in the PRC (it has doubled over the course of 2010 until 2018). It would be possible to discern whether the increased proactivity towards imports originating in the PRC is simply the result of higher proactivity of the European Commission, by looking into the extent wherein EU28 initiated anti-dumping investigations within the same period.

Figure 7. EU28's percentage of AD investigations initiated in the world: 01-01-1990 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

Figure seven indicates that the share of EU28 in the total amount of anti-dumping investigations which are initiated in the world is decreasing. In line with our prior finding, this implies that the European

Commission is ever more focused on imports which originate in the PRC. It appears that the extent wherein imports originating in a country are subjected to anti-dumping investigations in EU28, is dependent on the extent wherein imports originating in a specific country make-up the total extent of imports into the domestic market for consumption of the EU. This finding necessitates research on the extent wherein retaliation has had effects on the EC's initiation of anti-dumping investigations.²⁰²

In order to derive inferences on the retaliatory effect on product imports from countries in the EU *vice versa* other countries into the EU, it is important to provide an overview of the extent wherein anti-dumping investigations which were initiated by the European Commission were met by the initiation of anti-dumping investigations which were directed on the importation of products originating in the European Union in the same time-frame. In order to provide the most recent overview it is decided to confine the period under consideration to the time-span between January 2010 until November 2018.

Figure 8. Original A-D investigations by and against the EU: 01-01-2010 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

Figure eight gives a first indication of the extent wherein WTO Members in the world possibly retaliate against the initiation of anti-dumping investigations by comparing two variables: the amount of anti-

²⁰² Blonigen, Bruce A., and Chad P. Bown. "Antidumping and retaliation threats." *Journal of International Economics* 60.2 (2003): 249-273 substantiates that over the course of 1980 and 1998 "the US industry is influenced by the threat of reciprocal foreign AD disputes in its decision of which foreign countries to name in the initial AD petition, and that the U.S. AD authority's anti-dumping decisions are influenced by the threat of foreign retaliation under the GATT/WTO dispute settlement mechanism".

dumping investigations which the world initiated with respect to imports which originate in EU28 and the amount of anti-dumping investigations which EU28 initiated against imports originating in the world except EU28. It appears from figure eight that even though the world except EU28 retained a relatively upbeat trend with respect to the initiation of anti-dumping procedures, DG Trade EU decreased its anti-dumping investigations. Incongruousness would be visible because the point wherein the most anti-dumping investigations were initiated against imports which originate in EU28 overlaps with the year wherein the least amount of anti-dumping investigations were initiated by EU28. It also stands out that over the whole line the trade defence mechanism of the EU initiates less anti-dumping investigations on imports than other WTO Members initiate anti-dumping measures on imports which originate in EU28. This inference purports to conclude that EU28 is less proactive in the field of trade defence against dumped imports than other WTO Members are with respect to its dumped exports. This finding either implies that EU28 exporters dump less exports into the world than that the world dumps imports into EU28 or that EU28 does not initiate sufficient anti-dumping investigations to counter dumping respectively that the world initiates anti-dumping investigations on exports of EU28 which are not being dumped. To infer further conclusions on the possibility that the latency of DG Trade EU is due to shifts in the trade balance between imports and exports of EU28, the relative value of import versus export volumes have been juxtaposed according to their percentages.

Figure 9. Percentage of Import vs Export Value in EU28: 01-01-2001 until 01-10-2018

Source: the author's calculations based on Eurostat Data Explorer

Figure nine indicates that the values of imports into EU28 and exports from EU28 over the course of January 2001 until November 2018 balance out in two-pronged deviations of not more than five percent from a perfect equilibrium. We find this trend extraordinary, especially where the crisis years apparently retracted the excessive import value towards to the perfect equilibrium. Presuming that the EC favours the *status-quo* when the value of import and export volume nears a perfect equilibrium, the imposition of measures over the same period in figure nine would remain consecutively stable.

c. The retaliatory effect of anti-dumping measures imposed by and against the EU

Figure ten, hereunder, provides an overview of the extent wherein EU28 imposed anti-dumping measures on products which originate in the world *vice versa* the extent wherein the world has imposed anti-dumping measures on exports which originate in EU28. Figure ten sends a shockwave through our prior findings on the extent wherein there exists a retaliatory effect on the initiation of anti-dumping investigations. Figure ten makes it unequivocally clear that even though hardly any retaliatory effect persists in initiations over the course of the 2000 until 2018, retaliatory effects apparently persist in the extent wherein EU28 imposed anti-dumping measures on imports which originate in the world except EU28 and the extent wherein the world except EU28 imposed anti-dumping measures on exports which originate in EU28.

Figure 10. Amount of A-D measures imposed by and against the EU: 01-01-2000 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

There can be no doubt over the existence of correlation between the extent wherein either the world imposes anti-dumping measures on imports originating in EU28 when EU28 imposes anti-dumping measures on imports originating in the world except EU28 or the extent wherein the world except EU28 imposes anti-dumping measures on imports originating in EU28 when EU28 imposes anti-dumping measures on imports originating in the world except EU28. Neither is it necessary to discern exactly which of the two aforementioned factors is the exact determinant for the mutual trends which are clearly visible in figure ten, because the mere fact that a certain degree of mutualisation exists is already a prime factor which evidences that geopolitical factors in tit-for-tat persist as an indicator for the imposition of anti-dumping measures. It seems very unlikely that dumping of imports into the EU and dumping of exports from the EU follow similar trends since both are private actions. To rest our case, we should see whether the same convergence in trends is visible with respect to the withdrawals of anti-dumping-measures from EU28 by the world on the one hand and by EU28 on the other hand. After all, if there exists a deliberate tendency to impose anti-dumping measures when another WTO Member imposes anti-dumping measures, then surely there would also have to exist the tendency to withdraw anti-dumping measures when another WTO Member withdraws its anti-dumping measures.

Figure 11. Amount of A-D measures withdrawn from and by the EU: 01-01-2000 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

The results of figure eleven are even more staggering. Both the amount of anti-dumping measures which have been withdrawn by EU28 and the amount of anti-dumping measures which have been

withdrawn from EU28 over course of January 2000 until November 2018 reflect a tendency for increase over the years 2000 until 2005 and a general decrease over the years 2005 until 2018. When comparing both graphs, we see a general tendency to withdraw anti-dumping measures after the imposition of anti-dumping measures. Furthermore, figure eleven makes it clear that EU28 is more likely to be the lead instigator of trends with respect the amount anti-dumping measures which are imposed on exports from EU28. Figure eleven makes this clear because it appears that EU28 over the course of the years 2003 until 2018 stayed ahead of the curve. Furthermore, when comparing figure 11 to figure 10, it is staggering to see that general tendencies in the imposition of anti-dumping measures by the world except EU28 on EU28 and EU28 on the world except EU28 overlap with general tendencies to withdraw anti-dumping measures by the world except EU28 from EU28 and by EU28 from the world except EU28. Figure eleven supports that the imposition of anti-dumping measures is ahead of the curve in the withdrawal of anti-dumping measures. This finding further corroborates that EU28 *vice versa* the world except EU28 pursues to maintain the status quo in contingent protection.

After having established that tit-for-tat effects do exist in the extent wherein EU28 and the world except EU28 impose contingent protection on and withdraw contingent protection from each other, it becomes necessary to discern whether the dependency between the variables is primarily induced by internal factors or external factors. Internal factors in this respect would not relate to other specific countries while external factors would. Theretofore, a new super-graph was designed in figure twelve on the next page which juxtaposes the quinquennial maxima and minima imposed by EU28 and against EU28. By juxtaposing the extent wherein anti-dumping measures were imposed by and against EU28 per country, it is possible to infer a first indication on the extent wherein both evolve in tandem.

Figure 12. The initiation of AD measures by and against the EU: 01-01-1990 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

A first view on figure twelve makes it clear that the relatively largest proportion of anti-dumping measures were imposed by EU28 on the importation of products which originate in the PRC.²⁰³ In all five quinquennia since 1990 except 1995-2000, products originating in the PRC have had the highest amount of anti-dumping measures imposed on them. Second in line comes India and the Russian Federation. However, it stands out that the only quinquennium wherein the highest amount of anti-dumping measures was not imposed on the PRC but on India, is the only quinquennium wherein the highest amount of anti-dumping measures were imposed by India against EU28. This becomes even more peculiar, because in the period 1990-1995 India was not even present amongst the seven WTO Members against whose imports from and who against exports from EU28 imposed the highest amount of anti-dumping measures. Juxtaposed, however, it becomes clear that the USA leads the quinquennial amount of anti-dumping measures which were imposed on exports originating in EU28. Over the course of 1990-1995, 2000-2005 and 2015-2018 it can be derived that the USA leads the quinquennial amount of anti-dumping measures which were imposed on exports originating in EU28. However, it stands out that the USA never led the quinquennial amount of anti-dumping measures which EU28 imposed. A certain degree of retaliation per WTO Member persists, the case of India over the years 1995-2000 gives a prime indication. However, the retaliation might depend on the WTO Member concerned because EU28 has amply imposed A-D measures on products from the USA.

Figure twelve indicates that except for the few anti-dumping measures which were imposed on products originating in Japan, Russia, Taiwan and USA, most of the anti-dumping measures imposed by EU28 concerned imports which originate in developing countries. Furthermore, it appears that the majority of quinquennial anti-dumping measures which were imposed in the period January 1990 until November 2018 by the European Commission are directed towards the importation of goods which originate in non-market economies. The disproportionately large extent of anti-dumping measures imposed by EU28 on products originating in the PR of China perhaps sprang forth out of the fact that the PR of China only until recently has been granted market economy status. The future evolution of the data in figure twelve might therefore shift drastically once EU28 implements the market-economy status of the PR of China

²⁰³ Hoekman, Bernard M., and Michel M. Kostecki. *The political economy of the world trading system: the WTO and beyond*. Oxford University Press, 2009, p 433 notes in this respect: "In the EU and the US, AD rulings against Chinese exporters are often based on a comparison of export prices of Chinese products with prices of the same products in a third country. China tends to be detrimentally affected by these practices. In about 40 per cent of all EU preliminary AD investigations against China in 2001-5, the US was used as a 'third country'. This approach is clearly problematic as it is easy to find dumping if prices of Chinese products are compared to those of the same type of products in an advanced country. Conversely, the US often opted to use India for comparison purposes, calculating a 'hypothetical cost' of Chinese products based on the cost of raw materials and publicly regulated charges in India plus a 'hypothetical profit' margin to determine the price used for the comparison. In general, the costs and charges in India were higher than those in China and the method of calculating 'hypothetical profits' was arbitrary, pushing up the prices used for the comparison."

into practice. Yet, there are also reasons to expect that the change in status might not generate significant changes in the manner wherein the European Commission initiates anti-dumping investigations with respect to products originating in the PR of China.²⁰⁴ After all, a change from non-market economy status to market economy status is by itself likely to generate a modification of the extent wherein exporters are inclined to export dumped products for free circulation into the domestic market for consumption of the European Union. On the other hand, if a strong correlation exists between the extent wherein dumping occurs and the extent wherein the European Commission initiates anti-dumping investigations, the PRC's evolution from developing to developed country might have a negative bearing on the extent wherein dumped products are exported to the EU's domestic market for consumption.

d. The prevalence of protectionism per sector of the economy in the EU, the PRC & the USA.

Insight into the sectors of the European Union which most often incurred injury as a causal result of the importation of allegedly dumped products is provided by looking at the extent wherein the different imports into EU28 which have been subjected to anti-dumping measures, classify under various chapters of the harmonised nomenclature on the one hand and under six-digit commodity numbers on the other hand. Figure thirteen on the next page only gives an overview of the commodity numbers which, per investigation wherein the European Commission subjected products to anti-dumping measures over the course of January 1990 until November 2018, were grafted into one representation on the graph insofar they fall under the same chapter of the harmonised nomenclature per investigation. A comparison thereof with the graph which represents all the commodity numbers whereon the Directorate General for Trade of the EU imposed anti-dumping measures, enables us to gain insight into the extent wherein EU28 per different chapter of the harmonised nomenclature of products subjected to anti-dumping measures, has applied anti-dumping measures on multiple commodity numbers within

²⁰⁴ Mavroidis, Petros C. "The Regulation of International Trade, Volume 1: GATT." (2016), p 716 - Especially when one considers the EC in for instance EC-Fasteners: "In EC-Fasteners (China), the EU had chosen India as the "surrogate" country. Bown and Mavroidis (2013) examined the publicly available trade data and concluded that India had both an extremely small share of the EU import market (relative to China and Chinese Taipei); the EU could have picked Chinese Taipei but did not. India had relatively higher unit values than EU imports from both China and Chinese Taipei and, to the extent that higher unit values in the EU import market corresponded to higher costs and higher prices for domestic sales at home, which would make India an attractive candidate (in the eyes of the EU) for an analog country. The EU, further, chose to request information from only two Indian firms, only one of which, Pooja Forge, provided information that the EU deemed adequate to use to construct the NV for all the Chinese firms in the dumping margin calculation. From a statistical perspective, the result of this process is that the information of only one Indian firm was used to construct the NV for more than 110 Chinese exporting firms. For statistical reasons alone, Bown and Mavroidis (2013) concluded that it was highly remote that this one Indian firm represented the average Chinese exporting firm (or even the Chinese firm producing the average exported product) from the universe of Chinese exporting firms ultimately confronted with the AD duty."

the same chapter of the harmonised nomenclature within different investigations. The latter graph can be found in figure fourteen, displayed on the second page after the upcoming page.

Figure 13. HS chapters of goods whereon the EU imposed A-D measures: 01-01-1990 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

There are several possible slight distortions of the data wherewith figure thirteen was graphed. On the one hand anti-dumping measures were sometimes imposed on imports originating in multiple countries. On the other hand, a product whereupon an anti-dumping measure is imposed sometimes fell under multiple commodity numbers. The latter problem was solved by taking into account the different CN codes for a certain product whereupon anti-dumping

measures were imposed to the extent that the HS2 chapter codes differed. The result thereof is that a product under investigation does not classify more than once under a single HS chapter, thereby honouring the amount of products subject to an investigation. Yet, as was pointed out earlier, these findings would not accurately reflect the extent wherein subtypes of the product under investigation were subjected to anti-dumping measures. And it was found that it was therefore necessary to multiply the HS2 codes belonging to a certain product to the extent that the measures were imposed on imports originating in different countries in the following graph.

Figure thirteen unequivocally indicates that the overarching amount of anti-dumping measures which the European Commission imposed on the importation of products during the quinquennia since 1990 were placed on products within the sectors steel and allied industries, electrical machinery and organic chemicals. Over the course of all quinquennia, the European Commission clearly imposed the highest amount of anti-dumping measures on the sector steel. The significant uneven handedness purports to conclude that EU28 places special interest on the protection of steel and allied Union industries. Yet there are some remarks to be made with respect to the aforementioned finding. First, the special protection may not have sprung forth out of the deliberate preceptive direction to protect specific sectors of the Union which were identified as of strategic interest to the economy of the European Union. However, the [High level Roundtable on the future of the European Steel Industry](#) clearly indicates that the steel industry is of vital importance. We would like to quote a phrase from the High-level Roundtable:

"Due to the restructuring efforts in the past, the EU steel sector is nowadays a dynamic, innovative and customer-oriented industry. The international competitiveness of European steel producers is based on continuous innovation, both of products and of production processes. From an Industrial Policy point of view, the steel industry's capacity to develop new, special properties and high-quality steel products provides a competitive edge globally. Therefore, having a strong and highly performing steel sector is of strategic importance for the EU economy."

The inferences are of course preliminary. After all, a large portion of the anti-dumping measures which were imposed on imports which relate to the metal and chemicals industry could have sprung forth from a Union industry which simply would be more proactive than other Union industries. Before making any final inferences on this matter, it would be necessary to research the diversity of complainants and their level of support. Figure 47 under the first paragraph of chapter four furnishes this information. The paragraph makes it clear that the support level of the Union industry for the initiation of anti-dumping measures in the sector steel and allied industries is primarily defined through the association which represents the Union's steel industry. The association is being contracted multiple times as a party which represents more

than 25 % of the Union steel and allied industries. In spite of these facts, the European Commission does not necessarily have to be partial with respect to the decision on whether imports into the domestic market for consumption of the European Union are being dumped. Nevertheless, the facts argue against this presupposition of partiality.

If the European Commission would determine the extent wherein it will impose anti-dumping measures by looking at the strategic leverage of foreign exporting producers in specific sectors of its Union industry, it would not suffice to imply that the European Commission is abusing anti-dumping measures as a figment to shield strategic sectors of the domestic industry from imports which cannot be considered to have been dumped *per se*. A manifold amount of other reasons may underlie the significant deviation amongst chapters of the harmonised nomenclature which are subjected to anti-dumping measures in EU28. In line therewith, it might also very well be possible that the significant deviation is due to a higher susceptibility to dumping in specific sectors of the Union industry. Furthermore, the deviation must be seen in light of the extent wherein the maturity and nature of domestic industries differ.

Sectors with a lower degree of competition within a larger pool of domestic producers would appear less inclined to request the European Commission for an imposition of anti-dumping measures because the impact will be marginal on a direct scale. This situation may exist or desist when an infant sector matures into average competition between a smaller pool of competitors but it would very likely persist when the pool dries up into higher competition between an even smaller amount of competitors – oligopoly or into the last domestic Union producer – monopoly.

Figure fourteen, which is depicted on the next page, enables us to gain further insight into psychological behaviour profile of the DG for Trade of the EU. Behavioural profiling is applied as a defined technique to detect DG Trade EU'S main personality traits and behavioural characteristics. The determination is based on the deliberate exclusion and inclusion of commodity numbers within specific anti-dumping investigations of DG Trade EU.

A strategic policy choice appears discernible from the divergence between figure thirteen and figure fourteen. It implies that DG Trade EU frequents more commodity numbers per HS chapter when it concerns HS chapters which are more often included in anti-dumping investigations. From the onset, not only does the European Commission impose more anti-dumping measures in the chapter steel and allied industries of the harmonised nomenclature, sectors which the [High level Roundtable on the Future of the European Steel Industry](#) designates to be of particular strategic importance for the economy of the European Union, it also imposes more anti-dumping measures on the six-digit commodity numbers of products which fall under each of the

chapters in the harmonized nomenclature which most often were subjected to anti-dumping measures.

Figure 14. CNs of imports whereon EU28 imposed A-D measures: 01-01-1990 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

The extent wherein complainants requested the initiation of those anti-dumping investigations which resulted in the imposition of measures, represent major proportions of the total domestic industry of the EU might be another factor which explains the divergence in the extant between the extents wherein the European Commission imposed anti-dumping measures on these specific chapters of the harmonised nomenclature versus the other chapters of the harmonised

nomenclature. Because there are too much domestic factors necessitating a recalculation of the extent wherein geopolitical strategies underlie the implementing regulations of the European Commission on whether or not to impose anti-dumping measures, we need to take a transatlantic peek at practices of the US International Trade Administration.

Figure 15. HS chapters of goods whereon the USA imposed A-D measures: 01-01-1990 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

Figure fifteen and fourteen, which has been graphed on the previous page, provide a stellar indication that amongst others, either the United States Department of Commerce and the European Commission are adamant on protecting more or less the same types of sectors which

are deemed to be of essential geopolitical importance or that dumping in both the USA and EU28 more or less graft under the same chapters of the harmonised nomenclature; or that specific sectors in both economies of the USA and the EU converge in the extent wherein they account for a total sector of the whole domestic industry (since this would vouch for an increased likelihood that certain domestic producers would start complaints and thus an increased likelihood that the impositions of anti-dumping measures would converge within these sectors).

In the same vein as figure thirteen, figure fifteen provides an insight into the quinquennial evolution of the grafted extent wherein products falling under the same chapters of the harmonised nomenclature have been subjected to the imposition of anti-dumping measures over the course of January 1990 until November 2018. It is excruciatingly staggering to see that, over the course of all quinquennia since 1990, both the US International Trade Administration and DG Trade EU imposed the highest amounts of anti-dumping measures on imports which fall in the sector chapter Iron and Steel in the first place and the sector Articles of Iron of Steel in the second. However, to infer conclusions on the extent wherein these convergences truly connote to the decision to include more commodity number on products within sectors which are likely to be of strategic importance, it would be necessary to graph the extent wherein the United States Department of Commerce initiated contingent protection on six-digit commodity numbers of products falling under the same chapters of the harmonised nomenclature over the quinquennial courses from 1990 until 2018. Theretofore we refer to the graph on the next page.

The results of the specification into six digits of the harmonised nomenclature belonging to goods whereupon the US Department of Commerce has initiated anti-dumping measures over the course of January 1990 until November 2018 are nothing short of staggering and further enforce prior findings with respect to shielding of domestic industries of strategic importance.

Except for an anomaly which occurred in the quinquennium 2005 until 2010, the cause whereof still remains in doubt (the calculation appeared correct), it becomes clear that the United States Department of Commerce imposed an exorbitant amount of anti-dumping measures at the six-digit commodity number on products whereon it imposed the most anti-dumping measures at the chapter level of the harmonised nomenclature.²⁰⁵ The difference is so significant that it even

²⁰⁵ Irwin, Douglas A. *Clashing Over Commerce: A History of US Trade Policy*. University of Chicago Press, 2017, p 588 especially in light of the fact that in a majority of cases initiated by USDoC dumping was found: "The antidumping process started with a firm or industry association filing a petition with the Commerce Department and the ITC alleging that imports from a particular country were being sold at "less than fair value" and causing "material injury." Commerce made the "less than fair value" determination, and the ITC made the "material injury" determination. Under normal circumstances, foreign sales were considered "dumping" (sold at less than fair value) if a foreign exporter charged a lower price on its sales in the United States than in its home market. Commerce almost always ruled that dumping occurred: from 1980-92,

purports to indicate that investigative authorities are using general indications on a variety of commodities as an umbrella to include excessive amounts of commodities at the six-digit level.

Figure 16. CNs of imports whereon the USA imposed A-D measures: 01-01-1990 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

If the steel and allied industries of developed countries were under a similar level of threat from emerging economies such as the PRC to spark defence mechanisms under the false pretext of dumping, then surely the HS chapters belonging to impositions of anti-dumping measures would differ between the former countries and the PRC. Theretofore, figure seventeen, which has been

dumping was found in 93 percent of all cases. Commerce often found large dumping margins: the average antidumping duty was 26 percent in the period 1980-84 and 41 percent from 1985-89. The average antidumping duty in effect in 1992 was 46 percent in non-steel cases and 27 percent in steel cases."

graphed on the next page, provides an overview of the quinquennial evolution of chapters of harmonised nomenclature belonging to goods whereon the PRC has imposed anti-dumping measures over the course of January 2000 until November 2018. Data which relates to the various chapters of the harmonised nomenclature whereupon the PRC imposed anti-dumping measures could not be found prior to the year 2001 (the year wherein the PRC joined the WTO).

Figure 17. HS chapters of goods whereon the PRC imposed A-D measures: 01-01-2000 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

The extent wherein the PRC Bureau of Industry Injury Investigation imposed anti-dumping measures over the course of the quinquennia since the year 2000 on different types of products differs significantly from the extent wherein EU28 and the USA imposed anti-dumping measures on different types of goods. Whereas EU28 and the USA primarily imposed anti-dumping measures on steel and allied industries, the PRC primarily imposed anti-dumping measures on the sectors Organic chemicals and Plastics & articles. It is striking to see that just alike the USA in graph fifteen and EU28 in graph thirteen, every year there is a general tendency wherein a stable amount of anti-dumping measures is imposed on specific chapters of the harmonised nomenclature. In order to gain further insight on the extent wherein organic chemicals and plastics and articles are more often included in impositions of anti-dumping measures, figure 18 has been graphed on the next page. However, figure 18 indicates that unlike EU28 and the USA,

the PRC Bureau of Industry Injury Investigation does not impose anti-dumping measures on significantly more six-digit commodity numbers per investigation. On the contrary, the relative extent of six-digit commodity numbers which have been subjected to anti-dumping measures apparently decreases within the sectors of products whereon most anti-dumping measures were imposed.

Figure 18. CNs of imports whereon the PRC imposed A-D measures: 01-01-2000 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

In sum, products which are being transported across borders all have specific commodity numbers affixed to them within the [nomenclature](#). This commodity number can be six digits or even eight digits such as the TARIC code of the European Union. We conclude that chapters belonging to products whereon in the EU and the USA most often antidumping measures were imposed, have more commodity numbers affixed to them. This especially counts for steel and allied industries in EU28 and the USA. For the USA it became clear that the highest amount of anti-dumping measures are imposed on commodity numbers which fall under chapters of the harmonised nomenclature which are most prevalent in all the antidumping investigations: steel and articles of steel. The same conclusion has been drawn for EU28. The result is that far more six-digit commodity numbers of products in the sector steel have anti-dumping measures imposed on them *pro rata* the amount of investigations which are initiated on the same

products. This would prove to be the second indication that geo-political factors have a bearing on the amount of antidumping measures per sector. Import dependency might prove to be a risk which neither the USA nor the EU are willing to take with respect to the sectors steel and allied industries. The strategic leverage which EU28 and the USA wish to retain over the steel industry would be pivotal in understanding why such a large amount of commodity numbers pervades investigations within the sector steel and allied industries. It is attestable that products within those chapters of the harmonised nomenclature which more often were included in anti-dumping investigations, have more often been subjected to the imposition of anti-dumping measures (because the amount on CN6es were higher for chapters which were more often included in anti-dumping investigations – particularly with respect to steel and allied industries).

Over the quinquennial course it has become apparent that a disproportional share of products falling within specific chapters of the harmonised nomenclature have been subjected to antidumping measures. Abnormal patterns were not merely visible in EU28 and the USA, but also in the PRC. The diverging representation is consecutively stable over the quinquennia of all three Members under investigation except for a small anomaly in the period 2005-2010 for the USA. In general, the stable trend-frame indicates that geo-political factors would have a bearing on the amount of and range wherein products are being subjected to anti-dumping measures.

It is quite peculiar that we could have inferred the High-Level Roundtable on the EU Steel Industry's conclusions on the strategic importance of steel from the frequency wherewith DG Trade EU and the US International Trade Administration imposed contingent protection on imports comparable to or closely resembling products in the steel and allied industry. However, we abstain from any final conclusions because it might be possible that steel is being dumped disproportionately to other products over the course of multiple quinquennia, albeit unlikely that this is the reason. There is no reason to suspect that a specific product is being dumped more than other products, except for geo-political strategies in NME's to dump exports into specific industries to gain strategic leverage over those specific industries, which would also corroborate that geo-political factors have a bearing on the imposition of contingent protection.

3.2 Anti-dumping measures

a. Correlation between A-D measures and WTO disputes initiated by and against the EU

In order to gain insight in tit-for-tat retaliation amongst Members of the WTO, we have provided an overview of the extent wherein Members of the WTO against which the EU initiated anti-dumping disputes before the DSS of the WTO likewise initiated anti-dumping disputes against the EU. Theretofore table 3 provides a comparative insight into the A-D disputes which arose in the dispute settlement system of the WTO during the period January 2015 until November 2018.

Table 3. A-D disputes arisen in the DSS of the WTO by and against the EU: 01-01-2015 until 01-11-2018

A-D DISPUTES ARISEN IN THE DSS OF THE WTO BY AND AGAINST THE EU		
<i>January 2015 until November 2018</i>		
Case N ^o	Opponent	Cases title
Disputes where the EU is complainant		
DS473	Argentina	A-D Measures on Biodiesel from Argentina
DS219	Brazil	A-D Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil
DS397	China	Definitive A-D Measures on Certain Iron or Steel Fasteners from China
DS405	China	A-D Measures on Certain Footwear from China
DS516	China	Measures Related to Price Comparison Methodologies
DS140	India	A-D Investigations Regarding Unbleached Cotton Fabrics from India
DS141	India	A-D Duties on Imports of Cotton-type Bed Linen from India
DS313	India	A-D Duties on Certain Flat Rolled Iron or Non-Alloy Steel Products from India
DS385	India	Expiry Reviews of A-D and CV Duties on Imports of PET from India
DS442	Indonesia	A-D Measures on Imports of Certain Fatty Alcohols from Indonesia
DS480	Indonesia	A-D Measures on Biodiesel from Indonesia
DS474	Russia	Cost Adjustment Methodologies and A-D Measures on Imports from Russia
DS494	Russia	Cost Adjustment Methodologies and A-D Measures on Imports from Russia — (Second complaint)
DS521	Russia	A-D Measures on Certain Cold-Rolled Flat Steel Products from Russia
Disputes where the EU is respondent		
DS063	USA	A-D Measures on Imports of Solid Urea from Germany
DS157	Argentina	Definitive A-D Measures on Imports of Drill Bits from Italy
DS189	Argentina	Definitive A-D Measures on Carton-Board Imports from Germany and Definitive A-D Measures on Imports of Ceramic Tiles from Italy
DS407	China	Provisional A-D Duties on Certain Iron and Steel Fasteners from the EU
DS425	China	Definitive A-D Duties on X-Ray Security Inspection Equipment from the EU
DS460	China	Measures Imposing A-D Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from the European Union
DS304	India	A-D Measures on Imports of Certain Products from the ECs
DS337	Norway	A-D Measure on Farmed Salmon from Norway
DS479	Russia	A-D Duties on Light Commercial Vehicles from Germany and Italy
DS136	USA	A-D Act of 1916
DS217	USA	Continued Dumping and Subsidy Offset Act of 2000
DS225	USA	A-D Duties on Seamless Pipe from Italy
DS262	USA	Sunset Reviews of A-D and CV Duties on Certain Steel Products from France and Germany
DS294	USA	Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)
DS319	USA	Section 776 of the Tariff Act of 1930
DS350	USA	Continued Existence and Application of Zeroing Methodology
DS424	USA	A-D Measures on Imports of Stainless Steel Sheet and Strip in Coils from Italy

Table three and figure nineteen on the next page indicate that, similar to the initiation of original anti-dumping investigations and the imposition of anti-dumping measures, the almost utmost largest amount of anti-dumping disputes which were brought by EU28 before the dispute

settlement system of the WTO were related to anti-dumping measures imposed by the PRC on the exportation of products originating in EU28. However, the complainant in the majority of anti-dumping disputes which over the course of January 2015 until November 2018 were signed up for adjudication against EU28 through the dispute settlement system of the WTO, is the USA.

Figure 19. All WTO A-D disputes initiated by and against the EU: 01-01-1995 until 01-11-2018

Source: the author's calculations based on the database of the World Trade Organisation

These afore figures tend to indicate that there is no clear direct tit-for-tat correlation between anti-dumping disputes initiated by and against the EU at the WTO level. Figure nineteen merely tends to indicate that a degree of tit-for-tat retaliation exists with respect to anti-dumping disputes which are brought up by and against the PRC. Table four, depicted hereunder, provides an overview of the different anti-dumping disputes which were brought up for adjudication in the dispute settlement system of the WTO over the course January 1996 until November 2018.

Table 4. WTO AD disputes initiated by and against the EU: 01-01-1990 until 01-11-2018

WTO A-D DISPUTES INITIATED BY AND AGAINST THE EU <i>January 1996 until November 2018</i>			
Nº	Complainant	Respondent	Case name
DS063	EU	USA	Anti-Dumping Measures on Imports of Solid Urea from the Former German Democratic Republic
DS136	EU	USA	Anti-Dumping Act of 1916
DS140	India	EU	Anti-Dumping Investigations Regarding Unbleached Cotton Fabrics from India
DS141	India	EU	Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India
DS157	EU	Argentina	Definitive Anti-Dumping Measures on Imports of Drill Bits from Italy
DS189	EU	Argentina	Definitive Anti-Dumping Measures on Carton-Board Imports from Germany and Definitive Anti-Dumping Measures on Imports of Ceramic Tiles from Italy
DS217	EU	USA	Continued Dumping and Subsidy Offset Act of 2000
DS219	Brasil	EU	Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil
DS225	EU	USA	Anti-Dumping Duties on Seamless Pipe from Italy
DS262	EU	USA	Sunset Reviews of Anti-Dumping and Countervailing Duties on Certain Steel Products from France and Germany
DS294	EU	USA	Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)

DS304	EU	India	Anti-Dumping Measures on Imports of Certain Products from the European Communities
DS313	India	EU	Anti-Dumping Duties on Certain Flat Rolled Iron or Non-Alloy Steel Products from India
DS319	EU	USA	Section 776 of the Tariff Act of 1930
DS337	EU	Norway	Anti-Dumping Measure on Farmed Salmon from Norway
DS350	EU	USA	Continued Existence and Application of Zeroing Methodology
DS385	India	EU	Expiry Reviews of Anti-dumping and Countervailing Duties Imposed on Imports of PET from India
DS397	China	EU	Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China
DS405	China	EU	Anti-Dumping Measures on Certain Footwear from China
DS407	EU	China	Provisional Anti-Dumping Duties on Certain Iron and Steel Fasteners from the European Union
DS424	EU	USA	Anti-Dumping Measures on Imports of Stainless-Steel Sheet and Strip in Coils from Italy
DS425	EU	China	Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union
DS442	Indonesia	EU	Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia
DS460	EU	China	Measures Imposing Anti-Dumping Duties on High-Performance Stainless-Steel Seamless Tubes ("HP-SSST") from the European Union
DS473	Argentina	EU	Anti-Dumping Measures on Biodiesel from Argentina
DS474	Russia	EU	Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia
DS479	EU	Russia	Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy
DS480	Indonesia	EU	Anti-Dumping Measures on Biodiesel from Indonesia
DS494	Russia	EU	Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia — (Second complaint)
DS516	China	EU	Measures Related to Price Comparison Methodologies
DS521	Russia	EU	Anti-Dumping Measures on Certain Cold-Rolled Flat Steel Products from Russia

Note that by clicking on the case number, a direct link to the website of the WTO is opened wherein detailed information with respect to the dispute is provided. Furthermore, it shows disputes wherein the EU was a complainant and the complainants where the EU was defendant.

Figure 20. All WTO A-D disputes initiated per respondent: 01-01-1995 until 01-11-2018

Source: the author's calculations based on the database of the World Trade Organisation

When we look at the overall amount of anti-dumping disputes which were initiated over the course of January 1995 until November 2018, it tends to indicate that the USA is not

disproportionally targeting exports which originate in EU28. After all, the USA has been respondent in nearly fifty per cent of all the anti-dumping disputes which have ever been initiated in the WTO. To further our insight into the retaliatory effect of anti-dumping actions by and against EU28, we need an overview of all anti-dumping measures which were initiated by the DG Trade EU on the country of origin of the products involved and an as far as possible overview of anti-dumping measures which were initiated on products originating in the European Union.

b. Anti-dumping actions in the EU, the PRC and the USA per country of origin

Figure 21. A-D measures initiated by and against the EU per country: 01-01-1978 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

Figure 21 gives an accurate historical overview of all anti-dumping measures which were initiated by and against the EU during the period January 1990 until November 2018. The dates wherefrom anti-dumping measures which were initiated against exports from the EU were recorded, differs per country in figure twenty-one. Cases brought against countries who currently are members states of the European Union were considered from the moment of their accession. From all countries in the world, the USA initiated the most anti-dumping measures

against EU28. EU28, however, initiated a mere 14 anti-dumping measures on products originating in the USA. Whereas the PRC only initiated 43 anti-dumping measures on imports which originate in EU28, this amount remains relatively high since the measures for the PRC were only recorded since 1997. On the opposite side, EU28 by far initiated the largest amount of anti-dumping measures on products which originate in the PRC. Figure twenty-one indicates that the EU found the PR of China to be the prime country of origin of dumped goods while, subject to a different outcome due to differing recorded time-frames, the USA, in comparison to other Members, regards the EU as a prime country of origin of dumped goods. A magnified overview of the extent wherein the PR of China is the country of origin of products whereupon the European Union initiated anti-dumping proceedings has been provided in figure twenty-two.

Figure 22. CoO of exports subjected to A-D proceedings in the EU: 01-01-1990 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

In order to make figure twenty-two "readable" without distorting the relative distribution, countries accounting for one and two initiated anti-dumping proceedings were grafted in "the rest". The countries accounting for one and two cases are Australia, Faeroe Isl., Hungary, Libya, Lithuania, Kingdom of Saudi Arabia, Slovakia, FYROM, Algeria, Argentina, Armenia, Canada, Chile, Estonia, Georgia, Guatemala, Israel, Latvia, Macao, China, Republic of Moldova, Oman,

Serbia, Serbia and Montenegro, Switzerland and the United Arab Emirates. Figure twenty-two indicates that twenty-nine per cent of all anti-dumping proceedings of the EU over the period January 1990 until November 2018 were initiated on the importation of goods originating in the PR of China. Since products from the country of origin of products whereon EU28 initiated the second largest amount of anti-dumping proceedings account for a mere seven per cent of all anti-dumping proceedings which were initiated by EU28, it would be clear that the European Union regards exporting producers from the PRC as a major source for dumped imports. Other major countries of origin of products whereupon the EU initiated anti-dumping proceedings are India, Russia, Taiwan, Thailand and Malaysia. Figure twenty-three hereunder, provides an overview of all anti-dumping proceedings which the US Department of Commerce initiated in the period January 1990 until November 2018 on products per country of origin of the products.

Figure 23. CoO of exports subjected to A-D proceedings in the USA: 01-01-1990 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

Figure twenty-three indicates that in comparison to other countries, the USA initiated the largest amount of anti-dumping proceedings on products which originate in the PRC. Anti-dumping measures against the EU appear to be fragmented per EU member state. To research any possible tit-for-tat relation, it would be necessary to gain insight in the extent wherein the USA initiated anti-dumping proceedings on products originating in EU member states, respectively the rest of the world. Strikingly East Asia is over-represented in the EU's contingent protection.

The second largest proportion concerns products which originate in the Republic of Korea and accounts for seven per cent while Japan accounts for six per cent. Figure twenty-four, depicted hereunder, subdivides proceedings initiated by the US Department of Commerce with respect to products originating in the EU to the individual Member states in the EU involved.

Figure 24. CoO of EU-exports whereon the USA initiated AD measures: 01-01-1980 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

Figure twenty-four indicates that exports originating in major economies within the Union such as Germany, Italy, France and Spain were most often subjected to anti-dumping proceedings of the US International Trade Administration. Minor EU economies such as Ireland, Latvia, Lithuania and Luxembourg were less often subjected to anti-dumping proceedings from the US International Trade Administration.

Figures twenty-two and twenty-three make it clear that the US International Trade Administration and the Directorate general for Trade of EU28 have initiated most of their anti-dumping proceedings on products which originate in the PR of China. By looking at the extent wherein EU28 and the USA are represented as countries of origin of products in anti-dumping proceedings which have been initiated by the PR of China, it would be possible to further corroborate the existence of a tit-for-tat relation with respect to the initiation of anti-dumping proceedings. Figure twenty-five, which is depicted on the next page, gives an overview of the extent in which the PR of China initiated anti-dumping proceedings on products which originate in different WTO Members over the time-interval covering January 1998 until November 2018.

Figure 25. CoO of exports whereon the PRC initiated AD measures: 01-01-1998 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

It is directly apparent from figure twenty-five that the Bureau of Industry Injury Investigation initiated the highest amount of anti-dumping proceedings on the importation of products originating in the United States. Japan, the Republic of Korea, EU28 and Taiwan follow closely. Strikingly, EU28 and the USA make up 30 per cent of all anti-dumping proceedings in the PRC.

When we compare figures twenty-four and twenty-five with each other, it becomes clear that the PR of China and the USA have initiated the highest amount of anti-dumping proceedings on products which originate in each other's country. Furthermore, it really stands out that their relative percentages are exactly the same: products originating in the USA account for 19 per cent of all anti-dumping proceedings initiated by the PRC Bureau of Industry Injury Investigation and products originating in the PRC account for the same 19 per cent of all anti-dumping proceedings initiated by the US International Trade Administration. However, a tit-for-tat relationship between EU28 and the PRC is not directly discernible with respect to the initiation of anti-dumping proceedings. Whereas the PRC is the country of origin of almost thirty per cent of all imports into EU28 which were subjected to anti-dumping proceedings in figure 22, EU28 accounts for a mere eleven per cent of all anti-dumping proceedings which were initiated in the PRC. However, this must be seen in light of the fact that separate EU member states are not counted in the wider EU28 margin in figure twenty-five. Thus, while the PR of China found products originating in the US to account for a major proportion of all dumped products entering its domestic market for consumption, the EU found products originating in the PR of China to account for a major proportion of all dumped products entering its domestic market for

consumption and US found products originating in the EU and the PRC to account for a major proportion of all dumped products entering its domestic market for consumption.

It remains unclear why, over the course of January 1998 until November 2018, the PR of China initiated the second largest proportion of its anti-dumping proceedings (eighteen per cent) on products which originate in Japan, when we consider that the percentage of proceedings initiated with respect to products originating in Japan by the investigative authorities of the USA and the EU respectively account for six and two per cent. Geographical indications, distance and connectivity might have played a role in the higher percentage of export of dumped goods from Japan to the PRC. Of course, it also has to be taken into account that due to different dates of accession to the WTO, the time-frame of analysis of anti-dumping proceedings differs in the aforementioned figures.

Slightly under the USA and Japan are the proceedings which the PRC Bureau of Industry Injury Investigation initiated on imports which originate in the Republic of Korea. Imports originating in the Republic of Korea account for fourteen per cent of all proceedings initiated by MofCom in the period under consideration. However, figure 22 indicates that products which originate in the Republic of Korea only concern four per cent of all anti-dumping proceedings ever initiated by the Directorate General for Trade of the EU and figure 23 indicates that products which originate in the Republic of Korea only concern seven per cent of all anti-dumping proceedings ever initiated by the US International Trade Administration. Geographical indications, distance and connectivity might have played a role in the higher percentage of exports of dumped goods from the Republic of Korea to the PRC.

Figure twenty-six delineates the extent to which separate EU member states or the EU as a whole were countries of origin of imports whereupon the Bureau of Industry Injury Investigation initiated anti-dumping proceedings over the time-interval January 1998 until November 2018. Contrary to the USA, most of the anti-dumping proceedings which were initiated by the PR of China on products which originate in EU28 or its separate member states, originated in the European Union as a whole instead of its separate member states. Of all separate member states of the European Union, the PR of China initiated the largest amount of anti-dumping proceedings on the import of products which originate in Germany. Germany is a country of origin of products in 9 per cent of all anti-dumping cases which the PR of China initiated on products originating in the European Union or its Member States. Thereafter come the Netherlands and the United Kingdom as countries of origin of products whereupon the PR of China initiated anti-dumping proceedings, both accounting for seven per cent of all anti-dumping cases which the PR of China directed towards products originating in the European Union or its Member States.

Figure 26. CoO of EU-exports whereon the PRC initiated AD measures: 01-01-1998 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

c. Protection per chapter of the harmonised nomenclature in the EU, the PRC and the USA

In order to provide an insight into the extent to which different sectors of the domestic industry of the European Union incur injury as a causal result of the importation of dumped products, it might be useful to give an overview of the extent to which the European Union initiated anti-dumping proceedings on different types of products which were imported into the domestic market for consumption of the European Union. Figure twenty-seven, depicted on the next page, provides an overview of the percentages to which the products subject to antidumping proceedings which are initiated by the EU or its predecessors in January 1980 until November 2018 classify under different HS chapters. In the making of figure twenty-seven each case was treated separately to the extent that the product under investigation originated in multiple countries (in anti-dumping procedures multiple countries of origin are often contracted). In figure twenty-seven, the six-digit commodity numbers of anti-dumping proceedings which involved a product which classifies under multiple commodity numbers, were taken into account to the extent in which they differed under the various chapters of the harmonised nomenclature. Thus, if a product fell under two different TARIC codes within one chapter of the harmonised nomenclature, one HS2 code was taken into account.

Figure twenty-seven makes it clear that the European Union initiated more than one third of all its anti-dumping measures on the importation of iron and steel and articles thereof. This further corroborates our preliminary inference that the European Union considers steel, iron and allied industries to be of strategic importance. The spread of the diagram tends to indicate that EU28

affords the highest level of protection to articles of iron and steel, iron and steel, and electrical machinery. On the other hand the presumption could be made that the European Union simply is most subject to dumped imports in the subject industries or that the other industries are simply not aware enough of the fact that they face competition from dumped goods and thus seldom apply for the initiation of an investigation as a result whereof the amount of cases in the other sectors remain low. Whatever the cause may be, the potential significant similarities between EU28 and the USA with respect to the constitution of imports whereon anti-dumping measures have been initiated, definitely prompt a further in-depth investigation into the matter.

Figure 27. HS chapters of imports whereon EU28 initiated AD measures: 01-01-1990 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

Just alike figure twenty-seven, figure twenty-eight provides an overview of the extent wherein products subjected to anti-dumping measures which were initiated by the US Department of Commerce in the period January 1990 until November 2018 fall under different HS chapters. The methodology which was used for the preparation of figure twenty-seven is the same as the methodology such as was described for the previous figure. It is directly apparent from figure twenty-eight that the US International Trade Administration initiated the highest amount of anti-dumping measures on the importation of iron, steel and articles of iron and steel. Over the

course of January 1990 until November 2018 it accounted for a major proportion of 46 per cent of all anti-dumping measures which were initiated by the United States Department of Commerce. For iron and steel alone, this is twelve per cent more than the proportion wherein the European Union initiated anti-dumping measures on the importation of metals in the period January 1990 until November 2018. However, the sectors iron, steel and articles thereof account for the largest share in both figure twenty-eight and figure twenty-seven. Converging trends in specific sectors appear clearly visible. In combination with prior graphs, it would appear that the USA and EU28 are primarily shielding their iron and steel industries from imports originating in the PRC. The extent wherein these shares persists is staggering: 46 per cent of all imports whereon the US International Trade Administration imposed anti-dumping measures concerned iron, steel and articles of iron and steel and thirty-one per cent of all imports whereon DG Trade EU imposed anti-dumping measures concerned iron and steel and also articles of iron and steel.

Figure 28. HS chapters of imports whereon USA initiated AD measures: 01-01-1990 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

The USA thus appears slightly more protective of its sectors Iron & Steel and Articles of Iron and Steel than EU28. Whereas chemicals and electrical machinery are the EU's third and fourth most shielded industries with ten and nine per cent respectively, in the USA plastics and articles

thereof and organic chemicals come third and fourth with six per cent each. The similarity between the dispersion of the percentages to which the EU and US initiated antidumping proceedings with respect to the importation of certain types of products into their domestic markets for consumption is striking. The similarities for the steel and iron industry cannot be ascribed to retaliatory effects as the EU relatively spoken hardly initiated as much anti-dumping cases on imports originating in US in comparison to anti-dumping cases initiated by the US on imports which originate in the European Union (read the findings near figure 21: throughout history, 110 times the US vs EU28 and only 14 times EU28 vs US). The similarities might therefore only be understood as a mutually coordinated response to exports which originated in the PRC.

If all other factors having a bearing on the initiation of anti-dumping proceedings such as producers' knowledge of whether they face competition from dumped imports or insufficiencies in evidence while *de facto* dumping existed, are considered *ceteris paribus*, and assuming that the amount of anti-dumping procedures terminated without the imposition of duties relatively to the amount of anti-dumping procedures which resulted in the imposition of duties are equally distributed per sector, it would be clear that the steel, iron and allied industries of the EU and USA would be, relative to other industries, most often subjected to injury caused by dumping.

Just alike figures twenty-seven and twenty-eight, figure twenty-nine (to be found on the next page) provides an overview of the extent wherein imported products whereupon the PRC Bureau of Industry Injury Investigation initiated anti-dumping measures in the period January 2000 until November 2018 classify under different chapters of the harmonised nomenclature. The method which was used for the calculation of figure twenty-nine is similar to the method which was used in figures twenty-seven and twenty-eight. Figure twenty-nine indicates that the distribution per sector of products whereupon the PRC Bureau of Industry Injury Investigation initiated anti-dumping measures differs significantly from the distribution of EU28 and the USA. It stands in contrast to the similarity which exists between the distribution of EU28 and the USA.

Most of the anti-dumping measures which were initiated by the PRC Bureau of Industry Injury Investigation on the importation of products relates to the chemicals and allied industries. More than fifty per cent of the anti-dumping measures which were initiated by the PRC Bureau of Industry Injury Investigation were related to the importation of chemicals and allied industries into the domestic market for consumption of the PRC. Furthermore, it really stands out that a mere four per cent of all anti-dumping measures which were initiated by the PR of China in the period January 2000 until November 2018 were imposed on the importation of iron, steel and allied industries – especially because the EU and the USA initiated the highest amount of anti-dumping measures on the importation of iron, steel and allied industries over the course of January 190 until November 2018. Another significant difference exists in the amount of anti-

dumping measures which were imposed on the importation of plastics and articles thereof. Over course of January 2000 until November 2018, ten per cent of all the anti-dumping measures which the PRC imposed on the importation of products concerned the importation of plastics and articles thereof. For the USA and the EU over the course of January 1990 until November 2018, the importation of plastics and articles corresponded to a total percentage of six per cent.

Figure 29. HS chapters of imports whereon the PRC initiated AD measures: 01-01-2000 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

Figure twenty-nine has made it clear that the PRC Bureau of Industry Injury Investigations primarily concentrated the initiation of anti-dumping measures on the importation of chemicals and plastics. However, to understand the extent wherein the relative distribution per chapter of the harmonised nomenclature correlates with the importation of products which originate in EU28, it will be necessary to create a new diagram. The new diagram, depicted on the next page, provides a clear indication of the extent wherein the relative distribution in the bilateral trade relationship between the PRC and EU28 differs from the relative distribution in the multilateral trade relationship between the PRC and the rest of the world. From the onset, it appears in figure thirty that the majority of anti-dumping measures which were initiated by the PRC on the importation of products also concerns the importation of organic chemicals, albeit to a lesser

degree (forty-five per cent compared to fifty-two per cent). Furthermore, the importation of plastics and articles thereof are slightly more prevalent with a percentage of thirteen per cent.

Figure 30. HS chapters of EU-exports subjected to AD measures in the PRC: 01-01-2000 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

In figure thirty, anti-dumping measures whereof the imports under consideration classified under multiple commodity number were merged insofar these commodity numbers, per investigation, classified under the same chapter of the harmonised nomenclature. It stands out that the dispersion of imports into the domestic market for consumption of the PRC per chapter of the harmonised nomenclature in figure thirty is nearly equal to the dispersion of imports per chapter of the harmonised nomenclature in figure twenty-nine. The convergence in distribution implies that the PRC Bureau of Industry Injury Investigation does not apply a significantly different strategy in contingent protection with respect to imports into the domestic market for consumption of the PRC which originate in EU28 in comparison to imports into the domestic market for consumption of the PRC which originate in the whole world. The products which originate in EU28 and whereupon anti-dumping measures were imposed more or less fall under the same chapter of the harmonised nomenclature as the products which originate in the world.

In order to infer further conclusions with respect to the data which have been diagrammed in figure thirty, it would be necessary to compare the extent wherein the PRC Bureau of Industry Injury Investigation initiated anti-dumping measures on imports per chapter of the harmonised nomenclature which originate in EU28 *vice versa* with the extent wherein the US Department of Commerce initiated anti-dumping measures on imports per chapter of the harmonised nomenclature which originate in EU28. Figure thirty-one, which can be found on the next page, provides an overview of the extent wherein imports into the domestic market for consumption of the USA which originate in EU28 whereupon the US International Trade Administration over

the course of January 1990 until November 2018 imposed anti-dumping measures fall under the various chapters of the harmonised nomenclature.

Figure 31. HS chapters of EU-exports subjected to AD measures in the USA: 01-01-1987 until 01-11-2018

Source: the author's calculations based on (semi-) annual reports from WTO Members to the CADP

Insofar anti-dumping measures were imposed per investigation on products whose commodity numbers concerned the same chapter of the harmonised nomenclature, they were merged in one measure per chapter of the harmonised nomenclature. Where the US Department of Commerce initiated anti-dumping measures on single EU member states, the anti-dumping measure was considered as if it was imposed on EU28. The distribution between different chapters of the harmonised nomenclature in figure thirty-one, bears striking similarities with the distribution of anti-dumping measures which the US Department of Commerce initiated on imports into the domestic market for consumption of the USA which originate in the whole world. One major difference stands out: whereas the US International Trade Administration initiated only twenty percent of its total anti-dumping measures on world-imports in the sector iron steel and chemical industries over the course of January 1990 until November 2018, the same figure for imports which originate in EU28 makes up a staggering fifty-three per cent. This indicates that the US International Trade Administration, in comparison to the rest of the world regards exporting producers from EU28 as a major source for dumped imports causing material

injury to its domestic iron, steel and allied industries. It stands out that the extent wherein the US International Trade Administration initiates anti-dumping measures on different types of products which originate in EU28 strongly differs from the extent wherein the PRC of China initiates anti-dumping measures on products which originate in EU28. The difference either implies that exporting producers from EU28 have a different policy with respect to the countries wherein they decide to dump their exports, that the investigative authorities from the PRC or the USA have different policies with respect to the types of products whereon they will initiate anti-dumping measures or that the investigative authorities from the PRC or the USA are simply unaware of the dumping which takes place in the sector whereon the USA or the PRC initiated anti-dumping measures. However, it is rather likely that the US International Trade Administration and the PRC Bureau of Industry Injury Investigation apply different policies with respect to EU-exports whereon they will apply anti-dumping measures. After all, it seems unlikely that exporting producers from EU28 over several decennia show significant differences with respect to the types of products which will be dumped in the PRC and the USA. However, one has to bear in mind that a manifold number of other factors may affect the overall decision of investigative authorities to initiate anti-dumping measures on the varying imports from EU28.

The diverging distribution in the diagrams of figures thirty-one and thirty may *inter alia* be caused by varying levels of demand in the domestic market for consumption of the PRC and the USA due to different stages of development; price diversification per country of export by exporting producers from EU28; varying levels of support by or on behalf of the domestic industries for the initiation of anti-dumping measures; or different understanding and proactivity with respect to domestic producers or investigative authorities. On the other hand, the differences in distribution between figures thirty and thirty-one are so strong that it seems very unlikely that they do not to some extent at least rest on diverging policies by the investigative authorities from the PRC and the USA.

3.3 Sketching the desirability of contingent protection

a. The world import shares of imports into EU28 whereon EU28 initiated A-D procedures

Figure thirty-two, which is depicted hereunder, provides the yearly average month-on-month evolutions in the import shares of products whereupon EU28 initiated anti-dumping procedures.

Figure 32. Import shares whereon EU28 initiated A-D procedures: 01-01-2010 until 01-11-2018

Source: Commission Implementing Regulations on EUR-Lex and statistics from Eurostat Data Explorer

Figure thirty-two and figure thirty-three include all the anti-dumping investigations which were initiated by the DG for Trade of the EU over the course of January 2010 until November 2018.²⁰⁶ Two years before the year wherein, one year before the year wherein and the year wherein anti-dumping procedures were initiated are highlighted with a purple glow within figure thirty-two.

Paragraph eight of Article 5 of the Anti-dumping Agreement, which is represented hereafter, indicates that investigative authorities have to terminate their investigation immediately when they have determined that the volume of dumped imports is negligible. The article continues by indicating that the volume of dumped imports from a particular country is negligible when it accounts for less than three per cent of the imports of the like product in the importing Member.

²⁰⁶ Chronological reference to the cases in figure thirty-two: Notice of initiation of an anti-dumping proceeding concerning imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China (OJ C 143, 30.4.2015, p. 12–22) / Notice of initiation of an anti-dumping proceeding concerning imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ C 161, 14.5.2015, p. 9–19) / Notice of initiation of an anti-dumping proceeding concerning imports of aspartame originating in the People's Republic of China as well as aspartame originating in the People's Republic of China contained in certain preparations and/or mixtures (OJ C 177, 30.5.2015, p. 6–16) / Notice of initiation of an anti-dumping proceeding concerning imports of certain ceramic foam filters originating in the People's Republic of China (OJ C 266, 14.8.2015, p. 14–24) / Notice of initiation of an anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ C 58, 13.2.2016, p. 9–19) / Notice of initiation of an anti-dumping proceeding concerning imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China (OJ C 58, 13.2.2016, p. 20–29) / Notice of initiation of an anti-dumping proceeding concerning imports of certain lightweight thermal paper originating in South Korea (OJ C 62, 18.2.2016, p. 7–13) / Notice of initiation of an anti-dumping proceeding concerning imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus (OJ C 114, 31.3.2016, p. 3–9) / Notice of reopening the anti-dumping investigation concerning imports of stainless steel cold-rolled flat products originating in Taiwan (OJ C 291, 11.8.2016, p. 7–16) / Notice concerning the judgments in Joined cases C-186/14 P and C-193/14 P in relation to Council Regulation (EC) No 926/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China and Commission Implementing Regulation (EU) 2015/2272 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ C 331, 9.9.2016, p. 4–6) / Notice of initiation of an anti-dumping proceeding concerning imports of certain corrosion resistant steels originating in the People's Republic of China (OJ C 459, 9.12.2016, p. 17–27) / Notice of initiation regarding the anti-dumping measures in force on imports of biodiesel originating in Argentina and Indonesia, following the recommendations and rulings adopted by the Dispute Settlement Body of the World Trade Organisation in the EU — Anti-Dumping Measures on Biodiesel dispute (DS473) (OJ C 476, 20.12.2016, p. 3–5) / Notice of initiation of an anti-dumping proceeding concerning imports of solar glass originating in Malaysia (OJ C 174, 23.5.2018, p. 8–17) / Notice of initiation of an anti-dumping proceeding concerning imports of hot-rolled steel sheet piles originating in the People's Republic of China (OJ C 177, 24.5.2018, p. 6–18) / Notice concerning the judgments of the General Court of 15 September 2016 in Cases T-80/14, T-111/14 to T-121/14 and T-139/14 regarding Council Implementing Regulation (EU) No 1194/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on Argentinian and Indonesian imports of biodiesel, and following the recommendations and rulings adopted by the Dispute Settlement Body of the World Trade Organisation in disputes DS473 and DS480 (EU — Anti-Dumping Measures on Biodiesel disputes) (OJ C 181, 28.5.2018, p. 5–9) / Notice of initiation of an anti-dumping proceeding concerning imports of welded tubes, pipes and hollow profiles of square or rectangular cross-section, of iron other than cast iron or steel other than stainless, originating in the former Yugoslav Republic of Macedonia, Russia and Turkey (OJ C 347, 28.9.2018, p. 6–17)

"An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member. "

The import shares of products under investigation in anti-dumping proceedings [2015/C177/07-PRC](#), [2016/C62/07-Republic of Korea](#), [2016/C476/04-Argentina & Indonesia](#) and [2018/C181/05-Argentina & Indonesia](#) apparently do not exceed the threshold of three per cent for non-negligibility in either of the years 2010 until November 2018. However, definitive anti-dumping measures have been imposed on the [first](#),²⁰⁷ [second](#)²⁰⁸ and [third](#)²⁰⁹ (pursuant to a review and eventually terminated in the [fourth](#) case pursuant to a re-opening). An increased fluctuation in import shares is generally visible over the years 2015 until 2018, the years wherein the anti-dumping investigations in figure thirty-two have been initiated, when compared to the years 2010 until 2015, the years wherein no anti-dumping investigations in figure thirty-two have been initiated. However, the problem with the threshold of three per cent for import volumes to be non-negligible is that a market share of more than three per cent does not take the history of the import of the product into consideration. Taiwan in case [2016/C291/07-Taiwan](#) for instance fluctuated between an EU28-import-share of four and seven per cent over the years 2010 until 2014, had a significant decrease towards less than two percent EU28-import-share in 2015 and had anti-dumping measures imposed when it recouped its import share back to four per cent in

²⁰⁷ COMMISSION IMPLEMENTING REGULATION (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China *and* COMMISSION IMPLEMENTING REGULATION (EU) 2016/1247 of 28 July 2016 Imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame originating in the People's Republic of China

²⁰⁸ COMMISSION IMPLEMENTING REGULATION (EU) 2016/2005 of 16 November 2016 imposing a provisional anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea *and* COMMISSION IMPLEMENTING REGULATION (EU) 2017/763 of 2 May 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain lightweight thermal paper originating in the Republic of Korea

²⁰⁹ COMMISSION IMPLEMENTING REGULATION (EU) 2017/1578 of 18 September 2017 amending Implementing Regulation (EU) No 1194/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia

2016. Furthermore, most of the anti-dumping cases in figure thirty-two concern anti-dumping procedures which were initiated after significant changes in the import share of the country of origin of the product under investigation: see for instance 2015/C143/13-PRC, 2015/C161/07-PRC & RU, 2016/C58/08-PRC, 2016/C58/09-PRC, 2016/C114/04-Belarus, 2016/C459/11-PRC and 2018/c177/05-PRC. It really stands out that the import share of the countries of origin of products under consideration in other investigations reflect hardly any fluctuation: *par exemple* see 2015/C177/07-PRC, 2015/C266/07-PRC, 2016/C62/07-South-Korea and 2016/C331/03-PRC.

Table 5. The EU28 import share per CoO of subjected goods: 01-01-2012 until 01-11-2018

WORLD IMPORT SHARE INTO EU28 OF COO OF GOODS WHEREON THE EC IMPOSED A-D MEASURES							
January 2012 until November 2018							
Case year/id-number/CoO	2012	2013	2014	2015	2016	2017	2018
Regulations implemented in 2015							
2015/C143/13-PRC	2%	3%	8%	10%	5%	4%	4%
2015/C161/07-PRC & the Russian Federation	10%	14%	13%	17%	3%	1%	0%
2015/C177/07-PRC	1%	1%	1%	1%	2%	1%	1%
2015/C264/04-PRC	19%	18%	21%	26%	17%	17%	19%
2015/C266/07-PRC	9%	10%	10%	8%	9%	8%	9%
2015/C357/05-PRC & Taiwan	15%	16%	17%	16%	16%	10%	6%
2015/C421/08-India, Brazil, Georgia, Mexico	20%	26%	13%	23%	16%	5%	2%
Average:	11%	13%	12%	14%	10%	7%	6%
Regulations implemented in 2016							
2016/C58/10-PRC	24%	24%	28%	29%	21%	2%	1%
2016/C58/08-PRC	1%	1%	3%	6%	4%	0%	0%
2016/C58/09-PRC	5%	5%	9%	16%	8%	0%	0%
2016/C62/07-Republic of Korea	0%	1%	1%	1%	2%	2%	1%
2016/C114/04-Republic of Belarus	3%	3%	4%	7%	5%	2%	2%
2016/C148/06-PRC	17%	19%	24%	14%	16%	20%	23%
2016/C246/08-Brazil, Iran, Russia, Serbia & Ukraine	11%	10%	13%	17%	17%	8%	7%
2016/C281/11-Republic of Korea	0%	0%	10%	24%	31%	31%	15%
2016/C291/07-Taiwan	4%	5%	7%	2%	4%	4%	4%
2016/C331/03-PRC	3%	4%	5%	4%	5%	5%	4%
2016/C398/10-PRC & Thailand	40%	31%	36%	36%	35%	38%	31%
2016/C459/11-PRC	5%	6%	6%	8%	11%	9%	5%
2016/C461/07-PRC & India	55%	55%	34%	35%	34%	32%	21%
2016/C476/04-Argentina & Indonesia	2%	1%	0%	0%	0%	0%	2%
Average:	16%	15%	14%	16%	17%	17%	12%
Regulations implemented in 2017							
2017/C200/09-PRC, Russia & Turkey	50%	30%	28%	33%	35%	19%	13%
2017/C251/04-Egypt & Ukraine	57%	39%	29%	28%	32%	28%	35%
2017/C264/13-PRC	9%	12%	14%	16%	17%	17%	8%
2017/C296/04-PRC	26%	34%	31%	28%	26%	33%	31%
2017/C334/03-India	21%	15%	18%	18%	17%	18%	13%
2017/C353/06-PRC	0%	0%	0%	0%	0%	53%	38%
2017/C438/12-BiH & Brazil	11%	8%	10%	11%	11%	10%	13%
Average:	25%	20%	19%	19%	20%	25%	22%
Regulations implemented in 2018							
2018/C171/05-PRC & India	11%	8%	8%	6%	5%	4%	4%
2018/C174/09-Malaysia	0%	0%	0%	0%	0%	4%	6%
2018/C177/05-PRC	1%	1%	1%	1%	3%	8%	5%
2018/C181/05-Argentina & Indonesia	2%	1%	0%	0%	0%	0%	2%
2018/C284/08-Russia, T&T & USA	17%	14%	20%	25%	36%	40%	32%
2018/C347/06-Macedonia, Russia & Turkey	7%	6%	7%	7%	8%	11%	9%
Average:	6%	5%	6%	7%	9%	11%	10%

Table five indicates that the imposition of anti-dumping measures appears to be effective in diminishing the import share of products under consideration. The average share dropped in

nearly every year after the year wherein anti-dumping measures have been imposed by the EC. Figure 33, which is depicted on the next page, shows the import shares of imports from countries of origin whereon EU28 initiated anti-dumping measures over the course of January 2015 until November 2018, averaged per year. The graph in figure 33 is similar to the graph in figure 32, except for that it concerns different imports under consideration. Within figure 33, four series have been highlighted. The two series which have been highlighted in red argue against the use of an import share of three per cent to determine whether import volumes are negligible. The two series which have been highlighted in green argue for the use of an import share of three per cent to determine whether import volumes are negligible. The percentages underlying the graphs in figures thirty-two and thirty-three appear visible in table five too. In table five, the market share in the year of the imposition of anti-dumping measures has been coloured in blue.

Series 2018/C171/05-PRC & India decreased gradually from an average import share of thirty-eight per cent in 2010 to an average import share of four per cent in 2018. Despite the total import share from the PRC and India decreasing nearly ninety per cent in series 2018/C171/05-PRC & India, the European Commission initiated anti-dumping measures on the imports in 2018. It seems hard to rhyme an ever-decreasing import share with the deliberate importation of non-negligible import volumes at export prices below their normal value which causes injury to the domestic industry producing comparable or closely resembling products. On the contrary, a decreasing import share would rather connote to a decrease in injury to the domestic industry producing the like product. Therefore, the rationale behind the decision to initiate anti-dumping measures in 2018 in series 2018/C171/05-PRC & India would rather seem extremely farfetched.

Series 2015/C264/04-PRC provides another example of how the determination of negligibility of import volumes seems to run against the rationale behind the imposition of anti-dumping measures.²¹⁰ In this series we see that import shares did not deviate significantly ever since 2010: it remained quite stable but at a high import share. If the import shares are stable, it would seem rather illogical to impose anti-dumping measures: how could the stable situation cause injuries?

Series 2017/C353/06-PRC indicates an exorbitant increase towards an import share of fifty-three per cent (data on previous years was unavailable from Eurostat Data Explorer). We see a similar significant increase in case 2018/C284/08-RU, T&T & USA: import shares rose nearly thirty per cent over the course of 2013 until 2017. These two cases clearly indicate significant increases in

²¹⁰ United States International Trade Administration. *The economic effects of antidumping and countervailing duty orders and suspension agreements*. Vol. 2900. US International Trade Administration, 1995, p 2-6

the market share which, provided that they are exported at prices below their normal value, are likely to cause injury to the domestic industry of the European Union producing the like product.

Figure 33. Import shares whereon EU28 initiated A-D measures: 01-01-2010 until 01-11-2018

Source: the author's calculations based on Commission Implementing Regulations on EUR-Lex and statistics from Eurostat Data Explorer

b. A new concept for the optimisation of world trade through contingent protection

The imposition of anti-dumping measures on imports which originate from a country wherefrom the import share of the product under consideration hardly fluctuates or wherefrom the import share for several years lay above the threshold for non-negligibility, seems hard to rhyme with the rationale behind dumping. After all, anti-dumping measures serve to counter the injurious effects caused by the import of products in non-negligible volumes at export prices below their normal value. If the price effects of imports are considered *ceteris paribus*, an increased import volume of a specific type of product into the domestic market for consumption of EU28 does not necessarily have to imply dumping. After all, the increased import volume might correspond to an increased demand in the domestic market for consumption of EU28. However, if the absolute increase in import volume of the product under consideration does not correspond to dumping, then surely the absolute world import volume of the product under consideration would be likely to increase too. If the increase in absolute import volume connotes to dumping, then the increase might be visible through an increased market share in the total import volume of the product under consideration. After all, it seems quite unlikely that the whole world would dump the product under consideration at the same time. An economic upturn, however, likely reflects a general increase in the total import volume of the product which is under investigation.

Increases or decreases in market share by themselves appear to provide inaccurate reflections of the extent wherein a product under consideration is being dumped. After all, a market share by itself says nothing about the extent wherein the domestic industry is suffering injury as a causal result of dumping. However, it appears that if the products under consideration are being sold at prices which are much higher than the prices which domestic producers ask for the like product, they are unlikely to incur injury. An increase in market share might also be caused by a change in absolute export volume from a third country-of-origin. When exporting producers from countries other than the country-of-origin under consideration decrease their absolute export volumes of the like product into the domestic market for consumption of EU28, the market share of the country-of-origin under consideration will have increased naturally. In such a case the market share of the product from the country-of-origin might surpass the negligibility threshold. However, an economic crisis may cause the world's import volume of the product under consideration to drop significantly, except for the import volume of the product from the country of origin under consideration. It would appear that import volumes which due to external factors become non-negligible should not become susceptible to contingent protection.

Dumping as a means to cause injury to the domestic industry producing the like product would likely occur through sudden, deliberate increases of import volumes from countries of origin at export prices which are lower than their normal value. However, not all sudden increases in the

import volume of a country of origin can be attributed to dumping. Sudden increases might be caused by free trade agreements, by an economic boom etc. Yet most of those changes are also most likely to be visible in the total import volume of the product under consideration except the country of origin of the product under consideration. A percentual increase in import volume would therefore correspond to dumping if it does not take place in the *natural course of trade*.

A percentual increase in import volume from a country of origin is unlikely to be in the *natural course of trade* and likely to correspond to dumping insofar the percentual increase exceeds the percentual increase in the total import volume from the extra world. However, there apparently is a natural deviation in the excess beyond the percentual increase of the total import volume from the world except the country of origin. In order to counteract injurious increases, it would be necessary to discern the extent wherein the percentual increases of import volumes from the country of origin exceed the percentual increase of import volumes of the world except the country of origin. After all, an increase in domestic demand seems unlikely to spread out evenly amongst all exporting producers. Furthermore, not all excesses necessarily create shock-effects.

This research explores a concept for a new theory to determine the negligibility of imports on the one hand and the de-attribution of injurious factors other than dumped imports on the other.²¹¹ The concept appears far from perfect, does not fall within the scope of this research and may be susceptible to a lot of scepticism. Nevertheless, it strives to optimise the international exchange of goods by tackling injurious excesses in import volumes. It proposes the determination of negligibility through the excess in between the percentual change in import volume from the country of origin minus the percentual change in import volume from the world except the country of origin. The concept proposes to determine the excesses per month and then accumulate them per year. The accumulation of natural month-on-month excesses between the changes in import volumes has been graphed on the next page.

The graph in figure 34 on the next page was created by collecting absolute month-on-month import volumes into the domestic market for consumption of EU28. The import volumes under consideration belong to six-digit commodity numbers whereof the exporting producers became subject to antidumping measures in EU28. Two types of import volumes have been collected: those who originate in the country of origin and those who originate in the world except the former one. Subsequently, both these afore import volumes per month were deducted from the

²¹¹ Matsushita, Mitsuo, et al. *The World Trade Organisation: law, practice, and policy*. Oxford University Press, 2015, p 383: "To determine whether a product is dumped, the antidumping authority of the importing country must determine whether there is a difference between the export price and the normal value (domestic price) of the product. If the difference is slight (less than 2 per cent of the export price), national antidumping authorities must terminate the investigation (the *de minimis* rule). Anti-dumping authorities must also terminate the investigation if the volume of imports of the dumped product is **negligible** (for example, less than 3 per cent of imports of the like product)."

import volumes in their previous month. The outcome of the deduction was divided with the import volume in the previous month. The results thereof are the percentual month-on-month changes in import volume. The percentual changes were accumulated per year and deducted from each other. Every year wherein the annualised month-on-month differencing percentual change exceeded more than 100 per cent, was presumed fall outside the natural course of trade.

Figure 34. Natural differences in import volumes into EU28: 01-01-2010 until 01-11-2018

Source: the author's calculations based on Commission Implementing Regulations on EUR-Lex and statistics from Eurostat Data Explorer

Figure thirty-four, which is depicted on the previous page, provides an overview of the cases wherein the annualised month-on-month differencing percentual change on average over the years January 2010 until November 2018 did not exceed 100 percent: cases deemed to be within the natural course of trade. Of all series reflecting the extant in between changes in imports volumes, 2017/C438/12-BiH & Brazil appears most naturally (glowing). Unsurprisingly, the case was **terminated** in less than one year after the European Commission initiated the investigation. Another series which appeared very stable was 2015/266/07-PRC. The Directorate General for Trade of the EU **terminated** this case in less than one year after the initiation of the investigation.

Table 6. The level of cooperation per CoO of exporting producers: 01-01-2015 until 01-11-2018

DIFFERENCES BETWEEN PERCENTUAL MOM CHANGES IN SIMULTANEOUS IMPORT VOLUMES INTO EU28 WHEREON A-D MEASURES ARE VS ARE NOT INITIATED							
January 2015 until November 2018							
Case year/id-number/CoO	2012	2013	2014	2015	2016	2017	2018
Regulations implemented in 2015							
2015/C143/13-PRC	383%	1068%	141%	231%	246%	175%	383%
2015/C161/07-PRC & the Russian Federation	32%	-58%	159%	135%	854%	7896%	32%
2015/C177/07-PRC	7%	14%	36%	-5%	-41%	60%	7%
2015/C264/04-PRC	-121%	-151%	-72%	-169%	105%	188%	-121%
2015/C266/07-PRC	21%	84%	20%	74%	12%	177%	21%
2015/C357/05-PRC & Taiwan	79%	144%	21%	32%	-46%	-2884%	79%
2015/C421/08-India, Brazil, Georgia, Mexico	275%	-47%	-315%	-164%	334%	-22%	275%
Average:	97%	151%	-2%	19%	209%	798%	97%
Regulations implemented in 2016							
2016/C58/10-PRC	3%	142%	-11%	-55%	1935%	502%	3%
2016/C58/08-PRC	988%	344%	554%	-289%	679%	232%	988%
2016/C58/09-PRC	321%	518%	113%	-33%	652%	5117%	321%
2016/C62/07-Republic of Korea	498%	93%	188%	308%	426%	201%	498%
2016/C114/04-Republic of Belarus	81%	211%	102%	200%	-10%	192%	81%
2016/C148/06-PRC	381%	155%	113%	80%	103%	336%	381%
2016/C246/08-Brazil, Iran, Russia, Serbia & Ukraine	-174%	-340%	1846%	273%	6112%	161%	-174%
2016/C281/11-Republic of Korea	232%	557%	80%	53%	-49%	-3%	232%
2016/C291/07-Taiwan	42%	31%	66%	45%	16%	4%	42%
2016/C331/03-PRC	152%	56%	158%	93%	64%	170%	152%
2016/C398/10-PRC & Thailand	679%	779%	-12%	808%	332%	327%	679%
2016/C459/11-PRC	112%	106%	240%	82%	71%	200%	112%
2016/C461/07-PRC & India	20%	-255%	-39%	35%	15%	111%	20%
2016/C476/04-Argentina & Indonesia	484%	-9%	2463%	-93%	2866%	197%	484%
Average:	273%	171%	419%	108%	944%	553%	273%
Regulations implemented in 2017							
2017/C200/09-PRC, Russia & Turkey	345%	-6%	361%	126%	29%	350%	345%
2017/C251/04-Egypt & Ukraine	1190%	198%	386%	151%	102%	90%	1190%
2017/C264/13-PRC	46%	17%	2%	4%	-15%	-161%	46%
2017/C296/04-PRC	63%	-96%	272%	46%	9%	94%	63%
2017/C334/03-India	48%	15%	-4%	2%	50%	56%	48%
2017/C353/06-PRC	0%	0%	0%	0%	14%	-13%	0%
2017/C438/12-BiH & Brazil	67%	-11%	72%	10%	47%	130%	67%
Average:	251%	17%	155%	48%	34%	78%	251%
Regulations implemented in 2018							
2018/C171/05-PRC & India	1711%	1319%	1468%	779%	220%	242%	1711%
2018/C174/09-Malaysia	-115%	-205%	-148%	-214%	-43%	39%	-115%
2018/C177/05-PRC	14485%	10428%	13528%	1607%	210507%	115665%	14485%
2018/C181/05-Argentina & Indonesia	484%	-9%	2463%	-93%	2866%	197%	484%
2018/C284/08-Russia, T&T & USA	1061%	372%	230510%	1097%	16421%	667%	1061%
2018/C347/06-Macedonia, Russia & Turkey	215%	41%	35%	38%	63%	11%	215%
Average:	2973%	1991%	41309%	535%	38339%	19470%	2973%

Figure 35. Unnatural differences in import volumes into EU28: 01-01-2010 until 01-11-2018

Unnatural differences between percentual MoM changes in simultaneous import volumes into EU28 whereon A-D measures are vs are not initiated

January 2010 until November 2018

MoM changes are aggregated per year per investigation

Source: the author's calculations based on Commission Implementing Regulations on EUR-Lex and statistics from Eurostat Data Explorer

Cases initiated in between January 2015 until November 2018 where the average annual sum of the monthly differences between the percentual changes in import volumes from countries of

origin vice versa percentual changes in the total import volume from the world, over the years 2010 until 2018 exceeded one hundred per cent have been graphed in figure thirty-five here-above. The extent wherein these excesses in between the relative change in import volume from countries of origin minus the relative change in import volumes from the world exist, is further visible in table six on the page before the previous page. The year of imposition is visible in blue. Series 2018/C177/05-PRC clearly indicates how abnormally high these excesses can be.

The ideal benchmark for excesses to fall outside of the natural course of trade falls out of the scope of this research. However, it would seem unreasonable that changes in imports of specific product from a country of origin in excess of more than hundred per cent above the change in total import volume from the whole world would fall in the natural course of trade. If the world doubles their import volume in one year, it would seem out of tune that an exporting producer would more than triple its import volume in the same year. It would seem that such an excessive increase in import volume would generate injurious shock-effects on the domestic industry of the importing Member. However, under the current situation, if the increase in import volume implies a change which results in an import share which remains less than three per cent, the effect would remain negligible. Relative changes in import volumes from countries under consideration appear to be the more suitable means to indicate negligibility of import volumes.²¹²

It remains debatable whether the threshold of three per cent is a suitable means to determine the negligibility of import volumes. After all, it would imply that WTO Members with larger economies who automatically represent larger import shares, have a higher risk of falling outside the demarcation of negligibility (albeit under the exception of smaller countries accounting for more than seven per cent of the import share). This might imply that dumping is more persistent for exporting producers who are registered in countries of origin with larger economies. However, if the exporting producer would be exactly the same, but registered within a smaller economy, its exports might be considered negligible. The criterion therefore appears rather redundant: it does not look at the actual changes in import volumes nor at the historical background of import volumes. It appears that the focal point of attention should rather be the shock effect on the domestic industries producing the like product in the country of importation.

Only drastic contra-cyclical fluctuations, at export prices lower than the normal value, appear capable of causing injury to the domestic industry producing the like product. Slow, non-excessive fluctuations of import volumes at the same pace as the pace of the total import volume of the like product presumably allow the domestic industry of the importing country to

²¹² Or it would at least have to be seen in combination with the magnitude of the import share

adjust gradually and incentivizes industries to innovate. In the latter cases, there appears no willingly and knowingly premeditated action which implies dumping. The evolution of the imports volume of the like product would have to be seen over the course of several years to understand the strategic motives of the exporting producers. Import shares by themselves provide ample information in this regard. Therefore, it appears commendable to determine negligibility *inter alia* via the evolution of import share rather than a static determination of import share at a specified point in time. By looking at the fluctuation of the import share, it appears to become unnecessary to initiate anti-circumvention investigations. After all, the transshipment of goods through intermediate countries of export, would generate very significant increases in their relative import share. Furthermore, smaller WTO Members would not necessarily be excluded from the negligibility test: even if their total volume of imports into the domestic market for consumption of the importing Members would be less than three per cent, a sudden significant increase would become susceptible to anti-dumping measures. If an exporting producer would circumvent anti-dumping measures through the transshipment of imports via multiple intermediate countries of exports, it would still be detected and susceptible to anti-dumping measures because the relative change of the import volume from those smaller intermediate countries of export into the domestic market for consumption of the importing WTO Member would be higher than the relative change in import volume of the like product from the whole world into the domestic market for consumption of the importing Member.

In sum, the size of the exporting Member and the country of origin of the imported product become irrelevant for the determination of negligibility when we look at changes in the relative import share from the country of origin. By looking at the excess in the relative changes of import volumes from one country of origin vice versa the total import volume from the world, conjunctural changes in the world economy become *ceteris paribus*, because they are diminished from the relative changes in import volume from the country of origin which is under consideration. After all, when the change in the import volume from one country of origin is equal to the change in the import volume from the whole world, it seems likely that the change is caused through a natural process (read an increase in domestic demand) rather than dumping.

It is the excess in relative change of the import volume above the relative change in import volume of the world which allegedly provides the purest indication of a change in import volume which connotes to dumping. Therefore, the percentual change in the import of an allegedly dumped good would be subtracted from percentual change in the import of goods which are not alleged to be dumped to determine existence of dumping. However, it appears hard to discern what the exact extent is of products which are dumped per country. Therefore, the percentual changes of the whole world would have to be taken into consideration. It appears

that the fluctuation in the import volumes of a specific product from a specific country of origin is dependent on an increase or decrease of domestic demand. An import share by itself gives no indication of the extent wherein the fluctuation of imports is dependent on or in excess of domestic demand. The fluctuation in the import share of the world extra the country of origin under consideration would appear to give, due to its wide variation of countries of origin and unlikelihood of overall dumping, a clear indication of the extent wherein the fluctuation of imports is caused through a matrix of natural causes, some of whom are reflected in the non-attribution analyses of the anti-dumping agreement. A non-attribution analysis might become unnecessary, it might be incorporated automatically in the fluctuation of world import volumes.

Paragraph 8 of Article 5 of the Anti-dumping Agreement only looks into the world import share to determine whether imports are negligible. If exporting producers account for less than three percent of the world import volume of the like product, their imports are negligible (unless multiple countries whose individual imports are negligible, cumulatively account for more than 7% of like products imported into the home market for consumption of the importing Member).

In the current situation, inspection authorities only look into market shares at specific moments. Arguably, the rationale for this would be that price movements of imports which constitute a negligible fraction of world import volume of the like product, have a negligible impact on the domestic industry producing the like product in the country of importation. In this line of thought, inspection authorities fail to look at the evolution of imports over a longer period of time. If a country of origin of a product under consideration accounts for a market share of 25% over a longer period of time, for instance 30 years, any import originating in this country would automatically meet the threshold for negligibility per paragraph 8 of Article 5 of the Anti-dumping agreement. After all, a significant decrease of prices in such a situation could result in significant shock effects on the domestic industry of the country of importation. In the sketched situation, the alleged purpose of these price decreases would be to increase market share in the country of importation. However, if an exporting producer would lower export prices without a significant increase in import volume, the result would unlikely be an increase in the market share in the country of importation. The result would rather only be that consumers or producers further down the supply chain benefit from lower prices. These export price decreases or increases might evolve in tandem with the economic cycles in the country of importation. The imposition of anti-dumping measures in such a case might infringe the natural evolution of cross-border supply at intermittent intervals of domestic demand.

If exporting producers succeed in their objective to gain market share through price decreases, then their share of world import volume of the like product will likely increase. In other words, their share in world import volume is likely to increase if their price decrease is unnatural. After

all, it appears unlikely that all exporting producers in the whole world would at the same time choose to lower prices to gain market share in the country of importation. The result would be that exporting producers from other countries of origin would start losing market share to the country of origin whose exporting producers chose to decrease their export prices. However, if the price decrease is natural, exporting producers from other countries of origin are also incentivised to decrease their prices, making a significant increase in the import share from one specific country of origin unlikely.

For the reasons stipulated above, it would therefore seem that the relative evolution of changes in import volume from the country of origin is a more suitable means to establish negligibility ex paragraph 8 of Article 5 of the Anti-dumping Agreement. By themselves, changes in the evolution of import volume of one country of origin bear little weight. This changes however, when we compare these changes in the evolution of import volumes with simultaneous changes in the evolution of import volume which originate in the whole world except the country of origin. By looking at changes in the exterior between percentual changes in import volume which originate in the world on the one hand and the country of origin on the other, a clearer indication of unnatural fluctuations which connote to dumping is distilled from other, natural fluctuations of absolute import volume. The theory embarks from the presumption that the whole world would not dump a product at the same time, provided that there is more than one importer of course. In light of this benchmark, any significant change in import from a country which surpasses that of the world would be suspicious. It remains questionable though which the appropriate value would be from which the changes in import volume from the world and the country of origin are to be calculated. If it would for instance be a change in volume from the past month, and the previous month there would be no import, any change would be 0%, while in fact there is an absolute change. To mitigate this problem the theory proposes the average of the new import volume and the old import volume as the variable from which the change into the new import volume is calculated. Another issue which is solved through the use of this variable is that a drop in volume could never surpass 100% while a rise could (which distorts the ability to accurately offset these two when making yearly averages of percentual changes per month). Furthermore, this theory could not apply to monopolistic import. After all, in such a situation, the percentual change in import from the world equals that of the country of origin and their difference is 0%. However, when there is a single importer, chances appear slim that dumping would be an issue (probably, in such cases the domestic industry would likely be absent and dumping would only be beneficial for the importing country). Furthermore, the theory could be less efficient in oligopolistic import, where the lower amount of importers might distort the "natural" course of world import because of mutual adjustments.

3.4 Anti-dumping rates

Paragraph three of Article 9 of the Anti-dumping Agreement proscribes investigative authorities from imposing anti-dumping rates at a level which exceeds the dumping margin as established under Article 2 of the Anti-dumping Agreement. Paragraph four of Article 2 of the Anti-dumping Agreement forces investigative authorities to make a fair comparison between the export price and the normal value at the same level of trade (usually ex-factory) and in respect of sales which were made at as nearly as possible the same time with due allowances for differences which affect price comparability.²¹³ Subparagraph two of Article 2.4 of the Anti-dumping Agreement indicates that this fair comparison will result in margins of dumping which will be established through a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions; by a comparison of normal value and export prices on a transaction-to-transaction basis; or a weighted average normal value and prices of individual export transactions.²¹⁴ The last comparison is only permissible if there is a pattern of export prices which differs significantly among purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

a. The country-wide, individual and other co-operator rates imposed by DG Trade EU

In general the three types of rates which DG Trade EU applies are the individual rates which are usually calculated for cooperating exporting producers which are included in the sample, the other co-operator rates which concern cooperating exporting producers which were not

²¹³ Mavroidis, Petros C. "The Regulation of International Trade, Volume 1: GATT." (2016), p 84:

"Article 2.4 of AD provides an indicative list of due allowances that can legitimately be made once prices have been brought to the same level of trade.

It follows that the indicative list included in this provision contains both factors "exogenous" to the allegedly dumping economic operator (e.g., taxation) and factors controlled by it, such as quantity discounts or differences between the quality of the exported product and that of the product sold domestically. It also makes sense that both can affect price comparability and can appropriately form the subject matter of due allowances.

An IA cannot limit itself to a review of the factors included in the indicative list. Article 2.4 of AD requires that due allowances be made for any "other" (e.g., other than the statutory factors affecting price comparability) difference that affects price comparability. The Panel on EC-Tube or Pipe Fittings, for example, accepted that due allowance could be made for "packaging expenses," an item not explicitly mentioned in Article 2.4 of AD (§ 7.184). It is, of course, difficult to draw up an exhaustive list of factors that affect price comparability. In line with the overall standard of review applied by WTO panels, it might be reasonable to suggest that IAs, at any rate, must take into account the factors mentioned in Article 2.4 of AD, as well as any other factor affecting price comparability brought to their attention."

²¹⁴ Mavroidis, Petros C. "The Regulation of International Trade, Volume 1: GATT." (2016), p 85: "Weighted average to weighted average (WA-WA), and transaction-to-transaction (T-T) are, thus, the two normal methods mentioned in the agreement. There is a third method as well, an exceptional one that we will discuss later. The AB on EC-Tube or Pipe Fittings, made it clear that the two methods (WA-WA, T-T) are offered as alternatives, and WTO members are free to choose one or the other. Note that the AD Agreement (Article 2.4.2) states that, when using the WA-WA methodology, the WA-NV should be compared to a WA of prices of all "comparable export transactions," not of "all sales"."

included in the sample and the country-wide all-others rate, which is imposed on non-cooperating exporting producers which have not been included in the sample.²¹⁵ The Appellate Body in US – Hot Rolled Steel found that paragraph four of Article 9 of the Anti-dumping Agreement does not prescribe any method which WTO Members must follow in the determination of the "all-others rate".²¹⁶

"115. We observe, first, that Article 9.4 applies only in cases where investigative authorities have used 'sampling', that is, where investigative authorities have, in accordance with Article 6.10 of the *Anti-Dumping Agreement*, limited their investigation to a select group of exporters or producers. In such cases, the investigative authorities may determine an anti-dumping duty rate to be applied to those exporters and producers who were not included in the investigated sample. The rate so established is referred to as the 'all others' rate.

116. Article 9.4 does not prescribe any method that WTO Members must use to establish the 'all others' rate that is actually applied to exporters or producers that are not investigated. Rather, Article 9.4 simply identifies a maximum limit, or ceiling, which investigative authorities 'shall not exceed' in establishing an 'all others' rate. Sub-paragraph (i) of Article 9.4 states the general rule that the relevant ceiling is to be established by calculating a 'weighted average margin of dumping established' with respect to those exporters or producers who were investigated. However, the clause beginning with 'provided that', which follows this sub-paragraph, qualifies this general rule. This qualifying language mandates that, 'for the purpose of this paragraph', investigative authorities 'shall disregard', first, zero and *de minimis* margins and, second, 'margins established under the circumstances referred to in paragraph 8 of Article 6.' Thus, in determining the amount of the ceiling for the 'all others' rate, Article 9.4 establishes

²¹⁵ Chow, Daniel CK, and Thomas J. Schoenbaum. *International Trade Law: Problems, Cases, and Materials*. Wolters Kluwer Law & Business, 2017, p 632 with respect to the EU's basic Anti-dumping Regulation methodology for applying individual or country-wide rates on exports originating in NMEs:

"Under this Regulation, EU authorities enforced an anti-dumping order on a countrywide basis in several cases involving Chinese imports, on the grounds that China is an NME. The EU Regulation provided that, as a general rule, countrywide anti-dumping orders can be imposed in the case of imports from NMEs unless certain criteria were met for individual treatment. In *European Communities Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397/AB/R, Report of the Appellate Body, adopted on July 28, 2011, although the EU granted requests for individual treatment from all the Chinese companies concerned, China challenged the EU Regulation "as such" as inconsistent with the WTO Antidumping Agreement. The Appellate Body, considering this issue, ruled (367-370) that the EU presumption in favor of countrywide treatment in cases involving an NME was inconsistent with Articles 6.10 and 9.2 of the WTO Antidumping Agreement, which in fact calls for a presumption in favor of individual treatment. The Appellate Body further ruled that the tests employed by the EU to determine the difference between individual and countrywide treatment in anti-dumping cases were inconsistent with both articles. The tests used by the EU did not sufficiently relate to the structural relationship between the company accused and the state. Under Articles 6.10 and 9.2, to treat the state as the single exporter it is necessary to make findings concerning (1) the existence of structural links between exporters; (2) the existence of corporate and structural links between the state and exporters; and (3) the existence of control or material influence by the state."

²¹⁶ Appellate Body Report, US – Hot-Rolled Steel, para. 116

two prohibitions. The first prevents investigative authorities from calculating the 'all others' ceiling using zero or *de minimis* margins; while the second precludes investigative authorities from calculating that ceiling using 'margins established under the circumstances referred to' in Article 6.8."

It will be discussed *infra* whether the European Commission in the calculation of any impositions of provisional and definitive all-others rates has acted inconsistently with sub-paragraph (i) of Article 9.4 of the Anti-dumping Agreement by transposing anti-dumping rates which exceed a "weighted average margin of dumping established"²¹⁷ with respect to those exporters or producers who were investigated – the ceiling which was explained in recital 116 of US- Hot Rolled Steel.

Before looking into the method which has been applied by the European Commission to calculate the different types of anti-dumping rates, impartiality in the imposition of various A-D rates will be researched by looking into their average height over the course of January 2015 until December 2018. The average height of the anti-dumping rate should, according to paragraph three of Article 9 of the Anti-dumping Agreement correspond with the average margin of dumping insofar it is necessary to counter the injurious effects of dumping. Thus, if the average all-others rate would lay significantly higher than the average individual rates, it

²¹⁷ Matsushita, Mitsuo, et al. *The World Trade Organisation: law, practice, and policy*. Oxford University Press, 2015, p 390 explains the methodology for calculating dumping margins:

"Another important issue in a fair comparison of domestic and export prices is that of 'averaging'. In the past, antidumping authorities in the United States and the EU utilized the 'averaging' method when comparing domestic and export prices.

The following example illustrates the averaging method. Company A (a Japanese company) sells Product X in the domestic market and exports it to the EU market. In the domestic market, the average price of Product X is equivalent to \$100 per unit. Company A exports Product X to the markets of the UK, Germany, France, and Italy. The price at which Product X is exported to the UK is \$80; that at which it is exported to Germany is \$90; that at which it is exported to France is \$110; and that at which it is exported to Italy is \$120. Assuming that the volume of sales is the same to each market, the weighted average of export price is equivalent to \$100.

If the average prices were compared, there would be no difference between domestic prices and export prices and, therefore, no dumping. In the past, the antidumping authorities of the United States and the EU, however, compared the weighted average of the domestic price with each of the export prices before averaging. If an export price is lower than the average domestic price, that export price is judged to be a dumping price. If, on the other hand, an export price is higher than the average domestic price, that export price is disregarded. There was, therefore, a non-symmetrical comparison between the domestic price and export prices and, consequently, dumping was artificially 'created'. There would be no dumping if there were a symmetrical comparison. The result was that there was dumping in almost all situations where there are a number of sales transactions both in the domestic market and the export market of product.

To remedy this situation, the Antidumping Agreement provides that, in principle, an antidumping authority should compare either a 'weighted average normal value with a weighted average of prices of all comparable export transactions' or 'normal value and export prices on a transaction-to-transaction basis'. Antidumping authorities may, however, deviate from this rule when there is evidence that exporters manipulate domestic and export prices so that there is no dumping margin if a comparison of prices is made on a weighted average basis."

might provide a first indication of partiality in the imposition of anti-dumping measures. After all, ex Article 6.10 of the Anti-dumping Agreement, the country-wide anti-dumping rates are imposed from the rationale that the number of exporters, producers, importers or types of products is so large as to make such the determination of an individual margin of dumping impracticable.

Due to the large number of exporting producers whereon all-others rates (or country-wide rates) are imposed, one would expect, in the case of malfeasance in the determination of rates, that the all-others rates on average would be higher than the individual rates – due to the broader scope of imposition. In this respect figure thirty-six, which is displayed hereunder, provides an overview of the "average provisional all others rates", the "average provisional individual rates" and the "average provisional other co-operator rates" which were imposed by the European Commission over the course of January 2015 until November 2018 on the importation of goods which have been subdivided according to their chapter within the harmonised nomenclature.

Figure 36. EU28 average provisional rate of duty per HS2 chapter: 01-01-2015 until 01-11-2018

Source: the author's calculations based on Commission Implementing Regulations on EUR-Lex

Figure thirty-seven, which has been displayed on the next page, provides an overview of the "average definitive all others rates", the "average definitive individual rates" and the "average definitive other co-operator rates" which were imposed by the European Commission over the course of January 2015 until November 2018 on the importation of goods which have been subdivided according to their chapter within the harmonised nomenclature.

Figure 37. EU28 average definitive rate of duty per HS2 chapter: 01-01-2015 until 01-11-2018

Source: the author's calculations based on Commission Implementing Regulations on EUR-Lex

Figures thirty-six tends to indicate that the European Commission in general applied "average provisional all-others rates" on a higher rate than "average provisional individual rates" and "average provisional other co-operator rates" over the course of January 2015 until November 2018. It will be researched and discussed *infra* how it is possible that the European Commission on average applies higher "average provisional all-others rates". Furthermore, it appears that the highest provisional rates were imposed on the sector rubbers and articles and the sector paper & paperboard etc. These sectors have not been determined to be of strategic importance through the amount of anti-dumping measures which were imposed on them and this would support impartiality in the imposition of rates per sector by the European Commission. It stands out that one of the lowest average provisional anti-dumping rates has been imposed on the sector whereof the commodity numbers have most often been subjected to anti-dumping measures: the sector iron, steel and allied industries. This changes however when we look at figure thirty-seven where the third highest average definitive anti-dumping rate has been imposed on the sector iron, steel and allied industries. Furthermore, it appears that the "average definitive all others rates", the "average definitive individual rates" and the "average definitive other co-operator rates" do not differ significantly in height. However, since the different types of rates in figure thirty-seven are dispersed according to their chapter within the harmonised nomenclature, it will be necessary to accumulate the overall rate for a precise indication of the disparity between the different types of rates. Theretofore figure thirty-eight, which is depicted hereunder, gives an overview of the average rates which were applied through provisional and

definitive anti-dumping measures over the course of January 2015 until November 2018 on individual exporting producers (including the cooperating exporting producers which are in the sample), the other cooperating exporting producers and the rest: all other exporting producers.

Figure 38. Averages of different types of A-D rates imposed by the EU: 01-01-2015 until 01-11-2018

Source: the author's calculations based on the database of the DG for Trade of the EU

Figure thirty-eight clearly indicates that highest average rates of duty which were imposed on imports into the domestic market for consumption of EU28 belong to the "average definitive all-others rates" and the "average provisional all-others rates". Under the rationale of subparagraph (i) of Article 9.4 of the Anti-dumping Agreement, the all-others rates should not exceed the "weighted average margin of dumping established" with respect to those exporters or producers who were investigated: in EU28 this would be the sample of cooperating exporting producers. This is a first indication of possible malfeasance and it will have to be research *infra* how it is possible that the "average definitive all-others rates" differ twelve per cent from the "average definitive other co-operators rates". Given the long-lasting nature of definitive rates over provisional rates this enquiry is ever more pressing. The dispersion primarily persists in the definitive rates: The "average provisional all-others rates" does not significantly differ from the "average provisional other co-operators rates" (only one per cent) and fall by reason of insignificance outside the scope of further research within the dissertation at hand. After having determined that disparity persists between the height of the various types of anti-dumping rates which have been imposed by the European Commission over the course of January 2015 until

November 2018, it seems just to research the disparity wherein imports whereupon the European Commission over the course of January 2015 until November 2018 imposed all-others rates originate in different countries.²¹⁸ Figure thirty-nine, on display hereunder, provides this.

Figure 39. CoO of imports whereon EU28 imposed all-others rates: 01-01-2015 until 01-11-2018

Source: the author's calculations based on the database of the DG for Trade of the EU

In the making of figure thirty-nine, all commodity numbers belonging to imports whereupon all-others rates were imposed were taken into account insofar they (within the same investigation) differed under the chapters of the harmonised nomenclature. Duplicates in two-digit chapters of the harmonised nomenclature were taken out. Thus, if EU28 imposed provisional all-others rates on the importation of certain products originating in Indonesia which fell under seven commodity numbers with three duplicative two-digit chapter numbers of the harmonised nomenclature, the number of products whereon EU28 imposed provisional all-others rates on Indonesia within this investigation was set to three.

Figure thirty-nine tends to indicate that the European Commission over the course of January 2015 until November 2018 imposed a major proportion of its all-others rates on imports which

²¹⁸ For a further reading on the various types of rate: Czako, Judith, Johann Human, and Jorge Miranda. A handbook on anti-dumping investigations. Cambridge University Press, 2003, p 60:

"According to article 6.10, dumping margins are to be calculated individually for every known exporter under investigation. Hence, if provisional measures are imposed, exporters will receive duty rates corresponding to their own margins. Article 6.10 also provides that, when the number of exporters is very large, the calculation of individual margins can be limited to the exporters included within a sample, or accounting for a significant proportion of total export volume. In accordance with Article 9.4, the duty rate for exporters not selected for an individual examination, will be calculated as the weighted average dumping margin established for exporters selected for an individual examination, excluding zero margins, *de minimis* margins and margins based on facts 'available'."

originate in the PR of China. Figure forty, which is depicted hereunder, provides the overview for individual rates which have been imposed by the European Commission in the same period.

Figure 40. CoO of imports whereon EU28 imposed individual rates: 01-01-2015 until 01-11-2018

Source: the author's calculations based on the database of the DG for Trade of the EU

Figure forty provides a distribution of individual rates which is similar to the distribution of all-others rates in figure thirty-nine. Once again the overall majority of rates is imposed on products which originate in the PRC. In order to determine the extent wherein EU28 transposed all-others rates from co-operator rates, it is necessary to look the distribution of other co-operator rates.

Figure 41. CoO of imports whereon EU28 imposed other co-operator rates: 01-01-2015 until 01-11-2018

Source: the author's calculations based on the database of the DG for Trade of the EU

b. Indications of partiality by the MofCom of the PRC in setting various rates of duties

The distribution of other co-operator rates in figure forty in paragraph a, differs significantly from the distribution of the individual rates and the all-others rates. Almost all other co-operator rates have been imposed on products which originate in the PRC. This might indicate that EU28 calculates a majority of the all-others rates which it imposes on imports which originate in the PRC through a transposition of other co-operator rates. This preliminary finding would be in line with the diverging rates of figure thirty-eight and purports further research into the validity of the method which the European Commission applies in the calculation of the all-others rates.

Figures thirty-nine, forty and forty-one all indicate that the majority of every type of rate which the European Commission imposed in their provisional and definitive anti-dumping measures in the period January 2015 until November 2018 concern the importation of products which originate in the PR of China. The wide disparity justifies a closer inspection into the extent wherein tit-for-tat exists in the imposition of different types of rates between EU28 and the PRC. Theretofore this dissertation continues with an assessment of the extent wherein the PRC imposed anti-dumping measures on the importation of products originating in the European Union in the same period under consideration. An overview of all anti-dumping investigations which the PRC Bureau of Industry Injury Investigation initiated over the course of January 2015 until November 2018 on the importation of products has been provided in table 7 hereunder.

Table 7. A-D investigations initiated by the MofCom of China: 01-01-2015 until 01-11-2018

ANTI-DUMPING INVESTIGATIONS INITIATED BY THE MINISTRY OF COMMERCE OF CHINA <i>January 2015 until November 2018</i>		
Product	Country of Origin	Announcement N ^o
2015 (4 initiations)		
Unbleached Paper Bags	EU, the USA and Japan	商务部公告2015年第9号
Acrylic Fibers	Japan, South-Korea and Turkey	商务部公告2015年第22号
Oriented Electrical Steel	Japan, South-Korea and the EU	商务部公告2015年第23号
Iron-Based Amorphous Alloy Strips	Japan and the USA	商务部公告2015年第61号
2016 (4 initiations)		
Dry Corn Drums	USA	商务部公告2016年第2号
Divinyl Chloride-Chloroethylene Copolymer	Japan	商务部公告2016年第17号
Acrylic Fibers	Japan, South-Korea and Turkey	商务部公告2016年第31号
Copoly Formaldehyde	Korea, Thailand and Malaysia	商务部公告2016年第57号
2017 (8 initiations)		
Bisphenol A	Thailand	商务部公告2017年第13号
Methyl Isobutyl (A) Ketone	South-Korea, Japan and South	商务部公告2017年第16号
Phenylphenoxybenzaldehyde	India	商务部公告2017年第29号
Styrene	South-Korea, Taiwan and the	商务部公告2017年第31号
White Feather Broiler Products	Brazil	商务部公告2017年第39号
Halogenated Butyl Rubber	USA, the EU and Singapore	商务部公告2017年第45号
Hydroiodic Acid	USA and Japan	商务部公告2017年第62号
Ethanolamines	USA, Saudi Arabia, Malaysia	商务部公告2017年第67号
First three quarters of 2018 (7 initiations)		
O-Dichlorobenzene	India and Japan	商务部公告2018年第6号
Sorghum	USA	商务部公告2018年第12号
Phenol	USA, the EU, South-Korea,	商务部公告2018年第33号
Stainless Steel Billets, Sheets, Ropes	EU, Japan, South-Korea and	商务部公告2018年第62号
Nitrile Rubber	South-Korea and Japan	商务部公告2018年第74号

Horizontal machining centres for working metal	Japan and Taiwan	商务部公告2018年第76号
Barley	Australia	商务部公告2018年第89号

Table seven indicates that the PRC Bureau of Industry Injury Investigation over the course of January 2015 until November 2018 did not in particular initiate anti-dumping investigations on imports which originate in EU28. The countries of origin of imports whereon the PRC Bureau of Industry Injury Investigation initiated anti-dumping investigations seems quite diversified. We will therefore look into the extent wherein anti-dumping rulings of the Ministry of Commerce of the PRC primarily target imports which originate in EU28. An overview is provided in table eight. Note that by clicking on the blue links of the announcements listed in table eight, the website of the Ministry Commerce of the PRC will be opened there where the public announcement which specifies all the particulars of the preliminary, final and tax rate applicable rulings is publicized.

Table 8. Announcements of A-D rulings of the MofCom of China: 01-01-2015 until 01-11-2018

ANNOUNCEMENTS OF FINAL, PRELIMINARY AND TAX-RATE APPLICABLE A-D RULINGS OF THE MINISTRY OF COMMERCE OF CHINA <i>January 2015 until November 2018</i>	
Final rulings on A-D investigations	
Announcement No. 84 of 2018 of MofCom on the final ruling on the A-D investigation of imported nitrile rubber originating in Korea and Japan 2018-11-08 09:00:00	
Announcement No. 81 of 2018 of MofCom on the final ruling on the A-D investigation of imported ethanolamines originating in the USA, Saudi Arabia, Malaysia and Thailand 2018-10-29 10:28:56	
Announcement No. 80 of 2018 of MofCom on the final ruling on the A-D investigation of imported hydriodic acid originating in the USA and Japan 2018-10-15 08:52:36	
Announcement No. 43 of 2018 of MofCom on the final ruling of the A-D investigation on imported styrene originating in South Korea, Taiwan and the USA 2018-06-22 10:17:24	
Announcement No. 42 of 2018 of MofCom on the final ruling on the A-D investigation on imported phenoxybenzaldehyde originating in India 2018-05-31 09:00:07	
Announcement No. 40 of 2018 of MofCom on the final ruling on the A-D investigation on imported halogenated butyl rubber originating in the USA, the EU and Singapore 2018-08-10 15:29:10	
Announcement No. 27 of 2018 of MofCom on the final ruling of the A-D investigation on imported methyl isobutyl (meth) ketone originating in Korea, Japan and South Africa 2018-03-19 10:46:13	
Announcement No. 23 of 2018 of MofCom on the final ruling on the A-D investigation of imported bisphenol A originating in Thailand 2018-02-28 16:18:52	
Announcement No. 19 of 2018 of MofCom on the final ruling on the A-D investigation of imported o-chloro-p-nitroaniline originating in India 2018-02-12 09:00:11	
Announcement No. 79 of 2017 of MofCom on the final ruling on the A-D investigation of dried corn distiller's grains imported from the USA 2017-01-11 10:00:13	
Announcement No. 61 of 2017 of MofCom on the final ruling on the A-D investigation of imported copolyformaldehyde originating in Korea, Thailand and Malaysia 2017-10-23 08:58:33	
Announcement No. 17 of 2017 of MofCom on the final ruling on the A-D investigation on imported vinylidene chloride-vinyl chloride copolymer resin originating in Japan 2017-04-19 09:15:15	
Announcement No. 65 of 2016 of MofCom on the final ruling on the A-D investigation of imported iron-based amorphous alloy strips originating in Japan and the USA 2016-11-18 09:10:31	
Announcement No. 33 of 2016 of MofCom on the final ruling of the A-D investigation on imported oriented electrical steel originating in Japan, South Korea and the EU 2016-07-23 23:09:48	
Announcement No. 31 of 2016 of MofCom on the final ruling of the A-D investigation on imported acrylic fibers originating in Japan, South Korea and Turkey 2016-07-13 08:33:44	
Announcement No. 8 of 2016 of MofCom on the final ruling of the A-D investigation on imported unbleached paper bags originating in the USA, the EU and Japan 2016-04-09 08:50:13	
Announcement No. 60 of 2015 of MofCom on the final ruling of the A-D investigation on imported methyl methacrylate originating in Singapore, Thailand and Japan 2015-12-01 09:13:07	
Announcement No. 25 of 2015 of MofCom on the final ruling on the A-D investigation of imported optical fiber preforms originating in Japan and the USA 2015-08-19 10:00:11	
Preliminary rulings on A-D investigations	
Announcement No. 70 of 2018 of MofCom on the preliminary ruling on the A-D investigation of imported o-dichlorobenzene originating in Japan and India 2018-10-08 11:48:27	

Announcement No. 67 of 2018 of MofCom on the preliminary ruling on the A-D investigation on imported n-butanol originating in Taiwan, Malaysia and the USA 2018-09-03 08:45:04
Announcement No. 61 of 2018 of MofCom on the preliminary ruling on the A-D investigation of imported nitrile rubber originating in Korea and Japan 2018-07-16 08:52:25
Announcement No. 50 of 2018 of MofCom on the preliminary ruling of the A-D investigation on imported ethanolamine originating in the USA, Saudi Arabia, Malaysia and Thailand 2018-06-16 07:00:00
Announcement No. 49 of 2018 of MofCom on the preliminary ruling on the A-D investigation of imported hydriodic acid originating in the USA and Japan 2018-06-16 07:00:00
Announcement No. 46 of 2018 of MofCom on the preliminary ruling of the A-D investigation on imported white feather broilers originating in Brazil 2018-06-08 08:52:04
Announcement No. 38 of 2018 of MofCom on the preliminary ruling on the A-D investigation against imported sorghum originating in the USA 2018-04-17 14:30:10
Announcement No. 8 of 2018 of MofCom on the preliminary ruling on the A-D investigation of imported phenoxybenzaldehyde originating in India 2018-02-07 09:00:19
Announcement No. 72 of 2017 of MofCom on the preliminary ruling on the A-D investigation of imported bisphenol A originating in Thailand 2017-11-09 09:01:32
Announcement No. 70 of 2017 of MofCom on the preliminary ruling on the A-D investigation on imported methyl isobutyl (meth) ketone originating in Korea, Japan and South Africa 2017-11-20 09:00:58
Announcement No. 56 of 2017 of MofCom on the preliminary ruling on the A-D investigation of o-chloro-p-nitroaniline originating in India 2017-10-20 08:32:16
Announcement No. 32 of 2017 of MofCom on the preliminary ruling of the A-D investigation on imported copolyformaldehyde originating in Korea, Thailand and Malaysia 2017-06-26 10:06:48
Announcement No. 3 of 2017 of MofCom on the preliminary ruling on the A-D investigation on imported vinylidene chloride-vinyl chloride copolymer resin originating in Japan 2017-01-19 08:53:57
Announcement No. 49 of 2016 of MofCom on the preliminary ruling on the A-D investigation on imported dry corn distiller's grains originating in the USA 2016-09-23 09:30:59
Announcement No. 42 of 2016 of MofCom on the preliminary ruling on the A-D investigation of imported iron-based amorphous alloy strips originating in Japan and the USA 2016-08-18 09:37:39
Announcement No. 10 of 2016 of MofCom on the preliminary ruling on the A-D investigation of imported electrical steel originating from Japan, South Korea and the EU 2016-04-01 10:16:29
Announcement No. 9 of 2016 of MofCom on the preliminary ruling on the A-D investigation of acrylic fibers imported from Japan, South Korea and Turkey 2016-04-01 08:50:56
Announcement No. 67 of 2015 of MofCom on the preliminary ruling of the A-D investigation on imported unbleached paper bags originating in the USA, the EU and Japan 2015-12-10 08:37:34
Announcement No. 29, 2015 of MofCom on the preliminary ruling on the A-D investigation of imported methyl methacrylate originating in Singapore, Thailand and Japan 2015-07-24 15:11:06
Announcement No. 15 of 2015 of MofCom on the preliminary ruling on the A-D of imported optical fiber preforms originating in Japan and the USA 2015-05-18 16:33:25
Tax-rate applicable rulings on A-D investigations
Announcement No. 47 of MofCom on the tax rate applicable to Honeywell Resin and Chemicals Co., Ltd. in the A-D measures of nylon 6-slice and caprolactam A-D measures 2018- 06-08 08:49:15
Announcement No. 50 of MofCom on the A-D measures applicable to carbon steel fasteners imported from the Netherlands Royal Nedischroef Holding Co., Ltd. for the review of the mid-term review of dumping and dumping margins 2017-09-19 08:35 :25
Announcement No. 36 of MofCom on the Tax Rates Applicable to Mitsubishi Chemical Co., Ltd. in the A-D Measures against Acrylic Fibers by Mitsubishi Chemical Co., Ltd. 2017-08-04 09:13:00
Announcement No. 14 of MofCom on the tax rate applicable to the A-D measures of the Kuibyshev Nitrogen Open Joint Stock Company in the nylon 6-slice A-D measures 2017-03-15 09:19:11
Announcement No. 55 of MofCom on the Tax Rates Applicable by AV Group NB Company to AV Nackawic Inc. and AV Cell Inc. in Pesticide A-D Measures 2016-10-19 08:31:48
Announcement No. 39 of MofCom on the A-D tax rate applicable to the A-D measures of arsenic in the A-D measures of the USA Rodrigues Co., Ltd. by Solvay USA Ltd. 2016-08-17 10:30:03
Announcement No. 28 of MofCom on the A-D tax rate applicable to the A-D measures against epichlorohydrin in Japan by Cao Da, Co., Ltd., 2016-06-16 08:48:34
Announcement No. 68 of MofCom on the approval of Nippon Denshi Co., Ltd. to inherit the A-D tax rate of neoprene from Japan Electric Chemical Industry Co., Ltd. 2015-12-25 08:38:28
Announcement No. 57 of MofCom on the approval of Hanwha Integrated Chemical Co., Ltd. to inherit the A-D duty rate of the refined terephthalic acid of Samsung Synthetic Chemical Co., Ltd. 2015-11-20 10:26:02
Announcement No. 28 of MofCom on the A-D Rate of the Lanco Operating Company's Inheritance of the Epichlorohydrin Case of the Dow Chemical Company 2015-08-17 14:43:47

Table eight indicates that the PRC Bureau of Industry Injury Investigation neither primarily targets imports which originate in EU28 in its preliminary rulings, nor in its final rulings nor in its

tax-rate applicable rulings over the course of January 2015 until November 2018. From the onset, it appears that the PRC Bureau of Industry Injury Investigation is rather impartial in the initiation of anti-dumping investigations and imposition of anti-dumping measures per country of origin. However, to fully exclude any form of partiality, we will need to look at the distribution per chapter of the harmonised nomenclature of imports whereon the PRC Bureau of Industry Injury Investigation over the course of January 2015 until November 2018 imposed preliminary and final anti-dumping duties, the total amount of anti-dumping measures per country of origin and the average height of the rates imposed per country of origin per type of rate. An insight into the extent wherein the PRC Bureau of Industry Injury Investigation over the course of January 2015 until November 2018 imposed anti-dumping measures on the importation of products which fall under various chapters of the harmonised nomenclature is provided in figure forty-two. The six-digit CNs of the products have been merged according to their HS2 digit codes.

Figure 42. Imports into the PRC whereon MofCom imposed A-D duties: 01-01-2015 until 01-11-2018

Source: the author's calculations based on MofCom Public Announcements in table eight

Figure forty-two indicates that most anti-dumping measures which the PRC Bureau of Industry Injury Investigation over the course of January 2015 until November 2018 applied on products qualified under the chapter 29 "organic chemicals" of the harmonised nomenclature. The outcome shows strong similarities with the distribution of products whereon the PRC Bureau of Industry Injury Investigation initiated anti-dumping measures over the course of January 2000 until November 2018 (see figure twenty-nine). However, the distribution appears less discriminatory: whereas thirty-eight per cent of the imposition of anti-dumping measures over the course of January 2015 until November 2018 concerned organic chemicals, this figure was much larger over the course of January 2000 until November 2018: fifty-two per cent. To provide

a clearer overview of the extent wherein the PRC Bureau of Industry Injury Investigation imposed anti-dumping measures on various countries of origin, figure forty-three (to be found hereafter) provides a clustered bar of the amount of rulings wherein the PRC imposed anti-dumping duties according to the countries of origin of the products concerned.

Figure 43. CoO of imports whereon MofCom imposed A-D duties: 01-01-2015 until 01-11-2018

Source: the author's calculations based on the Public Announcements from the database of MofCom

Figure forty-three indicates that most anti-dumping duties which the PRC Bureau of Industry Injury Investigation imposed over the course of January 2015 until November 2018 were directed at imports which originate in Japan and the USA. Only a mediocre amount of anti-dumping duties were imposed on imports which originate in EU28. Therefore, it is safe to assume that tit-for-tat is not prevalent in the imposition of anti-dumping duties by DG Trade EU on the one hand and the PRC Bureau of Industry Injury Investigation on the other. However, this finding gives no insight in the extent wherein the Ministry of Commerce of the PRC applies discriminatory rates in the imposition of anti-dumping duties. If discrimination in anti-dumping duties by the PRC Bureau of Industry Injury Investigation exists, then the average all-others rate which it has imposed on imports which originate in the USA and Japan would have to be the highest of all other types of rates per country of origin of imports which enter the domestic market for consumption of the PRC. The rationale behind this logic is very simple: the all others rate which is applied on imports which originate in the USA and Japan have the broadest reach of all imports whereon the PRC Bureau of Industry Injury Investigation imposed anti-dumping duties and would generate a higher rate of income per increase in the level of duty than

individual imports which originate in other countries of origin. Yet to infer any significant conclusions, the average all others rate would have to lay higher than the average individual rate and both rates would have to increase per the amount of anti-dumping duties which have been imposed per country of origin of imports which enter the domestic market for consumption of the PRC. Theretofore, figure forty-four, which is depicted hereunder, provides an overview of the extent wherein the PRC Bureau of Industry Investigation imposed different individual and country-wide anti-dumping rates per country of origin of products which enter the PRC. The spider plot looks at the various anti-dumping rulings of the Ministry of Commerce of the PRC which have been published over the course of January 2015 until November 2018.²¹⁹

Figure 44. Amount vs average final rate per CoO of imports into the PRC: 01-01-2015 until 01-11-2018

Source: the author's calculations based on the Public Announcements from the database of MofCom

²¹⁹ Sources (preliminary and definitive) are: 2015 Preliminary Rulings on Anti-dumping Investigations 15, 29 and 67 / 2016 Preliminary Rulings on Anti-dumping Investigations 9, 10, 42 and 49 / 2017 Preliminary Rulings on Anti-dumping Investigations 3, 32, 56, 70 and 72 / 2018 Preliminary Rulings on Anti-dumping Investigations 8, 38, 46, 49, 50, 61, 67 and 70 / 2015 Final Rulings on Anti-dumping Investigations 25 and 60 / 2016 Final Rulings on Anti-dumping Investigations 8, 31, 33 and 65 / 2017 Final Rulings on Anti-dumping Investigations 17, 61, 79 / 2018 Final Rulings on Anti-dumping Investigations 19, 23, 27, 40, 42, 43, 80, 81, 84

Figure forty-four provides a clear indication of discrimination in the imposition of final individual and all-others rates on the one hand and the height of anti-dumping duties per country of origin of imports under investigation on the other. After every country of origin in figure forty-four stands a number which represents the amount of anti-dumping duties which were imposed on imports therefrom. It clearly stands out that imports from countries of origin which have more often been subjected to final anti-dumping duties, have higher individual and all-others rates imposed on them. Furthermore, it is clearly visible that the average all-others final anti-dumping rates for every country of origin lays higher than the average individual final anti-dumping rate.

3.5 Anti-dumping duties

a. Divergence in rates of duties applied by DG Trade EU per phase, type & country of origin

A general distinction can be made between several types of anti-dumping duties under the same or different jargon: ad valorem tariffs (tariffs which are expressed as a percentage of the export price or normal value), non-ad-valorem tariffs (tariffs which are not expressed as a percentage of the export price or normal value: can be "compound", "mixed", "specific" or other forms based on technical factors such as composition),²²⁰ compound tariffs (tariffs which combine or subtract an "ad valorem" duty and a "specific" duty), mixed tariffs (tariffs which combine an "ad valorem" duty and a "specific" duty on the fulfilment of condition(s) either below or above specific thresholds) and specific tariffs (tariff rates which are applied as fixed amounts per quantity – such as \$100 per ton). The most prevalent type of anti-dumping duty goes ad valorem. For EU28 it is calculated as a percentage of the net, free-at-E.U. frontier cost-insurance-freight price. Furthermore, there exists a variable duty which usually takes the form of a set minimum import price for products being imported into the domestic market for consumption of the European Union. In the afore situation (un)related importers or trading companies in the domestic market for consumption in EU28 only have to pay duties when the export price of the exporter of the subject products into the European Union lays underneath the MIP. Figure forty-

Figure 45. Average rates of ad valorem and specific duties in the EU: 01-01-2015 until 01-11-2018

Source: Commission Implementing Regulations imposing duties on imports from the EUR-Lex database

²²⁰ Evenett, Simon J. and B. M. Hoekman, eds. *Economic development and multilateral trade cooperation*. The World Bank, 2005, p 101 on problems associated with specific, mixed and non-compound tariffs.

five, which is depicted on the previous page, provides an overview of the extent wherein the European Commission of the course of January 2015 until November 2018 imposed different provisional and definitive types of tariffs on imports entering the domestic market for consumption of EU28. Figure forty-five indicates that most anti-dumping measures concern ad-valorem duties (only two cases concerned minimum import prices).²²¹ Furthermore, figure forty-five clearly indicates that the Directorate General for Trade of the EU over the course of January 2015 until November 2018 imposed the highest provisional and definitive anti-dumping rates on a country-wide level. As has been mentioned earlier, the disparity in the height between the all others and other co-operator rates prompts further research.

b. Divergence in rates of duties applied by USDoC per phase, type & country of origin

To gain insight in the prevalence of differing heights of rates, figure 46, which can be found on the next page, gives an overview of rates imposed by USDOC. Figure forty-six unequivocally indicates that the US International Trade Administration by far imposed the highest average final individual and country-wide rates on imports which originate in the PRC. With thirty determinations of sales at less than fair value,²²² the PRC by far exceeds the second most prevalent country of origin whereon anti-dumping duties have been imposed. The Republic of

²²¹ Mavroidis, Petros C. "The Regulation of International Trade, Volume 1: GATT." (2016), p 83 Perhaps the minimal amount of Minimum Import Prices originates from their inconformity with Articles of the GATT:

"The Panel on EEC-Minimum Import Prices found that the requirement that importers of tomato concentrates provide additional "security" to guarantee that the price charged at the moment of import clearance of goods at the EU frontier plus the customs duty payable would equal or exceed a predetermined minimum import price was in violation of Article XI.1 of GATT (§ 4.9) The rationale for this finding is obvious: a minimum import price restricts entry, since all goods priced below the statutory minimum price will not access the market.

One might respond that customs duties are essentially "minimum import prices." In that case, why allow customs duties but not minimum import prices? What is good for the goose is good for the gander, as the popular saying goes.

First, customs duties and minimum import prices are not necessarily substitutes, as they could be complements. Minimum import prices could be imposed above and beyond customs duties if necessary, in order to ensure that the price of imports equals that of domestic goods. Second, minimum import prices are not formally customs duties, and as such, they do not have to respect the discipline imposed in Article II of GATT. Minimum import prices are not fixed by reference to the price of the imported good only, but rather by looking into the difference between the price of the domestic good and the price of the imported one. Typically, they represent the difference between the two prices. The only provision that can put a halt to similar practices is Article XI.1 of GATT. Finally, whereas customs are "negotiable," as trading nations can determine their level through exchange of concessions, the level of minimum import prices is unilaterally set by importers."

²²² Palmeter, N. David. *The WTO as a Legal System: Essays on International Trade Law and Policy*. Cameron May, 2003, p 16 explains the U.S. anti-dumping methodology: "The U.S. antidumping law provides for the imposition of a special duty to offset the margin of any "dumping" of imported merchandise. This is the amount by which the price of merchandise sold for export to the United States is less than its "fair" value, which normally is the price for comparable merchandise in the country of export. International price discrimination, then, is the gravamen of dumping. Those familiar with the domestic price discrimination statute, the Robinson-Patman Act, may assume that the antidumping law is similar. They would be mistaken. The antidumping law shares with Robinson-Patman the dubious premise that differential pricing is undesirable, but beyond that, the laws differ greatly."

Korea accounts for a mere seventeen impositions. Contrary to the impositions of the PRC Bureau of Industry Injury Investigation, the US International Trade Administration does not apply higher rates on a higher amount of impositions: the average final country-wide rate on products which originate in the Republic of Korea amount to a mere sixteen per cent. However, it does stand out that the US International Trade Administration imposed a staggering average rate of 195 per cent on imports which originate in the PRC. Presumably a certain level of tit-for-tat exists in the imposition of anti-dumping measures by the PRC Bureau of Industry Injury Investigation *vice versa* the US International Trade Administration: imports which originate from the USA also account for the highest number of impositions (58) at the highest rate of duty (65%) by the Ministry of Commerce of the PRC.

Figure 46. Average final ad valorem rates of duty imposed by USDOC: 01-01-2015 until 01-11-2018

Source: Final Determinations of Sales at Less Than Fair Value from the database of US ITA - USDOC

CHAPTER FOUR

4 Essentials of Anti-dumping Investigations initiated in EU28

4.1 Complainants: by or on behalf of the domestic industry

Paragraph four of Article 5 of the Anti-dumping Agreement indicates that an anti-dumping investigation may not be initiated unless an examination of the degree of support for, or opposition to, the application for the initiation of an anti-dumping investigation, expressed by domestic producers of the like product, confirms that the application is made by or on behalf of the domestic industry. In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques. An application is made by or on behalf of the domestic industry if domestic producers which are in favour of the application represent more than twenty-five per cent of the total production of the like product and account for more than fifty per cent of the output of domestic producers of a product identical to, comparable to or closely resembling the imports under consideration which expressed support for or opposition against the application.

To determine the validity of the initiation anti-dumping investigations which have been initiated by the Directorate General for Trade of the EU over the course of January 2015 until November 2018, figure forty-seven provides an overview of the extent wherein the Union industry which expressed support for the initiation of anti-dumping investigations accounts for the domestic output of a product identical to, comparable to or closely resembling the imports under consideration. Strikingly, it appears that the European Commission over the course of January 2015 November 2018 never expressed the extent wherein support makes up total support and

Figure 47. Degree of Union Industry support for A-D investigations: 01-01-2015 until 01-11-2018

Source: the author's calculations based on EC-Notices of Initiation of A-D proceedings E.C.

opposition to initiation in any provisional or definitive Commission Implementing regulations.

Figure forty-seven indicates in that more than fifty per cent of the anti-dumping investigations which were initiated by the European Commission, the Union industry which has expressed support for the initiation of the anti-dumping investigation accounted for little more than twenty-five per cent of the domestic output of the product identical to, comparable to or closely resembling the imports under consideration – the minimum threshold for the initiation of anti-dumping investigations by investigative authorities under paragraph four of Article 5 of the Anti-dumping Agreement. Furthermore, it was found that most domestic support was determined through associations of the domestic industry producing the product identical to, comparable to or closely resembling the imports under consideration. To determine whether the weak level of domestic industry support for the initiation of anti-dumping investigations is incidental or consecutive, figure forty-eight provides an annual overview of the average EU industry support.

Figure 48. Average Union industry support for A-D investigations: 01-01-2015 until 01-11-2018

Source: the author's calculations based on the notices of the initiations of A.-D. investigations by the E.C.

Figure forty-eight indicates that a low level of Union industry support for the initiation of anti-dumping investigations is primarily concentrated within the year 2016. The average yearly support for the initiation of anti-dumping investigations which were initiated over the course of 2015 until November 2018 extra 2016, has been more than fifty per cent. Figure forty-eight indicates that consecutiveness in a low level of support by the Union industry for the initiation of anti-dumping investigations which have been investigated is absent. The year 2016 appears to have been an anomaly. Nevertheless, the majority of low level of Union industry support for the initiation of anti-dumping investigations which were initiated by the European Commission

over the course of January 2015 until November 2018, dampens down the validity of investigations which have been initiated by the European Commission over the aforesaid period.

The notices of initiation of anti-dumping investigations from the European Commission frequent the notion "more than X % of Union industry support". The subtle phrase does not preclude that in certain cases indeed there is a higher amount of support for the initiation than merely 25 per cent. Presumably, the lower accreditation of Union industry support is borne out of the precautionary nature of the European Commission in order to prevent the subject accreditation to be challenged in court. It should be noted that the practice of choosing a lower standard of Union support in order to offset risks, impedes on the rights of parties without access to a more specific overview in the non-confidential file to have a clear understanding of the manner wherein the domestic industry actually perceives the importation of the deemed dumped imports. With an overview of the total support for the initiation of anti-dumping investigations which were initiated in the period January 2015 until November 2018, came the need to provide an overview of the extent wherein the average support for the initiation of anti-dumping investigations evolved over the period January 2015 until November 2018. Figure 48 provided an overview of evolution of the average extent to which the Union domestic industry supported all the anti-dumping investigations which were initiated in 2015, 2016, 2017 and midway 2018.

The overall weak Union industry support for the initiation of anti-dumping investigations prompted us to look into the extent wherein different types of parties lodged complaints over the course of January 2015 until November 2018. Three different categories of parties lodged complaints by or on behalf of the domestic industry which resulted in the initiation of anti-dumping investigations over the course of January 2015 until November 2018. The first category concerned associations of producers which represent certain sectors of the domestic industry of the European Union.²²³ An example thereof would be the European Steel Association (Eurofer) which represents the European iron and steel industries. The second category concerns domestic producers in the European Union (Union producers) who single-handedly apply for the initiation of an anti-dumping investigation. Most often these types of applicants

²²³ Mavroidis, Petros C., Patrick A. Messerlin, and Jasper M. Wauters. *The law and economics of contingent protection in the WTO*. Edward Elgar Publishing, 2010, p 138 clarifies the legitimacy of using support expressed by producers' associations on behalf of its members:

"The (Anti-dumping) Agreement does not explicitly require individual producers' support and appears to allow the authority to consider as sufficient the support expressed by producers' association on behalf of its members. A practice exists to consider the support expressed by the association as equivalent to the support expressed by all of the producers represented by this association, even though the association perhaps only supported the application following a small majority vote within the association. It has therefore been suggested to clarify the Agreement to require that the standing determination be based on the positions expressed by individual domestic producers, and that representation by trade associations should not be counted collectively when such determinations are made. TN/RL/GEN/23; TN/RL/GEN/69"

concern oligopolists or monopolists. The third category of parties which launched complaints in the period January 2015 until November 2018 concerned national associations of producers.

Figure forty-nine, which can be found hereunder, provides an overview of the different types of complainants which lodged complaints resulting in the initiation of anti-dumping investigations over the course of January 2015 until November 2018. Figure forty-nine clearly indicates that most applications for the initiation of anti-dumping investigations into imports entering the domestic market for consumption of EU28 were lodged by European Associations representing Union producers. The fact that more than fifty percent of all anti-dumping complaints were lodged by European Associations is worrisome, especially in light of the already low level of domestic industry support for the initiation of anti-dumping investigations ex figure forty-seven. A policy recommendation would therefore be to consult Union producers themselves more often on the desirability of the initiation of anti-dumping investigations. After all, if the Union industry does not significantly support the initiation of anti-dumping investigations, the initiation should be withheld not in the least place because of the potential adverse effects of impositions with respect to the functioning of the Union industry further down the supply chain.

Figure 49. Types of EU complainants in EC-initiated A-D investigations: 01-01-2015 until 01-11-2018

Types of EU complainants in A-D investigations initiated by the EC
01-01-2015 until 01-11-2018

Source: the author's calculations based on E.C. Notices of the initiation of A.-D. proceedings

4.2 Sampling of domestic industries, importers and exporting producers

Figure forty-nine, which can be found hereunder, provides an overview of the extent wherein the European Commission applied sampling in all the anti-dumping investigations which were initiated in the period January 2015 - November 2018.²²⁴ Terminated investigations have been treated separately and investigations without sampling are cases wherein provisional and / or definitive anti-dumping measures were applied without the use of sampling. Investigations wherein the Union producers and / or the exporting producers and / or the unrelated importers were sampled were treated as investigations wherein sampling was applied. Anti-dumping investigations on goods with multiple countries of origin were treated as separate investigations.

Figure 50. The use of sampling in A-D investigations initiated in the EU: 01-01-2015 until 01-11-2018

Source: the author's calculations based on regulations imposing provisional and definitive duties, notices of termination

Figure fifty clearly indicates that the extent wherein the European Commission applied sampling over the course of January 2015 until November 2018 by far exceeds the extent wherein the European Commission did not apply sampling. It remains to be seen why the European Commission makes excessive use of sampling in the anti-dumping investigations which it initiated over the course of January 2015 until November 2018. Perhaps this figure indicates that a thorough execution of anti-dumping investigations is increasingly burdensome for the

²²⁴ Mavroidis, Petros C., Patrick A. Messerlin, and Jasper M. Wauters. *The law and economics of contingent protection in the WTO*. Edward Elgar Publishing, 2010, p 200: "The Agreement allows the use of samples, as an alternative to the individual margin calculation for each exporter. When choosing the sample, an investigating authority must, in accordance with the second sentence of Art. 6.10 AD: (a) *either* choose a sample which is *statistically valid*, or (b) investigate the *largest percentage of the volume of exports* from the country in question which can be *reasonably* investigated. Notice the *or*: the two methods are substitutes. Recourse to basic econometrics seems warranted in order to define what is a statistically valid sample; however, the other method seems to leave more discretion to an investigating authority: the reasonableness test enshrined in there suggests that a number of factors might be relevant to justify the authority's course of action."

European Commission. The amount of anti-dumping investigations which were initiated over the course of January 2015 until November 2018 which did not result in the imposition of anti-dumping measures (ten cases were terminated) and wherein sampling has been applied (fourteen cases were sampled) is significant and would impede on the validity of the initiation of anti-dumping proceedings by the European Commission. The excessive use of sampling by the European Commission (only two cases where sampling was not applied) in concurrence with higher average all others rates corroborates the need for a closer examination of the method which the European Commission applied in constructing the all others rate out of samples.²²⁵ However, to determine whether further investigation into the method applied for the determination of the country-wide rate is necessary, it is necessary to discern wherefore which variables were sampled in the fourteen investigations where sampling was applied in figure 50.

Figure 51. Sampling of Interested Parties by the European Commission: 01-01-2015 until 01-11-2018

Source: the author's calculations based on regulations imposing provisional and definitive duties, notices of termination

²²⁵ Mavroidis, Petros C., Patrick A. Messerlin, and Jasper M. Wauters. *The law and economics of contingent protection in the WTO*. Edward Elgar Publishing, 2010, p 200, "The AB, in its report on *EC Bed Linen (Article 21.5 India)* provided some important clarifications as to whether, in a sampling situation, it suffices to examine the sampled exporters in order to be able to reach conclusions on injury and ultimately impose duties on all exporters or producers within the limits of Article 9.4 (of the AdA). The European Communities sampled Indian exporters. Of the five sampled, three were found to be dumping. The European Community did not impose duties on the two exporters found not to be dumping; it did impose the weighted average (of the duties imposed on the three 'dumpers') on the non-sampled Indian exporters. India protested. It stated that, during the investigation of Indian exporters of bed linen, 53 per cent of imports to the EC market were found not to be dumping. India did not call into question the methodology used by the European Community for sampling and did not attack the EC practice under Art. 6.10 or 9.4 AD either. In India's view, it was the injury analysis of the European Communities that was questionable: since Art: 3.2 AD requires investigating authorities to focus on the effects of dumped imports only, the European Community should have kept as a working hypothesis at this stage that 53 per cent of total Indian imports are not dumped, and, hence, should not be taken into account for the purpose of the injury analysis" The AB followed India's reasoning.

Figure fifty-one indicates that in most investigations wherein sampling has been applied, exporting producers, the Union industry and importers were sampled. The amount of cases wherein exporting producers have been sampled goes on par with the amount of cases wherein importers were sampled. The relatively high number of anti-dumping investigations (ten out of fourteen) wherein exporting producers have been sampled, tends to indicate that a method associated with sampling could have caused the significant difference between the individual, other co-operators and all-others rates which have been applied by the European Commission over the course January 2015 until November 2018. However, to understand the mechanics behind the usage of sampling by the European Commission, we need to look at the parameters of the samples. Table nine, which is depicted hereunder, provides a clear insight into the representativeness of the samples which have been applied in provisional Commission Implementing Regulations over the course of January 2015 until November 2018.

Table 9. Representativeness of samples in EC provisional regulations: 01-01-2015 until 01-11-2018

REPRESENTATIVENESS OF SAMPLES IN INITIATED EC PROVISIONAL REG.S <i>January 2015 until November 2018</i>						
Case N ^o ↓	Q Union Producers	% of Union production	Q exporting producers	% of total export to EU	Q unrelated importers	Q % of total EU import
EC Reg. 2016/18	5	35	2	-	1	-
EC Reg. 2016/113	4	90	-	-	-	-
EC Reg. 2016/262	-	-	3	90	-	-
EC Reg. 2016/1777	4	30	3	-	-	-
EC Reg. 2016/1778	5	45	3	57	-	-
EC Reg. 2016/1977	4	51	4	-	3	-
EC Reg. 2016/2005	3	85	-	-	-	-
EC Reg. 2016/2303	5	22,4	-	-	3	80
EC Reg. 2017/1444	4	30	3	-	-	-
EC Reg. 2017/1480	3	48	5	-	3	-
EC Reg. 2018/671	4	60	4	-	5	-
EC Reg. 2018/683	11	36	-	-	2	80
Average:	4.727273	51	3.375	73.5	2.833333	80

Table nine indicates, insofar information has been provided in provisional Commission Implementing Regulations over the course of January 2015 until November 2018, that the provisional samples of exporting producers and importers are far less representative than provisional samples of Union producers. A mere average of 3.375 exporting producers were included in samples which the European Commission applied in its provisional implementing regulations over the course of January 2015 until November 2018.²²⁶ Furthermore, whereas the European Commission disclosed the percentage of Union production which can be accredited to samples of Union producers of all Union producers which it sampled over the course of January 2015 until November 2018, it only disclosed the percentage wherein exporting producers account for the total export of the like product into the domestic market for

²²⁶ Commission Regulations 2016/113, 2016/2005, 2016/2303 and 2018/683 did not even indicate the amount of exporting producers which were included in the sample.

consumption of EU28 in two investigations.²²⁷ Furthermore, The European Commission only disclosed the extent wherein importers account for the total percentage of import into the domestic market for consumption of EU28 in two cases.²²⁸

The significant difference in the extent wherein the European Commission discloses the underlying representativeness of samples which are applied on Union producers *vice versa* exporting producers provides a strong indication that the European Commission might be transposing sampled rates (into the country-wide all others rate) which do not accurately reflect a fair share of the total importation of the like product from the specific country of origin into the domestic market for consumption of EU28. However, to substantiate the possibility of this afore assertion, it will be necessary to investigate the exact method wherewith the European Commission transposes sampled rates into the country-wide all-others rate.

Throughout the analyses of multiple Commission Implementing Regulations, it became apparent that the European Commission applies inconsecutive terms to describe consecutive practices. It stands out that the selection of a sample of exporting producers to determine the margin of dumping within a Regulation does not necessarily have to concern the sample of exporting producers which is actually applied to determine the margin of dumping within a Regulation. In [Commission Regulation \(EU\) 2018/683](#) of 4 May 2018, imposing a provisional anti-dumping duty on imports of certain pneumatic tyres originating the PRC, samples are selected provisionally (recital 35) and finally (recital 38). The sample within a provisional or definitive Commission Implementing Regulation might be selected provisionally as opposed to a final selection. However, the European Commission only marginally discloses whether a sample is selected provisionally or finally. The former does not necessarily have to be the latter and might cause confusion amongst interested parties who wish to gain insight in the calculation of the margin of dumping via samples.

In sum, over the course of January 2015 until November 2018, the European Commission seldom provided insight in the representativeness and therewith the validity of the samples which it selected finally as opposed to provisionally. Furthermore, the European Commission hardly discloses the percentual representativeness of samples of exporting producers and unrelated importers. In all the provisional Commission Implementing Regulations of anti-dumping investigations which were initiated in between January 2015 and November 2018, the European Commission only twice disclosed the relative percentual representativeness of total imports into the EU of sampled unrelated importers and exporting producers. This is in stark contrast with the relative percentual representativeness of Union production of sampled Union producers –

²²⁷ This concerned Commission Regulations 2016/262 and 2016/1778.

²²⁸ This concerned Commission Regulations 2016/2303 and 2018/683

which was disclosed in all except one anti-dumping investigation initiated in between January 2015 and November 2018. The extraordinary difference in disclosure tends to indicate that the European Commission is reluctant to disclose the validity of any fraction of an investigation which has a higher degree of likelihood to impede on the validity of the whole investigation. A policy recommendation would be to disclose the relative percentual representativeness of all final samples in all Commission Implementing Regulations, irrespective of the samples' usage to calculate margins of dumping or injury.

4.3 Margins of dumping: the illicit diffraction of transpositions

a. Methods applied by DG Trade EU for the calculation of margins of dumping

Pursuant to Article 2(11) of the Basic Anti-dumping Regulation the margins of dumping during the investigation period shall normally be established on the basis of a fair comparison between the weighted average prices of all export transactions to the Union and the weighted average normal value or through a comparison of individual normal values and individual export prices to the Union or on the basis of a comparison between a normal value established on an weighted average basis and prices of all individual export transactions to the Union. The last option is the exception to the general rule which entails a comparison between weighted average values.²²⁹

Figure 52. Methods of the EC to calculate provisional dumping margins: 01-01-2015 until 01-11-2018

Source: Regulations of the E.C. imposing provisional A-D measures publicized in the EUR-Lex database

Figure fifty-two, which is provided above, provides an overview of the extent wherein the European Commission applied different methods in calculating provisional margins of dumping in its determinations over the course of January 2015 until November 2018. Figure fifty-two indicates that most margins of dumping have been calculated through a comparison of the

²²⁹ World Trade Organisation. *WTO Analytical Index*. Vol. 1. Cambridge University Press, 2007, p 544

weighted average normal value with the weighted average export price. Particular market situations²³⁰ prompted the European Commission, in most anti-dumping investigations which were initiated between January 2015 until November 2018, to calculate normal values through producers of identical, comparable or closely resembling products in analogue countries.

b. Diffracting: the zeroing of marginal dumping margins in the residual dumping margin

Figure fifty-two indicates how the European Commission in the calculation of all its impositions of provisional and definitive all-others rates acted differently from sub-paragraph (i) of Article 9.4 of the Anti-dumping Agreement by applying a method which enables anti-dumping rates which exceed a "weighted average margin of dumping established" with respect to those exporters or producers who were investigated (the ceiling which was explained in recital 116 of US- Hot Rolled Steel) to be transposed to the all-others rate.²³¹ In twelve provisional Commission Implementing Regulations which were initiated over the course of January 2015 until November 2018, did the European Commission calculate the all others rate through TransaWa margins of dumping. TransaWa margins of dumping are calculated through a transposition of the broadest

²³⁰ Giannakopoulos, Themistoklis K. *A Concise Guide to the EU Anti-dumping/anti-subsidies Procedures*. Vol. 23. Kluwer Law International BV, 2006, p 26 with respect to a particular market situation:

"When there are no or insufficient sales of the like product in the ordinary course of trade, or where because of the particular market situation such sales do not permit a proper comparison, the normal value of the like product shall be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade to an appropriate third country, provided that those prices are representative.

A particular market situation for the product concerned within the meaning of the preceding sentence may be deemed to exist, inter alia, (i) when prices are artificially low, (ii) when there is significant barter trade, or (iii) when there are non-commercial processing arrangements."

²³¹ Sources: COMMISSION REGULATION (EU) 2016/113 of 28 January 2016 imposing a provisional anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China / COMMISSION IMPLEMENTING REGULATION (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation / COMMISSION IMPLEMENTING REGULATION (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China / COMMISSION REGULATION (EU) 2016/1977 of 11 November 2016 imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China / COMMISSION IMPLEMENTING REGULATION (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China / COMMISSION IMPLEMENTING REGULATION (EU) 2016/1777 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China / COMMISSION IMPLEMENTING REGULATION (EU) 2016/2005 of 16 November 2016 imposing a provisional anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea / COMMISSION IMPLEMENTING REGULATION (EU) 2016/2303 of 19 December 2016 imposing a provisional anti-dumping duty on imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus / COMMISSION IMPLEMENTING REGULATION (EU) 2017/1444 of 9 August 2017 imposing a provisional anti-dumping duty on imports of certain corrosion resistant steels originating in the People's Republic of China / COMMISSION IMPLEMENTING REGULATION (EU) 2017/1480 of 16 August 2017 imposing a provisional anti-dumping duty on imports of certain cast iron articles originating in the People's Republic of China / COMMISSION REGULATION (EU) 2018/683 of 4 May 20

weighted average export price to weighted average normal value which is calculated within the sample of cooperating exporting producers. An example of a TransaWa margin of dumping can be found in a recent Commission implementing regulation.²³² The [conjunction](#) in between recitals 125 and 126 of Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018 holds that if the volume of exports of sampled cooperating exporting producers to the Union expressed as a proportion of the total export volume from the country concerned to the Union is high, the Commission transposes the broadest margin of dumping in the sample of cooperating exporting producers on a country-of-origin-wide level. The transposition appears to run against sub-paragraph (i) of Article 9.4 of the Anti-dumping Agreement because it would enable the transposition of anti-dumping rates which exceed a "weighted average margin of dumping established" with respect to those exporters or producers who were investigated (the ceiling which was explained in recital 116 of US- Hot Rolled Steel) into the all-others rate.

There exists no causal justification for a country-wide transposition of the highest dumping margins found for sampled cooperating exporting producers when the import share of (un)sampled cooperating exporting producers of the total volume of import from the country of origin is high.²³³ A causal justification for such a transposition would only exist when the sampled cooperating exporting producer with the highest dumping margin would account for a very high import share of the total import volume of the subjected product from the country concerned. Therefore, the transposition should be the weighted average of the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid

²³² Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018

²³³ In effect, the practice concerns a certain form of zeroing within a sample. Albeit proscribed by the DSS of the WTO, some scholars argue that zeroing bears some economic legitimacy: Bentley, Philip, and Aubrey Silberston. *Anti-dumping and countervailing action: limits imposed by economic and legal theory*. Edward Elgar Publishing, 2007, p 74

"In the real world the ideal method of collecting anti-dumping duties cannot be achieved. One has therefore to live with either the prospective or the retrospective method, and their respective advantages and disadvantages. The ideal, namely the case where the customs officer reassesses normal value and export price for each import, is nevertheless a useful theoretical tool for dealing with difficulties that arise in the imposition and collection of anti-dumping duties.

One such difficulty is the question of undumped shipments and what is known as zeroing'. Under the prospective system, and before the Uruguay Round, the EU authorities used to calculate the weighted average dumping margin by treating all undumped shipments as having a dumping margin of zero; that is, on determining the weighted average they did not give the undumped shipments their arithmetic negative value. When one thinks about this, it has a certain logic. The purpose of determining a weighted average dumping margin as a percentage of the weighted average CIF price is to calculate the weighted average duty that would have been collected if each individual import made during the investigation period had been subject to a duty equal to the amount of dumping. It is then assumed that duty will continue to be due, in the future, at this same average rate per value CIF imported. In this model, the customs officer is not going to make a rebate of duty if an individual shipment has a negative dumping margin. He is simply not going to charge any anti-dumping duty. It is therefore logical that the dumping margin should be treated as zero, and not as a negative figure, when determining the weighted average dumping margin, corresponding to the flat rate of duty to be imposed in the future, that is to say, prospectively. Thus one could conclude that, from an economic point of view, it is correct to use zeroing in calculating the weighted average dumping margin."

(calculated through a comparison of the weighted average normal value (of each type of a like product (in an analogue country)) with the weighted average export price of a corresponding type of the product concerned). The current practice of the European Commission appears to run against recital twelve of article 2 of the Basic Anti-dumping Regulation: "Where dumping margins vary, a weighted average dumping margin may be established (for the all-others margin of dumping)". However, the European Commission only diffracts the margin of dumping from the sample of cooperating exporting producers for transposition into the all-others rate of duty without diffracting the share wherein the diffracted margin of dumping accounts for a share of total imports of identical, comparable or closely resembling products from the country of origin. The European Commission applies the un-fractured import share of the whole sample of cooperating exporting producers as a justification for the transposition of the margin of dumping of a cooperating exporting producer with the broadest margin of dumping to the all-others rate.

TransaWa margins of dumping generate country-of-origin-wide artificially inflated margins of dumping for exporting producers without any causal link with reality. The absence of any causal link with reality implies the risk of a country-of-origin-wide transposition of the broadest dumping margin within the sample of exporting producers which belongs to an exporting producer which accounts for a meagre fraction of the total import volume from the country concerned to the Union. This risk undermines the whole object and purpose for establishing margins of dumping. Yet nevertheless, this practice is incumbent in all twelve Commission Implementing Regulations imposing provisional anti-dumping duties between January 2015 and November 2018. With it, the impermissible risk of transposing exorbitant high margins of dumping of insignificant fractions of the total export volume (from the COO to the Union of that single sampled cooperating exporting producer) to significant fractions of the total export volume from the country of origin concerned to the Union. It would appear to run against the ceiling stipulated in sub-paragraph (i) of Article 9.4 of the Anti-dumping Agreement (the transposition of anti-dumping rates may not exceed the sampled weighted average margin of dumping – recital 116 of US- Hot Rolled Steel)²³⁴ for transpositions into the country-wide rates.

The worrisome practice of TransaWa margins of dumping through diffraction is made possible through the practice of the European Commission which looks at the proportion of the total import share of (un)sampled cooperating producers in the total export volume from the country concerned to the Union to determine whether the highest dumping margin in the sample of cooperating exporting producers is to be transposed to all-others on a country-of-origin wide scale. The European Commission renames the import share of sampled cooperating exporting products, the "level of cooperation", before it is applied as a "figment" to justify transposition

²³⁴ World Trade Organisation. *WTO Analytical Index*. Vol. 1. Cambridge University Press, 2007, pp 632, 633

of not the average of all margins of dumping from all cooperating exporting producers, but only the margins of dumping of the cooperating exporting producer which accounts for the broadest margin of dumping within the sample of cooperating exporting producers. Strikingly, all levels of cooperation in all investigations since January 2015 were found to be high and the European Commission transposed the highest margin of dumping which it found within the sample of cooperating exporting producers to all others in all investigations which it initiated in between January 2015 until November 2018. Not only would the current practice of diffraction run against sub-paragraph (i) of Article 9.4 of the Anti-dumping Agreement on the ceiling of transposable margins of dumping, it also contravenes the firmly established principle on fair comparison which is enshrined in paragraph 4 *juncto* subparagraph 4.2 of Article 2 of the Anti-dumping Agreement. Hereafter follow examples where the European Commission either applied diffraction or applied different, complex schemes of contrivances:

Recital 47 of Commission Regulation (EU) 2016/1977 of 11 November 2016:

"The level of cooperation in this case is high because the imports of the cooperating exporting producers constituted around 85 % of the total exports to the Union during the IP. On this basis, the Commission decided to base the residual dumping margin at the level of the sampled company with the highest dumping margin."²³⁵

c. Export price & normal value at differing levels of trade: inflating the margins of dumping

Another example of what appears to be a complex scheme of contrivances can be found in **Commission Implementing Regulation (EU) 2016/2005 of 16 November 2016**:²³⁶

²³⁵ COMMISSION REGULATION (EU) 2016/1977 of 11 November 2016 imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China

²³⁶ COMMISSION IMPLEMENTING REGULATION (EU) 2016/2005 of 16 November 2016 imposing a provisional anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea

Focal point of the determination of the margin of dumping at the cost insurance freight level - Union frontier duty unpaid, is the difference between the export price in the importing Member (EU28) and the normal value in the exporting Member (the Republic of Korea). Captive sales across the Union frontier level are not necessarily concluded at arm's length. After all, the sales price might be artificial because the sale takes place within the same group between an exporting producer and a related importer. Captive sales are therefore not eligible to be included in the determination of the export price for the calculation of the margin of dumping.²³⁷

In the investigation at hand, captive sales were made within the Hansol Group over the Union frontier level. It concerned sales of jumbo rolls to related parties for conversion into small rolls for resale. The mere fact that captive sales were made within a group for eventual free sales, would not justify the use of the captive sales prices as a benchmark for the determination of the export price within the calculation of the margin of dumping. In the case at hand the European Commission apparently included the lower price of captive sales within the calculation for the final determination of the weighted average export price. [Recital forty-six](#) explains the scheme:

"As explained in recital 25, 15 %-25 % of the Hansolgroup's exports to the Union were (direct or indirect) sales of jumbo rolls during the investigation period, whereas the remaining sales were sales of jumbo rolls to related parties that were converted and resold as small rolls. The above dumping margins have been weighted accordingly. This was done by applying the share of the jumbo rolls sales for direct or indirect sales to unrelated parties (i.e. 15 %-25 %) to the dumping margin calculated for jumbo rolls (0,5 %-5 %) and by applying the share of the jumbo rolls sales to related parties for conversion into and subsequent resale as small rolls to unrelated parties (i.e. 75 %-85 %) to the dumping margin calculated for jumbo rolls converted into small rolls (10 %-15 %)."²³⁸

The maximum combined margin of dumping within the calculation stated above would be $(85\% \times 15\%) + (15\% \times 5\%) = 13.5$ per cent with the former being the captive margin of dumping (which was not eligible for inclusion) and the latter being the free margin of dumping (which was

²³⁷ Van Bael, Ivo, and Jean-François Bellis. *EU anti-dumping and other trade defence instruments*. Kluwer Law International BV, 2011, p 247 provides the EC's rationale to exclude captive sales:

"In Rebars, the Commission considered that the distinction between captive and free markets was relevant for the injury analysis because products destined for captive use were not exposed to direct competition from imports and prices that were set within the group were not reliable. In contrast, the production destined for free market sales was in direct competition with imports of the product concerned, and prices were free market prices. The issue of captive sales is thus relevant not only for the correct assessment of the volume of imports in market share but also for the injury assessment. Indeed, as the logic underlying the exclusion of captive sales is that they are not in competition with imports, the effect of imports cannot be assessed vis-à-vis the captive market."

²³⁸ COMMISSION IMPLEMENTING REGULATION (EU) 2016/2005 of 16 November 2016 imposing a provisional anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea, recital 47

eligible for inclusion. The minimum combined margin of dumping within the calculation stated above would be $(75\% \cdot 10\%) + (25\% \cdot 0.5\%) = 7.625$ per cent. The European Commission established a dumping margin of 12.1 per cent. Apparently, the European Commission included captive sales within the overall calculation of the margin of dumping and also decided to apply a very high rate within the discretion which it afforded itself – a discretion apparently running against paragraph four of Article 2 of the Anti-dumping Agreement because the comparison between the normal value and the export price has to be made at the same level of trade – which implies that captive sales have to be excluded from the calculation of the margin of dumping.²³⁹ The inclusion of the dumping margin calculated for jumbo rolls converted into small rolls (10 %-15 %) into the combined dumping margin would be prohibited insofar they were captive sales since these did not occur at the same level as the normal sales. Paragraph four of Article two of the Anti-dumping Agreement explains how the comparison must be made at the same level of trade:

"A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties."

In the case at hand it appears that the European Commission would have to live up to the principles of a fair comparison insofar the dumping margin which it calculated for jumbo rolls converted into small rolls were based on the captive sales instead of the free sales of small rolls. The sheer difference between the margin of dumping which is calculated for free sales of jumbo rolls (a mere 0,5 % to 5 %) and the margin of dumping which is calculated for captive sales of jumbo rolls converted into small rolls (10 %-15 %) and the absence of any further indication on whether the captive sales price of jumbo rolls or the free sales price of converted small rolls has been used, provides a very strong presumption that the European Commission included captive

²³⁹ Andersen, Henrik. *EU dumping determinations and WTO law*. Kluwer Law International BV, 2009, p 208
the same level of trade is normally the *ex-factory* level

sales prices in the determination of the margin of dumping of jumbo rolls which have been converted into small rolls for resale in the free market – which would be prohibited under the prescript of paragraph four of Article two of the Anti-dumping Agreement.

It appears nearly beyond any reasonable doubt that EU28 calculated the weighted average margin of dumping through the inclusion of the margin of dumping which was calculated through a comparison of the normal value with an export price of unrealised, captive sale of jumbo rolls destined for inter-group conversion into small rolls for resale on the free market. If true, it would imply that the European Commission artificially deflated the export price through the inclusion of related sales of jumbo rolls destined for conversion into small rolls, which in comparison with the normal value artificially inflated the margin of dumping. The captive sales prices of jumbo rolls which had not left the group for conversion into small rolls would not be established at arm's length and inclusion into the margin of dumping which was weighted into the average combined margin of dumping would be prohibited. Even though the practice of including captive sales prices into a combined margin of dumping would likely be malfeasant, the EC apparently did not apply it in any other provisional Commission Implementing Regulations since 2015.²⁴⁰ It remains quite unclear, therefore, which exact rationale of the European Commission caused it to deviate from the standard method which it applies for the calculation of margins of dumping.

²⁴⁰ Van Bael, Ivo, and Jean-François Bellis. *EU anti-dumping and other trade defence instruments*. Kluwer Law International BV, 2011, p 283 for the rationale & examples where the EC did not include captive sales

4.4 Market economy treatment of exporting producers

a. Inflating the normal value: on the choice to apply better developed analogue countries

Article 2(7)(b) of the EU Basic Anti-dumping Regulation explicates the circumstances under which market economy treatment²⁴¹ will be granted to exporting producers of imports under investigation. Article 2(7)(b) of the EU Basic Anti-dumping Regulation read as follows:

"In anti-dumping investigations concerning imports from the People's Republic of China, Vietnam and Kazakhstan and any non-market-economy country which is a member of the WTO at the date of the initiation of the investigation, the normal value shall be determined in accordance with paragraphs 1 to 6, if it is shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in accordance with the criteria and procedures set out in point (c), that market-economy conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When that is not the case, the rules set out under point (a) shall apply."

Article 2(7)(b) of the EU Basic Anti-dumping Regulation reads that if market-economy conditions do not prevail for exporting producers from the PRC, Vietnam, Kazakhstan and any other non-market economy country, Article 2(7)(a) of the EU Basic Anti-dumping Regulation shall apply. Article 2(7)(a) of the EU Basic Anti-dumping Regulation reads as follows:

" (a) In the case of imports from non-market-economy countries (1), the 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 Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin. An appropriate market-economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time limits. Where appropriate, a market-economy third country which is subject to the same investigation shall be used. The parties to the investigation shall be informed shortly after its initiation of the market-economy third country envisaged and shall be given 10 days to comment."

²⁴¹ United Nations Staff. *Asia-Pacific Development Journal*. United Nations Publications, 2003, p 283: "If a Chinese company can prove that its export activity is not subject to state interference, it can apply for individual treatment. When granted individual treatment, the anti-dumping margin of the company concerned will be established by comparing its own export prices and normal prices from the analogue country. This is an option open to exporting producers who may not be able to meet all the criteria for full market economy treatment. A full market economy treatment is granted when a company can show that neither its domestic nor its export activities are subject to state interference. While not granted individual treatment, a countrywide dumping margin is normally calculated for all Chinese firms comparing analogue country prices and importing prices in EU based on the information available."

The method which is described in Article 2(7)(a) of the EU Basic Anti-dumping Regulation appears to run against paragraph two of Article 2 of the Anti-dumping Agreement. After all, paragraph two of Article 2 of the Anti-dumping Agreement clearly indicates that when a particular market situation in the domestic market of the exporting country, sales of the like product in the ordinary course of trade in the domestic market for consumption of the exporting country do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported (from the country of origin) to an appropriate third country,²⁴² provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Paragraph two of Article 2 of the Anti-dumping Agreement provides a restrictive set of options. Nowhere does paragraph two of Article 2 of the Anti-dumping Agreement in the case of a particular market situation allow direct recourse to prices or constructed values in a market economy third country. The rationale: recourse to prices or constructed values in a market economy third country may, by reason of differing levels of economic development, impede on the validity of the normal value. Regardless thereof, Article 2(7)(a) of the EU Basic Anti-dumping Regulation appears to contravene a just implementation of paragraph two of Article two of the Anti-dumping Agreement and would be condemned by the WTO Dispute Settlement Body. From the onset, it appears that EU28 drafted Article 2(7)(a) of the EU Basic Anti-dumping Regulation in deliberate defiance of paragraph two of Article two of the Anti-dumping Agreement. It is true that Article 15(a) of China's Accession Protocol allows normal value for the PRC to be based on prices other than domestic prices. However, the wide discretion in Article 15(a) appears to give no basis for a deviation from the basic requirement in Article 2 of the Anti-dumping Agreement to determine normal value through a comparable price of the like product when it is exported (from the COO) to an appropriate third country – especially in light of the foregoing rationale.²⁴³

To gain a thorough understanding of EU28's practice under Article 2(7)(a) of the EU Basic Anti-dumping Regulation figure fifty-two, which is depicted on the next page, provides an overview of the extent wherein the European Commission chose different types of analogue countries in the determination of the normal value ex Article 2(7)(a) of the EU Basic Anti-dumping Regulation. The dispersion of analogue countries has been divided into the countries of origin

²⁴² Not 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 Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin – as per Article 2(7)(a) of the EU Basic Anti-dumping Regulation.

²⁴³ Some scholars argue that this discretion extends to the analogue country method: see Andersen, Henrik. *EU dumping determinations and WTO law*. Kluwer Law International BV, 2009, pp 297 and 298

of the imports under consideration. It concerned countries of origin wherefore the European Commission deemed that a particular market situation, which justified the choice of third countries for the determination of normal value, existed. Figure fifty-three was graphed through all the provisional Commission Regulations implemented in January 2015 to November 2018.²⁴⁴

Figure 53. Analogue countries chosen for Market Economy Treatment: 01-01-2015 until 01-11-2018

Source: Regulations of the E.C. imposing provisional A-D measures publicized in the EUR-Lex database

²⁴⁴ Sources: Recital 30 of COMMISSION REGULATION (EU) 2016/113 of 28 January 2016 imposing a provisional anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China / Recital 34 of COMMISSION IMPLEMENTING REGULATION (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation / Recital 45 of COMMISSION IMPLEMENTING REGULATION (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China / Recital 28 of COMMISSION REGULATION (EU) 2016/1977 of 11 November 2016 imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China / Recital 43 of COMMISSION IMPLEMENTING REGULATION (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China / Recital 52 of COMMISSION IMPLEMENTING REGULATION (EU) 2016/1777 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China / Recital 34 of COMMISSION IMPLEMENTING REGULATION (EU) 2016/2303 of 19 December 2016 imposing a provisional antidumping duty on imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus / Recital 43 of COMMISSION IMPLEMENTING REGULATION (EU) 2017/1444 of 9 August 2017 imposing a provisional anti-dumping duty on imports of certain corrosion resistant steels originating in the People's Republic of China / Recital 83 of COMMISSION IMPLEMENTING REGULATION (EU) 2017/1480 of 16 August 2017 imposing a provisional anti-dumping duty on imports of certain cast iron articles originating in the People's Republic of China / Recital 112 of COMMISSION REGULATION (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on import of certain pneumatic tyres, new or rethreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China, and amending Implementing Regulation (EU) 2018/163 / Recital 103 of COMMISSION IMPLEMENTING REGULATION (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/671

Figure fifty-three indicates that most of the imports which originate in non-market economies and whereupon anti-dumping measures were imposed originate in the PR of China. Over the course of January 2015 until November 2018, analogue countries were chosen in a staggering thirteen out of fourteen investigations. Most analogue countries which have been chosen concerned developed economies: USA three investigations, Canada two investigations, Japan two investigations, Canada one investigation, Australia one investigation. The normal value of products which are produced in developed countries is likely to be higher than the normal value in BRICS countries such as the PRC. The result would be that the difference with the export price may increase and result in an inflated margin of dumping. The issue becomes ever more pressing since EU28 decided to determine analogue normal values in nearly all the anti-dumping investigations which it initiated in between January 2015 until November 2018.

Figure fifty-four, which is depicted hereunder, provides a clearer overview of the countries of origin of imports wherefore the European Commission chose different analogue countries in determining the normal value of imports which originate in countries which were not granted market economy status. All the regulations imposing provisional anti-dumping measures over the course of January 2015 until November 2018 are reflected in the diagram of figure fifty-four. For each investigation which has been included in figure fifty-four, the analogue country which was chosen in the preliminary stage has been represented in figure fifty-three. For reasons of practicability, figure fifty-four does not include anti-dumping investigations which impose definitive measures. Anti-dumping regulations which impose definitive measures merely confirm the analogue country choices at the preliminary stages, making inclusion impracticable.

Figure 54. CoO of imports whereon the EC applied analogue countries: 01-01-2015 until 01-11-2018

Countries of origin of imports which the EC deemed NME's and whereon
the EC applied analogue countries for MET
01-01-2015 until 01-11-2018

Source: Regulations of the E.C. imposing provisional A-D measures publicized in the EUR-Lex database

b. On the lapse of section 15 of the Protocol of Accession of the PRC to the WTO

Figure fifty-four further indicates that nearly all choices for analogue countries (eighty-two per cent) by EU28 over the course of January 2015 until November 2018, concerned imports which originate in the PRC. The exorbitant extent wherein analogue normal values were calculated as a means to determine the margin of dumping of imports, especially where it concerned imports which originate in the PRC, in combination with the majority of cases wherein developed countries were chosen as analogue countries, might indicate a certain degree of partiality in the determination of normal values over the course of January 2015 until November 2018. This finding is further strengthened in light of the fact section fifteen of the Protocol of Accession of the PRC to the WTO lapsed on 11 December 2016. Therefore, a particular market situation in the PRC cannot be deemed to exist *per se* and the European Commission would have to apply domestic prices and costs of Chinese producers to establish the normal value.

Through reasons which appear to vary with every investigation, the European Commission refuses to grant the PRC automatic market economy status and applies analogue countries in the determination of normal value – wherefore there is no legal basis in the Anti-dumping Agreement of the WTO. In [recital 76](#) of Commission Implementing Regulation (EU) 2017/1480 of 16 August 2017 imposing a provisional anti-dumping duty on imports of certain cast iron articles originating in the PRC, the European Commission simply did not discuss the claim: it simply reiterated its prior stance on the matter. In [recital 108](#) of Commission Implementing Regulation (EU) 2017/141 of 26 January 2017 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the PRC, the Commission denies market economy treatment by simply noting that it has no discretion on whether or not to apply the current rules as set out in the basic Regulation. In [recitals 76 and 77](#) of Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the PRC, the European Commission applied yet another reasoning to refuse market economy treatment by simply stating that the Notice of Initiation was published on a date after the date wherein legislation came in effect which altered Article 2(7)(a) and (b) of the EU Basic Anti-dumping Regulation. Once again, the European Commission apparently fails to indicate why market economy conditions do not prevail *per se* for exporting producers of products which originate in the PRC. In [recital 76](#) of Commission Implementing Regulation (EU) 2017/1480 of 16 August 2017 imposing a provisional anti-dumping duty on imports of certain cast iron articles originating in the PRC, the Commission only states that pursuant to Article 2(7) of the basic Regulation, normal value was determined on the basis of data from an analogue country. The European Commission consecutively fails to indicate the exact grounds for denying market economy treatment in spite of the lapse of section fifteen of the C.A.P. on 11 December 2016.

4.5 Individual treatment of exporting producers

a. The indiscriminate application of criteria to deny Market Economy Treatment

Ex Article 2(7)(d) of the EU Basic Anti-dumping Regulation, when the European Commission determines that a particular market situation exists, the European Commission limits its determination of normal value to the parties included in the investigation (read: the sampled cooperating exporting producers) and any producer which receives individual treatment ex Article 17(3) of the EU Basic Anti-dumping Regulation. Article 17(3) of the EU Basic Anti-dumping Regulation reads:

"3. In cases where the investigation has been limited in accordance with this Article, an individual margin of dumping shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this Regulation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time."

The normal values which are established through Article 17(3) of the EU Basic Anti-dumping Regulation will then be compared with the individual export prices to the Union on a transaction-to-transaction basis.²⁴⁵ The investigation will subsequently be terminated "where the margin is below 2 per cent for individual exporters".²⁴⁶ Where the individual dumping margin is not found to be *de minimis*, "individual duties shall be applied to imports from any exporter or producer which is granted individual treatment".²⁴⁷ A review shall also be carried out for the purpose of determining individual margins of dumping for new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based.²⁴⁸ However, once an individual margin of dumping is established, it remains far from certain that it will be upheld. Anti-dumping duties not exceeding the residual anti-dumping duty imposed in accordance with Article 9(5) may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place.²⁴⁹

We will now look closer into the legal practice for individual treatment through the EU Basic Anti-dumping Regulation. Therefore, figure fifty-five which is depicted on the next page,

²⁴⁵ See Article 2(11) of the EU Basic Anti-dumping Regulation

²⁴⁶ See Article 9(3) of the EU Basic Anti-dumping Regulation

²⁴⁷ See Czako, Judith, Johann Human, and Jorge Miranda. *A handbook on anti-dumping investigations*. Cambridge University Press, 2003, p 323 on practical examples with respect to the *de minimis* calculation and see Article 9(6) of the EU Basic Anti-dumping Regulation

²⁴⁸ See Article 11(4) of the EU Basic Anti-dumping Regulation

²⁴⁹ See Article 13(1) of the EU Basic Anti-dumping Regulation

provides an overview of the criteria and other reasons through which the European Commission denied Individual Treatment to exporters in the preliminary and final stage of anti-dumping investigations by looking at Commission Implementing Regulations imposing provisional and definitive measures over the course of January 2015 until November 2018.

Figure 55. The EC's denial of MET per criterion & other reasons: 01-01-2015 until 01-11-2018

Source: the author's calculations from Provisional & Definitive Commission Implementing Regulations

Figure fifty-five clearly indicates that a significant amount of exporting producers either did not submit market economy treatment claim forms for individual treatment or withdrew the request for market economy treatment. Since it usually is in the best interest of exporting producers to be granted individual treatment, the reason behind the significant extent wherein exporting producers have not applied for individual treatment should be researched. A recommendation for the European Commission would be to double check whether market economy claim forms for individual treatment duly specify the benefit of individual treatment.²⁵⁰

The criteria upon which the European Commission denies market economy claim forms for individual treatment are stipulated in Article 2(7)(c) of the EU Basic Anti-dumping Regulation. The chapeau of Article 2(7)(c) of the EU Basic Anti-dumping Regulation indicates that a claim must be made in writing and contain sufficient evidence that the producer operates under market-economy conditions. Article 2(7)(c) of the EU Basic Anti-dumping Regulation specifies five criteria for exporting producers to be granted individual treatment through market economy claim forms. The first criterion holds that decisions of firms regarding prices, costs and

²⁵⁰ See McGovern, Edmond. *EU Anti-dumping and trade defence law and practice*. Globefield Press, 2018, p 39 for an example of a MET claim form: clearly no benefit is specified.

inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, must be made in response to market signals reflecting supply and demand, and without significant State interference in that regard, and costs of major inputs substantially reflect market values. In two of all Commission Implementing Regulations imposing provisional and definitive measures over the course of January 2015 until November 2018 did the European Commission apply the first indent of Article 2(7)(c) of the Basic Anti-dumping Regulation to deny exporting producers individual treatment.²⁵¹

The second criterion holds that firms must have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes. In two of all Commission Implementing Regulations imposing provisional and definitive measures over the course of January 2015 until November 2018 did the European Commission apply the second indent of Article 2(7)(c) of the Basic Anti-dumping Regulation to deny exporting producers individual treatment.²⁵²

The third criterion holds that the production costs and financial situation of firms may not be 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. In four of all Commission Implementing Regulations imposing provisional and definitive measures over the course of January 2015 until November 2018 did the European Commission apply the third indent of Article 2(7)(c) of the Basic Anti-dumping Regulation to deny exporting producers individual treatment.²⁵³

²⁵¹ See COMMISSION REGULATION (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China, and amending Implementing Regulation (EU) 2018/163 and COMMISSION IMPLEMENTING REGULATION (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/671

²⁵² See COMMISSION REGULATION (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China, and amending Implementing Regulation (EU) 2018/163 and COMMISSION IMPLEMENTING REGULATION (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China

²⁵³ See COMMISSION REGULATION (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China, and amending Implementing Regulation (EU) 2018/163 and COMMISSION IMPLEMENTING REGULATION (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/671 and COMMISSION IMPLEMENTING REGULATION (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China

The fourth and fifth criterions hold that the firms concerned must be subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms, and that exchange rate conversions have to be carried out at the market rate. In only two of all Commission Implementing Regulations imposing provisional and definitive measures over the course of January 2015 until November 2018 did the European Commission apply all five indents of Article 2(7)(c) of the Basic Anti-dumping Regulation to deny exporting producers individual treatment.²⁵⁴ The current practice of the European Commission, which makes individual treatment dependent on the fulfilment of self-stipulated criterions within the framework of market economy treatment appears to be in breach of paragraph ten of Article six of the Anti-dumping Agreement. Paragraph ten of Article 6 of the Anti-dumping Agreement stipulates the exact conditions for individual treatment.

c. The incompatibility between article 2 of the AdA and recourse to analogue normal values

The chapeau of paragraph ten of Article 6 of the Anti-dumping Agreement prescribes that individual treatment must be granted to every known exporter or producer concerned, regardless of the existence of a particular market situation ex paragraph two of article 2 of the Anti-dumping Agreement, unless the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable.²⁵⁵ If the determination would become impracticable, investigative authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated. Impracticability as a prerequisite to deny individual treatment has no correlation whatsoever with the criterions formulated by the

²⁵⁴ Bungenberg, Marc, et al., eds. *The future of trade defence instruments: global policy trends and legal challenges*. Springer, 2018, p 65 elaborates on the country-wide variant of these five criteria (according to the EU the PRC did not fulfil these criteria:

"1. A low degree of government influence over the allocation of resources and decisions of enterprises, whether directly or indirectly (e.g. through public bodies), for example through the use of state-fixed prices trade or currency regimes;
2. An absence of state-induced distortions in the operation of enterprises linked to privatisation and the use of non-market trading or compensation or discrimination in the tax system;
3. The existence and implementation of a transparent and non-discriminatory company law which ensures adequate corporate governance (application of international accounting standards, protection of shareholders, public availability of accurate company information);
4. The existence and implementation of a coherent, effective and transparent set of laws which ensure the respect of property rights and the operation of a functioning bankruptcy regime; and
5. The existence of a genuine financial sector which operates independently from the state and which in law and practice is subject to sufficient guarantee provisions and adequate supervision."

²⁵⁵ Capaldo, Giuliana Ziccardi, ed. *The Global Community Yearbook of International Law and Jurisprudence 2018*. Oxford University Press, USA, 2019, p 495 on the interpretation of the term 'impracticable'

European Commission to determine whether exporting producers operate under market economy conditions.

The EU's criteria to determine whether exporting producers operate under market economy conditions can only be shoved under the phrase "particular market situation" ex paragraph two of Article 2 of the Anti-dumping Agreement – an Article which has no bearing whatsoever on the determination of individual treatment. The latter matter becomes ever more pressing when one reads the chapeau of paragraph ten of Article 6 of the Anti-dumping Agreement in conjunction with subparagraph two of paragraph ten of Article 6 of the Anti-dumping Agreement:

"In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged."

The chapeau of paragraph ten of Article 6 of the Anti-dumping Agreement has to be read in opposition to subparagraph two of paragraph ten of Article 6 of the Anti-dumping Agreement: the latter concerns the situation wherein an exporting producer submits the necessary information in time for that information to be considered during the course of the investigation. In the latter case paragraph ten of Article 6 of the Anti-dumping Agreement nudges up the thumbscrew on investigative authorities by imposing an even more stringent condition for exclusion from individual treatment: the individual examination would have to be unduly burdensome to the investigative authorities and prevent the timely completion of the investigation.

Instead of impracticability, which is the condition for investigative authorities to deny individual treatment in the absence of submission of necessary information (and not the market economy treatment criteria in Article 2(7)(c) of the EU Basic Anti-dumping regulation), in the presence of necessary information investigative authorities may not deny individual treatment if individual examination would not be unduly burdensome to the investigative authorities. Instead of merely unduly burdensome to authorities, the individual examination would also have to prevent a timely completion of the anti-dumping investigation. To corroborate the previous remark that individual treatment would be more beneficial for exporting producers, it is necessary to provide a complete overview of the extent wherein the European Commission applies different rates to exporters which were granted individual treatment.

Table ten, which is provided on the next page, provides an overview of the extent wherein different rates were applied on exporting producers which were granted individual treatment as compared to the country-wide residual dumping margin imposed on all others. The averages have been taken from the highest and lowest individual duty. Other cooperating producers were not counted as individually treated. Sampled cooperating producers were included within the individual treatment. Other cooperating producers were not regarded to be individually treated.

Table 10. A-D proceedings where DG Trade EU granted or denied IT: 01-01-2015 until 01-11-2018

INITIATED A-D PROCEEDINGS WHERE DG TRADE EU GRANTED OR DENIED IT						
<i>January 2015 until November 2018</i>						
Case N ^o ↓	Amount of IT granted	Lowest IT duty imp.	Highest IT duty imp.	Average of LHIIIT duties	All others duty imp.	Average IT duty rate as % of all other duty rate
Provisional regulations						
2016/18	2	14%	16%	15%	16%	93%
2016/113	6	9%	13%	11%	13%	85%
2016/262	3	55%	59%	57%	59%	97%
2016/1777	3	65%	74%	69%	74%	94%
2016/1778	6	13%	23%	18%	23%	79%
2016/1977	4	44%	79%	61%	81%	76%
2016/2005	1	12%	12%	12%	12%	100%
2016/2303	1	13%	13%	13%	13%	100%
2017/1444	8	17%	29%	23%	29%	80%
2017/1480	5	25%	43%	34%	43%	80%
2018/671	4	22%	84%	53%	84%	63%
2018/683	4	57%	82%	70%	82%	85%
Average	3.916667	29%	44%	36%	44%	86%
Definitive regulations						
2016/1159	1	62%	62%	62%	-	-
2016/1246	6	18%	23%	20%	23%	91%
2016/1247	3	59%	55%	57%	59%	96%
2016/1328	2	20%	20%	20%	22%	89%
2016/1328	2	19%	34%	26%	36%	73%
2017/141	2	0%	5%	3%	12%	21%
2017/141	4	31%	55%	43%	65%	66%
2017/336	3	65%	74%	69%	74%	94%
2017/649	6	18%	36%	27%	36%	75%
2017/763	1	10%	10%	10%	10%	100%
2017/804	5	29%	55%	42%	55%	77%
2017/1019	1	11%	11%	11%	11%	100%
2017/1578	3	43%	80%	61%	80%	77%
2017/1578	4	77%	175%	126%	179%	70%
2017/1795	5	53%	63%	58%	63%	92%
2017/1795	1	58%	58%	58%	58%	100%
2017/1795	2	18%	97%	57%	97%	59%
2017/1795	1	61%	61%	61%	61%	100%
2018/140	5	16%	38%	27%	38%	70%
2018/186	8	17%	28%	23%	28%	81%
2018/1579	4	43%	62%	52%	62%	85%
Average	3.285714	35%	52%	43%	53%	81%

Table ten indicates that the average individual rate in both provisional and definitive Commission Implementing Regulation has been lower than the residual rate of duty. Unsurprisingly, the provisional individual rate of duty expressed as a percentage of the provisional residual rate of duty lay higher than the definitive individual rate of duty expressed

as a percentage of the definitive residual rate of duty. It would make sense that a definitive imposition of the all-others rate of duty would be distanced further from the definitive imposition of the individual rate of duty (difference: 19%) than the distance between the provisional imposition of the all-others rate of duty and the provisional imposition of the individual rate of duty (difference: 14 %). Both inferences tend to indicate that individual treatment is more likely to yield lower margins of dumping and thus would be more preferable for exporting producers. The rates which are presented in table ten were sourced from all Commission Implementing Regulations imposing provisional and definitive measures over the course of January 2015 until November 2018.²⁵⁶

The rationale underlying Commission decisions to deny individual treatment is distorted through transposition of market economy treatment criteria. Nevertheless, closer inspection of the application of the criteria by the European Commission yields staggering findings. In [recital 65](#) of Commission Implementing Regulation (EU) 2017/1480 of 16 August 2017 imposing a provisional anti-dumping duty on imports of certain cast iron articles originating in the PRC, for instance, state interference under criterion 1 of Article 2(7)(c) of the EU Anti-dumping Agreement was based on the simple notion that one of the new owners had links to the State and the Communist Party of China. The Commission did not disclose how ownership of a person with links to the government would imply state interference under criterion 1 of Article 2(7)(c) of the EU Anti-dumping Agreement. For other criteria the Commission simply places the burden of proof in the determination of whether market economy conditions prevail for individual treatment in the hands of the exporting producers.

Surely the *onus probandi* should rest in the hands of the European Commission to prove that individual treatment is not warranted. After all, the chapeau of paragraph ten of Article 6 of the Anti-dumping Agreement in conjunction with subparagraph two of paragraph ten of Article 6 of the Anti-dumping Agreement clearly indicates that the European Commission needs to substantiate impracticability or undue burdens and the prevention of a timely completion of an investigation were it to deny individual treatment to exporting producers. However, in practice the European Commission consistently places the burden of proof in the hands of exporting producers. Another example thereof would be [recital 94](#) of Commission Regulation (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on imports of certain pneumatic tyres originating in the PRC where the European Commission denied individual treatment because groups failed to demonstrate, either individually or as a group, that they had

²⁵⁶ See Commission Implementing Regulations 2016/18, 2016/113, 2016/262, 2016/1159, 2016/1246, 2016/1247, 2016/1328, 2016/1777, 2016/1778, 2016/1977, 2016/2005, 2016/2303, 2017/141, 2017/336, 2017/649, 2017/763, 2017/804, 2017/1019, 2017/1444, 2017/1480, 2017/1578, 2017/1795, 2018/140, 2018/186, 2018/671, 2018/683, 2018/1579

one set of clear set of accounts that were independently audited in line with international accounting standards. Because both groups failed to demonstrate that they were not subjected to significant distortions carried over from the former non-market economy system, criterion three for market economy treatment as individual exporting producer apparently was not met. It appears that the European Commission goes against the method which the Anti-dumping Agreement prescribes for the determination of whether individual treatment is warranted or not. It would be a worrisome trend if the European Commission consecutively places the onus on exporting producers to evidence that market economy conditions prevail. In [recital 83](#) of Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the PRC the European Commission simply found that criterion one was not fulfilled because the group had purchased products whose prices were affected by significant distortions of the prices of raw material due to State interference. However, the Commission omitted to substantiate how the State interference had exactly resulted in the significant distortions of the prices of the raw materials.

4.6 Determinations of normal values

a. Various methods applied by DG Trade EU to calculate normal values

Table eleven, which is depicted hereunder, provides insight in the extent wherein the European Commission diverts from the method which the Anti-dumping Agreement of the WTO prescribes for the determination of normal value. Therein one can find an overview of all methods which the European Commission applied in the determination of normal value over the course of January 2015 until November 2018. A distinction has been made between the Commission Implementing Regulations imposing provisional and definitive anti-dumping measures. It appears that the definitive regulations often confirm the prior methods which have been applied to determine the normal value in the provisional phase of the same anti-dumping investigations.

Table 11. Methods applied to determine the NV in EC cases initiated in: 01-01-2015 until 01-11-2018

METHODS APPLIED BY THE EC TO DETERMINE THE NORMAL VALUE							
January 2015 until November 2018							
Case number↓	MET-EXPORT COUNTRY		AORB	ANALOGUE COUNTRY: MET HAS NOT BEEN GRANTED TO PARTIES			
	domestic sales	constructed value	COI	⊗: (WA) (all) sales	Å: (WA) profitable sales	Ψ: (A)CP+(WA) SG&A+(WA)PR	Ω: (WAs) (A)CCRP or (A)CCCTP+SG&A+PR
Provisional regulations							
2016/181				X	X	X	
2016/113						X	
2016/262				X		X	
2016/1777				X		X	X
2016/1778				X	X	X	X
2016/1977				X		X	
2016/2005	⊗	Ψ Ω					
2016/2303				X			
2017/1444				X	X	X	X
2017/1480				X		X	
2018/683				X		X	
2018/1012			⊗				
Sum:	1	1	1	9	3	9	3
Definitive regulations							
2016/1159			Ψ				
2016/1246						X	X
2016/1247			Ψ				
2016/1328				X	X	X	
2016/1328				X	X	X	
2017/141		Ψ					
2017/141						X	X
2017/336				X		X	X
2017/649				X	X	X	X
2017/763	⊗	Ψ					
2017/804				X		X	
2017/1019				X			
2017/1795	⊗	Ψ					
2017/1795	⊗	Ψ					
2017/1795	⊗	Ψ					
2017/1795	⊗	Ψ					
2018/140				X		X	
2018/186				X	X	X	X
2018/1579				X		X	
Sum:	5	6	2	9	4	10	5

Table ten indicates that in most of the anti-dumping investigations normal value was either determined through the weighted average of domestic sales of producers in analogue countries or constructed by adding up the average cost of production with the weighted average selling, general and administrative costs and the weighted average profit.²⁵⁷ The former and the latter method were respectively applied in nine out of twelve provisional anti-dumping investigations over the course of January 2015 until November 2018. Only one provisional Commission Implementing Regulation granted market economy treatment to exporting producers.²⁵⁸ In the single provisional regulation wherein exporting producers were granted market economy treatment, the normal value was constructed and determined through sales in the domestic market for consumption of the country of origin of the products under consideration. In Commission Implementing Regulations imposing definitive measures, normal value was mostly determined through the weighted average of domestic sales of producers in analogue countries or constructed by adding up the average cost of production with the weighted average selling, general and administrative costs and the weighted average profit of producers in analogue countries. Only three times in all provisional and definitive Commission implementing Regulations did the European Commission determine normal value on another reasonable basis.

The excessive determination of analogue normal value in both the provisional and definitive phases of Commission Implementing Regulations stands in stark contract with the prerequisites of paragraph two of Article 2 of the Anti-dumping Agreement. Therein, when a particular market situation exists, for instance in the absence of the market economy conditions which are stipulated in Article 2(7)(c) of the EU Basic Anti-dumping Regulation, normal value must be determined through the export price of like products from the country of origin when exported to third countries and not through the price of constructed value in a market economy third country (the method which has been codified in Article 2(7)(a) of the EU Basic Anti-dumping Regulation). The determination of a normal value through the export price of the like products when exported from the country of origin of products under consideration to third countries is likely not in conformity with the determination of the normal value through "the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin". Hence, Article 2(7)(a) of the EU Basic Anti-

²⁵⁷ Giannakopoulos, Themistoklis K. *A Concise Guide to the EU Anti-dumping/anti-subsidies Procedures*. Vol. 23. Kluwer Law International BV, 2006, p 26 explains the methodology for constructing normal value

²⁵⁸ COMMISSION IMPLEMENTING REGULATION (EU) 2016/2005 of 16 November 2016 imposing a provisional anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea

dumping Regulation would thus appear to be running against paragraph two of Article 2 of the Anti-dumping Agreement and would likely be condemned by the WTO dispute settlement body.

b. Rephrasing sales in the ordinary course of trade ex Art. 2 of the Anti-dumping Agreement

One of the objectives of this research has been to assess the legitimacy of provisional and final determinations of normal value in Commission implementing regulations. To that end, it appeared necessary to concentrate Article 2.1 of the AdA and the chapeau and the first subparagraph of Article 2.2 of the AdA into a more concise text. Focal point of this contraction is the phrase 'sales in the ordinary course of trade' for the determination of normal value under the first paragraph of Article 2 of the AdA.

The Appellate Body appears to go askew on the assertion that the Anti-dumping Agreement does not define the term 'in the ordinary course of trade'.²⁵⁹ Arguably the term 'in the ordinary course of trade' appears undefinable without an interposition. In Article 2 it appears that the term is defined through a complex scheme of terms and phrases. The importance of the phrase prompted a succinct concentration of the terms and phrases. The concentration of these terms and phrases took place through four verifiable stages and can be found *infra*. The causal chain within the scheme for the determination of what constitutes 'the ordinary course of trade' of sales as a means for normal value is opened up episodically. The original text appeared to be overborne by an untoward conjuncture of interchangeable variables. Furthermore, teleological grounds for the position of the Appellate Body that the specific phrase 'at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs' in Article 2.2.1 of the AdA applies to any sales other than those to a third country seem absent. Even if the correct teleological meaning of the specific phrase purported to demarcate application of Article 2.2.1 to a mere fraction of sales of the like product in the domestic market, the blatant omission of what exactly is to be understood from this quintessential term in the determination of normal value provides ground to conclude that the codification would have been erroneous.

It was found that sales are only in the ordinary course of trade if they are either made at prices *above fixed and variable production costs per unit plus overhead, administrative, selling and general costs per unit* or at *lower prices above the weighted average per unit cost or the period of investigation* if the latter sales are *made in less than six months* at either *a volume of less than 20 per cent of the total volume of sales used for the determination of normal value* or *a weighted average per unit cost of all sales used to determine normal value which does not surpass the*

²⁵⁹ AB Report, US – Hot-Rolled Steel, para. 139 – see also Mavroidis, Petros C., Patrick A. Messerlin, and Jasper M. Wauters. *The law and economics of contingent protection in the WTO*. Edward Elgar Publishing, 2010, p 31 to 41 for a complete discourse on the meaning of the phrase 'in the ordinary course of trade'

weighted average selling price of all sales used to determine normal value. This simpler definition is completely derived from the chapeau and first subparagraph of Article 2.2 of the AdA, can be employed as a means to validate the determination of normal value in provisional and definitive Commission regulations which have been implemented over the course of January 2015 to December 2018. The four stages wherewith the definition of the 'ordinary course of trade' has been abstracted can be found hereafter:

The original text (the colours relate the phrases on the previous page with those hereunder):

" 2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, 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.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country⁽²⁾, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below *per unit (fixed and variable) costs of production plus administrative, selling and general costs* may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an *extended period of time* in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit cost at the time of sale are *above weighted average per unit cost for the period of investigation*, such prices shall be considered to provide for recovery of costs within a reasonable period of time. The extended period of time should normally be one year but shall in no case be less than six months. Sales below per unit cost are made in substantial quantities when the authorities establish that the *weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit cost*, or that the volume of sales below per unit cost represents *not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value*. "

The first concentration:

"2.1 For the purpose of this Agreement, normal value is the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country, normal value is a comparable price of the like product when exported to an appropriate third country.

2.2.1 Sales of the like product in the domestic market of the exporting country are not in the ordinary course of trade if they are made within an extended period of time⁽⁴⁾ in substantial quantities⁽⁵⁾ and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

- The extended period of time should normally be one year but shall in no case be less than six months.
- Sales below per unit cost are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit cost, or that the volume of sales below per unit cost represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.
- If prices which are below per unit cost at the time of sale are above weighted average per unit cost for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time."

The second concentration:

"2.1 For the purpose of this Agreement, normal value is the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country, normal value is a comparable price of the like product when exported to an appropriate third country.

2.2.1 Sales of the like product in the domestic market of the exporting country are not in the ordinary course of trade if they, within no less than six months within the period under consideration, are made at a weighted average selling price below the weighted average per unit cost, or at a sales volume below per unit cost of not less than 20 per cent of the volume sold in transactions under consideration and if, insofar they are below per

unit cost at the time of sale, they are not above weighted average per unit cost for the period of investigation. "

The third concentration:

"2.1 For the purpose of this Agreement, normal value is the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.1.1 Normal value is the comparable price of the like product when exported to an appropriate third country when there are no sales of the like product in the domestic market of the exporting country, within no less than six months within the period under consideration:

- which are made at a weighted average selling price above the weighted average per unit cost; or
- whose volume below per unit cost represents more than 20 per cent of the volume sold in transactions under consideration; and
- whose prices below per unit cost at the time of sale are above the weighted average per unit cost for the period of investigation"

The fourth concentration:

"2.1 For the purpose of this Agreement, normal value is the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits if within no less than six months within the period under consideration either sales of the like product in the domestic market of the exporting country or exports of the like product from the country of origin to an appropriate third country are made at a comparable weighted average selling price underneath the weighted average per unit cost; or at a volume below per unit cost which represents more than 20 per cent of the volume sold in transactions under consideration; and at comparable prices below per unit cost which at the time of sale are under the weighted average per unit cost for the period of investigation. In the opposite instance of the first respectively second exception, normal value is the price belonging to the sales of the exception."

4.7 Determinations of export prices

a. On the deflation of export prices to inflate margins of dumping: varying levels of trade

To gain insight in the determination of export prices, table twelve, which is drawn hereunder, provides insight into the extent wherein the European Commission applied different methods for determining the export price in Commission Implementing Regulations imposing provisional and definitive anti-dumping measures over the course of January 2015 until November 2018.

Table 12. Methods applied by the EU in establishing the EP: 01-01-2015 until 01-11-2018

METHODS APPLIED BY THE EC IN DETERMINING THE EXPORT PRICE <i>January 2015 until November 2018</i>		
Case number ↓	Export selling price actually paid / payable	UFL adj. 1 st unrelated import price
Provisional regulations		
2016/181	X	X
2016/113	X	
2016/262	X	X
2016/1777	X	
2016/1778	X	X
2016/1977	X	
2016/2005	X	X
2016/2303	X	X
2017/1444	X	X
2017/1480	X	
2018/683	X	X
2018/1012	X	X
Sum:		
Definitive regulations		
2016/1159		X
2016/1246	X	X
2016/1247	X	X
2016/1328	X	X
2016/1328	X	X
2017/141	X	
2017/141	X	
2017/336	X	
2017/649	X	X
2017/763	X	X
2017/804	X	
2017/1019	X	X
2017/1795	X	X
2017/1795	X	X
2017/1795	X	X
2017/1795	X	X
2018/140	X	
2018/186	X	X
2018/1579	X	X
Sum:	18	14

Note that by clicking on the blue links in table twelve, a direct link to the website of EUR-Lex is opened which published the relevant Commission Implementing Regulation. Table twelve clearly indicates that most export prices of imports whereon provisional and definitive anti-dumping measures were imposed in the period January 2015 until November 2018, were based on the export selling price actually paid / payable. Only seldom did the European Commission base the export price on the union frontier level first adjusted unrelated importer selling price.

Pursuant to Article 2(9) first and second subparagraph of the basic Regulation, the Commission is entitled to construct the export price where it appears that the export price is unreliable because of an association between the exporter and the importer. In such a case adjustments for all costs, including duties and taxes, incurred between the importation and resale, and for profits accruing are made to establish a reliable export price, at the Union frontier level. Pursuant to Article 2(9) third subparagraph of the EU Basic Regulation the items for which adjustments are to be made include those normally borne by an importer but paid by any party, including a reasonable margin for SG&A costs and profit.²⁶⁰

Paragraph four of Article 2 of the Anti-dumping Agreement forces investigation authorities to make a fair comparison between the export price and the normal value at the same level of trade (usually ex-factory) and in respect of sales which were made at as nearly as possible the same time with due allowances for differences which affect price comparability.²⁶¹ In the case of intercompany export prices, the price would thus have to be adjusted to the actual price of the first independent customer in the country of importation. If such prices are absent, captive sales prices could be adjusted with allowances for differences which affect price comparability. In such a case the European Commission adjusts all costs, including duties and taxes, incurred between the importation and resale, and for profits accruing to establish a reliable export price, at the Union frontier level.

Pursuant to Article 2(9) third subparagraph of the basic Regulation the items for which adjustments are to be made include those normally borne by an importer but paid by any party, including a reasonable margin for SG&A costs and profit. Likewise, ex Article 2 of the Anti-dumping Agreement, the normal value needs to be adjusted towards the similar level of trade.

²⁶⁰ Recital 105 of COMMISSION IMPLEMENTING REGULATION (EU) 2018/1579 of 18 October 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or rethreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163

²⁶¹ Mavroidis, Petros C. "The Regulation of International Trade, Volume 1: GATT." (2016), p 84:

"Article 2.4 of AD provides an indicative list of due allowances that can legitimately be made once prices have been brought to the same level of trade.

It follows that the indicative list included in this provision contains both factors "exogenous" to the allegedly dumping economic operator (e.g., taxation) and factors controlled by it, such as quantity discounts or differences between the quality of the exported product and that of the product sold domestically. It also makes sense that both can affect price comparability and can appropriately form the subject matter of due allowances.

An IA cannot limit itself to a review of the factors included in the indicative list. Article 2.4 of AD requires that due allowances be made for any "other" (e.g., other than the statutory factors affecting price comparability) difference that affects price comparability. The Panel on EC-Tube or Pipe Fittings, for example, accepted that due allowance could be made for "packaging expenses," an item not explicitly mentioned in Article 2.4 of AD (§ 7.184). It is, of course, difficult to draw up an exhaustive list of factors that affect price comparability. In line with the overall standard of review applied by WTO panels, it might be reasonable to suggest that IAs, at any rate, must take into account the factors mentioned in Article 2.4 of AD, as well as any other factor affecting price comparability brought to their attention."

If the sales expenses and profit margin of the analogue country producer aren't excluded, they act as an artificial inflation of the margin of dumping which generates asymmetry affecting price comparability. However, the European Commission did not exclude this artificial inflation of the margin of dumping through the exclusion of the component in the export price which is included in the normal value. In recital 107 of COMMISSION IMPLEMENTING REGULATION (EU) 2018/1579 of 18 October 2018, the European Commission provided the rationale for this asymmetry, which directly contravenes the prerequisite in paragraph four of Article 2 of the AdA to establish an export price and normal value at the same level of trade, with same components:

"At the same time, the Court held that determination of the normal value and determination of the export price are governed by separate rules and therefore SG&A expenses need not necessarily be treated in the same way in both cases. The Commission reaffirmed its position that the analogue country producer's final sales price was brought down to the same ex-works level of trade by adjusting it with duly verified allowances reported in its transaction by transaction table. Accordingly, that claim was rejected."²⁶²

In other determinations, the European Commission appears to artificially deflate the export price ex Article 2(10)(i) of the Basic Anti-dumping Regulation through adjustments on the premises of an (alleged) artificial inflation of export prices through (allegedly) captive sales through intercompany importers based in intermediate companies of export.²⁶³ It appears that the European Commission applies automatic adjustments unless it can either verify that the products concerned to the Union is sold directly to independent customers (in which case the export price is established in accordance with Article 2(8) of the Basic Anti-dumping Regulation) or unless it can verify that the prices between related parties were at arm's length and reflected market prices.²⁶⁴ Since the onus to verify whether adjustments are warranted rests in the hands of the European Commission, it is recommendable to refrain from unwarrantable adjustments.

²⁶² See recital 107 of COMMISSION IMPLEMENTING REGULATION (EU) 2018/1579 of 18 October 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or rethreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163

²⁶³ See recital 39 until 49 of COMMISSION IMPLEMENTING REGULATION (EU) 2018/186 of 7 February 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain corrosion resistant steels originating in the People's Republic of China and recitals 106 until 132 of COMMISSION IMPLEMENTING REGULATION (EU) 2017/1795 of 5 October 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Serbia

²⁶⁴ See recital 70 until 73 of COMMISSION IMPLEMENTING REGULATION (EU) 2017/1795 of 5 October 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Serbia

4.8 Price effect analysis: margins of undercutting

To gain insight in the calculations of margins of undercutting, table thirteen, which is depicted hereunder, provides an overview of the rates in the margins of undercutting which the European Commission calculated through Commission Implementing Regulations imposing provisional and definitive anti-dumping measures over the course of January 2015 until November 2018.²⁶⁵

Table 13. Margins of undercutting where the EU imposed A-D duties: 01-01-2015 until 01-11-2018

Margins of undercutting where the EU imposed A-D duties <i>January 2015 until November 2018</i>		
Case number↓	Minimum 1 st (WA) MoU	Maximum 2 nd (WA) MoU
Provisional regulations		
2016/181	8,1	
2016/181	14,4	
2016/262	21,1	
2016/1777	29,0	
2016/1778	2,7	5,6
2016/1977	15,1	30,2
2016/2005	8,1	
2016/2303	4,5	
2017/1444	9	15
2017/1480	35,4	42,7
2018/683	21	31
2018/1012	16,2	41
Average:	18,13	
Definitive regulations		
2016/1159	19,1	
2016/1246	8,3	11,8
2016/1247	21,1	
2016/1328	8,1	
2016/1328	15,1	
2017/141	59,4	
2017/141	76,1	
2017/336	29,0	
2017/649	2,7	5,6
2017/763	9,4	
2017/804	15,1	
2017/1019	2,8	
2017/1795	-6,95	-0,12
2017/1795	8,45	
2017/1795	8,87	17,74
2017/1795	8,45	
2018/140	31,6	39,2
2018/186	8,1	15,1
2018/1579	18	21
Average:	19,08	

Where an investigation yielded multiple margins of undercutting, the margin of undercutting in table thirteen was calculated as an average of the maximum and the minimum of the margins of undercutting which were found in the investigation. It appears impossible to delineate the method and methodology which the European Commission applies in their determination of margins of dumping, because the calculations are not always disclosed. In spite thereof, table

²⁶⁵ See Mavroidis, Petros C. *Trade in goods*. Oxford University Press, 2007, p 460 for further insight into the role of margins of undercutting within the injury analysis of price effects

thirteen indicates that the average rate in margins of undercutting remains rather stable in the provisional and definitive phase: 18.13 % *vice versa* 19.08 % respectively. The highest rate in margins of undercutting over the course of January 2015 until November 2018 stood at 76.1 %. The latter rate stands in stark contrast to the lowest rate: -6,95%.

It seems rather far-fetched that imports entering the domestic market for consumption of the European Union would be able to undercut the domestic prices for identical, comparable or closely resembling products by a staggering 76.1%. It remains, however, impossible to infer conclusions on the validity of the margin of undercutting because the European Commission did not disclose any of the calculations wherewith it determines the margin of undercutting. A policy recommendation would be to include the calculations which underpin the margins of undercutting because it is an essential part of the domestic price effects analysis under paragraph two of Article 3 of the Anti-dumping Agreement.

4.9 Micro-economic and macro-economic injury indications

Ex paragraph four of Article 3 of the Anti-dumping Agreement, the impact of the dumped imports on the domestic industry of the importing country shall be examined through an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance. However, the European Commission is obliged to include the aforementioned micro- and macro-economic factors in every injury analysis which it carries out in provisional and definitive Commission Implementing Regulations.²⁶⁶

Paragraph four of Article 3 of the Anti-dumping Agreement has been implemented into Article 3(5) of the EU Basic Anti-dumping Regulation. Article 3(5) of the EU Basic Anti-dumping Regulation holds that the examination of the impact of the dumped imports on the Union industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past dumping or subsidisation; the magnitude of the actual margin of dumping; actual and potential decline in sales, profits, output, market share, productivity, return on investments and utilisation of capacity; factors affecting Union prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

In order to gain insight in the consecutive application micro- and macro-economic injury indicators in the material injury analyses of the European Commission over the course of January 2015 until November 2018, table fourteen (which provides an overview of extent wherein various macro-economic injury indicators have been applied in the various Commission Implementing Regulations imposing provisional anti-dumping measures over the course of January 2015 until November 2018) and table fifteen provide an overview of the extent wherein the various micro-economic injury indicators have been applied in the various Commission Implementing Regulations imposing provisional anti-dumping measures over the course of January 2015 until November 2018. Since Commission Implementing Regulations imposing definitive measures very seldom modify indicators applied in the provisional injury analyses, the

²⁶⁶ See Hoekman, Bernard M., and Michel M. Kostecki. *The political economy of the world trading system: the WTO and beyond*. Oxford University Press, 2009, p 435

decision was made to only investigate the consecutive application of macro- and micro-economic injury indicators at the provisional level. Tables fourteen and fifteen provide links to provisional Commission Implementing Regulations through their respective number atop in yellow. Note that by clicking on the subject number, a direct link to the website of EUR-Lex is opened where the provisional Commission Implementing Regulation is published. On the left side of tables fourteen and fifteen is an overview of all injury indicators which were found within the various Commission Implementing Regulations. An X appears below the number of the provisional Commission Implementing Regulation which is written atop if the micro- or macro-economic injury indicator was applied in the provisional Commission Implementing Regulation.

Table 14. Usage of provisional macroeconomic injury indicators by the EC: 01-01-2015 until 01-11-2018

PROVISIONAL MACRO-ECONOMIC INDICATORS APPLIED IN THE MATERIAL INJURY ANALYSIS (ART. 3(5) BADR) <i>January 2015 until November 2018</i>												
Case number →	113	181	262	1977	1778	1777	2005	2303	1444	1480	683	1012
Indicator ↓	'16	'16	'16	'16	'16	'16	'16	'16	'17	'17	'18	'18
Production	X	X	X	X	X	X	X	X	X	X	X	X
Production capacity	X	X	X	X	X	X	X	X	X	X	X	X
Capacity utilisation	X	X	X	X	X	X	X	X	X	X	X	X
Sales volume	X	X	X	X	X	X	X	X	X	X	X	X
Growth	-	X	-	X	X	X	X	X	X	X	X	X
Market share / growth	X	X	X	X	X	X	X	X	X	X	X	X
Employment	X	X	X	X	X	X	X	X	X	X	X	X
Productivity	X	X	X	X	X	X	X	X	X	X	X	X
Magnitude of actual Dumping margin	X	X	X	X	X	X	X	X	X	X	X	X
Dumping recovery	X	-	X	X	-	X	X	X	-	X	-	X
Labour costs	-	X	-	-	-	X	-	-	-	-	-	-
Sum:	9	11	9	10	10	11	10	10	10	10	9	10

Table 15. Usage of provisional microeconomic injury indicators by the EC: 01-01-2015 until 01-11-2018

PROVISIONAL MICRO-ECONOMIC INDICATORS APPLIED IN THE MATERIAL INJURY ANALYSIS (ART. 3(5) BADR) <i>January 2015 until November 2018</i>												
Case number →	113	181	262	1977	1778	1777	2005	2303	1444	1480	683	1012
Indicator ↓	'16	'16	'16	'16	'16	'16	'16	'16	'17	'17	'18	'18
Average unit prices	X	-	X	X	-	X	X	X	-	X	X	X
Sales prices	-	X	-	-	X	-	-	-	X	-	-	-
Unit cost	X	-	-	X	X	X	X	X	X	X	X	X
Cost of goods sold to Union industry	-	X	X	-	-	-	-	-	-	-	-	-
Profitability	X	X	X	X	X	X	X	X	X	X	X	X
Cash flow	X	X	X	X	X	X	X	X	X	X	X	X
Investments	X	X	X	X	X	X	X	X	X	X	X	X
Return on investment	X	X	X	X	X	X	X	X	X	X	X	X
Ability to raise capital	X	X	X	X	X	X	X	X	X	-	X	-
Stocks/inventories	X	X	X	X	X	X	X	X	X	X	X	X
Labour cost/wages	X	X	X	X	X	-	X	X	X	X	X	X
Sum:	9	9	9	9	8	8	9	9	9	8	9	8

Tables fourteen and fifteen indicate a rather consecutive application of most micro- and macroeconomic indicators in provisional Commission Implementing Regulations over the course of January 2015 until November 2018. There are a few significant exceptions to afore finding. The macro-economic injury indicators Stocks / inventories, Labour costs and the micro-economic injury indicators Sales prices, Cost of goods sold to Union industry appear to have been applied scarcely in the provisional Commission Implementing Regulations. However, to gain a thorough insight into the extent wherein these macro- and micro-economic injury indicators have been applied on a provisional basis, figure fifty-six graphed the extent wherein each of the indicators has been applied over the course of January 2015 until November 2018.

Figure 56. The use of micro-, macro- and other economic injury indicators: 01-01-2015 until 01-11-2018

Source: Regulations of the E.C. imposing provisional A-D measures publicized in the EUR-Lex database

Whereas tables fourteen and fifteen tended to indicate diligent consecutiveness in the application of micro- and macro-economic injury indicators in the injury analyses carried out by the European Commission over the course of January 2015 until November 2018, graph fifty-six

clearly indicates otherwise. The micro-economic injury indicator Cost of goods sold to the Union industry and the macro-economic injury indicator Labour costs are only applied twice. The aforementioned macro- and micro-economic injury indicators are significant and no reason for their omission has been provided in any of the other Commission Implementing Regulations imposing provisional anti-dumping measures over the course of January 2015 until November 2018: the absence of any clear reasoning from the European Commission on the exclusion of the aforementioned macro- and micro-economic injury indicators tends to indicate that they should have been applied consecutively. Even though the limited use of aforementioned indicators cannot serve as a vignette for malignant intent, it does stand out odd that they were only applied twice in all of the twelve provisional Commission Implementing Regulations over the course of January 2015 until November 2018.²⁶⁷ Afore finding counts the more when we look at micro-economic injury indicator Sales price which was only applied thrice.

²⁶⁷ Legal Affairs Division, World Trade Organisation. *WTO Analytical Index: Guide to WTO Law and Practice*. Cambridge University Press, 2012, p 2463: counts the more, especially in light of the EU's prior misconception on the extent wherein the domestic industries of the European Union had to be included in the analysis of injury to the domestic industries through micro- and macro-economic injury indicators: "The Appellate Body in EC Fasteners (China) found that the EU authorities violated Article 4.1 by defining a domestic industry comprising producers accounting for 27 per cent of total estimated EU production of fasteners. As described by the Appellate Body, "the Commission selected six producers as part of the sample, obtained relevant information from them, and verified the information on their premises. The Commission then used the information obtained from the sampled producers for its analysis of the 'microeconomic' injury factors, but conducted its analysis of the 'macroeconomic' injury factors on the basis of information obtained from all of the 45 producers included in the domestic industry definition. The Appellate Body found:

'A major proportion' . . . should be understood as a proportion defined by reference to the total production of domestic producers as a whole. 'A major proportion' of such total production will standardly serve as a substantial reflection of the total domestic production....

In our view, the above interpretation is confirmed by the purpose of defining the domestic industry under the Anti-Dumping Agreement. As footnote 9 to Article 3 of the Anti-Dumping Agreement indicates, 'the domestic industry forms the basis on which an investigating authority makes the determination of whether the dumped imports cause or threaten to cause material injury to the domestic producers. . . 'a major proportion of the total domestic production' should be determined so as to ensure that the domestic industry defined on this basis is capable of providing ample data that ensure an accurate injury analysis... to ensure the accuracy of an injury determination, an investigating authority must not act so as to give rise to a material risk of distortion in defining the domestic industry, for example, by excluding a whole category of producers of the like product. The Appellate Body summed up: In sum, a proper interpretation of the term "a major proportion" under Article 4.1 requires that the domestic industry defined on this basis encompass producers whose collective output represents a relatively high proportion that substantially reflects the total domestic production. This ensures that the injury determination is based on wide-ranging information regarding domestic producers and is not distorted or skewed. In the special case of a fragmented industry with numerous producers, the practical constraints on an authority's ability to obtain information may mean that what constitutes "a major proportion" may be lower than what is ordinarily permissible in a less fragmented industry. However, even in such cases, the authority bears the same obligation to ensure that the process of defining the domestic industry does not give rise to a material risk of distortion. A complainant alleging an inconsistency under the second method for defining the domestic industry bears burden to prove its claim and to demonstrate the domestic industry that the definition does not meet the standard of 'a major proportion'. Nonetheless, a domestic industry defined on the basis of a proportion that is low, or defined through a process that involves active exclusion of certain domestic producers, is likely to be more susceptible to a finding of inconsistency under Article 4.1 of the Anti-Dumping Agreement."

4.10 Non-attribution of injurious effects: the break-the-causal-link analysis

a. The extent wherein factors other than dumped imports are assessed by DG Trade EU

To impose measures, paragraph five of Article 3 of the Anti-dumping Agreement requires investigative authorities to demonstrate that dumped imports are, through the effects of dumping, causing injury within the meaning of the Anti-dumping Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry must be based on an examination of all relevant evidence before the investigative authorities.²⁶⁸

In the AdA's causal-link analysis, the investigative authorities must examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors may not be attributed to the dumped imports.²⁶⁹ Factors which may be relevant in this respect include *inter alia* the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the domestic industry's export performance and productivity.

The European Union has implemented the prerequisites of the non-attribution analysis in Article 3(7) of the EU Basic Anti-dumping Regulation.²⁷⁰ The non-attribution analysis is a component of the greater injury analysis which requires the Directorate General for Trade of the EU to demonstrate, from all the relevant, positive evidence presented, that the dumped imports are causing injury within the meaning of EU Basic Anti-dumping Regulation. Specifically, the injury

²⁶⁸ Hoekman, Bernard M., and Petros C. Mavroidis. *Antitrust-based remedies and dumping in international trade*. Vol. 1010. World Bank Publications, 1994, p 7 elaborates on 'relevant evidence before authorities'

²⁶⁹ See Van den Bossche, Peter. *The law and policy of the World Trade Organisation: text, cases and materials*. Cambridge University Press, 2008, p 733 on the need to demonstrate a causal link

²⁷⁰ Van Bael, Ivo, and Jean-François Bellis. *EU anti-dumping and other trade defence instruments*. Kluwer Law International BV, 2011, p 331 explicates the twofold test of the European Commission as follows: The last step in an injury determination involves an inquiry into causality, i.e., there must be a causal link between dumping and injury. The investigation into causality involves two tests, a positive test and a negative test. The positive test enquires whether the imports under consideration have materially affected the situation of the Union industry. The positive test is stipulated by Article 3(6) of the (EU Basic Anti-dumping) Regulation, which states that:

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

The scope of the negative test is to ensure that any harmful effect caused by factors other than the imports under consideration is not attributed to such imports. The negative test is laid down in Article 3(7) of the Regulation, as follows: 'known factors other than the dumped imports which at the same time are injuring the Community industry shall also be examined to ensure that injury caused by these other factors is not attributed to the dumped imports under paragraph 6. The analysis, aimed at separating and distinguishing the injurious effects of different causal factors, is in practice a complex task. If the injurious effects of the dumped imports and other known factors remain aggregated, the investigating authorities may not conclude that the injury suffered by the domestic industry has been caused by the dumped imports and not by other factors.'

analysis requires investigative authorities to demonstrate that the volume and/or price levels of dumped imports are having an injurious impact on the Union industry, and that the impact exists to a degree which enables it to be classified as material.

Pursuant to the impact assessment, ex Article 3(7) of the EU Basic Anti-dumping Regulation, any known factors, other than the dumped imports, which at the same time are injuring the Union industry shall also be examined to ensure that the injury caused by those other factors is not attributed to the dumped imports. Factors which may be considered in that respect shall include: the volume and prices of imports not sold at dumping prices; contraction in demand or changes in the patterns of consumption; restrictive trade practices of, and competition between, third country and Union producers; developments in technology and the export performance; and productivity of the Union industry.

The implementation of paragraph five of Article 3 of the Anti-dumping Agreement into Article 3(7) of the EU Basic Anti-dumping Regulation appears quite harmonious and consistent. An analysis of the implementation into practice, requires an assessment of the extent wherein each of these harmoniously implemented factors is applied in Commission Implementing Regulations imposing provisional and definitive anti-dumping measures. Figure fifty-seven, depicted on the next page, provides an overview of the extent wherein the European Commission examined injurious factors other than dumped imports in the break-the-causal-link analyses ex Article 3(7) of the EU Basic Anti-dumping Regulation which it carried out in its provisional and definitive Commission Implementing Regulations over the course of January 2015 until November 2018.

Figure fifty-seven indicates that the European Commission established a causal link between dumped imports and the incurrence of injury to the domestic industry producing the like products in all of the twenty-six Commission Implementing Regulations imposing provisional and definitive anti-dumping measures. However, the European Commission far from consecutively examined injurious factors other than dumped imports in the provisional and definitive Commission Implementing Regulations over the course of January 2015 until November 2018.

In all of the twenty-six provisional and definitive Commission Implementing Regulations over the course of January 2015 and November 2018, the European Commission only once examined the potential injurious effect of the factors Technical evolution of the product under investigation (decreased weight of sold items); A force majeure with bearing on production, capacity utilisation, sales, market share and productivity figures; Impairment booking; Competition between domestic vertically integrated producers and domestic external input sourcing producing companies in the same sector, Branded v non-branded sales; and Price decreases of domestic interchangeable and domestic products.

Figure 57. Break-the-causal-link analyses: non-attribution factors in the EU: 01-01-2015 until 01-11-2018

Source: the author's calculations based on E.U.-Regulations imposing provisional and definitive A.-D. measures

Injurious factors which the European Commission barely assessed were proposed by interested parties as possible causes for injury to the domestic industry other than dumped imports. Even though the European Commission assessed these other factors and acknowledged that these other factors may have a bearing on the state of the domestic industry, it failed to reassess these

other factors in consequent anti-dumping investigations.²⁷¹ An example of such a factor, which the European Commission assessed once is competition between domestic vertically integrated producers and external input sourcing producing companies in the same sector. The assessment of this factor by the European Commission in [Commission Implementing Regulation \(EU\) 2016/1777](#) of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the PRC has been provided hereunder:

" (184) One interested party argued that the profit margin of the vertically integrated Union producers is eroded by the lower prices charged by re-rollers in the Union, which allegedly charge prices 6 % - 9 % below the prices charged by vertically integrated producers.

(185) A re-roller is a company who does not produce their own input material, namely steel slabs. All sampled Union producers produce their own steel slabs and are therefore vertically integrated producers.

(186) The Commission notes in this respect that the prices of dumped imports from the PRC undercut the Union industry prices on average by 29 % during the investigation period, as stated in recital (99) above. On this basis, prices of dumped imports from the PRC would still be at least 20 % lower than prices of re-rollers in the Union.

(187) The same party also argued that the quantity produced by re-rollers in the Union is decreasing, since many of them depend on supplies of steel slabs from Ukraine. This supply from Ukraine has however decreased due to supply shortages during the period considered, and that this decrease in supply has not been compensated by production of the other Union producers despite their low capacity utilisation.

(188) In this respect, the party provided no evidence that the Union producers were not interested or not willing to supply these additional quantities. It is therefore clear that especially these price sensitive customers moved away from products produced by the Union industry to even lower priced dumped imports from the PRC.

(189) The Commission therefore concludes that the decreasing profitability of vertically integrated Union producers can only be affected to a very limited extent by decreasing quantities of moderately priced heavy plates produced by re-rollers in the Union. It also concludes that their decreasing profitability is overwhelmingly due to very significantly lower-priced dumped imports from the PRC, which also significantly increased in quantity."

In the reasoning of the European Commission the decreasing profitability of vertically integrated Union producers can only be affected to a very limited extent by the decreasing quantities of moderately priced products produced by external input sourcing producing companies in the

²⁷¹ Recitals 184 until 189 of COMMISSION IMPLEMENTING REGULATION (EU) 2016/1777 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China

same sector. It drew this conclusion because no evidence was submitted which purported to conclude that price sensitive customers moved to external input sourcing producing companies in the same sector rather than dumped imports from the PRC. Therewith, the European Commission acknowledged that if evidence was submitted which purported to conclude that price sensitive customers moved to external input sourcing producing companies, this could have been a factor other than dumped imports which has caused a decrease in the profitability of the Union industry. Whereas the European Commission acknowledged external input sourcing producing companies in the same sector as a means to assess injury, it should have incorporated it into the standard assessment of all factors other than dumped imports in the subsequent anti-dumping investigations. However, the European Commission did not examine the potentiality of injurious effects caused by this specific factor and a variety of other factors other than dumped imports in any of its subsequent anti-dumping investigations.

Not only did the European Commission not include newly arisen factors other than the known factors other than dumped imports in subsequent Commission Implementing Regulations over the course of January 2015 until November 2018, the European Commission also did not include standard factors other than dumped imports which ought to be integrated in the break-the-causal-link analyses through the prescript of Article 3(7) of the EU Basic Anti-dumping Regulation.²⁷² Ex per the codification of Article 3(7) of the EU Basic Anti-dumping Regulation, the volume and prices of imports not sold at dumping prices in the sense of price decreases of domestic interchangeable and domestic products was only analysed in five out of twenty-six anti-dumping investigations which were executed over the course of January 2015 until November 2018; contraction in demand or changes in the patterns of consumption was only analysed in eleven out of twenty-six anti-dumping investigations which were executed over the course of January 2015 until November 2018; restrictive trade practices of, and competition between, third country and Union producers in the sense of Imports from third countries or third parties was analysed the most with twenty-three out of twenty-six anti-dumping investigations which were executed over the course of January 2015 until November 2018;

²⁷² Stanbrook, Clive, Philip Bentley, and Joseph Cunnane. *Dumping and subsidies: Law and procedures governing the imposition of anti-dumping and countervailing duties in the European Community*. Kluwer Law International BV, 1996, p 127 explains how and why these standard factors ought to be factored in in the break-the-causal-link analyses:

"In practice, the Community Authorities assess each of these aspects in the reasons given for their decisions. However, that assessment is restricted to whether they have an effect on injury and if so, whether, in the light of the effect they have, it can still be said that the effects of the dumped or subsidised imports are such as to cause injury. At the moment, at any rate, no attempt is made to quantify those effects with a view to excluding them for the purposes of calculating the so called injury threshold. This, of course, may not change the calculations where the injury threshold is substantially above the margin of dumping. However, it should change the calculation where it was below. In this situation, a failure to adjust the threshold means that the level of duty on the dumped products will be set at such a level as to offset all the factors, including those that Regulation (EC) No 384/96 and Regulation (EC) No 3284/ 94 specifically required the Community Authorities to exclude."

developments in technology and the export performance in the sense of the volume, value and average price of exports of the domestic industry to unrelated customers was analysed second-most with twenty-one out of twenty-six anti-dumping investigations which were executed over the course of January 2015 until November 2018; and the productivity of the Union industry in the sense of the capacity utilisation rate of the domestic industry was only analysed in nine out of twenty-six anti-dumping investigations which were executed over the course of January 2015 until November 2018.²⁷³ It appears that the consecutiveness of the European Commission in the examination of factors other than dumped imports in the break-the-causal link analyses is rather weak. However, the consecutiveness appears stronger where it concerns the factors other than dumped imports which are prescribed by Article 3(7) of the EU Basic Anti-dumping Regulation.

²⁷³ For a more comprehensive reading on these injury factors in the negative test: Van Bael, Ivo, and Jean-François Bellis. *EU anti-dumping and other trade defence instruments*. Kluwer Law International BV, 2011, p. 342

4.11 Underselling: the target profit margin and margin of injury in the lesser duty rule

Ex Article 7(2) of the EU Basic Anti-dumping Regulation the amount of the provisional anti-dumping duty should be less than the margin of dumping provisionally established insofar the lesser duty would be adequate to remove injury to the domestic industry.²⁷⁴ In the same vein Article 9(4) of the EU Basic Anti-dumping Regulation holds that a definitive anti-dumping duty shall be imposed insofar it would be adequate to remove the injury to the Union industry. To determine the proportion of the margin of injury in the margin of dumping, the European Commission calculates the target price which the Union industry should have achieved in the absence dumped products. Theretofore the selling, general, administrative costs and costs for profits which are realized by the domestic industry producing the like product are usually accumulated with an appropriate target profit which the domestic industry producing the like product should normally be able to generate in absence of importation of the dumped product. The target profit is based on a target profit margin of the turnover which is sufficient to eliminate injury to the domestic industry. Table sixteen provides all the target profit margins in provisional and definitive EC Regulations established over the course of January 2015 until November 2018.

Table 16. Target profit margin in the EC's Injury Elimination Level: 01-01-2015 until 01-11-2018

TARGET PROFIT MARGINS EXPRESSED AS A PERCENTAGE OF THE TURNOVER <i>January 2015 until November 2018</i>		
Case number ↓	TPM as % of TO	Whereon the TPM in the IEL is based
Provisional regulations		
2016/181	5%	The TPM in OJ L 284, 30.10.2015
2016/113	1,65%	Profits from the unrelated sales 1 year < dumping year.
2016/262	7,5%	Average profits in the first two years of the PuC
2016/1777	7,9%	Years after the financial crisis and <PuC
2016/1778	7%	Average EBITDA for RFSP producers from an OECD report
2016/1977	5,7%	Profits from unrelated sales 2 years <PUC
2016/2005	11,5%	Profitability in year < year of surge in dumped products
2016/2303	4,8%	A recent case on HFPSCRB
2017/1444	7,4%	Most profitable year in ten year of sampled producers
2017/1480	5,3%	Unrelated profits in year < surge in dumped products
2018/683	15,6	Profits from unrelated sales 2 years <PUC
2018/1012	4,3%	Highest average Union industry profit margin in PUC
Average:	6,00%	
Definitive regulations		
2016/1159	7,5% est.	The TPM in Implementing Regulation (EU) 2016/262

²⁷⁴ The Lesser-Duty-Rule is, however, not applied uniformly amongst WTO Members, for the PRC see Nakagawa, Junji, ed. *Anti-dumping Laws and Practices of the New Users*. Cameron May, 2007, p 45: "There is no clear provision in the 2004 Regulation or other implementing rules that explicitly admits a lesser duty rule as recommended under Article 9.1 of the WTO Anti-Dumping Agreement. This is in contrast to Article 15 of the Provisional Rules on Price Undertakings in Antidumping Investigations, which provides that the level of the price increase in a price undertaking may be less than the dumping margin if it is adequate to remove injury to the domestic industry. However, there are two provisions in the 2004 Regulation which tacitly imply the possibility of applying a lesser duty rule. First, Article 30 provides for the extension of the period for applying provisional months 'in special circumstances,' namely, when the MOFCOM examines whether a duty lower than the margin of dumping would be sufficient to remove injury. Second, Article 42 provides that no anti-dumping duties shall be levied in excess of the margin of dumping established in a final determination. In practice, however, China has never applied a lesser duty rule in a final determination."

2016/1246	4,8%	Profits from unrelated sales 2 years <PUC
2016/1247	7,5%	Average profits in the first two years of the PuC
2016/1328	9,9%	Profits from unrelated sales 6 years <PUC
2017/141	10% est.	Profits from unrelated sales 2 years <PUC
2017/336	7,9%	Years after the financial crisis and <PuC
2017/649	7%	Average EBITDA for CRFP producers from an OECD report
2017/763	11,5%	Profitability in year < year of surge in dumped products
2017/804	4,7%	Profits from unrelated sales 2 years <PUC
2017/1019	4,8%	A recent case on HFPSCRB
2017/1795	7,9%	Years after the financial crisis and <PuC
2018/140	5,3%	Unrelated profits in year < surge in dumped products
2018/186	7,4%	Most profitable year in ten year of sampled producers
2018/1579	17,9% & 6,1% per PCN	Profits from unrelated sales 2 years <PUC
Average:	9,67%	

Table sixteen provides the basis whereon the target profit margin is calculated in the utmost right column. It directly stands out that the average provisional target profit margin over the course of January 2015 until November 2018 exactly equals the minimum target profit margin which was proposed for the calculation of the non-injurious price for injury margin calculation in the trilateral compromise agreement between EU institutions in the context for the modernisation of the EU's trade defence instruments.²⁷⁵ This would suggest that the EC's practice is in line with policy expectations.

The definitive average target profit margin which the European Commission calculated over the course of January 2015 until November 2018 lay more than fifty per cent higher than the average provisional target profit margin. The result would be that the European Commission over a longer period of time imposed anti-dumping measures at a higher rate than the provisional period of time. Nevertheless, it appears that the European Commission applies a consistent target profit margin in between seven to nine per cent. This contributes to the predictability of the European Commission in setting injury elimination levels which appears to be a good practice for exporting producers which are subjected to an injury analysis.

²⁷⁵ Bungenberg, Marc, et al., eds. *The future of trade defence instruments: global policy trends and legal challenges*. Springer, 2018, pp 73-74

CHAPTER FIVE

5 Aside and after Anti-dumping Investigations in EU28

5.1 Terminations of anti-dumping investigations

Pursuant to Article 9 of the Basic Anti-dumping Regulation, anti-dumping investigations can be terminated without the imposition of anti-dumping measures.²⁷⁶ Table seventeen, which is displayed hereunder, provides an overview of all the anti-dumping proceedings which were terminated through Commission decisions over the course of January 2015 until November 2018. Note that table seventeen contains direct links to the published Commission Decisions.

Table 17. A-D proceedings terminated through Commission decisions: 01-01-2015 until 01-11-2018

STAGES OF A-D PROCEEDINGS INITIATED BY DG TRADE EU <i>January 2015 until November 2018</i>		
Case Name	Initiation	Final Stage
Zeolite A powder from Bosnia and Herzegovina	Initiation	Termination
Certain ceramic foam filters from the PRC	Initiation	Termination
Manganese oxides from Brazil, Georgia, India and Mexico	Initiation	Termination
Purified terephthalic acid and its salts from the Republic of Korea	Initiation	Termination
Stainless steel cold-rolled flat products from Taiwan	Initiation	Termination
Seamless pipes and tubes of iron or steel from the PRC	Initiation	Termination
Low Carbon Ferro-Chrome from the PRC, Russia and Turkey	Initiation	Termination
Ferro-silicon from Egypt and Ukraine	Initiation	Termination
Certain stainless-steel wires from India	Initiation	Termination
Silicon from Bosnia and Herzegovina and in Brazil	Initiation	Termination
Biodiesel from Argentina and Indonesia	Initiation	Termination

Table seventeen indicates, in comparison to the amount of initiated anti-dumping proceedings, a relatively low amount of Commission Implementing Decisions terminating anti-dumping proceedings over the course of January 2015 until November 2018. In comparison to the amount of anti-dumping proceedings which are initiated on the importation of products which originate in the PRC, products which originate in the PRC are relatively underrepresented in Commission Implementing Decisions terminating anti-dumping proceedings over the course of January 2015 until November 2018. This prompts further research into the rationale behind the Commission Implementing Decisions to terminate anti-dumping proceedings over the course of January 2015 until November 2018.

The first option for termination is stated in Article 9(1) of the EU Basic Anti-dumping Regulation. Article 9(1) of the EU Basic Anti-dumping Regulation holds that where the complaint is withdrawn, anti-dumping proceedings may be terminated unless such termination would not be in the Union's interest. The second reason for termination is stated in Article 9(2) of the EU Basic

²⁷⁶ Union producers can bring up an action for annulment under Article 263 TFEU before the General Court – see Giannakopoulos, Themistoklis K. *Safeguarding companies' rights in competition and anti-dumping/anti-subsidies proceedings*. Vol. 12. Kluwer Law International BV, 2011, p 425

Anti-dumping Regulation. Article 9(2) of the EU Basic Anti-dumping Regulation holds that termination is warranted when the examination by the committee of representatives of the EU Member States ex Article 3(2) of Regulation (Eu) No 182/2011 of the European Parliament and of the Council indicates that protective measures are unnecessary. Article 9(3) of the EU Basic Anti-dumping Regulation holds that termination is warranted when the volume of dumped imports and thus the injury to the domestic industry producing the like product is negligible; or when the margin of dumping is *de minimis*.²⁷⁷ However, the European Commission might include other reasons to terminate anti-dumping proceedings. Figure fifty-eight provides an overview of the extent wherein different reasons underlay Commission Implementing Decisions to terminate the anti-dumping proceedings over the course of January 2015 until November 2018.

Figure 58. EC A-D investigation termination decisions per reasoning: 01-01-2015 until 01-11-2018

Source: the author's calculations based on EC Regulation terminating A.-D. investigations from EUR-Lex

Figure fifty-eight indicates that most anti-dumping proceedings were terminated because the complainant withdrew its complaint and termination was in the Union interest ex Article 9(1) of

²⁷⁷ Van Bael, Ivo, and Jean-François Bellis. *EU anti-dumping and other trade defence instruments*. Kluwer Law International BV, 2011, p 406 explains this article:

"Article 9(3) provides that the proceeding will be immediately terminated without the imposition of duties if the dumping margin, expressed as a percentage of the export price, is less than two per cent. This is subject to the provision that where the dumping margin is less than two per cent for individual exporters, only the investigation is to be terminated, and such exporters shall remain subject to the proceedings and may be re-investigated in any subsequent review carried out for the country concerned. Following the WTO Appellate Body Report in Mexico - Beef and Rice, Article 9(3) of the Regulation is no longer compatible with the WTO Anti-Dumping Agreement in that exporting producers who obtained a zero per cent anti-dumping duty in the original investigation cannot be the subject of a subsequent review investigation."

the EU Basic Anti-dumping Regulation. This makes sense when we look at the weak Union industry support for anti-dumping investigations which were initiated over the course of January 2015 until November 2018 ex figures forty-seven and forty-eight. It remains unclear, however, what the exact reasons were for complainants to withdraw their complaint. The European Commission seldom publishes the reasons for complainants to withdraw their complaint. In a little more than one-third of the anti-dumping proceedings which were terminated over the course of January 2015 until November 2018, did the European Commission terminate anti-dumping proceedings because the margin of dumping was found to be *de minimis* Article 9(3) of the EU Basic Anti-dumping Regulation. In a few cases the volume of imports was found to be negligible; a causal link between injury to the domestic industry producing a product identical, comparable or closely resembling the product under consideration was absent; and the European Commission accepted a price undertaking from the exporting producer(s).

5.2 Acceptance, withdrawal and rejection of price undertakings

Ex Article 8(1) of the EU Basic Anti-dumping Regulation the European Commission may, once a provisional affirmative determination of dumping and injury has been made, accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices or to cease exports at dumped prices, if it is satisfied that the injurious effect of dumping is thereby eliminated.²⁷⁸ In such a case and as long as such undertakings are in force, provisional duties which are imposed ex Article 7(1) EU Basic Anti-dumping Regulation, or definitive duties which are imposed ex Article 9(4) EU Basic Anti-dumping Regulation, shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings. The price under such undertakings is not supposed to exceed the injury-elimination level. Figure fifty-nine hereunder provides an overview of the extent wherein price undertakings were accepted; withdrawn or repealed; and / or rejected or terminated per country by the European Commission over the period from January 2015 until November 2018.

Figure 59. The EC's regulations on undertakings per CoO: 01-01-2015 until midway 2018

Source: Commission implementing regulations with respect to undertakings

Figure fifty-nine indicates that over the course of January 2015 until November, the European Commission only accepted one price undertaking from exporting producers of imports which originate in the PRC. The single acceptance stands in stark contrast to the nine undertakings which were withdrawn or repealed and the four undertakings which were rejected or

²⁷⁸ Giannakopoulos, Themistoklis K. *A Concise Guide to the EU Anti-dumping/anti-subsidies Procedures*. Vol. 23. Kluwer Law International BV, 2006, p 131:

"It is the Commission practice not to accept undertaking offers from companies, which were neither granted MET nor IT, since no individual dumping margin can be established in such cases: *Granular polytetrafluoroethylene (PTFE) originating in Russia and PRC*, op. cit., recital 152."

terminated. In the making of figure fifty-nine, price undertakings which were offered by multiple exporting producers per anti-dumping investigation were treated separately per country of origin. Table eighteen, which is provided hereunder, indicates that the vast majority of the price undertakings which were offered over the course of January 2015 until November 2018 concerned exporting producers of products which originated in the PRC.

Table 18. Undertakings accepted, withdrawn or rejected by DG Trade EU: 01-01-2015 until 01-11-2018

UNDERTAKINGS ACCEPTED, WITHDRAWN OR REJECTED BY DG TRADE EU		
<i>January 2015 until November 2018</i>		
Product	Country of Origin	Announcement N°
2015-midway 2018 (1 acceptance)		
Citric acid	PRC	L-15 22.01.2015
2015-midway 2018 (9 withdrawals or repeals)		
Citric acid	PRC	L-15 22.01.2015
Ammonium nitrate	Russia	L-75 22.03.2016
Solar panels	PRC	L-71 16.03.2017
Solar panels	PRC	L-142 02.06.2017
Solar panels	PRC	L-201 02.08.2017
Solar panels	PRC	L-218 24.08.2017
Solar panels	PRC	L-230 06.09.2017
Solar panels	PRC	L-241 20.09.2017
Solar panels	PRC	L-238 16.09.2017
2015-midway 2018 (1 rejection or termination)		
Hot-rolled flat products of iron or steel	Brazil, Iran, Russia, Ukraine	L-67 09.03.2018

5.3 Time-constraints on the conclusion of anti-dumping proceedings

Pursuant to Article 6(9) of the EU Basic Anti-dumping Regulation anti-dumping proceedings which have been initiated pursuant to Article 5(9) of the EU Basic Anti-dumping Regulation shall whenever possible be concluded within one year and in all cases be concluded within 15 months of initiation.²⁷⁹ Furthermore, Article 7(1) of the EU Basic Anti-dumping Regulation provides that provisional duties shall in no case be imposed later than nine months from the moment wherein the proceedings are initiated. Thus, a preliminary determination ought to be concluded within nine months. Pursuant to recital fifteen of the preamble of the EU Basic Anti-dumping Regulation *juncto* Article 6(9) of the EU Basic Anti-dumping Regulation the termination of anti-dumping proceedings must occur, regardless of whether definitive measures are imposed, within fifteen months after the initiation of anti-dumping investigations yet normally within twelve months after the date wherein the anti-dumping investigation has been initiated.

Table nineteen, which is depicted on the next page, provides an overview of the various stages of anti-dumping investigations which the European Commission initiated over the course of January 2015 until November 2018. Figure sixty, which is also provided there, provides an overview of the days necessary for the completion of the various phases of the anti-dumping investigations which have been listed in table nineteen. Figure sixty indicates that the European

²⁷⁹ McGovern, Edmond. *EU Anti-dumping and trade defence law and practice*. Globefield Press, 2018, p 51:2 stipulated the consequences of not living up to the specified time-frames and the various causes which might prevent a timely completion:

"Investigations must whenever possible be concluded within one year (it seems that this period is not subject to judicial control: Case T-35/01, Shanghai Teraoka Electronic v. Council, judgment of 28 Oct. 2004, [2004] ECR II-3663, para. 348 - AD Regulation, Art. 6(9)), and in any event within 15 months (13 months for countervailing duties) of initiation (Case C-76/01 P. Eurocoton v. Council, judgment of 30 Sept. 2003, [2003] ECR I-10091, para. 64). The failure of the Council to adopt a Commission proposal within this period may be challenged by the complainants (Case 246/87, Continentale Produkten-Gesellschaft v. Hauptzollamt München-West, judgment of 12 May 1989, [1989] ECR 1151, para. 8 (32 months reasonable in the circumstances); Case C-121/86, Epichiriseon Metalleftikon v. Council, judgment of 5 Oct 1988, [1990] ECR 3919, para. 22; Case C-122/86, Epichiriseon Metalleftikon v. Council and Commission, judgment of 28 Nov. 1989, [1989] ECR 3959, para. 12; Case C-129/86, Hellenic Republic v. Council, judgment of 28 Nov. 1989, [1990] ECR 3963, para. 35 (4 years reasonable in the circumstances).). Irrespective of explicit time limits, the Court of Justice has observed that the period should not be unreasonably long (Joined cases T-163/94 and T-165/94, NTN and Koyo Seiiko v. Council, judgment of 2 May 1995, [1995] ECR II-1381, paras. 117 et seq.), and the Court of First Instance has in one instance annulled a measure partly on the basis of the excessive duration.

In practice, almost all investigations last between 12 and 15 months. Because of the complexity of many investigations, the achievement of the one-year goal will remain problematic (see, e.g. the Commission's explanations in Advertising matches originating in Japan, OJ L 284, 1997, p. 57, rec. 10.). Other factors may play a part. For example, one (review) investigation was delayed *inter alia* because a concurrent fair-competition investigation was expected to reveal relevant information, and because extended negotiations were held on undertakings (calcium metal originating in Russia, China, OJ L 94, 1999, p. 1, rec. 16). In some instances the delay is caused by differences among the members of the Advisory Committee (tungsten ores and concentrates originating in China and Hong Kong, OJ L 83, 1990, p. 23, rec. 7)."

Commission stayed within the obligatory time-frames which stand for concluding preliminary determinations, final determinations and terminations.

Figure 60. Time-frames needed to conclude A-D investigations in the EU: 01-01-2015 until 01-11-2018

Source: the author's calculations based on Implementing Regulations of the European Commission

Nevertheless, figure sixty also indicates that the European Commission tended to stretch the length of each phase in the anti-dumping investigations which it initiated over the course of January 2015 until November 2018 to the very limit. This tends to indicate that the Directorate General for Trade of the EU might be understaffed.

Table 19. Stages of A-D proceedings initiated by DG Trade EU: 01-01-2015 until 01-11-2018

STAGES OF A-D PROCEEDINGS INITIATED BY DG TRADE EU <i>January 2015 until November 2018</i>			
Case Name	Initiation	Second Stage	Third Stage
Zeolite A powder from Bosnia and Herzegovina	Initiation	Termination	X
Rebars from the PRC	Initiation	Provisional measures	Definitive measures
Cold-rolled flat steel products from the PRC and the Russian Federation	Initiation	Provisional measures	Definitive measures
Aspartame from the PRC	Initiation	Provisional measures	Definitive measures
Sodium cyclamate from the PRC	Initiation	X	Definitive measures
Certain ceramic foam filters from the PRC	Initiation	Termination	X
Stainless steel fittings from the PRC and Taiwan	Initiation	X	Definitive measures Definitive measures
Manganese oxides from Brazil, Georgia, India and Mexico	Initiation	Termination	X
Certain seamless pipes and tubes of iron or steel from the PRC	Initiation	Provisional measures	Definitive measures

Hot-rolled flat products of iron or steel from the PRC	Initiation	Provisional measures	Definitive measures
Heavy plate of steel from the PRC	Initiation	Provisional measures	Definitive measures
Lightweight thermal paper from South Korea	Initiation	Provisional measures	Definitive measures
Concrete reinforcement bars and rods from the Republic of Belarus	Initiation	Provisional measures	Definitive measures
Oxalic acid from India and the PRC	Initiation	X	Definitive measures
Hot-rolled flat products of iron or steel from Brazil, Iran, Russia, Serbia and Ukraine	Initiation	X	Definitive measures
Purified terephthalic acid and its salts from the Republic of Korea	Initiation	Termination	X
Stainless steel cold-rolled flat products from Taiwan	Initiation	Termination	X
Seamless pipes and tubes of iron or steel from the PRC	Initiation	Termination	X
Threaded tube or pipe cast fittings of cast iron from the PRC and Thailand	Initiation	X	Definitive measures
Corrosion resistant steels from the PRC	Initiation	Provisional measures	Definitive measures
Cast iron articles from the PRC and in India	Initiation	Provisional measures	Definitive measures
Biodiesel from Argentina and Indonesia	Initiation	X	Definitive measures
Low Carbon Ferro-Chrome from the PRC, Russia and Turkey	Initiation	Termination	X
Ferro-silicon from Egypt and Ukraine	Initiation	Termination	X
New and rethreaded tyres for buses or lorries from the PRC	Initiation	Provisional measures	Definitive measures Definitive measures
Tartaric acid from the PRC	Initiation	Re-opening	X
Certain stainless-steel wires from India	Initiation	Termination	X
Electric bicycles from the PRC	Initiation	Provisional measures	X
Silicon from Bosnia and Herzegovina and in Brazil	Initiation	Termination	X
Open mesh fabrics of glass fibres from the PRC and India	Initiation	X	Definitive measures
Solar glass from Malaysia	Initiation	Ongoing	Ongoing
Hot-rolled steel sheet piles from the PRC	Initiation	Ongoing	Ongoing
Biodiesel from Argentina and Indonesia	Initiation	Termination	X
Mixtures of urea and ammonium nitrate from Russia, Trinidad and Tobago and the USA	Initiation	Ongoing	Ongoing
Welded tubes, pipes and hollow profiles of iron or steel from Macedonia, Russia and Turkey	Initiation	Ongoing	Ongoing

Even though the time-frames within figure sixty are in line with the prescripts of the EU Basic Anti-dumping Regulation, there are some exceptions such as point 27/4/2016 on definitive measures which appears to exceed the maximum time frame. To gain a clearer insight table twenty, which is provided hereunder, provides the exact days wherein each phase of the anti-dumping procedures has been completed.

Table 20. Days needed by the EC to conclude A-D investigations: 01-01-2015 until 01-11-2018

DAYS NEEDED BY THE EC TO CONCLUDE A-D INVESTIGATIONS			
01-01-2015 until 01-01-2019			
	Termination	Provisional Measures	Definitive Measures
Initiated in 2015			
AD619 - 30.4.2015		274	90
AD620 - 14.5.2015		274	448
AD621 - 30.5.2015		272	426
AD626 - 12.8.2015			339
AD624 - 14.8.2015	320		
AD622 - 29.10.2015		274	456
AD625 - 17.12.2015		275	455
Average:	320	273.8	369

Initiated in 2016			
AD632 - 13.2.2016		273	454
AD630 - 13.2.2016		237	418
AD632 - 13.2.2016		237	381
AD629 - 18.2.2016		273	440
AD633 - 31.3.2016		264	443
AD568a - 27.4.2016			581
AD635 - 7.7.2016			456
AD636 - 3.8.2016	307		
AD585a - 28.10.2016			244
AD639 - 9.12.2016		244	426
AD637 - 10.12.2016		250	416
Average:	307	254	425.9
Initiated in 2017 until January 2019			
AD638 - 23.6.2017	392		
AD642 - 2.8.2017	306		
AD640 - 11.8.2017		269	458
AD591a - 6.10.2017	356		
AD643 - 20.10.2017		271	
AD645 - 19.12.2017	245		
AD648 - 23.5.2018			
AD647 - 24.5.2018			
AD593A - 28.5.2018	143		
AD649 - 13.8.2018			
AD651 - 28.9.2018			
Average:	288.4	270	458

Table twenty shows that the European Commission stayed within all time-frames except case AD 568a which took 581 days to impose definitive anti-dumping measures. However, upon closer inspection case AD 568a concerned the re-imposition of definitive anti-dumping measures wherefore no provisional measures appear to have been imposed. Furthermore, table twenty indicates that the average time-frame for imposition and terminations remained relatively stable over the course of January 2015 until November 2018. In line with Article 7(1) of the EU Basic Anti-dumping Regulation, the provisional imposition of anti-dumping measures stayed within the time-frame of 9 months with averages of 273.8 days in 2015, 254 days in 2016 and 270 days in 2017 and 2018. The terminations stayed well within the maximum time-frame of fifteen months ex Article 6(9) of the EU Basic Anti-dumping Regulation with averages of 320 days in 2015, 307 days in 2016 and 288.4 days in 2017 and 2018.

5.4 Interim, sun-set & anti-absorption reviews and anti-circumvention investigations

Recitals eighteen and thirty-two of the preamble of the EU Basic Anti-dumping Regulation and Articles 11(4), 12 and 13 of the EU Basic Anti-dumping Regulation identify five types of "reviews": expiry reviews, interim reviews, new exporter reviews, anti-circumvention investigations and anti-absorption investigations.²⁸⁰ Albeit not named "interim review" in the Anti-dumping Agreement, paragraph two of Article 11 of the Anti-dumping Agreement obliges investigation authorities to review the continued imposition of an anti-dumping measure, where warranted, on their own initiative *ex officio* or, provided that a reasonable period of time has lapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review.

Interested parties may request investigating authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both.²⁸¹ If, pursuant to the interim review, investigative authorities find that continued imposition of an anti-dumping duty is no longer warranted, the duty must be lifted immediately.

Paragraph three of Article 11 of the Anti-dumping Agreement requires sunset or expiry reviews prior to the auto-termination of anti-dumping duties on a date not later than five years from the imposition of definitive anti-dumping measures or from the latest interim respectively expiry review (if it has covered both dumping and injury).²⁸² Expiry reviews are initiated on the own initiative of investigation authorities or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period prior to the auto-termination date.²⁸³ In the expiry review investigation authorities will investigate whether the expiry of an anti-dumping

²⁸⁰ International Trade Centre UNCTAD/WTO. *Business Guide to Trade Remedies in the European Community: Anti-dumping, Anti-subsidy and Safeguards Legislation, Practices and Procedures*. Oxford University Press, 2004, p 18: "A special type of review is the anti-circumvention and anti-absorption investigation, which can be initiated if the duties imposed have not had their intended effect."

²⁸¹ Van Bael, Ivo, and Jean-François Bellis. *EU anti-dumping and other trade defence instruments*. Kluwer Law International BV, 2011, p 463: questionnaires will also be disseminated amongst interested parties

²⁸² Van Bael, Ivo, and Jean-François Bellis. *EU anti-dumping and other trade defence instruments*. Kluwer Law International BV, 2019, p 498:

"The request for an expiry review must be lodged by or on behalf of Union producers that meet the requirements of Article 4 on the definition of the Union industry. It is, however, not necessary for the request to be lodged on behalf of the original complainants. Contents of the request:

The request must contain sufficient *prima facie* evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. According to the Regulation, such a likelihood may be demonstrated by: evidence of continued dumping and injury, i.e., that the existing measures are inadequate to remove dumping and injury ('continuation test'); or evidence that the removal of injury is partly solely due to the existence of measures; or evidence that the circumstances of the exporters, or market conditions, indicate the likelihood of further injurious dumping ('recurrence test'); or evidence of continued distortions on raw materials"

²⁸³ Van den Bossche, Peter, and Werner Zdouc. "The law and policy of the World Trade Organisation." *Cambridge Books* (2017) p 863: the same goes for the SCM Agreement

duty would be likely to lead to the continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

Provided that anti-dumping duties are in force on imports, ex paragraph five of Article 9 of the Anti-dumping Agreement new exporter reviews may be carried out for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.²⁸⁴ Compared to normal duty assessment and review proceedings in the importing Member, new exporter reviews are initiated and carried out on an accelerated basis. Contrary to the expiry reviews, anti-dumping duties may not be levied on imports from new exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Recital 20 of the preamble of the EU Basic Anti-dumping Regulation indicates that the Anti-Dumping Agreement does not contain provisions regarding the circumvention of anti-dumping measures, though a separate GATT Ministerial Decision recognised circumvention as a problem and referred it to the GATT Anti-dumping Committee for resolution.²⁸⁵ Nevertheless, the concept of anti-circumvention investigations is codified in Article 13(1) of the EU Basic Anti-dumping Regulation. Article 13(1) of the EU Basic Anti-dumping Regulation holds that anti-dumping duties may be extended to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.

Circumvention is defined as a change in the pattern of trade between third countries and EU28 or between individual companies in the country subject to measures and EU28, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities

²⁸⁴ See McGovern, Edmond. *EU Anti-dumping and trade defence law and practice*. Globefield Press, 2018, p 57:7 for a thorough elaboration on new-exporter reviews

²⁸⁵ Yu, Yanning. *Circumvention and Anti-circumvention Measures: The Impact on Anti-dumping Practice in International Trade*. Vol. 13. Kluwer Law International BV, 2008: ...contrary to the US, which "sets out the criteria for each type of circumvention practices to enable the administering authorities to readily operate the cases in practice" (it does not contain a specific definition)

of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the EU Basic Anti-dumping Regulation.

The Anti-dumping Agreement has no Article which deals directly with the concept of anti-absorption. Article 11 of the Anti-dumping Agreement, discussed earlier, might provide a disputable legal basis for Article 12 of the EU Basic Anti-dumping Regulation. Article 12 of the EU Basic Anti-dumping Regulation provides an indication of an anti-absorption investigation:

"Where the Union industry or any other interested party submits, normally within two years from the entry into force of the measures, sufficient information showing that, after the original investigation period and prior to or following the imposition of measures, export prices have decreased or that there has been no movement, or insufficient movement, in the resale prices or subsequent selling prices of the imported product in the Union, the Commission may reopen the investigation to examine whether the measure has had effects on the abovementioned prices. The Commission shall provide information to the Member States once an interested party has submitted sufficient information justifying the reopening of the investigation and the Commission has completed its analysis thereof. The investigation may also be reopened, under the conditions set out in the first subparagraph, on the initiative of the Commission or at the request of a Member State."²⁸⁶

a. Support for, outcome of, countries of origin in and amount per type of reviews

The overview in figure sixty-one, to be found on the next page, provides an insight into the extent wherein various types of reviews were initiated over the course of January 2015 until November 2018. It will be useful to gain clear insight in the extent wherein each aforementioned type of review takes precedence. Figure sixty-one indicates that the majority of reviews which were initiated over the course of January 2015 until November 2018 concern expiry reviews. Second in line & accounting for less than half the amount of expiry reviews are interim reviews.

²⁸⁶ Luo, Yan. *Anti-dumping in the WTO, the EU, and China: The Rise of Legalization in the Trade Regime and Its Consequences*. Vol. 69. Kluwer Law International BV, 2010, p 144: provides the legal background on the anti-absorption duty:

"Before the conclusion of the Uruguay Round, the EU anti-dumping rules experienced two more major amendments in 1984 and 1988. In July 1984, Regulation 3017/79 was replaced by Regulation 2176/84. A 'sunset clause' was inserted into the text, providing for the automatic termination of measures five years after the imposition of measures, or five years after last modification or confirmation of measures. Other revisions included a clarification of the meaning of production cost for the purpose of calculating constructed normal value, and the treatment of sales not in the ordinary course of trade. In 1988, Regulation 2423/88 replaced Regulation 2176/84. Additional rules were introduced to clarify or modify the prior practice of the Commission in Regulation 2423/88. For example, the anti-absorption duty, that is, '*the possibility of increasing the duty where it was proven that the exporter bore the cost of it*', was introduced. The rules concerning the treatment of discounts and rebates when the normal value and the export price was determined on the basis of price actually paid were clarified."

Figure 61. Q of reviews and anti-circumvention investigations in the EU: 01-01-2015 until midway 2018

Source: notices of the initiation of the different types of reviews, Council Implementing Regulations

Anti-circumvention investigations and new exporter reviews accounted for the least amount of reviews which were initiated over the course of January 2015 until November 2018 (sixty-five reviews were initiated). A comparison between the amount of reviews which were initiated, the amount of anti-dumping investigations which were initiated and the amount of anti-dumping measures which were imposed provisionally and definitive over the course of January 2015 until November 2018, indicates that reviews have accounted for a significant part of annual anti-dumping (re-)impositions.

The exorbitant high amount of expiry reviews – in comparison to interim reviews, anti-circumvention investigations, anti-absorption reviews etc. – in figure sixty-one calls the validity of their initiation into question. Ex paragraph three of Article 11 of the Anti-dumping Agreement sunset or expiry reviews are initiated on the own initiative of investigation authorities or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period prior to the auto-termination date. In order to ascertain the validity of the initiation of sunset reviews, it would first be necessary to research the extent wherein the domestic industry of the European Union would be supportive of their initiation. Figure sixty-two provides this

overview of the extent wherein the domestic industry of the European Union supports expiry reviews which have been initiated over the course of January 2015 until November 2018. Figure sixty-two confirms the expectations of overall weak domestic industry support for the initiation of expiry reviews. Sixty-nine per cent of all expiry reviews which were initiated over the course of January 2015 until November 2018 were only supported by a meagre twenty-five per cent.²⁸⁷

Figure 62. Level of Union industry support for expiry reviews in the EU: 01-01-2015 until midway 2018

Source: notices of initiations of expiry reviews of anti-dumping measures

The weak support of the domestic industry for the initiation of reviews (in combination with weak support of the domestic industry for the initiation of anti-dumping investigations in the graphs of figure 47 and 48) tends to indicate a certain inclination of the European Commission. However, before jumping to any conclusions we would have to look into the countries of origin of imports into the European Union whereupon the European Commission initiated reviews. Figure 63, which can be found on the next page, provides an overview of the various countries

²⁸⁷ World Trade Organisation. *Trade Policy Review-China 2012*. Bernan Press, 2012, p 40: the same goes for the Ministry of Commerce of China:

"Articles 48-52 of the AD Regulations provide for "expiry" and "interim" reviews." Under these provisions, final measures are imposed for five years, but may be extended following a review. In practice, MOFCOM publishes a notice six months before the measure is scheduled to expire, and initiates a review only if the domestic industry submits an application including sufficient evidence that expiry would likely lead to a continuation or recurrence of dumping and injury."

of origin of imports whereupon the European Commission initiated reviews over the course of January 2015 until November 2018. It would be of special interest to look at the extent wherein the European Commission initiated reviews on imports which originate in the PRC. It would be of special interest due the fact that the majority of anti-dumping investigations which have been initiated by the European Commission over the course of January 2015 until November 2018, concern imports which originate in the PRC.

Figure 63. CoO of imports in expiry, interim and other reviews in the EU: 01-01-2015 until midway 2018

The CoO of imports whereon expiry, (partial) interim, partial re-opened, new exporting producer and new exporter reviews were initiated
01-01-2015 until midway 2018

Source: notices of the initiations of (expiry) reviews, (partial) interim reviews, new exporter reviews

The notices of initiations of reviews indicate that the extent wherein reviews were initiated on imports into the EU which originate in the PRC almost equals the extent wherein initiations of reviews were supported by a meager 25% of the union industry. However, before we could draw any conclusions on the inclination of the European Commission to initiate reviews on imports which originated in the PRC, we would have to look into the extent wherein reviews which were initiated in this period on imports which originate in the PRC resulted in a confirmation of duty.

Table 21. Expiry, interim, other and new exporter reviews in the EU: 01-01-2015 until 01-01-2019

EXPIRY, INTERM, OTHER AND NEW EXPORTER REVIEWS INITIATED IN THE EU PER OUTCOME <i>January 2015 until January 2019</i>		
Case Name	Initiation	Final Stage
Expiry reviews – concluded with a confirmation of duty		
Citric acid	PRC	L-8 22.01.2015
Monosodium glutamate	PRC	L-15 22.01.2015
Welded tubes and pipes	Belarus PRC Russia	L-20 27.01.2015
Fasteners	PRC Malaysia	L-82 27.03.2015
PSC wires and strands	PRC	L-139 05.06.2015
Biodiesel	USA Canada	L-239 15.09.2015
Wire rod	PRC	L-268 15.10.2015
Tube and pipe fittings	PRC	L-282 28.10.2015

Pipes and tubes	PRC	L-322 08.12.2015
Aluminium foil in big rolls	PRC	L-332 18.12.2015
Ring binder mechanisms	PRC	L-122 12.05.2016
Molybdenum wires	PRC	L-170 19.06.2016
Sodium cyclamate	PRC	L-192 16.07.2016
Sodium gluconate	PRC	L-16 20.01.2017
Aluminium	PRC	L-18 24.01.2017
High tenacity yarn of polyester	PRC	L-49 25.02.2017
Solar panels	PRC	L-56 03.03.2017
Graphite electrode systems	India	L-64 10.03.2017
Okoume plywood	PRC	L-92 06.04.2017
Filament glass fibre products	PRC	L-107 25.04.2017
Tungsten carbide	PRC	L-142 02.06.2017
Melamine	PRC	L-170 01.07.2017
Coated fine paper	PRC	L-171 04.07.2017
Barium carbonate	PRC	L-250 28.09.2017
Open mesh fabrics of glass fibres	PRC	L-288 07.11.2017
Ceramic tiles	PRC	L-307 23.11.2017
Hand pallet trucks and their ess. parts	PRC	L-314 30.11.2017
Trichloroisocyanuric acid	PRC	L-319 05.12.2017
Steel ropes and cables	PRC	L-101 20.04.2018
Tartaric acid	PRC	L-164 29.06.2018
Expiry reviews – terminated with a repeal of duty		
Welded tubes and pipes of iron or non-alloy steel	Ukraine	L-20 27.01.2015
Candles tapers and the like	PRC	L-210 07.08.2015
Aluminium foil in big rolls	Brazil	L-332 18.12.2015
Fasteners iron or steel	PRC Malaysia	L-52 27.02.2016
Polyethylene terephthalate	PRC	L-32 07.02.2017
Interim reviews – concluded with an amendment of duty		
Citric acid	PRC	L-15 22.01.2015
Ceramic tiles	PRC	L-67 12.03.2015
Polyethylene terephthalate	India	L-208 05.08.2015
Open mesh fabrics of glass fibres	India	L-236 10.09.2015
Steel ropes and cables	Ukraine	L-19 27.01.2016
Tube and pipe fittings of iron or steel	South-Korea Malaysia	L-58 04.03.2016
Silicon metal (silicon)	PRC	L-179 05.07.2016
Stainless steel wires	India	L-34 09.02.2017
Interim reviews – concluded and terminated without an amendment of duty		
Solar panels	PRC	L-4 07.01.2016
Threaded tube or pipe cast fittings of malleable cast iron	PRC	L-193 19.07.2016
Threaded tube or pipe cast fittings of malleable cast iron	Thailand	L-193 19.07.2016
Sodium gluconate	PRC	L-336 10.12.2016
Solar panels	PRC	L-56 01.03.2017
Threaded tube or pipe cast fittings of malleable cast iron	PRC	L-7 11.01.2018
Other reviews (partial re-openings, new exporting producers) – concluded with an amendment of duty		
Stainless steel wires	PRC	L-9 15.01.2015
Ceramic tiles	PRC	L-124 20.05.2015
Stainless steel wires	India	L-163 30.06.2015
Stainless steel wires	India	L-265 10.10.2015
Oxalic acid	PRC	L-321 29.11.2016
Footwear	PRC Vietnam	L-64 09.03.2017
Threaded tube or pipe cast fittings of malleable cast iron	PRC	L-166 29.06.2017
Biodiesel	Argentina	L-239 19.09.2017
Bicycles	Sri	L-5 10.01.2018
Seamless pipes and tubes	PRC	L-164 29.06.2018
Other reviews – concluded with a termination and repeal of measures		
Zeolite A powder	BiH	C-365 04.10.2016
New exporter reviews – concluded with an imposition/amendment of duty		

Bicycles	Tunisia	L-7 12.01.2018
New exporter reviews – concluded and terminated without an imposition/amendment of duty		
Trichloroisocyanuric acid	PRC	L-65 10.03.2015

Table twenty-one and figure sixty-four, which is depicted hereunder, provide overviews of the various outcomes of anti-circumvention investigations, anti-absorption reviews, new exporter reviews, other reviews, interim reviews and expiry reviews which were initiated over the course of January 2015 until November 2018. Seven types of outcome have been identified: confirmations of duty;²⁸⁸ terminations and repeals of duty;²⁸⁹ amendments of duty;²⁹⁰ terminations without amendment or imposition of duty;²⁹¹ impositions of duty;²⁹² extensions of duty;²⁹³ and conclusions without extensions of duty.²⁹⁴ Unsurprisingly, figure sixty-four indicates that most of the sunset reviews resulted in confirmations of duty. Only five expiry reviews resulted in the termination and repeal of duty. These findings further corroborate that the European Commission considered and still considers the PRC to be a prime source of continued dumping.

Figure 64. The outcome of reviews, A-A and A-C investigations in the EU: 01-01-2015 until midway 2018

Source: the author's calculations based on the online database of the DG for Trade of the EU

²⁸⁸ See for instance COMMISSION IMPLEMENTING REGULATION (EU) 2015/82 of 21 January 2015

²⁸⁹ See for instance COMMISSION IMPLEMENTING REGULATION (EU) 2015/110 of 26 January 2015

²⁹⁰ See for instance COMMISSION IMPLEMENTING REGULATION (EU) 2015/82 of 21 January 2015

²⁹¹ See for instance COMMISSION IMPLEMENTING REGULATION (EU) 2016/12 of 6 January 2016

²⁹² See for instance COMMISSION IMPLEMENTING REGULATION (EU) 2018/49 of 11 January 2018

²⁹³ See for instance COMMISSION IMPLEMENTING REGULATION (EU) 2015/776 of 18 May 2015

²⁹⁴ See for instance COMMISSION IMPLEMENTING REGULATION (EU) 2017/2093 of 15 November 2017

b. Negligible import volumes under review: when continued imposition is unwarranted

The validity of the numerous findings of continued dumping in expiry reviews initiated on imports which originate in the PRC tends to become questionable through table five and the graphs in figures 32 and 33. After all, the table and graphs indicate that in the majority of anti-dumping procedures which were initiated on imports which originate in the PRC in the year 2015, the result was that the import share of products which originated in the PRC diminished.

Case C143 saw a drop of 10% to 5% one year after the initiation of anti-dumping procedures and 4 per cent in 2017 and 2018.²⁹⁵ The meager import share pursuant to the initiation of anti-dumping measures in case C143 in 2015 appears to make a continued imposition unwarranted. Case C161 saw a drop of 17% to a staggering 3% one year after the initiation of anti-dumping procedures.²⁹⁶ The import share of case C161 even dropped to 1% in 2017 and less than 1% in 2018, making a continued imposition definitely unwarranted. The import share in case C177 never even surpassed more than 2% between 2012 until 2018, making any imposition or continued imposition pursuant to a review definitely unwarranted.²⁹⁷ The import share of case C266 appears to vouch for re-imposition of anti-dumping measures with a consecutively stable percentage between 8 and 9.²⁹⁸ However, it remains questionable whether dumping exists when the import share of products under consideration remains stable between 8 and 9 per cent over the course of three years prior to the year of imposition, the year of imposition and three years posterior to the year of imposition. The import share of case C357 does appear to vouch for re-imposition even though two to three years after the imposition we see the annual percentages between 15 and 17% over the course of 2012 until 2015 drop to an all-time low of 6% in 2018 and 10% in 2017.²⁹⁹ Arguably, dumping might not persist in case C357. Would dumping persist in case 357, it would appear unlikely that an import share which remained consecutively stable over the course of four years prior to an imposition would suddenly drop by more than 50% two years after the imposition of anti-dumping measures. Such a significant drop implies a significant

²⁹⁵ Notice of initiation of an anti-dumping proceeding concerning imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China (OJ C 143, 30.4.2015, p. 12–22)

²⁹⁶ Notice of initiation of an anti-dumping proceeding concerning imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ C 161, 14.5.2015, p. 9–19)

²⁹⁷ Notice of initiation of an anti-dumping proceeding concerning imports of aspartame originating in the People's Republic of China as well as aspartame originating in the People's Republic of China contained in certain preparations and/or mixtures (OJ C 177, 30.5.2015, p. 6–16)

²⁹⁸ Notice of initiation of an anti-dumping proceeding concerning imports of certain ceramic foam filters originating in the People's Republic of China (OJ C 266, 14.8.2015, p. 14–24)

²⁹⁹ Notice of initiation of an anti-dumping proceeding concerning imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan(2015/C 357/05)

effect of anti-dumping impositions and therewith making a continued imposition unwarranted.

An attempt was made to assess the validity of outcomes of reviews initiated over the course of January 2015 until November 2018 by looking into changes in the import share of products originating in the PRC whereupon anti-dumping procedures were initiated in the year 2015. However, we have not yet ascertained whether reviews have actually been initiated or concluded in these cases. Theretofore, and to assess an inclination of the European Commission towards imports originating in the PRC, table twenty-two and twenty-three, both of which can be found hereunder, provide an overview of the various countries of origin of imports whereon expiry reviews were initiated and concluded over the period January 2015 until November 2018.

Table 22. Expiry reviews which have been initiated by DG Trade EU: 01-01-2015 until midway 2018

EXPIRY REVIEWS INITIATED BY DG TRADE EU <i>January 2015 until Midway 2018</i>		
Product	Country of Origin	Announcement N ^o
2015 (10 initiations)		
Ringbinder mechanisms	PRC	C-67 25.02.2015
Silicon metal	PRC	C-174 28.05.2015
Sodium cyclamate	PRC and Indonesia	C-189 06.06.2015
Molybdenum wires	PRC	C-194 12.06.2015
Aluminium road wheels	PRC	C-355 27.10.2015
Sodium gluconate	PRC	C-355 27.10.2015
Polyethylene terephthalate	PRC	C-376 13.11.2015
High tenacity yarn of polyester	PRC	C-397 28.11.2015
Solar panels	PRC	C-405 05.12.2015
Graphite electrode systems	India	C-415 15.12.2015
2016 (10 initiations)		
Okoume plywood	PRC	C-34 29.01.2016
Filament glass fibre products	PRC	C-99 15.03.2016
Tungsten carbide	PRC	C-108 23.03.2016
Melamine	PRC	C-167 11.05.2016
Open mesh fabrics of glass fibres	PRC	C-288 09.08.2016
Barium carbonate	PRC	C-298 18.08.2016
Ceramic tiles	PRC	C-336 13.09.2016
Hand pallet trucks and their ess. Parts	PRC	C-373 12.10.2016
Seamless pipes and tubes of stainless steel	PRC	C-461 10.12.2016
Trichloroisocyanuric acid	PRC	C-476 20.12.2016
2017 (8 initiations)		
Steel ropes and cables	PRC	C-41 08.02.2017
Oxalic acid	PRC and India	C-117 12.04.2017
Tartaric acid	PRC	C-122 19.04.2017
Seamless pipes and tubes of iron or steel	Russia	C-214 04.07.2017
Seamless pipes and tubes of iron or steel	Ukraine	C-214 04.07.2017
Lever arch mechanisms	PRC	C-290 01.09.2017
Aluminium Radiators	PRC	C-377 09.11.2017
Chamois leather	PRC	C-416 06.12.2017
The first six months of 2018 (8 initiations)		
Tube and pipe fittings	Turkey, Russia, South-Korea and Malaysia	C-31 27.01.2018
Bioethanol	USA	C-64 20.02.2018
Aluminium foil in small rolls	PRC	C-95 13.03.2018
Organic coated steel products	PRC	C-96 14.03.2018
Threaded tube or pipe cast fittings of malleable cast iron	PRC and Thailand	C-162 08.05.2018

Ceramic tableware and kitchenware	PRC	C-167 15.05.2018
Tungsten electrodes	PRC	C-186 31.05.2018
Bicycles	PRC	C-189 04.06.2018

Table twenty-one indicates that nearly all expiry reviews which were initiated over the course of January 2015 until November 2018 concerned imports which originate in the PRC. In 2016 all expiry reviews concerned imports which originate in the PRC. Only five out of thirty-six sunset reviews which were initiated over the course of January 2015 until November 2018 did not concern imports which originate in the PRC. Table twenty-three is directly provided hereunder.

Table 23. Expiry reviews terminated and confirming duty by DG Trade EU: 01-01-2015 until 01-11-2018

EXPIRY REVIEWS CONCLUDED BY DG TRADE EU <i>January 2015 until November 2018</i>		
Product	Country of Origin	Announcement N°
2015 (10 confirmations of duty)		
Citric acid	PRC	L-8 22.01.2015
Monosodium glutamate	PRC	L-15 22.01.2015
Welded tubes and pipes	Belarus, PRC and Russia	L-20 27.01.2015
Fasteners	PRC and Malaysia	L-82 27.03.2015
PSC wires and strands	PRC	L-139 05.06.2015
Biodiesel	USA and Canada	L-239 15.09.2015
Wire rod	PRC	L-268 15.10.2015
Tube and pipe fittings	PRC	L-282 28.10.2015
Pipes and tubes	PRC	L-322 08.12.2015
Aluminium foil in big rolls	PRC	L-332 18.12.2015
2016 (3 confirmations of duty)		
Ring binder mechanisms	PRC	L-122 12.05.2016
Molybdenum wires	PRC	L-170 19.06.2016
Sodium cyclamate	PRC	L-192 16.07.2016
2017 (15 confirmations of duty)		
Sodium gluconate	PRC	L-16 20.01.2017
Aluminium	PRC	L-18 24.01.2017
High tenacity yarn of polyester	PRC	L-49 25.02.2017
Solar panels	PRC	L-56 03.03.2017
Graphite electrode systems	India	L-64 10.03.2017
Okoume plywood	PRC	L-92 06.04.2017
Filament glass fibre products	PRC	L-107 25.04.2017
Tungsten carbide	PRC	L-142 02.06.2017
Melamine	PRC	L-170 01.07.2017
Coated fine paper	PRC	L-171 04.07.2017
Barium carbonate	PRC	L-250 28.09.2017
Open mesh fabrics of glass fibres	PRC	L-288 07.11.2017
Ceramic tiles	PRC	L-307 23.11.2017
Hand pallet trucks and their ess. parts	PRC	L-314 30.11.2017
Trichloroisocyanuric acid	PRC	L-319 05.12.2017
The first six months of 2018 (2 confirmations of duty)		
Steel ropes and cables	PRC	L-101 20.04.2018
Tartaric acid	PRC	L-164 29.06.2018
2015-2018 (5 terminations and repeals of duty)		
Welded tubes and pipes of iron or non-alloy steel	Ukraine	L-20 27.01.2015
Candles tapers and the like	PRC	L-210 07.08.2015
Aluminium foil in big rolls	Brazil	L-332 18.12.2015
Fasteners iron or steel	PRC and Malaysia	L-52 27.02.2016
Polyethylene terephthalate	PRC	L-32 07.02.2017

Tables twenty-two and twenty-three indicate that a review was neither initiated nor concluded in case C143, a case wherefore a continued imposition would likely be unwarranted due to a significant decrease of world import share to 5 % in 2016 and 4 % in 2017 and 2018. Tables twenty-two and twenty-three indicate the same for case C161, another case wherefore a continued imposition would likely be unwarranted due to a significant decrease of the world import share from 17% to a staggering 3% one year after the initiation of anti-dumping procedures.³⁰⁰ Instead of a review, definitive measures were conjointly imposed on cases C143 and C161 through Commission Implementing Regulation [2018/1382](#) of 2 September 2019 amending certain Regulations imposing anti-dumping or anti-subsidy measures on "certain steel products" subject to safeguard measures.³⁰¹ Albeit that the EC's provisional import shares in [recital 58](#) for case C143 and [recital 113](#) for case C161 deviate from the import shares which we established for both cases in table five, the fact that the EC does not disclose its calculations, while the calculations for table five are annexed hereto in a transparent and verifiable manner, argues against it.³⁰² Furthermore, periods under consideration for the purpose of establishing the provisional import shares in cases C143 and C161 do not extend beyond 2015 (they start from 2011), making an analysis of the eligibility of continued imposition impossible. Impossible, because a determination on the evolution of the import share in cases C143 and C161 beyond the year 2015 is absent in their conjoined final determination in Commission Implementing Regulation [2018/1382](#) of 2 September 2019 amending certain Regulations imposing anti-dumping or anti-subsidy measures on "certain steel products" subject to safeguard measures.

Tables twenty-two and twenty-three indicate that no review has been initiated nor concluded in case C177.³⁰³ The import share in case C177 never even surpassed more than 2% between 2012 until 2018, making any imposition or continued imposition pursuant to a review likely unwarranted (unless the European Commission kept on looking at the conjoined import share of course). The European Commission did not disclose the extent wherein imports into the EU of aspartame which originate in the PRC account for the total share of imports into the EU of aspartame which originates in the world in [recital 74](#) of Commission Implementing Regulation

³⁰⁰ Provisional impositions were published in COMMISSION IMPLEMENTING REGULATION (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation and COMMISSION REGULATION (EU) 2016/113 of 28 January 2016 imposing a provisional anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China

³⁰¹ COMMISSION IMPLEMENTING REGULATION (EU) 2019/1382 of 2 September 2019 amending certain Regulations imposing anti-dumping or anti-subsidy measures on certain steel products subject to safeguard measures

³⁰² The same reasoning is applied on cases C177, C266 and C357.

³⁰³ Notice of initiation of an anti-dumping proceeding concerning imports of aspartame originating in the People's Republic of China as well as aspartame originating in the People's Republic of China contained in certain preparations and/or mixtures (OJ C 177, 30.5.2015, p. 6–16)

(EU) 2016/262.³⁰⁴ Neither did the European Commission disclose the extent wherein imports into the EU of aspartame which originate in the PRC account for the total share of imports into the EU of aspartame which originates in the world in [recital 63](#) of Commission Implementing Regulation (EU) 2016/1247 wherein it meagrely upholds its provisional findings in [recital 74](#).³⁰⁵

We emphasize the explicit obligation in paragraph 8 of Article 5 of the Anti-dumping Agreement to terminate any anti-dumping investigation immediately once investigating authorities determine that the volume of dumped imports is negligible. We reiterate with emphasis that the concept of negligibility *per* codification in paragraph 8 of Article 5 of the A.d.A. constitutes:

"the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 percent of the imports of the like product in the importing Member collectively account for more than 7 percent of imports of the like product in the importing Member."³⁰⁶

In light of the Directorate's omission to corroborate non-negligibility in [recital 63](#) of Commission Implementing Regulation (EU) 2016/1247 *juncto* [recital 74](#) of Commission Implementing Regulation (EU) 2016/262, a *prima facie* case C177 might be established *per* [Table 5](#) where the continued imposition of *ad valorem* duties would be unwarrantable. Paragraph 8 of Article 5 of the Agreement on the Implementation of Article VI of the GATT'94 would place the *onus* in the hands of the Directorate General for Trade of the European Commission to corroborate that the volume of aspartame which originates in the PRC and is dumped past the Union frontier level, accounts for more than three per cent of the volume of aspartame which originates in the world *extra* the PRC and is imported into the domestic market for consumption of EU28. It appears that Article 5 of the AdA might provide the impetus for the Directorate to initiate an *ex officio* sunset review into the continued need for *ad valorem* duties in effect on imports of aspartame originating in the PRC.

Tables twenty-two and twenty-three indicate that no review has been initiated nor concluded in case C266.³⁰⁷ Contrary to one might expect – after all the import share in case C266 was consecutively stable at a percentage between 8 and 9 over the course of three years prior to the

³⁰⁴ COMMISSION IMPLEMENTING REGULATION (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China

³⁰⁵ COMMISSION IMPLEMENTING REGULATION (EU) 2016/1247 of 28 July 2016 Imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame originating in the People's Republic of China

³⁰⁶ Paragraph 8 of Article 5 of the Agreement on the Implementation of Article VI of the General Agreement on the implementation of Trade and Tariffs 1994

³⁰⁷ Notice of the initiation of an anti-dumping proceeding concerning imports of certain ceramic foam filters originating in the People's Republic of China (OJ C 266, 14.8.2015, p. 14–24)

year of imposition, the year of imposition and three years posterior to the year of imposition – case C266 was [terminated](#) on 2 July 2016.³⁰⁸ Tables twenty-two and twenty-three neither indicate that a review has been initiated or concluded in case C357.³⁰⁹ This runs contrary to one's expectation since the import share of case C357 dropped to an all-time low of 6% in 2018 and 10% in 2017 after it rated between 15 and 17% over the course of 2012. A review would however not appear stringent since the threshold for non-negligibility has not been breached. However, the significant drop in import share pursuant to the imposition of [final anti-dumping measures](#) on 7 April 2017, might incentivize the European Commission to initiate an *ex officio* investigation into the continued existence of dumping in case C357.³¹⁰

Table twenty-three might further corroborate a certain inclination towards imports which originate in the PRC. Fifty per cent of the measures which were repealed pursuant to the termination of a sunset review over the course of January 2015 until November 2018 concerned products which did not originate in the PRC. This surely stands in stark contrast to the extent wherein imports which originate in the PRC were included in expiry reviews over the course of January 2015 until November 2018. Afore finding counts the more since, according to figure sixty-five hereunder, expiry reviews account for more than fifty per cent of all the different types

Figure 65. EU proactivity in different reviews, A-A / A-C investigations: 01-01-2015 until 01-11-2018

The relative share amongst reviews, A-A / A-C investigations in the EU's initiations and conclusions
01-01-2015 until 01-11-2018

Source: the author's calculations based on the database of the DG for Trade of the EU

³⁰⁸ COMMISSION IMPLEMENTING DECISION (EU) 2016/1072 of 29 June 2016 terminating the anti-dumping proceeding concerning imports of certain ceramic foam filters originating in the People's Republic of China

³⁰⁹ Notice of initiation of an anti-dumping proceeding concerning imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (2015/C 357/05)

³¹⁰ See COMMISSION IMPLEMENTING REGULATION (EU) 2017/141 of 26 January 2017 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan in conjunction with COMMISSION IMPLEMENTING REGULATION (EU) 2017/659 of 6 April 2017 amending Implementing Regulation (EU) 2017/141 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan

of reviews which were initiated by EU28 over the course of January 2015 until November 2018. In order to infer further conclusions on any inclination towards the PRC in reviews, the outcomes of reviews other than expiry reviews would have to be looked into. Figure sixty-six, depicted hereunder, provides an overview of the outcomes of (partial) interim reviews initiated in EU28.

Figure 66. The outcomes of (partial) interim reviews initiated in the EU: 01-01-2015 until 01-11-2018

Source: the author's calculations based on the database of the DG for Trade of the EU

Figure 66 indicates that the overall majority of partial interim reviews which have been initiated by the European Commission over the course of January 2015 until November 2018 resulted in either a decrease, repeal, exclusion or transposition of the scope of duty. The finding further corroborates, in light of the fact that (see table twenty-four on the next page) the majority of imports under impartial interim review concern imports from the PRC, that a majority of impositions become unwarranted shortly after their determination for imposition.

Figure 66 clearly indicates that the union industry often supports the repeal, decrease, exclusion or transposition of the scope of duty. This might further corroborate that in a vast amount of anti-dumping investigations, the union industry might either not directly incur injury as a causal result of dumped imports or that in the majority of anti-dumping investigations injury was a causal result of imports whose dumping margin became *de minimis* shortly after the imposition of anti-dumping measures. These findings are supported by the graph in figure 32 which points out that in the majority of cases a significant increase in the import share from a country of origin is followed up by a significant decrease in the import share from that specific country of origin. Thus it appears that in most cases anti-dumping measures have a direct detrimental

effect on the extent wherein dumping persists, were dumping to be analyzed by means of the extent wherein imports from a specific country of origin account for total, worldwide imports.

Table 24. Interim reviews initiated and terminated by DG Trade EU: 01-01-2015 until 01-11-2018

INTERIM REVIEWS INITIATED, TERMINATED WITH AND WITHOUT AMENDMENT OF DUTY BY DG TRADE EU <i>January 2015 until November 2018</i>		
Product	Country of Origin	Announcement N ^o
2015-midway 2018 (15 initiations)		
Tube and pipe fittings of iron or steel	South-Korea	C-58 18.02.2015
Solar panels	PRC	C-147 05.05.2015
Silicon metal (silicon)	PRC	C-287 01.09.2015
Threaded tube or pipe cast fittings of malleable cast iron	PRC and Thailand	C-392 25.11.2015
Solar panels	PRC	C-405 05.12.2015
Stainless steel wires	India	C-411 11.12.2015
Sodium gluconate	PRC	C-64 19.02.2016
High tenacity yarn of polyester	PRC	C-384 18.10.2016
Solar panels	PRC	C-67 03.03.2017
Ceramic tableware and kitchenware	PRC	C-117 12.04.2017
Threaded tube or pipe cast fittings of malleable cast iron	PRC and Thailand	C-162 23.05.2017
Ammonium nitrate	Russia	C-271 17.08.2017
Ammonium nitrate	Russia	C-271 17.08.2017
Tubes and pipes of ductile cast iron	India	C-157 04.05.2018
Seamless pipes and tubes	Ukraine	C-159 07.05.2018
2015-midway 2018 (8 concluded amendments of duty)		
Citric acid	PRC	L-15 22.01.2015
Ceramic tiles	PRC	L-67 12.03.2015
Polyethylene terephthalate	India	L-208 05.08.2015
Open mesh fabrics of glass fibres	India	L-236 10.09.2015
Steel ropes and cables	Ukraine	L-19 27.01.2016
Tube and pipe fittings of iron or steel	South-Korea and Malaysia	L-58 04.03.2016
Silicon metal (silicon)	PRC	L-179 05.07.2016
Stainless steel wires	India	L-34 09.02.2017
2015-midway 2018 (4 terminations without amendments)		
Solar panels	PRC	L-4 07.01.2016
Threaded tube or pipe cast fittings of malleable cast iron	PRC	L-193 19.07.2016
Threaded tube or pipe cast fittings of malleable cast iron	Thailand	L-193 19.07.2016
Sodium gluconate	PRC	L-336 10.12.2016
Solar panels	PRC	L-56 01.03.2017
Threaded tube or pipe cast fittings of malleable cast iron	PRC	L-7 11.01.2018

The PRC ex table twenty-four is not significantly underrepresented as a country of origin of imports in interim reviews as compared to the extent wherein it is represented as a country of origin in sunset reviews which were initiated over the course of January 2015 until November 2018. However, the PRC is less represented as a country of origin in the extent wherein interim reviews are concluded with amendment of duty, as compared to interim reviews which are terminated without amendment. To infer any conclusions with respect to any inclination of the European Commission towards imports which originate in the PRC, it is necessary to look at the outcomes of partial interim reviews in the EU, to be seen in figure sixty-seven on the next page.

Figure 67. The outcome of (partial) interim reviews in the EU: 01-01-2015 until midway 2018

Source: the author's calculations based on the online database of the DG for Trade of the EU

Figure sixty-seven indicates that over the course of January 2015 until November 2018 the amount of amendments of duty in (partial) interim reviews evolved more or less in tandem with the amount of terminations without amendment in (partial) interim reviews. It would therefore appear that the European Commission applies a neutral stance with respect to reviews wherein the PRC is not significantly overrepresented as a country of origin of the products under consideration. To infer any conclusions with respect to any inclination of the European Commission towards imports which originate in the PRC, one needs insight in the extent wherein anti-circumvention investigations, anti-absorption investigations, new exporter reviews and partial re-openings were initiated on imports which originate in the PRC, see tables 25 and 26.

Table 25. Anti-circumvention / anti-absorption investigations in the EU: 01-01-2015 until 01-11-2018

ANTI-CIRCUMVENTION / ANTI-ABSORPTION INVESTIGATION INITIATED IN THE EU PER COO <i>January 2015 until January 2019</i>		
Case Name	Country of Origin	Reference
Anti-absorption investigations - concluded with increase of duty		
Solar glass	PRC	L-215 14.08.2015
Stainless steel wires	India	L-228 02.09.2015
Anti-absorption investigations - concluded without increase of duty / termination		
Stainless steel wires	Taiwan	L-98 11.04.2017
Anti-circumvention investigations - concluded with extension of duty		
Bicycles	PRC	L-122 19.05.2015
Molybdenum wires	PRC	L-284 30.10.2015
Citric acid	Malaysia	L-10 15.01.2016
Solar panels	Taiwan	L-37 12.02.2016
Hand pallet trucks and their ess. Parts	PRC	L-214 08.08.2016
Aluminium foil	PRC	L-40 17.02.2017
Anti-circumvention investigations - concluded without extension of duty / termination		
Seamless pipes and tubes of stainless-steel	India	L-299 16.11.2017
Hand pallet trucks and their ess. Parts	Vietnam	L-49 22.02.2018

Table 26. New exporter reviews and partial re-openings by DG Trade EU: 01-01-2015 until 01-11-2018

OTHER REVIEWS BY DG TRADE EU (NEW EXPORTER, PARTIAL RE-OPENINGS)		
<i>January 2015 until November 2018</i>		
Product	Country of Origin	Announcement N°
2015-midway 2018 (1 initiated partial re-opening)		
Zeolite A powder	BiH	C-17 20.01.2015
2015-midway 2018 (10 partial re-openings concluded with amendment of duty)		
Stainless steel wires	PRC	L-9 15.01.2015
Ceramic tiles	PRC	L-124 20.05.2015
Stainless steel wires	India	L-163 30.06.2015
Stainless steel wires	India	L-265 10.10.2015
Oxalic acid	PRC	L-321 29.11.2016
Footwear	PRC Vietnam	L-64 09.03.2017
Threaded tube or pipe cast fittings of malleable cast iron	PRC	L-166 29.06.2017
Biodiesel	Argentina	L-239 19.09.2017
Bicycles	Sri-Lanka	L-5 10.01.2018
Seamless pipes and tubes	PRC	L-164 29.06.2018
2015-midway 2018 (1 partial re-opening terminated with repeal of measures)		
Zeolite A powder	BiH	C-365 04.10.2016
2015-midway 2018 (5 initiated new exporter reviews)		
Steel ropes and cables	PRC South-Korea	L-309 26.11.2015
Solar panels	Malaysia	L-36 11.02.2017
Bicycles	Tunisia	L-116 05.05.2017
Open mesh fabrics of glass fibres	India	L-226 01.09.2017
Solar panels	PRC	L-288 07.11.2017
2015-midway 2018 (1 new exporter review concluded with imposition / amendment of duty)		
Bicycles	Tunisia	L-7 12.01.2018
2015-midway 2018 (1 terminated new exporter review)		
Trichloroisocyanuric acid	PRC	L-65 10.03.2015

The PRC ex table twenty-five is not significantly underrepresented as a country of origin of imports in anti-circumvention investigations, anti-absorption investigations, new exporter reviews and partial re-openings – in comparison to the extent wherein it is represented as a country of origin in sunset reviews which were initiated over the course of January 2015 until November 2018. However, in comparison to expiry reviews, the PRC does not appear less represented as a country of origin in the extent wherein anti-circumvention investigations, anti-absorption reviews and (partial) re-openings resulted in the continued imposition of a duty. This finding is especially visible in anti-circumvention investigations and anti-absorption investigations which were concluded over the course of January 2015 until November 2018.

CONCLUSION AND RECOMMENDATIONS

6 Conclusion and Recommendations

6.1 The main concluding remarks

The study at hand supports that the actual appraisal of 'real' actions of producers exporting products from and towards the EU is at pains with the prescripts of the Anti-dumping Agreement. The dissertation confirms all six working hypotheses, to be substantiated *infra*: geopolitical factors have an impact on anti-dumping proceedings; import volumes are neither always determined nor determinable through the prescripts of the Anti-dumping Agreement; imposed anti-dumping rates do not always correspond to real dumping margins; the normal value and the export price of imports are not always determined in line with the Anti-dumping Agreement; injury caused by factors other than dumping is not always discerned nor discernible from injury due to dumping; an uptick in *ex officio* expiry reviews would be highly desirable.

The research identifies contingent protectionism in sectors of geopolitical importance, tit-for-tat in the use of defense measures *vice versa* the EU and malpractice by the PRC in calculating rates of duties. Domestic industry support for initiated anti-dumping applications turned out to be weak and indirect (runs against Article 5 §4 of the Anti-dumping Agreement). The research detected a widespread malpractice which artificially inflates the residual dumping margin (in breach of Article 9 §4 and Article 2 §4 & subparagraph 4.2 of the Anti-dumping Agreement). The proscribed practice is coined with the term *diffracting*. The research found erroneous implementations: criteria used for individual treatment ex Article 2(7)(c) of the EU Basic Anti-dumping Regulation run against Article 6 §10 *juncto* 2 §2 of the Anti-dumping Agreement; Article 2 §2 of the Anti-dumping Agreement does not facilitate the use of analogue normal values (ex Article 2(7)(a) of the EU Basic Anti-dumping Regulation); the asymmetric inclusion of sales expenses and profit margins runs against Article 2 §4 of the Anti-dumping Agreement *juncto* Article 2(9) third subparagraph of the EU Basic Regulation. Furthermore, inconsecutiveness in the application of micro- and macroeconomic injury indicators runs against Article 3 §4 of the Anti-dumping Agreement and inconsecutive analyses of the effect of factors other than dumped imports runs against the prescripts ex Article 3 §5 of the Anti-dumping Agreement *juncto* Article 3(7) of the EU Basic Anti-dumping Regulation. Furthermore, increased proactivity *ex-officio* in the review phase is desirable: Article 5 §8 of the Anti-dumping Agreement makes it undesirable to uphold measures on negligible import volumes in all the various phases of anti-dumping proceedings.

In sum, contingent protection beyond the bound tariff ought to be employed as a means to shield the domestic industry against material injury caused by the importation of goods in representative volumes at export prices significantly lower than their normal value. However, in practice anti-dumping instruments have been employed as a means to shield domestic

industries from general, non-injurious effects of imports into or originating in EU28. The dissertation finds that protectionism continues to prevail in sectors which are geopolitically important through erroneous implementation of contingent protection.

The first side objective of this dissertation has been the distillation of a definition of sales in the ordinary course of trade from the overborne text of Article 2 §2 of the Anti-dumping Agreement:

Sales are *only* in the ordinary course of trade if they are *either* made:

- at prices above the *per unit cost* (the sum of fixed and variable production costs per unit plus overhead, administrative, selling and general costs per unit) *or*
- at prices below the same *per unit cost* above the weighted average *per unit cost* for the period of investigation if the latter sales are made in less than six months at *either*
 - o a volume of less than 20 % of the total volume of sales used for the determination of normal value *or*
 - o a weighted average *per unit cost* of all sales used to determine normal value which does not surpass the weighted average selling price of all sales used to determine normal value

The second side objective of the research is the formulation of a new general theory on the detection of dumping via sales which fall outside the natural course of world trade through a percentual increase in import from a Member state which exceeds that of the rest of the world.

6.2 The impact of geopolitical factors

a. Malfeasance through China's Trade Remedy Investigation Bureau - discriminatory rates

Figure 44 indicates malfeasance in the height of rates of duties which the PRC Bureau of Industry Injury Investigation imposed over the course of January 2015 until November 2018. Firstly, the PRC Bureau of Industry Injury Investigation on average imposed significantly higher rates on all types of duties with a broader scope (countrywide impositions vs. individual impositions). Secondly, the PRC Bureau of Industry Injury Investigation on average imposed significantly higher rates on all types of duties with a lengthier scope (definitive impositions vs. provisional impositions). Thirdly, the PRC Bureau of Industry Injury Investigation on average imposed significantly higher anti-dumping rates on imports which originate in WTO Members whose exports the PRC Bureau of Industry Injury Investigation more often contracted in anti-dumping investigations. The PRC Bureau of Industry Injury Investigation imposed a staggering average countrywide rate of 64% and an average individual rate of 49% in its 58 anti-dumping rulings on imports which originate in the USA. This stands in stark contrast to the average countrywide rate of 30% and the average individual rate of 15% in the 3 rulings on imports which originate in Singapore. The perfect correlation between higher rates on the one hand and countrywide

impositions, definitive impositions and the amount of rulings on the other, corroborates the PRC Bureau of Industry Injury Investigation's partiality in setting heights of the various rates of duty.

b. Discriminatory rates of anti-dumping duties – the US International Trade Administration

Figure 46 indicates possible partiality in the height of rates of duties which the US International Trade Administration imposed over the course of January 2015 until November 2018. A correlation between higher rates on the one hand and countrywide impositions, definitive impositions and the amount of less-than-fair-value determinations on the other is absent. However, a certain partiality appears towards imports which originate in the PRC. Firstly, imports which originate in the PRC were most often subjected to less-than-fair-value investigations (30 investigations compared to 17 second-most investigations). Secondly, the average final countrywide rate accounted for a staggering 195% (the second highest accounted for a mere 75%). Thirdly, the average final individual rate accounted for a staggering 102% (the second highest accounted for a mere 79%). The outcome of less-than-fair-value investigations on imports which originate in the PRC, when compared to imports which originate in the rest of the world, appears so significant that it seems hard to rhyme with private actions of Chinese exporting producers. The exorbitant difference would rather indicate a certain degree of partiality towards imports which originate in the PRC. The partiality appears understandable by the exorbitant high rate of duty imposed by the Bureau of Injury Industry Investigation of the PRC in the numerous anti-dumping rulings on imports which originate in the USA (an average countrywide rate of 64% and an average individual rate of 49% in its 58 anti-dumping rulings). Thus, tit-for-tat appears present in the extent wherein the US Department of Commerce on the one hand and the Ministry of Commerce of the PRC on the other impose measures on imports from each other and the rates of duty which they apply on their bilateral exchange of products.

c. Discriminatory rates of anti-dumping duties – Directorate General for Trade of the EU

Malfeasance is not discernible from the extent wherein the European Commission applies different rates of duty. Figure 36 indicates that, over the course of January 2015 until November 2018, the average provisional countrywide rate is only slightly higher than the average provisional individual rate. Furthermore, the lowest average provisional anti-dumping rates were imposed on imports whose commodity numbers were most often subjected to anti-dumping measures: Iron, steel and allied industries. Nevertheless, figure thirty-seven indicates that the third highest average definitive anti-dumping rate was imposed on imports Iron, steel and articles thereof. The absence of a significant sectorial difference between the height of the average definitive countrywide rate, the height of the average definitive individual rate and the height of the average definitive other co-operator rate provides a strong indication of

impartiality. However, a slight indication of partiality is provided in figure 38: the average definitive countrywide rate is 12 percent higher than the average provisional countrywide rate.

d. Retaliatory effect of impositions and withdrawals

Figures 10 and 11 evidence that the extent wherein the EU over the course of January 2000 until November 2018 imposed or withdrew anti-dumping measures on imports into the EU converges with the extent wherein WTO Members imposed or withdrew anti-dumping measures on exports which originate in the EU. Figure 12 further evidences that the imposition and withdrawal of anti-dumping measures by one member is a geopolitical factor which impacts the imposition and withdrawal of anti-dumping measures by another member. Specific evidence can be found in quinquennium 1995-2000. Quinquennium 1995-2000 is the only quinquennium wherein the EU imposed the highest amount of anti-dumping measures on exports which originate in India. This coincides with the only quinquennium wherein India imposed the highest amount of anti-dumping measures on imports which originate in the EU. Yet whereas the EU over the course of multiple quinquennia has imposed the highest amount of anti-dumping measures on imports which originate in the PRC, the USA over the course of multiple quinquennia has imposed the most anti-dumping measures on goods which originate in the EU.

Tit-for-tat appears to be absent in the initiation of anti-dumping disputes by and against the EU at the WTO level (see table 3 and figure 19). Nevertheless, correlation is visible with the extent wherein anti-dumping investigations were initiated and the extent wherein anti-dumping measures were imposed. The USA initiated the highest amount of anti-dumping disputes on measures which were imposed by the EU, while the EU initiated highest amount of anti-dumping disputes on measures which were imposed by the PRC. Likewise, figure twenty-one indicates that the USA initiated the highest amount of anti-dumping measures on imports which originate in the EU. However, the EU initiated the highest amount of anti-dumping measures on imports which originate in the PRC. Whereas the EU regards the PRC to be a prime source of dumping, from an EU perspective the USA regards the EU to be a prime source of dumping. From an USA perspective, see figure 23, the PRC is the foremost source of dumping: over the course of January 1990 until November 2018 the US International Trade Administration initiated the highest amount of anti-dumping proceedings on imports which originate in the PRC. Tit-for-tat is derivable from figure 25: over the course of January 1998 until November 2018 the PRC Bureau of Industry Injury Investigation initiated the highest amount of anti-dumping proceedings on imports which originate in the USA. The relative distribution is exactly the same: whereas products originating in the USA account for nineteen percent of all anti-dumping proceedings initiated by the PRC Bureau of Industry Injury Investigation, products which originate in the PRC account for nineteen percent of all cases initiated by the US International Trade Administration.

e. Strategic protectionism in sectors of geopolitical importance

Figures 13 until 19 evidence the strong use of anti-dumping measures as a means to shield sectors, whose domestic production is of strategic importance, against international competition. Over the course of all quinquennia since January 1990, US ITA and DG Trade EU consecutively imposed the highest amount of anti-dumping measures on the importation of Iron and steel and articles thereof and Electric machinery (see figures 13 and 14 – the EU initiated more than one-third of all its anti-dumping measures on the importation of Iron and steel and articles thereof – see figure 27). The geopolitical importance of the first sector for EU28 would be derivable from the report of the High Level Round Table on the Future of European Steel Industry. The US International Trade Administration, over the course of the same quinquennia, consecutively imposed the highest amount of anti-dumping measures on the same imports: Iron and steel and articles thereof (see figures 15, 16 and 28). The PRC Bureau of Industry Injury Investigation, over the course of all quinquennia since January 2000, consecutively imposed the highest amount of anti-dumping measures on imports falling under chapter 29 of the harmonised nomenclature: Organic chemicals and Plastics & articles (see figures 17, 18, 29 and 42). The USA primarily protects its domestic iron, steel and allied industries from imports which originate in the EU (figure 31). Whereas the USA initiated a mere 20 % of *anti-dumping measures on world imports* on Iron and steel, it initiated a staggering 53 % of *anti-dumping measures on EU imports* on Iron and steel. In stark contrast: the PRC initiated a mere 6 % of *anti-dumping measures on EU imports* of iron and steel. Ceteris paribus the extent wherein dumping prevails in various chapters of the harmonized nomenclature: the consecutively high imposition of anti-dumping measures by the EU, the USA and the PRC in specific sectors of the harmonized nomenclature over the course of multiple quinquennia calls the misuse of anti-dumping instruments as a means to shield specific domestic industries from fair, international competition into question. After all, it appears highly unlikely that dumping only prevails in specific chapters of the harmonized nomenclature since dumping concerns a private action.

6.3 The validity of analogue normal value

a. Art. 2(7)(a) EU Basic Anti-dumping Regulation vs. Art. 2 §2 Anti-dumping Agreement

The EC's determination of normal value through the price or constructed value in market economy third countries ex Article 2(7)(a) of the EU Basic Anti-dumping Regulation runs against the prerequisite ex Article 2 §2 of the Anti-dumping Agreement to determine normal value through the comparable, representative price of the like product when exported from the country of origin to an appropriate third country, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Arguably, recourse to prices or constructed values in a third country impedes on the validity of the normal value. After all, the level of economic development in the analogue country might exceed the level of economic development in the country of origin. The higher normal value in the market economy of the third country would artificially inflate the margin of dumping. In spite of the aforesaid, figure 53 indicates that over the course of January 2015 until November 2018 the European Commission applied the analogue country method in a staggering 13 out of 14 investigations. Whereas ex figure 54 the analogue country method primarily concerned imports originating in the PRC, the analogue countries primarily concerned developed economies: USA three investigations, Canada three investigations, Japan two investigations and Australia one investigation. The analogue country method might thus have resulted in an artificial inflation of margins of dumping in provisional and final determinations over the course of January 2015 until November 2018.

Eighty-two percent of the analogue country determinations over the course of January 2015 until November 2018, unwarranted as they may be ex Article 2 § 2 of the Anti-dumping Agreement, concerned imports which originate in the PRC (see table ten). Thus, it appears that DG trade EU in the majority of cases considers the PRC to be a non-market economy. However, under section 15 of the Protocol of Accession of the PRC to the WTO, the non-market economy status of the PRC lapsed on 11 December 2016. In line therewith, the European Commission might want to substantiate every denial of market economy status to Chinese exporting producers. However, upon request of multiple interested parties, the European Commission did not provide a clear reasoning for the denial of market economy status: see recital 76 of Commission Implementing Regulation (EU) 2017/1480 of 16 August 2017, recital 180 of Commission Implementing Regulation (EU) 2017/141 of 26 January 2017, recitals 76 and 77 of Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018. Therefore, whereas the analogue country method is not facilitated by the Anti-dumping Agreement, the application of the analogue country method remains rather obscure. Furthermore, a significant amount of exporting producers either did not submit market economy treatment claim forms for individual treatment or withdrew their request for market economy treatment (see figure 54). One might recommend to check whether interested parties understand the benefit of individual treatment.

6.4 Unwarranted denials of individual treatment

The criteria for individual treatment ex Article 2(7)(c) of the EU Basic Anti-dumping Regulation run against Article 6 §10 of the Anti-dumping Agreement. After all, the chapeau of Article 6 §10 of the Anti-dumping Agreement indicates that individual treatment must be granted to every known exporter or producer, regardless of the existence of a particular market situation ex Article 2 §2 of the Anti-dumping Agreement. Individual treatment is only deniable if the amount

of exporters, producers, importers or types of products involved would make an individual determination impracticable and prevent timely completion.

Impracticability bears no correlation with the self-stipulated criteria to determine whether exporting producers operate under market economy conditions and thus should be afforded individual treatment. Furthermore, the European Commission often omits to substantiate the application of criteria: see for instance recital 65 of Commission Implementing Regulation (EU) 2017/1480 of 16 August 2017, where state interference under criterion 1 of Article 2(7)(c) of the EU Basic Anti-dumping Regulation was based on the simple notion that one of the new owners had links to the State and the Communist Party of China. Contrary to the need to substantiate impracticability or undue burdens and the prevention of the timely completion of an investigation, the European Commission places the burden of proof in the hands of interested parties to prove that criteria for individual treatment prevail. See for instance recital 94 of Commission Regulation (EU) 2018/683 of 4 May 2018 where individual treatment was denied because groups failed to demonstrate, either individually or as a group, that they had one clear set of accounts that were independently audited in line with international accounting standards. In recital 83 of Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018 it was found that criterion one was not fulfilled because the group had purchased products whose prices were affected by significant distortions of the prices of raw materials due to State interference. However, the Commission did not furnish any clear evidence on how interference from the PRC could have resulted in the significant distortions of the prices of the raw materials.

6.5 The representativeness of dumping margins

a. Union industry support for initiations

In none of the provisional or definitive implementing regulations implemented over the course of January 2015 until November 2018, did the Commission express the extent wherein the collective output of domestic producers who supported applications accounted for total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. It merely expressed the extent wherein the collective output accounted for total production of the like product, thereby also including that portion of the domestic industry which neither expressed support nor opposition to the application. However, *per* Article 5 §4 of the Anti-dumping Agreement, the European Commission is required to look into "that portion of the domestic industry expressing either support for or opposition to the application".

Furthermore, Union industry support appears rather weak. Figure 47 indicates that Union industry support accounted for a mere 25% in over half the amount of anti-dumping

investigations which were initiated in between January 2015 and November 2018. Twenty-five per cent is the minimum threshold for the initiation of anti-dumping investigations ex Article 5 §4 of the Anti-dumping Agreement. Moreover, more than 50% of all anti-dumping applications were lodged by associations of Union producers - further drawing the legitimacy of initiations into question. Figure 62 indicates that the weak domestic industry support continues into the review phase. Almost seventy per cent of all expiry reviews which have been initiated over the course of January 2015 until November 2018 only accounted for a meagre twenty-five per cent.

b. Diffraction of sampled margins of dumping

The European Commission applied sampling in 29 of the 31 anti-dumping investigations which it initiated over the course of January 2015 until November 2018 (see figure 50). The excessive use of sampling is questionable. After all, individual treatment is required if the number of exporters, producers, importers or types of products involved is not so large as to make such an individual determination impracticable (refers to Article 6 §10 of the Anti-dumping Agreement).

If the volume of imports of sampled cooperating exporting producers expressed as a proportion of the total import volume from the country of origin is high, investigating authorities have transposed margin(s) of dumping belonging to a fraction of the sample of cooperating exporting producers to a country-of-origin-wide level. The stipulated method is runs against subparagraph (i) of Article 9 §4 of the Anti-dumping agreement. It runs against because it enables the transposed margin of dumping to exceed the "weighted average margin of dumping established" with respect to all exporters or producers who were investigated (the ceiling was explained in recital 116 of US- Hot Rolled Steel).³¹¹ Furthermore, the mere transposition of a fraction of margin(s) of dumping which were found in a sample contravenes the principle of fair comparison, enshrined in §4 & subparagraph 4.2 of Article 2 of the Anti-dumping Agreement.³¹²

Investigating authorities reformulated the extent wherein the volume of exports of sampled cooperating exporting producers account for a proportion of the total export volume from the country of origin into 'level of cooperation'. The investigating authorities subsequently applied a high level of cooperation as a justification for a transposition of the fraction of the sample which accounts for the broadest margin of dumping. However, the transposition of a fraction of the sample would only be justified if the fraction itself would be representative. Examples abound: see the conjuncture in between recitals 125 and 126 of Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018. A country-wide transposition of the highest dumping

³¹¹ World Trade Organisation. *WTO Analytical Index*. Vol. 1. Cambridge University Press, 2007, pp 632, 633: the transposition of anti-dumping rates may not exceed the sampled weighted average margin of dumping

³¹² Because it might result in the artificial inflation of county-wide margins of dumping

margin(s) of sampled exporting producers is unwarranted when only the import share of non-transposed sampled exporting producers is representative. The import share of non-transposed sampled exporting producers has no bearing on the representativeness of transposed sampled exporting producers. Furthermore, the current practice of the European Commission runs against recital twelve of Article 2 of the EU Basic Anti-dumping Regulation: "Where dumping margins vary, a weighted average dumping margin may be established (for the all-others margin of dumping)". The un-fractured import share of the whole sample of exporting producers is applied as a figment to justify the countrywide transposition of the margin(s) of dumping of exporting producers belonging to a fraction of all the sampled exporting producers.

The absence of a causal link between import share and transposed margins of dumping implies the risk of a countrywide dumping margin which accounts for a meagre fraction of the total import volume from the country of origin. This risk undermines the whole object and purpose for establishing margins of dumping. Yet nevertheless, this practice is incumbent in all twelve Commission Implementing Regulations imposing provisional anti-dumping duties between January 2015 and November 2018. Strikingly, all levels of cooperation in all investigations since January 2015 were found to be high and the investigating authority transposed the highest margin of dumping which it found within the sample of cooperating exporting producers to all-others in all the investigations which it initiated in between January 2015 until November 2018.

6.6 The artificial deflation of export prices

a. Asymmetric inclusion of sales expenses and profit margins

Whereas the investigating authority includes sales expenses and profit margins in the normal value, it excludes sales expenses and profit margins from the export price. See for instance recitals 103 until 107 of Commission implementing regulation (EU)2018/1579 of 18 October 2018). The asymmetric inclusion generates higher normal values and lower export prices, thereby artificially inflating the margin of dumping. This practice is proscribed under Article 2 §4 of the Anti-dumping Agreement, which requires normal value and export price to be adjusted towards a similar level of trade, with the same components. Furthermore, pursuant to Article 2(9) third subparagraph of the EU Basic Anti-dumping Regulation, the items for which adjustments are to be made include those normally borne by an importer but paid by any party, including a reasonable margin for SG&A costs and profits.

In other determinations, the investigating authority appears to artificially deflate the export price ex Article 2(10)(i) of the EU Basic Anti-dumping Regulation through adjustments on the premises of an (alleged) artificial inflation of export prices through (allegedly) captive sales through intercompany importers based in intermediate companies of export. It appears that the

European Commission applies automatic adjustments unless it can either verify that the products concerned to the Union are sold directly to independent customers (in which case the export price is established in accordance with Article 2(8) of the EU Basic Anti-dumping Regulation) or unless it can verify that the prices between related parties were at arm's length and reflected market prices. The onus to verify whether adjustments are warranted rests in the hands of the European Commission and thus it should refrain from unwarrantable adjustments.

b. Target profit margins

The European Commission does not publish calculations through which it establishes the margins of undercutting – making a verification impossible. A publication thereof is recommendable since the target profit margin is an essential part of the domestic price effects analysis *ex* Article 3 §2 of the Anti-dumping Agreement. *A priori*, it appears unlikely that the European Commission miscalculates target profit margins. Unlikely since table 16 indicates that the average provisional target profit margin over the course of January 2015 until November 2018 exactly equals the minimum target profit margin which was proposed for the calculation of the non-injurious price for injury margin calculation in the trilateral compromise agreement between EU institutions in the context for the modernisation of the EU's trade defence instruments.

6.7 Sales in the ordinary course of trade

One of the objectives of this dissertation has been to simplify the definition of sales in the ordinary course of trade for the determination of normal value *ex* Article 2 §2 of the Anti-dumping Agreement. The cause of this objective is the confusion which exists with respect to the definition of sales in the ordinary course of trade.³¹³ The following definition of sales in the ordinary course of trade has been crystallized from the text of Article 2 §2 of the AdA:

'Sales are *only* in the ordinary course of trade if they are *either* made: at prices above the *per unit cost* (the sum of fixed and variable production costs per unit plus overhead, administrative, selling and general costs per unit) *or* at prices below the same *per unit cost* above the weighted average *per unit cost* for the period of investigation if the latter sales are made in less than six months at *either* a volume of less than 20 % of the total volume of sales used for the determination of normal value *or* a weighted average *per unit cost* of all sales used to determine normal value which does not surpass the weighted average selling price of all sales used to determine normal value.'

³¹³ See recital 139 of Appellate Body Report, *United States - Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, 4697, wherein the Appellate Body accepted a WTO Member's clueless and unsubstantiated version of what constituted sales in the ordinary course of trade.

6.8 Micro- & macro-economic injuries

The European Commission applied most indicators on a consecutive basis over the course of January 2015 until November 2018 (see table 14 and 15). However, the macroeconomic injury indicators Stocks / inventories, Labour costs and the micro-economic injury indicators Sales prices, Cost of goods sold to Union industry appear to have been applied scarcely. It remains unclear why the European Commission scarcely applied these injury indicators. A full examination of all injury indicators is commendable, especially because the European Commission established a causal link between dumped imports and the incurrence of injury in all of the 26 Commission implementing regulations imposing provisional and definite anti-dumping measures over the course of January 2015 until November 2018 (referral to figure 57).

6.9 The break-the-causal-link analysis

a. Exceptional injurious factors other than dumped imports

In all of the twenty-six provisional and definitive Commission Implementing Regulations over the course of January 2015 and November 2018, the European Commission only once examined the potential injurious effect of the factors: Technical evolution of the product under investigation (decreased weight of sold items); A force majeure with bearing on production, capacity utilisation, sales, market share and productivity figures; Impairment booking; Competition between domestic vertically integrated producers and domestic external input sourcing producing companies in the same sector, Branded v non-branded sales; and Price decreases of domestic interchangeable and domestic products. It is commendable that European Commission incorporates all factors other than dumped imports which it assessed in previous regulations in subsequent break-the-causal-link analyses. It is commendable because a fair analysis of the extent wherein dumped goods cause injury to the domestic industry requires a maximal assessment of the potentiality of injury caused by factors other than dumped imports.

b. Codified injurious factors other than dumped imports

Over the course of January 2015 until November 2018, the European Commission omitted to include factors other than dumped imports which ought to be included in the break-the-causal-link analyses ex Article 3 §5 of the Anti-dumping Agreement *juncto* Article 3(7) of the EU Basic Anti-dumping Regulation. Over the course of January 2015 until November 2018: the volume and prices of imports not sold at dumping prices (price decreases of domestic interchangeable and domestic products) was analysed in five out of twenty-six anti-dumping investigations; contraction in demand or changes in the patterns of consumption was analysed in eleven out of twenty-six anti-dumping investigations; restrictive trade practices of and competition between 3rd country and Union producers (imports from 3rd countries or 3rd parties) was analysed in

twenty-three out of twenty-six anti-dumping investigations; developments in technology and the export performance in the sense of the volume, value and average price of exports of the domestic industry to unrelated customers was analysed second-most with twenty-one out of twenty-six anti-dumping investigations; and the productivity of the Union industry in the sense of the capacity utilisation rate of the domestic industry was only analysed in nine out of twenty-six anti-dumping investigations. Consecutiveness of the European Commission in the examination of factors other than dumped imports in the break-the-causal link analyses appears weak. However, the consecutiveness appears stronger where it concerns the factors other than dumped imports which are prescribed by Article 3(7) of the EU Basic Anti-dumping Regulation.

6.10 The determination of negligibility

a. Multiple impediments to the principle of negligibility

The European Commission did not provide analyses of non-negligibility ex Article 5 §8 of the Anti-dumping Agreement in multiple cases. Figure 32 substantiates negligible import volumes in anti-dumping proceedings [2015/C177/07-PRC](#), [2016/C62/07-Republic of Korea](#), [2016/C476/04-Argentina & Indonesia](#) and [2018/C181/05-Argentina & Indonesia](#). Nevertheless, anti-dumping measures were imposed in these proceedings. The European Commission's omission roots in an unconventional method to establish negligibility. Instead of determining the extent wherein the volume of dumped imports from a particular country accounts for imports of the like product in the importing member, *per* the Anti-dumping Agreement, the European Commission determines negligibility of import volumes through a comparison with Union consumption (see for instance recitals 74 and 75 ³¹⁴ and recitals 56 until 58 ³¹⁵).

b. Malpractices in the review phase

The aforementioned malpractice extends well beyond the provisional and definitive phase of anti-dumping proceedings. Tables 21 and 22 indicate that a review was neither initiated nor concluded in case C143, a case wherefore a continued imposition would likely be unwarranted due to a significant decrease of world import share to 5 % in 2016 and 4 % in 2017 and 2018. The same applies to case C161: continued imposition would likely be unwarranted due to a significant decrease of the world import share from 17% to a staggering 3% one year after the initiation of anti-dumping procedures.³¹⁶ Instead of a review, definitive measures were

³¹⁴ COMMISSION IMPLEMENTING REGULATION (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China *and* COMMISSION IMPLEMENTING REGULATION (EU) 2016/1247 of 28 July 2016 Imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame originating in the People's Republic of China

³¹⁵ COMMISSION IMPLEMENTING REGULATION (EU) 2016/2005 of 16 November 2016 imposing a provisional anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea

³¹⁶ Provisional impositions were published in COMMISSION IMPLEMENTING REGULATION (EU) 2016/181

conjointly imposed on cases C143 and C161 through Commission Implementing Regulation [2018/1382](#) of 2 September 2019 amending certain Regulations imposing anti-dumping or anti-subsidy measures on "certain steel products" subject to safeguard measures.³¹⁷

Tables 21 and 22 indicate that no review has been initiated nor concluded in case C177.³¹⁸ The import share in case C177 never even surpassed more than 2% between 2012 until 2018, making any imposition or continued imposition pursuant to a review likely unwarranted (unless the European Commission kept on looking at the conjoined import share of course). The European Commission did not disclose the extent wherein imports into the EU of aspartame which originate in the PRC account for the total share of imports into the EU of aspartame which originates in the world in [recital 74](#) of Commission Implementing Regulation (EU) 2016/262.³¹⁹ Neither did the European Commission disclose the extent wherein imports into the EU of aspartame which originate in the PRC account for the total share of imports into the EU of aspartame which originates in the world in [recital 63](#) of Commission Implementing Regulation (EU) 2016/1247 wherein it meagrely upholds its provisional findings in [recital 74](#).³²⁰

In light of the Directorate's omission to corroborate non-negligibility in [recital 63](#) of Commission Implementing Regulation (EU) 2016/1247 *juncto* [recital 74](#) of Commission Implementing Regulation (EU) 2016/262, a *prima facie* case C177 might be established *per* [Table 5](#) where the continued imposition of *ad valorem* duties would be unwarrantable. Paragraph 8 of Article 5 of the Agreement on the Implementation of Article VI of the GATT'94 would place the *onus* in the hands of the Directorate General for Trade of the European Commission to corroborate that the volume of aspartame which originates in the PRC and is dumped past the Union frontier level, accounts for more than three per cent of the volume of aspartame which originates in the world *extra* the PRC and is imported into the domestic market for consumption of EU28. It appears that Article 5 of the AdA might provide the impetus for the Directorate to

of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation and COMMISSION REGULATION (EU) 2016/113 of 28 January 2016 imposing a provisional anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China

³¹⁷ COMMISSION IMPLEMENTING REGULATION (EU) 2019/1382 of 2 September 2019 amending certain Regulations imposing anti-dumping or anti-subsidy measures on certain steel products subject to safeguard measures

³¹⁸ Notice of initiation of an anti-dumping proceeding concerning imports of aspartame originating in the People's Republic of China as well as aspartame originating in the People's Republic of China contained in certain preparations and/or mixtures (OJ C 177, 30.5.2015, p. 6–16)

³¹⁹ COMMISSION IMPLEMENTING REGULATION (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China

³²⁰ COMMISSION IMPLEMENTING REGULATION (EU) 2016/1247 of 28 July 2016 Imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame originating in the People's Republic of China

initiate an *ex officio* sunset review into the continued need for *ad valorem* duties in effect on imports of aspartame originating in the PRC.

c. The rationale behind a new concept for negligibility: the nature of the import history

The research argues that the current method prescribed for a determination of negligibility ex Article 5 §8 of the Anti-dumping Agreement is undesirable. After all, the threshold of three per cent does not take the nature of the import history of the product into consideration. For instance, Taiwanese imports into EU28 in case [2016/C291/07-Taiwan](#) fluctuated between four and seven per cent over the years 2010 until 2014. The EU28-import share decreased significantly towards less than two percent in 2015 and had anti-dumping measures imposed when it recouped its import share back to four per cent in 2016. Furthermore, the threshold of three per cent is easily circumventable through the simultaneous investigation of imports originating in Members whose individual import share of less than three per cent conjointly accounts for more than seven percent of imports of the like product in the importing Member.³²¹

d. The rationale for a new concept for negligibility: looking at the nature of the trade curve

The imposition of anti-dumping measures on imports which originate from a country wherefrom the import share of the product under consideration hardly fluctuates or wherefrom the import share for several years lay above the threshold for non-negligibility, seems hard to rhyme with the rationale behind dumping. After all, anti-dumping measures serve to counter the injurious effects caused by imports of products in non-negligible volumes at export prices below their normal value. If the price effects of imports are considered *ceteris paribus*, an increased import volume of a specific type of product into the domestic market for consumption of EU28 does not necessarily have to imply dumping. After all, the increased import volume might correspond to an increased demand in the domestic market for consumption of EU28. However, if the absolute increase in import volume of the product under consideration does not correspond to dumping, then surely the absolute world import volume of the product under consideration would be likely to increase too. If the increase in absolute import volume connotes to dumping, then the increase might be visible through an increased market share in the total import volume of the product under consideration. After all, it seems quite unlikely that the whole world would dump the product under consideration at the same time. An economic upturn, however, likely reflects a general increase in the total import volume of the product which is under investigation.

Arguably, the rationale behind Article 5 §8 of the Anti-dumping Agreement would be that price movements of imports which constitute a negligible fraction of world import volume of the like product, have a negligible impact on the domestic industry producing the like product in the

³²¹ The exception per Article 5 §8 of the Anti-dumping Agreement

country of importation. However, if a country of origin of a product under consideration accounts for a market share of 25% over a longer period of time, for instance 30 years, any import originating in this country would automatically meet the threshold for negligibility per paragraph 8 of Article 5 of the Anti-dumping agreement. After all, a significant decrease of prices in such a situation could result in significant shock effects on the domestic industry of the country of importation. In the sketched situation, the alleged purpose of these price decreases would be to increase market share in the country of importation. However, if an exporting producer would lower export prices without a significant increase in import volume, the result could impossibly be an increase in the market share in the country of importation. The result would only be that consumers or producers further down the supply chain benefit from lower prices. These export price decreases or increases would evolve in tandem with the economic cycles in the country of importation. The imposition of anti-dumping measures in such a case infringes natural evolution of cross-border supply at intermittent intervals of domestic demand.

If exporting producers succeed in their objective to gain market share through price decreases, then their world import share will likely increase. Thus, the world import share is likely to increase if price decreases are unnatural. After all, it would be unlikely that all exporting producers in the whole world would at the same time choose to lower prices to gain market share in the country of importation. The result would be that exporting producers from other countries of origin would start losing market share to the country of origin whose exporting producers deliberately decrease their export prices. However, if the price decrease is natural, exporting producers from other countries of origin are also incentivised to decrease their prices, making a significant increase in the import share from one specific country of origin very unlikely.

e. A new concept to determine negligibility ex Article 5 §8 of the Anti-dumping Agreement

For the reasons stipulated above, the relative evolution of changes in import volume from the country of origin is a more suitable means to establish negligibility. However, by themselves changes in the evolution of import volume of one country of origin bear little weight. This changes however, when we compare these changes in the evolution of import volumes with simultaneous changes in the evolution of import volumes which originate in the whole world except the country of origin. By looking at changes in the exterior between percentual changes in import volume which originate in the world on the one hand and the country of origin on the other, a clearer indication of unnatural fluctuations which connote to dumping is distilled from other, natural fluctuations of absolute import volume.

Only drastic contra-cyclical fluctuations, at export prices lower than the normal value, appear capable of causing injury to the domestic industry producing the like product. Slow, non-excessive fluctuations of import volumes at the same pace as the pace of the world import

volume of the like product presumably allow the domestic industry of the importing country to adjust gradually and incentivizes industries to innovate. In the latter cases, there appears no willingly and knowingly premeditated action which implies dumping. The evolution of the import volume of the like product would have to be seen over the course of several years to understand the strategic motives of the exporting producers. Import shares by themselves provide ample information in this regard. Therefore, it appears commendable to determine negligibility *inter alia* via the evolution of import share rather than a static determination of import share at a specified point in time. By looking at the fluctuation of the import share, it would thus become unnecessary to initiate anti-circumvention investigations. Instead of the static import share at a specific moment in time, a new theory is proposed, which analyses the nature of the global trade curve through the difference between the percentual change of import volumes from the country of origin on the one hand and the rest of the world on the other. The theory presumes that, provided that there are more than a few importers, the whole world would not dump a product at the same time. In light of this presumption, any significant change in import from a country which surpasses that of the world would be suspicious. Because absolute volumes are incomparable, the theory thus looks at the percentual changes. The variable from which the changes in import volume from the world and the country of origin are calculated would be the average of the new import volume and the old import volume. The old volume would be calculated as an average of an x amount of other import volumes in prior years.

7 Literature List

- Aggarwal, Aradhna. *The anti-dumping agreement and developing countries: An introduction*. Oxford University Press, 2006
- Andersen, Henrik. *EU dumping determinations and WTO law*. Kluwer Law International BV, 2009
- Bentley, Philip, and Aubrey Silberston. *Anti-dumping and countervailing action: limits imposed by economic and legal theory*. Edward Elgar Publishing, 2007
- Bernard M. Hoekman, Michel M. Kosteki *The Political Economy of the World Trading System* Oxford University Press, 2009
- Blonigen, Bruce A., and Chad P. Bown. *Antidumping and retaliation threats*. Journal of International Economics 60.2, 2003
- Bossche, Peter. *The law and policy of the World Trade Organisation: text, cases and materials*. Cambridge University Press, 2008
- Bown, Chad P. *Self-enforcing trade: developing countries and WTO dispute settlement*. Brookings Institution Press, 2010
- Bown, Chad P. *The World Trade Organisation and antidumping in developing countries*. The World Bank, 2006
- Bungenberg, Marc, et al., eds. *The future of trade defence instruments: global policy trends and legal challenges*. Springer, 2018
- Burckhardt, Christian. *The European Union as an actor in international trade relations*. Global Power Europe-Vol. 2. Springer Berlin Heidelberg, 2013
- Burstein, Ariel, and Marc J. Melitz. *Trade liberalization and firm dynamics*. No. w16960. National Bureau of Economic Research, 2011
- Cantono, Simona, and Roberto Marchionatti. *Dumping As Price Discrimination: Jannaccone's Classic Theory Before Viner*. Journal of the History of Economic Thought 34.02, 2012
- Capaldo, Giuliana Ziccardi, ed. *The Global Community Yearbook of International Law and Jurisprudence 2018*. Oxford University Press, USA, 2019
- Cass, Ronald A., and Keith N. Hylton. *Laws of creation: property rights in the world of ideas*. Harvard University Press, 2013
- Chaisse, Julien, and Tsai-Yu Lin, eds. *International economic law and governance: essays in honour of Mitsuo Matsushita*. Oxford University Press, 2016
- Chow, Daniel CK, and Thomas J. Schoenbaum. *International Trade Law: Problems, Cases, and Materials*. Wolters Kluwer Law & Business, 2017
- Claessens, Stijn, Simon J. Evenett, and Bernard M. Hoekman. *Rebalancing the global economy: A primer for policymaking*. CEPR, 2010
- Cottier, Thomas, and Petros C. Mavroidis. *Regulatory Barriers and the Principle of Non-discrimination in World Trade Law: Past, Present, and Future*. Vol. 2. University of Michigan Press, 2000
- Cottier, Thomas, and Petros C. Mavroidis. *State Trading in the Twenty-First Century: The World Trade Forum*. Vol. 1. University of Michigan Press, 1998

- Cottier, Thomas. *International trade regulation and the mitigation of climate change*. Cambridge University Press, 2010
- Czako, Judith, Johann Human, and Jorge Miranda. *A handbook on anti-dumping investigations*. Cambridge University Press, 2003
- Delimatsis, Panagiotis. *International trade in services and domestic regulations: necessity, transparency, and regulatory diversity*. OUP Oxford, 2007
- Diebold, Michael P. *Application of Light Scattering to Coatings: A User's Guide*. Springer, 2014
- Dirk De Bièvre and Arlo Poletti, *The EU in trade policy: From regime shaper to status quo power*, Falkner, Gerda and Müller, Patrick (eds.), 2013
- Edwin Vermulst & F. Graafsma, *Customs and Trade Laws as Tools of Protection: Selected Essays*, Cameron May, 2005
- Evenett, Simon J. and B. M. Hoekman, eds. *Economic development and multilateral trade cooperation*. The World Bank, 2005
- Frieden, Jeffry A. *The modern capitalist world economy: A historical overview*. The Oxford Handbook of Capitalism. Oxford University Press, 2012
- Frieden, Jeffry. *The political economy of the Bretton Woods Agreements*. Boston, Harvard University, 2017
- Fruehan, R. J. *Critical assessment of advanced iron smelting processes*. Iron & steelmaker 30.2, 2003
- Gardiner, Richard K. *Treaty interpretation*. Oxford University Press, USA, 2015
- Giannakopoulos, Themistoklis K. *A Concise Guide to the EU Anti-dumping/anti-subsidies Procedures*. Vol. 23. Kluwer Law International BV, 2006
- Giannakopoulos, Themistoklis K. *Safeguarding companies' rights in competition and anti-dumping/anti-subsidies proceedings*. Vol. 12. Kluwer Law International BV, 2011
- Gilbert R. Winham in Ravenhill, John. *Global political economy*. Oxford University Press, 2017
- Heather A Hazard. *Resolving disputes in international trade*. Harvard University, 1988
- Heo, Uk, and Terence Roehrig. *The Evolution of the South Korea–United States Alliance*. Cambridge University Press, 2018
- High-level Round Table on the future of the European Steel Industry, 12 February 2013, *Ref. Ares(2015)3397296*, 2015
- Hoekman, Bernard & Mavroidis, Petros C.,. *Antitrust-based Remedies and Dumping in International Trade*. C.E.P.R. Discussion Papers, 1994
- Hoekman, Bernard M., and Michel M. Kostecki. *The political economy of the world trading system: the WTO and beyond*. Oxford University Press, 2009
- Hoekman, Bernard M., and Petros C. Mavroidis. *Antitrust-based remedies and dumping in international trade*. Vol. 1010. World Bank Publications, 1994
- Hoekman, Bernard M., and Petros C. Mavroidis. *World Trade Organisation (WTO): Law, Economics, and Politics*. Routledge, 2007

- Horlick, Gary, and Edwin Vermulst. *The 10 major problems with the anti-dumping instrument: An attempt at synthesis*. Journal of World Trade 39.1, 2005
- Horn, Henrik, and Petros C. Mavroidis. *Economic and legal aspects of the Most-Favored-Nation clause*. European Journal of Political Economy 17.2, 2001
- International Trade Centre UNCTAD/WTO. *Business Guide to Trade Remedies in the European Community: Anti-dumping, Anti-subsidy and Safeguards Legislation, Practices and Procedures*. Oxford University Press, 2004
- Irwin, Douglas A. *Clashing Over Commerce: A History of US Trade Policy*. University of Chicago Press, 2017
- Johnson, Debra, and Colin Turner. *European business*. Routledge, 2015
- Kuijper, Pieter Jan, and Frank Hoffmeister. *WTO Influence on EU Law: Too Close for Comfort? Between Autonomy and Dependence*. TMC Asser Press, 2013
- Kuijper, Pieter Jan, et al. *The law of EU external relations: cases, materials, and commentary on the EU as an international legal actor*. OUP Oxford, 2013
- Lawrence, R. *Crimes and Punishments?: Retaliation under the WTO*. Peterson Institute, 2003
- Legal Affairs Division, World Trade Organisation. *WTO Analytical Index: Guide to WTO Law and Practice*. Cambridge University Press, 2012
- Leidy, M. P., and B. M. Hoekman. *Inter-Industry Linkages and Cascading Contingent Protection*. University of Michigan Working Papers. No. 275. 1991
- Lesser, Ian O. *Resources and strategy*. Springer, 1989
- Luo, Yan. *Anti-dumping in the WTO, the EU, and China: The Rise of Legalization in the Trade Regime and Its Consequences*. Vol. 69. Kluwer Law International BV, 2010
- Mankiw, N. Gregory, and Phillip L. Swagel. *Antidumping: The third rail of trade policy*. Foreign Aff. 84, 2005
- Martin, Lisa L., ed. *The Oxford handbook of the political economy of international trade*. Oxford University Press, 2015
- Matsushita, M., Schoenbaum, T. J., Mavroidis, P. C., & Hahn, M. *The World Trade Organisation: law, practice, and policy*. Oxford University Press, 2015
- Matsushita, Mitsuo, et al. *The World Trade Organisation: law, practice, and policy*. Oxford University Press, 2015
- Matsushita, Mitsuo. *Some International and Domestic Antidumping Issues*. Asian J. WTO & Int'l Health L & Pol'y 5, 2010
- Mavroidis, Petros C. *The Regulation of International Trade: GATT*. Vol. 1. MIT Press, 2016
- Mavroidis, Petros C. *Trade in goods*. Oxford University Press, 2007
- Mavroidis, Petros C. *Trade in goods*. Oxford University Press, 2012
- Mavroidis, Petros C., *Trade in Goods*, 2nd edition, Oxford University Press, 2012
- Mavroidis, Petros C., Patrick A. Messerlin, and Jasper M. Wauters. *The law and economics of contingent protection in the WTO*. Edward Elgar Publishing, 2010

- McGovern, Edmond. *EU Anti-dumping and trade defence law and practice*. Globefield Press, 2018
- Michalopoulos, Constantine. *Developing Countries in the WTO*. Springer, 2001
- Michalopoulos, Constantine. *The integration of transition economies into the world trading system*. The World Bank, 1999
- Nakagawa, Junji, ed. *Anti-dumping Laws and Practices of the New Users*. Cameron May, 2007
- P. K. M. Tharakan, *Political Economy and Contingent Protection*, The Economic Journal, Vol. 105, No. 433, 1995
- Palmer, N. David. *The WTO as a Legal System: Essays on International Trade Law and Policy*. Cameron May, 2003
- Pangratis, Angelos, and Edwin Vermulst. *Injury in Anti-Dumping Proceedings—The Need to Look Beyond the Uruguay Round Results*. Journal of World Trade 28.5, 1994
- Patrick A. Messerlin and Geoffrey Reed, *Antidumping Policies in the United States and the European Community*. The Economic Journal, Vol. 105, No. 433, 1995
- Porres, Amelia, Friedl Weiss, and Petros C. Mavroidis. *Guide to GATT law and practice: analytical index*. Vol. 1. Bernan Assoc, 1995
- Posner, Eric A., and Alan O. Sykes. *Economic foundations of international law*. Harvard University Press, 2013
- Prusa T., Vermulst, E. *United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China: Nails in the Coffin of Unfair Dumping Margin Calculation Methodologies*. World Trade Review, 18(2), 2019
- Prusa, Thomas J., and Edwin Vermulst. *United States—Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand: a cat in the bag*. World Trade Review 11.2, 2012
- Stanbrook, Clive, Philip Bentley, and Joseph Cunnane. *Dumping and subsidies: Law and procedures governing the imposition of anti-dumping and countervailing duties in the European Community*. Kluwer Law International BV, 1996
- Tejeda, Marco T. Molina. *The Regulation of International Trade: The GATT and the WTO Agreements on Trade in Goods*. (Volumes 1 and 2 by Petros C. Mavroidis Cambridge, MA: The MIT Press, 2016) World Trade Review 16.4, 2017
- Tharakan, PK Mathew. *The problem of anti-dumping protection and developing country exports*. WIDER Working Papers (UNU), 2000
- United Nations Staff. *Asia-Pacific Development Journal*. United Nations Publications, 2003
- United States International Trade Administration. *The economic effects of antidumping and countervailing duty orders and suspension agreements*. Vol. 2900. US International Trade Administration, 1995
- Van Bael, Ivo, and Jean-François Bellis. *EU anti-dumping and other trade defence instruments*. Kluwer Law International BV, 2011
- Van Bael, Ivo, and Jean-François Bellis. *EU anti-dumping and other trade defence instruments*. Kluwer Law International BV, 2019

- Van den Bossche, Peter, and Werner Zdouc. *The law and policy of the World Trade Organisation*. Cambridge Books, 2017
- Van den Bossche, Peter. *The law and policy of the World Trade Organisation: text, cases and materials*. Cambridge University Press, 2008
- Vermulst, Edwin A. *Customs and Trade Laws as Tools of Protection: Selected Essays*. Cameron May, 2005
- Vermulst, Edwin A., and Folkert Graafsma. *WTO disputes: anti-dumping, subsidies and safeguards*. Cameron May, 2002
- Vermulst, Edwin, and Brian Gatta. *Disciplining the Use of TDI against China through WTO Dispute Settlement*. Global Trade & Cust. J. 7, 2012
- Vermulst, Edwin, Juhi Dion Sud, and Simon J. Evenett. *Normal value in anti-dumping proceedings against China post-2016: are some animals less equal than others?* Global Trade and Customs Journal 11.5, 2016
- World Trade Organisation. *Trade Policy Review-China 2012*. Bernan Press, 2012
- World Trade Organisation. *WTO Analytical Index*. Vol. 1. Cambridge University Press, 2007
- Wruuck, Patricia. *The Political Economy of Anti-dumping Protection*. Springer International Publishing: Imprint: Springer, 2015
- Yu, Yanning. *Circumvention and Anti-circumvention Measures: The Impact on Anti-dumping Practice in International Trade*. Vol. 13. Kluwer Law International BV, 2008

8 Annexes

EUROPEAN COMMISSION
Directorate General for Trade
Directorate H - Trade Defence Instruments
Directorate H - Trade Defence

ANTI-DUMPING QUESTIONNAIRE FOR USERS

Company name:	
☐ LIMITED VERSION	☐ VERSION OPEN FOR CONSULTATION (*)
TWO VERSIONS OF YOUR REPLY TO THIS QUESTIONNAIRE NEED TO BE SUBMITTED: A LIMITED VERSION AND A VERSION OPEN FOR CONSULTATION BY INTERESTED PARTIES (TICK APPROPRIATE BOX ABOVE)	
• Intended for	Users of hollow sections into the European Union
• Country(ies) concerned	The former Yugoslav Republic of Macedonia ('FYROM'), Russia and Turkey
• Product under investigation	Welded tubes, pipes and hollow profiles of square or rectangular cross-section, of iron other than cast iron or steel other than stainless ('hollow sections')
• Investigation period (IP)	1 July 2017 to 30 June 2018
• Statutory reference	Article 5 of Regulation (EU) No 2016/1036 of the European Parliament and the Council (OJ L 176 of 30.6.2016, p. 21)
• Regulatory reference	Notice of initiation, Official Journal of the European Union of 28.9.2018
• Case number	AD651
• Deadline for response to the questionnaire	30 days following notification of the final sampling decision
• Address for communication	European Commission Directorate General for Trade Directorate H, CHAR – office 04/039 B-1049 Brussels, BELGIUM
• Case related email	TRADE-AD651-HS-INJURY@ec.europa.eu

(*) Please note that confidential information falls under the term 'limited' according to the internal rules of the European Commission. The Commission only considers documents labelled 'limited' as confidential documents under Article 19 of Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement). The Commission considers all documents that are not labelled 'limited', as non-confidential documents under these provisions. **Therefore, any replies which contain confidential information must be labelled 'Limited'.**

The undersigned certifies that all information supplied in response to the questionnaire is complete and correct to the best of his/her knowledge and belief and understands that the information submitted may be subject to audit and verification by the European Commission.

Date

Signature of authorised official

Company name and stamp

Name and title of authorised official

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INTRODUCTION

The purpose of this questionnaire is to allow the European Commission to obtain the information it deems necessary for its investigation.

Before completing this questionnaire please carefully read the cover letter and the instructions provided in this questionnaire including the glossary of dumping terminology in Annex I.

It is in your own interest to reply as accurately and completely as possible and to attach supporting documents. In addition to responding to all questions, you may supplement your response with additional data.

The European Commission may carry out inspection(s) at your factory or other premises to verify the information provided in this questionnaire by examining the records of your company.

The European Commission will base its findings on your reply to this questionnaire. **It must be submitted within the deadline for response given on page 1, preferably by email to the case related email address given on page 1.** Please note that files larger than 30MB must be split into smaller emails or a CD-R/DVD can be delivered by post or by hand to the address for communication given on page 1.

The non-submission of necessary information within the specified time limits or the submission of false or misleading information can have unfavourable consequences for your company. In any of these circumstances or if the investigation process is significantly impeded, the Commission may apply Article 18 of Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 ('the basic Regulation') and disregard any late response, or responses which are false or misleading. The Commission may disregard information if the deficiencies are such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is not verifiable, and that the party has not acted to the best of its ability.

Where the Commission decides to disregard a reply to the questionnaire, it will establish its preliminary or final findings on the basis of any other facts available which may include the information set out in the complaint.

Please contact the European Commission using the email address provided on page 1 with any questions or difficulties you may have regarding your responses to the questions.

General information about trade defence processes (general overview, steps, etc.) is available in the website <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence/>

Detailed instructions on correspondence in trade defence cases is available in the following document: <http://trade.ec.europa.eu/doclib/html/148003.htm>

Please use the **Registration Number** provided on page 1 for all correspondence with the Commission in this case.

General instructions:

- (1) To be able to verify your response and link it to your accounting and management records, submit the worksheets (usually Excel files and/or other extractions from your company's databases) used for preparing data for this questionnaire. All worksheets used in preparing the questionnaires must also be available at the on-the-spot verification visit.
- (2) You must be able to link all information you provide in this questionnaire to your original company records (electronic or paper). This will be checked during the verification visit and the Commission recommends keeping detailed cross references to be able to link the data.
- (3) All documents submitted in response to this questionnaire must be accompanied by an English translation.
- (4) Although the questionnaire is addressed to your company, all subsidiaries or other related companies are also interested parties to this proceeding. Detailed questions about your corporate structure are in Section A of the questionnaire.
 - where your subsidiary or other related company is also an exporting producer of the product under investigation in the country/ies concerned, this related party(ies) must complete the full questionnaire.
 - where your subsidiary or other related company is not a producer but is involved in the sales or marketing of the product under investigation destined for the European Union, such related party(ies) must report the front page and Annex I to this questionnaire.
 - related companies in the EU that are users of the product under investigation should complete this questionnaire as well. However, in cases where there exists a large number of such related companies you may limit your reply, following a relevant request to the officials in charge and the Commission's approval, to one or several companies representing a major proportion of that share of your activities in the European Union.

For the purpose of completing this questionnaire, natural persons or legal persons (i.e. companies) should be deemed to be related if:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognised partners in business;
- (c) they are employer and employee;
- (d) any persons directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or

(h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another:

- husband and wife,
- parent and child,
- brother and sister (whether by whole or half-blood),
- grandparent and grandchild,
- uncle or aunt and nephew or niece,
- parent-in-law and son-in-law or daughter-in-law,
- brother-in-law and sister-in-law.

All other natural persons or legal persons will be considered independent for this proceeding.

- (5) If your company is not a user of the product under investigation please consult the European Commission, using the email provided on page 1.
- (6) Unless otherwise specified, the information you provide must concern the investigation period ('IP') as defined on page 1 of this questionnaire.
- (7) Do not leave any question or section blank. If a question does not apply to your company, please explain clearly why this is the case. If the answer to the question is 'zero', 'no', 'none' or 'not applicable', then write 'zero', 'no', 'none' or 'not applicable'.
- (8) Please note that any reference in this questionnaire to the 'country(ies) concerned', or the 'country(ies) of origin' is to the country(ies) concerned as stated on page 1.
- (9) Members of the European Union are Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Questions referring to the 'European Union', 'EU', 'Union' or 'Total Union' should include all these Member States.
- (10) If you intend to have another party acting on your behalf e.g. a law firm or an accountancy or consultancy firm, please send a scanned copy of the original power of attorney, using the email provided on page 1.
- (11) The Commission makes all submitted documents, except the documents marked as limited, available to interested parties using our web-based system TRON. The group of interested parties include your company, your competitors, related and independent traders, importers and producers in the European Union.
- (12) When justified, certain information and supporting evidence containing business confidential data can be submitted as 'limited', which the Commission will not disclose to interested parties. In such a case each limited document must have its version 'open for consultation', which contains a meaningful summary of the confidential data and which will be disclosed to

the interested parties. Without the version 'open for consultation' the Commission will disregard the limited information.

- (13) Information submitted to the Commission for the purpose of trade defence investigations must be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing a) the Commission to use the information and data for the purpose of this trade defence proceeding and b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their right of defence. Interested parties have to fill in the annexed form (Annex IV) attesting that the information submitted is free from copyrights or that they have obtained the above mentioned permission before submitting it. Interested parties shall contact the Commission for any doubts about the handling of copyrighted information.

Rules for data submitted:

- (14) You should reply to this questionnaire in a Microsoft Office compatible format. For Excel transaction tables (D.2, D.3, E.2, E.3, F.2, M) please respect the instructions given in the yellow info boxes within the files:
- No thousand separators
 - Decimal separator is a dot (.)
 - Example of the number format: 1230900.00
 - Date format DD/MM/YYYY
 - Table lines as per transactions (entry on the invoice)
 - No merging of cells
 - Always keep formulas in the Excel sheets (do not paste values)
- (15) If you need to add some additional columns to the transaction tables (e.g. additional allowances), contact the European Commission immediately.
- (16) The submitted data must not contain any viruses. Be aware that submission of data containing a virus may be considered a deficiency which significantly impedes the investigation in accordance with the basic Regulation.

Currency issues:

- (17) For financial data reporting, use the currency in which you keep your accounting records. For amounts not booked in your accounting records, the average exchange rates listed in the 'Table 1 INFO' should be used.
- (18) In the transactions Tables, report invoices in their original currency. For example if the invoice is issued in EUR, always report this original value and then make the conversion to your accounting currency using the specific column in the Excel sheet.
- (19) Allowances have to be reported in the accounting currency of the reporting company (i.e. if the reporting company is a Belgian related importer, report the allowances in EUR).

(20) Identify clearly all units of measurement and currencies used in tables, lists and calculations.

A - 1. Identity and Communication

Fill in the details of your company in Excel sheet 'A.1 – Corporate information'.

A - 2. Legal Representative

In case you appointed a legal representative to assist you in this proceeding fill in the details in Excel sheet 'A.2 – Legal representation' and submit a scanned copy of the original power of attorney.

A - 3. Corporate information

In Excel sheet 'A.3 – Main shareholders' fill in the names of the principal shareholders (who owned more than 5% of the shares during the investigation period) of your company and indicate the percentage shareholding and the activities of these shareholders.

With respect to the product under investigation:

- (1) Supply a diagram outlining the internal hierarchical and organisational structure of your company. The diagram should show all units linked to the product under investigation in the EU and export markets. Indicate clearly the role of your company.
- (2) Outline your company's corporate structure and affiliations, including parent companies, subsidiaries or other related companies which are involved with the product under investigation in the EU and export markets. For this purpose you may supply a chart.
- (3) State if your company can be defined as one of the following: downstream industry - user - other (specify), and explain why.
- (4) Indicate whether your company has, in respect to the product under investigation, contractual links with other companies, legal or natural persons, located in the European Union or in third countries, concerning production, imports, exports and sales report the existence of these contractual links and keep available copies for possible inspection.

A - 4. Range of products

- (5) Provide a list of all main categories of products produced and/or sold by your company. If the products fall into distinct product groups, indicate these groups, as well as the main products belonging to those groups.
- (6) Indicate the relevance of the product under investigation in the finished product/s (relative value in finished product).

A - 5. Accounting system and policies

Please note that in case you limit your reply to a number of companies representing a major proportion of your activities in the EU that are relevant for the purpose of this investigation, you are requested to provide the relevant information hereunder only for this/those company/companies.

- (7) State your corporate financial year.
- (8) Attach a copy of the audited accounts (in any of the official languages of the EU or the English version, if available) including balance sheet, profit and loss statement, notes to the accounts and all reports, other notes, and auditor's opinion to these documents for the last three financial years for your company as well as for those companies related to you that are involved in the production, marketing or sales of the product under investigation. If your company's accounts have not been audited attach the financial statements which are required by your country's commercial or tax legislation.
- (9) If internal and periodical financial statements, management reports, standard cost reviews etc. are prepared and maintained for the product under investigation, provide copies for the three most recent financial years.
- (10) Provide a copy of the chart of accounts (in any of the official languages of the EU or the English version, when available) for each entity within the corporation that is involved with the production and/or sale of the product under investigation.
- (11) Provide the address where the accounting records of the company are kept. If they are maintained in different locations please indicate which records are kept at which location.

A - 6. Turnover

Please complete the table below, corresponding with and in the currency of your financial report (specify currency).

	Last calendar or financial year ending within the IP ³²²	IP
Total company turnover (all products)		
Turnover of product/s using/incorporating the product under investigation (if applicable)		

³²² If last calendar year coincides with the IP, complete with data for the previous calendar year.

SECTION B - PRODUCT CONCERNED

B.1 Scope of the Investigation

The product under investigation is welded tubes, pipes and hollow profiles of square or rectangular cross-section, of iron other than cast iron or steel other than stainless, but excluding line pipe of a kind used for oil or gas pipelines and casing and tubing of a kind used in drilling for oil or gas, originating in the former Yugoslav Republic of Macedonia ('FYROM'), Russia and Turkey, currently falling within CN codes 7306 61 92 and 7306 61 99.

These CN codes are given for information only and have no binding effect on the classification of the product.

Any reference to **product under investigation** in this questionnaire refers to the above product description.

It is obvious that all products corresponding to the above product description, regardless of the CN code under which they might be imported, are covered by this proceeding and have to be reported in the relevant section of this questionnaire.

B.2 Product comparability

Please comment on the comparability of the product under investigation imported from the country concerned with that produced in the EU, identifying any differences (e.g. technical or physical characteristics, prices, uses, etc...). Where possible this comparison should be provided in the form of the following table.

Type ³²³ imported and/ or used by your company	Type manufactured by the EU producers	Characteristics of the imported product and differences with the EU product	Average Price of the imported product ³²⁴

To the extent possible please provide these data also with respect to the product under investigation imported from other third countries not covered by the current proceeding.

³²³ State the exact type denomination. This should correspond to the denomination of the product or the commercial reference in your company's internal records such as sales invoices, product specification sheets, price lists etc.

³²⁴ Please specify currency and unit

SECTION C - INFORMATION RELATING TO PURCHASES

If purchases are made through a subsidiary or an intermediary, please provide details.

Purchases of the product under investigation – volume

State the total volume of all purchases made by your company of the product under investigation. Please indicate the unit of measurement (tonnes, kg, pieces, etc.).

Purchase volume	Last calendar or financial year ending within the IP	IP
Originating in the EU		
Originating in country/countries concerned ³²⁵		
Originating in other countries ³²⁶ – please specify		
TOTAL PURCHASE VOLUME		

Purchases of the product under investigation – value

State net CIF value at Union frontier (or ex-works value if of Union origin) after deduction of all discounts and rebates. If the invoiced price is prior to CIF Union frontier level, please indicate costs incurred by you for transport and/or ocean freight and insurance to the Union frontier.

Purchase value	Last calendar or financial year ending within the IP	IP
Originating in the EU		
Originating in country/countries concerned ³²⁷		
Originating in other countries ³²⁸		
TOTAL PURCHASE VALUE		

³²⁵ Separate for each country under investigation.

³²⁶ Specify the countries.

³²⁷ Separate for each country under investigation.

³²⁸ Specify the countries.

Development of purchase prices

Provide the average purchase price. Indicate the currency and unit of measurement for volume.

Average purchase price	Last calendar or financial year ending within the IP	IP
Originating in the EU		
Originating in country/countries concerned ³²⁹		
Originating in other countries		
TOTAL AVERAGE PURCHASE PRICE		

³²⁹

Separate for each country under investigation.

SECTION D - INFORMATION RELATING TO SALES

State the total quantity and value of **all sales** of finished products using or incorporating the **product under investigation** made by your company to **unrelated customers** in the following worksheets. All the worksheets used for completing the tables below should be kept available for inspection in order to facilitate the reconciliation of these figures with your financial and management accounts.

Indicate the unit of measurement and currency.

Volume ³³⁰	Last calendar or financial year ending within the IP	IP
All Products <i>- sales inside EU</i> <i>- sales outside EU</i>		
Products using/incorporating the product under investigation originating in the EU <i>- sales inside EU</i> <i>- sales outside EU</i>		
Products using/incorporating the product under investigation originating in the country/countries concerned³³¹ <i>- sales inside EU</i> <i>- sales outside EU</i>		
Products using/incorporating the product under investigation originating in other countries³³² <i>- sales inside EU</i> <i>- sales outside EU</i>		

³³⁰ Indicate unit of measurement

³³¹ Indicate origin

³³² Indicate origin

Table D.2: Value

Value ³³³	Last calendar or financial year ending within the IP	IP
All Products - <i>sales inside EU</i> - <i>sales outside EU</i>		
Products using/incorporating the product under investigation originating in the EU - <i>sales inside EU</i> - <i>sales outside EU</i>		
Products using/incorporating the product under investigation originating in the country/countries concerned³³⁴ - <i>sales inside EU</i> - <i>sales outside EU</i>		
Products using/incorporating the product under investigation originating in other countries³³⁵ - <i>sales inside EU</i> - <i>sales outside EU</i>		

³³³ Net, free of all taxes, after all discounts. Indicate currency.

³³⁴ Indicate origin

³³⁵ Indicate origin

SECTION E - INFORMATION RELATING TO COSTS

E.1 Cost of raw material

Please indicate for which products you use the product under investigation and provide the cost of raw material for each of your products that incorporate the product under investigation.

	Last calendar or financial year ending within the IP	IP
Raw material costs for the product in question		
Other raw materials		
Total costs for raw material		

E.2. Total costs & employees

Please provide the total cost for each of your products that use or incorporate the product under investigation. Please also provide the number of employees involved in the production of your product.

	Last calendar or financial year ending within the IP	IP
Total costs for raw material (as above)		
Labour costs		
Indirect costs, Overheads		
Full Costs		
Quantity produced – please specify unit of measurement		
Number of employees		

SECTION F - PROFIT / LOSS SITUATION

This section refers to the profitability of your sales related to the product under investigation in the European Union.

Profit/loss in % of turnover	Last calendar or financial year ending within the IP	IP
Total company		
Total for the product/s using/incorporating the product under investigation		

Explain in short how the supporting data that was used to fill in the above table was compiled, namely the absolute amount of profit/loss.

SECTION G - CAUSALITY

Please mention and elaborate any causes other than the imports of the product in question from the country concerned which may have contributed to the alleged injury suffered by the Union Industry.

SECTION H - OTHER QUESTIONS

As mentioned in the Notice of Initiation, the purpose of this section is to collect further information as to whether imposing anti-dumping duties would be in the interest of the Union and how any measure adopted would affect interested parties of the product under investigation. It should be noted that the information submitted under this point can only be taken into account if supported by the deemed necessary factual evidence at the time of its submission.

Please note that:

- 1. If you form part of a group of companies you may indicate information referring either to the group or to your specific company. Please kindly clarify the above in your relevant replies.**
 - 2. If you feel you have insufficient knowledge to reply, please state 'insufficient knowledge'.**
- I. Please indicate whether your company would be in favour of the imposition of anti-dumping measures or against.
 - II. What is your estimated share of the Union market of the products using/incorporating the product under investigation? If you sell the products using/incorporating the product under investigation outside the European Union, please indicate the countries and your estimated market share.

Country	Market share

- III. Customers - Please name your five main customers for the products using/incorporating the product under investigation (within and outside the EU):

NAME	Sales value (indicate currency)
1)	
2)	
3)	
4)	
5)	

IV. Suppliers - Please name your five main suppliers of the product under investigation (within and outside the EU):

NAME	Volume of purchase (indicate unit of measurement)	Value of purchase (indicate currency)
1)		
2)		
3)		
4)		
5)		

V. Please describe the relevant market(s) for the purpose of this investigation in which you operate by answering to the following questions:

- (1) What is the degree of concentration in your sector (number of companies operating)?
- (2) Who are your four main competitors on the EU market and on the export markets?
- (3) What are their price levels?
- (4) Which are the elements that determine competition in your sector (i.e. prices, delivery times, service ...)? Please substantiate.
- (5) What has been the evolution in the past three years of trade volumes from third countries?
- (6) Has some external factor (trade arrangements, currency fluctuation, etc.) influenced the evolution of prices in your market in the past three years? Please explain and substantiate.
- (7) Are there products that could be easily substituted for the product under investigation? Please explain.
- (8) What is the possibility for your company to switch to other sources of supply for the product under investigation?
- (9) Do the producers/exporters of the country concerned have any comparative advantage in comparison with the Union producers? Please substantiate your comments by giving some examples.

- (10) Please comment on what would happen on the market if anti-dumping duties are imposed on the imports under consideration, in particular: what would be the effects on the below interested parties, what are the factors likely to accelerate or delay the adjustment to the new situation.

The interested parties concerned by this proceeding would include the following economic operators in the EU:

- Upstream industries
- Producers
- Importers, traders and any intermediary parties
- Downstream industries, users and consumers
- Distributors

Special consideration should be given to the following factors:

- Turnover (value and volume)
- Market share
- Sales prices
- Costs
- Profits
- Employment
- Other

Explanations and definitions of some of the more specialised terms used in the questionnaire are provided here.

Adjustments

A fair comparison has to be made between the export price and the normal value. Due allowances have to be made in each case, on its merits, for differences which affect price comparability, including discounts, rebates and quantities, transport, insurance, handling, loading and ancillary costs, packing, credit, after-sales costs, commissions.

Facts available

In cases in which an interested party refuses access to, or otherwise does not provide, necessary information within the time limits, or significantly impedes the investigation, provisional or definitive findings can be made on the basis of the facts available. Where it is found that false or misleading information was supplied, the information can be disregarded and use may be made of facts available. It is therefore in the interest of parties involved in an anti-dumping proceeding to actively co-operate. If an interested party does not co-operate or co-operates only partly, the result may be less favourable to the party than if it had co-operated.

Combined Nomenclature

The Combined Nomenclature (CN) is the classification used within the European Union for collecting and processing foreign trade data. It was introduced in 1988. Annual revisions of the CN are produced and adopted as a legal text and published in the Official Journal of the European Communities. This classification is based on the Harmonised commodity description and coding system (HS) which covers all products that can be the subject of an international transaction and simultaneously have a physical dimension.

Constructed value

In cases where domestic prices paid for the like products in the exporting country cannot be used for the determination of normal value, i.e. when there are no or insufficient sales or where such sales were not made in the ordinary course of trade, normal value may be based on constructed value. Constructed value is calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative and finance costs and for profits incurred on the domestic market of the country of origin.

Country of origin

The country of origin is normally either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out.

Dumping

A product is considered as being dumped if its export price to the European Union is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.

European Commission

The European Commission is the executive body of the European Union. In anti-dumping proceedings it has the responsibility for the receipt of complaints and for conducting anti-dumping investigations. The European Commission is also the only decision-making body which means that it decides among others whether to impose provisional or definitive duties, to terminate proceedings and to accept undertakings.

Exporting country

The exporting country is normally the country of origin. However, it may be an intermediate country, except where, for example, the products are merely transhipped through that country, or the products concerned are not produced in that country, or there is no comparable price for them in that country.

Export price

The export price is the price actually paid or payable for the product under investigation when sold for export to the European Union, or to other countries.

Independent customers

A customer is being considered independent if he cannot be defined as a related company; see under related company.

Investigation period (IP)

For the purpose of representative findings, an investigation period has to be selected which, in the case of dumping, normally covers a period of not less than six months immediately prior to the initiation of the proceeding. The investigation period is indicated in the questionnaire.

Member states

Country	Code	Currency
Austria	AT	EUR

Belgium	BE	EUR
Bulgaria	BG	BGN
Croatia	HR	HRK
Cyprus	CY	EUR
Czech Republic	CZ	CZK
Denmark	DK	DKK
Estonia	EE	EUR
Finland	FI	EUR
France	FR	EUR
Germany	DE	EUR
Greece	GR	EUR
Hungary	HU	HUF
Ireland	IE	EUR
Italy	IT	EUR
Latvia	LV	EUR
Lithuania	LT	EUR
Luxembourg	LU	EUR
Malta	MT	EUR
Netherlands	NL	EUR
Poland	PL	PLN
Portugal	PT	EUR
Romania	RO	RON
Slovakia	SK	EUR
Slovenia	SL	EUR
Spain	ES	EUR
Sweden	SE	SEK
United Kingdom	UK	GBP

Normal value

The normal value is normally based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country or market economy third country. In cases where the exporter in the exporting country does not produce or sell the like product the normal value may be established on the basis of prices of other sellers or producers. Normal value can also be based on constructed value, see explanation of constructed value.

Original equipment manufacturer (OEM)

Describes a situation where a manufacturer produces a product which is sold under the brand name of the buyer. The term OEM refers to the purchaser of goods who is, or was, a manufacturer of the product.

Own brand manufacturer (OBM)

This manufacturer produces a product and sells it under its own brand name.

Product under investigation

The product under investigation is defined in the notice of initiation. It can be either the product concerned when it is sold for export or the like product; i.e. a product which is alike in all respects to the product under investigation or, in the absence of such a product, a product which closely resembles the product, when it is sold on the domestic market.

Related parties

For the purpose of completing this questionnaire, natural persons or legal persons (i.e. companies) should be deemed to be related if:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognised partners in business;
- (c) they are employer and employee;
- (d) any persons directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another:
 - husband and wife,
 - parent and child,
 - brother and sister (whether by whole or half-blood),
 - grandparent and grandchild,
 - uncle or aunt and nephew or niece,
 - parent-in-law and son-in-law or daughter-in-law,
 - brother-in-law and sister-in-law.

Selling, general and administrative expenses (SG & A)

The SG & A is part of the total cost:

cost of materials
+ cost of direct labour
+ cost of manufacturing overheads
= cost of production
+ SG & A expenses
= Total cost

The SG&A includes all selling, general and administration expenses including finance costs.

ANNEX II: GUIDELINES FOR COMPLETING THE NON-LIMITED QUESTIONNAIRE

When completing the questionnaire version open for consultation by interested parties you should bear in mind that all exporters, importers and other Union producers will have access to it. The reply open for consultation should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence.

In order to assist you in completing the questionnaire version open for consultation by interested parties, we advise you to use the completed 'limited' questionnaire response as a basis. Identify all information in the limited response which you consider is not limited and copy it to the version open for consultation. After this, check once more whether the information you did not copy to the file for consultation is really limited. If you still consider it to be confidential, you must give the reasons why, item by item and summarise the limited information in a form which is suitable for consultation by interested parties. If, in exceptional circumstances, it is not possible to even summarise the limited information, give reasons in the questionnaire version open for consultation by interested parties why summarisation is not possible.

Examples on how to summarise 'limited' information:

- ◆ When the information concerns numbers for various years you can use indices.

Example of limited information:

2016	2017	2018
20.000 EUR	30.000 EUR	40.000 EUR

The summary open for consultation by interested parties could be as follows:

2016	2017	2018
100	150	200

- ◆ When the information concerns a single number you can apply a percentage change to it.

Example of limited figure: 'My cost of production is EUR 300 per tonne.'

The summary for consultation could be as follows: 'My cost of production is EUR 330 per tonne' (providing a footnote saying: 'actual numbers have been amended by a margin of maximum $\pm$ 10% to protect confidentiality').

- ◆ When the limited information concerns text you can either summarise it or eliminate the names of parties by indicating their function.

Example: TRADING COMPANY Ltd told me that the prices of imports were 20% lower.

Summary for consultation by interested parties: **[one of my customers]** told me that the prices of imports were 20% lower.

ANNEX III: DECLARATION ON COPYRIGHT

Please choose one of the options specified below and fill in the respective form as instructed in the Introduction to this Questionnaire.

Option 1 – the questionnaire reply contains no copyrighted information:

'I, Mr/Ms ..., declare that none of the information and/or data submitted in this questionnaire reply is subject to third party copyrights'

Option 2 – the questionnaire reply contains copyrighted information

a) Permission obtained:

' I, Mr/Ms ..., declare that I am submitting to the Commission information and/or data in tables/annexes etc. which is subject to third party copyrights for which I have requested and obtained specific permission from the copyright holder/s (name/s of the company/ies) explicitly allowing [please attach document attesting the permission if possible]:

- the Commission to use the information and data for the purpose of this trade defence proceeding and

___ - to provide the information and/or data to interested parties to this investigation

I also declare that all the other information and data submitted for the purpose of this investigation are free from copyrights.'

b) Permission not obtained:

' I, Mr/Ms ..., declare that I am submitting to the Commission information and/or data in tables/annexes etc. which is subject to third party copyrights for which I have requested but not obtained specific permission from the copyright holder/s (name/s of the company/ies) to provide the information and/or data to interested parties to this investigation (I provide a meaningful summary of the copyrighted information).