Price Strategy in the EU: Suggestions to Chinese Exporters in the Light of Anti-Dumping

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Abstract

This paper investigates the EU anti-dumping policy towards Chinese companies. It is based on the EU anti-dumping cases since 1990. Based on this analysis, the paper presents practical advice to Chinese or foreign managers in companies in China with export to the EU. Firstly, the CELEX database may give some important information on how to formulate a price policy for exports to the EU in order to avoid anti-dumping measures. Secondly, the owner structure of the company is important, if market economy status with its lower duties, is wanted. Wholly owned foreign companies or joint ventures with a majority of foreign capital seem to have the biggest probability of achieving market economy status. Generally, evidence of independence of the Chinese public authorities is important. Thirdly, owner structure also counts in relation to getting individual treatment; here especially freedom in exporting is decisive. Fourthly, if an anti-dumping investigation seems to be against the interests of the company, it should make an offer to the EU Commission to raise its export prices instead of paying duty. Fifthly, the paper also shows that the circumvention and absorption of duties often do not pay.

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INTRODUCTION

In the beginning of 21st century we can look back at the last 10 to 15 years as a period with very radical changes in the world economy. Not only the transition of the former communist countries in Europe from planned to market economies, but also the beginning of a transition process in the most populous economy of the world, China, have been significant changed. Even though, the political system as such has not changed much in China, its economic structures are changing at a rapid pace. Parallel to these transitional processes, globalisation is certainly increasingly on the agenda – partly as a result of technological changes (the cost of spreading knowledge has fallen drastically) and partly as a result of a consciously multilateral trade and investment liberalisation process (leading to the creation of the WTO in 1995).

Along these trends we have experienced an extensive increase in regional economic integration (free trade areas, customs unions etc.) all over the world, with the deepest integration taking place in the EU, through the creation of the Single Market (1994) and the Euro (1999). Some countries around the world have even pursued a unilateral trade liberalisation process, moving from an import-substitution policy towards an open external trade policy regime. Most countries follow both the multilateral and the bilateral trade liberalisation path and some countries, such as Mexico, have even gone down the unilateral road.

But there is no rose without a thorn. Whatever trade and investment liberalisation strategy a country decides to follow, it always wants to guard itself against unforeseeable circumstances by building a trade policy readiness (safeguards). Therefore, the overall liberalisation trend does not necessarily provide an accurate picture of the degree of protectionism in the world - especially not for a country like China that until the end of 2001 was neither a member of WTO nor participating in a regional club.
The overall objective of this paper is to give advice to Chinese companies in formulating export price strategies when they are exposed to the risks of contingent protection in foreign markets. A Chinese company is defined as a company with production facilities in China - whether it is a state- or privately owned domestic Chinese company, a joint venture between a domestic Chinese and a foreign company or a wholly foreign-owned enterprise. To narrow down our analysis, we have decided to look at exports to the EU and at the EU anti-dumping policy as the potentially most important barrier to Chinese exports in the EU market.

The (EU) anti-dumping policy system has been extensively analysed in economics and law literature, but not in international business literature, see e.g. Niels (2000). The system has generally been described as protectionistic, non-transparent, with negative welfare effects on the EU and the countries exporting to the EU.

In the international business literature China has been analysed to a large extent in relation to the market entry forms of foreign companies. Factors decisive in the choice between a joint venture with a local Chinese partner or a wholly foreign owned enterprise has been the primary research objective, see e.g. Gomes-Casseres (1990), Yigan Pan (1996) and Vanhonacher, (1997).

From the viewpoint of business policy, this article covers the strategy of internationalisation. Each decade has had its dominating strategy approach. In the sixties and seventies the planning and design schools, and in the eighties the positioning school of Michael Porter conquered the strategy field, to be followed by the resource based school in the nineties (Mintsberg et al, 1998).

The positioning approach is relevant to this article in emphasizing competitive advantage as a key strategic concept. Positioning may be obtained by adjusting to prevailing conditions in the industry or by changing the rules of the game. Emphasis here will be on the adaption side of positioning. The resource based view seems to have little to offer in relation to the
problem under investigation in this article. The view focuses on building unique, value creating competences and the capture and protection of value. Protection is brought about by setting up barriers to resource mobility and competition.

Over the last few years a competing strategy school has appeared which may well supplant the resource based view - that has largely failed in becoming operational. This school accepts the concept of competitive advantage as basic, but looks for different sources than the resource based view. Instead of looking for resource superiority and isolating mechanisms it puts transaction costs at the centre. According to this view - vide Foss (2002), Foss & Foss (2000), Williamson (1996), Barzel (1996) - organizational arrangements are sources of competitive advantages for reasons identified in transaction cost economies. This strategy concept links directly to the problem that is dealt with in this paper in the sense that a foreign company’s entry mode in China is determined, i.a., by the EU policy.

The paper does not deal with anti-dumping policy as a part of the strategic management of firms and industries, such as developed by Rugman and Verbeke (1990) in an analysis of global firms and trade policy, and by Rugman and Gestrin (1991) in the context of US trade policy.

This paper extensively analyses the triangle formed by the (EU) anti-dumping policy, China and business policy. But instead of looking at how companies can use the anti-dumping policy as a shelter, we consider the EU anti-dumping policy as something given, and investigate to what extent and how Chinese firms exposed to anti-dumping may be able to sustain or at least not lose too much in competitiveness on the EU market. Because Chinese companies’ internationalisation until now primarily has been in exports we choose to look at the price strategies Chinese companies may use in the EU market. Following Dutta et al (2002) the lesson we want to give to exporters from China is: "Pricing is complex. [..] The
ability to set the right price at the right time, anytime, is also becoming increasingly important. [...] Once a bad price is established it can be devilish to fix”.

In section two the rules and procedures of the EU anti-dumping policy (AD) are presented. In section three a number of empirical facts concerning the EU AD toward China will be introduced. The “non-market economy problem” and “individual treatment problem” of the EU anti-dumping policy are touched upon in section four. In section five we present our advice how to formulate an export price strategy, and in section six the concluding remarks of the paper will be presented.

**THE EU ANTI-DUMPING POLICY: RULES AND PROCEDURES**

The EU anti-dumping regulation provides for the imposition of anti-dumping duties when the following three conditions are fulfilled: (1) There is dumping, (2) which creates material injury to the Community industry and (3) when at the same time, it is in the general interests of the Community.  

Dumping is present when the export price at which the product is sold in the Community market is shown to be lower than what is considered “normal value”. In most cases the normal value is calculated as the price in the exporters’ home market, however, a cost-based price including a profit margin is used when it is impossible to find a representative home market price.

Dumping according to this definition is nothing more than traditional price discrimination between markets, which is daily international business practice and not harmful in any way. The exception to this statement is the case when the dumping firm is monopolising the export market through its pricing behaviour, so-called “predatory dumping”.

An AD investigation is initiated by complaints from industry in the Community. The filer of the complaint hands over documentation for dumping and injury to the EU Commission.
The Commission investigates the case and determines if dumping is taking place, whether or not dumped imports are causing material injury to Community industry and whether or not costs on the Community of taking measures are in proportion to the benefits. If the Council of Ministers agrees with the Commission that dumping and injury are present in the given case, the result may be a definitive measure in the form of anti-dumping duties (5 years duration, which can be extended through a so-called “expire review”). In many cases there will be no duty, but the parties will agree on price-undertakings, i.e. the exporter will increase his price in order to avoid dumping and injury.

Before 1 July 1998 all Chinese (and Russian) companies were treated as non-market economy companies\(^3\). In anti-dumping cases against non-market economy companies one dumping margin calculation is typically made for the country in question (“the one country one duty rule”) by comparing weighted export prices with the normal value based on information from companies in a market economy, the so-called analogue country\(^4\). The philosophy behind using an analogue country when calculating the normal value is due to the belief that state intervention distorts home market prices and costs making them unusable in normal value calculations.

Because of the ongoing reforms in China, which have led to an increasing number of Chinese companies operating on market economy principles, the basic regulation was changed as of 1 July 1998\(^5\). According to the new regulation Chinese companies may apply for individual market economy status (MES), in which case the normal value is based on the home market price or a cost-based price of the company. The criterion that the companies have to fulfil is that there must not be any significant external interference in their economic decision-making in relation to prices, costs, investments etc. Furthermore, the companies have to have a clear set of accounting records independently audited in line with international
standards, and these must be subject to bankruptcy and property laws. Finally, their exchange rate conversions must be carried out at the market rate. For Chinese companies not applying for or getting MES there is a possibility (which also existed before July 1998) of individual treatment, which is as an exception to the “one country one duty rule”. The conditions for getting individual treatment (IT) are based on the export activities of the company (freedom to determine export prices and quantities as well as their terms and conditions) and not sales conditions in the domestic situation, which are also important for getting MES. The important point is that state intervention is not so significant, that circumvention of anti-dumping measures is possible. For example, the number of state officials on the board or in key management positions should be in clear minority. If a company can prove that its export activities are determined by market forces and not affected by state influence, an individual dumping margin may be calculated based on the export prices of the company and the normal value from an analogue country. The advantage of the company getting individual treatment is that it is the export prices of that particular country that count and not the average export prices of all exporting companies in the given industry in the country. The calculated dumping margin and the imposed duty will typically be lower in the case of individual treatment. Fulfilling the criteria of MES involves individual treatment, but not the other way round.

**THE EU ANTI-DUMPING POLICY AGAINST CHINA – SOME FACTS**

The total number of definite EU anti-dumping measures (duties and/or undertakings) in force on 31 December 2001 was 174 (Commission, 2001a). Asia was the most affected region with 114 cases, and with 34 instances China (excl. Hong Kong which had 1 case) was the individual country with the highest number. This corresponds to 20% of the total number.
Given that the Chinese share of the EU’s imports is 6-7% (Commission, 2001b), China is clearly over-represented in AD-cases.

In more than 50% of the cases, Chinese products affected by EU anti-dumping measures are chemicals, coal and steel products. Furthermore, products like bicycles, lighters, footwear, handbags and a few electronic products are also affected. In general, these are low-tech products in which it is reasonable to expect that China has a comparative advantage. According to Falvey (1981) and a number of empirical investigations (e.g. Torstensson, 1992, Nielsen, 2000), countries with different endowments of factors of production exchange products along a differentiated quality scale. Countries abundant in physical and particularly human capital are supposed to export high quality goods, and a country like China abundant in unskilled labour is supposed to export lower quality variants. According to this theory, treatment as a non-market economy company will be biased. If a Chinese company is treated as a company from a non-market economy with normal value based on the home market price in (typically) a higher income market economy country, a positive dumping margin is inevitable, unless the Commission makes sufficient adjustments for quality differences.

Based on observations of EU cases against China since 1990 it is found that such an adjustment is seldom the case. The same conclusion is found in McGee and Yoon (1998) for American anti-dumping cases against China.

Even though, the share of Chinese exports to the EU subject to AD-measures is still at a rather low level, the real effect on Chinese export may be much larger given that the potential threat of an anti-dumping investigation may discipline Chinese exporters’ price behaviour to avoid an anti-dumping investigation. The Chinese companies’ comparative advantages in low priced, low quality products may consequently be eroded.

The measures used against China are primarily duties and, very infrequently, price undertakings, which more often are accepted from companies from other countries. Since
1997 no price undertakings have been used in relation to Chinese companies, whereas in the beginning of the 1990s 21% (1991) of Chinese anti-dumping cases involved both duties and undertakings. The percentage for all countries in total concerning cases of price undertakings has also gone down, though only from 37% in 1991 to 28% in 2001 (Commission, 2001a).

Consequently, it can be stated that there is a clear tendency of increasing difficulties for Chinese companies to get price undertakings accepted. This tightening of the EU anti-dumping policy against China has gone hand in hand with China’s involvement in an increasing share of all AD-cases. Furthermore it is worth paying attention to the fact that the size of the calculated dumping margins and the levels of the duties used against China are typically higher than for other countries (for the same products).

Chinese companies using predatory dumping cannot explain the over-representation of China in relation to the number of cases and the size of measures in the form of duties. In nearly all cases, more than one Chinese company is involved. Even though, they act as an export monopoly in some cases, since export often goes through state owned export-import companies, in around 50% of the cases there are also dumpers from other countries. In the 50% of the cases where only Chinese companies are accused of dumping, there are non-dumping exporters from other countries. Furthermore, the affected labour-intensive industries are characterised by low entry barriers, meaning that the risk of ending with a Chinese monopoly is minimal.

Looking at the product coverage and the number of producers around the world, the possibility that EU is using AD as a strategic industry policy as defined in the economic literature can be excluded (Brander and Spencer 1985; Pauwels et al. 2000). Instead, the reason for the tight EU AD policy against China seems to be the Chinese open door policy with increasing exports of labour intensive products. This policy puts pressures on low-tech industries in the EU to restructure, and since all restructuring is painful in the short run, the
EU industries look for the easy solution: to shelter domestic firms from import competition. The EU AD legislation and practice are designed in a way that the provision of protection to old age industries is very flexible\textsuperscript{11}.

China is also over-represented in anti-absorption and anti-circumvention investigations. A company is said to absorb a duty if it bears the cost of the duty and thereby increases the dumping margin to be able to stay in the market. To reduce the potential effect of absorption, a specific (instead of an ad valorem) duty is often used against Chinese companies. If an anti-absorption investigation is initiated, it will usually result in an increase in the tariff. In the glyphosate case\textsuperscript{12}, the original tariff of 24\% was increased to 48\%, given roughly the same sales price in the European market, with the result that the Chinese exporter got a lower export price without getting more sales.\textsuperscript{13}

Circumvention occurs when anti-dumping measures are circumvented by means of transhipment through other countries or production in other countries for which there is insufficient due cause or economic justification other than avoiding the imposition of the duty\textsuperscript{14}. In the glyphosate case mentioned above, an anti-circumvention investigation was started in May 2001 concerning Chinese producers’ transhipment through Malaysia or Taiwan or formulation glyphosate originating in China in these countries. This investigation ended by extending the tariff to imports of glyphosate consigned from Malaysia and Taiwan. This result is common in anti-circumvention cases. However, the result can also turn out like in the artificial corundum case\textsuperscript{15}: A change from price undertakings to a definite duty because other Chinese exporters, whom the EU Commission did not earlier knew, exported the product.

The fact that the EU Commission can and often does initiate anti-absorption and anti-circumvention investigations, usually on the initiative of the EU producers, shows that there
is a big risk of Chinese producers either losing (anti-absorption) or at least not gaining (anti-
circumvention) when attempting to use loopholes in the EU anti-dumping system.

**MARKET ECONOMY STATUS AND INDIVIDUAL TREATMENT**

As mentioned above Chinese companies have the possibility of improving the outcome of an AD investigation by applying for individual treatment (IT), or by applying for market economy status (MES) after 1 July 1998.

In the period from 1 July 1998 until 31 December 2001, 32 new AD cases were initiated, of which six were not decided before 31 December 2001, and five have been terminated due to a withdrawal of the complaint before the investigation of the Commission was completed. This leaves 21 cases for the investigation of the problem concerning market economy treatment and individual treatment. Seven of these 21 cases are so-called “expire reviews” - reviews of former cases when they are expiring. Two are “reviews of new exporters”, that is current cases with definite measures, which involve new exporters who are starting their exports to the EU. Since there are possibilities for applying for MES or IT in relation to expire and new exporters reviews, these 9 cases have been included. The following analysis of MES and IT is based on an investigation of all 21 cases as published in the Official Journal of the EU Commission (see the Appendix for an overview)\(^1^6\).

**Market Economy Status**

In all 21 cases, at least 55 out of at least 432 Chinese producers applied for MES (13%), but only 8 companies were awarded MES! That gives a “rate of success” for MES of maximum 15%. If we exclude expire and new exporters reviews, which have another character than the new investigations, the figures are as follows: At least 52 out of at least 63 producers applied for MES (83%) and 7 received it; so the rate of “success” were 14\(^%\)\(^1^7\).
MES was awarded in the compact discs boxes case, the ferromolyden case, zinc oxides case (3 companies), the integrated electronic compact fluorescent lamps case (2 companies) and the stainless fasteners case (new exporters review).

According to information from the EU Commission there were at least 6 Chinese production plants in the compact discs boxes case, of which 4 were wholly owned by 3 Hong Kong based companies. The 4 exporting Chinese companies applied for MES. Only two of these applications were well considered. For one of them (A) MES was refused because production was carried out in an inward processing arrangement without the permission to sell in the Chinese market and separately audited accounts. The other (Hong Kong) company (B) produced in two plants (a and b) in China, also under inward processing arrangements. However, only subsidiary a did fulfil the requirements for MES. It had company status in China, was subject to bankruptcy laws and independent of the state, and it also had independent audited accounts etc. The other subsidiary (b) was characterised like A and not fulfilling the requirement for MES. Consequently, two subsidiaries of the same parent company in the same country can be treated quite differently with respect to getting MES status. Seen from an EU Commission point of view, intra-company differences in duties create risks of circumvention with exports going through the low duty (MES) plant. Therefore, in the compact discs boxes case a common tariff was introduced for the two plants.

In the integrated electronic compact fluorescent lamps case 10 companies applied for MES. Only Lisheng Electronic&Lighting Co. Ltd., a wholly foreign owned company, and Phillips&Yaming Lighting Co., a joint venture with a foreign share of 60%, received MES. It is interesting that the joint venture could get MES in spite of the fact that a share of 40% of the venture belonged to the Chinese State. The argument of the Commission was that
“sufficient safeguards existed which ensured that the State Company could not unduly influence the operation of the joint venture”\textsuperscript{18}.

Also in the new exporters review of \textit{stainless steel fasteners} the owner structure seems important. Bulten Fastener Co. Ltd., a company wholly owned by Swedish Finnveden was awarded MES. This case also clearly illustrates the importance of getting MES or IT. If this company had not applied for MES (or IT), but instead had accepted the tariff rate for other companies (without MES or IT), the difference in the duty rate would have been $74.7-18.5 = 56.2$ percentage point, a quite significant difference in relation to competitiveness in the European market! In the \textit{ferromolyden} case, a private limited liability company called Nanjing Metalink got MES. The company seems to be dominated by Hong Kong “foreign” capital\textsuperscript{19}. In the \textit{zinc oxides} case five companies applied for MES, but only three received it. Once more, the companies who got MES were companies with foreign capital and the refusals were based on significant state interference\textsuperscript{20}.

The general picture we see is - not surprisingly - that foreign capital is a good basis for getting MES since foreign capital logically reduces state influence and typically involves a knowledge transfer to the Chinese company in relation to e.g. accounting standards\textsuperscript{21}.

However, as the \textit{aluminium foil} case shows, a joint venture partner is not a sufficient prerequisite for getting MES. The applying Chinese company was a majority state owned company with the chairman of the board appointed by the state. The claim of the company was that the US joint venture partner was solely responsible for the management of operations and consequently independence of the state, was not taken for granted. Therefore, it is most likely easier to convince the EU Commission that a wholly foreign owned company operating in China is working on market economy conditions than a joint venture with a Chinese partner. Therefore, the entry mode for foreign investors whose purpose is using China as an export platform is moving towards wholly owned subsidiaries and away from
equity joint ventures. Foreign investors feel frustrated with joint ventures’ even though it is now easier to establish a joint venture (Deng, 2000). A wholly owned company encounters minimal resistance from authorities, it does not require a board of directors and avoids the problem of shared control (Vanhonacher, 1997).

Of the 90% refusals of MES, the general arguments have been (1) too big a state influence in relation to domestic and export sales and also staffing and (2) insufficient accounting systems. Seen from the perspective of an all-Chinese company wanting to export to the EU, the two problems will be reduced by entering into a joint venture with a foreign company, which does not have too low a share of foreign capital and with foreigners in the leading managers and board positions. Furthermore, it is important to get the right to sell in the domestic Chinese market as well as getting an export license.

**Individual Treatment**

After July 1998 the success rate of an application for individual treatment (excluding those companies that were given MES) is 58%, a number that has been increasing with time. The number of applications in relation to the number of potential applicants is very high when disregarding expire and new exporters reviews. The low number of applicants in the reviews is presumably due to the fact that if a company has been refused in one investigation, its motivation for trying again is fairly low, unless the company has undergone big changes in relation to its freedom of exporting. The relatively high refusal rate (42%) is explained by the fear of circumvention by channelling exports through the exporter with the lowest duty rate, when exporters are not independent. Prior to 1990 the EU did not determine any individual export prices for Chinas exporters meaning that no individual treatment was given, following the principle of “one country one duty”. Consequently, even though the number of IT relative
to the potential number is less than 6%, the increase in this number over time could be an indication of a development towards a less controlled export system in China.

The owner structure of the companies is also important in IT investigations. In the hairbrushes case, MES was not awarded to 3 applicants, but IT was given to all 7 applicants. An important factor behind the refusals of MES was that the companies were not allowed to sell on the Chinese market. However, this factor is of no great importance in relation to getting the IT, which primarily depends on the freedom in export behaviour. Furthermore, since all 7 companies were wholly or predominantly foreign owned, the state influence in exports and risks of circumvention were minimal.

Generally, co-operation (inclusive complete answers to the Commission’s questionnaires) is important. In the malleable cast iron tube or pipe fittings case one applicant for IT was refused even though “it was eligible for individual treatment, but the questionnaire reply was incomplete regarding reporting of export sales”.

**FORMULATION OF A PRICE STRATEGY**

Based on the analysis in this paper, it is now possible to formulate a number of propositions for managers in companies in China, which have been subject to or may be subject to an anti-dumping investigation in the future. The figure 1 gives an overview over the necessary steps in formulation of a price strategy for the EU market.

In order to prevent being subject to an EU anti-dumping investigation, the export price of the Chinese company in the EU market is an important factor. It is important for the Chinese company to discover if there has been former anti-dumping cases against Chinese producers or producers from other countries for the given product. This can very easily be verified by using the database CELEX (1)²² ²³. If such an investigation proves that there has been a former anti-dumping case, there is a big risk that a new one will be commenced, if the price
of the Chinese company is not close to the existing level in the EU market (perhaps corrected for quality differences). The information in CELEX concerning former anti-dumping investigations will give an indication of an “acceptable” export price level (2). If there has not been anti-dumping investigations for the given product type earlier, the Chinese company should be very careful about its analysis of European competitors. Experience has shown that if competitors are doing well in relation to actual performance, the risk of an anti-dumping investigation is small compared to the situation where they are performing badly, e.g. because of the business cycle or structural changes (losing comparative advantages) (OECD, 2000; Mah, 2000) (3). So the general lesson is not to deviate too much in prices from the European competitors (with the obvious consequence that sales will shrink). Therefore, the Chinese company is faced with a choice between accommodation of prices in order to avoid an AD investigation (and the risk of duties) (4) and no price adaptation with the hope of not being “detected” by the competitors (5)²⁴.

Figure 1 How to formulate a price strategy

Note: In each part of the figure separated by the horizontal lines decision-making is done at the firm level, the EU-policy level or both.
If an investigation has been initiated (6), it is important for the given company to try to acquire market economy treatment because in this way the calculation of dumping margins are based on the conditions of the firm and therefore less arbitrary (8)\textsuperscript{25}. According to experience (from Russian, Ukrainian and Chinese cases), tariffs and price undertakings will be more favourable. The main condition is to be independent of the state or the local government in relation to price fixing, wage policy, the right both to export and sell in the Chinese market and putting together the board of the company. Besides that, it is important to use international accounting standards. A joint venture with an international company is not a sufficient condition to acquire MES, but it certainly does increase the probability. For wholly foreign-owned companies the probability is further enhanced. For Chinese companies wanting to enter the world market, the process of becoming independent of the state and getting a non-Chinese joint venture partner should be started as early as possible. Especially fulfilling the criteria of accounting standards seems very easy when one enters into a joint venture with a foreign partner.

If an anti-dumping investigation is not opened (after a given period of time) it could be perceived by the Chinese company as an indication that its export prices in the EU market have not provoked the European competitors and for that reason export prices may be somewhat reduced (7).

If MES cannot be acquired, it is important to try to acquire individual treatment in relation to dumping margins and tariffs/price undertakings, since individual treatment (like MES) typically results in less severe measures (9)\textsuperscript{26}. Besides some of the conditions for acquiring MES (e.g. independence of the state), it is generally a question of willingness to co-operate with the EU Commission in relation to providing relevant information. “If an interested party does not co-operate, or co-operates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had co-operated”\textsuperscript{27}.
If a provisional or final determination of dumping and injury caused by such dumping has been made (10), there is a possibility that the Commission will offer the company an agreement to increase export prices (price undertakings) (11). In such a case the company should gladly accept the offer because the alternative to pay tariffs is worse (12). In the case that the Commission does not offer price undertakings, the Chinese company should take the initiative to give the EU Commission an offer to raise the export prices, but it must also know that there are rather tight deadlines to follow (13). If this is accepted (14), the company will avoid paying tariffs for the next five years at least and it can cash the tariff revenue as “profits”. However, as already mentioned the practice of the EU Commission since 1997 has been not to offer price undertakings to Chinese companies. But in line with the Chinese membership of the WTO and the expected increase in attainment of MES, it is not unreasonable that price undertakings will be given to Chinese companies in the future.

If negotiations on price undertakings do not give any result a tariff will be imposed on the company (15) with the potential consequence that exports no longer are profitable because of too little sales given an unchanged export price (16). In a situation like that the Chinese company may either stop exports or try to keep a considerable share of the European market through export price reductions or keeping export prices unchanged trying to avoid the tariff by exporting through a country without anti-dumping tariffs. For both the absorption and circumvention strategy there is a big risk of detection, which may result in a higher level of tariff consequently stopping export (17).

If exports are still profitable after the tariff, a continuation of exports seems natural, but absorption and circumvention may still be a hazardous possibility to improve export profitability (18).

A new exporter in the EU market in products, where AD-measures are in force, should not necessarily accept the existing duties. Through a special effort in a new exporters review,
there are possibilities of getting other conditions than those prevailing. This is also the case in expire reviews, where the investigation is based on the “old” method (for non-market economy companies), but the company can ask for a parallel MES investigation.

If the Chinese company feels that it has received an unfair treatment by the EU AD-system, it has a number of possibilities for complaining. First of all to the Commission, but if that proves unsuccessful, the company can complain to the EU Court of Justice. Generally, using Brussels based lawyers specialising in EU anti-dumping legislation is considered a good idea. The Chinese membership of the WTO gives Chinese companies an opportunity to check the legality of the EU anti-dumping decisions by using the dispute settlement system of the WTO.

However, the Chinese membership of the WTO will also change the rules of the anti-dumping game against China for other reasons. If Chinese producers who are under investigation by the Commission can clearly show that market economy conditions prevail in the industry that produces a similar product with regards to the manufacturing, production and sale of the product, the EU shall use Chinese prices or costs (WTO, 2001). Now the Chinese producers have an WTO legal right to get MES if market economy conditions are obvious instead of just having the possibility of applying for MES and waiting for the approval or rejection. The possibility of an arbitrary treatment of Chinese producers is thereby reduced. In any event, the possibility of using a method for calculating the normal value that is not based on market economy principles shall expire 15 years after the date of Chinese accession (WTO, 2001).

Other more indirect parts of the Chinese accession conditions may also influence the use of MES and IT in the coming years. Within three years after accession, all enterprises in China shall have the right to trade in all goods, including the right to import and export. Along with elimination of price control, this is the main condition for getting IT and also an important
factor behind getting MES. Furthermore, living up to the WTO requirements could be considered complementary to the Chinese reform process, with a gradual reduction of the influence of central authorities on the management of non-privatised companies.

CONCLUSION

This paper has shown that EU anti-dumping policy has been extensively applied, both in relation to the number and size of measures, especially to companies operating with China as their production base. The paper argues that the reason behind this is the EU willingness to protect its low-tech, labour intensive industries from restructuring processes.

This paper also shows that companies operating in China, exporting to or planning to export to the EU market, have a number of possibilities for lessening the threat of or the size of EU anti-dumping measures. Firstly, the companies have to use the information given by the EU institutions in relation to AD-cases. This information can be useful for Chinese companies in formulating their price strategies on the EU market. Secondly, since the treatment of a Chinese company depends on the strength of its linkages to Chinese public authorities, dependency should be reduced. There are numerous possibilities for this. A state-owned Chinese company could try to be privatised or enter into a joint venture with a foreign company making sure that the joint venture gets an export license and the right to sell on the Chinese domestic market. Combined with an application of getting market economy status or at least individual treatment, the possibilities for a lower level of duty are present. By entering into negotiations with the EU, the Chinese company may also have the possibility of getting a permission to convert a duty into a price undertaking resulting in better economic performance. For a foreign company investing in China our cases have shown that the company should prefer a wholly owned company or at least acquire the majority ownership. This result is in accordance with the literature on entry modes in China, saying that to protect
its ownership advantage the company should prefer a wholly owned company or a majority stake in a joint venture. Our study thus adds to the literature by stressing how the optimal entry mode for foreign companies in China may also be influenced by the anti-dumping policy of the surrounding world.

The overall conclusion is rather paradoxical, however. Often it does not pay for a Chinese company trying to enter the EU market to deviate too much in its export price from the present EU price level, because the result can easily be an AD investigation leading to tariffs or price undertakings which will neutralise the low prices. But if this advice is followed, the company will find it very difficult to enter the EU market because the consumers and the user industry will not prefer “identically” priced Chinese products, given the low perceived quality.

If the Chinese producer still tries to sell in the EU market at prices well below the present one, and if it ends with an AD-investigation and a duty, absorption often does not pay as a means to market expansion. Therefore, the only real strategic advice seems to be circumvention but as mentioned above, circumvention will sometimes be detected. The most far-reaching interpretation of these arguments is as follows: If the Chinese producer is within a product area where the EU producers and the EU institutions do not want competition, he does not stand a chance!

Since the conclusion of the Uruguay Round and the founding of the WTO, anti-dumping laws have become much more important. Now 120 countries have these laws at their disposal, including China. There is no doubt that anti-dumping laws will become the most important types of protectionism as traditional tariffs and quotas fade away. Since it is unlikely that the anti-dumping laws will be repealed in the near future, it seems obvious that companies in China should learn how to behave in international markets characterised by extensive use of anti-dumping especially because these firms are supposed to continue being
the main target for anti-dumping actions. Hopefully, this paper will add to the learning process of Chinese companies.
REFERENCES


APPENDIX
### Market Economy Status and Individual Treatment of Chinese Companies Since July 1998

<table>
<thead>
<tr>
<th>Council or Commission Regulation or Decision</th>
<th>Product</th>
<th>Producers</th>
<th>Market economy status (MES)</th>
<th>Individual treatment (IT) and Results</th>
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</thead>
<tbody>
<tr>
<td>OJ L 134, 17/05/2001</td>
<td>Aluminium foil</td>
<td>At least: 1 Chinese, 1 Russian</td>
<td>One Chinese company applied for MES. MES was given to the Russian producer, but not the Chinese. Reason: Majority state owned company; chairman of the board appointed by the state. The claim of the Chinese company, that it was the US Joint Venture partner that was solely responsible for the management of operations and therefore independence of the state was guaranteed, was not taken for granted. The offer of price undertakings was therefore not accepted (contrary to the Russian company) because no necessary guarantees to allow for adequate monitoring when MES.</td>
<td>No IT because no sufficient proof of independence of the state in relation to export prices, quantities and terms of conditions of sale. Since only one Chinese producer; IT of no importance. Result: A definitive duty of 15% was put on Chinese products compared to 14.9% on Russian producers (before undertakings were accepted).</td>
</tr>
<tr>
<td>OJ L 316, 15/12/2000</td>
<td>Coke of coal in pieces with a diameter of more than 80 mm</td>
<td>Many Chinese producers and exporters</td>
<td>One of the Chinese companies (TJGN) applied for MES, but it was refused because, (1) its accounts did not comply with international standards; (2) interference of the state in exports (only export through state owned Chinese export companies), (3) interference by the state in wage and salary setting.</td>
<td>Three companies (including TJGN) applied for IT, but all were refused. One because of no co-operation with the Commission; TJGN’s application was denied because it did not have an export license (risk of circumvention because export is through state owned trading companies) and because the Hong Kong based parent company of the TJGN did not answer questionnaires of the Commission (non co-operation). The third company was 100% state owned without an export license and without influence on export prices and quantities. Result: Definite duty of 43.6% in form of a specific duty (Euro per ton) to avoid absorption.</td>
</tr>
<tr>
<td>OJ L 301; 30/11/2000</td>
<td>Electronic weighing scales</td>
<td>At least: 3 in Korea, 2 in Taiwan, 3 in China</td>
<td>3 Chinese producers requested MES; but all refused. One because of overrunning deadlines for submitting information to the Commission. For the two others, because of selling to loss-giving prices in the domestic Chinese markets for many years, indicating that they did not operate under market economy conditions.</td>
<td>The same 3 Chinese companies applying for MES, applied IT. They were granted because they co-operated and because state interference in their export activities were not significant and did not open up for circumvention. Result: Individual definite duties of 12.8% and 9.0% for two of the individual treated companies and 0% for the third. For all other Chinese companies the tariff was 30.7%. Generally the duties were higher for Chinese companies than for the producers in the two market economies.</td>
</tr>
<tr>
<td>Date</td>
<td>Subject</td>
<td>Countries/Producers</td>
<td>Application Details</td>
<td>Result</td>
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<td>------------</td>
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<td>----------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| OJ L118; 19/05/2000 (Ther is a proposal to a Council Regulation of 18/10/2000, but it is cancelled because of overrunning the 15 month deadline) | Glycine                                      | At least: 5 Chinese                                                                                       | 5 companies applied for MES, but all were refused. 3 were rejected because they were actually dealers, not producers. 1 was rejected because the application was not submitted by the whole group involved in the production and sale of the product, but only one company within the group. Therefore, it was impossible to verify whether the group as a whole merited MES. Furthermore the company was subject to restriction in buying and selling activities both domestically and for exports. The last company was also subject to selling restrictions and its accounts were incomplete. | The same 5 companies that applied for MES applied for IT. Only for two of the producers this was a potential possibility. But because they either were 100% or majority owned by the state and without full freedom for exports their applications were refused.  
 **Result:** Proposal for a definite duty of 39.7% expressed as a specific duty. |
| OJ L111 09/05/2000 (There is a proposal to a Council Regulation of 10/10/2000, but it is cancelled because of overrunning the 15 month deadline) | Hair-brushes                                | At least: 7 Chinese, (of which 5 is established according to the legislation of Hong Kong with production facilities in Mainland China) 3 Korean 1 Taiwanese 1 Thai | 3 Chinese producers requested MES, 2 were refused because they did not have the right to sell in the domestic market. The third was also refused, but because it was affiliated to one of the two others, and firms belonging to the same group shall be treated equal. | All known 7 Chinese producers applied for IT and because all were evaluated to be sufficient independent of the Chinese authorities especially in relation to exports IT were given. An important factor in this conclusion was that all companies were wholly or predominantly foreign owned and generally there were no risk of circumvention.  
 **Result:** Proposal for definite duties for the seven companies between 18.4% and 75.3% and for all other Chinese companies of 114%.  
 The duties for companies in Korea, Taiwan and Thailand were all lower. |
| OJ L267 20/10/2000 | Cathode-ray colour television picture tubes | At least; 1 Lithuanian 2 Indian 2 Malaysian 3 Korean 1 Chinese | The known Chinese producer applied for MES. It was refused because, (1) it did not have a company status and therefore no Board of Directors. (2) No export license. (3) Account and audit reports were not made public. | Application for IT, but it was not given in spite of co-operation. The reasons were (1)-(3) in the MES-investigation (primarily (2)).  
 **Result:** A provisional duty was imposed on the Chinese producer, but no final duty because of a very low export to the EU. |
| OJ L297 24/11/2000 (New exporters review) | Stainless steel fasteners and parts thereof | At least: 3 Chinese | Bulten Fastener Co Ltd – a wholly owned subsidiary within the Finnveden Group – applied for a new investigation of the current measures, claiming it operated under market economy conditions. MES was given. | In the original investigation two Chinese companies were given IT.  
 **Result:** Bulten Fasteners: 18.5% duty.  
 The two companies with IT 13.6-24.2%.  
 The rest: 74.7%. If Bulten Fasteners was not given MES or IT, it had to pay 74.7%. |
<table>
<thead>
<tr>
<th>Document</th>
<th>Product</th>
<th>Country</th>
<th>MES Application</th>
<th>IT Application</th>
<th>Co-operation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>OJ L175 14/07/2000 (Expire review)</td>
<td>Bicycles</td>
<td>At least: 14 Chinese</td>
<td>Some exporting producers claimed that they were operating under market economy conditions, and that the Commission therefore should use a different methodology from that used in the original investigation. The position of the Commission was that this should be investigated in an interim review under Article 11(3) in the Basic Regulation. But no Chinese producers did provide sufficient evidence for that. Therefore no investigation of MES.</td>
<td>No application for IT. But 10 exporters did co-operate.</td>
<td></td>
<td>Result: The tariff rate of 30.6% was unchanged.</td>
</tr>
<tr>
<td>OJ L125 26/05/2000 (Expire review)</td>
<td>Silicon carbide</td>
<td>At least: 1 Ukrainian 1 Russian 1 Chinese</td>
<td>No Chinese application for MES</td>
<td>No IT application or co-operation.</td>
<td></td>
<td>Result: Confirmation of duties China: 52.6% Ukraine: 24% (co-operation) Russia: 23.3% and price undertakings (co-operation)</td>
</tr>
<tr>
<td>OJ L46 18/02/2000 (Expiry review)</td>
<td>Dead-burned Magnesia</td>
<td>Several Chinese producers</td>
<td>No Chinese application for MES</td>
<td>No IT-application. No co-operation.</td>
<td></td>
<td>Result: Concluded by confirmation of original duty</td>
</tr>
<tr>
<td>OJ L22 27/01/2000 (This is a new exporters review)</td>
<td>Handbags (leather)</td>
<td>At least: 5 Chinese</td>
<td>2 producers applied for MES. But no MES-investigation, because no need for normal value calculation, see IT.</td>
<td>5 companies applied for a review of a former investigation and individual treatment. They were all refused: - one because of lacking co-operation - one for giving misinformation and because of restrictions on domestic sales - one because of no evidence on production - and two with IT in the former case, because no significant changes.</td>
<td></td>
<td>Result: No changes in tariffs. One general of 38% and two individual duties.</td>
</tr>
<tr>
<td>OJ L084 23/03/2001 (Expire review)</td>
<td>Ferro-silicon</td>
<td>At least: 37 Chinese Furthermore some producers in Brazil, Kasakhstan, Russia, Ukraine, Venezuela</td>
<td>No MES-investigation because it is an expire review and no application for a parallel MES investigation.</td>
<td>No IT application and no co-operation</td>
<td></td>
<td>Result: Termination of the duties.</td>
</tr>
<tr>
<td>OJ L248 18.09.2001 (Expire review)</td>
<td>Gas-fuelled, non-refillable flint lighters and refillable pocket flint lighters</td>
<td>At least: 300 Chinese</td>
<td>No MES application.</td>
<td>There were no IT application and no co-operation with the Commission.</td>
<td></td>
<td>Result: The former duties are unchanged. This case also involves a former circumvention case.</td>
</tr>
</tbody>
</table>
### OJ L44 15/02/2001
**Potassium permanganate**

At least: 1 Chinese

No application for MES.

### OJ L208 18/08/2000
**Malleable cast iron tube or pipe fittings**

At least: 1 Brazilian; 1 Czech; 1 Japanese; 1 Korean; 3 Thai; 3 Chinese

3 Chinese companies applied for MES. But they were refused. The reasons were (1) State interference in the form of tax rebates and in the setting of salaries for workers. (2) No clear set of basic accounting records. (3) Accounts were not independently audited and the methods used were not in accordance with international accounting standards.

### OJ L202 10/08/2000
**Hot-rolled flat products of non-alloy steel**

At least: 1 Indian; 11 Romanian; 6 Chinese

6 Chinese producers applied for MES, but all were refused. The companies were wholly or partly owned by the State, and in relation to material sourcing, State interference, auditing of accounts, barter trade and land ownership some of conditions were not met by one or more of the companies.

The same 6 companies applied for IT, which also were refused, because they could give no proof that the State would not interfere in exports.

### OJ L310 04/12/1999
**Compact discs boxes**

At least: 6 Chinese (of which 4 were owned by 3 Hong Kong exporting producers with manufacturing facilities in China)

4 Chinese producers applied for MES. One was rejected, because it was not involved in production of the product! Another withdrew its claim. The third company (A) was a Hong Kong based exporter with a production facility in China carried out under an inward processing arrangement. Because this company was not entitled to sell in the domestic market in China, and without separately audited accounts MES was rejected. The fourth applying company (B) was like A based in Hong Kong, but with two production facilities in China producing under inward processing arrangements. All management, marketing and sales functions were performed by the Hong Kong parent company. But the situation for the two productions facilities (a and b) differs. a fulfilled all requirements for MES: It has a company status in China subjected to bankruptcy laws, independence of the State; independently audited accounts, etc. The other production facility, b, was characterised like the production facility of A, that was not fulfilling the requirements for MES. Therefore: “ since there would be a high risk that anti-dumping measures could be circumvented by channelling exports to the Community through the Chinese producer with the lower margin, the Commission services determined common dumping

4 Chinese companies applied for individual treatment, and it was granted, because no interference from the Chinese State was apparent.

### Result
- The final specific duty of the former case continues.
- No co-operation and application for IT.
- The 3 Chinese companies applied for IT. All were refused. For two there were clear interference from the State regarding determination of export prices and quantities. For the third the investigation showed that it was eligible for individual treatment, but the questionnaire reply was incomplete regarding the reporting of export sales.
- Final duties of 49.4 to Chinese producers. Significant higher than for the other countries, where many producers furthermore got IT.
- Final anti-dumping duty on all 3 countries. 8.1% on Chinese producers, 22.3% on Indian producers and 5.7% on a Romanian producer with IT and 11.5% on other potential producers from Romania. Price undertakings from 1 Indian and 11 Romanian firms were accepted.
<table>
<thead>
<tr>
<th>Date</th>
<th>Industry</th>
<th>Country/Company Details</th>
<th>Reason for Refusal/Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>OJ L214 08/08/01</td>
<td>Ferromolyden</td>
<td>At least 14 Chinese</td>
<td>The 9 companies who were refused MES applied for IT. 3 got it. The same four who were refused MES because of lacking information were refused IT. 1 were refused because of state interference gave risk for circumvention. 1 produced the good for other exporters, so a risk of circumvention – even though not state interference. Result: Temporary duties of Nanjing Metalink International Co Ltd (the MES-company): 3.6% The IT-companies: 9.8-17.2% Others: 26.3%</td>
</tr>
<tr>
<td>OJ L241 26/09/2000 (expire review)</td>
<td>Fluorspar</td>
<td>At least nine Chinese exporters/traders</td>
<td>No Chinese applications for MES</td>
</tr>
<tr>
<td>OJ L62 05/03/2002</td>
<td>Zinc oxides</td>
<td>At least 5 Chinese producers</td>
<td>5 claimed for IT of which 3 also claimed for MES. Only one of the two who did not get MES were granted IT. The resual of IT was based on state interference, in particular the degree of state ownership, was such as to permit circumvention of the measures if the company was granted an individual dumping margin. Result: The MES companies: 6.9-19.3% The IT company: 26.3% All others: 28.0%</td>
</tr>
<tr>
<td>OJ L195 19/07/2001</td>
<td>Integrated electronic compact fluorescent lamps</td>
<td>At least 12 Chinese (of which 4 had related exporters in Hong Kong and 1 a related importer in Europe).</td>
<td>12 Claimed for IT of which the 10 also claimed for MES. The non co-operating MES applications were refused, and one withdrew its claim. Of the rest 8 (not getting MES) 6 fulfilled the criteria on IT. Of the two refusals one was subject to constraints on its business decisions due to limitations on direct export sales, while the other faced excessive state intervention due to exclusive management of the business by state representatives,</td>
</tr>
</tbody>
</table>

Marginal for factory (a) and factory (b). So we have a situation for company B that one of its production facilities are granted MES and the other not, which influence the calculation of the normal value.
The reasons for the refusals were:
- one was considered non co-operating because it did not reply to the Commissions questionnaire.
- 5 were operating under significant state influence either through direct management by the state representatives or through constraints on business decisions such as limitations in selling on the domestic market.
- 2 did not have a clear set of basic accounting standards and rules. Furthermore the production costs and the financial situation were significantly distorted due to arbitrary valuation of assets.

**Result:**
Final duties of 0% for Lisheng Electronic&Lighting Co.Ltd (de minimis) and 32.3% for the other MES company, Phillips&Yaming, and for the IT companies the duty were between 8.4% and 59.5%, and for the non-IT companies 66%.
NOTES

1 Czinkota and Kotae (1997) empirically investigated how large firms in the U.S. can use the anti-dumping process to obtain strategic shelter from foreign competitors even under conditions of growing markets, while smaller firms in more atomistic industries are likely to gain such shelter only in instances of market decline. Furthermore, Marsh (1998) has shown how anti-dumping statues are effective in improving the performance of U.S. firms, suggesting that the anti-dumping laws significantly increase returns to U.S. firms that pursue anti-dumping protection.


3 In AD investigations the People’s Republic of China (in the following just ‘China’) and Hong Kong are treated as two countries; Hong Kong as a market economy and China as a non-market economy, where companies can apply for market economy status in the latter.

4 The GATT/WTO rule on anti-dumping for non-market economies gives the contracting parties freedom to determine normal value. In article 9 of the EU Basic Regulation it is stated, that as a general rule the “one country one duty” principle shall be used for non-market economy companies (Wang, 1999).


6 China accepted as a Member of the International Monetary Fund full convertibility for transactions under the current account in 1995. The Chinese currency is not yet convertible for capital account transactions (Houben, 1999).

7 Dumping companies in market economies are typically treated individually, unless it is impossible (because of lack of co-operation) or impractical (many exporters). In their anti-dumping practice prior to 1990 the EU did not determine any individual export prices for Chinese exporters (Wang, 1999). There were isolated cases in the early 1990s, but this development experienced a set-back in 1993 with the Chinese bicycle case (Commission Regulation (EEC) No. 550/93 of March 1993). Since 1996, however, the individual treatment policy has experienced a “renaissance” (Rydelski, 1998).

8 A case is defined as one product plus one country, independent of the measure, duty, price undertakings or a combination of two of these factors. The total number is counted at 31st December

9 In the glyphosate case (OJ L 47, 18/02/1998) the Commission used the predatory argumentation by saying that the aim of its anti-dumping measure is to prevent any company from monopolising the glyphosate market.

10 However, in the integrated electronic compact fluorescent lamps case (Council Regulation, OJ L195, 19/07/2001) the Commission characterises the product as being a high-tech product. In Pauwels et al (2001) it is said that the Strategic Trade Policy argument for protection need not apply for anti-dumping duties because the level of protection is endogenously determined by the firms involved

11 In the Eighteenth Annual Report from the Commission to the European Parliament on the Community’s Anti-dumping and Anti-subsidy Activities (1999), the substantial increase in AD-cases in 1999 is explained by the economic crises in Asia. The report says, “certain sensitive Community sectors, such as the iron and steel, electronics and chemical industries, found themselves facing a massive inflow on their domestic markets of low-priced and/or subsidised imports”.


13 Seen from a purely welfare economic point of view the Chinese companies absorption of duties are beneficial to the EU. This argument is parallel to the optimal tariff argumentation for big countries imposing tariffs.

14 See article 13 in Council Regulation, OJ L056, 06/03/1996.
15 See Council Regulation, OJ L276, 09/10/97.


17 The lack of exactness in relation to number of producers is due to the imprecise information given by the Commission in its Regulations.


19 This statement is based on a not very precise information given by the Metalink to the author.

20 The three companies who got MES were: (1) Liuzhou Nonferrous Metals Smelting Co. Ltd - 100% owned by a Canadian investor (information to the author from the company); (2) Liuzhou Fuxin Chemical Industry Co. Ltd – the ownerstructure is unknown and (3) Gredman Guingang Chemical Ltd. – who is located in Batang Maijiupo - a development zone for Enterprises with foreign Investment.

21 That MES is beneficial to a company is confirmed by a Commission statement in relation to recognition of Russia as “Market Economy” May 2002. In this statement it is said “Russia will crucially be able to benefit from the accompanying treatment in anti-dumping cases, an issue of key interest to both the Russian authorities and business community (http://europa.eu.int/comm/external_relations/russia/summit_05_02/ ip02_775.htm).

22 CELEX is the most reliable and widely known information source on European Community law. It was launched on the web in 1997. It includes most acts published in the L and C series of the Official Journal of the European Communities (OJ) within days of their publication.

23 The numbers (1), (2) etc. used in the following refer to the numbers used in figure 1.

24 In some cases it may an advantage for a company operating in China that an AD investigation is started! For a MES company (be it a wholly foreign owned, a joint venture with foreign capital or a wholly Chinese private owned company) an AD investigation ending with duties can function as means to weaken the competitiveness of local state owned or state subsidised companies within the given industry. That could have been the case in the integrated electronic compact fluorescent lamps case, where the complainants are the European Lighting Companies Federation representing major proportion of EU production, including Phillips Lighting B.V. So Phillips is both an initiator of an AD investigation and influenced through its Chinese joint venture. Phillips withdrew from the complaint after the initiation of the proceeding and stopped manufacturing of the product in the EU shortly after!

25 The definition of the dumping margin (DM) is: DM = PN – PX, with PN the normal value and PX the export price. If the company gets MES, it can influence both PN and PX and therefore it has a greater autonomy in relation to avoid dumping accusations. If it cannot get MES it can only influence PX and in principle whatever PX it chooses there can be dumping because selection of the analogue country is to a large extent the free choice of the EU institutions and therefore subject to lobby activities of the complainant industry.

26 The integrated electronic compact fluorescent lamps case shows that a MES company may get a higher duty than a non-MES company who gets IT.

27 Article 18 in Council regulation, OJ L056, 06/03/1996.

28 Article 8 in Council regulation, OJ L056, 06/03/1996.
The cases analysed in the Appendix are all characterised by (1) investigations are initiated after 1 July 1998, (2) that there is a potential evaluation of MES and/or IT and (3) with final measures or changes in measures (expire reviews and new exporters reviews). In expire reviews the Commission uses, unless there are changed circumstances, the same method as in the original investigation resulting in a duty, (see Art. 11(9) in the Basic Regulation).