



FACULTY OF LAW
Lund University

Yicheng Han

The EU's anti-dumping measures on Chinese products: legal
implication and proposals

JAEM01 Master Thesis

European Business Law
15 higher education credits

Supervisor: Sanja Bogojevic

Term: Spring 2013

Contents

Summary	1
Preface	2
Abbreviations	3
1 Introduction	4
1 Background	4
1.2 Purpose	4
1.3 Method	4
1.4 Delimitations	5
2 The commercial relations between the EU and China	6
2.1 Sino-EU trade relations	6
2.2 The EU's policy towards China	7
2.2.1 Economic policy towards China	8
2.2.2 The elements effecting the EU's policy towards China	8
2.3 Principles of the EU's anti-dumping policy towards China	9
2.3.1 Principle of non-discriminatory	9
2.3.2 Principle of fair competition	9
2.3.3 Principle of free trade	10
2.4 Brief summary	10
3 The Common Commercial Policy	11
3.1 Introduction	11
3.2 Principles	12
3.2.1 The principle of uniformity	12
3.2.2 The principle of assimilation	13
3.2.3 The principle of non-discriminatory	13
3.3 The scope	13
3.3.1 Trade in goods	14
3.3.2 Trade in services	14
3.3.3 Commercial aspects of intellectual property rights	14

3.4 Common Customs Tariff	14
3.4.1 Application of The Customs Tariff	14
3.4.2 Determination of Valuation	15
3.4.3 Determination of Origin	15
3.5 Tariff Quotas	16
3.6 Anti-dumping Duties	16
3.7 Brief summary	17
4 The EU anti-dumping legislation towards China	18
4.1 The EU anti-dumping regulation	18
4.1.1 Determination of dumping	18
4.1.2 Determination of injury and domestic industry	19
4.1.3 Determination of Union's interest	19
4.1.4 Causal link	20
4.2 Characteristics of the enforcement of anti-dumping	20
4.3 Reasons from China Leading to Anti-dumping Duty	20
4.4 On which extent, the EU could regard China as market economy country?	20
4.4.1 Effect of the WTO rules on the EU law	20
4.4.2 Article 15 of Protocol on China	21
4.4.3 The EU secondary legislation	21
4.5 Development of individual treatment on China	22
4.5.1 Administrative practice as the source of soft law	22
4.5.2 The stage of soft law	23
4.5.3 The phase of hard law	23
4.6 Framework of the EU anti-dumping institutions	23
4.6.1 The Commission	24
4.6.2 The Council	24
4.6.3 Anti-Dumping Advisory Committee	25
4.6.4 European Court of Justice and Court of First Instance	25
4.7 Brief summary	25
5 The EU's anti-dumping measure towards China	27
5.1 The criteria for treatment of anti-dumping towards China	27

5.2 Types of anti-dumping measure	27
5.2.1 The treatment with market economy status	28
5.2.2 The treatment with non-market economy status	29
5.2.3 The treatment combined with one country one duty rule and the analogue country methodology	29
5.2.4 Individual treatment	29
5.3 The implications of the EU anti-dumping measures on Chinese exporter	30
5.4 The implications of the EU anti-dumping measures for Sino-EU relations	30
5.4.1 The distortion on the Sino-EU trade	30
5.4.2 The damage to the symmetrical position in bilateral trade agreement	31
5.4.3 The effect on the political Sino-EU relations	31
5.5 Brief summary	32
6 Conclusion	33
6.1 Suggestion for government of China	33
6.1.1 Professional knowledge	33
6.1.2 Building supervisory system of anti-dumping	33
6.1.3 Structural changes of industry	33
6.1.4 Market economy status	34
6.2 Suggestion for exporters	34
6.2.1 Appropriate cooperation with anti-dumping investigation	34
6.2.2 Improvement of enterprise system	34
6.2.3 Satisfaction of criteria	34
6.3 Brief summary	34
Table of cases	35
Bibliography	38

Summary

Karel De Gucht, the EU's trade commissioner, warned that China cannot be a 'free rider' in global trade and wanted China to take responsibility for the global trading system to disciplines with respect to export credits.¹ China, as the EU's second biggest trade partner, is the main victim of the EU's anti-dumping duties. Recently, Chinese solar glass caused anti-dumping duties. As the student from China, I have witnessed the Chinese exporting companies suffered from the loss of the EU's anti-dumping duty. Because of China in my mind, I want to analysis the EU's anti-dumping duty, as the EU's commercial defence instruments, in order to help Chinese undertakings to understand the rules of the EU's anti-dumping, to protect them from the loss and to guarantee their interests.

The European Union's policies toward China is influenced mostly by economic relations and political relations. Dumping, as one of the important element, causes trade friction, which could affect the Europe Union's commercial policy towards China. According to Europe Union's the Common Commercial Policy, Europe Union's anti-dumping is one of the commercial defence instruments, as non-tariff barrier. And Council Regulation 1225/2009 describes a list of articles concerning about procedures of anti-dumping investigation. The thesis is divided into four sections:

The first section describes the importance of China-EU relations. In this section, there are Sino-EU commercial relations and European Union's economic policy towards China. And the description of elements which could influence Sino-EU commercial relations are also taken into consideration.

The second section provides the Common Commercial Policy. Application of the Common Customs Tariff and introduction of anti-dumping duties are involved.

The Third section indicates the European Union's anti-dumping legislation regarding with China. In the part, there are legal framework of institutions and anti-dumping regulation. The sections also involves the European Union's anti-dumping measures. Chinese exporters could be imposed three types of treats from the European Union, which is depend on the status whether they are regarded as market economy status or non-market economy status. In the stage of investigation, there are two method, such as the single country-wide duty rule and the analogue country methodology. In eventual, the effect of the anti-dumping measures on China-EU commercial and political relations.

In final, I just provide government of China and Chinese exporters with suggestion to find appropriate action, in the proceeding of the EU's anti-dumping investigation.

¹ BBC NEWS BUSINESS, 'China 'cannot be free rider on trade', 20 May 2013, <http://www.bbc.co.uk/news/business-22601503>

Preface

After the Europe and China established diplomatic relations in 1975, China became the European Union's second biggest trade partner. In recent years, China decrease dependence on Russia and USA, and Japan was in the trouble of economic crisis. Then China regarded the European Union as China's biggest trade partner.

China is an important actor with strong political power and increasingly powerful economic capability in the world. However, government of China establish external policies with development of global economy and politics, because economic factor is the foundation in the stage of Chinese policy-making. Therefore, the EU's anti-dumping measures could influence China's decision in the future, to a large extent. Government of China cooperates with the EU closely for reorganization of market economy country. I just want to know the EU's anti-dumping legislation in the field of the Common Commercial Policy and provide government of China or Chinese exporters with proposals in the process of the EU's anti-dumping investigation.

And I hope my thesis has functions. First of all, the thesis is the feedback about European Business Law I studied in Lund University. Second effect is that the thesis may provide Chinese exporting companies with the treat to deal with the EU's anti-dumping duty.

In a year of study in Lund, it is wonderful time when I could get the knowledge and experience about European business law. The thesis is the final part of my program. During the time of writing the thesis, Sanja Bogojevic, my supervisor, helped me very much and gave my suggestion. And then, I also offer my best wish and thanks to my uncle, Lizheng Ma, because he gave me advice about the thesis and support with his experience of study in Sweden.

Lund May 2013

Yicheng Han

Abbreviations

CCT	Common Customs Tariff
CFSP	Common Foreign and Security Policy
CN	Combined Nomenclature
COCOM	Coordinating Committee on Multilateral Export Control
EC	European Community
ECJ	European Court of Justice
EU	European Union
FDI	Foreign Direct Investment
GATS	General Agreement on Trade Service
GATT	General Agreement on Tariffs and Trade
Mofom	Commission and Chinese Ministry of Commerce EU
MCC	ModernGATSised Customs Code
GSP	Generalized System of Preferences
IP	Intellectual Property
SCTVS	Small Screen Televisions
TFEU	Treaty on the Functioning of the European Union
TPSSM	Transitional Product-specific Safeguard Mechanism
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights

1 Introduction

1.1 Rationale

During the period of last 30 years, the EU and China has established strategic partnership in different fields. The commercial relations is one important foundation. In the aspect of trade, there are a huge amount of trade frictions. Particularly, the issue of dumping makes Chinese exporter suffer a lot every year. Government of China and the EU have made effort to improve the issue via high level bureaucrats dialogue and achievement of agreements, etc. The Common Commercial Policy has the EU potential external dimension.² Article 206 and 207 TFEU concern about The Common Commercial Policy. And anti-dumping duties are used as defence instruments to protect the EU's market active competition, fair trade and industry interests, according Council Regulation 1225/2009. With Economic Reform in China, The EU changed the policy towards China by transferring non-market economy country to conditional market economy country. Thus the EU imposes Chinese exporter three different treatment depending on whether the Chinese exporter has market economy status or non-market economy status. The EU give the list of criteria. If the Chinese exporter could satisfy the five criteria, the EU could treat the Chinese company with market economy status.

After China gains the benefits from the Policy of Economic Reform and Open, the EU regards China as the second trade partner, the main supplier, while China wants gain the advanced technology from the EU. In the trades, Chinese labor-intensive products with low export price always cause the EU's anti-dumping investigation. China always desires to enjoy market economy status. And China sometimes regards the analogue country methodology as discriminatory.

Accordingly, I want Chinese manufacturers to understand why they are imposed high anti-duties and how to meet criteria to enjoy the treatment with market economy status. And I also expect government of China to protect Chinese exporting interests and to and know the effect of the EU anti-dumping on Sino-EU relations. In final, I would like to give my suggestion on the issues. I decide 'EU anti-dumping duties as defence instruments of Common Commercial Policy and implications of the EU anti-dumping measures on Sino-EU relations' as the theme of my thesis.

1.2 Purpose

The aim of the thesis is to study the importance of Sino-EU relations, anti-dumping measures towards Chinese exporters and the impact of anti-dumping duties on the China-EU political and commercial relationship, which involves the Common Commercial Policy and development of individual treatment. The main focuses concerns application of Common Customs Tariff and Council Regulation 260/2009, and procedure and effect of Council Regulation 1225/2009.

1.3 Method

I used interpretation, description and case analysis method to state the issues about the EU's commercial competence in the field of the Common Commercial Policy, anti-dumping policy to China according to regulations and implications on Sino-EU relations.

² Paul Craig, Grainne de Burca, EU Law: Text, Cases, and Materials (Oxford University Press, 5th edition, 2011), P 319

1.4 Delimitation

There is anti-dumping agreement in WTO. The EU legislation could make up the gap in the WTO rules. China also is imposed anti-dumping duties from USA and other countries. However, the theme concerns about EU anti-dumping duties. There is no context about the issues in USA. And I will have chance to study that, because China is also important trade partner of USA.

2 The commercial relations between the EU and China

China has become the world's second economy with strong political power in the world. And China is the EU's second trade partner and exchanges Chinese market to introduce the advanced technology and develops the EU market. The Commercial relations between the EU and China contributes the great global development in the field of economy, after China's Policy of Reforming and Opening.³ Particularly, China became the second most important trade partner in the world. The trade cooperation between the EU and China has experienced long term development and conducted trade frictions, since official diplomatic relations in 1975.⁴ After China launched the policy of Reforming and Opening in 1977, the EU had investigated anti-dumping case for China's exports. Consequently, in the case of mechanical alarm clock⁵ and sodium saccharin⁶ in 1979. Chinese exporters were victims, which means the first time for the EU to conduct anti-dumping measures against China. In the case, China was found to be dumping and there is sufficient evidence of injury, so that China was imposed provisional anti-dumping duty.⁷ Since the cases, Chinese exporting industry was facing with loss from the EU's anti-dumping duties. And Chinese exporters overstated that the EU's anti-dumping was discriminatory against Chinese companies. Until April of 1998, China was not removed from the list of non-market economy countries. In the 21st century, the new stage for trade relationship between the EU and China started. In 2003, China established the 'China's EU Policy Paper'. And then The EU and China signed seven agreements, such as EEC-China Trade and Economic Cooperation Agreement and EU-China Bilateral Investment Treaty (BIT), in 2005. After long term of cooperation, both the EU and China could enjoy benefits from each other. The EU's market contribute China's export growth, while the EU develop China's market for economic interests. However the Commission and the State Council of China address the issue of intellectual property (IP) right and fair trade,⁸ pursuant to China's obligation in WTO.

2.1 Sino-EU trade relations

There are three causes of the commercial relationship. First of all, it is asymmetrical status. Regarding with section of import, the EU imports office machinery, textiles and chemistry products, etc mostly from China, while China desires advanced technology and huge amounts of investment from the EU in the field of export. The cross-regional trade constitutes imbalance, which leads to frictions between the EU and China. Secondly, Chinese exporters

3 David Bartlett, 'Understanding commercial relations between China and the EU', August 2008, <http://www.rsmi.com/en/global-challenges/understanding-commercial-relations-between-china-and-the-eu.aspx>

4 Jiangyu Wang, 'A Critique Of The Application TO China Of The NME Rules Of Antidumping Legislation And Practice Of The European Union' (1993) 33 (3) J.W.T., 117

5 Commission Regulation (EEC) No 1579/80 of 19 June 1980 imposing a provisional anti-dumping duty on mechanical alarm clocks (other than travel alarms) originating in the German Democratic Republic and the USSR, and repealing a national anti-dumping duty on mechanical alarm clocks originating in China imposed under the transitional provisions of the Act of Accession

6 80/1116/EEC: Commission Decision of December 1980 accepting undertakings offered by the exporters of saccharin and its salts originating in China and the United States of America and terminating the proceedings concerning imports of saccharin and its salts from China, Japan and the United States of America. OJ 1980 L 331/41.

7 Commission Regulation (EEC) No 1579/80 of 19 June 1980 imposing a provisional anti-dumping duty on mechanical alarm clocks (other than travel alarms) originating in the German Democratic Republic and the USSR, and repealing a national anti-dumping duty on mechanical alarm clocks originating in China imposed under the transitional provisions of the Act of Accession

8 Delegation of the European Union to China, http://eeas.europa.eu/delegations/china/eu_china/trade/index_en.htm

are imposed anti-dumping duties mostly from the EU. Since 1979, EU initiated trade remedy measures on 157 cases related to China, of which there are 152 anti-dumping cases. And the case of sodium Saccharin was the first anti-dumping case about Chinese exporter in 1976. Thus, anti-dumping measures have become increasingly important trade defense instruments in trade between the EU and China. The third one is that the issue about market economy status is the key point in the process of trade disputes between the EU and China, which covers the general trade relation and interest of China. Two stages in which there are the changes of the EU's anti-dumping rule to China happened in the period of more than 35 years. And the EU does not regard China as economic market country. Finally, there is nothing in the WTO rules, or elsewhere, to provide that China automatically gets market-economy status in 2016.⁹ Thus, China always desires the recognition of market economy status. Currently, the cooperation between the EU and China could improve the global economic crisis. The financial cooperation is beneficial for EU-China to stimulate economy.¹⁰

2.2 The EU's policy towards China

Due to China's Policy of Reforming and Opening since 1977, China become increasing powerful economic actor in the world. According the Commission, '*China is the single most important challenge for EU trade policy in aspect of bilateral trade relations*'.¹¹ The relationship and the cooperation between the EU and China in the field of trade and security at global level caused the development of the EU strategic external policy towards to China is complicated. The EU' policies could foresee the changes and uncertainties about China's future.¹² And political issues invite the stress on the interests of both sides, so the EU takes it into account in the process of policy-making. During the period from 1949 to 1970s, China was controlled by Mao Zedong, with hostile view to the European and experienced the Great Proletarian Cultural Revolution in China and decreased dependence on Soviet Union. And Western Europe adopted the US policy towards communist countries but softened the policy, COCOM, so Western Europe attempted to make trade with China in non-strategic goods.¹³ After China's Policy of Reform in 1977, the economic relations between the Europe and China became flexible and improved. Then the EC and China made exchange agreements, in aspect of economy, education and culture. However, Tiananmen Square happened in 1989 led to the serious sanctions from the EC for the protection of human rights. After the end of the Cold war, China desired the advanced technology for economic development, and used the Chinese domestic market to exchange the technology. Then the EU made long term relationship with China in 1995. After the relationship developed, a comprehensive partnership was established in 1998. In 2003, the EU started the maturing partnership with China. In 2005, the EU and China needed a new relationship, a strategic and enduring relationship.¹⁴ The EU provided China with Foreign Direct Investment (FDI) and technology transfer. The EU's policies to gain sustained long-term beneficial relationship. The EU found the problem on IP in China, because the issue of IP is important in the EU development. According to 'Report on EU Customs Enforcement of Intellectual Property Rights Results at

9 Bernard O'Connor, 'When Will China's NME Status End?', <http://worldtradelaw.typepad.com/ielpblog/2011/11/when-will-chinas-nme-status-end.html>

10 People's Daily, 'A final glance at Sino-European relations 2008', (December 19 2008), <http://english.people.com.cn/90001/90780/91343/6557963.html>

11 Delegation of the European Union to China, http://eeas.europa.eu/delegations/china/eu_china/trade/index_en.htm

12 COMMUNICATION OF THE COMMISSION: A LONG TERM POLICY FOR CHINA-EUROPE RELATIONS, http://eeas.europa.eu/china/docs/com95_279_en.pdf

13 May-Britt U. Stumbaum, 'The European Union and China: Decision-making in EU Foreign and Security Policy towards the People's Republic of China' (Berlin University, 2009), p 69-73

14 Xiudian Dai, 'Understanding EU-China Relations: An Uncertain Partnership in the Making', the university of Hull, 1/2006, P 12, <http://www2.hull.ac.uk/fass/PDF/Politics-Daipaper.pdf>

the EU Border 2010',¹⁵ the products originating from China were the biggest source of infringements of IP. After 2006, the Sino-EU cooperation in the field of technology still entered new stage. The change transferred general academic research and individual projects to the cooperative programs on global issues, such as the establishment of laboratory for environment and climate. China-EU cooperation of technology transferred to academic research, strengthened key technology, and established innovation of Sino-EU policy.

2.2.1 Economic policy towards China

In 2006 the Commission adopted the strategic policy towards China guarantee the active competitive market and pursuant to fair trade with China.¹⁶ There are three types of activities in the EU' external policy, such as foreign economic policy, CFSP and Member State Foreign Policy. In the field of foreign economic policy, the Commission, as the important institution, is in charge of trade, aid and development. The EU contributes aid and trade at global level. There are three types of policies composing the EU's external policy, such as rules for imports, bilateral and multilateral trade agreements between the EU and third countries, trade, and cooperation policies with developing countries.¹⁷ When the EU establishes the economy policy towards China, the EU has to be confronted with challenges. First of all, China has strong diplomatic and political capabilities, so it is difficult for the EU to find China's political purpose when trading with China. After sanction from the EU for The Tiananmen incident, government of China hold purpose that China wants to imported advanced technological weapons from European countries. And China always makes effort to gain the reorganization of market economy status from the EU. Secondly, the EU has to change the economy policy with China's great economic development, so the EU accepts the impact on the Union industry interests from Chinese capability of manufacture and take advantage of China to develop the EU's economy and take over the crisis. In the field of the CCP, the EU use defence instrument to protect the Union's industry interests with new strategic policy towards China.

2.2.2 The elements effecting the EU's policy towards China

When the EU decides its foreign policy-making, which challenges the EU in the field of economy, policy and ideology, China with its ever growing economic power and political influence serves shall be taken into account.¹⁸ After the Policy of Reforming and Open, China has owned it huge market and economic power, which make China become one the most important strategic partner for the EU's external strategy.

First of all, because of the potential economic competence in China, the EU regards China as the partner which could invite much interests, in aspect of the EU's external policy. Thus, there are a huge amount of trades between the EU and China. The business interests makes determination of the external policy of the EU.

¹⁵ http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2010.pdf

¹⁶ Delegation of the European Union to China, http://eeas.europa.eu/delegations/china/eu_china/trade/index_en.htm

¹⁷ May-Britt U. Stumbaum, 'The European Union and China: Decision-making in EU Foreign and Security Policy towards the People's Republic of China' (Berlin University, 2009), p 105

¹⁸ May-Britt U. Stumbaum, 'The European Union and China: Decision-making in EU Foreign and Security Policy towards the People's Republic of China' (Berlin University, 2009), p 21

Secondly, the Sino-EU cooperative projects involve the various fields, such as economy, culture, science, etc. And the EU contributes the largest aid to China, which provides that the EU could put the Sino-EU cooperation into consideration in the stage of policy-making.¹⁹

In third, the Member States enjoy the bilateral relationship with China, which is taken into consideration in the stage of the EU's external policy. In recent years, China encourages European companies to invest Chinese market and to form joint ventures with China enterprises.

Moreover, due to the difference in political system and cultural background, China's approaches to security, trades and culture sometime challenge the EU economically and politically.²⁰

In final, element that the EU wants to negotiate with powerful China at equal position offers the consideration during the process of policy-making.

2.3 The EU's anti-dumping policy towards China

The EU claims that anti-dumping instrument is on the basis of protection of the Union's interests. The EU and China established EU-China textile agreement then terminated 'The bra war',²¹ which was the reflection of textiles dispute on the ground of the Union's interests of textiles industry. In anti-dumping investigation on Chinese exporters, there are three principles towards to China, such as principle of non-discriminatory, fair competition, and free trade.

2.3.1 Principle of non-discriminatory

As one of principles of WTO, principle of non-discriminatory is found in Article 9 (2) Uruguay Round Agreement.²² Then the EU adopted the principle into the Council Regulation 1225/2009, which is provided in Article 9 (5) that '*An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except for imports from those sources from which undertakings under the terms of this Regulation have been accepted*'.²³ However in the case of Polyester Staple Fiber,²⁴ the EU imposed different anti-dumping measures on the exporters depending on originating countries in which the exporters met the criteria or not. Thus regarding with China, the exporter thought EU's duties on Chinese companies breached the principle of non-discriminatory, particularly Article 9 (2) Uruguay Round Agreement.

2.3.2 Principle of fair competition

The EU uses trade defence instruments, such as anti-dumping and anti-subsidy measures to

19 May-Britt U. Stumbaum, 'The European Union and China: Decision-making in EU Foreign and Security Policy towards the People's Republic of China' (Berlin University, 2009), p 21

20 May-Britt U. Stumbaum, 'The European Union and China: Decision-making in EU Foreign and Security Policy towards the People's Republic of China' (Berlin University, 2009), p 22

21 EU-China textile agreement 10 June 2005. Memo - Brussels, 12 June 2005, http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_123754.pdf

22 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

23 The first sentence of Article 9 (5) of the Council Regulation 1225/2009

24 COUNCIL REGULATION 428/2005, 10 March 2005, imposing a definitive anti-dumping duty on imports of polyester staple fibers originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibers originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan

pursuant to open and fair trade in domestic and foreign market.²⁵ Thus, fair competition is foundation of the EU trade policy.²⁶ China's labor-intensive products with low export price are exported into the Member States, which could cause injury to the EU domestic industry interests. In the case of leather shoes originating from China and Vietnam, the anti-dumping measures protected the EU shoe industry from injury against unfair trade.²⁷ The shoes with low-cost advantage from China and Vietnam could cause unfair trade in Europe. Fair competition perhaps prevents and eliminates dumping.

2.3.3 Principle of free trade

Free trade is regarded as the foundational approach for global trade, which could be used to close the structural gap in WTO. Thus anti-dumping measures is not the approach to protect trade, but the approach to keep fair trade. Although anti-dumping duties could cause impact on domestic industry interest, it is regarded as tool of principle of free trade.²⁸ In the case of ceramic tableware and kitchenware from China,²⁹ Chinese exporters were imposed anti-dumping duties to protect fair trade, which was on the ground of WTO rules and the EU anti-dumping legislation. In the case, some Member States also gave their objections, because they thought the Commission's decision breached principle of free trade and would be harmful to domestic consumers and traders.

2.4 Brief summary

As the world's second economy, China has become the EU's second most important trade partner. During long term communication between China and the EU, the EU has been modifying the policies towards China, and is looking forwards to sustained long-term beneficial relationship with China. Thus Sino-EU trade relation is one of important pillars.

During the process of establishment of the EU's economic policy towards China, there are several factors taken into account. And I also describe the three principles in the field of the EU's anti-dumping policy towards Chinese products, such as principle of non-discriminatory, fair competition and free trade.

25 Trade defence, European Commission, http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/index_en.htm

26 The National Board of Trade, 'Dumping or Competition? The EU Anti-Dumping Duties on Ceramic Tiles', February 2012, <http://www.kommers.se/Documents/dokumentarkiv/publikationer/2012/rapporter/report-dumping-or-competition.pdf>

27 Commission adopts provisional anti-dumping measures on Chinese and Vietnamese leather shoes, 23rd March 2006, http://europa.eu/rapid/press-release_IP-06-364_en.htm

28 Bin Gu, 'On The Latest Key Parts Of Implementing Antidumping Measures: Focusing On Public Benefit', (University of International Business and Economics, 2009), <http://www.cesruc.org/uploads/soft/130221/1-1302210ZA3.pdf>

29 COMMISSION REGULATION 1072/2012, 14 November 2012, imposing a provisional anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China

3 The Common Commercial Policy

3.1 Introduction

After Lisbon Treaty coming into force, Article 206 and 207 TFEU put emphasis on the CCP. The CCP was developed by amendment of Article 207 TFEU.³⁰ It is extension of the traditionally exclusive EU competence in the field of the CCP on trade, service, related aspect of intellectual property and foreign direct investments, while the possibility further extension of the exclusive EU competence in the field of the CCP relies on constitutional limits of integration process in the Member States.³¹

There are several magnificent changes happening on the Common Commercial Policy (CCP). And there are four achievements resulting from Lisbon Treaty. First of all, the CCP governs trade, which developed the scope of the EU's exclusive external competence in this field. Second one is that the EU has competence to govern commercial field of intellectual property and foreign direct investment.³² Thirdly, the change is in description of Article 207 (4) TFEU, which provides that: *The Council shall also act unanimously for the negotiation and conclusion of agreements: (a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity; (b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.* In final, the European Parliament is got the power to have a legislative role in the CCP.³³

The movement of goods in and out of the EU is involved in the CCP. In the light of Article 206 TFEU, the CCP aims to international trade and direct investment and could not be regarded as measure of protection.³⁴ And unilateral measure, for anti-dumping duties, and international action with the third countries and international organizations are governed by the CCP to protect the EU interest and to keep active competition.³⁵

According to Article 207 TFEU, it describes the content of the CCP on the ground of uniform principles in field of changes in tariff rates, achievements of tariff and trade agreements, and commercial issues.³⁶ The article also provides the procedure for adopting trade policy measures and for achieving agreements in this respect.³⁷

The trade between the EU and China is included in field of external trade, so Sino-EU trade could be governed by the CCP. And anti-dumping duty, as one of commercial defence instruments, could protect the EU's active and comparative market, and EU's industry interest from the loss. Because imported Chinese products with low price could negative effect to the

30 Angelos Dimopoulos, *The Common Commercial Policy After Lisbon: Establishing Parallelism Between Internal And External Economic Relations?* <http://hrcak.srce.hr/file/44796>

31 Wolfgang Weiß, *Common Commercial Policy in the European Constitutional Area: EU External Trade Competence and the Lisbon Decision of the German Federal Constitutional Court*, http://link.springer.com/content/pdf/10.1007%2F978-3-642-34255-4_3.pdf

32 Article 207 (1) TFEU

33 Paul Craig, Grainne de Burca, *EU Law: Text, Cases, and Materials* (Oxford University Press, 5th edition, 2011), P 320

34 Piet Eeckhout, 'EU External Relations Law', (Oxford University, 3rd edition, 2011), 440

35 Paul Craig, Grainne de Burca, *EU Law: Text, Cases, and Materials* (Oxford University Press, 5th edition, 2011), 320-321

36 Article 207 (1) TFEU

37 Piet Eeckhout, 'EU External Relations Law', (Oxford University, 3rd edition, 2011), 440-441

EU's market, the Chinese product could be imposed anti-dumping duty from the EU.

3.2 Principles

There are three principles, uniformity, assimilation and non-discriminatory. Moreover, the principles are involved in the CCP. The Common Customs Tariff (CCT) and non-tariff (the Union's export and import regimes and commercial defence instruments) are included, while the CCP focus on bilateral and multilateral agreements negotiated with third countries and international organizations.³⁸ The principles also respect human right, such as the principle of non-discriminatory.

3.2.1 The principle of uniformity

According to Article 207 TFEU, the principle of uniformity is core part of The CCP, which allow the EU competence to cover external trade in the field of import and export,³⁹ which reflects the EU's interests in external relations. The provision 1 of summary of Opinion 1/75 says that: *'In its reference to an 'agreement', the second subparagraph of Article 228 (1) of the treaty uses the expression in a general sense to indicate any undertaking by entities subject to international law which has binding force, whatever its formal designation'*. In the light of the provision, it is applicable for any undertaking by entities subject to international law, which means that the rules could be applied by EU. And the provision 4 provides that : *The field of The Common Commercial Policy, and more particularly that of export policy, necessarily covers systems of aid for exports and more particularly measures concerning credits for the financing of local costs linked to export operations.* According to the provision, in aspect of the CPP, the exports are involved strictly. Finally, the provision shows that: *The 'internal' and 'external' measures adopted by the community within the framework of The Common Commercial policy do not necessarily involve, in order to ensure their compatibility with the treaty, a transfer to the institutions of the community of the obligations and financial burdens which they may involve: such measures are solely concerned to substitute for the unilateral action of the member states, in the field under consideration, a common action based upon uniform principles on behalf of the wholes of the community*, which means that all rules could be applied for imports and exports respectively.⁴⁰ Once the tariff is paid, the Union applies the principle to uniformity effectively, which means that the goods exported from other countries could be in free circulation and have equivalent states like goods free movement of good in internal market. In the Conckerwolcke case⁴¹, the Member States must comply with the Treaty rule, which had restrictive effect on national provision on customs clearance. And in the case, the Member State had derogating provision from the principle of uniformity.

Therefore, authorities of Member States are permitted to apply Common Customs Tariff (CCT), instruments of the CCP, pursuant to principle of uniformity.⁴² It is applied to the goods originating from third countries across EU external border. In the light of Article 28(2) TFEU, the provision provides that: *The provisions of Article 30 and of Chapter 2 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.* And Article 29 TFEU then indicates that: *Products coming from a third country shall be considered to be in free circulation in a*

38 Catherine Barnard, 'The Substantive Law of The EU: The Four Freedoms', (Oxford University , 3rd edition, 2010), 194

39 Piet Eeckhout, 'EU External Relations Law', (Oxford University , 3rd edition, 2011),441

40 Piet Eeckhout, 'EU External Relations Law', (Oxford University , 3rd edition, 2011),441

41 Case 41/76 Donckerwolke and Schou v. Procureur de la République [1976] ECR 1921

42 Piet Eeckhout, 'EU External Relations Law', (Oxford University , 3rd edition, 2011),452

Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges. Theoretically, it is possible for the Member States to apply the CCT, however there are exceptions because of the bilateral agreements and unilateral agreements on levy tariff, and multi-countries agreements. Most of products are freely imported into the EU. Consequently, as it can be explained, once the CCT is paid, the goods in free circulation has the same right to free movement of goods as counterparts from the EU.⁴³ There was the prohibition of Member States from unilateral action for new charge or charge with equivalent effect. Thus the Member States are not entitled to negotiate on tariff in the WTO, but EU is empowered to do that.⁴⁴ And the Member States are prohibited from imposing levy their tariff on the goods originating from third countries, while the levying charges with equivalent effect to tariff on the goods originating from third countries also is prohibited

3.2.2 The principle of assimilation

In the *Donckerwolcke* case⁴⁵, the principle of assimilation was established.⁴⁶ In the light of Article 28 TFEU, the second paragraph provides that: *The provisions of Article 30 and of Chapter 2 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.* This provision could show the adoption of liberalization to products imported from third countries in 'free circulation'. Furthermore, Article 29 TFEU then says that: *Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.* This provision shows that the products from third countries are entitled to be assimilation to counterpart from Member States. Thus the CCP reflects the active and open market for trades with third countries via the use of principle of assimilation. Although the various further trade restrictions to EU products in internal market are prohibited, there are different kinds of barriers on EU's external trades.

3.2.3 The principle of non-discriminatory

Because of the party of WTO Agreement involves EU, there is the principle of non-discrimination, which means elimination of discrimination against third countries. However ECJ is not willing to adopt the requirement of equal treatment. For example, in *Faust v Commission*, there does not exist general principles obliging the Community. And in aspect of external relations, the treatment to non-Member State should be equal. That the traders get various treatment within the Community is compatible with community law, so the different treatment is resulted from non-Member States automatically.⁴⁷

3.3 The scope

After Lisbon Treaty, the articles substantially improved the provisions on the CCP,

43 Catherine Barnard, 'The Substantive Law of The EU: The Four Freedoms', (Oxford University , 3rd edition, 2010), 194

44 Catherine Barnard, 'The Substantive Law of The EU: The Four Freedoms', (Oxford University , 3rd edition, 2010), 194

45 ECJ, Case 41/76 *Donckerwolke and Schou v. Procureur de la République* [1976] ECR 1921

46 Piet Eeckhout, 'EU External Relations Law', Oxford University , 3rd edition, 2011), 444

47 Case 52/81, Judgment of the Court (First Chamber) of 28 October 1982. - *Offene Handelsgesellschaft in Firma Werner Faust v Commission of the European Communities*-Common organization of the market in fruit and vegetables-Protective measures..

particularly Article 207 TFEU. In the light of Article 207 (1) TFEU, it provides that the CCP covers trade in goods and services, commercial aspects of IP and FDI.

3.3.1 Trade in goods

In the light of Opinion 1/94, there are issues concerning about multilateral agreements on trade in goods, which could be found in paragraph 21: *'The Commission and the parties agree that the Multilateral Agreements on Trade in Goods are for the most part covered by the exclusive competence conferred on the Community in matters concerning the common commercial policy by Article 113 of the EC Treaty.'*⁴⁸ The agreement signed by multi-parties on trade in good is attached in Annex 1A of the WTO Agreement. These agreements are covered within the scope of the EU's trade policy powers. On the ground of Treaty provisions, the internal measures could not prevent the international commitments from pursuant to the CCP. Thus, the WTO agreements on trade in goods are involved in ambit of the EU's commercial competence in the CCP.

3.3.2 Trade in services

The EU has exclusive competence in area of trade in service under the CCP, according to Lisbon Treaty. Article 207 (1) TFEU puts the focus on the tariff and trade agreements the two area. The Treaty expended the ambit of the EU's competence in the area of trade in service, as the EU external competence.⁴⁹ Because of GATS,⁵⁰ the CCP is pursuant to the WTO agreements.

3.3.3 Commercial aspects of IP rights

After Lisbon Treaty, the issues are exclusive nature. The CCP matches the WTO agreements, according to TRIPS⁵¹ agreements.

3.4 Application of The Customs Tariff

Article 33 (1) MCC describes that: *Import and export duties due shall be based on the Common Customs Tariff*, which means the custom duties depend on the CCT. The raw materials and semi-manufactured products could be imposed lower customs duties, but the done goods will be got higher customs duties. And if the products could be beneficial for competition, the goods also could get lower tariff.⁵² The national authorities are entitled to collect CCT. The custom duties levied should be on the basis of principle of non-discrimination and on the ground of national laws and conditions. Due to Chinese exporters are direct victims of the EU's anti-dumping duties, Chinese export of textile, chemical products and footwear, etc could not enjoy Generalized System of Preferences (GSP). However, Chinese export of mine, animal and some agriculture still could enjoy GSP.

3.4.1 Determination of Valuation

After the goods have been processed in the stage of classification, the value of goods need to

48 VI. The Multilateral Agreements on Trade in Good of Opinion 1/94

49 Angelos Dimopoulos, *The Common Commercial Policy After Lisbon: Establishing Parallelism Between Internal And External Economic Relations?* <http://hrcak.srce.hr/file/44796>

50 General Agreement on Trade in Services [1994] OJ L336/190

51 Agreement on Trade Related Aspects of Intellectual Property Rights [1994] OJ L336/213.

52 Catherine Barnard, *'The Substantive Law of The EU: The Four Freedoms'*, (Oxford University , 3rd edition, 2010), 203

be decided to assess ad valorem duties.⁵³ The evaluation of value of goods is ground of principles according to WTO Customs Valuation Agreement⁵⁴ envisaged in the Articles 40-3 of Modernised Customs Code (MCC). First of all, the Article 40 MCC provides the scopes. And the Articles 41-2 explain two methods of customs valuation. In final, the Article 43 MCC describes the list of implementing measures. And fair, uniform, neutral system is the standard in the valuation process, which could eliminate the use of 'arbitrary or fictitious customs values'.⁵⁵ Once the value could not be determined, the agreement offer another four measures for determining value, according to Article 42 MCC. They are: *Where the customs value of goods cannot be determined under Article 41, it shall be determined by proceeding sequentially from point (a) to paragraph 2(d) of this Article, until the first point under which the customs value of goods can be determined. The order of application of points (c) and (d) shall be reversed if the declarant so requests. 2. The customs value, pursuant to paragraph 1, shall be: (a) the transaction value of identical goods sold for export to the customs territory of the Community and exported at or about the same time as the goods being valued; (b) the transaction value of similar goods sold for export to the customs territory of the Community and exported at or about the same time as the goods being valued; (c) the value based on the unit price at which the imported goods, or identical or similar imported goods, are sold within the customs territory of the Community in the greatest aggregate quantity to persons not related to the sellers; (d) the computed value.*⁵⁶

3.4.2 Determination of Origin

Generally, the origin of the imported goods determines the tariff, whether the goods come from Union or non-Union. In the light of MMC, the determination of origin could be found in Articles 35-9 MCC. These rules concerns two sections. Thus the Articles 35-8 MCC deal with section one, non-preferential origin, while the section two, preferential origin, is envisaged in Article 39 MCC. Especially, Article 36 MCC concerns the Acquisition of origin. Article 36 MCC provides that: *1. Goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory; 2. Goods the production of which involved more than one country or territory shall be deemed to originate in the country or territory where they underwent their last substantial transformation.*

In the case of *Überseehandel*, it provides that the process was *only 'substantial' for the purposes of that provision 'if the product resulting therefrom has its own properties and a composition of its own, which it did not possess before that process or operation.*⁵⁷ Similar situation happens in the case of *Zentrag*, in which it also described that *'the last process or operation is only 'substantial' for the purposes of that provision if the product resulting therefrom has its own properties and composition of its own, which it did not possess before that process or operation. Activities altering the presentation of the product for the purposes of its use are not of such a nature as to determine the origin of the said product'*.⁵⁸ However, the simple assembly operations are taken into consideration. In the dumping case of *Brother*, the product used some parts from Japan and was assembled in Taiwan.⁵⁹ The case provided that: *'electronic typewriters imported by Brother from Taiwan must be regarded as originating in Japan'* according Article 5 of Regulation 802/68. And the Court also adopted a

53 Catherine Barnard, 'The Substantive Law of The EU: The Four Freedoms', (Oxford University , 3rd edition, 2010), 199

54 Agreement of Implementation of Art. VII of GATT 1994

55 Catherine Barnard, 'The Substantive Law of The EU: The Four Freedoms', (Oxford University , 3rd edition, 2010), 200

56 Article 42 (1) (2) of Regulation 450/2008 Community Customs Code (Modernised Customs Code)

57 Case 49/76 GESELLSCHAFT FÜR ÜBERSEEHANDEL MBH, Hamburg, [1997] ECR 41

58 Case 93/83 Zentralgenossenschaft des Fleischergewerbes eG (Zentrag) v Hauptzollamt Bochum [1984] ECR 1095

59 Case C-26/88 Brother International GmbH v. Hauptzollamt Gießen [1989] ECR I-4253

value added test and technical test as another sorts of assembly operations.

3.5 Tariff Quotas

The EU may influence the decision of levying custom duties on goods originating from third countries. Thus, the exception on the tariff happens because they allow the wholly or partial suspension of the normal duties applying to imported goods for a given quantity of goods.⁶⁰ There are two types of tariff quotas, such as preferential tariff quotas and autonomous tariff quotas.⁶¹ At first, preferential tariff quotas are used to certain non-Member states which do trades or make agreements with EU and could get lower custom duties rates than other normal third countries, in aspect of quantity of goods. And autonomous tariff quotas may improve economy in the EU.

Tariff quotas could be administered according to rules in Regulation 717/2008. This Regulation administers the rules governing the administration of quantitative import and export quotas, hereinafter referred to as 'quotas', whether autonomous or conventional, established by the Community.⁶²

3.6 Anti-dumping duties

In 1968, the first anti-dumping legislation was introduced, which was Council Regulation 459/68⁶³. Thus the Commission took the place of the Member States to enact anti-dumping legislation, to initiate anti-dumping cases and to interpret anti-dumping law.⁶⁴ After amendments, Council Regulation 384/96⁶⁵ with several amendments was applicable since 1996. In Final, Council Regulation 384/96 was replaced by Council Regulation 1225/2009.

Article VI of General Agreement on Tariffs and Trade 1994 (GATT) puts focus on anti-dumping and countervailing Duties. The practice of dumping has the certain concept that *'by which products of one country are introduced into the commerce of another country at less than the normal value of the product'*.⁶⁶ Thus the action of anti-dumping could be used on only situation in which distortion of domestic industry is resulted from dumping. And the action of anti-dumping includes imposing an anti-dumping duty. Council Regulation 1225/2009 on protection against dumped imports from countries not members of the European Community contains the related rules.

Article 2 of Council Regulation 1225/2009 provides the procedure on how to determinate dumping. First of all, in the light of Article 2 (A) it needs the normal value. In the process of establishing normal value, there are two different types treatment for economy countries and non-market economy countries respectively. And next step is envisaged in Article 2 (B) concerning export price. Normal value and export price can be compared.⁶⁷ After establishment of export price, it then is fair comparison, which is provided in Article 2 (C). In final, following the fair comparison, it needs to set up dumping margin, which is under

60 Catherine Barnard, 'The Substantive Law of The EU: The Four Freedoms', (Oxford University , 3rd edition, 2010), 203

61 Catherine Barnard, 'The Substantive Law of The EU: The Four Freedoms', (Oxford University , 3rd edition, 2010), 203

62 Article 1 of COUNCIL REGULATION (EC) No 717/2008

63 Regulation (EEC) No 459/68 of the Council of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community

64 Francis Snyder, 'The EU, the WTO and China Legal Pluralism and International Trade Regulation', (Hart Publishing,2010) , 237

65 Council Regulation (EC) No. 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community

66 Article VI of GATT

67 Piet Eeckhout, 'EU External Relations Law', (Oxford University , 3rd edition, 2011),455

Article 2 (D).

As mentioned before, the action of anti-dumping could be used only on distortion on the industry in EU. Obviously, there also the rules concerning determination of injury and definition of Union industry, which is envisaged in Article 3 and Article 4 respectively. In the light of Article 5, an investigation to determine the existence, degree and effect of any alleged dumping e initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Union industry. According to Article 6, the Commission could conduct the investigation. Eventually, there are the rules about provisional measures, undertakings, reinvestigation, verification visits, sampling, non-cooperation between any interested party, confidentiality, and disclosure.⁶⁸ *The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry*⁶⁹, which is the so-called lesser duty rule.

Generally speaking, anti-dumping measure is the example of the respect WTO rules from EU. And it is possible to conduct WTO to deal with trade disputes. Additionally, Council Regulation 1515/2001 put emphasis on the measures that may be taken by the Union following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters.

3.7 Brief summary

After Lisbon Treaty, the CCP is adopted to govern the EU's external trades with the third countries. Particularly, Article 206 and 207 TFEU are the main provisions. And according to the three important principles, such as uniformity, assimilation and non-discriminatory, the movement of goods in the out of the EU is governed. Thus the EU-China trades are totally included the field.

EU's anti-dumping is one of the commercial defence instruments, as non-tariff barrier, could be found in Council Regulation 1225/2009. Once the EU finds the Chinese products are dumped, anti-dumping duty could imposed on Chinese products, according to Council Regulation 1225/2009.

The trade between the EU and China could be governed by the CCP, so the Chinese products could enjoy same status as the European counterparts according to the three principles. However, Chinese products are dumped to the EU's market and are harmful to the EU's industrial interests or market, anti-dumping duty will imposed to the Chinese products.

68 Articles 7-20 Council Regulation 1225/2009

69 Last sentence of Article 9 (4) Council Regulation 1225/2009

4 The EU anti-dumping legislation towards China

After China's policy of Reform and Open in latter 1970s, China developed economy and increased exports. The EU had investigated anti-dumping case on China's exports for trade protectionism in Europe via anti-dumping. The EU adopts two measures on anti-dumping case towards China, such as the analogue country and one country one duty. And during the process, the key issue is whether China could enjoy market economic status or non-market economy status. Although China is not in the list of non-market economy country, it does not indicate that China could enjoy market economy status. If China wants to end its non-market economy status, it has to prove that China satisfies the five criteria. And the second stage is that China was regard as conditional market economy country, since Regulation 905/98 came into force in 1998. There are still serious dumping duties which the EU imposed on the Chinese exporters because the criteria in the new regulation are not improved in according to the development of China's status and the EU enjoys discretion when assessing dumping.⁷⁰

4.1 The EU anti-dumping regulation

Under Anti-dumping Agreement of GATT 1994, Uruguay Round Agreement, Article 2 provides detail description of dumping. The first provision says the conception of dumping, '*a product is 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.*' Pursuant to the rules of WTO and Anti-dumping Agreement, the EU shall support open and fair trade, and protect the anti-dumping. Under legal framework of GATT, the EU established anti-dumping regulations. Thus in the case of solar panel originating from China in 2013,⁷¹ anti-dumping measures must be imposed under certain circumstances: dumping confirmed by exporting producer in the country, material injury, causal link between the dumping and injury and protection of the EU interest. There are four conditions must be satisfied.

4.1.1 Determination of dumping

Generally, the export price of the product is less than its normal value, which could be regarded as action of dumping. In the light of Article 2 of Council Regulation 1225/2009, it covers two concepts of normal value and export price respectively, '*The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country*', and '*The export price shall be the price actually paid or payable for the product when sold for export from the exporting country to the Community.*' And the Article also stipulates the description of detail procedure of comparison of normal value and export price, and calculation of dumping margin.⁷² And the normal value and export price are shall be on the ground of comparable basis.⁷³

70 Qian, Wenjie 'An analysis of the legal problems and issues arising from the European Union's current anti-dumping legislation with regard to the People's Republic of China. PhD thesis', (2003), <http://theses.gla.ac.uk/1854/1/2003qianphd.pdf>

71 EU initiates anti-dumping investigation on solar panel imports from China, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=829>

72 Article 2 of Council Regulation 1225/2009

73 The European Commission, http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151016.pdf

4.1.2 Determination of injury and domestic industry

The issue is found in Article 3 Council Regulation 1225/2009, which is described that: *'the term of injury shall be taken to mean material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.'*⁷⁴

Injury could be determinate by two elements, such as *the volume of the dumped imports and the effect of the dumped imports on prices in the Community market for like products; and the consequent impact of those imports on the Community industry.*⁷⁵ During the process of determination of injury, there are several factors taken into account. First of all, existence of dumping could be considered *whether there has been a significant increase in dumped imports.*⁷⁶ Secondly, the other element concerns effect, which is also considered *whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, and whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases.*⁷⁷

Article 4 of Council Regulation 1225/2009 puts emphasis on domestic industry. The first provision of the article illustrate that term of domestic industry is *'the Community producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion.'*⁷⁸ However, there are the exceptions. *When producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'Community industry' may be interpreted as referring to the rest of the producers; in exceptional circumstances the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if: the producers within such a market sell all or almost all of their production of the product in question in that market; and the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community, in which injury may be found to exist even where a major portion of the total Community industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such a market.'*⁷⁹ In the process of determination of impact on domestic industry, there are different economic elements: market share, output, profits, productivity, return on investment, ability to raise capital, growth, magnitude of dumping, etc.⁸⁰

4.1.3 Determination of Union interest

Article 21 of Council Regulation 1225/2009 concerns about community interest. Particularly, the provision that *'Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures',*⁸¹ describes protection of community interest which could not effected by anti-dumping measures.

74 Article 3 (1) of Council Regulation 1225/2009

75 Article 3 (2) of Council Regulation 1225/2009

76 Article 3 (3) of Council Regulation 1225/2009

77 Article 3 (3) of Council Regulation 1225/2009

78 Article 4 (1) of Council Regulation 1225/2009

79 Article 4 (1) (a) (b) of Council Regulation 1225/2009

80 The European Commission, http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151016.pdf

81 Article 21 (1) of Council Regulation 1225/2009

4.1.4 Causal link

There must be the link between the injury and dumping.⁸²

4.2 Characteristics of the enforcement of anti-dumping towards China

There are five characters of the enforcement of the rules. First of all, the number of the EU's anti-dumping cases on China increases greatly. Thus, it is possible for Chinese exporters to get more serious anti-dumping duties from the EU in the future. Second point is that fewer anti-dumping cases which are terminated with price undertakings.⁸³ The anti-dumping duties now become main measures of anti-dumping. Thirdly, it is the duty rate. Obviously, the duty imposed by the EU is much higher than that before. During the period from 1979 to 1990, the rate of duties were above 40 percent, while the counterpart in the cases reached about triples, from 1991 to 2002.⁸⁴ The fourth one is the scope in which the products originated from China could be covered. The investigation of anti-dumping spreads to the section of finished products. Before 1988, the Chinese exporters of raw materials, such as mineral and chemical materials, were not subject to anti-dumping investigation. In final, the EU amended anti-dumping rules subject to products originating from China. Under these rules, the Chinese exporters which could satisfy the five criteria could get treatment of market economy status.

4.3 Reasons regarding with China Leading to Anti-dumping Duty

Obviously, Chinese manufacturers are confronted with the risk of being imposed anti-dumping duties. Although the situation is being improved, the labor-intensive products regarded as the products less than the normal value of the product exist in the field of export trade. Because most Chinese exporters do not realize or acquire knowledge of anti-dumping, the legal and appropriate action for anti-dumping sometimes could be misunderstood as abuse of the EU protectionism for anti-dumping. Besides, there is the lack of competitive market in China, which leads to Chinese manufacturers gain the Chinese domestic market via low price or administrative power from government. Chinese undertakings lack professional knowledge of marketing strategy, which causes that Chinese undertakings establish the price less than the normal value of the product to attract foreign market. And the most Chinese undertakings do not use appropriate legal measure to protect themselves. The main point is that the lack of awareness of the law on anti-dumping makes the phenomenon.

4.4 On which extent, the EU could regard China as market economy country?

In each certain case, the EU renders the reasons for the judgments on basis of law.

4.4.1 Effect of the WTO rules on the EU law

After Lisbon Treaty came into force, Article 1 (1) of Lisbon Treaty provides that 'the Union shall replace and succeed the European Community', which means that the EU has the legal

⁸² The European Commission, http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151016.pdf

⁸³ Qian, Wenjie 'An analysis of the legal problems and issues arising from the European Union's current anti-dumping legislation with regard to the People's Republic of China. PhD thesis', (2003), p 87, <http://theses.gla.ac.uk/1854/1/2003qianphd.pdf>

⁸⁴ Qian, Wenjie 'An analysis of the legal problems and issues arising from the European Union's current anti-dumping legislation with regard to the People's Republic of China. PhD thesis', (2003), p 88, <http://theses.gla.ac.uk/1854/1/2003qianphd.pdf>

personality. And the EU has exclusive competence in the field of anti-dumping.⁸⁵ And the foundation of the EU's anti-dumping law is envisaged in Article 113 (1) of the Treaty of Rome, which provides that : *'After the expiry of the transitional period, the common commercial policy shall be based on uniform principles, particularly in regard to tariff amendments, the conclusion of tariff or trade agreements, the alignment of measures of liberalization, export policy and protective commercial measures including measures to be taken in cases of dumping or subsidies.*⁸⁶ Because of Article 113 (1), the Member states could take such measures only after the Commission give the authorization. Thus, the EU could take advantage of power and duty under legal framework of WTO, which means the EU would deal with the trade relationship between China instead of the Member States.

By Pursuant to the CCP, the EU owned the exclusive competence. During the Uruguay Round indicates that the EU is one of participants. The EU as such is signatory to a number of international GATT agreements, so in the Uruguay Round in 1993, it concluded the stronger rules and disciplines on international trade, in which there were the provision on anti-dumping measures.⁸⁷ And the rules and disciplines are prior to that conducted by EU institutes.

In the field of determination of market economy status, there is no related provisions on determination of non-market economy status. The concept of non-market economy status is not mentioned in WTO Agreement, which then leads to the empty space for signatory to determinate non- market economy status. Thus the Member States then have discretion on their own legal framework on the basis of the protection of their interests.

4.4.2 Article 15 of Protocol on China

Before 2001, The People Public China became a member of WTO, China then was regarded as non-market economy country, because China could meet the standards of market economy country. Article 15 of Protocol On the People Public China is the key foundation why the EU does not regard China as economic market country.⁸⁸

4.4.3 The EU secondary legislation

In the aspect of anti-dumping duty, EU's secondary legislation is applicable for the Member States, which has direct effect on anti-dumping. Although there is no certain provisions on market economy status under Council Regulation 1225/2009, there is the list in which the Commission shall take account of the particular economic system of the countries referred to found in Council Regulation 519/94.⁸⁹ Then on the basis of Council Regulation 905/98, as amendment Council Regulation of 384/96, China was removed from the list of non-market economy countries, however China is not ranked as the market economy country. Than the EU developed legislation on anti-dumping towards China, in order to match China's economic reform.⁹⁰ The EU still adopts stringent measure to China, as conditional market

85 Ying Hui, Legal analysis of the EU about the battle of the "market economy status", (回颖, 中欧关于“市场经济地位”问题之争的法律分析), 2011, <http://www.cssn.cn/news/407232.htm>

86 Article 113 (1) the Treaty of Rome

87 Nicholas Moussis, Access to the European Union: Law, Economics, Policies, (EUROCONFIDENTIEL S.A. Press, 20th edition), http://www.europedia.moussis.eu/books/Book_2/7/23/04/?all=1

88 Ying Hui, 'Legal Analysis Of EU And China's Dispute On China's Market Economy Status', (回颖, 中欧关于“市场经济地位”问题之争的法律分析), 2011, <http://www.cssn.cn/news/407232.htm>

89 ANNEX I of Council Regulation 519/94

90 Qian, Wenjie 'An analysis of the legal problems and issues arising from the European Union's current anti-dumping legislation with regard to the People's Republic of China. PhD thesis', (2003), p205, <http://theses.gla.ac.uk/1854/1/2003qianphd.pdf>

economy country. And the EU's use flexible approaches in anti-dumping investigations. The prices of the products exporting can be used to determine their normal value if they are able to meet the five criteria in Council Regulation 905/98, in which the Chinese exporters could enjoy the conditional market economic status.⁹¹

4.5 Development of individual treatment on China

Although China is not regarded as market economy country but conditional market economy country, Chinese exporters could enjoy individual treatment as one exception to non-market economy treatment.

The legal changes and economic developments occurs in both EU and China, so the developments also impacted the Sino-EU relations, which lead to fundamental developments in anti-dumping of the EU towards Chinese exporters. Among the changes in the relations between the EU and China is the usage of 'soft law', which means that the measures have practical effect.⁹² If the criteria in the EU anti-dumping law are satisfied by the exporters, the exporters could enjoy individual treatment which renders the exporters the low dumping duties.

4.5.1 Administrative practice as the source

The Commission first adopted the term 'individual treatment', which was used to the Chinese manufacturers. In the case of Tungsten Ores,⁹³ there was the individual treatment. Since investigation in 1988, the Commission gave determination of different dumping margins. And then, because the Chinese exporters were State-controlled undertaking in Small Screen Televisions (SCTVS) case⁹⁴, Chinese government still channel exports through the companies with the low dumping margins, which could evade anti-dumping duties leading to individual treatment from the Commission, in the surrounding of State-controlled economy.⁹⁵ Then the Commission strengthened the criteria on the measure of individual treatment, in the case of Video Tapes in Cassettes.⁹⁶ The progress of China's economic reform during the several years leads to the Chinese exporters wants more individual treatments. Since the case of Magnesium Oxide⁹⁷ in 1992, the Commission accept the individual treatment as part of legislation, as the exception for the non-market economic countries with stringent condition that the exporter shall have evidence that they are free from the State authorities. During the process, the elements, such as economic, political and legal nature, could be taken into consideration.

91 Qian, Wenjie 'An analysis of the legal problems and issues arising from the European Union's current anti-dumping legislation with regard to the People's Republic of China. PhD thesis', (2003), p206, <http://theses.gla.ac.uk/1854/1/2003qianphd.pdf>

92 Francis Snyder, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques', (1193 56 MLR 19

93 Commission Regulation (EEC) No 761/90 of 26 March 1990 imposing a provisional anti-dumping duty on imports of tungsten ores and concentrates originating in the people's Republic of China, and terminating the proceeding concerning imports originating in Hong Kong

94 Small-screen colour television receivers (China), OJ 2002 L23 1/1, OJ 1998 L324/1, OJ 1991 L293/29 OJ 1991 L195/1, OJ 1991 L122/1, OJ 1991 L14/3 1

95 Francis Snyder, 'The EU, the WTO and China: Legal Pluralism and International Trade Regulation', (Oxford and Portland, Oregon,2010), 269

96 Video tapes in cassettes (China), OJ 1997 L304/19, OJ 1991 L331/23, OJ 1991 L293/25 OJ 1991 L236/1, OJ 1991 L106/15

97 Commission Regulation (EEC) No 2799/92, 2800/92 of 25 September 1992 imposing a provisional anti-dumping duty on imports of deadburned (sintered) magnesia originating in the People's Republic of China

4.5.2 The stage of soft law

With the effect China's economic reform, the non-State undertakings emerged in China, since the mid-1990s. And the cooperation between the EU and China, the Commission and Chinese Ministry of Commerce (Mofcom), makes the legalization of individual treatment more appropriate.⁹⁸ In 1996, the stage of 'soft law' without legal binding occurred. At that moment, there were criteria for non-market economic countries to enjoy individual treatment. Thus, in the case of Climax Paper Converters, it provided that: *'an undertaking cannot have a legitimate expectation that the Community institutions will not change their policy regarding individual treatment if experience shows that such a change was necessary in order to reach a satisfactory solution to the problems caused by dumping practices alleged against exporters from State-trading countries.'*⁹⁹

4.5.3 The phase of hard law

The Anti-dumping Regulation was amended in 1998, because of the increasing number of foreign investment in China. Finally, the Commission established new criteria of individual treatment, in 2009, which means that the stage of hard law with complete legal obligation happened. If Chinese exporter want to gain individual treatment, they shall meet the standards: (a) *in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;* (b) *export prices and quantities, and conditions and terms of sale are freely determined;* (c) *the majority of the shares belong to private persons; state officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;* (d) *exchange rate conversions are carried out at the market rate;* and (e) *State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.*¹⁰⁰ And the criteria is not applicable for State-run undertakings or the undertaking managed by Chinese officials.¹⁰¹

4.6 Framework of the EU anti-dumping institutions

The institutions in the EU play various roles and have functions in anti-dumping case. First of all, Council of the European Union has the function of decision-making. The institution, as the supreme institution in anti-dumping cases, could establish laws or regulations. And Council of the European Union also provides the Commission with the final judgments on anti-dumping case by voting. Secondly, European Commission has the important role in the stage of investigation. Directorate General for Trade of the Commission is in charge of specific issues on trial anti-dumping cases and review anti-dumping cases, and offer the preliminary decision and the final suggestion on final judgments. The Commission could make the determination whether the beginning or ending of investigation on anti-dumping cases. And then the Commission also enjoys the power to carry out the appeal for anti-dumping case, to carry on the administrative review on anti-dumping measure, to make the decision on such as, interim anti-dumping, commitments on the price, cancel to take out the measure, suspension in the procedures for anti-dumping, and to submit the issues to the

98 Francis Snyder, 'The EU, the WTO and China: Legal Pluralism and International Trade Regulation', (Oxford and Portland, Oregon, 2010), 274

99 Summary of the Judgment Case T-155/94 Climax Paper Converters Ltd v Council of the European Union [1996] ECR II-873

100 Article 9 (5) of Council Regulation 1225/2009

101 Helena Detlof and Hilda Fridh, 'The EU Treatment of Non-market Economy Countries in Antidumping Proceeding', 5th May 2006, Kommerskollegium National Board of Trade, P 17,

http://www.kommers.se/upload/Analysarkiv/Arbetsomr%E5den/Antidumpning/Antidumpning%20-%20huvudsida/The_EU_Treatment_of_Non-market_Economy_countries_in_antidumpingproceedings.pdf

Council to decide by vote. The third one is Anti-Dumping Advisory Committee. The functions of Anti-Dumping Advisory Committee is the institution of consultation and supervision. During the process of investigation, Anti-dumping Advisory Committee which is composed of the representatives from the Member States and the Commission could be consulted and informed by the Commission. It is mandatory that Anti-dumping Advisory Committee requires consultation, however, the results of the consultation are not obliged. And the advice cover a range of issues such as extent of dumping, extent of injure, the connect between dumping and injure and which appropriate measures shall be taken out, and so on. The Commission could establishes the final decisions. In fourth, it is Court of Justice and Court of First Instance. Generally, most of anti-dumping cases are in the process in the CFI. After that, the related legal questions will be appealed and could be dealt with by Court of Justice. Thus, Court of Justice enjoys the power to accept and hear a case related to the legal questions from CFI and the anti-dumping cases submitted by the Member States according to Article 234 (6) in The Amsterdam Treaty. In final, there are other institutions playing the roles in anti-dumping cases.¹⁰² In final, the EU Custom stays the important position in the stage of implementation of appropriate measure on anti-dumping cases.¹⁰³

4.6.1 The Commission

The Commission plays important role in investigation of dumping and injury. In the light of Regulation 1225/2009, the Commission could decide to initiate an investigation in special circumstance,¹⁰⁴ take provisional action after consultation or, in cases of extreme urgency,¹⁰⁵ may accept satisfactory voluntary undertaking offers under provisional affirmative determination of dumping and injury,¹⁰⁶ terminate investigation with a report on the results of the consultation,¹⁰⁷ submit the proposal adopted by the Council,¹⁰⁸ initiate an expiry review¹⁰⁹ and an interim review¹¹⁰ consider a refund of anti-dumping duties after consultation of the Advisory Committee,¹¹¹ and direct the customs authorities to take the appropriate steps to register imports.¹¹²

4.6.2 The Council

Only the Council can accept the proposal on anti-dumping measures from the Commission. The Council may amend the measure of increased dumping according to new findings on export prices.¹¹³ The Council could decide to suspend the measures, on the ground of protection of the EU interest, for nine months and not beyond on year,¹¹⁴ and extend the measure according article concerning about circumvention.¹¹⁵ And the Council may give different decision on imposing provisional measures by a qualified majority,¹¹⁶ accept

102 Xiao Luo, Analysis Of Motivation Of The EU's Anti-dumping On External Trade, (罗霄, 欧盟对外贸易反倾销的动因分析), http://oetrc.lixin.edu.cn/files/100133/1210/92_603ef6df2f5.pdf

103 Zuo Chen, The Introduction Of Procedure Of The EU's Anti-dumping Investigation (陈卓. 欧盟反倾销调查程序介绍), http://edu.solar001.com/upload/BJ_陈卓. 欧盟反倾销调查程序介绍.pdf

104 Article 5 (6) Regulation 1225/2009

105 Article 7 (4) Regulation 1225/2009

106 Article 8 (1) Regulation 1225/2009

107 Article 9 (2) Regulation 1225/2009

108 Article 9 (4) Regulation 1225/2009

109 Article 11 (2) Regulation 1225/2009

110 Article 11 (3) Regulation 1225/2009

111 Article 11 (8) Regulation 1225/2009

112 Article 14 (5) Regulation 1225/2009

113 Article 12 (3) Regulation 1225/2009

114 Article 14 (4) Regulation 1225/2009

115 Article 13 (3) Regulation 1225/2009

116 Article 7 (6) Regulation 1225/2009

undertaking without any objection,¹¹⁷ and terminate the investigation or proceeding with no objection.¹¹⁸ In the case of unbleached (grey) cotton fabrics from China,¹¹⁹ only the Council could impose definitive duties.

4.6.3 Anti-Dumping Advisory Committee

In the light of Regulation 1225/2009, Advisory Committee is composed representative of Member State and provide consultations.¹²⁰ After consultation from Advisory Committee, initiation of investigation can start.¹²¹ After specific consultation of the Advisory Committee, undertaking can be accepted.¹²² And provisional action can be taken after the consultation of the Advisory Committee.¹²³ The Commission proposals anti-dumping duties after the consultation from the institution. The actions of the Commission are generally under consultation.

4.6.4 European Court of Justice and Court of First Instance

According to Article 263 TFEU, it provides that: 'Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former'.¹²⁴ And in the case of *Dysan Magnetics Ltd*, it provides that: 'Since, therefore, the Commission' s role forms an integral part of the Council' s decision-making process, the Commission' s "decision" to initiate anti-dumping proceedings is a purely preparatory act, not capable of immediately and irreversibly affecting the applicants' legal position.'¹²⁵ Besides, it was hard for applicants to affect the admissibility, particularly in the case of *Brother Industries Limited*.¹²⁶ In investigation, there was individual approach for certain company, in the case of *Allied Corporation*,¹²⁷ 'It is thus clear that measures imposing anti-dumping duties are liable to be of direct and individual concern to those producers and exporters who are able to establish that they were identified in the measures adopted by the Commission or the Council or were concerned by the preliminary investigations.' Then in the case of *Gao Yao (Hong Kong)*,¹²⁸ it concerned the identity of applicant. The applicant was a representative of the Hong Kong company. The case of *Sinochem Heilongjiang*¹²⁹ also focused on same issue, in which the company registered according to law of China had correct legal person.

4.7 Brief summary

117 Article 8 (5) Regulation 1225/2009

118 Article 9 (2) Regulation 1225/2009

119 Commission regulation (EC) 2208/96, imposing a provisional anti-dumping duty on imports of unbleached (grey) cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey

120 Article 15 (1) Regulation 1225/2009

121 Article 5 (9) Regulation 1225/2009

122 Article 8 (1) Regulation 1225/2009

123 Article 7 (4) Regulation 1225/2009

124 Paragraph 3 of Article 263 TFEU

125 Case T-134/95, *Dysan Magnetics Ltd and Review Magnetics (Macao) Ltd v Commission of the European Communities*, Order of the Court of First Instance of 14 March 1996, [1996] ECR II-181, paras. 23

126 Case 229/86, *Brother Industries Limited v Commission of the European Communities*, Order of the Court of 30 September 1987, [1987] ECR 3757

127 Cases 239/82, *Allied Corporation and others v Commission of the European Communities*, Joined 275/82, Judgment of the Court of 21 February 1984, [1984] ECR 1005 paras. 12

128 Case C-75/92, *Gao Yao (Hong-Kong) Hua Fa Industrial Co. Ltd v Council of the European Union*, Judgment of the Court of 7 July 1994, [1994] ECR I-3141, paras. 28-29

129 Case T-161/94, *Sinochem Heilongjiang v Council of the European Union*, Judgment of the Court of First Instance of 11 July 1996, [1996] ECR II-695, para. 34.

The EU's anti-dumping legislation, Council Regulation 1225/2009, describes the conditions of dumping. Regarding with China, there are several faults from Chinese exporters. The lack of professional knowledge or features of Chinese industrial structure could invite the EU's anti-dumping duty.

In the long term communication between the EU and China, status of market economy country is most important issue. Although China is not regarded as market economy country, some certain Chinese exporters could enjoy market economy status treatment on some extent. And individual treatment is another exception to non-market economy treatment. After long period, the Commission established criteria of individual treatment in 2009. In final, various institutions in the EU play different roles and have functions in anti-dumping cases. Furthermore, there is the process of dealing with dumping cases by various institutions.

5 The EU's anti-dumping measure towards China

After 1979, the EU conducted the first investigation on the dumping case towards China. The status of China transformed from non-market economy country to conditional market economy country, which did not mean that China was regarded as Market Economy Status. With the process of economic Reform in China, the measures of anti-dumping towards China developed.

5.1 The criteria for treatment of anti-dumping towards China

Since the EU changed the attitudes to Chinese undertakings in 1998, it was possible for all the Chinese companies not to enjoy the same treatments from the EU. Thus, the concerned Chinese import undertakings shall offer abundant evidences by written report to the EU authorial institutions on the ground of the criteria to require the appropriate reference. And the EU could make decisions on the basis of the criteria to determinate whether the concerned Chinese exporters are market economy status or not. There are five criteria which could be found in Council Regulation 1225/2009. Thus, Article 2 (7) (c) describes the list of the criteria. First of all, it is that *'decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour; output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values'*.¹³⁰ Secondly, it is that *'firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes'*.¹³¹ Third criteria is that *'the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts'*.¹³² The fourth one is that *'the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms'*.¹³³ In final, the fifth one is that *'exchange rate conversions are carried out at the market rate'*.¹³⁴ The Chinese export companies could get the anti-dumping treatment with market economic country instead, when the exporters from China and Russia with the satisfaction of the five criteria apply treatment of market economy status.

5.2 Types of anti-dumping measure

In anti-dumping law, there are two exceptions to non-market economy treatment, such as individual treatment and market economy status treatment. Currently, in the EU market, the Chinese exporters enjoy four types of anti-dumping measures from the EU. It is very important for the concerned Chinese exporting companies to know whether they could be regarded as market economic status by the process of calculation of the normal value. In the aspect of market economic status countries, the determination of dumping depends on comparison between the normal value of concerned products in the originating countries and export price of the same products, so different companies could get various kinds of

130 Article 2 (7) (C) of Council Regulation 1225/2009

131 Article 2 (7) (C) of Council Regulation 1225/2009

132 Article 2 (7) (C) of Council Regulation 1225/2009

133 Article 2 (7) (C) of Council Regulation 1225/2009

134 Article 2 (7) (C) of Council Regulation 1225/2009

calculation of normal value and export price respectively.¹³⁵ However, the treatments for non-market economy countries are different. In the process of investigation of dumping on non-market economy countries, the EU adopts the other strategy that the EU considers the market economy country which produces same category of concerned product as analogue country, so that the normal value and dumping margin could be established. Then the EU could adopt the anti-dumping duty on the concerned company producing the product. The strategy could be used in specific case. Sometime the Commission could adopt the measures with the combination of the comparison between the normal value export price, and use of the analogue country method.

5.2.1 The treatment with market economy status

First of all, the EU treats the related Chinese undertaking with market economy status. Due to Council Regulation 905/98 that provides that '*process of reform in Russia and the People's Republic of China has fundamentally altered their economies and has led to the emergence of firms for which market economy conditions prevail; whereas both countries have as a result moved away from the economic circumstances which inspired the use of the analogue country method. Whereas it is appropriate to revise the Community's anti-dumping practice in order to be able to take account of the changed economic conditions in Russia and in the People's Republic of China, Whereas, in order to introduce the revised practice without affecting the common rules for imports in respect of Russia and the People's Republic of China, it is appropriate to remove from Article 2(7) of the Basic Antidumping Regulation the reference to the list of countries attached to Regulation (EC) No 519/94, and to add instead, in a footnote, the revised list of the countries concerned*',¹³⁶ the application to the concerned Chinese exporters are generally accepted. Thus, in according to the concept of dumping, the EU then established the principle of anti-dumping via price, injury and link between price and damage. After the comparison between normal value and export price, the determination of dumping depends on material and potential damage to the concerned industry in the EU. Then, the EU could impose anti-dumping duty. In the case of integrated electronic compact fluorescent lamps¹³⁷, the EU imposed serious anti-dumping duty on the Chinese company with non-market economy status. And another case yellow phosphorus,¹³⁸ the raw material company got the treatment with economic status from the EU.

There are five elements in measure of analogue country. First of all, the similarity between Chinese products and counterparts from analogue country. The physical characteristic and purpose usage could make the determination of the choice of analogue country, in spite of subtle difference.¹³⁹ The second element is the level of competition in analogue country. In the case of dead burned (sintered) magnesia,¹⁴⁰ Turkey, as analogue country was not an appropriate analogue country on the ground that the access to raw materials in Turkey was more difficult than in the PRC. Turkish domestic market was too small to be representative for the Chinese market. Thirdly, it is the similarity between technique, standard of production in China and the counterparts in analogue country. The procedure of production does not influence that. The fourth one is the comparison of sales in domestic market of analogue

135 Ying Hui, 'Legal Analysis Of EU And China's Dispute On China's Market Economy Status', (回颖, 中欧关于“市场经济地位”问题之争的法律分析), 2011, <http://www.cssn.cn/news/407232.htm>

136 preamble of COUNCIL REGULATION (EC) No 905/98

137 Commission Regulation (EC) No 255/2001 of 7 February 2001 imposing a provisional anti-dumping duty on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China

138 Dispute DS398 China — Measures Related to the Exportation of Various Raw Materials

139 OJ No.228,9.9.93, p. 16, Photo albums from P.R. China/provisional

140 OJ No.282,26.9.92, p. 16, deadburned (sintered) magnesia from P.R. China/provisional

country and counterparts external market from China. The EU used the comparison, when the EU thought the sale in analogue country was effective. In final, the extend of cooperation between manufacturers and the EU institutions. Article 2 (7) of Regulation 1225/2009 covers the element¹⁴¹.

5.2.2 The treatment with non-market economy status

On the basis of Council Regulation 1225/2009, it provides that: *'in the case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin'*,¹⁴² which means that the EU adopts the measure of the analogue country to establish normal value of the products originating from non-market economy country. And Article 2 (7) also says that the EU could adopt one country one duty rule on the products exporting from non-market economy country, which is imposed on the industrial companies.

5.2.3 The treatment combined with one country one duty rule and the analogue country methodology

Once the concerned Chinese exporters get the refusal of Market Economy Status, they could apply individual treatment, in the light of Council Regulation 1225/2009 that: *'in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits; export prices and quantities, and conditions and terms of sale are freely determined; the majority of the shares belong to private persons; state officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference; exchange rate conversions are carried out at the market rate; and State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.'*¹⁴³ In the case of integrated electronic compact fluorescent lamps, Mexico was used as the analogue country. And the conditional individual treatments is flexible, There were only 3 among 27 Chinese exporters qualified to enjoy individual treatment since 1997.¹⁴⁴

5.2.4 Individual treatment

Although certain Chinese exporters could not enjoy market economy status, they still get individual treatment. There are five criteria in Article 9 (5) of Council Regulation 1225/2009. In the process of investigation, the Commission applies individual treatment very stringently. In the case of bicycle from China,¹⁴⁵ the Commission applied individual treatment to certain Chinese exporters with utmost prudence. And in the case of video tapes in cassettes,¹⁴⁶ the

141 Li Chen, 'Deep Analysis Of Non-economic Market in EU's Anti-dumping On China', (陈力, 欧盟对华反倾销“非市场经济”问题深析), <http://file.lw23.com/4/4c/4cc/4cc12f01-61a2-46cb-a980-a5c6fe65f7e6.pdf>

142 Article 2 (7) (a) of COUNCIL REGULATION (EC) No 1225/2009

143 the second paragraph of Article 9 (5) of COUNCIL REGULATION (EC) No 1225/2009

144 Proposal for a Council Regulation amending Regulation 384/96 on protection against dumped imports from countries not members of the European Community /* COM/2000/03 6-3) final ACC 2000/0160 */ pp. 3,5 & 13

145 Council Regulation (EEC) No 2474/93 of 8 September 1993 imposing a definitive anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China and collecting definitively the provisional anti-dumping duty

146 Council Regulation (EEC) No 3091/91 of 21 October 1991 imposing a definitive anti-dumping duty on imports of video tapes in cassettes originating in the People's Republic of China and definitively collecting the provisional duty

approach was on the ground of each individual model. It is difficult for Chinese exporter to meet the criteria or requirement to gain individual treatment.¹⁴⁷

5.3 The implications of the EU anti-dumping measures on Chinese exporter

The EU's anti-dumping approach is reasonable and is beneficial to Chinese exporters. When the EU established the criteria for analogue country methodology, unavoidable uncertainties in the future are taken into consideration. During the process of selection of analogue country, the EU is flexible in determination of normal value for natural comparative advantages.¹⁴⁸ And the EU use discretion carefully and adopt appropriate measure to investigate dumping case, the development of the industry could be taken into consideration. Since 1998, it is possible for Chinese exporters to claim the treatment with market economy status. After meeting the criteria, the individual exporters could have chance of individual treatment. Under only situation in which there is the link between dumping and injury, Chinese exporters could be imposed treatment of non-market economy status.¹⁴⁹

5.4 The implications of the EU anti-dumping measures for Sino-EU relations

More and more Chinese exporters become the victims in dumping cases, which could prevent active trade between the EU and China to some extent, and constitute increasing number of frictions and disputes. And every time the Chinese exporters suffer too much by anti-dumping duty, which means that the EU's anti-dumping policy could cause great economic loss. particularly in the case of footwear importing from China in 2005¹⁵⁰, the decision from FESI caused serious loss to China exporters, in which only a Chinese exporter got treatment with economy market status.¹⁵¹ Besides, the EU anti-dumping policy could produce adverse effects on Sino-EU political communication.¹⁵²

5.4.1 The distortion on the Sino-EU trade

The EU anti-dumping is the obstacle for China-EU commercial relations. The EU is the biggest resource of anti-dumping duties on Chinese exporters. Although, the EU removed China from the list of non-market economy countries, the EU provided Chinese exporters with the stringent conditions and criteria to meet. Regarding with China, the conditions and criteria are regarded as discrimination, which could trig the decreasing number of export to the EU.¹⁵³ Thus, the obstacle is the danger in commercial dialogue between the EU and

147 Qian, Wenjie 'An analysis of the legal problems and issues arising from the European Union's current anti-dumping legislation with regard to the People's Republic of China. PhD thesis', (2003), <http://theses.gla.ac.uk/1854/1/2003qianphd.pdf>

148 Joris Cornelis, 'The EU's anti-dumping policy towards China: the EU's anti-dumping policy towards China-a discriminatory policy and unfair methodology?' (The University of Hong Kong, 2005), P 12, <http://hub.hku.hk/bitstream/10722/41408/6/FullText.pdf?accept=1>

149 Joris Cornelis, 'The EU's anti-dumping policy towards China: the EU's anti-dumping policy towards China-a discriminatory policy and unfair methodology?' (The University of Hong Kong, 2005), P 13, <http://hub.hku.hk/bitstream/10722/41408/6/FullText.pdf?accept=1>

150 Notice of initiation of an anti-dumping proceeding concerning imports of certain footwear with protective toecap originating in the People's Republic of China and Vietnam. OJ L166/6, 2005. 6. 30.

151 FESI press release on today's decision to impose preliminary import duties on leather footwear from China and Vietnam, 16th March 2006,

152 Meifeng Li, 'The effect of the EU anti-dumping on Sino-EU commercial relations: EU Anti-dumping Investigation on Leather Shoes from China', 2006, (李梅峰, 欧盟反倾销对中欧经贸关系影响——从欧盟对华鞋企的反倾销说起, 2006), <http://wenku.baidu.com/view/805a6844a8956bec0975e3af.html>

153 Hai Zheng, 'The effect of anti-dumping on China-EU relations'(郑海, 欧盟的反倾销对中欧关系的影响), (Shanghai

China.

5.4.2 The damage to the symmetrical position in bilateral trade agreement

After long-term diplomatic bureaucratic dialogue and cooperation in the field of economy, culture and technology, the EU and China have achieved many official documents including the Commission's communications and the summit statements. Regarding with realm of trade, there is the protectionism in which the EU imposes serious measures against Chinese exporters. And Transitional Product-specific Safeguard Mechanism (TPSSM) found in section 16 of the China Accession Protocol, was adopted by the EU, as the safeguard measures in Council Regulation 519/94 and Council Regulation 427/2003.¹⁵⁴ In the case of citrus fruits originating from China¹⁵⁵, the Commission conducted the investigations on the ground of the regulations, and imposed the measures on the fruit. In final, the Commission imposed definitive safeguard measures in the light of Regulations 3285/94.¹⁵⁶ Thus, the EU established the legislation gear with TPSSM to protect the EU market and prevent the products from China entering the EU. Accordingly, under the surrounding of discrimination against Chinese exporters, it could cause fair trade rule in the world.

5.4.3 The effect on the political Sino-EU relations

The political relationship between the EU and China is the foundation of the Sino-EU commercial dialogue. Although the EU is the main resource of dumping duties on Chinese exporters, the bilateral strategic cooperation between the EU and China is not influence by the anti-dumping action. In the commercial relationship, the issue of market economy status is key controversial point. Government of China puts emphasis on the issues, because China depends on the EU in recent years, as the EU's second-largest trading partner. And the government of China will change the its political direction in the future for improve the situation. China wants to strengthen the cooperation with the EU. And China will make the new policy to satisfied the criteria for market economy status. There are two issues mentioned. First of all, during the period of economic crisis, the EU needs cooperation with China to find opportunity. Secondly, the EU accepts China's economic rise and finds the challenges at political level.

After Doha Round negotiations, China had dialogue with the EU and wanted the EU to loosen trade protectionism. the purpose of high level communication between China and the EU is to develop export to the EU. On the other hand, government of China will continue economic reform and change the policies towards the EU anti-dumping instrument. At same, China also desires to cooperate with the EU to get through the crisis, because China depend on the EU market in global market. The lawyers could provide the exporters with legal suggestion before the trades to avoid the anti-dumping investigations.

Normal University, 2008), P 33-34

154 Eun Kyeong Lee, 'A WTO-Minus measure of the Protocol on the Accession of the People's Republic of China and its implication on the WTO legal system', (Seoul National University, February 2005), P 32-33, http://gsis.snu.ac.kr/studata/0502thesis_LeeEunKyung.pdf

155 Commission Regulation (EC) No. 1964/2003 of 7 November 2003 imposing provisional safeguard measures against imports of certain prepared or preserved citrus fruits (namely mandarins, etc), Official Journal of the European Union, L290/3, 11 August 2003.

156 Commission Regulation (EC) No. 658/2004) of 7 April 2004 imposing definitive safeguard measures against imports of certain prepared or preserved citrus fruits (namely mandarins, etc), Official Journal of the European Union, L104/67, 8 April 2004.

As the results of anti-dumping investigation, it would be difficult for Chinese commodity to enter the EU's market. The Commission imposed high anti-dumping duties on Chinese exporters. For example, in the case of paint, distemper, varnish and similar brushes, the Chinese exporter was imposed definitive duty, 69% of the net price per brush.¹⁵⁷ And in the case of powdered activated carbon, the anti-dumping duty was EUR 323/tonne.¹⁵⁸ Perhaps, China will not like to export chemistry products and raw materials to the EU. In the case of powdered activated carbon, the methodology of the analogue country is not fair to Chinese exporter, because USA was selected as analogue country. There are only a few Chinese joint ventures could enjoy individual treatment. China-EU political relationship could be influenced by the issue. Government of China negotiates with the EU for market economy status and elimination of the application of the analogue country to China, because government regards it as discriminatory.

5.5 Brief summary

The EU just adopt several anti-dumping measures towards Chinese products. First of all, it is the treatment with market economy status. Once the Chinese exporters could meet the criteria, they could enjoy this kind of treatment. Secondly, it is the treatment with non-market economy status. Third one is the treatment combined with individual treatment and the analogue country methodology. In final, some Chinese exporters could enjoy individual treatment.

Moreover, the EU's anti-dumping duty also invites a influence to Sino-EU relationship in commercial and political way. The EU's anti-dumping measure could produce the distortion on the EU-China trade. Chinese exporter could imposed stringent and serious anti-dumping duty. And the EU's anti-dumping duty could become an obstacle on the political relationship between the EU and China.

¹⁵⁷ Council Regulation (EEC) No 725/89, 20 March 1989, imposing a definitive anti-dumping duty on imports of paint, distemper, varnish and similar brushes originating in the people's Republic of China and definitively collecting the provisional anti-dumping duty on such imports

¹⁵⁸ Council Regulation (EC) No 649/2008, 8 July 2008, imposing a definitive anti-dumping duty on imports of powdered activated carbon originating in the People's Republic of China

6 Conclusion

The final chapter will give summary of the main issue that effect of the EU's anti-dumping measures, as defence instruments of the CCP, towards China on Sino-EU relations. Thus in the first section, the importance of China-EU relations and the EU's policies towards China are discussed. The second section then describes the Common Commercial Policy, because there are regulation concerning about imports from the third countries and anti-dumping as one of defence instruments. In final, the third section puts focus on the EU's anti-dumping legislation and measures which includes discussion about market economy status, criteria for individual treatment, analogue country methodology and one country one duty, and the effect of anti-dumping duties on China-EU relations. I would like offer my own opinion for Chinese exporters and government.

6.1 Suggestion for government of China

As the victim of the EU anti-dumping measures, government of China shall establish necessarily appropriate strategies to protect Chinese exporters. And China also shall be confronted with problems with Chinese market and the lack of knowledge of anti-dumping measures.

6.1.1 Professional knowledge

Due to the lack of professional knowledge of anti-dumping duties, the exporters always become the victim. Perhaps, the exporters could use appropriate treatment in anti-dumping investigations with the help from professional lawyers who have professional knowledge of the EU anti-dumping legislation and practice.¹⁵⁹ The government also need professional knowledge when establishing strategic policies. Ministry of Commerce signs agreements and has dialogues with the EU. And with the support of professional lawyers, China could meet the criteria for market economy status. In the negotiation with the EU, China must take advantage of WTO rules on anti-dumping to protect Chinese exporting interests.

6.1.2 Building surveillance system of anti-dumping

The purpose of the system is to know the development of anti-dumping and decrease the number of anti-dumping case. The system could include both information about the EU anti-dumping policies and status of Chinese industry. The system also changes Chinese exporting strategic policies with development of the EU anti-dumping instrument, by supervising the development of Chinese market. Although China's economy has reformed for more than 30 years, there are still problems compared with the EU's mature market economy. Therefore the system could help Chinese undertakings avoid the EU's anti-dumping duties and make trade policies of Chinese undertakings be accepted.

6.1.3 Structural changes of industry

The EU imposes anti-dumping duties on the ground of the EU interests. Thus, the government of China encourage European investment as joint ventures with Chinese companies. Perhaps, in the process of anti-dumping investigations, the joint ventures could get favorable treatments. At same time, government of China establishes relevant regulation towards labor-intensive products and the products with the price less than normal value.

¹⁵⁹ Qian, Wenjie 'An analysis of the legal problems and issues arising from the European Union's current anti-dumping legislation with regard to the People's Republic of China. PhD thesis', (2003), <http://theses.gla.ac.uk/1854/1/2003qianphd.pdf>

6.1.4 Market economy status

In the EU investigation of anti-dumping, market economy status is the key issue. Therefore the government of China shall make effort to gain market economy status. As the membership of WTO, China desires the status and wants to be treated in same way like other WTO members.

6.2 Suggestion for exporters

It is possible for Chinese exporters to avoid treatment of non-market economy status under condition of sufficient cooperation.¹⁶⁰ Although China is not regarded as market economy country, it is possible for Chinese exporters to gain individual treatment.

6.2.1 Appropriate cooperation in anti-dumping investigation

Once anti-dumping investigation starts, Chinese exporters shall take appropriate action to cooperate with the Commission. Chinese exporters could consult professional lawyers and cooperate with them to deal with the issues. And then Chinese exporters could get the detail information about the concerned industry in the EU domestic market. Besides, Chinese exporters also know whether Chinese products caused injury of the Union interests.

6.2.2 Improvement of enterprise system

Chinese manufacturers realize their own weakness. Therefore Chinese companies shall improve structural system to adopt international standard in competitive market, which lead to Chinese manufactures produce the products with high quality and high technology. The companies need information about international market to adjust export price.

6.2.3 Satisfaction of criteria

Chinese exporters found it was unfavorable when the EU adopting the methodology of the analogue country. Thus Chinese exporters could make effort to meet the criteria to enjoy individual treatment.

6.3 Brief summary

After Chinese government started the Policy of Reforming and Opening, the Chinese government and Chinese exporters could not realize the rules of world trade. And Chinese government lacks relevant professional knowledge of anti-dumping, which leads to the situation that Chinese exporters become victims again and again. Besides, Chinese exporters always make same mistakes and never improve themselves, so they could get great loss every time. I hope the suggestions could be helpful for them. And Chinese government shall do their best and need revolution in industry system to meet criteria to get reorganization of market economy status to protect exporting interests.

160 Joris Cornelis, 'The EU's anti-dumping policy towards China: the EU's anti-dumping policy towards China-a discriminatory policy and unfair methodology?' (The University of Hong Kong, 2005), P. 399-400, <http://hub.hku.hk/bitstream/10722/41408/6/FullText.pdf?accept=1>

Bibliography

COUNCIL REGULATION (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version)

REGULATION (EC) No 450/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code

Paul Craig, Grainne de Burca, *EU Law: Text, Cases, and Materials* (Oxford University Press, 5th edition, 2011)

Piet Eeckhout, *'EU External Relations Law'*, (Oxford University, 3rd edition, 2011)

Catherine Barnard, *'The Substantive Law of The EU: The Four Freedoms'*, (Oxford University, 3rd edition, 2010)

Francis Snyder, *'The EU, the WTO and China Legal Pluralism and International Trade Regulation'*, (Hart Publishing, 2010)

Jiangyu Wang, *'A Critique Of The Application TO China Of The NME Rules Of Antidumping Legislation And Practice Of The European Union'* (1993) 33 (3) J.W.T., 117

May-Britt U. Stumbaum, *'The European Union and China: Decision-making in EU Foreign and Security Policy towards the People's Republic of China'* (Berlin University, 2009)

BBC NEWS BUSINESS, *'China 'cannot be free rider on trade'*, 20 May 2013, <http://www.bbc.co.uk/news/business-22601503>

David Bartlett, *'Understanding commercial relations between China and the EU'*, August 2008, <http://www.rsmi.com/en/global-challenges/understanding-commercial-relations-between-china-and-the-eu.aspx>

Delegation of the European Union to China, http://eeas.europa.eu/delegations/china/eu_china/trade/index_en.htm

Bernard O'Connor, *'When Will China's NME Status End?'*, <http://worldtradelaw.typepad.com/ielpblog/2011/11/when-will-chinas-nme-status-end.html>

Xiudian Dai, *'Understanding EU-China Relations: An Uncertain Partnership in the Making'*, the university of Hull, 1/2006, <http://www2.hull.ac.uk/fass/PDF/Politics-Daipaer.pdf>

People's Daily, *'A final glance at Sino-European relations 2008'*, (December 19 2008), <http://english.people.com.cn/90001/90780/91343/6557963.html>

COMMUNICATION OF THE COMMISSION: A LONG TERM POLICY FOR CHINA-EUROPE RELATIONS, http://eeas.europa.eu/china/docs/com95_279_en.pdf

http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2010.pdf

Trade defence, European Commission,
http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/index_en.htm

The National Board of Trade, 'Dumping or Competition? The EU Anti-Dumping Duties on Ceramic Tiles', February 2012,
<http://www.kommers.se/Documents/dokumentarkiv/publikationer/2012/rapporter/report-dumping-or-competition.pdf>

Helena Detlof and Hilda Fridh, 'The EU Treatment of Non-market Economy Countries in Antidumping Proceeding', 5th May 2006, Kommerskollegium National Board of Trade, P 17,
http://www.kommers.se/upload/Analysarkiv/Arbetsomr%20den/Antidumping/Antidumping%20-%20huvudsida/The_EU_Treatment_of_Non-market_Economy_countries_in_antidumpingproceedings.pdf

Bin Gu, 'On The Latest Key Parts Of Implementing Antidumping Measures: Focusing On Public Benefit', (University of International Business and Economics, 2009),
<http://www.cesruc.org/uploads/soft/130221/1-1302210ZA3.pdf>

Angelos Dimopoulos, The Common Commercial Policy After Lisbon: Establishing Parallelism Between Internal And External Economic Relations? <http://hrcak.srce.hr/file/44796>

Wolfgang Weiß, Common Commercial Policy in the European Constitutional Area: EU External Trade Competence and the Lisbon Decision of the German Federal Constitutional Court, http://link.springer.com/content/pdf/10.1007%2F978-3-642-34255-4_3.pdf

Qian, Wenjie 'An analysis of the legal problems and issues arising from the European Union's current anti-dumping legislation with regard to the People's Republic of China. PhD thesis', (2003), <http://theses.gla.ac.uk/1854/1/2003qianphd.pdf>

The European Commission,
http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151016.pdf

EU initiates anti-dumping investigation on solar panel imports from China,
<http://trade.ec.europa.eu/doclib/press/index.cfm?id=829>

Ying Hui, Legal analysis of the EU about the battle of the "market economy status", (回颖, 中欧关于“市场经济地位”问题之争的法律分析), 2011,
<http://www.cssn.cn/news/407232.htm>

Nicholas Moussis, Access to the European Union: Law, Economics, Policies, (EUROCONFIDENTIEL S.A. Press, 20th edition),
http://www.europedia.moussis.eu/books/Book_2/7/23/04/?all=1

Xiao Luo, Analysis Of Motivation Of The EU's Anti-dumping On External Trade, (罗霄, 欧盟对外贸易反倾销的动因分析), http://oetrc.lixin.edu.cn/files/100133/1210/92_603ef6df2f5.pdf

Zuo Chen, The Introduction Of Procedure Of The EU's Anti-dumping Investigation (陈卓. 欧盟反倾销调查程序介绍), http://edu.solar001.com/upload/BJ_陈卓.欧盟反倾销调查程序介绍.pdf

Hai Zheng, 'The effect of anti-dumping on China-EU relations'(郑海, 欧盟的反倾销对中欧关系的影响), (Shanghai Normal University, 2008)

Li Chen, 'Deep Analysis Of Non-economic Market in EU's Anti-dumping On China', (陈力, 欧盟对华反倾销“非市场经济”问题深析), <http://file.lw23.com/4/4c/4cc/4cc12f01-61a2-46cb-a980-a5c6fe65f7e6.pdf>

Joris Cornelis, 'The EU's anti-dumping policy towards China: the EU's anti-dumping policy towards China-a discriminatory policy and unfair methodology?' (The University of Hong Kong, 2005), <http://hub.hku.hk/bitstream/10722/41408/6/FullText.pdf?accept=1>

.Table of Cases

Cases:

Case 52/81, Judgment of the Court (First Chamber) of 28 October 1982. - Offene Handelsgesellschaft in Firma Werner Faust v Commission of the European Communities-Common organization of the market in fruit and vegetables-Protective measures.

Case 49/76 GESELLSCHAFT FÜR ÜBERSEEHANDEL MBH, Hamburg, [1997] ECR 41

Case 93/83 Zentralgenossenschaft des Fleischgewerbes eG (Zentrag) v Hauptzollamt Bochum [1984] ECR 1095

Case C-26/88 Brother International GmbH v. Hauptzollamt Gießen [1989] ECR I-4253

Case T-134/95, Dysan Magnetics Ltd and Review Magnetics (Macao) Ltd v Commission of the European Communities, Order of the Court of First Instance of 14 March 1996, [1996] ECR II-181, paras. 23

Case 229/86, Brother Industries Limited v Commission of the European Communities, Order of the Court of 30 September 1987, [1987] ECR 3757

Cases 239/82, Allied Corporation and others v Commission of the European Communities, Joined 275/82, Judgment of the Court of 21 February 1984, [1984] ECR 1005 paras. 12

Case C-75/92, Gao Yao (Hong-Kong) Hua Fa Industrial Co. Ltd v Council of the European Union, Judgment of the Court of 7 July 1994, [1994] ECR I-3141, paras. 28-29

Case T-161/94, Sinochem Heilongjiang v Council of the European Union, Judgment of the Court of First Instance of 11 July 1996, [1996] ECR II-695, para. 34.

Case 41/76 Donckerwolke and Schou v. Procureur de la République [1976] ECR 1921

Case C-338/95 Wiener S.I. GmbH v Hauptzollamt Emmerich [1997] ECR I-6495, para.9

Case C-395/93 Neckermann Versand v Hauptzollamt Frankfurt am Main-Ost [1994] ECR I-4027

Case T-155/94 Climax Paper Converters Ltd v Council of the European Union [1996] ECR II-873

EU anti-dumping decisions:

Commission Regulation (EEC) No 1579/80 of 19 June 1980 imposing a provisional anti-dumping duty on mechanical alarm clocks (other than travel alarms) originating in the German Democratic Republic and the USSR, and repealing a national anti-dumping duty on mechanical alarm clocks originating in China imposed under the transitional provisions of the Act of Accession

Commission Regulation 1072/2012, 14 November 2012, imposing a provisional anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China

Commission Decision (EEC) NO 80/1116 December 1980 accepting undertakings offered by the exporters of saccharin and its salts originating in China and the United States of America and terminating the proceedings concerning imports of saccharin and its salts from China, Japan and the United States of America. OJ 1980 L 331/41.

Photo albums from P.R. China/provisional, OJ No.228,9.9.93

Deadburned (sintered) magnesia from P.R. China/provisional, OJ No.282,26.9.92

Video tapes in cassettes (China), OJ 1997 L304/19, OJ 1991 L331/23, OJ 1991 L293/25 OJ 1991 L236/1, OJ 1991 L106/15

Small-screen colour television receivers (China), OJ 2002 L23 1/1, OJ 1998 L324/1, OJ 1991 L293/29 OJ 1991 L195/1, OJ 1991 L122/1, OJ 1991 L14/3 1

Commission Regulation (EEC) No 2799/92, 2800/92 of 25 September 1992 imposing a provisional anti-dumping duty on imports of deadburned (sintered) magnesia originating in the People's Republic of China

Commission Regulation (EC) No 255/2001 of 7 February 2001 imposing a provisional anti-dumping duty on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China

Commission Regulation (EEC) No 761/90 of 26 March 1990 imposing a provisional anti-dumping duty on imports of tungsten ores and concentrates originating in the People's Republic of China, and terminating the proceeding concerning imports originating in Hong Kong

Council Regulation (EEC) No 2474/93 of 8 September 1993 imposing a definitive anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China and collecting definitively the provisional anti-dumping duty

Council Regulation (EEC) No 3091/91 of 21 October 1991 imposing a definitive anti-dumping duty on imports of video tapes in cassettes originating in the People's Republic of China and definitively collecting the provisional duty

Council Regulation 428/2005, 10 March 2005, imposing a definitive anti-dumping duty on imports of polyester staple fibers originating in the People's Republic of China and Saudi

Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibers originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan

Council Regulation (EEC) No 725/89, 20 March 1989, imposing a definitive anti-dumping duty on imports of paint, distemper, varnish and similar brushes originating in the people's Republic of China and definitively collecting the provisional anti-dumping duty on such imports

Council Regulation (EC) No 649/2008, 8 July 2008, imposing a definitive anti-dumping duty on imports of powdered activated carbon originating in the People's Republic of China

Commission adopts provisional anti-dumping measures on Chinese and Vietnamese leather shoes, 23rd March 2006, http://europa.eu/rapid/press-release_IP-06-364_en.htm

EU-China textile agreement 10 June 2005. Memo - Brussels, 12 June 2005, <http://trade.ec.europa.eu/do>