

KLUWER LAW INTERNATIONAL

GLOBAL TRADE LAW SERIES

EU DUMPING DETERMINATIONS AND WTO LAW

By
Henrik Andersen



Wolters Kluwer

Law & Business

EU Dumping Determinations and WTO Law

By

Henrik Andersen



Wolters Kluwer

Law & Business

AUSTIN

BOSTON

CHICAGO

NEW YORK

THE NETHERLANDS

Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.care@aspenspubl.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

Printed on acid-free paper.

ISBN 978-90-411-2827-0

© 2009 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic mechanical, photocopying, recording or otherwise, without written permission from the publishers.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed in Great Britain.

EU Dumping Determinations and WTO Law

Global Trade Law Series

VOLUME 18

Series Editor

ROSS BUCKLEY

Professor, Faculty of Law, University of New South Wales, Sydney, Australia

Associate Series Editor

ANDREAS ZIEGLER

*Professor, Faculty of Law and Criminal Sciences, University of Lausanne,
Lausanne, Switzerland.*

Advisory Board

*Kenneth W. Abbott, Professor of Law and Global Studies, Arizona State University,
Tempe, Arizona*

William Alford, Professor of Law, Harvard Law School, Cambridge, Massachusetts.

*Bhupinder Chimni, Professor of International Law, Jawaharlal Nehru University,
New Delhi.*

*Bradly Condon, Professor of Law, Instituto Tecnológico Autónomo de México,
Mexico City.*

*Thomas Cottier, Professor and Director of the World Trade Institute, University of
Berne, Berne.*

*Martin Davies, Professor & Director, Maritime Law Center, Faculty of Law,
Tulane University, New Orleans.*

Xiang Gao, Professor of Law, China University of Politics and Law, Beijing.

Patricia Hansen, Professor, Faculty of Law, University of Texas, Austin, Texas.

Faizel Ismail, Head, Delegation of South Africa to the WTO.

Yong-Shik Lee, Professor of Law, St John's University, New York.

*Petros C. Mavroidis, Professor, Columbia University School of Law, New York,
and University of Neuchatel, Switzerland.*

*Mitsuo Matsushita, Professor of Law, Seikei University, Professor Emeritus,
The University of Tokyo, Japan.*

Armand de Mestral, Professor of Law, McGill University, Montreal.

*Ernst-Ulrich Petersmann, Professor and Head of Law Department, European
University Institute, Florence.*

*Asif Qureshi, Professor of International Economic Law, The University of
Manchester, Manchester.*

*Aleka Sheppard, Professor & Founding Director, London Shipping Law Centre,
University College, London.*

*Jeff Waincymer, Professor of International Trade Law, Faculty of Law, Monash
University, Melbourne.*

*Jayashree Watal, Counsellor, Intellectual Property Division, World Trade
Organization, Geneva.*

Lao Tzu, *Tao Te Ching* XLIII

*The most submissive thing in the world can ride roughshod over the most
unyielding in the world – that which is without substance entering
that which has no gaps.*

*That is why I know the benefit of taking no action.
The teaching that uses no words, the benefit of taking no action, these are beyond
the understanding of all but a very few in the world.*

[Translated by D. C. Lau]

Preface

This book concerns one of the major challenges in the field of globalization: *Anti-dumping*. More specifically, the book looks into whether EU dumping determinations of products from Asian countries are in conformity with WTO law. The reason for looking into this question is my major interest in globalization and its challenges in the field of international trade and public international law. Different cultures with different legal backgrounds and understandings of law have to interact with one another. On one hand, globalization is the opening of markets between states to the better good of the world consumer and world producers, but on the other hand, the opening of markets might also oust national producers because of cheaper products in the global market, or it might be a reason for strong political powers to exploit weaker states.

Anti-dumping is just one set of several rules dealing with the impacts of globalization. On the international level, WTO anti-dumping law ensures a mechanism for importing countries to impose duties on foreign products with dumped prices, i.e., the export price is lower than the domestic price of the like product in the exporting country. Such a mechanism should *ceteris paribus* lead to a reduction in the import of the dumped products, and the anti-dumping rules may then be seen as an obstacle to trade between states. However, such rules may be justified in the light of undesired outcomes by predatory pricing, where the exporter lowers the export prices in order to eliminate the competitors in the importing country and thereafter raises the prices.

The application of the anti-dumping instrument by WTO Members is often controversial because of the protectionist character of anti-dumping, in which inefficient industries are protected from foreign competition. The legal framework within the WTO has some loopholes that leave wide discretion to the investigating authorities to determine that a product is dumped, thereby emphasising the protectionist nature of anti-dumping. The use of anti-dumping becomes even more

controversial when WTO Members use the anti-dumping tool beyond the legal scope of WTO law. The questions raised in this book concern the EU dumping determinations and their conformity with WTO law. The EU has a magnificent impact on global politics and the global trade, and the EU should take a leading position in turning the global wheels by ensuring the conformity with the legal standards under public international law. In so doing, the EU can secure that EU importers and foreign exporters can rely on the international set of anti-dumping law and the legal certainty of law. Furthermore, anti-dumping deserves much more attention in legal research than it has so far been given. This book is just a modest contribution to the research in the anti-dumping field.

This book is a revised version of my PhD thesis. The book would not have been possible without the inspiration, support, comments, etc. from several people and organizations to whom I owe my deepest regards.

I want to thank Copenhagen Business School for offering me the opportunity to undertake a PhD project, and City University of Hong Kong for supporting my research stay in Hong Kong in 2006. Furthermore, I want to thank Otto Mønstedts Fond and Konsul Axel Nielsens Mindelegat for financial support.

I want to thank in particular my supervisors for inspiration and interesting discussions. From Copenhagen Business School, I would like to thank Professor, dr.jur. Jens Fejø, Associate Professor, PhD, Lynn Roseberry and Professor, PhD, Verner Worm; and from City University of Hong Kong, Professor Gu Minkang. I also want to thank the members of the PhD Assessment Committee for providing me with some very useful and interesting comments about my work upon which I may continue my journey into the universe of research; Professor, PhD, Ulla Neergaard from Copenhagen Business School, Professor, PhD, Pär Halström from Umeå University, and Associate Professor, PhD, Pernille Wegener Jessen from Aarhus School of Business, Aarhus University. I also owe my deepest thanks to my colleagues at Copenhagen Business School, in particular Associate Professor, PhD, Kim Østergaard for convincing me to do a PhD, and Associate Professor, PhD, Christina Tvarnø and Head of Department, Professor, PhD, Steen Treumer for interesting discussions. Furthermore, I want to thank Lecturer Sharma Charu from City University of Hong Kong.

Also, I want to thank Administrative Officer Marie Pade Andersen and Translation Service Manager Susanne Askham for linguistic and grammatical editing.

I want to thank my family and friends for their support and understanding through the often challenging times: My parents, Søren and Annie Andersen; my sister Dorte Andersen; and the rest of my family: Bent Rohde Nielsen, Pia Bergstrøm Frederiksen, Oskar Rohde Bergstrøm, Anton Rohde Bergstrøm, Helene Hilligsøe, Anne Hilligsøe, Mads Hilligsøe, Morten Hilligsøe and Jørgen Rasmussen. To my Danish friends: Rene Thastum Jespersen, Peter Lille Frøen Rasmussen, Anne-Mette Hansen, Jesper Eier Engberg, Peter G. Uru and Pia Johannessen, Christian and Lone Lund Jørgensen, Martin Beo and Janni Dam Wied, Peder Bissen and Marie Lindeløv, Mette and Jerome Venet, Charlotte and Allan Gravsén, Anne-Sofie Aggerbeck-Lauritzen, Helene and Anders Fertin, and Andreas Petersen. To my Hong Kong friends: Leony Quion, Lesley Chui Suk Yin, Annie Chan, Donnie Dong, and Kelvin Wangchao. Also,

I want to thank the staff at Harbour Plaza Resort City in Hong Kong. Furthermore, I want to thank people in the TaijiQuan, YiQuan and Cheng Hsin field, in particular Master Torben Bremann, Master Wee Kee Jin, Grand Master Sam Tam, Grand Master Peter Ralston, Peter Hass, Jeppe Turck, Jesper Andersen Møller and Klaus Kornø Rasmussen. Also, I want to thank everybody at the Wudang Taoist Kung Fu Academy in Wudang, China. Furthermore, I want to thank my high school teacher, Jim Skov Jensen, from Greve Gymnasium, for being the first one to introduce me to GATT back in a history class in 1991.

I certainly want to thank Kluwer Law International for supporting the idea of publishing the PhD as a book. In particular, I want to thank the editors: Lou Rolla and Professor Ross Buckley for their suggestions on how to improve my work.

The present book would have not been completed without inspiration from many different writers on WTO and EU anti-dumping law. The writings and discussions by Edwin Vermulst in *The 10 Major Problems With the Anti-dumping Instrument in the European Community*, by Harold Wenig in *The European Community's Anti-dumping System: Salient Features*, by Pierre Didier in *The WTO Anti-dumping Code and EC Practice* and by Yuhan Liu in *Anti-dumping Measures and China* have all been great inspirations to me in writing this book. The first three articles are printed in *Journal of World Trade*, and the last-mentioned article is printed in *Journal of Financial Crime*.

The first book I ever read about WTO/GATT was *The GATT/WTO Dispute Settlement System – International Law, International Organizations and Dispute Settlement* from 1997 by Ernst-Ulrich Petersmann – an excellent work. It inspired me to look into the field of WTO. Most books about general WTO law include a chapter or section about anti-dumping law. I highly recommend looking into *The Law and Policy of the World Trade Organization*, by Peter Van den Bossche, from 2005. The book distinguishes itself by its wide coverage of complicated WTO law. Another interesting book is *Modern GATT Law – A Treatise on the General Agreement on Tariffs and Trade*, from 2005, by Raj Bhala. The author builds his writing on WTO law around the provisions in GATT 1994. Another great contribution to the discussion is *WTO Law – from a European perspective*, from 2006, edited by Birgitte Egelund Sørensen, Michael Steinicke, and Karsten Engsig Sørensen, which compares similarities and differences between the WTO and the EU systems. The chapter on anti-dumping, written by Pernille Wegener Jessen, includes a section on EU law on anti-dumping circumvention. Guiguo Wang has written about WTO – with China as the central subject – in *The Law of the WTO – China and the Future of Free Trade*, from 2005. The second edition of *The World Trade Organization – Law, Practice, and Policy*, from 2006, by Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, is also excellent. The authors provide a very interesting discussion regarding the sources of WTO law. Furthermore, throughout the book, the authors make a number of suggestions to improve WTO law.

For those interested in the background of WTO law, the extensive three-volume work by Terence P. Stewart (ed.); *The GATT Uruguay Round – A Negotiating History*, from 1993, is recommended. The section on anti-dumping

is written by Terence P. Stewart, Susan G. Markel, and Michael T. Kerwin. I also encourage those interested to look into *The World Trading System*, from 1989, by John H. Jackson, who writes about the policy background of GATT law – and the tension between a rule-oriented system and national discretion.

With respect to writings about WTO anti-dumping law, I would suggest looking into *The WTO Anti-dumping Agreement*, from 2005, by Edwin Vermulst. The author makes critical remarks on the application of anti-dumping law by both WTO Members and the DSB. Edwin Vermulst has also – together with Folkert Graafsma – written *WTO Anti-dumping, Subsidies and Safeguards*, from 2005, where an overview of anti-dumping disputes before panels and Appellate Body is provided. For a more detailed book on WTO anti-dumping law, *A Handbook Anti-dumping Investigations*, from 2003, by Judith Czako, Johan Human and Jorge Miranda, can be suggested.

For those interested in EU anti-dumping law, Ivo Van Bael and Jean-Francois Bellis have written *Anti-dumping and Other Trade Protection Laws of the EC*, of which the fourth edition is from 2004. The book gives an excellent overview of – and critical approach to – anti-dumping law in EU. Furthermore, the authors provide an overview of the anti-dumping cases in EU from initiation of investigation to termination – and further development – of cases from 1995 to 2004.

For a comparative study of the evolution of WTO/GATT and EU anti-dumping law, Wenxi Li's doctoral thesis *Anti-dumping Law of WTO/GATT and EC – Gradual Evolution of Anti-dumping Law in Global Economic Integration*, from 2001 is a must-read. The author makes suggestions on how to improve the existing anti-dumping laws towards more credibility.

About the trade relation between EU and China, I highly recommend *EC Trade Law Following China's Accession to the WTO*, by Jan Hoogmartens, from 2004, which includes some interesting discussions about the non-market economy approach in anti-dumping matters.

If the reader of this book wants to contact me for clarifications about my work or with suggestions for improvement, he or she should not hesitate to do so at: henriklaw@yahoo.com.

Henrik Andersen

Table of Contents

Preface	xvii
Chapter 1	
Introduction	1
1.1 Dumping and Its Elements	1
1.2 The Challenges and Discussions Concerning Dumping Determinations	2
1.2.1 Dumping Determinations	3
1.2.1.1 Product	3
1.2.1.2 Normal Value	3
1.2.1.3 Export Price	5
1.2.1.4 Comparison	5
1.2.2 EU Dumping Determinations and WTO Law	8
1.2.3 The Legal Approach	12
1.3 Sources of WTO Anti-dumping Law and the EU Measures	15
1.3.1 WTO Sources	15
1.3.1.1 The WTO Agreements and Decisions from the Ministerial Conference	16
1.3.1.2 Panel and Appellate Body Reports	17
1.3.1.3 Customary International Law	19
1.3.1.4 Principles of Law	20
1.3.1.5 Other Sources	22
1.3.2 Interpretation of WTO Agreements	23
1.3.2.1 General Interpretative Approach	23
1.3.2.2 National Interpretation: Article 17.6(ii) of the ADA	26
1.3.3 EU Dumping Measures and Judicial Reviews	27

Chapter 2

WTO Law as a Rule-Oriented System	31
2.1 Evolution of Anti-dumping Law in GATT/WTO	32
2.1.1 Anti-dumping in GATT: from Beginning to the Kennedy Round	33
2.1.1.1 Non-market Economies	35
2.1.1.2 The Group of Experts	36
2.1.2 The Kennedy Round (1963-1967)	37
2.1.3 The Tokyo Round (1973-1979)	39
2.1.4 The Uruguay Round (1986-1994)	40
2.2 The WTO Anti-dumping Rules: An Overview	41
2.2.1 Substantial Rules	41
2.2.1.1 Dumping	42
2.2.1.2 Injury	42
2.2.2 Procedural Rules	43
2.2.2.1 Initiation of the Investigation	43
2.2.2.2 Investigation	44
2.2.2.3 Measures and Anti-dumping Duties	46
2.2.3 Final Words	47
2.3 The Enforcement of WTO Anti-dumping Law in the WTO System	49
2.3.1 Dispute Settlement under GATT 1947	49
2.3.2 WTO Dispute Settlement	51
2.3.3 Final Comments	54
2.4 EU in GATT/WTO	55
2.4.1 The EU as a WTO Member	55
2.4.2 Evolution of EU Anti-dumping Legislation in Light of GATT/WTO Law	57
2.4.2.1 Community Interest	59
2.4.2.2 Guaranties of Rights in Anti-dumping Cases	59
2.4.2.3 Circumvention	60
2.4.2.4 Regulations Inconsistent with EU Law	61
2.4.3 Application of WTO Law in the EU System	62
2.4.3.1 The Effect of GATT/WTO Provisions in EU	63
2.4.3.2 Panel and Appellate Body Anti-dumping Reports in EU	64
2.5 Final Words	68

Chapter 3

Product under Consideration and Like Product	71
3.1 WTO Legislation	72
3.2 Practice by Panels and Appellate Body	73
3.2.1 Product under Consideration	73
3.2.1.1 No Criteria to Determine Product under Consideration	73

3.2.1.2	The Binding Definition	76
3.2.2	Like Product	78
3.3	EU Legislation	80
3.4	EU Practice	80
3.4.1	Product under Investigation	81
3.4.1.1	Physical, Chemical, and Technical Characteristics	81
3.4.1.2	The CN Codes	83
3.4.1.3	Interchangeability	86
3.4.1.4	Qualitative Differences	89
3.4.1.5	Different Functionality and Patented Products	91
3.4.1.6	Different Production Techniques	92
3.4.2	Like Product	95
3.5	Final Comments	98

Chapter 4

Normal Value	101
4.1 General Rule: Actual Domestic Price	101
4.1.1 WTO Legislation	102
4.1.1.1 Comparable Prices	102
4.1.1.2 Ordinary Course of Trade	103
4.1.1.3 Like Product	106
4.1.1.4 Destined for Consumption in the Exporting Country	106
4.1.2 Practice by Panels and Appellate Body	107
4.1.2.1 General Statements about Article VI of GATT 1994, Article 2.1 of the ADA and Normal Value	107
4.1.2.2 Comparable Prices	109
4.1.2.3 Ordinary Course of Trade	112
4.1.2.3.1 A Definition of Ordinary Course of Trade	112
4.1.2.3.2 Tests to Determine Ordinary Course of Trade	115
4.1.2.4 Destined for Consumption in the Exporting Country	117
4.1.2.5 Replacing Price in Downstream Sales between Associates	117
4.1.3 EU Legislation	119
4.1.3.1 The Price Is Based on Sales to Independent Customers	120
4.1.3.2 Comparability between Normal Value and Export Price	120
4.1.3.3 Ordinary Course of Trade	121
4.1.3.3.1 Sales between Associated Parties	121

	4.1.3.3.2 Sales below Costs and SAG	123
4.1.3.4	Normal Value Shall Be Based on the Price in the Exporting Country	124
4.1.3.5	The Sale Must Be of the Like Product	125
4.1.3.6	Low-Volume Sales	125
4.1.3.7	Destined for Consumption	125
4.1.4	EU Practice	125
4.1.4.1	Comparable Prices	126
4.1.4.2	Ordinary Course of Trade	127
	4.1.4.2.1 Sales between Associated Parties	128
	4.1.4.2.2 Prices below Costs and SAG	129
	4.1.4.2.3 Local Export Sales	133
4.1.4.3	Low-Volume Sales	134
	4.1.4.3.1 The Two 5% Tests	134
	4.1.4.3.2 Disregard of Some Products from the 5% Calculation	136
	4.1.4.3.3 Acceptance of Domestic Sales Below 5%	138
4.1.4.4	Exporting Country	139
4.1.4.5	Destined for Consumption in the Exporting Country	140
4.1.4.6	Downstream Sales between Associates	141
4.2	Alternatives to the Actual Domestic Prices	144
4.2.1	WTO Legislation	145
	4.2.1.1 Third-Country Price	146
	4.2.1.2 Normal Value Based on Costs, SAG and Profits	146
	4.2.1.2.1 Calculation of Costs, Article 2.2.1.1 of the ADA	147
	4.2.1.2.2 Calculation of SAG and Profits	148
4.2.2	Practice by Panels and Appellate Body	149
	4.2.2.1 General Statements about Article 2.2 and Article VI	149
	4.2.2.2 Calculation of Costs	151
	4.2.2.3 Calculation of SAG and Profits	154
	4.2.2.3.1 Principal Method in Article 2.2.2	154
	4.2.2.3.2 Relationship between the Subparagraphs in Article 2.2.2(i), (ii) and (iii)	156
	4.2.2.3.3 Data from Sales Not Made in the Ordinary Course of Trade	157
	4.2.2.3.4 The Same General Category of Products, Article 2.2.2(i)	158
	4.2.2.3.5 Weighted Average, Article 2.2.2(ii)	159

4.2.2.3.6	Any Other Reasonable Method, Article 2.2.2(iii)	160
4.2.3	EU Legislation	160
4.2.3.1	Calculation of Costs	161
4.2.3.2	Calculation of SAG and Profit	163
4.2.4	EU Practice	165
4.2.4.1	Relationship between Article 2.1 and Article 2.3	165
4.2.4.2	Article 2.3: Rejection of Third-Country Prices	169
4.2.4.3	Construction of Costs	170
4.2.4.4	Calculation of SAG and Profits	172
4.2.4.4.1	Low-Volume Sales	172
4.2.4.4.2	Sales below Costs	174
4.2.4.5	Weighted Average: Article 2.6(a)	176
4.2.4.6	The Same General Category of Products: Article 2.6(b)	178
4.2.4.7	Third Method: Any Other Reasonable Method – Article 2.6(c)	179
4.3	Final Comments	181
Chapter 5		
Export Price		187
5.1	WTO Legislation	187
5.2	Practice by Panels and Appellate Body	189
5.3	EU Legislation	192
5.4	EU Practice	194
5.4.1	Actual Export Price	194
5.4.1.1	Disregarding the Actual Export Price	195
5.4.1.1.1	Association and Compensatory Agreements	195
5.4.1.1.2	Other Reasons for Disregarding the Actual Export Price	199
5.4.1.2	Sales through a Trading House	200
5.4.2	Alternative Export Price	202
5.5	Final Comments	204
Chapter 6		
Comparison between Normal Value and Export Price		207
6.1	Adjusting Normal Value and Export Price	208
6.1.1	WTO Legislation	208
6.1.2	Practice by Panels and Appellate Body	210
6.1.2.1	Differences Affecting Price Comparability and Conditions and Terms	211
6.1.2.2	Levels of Trade	213
6.1.2.3	Physical Differences	214

6.1.2.4	Conversion of Currencies	216
6.1.2.5	Other Differences	218
6.1.3	EU Legislation	219
6.1.4	EU Practice	222
6.1.4.1	Differences in Physical Characteristics: Article 2.10(a)	222
6.1.4.2	Import Charges and Indirect Taxes: Article 2.10(b)	223
6.1.4.3	Discounts, Rebates and Quantities: Article 2.10(c)	225
6.1.4.4	Level of Trade: Article 2.10(d)	226
6.1.4.5	Transport, Insurance, Handling, Loading and Ancillary Costs: Article 2.10(e)	227
6.1.4.6	Packing: Article 2.10(f)	228
6.1.4.7	Credit: Article 2.10(g)	229
6.1.4.8	After-Sales Costs: Article 2.10(h)	230
6.1.4.9	Commissions: Article 2.10(i)	231
6.1.4.10	Currency Conversions: Article 2.10(j)	233
6.1.4.11	Other Factors: Article 2.10(k)	234
6.2	Calculating the Dumping Margin	235
6.2.1	WTO Legislation	236
6.2.2	Practice by Panels and Appellate Body	237
6.2.2.1	The Hierarchy of the Methods in Article 2.4.2	237
6.2.2.2	Intermediary Step: Multiple Averaging	238
6.2.2.3	Zeroing	242
6.2.2.3.1	Zeroing and the Weighted-Average- to-Weighted Average Method: Article 2.4.2	243
6.2.2.3.2	Zeroing and the Transaction-to- Transaction Method: Article 2.4.2	249
6.2.2.3.3	Zeroing and the Weighted-Average-to- Transaction Method: Article 2.4.2	253
6.2.2.3.4	Zeroing under Article 2.4	256
6.2.3	EU Legislation	260
6.2.4	EU Practice	262
6.2.4.1	The Preferred Method of Article 2.11	262
6.2.4.2	Zeroing	265
6.2.4.2.1	Zeroing under the Weighted- Average-to-Weighted-Average Method	265
6.2.4.2.2	The Time After EC: Bed Linen	266
6.2.4.2.3	The Weighted-Average-to- Transaction Method: First Condition	267

6.2.4.2.4	The Weighted-Average-to Transaction-Method: Second Condition	269
6.2.4.2.5	Zeroing under the Weighted-Average-to-Transaction Method	274
6.3	Individual or General Dumping Margins	275
6.3.1	WTO Legislation	276
6.3.2	Practice by Panels and Appellate Body	276
6.3.2.1	Lack of Information	276
6.3.2.2	Related Exporters	278
6.3.2.3	Margin Based on Product Types	279
6.3.3	EU Legislation	280
6.3.4	EU Practice	281
6.3.4.1	Related Producers	281
6.3.4.2	Non-cooperating Producers	283
6.4	Final Comments	285

Chapter 7

Special Anti-dumping Rules Regarding China	289
7.1 China: The Accession to the WTO	289
7.2 Normal Value for Chinese Producers	291
7.2.1 WTO Legislation	291
7.2.1.1 Relation to Article VI of GATT 1994 and ADA	292
7.2.1.2 The Special Rules	293
7.2.2 EU and the Non-Market Approach towards China	294
7.2.2.1 No State Specific Market Economy Criteria in EU Law	294
7.2.2.2 Political and Technical Statements	295
7.2.3 EU Legislation	296
7.2.3.1 Analogue Country	297
7.2.3.2 Opening to Market Economy Treatment	298
7.2.3.3 The Market Economy Criteria	299
7.2.4 EU Practice: The Non-Market Economy Approach for Single Producers	300
7.2.4.1 Single Producer Examination or Industry Examination?	300
7.2.4.2 The Five Criteria in Article 2.7(c)	301
7.2.4.2.1 State Interference and Market Conditions	303
7.2.4.2.1.1 Determinants Regarding Business Decisions	303
7.2.4.2.1.2 Determinants Regarding Market Conditions	307
7.2.4.2.2 International Accounting Standards	309