This brief is one in a series on key issues in the modernisation review. Further briefs will, inter alia, include the areas: Shipping Clause, Lesser Duty Rule and Union Interest Test. For more information, see www.kommers.se/TDI-brief

The Analogue Country Method in Anti-Dumping Investigations

▶ According to the EU anti-dumping regulation, the calculation of dumping for companies in a non-market economy should be based on values from an analogue country. In this brief, the National Board of Trade discusses some weaknesses with the current analogue country method, and suggests amendments on how the Regulation could be improved in order to address them.

What is the problem with the analogue country method?

An export company is allegedly dumping if it sells a product at an export price that is below the *normal value* of the product. According to the EU anti-dumping regulation, the normal value is defined as 1) the home market price or 2) the cost of production plus a reasonable profit and selling cost or 3) the export price to a third country. In cases where the exporting company operates in a non-market economy (NME), such as China, Vietnam and Belarus, the normal value is constructed on the basis of either price or costs of production in a market economy country, a so called *analogue country*. Thus, the choice of analogue country has a major impact on the outcome of the anti-dumping investigation.

The EU method of using an analogue country in anti-dumping calculations entails some weaknesses. One crucial weakness is that the regulation provides little guidance regarding the criteria to be applied for choosing the analogue country. The regulation only sets out that the selection shall be made in a “not unreasonable manner” and that due account should be taken of reliable information available at the time of selection. The lack of clear and publicly available guidelines on the selection of analogue country causes uncertainty for parties concerned.

In practice, the primary criterion for selection of the analogue country appears to be the willingness of the producers in this country to cooperate in the anti-dumping investigation.

Often, the selected analogue country has a totally different cost structure (i.e. higher domestic price level and/or higher producer costs) than the alleged dumping country. This problem is particularly evident in the anti-dumping cases against China. The most frequently used analogue country for China is the USA (31 percent of the cases during 2005-2010), a country that has a per capita gross national income of 48.9 USD, compared to the 8.4 USD of China. This inadequate comparison results in inflated normal values and, hence, inflated dumping margins for NME companies. Hence, the dumping margins will not reflect the levels of alleged dumping.

Since the selection of analogue country is based on the companies’ willingness to cooperate with the Commission in the investigation, there is a risk for a biased selection. Companies in third countries exporting to EU will generally benefit if duties are imposed on competing NME exporters. However, there is a risk that companies with higher costs (i.e. higher normal value) than the NME exporters are more willing to cooperate, knowing that this will lead to higher dumping margins. This proceeding results in inflated dumping margins.

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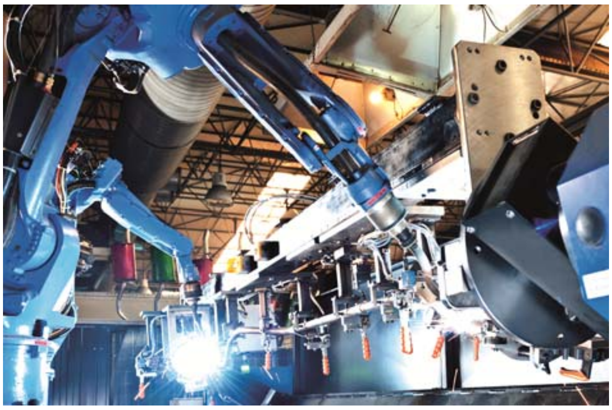

Today the most frequently used analogue country for China is the USA, a country that has a per capita gross national income that is almost six times higher than the one of China.

Proposals on how the analogue country method can be improved

First and foremost, it is important to establish clear and publicly available guidelines for the selection of analogue country. This would improve transparency, coherence and consistency of practice.

In order to avoid inflated dumping margins, the guidelines for selecting analogue countries for NMEs should state that:

- Only market economy countries that are at a level of economic development comparable to that of the NME country should be eligible as analogue countries. Several other countries (among them India, South Africa, and USA) have stipulated a similar criterion in their anti-dumping regulations.

- The normal value calculations in analogue countries should be based on the analogue companies' current home market price or export price to a third country, and not on production costs which depend on the willingness of analogue companies to cooperate.

- Products from the analogue country producer should be similar to the ones produced by NME country exporters. In this regard, differences in quality and brand names of the products should be taken into account. Other criteria to be assessed are the production processes, production scales and technologies. These should be similar to those of the NME country.

- In cases where some companies in the NME country have been granted market economy treatment (MET), it is possible to avoid the use of an analogue country. In these cases the normal value for the companies without MET could instead be based on figures from the MET companies. This would result in a more accurate and reliable definition of normal value, as the figures from the MET companies are likely to be the best benchmark for the true normal value in the specific case. In addition, the data from MET companies is already available to the Commission.

The EU's trade defence instruments (anti-dumping, anti-subsidy and safeguard measure) have remained largely unchanged for more than 15 years.
The Commission has now taken the initiative to modernise the current instruments in order to improve their efficiency and effectiveness.