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Report to Congressional Committees

January 2006

U.S.-CHINA TRADE

Eliminating Nonmarket Economy Methodology Would Lower Antidumping Duties for Some Chinese Companies

GAO-06-231

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Highlights

Highlights of GAO-06-231, a report to congressional committees

Why GAO Did This Study

U.S. companies adversely affected by unfair imports may seek a number of relief measures, including antidumping (AD) duties. The Department of Commerce (Commerce) classifies China as a nonmarket economy (NME) and uses a special methodology that is commonly believed to produce AD duty rates that are higher than those applied to market economies. Commerce may stop applying its NME methodology if it finds that China warrants designation as a market economy.

In light of increased concern about China's trade practices, the conference report on fiscal year 2004 appropriations requested that GAO review efforts by U.S. government agencies responsible for ensuring free and fair trade with that country. In this report, the last in a series, GAO (1) explains the NME methodology, (2) analyzes AD duties applied to China and compares them with duties applied to market economies, and (3) explains circumstances in which the United States would stop applying its NME methodology to China and evaluates the potential impact of such a step.

Commerce agreed with our findings, commenting that our report provides timely and helpful information on the NME methodology and its application to China.

www.gao.gov/cgi-bin/getrpt?GAO-06-231.

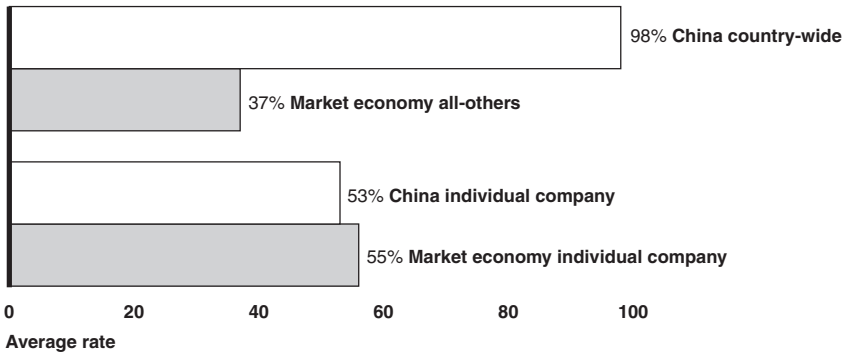
To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4347 or yagerl@gao.gov.

What GAO Found

Commerce's methodology for calculating AD duties on nonmarket economy products differs from its market economy approach in that (1) since NME prices are unreliable, it uses price information from surrogate countries, like India, to construct the value of the imported products and (2) it limits eligibility for individual rates to companies that show their export activities are not subject to government control. Companies that do not meet the criteria or do not participate in Commerce investigations receive "country-wide" rates.

China has been the most frequent target of U.S. AD actions. On 25 occasions, Commerce has applied duties to the same product from both China and one or more market economy. China (NME) duties were over 20 percentage points higher than those applied to market economies, on average. This is because average China country-wide rates were over 60 points higher than comparable market economy rates. Individual China company rates were similar to those assigned to market economy companies, on average.

Comparison of China and Market Economy Antidumping Rates for 25 Products (1985-2004)



Source: GAO AD database.

Commerce can declare China a market economy if the country meets certain criteria, thus ending the use of surrogate price information and country-wide rates in China AD actions. These changes would have a mixed impact. Duties would likely decline for Chinese companies not assigned individual rates. Individual company rates would likely diverge, with those that do not cooperate with Commerce receiving rates that are substantially higher than those that do cooperate. In any case, it appears that the actual trade impact of the NME methodology will decline as the portion of total export trade conducted by Chinese companies assigned individual rates increases and as the country-wide rates that largely account for the comparatively high average rates applied to China decline in importance.

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Abbreviations

AD	antidumping
HTS	Harmonized Tariff Schedule
ITC	U.S. International Trade Commission
NME	nonmarket economy
WTO	World Trade Organization

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Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, D.C. 20548

January 10, 2006

The Honorable Richard C. Shelby
Chairman
The Honorable Barbara A. Mikulski
Ranking Minority Member
Subcommittee on Commerce, Justice, and Science
Committee on Appropriations
United States Senate

The Honorable Frank R. Wolf
Chairman
The Honorable Alan B. Mollohan
Ranking Minority Member
Subcommittee on Science, State, Justice, and
Commerce and Related Agencies
Committee on Appropriations
House of Representatives

Imports from China have grown rapidly over the last decade, from a total value of about $42 billion in 1995 to over $196 billion in 2004.[1] While the prices of these Chinese goods are often lower than U.S. prices and, therefore, benefit consumers, this growth has presented a major challenge for U.S. producers that compete with Chinese products in the U.S. market. Some U.S. companies adversely affected by this growth have alleged that Chinese success in the U.S. market has come partly as a result of unfair trade practices.

U.S. companies that are adversely affected by unfair imports from China (or other countries) may avail themselves of a number of relief measures, including antidumping (AD) duties. The United States has classified China as a "nonmarket economy" (NME) country since 1981[2] and employs a special NME methodology to calculate AD duties on unfairly traded

[1]Both values are expressed in constant 2004 dollars.

[2]In U.S. law, an NME is a country that does not operate on market principles "so that sales of merchandise in such country do not reflect the fair value of the merchandise." 19 U.S.C. §1677(18). China is one of 12 countries that Commerce has determined is an NME. Commerce classified China as an NME in *Final Determination of Sales at Less than Fair Value: Natural Menthol from the People's Republic of China*, 46 Fed. Reg. 24614 (May 1, 1981).

products from that country. This methodology is commonly believed to result in duty rates that are significantly higher than those applied to market economy countries.

In light of increased concern about China's trade practices, the conference report on fiscal year 2004 appropriations legislation requested that GAO monitor the efforts of U.S. government agencies responsible for ensuring free and fair trade with that country.[3] In subsequent discussions with staff from the House Appropriations Committee's Subcommittee on Science, State, Justice, and Commerce and Related Agencies, we agreed to provide a number of reports on import relief mechanisms and the manner in which these mechanisms have been applied to China. To date, we have issued three such reports, focusing on textile safeguards, safeguards applicable to other products, and countervailing duties.[4]

This fourth and final report on China import relief mechanisms focuses on AD duties. In this report, we

- explain the special methodology that the United States employs to calculate AD duties on products from China and other NME countries,
- analyze the application of AD duties to China over the last 25 years and compare the duty rates applied to Chinese products with the duty rates applied to products from market economy countries, and
- explain the circumstances in which the United States would stop using its NME methodology to calculate AD duties on Chinese products and evaluate the potential impact of this step.

To conduct our review, we examined applicable U.S. laws and regulations and World Trade Organization (WTO) agreements, including relevant portions of the agreement through which China acceded to WTO membership in 2001. We reviewed scholarly literature and consulted with

[3]H.R. Rep. No. 108-401, at 574 (2003), accompanying the Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3, 65.

[4]GAO, *U.S.-China Trade: Textile Safeguard Procedures Should be Improved*, GAO-05-296 (Washington, D.C.: Apr. 4, 2005); GAO, *U.S.-China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties*, GAO-05-474 (Washington D.C.: June 17, 2005); GAO, *U.S.-China Trade: US-China Trade: The United States Has Not Restricted Imports Under the China Safeguard*, GAO-05-1056 (Washington, D.C.: Sept. 29, 2005).

trade and legal policy experts from the U.S. government, private sector trade associations, consulting and law firms, and academic institutions, as well as representatives of the WTO, the government of China, and other governments. In order to analyze U.S. application of AD duties to China and compare the duties applied to China with those applied to market economy countries, we used information from the Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), including notices of Commerce determinations appearing in the *Federal Register*, to construct a database on all U.S. antidumping investigations from 1980 through 2004. We verified this database to the official sources. Our analyses focused on the 68 AD duty orders that Commerce issued against Chinese products during this period and especially on the 25 cases in which Commerce also imposed duties on the same products from market economy countries.[5] We performed additional (multivariate regression) analyses to determine the extent to which duty rate variations could be attributed to differences between China and these other countries, or to other factors, such as the type of product involved. Appendix I contains a detailed description of our scope and methodology.

We conducted our work from June 2005 through December 2005 in accordance with generally accepted government auditing standards.

Results in Brief

Commerce's special methodology for calculating the AD duties that it applies to China and other NME countries differs from its usual (market economy) approach in two key respects. First, since prices in NME countries do not reliably reflect the fair value of the merchandise, Commerce uses price information from surrogate countries (like India) to construct the value of NME products—and thus provide an appropriate basis for calculating AD duty rates—rather than relying entirely on information from the exporting country itself. Second, Commerce requires NME companies to demonstrate that their export activities are not subject to government control in order to be considered eligible for individually determined duty rates, rather than considering all companies eligible for such rates, as it does in market economy cases. NME companies that do not meet these criteria, or do not participate in Commerce's investigations receive "country-wide" rates.

[5]We also collected and examined data on duties imposed against other NME countries. Appendix III briefly discusses our analyses of this data.

Over the last 25 years, the United States has applied AD duties against China more often than against any other country. On 25 occasions, Commerce applied duties to the same products from both China and at least one market economy country. The duty rates assigned in these cases varied greatly. On average, however, the rates applied to China were over 20 percentage points higher than those applied to market economy countries. This difference is attributable primarily to the comparatively high country-wide duty rates applied to Chinese companies not eligible for individual rates. These country-wide rates averaged about 98 percent—over 60 percentage points higher than the average duty rates assigned to market economy companies not receiving individual rates. In contrast, when Commerce calculated individual rates for Chinese companies, these rates were not substantially different, on average, from those assigned to individual market economy companies.

Commerce has administrative authority to declare China a market economy, or find individual Chinese industries to be "market-oriented" in character—provided that China overall or individual Chinese industries meet certain criteria. Such a declaration would end application of the NME methodology to China, in whole or in part. This would (1) eliminate country-wide duty rates against China and (2) eliminate use of surrogate country information to calculate AD duty rates on Chinese products. These changes would have a mixed impact. Eliminating country-wide rates would likely reduce duty rates applied to companies not receiving individual rates. Individually determined rates would likely diverge into two distinct groups, with companies that do not cooperate in Commerce investigations receiving rates that are substantially higher than those that do cooperate. The impact of applying Chinese price information would likely vary by industry, and AD rates applied against China would continue to vary widely, both within and among cases. However, it appears that the significance of the NME country-wide rates is declining as more Chinese companies receive individual rates, although data that would permit quantification of the potential trade impact of these changes is not available. This suggests that the trade significance of the NME methodology now applied to China will likewise decline over time.

Commerce provided written comments on a draft of this report, which are reprinted in appendix IV. Overall, Commerce agreed with our findings. In addition, Commerce, the Department of Homeland Security, and the Office of the U.S. Trade Representative, provided technical comments. We took these comments into consideration and made revisions throughout the report as appropriate to make it more accurate and clear.

Background

Dumping refers to a type of international price discrimination wherein a foreign company sells merchandise in a given export market (for example, the United States) at prices that are lower than the prices that the company charges in its home market or other export markets. When this occurs, and when the imports have been found to materially injure, or threaten to materially injure, U.S. producers, U.S. law permits application of antidumping duties to offset the price advantage enjoyed by the imported product.[6]

Any domestic industry that believes it is suffering material injury, or is threatened with material injury, as a result of dumping by foreign companies may file a petition requesting imposition of AD duties. Interested domestic industries file petitions simultaneously with Commerce and ITC. If Commerce determines that the petitioning parties meet certain eligibility requirements,[7] ITC determines whether the domestic industry has suffered material injury as a result of the alleged dumping (or is threatened with material injury).[8] While ITC is completing its work, Commerce conducts an investigation to establish the duty rates, if any, that should be applied.

To determine the duty rates to apply in an antidumping investigation, Commerce identifies (1) the foreign product's export price entering the U.S. market and (2) its "normal value." Commerce then compares these

[6]U.S. antidumping duty laws are found in 19 U.S.C. §§1673 et seq. The general international framework for application of antidumping duties can be found in the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*—commonly known as the "Antidumping Agreement"—and in article VI of the *General Agreement*.

[7]For example, 19 U.S.C. §1673a sets forth criteria for initiating an AD investigation. It calls for petitions to be filed "by or on behalf of" the affected domestic industry and requires petitioners to submit "reasonably available" information to support their allegations that dumping has occurred and that they have suffered injury as a result.

[8]U.S. law defines material injury as harm that is "not inconsequential, immaterial, or unimportant." 19 U.S.C. §1677(7)(A).

prices to determine whether—and by how much—the product's export price is less than its normal value. AD duty rates are based on these differences, which are called dumping margins.[9]

To establish a product's export price, Commerce generally refers to the prices charged in actual sales of that product to purchasers in the United States.[10] To establish its normal value, Commerce generally refers to the prices charged for the product in the exporting company's home market. In the event that the product is not sold in the exporter's home market, Commerce may refer to prices charged for the product in another export market or construct a normal value based on costs of production in the exporting country, together with selling, general and administrative expenses, and profit.[11] The two agencies make preliminary and, after additional investigation, final determinations as to whether injury has occurred (ITC) and the size of the duty, if any, that should be imposed (Commerce). When warranted, Commerce issues "duty orders" instructing Customs and Border Protection to apply duties against imported products from the countries under investigation. Both ITC and Commerce publish their decisions in the *Federal Register*.

Since AD duties address unfair pricing practices, and pricing decisions are generally made by individual companies, Commerce generally calculates and assigns AD duty rates on an individual company basis. As a result, AD investigations generally produce a number of individually determined, company-specific rates, reflecting differences in the extent to which companies have dumped their products—that is, exported them at less

[9]Under U.S. law, Commerce sets antidumping duties equivalent to dumping margins. 19 U.S.C. §1673. WTO rules encourage, but do not require, member states to apply antidumping duty rates that are less than the identified dumping margins if such lower rates are found sufficient to remedy the injury suffered by the domestic industry. WTO, *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, Art. 9.1.

[10]19 U.S.C. §1677a(a).

[11]19 U.S.C. §1677b establishes Commerce' authority to apply these approaches to establishing normal value. Article 2.2 of the WTO antidumping agreement also provides that normal value determinations shall generally be based on a product's sales price in its home market but permits investigating officials to refer to prices in another export market or to "constructed" prices, in certain circumstances.

than their normal value.[12] In addition, AD duty orders also generally specify a duty rate for other companies that have not been assigned an individually determined rate.

In principle, Commerce bases its AD duty determinations on information obtained from interested parties—including foreign producers and exporters. Commerce obtains needed information from foreign companies by sending them questionnaires and following up with additional questions, as needed, and with on-site visits.[13]

However, both U.S. law and WTO rules recognize that, in some cases, officials charged with completing these investigations will be unable to obtain sufficient information. In such cases, Commerce officials apply facts available to complete their duty determinations.[14] This may include secondary information, subject to corroboration from independent sources.

Moreover, if Commerce finds that an interested party, such as a foreign company under investigation, "has failed to cooperate by not acting to the best of its ability to comply with a request for information" then, in selecting among the facts available, Commerce may apply an inference that is adverse to the interests of that party. In applying adverse inferences, Commerce can use (among other things) information contained in the petition filed by the domestic industry seeking imposition of AD duties, the results of a prior review or determination in the case, or any other information placed on the record.[15]

[12]19 U.S.C. §1677f-1(c)(1) provides that, as a general rule, Commerce shall determine a dumping margin for each known exporter and producer of the subject merchandise. Article 6.10 of the WTO antidumping agreement is similar.

[13]Commerce is required to verify all of the information that it employs in making its final AD determinations. 19 U.S.C. §1677m(i).

[14]19 U.S.C. §1677e provides that if necessary information is not available on the record, or an interested party withholds requested information, fails to provide it by the deadline for submission, submits information that cannot be verified, or otherwise significantly impedes an investigation, then Commerce shall use "facts otherwise available" to make its determinations. Article 6.8 of the WTO Antidumping Agreement specifies that when an interested party "refuses access to, or otherwise does not provide, necessary information ...or significantly impedes the investigation" the importing country may base AD duty rates on the facts available. Annex II of the agreement elaborates on this basic point.

[15]19 U.S.C. §1677e(b).

This authority provides an incentive for foreign companies to provide the information that Commerce needs to complete its work. For example, in a 1993 case that involved two Brazilian companies, one company attempted to cooperate in the investigation but nonetheless was unable to provide the information that Commerce needed, while the other declined to provide any information at all. Commerce used facts available to determine that the first company should be subject to a duty rate of 42 percent. For the second company, Commerce selected adverse inferences from among the facts available and applied these to calculate a duty rate of 109 percent.[16]

Commerce Employs a Special Methodology to Calculate China AD Duties

The methodology that Commerce employs in NME cases differs from Commerce's usual (market economy) approach in two key ways. First, rather than rely entirely on information from the exporting country itself to establish a product's normal value, Commerce uses price information from surrogate countries to construct these values. Second, rather than consider all companies eligible for individually determined duty rates, Commerce requires NME companies to meet certain criteria to be considered eligible for such rates. Commerce generally employs different approaches to calculate duty rates for companies that do and do not meet these criteria.

AD Calculations for NME Products Employ Third Country Information

In AD investigations involving products from NME countries, U.S. law requires Commerce to use a special methodology to calculate duty rates in view of the absence of meaningful home market prices and information on production costs. When a product from China or another NME country is the target of an AD investigation, Commerce officials use price information and financial data from an appropriate market economy country to construct a normal value for the product under investigation.[17] India is the most commonly used surrogate for China.

[16] *Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Brazil*, 58 Fed. Reg. 37091 (July 9, 1993).

[17] 19 U.S.C. §1677b(c). This provision specifies that surrogate countries should be (1) at a level of economic development comparable to the NME in question and (2) a significant producer of the product being examined. Wage rates are determined by reference to wages prevailing in market economy countries at the per capita income level of the NME country being investigated. 19 C.F.R. §351.408(3).

To apply this methodology, Commerce (1) identifies and quantifies the factors of production (e.g., various raw materials) used by the NME producers, (2) identifies market prices for each factor in a surrogate country; (3) multiplies volume times cost for each factor; and (4) adds the results, together with a reasonable margin for selling, general and administrative expenses, and profit (based on surrogate country financial data), to produce a constructed normal value.[18] The dumping margin—and consequently the AD duty rate—is then determined by comparing this normal value with the NME company's export price to the United States.

NME Companies Must Meet Certain Criteria to Be Considered Eligible for Individual Duty Rates

While all companies from market economy countries are eligible for individually determined or weighted average AD duty rates, companies from China and other NME countries must pass a separate rates test to be eligible for such rates. This test requires NME companies to meet two closely related criteria: they must demonstrate that their export activities are free from government control both in law and in fact.[19] To provide a basis for deciding whether companies meet these criteria, Commerce requires these companies to submit information regarding

- whether there are restrictive stipulations associated with an individual exporter's business and export licenses,
- any legislative enactments decentralizing control of companies,
- any other formal measures decentralizing government control of companies,
- whether export prices are set by or subject to approval by the government,

[18] 19 U.S.C.§1677b(c)(2) states that if the available information does not permit Commerce to apply this methodology, Commerce may base its normal value determination on the price at which a comparable product, produced in a market economy country at a level of development similar to the exporting country, is sold in other countries, including the United States. In practice, however, Commerce has never resorted to this alternative.

[19] Commerce first developed and applied this test in a 1991 case involving sparklers from China—*Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 Fed. Reg. 20588, (May 6, 1991). Commerce elaborated further upon its criteria *in Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China*, 59 Fed. Reg. 22585 (May 2, 1994).

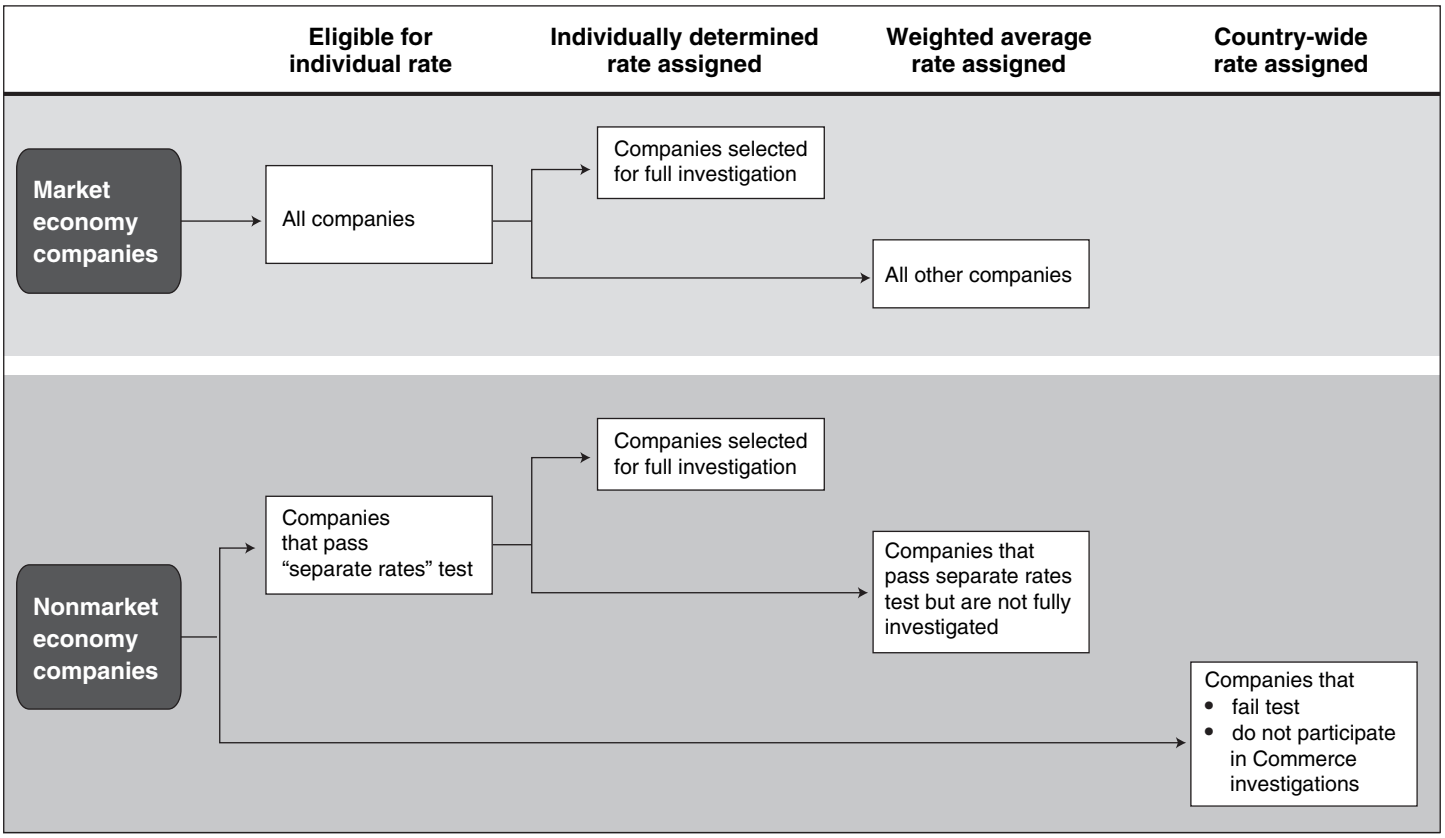
- whether the company has authority to negotiate and sign contracts,
- whether the company has autonomy in selecting its management, and
- whether the company retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[20]

Commerce Employs Different Approaches to Determine Duty Rates for Eligible and Ineligible NME Companies

As shown in figure 1, Commerce uses fundamentally different approaches to calculate duty rates to be applied against companies that do and do not pass the separate rates test.

[20]Department of Commerce, *Import Administration Policy Bulletin Number 05.1* (Washington, D.C.: Apr. 5, 2005).

Figure 1: Different Approaches to Determining AD Duty Rates



Source: GAO analysis of Commerce information.

Eligible NME Companies Receive Individually Determined or Weighted Average Duty Rates

As shown in figure 1, Commerce treats companies from China and other NME countries that pass Commerce's separate rates test like market economy countries when assigning duty rates. When practical, Commerce fully investigates and establishes individually determined duty rates for each eligible NME company, just as it does for each market economy company. To the extent that fully investigated NME companies cooperate with Commerce, they receive rates based on the information that they provide. As explained in the background section of this report, Commerce uses facts available, and may use adverse inferences, to calculate duty rates when the companies under investigation cannot or will not provide the information that Commerce needs.

In both NME and market economy cases, Commerce may limit the number of companies it fully investigates when it is faced with a large number of companies. In such situations, Commerce generally calculates individual rates for the companies that account for the largest volume of the subject merchandise.[21] In market economy cases, Commerce then calculates a weighted average of these rates and applies the resulting "all others" rate to companies that it has not fully investigated.[22] Commerce does not routinely calculate weighted average duty rates in NME cases. However, when the number of NME companies eligible for individually determined rates exceeds the number that Commerce can fully investigate, Commerce calculates a weighted average rate and informs Customs of the companies entitled to this rate.[23]

Other NME Companies Receive Country-Wide Duty Rates

In cases involving China or other NME countries, Commerce calculates a country-wide duty rate for companies that could not (or did not attempt to) pass Commerce's separate rates test. In NME cases, Commerce assumes that all exporters and producers of a given product are subject to common government control and that all of these companies should, therefore, be subject to a single country-wide duty rate. Commerce begins its NME antidumping investigations by requesting information from the government of the country in question and from known producers and exporters. If Commerce cannot identify all relevant producers and exporters, or if one or more of the identified companies refuses to cooperate in the investigation, Commerce relies on adverse inferences to calculate a

[21] 19 U.S.C. § 1677f-1(c)(2) provides that if it is not practicable to establish individual rates for all known exporters or producers, Commerce may limit its individual examinations to a statistically valid sample of companies or to those companies that account for the largest volume of the subject merchandise. Article 6.10 of the WTO Antidumping Agreement provides that when large numbers of exporters are involved, authorities may limit their examination to a reasonable number of parties.

[22] 19 U.S.C. §1673d(c)(5)(A). This section also specifies that in making such calculations Commerce shall exclude any duty rates that were determined entirely by applying facts available, as well as any rates that are zero or de minimis (less than 2 percent). Article 9.4 of the WTO antidumping agreement is similar.

[23] Commerce did this in 15 of the 68 China cases that we examined. For example, in one recent case Commerce calculated individual rates for 7 Chinese companies and also assigned a weighted average duty rate to 19 other Chinese companies that passed Commerce's separate rates test but were not fully examined. See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 Fed. Reg. 34125 (June 18, 2004). As in market economy cases, weighted average calculations exclude individual duty rates that are determined entirely by applying facts available, or that are or de minimis.

country-wide rate. Commerce then instructs Customs to apply the country-wide rate against shipments from any company other than those specifically listed as eligible for an individually determined or weighted average rate.[24]

Commerce Has Applied AD Duties to China Frequently at Varied Rates

Over the last 25 years, the United States has applied AD duties against Chinese products more often than against products from any other country. While AD duty rates have varied widely, on average the rates assigned to Chinese products have been higher than the rates assigned to the same products from market economy countries. We found that this is attributable primarily to the comparatively high country-wide rates applied to Chinese companies not eligible for individually determined or weighted average rates. When Commerce has calculated rates for individual Chinese companies, the average rates assigned to these companies have not been substantially different from those assigned to market economy companies.

China Has Been the Most Frequent Target of U.S. Antidumping Orders

Over the last 25 years, Commerce has both considered and actually applied AD duties against China more often than against any other country. From 1980 through 2004, Commerce processed 1,046 AD petitions and issued 455 AD duty orders. One hundred and ten of these petitions (11 percent) and 68 of these orders (15 percent) focused on China—both are the largest number against any U.S. trade partner.[25]

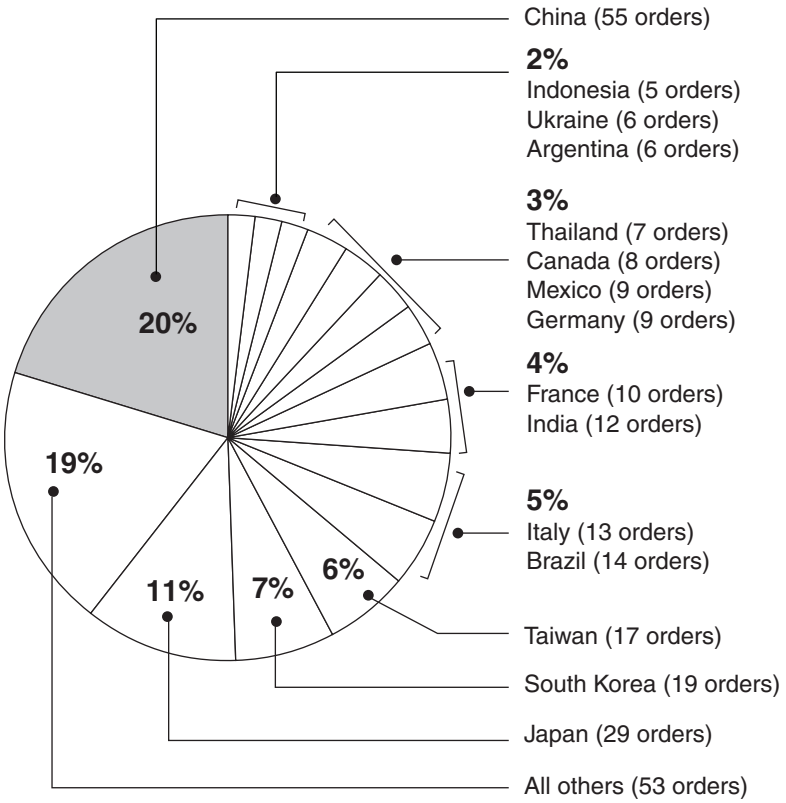
The number of orders applied to China varied from year to year. For example, Commerce issued no AD duty orders against China in 1998 but issued 9 in 2003. Commerce had 272 orders in place as of December 31, 2004. Fifty-five of these (20 percent) apply to China. As figure 2 shows, this is also the highest percentage of any country. As shown in table 1, these duty orders have targeted a wide variety of products but have been

[24]When Commerce identifies all NME exporters and producers, when all of these companies cooperate, and when Commerce can establish individual rates for each company, Commerce establishes country-wide rates that are weighted averages of the individual company rates. However, such cases are not common. Commerce employed this alternative in only 5 (about 7 percent) of the 68 AD orders it issued against China from 1980 through 2004. For an example, see *Notice of Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 Fed. Reg. 22544 (May 8, 1995).

[25]During the 1980s, Japan was the single most frequently targeted country. About 17 percent of all the AD orders that Commerce issued during the decade applied to Japan.

concentrated in chemicals and plastics, metal products, and agricultural products.

Figure 2: U.S. AD Orders in Place by Country as of December 31, 2004



Source: GAO AD database.

Note: From 1980 through 2004 Commerce applied 68 orders against China. Thirteen of these were revoked, leaving 55 in place as of the end of 2004.

Table 1: Products Affected by AD Duty Orders against China, 1980–2004

Type of product	Examples of affected products	Number of orders
Chemicals, plastics, pharmaceuticals	Barium chloride Polyethylene retail carrier bags Bulk aspirin	26
Steel, other metals	Carbon steel butt-weld pipe fittings Chrome-plated lug nuts Pure magnesium	20
Agricultural products	Crawfish Garlic Honey	5
Other products	Brake rotors Hand tools Cotton shop towels Automotive replacement glass windshields Folding gift boxes	17

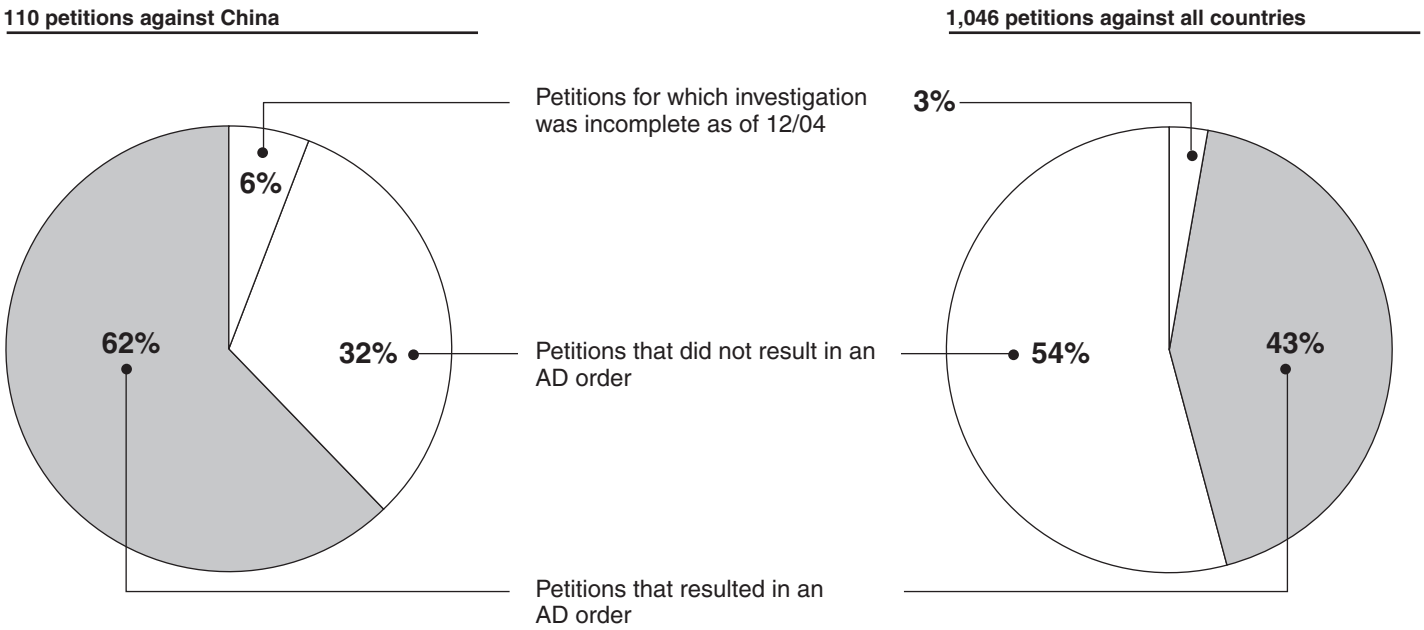
Source: GAO AD database.

Note: Product categories based on the *Harmonized Tariff Schedule of the United States, Annotated.* See appendix I for more information.

Moreover, petitions for AD duties against China have resulted in application of duties more often than those against other countries. As shown in figure 3, 62 percent of the petitions filed against China over the last 25 years resulted in duty orders, while the equivalent figure for all countries was about 43 percent.[26]

[26]China had the highest percent of investigations that resulted in orders (62 percent of 110 investigations) of any country subject to more than 15 AD orders. Japan (58 percent), Korea (51 percent), Taiwan (47 percent), and Germany (38 percent) followed China. Some countries, such as Latvia and Bangladesh, were subject to only one or two investigations and all of them resulted in orders, giving them a 100 percent rate. Ukraine, another NME, was subject to 13 antidumping orders, and 69 percent of them resulted in orders.

Figure 3: Results of AD Petitions, 1980-2004



Source: GAO AD database.

Note: Petitions may not result in an AD order for several reasons. For example, if ITC does not find the domestic industry to be materially injured, or threatened with material injury, or if Commerce does not find that dumping has occurred, then the case is terminated. Also, Commerce may suspend a case if the United States reaches an agreement with the foreign government that would eliminate the impact of dumping (e.g., restrictions on exports). In addition, the petitioners may decide to withdraw their petition before ITC and Commerce have completed their work.

China, Market Economy Rates Varied Widely

Over this 25 year period, Commerce issued duty orders against the same products from China and at least one market economy country on 25 occasions.[27] In 18 of these cases, Commerce calculated individual rates for companies from China and at least one market economy country. Fifteen of these cases involved more than one market economy country. In all, the orders applying to these 25 products contained a total of 243 individual,

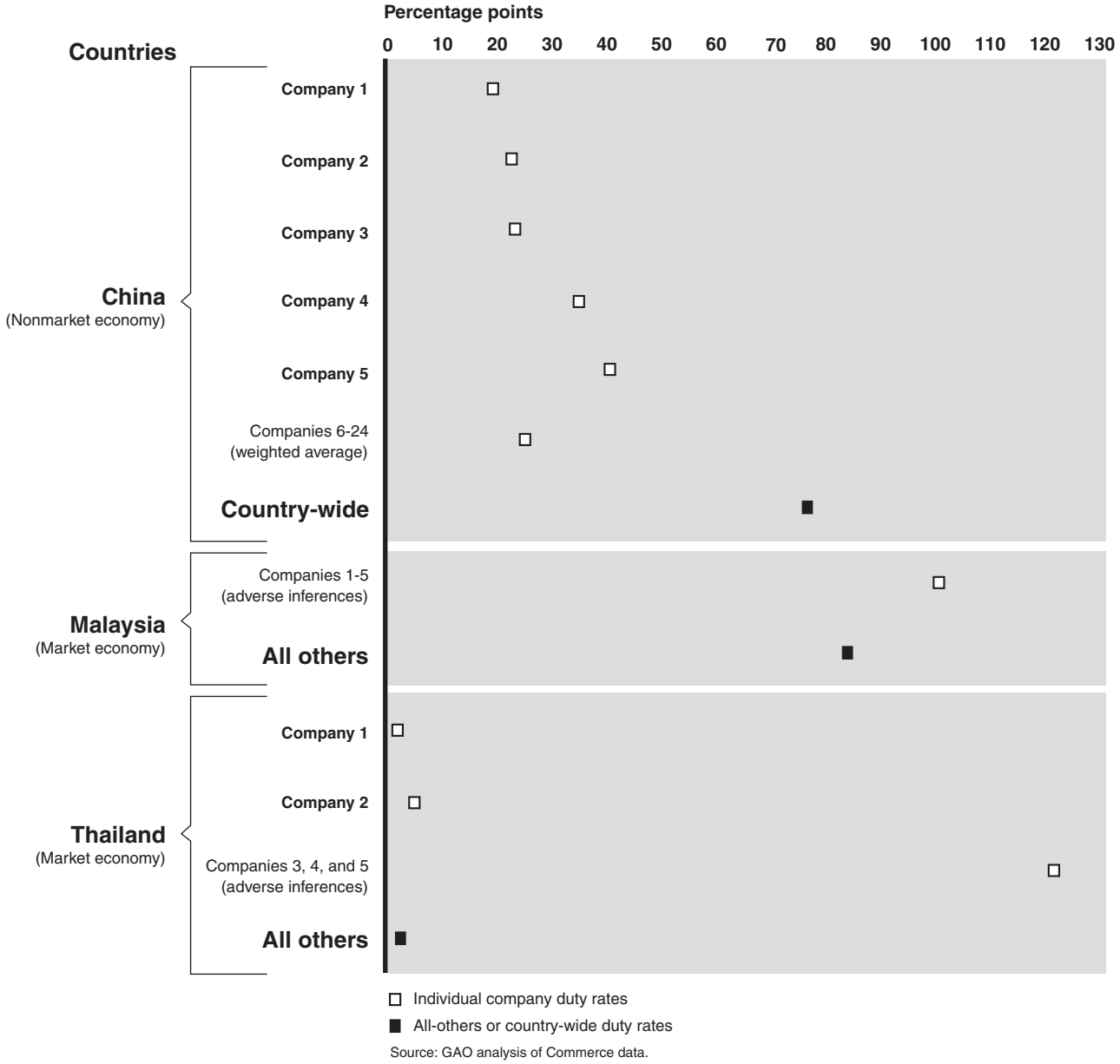
[27]We reviewed all antidumping orders between 1980 and 2004 and identified, from the 68 orders put in place against China, any in which there was also a corresponding order against the same product from at least one market economy within one year of the order against China. We found similar market economy orders for 25 of the 68 orders against China. See appendix I for more information.

weighted average, and country-wide duty rates. Appendix II provides detailed information on the rates applied in each of these cases, as well as another 43 cases that we identified wherein Commerce applied duty rates to China but not to any market economy country.

These rates varied a great deal—both among the orders applied to different products and within the orders applied to the same products. Overall, these duty rates varied from zero to 218 percent for China and from zero to about 244 percent for market economy countries. Figure 4 shows the extent to which duty rates applied to a single product can vary.[28]

[28]For details on this case, see the duty orders as follows: 69 Fed. Reg. 48201 (China), 69 Fed. Reg. 48203 (Malaysia), and 69 Fed. Reg. 48204 (Thailand), all published on Aug. 9, 2004.

Figure 4: AD Duty Rates Applied against Imported Polyethylene Retail Carrier Bags (2004)



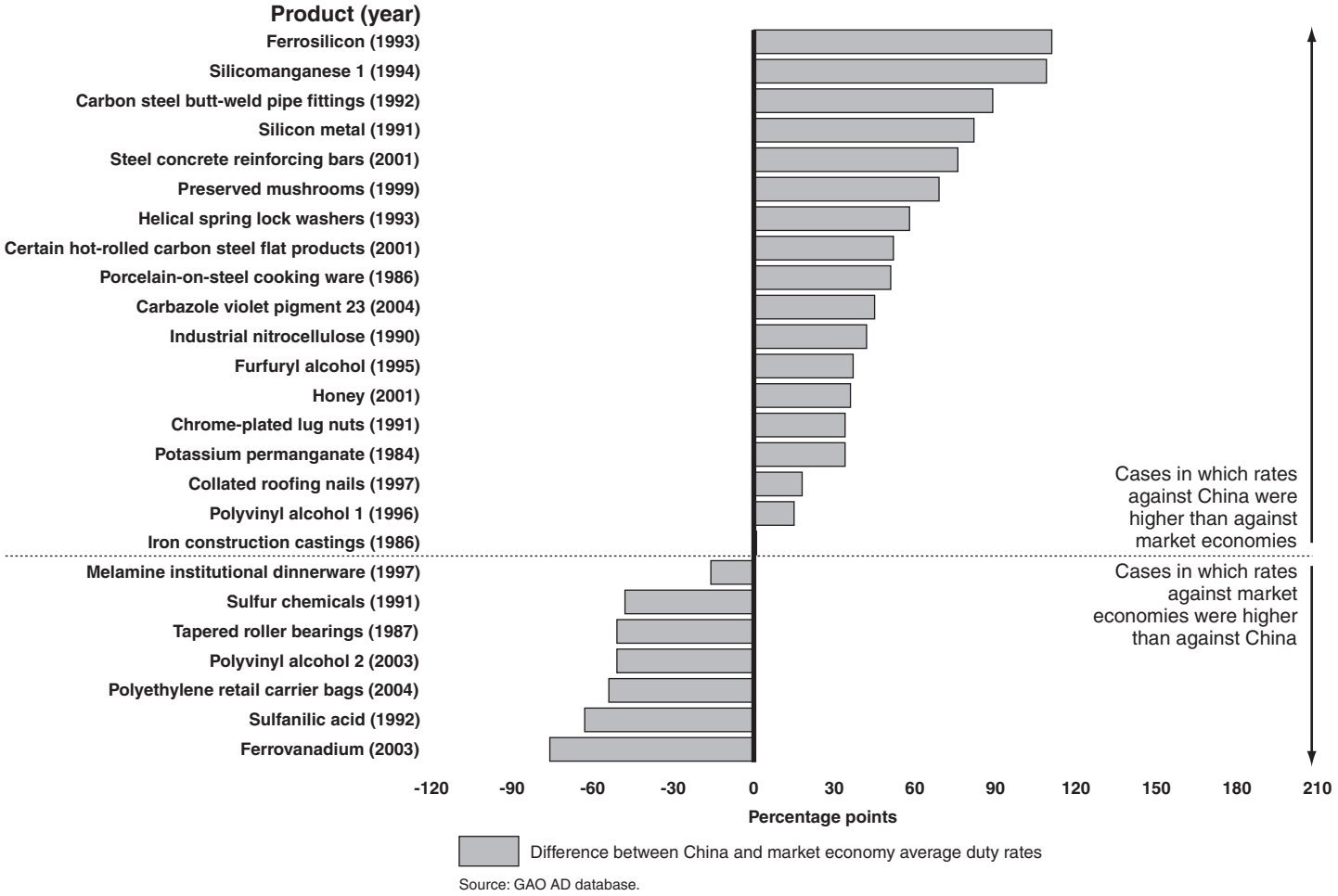
Source: GAO analysis of Commerce data.

Note: In addition to the five individual Chinese companies shown above, two Chinese companies received de minimus rates and were excluded from the order.

Overall, China Rates Were Higher Than Market Economy Rates

The average AD duty rates imposed on Chinese (NME) exporters over the last 25 years have been significantly higher than those imposed on market economy exporters of the same products. Taking all rates into consideration (including those calculated for individual companies, weighted averages of these rates, and country-wide rates applied to China) the average rate applied to Chinese companies in the 25 cases we examined was about 67 percent—over 20 percentage points higher than the average rate of 44 percent applied to market economy companies. As figure 5 shows, the overall average rates applied against China were higher for 18 of the 25 products in which there were AD orders against both China and at least one market economy.

Figure 5: Differences between Overall Average Duty Rates—China and Market Economies, 1980–2004



Source: GAO AD database.

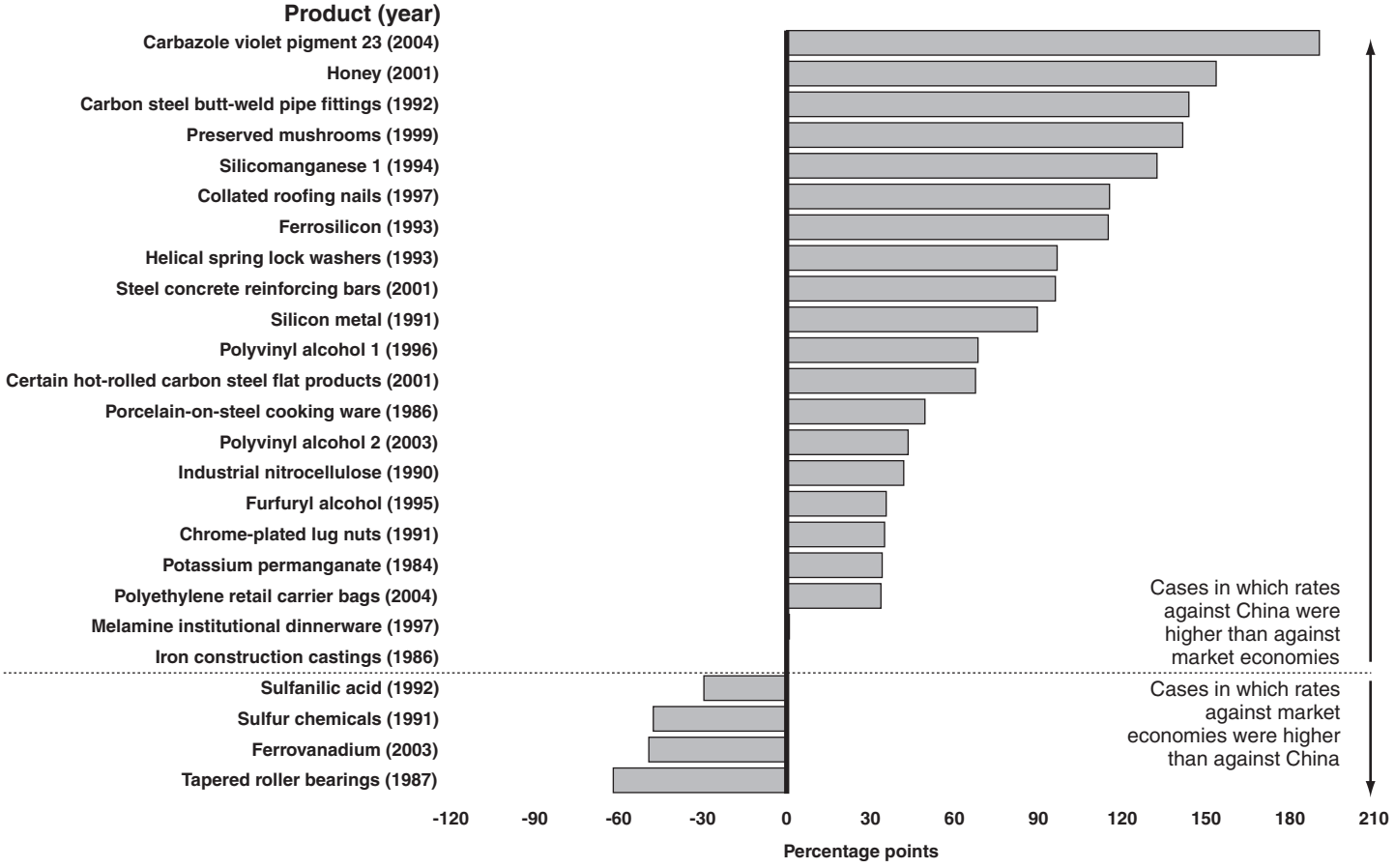
Difference in Average Rates Due Primarily to High China Country-Wide Rates

The difference between average China and average market economy duty rates was due primarily to the fact that the NME country-wide duty rates applied to China were substantially higher than the comparable all-others duty rates applied against market economy countries. In contrast, the individually determined duty rates assigned to Chinese companies in these cases were not substantially different, on average, from the individually determined rates assigned to market economy companies.

Country-Wide Duty Rates Substantially Higher Than Market Economy All-Others Rates

On average, the country-wide rates applied to China in these 25 cases were substantially higher than the comparable all-others rates applied to market economy countries. The country-wide duty rates applied against China averaged about 98 percent—over 60 percentage points higher than the average 37 percent all-others duty rate applied to market economy exporters of the same products. Figure 6 shows that the China country-wide rate was higher than the market economy all-others rate in 21 of 25 cases. As explained below, this difference was due largely to the use of different methodologies to calculate country-wide and all-others rates.

Figure 6: Differences between China Country-Wide and Market Economy All-Others Duty Rates, 1980–2004



Source: GAO AD database.

Note: In several cases, Commerce issued orders against several market economy countries, and we calculated an average all-others rate for all of the affected market economy countries.

Country-wide rates were nearly always equal to or higher than the highest individually determined rate applied to any Chinese company, due to application of adverse inferences.[29] According to Commerce, NME country governments themselves have never provided the information that Commerce needs to establish an appropriate country-wide duty rate. In addition, Commerce officials stated that, in most cases, participating NME companies have accounted for only a portion of known exports to the U.S. market from their country, indicating that others had not come forward. In most cases, therefore, Commerce has used adverse inferences to determine country-wide rates. For example, in its investigation of carbazole violet pigment, Commerce assigned three fully investigated Chinese companies individually determined rates of about 6, 27, and 45 percent. However, since other known Chinese producers did not respond to Commerce's request for information, Commerce used adverse inferences to determine that all other Chinese producers should be subject to an NME country-wide rate of about 218 percent.[30]

In contrast, the comparable market economy all-others rates were lower than the highest individual company rates assigned in any given case (if more than one other individual rate was assigned).[31] This is because, as discussed earlier, Commerce generally calculates all-others rates by averaging individually determined rates—excluding those derived entirely through application of facts available and those that are de minimis or zero.

[29]This was not the case in two of the 25 cases that we examined in detail. In these cases, Commerce calculated individual rates for two Chinese companies and, since these companies represented all known exports of the subject products to the United States, calculated a weighted average of these two rates. See, for example, *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 Fed. Reg. 22544 (May 8, 1995). In addition, in 3 of the other 43 orders against China Commerce calculated a weighted average of individual rates rather than a country-wide rate.

[30]See *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 Fed. Reg. 67304 (Nov. 17, 2004). In some cases, Commerce has set a country-wide rate equivalent to the duty rate that it calculated for one fully investigated company. Appendix II provides more information on these cases.

[31]In certain cases, Commerce has used facts-available-based individual company rates to establish all-others rates. 19 U.S.C. §1673d(c)(5)(B) provides that if all of the individual rates in a case were determined through application of facts available (or are zero or de minimis) then Commerce may use "any reasonable method" to establish the all-others rate.

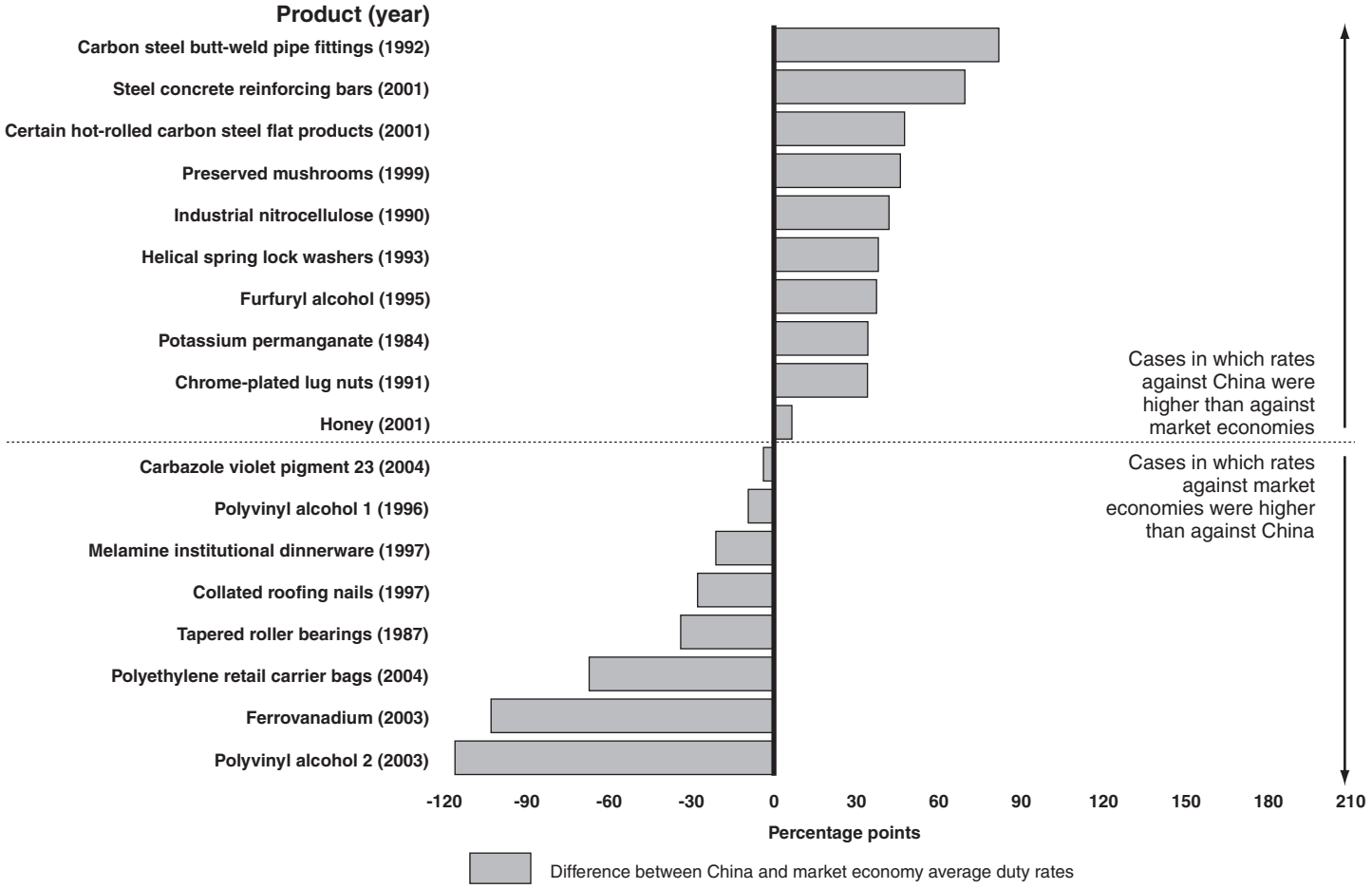
With regard to carbazole violet pigment, for example, Commerce investigated not only China but also India. Commerce assigned two fully investigated Indian companies rates of about 10 and 50 percent and weight-averaged these rates to determine that shipments from all other Indian producers should be subject to a duty rate of about 27 percent.

Individual Company Rates in China and Market Economy Countries Not Substantially Different on Average

On average, there was little difference between the individually determined rates applied to companies from China and those applied to market economy companies. The average individually determined rate applied to Chinese companies in these cases was 53 percent—a little less than the average rate of 55 percent applied to market economy companies.[32] The median rate for Chinese companies was 42 percent—the same as the median rate for market economy companies. Figure 7 displays the average individual company rates assigned to Chinese and market economy companies in the 18 cases in which Commerce assigned individual rates to both. As the figure shows, the rates assigned to Chinese companies were higher than the market economy rates in ten of these cases and lower in the other eight.

[32]These averages are based on a subset of the 25 products in which individual company rates were calculated for both China and at least one market economy. We found 18 products in which this was the case. However, the average duty rates for individual companies from China and market economies are still similar for the full set of 25 products—the average duty rate for individual Chinese companies was 52 percent compared with 48 percent for market economy companies.

Figure 7: Differences between Average Individual Company Duty Rates—China and Market Economy Countries, 1980–2004



Source: GAO AD database.

Our statistical analyses provided additional support for the importance of the country-wide rates in accounting for the overall difference between the duty rates applied to China and to market economy countries. Using multivariate regression analysis, we found that a number of variables, such as the type of product involved, accounted for some of the overall variation in duty rates. However, after accounting for the China country-wide rates there was no statistically significant difference between the duty rates applied to China and those applied to market economy countries. As explained in more detail in appendix III, we found essentially the same

results when we expanded our analyses to include data on AD actions against NMEs other than China.[33]

Ceasing to Apply NME Methodology Would Have Mixed Results

In certain circumstances, Commerce may stop using its NME methodology in China cases—and thus begin applying its market economy methodology to determine AD duty rates against that country. Such a step would lead to important changes in the methods that Commerce employs to determine China AD duty rates and in the duty orders resulting from these proceedings. These changes would have mixed results. Eliminating country-wide duty rates would likely reduce duty levels for Chinese companies that are not assigned individually determined rates. Individually determined rates would likely diverge into two distinct groups, with companies that do not cooperate in Commerce investigations receiving rates that are substantially higher than those assigned to companies that do cooperate. The impact of applying Chinese price information to calculate the normal value of Chinese products would likely vary by industry. In any case, rates would continue to vary widely based on the circumstances of each case. While trade data that would permit analysis of the potential trade impact of these changes is not available, it appears that the trade significance of country-wide duty rates is declining.

Commerce May Stop Applying NME Methodology to China in Certain Circumstances

Commerce has administrative authority to reclassify China and other NME countries as market economies or individual NME country industries as market-oriented in character. Such reclassifications would end Commerce's authority to apply its NME methodology to such countries or industries. Also, China's WTO accession agreement specifies that members may apply third-country information to calculate AD duty rates against that country, but this provision expires in 2016.

[33]To determine whether our results held for all NMEs, we collected and performed regression analyses including data on all AD actions from 1980 through 2004 in which Commerce applied duties to both a nonmarket economy other than China—such as Ukraine—and at least one market economy country. This increased the number of products we analyzed from 25 to 31.

Commerce Has Administrative Authority to Change China's NME Status

Commerce has the authority to reclassify China as a market economy country, in whole or in part. As we explained in more detail in a prior report,[34] U.S. trade law authorizes Commerce to determine whether countries should be accorded NME or market economy status and specifies a number of criteria for Commerce to apply in making such determinations.[35] Countries classified as NMEs may ask for a review of their status at any time.[36] China has actively sought market economy status among its trading partners, and a number of them have designated China as a market economy. However, Commerce informed us that Chinese officials have not yet officially requested a determination as to whether their country merits reclassification under the criteria specified in U.S. law. In April 2004, the United States and China established a Structural Issues Working Group under the auspices of the U.S.-China Joint Commission on Commerce and Trade. This group is examining structural and operational issues related to China's economy that may give rise to bilateral trade frictions, including issues related to China's desire to be classified as a market economy.[37]

Commerce also has the authority to designate individual NME industries as market oriented in character, but has denied all such requests to date. Commerce determined in a 1992 case against China that, short of finding that an entire country merits designation as a market economy, it could find specific industries within such countries to be market oriented in character.[38] Commerce officials noted that on several occasions Chinese industries responding to antidumping duty petitions have requested

[34]GAO-05-474, pages 10-15.

[35]19 U.S.C. § 1677(18). The criteria include the extent to which the country's currency is freely convertible and the extent to which wage rates are determined by free labor-management bargaining.

[36]Since 1993, Commerce has reclassified Russia and nine other formerly communist countries as market economies.

[37]According to Commerce, the working group has held two meetings—in July 2004 and May 2005. The United States and China established the Joint Commission in 1983 to serve as a forum for high-level dialogue on bilateral trade issues.

[38]For details, see *Sulfanilic Acid from the Peoples Republic of China*, 57 Fed. Reg. 9409 (Mar. 18, 1992). Commerce's criteria for designation as a market-oriented industry are (a) virtually no government involvement in setting prices or amounts to be produced, (b) industry characterized by private or collective (not state) ownership, and (3) market-determined prices for all significant inputs whether material or nonmaterial (e.g., labor and overhead).

designation as market-oriented industries. To date, Commerce has denied such requests—primarily on the grounds that the Chinese companies in question submitted information that was insufficient or was provided too late in Commerce's process to allow an informed decision.

China's WTO Commitment Allowing the Use of Third-Country Information Expires in 2016

When joining the WTO, China agreed that other WTO members could use third-country information to calculate normal values in antidumping actions against Chinese companies. Specifically, China's WTO accession agreement provides that in determining price comparability in antidumping investigations WTO members may use "a methodology that is not based on a strict comparison with domestic prices or costs in China."[39] However, the accession agreement also specifies that this provision will expire 15 years after the date of the agreement—that is, by the end of 2016.[40]

After 2016, the ability of WTO members to continue using third-country information in AD calculations involving China would be governed by generally applicable WTO rules, according to officials at the Office of the U.S. Trade Representative. These rules recognize that when dumping investigations involve products from a country that "has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the state," importing country authorities may have difficulty making the price comparisons through which AD duty rates are normally established. In such situations, importing countries may "find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate."[41] WTO rules do not provide any specific guidance about how this provision should be implemented; such decisions appear to be left up to individual members.

[39]WTO Protocol on the Accession of the People's Republic of China, Art. 15(a).

[40]WTO Protocol on the Accession of the People's Republic of China, Art. 15(d). China acceded to the WTO in December, 2001. The protocol also specifies that countries determining that market economy conditions prevail in China as a whole or in individual Chinese industries will cease applying third-country information in AD duty investigations against the country as a whole or against such industries. This provision is similar to U.S. trade law.

[41]The General Agreement on Tariffs and Trade, Annex I, Ad Art. VI, para. 1.2.

Transition to Market Economy Methodology Would Bring Significant Procedural Changes

Ending application of the NME methodology to China would bring two significant procedural changes in AD duty investigations against Chinese products. First, such a step would eliminate NME country-wide duty rates from China AD orders. Commerce would instead assign an individually determined rate to every relevant Chinese producer or exporter. If the number of companies involved were too great to allow full investigation of all relevant companies, Commerce would apply an all-others rate—a weighted average of the individually determined rates to all other Chinese companies (excluding those rates based entirely on facts available or that are de minimis or zero). However, Commerce would retain its authority to use facts available to determine the rates that it applies to individual Chinese companies. Second, transition to the market economy methodology would end Commerce's use of surrogate country information to calculate the normal value of Chinese products. Application of the market economy methodology would generally require Commerce to set the normal value of Chinese products equal to their sales price in China. If the product were not sold in China, Commerce could refer to prices charged for the product in another export market or construct the product's normal value, or it could continue to construct the product's normal value—using factor prices from the Chinese companies under investigation rather than from surrogate countries.

Eliminating Country-Wide Rates Would Likely Reduce Duty Levels for Companies Not Assigned Individually Determined Rates

The elimination of country-wide duty rates against China would likely reduce the duty rates applied to some Chinese companies. If Commerce applied its market economy approach to China, duty rates for companies not receiving individually determined rates would, in most cases, no longer be determined by applying facts available. Rather, Commerce would, for the most part, determine these rates by averaging the rates applied to fully investigated Chinese companies, with some exclusions. The default rate for uninvestigated Chinese companies would move, in most cases, from being the highest rate found to the average rate found among companies that cooperate in Commerce investigations.

Though not predictive, available evidence suggests that the all-others rates that Commerce would apply to China under the market economy methodology would be significantly lower than the country-wide rates currently applied to that country. As already shown, China country-wide rates have generally been significantly higher than the all-others rates that Commerce has assigned to market economy sources of the same products. As shown in table 2, the average country-wide rate for the 25 cases in which

Commerce assigned duties to both China and one or more market economies was 98 percent, while the average market economy all-others rate was 37 percent. The average rate assigned to individual Chinese companies was 53 percent, and Commerce calculates all-others rates by weight averaging individually determined rates, excluding those that are derived entirely through application of facts available and those that are de minimis or zero.

Table 2: Comparison of China, Market Economy AD Duty Rates, Methodological Changes, and Potential Effects

			Individual rates [b]		
	Overall [a]	**Group [a]**	**All**	**Cooperative**	**Adverse inferences**
Average China (NME) rates	67%	98% (Country-wide)	53%	51%	(Rarely applied)[c]
Average market economy rates	44%	37% (All others)	55%	16%	77%
Change from NME to market economy methodology for China companies	Chinese price information replaces surrogate price information	Country-wide rates eliminated, uninvestigated companies receive all others rate	Separate rates test eliminated		
Potential effect on average China rates	Effect unknown but likely to vary by industry	Rates likely to be significantly lower	Rates likely to fall into two distinct groups	Rates likely to be relatively low for cooperative companies	Rates likely to be relatively high for uncooperative companies

Source: GAO analysis of Commerce data.

[a]Averages based on 25 products with comparable China and market economy cases (1985-2004).

[b]Averages based on subset of 18 products with comparable China and market economy cases in which individual rates were applied. However, averages are nearly identical for full group of 25 products.

[c]Commerce applied adverse inferences only three times, for an average rate of 78 percent.

Individually Determined Rates Would Vary, Depending Upon Cooperation

A simple comparison of the average individually determined duty rates calculated under the NME and market economy methodologies suggests that a change in methodology would not result in any significant overall change in duty rates applied to individual Chinese companies. For the comparable cases, individual AD duty rates for Chinese companies averaged 53 percent and were not substantially different from individual market economy company rates, which averaged 55 percent.

However, a more detailed examination of the data indicates that the impact of a change in methodology on individual Chinese company duty rates would depend on the extent to which Commerce applies adverse inferences to calculate these rates. The rates assigned to individual companies under the market economy methodology fell into two distinct groups, depending on whether the companies cooperated with Commerce investigations. In the 25 cases that we examined in detail, about half of the fully investigated market economy companies cooperated with Commerce. On average, Commerce assigned a duty rate of about 17 percent to these companies.[42] Commerce found the other half of the fully investigated companies uncooperative and, therefore, applied adverse inferences to determine the duty rates to be applied to these companies. On average, Commerce assigned a duty rate of about 77 percent to these uncooperative market economy companies.[43]

Though not predictive, this suggests that a change from the NME methodology for China would result in a significant number of (cooperative) companies receiving relatively low rates, while another significant group of (uncooperative) companies would receive relatively high rates.[44] Our regression analysis confirmed the importance of adverse inferences as a determinant of variation in duty rates. As explained in appendix III, we found that application of adverse inferences tends to increase duty rates by a large margin.

[42]The duty rate reported here (17 percent) differs slightly from the rate reported in table 2 (16 percent) since this statement refers to the full 25 cases and the table refers just to the 18 cases in which individual rates were calculated for both China and at least one market economy.

[43]Companies may decline to cooperate, at least in part, because analysis of their own pricing practices leads them to conclude that cooperation will only result in AD duty rates that are as high, or higher, than those that would be imposed by application of adverse inferences.

[44]While Commerce may apply adverse inferences to calculate individual rates in China cases, it does so infrequently. For example, in the 25 comparable cases Commerce applied adverse influences in only 3 of 50 individual rate determinations for Chinese companies. Commerce officials stated that this may be due to Chinese companies that might otherwise have adverse inferences applied to them declining to participate in the investigation, and thus accepting application of the country-wide rate.

Impact of Applying Chinese Price Information Would Vary By Industry and Is Likely to Decline over Time

The impact of using Chinese price information on China AD duty rates would likely vary from one industry to another under the market economy methodology. Chinese prices are widely viewed as distorted to varying degrees. Where prices for key inputs are artificially low, relying on Chinese price information would produce an artificially low normal value. The result would be an AD duty that is lower than would be obtained by applying surrogate country input prices. Conversely, where Chinese prices are artificially high, AD duty rates may be higher if based on Chinese prices. To the extent that Chinese economic reforms bring Chinese prices more into line with world markets, the impact of abandoning the use of surrogate country information can be expected to decline. At any point in time, however, the probable effect of such a methodological change in an individual industry investigation would depend on the particular facts applying to that industry. The net impact of changing the source of price information on overall China duty rates cannot be estimated with confidence.

Duty Rates Will Continue to Display Great Variation

Our multivariate regression analyses suggest that, regardless of changes in methodology, there will continue to be a great deal of variation among the AD duty rates applied to products from China and other countries. Our analyses showed that application of country-wide duty rates to China largely explained the difference between the overall average duty rates applied to China and to market economy countries. Eliminating these rates would likely have a substantial overall reducing effect on China rates. However, a number of other factors, such as the type of product involved, also helped to account for differences among rates overall, and these factors will continue to have an impact on duty rates, regardless of whether Commerce applies country-wide rates to China. Furthermore, even after taking these factors into account, our analyses still explained only about half of the total variation in duty rates.[45] This means that about half of the

[45]Regression analyses employing variables to account for (1) application of a country-wide rate, (2) whether or not the duty was applied to China or a market economy, (3) the year of application, (4) whether or not Commerce applied adverse inferences, and (5) the type of product involved, taken together, accounted for 50 percent of the variation in duty rates. Appendix III provides more information on these results.

variation in duty rates is attributable either to idiosyncratic factors or to systematic factors that we did not capture in any of our variables.[46]

Trade Significance of Country-Wide Rates Appears to Be Declining

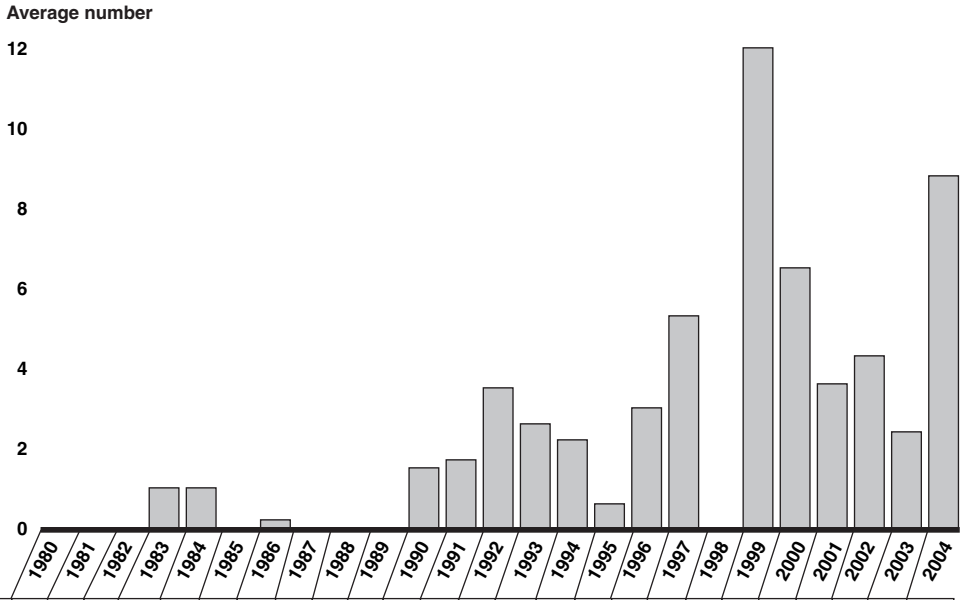
Available evidence suggests that the volume of trade affected by country-wide rates is declining and that, consequently, the trade impact of China duty orders will in the future depend increasingly on the magnitude of the individually determined rates. Commerce officials observed that in the early 1980s it was not unusual for China AD duty investigations to produce only a country-wide rate. However, as the Chinese economy has evolved, individual Chinese companies have become more likely to request—and receive—individually determined or weighted average rates. Since 1980, Commerce has applied country-wide rates alone in only 15 of 68 Chinese AD orders, and the last of these occasions was in 1995. The majority of all Chinese AD orders (about 78 percent), and all such orders issued over the last 10 years, have included at least one individual company rate.

Neither Commerce nor Customs and Border Protection maintain trade data that would permit analysis of changes over time in the relative volume or value of products imported into the United States under the country-wide or various individual duty rates listed in AD duty orders. However, as figure 8 shows, the average number of Chinese companies assigned individually determined rates (or assigned a weighted average rate) has been growing, though there continues to be variation from year to year. For example, in 2004 Commerce placed duties on six Chinese products and in doing so assigned individually determined or weighted average rates to 53 Chinese companies. Anecdotal evidence suggests that along with this rise in company interest in obtaining individual rates has come an increase in the volume of trade covered by these rates. For example, in one recent case Commerce fully investigated and assigned individually determined rates to four companies accounting for more than 90 percent of Chinese exports to the U.S. market. Commerce then assigned a weighted average of these rates to 9 additional companies, leaving only a very small portion of all Chinese exports to be covered by the country-wide rate.[47]

[46]One factor that remains poorly documented and is not reflected in our analysis is the effect that any Chinese government subsidies may have on Chinese export prices. For more discussion on this topic see GAO-05-474, pages 18-19.

[47]For details, see *Notice of Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 Fed. Reg. 20594 (Apr. 16, 2004).

Figure 8: Average Number of Individual Rates per Case per Year, All Orders against China, 1980–2004



	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Average individual companies per case				1.0	1.0		0.2				1.5	1.7	3.5	2.6	2.2	0.6	3.0	5.3		12	6.5	3.6	4.3	2.4	8.8
Total number of cases				2	3		5				2	7	2	3	5	3	2	6		1	4	5	3	9	6

Source: GAO AD database.

Notes: This table includes only the companies assigned individually determined or weighted average rates in initial AD duty orders. Other companies may be assigned such rates in subsequent reviews of these orders. The annual figures are the number of individual companies granted such rates divided by the number of AD duty orders. Commerce did not issue any individual company duty orders against China in 1980, 1981, 1982, 1985, 1987, 1988, 1989, or 1998. In the tapered roller bearings cases, Commerce originally put an order in place in 1987, but amended it in 1990. We use the information from the 1990 amendment in the above graphic.

Concluding Observations

On average, Commerce's application of its NME methodology has produced AD duties on Chinese products that are substantially higher than those applied to the same products from market economy countries. Changing China's NME status—and thus eliminating the application of this methodology—would have a variety of impacts. The duty rates applied to companies that do not receive individual rates would likely decline. Chinese companies that cooperate in Commerce investigations may also receive comparatively low rates. However, the impact of these lower rates on overall China averages may be offset, to some extent, by application of

adverse inferences to assign relatively high rates to individual Chinese companies that do not cooperate in Commerce investigations.

The net effect of these changes cannot be predicted. Such a prediction would require knowledge of price distortions in diverse Chinese industries, changes in these distortions over time, pricing decisions by Chinese companies in reaction to these changes, and decisions by U.S. companies about whether they should seek relief. Nonetheless, while the NME methodology is applied, it appears that the actual trade impact of using this methodology will decline as the portion of total export trade conducted by Chinese companies assigned individual rates increases, and as the country-wide rates that largely account for the comparatively high average rates applied to China decline in importance.

Agency Comments and Our Evaluation

The Department of Commerce provided written comments on a draft of this report. These comments are reprinted in appendix IV. Overall, Commerce agreed with our findings, observing that the report provided timely and helpful information on the NME methodology and its application to China.

Commerce identified a small number of apparent errors in our database. We re-examined our data, making corrections when necessary, and updated our analyses; these corrections did not have any significant impact on our findings. Commerce also made a number of technical comments, focusing primarily on our description of its NME methodology. We took these comments into consideration and made changes throughout the report to insure its clarity and accuracy. We also made a number of technical corrections suggested by the Department of Homeland Security and the Office of the U.S. Trade Representative.

We are sending copies of this report to the Secretaries of Commerce and Homeland Security, the International Trade Commission, the U. S. Trade Representative, appropriate congressional committees, and other interested parties. We also will make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or any of your staff have any questions about this report, please contact me at 202-512-4347 or yagerl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.

Loren Yager
Director, International Affairs and Trade

Scope and Methodology

To address our objectives, we examined and summarized applicable U.S. laws and regulations, as well as relevant World Trade Organization (WTO) agreements. These included the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*—commonly known as the "antidumping agreement"—and China's WTO accession agreement. We conducted a literature search and reviewed relevant scholarly and legal analyses and Department of Commerce (Commerce) determinations.[1] In order to corroborate and broaden our understanding, we consulted with trade and legal policy experts from the U.S. government, private sector trade associations, consulting firms, academic institutions, law firms with broad experience in trade actions involving China, as well as representatives of the WTO, the government of China, and other governments concerned about Chinese trade practices, including the European Union and Canada.

In order to analyze the application of antidumping (AD) duties to China and compare duty rates applied to China with those applied to market economy countries (our second objective) and to evaluate the potential impact of ceasing to apply the nonmarket economy (NME) methodology to China (our third objective), we collected information from the Department of Commerce and the International Trade Commission, including notices of Commerce determinations appearing in the *Federal Register*. We used this information to construct a database on all U.S. AD investigations from 1980 through 2004. In addition to information on the countries and products involved and the status of each investigation, our database included the duty rates applied upon completion of each new antidumping investigation against China during this period, as well as the duty rates applied against any producers of the same products from other countries. We verified this database to the official sources and found the data to be sufficiently reliable for the purposes of this report.

Our analyses focused on the 68 cases during this time period wherein Commerce imposed AD duties on Chinese products, and especially on the subset of 25 cases in which Commerce imposed duties against a similar

[1]Commerce provides internet access to all of its determinations since July, 1995, and to detailed information on its antidumping procedures at http://ia.ita.doc.gov/ia-decisions-and-data.html.

product from one or more market economy countries.[2] Specifically, the 25 cases included all market economy cases that had the same product name and were initiated within 1 year of an AD investigation against China. In all, we assembled data on 303 company-specific, weighted average, and country-wide duty rate determinations on Chinese products, and an additional 168 duty rate determinations on market economy products. Appendix II provides additional analyses of this data.

As part of our examination, we also performed multivariate regression analyses to determine the extent to which duty rate variations could be attributed to differences between China and these other countries, or to other factors, such as the type of product involved. Appendix III provides more information on these analyses and their results.

In addition to comparing China and market economies, we also collected information on duty rates that Commerce applied to products from other NME countries at the same time as it applied them to similar products from either China or a market economy. Appendix III provides information on the results of our analyses of this data.

We did not collect or analyze information on duty rates applied against market economy countries in cases where no parallel action was taken against China or any other NME country. Therefore, our analyses of market economy duty rates are specific to the sample of market economy orders in which a corresponding NME order was also in effect. Inclusion of other market economy product duty rates may have produced different results. However, we determined that the appropriate comparison between China and market economy countries was between the 25 similar products. We found through our regression analyses (discussed in app. III) that the product being investigated does help explain the variation among rates and it is, therefore, important to make an appropriate comparison. In addition, duty rates for the 43 remaining orders against China alone followed a similar pattern as those contained in the 25 cases where we drew comparisons with market economy duty rates. The average country-wide rate for these 43 orders against China was higher than the country-wide rate for the 25 orders (118 percent compared to 98 percent), and the average individual rate was lower (41 percent compared to 53 percent) for

[2]The 68 cases resulted in 72 individual orders since the hand tools case included four separate types of hand tools and the ceiling and oscillating fans case involved orders against both ceiling and oscillating fans.

the 18 orders with individual rates. These results were consistent with our findings that the country-wide rates tend to be significantly higher than individual rates.

In order to group specific products subject to AD orders into groups of similar products, we used the Harmonized Tariff Schedule (HTS) classifications for each product, as reported in the *Federal Register* announcement of the order. The HTS is the official U.S. classification of goods imported into the United States and includes 99 chapters covering all goods imports. In addition, the HTS chapters are grouped into larger sections that cover broad types of related products. The categories we used in this report are based on these HTS sections and chapters. Specifically, the category "Chemicals, plastics, pharmaceuticals" comprises HTS chapters 28 through 40 (which includes all chapters under the section "Chemical or allied industries"). The category "Steel, other metals" comprises HTS chapters 72 through 81 (which includes most chapters under the section "Base metals and articles of base metals" except those chapters covering articles of base metals). The category "Agricultural products" comprises HTS chapters 1 through 24 (which includes all chapters under the sections "Live animals; animal products," "Vegetable products," "Animal or vegetable fats, etc.," and "Prepared foodstuffs, beverages, spirits, and vinegar; tobacco and manufactured tobacco substitutes"). The category "Other products" comprises all other HTS chapters.

We conducted our work from June 2005 through December 2005 in accordance with generally accepted government auditing standards.

Additional Information on Duty Rates Applied to China and Market Economy Countries

This appendix provides additional information on the antidumping (AD) duty rate data that we assembled for this report and provides some additional analytical information, including brief discussions of variation in the duty rates applied to China over time, Department of Commerce (Commerce) determinations on whether Chinese companies should be considered eligible for individual rates, and duty rates applied to selected market economy countries.

Duty Rates Imposed on China

The overall average duty rate for all 68 orders against China from 1980 through 2004 was 65 percent. This was the result of 72 country-wide rates (on 68 products) with an average duty of 111 percent and 158 individual company rates with an average duty of 44 percent.[1] These rates ranged from zero to about 384 percent (see table 3). In our analysis, we identified 25 orders against China in which there was also an order against a market economy country on the same product put in place within 1 year from the order against China. Table 3 shows overall average duty rates from the 25 orders against China that were matched to market economy cases and the 43 orders in which no market economy order was identified. Table 4 at the end of this appendix provides information on each of the 68 orders against China, and table 5 provides comparative information for each of the 25 cases in which duties were also applied against market economy producers.

[1]There were more than 68 country-wide rates because in two cases Commerce calculated more than 1 country-wide rate for China. For hand tools (1991), Commerce calculated 4 separate country-wide rates based on the four different types of hand tools under investigation. Similarly, for oscillating and ceiling fans (1991), Commerce issued 2 separate country-wide rates—1 for oscillating fans and 1 for ceiling fans. Technically, these two cases resulted in six separate orders, although we count them as two orders. Since our analysis includes all of the rates in these six orders, the results are not affected either way.

Table 3: Summary Data on China AD Duty Orders, 1980–2004

	Type of rate	Number of rates	Mean (%)	Minimum (%)	Maximum (%)
25 orders matched to similar market economy orders	Individual company rates	50	52	0	162
	Country-wide rate	25	98	3	218
	Total	**75**	**67**	**0**	**218**
43 orders not matched to similar market economy orders	Individual company rates	108	41	0	292
	Country-wide rate	47	118	1	384
	Total	**155**	**64**	**0**	**384**
All 68 orders	Individual company rates	158	44	0	292
	Country-wide rate	72	111	1	384
	Grand total	**230**	**65**	**0**	**384**

Source: GAO AD database.

Note: The overall average individual duty rates listed in this table for the "matching" orders are for the 25 products with both China and market economy orders. However, only 18 of these products had individual rates imposed on both China and at least one other market economy. We use these 18 products for our comparison of individual company duty rates imposed on China and market economies, rather than the 25 products, in the rest of the report. The average individual company duty rate imposed on China for these 18 products is 53 percent, rather than 52 percent.

About 78 percent (53 AD orders) of the 68 AD orders included not only country-wide rates but also individually calculated rates for at least one Chinese company. Of these, about 54 percent (37 orders) included company-specific rates that were lower than the country-wide rates imposed in the same cases. With regard to nonmalleable cast iron pipe fittings, for example, two Chinese companies submitted detailed information and met Commerce's criteria for assignment of individually determined rates. Other Chinese pipe fitting companies, however, did not provide any information. Commerce assigned the two cooperating companies duty rates of between 6 and 8 percent—a fraction of the 76 percent country-wide duty rate applied in this case.[2]

Only 15 orders issued against China during this period included just a country-wide rate. Most of these orders date from the period before 1991 when Commerce had not yet begun applying its separate rates test. However, from 1991 through 1995 Commerce issued six orders that contained only a country-wide rate. In most of these cases, Chinese

[2]*Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 68 Fed. Reg. 7765 (Feb. 18, 2003).

companies failed to respond to Commerce requests for information. For example, in one case Commerce solicited information through both the Chinese government and the relevant Chinese industry association. However, the industry association responded that no Chinese producer or exporter wanted to participate in Commerce's investigation. Commerce, therefore, used facts available to establish a country-wide duty rate of about 156 percent.[3]

In 12 of the 68 orders, all the individual rates issued were equal to the country-wide rate. In some cases, Commerce specified an individual rate for one company and then used this rate as "facts available" to establish a country-wide duty rate at the same level.[4] For example, in its investigation of refined brown aluminum oxide from China, Commerce requested information from the government of China and more than 20 Chinese companies. Only one of these companies responded. Commerce found that this company qualified for its own duty rate and determined that this rate should be about 135 percent. Commerce determined that the failure of the other companies to provide requested information justified application of an adverse inference to determine the country-wide rate. Since the rate established for the lone cooperating company was higher than any of the rates suggested in the petition requesting imposition of duties on this product, Commerce set the country-wide rate equal to the rate applied to the one cooperating company—135 percent.[5]

[3]*Notice of Final Determination of Sales at Less than Fair Value: Glycine from the People's Republic of China*, 60 Fed. Reg. 5620 (Jan. 30, 1995). In two cases, Chinese companies did provide information but nonetheless did not receive an individually determined rate. In the first case, Chinese companies did not request consideration for an individual rate. In the second, Commerce denied eligibility on the grounds that the company in question was a state-owned enterprise. See *Notice of Final Determination of Sales at Less than Fair Value: Pure Magnesium and Alloy Magnesium from the People's Republic of China*, 60 Fed. Reg. 16437 (Mar. 30, 1995) and *Final Determination of Sales at Less than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the People's Republic of China*, 58 Fed. Reg. 37908 (July 14, 1993).

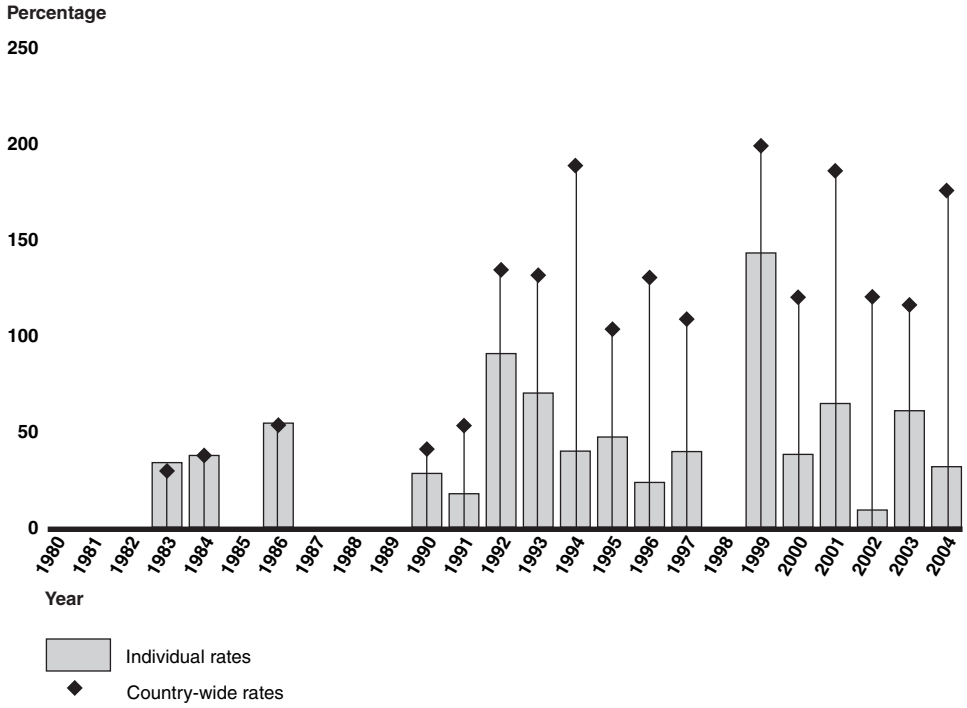
[4]Commerce officials clarified they have recently stopped including in duty orders the names of individual companies that have been assigned the country-wide rate because they have failed the separate rates test. However, Commerce still lists individual companies that pass the separate rates test but for other reasons receive an adverse inference-based rate—which may be the same as the country-wide rate.

[5]*Notice of Final Determination of Sales at Less than Fair Value: Refined Brown Aluminum Oxide from the People's Republic of China*, 68 Fed. Reg. 55589 (Sept. 26, 2003). No other countries were included in this investigation.

Duty Rates against China Have Fluctuated over Time

We found that there was a slight tendency for duty rates applied against Chinese products to rise over the period of our analysis, as well as to fluctuate over time. As figure 9 shows, individual company and country-wide duty rates tended to be larger from 1992-2004 than from 1980-1991. In addition, the individual company rates demonstrate a cyclical pattern over time. In our regression analysis, we found that there was a small positive trend in AD duty rates against China over time that was statistically significant. This result is consistent with research that has shown that overall U.S. AD margins have increased over time.[6]

Figure 9: Average Country-Wide and Individual Rates, All Orders against China, 1980-2004



Source: GAO AD database.

[6]See Bruce Blonigen, "Evolving Discretionary Practices of U.S. Antidumping Activity" National Bureau of Economic Research, Working Paper #9625 (April 2003).

Note: Commerce did not issue any new AD duty orders against China in 1980, 1981, 1982, 1985, 1987, 1988, 1989, or 1998. In the tapered roller bearings cases, Commerce put an order in place in 1987 but amended it in 1990. We use 1990 information in the above graphic.

Average Duty Rates on 68 Orders against China and Subset of 25 Orders Matched to Market Economy Orders

Table 4 shows the duty rates on the 68 orders imposed on China between 1980 and 2004. Table 5 then shows the duty rates on the 25 orders imposed on China in which we also found matching orders imposed on market economies.

Table 4: Average Duty Rates for 68 Orders against China, 1980–2004

			Individual company rates			
Year and product	Average (all rates) (%)	Average country-wide rate (%)	Number of rates	Average (%)	Minimum (%)	Maximum (%)
(1983) Cotton shop towels	35	36	2	34	30	37
(1983) Greig polyester cotton print cloth	22	22				
(1984) Barium chloride	15	15	1	15	15	15
(1984) Chloropicrin	58	58	1	58	58	58
(1984) Potassium permanganate	40	40	1	40	40	40
(1986) Iron construction castings	12	12				
(1986) Paint brushes	127	127				
(1986) Porcelain-on-steel cookware	67	67				
(1986) Steel wire nails	6	6				
(1986) Wax candles	54	54	1	54	54	54
(1990) Industrial nitrocellulose	78	78	1	78	78	78
(1990) Tapered roller bearings	3	3	2	3	1	5
(1991) Chrome-plated lug nuts	42	42	1	42	42	42
(1991) Hand tools	36	36				
(1991) Oscillating fans and ceiling fans	1	1	8	1	0	2
(1991) Silicon metal	139	139				
(1991) Sparklers	59	76	3	54	2	94
(1991) Sulfur chemicals	28	28				
(1991) Tungsten ore concentrates	151	151				
(1992) Carbon steel butt-weld pipe fittings	114	183	6	102	35	155
(1992) Sulfanilic acid	52	85	1	19	19	19

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Year and product	Average (all rates) (%)	Average country-wide rate (%)	Individual company rates			
			Number of rates	Average (%)	Minimum (%)	Maximum (%)
(1993) Compact ductile iron waterworks	127	127				
(1993) Ferrosilicon	138	138				
(1993) Helical spring lock washers	89	129	2	70	70	70
(1994) Cased pencils	14	45	4	6	0	17
(1994) Garlic	377	377				
(1994) Paper clips	73	127	3	55	46	61
(1994) Sebacic acid	98	243	4	61	44	85
(1994) Silicomanganese	150	150				
(1995) Furfuryl alcohol	46	45	2	47	44	50
(1995) Glycine	156	156				
(1995) Pure magnesium 1	108	108				
(1996) Manganese metal	33	143	4	6	1	12
(1996) Polyvinyl alcohol 1	78	117	2	58	0	117
(1997) Brake rotors	10	43	6	5	0	16
(1997) Collated roofing nails	39	118	2	0	0	0
(1997) Coumarin	87	161	2	51	31	70
(1997) Crawfish	133	202	5	120	92	157
(1997) Melamine dinnerware	2	7	4	1	0	3
(1997) Persulfates	55	119	3	34	32	35
(1999) Mushrooms	155	199	4	144	121	162
(2000) Apple juice	19	52	7	14	0	28
(2000) Bulk aspirin	57	144	2	14	11	17
(2000) Creatine	47	154	6	30	0	58
(2000) Synthetic indigo	96	130	2	80	80	80
(2001) Certain hot-rolled carbon steel flat products	76	91	4	73	64	91
(2001) Foundry coke products	109	215	4	83	49	106
(2001) Honey	72	184	4	45	26	57
(2001) Pure magnesium 2	165	306	1	25	25	25
(2001) Steel concrete reinforcing bars	133	133	1	133	133	133
(2002) Automotive replacement glass windshields	37	125	3	8	4	12
(2002) Certain folding gift boxes	58	165	2	5	2	9
(2002) Folding metal tables and folding metal chairs	28	71	2	7	0	14
(2003) Barium carbonate	58	81	1	34	34	34

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Year and product	Average (all rates) (%)	Average country-wide rate (%)	Individual company rates			
			Number of rates	Average (%)	Minimum (%)	Maximum (%)
(2003) Certain malleable iron pipe fittings	31	111	4	11	7	16
(2003) Cut to length carbon steel plate	62	129	5	49	17	129
(2003) Ferrovanadium	40	67	1	13	13	13
(2003) Lawn and garden steel fence posts	6	16	3	2	0	7
(2003) Non-malleable cast iron pipe fittings	30	76	2	7	6	7
(2003) Polyvinyl alcohol 2	52	98	1	7	7	7
(2003) Refined brown aluminum oxide	135	135	1	135	135	135
(2003) Saccharin	288	330	3	274	249	292
(2004) Carbazole violet pigment 23	74	218	3	26	6	45
(2004) Certain color television receivers	27	78	5	17	5	26
(2004) Hand trucks	105	384	4	35	26	46
(2004) Ironing tables	99	158	3	80	9	158
(2004) Polyethylene retail carrier bags	27	78	8	21	0	41
(2004) Tetrahydrofurfuryl alcohol	137	137	1	137	137	137
Total	**65**	**111**	**158**	**44**	**0**	**292**

Source: GAO AD database.

Note: The average (all rates) is calculated as the average of the country-wide rate and each of the individual company rates that Commerce issued in its order.

Table 5: Average Duty Rates for 25 Products with Orders against both China and Market Economies, 1980–2004

				Individual company rates			
Product and year	**Country and number of orders**	**Average (all rates) (%)**	**Average country-wide or all- others rate (%)**	**Number of rates**	**Average (%)**	**Minimum (%)**	**Maximum (%)**
Carbazole violet pigment 23 (2004)	China	74	218	3	26	6	45
	Market economies (1)	29	27	2	30	10	50
Carbon steel butt-weld pipe fittings (1992)	China	114	183	6	102	35	155
	Market economies (1)	25	39	3	21	0	51
Certain hot-rolled carbon steel flat products (2001)	China	76	91	4	73	64	91
	Market economies (7)	24	23	11	25	3	48
Chrome-plated lug nuts (1991)	China	42	42	1	42	42	42
	Market economies (1)	8	7	2	9	6	11
Collated roofing nails (1997)	China	39	118	2	0	0	0
	Market economies (1)	22	3	3	28	3	40
Ferrosilicon (1993)	China	138	138	0			
	Market economies (2)	27	23	4	29	3	89
Ferrovanadium (2003)	China	40	67	1	13	13	13
	Market economies (1)	116	116	2	116	116	116
Furfuryl alcohol (1995)	China	46	45	2	47	44	50
	Market economies (2)	10	10	2	10	8	12
Helical spring lock washers (1993)	China	89	129	2	70	70	70
	Market economies (1)	32	32	3	32	32	32
Honey (2001)	China	72	184	4	45	26	57
	Market economies (1)	36	30	3	38	27	55
Industrial nitrocellulose (1990)	China	78	78	1	78	78	78
	Market economies (6)	37	37	6	37	4	66
Iron construction castings (1986)	China	12	12	0			
	Market economies (3)	11	12	10	11	0	59
Melamine institutional dinnerware (1997)	China	2	7	4	1	0	3
	Market economies (2)	18	6	6	22	0	53
Polyethylene retail carrier bags (2004)	China	27	78	8	21	0	41
	Market economies (2)	81	44	10	88	2	123
Polyvinyl alcohol 1 (1996)	China	78	117	2	58	0	117
	Market economies (2)	63	48	6	68	19	77

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Product and year	Country and number of orders	Average (all rates) (%)	Average country-wide or all- others rate (%)	Individual company rates			
				Number of rates	Average (%)	Minimum (%)	Maximum (%)
Polyvinyl alcohol 2 (2003)	China	52	98	1	7	7	7
	Market economies (2)	103	54	5	123	39	144
Porcelain-on-steel cooking ware (1986)	China	67	67	0			
	Market economies (2)	15	17	8	15	2	57
Potassium permanganate (1984)	China	40	40	1	40	40	40
	Market economies (1)	5	5	1	5	5	5
Preserved mushrooms (1999)	China	155	199	4	144	121	162
	Market economies (3)	86	57	7	98	6	244
Silicomanganese 1 (1994)	China	150	150	0			
	Market economies (1)	41	18	1	65	65	65
Silicon metal (1991)	China	139	139	0			
	Market economies (2)	58	50	3	63	9	93
Steel concrete reinforcing bars (2001)	China	133	133	1	133	133	133
	Market economies (4)	57	37	12	64	17	102
Sulfanilic acid (1992)	China	52	85	1	19	19	19
	Market economies (1)	115	115	0			
Sulfur chemicals (1991)	China	28	28	0			
	Market economies (2)	75	75	2	75	50	100
Tapered roller bearings (1987)	China	3	3	2	3	1	5
	Market economies (3)	54	65	2	36	36	37
Total	**China**	**67**	**98**	**50**	**52**	**0**	**162**
	Market economies (54)	**44**	**37**	**114**	**48**	**0**	**244**

Source: GAO AD database.

Notes:

The average (all rates) is calculated as the average of the country-wide rate and each of the individual company rates that Commerce issued in its order.

The overall average individual duty rates listed in this table are for the 25 products with both China and market economy orders. However, only 18 of these products had individual rates imposed on both China and at least one other market economy. We use these 18 products for our comparison of individual company duty rates imposed on China and market economies, rather than the 25 products, in the rest of the report. The average individual company duty rate imposed on China for these 18 products is 53 percent and for market economies it is 55 percent.

Regression Analysis Results

In order to examine the difference between duty rates applied to China and those applied to market economy countries, we performed multivariate regression analyses on the cases in which the Department of Commerce (Commerce) applied duties to both China and at least one market economy country. These involved 25 different products, affected by 25 duty orders against China, and 54 duty orders against market economies. Multivariate regression analysis makes it possible to examine the simultaneous effect of several different factors on the duty rates and to determine the extent to which these factors, taken together, explain variation in these rates. To determine whether our analytical results for China held true for all nonmarket economy (NME) countries, we also identified six instances in which Commerce applied duties to a nonmarket economy other than China, and at least one market economy country, and reran our analyses using data for all 31 products.

Table 6 shows the results of our multivariate regression analysis of variation in the dependent variable (the antidumping [AD] duty rate) attributable to the following independent variables:

- China (a variable indicating whether the AD duty rate is for China or not)
- the country-wide rate (a variable indicating whether the AD duty rate is a country-wide rate), and
- year (a variable indicating the year in which the duty went into affect).

We also included a constant term. The regression involved 25 products covered by 25 orders against China and 54 orders against market economies and included a total of 243 duty rates (the dependent variable) from these 79 orders.

The results show that the variable for China as the target country had a coefficient of 3.002 percent, indicating that duty rates against China tended to be about 3 percentage points higher than those against market economies, on average. However, this coefficient is not statistically significant, meaning that there was no statistically significant difference between the rates assigned to China and market economy countries, when the other factors in the regression are included. The coefficient for the country-wide rate, on the other hand, shows that there is a 52 percentage point difference between country-wide rates against China and other rates. This result is statistically significant at above the 99 percent level. The

variable for the year of the order is also statistically significant, but it has a small coefficient.[1] The adjusted R-square measure shows that about 15 percent of the overall variation in duty rates is explained by the independent variables included here.

Table 6: Results of Multivariate Regression Analysis of Duty Rates on Explanatory Variables for China, Country-Wide Rates, and Year

Dependent variable = AD duty rate

Independent variables	Unstandardized coefficients (B)	Standard error	Standardized coefficients (Beta)	t-statistic	Significance of t-statistic
China	3.002	7.511	.028	.400	.690
Year	2.095	.497	.252	4.218	.000
Country-wide rate	52.050	11.398	.316	4.567	.000

Source: GAO analysis of Commerce data.

Note: R-square = 0.164; Adjusted R-square = 0.154; Observations = 243.

We then included additional variables for product groups, such as agriculture and steel, and, in separate regressions, individual product variables for each type of product. The additional variables generally improved the overall "fit" of the regression; the adjusted R-square measure with the individual product variables included showed that the regression explained between 24 and 31 percent of the overall variation in duty rates across the sample compared with 15 percent in the regression above. Also, certain types of products, such as agriculture products, tended to have higher duty rates relative to other types.

Table 7 shows the regression results when individual product variables are included. Once again the coefficient for China is insignificant, while the coefficient for the country-wide rate is significant at the 99 percent level. Some coefficients for individual products are significant (e.g., carbon steel butt-weld pipe fittings), but many are not. The overall adjusted R-square measure shows that this regression model explains about 31 percent of total variation in the duty rates.

[1]In other analyses in which we added variables for the types of product involved, the variable "year" becomes insignificant. Overall, we found mixed evidence of whether there is a positive trend over time in duty rates for this group of cases. (See appendix II.)

Table 7: Results of Multivariate Regression Analysis of Duty Rates on Explanatory Variables for China, Country-Wide Rates, and Individual Products

Dependent variable = AD duty rate

Independent variables	Unstandardized coefficients (B)	Standard error	Standardized coefficients (Beta)	t-statistic	Significance of t-statistic
China	2.055	7.302	.019	.281	.779
Year	-6.022	20.636	-.726	-.292	.771
Country-wide rate	50.928	10.609	.309	4.801	.000
Carbazole violet pigment 23 (2004)	113.617	269.338	.380	.422	.674
Carbon steel butt-weld pipe fittings (1992)	70.893	30.579	.294	2.318	.021
Certain hot-rolled carbon steel flat products (2001)	82.479	207.275	.482	.398	.691
Collated roofing nails (1997)	46.480	126.162	.155	.368	.713
Ferrosilicon (1993)	40.090	58.403	.134	.686	.493
Ferrovanadium (2003)	136.023	249.034	.386	.546	.585
Furfuryl alcohol (1995)	30.585	86.044	.102	.355	.723
Helical spring lock washers (1993)	49.701	47.927	.166	1.037	.301
Honey (2001)	98.896	207.608	.373	.476	.634
Industrial nitrocellulose (1990)	21.805	30.079	.101	.725	.469
Iron construction castings (1986)	-33.870	105.554	-.158	-.321	.749
Melamine institutional dinnerware (1997)	32.449	125.663	.146	.258	.796
Polyethylene retail carrier bags (2004)	122.291	268.962	.686	.455	.650
Polyvinyl alcohol 1 (1996)	81.135	105.532	.337	.769	.443
Polyvinyl alcohol 2 (2003)	147.492	248.661	.556	.593	.554
Porcelain-on-steel cooking ware (1986)	-25.756	105.698	-.107	-.244	.808
Potassium permanganate (1984)	-44.131	147.104	-.112	-.300	.764
Preserved mushrooms (1999)	141.530	163.666	.680	.865	.388
Silicomanganese 1 (1994)	67.142	69.110	.148	.972	.332
Silicon metal (1991)	51.868	25.308	.161	2.049	.042
Steel concrete reinforcing bars (2001)	111.738	207.339	.584	.539	.591
Sulfanilic acid (1992)	51.956	41.151	.115	1.263	.208
Sulfur chemicals (1991)	44.355	26.424	.126	1.679	.095
Tapered roller bearings (1987)	-7.471	85.958	-.027	-.087	.931

Source: GAO analysis of Commerce data.

Note: R-square = 0.386; Adjusted R-square = 0.309; Observations = 243.

In order to examine the effect of applying adverse inferences and facts available (other than adverse inferences) on the duty rates, we added

additional variables indicating when Commerce used these approaches. The results show that application of adverse inferences is a significant variable and has a large effect on the duty rates, but that application of facts available (other than adverse inferences) is not. When adverse inferences are introduced, this results in the country-wide rate variable becoming insignificant (see table 8). However, this is likely due to the fact that the adverse inferences variable is highly correlated with the country-wide rate. Therefore, it is not surprising that the country-wide rate is no longer significant since the adverse inferences variable is already accounting for much of the variation. In addition, the variable for China once again becomes significant. As we discuss in the body of this report, Commerce uses adverse inferences in very few determinations for Chinese companies granted their own rates. Adverse inferences were applied in making only 3 out of the 50 individual determinations used in this analysis. However, Commerce used adverse inferences in nearly half of its determinations against individual market economy companies.

Since adverse inferences are already factored into this model, as is the country-wide rate, the remaining differences accounted for by the China variable in table 3 are between individual (noncountry-wide) Chinese rates and individual market economy rates in which adverse inferences are not used. Table 8 shows that there is a statistically significant 27 percentage point difference between these rates. However, because there are methodological differences between the NME and market economy methodologies for individual companies, it is not clear how often adverse inferences would be used against individual Chinese companies should they move to a market economy methodology. In other words, we cannot predict the extent to which, under a market economy methodology, individual Chinese companies would cooperate with Commerce or Commerce would find it necessary to use adverse inferences in its determinations against Chinese companies. It is possible that some Chinese companies that currently have an individually determined rate under the NME methodology would face adverse inferences under a market economy methodology, whereas others would not. This could produce a result similar to the market economy cases we have examined in which the overall average (for example, 55 percent) is the result of some companies receiving comparatively high duty rates (e.g., 77 percent) when adverse inferences are used and others receiving comparatively low rates (e.g., 16 percent) when adverse inferences are not used (see table 2). In any case, these results show that there is a remaining difference between these two groups after accounting for the use of adverse inferences and the country-wide rate.

Table 8: Results of Multivariate Regression Analysis of Duty Rates on Explanatory Variables for China, Country-Wide Rates, Adverse Inferences, Other Facts Available, and Individual Products

Dependent variable = AD duty rate

Independent variables	Unstandardized coefficients (B)	Standard error	Standardized coefficients (Beta)	t-statistic	Significance of t-statistic
China	27.342	6.856	.252	3.988	.000
Year	4.831	17.572	.582	.275	.784
Country-wide rate	9.910	10.064	.060	.985	.326
Adverse inferences	60.196	6.845	.587	8.794	.000
Facts available	10.135	8.495	.069	1.193	.234
Carbazole violet pigment 23 (2004)	-40.728	229.493	-.136	-.177	.859
Carbon steel butt-weld pipe fittings (1992)	39.749	26.189	.165	1.518	.131
Certain hot-rolled carbon steel flat products (2001)	-57.704	176.678	-.337	-.327	.744
Collated roofing nails (1997)	-45.478	107.679	-.152	-.422	.673
Ferrosilicon (1993)	-3.176	49.788	-.011	-.064	.949
Ferrovanadium (2003)	-40.348	212.436	-.114	-.190	.850
Furfuryl alcohol (1995)	-13.868	73.344	-.046	-.189	.850
Helical spring lock washers (1993)	-18.938	41.354	-.063	-.458	.647
Honey (2001)	-31.946	176.875	-.121	-.181	.857
Industrial nitrocellulose (1990)	8.668	25.589	.040	.339	.735
Iron construction castings (1986)	25.459	89.838	.118	.283	.777
Melamine institutional dinnerware (1997)	-53.825	107.215	-.242	-.502	.616
Polyethylene retail carrier bags (2004)	-55.280	229.336	-.310	-.241	.810
Polyvinyl alcohol 1 (1996)	-5.196	90.169	-.022	-.058	.954
Polyvinyl alcohol 2 (2003)	-22.256	211.996	-.084	-.105	.916
Porcelain-on-steel cooking ware (1986)	32.037	89.998	.133	.356	.722
Potassium permanganate (1984)	33.392	125.194	.085	.267	.790
Preserved mushrooms (1999)	32.301	139.519	.155	.232	.817
Silicomanganese 1 (1994)	3.633	59.124	.008	.061	.951
Silicon metal (1991)	39.950	22.201	.124	1.799	.073
Steel concrete reinforcing bars (2001)	-41.334	176.900	-.216	-.234	.815
Sulfanilic acid (1992)	-1.893	35.427	-.004	-.053	.957
Sulfur chemicals (1991)	-8.757	23.151	-.025	-.378	.706
Tapered roller bearings (1987)	12.952	73.025	.046	.177	.859

Source: GAO analysis of Commerce data.

Note: R-square = 0.562; Adjusted R-square = 0.502; Observations = 243.

In order to examine whether the above results hold for all NMEs, we ran the same regressions for a larger set of 31 products (compared with the 25 products above) in which we found matching cases between nonmarket economies other than China and market economies. The data set on these 31 products included rates from 128 orders (26 on China, 82 on market economies, and 20 on NMEs other than China) that contained 355 duty rates (dependent variable).

These analyses confirmed our China-market economy only analyses but also showed that other NME countries tend to have duty rates that are statistically higher than market economy rates for this sample of matching cases. (Note that the number of additional products—six—is relatively small.) Controlling for both the NME designation and the country-wide rate, the NME designation itself is a significant variable at the 97 percent level of confidence with a coefficient of 23 percent (the coefficient for China is not statistically significant). The country-wide variable is also significant (99 percent level) and larger with a coefficient of 48 percent. As additional variables are added for individual products, the NME designation continued to be significant along with the country-wide rate variable.

There may be other systematic factors not accounted for in this regression model that would explain some of the variability not accounted for by the variables we included. As shown in table 7, our model accounted for about 50 percent (half) of the variation in rates. Some of this variation may be idiosyncratic and related to differences in individual companies' practices, other may relate to how Commerce has implemented its analysis. However, these unexplained factors do not appear to be systematically related to whether the case involved China or a market economy since the regression analysis already controls for that difference.

Comments from the Department of Commerce

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

DEC 8 2005

Mr. Loren Yager
Director
International Affairs and Trade
U. S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Yager:

Thank you for providing us with your draft report on the potential effects on certain Chinese companies of eliminating the non-market economy (NME) antidumping duty (AD) calculation methodology. As there has been increased concern with China trade practices in general, as well as increased attention paid to Commerce's statutorily based NME methodology, we find your report both timely and helpful. This study demonstrates a strong effort by the GAO staff to understand Commerce's application of the NME methodology; the history of AD duties applied to China during the last 25 years compared to the rates applied to market economy countries; and the circumstances under which the United States might determine it appropriate to stop applying its NME methodology, along with and the potential consequences of such a decision.

See comment 1.

We have reviewed carefully the facts regarding the 25 cases in which there were both Chinese and market economy AD orders issued. We found some errors in the data and shared them with your staff. We agree with the report's observation that the starkest difference between China rates and market economy rates lays in the difference between the NME country-wide rate and the market economy "all others" rate. We further agree that this difference arises from both the NME methodology itself, which requires a country-wide rate, and from how the two rates are calculated. The former rate usually reflects corroborated adverse inferences based on non-cooperation, while the latter is a weighted average of only the calculated individual company rates. The GAO could have analyzed such differing data pools as the set of all final AD margins generated regardless of whether an order was put in place. It also could have chosen to highlight other comparisons, such as between the rates determined for cooperating individual Chinese respondents and those applicable to cooperating respondents in market economy countries. The noticeable difference between the two types of rates, however, would likely have remained the same.

We note with interest the GAO's cautionary observations. First, it is true that increasing numbers of Chinese companies have been applying for, and receiving, separate, individual rates in AD investigations. This has the effect of removing those companies from coverage under the countrywide rate, and likely reducing the ultimate trade impact of eliminating the NME methodology, as the GAO surmises. Second, we note the GAO's explicit discussion of the

Mr. Loren Yager
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See comment 2.

relatively low explanatory power of its model, *i.e.,* the model does not explain that much of the observed difference between China and market economy rates. In addition, the report acknowledges that it cannot predict the extent to which individual Chinese companies would cooperate with Commerce under a market economy methodology and thus avoid the use of adverse inferences. These limitations make clear that no definitive conclusions or recommendations could reliably be drawn from the findings, as the report itself seems to recognize.

I appreciate the opportunity to provide comments on the draft report. Enclosed is an attachment with specific technical comments relating to the text of the report.

Sincerely,

Franklin L. Lavin

The following are GAO's comments on the Department of Commerce's letter dated December 8, 2005.

GAO Comments

1. We re-examined our data, making corrections as appropriate, and updated our analyses. The report reflects these corrections, though they did not have a significant impact on any of our findings.

2. As discussed in the report, the overall difference between the duty rates applied to China and those applied to market economy countries is largely explained by the application of comparatively high country-wide rates to China. Therefore, the model allows us to conclude that elimination of the NME methodology—and thus these country-wide rates—would result in lower duties for some Chinese companies. Nevertheless, there would still be variation in duty rates among companies and products due to a range of other factors.

GAO Contact and Staff Acknowledgments

GAO Contact

Loren Yager (202) 512-4347

Staff Acknowledgments

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