Analysis of the EU Anti-dumping Cost-adjustment Method and China's Response Strategy

---Argentina v. European Union Anti-Dumping on Biodiesel as an Example

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Abstract

The cost-adjustment methodology is a special calculation methodology applied by the EU investigating authorities in the course of anti-dumping investigations under specific circumstances. One of the tasks of an anti-dumping investigation is to determine the existence of a dumping margin, to determine the margin of dumping, and then to determine the existence of dumping, which ultimately serves as the basis for the imposition of anti-dumping duties (Mokrov et al., 2016). The cost-adjustment methodology is highly similar to the "Surrogate Country System" for China, but in the case of the expiry of the provision, that is, there is no longer a legal basis for the provision and the negotiations of the provisions of the countries have not been fruitful. The EU put forward the concept of "distortion of the market", that is, a third party as a reference to conduct the cost-adjusted of the exporter's price, in order to adjust to the EU's view of the "undistorted"; this is highly similar to the "Surrogate Country System" but slightly different (Chen, 2013). The scope is not limited to "non-market economies", but market economies such as Russia are also discriminated against in this way. Cost-adjustment arrangements are often applied to raw materials such as energy, which are subject to strong government control and whose prices are not sufficiently free-market, and are therefore highly susceptible to successful application and thus to a finding of dumping (Long, 2024). However, the consequences of such arrangements can be extended to all downstream products or industries that use energy as a raw material, so the discussion of this issue is of great significance and value to China.

Legal Application of the Cost-adjustment Methodology

The content and effect of the cost-adjusted method is very similar to the previous surrogate country system for China, but its legal basis for compliance, the Protocol of the Accession of the People's Republic of China to the World Trade Organization(WTO), expired and lost its legal effect on December 11, 2016, which means that this discriminatory practice against China no longer has a basis in WTO law. There is no WTO law basis, but in view of years of unsuccessful negotiations on this issue, the EU has proposed "market distortion", i.e., using a third party as a reference to carry out cost-adjusted to the exporter's price, in order to adjust it to the EU's view of "undistorted" (Wüstenberg, 2019). "Undistorted" look, which is highly similar and slightly different from the substitute country system, the scope of its target is not limited to "non-market economy countries", in the EU anti-dumping investigating body of the seamless steel pipe case, iron and non-alloy steel welded pipe case. In the three cases of anti-dumping investigations by the EU anti-dumping investigating authority on seamless steel pipes, iron and non-alloy steel welded pipes, urea and ammonium nitrate, the investigating authority has adopted this method on imports from Russia in accordance with the above method, so it can be seen that Russia and other countries with market economies are also being treated so discriminatory (Kluttig et al., 2011).

It is worth noting that the European Union is the WTO member that has systematically used the cost-adjusted method, which it has stipulated in its domestic law, and not just in the Russian case (Dutt et al., 2013). This calls for a systematic study of this method and an attempt to explore its implications for the future development of our country.

Definition of the cost-adjustment methodology

The cost-adjusted approach means that the anti-dumping investigation agencies(ADI) adopts a "structural normal value" approach, in particular by looking at the cost of raw materials used in the production of the product to determine the normal value; instead of using the actual costs recorded by the respondent, the ADI selects the price of another third-party market that the ADI considers more "representative", i.e. the price of a certain raw material product that constitutes the production cost (Moheb-Alizadeh & Handfield, 2018). Instead of using the actual costs recorded by the respondent in determining the costs, the investigating authority chooses to replace the price of a raw material product that constitutes the cost of production with a price from another third-party market.

cost-adjusted arrangements tend to target raw materials, such as energy, that are more heavily regulated and controlled by governments and whose prices are not sufficiently free-market (Wang & Chen, 2022), thus making them easier to use successfully and therefore more likely to be found to be dumped. However, the consequences of such arrangements are not limited to the energy product itself, but can be extended to all downstream products that use that energy as a raw material.

Conditions of application of the cost-adjustment methodology

The basic anti-dumping rules of the European Union have been amended several times, as early as in 1968, the first anti-dumping rules mentioned that if in the ordinary course of trade within the country of the investigated party, there is either: no sale of the raw material; the market is in a "special market situation", the normal value is determined on the basis of the comparable price at the time of export to a third country; or, alternatively, the normal value is also determined by comparing the cost of production in the country of origin with reasonable fixed costs of sale and general costs and profits (Vermulst & Sud, 2018). Or, alternatively, the normal value will be determined by comparing the cost of production in the country of origin plus reasonable fixed costs, cost of goods sold, general costs, and profit. The current version of the cost-adjustment methodology was established by the 2009 amendments to Rule 1225/2009, and

subsequent amendments have not touched on this area, as is the case with the current 2020 amendments applicable to this article. The current 2020 revision of 2020/1173, to which this article applies, makes no changes to this issue.

The cost-adjustment method is not a general method for determining normal value and dumping margins in the dumping determination process, but rather a special arrangement given in cases where the general method cannot be applied (Shadikhodjaev, 2019). Therefore, the relevant conditions of application should be an exception to the general methodology used in the determination of normal value and dumping margins. In the EU anti-dumping rules, two exceptions have been created on this issue, i.e. the conditions of application are as follows:

First, the use of domestic prices as normal value as an exception to the general method of calculating normal value, i.e. "structural normal value" can be used in "special market conditions" (Sud, 2016); second, the use of actual records of producers or suppliers to determine costs as an exception to the general method of determining costs, i.e. prices of inputs are unrepresentative and thus the cost price of inputs may not be used. Second, an exception to the general method of determining costs by using actual records of producers or suppliers, i.e., the prices of inputs are unrepresentative so that the actual recorded cost prices of inputs may not be used.

The application of the cost-adjustment approach is a two-step process, and the conditions for its application are sequential, with the first point being satisfied before the second point can be applied to recognize value. That is to say, first of all, it is necessary to apply the first exception, that is, it is not possible to use the domestic price as the normal value of the approach to determine the use of "structural normal value" (Liu, 2014), which allows the investigating agency not to adopt the domestic price of the party under investigation, but can be based on the cost of raw materials to establish the "structural normal value"; in the cost-adjusted approach, it is necessary to apply the "structural normal value" approach in two steps. On the basis of this step, then use the exception arrangement when examining the cost of raw materials, that is, instead of using the supplier's or producer's own actual recorded data on the cost of raw materials to determine the cost, but with a so-called "undistorted" from the domestic market of the country or the "world market", the investigating agency will be able to determine the cost of raw materials.

Legal basis for the EU cost-adjustment methodology

As mentioned above, the application of the cost-adjusted methodology is a two-step process. The first step is to recognize the legal basis for the respondent to apply "structural normal value" as follows: Article 2(3) of the EU Basic Rules on Anti-Dumping provides that in the event of Rule 2(3) of the EU Basic Anti-Dumping Rules provides that in the "absence or lack of sales in the ordinary course of trade" or "special market conditions", the investigating authority may exclude the application of the domestic price of the product of the exporting party or the country of origin as the basis for calculating the dumping margin (Huyghebaert, 2019). Paragraph 1 of Article 2(3) of the Rules states: "Where there are no or no sales of the like product in the ordinary course of trade, or where special market conditions make such sales impermissible for proper comparison, the normal value of the like product shall be based on the cost of production in the country of origin, plus a reasonable total volume of sales, general and administrative costs, and profit, or on the export price in the ordinary course of trade to a reasonable third country, or on the price in the ordinary course of trade to a reasonable third country" (Franklin, 1965). The legal basis for the second step of selecting the prices of raw materials of other parties as the basis for the proposed adjustment of normal value is as follows: Article 2(5) of the EU Basic Anti-Dumping Rules deals with the question of what materials should be used in the calculation of the "structural normal value", and what materials should be examined. Paragraph 2 of Article 2(5) of the EU AD Basic Rules, which deals with the

material to be examined in the calculation of the "structural normal value", provides for an exception that allows the investigating authority to exclude such "costs actually recorded by the investigated party": if the costs of production and distribution of the investigated product are not reasonably reflected in the investigated party's records, then the costs need to be adjusted; such adjustment needs to be based on the costs of producers in the same country as the investigated party. This adjustment would need to be based on the costs of producers or exporters in the same country as the investigated party; where such information is lacking or unavailable, the adjustment could be based on any reasonable basis, including information on other representative markets.

However, the above provisions give a large degree of discretion to the EU. Although Article 2(3) of the Rule describes the content of the special market situation, it does not mention what the normal course of trade in conformity with the general methodology looks like; and there is a gap in the scope of the determination of "reasonableness" and the criteria for determining "reasonableness" as proposed in Article 2(5) (Quintais, 2020).

As a member of the WTO, the EU is bound to implement its anti-dumping regulations under the framework of the WTO Anti-Dumping Agreement (ADA) (Vermulst & Sud, 2018). Although the EU's application of the cost-adjusted methodology is a special arrangement that does not contravene WTO rules, it is still necessary to have a certain degree of compliance in the specific implementation process, rather than being too arbitrary and abusive (Tietje & Sacher, 2018).

On the one hand, the ADA refers to the following circumstances for the application of special arrangements: first, "complete or substantially complete monopolization of trade by the State" and "all domestic prices are set by the State"; second, "the absence of sales of like products in the ordinary course of trade" and "special market conditions or low sales volumes" in the domestic market of the exporting country. second, "the absence of sales of like products in the ordinary course of trade" and "special market conditions or low sales volumes" in the domestic market of the exporting country. In most cases, once the investigating authorities believe that there is state intervention in the market, then it is basically determined that the product from the "special market conditions" market (Yang, 2017), such as the EU in anti-dumping investigations, from the country's interest in bias to a certain extent to intervene in the determination of dumping process that is determined that the product from the "special market". "Special market", but in practice, each country's market is more or less subject to a certain degree of intervention or regulation from the government, so the production cost of the product varies from country to country (Wade, 2018). On the other hand, Article 2.2.1.1 of the Anti-Dumping Agreement stipulates that "For the purposes of paragraph 2 (referring to Article 2.2), the records kept by the exporter or producer under investigation shall, as a general rule, be the basis for calculating the costs of the products under investigation, provided that they are in conformity with the accounting standards generally accepted in the exporting country, and, at the same time, reasonably reflect the costs of production and marketing of the products concerned". This WTO rule is the just and exclusive reason for excluding records kept by the exporter or producer under investigation, and Members do not have the discretion to extend to themselves the only circumstances in which this exception occurs. Regarding the term "reasonable", the EU argued that the term "reasonable" relates to both the reflection of costs and the costs themselves, and that the EU's practice of selecting third-country prices and excluding the accounts of domestic producers may again add to the calculation of normal value and lead to high dumping margins (Vermulst & Sud, 2018). Such an approach would be inconsistent with the interpretation of the WTO rules. As can be seen, the term "reasonableness" relates only to whether the costs are reasonably reflected in the accounting accounts, not whether the costs themselves are reasonable.

Argentina v. EU Biodiesel Anti-Dumping Case Analysis

The first part of the content of the cost-adjusted methodology of the definition, conditions of application, legal basis, compliance and other content to do a concise introduction and analysis, this part will be based on the Argentina v. EU biodiesel anti-dumping case, through the case study in-depth understanding of the cost-adjusted methodology and integration of its application strategy. This part will use the Argentina v. EU biodiesel anti-dumping case as the basis, and through the case study, we will gain a deeper understanding of the cost-adjusted methodology and integrate its application strategies.

Case background

The European Union (EU) is the most important export market for Argentine biodiesel, with 90% of Argentina's total biodiesel exports entering the EU market in 2012. on August 29, 2012, the EU initiated an anti-dumping investigation into biodiesel originating in Argentina and Indonesia. Biodiesel, an alternative fuel like conventional diesel, is produced by the European Union but also imported in large quantities, and in Argentina is mainly made from soybeans and soybean oil ("primary feedstock"). The dumping and injury investigation covered the period from July, 2011 to June 30, 2012, the period of investigation, and on May 27, 2013, the Commission adopted Regulation (EU) No. 490/2013 imposing provisional anti-dumping duties on imports of biodiesel originating in Argentina and Indonesia. Six months later, 22% to 25.7% anti-dumping duties were formally imposed In the Regulation, the Commission found that there was dumping of biodiesel imports originating in Argentina, which caused injury to the EU industry, and concluded that it was in the EU's interest to impose anti-dumping duties on these imports. With regard to the calculation of the dumping margin and, more specifically, the determination of the normal value of the Argentine like product, the Commission found that the domestic sales did not take place in the ordinary course of trade, as the Argentine market was subject to strict national controls, and chose to apply the cost-adjusted methodology. On December 19, 2013, Argentina filed a complaint under the WTO Dispute Settlement Mechanism (DSM) against the European Union (EU) for the dumping of biodiesel imports originating in Argentina. On December 19, 2013, Argentina filed a request for consultations under the WTO Dispute Settlement Mechanism (DSM) on the EU's anti-dumping decision on biodiesel, and on January 31, 2014, the WTO organized consultations between the EU and Argentina but did not reach a consensus. Subsequently, the WTO set up a panel at the request of Argentina, with 11 members, including Australia, China and Colombia, participating as third parties in the follow-up investigation of the case. However, the follow-up investigation revealed that the production costs included in the records of Argentina's exporting producers did not reasonably reflect the production costs of biodiesel due to Argentina's differential export tax system, or DET system, and that the relevant agencies only explained the relationship between international prices and domestic prices of key raw materials and pointed out the impact of the export tax on the supply of these raw materials and their prices in the domestic market, but did not specify the impact of the DET system itself on the availability of these raw materials and their prices in the domestic market (Knight, 2005). Describe the impact that the DET regime itself may have on the domestic prices of key raw materials and the extent of the impact. These impacts are not the same as in a tax regime where there is no differential rate of export duty on key raw materials and biodiesel.

The Agencies therefore failed to determine, in accordance with the requisite legal standard, that the prices of Argentina's primary raw materials were significantly distorted as a result of the DET regime, and the Agencies found that the prices of these raw materials were not reasonably reflected in the records of the Argentine exporting producers examined, disregarding that these records violated the EU's basic anti-

dumping regulation. On March 29, 2016, the WTO issued a panel in the Argentina v. EU Biodiesel, the WTO issued a panel report on the Argentina v. EU Dispute on Anti-Dumping Measures, finding that the EU had violated WTO requirements by applying a cost-adjustment methodology to Argentine firms involved in an anti-dumping investigation of Argentine biodiesel imports. In 2018, the EU declared the anti-dumping investigation terminated because it found that there was no causal relationship between the imports in question and the actual losses suffered by the EU industry. However, the EU's abuse of the cost-adjusted methodology was limited to a certain extent in this report.

Analysis of the controversial points in this case

In this case, Argentina's allegations were divided into two points: first, that Article 2(5), paragraph 2, of the EU's basic anti-dumping rules (according to which "the investigating authority may reject or adjust the cost data provided by the exporter if the price reflected in such data is 'abnormally or artificially low'") and the EU's cost-adjusted methodology violated GATT 1994 and the WTO Anti-Dumping Agreement; and second, that the EU's anti-dumping treatment of biodiesel imports from Argentina violated GATT 1994 and the WTO Anti-Dumping Agreement.

Based on a comprehensive review of the views of all parties, the Panel ultimately agreed with part of Argentina's request that some of the anti-dumping duties imposed by the EU on Argentine-produced biodiesel were inconsistent with the relevant WTO provisions, but rejected in its entirety the claim that the EU's basic anti-dumping rules were per se contrary to the relevant WTO provisions.

With regard to the first allegation, the Appellate Body found that the relevant EU investigating authority had applied a cost-adjusted methodology to alter the domestic production costs in Argentina and artificially increase the dumping margins, without sufficiently demonstrating that the Argentine producers' records did not reasonably reflect the cost of soybeans, a raw material necessary for the production of biodiesel (Wüstenberg, 2019). The Appellate Body also found that the Argentine respondent was dumped, and that the EU had not applied a cost-adjusted methodology. This practice violated Article 2.2.1.1 of the ADA, which provides that "for the purposes of paragraph 2 (referring to Article 2.2), costs shall normally be calculated on the basis of records maintained by the exporter or producer under investigation, provided that such records are in conformity with generally accepted accounting principles in the exporting country and reasonably reflect the costs of production and distribution relating to the product under consideration". The Panel analyzed whether the relevant EU investigating authorities applied "reasonably reflect" in Article 2.2.1.1 on the basis of an accurate understanding, and concluded that the EU investigating authorities improperly interpreted the term "reasonably" and artificially expanded the term "reasonably" to include the analysis concluded that the EU investigating authority has improperly interpreted the term "reasonably" in , artificially expanding the scope of "reasonably", and considered that the term does not describe "cost" but modifies "reflection', which means that whether the cost is reasonable or not does not belong to the restriction of this provision, while the action of reflecting should be reasonable or not.

In addition, the Panel found that the two conditions in Article 2.2.1.1 of the ADA for the application of the accounting records of the original producer existed side by side, implying that the requirement of "reasonably reflecting" modifies all the actual costs of the product in question. The Panel did not agree with the EU's view that "the costs should be reasonably reflected in the accounting records and the costs themselves should be reasonable", but considered that the provisions of Article 2.2.1.1 only restrict the respondent's accounting records to keep true and accurate information, and that "reasonably reflect" only refers to the fact that the information in the records is true and accurate, and that "reasonably reflect" only refers to the information in the records. Only with respect to the reflection of costs in that record and not

with respect to the costs themselves. The EU's substitution of international prices for Argentinean domestic producers is unsupported under Article 2.2.1.1, and it does not sufficiently demonstrate that its accounting records do not reflect reasonableness, nor can it be relied upon as a basis for not adopting the accounting records of Argentinean domestic producers. In response to the second allegation, it is clear from the conditions for the application of the cost-adjusted methodology in Part I that the use of domestic prices as an exception to normal value is recognized not only as the basis for the construction of the "structural normal value", but also as the basis for the application of the cost-adjusted methodology. It is also a prerequisite for the application of the cost-adjustment methodology. In that case, neither the Panel nor the Appellate Body qualified the definition and use of "special market conditions", nor did they suggest that the European Union had erred in finding "special market conditions", but only that the case was insufficiently reasoned in its determination. In response to Argentina's allegation in this article, the Panel and the Appellate Body found that the circumstances enumerated were probable and not mandatory, and that they were not sufficient to conclude that there had been a violation of the Anti-Dumping Agreement.

This case is the first time that a WTO member has challenged and basically won the application of the EU's cost-adjusted methodology, which is at the heart of the dispute settlement (Kotkin, 2023). The end result is to find a "more representative market" prices, the cost estimate than the actual cost of enterprises recorded higher, so that the "normal value" of the overall higher, it is also easier to conclude "dumping". In view of its similarity to the "Surrogate Country System", the final judgment in this case has far-reaching significance for the future development of China's international trade.

China's Response in the Context of the EU's Use of Cost-adjustment

Article 2.2 of the ADA does not allow for the application of "surrogate country system" similar to those that have long been applied to China by members such as the United States and the EU. However, the "structural normal value" practiced by the EU is nothing more than a variant of the traditional "surrogate country system" (Xiao et al., 2024). However, through the above analysis, it is not difficult to find that the effect of the EU's cost-adjusted method is not only a continuation of the traditional substitution method, but also extends the scope of application to a certain extent (Balassa, 1975). All along, the EU frequently implements anti-dumping sanctions on Chinese exports because of China's economic system and industrial advantages, and applies the "surrogate country system" in determining the normal value of products (Zhai et al., 2024). After the expiration of the relevant provisions, the cost-adjusted method fills the gap to a certain extent.

It is important to note that although there may be irregularities and irrationalities in the EU rules, there is still room for China to improve itself to resolve disputes.

Government-enterprise liaison

The government and enterprises link up and actively respond to the lawsuit under the premise of regulating themselves (Feng et al., 2017). On the one hand, China's government should urge domestic export enterprises to standardize their accounting records in accordance with China's accounting regulations to ensure that the EU applies the accounting records of Chinese producers when constructing structural prices to determine the normal value of China's exports, and to prevent them from abusing third-country data and unreasonably increasing dumping margins (Chen, 2013). When Chinese enterprises are forced to respond to a complaint, they should also keenly analyze the legitimacy of the investigative procedures of the anti-dumping investigative body, review the applicability of the complaining party's evidence, and pay attention to the anti-dumping accounting evidence in response to

the complaint. In order to ensure that the domestic export enterprises in accordance with the provisions of the standardization of corporate accounting records on the basis of China's enterprises should also be based on a certain degree of product cost, coupled with the consideration of the current market situation in different countries and the differences in consumption, appropriate conversion of the operating mechanism and business strategy, and constantly optimize the industrial structure, accelerate industrial transformation and upgrading, and gradually form a capital-intensive or technology-intensive exports of high-technology and high-value products, and to reduce product substitutability at the same time (Luo et al., 2010). While reducing the substitutability of products, it also enhances its competitiveness.

On the other hand, the government should continuously optimize the construction of the socialist market economy system, actively create a good and transparent market business environment, and improve the laws and regulations that guarantee the development of the market and promote fair competition, as well as the legislation related to anti-dumping (Yilmazcan, 2024). On this basis, the government and enterprises should actively cooperate to form a joint force, realize data sharing, actively build a talent team, train professional responders, regularly organize personnel to study EU anti-dumping regulations and the latest cases, and formulate guidelines for responding to anti-dumping investigations. When needed, to provide supporting funds and financial support for enterprises to respond to complaints, to achieve positive linkage between the government, enterprises and the industry, the implementation of the principle of who responds to complaints, who benefits, to give active response or successful enterprises to reward mechanisms, such as the use of export licenses in international trade, customs audits and other means of subsidies and rewards, in order to form effective incentives and constraints on the mechanism, so as to enhance the enterprises to respond to the complaint. Incentives.

In-depth study of WTO-related cases

In the case of Argentina v. EU Biodiesel, where the EU used the cost-adjusted methodology to exclude other information provided by Argentina, such as relevant accounting records, the Panel upheld the view that the EU's basic anti-dumping rules were not inconsistent with the ADA, but rejected the EU's interpretation of Article 2.2.1.1 as "reasonable" (Rytkönen, 2018). The Panel supported the view that the EU's basic anti-dumping rules did not violate the ADA, but rejected the EU's interpretation of Article 2.2.1.1 as "reasonable". To address this point, China should carefully study the report of the decision in this case, further understand the interpretation of the Panel and the Appellate Body of the relevant rules of the ADA with a view to serving China in the future, and pay close attention to the EU's interpretation of the "obligation of fair comparison", "reasonable" and "cost-reflective" after this case and the restriction of the EU's interpretation of the "obligation of fair comparison". Closely monitor the EU's further actions on the "fair comparison obligation", "reasonable reflection", "cost adjustment obligation" and its related compliance issues after this case has been limited. In addition, it is also necessary to understand and study other WTO dispute settlement cases in depth and in all aspects, so as to better serve itself in the future. On this basis, our government may choose to negotiate with the EU on the "special market situation" and the application and restrictions of the cost-adjusted method. After all, the EU recognizes China's market economy status will be the inevitable future, however, this does not mean that the EU has given up on China to take anti-dumping measures, a similar situation in the EU launched anti-dumping process of Russia can be seen (Yang, 2017). Therefore, the Chinese government should be fully prepared to deal with the EU's accusation that we are in a "special market situation", and show concrete evidence to the EU to prove that there is no such situation in the Chinese market. The Chinese government should provide evidence to the EU and fully explain that China's industrial policy or government intervention is appropriate and not sufficient to be used as a condition for determining that China's market constitutes a

"special market situation", so the EU should not regard China's industrial policy or government intervention as a "special market situation" and take action against China. Therefore, the EU should not regard China's industrial policy or government intervention as a "special market situation" and take anti-dumping measures against China, which is inappropriate and without legal basis (Ngangjoh-Hodu & Han, 2019).

In conclusion, China should actively utilize the WTO dispute settlement mechanism to safeguard our legitimate rights and interests under WTO rules and to create a stable external environment for our export enterprises. At the same time, we should continue to deepen reforms internally and continue friendly and continuous bilateral negotiations externally, with a view to solving the problem at its root.

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