

Committee on Anti-Dumping Practices

**CHAIRMAN'S REPORT TO THE COUNCIL FOR TRADE IN GOODS
ON TRANSITIONAL REVIEW OF CHINA**

1. The Committee on Anti-Dumping Practices undertook the second transitional review of China pursuant to Paragraph 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432) at its meeting on 23-24 October 2003.
2. There is no information specified for submission to the Committee under Annex 1A to the Protocol. Members had submitted questions in the context of the transitional review relating to China's implementation of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement). These can be found in documents G/ADP/W434 (submitted by Japan) and G/ADP/W/436 (submitted by the United States).
3. The statements made at the meeting of 23-24 October 2003, at which the transitional review was Item L of the agenda, are reflected in the minutes of the meeting, which will be circulated as document G/ADP/M/25. The relevant paragraphs, which reflect the statements made and the discussion at the meeting, are annexed.

Excerpt from the minutes of the regular meeting of the Committee on Anti-Dumping Practices held 23-24 October 2003, to be circulated as document G/ADP/M/25

L. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION

1. The Chairman recalled that paragraph 18 of the Protocol of Accession of the People's Republic of China to the WTO provides that all subsidiary bodies, including the Committee, "which have a mandate covering China's commitments under the WTO Agreement or [the] Protocol shall, within one year after accession, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol". He noted that China was to provide relevant information in advance of the review, including information specified in Annex 1A of the Protocol, and that China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members on the Protocol in subsidiary bodies which have a relevant mandate. The Committee must report the results of the review promptly to the Council for Trade in Goods. Review is to take place after accession in each year for eight years with a final review in year 10 or at an earlier date decided by the General Council. There are no procedures set out for the conduct of the transition review in the Protocol, except that China is to provide relevant information in advance of the review.

2. The Chairman noted in this regard that there is no information specified for submission to the Committee under Annex 1A. Members had submitted questions in the context of the transitional review relating to China's implementation of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement). These can be found in documents G/ADP/W434 (submitted by Japan) and G/ADP/W/436 (submitted by the United States).

3. Before turning to the questions posed by Members, the Chair asked whether any Member had any general comments.

4. The delegate of the United States stated that the United States would like to recognize China's efforts over the past year as it worked to fashion an anti-dumping regime that is transparent, subject to the rule of law and in compliance with WTO rules. This process was not complete, however, and in the spirit of the TRM the United States was taking this opportunity to highlight areas where further improvements could be made. To assist in making this review as productive as possible, the United States had submitted written questions, in document G/ADP/W/436. He noted that written questions and answers were the most practical and appropriate form to accurately transmit technical information. It was in the interests of all Members – including China – to promote a free exchange of information through the mechanisms provided by the WTO, including the transitional review mechanism.

5. The United States applauded China's on-going efforts to round out the legal framework of its anti-dumping regime. The delegate noted that China had issued ministerial rules on industry injury investigations as well as judicial interpretations on hearing anti-dumping appeals. Nonetheless, gaps remained in this legal structure. One notable gap was in the area of expiration reviews, which left China in the position of currently conducting an expiration review without having ministerial rules on the books.

6. The delegate also noted that China had notified many of these anti-dumping laws and regulations to the WTO. Other such laws and regulations – including those concerning judicial review of anti-dumping measures – had not been notified. Notification of such laws and regulations is required by the WTO, specifically Article 18.5 of the Anti-Dumping Agreement, to increase the transparency of Members' anti-dumping regimes. Furthermore, as China's initial anti-dumping

actions since joining the WTO are now coming to final decisions, it was essential that clear rules be in place and known to all parties regarding procedures for seeking judicial review. It was also important for such parties to be provided with a clear understanding of the legal authority the courts have over the decisions made by the administering authorities. The United States, therefore, expected China to notify all laws and regulations that have a bearing on anti-dumping investigations and reviews to this Committee. The United States also invited China, as it had all other active users of the anti-dumping remedy, to submit papers describing its practice regarding the various topics now under discussion in the Working Group on Implementation.

7. The United States appreciated China's providing answers to the questions posed to it by the United States in the spring of 2003 on laws and regulations notified as of that date under Article 18.5.¹ Unfortunately, the late date of China's response precluded the United States from commenting on the content of those answers. Members of the AD Committee had agreed to these procedures in order to establish a technical forum for gaining a deeper understanding of each other's anti-dumping regimes. This procedure was not unique to China, and many Members developed and developing, large and small, had participated in this process. The United States expected China to meet its responsibility to answer such questions promptly and in full, as all Members had agreed.

8. The transparency concerns of the United States did not end with China's participation in transparency exercises in this Committee. Of potentially greater concern was the extent to which the conduct of investigations and reviews was transparent to the interested parties involved in them. In particular, many respondent companies had complained that there was insufficient information released to parties to reasonably mount an effective defence. The delegate noted that the Ministry of Commerce had created a reading room for interested parties to access public versions of certain documents relating to anti-dumping investigations. However, a particular shortfall was that the Ministry, and its predecessor, the SETC, had never adequately made available documents relating to their injury investigations. Increasing the timeliness and breadth of the documents made available on the public record in anti-dumping investigations and reviews would improve the utility of this reading room.

9. China could also enhance the transparency of its anti-dumping investigations and reviews by providing details of the administering authorities' decision-making processes and reasoning. Again, limited disclosure of the basis for decisions taken in a proceeding greatly hindered interested parties' ability to defend themselves. Preliminary and final determinations were particularly suitable for these kinds of disclosures and should include substantive information considered by the administering authorities, and a description of the analysis conducted in the course of dumping and injury decisions.

10. China had informed this Committee that the roles played by MOFTEC and SETC were now subsumed under the Ministry of Commerce. The role of the State Council Tariff Commission was still not completely clear, however. Nor did it appear that China had issued regulations governing the activities of the Tariff Commission in anti-dumping investigations or reviews. The United States urged China to clarify the oversight role of the State Council Tariff Commission, including when it may exercise discretion in the course of an investigation and any decisions it had made in investigations and reviews to date. The United States further urged China to establish procedures for publicizing the Tariff Commission's decisions in anti-dumping actions.

11. The United States applauded the continued efforts of China to increase the transparency of its anti-dumping regime and bring it into conformity with WTO rules. The United States wished to foster mutual cooperation and understanding on this front through multilateral mechanisms such as the TRM process and through bilateral technical exchanges.

¹ G/ADP/Q1/CHN/14 & G/ADP/Q1/CHN/19

12. The Chairman then invited the delegate of China to take the floor to respond to the questions and comments put to it..

13. The delegate of China took the opportunity to brief the Members and the Committee on China's implementation of its accession commitments in relation to anti-dumping measures over the past year, and also to respond to questions and comments from certain Members under the framework of TRM.

14. **Part 1: China's Implementation of its Anti-Dumping Legislation.** Competent authorities in China carried out anti-dumping investigations on a number of cases pursuant to Chinese anti-dumping legislations in accordance with statutory procedures in the past year. During the past year, China had initiated 3 anti-dumping investigations; made 12 preliminary determinations and 10 final determinations; currently, there were four anti-dumping cases pending preliminary determination. Furthermore, China was supervising the implementation of two price undertakings with respect to change of the name and price readjustment.

15. In addition, the Ministry of Commerce (MOFCOM) published a notice of initiation on 1 July 2003 to conduct a sunset review of anti-dumping measures applied to newsprint imported from Canada, Korea and the United States, which review was now underway. China implemented anti-dumping investigations in strict accordance with the *Foreign Trade Law*, the *Regulations of the PRC on Anti-Dumping*, and the WTO Anti-Dumping Agreement. Most Members recognized the consistency of Chinese anti-dumping legislations and practices with the WTO Anti-Dumping Agreement in the first TRM conducted in 2002.

16. **Part 2: Responses to Questions.** Prior to the meeting, some Members raised some questions with regard to the following anti-dumping investigations: Coated Paper, PA, SBR, PVC, TDI and Phenol. The delegate of China undertook to respond to those questions.

1. **On the application of "facts available" to determine AD measures against "all other" companies of that country.** In the above investigations, Chinese authorities published all anti-dumping investigations to be initiated and notified them to relevant agencies of the countries (regions) concerned before making the public notices. The notice of initiation of investigations leaves all parties sufficient time to register and respond. In addition, Chinese competent authorities issued questionnaires to all registered respondent companies, thereby allowing them to furnish information and evidence. At the request of interested parties, hearings were organized in some cases to allow interested parties to further express their opinions. The Chinese investigation authority has in all the investigations provided companies with adequate opportunity to access the relevant information via either public channels or their diplomatic missions in China. Therefore, the above anti-dumping determinations made by China are consistent with the requirements of Article 6.8 of the ADA and its Annex II. It is proper that the Chinese Authority applied facts available to determine AD measures against "all other" companies of a country that failed to respond and were unknown to the Chinese authority or if the information is not provided within a reasonable period. All of these measures adopted by the Chinese Authorities are fully consistent with the AD Agreement.

2. **On establishing injury and the causal link in Notices of Determinations in the above anti-dumping investigations.** While establishing industry injuries and the causal links between other factors, Chinese authorities strictly abide by the WTO ADA and the Chinese legislations in the following aspects: conducting a full and comprehensive analysis and assessment of all indicators determining injury as recognized by WTO; demonstrating by positive evidence that the volume of imports from each country is not negligible and conducting an analysis of competition conditions between imported products and between imported products and domestic like products

while cumulatively assessing the effects of imports from more than one country, conducting an analysis of other causes of industry injuries and clarify in the Notice of Determination; and so on.

3. **On the disclosure of relevant data and the disclosure of calculation methodologies for determining dumping margins and the relevant data used in preliminary injury determinations in the above-mentioned six investigations.** In all the anti-dumping investigations in which preliminary determinations have been made, the Chinese authorities expounded in Notices of Determination on the data and facts based on which the injury determinations were made, to facilitate the comments by interested parties on the determinations to protect their own interests.

4. On the examination of physical characteristics and uses of the products for determinations of "like products" in the anti-dumping investigations of Coated Paper, SBR and TDI. The Chinese Authority took full account of the physical characteristics, chemical characteristics, uses and means of distribution of the products and other factors according to Article 2.6 of the ADA in the determination of "like product" in its investigations of coated paper, SBR and TDI. All the determinations are available in the public notice of preliminary or final determinations. This practice is in full conformity with the ADA.

17. The delegate of China noted that China had received another document with questions just before this meeting. Due to the short notice, she could only make some preliminary replies:

1. **On the question of access to public information.** China had enacted the Provisional Rules on Access to Public Information in AD investigations. Its Article 5 provides for the types of public information that can be accessed by the interested parties. Its legal authority can be found in Article 23 of the AD Regulations.

2. **On the question of Judicial, Arbitral and Administrative Review.** Judicial review and administrative review are stipulated in the Administrative Proceedings Law and Administrative Review Law. Article 53 of the AD Regulations provides for administrative review and judicial review for AD investigations. Judicial review of AD determination was further clarified by the Supreme People's Court in its judicial interpretation. Such reviews also apply to Customs enforcement.

3. **On the question of the function of the State Council Tariff Commission.** According to Article 38 of AD Regulations, it makes decisions on the level of tariff duties on the proposal of MOFCOM. So far, it has not modified any such proposal by MOFCOM.

4. **On the question of rules on expiration reviews.** Chapter 5 of China's AD Regulations focuses on the time-limits and review of AD duties and price undertakings. The provisions were formulated in compliance with the WTO ADA. The expiration reviews will be conducted in strict conformity with the AD Regulations and the WTO ADA.

18. The delegate of China stated that, since WTO accession, China had been attaching great importance to the anti-dumping legislation and the enforcement thereof. China initiated investigations solely for the purpose of protecting normal international trading order, a fair competition environment as well as the rights and interests of China's domestic industries. The investigations target only the injury-causing imports priced under normal value.

19. Another delegate of China then provided some additional comments concerning questions or statements as to some of the questions that had already been addressed by the head of the Chinese delegation. China had made unremitting efforts to bring its legislation and practice in line with the letter and the spirit of the WTO rules and it had worked with utmost sincerity in fulfilling its

accession commitments. Immense progress in this respect had made, and recognized by many. This was particularly true in the field of anti-dumping. Although China had been subjected to over 540 anti-dumping investigations initiations since 1979, it had only initiated the first of its own investigations in the year 1997. In every investigation that it had initiated and undertaken, the Chinese investigating authority had endeavoured to provide adequate opportunities to all the interested parties to defend their legitimate rights and interests, and had kept open all the remedial channels, including the ever-improving AD procedures, and administrative and judicial reviews. Being one of the most frequently targeted victims of AD measures, and despite the many challenges those in China had encountered, both as a new Member of WTO and due to the fast changing situation, and with practical difficulties caused by government restructuring and downsizing, China had nonetheless endeavoured to build and improve a trade remedy regime that was consistent with WTO rules, its international obligations and such principles as transparency, procedural fairness and the rule of law, and had enforced and implemented such a regime in the same manner. China was not claiming that its system and the enforcement were perfect but China believed that it had been moving in the right direction and would continue along this path. In this process, China counted on other Members' cooperation, trust and goodwill as well as objectivity.

20. The delegate of Japan thanked China for the responses to its questions, and stated Japan's appreciation for the efforts made by China in developing and improving necessary legislation and measures after its accession. Hoping that this TRM procedure would enhance Japan's understanding with respect to the compliance of Chinese anti-dumping measures to the WTO Agreement, Japan had submitted some questions.

21. One of the concerns that led Japan to submit these questions and those it still had, was the compliance of procedure of anti-dumping investigations taken by China. Anti-dumping investigations should be initiated by notifying the interested parties of the initiation of the investigation. However, some investigations were initiated without any notification to the responding parties. The Chinese authorities then applied facts available because the responding parties did not submit any information, even though the responding parties did not receive any notification about the initiation of the investigation. According to the response from China that had just been given, the Chinese Government notified the relevant agencies instead of directly notifying the interested parties. Japan's follow up question was: who is the relevant agency that China notified about the initiation of the investigation instead of directly notifying the exporters or producers in the following countries?

22. The other concern Japan had was with the transparency of investigations. Many companies complain about the insufficient disclosure of the process of determination, especially the process of injury determination and causality analysis. As noted by the delegate of the United States, insufficient disclosure hinders the opportunity for the responding parties to effectively defend themselves. As some responding companies and the Japanese Government were continuously submitting their comments, the responding party should be notified sufficiently detailed explanations about the determinations on dumping and injury. Again, Japan hoped that its questions and clarifications in this TRM process would enhance the transparency of anti-dumping measures taken by China and therefore help Members to better understand the commitment of China to the WTO.

23. The delegate of the United States thanked the Chinese delegation for their comments and for so quickly responding to the US questions. He had two follow-up questions to ask. First, he asked the Chinese delegation if they would mind repeating the answer to the US question number 4. In addition, he asked, in connection with the response to the US question number 1, part (b), whether the Chinese Government, MOFCOM, had indeed now placed injury documents in its public reading room so that the interested parties may view them.

24. The delegate of China stated, concerning the first question, that is the notification of the investigation initiation to the relevant interested parties, in practice, what the authorities did in China

was to send the notification prior to the public notice of initiation to the diplomatic mission of the country of those companies whose products were subject to the investigation. So, in the particular cases referred to in the question posed by Japan, that diplomatic mission should be the Japanese Embassy in Beijing. He stated the view that this was compliance with Article 6.1.3 of the WTO ADA.

25. Concerning the second question, that is the transparency of China's investigations, particularly with regard to access to information on their injury and causal link, he noted that this question was addressed in the statement by the head of the Chinese delegation. Actually, access to information on injury and causal link was made possible under Article 8 of the Anti-Dumping Regulations of China, as well as in Articles 6 and 9 under the rules on the investigation and the determination of injury to the industries. Here, there was a particular circumstance already referred to, that is the Government's restructuring process. The functions of the former SETC or State Economic and Trade Commission with regard to the investigation of injury had already been incorporated into the newly established Ministry of Commerce or MOFCOM. Therefore, the information relating to both the analysis of dumping and the determination of the injury was now provided by MOFCOM, and the interested parties may access MOFCOM for that information.

26. On the two questions from the US, the delegate noted that the first concerned the methodology or the way to address complaints concerning the decision or enforcement of anti-dumping duties by the General Customs Administration of China. The Chinese delegation had already addressed this question in the statement. With regard to such complaints, judicial review and administrative review were possible and could be resorted to by the relevant parties. China also had special laws and regulations governing the enforcement and the levying of customs duties by the General Customs Administration. Concerning the second question by the US, it was also a question related to the access to information regarding injury and the causal link. The answer to this question was, he thought, somewhat similar to the answer to the question posed by Japan.

27. The delegate of Japan observed that according to the response just given about the initiation of an investigation, the Chinese authorities notified the initiation of the investigation to the diplomatic mission, the Japanese Embassy, but the Japanese Government had never agreed to that. The Japanese Government has no obligation to notify the initiation of the investigation to the Japanese company. In accordance with the AD Agreement, it was the investigating authority that was obliged to notify the companies that are subject to the investigation. Japan hoped that China would further improve the procedure of anti-dumping measures, especially as to the notification of initiation of an investigation and the disclosure of relevant information to the interested parties.

28. The delegate of the United States observed that, with regard to the availability of injury documents for review by interested parties, the US question was specifically whether such documents were now readily available in the public reading room that MOFCOM maintains in its headquarters in Beijing? The United States knew that MOFCOM had made great efforts to put documents relating to its dumping margin calculation in this reading room, but to date the United States were not aware of injury documents ever having been placed in this room and made available to interested parties. So the question was asking specifically whether such documents were now available in the reading room. Secondly, with regard to the rules and regulations that dictate how the Customs Administration will apply anti-dumping duties, collect anti-dumping duties and provide for judicial review, the United States asked that the Government of China notify to the Committee the relevant portions of that law and those regulations so that they could be reviewed in the Committee.

29. The delegate of China observed, regarding the question by Japan, that he had checked the WTO ADA. Article 6.1.3 of the ADA, at footnote 16, read "it being understood that where the number of exporters involved is particularly high the full text of the written application is to be provided only to the authorities of the exporting member or the relevant trade association". He noted

that this might not apply in all dimensions to the fact that China was only notifying the Japanese diplomatic mission in China. He had quoted it just to indicate the difficulty the investigating authority may have in notifying all the interested parties, because the parties have to be known to the investigating authority. This was a practical difficulty and he did not think there was any specific or very clear direct requirement set forth in the ADA.

30. Regarding the follow-up questions from the US, the first question concerned whether the injury information was currently available in the public reading rooms set up by the former MOFTEC, now MOFCOM. As he had stated, the process of government restructuring was still going on. Of course, it was China's intention to make such documents or information available in this public reading room in the future. He clarified that, even before the Ministry of Commerce was established, SETC already had a statutory requirement to disclose such information to the interested parties, which can be found in Article 43 of the Rules on the investigation and determination of industry and injury. As for the second question, it was a request to notify the relevant laws and regulations concerning or governing the enforcement of China's General Customs and Administration. China would of course consider it, and try to see if this was actually required by WTO in accordance with China's obligations. One additional note -- even now, if someone was interested in gaining access to the information on injury they could directly approach the Ministry of Commerce for such information if they could not find such information in the public reading room.

31. The delegate of Japan stated that the Japanese question was not regarding the application submitted by the domestic industry, but as to the notification of initiation of the investigation. Anyway, Japan appreciated the response from China and expected further efforts from China through the commitments to the WTO.

32. Turning to the Committee's report on the transitional review, the Chairman noted that there were no guidelines for the report contained in the Protocol. Following the review at last October's meeting, the Chairman, acting on his own responsibility, had prepared a brief, factual report, with references to the documents concerned, and attaching the portion of the minutes of the meeting which relate to the transition review. The Chairman asked Members whether this procedure should be followed again.

33. The Committee so decided.
