

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO
SECTION 18 OF THE PROTOCOL ON THE ACCESSION
OF THE PEOPLE'S REPUBLIC OF CHINA**

Statement of the United States to the
Committee on Anti-Dumping Practices on 28 October 2004

The following communication, dated 28 October 2004, is being circulated at the request of the Delegation of the United States.

In the three years since China acceded to the WTO, it has expended a great deal of effort to fashion an anti-dumping regime intended to satisfy its obligations under the WTO Anti-Dumping Agreement and its Protocol of Accession. The goal of the transitional review that this Committee is conducting today, itself a provision of China's Protocol of Accession, is to allow Members to examine and report on China's progress in meeting its obligations under the Anti-Dumping Agreement. At this point, China has made noteworthy strides in promulgating laws and regulations and building an administering authority, but it still has much work to do. China has quickly become one of the leading users of the anti-dumping remedy – last year China imposed the second highest number of anti-dumping measures among all WTO Members. However, China does not appear to have placed sufficient emphasis on the fundamental principles of transparency and fair procedures. Transparency and fair procedures form the core of the Anti-Dumping Agreement – in order to build a WTO-compliant anti-dumping regime, any Member must embrace those concepts and instill them in its administrative culture. We would like to outline here the United States' principal observations and concerns.

China modified the legal framework of its anti-dumping regime in the wake of the 2003 reorganization of China's anti-dumping administering authority into the Ministry of Commerce ("MOFCOM"). However, it is not clear from China's recently delivered response to the questions the United States posed in May 2004¹ which ministerial rules are still in force, which rules have been annulled and which rules have been modified. For example, it is our understanding that as part of this overhaul, China also revised its Foreign Trade Law. To our knowledge, these revisions have not been notified to this Committee for Members' information and review. The status of ministerial-level rules is even more problematic. While we appreciate China's recent notification of its regulations pertaining to anti-dumping actions, we urge China to clarify in detail to this Committee the full set of rules, regulations and laws that currently govern its anti-dumping regime.

¹ G/ADP/Q1/CHN/46, 18 October 2004

In addition to issues surrounding the legal framework of China's anti-dumping regime, the United States continues to be concerned about transparency in several aspects of China's conduct of its investigations and reviews.

A principal concern that we have involves timely access to information needed by interested parties to participate meaningfully in China's anti-dumping investigations. We appreciate MOFCOM's efforts thus far to make certain types of documents available to interested parties. The Bureau of Fair Trade ("BOFT"), MOFCOM's dumping investigation unit, maintains a public reading room in which it provides non-confidential versions of the petitions filed by Chinese domestic industries and most anti-dumping-related questionnaire responses submitted by responding parties. Furthermore, we understand that the BOFT generally makes available to responding parties a summary of the key facts and decisions underlying the agency's dumping margin determinations, although we are concerned about the limited substance and detail revealed in those summaries. We would urge BOFT to go a step further and make available in the public reading room, or at least to interested parties, summaries of meetings between interested parties and agency decision makers and to ensure that confidential documents not released are identified in comprehensive indices so that all parties know of their existence.

In contrast to the relative ease of access to non-confidential versions of documents from the BOFT, the United States has serious concerns about the availability of information from the Investigation Bureau for Industry Injury ("IBII"), MOFCOM's injury arm. As noted in China's response to questions posed by the United States in May 2004, the IBII has just recently begun placing documents in the BOFT public reading room. However, based on a very recent visit by US Embassy officials, that reading room contains a limited number of documents pertaining to a limited number of China's ongoing investigations, but hardly all of its proceedings. Furthermore, interested parties, including responding parties and officials of the US Government, have been frustrated in their attempts to obtain from the IBII non-confidential versions of even basic documents, such as Chinese industry responses to IBII questionnaires. Unfortunately, the IBII often denies access to such documents, or it imposes impossible preconditions, such as requiring parties to identify the precise titles of the documents requested – despite the fact that there is no record available to a requesting party that lists the documents in the IBII's possession. This situation is exacerbated at an even more fundamental level. To our knowledge, the IBII has never disclosed to a responding party the essential facts under consideration as required by Article 6.9 of the Agreement. We intend to continue monitoring this practice very closely but hope that the IBII's having recently placed in the public reading room some documentation related to its current injury investigations is a signal that it intends to make a broad move towards disseminating key information to interested parties on a timely basis.

The timely availability of information, however, is only a first step. Article 6 of the Anti-Dumping Agreement requires that non-confidential summaries of confidential documents must be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. Without access to confidential information submitted to MOFCOM, it is essential to responding parties to have comprehensive and informative non-confidential summaries in order to be able to mount an effective defence. We would note that the quality of the non-confidential summaries China has made available varies considerably and would urge China to enforce tighter standards.

Furthermore, the United States is concerned that, in some cases, critical arguments or evidence put forward by interested parties have not been addressed adequately in either preliminary or final determinations. This problem is especially prevalent in injury determinations. Similarly, and again especially in injury determinations, many of the conclusions MOFCOM reaches do not appear to be supported by adequate evidence. In many instances, either no evidence is cited at all, or the evidence cited is not available to anyone except the administering authority. Conclusory statements without evidentiary support do not constitute "positive evidence" within the meaning of the Anti-Dumping Agreement. In particular, details of the factual basis and reasoning supporting the

investigating authority's decisions as well as petitioners' allegations and briefs must be made available to all interested parties.

Given the increasing number of investigations and reviews being undertaken by China, we urge China to apply fair procedures to all parties to an investigation as envisioned by the Anti-Dumping Agreement. For investigations and reviews, this includes, but is not limited to, timely access to administrators and favourable consideration of hearing requests, as embodied in Article 6.2 of the Anti-Dumping Agreement. We are aware of a number of delays in responding to requests to hold hearings requested by interested parties. We also note with some concern the increased use of meetings other than formal hearings in some investigations and urge that interested parties not present be quickly informed of matters discussed at such meetings.

The United States recognizes the efforts China has made to inject transparency into its anti-dumping regime. However, with three years of WTO membership behind it, China now needs to redouble its efforts to ensure that its anti-dumping system fully conforms to WTO rules. The United States stands ready to assist China in these efforts and looks forward to seeing substantial improvements in the very near future.
