WORLD TRADE ORGANIZATION

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Committee on Anti-Dumping Practices

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

1. The Committee on Anti-Dumping Practices undertook the fourth 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 of 31 October-1 November 2005.

2. There is no information specified for submission to the Committee under Annex 1A to the Protocol. Members submitted questions and comments 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/W/446 (submitted by the United States), G/ADP/W/447 (submitted by Japan), G/ADP/W/448 (submitted by the European Communities), and G/ADP/W/449 (submitted by the United States).

3. The statements made at the meeting of 31 October-1 November 2005, at which the Transitional Review was item E of the agenda, are reflected in the minutes of the meeting, which will be circulated as document G/ADP/M/29. The relevant paragraphs of the minutes, 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 31 October-1 November 2005, to be circulated as document G/ADP/M/29

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

1. The Chair recalled that Paragraph 18 of the Protocol of Accession of the People's Republic of China to the World Trade Organization provides that all subsidiary bodies, including this 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." China is to provide relevant information in advance of the review, including information specified in Annex 1A to the Protocol. China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in 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. The 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.

2. The Chair further recalled that there are no procedures set out for the conduct of the Transitional Review in the Protocol, except that China is to provide relevant information in advance of the review. No information is specified for submission to the Committee on Anti-dumping Practices under Annex 1A.

3. The Chair noted that the delegations of the United States, Japan, and the European Communities had submitted questions and comments in the context of the Transitional Review, which were circulated in documents G/ADP/W/446, W/447, and W/448, respectively.

4. In response to the Chair's invitation for any statements of a general nature, the delegate of the United States[1] noted that this was the fourth annual review of China's implementation of its anti-dumping regime under the Transitional Review Mechanism of China's protocol of accession, the goal of which is to provide Members an opportunity to examine and report on China's efforts to meet its obligations under the ADA. In the previous three reviews the US had voiced concerns about China's conduct of its anti-dumping actions but also had noted incremental improvements in China's compliance efforts. Unfortunately, since the previous review, China's efforts to meet its obligations appeared to have shown little improvement. China insisted that its anti-dumping laws and regulations embraced the fundamental principles of transparency and fair procedures that formed the core of the Anti-dumping Agreement and in large part this appeared to be the case. In practice, though, China's conduct with regard to the anti-dumping measures that it had imposed fell short of these fundamental principles.

5. One needed only to turn to the statements made by the United States during the previous year's Transitional Review in the Committee and note how the circumstances described then were largely unchanged. The previous year, the United States had raised serious concerns about the availability of information from China's administering authority, the Ministry of Commerce ("MOFCOM") and its injury arm in particular, the Investigation Bureau for Industry Injury ("IBII"). As could be seen from the questions filed by the United States for this Transitional Review, these problems persisted. The MOFCOM public reading room still contained only a limited number of documents pertaining to a few of China's ongoing injury investigations. Interested parties, including responding parties and officials of the US Government, continued to be frustrated in their attempts to

[1] The statement by the United States was circulated in document G/ADP/W/449.

obtain adequate non-confidential versions of documents, such as Chinese industry responses to IBII questionnaires.

6. As the number of anti-dumping measures being imposed by China grew, there were a growing number of complaints by responding parties about the quality of the non-confidential summaries China had made available. Article 6.5 of the Anti-dumping Agreement required that non-confidential summaries of confidential documents be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. As the United States had pointed out the previous year, without access to confidential information submitted to MOFCOM, it was essential to responding parties to have comprehensive and informative non-confidential summaries in order to be able to mount an effective defence. The US government had received ever more frequent complaints that non-confidential summaries, when they were finally made available, contained insufficient factual information to permit development of effective arguments.

7. Furthermore, the United States continued to be concerned that, in a growing number of cases, critical arguments or evidence put forward by interested parties had not been addressed adequately in either preliminary or final determinations. This had been a problem the previous year and still remained a problem, especially prevalent in injury determinations. Similarly, many of the conclusions reached by MOFCOM did not appear to be supported by adequate evidence. In many instances, either no evidence was cited at all, or the evidence cited was not available to anyone except the administering authority. As the United States had stated the previous year, conclusory statements without evidentiary support did not constitute positive evidence. In particular, details of the factual basis and reasoning supporting the investigating authority's decisions, as well as petitioners' allegations and briefs, had to be made available to all interested parties.

8. The United States again urged China to apply fair procedures to all parties to an investigation as envisioned by the Anti-dumping Agreement. For investigations and reviews, this included, but was not limited to, timely access to administrators and favourable consideration of hearing requests, as embodied in Article 6.2 of the ADA. The United States was concerned about continuing delays by MOFCOM in responding to requests to hold hearings submitted by interested parties, as well as continued use of private meetings rather than hearings open to all interested parties, as a principal means to obtain the views of parties. The United States continued to urge that interested parties not present at such private meetings be quickly informed of matters discussed at such meetings in accordance with Article 6.3 of the ADA.

9. As China's anti-dumping regime grew out of its infancy, new concerns were surfacing with regard to how China's customs authorities were collecting anti-dumping duties. Until that point, virtually all attention appeared to have been focused on the investigative process. However, even the most objective and transparent investigation could be undermined by poor interaction between the administering authority and the customs authorities who assessed the anti-dumping duties at the border. In a growing number of cases, the US Government had received reports from responding parties of Chinese customs authorities either assessing anti-dumping duties on merchandise not subject to the measure, or imposing seemingly unreasonable burdens of proof before allowing entry of non-subject merchandise. This situation was exacerbated by the apparent lack of uniform procedures for importers to resolve disputes when faced with such circumstances. The United States urged China to put in place such procedures, as well as to refine the process by which MOFCOM informed Chinese customs officials, at China's ports, as to the precise merchandise subject to each anti-dumping measure and the anti-dumping duty rates applicable to each importer. The United States called to China's attention in this regard Article 5.9 of the ADA which provides that anti-dumping proceedings shall not hinder customs clearance.

10. The previous year, the United States had noted that China did not appear to have notified all relevant legislation to the Committee and in particular had asked China to clarify which rules applied

to its prosecution of anti-dumping actions. The same problem still persisted. Key pieces of China's legislation still appeared not to have been notified to the Committee, leaving considerable uncertainty as to the rules being used by China to conduct its anti-dumping actions. Such lapses in notification only served to compound the concerns about implementation. The United States urged China to clarify in detail to the Committee the full set of rules, regulations and laws that governed its anti-dumping regime.

11. In conclusion, the United States recognized the efforts China had made to develop a legal framework for its anti-dumping regime that took into account the principles of transparency of the Anti-dumping Agreement. With much of that framework now in place, China needed to focus its efforts on conducting its anti-dumping actions in a manner consistent with that framework, and in conformity with WTO rules. The United States looked forward to seeing substantial improvements in the very near future and offered its assistance to China in pursuit of that goal.

12. The Chair noted that written questions from the United States had been circulated in document G/ADP/W/446, and offered the floor to China to respond.

13. The delegate of China noted that the Chair had requested China to respond first to questions posed by the United States, but indicated that in its preparation of responses to all questions submitted by Members, China had categorized the questions, and therefore preferred to respond to all the questions that had been raised.

14. Concerning the opening remarks of the US delegation, China did not share the view that China's implementation of the Anti-dumping Agreement, and the practices of the Chinese authorities, were inconsistent with the Agreement. China had taken note of the comments made, but certainly did not agree with those points of view. From the detailed responses to the questions posed by Members, which China was about to present, the Committee would recognize that China had been abiding by the rules of the ADA sincerely and faithfully.

15. Turning to the answers to all of the questions raised by Members prior to the meeting, including the questions by the US delegation, the delegate of China noted first, that in terms of notification of the anti-dumping-related regulations of China, China had notified to the Committee, in document G/ADP/N/1/CHN/2/Suppl.3, the regulations of the People's Republic of China on anti-dumping which regulated the work of the general administration of customs on anti-dumping duty collection and, in document G/ADP/N/1/CHN/2/Suppl.1, the provisional rules on access to non-confidential information of anti-dumping investigations. Concerning the administrative reconsideration law and the implementation measures of MOFCOM on administrative reconsideration, these did not provide specific procedures for initiation and investigation of anti-dumping cases but rather regulated the procedures of administrative reconsideration on all kinds of administrative acts generally, and China considered that Article 16.5 of the Agreement did not apply to them. Concerning the rules of the Supreme People's Court on certain issues related to application of law in hearings of anti-dumping and administrative cases, coordination was still ongoing with the judicial branch to prepare the English version for notification.

16. The second issue was about information disclosure. According to regulations of the People's Republic of China on anti-dumping, and provisions on the anti-dumping investigation of industry injury, in any investigation of injury and causality, the authority disclosed the essential facts under consideration which formed the basis for the decision, as stated in Article 6.9 of the Anti-dumping Agreement, to interested parties or their attorneys in writing before the final determination. The interested parties could submit comments in writing to the authority within 10 days from the date of information disclosure and the authority accepted and gave full considerations to the comments submitted. According to China's knowledge, not all investigating authorities of WTO Members disclosed information in strict consistency with Article 6.9 as China did.

17. The third issue was confidentiality, in which regard China referred Members to Article 22 of the regulation of the People's Republic of China on anti-dumping, which well safeguarded the business secrets in interested parties' submissions. In practice, confidentiality applications from interested parties had been given serious consideration by the authority of China. While protecting the confidential information of the interested parties, according to China's relevant regulations and WTO rules, the investigating authority required the interested parties, including both the domestic applicants and the responding parties, to provide non-confidential summaries according to Article 6.5 of the Anti-dumping Agreement. After necessary examination, the authority sent these summaries to the anti-dumping non-confidential information unit within 10 working days from the day they were received. Therefore, the authority had already established a complete and competent injury information system with easy access to the non-confidential summaries for the interested parties.

18. Fourth, with regard to the situation when not all information requested was provided by interested parties, China understood that responding companies might not be in the position to answer all questions in a questionnaire, and therefore took this situation into consideration when making determinations. The partial questionnaire replies would be partially accepted on the condition that they were partially qualified. The Chinese authority would disregard a questionnaire reply and use the facts available only on occasions when the interested parties provided false information or did not provide necessary information within a reasonable period of time, or significantly impeded the investigation. In these situations, the Chinese authority would inform the relevant interested parties and provide a written explanation as to why their replies were excluded. Even with the best information available, the Chinese authority would determine the case in strict accordance with the relevant regulations of China and the WTO rules, including the Agreement's Annexes.

19. Concerning the questions on the injury investigation, when examining the causal link between dumped imports and material injury in anti-dumping cases, the Chinese investigating authority analysed factors other than dumped imports that might injure the domestic industry, according to China's relevant regulations and WTO rules. These other factors included domestic market demand of the like product, changes in the patterns of consumption, management of domestic businesses, effects of trade policy, the competition environment, development of new technology, exports of domestic like products, the volumes and prices of imports from other countries, *force majeure*, etc. All the analysis and conclusions were demonstrated in detail in the determinations.

20. In an injury investigation, the authority first examined whether an industry was injured and then considered whether it was injured by dumped imports or by any other possible reasons. Comments on causality or other topics from interested parties were fully considered. According to the relevant WTO requirements, China understood that an affirmative finding of causal link could be made when dumped imports were just one of the reasons which led to injury. If industry injury was caused only by other factors than the dumped imports, a negative finding would be made. As for the technical aspects, the practices of the Chinese authority were strictly consistent with the WTO rules, and while some other Members held different opinions, many issues were still being discussed in the rules negotiations. China was curious to know the views and practices on the above issues of the Member that posed the question.

21. The second aspect in terms of injury investigation was on the public notices. Public notices of both preliminary and final determinations issued by the investigating authority incorporated detailed information on findings of industry injury including procedures of investigation, facts and regulations on which the findings were based, and explanations of the final conclusions. The public notices including all the information disclosure made by the Chinese authority were very detailed and accurate. This had been well acknowledged by WTO Members. However, China had also received reports from its interested parties that some WTO Members' public notices only consisted of three pages of information.

22. The third aspect in injury investigations was the consideration of market share. Pursuant to Chinese regulations and WTO rules, the Chinese injury investigating authority analysed all relevant factors that reflected the impact of dumping on the industry, including market share, when evaluating the impact of the imported products' increasing volume. In addition to the market share, when determining whether a domestic injury was injured, the authority also analysed apparent consumption as well as other factors of imported products and domestic like products in the domestic market. With regard to price suppression and price depression, China had some confusion over the question posed by the Member. However, pursuant to Article 3.2 of the Agreement, the Chinese investigating authority held the view that price suppression referred to prices of the imported products preventing domestic price increases which otherwise should have occurred to a significant degree, and that price depression referred to prices of imports resulting in a significant decline in the price of the domestic like products.

23. Concerning the question of the general administration of customs, and the implementation of anti-dumping measures, according to Chinese anti-dumping regulations, MOFCOM, as the investigating authority, would propose imposition of an anti-dumping duty to the State Council Tariff Commission, ("SCTC"), based on the dumping and injury determination. The SCTC would make a decision on the basis of such a proposal. MOFCOM would publish these determinations and Customs would implement accordingly, from the effective date set forth in the public notice. In the process of implementation, Customs would also give a public notice about the procedure to collect anti-dumping duties. Concerning the scope and tariff line of the product subject to the anti-dumping measure, MOFCOM, as the investigating authority, would contact Customs immediately after initiating an anti-dumping case in order to make sure that the scope of the subject product and the tariff line were accurate. MOFCOM and Customs would consult with each other in case any problem emerged about implementation of the measures. MOFCOM also would consult the SCTC about any questions on classification and identification of the subject products' tariff lines. In the process of implementation, the importer and exporter could claim to Customs through the local customs office, or to MOFCOM directly, if there were a dispute about implementation of anti-dumping measures, and Customs and MOFCOM would contact each other to solve the problem.

24. Concerning "all other" rates, MOFCOM calculated such rates, and specific data, upon the best information available in an anti-dumping case.

25. Concerning initiation of investigations or reviews, the Chinese authority carefully examined the accuracy and adequacy of the evidence provided in the applications lodged by the domestic industry, in full compliance with the provisions of the anti-dumping legislations and the Agreement, when initiating investigations and reviews of anti-dumping cases. A case or a review would only be initiated when a petition being considered contained positive evidence and clear reasons. The authority would not take the data into consideration during the initiation if they were not related to the case or to the subject product directly.

26. Concerning administrative reconsideration and judicial review of anti-dumping investigations, there was one case of administrative reconsideration on an anti-dumping investigation, and the administrative reconsideration decision as well as the customs data and other relevant evidence were delivered to the interested parties. To date, there had been no judicial review of any anti-dumping measures.

27. The Chair thanked the delegate of China, and opened the floor for any additional or follow-up questions, or other comments.

28. The delegate of the European Communities thanked China for its attempt to reply to the EC's questions, noting that he used the term "attempt" deliberately. First, the EC had seen a similar series of events already in the previous TRM and the EC was most unhappy about the way its questions had

been replied to. The EC had posed very clear and precise questions, other Members had done so as well, and, although there was a little bit of overlap, the questions which had been posed by three Members were quite different. But what the EC had received was not a reply to its precise and clear questions but a sort of wholesale attempt to dispose of these different questions altogether in one general reply. The EC clearly thought that this was not appropriate. This was the first point as far as the form of these replies was concerned. Moving to the second point, the content of the replies, listening to the delegate of China could give the impression that China was one of the best possible anti-dumping worlds. Unfortunately, the reality seemed to be somewhat different. The EC delegate's instructions indicated that there was, for example, a case where no disclosure had been given on injury and causal link, contrary to what the Chinese delegate had said, which was that disclosure normally would cover causal link and injury. His instructions also indicated that there were indeed problems with confidentiality. The EC knew of one example where a respondent had been required to put in the non-confidential summary the minimum price for the purposes of an undertaking. This was tantamount to allowing the domestic industry to set up a cartel, because once it knew the price at which the respondent could deliver to China, the industry could easily undercut that price, and on this basis drive the respondent out of the Chinese market.

29. Third, China had mentioned that it would respect the provisions of questionnaire replies. However, the EC question was wider, expressing concerns about information requests which seemed to be far-reaching. Indeed, the problematic information requests not only appeared in questionnaires but also during on-the-spot investigations. There again, EC exporters had been confronted, in some cases, with excessive information requests, and thus far no reply had been provided to the EC's questions concerning these information requests.

29. Finally, the EC took issue with one point made by China concerning the examination of "other factors". From listening to the reply, it did not seem to be in line with the standard required under the Agreement, that the various causes of injury must be separated and distinguished.

30. The delegate of Japan thanked China for the detailed explanation, and appreciated the steady improvement in the anti-dumping rules and practice of the People's Republic of China. Members' common objective of the Transitional Review Mechanism was to share understanding of the efforts made by China heading to the complete compliance with the Anti-dumping Agreement. To make this discussion more clear and effective, Japan had submitted written questions, as the EC had done. Japan's questions were in response to the statement by China the previous year that Members should make comments based on solid evidence and facts of individual cases, as referred to in the meeting minutes, G/ADP/M/27, paragraph 81. Japan requested that China also circulate its response in some written form.

31. The delegate of the United States agreed with Japan that it would be very helpful indeed if China's answers were circulated in written form.

32. The delegate of China stated that in his view the responses provided by his delegation during the meeting had fully clarified and explained the questions raised by Members. Chinese investigating authorities investigated and made determinations on anti-dumping, injury to the industry and causality pursuant to a comprehensive and objective analysis of the facts in a manner that was strictly consistent with China's relevant regulations and WTO rules. The relevant legislation of China and the authorities' practices secured sufficient and transparent access in different stages of the investigation process for interested parties to convey their comments to and seek explanations from the authorities.

33. Anti-dumping procedures and practices were very complicated issues and it was not difficult for anyone just to pick out a specific aspect of procedure and practice and elaborate on the argument that these did not live up to the requirements of the Agreement. In the morning session, Members had heard about a specific case raised by the Japanese delegation, with a request for explanation from the

US delegation, also on a consistency issue. It seemed that no definite answer had been provided. Therefore, from China's point of view, the approach of criticising another Member was not the right approach within the Committee. All Members faced the challenge of improving their practices with regard to anti-dumping to reflect the spirit of the Agreement. China therefore did not accept the points particularly raised in the opening statement of the US delegation because, for example, on the point that public hearings were replaced by private meetings, the fact was that in China's practice, public hearings were held as long as interested parties so requested. Some of the specific private meetings in reality had been held at the request of the US Embassy in China. China wanted to exchange views with Members on anti-dumping practices and procedures, which was helpful not only for China but also for all Members. In this respect, however, China did not accept a criticising approach.

34. The delegate of Japan stated that he did not want to criticise China, and asked China to repeat its response with regard to Japan's first question, concerning initiation of investigations or reviews.

35. The delegate of China noted a point which had been very clear, that in all the Transitional Review Mechanism, the Chinese delegation was not in a position to provide written responses. This was a known position.

36. The answer to the first question of the Japanese delegation, on the initiation of investigations or reviews of anti-dumping investigations, was that Chinese authorities carefully examined the accuracy and adequacy of the evidence provided in the applications lodged by the domestic industries, in full compliance with the provisions of domestic anti-dumping legislation and the Anti-dumping Agreement, when initiating investigations or reviews of anti-dumping cases. A case or a review would only be initiated when a petition being considered contained positive evidence and clear reasons, whereas if the data were not related to the case or the subject product directly, the authority would not take them into consideration during the initiation of the case or review.

37. The delegate of Japan thanked China for the response and reiterated its request for a written reply to Japan's written questions concerning three specific cases.

38. The Chair thanked all delegations for their participation in the exchange, and especially thanked the delegation of China for its preparation and for the information and answers provided. She equally thanked those Members that had undertaken to submit written questions and to participate in the discussion.

39. Concerning the required report to the Council for Trade in Goods concerning this Transitional Review, the Chair noted that there were no guidelines for the report contained in the Protocol, and recalled that previously the Committee Chair, acting on his or her 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 related to the Transitional Review. She suggested proceeding on the same basis for the 2005 report.

40. The Committee so decided.