

**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 31 October 2005

Today we are here to begin the fourth annual review of China's implementation of its anti-dumping regime under the Transitional Review Mechanism of China's protocol of accession.¹ The goal of these reviews is to provide Members an opportunity to examine and report on China's efforts to meet its obligations under the Anti-Dumping Agreement. In the previous three reviews, the United States has voiced concerns about China's conduct of its anti-dumping actions, but also has noted that China has been incrementally improving its compliance efforts. Unfortunately, since the last review, China's efforts to meet its obligations appear to have shown little improvement. China insists that its anti-dumping laws and regulations embrace the fundamental principles of transparency and fair procedures that form the core of the Anti-Dumping Agreement, which in large part appears to be the case. In practice though, China's conduct with regard to the anti-dumping measures that it has imposed falls short of those fundamental principles.

One need only turn to the statement made by the United States last year in the transitional review before this committee² and note how the circumstances described then are largely unchanged. Last year, the United States 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 can be seen from the questions filed by the United States for this transitional review³, these problems persist today. The MOFCOM public reading room still contains 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, continue to be frustrated in their attempts to obtain adequate non-confidential versions of documents, such as Chinese industry responses to IBII questionnaires.

As the number of anti-dumping measures being imposed by China grows, there are a growing number of complaints by responding parties about the quality of the non-confidential summaries China has made available. Article 6.5 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. As the United States pointed out last year, 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 have received ever more frequent complaints that non-confidential

¹ See, Article 18 of the *Protocol on the Accession of the People's Republic of China* (WT/L/432, 23 November 2001)

² G/ADP/W/443, 29 October 2004

³ G/ADP/W/446, 26 September 2005

summaries, when they are finally made available, contain insufficient factual information to permit development of effective arguments.

Furthermore, the United States continues to be concerned that, in a growing number of cases, critical arguments or evidence put forward by interested parties have not been addressed adequately in either preliminary or final determinations. This was a problem last year and still remains especially prevalent in injury determinations. Similarly, 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. As the United States stated last year, conclusory statements without evidentiary support do 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 must be made available to all interested parties.

The United States again urges 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 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 continues to urge that interested parties not present for such private meetings be quickly informed of matters discussed at such meetings, in accordance with Article 6.3 of the Anti-Dumping Agreement.

As China's anti-dumping regime grows out of its infancy, new concerns are surfacing with regard to how China's customs authorities are collecting anti-dumping duties. Until now, virtually all attention appears to have focused on the investigative process. However, even the most objective and transparent investigation can be undermined by poor interaction between the administering authority and the customs authorities who assess the anti-dumping duties at the border. In a growing number of cases, the US government has 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 is exacerbated by the apparent lack of uniform procedures for importers to resolve disputes when faced with such circumstances. The United States urges China to put in place such procedures, as well as refine the process by which MOFCOM informs 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. We call to China's attention in this regard Article 5.9 of the Anti-Dumping Agreement which provides that anti-dumping proceedings shall not hinder customs clearance.

Last year, the United States noted that China did not appear to have notified all relevant legislation to the Committee and in particular, asked that China clarify which rules apply to its prosecution of anti-dumping actions. The same problem persists this year - key pieces of China's legislation still appear not to have been notified to this Committee, leaving considerable uncertainty as to the rules being used by China to conduct its anti-dumping actions. Such lapses in notification only serve to compound the concerns about implementation. The United States urges China to clarify in detail to this Committee the full set of rules, regulations and laws that currently govern its anti-dumping regime.

The United States recognizes the efforts China has made to develop a legal framework for its anti-dumping regime that takes into account the principles of transparency of the Anti-Dumping Agreement. With much of that framework now in place, China must 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 looks forward to seeing substantial improvements in the very near future and offers its assistance to China in pursuit of that goal.
