

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

The following communication, dated 13 September 2005, is being circulated at the request of the Delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

Questions from the Separate Customs Territory of Taiwan,
Penghu, Kinmen and Matsu

In paragraph 101 of the Report of the Working Party on China's Accession, China has stated that, upon its accession, in accordance with the provisions of the WTO Agreement on Rules of Origin, in particular Article 2(b), it would not use the rules of origin as an instrument to pursue trade objectives, directly or indirectly. Furthermore, China confirmed that it would apply rules of origin equally for all purposes, and also committed to ensuring that its laws, regulations and other measures relating to rules of origin would be issued and promulgated in full conformity with the WTO Agreement on Rules of Origin. China also confirmed that it would make available to WTO Members translations into one or more of the official languages of the WTO, all laws, regulations and other measures pertaining to or affecting trade in goods and services.

We recognize China's efforts to improve its business environment and its implementation of WTO commitments over the past few years, with the aim of further integrating with the global economy. In line with this goal, it would be appreciated if China could provide further clarification, in its responses to our questions below, of certain aspects of its implementation of the above commitments.

1. On 3 September 2004, the Chinese government issued new "Regulations on the Place of Origin for Imported and Exported Goods", effective 1 January 2005. These new regulations supersede the previous 1986 and 1992 versions. We should be grateful if China could please advise when these new regulations will be notified to this Committee.
2. As outlined in Article 10 of the new "Regulations on the Place of Origin for Imported and Exported Goods", the Chinese customs agency can ignore the origin of imported goods if those goods are processed or treated with the aim of circumventing China's trade remedy measures, such as anti-dumping, countervailing and safeguard measures.

Article 2(a) of the WTO Agreement on Rules of Origin requires that, when issuing administrative determinations of general application, the requirements to be fulfilled are clearly defined. In addition, Article 2(b) requires that Members do not use the rules of origin as an instrument to pursue trade objectives, directly or indirectly.

We would therefore appreciate knowing:

- (i) How China determines whether the processing or treatment of goods is aimed at circumvention, and how the methods used by China in this respect are consistent with the above-mentioned requirements in Articles 2(a) and 2(b).
 - (ii) In the event that an exporter disagrees with China's anti-circumvention determination, is there any procedure in place to which exporters can have recourse?
3. Separately, China has promulgated on 6 December 2004, Notice No.122 by the Customs General Administration stipulating the criteria for determining substantial transformation, as referred to in China's "Regulations on the Place of Origin for Imported and Exported Goods". These criteria include, amongst others, the tariff heading, the value added content, and manufacturing or processing. For the value added content to confer origin, the total value of the raw materials and related costs incurred must be greater than or equal to 30% of the value of the final manufacturing products.

Some further clarification from China on the following aspects would be most appreciated:

- (i) According to Article 2(a) (ii) of the WTO Agreement on Rules of Origin, in cases where the *ad valorem* percentage criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin.

The exact methodology, however, does not seem to be very clearly defined in Notice No.122. For example, could China please clarify whether the calculation of the value of the final manufactured product is based on CIF or on FOB prices? In addition, we would appreciate knowing what prices should be used to calculate the total value of the raw materials and related costs.

- (ii) Article 2(g) of the Agreement on Rules of Origin requires that all laws and regulations, etc. relating to rules of origin should be published in the interests of transparency. China's Notice No.122 suggests that details of the methodology used for calculations relating to the manufacturing or processing process and the value added content are set out in a "checklist".

It would be appreciated if China could please advise where this checklist may be found, and also provide us with a copy.

- (iii) According to Article 2(j) of the Agreement on Rules of Origin, any administrative action which Members "... take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, ..."

Please could China confirm whether this kind of mechanism is contained in its existing domestic laws and regulations, and, if so, please could China elaborate on the details, and provide us with a copy of the relevant regulations.
