

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 25-26 October 2006.
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/457 (submitted by Japan), G/ADP/W/458 (submitted by the European Communities), and G/ADP/W/459 and /461 (submitted by the United States).
3. The statements made at the meeting of 25-26 October 2006, at which the Transitional Review was item D of the agenda, are reflected in the minutes of the meeting, which will be circulated as document G/ADP/M/31. 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 25-26 October 2006, to be circulated as document G/ADP/M/31

D. 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. This 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 under Annex 1A.

3. The Chair noted that the delegations of the Japan, the European Communities and the United States submitted questions and comments in the context of the transitional review, which have been circulated in documents G/ADP/W/457, W/458, and W/459, respectively.

4. In response to the Chair's invitation for any statements of a general nature, the delegate of the United States¹ noted that this was the fifth 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 with an opportunity to examine China's efforts to meet its obligations under the Anti-Dumping Agreement, as well as to give China the opportunity to clarify its policies and practices. Similarly to prior reviews, the United States had voiced concerns about China's conducts its anti-dumping actions but also had noted incremental improvements in China's compliance efforts. Unfortunately, five years and many anti-dumping actions after its accession, China appeared to still face many hurdles in making its anti-dumping regime reach the standards of transparency and procedural fairness fully commensurate with the requirements of the Anti-Dumping Agreement.

5. One needed only to turn to the statements made by the United States during the previous years' Transitional Review in the Committee and note how the circumstances described then remained largely unchanged. More specifically, in past reviews 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 was seen from the questions submitted by the United States for this transitional review (G/ADP/W/459), many of these problems persisted. Interested parties, including responding parties and officials of the US Government, continued to be frustrated in their attempts to obtain adequate non-confidential versions of documents, such as Chinese industry responses to IBII questionnaires.

¹ The statement by the United States was circulated in document G/ADP/W/461.

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 pointed out again this 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 government of the United States had received continued complaints from responding parties 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 in injury determinations. Similarly, many of the conclusions reached by MOFCOM in its determinations 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 emphasized previous years, conclusory statements without evidentiary support did not constitute "positive evidence" within the meaning of Article 3.1 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, 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 Anti-Dumping Agreement. The United States was concerned about continuing resort to private meetings with selected parties as a principal means to obtain 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 and be given an opportunity to present their rebuttal, in accordance with Article 6.3 of the Anti-Dumping Agreement. Having said that, the United States was encouraged by IBII's decision to hold a public hearing regarding its investigation of butanols in June of 2006, prior to the preliminary determination. The United States urged China to provide all interested parties with the opportunity to raise issues in an open and transparent setting at an early stage of every proceeding.

9. Poor interaction between the administering authorities and the customs authorities that assess the anti-dumping duties at the border undermine even the most objective and transparent investigation. In a growing number of cases, the US government continued to receive reports from responding parties of Chinese customs authorities either assessing anti-dumping duties on merchandise not subject to a measure, or imposing seemingly unreasonable burdens of proof before allowing entry of non-subject merchandise. Although MOFCOM had shown improvement in responding in a timely manner to those customs problems when raised by interested parties, these situations were needlessly complicated by the lack of uniform procedures for importers to resolve this type of dispute. The United States urged China to put in place such governing procedures and to refine the process by which MOFCOM and Chinese customs officials at China's ports confirmed 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 Anti-Dumping Agreement, which provides that anti-dumping proceedings shall not hinder customs clearance.

10. In previous years the United States had also 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 Anti-Dumping Committee, leaving considerable uncertainty as to the rules being used by China to conduct its anti-dumping actions. Some of the questions filed by the United States in this year's review were aimed at legislation which could directly or indirectly shape China's anti-dumping regime, but which had not been notified to the Committee. Such lapses in notification denied other WTO Members the opportunity to review and comment on the content of these new regulations in order to further clarify key aspects of their implementation. The United States urged China to clarify in detail to the Committee the full set of rules, regulations and laws that govern 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 and fair procedures as set forth in the Anti-Dumping Agreement. With much of that legal framework now in place, China needed to continue focusing its efforts on conducting its anti-dumping actions in the manner consistent with that framework, and in conformity with WTO rules. The United States looked forward to seeing continued improvement in the very near future and offered its assistance to China in pursuit of that goal.

12. The Chair offered the floor to China to respond.

13. Taking note of the comments made, the delegate of China pointed out that this was the fifth transitional review by the Committee of the Chinese anti-dumping regime. In the past five years the Committee had held a number of discussions on China's anti-dumping regime in the framework of the legislation review process, the review of China's anti-dumping actions, and also in the transitional review framework in the last three years. It was, therefore, China's conviction that Members had already a clear understanding of the matter and in particular of China's legislative framework, given that China had notified the Committee of a dozen relevant anti-dumping rules and regulations. Conversely, three pieces of legislation as identified in the written questions by the US had not been notified. China confirmed that it would address those regulations in turn as part of its oral presentation at the meeting.

14. As an opening remark, China stated that it believed its anti-dumping regime to be consistent with the Anti-Dumping Agreement. China did not share the view of the United States that the issues the latter had identified in its questions and the oral statement were actually significant. Given that the comments by the US referred to the perfect functioning of the anti-dumping instrument, China questioned whether the United States would be able to function in such perfect circumstances any time soon. Indeed, various Members had been raising similar concerns during the Committee meetings with regard to each other's anti-dumping instrument functionalities. Consequently, China believed it had made its utmost efforts to establish a transparent anti-dumping regime with a view to further the information disclosure procedures embodied in the extensions of the new regulations.

15. Turning to answers to all questions raised by Members, the delegate of China noted that he would address the issue of notification of the three anti-dumping related regulations, questioned by the United States, while his colleagues would respond in detail to rest of the technical questions.

16. Speaking on the matter of non-notification of three anti-dumping related regulations, the delegate of China noted first that the first regulation was essentially a judicial interpretation adopted by the China Supreme Court. China's Permanent Mission to the WTO had been notified about it and was expected to submit it to the Secretariat for notification shortly.

17. The second regulation in question concerned access to information and information disclosure in industry injury investigations. The delegate of China pointed out that this was a fairly new

regulation intended to further perfect China's information disclosure procedures. The translation of that regulation was being proofread and notification thereof would be made to the Committee within a couple of weeks.

18. The third regulation in question concerned responses to anti-dumping cases against Chinese exported products. Because of the internal divergence in views among the relevant authorities in Beijing as to whether that particular regulation fell within the scope of notification under the anti-dumping agreement, no formal notification had been made yet. However, this specific issue was in the process of clarification and advice on it was also being sought from the WTO Secretariat.

19. Having addressed the relevant notification questions, the floor was passed to the experts from Beijing to address other concerns and question of the Members.

20. Turning to the questions concerning transparency of the Chinese anti-dumping procedures, the delegate from China informed Members that China had promulgated a series of regulations and rules on transparency, including on information disclosure, e.g. anti-dumping regulations, provisional rules on information disclosure in anti-dumping investigations, and provisional rules on access to non-confidential information of anti-dumping investigations. China's investigating authority had applied the above rules and regulations to ensure compliance with the transparency requirements in anti-dumping proceedings. According to these regulations, after a preliminary determination, the Chinese authority disclosed to the companies concerning the essential facts under consideration, which formed the basis for the decision. Such essential facts included determination of export price and normal value, adjustments for differences in conditions and terms of sales, and dumping margin calculations. Disclosure of dumping margin calculations contained an explanation of the factual basis for the dumping findings and a table with the relevant calculations. This information assisted the parties concerned to understand the findings of the authorities, enabling them to make comments on a given determination and calculation of the dumping margin. Prior to publication of the final determination, compliant with the transparency requirements, Chinese authorities issued a separate document disclosing the information on the basis of which the final determination would be made. The parties concerned were given ten days to make comments on the essential facts.

21. The second set of questions concerned methodology for comparing export price and the normal value. The delegate of China informed Members that China's investigating authority determined the export price and the normal value based on the information submitted in the companies' questionnaire replies. In addition, due adjustments would be made for differences in price comparability at the ex-factory level in order to make a fair comparison between the export price and normal value. The dumping margin was normally calculated on the basis of comparison of the weighted average normal value and the weighted average export price.

22. The delegate of China further clarified that according to the Chinese anti-dumping regulations two other methodologies for the comparison of normal value and export price were available, i.e. the transaction-to-transaction comparison and a comparison of weighted average normal value with an individual export price. Nevertheless, the latter two methods had not been used yet.

23. The next set of issues concerned implementation of anti-dumping measures. According to the anti-dumping regulation, the Ministry of Commerce of China, MOFCOM, published the determination and informed the customs administration. The decision entered into force from the effective date set forth in the public notice. In the process of implementation, the customs administration also gave public notice on collection of the anti-dumping duties. The delegate of China assured Members that any technical problems encountered during implementation would be addressed by MOFCOM and the custom administration through mutual consultations at the working level.

24. Concerning the scope and tariff line of the product subject to an anti-dumping measure, MOFCOM contacted the customs administration immediately after initiation of the anti-dumping investigation in order to ascertain that the tariff line and the scope of the subject products were correct and accurate. Again, the delegate of China assured Members that mutual consultations would be held to solve other potential problems regarding implementation of the anti-dumping measures.

25. As regards the deposit amount, the delegate of China clarified that this was established by reference to two figures. The first figure represented the anti-dumping deposit collected according to the anti-dumping regulation, i.e. the duty paid price multiplied by the anti-dumping deposit rate. In China's view, such calculation of the anti-dumping deposit amount was consistent with the Anti-Dumping Agreement. The second figure represented the VAT deposit collected, according to the China's domestic VAT regulations, when the anti-dumping duty rate was lower than the anti-dumping deposit rate. Furthermore, where any such cash deposit exceeded the anti-dumping duty rate, the amounts in excess were to be refunded to the importers.

26. Concerning the questions on the responding procedure, the anti-dumping regulation of China allowed for a procedure of setting aside an extra 20 days for potential respondents to express their intention to co-operate to a given investigation. This 20-day registration procedure did not count against the 37-day time-limit for answering the questionnaire. It was further explained that MOFCOM made the questionnaires available on its official website for all the interested parties, including those that did not express interest in a 20-day registration procedure, to have easy access to them and to participate in a given investigation by answering and submitting their questionnaire replies. The delegate of China pointed out that only companies which submitted questionnaire replies to MOFCOM received individual dumping margins. If a company did not respond to the questionnaire, MOFCOM based its determination on the best information available. By way of explanation, the delegate of China clarified that the given procedure was set up with a view to facilitate companies' efforts to participate in the anti-dumping procedures. As for sampling, that MOFCOM determined whether or not sampling should be applied in a given procedure. This would depend on the number of potential respondents, but the registration procedure did not concern sampling, which was only addressed by Article 9.4.

27. The fifth set of issues concerned application of *de minimis* rates. In this connection the delegate of China noted that the use and practice of application of the *de minimis* rule differed among WTO Members. The Chinese authority was in the process of studying this issue and intended to keep contact and exchange opinions with other WTO Members in this matter.

28. Another set of questions concerned injury investigations. The first group of questions focused on disclosure. Indeed, the IBII disclosed to the interested parties the essential facts which form the basis of the injury decisions as provided in Articles 6.9 of the Anti-Dumping Agreement. On 4 August 2006, MOFCOM had promulgated rules on access to information and information disclosure on industry injury investigation. The delegate of China had confirmed that these rules would be notified to the Committee as soon as the translation thereof was completed. In a nutshell, the rules in question stipulated the specific contents and procedures of information disclosure, as well as the interested parties' rights in respect of access to such information. According to the rules, information disclosure should normally be made within 30 days before the final determinations. IBII was under an obligation to inform all interested parties, including the exporters, of the essential facts. Interested parties who had not made themselves known to the authorities would find such disclosure materials in the public notices by MOFCOM.

29. Turning to the issue of confidentiality, it was generally recognized that determining whether non-confidential summaries of information were provided in sufficient detail to permit reasonable understanding of the subject of the information submitted in confidence was at the discretion of the investigating authorities. This assessment was made on a case-by-case basis. If non-confidential

summaries submitted by interested parties were not provided in sufficient detail to permit reasonable understanding of the substance of the information provided in confidence, IBII would then ask the party concerned to withdraw its request for confidentiality. Otherwise, IBII could also disregard such information unless its accuracy was demonstrated from appropriate sources. In exceptional circumstances where interested parties did not provide non-confidential summaries, they had to include a statement of the reasons why such summarisation was not possible based on the rules for access to information and information disclosure in industry injury investigations and the Anti-Dumping Agreement.

30. Concerning the use of aggregate figures versus indexed figures, the aggregate figures had to be used as long as due regard was given to protection of confidential information. As a general matter, it was considered more meaningful to use aggregate figures instead of indexed figures where more than two petitioners or respondents were involved in a given investigation.

31. The next question concerned initiations of investigations, in particular whether volumes and prices of imports from other countries had to be examined prior to the initiation. The delegate of China recalled that this matter was clearly addressed in Article 5 of the Anti-Dumping Agreement. The Chinese authority carefully examined 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 Agreement and the relevant legislation of China.

32. Finally, the last issue concerned dumped imports in the spandex case. In that case, IBII had received comments from interested parties on the preliminary determination of dumped imports as well as further investigations. More specifically, the delegate of China explained that the final determination of the injury in the spandex case did not include data of dumped imports, market share, or import price of the subject product of those producers or exporters whose dumping margin was *de minimis*. Further details on this case were available from the respective notice of the definitive determination published by MOFCOM on 12 October 2006. By way of general remark, the delegate of China urged Members to submit case-specific questions to the respective case handlers during the course of the investigations to allow them to deal with any such matters in a more efficient and effective way.

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

34. The delegate of the United States thanked China for its replies to the questions from the United States, and asked for further clarification in a few areas.

35. First, on the issue of VAT, the United States appreciated China's description of its two separate calculations: its calculation of the duty deposit rate and its calculation of the VAT deposit. Although there was some detail given in the response with regard to how the anti-dumping deposit was calculated, there was not much description given as to how the VAT deposit was calculated and, specifically, whether the VAT deposit was calculated on the basis of a price to which the anti-dumping duty had already been added, thus increasing the anti-dumping duty by the amount of the VAT rate.

36. In addition, the delegate of the United States noted that China had not answered the US question 10, i.e., whether VAT assessed on anti-dumping duties or other duty collected in excess of the margin of dumping had ever been refunded by China, following a request by an importer as required under Article 9.3.2 of the Anti-dumping Agreement.

37. Another follow-up question related to US question 5, which dealt with responding parties that received *de minimis* rates. Currently, under Chinese practice, China did not exclude them from the anti-dumping order. The United States understood the Chinese delegate to say that China was studying this issue in light of the Appellate Body's decision in the report on Mexican Rice, and expressed that hope that China would complete its review quickly. The United States was interested in consulting with China on that matter.

38. With regard to US question 7 dealing with non-confidential summaries by the Ministry of Commerce's injury arm, the IIBI, the Chinese delegate had explained the rights that the administering authority had. The United States recalled that this had been a problem area that it had focussed on for several years now and asked China to elaborate on what specific steps IIBI was taking to address this problem.

39. Lastly, the US delegate wanted to confirm its understanding of China's response to US question 8(a), which dealt with the situation where there was some conflict between the administering authority – the Ministry of Commerce – and the customs authorities. Was it China's response, in fact, that there were no written procedures governing ways to handle that situation but rather the two agencies simply consulted?

40. The delegate of the European Communities thanked China for its clarifications and extensive answers to questions, one-by-one in an individual way. The EC was looking forward to the announced notifications of the new rules and to their application in future cases.

41. As regards the use of aggregate figures, the EC was pleased to hear that China also considered that this method should get preference over the use of indexed figures and was looking forward to seeing such practice being applied in concrete cases. The EC would continue to study the rest of the answers given and would come back to China at a later stage if further questions arose.

42. The delegate of Japan echoed the United States and the EC in thanking China for its replies. Japan appreciated the steady improvements in China's anti-dumping law and practice and believed that the Transitional Review Mechanism was a good opportunity to review those improvements. The replies to specific questions were being studied and would be addressed later.

43. Regarding the follow-up questions, the delegate of China stated, first, with regard to the VAT issue, that it was his personal understanding that, under the existing or current textual framework in China, the tariff which included duties in the cases of anti-dumping, safeguards and others *was* subject to VAT in China. China recalled that the Anti-Dumping Agreement itself did not have very clear provisions on this particular issue, and was willing to exchange further views with Members on this matter.

44. Concerning the US question 5, the delegate from China reiterated that the WTO itself did not agree on what should be the final policy in respect of application of *de minimis* rates. However, China confirmed its willingness to further discuss this technical issue with Members.

45. On the question concerning the information disclosure, the up-coming notifications reflected the actual and concrete steps taken by China in this regard. Underlying the immense work already done, China would make further efforts to draft other regulations on information disclosure.

46. In respect of US question 8(a), China did not have a written procedure for settling the issues of implementation of specific anti-dumping measures. Because of the variety of implementation issues that could potentially arise, the actions taken to address them would differ accordingly. In China's view, the mechanism currently used to address implementation problems by the investigation

authorities in China, on one hand, and the customs administration, on the other, was effective and efficient.

47. The delegation of China confirmed that the specific responses provided by its experts during the Committee meeting would be made available to the Secretariat, as well as to the Members, in writing.

48. The United States thanked the delegation of China for its answers and indicated that it had found the exchange during the meeting to have been particularly helpful and the responses quite useful.

49. On the VAT issue, the United States draw China's attention to Article 18.1 which provided that 'no specific action against dumping of exports can be taken except in accordance with this agreement.' It was the view of the United States that application of the VAT rate to a number which included the dumping duty meant that, by virtue of an affirmative finding of dumping, the result would not only be the amount of duty owed, i.e. the dumping duty, but that there would be the secondary effect of an increase in the amount of the VAT. The United States viewed this as a clear example of a specific action against dumping inconsistent with the provisions of the agreement, in particular Article 18.1., and expressed willingness to discuss this further with China

50. The Chair thanked all delegations for their participation in the exchange, and especially 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.

51. 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 2006 report.

52. The Committee so agreed.
