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Committee on Anti-Dumping Practices

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

Statement of the United States

The following communication, dated 24 October 2006, is being circulated at the request of the Delegation of the United States.

Today we undertake the fifth annual review of China's implementation of its anti-dumping regime under the Transitional Review Mechanism of China's Protocol of Accession. These reviews provide Members an opportunity to examine China's efforts to meet its obligations under the Anti-Dumping Agreement. Similar to prior reviews, the United States continues to have concerns about how China conducts its anti-dumping actions, but also notes that China has been incrementally improving its compliance efforts. Yet, five years and many antidumping actions after its accession, it appears that China still faces many hurdles before its anti-dumping regime reaches the standards of transparency and procedural fairness fully commensurate with the requirements of the Anti-Dumping Agreement.

In past transitional reviews before this Committee, 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 review (G/ADP/W/459), many of these problems persist today.

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. Article 6.5 of the Anti-Dumping Agreement requires 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 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 continued complaints from responding parties that non-confidential 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 critical arguments or evidence put forward by interested parties have not been addressed adequately in either preliminary or final determinations. This problem remains especially prevalent in injury determinations. Similarly, many of the conclusions MOFCOM reaches in its determinations 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

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anyone except the administering authority. As the United States has previously emphasized, conclusory statements without evidentiary support do 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, must be made available to all interested parties.

The United States also 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 were encouraged by IBII's decision to hold a public hearing regarding its investigation of butanols in June of this year, prior to the preliminary determination. We urge 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. However, the United States is concerned that China continues to resort to private meetings with selected parties as a principal means to obtain views of parties. The United States reiterates that interested parties not present for private meetings should be quickly informed of matters discussed at these meetings and be given an opportunity to present their rebuttal, in accordance with Article 6.3 of the Anti-Dumping Agreement.

Even the most objective and transparent investigation can be undermined by poor interaction between the administering authorities and the customs authorities that 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 a measure, or imposing seemingly unreasonable burdens of proof before allowing entry of non-subject merchandise. Although MOFCOM has shown improvement in responding in a timely manner to these customs problems once raised by interested parties, these situations are needlessly complicated by the lack of uniform procedures for importers to resolve this type of dispute. The United States urges China to put in place governing procedures and to refine the process by which MOFCOM and Chinese customs officials at China's ports confirm 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 Article 5.9 of the Anti-Dumping Agreement, which provides that anti-dumping proceedings shall not hinder customs clearance.

In past transitional reviews, the United States also has 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. Some of the questions filed by the United States in this year's review are aimed at legislation which may directly or indirectly shape China's anti-dumping regime, but which have not been notified to this Committee. Lapses in notification deny 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 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 strides China has made to develop a legal framework for its anti-dumping regime that takes 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 must continue to strive to improve the conduct of its anti-dumping actions. The United States looks forward to seeing continued improvement and offers its assistance to China in pursuit of that goal.
