

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 seventh 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 27-28 October 2008.
2. There is no information specified for submission to the Committee under Annex 1A to the Protocol. Members submitted questions 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 questions can be found in documents G/ADP/W/467 (submitted by the United States) and G/ADP/W/468 (submitted by Japan).
3. The statements made at the meeting of 27-28 October 2008, 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/35. 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 on 27 October 2008, to be circulated as document G/ADP/M/35

E. 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 pursuant to Paragraph 18 of the Protocol of Accession of the People's Republic of China to the World Trade Organization, all subsidiary bodies, including the 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 was to provide relevant information in advance of the review, including information specified in Annex 1A to the Protocol. China could 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 had a relevant mandate. The Committee was required promptly to report the results of the review to the Council for Trade in Goods. The review was 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. There were no procedures set out for the conduct of the transitional review in the Protocol, except that China was to provide relevant information in advance of the review. In this regard the Chair noted that there was no information specified for submission to the Committee under Annex 1A.

3. The Chair noted that the delegations of the United States and Japan had submitted questions in the context of the transitional review (documents G/ADP/W/467 and W/468, respectively). The Chair invited Members to make any general statements.

4. The representative of the United States noted that this was the seventh annual Transitional Review of China, and that the Transitional Review Mechanism continued to be useful in helping to provide needed additional transparency on China's trade regime so that Members could better understand and assess China's progress in implementing and complying with its WTO obligations. Regarding anti-dumping, this was the seventh annual review of China's implementation of its anti-dumping regime under the Transitional Review Mechanism of China's Protocol of Accession. These reviews provided Members an opportunity to consider China's efforts to meet its obligations under the Anti-dumping Agreement.

5. As it had in prior reviews, the United States observed that China had been incrementally moving forward in meeting its obligations. There remained aspects of China's anti-dumping regime that were obscure, however, making it difficult for Members to confirm whether China was meeting the standards of transparency and procedural fairness embodied within the requirements of the Anti-dumping Agreement.

6. China continued to be an active user of the anti-dumping remedy. In past Transitional Reviews before the Committee, the United States had expressed concerns that critical arguments or evidence put forward by interested parties had not been addressed adequately in either preliminary or final determinations by China's administering authority, the Ministry of Commerce or MOFCOM. As China's anti-dumping regime had matured, many of the measures it had put in place had now reached the five-year mark, with several more reaching that point in the coming year. Given the procedural fairness issues that the United States had encountered in prior Chinese anti-dumping proceedings, it was critical that China ensure that the procedures governing the expiration and review of measures met the high standards of the Anti-dumping Agreement. Full access to critical arguments and evidence had to be provided to interested parties in sunset reviews, as well as full opportunities for due process. In

particular, details of the factual basis and reasoning supporting the investigating authority's decisions as well as complete accounts of the petitioners' arguments and briefs had to be available to all interested parties. While China had a basic regulation providing for the conduct of sunset reviews, the United States urged China to continue to develop those regulations and procedures as soon as possible and notify them promptly to the Committee.

7. The United States also urged China to apply fair procedures to all parties involved in a sunset review as envisioned by the Anti-dumping Agreement. 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 AD Agreement. The United States urged China to provide all interested parties with the opportunity to raise issues in an open and transparent setting and at an early stage of every proceeding, rather than relying on private meetings with selected parties as the principal means of listening to the concerns and arguments of all of the parties. The United States reiterated that interested parties not present for private meetings should be quickly informed of the matters discussed at those meetings, and should be given an opportunity to present their rebuttals in accordance with Article 6.3 of the Anti-dumping Agreement.

8. The United States also again urged China 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 Article 5.9 of the Anti-dumping Agreement, which provided that anti-dumping proceedings were not to hinder customs clearance. In prior Transitional Reviews, the US government had described reports from responding parties regarding 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 these customs problems once raised by interested parties, these situations seemed needlessly hindered by the lack of uniform procedures to resolve such disputes.

9. The United States recognised the progress that China had made in developing 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. The United States urged China to continue to improve the conduct of its anti-dumping proceedings in order to complement that progress.

10. The United States looked forward to seeing continued improvements and offered its assistance to China in pursuit of that goal.

11. The representative of Japan drew attention to the document submitted by his delegation (G/ADP/W/468), which raised two specific questions regarding China's anti-dumping practices. The first question concerned the application of facts available by MOFCOM. The previous year, Japan had voiced its concern about this issue. The key question was whether the investigating authority could make determinations based on the facts available when it had failed to ensure that so-called unknown exporters or producers were aware of the consequences of not supplying relevant information. The explanation from China the previous year indicated that all interested parties could gain access to the questionnaires from the official website and thereby could be aware of their consequences. In many cases, however, parties who gained access to the questionnaires from the website were limited to those exporters or producers that were already known to the investigating authorities. Under these circumstances, Japan queried why MOFCOM could apply facts available to the so-called unknown exporters or producers, in the light of Article 6.8 and paragraph 1 of Annex II of the Anti-dumping Agreement. Japan noted that other WTO Members seemed to apply a more reasonable average rate or indicative rate under such circumstances for unknown exporters or producers.

12. Turning to the second question, about injury determinations, the previous year Japan had voiced its concern that MOFCOM's injury determination in the investigation on electrolytic capacitor paper

originating in Japan might run counter to Article 3.1 and 3.5 of the Anti-dumping Agreement. The final determination of that case had simply concluded that imports from Germany and the United States had had little effect on injury, without providing sufficient and reasonable explanations as to how the investigating authority had separated and distinguished the injurious effects of those imports and of the imports from Japan. Japan needed an explanation regarding the details of the analytical methodology for the injury determinations of MOFCOM in respect of the injurious effects of imports from countries other than Japan.

13. The representative of China indicated that his delegation had taken note of the statement that had just been made by the United States. With regard to the transparency of China's anti-dumping regime, including also the transparency regarding customs clearance procedures, China noted that transparency was the fundamental principle of the Organization, and was actually a continuous process of each and every Member of the WTO. In the past seven years, with China's notifications and the reviews and the exchange of questions under the agenda items of the legislation review and others, and also China's efforts made under the Transitional Review Mechanism, China's anti-dumping regime had been quite transparent to Members. It was also China's belief that this regime was consistent with the Anti-dumping Agreement. Turning to the detailed responses to the specific questions raised in the two documents, the first one, from Japan, concerned the application of facts available. China believed that its practices in this regard were in line with the requirement of the WTO Anti-Dumping Agreement. Those practices were that China would inform the Members concerned in due time after receiving an application for initiation of an anti-dumping investigation. At the initiation of the investigation, the notice of initiation would be published and notified to all the known exporters and producers and also to the Members concerned. China's anti-dumping legislation provided 20 days to potential respondents to register with its anti-dumping authority to respond to the investigation, and questionnaires would also be available on the official website of the Ministry of Commerce for all interested parties, including those that had not registered with the anti-dumping authority in the 20 days provided. China was puzzled by the question of Japan, specifically the sentence in the document saying that the "parties who can gain access to the questionnaire from China's official website or other means are limited to those exporters or producers that have already been known to the investigating authority". China had no secret code for the interested parties to gain access to the questionnaire. It was public, it was accessible by everyone, China did not see why there was any limitation on any parties interested in a case to gain access to the questionnaire.

14. It was only for those enterprises not having responded to the questionnaire that the determination would be based on information or facts available. Therefore in China's view these practices were consistent with Article 6.8 and paragraph 1 of Annex II of the Anti-dumping Agreement, and it seemed to China that the practices of other WTO Members were the same.

15. Regarding the question from Japan on injury determinations, as China had explained in the previous Transitional Review, in the electrolytic capacitor paper case, the competent authority had made examinations on the volume of the dumped imports, the effect of the dumped imports on prices and the consequent impact on the domestic industry, based on positive evidence, which was consistent with Article 3.1 of the Anti-dumping Agreement. Members could find these examinations in the final determination report on pages 29 to 34. Also, in line with Article 3.5 of the Anti-dumping Agreement, the competent authority had analyzed the causality between dumped imports and injury, and then had addressed all other factors which might have caused injury. After the analysis, it was found that other factors were not the major reason for the material injury, as indicated on pages 35 to 38 in the final report. China therefore did not think in this regard that there was an inconsistency with Articles 3.1 and 3.5 of the Anti-dumping Agreement.

16. Furthermore, the injurious effects of those imports from countries and areas other than Japan also had been separately distinguished. Members could find this on pages 36 to 37 in the final report. In this respect, the Anti-dumping Agreement did not provide for specific methodologies to separate and

distinguish injurious effects. Nevertheless, in this particular case, the competent authority had made a specific disclosure to the Japanese embassy in Beijing concerning this issue, and in that disclosure had made a detailed explanation in response to the argument of Japan. After receiving the final determination in this case, the responding party had applied for an administrative review. The review tribunal had upheld the original determination by the investigating authority. After the administrative review, no rebuttal arguments had been received.

17. With regard to the questions on expiry reviews raised by the United States, Chapter V of the Regulations on Anti-dumping of China, namely Duration and Review of Anti-dumping Duties and Price Undertakings, specifically provided for how anti-dumping reviews, including expiry reviews, were conducted. The Regulations had first been promulgated on 26 November 2001, and had later been revised and promulgated on 31 March 2004. The Regulations had been notified to the WTO (document G/ADP/N/1/CHN/2/Supp1.3).

18. The representative of the United States stated that concerning expiry reviews, the United States understood that the Chinese Ministry of Commerce might be in the process of preparing additional regulations or rules on the conduct of expiry reviews. The United States asked if this was the case, and if so, when China envisioned finishing the development of these regulations or rules and notifying them to the Committee.

19. The representative of Japan stated that his delegation had taken note of the explanation, and had a supplementary comment for the record. Japan still wondered whether the mere posting of the questionnaire on the website would be consistent or not in light of Article 6.8 and paragraph 1 of Annex I of the Anti-dumping Agreement, noting that other Members applied a more reasonable average rate or indicative rate not based on the adverse facts available. In the light of those Members' practices, Japan would pursue this question in due course.

20. The representative of China responded to the question of the United States that China was internally discussing the possibility of having separate rules on expiry reviews, but that the work was still at a very early stage. If the separate rules were finalized and formally promulgated, China would certainly fulfil its notification obligations and provide those rules to the Committee.

21. With regard to the question from Japan, China did not have much to add, but had taken note of the points made for the record by Japan.

22. The Chair thanked delegations for their participation in the exchange. He especially thanked the delegation of China for its preparation and for the information and answers that it had provided. He equally thanked those Members that had undertaken to submit written questions and had taken part in the discussion.

23. Concerning the required report to the Council for Trade in Goods in respect of the Transitional Review, the Chair noted that the Protocol contained no guidelines for these reports. He recalled that in the past, the Chair of the Committee, 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. The Chair suggested proceeding again on that basis.

24. The Committee so decided.
