

**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 eighth 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 21 October 2009.
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/475 (submitted by Japan) and G/ADP/W/474 (submitted by the United States).
3. The statements made at the meeting of 21 October 2009, 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/37. 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 21 October 2009, to be circulated as document G/ADP/M/37

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 Japan and the United States had submitted questions in the context of the transitional review (documents G/ADP/W/475 and W/474, respectively). The Chair invited Members to make any general statements.

4. The representative of the United States noted this was the eighth annual review of China's implementation of its anti-dumping regime, under the Transitional Review Mechanism of China's Protocol of Accession, to be undertaken by the Committee. These reviews provided Members with an important opportunity to consider China's efforts to meet its obligations under the Anti-dumping Agreement. As in prior reviews, the United States observed that China had been incrementally improving its compliance efforts, but there remained aspects of China's anti-dumping regime that were obscure, thereby making it difficult for Members to confirm whether China was meeting the standard of procedural fairness reflected in the Anti-dumping Agreement.

5. China had developed into a substantial user of the anti-dumping remedy and had initiated over 160 investigations since joining the WTO in 2001, including 15 this year, which placed it among the top ten users of the remedy. Given that China was an active user of trade remedies, it would be essential that China conduct anti-dumping investigations in a responsible manner.

6. The United States used this opportunity to highlight certain concerns that it shared with its respondent companies that were subject to Chinese anti-dumping proceedings regarding significant lapses in transparency on the part of China's administering authority, the Ministry of Commerce ("MOFCOM"). Such concerns were characterized in large part by the Chinese petitioning company not providing MOFCOM with adequate non-confidential summaries of its submissions, and MOFCOM's subsequent failure to require that reasonable non-confidential summaries be provided. As a result, interested parties had been unable to adequately defend their interests in several recent anti-dumping proceedings, while MOFCOM had been deprived of key rebuttal information needed to render a fair and objective determination, as required by the Anti-dumping Agreement. The United States urged China to review the adequacy of its non-confidential investigative records to ensure that all interested parties were provided with adequate non-confidential summaries that allow

for meaningful comments, well in advance of MOFCOM's final determination, and in a manner consistent with the provisions of the Anti-dumping Agreement.

7. According to Article 22 of the Antidumping Regulations of the People's Republic of China and Article 6.5.1 of the Anti-dumping Agreement, it would be the investigating authority's responsibility to ensure that proper non-confidential summaries were provided for any information considered to be proprietary in nature. This was particularly important given that in China's anti-dumping practice, non-confidential summaries were the only means by which interested parties might examine and evaluate submissions made by other parties and documents generated by the administering authority. Accordingly, the United States urged China to thoroughly review requests for confidential treatment of information made by all parties, particularly requests by petitioning Chinese companies, and provide as soon as possible non-confidential summaries that allow for adequate understanding of the submitted information and rebuttal of allegations based on such data.

8. Similarly, the United States urged China to improve the level of detail provided by MOFCOM in its disclosure of dumping margin calculations and of the essential facts supporting the positions taken in the preliminary determination, another aspect of China's investigative process often criticized by responding parties. The United States urged China to provide parties with such improved disclosures with sufficient time to allow for the preparation of rebuttal arguments prior to a final determination. In this way, China could ensure that all parties were afforded the procedural fairness to which they were entitled.

9. Furthermore, the United States noted that as China's anti-dumping regime had matured, many of the measures it had put in place have now reached the five-year mark. Given the evidentiary problems the United States had encountered in prior anti-dumping proceedings conducted by MOFCOM, it was critical that when drafting its expiry review regulations and procedures, China should ensure that those regulations and procedures would meet the high standards of the Anti-dumping Agreement. Under the Anti-dumping Agreement, full access to critical arguments and evidence must be provided to interested parties in expiry reviews, as well as full opportunities for due process. In particular, details of the factual basis and the reasoning supporting the investigating authority's decisions, as well as complete accounts of the petitioners' allegations and briefs, must be made available to all interested parties. Therefore, the United States urged China to finalize its expiry review regulations and procedures as soon as possible and to notify them promptly to this Committee.

10. The United States also urged China to apply fair procedures to all parties involved in an anti-dumping proceeding as envisioned by the Anti-dumping Agreement. This would include, but would not be limited to, timely access to administrators and favourable consideration of hearing requests. 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, rather than resorting to private meetings with selected parties as a principal means to obtain views of parties. The United States reiterated 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 comments.

11. The United States recognized the progress China had made to date in developing a legal framework for its anti-dumping regime and in pursuing the principles of transparency and fair procedures set forth in the Anti-dumping Agreement. As a significant user of the anti-dumping remedy, China had a responsibility to demonstrate its commitment to the principles set forth in the Anti-dumping Agreement. In that regard, the United States strongly encouraged China to complete the transition to make its anti-dumping investigative and decision-making processes fully transparent and procedurally fair for all parties. The United States noted that it was looking forward to seeing continued improvement and offered its assistance to China in pursuit of that goal.

12. The representative of Japan referred to the technical questions posed by Japan in document G/ADP/W/475 and indicated that the two issues pertaining to the application of facts available and injury determinations, on which the questions focused, were follow-up questions posed by Japan last year.

13. On facts available, Japan's central concern was the treatment of the exporters/producers who were unknown to the investigating authority and who were not provided with a notice of initiation, did not have an opportunity to have access to the investigating authority's website or its questionnaires, nor were they able to register with that authority. Japan expressed its appreciation to the responses provided by China last year as reflected mainly in paragraph 96 as well as other paragraphs of the October 2008 minutes contained in document G/ADP/M/35. However, this did not respond to Japan's concern regarding the treatment of unknown exporters/producers and that if certain information was not supplied within a reasonable time, the investigating authority would be free to make determinations on the basis of the facts available.

14. On injury determinations, Japan referred to the WTO jurisprudence with respect to the investigating authority's obligation to separate and distinguish the injurious effects of the imports from countries other than the Japan. This was clear in Article 3.5 of the Anti-dumping Agreement. Although Japan appreciated the detailed responses provided by China on this issue last year and reflected in paragraphs 97 and 98 of the October 2008 minutes contained in document G/ADP/M/35 and the provision of the information to the Embassy of Japan in Beijing, China had not yet provided a clear answer on its practice in this regard. The statement provided by China simply stated that "other factors were not the major reason for the material injury", without providing any further explanation on how the authority would "separate and distinguish".

15. The representative of the European Communities thanked Japan and the United States for their submissions and statements and indicated that the European Communities was looking forward to hearing China's comments on them. In the past, the European Communities expressed concern with respect to, *inter alia*, the disclosure issue and that such concerns had remained and overlapped to some extent with what was raised in the submissions and statements of the United States and Japan. The European Communities, therefore, shared other Members' concerns expressed in this regard.

16. Before responding to the specific points made by Members, which were also reflected in the written questions addressed to China, the representative of China made some general observations. China indicated that the anti-dumping regime it had developed in the course of the great progress it achieved in opening the market, was comprehensive, detailed and fully consistent with the requirement of the Anti-dumping Agreement. The practice of the Chinese authorities in this respect had been fair and rule-based pursuant to China's anti-dumping regulations and rules, and the Anti-dumping Agreement's requirements. In initiating anti-dumping cases, China had always taken a serious, prudent and responsible attitude and exercised great restraint. On the contrary, China had become the largest victim of trade remedy measures imposed by other Members. China indicated that the number of cases initiated by other Members was also available and was reflected in the documents of the meeting. The number of cases was self-explanatory and reflected that China was not a substantial user of trade remedy measures. The number of cases initiated by China was quite moderate taking into consideration China's huge volume of imports.

17. Turning to specific questions posed by Members, China indicated that it would like to respond to these questions. Regarding non-confidential summaries, the Investigating Authority of China had dealt with the confidential information in anti-dumping proceedings in a way that was in compliance with the Anti-dumping Agreement and the domestic laws, regulations and rules. According to the *Provisional Rules on Access to Public Information of Antidumping Investigations*, the authority would request interested parties to provide non-confidential summaries which would present an appropriate understanding of the substance of the confidential information. The non-

confidential summaries had always been made public in a timely manner and interested parties had no obstacle in obtaining such summaries. Taking the recent injury investigations as an example, interested parties submitted arguments and comments on the issue of non-confidential summaries and these arguments and comments were addressed in the determinations by the authority at a later stage.

18. Regarding application of facts available, according to Article 40 of *Provisional Rules on Initiation of Antidumping Investigations*, upon the issuance of the Public Notice of initiation, the Ministry of Commerce should provide the non-confidential text of the application to the known exporters and the governments of the exporting countries (regions), which would be consistent with WTO agreements. China believed that its practice was in line with this rule and with international practice.

19. According to Article 6 of *Provisional Rules on Questionnaire in Antidumping Investigations*, the producers or exporters of the countries (regions) concerned have 20 days to register with the Ministry of Commerce or MOFCOM and respond to the investigation after the date of initiation of an anti-dumping case. Compared with relative WTO rules and the practice by other Members, this rule and practice by China was more favourable for exporters to cooperate with the investigating authority, and reduce the possibility of application of facts available.

20. Regarding the question on injury determinations raised by Japan, during the injury investigation of the electrolytic paper case, the Japanese Embassy in Beijing raised the argument on the effects of imports from countries other than Japan. The petitioner submitted comments in response to that and the authority examined the issue. An analytical paragraph was dedicated to this issue in the final determination which illustrated that the volume and market share of imports from Japan was more than ten-fold or twenty-fold of those from Germany and the United States, respectively. The effects of imports from Germany and the United States on the domestic industry were just minor. Following the determination, a Japanese company posed the application for administrative review. Determination of the administrative review confirmed that the authority's finding on the effects of imports from other countries was based on facts and properly reasoned. The applying Japanese company clearly indicated that it would not put further petitions or arguments for the case. During the above-mentioned process and afterwards, the authority had made explanations on the issue repeatedly under various occasions upon the request of the Japanese Government. China believed that it had already provided sufficient details in the explanation of the issue.

21. Regarding regulations or rules for expiry reviews, China currently conducted expiry reviews pursuant to *Anti-dumping Regulation of the P.R.C.* Yet to further perfect China's expiry review system, China indicated that it was working on a preliminary draft of rules on expiry review.

22. On the 20 days registration period, the representative of Turkey inquired whether China would send the questionnaire and provide 20 days for registration, or would it just provide 20 days for interested parties to register after the initiation of an investigation.

23. The representative of China clarified that after the initiation of the case, there would be 20 days for the interested parties to register and that this was a separate procedure.

24. The representative of the United States thanked China for the answers provided and posed a follow-up question pertaining to expiry review regulations. The United States was pleased to hear that China was in the process of drafting these regulations, but requested China to indicate when it would expect to actually have those regulations finalized and promulgated.

25. The representative of China explained that the work on this issue was in its final stages. In addition, there would be an internal procedure to ratify that regulation. Although China could not specify an exact date, it indicated that this would take place very soon.

26. The representative of Japan thanked China for the detailed responses, but indicated that Japan's question with respect to facts available remained unanswered. Japan requested China to explain its practice with respect to the treatment of unknown exporters who would not receive any questionnaire and who would have no opportunity to have access to the website.

27. The representative of China stated that this was a long-standing question which had been posed in the context of previous reviews. China indicated that this question was two-fold. The first had to do with whether such unknown exporters/producers exist and the second had to do with their treatment. China explained that as already indicated, the investigating authority – upon initiation - pursuant to the anti-dumping regulation and in line with the Anti-dumping Agreement, would notify all the companies known to the authority, publish the notice and the application, and place it on the website. It would also provide the public version of the application and the notice to the Embassies of the relevant governments to provide potential unknown interested parties with the necessary opportunity.

28. As for the unknown interested parties that exist, the investigating authority would exhaust all ways to provide the necessary opportunities. However, there were no clear rules about that in the Anti-dumping Agreement. The authority could calculate an anti-dumping margin based on facts available in line with the Anti-dumping Agreement.

29. The representative of Japan thanked China for the clear and structured answer, but indicated that Japan would analyse the response and come back if necessary.

30. 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.

31. 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.

32. The Committee so decided.

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