

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

Questions Posed by the UNITED STATES Regarding
the Notification of THE PEOPLE'S REPUBLIC OF CHINA¹

The following communication, dated 3 October 2002, has been received from the Permanent Mission of the United States

United States' questions with regard to China's Transitional Review Mechanism (TRM) on Anti-Dumping Practices

1. The United States thanks China for its recent notification of its antidumping regulations. As referenced in its notification, China has also implemented rules regarding the notified regulations, the text of which, to our knowledge, has not yet been notified to the Committee on Antidumping Practices as required by Article 18.5 of the Antidumping Agreement ("ADA").²

When does China intend to notify these provisional rules?

Does the State Economic and Trade Commission (SETC) plan to issue provisional rules governing its responsibilities under the notified regulations? If so, when will such rules be issued?

Apart from the provisional rules that have already been issued, what other level of rulemaking, if any, is required or contemplated to implement these notified regulations? Are there other forms of guidance or official interpretation, such as case precedent (*stare decisis*), that will influence MOFTEC's, SETC's and the State Council Tariff Commission's decisions?

2. Article 1 of the notified regulations specifies that they are "formulated in accordance with the relevant provisions of the Foreign Trade Law of the People's Republic of China...". Does "Foreign Trade Law" refer exclusively to Law 19-586 Adopted 12 May 1994 by the Seventh Session of the Standing Committee of the Eighth National People's Congress? If not, what other laws apply to the notified regulations?

¹ G/ADP/N/1/CHN/2

² Per G/ADP/N/1/CHN/1 (31 May 2002), China has issued provisional rules concerning the following aspects of its notified regulations: Initiation of Anti-Dumping Investigations, Questionnaires, Hearings, Sampling, Information Disclosure, Verification, Access to Non-Confidential Information, Price Undertakings, New Shipper Reviews, Refunds of Anti-Dumping Duties and Interim Reviews of Dumping and Dumping Margins. To our knowledge, the text of these rules has not been notified to the Committee.

3. Article 4 of the notified regulations states that sales in the domestic market will not be used where “the price and the quantity” do not permit a fair comparison. Under what circumstances will China determine that home market prices do not permit a fair comparison?

4. Article 6 of the notified regulations states that “a fair and reasonable comparison shall be made between the export price and the normal value of an imported product, with due allowance for factors which affect price comparability”. Is the intent of the reference to “due allowance for factors which affect price comparability” to apply the types of adjustments described in ADA Art. 2.4? Please describe all adjustments normally made by China to reported normal value and export price. How does China intend to apply the currency exchange provisions of ADA Art. 2.4.1?

5. Paragraph 1 of Article 8 of the notified regulations states that, in examining the volume of dumped imports, the competent authority should examine whether the volume “has been increasing significantly, or the possibility of a significant increase in dumped imports”.

- (a) Is Paragraph 1 of Article 8 applicable to analysis of current material injury, threat of material injury, or both?
- (b) If Paragraph 1 of Article 8 is applicable to analysis of current material injury, how is examination of “the possibility of a significant increase in dumped imports” consistent with ADA Art. 3.2?
- (c) If Paragraph 1 of Article 8 is applicable to analysis of threat of material injury, how is examination of “the possibility of a significant increase in dumped imports” consistent with ADA Art. 3.7(i), which requires a finding of a “likelihood” of substantially increased importation?

6. Paragraph 3 of Article 8 of the notified regulations similarly seeks to provide for an examination of the impact of dumped imports on the domestic industry. In this respect, consistent with ADA Art. 3.4, such an examination must include an evaluation of “all relevant economic factors and indices having a bearing on the state of the industry”. These factors include but are not limited to the enumerated factors listed in ADA Art. 3.4. However not all of the factors referenced in ADA Art. 3.4 are provided in Article 8 of the notified regulations. How does China intend to implement the requirements of ADA Art. 3.4?

7. Paragraph 4 of Article 8 of the notified regulations could be interpreted as referring to certain factors that, according to ADA Art. 3.7, should be examined by a competent authority in determining the threat of material injury. Is Article 8 principally or partially directed to a threat analysis? If so, Article 8, Paragraph 4 fails to list the factors specified in ADA Arts. 3.7(i) and (iii).

This article also does not contain the requirement in ADA Art. 3.7 that an affirmative determination of threat of material injury by reason of dumped imports must be based on a belief that further dumped imports are “imminent,” and that material injury by reason of the dumped imports would occur unless an antidumping duty measure were applied. How does China intend to implement these requirements of the ADA?

8. Footnote 11 to ADA Art. 4.1(i) provides a specific definition of related parties, which is not included in Article 11 of the notified regulations. How does China define a related party?

9. What entities would China consider to be a “relevant organization” for purposes of filing an application to initiate an anti-dumping investigation, as described in Article 13 of the notified regulations?

10. Article 21 of the notified regulations provides for the use of “facts already known and the best information available.” Please clarify how the use of facts available, pursuant to this Article, will be consistent with the provisions of Annex II to the ADA.

11. Article 22 of the notified regulations does not provide a definition of “interested parties”, which is particularly important with respect to the treatment of and access to confidential information. How does China define interested parties and how does that definition comply with ADA Art. 6.11?

12. Article 29 of the notified regulations indicates that any decision to apply provisional measures is proposed by MOFTEC, but decided by the State Council Tariff Commission (the “Tariff Commission”). The same requirement applies to final determinations, as specified in Article 38, and changes to antidumping measures, as specified in Article 50. Does the Tariff Commission have the authority to overrule a MOFTEC proposal? If so, what oversight rules govern the Tariff Commission’s decisions? What discretion does the Tariff Commission have in setting dumping margins or otherwise modifying MOFTEC’s recommendations?

13. Under Article 45 of the notified regulations, when provisional anti-dumping duties are to be refunded following a negative final determination, what actions will be required of importers to obtain the refunds? How quickly will such refunds be made? Will interest be paid on refunds of duties that were originally paid in cash?

14. What are the specific bodies to which the appeals referred to in Article 53 of the notified regulations may be made? To which body are the “administrative reconsiderations ” made? What are the procedures for requesting and conducting such reconsiderations? Which courts have jurisdiction over appeals of antidumping actions? What laws and regulations govern such actions and what standard of review is required for the appeal?

15. Article 55 of the notified regulations specifies that MOFTEC and SETC may take “appropriate measures” to prevent acts of evading antidumping measures. What constitutes evasion of antidumping measures? Please describe how the authorities will determine whether such evasion has occurred, and the types of measures the authorities may take if such evasion has occurred.

16. Article 56 of the notified regulations specifies that China may take “corresponding measures” against any country that “discriminatorily” imposes antidumping measures against exports from China. Based on what authority in the ADA could China take such action? Under what circumstances does China foresee applying this provision (i.e., what type of action would be considered as “discriminatory” within the meaning of Article 56)? What sorts of actions would be taken against another country?

17. Please explain the differentiation between the terms “country” and “region” as used in the notified regulations (e.g. Article 4).
