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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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

Questions Posed by the EUROPEAN COMMUNITIES Regarding the Notification of THE PEOPLE'S REPUBLIC OF CHINA[1]

The following communication, dated 16 September 2002, has been received from the Permanent Delegation of the European Commission.

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

- Several Articles of the Regulation determine different, joint or complementary roles and responsibilities for the Ministry of Foreign Trade and Economics Cooperation (MOFTEC) and the State Economics and Trade Commission (SETC). Could the People's Republic of China please explain, what is the exact role, function, responsibilities and inter-institutional relationship between these two authorities in the context of anti-dumping proceedings?

- Could the PRC please clarify the question of legal representation in case of anti-dumping proceedings. In particular, can a non-Chinese lawyer make representations for exporters in the context of antidumping proceedings (e.g. submit written comments, participate in hearings)? If not, can the People's Republic of China please explain the reasons why?

- Article 4 sets out the rules for the determination of normal value. Could the People's Republic of China confirm that, in accordance with Article 2.2 of the Anti-Dumping Agreement a comparable price of the like product exported to an appropriate third country can only be used, provided this price is representative ?

- Article 5 (2) of the Regulation: could the People's Republic of China confirm that prices are considered unreliable only in situations where there is an association or compensatory arrangement, in accordance with Article 2.3 of the Anti-Dumping Agreement ?

- Article 8 of the Regulation contains rules on the determination of injury. The EC notes that this provision does not list all relevant economic factors and indices having a bearing on the state of the domestic industry as provided in Article 3.4 of the WTO Agreement. How does the People's Republic of China ensure that the investigating authority will not consider fewer factors than what

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is requested under Article 3.4 of the Anti-Dumping Agreement (see e.g. Thailand – H-beams from Poland, Appellate Body Report WT/DS122/AB/R, para. 121-128).

- According to Article 20 of the Regulation, MOFTEC may carry out investigations in the territory of other countries unless that country objects to the investigation. Could the People's Republic of China confirm that MOFTEC shall also obtain the agreement of the firms concerned, in accordance with Article 6.7 of the Anti-Dumping Agreement ? How does it intend to ensure that the results of such investigations shall be made available or disclosed in accordance with Article 6.7, last sentence, of the Anti-Dumping Agreement ?

- Some aspects of the provisions on the collection of evidence are unclear: e.g.
  - how much time do exporters or foreign producers have to complete the questionnaires (cf. Art. 6.1.1 of the Anti-Dumping Agreement) ?
  - is evidence presented by one interested party available to other interested parties, subject to the protection of confidential information (cf. Art. 6.1.2 of the Anti-Dumping Agreement) ?
  - are there rules on the provision of non-confidential summaries (cf. Art. 6.5.1 of the Anti-Dumping Agreement) ?
  - are there any rules on the use of sampling (cf. Article 6.10, 6.10.1, 6.10.2 and Article 9.4 of the Anti-Dumping Agreement) ?

- According to the first sentence of Article 27 of the Regulation an investigation shall be terminated under the circumstances set out in points (1) to (5). However, the second sentence of this article states that the investigation shall be terminated if the "alleged products are covered by the 2nd, 3rd, or 4th items above". Could the People's Republic of China clarify the relation between the first and last sentence of this article ?

- Article 30 of the Regulation provides that "in special circumstances" the period of provisional anti-dumping duty may extend to 9 months. Could the People's Republic of China confirm that "special circumstances" only refer to the situation where the authorities examine whether a duty lower than the margin of dumping would be sufficient to remove injury, in accordance with Article 7.4 of the Anti-Dumping Agreement ?

- Article 48 of the new Regulation allows for an extension of measures "as appropriate", after a review determines the need for a continued imposition of measures. How long would this time frame be and how does this provision relate to Article 11.3 of the Anti-Dumping Agreement ?

- The new Regulation does not contain a provision regarding the detailed contents of public notices of initiation, preliminary or final determination of an anti-dumping investigation, acceptance or termination of an undertaking, and termination of a definitive anti-dumping duty (cf. Article 12.1.1, 12.2.1, 12.2.2, 12.2.3 and 12.3 of the Anti-Dumping Agreement). What are the rules or practices in this respect ?

- For some aspects of the investigation, the Anti-Dumping Agreement provides more detailed guidance, which is not reflected in the Anti-Dumping Regulation of the People's Republic of China. This is for example the case with regard to Articles 2.2.1, 2.2.1.1, 2.2.2, 2.4.1, 4.2, 5.7, 6.1, 6.3, 6.5.2, 6.11, 6.12, 6.13, 10.4; parts of 2.4, 3.5, 3.7, 4.1 (ii), 6.1.3, 8.3, 10.6 (ii) of the WTO Anti-Dumping Agreement. Could the People's Republic of China please confirm that when carrying out anti-dumping investigations, it will also respect those provisions of the Anti-Dumping Agreement which are not or only partially included in its legislation ?

- Article 56 of the Regulation provides that China may adopt "corresponding" measures whenever another country discriminatorily imposes anti-dumping measures against imports originating in the People's Republic of China. Could the People's Republic of China explain how this provision relates to the clear WTO rules on dispute settlement, which provide that in cases of disputes or measures not compatible with the WTO rules (as discriminative measures would be), WTO members should seek to resolve the dispute amicably and, if necessary, resort to the WTO Dispute Settlement Body. Only under strict conditions, defined in the rules on dispute settlement can "retaliatory" measures be allowed under the WTO rules. Have there already been cases of application of Article 56 ? If so, could some information on these cases be provided? If not, how does the People's Republic of China envisage to apply Article 56, in particular in the light of the WTO rules ?

- Could the People's Republic of China clarify whether any implementing rules have been adopted in accordance with Article 58 of the Regulation, and if so, what their contents is and when they will be notified to the WTO ?