

**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 CHINA¹

The following communication, dated 24 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 Subsidies and Countervailing Measures

- Several Articles (Art 5,7,16,18,25,26,28,34,37,48,49,54,57) of the Regulation mention 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 PRC explain, what is the exact role, function, responsibilities and hierarchical situation, if any, of these two entities in the functioning of the PRC's economic organisation in general and in regard to trade defence instruments in particular?
- Art 8 of the Regulation enumerates factors which shall be considered for the determination of injury. The EC notes that that this provision does not list all relevant factors and indices having a bearing on the state of domestic industry as provided in Art 15 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM). How does the PRC ensure that the investigating authority will not consider fewer factors than what is requested under Art 15 of the ASCM Agreement?
- According to Art 20 of the Regulation the investigation authorities can use questionnaires, sampling etc. and carry out investigations in the territory of other countries unless that country objects to the investigation. How much time do exporters, producers or interested Members have to complete questionnaires or giving replies (cf. Art 12.1 ASCM)? Could the PRC confirm that MOFTEC shall also obtain the agreement of the firms concerned in accordance with Art 12.6 of the ASCM?
- Art 25 and 26 foresee a two step process involving MOFTEC and SETC in establishing a final determination of the investigation. Can the PRC confirm that the preliminary decision mentioned in Art 26 refers only to the situation where provisional measures according to Art 17 of the ASCM are applied?

¹ G/SCM/N/1/CHN/1

- Art 28 of the Regulation lists in point 1 to 5 the circumstances under which a countervailing investigation shall be terminated. Point 5 stipulates „other circumstances considered not appropriate by MOFTEC and SETC to continue the countervailing investigation". However, the second sentence of this Article states that the investigation on a product involved shall be terminated if the product from one country or some countries (regions) falls in the circumstances set forth in item 2nd, 3rd, 4th or 5th of the preceding paragraph. Could the PRC clarify the relation between the first and the last sentence of this Article, in particular why the 1st item is not reproduced? What are „the other circumstances that both MOFTEC and SETC consider not appropriate to continue an investigation“?
 - Art 42 of the Regulation describes the determination of countervailing duties. For those exporters of the subsidized products not included in the examination, the countervailing duties shall be determined in a reasonable way.
 - Can the PRC please explain in more detail the notion of „reasonable way“? How is it ensured that the conditions set out in Art 19.3 of the ASCM are being complied with?
 - Art 45 of the Regulation deals with the retroactive imposition of countervailing duties in case of provisional measures. The list of reasons for the imposition of such duties seems to be less restrictive than in Art 20.6. of the ASCM. Can the PRC confirm that the application of such retroactive countervailing duties will only be done according to Art.20.6 of the ASCM?
 - Art 47 of the Regulation allows for an „extension as appropriate“ of measures after a review determines that the termination of the countervailing duty would be likely to lead continuation or recurrence of subsidization and injury. How long is „appropriate“ and how does this provision relate to Art 21.3 and 4 of the ASCM?
 - Art 54 and 57 of the Regulation gives MOFERT and SETC the right to adopt appropriate measures to prevent the circumvention of countervailing measures and to formulate detailed implementation rules. Can the PRC explain which preventive measures and detailed implementation rules have been established so far and circulate it to Members.
 - Art 55 provides that the PRC may, on the basis of actual situations, adopt corresponding measures against a country whenever this country discriminatorily imposes countervailing measures on exports from the PRC. Could the PRC explain how this provision relates to the clear WTO rules on dispute settlement, which provide that in cases of dispute 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 Art 55? If so, could some information on these cases be provided? If not, how does the PRC envisage to apply Art 55, in particular in the light of the WTO rules?
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