

**CHINA'S TRANSITIONAL REVIEW MECHANISM
ON ANTI-DUMPING PRACTICES**

Statement by the United States

The following communication, dated 25 October 2002, has been received from the Permanent Mission of the United States.

The remedies authorized by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement") form an essential part of the current rules-based international trading system. Transparency, predictability, and adherence to the rule-of-law are all critical to the WTO-consistent application of these remedies, as well as to ensuring that they don't act as an unjustifiable barrier to trade. Hence, it is in all Members' interests to ensure that each Member promptly and effectively implements their WTO obligations in this area.

Our joint goal in this transitional review mechanism should be to conduct a thorough and meaningful review, both to highlight to China its successes, and to identify areas where more work needs to be done. As China is becoming increasingly active in using its anti-dumping law, it is important that it lay out its plan for bringing its practices into better conformity with its WTO commitments where there are gaps. We want to do our utmost to facilitate such a review and urge China to join in the review in the spirit in which it is intended. A key part of the review is for Members to ask questions about areas of China's practices that they do not understand. We and five other Members posed such questions.¹

We recognize and applaud China's efforts to implement trade remedy laws and regulations consistent with WTO requirements. China has been prompt in promulgating new regulations and implementing rules, with new regulations having gone into effect on 1 January 2002, followed by eleven sets of provisional implementing rules between February and April. We are disappointed, though, by the delay in China's notifying these regulations and rules – the regulations were not notified until May (by name only) and the text of the regulations not until September (G/ADP/N/1/CHN/1 and 2, respectively). To our knowledge, China has not yet notified its statute governing anti-dumping measures nor the text of its provisional implementing rules.²

With regard to transparency, we encourage the Ministry of Foreign Trade and Economic Cooperation's (MOFTEC) efforts to make non-confidential information submitted during anti-dumping proceedings available to interested parties and to the public. To our knowledge, the State Economic and Trade Commission (SETC) has not established a means to make available to the public,

¹ G/ADP/Q1/CHN/2, 3, 4,5, 6 and 7

² The United States reserves comment and the right to pose questions on the provisional rules and the topics that they cover until China formally submits the text of the rules to the Committee. A list of the provisional rules that China has issued was included in China's May notification.

or even to interested parties, non-confidential summaries of materials submitted to the agency. At both agencies, there appears to be little or no disclosure of their respective analysis and decision-making process. However, none of the anti-dumping investigations that China has initiated since its accession to the WTO have reached the point of a preliminary decision. We hope China takes advantage of this early stage to further develop transparency in its proceedings.

We are also encouraged that the notified regulations embrace the principles of rule of law and due process. However, the regulations provide no elaboration on these topics. In particular, China should identify the specific statute or statutes that govern its anti-dumping actions and notify those laws to the Committee. China also should clarify the roles of Chinese government entities involved in China's anti-dumping regime: MOFTEC, SETC and the State Council Tariff Commission. Also unclear are the entities to whom appeals of anti-dumping determinations may be made and the rules under which such appeals will be conducted.

China has made a significant effort to mold its revised regulations to the provisions and requirements of the AD Agreement, which is particularly evident when the notified regulations are compared with China's pre-accession anti-dumping regulations. The language in China's notified regulations appears generally to follow that in the AD Agreement, although there are certain areas where key provisions are omitted or are worded in an ambiguous manner. In addition, China included certain provisions that do not appear in the AD agreement. The most prominent example is Article 56 of the notified regulations, which indicates that China may take "corresponding" measures when another country "discriminatorily" imposes anti-dumping measures on exports from China. This provision appears to have provoked universal comment – each of the Members that submitted TRM questions expressed concern about Article 56. We and other Members also have questions about such topics as:

- The factors that China will examine in conducting an injury analysis under Article 3 of the AD Agreement;
- China's definition of "interested" and "related" parties under Articles 6.11 and 4.1 of the AD Agreement, respectively;
- China's calculation of export price and normal value under Article 2 of the Agreement;
- China's use of facts available in anti-dumping determinations under Annex II of the AD Agreement; and
- How China intends to identify and address evasion of anti-dumping measures.

The questions we and other Members posed attempt to seek understanding of the issues noted above. We are disappointed that China has not provided written answers to those questions. Such responses would have greatly facilitated the review during these meetings. In order to make the review useful to all, China included, we urge China to agree to submit in a timely manner, written responses to the questions posed by the Members.

We want to stress that the United States does not take issue with China's use of anti-dumping remedies, so long as such actions comport with WTO rules. We also look forward to continued cooperation with China, such as through technical assistance exchanges, as it develops its trade remedy regime. We hope these exchanges will foster a mutual understanding of each other's unfair trade laws and promote fair application of the rules in accordance with WTO guidelines. In that regard, we have just completed a program of comprehensive anti-dumping training assistance to a delegation of trainees from the Shanghai WTO Affairs Consultation Centre over the course of their

four-month stay in Washington this fall. We are eager to provide similar assistance to the Government of China, as well as other groups within China that need such training.
