

**Committee on Subsidies  
and Countervailing Measures**

**CHAIRMAN'S REPORT TO THE COUNCIL FOR TRADE IN GOODS  
ON TRANSITIONAL REVIEW OF CHINA**

1. The Committee on Subsidies and Countervailing Measures undertook the first 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 on 31 October-1 November 2002.
2. Annex 1A to the Protocol requires China to submit information on the following to this Committee: "Pricing Policies": (a) "application of existing or any other price controls and the reason for their use"; and (b) "pricing mechanisms of China's state trading enterprises for exported products". China submitted a notification in this respect on 30 October 2002. It can be found in document G/SCM/N/92.
3. China's countervailing duty legislation notification be found in document G/SCM/N/1/CHN/1. China also submitted a "nil" semi-annual notification concerning countervailing duty actions for the period 1 January-30 June 2002 (as reflected in paragraph 2 of document G/SCM/N/87/Add.1).
4. The questions posed by Members in the context of the transition review can be found in G/SCM/Q1/CHN/2 and 8-10 and G/SCM/Q2/CHN/1-4.
5. The statements made at the meeting of 31 October-1 November 2002, 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/SCM/M/44. The relevant paragraphs which reflect the statements made and the discussion at the meeting are annexed.

E.. TRANSITION REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION

1. The Chairman recalled that paragraph 18 of the Protocol of Accession of the People's Republic of China to the World Trade Organization provided that all subsidiary bodies, including this 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. He recalled in this connection that at the Committee's spring regular meeting, it was agreed that the review for this year would take place at this fall 2002 regular meeting. The Chairman said that this Committee had to report the results of the review promptly to the Council for Trade in Goods. 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. The Chairman said that there were no procedures set out for the conduct of the transition review in the Protocol, except that China was to provide relevant information in advance of the review. In this regard, the Chairman noted that Annex 1A specified China was requested to provide information on the following to this Committee in accordance with Article 18.1 of its Accession Protocol: "Pricing Policies": (a) "application of existing or any other price controls and the reason for their use"; and (b) "pricing mechanisms of China's state trading enterprises for exported products". He said that China had submitted a notification in this respect on 30 October 2002.

3. The Chairman noted that China had also made several of the notifications required of all Members under the Agreement on Subsidies and Countervailing Measures. China's notification of countervailing duty legislation, under Article 32.6 of the Agreement, could be found in document G/SCM/N/1/CHN/1. He said that this legislation notification would be included on the agenda of the Committee's meeting next spring in the regular course of business. China had also submitted, under Article 25.11 of the Agreement, a "nil" semi-annual report for the period 1 January to 30 June 2002, as reflected in paragraph 2 of document G/SCM/N/87/Add.1. The Chairman stated that certain Members had submitted questions in the context of the transition review, which related to China's notification of legislation in G/SCM/N/1/CHN/1, to subsidies and to the information specified in Annex 1A of China's Accession Protocol.

4. The delegate of the United States made a statement regarding the US views on the transitional review mechanism. He stated that the Agreement on Subsidies and Countervailing Measures built on the rules and disciplines of Article VI, XVI and XXIII of the GATT 1994. Accordingly, it provided extensive guidance and requirements as to the use and transparency of subsidies, the application of countervailing measures to offset the injurious effects of subsidized imports and addressing the adverse trade effects of subsidies in export markets. In general, the Agreement on Subsidies and Countervailing Measures sought to balance the need to counteract the international trade distortions which subsidies could cause with the recognition that governments often use subsidies to achieve a wide range of public policy objectives. Because of this careful balance, WTO Members placed a high priority on multilateral surveillance of Members' obligations under the Agreement on Subsidies and Countervailing Measures and in ensuring that each Member promptly and effectively implements its WTO obligations in this area.

5. In the Committee on Subsidies and Countervailing Measures, the scope of China's transitional review necessarily involved obligations concerning both countervailing measures and subsidies. In addition to its obligation to implement any countervailing duty legislation it may choose

to enact consistent with WTO requirements, and to respect the rules of the Agreement concerning the use and transparency of subsidy measures, China undertook several specific commitments with respect to subsidies in the context of its accession to the WTO. Among other things, China agreed to eliminate upon accession all subsidy programmes falling within the scope of Article 3 of the Agreement. The Protocol of Accession also stipulated that for purposes of applying Article 1.2 and 2 of the SCM Agreement, subsidies provided to state-owned enterprises would be viewed as specific if, *inter alia*, state-owned enterprises were the predominant recipients of such subsidies or state-owned enterprises received disproportionately large amounts of such subsidies. Finally, for purposes of China's transitional review in this Committee, it was also understood that the review would encompass China's specific commitments with respect to pricing practices and controls, and, in this regard, his delegation noted and thanked China for the information they had recently supplied concerning these issues.

6. In the view of the United States, the goal of this transitional review mechanism should have been to conduct a thorough and meaningful review of China's progress on WTO implementation that both highlighted China's successes and identified areas that needed more focus and clarification. Since China had neither used its countervailing duty law nor submitted a subsidy notification since acceding to the WTO, a careful and analytical review at this point in time may have helped to prevent unnecessary confusion or disagreements in the future. It was important for China to set forth its plan to ensure that its practices and policies would comply with its WTO commitments in those areas where there may have been gaps. The United States wanted to help make this review as meaningful and helpful as possible, and looked forward to working with its Chinese colleagues with that end in mind. A key part of the review was for Members to ask questions about areas of China's practices and policies that required further clarification or elaboration as regards China's multilateral obligations. The United States and several other Members had posed such questions covering both countervailing duty and subsidy matters.<sup>1</sup>

7. **Part I - Countervailing Duty Laws and Regulations.** The United States recognized and applauded China's efforts to implement a domestic countervailing duty (CVD) regime consistent with WTO requirements. China had been prompt in promulgating new regulations and implementing rules, with new regulations having gone into effect on 1 January 2002, followed by the issuance of certain provisional implementing rules. The United States was disappointed, though, by China's delay in notifying these regulations to the WTO insofar as the text of the regulations was only circulated in September (G/SCM/N/1/CHN/1). To the knowledge of the United States, China had not yet notified its underlying statute governing countervailing measures nor the text of its provisional implementing rules. In that regard, the United States reserved its right to comment and pose questions on the provisional rules and the topics that they covered once China had formally submitted the text of those rules to this Committee.

8. A fair number of the United States' specific questions and concerns about China's countervailing duty regulations were identical or similar to those which the United States had raised in regard to its anti-dumping regulations, especially those concerning common procedural and injury issues. Therefore, the areas of interest which the United States summarized in this meeting echoed many of those which the United States had raised in the TRM conducted in the Committee on Antidumping Practices.

9. With regard to transparency, the United States urged both the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the State Economic and Trade Commission (SETC) to take steps to ensure that non-confidential information submitted during countervailing duty proceedings was available to interested parties and to the public. Since it had not yet initiated a countervailing duty case, the United States hoped China would use this opportunity to develop and implement

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<sup>1</sup> G/SCM/Q1/CHN/2, and 8 to 10 as well as G/SCM/Q2/CHN/1 to 4.

additional procedures that would help to ensure appropriate transparency in its countervailing duty proceedings.

10. The United States was encouraged that the notified regulations generally embraced the principles of rule of law and due process. However, the regulations provided little practical or detailed elaboration of these principles. In particular, China should identify the specific statute or statutes that governed its countervailing duty actions and notify those laws to the Committee. China also should clarify the roles of Chinese government entities involved in China's countervailing duty regime: MOFTEC, SETC and the State Council Tariff Commission. Also unclear were the entities to whom appeals of countervailing duty determinations may be made and the rules under which such appeals would be conducted.

11. China had made a deliberate effort to conform its CVD regulations to the provisions and requirements of the Agreement on Subsidies and Countervailing Measures. The language in China's notified regulations appeared generally to follow that in the Agreement on Subsidies and Countervailing Measures, although there were certain areas where key provisions were omitted or were worded in an ambiguous manner. In addition, China included certain provisions that did not appear in the Agreement. The most prominent and troubling example was in Article 55 of the notified regulations, which indicated that China may take "corresponding" measures when another country "discriminatorily" imposed countervailing duty measures against exports from China. The United States and other Members also had questions about such topics as:

- the role and function each Chinese governmental entity involved in a case would have;
- the suggestion in Article 3 of the regulations that any funding provided by a government through a private body would be considered a subsidy;
- how China intended to determine specificity under its laws and regulations in accordance with Article 2 of the Agreement;
- how China would determine injury in accordance with Article 15 of the Agreement; and
- China's provisions for ensuring respect for the confidentiality of submissions while also providing transparency.

12. **Part II – Subsidies.** GATT Article XVI:1 generally required all Members to notify certain information about any subsidy which produced a trade effect, and Article 25 of the SCM Agreement supplemented this obligation by providing that Members "shall notify any subsidy as defined in paragraph 1 of Article 1, which is specific within the meaning of Article 2, granted or maintained within their territories". Article 25 further provided that such notifications "shall be submitted not later than 30 June of each year" and should be "sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of notified subsidy programmes". In this regard, notifications were to indicate: (i) the form of the subsidy; (ii) the amount per unit or, where this was not possible, the total or annual amount budgeted for the subsidy; (iii) the policy objective and/or purpose; (iv) its duration and (v) statistical data illustrating its trade effects. Although China had submitted a subsidies notification in the context of its accession (see Protocol Annex 5A), the information contained therein was generally current only through 1998 or 1999.

13. The United States fully appreciated both the importance and the difficulty of satisfying this fundamental notification obligation. Prompt and timely compliance with such subsidy notification requirements required considerable organization and commitment on the part of the authorities responsible for providing the information, but it was also critical for satisfying the rights of other Members to know and understand the range and operation of subsidy measures that were subject to the provisions of the Agreement. Used properly, the notification process could also provide a means of disseminating information domestically about the obligations of the Agreement on Subsidies and

Countervailing Measures and could help to avoid the adoption of measures that might be inconsistent with a Member's multilateral obligations, thereby preventing unnecessary trade frictions.

14. As China had not submitted at the time of the meeting its annual notification of subsidies that was due on 30 June, the United States hoped that the Chinese delegation had been able to make profitable use of the subsidy notification seminar that had been held earlier in the week. The expertise of the Secretariat and the experience of other Members should have provided useful guidance to China on how best to organize its efforts and resources to meet this important obligation. Although the United States understood that it was sometimes challenging to balance the need to supply complete notifications with the need to meet notification deadlines, the United States urged the Chinese authorities to make a maximum effort to satisfy both requirements.

15. The questions posed by the United States on subsidies were aimed at learning, and confirming China's success in complying with its accession commitments in this area. As a result, the United States had asked for information demonstrating China's compliance with its commitments to eliminate certain specific subsidy practices, and ensuring that other measures about which the United States had learned certain information did not conflict with China's agreement not to provide subsidies contingent upon export performance or the use of domestic over imported goods. The United States also had sought assurances that when China submitted its forthcoming subsidy notifications, it would include measures bestowed at sub-central government levels, consistent with the requirements of the Agreement and the practices of other WTO Members. The United States understood that gathering such information could be time-consuming and difficult, but it remained an important element of all Members' transparency obligations. To the extent that learning about the United States' own efforts and procedures to gather information about sub-central measures might be helpful to China, the United States would be happy to share such experiences.

16. **Conclusion.** The questions that the United States had posed in this review sought an improved understanding of the issues relevant to the Transitional Review Mechanism, which would benefit both China and other WTO Members. The United States was disappointed that China had not provided written answers to those questions. In order to make the review useful to all, including China, the United States urged China to reconsider its position. At the very minimum, the United States expected China to work with the United States in order to ensure that written and informative responses to the questions posed by the Members could be provided in some timely fashion and appropriate forum.

17. The delegate of the United States stressed that the United States did not take issue with China's use of countervailing duty remedies, so long as such actions comported with WTO rules. The United States also looked forward to continued cooperation with China, such as through technical assistance exchanges, as it develops its trade remedy regime and procedures for the notification of subsidies to the WTO. The United States hoped these exchanges would foster a mutual understanding of each other's trade remedy laws and promote fair application of the rules in accordance with WTO guidelines. In that regard, the United States had just completed a programme of comprehensive training assistance concerning matters relevant to the SCM and Anti-dumping Agreements with a delegation of trainees from the Shanghai WTO Affairs Consultation Centre over the course of their four-month stay in Washington this fall. The United States was eager to provide similar assistance to the Government of China, as well as other groups within China that would request such training.

18. The Chairman thanked the delegate of the United States and reminded Members that the following Members had posed questions in the transition review context: the European Communities, the United States, Japan, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu can be found in documents G/SCM/Q1/CHN/2 and /8-10, respectively, concerning China's countervail legislation. In addition, the European Communities, the United States and Japan had submitted questions in respect of subsidies, in documents G/SCM/Q2/CHN/1-3, respectively. Finally, at the

beginning of this meeting, Mexico had submitted questions in respect of subsidies, in document G/SCM/Q2/CHN/4. The Chairman invited the delegate of China to take the floor to respond to the questions posed by Members.

19. The delegate of China stated that China welcomed this opportunity to present to this Committee the following information within the framework of the transitional review under paragraph 18 of the Protocol of China's Accession to the WTO. He said that the statement would begin with some updated information regarding subsidies and the pricing policy in China. The second part would concern China's countervailing regulation which was notified to this Committee with full text in English. He stated that he believed that the information was sufficient to address concerns and respond to questions that Members raised to China prior to this meeting. His statement would be circulated after it was delivered.

20. **Part I - subsidy programmes and the notification obligations under the Subsidies Agreement.** The delegate of China stated that, in common with many other Members, China had experienced difficulty in obtaining accurate data and details of all types of subsidies. Some members of the Chinese delegation had participated in the Subsidies Notification Seminar for capital-based officials prior to this meeting of the Committee. They were impressed by the delay of notifications of many other WTO Members.

21. Soon after WTO accession, China began to collect the information of subsidies, although the preoccupation was placed on regulation and policy streamlining and formulation to honour the commitments and undertakings made. Due to the time constraints and also the complexity of this job known to all of us, this information collection process was far from finishing, and it seemed very difficult at the time of this Committee meeting to tell a clear-cut deadline. However, the work that the Chinese authorities had done did turn up with some new information which the Chinese delegation would like to share with other Members at this Committee's meeting, although in the view of the Chinese authorities these incomplete information were not sufficient for the Chinese authorities to update the subsidy notification that they made during the accession negotiations, the delegate of China thought that it was sufficient for a meaningful review at this Committee's meeting. The delegate of China stated that they would certainly continue their efforts to collect more information and further improve their quality, so as to notify to the Committee at an earlier date. The delegate of China said that the information that he would disclose in this Committee meeting would be reflected in China's future notification.

22. First and foremost, on the subsidy programme related to the Strategy of the Chinese government to develop the western regions, the delegate of China said that the Strategy initiated in year 2000 aimed at accelerating the social and economic development of the western regions of China. The subsidy programme took the form of preferential taxation treatment for enterprises in the West. To be more specific, for the industries and sectors encouraged by the State, all enterprises in the regions — both domestic and foreign-invested — were entitled to a preferential income tax rate of 15 per cent from year 2001 to 2010. The delegate of China stated that this was a ten-year programme. The Ministry of Finance, the General Administration of Taxation and the taxation authorities at the local levels were responsible for the implementation.

23. Secondly, regional subsidy programmes in China as notified in Annex 5A to the Accession Protocol, including those for special economic zones, were still valid. The purpose of the programmes was to promote regional social and economic development and absorbing foreign investment, and they were by no means contingent upon export performance or on use of domestic products. China believed that those programmes were extremely important and necessary to achieve the development goal of the nation, and they were not in any way prohibited by the Agreement on Subsidies and Countervailing Measures. The delegate of China said that China therefore had no plan to cancel these programmes.

24. During the accession negotiations, China committed to eliminating the subsidy programmes contained in Annex 5B to the Accession Protocol. The two programmes relating to the Industrial Policy on Automobiles were ceased from implementation as of 1 January 2002, according to a Decree of the Ministry of Finance dated 11 December 2001. China no longer maintained subsidy programmes that were contingent upon export performance or use of domestic products. The subsidies provided to certain state-owned enterprises running at a loss by the central budget, as listed also in Annex 5B, were eliminated in 2001. Since 2001, such an item no longer existed in the central budget. The subsidies provided to certain state-owned enterprises running at a loss by the local budget, which appeared in Annex 5A, had also been eliminated since 2001.

25. One Member mentioned the incentive programme for export of new and hi-tech products. As a general policy, China encouraged export of new and hi-tech products with a view to upgrading the structure of products exported and to adapting enterprises to the competition in international markets. However, up to October 2002, no specific trade policy or concrete incentive measure had been applied. The delegate of China assured Members that China would fulfil its notification obligation once China had such specific incentive programmes.

26. One Member asked about new policies of China to support exports. The delegate of China reiterated that all the promotion policies and measures taken by China to support exports would not go out of the scope permitted by the Agreement on Subsidies and Countervailing Measures. For the industry of integrated circuits in China, some preferential taxation policies had been adopted to promote its development since year 2001. More specifically, (1) for integrated circuit manufacturing enterprises established in China with total investment of RMB 8 billion and above or for manufacturing of circuits less than 250 millimicron, import of certain specialized construction materials for purification rooms, manufacturing equipment and spare parts etc. were exempted from tariff and value-added tax from 1 January 2001; (2) for the same kind of enterprises, import of certain manufacturing raw materials and consumption goods for self-use was exempted from tariff and value-added tax from 1 July 2001; (3) from 1 January 2001 to the end of 2010, for the value-added tax applied to integrated circuit products at the rate of 17 per cent, collection exceeding 3 per cent of actual tax should be refunded upon collection. These three taxation policies were adopted for a product or an industry, regardless of the ownership of the enterprise or the source of the investments. They were not based upon export performance. Therefore, these policies were consistent with the Agreement on Subsidies and Countervailing Measures. The delegate of China stated that China had no plan to eliminate or change those programs.

27. The delegate of China stated that China had eliminated its export subsidies on agricultural products as early as the beginning of 1990s. During the course of the WTO accession negotiations, China committed itself not to resume agricultural export subsidies. China honoured this commitment since accession. After accession, to alleviate burdens of farmers and to increase competitiveness of the agricultural products, China increased transportation and distribution efficiency for the agricultural products. The Railway Construction Fund imposed on transportation of agricultural products including grain and cotton, and unreasonable fees and charges imposed by some local railway enterprises were also ruled out. This led to a drastic decrease of cost of transportation and distribution, facilitating domestic circulation and export of agricultural products. Furthermore, taking the international prevailing practice, agriculture products were also exported with zero value-added tax. All these measures contributed to the decline of the cost of exporting agricultural products. Those measures were WTO-consistent and in line with international common practices.

28. With regard to the pricing policy in China, the delegate of China stated that, in advance of this meeting, the Chinese delegation had provided this Committee with some information as required by Annex 1A to the China's Accession Protocol. He said that prices of most products and services in China were completely determined by the market. Price control by the government took only two forms, of state pricing and government guidance pricing, and was limited to very few products and

services as listed in Annex 4 of the Protocol of China's Accession to the WTO. He stated that the State Development and Planning Commission was the government authority responsible for implementation of price control. The Catalogue of Pricing by the State Development Planning Commission and Relevant Administrative Bodies of the State Council, which was promulgated by the State Development Planning Commission on 4 July 2001, was still in force. This catalogue was fully discussed by the members of the Working Party on China during the accession negotiations, and its conformity to China's commitment had been recognized by all WTO Members.

29. Reasons behind use of price control in China were specifically provided in Article 18 of the Pricing Law of the People's Republic of China, which stated that price control was restricted only to: (1) a limited number of products that were of great importance to national economy and people's livelihood, (2) a small number of products of scarce resources, (3) products under natural monopoly, (4) important public utilities, and (5) important services of public interest. In China, the practice of one product or service under multiple pricing had been terminated. Transparency of pricing policy was well observed, with a list of products and services subject to state pricing and government guidance pricing as well as their price-setting mechanism published with the Price Gazette of the People's Republic of China.

30. Regarding the pricing mechanism of state trading enterprises, about which some Members were concerned, the delegate of China emphasized that according to the Pricing Law of the People's Republic of China, state pricing and government guidance pricing only applied to products and services as published, regardless of the ownership of the enterprises. Prices of products and services that were not subject to state pricing and government guidance pricing shall be determined by the market, and eventually by the enterprises themselves. Therefore, pricing mechanism of state trading enterprises was also determined by those enterprises according to the market situation. On this particular issue, the delegate of China stated that more information would be provided in China's notification to the Council for Trade in Goods concerning state trading enterprises.

31. **Part II – Response to the questions posed to China prior to this meeting by several Members regarding China's Countervailing Regulations.** The delegate of China stated that since China had not initiated any countervailing investigation and no questions in this regard were raised, his instruction would be limited to the regulatory aspect.

32. The delegate of China then addressed some specific questions posed by Members:

**1. The function of various government authorities in countervailing investigations in China.** The delegate of China referred to the explanation given in the Safeguards and Anti-dumping Committees with respect to similar questions posed by Members. Three government agencies in China were legislatively involved in countervailing investigation matters, namely the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the State Economic and Trade Commission (SETC) and the Tariff Commission under the State Council (TCSC). According to the Regulations on Countervailing Measures, MOFTEC and SETC were the investigating authorities. MOFTEC was in charge of the investigation and determination of subsidy. If a provisional countervailing measure took the form of undertakings, a decision should have been made and published by MOFTEC as the foreign trade administrative authority. SETC was responsible for the investigation and determination of injury. TCSC was to decide whether to levy provisional or definitive countervailing duties, upon proposal made by MOFTEC on the basis of the investigation findings. The specific provision governing the decision-making of TCSC could be found in Article 43 of the notified Regulation. According to that Article, no countervailing duties shall be levied in excess of the amount of subsidy as determined in the final determination made by MOFTEC. The delegate of China said



that, while the TCSC was empowered to decide whether to adopt recommendations for application of countervailing measures, it was not in a position to overrule or modify the determination made by MOFTEC on the amount of subsidy. Other than the above functions carried out by SETC and TCSC, MOFTEC was also responsible for the other issues relating to countervailing investigations, including consultations, notifications, dispute settlement etc.

**2. Implementation of Article 55 of the Regulations on Countervailing Measures.** The delegate of China stated that some Members were concerned that China may take the “corresponding measures” under Article 55 of our Regulations on Countervailing Measures. The delegate of China made clear that until October 2002 China had not applied Article 55 of the Regulations on Countervailing Measures and therefore had not taken any “corresponding measures”. Furthermore, being a WTO Member, China would first resort to the dispute settlement provisions provided in the Agreement on Subsidies and Countervailing Measures and the dispute settlement provisions under Annex II of the WTO Agreement before taking the “corresponding measures”, if the other party was also a WTO Member.

**3. Administrative reconsideration and judicial review.** The delegate of China stated that, if the parties concerned in a specific case disagreed with the relevant countervailing decisions, Article 52 of the Regulation prescribed the mechanism of administrative reconsideration and judicial review. If interested parties were not satisfied with a final determination, a decision on imposition of countervailing duties, a decision on retroactive imposition of a countervailing duty and review findings, they could apply for administrative reconsideration. In accordance with Article 14 of Law of the People’s Republic of China on Administrative Reconsideration, the reconsideration authority should be the department under the State Council that carried out the administrative action.

For judicial review, China had The Law of the People’s Republic of China on Administrative Litigation Procedure. According to this law, the People’s Court at intermediary level within the jurisdiction of which the government authority making the administrative decision in question was located would deal with litigation against this government authority. Furthermore, the Supreme People’s Court of China was in the process of formulating rules on hearing administrative litigation on countervailing investigations. The Rules would be notified to the Committee once promulgated.

As to the standard of review, the reconsideration authority or the court shall focus on whether there were procedural irregularities, abuse of power, improper interpretation and application of law, etc. Nevertheless, they were not entitled to reinvestigate the case.

**4. Anti-circumvention.** Some Members raised concerns about Article 54 of the Regulations on Countervailing Measures, which stipulated that MOFTEC and SETC may take appropriate measures to prevent circumvention of countervailing measures. Although this Article provided the possibility of taking remedy measures when circumvention takes place, the delegate of China made clear that to date China had not invoked this Article and had not taken any anti-circumvention measures. Meanwhile, China noted that quite a number of other Members also had relevant rules and practices on anti-circumvention. He said that this issue had been long discussed in the WTO and it was also a subject in the Negotiation Group on Rules as well as in this Committee. In this regard, the delegate of China stated that, once any new disciplines are agreed, China would implement them.

The delegate of China stated that paragraph 18 gave China equal legitimate right to review the fulfilment of this obligation by other Members vis-à-vis China. He stated that Chinese enterprises viewed the unjustifiable application of subsidy rules and countervailing measures in some US anti-dumping cases against Chinese products with great concern. The delegate of China said that, in the anti-dumping investigation against imports of windshields from China and several cases on steel products, the prices actually paid by the Chinese companies concerned on raw materials imported from market economy countries were not used as a basis for the calculation of the normal value by the US authorities. The reason given by the US authorities to reject that information was that the countries where those raw materials were sourced maintained generally available export subsidies. Such a decision was made without any investigation, and without any determination on subsidies despite the fact that the Chinese companies, as importers of the raw materials, had demonstrated and proven to the US authorities that imported raw materials had not benefited from those generally available subsidies in the source countries. The practice of the United States in the above-mentioned cases ran afoul of the principle of due legal process. He stated that the anti-dumping case on windshields was pending in the Court of International Trade of the United States. China urged the government of the United States to repeal immediately such unjustifiable practice and respect the principles of rule of law and due process.

33. Before giving the floor to one of his colleagues in the Chinese delegation, the delegate of China thanked all those Members who had raised questions and made comments. He also expressed his gratitude to those Members who had not raised questions or make comments. He also thanked the Chairman of this Committee and the Secretariat for the painstaking efforts that they had made for the sound preparation and smooth proceeding of this Transitional Review Mechanism exercise.

34. The delegate of China stated that he wished to take this opportunity to provide responses to those questions put to this delegation concerning its notified regulations on countervailing measures. He said that replies would be given grouped by article.

35. On Article 3, three questions were raised. The first question related to the first paragraph of Article 3 of the Regulation. In the first paragraph, the words “will benefit the recipients” were used and some Members were concerned with the future tense of this paragraph. He said that it was simply a matter of translation. He stated that it should have been translated as “which benefits the recipients”. The second question related to item 2 of Article 3, in which the exemption of exported products from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes was not mentioned. The delegate of China referred to paragraph 7 of the Annex to the Regulation, which was an integral part of the Regulation. He said that it was made clear in that Annex that the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption or the remission of such duties or taxes in amounts not in excess of those which have accrued should not be deemed to be a subsidy. The third question related to item 4 of Article 3, with regard to which some Member noted that something was omitted in the Regulation as compared to Article 1.1(a)1(iv) of the Agreement on Subsidies and Countervailing Measures. He said that those items would be construed in light of Article 1.1(a)1(iv) of the Agreement on Subsidies and Countervailing Measures. That is, the fundings through a private body would be deemed to be a subsidy only when the practice in no real sense differed from practices normally followed by governments.

36. The delegate of China stated that two questions were posed concerning Article 4 of the Regulation. The first question was related to item 2: the subsidies received by certain enterprises or industries explicitly provided for in laws and regulations of an exporting country or region. Some Members noted that Article 2.1(b) mentioned that, where the granting authority or the legislation

pursuant to which the granting authority operated established objective criteria or conditions governing the eligibility for and the amount of a subsidy, specificity should not exist. He said that he wished to make it clear that China would construe item 2 of Article 4 of the Regulation in light of the provisions contained in Article 2.1(a) and (b) of the Agreement on Subsidies and Countervailing Measures. The second question was related to the final paragraph of Article 4 of the Regulation: factors that should be taken into account when specificity was to be determined, notwithstanding any appearance of non-specificity. He said that China would take such factors into account as required by Article 2.1(c) of the Agreement on Subsidies and Countervailing Measures.

37. The delegate of China said that two questions were raised concerning Article 6. The first question concerned paragraph 2 of Article 6 on commercial loans. He said that China would interpret those items in light of provisions contained in Article 14(b) of the Agreement on Subsidies and Countervailing Measures; a loan by a government should not be considered as conferring a benefit unless there was a difference between the amount that the firm receiving the loan paid on the government loan and the amount that the firm would have paid on a comparable commercial loan which the firm could actually have obtained on the market. The second question related to paragraph 4 of Article 6: when an equity infusion by the government would be considered as a subsidy. He stated that government provision of equity capital should not be considered to confer a benefit unless the investment decision could be regarded as inconsistent with the usual investment practice of a private investor in the territory of that Member.

38. The delegate of China said that several questions were raised concerning Article 8. In the first question, a Member was concerned that China listed six factors when an injury determination was to be made. This provision distinguished what kind of injury should be determined. He said that Article 8 of the Regulation used the term "injury" in the general sense. Injury included three types of injury: material injury, threat of material injury and material retardation. He stated that it could be possible that those six factors listed in Article 8 related only to one of the three types of injury. However, in practice, China would consider those factors related only to one type of injury. In the Provisional Rules on Initiation of Countervailing Investigations, China separated those three types of injury. China required a different set of data to be submitted when the injury allegation was made for the different types of injury. The second question concerned the word "possibility", which appeared in paragraph 2 of Article 8. He said that this was simply a matter of translation; one could read "possibility" as "likelihood". The third question was what kind of economic factors and indices would be evaluated when the injury determination was made. It was noted that paragraph 4 of Article 8 did not list all those economic factors and indices as listed in Article 15.4. He stated that the wording of paragraph 4 of Article 8 of the Regulation meant that all relevant economic factors and indices should be evaluated including the actual and the potential decline in output, sales, market share, profits, productivity, return on investments, utilization of capacity, factors affecting domestic prices, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. The fourth question related to the second paragraph of Article 8. Some Members noted that the determination of threat of material injury was omitted from the Regulation. He said that, if a determination of threat of material injury had to be made, the threat should be clearly foreseen and imminent. China would not repeat the relevant articles, however, the determination of threat of material injury should be based on facts and not merely on remote possibility. He stated that this would mean that the threat should be clearly foreseen and imminent. The fifth question related to the last paragraph of Article 8: not all factors listed in Article 15.5 of the Agreement were listed in the Regulation. He stated that China would construe this paragraph in light of the provisions of Article 15.5: all those factors would be evaluated.

39. The delegate of China stated that a question was raised concerning Article 11 with regard to when domestic producers would be deemed to be related to exporters or importers. He said that China would interpret this term as required by footnote 48 to Article 16.1 of the Agreement on Subsidies and Countervailing Measures. In this regard, domestic producers would be deemed to be

related to exporters or importers when one of them directly or indirectly controls the other and/or together they controlled directly or indirectly a third person or both of them directly or indirectly were controlled by a third person.

40. The delegate of China stated that three questions were raised concerning Article 13. The first concerned the definition of "relevant organization". He said that some organizations, like trade associations and trade unions, would be covered by this term. The second question was whether a natural person, or legal person, or relevant organization should be the producer within the domestic industry. He said that the answer would be no. A trade association or trade union would apparently not be a producer within the domestic industry. The third question concerned the requirements for the application made by relevant organizations. He stated that all provisions dealing with the requirements applicable to petitions made by applicants would apply to applications made by the relevant organizations.

41. The delegate of China stated that a question was raised concerning Article 19 regarding the definition of "other interested organizations". He said that all those interested parties listed in Article 12.9 of the Agreement on Subsidies and Countervailing Measures would be deemed to be interested organizations, including the consumer organizations and industrial users.

42. The delegate of China stated that three questions were posed concerning Article 20. The first question concerned the time-period for replies by interested parties. He said that, according to Article 17 of the Provisional Rules on the Investigation, the time-period to reply questionnaires would be 37 days. The second question related to on-the-spot verifications. The question posed was whether prior consent of the firm concerned would be required. He said that under Article 9 of the Provisional Rules, explicit prior consent of the firm concerned would be required before on-the-spot verification could be carried out. The third question concerned the definition of "all interested parties". He said that industrial users and consumer organizations would be included in this group.

43. The delegate of China stated that a question was raised under Article 21 about how "best information available" would be used. He said that no guidance was provided by the Agreement on Subsidies and Countervailing Measures. However, China would take a similar approach to that adopted in anti-dumping investigations. China would refer to Annex 2 of the Anti-Dumping Agreement.

44. The delegate of China stated that three questions were posed regarding Article 22. The first concerned the procedure for the interested parties to have access to public files of the investigation. He referred to Article 23 of the Regulation. He said that Article 23 provided that the investigating authority should allow applicants, interested parties and the governments of interested countries or regions to have access to information relevant to the investigation, provided that the information had not been treated as confidential. He said that China would follow the procedures applicable in the context of anti-dumping investigations, for which China had very specific rules on the inspection of public files. The second question concerned the provisions applicable to the summaries of confidential information submitted. He said that China had similar rules to those applicable in anti-dumping investigations, i.e., the summary had to be meaningful in order to enable other interested parties to understand the substance of the information submitted. The third question concerned the rules and procedures, including penalties for violators, that China had in place to guarantee the confidentiality of information submitted in countervailing measure procedures. He referred to the Regulation for Respecting Confidentiality by Government Officials. In that regulation many sanctions were stipulated, including criminal penalties.

45. The delegate of China stated that two questions were raised about Articles 25 and 26. The first question was whether a two-step approach, i.e., a provisional determination and a final determination, would be used in every countervailing investigation. The answer was yes. China

considered that a two-step approach would facilitate interested parties' defence of their interests, even when provisional countervailing measures were not taken. He stated that the two-step approach would be used because, in the provisional determination, China would disclose some information and analysis on the relevant data to the interested parties that would facilitate the interested party in defending their interest. The second question was whether provisional measures would have to be applied in the event of an affirmative preliminary determination. He referred to Article 29. That Article provided that provisional countervailing measures may be applied if the preliminary determination established the existence of a subsidy and injury caused by a subsidy to a domestic injury. China did not set forth all those requirements for the imposition of provisional countervailing measures as contained in Article 17.1 of the Agreement on Subsidies and Countervailing Measures; however, China would follow those procedures and only when those requirements were met would China impose provisional countervailing measures.

46. The delegate of China stated that two questions were posed about Article 28. The first concerned the last paragraph of Article 28, where China omitted item 1 and 6 as listed in the first paragraph of that Article. He stated that there was a translation problem. The proper translation of the last sentence would be "the countervailing investigation on the said country or region shall be terminated". Paragraph 1 related to the termination of the whole proceeding. The second question related to "the other circumstances that both MOFTEC and SETC consider not appropriate to continue an investigation", mentioned in paragraph 6 of that Article. He said that a countervailing investigation may be terminated because of public interest considerations.

47. A question was raised about Article 42, concerning the definition of "reasonable way" for determining a separate countervailing duty for the exporters which were not investigated at the initial investigation. The delegate of China stated that Article 42 addressed the matter of new shipper review as required by Article 19.3 of the Agreement on Subsidies and Countervailing Measures. He said that "reasonable way" meant that the procedure applicable to new shipper investigations would be identical to the procedure in initial investigations, but for the time or the duration of the investigation. That would mean that the investigation would be carried out in an expeditious manner.

48. With regard to Article 43, it was asked whether China was considering the application of the lesser duty rule. The delegate of China stated that China did not have explicit rules on lesser duty; however China kept such a possibility because the Tariff Commission and the State Council had the power to reconsider the recommendation made by MOFTEC. This power was limited by the provision of Article 43: no countervailing duty should be levied in excess of the amount of a subsidy as established in the final determination.

49. Regarding Article 45, the delegate of China confirmed that Article 45 would be applied in light of Article 20.6 of the Agreement on Subsidies and Countervailing Measures. That is, a cumulative assessment would be made only when the conditions provided for in Article 20.6 of the Agreement were met.

50. The delegate of China stated that three questions were posed about Article 46. The first question concerned the actions that would be required of importers to obtain refunds of provisional duties following a negative final determination. He stated that no further actions on the part of the importer would be required. In the final determination, China would notify Customs that the provisional countervailing duties levied on imports should be refunded automatically. The second question concerned the time-period in which the refund had to be made. On this point, he stated that there were no specific provisions contained in the Agreement Subsidies and Countervailing Measures. He said that the refund would be made in an expeditious manner, as required by Articles 20.3 and 20.4 of the Agreement. He said that no interest would be paid on duties levied.

51. Under Articles 47 and 48, two questions were raised. The first question concerned the lack of distinction between sunset and annual reviews. The delegate of China stated that, from the provisions of Articles 47 and 48, it seemed clear to him that Article 47 related to sunset reviews while Article 48 related to annual reviews. The second question concerned the length of the period of extension of countervailing measures. He stated that according to the relevant provisions of the Agreement on Subsidies and Countervailing Measures that period would be five years. However, he stated that China kept the possibility to extend countervailing duty measures for less than five years.

52. Several questions were raised regarding the list of export subsidies annexed to China's Regulation. Some Members were concerned that some factors were omitted from China's list of export subsidies. He stated that China would construe the list of export subsidies in light of Annex 1 of the Agreement on Subsidies and Countervailing Measures.

53. The delegate of the United States thanked the Chinese delegation for their extensive replies. The information provided helped considerably to clarify a number of United States' questions and doubts. Given the extent of the information contained in the Chinese delegation's oral replies, the United States very much appreciated China's commitment to make available its statement to other Members. The United States also encouraged the Chinese delegation to provide a copy of the more technical statement as well. The United States noted that many of the replies explained that, where China did not replicate the words or substance of the Agreement in its domestic legislation, it would apply or honour the unincorporated parts in practice. The delegate of the United States stated that that was helpful. He stated that the United States did not expect Members to have to repeat the Agreement verbatim in their domestic law, but it was often important to take additional steps to ensure both domestic and foreign parties of the rules and practices that would be followed. This was especially important for China, where it was clear from the Chinese delegation's informative responses that it had not developed a detailed or well-practiced system of judicial or administrative review. Courts needed guidance about how to properly judge the exercise of discretion by investigating authorities, as much as did the parties subject to the investigation. In that regard, the United States would be interested in knowing whether there was a principle or mandate in Chinese law which generally charged both agencies or courts with applying or interpreting less specific areas of the countervailing duty law in a manner consistent with WTO rules. Whether or not there was any such law, the United States urged China to continue efforts to spell out additional areas of practice in its supplementary implementing rules and to make those rules available for WTO Members' review, in a timely manner. In closing, the United States thanked the Chinese delegation again and looked forward to reviewing China's written statements in the very near future.

54. The delegate of the European Communities thanked the Chinese delegation for the extremely elaborate replies to the questions posed by his delegation and to the questions of other Members. He stated that his delegation was slightly overwhelmed by the sheer amount of information that was provided by the Chinese delegation during this Committee meeting. He stated it was clear to his delegation that it was for a good reason that most of the review procedures in this Committee were made on a written basis. He said that he understood that the statement that was read out had been provided and that there would be a report by the Chair with a transcript circulated to Members that would certainly provide helpful documentation of the exchange of questions and replies on the matter before the Committee.

55. The delegate of the European Communities stated that his delegation had a few follow-up comments and questions concerning the three subject matters that were addressed by the Chinese delegate. The first related to subsidies. He stated that his delegation had heard the remark that the Chinese delegation would be hesitant to provide an update of its information on subsidies also because at the moment information that was available was incomplete and that they would wait until information was completed. He stated that his delegation would like to point to two of the lessons that Members had learned during the Subsidies Notification Seminar. The first lesson was "if in

doubt, notify". That would certainly also apply to the situation where information might not be perfect, but information was there. Second, the European Communities had learnt from the experience of other delegations that, if there was too much time between notifications, institutional memory would be lost and it would become increasingly difficult to make an update of a subsidy notification. He stated that China already put considerable efforts into producing a subsidy notification which was attached to the Accession Protocol, so it might also be worth considering whether it would not increase the necessary efforts to produce an update of this information if too much time elapsed. As a more technical follow-up question on subsidies, the delegate of the European Communities said that his delegation had noted that an export subsidy with regard to the export of automobiles ceased as of 11 December 2001, and that an indication of the Decree was given. He stated that his delegation requested the Chinese delegation to provide similar information, meaning the exact date and also the exact legal basis, for the expiry of incentives given to state enterprises on a central government and on a local government level. He stated that his delegation had heard that such incentives were not given any more and that his delegation requested the exact information on the dates and the legal basis. With regard to state trading enterprises, the delegate of the European Communities stated that his delegation had listened with interest to the information provided by the Chinese delegation. He stated that his delegation had also studied the information that provided in writing and thanked the Chinese delegation for providing the information in writing on this particular issue. He stated that his delegation would study this information further and come back to this issue at a later stage. With regard to the countervailing duty legislation, the European Communities appreciated the efforts by the Chinese delegation to enact legislation which is in line with WTO obligations. The European Communities also thanked the Chinese delegation for the elaborate replies to the European Communities' detailed questions on that. The delegate of the European Communities stated that his delegation would like to reiterate a question that it had posed in writing and which either might not have been answered in the oral reply, or which might just have slipped this delegation's attention. The question was "how much time did exporters, producers or interested Members have to complete questionnaires or give replies in countervailing duty investigations"?

56. The delegate of Japan stated that his delegation had put high importance on the transitional review mechanism which served as a vehicle for better understanding how China was pursuing its implementation of WTO rules and the Accession Protocol. He stated that it was very important to have a very thorough and meaningful review in this Committee. The delegate of Japan thanked China for all the efforts that China had made for having the Chinese legislation conform with the Agreement on Subsidies and Countervailing Measures, with WTO rules, and also to cooperate with the Committee and the Members regarding the Transitional Review Mechanism. He stated that his delegation was also impressed by the fact that China had eliminated all the export subsidies and also the subsidies contingent upon domestic over imported goods. He stated that this was a very good precedent.

57. Japan had submitted a number of questions in writing. A very comprehensive answer was given by the Chinese delegation. He stated that he thought that most of the questions posed by his delegation had been answered in some way. He said that his delegation had posed a lot of questions and also accordingly the amount of answers given by the delegation of China was also very detailed. He said that his delegation would appreciate it if the Chinese delegation could submit a written note of the technical answers that were given. He said that he looked forward to China providing the rest of the relevant rules on subsidies and countervailing measures as early as possible. His delegation also looked forward in the future to seeing that China would be implementing its rules as it was outlined in the answers given during the first session of this meeting. He thanked the Chinese delegation for the answers given. He stated that his delegation would like to reflect on these answers, preferably in written form, and come back to this at a later stage.

58. The delegate of Chinese Taipei stated that his delegation wished to thank the Chinese delegation for its efforts in preparing the responses to the questions raised by his delegation. As one of the major trading partners of China, he stated that his delegation believed the smooth implementation of the Accession Protocol was in the best interest of all Members, including China itself. Therefore, his delegation appreciated the opportunity to exchange views with the Chinese delegation, taking advantage of the Transitional Review Mechanism.

59. The delegate of China thanked the United States, the European Communities, Japan, and Chinese Taipei for their positive comments and the follow-up questions they raised. He stated that his delegation wished to respond some questions and make some comments. First of all, concerning the question regarding the time-period given to exporters and governments to submit replies to the questionnaires, the delegate of China said that, as mentioned during the first session of this meeting, the time-period was stipulated in China's Provisional Rules for Conducting Investigations. This time-period was 37 days. Second, concerning the circulation of the statement made during the first session of this meeting, the delegate of China stated that, as he had said during the first session, the Chinese delegation would provide one copy of the statement to the Secretariat after some double-checking. This statement could be circulated, the Members could receive a written copy from the Secretariat. Almost everything, the important responses to the major questions were in that statement. For the written work of the technical responses, he stated that it was beyond the mandate of his delegation. He stated that he hated to repeat the same words, but the Chinese delegation had repeatedly stated the position of the Chinese government on this issue. Since everyone in the Committee was clear about China's position on this issue, he stated that he did not want to repeat it and waste time. Third, the delegate of China confirmed that the Chinese countervailing regulation and any measures would stick to the WTO rules. China welcomed the comments from other Members. China appreciated the cooperation with other Members in this regard. Fourth, with respect to subsidies, the delegate of China stated that China was in the process of collecting more information in order to satisfy the notification needs, but until last June, Members were required to notify subsidy measures of the year 2001. He stated that China only joined the WTO in December 2001 and had been in the WTO for one month during the notification period. China had shared with other Members the updated information, whenever that was available to us. Apart from that, China was collecting more information but it was not complete, not accurate, at this stage. When the information was complete and accurate and sufficient to notify to the WTO, China would do that, and would update China's notification in the Protocol. China was facing similar difficulties to those other Members had, it was very complicated, and much more difficult than China had expected. So China was making efforts, and would continue to make efforts. Finally, with respect to the expiry date of the incentives for automobiles, the delegate of China referred to his statement delivered during the first session of this meeting. He repeated that the date was from 1 January 2002. The delegate of China again thanked all Members who raised questions and made comments. He stated that his delegation hoped that Members could take advantage of other channels, bilateral and multilateral, which China believed were supplementary to each other, before the annual Transitional Review Mechanism ended for the Members' common goals and objectives.

60. The Chairman thanked China for its intervention and invited other delegations to make comments.

61. The delegate of Mexico stated that his delegation had submitted an advance copy containing some questions for the People's Republic of China under its Protocol of Accession and under Article 25.8 of the Agreement on Subsidies and Countervailing Measures. Those questions were read out by the delegate and circulated during this meeting as document G/SCM/Q2/CHN/4. The delegate of Mexico stated that his delegation would be grateful to the delegation of China for its answers in writing, including relevant legal documents.



62. The delegate of China thanked the delegation of Mexico for the questions. He stated that, unfortunately, nobody in his delegation nor in the Permanent Mission of China, spoke Spanish. He stated that the Chinese delegation had only received the questions in Spanish from the Mexican delegation on 31 October and that the Chinese delegation had not had time to reflect on those questions. He said that his delegation took note of the questions and would provide a response in the future. This response would be reflected in China's future notification.

63. The Chairman thanked the delegation of China for its indication to provide answers also to those questions that had been presented by the delegation of Mexico. The Chairman thanked those delegations that had raised questions. He also expressed his sincerest appreciation to the delegation of China for responding to those questions or indicating that some additional responses may reach the Committee in the near future. He recalled Members that there were no guidelines for the report in the Protocol of Accession of the People's Republic of China to the World Trade Organization. He stated that he was aware of the fact that in several other bodies that have already undertaken the transition review the Chairman, acting on his own responsibility, prepared a brief factual report with references to the documents and attached the portion of the minutes of the meeting which relate to the transitional review. He stated that this was the way of proceeding that he would like to put before the Committee for consideration.

64. The Committee took note of the statements made and agreed to proceed as suggested by the Chair.

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