

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO
SECTION 18 OF THE PROTOCOL ON THE ACCESSION
OF THE PEOPLE'S REPUBLIC OF CHINA**

Questions from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following communication, dated 25 October 2004, is being circulated at the request of the Delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

Regulation of the People's Republic of China on Anti-Dumping

1. After the restructuring of China's government agencies, the Ministry of Commerce announced on 31 March 2004, the revised "Anti-dumping Regulation of the People's Republic of China" (hereinafter referred to as "the Revised Regulation"). China very recently notified the WTO Committee on Anti-dumping Practices of its Revised Regulation¹.

In addition, Article 7 of the previously notified regulation² stated that, "The State Economic and Trade Commission (hereinafter referred to as the "SETC") shall be responsible for the investigation and determination of injury". In the Revised Regulation, however, the investigation and determination of injury to a domestic industry shall be conducted by the Ministry of Commerce.

It would be appreciated if China could please explain whether the provisional rules originally issued by the SETC (such as the "Rules on Investigations and Determinations of Industry Injury for Anti-dumping" and the "Rules on Public Hearings with Regard to Investigations of Injury to Industry"³) have been annulled. Furthermore, which authorities are responsible for these rules under the Revised Regulation?

2. According to Article 10 of the previously notified regulation, "The effect of the dumped imports shall be assessed in relation to the separate identification of the domestic production of the like product. If such separate identification of that production is not possible, the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, including the like domestic product". However, according to China's replies in document G/ADP/Q1/CHN/17, Article 10 means that when the investigating authority assesses the effect of the dumped imports, "the domestic production of the like product" should be considered as the first important factor.

¹ G/ADP/N/1/CHN/2/ Suppl.3. The Amended Regulation was not notified until a few days before this submission. Therefore, many of our references in this paper were made according to the previously notified regulation.

² G/ADP/N/1/CHN/2

³ G/ADP/N/1/CHN/2/Suppl.2

We would therefore ask China to please explain further what the specific criteria are for “like products” and “the narrowest range of products”. Moreover, what is the relationship between the two and how do they relate to ADA Article 3.6? Could China please also give examples for reference?

3. Article 11 of the previously notified regulation defined “domestic industry” as “domestic producers as a whole of the like products within the People’s Republic of China or those of them whose collective output of the product constitutes a major proportion of the total production of those products...”.

Please clarify what criterion is used to determine what is the “major proportion”.

4. Article 28 of the previously notified regulation allowed for cash deposits, bonds or other forms of security to be posted for provisional anti-dumping duties. In its response to the United States in Question 10 of G/ADP/Q1/CHN/24, China stated that importers may use bonds or other surety in lieu of cash surety, but in practice they should observe the specific rules of the Chinese Customs.

In light of this, is the term “bond” referred to in China’s reply identical to the term referred to in the previously notified regulation? How do these two terms relate to ADA Article 7.2? What is the type and scope of the phrase “other forms of security” in Article 28 of the previously notified regulation? What are the specific rules followed by Chinese Customs?

5. According to Article 49 of the previously notified regulation, “After an anti-dumping duty has taken effect, MOFTEC (the Ministry of Foreign Trade and Economic Co-operation) may....decide on justifiable grounds to review the need for the continued imposition of the anti-dumping duty; such a review may also be conducted, provided that a reasonable period of time has elapsed, upon request by any interested party and on the basis of examination of the relevant evidence submitted by the interested party”.

Furthermore, Article 50 of the previously notified regulation stated that: “On the basis of the findings of a review, MOFTEC shall, in accordance with the provisions of that regulation, make a proposal on the retention, revision, or termination of an anti-dumping duty...”. Article 51 indicates that: “The review proceedings shall be conducted with reference to the relevant provisions of these Regulations on anti-dumping investigation”.

In the case of the anti-dumping duty imposed on cold-rolled steel products imported from the Russian Federation, Republic of Korea, Ukraine, Kazakhstan and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the Ministry of Commerce issued Bulletin No. 22 on 17 May 2004, publicizing its decision to initiate the review on the need for the continued imposition of the anti-dumping duty.

We would therefore appreciate answers to the following questions:

- a) Which situations or reasons does the term “justifiable grounds” describe? How long is “a reasonable period of time”? Are there any restrictive clauses? Was the review on imported cold-rolled steel products initiated by interested parties or by the Ministry of Commerce on its own initiative?
- b) The Ministry of Commerce issued Bulletin No. 53 on 10 September 2004, to publicize its decision to suspend the imposition of anti-dumping duties on imported cold-rolled steel products, on the basis of the review’s findings. What is the definition of the term “suspension” used in Bulletin No. 53? How does it relate to the terms “retention, revision, or termination” used in Article 50 of the previously notified regulation? Is there any time limit on “suspension of the anti-dumping duty”? If so, what is the duration?

- c) According to the above-mentioned Bulletin No. 53, if the market for cold-rolled steel were to change again during the suspension of the anti-dumping duty, the interested parties may file an application in written form for a review of the need for continued imposition of the anti-dumping duty in line with Article 49 of the previously notified regulation.

Please would China explain the procedure to be followed in such a review. Would the review proceedings be conducted in accordance with the relevant provisions of the notified regulation on anti-dumping investigations? If not, please explain how the provision is consistent with ADA Articles 11.1 and 11.4?

Provisional Rules of Ministry of Foreign Trade and Economic Cooperation on Questionnaire in Anti-dumping Investigations

6. According to Article 25 of the “Provisional Rules of MOFTEC on Questionnaire in Antidumping Investigations”, “It would be considered as to impede the investigation if [the submitted electronic data carrier] contains certain virus, and in such case MOFTEC may make determination on the basis of facts available and the best information available”.

Will the authorities inform the respondents if they find that the submitted electronic data carrier contains certain virus? Under such situation, will they allow the respondents to provide the same data after clearing the file?

Provisional Rules of the Ministry of Foreign Trade and Economic Cooperation on Sampling in Anti-dumping Investigations

7. According to Article 10 of the Provisional Rules of MOFTEC on Sampling in Anti-dumping Investigations, “The exporters and producers not selected in the sample and in the reserve list may provide information to MOFTEC on a voluntary basis”. Article 15 of the same Provisional Rules states, “MOFTEC shall examine individually the exporters and producers who are not selected in the sample but have submitted necessary information in time and expressly requested separate determination of dumping margin, provided that such separate examination would not prevent timely completion of the dumping investigation”.

The United States raised a question on how China uses the information submitted by a non-selected exporter in determination of the dumping margin.⁴ China replied that the investigation authority would examine the information provided by them in accordance with Article 15 of the Provisional Rules on Sampling. In order to properly clarify whether China’s implementation of anti-dumping measures complies with ADA requirements, we would like to raise the following questions:

- a) If non-selected exporters and producers have submitted necessary information in time but not expressly requested separate determination of the dumping margin, will the investigating authority examine and determine the separate dumping margin for each of them?
- b) If more than one exporter or producer expressly request separate determinations, how would the investigating authority make the decision not to make an individual, separate examination because it would prevent the timely completion of the dumping investigation? Has there been any example to date of this happening?
- c) How would China’s procedures as described above comply with the ADA Article 6.10.2?

⁴ G/ADP/Q1/CHN/14