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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

Replies to the Questions Posed by the UNITED STATES¹ Regarding the Notification of CHINA²

The following communication, dated 6 May 2003, has been received from the Permanent Mission of China.

Q1. The United States thanks China for its notification of its countervailing duty provisional rules and regulations³ to the Committee on Subsidies and Countervailing Measures as required by Article 32.6 of the Agreement on Subsidies and Countervailing Measures ("ASCM").

We understand that some rules that apply to countervailing duty proceedings have been issued by the Chinese government, but do not appear to have been notified to the Committee. For example:

- (a) In September 2002, the Supreme People's Court issued the *Rules by the Supreme People's Court on the Issues Regarding Judicial Review of Countervailing Administrative Case*.
- (b) The State Economic and Trade Commission (SETC) issued the *Rules for Injury Investigations and Determinations for Countervailing Duty Investigations* in December 2002.
- (c) The *Regulation for Respecting Confidentiality by Government officials*, which governs the protection of confidential information submitted to the Government of China.

Q2. When will China notify the translated text of these and any other relevant rules to the Committee?

Reply

We will notify these laws and regulations when we finish the translated text of these relevant documents.

¹ G/ADP/Q1/CHN/15-G/SCM/Q1/CHN/15

² G/SCM/N/1/CHN/1 + Suppl.1

³ G/SCM/N/1/CHN/1 (11 September 2002); G/SCM/N/1/CHN/1/Suppl.1 (18 February 2003)

Q3. Several sets of rules were issued by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) for anti-dumping proceedings, for which no counterpart rules appear to have been issued for countervailing duty proceedings. These additional rules include:

- (a) *Provisional Rules for Sampling for Anti-Dumping Investigations;*
- (b) *Provisional Rules for Information Disclosure in Anti-Dumping Investigations;*
- (c) *Provisional Rules for Access to Non-Confidential Information in Anti-Dumping Investigations;*
- (d) *Provisional Rules for Price Undertakings in Anti-Dumping Investigations;*
- (e) *Provisional Rules on New Shipper Review in Anti-Dumping Investigations;*
- (f) *Provisional Rules on Refund of Anti-Dumping Duty; and*
- (g) *Provisional Rules on Interim Review of Dumping and Dumping Margins.*

Does MOFTEC intend to issue similar rules for countervailing duty proceedings as it did for anti-dumping proceedings?

Reply

China hasn't formulated similar rules for countervailing duty proceedings. Based on the published provisional regulations and their implementation, China will determine whether it is necessary to formulate some relative rules according to *the Regulations on countervailing measures* and referring to ASCM.

Q4. Article 1 of the notified regulations specifies that they are "formulated in accordance with the Foreign Trade Law of the People's Republic of China...". Does "Foreign Trade Law" refer exclusively to Law No. 19-586 adopted 12 May 1994 by the Seventh Session of the Standing Committee of the Eighth National People's Congress? If not, what other laws apply to the notified regulations and provisional rules? Have these other laws been notified to the Committee?

Reply

Foreign Trade Law of the People's Republic of China refers to the Law adopted at the Seventh Session of the Standing Committee of the Eighth National People's Congress and promulgated by Decree No. 22 of the Chairman of the People's Republic of China in 1994.

Q5. Throughout this document, we refer to MOFTEC, SETC and the State Council Tariff Commission as these are the organs cited in the notified regulations and rules. In light of recent government restructuring, please identify the specific government entities that will be administering China's countervailing rules and regulations, and the particular rules and regulations for which each entity will be responsible.

Reply

MOFTEC and SETC were reorganized in the recent government restructure and the Ministry of Commerce came into existence. The Ministry of Commerce will be responsible for the affairs of countervailing duty investigation.

Q6. With regard to Article 6 of the notified regulations:

- (a) Paragraph 3 reflects the calculation method described in ASCM Article 14(c), but omits the statements in the ASCM article that loan guarantees are not considered benefits unless there is a difference in what would have been paid for a comparable loan guarantee that the firm could actually obtain from commercial sources (plus fees). Is the intent of Paragraph 3 to mirror the requirements of ASCM Article 14(c)?

Reply

The calculation method provided in the Chinese Regulations is consistent with Article 14(c) of the ASCM.

- (b) How does Paragraph 5 take into account the standards for determining the market price specified in ASCM Art 14(d)?

Reply

The economic indices in the Regulations will be prescribed in the rules which will be published in the future.

Q7. Paragraph 3 of Article 8 of the notified regulations discusses the competent authority's examination of pricing and indicates that the authority should examine "price undercutting" of the subsidized imports. Please explain how this language is consistent with ASCM Art15.2, under which the investigating authorities are "to consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the importing Member..."

Reply

The provision concerning price undercutting in the notified Regulations is consistent with Article15.2 of ASCM. They all refer to the price undercutting by the subsidized imports as compared with the price of a domestic like product. There are similar provisions in the Art.18 of the *Provisional Rules for Initiation of Countervailing Investigation*.

Q8. Please clarify the standards of evidence that applicants must meet in providing each type of information specified in Articles 14 and 15 of the notified regulations and Articles 15 through 22 of the *Provisional Rules on Initiation of Countervailing Investigations*.

Reply

Articles 11 through 22 of the *Provisional Rules on Initiation of Countervailing Investigations* have clarified Articles 14 and 15 of *the regulations* in detail. The investigating authorities will examine the evidence submitted by the applicants and decide whether to initiate an investigation according to the Articles 11 through 22 of the *Provisional Rules on Initiation of Countervailing Investigations* and combined with the articles of the regulations.

Q9. Article 16 of the notified regulations and corresponding articles of MOFTEC's *Provisional Rules on Initiation of Countervailing Investigations* do not include the provision of ASCM Art11.3 that requires the authorities to examine the accuracy and adequacy of the evidence provided in the application to determine whether it is sufficient to justify the initiation of an investigation. Also, Article 16 does not include the provision of ASCM Art11.5 specifying that the authorities shall avoid publicizing an application for investigation prior to an

investigation being initiated. How does China intend to meet the requirements of ASCM Arts. 11.3 and 11.5?

Reply

According to the regulations and rules promulgated by China, an applicant shall provide plenty of materials of evidence to support his claim while he submits his application, and the investigating authorities will affirm by various means the accuracy of the evidence. The modus operandi of China is consistent with ASCM. Art.39 of *Provisional Rules on Initiation of Countervailing Investigations* provides that the application for initiation of a countervailing duty investigation shall not be publicized if MOFTEC determines not to initiate the investigation. This is consistent with the Art.11.5 of the ASCM .

Q10. Please confirm that Article 18 of the notified regulations and Article 44 of the *Provisional Rules on Initiation of Countervailing Investigations* are intended to implement the provisions of ASCM Art11.6. How does China envisage implementing this provision, including collecting the evidence required by ASCM Art. 11 before self-initiating an investigation? Is MOFTEC the only organization that has authority to self-initiate countervailing duty proceedings?

Reply

Article 18 of *the Regulations* and Article 44 of the *Provisional Rules on Initiation of Countervailing Investigations* are consistent with ASCM Art11.6.

The second paragraph of Article 44 provides that if the authorities decide to initiate a countervailing duty investigation on its own initiative, the evidence available shall meet the requirements specified in Article 3. So the provisions on self-initiation are consistent with ASCM Art. 11.6.

At present, only Ministry of Commerce can decide to initiate a countervailing duty investigation on its own initiative.

Q11. With regard to the *Provisional Rules for Initiation of Countervailing Investigations*:

- (a) **Do Articles 8 and 9 of the *Rules* concern solely how an “industry” is defined for ascertaining whether there is sufficient support for the application for purposes of ASCM Art11.4, or do they also relate to how the industry is defined for conducting injury analysis for purposes of ASCM Art.15?**

Reply

The definition of domestic industry in the Rules is consistent with ASCM Art. 11.4.

- (b) **Article 9 of the *Rules*, which specifies when MOFTEC may define the domestic industry on a regional basis, does not require that there be a concentration of subsidized imports into the region. Assuming that Article 9 is pertinent to injury analysis, how is this provision consistent with the last sentence of ASCM Art16.2?**

Reply

Article 9 of the *Rules* is consistent with the Art. 16.2 of the ASCM.

- (c) **Do Articles 18 and 19 of the *Rules* require an applicant to choose whether its application is based on material injury to the domestic industry or threat of material injury? Can an applicant file an application based on allegations of both material injury and threat?**

Reply

An applicant should not file an application based on allegations of both material injury and threat.

- (d) **If an applicant files its application solely on an allegation of threat of material injury pursuant to Article 19 of the *Rules*, is the applicant then free to omit from its application the price and volume information specified in subparagraphs (1), (2), and (3) of Article 18 of the *Rules*? If so, please explain how the provisions of Article 19 of the *Rules* are consistent with Article 11.2(iv) of the ASCM.**

Reply

An applicant shall provide the information about price and quantity according to Article 19.

Q12. Regarding the *Provisional Rules for Questionnaires in Countervailing Duty Investigations*:

- (a) **Article 13 of the *Rules* requires that responses and supporting materials be translated into simplified Chinese characters. For voluminous supporting documents, such as company annual reports, will MOFTEC allow parties to limit translation to only the relevant portions of the documents?**

Reply

If the supporting documents are in a foreign language, the applicant shall provide both the full texts of the foreign language documents and a Chinese translation of the relevant parts of the texts.

- (b) **What explanation will MOFTEC provide to parties submitting information of the grounds for its conclusion under Article 20 of the *Rules* that the reasons for requesting confidential treatment are insufficient?**

Reply

The investigating authorities shall notify the applicant and explain the reason.

- (c) **(c) Article 20 of the *Rules* provides that MOFTEC will request amendment of a request for confidential treatment in two situations: 1) the original *reason* given for the request is deemed insufficient; or 2) the non-confidential *summary* (or reason given for not providing such a summary) is deemed insufficient. However, Article 20 only explains what will happen in one of those situations if the amendment continues to be deemed insufficient (i.e. if the amended non-confidential summary is still insufficient, the material will be disregarded).**

Article 20 of the *Rules* does not explain what steps will be taken if the amended reason for requesting confidentiality is still deemed insufficient. In such a case, will the materials be disregarded or treated as non-confidential?

Reply

In these circumstances, the materials will be disregarded according to the second paragraph of this Article.

- (d) **What does MOFTEC do with material which has been submitted to it, but which it will disregard under Article 20 because of an insufficient non-confidential summary?**

Reply

The Chinese investigating authorities have the right not to treat that part of materials as confidential information.

Q13. Regarding the *Provisional Rules for the Conduct of Public Hearings in Countervailing Duty Investigations*:

- (a) **Please clarify what type of information would fall within the definition of “state secrets” or “personal privacy” under Article 4 of the *Rules*.**

Reply

State secrets in the *law on guarding state secrets of the People’s Republic of China*, refer to the proceedings that are relative to the safety and interests of state, and that those matters that can only be made known to certain people and in a certain period of time. Paragraph 3 of Article 7 of *the Replies to Some Questions about How to Trial Cases of Honour Right* which was promulgated by the Supreme People’s Court on 7 August 1993, clearly stipulates that if the privacy of others is publicized without permission, and as a result their honour are damaged, the action should be treated as infracting other’s honour right.

- (b) **Articles 5 through 10 of the *Rules* suggest that holding a hearing is at the discretion of MOFTEC. How is this Article consistent with ASCM Art12.2, which states, “interested parties shall have the right to present information orally”?**

Reply

Articles 5 through 10 of the *Rules for the Conduct of Public Hearings in Countervailing Duty Investigations* provide some proceedings of hearings, but will not bereave or hinder interested parties’ right to present information orally. Even if hearings aren’t hold, interested parties can still present information orally to investigating authorities according to these provisions.

- (c) **Article 14 of the *Rules* suggests that only interested parties may attend a hearing. Does China allow for public attendance at hearings?**

Reply

Investigating authorities will decide whether the public may attend the hearings, on the basis of the situation and characteristic of the case and the objective condition of the meeting place.

Q14. With regard to the *Provisional Rules for On-the-Spot Verification in Countervailing Duty Investigations*:

- (a) **Please clarify the intent of the statement in Article 4 of the *Rules* that MOFTEC will only conduct verifications of exporters who have been fully cooperative in the investigation. For example, will failure to provide a small, discrete amount of data while otherwise cooperating to the best of their ability prevent any verification from occurring?**

Reply

Article 3 of the *Provisional Rules for On-the-Spot Verification in Countervailing Duty Investigations* provides that the on-the-spot verification provided for in these Rules refers to the procedure by which MOC dispatches its officials to the exporting country (region) concerned during the investigation to verify truthfulness, accuracy and adequacy of the materials submitted by the exporters and producers and to collect further information and materials. The investigating authorities may make their decision based on the facts available, without verifying truthfulness, accuracy and adequacy of the material, if exporters do not fully co-operate during the investigation process.

- (b) **Please clarify the meaning and intent of Article 6 of the *Rules*. What factors will MOFTEC consider in determining whether the “particular circumstances” of each case call for verification?**

Reply

If the investigating authorities confirm the truthfulness, accuracy and adequacy of the materials submitted by the exporters and producers, the verification is not needed.

- (c) **Under what circumstances does MOFTEC foresee using non-government experts to assist in verification, as indicated in Article 12 of the *Rules*? What is the penalty should such experts breach their obligation of confidentiality with respect to certain company information?**

Reply

There is no countervailing duty case in China so far. Therefore, we do not have such experiences in the countervailing investigation practice. If experts have breached the confidentiality requirements, the Chinese investigating authorities will treat it according to the relative domestic laws and regulations strictly.

- (d) **If, under Article 16 of the *Rules*, the verification team decides to use Chinese as the working language, will MOFTEC provide translators?**

Reply

If the verification team decides to use Chinese as the working language, the investigating authorities may decide whether to provide translators based on the specific situation, or the investigating authorities may request the responding company to provide translators.

- (e) **Please clarify what is envisioned as a “reasonable period” and elaborate as to the level of detail that will be disclosed in MOFTEC reports of the results of verification, as envisioned under Article 19 of the *Rules*.**

Reply

After verification, the investigating authorities will determine the period to disclose the results of verification, based on the specific situation, such as content of investigation and complexity of the results of verification.

- (f) **Article 21 of the *Rules* indicates that facts available may be applied when verification fails to be completed as scheduled due to delay caused by exporters and producers in question. What allowance will MOFTEC make for circumstances where it is not possible for the company to reasonably respond in the time allotted for verification?**

Reply

If the situation mentioned arises, the investigating authorities will provide a chrysalis, but the company should comply with those requirements as provided in Article 21. Otherwise, the investigating authorities may make their determination whether subsidy exists and the amount of subsidy on the basis of facts available.

- (g) **Will MOFTEC conduct verifications of questionnaire responses only in initial investigations, or will MOFTEC also conduct verifications in interim reviews? Under what circumstances will MOFTEC conduct a verification in a review?**

Reply

The on-the-spot verification will normally be carried out by MOFTEC after the preliminary determination. However, the on-the-spot verification may alternatively be carried out before the preliminary determination based upon the merits of each case according to Article 7 of the *Provisional Rules for On-the-Spot Verification in Countervailing Duty Investigations*.

Article 50 of the notified Regulation prescribes that the review proceedings shall be conducted with reference to the relevant provisions of these Regulations on countervailing investigation. The investigating authorities may also conduct a verification in a review.

Q15. Article 22 of the notified regulations does not provide a definition of “interested parties,” which is particularly important with respect to the treatment of and access to confidential information. How does China define interested parties and how does that definition comply with ASCM Art12.9?

Reply

“Interested parties” is defined as the applicants, the known exporters and importers, other interested organizations and parties. The definition of “interested parties” is consistent with Art 12.9 of ASCM.

Q16. Article 22 of the notified regulations states that “[a]n interested party may request the investigating authorities to treat the information it provided as confidential if it considers that any disclosure of such information will create significantly adverse effects.” How does MOFTEC define what constitutes “significantly adverse effects”?

Reply

“significantly adverse effects” commonly refers to that the parties who provide the information or produce the information have lost their interests significantly.

Q17. How does China interpret the following provisions in Article 45 of the notified regulations: (1) “the subsidized imports increased massively during a short period of time;” (2) “such increase has caused injury which is difficult repair to a domestic industry;” and (3) “such products have benefited from the subsidy ”?

Reply

The Article mentioned is consistent with Art20.6 of ASCM.

Q18. Article 29 of the notified regulations indicates that any decision to apply provisional measures is proposed by MOFTEC, but decided by the State Council Tariff Commission (the “Tariff Commission”). The same requirement applies to final determinations, as specified in Article 38. What oversight rules govern the Tariff Commission’s decisions? What discretion does the Tariff Commission have in setting countervailing duties or otherwise modifying MOFTEC’s recommendations? Does the Tariff Commission have the authority to increase the countervailing duty determined by MOFTEC?

Reply

The Tariff Commission will make his decision based on the suggestion made by MOFTEC (Now by MOC).

Article 29 also specifies that countervailing duties will be collected by Chinese Customs. What provisions are available to an importer to seek redress in the event of a dispute over classification of imported merchandise and/or an error in the amount of the duty collected by Chinese Customs? This question also applies to disputes over the amount of any duties to be refunded under Article 46 of the notified regulations.

Reply

China will formulate rules on this issue in later stage.

Q19. In regard to Article 47 of the notified regulations, will countervailing measures expire automatically after five years if no review is undertaken? If not, what procedures are required to apply for revocation of the countervailing measures? Please clarify the meaning of “may be extended as appropriate” as used in Article 47. For example, will there be a finite extension of

the countervailing measure? Will another review be required to remove the measure at a later date, and if so, how soon following the fifth anniversary may such a review be requested? Under what circumstances, and based upon what information will China conduct the review specified in Article 47? What rules will China follow in conducting such a review?

Reply

China will formulate the rules on review of countervailing measures, in order to regulate the proceedings and the entities related to review. Before the rules are published, the practice on review will not collide with relative Articles of ASCM.

Q20. Article 54 of the notified regulations specifies that MOFTEC and SETC may take “appropriate measures” to prevent circumvention of countervailing measures. Please describe how the authorities will determine whether such circumvention has occurred, and the types of measures the authorities may take if such circumvention has occurred?

Reply

Up to now, China hasn't formulated explicit rules on circumvention of countervailing measures. China will decide whether to formulate explicit rules on circumvention of countervailing measures, on the basis of the objective need of specific situations.

Q21. Article 55 of the notified regulations specifies that China may take "corresponding measures" when any country "discriminatorily" imposes countervailing measures against exports from China. Based on what authority in the ASCM could China take such an action? Under what circumstances does China foresee applying this provision (i.e. what would be considered as "discriminatory" within the meaning of Article 55)? What sorts of actions would be taken against another country? Is there any law prohibiting use of Article 55 prior to exhausting other remedies such as the WTO dispute settlement process?

Reply

Up to now, China hasn't any case in related to this article.

Q22. Please elaborate on how judicial reviews will be conducted, including specific entities that will conduct the reviews and the procedures under which such reviews would be conducted. Does China intend to notify the Committee of *The Administrative Review Law of the People's Republic of China*, *The Administrative Litigation Procedure Law of the People's Republic of China*, Article 14 of the *Law of the People's Republic of China on Administrative Reconsideration* and the *Law of the People's Republic of China on Administrative Litigation Procedure*?

Reply

Any party may apply for administrative reconsideration, or file a lawsuit in the people's courts, according to the Article 52 of *the Regulations*. Any party should comply with *the Law of the People's Republic of China on Administrative Reconsideration* when applying for administrative reconsideration, and should comply with the *Law of the People's Republic of China on Administrative Litigation Procedure* when filing a lawsuit in the people's court.

Q23. What are the procedures for requesting and conducting appeals to the State Council Tariff Commission referred to in Article 52 of the notified regulations? Which courts have jurisdiction over the findings of the Tariff Commission in appeals of countervailing measure

decisions? What laws and regulations govern such actions and what standard of evidence is required for the appeal? Will China be issuing rules concerning such appeals?

Reply

China will formulate rules on this issue in later stage.

Q24. Please explain the differentiation between the terms "country" and "region" as used in the notified regulations (e.g. Article 4).

Reply

The word “region” mentioned in these Regulations refers to a separated customs territory.
