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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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NOTIFICATIONS OF LAWS AND REGULATIONS UNDER ARTICLE 18.5 AND ARTICLE 32.6 OF THE AGREEMENTS

Questions posed by the UNITED STATES Regarding the Notification of CHINA

The following communication, 2 October 2003, has been received from the Permanent Mission of the United States.

Questions on Subsidies and Countervailing Measures

The United States thanks China for its notification of its Rules on Investigations and Determinations of Industry Injury for Countervailing Measures (the “Rules”).¹

1. Article 3 of the Rules states that countervailing duty (“CVD”) investigations of injury involving agricultural products shall be conducted by the State Economic and Trade Commission (“SETC”) in conjunction with the Ministry of Agriculture.² Could China please clarify the role of the Ministry of Agriculture in a CVD investigation?
2. Article 5 of the Rules defines “material injury” as “injury that has been caused to a domestic industry and is not negligible”. For purposes of this definition, does the concept of “negligible” injury refer to the concept of negligible import volume addressed by Article 16 of the Rules? If not, could China explain its understanding of the concept of “negligible” injury?
3. Article 15.7 of the Agreement on Subsidies and Countervailing Measures (the “ASCM”) defines the analysis for threat of material injury and states that “no one of these factors by itself can necessarily give decisive guidance, but the totality of the factors considered must lead to the conclusion that further subsidized exports are imminent and that, unless protective action is taken, material injury would occur”. ASCM Article 15.7 also states that “the change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent”. Article 7 of the Rules does not contain language implementing these provisions of ASCM Article 15.7. How does China intend to comply with these provisions?
4. Are the factors that SETC examines in ascertaining impact for threat analysis under Article 7.6 of the Rules the same as the ones SETC examines for analysis of material injury under

¹ G/SCM/N/1/CHN/1/Suppl.2 (14 April 2003)

² The United States is aware of reports that, since the time these regulations were notified, the injury function has been transferred to the Ministry of Commerce. However, we have continued to refer to the SETC throughout these questions for consistency with the notified regulations.

Article 6.4 of the Rules? If not, how does the examination of impact for threat analysis differ from that for analysis of material injury?

5. Article 8 of the Rules details the factors to be examined in the determination of material retardation of the establishment of a domestic industry. Will these factors be considered in relation to one another or is any single factor considered to be determinative?

6. Article 11 of the Rules refers to factors which may be examined in the determination of like product and specifically mentions “comments from consumers and producers...”. Does China intend to permit other interested parties to comment on this issue? How will such comments be solicited?

7. The first sentence of Article 13 of the Rules states that “In the determination of injury to [the] domestic industry, SETC may exclude the product under investigation or part thereof that did not cause injury to the domestic industry”. The meaning of this provision, which does not appear to implement any portion of the ASCM, is unclear. Could China provide an example of a factual situation in which SETC would apply this provision? How can SETC determine that a portion of the product under investigation did not cause injury before it has concluded its investigation of injury?

8. Can China please explain how it defines “negligible” as used in Articles 5 and 16 of the Rules? In determining whether imports are negligible in a CVD investigation, how will the Chinese authorities address the special requirements applicable to import volumes from developing countries consistent with ASCM 27.10?

9. Article 18 of the Rules states that SETC shall take account of public interest in making a determination of injury to the domestic industry.

(a) Will interested parties have an opportunity to present evidence in this respect?

(b) Will interested parties be allowed to view the information submitted by users and consumers of the subsidized imports, or adequate non-confidential summaries thereof?

10. Article 19 of the Rules states that the period of investigation for injury is normally the three years immediately prior to the initiation of the investigation. Under what circumstances would China use a different period?

11. According to ASCM Article 11.3 “[t]he authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation”. Article 20 of the Rules does not contain any reference to “the accuracy and adequacy of the evidence”. How will China ensure that its authorities examine the accuracy and adequacy of the evidence, as required by ASCM Article 11.3?

12. Article 21 of the Rules describes the information that must be included in the application for initiation of a countervailing duty investigation. Although this Article lists information required on injury, considerations for cumulative assessment, and other factors that caused injury to the domestic industry, it does not contain any provision regarding the application including sufficient evidence of a causal link between the subsidized imports and the alleged injury, as required by ASCM Article 11.2. Does China require petitions to contain information concerning causation?

13. Article 16 of the *Regulations of the People’s Republic of China on Countervailing Measures*³ states that “the government of the country (region) the product of which may be subject to such

³ G/SCM/N/1/CHN/1 (11 Sept 2002)

investigation shall be invited for consultation regarding the subsidy in question”. However, Article 23 of the Rules states that SETC “may” accept invitations for consultation from the governments....” Under what circumstances would SETC not take part in consultations?

14. Article 23 of the Rules does not contain any provision under which the Members whose products are subject to the investigation are, upon request, to be provided access to the non-confidential evidence being used for initiating the investigation, as required by ASCM Article 13.4. Will this information be provided to such Members?

15. ASCM Article 12.1 states that “[i]nterested Members and all interested parties in a countervailing duty investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.”

- (a) In applying Article 24 of the Rules, will China allow respondents the opportunity to revise information included with the notice of appearance after it is submitted?
- (b) What is the status of interested parties who do not register as respondents? Additionally, will an interested party be considered as registered if it responds to the best of its ability, but does not submit all of the information requested?
- (c) Please specify the entities that may be treated as interested parties pursuant to Article 24(4) of the Rules, which states that “others” may be granted interested party status.

16. In circumstances where SETC engages experts in a CVD investigation, pursuant to Article 28 of the Rules, how will China ensure that these experts maintain the confidentiality of the data examined, as provided for in Article 12.4 of the ASCM?

17. Article 31 of the Rules states that the questionnaires shall be returned “within the time limit” specified in the questionnaire.

- (a) What is the time limit for questionnaire responses? Are these calendar days
or
working days?

- (b) Under what circumstances will SETC not grant an extension?

18. Article 32 of the Rules does not provide for making the results of verifications available to a firm that was verified. How will the administering authorities disclose results of the on-the-spot-verification to ensure compliance with Article 12.6 and Annex VI of the ASCM?

19. Article 33 of the Rules does not provide for protecting the confidentiality of information received during the investigation in the territory of other Members, as required in ASCM Article 12.6. How will China ensure that Article 33 is implemented consistent with the ASCM?

20. Article 33 of the Rules states that, when requested by an interested party, SETC may conduct a verification. Under what circumstances would a requested verification not be conducted? What provisions will the administering authority make for a situation in which it cannot conduct all requested verifications?

21. Article 35 of the Rules states that when requested by an interested party, or when SETC deems it necessary, a public hearing *may* be held. Under what circumstances would requests for hearings not be honoured?

22. Will China be issuing further rules for price undertakings? If so, when? If not, how will China determine if an undertaking is sufficient to eliminate the injurious effect of the subsidy, in accordance with ASCM Article 18.1?

23. Will China entertain requests for price undertakings pursuant to Article 37 of the Rules prior to making a preliminary determination of dumping and injury? If so, please explain how such a practice would be consistent with ASCM Article 18.2 which states that price undertakings shall not be sought or accepted until after an affirmative preliminary determination of subsidization and injury caused by subsidization has been made?

24. The second sentence of Article 38 of the Rules states that, if exporters refuse or do not offer a proposal for price undertaking, "SETC is free to determine that a threat of injury is more likely to be realized if the exporters continue to subsidize the imported products."

(a) Is this a factor SETC will consider in addition to the factors pertinent to threat analysis listed in Article 7 of the Rules?

(b) How is SETC's consideration of this factor consistent with Article 15.7 of the ASCM?

25. If a respondent's request for confidential information is denied, will the respondent be given an opportunity to revise the non-confidential summary or to withdraw any confidential information prior to its disclosure? How will China treat confidential information submitted by the respondents once the investigation is completed?

26. Article 44 of the Rules does not contain any provision making allowances for difficulties experienced by interested parties, in particular small companies, in supplying information requested, nor does it require authorities to offer assistance, as provided for in ASCM Article 12.11. How does China intend to implement this ASCM requirement?

27. Will China issue provisional rules for access to non-confidential information during injury investigations? If so, when? Prior to that time, what will govern such access?

28. Article 45 of the Rules states that interested parties shall have access to non-confidential information after the initiation of the case and prior to the publication of the final determination. The second paragraph of Article 45 states that the interested parties *may* also have access to the non-confidential information within a reasonable period after publication of the final determination.

(a) Are there any circumstances in which interested parties would be denied access to non-confidential information? If so, please explain. How would such circumstances be consistent with ASCM Article 12.3?

(b) How does China define "reasonable period" for purposes of this provision? Will records of investigations be available indefinitely for reference in future investigations and for judicial review?

(c) How is this Article consistent with ASCM Article 12.3, under which authorities are to "provide timely opportunities for all interested Members and interested parties to see all information that is relevant to the presentation of their cases, that is not confidential..."?

29. How is Article 46 of the Rules consistent with Article 23 of the *Regulations of the People's Republic of China on Countervailing Measures*⁴, which states “the investigating authorities shall allow applicants, interested parties and governments of interested countries (regions) to have access to the information relevant to the investigation, provided that the information has not been treated as confidential?”

- (a) What is the “relevant certificate” required by Article 46? How do interested parties obtain this certificate?
- (b) What are the procedural formalities referred to in Article 46? Where can respondent parties obtain information on these procedural formalities?

30. While Articles 45, 46, and 47 of the Rules contain provisions permitting interested parties to inspect non-confidential information, they do not expressly address whether parties are entitled to prepare presentations based on such information that they inspect. Do interested parties have such rights? If not, how does China implement the requirements of Articles 12.3 and 12.8 of the ASCM? What facilities does China provide for viewing and copying non-confidential information?

31. Article 50 of the Rules lists circumstances which would lead to termination of the injury investigation. This list does not include termination based on the amount of the subsidy being *de minimis*, although these grounds are included in Article 28 of the *Regulations of the People's Republic of China on Countervailing Measures*. How is Article 50 consistent with Article 11.9 of the ASCM which states that there shall be immediate termination in cases where the amount of a subsidy is *de minimis* (i.e., less than 1 percent, ad valorem)?

32. Article 51 of the Rules contains provisions on interim and expiration reviews.

- (a) Does China intend to issue implementing rules for interim reviews and expiration reviews? If so, when? Will these rules be notified to the WTO?
- (b) Will five-year expiration reviews be conducted in all cases either at the request of interested parties or based on self-initiation by the administering authority?
- (c) Under what circumstances will the administering authority self-initiate a review?
- (d) What is the timeline for completion of interim and expiration reviews?
- (e) Will the determination be issued publicly? If so, in what format (e.g., where will it be published)?
- (f) What organization now conducts interim and expiration reviews?
- (g) What procedural rights will parties have with respect to the injury determination?

33. Articles 55 through 58 of the Rules address circumvention.

- (a) Will China develop and publish procedures for investigations of circumvention of CVD measures?

⁴ G/SCM/N/1/CHN/1 (11 Sept 2002)

- (b) With respect to Article 57(1) of the Rules, during what length of time prior to initiation of an investigation would alleged “practices of circumvention ” be considered a factor to be examined in determining whether there has been circumvention of countervailing measures?
- (c) How can actions prior even to the initiation of a countervailing duty investigation constitute “circumvention” of a measure, if the measure does not even exist at that time?
- (d) What are the “appropriate measures” SETC may take in situations where circumvention of a countervailing measure causes injury to the domestic industry pursuant to Article 58 of the Rules?

34. When parties provide requested information in Chinese, as required by Article 59 of the Rules, and a relevant document is lengthy, may a party submit a translation of only the pertinent portions of the lengthy document, or must the party provide a translation of the entire document, no matter how lengthy?

35. Will SETC interpretations of the Rules, referenced in Article 61 of the Rules, be subject to judicial review?
