

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

Original: English

NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

Replies to the Questions Posed by the EUROPEAN COMMUNITIES¹ Regarding the Notification of CHINA²

The following communication, dated 30 April 2003, has been received from the Permanent Mission of China.

Provisional Rules on Initiation of Anti-Dumping Investigations

Q1. It results from Article 32 of the Provisional Rules that before initiation of an investigation the Bureau of Fair Trade may conduct on the spot verifications on the issues contained in the application and supporting materials. Could the PRC please clarify what type of investigation is envisaged, given in particular of the fact that the application includes a.o. information on dumping ?

Reply

The investigating authority of China may examine and verify the genuineness and completeness of the data and arguments contained in the application through various ways, such as carrying out on-the-spot verification on the enterprises concerned, verifying the information through customs data, investigating and querying the importers, which may all be what is meant to be investigation under Article 32 of the Provisional Rules on Initiation of Anti-Dumping Investigations.

Provisional Rules on Questionnaire in Anti-Dumping Investigations

Q2. The Provisional Rules set out a number of requirements for responding companies (see for example Articles 7, 12-16, 22-28). Can the PRC please confirm that it will apply these provisions in the light of Article 6.13 and Annex II of the Anti-Dumping Agreement (ADA)? Would e.g. documents submitted in English, as a WTO language, but not translated into Chinese be regarded as “facts available“, or will such documents be disregarded?

¹ G/ADP/Q1/CHN/11-G/SCM/Q1/CHN/11

² G/ADP/N/1/CHN/2 + Suppl.1

Reply

The investigating authority of China has set out a number of requirements for responding companies in the Articles of Provisional Rules on Questionnaire of Anti-Dumping Investigations (such as Articles 7, 12 through 16, 22 through 28) to provide a more explicit guidance for the responding companies so as to save their time to respond and make the investigation move more smoothly, which is in the interest of the responding companies as well. The investigating authority of China would abide by the relevant regulations of the Anti-Dumping Agreement (ADA).

There is no specific rule set out in the Anti-Dumping Agreement (ADA) as to which language should be used in responses. In practice, the WTO Members usually use their own official languages. The requirement of the investigating authority of China to submit the response in Chinese is consistent with the common practice.

Q3. Article 20, second paragraph provides that MOFTEC may disregard information if the responding company does not submit a satisfactory non-confidential summary. Would the authorities of the PRC nevertheless use such information if it can be demonstrated from appropriate sources that the information is correct, in accordance with Article 6.5.2 ADA?

Reply

In cases where a responding company does not submit a non-confidential summary of the response, the authorities would still consider acceptance of the response concerned if it could be demonstrated from appropriate sources that the information in the response is correct.

Q4. Article 27 of the Provisional Rules states that the questionnaire response of the responding company shall be submitted through a practising attorney at law of the PRC and that relevant matters shall be dealt with by the attorney. Does this mean that a responding company cannot submit its response directly to MOFTEC or through any other lawyer? What are the consequences of not complying with this provision? How does this provision relate to Article 6.13 and Annex II ADA?

Reply

Based on the stipulation, a responding company's questionnaire response should be submitted only through a practising attorney at law of the PRC. This would be helpful to better clarify the facts and protect the interests of the enterprises.

This Article in Provisional Rules on Questionnaire of Anti-Dumping Investigations is not inconsistent with the relative provisions in Article 6.13 and Annex II ADA.

Provisional Rules on Sampling in Anti-Dumping Investigations

Q5. According to the Provisional Rules MOFTEC shall decide on the selection of the sample and the disagreement of exporters and producers to the selection has no prejudice to the selection of MOFTEC (Article 8). Could the PRC clarify how these provisions relate to Article 6.10.1 ADA?

Reply

It is set out in Provisional Rules on Sampling of Anti-Dumping Investigations that, while selecting the samples, the investigating authorities should, as much as possible, consult with the

exporters and producers concerned. However, where the exporters and producers disagree to such selection, there would be no prejudice to the selection of the authorities. Article 6.10.1 of the ADA does not prohibit the investigating authorities to select those who disagree to such selection after consultation.

Provisional Rules on On-the-Spot Verification in Anti-Dumping Investigations

Q6. Article 12, paragraph 2 of the Provisional Rules provides that where non-governmental experts take part in the on-the-spot verification, they shall strictly abide by the obligation of confidentiality. Are such experts subject to effective sanctions for breach of confidentiality requirements, in accordance with Article 2 of Annex I of the ADA?

Reply

So far, the investigating authority of China has not come across such problems. Should there be any case in future investigation, the investigating authority of China shall take correspondent measures to deal with such behaviour of the experts strictly in accordance with relative laws and regulations in China.

Provisional Rules on Price Undertakings in Anti-Dumping Investigations

Q7. Could the PRC please clarify what type of criteria would be considered under Articles 10 (3) and 22 of the Provisional Rules, for the acceptance or cancelling of a price undertaking ? What public interest considerations could play a role in Article 22 other than violation of the undertaking or effectiveness of the measures?

Reply

Concretely speaking, "public interest" under Article 10(3) of Provisional Rules on Price Undertakings of Anti-Dumping Investigations may refer to such factors as whether the price undertaking is in conformity with the principle of balance of interests between the upstream industries and the downstream industries, whether it would over-protect domestic industries, whether it would have unbeneficial effect on the supply of the domestic market, whether it would jeopardize the competing relationships on the domestic market (monopoly and unfair competition) and so on. For example, the investigating authority of China may declare cancellation of a price undertaking if it finds such price undertaking may over-protect the domestic industry.

Provisional Rules on New Shipper Review in Anti-Dumping Investigations

Q8. Could the PRC please clarify the provision of Article 6 of the Provisional Rules?

Reply

According to Article 6 of Provisional Rules on New Shipper Review in Anti-Dumping Investigations, only those export transactions on which anti-dumping duties have been levied can be considered as the basis for the new shipper review, while those on which anti-dumping duties have not been levied cannot be considered for such purpose.

Q9. Article 7 of the Provisional Rules provides that the application for new shipper review shall be filed not later than 30 days after the actual export. According to Article 5, paragraph 2 the export shall be made in sufficient quantities. How should the period of 30 days be counted if

several export transactions took place at different moments, which cumulatively would constitute a sufficient quantity?

Reply

The period of 3 months (noted: it is mistakenly written as 30 days in the original letter) provided for in Article 7.1 of the Provisional Rules on New Shipper Review in Anti-dumping Investigations shall be counted from the first export transaction which shall meet the requirement of "sufficient" quantities provided for in Article 5.

Provisional Rules on Interim Review of Dumping and Dumping Margin

Q10. According to Article 6 the application for an Interim Review shall be filed within 30 days from the date after each single year has elapsed following the anti-dumping measures entering into force. Would this mean that where a change of circumstances occurred shortly after the anniversary of the measures no application for review could be filed until the next anniversary of the measures?

Reply

Article 6 of the Provisional Rules on Interim Review of Dumping and Dumping Margin regulates only those cases in regular situations, which does not impede the rights of the interested parties to file an application for interim review in advance where the change of circumstances would have occurred before a whole year has elapsed following the entry into force of anti-dumping measures or the decision of interim review.

Q11. Where the applicants of the original anti-dumping investigation make comments, pursuant to Article 11 of the Provisional Rules, on whether such review shall be initiated, would such comments be available to the exporters and producers requesting the review?

Reply

In such circumstances, the comments made by the applicants of the original anti-dumping investigation on whether the review shall be initiated, like comments made by other interested parties, shall be made available to other interested parties, including the exporters and producers requesting such a review.

Q12. Articles 25-27: could the PRC please clarify whether the investigation in an interim review can only cover dumping or whether it can also cover injury in accordance with Article 11.2 ADA?

Reply

The interim review may cover both dumping investigation and injury investigation. However, as limited by the functions of the former MOFTEC were limited, the Provisional Rules on Interim Review of Dumping and Dumping Margin only cover review of dumping and dumping margins. This does not preclude the investigating authority of China from conducting review on both dumping and injury investigation in accordance with the relative legislations and regulations.
