

**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 Anti-Dumping

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

1. Article 3 of the Rules states that anti-dumping injury investigations 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 an anti-dumping 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? If not, could China explain its understanding of the concept of “negligible” injury?
3. Under Article 5 of the Rules, “threat of material injury” occurs when “material injury has not been caused to [a] domestic industry. . .”. However, in its response to United States question 11(c) in G/ADP/Q1/CHN/19 (7 May 2003), China stated that, under current Chinese law, “[a]n applicant [for anti-dumping duties] can not file an application based on theories of both material injury and threat”. In light of this, how would the SETC have occasion in an investigation where threat of material injury is alleged to make a finding whether or not material injury has been caused to a domestic industry?
4. Article 3.7 of the Anti-Dumping Agreement (“ADA” or “AD Agreement”) 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 dumped exports are imminent and that, unless protective action is taken, material injury would

¹ G/ADP/N/1/CHN/2/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.

occur". ADA Article 3.7 also states that "the change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent". Article 7 of the Rules does not contain language implementing these provisions of ADA Article 3.7. How does China intend to ensure that these requirements are met?

5. ADA Article 3.7 specifies that an authority must examine whether there is a "significant rate of increase of dumped imports into the domestic market..". Article 7 of the Rules does not contain any provision stating that the examination should include whether the rate of increase of dumped imports is "significant". How will China ensure that its analysis of an alleged threat of material injury will be consistent with ADA Article 3.7 in these respects?

6. Are the factors that SETC examines in ascertaining impact for threat analysis under Article 7.5 of the Rules the same as the ones SETC examines for analysis of material injury under Article 6.3 of the Rules? If not, how does the examination of impact for threat analysis differ from that for analysis of material injury?

7. Article 8 of the Rules identifies the factors examined in the determination of whether material retardation of the establishment of a domestic industry has been caused by dumping. Are these factors considered in relation to one another? Is any single factor considered to be determinative?

8. 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 also intend to permit other potentially interested parties to comment on this issue? How will such comments be solicited?

9. The first sentence of Article 13 of the Rules states that "[i]n 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 AD Agreement, 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?

10. Article 15 of the Rules appears to indicate when SETC may perform a regional industry analysis pursuant to Article 4.1(ii) of the AD Agreement. Article 4.1(ii) of the AD Agreement states that, in order for the authority to base an injury determination on a regional industry there must be "a concentration of dumped imports into such an isolated market and . . . the dumped imports [must be] causing injury to the producers of all or almost all of the production within such market". How does China intend to implement these requirements of Article 4.1(ii), which are not articulated in Article 15 of the Rules?

11. Article 16 of the Rules states that "[t]he volume of the dumped imports shall *normally* [emphasis added] be regarded as negligible..." Under what circumstances, other than those listed in Article 16, would China consider imports accounting for less than three percent of total imports to be non-negligible?

12. Article 18 of the Rules states that SETC shall take account of public interest in making a determination of injury to the domestic industry. Will China also allow interested parties an opportunity to present evidence in this respect? Will interested parties be allowed to view the information submitted by users and consumers of the allegedly dumped imports, or adequate non-confidential summaries thereof?

13. Article 19 of the Rules states “[t]he period under anti-dumping investigations of injury to industry is normally the 3 years immediately prior to the initiation of an investigation”. Under what circumstances would China use a different period of investigation?

14. According to ADA Article 5.3, “[t]he authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation”. Article 20 of the Rules does not contain any reference to the “accuracy and adequacy of evidence.” How will China ensure that its authorities examine the accuracy and adequacy of the evidence prior to initiation, as required by ADA Article 5.3?

15. Article 21 of the Rules describes the information that must be included in the application for initiation of an anti-dumping 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 that the application must contain information related to causal link between the dumped imports and the alleged injury, as required by ADA Article 5.2. Does China require petitions to contain information concerning causation?

16. ADA Article 6.1 states “[a]ll interested parties in an anti-dumping 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.” When considering Article 23 of the Rules, will China allow respondents the opportunity to revise information included with the notice of appearance after it is submitted? What is the status of interested parties if they do not register as respondents? Additionally, will an interested party be considered registered if it responds to the best of its ability, but does not submit all of the information requested?

17. 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. In its response to United States question 17 in G/ADP/Q1/CHN/19, China did not indicate that it considers any entity other than those specified in subsections (1), (2), and (3) of Article 24 (i.e. domestic producers of the like product, importers and foreign producers of the merchandise under investigation, associations of these groups, and governments of the country or region producing the merchandise under investigation) eligible for status as an interested party.

18. In circumstances where SETC engages experts in an anti-dumping investigation pursuant to Article 27 of the Rules, how will China ensure that these experts maintain the confidentiality of the data examined, as provided for in Article 6.5 of the ADA?

19. Article 30 of the Rules states that the questionnaires shall be returned “within the time limit specified in the questionnaire.” Specifically, what is the time limit for questionnaire responses? Are these calendar days or working days? Additionally, under what circumstances will SETC not grant an extension?

20. Article 32 of the Rules does not provide for making results of verifications available to the firm which was verified or for protecting the confidentiality of information received during the investigation as required in ADA Article 6.7 and Annex I. How will China ensure that Article 32 is implemented consistent with ADA Article 6.7 and Annex I?

21. Article 32 of the Rules states that, when requested by an interested party, the administering authority will conduct a verification. Under what circumstances would a requested verification not be conducted? What provisions will SETC make for a situation in which it cannot conduct all requested verifications?

22. Article 34 of the Rules states that hearings may be held upon request. Under what circumstances would requests for hearings not be honoured?
23. With regard to Articles 35 through 37 of the Rules, which address price undertakings:
- (a) Will China be issuing further rules for price undertakings? If so, when?
 - (b) Will China entertain requests for price undertakings prior to making a preliminary determination of dumping and injury? If so, please explain how such a practice would be consistent with ADA Article 8.2, which states, “[p]rice undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping”?
24. The second sentence of Article 36 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 dumping the import[ed] 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 3.7 of the AD Agreement.
25. How does Article 37 of the Rules conform to ADA Article 8.4, which states that “if a negative determination of dumping or injury is made, the undertaking shall automatically lapse”?
26. If a respondent’s request for confidential information is denied, will the respondent be given an opportunity to revise the non-confidential summary or withdraw any confidential information prior to its disclosure? How will China treat confidential information submitted by the respondents once the investigation is completed?
27. Article 42 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 provide assistance, as required by ADA Article 6.13. How does China intend to implement this ADA requirement?
28. Article 43 of the Rules states that interested parties shall have access to non-confidential information after the initiation of the case, prior to the publication of the final determination and 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. Additionally, how would such circumstances be consistent with ADA Article 6.4?
 - (b) How does China define a “reasonable period” for purposes of this provision?
 - (c) Will records of investigations be available indefinitely for reference in future investigations and for judicial review?
29. How is Article 44 of the Rules consistent with Article 23 of the Regulations of the People’s Republic of China on Anti-Dumping³, which states “the investigating authorities shall allow the

³ G/ADP/N/1/CHN/2 (11 September 2002)

applicant and interested parties to have access to the information relevant to the investigation, provided that the information has not been treated as confidential”? In addition:

- (a) What is the "relevant certificate" required by Article 44 of the Rules? How do interested parties obtain this certificate?
- (b) What are the procedural formalities referred in Article 44 of the Rules? Where can respondent parties obtain information on these procedural formalities?

30. While Articles 43, 44, and 45 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 6.4 and 6.9 of the AD Agreement?

31. Will the SETC provide facilities such as a public reading room in order for interested parties to review and copy non-confidential information?

32. Article 48 of the Rules lists circumstances which would lead to termination of the injury investigation. This list does not include termination based on de minimis margins, although these grounds are included in Article 27 of the Regulations of the People's Republic of China on Anti-Dumping. How is Article 48 of the Rules consistent with Article 5.8 of the ADA which explicitly calls for termination of anti-dumping investigations when the authorities determine the margin is de minimis (i.e., less than 2 percent, expressed as a percentage of the export price)?

33. With regard to Article 49 of the Rules, which contains provisions concerning interim and expiration reviews:

- (a) Does China intend to issue implementing rules for interim reviews and expiration reviews? If so, when? Additionally, will these rules also 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 SETC?
- (c) Under what circumstances will SETC self-initiate a review?
- (d) What is the time line for completion of interim and expiration reviews?
 - (i) Will the determination be issued publicly? If so, in what format (e.g., where will it be published)?
 - (ii) What organization now conducts interim and expiration reviews?
 - (iii) What procedural rights will interested parties have with respect to the injury determination?

34. With regard to Articles 53 through 56 of the Rules, which address circumvention:

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

- (b) With regard to Article 55 of the Rules, during what length of time *prior to initiation* of an investigation would alleged practices of circumvention be considered a factor in evaluating whether there has been circumvention of an anti-dumping measure?
- (c) How can actions prior to the initiation of an anti-dumping investigation constitute circumvention of a measure, if the measure does not exist at that time?
- (d) What are the appropriate measures China may take in situations where circumvention of anti-dumping measures causes injury to the domestic industry pursuant to Article 56 of the Rules? What process will China follow in determining what measures to take to address circumvention?

35. When parties provide requested information in Chinese, as required by Article 57 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?

36. Will SETC interpretations of the Rules, referenced in Article 59 of the Rules, be subject to judicial review?
