

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

Follow-Up Questions from the UNITED STATES¹ Regarding the Notification of CHINA²

The following communication, dated 7 November 2003, has been received from the Delegation of the United States.

The United States would like to thank China for the replies provided in G/ADP/Q1/CHN/32-G/SCM/Q1/CHN/32. Referring to the answers provided by China, and without prejudice to our rights to pose further follow-up questions at a later date, the United States takes this opportunity to present the following follow-up questions:

- A. Original Question 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.³ Could China please clarify the role of the Ministry of Agriculture in an anti-dumping investigation?

Reply: The Ministry of Agriculture is responsible for assisting investigations conducted by the Ministry of Commerce as well as collecting related evidences.

Follow-up Question to Reply 1: Please describe the assistance the Ministry of Agriculture will provide. Will the Ministry of Agriculture have any role in gathering information, calculating dumping margins or making an injury determination? If so, please describe those roles.

- B. Original Question 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?

Reply: Related anti-dumping rules of China have not prohibited other potentially interested parties to comment on this issue. As for the question of how such comments will be solicited, we think there are various channels: notifying interested parties already known to participate in the comment; publicizing notifications for their suggestions; or issuing questionnaires to collect their viewpoints. All these are based upon the premises of necessity.

¹ See, replies from China in G/ADP/Q1/CHN/32-G/SCM/Q1/CHN/32 (23 October 2003) to questions posed by the United States in G/ADP/Q1/CHN/26-G/SCM/Q1/CHN/26 (3 October 2003).

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

³ 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.

Follow-up Question to Reply 8: Please confirm whether comments from parties other than consumers and producers on the issue of the appropriate like product will be accepted. On this issue, does China's answer mean that in each case it will solicit comments on the like product through all three of the channels mentioned? If not which "channel" will it use, or will some other means of soliciting comments be used? Does the reference to the "premises of necessity" mean that in some cases Chinese authorities will deem comments by interested parties to be "unnecessary?" If so, how will it identify such cases?

- C. Original Question 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?

Reply: China's investigating authorities may exclude the product under investigation or part thereof that did not cause injury to domestic industry in the determination of injury to the domestic industry, the meaning of this sentence is quite clear, which is to refrain from taking anti-dumping measures to part of the product under investigation that did not cause material injury to our domestic industry. This article has in effect fulfilled the regulation that anti-dumping measures shall not be taken against imported product without one of the three prerequisites in WTO Anti-Dumping Agreement: dumping, injury and a cause-effect relation.

For example: during the anti-dumping verdict by the Chinese Government in 1999 against imported stainless steel sheets, we have excluded 4 categories of products which have not caused any material injury to our domestic industry, and decided not to take anti-dumping measures against such. The 4 categories are: stainless steel strip for the cathode of an electron gun on TV, stainless steel sheet for the razor, stainless steel sheet for a car's vent-pipe, and stainless steel sheet for a washing machine.

The determination that part of the product under investigation did not cause material injury will be made after the conclusion of the investigation, rather than before it. One of the major tasks of injury investigation is to determine whether or not the investigated product has caused material injury to China's domestic industry, or the investigated product as a whole or part has caused such injury.

Follow-up Question to Reply 9: Does this mean that volume and pricing data that China's investigating authority considers for purposes of its injury analysis pursuant to Article 3.2 of the AD Agreement and Article 15.2 of the SCM Agreement will include data pertaining to the dumped or subsidized imports that are ultimately excluded from the scope of its order? If this is the case, what is the logical basis for China premising an affirmative injury determination in part on data relating to the same imports it determines, in the context of the same investigation, are not causing injury? Can exclusion of certain portions of the product under investigation pursuant to Article 13 of the Rules be based on the purchaser of the product under investigation, or the region or time period in which the product under investigation is sold? Has China applied this provision in any investigation? If so, could China please provide details involving the application of this provision?

- D. Original Question 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?

Reply: China's investigating authorities will allow interested parties to present related evidence, and interested parties will be allowed to view information and non-confidential summaries according to regulation of the Rules.

Follow-up Question to Reply 12: Will information presented by users and consumers on public interest, or adequate non-confidential summaries thereof, be made part of the public record?

- E. Original Question 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?

Reply to Question 19: Article 25 of China's Anti-Dumping Regulations has related regulations. China's investigating authorities have always acted in accordance with this regulation, citing ADA Article 6.7 and Annex I as our reference. We have always guaranteed that Article 32 of the Rules will not go against ADA Article 6.7 and Annex I, and fall in line with such stipulations. In practice, we have as well tried to make results of verifications available to related firms, ensuring the availability of such results to related parties.

Follow-up Question to Reply 19: The response provided does not address the question posed. Is the reply to question 19 intended to be that provided in paragraph 2 of the reply to question 18 which reads "[i]n general, time limit for the return of questionnaire shall be 37 days. The investigating authorities shall not grant an extension without occurrence of special circumstances, irresistible forces or reasonable explanations"?

- F. Original Question 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?

Reply to Question 20: There are 4 common situations: 1. the request of an interested party is raised too late. With final verdict pressing near, the investigating authorities do not have time to conduct verifications. In such case, we can find some other ways to compensate, without infecting the accuracy of the verdict; 2. the request from an interested party bears no further significant evidence. A verdict can be made from the possessed evidence, and there is no necessity for further verifications; 3. the internal technical factors of the investigator have prevented the verification, but we will find ways to compensate without infecting the accuracy of the verdict; 4. other situations as regulated by law.

Follow-up Question to Reply 20: The response provided does not address the question posed. Is the reply to question 20 intended to be that provided in the reply to question 19, which reads "[a]rticle 25 of China's Anti-Dumping Regulations has related regulations. China's investigating authorities have always acted in accordance with this regulation, citing ADA Article 6.7 and Annex I as our reference. We have always guaranteed that Article 32 of the Rules will not go against ADA Article 6.7 and Annex I, and fall in line with such stipulations. In practice, we have as well tried to make results of verifications available to related firms, ensuring the availability of such results to related parties"?

- G. Original Question 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?

Reply to Question 21: Investigating authorities will come up with a justified verdict in accordance with all premium evidences, and there will be no unjust regulations against the unverified interested party.

Follow-up Question to Reply 21: The response provided does not fully address the question posed. Is the reply to question 21 intended to also include that provided in the reply to question 20, which reads "[t]here are 4 common situations: 1. the request of an interested party is raised too late. With final

verdict pressing near, the investigating authorities do not have time to conduct verifications. In such case, we can find some other ways to compensate, without infecting the accuracy of the verdict; 2. the request from an interested party bears no further significant evidence. A verdict can be made from the possessed evidence, and there is no necessity for further verifications; 3. the internal technical factors of the investigator have prevented the verification, but we will find ways to compensate without infecting the accuracy of the verdict; 4. other situations as regulated by law. Investigating authorities will come up with a justified verdict in accordance with all premium evidences, and there will be no unjust regulations against the unverified interested party.” If so, what standard is presently utilized to determine if an interested party’s request for a verification is too late? When is the final opportunity for an interested party to request a verification before the final determination, and how will interested parties be notified of this final opportunity? Could China please provide some examples of “other ways to compensate, without infecting the accuracy of the verdict” outside of conducting a verification? Could China please provide some examples of “other situations as regulated by law?” What factors are considered when determining that “an interested party bears no further significant evidence”?

- H. Original Question 22. Article 34 of the Rules states that hearings may be held upon request. Under what circumstances would requests for hearings not be honored?

Reply: Requests for hearings will not be honored due to irresistible forces or unlawful requests. Article 23 of the Rules on Public Hearings on Injury to Industry has further provisions.

Follow-up Question to Reply 22: Aside from circumstances due to “irresistible forces or unlawful requests”, are there any other circumstances under which requests for hearings would not be honored? What constitutes an “unlawful request” for a hearing? Could China please provide some examples of “irresistible forces” which would cause a request for a hearing to be denied?

- I. Original Question 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”?

Reply: Different issues have been addressed in Article 37 of the Rules and Article 8.4 of ADA. The same spirits are manifested in the regulations of the Rules and Anti-Dumping Agreement, and China’s investigating authorities will give adequate consideration to related stipulations in the Agreement, which will fully guarantee ADA effectiveness.

Follow-up Question to Reply 25: Could China please confirm that in the event of a negative dumping or injury determination, a price undertaking will lapse?

- J. Original Question 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?

Reply: If the request does not go against China’s related regulations and the set time limits, the respondent will be given an opportunity to revise the non-confidential summary or withdraw any confidential information prior to its disclosure. Once the investigation is completed, the confidential information will be appropriately dealt with in accordance with China’s current regulations in file keeping.

Follow-up Question to Reply 26: Could China please confirm whether confidential information submitted by one interested party, including documents collected during on-site verifications, is ever released to another interested party?

- K. Original Question 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?

Reply: Any un-addressed issues in China's anti-dumping regulations will be implemented in line with the regulations of WTO Anti-Dumping Agreement under the precondition of not going against the spirits of related Chinese regulations.

Follow-up Question to Reply 27: Does this mean that WTO Anti-Dumping Agreement provisions which are in conflict with the spirit of Chinese regulations will be superceded by the Chinese regulations?

- L. Original Question 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?

Reply: (1) They will not be any circumstances and regulations in which interested parties would be denied to access to non-confidential information.

(2) In case this does not go against China's related regulations and specific preconditions, a "reasonable period" here can be interpreted as during implementation period of the anti-dumping measures.

(3) In case this does not go against China's related regulations and specific preconditions, records of investigations that can be lawfully publicized will be available for reference in future investigations and for judicial review.

Follow-up Question to Reply 28: How long after the final determination will the public record be available? In the case of a positive determination, will the public record be available as long as the particular anti-dumping measures are in place?

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

Reply: These facilities have already been provided by the investigating authorities.

Follow-up Question to Reply 31: Are all public documents regarding injury investigations China has undertaken since December 11, 2001 available in the MOFCOM public reading room?

- N. Original Question 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?

Reply: (a) China is improving the regulations concerning interim and expiration reviews. Some regulations have been issued, and some are still being made. Chinese government will notify the WTO about these regulations.

(b) According to the related regulations, five-year expiration reviews will be conducted either at the request of interested parties or based on self-initiation by China's investigating authorities.

(c) According to the law, SETC will self-initiate a review when China's investigating authorities consider that dumping, the side effects of dumping or the injury on Chinese industry still exist, or when there are solid reasons for a review.

(d) The time line for completion of interim and expiration reviews is: the interim review comes first, and later the expiration review. An interim review is conducted from the second year after anti-dumping measures are taken into effect until the end of the implementation period. An expiration review is made in the last year of the implementation of anti-dumping measures. The procedural formalities for the reviews are implemented in the light of the regulations concerning anti-dumping investigations.

(1) The determination will be issued publicly in the form of an announcement (e.g. on the Chinese media such as International Business).

(2) Now the Ministry of Commerce of the People's Republic of China conducts interim and expiration reviews.

(3) The procedural rights of interested parties are the same as the related rights in application and investigation procedures.

Follow-up Question to Reply 33: Does the Bureau of Industry Injury Investigation initiate expiration reviews separately from the Bureau of Fair Trade for Import and Export? Which Bureau is responsible for conducting the expiration review? Apart from injury considerations, what else may constitute a legitimate reason for Bureau of Industry Injury Investigation to self-initiate such a review?
