

**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 STATES<sup>1</sup>  
Regarding the Notification of CHINA

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/33-G/SCM/Q1/CHN/33. 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:

**Follow-Up questions A through D, below, relate to US questions posed in G/ADP/Q1/CHN/14-G/SCM/Q1/CHN/14 (11 April 2003), and answered in G/ADP/Q1/CHN/33-G/SCM/Q1/CHN/33 (24 October 2003)<sup>2</sup>**

- A. Original Question 23. Article 29 also specifies that anti-dumping 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 duty collected by Chinese Customs?

Reply: In accordance with the Administrative Reconsideration Law of the People's Republic of China, where citizens, legal persons or other organizations hold that a specific administrative act of an administrative organ has infringed upon their lawful rights and interests, they may, in accordance with this law, file an application to the competent administrative organ for reconsideration.

Follow-up Question to Reply 23: China states that an application of an importer seeking redress in a dispute over classification of imported merchandise and/or an error in the amount of duty collected by Chinese Customs should be filed to the "competent administrative organ for reconsideration". In a situation as described above, what agency would be considered the most appropriate "competent administrative organ"?

<sup>1</sup> G/ADP/Q1/CHN/33-G/ADP/Q1/CHN/33 (24 October 2003).

<sup>2</sup> These questions relate to regulations notified by China in G/ADP/N/1/CHN/2 + Suppl.1 (11 September 2002). The original questions were posed by the United States in G/ADP/Q1/CHN/14-G/SCM/Q1/CHN/14 (11 April 2003). In additional questions, the United States noted that its original questions numbered 22-38 had not been answered in G/ADP/Q1/CHN/24- G/ADP/Q1/CHN/24 (12 September 2003). China replied to these questions in G/ADP/Q1/CHN/33-G/ADP/Q1/CHN/33 (24 October 2003), and those replies are referred to in these follow-up questions.

- B. Original Question 30a. With regard to the Provisional Rules on Refund of Anti-Dumping Duty: (a) Article 6 of the Rules lists the type of evidence to be submitted to MOFTEC as part of a request for refund. Why are applicants required to provide data on sales to third countries? Does this provision apply even when the normal value for the sales at issue is based on home market sales? Article 6 also requests that copies of the import contract, invoice(s), bill of lading, and evidence of payment of the sale and of the anti-dumping duty be provided for every sale covered by the refund application. Would China consider such data and documentation to be "necessary information" within the meaning of ADA Art. 6.8 and, if so, on what grounds? How would China in such context implement its obligations under ADA Art. 6.13 to "take due account of any difficulties experienced by interested parties...and...provide any assistance practicable"?

Reply: (a) Article 6 of the Provisional Rules on Refunding in Anti-Dumping Investigations is in full conformity with Article 2.2 of the WTO ADA. Please refer to Article 2.2 of the WTO ADA. Such data and documents are basic information required for the investigations. They are used to prove the actual existence of the transactions of exporting products under investigation to China and the actual payment of the anti-dumping duties. As long as the products under investigation are actually imported and the anti-dumping duties paid, the importers including small companies would have in their possession the above information. Therefore, the interested parties, the small companies in particular, will not incur extra undue burden in providing evidence.

Follow-up Question to Reply 30a: Please explain the basis for automatically requiring parties to report data on sales to third countries even in cases where China has previously determined that the conditions of Article 2.2 for use of such data did not apply.

- C. Original Question 31a. Regarding the Provisional Rules on New Shipper Review in Anti-Dumping Investigations: (a) Please clarify the meaning of Article 6 of the Rules. Does this Article mean that there must be entries into China of the subject merchandise (as opposed to shipment which have not yet reached China) before a new shipper review will be conducted?

Reply: (a) Yes, review of new shippers requires actual export.

Follow-up Question to Reply 31a: Could China please clarify whether the term "actual export" means goods that have arrived in China? Will China conduct a new shipper review on the basis of a sale to China where the merchandise has been exported, but has not yet entered the customs territory of China?

- D. Original Question 32. In regard to Article 48 of the notified regulations, will anti-dumping measures expire automatically after five years if no review is undertaken? If not, what procedures are required to apply for revocation of the anti-dumping measures? Please clarify the meaning of "may be extended as appropriate" as used in Article 48. For example, will there be a finite extension of the anti-dumping 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 48?

Reply: In accordance with Article 48 of the regulation, anti-dumping measures will expire automatically if there is no review undertaken about the need for the continued imposition of the anti-dumping duty. Article 49 also provides two situations that review about the need for the continued imposition of the anti-dumping duty may be conducted, that is, "After an anti-dumping duty has taken effect, MOFTEC may, after consultation with SETC, decide on justifiable grounds to review the need for the continued imposition of the anti-dumping duty; such a review may also be conducted, provided that a reasonable period of time has elapsed, upon request by any interested party and on the basis of examination of the relevant evidence submitted by the interested party".

Follow-up Question to Reply 32: Could China please define what would constitute "a reasonable period of time"?

**Follow-Up Questions E and F below relate to US questions posed in G/ADP/Q1/CHN/24-G/ADP/Q1/CHN/24 (12 September 2003) and answered in G/ADP/Q1/CHN/33-G/ADP/Q1/CHN/33 (24 October 2003):**

- E. Original Question 9. When the Ministry of Commerce does not verify a respondent due to its own resource restraints or due to sampling, will the questionnaire responses of the respondents not verified be accepted as submitted?

Reply: Only verified information in the replies to questionnaires will be accepted in making determinations.

Follow-up Question to Reply 9: If MOFCOM does not conduct an on-site verification or otherwise verify some of the respondents because of its own resource restraints, does this mean it will not use bona fide data submitted by those respondents? If so, what information will be used to calculate dumping margins for those respondents? In cases involving resource restraints, how will MOFCOM select which respondents will be verified?

- F. Original Question 10. Article 7.2 of the Anti-Dumping Agreement and Article 28 of the Anti-Dumping Regulations of the People's Republic of China allow for a bond to be posted for provisional anti-dumping duties. However, recent preliminary determinations do not allow for this option.<sup>3</sup> May importers use bonds or other surety in lieu of cash payments in all cases?

Reply: Importers may use bonds or other surety in lieu of cash surety. But in practice they shall observe the specific rules of the Chinese Customs.

Follow-up Question to Reply 10: Do Chinese Customs Regulations permit the posting of bonds, and if so, under what circumstances? Additionally, when will these bonding requirements be notified?

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<sup>3</sup> See, e.g., PRC Ministry of Commerce Public Notice 11 (2003) and Appendix relating to the anti-dumping proceedings on polyvinyl chloride.