

Committee on Anti-Dumping Practices

**CHAIRMAN'S REPORT TO THE COUNCIL FOR TRADE IN GOODS
ON TRANSITIONAL REVIEW OF CHINA**

1. The Committee on Anti-Dumping Practices undertook the first transitional review of China pursuant to Paragraph 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432) at its meeting on 24-25 October 2002.
2. There is no information specified for submission to the Committee under Annex 1A to the Protocol. Prior to the meeting, China had made several of the notifications required of all Members under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement). These can be found in documents G/ADP/N/1/CHN/1 and G/ADP/N/1/CHN/2, both of which concern legislation, and G/ADP/N/92/CHN, which is China's semi-annual report of anti-dumping actions for the period 1 January to 30 June 2002. China had also notified preliminary or final actions taken, as reflected in document G/ADP/N/95.
3. Members submitted questions in the context of the transition review relating to China's notification of legislation in G/ADP/N/1/CHN/2. The questions posed by Members in this regard can be found in documents G/ADP/Q1/CHN/1 and G/ADP/Q1/CHN/3 through G/ADP/Q1/CHN/7.
4. The statements made at the meeting of 24-25 October 2002, at which the transitional review was Item D of the agenda, are reflected in the minutes of the meeting, which will be circulated as document G/ADP/M/22. The relevant paragraphs, which reflect the statements made and the discussion at the meeting, are annexed.

*Excerpt from the Minutes of the Regular Meeting of the Committee on Anti-Dumping
Practices held on 24-25 October 2002, to be circulated as document G/ADP/M/22*

**D. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF
ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE
ORGANIZATION**

1. The Chairman recalled that paragraph 18 of the Protocol of Accession of the People's Republic of China to the WTO provides that all subsidiary bodies, including the Committee, "which have a mandate covering China's commitments under the WTO Agreement or [the] Protocol shall, within one year after accession, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol". He noted that China was to provide relevant information in advance of the review, including information specified in Annex 1A of the Protocol, and that China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members on the Protocol in subsidiary bodies which have a relevant mandate. The Committee must report the results of the review promptly to the Council for Trade in Goods. Review is to take place after accession in each year for eight years with a final review in year 10 or at an earlier date decided by the General Council. There are no procedures set out for the conduct of the transition review in the Protocol, except that China is to provide relevant information in advance of the review.

2. The Chairman noted in this regard that there is no information specified for submission to the Committee under Annex 1A. He observed that China had made several of the notifications required of all Members under the Agreement, which could be found in documents G/ADP/N/1/CHN/1 and G/ADP/N/1/CHN/2, both of which concern legislation, and G/ADP/N/92/CHN, which is China's semi-annual report for the period 1 January-30 June 2002. China had also notified preliminary or final actions, as reflected in G/ADP/N/95. Members had submitted questions in the context of the transition review, all of which related to China's notification of legislation in document G/ADP/N/1/CHN/2. The Chairman reminded Members that that notification would be included on the agenda of the Committee's meeting in spring 2003 in the regular course of business. Before turning to the questions posed by Members, the Chair asked whether any Member had any general comments.

3. The delegate of the United States made a statement regarding the US views on the transitional review mechanism.¹ He stated that the remedies authorized by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement") form an essential part of the current rules-based international trading system. Transparency, predictability, and adherence to the rule-of-law are all critical to the WTO-consistent application of these remedies, as well as to ensuring that they don't act as an unjustifiable barrier to trade. Hence, it is in all Members' interests to ensure that each Member promptly and effectively implements their WTO obligations in this area.

4. He continued by stating that Members' joint goal in this transitional review mechanism should be to conduct a thorough and meaningful review, both to highlight to China its successes, and to identify areas where more work needs to be done. As China is becoming increasingly active in using its anti-dumping law, it is important that it lay out its plan for bringing its practices into better conformity with its WTO commitments where there are gaps. The United States wanted to do its utmost to facilitate such a review and urged China to join in the review in the spirit in which it is

¹ Subsequently circulated as document G/ADP/W/428, 28 October 2002.

intended. A key part of the review is for Members to ask questions about areas of China's practices that they do not understand. The United States and five other Members posed such questions.²

5. The United States recognized and applauded China's efforts to implement trade remedy laws and regulations consistent with WTO requirements. China had been prompt in promulgating new regulations and implementing rules, with new regulations having gone into effect on 1 January 2002, followed by eleven sets of provisional implementing rules between February and April. The United States were disappointed, though, by the delay in China's notifying these regulations and rules – the regulations were not notified until May (by name only) and the text of the regulations not until September (G/ADP/N/1/CHN/1 and 2, respectively). To the knowledge of the United States, China has not yet notified its statute governing anti-dumping measures nor the text of its provisional implementing rules.³

6. With regard to transparency, the United States encouraged the Ministry of Foreign Trade and Economic Cooperation's (MOFTEC) efforts to make non-confidential information submitted during anti-dumping proceedings available to interested parties and to the public. To the United States' knowledge, the State Economic and Trade Commission (SETC) has not established a means to make available to the public, or even to interested parties, non-confidential summaries of materials submitted to the agency. At both agencies, there appears to be little or no disclosure of their respective analysis and decision-making process. However, none of the anti-dumping investigations that China had initiated since its accession to the WTO had reached the point of a preliminary decision. The United States hoped China took advantage of this early stage to further develop transparency in its proceedings.

7. The United States were also encouraged that the notified regulations embrace the principles of rule of law and due process. However, the regulations provide no elaboration on these topics. In particular, China should identify the specific statute or statutes that govern its anti-dumping actions and notify those laws to the Committee. China also should clarify the roles of Chinese government entities involved in China's anti-dumping regime: MOFTEC, SETC and the State Council Tariff Commission. Also unclear are the entities to whom appeals of anti-dumping determinations may be made and the rules under which such appeals will be conducted.

8. China had made a significant effort to mold its revised regulations to the provisions and requirements of the AD Agreement, which was particularly evident when the notified regulations are compared with China's pre-accession anti-dumping regulations. The language in China's notified regulations appeared generally to follow that in the AD Agreement, although there were certain areas where key provisions were omitted or were worded in an ambiguous manner. In addition, China included certain provisions that do not appear in the AD agreement. The most prominent example was Article 56 of the notified regulations, which indicates that China may take "corresponding" measures when another country "discriminatorily" imposes anti-dumping measures on exports from China. This provision appeared to have provoked universal comment – each of the Members that submitted TRM questions expressed concern about Article 56. The United States and other Members also had questions about such topics as:

- The factors that China will examine in conducting an injury analysis under Article 3 of the AD Agreement;

² G/ADP/Q1/CHN/1, 3, 4, 5, 6 and 7.

³ The United States reserved comment and the right to pose questions on the provisional rules and the topics that they covered until China formally submitted the text of the rules to the Committee. A list of the provisional rules that China had issued was included in China's May notification.

- China's definition of "interested" and "related" parties under Articles 6.11 and 4.1 of the AD Agreement, respectively;
- China's calculation of export price and normal value under Article 2 of the Agreement;
- China's use of facts available in anti-dumping determinations under Annex II of the AD Agreement; and
- How China intended to identify and address evasion of anti-dumping measures.

9. The questions the United States and other Members posed attempted to seek understanding of the issues noted above. The United States were disappointed that China had not provided written answers to those questions. Such responses would have greatly facilitated the review during these meetings. In order to make the review useful to all, China included, the United States urged China to agree to submit in a timely manner, written responses to the questions posed by the Members.

10. The delegate of the United States stressed that the United States does not take issue with China's use of anti-dumping remedies, so long as such actions comport with WTO rules. The United States also looked forward to continued cooperation with China, such as through technical assistance exchanges, as it develops its trade remedy regime. The United States hoped these exchanges would foster a mutual understanding of each other's unfair trade laws and promote fair application of the rules in accordance with WTO guidelines. In that regard, the United States had just completed a program of comprehensive anti-dumping training assistance to a delegation of trainees from the Shanghai WTO Affairs Consultation Centre over the course of their four-month stay in Washington this fall. The United States were eager to provide similar assistance to the Government of China, as well as other groups within China that need such training.

11. The Chairman thanked the delegate of the United States and invited the delegate of China to take the floor to make a statement or to respond to the questions found in documents G/ADP/Q1/CHN/1, and G/ADP/Q1/CHN/3-7.

12. The delegate of China stated that China welcomed this opportunity to address the Committee on the implementation of China's commitments with regard to Anti-Dumping within the framework of paragraph 18 of China's Protocol of Accession. China's accession to the WTO reflected the strong quest of China for a fair and open trading system, and the resolution to resist protectionist pressures of all kinds. Therefore, in spite of the challenges and difficulties arising from WTO Membership, the Chinese Government had taken a firm and positive stand on the implementation issues, for example, institutional restructuring, undertaken by China to better adapt to the demands posed in particular by the WTO accession, fulfilling WTO obligations and China's accession commitments.

13. As part of the implementation efforts, an enormous amount of preparations had been made by various related government agencies for the smooth proceeding of this review. To facilitate this exercise, he would present to the Committee a brief introduction in this regard. His statement would be composed of three parts. The first part described the implementation of the AD Agreement and China's preparation for this review; the second part would be China's responses to the questions and comments from Members raised before this meeting, and in the last part of the presentation, he would raise some issues of concern to China for the attention of Members.

14. **Part one - implementation of the Agreement and preparation for the review.** First, on the issue of China's legislation on anti-dumping practices. The *Foreign Trade Law of The People's Republic of China* came into force on 1 July of 1994, which marked the establishment of the anti-dumping system in China. Article 30 of the Law stipulates that, "Where a product is imported at less

than normal value of the product and causes or threatens material injury to an established domestic industry concerned, or materially retards the establishment of a particular domestic industry, the State may take necessary measures in order to remove or ease such injury or threat of injury or retardation". Article 32 of the Law stipulates that, in the event of such situation, "the authority or agency designated by the State Council shall conduct investigations and make determinations..."

15. Under the above-mentioned Articles of the Foreign Trade Law, China promulgated *The Regulations on Anti-Dumping and Countervailing Measures* on 25 March of 1997. These regulations, the first regulations on anti-dumping in China, were drafted with help from the United States and the European Union. After China's accession to the WTO, China promulgated *The Regulations of The People's Republic of China on Anti-Dumping* on 1 January 2002 on the basis of WTO rules, taking into account the experience China had gained in applying the *Regulations* of 1997, and also the practices of some other WTO Members. China cherished the cooperation and technical assistance received from WTO Members in the formulation of the new regulations.

16. Compared with the *Regulations* of 1997, the new *Regulations* are more detailed, with 59 Articles, and provide more predictability as well as transparency to the parties concerned. And, in the same spirit, the Ministry of Foreign Trade and Economic Cooperation of China (MOFTEC) promulgated as many as eleven administrative rules regarding anti-dumping, namely:

- Provisional Rules of MOFTEC on Public Hearing in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Questionnaire in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on On-The-Spot Investigations in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Information Disclosure in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Price Understandings in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Access to Non-Confidential Information in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Sampling in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Initiation of Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Interim Review in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on New Shipper Review in Anti-Dumping Investigations;
- Provisional Rules of MOFTEC on Refund of Anti-Dumping Duty in Anti-Dumping Investigations.

17. Being an integral part of China's anti-dumping regulations, the above-mentioned rules provide guarantees to protect the interests and rights of all the parties concerned. The translation of these rules was underway and the English versions would be notified to this Committee soon.

18. Second, on the application of the legislation. Based on the provisions of *The Regulations on Anti-Dumping and Countervailing Measures* of 1997, China initiated its first anti-dumping investigation on newsprint on 10 December 1997. In total 12 investigations were initiated with 8 concluded under the *Regulations* of 1997.

19. By the end of September 2002, China had initiated 21 anti-dumping investigations on products from 20 countries and regions, covering petrochemical, steel, chemical and paper products, etc. To date, of the total of 21 investigations, 8 had been concluded, and the other 13 were still in process. Of the 8 investigations concluded, 2 investigations were terminated due to no injury to domestic industry. The other 6 investigations resulted in definitive measures. With regard to these measures, some exporters were granted a zero duty rate; some exporters were given price undertakings; and certain Members were excluded from the investigation on the basis of negligible import volumes.

20. In the process of formulating the above-mentioned *Regulations* and rules, China spared no efforts in maintaining consistency with the relevant WTO rules in all aspects, including the initiation procedures and the subsequent investigation, the determination of dumping and injury, reviews, etc.

21. Third, notification by China under the Anti-Dumping Agreement. After accession, China had fully implemented its notification obligations pursuant to the Anti-Dumping Agreement. On 28 May 2002, China notified to the Committee on Anti-Dumping Practices the regulations and administrative rules on Anti-Dumping in accordance with Article 18.5 of the Anti-Dumping Agreement, which is contained in the WTO document G/ADP/N/1/CHN/1. On 27 August 2002, China further submitted to the Committee the English version of the *Regulations on Anti-Dumping*, which is contained in the WTO document G/ADP/N/1/CHN/2. On 3 September 2002, China provided to the Committee a notification concerning the anti-dumping actions taken during the first half of 2002, pursuant to Article 16.4 of the Anti-Dumping Agreement. Last but not least, China had also notified promptly preliminary and final measures taken.

22. **Part two - responses to the comments and questions of common concern to some Members.** Some Members had submitted questions with regard to the anti-dumping legislation and the practices of China in advance of the meeting. Some Members who raised questions expressed their concern that Chinese regulations on anti-dumping were too simple to completely reflect the Anti-Dumping Agreement and that China's anti-dumping practices may not be fully compatible with WTO Anti-Dumping Agreement.

23. First, as just mentioned, China strictly observed the Anti-Dumping Agreement in the process of formulating the *Regulations of the People's Republic of China on Anti-Dumping* so as to ensure the latter's full consistency in all areas. Second, under the *Regulations*, MOFTEC has formulated 11 rules for Chinese anti-dumping practices. Relevant rules on injury enquiries are in the process of formulation by the State Economic and Trade Commission (SETC). These rules, together with the *Regulations* itself, form a comprehensive package of China's anti-dumping legislation to fully implement the Anti-Dumping Agreement. As just mentioned, the translation of these rules is underway. After China had notified the English versions to the Committee, Members would find answers very easily for their questions.

24. The delegate of China then addressed some specific questions posed by Members.

1. Function of various government Authorities in anti-dumping investigations. At present, there are three government administrations who deal with anti-dumping matters in China -- the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the State Economic and Trade Commission (SETC) and the State Council Tariff Commission. MOFTEC and the SETC are the investigating authorities. MOFTEC is in charge of the investigation and determination of dumping. SETC is responsible for the investigation and determination of injury. The Tariff Commission decides whether to levy provisional or definitive anti-dumping duty. Under Articles 29, 38 and 50 of the *Anti-Dumping Regulations of China*, the Tariff Commission decides whether to levy an anti-dumping duty, including the level of the duty, upon a proposal made by MOFTEC on the basis of the investigation findings. However, the level of the duty decided by the Tariff Commission cannot exceed the dumping margin determined by MOFTEC. Other than the above-mentioned functions carried out by SETC and the Tariff Commission, MOFTEC deals with the other issues related to anti-dumping including notification, consultation, etc.

2. Implementation of Article 56 of the AD Regulation. Some Members also expressed their concern on the “corresponding measures” under Article 56 of *China’s Anti-Dumping Regulations*. The delegate of China made clear that that (1) so far China had not applied Article 56 and therefore had not yet taken any “corresponding measures” in any case, (2) being a WTO Member, before taking “corresponding measures”, China would resort to the dispute settlement provisions under Article 17 of the AD Agreement and dispute settlement provisions under Annex II of the WTO Agreement, if the other party was a WTO Member.

3. Administrative and Judicial review. If the concerned parties disagree with the relevant anti-dumping decisions, Article 53 prescribes the mechanism of administrative and judicial review. Where interested parties disagree with the final determination, the decisions on the imposition of anti-dumping duties, the retroactivity of anti-dumping duties, refund of anti-dumping duties and imposition of anti-dumping duty on new shippers, they can apply for administrative reconsideration. In accordance with Article 14 of *The Administrative Review Law of the People’s Republic of China*, the review authority shall be the department under the State Council that carried out the administrative action.

For judicial review, China had *The Administrative Litigation Procedure Law of the People’s Republic of China*. According to this law, the People’s Court, at intermediary level, within the jurisdiction of which the government authority making the administrative decision in question is located will deal with litigation against this government authority. Furthermore, the People’s Supreme Court of China is in the process of formulating rules on hearings in the administrative litigation on anti-dumping. After its promulgation, China would notify WTO as soon as possible.

As to the standard of the review, the reconsideration authority or the court shall focus on whether there are procedural irregularities, abuse of power, improper interpretation and application of law, etc. However, they are not entitled to reinvestigate the case.

4. Best Information Available (BIA). Article 21 of *China’s Anti-Dumping Regulations* stipulates that the investigating authority may make determinations on the basis of the facts available and the best information available, if the interested party fails to provide the information required, or refuses to provide relevant materials, or otherwise fails to provide necessary information within a reasonable time-limit or significantly impedes the investigation. This Article is consistent with Article 6.8 and the provisions of Annex II of the Anti-Dumping Agreement.

In the questionnaires, China underscores, in bold letters, **“If, within the prescribed time-frame, your company fails to submit the completed questionnaire as required, or fails to submit a comprehensive and accurate answer sheet, or does not allow MOFTEC to verify the information and materials provided, MOFTEC may, pursuant to the *Anti-Dumping Regulations of the PRC*, make determinations on the basis of the facts available and best information available.”** This principle applies to the injury enquiries as well.

In practice, Chinese investigating authorities always try to verify all the information and materials submitted by the responding companies. Best information available (BIA) is applied only when the information required is not submitted or the submitted information can not be verified with due difficulties.

5. Anti-circumvention. Some Members also asked questions with regard to Article 55 of *China's Anti-Dumping Regulations*, which stipulates that MOFTEC and SETC may take appropriate measures to prevent the circumvention of anti-dumping measures. Although this Article provides the possibility of remedial measures when circumvention takes place, the delegate of China made it clear that, to date, China had not invoked this Article and had not taken any anti-circumvention measures. However, China noted that quite a number of Members do have relevant rules and practices on anti-circumvention. This issue has been under discussion for a long time in the WTO, and was also a subject of the Negotiating Group on Rules, as well as the Committee. Once any new disciplines were agreed, China shall fully implement them.

25. Part three, the Market Economy status of China and the implementation of Annex 7 to China's accession protocol by certain Members. Section 18 of China's Protocol of Accession also stipulates that China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in the Protocol. The Chinese delegation had been requested, by Chinese enterprises who have been for a long time the victims of other Members' unfair anti-dumping practices, to raise at this meeting their serious concerns over other Members' anti-dumping regulations and practices against Chinese products.

26. The first would be the issue of "market economy status" ("MES"). Despite the fact that China had made remarkable achievements over the past two decades in the establishment of its market economy and that Chinese companies were now totally driven by market forces in their business operations, China had noticed that few Chinese companies had been granted market economy treatment. To a large extent, this was due to the fact that the criteria and procedures provided for in China's Protocol of Accession, which justify fair treatment towards Chinese companies meeting market conditions, were not properly reflected in the anti-dumping rules and practices maintained by some Members. These inconsistencies seriously impaired the interests of Chinese companies and impeded normal trade between China and these Members. China required those Members to objectively evaluate the achievements that China had made in establishing a market economy system and to strictly observe the relevant WTO rules to ensure fair treatment of Chinese companies.

27. The delegate of China also reminded some Members of the commitments they had made with regard to the reservation of some existing anti-dumping measures against Chinese products that are not consistent with WTO rules. Annex 7 of the Protocol provides clear-cut phase-out arrangements for these. China required that these provisions be carried out by these Members in due course.

28. China had been fulfilling its WTO accession commitments in a positive and serious spirit. The efforts made, as well as the difficulties that have been overcome, should be recognized by all Members. Great improvement had been made in terms of legislative construction, market access opportunities, and policy transparency since China's accession to the WTO. The delegate of China hoped that the information notified to the Committee prior to the meeting and the presentation made just now would help facilitate this review. As a new Member of WTO, the Chinese Government was willing to enter into closer cooperation with the WTO as well as other Members.

29. With the guidance of the Chair and cooperation from Members, the delegate of China was convinced the review could greatly improve understanding between China and other Members, and would achieve positive results.

30. The Chairman thanked the delegate of China and inquired whether Members had follow-up questions or comments with respect to China's intervention.

31. The delegate of the United States thanked the Chinese delegation for its statement and its cooperation in the review. He asked the Chinese delegation whether it intended to provide detailed answers to each of the questions raised by the Members in advance of this meeting?

32. The delegate of the European Communities thanked China for the explanations given and for the efforts undertaken in order to implement the obligations taken in acceding to this organization. The EC had listened very carefully to what had been said and had tried to compare what had been said to the questions which had been posed by the EC prior to the meeting, but had not found replies to all its questions. The EC realized that a significant number of the questions posed could probably be answered, as the delegate of China pointed out, by looking at the provisional rules for which English translations were being prepared, and to which the EC looked forward. Some of the questions also covered issues which, at least at first sight, did not appear to be covered by these provisional rules. These were the EC's questions concerning normal value, injury, legal representatives, and so on. The EC wondered whether China envisaged to give a reply on these questions which do not relate to the provisional rules, and if so, at what time could the EC expect such a reply.

33. The delegate of Chinese Taipei echoed the positive remarks made by the previous speakers, that credit should be given to China for their obvious efforts in preparing those responses to the questions and comments tabled by his delegation and several others. However, he was not sure, having heard the Chinese oral presentation, whether all of his delegation's concerns had been thoroughly responded to. His authorities would study China's responses later in detail, and might ask follow-up questions. As one of China's major trading partners and a major investor, Chinese Taipei felt very much obliged to identify and address several important concerns in areas where China might have lapsed in its implementation of the Protocol of Accession. Of course, Chinese Taipei strongly believed that China's smooth implementation was in the best interest of all Members, including China itself. Therefore, his delegation welcomed and appreciated the opportunity to exchange views with Chinese colleagues, taking advantage of this review mechanism, and wished China well in this review exercise.

34. The delegate of Japan thanked the delegate of China for the explanations given. China's explanations covered some questions Japan had posed beforehand, but many of the questions still remained unanswered. Therefore, Japan was looking forward to answers from China, and also to the notification of the other regulations referred to by the Chinese delegate.

35. The delegate of Korea stated that, as one of the questioning Members, he appreciated very much the Chinese response, which was to the point and presented in a very cooperative manner. His delegation was especially very much encouraged by the response of China that Regulation 56 would be implemented in strict compliance with the Dispute Settlement Understanding and the Anti-Dumping Agreement. Furthermore, Korea was also very much encouraged that anti-circumvention will be implemented only after there are unified rules arrived at through negotiation.

36. The delegate of Cuba thanked China for such a broad and complete presentation, and congratulated China for the considerable efforts that they had made in barely a year following accession. Cuba saw that work had been done on legislation and on very complex and technical subjects, such as that addressed in the Committee. Cuba was still involved in the same process. Cuba recognized China's efforts in the context of a burdensome exercise which is being conducted in parallel in several bodies of the organization.

37. The delegate of Canada thanked the delegation of China for its presentation, which had been helpful. Canada also wondered whether China would be providing answers in writing to the questions that had been submitted as part of this exercise.

38. The delegate of China thanked the Members who had spoken for their positive comments. With respect to the questions raised by the United States, the European Communities, Chinese Taipei, Japan, Korea, Cuba and Canada, he invited his colleague to give responses to some specific questions.

39. The delegate of China, before turning to specific questions posed by WTO Members, made a general remark. He noted that every country has a different legal culture. It is Chinese tradition for the legislative body just to set forth the general principles and the guidelines for carrying out of administrative action, and to leave room for the implementing authority to formulate detailed rules to accommodate changing circumstances. It was not intended that the legislative authority compel the implementing authority to violate China's international obligations. On the contrary, as Members know, the WTO Anti-Dumping rules are evolving, the simplification of the legislation especially for anti-dumping legislations is to allow the Chinese Government actively to participate in the negotiations and take into account the changing circumstances when the legislations are implemented.

40. Turning to the specific questions, the delegate of China observed that as there were so many questions put to China, it was not appropriate to read the question first and provide replies. Instead, he would structure his replies by the sequence of the Articles as they appear in the notified regulations.

41. First with regard to Article 1, concerning the legal basis for the formulation of the anti-dumping regulation, this question had already been answered by the head of the Chinese delegation -- the legal basis for the anti-dumping regulations is the Foreign Trade Law of the People's Republic of China.

42. Coming to Article 4, with regard to paragraph 2 of Article 4 of the Regulations, several questions were posed by WTO Members.

- (a) The first question would be what is the difference between the terms "country" and "region". The delegate of China noted that, as a matter of fact, there are some separate customs territories. In Chinese, the term "country" has sovereign meaning and some anti-dumping measures have had to be imposed against products from a separate customs territory as well as from customs unions, which are for certain not countries.
- (b) The second question would be under what conditions the price and the quantity of sales do not permit a fair comparison. The delegate of China stated that when the price is below cost according to Article 2.2.1 sales of the like product in the domestic market of the foreign country or sales to third countries at prices below per unit cost of production plus administrative selling and general cost might be seen as not being in the ordinary course of trade. As to the quantity, the delegate of China noted footnote 2 of the AD Agreement, providing that the domestic sales have to be more than five per cent of those exports to China.
- (c) The third question is that what is an appropriate third country. Normally, to determine an appropriate country would mean that the price has to be representative as required by Article 2.2 of the AD Agreement.
- (d) The fourth question is how to determine the reasonable amount for expenses and profits. The delegate of China confirmed that China would comply with the rules contained in Articles 2.2.1 and 2.2.2 for the determination of cost and profits.

43. As regards Article 5, one question was raised on paragraph 2 of Article 5, that is, under what conditions the price will be deemed unreliable. The delegate of China noted that China construed this

term as what is provided for in Article 2.3, that is, the price will be deemed unreliable when there is any association or compensatory arrangement between the exporter and the importer or a third party.

44. With respect to Article 6, many Members raised the concern that the Chinese legislation did not list all factors that may affect price comparability. However, the delegate of China noted that there are some provisions in Article 6 that will require the investigating authority to make adjustments to those factors which might affect price comparability. In the provisional rules on initiation of anti-dumping investigations, China listed all those factors that might affect fair comparison that are listed in the Agreement, the difference in physical characteristics, level of trade and the quantity of sales, etc.

45. With respect to Article 8, several questions were raised.

- (a) The first concern was that from the wording of Article 8 of China's regulation, no differentiation was made between injury. In other words, injury in this Article was used as a general term, that includes material injury, threat of material injury and material retardation. This is why some Members were concerned that some factors only relate to a specific type of injury determination. They worried that the Chinese investigating authority would apply all those factors to a single injury determination. As he had stated, injury was used as a general term, so the Chinese authorities had formulated all the factors that might be related to an injury determination for all types of injury. However, in practice, the investigating authority, that is the SETC, would look into those factors relating to the specific type of injury. For example, paragraph 4 of Article 8 only relates to the threat determination, not the current material injury situation. In China's provisional rules on initiation of anti-dumping investigations, the petitioner is required to provide a different set of data. If Members had had an opportunity to look at the provisional rules, they would find that paragraph 6, that is the production capacity or export capacity of the exporting country, only is required when the injury allegation was made on the basis of threat of material injury.
- (b) The third concern raised by WTO Members was that paragraph 3 of Article 8 did not list all the factors that are listed in the relevant WTO rules. Members worried that the Chinese investigating authority may consider fewer economic factors than those required by the WTO Agreement. The delegate of China first stated that the economic factors that are listed in the AD Agreement are non-exhaustive. That was also the case for Article 8, paragraph 3. In practice the investigating authority always considers all possible economic factors and indices having a bearing on the position of the domestic industry.

46. With regard to Article 11, the delegate of China clarified that there might be a problem of translation. In Chinese this Article states that if domestic producers are related to exporters or importers they may be excluded from the domestic industry. If one looks at the English translation, one may have the impression that the exclusion is mandatory. Another point is how to determine that the domestic producers are related to exporters or importers. The criteria China takes into account in practice are exactly as stipulated in the AD Agreement, footnote 16. That is, whether the domestic producer controlled the exporter or importer or the domestic producer and the exporter or importer jointly controlled the third person, or are controlled by the third party. This is the same as provided for in the AD Agreement.

47. With regard to Article 12, the question is how to determine the scope of the like product. In practice, China considers several factors, physical characteristics, use, marketing channels, etc. None

of those factors are decisive, and it has to be decided on a case-by-case basis. The delegate of China noted that this is the view taken by the WTO panels and Appellate Body.

48. Coming to Article 13, some Members asked what is the meaning of "relevant organization". The delegate of China explained that in the Chinese legal system, they have different kinds of organizations. Some have personality and some have no legal personality. Looking at the wording of Article 13, only natural persons, legal persons are mentioned. If there were no reference to other relevant organizations, the provision might exclude trade associations, or trade unions from being considered as interested parties.

49. Addressing questions concerning Article 19.

- (a) The first question is the scope of the interested parties. The scope of the interested parties as set out in the AD Agreement is non-exhaustive in nature. If one looks at the wording of Article 19, it lists some of them, and then refers to other interested organizations and parties. China wants to encompass as many as possible of those interested parties and take a participating role in the investigations, to express their views to enable the investigating authority to make their determinations on an objective basis.
- (b) The second question is the notification to the known exporters. Some Members questioned that the Chinese Government never notified the known exporters. The delegate asserted that this was not the case. Indeed, in some cases, China did not notify the known exporters. However, when China fulfilled the obligation under the AD Agreement, to give notification to the government of the exporting country before the initiation of the case, China always asked the diplomatic representative to kindly notify their exporters that the Chinese Government had initiated an anti-dumping case against them. Those requests were always accepted, so in that case China did not notify the exporters. After the initiation, normally the foreign exporter would retain a Chinese lawyer to represent them in the case. The Chinese authorities notified all decisions to their legal representatives.
- (c) The third question is that China has no provisions on the content of the public notice. Yes indeed, in the regulation there were not such rules. However, in China, it is not appropriate for the State Council to deal with such specific issues. Those issues are left to the Ministry. When China formulated the provisional rules on initiation of the case, China had a specific and very detailed provision on what has to be contained in the public notice.

50. Coming to Article 20.

- (a) Some Members asked whether the Chinese investigating authority would require consent from the companies concerned before on-the-spot verification is carried out. The answer was yes. In every case, before Chinese officials conducted an on-the-spot verification, they always obtained consent from the company concerned and informed them of the time schedule of the verification.
- (b) The second question was when the request for on-the-spot verification is objected to, whether best information available would be used. The delegate of China directed Members' attention to Article 21. In that Article, China did not use the words "the investigating authorities *shall* make a determination on the basis of best information available", it used the word "*may*". That means that it is not mandatory for the investigating authority to use the best information available when the request for on-

the-spot verification is objected to. In practice, China always tried to verify by other means the information submitted. If it could be verified without undue delay, China did not resort to best information available.

- (c) The third question was regarding disclosure of the result of the verification. China had a provisional rule on disclosure of information concerning the anti-dumping investigation. There, China had a specific procedure for disclosure of the result of verification to the parties that verified.
- (d) The fourth question was whether China had specific rules on sampling. The answer was yes, China did have very specific rules on sampling.

51. With regard to Article 22.

- (a) The first question was what constitutes confidential information? In accordance with the WTO rules, that is the AD Agreement, there are two kinds of confidential information. That is, information that is confidential by nature, and the second kind of confidential information is information that a party provides on a confidential basis. China does the same in practice.
- (b) The second question was whether China had rules on summaries of confidential information, to which the answer was yes.
- (c) Another question was raised about the wording in paragraph 2 of Article 22. The regulation says that the request for confidentiality has to be "justifiable". Some Members raised a concern that this is different from "warranted". The delegate of China indicated that this was simply a matter of translation, and one can read *justifiable* as *warranted*.
- (d) The fourth question about confidential information was that whether China had rules similar to administrative protective orders, such as are used in the United States. The answer was no. Confidential information is only for the use of the investigating authority, it is not allowed for the legal representative of parties other than the party submitting it, to access such confidential information.

52. With regard to Article 23, the delegate of China stated that MOFTEC had established a special office for access to public files in the investigation. Those files were readily available to the public, not only the interested parties.

53. With regard to Article 27, one question was raised. China's law mentioned five circumstances in paragraph 1, while in paragraph 2 just three were listed. Some Members asked what the difference is between the two paragraphs. The delegate of China stated that paragraph 2 sets out the circumstances in which a case had to be terminated against a specific country or region, on the products from that country or region, meeting the conditions stipulated in paragraph 2, 3 and 4. The first paragraph is talking about the termination of the whole case, to use the term of the EC, that is the proceeding will be terminated under the circumstances of the first paragraph. Under the second paragraph only an investigation against a specific country will be terminated.

54. With regard to Article 28, several questions were raised.

- (a) The first was the time-period of the provisional anti-dumping measure in Article 30, and why it can be extended to 9 months. The delegate of China directed Members' attention to Article 38, which indicated that the final anti-dumping measure will be

decided upon by the Tariff Commission under the State Council. What governs the exercise of the discretion of the Tariff Commission is Article 42, that is, the amount of the anti-dumping duty shall not exceed the margin of dumping established in the final determination. That is to say, although China had no explicit lesser duty rule, it did keep such a possibility, to apply a lesser duty rule, if the Tariff Commission sees fit. That means that the provision of Article 30, that a provisional measure can be extended up to 9 months, is consistent with the AD Agreement. This brought him back to Article 28, regarding which some Members raised a question concerning the refund of the provisional anti-dumping duty. The delegate of China stated that first, when the provisional duties collected have to be refunded, there are no further actions for importer or exporter to take for the refund. MOFTEC will notify the Customs to make those refunds. Second, China made such refund within 90 days, according to Article 9.3.2 of the AD Agreement. Third, no interest will be paid on those refunds.

- (b) The second question with regard to Article 28 was that China did not follow the AD Agreement in formulating the conditions to impose provisional measures. That is according to Articles 7.1.1 and 7.1.3, if the injury determination is made on the basis of threat, the threat has to be imminent and only under the circumstances that if provisional measures are not imposed the threat of material injury will become a current injury. China did not set forth such conditions in Article 28. However, he asked Members to note that in Article 28 China used the word *may* not *shall*.

55. With regard to Article 31, some Members raised the question that the Chinese regulations did not stipulate that the small margin of increase of price was to be required, when the lesser increase in price would enough to remove the injury. However, the delegate of China noted that this was not mandatory by nature, so China did not incorporate such provisions in its regulation.

56. With regard to Article 48, some Members asked that China did not make clear whether the extension of anti-dumping measures will be five years. The delegate of China stated that China wanted to keep the possibility that it would extend an anti-dumping measure shorter than five years. With that, he stated that he had finished with the answers to specific questions.

57. The delegate of China noted that, with respect to the question raised by several Members regarding written answers, the Chinese delegation had no written answers. He noted that paragraph 18 of the Protocol of China's Accession serves as the only legal basis governing the TRM exercise, and asserted that no one in the room could justify a request for written responses from that paragraph. Of course, China had noticed that there were some differences in the understanding of the paragraph, but China believed it was not the mandate of this Committee to interpret the paragraph, and he hoped the Committee would not waste time. The second point he made was that China believed the information provided prior to the meeting, at the meeting, and the explanations made by his colleague, were sufficient for a meaningful review. China understood that it was technical, and his delegation could agree that the statement made by the head of the Chinese delegation be submitted to the Secretariat and Members could get copies for transparency purposes. The third point he wanted to make in addressing the concerns of Members was that, since the experts from China were here for the review, Members who had any follow-up questions might approach those experts, and China would hold informal bilateral discussions with them. He stated that informal bilateral contacts had nothing to do with the TRM, and China was not intending to substitute this for multilateral exercise, but to supplement the multilateral exercise.

58. The Chairman thanked the Chinese delegation for the detailed answers and comments provided to the Committee, noting that Members would benefit from it.

59. The delegate of Chinese Taipei thanked the Chinese delegation for its replies, and raised two points as follow-up.

- (a) First, about Article 30 of the notified regulation. China had replied that because the Tariff Commission has the possibility to look into the lesser duty, the provisional measure may be extended to nine months. He sought clarification that it was not merely because the Commission has the mandate to look into the matter. That is, the provisional measure would last for nine months only in the case where the Commission did conduct the examination on lesser duty.
- (b) The second follow-up question was about the provisional rules on initiation which his delegation had raised in its question. His understanding was that this provisional rule was only available in Chinese. His authorities had taken the effort to look into the Chinese version, and could comprehend the provisions there. They had found that in Article 39 of the provisional rules on initiation, if the investigating authority intended to conduct an on-site investigation, this intention must be announced in the Public Notice. His question concerned whether or not an on-site investigation would only be conducted when it is mentioned in the Public Notice. He recognized that the text of the provision was not available to all Members for the time being, so would be more than happy to wait until everybody had the notification available and have the question outstanding at that point.

60. The delegate of the European Communities thanked China for the very extensive and very valuable replies. He had been quite impressed with the degree of detail which the delegate has entered into on the various issues raised. He did not want to enter into the issue whether there was any legal obligation to provide written responses or not. He considered that the reply had been fantastic, to use the word of the head of the Chinese Delegation, and constituted a very valuable contribution in understanding the Chinese Anti-Dumping Law. Simply on that basis alone, it would be extremely helpful to have some written record of this because it would help for future reference. Without entering into any discussion of obligation, he thought it would simply be helpful for everybody here to understand the replies if they were available in written form.

61. With respect to one question put by his delegation, concerning the issue of legal representation in case of anti-dumping proceedings, he thought China had not replied. The question was whether non-Chinese lawyers can make representations for exporters in the context of anti-dumping proceedings in front of MOFTEC and SETC, and should this not be the case then the EC would appreciate it if China could explain why not.

62. The delegate of the United States thanked the Chinese delegation for the lengthy and comprehensive answers to the questions. The United States did have a few follow-up questions.

- (a) The first was, recognizing that the lesser duty rule is not mandatory, in what cases had the Tariff Commission lowered the margin recommended by MOFTEC? And what criteria did it apply to identify the appropriate margin.
- (b) The United States asked to be given an example of an other relevant organization that would be considered legal under the Chinese system.
- (c) The United States also asked whether the Tariff Commission is subject to judicial review in the People's Court, and whether it would be subject to the Court's determinations?

- (d) In the discussion of the questions on sampling, the delegate indicated that China does in fact have rules on sampling. The United States would appreciate it if China could specify where those rules may be found.
- (e) In a similar vein, in the discussion of confidential information and the need to provide public summaries of such information, again the delegate indicated that China does have rules with respect to such public summaries. Again, the United States would appreciate it if China could specify where these rules may be found.
- (f) One additional question at this time related to the delegate's discussion of notification to known exporters. In that discussion, if he had understood correctly, the delegate of China seemed to indicate that China regarded notice to the government of the exporting country as constituting notice to the exporters, and requesting that the exporting countries government provide notice to the exporters. The United States asked if China could provide some additional indication of how it believed that to be consistent with the requirements of Article 6.1.3 of the Anti-Dumping Agreement.

63. The delegate of China briefly responded to the follow-up questions.

- (a) First, with respect to legal representation in the anti-dumping investigations, according to China's rules it is not allowed for foreign attorneys-at-law to represent foreign exporters or other parties, to make submissions or to attend the public hearings. This was because China's law on attorneys-at-law does not allow a foreign lawyer not qualified to practice law in China to act. Since anti-dumping investigations are quasi-judicial exercise, it is not allowed. He noted that this was not the appropriate forum to discuss whether foreign lawyers can represent interested parties in an anti-dumping case – that was a matter of Trade in Services.
- (b) As to the function of the Tariff Commission and the State Council, he clarified that the Tariff Commission cannot amend the dumping margin determined by the MOFTEC. However, it can take a different decision on MOFTEC's proposal for the final anti-dumping measures. That is to say, the Tariff Commission can lower the duty rate. However, it cannot raise the anti-dumping rate above the dumping margin determined by MOFTEC.
- (c) Another point was that the Tariff Commission is also subject to judicial review.
- (d) Regarding the rules for summaries of confidential information, he noted that it was not easy to formulate very detailed rules for a summary of confidential information. He was not aware of any country which had specific rules. What he had said was that China had some rules on the summary of confidential information, that is, the summary has to be meaningful to enable the other party to understand the substance of the information submitted on the confidential basis.
- (e) As to the question of notification to known exporters, in practice, it was difficult for the Chinese authorities to find the addresses of exporters in the petitioner's application, so it was very difficult to carry out such a notification. However, if it was possible to notify known exporters, the authorities would do that.
- (f) With regard to Article 30 of the Chinese Anti-Dumping Regulation, he noted that the similar article in the Anti-Dumping Agreement stated that whenever the competent authorities are entitled to consider whether to impose a lesser duty, the provisional measure can be extended to 9 months. China did have that possibility. Having said

that, he clarified that in practice, China had never extended provisional measures beyond 6 months.

64. The delegate of China noted that China understood that the questions could not be exhausted by one TRM. A TRM is an 8-10 year programme, and China did not expect to graduate from an 8-10 year programme in one year, so there would be many more opportunities, multilateral and bilateral. China hoped to cooperate with other Members on this issue.

65. The Chairman considered that Members recognized this to be a useful exercise. Important information had been presented, and everybody had learned a great deal about the Chinese Anti-Dumping laws and the implementation of the Anti-Dumping Agreement in China. He noted that, as he had mentioned earlier in the meeting, the legislation that was the subject of questions today would be on the Committee's agenda in the spring, in the regular course of business, so as the delegate of China had said, there would be more opportunities to continue discussing these issues.

66. Turning to the Committee's report on the review, the Chairman noted that there are no guidelines for the report contained in the Protocol. In several other bodies that had undertaken the transition review, the Chairman had, acting on his own responsibility, prepared a brief, factual report, with references to the documents concerned, and attaching the portion of the minutes of the meeting which relate to the transition review. He asked Members whether this procedure should be followed in the Committee.

67. The Committee **so decided**.
