

PROPOSAL ON SUNSET REVIEW

Communication from China¹

The following communication, dated 28 June 2007, is being circulated at the request of the Delegation of China.

Issues and Recommendations

From the point of view of China, there exist certain ambiguities in Article 11.3 of the ADA:

First, the timing requirement for the initiation of the review is not clear. Under Article 11.3, it is provided that a review shall be "initiated before that date", i.e. a date not later than five years from the imposition of any definitive anti-dumping duty (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph). A related problem is how to define "a reasonable period of time prior to that date" for request made by or on behalf of the domestic industry. Such ambiguities contribute in most cases to the easy initiation of a review and subsequently a prolonged imposition of the definitive duty beyond five year period. China considers that such ambiguities should be clarified by setting a time limit to file a request for review, e.g. at least seven months before the date of expiry of five year period.

Second, the relation between the first sentence "...any definitive anti-dumping duty shall be terminated..." and the last sentence "the duty may remain in force pending the outcome of such a review" in Article 11.3 is not clear. The effectiveness of the first sentence is undermined to a large extent by the fact that many anti-dumping duties, in serious contradiction with the spirit of Article 11.3, have been in force much beyond five years as provided in the first sentence without sufficient justification. Therefore, China is of the view that the duty should be suspended or imposed only on a provisional basis pursuant to Articles 7 and 10 pending the outcome of such a review and there should be in any case a time limit for the duration of the anti-dumping duty.

China proposes to amend Article 11.3 as follows:

Proposed Text

Article 11.3: Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and

¹ This paper does not purport to represent China's final position on this matter and China reserves the right to make further proposals.

injury, or under this paragraph), unless the authorities determine, in a review initiated ~~before that date on their own initiative or~~ upon a duly substantiated request made by or on behalf of the domestic industry ~~within a reasonable period time~~ **at least seven months** prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.²² The duty ~~may remain in force~~ **shall be suspended or imposed provisionally pursuant to Articles 7 and 10, where appropriate, from the date of expiry** pending the outcome of such a review. **In no event, shall such a review be initiated more than one time and any definitive anti-dumping duty be applied for a period longer than 10 years from the date of its imposition.**

²² When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.