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PROPOSAL OF THE PEOPLE'S REPUBLIC OF CHINA ON THE NEGOTIATION ON ANTI-DUMPING

The following communication, dated 5 March 2003, has been received from the Permanent Mission of the People's Republic of China.

I. INTRODUCTION

According to Article 1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the AD Agreement), "an anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994…", i.e., where products of one Member are exported to another by dumping and cause or threaten to cause material injury to an established industry in the latter or materially retard the establishment of a domestic industry. However, the ambiguity of the AD Agreement itself leaves room for enormous discretion to the investigating authorities of importing Members. And for a long time, anti-dumping measures have been used to minimize competition of imports to domestic industries instead of counteracting the injurious effects of dumped imports. The abuse of anti-dumping measures has significantly diminished the value of the commitments made by these importing Members on trade liberalization, particularly on tariff reduction, in the previous rounds of trade negotiations and therefore has undermined the market access opportunities for targeted Members.

Under such circumstances, Members agreed in Doha "to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants". The clarification and improvement of the disciplines as set in the AD Agreement, as instructed by the Ministers, will help to prevent the abuse of anti-dumping measures and guarantee the value of trade liberalization commitments that Members have made and will make.

II. PROPOSAL

1. Clarification and improvement of the disciplines under the AD Agreement

1.1 Product under investigation

A clear and strict criterion should be established in the AD Agreement for the determination of "product under investigation".

1.2 "Major proportion"

"Major proportion" under Article 4.1 should be further elaborated for the determination of domestic industry.

1.3 Back to back investigations

Paragraph 7.1 of the Decision on Implementation Related Issues and Concerns (WT/MIN(01)/W/10) requires "special care to be taken" in examining the application of back to back investigations. To that end, a new paragraph should be added to Article 5 of the AD Agreement: Investigating authorities shall not initiate an anti-dumping investigation where an investigation of the same product from the same Member resulted in a negative finding within the 365 days prior to the filing of the application.

1.4 "Particular market situation"

"Particular market situation" under Article 2.2 should be further defined to limit the discretion of the investigating authorities to refuse to use the normal price of the product sold domestically when comparing with the export price.

1.5 Constructed normal value

Article 2.2.2 should be further elaborated to provide clear guidance for the use of information in the calculation of the constructed normal value.

1.6 Constructed export price

Articles 2.3 and 2.4 should be clarified to provide clearer guidelines for a symmetric comparison between constructed export price and normal value.

1.7 Cumulative assessment of injury

Article 3.3 should be clarified to identify the factors to be considered to evaluate whether the conditions of competition between the imported products from different Members and between the imported products and the domestic products are the same.

1.8 Determination of injury

Article 3.4 should be clarified to limit the discretion of the investigating authorities in the evaluation of injury.

1.9 Causality between dumping and injury

Article 3.5 should be clarified in order to ensure that a causal link could only be established when the dumped import is the substantial reason for the injury of the domestic industry.

1.10 Threat of material injury

Article 3.7 should be clarified and improved to specify in a more detailed manner the factors to be considered in the determination of the threat of material injury.

1.11 Prohibition of zeroing

Article 2.4.2 should be clarified to explicitly prohibit the practice of zeroing.

1.12 Treatment to affiliated parties and their transactions

Clear guidance should be established under the AD Agreement on the approach to treat transactions between affiliated companies in the context of normal value.

1.13 "All others" rate

Article 9.4 should be improved that *de minimis* margins shall be considered for the determination of "all others" rate for exporters/producers which are not sampled.

1.14 Price undertakings

Articles 8.1 and 8.3 should be further elaborated to limit the discretion of investigating authorities in rejecting proposals for price undertakings, such as the expressions of "satisfactory voluntary undertakings" and "reasons of general policy".

1.15 Reviews

Clear provision should be formulated in the AD Agreement to require that the procedures and methodologies used in the initial investigation shall be applied in the reviews under Articles 9.3, 9.5, 11.2 and 11.3. And the duration of reviews under Article 11.4 should be limited to 12 months.

1.16 "Non market economy" clause

Article 2.7 and the second Supplementary Provision to Paragraph 1 of Article VI in Annex I to GATT 1994 provide that, in the case of imports from a Member which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of Paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

Under the above-mentioned "non market economy" clauses, some Members use domestic prices of third countries instead of domestic prices of targeted Members in the comparison with the export price. Past experiences show that these Members, in most cases suggested by complaining industries, tend to choose those third countries at more advanced development levels, with higher labour costs and therefore with much higher domestic prices. Using this methodology, an artificial "dumping" is easily created and an anti-dumping measure is therefore "justified". With wide discretion in choosing the third country, an importing member is free to choose any other country as the third country as long as the latter produces the same or like products. Under such circumstances, exporters of "non market economies" are accused of exercising "unfair trade practices" to which they have no idea at all since they never know what third country might be chosen in the determination of normal value.

As we are all aware, one of the basic principles of this Organization is free trade which requires Members to establish market economic system. Therefore, no economy could ever accede to the WTO with a complete or substantially complete monopoly of its trade and with all domestic prices fixed by the State. Such clauses was established several decades ago when market economy was not prevailing. After 50 years of development, the circumstances for invoking such a clause do not exist anymore. And it is abused by some Members to provide unjustified protection to their domestic

industries. Therefore, the "non market economy" clause contradicts with the real situation of WTO Members and should be revoked.

2. S&D Treatment to developing and least-developed participants

The Doha Ministerial Declaration clearly specifies that the needs of developing and least-developed country Members should be taken into consideration in the negotiation on anti-dumping. This also echoes one of the objectives of the WTO that positive efforts should be made "to ensure that developing countries and the least developed countries secure a share in the growth in international trade commensurate with the needs of their economic development."

Recognizing that some positive efforts have been made by the WTO, we must admit that it is far from being enough to fulfill the objectives as set out in the WTO Agreement. Realizing that developing countries are mostly targeted by anti-dumping measures which prevent them from developing their foreign trade and from securing their shares in international trade, we should recognize S&D treatment as an important aspect of the negotiation on anti-dumping. The following proposals should be seriously considered by the Negotiating Group in order to fulfill its tasks embodied in the Doha Ministerial Declaration.

2.1 Lesser duty rule

Lesser duty rule should be mandatory in the application of anti-dumping measures by developed country Members on the imports from developing country Members.

2.2 Increase of negligible import volume and *de minimis* dumping margin

The negligible volume of dumped imports under Article 5.8 should be increased from 3 per cent to 5 per cent for imports from developing Members. And the provision that measures can still be taken if the imports from the countries under the negligible volume collectively account for more than 7 per cent should be deleted.

The existing *de minimis* dumping margin under Article 5.8 should be increased from 2 per cent to 5 per cent of export price for imports from developing country Members.

2.3 Price undertakings

In the application of anti-dumping measures by developed country Members on the imports from developing country Members, the investigating authorities of the former shall accept the proposal of price undertakings from the exporters concerned as long as the proposal of the undertaking offsets the dumping margin determined. Even in cases where the actual or potential exporters are great, the investigating authorities shall accept such proposals from those cooperating exporters whose share individually in the total exports from the targeted country where the exporters are located to the importing developed country Member is more than 10%.

2.4 Automatic sunset of anti-dumping measures

In cases of anti-dumping measures taken by developed country Members against exports from developing country Members, such measures shall automatically cease after five years. And no application to initiate new investigations against the same products from the same developing country Members shall be accepted 365 days after ceasing of the sunset of previous measures.

This is the first anti-dumping proposal of China for the deliberation by the Negotiating Group on Rules. It is not supposed to be the final position of China on this important issue. China reserve the right to make further contributions to this process with the development of the negotiation.