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Negotiating Group on Rules

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**FOLLOW-UP PAPER ON SPECIAL CONSIDERATION AND TREATMENT OF
SMALL AND MEDIUM-SIZED ENTERPRISES IN ANTI-DUMPING AND
COUNTERVAILING PROCEEDINGS**

COMMUNICATION FROM CHINA

The following communication, dated 2 August 2017, is being circulated at the request of the Delegation of China.

1 BACKGROUND AND INTRODUCTION

The *Proposal on Trade Remedies* (TN/RL/GEN/185) submitted by China on 21 April 2017 was circulated among the Members on 24 April, in which China highlighted initiatives and proposals, *inter alia*, on special consideration and treatment of Small and Medium-sized Enterprises (SMEs) in anti-dumping and countervailing proceedings.

It is well-accepted that SMEs with their vigor and competitiveness are among the powerhouses for creating job opportunities and promoting technology innovation as well as economic development. Acknowledging SMEs' increasingly important role in international trade in recent years, facilitating SMEs' integration into international trade has become a common interest among Members.¹ In light of the global and local economic difficulties, it is the Members' shared responsibility to help create a free trading environment for the SMEs and facilitate their participation in international trade and cooperation.

Considering the multifarious difficulties and heavy burden confronted by SMEs in responding to trade remedy proceedings due to their limited capacities and lack of experience, China further clarifies its suggestions contained in the proposal TN/RL/GEN/185 and hereby submits this proposal on special consideration and treatment of SMEs in AD and CVD proceedings. This paper is thus meant to serve as the basis for further discussion.

In general, this paper aims at encouraging the investigating authorities to make positive efforts to identify small and medium-sized enterprises when appropriate, take due account of the unique or disproportionate difficulties confronted by them in responding to proceedings, and provide them with any practicable assistance or help to reduce their burden thereof. Although it focuses on the SMEs' participation as respondents, any proposal from the Membership with respect to SMEs' participation as petitioners is welcome as basis for subsequent discussions on this topic.

2 DESCRIPTION AND ANALYSIS

With respect to SMEs' participation in responding to AD and CVD proceedings, we note that ADA Article 6.13 and ASCM Article 12.11 both provides that "[t]he authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable". On 29 June 2005, Norway proposed amending Article 6.13 to include a requirement that "[i]n particular the authorities shall respond in a timely manner to questions for clarifications of the questionnaires, and provide

¹ See *Annual Report 2017*, www.wto.org/english/res_e/booksp_e/anrep_e/anrep17_chap4_e.pdf - 86k - 2017-05-31

assistance in identifying the information that is needed".² Norway's proposal was partially incorporated into the Chair's consolidated text of 2011 (TN/RL/W/254) in the form of *"including by responding in a timely manner to requests for clarification of questionnaires"*.³ China values these efforts made by Members with respect to this issue.

Further, China notes that SMEs face multifarious difficulties and bear heavy burden in responding to trade remedy proceedings in practice, which may involve several procedural aspects such as access to information, questionnaire, extension, sampling, and price undertaking. For instance, they may have difficulty in obtaining qualified professional assistance from lawyers or experts due to high financial expenses. Because of lack of experience and expertise, even when SMEs have already done their best in cooperating, their questionnaires may still be less than ideal or even incomplete, which could often lead to unfavorable or even excessively highest rates for them. Their applications for price undertaking are also easily disregarded due to their small percentage of industrial representativeness. The above has, in turn, contributed to SMEs' reluctance in responding to other AD and CVD proceedings, resulting in a worse-off situation for SMEs in international trade.

As the existing Article 6.13 of ADA and Article 12.11 of ASCM, or the previously proposed amendments to Article 6.13 of ADA are insufficient to cover all the typical difficulties confronted by SMEs, China holds that it is necessary to add a self-standing article "*Small and Medium-sized Enterprises*" to ADA and ASCM to address the issues highlighted.

3 PROPOSAL

In light of the above, China proposes for discussion the following article.

In principle, the authorities shall, when appropriate or requested, make positive efforts to identify SMEs as respondents, take due account of the unique or disproportionate difficulties experienced by them in the process of investigations and provide them with any practicable assistance.

In detail, assistance to SMEs may include but not limited to:

- a. The authorities shall take due account of difficulties of SMEs in gaining access to information and take appropriate measures to ensure their easier access to relevant information including initiation, questionnaire, disclosure and public notice etc.
- b. The authorities shall give full consideration to SMEs' comments and opinions when sampling for limited examination. If SMEs have genuine difficulties in providing full cooperation and present justifiable explanation therefor, the authorities may decide not to select them for limited examination.
- c. If SMEs are unable to submit questionnaires on time with good cause, the authorities shall grant them reasonable extension upon request unless such extension will significantly impedes the investigation.
- d. The authorities shall provide any assistance practicable to SMEs when they supply information requested by the authorities, including responding in a timely manner to requests for clarification of questionnaires and permitting SMEs to submit questionnaires in less burdensome ways.
- e. The authorities shall take due account of price undertakings offered by SMEs where appropriate.
- f. Even when information provided by SMEs may not be ideal in all respects, this situation shall not lead to a result which is less favorable to SMEs if they have provided cooperation to the best of their abilities.

² See Norway in TN/RL/GEN/49, *Proposal on issues relating to evidence, public notice and explanation of the determinations under Articles 6 and 12 of the ADA*.

³ See TN/RL/W/254.

China recalls from previous discussions in the context of this issue that some Members raised the question of how to define SMEs. It is our understanding that there is no established or generally accepted definition or test of SMEs among the Membership, particularly for the purpose of AD and CVD proceedings. Therefore, we believe it would be better to leave this issue to be decided upon by investigating authorities based on their domestic regulations, industry-specific standard, common practice or the case by case situation. Nevertheless, any suggestions regarding the definition would be appreciated.

China is also conscious of the additional administrative burden that may come to bear on the authorities of some of the developing Members as a result of the above proposed amendments. China thus recommends an incremental approach for the adoption by such Members and extension of technical assistance to them under the principle of special and differential treatment.

ANNEX 1

Proposed Amendments to ADA/ASCM

Article X

Special consideration and treatment of SMEs

The authorities shall, when appropriate or requested, make positive efforts to identify Small and Medium-sized Enterprises (SMEs), take due account of the unique or disproportionate difficulties experienced by them in the process of investigations and provide them with any practicable assistance. Assistance to SMEs may include but not limited to:

- a. The authorities shall take due account of difficulties of SMEs in gaining access to information and take appropriate measures to ensure their easier access to relevant information including initiation, questionnaire, disclosure and public notice etc.
 - b. The authorities shall give full consideration to SMEs' comments and opinions when sampling for limited examination. If SMEs have genuine difficulties in providing full cooperation and present justifiable explanation therefor, the authorities may decide not to select them for limited examination.
 - c. If SMEs are unable to submit questionnaires on time with good cause, the authorities shall grant them reasonable extension upon request unless such extension will significantly impedes the investigation.
 - d. The authorities shall provide any assistance practicable to SMEs when they supply information requested by the authorities, including responding in a timely manner to requests for clarification of questionnaires and permitting SMEs to submit questionnaires in less burdensome ways.
 - e. The authorities shall take due account of price undertakings offered by SMEs where appropriate.
 - f. Even when information provided by SMEs may not be ideal in all respects, this situation shall not lead to a result which is less favorable to SMEs if they have provided cooperation to the best of their abilities.
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