中华人民共和国商务部
MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA
2, DONG CHANG'AN STREET, BEIJING, CHINA 100731

May 19, 2004

Mr. James J. Jochum
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
Pennsylvania Avenue and 14th Street NW
Washington, DC 20230

Re: **Public Hearings on U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues**

Dear Assistant Secretary Jochum:

The Ministry of Commerce of the People's Republic of China hereby responds to the Department's May 3, 2004 Federal Register notice (69 Federal Register 24,132) inviting comments and requests to testify concerning topics and issues for the U.S. – China Joint Commission on Commerce and Trade Working Group on Structural Issues.

We attach an original and six copies of our written submission, as well as an electronic version on CD-ROM.

We would appreciate the opportunity to make an oral presentation at the June 3 hearing. As requested in the notice, we provide below the name, address, telephone number, and position of the official who will be make a presentation on behalf of the People's Republic of China:

Dai Yunlou
The Economic and Commercial Counsellor
Embassy of the People's Republic of China

2133 Wisconsin Avenue, NW. Washington D.C.,20007. U.S.A.
Tel: 001-202-625-3380, 001-202-625-3350
Fax: 001-202-337-5864, 001-202-625-3350

We also would appreciate the opportunity to extend the time for our presentation beyond the five-minute time limitation.

Sincerely,

Wang Shichun
Director General
Bureau of Fair Trade for Imports & Exports
Ministry of Commerce of P.R.C.

SUBMISSION OF

THE MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA

ON

RECOGNITION OF CHINA AS A MARKET ECONOMY FOR PURPOSES OF U.S. ANTIDUMPING LAW

May 19, 2004

INTRODUCTION

The Government of the People's Republic of China appreciates the opportunity to make a presentation in the Department of Commerce's public proceeding to identify topics and issues for discussion in the U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues concerning China's desire no longer to be treated as a non-market economy ("NME") under U.S. antidumping law.

As has been widely recognized, China's economy today is very different from the centrally planned and controlled economy of decades ago. Other countries, including New Zealand[1] and Singapore, have recently reviewed the vast reforms and extensive restructuring that have occurred in China's economy and have decided that they will no longer treat China as an NME for antidumping purposes. Similarly, China should be recognized as a market economy for purposes of United States antidumping law. On this issue, the various relevant factors should be viewed within the framework of the overall development of China's economy and in light of the specific context and purpose of the antidumping rules in which the NME issue arises.

GENERAL PRINCIPLES

As members of the World Trade Organization, both China and the United States are committed to a rules-based system of international trade and dispute resolution. Within this system, antidumping duties and countervailing duties exist as exceptions to

[1] Rt. Hon. Helen Clark (Prime Minister of New Zealand), New Zealand and China to Work Towards FTA, April 14, 2004, available at www.beehive.govt.nz/ViewDocument.cfm?DocumentID=19432 (last accessed on April 17, 2004).

the general trading rules concerning most-favored nation tariff treatment and bound tariff rates. These exceptions exist solely to provide a remedy for specific export price discrimination and subsidy practices recognized as unfair trading practices. The international agreements and national laws governing antidumping duties and countervailing duties thus are remedial and not punitive, as such duties are limited to offsetting only the amount of any unfair pricing or subsidies. They are not meant to punish a country simply for having an economy with a different structure.

For "market economy" countries, trade distorting governmental interventions in the market are treated as subsidies and remedied through the WTO Subsidies Code and the application of countervailing duties. Unfairly low export pricing, relative to home market pricing and production costs, is remedied through the WTO Antidumping Agreement and antidumping duties.

For "non-market economy" countries, on the other hand, the United States has determined that no direct remedy for subsidies is permitted, and unfair pricing is measured with reference to the "factors of production" used to produce the investigated products, valued using available data in "surrogate" countries. This methodology aimed at avoiding "distortions" in pricing by producers in the NME country introduces its own pricing distortions. The surrogate country selected has its own market distortions and peculiarities, based on its structure and comparative advantages. Moreover, data limitations generally mean that surrogate prices for individual "factors of production" are not prices for identical products, and surrogate values used for general and administrative expenses and for profits do not reflect those of comparable enterprises operating in comparable circumstances.

The issue of whether an economy should be treated for antidumping and countervailing duty purposes as a market economy or as a non-market economy should take into account which methodology best addresses the conduct sought to be remedied by antidumping and countervailing duties. In this connection, China observes that governments worldwide are involved and intervene in their economies. Governments in countries the United States treats as market economies for antidumping purposes provide trade-distorting subsidies, control interest rates, own production and trading companies, control natural resources, intervene in foreign exchange markets and impose currency controls, regulate the conditions of competition, and even set prices for certain goods and services.

The question of whether a country "operates on market principles of cost and pricing," 19 U.S.C. § 1677(18)(B), therefore necessarily is a question of degree and not absolutes, as the United States itself recognizes in its six-factor NME test. Each factor specifies that the Department is to consider "the extent" of market-oriented activity, including government ownership, foreign investment, currency convertibility, etc.

China believes that, in assessing whether the Chinese economy is market-driven to the necessary "extent," the central questions with respect to alleged distortions should be not whether distortions exist, as distortions exist in all economies, but rather whether each alleged distortion (1) is of the type intended to be addressed by the Subsidies Code and Antidumping Agreement, and thus falling outside normal tariff obligations, and (2) is incapable of being addressed adequately through the normal, market economy measures of antidumping and countervailing duties. Unless the NME antidumping methodology is better suited to fairly remedying the alleged distortion, it is not appropriate to resort to surrogate values that are themselves distorted.

MARKET ECONOMY DEVELOPMENTS IN CHINA

China began its transition from a centrally planned economy under the leadership of the late Deng Xiaoping in 1978. In 1979, China started promoting in rural areas the household contracted responsibility systems with remuneration linked to output, and farming households were entitled to full autonomy in arranging their production. In 1984, China made a decision to reform its economic system toward a market economy. In October 1992, China made explicit that the objective of China's economic reforms was to establish a market economy system. In 2002, China proclaimed to the world that China has established a preliminary system of market economy. Along with the systemic transition, China has made phenomenal progress in market liberalization and economic growth.

Developments have included the following:

- recognition and protection of private property rights
- restructuring, reorganization , and reduction of state-owned enterprises
- dominance of private sector and private control over means of production and pricing
- decrease of state control and administration over economic affairs
- opening of economy to foreign investment

In light of this background of continuing economic liberalization, we address briefly each of the six factors in the Department's NME analysis.

I. The extent to which the Chinese currency is convertible into the currency of other countries

The currency of the People's Republic of China ("China"), the Renminbi ("RMB"), is freely convertible for current account transactions. Since December 1, 1996, China has adopted Article VIII of the International Monetary Fund ("IMF") Articles of Agreement.[2] The obligations imposed by Article VIII include: (1) the avoidance of restrictions on current payments; (2) the avoidance of discriminatory currency practices; and (3) the convertibility of foreign-held balances.[3] By adopting these obligations, China has removed all restrictions on payments and transfers for current transactions, which plainly are the most relevant for international trade.

China has also taken concrete steps towards full convertibility of capital account transactions. In the last two years, China has permitted foreign investors to acquire financing from the domestic Chinese market, and has permitted foreign banks to issue RMB securities. China has also launched the qualified foreign institutional investors ("QFII") program to facilitate foreign capital flow. In accordance with provisions of the IMF Articles of Agreement, however, China maintains a few restrictions on the movement of capital to prevent malicious attacks by speculative international short-term capital and to help maintain regional financial stability. Many countries that the

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[2] IMF Annual Report 1997, at 72, available at http://www.imf.org/external/pubs/ft/ar/97/pdf/file06.pdf (last accessed at May 17, 2004).

[3] Available at http://www.imf.org/external/pubs/ft/aa/index.htm (last accessed May 17, 2004).

Department recognizes as market economy countries, such as Russia and many former Soviet republics, maintain the same kind of measures for similar concerns. Nonetheless, it is China's goal, and China has made steady progress, toward achieving full convertibility of capital accounts.

II. The extent to which wage rates in China are determined by free bargaining between labor and management

The Chinese Government has enacted and enforces laws to protect core labor standards and collective bargaining. Workers, with support from trade unions, are enforcing their rights and the Government has developed mechanisms to assist workers.

The Chinese Government has confirmed its commitment to a free labor market through legislative activities. Laws and regulations have been promulgated to promote free mobility of the work force by reforming the residency registration system, and to advance the practice of collective bargaining through fair negotiation between labor and management. Trade unions have independent civil status under Chinese law and represent workers' interests before a variety of labor dispute settlement forums. The public and private sectors have overwhelmingly adopted the labor contract system. Other than establishing government-regulated minimum wage and social security requirements to protect workers, the Chinese Government leaves wage determination to labor-management negotiations and the operation of market forces.

III. The extent to which joint ventures or other investments by firms of other foreign countries are permitted in China

China not merely permits, but strongly encourages foreign direct investment. Over at least the past decade, China has attracted and continues to attract tremendous amounts of foreign investment and has handsomely rewarded foreign investors. 479,605 foreign-invested enterprises have been established in China since 1979. In 2003, the number reached 41,081.

China prides itself on its open and favorable investment environment, based on the principle of national treatment for foreign investors. The Chinese legal framework has been constantly improved to facilitate foreign investment in its manifold forms, including wholly foreign-owned enterprises, China-foreign equity joint ventures, and China-foreign cooperative contractual enterprises. Foreign investors are free to establish joint ventures or other forms of investment to engage in commercial activities in a broad range of goods and services.

In keeping with its commitments for accession to the World Trade Organization ("WTO"), China has further broadened market access to foreign investment in areas including domestic and foreign trade, banking and insurance, and professional services.

IV. The extent of government ownership or control of the means of production

The Chinese Government has significantly decreased its ownership and control of the means of production. The government does not control the production of goods, except for a limited number of items of strategic importance or of particular importance to the public welfare.

The emergence of a substantial and vibrant private sector, including a large number of foreign-invested enterprises in many sectors of the economy, is further evidence that the government now maintains limited ownership or control over the means of production.

V. The extent of government control over the allocation of resources and over the price and output decisions of enterprises

For the vast majority of products and services, the market, not the government, decides the allocation of resources, and enterprises make their price and output decisions based on market considerations. In accordance with its WTO accession protocol, however, the Chinese Government reserves the right of state trading or designated trading and of setting or issuing guidance on prices for a very limited number of products and services, which are either of strategic significance or of particular importance to the public welfare. It has consistently been the Chinese Government's policy to accelerate market reform and promote the growth of the private sector.

VI. Such other factors as the administering authority considers appropriate

The world has witnessed the astounding transformation in China's economy, and China is now an important stakeholder in the global trading system. Its dramatic economic growth stems from the opening of its economy to private enterprise and market forces. Indeed, China is now the world's third largest importer, and the fourth largest exporter, conditions which resulted from the market-oriented developments and economic integration noted under each of the factors above.

For all of the foregoing reasons, the Chinese economy is operating on the basis of market principles to a sufficient extent that the domestic prices and costs of its enterprises can reasonably be used as a basis for calculating normal value within the meaning of the U.S. antidumping law. The Government of the People's Republic of China looks forward to discussions with the United Sates on the issue of revoking China's current NME status and recognizing China's market economy status for U.S. antidumping law purposes.