September 24, 2014

Dale Seymour
Commissioner
Anti-Dumping Commission

Review 248: The appropriateness of investigation into the RMB exchange rate regime as a subsidy program

This submission is made on behalf of Government of China (GOC), in relation to Review 248 of certain aluminum extrusions exported to Australia from China. We specifically refer to the alleged currency undervaluation and submit that the Australian Anti-dumping Commission's (the Commission) investigation into China's currency undervaluation as a subsidy not only lacks of procedure fairness, but also lacks factual and legal basis, and therefore is not appropriate.

I. China's reform on RMB exchange rate regime

There have been significant reforms of China's foreign exchange regime since 1979, which reforms are aimed at creating a more liberal RMB foreign exchange system. In particular, in July 2005, the People's Bank of China issued a policy announcement to further adjust the exchange rate regime under which the RMB is pegged to a basket of foreign currencies and is allowed to "fluctuate by up to 0.3% (later changed to 0.5% in 2007 and 1% in 2012) on a daily basis against the basket." (*Public Announcement of the People's Bank of China on Reforming the RMB Exchange Rate Regime*, No. 16, issued and effective on July 21, 2005).

After the reforms, the nominal exchange rate of RMB appreciated by around 30% to RMB 6.35 to a dollar by the end of 2011, as compared to the exchange rate at RMB 8.28 to a dollar in 2005. China is currently looking to liberalise RMB exchange rate for the globalisation of the

Chinese currency. An example of this is the recent agreement between the Bank of China and the Australian Security Exchange (ASX) on RMB settlement service. China's policy direction for RMB globalisation provides no room for the alleged manipulation of RMB exchange rates.

II. Lack of procedure fairness

Simply based on a responsive submission of the domestic industry in Review 248, in which the domestic industry alleged that China's currency undervaluation constitutes a prohibited export subsidy, the Commission started to investigate this so-called currency undervaluation program without notifying the interested parties in this review, including the Government of China. No opportunity for consultation or comment has been offered. Therefore, GOC didn't have any chance to clarify the actual situation in China or comment on the appropriateness of investigation into RMB exchange rate regime as a subsidy program.

In GOC's previous submission dated July 24, 2014, we have expressed our concerns regarding certain procedural and transparency aspects of the current review of measures applying to aluminium extrusions. In particular, the GOC is concerned that the Commission has not fulfilled certain basic obligations required under the Agreement on Subsidies and Countervailing Measures (SCM), and thus infringed seriously the GOC's important legal rights.

III. Lack of factual and legal basis

First, RMB exchange rate is an issue that falls within China's economic sovereignty, and therefore is a politically sensitive issue. In our view, investigate into RMB exchange rate system is a challenge to China's economy system, which is not acceptable to China. It is well recognized that every country has its right to choose its own exchange rate mechanism according to the development level and operation status of its economy and the balance of payments as well. Both developed countries and developing countries have the rights to administer its foreign currency market and exchange rate. And maintain the stability of RMB exchange rate and improve the balance of payments, will not only benefit China, but also benefit the economic stability of our neighbouring countries and the whole world.

Second, although different countries may have different preference in choosing its own exchange rate system, each type of exchange rate system, whether fixed or floating, are all compatible with international rules. As Article 15 of GATT 1994 only provides principle requirement on exchange rate system, without mentioning any specific exchange rate management system that should be adopted by member countries. China's exchange rate regime is a unified, managed floating system, based on market supply and demand with reference to a basket of currencies since 2005. China's practice is consistent with international rules. There is no currency undervaluation, nor any type of subsidy result from RMB exchange rate.

Third, according to the definition of subsidy in Article 1 of the SCM Agreement, exchange rate does not fall within any type of subsidy. As the exhaustive list of government practices under Article 1.1(a) of the SCM Agreement does not refer to currency regimes, exchange rates of undervalued currencies, which are left to the jurisdiction of International Monetary Fund (IMF). Government of China does not provide any financial contribution to Chinese companies through the RMB exchange rate system, which floating according to market supply and demand. There is no undervaluation and therefore no benefit conferred. According to the practices of the WTO members and previous WTO disputes on subsidies, unified exchange rate system has never been determined as a subsidy. RMB exchange rate is a macro monetary policy, which is not designed for certain regions or industries, and is not export contingent. Foreign investment, tourist and all business across China apply the same exchange rate. There is no specificity, and it is not an export subsidy at all. Therefore we believe there is no basis to investigate into RMB exchange rate as a subsidy.

In fact, early in 2004, in Canada's *Laminate Flooring* countervailing investigation against China, the petitioner had alleged RMB exchange rate is an export subsidy. GOC held a pre-initiation consultation with Canadian authorities who finally rejected the petitioner's request to investigate the RMB exchange rate as s subsidy. Since 2006, domestic industries in United States have tried in more than 15 countervailing investigations to request the Commerce Department to investigate into RMB exchange rate. However, all failed. So far, neither Canada, nor US, or any other WTO member has ever actually investigate RMB exchange rate as a subsidy. From this we can see that WTO members are very cautious on this.

On September 1, 2010, Commerce Department issued a Memorandum concerning the allegation against China's exchange rate system, in

Aluminum Extrusion and *Coated Paper* case. In this memo, Commerce Department pointed out that to initiate an investigation on a particular allegation needs to fulfill all legal elements for initiation. However, the petitioners in these two cases failed to provide sufficient evidence to prove that RMB exchange rate constitutes a *de jure* or *de facto* export subsidy, or a *de facto* specific subsidy. China's exchange rate is a unified system, same price applies to every companies and individuals in China. It is not limited to exporter or certain industries, and there is no specificity. Consequently, Commerce Department rejected to investigate the RMB exchange rate as a subsidy.

There are strong arguments against any allegations under the WTO SCM Agreement that China provides export subsidies by manipulating RMB exchange rates:

a. No evidence of specificity;

b. As indicated above, no evidence that the alleged manipulation is contingent upon export performance;

c. No evidence that the GOC has made a financial contribution;

d. No evidence that exporters or manufacturers have actually received a benefit.

We **attach** an article that provides a detailed analysis on the WTO-consistency of the alleged manipulation.

Finally, given the sensitivity of this issue, it is politically dangerous for the Commission to undertake such investigation. Please refer to the following comments in relation to why the US has not decided to undertake a formal investigation on this issue even though the US has closely followed the issue for years:

> *Such an investigation would admittedly be dramatic, and perhaps even traumatic. It would push Commerce to the centre of the political spotlight concerning a difficult international issue on which the Treasury Department has led for many years. And merely preparing, much less actually sending to the Chinese Government, a CVD questionnaire aimed at eliciting information that would be needed to make a "benefit" determination on currency would create diplomatic shockwaves.*

IV. Conclusion

After reviewing the submission made by the Australian domestic industry, we find that its allegation of RMB exchange rate is an export subsidy is very similar with the ones raised by US domestic industries, lacks both factual evidence and legal basis. We strongly request the Commission could fully understand the political sensitiveness of this issue and stop its ongoing investigation on RMB exchange rate in Review 248 immediately, so as to avoid any wrong message to be sent to Australian domestic industries and other WTO members, and avoid serious negative impact on bilateral economic and trade relationship.

Public Record

September 24, 2014

Dale Seymour
Commissioner
Anti-Dumping Commission

Re: Currency issue in Review 248

Dear Mr. Seymour,

It was nice to meet with you in Canberra last week and exchange views with you in a straight forward and friendly manner on trade remedy issues that concern both sides.

I'm writing to reiterate Government of China's position on your Commission's investigation into the RMB exchange rate regime as a subsidy in Review 248 of certain aluminum extrusions exported to Australia from China.

First, RMB exchange rate is an issue that falls within China's economic sovereignty, and therefore is a politically sensitive issue. In our view, investigate into RMB exchange rate system is a challenge to China's economy system, which we are strongly opposed to. Second, exchange rate does not fall within any type of subsidy under the SCM Agreement. According to the practices of the WTO members and previous WTO disputes on subsidies, unified exchange rate system has never been determined as a subsidy. There is no legal basis to investigate into RMB exchange rate as a subsidy. Third, domestic industries in United States and Canada have tried many times to request the investigating authority to investigate into RMB exchange rate. However, their requests have all been rejected, which shows the cautious attitude of WTO members on this issue.

We strongly request the Commission could fully understand the political sensitiveness of this issue and stop its ongoing investigation on RMB exchange rate in Review 248 immediately. Otherwise, Australian will become the first country that conduct such investigation into China's currency regime, which will send wrong signal to Australian domestic industries and other WTO members, and will bring serious negative impact on bilateral economic and trade relationship.

Please find the attached submission on behalf of Government of China on this issue. Your full consideration on our concerns and careful handling of this issue will be highly appreciated.

Look forward to your timely response.

Kind regards

刘丹阳

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CC: Ms. Elizabeth Ward, Assistant Secretary, Goods and Investment Branch, Office of Trade Negotiations, Department of Foreign Affairs and Trade