

**TRANSITIONAL REVIEW MECHANISM IN CONNECTION WITH
PARAGRAPH 18 OF THE PROTOCOL ON THE ACCESSION OF
THE PEOPLE'S REPUBLIC OF CHINA**

Questions and Comments of Japan

The following communication, dated 30 September 2003, has been received from the Permanent Mission of Japan.

1. Japan welcomes that, in the second year after accession, implementation by China of its commitments on Market Access has progressed and is entering into a cruising phase. It appreciates efforts by China for developing and improving necessary regulatory framework and smoothly implementing phase-in commitments. In a transitional period of evolving regulations, the importance of regulatory transparency, predictability, stability and consistency is paramount; the value of market access commitments and the efforts to implement them could be easily clouded out by a shortness of such elements either in regulations themselves or in their application. The transitional review mechanism could be useful for making those transitional efforts more efficient and productive, and it is a pleasure for Japan to contribute to this process.

2. In this context, China is further invited to take necessary steps to ensure regular and effective application of public comments procedures, well-in-advance publication of laws and regulations, avoidance of abrupt regulatory change, clear-demarcation of departmental responsibilities, improvement in inter-departmental and central-provincial coordination and consistency etc.

3. In accordance with Paragraph 18 of the Protocol on the Accession of the People's Republic of China, which states that "China shall provide relevant information to each subsidiary body in advance of the review" and in the spirit of cooperation to render the TRM process most efficient and effective, Japan requests China to provide in advance of the meeting of the Committee on Anti-Dumping Practices responses and relevant information to the following questions and comments.

Q1. The Chinese investigating authorities applied "facts available" to determine AD measures against Japanese "all other" companies without serving a notice of initiation or any questionnaires to these companies in the following anti-dumping investigations: Coated Paper, Phthalic Anhydride, Styrene Butadiene Rubber (SBR), Polyvinyl Chloride, Toluidine Di Isocyanate (TDI), and Phenol. It appears that these determinations were inconsistent with Article 6.8 because the authorities did not provide these companies any opportunity to supply information within a reasonable period of time. Please explain reasons, if the Chinese authorities consider that these determinations were consistent with the AD Agreement.

Q2. Notices of determinations in anti-dumping investigations of Coated Paper, Phthalic Anhydride, SBR, Polyvinyl Chloride, TDI and Phenol indicated the following problems for determining injury and a causal relationship. These determinations would not have met

requirements of “positive evidence” and “objective examination” in Article 3.1. Please explain reasons, if the Chinese authorities consider that these preliminary determinations were consistent with the AD Agreement:

(a) Accuracy of the Data, on which Determinations Based

The preliminary determinations gave rise to a question on the accuracy of the data, on which these determinations were based, because these determinations did not disclose actual numbers or the source of the data. The disclosed data also contained certain obvious calculation errors.

(b) Evaluation of Injury Factors not in an Unbiased or Objective Manner

The authorities determined that the domestic industry was injured, even though relevant economic factors did not indicate the domestic industry was in the state of injury.

In addition, the authorities cumulatively assessed the effects of imports from more than one country without demonstrating by positive evidence that the volume of imports from each country was not negligible and without showing any positive evidence on “the conditions of competition between the imported products” or “the condition of competition between the imported products and like domestic product”.

(c) Evaluation of All Economic Factors under Article 3.4

The authorities did not evaluate certain economic factors and indices as set forth in Article 3.4, such as market share of dumped imports and domestic like products.

(d) Causal Relationship in terms of Price

The authorities failed to demonstrate by positive evidence that the dumped imports had caused the material injury to the domestic industry because of either depression or suppression by the price of the dumped imports of the price of the domestic like product to a significant degree.

(e) Causal Relationship between Dumping and Injury to the Domestic Industry

The authorities failed to demonstrate what was the direct cause of the injury to the domestic industry with positive evidence. The authority also failed to separate and distinguish effects of other known factors to the injury of domestic industry from the effects of the dumping of the dumped imports.

Q3. The authorities made insufficient disclosure of data, on which their injury determinations were based, in preliminary anti-dumping determinations of Coated Paper, Phthalic Anhydride, SBR, Polyvinyl Chloride, TDI and Phenol. The authorities also made insufficient disclosure of data and calculation methodologies for determining published dumping margins in these investigations. Consequently, interested parties were unable to make any effective data analysis. Interested parties’ comments on the preliminary determinations were therefore confined to limited matters, and their opportunity to defend their interests was deprived. As such, these preliminary determinations were inconsistent with Articles 3.1 and 12.2.1 of the AD agreement. We are afraid that final determinations of the above investigations will be made inconsistently with Articles 6.4, 6.5 and 6.9 of the AD agreement, if the authorities do

not take adequate remedies to such situations. Please explain reasons, if the Chinese authorities consider these situations were consistent with the AD Agreement.

- Q4. The Chinese authorities acted inconsistently with Article 2.6 of the AD agreement by making determinations on “like products” without making adequate examination of physical characters and uses of the product under consideration in anti-dumping investigations of Coated Paper, SBR and Diphenylmethane Di Isocyanate. Please explain reasons, if the Chinese authorities consider these determinations to be consistent with the AD Agreement.
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