

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO
SECTION 18 OF THE PROTOCOL ON THE ACCESSION
OF THE PEOPLE'S REPUBLIC OF CHINA**

Questions from Japan

The following communication, dated 24 September 2004, is being circulated at the request of the Delegation of Japan.

Q1. 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”.

For example, the notices of determinations in some anti-dumping investigations only indicated the conclusion “After considering the related evidential documents, ... the authority determined that a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the condition of competition between the imported products and the like domestic product regarding the physical and chemical characteristics, structure of raw materials, production process, its use.”, but does not explain any reason for such conclusion.

These determinations would not meet the requirements of “positive evidence” and “objective examination” in Article 3.1 as well as Article 3.2 and 3.3. Please explain reasons, if the Chinese authorities consider that this practice is consistent with the AD Agreement:

Q2. The authorities made insufficient disclosure of data, on which their dumping and injury determinations were based, in some anti-dumping determinations. The authorities also made insufficient disclosure of data and calculation methodologies for determining dumping margins in these investigations. Consequently, interested parties were unable to make any effective data analysis. Interested parties’ comments on preliminary or final determinations were therefore confined to limited matters, and their opportunity to defend their interests was deprived. As such, these determinations were inconsistent with Articles 3.1, 6.4., 6.9 and 12.2.1 of the AD agreement. Please explain reasons, if the Chinese authorities consider these situations were consistent with the AD Agreement.

For example, the notices of provisional determinations in some anti-dumping investigations only indicated the fact that they applied “facts available”, but did not include any explanation of which data they used, how they calculated the dumping margin with the data. Such determination would be inconsistent with Articles 12.2.1(iii) of the AD agreement.

Q3. The Chinese authorities would have acted inconsistently with Article 2.6 of the AD agreement by making determinations on “like product” without making adequate examination of physical characters and uses of the product under consideration in some anti-dumping investigations.

For example, the authority found like product and injury to its industry even in case where the product which is the same or closely resembling with the product imported from Japan was not produced in China during the period of investigation and did not compete at all with the product in China.

Please explain reasons, if the Chinese authorities consider these determinations to be consistent with the AD Agreement.

Q4. After the preliminary anti-dumping determination of dispersion unshifted single-mode optical fibre, some Japanese companies exported the optical fibre, which was not included in the product under investigation, to China. However, a company faced suspension of customs procedures and was requested to pay deposits for provisional anti-dumping duties at Chinese customs. According to the company, when being suspended, the company submitted the relevant evidence and made an explanation to the customs that its product was not included in the anti-dumping investigation. The customs, however, rejected the company’s explanation, requiring the authorization from another Chinese authority. Then, the company sent the sample of the product and requested the Chinese authority for the measurement and authorization. But the authorities rejected company's request, saying the authority could not measure the product due to the absence of measuring equipments. After all, the company was forced to pay deposits of 46 per cent to the customs, although its product was not included in the product under investigation.

In our view, the import restrictions and the imposition of the anti-dumping duties or provisional measures on the product which was not investigated are inconsistent with the entire AD Agreement and Article XI of GATT 1994. Please explain reasons, if the Chinese authorities consider these situations were consistent with the AD Agreement and GATT 1994.
