

**CHINA'S TRANSITIONAL REVIEW MECHANISM**

Communication from Japan

The following communication, dated 8 September 2004, is being circulated at the request of the Delegation of Japan.

Questions and Comments of JAPAN on the Implementation by CHINA of its  
Commitments on Market Access

1. Japan welcomes that, in the third year after accession, implementation by China of its commitments on market access has progressed and entered into a cruising phase. 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 Market Access, responses and relevant information to the following questions and comments.

1. Tariff policy

(1) Tariff rates on photographic products

(a) The tariff concessions provided by China when acceding to the WTO clearly states China's commitment to reduce tariffs on photographic products (HS37) to 0-53.5% in the form of ad valorem (levied on yuan/yuan) duties as of 2002. However, for 35 items of photographic products, including ordinary photographic film, China has not applied the committed concession rates. Instead, China has imposed specific duties (levied on yuan/square metre basis) equivalent to far more excessive tariff rates. For example, though the concession rate for the finished 35mm color negative film should be

30%, the duty currently imposed on is a specific duty, 120 yuan/m<sup>2</sup>, which is equivalent to over 100% in ad valorem terms.

In this context, Japan would like to urge China:

- to clarify the legitimate reason, if any, why China keeps these specific duties in spite of the commitment China has made to the concession tariff rates in the form of ad valorem duties.
- to provide a specific schedule for the application of tariff concessions committed at the time of WTO accession in the form of ad valorem duties with regard to the 35 items of photographic products.

(b) Although Japan has no intention of admitting the current Chinese position on using specific duties, we are prepared to discuss this problem in a bilateral manner which China offered at the WTO Market Access meeting in October 2003. Japan would like to ask China to provide us with a framework on the experts meeting, including responsible organizations, titles of participants, schedule, and venue.

(2) Tariff classification

(a) Some cases can be seen in China where the decisions in the application of tariff classifications differ among the officials even in the same customs zone. As a result, some Japanese companies are obliged to pay higher tariffs without being able to appeal. With respect to the tariff classification issue, Japan understands that China has two types of formal decisions on tariff classification: one is an Advance Decision and the other is an Administrative Ruling. Compared to an Advance Decision, which is valid only for one year and only in the governing customs zone, Japan believes that an Administrative Ruling is more desirable for it is made public all over China and is effective to all the importers on a permanent basis. However, it is said that in practice there have not been any cases where an Administrative Ruling has been issued.

(b) In this context, we would like to urge China to improve the situation by using the Administrative Ruling scheme effectively as well as to resolve cases such as the one described below.

[case] A company exports commercial AV equipment to China. Previously the company's product was allowed to clear through customs without any tariffs being imposed under the oral guidance given by the officials of the local customs zone in Shanghai. One day, however, another organization in the same customs zone held an investigation and, as a result, a 30% tariff was imposed, to which the company could not make an appeal. The company has been applying for an Advance Decision regarding this product's tariff classification since the end of last year, without receiving any clear response.

2. Automobile policy

(1) Auto Industry Development Policy

(a) Prohibition of sales of both Chinese-made and imported automobiles

At the follow-up meeting of the Japan-China economic partnership consultation in June 2004, China clearly stated that the Auto Industry Development Policy which took effect on and after 1 June 2004 does not prohibit any dealers from selling both Chinese-made and imported automobiles in China.

In this context, Japan would like to urge China:

- to confirm that the Chinese government's statement means that even if any other regulation exists, dealers are always allowed to sell both Chinese-made and imported automobiles without any conditions.
- to confirm that there is no sales discrimination, in any fashion, between Chinese-made and imported automobiles.

In addition, at the same meeting, China also stated that it is now preparing a new legislation/regulation in order to control automobiles' brands in a manner consistent with WTO rules.

In this context, Japan would like to urge China:

- to explain the latest status of this legislation/regulation.
- to provide a legislation/regulation draft, if there is any.

(b) Authorizing system of complete automobile feature

(i) Japan is very concerned about the Chapter XI of the Auto Industry Development Policy. In particular, under the certain conditions of which the Articles 55, 56 and 57 stipulate, the Chinese authorities shall identify sets of components for automobile at their discretion as to what constitutes complete automobile feature. Consequently, despite the legitimate import of sets of components, these Articles may permit the customs authorities to impose higher customs duty, which equals to that of complete automobiles, upon the sets of components.

(ii) Japan understands that the customs duties shall be imposed at the point of time when goods are entering the importing country. If the unit of imported goods is an automobile component only, the customs duty shall be for an automobile component as itself. Therefore, in cases where customs authorities impose different higher tariff rates such as that of complete automobile on automobile components, we suspect its inconsistency with the Article II of the GATT.

In this context, Japan would like to urge China to clarify its understanding on this issue.

(iii) In addition, according to Paragraph 93 of the Working Party Report on the accession of China, China clearly confirmed that it had no tariff lines for completely knocked-down kits or semi-knocked down kits for automobiles and stated as well that if China were to create such tariff lines, the tariff rates would be no more than 10 per cent.

In this context, Japan would like to urge China to confirm that even if China were to create new tariff lines on automobile components in order to prevent any customs loss, the tariff rates would be determined in accordance with the paragraph 93 of the Working Party Report on the accession of China.

(iv) As noted above, Japan takes a great interest in the Auto Industry Development Policy which was publicized on 1 June 2004 in terms of WTO rules. In this context, Japan would like to urge China to implement the Policy in consistency with WTO rules and would like to request, in line with the transparency requirements under WTO rules, relevant information such as implementation legislations/regulations will be open well in advance so that comments from WTO members including Japan could be taken into account appropriately.

(2) Implementation of import quotas for automobiles

China has committed in Paragraph 124 of the Working Party Report and Annex 3 of the Protocol to completely abolish by 1 January 2005 any import restrictions which are inconsistent with the WTO rules, specifically Article XI of the GATT 1944.

In this context, Japan would like to urge China to confirm that China will completely abolish by 1 January 2005 all import restrictions including import quotas for automobiles and automobile primary parts, specified in Annex 3 of the Protocol, and will not maintain any non-tariff measures regarding automobiles thereafter.

(3) Transparency in issuing import licenses on automobiles

(a) The Chapter IV of the Measures on the Administration of Import of Machinery and Electronic Products which entered into force on 1 January 2002 provides that any applications for import of products which are subject to this Act shall be approved in any circumstances. In real practice, however, there seem to be cases, for example, where certifications of permission for automobile imports of 30 or above passenger buses were issued only for half of the applications. Furthermore, in such cases, Chinese authority did not respond sufficiently to the applicants' request for providing specific reasons for limited certifications.

In this context, Japan would like to urge China:

- to clarify whether China will maintain the Automatic Import License System provided in Chapter IV of the Measures on the Administration of Import of Machinery and Electronic Products after 1 January 2005.
- to explain the objective of this system if China were to maintain this system even after 1 January 2005 since it could be regarded as a non-tariff measure which is inconsistent with WTO rules.
- to approve all imports applications in accordance with the Measures on the Administration of Import of Machinery and Electronic Products, if China were to maintain the Measure even after 1 January 2005, given that the system is operated in consistency with the WTO rules.

3. Import policy

Import prohibition of used goods

(a) China implements an across-the-board prohibition on imports of used goods including worn clothing in terms of the necessity "to protect human, animal or plant life or health." However, Japan is greatly concerned about the consistency of these import prohibition measures with WTO rules, especially the GATT Article XI.

(b) Worn clothing exported from Japan has not raised any hygiene-related problems with any other importing countries. Therefore, Japan considers the import prohibition measure imposed by China as not justified under the WTO rules.

(c) In this context, Japan would like to urge China:

- to abolish such import prohibition measures.
- to explain the understanding of the Chinese Government on the consistency, if any, with WTO rules regarding the import prohibition measure.

4. Specific policies

(1) Integrated circuits(ICs) VAT refund

(a) Japan understands that the US and China have reached an agreement on the ICs VAT issue, and we also welcome the fact that the China will completely abolish its VAT refund program by the end of March 2005.

(b) In this context, Japan would like to urge China:

- to confirm that the companies that have already made an application under the present program will receive a proper VAT refund no later than the end of March 2005.

(c) Japan would also like to ask whether China has any plan to formulate any financial or non-financial support program for domestic ICs manufacturers. If so, please provide information including details of such support programs and timetables for its implementation.

(2) Trading rights

Japan understands that the revised Foreign Trade Law entered into force on 1 July 2004 so as to implement the commitments on the accession to the WTO, including the granting of trading rights. Japan requests China to implement the revised Act consistently with the WTO rules.

In this context, Japan would like to urge China to explain the current status of the implementation of granting the trading rights.

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