WORLD TRADE ORGANIZATION

G/ADP/W/447
5 October 2005

(05-4453)

Committee on Anti-Dumping Practices Original: English

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

Comments and Questions from Japan Concerning Anti-Dumping

The following communication, dated 3 October 2005, is being circulated at the request of the Delegation of Japan.

Japan appreciates the steady improvements in the anti-dumping law and practice of the People's Republic of China (hereinafter China), especially with regard to the notice of initiation of the investigation, publication of information, on-site verification, etc.

Our common goal of the Transitional Review Mechanism (TRM) is to achieve the complete compliance of the Chinese anti-dumping law and practice with the disciplines of the Anti-dumping Agreement (ADA). In this context, we would like to remind you that, in the last TRM session in the Anti-dumping Committee Meeting, China requested other countries to "make comments based on solid evidence and facts of individual cases" (G/ADP/M/27, paragraph 81). Therefore, Japan poses several questions below based on specific cases, and is willing to discuss issues with China in a constructive manner.

1. Initiation of investigations/reviews without clear examination of the accuracy and adequacy of the evidence provided in the applications

With regard to initiation of the investigations and reviews by Chinese authorities, we have concerns about their consistency with Article 5.3 of the ADA, which requires the authorities to "examine the accuracy and adequacy of the evidence provided in the application". In view of the risk that an initiation of the investigation itself may cause a heavy burden to fall on the respondents, the authorities should initiate an investigation with great caution.

More specifically, in the investigation of **bisphenol-A** (initiation date: 12 May 2004), most of the data provided in the application were not consistent with the data disclosed by the applicants themselves or with publicly available financial data that are easily available to the government. Though these public data indicated good performances of the applicants in sales, profits, domestic prices, etc., the authorities initiated the investigation without clear examination of the accuracy and adequacy of the evidence in accordance with Article 5.3 of the ADA.

In addition, the authorities initiated an investigation concerning **nucleotide food additives** (initiation date: 12 November 2004), regardless of significant discrepancies between the data contained in the application and the actual data. The alleged upward trend in exports from Japan did not exist; on the contrary, actual exports from Japan had steadily decreased, as shown in the request letter submitted by the Government of Japan dated 4 January, 2005.

Moreover, the authorities initiated the review of the anti-dumping measures on **toluene diisocyanate (TDI)** (initiation date: 3 February 2005) based on an application for review lodged by the domestic industry in a manner inconsistent with Article 11.2 of the ADA. While Article 11.2 allows the authorities to initiate a review "where warranted" upon request by an interested party "which submits positive information substantiating the need for review", and while the responding companies drew attention to this condition in their written letter to the Government of China, the authorities initiated the review without any clear reason. Initiation of the review without positive information or reason is inconsistent with Article 11.2, as well as Article 6.2, which ensures the right of interested parties to defend their interests, which is applied *mutatis mutandis* to reviews in accordance with Article 11.4.

We request China to explain the consistency of its measures with the ADA in regard to the above-mentioned situation.

2. Incomplete determination of injury

With regard to insufficient analysis concerning the determination of injury that is short of reasons/explanations, we have concerns about its consistency with obligations under the ADA, including Article 3.1 thereof, which requires the authorities to make a determination of injury "based on positive evidence" and involving "an objective examination" of various factors; Article 3.4 thereof, which requires the authorities' comprehensive analysis of all 15 factors; and Article 3.5 thereof, which requires the authorities' "demonstration" of a causal relationship "based on an examination of all relevant evidence before the authorities".

For example, the authorities made a positive finding of injury in the original investigation concerning **TDI** (date of the final determination: 22 November 2003), while indicators such as nominal volume of domestic consumption, production of the domestic like product, sales volume and market share, etc, did not appear to have deteriorated. Moreover, there were no comprehensive, objective or reasonable explanations as to the causal relationship between the dumped imports and the injury.

More specifically, the authorities found in the preliminary determination (date of the preliminary determination: 10 June 2003) that the range of price decrease of the domestic like products was wider than that of subject imports, and that the market share of the domestic like products increased in the period of investigation compared to the previous year. While this indicates that it was the domestic like products that lead the decrease in price, the authorities did not undertake any analysis in the preliminary and final determination on who the price leader had been.

We request China to explain the consistency of its measure with the ADA in regard to the above-mentioned situation.

3. Insufficient transparency and insufficient opportunity for comment

With regard to the transparency in investigations conducted by the Chinese authorities, we have concerns about its consistency with the obligations under the ADA, including Article 6.8 thereof, which allows the authorities to use facts available only when an "interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation"; paragraph 5 of Annex II thereof, which requires the authorities not to disregard the information "even though the information provided may not be ideal in all respects," "provided the interested party has acted to the best of its ability."; and paragraph 6, *ibid*, which states that the supplying party should "be informed forthwith of the reasons therefore, and should have an opportunity to provide further explanations".

For example, in the investigation of **nucleotide food additives**, the authorities made a preliminary determination of injury solely dependent on the application by the domestic industry (date of the preliminary determination: 4 August 2005), although the information submitted by the Government of Japan indicated a steady decrease in the volume of exports from Japan. In making such a determination, the reason provided by the authorities was as follows: while the authorities "fully considered information submitted by the respondents", they found "information submitted by the applicant reliable in making the determination of injury based on the best information available, owing to the incompleteness of the information submitted by the respondents". Regardless of the performance or cooperation of the respondents in submitting information during the investigation, the authorities must ensure the right of other interested parties who submitted data to receive an explanation and to make comments when the information they submitted is rejected. However, the authorities did not inform the Government of Japan of the reason for the rejection of the information it submitted, or provide it with the opportunity for comment, though this is required by the relevant provisions of the ADA referred to above.

We request China to explain the consistency of its measures with the ADA in regard to the above-mentioned situation.