

**CHINA'S TRANSITIONAL REVIEW MECHANISM**

Communication from Japan

The following communication, dated 6 September 2005, 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

Japan welcomes that, in the fourth year after China's accession, the implementation of its commitments on market access has evolved from simple progress into a cruising phase. In a transitional period of evolution of 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 by insufficiency of such elements either in regulations themselves or in their application. The Transitional Review Mechanism could be useful in making those transitional efforts more efficient and productive, and Japan is delighted to be making a positive contribution to this process.

In this context, China is further invited to take the necessary steps to ensure a regular and effective application of public comments procedures, prompt publication of laws and regulations, predictability of regulatory changes, clear demarcation of departmental responsibilities within the different departments involved as well as between central and provincial authorities, etc.

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 in rendering the TRM process more efficient and effective, Japan requests China to provide prior to the meeting of the Committee on Market Access, the responses and relevant information to the following questions and comments.

**1. Customs duty regarding "Complete Automobile Feature"**

- (a) Japan is very much concerned about Chapter XI of the Auto Industry Development Policy published on 1 June 2004. In particular, under the conditions which Articles 55, 56 and 57 stipulate, Chinese authorities are given discretion to find "complete automobile feature" in components of automobiles, and consequently to impose tariff rates for a complete automobile which is higher than the one for its components.
- (b) Japan understands that customs duties should be imposed on the products at the point of their entry into the importing country. If the unit of imports at the point of entry is automobile components, such as bodies or engines, the customs duty applicable for them shall naturally be

the one for automobile components. If the tariff rate for complete automobiles is imposed on components of automobiles, which is actually higher than the tariff rate for components, in accordance with the Auto Industry Development Policy, we suspect that it may be inconsistent with Article II of the GATT. Japan would like to urge China to clarify its position on this issue.

- (c) 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 percent. Even if China is to claim that this policy serves the purpose of preserving customs revenue, Japan would like to urge China to confirm that it will continue to adhere to the Paragraph 93 set out above.

## **2. Tariff rates on photographic products**

- (a) At the time of its accession to the WTO, China committed 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 imposed specific duties (levied on yuan/square meter basis) far exceeding the committed concession rates. For example, although the concession rate for the finished 35mm colour negative film is 24% in 2005, the duty currently imposed is a specific duty of 96 yuan/m<sup>2</sup>, which is equivalent to more than twice the concession rates in the *ad valorem* terms.

Although Japan has no intention of admitting the current Chinese position on applying specific duties, we carefully listened to China's explanation regarding how the *ad valorem* duties are converted into equivalent specific duties at a bilateral meeting at an expert level in August this year. China explained how the authorities estimate import prices of the 35mm colour negative film, which is multiplied by the *ad valorem* duty to calculate the equivalent specific duty, based on the international average retail price and assumed distribution margin rates. Japan, however, considers that this practice is neither reasonable nor acceptable.

- (b) In this context, Japan would like to urge China to clarify the legitimate reason, if any, why China continues to keep these specific duties in spite of the commitment by China 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.

## **3. Customs classification**

- (a) There are some cases in China where decisions on customs classifications differ among officials even in the same customs district. As a result, some Japanese companies have been obliged to pay higher tariffs without being able to appeal. Japan understands that China has two types of formal decisions on tariff classification: one is "Advance Decision" and the other is "Administrative Ruling". Compared to "Advance Decision", which is valid only for one year and only within the governing customs district, Japan believes that "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, in practice, we are not aware of any cases where an Administrative Ruling has ever been issued.
- (b) In this context, we would like to urge China to ensure transparency in accordance with the WTO rules and 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 exporting commercial audio-visual equipment to China had previously been allowed to clear the customs without any tariffs being imposed under the oral guidance given by the officials of the customs district 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 object. The company applied for an Advance Decision regarding customs classification of this product at the end of that year, without receiving any clear response for over a year after that.

#### **4. Import prohibition of used goods**

- (a) China implements an across-the-board prohibition on imports of used goods including second-hand clothing on the ground of the necessity “to protect human, animal or plant life or health.” However, Japan is greatly concerned about the consistency of the import prohibition with the WTO rules, especially GATT Article XI.
- (b) Second-hand clothing exported from Japan has not caused any hygiene-related problems with any other importing countries. Therefore, Japan considers the import prohibition measure imposed by China is not justified under the WTO rules.
- (c) In this context, Japan would like to urge China
  - to abolish such an import prohibition measure,
  - to explain the position of the Chinese Government on the consistency, if any, with WTO rules regarding this import prohibition measure.

#### **5. Export Restrictions**

- (a) Japan understands that China implements export licensing on exports of cokes. Because not enough licenses were issued last year, the export price of Chinese cokes soared and has left the world market disrupted. This year, although there have not been any big disruptions so far, the export licensing measure still exists. Japan is greatly concerned about the issuance plan for 2005 because half of all licenses remain unissued. Since this measure is not made effective in conjunction with restrictions on domestic production or consumption, Japan considers that it is not consistent with GATT Article XI and cannot be justified under GATT Article XX (g) regarding the conservation of exhaustible natural resources.
  - (b) In view of the above, Japan would like to urge China to clarify its position on the consistency of export licensing measures, if any, with the WTO rules regarding such export restrictions. If there is any plan to reform export licensing measures, we would like to know the details.
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