

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

Questions from Japan to the People's Republic of China (Anti-Dumping)

The following communication, dated 25 September 2006, is being circulated at the request of the Delegation of Japan.

Japan appreciates the efforts by the People's Republic of China (PRC) for steady improvements in the anti-dumping laws and practices. Japan would like to pose a question once again about the "appearance notice" which we already asked on the occasion of the Trade Policy Review (TPR) of the PRC in April 2006. In addition, we would like to pose a question relating to the injury determination in a specific case. The TPR and TRM are very important mechanisms to ensure and promote greater transparency in the PRC's domestic system. Japan expects the most sincere correspondence from the Government of the PRC.

1. MOFCOM only sends questionnaires to and determines individual margins of dumping for exporters or producers who have fulfilled an "appearance notice" at the initial stage of the investigation. For those who have not fulfilled the appearance notice, MOFCOM applies a uniform margin of dumping ranging from several dozens to more than 100 per cent. We would like to request the PRC to explain the consistency of its measure with the Anti-Dumping Agreement (ADA) to use facts available that can be adverse to the exporter's interests and to apply high *all others' rates* not based on Article 9.4 ( ) of the ADA, without sending questionnaires to exporters who have not fulfilled the appearance notice, including "the known exporters or producers" mentioned in the petitioner's application.

In *Mexico-Anti-Dumping Measures on Rice* (DS295), the Appellate Body stated that "an exporter shall be given the opportunity to provide information required by the investigating authority before the latter resorts to facts available that can be adverse to the exporter's interests". The Appellate Body found that Mexico, by having not provided required information to the US exporters and having nevertheless determined in reliance on facts available a higher margin of dumping than the margins individually calculated, acted inconsistently with paragraph 1 of Annex II and Article 6.8 of the Anti-Dumping Agreement.

Although Japan has already posed this question during the TPR held in April, we have not received the PRC's reply yet. We hope that the PRC replies to Japan's question on this occasion and also submits its written answers to the Secretariat in the TPR framework without delay.

2. In the investigation on Spandex, MOFCOM made a preliminary determination of injury on 24 May 2006, based on the volume of imports from all countries and territories under investigation (Japan, Singapore, Korea, Rep. of; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and the United States of America) including *de minimis* margins for three Korean exporters. In *EC – Bed Linen* (DS141), the Appellate Body ruled that the imports from the exporters or producers who had the individual margins of dumping found to be *de minimis*, were not considered to be "dumped imports" referred under Article 3.1 and 3.2 of the ADA. With regard to the volume of the dumped imports, Japan believes that MOFCOM should exclude the imports from Korea when it considers whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing member and the effect of the dumped imports on prices. While we strongly expect that MOFCOM will make a final determination consistent with the ADA, Japan requests the PRC to explain the consistency of its preliminary determination with the ADA, especially in view of the Appellate Body's ruling in *EC-Bed Linen*.

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