

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

Questions from JAPAN to CHINA

The following communication, dated 4 October 2007, is being circulated at the request of the Delegation of Japan.

For the sixth Transitional Review Mechanism (TRM) for the People's Republic of China (China), Japan hereby submits following questions in advance of the regular meeting of the Committee of Anti-Dumping Practices. Japan looks forward to having clear and full responses from China.

1. Registration Procedure

MOFCOM uniformly applies high all-other's-margin based on the adverse facts available (AFA) to those exporters or producers who do not fulfill "appearance notice" ("non-registered parties") at the initial stage of investigation. Japan is concerned that, as far as those non-registered parties are exporters and producers unknown to the authority, applying the AFA in this case runs counter to paragraph 1 of Annex II and Articles 6.1 and 6.8 of the Anti-Dumping Agreement (ADA). See *Mexico – Anti-Dumping Measures on Rice* (WT/DS295/AB/R, para. 259).

In this regard, Japan notes the explanation given by China during the regular meeting of the Committee in 2006:

"The anti-dumping regulation of China allows for a procedure of setting aside an extra 20 days for potential respondents to express their intention to co-operate to a given investigation. This 20-day registration procedure does not count against the 37-day time-limit for answering the questionnaire. MOFCOM makes the questionnaires available on its official website for all the interested parties, including those that do not express interest in a 20-day registration procedure, to have easy access to them and to participate in a given investigation by answering and submitting their questionnaire replies. If a company does not respond to the questionnaire, MOFCOM bases its determination on the best information available."

Japan would like to ask China to clarify following points.

- (1) Does the Chinese authority notify all those firms eventually to be applied the AFA of the information required by the authority?

- (2) Does the authority notify those firms of a possibility that the authority will make determinations on the basis of the facts available, should they fail to supply the required information? To put it in other words, in what way does the authority ensure that a party is aware of such potential application of the facts available if it fails to supply the required information, as provided for in paragraph 1 of Annex II of the ADA?

Japan expects that China clarifies above points in view of the consistency with the ADA and, in particular, in view of the ruling of the Appellate Body in *Mexico – Anti-Dumping Measures on Rice*.

2. Final anti-dumping determination against electrolytic capacitor paper from Japan

MOFCOM made its final determination to impose an anti-dumping duty against electrolytic capacitor paper originating in Japan (issued on 17 April 2007).

Japan is especially concerned about MOFCOM's injury determination in this case. With regard to imports to China of electrolytic capacitor paper, those imports from countries and areas other than Japan showed a rapid increase. However, MOFCOM's final determination merely concluded that such imports had little effect on injury, without detailed explanations as to how the authority conducted its analysis on the injurious effect of those imports from Japan by properly separating and distinguishing the injurious effects of those imports from countries and areas other than Japan. Japan considers that the analysis and explanations by MOFCOM were not adequate in this case, and its injury determination might run counter to Articles 3.1 and 3.5 of the ADA.

Japan asks China to explain how its injury determination in this case is consistent with the ADA, especially in view of the Appellate Body's ruling in *US – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan* (WT/DS184/AB/R, para. 223).
