

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

Questions from JAPAN to
the PEOPLE'S REPUBLIC OF CHINA

The following communication, dated 6 October 2008, is being circulated at the request of the Delegation of Japan.

For the seventh Transitional Review Mechanism 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. Application of the facts available

The Ministry of Commerce (MOFCOM) applies the "facts available" in the calculation of a margin of dumping for all other exporters or producers that have been unknown to the investigating authority and that have not been provided the notice of initiation or full text of the petitioner's written application. In the previous transitional reviews, Japan voiced concern that this application of facts available might run counter to Article 6.8 and paragraph 1 of Annex II of the Anti-Dumping Agreement (ADA). An explanation given by China last year was following:

"The investigating authority informed all interested parties of the information required and, throughout an investigation, interested parties were given ample opportunity to submit evidence and materials and to make relevant comments. As had been indicated in previous transitional reviews, the Chinese anti-dumping practices were not inconsistent with the Anti-Dumping Agreement. All interested parties, including the unregistered parties could, through their governments or from the Chinese official website or other means, gain access to the questionnaire and then submit it."

In many cases, however, parties who can gain access to the questionnaire from China's official website or other means are limited to those exporters or producers that have already been known to the investigating authority and that have been provided the notice of initiation in the respondent-registration procedure in China's anti-dumping investigation. Therefore other exporters or producers that have been unknown to the investigating authority and that have not been provided the notice of initiation therefore can exist, and for such exporters or producers, it is difficult to obtain information on the investigation. In this case the investigating authority fails to ensure that any such unknown exporters or producers are aware that if the required information is not supplied within a

reasonable time, the investigating authority will be free to make determinations on the basis of the facts available. Could China please explain how the MOFCOM's practice of applying the facts available to the exporters and producers that are unknown to the investigating authority can be justified, in the light of Article 6.8 and paragraph 1 of Annex II of the ADA and related practices of other WTO members.

2. Injury Determinations

Regarding injury determinations, MOFCOM fails to assess the injurious effects of other known factors appropriately and did not separate and distinguish the injurious effects of those other factors from the injurious effects of the dumped imports. Last year Japan voiced a concern that MOFCOM's injury determination in the investigation on electrolytic capacitor paper originating in Japan might run counter to Articles 3.1 and 3.5 of the ADA. China responded that as could be found in the final determination, MOFCOM had analyzed the causality between dumped imports and injury and had addressed all other factors that might have had caused injury.

However, in MOFCOM's final determination in that case (issued on 17 April 2007) and MOFCOM's response to the related concern that Japan had raised in the course of the procedure, it can only be found that MOFCOM merely compared the volume of imports from Japan with the volume of imports from Germany and the United States. The final determination simply concluded that those imports from Germany and the United States had little effect on injury, without sufficient and reasonable explanations as to how the investigating authority had separated and distinguished the injurious effects of those imports from Japan from the injurious effects of those imports from countries and areas other than Japan.

Could China please explain the details of the analytical methodology for injury determinations that MOFCOM uses, taking into account the Appellate Body's ruling in *US – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan* (WT/DS184/AB/R).
