

**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 7 October 2009, is being circulated at the request of the Delegation of Japan.

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

**1. Application of the facts available (FA)**

In the seventh transitional review, the representative of China stated that China was puzzled by the questions put forward by Japan, specifically the sentence in the document saying that "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". Japan understands that this sentence means that the exporters or producers that are unknown to the investigating authority and that are not provided the notice of initiation cannot follow the movement of the investigating authority, so they would not access the website, register with the authority, or confirm the questionnaire. That is, the exporters or producers that were unknown to the investigating authority and that were not provided the notice of initiation could exist. Then the investigation authorities could fail to ensure that such unknown exporters or producers are aware that if information is not supplied within a reasonable time, the investigating authority would be free to make determinations on the basis of the FA. In fact, the Ministry of Commerce (MOFCOM) applied the FA in the calculation of a margin of dumping for such exporters or producers. Please explain how China justifies MOFCOM's practice, in the light of Article 6.8 and paragraph 1 of Annex II of the ADA and international practice. Japan was not able to obtain an adequate answer from China in the seventh transitional review. Therefore, Japan asks the question again.

**2. Injury Determinations**

In the seventh transitional review, Japan requested an explanation regarding the details of the analytical methodology for the injury determinations of MOFCOM as to how the investigation authority separated and distinguished the injurious effects of the imports from countries and areas other than Japan, taking into account the Appellate Body's ruling in United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (WT/DS184/AB/R). China answered that, in the electrolytic capacitor paper case, the competent authority had analyzed the causality and that it

was found that other factors were not the major reason for the material injury, as the final determination report (issued on 17 April 2007) had shown.

However, in the final determination report, MOFCOM merely concluded that the volume of imports from Germany and the United States had little effect on the injury without rational and adequate explanations as to how the investigation authority separated and distinguished the injurious effects of the imports from countries and areas other than Japan. Again, Japan requires the explanation of the details of the analytical methodology.

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