

**NOTIFICATION OF LAWS AND REGULATIONS UNDER  
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

**Questions Posed by JAPAN Regarding the Notification of  
THE PEOPLE'S REPUBLIC OF CHINA<sup>1</sup>**

The following communication, dated 3 October 2002, has been received from the Permanent Mission of Japan.

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**Japan's questions with regard to China's Transitional Review Mechanism (TRM) on Anti-Dumping Practices**

This paper intends to provide questions to the English translation of the Regulations of the People's Republic of China on Anti-Dumping submitted by China (G/ADP/N/1/CHN/2).

We would like to request the Government of China to provide all relevant rules on Anti-Dumping as early as possible. At this juncture, we reserve our rights to provide further questions to them if necessary.

**Normal Value**

1. Article 4(2) of the Regulations of the People's Republic of China on Anti-Dumping ("China's AD regulations") states that where "the price and quantity of such sales do not permit a fair comparison, the normal value shall be the comparable price of the like product when exported to an appropriate third country (region) or the cost of production of the like product in the country (region) of origin . . .".

Please explain what quantity of sales and what price level are sufficient for determining normal value.

2. Article 4(2) of China's AD regulations notes that the normal value can be calculated as "the cost of production of the like product in the country (region) of origin plus a reasonable amount for expenses and for profits."

(a) Please explain how the cost of production will be calculated under China's AD law, including what constitutes "a reasonable amount for expenses and for profits."

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<sup>1</sup> G/ADP/N/1/CHN/2.

- (b) Please explain when sales will not be considered in the “ordinary course of trade” because of price pursuant to Article 2.2.1 of the ADA.

### **Export Price**

3. Article 5(2) of China’s AD regulations states that “in cases where there is no export price for the imported product or the price is unreliable, the export price may be constructed . . .”.

Please explain the conditions in which the export price would be considered “unreliable”.

### **Injury**

4. Article 8 of China’s AD regulations sets forth factors to be considered in the determination of injury. In the same context it also notes that “the determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility.” China’s AD regulations do not identify the factors to be considered specifically in the determination of threat of material injury as opposed to the determination of material injury. Article 8 of China’s AD regulations identifies certain factors that are to be considered in both the material injury and threat of material injury inquiries (some of which, as noted above, should be relevant only in the context of threat determinations).

- (a) The ADA includes separate non-exhaustive lists of factors that are to be considered in making the material injury determination (Article 3.4), and threat of material injury (Article 3.7), respectively. Please explain how China will ensure that the appropriate factors will be considered in the two separate inquiries.
- (b) Article 8 of China’s AD regulations states that the volume factors, which “the possibility of significant increase in dumped imports (Article 8.(1))”, “the product capacity” and “inventories of the product (Article 8.(4))”, are to be considered in future oriented determinations of threat of material injury, not in present material injury determinations.

Please explain whether China expects to apply these factors only in threat situations. If China anticipates that it will apply these factors in present material injury situations as well, please explain how these factors are consistent with the ADA.

5. As to the impact of the dumped imports on the domestic industry, Article 8.(3) of China’s AD regulations notes that the impact on “the relevant economic factors and indices of the domestic industry” shall be examined.

Please explain which relevant economic factors and indices will be examined under this inquiry. Article 3.4 of the ADA includes a non-exhaustive list of “factors and indices having a bearing on the state of the industry,” which includes “sales, profits, output, market share, productivity, return on investments, [ ] utilization of capacity,” etc.

6. Article 3.5 of the ADA describes the factors that are to be considered in demonstrating the causal relationship between the dumped imports and the injury to the domestic industry.

China’s AD regulations contain no analogous discussion of the causation factors that are to be considered, although it does note in the last paragraph of Article 8, that “injuries caused by factors other than dumping must not be attributed to dumping.” Please explain how China

will consider in order to ensure that the necessary causal relationship between the dumped imports and the injury to the domestic industry exists.

### **Domestic Industry**

7. China excludes from the definition of the term “domestic industry” in Article 11 those domestic producers who are “related to the exporters or importers or are themselves importers of the dumped imports or like products.”

Please explain how China will determine if a domestic producer is “related” to an exporter or importer, and how it will ensure that its determination will be consistent with Article 4.1 (footnote 11) of the ADA, which specifies the situations in which producers may be deemed related to exporters or importers.

### **Investigation Procedures**

8. Article 19 of China’s AD regulations states that the investigation authority shall publish the decision to initiate an investigation and notify the interested parties including the known exporters. Although this provision follows Article 12.1 of the ADA, as a matter of fact, MOFTEC has never notified any known Japanese exporters at the initiations of the investigations against Japan.

Please explain how China satisfies the requirements of these Articles of the China’s regulations and the ADA.

9. Article 21 of China’s AD regulations provides that in certain situations, the investigating authorities may “make determinations on the basis of the facts already known and the best information available.”

The ADA contains provisions in Article 6.8 and Annex II governing the use of “facts available” in antidumping determinations. Please explain how China will ensure that its application of the authority set forth in Article 21 will satisfy the standards set forth in the ADA.

10. China’s AD regulations use the term “interested party/ies” at several points (e.g., Articles 20, 21, 22, 23). Article 19 of China’s AD regulations defines interested party/ies as “known exporters and importers, government of exporting countries (regions) and other interested organizations and parties.”

- (a) Is this the complete definition of interested parties applicable to all references throughout the regulations?
- (b) Article 6.11 of the ADA provides a definition of the term “interested parties” and includes, in addition to the groups listed in China’s regulations, foreign producers, trade and business associations representing exporters, foreign producers and importers, domestic producers and their trade and business associations. Please explain how China will ensure that its antidumping procedures will properly treat those parties that are recognized by the ADA as “interested parties.”
- (c) Article 6.12 of the ADA requires that the investigation authorities will provide opportunities for industrial users and consumer organizations (where relevant) to provide information on dumping, injury, and causality. China’s AD regulations

provide no analogous guarantee of access for these groups to the investigative process. Please explain how China will ensure compliance with this requirement of the ADA.

### **Provisional Anti-Dumping Measures**

11. Before provisional measures may be applied, the ADA requires that the procedural prerequisites of Article 7.1(i) must be satisfied, and, under Article 7.1(iii), the authorities must judge that such measures are “necessary to prevent injury being caused during the investigation.”

Neither of these prerequisites is included in China’s AD regulations. Please explain how China will ensure that these prerequisites are satisfied before provisional measures are imposed.

12. Article 7.4 of the ADA states that the 4 month period during which provisional measures may be applied can be extended to 6 months only upon request of “exporters representing a significant percentage of the trade involved.” Furthermore, the 4- and 6-month periods can be extended to 6 and 9 months, respectively, only if the investigating authorities “examine whether a duty lower than the margin of dumping would be sufficient to remove injury . . .”.

Article 30 of China’s AD regulations states that the time period for provisional measures shall not exceed 4 months, except that it may be extended to 9 months in “special circumstances.” Please explain what circumstances are considered “special circumstances” under China’s AD regulations. Please explain how China’s grant of authority to extend the time period for provisional measures to 9 months will be limited to those situations in which the ADA permits such extension.

### **Undertakings**

13. Article 8.1 of the ADA provides that price increases under undertakings “shall not be higher than necessary to eliminate the margin of dumping,” and notes that “it is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.”

Analogous provisions do not exist in China’s AD regulations. Please explain how China will ensure that its investigating authorities will consider these factors in pursuing price undertakings.

### **Anti-Dumping Duties**

14. Article 42 of China’s AD regulations notes that “[t]he amount of the antidumping duty shall not exceed the margin of dumping established in a final determination.”

The ADA, Article 9.1, notes that “[i]t is desirable . . . that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.” Please explain whether China is considering any method by which a lesser duty could be considered and applied.

### **Duration and Review of Duties and Undertakings**

15. Articles 49-52 of China’s AD regulations use the term “review”, but it is not clear whether the referenced reviews are annual (administrative) reviews under Article 11.2 of the ADA, or five-year

(sunset) reviews under Article 11.3, parenthetical, of the ADA. Can China clarify this point in its implementing regulations?

**Others**

16. Article 55 of China's AD regulations states that "MOFTEC and SETC may take appropriate measures to prevent the circumvention of anti-dumping measures."

This provision does not appear to have an analogy in the ADA. Please explain how China define the term "circumvention", what constitutes the "appropriate measures", and in which condition China decides to take the "appropriate measures."

17. Article 56 of China's AD regulations states that "[w]here a country (region) discriminatorily imposes anti-dumping measures on the exports from the People's Republic of China, China may, on the basis of the actual situations, take corresponding measures against that country (region)."

This provision does not appear to have an analogy in the ADA. Please explain how this provision is consistent with the ADA, and how China plans to implement this provision.

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