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Council for Trade in Goods

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

Questions from the United States to China concerning Trade in Goods

The following communication, dated 17 November 2003, has been received from the delegation of the United States.

The Government of the United States wishes to pose the following questions to China at the 26 November 2003 meeting of the Council for Trade in Goods for the purposes of the transitional review mandated by China's Protocol of Accession.

Trading Rights

1. The United States seeks clarifications regarding certain questions that it raised relating to China's commitments on trading rights in connection with the transitional review before the Committee on Market Access on October 20, 2003. As the United States explained before the Committee on Market Access, China committed in its accession agreement to expand the availability of trading rights pursuant to an agreed schedule covering the first three years of its WTO membership, after which trading rights would be automatically available. With regard to foreign-invested enterprises in particular, China committed that it would make full rights to trade available to joint ventures with minority foreign ownership beginning not later than one year after China's accession (i.e., by 11 December 2002) without any conditions. China also committed that, within two years after its accession (i.e., by 11 December 2003), it would make full trading rights available to joint ventures with majority foreign ownership without any conditions. (See China's Working Party Report, para. 83.) In reviewing China's compliance efforts, the United States observed that China had continued to limit the availability of trading rights for foreign-invested enterprises by imposing conditions on the eligibility of those enterprises, including requirements related to minimum registered capital, import levels, export levels and prior experience. With regard to foreign-invested manufacturing enterprises, the United States referenced the treatment provided by China in the *Foreign Trade Law*, the January 2001 *Supplementary Provisions (II) to the Provisional Regulations Governing the Establishment of Investment-type Companies by Foreign Business Investment*, and the July 2001 *Circular Concerning the Extension of Import and Export Rights for Foreign-Funded Enterprises*. With regard to foreign-invested trading enterprises, the United States referenced the treatment provided by China in the January 2003 *Provisional Rules for the Establishment of Chinese-Foreign Equity Joint Venture Foreign Trade Companies*, which apparently had superseded two earlier measures, the September 1996 *Provisional Rules for the Establishment of Chinese-Foreign Equity Joint Venture Foreign Trade Companies on a Pilot Basis* and the August 1997 *Regulations on Policies for Pilot Chinese-Foreign Equity Joint Venture Foreign Trade Companies*.

- (a) Please explain whether any measures other than those referenced above govern the trading rights of foreign-invested enterprises.

- (b) Please explain how conditions relating to minimum registered capital, past import and export levels and prior experience in the measures referenced above are consistent with China's commitments to provide full rights to trade to foreign-invested enterprises.
- (c) We understand that China's Ministry of Commerce is in the process of drafting revisions to the *Foreign Trade Law* and/or its implementing regulations in order to implement China's commitment to make trading rights automatically available to all enterprises in China and foreign enterprises and individuals no later than 11 December 2004. Do the draft revisions exclude conditions relating to minimum registered capital, past import and export levels and prior experience?

Value-Added Tax Policies

2. During the transitional review before the Committee on Market Access, China attempted to justify its value-added tax (VAT) policies on integrated circuits by citing to Article III:8(b) of GATT 1994. Specifically, China argued that China's VAT rebates on integrated circuits were a kind of subsidy paid to domestic producers and therefore allowed by Article III:8(b). In the United States' view, several prior interpretations of Article III:8(b) contradict this argument, including, for example, the GATT panel report in *United States – Measures Affecting Alcoholic and Malt Beverages*, DS23/R (adopted 19 June 1992), and the WTO panel report in *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R (adopted 23 July 1998). Please explain how China supports its interpretation of Article III:8(b).

3. In response to questions about its VAT policies on copper scrap during the transitional review before the Committee on Market Access on 20 October 2003 and the transitional review before the Committee on Subsidies and Countervailing Measures on 28 October 2003, China explained that it rebated 30 percent of the VAT on imported copper. The United States seeks the following clarifications:

- (a) Please identify the measure that implements this policy.
- (b) Please explain how this VAT rebate program works in its entirety. What is the amount of VAT originally paid? Which entity pays this VAT? To which entity or entities is a VAT rebate paid? How much of a rebate do these entities receive? Is the rebate only available upon the exportation of finished or semi-finished products copper products? Is the VAT rebate applied only to imported scrap, or is it also applied to domestically sourced copper scrap? If the VAT rebate is applied to both, do the rebates differ depending on whether imported copper scrap or domestically sourced copper scrap is involved?
- (c) Does China maintain any similar VAT rebate programs on imported products other than copper scrap? If so, please identify the relevant measures.
- (d) Does China maintain any other preferential policies benefiting copper scrap, copper or semi-fabricated products such as flat-rolled products, long products and pipe and tube, whether those policies involve the VAT, other taxes, duty drawback or tariffs? If so, please identify the relevant measures.
- (e) Are any of China's preferential policies benefiting copper scrap, copper or semi-fabricated products conditioned on domestic production or ownership, or on domestic or foreign content? Please explain.

Export Restrictions

4. The United States has previously inquired about China's export quota on fluorspar. China has not eliminated this export restriction since acceding to the WTO, despite the fact that WTO rules establish a general prohibition against export restrictions, with only limited exceptions. The United States understands China's position to be that the export quota on fluorspar, a raw material used in the production of hydrofluoric acid and fluorocarbons, falls under the exception regarding the conservation of exhaustible natural resources, set forth in Article XX of the General Agreement on Tariffs and Trade 1994 (GATT 1994). However, that exception only allows measures such as export quotas if they were made effective in conjunction with restrictions on domestic production or consumption, and provided that they are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade. China has asserted that it maintains the necessary domestic restrictions by imposing a 15 percent resource tax and certain compensatory charges. But, these measures are applied to all fluorspar, whether sold domestically or exported, and, based on the U.S. understanding, therefore do not act as comparable restrictions on domestic consumption or production. Does China have any other WTO justification for the export quota on fluorspar? If not, please explain when it will eliminate this quota.

5. China also continues to require fluorspar exporters to pay export license fees, which reportedly range from 85 percent to more than 150 per cent of the cost of fluorspar. However, GATT Article VIII provides that fees and charges imposed in connection with importation or exportation (other than import or export duties and taxes within the purview of GATT Article III) must be limited to the cost of services rendered and not represent an indirect protection to domestic products or a taxation of exports for fiscal purposes. China's export license fee does not appear to fit within this standard, as it is assessed on a per unit basis and more than doubles the cost of fluorspar. Please explain how China justifies the export license fee on fluorspar under WTO rules. If China cannot, please explain when it will eliminate or modify this fee.

Border Trade

6. In June 2003, China reportedly took boric acid and approximately 20 other products off the list of imports from border areas that can benefit from preferential treatment in the form of reduced import duties and/or VAT. Please provide a list of these products, and identify the measure(s) that put an end to their preferential treatment.

7. It is our understanding that China nevertheless continues to provide preferential treatment to imports of other products from border areas.

- (a) Please provide a list of the products that continue to receive preferential border area treatment. For each listed product, please explain whether it benefits from reduced import duties, reduced VAT or both.
- (b) Please describe China's plans for eliminating the preferential treatment for these products. If China does not intend to eliminate this preferential treatment immediately, please explain how this preferential treatment is consistent with China's WTO commitments, as set forth in Article I of GATT 1994 (most-favoured nation treatment), Part XIV of Annex 5A to China's Protocol of Accession (where China stated that it would eliminate preferential import duties for border trade) and Section 2(A) of China's Protocol of Accession (uniform administration of trade regime).

Transparency

8. According to statements made by Chinese Government officials and reports from other sources, China is in the process of drafting several trade-related laws, regulations and other measures that will likely have a major impact on the operations of foreign companies doing business in China, including amendments to the foreign trade law, amendments to the commercial banking law, regulations on rules of origin for imports and exports, import and export tariff regulations, construction engineering design regulations and intellectual property rights customs protection regulations. The reports also suggest that China will be finalizing these draft measures by the end of 2003. We understand, however, that, to date, none of these draft measures has been circulated for public comment. When will China circulate these draft measures for public comment?

Government Procurement

9. In June 2002, China adopted its *Government Procurement Law*, which became effective on 1 January 2003. China then began the process of drafting regulations implementing this law. In December 2002, the Ministry of Finance (MOF) circulated a draft of the *Measures on the Administration of Bidding of Government-Procured Goods and Services* for public comment, although it has not yet issued them in final form. MOF is also reportedly in the process of drafting several sets of implementing rules, including measures relating to the administration of government software procurement, the administration of bidding for goods and services in government procurement, the administration of government procurement information, the examination of centralized government procurement institutions, the administration of complaints by suppliers and the administration of government procurement experts. MOF has also indicated that it is planning to set up a working group to study China's accession to the WTO's Government Procurement Agreement (GPA).

- (a) What is MOF's timetable for issuing the *Measures on the Administration of Bidding of Government-Procured Goods and Services* in final form?
- (b) When will MOF circulate for public comment the various sets of implementing rules currently being drafted? What is MOF's timetable for issuing these rules in final form?
- (c) What is MOF's timetable for the establishment of the GPA working group? When is the working group's work expected to be finished?

Customs Valuation

10. In connection with the transitional review before the Committee on Customs Valuation on 6 October 2003, the United States submitted a series of questions for China related to its implementation of the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (G/VAL/W/127). At that meeting, China indicated that it would respond more fully to those questions in the future. When can the United States expect China's responses?
