

# WORLD TRADE ORGANIZATION

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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<sup>1</sup>

### Communication from Japan

The following communication, dated 1 November 2004, is being circulated at the request of the Delegation of Japan.

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### Japan's comments to the Council for Trade in Goods

#### 1. Export restriction (coke)

China has been, for certain reasons, restricting coke exports through export licensing measures. However, because of the insufficient supply of export licences at the beginning of this year, the export price for Chinese coke soared and the negative impact on the market still remains. Since China's restriction has had an adverse impact on the coke-consuming industries, such as the steel and foundry industries, Japan is deeply concerned about China's export licensing issuance plan for 2005 which has, so far, not been announced yet. Since China's export licensing measure does not appear to be made effective in conjunction with restrictions on domestic production or consumption, Japan is concerned that the restriction may not be justified under GATT Article XX(g) regarding the conservation of exhaustible natural resources, and thereby in violation of the GATT Article XI. Moreover, Japan recognizes the fact that China has limited the allocation of export licences to certain enterprises. The short supply of export licences has also resulted in the unusually high fees paid as premium by traders wishing to export coke, which, in our view, could eventually constitute a violation of the GATT Article VIII:1(a) which states that rendered export fees and charges must be limited in amount to the approximate cost of services.

In this context, Japan urges China to:

- (a) provide China's view on the WTO consistency of export restrictive measures, which appears not to have been made effective in conjunction with restrictions on domestic production or consumption;
- (b) notify the quantity of coke produced and consumed in China in 2001, 2002, 2003 and 2004 (up to the latest available month) and to explain what kind of restrictions on domestic production and consumption, if any, have been taken and how they have worked during this period;

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<sup>1</sup> WT/L/432.

- (c) explain the rationale for limiting the allocation of export licences to a certain number of trading enterprises and for the way the Chinese Government ensures that the fee and charges paid by these export licence holders are limited to the approximate cost of services rendered, and;
- (d) specify when and how China will issue export licences for 2005 and what will be the total amount of coke authorized by the export licences.

## **2. Export restriction (fluorite)**

In the TRM of the Council of Trade in Goods held last year, China explained, "the measure for protection of natural resources is maintained about fluorite". The GATT Article XX(g) sets forth a general exception insofar as the measures are made effective in conjunction with domestic production or consumption. China's domestic consumption of fluorite seems to be increasing, in light of the information that the production of hydro fluorite, which is made from fluorite, has been increasing in China.

It so appears as if the decrease in the licensed export of fluorite is intended to compensate for the increase in the domestic demand of it.

Japan urges China to account for the WTO-consistency of such measures, especially with regard to the GATT Articles XI and XX.

Japan also urges China to provide detailed information on the regulation which China has imposed on the fluorite users in China, if China is to regard the regulation consistent with the GATT Article XX.

## **3. Government procurement**

At the Working Party for WTO accession, China committed itself to initiating negotiations for its membership to the Government Procurement Agreement (GPA) (see, Report of the Working Party, para. 339). China also agreed to table an Appendix 1 offer as soon as possible (see, also, Report of the Working Party, para. 341) and, until such a time, and to require all government entities to conduct their procurement in a transparent manner and to provide all foreign suppliers with an equal opportunity to participate in the procurement pursuant to the principle of MFN.

Japan urges China to:

- (a) outline the schedule for China's requests for GPA membership, including the commencement of the negotiation process, and;
- (b) confirm that all government procurement procedures are conducted in a transparent manner and that the MFN principle is applied to all foreign suppliers in practice, notwithstanding the fact that Article 10 of China's Law on Government Procurement (enacted 29 June 2002, enforced 1 January 2003) only stipulates that the Government must procure national goods and services.

## **4. Authorizing system of complete automobile feature**

Japan thanks China for the responses provided so far at the last MA committee. However, Japan believes that some of our questions have unfortunately not been responded to yet. Using this valuable opportunity, Japan wishes to ask China for an elaboration on some of these questions, as a part of the transitional review mechanism.

- (a) At the last MA committee, regarding the customs classification of CKD and SKD kits in connection with the Article 55-57 of the auto industry development policy, China responded that the current practice has not changed.
  - (b) We would like to know what is meant by "the current practice". In other words, we would like to know whether it means China has already created tariff lines for CKD and SKD kits for motor vehicles.
  - (c) If China's answer is "yes" (China already has those tariff lines), it raises the question as to whether China's current practice is consistent with this commitment as stipulated in paragraph 93 of the Working Party Report on China's Accession. China committed that with regard to the CKD and SKD kits, "the tariff rates would be no more than 10 per cent." Japan welcomes China's explanation of this.
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