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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 CHINA¹

Communication from the European Communities

The following communication, dated 22 November 2004, is being circulated at the request of the delegation of the European Communities.

The EC welcomes progress made by China in the implementation of many of its commitments under its Accession Protocol. It has noted a positive trend in informing foreign parties and the industry ahead of introducing legislation and encourages China to continue this practice. It also notes with satisfaction the setting up of bilateral dialogues on various topics that allow for increased sharing of views and experience early in the process of reform and legislative drafting, and should help avoid the creation of obstacles to trade.

At the same time, the EC attaches a great importance to the TRM exercise, and considers that it is of utmost importance to ensure a proper and meaningful functioning of this mechanism. The objective of the EC was to have in each subsidiary body under the Council for Trade in Goods a meaningful discussion and detailed replies from the Chinese side to this limited number of questions.

To ensure an efficient functioning of the mechanism, the EC has transmitted the questions well in advance of each meeting (typically six weeks), focusing on a limited number of issues that have already been discussed a number of times in the WTO committees or in bilateral meetings and as a result well-known to the Chinese side.

However, the EC regrets to note that the assessment this year's TRM exercise in the subsidiary bodies under the Council for Trade in Goods is rather disappointing. The EC impression is that China provided replies of a very general nature that lacked specificity in order usefully address a number of questions raised notably in the Import Licensing, Market Access, TBT and SPS committees. The EC regrets that China provided written replies only in very few instances. Regrettably, experience of previous exercises shows that follow up replies rarely come.

In this meeting, the EC would like to concentrate only on those issues that are of extreme concern to us, notwithstanding the fact that for all items pending we would seek answers from China. The issues of extreme concern and for which the answers provided by the Chinese side were not sufficient can be listed as follows:

¹ WT/L/432.

1. Export restrictions on Raw materials

The EC attaches particular importance to two products, namely coke and rare earths.

In the context of its accession to the WTO, China committed itself to eliminate, upon accession, export restrictions unless they could be justified under WTO rules (§ 165 of the Working Party Report). In the Protocol of accession (Part I-Sections 8 (b) and 18 and Part IV-Section 5 of Annex 1A related to "export restrictions"), China undertook to notify any possible export restrictions to the WTO.

Since the TRM exercise of 2002 the EC has requested justification for such measures from the Chinese authorities. To the EC's knowledge, the only document transmitted so far by China to the WTO on this issue is the list of products subject to export restrictions notified to the WTO Committee on Market Access on 18 September 2002 and 17 October 2003. The Chinese authorities indicated in a letter of 17 October 2003 that they were "still verifying the WTO justification which will be provided to the Secretariat later". To the knowledge of the EC, this justification has never been transmitted to the WTO.

The reply provided by China to the Committee on Market Access concerns only coke and has not addressed the other product of EC concern, namely rare earths. In its reply, China appears to believe that the export quota on coke falls under the exception regarding the exhaustion of natural resources, set forth in Article XX of GATT 1994. However, article XX only allows measures that were made effective in conjunction with restrictions on domestic production or consumption.

- (i) The EC would like to urge China to notify in line with Part I-Section 8 (b) of the Protocol of accession the quantities associated with the export restrictions imposed on the products listed in the Chinese document of 17 October 2003 (and on any other product that may not be included in this list);
- (ii) The EC would be grateful if China could identify all such restrictions imposed on domestic coke and rare earth production and consumption to date;
- (iii) Does China have any plan to impose any new domestic restrictions?
- (iv) Does China have any timetable for eliminating the export quota system on coke and rare earths?

2. Automobiles

The EC has taken note of the publication of the New Automobile Policy (hereafter "NAP") on 1 June 2004. Given the framework nature of this new policy and the opaque manner in which it was developed, the EC has indicated in the Market access committee that it would appreciate if China, in line with the transparency requirements under WTO, could notify any definitive text of the soon to be published implementation regulations that will supplement the new policy sufficiently in advance so as to allow all WTO Members to comment on it.

In addition to questions on the distribution and JV requirements aspects of the NAP, the EC has raised the questions in the Committee on Market Access on the customs classification of automobile spare parts. In its reply, China has merely indicated that the classification mechanism has not changed.

In this context, the EC would be grateful if China could:

- indicate the precise point in time when the identification of complete vehicles and assemblies occurs after importation;
- explain the meaning of the reference to a "regulated amount" in respect of classification of assemblies and complete vehicles, and its consistency with WTO rules;
- explain how it intends to implement the provisions of the NAP relating to customs classifications in a way which will comply with classification principles enshrined in the Harmonized System Convention under the World Customs Organization.

3. Subsidies Notifications

With the accession to the WTO China has also subscribed to the obligations of Article XVI:1 of GATT 1994 and Article 25 ASCM to provide a New and Full Subsidy Notification. Since China's accession to the WTO no Subsidy Notification has been made. The last notification covering the financial years 2001 and 2002 was due on 30 June 2003. The EC would like to express its disappointment that China has so far not fulfilled this obligation resulting from her accession to the WTO and thus does not contribute to this important exercise of transparency. In its reply to the Subsidies Committee, China has only referred to notification submitted at time of Accession.

Can China please finally indicate when the notification can be expected?

In last year's Subsidies Committee of October the EC have asked China (G/SCM/Q2/CHN/5) to provide information according to the WTO subsidy notification format on a VAT reimbursement scheme for the import of copper raw material (copper scrap and copper concentrate). Considering the distortions which this scheme causes on international raw material markets, the EC have reiterated its request for information several times at various levels. Only insufficient replies have been received.

Can China please explain this lack of reaction, indicate when this information can be expected and what are the intentions in regard to this scheme?

4. SPS measures

China has taken on a number of occasions the official position that as a "non-member of OIE", it is not involved in the creation of OIE standards, and therefore needs time to analyse whether these standards are appropriate for China and is therefore not forced to respect and to follow such international standards. This position is not consistent with the obligations under Article 3.2 and Article 5 of the Agreement for WTO Members to use relevant international standards as a basis for their sanitary and phytosanitary measures.

In that respect, the European Communities would like to recall that China has committed in Paragraph 2 of the EU-China record of understanding on SPS measures that "China shall recognise the OIE, the Codex Alimentarius and the IPPC as the reference organizations in the relevant fields, as provided for by the SPS Agreement" and this regardless of China's participation or not to the works of the OIE.

The European Communities would also like to point out that China participates to some extent in OIE and has already in the past made notifications to the OIE of certain animal diseases, in particular in the case of Avian Influenza.

In that context, the EC would like to emphasise that the sanitary and phytosanitary measures not in accordance with international standards, guidelines and recommendations issued by the WHO,

the IPPC and the OIE, and which may have a significant impact on trade, shall be justified on the basis of a risk assessment.

The SPS Agreement is based on the respect of international standards except where a scientific evidence justifies a different approach. The systematic failure of any Member Country to respect these standards simply because they do not attend the meetings of the relevant organisation is not compatible with the obligations of WTO Membership. The EC note that even though positive steps have been made in order to follow international standards, the administrative procedure in place does not allow a chance to implement these rules within a reasonable period of time.

With this regard:

- Can China please clarify how on the one hand it claims to comply with Articles 3.2 and Article 5 of the SPS Agreement by respecting the relevant international standard but on the other hand adopts a position as a "non-member of the OIE" whereby it has to assess these on a case by case basis?
- Has China based the sanitary and phytosanitary measures on risk assessment when these measures do not conform to international standard guidelines or recommendations?

The European Communities would like to emphasise the important detrimental effect to trade in relation to the above, firstly in relation to BSE, but also with regard to the excessive delays applied by China to recognise disease free status of European Member States, sometimes several years after the recognition by the OIE and other WTO Members.

5. Government Procurement

The EC would like to raise the question of China's accession to the Government Procurement Agreement (GPA).

In the Working Party for WTO accession China stated that would initiate negotiations for membership in the GPA as soon as possible.

Now that three years have elapsed since China's accession to the WTO, the EC would be grateful if China could indicate when it intends to start negotiation in order to join the GPA.

We understand that a working group on the possibility of initiating GPA negotiations has recently completed a study on the subject. The EC would be grateful to have information on the recommendations provided by the Working Group. Has China set a timetable for joining the GPA?

The EC would also like to stress that, until its accession to the GPA, China should, in line with its commitments ensure that all government entities conduct their procurement in a transparent manner and that all foreign suppliers are provided with equal opportunity to participate in that procurement pursuant to the MFN principle.
