

CHINA TRANSITIONAL REVIEW MECHANISM¹

Questions from the EUROPEAN COMMUNITIES to CHINA²

The following communication, dated 16 September 2004, is being circulated at the request of the Permanent Delegation of the European Communities.

The European Communities is transmitting comments and questions well in advance of the meeting of the Import Licensing Committee of 30 September 2004, in order for the Chinese authorities to reply and to complete any information that may be incomplete.

Once the information to be provided by China in accordance with paragraph 8, and paragraph IV.2(d) of Annex 1A of its accession protocol has been received, the EC might come back with additional questions.

The EC's comments and questions relate to the following priority item: trading rights under the new Foreign Trade Law.

Revised Foreign Trade Law

The EC noted the adoption on 6 April 2004 of the Revised Foreign Trade Law (hereafter "Revised FTL") and its entry into force on 1 July 2004. It also noted the fact that the final version of the Revised FTL takes into account some of the comments provided by the EC on the draft text. However, the Revised FTL still raises a number of concerns and requires some clarification.

- As a general rule, the EC would like China to confirm that all FTL provisions will be implemented in a way which is compliant with all WTO commitments undertaken by China.

More specifically, the EC would like to stress two issues, namely the granting of trading rights and the possible restrictions on imports and exports:

(i) **Trading rights** (article 9 of the Revised FTL)

The EC understands that the precise procedure for the granting of trading rights will be set out in an implementing regulation. The EC would like to stress that, in line with the commitments taken by China in the context of its accession to the WTO, this procedure should be simple, subject to clear criteria and conducted without delay.

¹ Pursuant to Paragraph 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432).

² See Understanding on Procedures for the Review of Notifications (G/LIC/4).

Moreover, article 9 of the Revised FTL stipulates that registration will not be required "where laws, administrative regulations and provisions by the department in charge of foreign trade under the State Council provide otherwise". The EC is concerned that such a provision might be implemented in a way which could lead to discrimination between operators.

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

- explain when and in which form the detailed provisions for the granting of trading rights will be made public;
- provide an indication of the content of these provisions;
- explain precisely the cases where registration will not be required and confirm that this will not lead to any form of discrimination.

(ii) Restrictions on imports and exports

The Revised FTL contains a number of provisions dealing with restrictions on imports and exports (notably in articles 16 to 20). Since these restrictions are clearly disciplined under several WTO rules, and since the language used in the Revised FTL differs from such disciplines, the EC is concerned about the consistency with WTO rules of possible restrictions introduced by China under the Revised FTL.

- In this context, the EC would be grateful if China could confirm that all possible restrictions it might take under the Revised FTL will be in strict conformity with WTO rules.

The Revised Foreign Trade Law also raises a number of very serious concerns with regards to the services sectors. These will be raised by the EC in its submission to the Council for Trade in Services in the context of the TRM exercise.
