

CHINA'S TRANSITIONAL REVIEW MECHANISM

Communication from the European Communities

The following communication, dated 5 August 2004, is being circulated at the request of the Delegation of the European Commission.

1. The EC is transmitting comments and questions well in advance of the meeting of the Market Access Committee of 20 September 2004, in order for the Chinese authorities to reply to and complete any outstanding information.

2. Once the information to be provided by China in accordance with paragraph 8 and paragraph IV.3 (a) of Annex 1A of its Protocol of accession has been received, the EC might come back with additional questions.

3. The EC's comments and questions relate to the following priority items: the Revised Foreign Trade Law, Chinese exports restrictions on raw materials, and the New Automobile Policy.

Revised Foreign Trade Law

4. 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 welcomed the fact that the final version of the Revised FTL takes into account some of the comments provided on the draft text by the EC and other WTO members. 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.

5. 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)

6. 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.

7. 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.

8. 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

9. 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 consistence 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.

10. 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 Services in the context of the TRM exercise.

Chinese exports restrictions on raw materials

11. 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.

12. Since the TRM exercise of 2002 the EC has requested justification for such measures from the Chinese authorities. To the knowledge of the EC, 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.

13. The EC is deeply concerned that a number of the export restrictions maintained by China cannot be justified under WTO rules and urges China to bring its export regime into conformity with WTO rules and the commitments taken in the context of its accession to the WTO as soon as possible. The EC attaches particular importance to two products, namely coke and rare earths.

14. In this context, 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);
- to transmit to the WTO the justification for these export restrictions;
- when no such justification exists, to explain when and how it intends to bring its export regime in line with WTO rules, in particular with regards to coke and rare earths.

Automobile

15. 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 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.

16. As a general rule, the Commission is quite concerned by the multiple forms of governmental interventions characterising nearly every area of the automobile sector. The wide scope for state intervention implied in the policy and the uncertainty regarding implementation regulations are cause for grave concerns to the EC. More specifically, the EC would like to get clarification already now on the three following issues:

i) Distribution (paragraph 34 of the NAP)

17. The conditions imposed on distributors remain unclear. The EC would therefore be grateful if China could confirm that it will be possible to distribute through the same network:

- imported and locally produced cars;
- cars produced by different joint-ventures;
- cars of different ‘brands’, regardless of the definition the Chinese authorities are attaching to this word as contained in the NAP.

ii) Customs classification (Chapter XI of the NAP)

18. New localisation rules reclassify spare parts/kits for tariff purposes. The EC is very much concerned by the interpretation that the Chinese authorities are applying to define a “complete vehicle”, especially in view of the specific commitments for vehicle parts China has entered into through its Protocol of accession. The EC is also very much concerned at the type of procedures Chinese authorities apply for the identification of “complete vehicles” or “auto assemblies” and by references to an unspecified “regulated amount” in connection with such identification procedures.

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

- explain how it intends to implement the provisions of the NAP relating to customs classifications in a way which will comply with WTO accession commitments undertaken by China in respect of tariff reduction for vehicle “parts”;
- 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.

iii) Joint venture ownership limitation (Chapter X of the NAP)

20. The EC understands that under the new Chinese Automobile Policy maximum foreign participation in joint ventures remains capped at 50% and that under the new Chinese Automobile Policy the maximum number of joint ventures per investor is capped at two. The EC further understands that for operations in the export processing zones none of the above restrictions apply.

21. Paragraph 3 of the Protocol of accession stipulates that: “(...) *China shall ensure that (...) the right of investment (...) is not conditioned on: (...) export performance (...)*”.

22. In the light of the above understanding of the relevant features of the new Chinese Automobile Policy and the Chinese undertaking contained in the Protocol of accession, the state of affairs may be summarised as follows: fully foreign-owned production is only allowed in export processing zones and approval of such investments will only be granted for investment in such zones. In other words, in order to obtain approval of investment beyond 50% foreign ownership, foreign producers will have to locate their production in an export processing zone. The approval or actual right could, therefore, be conditional upon acceptance and fulfilment of an export performance requirement.

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

- confirm the relevant features of its new Automobile Policy and provide additional details about features relevant for the approval of investments in the export processing zones and for the operation of businesses established in those zones, including the extent to which export (and the volume of such exports) is actually required and/or necessary for enterprises located in those zones with the consequence that such export performance becomes a condition for approval of foreign majority-owned investment and/or the unlimited number of joint ventures.
 - clarify which government ministry or agency is responsible for export processing zones and which regulation foresees the abolition of otherwise applicable joint venture restrictions provided the investment is located in an export processing zone.
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