

# WORLD TRADE ORGANIZATION

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Committee on Market Access

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## CHINA'S TRANSITIONAL REVIEW MECHANISM

### Communication from the United States

The following communication, dated 30 August 2004, is being circulated at the request of the Delegation of the United States.

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### Questions From the UNITED STATES to CHINA concerning Market Access

#### **Export Restrictions**

1. The United States is concerned about China's export restrictions on coke, a key steel input. China is the world's largest producer of coke, with total production of 177.7 million MT in 2003. In 2004, China initially imposed an export quota of 8.3 million MT, down from the 2003 level of 14.3 million MT. In the first six months of 2004, China's export quota, combined with the illegal selling of export quota certificates by provincial Ministry of Commerce (MOFCOM) authorities and State trading enterprises affiliated with MOFCOM, caused the export price for Chinese coke to rise above \$500 per MT, more than three times the price in 2003. This price rise had a similar effect on world coke prices, while Chinese domestic prices ranged between \$150 and \$200 per MT. Following repeated complaints from various WTO members, China raised the 2004 quota to 12.3 million MT in late July.

- a. 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 coke 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 that 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. Please identify the relevant domestic restrictions imposed by China. In addition, please explain how China's export restrictions on coke satisfy the Article XX exception. The United States notes that, in 2003, China's policies resulted in China reserving approximately 163 million MT for the domestic market, while only allowing less than 15 million MT to be exported.
- b. In late May of 2004, China and the European Union (EU) announced a bilateral agreement guaranteeing 4.5 million MT of the 2004 coke quota for EU purchasers. Following that agreement, China entered into discussions with the United States and other WTO Members with a view toward establishing country-specific quota allocations for 2004. In late July of 2004, however, China indicated that it would not

be using country-specific quota allocations and instead simply raised the 2004 quota from 8.3 million MT to 12.3 million MT. Please explain the current status of the China-EU bilateral agreement.

- c. According to Chinese coke industry sources earlier this year, several new coke production facilities were under construction in China that would result in substantially increased production capacity, and China's coke production was forecast to continue to grow through at least 2006, even with planned elimination of polluting bee-hive oven production. In contrast, according to an August 16, 2004 news report citing MOFCOM sources, China will be cutting its coke production by 20 percent in 2005. Please clarify this situation.
- d. The United States appreciates the efforts undertaken by MOFCOM to stamp out the practice of selling export quota certificates. MOFCOM has indicated that this practice is illegal under Chinese law, and the United States notes that Article VIII of GATT 1994 provides that fees and charges (other than import and export duties) must be limited to the approximate cost of services rendered and not represent an indirect protection to domestic products or a taxation of exports for fiscal purposes. On July 23, 2004, MOFCOM issued an urgent notice reiterating that the selling of export licenses was illegal, calling for investigations into this practice and demanding reports by August 15. Please explain the results of these investigations.

2. The United States has previously raised its concerns, both bilaterally and before the Council for Trade in Goods and the Committee on Market Access, about China's export quotas and license fees on other raw materials, such as fluorspar. What are China's plans for bringing these measures into compliance with WTO rules?

### **New Automobile Industrial Policy**

3. In paragraph 204 of the Working Party Report, China committed to amend its 1994 Industrial Policy for the Automotive Sector upon accession to make it compatible with WTO rules and principles. On June 1, 2004, China published its new policy, entitled "Development Policy of the Automobile Industry."

- a. With regard to Article 34 of the new policy, please clarify what restrictions, if any, apply to the distribution of automobiles in China. In particular, please clarify whether an enterprise may distribute, through the same network, (1) automobiles produced by different joint ventures, (2) imported and domestically produced automobiles and (3) different brands.
- b. With regard to Article 55-57 of the new policy, and in light of China's commitment in paragraph 93 of the Working Party Report accompanying China's Protocol of Accession, please clarify how China defines completely knocked-down kits for motor vehicles and semi-knocked down kits for motor vehicles and identify the tariff rates that are applicable to them.

### **Tariff-Rate Quotas on Fertilizers**

4. In the Goods Schedule accompanying its Protocol of Accession, China committed to allocate specified portions of the fertilizer tariff-rate quota (TRQ) for importation through entities other than state trading enterprises. For 2004, please provide information on the total quantity of each fertilizer

TRQ (i.e., diammonium phosphate (DAP), urea and NPK) that was allocated for importation through state trading enterprises, and the total quantity of each fertilizer TRQ allocated for importation through entities other than state trading enterprises.

5. In the TRQ headnotes on fertilizer and wool tops (found in Part III, Section A, of China's Goods Schedule), paragraph 6B, China committed that applications for reallocation of uncontracted-for TRQ quantities shall be accepted from 1-15 September, that specific conditions for applying for reallocated TRQ quantities will be published in the official journal one month in advance of the application period, and that new allocations will be assigned by 1 October. Please describe in detail (a) how China implemented its commitments regarding reallocation of the 2003 TRQ quantities and (b) how China is implementing its commitments regarding reallocation of the 2004 TRQ quantities.

#### **Value-Added Tax Applied to Diammonium Phosphate**

6. The United States continues to have national treatment concerns regarding the Circular about VAT Exemption Policy for Certain Farming Materials (No. 113/2001), jointly issued by the Ministry of Finance and the State Administration of Taxation on July 20, 2001, which exempts all phosphate fertilizers except DAP from China's value-added tax. DAP, which is produced in the United States, competes with similar phosphate fertilizers produced in China, such as monoammonium phosphate (MAP). This measure discourages use of DAP, for which China committed to permit access under its TRQ commitments, in favor of products that are not imported. The United States has raised this issue with China on several occasions, both at the WTO and bilaterally.

- a. Please provide data showing China's annual consumption of DAP since 2001, including the amounts sourced domestically versus imports.
- b. Please provide data showing China's annual consumption of MAP since 2001, including the amounts sourced domestically versus imports.
- c. Does China have any plans for revising Circular 113/2001 to eliminate the discriminatory treatment of DAP?

#### **Scrap Recycling Regulations**

7. Near the end of 2003, China's General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) issued Notice No. 115-2003, which announced the creation of a new requirement that exporters of recycled scrap to China must register with AQSIQ. Although this notice established a deadline of July 1, 2004, it was not until May 8, 2004, that AQSIQ issued Notice No. 48-2004, which establishes the procedures and substantive requirements that recycled scrap exporters must satisfy to register with AQSIQ. AQSIQ subsequently showed flexibility by agreeing to extend the deadline for filing an application to August 1, 2004. At the same time, however, it is the United States' understanding that exporters that missed the August 1, 2004 application deadline are precluded from applying for registration until some indefinite time in the future. Is the United States' understanding correct that AQSIQ will refuse to accept applications filed after August 1, whether from existing shippers or new shippers? If so, please explain AQSIQ's reasoning for precluding these exporters from applying for registration. While the United States believes that AQSIQ may have a legitimate basis for insisting that these exporters complete the registration process and obtain a registration number before exporting to China, it does not understand what legitimate basis there would be for barring their registration by not allowing them to apply.

### **Foreign Trade Law**

8. Article 16 of the *Foreign Trade Law* appears to grant broad authority to impose restrictions on the import and export of goods in a variety of situations, but the ability of a WTO member to impose many of these restrictions is disciplined by WTO rules, particularly Articles XI, XII and XX of GATT 1994, and by the terms of China's accession agreement. Can China confirm that it will only apply the restrictions set forth in Article 16 of the *Foreign Trade Law* to the extent consistent with its WTO obligations?

9. China, as a WTO member, has undertaken various transparency obligations under the WTO Agreement and China's WTO accession agreement. China has also specifically agreed to provide for fair and transparent judicial review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of GATT 1994, Article VI of the General Agreement on Trade in Services and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights. Can China confirm that all of the various administrative investigations and determinations authorized in the *Foreign Trade Law* are subject to judicial review?

### **Trading Rights**

10. Please provide data showing the number of enterprises and individuals that have registered for trading rights, i.e., the right to import and the right to export, since July 1, 2004 pursuant to the *Measures on the Record Registration of Foreign Trade Operators*, issued by MOFCOM on June 25, 2004. Have any enterprises or individuals been refused registration? If so, please explain.

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