

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO PARAGRAPH 18
OF THE PROTOCOL ON THE ACCESSION OF THE
PEOPLE'S REPUBLIC OF CHINA ("CHINA")**

Questions From the UNITED STATES to CHINA

The following communication, dated 11 October 2005, has been received from the delegation of the United States.

The United States wishes to pose the following questions to China in connection with the 10 November 2005 meeting of the Council for Trade in Goods for the purposes of the transitional review mandated by China's Protocol of Accession. Several of these questions relate to matters that were raised by the United States and other Members during the transitional reviews held before the committees that report to the Council for Trade in Goods, but China deferred responding to them until the transitional review before the Council for Trade in Goods. The United States notes that it may submit additional questions, depending on the outcomes of other upcoming transitional reviews before committees that report to the Council for Trade in Goods.

A. EXPORT RESTRICTIONS

1. The United States and other Members raised continuing concerns regarding China's export quota on coke, a key steel input, as well as other goods during the transitional review held by the Committee on Market Access on 3 October 2005. China responded by stating that it would address these matters during the transitional review before the Council for Trade in Goods.

2. As the United States explained in its submission before the Committee on Market Access, China is the world's largest producer of coke, with total production exceeding 208 million MT in 2004, a 14 per cent increase over 2003. For 2005, China announced an export quota of 14.3 million MT, similar to the level to which China eventually raised the quota in 2004. China's export quota on coke, combined with the illegal sale of export quota certificates, causes the export price for Chinese coke to remain artificially high. Although the Ministry of Commerce (MOFCOM) has taken steps to stamp out the practice of selling export quota certificates, a significant portion of the export price remains attributable to these fees. Despite the fact that WTO rules establish a general prohibition against export restrictions, with only limited exceptions, China has not yet issued a measure formally eliminating its coke export quota system, although an official from the National Development and Reform Commission (NDRC) has stated publicly that it will be eliminated effective 1 January 2006. Can China confirm that it will eliminate its export quota system for coke effective 1 January 2006?

3. China also maintains 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?

B. BOOKS, NEWSPAPERS AND MAGAZINES

4. Within the context of China's WTO commitments, the concept of "trading rights" includes the right to import goods into China and the right to export goods from China, as explained in China's Protocol of Accession. The right to sell goods in China is principally governed by commitments relating to "distribution services" set forth in China's Services Schedule. In the business world, trading rights and distribution services are fundamentally inter-related, and often an enterprise will need both of them to carry out its business plan.

5. The United States submitted questions to China regarding trading rights for books, newspapers and magazines in connection with the transitional review before the Market Access Committee. The United States also submitted questions to China regarding distribution services for books, newspapers and magazines in connection with the transitional review before the Council for Trade in Services. At the Council for Trade in Services' transitional review, held on 23 September 2005, China stated that it preferred to respond to the distribution services questions during the Market Access Committee's transitional review, scheduled for 3 October 2005, so that it could respond to them at the same time that it responded to the United States' trading rights questions. However, at the Market Access Committee's transitional review, China stated that it viewed the transitional review before the Council for Trade in Goods as the appropriate venue for responding to these questions.

6. As the United States explained in its submissions to the Market Access Committee and the Council for Trade in Services, in its Protocol of Accession, China committed to eliminate its system of examination and approval of trading rights and make full trading rights automatically available for all Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals, including sole proprietorships, within three years of its accession, or by 11 December 2004, the same deadline for China to eliminate most restrictions in the area of distribution services. The only exceptions applied to products listed in Annexes 2A and 2B, such as grains, cotton and tobacco, for which China reserved the right to engage in state trading. In April 2004, the National People's Congress issued the revised *Foreign Trade Law*. Except with regard to products reserved for state trading, the new law provided for trading rights to be automatically available through a registration process for all domestic and foreign entities and individuals, effective 1 July 2004. These rights were also reflected in the *Measures on the Management of Foreign Investment in the Commercial Sector*, issued by MOFCOM in April 2004. Under this measure, licensed foreign service suppliers of wholesaling services, commission agents' services and retail services could also engage in importing and exporting.

7. The United States is concerned because, despite these measures, other measures issued by the Chinese government appear to provide different treatment for wholly foreign-owned enterprises seeking to engage in the importing and exporting of books, newspapers and magazines. The *Catalogue for the Guidance of Foreign Investment Industries*, issued by NDRC and MOFCOM in November 2004 and effective January 2005, several months after the effective date of the revised *Foreign Trade Law*, lists the "importing of books, newspapers and periodicals" under the category of "prohibited" foreign investment. Similarly, the *Administrative Regulations on Publishing*, issued by the State Council in December 2001, wholly reserves the importation of books, newspapers and periodicals for state trading enterprises.

- (a) Please clarify how the *Administrative Regulations on Publishing* and the *Catalogue for the Guidance of Foreign Investment Industries* are consistent with China's commitments to make trading rights automatically available for all Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals, including sole proprietorships, by 11 December 2004.

- (b) If the above-described measures do not fully implement China's trading rights commitments, please describe China's plans for bringing those measures into conformance with these commitments.

8. Meanwhile, in the Services Schedule accompanying its Protocol of Accession, China committed that, within three years after accession (or by 11 December 2004), it would permit foreign service suppliers to supply wholesaling services, commission agents' services and retail services through wholly foreign-owned enterprises without any market access or national treatment limitations, with the exceptions of chemical fertilizers, processed oil and crude oil, salt and tobacco (and except with regard to certain chain stores). In March 2003, the State Press and Publication Administration and the Ministry of Foreign Trade and Economic Cooperation issued the *Measures Governing Foreign-Funded Books, Newspapers and Magazines Distribution Enterprises*. This measure appeared to permit foreign-funded enterprises to engage in retailing of books, newspapers and magazines as of 1 May 2003 and wholesaling of books, newspapers and magazines as of 1 December 2004. In April 2004, MOFCOM issued the *Measures on the Management of Foreign Investment in the Commercial Sector*. This measure lifted market access and national treatment restrictions on wholly foreign-owned enterprises engaging in wholesaling services, commission agents' services and retail services and removed then-existing product exceptions for books, newspapers, magazines, pharmaceutical products, pesticides and mulching films (but not for chemical fertilizers, processed oil, crude oil, salt and tobacco) as of the scheduled phase-in date of 11 December, 2004.

9. The United States is concerned because, despite these two measures, other Chinese measures appear to provide different treatment for wholly foreign-owned enterprises seeking to engage in the provision of wholesaling services, commission agents' services and retail services for books, newspapers and magazines. The *Catalogue for the Guidance of Foreign Investment Industries* lists "wholesale or retail business of books, newspaper and periodicals" under the "restricted" category, which suggests that an investment requires special government approvals, although a footnote adds that "wholly foreign-owned enterprises will be permitted no later than 11 December 2004, and can engage in the distribution of books, newspapers, [and] magazines." In addition, in September 2004, two months after the effective date of the *Measures on the Management of Foreign Investment in the Commercial Sector*, the General Administration of Press and Publication adopted the *Administrative Measures on Subscription of Imported Publications*, which appear to restrict the distribution of imported publications by subscription to the state trading enterprises described in the *Administrative Regulations on Publishing*.

- (a) Please clarify how the Administrative Regulations on Publishing, the Administrative Measures on Subscription of Imported Publications and the Catalogue for the Guidance of Foreign Investment Industries are consistent with China's commitments to lift market access and national treatment restrictions on wholly foreign-owned enterprises seeking to engage in wholesaling services, commission agents' services and retail services for books, newspapers and magazines by 11 December 2004.
- (b) If the above-described measures do not fully implement these commitments, please describe China's plans for bringing those measures into conformance with these commitments.

C. BORDER TRADE

10. Previously, the United States has expressed concern about imports from border areas that continue to benefit from preferential treatment in the form of reduced import duties and/or value-added tax (VAT) pursuant to measures such as Bulletin No. 27 and Bulletin No. 39, issued by the General Administration of Customs on 1 May 2003 and 11 June 2003, respectively. In explaining its concerns, the United States has referenced China's WTO commitments, as set forth in Part XIV of Annex 5A to China's Protocol of Accession (where China stated that it would eliminate preferential import duties for border trade) and paragraph 2(A) of China's Protocol of Accession (where China extended its obligations under the WTO Agreement and the commitments that it made in its Protocol of Accession to border trade regions as part of its commitment to apply uniformly its trade regime). Has China eliminated preferential border area treatment for any products during the past year? Does China have any plans to review its preferential treatment of imports from border areas?

11. The United States understands that, outside of border areas, China applies a VAT of 13 per cent on logs and a VAT of 17 per cent on sawn wood. Does China still charge Chinese companies located along the Sino-Russian border a VAT of 6.5 per cent on logs and a VAT of 8.5 per cent on sawn wood?

D. GOVERNMENT PROCUREMENT

12. In paragraph 341 of the Working Party Report accompanying its Protocol of Accession, China committed to initiate negotiations for China's accession to the WTO's Government Procurement Agreement (GPA) "as soon as possible." Please describe all of the steps that China has taken to prepare for the initiation of GPA negotiations.

E. TRANSPARENCY

13. In Section 2(C) of its Protocol of Accession, China committed to provide a reasonable period for public comment on all new or modified trade-related laws, regulations and other measures before implementing them, except in certain specified instances. Please describe any progress that China has made during the past year in implementing this commitment.

14. In Section 2(C) of its Protocol of Accession, China also committed to establish or designate an official journal dedicated to the publication of all trade-related measures. However, the Chinese Government continues to utilize numerous journals and other publications to invite comments on the drafts of prospective trade-related laws, regulations and other measures and to announce the issuance of final ones. Please describe any progress that China has made during the past year to consolidate these publications into a single official journal in keeping with its commitment.
