

CHINA'S TRANSITIONAL REVIEW MECHANISM

Communication from the European Communities

The following communication, dated 2 August 2005, is being circulated at the request of the Delegation of the European Commission.

The EC is transmitting comments and questions well in advance of the meeting of the Market Access Committee of XX September 2005, in order for the Chinese authorities to reply to and complete any outstanding information.

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.

The EC's comments and questions relate to the following priority items: Chinese exports restrictions and the New Automobile Policy.

Chinese exports restrictions

The EC refers to its 2004 communication in which it had reminded China of its commitments

- to eliminate, upon accession, export restrictions unless they could be justified under WTO rules (§ 165 of the Working Party Report) and
- to notify any possible export restrictions to the WTO.

Justification requested for the existing export restrictions by the EC since the TRM exercise of 2002 has not been provided by the Chinese authorities nor was it transmitted to the WTO.

The EC thus remains concerned about the WTO compliance of a number of the export restrictions maintained by China. China is therefore urged to comply with its accession related commitments and to bring its export regime of raw materials into conformity with WTO rules.

The EC attaches particular importance to and refers to earlier bilateral exchanges on coke and rare earths. It urges 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) and
- to transmit to the WTO the justification for these export restrictions; or

- When no such justification exists, correctly notify to the WTO when and how it intends to bring its coke export regime in line with WTO rules and also to transmit all necessary information when this will be case for rare earths.

The EC is also concerned that a number of export restrictions maintained by China may affect the supply of raw hides and skins for European tanners.

In this context, the EC would like to urge China

- to clarify and notify the products subject to export restrictions and taxes;
- to transmit to the WTO the justification for these export restrictions.

Automobiles

The EC refers to its concerns regarding the New Automobile Policy (hereafter “NAP”) already voiced in last year’s transitional review, especially with a view to the wide scope of state intervention and the uncertainty about the implementing regulations that will supplement the new policy. Given the experience of how the NAP was developed, the EC wishes to stress the transparency obligations under WTO rules with regard to the outstanding implementation regulations of the NAP. Publishing drafts of these implementing regulations well in advance would allow other WTO Members to comment on them.

The EC would like to draw China’s special attention to the following issues

i) Administrative measures for the import of automobile components fulfilling the characteristics of a whole vehicle

These measures are

- likely to invalidate some of China’s WTO accession commitments (abolition of local content requirements and TRIMs, national treatment obligation);
- in violation of WCO classification criteria (as reclassification of car parts as whole vehicles leads to a payment of double import tax).

The measures will have a major negative economic and technical impact on the EC manufacturers and on the development of the Chinese automotive industry itself.

The EC therefore urges China to review its new legislation regarding WTO and WCO aspects and to be open for a constructive in depths discussion on this matter in order to develop solutions that are both, promoting China’s goals of further localization of parts production and facilitating business for EC automobile manufacturers.

ii) Joint venture ownership limitation

The NAP imposes restrictions on foreign investors, which have contributed substantially to the rapid development of China’s automotive sector. Foreign joint venture partners are still not allowed majority ownership in automobile production. Moreover, participation of foreign joint venture partners in automobile manufacturing projects is limited to two for the production of passenger cars and two for commercial vehicles (“2+2”). Due to the global nature of the automotive industry and the brand strategies of local companies locked in 50/50% ventures with foreign vehicle makers such restrictions are counterproductive to the NAP’s objective of promoting international competitiveness.

In this context the EC urges China

- to allow foreign majority investment and
- to eliminate the “2+2” regulation.

The EC likes to draw China’s attention to the fact that a review of the joint venture ownership regulation might well help to facilitate to solve the problem related to the localisation of parts production (see i).

iii) Type Approval/ Homologation Standards

Vehicles/components produced in China are type-approved according to the China Compulsory Certification (CCC) regulation. Since the CCC rules are not internationally recognized these vehicles are marketable on the domestic market only. Moreover, vehicles importers have to carry considerable – and sometimes prohibitive – costs as vehicles already type approved according to EU Directives that conform to the internationally recognized homologation standards of the 1958 UN/ECE Agreement have to be approved again according to the CCC rules. The CCC regulation thus effectively constitutes a non-tariff market access barrier.

Against this background the EC recommends China’s accession to the 1958 UN/ECE agreement as soon as possible.

Adhesion to the Agreement would allow China both to recognize and itself to deliver homologation results obtained in accordance with the testing methods it prescribes. That would facilitate the sales of China-made cars in other countries. In addition, China would be able to proactively participate in preparing internationally recognized homologation standards as they continue to evolve.

China Compulsory Certification (CCC) Regulation

The European Communities would also like to draw the attention of the Chinese authorities to the growing difficulties encountered by European exporters owing to the China Compulsory Certification (CCC) regulation. Several sectors are affected by provisions that appear to be trade restrictive and not proportional to the objectives stated by the Chinese legislation.

Trade and Distribution

The EC commends the efforts made by China to comply with its WTO commitments in the Trade and Distribution sectors.

In this area, the EC wishes to mention the following concerns:

- The lack of consistency in the approval procedures for the establishment of foreign invested commercial enterprises in all locations throughout China;
- Delays encountered by foreign invested manufacturing companies and wholly foreign owned companies in getting approval to carry out distribution activities;
- The high registered capital requirements for setting up foreign invested commercial enterprises;
- The prohibition to wholly foreign-owned trading companies located in free-trade zones to include distribution in their business scope.

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

- When it will set up a uniform system of approval of the establishment of Foreign Invested Commercial Enterprises in all locations throughout China;
 - Provide information on the average time for approval of an application for foreign invested manufacturing companies and wholly foreign owned companies to carry out distribution activities;
 - Confirm that the minimum registered capital required by authorities throughout China for a foreign invested commercial enterprise engaging is RMB 300 for retailing and RMB 500 for wholesaling.
 - Indicate whether and when it is considering allowing wholly foreign-owned trading companies located in free-trade zones to include distribution in their business scope.
 - Indicate when it will issue regulations on direct selling.
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