

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 2 September 2005, is being circulated at the request of the Delegation of the United States.

Questions from the UNITED STATES to CHINA concerning Market Access

Tariffs on Imported Auto Parts

1. On February 28, 2005, the National Development Reform Commission issued the *Measures on the Importation of Parts for Entire Automobiles*, which became effective on April 1, 2005. These rules require foreign firms to register the parts they use in the manufacture of new automobiles and establish a "National Verification Center" to determine whether the various imported parts are deemed to have formed the features of an entire automobile or an assembly system once the parts have been assembled within China. If an imported part is determined to constitute a "feature of an entire automobile," China's General Administration of Customs will apply the tariff rate assessed a complete automobile on each of the various imported parts rather than the tariff rate applicable to an individual part. China's bound and applied tariff rates for complete automobiles are significantly higher than the rates for imported auto parts, as set forth in the Goods Schedule accompanying China's Protocol of Accession. Consequently, application of the *Measures on Importation of Parts for Entire Automobiles* appears to result in the imposition of a tariff on auto parts in excess of the bound rate. Please explain how these rules are consistent with the commitments made by China in the Goods Schedule accompanying its Protocol of Accession and Article II of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

2. In paragraph 7 of its Protocol of Accession and paragraph 203 of the accompanying Working Party Report, China committed to eliminate all local content requirements relating to importation. Despite this commitment, Articles 21 and 22 of the *Measures on Importation of Parts for Entire Automobiles*, and their accompanying Appendices, specify key parts and assemblies that must be localized. Failure to localize these components results in the application of a discriminatory tariff. These rules therefore appear to improperly condition tariff treatment on the basis of domestic content. Please explain how these rules are consistent with the commitments made by China in its Protocol of Accession and Working Party Report and Article III of GATT 1994.

China's Automobile Policy

3. In its 5 August 2005 submission (G/MA/W/70), the European Communities (EC) raises a number of concerns regarding China's automobile policy. The United States would like to associate itself with the EC's comments and questions regarding China's automobile policy, including those on administrative measures for the import of automobile components fulfilling the characteristics of a whole vehicle and joint venture ownership limitations. With regard to the EC's comments on type approval/homologation standards, the United States has similar concerns for vehicles built to U.S. standards, and would encourage China's accession to the 1998 UN/ECE Agreement.

Trading Rights for Books, Newspapers and Magazines

4. Within the context of China's WTO commitments, the concept of "trading rights" includes two elements, i.e., 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 within China is governed by separate commitments principally relating to "distribution services" set forth in China's Services Schedule. In the business world, trading rights and distribution services are fundamentally interrelated, and often an enterprise will need both of them to carry out its business plan.

5. 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 December 11, 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.

6. 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 July 1, 2004.

7. In April 2004, the Ministry of Commerce ("MOFCOM") issued the *Measures on the Management of Foreign Investment in the Commercial Sector*. These regulations 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 December 11, 2004. These regulations also provided that licensed foreign service suppliers of wholesaling services, commission agents' services and retail services could also engage in importing and exporting.

8. The United States is concerned because, despite the revised *Foreign Trade Law* and the new distribution regulations, other Chinese measures appear to provide different treatment for wholly foreign-owned enterprises seeking to engage in importing and exporting and the provision of wholesaling services, commission agents' services and retail services with regard to books, newspapers and magazines. The *Catalogue for the Guidance of Foreign Investment Industries*, issued by the National Development and Reform Commission and MOFCOM in November 2004 and effective January 2005, several months after the effective date of the *Measures on the Management of Foreign Investment in the Commercial Sector*, 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 December 11, 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.

Export Restrictions

9. The United States remains concerned about China's export restrictions on coke, a key steel input. China is the world's largest producer of coke, with total production exceeding 208 million MT in 2004, a 14 percent 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 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 formally announced when it will eliminate its coke export quota system. When does China plan to eliminate its export quota system for coke?

10. 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?

Tariff Rate Quotas on Fertilizers

11. 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 2005, 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.

12. 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 2004 TRQ quantities and (b) how China is implementing its commitments regarding reallocation of the 2005 TRQ quantities.

Value-Added Tax Applied to Diammonium Phosphate

13. The United States continues to have 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 the TRQ commitments set forth in the Goods Schedule accompanying its Protocol of Accession, 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 through 2004, including the amounts sourced domestically versus imports.
 - (b) Please provide data showing China's annual consumption of MAP through 2004, 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?
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