

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 15 September 2006, is being circulated at the request of the Delegation of the United States.

Trading Rights

1. In its Protocol of Accession, China committed to eliminate its system of examination and approval of trading rights, i.e., the right to import goods (into China) and the right to export goods (from China), 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. In April 2004, the National People's Congress issued the revised *Foreign Trade Law*. Except with regard to products reserved for state trading, this law – consistent with China's WTO obligations – provided for trading rights to be automatically available through a registration process for all domestic and foreign entities and individuals, effective 1 July 2004. Despite the revised *Foreign Trade Law*, other Chinese measures reserve the right to import publications, including books, newspapers and magazines, audiovisual products and electronic publications, to certain state-owned enterprises. These measures include the *Administrative Regulations on Publishing*, issued by the State Council in December 2001, the *Catalogue for the Guidance of Foreign Investment Industries*, issued by the National Development and Reform Commission ("NDRC") and the Ministry of Commerce ("MOFCOM") in November 2004, the *Decisions of the State Council Regarding Entrance of Non-Public Capitals into Cultural Industries*, issued by the State Council in April 2005, the *Several Opinions on Canvassing Foreign Investment into the Cultural Sector*, issued by the Ministry of Culture, the State Administration of Radio Film and Television, the General Administration of Press and Publications ("GAPP"), NDRC, and MOFCOM in July 2005, and the *Procedures for the Examination and Approval of Establishment of Publication Importation Entities*, issued by GAPP in December 2005. Other relevant measures include the *Administrative Regulations on Audio and Video Products*, issued by the State Council in December 2001, and the *Administrative Regulations on Electronic Publications*, issued by GAPP in December 1997.

- (a) When China responded to questions on this issue from the United States at the November 2005 meeting of the Council for Trade in Goods, it explained – with regard to the importation of books, newspaper and magazines – that the Chinese government had the right to restrict the importation or exportation of products to protect public morals, public interest and national security. China cited Article XX of GATT 1994. Please explain the relevance

of GATT Article XX to China's Protocol of Accession. In addition, please explain why China's import restriction is "necessary" within the meaning of Article XX.

- (b) Does China contend that it has the right to restrict the importation of audiovisual products and electronic publications on the same basis as it restricts the importation of books, newspapers and magazines? Please explain.

Export Restrictions

2. 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 2005, a 14 percent increase over 2004. For 2006, China announced an export quota of 14.3 million MT, similar to the level to which China eventually raised the quota in 2004 and 2005. 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. Previously, an official from the NDRC had stated publicly that China would eliminate the coke export quota system in 2006. Does China have any plans to eliminate its coke export quota system? Please explain.

3. In connection with China's Trade Policy Review, held on 19 and 21 April 2006, the United States submitted written questions addressing export quotas, such as the export quota on fluorspar, that are allocated through bidding. According to the Secretariat's report, exports subject to quota bidding are, *inter alia*, "those involving large amounts of exhaustible natural resources; those having a dominant share in the international market, and their overall export amounts are 'unlikely to be affected by price fluctuations'; those whose supply exceeds demand and thus tend to be sold at a low price, which may result in anti-dumping actions in other countries;" The United States then asked the following questions:

- a. Please identify the products that fell under each of the three enumerated categories in 2005.
- b. Please explain how each of the three enumerated categories is consistent with China's WTO obligations.

To date, China has not responded to these questions. The United States anticipates that China will submit its Trade Policy Review responses prior to this Committee's 4 October 2006 meeting, when China's Transitional Review Mechanism is on the agenda. The United States may then ask follow-up questions in connection with China's upcoming transitional review. In the event that China is unable to submit its Trade Policy Review responses prior to this Committee's 4 October 2006 meeting, the United States would ask that China provide its responses during the portion of that meeting devoted to the Transitional Review Mechanism.

4. Has China begun to take any steps to eliminate the export quotas that it maintains on fluorspar or other raw materials? Does China have any plans to do so? If not, why not?

Tariff-Rate Quotas on Fertilizers

5. Does China have any plans to adjust the tariff-rate quota quantities for fertilizers? Please explain.

Value-Added Tax Applied to Diammonium Phosphate

6. 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 diammonium phosphate (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.

- (a) Previously, the United States has requested that China provide data showing China's annual consumption of DAP and MAP, including the amounts sourced domestically versus imported amounts. To date, China has not provided any of this data. Please provide this data.
 - (b) Does China have any plans for revising Circular 113/2001 to eliminate the discriminatory treatment of DAP? If not, why not?
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