**WORLD TRADE ORGANIZATION**

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**Committee on Market Access**

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**CHINA'S TRANSITIONAL REVIEW MECHANISM**

Communication from the European Communities

The following communication, dated 3 October 2007, is being circulated at the request of the Delegation of the European Communities.

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The EC is transmitting comments and questions in advance of the meeting of the Market Access Committee of 15 October 2007, 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.

## 1. Chinese exports restrictions

1.1 The EC refers to its 2005 communication in which it had recalled China's 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.

1.2 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.

1.3 The EC thus remains very concerned about and is not satisfied with the level of WTO compliance on 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.

1.4 The EC attaches particular importance to and refers to earlier bilateral exchanges on coke, rare earths and non-ferrous metals. 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 theses 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.

1.5 The EC asks China to communicate a timeframe for the abolition of the export licence system on coke.

1.6 The EC urges China to present a comprehensive table on the export taxes and VAT reimbursement schemes and other export restrictions, in particular on non-ferrous metals and on chemical industry raw materials such as fluorspar and phosphorous. Attempts to obtain such information have met with failure and showed some deficiency current implementing provisions to fulfil WTO transparency requirements.

1.7 As far as the introduction of new export restrictions is concerned, such as those related to steel, the EC urges China to comply with the obligation of consulting countries having a substantial interest in trade of products concerned.

1.8 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.

1.9 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 theses export restrictions.

1.10 EC urges China to ensure conformity with its Accession Protocol and in particular article 11, according to which China shall eliminate all taxes and charges applied to exports unless specifically provided for in Annex 6 of this Protocol or applied in conformity with the provisions of Article VIII of the GATT 1994.

1.11 EC takes note of the recent introduction of export taxes on steel products. EC considers this as a temporary measure to curb uncontrolled raise of exports. EC underlines that there is a fundamental problem of over-capacity and this should be addressed via restructuring measures already in place.

## 2. China Compulsory Certification (CCC) Regulation

2.1 The EC would also like stress to the Chinese authorities its concern about 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, impose a heavy cost on importers and are not proportionate to the objectives stated by the Chinese legislation.

2.2 The EC urges China to develop and implement a certification system in a way avoid unnecessary barriers to trade.

2.3 In the ongoing review of the CCC implementation, the EC would be grateful if China could explain in detail:

- Will China simplify requirements for low risk products, based on a effective market surveillance system?
- How far will public availability of interpretative notices and rulings issued by CNCA be ensured?

- How far will foreign certification bodies be allowed to undertake certification, testing and inspection work under the CCC (going beyond the follow-up factory inspection)?
- How far will the review allow for the recognition of the results of testes performed in Europe (when EU standards and testing requirements are identical or equivalent to the Chinese ones)?

**3. Automobiles**

3.1 The EC refers to its serious 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. Based on past experience on 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.

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

i) <u>Joint venture ownership limitation</u>

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).

ii) <u>Type Approval/ Homologation Standards</u>

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 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.

iii) The Automotive Industry Development Policy

According to recent press releases, China has modified the "Automotive Industry Development Policy" reinforcing the conditions for EU manufacturers to invest in China. According to these draft provisions, new investors would only be authorised to produce Chinese brand vehicles or according to tight conditions, including obligation on local sourcing. Amendments to the "Automotive Industry Development Policy" may also concern the production of parts which could also be subject to Joint venture ownership limitation. This may have a very negative impact concerning the investment of EU car parts manufacturers in china. Finally, the Chinese government may also decided to grant financial support to Chinese manufacturers in order to promote export of vehicles

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

- Provide information on the latest development on the "Automotive Industry Development Policy" regarding these three points in order to dispel legitimate concerns raised by the proposed policy.

## 4. Steel Industry Development Policy

i) In article 30 of the NDRC Steel Industry Development Policy, last paragraph, referring to high energy consuming and high polluting primary processed products, it is stated: " Limits will be imposed on the exports of high energy consuming and high polluting primary processed products such as coke, ferroalloys, pig iron, steel scrap, and billets (ingots), and export drawbacks on these products will be reduced or abolished."

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

- What is meant by "limits will be imposed"- the consistency with China WTO's obligations, in particular with reference to export restrictions ;
- which “export drawbacks” the Chinese authorities refer to and which consequences they expect from reduction or abolition thereof ;
- the measures and provisions that have been or will be taken to implement this policy ;
- Which ministry/department will do be in charge of the implementation.

ii) In article 30 of NDRC Steel Industry Development Policy, first paragraph, it is stated: "The state encourages enterprises to strengthen international cooperation in mining industry resources. The state supports large scale backbone enterprises and corporations to establish iron, chrome, manganese, nickel, waste steel and coking supply bases overseas through investment, joint ventures, partnerships and purchases. The state encourages for needs in raw materials such as ore and coke, to be resolved by relying on the overseas market."

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

- the measures it intends to take to encourage enterprises to strengthen international cooperation in mining industry resources;
- the measures it intends to take to "support large scale backbone enterprises and corporations” to establish iron, chrome, manganese, nickel, waste steel and coking supply bases overseas through investment, joint ventures, partnerships and purchases;

- the implementing provisions it intends to take as well as their possible timing.

iii) Article 18 of the NDRC Steel Industry Development Policy reads: "Policies for imported technologies and equipments: use of national equipment and technologies is encouraged, and import is to be reduced. The equipments and technologies that must be imported because they can not be made in China or can not meet the requirements must be advanced and practical. The manufacturing of the equipments which are largely needed in the future will be localised. Use of outdated and second hand steel production equipments eliminated either at home or overseas is prohibited."

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

- the measures it intends to take to reduce imports;
- the definition of "advanced and practical" in this context;
- the criteria that will have to be met to fulfil such definition of "advanced and practical";
- the implementing measures as well as their timing.

iv) Article 23 of the NDRC Steel Industry Development Policy states that " In principle, when investing in the Chinese steel industry, foreign investors will not hold a controlling stake." This limitation is questionable in view of WTO commitments, counterproductive and will hinder the development and the investments. The EC requests that this artificial limit be lifted and that investments can take place on the basis of sound and objective factors.

**5. Petrochemical, chemical, energy and environment sectors**

i) JV ownership limitations and local content requirements

The Chinese Authorities maintain a foreign investment ceiling in some cases of a less than 50% ownership position for the foreign partner that impedes further growth and investments in those sectors. In addition, local content requirements are in place for the construction of new plants. In this context the EC urges China to:

- allow foreign majority investment so as to encourage the continued and increased investment and technology transfer in the sector, and
- eliminate local content requirements which would allow industry to catch up with international standards and competition.

ii) Retail and wholesales fuels market opening

There are many restrictions on foreign enterprises that want to access China's growing wholesale/retail fuel sector and local enterprises benefit from unfair competitive advantages. The EC urges China to:

- Lift the majority ownership condition in the draft Wholesale Regulation, which requires foreign firms to possess at least 30 retail sites prior to receiving access to the wholesale fuel market. This condition can not be met by foreign firms.
- Modify the new franchise requirements, which require an existing turnover of 1m tons per annum before allowing fuel dealership a condition that can only be met by PRC National Oil Companies.
- Change the Price Control Regulation for refined oil products which leads to disparities in pricing, negative margins and inability to secure reliable supply.

## 6. Pharmaceuticals

6.1 Despite the EC repeated requests to address the problems, this sector continues to be characterised by a variety of unnecessary, burdensome or costly registrations, licensing, certification and reimbursement procedures are creating trade barriers:
For example:

1) Imported active pharmaceutical ingredients face stricter testing requirements compared to local manufactured products as for example the very extensive "Port Drug Inspection" as well as the case-by-case quality standard evaluation.

2) It typically takes 6 to 12 months to obtain clinical trial approval in China, while clinical trial approvals can usually be obtained within 3 months in other major markets.

3) The price of the originator (??) medicine is tied to the cost-basis of its generic version plus a small premium. This approach is contrary to international practices where the price of generics is linked to the originator medicine.

4) As regards to the National Reimbursement Drug List (NRDL) problems arise due to the fact that the lists are not annually updated and as a result the most innovative products are not included.

5) The approval and licensing procedures for the establishment of foreign invested commercial enterprises are unclear.

6.2 On all these issues the EC reiterates its serious concerns as some of these measures appear to run counter to China's WTO commitments, in particular national treatment.

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

- Ensure imported and locally manufactured products are treated equally.
- Shorten clinical trial application approval time to 3 months.
- De-link the pricing of innovative drugs (of the originator) from generics.
- Update reimbursement lists on an annual basis with newly registered drugs.
- Provide written and clear guidance to assist local authorities, namely drug regulatory and commercial bureaus, in amending business licenses for pharmaceutical companies and
- set up a uniform system of approval of the establishment of Foreign Invested Commercial Enterprises in all locations throughout China.

## 7. Cosmetics

7.1 Despite the many requests by the EC, the approval procedures for imported non-special use cosmetics still differ from that of domestic non-special use cosmetics. For imported products, a multiple approval procedure is still compulsory, leading to extensive workload, misallocation of personnel and financial resources and delays in product introduction to the market.

7.2 This measure is likely to invalidate some of China's WTO commitments (national treatment obligation).

7.3 In this regard, the EC requests that China unifies the notification system currently in force for imported non-special use and domestic non-special use cosmetics.

**8. Wood & Wood products**

8.1 The Notice of the General Office of the State Council on transferring Opinions on Speeding up the Conservation and Substitution of Timbers of Such Departments as National Development and Reform Commission - Guobanfa No. 58 in (2005), is unclear on whether wood which has been legally harvested and which originates from sustainable forests can be used in the Chinese building, construction and interior decoration sector.

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

- describe in detail the measures and regulations it has adopted or intends to adopt and the implementing provisions thereof, in order to implement the policy guidelines set up in Guobanfa 58.
- Ensure that such regulations will not discriminate between domestic and foreign suppliers of wood which has been legally harvested and which originates from sustainable forests.
- Ensure that full consultation of stakeholders, including foreign suppliers of sustainable wood products, will be carried out well in advance of the process of drafting the necessary implementing regulations.