

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO  
SECTION 18 OF THE PROTOCOL ON THE ACCESSION  
OF THE PEOPLE'S REPUBLIC OF CHINA**

Questions from the EUROPEAN COMMUNITIES to CHINA

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

Article 10 of the Accession Protocol of the People's Republic of China ("China")<sup>1</sup> sets out China's obligations regarding subsidies.

In particular, Article 10.1 contains an unambiguous obligation for China to:

*"[...] notify the WTO of any subsidy within the meaning of Article 1 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), granted or maintained in its territory, organized by specific product, including those subsidies defined in Article 3 of the SCM Agreement. The information provided should be as specific as possible, following the requirements of the questionnaire on subsidies<sup>2</sup> as noted in Article 25 of the SCM Agreement."*

However, it was only on 11 April 2006 that China submitted its first subsidy notification for the period 2001 to 2004 following its accession in 2001.<sup>3</sup> A number of WTO Members, including the European Communities, had repeatedly urged China to abide by its WTO obligations, including by the submission of a subsidy notification. Such a notification should, by providing the necessary degree of detailed and specific information, allow other WTO Members to assess the WTO compatibility of notified measures and to consider possible further steps, including questions regarding the notification and the initiation of WTO dispute settlement.

While China's submission of the notification is to be welcomed, a closer reading of it reveals that it falls well short of the requirements set out in Article 10.1 of the Accession Protocol and Article 25 of the SCM Agreement.

This prompted a number of WTO Members, including the European Communities, to pose questions to China regarding the notification. Despite reassurances from China that the answers

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<sup>1</sup> WT/L/432.

<sup>2</sup> G/SCM/6/Rev.1.

<sup>3</sup> G/SCM/N/123/CHN.

would be provided by end-June 2007 it was only on 7 September 2007 that China submitted answer to the questions.<sup>4</sup>

A reading of these answers reveal that not in any single reply China has provided the statistical data as requested by the European Communities. The reason for the failure to provide this data is said to be due to a lack of available statistics. The European Communities reminds China that this is a clear obligation under Article 25.3 SCM Agreement to provide such data and alleged unavailability of the data is not a valid excuse. Moreover, answers provided in response to certain questions (e.g. I. 2(c), 3(b); II.1,2,3,4,5,6) are either partial or flawed and contradictory to Article 25.10 SCM Agreement as regards question II.1,2,3,4,5,6. Article 25.10 SCM Agreement requires Members to notify promptly any measure which is considered to be a subsidy by another Member. Consequently, the various explanations provided by China do not fulfil these notification requirements under Article 25 SCM Agreement.

Already on previous occasions the European Communities has expressed its concern over the apparent unwillingness of China to abide by its WTO obligations, including the fundamental principles of transparency and accountability, and has encouraged China to submit a complete subsidy notification and provide answers to questions from other WTO Members.

Likewise, the European Communities, given its substantial trade interest, obtained third party rights in the dispute against China regarding export subsidies and import substitution measures.<sup>5</sup> During the course of the two rounds of consultations, the European Communities stressed the need for all WTO members, including China, to observe its WTO obligations, including by observing the fundamental principle of transparency and by submitting a complete subsidy notification. The European Communities further noted that failure by any WTO Member, including China, to do so could lead to the initiation of WTO dispute settlement.

The European Communities has also reserved its third part rights for the panel proceedings in this dispute.

Based on the above, the European Communities notes the continuing failure of China to fulfil its WTO obligations and urges China to provide complete answers to the questions I. 2(c), 3(b); II.1,2,3,4,5,6 and provide all statistics requested by the European Communities. Should China not be able to do so at present stage, China is requested to indicate when it will be able to provide statistical data as stipulated in Article 25.3 SCM Agreement.

The European Communities also notes that despite the fact that subsidies at all levels of government must be notified, China only notified subsidies at central government level. Can China confirm that it will submit a complete subsidy notification already for the next notification, which was due by 30 June this year? If not China is requested to indicate when it will fulfil this WTO obligation.

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<sup>4</sup> G/SCM/Q2/CHN/25.

<sup>5</sup> China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments (DS358/DS35).