WORLD TRADE ORGANIZATION

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CHINA'S TRANSITIONAL REVIEW MECHANISM

Questions to China from the United States in the context of the Transitional Review Mechanism under Paragraph 18 of the Protocol of Accession of the People's Republic of China

The following communication, dated 13 August 2008, has been received from the Delegation of the United States, with the request that it be circulated to Members, for the purposes of the Seventh Transitional Review to take place at the forthcoming meeting of the Committee.

Domestic support for China's pork industry

1. Article 4 of China's Enterprise Income Tax Law establishes a generally applicable enterprise income tax rate of 25 per cent. However, Article 86 of China's Enterprise Income Tax Law, which became effective on 1 January 2008, wholly exempts agricultural producers from the payment of enterprise income taxes with regard to the "rearing of livestock", including pork. This Article also wholly exempts agricultural processors from the payment of enterprise income taxes with regard to the preliminary processing of pork.

(a) Please explain how China's Enterprise Income Tax Law defines the term "enterprise" in the context of (i) pork producers and (ii) pork processors.

(b) Please identify the amount of revenue generated by (i) pork producers and (ii) pork processors in China in 2007. Please also provide any available estimates for 2008.

2. The United States understands that pork producers in China can receive a payment of RMB 100 per head for every sow, up from an earlier payment rate of RMB 50 per head. The Chinese government previously indicated that the value of these payments was $886 million when the payment was RMB 50 per head.

(a) Please describe the eligibility criteria for pork producers to receive payments under this program.

(b) What is the total annual value of the RMB 100 per head payments?

(c) Please identify the measures establishing this payment program.

3. The United States understands that the China Insurance Regulatory Commission oversees a sow insurance program, and that total annual premiums for this program are $2.9 billion, with the Chinese government paying for 76 per cent of the total annual premiums.

(a) Please describe the eligibility criteria for pork producers to receive payments under this program.

(b) Is it correct to conclude that the Chinese government is paying $2.2 billion in premiums annually under this insurance program, while pork producers pay the remaining $700 million? If not, please identify the correct amounts.

(c) Please identify the measures establishing this insurance program.

4. The United States understands that China makes payments to large-scale pork breeding farms, based on farm size. Specifically, farms with 500-999 heads receive RMB 2 million per year, farms with 1,000-1,999 heads receive RMB 4 million per year, farms with 2,000-2,999 heads receive RMB 6 million per year and farms with greater than 3,000 heads receive RMB 8 million per year.

(a) Please describe the eligibility criteria for pork producers to receive payments under this program.

(b) What was the annual value of payments made under this payment program in 2007?

(c) Please identify the measures establishing this payment program.

5. The United States understands that China makes payments to pork producers in Southern China for weather-related losses and that these payments range from RMB 200,000 to RMB 1 million, depending on the size of the production facility.

(a) Please describe the eligibility criteria for pork producers to receive payments under this program.

(b) What was the annual value of payments made under this payment program in 2007?

(c) Please identify the measures establishing this payment program.

6. The United States understands that China makes payments to pork processors related to the slaughtering of hogs, with the payment being between RMB 50 and RMB 100 per head slaughtered.

(a) Please describe the eligibility criteria for pork processors to receive payments under this program.

(b) What was the annual value of payments made under this payment program in 2007?

(c) Please identify the measures establishing this payment program.

7. The United States understands that China makes payments to pork producers related to the artificial insemination of sows, with payments of RMB 10 per dose and an additional RMB 10 for each sow that is successfully bred.

(a) Please describe the eligibility criteria for pork producers to receive payments under this program.

(b) What was the annual value of payments made under this payment program in 2007?

(c) Please identify the measures establishing this payment program.

8. Please identify the total value of China's pork production in 2007. Please also provide any available estimates for 2008.

Discriminatory VAT exemptions

9. In connection with last year's transitional review before this Committee, the United States explained its understanding that many agricultural products are exempted from China's 13 per cent value-added tax (VAT) normally applicable to agricultural products. For example, it appears that sales of agricultural commodities produced and sold by farmers in China, such as wheat, cotton and corn, are exempted from the VAT. In addition, it appears that sales of agricultural inputs produced and sold in China, such as seed, pesticide, herbicide, agricultural machinery and certain fertilizers, are exempted from the VAT. However, when these same products are imported, it appears that they are assessed the VAT at the rate of 13 per cent.

(a) In its statement during last year's transitional review, China appeared to confirm that sales of agricultural commodities produced and sold by farmers in China, such as wheat, cotton and corn, are exempted from the VAT, while imports of these same products are assessed the VAT at 13 per cent. China appeared to argue that this practice is consistent with Article III of the General Agreement on Tariffs and Trade 1994 (GATT 1994) because downstream entities in China must pay the VAT in connection with transactions taking place after the initial transaction involving the farmer. However, China did not address how it justifies the more favorable VAT treatment accorded to the products in question when they are sold by a farmer in China versus the treatment accorded to imported products, which are always assessed the VAT. Please explain how China justifies this discriminatory treatment.

(b) In its statement during last year's transitional review, China also did not explain how it justifies the VAT exemption for farmers in China under Article 3 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), which prohibits subsidies that are contingent on the use of domestic over imported goods. Please provide China's justification at this year's transitional review.

(c) In its statement during last year's transitional review, China did not respond to questions posed by the United States regarding sales of agricultural inputs produced and sold in China, such as seed, pesticide, herbicide, agricultural machinery and certain fertilizers. The United States would ask that China respond to the following questions at this year's transitional review: Can China confirm that these agricultural inputs are exempted from the VAT, while imports of these same products are assessed the VAT at 13 per cent? If so, please identify the applicable measures. Please also explain how China justifies these VAT exemptions under its WTO obligations, including Article III of the GATT 1994 and Article 3 of the SCM Agreement.

Export VAT rebates

10. In connection with last year's transitional review before this Committee, the United States explained its understanding that a VAT rebate is available upon the export of some agricultural products, including ones for which payment of the VAT was imputed rather than actually paid at a prior stage because of an exemption (as explained in question 8 above). In its statement during last year's transitional review, China referenced the "*Interim Regulation of the P.R.C. on VAT*", but did not respond to the United States' question seeking an explanation regarding how China ensures that the export rebate is not excessive, i.e., that it does not exceed the VAT actually paid.

(a) Please provide a citation to the "*Interim Regulation of the P.R.C. on VAT*".

(b) Please identify and provide citation to any other measures that govern how China calculates the export rebate in this situation, including any measures that specifically address agricultural commodities such as wheat, cotton and corn or agricultural inputs such as seed, pesticide, herbicide, agricultural machinery and certain fertilizers.

(c) Please explain how China ensures that the export rebate is not excessive, i.e., that it does not exceed the VAT actually paid.

11. Please explain how China applies the VAT to agricultural and food products imported into China for processing and then re-exported. Is the VAT charged on the imported agricultural or food product? Is the exported processed product eligible for a VAT rebate?

Tariff rate quotas

12. US companies continue to be concerned about inadequate transparency in the administration of China's tariff rate quota (TRQ) regime for bulk agricultural commodities. It appears that the initial quota and any above-quota licences continue to be issued without public announcement of specific information about the quota allocations, such as the type and volume of quota being allocated to particular entities and the applicable duty rates. When the United States raised this concern in connection with last year's transitional review before this Committee, China explained that it published information regarding the initial allocation of TRQs and the reallocation of TRQs, citing National Development and Reform Commission (NDRC) Announcement No. 64 of 2006 and NDRC and Ministry of Commerce (MOFCOM) Announcement No. 47 of 2007. However, those announcements only address the opportunity to apply for quota allocations. In the interests of transparency and the freer and more efficient flow of trade, the United States would welcome increased transparency in this area.

(a) Would China be willing to publish information on the entities receiving initial quota allocations, their initial request for an allocation, how much of an allocation these entities received and whether the entities received general quota allocations or processing quota allocations? If not, please explain China's rationale.

(b) Would China be willing to announce the applied duty rates for above quota allocations at the time when the application opportunity is made available? If not, please explain China's rationale.