

CHINA'S TRANSITIONAL REVIEW MECHANISM

Communication from the United States

The following communication, dated 26 September 2008, is being circulated at the request of the Delegation of the United States.

Export Restrictions

1. In past transitional reviews before this Committee and the Council for Trade in Goods, the United States has expressed strong concerns about China's use of export quotas and export duties, particularly on raw materials. In 2008, China continued these policies, and in many cases made them even more restrictive. The United States remains very concerned about all of these actions.

2. In 2008, China also took new actions on certain raw materials. For example, effective 20 May 2008, China raised its export duties on natural phosphates, including natural calcium phosphates, natural aluminum calcium phosphates and phosphatic chalk, and yellow phosphorus from 10-20 percent to 110-120 percent in 2008, even though it is the world's leading producer of these inputs. In addition, China has imposed minimum prices on export sales of natural phosphates and yellow phosphorus. It appears that these actions not only discourage exports of natural phosphates and yellow phosphorus from China, but also create disadvantages for foreign downstream producers of industrial chemicals by artificially increasing China's export prices for these inputs, which also drives up the world prices. At the same time, China's actions appear to artificially lower China's domestic prices for natural phosphates and yellow phosphorus due to domestic oversupply, enabling China's domestic downstream producers of industrial chemicals to produce lower-priced products from these inputs and thereby creating significant advantages for China's domestic downstream producers of industrial chemicals when competing against their foreign counterparts both in the China market and in export markets. Indeed, since China took these actions, the world price of yellow phosphorus, for example, reportedly has doubled and now totals \$9,000 per metric ton (MT), while China's domestic price ranges between \$3,000 and \$3,500 per MT.

- (a) Please explain the purposes underlying China's imposition of (i) export duties and (ii) minimum export prices on natural phosphates and yellow phosphorus. It is the United States' understanding that natural phosphates are primarily used to produce fertilizer in China, while yellow phosphorus is primarily used in China to produce sodium phosphates, phosphorus trichloride and other phosphorus chemicals.
- (b) In Section 11.3 of Part I of its Protocol of Accession, China committed not to impose export duties on any goods not appearing on the list of goods subject to export duty in Annex 6 of its Protocol of Accession. Natural phosphates do not appear on the Annex 6 list. Where a good is listed in Annex 6, China committed not to exceed the listed percentage cap. Yellow phosphorus appears on the Annex 6 list, with a cap of 20 percent. Please explain how China

justifies (i) the imposition of any export duties on natural phosphates and (ii) the imposition of export duties in excess of 20 percent on yellow phosphorus in light of the commitments that China made in Section 11.3 of Part I of its Protocol of Accession.

- (c) Please explain how China justifies its use of minimum export prices under Article XI of the General Agreement on Tariffs and Trade 1994.
- (d) Does China have any plans to eliminate (i) its export duties and (ii) its minimum export prices on natural phosphates and yellow phosphorus? Please explain.

3. In connection with last year's transitional review, the United States raised concerns about China's export duties on refined metal lead. The United States explained that, after China decided to eliminate the 13 percent value-added tax (VAT) rebate available upon export of refined metal lead in 2006, it decided, in 2007, to impose a duty of 10 percent on exports of refined metal lead, and this duty remains in place in 2008. These actions have caused a steep decline in China's exports of refined metal lead and contributed to a sharp rise in world prices. Meanwhile, Chinese domestic prices reportedly have declined because of China's captive refined metal lead production, giving China's downstream producers a significant competitive advantage over foreign downstream producers. Last year, the United States asked China the questions set forth below, but China did not respond to them. The United States asks that China respond to them during this year's transitional review before this Committee.

- (a) Please explain the purposes underlying China's imposition of export duties on refined metal lead.
- (b) In Section 11.3 of Part I of its Protocol of Accession, China committed not to impose export duties on any goods not appearing on the list of goods subject to export duty in Annex 6 of its Protocol of Accession. Refined metal lead does not appear on the Annex 6 list. Please explain how China justifies its imposition of export duties on this product in light of the commitment that China made in Section 11.3 of Part I of its Protocol of Accession.

VAT Applied to Diammonium Phosphate

4. The United States continues to have concerns regarding the Circular on the VAT Exemption Policy for Certain Farming Materials (No. 113/2001), jointly issued by the Ministry of Finance and the State Administration of Taxation on 20 July 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. Does China have any plans to revise this Circular, particularly to eliminate the discriminatory treatment of DAP?
