

CHINA'S TRANSITIONAL REVIEW MECHANISM

Communication from the European Communities

The following communication, dated 8 October 2008, is being circulated at the request of the Delegation of the European Communities.

The EC is transmitting comments and questions in advance of the meeting of the Market Access Committee of 16 October 2008, 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 and 2007 communications in which it had recalled China's commitments

- to eliminate all taxes and charges applied to exports unless specifically provided for in Annex 6 of its accession Protocol,
- 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 on several occasions for the existing export restrictions and taxes 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 and taxes 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, yellow phosphorus 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 these export restrictions; or
- When no such justification exists, correctly notify to the WTO when and how it intends to bring its export regime in line with WTO rules.

1.5 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 to fulfil WTO transparency requirements.

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

1.7 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.

1.8 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 these export restrictions.

1.9 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.

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. An increasing number of 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 tests 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) *Joint venture ownership limitation*

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.

(ii) *Type Approval/ Homologation Standards*

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 Policy*

The EC would be grateful if China could provide information on the latest development on the "Automotive Industry Development Policy", in particular as regards (i) any additional obligation imposed on EU manufacturers planning to invest in China (e.g., obligations on local sourcing or local branding); (ii) any additional limitation concerning the production of parts (e.g., joint venture ownership constraints); (iii) any financial support granted to Chinese manufacturers in order to promote export of vehicles.

4. 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 Wholesale Regulation, which sets up specific requirements prior to receiving access to the wholesale fuel market, as the latter cannot realistically be met by foreign firms.
- Eliminate import quotas, as these do not permit proper petrochemical economic activity, including by foreign companies functioning in China
- Modify the franchise and license requirements for allowing fuel dealership and which contain conditions 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.
- Repeal relevant provisions on retail distribution included in old legislation that discriminate foreign companies, and which should be treated by the new law.

5. Pharmaceuticals

5.1 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:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) The approval and licensing procedures for the establishment of foreign invested commercial enterprises are unclear.

5.2 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.

5.3 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.

6. Cosmetics

6.1 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.

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

6.3 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.
