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Committee on Market Access Original: English

CHINA'S TRANSITIONAL REVIEW MECHANISM

Communication from the European Communities

The following communication, dated 18 September 2009, 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 2 October 2009, 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 would like to reiterate its growing concern regarding China's policy in the field of raw materials. In particular, the EC notes an increased use of measures restricting access of EU industry to materials that serve as inputs for different sectors of EU interest.

1.2 The EC refers to the WTO consultations it requested on 23 June 2009 regarding China's export restraints on a number of key raw materials and hopes to arrive at a mutually satisfactory solution with China.

1.3 The EC also needs to underline that many other products are subject to by China's export restraints which need to be urgently lifted as they place EU industry at a significant unfair disadvantage vis-à-vis China's domestic industry.

1.4 The EC notes that China currently applies export quotas which are generally prohibited under Article XI of the GATT on General Elimination of Quantitative Restrictions. In addition, on 1 January 2009, China applies export tariffs to 373 tariff lines in what the EC sees as a violation of its Protocol of Accession to the WTO.

1.5 Justification requested on several occasions for the existing export restraints 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.

1.6 In particular, the EC refers to its 2007 and 2008 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 restraints unless they could be justified under WTO rules (§ 165 of the Working Party Report) and
- to notify any possible export restraints to the WTO.

1.7 The EC thus remains very concerned and is not satisfied with the level of WTO compliance on a number of the export restraints 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.

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

2. China Compulsory Certification (CCC) Regulation

2.1 On 24 June 2008, China notified to the TBT Committee a *Draft Amendment to Regulations on Compulsory Product Certification* (G/TBT/N/CHN/399). The EC welcomes this notification as a first step of a process involving a more substantive review of the CCC system.

2.2 However, the EC would like to stress to the Chinese authorities its concern about the growing difficulties encountered by European exporters owing to the 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.

2.3 The EC urges China to develop and implement a certification system in a way to avoid unnecessary barriers to trade. China could, in a reasonable timeframe, amend the CCC in a way that would improved market access for EU products, in particular by setting conformity assessment requirements on the basis of the actual risks associated with the products and consider simplified procedure, including Supplier Declaration of Conformity (SDoC), for lower risk products whenever possible.

2.4 The EC understands that the substantive review of the CCC will take some time and remains engaged to support this process by deepening exchanges of experiences with the Chinese authorities on product risk assessment and management of conformity assessment systems based on lighter requirements and effective market surveillance.

2.5 Pending such review, the EC invites China to give positive consideration to some proposals for the short-term simplification of the CCC, as follows:

- Wider exemptions for spare parts and components intended for incorporation into a final product subjected itself to CCC certification;
- Limitation of factory inspection in third countries to those aspects not covered by ISO 9001 certificates, for factories that are ISO 9001 certified;
- Wider scope of recognition of foreign test results;
- Initial factory inspection allowed to be done by foreign bodies;
- Allow foreign-owned laboratories and certification bodies legally established in China and authorized by the CNCA to test and certify under the CCC scheme;
- Reduction of administrative burdens (lower certification fees, shorter procedures, fewer test samples, etc.);
- Eliminate redundancies with other approval procedures for radio and telecom equipment (similarly to what has been achieved for medical devices).

3. Pharmaceuticals – National Drug Reimbursement List (NDRL)

3.1 The EC recalls the concerns raised in the last transitional review with respect to the National Drug Reimbursement List (NDRL) introduced in 2000 which has not been up-dated since 2004.

3.2 Current Chinese regulations require that the NDRL be reviewed bi-annually. This should be enforced because any delay means that new medicines still have not had the opportunity to obtain reimbursement.

3.3 Despite the EC repeated requests to address the problem, the EC notes that there are currently 106 new molecules approved by the SFDA for sale in China currently queued up for NDRL review.

3.4 Since only products on the list can be reimbursed, failure to update it puts more recent and innovative drugs at a competitive disadvantage. The EC is concerned about possible de facto discrimination as the practice of not updating often enough the reimbursement list has a disproportionate impact on imported products.

3.5 The EC urges China to ensure that new innovative medicinal products already approved by China SFDA for sale in China are included in the NDRL and that a regular and comprehensive updating of the NDRL is achieved.

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