

CHINA'S TRANSITIONAL REVIEW MECHANISM

Communication from the United States

The following communication, dated 21 September 2009, is being circulated at the request of the Delegation of the United States.

Export Restraints

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, export duties and other export restraints, particularly on raw materials. In 2009, 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 June 2009, the United States and the European Communities requested WTO dispute settlement consultations with China regarding China's export quotas, export duties and/or other export restraints on nine of these raw materials, including bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus and zinc. Mexico subsequently requested WTO dispute settlement consultations with China regarding these same export restraints in August 2009.

3. In August 2009, Chinese media reports explained that China's Ministry of Industry and Information Technology (MIIT) had drafted a report entitled "Special Plan for the Development of the Rare Earths Industry 2009-2015" recommending stricter export restraints on rare earths, which comprise a group of 17 elements, including cerium, dysprosium, erbium, europium, gadolinium, holmium, lanthanum, lutetium, neodymium, praseodymium, samarium, terbium, thulium, ytterbium, yttrium, ferrocerium, monazite, bastnasite and mischmetal. According to these reports, China currently accounts for more than 95 percent of the world's annual mining output of rare earths, which are used in green technologies, like hybrid cars and low-energy light-bulbs, as well as in hard-disk drives, magnets, lasers, Blackberries, iPods, mobile phones, plasma TVs, catalytic converters, navigation systems and missiles, among other products and technologies. MIIT is reportedly proposing a total ban on exports of dysprosium, lutetium, terbium, thulium and yttrium, and a reduction in the export quota on other rare earths such as cerium, europium, lanthanum and neodymium. Currently, China also imposes export duties of 25 percent on all rare earths.

- (a) Please explain the purposes underlying the export quotas that China currently imposes on rare earths.
- (b) Please explain how China justifies its use of export quotas on rare earths under Article XI of the General Agreement on Tariffs and Trade 1994.

- (c) Please explain the purposes underlying the export duties that China currently imposes on rare earths.
- (d) 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. Rare earths do not appear on the Annex 6 list. Please explain how China justifies the imposition of export duties on rare earths in light of the commitments that China made in Section 11.3 of Part I of its Protocol of Accession.
- (e) Please explain the status of MIIT's proposed report entitled "Special Plan for the Development of the Rare Earths Industry 2009-2015."
- (f) Please explain how China could justify a total ban on exports of dysprosium, lutetium, terbium, thulium and yttrium under Article XI of the General Agreement on Tariffs and Trade 1994.

4. In connection with past transitional reviews before this Committee and the Council for Trade in Goods, 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. 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. In past years, 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

5. 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?
