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Council for Trade in Goods

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TRANSITIONAL REVIEW MECHANISM PURSUANT TO PARAGRAPH 18 OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

Questions from the UNITED STATES to CHINA concerning trade in goods

The following communication, dated 26 August 2002, has been received from the Permanent Mission of the United States.

Attached are the questions that the Government of the United States wishes to pose to China at the 22 November CTG meeting for the purposes of the Transitional Review mandated by China's Protocol of Accession.

State Trading Enterprises

1. The Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994 (Understanding) requires WTO Members to submit a notification regarding state trading enterprises to the Council for Trade in Goods, for review by the Working Party on State Trading Enterprises. The Understanding defines state trading enterprises for this purpose as:

Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports.

The Understanding also explains that a Member's notification shall be made in accordance with the questionnaire on state trading, as adopted on 24 May 1960 and revised in 1998. In accordance with that questionnaire, the notification should include all state trading enterprises (that fall within the definition above) and the products within their control (listed by HS tariff code); statistics, by quantity and value, on imports, exports and national production of the products notified; the purpose of each notified state trading enterprise and the legal authority which grants exclusive or special rights to that enterprise; a detailed description of the functioning of each notified state trading enterprise, including in particular whether that enterprise is primarily involved in importing or exporting, whether private traders are allowed to import or export and on what conditions, and whether there is free competition between private traders and that enterprise; all exclusive or special rights or privileges granted to each notified state trading enterprise, including any support or assistance provided by the government; and an explanation of how any mark-up on imported products is determined. In addition, China agreed in its Protocol of Accession (in Section 6.2 of Part I) to provide full information on the pricing mechanisms of its state trading enterprises for exported goods.

China's notification under the Understanding and the Protocol of Accession was due upon accession.

- (a) Please indicate when this notification will be supplied.
- (b) Please list all laws, regulations and other measures (at both the central level and the sub-national level) that China has issued since its accession dealing with state trading enterprises, and indicate which of these measures were taken to comply with the Understanding or the commitments in China's accession agreement.
- (c) Please indicate what steps China has taken to ensure that all laws, regulations and other measures related to state trading enterprises have been published and are readily available, as required by Section 2(C)2 of Part I of China's Protocol of Accession.

Export Restrictions

2. Since 1994, China has subjected acid grade fluorspar to two types of export restrictions.

China imposes a quota on fluorspar exports, and it also requires fluorspar exporters to pay export license fees, which reportedly range from 85 percent to more than 150 per cent of the cost of fluorspar. China has not eliminated these export restrictions since acceding to the WTO, despite the fact that WTO rules establish a general prohibition against export restrictions, with only limited exceptions. The United States understands China's position to be that the export restrictions on fluorspar, a raw material used in the production of hydrofluoric acid and fluorocarbons, fall under the exception regarding the conservation of exhaustible natural resources, set forth in Article XX of the General Agreement on Tariffs and Trade 1994 (GATT 1994). However, that exception only allows measures such as export restrictions if they were made effective in conjunction with restrictions on domestic production or consumption.

- (a) Please indicate whether the two types of export restrictions on fluorspar were made effective in conjunction with a measure imposing restrictions on domestic production or consumption of fluorspar, as envisioned by Article XX of GATT 1994. If so, please identify the measure imposing the restrictions on domestic production or consumption, and indicate when it became effective.
- (b) Does China charge domestic fluorspar producers any fees similar to the export licence fees imposed on exporters of fluorspar? If so, please describe those fees.

3. In paragraph 165 of the Working Party Report accompanying China's Protocol of Accession, China confirmed that, upon accession, it would notify remaining non-automatic restrictions on exports. Please indicate when this notification will be supplied.

Border Trade

4. China continues to provide preferential treatment to imports from border areas, in the form of reduced import duties and/or value-added taxes (VAT). For example, China's WTO Notification and Enquiry Center, in response to an enquiry about China's border trade policy, confirmed that China continues to apply a 50 per cent lower import duty rate to imports of boric acid from Russia.

- (a) Please identify the conditions that must be satisfied in order for trade to be considered "border trade" that is eligible for import duty and/or VAT reductions, and identify the amounts of those reductions.
- (b) Are all imports from within a border area subject to preferential treatment, or is there a list of specific products that receive this treatment? If there is a list, please identify the products on the list.

(c) Boric acid is manufactured in Russia several hundred kilometers away from Russia's border with China, outside the definition of a border area, as set forth in the State Council notice on border trade, issued on 3 January 1996. Please explain how the application of a 50 per cent lower import duty rate for Russian boric acid is in compliance with China's border trade policy, given that the location of the mining of boric acid in Russia is outside the border trade area.

(d) In its Protocol of Accession, China agreed that "[t]he provisions of the WTO Agreement and this Protocol shall apply to the entire customs territory of China, *including border trade regions* and minority autonomous areas, Special Economic Zones, open coastal cities, economic and technical development zones and other areas where special regimes for tariffs, taxes and regulations are established China shall apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures issued or applied at the sub-national level" Protocol of Accession, Section 2(A) (emphasis added). China also took on the obligation to provide most-favoured nation treatment under Article I of GATT 1994. In addition, China specifically stated that it would eliminate preferential import duty and VAT treatment in border areas by the end of 2000. See Protocol of Accession, Annex 5A, Part XIV. Please describe China's plans for eliminating its preferential border trade policy. If China does not intend to eliminate this policy immediately, please explain how this policy, including its application to trade in boric acid, is consistent with China's WTO commitments.

National Treatment

5. Please identify all laws, regulations and other measures that China has repealed or modified because they were inconsistent with the WTO's national treatment principle, as required by Part II.1 of Annex 1A to China's Protocol of Accession.

6. Please describe the steps taken by China to repeal or modify laws, regulations and other measures in order to provide national treatment in respect of after sales service and boiler and pressure vessels.

Foreign Trade Barriers Regulation

7. The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) recently issued the *Provisional Rules on Investigation of Foreign Trade Barriers*, effective 17 November 2002. MOFTEC did not provide any opportunity for public comment on these rules, contrary to the commitment in Section 2(C)2 of Part I of China's Protocol of Accession. The United States seeks the following clarifications about these rules:

(a) Article 12 indicates that interested parties will have the opportunity to comment if MOFTEC decides to accept a petition for investigation of trade barriers. How much time will interested parties have to provide their comments? Will interested parties have the opportunity to review a non-confidential version of the petition? Will there be a public hearing?

(b) Under Article 16, what type of information will MOFTEC provide in its announcement of a self-initiated case?

(c) Under Article 18, will MOFTEC take steps to ensure that the expert panelists do not have an interest in the outcome of the investigation? Will the names of the expert panelists be made public? Will the panel's findings be made public?

(d) If MOFTEC finds that material submitted during an investigation is not confidential under Article 20, will it provide the submitting interested party the opportunity to withdraw the material?

(e) Article 32 states that the power to interpret the rules shall remain with MOFTEC. Please confirm that MOFTEC's interpretation is subject to judicial review.
