

# WORLD TRADE ORGANIZATION

G/L/910  
5 November 2009

(09-5538)

## REPORT OF THE COUNCIL FOR TRADE IN GOODS ON CHINA'S TRANSITIONAL REVIEW

1. The Council for Trade in Goods (CTG), at its meeting on 30 October 2009, carried out the Transitional Review of China pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432).
2. Japan and the United States submitted questions and comments in writing to China on the CTG-specific information requirements contained in Annex 1A of the Protocol and on matters raised before subsidiary bodies. These questions and comments were circulated in documents G/C/W/626 and G/C/W/628 respectively. The Annex 1A information provided by China to the Council for the review was circulated in document G/C/W/630.
3. The CTG took note of the reviews that had been carried out in the CTG subsidiary bodies. Furthermore, the Council reviewed the information provided by China concerning specific parts of Annex 1.A of the Protocol and the questions raised by certain Members. The statements made at the meeting of 30 October 2009 are reflected in the minutes of the meeting in document G/C/M/100. The relevant paragraphs which reflect the discussion under agenda item VII are annexed.

## ANNEX

### **I. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA**

7.1 The Chairman recalled that in accordance with paragraph 18 of the Protocol of the Accession of the People's Republic of China in document WT/L/432, this Council was to report to the General Council on the Transitional Review. As a first step, CTG subsidiary bodies were required to transmit their reports to the Council for Trade in Goods. As a first step, she would give Members an opportunity to make general comments on those reports, and would subsequently propose that the Council takes note of the Reviews that had been carried out in the CTG subsidiary bodies. She would then move on to the CTG's own report. The Council was required to review the information to be provided by China in designated parts of Annex 1.A of the Protocol.

7.2 She added that the following subsidiary bodies had carried out the Transitional Review: Market Access – the report was contained in document G/MA/241; Agriculture - the report was contained in document G/AG/26; Customs Valuation - the report was contained in documents G/VAL/63; Import Licensing - the report was contained in document G/LIC/20; Rules of Origin - the report was contained in document G/RO/68; Anti-Dumping - the report was contained in document G/ADP/18; Subsidies and Countervailing Measures - the report was contained in document G/SCM/130; Safeguards - the report was contained in document G/SG/88; and TRIMs - the report was contained in documents G/L/899. She asked Members if they had general comments on these Reviews. She understood that the reports from the Committees on Technical Barriers to Trade and Sanitary and Phytosanitary Measures had not been finalized as of this meeting as the SPS Committee is meeting this week, and TBT next week.

7.3 The Council took note of the reports from the subsidiary bodies. The Chairs of the Committee on Sanitary and Phytosanitary Measures and the Committee on Technical Barriers to Trade would submit their reports directly to the General Council.

7.4 The Chairman recalled that China was required to provide information to the CTG in accordance with paragraph 18.1 of the Protocol of Accession. The relevant information requirements were listed in Annex 1A therein. China had submitted this information as circulated in document G/C/W/630. She also drew Members' attention to the following documents: questions from the US in documents G/C/W/628 and questions from Japan in document G/C/W/626.

7.5 The representative of China did not wish to add to his delegation's submission. He informed the Council that the document arrived late because the date of the Council's meeting was advanced.

7.6 The representative of the United States noted that this was the eighth Transitional Review Mechanism for China. The United States believed that the TRM continued to be a useful mechanism. It helped to provide needed additional transparency for China's trade regime so that Members could better understand and assess the progress that China had made in adopting and complying with WTO disciplines. His delegation raised previously submitted questions in its written submission because China did not respond to them in the subsidiary body reviews. He highlighted a few of his delegation's concerns. Before the Market Access committee, his delegation addressed questions to China about its export restraints on certain raw materials - a matter that raised serious WTO concerns. China continued to maintain export quotas and export duties among other restraints on a number of raw materials. WTO rules generally prohibited export quotas. The same was generally true for export duties that China used. China had made a commitment in its WTO Protocol of Accession circumscribing its use of export duties. It was long past time for China to get rid of its export restrictions on raw materials. China should have eliminated them when they acceded to the WTO nearly eight years ago. His delegation wanted to see a level playing where competition was fair.

However with China's export restraints, the US and other WTO Members were significantly disadvantaged. The export restraints artificially raised world raw material prices and lowered China's domestic prices. That gave a substantial artificial advantage to China's downstream producers over US and other foreign downstream producers.

7.7 Before the Market Access Committee, his delegation asked questions specifically about export restraints on rare earths, a group of related raw materials that were particularly important to industries around the world including the US industry. His delegation also asked about refined metal lead. China did not respond to these questions so his delegation was submitting them again in connection with this Council's TRM. His delegation looked forward to China's responses to these questions at this meeting.

7.8 Other questions submitted for this TRM were originally submitted in connection with the TRM before the Subsidies Committee. During that TRM, his delegation highlighted a number of serious concerns. First, it noted that during the Subsidies Committee TRM, China stated that a new subsidies notification for 2005-08 would be submitted in the coming months. While this would be a positive step, China also stated that the notification would not contain any sub-central governmental measures. This was disturbing given that China, after nearly eight years of WTO Membership, had still not provided any notification addressing a single sub-central governmental measure despite concerns expressed by Members in China's Accessions working party report about such measures, and the issue being raised in several previous transitional reviews of the Subsidies Committee.

7.9 Second, during the Subsidies Committee TRM, the US raised China's obligation under Article 18.1 and Annex 1A of China's Protocol of Accession. These obligations directed China to provide annual economic development programs, China's five year programs and any industrial or sectoral programs or policies promulgated by central and sub-central governmental authorities. While China had provided some information about central governmental industrial plans and policies, China appeared not to have provided any of the relevant information about sub-central governmental authorities. These were serious matters and his delegation urged China to take swift action to resolve these matters in accordance with its WTO obligations.

7.10 Finally during the Subsidies Committee TRM, China did not provide answers to any of the US questions regarding sub-central governmental subsidies benefiting China's textile sector. One example of an unanswered question involved a sub-central governmental subsidy program that could be found in the Implementation Plan for Reviving Hunan's Textile Industry 2009-2011. This program appeared to provide export subsidies inconsistent with China's obligations under Article 3 of the Agreement on Subsidies and Countervailing Measures. Therefore, China's response to his delegation's question about this program was especially important. Before this Council, his delegation resubmitted the questions to which China did not respond during the Subsidies Committee TRM and it hoped to receive China's responses.

7.11 Before concluding, he noted significant US concerns about matters that fell within the jurisdiction of other committees that reported to the Council. In the area of SPS, China continued to maintain a number of measures that were non-transparent and appeared to lack scientific bases such as H1N1 restrictions, BSE-related bans, Avian Influenza bans, pathogen standards and residue standards. In the investment area, China continued to maintain various restrictions on foreign investment and continued to subject new investments and mergers and acquisitions to vague standards such as national economic security. In the customs valuation area, China did not seem to uniformly follow WTO rules. The practices of China's customs administration still seemed to vary from port to port both in terms of customs clearance procedures and valuation determinations and, in some cases, these gave rise to WTO concerns. In the area of technical barriers to trade, China continued to pursue the development of unique national standards despite the existence of well established international standards, apparently with the objective of protecting domestic companies from competing with

foreign technologies and standards. He concluded that all these matters raised serious concerns for his Government.

7.12 The representative of Japan raised three issues before the Council's TRM, all related to China's export restrictive measures. First, Japan expressed its concern on China's export licensing measures on certain materials such as fluorite, coal, coke and non-ferrous metals. Her delegation understood that China's justification for these export restricting measures was based on GATT Article XX. In order to justify these measures by the general exception under Article XX, China needed to convince Members with evidence that China implemented restrictions on domestic production and consumption. However, actual data regarding domestic production and consumption on these products had not been provided by China. In this context, Japan asked China: how it justified its use of export licensing measures on each material under Article XX of the General Agreement on Tariffs and Trade 1994; to provide the data on domestic production and consumption of each material in which an export licensing measure was applied; to provide some information about whether there was a ceiling on domestic production of each material in which an export licensing measure was applied; to clarify the extent of difference between the volume of export restriction and the restriction on domestic production; and if it had plans to eliminate or review the export licensing measures.

7.13 Second, Japan expressed its concern on China's export taxes on certain raw materials and products, including chemical fertilizers and their raw materials, non-ferrous metals, coal and coke. In its Protocol of Accession, China committed to eliminate all taxes and charges applied to exports unless specifically provided for in Annex 6 of the Protocol. However, in her delegation's understanding, China imposed export taxes on some items listed in Annex 6 but at higher levels than indicated in the Annex, and China imposed export taxes on some items not listed in Annex 6. In this connection, Japan asked China: to explain the purposes of China's imposition/increase of export taxes on chemical fertilizers and their raw materials, non-ferrous metals, coal and coke, respectively; to explain how China justified its imposition of export taxes in light of the commitments that China made in its Protocol of Accession; if it had any plans to eliminate or review the export taxes measures.

7.14 Third, her delegation was concerned with China's export prohibition on natural sand. Japan asked China: to explain how it justified its export prohibition on natural sand under Article XI of the General Agreement on Tariffs and Trade 1994; to explain in detail China's restrictive measures on domestic production and consumption of natural sand; to provide the data on the latest trend in domestic production and consumption of natural sand; if it had plans to eliminate or review the export prohibition on natural sand.

7.15 The representative of the European Communities had made submissions to a number of the subsidiary bodies and had taken an active part in this eighth TRM exercise in various committees. Transparency was an essential element of the WTO which implied obligations to all Members. He recalled that the scrutiny provided for by the TRM was approved by China as part of its Protocol of Accession. Despite impressive progress China had made in integrating into the world based trading system, the EC and several WTO Members were still confronted with some important areas of concern. The TRM mechanism was an important forum for addressing these concerns and China was encouraged to participate actively in it.

7.16 While his delegation had seen China participate in the meetings and, to a certain extent, answer questions, this had not always been to his delegation's full satisfaction. Many of the answers had been partial and repetitive and, more importantly, the replies had not addressed the core problems highlighted by the EC and other Members. Among the written questions submitted by the EC which it considered had not been adequately answered were those that dealt with the following: local content requirements; steel industry development policy; TRIMS and compatible clauses in contractual arrangements (for example the questions submitted in document G/TRIMS/W/69);

questions related to export restrictions (the EC reiterated its growing concern regarding China's export restraints on a number of key role materials); and export quotas which were generally prohibited under Article XI of the GATT. Concerning the last area, he added that as from January 2009, China applied export tariffs on 373 tariff lines in what the EC viewed as a violation of its Protocol of Accession to the WTO. Here, he referred to his delegation's submission to the Market Access Committee in document G/MA/W/97.

7.17 Lastly, on several industrial sectors such as steel, ship building, petrol chemical, pharmaceuticals, cosmetics, there were long standing issues raised on several occasions. His delegation's concerns related to issues such as intellectual property which had also been raised in the framework of the Council for Trade-Related Aspects of Intellectual Property Rights, pricing and registrations procedures, joint venture limitation subsidies, local content requirements and technical barriers.

7.18 The representative of China noted that the concerns expressed in the statements were not new. They repeated issues which had been under debate during all eight transitional reviews both in this Council and also in the subsidiary bodies. China had engaged in this transitional review exercise seriously. It had provided numerous detailed responses and clarifications with regard to the concerns expressed by Members. These could be found in the minutes of the meetings. He considered that Members took the floor during this Council because they were not satisfied with the responses China provided. This did not mean that China had not provided responses in this regard. With respect to the written questions from Japan and the United States, he provided the following points in addition to what his delegation had explained in previous reviews. This was without prejudice to his delegation's position in ongoing disputes in this regard with some Members in the DSB.

7.19 China maintained export administrative measures on a small number of products for the purpose of protecting public interest, conserving exhaustible natural resources or undertaking obligations under international treaties. These export administrative measures were not new and their WTO-related justifications were also provided. As the largest developing country, China was now facing tremendous pressure in natural resource conservation and protection of the environment. On this particular point, his delegation had provided many explanations. The Chinese Government had made enormous efforts in this respect. It now took resource efficiency and environmental protection as two fundamental national policies in order to establish an energy efficient and environmentally friendly society and realise long term sustainable development. In the past several years, China had already made great achievements, for example, in comparison with 2005. The total energy consumption per unit of GDP in 2008 was decreased by more than 10%. China had also adopted and was implementing its national plan for coping with climate change. If this plan was successfully implemented, 620 million tonnes of coal would be conserved from 2005-2010. This equalled cutting carbon dioxide emissions by 1.5 billion tonnes.

7.20 The export administration of a small number of products was part of the great efforts of the Chinese Government and these measures were not isolated to specifically or intentionally target exports. All these measures were accompanied with restrictive measures on domestic production and consumption. Examples in this regard had been provided in all previous meetings. Today, he added more information. Members could find the caps on the domestic production of these products on the website of the Chinese Ministry of Land and Resources. For example, in 2009, the production of antimony was capped at 90,180 tons, and that of rare earth at 82,320 tons.

7.21 With respect to the written questions from the US delegation on subsidies to the textile sector, he had no intention of reopening the work already done in that Committee. He responded briefly to the US claim that his delegation did not respond to these questions in that Committee. China had made detailed explanation on the industrial policies in its five year plan, and also recent adjusting and reinvigorating plans which were in response to the challenges of the financial and economical crisis.

These plans were all general policy statements and his delegation had stressed in the Committee on Subsidies and Countervailing Measures that general policy statement should not be mistaken as subsidy programs. His delegation believed, that to confirm existence of a subsidy program, there should be very specific administrative measures specifying at least what the financial contribution was and how it would be utilised. In that Committee, his delegation noted that, as far as the cities of Wuxi and Hangzhou and Hunan and Jiangsu Provinces were concerned, they were all found in relevant local plans drafted to state general policy guidelines in response to the financial and economic crisis. His delegation had no confirmed information on the existence of concrete measures specifying the amount or size of the financial contribution provided, as well as how it is utilised to support the textile sector.

7.22 The Chairman proposed that the Council take note of the information provided by China in its submission and in its responses to the questions raised by Members. Regarding the form of the Council's report of the Review, she proposed proceeding in the same manner as last year. This would mean that a brief factual report would be prepared with references to the documents, and attached to the report, the portion of the minutes of this meeting which related to the Transitional Review. This report, as well as the reports of the subsidiary bodies, would then be transmitted to the General Council.

7.23 The Council so agreed.

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