

WORLD TRADE ORGANIZATION

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Council for Trade in Goods

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 18 November 2008, 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. The European Communities, 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/605, and G/C/W/606, and G/C/W/603 and Add.1 respectively. The Annex 1A information provided by China to the Council for the review was circulated in document G/C/W/608.

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 18 November 2008 are reflected in the minutes of the meeting in document G/C/M/95. 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/217; Agriculture - the report was contained in document G/AG/25; Customs Valuation - the report was contained in documents G/VAL/62; SPS - the report was contained in document G/SPS/50; TBT - the report was contained in document G/TBT/24; Import Licensing - the report was contained in document G/LIC/19; Rules of Origin - the report was contained in document G/RO/66; Anti-Dumping - the report was contained in document G/ADP/17; Subsidies and Countervailing Measures - the report was contained in document G/SCM/125; Safeguards - the report was contained in document G/SG/85; and TRIMs - the report was contained in documents G/L/859. She asked Members if they had general comments on these Reviews.

7.3 The representative of the European Communities stated that his delegation was concerned about the lack of co-operation from China in this Transitional Review Mechanism and was disappointed by the lack of Chinese replies. Transparency was an essential element of the WTO Membership and it applied to all WTO Members. The scrutiny provided for by the Transitional Review Mechanism had been approved by China as part of its Protocol of Accession. The WTO Accession was the starting point, not the end point of the Members' contribution to the WTO system and therefore his delegation hoped that China would give detailed replies to all questions that his delegation and other Members had raised in the subsidiary committees. The EC had re-submitted written questions on export restrictions, circulated in document G/C/W/605, that had been left unanswered in the Market Access Committee. He focused on a few areas of particular concern to his delegation, although this was by no means an exhaustive list of its concerns. With respect to transparency: he stressed the importance of China fully implementing its commitments in its Protocol of Accession to provide for a reasonable period for comments to the appropriate authorities before measures effecting trade in goods were implemented. China's certification system for a range of sectors appeared to be trade restrictive. The EC urged China to develop and implement a certification system in such a way so as to avoid unnecessary barriers to trade. The EC was concerned about the progressive expansion of this system to new products. The EC continued to have serious concerns about the thirteen proposed implementing rules for the proposed re-certification for various information technology products for information security requirements. Pursuant to the notified drafts, such products would be subject to the procedures and would have to comply with the Chinese standards or encryption-references. Foreign owned companies established in China were not granted the same rights in standard setting technical committees as all other companies in China. Their involvement was restricted to a non-voting service status. Several other industrial sectors such as steel, ship building, petrochemical, pharmaceuticals, cosmetics, etc. were long-standing issues raised on several occasions. His delegation's concerns also related to issues such as intellectual property, raised in the framework of the Council for Trade-Related Aspects of Intellectual Property Rights, pricing and registration procedures, joint-venture limitations, subsidies, local content requirements and technical barriers.

7.4 The representative of the United States recalled that this was the seventh TRM for China. The US believed that the TRM continued to be a useful mechanism. The TRM helped to provide needed additional transparency for China's trade regime so that Members could better understand and assess the progress China had made in adopting and complying with WTO disciplines. In his delegation's written submissions before this Committee, it had raised questions that had been previously asked during transitional reviews conducted by subsidiary bodies, but China had not responded to them. He highlighted a few of his delegation's concerns. His delegation had raised its concerns regarding export restrictions on raw materials in the Market Access Committee. China continued to maintain export quotas, export quota bidding, minimum export prices and export duties on numerous raw material inputs that were particularly important to US industry. WTO rules prohibited export quotas, export quota bidding and minimum export prices. The same was true for most of the export duties that China also used to discourage exports. China had made a commitment in its WTO Protocol of Accessions 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 it acceded to the WTO nearly 6 years ago. His delegation wanted to see a level playing field, where competition was fair. However, with China's export restrictions, the US and other WTO Members were significantly disadvantaged. The export restrictions 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. Before the Market Access Committee, his delegation had raised these same concerns and asked questions specifically about two raw materials that had recently been subjected to particularly extreme export restrictions – yellow phosphorous and refined metal lead. China did not respond to these questions, so his delegation resubmitted them to the Council for Trade in Goods. His delegation looked forward to China's responses to these questions today.

7.5 He added that other questions submitted to the CTG were originally submitted in connection with the Transitional Review in the Subsidies Committee. During that Review, his delegation had highlighted a number of serious concerns. In particular, his delegation noted China's continuing failure to notify any sub-central government subsidy programmes, and information it received indicating that China maintained and continued to put in place numerous prohibited subsidies, especially at the sub-central government level. These were indeed serious matters, and his delegation again urged China to take swift action to resolve these matters in accordance with its WTO obligations. Before this Council, his delegation had re-submitted questions that dealt with the Chinese government's recent efforts to re-centralise control over land administration. It appeared that China had made this change in an attempt to ensure that land use-rights were allocated in accordance with state industrial development policies rather than market principles. His delegation would like to learn more about this area. At the Review in the Subsidies Committee, China indicated that it had not had enough time to prepare its responses to these questions. So, his delegation hoped to hear China's responses today.

7.6 Finally, he noted significant US concerns about matters that fell within the jurisdiction of other committees that reported to this Council. In the area of sanitary and phytosanitary standards, China continued to maintain a number of measures that were non-transparent and appeared to lack scientific bases, such as BSE-related bans, pathogen standards, residue standards and avian influenza bans. 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 practices 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 foreign technologies and standards. All of these matters raised serious concerns for his delegation and it looked forward to China's responses.

7.7 The representative of Switzerland also raised an issue that her delegation had previously raised in the Committee on Market Access. She reported that, in May 2008, China had raised export taxes on yellow phosphorous to 120 per cent and seemed to have applied since then an effective high-minimum export price. Yellow phosphorous was an essential input for many industries, like the textile industry, the construction sector, the electronic industry and the chemical industry. This issue was of deep concern to Switzerland and had been raised in several meetings, even at the highest level. Furthermore, her delegation had a more technical, bilateral meeting on this issue last week for which she thanked the Chinese delegation. Her delegation's assessment was, however, that the export duty on yellow phosphorous was not consistent with China's obligation in its Accession Protocol. China had committed itself therein to not levy export duties beyond the level specified in Annex 6 of the Protocol for a list of 84 products, including yellow phosphorous. The maximum level of the export tax on yellow phosphorous according to Annex 6 was 20%. The export tax was applied on yellow phosphorous but not on other industrial products using yellow phosphorous or on downstream products. In this way, the measure severely disadvantaged industries outside of China. Chinese companies producing products using yellow phosphorous did not have to pay the export tax and therefore enjoyed a much lower domestic price. According to her delegation's information, the present export tax would expire on 31 December 2008 at which time China would again be in conformity with its WTO obligations. However, her delegation had heard that China would not decrease its export taxes or only partially reduce them from 120 per cent to 95 per cent. It also seemed that the export tax would stay in place until end December 2009. Her delegation regretted if this was the case. Switzerland asked the Chinese delegation when it intended to bring itself into WTO conformity on this issue, i.e. when would it reduce the export tax on yellow phosphorous to a maximum level of 20 per cent and when would it eliminate the export price.

7.8 The representative of China did not wish to re-open the Reviews carried out in the subsidiary bodies on the issues identified by the previous speakers. Generally speaking, he did not agree with the comment by the EC delegate that China lacked co-operation in this TRM and did not respond to the questions raised by Members. As Members could see from the minutes of the CTG subsidiary bodies, detailed information, explanations and positions were provided by the Chinese delegation to the questions addressed to it. He referred to the questions resubmitted in documents G/C/W/603 and Add.1 and G/C/W/605 from the US and EC respectively. For example, on the export regulation that the US and EC raised before the Committee in Market Access, his colleague had responded very clearly that, although the Chinese delegation was willing to exchange views on those questions in that Committee, it was not appropriate to deal with export issues in the Committee on Market Access in view of the Committee's TRM mandate. The Chinese Accession Protocol, in Annex 1A stated: "issues concerning export administration were to be taken up by the Council for Trade in Goods". His colleague in the Market Access Committee also told the EC that the Chinese delegation did not agree that any question could be raised in the Transitional Review of the relevant committees and councils without due regard to their respective mandates.

7.9 Regarding the question from the US delegate on China's land and administration system, raised in the Committee on Subsidies and Countervailing Measures, the Chinese delegation did respond clearly. It said that it did not see the relevance of those questions to the mandate of that Committee. In fact, to that response, his delegation added that it doubted the relevance of this issue of land and administration to trade in goods, of which this Council was responsible. In conclusion, the Chinese delegation had always engaged seriously and with full co-operation from the relevant authorities back in the Capital on the TRM. He himself travelled to Geneva for this one-day meeting from Beijing. The discussion under the agenda item of the transitional review should be, and this was the wording from the Accession Protocol, "to review the implementation by China of the WTO Agreement and the provisions of this Protocol". The discussion should not be a discussion on general

issues, such as the land administration system. There was a mechanism in this organization for enhancing the mutual general understanding of the economic and trade regimes and policies of the Members. He concluded that he would take up detailed questions from Members in the second part of the review.

7.10 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/608. She also drew Members' attention to the following documents to which delegations had already referred: questions from the US in documents G/C/W/603 and Addendum 1; questions from the EC in document G/C/W/605; and questions from Japan in document G/C/W/606.

7.11 The representative of China informed Members that his delegation's communication, submitted as required under Annex 1A of the Protocol, outlined in detail China's export administration regime. He did not have much more to add to the information provided.

7.12 The representative of Japan appreciated China's communication but asked that, next year, it be submitted well in advance of the Council's meeting. Her delegation had raised three issues in its submission, all related to China's export restrictive measures. She mentioned a few of the questions in the document. First, Japan expressed its concern regarding China's exporting licensing measures that China justified on the basis of GATT Article XX. She asked China to explain which sub-paragraph of Article XX did it justify its export licensing measures on a product-by-product basis. China also mentioned in the past that it implemented stringent restrictions on domestic production and consumption. In this connection, her delegation would like China to explain its justification with concrete data. Japan also expressed its concern regarding China's export taxes on products, such as agriculture products and fertilizers. Her delegation understood that China imposed export taxes on products not listed in Annex 6 of the Accession Protocol. She asked China to explain the purposes and necessities of these export taxes, particularly on products not listed in Annex 6 of the Protocol. China's report said that China would submit to the WTO a new and full notification of quantitative restrictions for the year 2008 which would reflect details of these export non-tariff measures, including quota bonding. Her delegation looked forward to receiving this notification and asked when that notification would be made. Japan was also concerned with China's export prohibition on natural sand and asked how China justified it with regard to Article 11 of the GATT. If China justified it under Article XX(d) of GATT, she asked for a detailed explanation of China's restrictive measures on domestic production and consumption of natural sand. She also asked for data of the latest trends in domestic production and consumption of natural sand.

7.13 The representative of China focused his explanation and responses on the background situation in China instead of going into specific products. The Chinese Government was becoming more and more aware of the importance and urgency of environmental protection and energy conservation while developing its economy. This was a common concern of the international community. It was not difficult to see that the rapid development of the Chinese economy in the past three decades had also brought about heavy pressure on the environment, and in certain areas the situation was fairly serious. Members might well be aware of the concept of scientific outlook on development which was advocated by the Chinese Government. It was natural that the measures adopted for such purposes were also reflected on exports. In the Transitional Reviews of the subsidiary Committees that reported to this Council, some Members raised questions and concerns regarding China's industrial policies. As a matter of fact, the utmost objective of the industrial policies was also to achieve environmental protection, energy conservation and emission reductions. In these areas China was fully aware of its responsibilities towards the world. It took note of Members' concerns expressed today on the measures effecting exports, but he clarified that the measures were not isolated to specifically or intentionally target exports. Rather they were part of the Chinese Government's efforts to address the pressing concern for environmental protection, energy

conservation and emission reductions, which these days were the daily talk of Chinese people. These measures were also accompanied by restrictive measures on domestic production and consumption. For example, in the Comprehensive Work Scheme on Energy Reservation and Emission Reduction, promulgated by the State Council, it was stipulated that while implementing the various measures affecting the export of energy-intensive and high polluting products, any initiative to establish new projects of high energy consumption and high pollution must be reviewed in conjunction with the local government's undertaking to meet the targets for energy saving, emission reduction and outdated production capacity elimination. Obsolete production capacity in industries of electricity, steel, construction inputs, electrolyte aluminium, iron alloy, calcium carbide, coke, coal, tabulate glass must be eliminated and local governments must close down those enterprises falling into the above categories. Another example was the Chinese Government's significant, recent increase, on 1 August 2007 of the resource tax rate on zinc, lead, copper, tungsten, by 400% or 500%. There were also other domestic restriction measures on production and consumption concerning specific products like coke, etc. which were elaborated in previous Reviews. These measures were still in place and he, therefore, would not repeat them today.

7.14 It was his delegation's belief that those measures affecting exports of certain natural resource products had been implemented where strict domestic production and consumption restrictions were also put in place. They were part of the overall programme to achieve sustainable and scientific development of the Chinese economy. They were taken, bearing in mind China's obligations in the WTO, specifically in Article XI, Annex 6 of the Accession Protocol, and paragraph 162 of the Working Party Report which basically said that measures having the effect of export restriction in exceptional cases may be adopted to the extent that they were consistent with WTO rules. With regard to Japan's question on Chinese measures concerning agriculture related products, these were in response to the shortage of foodstuffs which many Members, particularly developing Members, were facing. China had the largest population in the world, and it was not difficult to understand its concerns for maintaining a stable and sufficient domestic supply of foodstuff at prices affordable to the general public. The measure concerning chemical fertilizers was also due to shortage of supply concerns. But it was seasonal and would be adjusted at an appropriate time. Regarding the transparency of export-related measures, the primary concern in the EC's questions, he did not see the problem. In the past 7 years, China had provided detailed information regarding export tariff and non-tariff measures. It submitted its annual QR notification to the Committee on Market Access which listed, according to 8 digit tariff lines, all China's non-tariff measures covering both imports and exports, including the quota volume when applicable. It also provided annually to this Council information required by Annex 1A of the Accession Protocol describing, in detail, China's export administration regime. Furthermore, all the information regarding export administration in China could be acquired on the internet, at the web-site of the Ministry of Commerce. In the last two Trade Policy Reviews, a large amount of information on China's export administration regime was also covered. Regarding the export prohibition of natural sand, the export prohibition also aimed at protecting the environment and eco-system, as the mining of natural sand caused severe damage to river beds and water quality. For silica sand, since the processing technology of polycrystalline silicon was not advanced in China, purity of refined silicon was quite low and most silicon was wasted in the processing. This caused not only pollution but wasting of natural resources. Currently, China was not in favour of domestic natural sand mining and silica sand refinery and most of these products were imported. To conclude, he hoped that Members would understand the challenges and pressures of a large developing country like China to protect its environment and conserve its natural resources to achieve sustainable development. His delegation took note of Members' specific concerns and would keep in touch through bilateral communications.

7.15 The representative of the European Communities asked a follow-up question to China on export restrictions. The EC fully understood and shared China's environmental concerns. However, the levy of export taxes actually reduced the domestic price for domestic users so it was not clear how

this would help the environment. Therefore, if the concern was the environment, why did not China levy the same taxes on domestic producers that were applied on exports.

7.16 The representative of China reiterated that the Chinese government was also implementing very strict domestic restrictions on production and consumption. One of the examples he gave was the increase in the resources tax rate on a number of the mineral products.

7.17 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.

7.18 The Council so agreed.
