

# WORLD TRADE ORGANIZATION

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## 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 10 November 2005, 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/530, G/C/W/532, G/C/W/537 and G/C/W/538 respectively. The Annex 1A information provided by China to the Council for the review was circulated in document G/C/W/539.
3. The review proceeded in two stages. First, the CTG took note of the reviews that had been carried out in the CTG subsidiary bodies. Second, the Council reviewed the information provided by China concerning specific parts of Annex 1A of the Protocol and the questions raised by certain Members. The statements made at the meeting of 10 November 2005 are reflected in the minutes of the meeting in document G/C/M/82. The relevant paragraphs which reflect the discussion under agenda item III are annexed.

## ANNEX

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

3.1 In accordance with paragraph 18 of the Protocol of the Accession of the People's Republic of China ("the Protocol") in document WT/L/432, the Chairman explained that the CTG would report to the General Council on the Transitional Review Mechanism (TRM). He suggested that the Council proceed in two stages. First, the CTG subsidiary bodies were required to transmit their reports to the Council for Trade in Goods. This they had done and, as a first step in the review process, he gave Members an opportunity to make general comments on those reports, and then proposed that the Council take note of the Reviews that had been carried out in these bodies. Then the Council would turn to its own report. The Chairman recalled that the following subsidiary bodies had carried out the Review: Committee on Market Access (document G/MA/164 and G/MA/W/74 which contained information China supplied after completion of the Review); Committee on Agriculture (G/AG/21); Committee on Customs Valuation (G/VAL/59); Committee on Sanitary and Phytosanitary Measures (G/SPS/38); Committee on Technical Barriers to Trade (G/TBT/17); Committee on Import Licensing (G/LIC/14); Committee on Rules of Origin (G/RO/61); Committee on Anti-Dumping (G/ADP/14); Committee on Subsidies and Countervailing Measures (G/SCM/118); Committee on Safeguards (G/SG/80); and Committee on Trade-Related Investment Measures (G/L/751).

3.2 The representative of the United States recalled that the WTO was nearing the end of the fourth annual transitional review of China's efforts to implement the commitments in its Protocol of Accession to the WTO. His delegation believed that the TRM remained an important and useful mechanism, serving the interests of China and of other WTO Members. It provided Members with the opportunity to seek clarifications on China's policies and practices. China, in turn, had the opportunity to clarify its approaches and actions, in order to prevent misunderstandings that could lead to trade frictions. Perhaps the most important aspect of the TRM was that it also provided a forum for Members to convey to China their views, expectations and concerns regarding China's efforts to comply with its WTO obligations. China then had the opportunity to explain its views and to inform Members about how it had addressed their expectations and concerns. The TRM was an important and useful exercise in transparency, one of the fundamental principles underlying the WTO Agreement. His delegation believed that many of the TRM exercises in the subsidiary Committees generated productive exchanges and it was evident that China put a lot of time and effort into reviewing and considering Members' questions and preparing responses. However, there were areas in which China could improve. It would be helpful if China could bring experts from capital to the reviews; in some cases, their absence prevented productive exchanges during or around the reviews.

3.3 His delegation highlighted concerns that it had raised during the reviews in the subsidiary Committees. Several areas of concern were raised in the SPS and Agriculture Committees, and his delegation focused on two BSE-related issues. Its strongest concern involved China's BSE-related ban on US beef. It was nearly two years since China imposed its ban on US beef, and China had still not offered any explanation of its actions or the necessary regulatory steps for lifting the ban. Dozens of countries lifted their bans on US beef. Each of them had, at a minimum, provided the US with a detailed explanation of the regulatory steps necessary to decide on the US request to lift the ban. His delegation strongly urged China to take immediate steps to ensure that its regulatory authorities moved quickly to address this problem. His delegation also expressed concern about the *de facto* ban that China maintained on low-risk, non-ruminant origin products from the US. China's ban was ostensibly based on concerns about BSE, but these products should never have been banned under existing OIE (World Organization for Animal Health) guidelines. His delegation continued to urge China to take immediate steps to lift this ban.

3.4 Another area of concern related to China's continued fire blight-related ban on the importation of US apples, pears and plums. His delegation had asked China to move quickly to modify its ban to allow the importation of mature fruit which were free of symptoms, consistent with the decision of the Appellate Body in *Japan – Measure Affecting the Importation of Apples* (WT/DS245/AB/R). As in prior reviews, his delegation also focused on China's Quarantine Import Permit (QIP) system. China's regulatory authorities seemed to frequently use this system to intervene in the market in order to control the pace and quantity of trade in agricultural commodities. This was one of the most important issues affecting the United States and China's other agricultural trading partners. His delegation also expressed continued concern about China's VAT policies and practices as they related to corn. This was an area where US exporters had complained about *ad hoc* treatment and other irregularities that favoured domestic producers. As a result, his delegation sought, and continued to seek, needed clarifications from China.

3.5 Before the Market Access Committee, his delegation raised three important issues. The first concerned one of the initial measures implementing China's new automobile industrial policy. Here, the United States, like other Members, expressed strong concern over regulations issued earlier this year addressing tariffs on imported auto parts. These regulations would likely break China's tariff bindings by applying the higher tariff rate for complete vehicles to many imported parts. The regulations also called into question China's commitment to eliminate local content requirements. So far, these regulations had created significant uncertainty for US and other foreign suppliers, and his delegation looked forward to China remedying this situation as soon as possible.

3.6 The representative of the European Communities also attached great importance to the functioning of the TRM. Transparency was an essential element of WTO Membership, and while the TRM was specific to the China Protocol of Accession to the WTO, it was not terribly different from the trade policy reviews to which every Member was subject. China had reaped enormous benefits from its access to the liberal and transparent trade environment provided by the WTO. China was now a major trading partner, and had a key stage in the proper functioning of this institution. His delegation looked to China to show leadership in setting the example of providing detailed answers to legitimate concerns of all Members. This could only contribute to mutual trust and dispel concerns about, for example, the enactment of industrial policies that appeared to feature elements not compatible with WTO commitments. His delegation was grateful for the replies received in the various subsidiary bodies and the efforts China had made to resolve some of the concerns. Nevertheless it hoped for more detailed replies than in the past to the questions that his delegation and other Members had raised in the subsidiary bodies. His delegation had provided advance questions for the CTG-specific review also. Some questions overlapped with the US and these were in three domains. The first concerned Chinese export restrictions, in particular coke. The second concerned the measures for the import of automobile components fulfilling the characteristics of a whole vehicle, which the US had also raised. The third was his delegation's concern over lack of subsidies notifications. He added that a fourth area of concern was the timing of the opening of negotiations with China to join the Government Procurement Agreement.

3.7 The representative of China stated that his delegation had made tremendous efforts to respond to questions and concerns raised by Members. It believed that it had clarified and explained its positions on all of these issues, and that it had legitimate reasons and concerns with regard to all of the issues raised which had been dealt with in a WTO-consistent manner. The review process was certainly helpful for Members to understand better the positions and the background in China with regard to the issues raised. That said, his delegation also had some concerns with the review process itself. In its view, some of the questions had been raised repeatedly and China's positions had been explained many times over the years, as reflected in the minutes of all the subsidiary Committee meetings in which the TRM took place. Members should refrain from giving such extra burdens to developing Members like China, particularly in light of the heavy tasks leading to the Hong Kong Ministerial. Another concern was the late presentation of questions to China which made them difficult to deal with. His delegation would work professionally and pragmatically to respond to the

questions raised but did not want its efforts disturbed by the late presentation of questions. Finally, his delegation thanked Members for their interest in China's trade policies and regime; China had the same interest in other Members. His delegation looked forward to further exchanges with Members on issues of mutual trade interest, and to more stabilising trade relations which were healthy not only for China but for other Members.

3.8 The Chairman proposed that the Council take note of the statements made and of the reports from the subsidiary bodies on their respective TRM exercises. Afterwards, he proposed that the Council move to the CTG-specific TRM.

3.9 The Council so agreed.

3.10 With respect to the CTG-specific Review, the Chairman stated 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. China had submitted the required information in document G/C/W/539. He also drew attention to questions from Japan in document G/C/W/532, questions from the United States in document G/C/W/530 and 537, and questions from the European Communities in document G/C/W/538.

3.11 The representative of Japan agreed with the US and the EC on the value of the TRM process and also commended China for its great efforts to respond to the questions that made this process most productive. Japan was also pleased to see that there was some good productive and informative clarifications for progress. At the same time, there were still issues that concerned his delegation. On the specific issues raised in his delegation's submission, he made some brief points. His delegation had raised the system of complete automobile features several times, and it carefully listened to the past explanations by China. However, it remained concerned in light of the consistency with the spirit of China's commitment in paragraph 93 of the Report of the Working Group on the Accession of China, and with Article II of the GATT. His delegation would appreciate additional efforts by China to address the concern which was also shared by other Members as well. With regard to fluorite and coke, Japan questioned the justification under Article XX(g) of GATT. This Article stipulated that regulation on domestic production and consumption should accompany trade restrictions introduced for conservation of exhaustible natural resources. All natural resources except for renewables were exhaustible in principle. However, his delegation did not believe that this was the way in which Article XX(g) should be interpreted. Japan requested solid reasons why the measures noted were GATT-consistent. Japan acknowledged that the production of coke had environmental impacts that China was trying to address very seriously. The environmental problem was also a serious problem in Japan in the past and his delegation understood the importance of solving these problems. However, the policy measures chosen should be most straightforward to avoid pollution. His delegation believed that environmental regulations and their effective enforcement were primary means; trade-restrictive policies should be avoided. With regard to government procurement, his delegation shared the views of the US and Japan and looked forward to good news from the Chinese delegation.

3.12 The representative of China, before responding to the detailed questions, noted that some of these questions had already been dealt with in the subsidiary bodies. In this respect, he reiterated China's position with regard to the relationship of the mandate of the subsidiary bodies vis-à-vis the mandate of the CTG. His delegation provided the following clarifications regarding the questions raised by Members. Regarding importation and distribution of books, newspaper and magazines, pursuant to Articles 14 and 16(a) of the revised *Foreign Trade Law*, the Chinese government had the right to restrict the importation or exportation of products to protect public moral, public interest and national security. This was not contradictory to Article XX of GATT 1994. In accordance with the *Foreign Trade Law*, the *Administrative Regulations on Publishing* and the *Catalogue for the Guidance of Foreign Investment Industries* stipulated that any Chinese enterprise, foreign invested enterprise or wholly-foreign owned enterprise could engage in exportation of newspapers, books and

magazines, while for the purpose of protection of public moral, importation of foreign publications should be done only by certain enterprises.

3.13 Regarding distribution of imported publications, China's service schedule read, "For these products, foreign service suppliers will be permitted to engage in the distribution of books, newspapers, magazines, pharmaceutical products, pesticides and mulching films within three years after China's accession, and to engage in the distribution of chemical fertilizers, processed oil and crude oil within five years after China's accession.". In accordance with the commitments in the Accession Protocol, China had already opened its market to foreign invested and wholly foreign owned enterprises to engage in wholesale and distribution of Chinese books, newspapers and magazines in China.

3.14 Regarding trade in coke, it should be noted that the raw material for making coke, coal, was an exhaustible resource and coal mines had already been excessively exploited. At present, reserved coal mines in China, which could be used in coke production, were estimated to guarantee sustainable use for coke production for, at most, only 100 years. Taking into account the losses from the mining and production processes, the coal reserves could actually last for only 40 years. Under these circumstances, China carried out a series of measures to control the domestic production and consumption of coke. First, on 1 September 1999 and 1 Jan 2000, the SETC published *the first batch of Catalogue of Prohibition of Repetitive Project Investment in Industrial and Commercial Area, the Second Batch of Catalogue of Outdated Production Capacity, Techniques and Products*. Second, on 27 May 2004, nine ministries jointly published *the Circular on Streamlining Administration on Coke Industry*, which stipulated that small coke factories must be shut down and qualified manufacturers have to pay a high pollution fee; that all the coke projects after 2000 must be reviewed and those failing to meet the published standards were terminated; and more effective enforcement against illegal sales of export quota licenses for coke. Third, on 16 December, 2004, the National Development and Reform Commission published Announcement No. 76 of 2004, which set the standard for market access in the coke industry. The standard applied to both domestic and foreign enterprises. It showed the Chinese Government's determination to streamline and restore market order in the coke industry.

3.15 At present, as a result of those effective measures, domestic order in the coke market was restored. The export price of coke was only 130 US\$/ton, which equalled the coke import price of the United States. Therefore, it was not proper to say that, "a significant portion of the export price remained attributable to the practice of selling export quota certificates" or that, "the export price remained artificially high". Moreover, as the present coke price in the international market was already lower than the production cost of many coke producing countries, maintaining the quota system on coke could guarantee the international market price remaining at a rational level, estimated to be 200-220 US\$/ton. However, he pointed out that one Member, on one hand, implemented an anti-dumping tax on China's coke export, while on the other, urged China to abolish its export control on coke. He asked if the Member could provide the rationale for such self-contradictory behaviour?

3.16 Regarding the Agreement on Government Procurement, the Chinese government was taking positive steps to initiate negotiations. Recently, a joint study group at the Ministry level had been established under the leadership of the Ministry of Finance. His delegation expected the study group to turn out concrete outcomes in the near future. Regarding transparency, the Chinese Government had been faithfully implementing its accession commitment. At present, Ministries and agencies were supposed to submit copies of their newly published laws and regulation to MOFCOM, which was trying to include all the trade related laws and regulations in the *Foreign Trade and Economic Relation Gazette* published by MOFCOM. However, it should be noted that although the MOFCOM Gazette may include all the trade-related laws, regulations and administrative measures, other ministries or agencies could still publish their own gazettes to make their policies known to the public. This had proven to be an effective method for public opinion solicitation. As for the public opinion solicitation process, most of the drafted trade related laws and regulations were to be published on the

websites of respective competent government bodies, which provided an easy access for interested parties to make their voices heard. Besides, public hearings, symposiums and discussion groups were also held to involve interested parties.

3.17 Regarding the rationale for export controls on fluorspar, his delegation had been clear during the previous TRM and it seemed unnecessary to repeat the points which remained unchanged. Regarding border trade, China did not maintain any country-specific preferential treatment at present. Regarding iron ore, the Chinese Government had not been informed by the industry association of the promulgation of any standard yet. Regarding the tax base for the consumption tax applied to imported goods, his delegation believed that there was a misunderstanding due to translation of the regulation; the formulas to calculate the tax base were the same though the Chinese wording may seem different. His delegation would welcome a bilateral technical communication after today's meeting.

3.18 The representative of the United States thanked China for the detailed responses. To follow-up on a couple of points, he noted that with regard to the importation of books, newspapers and magazines, his delegation had a difference in view. China's commitment to allow the importation of books, newspapers and magazines was clear from its accession agreement. China was allowed to reserve for state trading certain products listed in Annex 2, and books, newspapers and magazines were not among the products listed in Annex 2. His delegation understood China's stated concerns about protecting public morals. Whatever mechanism China wanted to use to do that, it still needed to figure out a system that would allow foreign enterprises and individuals to import books, newspapers and magazines at the same time. With regard to the distribution of books, newspapers and magazines, his delegation was happy to hear that China considered this sector to be fully open. His delegation raised one measure in its questions, the administrative measures on subscription of imported publications which seemed to, in part, restrict distribution to state trading enterprises.

3.19 With regard to the coke export quota system, his delegation appreciated the detailed comments from China on that issue. Whatever system China implemented, it must not discriminate in its efforts to protect the exhaustible natural resources. The current quota system was discriminatory against exports of coke. He appreciated the Chinese delegate's comments about the consumption tax issue and looked forward to discussing bilaterally the translation issue. Lastly, there was one question regarding border trading for which his delegation would welcome information from China. Specifically, what were the currently applicable value added tax rates for logs and for sawn wood?

3.20 The representative of China briefly responded to these points. On newspapers and magazines, his delegation maintained that China's commitment with regard to these products, both in the distribution and the import and export side, was faithfully implemented and did not affect China's right to take necessary measures for the protection of public morals and other legitimate concerns. That being said, his delegation's position was quite clear. On the issue of coke, he did not have much to add since the positions of China had been explained clearly. Lastly, on border trade and specifically regarding a preferential arrangement with Russia, his delegation explained clearly that China did not presently have any country-specific preferential arrangements.

3.21 The Chairman thanked the delegation of China for the answers that it had provided and also those delegations that had raised questions and made comments. He proposed that the Council agree to proceed with the preparation of a brief factual report on the TRM with references to the relevant documents and with the portion of the minutes of this meeting relating to the TRM attached. The CTG report, together with the reports of the subsidiary bodies, would then be transmitted to the General Council.

3.22 It was so agreed.

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