

WORLD TRADE ORGANIZATION

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CHINA – CERTAIN MEASURES GRANTING REFUNDS, REDUCTIONS OR EXEMPTIONS FROM TAXES AND OTHER PAYMENTS

Request for Further Consultations by the United States

Addendum

The following communication, dated 27 April 2007, from the delegation of the United States to the delegation of China and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

As you know, on 20 March 2007, pursuant to the request of the United States (DS358/1), the People's Republic of China and the United States held consultations concerning certain measures granting refunds, reductions, or exemptions from taxes or other payments otherwise due to the government by enterprises in China. Through those consultations held pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Articles 4 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), and Article 8 of the *Agreement on Trade-Related Investment Measures* ("TRIMs Agreement"), and confirmed by subsequent review, we understand that China has repealed a subsidy program based on the disbursement of loans at discounted lending rates, identified in our initial consultation request as the *Circular of the People's Bank of China, the State Administration of Foreign Exchange, the Ministry of Foreign Trade and Economic Cooperation and the State Administration of Taxation Concerning Printing and Distribution Detailed Rules on Rewarding and Punishment Concerning Provisional Regulations over Examination of Export Collections of Foreign Exchange*. In addition, with regard to the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*, also identified in our initial consultation request, we have learned that China recently adopted a new income tax law, the *Enterprise Income Tax Law of the People's Republic of China*.

To take these developments into account, my authorities have instructed me to modify our identification of the measures at issue and request supplemental consultations with the Government of the People's Republic of China pursuant to Articles 1 and 4 of the DSU, Article XXII:1 of the GATT 1994, Articles 4 and 30 of the SCM Agreement, and Article 8 of the TRIMs Agreement, with regard to certain measures granting refunds, reductions, or exemptions from taxes or other payments otherwise due to the government by enterprises in China. As required by Article 4.2 of the SCM Agreement, a Statement of Available Evidence is attached to this request for supplemental consultations.

These measures include the following, as well as any amendments and any related or implementing measures:

- *Circular of the State Administration of Taxation Concerning Transmitting the Interim Measure for the Administration of Tax Refunds to Enterprises with Foreign Investment for Their Domestic Equipment Purchases;*¹
- *Circular of the Ministry of Finance and the State Administration of Taxation Concerning the Issue of Tax Credit for Business Income Tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises,*² read in conjunction with *Circular of the State Administration of Taxation on Printing and Distributing the Measures Concerning Business Income Tax Credit on the Investment of Enterprises with Foreign Investment and Foreign Enterprises by Way of Purchasing Homemade Equipment;*³
- *Circular on Distribution of Interim Measures Concerning Reduction and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation;*⁴
- Articles 75(7) and 75(8) of the *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises,*⁵ read in conjunction with Articles 8 and 9 of the *Provisions of the State Council on the Encouragement of Foreign Investment*⁶ and Articles 6 and 8 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises;*⁷
- Article 73(6) of the *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises,*⁸ read in conjunction with Articles 6 and 7 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*⁹ and Section XIII of the Catalogue for the Guidance of Foreign Investment Industries;¹⁰
- Article 81 of the *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises,*¹¹ read in conjunction with Articles 6 and 10 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*¹² and Article 10 of the *Provisions of the State Council on the Encouragement of Foreign Investment;*¹³

¹ GuoShiFa [1999] No. 171 (20 August 1999), available at www.fdi.gov.cn.

² CaiShuiZi [2000] No. 49 (14 January 2000), available at www.fdi.gov.cn.

³ GuoShuiFa [2000] No. 90 (18 May 2000), available at www.fdi.gov.cn.

⁴ CaiShui [1999] No. 290 (8 December 1999).

⁵ Decree [1991] No. 85 of the State Council (30 June 1991), available at www.fdi.gov.cn.

⁶ GuoFa [1986] No. 95 (11 October 1986), available at www.fdi.gov.cn.

⁷ Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991), available at www.fdi.gov.cn.

⁸ Decree [1991] No. 85 of the State Council (30 June 1991), available at www.fdi.gov.cn.

⁹ Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991), available at www.fdi.gov.cn.

¹⁰ Order [2004] No. 24 of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China (30 November 2004), available at www.fdi.gov.cn.

¹¹ Decree [1991] of the State Council (30 June 1991), available at www.fdi.gov.cn.

¹² Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991), available at www.fdi.gov.cn.

¹³ GuoFa [1986] No. 95 (11 October 1986), available at www.fdi.gov.cn.

- Parts IV and VIII of the *Enterprise Income Tax Law of the People's Republic of China*;¹⁴
- Article 3 of the *Provisions of the State Council on the Encouragement of Foreign Investment*;¹⁵
- *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment*,¹⁶ read in conjunction with Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.¹⁷

These measures appear to provide such refunds, reductions or exemptions to enterprises in China on the condition that those enterprises purchase domestic over imported goods, or on the condition that those enterprises meet certain export performance criteria. Accordingly, the measures appear to be inconsistent with Article 3 of the *SCM Agreement*. Furthermore, to the extent the measures accord imported products treatment less favorable than that accorded "like" domestic products, they appear inconsistent with Article III:4 of the GATT 1994 and Article 2 of the TRIMs Agreement. The measures also appear not to comply with China's obligations under paragraphs 7.2-7.3 and 10.3 of Part I of its Accession Protocol,¹⁸ as well as paragraph 1.2 of Part I of its Accession Protocol (to the extent that it incorporates paragraphs 167 and 203 of the Report of the Working Party on the Accession of China,¹⁹) which forms part of the terms of accession agreed between China and the WTO and is an integral part of the *Marrakesh Agreement Establishing the World Trade Organization*.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

¹⁴Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007), available at www.fdi.gov.cn.

¹⁵GuoFa [1986] No. 95 (11 October 1986), available at www.fdi.gov.cn.

¹⁶GuoFa [1997] No. 37 (29 December 1997), available at www.fdi.gov.cn.

¹⁷Order [2004] No. 24 of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China (30 November 2004), available at www.fdi.gov.cn.

¹⁸WT/L/432.

¹⁹WT/MIN(01)/3.

Statement of Available Evidence

- Circular of the State Administration of Taxation Concerning Transmitting the Interim Measure for the Administration of Tax Refunds to Enterprises with Foreign Investment for Their Domestic Equipment Purchases²⁰
- Circular of the Ministry of Finance and the State Administration of Taxation Concerning the Issue of Tax Credit for Business Income Tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises²¹
- Circular of the State Administration of Taxation on Printing and Distributing the Measures Concerning Business Income Tax Credit on the Investment of Enterprises with Foreign Investment and Foreign Enterprises by Way of Purchasing Homemade Equipment²²
- Circular on Distribution of Interim Measures Concerning Reduction and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation²³
- Provisions of the State Council on the Encouragement of Foreign Investment²⁴
- Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises²⁵
- Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises²⁶
- Enterprise Income Tax Law of the People's Republic of China²⁷
- Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment²⁸
- Catalogue for the Guidance of Foreign Investment Industries²⁹

²⁰GuoShiFa [1999] No. 171 (20 August 1999), available at www.fdi.gov.cn (English translation by Ministry of Commerce of People's Republic of China).

²¹CaiShuiZi [2000] No. 49 (14 January 2000), available at www.fdi.gov.cn (English translation by Ministry of Commerce of People's Republic of China).

²²GuoShuiFa [2000] No. 90 (18 May 2000), available at www.fdi.gov.cn (English translation by Ministry of Commerce of People's Republic of China).

²³CaiShui [1999] No. 290 (8 December 1999) (English translation).

²⁴GuoFa [1986] No. 95 (11 October 1986), available at www.fdi.gov.cn (English translation by Ministry of Commerce of People's Republic of China).

²⁵Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991), available at www.fdi.gov.cn (English translation by Ministry of Commerce of People's Republic of China).

²⁶Decree [1991] No. 85 of the State Council (30 June 1991), available at www.fdi.gov.cn (English translation by Ministry of Commerce of People's Republic of China).

²⁷Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007), available at www.fdi.gov.cn. (English translation by Ministry of Commerce of People's Republic of China).

²⁸GuoFa [1997] No. 37 (29 December 1997), available at www.fdi.gov.cn (English translation by Ministry of Commerce of People's Republic of China).

²⁹Order [2004] No. 24 of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China (30 November 2004), available at www.fdi.gov.cn (English translation by Ministry of Commerce of People's Republic of China).