

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 Mexico

Addendum

The following communication, dated 4 May 2007, from the delegation of Mexico 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 by Mexico (DS359/1), the People's Republic of China and Mexico held consultations regarding certain measures through which the People's Republic of China grants enterprises located within its territory refunds, reductions, or exemptions from taxes or other payments otherwise due to the Government. On the basis of 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Trade-Related Investment Measures* (TRIMs Agreement), and following a subsequent review, we understand that China has repealed a subsidy program based on the disbursement of loans at discounted lending rates, identified in our initial consultation request as the *Circular of the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, regarding 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, regarding certain measures through which the People's Republic of China grants enterprises located within its

territory refunds, reductions, or exemptions from taxes or other payments otherwise due to the Government. As required by Article 4.2 of the SCM Agreement, a Statement of Available Evidence is attached to this request for supplemental consultations.

The measures concerned include the following, as well as any amendments thereto and any related 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 Purchases¹;
- 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 Enterprises², 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 Equipment³;
- *Circular on Distribution of Interim Measures Concerning Reduction and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation*⁴;
- *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*⁵, including paragraphs 7, 8 and 9 of Article 75 thereof, read in conjunction with the *Provisions of the State Council on the Encouragement of Foreign Investment*⁶, including and Articles 8, 9 and 18 thereof, and the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*⁷, including Articles 2, 5, 6 and 8 thereof;
- *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*⁸, including Article 73(6) thereof, read in conjunction with the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*⁹, including Articles 2, 5, 6 and 7 thereof, and Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*¹⁰;

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.

- *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*¹¹, including Article 81 thereof, read in conjunction with the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*¹², including Articles 6 and 10 thereof, and the *Provisions of the State Council on the Encouragement of Foreign Investment*¹³, including Article 10 thereof;
- The *Enterprise Income Tax Law of the People's Republic of China*, including Parts IV and VIII thereof¹⁴;
- The *Provisions of the State Council on the Encouragement of Foreign Investment*¹⁵, including Article 3 thereof;
- *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 refunds, reductions or exemptions to enterprises in China on the condition that those enterprises purchase domestic over imported goods, or on the condition that they meet certain export performance criteria. Thus, the said measures appear to be inconsistent with Article 3 of the *SCM Agreement*. Furthermore, to the extent the measures accord imported products treatment less favourable 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 include preferential treatment for enterprises with foreign investment and foreign enterprises established in economic areas in the territory of China (for example, in special economic zones, economic and technological zones, coastal economic open zones, and the Hainan Special Economic Zone) to the extent that they grant enterprises located within the said areas refunds, reductions, or exemptions from taxes or other payments in a manner inconsistent with the above-mentioned WTO provisions. Finally, 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 WTO Accession Protocol¹⁸, 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 China¹⁹), 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 in order to fix a mutually convenient date for consultations.

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.

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

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

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

¹⁷ 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.

¹⁸ WT/L/432.

¹⁹ WT/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 Purchases*²⁰;
- *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*²¹;
- *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*²²;
- *Circular on Distribution of Interim Measures Concerning Reduction and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation*²³;
- *Provisions of the State Council on the Encouragement of Foreign Investment*²⁴;
- *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*²⁵;
- *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*²⁶;
- *Enterprise Income Tax Law of the People's Republic of China*²⁷;
- *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment*²⁸;
- *Catalogue for the Guidance of Foreign Investment Industries*.²⁹

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

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

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

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

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

²⁵ Order [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).

²⁶ Decree [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).

²⁷ Order [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).

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

²⁹ 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 (English translation by Ministry of Commerce of People's Republic of China).