

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

Request for the Establishment of a Panel by the United States

The following communication, dated 12 July 2007, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 2 February and 27 April 2007, the United States requested consultations with the Government of the People's Republic of China ("China") 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"), with regard to certain measures granting refunds, reductions, or exemptions from taxes otherwise due to the government.¹ The United States held consultations with China on 20 March and 22 June 2007. Unfortunately, those consultations did not resolve the dispute.

Certain of the measures that were the subject of the above consultations provide refunds, reductions, or exemptions to enterprises in China from taxes otherwise due to the government on the condition that those enterprises purchase domestic over imported goods. Accordingly, these measures appear to be inconsistent with Article 3.1(b) and 3.2 of the SCM Agreement. Furthermore, because they condition advantages on an enterprise's purchase of domestic over imported equipment, these measures appear to accord imported products treatment less favourable than that accorded "like" domestic products, inconsistent with Article III:4 of the GATT 1994 and Article 2.1 and Annex 1, paragraph 1(a), of the TRIMs Agreement. For the same reasons, these measures appear not to comply with China's obligations under paragraphs 7.2-7.3 and 10.3 of Part I of its Protocol of Accession and paragraph 1.2 of Part I of its Protocol of Accession (to the extent that it incorporates paragraph 203 of the Report of the Working Party on the Accession of China). The measures that give rise to these apparent inconsistencies include the following, as well as any amendments and any related or implementing measures:

1. *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*,² read in conjunction with the *Circular of the State Administration of Taxation and the National Development and Reform Commission of the People's Republic of China, on Printing and Issuing the Trial Measures for the Administration of Tax Rebate for the Purchase of Domestically-Produced Equipment in Foreign Investment Projects*.³

¹ WT/DS358/1 and WT/DS358/1/Add.1.

² GuoShiFa [1999] No. 171 (20 August 1999).

³ GuoShuiFa [2006] No. 111 (24 July 2006).

2. *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*,⁴ read in conjunction with the *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*.⁵ Subsidies under this program will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*,⁶ by virtue of Article 57 of that Law.
3. *Circular on Distribution of Interim Measures Concerning Reduction and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation*.⁷ Subsidies under this program will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*,⁸ by virtue of Article 57 of that Law.

Certain of the measures that were the subject of those consultations grant refunds, reductions, or exemptions from taxes otherwise due to the government on the condition that the beneficiary enterprises meet certain export performance criteria. These measures thus appear to be inconsistent with Article 3.1(a) and 3.2 of the SCM Agreement and, consequently, paragraph 10.3 of Part I of China's Protocol of Accession, and paragraph 1.2 of Part I of its Protocol of Accession (to the extent that it incorporates paragraph 167 of the Report of the Working Party on the Accession of China). The measures that give rise to these apparent inconsistencies include the following, as well as any amendments and any related or implementing measures:

4. Article 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*,⁹ read in conjunction with Article 9 of the *Provisions of the State Council on the Encouragement of Foreign Investment*¹⁰ and Article 6 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*.¹¹ Subsidies under this program will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*,¹² by virtue of Article 57 of that Law.
5. Article 75(7) 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*,¹³ read in conjunction with Article 8 of the *Provisions of the State Council on the Encouragement of Foreign Investment*¹⁴ and Article 6 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*.¹⁵ Subsidies under this program will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*,¹⁶ by virtue of Article 57 of that Law.

⁴ CaiShuiZi [2000] No. 49 (14 January 2000).

⁵ GuoShuiFa [2000] No. 90 (18 May 2000).

⁶ Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007).

⁷ CaiShui [1999] No. 290 (8 December 1999).

⁸ Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007).

⁹ Decree [1991] No. 85 of the State Council (30 June 1991).

¹⁰ GuoFa [1986] No. 95 (11 October 1986).

¹¹ Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991).

¹² Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007).

¹³ Decree [1991] No. 85 of the State Council (30 June 1991).

¹⁴ GuoFa [1986] No. 95 (11 October 1986).

¹⁵ Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991).

¹⁶ Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007).

6. 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*,¹⁷ read in conjunction with Article 7 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*¹⁸ and Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.¹⁹ Subsidies under this program will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*,²⁰ by virtue of Article 57 of that Law.
7. 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*,²¹ read in conjunction with Article 10 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*²² and Article 10 of the *Provisions of the State Council on the Encouragement of Foreign Investment*.²³ Subsidies under this program will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*,²⁴ by virtue of Article 57 of that Law.
8. Article 3 of the *Provisions of the State Council on the Encouragement of Foreign Investment*.²⁵
9. *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment*,²⁶ read in conjunction with Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.²⁷
10. Article 25 of the *Enterprise Income Tax Law of the People's Republic of China*,²⁸ read in conjunction with Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.²⁹
11. Article 28 of the *Enterprise Income Tax Law of the People's Republic of China*,³⁰ read in conjunction with Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.³¹
12. Article 31 of the *Enterprise Income Tax Law of the People's Republic of China*,³² read in conjunction with Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.³³

¹⁷ Decree [1991] No. 85 of the State Council (30 June 1991).

¹⁸ Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991).

¹⁹ 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).

²⁰ Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007).

²¹ Decree [1991] No. 85 of the State Council (30 June 1991).

²² Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991).

²³ GuoFa [1986] No. 95 (11 October 1986).

²⁴ Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007).

²⁵ GuoFa [1986] No. 95 (11 October 1986).

²⁶ GuoFa [1997] No. 37 (29 December 1997).

²⁷ 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).

²⁸ Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007).

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).

³⁰ Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007).

³¹ 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).

³² Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007).

China's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

Accordingly, the United States respectfully requests, pursuant to Article 6 of the DSU and Article 4 of the SCM Agreement, that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

³³ 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).