

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

Request for the Establishment of a Panel by Mexico

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

On 26 February and 4 May 2007, Mexico requested consultations and further consultations, respectively, with the People's Republic of 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. Mexico held consultations with the People's Republic of China on 20 March and 22 June 2007. Unfortunately, those consultations did not resolve the dispute.

The first set of measures that were the subject of consultations are measures granting refunds, reductions, or exemptions to enterprises in the People's Republic of China from taxes otherwise due to the Government, on the condition that those enterprises purchase domestic over imported goods. Consequently, these measures appear to be inconsistent with Articles 3.1(b) and 3.2 of the *SCM Agreement*. Furthermore, because they make advantages conditional on an enterprise's purchase of domestic over imported equipment, these measures appear to accord to imported products treatment less favourable than that accorded to like domestic products, in a manner 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 the obligations of the People's Republic of China 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 thereto and any 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*¹, 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*

¹ GuoShuiFa [1999] No. 171 (20 August 1999).

*Administration of Tax Rebate for the Purchase of Domestically-Produced Equipment in Foreign Investment Projects.*²

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*³, 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*.⁴ Subsidies under these programmes will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*⁵, 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*.⁶ Subsidies under this programme will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*, by virtue of Article 57 of that Law.

The second set of measures that were the subject of 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 Articles 3.1(a) and 3.2 of the *SCM Agreement* and, consequently, with paragraph 10.3 of Part I of the Protocol of Accession of the People's Republic of China and paragraph 1.2 of Part I of its Protocol (to the extent that it incorporates paragraph 167 of the Report of the Working Party on the Accession of China). These measures include the following, as well as any amendments thereto and any implementing measures:

4. *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*⁷, including Articles 75(7) and 75(8) thereof, read in conjunction with the *Provisions of the State Council on the Encouragement of Foreign Investment*⁸, including Articles 8 and 9 thereof, and the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*⁹, including Articles 6 and 8 thereof. Subsidies under this programme will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*, by virtue of Article 57 of that Law.
5. *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*, 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*, including Article 6 thereof, and Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.¹⁰

² GuoShuiFa [2006] No. 111 (24 July 2006).

³ CaiShuiZi [2000] No. 49 (14 January 2000).

⁴ GuoShuiFa [2000] No. 90 (18 May 2000).

⁵ Order [2007] No. 63 of the President of the People's Republic of China (16 March 2007).

⁶ CaiShui [1999] No. 290 (8 December 1999).

⁷ Decree [1991] No. 85 of the State Council (30 June 1991).

⁸ GuoFa [1986] No. 95 (11 October 1986).

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

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).

Subsidies under this programme will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*, by virtue of Article 57 of that Law.

6. *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*, 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*, including Article 10 thereof. Subsidies under this programme will continue to be granted under the *Enterprise Income Tax Law of the People's Republic of China*, by virtue of Article 57 of that Law.
7. Article 3 of the *Provisions of the State Council on the Encouragement of Foreign Investment*.
8. *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment*¹¹, read in conjunction with Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.
9. Article 25 of the *Enterprise Income Tax Law of the People's Republic of China*, read in conjunction with Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.
10. Article 28 of the *Enterprise Income Tax Law of the People's Republic of China*, read in conjunction with Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.
11. Article 31 of the *Enterprise Income Tax Law of the People's Republic of China*, read in conjunction with Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.

The aforementioned 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 Articles 3.1(a) and 3.2 of the *SCM Agreement* and, consequently, with paragraph 10.3 of Part I of the Protocol of Accession of the People's Republic of China and paragraph 1.2 of Part I of its Protocol (to the extent that it incorporates paragraph 167 of the Report of the Working Group on the Accession of China).

All these measures of the People's Republic of China appear to nullify or impair the benefits accruing to Mexico directly or indirectly under the cited agreements.

Accordingly, Mexico 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.

¹¹ GuoFa [1997] No. 37 (29 December 1997).