

# WORLD TRADE ORGANIZATION

WT/DS359/1  
G/L/814  
G/SCM/D75/1  
G/TRIMS/D/26  
28 February 2007

(07-0861)

Original: Spanish

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

### Request for Consultations by Mexico

The following communication, dated 26 February 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.

The Government of Mexico hereby requests consultations with the Government of the People's Republic of China ("PRC") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, 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 through which the PRC grants enterprises refunds, reductions, or exemptions from taxes or other payments otherwise due to the Government. As required by Article 4.2 of the SCM Agreement, I attach to this request for consultations a statement of available evidence.

The measures that are the subject of this request include the following and any amendments thereto, as well as 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*<sup>1</sup>;
- *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 Enterprise with Foreign Investment and Foreign Enterprises*<sup>2</sup>, 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*<sup>3</sup>;

<sup>1</sup> GuoShiFa [1999] No. 171 (20 August 1999), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>2</sup> CaiShuiZi [2000] No. 49 (14 January 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>3</sup> GuoShuiFa [2000] No. 90 (18 May 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

- *Circular on Distribution of Interim Measures Concerning Reduction and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation*<sup>4</sup>;
- 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*<sup>5</sup>, read in conjunction with Articles 8 and 9 of the *Provisions of the State Council on the Encouragement of Foreign Investment*<sup>6</sup> 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*<sup>7</sup>;
- 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*<sup>8</sup>, 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*<sup>9</sup> and Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*<sup>10</sup>;
- 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*<sup>11</sup>, 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*<sup>12</sup> and Article 10 of the *Provisions of the State Council on the Encouragement of Foreign Investment*<sup>13</sup>;
- Article 3 of the *Provisions of the State Council on the Encouragement of Foreign Investment*<sup>14</sup>;
- Articles 3 and 6 of 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 Distributing Detailed Rules on Rewarding and Punishment Concerning Provisional Regulations over Examination of Export Collections of Foreign Exchange*<sup>15</sup>;

---

<sup>4</sup> CaiShui [1999] No. 290 (8 December 1999).

<sup>5</sup> Decree [1991] No. 85 of the State Council (30 June 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>6</sup> GuoFa [1986] No. 95 (11 October 1986), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

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

<sup>8</sup> Decree [1991] No. 85 of the State Council (30 June 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

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

<sup>10</sup> 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](http://www.fdi.gov.cn).

<sup>11</sup> Decree [1991] of the State Council (30 June 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

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

<sup>13</sup> GuoFa [1986] No. 95 (11 October 1986), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>14</sup> GuoFa [1986] No. 95 (11 October 1986), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>15</sup> YinFa [2000] No. 58 (17 February 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

- *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment*<sup>16</sup>, read in conjunction with Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*.<sup>17</sup>

These measures appear to provide refunds, reductions or exemptions from taxes or other payments ordinarily payable to the Government by enterprises in the PRC on the condition that those enterprises purchase domestic over imported goods, or on the condition that those enterprises meet certain export performance criteria. Accordingly, Mexico considers that these measures are 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 are inconsistent with Article III:4 of the GATT 1994 and Article 2 of the TRIMs Agreement. In Mexico's view, the measures are also inconsistent with the PRC's obligations under paragraphs 7.2, 7.3 and 10.3 of Part I of its Accession Protocol<sup>18</sup>, 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<sup>19</sup>), 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*.

Mexico reserves the right to raise further factual and legal claims during the course of the consultations. It looks forward to receiving the PRC Government's response in order to set a mutually convenient date for consultations.

---

<sup>16</sup> GuoFa [1997] No. 37 (29 December 1997), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>17</sup> 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](http://www.fdi.gov.cn).

<sup>18</sup> WT/L/432.

<sup>19</sup> WT/MIN(01)/3.

**Statement of Available Evidence Pursuant to Article 4.2  
of the SCM Agreement**

- *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*<sup>20</sup>;
- *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*<sup>21</sup>;
- *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*<sup>22</sup>;
- *Circular on Distribution of Interim Measures Concerning Reduction and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation*<sup>23</sup>;
- *Provisions of the State Council on the Encouragement of Foreign Investment*<sup>24</sup>;
- *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*<sup>25</sup>;
- *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*<sup>26</sup>;
- *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 Distributing Detailed Rules on Rewarding and Punishment Concerning Provisional Regulations over Examination of Export Collections of Foreign Exchange*<sup>27</sup>;
- *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment*<sup>28</sup>;

---

<sup>20</sup> GuoShiFa [1999] No. 171 (20 August 1999), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>21</sup> CaiShuiZi [2000] No. 49 (14 January 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>22</sup> GuoShuiFa [2000] No. 90 (18 May 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>23</sup> CaiShui [1999] No. 290 (8 December 1999).

<sup>24</sup> GuoFa [1986] No. 95 (11 October 1986), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>25</sup> Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>26</sup> Decree [1991] No. 85 of the State Council (30 June 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>27</sup> YinFa[2000] No. 58 (17 February 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>28</sup> GuoFa [1997] No. 37 (29 December 1997), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

- *Catalogue for the Guidance of Foreign Investment Industries.*<sup>29</sup>
- 

---

<sup>29</sup> 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](http://www.fdi.gov.cn).