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CHINA – TAX MEASURES CONCERNING CERTAIN DOMESTICALLY PRODUCED AIRCRAFT

REQUEST FOR CONSULTATIONS BY THE UNITED STATES

The following communication, dated 8 December 2015, from the delegation of the United States to the delegation of China and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request 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* and Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ('GATT 1994'), with regard to measures providing tax advantages in relation to the sale of certain domestically produced aircraft in China.

It appears that China exempts the sale of certain domestically produced aircraft, including general aviation, regional, and agricultural aircraft, from the value-added tax (VAT), while imported aircraft continue to be subject to the VAT. These measures are reflected in legal instruments that include, but are not limited to, the following, operating separately or collectively:

1. *Circular on the Value-Added Tax Exemption for Domestically Produced Regional¹ Aircraft*, Ministry of Finance and State Administration of Taxation, Cai Shui Zi [2000] No. 51
2. *Circular on the Applicability of the Value-Added Tax Exemption for Domestically Produced Regional Aircraft to the N-5 Aircraft*, Ministry of Finance and State Administration of Taxation, Cai Shui [2002] No. 97
3. *Circular on the Relevant Tax Policy for the AVIC I New Regional Aircraft*, Ministry of Finance and State Administration of Taxation, Cai Shui [2006] No. 283
4. *Interim Regulation of the People's Republic of China on Value Added Tax*, Order of the State Council of the People's Republic of China, Order No. 538, amending Order No. 134

as well as any amendments or successor, replacement, or implementing measures.

These measures appear to be inconsistent with China's obligations pursuant to Article III:2 of the GATT 1994 because they subject, directly or indirectly, products imported into the territory of China to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. These measures also appear to be inconsistent with China's obligations pursuant to Article III:4 of the GATT 1994 because they accord products imported into China with treatment less favorable than that accorded to like products of Chinese origin.

China appears to have acted inconsistently with its obligations under Article X:1 of the GATT 1994 because it has not published the instruments listed in paragraphs (1), (2), (3), and (4), above,

¹ The United States understands that this measure applies to a range of domestically produced aircraft, including general aviation, regional, and agricultural aircraft.

promptly in such a manner as to enable governments and traders to become acquainted with them.

China appears to have acted inconsistently with its obligations under Part I, Paragraph 2(C)(1), of the *Protocol on the Accession of the People's Republic of China* (WT/L/432) ('Accession Protocol') because it is enforcing the instruments listed in paragraphs (1), (2), (3), and (4), above, which pertain to or affect trade in goods, and which have not been published or made readily available to WTO Members, individuals, and enterprises.

China appears to have acted inconsistently with its obligations under Part I, Paragraph 2(C)(2), of the Accession Protocol because it failed to provide a reasonable period for comment before the instruments listed in paragraphs (1), (2), (3), and (4), above, were implemented, after publication in its official journal of those instruments.

China appears to have acted inconsistently with its obligations under Part I, Paragraph 1.2, of the Accession Protocol (to the extent that it incorporates paragraph 334 of the *Report of the Working Party on the Accession of China* (WT/MIN(01)/3)) because it failed to make available to WTO Members translations of the instruments listed in paragraphs (1), (2), (3), and (4), above, into one or more of the official languages of the WTO and failed to make those instruments available.

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