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WTO TRADE POLICY REVIEW OF CHINA

From 26-28 May 2010, the WTO will conduct the bi-annual Trade Policy Review with China. This important exercise is conducted every two years with China, consequently the 3rd time since its accession. In this process, every WTO member has the possibility to raise questions about a member's national trade policy and compliance with WTO rules. With regard to this year's China Trade Policy Review, BUSINESSEUROPE has identified the following priorities:

1) National Indigenous Innovation Policy (NIIP)

A series of policies from 2006 to the present day establish preferential treatment for products containing "indigenous" IPR. There is an increasingly clear trend towards China selecting technologies and products based on the geographical origin of their creation. While BUSINESSEUROPE supports and encourages innovation in China, this trend deprives Chinese users of the technologies and products best adapted to the market's needs. It also discriminates against foreign and foreign-invested Chinese companies and deters them from marketing innovative products in China. The related policies, broadly linked under the indigenous innovation umbrella, limit the types of products that are developed and used in China and exclude some of the most innovative suppliers, the associated R&D, and resulting innovation benefits to the Chinese market.

"Order 618" on the proposed National Indigenous Innovation Product Accreditation Catalogue for Government Procurement of November 2009 has crystallised the challenge posed by such regulations by explicitly connecting "indigenous innovation" to government procurement. This connection has been a catalyst for industry's concerns on this issue.

China has yet to provide clear guarantees that European and other non-Chinese companies will not be excluded from the market, whether centrally or at provincial level. The NIIP, in its original form, created real concerns as it would have severely impacted the ability of foreign companies to operate on a level playing field with local companies in China. The new draft regulation, released by the Chinese government on 10 April 2010, shows clear improvement compared to the previous version and would give foreign-invested companies in China a real chance to take part in the process. However, lists or catalogues by definition are counterproductive as they fall out-of-date very quickly, especially in the high-tech sector. Therefore, China should not publish the indigenous innovation product list and should not carry this program forward. Moreover, the core issue, namely how to build up a sustainable innovation capacity via open and fair competition and without restricting market access, remains untouched in the NIIP.



2) Government procurement

In 2009, businesses were extremely concerned over the issue of the “Buy Chinese” policy. The draft Government Procurement Implementing Rules released earlier this year raised concerns regarding a hardening of current Chinese practices (definition of “domestic product”, pricing thresholds, etc.). More clarity is needed on the content and applicability of legislation (interaction between Government Procurement Law and Bidding Law), including what is meant by “domestic” requirements.

Moreover, China has not yet submitted a revised offer for its accession to the WTO Government Procurement Agreement despite its commitment to do so in early 2010. China’s current offer needs serious improvements, notably regarding thresholds and coverage, and must lead to an opening of large-scale infrastructure projects to investment and trade.

3) Intellectual property rights

BUSINESSEUROPE welcomes China’s efforts to implement the WTO/TRIPS rules but is concerned with the actual implementation of these frameworks. China’s progress in streamlining its intellectual property legislation must be acknowledged, but effective enforcement of IPR remains highly problematic, notably at regional and local levels. The scale of the production of counterfeit and pirated goods inside China remains at an alarmingly high level. In 2008, 54% of all counterfeit goods seized at EU borders came from China.

BUSINESSEUROPE calls on the EU, through the WTO Trade Policy Review and other frameworks, to step up its action and make every effort with China to ensure the effective protection of intellectual property rights in accordance with international/WTO commitments. Work should be based on:

- strict enforcement of intellectual property rights in line with international standards;
- clarification of the interpretation of legal procedures on criminal intellectual property enforcement and increased criminal enforcement of IPR violations;
- promotion of public awareness of the dangers of IPR violations; reinforced customs controls and border management in the enforcement of IPR.

BUSINESSEUROPE would welcome intensified participation by China in IPR treaties. China is not yet a member of the following WIPO-administered treaties:

- Patent Law Treaty, which simplifies formal aspects of patent law,
- Singapore Treaty on the Law of Trademarks, which simplifies formal aspects of trademark law, and
- Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs, which provides for an international registration of industrial designs.



4) Non-respect of WTO accession commitments and non-adoption of international standards

a) Fulfilment of WTO obligations

China should progressively revise its laws and regulations to comply with the spirit of its existing liberalisation commitments, based on transparency, improved market opening and a sound and non-discriminatory regulatory environment. It should implement its WTO commitments to open large sectors such as wholesale services, insurance, telecom and retail sectors as well as specific sectors like computer reservation system services. China also needs to eliminate requirements for local content which undermine companies' strategies and violate China's WTO commitments.

b) China Compulsory Certification (CCC)

Chinese mandatory certification schemes such as the China Compulsory Certification (CCC) are a very challenging and harmful practice. The CCC scheme restricts access to the Chinese market for companies in a range of key industries such as automotive, auto parts, ICT, healthcare equipment and electro-technical and power transmission industries. CCC should avoid duplicating existing certification based on international standards.

c) CCC-i and related information security schemes (Commercial Encryption Regulations, Multi-level Protection Scheme)

China abuses national security wording in the WTO TBT Agreement (incl. Annex 3) in order to impose regulations which explicitly bar products provided by foreign-invested companies from several commercial and civilian government applications. 1 May 2010 saw the entry into application of mandatory CCC-i testing for information security products destined for government procurement. The testing process is opaque and forces disclosure of highly confidential trade secrets (encryption source codes). BUSINESSEUROPE would encourage China to adopt global norms like Common Criteria in any testing and certification regime. It is also important for China to define what constitutes government procurement in this space and whether a testing and certification regime includes state-owned enterprises.

d) Adoption of international standards

While BUSINESSEUROPE acknowledges some improvements, which could be achieved through existing bilateral exchanges, Chinese authorities should ensure that rules and practices issued by the Standards Administration of China and the CNIS (China National Institute of Standardization) reflect international norms in standardisation. Today's procedures make it very complicated and costly to have products approved, due to several reasons:

- standards and specifications for approval are not always defined and available;
- national technical standards continue to be developed even in areas where international open standards exist;



- international companies have limited possibilities to participate in Chinese standardisation processes.

For instance, although China is a member of Working Party 29 of the UNECE and signed up to its 1958 and 1998 agreements, it regularly adopts unjustified specific standards in the automotive sector which create technical barriers to trade. Moreover, China should improve product safety, health and environmental standards for its industries and products to protect consumer interests in domestic and export markets.

e) Inclusion of voluntary sectoral standards

China's policy of including voluntary sectoral standards within mandatory certification schemes restrict market access and circumvents WTO TBT notification. As an example, telecom handsets require triple certification before being granted market access. One of these certifications, the Network Access License (NAL) includes voluntary standards, which often diverge substantially from international standards and mandate specifications far beyond officially stated network security requirements.

5) Access to raw materials

As the world's third largest importer of raw materials, China's enormous demand for energy and natural resources has an impact on global markets for commodities. While BUSINESSEUROPE recognises that this is a natural consequence of the industrialisation in China, it cannot accept that the free operation of market forces in respect of supply and prices of raw materials and energy is distorted by Chinese governmental measures for the benefit of Chinese producers. Market distortive policies include:

- subsidised resource and utility pricing;
- manipulation of import and export tariffs (e.g. rare earth export tariffs);
- significant rise of barriers to trade, for example licences and taxes for coke, phosphor and copper exports, as well as export restrictions and other measures to control raw materials pricing;
- dual pricing of raw material imports to China.

6) Subsidies

BUSINESSEUROPE is very worried that a part of China's competitiveness is based on the existence of complex, pervasive and sometimes even prohibited subsidy schemes. China's policy to establish global "national champions" is a prime area in this regard, with these companies benefiting from enormous state support for both their domestic and their global business, including very favourable export financing conditions.

Also in very advanced hi-tech sectors like telecoms infrastructure, Chinese companies can benefit from export credits. China should act in line with international practices and adhere to the OECD export credit rules in order to establish a level-playing field for foreign companies.



7) **Macroeconomic imbalances**

A more flexible currency regime is essential for a rebalancing of the Chinese economy, reducing its reliance on exports and encouraging domestic demand. Allowing for a further appreciation of the Chinese currency will also contribute to a balanced recovery of the global economy and a reduction of trade and macroeconomic imbalances.

8) **Value Added Services (VAS)**

Chinese authorities should allow foreign companies to participate in the same range and categories of value-added services as domestic players and to streamline the value-added services licence application approval process.

9) **Visa requirements and quotas**

More transparency and reliability is needed with regard to visa requirements and quotas.
