TRADE POLICY DEVELOPMENTS PAPER NO. 7

REPORT ON CHINA

(for the period July - September 2011)

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EXECUTIVE SUMMARY & AGENDA FOR NEXT REPORT

1. China attracted $77.6 billion of FDI between January and August this year, a 17.7 percent increase from 2010.
2. China announced the adoption of the Energy Conversation and 'New Energy Vehicles Development Plan' for the period 2011- 2020, which purportedly includes a provision requiring that from 2015, all electric car sales in China should be of Chinese 'own brands'. China has stated its intention of becoming a world leader in the production of electric cars.
3. It is reported that China is trying to construct a series of official economic cooperation zones in Africa. These zones are a central platform in China's announced strategy of engagement in Africa. This is considered to be a new model of development cooperation and the next report will seek to explore the details of this policy.
4. The Ministry of Commerce recently announced the establishment of the Shanghai Waigaoqiao tariff-free zone- as a trial area for the promotion of regional imports and trade.
5. In an effort to support oil and gas drilling, the Chinese government has issued tax exemption incentives for drilling programs in China.
6. A new standard has been jointly issued by the Ministry of Environmental Protection and the General Administration of Quality Supervision for reduction of Sulphur Dioxide pollution.
7. All merchants and companies in China who have not been licensed to sell dairy products can no longer sell infant formula and dairy drinks such as "AD calcium milk" and "Nutrition Express" starting from Aug, 2011.
8. In July 2011, China issued six draft standards which would consolidate the implementation of Multi-Level Protection Scheme (MLPS) and OSCCA regulations on commercial encryption. Should China decide to enforce the application of those standards on a mandatory basis, it would entail a prohibition on the use of foreign technology in IT systems considered critical for infrastructure even if used in purely commercial sectors.
9. China's first national social insurance law could require companies employing foreigners to pay up to Rmb4,324.56 (approx. $667) per month in social insurance contributions, to pay for things like state medical insurance, pensions, workplace injury, unemployment and maternity insurance, according to employer lawyers. Foreign employees might have to pay up to a further Rmb 1,285.68 per month each in individual contributions.

10. The next Quarterly Report will focus on the most recent notification made by China under the Agreement on Subsidies and Countervailing Measures (ASCM) detailing the various subsidies provided by the Chinese Government.
11. The next Quarterly Report will also focus on the subsidies provided by the Chinese government in the Energy sector.
12. The next Quarterly report will monitor China's approach to enforcing export quotas and export restrictions on rare earth metals and raw materials and the position China takes before the WTO Appellate Body in the dispute WT/DS 394/R.
13. The next Quarterly report will also examine China's use of foreign technology mainly relating China's approach to Information Security Standards and Certification in light of its National Information Assurance Policy Framework Multi-Level Protection Scheme (MLPS).
14. In November, 2011, China will be completing tenth anniversary of its entry to the WTO. The next report will briefly examine China's compliance with various WTO commitments and the areas where its compliance is less than satisfactory.

TRADE POLICY DEVELOPMENTS REPORT: PEOPLES' REPUBLIC OF CHINA

FOR THE QUARTER JULY, 2011 TO SEPTEMBER, 2011

I. ECONOMIC ENVIRONMENT: MACROECONOMIC FUNDAMENTALS

I.I Economic Environment

China's GDP grew at a rate of 10.4 percent in 2010, during the quarter ended on September 30th, China's GDP growth rate slipped to 9.5 percent from what used to be 10.4 percent in 2010.[1] Data available for this period suggested that economic growth continued to ease in July and August, but domestic demand relatively held up well. Industrial output rose 13.5 percent in August from a year earlier, although it slowed from the 14 percent growth recorded in July. Retail sales growth eased to 17 percent in August from the data available for the previous month.[2]

The government's Consumer Price Index rose by 6.2 over last August and September, according to the National Bureau of Statistics.

Food prices, which jumped 13.4 percent in August from a year earlier, contributed 4 percentage points to August's inflation level. Non-food inflation in August rose to 3.0 percent from 2.9 percent in July.

According to the People's Bank of China, China's foreign exchange reserves as on September 2011 was 389.17 US $ billion which was lower than the data recorded for the August 2011 which was recorded at $ 400.29 billion.[3]

I.II Stimulus Package

China has reportedly provided government support to a number of sectors such as ICT (targeted investment to six key projects, credit guarantees for SMEs, import tax rebate on IT Products, etc), automobiles (restructuring around 2-3 major firms producing around 2 million cars), steel (restructuring around five major companies) and shipbuilding in the recent past. But these stimulus programmes were provided mainly during the 2008-2009. It is not reported that China has provided any stimulus package during the review quarter.

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[1] Economic and Financial Indicators, ECONOMIST (Sep. 30, 2011)

[2] China inflation, growth cool, heralding rate pause REUTERS (Sept 9, 2011), *available at,* http://www.reuters.com/article/2011/09/09/us-china-economy-inflation-idUSTRE7881D020110909.

[3] Central Bank of PRC, "*Foreign Exchange Reserves*", (last visited 15 Oct 2011), http://www.cbc.gov.tw/

I.III Monetary Policies

Monetary policies: With abatement in inflation, the monetary tightening is expected to ease in the coming few months. However, inflation is considered to be remaining above target at 5.4 percent at the end of September, 2011. Since 2010, reserve requirements for banks were raised by 450 bps while interest rates were hiked 96 bps to curb loan growth, while additional administrative measures targeting the real estate sector were introduced.

Deposits and Loans & Investments: At the end of August, the monthly growth rate of total deposits in major financial institutions was -0.22%, lower than that of the previous month; the annual growth rate declined from 5.76% at the end of the previous month to 5.23%. The monthly growth rate of total outstanding loans and investments (measured on a cost basis) of major financial institutions was 0.89%, higher than that of the previous month. Meanwhile, the annual growth rate declined from 7.35% at the end of the previous month to 7.29%, where the decline was mainly due to slowing growth in bank claims on government. If (1) loans and investments extended by life insurance companies, (2) non-accrual loans reclassified and bad loans written off by major financial institutions, and (3) funds raised directly from capital markets were all taken into account, the total outstanding amount of funds raised by the non-financial sector would show an annual growth rate of 5.84%, higher than the 5.66% at the end of the previous month.

Import- Export Data: China's economic growth continues to be export-led. Exports of goods and services constitute nearly 40 percent of the GDP. China's major exports include: office machines, data processing equipments, telecommunication equipments, electrical machinery and apparel and clothing. Chinas imports include: iron and steel, oil and mineral fuels, machinery and equipments, plastics, optical and medical equipment and organic chemicals. China's leading trading partners are European Union, the United States, Japan, Hong King and South Korea.

China's economic policies have very recently had a shift towards consumption driven economy. Such a policy may help countries including the ones whose trade deficit with China in 2010 stood at US$ 20.02 billion, more than USD 15.87 billion registered in 2009.

Table I: Import-Export Statistics of China

	January 2011- July 2011	
	Absolute Value	Increase ±%
Total Import and Export Value	$20225.5	25.1
Export Value	$10493.8	23.4
Import Value	$9731.7	26.9
Import and Export Balance	$762.1	-8.7

Source: Ministry of Commerce, China

China and India Trade: China has emerged as one of India's largest trading partners. The bilateral trade stood at USD 61.74 billion in 2010 and is expected to reach USD 100 billion by 2015.[4]

China and EU Trade: Importantly, China has surpassed the U.S. to become EU's largest trading partner. According to the latest statistics released by Eurostat on September 29, total EU-China import and export in July 2011 reached 35.6 billion Euros, 800 million Euros more than EU-U.S.

China and US: Another important development is that Renminbi has been rising in value as against the US Dollar, although the appreciation is not to the extent desired by the policy makers in countries including the United States. One dollar was traded at 6.4 Renminbi in August 2011, compared with 6.8 Renminbi in June 2010, when People's Bank of China relaxed some restrictions on the currency. *The Economist*, the news magazine, estimates that the Renminbi is still undervalued by about 25% relative to the dollar.[5]

China continues to run large trade surpluses with the United States. China's trade surplus with the U.S. stood at $273 billion in 2010, compared with $83 billion a decade earlier. But China's overall trade surplus has declined, relative to the size of its economy since 2007, a trend that Chinese officials cite as evidence that the Renminbi is drawing closer to its natural market value.[6] The current account surplus which was 10 percent of GDP in 2007 fell to just over 5 percent in 2010 is still declining. One reason for this trend could be the weak global demand, but it also an indication that China's imports have steadily increased (see Table I).

[4] Press Trust of India, *"China's policy shift in trade may boost India's exports",* The Economic Times, 17th August 2011 available at http://articles.economictimes.indiatimes.com/2011-08-17/news/29896501_1_bilateral-trade-policy-shift-trade-deficit

[5] China's Currency Policy: *It's Complicated*, THE ECONOMIST (Oct. 4, 2011)

[6] *U.S. Senate's Bill on Tariffs Angers China,* NEW YORK TIMES, (Oct 4, 2011), *available at,* http://www.nytimes.com/2011/10/05/world/asia/china-criticizes-senates-currency-manipulation-bill.html.

China and Taiwan Trade: According to China Customs statistics, over the first 8 months of 2011, China's imports and exports under the Economic Cooperation Framework Agreement (ECFA) with Taiwan region, whether covered by conventional tariffs or not, totaled USD 14.47 billion in value, up 12.7% year-on-year, accounting for 13.6% of the total trade value between the two parties.

I.IV. US Currency Bill

In October 2011, the US Senate passed a Bill that would give the United States the ability to impose countervailing duties on countries that undervalue their currencies. Although this Bill targets all misaligned currencies, the apparent motivation for the introduction of the Bill was the perceived undervaluation of the Renminbi as against the US Dollar. The U.S. Senate passed the Bill with a vote of 63-35 receiving broad bipartisan support. The Bill now awaits approval by the House of Representatives and the President of the United States.

The Bill allows the United States government to identify misaligned currencies and include estimates of the level of and undervaluation within the "countervailing duty" that the US imposes on imports, it finds to be state subsidized unfairly, aside from seeking other retaliatory duties.

The introduction of this bill comes in the wake of several comments made against China's alleged attempts to undervalue its currency by a number of US senators, both democrats and republicans.

China has also responded aggressively to the passing of the bill, threatening a trade war if the Bill becomes law. [7]

II. ECONOMIC POLICY FORMULATION

II.1 Laws and Regulations

A new economic and trade policy with China is expected to be released soon. The proposed policy is likely to pave the way for a flexible visa regime for service suppliers and professionals. The policy is expected to outline how non-tariff barriers (NTBs) in public procurement can be removed. It may take a mission-based approach, which would necessitate Government intervention to get business from Chinese State-owned

[7] U.S. Legislation Targeting China Yuan Hits Republican Opposition BLOOMBERG (Oct 5, 2011), *available at,* http://www.bloomberg.com/news/2011-10-04/china-currency-bill-runs-into-republican-opposition-in-congress.html.

Enterprises (SoEs). There is a strong belief in trade circles that the bulk of the businesses lie with these SoEs.[8]

III. TRADE AGREEMENTS AND ARRANGEMENTS

III.1 China's FTAs:

As at 30 September 2011, China has signed FTA with ASEAN, Chile, Pakistan, New Zealand, Singapore, Peru and Costa Rica. In addition, the Closer Economic Partnership Arrangement (CEPA) between Mainland and Hong Kong and Macao, and the Cross-Straits Economic Cooperation Framework Agreement (ECFA) were also signed and implemented. China now is negotiating FTA with Australia, the Gulf Cooperation Council (including six countries of Saudi Arabia, Kuwait, UAE, Oman, Qatar and Bahrain), Switzerland, Norway and Iceland.

China-Costa Rica Free Trade Agreement: China- Costa Rica FTA entered into force on August 1, 2011. It is the 10th FTA China has signed and executed.

The China-Costa Rica FTA has a fairly wide coverage. It covers 90 percent of goods trade between China and Costa Roca. For China, the overage of goods include products relating to textiles, light industry, machinery, electronics, vegetables and fruits, automobiles, chemicals, hide and leather, and for Costa Rica, it covers coffee, beef, pork, pineapple juice, frozen orange juice, jam, fish powder, minerals and hides.9 With respect to services trade, it encompasses over 45 service sectors and sub-sectors of Costa Rica, including telecommunication services, commercial services, construction, real estate, distribution, education, environment, computers and tourism services, and 7 service sectors and sub-sectors of China, including computer services, real estate, market research, translation and interpretation and sport. The two countries also reached agreements on such issues as IPR, trade relief, rules of origin, customs procedures, technical barriers to trade, health and plant inspection and quarantine and cooperation

China and Bangladesh: Chinese Ambassador to Bangladesh Zhang Xianyi said that China would grant duty-free market access to 90 per cent of the products originating from Bangladesh to its market soon. "At present, the duty-free market access is open for about 70 per cent of China's total import of 4762 products from the least developed countries including Bangladesh," said the Chinese Ambassador while addressing a 'meet the press' program.

[8] Hindu Business Line, *India: New policy soon to perk up trade ties with* China , Hellenic Shipping News, (Sep. 28, 2011), http://www.hellenicshippingnews.com/index

[9] Ministry of Commerce (MOFCOM), http://fta.mofcom.gov.cn/enarticle/enrelease/201108/7441_1.html

Economic Cooperation with Tanzania for Constructing Oil Pipeline: Tanzania's government has signed a loan agreement for more than $1 billion with the Chinese government to construct a natural gas pipeline from Mnazi Bay in Mtwara Region and Songo Songo in Kilwa district to the capital Dar es Salaam.

Construction of the 330 mile-long natural gas pipeline will begin in November, 2011 when Chinese experts will begin evaluating the project, which has an expected completion date of March 2013.

In addition to the natural gas pipeline the loan will also finance the construction of two gas processing plants. Along with the Mnazi Bay- Dares Salaam natural gas pipeline, Tanzania has also concluded a second agreement with China's Sichuan Hongda Group worth $3 billion, to develop the Mchuchuma coal and Liganga iron ore projects in Rudewa district in Tanzania's Iringa region.[10]

It is reported that China is trying to construct a series of official economic cooperation zones in Africa. These zones are a central platform in China's announced strategy of engagement in Africa. This is considered to be a new model of development cooperation and the next report will understand the details of this policy.

IV. FOREIGN INVESTMENT

IV.I Overseas Investment

China has been encouraging its companies to invest overseas to shore up their competitiveness and help relieve the upward pressure on the Yuan from capital inflows. According to MOFCOM, domestic Chinese investors had directly invested in 2,169 overseas companies in 117 countries and regions. Thomson Reuters reports that China's outbound investment rose 14.1 percent in the first 10 months of 2011 from a year earlier to $46.3 billion, including $15.6 billion via mergers and acquisitions in overseas markets. The impressive rate in FDI outflow indicates that China could be an important source of global capital in the years to come.

Box I: China's Investment in Energy Sector

A unit of China Petrochemical Corp. (Sinopec) has signed a deal to buy Canadian oil and gas explorer Daylight Energy Ltd. for $2.2-billion in cash, underscoring China's quest to secure enough energy to power its economy.

China's outbound deals in energy and mining so far this year total $26-billion, compared with $32.3-billion in the same period last year, according to Thomson Reuters data. In July, China's top offshore oil producer, CNOOC Ltd., agreed to buy Opti Canada Inc. for $34-million and $2-billion in debt and later during the previous month, China's Minmetals Resources Ltd. agreed to buy Africa-focused copper miner Anvil Mining for $1.28-billion. The acquisition would mark the latest energy sector deal between China and Canada and might be large enough to face review under the

[10] CHINA DRAWS TANZANIA INTO ITS EMBRACE Financial times(SEPT 23, 2011), Available At, http://blogs.ft.com/beyond-brics/2011/09/23/china-draws-tanzania-into-its-african-embrace/#axzz1ZtpifjfK

Investment Canada Act, which must determine if foreign purchases of domestic firms are of net benefit to Canada. Sinopec already owns a stake in the huge Syncrude Canada oil sands venture. The transaction is subject to approval by Daylight shareholders and regulatory approval from the Chinese and Canadian governments. According to Daylight officials, the deal is expected to close before the end of the year.

Source: ICTSD and Bloomberg

IV.2. Foreign Direct Investment (FDI)

Foreign direct investment (FDI) in China has slowed slightly in the first eight months of 2011 from a year ago although it is believed that the outlook is still positive given the high growth rate in China.

The country attracted $77.6 billion between January and August this year, a 17.7 percent increase from a year ago, the Ministry of Commerce said in a statement issued on its website.[11] That marked a slight slowdown from the 18.6 percent annual growth recorded in the January-July period and the 18.1 percent growth in FDI recorded for the corresponding first eight months of 2010.

V. REGULATORY CHANGES IN OPERATIONS OF BUSINESS

V.1. Change in Mergers and Acquisitions rules

On 3 February 2011, the State Council promulgated the "Notice of the General Office of the State Council on Launching the Security Review Mechanism for Mergers and Acquisition of Domestic Enterprise by Foreign Investors", which established the national security review system for merger and acquisition (M&A) transactions by foreign investors in China. On 25 August 2011, after a trial implementation period of about six months of an interim regulation on the security review system, the Ministry of Commerce finalized and issued the "Regulation on Implementing of the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors", which came into effect from 1 September 2011. The national security review system as established and specified under the notice and the regulation may have a broad impact on prospective M&A transactions by foreign investors in China.

China on September 20 defended its regulation that reviews mergers and acquisitions (M&A) of domestic companies by foreign investors, saying it does not impose a new threshold for such practices. The Spokesman of the Ministry of Commerce said at a news briefing in response to foreign investors' concerns over M&A of domestic firms, indicated that the new Regulation did not introduce a new threshold for acquisitions and mergers by foreign investors or a new recognition procedure. According to the February 2011 notice, the review process will involve foreign M&A of domestic military-industrial enterprises and supporting firms, companies near "major and sensitive military facilities" and other M&A that are deemed to be relevant to

[11] Press Release of the Ministry of Commerce, www.mofcom.gov.cn (last visited Sep. 27, 2011).

national security. According to the Spokesman, foreign M&A of domestic companies accounted for 3.1 percent of the foreign direct investment (FDI) that China attracted last year.[12]

V.2. Antitrust and Competition Law

There is considerable speculation in China that many large transactions that should have been notified for clearance by the Ministry of Commerce have not been properly notified. New Draft Regulations entitled, "Preliminary Regulations on the Investigation & Treatment of Failure to Report Concentration of Undertakings (Opinion Solicitation Draft)," clarify and provide MOFCOM with the power to investigate, fine and order divestiture of mergers and acquisitions that should have been, but failed to be, notified and cleared.

On 13 June 2011, MOFCOM solicited public comments on a newly published "Preliminary Regulations on the Investigation & Treatment of Failure to Report Concentration of Undertakings" (Draft for comment solicitation), with a 23 June deadline for public comments.

VI. TRADE RELATED INVESTMENT MEASURES (TRIMS)

China announced the adoption of the Energy Conversation and 'New Energy Vehicles Development Plan' for the period 2011- 2020, which purportedly include a provision requiring that from 2015 all electric car sales in China be of Chinese 'own brands'. China has stated its intention to become a world leader in the production of electric cars. This plan, in combination with strict deadlines of access to investment, suggests a government rather than a market induced investment, potentially at the expense of trade and wider economic efficiency.

VII. MEASURES AFFECTING IMPORTS AND EXPORTS

VII. 1. Import prohibition and Licensing

Import of scrap goods and materials: China's Ministry of Environmental Protection introduced on 1 August 2011, the regulations for importing scrap goods. The new rules require importers to have certificates for bringing solid waste into the country to ensure the imports meet environmental standards, according to a statement on the ministry's website.

"The new rule requires an environmental certificate and immediate inspection at ports, which wasn't the case before, so the whole process of customs clearance is a lot more complicated and takes a lot longer now," said a trader at a trading house in Guangdong province.

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[12] "*China defends M&A regulation*" Xinhua (China Daily USA) (last visited 16 Oct 2011) http://usa.chinadaily.com.cn/business/2011-09/20/content_13752515.htm

China imported 382,175 metric tons (421,276 short tons) of scrap copper in August, down 12% from July and a drop of 4.1% from the same period a year ago. During the first eight months of 2011, scrap-copper imports had been up 7.3% from a year ago, at 3.01 million tons.[13]

China revisiting the definition of 'Luxury Goods': China is proposing to update its definition of luxury goods and adjust the tariffs on imported luxury goods accordingly; a senior Customs official was quoted. The objective behind this proposal is to develop a market for imported luxury goods within China and is considered to be broadly in line with China's economic development. In the opinion of Wei Jianguo, former vice-minister of commerce, China's definition of 'luxury goods' is too broad and some items should be delisted and their import tax rates accordingly lowered. Lower tax rates would potentially stimulate domestic consumption of such goods.

A survey by MOFCOM shows that the prices in China of 20 luxury brands in goods ranging from clothing to electronics are 45 percent higher than in Hong Kong and 51 percent higher than in the United States. Though China's middle class and its purchasing power are expanding, many Chinese customers prefer to buy luxury goods overseas to avoid the high taxes on imported goods. According to a Bain & Company survey in 2010, Chinese consumers spent $13 billion on luxury goods, and 56 percent of that was spent overseas.[14]

The Chinese government reduced fuel-oil import tariffs in July. The duties were reduced on diesel and jet kerosene and gasoline.

VII.2. Export quotas and export duties

China has applied export quota on several raw material and the recent decision of the WTO panel only reaffirms the inconsistency of such policies with core WTO norms and China's Accession of Protocol.

China updated the export quota of rare earths for the first quarter of 2011. This represents a reduction of 35.2 percent on the quota allocated by the Ministry of Commerce (MOFCOM) for the first quarter of 2010. The reduction of quotas for foreign-invested companies was higher for domestic exporting companies by almost 4.5 percentage points. The total export quota size for 2011 remains almost at the same level as that for 2010, but in fact represents a strong reduction of the quota for rare earths as another category of industrial product, viz., Ferro alloys containing rare earths was included to this list. Some estimated indicate that by

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[13] *Trading houses say scrap-copper imports are piling up in Chinese ports as China enforces stricter environmental standards"* The Wall Street Journal (last visited Oct 13 2011) http://online.wsj.com/article/SB10001424052970203914304576627243471002416.html.

[14] Lan Lan "Updated tariffs on luxury products discussed" China Daily (14 Oct 2011) http://www.chinadaily.com.cn/cndy/2011-10/14/content_13895434.htm.

including this new category of products in the quota, China has reduced the rare earth export by almost 30 percent while giving an impression the quota limit has been retained as such.

Box II: Summary of key findings of the WTO Panel in the Dispute on China's Export Restriction on Raw Materials

This dispute concerns four types of export restraint that China imposes on the export of a number of raw materials. The raw materials subject to the export restraints are various forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus and zinc. China is a leading producer of each of the raw materials which are used to produce everyday items as well as technology products.

The Complainants argued that the use of export restraints creates scarcity and causes higher prices of the raw materials in global markets. They also provide Chinese domestic industry with a significant advantage by way of a sufficient supply, and lower and more stable prices for the raw materials.

Upon its accession to the WTO, China undertook to eliminate all export duties except for a number of products listed in an Annex to its Protocol of Accession. In this Protocol, China also committed not to apply export quotas.

In one of its key findings, the Panel found that China's export duties were inconsistent with China's commitments under its Protocol of Accession and Article XI of the GATT. The Panel found that the wording of China's Protocol of Accession did not allow China to use the general exceptions in Article XX of the GATT 1994 to justify its WTO-inconsistent export duties. The Panel also considered that even if China were able to rely on certain exceptions available in the WTO rules to justify its export duties, it had not complied with the requirements of those exceptions.

In particular, China had argued in its defense that some of its export duties and quotas were justified because they related to the conservation of exhaustible natural resources for some of the raw materials. But China was unable to demonstrate that it imposed these restrictions in conjunction with restrictions on domestic production or consumption of the raw materials so as to conserve the raw materials. The Panel acknowledged, however, that China appears to be heading in the right direction in adopting a framework to justify its quotas under WTO rules, but that the framework is not yet WTO-consistent as it still has to be put into effect for domestic producers.

As for other of the raw materials, China had claimed that its export quotas and duties were necessary for the protection of the health of its citizens. China was unable to demonstrate that its export duties and quotas would lead to a reduction of pollution in the short- or long-term and therefore contribute towards improving the health of its people.

China also committed to eliminate all restrictions on the "right to trade" — rights given to enterprises by China in parallel to market access and non-discrimination provisions guaranteed under the WTO. The complainants were successful in most of their trading rights claims.

The Panel also found that certain aspects of China's export licensing regime, applicable to several of the products at issue, restrict the export of the raw materials and so are inconsistent with WTO rules.

Source: WTO Panel Report/Worldtralaw.net

VII.3 Export Subsidies:

The Ministry of Commerce recently announced the establishment of the Shanghai Waigaoqiao tariff-free zone - as a trial area for the promotion of regional imports and trade.[15] In a speech to China's Import Forum 2011 in Shanghai, Zhong Shan, the Deputy Minister of Commerce, said that the government is currently studying measures to encourage imports, so as to provide a re-balancing of the country's foreign trade relationships. He pointed out that, while China's imports have increased 3.7 times since its accession to the World Trade Organization in 2002, and it has become the second largest importing nation, the government appreciated that the greater growth in the country's exports in a time of global economic troubles could lead to increased protectionism against China, unless its export surpluses are reduced.[16]

VIII. CONTINGENT TRADE PROTECION

VIII.1 Antidumping

Ministry of Commerce issued notice No. 59, 2011 starting an expiry review of anti-dumping duties on imported nonyl phenol originated from India and Taiwan. The measures were imposed in March, 2007 and are scheduled to expire on March 29, 2012.[17]

The Ministry of Commerce decided to conduct mid-term review of dumping and dumping margin relating to the AD measures imposed on Sulfamathoxazole originated from India.[18] On June 24, 2011, Shouguang Fukang Pharmaceutical Co. Ltd., the domestic manufacturer, submitted a petition to the Ministry of Commerce. The measures were originally imposed vide Ministry of Commerce Announcement No. 48 of 2007.

China's anti-dumping measures on potato starch imported from the European Union are scheduled to expire on 6 February 2012. It is speculated that domestic producers would request for review.[19]

China has imposed preliminary antidumping duties on printing paper imports from the EU, the United States, and Japan on 10 August 2011. Importers of printing paper from the above countries are required ranging from 17.6 percent to 28.8 percent.[20]

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[15] Mary Swire, "*China Looks At Measures to Increase Import"* (Oct 4 2011, 3:16 PM) http://www.tax-news.com/news/China_Looks_At_Measures_To_Increase_Imports____51743.html

[16] Mary Swire, "*China Looks At Measures to Increase Imports"* (Oct 4 2011, 3:16 PM) http://www.tax-news.com/news/China_Looks_At_Measures_To_Increase_Imports____51743.html

[17] Announcement No. 59, 2011 of "*Ministry of Commerce on the Termination of Anti-dumping Measures on Imports of Nonyl Phenol (NP) Originating in India and Taiwan*" (Sept 26 2011 08:00 PM) http://english.mofcom.gov.cn/aarticle/policyrelease/domesticpolicy/201109/20110907757080.html

[18] "Announcement No. 49 of the *Ministry of Commerce of the People's Republic of China on Midterm Review Ruling of Anti-dumping Measures on Sulfamethoxazole*" (Aug 24, 2011 12:00 AM) http://english.mofcom.gov.cn/aarticle/policyrelease/domesticpolicy/201109/20110907723393.html

[19] http://www.bizchinanow.com/Contents/Channel_1853/2011/0829/306573/content_306573.htm

VIII.2 Safeguards

No safeguard action was initiated by China during the period under Review.

VIII.3. Subsidies

In an effort to support oil and gas drilling, the Chinese government has issued tax exemption incentives for drilling programs in China, according to a statement released on September 1, 2011.[21] The statement said that from 1 January 2011 to 31 December 2015, oil and gas drilling projects on specially appointed land and sea areas will be exempt from import taxes on equipment, instruments, accessories and special purpose tools that domestic companies are unable to manufacture and are directly used in exploration and exploitation. The exemptions are valid within quotas for free imports. Tax-exempt drilling programs include projects on deserts and barren beaches in Chinese territory, land blocks jointly exploited by Chinese and foreign companies under the permission of the Chinese government, inland seas, territorial waters, continental shelves, and other maritime resources under China's jurisdiction. Programs on maritime territory and land blocks jointly exploited by Chinese and foreign companies will also be exempt from import value-added tax.[22]

Feed-In – Tariffs for Solar Power: There are at least two major initiatives introduced by China to explore sources of renewable energy. The first major initiative is the 12th Five Year Plan for Renewable Energy Development, covering 2011 to 2015, focuses on sources of renewable energy such as hydropower, wind, solar, and biomass. The second is the Emerging Energy Industry Development Plan, covering 2011 to 2020, which also includes nuclear energy, clean coal, smart grid, and alternative fuel for new-energy vehicles. The State Council, China’s national cabinet, is currently reviewing both plans, but it looks like the renewable energy plan for 2011-2015 will come out first. New renewable energy plan will raise solar targets to unprecedented levels: 10 GW of installed solar capacity by 2015, including 9 GW from photovoltaic installations and 1 GW from solar thermal electric power generation, and 50 GW total installed capacity by 2020. The United States is currently ahead of China, with 2.6 GW installed solar capacity at year-end 2010. The United States is also leading in solar equipment, with $1.9 billion in overall net exports in 2010. But as Chinese policymakers prepare for a major push on solar, U.S. policymakers are moving to reduce funding for the basic support programs that created this impressive lead, and that means they could easily lose this edge over China.

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[20] C*hina levies anti-dumping duty on printing paper imports”* Xinhua (last visited 10 August, 2011) http://news.xinhuanet.com/english2010/china/2011-08/10/c_131041449.htm.

[21]"*Import taxes exempted for oil-drilling goods*" Xinhua (China Daily USA) (last visited 15 Oct, 2011) http://usa.chinadaily.com.cn/business/2011-09/02/content_13606308.htm.

[22] *Id.*

Box III: Solar Trade War

The rapid growth of the Chinese solar energy sector can be attributed to the subsidizing policies of the Chinese government as far as the solar energy sector is concerned. The Chinese government has given a number of benefits to its indigenous companies in this sector by allowing them to buy land at very low rates, and in some instances, even lowered the interest on state-controlled loans that these companies acquired in order to purchase the land and the factories required to begin production. While in the United States and EU the subsidies and support offered to the industry is at the level of the consumers, the method followed in China is entirely different. It is believed that the enterprise level support given in China has contributed to rapid growth of China's solar and even wind industries.[28]

As of year-end 2010, China had around 700 megawatts of installed solar capacity, and meeting the new 2015 target will require adding another 9.3 GW to the grid—a capacity expansion of over 1,000 percent during the 2011-2015 five-year plan period. In 2010, China surpassed the United States in total wind capacity, and there are now four Chinese wind turbine manufacturers among the global top ten.

According to an official in the Chinese Finance Ministry, the Chinese government had taken a decision to create 13 industry zones and pay up to half the price of equipment for solar power projects. It is reported that the subsidy may come to of 4 to 6 yuan (60 to 90 U.S. cents) per watt of generating capacity. Further according to a recent report by UBS, Chinese solar panel producers are undercutting their German competitors by some 20 percent, mainly owing to the state support received by this sector.

It is also anticipated that Solar World Industries America Inc., supported by a group of additional U.S. manufacturers of solar power technology are filing AD/CVD proceedings against solar power modules and solar cells.

Source: New York Times, ICTSD[23]

Chinese leaders have already pledged to expand non-fossil fuels to 15 percent of the country's energy supply by 2020. To stay on track, any nuclear slowdown is sought to be offset by another clean energy source such as solar, wind, or hydropower, and among the three, solar is the only sector that is not currently facing internal political challenges.

The new benchmarks being set for solar are a big increase over China's previous solar targets. China's 2007 Medium-and Long-Term Development Plan for Renewable Energy set a 2020 solar capacity target of 1.8 GW. That target has been climbing steadily, but even as recently as June 2011 many Chinese media outlets and government officials were quoting a 5 GW solar target for 2015 and a 20 GW target for 2020. If the latest reports are correct, the new targets will be twice as high.

[23] ICTSD, *China Denies Dumping Solar Panels*, http://ictsd.org/i/news/biores/55441/(last visited Oct. 15, 2011)

According to the China Securities Journal, if China achieves the new 10 GW benchmark, the solar sector will likely expand by up to RMB 440 billion ($68.9 billion) over the 2011-2015 period. Many market watchers actually expect the sector to grow even faster, possibly reaching 15 GW by 2015, which would entail an even larger expansion of up to RMB 690 billion.

The Chinese government has already provided at least RMB 10 billion to subsidize around 642 MW (0.642 GW) in solar generation projects since 2009. And in August 2011 the National Development and Reform Commission (NDRC) launched a feed-in tariff for solar power generation. The new tariff sets benchmark prices for solar energy—minimum prices China's grid operators must pay for solar power—and the tariff will soon be paired with clean energy quotas to guarantee market demand. Most of the 11th Five-Year Plan solar policy support, however, went towards larger-scale photovoltaic projects located primarily in the west. China already has a power transmission problem—supply is concentrated in the west and demand is concentrated in the east—so adding more large-scale western solar projects, though economical from a facilities perspective, has further strained the west-to-east transmission grid.

China's new renewable plan aims to address this imbalance by encouraging more smaller-scale distributed solar generation projects in the southern and eastern regions where China's power demands are highest. Chinese policy makers expect that the shift toward smaller-scale projects will also encourage more small- and medium-enterprise participation. China's big central-government state-owned enterprises, which have massive resources and soft budget constraints, won most of the existing large-scale photovoltaic tenders by bidding below market value, thus shutting small- and medium-sized companies out of the market and driving down quality.

The 2011-2015 renewable energy plan also includes new targets for water, wind, biomass, and other renewables. Connected wind capacity should reach a new target of 100 GW by 2015, up from 13.9 GW at year-end 2010, of which 25 GW should be distributed wind capacity. Hydropower should grow from 210 GW at year-end 2010 to 290 GW by 2015 (including 260 GW from conventional hydropower and 30 GW from pumped water storage), and biomass should reach a total installed capacity of 13 GW by 2015.

The new plan also sets China's first nationwide targets for geothermal energy (100 MW by 2015), tidal power generation (constructing one or two 20 MW projects by 2015), and ocean projects (building five 10 MW generation stations by 2015). The United States has no major ocean power projects, but it will be difficult for China to catch up to the relatively strong U.S. lead in geothermal energy. The Obama administration's U.S. Recovery Act gave an impetus to the U.S. industry with geothermal stimulus funding, and those projects will add around 8 GW to the grid over the next few years.

The details about the specific subsidies, tax incentives, and pricing structures that the Chinese Administration may use to achieve these new renewable energy targets are still not available. The policy support package will most likely include a new quota system, which will require grid companies to purchase a certain percentage of their annual energy acquisitions from non-water renewables. The next Trade Monitoring Report will seek to understand the nature and extent of Government support provided in this area.

IX. TECHNICAL REGULATIONS AND STANDARDS

China's power industry is expected to reduce Sulphur Dioxide emissions by 6 million metric tons by 2015. Stricter Emission Standard for Thermal Power Plants is one of the measures taken in order to help reduce the power industry's Sulphur Dioxide emissions. The new standard jointly issued by the Ministry of Environmental Protection and the General Administration of Quality Supervision, Inspection & Quarantine was published on the Ministry's website. The new Standard will take effect from 2012 and replace the current one, which was issued in 2003. After the implementation of the new standard, Sulphur Dioxide emissions from the country's power industry are expected to be reduced by 6.18 Million Metric Tons by 2015, while Oxynitrate emissions will be reduced by 5.8 Million Metric Tons.[24]

On 9 Aug 2011, the State Administration of Work Safety (SAWS) of China released the revised version of the Measures for The Administration of Operating Licenses for Hazardous Chemicals (for short "the Measures") for public consultation.[25] The revised version will replace the old one issued in 2002 and will enter into force on 15 December 2011. Relevant departments and industry are advised to submit their comments before 15 September 2011.

The Measures is one of the two sub-measures of the *Regulations on Safe Management of Hazardous Chemicals* in China published on 11 March 2011 and stipulates the detailed conditions and procedure regarding the application of operating license for hazardous chemicals in China. The other measure relates to the Measures for The Administration of Registration of Hazardous Chemicals, which is expected to be revised and released shortly.

X. SANITARY AND PHYTOSANITARY MEASURES

China's National Development and Reform Commission (NDRC), China's leading Planning Agency announced on 19 September 2011 that it has lowered the fees for animal and animal product quarantine. The move aims to reduce the circulation cost and help relieve corporate burden, the NDRC said on its website. In

[24] Anna Tang, "*China's power industry expected to reduce Sulphur Dioxide emissions by 6 Million Metric Tons by 2015"* Xinhua (last visited 23 Sept 2011).

[25] Press Release of Chemical Inspection and Regulation Service, http://www.cirs-reach.com/news (last visited Sep. 30, 2011)

a circular jointly issued by the NDRC and the Ministry of Finance, the national standard charges for animal and animal product quarantine were all reduced by at least 30 percent.[26]

On August 31, 2011, China introduced a new legislation entitled, "National Food Safety Standard of the P.R.C. Eggs and their Products." This standard applies to all kinds of poultry shell eggs, including products processed by storage methods assuring the quality of fresh eggs such as refrigeration, immersion, coating, disinfection, controlled atmosphere and dry storage, and also applies to liquid egg products, dried egg products, iced eggs products and other processed egg products using fresh eggs as major raw material, with or without complementary substances.[27]

All merchants and companies in China who have not been licensed to sell dairy products can no longer sell infant formula and dairy drinks such as "AD calcium milk" and "Nutrition Express" starting from August 2011. According to *China Daily*, a new paper, merchants who have not been granted permission to sell infant formula in their dairy products license are not allowed to sell it, with the threat of punishment if they do. The Administration of Industry and Commerce added two projects that require administrative examination and approval for market circulation of Food on 28 March 2011.[28]

XI. WTO DISPUTE SETTLEMENT

A. United States seeks consultation on China's AD/CVD measures on Broiler products from the U.S:

On 20 September 2011, the United States requested consultations with China concerning China's measures imposing anti-dumping and countervailing duties on broiler products from the United States. The United States claimed that the measures appear to be inconsistent with various provisions of the Anti-Dumping Agreement related to the process of the anti-dumping investigation as well as the anti-dumping duty determination at issue (including improper dumping and injury determination, improper reliance on the facts available, failure to provide access to relevant information, insufficient explanation of the basis for the determinations, absence of proper analysis of the effects of imports under investigation, and absence of objective determination of causality).[29]

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[26] *China cuts charging for animal quarantine"* Xinhua (ChinaDaily USA) (last visited 16 Oct 2011) http://usa.chinadaily.com.cn/business/2011-09/19/content_13740603.htm

[27] WTO SPS Notification of China, G/SPS/N/CHN/473 (Aug. 31, 2011).

[28] Cai MuYuan "*Dairy products license tightened*" (ChinaDaily USA) (last visited Oct. 16, 2011) http://usa.chinadaily.com.cn/business/2011-08/02/content_13035836.htm.

[29] *"China Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States"* WTO official website, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds427_e.htm.

B. Dispute Settlement Body Adopts the Panel and Appellate Body Reports on *EC-Definitive Antidumping Measures on Certain Iron or Steel Fastners from China*:

The DSB adopted the Panel and Appellate Body reports (WT/DS397/R and WT/DS397/AB/R) which reviewed anti-dumping measures taken by the EU on imports of iron and steel products from China. This was the first dispute filed by China against the European Union at the WTO. This dispute concerned two measures: (1) certain provisions of the EU antidumping law that relate to the treatment of market economies (NMEs); and (2) the imposition of EU of definitive antidumping duties on certain iron or steel fastners from China. The Panel held that Basic EU Ad Regulation is inconsistent "as such" with AD Agreement Articles 6.10 and 9.2., because it conditions the determination of individual dumping margins for and the imposition of individual antidumping duties on NME exporters or producers to the fulfilment of the Individual Treatment [IT] test. In other words, the dispute was about a situation where exporters and producers from non-market economies could be grouped in a single entity when calculating a dumping margin and imposing a duty.

The US expressed concerns on the Panel and Appellate Body consideration of Articles 6.10 and 9.2 of the Anti-dumping Agreement, arguing that they did not appreciate fully the difficulties that investigating authorities encounter when determining anti-dumping margins for non-market economy exporters. The US added that the Appellate Body correctly recognized that the Anti-dumping Agreement neither defined "exporter" nor "producer", nor set out the specific criteria for the investigating authority to examine, before concluding that a particular firm or group of firms constituted an "exporter" or "producer". The US noted that the Appellate Body underscored the importance of properly defining the domestic industry for purposes of the injury analysis.[30]

On 31 August 2011, China notified the DSB of its decision to appeal certain issues of law and legal interpretations of the panel report. On 6 September 2011, the United States notified the DSB of its decision to appeal certain issues of law and legal interpretations of the panel report.[31]

C. The Appellate Body issued its report in *United States- Measures Affecting Imports of Certain Passenger Vehicle and Light Trucks Tyres from China*.

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[30] World Trade Organization, *WTO adopts reports on steel fastener anti-dumping case*" WTO News item (last visited 28 July 2011) http://www.wto.org/english/news_e/news11_e/dsb_28jul11_e.htmfor

[31] World Trade Organization, *China-Measures Related to the Exportation of Various Raw Materials*" WTO Dispute Settlement Panel Report, (31 Aug, 2011) http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds394_e.htm

This dispute concerns a safeguard measure applied by the United States to imports of certain passenger vehicle and light truck tyres from China. The measure was imposed as a "transitional product-specific safeguard measure" under China's Protocol of Accession. The Appellate Body upheld the panel's finding that the USITC did not fail to evaluate properly whether imports from China were "increasing rapidly" under Paragraph 16.4 of China's Accession Protocol. The Appellate Body also upheld the panel's finding that China failed to establish that the USITC improperly attributed injury caused by other factors to subject imports. For more details see **Trade Policy Monitoring Report of the United States , Vol. II(2011)**

D. **WTO Panel issues Report on China Raw Materials (WT/DS 394/R)**

For details, see the information provided under Box III.

XII. INTELLECTUAL PROPERTY RIGHTS

In July 2011, China issued six draft standards which would consolidate the implementation of Multi- Level Protection Scheme (MLPS) and OSCCA regulations on commercial encryption. Should China decide to enforce the application of those standards on a mandatory basis, it would entail a prohibition on the use of foreign technology in IT systems considered critical for infrastructure even if used in purely commercial sectors.

XIII. TRADE POLICY BY SECTOR: SERVICES

A new social insurance law that will apply to foreign employees from July 1, 2011 may make it significantly more expensive for companies in China to hire expatriates. China's first national social insurance law could require companies employing foreigners to pay up to Rmb4,324.56 ($667) per month in social insurance contributions, to pay for things like state medical insurance, pensions, workplace injury, unemployment and maternity insurance, according to employer lawyers. Foreign employees might have to pay up to a further Rmb1,285.68 per month each in individual contributions. If the law is implemented in letter and spirit, businesses in China may find it expensive to hire foreigners. The new law could turn out to be voluntary instead of mandatory, and it remains unclear how these laws will be implemented against Taiwan, Hong Kong and Macau nationals.[32] This development has to be monitored in the upcoming Quarterly report as well.

32 Kenneth Tan "China's new national social insurance law may make hiring foreigners significantly costlier" Financial Times (last visited 25 June, 2011) http://shanghaiist.com/2011/06/01/chinas_new_national_social_insuranc.php.

XIV. TRADE POLICY BY SECTOR: AGRICULTURE

The Ministry of Agriculture did not permit so far any genetically modified seeds to be imported or planted in China. He went on to explain that all the genetically modified cotton, beans, corn and rapeseed that has ever been imported in to China, was only processed and not cultivated.[33]

NDRC recently announced that it would raise the minimum purchase prices for wheat from farmers in 2012 to boost grain output. The move "aims to protect farmers' enthusiasm to grow grains and further stimulate grain production." In terms of this announcement, the minimum purchase price for white wheat in the country's major wheat-producing areas is sought to be increased to 102 Yuan (16 U.S. dollars) per 50 kg, up 7 Yuan from the 2011 price. It said the minimum purchase price for rice and wheat both will rise 9 Yuan to 102 Yuan per 50 kg next year. A stable food supply is considered to be crucial to China's efforts to check inflation, as food prices account for about a third of the weighting in its consumer price index (CPI) calculation. China's CPI rose to a 27- month year on year high of 6.5 percent in July and weakened slightly to 6.2 percent in August.[34]

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33 "Ministry of Agriculture: China Has Never Imported GM Seeds" Beijing News (last visited 13 Oct, 2011) http://www.eeo.com.cn/ens/2010/0303/164075.shtml.

34 Xinhua, "China raises minimum wheat purchase prices for 2012" (Sept 29 2011 3:00 PM) http://en.ec.com.cn/article/newsroom/newsmacroeconomy/201109/1164303_1.html