

# WORLD TRADE ORGANIZATION

G/LIC/Q/CHN/4  
16 May 2003

(03-2617)

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Committee on Import Licensing

Original: English

## QUESTIONS AND COMMENTS FROM THE UNITED STATES TO CHINA<sup>1</sup>

The following communication, dated 8 May 2003, has been received from the Permanent Mission of the United States.

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### Background on Tariff Rate Quotas (TRQs)

Licensing: Paragraph 138 of the Working Party Report<sup>2</sup> provides that China “would not require a separate import licence approval for goods subject to a TRQ allocation requirement but would provide any necessary import licence in the procedure that granted a quota allocation.” This was the concession China made in December 2000 that allowed China’s overall accession negotiations to resume after they had stalled. Paragraph 6.A of the TRQ headnote (found in Part I, section I-B of China's Schedule of Concessions and Commitments on Goods) states that: “[a]ny additional requirement for importation will be automatic under the terms of the Agreement on Import Licensing Procedures.” Despite these commitments, endusers must apply twice for approval in order to obtain and utilize TRQ. After receiving an allocation from the SDRC (formerly SDPC) in the form of a “notice,” quota holders are required under Article 17 of China’s *Interim Measures on the Administration of Tariff-Rate Quota for Agricultural Imports*, to then apply for an Agricultural Tariff Quota Certificate by bringing the notice and a signed contract to SDRC.

Article 2 of the WTO Agreement on Import Licensing Procedures confirms that no government discretion is permitted in granting automatic import licences and it further prohibits administration of automatic import licences in a manner that has trade-restrictive or distortive effects on imports. It also requires approval “immediately upon receipt, to the extent administratively feasible, but within a maximum of ten working days.” In addition to being required to go through two separate approval processes at SDRC for the same TRQ allocation as described above, quota holders must obtain an import licence from AQSIQ pursuant to AQSIQ Ordinance 7 (effective 20 March 2002). This licence also requires a minimum of two applications, does not appear to be justified on SPS grounds, and is being implemented in such a manner as to act as an additional quantitative restriction. According to industry, approval for this licence can take up to 30 days at each level of government.

Finally, endusers holding “processing trade” quota are subject to additional licensing requirements which add additional steps to the process: In order to utilise their allocated quota, entities holding processing trade TRQ must apply for and obtain a “Processing Trade Certificate” from MOC (formerly MOFTEC) before they can utilise their quota. They must also obtain a separate processing trade business licence as a precondition for obtaining a TRQ allocation. In the US view, these additional steps are trade restrictive and are not in accordance with China’s obligation to provide

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<sup>1</sup> See Understanding on Procedures for the Review of Notifications (G/LIC/4).

<sup>2</sup> WT/ACC/CHN/49.

any required licence in the procedure to grant the quota, and to make “automatic” any additional requirement for importation.

Commercially Viable Quantities: Paragraph 6.E obligates China to allocate TRQs in commercially viable shipping quantities. Article 3.5 (i) of the Agreement on Import Licensing Procedures emphasizes the importance of issuing licences for products in economic quantities. However, reports from traders indicate that allocations of some commodities are too small to be commercially viable, and as a result, endusers are either not applying for TRQ or are not utilising their allocations because it is not economic for them or their agent. Industry reports that some of the cotton TRQ allocations in 2002, for example, were as small as 200 metric tons, which is well below what is considered a commercially viable shipping quantity for cotton. During bilateral consultations, China agreed that it had allocated some TRQ in less than commercially viable quantities. We asked China to modify the system to avoid this problem in the future and China agreed to consider.

Transparency: The United States remains concerned with the lack of transparency in China’s administration of TRQs. The US Government and US exporters have experienced difficulty discovering which entities have been allocated TRQ, despite China’s commitment in the TRQ headnote to administer the TRQ system in a transparent manner and to provide this information within ten days upon request to SDRC (headnote, paragraph 6.F). Our inability to obtain this information makes it difficult to assess China’s implementation of its TRQ obligations and appears to undermine China’s commitment to “provide effective import opportunities.” During our bilateral consultations, China informed us that it did not intend to provide additional information on the entities receiving allocations. Industry requests to SDRC for information on 2003 allocations have gone unanswered.

MOC Automatic Registration Process: The United States is increasingly concerned that MOC is limiting issuance of its automatic registration form (ARF) in an effort to restrict imports of chicken meat and offal. Industry and traders recently reported that in March, MOC ceased issuance of ARF to importers in Guangdong Province and in Shanghai, restricted issuance to select importers. Although these reports are anecdotal, they are supported by trade statistics (US chicken exports to China are off by nearly \$100 million from levels two years ago) and by the fact that Chinese domestic prices for major imported chicken cuts remain well above landed costs plus tariff and VAT for imports.

#### Administration of Agricultural TRQs

The United States remains very concerned with China’s licensing regime for goods subject to a TRQ allocation requirement.

We continue to believe that these licensing requirements are not in accordance with China’s WTO commitments.

In an effort to seek accommodation, the United States engaged in bilateral consultations with China on this issue in September 2002 and again in February 2003.

To date we have seen little progress, and no indication that China’s TRQ licensing requirements will be brought into compliance with WTO obligations.

While the United States remains open to additional bilateral dialogue, we are nearing the point where lack of resolution will force escalation of this issue.

TRQ Licensing

- Paragraph 138 of the Working Party Report states that China will not require a separate import licence approval for goods subject to a TRQ allocation requirement, but will provide any necessary import licence in the procedure that granted a quota allocation.
- Paragraph 6.A of China's headnote on Tariff Quotas states that "Any additional requirement for importation will be automatic under the terms of the Agreement on Import Licensing Procedures."
- This Agreement states that "automatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports", and that applications should be "approved immediately on receipt, to the extent administratively feasible, but within a maximum of ten working days."
  - Contrary to this commitment China maintains multiple licensing requirements that occur outside of the procedure granting quota allocation and that do not appear to be automatic.
  - End-users must apply twice to SDRC for a single allocation – once for the initial allocation and a second time for SDRC's approval to use that allocation once the importer has a signed contract.
  - Quota-holders must apply for and obtain, at both the local and national level, an additional import licence from AQSIQ before the product can be imported. We understand that approval can take up to 30 days at each level of government.
  - Entities importing under TRQs reserved for processing, must obtain a separate processing trade business licence and a "Processing Trade Certificate" in order to obtain a TRQ allocation.
- These separate and multiple licensing requirements and the additional time and effort expended by importers to fulfill them, are an undue burden on trade and appear to be in conflict with China's commitments.
  - China continues to require quota-holders to provide detailed, time-sensitive commercial information, such as price and origin, prior to obtaining an import licence, and it restricts the commercial terms that can be changed thereafter. Paragraph 6.A of the TRQ headnote requires China to "establish a tariff-quota system that is open, transparent, fair, responsive to market conditions, timely, minimally burdensome to trade, and reflects end-user preferences."
- This requirement unduly restricts an end-user's ability to adjust to market conditions and operate based on commercial considerations.
  - Please comment on the foregoing description, explaining how in China's view these measures meet WTO requirements.
  - Please explain the steps China will take to eliminate the additional, non-automatic licensing requirements for TRQ commodities or how it will bring these requirements into accordance with its WTO commitments.

- Please explain how China's TRQ licensing regime will be affected by the recent government restructuring involving MOFTEC, and the SDRC.
- China prohibits the sale of products imported under "processing" TRQ from being sold on the domestic market. End-users who do sell these commodities or their products in the domestic market are subject to penalties and to out-of-quota tariffs.
- This restriction on utilisation would appear to not accord with Article 3.2 and 3.5(h) of the Agreement on Import Licensing Procedures (Article 3.2 provides that "non-automatic licensing shall not have trade-restrictive or -distortive effects on imports additional to those caused by the imposition of the restriction." Article 3.5(h) provides that "when administering quotas, Members shall not prevent importation from being effected in accordance with the issued licences, and shall not discourage the full utilisation of quotas.")
  - Can China please explain how this restriction is consistent with its obligations under the Agreement on Import Licensing Procedures, or explain what steps it will take to remove this restriction?

#### Commercially Viable Quantities

- Paragraph 6.E obligates China to allocate TRQs in commercially viable shipping quantities. Article 3.5 (i) of the Agreement on Import Licensing Procedures emphasizes the importance of issuing licences for products in economic quantities.
- In 2002, there were many complaints from traders that some TRQs had been allocated in quantities that were not commercially viable to ship. Chinese officials acknowledged this problem and indicated interest in addressing it for the future.
  - What steps has China taken to ensure that it issues licences for products in commercially viable quantities?

#### Transparency in TRQ administration

- The US remains concerned with the lack of transparency in China's administration of TRQs.
- With respects to licensing, the US Government and US exporters continue to experience difficulty in obtaining information on which entities have been allocated TRQs and TRQ import licences.
- China committed, in the TRQ headnote (paragraph 6.F) to provide this information within ten days upon request to SDRC and to administer the TRQ system in a transparent manner.
  - Why does China refuse to provide this information?
  - What steps is China taking to provide this information within the agreed time frame?

#### MOC Automatic Registration Process

- MOC's automatic registration for imports of chicken meat and offal does not appear consistent with the provisions for automatic licensing in the Agreement on Import Licensing Procedures.

- We have received reports from our industry that MOC is restricting issuance of its automatic registration form, a required document for importation, and that some major ports have experienced prolonged periods, sometimes exceeding 30 days, during which no forms were issued.
- We are concerned that this registration requirement is being used to quantitatively restrict chicken meat and offal imports. China's WTO accession did not establish a quota for any of these products.
  - Can China explain what objective it is trying to achieve with this registration form and how this requirement is in accordance with China's WTO commitments?
  - Can China address the reports that forms are not being issued in a prompt and automatic fashion?
  - Could China please describe the steps it will take to eliminate or bring this requirement into accordance with China's obligations?

Administration of Auto Quotas

- China administers quotas for imports of automobiles and other goods listed in Annex 3 to its Protocol of Accession<sup>3</sup>.
  - In accordance with Article 3.5(a) of the Agreement on Import Licensing Procedures, please provide information on the administration of the restrictions, the import licences granted for 2002 and the first four months of 2003, and import statistics for those same periods.

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<sup>3</sup> WT/L/432.