

CHINA'S TRANSITIONAL REVIEW MECHANISM¹

Comments and Questions from the EUROPEAN COMMUNITIES to CHINA

The following communication, dated 14 August 2003, has been received from the Permanent Delegation of the European Communities.

The EC is transmitting comments and questions well in advance of the meeting of the Committee on Import Licensing of 2 October 2003, in order for the Chinese authorities to reply and to complete any information that may be incomplete.

Once the information to be provided by China in accordance with paragraph 8 and paragraph IV.2 (d) of Annex 1A of its Protocol of Accession has been received, the EC might come back with additional questions.

The EC's comments and questions relate to the following priority items: trading rights and allocation of quotas and tariff rate quotas.

Trading rights

The EC welcomes the adoption in January 2003 of the "Provisional Rules on the Establishment of Sino-Foreign Foreign Trade Companies"² covering the trading rights issue. The liberalisation of trading rights is indeed a key component of the liberalisation package brought about by China's WTO accession.

However, the EC has a number of concerns regarding certain provisions of the Rules. Detailed questions have been transmitted to China bilaterally. The main concerns relate to:

(i) Timetable and scope:

In line with paragraph 83(c) of the Working Party Report³ (WT/MIN(01)/3), all joint-ventures with minority share foreign-investment should have been able to obtain trading rights from

¹ Pursuant to Section 18 of the Protocol of Accession of the People's Republic of China (WT/L/432).

² MOFTEC Order No. 2003/1, dated 31 January 2003, entitled "Provisional Rules on the Establishment of Sino-Foreign Foreign Trade Companies".

³ "The representative of China also confirmed that during the phase-in period, China would progressively liberalize the scope and availability of trading rights for foreign-invested enterprises. Such enterprises would be granted new or additional trading rights based on the following schedule. Beginning one year after accession, joint-venture enterprises with minority share foreign-investment would be granted full rights to trade and beginning two years after accession majority share foreign-invested joint-ventures would be granted full rights to trade."

11 December 2002 onwards. However, the Provisional Rules seem only to apply to what is defined as "trading" joint ventures. In this context, the EC would be grateful if China could:

- confirm that all joint ventures with minority share foreign-investment can now obtain trading rights, in line with China's WTO commitments;
- indicate if legislation already exists to define the trading rights of joint-ventures not falling within the category defined by China as "trading" joint-ventures, allowing them to exercise the rights to import and export;
- confirm that Sino-foreign joint venture companies which were already established in China when the MOFTEC Provisional Rules 2003/1 came into force can also obtain trading rights under the same conditions as joint ventures established after this date.

(ii) Requirements for obtaining trading rights

The Provisional Rules contain in Article 4 requirements of prior experience for both the Chinese and foreign joint venture partners and impose a minimum capital requirement.

These provisions seem not to be in line with paragraph 84(b)⁴ of document WT/MIN(01)/3, according to which China committed itself to eliminating all requirements relating to prior experience or minimum capital when granting trading rights.

- The EC would be grateful if China could clarify this point.

(iii) Temporal application

- Given the "provisional" nature of the Rules adopted in January 2003, the EC would be grateful if China could indicate when the definitive legislation will be adopted, give information on its scope and explain how it will fit in with China's commitments, in particular in regards to the problems highlighted above.

The EC would like to point out that a rapid publication of definitive legislation fully implementing China's WTO obligations is particularly important in view of the full liberalisation of trading rights for all enterprises in China on 11 December 2004.

Quotas and tariff-rate quotas allocation (automobile and fertiliser)

The EC welcomes the timely publication of the 2003 quotas and tariff-rate quotas in line with China's commitments and which represented a substantial improvement on the situation in 2002. The quantities issued are also in conformity with China's commitments.

However, the EC has serious concerns regarding the actual allocation of the quotas and tariff-rate quotas to importers. It seems that the transparency issue, that the EC and other WTO Members had raised during last year's TRM exercise, has not been adequately addressed. In particular, large parts of the quotas are not allocated to genuine importers (state-owned or not) but to other parties not involved in import activities, from which the genuine importers have to "buy" the licences.

⁴ "... the representative of China confirmed that such [trading] rights would be granted in a non-discriminatory and non-discretionary way. He further confirmed that any requirements for obtaining trading rights would be for customs and fiscal purposes only and would not constitute a barrier to trade. The representative of China ... confirmed that requirements relating to minimum capital and prior experience would not apply" (emphasis added).

In practice, according to industry sources, this leads to the development of a "market" for licences. Whereas these should in theory be free, they can cost up to between 80,000 and 100,000 RMB for an automobile and between 150 and 180 RMB per ton for NPK fertiliser (up from 50-70 RMB one year ago). As a result the EC products are more expensive for Chinese customers. Moreover, according to various industry reports, although quantities officially announced as issued appear to conform with China's commitments, the quantities which are in fact allocated are smaller.

In this context, the EC asks China to:

- ensure that, in line with her WTO commitments the full quantity of quotas and tariff-rate quotas are allocated to genuine importers, thus ensuring that licences are issued and used in accordance with the letter and the spirit of the relevant sections of the Working Party Report;
 - publish the criteria applied for the allocation of the licences for quotas and tariff-rate quotas;
 - indicate whether import licences are interchangeable between different types of models (e.g. engine specifications).
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