

QUESTIONS FROM THE UNITED STATES TO CHINA¹

The following communication, dated 25 September 2003, has been received from the Permanent Mission of the United States.

I. QUESTIONS REGARDING NOTIFICATIONS REQUIRED BY THE COMMITTEE ON IMPORT LICENSING

Rules and information concerning import licensing procedures:

China provided initial notifications of its import licensing procedures (under Articles 1.4(a)/8.2(b) of the Agreement on Import Licensing Procedures) and response to the questionnaire on import licensing procedures as required by Article 7.3. These are contained in G/LIC/N/1/CHN/1, G/LIC/N/1/CHN/1/Add.1, and G/LIC/N/3/CHN/1.

1. Is the list in G/LIC/N/1/CHN/1 comprehensive, i.e., does it contain all items for which China currently maintains import licensing requirements? Can we assume if the items are not designated as subject to automatic licensing, they are subject to non-automatic licensing?
2. In our review of these documents, we note that there is no information on the eligibility of persons, firms and institution to make such applications; the administrative body(ies) to be approached; and the required time to obtain a licence after the submission of an application. In addition, there is no information on fees. Please provide this information, and amend the notifications to provide this information.
3. Has the list of all entities responsible for the authorization or approval of imports been updated and republished in the official journal, the MOFCOM Gazette since the last meeting? Paragraph 132 of China's Working Party Report² requires publication within one month of any change.
4. Please report on any preferential criteria employed in awarding import licences, e.g., for state-controlled importer vs. non-state-controlled importers.
5. Please list any current export performance requirements associated with the issuance of an import licence.

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

² WT/MIN(01)/3.

6. We understand that import licences are still bought, sold and transferred between non-affiliated entities notwithstanding China's statement in paragraph 135 of the Working Party Report that this is illegal. What steps has China taken to counteract this practice?

Other notification requirements of the Agreement:

Article 5 of the Agreement (New Import Licensing Procedures or Changes) stipulates that Members must notify new or amended import licensing procedures.

1. In light of China's extensive and changing import licensing system, please explain what procedures China is implementing to ensure that the Committee is notified of Article 5 changes.
2. Has China issued any new laws, regulations, orders, decrees and other measures (including at the sub-national level) since submission of the initial notifications last year? Please describe changes in procedures that have taken place since that time. Have any of these measures been taken to comply with the Agreement or the commitments in China's accession agreement?
3. Import Licensing Procedures for Telecommunications Products: We have received reports that to obtain an import licence for some telecommunications products, MOFCOM requires the procurement of said products be made through an open international bidding, but China has not notified this requirement and we are not aware of any public announcement. Article 3.3 of the Agreement of Import Licensing (Non-Automatic Import Licensing), stipulates that Members shall publish sufficient information for other Members to know the basis for granting licences. Please explain the procedures for granting an import licence for telecommunications products, and indicate where this information is available in China and to WTO Members.

II. QUESTIONS AND COMMENTS RELATED TO IMPORT LICENCES ISSUED FOR ADMINISTRATION OF TARIFF-RATE QUOTAS

On 31 July 2003, China published draft revisions to the Interim Rules on Agricultural Tariff-Rate Quota Administration for comment. The United States commends China on several improvements in the draft Rules from the prior measures. For example, the United States is pleased to see that the draft Rules eliminate the separate tariff-rate quota (TRQ) for processing trade, i.e., imports of goods that must be processed and re-exported. However, the United States does have some concerns and questions regarding the draft Rules. The United States submitted those concerns and questions to China soon after the draft Rules were published for comment, and we look forward to receiving China's responses. The United States subsequently highlighted three of its areas of concern before the Committee on Agriculture, which conducted its review of China WTO implementation matters on September 25, 2003. First, the United States referenced its concern that the draft Rules still provide for restrictions relating to processing trade and, in particular, application of out-of-quota tariff rates and other penalties when a processing trade enterprise sells agricultural goods imported pursuant to a TRQ allocation in the domestic market without approval. Imported agricultural goods should be eligible for sale in the domestic market without any restriction as to end-use. Second, the United States expressed its continuing concern about lack of transparency in TRQ administration, including the lack of information regarding TRQ holders. The United States pointed out that, in its Goods Schedule (TRQ Headnote, Part I, Section I-B of Schedule CLII - People's Republic of China), China committed to provide information on entities that received TRQ allocations. The United States therefore asked for various information on TRQ holders for 2002 and 2003 (year-to-date). Third, the United States asked China to describe the steps it was taking to ensure that TRQs are allocated in commercially viable shipping quantities.

The United States has the following additional questions for China regarding its TRQ administration:

1. China's regulations state that "[t]he minimum quota amount will be limited to appropriate commercial shipping volumes . . ." However, in 2002, some of the volumes allocated under the corn import TRQ were as small as 6 mt, with many other allocations well below what would normally be considered "appropriate commercial shipping volumes." When requesting information for 2003, U.S. exporters were informed only that there were 214 enterprises that obtained allocations for the "private share" corn TRQ, with 56 enterprises obtaining certificates for volumes of 10 mt or more. Without knowing the volumes for the 158 recipients of less than 10 mt, it is not possible to ascertain whether or not each of them is in a position to import a commercially viable quantity. It is also difficult to assess whether any allocations were made to provinces that are poorly situated to receive any corn from the world market, which would make filling a quota that much more difficult.
 - (a) Please explain how China intends to remedy this situation. Would China publicly release information on corn TRQ certificate holders, and the volume each one holds?
 - (b) Would China provide this same information for other TRQ goods?
 2. Please confirm that all 2004 TRQ quantities will be announced and allocated by 1 January 2004, that the application period for those allocations will be between 15-30 October 2003, and that specific conditions have been published in the official journal one month in advance of the application period, in accordance with the TRQ headnote in China's Goods Schedule. If not, please indicate when these actions will be taken.
 3. In its Protocol of Accession, China agreed that all commercial terms for TRQ imports would be at the sole determination of the importer and the exporter. Chinese authorities have reportedly informed cotton buyers that they will not allocate TRQ unless the underlying contract contains a clause specifying that any dispute will be arbitrated before the China International Economic and Trade Arbitration Commission (CIETAC) and that Chinese law be chosen as the governing law for any such dispute. Please confirm that all commercial terms regarding such imports, including with respect to choice of law and choice of arbitration forum, are at the sole discretion of the parties to the contract. If not, please explain how these requirements conform with the terms of China's Protocol of Accession.
-