

Committee on Agriculture

**REPORT TO THE COUNCIL FOR TRADE IN GOODS
ON CHINA'S TRANSITIONAL REVIEW**

The present report is submitted on the responsibility of the Chairman, Mr. Roald Lapperre, as agreed by the Committee at its regular meeting on 23 September 2004.

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1. The Committee held its third annual Transitional Review under paragraph 18 of the Protocol of the Accession of the People's Republic of China at the regular meeting on 23 September 2004 (WT/L/432 refers).
 2. The issues raised and the statements made in the context of the Transitional Review are contained in the attachments hereto.
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Attachment 1

Questions to China from the United States in the context of the Transitional Review Mechanism under Paragraph 18 of the Protocol of Accession of the People's Republic of China (G/AG/W/64 refers)

The following communication, dated 27 August 2004, has been received from the Delegation of the United States, with the request that it be circulated to Members, for the purposes of the Transitional Review to take place at the Committee's meeting on 23 September 2004.

The following questions relate to matters covered by both Article 4 of the Agreement on Agriculture and various articles of the Agreement on Import Licensing Procedures. While the United States is submitting these questions in connection with the transitional review before the Committee on Agriculture scheduled for 23 September 2004, it may address these matters further during the transitional review before the Committee on Import Licensing scheduled for 30 September 2004.

Administration of Agricultural Tariff-Rate Quotas

1. In paragraph 116 of its Working Party Report, China committed that it would ensure that tariff-rate quotas (TRQs) were administered on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified time-frames, administrative procedures and requirements that would provide effective import opportunities; that would reflect consumer preferences and end-user demand; and that would not inhibit the filling of each TRQ. In paragraph 6 of the TRQ headnote in its Goods Schedule (Part I, Section I-B), China also committed to equitably distribute allocations within each portion of the TRQ to ensure complete TRQ utilization, and to establish a TRQ system that is responsive to market conditions and minimally burdensome to trade.

2. At the November 2003 meeting of the Committee on Agriculture and again during bilateral discussions with the United States in April 2004, China agreed to provide certain information on quota holders and allocations and reallocations for commodities subject to TRQs, for those quota holders that have expressed their consent to the Chinese government for release of this information, upon written request. After subsequently submitting a written request to China regarding all TRQ commodities, the United States received an initial list of quota holders for wheat and cotton, but no information on the amounts allocated or reallocated. The United States has not received any information with regard to the other TRQ commodities.

- (a) Please provide the following information for each of the commodities subject to TRQs: (i) the volume of TRQ requested, both for initial allocation and for reallocation; (ii) the volume of TRQ requests denied; (iii) fill rates to date; (iv) the amount of any goods entered at the out-of-quota rate; and (v) time taken to grant TRQ allocations and reallocations.
- (b) For each of the commodities subject to TRQs, please provide a list of enterprises that applied for TRQ allocation.
- (c) For each of the commodities subject to TRQs, please provide a list of the enterprises that have received allocations, the nature of each enterprise (e.g. state-owned enterprise, foreign-invested enterprise, etc.), and whether the enterprise has received quota reserved for importation through state trading enterprises or enterprises other than state trading.

3. Please confirm that: (a) the application period for 2005 quota allocations will be between 15 and 30 October 2004; (b) specific requirements have been published in the *International Business Daily* and the *China Economic Herald* as well as the websites of the Ministry of Commerce and the State Development and Reform Commission one month in advance of the application period; and (c) all 2005 TRQ quantities will be allocated by 1 January 2005, in accordance with China's WTO commitments and Decree No. 4, the *Interim Rules and Regulations for Agricultural Imports Tariff Rate Quota*, issued 27 September 2003.

4. Can China verify that cotton that is imported into bonded warehouses, bonded areas and export processing zones does not count towards its global cotton TRQ allocation? Because of the limited transparency in China's operation of its TRQ system, the United States has had difficulty verifying that these products are not counted in China's TRQ totals.

5. The United States appreciates that, in response to Members' concerns and in light of its WTO obligations, China revised its TRQ regulations in 2003 to eliminate the sub-quota for processing trade (i.e. imports that must be processed and re-exported). However, the United States is still concerned that China's regulations provide for the application of out-of-quota tariff rates if a TRQ product imported under a processing trade channel is sold in China rather than processed and re-exported. Can China confirm that although it never requires that quota holders bring product in as processing trade as a condition of any TRQ import certificates, quota holders have the option of choosing the processing trade channel as opposed to the general trade channel and China counts the product as in-quota imports in either case? If so, please explain how product entering China as processing trade under China's TRQ system can be consistent with China's tariff binding and national treatment obligations when product entering China as processing trade is subject to out-of-quota tariffs and other penalties if it enters the customs territory of China.

AQSIQ Licensing for Inspection of Imports

6. The United States remains concerned about the quarantine import inspection permit procedures provided for in State General Administration of Quality Supervision and Inspection and Quarantine (AQSIQ) Ordinance 7, *Administrative Measures for the Entry-Exit Inspection and Quarantine for Grains and Feed Stuff* (effective March 1, 2002), as well as AQSIQ Decree No. 25, *Administrative Measures for Entry Animal and Plant Quarantine* (effective 1 September 2002). Specifically, pursuant to Ordinance 7, AQSIQ requires that importers obtain an import inspection permit prior to signing an import contract for grain or feed. Port quarantine authorities may return or destroy any cargoes without a prior import inspection permit. This import inspection permit is in addition to other import licenses, including a TRQ import certificate (in the case of TRQ commodities like wheat) and a safety certificate (in the case of certain commodities), and it does not replace inspection at the port. Similar procedures apply under Decree No. 25, pursuant to which importers are required to obtain a quarantine permit for a wide range of animal and plant products before an import contract can be signed. The United States continues to receive reports from traders regarding both the burdensome nature of the procedures and selective enforcement by AQSIQ under Ordinance 7 and Decree No. 25.

- (a) Please clarify who is eligible to apply for an import inspection permit under Ordinance 7. What standards does AQSIQ employ in accepting or rejecting applications?
- (b) Please clarify who is eligible to apply for a quarantine permit under Decree No. 25. What standards does AQSIQ employ in accepting or rejecting applications?

- (c) Under Article 6 of Ordinance 7, in applying for an import inspection permit, the owner of the goods to be imported, or its agent, must provide information that includes details about plant location, storage capacity, transportation, processing and whether prior shipments have been fully utilized. Please explain why this information is necessary.
- (d) Please explain why AQSIQ requires an inspection of the facilities of an enterprise that processes agricultural commodities, since the State Administration of Industry and Commerce also requires an inspection of those same facilities. Will one inspection satisfy both requirements?
- (e) Please explain why an importer must re-apply for a new import inspection permit (rather than have the term of the original one extended) if it has not entered into a commercial contact and imported the commodities covered by the import inspection permit by the expiry date.
- (f) Please explain why an importer must specify the commodity weight, country of origin and port of entry before it has even entered into an import contract. Please also explain why an importer must reapply for a license if the commodity weight changes by more than 10 per cent or if the country of origin or the port of entry changes.

7. On 16 June 2004, AQSIQ issued Decree No. 73, *Items on Handling the Review and Approval for Entry Animal and Plant Quarantine* (effective 1 July 2004). This decree adds provisions that may create unfavorable commercial terms for imports. While it is unclear how this new decree will be implemented and enforced, the vague wording of the decree leaves open the possibility for future enforcement actions and places liability on the foreign exporter.

- (a) Decree No. 73, in paragraph 4, requires importers to incorporate the inspection and quarantine requirements specified in the quarantine permit into contracts and stipulate that the goods should comply with relevant Chinese laws and food safety regulations. This requirement appears to be unnecessary, because China's inspection and quarantine requirements are fully enforceable by Chinese authorities. Please explain the necessity of requiring inspection and quarantine requirements to be incorporated into commercial contracts.
- (b) The requirement of paragraph 4 of Decree No. 73 appears to oblige the seller of imported goods to bear the full commercial risk of non-compliance with China's inspection and quarantine requirements. Customarily in international sales contracts for bulk commodities, parties generally agree that upon inspection of goods by the exporting country and issuance of a certificate of approval by the exporting country, risk pertaining to the quality of goods passes to the buyers. Please explain the basis for changing existing commercial practice.
- (c) Decree No. 73, paragraph 6, requires the name of the exporter and the supplier to be indicated in the application form for the entry animal and plant quarantine permit when applying for soybean imports. It is often difficult to identify the name of the supplier (or the origin of the commodity) at the time an importer applies for the inspection permit. Often, the supplier is changed after the quarantine permit is issued. While the United States understands the need to provide the name of the exporter in a transaction, please explain why China needs the name of the supplier to be indicated in the application form for the quarantine permit for soybeans.

Attachment 1 (continued)

Additional Questions to China from the United States in the context of the Transitional Review Mechanism under Paragraph 18 of the Protocol of Accession of the People's Republic of China (G/AG/W/64/Add.1 refers)

The following communication, dated 16 September 2004, has been received from the Delegation of the United States, with the request that it be circulated to Members, for the purposes of the Transitional Review to take place at the Committee's meeting on 23 September 2004.

AQSIQ Licensing for Inspection of Imports

On 30 August 2004, China issued a measure exempting certain animal and plant products from entry quarantine review and approval, effective 1 September 2004. The measure, General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) Announcement 111, appears to exempt certain animal and plant products from the requirement to obtain a quarantine import inspection permit in advance of entry and prior to signing an import contract. The United States welcomes China's modification of its quarantine permit policies in Announcement 111 to remove some products from the list of products requiring quarantine permits, as traders have expressed continued concern regarding the burdensome nature of the quarantine permit procedures.

- (a) Announcement 111 lists the generic names of certain products in the animal products and plant products categories that are exempted from the quarantine permit requirement, but does not provide sufficient detail for the trade or a description of these products based on Harmonized Schedule (HS) Number. Please provide a description of exempted products by HS Number.
 - (b) Announcement 111 indicates that China's decision to exempt certain products is based on risk assessments. Please provide those risk assessments, along with any other analysis or criteria used as a basis for the exemptions.
 - (c) Were risk assessments performed on other products, i.e. products that are still on the list of products requiring quarantine permits? If so, please provide those risk assessments, along with any other analysis or criteria used.
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Attachment 1 (continued)

Questions to China from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu in the context of the Transitional Review Mechanism under Paragraph 18 of the Protocol of Accession of the People's Republic of China (G/AG/W/65 refers)

The following communication, dated 27 August 2004, has been received from the Delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, with the request that it be circulated to Members, for the purposes of the Transitional Review to take place at the Committee's meeting on 23 September 2004.

We understand that China has made progress in 2004 on the implementation of its TRQs, the enactment of relevant regulations and on the allocation of quotas. According to paragraph 116 of the Working Party Report, China is committed to TRQs being administered on a transparent basis.

We would appreciate receiving some further information and clarification regarding the following points, with particular reference to transparency as it relates to the TRQ on rice:

1. Could China please provide information on the fill rate of the rice TRQ in the year 2003.
2. We note that 50 per cent of China's rice tariff quota is imported solely by a state trading enterprise (STE) and the other 50 per cent is imported by private sector entities. Please explain how the STE operates in terms of its importation of the government quota and how it decides on the trading partners.
3. With regard to importation of the rice quota by the private sector, the 2003 25th Announcement of China's National Development Reform Commission issued on 30 September 2003 states that for the year 2004, the private quota is allocated on a first-come, first-served basis according to a company's volume of applications, historical import records and processing capacity, or its volume of production, importation and sales.

It would be appreciated if China could provide details concerning the following:

- (a) Is any information on its rice quota holders made public and on what criteria does China base its allocation decisions? If the reply to the first part of this question is in the affirmative, could China please also advise us of the means by which it publicizes such information.
- (b) Are there any other fees, charges, taxes or premiums collected besides tariff charges on each rice importation, and are any fees charged for acquiring the quota? If so, what are the respective amounts?
- (c) What are the relevant items and standards of SPS requirements for rice importation to China?
- (d) We understand that a grain wholesaler or retailer with an annual sales volume above 100 million RMB would qualify for a private rice quota application. We would like to know the details of how a company should go about acquiring the qualification as a grain wholesaler or retailer in China. For example, which competent authority should this company apply to for such a qualification and are there any special requirements involved?
- (e) Do any limitations or conditions apply to imported rice being sold in China's market? If so, we would appreciate knowing what they are.

Attachment 2

Excerpt from the Secretariat Summary Report of the Meeting of the Committee on Agriculture on 23 September 2004 (G/AG/R/40 refers)

B. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA (WT/L/432)

39. The Committee held its third annual review under paragraph 18 of the Protocol of Accession of the People's Republic of China. The questions by the United States and Chinese Taipei are set out in documents G/AG/W/64 and Add.1 and G/AG/W/65, respectively.

(i) Statement by China

40. China stated that continued efforts had been made in 2004 to implement the agricultural commitments resulting from its accession to the WTO. The average tariff on agricultural products had been further reduced from 16.8 per cent in 2003 to 15.6 per cent in 2004. The current average tariff level for agricultural products represented one of the lowest among WTO Members.

41. Regarding the matter of tariff quotas, the Ministry of Commerce and the State Development and Reform Commission of China had issued Decree No. 4 of 27 September 2003, entitled "Interim Measures on the Administration of Tariff Rate Quota for Importation of Agricultural Products". This new regulation was the result of the democratic legislative process under which views from various stakeholders were solicited and taken into account. On 15 October 2003, the Ministry of Commerce and the State Development and Reform Commission issued Announcement No. 54 of 2003, which contained a list of agencies authorized to administer import tariff quotas for agricultural products. As a result of the restructuring of government agencies and re-adjustment of their functions in 2003, since 2004 the State Development and Reform Commission was responsible for tariff quota administration for grains and cotton, while the Ministry of Commerce was responsible for all other agricultural tariff quotas. On 30 September 2003, the State Development and Reform Commission issued the Announcement No. 25 of 2003, covering the quantities, application procedures and allocation methods for importation of agricultural products. On 28 September 2003, the Ministry of Commerce issued Announcements No. 51 and 52 of 2003, which established the 2004 implementing rules for allocation of the tariff quotas for palm oil, soybean oil, rape seed oil, sugar, and wool and wool tops.

42. China drew attention to the Table MA:2 notification concerning imports under tariff quotas in 2003 (G/AG/N/CHN/5 dated 21 September 2004), and the written document containing detailed information regarding tariff quota administration that China had submitted to the Committee on Market Access in 2004 in accordance with the requirement of Annex 1A of China's Protocol of Accession.

43. China considered that the new tariff quota regime had functioned well so far. Along with the gradual increase of tariff quotas for farm imports under commitments, the market access opportunities had expanded further, and the Chinese market for agricultural goods had been further opened.

44. China also noted that it had notified the Committee that no export subsidy of any kind had been provided in 2002-2003.

45. In response to the questions on tariff quota administration by the United States in document G/AG/W/64 (i.e., the request for information regarding the volume requested and denied; fill rates to date; the quantities imported at the out-of-quota rate; and time taken to grant allocations and reallocations), China noted that the relevant information was contained in document G/MA/W/64 dated 21 September 2004 submitted to the Committee on Market Access.

46. In response to the United States, China stated that it was not yet in a position to provide a list of enterprises because this information was considered to be confidential business information. The enterprises concerned had expressed the view that release of this information would affect their competitiveness in the market. China considered these concerns to be legitimate and noted that under Article XIII:3(a) of the GATT 1994 "... there shall be no obligation to supply information as to the names of importing or supplying enterprises". China provided the following information concerning the number of the enterprises that had applied for, and had been granted, tariff quota allocations in 2004.

Product	Number of enterprises having applied for tariff quota allocations in 2004	Number of enterprises having been granted tariff quota allocations in 2004
Wheat	340	299
Corn	290	271
Rice	218	190
Rape seed oil	355	238
Palm oil	1764	1262

47. With respect to the allocation of agricultural tariff quotas for 2005, China confirmed that the relevant domestic procedures were underway and that quantities, application procedures and other details would be published in the near future.

48. With respect to cotton, China stated that cotton imported into bonded warehouses and bonded areas did not count towards its global cotton tariff quota allocation, as provided for in the annual Announcement for Allocation of TRQs for agricultural products.

49. Regarding the matter of "processing trade", China stated that imports under processing trade were bonded. Bonded materials and components and products thereof were not permitted for domestic sale and had to be re-exported. Enterprises that intended to sell imported materials and components or products thereof in the domestic market should conduct the importation under "general trade" rather than processing trade. Under general trade, there was no preferential treatment of bonded imports, although imports within quota could be sold in the domestic market at the in-quota tariff rate. Processing trade was subject to preferential treatment of bonded imports with the prohibition of sale in the domestic market, in which case they were subject to out-of-quota tariffs and other penalties. To do otherwise would be unfair for the imports conducted under general trade.

50. Concerning the questions on SPS-related matters, China considered that the SPS or TBT Committees were the appropriate WTO bodies to address issues such as quarantine matters, disease control, risk assessment, inspection and certification procedures. China preferred to respond to questions in this regard at the meetings of those bodies.

(ii) Follow-up questions and/or comments by Members and China's responses thereto

51. The United States expressed the view that the Transitional Review had proceeded relatively smoothly last year and was a constructive and positive exercise. The United States looked forward to continuing in a cooperative and pragmatic spirit during this year's exercise.

52. The United States noted that the first set of questions addressed to China concerned the issue of tariff rate quotas. The United States welcomed China's Table MA:2 notification dated 21 September 2004, as well as China's commitment at the November 2003 Committee meeting, and in the April 2004 bilateral discussions, to provide business information regarding tariff rate quota holders, as envisaged in the Headnotes to China's Schedule (Part I, Section I-B of Schedule CLII). Subsequent to those meetings, the United States had submitted a written request to China regarding all tariff rate quota commodities. In response, the United States had received an initial list of quota holders for wheat and cotton, but no information on the amounts allocated or reallocated. The United

States was disappointed that it had not received any information with regard to the other tariff rate quota commodities and invited China to provide the full information.

53. The United States appreciated that China had revised its tariff rate quota regulations in 2003 to eliminate the sub-quota for processing trade (i.e. imports that must be processed and re-exported). However, the United States remained concerned that the regulations provided for the application of out-of-quota tariff rates if a tariff rate quota product imported under a processing trade channel was sold in China rather than processed and re-exported. Given that imported products that entered bonded areas or export processing zones were exempt from obtaining a tariff rate quota certificate, the United States sought clarification from China as to why the TRQ Certificate had a section detailing "trade pattern" where quota holders had the option of choosing the processing trade channel as opposed to the general trade channel.

54. The United States took note of China's request to deal with certain issues in the SPS Committee. Without prejudice to the US position that the overall quarantine import/inspection permit was not an SPS measure, the United States looked forward to further discussing these issues at the meetings of the SPS or TBT Committees with experts from China's capital.

55. Chinese Taipei considered that China had provided non-specific answers to its specific questions. Chinese Taipei expressed its interest in receiving more detailed information since Chinese Taipei had a commercial interest in the rice market of China.

56. Australia noted its interests in relation to some of the issues raised, particularly concerning tariff quota administration, where it had both commercial and systemic interests. Australia had a follow-up question concerning tariff quota volumes for products that had reached their final quota levels in 2004, including wool, cotton, wheat and sugar. During the bilateral negotiations on China's WTO accession, China and Australia had agreed to consult prior to the end of the implementation period on each product subject to a tariff quota. Australia would welcome information about China's plans with respect to those particular products where the tariff quota volumes had reached their final quota levels in 2004, i.e., whether the volumes would be maintained, expanded or abolished in 2005. New Zealand supported Australia request for clarification in this regard.

57. Canada noted its systemic interest in relation to a number of questions. Thailand noted its interest concerning the administration of the tariff quota for rice.

58. The EC supported the concerns raised by Members concerning China's tariff quota management. The EC requested that China provide a list of quota holders to all Members, in particular for the wheat tariff quota, which was of particular interest to the EC.

59. China thanked delegations for their interest in this exercise and expressed appreciation for the understanding of those delegations that had not taken the floor under this agenda item. China considered that trade with these Members was also very important. For its part, China was prepared to work with all Members to facilitate the growth of trade. China also took note of the follow-up question by Australia which would require further study at the capital. With respect to the requests for information by various delegations, China referred to the information provided in its opening statement, including the documents, submissions and notifications that it had mentioned.

(iii) Report to the Council for Trade in Goods

60. With respect to the Committee's report on the Transitional Review to the Council for Trade in Goods, the Committee took note that the Chairman would submit a factual report on his own responsibility. The Committee's discussions as reflected in the Secretariat summary report of the September meeting, as well as the advance questions posed to China, would be included in the report as an attachment.
