

**CHINA'S TRANSITIONAL REVIEW MECHANISM**

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

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.

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