

**CHINA'S TRANSITIONAL REVIEW MECHANISM**

Questions to China from the United States in the context of the Transitional Review Mechanism pursuant to Section 18 of the Protocol of Accession of the People's Republic of China

Addendum

The following additional questions were received from the Permanent Mission of the United States on 26 September 2002, with the request that they be circulated to Members, for the purposes of the Committee's first Transitional Review.

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**Agricultural TRQs**

We would like to thank China for meeting with the United States bilaterally on 12 September for consultations on China's administration of its TRQs. The consultations were useful in that they allowed us to exchange views on some of the more difficult issues surrounding TRQ administration that have arisen since the TRQs were allocated in April of this year.

The United States recognizes the difficulties that Members can encounter when implementing new regulations. For China, this issue was compounded given the number of regulations that were promulgated or revised during the first year of WTO implementation.

While China has succeeded in making enormous changes to its TRQ administration system in a relatively short period of time, a few important wrinkles remain to be ironed out in order for the system to function as smoothly as envisioned in China's accession agreement. We would like to assist China by identifying those wrinkles so that the regulations and actual practice are consistent with China's WTO obligations for TRQ commodities. To that end, we respectfully request that the Chinese delegation respond to each of the questions raised in our August submission.

We would also like to take this opportunity to make some observations and pose additional questions based on what we learned during our bilateral consultations.

**Sub-quota for Processing**

During consultations China confirmed that a certain portion of the TRQ for each agricultural commodity is reserved for the processing trade, in other words, for use by mills and other end-users in China that are involved in the business of processing these commodities. End-users receiving such allocations are required to re-export the processed product or are subject to criminal penalties and the application of out-of-quota tariffs for any such product that is sold onto the domestic market. This reserved TRQ is not allocated to end-users by China's State Development Planning Commission (SDPC) on 1 January of each year as required by China's head note, but is allocated to another government agency, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) to manage. TRQ allocated for this purpose can only be used if the end-user also applies separately for and receives a processing trade certificate and a special business licence in advance of importation.

This system appears to be inconsistent with China's obligations in several respects:

- First, China appears to be establishing a sub-quota based not on consumer preferences and end-user demand, as evidenced by applications, but rather on the government's subjective and non-transparent *a priori* assessment of demand for processing;
- Second, the entire TRQ is not allocated to end-users on 1 January, but is allocated to another Chinese ministry to administer. This would appear to be inconsistent with China's obligation to have a single, central authority administer TRQs and make allocation decisions; this would also appear to be inconsistent with China's obligation to allocate the entire TRQ on 1 January;
- Third, China appears to be restricting the utilization of product imported under this category, which is prohibited under Article 3 of the Agreement on Import Licensing Procedures;
- Fourth, the application of out-of-quota tariffs to product imported under the TRQ and sold onto the domestic market appears to be inconsistent with tariff bindings; and
- Fifth, the additional licensing requirement would appear to be inconsistent with the requirement of China to issue any additional licence in the procedure granting the quota allocation.

In the view of the United States, these requirements are not in accordance with China's WTO obligations. The sub-quotas are not envisioned in China's accession agreement and serve to impede quota fill; additionally, the differential treatment of certain product imported under the TRQ raises serious national treatment questions under the GATT.

What steps will the Chinese take to discontinue the practice of establishing a separate sub-quota for processing or modify the system to bring regulations and practices in line with China's WTO obligations?

### **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. Yet China requires that end-users apply to SDPC two times for a single allocation - once for the initial allocation and a second time for SDPC's approval to use that allocation once the importer has a signed contract.

Quota-holders are then required to apply for and obtain, at both the local and national level, an additional import licence from AQSIQ before the product can be imported. There appear to be no legitimate quarantine objectives for these additional licensing requirements that couldn't easily be achieved through other less burdensome means.

These separate and multiple licensing requirements and the additional time and effort that it takes importers to fulfill them are an undue burden on trade and appear to be in conflict with China's commitments for TRQ commodities.

It is also important that China not unduly restrict end-users' ability to adjust to market conditions and operate based on commercial considerations. Paragraph 6.A of the head note 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." However, China requires quota-holders to provide detailed commercial information prior to obtaining an import licence, and it restricts the commercial terms that can be changed thereafter.

It is the view of this delegation that these requirements are not in accordance with China's obligations and should be eliminated.

Could China please describe the steps it will take to bring its licensing requirements into accordance with China's obligations?

### **Commercially Viable Quantities**

During our bilateral consultations United States noted complaints from our exporters that allocations for some TRQ commodities were not being made in commercially viable quantities. We appreciate China's acknowledgement of this problem and look forward to working with China on a solution.

### **Transparency**

In the view of the United States some of the difficulties being experienced by both foreign exporters and Chinese importers can be alleviated through increased transparency in the administration of the TRQ system. In that regard, the United States respectfully requests that China provide additional information on the entities receiving quota in response to inquiries from both governments and individuals, as envisioned in 6.A, 6.F and 8.C of the head note. While we appreciate the information provided to this Committee during its June meeting, it was not adequate to meet the needs of the traders and is insufficient in terms of facilitating an assessment of China's compliance with its WTO commitments. Lack of transparency in the system has impeded traders' ability to conduct business and has caused confusion in the market.

While we appreciate the information on TRQs submitted to the Committee on Market Access in G/MA/W/39 (item 1(a)i), we need additional detail regarding the breakdowns in each category for private entities, STEs, and processing trade in order to be able to make an adequate assessment of China's administration of its TRQs. For each TRQ commodity could China please provide information regarding:

- the total volume of TRQ made available for importation through private entities and the volume made available for importation through STEs;
- the volume of TRQ reserved for importation for processing and re-export;
- the volume and number of requests received for each of those categories (private, STE, and processing);
- the volume and number of requests denied for each of those categories (private, STE and processing); and
- the time taken to grant the TRQ allocation for each category?

In addition, could China please indicate for each TRQ commodity any restriction on the amount of TRQ that a single entity can apply for and/or receive?

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