

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

The following communication, dated 28 August 2002, has been received from the Permanent Mission 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 26 September 2002.

Questions related to the administration of agricultural tariff-rate quotas

1. The regulations regarding administration of tariff-rate quota (TRQ) for agricultural commodities were released in draft form for public comment in November 2001, and final regulations were published in January 2002. Allocation of the TRQs was delayed until May 2002. This has caused significant disruption and uncertainty to the trade.

- (a) Please provide details on the procedure and timetable for reallocation of 2002 TRQ that has not been contracted for.
- (b) Please confirm that all 2003 TRQ quantities will be allocated by 1 January 2003, that the application period will be open from 15-30 October 2002, 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 (Part I-Section I-B of Schedule CLII - People's Republic of China).

2. In the Committee on Agriculture meeting in June, China provided the following information: (1) the amount of TRQ allocated for wheat, corn, rice, soybean oil, and cotton for 2002; (2) the distribution of allocations for trade through State trading entities and non-State trading entities; and (3) the amounts reserved for "processing" for each of the products.

- (a) Can China confirm that it has published in an official journal the amounts of TRQ actually allocated for 2002, the amounts of TRQ reserved for importation by STEs and non-STE, and the amounts of TRQ reserved for the "processing trade"?
- (b) We understand that TRQ reserved for processing trade refers to TRQ that can be used only to import product that will be processed and re-exported. Is this understanding correct? If not, please define "processing trade" as used with respect to TRQs. What are the consequences if TRQ reserved for processing is used to import product that is consumed in the domestic market and not re-exported?

3. Neither China's Working Party Report nor the TRQ and headnote commitments for agricultural products (Part I, Section I-B of Schedule CLII - People's Republic of China) provide for a sub-quota for processing trade. These documents do, however, state that "China will equitably distribute allocations within each portion of the tariff-quota to ensure complete tariff-quota utilization and 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" (headnote 3.A), and that "China would ensure that TRQs were administered on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, 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" (Working Party Report, paragraph 116). Requiring that some portion of the TRQ be reserved for processing and re-export appears not to meet these criteria.

- (a) In light of China's market access and national treatment commitments for agricultural commodities, China is requested to justify these restrictions regarding use of a portion of the TRQ for processing trade.
- (b) Please indicate when China will eliminate the processing trade restrictions on TRQs for any 2002 quota that has not yet been utilized, and for 2003 and subsequent years' quota.

4. In paragraph 116 of its Working Party Report, China committed that it would ensure that 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 filing 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.

- (a) Please provide the following information: (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 for each TRQ; (iv) the amount of any goods entered at the out-of-quota rate; (v) time taken to grant TRQ allocation; and (vi) time taken to grant any import licenses necessary to import TRQ product (see comments below regarding China's requirement of a separate import license for TRQ products).
- (b) For each of the commodities subject to TRQ, please provide a list of enterprises that applied for TRQ allocation.
- (c) For each of the commodities subject to TRQ, please provide a list of enterprises that have received allocations, as well as indication of nature of enterprise (state-owned enterprise, foreign-invested enterprise, cooperative enterprise, etc.), whether enterprise has received TRQ reserved for importation through state trading enterprises or enterprises other than state trading enterprises, and whether enterprise has received TRQ reserved for "processing trade" or "general trade".

5. China committed that allocations would be made in commercially viable shipping quantities. Reports from traders, however, indicate that some allocations are in commercially unviable amounts.

- (a) Please provide a list showing the size of each allocation of 2002 TRQ.
- (b) What measures did China take to ensure that these allocations were for commercially viable quantities?

6. The United States has a number of concerns regarding the *Interim Measures on the Administration of Tariff-Rate Quota for Agricultural Imports*, issued by State Development and Planning Commission on 30 January 2002, in addition to the distinction made between "processing trade" and "general trade" discussed above.

Article 2 of the WTO Agreement on Import Licensing Procedures confirms that there is no government discretion allowed in granting automatic import licenses and it further prohibits administration of automatic import licenses in a manner that has trade-restrictive or -distortive effects on imports.

Additionally, Paragraph 138 of China's Working Party Report explicitly states that any necessary licenses will be granted in the procedure that granted a quota allocation. Paragraph 6A further states: "Any additional requirement for importation will be automatic under the terms of the Agreement on Import Licensing."

- The requirement for a signed contract prior to issuing permission to utilize the quota is burdensome, contrary to practice in other WTO Members, and, in the view of the United States, inconsistent with Paragraph 138 of China's Working Party Report. Please explain why it is necessary, under Article 17 of the *Interim Measures*, that an end-user have a signed contract before it can apply for an Agricultural Product Tariff Quota Certificate.
- Article 17 sets out a separate licensing procedure that follows quota allocation, despite China's commitment discussed above regarding a single licensing procedure. Please provide a time-frame for the elimination of the separate licensing procedure in Article 17.
- Similarly, by requiring detailed commercial information prior to obtaining an import license and limiting what commercial terms can be changed (Article 40), the *Interim Measures* limit an end-user's ability to adjust to market conditions and operate based on commercial considerations. We call China's attention to its commitment that all commercial terms of trade will be at the sole determination of the importer and exporter taking into full account the demands of the end-user. (TRQ headnote, para. 6.E.) Please indicate when China will eliminate these requirements or justify these requirements in light of the TRQ headnote and the Agreement on Import Licensing Procedures.
- Please confirm that, under Article 11 of the *Interim Measures*, an end-user can apply for a quota allocation in any location and use that allocation for importation anywhere in China, without any restrictions on end-use or product destination?
- Article 19 of the *Interim Measures* limits extensions of Agricultural Product Tariff Quota Certificates to February 15 of the following year. The United States notes that any needed extensions must be automatic and immediate upon presentation of documents, and there is no limit on the duration of the extension, provided the

product is on the water by December 31. (TRQ headnote, para. 8.D.) When will China revise Article 19 accordingly?

- Please explain why "contract-based", first-come-first-served, and processing trade are excepted from Article 10's and Article 27's time deadlines. Please identify specifically what rules apply to those applications?
- Under the TRQ headnote for agricultural products, if the TRQ reserved for import through state-trading enterprises has not been contracted for by 15 August, the quota holder will have the *right* to import through *any* entity with trading rights. No SDPC approval should be required, as contemplated by Article 25 of the *Interim Measures*. When will China revise Article 25 to eliminate the requirement of SDPC approval?
- Under the TRQ headnote, initial allocations should be designated for importation through state trading enterprises or through non-state trading enterprises, as specified in China's TRQ schedule. (In contrast, *reallocated* quota of the latter type can be imported through either a state-trading enterprise or a non-state trading enterprise.) Please confirm that TRQ for importation through non-state trading shall be reserved for importation by non-state trading enterprises only, and that holders of such TRQ are not required to utilize state trading enterprises to import covered product. In this regard, we note that Article 4 of the *Interim Measures* states that "TRQs for non-state trade shall be imported either by state owned trading companies or non-state owned trading companies which have trading rights." Please indicate how China intends to clarify Article 4 to make clear that TRQs for non-state trade are reserved for importation by entities other than state trading enterprises.

Questions related to export subsidies

1. For the years 2000 through 2002, please provide the following prices, on a monthly basis if possible, for corn, cotton, and rice:

- Government grain bureau procurement prices
- Representative domestic market prices
- Government grain bureau sales prices to trading companies for sale in the domestic market
- Government grain bureau sales prices to trading companies for sale in export markets
- Trading company export prices

2. For the years 2000 through 2002, please provide the quantities, on a monthly basis if possible, of government grain bureau sales of corn, cotton, and rice to trading companies for (1) sale in the domestic market, and (2) sale in export markets.

3. For the years 2000 through 2002, please provide the quantities, on a monthly basis if possible, of corn, cotton, and rice that trading companies exported.

4. For 2002, please describe support provided to corn, cotton, and rice producers, government grain bureaux, and exporters of corn, cotton, and rice. Please identify any support that is linked to exportation. This includes preferential transportation rates, tax and fee rebates, storage and upgrading expenses, debt forgiveness, and other revenue transfers and revenues foregone.

5. Please explain how China has been able to export substantial quantities of corn and cotton in 2002, when domestic market prices are higher than export prices.
