

CHINA'S TRANSITIONAL REVIEW MECHANISM

Questions to China from the European Communities 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 17 September 2002, has been received from the Permanent Mission of the European Communities, 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.

We would like to indicate that the points raised in this note are based on information obtained indirectly. Questions raised here refer to section 12 and paragraphs IV.1 and IV.2 of Annex 1A of the People Republic of China's Protocol of Accession¹, and to Article 18 of the Agreement of Agriculture.

We are, therefore, transmitting comments and questions in advance of the meeting of the Committee on Agriculture of 26 September 2002, in order for the People Republic of China (PRC) authorities to reply and to complete any information that may be incomplete.

Our comments and questions fall into two broad categories: transparency and transposition into domestic legislation. Under these headings we would like to refer to the issues of quota and tariff quota allocation.

The European Communities (EC) would also like to take the opportunity of the Committee of Agriculture to underline that questions and comments raised previously in documents G/LIC/Q/CHN/1 of 12 August 2002 and G/MA/W/33 of 13 August 2002 apply also to agriculture, and the EC will follow closely the report made to these relevant Committees given its importance for agriculture.

The EC wants also to reiterate the importance of sanitary and phytosanitary measures, their impact on agricultural trade and recall that they are subject to the disciplines and rules of the WTO.

¹ WT/L/432.

I. TRANSPARENCY

The PRC authorities published the regulation on tariff quota (TRQ) *Rules and Regulations for Agricultural Imports Tariff Rate Quota*, on 7 February 2002. This publication was preceded by a call for comments to all market players and citizens. The EC welcomed this transparency and co-operation process to comment on the proposed regulation.

However, the EC has not yet received so far an official translation of this regulation. The PRC committed itself "to make available to WTO Members translations into one or more of the official languages of the WTO all laws, regulations and other measures pertaining to or affecting trade in goods, and other measures available before they were implemented or enforced but in no case later than 90 days after they were implemented or enforced" (paragraph 334 of the Working Party Report²).

- When would this regulation be available in one or more of the official languages of the WTO?

The EC wants also to take the opportunity of this exercise of the Transitional Review Mechanism to highlight that other publications as foreseen in the Protocol of Accession, the Working Party Report and the Agreement on Agriculture are also awaited.

Article 18.2 of the Agreement on Agriculture specify that Members are subject to notifications:

- When would the People's Republic of China submit its MA:1 notification?

But beyond this formal Article 18.2 notification aspect, in the meantime:

- The EC would like to ask the PRC to provide any relevant information related to agriculture as listed in paragraph IV.1 of Annex 1A of the Protocol of Accession.
- The EC would like to ask the Chinese authorities so supply information on Non-Tariff Measures as listed in paragraph IV.2 of annex 1A of the Protocol of Accession as far as agricultural products are concerned.
- The EC would like to ask the PRC authorities when they intend notifying fiscal and other transfers between or among state-owned enterprises in the agricultural sector as described in section 12 paragraph 2 of the Protocol of Accession.

In paragraph 324 and subsequent of the Working Party Report, the PRC authorities committed themselves to transparency. However, it has been reported to the EC that even in case of notification to the public, it is difficult to find the texts. In paragraph 336 of the WP report, it is said that "*China would establish or designate one or more enquiry points where all information relating to the laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex, as well as the published texts, could be obtained and would notify the WTO of any enquiry point and its responsibility. The information would include the names of national or sub-national authorities (including contact points) responsible for implementing a particular measure.*" The PRC authorities reiterated their commitment to transparency according to paragraph 2(C)2 in the Protocol of Accession.

² Document WT/ACC/CHN/49.

A general inquiry point has been established within the MOFTEC. As far as agriculture is concerned:

- Could the PRC authorities confirm that this entry point is also valid for agriculture? If it were not the case, the EC would like to ask the PRC to provide WTO Members with the list of inquiry points related to agriculture.

II. TRANSPOSITION INTO DOMESTIC LEGISLATION

As mentioned in the above section, the Chinese authorities have published the TRQ regulation. However, the Commission would like to express its concerns with regards to what appears as a dual-use system (quota A for internal consumption and quota B for processing for re-export) in their *Rules and Regulations for Agricultural Imports Tariff Rate Quota*. This categorisation might act as a restriction of market access since a portion of the quota, which could be important, is dedicated to re-export instead of internal consumption. In addition, it has the potential to result in a failure to fill the quotas.

- The EC would like to ask the PRC authorities how they intend to address this concern.

The EC would like to ask the PRC to explain the rationale for including aid and charities, especially if they are in a fully granted form, as imports subject to taxes and duties. Their inclusion in the list of form of trade subject to benefit from tariff rate quota is questionable. Here also this provision might lead to a reduction of the scope of the quota.

- The EC would like to ask the PRC authorities how they intend to address this concern.

The EC take the opportunity of this exercise to reiterate its concern that the overall burdensome character of this regulation, particularly the number of layers of interventions and requirements in the process of allocating the quota. China committed to make the TRQ application and process as *minimally burdensome to trade* (point 6.A of Section I –B Tariff Quotas of PRC's Schedule CLII).

- The EC would like to ask the PRC authorities how they intend to address this concern.

The EC notes that China has had difficulties to allocate its tariff quota for the calendar year 2002. They should have been allocated by 1 January 2002, but were finally allocated several months later. The EC could show understanding that the date of accession of China to the WTO made it difficult to respect the date of 1 January as this was the first time that new regulations relating to tariff quota management for agricultural products were in operation.

- The EC would like to know what measures the PRC authorities have taken in the meantime in order to avoid such problem in the future and particularly now for the mid-year reallocation process.

III. UNEXPECTED DIFFICULTIES

The PRC has introduced serious restrictions on EU animal products including certain cosmetics. The EU welcomes that some progress has been made towards easing the restrictions, but considers that the remaining measures are still unjustified. The PRC has not provided any scientific justification for the measures.

The EU will raise these issues in details within the SPS Committee conducting the TRM exercise.

IV. POSITIVE ELEMENTS

As regard quantities and rates mentioned in the TRQ regulation, the EC notes that they are in line with WTO schedule.

The EC judge as positive the call for comments to all market players and citizens on the proposed regulation on tariff quota management although not many of its comments were taken on board.
