

Committee on Import Licensing

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

1. The Committee on Import Licensing, at its meeting on 24 September 2002, carried out the first transitional review of China pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432). Preparations in connection with Section 18 of the Protocol had been discussed at the meeting of the Committee in May 2002 where it was agreed that the first transitional review would be conducted at the meeting on 24 September 2002 (G/LIC/M/15, paragraphs 3.1-3.6).
2. Pending information required for the transitional review, the European Communities, United States and Japan submitted questions and comments in writing to China on its licensing system. These questions and comments were circulated in documents G/LIC/Q/CHN/1, G/LIC/Q/CHN/2 and G/LIC/Q/CHN/3. The information and notifications provided by China to the Committee on Import Licensing for its meeting on 24 September 2002 were circulated in documents G/LIC/W/18, G/LIC/N/1/CHN/1, G/LIC/N/1/CHN/1/Add.1 and G/LIC/N/3/CHN/1.
3. The statements made at the meeting of 24 September 2002, where discussions under the transitional review took place, are reflected in the minutes of the meeting (G/LIC/M/16, paragraphs 3.1-3.52). The relevant paragraphs which reflect this discussion are annexed.

ANNEX

3. Transitional review under Section 18 of the Protocol of Accession of the People's Republic of China⁶

3.1 The Chairman referred to paragraph 1 of Section 18 of the Protocol of Accession of China, pursuant to which those subsidiary bodies of the WTO, including the Committee on Import Licensing, which had a mandate covering China's commitments under the WTO Agreement or the Protocol should, within one year after accession and in accordance with paragraph 4, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of the Protocol. China should provide relevant information, including information specified in Annex 1A, to each subsidiary body in advance of the review. China could also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in the Protocol in those subsidiary bodies which had a relevant mandate. Each subsidiary body was required to report the results of such review to the relevant Council, in the case of this Committee to the Council for Trade in Goods.

3.2 Under paragraph 3(a) of Annex 1A, China was required to notify the Committee on Import Licensing of "implementation of the provisions of the Agreement on Import Licensing Procedures and the WTO Agreement applying the measures set out in Section 8 of the Protocol including provision of the time taken to grant an import licence". Paragraph 1 of Section 8 of the Protocol stipulated that in implementing the WTO Agreement and provisions of the Agreement on Import Licensing Procedures, China should undertake certain measures to facilitate compliance with these Agreements. These included publication of certain information and procedures related to the Import Licensing Agreement, on a regular basis, in an official journal dedicated to the publication of all laws, regulations and other measures pertaining to trade. Copies of these publications should be forwarded to the WTO and the Committee for circulation within 75 days of each publication. China was also required, *inter alia*, to submit the notification of its import licensing procedures to the Committee; and to report annually to the Committee on its automatic import licensing procedures, explaining the circumstances which gave rise to these requirements and justifying the need for their continuation. This report shall also provide the information listed in Article 3 of the Licensing Agreement. China was required to issue import licences for a minimum duration of validity of six months, except where exceptional circumstances made this impossible. In such cases, China was required to promptly notify the Committee of the exceptional circumstances requiring shorter periods of licence validity. Paragraph 2 of Section 8 stated that "except as otherwise provided for in this Protocol, foreign individuals and enterprises and foreign-funded enterprises shall be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of the distribution of import and export licences and quotas."

In addition, Section VII(a) of Annex 1A referred to responses to specific questions in the context of the Transitional Review Mechanism (TRM), which should be notified to the Committee.

3.3 The Chairman recalled that preparations in connection with the transitional review were initially discussed at the meeting in May 2002, as reflected in the minutes of that meeting (G/LIC/M/15, paragraphs 3.1-3.6), when it was agreed to conduct the first transitional review at the current meeting. As agreed, he had conducted informal consultations on this matter to best determine how the Committee should carry out its obligations under the transitional review mechanism, to report to the Council for Trade in Goods.

3.4 Pending the information required from China to carry out the review, the European Communities, the United States and Japan had submitted questions and comments to China which had been circulated in documents G/LIC/Q/CHN/1, 2 and 3 respectively.

⁶ WT/L/432.

3.5 Since China's communication circulated in G/LIC/W/18, the Committee had received additional information from China which was relevant to the transitional review. This included the English version of the lists of products subject to import licensing, tariff rate quota administration and import tendering as well as the English translation of rules and information related to the Agreement on Import Licensing Procedures. These were circulated as documents G/LIC/N/1/CHN/1 and Addendum 1. China had also submitted a notification under Article 7.3, replies to the Questionnaire, which was circulated as document G/LIC/N/3/CHN/1. The Chairman thanked the Chinese delegation, on behalf of the Committee, for the information provided.

3.6 The Chairman suggested that the review be conducted in two parts: first, under IV.3(a) of Annex 1A, and thereafter under VII(a) of Annex 1A.

3.7 Taking the floor under IV.3(a) of Annex 1A, the representative of China informed the Committee of the implementation of China's commitments regarding the WTO Agreement on Import Licensing Procedures since becoming a Member of the WTO.

3.8 He stated that in the course of China's long accession negotiations, China had made commitments under the intrinsic demands of their economic reform and opening-up process, as well as the requirements posed by WTO rules and other Members. In order to fulfill these commitments, the Chinese Government had overcome enormous difficulties to open the market, dedicated to the establishment of a uniform, transparent, equitable, non-discriminatory environment for market access, and had adjusted its policies governing the import of goods in a timely manner immediately after China's accession.

3.9 As a developing country Member, and in order to safeguard its national security and social welfare, to protect the ecological environment for human beings, to observe the international conventions and agreements that China had signed or participated in, and to promote economic and trade development, his authorities had promulgated a series of regulations and administrative measures concerning import administration of goods, including import quotas, specific tendering, import licensing, automatic import licensing and tariff rate quotas (TRQ). To be more specific, these were *Regulations on the Administration of Import and Export of Goods*, *Measures on the Administration of Import Licence of Goods*, *Measures on the Administration of Automatic Import Licensing of Goods*, *Measures on the Administration of Tariff Rate Quota of Agricultural Products*, *Implementation Rules on the Administration of Automatic Import Licensing of Important Industrial Products* etc. These regulations and measures, based on WTO rules and China's commitments, specified the list of products subject to import quotas, specific tendering, import licensing, automatic import licensing, TRQs and import prohibition, and the list of authorized bodies in charge of approval, relevant procedures and standards. In order to fulfill the obligation of transparency, his authorities required that all newly established laws, regulations and administrative measures should be published before being implemented. In addition, the Chinese Government had established the China WTO Notification and Inquiry Center as a focal point which was responsible for notifications and for providing WTO Members, domestic and foreign enterprises or individuals with precise and reliable trade policy information.

3.10 Currently, the administration of import of goods in China consisted of the following categories:

1. Tariff Rate Quota (TRQ): Major agricultural products and chemical fertilizers were subject to TRQ administration. All of these products except for chemical fertilizers were subject to TRQ administration by the State Development Planning Commission (SDPC). Fertilizers were subject to TRQ administration by the State Economic and Trade Commission (SETC).

2. Import Quota: Among the products subject to import quota, natural rubber was subject to the administration of import quota by SDPC. Processed oil and automobile tyres were subject to the administration of import quota by SETC. All other products were subject to the administration of import quota by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC).

3. Specific Tendering: Specific machinery and electronic products were subject to import licensing administration by MOFTEC.

4. Automatic Import Licensing: Important industrial products and some other products including parts of machinery and electronic products were subject to automatic import licensing administration. Automatic import licensing for important industrial products was under the administration of SETC, while other products were under the administration of MOFTEC.

5. Licensing Administration: According to relevant international conventions and treaties that China had signed, chemicals used for the production of narcotics, monitored chemicals and ozone-depleting substances (OSD) were subject to licensing administration.

6. Import Prohibition: Products in this category included rhino horns, tiger bones, urban waste, clinic waste, used clothing, used machinery and electrical products etc.

3.11 He emphasized that the above measures for the administration of import of goods, which were either based on China's commitments or for statistical purposes, were implemented in a way consistent with WTO rules. The machinery and electronic products subject to the administration of import quotas and licensing constituted only three per cent of the total imports of machinery and electronic products. Since the beginning of its WTO Membership, China had simplified the administrative procedures for imports of goods. Proof of that was the introduction of online administration (through the internet), which greatly facilitated the quota allocation process. Furthermore, only 1.7 per cent of machinery and electronic products were under the category of specific machinery and electronic products subject to import tendering. The import licensing administration was undertaken in a uniform, transparent, equitable and non-discriminatory manner, applying equally to products made in or originating from all WTO Members. The quota quantity, procedures for licence application and principles for allocating quotas, which were major concerns of WTO Members, had already been published in the publications designated by the Chinese Government, including the MOFTEC Gazette and relevant websites. The practices of transferring or selling import licences were severely penalized by the Chinese Government according to relevant laws and regulations.

3.12 China's adoption of the new regime for the administration of imports of goods provided WTO Members with convenient, fast and more stable and predictable market access opportunities. In July 2002, the value of imported products under the administration of automatic import licensing totaled US\$ 4.77 billion, up by 31.4 per cent compared with the same period in 2001, and the cumulative value from January to July totaled US\$ 28.5 billion, up by 11.6 per cent compared with the same period in 2001.

3.13 Products subject to import licensing administration had been reduced from 35 in 2001 to 12 in 2002. The eight-digit HS headings subject to import licensing administration had been reduced from 502 to 170. Therefore it would be fair to say that since its accession the Chinese Government had overcome tremendous difficulties in fulfilling its obligations. Before this meeting, his authorities had provided a large amount of information to the WTO in a WTO working language, fully demonstrating China's sincerity and goodwill in honouring its commitments. China hoped that Members could fully

recognize and understand this point and that in this review, Members could exchange ideas with each other, clarify problems and improve the work in a more positive way.

3.14 He further said that the questions China had received from certain Members prior to this review had helped his authorities in preparing relevant information for the WTO. He believed that the information submitted by China had already appropriately addressed the concerns raised by these Members and that, should there be additional questions from Members which were beyond the coverage of the information submitted, he would provide the necessary answers to them during the course of this review.

3.15 The Committee took note of the statements made.

3.16 The Chairman, moving on to the discussion under VII(a) of Annex 1A of the Protocol of Accession, reminded Members of the specific questions to China posed by the European Communities, the United States and Japan in the context of the Transitional Review Mechanism, which had been circulated in documents G/LIC/Q/CHN/1, 2 and 3 respectively.

3.17 The representative of the European Communities welcomed China to this meeting and said that he fully recognized the efforts made to turn this exercise into a meaningful one. This being the first time that this item had appeared on the agenda of this Committee, he said that he was aware that the first review might pose particular difficulties which he hoped would not be encountered in the future. He was heartened by the statement made by China that it had taken note of the questions which had been put forward in advance of the meeting, which had led to the submission of the documentation that the Committee had before it. Referring to document G/LIC/Q/CHN/1, he said that it contained general questions about forthcoming notifications. Although the Committee had received that documentation in the meantime it had not been possible for the EC experts to study them in detail and to see whether any additional information was required. His delegation had found the Chinese statement useful and applauded the fact that the Committee would have an opportunity to study the detailed Chinese intervention. In order to carry out a meaningful review in the Committee, more time was needed in order to address the specific questions posed to China. His delegation was not in a position to do so at this meeting because it had not had time for an in-depth examination of the information submitted. He was sure that the Committee would do that in due course, hence for the time being his delegation thanked China for the information provided. His delegation looked forward to a discussion on how they could obtain answers to the questions already submitted and pose more questions based on the information and notifications received, as soon as his authorities had had the time to study the information in more depth. He was aware that some ways of doing that had already been explored in a similar situation in another Committee and his delegation wanted to urge delegations to make an effort to allow such a process to develop. The important cut-off date would be the General Council in December 2002 where WTO Members could give their overall assessment of the review. Regarding the import licensing area, for the time being this could not really be judged. His delegation very much deplored this situation but understood that this was due to the difficulties in providing timely information as required in Section 18 of the Protocol of Accession.

3.18 The representative of China appreciated the European Communities' positive, cooperative and practical approach to dealing with this transitional review. He promised that China would address the concerns raised by the EC through their questions, and that they would carefully study the issues raised and deal with these issues through other channels.

3.19 The representative of the United States⁷ thanked China for its notifications and submissions contained in G/LIC/W/18, G/LIC/N/1/CHN/1 and Add.1 and G/LIC/N/3/CHN/1 which had been forwarded to capital for review. He would submit to China as soon as possible any additional

⁷ The statement by the United States was circulated as document G/LIC/8 following the meeting.

questions or requests for clarification that his authorities might have based on those notifications and other information. He requested that China provide written responses to these questions in time for them to be included in the Committee's report to the Council for Trade in Goods on the transitional review. These questions and China's responses should be considered an integral part of this Committee's review of China's implementation.

3.20 He said that his authorities were disappointed that China had not provided written responses in advance of this meeting to the questions submitted by the US and other Members. The information requested in those questions was precisely the type of information relevant to China's implementation of the WTO Agreement and China's Protocol of Accession that was required by the TRM established in Section 18 of China's Protocol. This review was an essential element of China's accession package, and China's agreement to provide information under this review was a part of that commitment. He requested that China provide written responses to the questions that Members had already submitted, in time for the responses to be included in the report to the CTG. While the US welcomed the additional information provided by China, this information had been received only three working days prior to the review. If information was to be considered part of the review, Members should at least have the opportunity to read and review it. China's failure to provide information on time did not mean that the obligation had disappeared. As this was a multilateral review of China's implementation of the Agreement on Import Licensing Procedures and not a bilateral review, the US noted that China's responses must be made to the Committee as a whole. While the US would welcome the opportunity to discuss these important issues bilaterally, it was their strong view that both the questions and answers submitted in the context of the TRM should be made available multilaterally and should be reflected in the permanent record of this discussion. They believed that other Members might have an interest in knowing China's responses to the questions posed by the US; his authorities certainly had an interest in knowing China's responses to the questions posed by other Members.

3.21 As concerned the administration of agricultural TRQs, his delegation thanked China for meeting with them bilaterally on 11 and 12 September 2002 for consultations on its administration of agricultural and fertilizer TRQs, as provided for in its schedule of concessions. The consultations were useful in that they had allowed them to exchange views on some of the more difficult issues surrounding TRQ administration that had arisen since the TRQs were allocated in April 2002. The US recognized the difficulties that Members could encounter when implementing new regulations, and 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 had succeeded in making enormous, and generally useful, changes to its TRQ administration system in a relatively short period of time, a few important wrinkles remained to be ironed out in order for the system to function as smoothly as envisioned in China's WTO accession agreement. The US sought to assist China in identifying those wrinkles so that the regulations and actual practice were consistent with China's market access obligations for commodities under TRQs. To that end, the US requested that the Chinese delegation respond in writing to the whole Committee to each of the questions raised in the August 2002 submission by the US (G/LIC/Q/CHN/2). His authorities took this opportunity to make some observations and pose additional questions based on the bilateral consultations.

3.22 As concerned licensing, paragraph 138 of the Report of the Working Party on the Accession of China⁸ stated that China did not require a separate import licence approval for goods subject to a TRQ allocation requirement, but would provide any necessary import licence in the procedure that granted a quota allocation. Yet China required that end-users apply to the State Development and Planning Commission (SDPC) twice for a single allocation – once for the initial allocation and a second time for SDPC's approval to use that allocation once the importer had a signed contract. Quota-holders were then required to apply for and obtain, at both the local and national level, an

⁸ WT/ACC/CHN/49.

additional import licence from the State General Administration for Quality Supervision and Inspection and Quarantine (AQSIQ) before the product could be imported. There appeared to be no legitimate quarantine objectives for these additional licensing requirements that could not easily be achieved through other less burdensome means. For entities that wished to import under TRQs reserved for processing, there was yet another licence required. End-users were required to obtain a separate processing trade business licence in order to obtain a TRQ allocation. These separate and multiple licensing requirements, and the additional time and effort that it took importers to fulfill them, were an undue burden on trade and appeared to be in conflict with China's commitments for TRQ commodities. It was also important that China not unduly restrict end-users' ability to adjust to market conditions and to operate based on commercial considerations. Paragraph 6.A of the TRQ headnote required China to "establish a tariff-quota system that was open, transparent, fair, responsive to market conditions, timely, minimally burdensome to trade, and reflects end-user preferences." However, China required quota-holders to provide detailed, time-sensitive commercial information, such as price and origin, prior to obtaining an import licence, and it restricted the commercial terms that could be changed thereafter. This requirement unduly restricted an end-user's ability to adjust to market conditions and operate based on commercial considerations. He called China's attention to its commitment in the TRQ headnotes stipulating that all commercial terms of trade would be at the sole determination of the importer and exporter, taking into full account the demands of the end-user. His authorities requested that China explain why it was necessary for an end-user to have a signed contract before it could apply for an Agricultural Product Tariff Quota Certificate, and what purpose this additional step served. China was also requested to explain the steps China would take to eliminate the additional licensing requirements for TRQ commodities or how it would bring these requirements into accordance with its WTO commitments.

3.23 China prohibited the sale of products imported under "processing" TRQ from being sold on the domestic market. End-users who sold these commodities or their products on the domestic market were subject to penalties and to out-of-quota tariffs. This restriction on utilisation would appear not to accord with Article 3 of the Agreement on Import Licensing Procedures, which prohibited such restrictions. The US requested that China explain how this restriction was consistent with its obligations under the Agreement on Import Licensing Procedures, or explain what steps it would take to remove this restriction.

3.24 As concerned AQSIQ licensing requirements, the import licensing regulation implemented by AQSIQ pursuant to AQSIQ Ordinance 7 (effective 20 March 2002) did not appear to serve a legitimate SPS concern and did not appear to be consistent with the terms of the Agreement on Import Licensing Procedures on automatic licensing. Instead, it was an unduly burdensome, non-automatic licensing requirement that appeared to be an additional quantitative restriction. The AQSIQ licence did not replace inspection at port, but was a separate licence that must be obtained in advance of importation. It applied only to imported goods. The AQSIQ licensing process required multiple approvals at several different levels of government. Applications at each level of government could take up to 30 days and those applications that were finally approved took 30 days after issuance to become effective. In addition, these licences were only valid for 90 days from the date of issue. The short period of validity for these licences placed unjustified constraints on importers and exporters. In practice, the period of validity was much shorter, according to reports from US industry. Applicants for an AQSIQ import licence must state commodity weight (in advance of shipment), country of origin, and port of destination. Requiring such information in advance of a contract being signed was unrealistic, burdensome to trade, and interfered with a quota-holder's right to determine the commercial terms of trade. If it was necessary to give quarantine officials advance notice of shipments, there were less trade-restrictive ways to gather this information that were consistent with China's WTO obligations. His authorities requested that China explain what objective it was trying to achieve with this additional AQSIQ licensing requirement and how this requirement was in accordance with China's commitments. China was also requested to describe the steps it would take to eliminate or bring its licensing requirements into accordance with China's obligations.

3.25 As concerned the administration of auto quotas, according to paragraph 4 of "Implementation Rules on the Quota Administration on Imports of Machinery and Electrical Products," the Ministry of Foreign Trade and Economic Cooperation was responsible for examining and supervising the status of allocation of import licences. The US requested China to provide relevant information on the current status of import quota allocation distributed by the following entities: all provinces, autonomous regions, municipalities directly under the central government and those with independent budgetary status, coastal open cities, and by external economic trading management departments of special economic zones and State Council-related machinery/electrical products import/export administrative offices.

3.26 He further stated that he agreed with the comment of the representative of Japan. Paragraph 129 of the Working Party Report provided that import licences could be extended once, upon request, for up to three months, if the request was made before 15 December. The US requested that China ensure that for 2002, the effective period for all quotas and related import licences be extended by the period for which the quota allocation was delayed.

3.27 Furthermore, China had only very recently given to the Committee its list of licensing requirements that remained in effect; information on its import licensing procedures in the form of responses to the annual Questionnaire required by Article 7.3 of the Agreement, including information on the purposes, criteria, and other administrative requirements of the licensing system; an explanation of the circumstances which gave rise to the licensing requirement and a justification for its continuation. This information should have been provided along with the appropriate tariff rates and quantities associated with the import restriction sufficiently in advance of this meeting to permit review and comment.

3.28 The US commended China's effort to revise its import licensing regulations to comply with WTO requirements. However Articles 1.4(a)/8.2(b) of the Agreement stated that all rules and information concerning import licensing procedures should be published and the information notified and made available to the Committee on Import Licensing. This had been done too late to permit review.

3.29 Furthermore, in accordance with Section 8.1(a) of China's Protocol of Accession, China was required to publish on a regular basis in the MOFTEC Gazette a list of all entities responsible for the authorization or approval of imports, and notify this list to the WTO. Although various regulations governing import licensing had appeared on the MOFTEC website, it was not clear if MOFTEC's "Import Licensing Affairs Bureau" was the only agency responsible for the authorization or approval of imports. China should notify this list to the Committee.

3.30 Lastly, paragraph 334 of the Report of the Working Party on the Accession of China required China to provide translations into one or more of the official WTO languages of all measures pertaining to or affecting trade in goods, in no case later than 90 days after they were implemented or enforced. With regard to import licensing, while the Committee had received a number of China's regulations to review shortly before the meeting, China had clearly failed to fully comply with this aspect of its accession commitments. The US requested that China confirm that products listed in Annex 3 of China's Protocol of Accession that were subject to import quotas (e.g., fertilizer, agriculture and autos) received automatic import licences as part of the application process for quota allocation. China should affirm its intention to comply with the scheduled phase-out of licensing requirements in Annex 3 of China's Protocol of Accession.

3.31 The representative of Djibouti appreciated the questions and answers given and believed that China had well demonstrated its will to help others to understand how it was satisfying the WTO rules. He hoped that the answers to be given by China would satisfy the Committee. While he understood

the concerns of certain delegations, he believed that China, as a new Member of the WTO, as well as other countries which had recently acceded to the WTO, required more time to understand the WTO rules and to implement the WTO system. He requested delegations who wished to pose questions to China to be modest in doing so, bearing in mind the situation of future acceding countries.

3.32 The representative of China expressed his appreciation to the representative of Djibouti for his positive interpretation of the TRM. On the general comment raised by the United States on the issue of written replies to the questions raised by Members, he said that his delegation had already rejected a similar request in another body because those requests had no legal basis in China's Accession Protocol, and that he again rejected this request in this Committee. Concerning the specific questions raised by the US on the TRQ administration under licensing, he provided the following information: on the administration of TRQs, China had exchanged views with the US through bilateral channels. If the US believed that this kind of forum was useful China could continue to have this dialogue in this forum, but if the US insisted that China should provide written replies to the questions on administration of agricultural TRQs, he had already expressed China's position. Regarding the concerns of the US over the so-called separate licensing requirement, he stated that China did not apply any separate import licensing requirement. With regard to agricultural TRQ administration, the quota holder only needed to show the customs the TRQ certification. This was the only import licensing requirement applied. As concerned the so-called AQSIQ licence, this concerned a quarantine matter which should not be discussed in this forum, and which he suggested should be discussed in the TBT or SPS Committee. He confirmed to the US that China did not believe that the administration of TRQs in China was in conflict with China's commitments for TRQ commodities. During the US-China bilateral discussions China had elaborated its views on that issue. The administration for processing reflected the result of long-term negotiations and reflected the nature of processing trade. With regard to the question that China required quota holders to provide several kinds of information, he pointed out that the intention was to guarantee the full utilisation of the quota. The US had also raised a question as to why China deemed it necessary for the end-user to have signed a contract before they could apply for an agricultural product TRQ. China did not consider this to be an additional requirement. If a quota-holder wanted to import products they had to sign a contract. He thought it was natural for the Chinese authorities to ask the end-user to sign a contract before applying for a TRQ certificate. With respect to the US question concerning prohibition of some products imported under the "processing" TRQ from being sold on the domestic market, he believed it was legitimate for China to have this kind of administration, because processing trade enjoyed tariff exemptions, and selling products on the domestic market could not be considered as processing trade. "Processing trade" meant the processing and re-export of the imported raw materials, hence these legitimate regulations, which China did not consider to be in conflict with Article 3 of the Licensing Agreement.

3.33 The Chairman noted that both the European Communities and the United States had requested some additional time to study the contents of the notifications submitted by China and hoped that this issue would be solved by the end of this meeting.

3.34 The representative of China said that he held a different view on this point. The only possible solution in his view was for the minutes of this meeting to reflect the different opinions. Responding to the questions raised by the US on the requirement of AQSIQ, he did not believe that this was an issue which should be addressed in this forum, and suggested that it be discussed in the TBT and SPS Committees. With regard to the second question on the information provided by China, he said that his authorities had made the maximum efforts to translate all the relevant laws, regulations and administrative procedures into a WTO working language, which had already been submitted to the relevant Committees. China would continue its efforts to guarantee that all laws, regulations and procedures concerning import licensing were notified in a timely manner. He added that his authorities had already published the list of entities responsible for the authorization or approval of imports and had notified this to the WTO. This list of entities was an integral part of the regulations.

For example, for internal administration of import quotas of natural rubber, at the end of the relevant regulation there was a list of agencies authorized by the SDPC. For other regulations too a list of entities responsible for the authorization or approval of imports was attached. He further clarified that MOFTEC's Import Licensing Affairs Bureau was not the only agency responsible for the authorization or approval of imports, and that according to different laws and regulations, there were different authorized agencies in charge of the authorization or approval of imports.

3.35 The representative of Japan thanked China for its statement and the documentation supplied for the meeting, based on which he wished to make this opportunity as meaningful and fruitful as possible. Therefore, in addition to the written questions that had been circulated beforehand in document G/LIC/Q/CHN/3, Japan had prepared additional questions. Japan welcomed China's efforts to meet its obligations under the WTO Agreement and its Protocol of Accession and understood that China had made changes in a number of trade-related laws and regulations to implement its obligations since becoming a WTO Member. Such efforts undoubtedly required a significant amount of time and human resources. Japan welcomed China's efforts so far to examine the wide range of commitments under the WTO and thought that the TRM would contribute to China's implementation of WTO rules if carried out in a meaningful and productive manner. When submitting its comments, one month before the meeting, Japan had requested China to respond in written form in advance of the meeting. Japan had intended to make the TRM as meaningful as possible by clarifying facts and China's views on some import licensing issues beforehand. Japan already knew China's position on this issue from the discussions in the Market Access Committee, but still wished to remind China of Japan's position. Japan again requested a prompt written response from China to the questions posed. His delegation wished to make comments and ask additional questions based on the questions submitted a month previously and to pose additional questions at this meeting.

3.36 First, as concerned import quotas on motor vehicles, while his delegation had had some exchanges of views in the Committee on Market Access on 23 September, Japan was still concerned whether allocation of import quotas for automobiles and key parts was being implemented appropriately. They wished to review whether or not China conformed to the provisions of the WTO Agreement and its Protocol of Accession after receiving replies to the following questions. Japan requested China to provide the necessary information as required under Articles 1.4 and 3.5(a) of the Agreement on Import Licensing Procedures. While he did not intend to repeat the questions contained in document G/LIC/Q/CHN/3, his authorities wished to have information on the eligibility of the applicant, the value of the import quota and import quota distributed by different entities.

- (a) China had explained in the meeting of the Committee on Market Access held on 23 September 2002 that US\$ 7.9 billion was allocated to the 2002 quota for automobiles and key parts. According to Table Two of Annex 3 of the Protocol, the key parts covered by the import quota system were only engines (serial Nos. 104, 105 and 106 of Annex 3) and bodies for vehicles (serial No. 318 of Annex 3). China's customs statistics showed that the value for automobiles, engines and bodies for vehicles imported from April to July was US\$ 1.2 billion, US\$ 0.06 billion and US\$ 0.1 billion respectively. Therefore, the total volume of imports for automobiles and key parts covered by the quota system from April to July was approximately US\$ 1.3 billion, while China had explained that US\$ 7.9 billion of the quota was completely allocated. How would China explain the gap between the value of actual imports and allocated quotas, and address Japan's concern about whether the allocation of quotas for automobiles and key parts was implemented in an appropriate manner? What was China's view on the need for reallocation based on the gap between the value of actual imports and allocated quota?
- (b) Japan requested China to provide the following information to promote understanding of China's implementation of quota allocation and import licensing for automobiles and key parts:

- total value/quantity of quota applied for automobiles and key parts;
- value/quantity of quota applied and allocated for automobiles;
- value/quantity of quota applied and allocated for CKD/SKD for automobiles; and
- value/quantity of quota applied and allocated for engines and bodies for vehicles.

Japan understood that the actual volume of imports compared to the quota to be allocated was quite limited and was still concerned about the issue of reallocation. At this stage he requested that the unused quota for 2002 be returned and reallocated as specified in the report of the Working Party.

- (c) China had explained in the TRM meeting of the Committee on Market Access held on 23 September 2002 that ten per cent of the total quota was reserved for new entrants for application. China had also said that US\$ 7.9 billion was allocated to the 2002 quota for automobiles and key parts. Japan requested that China provide the actual value allocated to new entrants in 2002.
- (d) Finally, regarding the comments in G/LIC/Q/CHN/3, his authorities required that China specify the five points laid out in the Japanese comment on the implementation rules relating to the administration of import of specific machinery and electronic products, although Japan did not necessarily request the same language as written in the Working Party Report. Japan did not see any related articles in the regulation. Therefore Japan requested that China explain which article of the regulation specified the five points referred to in the comment. The five points were as follows:
- (i) Priority consideration to be given to new entrants, enterprises with foreign ownership equal to or less than 50 per cent, and enterprises with foreign ownership greater than 50 per cent in allocating the quota.
 - (ii) An import licence to be issued in most cases within three working days, and in exceptional cases, within a maximum of ten working days, after a request for a licence.
 - (iii) An import licence to be extended once, upon request, for up to three months, if the request was made before 15 December of the current quota year.
 - (iv) The procedures for requests for extension mentioned in (iii) above.
 - (v) Methodology of quota reduction for holders failing to return unused quota, and the date and time-frame of reduction.

3.37 As concerned the question of the extension period for quota allocation, Japan requested that China ensure that for the year 2002 the effective period for all quotas and related import licensing be extended by three months, since the allocation of the quota had been delayed by three months.

3.38 Japan requested that China address these issues at this meeting and wished to have additional opportunities to further clarify the issues and for an exchange of views based on the oral responses at this meeting as well as written replies to questions to be supplied later. He concluded by saying that Japan would like these discussions and documents, as well as those relating to any additional opportunities, to be included in the Committee's report to be submitted to the Council for Trade in Goods on the transitional review.

3.39 The representative of China, responding to the question raised by Japan about the difference between the value of actual imports and allocated quotas, said that although he believed this was an issue under the Committee on Market Access, he would reply for the sake of transparency. At the beginning of the Chinese accession negotiations 15 years previously, China had been told that the quota was a market access opportunity and was not an importation obligation, therefore actual imports had no direct relationship with the quota allocated. The volume of imports depended on the supply

and demand of the market. The Chinese Government encouraged the full utilization of quotas but could not guarantee whether the quotas allocated would be fully utilized. With regard to the request for information on the total value or quantity of the quota applied for automobiles and key parts and CKD/SKD automobiles, according to the commitment made by China in its Accession Protocol and the Working Party Report, China had an integrated quota for automobiles and key parts, but no split quota to be allocated. Therefore it was the responsibility of the applicants to apply for the value and quantity of automobiles and key parts to be imported. He had no further information on this point. On the question raised of the proportion for new entrants of the total quota allocated for automobiles and key parts, he replied that ten per cent of the total quota of US\$ 7.9 billion in 2002 was reserved for new entrants, i.e. about US\$ 800 million. On the last question, on the five points of paragraph 130 of China's Working Party Report, he said that there was some misunderstanding by Japan on this paragraph. He recalled that during the final stage of the accession negotiations he had clarified several times to the Japanese delegation the contents of this paragraph. Japan at that time had raised the question as to why China did not reflect the criteria listed in paragraph 130(b)(ii). Actually, China applied the criteria listed in paragraph 130(b)(i). According to this paragraph, in cases in which average imports over the three-year period immediately prior to the year of China's accession for which data was available exceeded 75 per cent of the relevant quota, applicants that had not previously been allocated quota would be allocated ten per cent of the total quota in the first year, and the majority of any quota growth in any subsequent year. According to China's regulations on administration of import and export of machinery and electronic products, China fulfilled this requirement of paragraph 130(b)(i). The application of paragraph 130(b)(ii) was conditioned upon the occurrence of "other cases". As no other cases within the meaning of this paragraph had occurred, the measures contained in paragraph 130(b)(ii) would, therefore, not apply. He made this clarification again to Japan.

3.40 The representative of Japan thanked the delegate of China for his responses. As concerned the response to the second additional question posed by Japan, there was no breakdown of data for the quota applied and allocated for automobiles, CKDs and engines and bodies. Japan wished to know the total value/quantity of quota applied for automobiles and key parts, which would clarify the comments of the Chinese delegation on the issue of breakdown of quota. Japan understood that China collected those data and breakdown of those data for the quota applied and allocated in order to get information for statistical purposes.

3.41 The representative of China replied that the allocation for automobiles and key parts in 2002 was around US\$ 12 billion. According to the commitments China had made under Annex 3 of the Protocol of Accession, China had a single quota value for automobiles and key parts. Therefore China had no breakdown statistics for this quota allocation.

3.42 The Chairman said that according to the interventions made by Members, two issues remained to be resolved and that he would like to hear from Members as to how to deal with those issues. The first issue was whether China had an obligation to reply in writing to the questions posed by Members in writing. The second concerned Members' requests to have another opportunity to proceed with this review because they had not had sufficient time to study the documents submitted by China.

3.43 The representative of the European Communities said that although his delegation had not actively taken part in the more specific discussion at this meeting due to reasons which he had explained earlier, he had found that discussion fruitful. This showed the value of addressing as many issues as possible in an interactive debate in a meeting with a record of the discussions. If done thoroughly this would alleviate some of the problems. He hoped that in future meetings of this kind Members could have a full interactive debate on the basis of thoroughly studied information and well-formulated questions – the kind of debate which the Committee had had on a number of issues at this meeting. While he was not judging whether this was an exhaustive debate, he thought it had

brought the discussion forward. His delegation noted the willingness expressed by China to furnish further information concerning possible follow-up questions. Referring to the term "other channels" mentioned by the representative of China, he said that like others his delegation believed that the process followed in the WTO of questions and answers being documented and made available multilaterally for full transparency, was certainly the best way to proceed. His delegation had taken note of China's position. Members could go on arguing what exactly Section 18 of the Protocol and the Annex meant, but in his view this would not lead to any agreement. An agreement on that point had not been reached in the Committee on Market Access, and was unlikely to be reached at this meeting or in the very short time available before the meeting of the CTG. Nor were Members asked to give up their formal position on this point. The most important question was how much real, pragmatic progress could be made which would allow a full evaluation of the China's TRM in the December 2002 General Council. Any way forward to allow Members to have a better view on how China had implemented its WTO obligations was welcomed by his delegation, including any further use of the knowledge and expertise which the Chinese delegation had brought to this meeting. It might be possible to discuss this issue further in any forum without giving up the positions Members held on the question of whether that was appropriate. Nothing precluded any delegation, including China, based on better knowledge and understanding of the various interests and concerns, from notifying at some stage more information on import licensing to the Committee. He would be happy to have such information, be it as an answer to a question or as an indirect response to the comments and questions that various delegations had put forward, for an improved understanding of the concerns and how the various mechanisms in China operated. Members should explore all the avenues which had been or could be opened. Thus the final evaluation of the TRM at the end of this year would not be based on the discussion in one particular Committee but on the overall picture. For the time being the transitional review had only started off with the discussion at this meeting, with more information needing to be provided. The discussion in this Committee would be useful when reviewing the results of the discussions in all subsidiary bodies and in fine-tuning the TRM process.

3.44 The representative of the United States said that in his delegation's view the Committee had not conducted a review in conformity with the requirements of Section 18 of China's Protocol of Accession. The Committee should have received the Annex 1A information sooner as well as China's responses to the questions, in order for the Committee to be able to evaluate that material and respond. As a consequence, the path the US was going to take was two-fold. First, as concerned the other channels that had been mentioned by China, the US would fully participate in any effort to develop information and he encouraged the Chinese delegation to pursue that option as well, while recognizing that it was outside this TRM process and therefore did not change the US' view towards the adequacy of this first review. Secondly, the US intended to table questions based on the material that China had presented so far. These questions would be presented in writing through the Chair to the Chinese delegation with the intention that it be circulated to other Members. It was hoped that at the next meeting of the Committee China might be in a position to provide further information.

3.45 The representative of Japan thanked the delegation of China for the exchanges of views at the meeting, which he found meaningful, and welcomed any other processes or opportunities for further exchanges of views. After reviewing information provided at the meeting and the documents supplied, he stated that his authorities might raise further questions or comments in the framework of the TRM this year.

3.46 The representative of China said that he did not agree with the judgement of some Members on the TRM. While Members were free to make any kind of judgement they wanted, he believed that China had faithfully fulfilled its obligations under Section 18 of the Protocol of Accession, and that the transitional review, in his view, had been conducted in a fruitful and constructive way. With regard to the pending issue on the requirement for China to provide written replies, his authorities had a different view. He believed that this Committee had no mandate to interpret Section 18 of the Protocol, hence it was not necessary to continue the debate. The only way to address this issue was to

reflect the different views of Members in the minutes of the meeting. With regard to further questions from Members and additional information required by Members, he said that China welcomed questions from any Member concerning China's trade policies and would provide due responses, although not in the context of this TRM. He informed the Committee that, during the meeting of the Committee on Market Access on 23 September, his delegation had offered to have an informal meeting between the Chinese experts and interested parties, outside the forum of this TRM.

3.47 The Chairman said that there seemed to be no windows open for the future process, i.e. whether information should be provided in written form or orally, or whether the future process would be within the framework of the TRM. He suggested that a factual report on China's TRM be submitted to the CTG for consideration at its meeting on 8 November 2002. This factual report would refer to the relevant paragraphs of the minutes of this meeting as well as written comments and questions submitted to China and the information and notifications received from China. This in his view would allow Members to make further consideration within the CTG or the General Council.

3.48 The representative of the European Communities said that as he had not participated in the meeting of the Committee on Market Access on 23 September, he did not know what had taken place during the discussion on the TRM. However, since this discussion was being held in a different Committee, he requested that China provide more information about the possibility of making use in a pragmatic way of the expertise which the delegation of China had brought to this meeting. The Chairman might, after the meeting, explore whether there was willingness on all sides to continue an informal process outside the TRM to enlighten Members further on some of the specific questions.

3.49 The representative of the United States agreed to the Chairman's proposal to submit a concise and factual report to the CTG. He suggested that as part of the official report a detailed version of the discussion that had taken place at this meeting should be appended. This was because the minutes themselves were restricted documents and would not necessarily be a part of a report. In addition, as part of the report to the CTG on the TRM, he suggested that the written questions from Members submitted to China, the submission that his delegation had put forward orally at this meeting in which further questions were posed as well as the answers that China had provided should be included.

3.50 The representative of China expressed his delegation's appreciation to the Chairman for his excellent leadership of this meeting, and to Members for their cooperation and active participation. His delegation agreed with the closing remarks made by the European Communities that the review exercise had been fruitful. He also noted the remarks made by Japan that they had appreciated the opportunity of an oral exchange of views which they had found meaningful. His delegation expressed their agreement with the judgement and comments of this kind made by delegations. He appreciated the constructive and positive attitude as demonstrated by Members including the US, Japan and the EC in this exercise, all of which had been achieved with the excellent leadership of the Chairman. With regard to the intervention made by the EC concerning the request for opportunities for other channels for exchange of views and for discussions on issues of multilateral or bilateral concern, he assured the EC that the door of communication and consultation was always open, and that there were plenty of other channels and opportunities to exchange views outside this TRM. He assured other delegations as well that the door of dialogue and consultations on issues of any nature in connection with bilateral or multilateral trade were always open, and that his delegation was willing and ready to continue this useful exercise.

3.51 The Chairman, responding to the proposal by the US regarding the format of the report to the CTG on the TRM, said that the oral questions and answers would be reflected in the factual report and the minutes. The minutes would fully reflect all the interests, concerns, comments or statements of various Members. Therefore in his view it would be appropriate to attach the relevant paragraphs of the minutes to the report. As concerned the request made by the EC, he said that China had fully

responded to the request. He concluded by thanking Members for the detailed and fruitful discussion under this agenda item.

3.52 The Committee took note of the statements made. The report to the Council for Trade in Goods on China's transitional review was circulated in document G/LIC/10.
