

CHINA'S TRANSITIONAL REVIEW MECHANISM¹

Questions from the UNITED STATES to CHINA

The following communication, dated 26 August 2002, has been received from the Permanent Mission of the United States.

Questions regarding notifications required by the Committee on Import Licensing

1. Rules and information concerning import licensing procedures: Articles 1.4(a)/8.2(b) of the Agreement on Import Licensing Procedures (Agreement) state that all rules and information concerning import licensing procedures, e.g., for submission of an application, eligibility to apply, the administrative bodies involved, the products covered, should be published and the information notified and made available to the Committee on Import Licensing (Committee). These notifications were due upon accession. In addition, China agreed in Section 8 of its Protocol of Accession to notify certain additional information regarding import and export licensing.

- (a) Please indicate when each of these notifications will be supplied.
- (b) Please also provide a list of the import-related measures for which China will provide the texts of these measures, and indicate when we can expect to receive them. The United States notes that, pursuant to paragraph 334 of the Report of the Working Party on the Accession of China², China is required 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.

2. Replies to Questionnaire on Import Licensing Procedures: Article 7.3 of the Agreement stipulates that Members should complete the annual questionnaire on import licensing procedures laying out the purposes, criteria, and other administrative requirements of the licensing system.

- (a) Please indicate when China will submit this information, which was due upon accession.

3. Other requirements (new import licensing procedures or changes): Article 5 of the Agreement stipulates that Members must notify new or amended import licensing procedures, i.e., after the original two notifications.

- (a) As China has not yet complied with standard initial notifications to the Committee, and in light of China's extensive and changing import licensing system, please

¹ Pursuant to Section 18 of the Protocol of Accession of the People's Republic of China, WT/L/432.

² WT/ACC/CHN/49.

explain what procedures China is implementing to ensure that the Committee is notified of Article 5 changes.

Pending the submission of the above information on China's import licensing requirements required by the Agreement and China's accession agreement, we request the following specific information, in writing, in advance of the Committee's 24 September 2002 meeting:

4. Please list all laws, regulations, orders, decrees and other measures (including at the sub-national level) that China has issued since its accession dealing with import licensing and indicate which of these measures were taken to comply with the Agreement or the commitments in China's accession agreement.
5. What steps has China taken to ensure that the list of all entities responsible for the authorization or approval of imports will be updated and republished in the official journal, the MOFTEC Gazette, within one month of any change, as required by paragraph 132 of China's Working Party Report?
6. In paragraph 138 of its Working Party Report, China committed that it would 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. What steps has China taken to implement this commitment and to abolish the requirement to obtain a separate import licence approval?
7. Please list all import licensing requirements China currently maintains, listing by HS item number the goods for which import licences are required.
8. For each type of licence, please indicate which government agencies are responsible for issuing the licences.
9. Please indicate and fully describe relevant changes in procedures and any fees or costs associated with obtaining a licence.
10. Please report on preferential criteria employed in awarding import licences, e.g., for state-controlled importer vs. privately owned importers.
11. Please list any current export performance requirements associated with the issuance of an import licence.
12. We understand that import licences are still bought, sold and transferred between non-affiliated entities notwithstanding China's statement in paragraph 135 of the Working Party Report that this is illegal. What steps has China taken to counteract this practice?

Questions related to import licences issued for inspection permits

We seek confirmation of and additional information on the procedures and requirements that the State General Administration of Quality Supervision and Inspection and Quarantine (AQSIQ) is applying in connection with quarantine inspection permits.

13. Please explain AQSIQ's procedures for issuance of import inspection certificates.
14. Is there a limit placed on access to inspection permits or the amount of product covered by any one permit for products such as meat and poultry products?

15. In the light of documentation and procedural requirements, is it possible to obtain import permits less than 60 days in advance of the planned date of importation for commodities such as meat products, grain and soybeans?
16. How does AQSIQ handle shipments arriving with less than 60 days' notice?
17. Please confirm that importers must secure import inspection permits prior to signing a contract to purchase foreign commodities with exporters.
18. We are concerned that AQSIQ's procedures for import inspections are becoming technical barriers to trade. Please explain why this is not the case, i.e., how the requirements are necessary and the least restrictive method of achieving the necessary objective?

Questions related to MOFTEC Order No. 20, 2001, "Measures on the Administration of Automatic Import Licence of Goods"

19. Annex I of the *Measures on the Administration of Automatic Import Licence of Goods*, entitled "Catalog of Goods Subject to Automatic Import Licence Administration," lists products by harmonized tariff code that require import licences. China has not notified or provided a justification for imposing a licensing requirement on these products. When does China intend to notify and justify these requirements, as provided for in the Agreement and China's Protocol of Accession?
20. With regard to the above-referenced catalog (Annex I of the *Measures on the Administration of Automatic Import Licence of Goods*), products are grouped by commodity code into three sub-catalogs, entitled "Catalog 1," "Catalog 2," and "Catalog 3." It is not clear why the product list is broken into three sub-catalogs, or what the significance of each catalog is.
 - (a) Do the procedures for issuing licences for products contained in sub-catalog 1 differ from the procedures for issuing licences for products contained in sub-catalog 2? Please explain.
21. Article 7 of the *Measures on the Administration of Automatic Import Licence of Goods* specifies the documents that must be submitted to the licensing institutions in addition to the application for an import licence. Section 4 requires the importer to provide the "contract on agency import concluded between the entrusting party and the import business operator if the import is subject to entrustment." According to the WTO Import Licensing Agreement, automatic import licensing should not be used to restrict trade and application procedures are to be as simple as possible. The documentation requirements in Article 7 of the *Measures on the Administration of Automatic Import Licence of Goods* appear excessive and go beyond what is necessary to monitor imports.
 - (a) Please define the policy of "entrustment," and identify products subject to entrustment.
 - (b) What is the purpose of requiring submission of documents relating to business scope and the contract for importing the goods?
 - (c) By requiring unspecified "other necessary documents," Article 7 of the *Measures* may be inconsistent with the Import Licensing Agreement's transparency requirements and could result in delays in issuing licences. All documentation requirements should be published with specificity in advance. Please identify the "other necessary documents" referred to in Article 7.

23. Article 9 of the *Measures on the Administration of Automatic Import Licence of Goods* appears to limit applicants to “import business operators”, although China has committed in the Working Party Report (at paragraph 128) that any enterprise with the right to trade will be permitted to apply for an import licence. In addition, under Article 2.2(a)(ii) of the Agreement, any enterprise or person with the right to import should be permitted to apply for an import licence.
- (a) What are the requirements to qualify as an “import business operator”?
 - (b) How do these requirements conform to paragraph 128 of China’s Working Party Report and Article 2.2(a)(ii) of the Agreement?
24. Article 13 of the *Measures on the Administration of Automatic Import Licence of Goods* states that “the system of one licence for one batch shall be exercised for the automatic import licence, the same automatic import licence shall not be used in accumulative customs declaration in batches.”
- (a) Why does China require a separate licence for each batch shipped? These requirements are burdensome, more restrictive than necessary and may impede trade.
25. Article 10 of the *Measures on the Administration of Automatic Import Licence of Goods* refers to the “processing trade,” but it is not clear what this means. Article 18, however, indicates that “processing trade” does not refer to imports into bonded zones or export processing zones.
- (a) Please explain what “processing trade” means in Article 10. In addition, please explain why “processing trade” is exempted from licensing requirements by Article 10.
26. Article 15 of the *Measures on the Administration of Automatic Import Licence of Goods* states that “the automatic import licence administration on the goods of foreign-funded enterprises shall be conducted in accordance with the present relevant provisions.”
- (a) What are the relevant provisions that are applied to licensing of imports by foreign-funded enterprises?
27. In paragraph 334 of China’s Working Party Report, China committed that it “would 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, services, TRIPS or the control of foreign exchange, and to the maximum extent possible would make these laws, regulations and other measures available before they were implemented or enforced, but in no case later than 90 days after they were implemented or enforced.” To date, China has not provided translations of several post-accession measures in the area of import licensing procedures, which were implemented more than 90 days ago.

Please provide a translation of the following measures in advance of the 24 September 2002 meeting at which the Committee will be reviewing the implementation by China of the WTO Agreement and the relevant provisions of China’s Protocol of Accession:

- (a) The *Measures on the Administration of Automatic Import Licence of Goods* includes 5 annexes. We have obtained only Annex 1. Please provide translations of Annexes 2-5.

- (b) *Implementing Rules for the Administration of Automatic Licensing of Important Industrial Products.*

Questions related to MOFTEC Order No. 21, 2002, “Measures on the Administration of Designated Trading on Import of Goods”

28. The *Measures on the Administration of Designated Trading on Import of Goods* set forth rules governing designated trading enterprises engaged in the importation of specific products. Some, but not all, of these products also appear to be listed in the Catalog of Goods Subject to Automatic Import Licence Administration.
- (a) Please explain your methodologies for grouping products under the *Measures* versus the Catalog.
29. Article 7, Sections 2-4, of the *Measures on the Administration of Designated Trading on Import of Goods* describes the schedule and process by which MOFTEC increases the number of designated trading enterprises in each province, autonomous region, and municipality.
- (a) Please explain how MOFTEC intends to make this information known to the public, in particular end users and sellers of products subject to designated trading.
30. Paragraph 86 of China’s Working Party Report states that China will eliminate import and export volume as a criterion for obtaining the right to trade in these products (referring to products in Annex 2B of the Protocol of Accession). Article 6(4) of the *Measures on the Administration of Designated Trading on Import of Goods*, however, requires companies to submit reports on the “analysis of the domestic and foreign supply and demand and on market information for the import of goods subject to designated trading administration as well as the information on the purchasing of and selling avenues of the applicant.”
- (a) Please explain the relevance of this information, and justify the requirement in light of China’s commitment in paragraph 86 of the Working Party Report.

Questions related to MOFTEC Order No. 18 (2001), “Regulations on Technology Imports and Exports,” and State Council Order No. 331 (10 December 2001), “Technology Import and Export Administrative Regulations”

31. Please explain the relationship between the *Regulations on Technology Imports and Exports*, issued by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) as Order No. 18 of 2001, and the *Technology Import and Export Administrative Regulations*, issued by the State Council as Order No. 331 (10 December 2001).
32. The MOFTEC *Regulations on Technology Imports and Exports* discuss the three-step process of importing restricted technology: (1) approval of proposal for import, (2) submission of technology import contract and (3) subsequent issuance of import licence. This three-step process may violate provisions of China’s accession agreement and General Agreement on Tariffs and Trade 1994 (GATT) that do not permit the use of approvals in addition to import or export licences. If so, such approvals currently required will have to either be abolished or replaced with licences or, if appropriate, certification requirements.
- (a) Please confirm whether the products covered by the *Regulations on Technology Imports and Exports* are listed in Annex 3 of China’s Protocol of Accession.

- (b) If this cannot be confirmed, please justify the issuance of permits for the importation of technology products in light of Article XI of the General Agreement on Tariffs and Trade 1994.
33. Articles 12, 14 and 15 of the Regulations on Technology Imports and Exports and Article 9 of the *Technology Import and Export Administrative Regulations* indicate that it may take up to 40 working days to obtain approval to import restricted technology.
- (a) This 40-working day period exceeds the 30-calendar day time limit established Article 3.5(f) of the Agreement. How does China justify its 40-working day time period? When will China revise the above-discussed provisions to reflect the 30-calendar day maximum of Article 3.5(f) of the Agreement?
- (b) Please confirm whether, following approval of the proposal to import (Article 12 of the *Regulations on Technology Imports and Exports*) and submission and approval of the technology import contract (Article 14), any additional import licence is required to import the restricted technology product.
- (c) If an additional import licence is required, please describe the procedure for obtaining the additional licence and the amount of time typically required to obtain the additional licence.

Questions related to “Measures for the Administration of Licences for the Import of Goods,” issued by MOFTEC (1 January 2002)

34. Please explain what is meant by “the list of graded licence issuance” and the “Catalog of Graded Issuance for Commodities Subject to Administration of Import Licence” in Articles 3 and 9 of the *Measures for the Administration of Licences for the Import of Goods*.
- (a) What is a graded licence? How does it differ from other licences?
35. In paragraph 129 of China’s Working Party Report, China agreed that for products listed in Annex 3 as subject to quota, it would ensure that those entities with quota allocations would also receive any necessary import licence. This system would conform to WTO rules, including the Agreement on Import Licensing Procedures, and would be transparent, timely, responsible to market conditions and would minimize the burden on trade. Import licences would be granted based on the quota allocation. A licence would be issued for the full amount of the quota and would be valid for the calendar year issued.
- ? Several aspects of Article 11 of the *Measures for the Administration of Licences for the Import of Goods* appear to be inconsistent with China’s commitments in paragraph 129.
- ? First, Article 11 appears to create a presumption that an import licence may be used for only one entry and must be used at the specified customs office. The licence should be modified to specify that it is good for more than one customs declaration as provided in the Working Party Report.
- ? Second, Article 11 imposes a maximum number of times that an import licence may be used, i.e., 12. This limitation is not consistent with the provisions of paragraph 129 of the Working Party Report.
- ? Third, Article 11 unduly interferes with the right of a trading enterprise to import goods. For example, a trader may need to change the port of arrival for a shipment because of last-minute

commercial considerations, but “one licence for one customs office” would not permit such standard changes. As such, the licensing procedures are likely to have unnecessary trade-distortive effects and be “more administratively burdensome than absolutely necessary to administer the measure,” in contravention of Article 3.2 of the Agreement on Import Licensing Procedures and paragraph 129 of the Working Party Report. An import licence should permit the importation of the specified quantity of product in one shipment or multiple shipments, without restriction.

Please address these apparent inconsistencies in detail, and indicate how China intends to bring Article 11 into compliance with its WTO obligations.

36. In paragraphs 129 and 138 of its Working Party Report and in its Goods Schedule, China confirmed that a separate import licence approval for goods subject to TRQ or quota would not be required, but that China would provide any necessary import licence in the procedure that granted a quota allocation.
- (a) In light of Article 7 of the *Measures for the Administration of Licences for the Import of Goods*, it is not clear whether or not an entity is required to apply for an import licence under the *Measures* in order to be able to import goods under allocated TRQ or quota. Please clarify this matter. If separate import licence is required, this requirement should be eliminated and the same process used for granting the quota allocation should be used for the grant of an import licence.
- (b) Similarly, Article 17 of the *Interim Measures on the Administration of Tariff-Rate Quota for Agricultural Imports*, issued by State Development and Planning Commission on January 30, 2002, sets out a separate licensing procedure that follows quota allocation. In light of China’s commitment in paragraph 138 of the Working Party Report, China should eliminate this separate licensing procedure?
37. Please explain what “processing trade” means in Article 17 of the *Measures for the Administration of Licences for the Import of Goods*. Does it have the same meaning in all of the licensing regulations?
38. Article 23 of the *Measures for the Administration of Licences for the Import of Goods* states that “if an import licence drawn is lost, the unit drawing the licence shall report the case to the department of public security immediately and shall publish the announcement of invalidation on the national comprehensive or economic newspapers.”
- (a) While we understand why the licensee should report a lost licence, why is it the licensee’s responsibility to publish the announcement of invalidation in the national comprehensive or economic newspapers? Is notification of who receives a licence published comprehensively?

Industrial quotas

40. In paragraph 127 of China’s Working Party Report, China confirmed that the administration of quotas and import licences for products listed in Annex 3 would be consistent with the WTO Agreement, including Article XIII of the General Agreement on Tariffs and Trade 1994 and the Agreement on Import Licensing Procedures, and that the allocation of quotas and issuance of import licences would go through a simple and transparent procedure, so as to ensure the full utilisation of quota.

- (a) Please report on what steps China has taken or will take to fulfill the commitment that the administration of quotas and import licences for products listed in Annex 3 will be consistent with the WTO Agreement, including Article XIII of the General Agreement on Tariffs and Trade 1994 and the Agreement on Import Licensing Procedures.
 - (b) Please report on what steps China has taken or will take to fulfill its commitment that the allocation of quotas and issuance of import licences would go through a simple and transparent procedure, so as to ensure the full utilisation of the quota.
41. In paragraph 128 of China's Working Party Report, China confirmed that for products listed in Annex 3 subject to quota and licensing requirements, any entity that will possess the right to trade in the quota year, including enterprises possessing trading rights to import such products or inputs for production purposes under a particular quota category, could apply for a quota allocation and licence to import products listed in Annex 3.
- (a) Please report on how this commitment has been fulfilled. In particular, please indicate how companies that will possess trading rights in the quota year will be able to apply for a quota allocation and import licences for the products listed in Annex 3 that are under quota.
42. In paragraph 129 of China's Working Party Report, China confirmed that for products listed in Annex 3, the system for quota allocation and licensing would ensure that those entities with quota allocations would receive necessary import licences and that the system for quota allocation and licensing would conform to WTO rules, including the WTO Agreement on Import Licensing Procedures.

China also confirmed that applications for a quota allocation would need to be submitted to only one organization, at one level (central or sub-national) for approval. The relevant organization would then issue an import licence based on the quota allocation, in most cases within 3 working days and, in exceptional cases, within a maximum of 10 working days after a request for the licence. A licence would be issued for the full amount of the quota and would be valid for the calendar year issued. Such licence would be extended once, upon request, for up to 3 months, if the request was made before 15 December of the current quota year. Imports occurring under an extended licence would be counted against the relevant quota amount for the year in which the allocation took place.

China also confirmed that the relevant organization for issuing quota allocations and licences, amount of quota, including the growth in quota provided for in Annex 3, the eight-digit tariff codes and full descriptions of all products covered by each quota and procedures for application for a quota allocation and licence, including the beginning and end date of the application period and any other relevant procedures or criteria, would be published in the official journal at least 21 days prior to the beginning of the application period, that the application period would be from 1-31 August, and that quotas would be allocated to applicants no later than 60 days after closure of the application period.

- (a) Please describe in detail how these commitments have been fulfilled.
- (b) Describe precisely how the system for quota allocation and licensing for products in Annex 3 has been implemented in conformity with the transparency and procedural requirements in the WTO Agreement on Import Licensing Procedures and the additional specific assurances given in paragraph 129.

- (c) Please confirm that the application period for quotas opened on 1 August and that China will, in fact, allocate these quotas in conformity with the procedures listed in para 129 prior to 60 days from the closure of the application period. Please describe what steps China is taking to ensure fulfilment of this commitment.
43. In paragraphs 130-31 of China's Working Party Report, which address the allocation and utilisation of quotas, China confirmed that it would allocate quotas in accordance with the criteria listed in these paragraphs, and that procedures which would be published in advance and would be applied in conformity with WTO requirements, including the Agreement on Import Licensing Procedures. China also confirmed that, in applying these criteria, it would consider the need to allow for equitable participation by producers from WTO Members and take into account the need to maximize the potential for quota fill.
- (a) Please describe precisely what steps China has taken or will take to modify its quota allocation system to meet the commitment to allocate quotas based on the provisions of the WTO Agreement on Import Licensing Procedures and on the specific procedures listed in this paragraph.
- (b) Have the procedures been published?
- (c) Please indicate how China intends to fulfill the commitments in these paragraphs.

Tariff-Rate Quotas

44. In paragraph 116 of its Working Party Report, China agreed that TRQs would be 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, would reflect consumer preferences and end-user demand and would not inhibit the filing of each TRQ.
- (a) Please report on what steps China has taken or will take to fulfill these commitments.
45. In paragraph 119 of its Working Party Report, China agreed that the role of sub-national authorities would be limited to purely administrative operations. China also agreed that it would not establish a separate process of allocation to sub-national authorities and that decisions regarding all allocations and re-allocations to end-users would be made by a single, central authority.
- (a) Please report on how this commitment has been fulfilled.
46. In the headnotes on TRQ administration (found in Part I, Section 1-B, and Part III, Section A, of China's Goods Schedule³), China committed to reserve a specified portion of each TRQ for importation through entities other than state trading enterprises. In addition, in paragraph 120 of its Working Party Report, China committed that any enterprise possessing the right to trade (other than state trading enterprises) will be permitted to import TRQ products reserved for importation by non-state trading enterprises.
- (a) Please report on what steps China has taken or will take to ensure that TRQs reserved for importation through non-state trading enterprises can be imported by any enterprise possessing the right to trade.

³ WT/ACC/CHN/49/Add.1.

Other questions

47. In paragraph 23 of China's Working Party Report, China confirmed that it would unify the licensing requirements applied under its *Administrative Measures on Imported Spirits in the Domestic Market* so that a single licence authorized the sale of all spirits irrespective of their country of origin.
- (a) Please report on how this commitment has been fulfilled.
48. In paragraph 136 of China's Working Party Report, China confirmed its intent to bring its *Provisional Procedures for the Administration of Automatic Registration for the Import of Special Commodities* (13 August 1994) and, in particular, the criteria for approval of registration into conformity with Article 2 of the Agreement on Import Licensing Procedures upon accession.
- (a) Please indicate how China has proceeded to fulfill this commitment.
49. We note that all domestic manufacturers who export are free to purchase raw material wherever they can buy it, but furniture manufacturers who do not export are still required to have an import permit which the government will issue only to certain companies. This appears to be a benefit based on export performance and a limitation on imports. Please describe China's plans for eliminating this requirement.
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