

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO PARAGRAPH 18 OF THE
PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA¹**

Questions from the UNITED STATES to CHINA

The following communication, dated 10 November 2004, is being circulated at the request of the Delegation of the United States.

The United States wishes to pose the following questions to China at the 25 November 2004 meeting of the Council for Trade in Goods for the purposes of the transitional review mandated by China's Protocol of Accession. Many of these questions relate to matters that were not fully addressed by China during the transitional reviews held before the committees that report to the Council for Trade in Goods.

Export Restrictions

1. The United States and other Members raised concerns regarding China's export quota on coke, a key steel input, as well as other goods during the transitional review held by the Committee on Market Access.

- (a) China appears to believe that the export quota on coke falls under the exception regarding the conservation of exhaustible natural resources, set forth in Article XX of the General Agreement on Tariffs and Trade 1994. However, that exception only allows measures that were made effective in conjunction with restrictions on domestic production or consumption, and provided that they are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade. Please identify all of the relevant domestic restrictions imposed by China.
- (b) Please explain how these restrictions, in China's view, satisfy the requirements of GATT Article XX in light of the fact that only a small percentage of domestic coke production has been permitted for export.
- (c) Does China have any plans to impose any new or additional domestic restrictions? If so, please explain them.
- (d) Does China have any timetable for eliminating the export quota on coke?

¹ WT/L/432.

Tariff Rate Quotas on Fertilizers

2. In the TRQ headnotes on fertilizer and wool tops (found in Part III, Section A, of China's Goods Schedule), paragraph 6B, China committed that applications for reallocation of uncontracted-for TRQ quantities shall be accepted from 1-15 September, that specific conditions for applying for reallocated TRQ quantities will be published in the official journal one month in advance of the application period, and that new allocations will be assigned by 1 October. Please provide the following information, in accordance with paragraph IV.1(a) of Annex 1A to China's Protocol of Accession, for 2003 and 2004 for each fertilizer TRQ:

- (a) amount of unused TRQ returned prior to reallocation;
- (b) number of applications for reallocated TRQ received;
- (c) number of applications for reallocated TRQ denied; and
- (d) amount of TRQ reallocated.

Value-Added Tax Applied to Diammonium Phosphate

3. The United States raised concerns during the transitional review before the Committee on Market Access regarding the Circular about VAT Exemption Policy for Certain Farming Materials (No. 113/2001), which exempts all phosphate fertilizers except diammonium phosphate (DAP) from China's value-added tax. This measure discourages use of DAP, for which China committed to permit access under its TRQ commitments, in favor of other phosphate fertilizer products that are not imported. Please provide the following data, which China indicated during the transitional review before the Committee on Market Access, it was attempting to gather:

- (a) China's annual consumption of DAP since 2001, including the amounts sourced domestically versus imports; and
- (b) China's annual consumption of monoammonium phosphate (MAP) since 2001, including the amounts sourced domestically versus imports.

SPS Measures

4. China is obligated under the WTO SPS Agreement to base its SPS measures on sound science and risk assessments. If it follows existing standards of the three WTO-recognized international standard-setting bodies (Codex Alimentarius (Codex), the International Plant Protection Convention (IPPC) and the World Organization for Animal Health (OIE)), it is automatically assumed to be in compliance with this requirement; otherwise, risk assessments should be completed and made available. However, in dozens of notified and unnotified regulations, standards more restrictive than those of Codex, IPPC and OIE have been adopted without providing access to risk assessments identifying the necessity for such restrictive measures. We recognize that China is not a member of international standard-setting organizations like the OIE and IPPC. Nevertheless, the WTO SPS Agreement obligates Members to base their measures on relevant international standards. If a Member introduces a measure that provides a higher level of protection than that achieved by the international standard, it must present a scientific justification or a risk assessment to support its measure. What steps is China taking to make these scientific justifications and risk assessments available to interested parties or to bring these measures into line with the standards of OIE, IPPC, and Codex Alimentarius?

5. China's SPS requirements for a number of commodities, such as G/SPS/N/CHN/52, hygienic standards for grain, and the unnotified AQSIQ Decree 73, which modifies the requirements for

applicants of quarantine inspection permits, mix product quality requirements with SPS measures. These two measures in particular introduce water, heat, and foreign material requirements that have no bearing on the safety of the product and which a foreign supplying government should not be expected to guarantee. Quality issues are primarily matters for resolution between buyer and seller on commercial sales. Please indicate when China will rescind these requirements, not only for the two identified regulations, but also as general practice.

6. China's fresh and frozen poultry regulation (GB16869-2002), notified on 9 August 2002 as G/TBT/N/CHN/6, establishes a zero tolerance limit for the presence of Salmonella bacteria in raw, uncooked products. The regulation was published without any accompanying public health risk data to support the establishment of such a restrictive measure. Current science indicates that the complete elimination of enteropathogenic bacteria on raw meat and poultry products is unachievable without first subjecting such products to a process of irradiation.

- (a) When will China provide the risk data to support the standard?
- (b) What evidence can China provide to document that, in accordance with its WTO/SPS obligations, the same standard is being applied to domestic as well as imported poultry products?

Control, inspection and approval procedures

7. The United States remains concerned about the quarantine import inspection permit procedures provided for in General Administration for Quality Supervision, Inspection and Quarantine's (AQSIQ) Ordinance 7, *Administrative Measures for the Entry-Exit Inspection and Quarantine for Grains and Feed Stuff* (effective 1 March 2002), and AQSIQ Decree 25, *Administrative Measures for Entry Animal and Plant Quarantine* (effective 1 September 2002). Specifically, pursuant to Ordinance 7, AQSIQ requires that importers obtain an import inspection permit prior to signing an import contract for grain or feed. Port quarantine authorities may return or destroy any cargoes without a prior import inspection permit. This import inspection permit is in addition to other import licences, including a tariff-rate quota (TRQ) import certificate (in the case of TRQ commodities like wheat) and a safety certificate (in the case of certain commodities), and it does not replace inspection at the port. Similar procedures apply under Decree 25, pursuant to which importers are required to obtain a quarantine permit for a wide range of animal and plant products before an import contract can be signed. The United States continues to receive reports from traders regarding both the burdensome nature of the procedures and selective enforcement by AQSIQ under Ordinance 7 and Decree 25.

- (a) Please clarify who is eligible to apply for an import inspection permit under Ordinance 7. What standards does AQSIQ employ in accepting or rejecting applications?
- (b) Please clarify who is eligible to apply for a quarantine permit under Decree 25. What standards does AQSIQ employ in accepting or rejecting applications?
- (c) Under Article 6 of Ordinance 7, in applying for an import inspection permit, the owner of the goods to be imported, or its agent, must provide information that includes details about plant location, storage capacity, transportation, processing and whether prior shipments have been fully utilized. Please explain why this information is necessary.
- (d) Please explain why AQSIQ requires an inspection of the facilities of an enterprise that processes agricultural commodities, since the State Administration of Industry

and Commerce also requires an inspection of those same facilities. Will one inspection satisfy both requirements?

- (e) Please explain why an importer must re-apply for a new import inspection permit (rather than have the term of the original one extended) if it has not entered into a commercial contact and imported the commodities covered by the import inspection permit by the expiry date.
- (f) Please explain why an importer must specify the commodity weight, country of origin and port of entry before it has even entered into an import contract. Please also explain why an importer must reapply for a licence if the commodity weight changes by more than ten per cent or if the country of origin or the port of entry changes.

8. AQSIQ Decree 73, *Items on Handling the Review and Approval for Entry Animal and Plant Quarantine*, which became effective 1 July 2004, adds provisions that may create unfavorable commercial terms for imports. While it is unclear how this new Decree will be implemented and enforced, the vague wording of the Decree leaves open the possibility for future enforcement actions and places liability on the foreign exporter.

- (a) Decree 73, in paragraph 4, requires importers to incorporate the inspection and quarantine requirements specified in the quarantine permit into contracts and to stipulate that the goods should comply with relevant Chinese laws and food safety regulations. This requirement appears to be unnecessary, because China's inspection and quarantine requirements are fully enforceable by Chinese authorities. Please explain the necessity of requiring inspection and quarantine requirements to be incorporated into commercial contracts.
- (b) The requirement of paragraph 4 of Decree 73 appears to oblige the seller of imported goods to bear the full commercial risk of non-compliance with China's inspection and quarantine requirements. Customarily in international sales contracts for bulk commodities, parties generally agree that upon inspection of goods by the exporting country and issuance of a certificate of approval by the exporting country, risk pertaining to the quality of goods passes to the buyers. Please explain the basis for changing existing commercial practice.
- (c) Decree 73, paragraph 6, requires the name of the exporter and the supplier to be indicated in the application form for the entry animal and plant quarantine permit when applying for agricultural product imports. It is often difficult to identify the name of the supplier (or the origin of the commodity) at the time an importer applies for the inspection permit. Often, the supplier is changed after the quarantine permit is issued. While the United States understands the need to provide the name of the exporter in a transaction, please explain why China needs the name of the supplier to be indicated in the application form for the quarantine permit for soybeans.

9. On 30 August 2004, China issued a measure exempting certain animal and plant products from entry quarantine review and approval, effective 1 September 2004. The measure, AQSIQ Announcement 111, appears to exempt certain animal and plant products from the requirement to obtain a quarantine import inspection permit in advance of entry and prior to signing an import contract. The United States welcomes China's modification of its quarantine permit policies in Announcement 111 which removed some products from the list of products requiring quarantine permits, as traders have expressed continued concern regarding the burdensome nature of the quarantine permit procedures.

- (a) Announcement 111 lists the generic names of certain products in the animal products and plant products categories that are exempted from the quarantine permit requirement, but does not provide sufficient detail for the trader or a description of these products based on Harmonized Schedule (HS) Number. Please provide a description of exempted products by HS Number.
- (b) Announcement 111 indicates that China's decision to exempt certain products is based on risk assessments. Please provide those risk assessments, along with any other analysis or criteria used as a basis for the exemptions.
- (c) Were risk assessments performed on other products, i.e., products that are still on the list of products requiring quarantine permits? If so, please provide those risk assessments, along with any other analysis or criteria used.

Border Trade

10. Through Bulletin No. 27 and Bulletin No. 39, issued by the General Administration of Customs on 1 May 2003 and 11 June 2003, respectively, China took boric acid and 19 other products off the list of imports from border areas that can benefit from preferential treatment in the form of reduced import duties and/or VAT. At last year's transitional review, China acknowledged that it continues to provide preferential treatment to imports of other products from border areas and stated that it had published lists of these products in several batches.

- (a) Please identify the products that continue to receive preferential border area treatment. For each product, please explain whether it benefits from reduced import duties, reduced VAT or both.
- (b) Please explain how this preferential treatment is consistent with China's WTO commitments, as set forth in Part XIV of Annex 5A to China's Protocol of Accession (where China stated that it would eliminate preferential import duties for border trade) and paragraph 2(A) of China's Protocol of Accession (where China extended its obligations under the WTO Agreement and the commitments that it made in its Protocol of Accession to border trade regions as part of its commitment to apply uniformly its trade regime).

Transparency

11. The Chinese Government utilizes numerous official journals to invite comments on the drafts of prospective WTO-related laws, regulations and other measures and to announce the issuance of final ones. Has China considered consolidating these publications into a single publication? If so, when might China do so?

Government Procurement

12. Nearly three years ago, in paragraph 341 of the Working Party Report² accompanying its Protocol of Accession, China committed to initiate negotiations for China's accession to the WTO's Government Procurement Agreement (GPA) "as soon as possible." We understand that, in late 2003, China set up a working group to study the possibility of initiating GPA negotiations. What is the status of the working group's work? Has China decided on any timetable for initiating GPA negotiations?

² WT/ACC/CHN/49.