

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 30 September 2004, carried out the third transitional review of China pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432).
2. Written comments and questions in connection with the transitional review of China's import licensing system were submitted in advance by Japan, the United States and the European Communities. These submissions were circulated in documents G/LIC/Q/CHN/11, G/LIC/Q/CHN/12, G/LIC/Q/CHN/13, respectively.
3. The information and notifications provided by China to the Committee on Import Licensing for its meeting on 30 September 2004, were circulated in documents G/LIC/W/23 and G/LIC/N/3/CHN/3.
4. The statements made at the meeting of 30 September 2004, where discussions under the transitional review took place, are reflected in the minutes of the meeting (G/LIC/M/20, paragraphs 3.1-3.29). The relevant paragraphs which reflect this discussion are annexed.

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

3.1 The Chairperson reminded Members that the second transitional review of China's implementation of the WTO Agreement and related provisions of the Protocol, under Paragraph 18 of the Protocol of Accession of China, was carried out in 2003 by the subsidiary bodies of the WTO. This included the Committee on Import Licensing, which had a mandate covering China's commitments under the WTO Agreement or China's Protocol of Accession. The report to the Council for Trade in Goods on last year's review was circulated in document G/LIC/11. The third transitional review was conducted at this meeting.

3.2 The Chairperson stated that China was required to provide relevant information, including information specified in Annex 1A, to each subsidiary body in advance of the review. Each subsidiary body was required to report the results of such review promptly to the relevant Council (for this Committee the Council for Trade in Goods) which in turn reported promptly to the General Council. According to Paragraph 18 of the Protocol, the transitional review takes place each year after accession for eight years, followed by a final review in the tenth year or at an earlier date decided by the General Council. 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 set out the measures which China was to undertake to facilitate compliance with the WTO Agreement and provisions of the Agreement on Import Licensing Procedures. 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 give rise to these requirements and justifying the need for their continuation. This report should also provide the information listed in Article 3 of the Licensing Agreement.

3.3 In addition, Section VII(a) of Annex 1A of the Protocol referred to responses to specific questions in the context of the transitional review mechanism, which should be notified to the relevant subsidiary body. The Chairperson informed the members that since the last meeting, the Secretariat received three submissions containing questions and comments, G/LIC/Q/CHN/11 from Japan, G/LIC/Q/CHN/12 from the United States and G/LIC/Q/CHN/13 from the EC.

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

3.5 China submitted a communication late in the day of 27 September 2004 which was available in English at the meeting.

3.6 Taking the floor under Section IV.3(a) of Annex 1A, the first representative of China stated that this was not the first time for this Committee to conduct a transitional review; this was the third year. He did not feel it was necessary to quote all paragraphs from the China's Protocol of Accession and felt it might be useful just to remind the members of the Committee which questions, comments, and documents from Members, including China, had been received in advance of the review so that Members could follow the practice of the Transitional Review as was done in the past.

3.7 He offered a brief account of China's efforts in implementing its WTO commitments and obligations pursuant to this committee and introduced the Administrative Licensing Law of the People's Republic of China, which entered into force on 1 July 2004. The enactment and enforcement of this law was of great importance for implementing China's obligations under the WTO Import Licensing Agreement. It demonstrated the firm commitment and earnest efforts on the part of the Chinese Government to establish and maintain a transparent open and non-discriminatory import

licensing procedure and other trade-related aspects of the licensing process. It was designed to regulate the Chinese Government's activities of administrative licensing at various levels. Trade-related administrative licensing, including import licensing, naturally fell into the jurisdiction of this law. Under the relevant WTO rules and China's accession commitments, administrative licensing should be carried out in a transparent and regular manner. The restrictive effect of administrative licensing conditions and procedures should be no more than is necessary. This understanding of the Chinese Government was one of the key reasons that led to the enactment of the law. This law contained specific provisions on the right of agencies to carry out such administration of the procedures and fees concerned. Thanks to this law and the newly revised Foreign Trade Law of the People's Republic of China, the import licensing regime of the country was further streamlined.

3.8 Prior to this session China had submitted to the Committee its responses to the questionnaire on import licensing procedures for 2004 pursuant to Article 7.3 of the Agreement on Import Licensing Procedures. China also elaborated on its 2004 import licensing regime through the provision of relevant information pursuant to Annex 1A of its Accession Protocol. The questionnaire responses and Annex 1A information made reference to quite a number of Chinese laws, regulations and proclamations for which translation efforts were underway. It was estimated that the work of translation could be completed in a couple of months. Then notifications would be submitted to this Committee. In the context of this transitional review the delegation received a number of questions from some Members.

3.9 A second delegate from China made a comment concerning the avoidance of unnecessary repetitive work under the transitional review and different Committees in the WTO. A number of the questions that were received under the Import Licensing Committee had already been raised under the Market Access Committee and had already been replied to clearly and in detail by China. There was a clear distinction among the mandates of the Committees or Councils and other bodies in the WTO. The relevance between the implementation of China's commitment of accession and each body's sphere of mandates was also clearly defined. China was serious about answering the questions raised by Members, but did not agree that Members could raise the same questions repetitively in different Committees. Members should try their best to observe the relevance between their questions and the mandates of each of the 17 bodies that had the mandate to conduct the transitional review. The Chinese Delegation would make an objective judgment concerning the advance questions raised and decide the most relevant or most appropriate Committee or Council where discussions would be addressed. In doing so they would avoid repetitive work on the same work raised in other bodies. They would bear in mind the question's relevance to the mandate of each of the Committees as well as whether the representative of the relevant authorities was available in the Chinese delegation present at the transitional review in different Committees. He requested the understanding and cooperation of Members concerned in this regard.

3.10 China responded to questions received in advance from Members as follows:

- (a) Question concerning the entities responsible for authorization of tariff rate quotas for the importation of agricultural products: this information was contained in announcement No. 54 of 2003 which was jointly promulgated by the Ministry of Commerce (MOFCOM) and the National Development and Reform Commission (NDRC).
- (b) Question concerning the entities responsible for the authorization of tariff quotas for the importation of fertilizers: this information was found in Decree No. 27 of 2002, jointly promulgated by the former State Economic and Trade Commission and the General Administration of Customs.
- (c) Question concerning the entities responsible for the authorization of automatic import licensing: this information was found in the *Measures on Administration of Automatic Import*

Licensing for Goods promulgated by the former Ministry of Foreign Trade Economic Cooperation, now MOFCOM as Ministry Degree No. 20 of 2001.

- (d) Question concerning the entities responsible for the authorization of import licenses and import quota licenses: this information was found in the *Measures on Administration of Import Licenses for Goods* promulgated as Ministry Degree No. 22 of 2001, also by the former Ministry of Foreign Trade and Economic Cooperation, now MOFCOM.

All of these announcements could be found in the China Foreign Trade and Economic Cooperation Gazette and on the website of MOFCOM. Some had already been translated and submitted to the Committee as notifications and those not yet notified were in the process of translation and would be notified in the coming few months. The delegate pointed out a typographical error in Annex 1A of the Protocol of Accession document G/LIC/W/23. The website address in the fourth line of the last paragraph of the document should read www.mofcom.gov.cn not [ch](http://www.mofcom.gov.ch).

- (e) Question concerning the buying, selling and transferring of import licenses: it was explicitly stipulated as illegal in article 34 of the newly revised Foreign Trade Law and Articles 66 and 67 of the Regulations on Administration of Import and Export of Goods. In addition, these stipulations were again embodied in the implementing rules of these laws and regulations that included the Measures on Administration of Import Licenses for Goods, the Measures on Administration of Automatic Import Licensing for Goods, the Interim Measures on Administration of Tariff Rate Quota for Importation of Agricultural Products and the Interim Measures on the Administration of Tariff Rate Quota for Importation of Fertilizers etc.
- (f) Questions concerning the newly revised Foreign Trade Laws, the issuer of trading rights and quantitative restrictions on importation of automobiles: these issues were repetitive and the Committee on Market Access and the Council for Trade in Goods were respectively the right places to deal with these issues. In the transitional review conducted a few days previously in the Committee on Market Access, the delegate had responded to these questions in detail where he also made it clear that the responses did not in any way affect their judgment on the relevance of these questions in the sphere of the Committee's mandates. He concluded by saying that, firstly, the Foreign Trade Law will be implemented in a way consistent to China's WTO commitments and obligations. Secondly, China would continue to implement its commitments made on the reduction of non-tariff measures in 2005.
- (g) Question concerning the Measures on Administration of Foreign Investment in Commercial Fields: this fell into the sphere of distribution service which should be dealt with under the Council for Trade in Services and should not be dealt with in the Import Licensing Committee.
- (h) Question concerning the quarantine inspection and related certificate of China's quarantine authorities: this was an SPS issue and should be dealt with in the transitional review of the SPS Committee to avoid repetitive travel to Geneva of officials from the quarantine and inspection authorities.

3.11 The Chairperson noted that she was encouraged by China's commitment taken in this Committee that China would fully observe its obligations taken at the moment of accession to the WTO.

3.12 The delegate from the United States asked whether there was any one place or particular Gazette citations that compiled all the laws, items and regulations or whether it was necessary to go to the various sources.

3.13 The delegate from the European Communities acknowledged receipt of the answers to the agreement C3 and stated that they might raise extra questions later. She further stated that she had consulted the MOFCOM website but found that the most recent rules dated from 1991, and she had not found information about the implementation or publication of legal texts. She questioned whether the website would be updated.

3.14 She affirmed that the EC did raise questions in another context such as the Committee on Market Access but they still had issues pending, such as the right to trade and certain restrictions to importing and exporting especially with regard to the right to trade, referring to Article 9 of the new revised trade law. The EC would like explanations as to when and in what way detailed provisions concerning the right to trade would be made public. She stated that apparently this was not the case so far, and that they would like to have an indication of the content of these provisions. She stated that they had taken note of the fact that article 9 of the Foreign Trade Law said that registration would not be required if the rules and administrative provisions and laws otherwise provided. She would like an explanation of this or an explanation on when registration would not be required. Could they have assurances that this would not give rise to discrimination? In addition they had concerns about restrictions to imports and exports and wondered about the compatibility with WTO rules of any possible restrictions that might be introduced by China under the revised version of the new Foreign Trade law. The EC also had very serious concerns about the services sectors and would be raising questions in a communication that would be addressed to the Councils on Goods and Services.

3.15 The delegate from Japan requested clarification on two points. First, since the first Transitional Review was held, Japan expressed concern about China's implementation of import quotas of automobiles. Since the phasing out period of the non-tariff measures was coming soon, rather than raising the issue of import quotas of automobiles, Japan requested that China confirm that on 1 January 2005 it would completely eliminate non-tariff measures on their automobile sector and would thereafter not implement new measures. In particular, the delegate wanted clarification that after 1 January 2005 there would be no need for Japanese automobile manufacturers or importers to apply for any non-automatic import licences.

3.16 Second, Japan was concerned about reports from Japanese manufacturers regarding the lack of transparency in issuing import licences on automobiles shown in document G/LIC/Q/CHN/11 we understand that a certain automobile with 30 seats or more had been subject to automatic import licensing procedures. In practice only a limited number of Japanese applications were approved. The reasons behind this were unknown but Japan hoped that the concerns prevailing within Japan's auto industry will disappear quickly. If such misapplication occurs again, Japan directed China to request further opportunity to take up this issue bi-laterally for more profound discussion.

3.17 Finally, the delegate expressed Japan's strong desire that China ensure that automatic import licensing procedures shall not have trade-restricting effects.

3.18 The Chairperson announced that there would be a correction or a revision to G/LIC/W/23, correcting the website address.

3.19 The delegate from Canada raised a problem that Canada had experienced in the application of China's import licensing procedures. It was Canada's understanding that China required all shipments of recyclable materials destined for China markets to be certified for quality prior to export under requirements set out in AQSIQ notices 48-2002 and 115-2003. The Chinese certification agency in the US, China Certification and Inspection Company (CCIC), had informed Canadian Government officials that they would provide inspectors for Canadian shipments of recyclable materials only if the Canadian facility would pay for the inspectors' travel and accommodation expenses. The Canadians confirmed with US exporters and US association representatives that US-based recyclable material exporters were charged only for the inspection service and not for any travel or accommodation

expenses. This meant that there was preferential treatment provided to US based recyclable material exporters in their shipments to China, in comparison to that provided to Canadian exporters. Canada noted that the Agreement on Import Licensing Procedures provides for non-discriminatory treatment, equitable administration, neutral impact on trade, and equal eligibility across firms. In addition, the Preshipment Inspection Agreement provides for inspection in the customs territory of the exporter. This issue was raised bilaterally with Chinese officials in Ottawa. Canada requested that this particular situation be investigated and that Canadian recycling companies be accorded treatment consistent with the Agreement on Import Licensing Procedures and that this treatment should be as favorable as that extended to US exporters.

3.20 The delegate from China provided follow-up to the questions. First he addressed the issue raised by the US concerning a compilation list of entities by stating that these entities were listed in all relevant decrees and announcements of all the relevant authorities. To facilitate the work of the Committees China was preparing the translations of all these relevant documents. Some of them had been completed and the rest would be completed in a couple months. He felt that the translations of the full texts of these documents would give Members a clear understanding of the information provided in the earlier statement. On the question of the difficulty the EC representative had when surfing the website of MOFCOM, the delegate thought the information was very much up to date. He had personally been in Geneva for about three weeks and used the website a lot to update information, but could recognise the difficulty because the language could be a difficult point for Members, and as he had stated they were doing the translation of all the documents related to this Committee and making the notifications. This could also be addressed.

3.21 On the question of the trading rights, the Chinese delegate did not know whether the representative of the EC had communicated with their representative who would be representing the EC in the Market Access Committee meetings because they have already responded to exactly the same questions in that Committee's meeting and also they did not think that the committee on Import Licensing was the appropriate body to address the trading rights issue. He did not repeat in detail what he had said in that Committee's meeting but assured the Committee that the newly revised Foreign Trade Law would be implemented consistently with their WTO obligations and commitments and the implementing rules with regard to the trading rights had also been promulgated. For that he hoped the EC delegate could consult the information they had provided in the Market Access Committee.

3.22 On the questions from Japan, the Chinese delegate thought he had made a very clear response in his statement when he said that in the year 2005 they would continue to implement their commitments with regard to the reduction of their non-tariff measures. Concerning another point that the Japanese delegate had raised in his intervention, the Chinese delegate thought the non-automatic licensing regime in China was consistent with their obligations or commitments within the Agreement on Import Licensing Procedures and they did not see any reason why they should abolish this automatic import licensing regime. Because of the large amount of non-tariff measures eliminated in the short period of time after China's accession they believed that the monitoring of the trade of these products was very important and the automatic import licensing regime was a good way through which they could closely monitor the latest developments of trade in these products. He did not see the necessity to abolish the automatic import licensing regime but he assured the Committee that this regime would be implemented in a way consistent with the obligations for this Organization.

3.23 In response to the question from the Canadian delegate, the Chinese delegate stated that he could not get into the details because they did not have the information available. This question related to the measures adopted by their quarantine and inspection authorities and he hoped that they could deal with this issue in the coming month in the SPS or TBT Committee meetings in order to avoid repetitive travel to Geneva of their people from that authority. He also suggested that more detailed information be provided in advance of the meeting so they could prepare for the responses.

3.24 The delegate from Japan stated that there had been a misunderstanding between their questions and the answers. Japan did not deny China's right to conduct automatic import licensing as mentioned but acknowledged that in 2004 a certain type of automobile had been subject to automatic licensing. They had found a case of misapplication because their industry had stated that in some cases only limited numbers of applications had been approved this year. This should not have happened under automatic licensing so it was requested that the message go to Beijing.

3.25 The delegate from Canada stated that they would put their issue in writing and sort out where it should be addressed and how. She stated that it was not clear if this was a TBT issue. It was inspection for quality prior to export but in this case it was access to the inspection services to get an import licence.

3.26 The delegate from the United States stated that the AQSIQ issue had licensing components. He would like responses in one month's time and would revert to the issue in a later meeting.

3.27 The delegate from China thought he recalled that in the Market Access Committee or in the questions provided, the request was made that they abolish or eliminate the automatic licensing provision. Concerning the issue raised by the Japanese delegation, he had checked with Chinese licensing services and they didn't find that their practices are inconsistent with stipulations in their own decrees or announcements or regulations nor the obligations under this committee and he reminded Members they have the new law of administrative licensing and the law on administrative procedures which provide the procedures that can be relied on by the Japanese companies for their difficulties.

3.28 The delegate of Japan felt that discussion would be difficult at the meeting because it was really to be debated based on actual facts of what they are doing at customs and other occasions. He also conveyed the message to the capital and would like further discussion on this issue in the future.

3.29 The Committee concluded the review. In accordance with the practice used after the two previous reviews the Committee requested the Secretariat to prepare a brief factual report for submission to the CTG, with references to the documents concerned and the portion of the minutes of the meeting which relate to the transitional review.
