

**REPLIES OF CHINA TO QUESTIONS FROM THE UNITED STATES<sup>1</sup>**

The following communication, dated 4 May 2004, is being circulated at the request of the Delegation of China.

**I. QUESTIONS REGARDING NOTIFICATIONS REQUIRED BY THE COMMITTEE ON IMPORT LICENSING**

*Question 1: Is the list in G/LIC/N/1/CHN/1 comprehensive, i.e., does it contain all the items for which China currently maintains import licensing requirements? Can we assume if the items are not designated as subject to automatic licensing, they are subject to non-automatic licensing?*

Answer: With regard to questions relating to China's notifications raised by the US, the list contained in document G/LIC/N/1/CHN/1 is comprehensive, covering all items for which China currently maintains import licensing requirements. China permits import of all goods, except those items for which the importation is limited or prohibited by laws or regulations. Some of the imported goods are subject to automatic licensing administration for statistical purposes. China had already provided the updated information in 2003.

*Question 2: In our review of these documents, we note that there is no information on the eligibility of persons, firms and institutions to make such applications; the administrative body(ies) to be approached; and the required time to obtain a licence after the submission of an application. In addition, there is no information on fees. Please provide this information, and amend the notifications to provide this information.*

Answer: All the information is included in the submissions. And no administrative fees will be charged.

*Question 3: Has the list of all entities responsible for the authorization or approval of imports been updated and republished in the official journal, the MOFCOM Gazette since the last meeting? Paragraph 132 of China's Working Party Report requires publication within one month of any change.*

Answer: The list of entities responsible for the authorization or approval of imports can be found in MOFCOM Gazette.

*Question 4: Please report on any preferential criteria employed in awarding import licences, e.g., for state-controlled importers vs. non-state-controlled importers.*

*Question 5: Please list any current export performance requirements associated with the issuance of an import licence.*

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<sup>1</sup> See G/LIC/Q/CHN/8.

Answer: As for awarding import licences, no preferential criteria are used and no export performance requirements are associated with the issuance of an import licence.

*Question 6: 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?*

Answer: China has clearly provided that a licence should not be bought, sold or transferred. Any buying, selling and transferring of import licences between non-affiliated entities are prohibited by laws and regulations of China and corresponding punishment measures are stipulated. China also verifies the utilization of the issued import licences through the electronic network of Customs as well as by other means.

*Other notification requirements of the Agreement: Article 5 of the Agreement (New Import Licensing Procedures or Changes) stipulates that Members must notify new or amended import licensing procedures.*

*Question 1: In light of China's extensive and changing import licensing system, please explain what procedures China is implementing to ensure that the Committee is notified of Article 5 changes.*

*Question 2: Has China issued any new laws, regulations, orders, decrees or other measures (including at the sub-national level) since submission of the initial notifications last year? Please describe changes in procedures that have taken place since that time. Have any of these measures been taken to comply with the Agreement or the commitments in China's accession agreement?*

Answer: Since China's accession to the WTO, the Chinese Government has adopted a series of measures to implement the provisions contained in its Protocol, Working Party Report and the Agreement on Import Licensing Procedures, thereby fulfilling its obligations in real earnest. For instance, in accordance with Article 7.3 and Article 8.2(b) of the Agreement on Import Licensing Procedures, based on the initial notifications submitted in 2002 and taking into account the newly revised import policies and measures plus other related changes, China has submitted to the Committee replies to the Questionnaire on Import Licensing Procedures and relevant laws, regulations as well as the changes thereto. These notifications contain all the information concerning import licensing procedures as of 2003, including the full text of 11 newly revised regulations and the implementation of China's commitments. In addition, China has also notified the WTO of the six lists of products subject to import licensing administration in four categories. Please refer to the aforementioned notifications for detailed information.

In addition, in order to implement the WTO Agreement and China's accession commitments, the Chinese Government has set up the China WTO Notification and Inquiry Centre. It assumes the exclusive responsibility of making WTO-related notifications while accepting and replying to the questions and inquiries submitted by WTO Members, enterprises both at home and abroad as well as individuals.

*Question 3: Import Licensing Procedures for Telecommunications Products: We have received reports to obtain an import licence for some telecommunications products, MOFCOM requires the procurement of said products be made through an open international bidding, but China has not notified this requirement and we are not aware of any public announcement. Article 3.3 of the Agreement on Import Licensing Procedures, Non-Automatic Import Licensing, stipulates that Members shall publish sufficient information for other Members to know the basis for granting licences. Please explain the procedures for granting an import licence for telecommunications products, and indicate where this information is available in China and to WTO Members.*

Answer: Concerning import licensing procedures for telecommunication products, in accordance with the *Tendering and Bidding Law of the People's Republic of China*, projects such as large-scale infrastructure facilities and public utilities as well as those bearing on social interests and public security or involving state financing must go through tendering process. Since the majority of telecommunication products fall into the above categories, importers are required to go through international open tendering process stipulated.

Telecommunication products are subject to automatic import licensing requirements. After international tendering, the importers shall go through the import procedures in accordance with the *Regulations on Automatic Import Administration of Machinery and Electronic Products*. China has notified the WTO of its automatic import licensing regime as well as laws and regulations concerned.

## **II. QUESTIONS AND COMMENTS RELATED TO IMPORT LICENCES ISSUED FOR ADMINISTRATION OF TARIFF-RATE QUOTAS**

*On 31 July 2003, China published draft revisions to the Interim Rules on Agricultural Tariff-Rate Quota Administration for comment. The United States commends China on several improvements in the draft Rules from the prior measures. For example, the United States is pleased to see that the draft Rules eliminate the separate tariff-rate quota (TRQ) for processing trade, i.e., imports of goods that must be processed and re-exported. However, the United States does have some concerns and questions regarding the draft Rules. The United States submitted those concerns and questions to China soon after the draft Rules were published for comment, and we look forward to receiving China's responses. The United States subsequently highlighted three of its areas of concern before the Committee on Agriculture, which conducted its review of China WTO implementation matters on 25 September 2003. First, the United States referenced its concern that the draft Rules still provide for restrictions relating to processing trade and, in particular, application of out-of-quota tariff rates and other penalties when a processing trade enterprise sells agricultural goods imported pursuant to a TRQ allocation in the domestic market without approval. Imported agricultural goods should be eligible for sale in the domestic market without any restriction as to end-use. Second, the United States expressed its continuing concern about lack of transparency in TRQ administration, including the lack of information regarding TRQ holders. The United States pointed out that, in its Goods Schedule (TRQ Head note, Part I, Section I-B of Schedule CLII - People's Republic of China), China committed to provide information on entities that received TRQ allocations. The United States therefore asked for various information on TRQ holders for 2002 and 2003 (year-to-date). Third, the United States asked China to describe the steps it was taking to ensure that TRQs are allocated in commercially viable shipping quantities.*

Answer: Concerning TRQ administration, according to China's policies on processing trade, imports under processing trade are bonded. These bonded materials, components and products thereof are not permitted to be sold domestically. If an enterprise wants to sell imported materials, components or products thereof domestically, it should go through the general trade process and pay import tariffs. If an enterprise engaged in the processing trade wants to sell imported bonded materials, components or products thereof domestically, it should get permission.

With regard to the issue of transparency in TRQ administration, China has been handling the inquiries in accordance with the commitment since its WTO accession.

With regard to the issue of commercial viability of TRQ allocation, China has increased the average amount of quota allocated to each individual quota-holder since the beginning of 2004. The newly increased quota amount for 2004 has been mainly allocated to users with the smallest amount of quotas in 2003.

As to the three concerns raised by the US, China had already provided a reply during the TRM meeting on 25 September 2003 before the Committee on Agriculture.

***The United States has the following additional questions for China regarding its TRQ administration:***

*Question 1:* China's regulations state that "[t]he minimum quota amount will be limited to appropriate commercial shipping volumes ...." However, in 2002, some of the volumes allocated under the corn import TRQ were as small as 6 mt, with many other allocations well below what would normally be considered "appropriate commercial shipping volumes." When requesting information for 2003, US exporters were informed only that there were 214 enterprises that obtained allocations for the "private share" corn TRQ, with 56 enterprises obtaining certificates for volumes of 10 tmt or more. Without knowing the volumes for the 158 recipients of less than 10 tmt, it is not possible to ascertain whether or not each of them is in a position to import a commercially viable quantity. It is also difficult to assess whether any allocations were made to provinces that are poorly situated to receive any corn from the world market, which would make filling a quota that much more difficult.

*(a) Please explain how China intends to remedy this situation. Would China publicly release information on corn TRQ certificate holders, and the volume each one holds?*

*(b) Would China provide the same information for other TRQ goods?*

Answer: Concerning additional questions on TRQ from the United States, enterprises receiving TRQ take the amount of quota granted to these enterprises as business secret. The information and the allocated amount of those enterprises who have given their consent will be provided in accordance with the requests of the inquirers.

*Question 2:* Please confirm that all 2004 TRQ quantities will be announced and allocated by 1 January 2004, that the application period for those allocations will be from 15-30 October 2003, and that specific conditions have been published in the official journal one month in advance of the application period, in accordance with the TRQ head note in China's Goods Schedule. If not, please indicate when these actions will be taken.

Answer: China confirmed that its TRQ administration agencies would allocate TRQs in strict compliance with its relevant WTO commitments. Applications by enterprises had been processed from 15 to 30 October 2003. Such information as the total quota amount and criteria for application would be published in the official journals one month before the application period. The TRQs had been allocated to end-users by 1 January 2004.

*Question 3:* In its Protocol of Accession, China agreed that all commercial terms for TRQ imports would be at the sole determination of the importer and the exporter. Chinese authorities have reportedly informed cotton buyers that they will not allocate TRQ unless the underlying contract contains a clause specifying that any dispute will be arbitrated before the China International Economic and Trade Arbitration Commission (CIETAC) and that Chinese law be chosen as the governing law for any such dispute. Please confirm that all commercial terms regarding such imports, including with respect to choice of law and choice of arbitration forum, are at the sole discretion of the parties to the contract. If not, please explain how these requirements conform to the terms of China's Protocol of Accession.

Answer: The TRQ administration agencies in China adopt a consistent approach in TRQ allocation for all agricultural products (including cotton). In TRQ allocation, the relevant enterprises are not required to submit import contracts.

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