

Committee on Import Licensing
24 September 2002

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**STATEMENT MADE BY THE UNITED STATES
UNDER AGENDA ITEM C¹**

The following statement, made by the representative of the United States at the meeting of the Committee on Import Licensing on 24 September 2002, is being circulated at the request of the Permanent Mission of the United States.

Transitional Review under Section 18 of the Protocol of Accession of China
Statement and additional questions for China

1. We thank 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 circulated late last week. They have been forwarded to Washington for review. We will submit to China as soon as possible any additional questions or requests for clarification that we might have based on those notifications and other information, and we ask that China provide written responses to these questions in time for them to be included in the report. These questions and China's responses should be considered an integral part of this committee's review of China's implementation.
2. We are disappointed that China did not provide written responses in advance of this meeting to the questions submitted by the United States and other Members. The information requested in those questions is precisely the type of information relevant to China's implementation of the WTO Agreement and China's Protocol that is required by the Transitional Review Mechanism (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. We ask that China provide written responses to the questions that we already submitted, in time for the responses to be included in the report.
3. Can China agree to this (i.e. to provide written responses in time to be included in the report)?
4. While we welcome the additional information provided by China last week, we received it only three working days prior to the review. If information is to be considered part of the review, Members must at least have the opportunity to read and review it. China's failure to provide information on time does not mean that the obligation has disappeared.

¹ Transitional Review under Section 18 of the Protocol of Accession of the People's Republic of China (WT/L/432).

5. As this is a multilateral review of China's implementation of the Import Licensing Procedures Agreement and not a bilateral review, we respectfully note that China's responses must be made to the Committee as a whole.

6. While we will always welcome the opportunity to discuss these important issues bilaterally, it is our 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. We believe that other Members may have an interest in knowing China's responses to the question posed by this delegation; we certainly have an interest in knowing China's responses to the questions posed by other Members.

Administration of Agricultural Tariff rate quotas (TRQs)

7. We thank China for meeting with us 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 allowed us to exchange views on some of the more difficult issues surrounding TRQ administration that have arisen since the TRQs were allocated in April of this year.

8. The United States recognizes the difficulties that Members can 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.

9. While China has succeeded in making enormous, and generally useful, changes to its TRQ administration system in a relatively short period of time, a few important wrinkles remain to be ironed out in order for the system to function as smoothly as envisioned in China's WTO accession agreement.

10. We seek to assist China in identifying those wrinkles so that the regulations and actual practice are consistent with China's market access obligations for commodities under TRQs. To that end, we respectfully request that the Chinese delegation respond in writing to the whole Committee to each of the questions raised in our August 2002 submission.

11. We would also like to take this opportunity to make some observations and pose additional questions based on our bilateral consultations.

Licensing

12. Paragraph 138 of the Report of the Working Party² states that China will not require a separate import licence approval for goods subject to a TRQ allocation requirement, but will provide any necessary import licence in the procedure that granted a quota allocation. Yet China requires that end-users apply to the State Development and Planning Commission (SDPC) two times for a single allocation - once for the initial allocation and a second time for SDPC's approval to use that allocation once the importer has a signed contract.

13. Quota-holders are then required to apply for and obtain, at both the local and national level, an additional import licence from the State General Administration for Quality Supervision and Inspection and Quarantine (AQSIQ) before the product can be imported. There appears to be no legitimate quarantine objectives for these additional licensing requirements that could not easily be achieved through other less burdensome means.

² WT/ACC/CHN/49.

14. For entities that wish to import under TRQs reserved for processing, there is yet another licence required. End-users are required to obtain a separate processing trade business licence in order to obtain a TRQ allocation.

15. These separate and multiple licensing requirements and the additional time and effort that it takes importers to fulfill them are an undue burden on trade and appear to be in conflict with China's commitments for TRQ commodities.

16. It is 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 requires China to "establish a tariff-quota system that is open, transparent, fair, responsive to market conditions, timely, minimally burdensome to trade, and reflects end-user preferences." However, China requires quota-holders to provide detailed, time-sensitive commercial information, such as price and origin, prior to obtaining an import licence, and it restricts the commercial terms that can be changed thereafter.

17. This requirement unduly restricts an end-user's ability to adjust to market conditions and operate based on commercial considerations. We call China's attention to its commitment in the TRQ headnotes stipulating that all commercial terms of trade will be at the sole determination of the importer and exporter taking into full account the demands of the end-user.

- Please explain why it is necessary for an end-user to have a signed contract before it can apply for an Agricultural Product Tariff Quota Certificate? What purpose does this additional step serve?
- Please explain the steps China will take to eliminate the additional licensing requirements for TRQ commodities or how it will bring these requirements into accordance with its WTO commitments.

18. China prohibits the sale of products imported under "processing" TRQ from being sold on the domestic market. End-users who do sell these commodities or their products onto the domestic market are 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 prohibits such restrictions.

- Can China please explain how this restriction is consistent with its obligations under the Agreement on Import Licensing Procedures, or explain what steps it will take to remove this restriction?

AQSIQ licensing requirements

19. The import licensing regulation implemented by AQSIQ pursuant to AQSIQ Ordinance 7 (effective 20 March 2002) does not appear to serve a legitimate SPS concern and does not appear to be consistent with the terms of the Agreement on Import Licensing Procedures on automatic licensing. Instead, it is unduly burdensome, non-automatic licensing requirement that appears to be an additional quantitative restriction. The AQSIQ licence does not replace inspection at port, but is a separate licence that must be obtained in advance of importation. It applies only to imported goods.

20. The AQSIQ licensing process requires multiple approvals at several different levels of government. Applications at each level of government can take up to 30 days and those applications that are finally approved take 30 days after issuance to become effective.

21. In addition, these licences are only valid for 90 days from the date of issue. The short period of validity for these licences places unjustified constraints on importers and exporters. In practice, the period of validity is much shorter, according to reports from our industry.

22. 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 is unrealistic, burdensome to trade, and interferes with a quota-holder's right to determine the commercial terms of trade.

23. If it is necessary to give quarantine officials advance notice of shipments, there are less trade-restrictive ways to gather this information that are consistent with China's WTO obligations.

- Can China explain what objective it is trying to achieve with this additional AQSIQ licensing requirement and how this requirement is in accordance with China's commitments?
- Could China please describe the steps it will take to eliminate or bring its licensing requirements into accordance with China's obligations?

Administration of auto quotas

24. 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 (MOFTEC) is responsible for examining and supervising the status of allocation of import licences.

- Please 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.

25. We agree with the comment of our Japanese colleague. Paragraph 129 of the Working Party Report provides that import licences could be extended once, upon request, for up to three months, if the request is made before 15 December.

- We would appreciate it if China would ensure that for 2002, the effective period for all quotas and related import licences be extended by period for which the quota allocation was delayed.

26. China has only very recently given to the Committee its list of licensing requirements that remain 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 give 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.

27. We commend 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 state 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 has been done too late to permit review.

28. Furthermore, in accordance with Section 8.1(a) of China's Protocol of Accession, China is 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 have appeared on the MOFTEC website, it is not clear if MOFTEC's "Import Licensing Affairs Bureau" is the only agency responsible for the authorization or approval of imports. China should notify this list to the Committee.

29. Lastly, paragraph 334 of the Report of the Working Party on the Accession of China requires 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 we received a number of China's regulations to review last week, China clearly failed to fully comply with this aspect of its accession commitments.

- The United States requests China confirm that products listed in Annex 3 of China's Protocol of Accession that are subject to import quotas (e.g., fertilizer, agriculture and autos) receive 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.
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