

CHINA'S TRANSITIONAL REVIEW MECHANISM

Communication from the European Communities

The following communication, dated 5 August 2002, has been received from the Permanent Delegation of the European Commission.

We would like to indicate that the points raised in this note are based on information obtained indirectly. We deeply regret that the information to be provided by China according to section 8 and paragraph IV.2(d) of Annex 1A of its Protocol of Accession¹ has not yet been received.

We are, therefore, transmitting comments and questions well in advance of the meeting of the Committee on Market Access Committee of 23 September 2002, in order for the Chinese authorities to reply and to complete any information that may be incomplete.

Our comments and questions fall into two broad categories: transparency and transposition into domestic legislation.

1. Transparency

Under this heading we would like to refer to the issue of quota and tariff quota allocation.

We must unfortunately decry the lack of transparency concerning the management of quotas and tariff quotas. The Chinese authorities have failed to indicate the actual allocation, the criteria followed, the beneficiaries, as well as other aspects that concern both allocation and re-allocation of quotas. We would appreciate detailed information on legislation concerning these aspects and clarifications regarding the following more detailed points.

Despite one positive instance regarding tariff quotas for fertilisers, we regret to say that the management of quotas for industrial goods in general is not transparent.

Such marked lack of transparency fosters uncertainty and creates additional costs to Chinese consumers, especially when the rights accruing under TRQs are not directly exploited by the commercial enterprises that are to carry them out.

In this context, we welcome the assurances given by the State Economic and Trade Commission (SETC) that it intends to publish the circulars concerning quota allocation for 2003 by mid October 2002, in order to avoid the delays experienced in 2002. We wonder however what the Chinese authorities intend doing about the rest of problems on quotas and TRQs.

As regards specific information, we would be grateful if the Chinese authorities could notify:

¹ WT/L/432.

- the quota requirements remaining in effect after China's accession (see section 8.1(b) of the Protocol of Accession);
- applied tariffs;
- trade data;
- quantitative restrictions;
- information on administration of TRQs in 2002 (see paragraphs IV.1(a) and IV.2(c) of Annex 1A);
- information about conditions imposed on distribution licences, quotas, TRQs or other means of approval for importation (see paragraph IV.2(d) of Annex 1A);
- information on introduction or application of NTMs other than those listed in Annex 3 (see paragraph IV.2(a) of Annex 1A); and
- information on phased elimination of Annex 3 NTMs (see paragraph IV.2(b) of Annex 1A).

2. Transposition into Domestic Legislation

The EC recognises and appreciates the work done by the Chinese authorities in enacting the tariff commitments contained in their Schedule. Unfortunately the lack of an electronic version of the Chinese applied tariff rates has prevented the EC from carrying out any systematic checks. We are confident, though, that the Chinese authorities will provide the electronic version by the end of this year. We note that the Chinese authorities sometimes opt for the application of specific duties, even if their Schedule contains bound *ad valorem* rates. Such action, although legitimate and compatible with the WTO Schedule obligations, should be undertaken only if and when due care is taken not to exceed the bound duty rates. This has not been the case in some specific instances. Could the Chinese authorities provide a listing of the specific duties currently applied distinguishing between mixed, compound and sliding scale?

Under this heading, we would like to raise a point on export duties. The Protocol of Accession notes in section 11, paragraph 3 the commitment by the Chinese authorities to eliminate all taxes and charges applied to exports, unless they are either in conformity with GATT Article VIII or listed in Annex 6 of the Protocol (84 products).

On 20 December 2001, the Ministry of Foreign Trade and Economic Co-operation (MOFTEC) and Customs General Administration published the announcement No. 2001/17, which contains a list of commodities under administration of export licence for 2002. Among them there are some commodities and products not listed in Annex 6. So far the EC has been unable to understand the reasons for the levying of export duties in the case of products not listed in Annex 6. In the absence of any clear explanation from the Chinese authorities, the charges shall be deemed to be not in line with the WTO commitments of China. We would appreciate receiving from the Chinese authorities detailed explanations and indication of relative legislation on the products for which export duties are currently being levied.

We note that the Chinese authorities have issued a set of "Implementation Rules on the Quota Administration of Import of Machinery and Electrical Products". We would appreciate receiving details on the legal instruments implementing such framework legislation.

In particular, we would be grateful for specific details on the time needed to issue a licence following the filing of an application, and whether the said Regulation contains a deadline for the issuance of the licence. We would also like to receive details on the procedures and rights relating to licence extensions.

We would like to understand why the Regulation refers to allocation procedures at local level, ahead of MOFTEC. We would like to recall that the allocation requests are to be submitted to one agency at one administrative level only, so as to make the allocation and issuance of import licences simple and transparent. Please offer us detailed explanations on this point indicating the legislative provisions enacted.

Paragraph 130 of the Report of the Working Party² specifies the procedure to be followed for the allocation of quotas to newcomers. The above-mentioned Regulation refers to a "proportion" of the yearly quota as allocation to newly added applicants, at the same time as it sets out the principle of "priority to applicants with strong productions, sales and service abilities". We would be grateful if the Chinese authorities could indicate in great detail the procedures they intend to follow for the treatment of newcomers in the allocation of TRQs.

The Regulation contains the word "deduction"; is this equivalent to a "proportionate reduction" in the year following the lack of quota fill by an applicant? Could the Chinese authorities give clarification and indicate the legislative provisions taken in order to cope with instances of quota re-allocation?

Based on Article 5 of this Regulation MOFTEC is committed to publishing the quota for the subsequent year. For the sake of transparency, the quota allocation of the previous year should also be published with clear data on the number of applications requested, as well as the number of those rejected and reasons therefor.

Furthermore, we would like to receive a detailed explanation of the procedures enacted to implement the commitments contained in the Information Technology Agreement, where – contrary to ITA provisions – the Chinese authorities seem to be requiring end-use certificates.

Finally, we would like to mention that the implementation of tariff reduction commitments appears to be generally satisfactory. Some specific problems, e.g. border trade and the imposition of preferential duties to some trade partners, seem to be on their way to a solution.

² WT/ACC/CHN/49.