

CHINA'S TRANSITIONAL REVIEW MECHANISM

Questions from the UNITED STATES to CHINA concerning Market Access

The following communication, dated 28 August 2003, has been received from the Permanent Mission of the United States.

Tariff-Rate Quotas on Fertilizers

The United States recognizes the difficulties that Members sometimes can encounter in the first year of administering tariff-rate quotas (TRQs). We want to work with China's officials to ensure that the issues that we have identified in the questions below are dealt with quickly and that the administration of China's TRQs becomes fully consistent with China's WTO obligations.

1. In its Goods Schedule, China committed to allocate specified portions of the fertilizer TRQ for importation through entities other than state trading enterprises. Please provide information on the total quantity of each fertilizer TRQ (i.e., diammonium phosphate (DAP), urea and NPK) that was allocated for importation through state trading enterprises, and the total quantity of each fertilizer TRQ allocated for importation through entities other than state trading enterprises.
2. In the TRQ headnotes on fertilizer and wool tops (found in Part III, Section A, of China's Goods Schedule) and in a side letter from Ministry of Foreign Trade and Economic Cooperation (MOFTEC) Vice Minister Long Yongtu to Working Party Chairman Pierre-Louis Girard dated 17 September 2001, China committed to the allocation of 2002 TRQs for fertilizer by 31 December 2001, with the TRQs being valid as of 1 January 2002. However, the State Economic and Trade Commission did not begin to allocate 2002 TRQ for fertilizer until approximately four months later. Please explain what steps China is taking to ensure that 2003 TRQs for fertilizer and wool tops are allocated fully to end-users by 1 January 2003.
3. In its accession agreement, China agreed that TRQ allocation would be based on end-user demand and consumer preferences. (See Working Party Report, para. 116.) However, the *Interim Measures on the Administration of Import Tariff Quota On Fertilizers* (issued by the State Economic and Trade Commission on January 15, 2002) provide that TRQ allocation will be "based on the production needs and market demand of different regions" (Article 12) and "based on the needs to maintain comprehensive balance of national economy and rational allocation of resources" (Article 6(1)).

- a. Please confirm that, notwithstanding Articles 6(1) and 12, China will allocate the entire TRQ quantities provided for in China's Schedule of Concessions and Commitments based solely on end-user demand and consumer preferences, to ensure complete TRQ utilization.
 - b. Please confirm that an otherwise qualified applicant will not be denied TRQ allocation on the ground that the applicant only needs the product later in the year or desires to import the product through a particular port.
4. China committed in its Working Party Report (at paragraph 120) that any enterprise possessing the right to trade (other than state trading enterprises) will be permitted to import product reserved for importation by non-state trading enterprises. Article 20 of the *Interim Measures on the Administration of Import Tariff Quota On Fertilizers*, requiring enterprises to apply for and meet unspecified qualifications to be a non-state trading enterprise, appears to conflict with paragraph 120 of the Working Party Report.
 - a. Please justify Article 20 in light of China's Working Party Report commitment. If you cannot do so, please provide information regarding your plans for amending Article 20.
 - b. How will China ensure that, prior to any amendment of Article 20, any enterprise (including the quota holder) that has a right to trade in any product may import TRQ products reserved for importation through entities other than state trading enterprises?
 - c. Please indicate how quota holders without trading rights may identify potential importers, where the TRQ is reserved for importation through entities other than state trading enterprises?
5. Paragraph 120 of China's Working Party Report provides that any enterprise with the right to import any product will be able to import at the out-of-quota tariff rate. Article 24 of the *Interim Measures on the Administration of Import Tariff Quota On Fertilizers*, however, limits this ability to enterprises with the right to import fertilizers. Please provide information on China's plans for revising Article 24 to make it consistent with the Working Party Report.
6. Any end-user of fertilizer products should be able to apply for TRQ allocation. However, Articles 20 and 21 of the *Interim Measures on the Administration of Import Tariff Quota On Fertilizers* seem to suggest that only enterprises with trading rights may apply for quota allocations. Please confirm that any end-user is able to apply for fertilizer TRQ, whether that TRQ is reserved for importation through state trading enterprises or non-state trading enterprises.
7. Article 9 of the *Interim Measures on the Administration of Import Tariff Quota On Fertilizers* should provide that the deadline for publication of the in-quota amount each year is September 15, not between September 15 and October 14, in accordance with paragraph 3 of the headnotes for fertilizer and wool tops TRQ .
 - a. Please provide information regarding China's plans for revising Article 9 to make it consistent with the headnotes on fertilizer and wool tops TRQ.
 - b. The same change needs to be made to Article 27 of the *Regulation on the Administration of the Import and Export of Goods* (issued by the State Council on December 10, 2001). What are China's plans for amending Article 27 to make it consistent with the headnotes on fertilizer and wool tops TRQ?

8. China committed, in Paragraph 6B of the headnotes on fertilizer and wool tops TRQ, that: applications for reallocation of uncontracted-for TRQ shall be accepted from 1-15 September, that specific conditions for applying for reallocated TRQ 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.
 - a. Article 17 of the *Interim Measures on the Administration of Import Tariff Quota On Fertilizers* provides that reallocation will occur by 15 October. Please indicate when China will revise Article 17 to make it consistent with the fertilizer TRQ headnotes.
 - b. Please describe in detail how China is implementing its commitments regarding reallocation of 2002 TRQ.

Industrial Quotas

As with TRQs, the United States recognizes the difficulties that Members sometimes can encounter in the first year of administering quotas and would like to work with relevant Chinese officials to ensure that the issues identified below are dealt with quickly and that the administration of China's quotas becomes fully consistent with China's WTO obligations.

9. There is inadequate information on how China has allocated 2002 quota for autos and other products listed in Table Two of Annex Three to the Protocol of Accession. In addition, there have been complaints that applicants for auto quota have received only a small portion of the quantity applied for. For each of the products listed in Table Two of Annex Three to the Protocol of Accession, please provide the following information for 2002 quota:
 - a. Total quantity of quota applied for;
 - b. The number of requests for quota denied;
 - c. Total quantity of quota allocated to end-users;
 - d. Fill rates for the quota;
 - e. Total quantity of quota allocated to entities that had not previously been allocated quota.
10. In paragraphs 126-30 of its Working Party Report and in a side letter from Ministry of Foreign Trade and Economic Cooperation (MOFTEC) Vice Minister Long Yongtu to Working Party Chairman Pierre-Louis Girard dated 17 September 2001, China committed to the allocation of 2002 industrial quotas by 31 December 2001, with the quotas being valid as of 1 January 2002. However, allocation of 2002 quota for at least some products was delayed significantly this year. Please explain what steps China is taking to ensure that 2003 quota is allocated fully to end-users no later than 1 November 2002, in accordance with paragraph 129 of the Working Party Report. Please also confirm that no portion of the 2003 quota will be withheld for later allocation (i.e., after the allocation deadline of 1 November 2002).
11. China committed to publish all measures affecting trade in goods, services, TRIPS or the control of foreign exchange and provide a reasonable period for comment before those measures are implemented. (See China's Protocol of Accession, Part I, Section 2(C)2.) China apparently did not provide this comment period for the *Implementing Measures for Quota Management of Machinery and Electrical Product Imports* (MOFTEC Order 23,

issued December 20, 2001). Please provide information regarding China's plans for ensuring that, in the future, all of China's ministries will publish and provide a reasonable period for comment on all trade-related measures prior to implementation, except for those measures involving national security, specific measures setting foreign exchange rates or monetary policy and other measures the publication of which would impede law enforcement.

12. In its Working Party Report, China agreed to very detailed procedures for how quota should be allocated, which were of keen interest to the United States and other Members. However, Article 9 of the *Implementing Measures for Quota Management of Machinery and Electrical Product Imports* does not reflect these agreed-upon procedures. For example, paragraph 130(b) of the Working Party Report provides in detail what amount of quota should be allocated to applicants that had not previously been allocated quota, including allocation to foreign-invested enterprises.
 - a. Please explain China's plans to revise the *Implementing Measures* to fully reflect the provisions of the Working Party Report.
 - b. How is China ensuring that quota is allocated in accordance with these provisions of the Working Party Report, including paragraph 130?
13. The *Implementing Measures for Quota Management of Machinery and Electrical Product Imports* state several principles according to which import quota should be allocated, one of which (found in Article 9(1)) is: "guarantee the need of scientific research, education, culture, sanitation and other social good causes." While the United States respects China's interest in pursuing educational and other social objectives, Article 9(1) goes beyond the criteria for quota allocation that China agreed to in the Working Party Report.
 - a. Please explain how Article 9(1) of the *Implementing Measures* is applied.
 - b. Please justify this provision in light of paragraph 130 of the Working Party Report.
14. China committed that "any entity that will possess the right to trade in the quota year . . . could apply for a quota allocation and license to import such products". (See China's Working Party Report, para. 128.) Nonetheless, Article 6 of the *Implementing Measures for Quota Management of Machinery and Electrical Product Imports* (in clauses 3, 4 and 5) impose additional restrictions on who may apply for quota allocation. In the view of the United States, these clauses should be deleted to make Article 6 consistent with China's commitment in paragraph 128 of the Working Party Report.
 - a. Please justify Article 6 in light of China's Working Party Report commitment. If you cannot do so, please provide information regarding your plans for amending Article 6.
 - b. Please define the term "management right" (or "economic right") in Article 6(2), which requires that applicants "have the management right of the quota product for which they apply."
 - c. How has China ensured that the commitment in paragraph 128 has been fulfilled?
15. Article 10 of the *Implementing Measures for Quota Management of Machinery and Electrical Product Imports* requires quota applicants to submit an application to local administrative

authorities and departmental machinery and electrical product offices for verification before they can submit the application to MOFTEC. However, China specifically committed not to impose such multiple application requirements. (See China's Working Party Report, para. 129.) In the view of the United States, Article 10 should be revised to permit application to MOFTEC directly without a requirement for initial administrative applications or similar procedures. Please provide information regarding your plans for amending Article 10.

16. Article 13 of the *Implementing Measures for Quota Management of Machinery and Electrical Product Imports* prevents a quota holder from making changes to trade means, use of product, names of product, price, equipment conditions, etc. after an import license has been issued, and it also appears to give administrative authorities power to disapprove such changes after the quota has been allocated (but prior to issuance of an import license). Please explain these restrictions in light of paragraph 131 of the Working Party Report, which provides that "all commercial terms of trade, including product specifications, product mix, pricing, and packaging, would be at the sole discretion of the quota holder, so long as the products are within the relevant quota category."
17. Article 5 of the *Implementing Measures for Quota Management of Machinery and Electrical Product Imports* provides that MOFTEC will publish the relevant terms and procedures for quota allocation by July 31 of each year. However, China committed to publish them at least 21 days prior to the beginning of the quota application period, which commences August 1, or in other words by July 11. (See China's Working Party Report, para. 129.)
 - a. Please provide information regarding China's plans to revise Article 5 of the *Implementing Measures* by substituting July 11 for July 31.
 - b. Similarly, what are China's plans for revising Article 13 of the *Regulation on the Administration of the Import and Export of Goods* by substituting July 11 for July 31?
18. As agreed in paragraph 131 of the Working Party Report, entities must return quota by September 1 only if they have not at least *contracted for* import of that quota. However, Article 8(1) of the *Implementing Measures for Quota Management of Machinery and Electrical Product Imports* could be interpreted to require entities to return quota that has not been used, including quota that has been contracted for but not actually used.
 - a. How does China interpret Article 8(1)?
 - b. Similarly, how does China interpret the first sentence of Article 18 of the *Regulation on the Administration of the Import and Export of Goods*?

Value-Added Tax Applied to Certain Fertilizer Products

19. The *Circular about VAT Exemption Policy for Certain Farming Materials* (No. 113/2001), jointly issued by Ministry of Finance and the State Administration of Taxation on July 20, 2001, exempts all phosphate fertilizers except diammonium phosphate (DAP) from China's value-added tax (VAT). DAP, a product produced in the United States, competes with similar phosphate fertilizers produced in China, such as monoammonium phosphate (MAP). The *Circular* also exempts from the VAT all nitrogen fertilizers except urea, while allowing a partial VAT rebate for domestic producers of urea. These tax policies discourage use of foreign DAP and urea, for which China committed to permit access under TRQs.
 - a. Please explain the reasons for these tax policies.

- b. Please explain how the differences in the treatment of foreign versus domestic products under these tax policies are consistent with Article III of the General Agreement on Tariffs and Trade 1994 (GATT).

Consumption Tax Applied to Imported Goods

20. Under the *Provisional Regulations on Consumption Tax*, which have been in effect since 1993 and have not been amended since China acceded to the WTO, China uses a different tax base to compute consumption tax for imported products and domestic products. For domestic products, the tax base for domestic products is the sales amount (apparently the ex-factory price). (*Provisional Regulations*, Article 5.) This amount is multiplied by the consumption tax rate to derive the consumption tax due. In contrast, for imported products, Article 9 sets the tax base as the “composite assessable value,” which is defined as (dutiable value + customs duty), divided by $(1 - \text{consumption tax rate})$. The resulting amount is then multiplied by the consumption tax rate to derive the consumption tax due. Please explain how the differential tax treatment is consistent with GATT Article III, or if not, please describe China’s plans to modify the tax measure.

ITA End-Use Certificates

21. China committed that, upon accession, it would participate in the Information Technology Agreement (“ITA”) and would eliminate tariffs on all information technology products as set out in China’s schedule. (Working Party Report, paragraph 92.) However, China has not yet become a participant in the Committee on the Expansion of Trade in Information Technology Products, nor has it implemented its commitments in accordance with the ITA, because it is requiring importers to obtain “end-use” certificates from the Ministry of Information Industries (MII) on 15 ITA products to receive ITA reduced or duty-free treatment. The experience of all ITA participants is that ITA coverage is determined on the basis of classification under the ITA product descriptions, not through the use of “end-use” certificates. Indeed, during the ITA negotiations, the use of “end-use” certificates was considered and rejected, since they are generally unnecessary and very burdensome. When will China eliminate its “end-use” certification requirement?

2002 Tariff Rates

22. The United States notes that all WTO Members are required to provide annually to the WTO Integrated Data Base (IDB) applied tariffs and import statistics. Applied rates for the year are due no later than March 31, and import statistics for the previous year are due by September 30. Based on the latest information from the WTO, Secretariat, we understand China has not yet provided its applied rates to the IDB. When does China plan to do so?

We note China recently provided the United States an electronic version of China’s 2002 tariff schedule, but we have not had adequate time to conduct an accurate verification of China’s tariff commitments. As appropriate, we will notify China of any discrepancies, either bilaterally or through future meetings of the Market Access Committee.