



WTO Dispute Panel Report on China's Administration of Tariff Rate Quotas (TRQs) for Certain Agricultural Products

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A World Trade Organization (WTO) dispute panel circulated its report on April 18, 2019 concerning U.S. claims that China's administration of tariff rate quotas (TRQs) for corn, rice and wheat has been inconsistent with its legal obligations (WTO 2019). This article summarizes the dispute arguments and panel findings. A key conclusion of the panel is that China has failed to ensure that administration of its TRQs would not inhibit the filling of each TRQ, and the panel recommended that China be requested to bring its measures into conformity with its obligations. This is the second time in 2019 that the U.S. has successfully challenged China's agricultural support and trade measures at the WTO. An earlier panel report, adopted by the WTO on April 26, 2019, found that China's domestic support for wheat and rice had exceeded its WTO commitments during 2012-2015 (*farmdoc daily* [March 6, 2019](#)) and requires China to bring its domestic support into compliance.

Background

A TRQ is a two-tiered import tariff system. The first tier has a lower tariff rate that applies up to a specified quantity of in-quota imports. The second tier has a higher tariff rate that applies to imports that are in excess of the quota quantity. TRQs are designed to allow at least some market access for commodities where the second-tier tariff provides high protection. Forty countries have 1,128 agricultural WTO TRQs.

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In acceding to the WTO in 2001, China agreed to allow global access for imports of certain quantities of corn, rice, and wheat at a low 1% in-quota tariff. Maximum annual first-tier TRQ imports by China from all sources are 283 million bushels of corn, 117 million hundredweight of rice, and 354 million bushels of wheat. These maximums are approximately 3%, 4%, and 7% of China's recent production of corn, rice, and wheat, respectively. Out-of-quota imports above these limits face a tariff of 65%.

China's domestic prices of corn, rice and wheat have been well above world prices since 2013. High domestic prices create an incentive for in-quota TRQ imports to take advantage of lower world prices. However, China's imports of these crops have remained far below its TRQ in-quota levels, motivating the U.S. complaint (Gale 2017).

China's accession agreement includes two unique additional provisions concerning its TRQs. First, China's obligations regarding TRQ administration are more specific than the obligations of other WTO members. China committed to administering its TRQs "on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements that would provide effective import opportunities; that would reflect consumer preferences and end-user demand; and that would not inhibit the filling of each TRQ" (WTO 2001, paragraph 116).

Second, China is allowed to apportion the use of 60% of corn TRQs, 50% of rice TRQs, and 90% of wheat TRQs to state trading enterprises. The single state trading enterprise for grains is COFCO (China National Cereals, Oils and Foodstuffs Import and Export Corporation). Non-state trading enterprises include a diverse array of firms that can apply for TRQ allocations.

China's alleged noncompliance with its obligations on TRQ administration is the issue in the dispute. The panel did not require the U.S. to quantify numerically the effects of China's administration on under-filling of its TRQs and no numerical assessments are evaluated in the panel report. In making its evaluations, the panel considered the legal instruments and other documents by which China established and administered its TRQs and the administrative procedures and practices followed by its National Development and Reform Commission, examining in particular the legal instruments and practices as applied in 2017.

Dispute Arguments and Panel Decisions

For exporters to China's grain markets, the fill rates of the TRQs are the bottom line in terms of market access. Thus, we focus on the panel findings concerning two aspects of TRQ administration on which the U.S. prevailed in its claim that China failed to ensure that filling of each TRQ was not inhibited.

State Trading Enterprise and Non-State Trading Enterprise Portions of TRQs

The panel found first that China's legal instruments and other documents failed to explain how it allocated the COFCO and non-state trading enterprise portions of TRQs and did not provide the possibility of applying for one portion or the other. The uncertainty this created was found inconsistent with China's commitments to transparency, predictability and clearly specified administrative procedures. However, the panel did not conclude that this failure inhibited China from filling its TRQs.

The panel then considered China's administrative practice. Among its various findings the panel determined that allocating the entire state trading enterprise portion of the TRQs to COFCO and not requiring its unused allocations to be returned for reallocation "precludes non-STE [non-State Trading Enterprises] applicants from applying for and receiving COFCO's unused TRQ amounts during the reallocation process" (WTO 2019, paragraph 7.112). The panel thus concluded that China's administrative practice violated its obligation to administer TRQs for corn, rice and wheat in a manner that would not inhibit the filling of each TRQ.

Usage Requirements

China requires that corn and wheat imported under TRQs be processed and used at the importer's own production plant. The panel concurred with the U.S. that these usage requirements precluded firms from using TRQ imports in the most efficient and thus least cost manner for their commercial needs in all circumstances. It agreed that absent such requirements, firms would apply for larger TRQ allocations, and, thus, the usage requirements inhibited the filling of China's corn and wheat TRQs.

China usage requirement for rice is different. Sales of rice imported under the TRQ are required to be organized in the name of the importing enterprise. The panel rejected the U.S. argument that this usage requirement violated China's obligation to ensure that its TRQ administration would not inhibit filling of China's rice TRQ.

Other Violations

The U.S. asserted that other aspects of China's TRQ administration also violated one or more of its obligations. The panel ruled against the U.S. claim that China's failure to provide public notices of allocated, returned and reallocated TRQs violated China's obligations of transparency, predictability and ensuring that TRQ administration would not inhibit filling of each TRQ. The U.S. arguments on the remaining administrative aspects did not go to the point of claiming that they violated China's obligation to ensure the filling of each TRQ was not inhibited. However, China's violation of other independent but inter-related commitments contributed to the panel's overall conclusion that administration of the corn, rice and wheat TRQs was inconsistent "as a whole" with China's obligations.

A summary of the U.S. assertions and panel conclusions is presented in Table 1, showing that the panel concurred with the U.S. on most of its complaints. If neither the U.S. nor China appeals the panel report, the WTO will adopt it no later than June 18, 2019.

Area of U.S. Concern		Element of China's Obligations Considered by Panel					
		Transparent	Predictable	Fair	Clearly Specified		Not Inhibiting the Filling of Each TRQ
					Administrative Procedures	Requirements	
Basic Eligibility Criteria for Firms	Legal Instruments	X	X			X	
	Administrative Practices	X	X	X		X	
Allocation Principles	Legal Instruments	X	X		X		
	Administrative Practices	X	X	X			
Reallocation Procedures	Legal Instruments				X		
	Administrative Practices						
Public Comment Process	Legal Instruments	X	X		X		
	Administrative Practices			X			
State Trading Enterprise (STE) and Non-STE Portions of TRQs	Legal Instruments	X	X		X		
	Administrative Practices	X	X	X	X		X
Public Notice	Legal Instruments						
	Administrative Practices						
Usage Requirement for Corn and Wheat	Legal Instruments						X
	Administrative Practices		X		X		
Usage Requirement for Rice	Legal Instruments						
	Administrative Practices						

Notes: Shaded cells are U.S. claims that China is not meeting the obligation. X indicates the panel agreed with the U.S. claim on at least some grounds.

Context of the Dispute Outcome

As noted above, the panel did not require the U.S. to quantify the effects of China's TRQ administration on TRQ fill rates. However, China's imports of corn, rice and wheat during 2013-2017 demonstrate the

potential importance of the panel conclusions. During these recent years, China's high domestic prices created incentives for in-quota TRQ imports. As discussed in-depth by Grant, Xie and Boys (2019), based on firm-level data there appear to be substantial differences in the TRQ fill rates between the COFCO and non-state trading enterprise portions of the TRQs during these five years.

The average fill rate of the COFCO portion for corn was 21%, whereas the average non-state trading enterprise portion fill rate was 86%. For rice, the averages were 21%, and 70%, respectively. For wheat, the average fill rate of the COFCO portion was 29%, whereas the annual non-state trading enterprise portion fill rates were 90% or higher. The higher fill rates of non-state trading enterprise portions of the TRQs for corn, rice and wheat during these five years suggest imports could increase if China brings TRQ administration into compliance with its obligations.

Several other recent studies and projections are consistent with this conclusion. Chen, Villoria and Xia (2018) estimate that, if TRQ administrative obstacles were removed, the total fill rates in 2017 would have been 22 percentage points higher than observed for corn, 11 percentage point higher for rice, and 34 percentage points higher for wheat. Kimura and Gay (2019) find that China's corn and wheat imports would fill the TRQs in a scenario where China's support programs did not encourage production. Last, projections at China's 2019 Agricultural Outlook Conference also suggest imports will increase although remaining below the maximum in-quota TRQ levels.

Summary Observations

- China's WTO commitments include obligations for its TRQ administration that are more specific than the obligations of other WTO members. The dispute about China's TRQ administration concerns whether China has met these legal obligations.
- A key finding of the dispute panel is that China has failed to meet its obligation to ensure that TRQ administration would not inhibit the filling of the TRQs for corn, rice and wheat. This finding rests on two features of China's TRQ administration. One is allocating a given portion of the TRQs to COFCO and not requiring the unused part of that portion to be returned for reallocation. The second is requiring that corn and wheat be processed at an importer's own plant.
- Import data from 2013-2017 show that the non-state trading enterprise portions of TRQs had higher average fill rates than the COFCO portions. Economic analysis also suggest China may increase imports if TRQ administrative obstacles are removed. Thus, if the panel report is adopted, and China brings its TRQ administration into WTO compliance, market access opportunities are likely to increase.
- While the U.S. brought the successful case about China's administration of its TRQs for corn, rice and wheat, the TRQs are for imports from any country not just the U.S. It is thus not a given that the outcome of this WTO challenge means increases in China's imports from the U.S. Other exporters may benefit more.
- The panel ruling on China's TRQ administration will inform ongoing discussions in the WTO to review and seek improvements in the rules for TRQ administration of all members. Currently, TRQ administration generally falls only under the requirements that all laws, regulations, judicial decisions and administrative rulings of general application be administered "in a uniform, impartial and reasonable manner" (WTO 2019, paragraph 7.199).
- The U.S. and China are negotiating bilaterally for a broad agreement to de-escalate their trade conflicts. If an agreement is reached it may largely determine how much of an increase will occur in U.S. exports of grains and oilseeds to China.
- The WTO dispute findings on domestic support and TRQ administration have strengthened U.S. arguments for China to offer better market access for grains. They also set an avenue for U.S. recourse through the WTO if China fails to meet its obligations.

References

- Brink, L., D. Orden and C. Zulauf. 2019. [WTO Dispute Panel Report on China's Agricultural Support](#). *farmdoc daily* (9) 40, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, March 6.
- Chen B., N. Villoria and T. Xia. 2018. Import Protections in China's Grain Market: An Empirical Assessment. Presented at the Agricultural and Applied Economics Association (AAEA) annual meeting, July. <https://ageconsearch.umn.edu/record/274275?ln=en>
- Gale, F. 2017. U.S. Challenge of China's Tariff-Rate Quota (TRQ) Administration System for Grains. Presented at the International Agricultural Trade Research Consortium (IATRC) annual meeting, December. <https://ageconsearch.umn.edu/record/266826>
- Grant, J., C. Xie, and K. Boys. 2019. Firms, Agricultural Imports, and Tariff-Rate Quota Administration: New Evidence from China. International Agricultural Trade Research Consortium (IATRC) Commissioned Paper, forthcoming.
- Kimura, S. and H. Gay. 2019. Alternative Scenarios for China's Grain Policy. OECD Trade and Agriculture Directorate, Committee for Agriculture, TAD/CA/APM/WP(2018)3/FINAL. [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/CA/APM/WP\(2018\)3/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/CA/APM/WP(2018)3/FINAL&docLanguage=En)
- WTO. 2019. China – Tariff Rate Quotas for Certain Agricultural Products, Report of the Panel. WT/DS517/R, April 18. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds517_e.htm
- WTO. 2001. Report of the Working Party on the Accession of China. WT/ACC/CHN/49, October 1. https://www.wto.org/english/thewto_e/acc_e/a1_chine_e.htm