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CHINA – TARIFF RATE QUOTAS FOR CERTAIN AGRICULTURAL PRODUCTS

REQUEST FOR CONSULTATIONS BY THE UNITED STATES

The following communication, dated 15 December 2016, from the delegation of the United States to the delegation of China and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") with respect to China's administration of its tariff-rate quotas (TRQs), including those for wheat, short- and medium- grain rice, long grain rice, and corn.

China's Schedule CLII, Part I, Section I–B provides for TRQs to permit the importation of specified volumes of wheat, short- and medium- grain rice, long grain rice, and corn at lower in-quota duty rates. However, China appears to administer TRQs for wheat, short- and medium-grain rice, long grain rice, and corn inconsistently with its WTO obligations. In particular, China's administration of its TRQs appears to be inconsistent with its commitments specified in paragraph 1.2 of Part I of the *Protocol on the Accession of the People's Republic of China* (WT/L/432) ("Accession Protocol") which incorporates the commitments in paragraph 116 of the *Report of the Working Party on the Accession of China* (WT/MIN(01)/3) ("Working Party Report"), as well as with Articles X:3(a), XI:1, and XIII:3(b) of the GATT 1994.

The legal instruments through which China has established its TRQs for wheat, short- and medium- grain rice, long grain rice, and corn, include, but are not limited to, the following, operating separately or collectively:

- *Customs Law of the People's Republic of China* (adopted at the 19th Meeting of the Standing Committee of the Sixth National People's Congress on 22 January 1987, amended 28 December 2013, in Order No. 8)
- *Regulation of the People's Republic of China on the Administration of the Import and Export of Goods* (Order of the State Council No. 332, adopted at the 46th executive meeting of the State Council on 31 October 2001, effective 1 January 2002)
- *Regulation of the People's Republic of China on Import and Export Duties* (State Council, Order No. 392, adopted at the 26th executive meeting of the State Council on 29 October 2003, amended 6 February 2016, in Order No. 666)
- *Foreign Trade Law of the People's Republic of China* (adopted at the 8th Session of the Standing Committee of the Tenth National People's Congress on 6 April 2004, effective 1 July 2004)

as well as any amendments, or successor, replacement, or implementing measures.

The legal instruments through which China administers its TRQs for wheat, short- and medium- grain rice, long grain rice, and corn, include, but are not limited to, the following, operating separately or collectively:

- *Provisional Measures on the Administration of Import Tariff-Rate Quotas for Agricultural Products* (Ministry of Commerce and National Development and Reform Commission 2003 Order No. 4, issued 27 September 2003)
- *Application Criteria and Allocation Principles for Import Tariff-Rate Quotas for Grains in 2017* (National Development and Reform Commission 2016 Public Notice No. 23, issued 10 October 2016)
- *Announcement of Applicant Enterprise Data for Import Tariff-Rate Quotas for Grains in 2017* (National Development and Reform Commission, issued 1 December 2016)
- *Application Criteria and Allocation Principles for Import Tariff-Rate Quotas for Grains in 2016* (National Development and Reform Commission 2015 Public Notice No. 22, issued 29 September 2015)
- *Announcement of Applicant Enterprise Data for Import Tariff-Rate Quotas for Grains in 2016* (National Development and Reform Commission, issued 4 December 2015)
- *Public Notice on the Reallocation of Import Tariff-Rate Quotas for Agricultural Products in 2016* (National Development and Reform Commission and Ministry of Commerce 2016 Public Notice No. 19, issued 17 August 2016)
- *Communist Party of China Central Committee and State Council Several Opinions on Fulfilling the New Concept of Development to Accelerate Agricultural Modernization and Implementing Targets for Comprehensive Prosperity* (Communist Party of China Central Committee, State Council, Zhong Fa [2016] No.1, issued 31 December 2015)

as well as any amendments, or successor, replacement, or implementing measures.

China's administration of its TRQs for wheat, short- and medium- grain rice, long grain rice, and corn appears to be inconsistent with China's obligations pursuant to paragraph 1.2 of Part I of the Accession Protocol, which incorporates the commitments in paragraph 116 of the Working Party Report,¹ because:

- China has failed to ensure that it administers its TRQs on a transparent basis;
- China has failed to ensure that it administers its TRQs on a predictable basis;
- China has failed to ensure that it administers its TRQs on a fair basis;
- China has failed to ensure that it administers its TRQs using clearly specified administrative procedures and requirements; and
- China has failed to ensure that it administers its TRQs using administrative procedures and requirements that would not inhibit the filling of each TRQ.

China's administration of its TRQs for wheat, short- and medium- grain rice, long grain rice, and corn appears to be inconsistent with Article X:3(a) of the GATT 1994, because China has failed to administer its TRQs in a reasonable manner.

China's administration of its TRQs for wheat, short- and medium- grain rice, long grain rice, and corn appears to be inconsistent with Article XI:1 of the GATT 1994, because China institutes or maintains prohibitions or restrictions on its importation of each product other than duties, taxes, or other charges.

China's administration of its TRQs for wheat, short- and medium- grain rice, long grain rice, and corn appears to be inconsistent with Article XIII:3(b) of the GATT 1994, because China has failed to provide public notice of quantities permitted to be imported under each TRQ and changes to quantities permitted to be imported under each TRQ.

We look forward to receiving your reply to the present request and to scheduling a mutually convenient date for consultations.

¹ As specified in China's Accession Protocol, Part I, paragraph 1.2 (incorporating commitments referenced in paragraph 342 of China's Working Party Report, including paragraph 116).