WTO Dispute Panel Report on China's Administration of Grain Tariff-Rate Quotas

Bowen Chen (bwchen@ksu.edu). Graduate student. K-State Department of Agricultural Economics

April 2019

1. General background

In December 2016, the U.S. launched a dispute request against China at the World Trade Organization (WTO) over China's tariff quota administration for imports of maize, rice and wheat. Later in September 2017, the Dispute Settlement Body, which is a session of the General Council of the WTO that makes decisions on trade disputes, established a panel to investigate this dispute. After one year and a half, the panel issued the final report on April 18, 2019.[1] This final report will become the ruling or recommendation within 60 days, unless a consensus rejects findings of this report (a rare case in the history).

2. What is tariff rate quota and tariff quota administration?

Tariff rate quota is a policy instrument introduced to agriculture in the Uruguay Round Agreement on Agriculture in early 1990s. Specifically, **tariff rate quota** is a two-tiered trade tariff system, i.e., a first-tier tariff rate is applied to in-quota imports and a second-tier tariff is applied to out-of-quota imports. Currently, nearly 43 countries have a combined total of 1425 tariff quotas for various agricultural commodities, according to the WTO.[2] **Tariff quota administration** involves allocating the quotas among quota applicants, and the allocation process determines who has the quota and how many quotas can be used for importing at the in-quota tariff rate.

3. Key features of tariff rate quota policy in China

(1) China implemented tariff rate quota policy for importing wheat, corn and rice in 2001 when joining the WTO;

(2) The in-quota tariff rate is 1%, and the out-of-quota tariff rate is 65%;

[1] The link to the report is here: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds517_e.htm
[2] The source of information is here: https://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd07_access_e.htm

(3) Since 2004, the quota limits have been maintained at 9.6 million tonnes for wheat, 7.2 million tonnes for corn, and 5.3 million tonnes for rice. The rice quotas are equally divided between long grain rice and short & medium grain rice;

(4) The majority shares of quotas, i.e., 90% for wheat, 60% for maize and 50% for rice, are reserved to State-trading Enterprises;

(5) The National Development and Reform Commission (NDRC, a government agency) administers the allocation of grain quotas in China among State-trading Enterprises (STEs) and non-State-trading Enterprises (non-STEs).

(6) Unused quotas of non-STEs shall be returned to the NDRC and are then reallocated to quota applicants. It is a matter of legal debate that whether the STEs shall return the unused quotas.

4. What is disputed?

The U.S. claimed that China's administration of its TRQs for wheat, rice, and corn violates six obligations that China has committed. The obligations are to: (1) administer TRQs on a transparent basis; (2) administer TRQs on a predictable basis; (3) administer TRQs on a fair basis; (4) use clearly specified administrative procedures; (5) use clearly specified requirements; and (6) administer TRQs in a manner that would not inhibit the filling of each TRQ.

At the meantime, the U.S. challenged China in six different aspects of the TRQ policy and provided arguments to support its claims. The aspects are: (1) basic eligibility criteria; (2) allocation principles and the reallocation procedures; (3) public comment process; (4) administration of STE and non-STE portions of TRQs; (5) public notice; and (6) usage requirements. Table 1 at the end of the article summarizes key points of arguments between the U.S. and China in each aspect.

5. What is in the panel report?

The final report lists arguments of both the U.S. and China about the tariff quota administration. Besides, this report provides assessments of the panel on the related disputed issues. In general, the panel has focused on two points in the report. First, are the legal instruments concerning the TRQ administration issued by China consistent with its legal obligations? Second, has the NDRC practiced the tariff quota administration in a way that aligns with the legal instruments and the legal obligations (see section 4) of China?

6. What are the findings of the panel report?

The panel concluded in the report that China's administration of its grain TRQs are inconsistent with its legal obligations in all six aspects challenged by the U.S. *except in the public notice aspect*. In addition, the panel concluded that the way that China administers STE and non-STE portions and the usage requirements could inhibit the filling of TRQs. Finally, the panel recommends the Dispute Settlement Body to request China to bring its TRQ administration measures into conformity with its legal obligations.

7. To what extent has the tariff quote administration restricted China's imports?

The trade impacts of the tariff quota administration are not discussed in the panel report. Our paper with Dr. Tian Xia suggested that China might have restricted wheat imports greatly by using the tariff quota administration as a non-tariff barrier. For instance, our analysis shows that China might have imported wheat from the U.S. that worth 753 million dollars in 2017 in the absence of restrictive tariff quota administration, rather than 421 million dollars that was observed. The paper is only available upon request because it is still under peer review. An outdated version of our paper is yet available online.[3]

[3] The link to the article is: https://ageconsearch.umn.edu/record/274275?ln=en

Table 1: Key Points of Arguments of the U.S. and China Regarding the Tariff Quota Administration

Aspects	United States	China	WTO Panel
Basic eligibility criteria (i.e., applicants must meet certain application criteria to be eligible to receive TRQ allocations).	The terms used to describe the eligibility criteria in China's legal instruments are vague and cannot be easily understood.	The eligibility criteria are not applied in practice. Instead, eligibility is evaluated based on a government website (i.e., Credit China) that records enterprise information.	• The descriptions of *some* eligibility criteria are indeed vague. • China should have made quota applicants aware of its actual practice of eligibility evaluation.
Allocation principles and reallocation procedures (i.e., the TRQ to be allocated and reallocated to eligible applicants are determined by the NDRC with reference to certain principles).	• China does not clearly explain the allocation principles in its legal instruments; • Since the quota reallocation follows the allocation principles that are unclear, the quota reallocation principles are also unclear.	• It is not legally required to make applicants aware of quota allocation procedures. • The allocation principles are not applicable to quota reallocation, and quota reallocation follows the first-come, first-served principle.	• The quota allocation has not been conducted on a transparent, predictable, and fair basis in practice. • The reallocation procedures are not clearly specified in its legal instruments.
Public comment process (i.e., the public is invited to comment on the quota allocation once it is determined and announced online).	China does not clarify how the information received from the public is evaluated, treated, or can be rebuted.	• It is not legally required to spell out the whole public comment process in the legal instruments; • The public comment process is well informed in practice.	China's legal instruments do not specify whether the public's comments will be verified and whether applicants could be allowed rebut such comments.
STE and non-STE portions of TRQs (i.e., the quotas are divided into STE and non-STE portions).	• China uses single application process for allocating STE and non-STE portions of TRQs, which could cause uncertainty and thus reduce import demand. • Non-STE quota recipients of STE portions of quotas must initially contract with the STEs and seek approval from the NDRC to import.	• The arguments of the U.S. are false because the unused quotas of state-trading enterprise are not required to be returned. • China did not commit to require the STEs to return the unused quotas.	• Chinas legal instruments indicate that the STE portions of TRQs could be allocated to non-STE applicants. • The non-STE recipients are constrained in utilizing the STE portions of quotas. • The panel does not tell whether NDRC practice is consistent with Chinas commitment to the WTO or not.

to be continued in the next page...

Table 1 continued...

Public notice (i.e., to provide public notice of information about the quota allocation and reallocation)	China does not notify the public of the specifics about quota allocation outcome.	The arguments of the U.S. regarding the scope of public notice go too far.	The specifics about the allocation outcome is NOT necessary for applicants and other interested parties to easily understand or discern the underlying set of rules or principles through which the NDRC administers TRQs.
Usage requirements for wheat, rice, and corn imported under TRQ allocations, e.g., China requires the imported wheat and corn to be "processed and used" in the TRQ recipient's own plant.	The usage requirements raise uncertainty and therefore increases costs for a TRQ Certificate holder, leading quota applicants to request a smaller TRQ amount than it may otherwise wish to receive for commercial purposes.	The requirements alert applicants that they will be accountable for utilizing their allocations, thereby incentivizing efficient use of allocations and deterring unlawful sales of TRQ certificates.	The usage requirements restrain the filling of China's TRQs for wheat and corn, but not necessarily for rice.