

***CHINA – TARIFF RATE QUOTAS
FOR CERTAIN AGRICULTURAL PRODUCTS***

(DS517)

**FIRST WRITTEN SUBMISSION
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TABLE OF ACRONYMS AND SHORT FORMS

ACRONYM	FULL NAME
COFCO	China National Cereals, Oils and Foodstuffs Corporation
DSU	<i>Understanding on Rules and Procedures Governing the Settlement of Disputes</i>
GATT 1994	<i>General Agreement on Tariffs and Trade 1994</i>
MT	Metric tons
TRQ	Tariff Rate Quota
NDRC	National Development and Reform Commission
WTO	World Trade Organization

TABLE OF EXHIBITS

Exhibit No.	Description	Abbreviated Title
US-1	<i>Report on the Working Party on the Accession of China</i> WT/ACC/CHN/49 (October 1, 2001).	<i>Working Party Report</i>
US-2	<i>Protocol on the Accession of the People's Republic of China</i> WT/L/432 (November 23, 2001).	<i>Accession Protocol</i>
US-3	<i>Request for Consultations by the United States</i> , WT/DS517/1, circulated December 21, 2016.	<i>Consultations Request</i>
US-4	<i>Request for Establishment of a Panel by the United States</i> , WT/DS517/6, circulated August 21, 2017.	<i>Panel Request</i>
US-5	<i>Note by the Secretariat: Constitution of the Panel Established at the Request of the United States</i> , WT/DS517/7/Rev.1, circulated February 12, 2018	
US-6	U.S. Department of Agriculture (USDA), <i>World Agriculture Supply and Demand Estimates</i> (March 8, 2018), available: http://www.usda.gov/oc/commodity/wasde/latest.pdf	
US-7	<i>Customs Law of the People's Republic of China</i> (adopted at the 19 th Meeting of the Standing Committee of the Sixth national People's Congress on 22 January 1987, amended 28 December 2013, in Order No. 8)	<i>Customs Law</i>
US-8	<i>Regulation of the People's Republic of China on Import and Export Duties</i> (State Council, Order No. 392, adopted at the 26 th executive meeting of the State Council on 29 October 2003, amended 6 February 2016, in Order No. 666)	<i>Duties Regulation</i>
US-9	<i>Foreign Trade Law of the People's Republic of China</i> (adopted at the 8 th Session of the Standing Committee of the Tenth National People's Congress on 6 April 2004, effective 1 July 2004)	<i>Foreign Trade Law</i>
US-10	<i>Regulation of the People's Republic of China on the Administration of the Import and Export of Goods</i> (Order of the State Council No. 332, adopted at the 46 th executive meeting of the State Council on 31 October 2001, effective 1 January 2002)	<i>Import Regulation</i>

US-11	<i>Provisional Measures on the Administration of Import Tariff-Rate Quotas for Agricultural Products</i> (Ministry of Commerce and National Development and Reform Commission 2003 Order No. 4, issued 27 September 2003)	<i>2003 Provisional Measures</i>
US-12	<i>China's WTO Notification on State Trading for 2003-2014</i> , G/STR/N/10/CHN – G/STR/N/15/CHN (Oct. 19, 2015)	<i>China's State Trading Notification</i>
US-13	<i>Public Notice on Authorized Agencies for Agricultural Product Import Tariff-Rate Quotas</i> (Ministry of Commerce and National Development and Reform Commission, Public Notice No. 54, issued 15 October 2003)	<i>2003 List of NDRC Authorized Agencies</i>
US-14	<i>Catalogue of Import State Trading Enterprises</i> (Ministry of Foreign Trade and Economic Cooperation 2001 Announcement No. 28, published 11 December 2001)	<i>2001 Catalogue of Import STEs</i>
US-15	<i>Allocation Notice and Attached Application Criteria and Allocation Principles for Import Tariff-Rate Quotas for Grains in 2017</i> (National Development and Reform Commission 2016 Public Notice No. 23, issued 10 October 2016)	<i>2017 Allocation Notice or Allocation Notice</i>
US-16	<i>Allocation Notice and Attached Application Criteria and Allocation Principles for Import Tariff-Rate Quotas for Grains in 2016</i> (National Development and Reform Commission 2015 Public Notice No. 22, issued 29 September 2015)	<i>2016 Allocation Notice</i>
US-17	<i>Reallocation Notice for Import Tariff-Rate Quotas for Agricultural Products in 2017</i> (National Development and Reform Commission and Ministry of Commerce 2017 Public Notice No. 11, issued 11 August 2017)	<i>2017 Reallocation Notice</i>
US-18	<i>Reallocation Notice for Import Tariff-Rate Quotas for Agricultural Products in 2016</i> (National Development and Reform Commission and Ministry of Commerce 2016 Public Notice No. 19, issued 17 August 2016)	<i>2016 Reallocation Notice</i>
US-19	<i>Announcement of Applicant Enterprise Data for Import Tariff-Rate Quotas for Grains in 2017</i> (National Development and Reform Commission, issued 1 December 2016)	<i>2017 Announcement of Enterprise Data</i>
US-20	<i>Announcement of Applicant Enterprise Data for Import Tariff-Rate Quotas for Grains in 2016</i> (National Development and Reform Commission, issued 4 December 2015)	<i>2016 Announcement of Enterprise Data</i>

US-21	TRQ Fill Rate Data	
US-22	Grain Pricing Data	
US-23	Schedule CLII – People’s Republic of China, Part I – Most-Favoured-Nation Tariff: Section I (B) – Tariff Quotas	<i>China’s Schedule CLII, Part I, Section I (B)</i>
US-24	<i>China Committee on Agriculture TRQ Notification (2013-2014), G/AG/N/CHN/30 (Feb. 2, 2016)</i>	
US-25	<i>China Committee on Agriculture TRQ Notification (2012), G/AG/N/CHN/26 (Mar. 7, 2014)</i>	
US-26	<i>China Committee on Agriculture TRQ Notification (2011), G/AG/N/CHN/25 (Dec. 17, 2012)</i>	
US-27	<i>China Committee on Agriculture TRQ Notification (2010), G/AG/N/CHN/22 (Dec. 14, 2012)</i>	
US-28	<i>China Committee on Agriculture TRQ Notification (2009), G/AG/N/CHN/19 (Apr. 15, 2010)</i>	
US-29	<i>China Committee on Agriculture TRQ Notification (2008), G/AG/N/CHN/16 (Aug. 10, 2009)</i>	
US-30	<i>China Committee on Agriculture TRQ Notification (2007), G/AG/N/CHN/14 (Feb. 19, 2009)</i>	
US-31	<i>China Committee on Agriculture TRQ Notification (2006), G/AG/N/CHN/11 (Sept. 14, 2007)</i>	
US-32	<i>China Committee on Agriculture TRQ Notification (2005), G/AG/N/CHN/9 (Oct. 25, 2006)</i>	
US-33	<i>China Committee on Agriculture TRQ Notification (2004), G/AG/N/CHN/7 (Apr. 6, 2005)</i>	
US-34	<i>China Committee on Agriculture TRQ Notification (2003), G/AG/N/CHN/2 (Sept. 25, 2003)</i>	
US-35	<i>China Committee on Agriculture TRQ Notification (2002), G/AG/N/CHN/3 (Sept. 25, 2003)</i>	

US-36	<i>China's Notification (2009-2010) G/AG/N/CHN/28 (May 6, 2015)</i>	<i>China's Notification (2009-2010)</i>
US-37	Gregory Meyer, <i>Wheat Price Falls to Lowest Level in a Decade</i> , Financial Times (August 28, 2016).	
US-38	Jen Skerritt, <i>In a World Flooded by Wheat, Cutting a Crop by Half Isn't Enough</i> , Bloomberg News (Oct. 6, 2017), available: https://www.bloomberg.com/news/articles/2017-10-06/in-a-world-flooded-by-wheat-cutting-a-crop-by-half-isn-t-enough	
US-39	Michael Raine, <i>What Does China Want? Great Hard Red Spring Wheat</i> , The Western Producer (Feb. 7, 2017), available: https://www.producer.com/2017/02/what-does-china-want-great-hard-red-spring-wheat/	
US-40	Huang Ge, <i>China Opens Domestic Rice Market to More Importers to Satisfy Growing Demand</i> , Global Times (Feb. 17, 2016), available: http://www.globaltimes.cn/content/969040.shtml	
US-41	Sybille de La Hamaide, <i>Corn, wheat prices to hit 10-year lows in 2016: AgResources</i> , Reuters (April 8, 2016).	
US-42	Kelsey Nowakowski, <i>Why Corn – Not Rice – Is King in China</i> , National Geographic (May 18, 2015), available: http://theplate.nationalgeographic.com/2015/05/18/why-corn-not-rice-is-king-in-china/	
US-43	<i>The New Shorter Oxford English Dictionary</i> , (ed. 1993)	

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Short Title	Full Citation
<i>Argentina – Hides and Leather</i>	Panel Report, <i>Argentina – Measures Affecting the Export of Bovine Hides and Import of Finished Leather</i> , WT/DS155/R and Corr.1, adopted 16 February 2001
<i>Argentina – Import Measures (AB)</i>	Appellate Body Reports, <i>Measures Affecting the Importation of Goods</i> , WT/DS438/AB/R / WT/DS444/AB/R / WT/DS445/AB/R, adopted 26 January 2015
<i>Argentina – Import Measures (Panel)</i>	Panel Reports, <i>Measures Affecting the Importation of Goods</i> , WT/DS438/R / WT/DS444/R / WT/DS445/R and Add. 1, adopted 26 January 2015, as modified by Appellate Body Reports WT/DS438/AB/R / WT/DS444/AB/R / WT/DS445/AB/R
<i>Brazil – Retreaded Tyres (Panel)</i>	Panel Report, <i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> , WT/DS332/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS332/AB/R
<i>China – Publications and Audiovisual Products (Panel)</i>	Panel Report, <i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Products</i> , WT/DS363/R and Corr.1, adopted 19 January 2010, as modified by Appellate Body Report, WT/DS363/AB/R
<i>China – Raw Materials (Panel)</i>	Panel Reports, <i>China – Measures Related to the Exportation of Various Raw Materials</i> , WT/DS394/R / WT/DS395/R / WT/DS398/R / Add. 1 and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R
<i>Colombia – Ports of Entry</i>	Panel Report, <i>Colombia – Indicative Prices and Restrictions on Ports of Entry</i> , WT/DS366/R and Corr.1, adopted 20 May 2009
<i>Dominican Republic – Import and Sale of Cigarettes (Panel)</i>	Panel Report, <i>Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes</i> , WT/DS302/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS302/AB/R
<i>EC – Chicken Cuts (AB)</i>	Appellate Body Report, <i>European Communities – Customs Classification of Frozen Boneless Chicken Cuts</i> , WT/DS269/AB/R, WT/DS286/AB/R, adopted 27 September 2005, and Corr.1
<i>EC – Selected Customs Matters (AB)</i>	Appellate Body Report, <i>European Communities – Selected Customs Matters</i> , WT/DS315/AB/R, adopted 11 December 2006

<i>Indonesia – Import Licensing Regimes</i> (Panel)	Panel Report, <i>Indonesia – Importation of Horticultural Products, Animals and Animal Products</i> , WT/DS477/R, WT/DS478/R, and Add. 1, adopted 22 November 2017, as modified by Appellate Body Report WT/DS477/AB/R, WT/DS478/AB/R, and Add.1
<i>India – Autos</i> (Panel)	Panel Report, <i>India – Measures Affecting the Automotive Sector</i> , WT/DS146/R, WT/DS175/R and Corr.1, adopted 5 April 2002
<i>India – Quantitative Restrictions</i> (Panel)	Panel Report, <i>India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products</i> , WT/DS90/R, adopted 22 September 1999, upheld by Appellate Body Report WT/DS90/AB/R
<i>Japan – Semi-Conductors</i> (GATT Panel Report)	GATT Panel Report, <i>Japan – Trade in Semi-Conductors</i> , L/6309-35S/116, adopted 4 May 1988
<i>Thailand – Cigarettes (Philippines)</i> (Panel)	Panel Report, <i>Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines</i> , WT/DS371/R, adopted 15 July 2011, as modified by Appellate Body Report WT/DS371/AB/R
<i>US – Carbon Steel (India)</i> (Panel)	Panel Report, <i>United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India</i> , WT/DS436/R, adopted 19 December 2014, as modified by Appellate Body Report, WT/DS/436/AB
<i>United States – COOL</i> (Panel)	Panel Reports, <i>United States – Certain Country of Origin Labelling (COOL) Requirements</i> , WT/DS384/R / WT/DS386/R, adopted 23 July 2012, as modified by Appellate Body Reports WT/DS384/AB/R / WT/DS386/AB/R
<i>US – Clove Cigarettes</i> (Panel)	Panel Report, <i>United States – Measures Affecting the Production and Sale of Clove Cigarettes</i> , WT/DS406/R, adopted 24 April 2012, as modified by Appellate Body Report WT/DS406/AB/R
<i>US – Gasoline</i> (AB)	Appellate Body Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> , WT/DS2/AB/R, adopted 20 May 1996
<i>US – Poultry (China)</i>	Panel Report, <i>United States – Certain Measures Affecting Imports of Poultry from China</i> , WT/DS392/R, adopted 25 October 2010
<i>US – Softwood Lumber V (Article 21.5 – Canada)</i> (AB)	Appellate Body Report, <i>United States – Final Dumping Determination on Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada</i> , WT/DS264/AB/RW, adopted 1 September 2006
<i>United States – Underwear</i> (AB)	Appellate Body Report, <i>United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear</i> , WT/DS24/AB/R, adopted 25 February 1997

<i>United States – Underwear</i> (Panel)	Panel Report, <i>United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear</i> , WT/DS24/R, adopted 25 February 1997, as modified by Appellate Body Report WT/DS24/AB/R
<i>US – Zeroing (Japan)</i> (Panel)	Panel Report, <i>United States – Measures Relating to Zeroing and Sunset Reviews</i> , WT/DS322/R, adopted 23 January 2007, as modified by Appellate Body Report WT/DS322/AB/R

I. INTRODUCTION

1. As part of its accession to the World Trade Organization (“WTO”), the People’s Republic of China (“China”) agreed to eliminate import prohibitions and move to a system of tariffication, including the use of tariff-rate quotas (“TRQs”) for the importation of agricultural products. Due to well-documented concerns over “the lack of transparency, uniformity and predictability,” Members requested that China agree to administer its TRQs in a simple, transparent, timely, predictable, uniform, non-discriminatory, and non-trade restrictive manner, and in a way that would not cause trade distortions.¹

2. To that end, China specifically committed, in Paragraph 116 of the *Report of the Working Party on the Accession of China* (“Working Party Report”), to ensure that its agricultural TRQs are administered 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.” Moreover, China committed to administer its TRQs “fully in accordance with WTO rules and principles,”² including obligations in the GATT 1994.³

3. Based on the legal instruments published by China, at the beginning of each year, China’s National Development and Reform Commission (“NDRC”) and its local authorized agencies announce a process for soliciting applications and allocating the wheat, rice, and corn (collectively, “grains”) TRQs. However, because the requirements and procedures in the published instruments are vague and undefined, applicants have insufficient or no information regarding how NDRC or its authorized agencies evaluate the applications received or make determinations regarding allocation and reallocation of the TRQs. China also fails to publish the results of these application processes, including the total TRQ allocation or reallocation amounts, the TRQ recipients, and the amounts allocated to each recipient. For purposes of reallocation, China does not even announce the total TRQ amount available for reallocation to potential applicants.

4. Even if successful in obtaining a TRQ allocation, China’s measures subject recipients to requirements and penalties that limit their ability to fully utilize their TRQ allocations, particularly for the state trading portion of each TRQ. These burdensome requirements may discourage potential applicants from applying at all, or may limit the amount of TRQ for which they do apply.

5. In this submission, the United States demonstrates that China’s administration of grains TRQs is inconsistent with Paragraph 116 of the Working Party Report, as incorporated into

¹ *Report of the Working Party on the Accession of China* (WT/ACC/CHN/49) (“*Working Party Report*”), para. 112 (Exhibit US-1). Members also raised concerns regarding “distortions introduced into the market due to allocations based on government determinations . . . rather than consumer preferences and end-user demand . . . trade-restrictive and non-competitive practices of state trading enterprises; and general uncertainty, inconsistency . . . in trade of bulk commodities.” *Working Party Report*, para. 113 (Exhibit US-1).

² *Working Party Report*, para. 116 (Exhibit US-1).

³ *Protocol on the Accession of the People’s Republic of China* (WT/L/432) (“*Accession Protocol*”), Part I, paragraph 1.2 (Exhibit US-2), incorporates commitments referenced in paragraph 342 of the *Working Party Report* including paragraph 116.

China’s Protocol of Accession to the WTO (“Accession Protocol”), as well as Articles X:3(a), XI:1, and XIII:3(b) of the General Agreement on Tariffs and Trade 1994 (“GATT 1994”).

6. The United States proceeds as follows:

- Section II sets out the procedural background of the dispute.
- Section III explains the factual background of the dispute, describing in Section III.A China’s legal framework and its administration of TRQs for these grains, including the measures at issue; and in Section III.B, the utilization of each TRQ in recent years.
- Section IV.A explains how China’s administration of TRQs for these grains is inconsistent with commitments in Paragraph 116 of China’s Working Party Report, incorporated into China’s Accession Protocol. Specifically, the United States demonstrates that China has failed to ensure that its TRQs are administered on a transparent, predictable, and fair basis, using clearly specified timeframes, administrative procedures, and requirements that would not inhibit the filling of each TRQ.
- Section IV.B then demonstrates that China’s TRQs are not administered in a reasonable manner, inconsistent with Article X:3(a) of the GATT 1994.
- Section IV.C explains how China’s administration of its TRQs results in “restrictions ... on the importation” of wheat, rice, and corn, inconsistent with Article XI:1 of the GATT 1994.
- And finally, Section IV.D demonstrates that China’s TRQ administration is inconsistent with Article XIII:3(b) of the GATT 1994, because it fails to provide public notice of the total quantity of each TRQ permitted to be imported, and of any changes to such quantity.

II. PROCEDURAL BACKGROUND

7. On December 15, 2016, the United States requested consultations with 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 GATT 1994 with respect to China’s administration of its TRQs, including those for wheat, short- and medium-grain rice, long grain rice, and corn.⁴ Pursuant to this request, the parties consulted on February 9, 2017. The consultations did not resolve the dispute.

8. On August 21, 2017, the United States requested the establishment of a panel.⁵ Australia, Brazil, Canada, Ecuador, the European Union, Guatemala, India, Indonesia, Japan,

⁴ *Request for Consultations by the United States*, WT/DS517/1, circulated December 21, 2016 (Exhibit US-3).

⁵ *Request for Establishment of a Panel by the United States*, WT/DS517/6, circulated August 21, 2017 (Exhibit US-4).

Kazakhstan, Korea, Norway, the Russian Federation, Singapore, Chinese Taipei, Ukraine, and Vietnam reserved third party rights.⁶

9. The Panel was composed on February 12, 2018.⁷

III. FACTUAL BACKGROUND

10. China is both a significant producer and a significant consumer of grains, including wheat, rice, and corn.⁸ China permits imports these grains through the administration of TRQs for wheat, long-grain rice, short- and medium-grain rice, and corn (collectively, “grains”). Below, the United States describes China’s measures and administration, pursuant to the measures, of TRQs for these grains. In particular, Section III.A describes how, according to these measures, the NDRC allocates and reallocates TRQ through an application process, and how TRQ allocation recipients then import grains pursuant to their Agricultural Product Import Tariff-Rate Quota Certificate (“TRQ Certificate”). Section III.B then provides information regarding the utilization of each of China’s grains TRQs.

A. Legal Framework and Administration of Tariff-Rate Quotas for Wheat, Rice, and Corn

11. In this section, the United States provides the factual background with respect to China’s TRQ administration for grains.

12. The following laws and regulations provide the legal framework for importing goods, generally, and for China’s administration of its grains TRQs:

- *Customs Law of the People’s Republic of China* (“*Customs Law*”),⁹
- *Regulation of the People’s Republic of China on Import and Export Duties* (“*Duties Regulation*”),¹⁰
- *Foreign Trade Law of the People’s Republic of China* (“*Foreign Trade Law*”),¹¹ and

⁶ Note by the Secretariat: Constitution of the Panel Established at the Request of the United States, WT/DS517/7/Rev.1, circulated February 12, 2018 (Exhibit US-5).

⁷ Note by the Secretariat: Constitution of the Panel Established at the Request of the United States, WT/DS517/7/Rev.1, circulated February 12, 2018 (Exhibit US-5).

⁸ U.S. Department of Agriculture (USDA), *World Agriculture Supply and Demand Estimates* (March 8, 2018), available: <http://www.usda.gov/oce/commodity/wasde/latest.pdf> (Exhibit US-6).

⁹ *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) (“*Customs Law*”) (Exhibit US-7).

¹⁰ *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) (“*Duties Regulation*”) (Exhibit US-8).

¹¹ *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 April 6, 2004, effective July 1, 2004) (“*Foreign Trade Law*”) (Exhibit US-9).

- *Regulation of the People’s Republic of China on the Administration of the Import and Export of Goods (“Import Regulation”).*¹²

13. The *Customs Law* authorizes the “Customs of the People’s Republic of China” to supervise and control entry and exit from the customs territory, and to collect customs duties and other taxes and fees.¹³

14. Pursuant to the *Customs Law*, the *Duties Regulation* then provides that duty rates on import goods include “tariff-rate quota duty rates.”¹⁴ The *Duties Regulation* further clarifies that “[w]here the quantity of import goods that are subject to tariff-rate quota administration in accordance with the provision of the State is within the tariff-rate quota, the tariff quota duty rates shall apply.”¹⁵

15. The *Foreign Trade Law* provides that China “may implement tariff-rate quota administration.”¹⁶ Enacted according to the relevant provisions of the *Foreign Trade Law*, China’s 2001 *Import Regulation* sets out certain trade regulations, including in Section 4 for “goods under the administration of tariff-rate quotas.”¹⁷ The *Import Regulation* states that the list of goods subject to TRQs will be formulated, adjusted, and promulgated by the foreign trade department of the State Council in conjunction with the relevant economic administrative departments of the State Council.¹⁸

16. With respect to the administration of TRQs, Article 32 of the *Import Regulation* provides that the administrative departments shall, on the basis of the provisions of the *Import Regulation*, (1) formulate specific measures for administration so as to clarify the qualifications of the applicant; (2) clarify the departments for accepting applications; (3) clarify the principles and procedures of inspections and other items; and (4) promulgate the measures prior to their implementation.¹⁹

17. In 2003, China published, in accordance with the *Customs Law*, *Duties Regulation*, *Foreign Trade Law*, and *Import Regulation*, the *Provisional Measures for the Administration of Import Tariff Quotas of Agricultural Products (“2003 Provisional Measures”).*²⁰ The 2003

¹² *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 October 31, 2001, effective January 1, 2002) (“*Import Regulation*”) (Exhibit US-10).

¹³ *Customs Law*, Article 2 (Exhibit US-7).

¹⁴ *Duties Regulation*, Articles 1, 9 (Exhibit US-8).

¹⁵ *Duties Regulation*, Article 12 (Exhibit US-8). See also *Import Regulation*, Article 26 (“For the goods imported within the tariff-rate quotas, the tariffs will be levied according to the rates within the quotas; for the goods imported beyond the tariff-rate quotas, the tariffs will be levied according to the rates beyond the quotas”) (Exhibit US-10).

¹⁶ *Foreign Trade Regulation*, Article 19 (Exhibit US-9)

¹⁷ *Foreign Trade Regulation*, Article 19 (Exhibit US-9). Article 11 of the *Import Regulation* provides generally that for goods imported subject to tariff-rate quota administration, the provisions of Section IV (Articles 25-32), “State trading and designated operating,” apply. *Import Regulation*, Article 11 (Exhibit US-10).

¹⁸ *Import Regulation*, Article 25 (Exhibit US-10).

¹⁹ *Import Regulation*, Article 23 (Exhibit US-10).

²⁰ *Provisional Measures for the Administration of Import Tariff-Rate Quotas of Agricultural Product*, Ministry of Commerce and National Development and Reform Commission Order [2003] No. 4 (“*2003 Provisional Measures*”), Article 4 (Exhibit US-11). The United States notes that no final or additional measure appears to have superseded the “provisional” measure and it continues to be cited as the legal basis for China’s TRQs in China’s State Trading

Provisional Measures designate products to be subject to TRQs and identify the authorities responsible for administering the TRQs for each product. Specifically, Article 3 specifies that wheat, corn, and rice, among other imported agricultural products, will be subject to TRQ administration.²¹

18. Article 7 of the *2003 Provisional Measures* designates NDRC as the authority responsible for allocating the TRQs for wheat, corn, and rice.²² Also in 2003, China published a list of thirty-seven provincial and municipal departments authorized by NDRC to process applications for wheat, rice and corn.²³

19. The *2003 Provisional Measures* further establish that TRQs for these products are divided into two categories: state trading and non-state trading.²⁴ The two categories relate to the type of entity that may engage in importation of the product under the relevant portion of the TRQ. Specifically, Article 4 of the *2003 Provisional Measures* specifies that:

Import tariff-rate quotas for wheat, corn, [and] rice, . . . are divided into state trading quotas and non-state trading quotas. State trading quotas must be imported through state trading enterprises; non-state trading quotas are imported through enterprises that have trading rights, and end-users that have trading rights may also import by themselves.²⁵

For the purposes of the state trading portion of the TRQ, China’s National Cereals, Oil & Foodstuff Import and Export Co. (“COFCO”) is the only enterprise designated as a state trading enterprise for grains.²⁶

20. Regarding TRQ administration, the *2003 Provisional Measures* provide that one month prior to the application period, NDRC will announce the total TRQ quantities for each commodity for the following year; the TRQ application criteria; and the tariff codes and applied tariff rates for products subject to the TRQ.²⁷

Notification, G/STR/N/10/CHN - G/STR/N/15/CHN (Oct. 19, 2015) (“*China’s State Trading Notification*”) (Exhibit US-12).

²¹ *2003 Provisional Measures*, Article 3 (Exhibit US-11).

²² The Ministry of Commerce (“MOFCOM”) allocates TRQs for soybean oil, rapeseed oil, palm oil, sugar, wool, and wool tops. *2003 Provisional Measures*, Article 7 (Exhibit US-11).

²³ *Public Notice on Authorized Agencies for Agricultural Product Import Tariff-Rate Quotas* (Ministry of Commerce and National Development and Reform Commission, Public Notice No. 54, issued 15 October 2003) (“*2003 List of NDRC Authorized Agencies*”) (Exhibit US-13).

²⁴ *2003 Provisional Measures*, Article 4 (Exhibit US-11); *Foreign Trade Law*, Article 11 (Exhibit US-9) (“The State may employ the administration of state trading to the import and export of some goods. The import and export of the goods subject to the administration of state trading can be managed by the authorized enterprises only, with the exception, however, of those goods which are allowed by the state to be partially imported or exported by unauthorized enterprises”).

²⁵ *2003 Provisional Measures*, Article 4 (Exhibit US-11).

²⁶ *Catalogue of Import State Trading Enterprises* (Ministry of Foreign Trade and Economic Cooperation 2001 Announcement No. 28, issued 2001) (Exhibit US-14).

²⁷ *2003 Provisional Measures*, Article 10 (Exhibit US-11). *See also Import Regulation*, Article 27 (Exhibit US-10).

21. Pursuant to the 2003 *Provisional Measures*, NDRC issues two annual notices, each published in substantially the same form every year:

- *Application Requirements and Allocation Principles for Import Tariff-Rate Quota Quantities for Grains and Cotton (“Allocation Notice”)*,²⁸ which includes: (I) Quota Quantities; (II) Application Criteria; (III) Application Period; (IV) Allocation Principles; (V) Other Requirements, and, as attachment, a sample application form.
- *Application Requirements and Reallocation Principles for Import Tariff-Rate Quota Quantities for Grains and Cotton (“Reallocation Notice”)*, which publicly notifies matters relating to reallocation of TRQ, namely, the application process.²⁹

The 2003 *Provisional Measures* and, for each year, the two annual *Notices*, set out the legal basis for administration of the TRQs for corn, wheat, and rice as described below.

1. Allocation

22. To implement the TRQs, NDRC annually issues the *Allocation Notice*.³⁰ The *Allocation Notice* sets out, for the following calendar year, the TRQ amounts for each grain and state trading portion of each TRQ, the requirements for TRQ allocation eligibility (“Application Criteria”), and factors NDRC will consider in determining how quota is assigned to eligible applicants (“Allocation Principles”). The *Allocation Notice* also includes, in an attachment, the application form.

23. Article I of the *Allocation Notice*, “Quota Quantities,” provides the total TRQ amount for each product. Article I also specifies, for each product, the portion of the TRQ reserved for state trading, meaning the portion of the TRQ that can only be imported through authorized state trading enterprises.³¹ The 2017 import TRQ quantities for grains are:

²⁸ *Allocation Notice and Attached 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) (“2017 Allocation Notice”) (Exhibit US-15). See also *Allocation Notice and Attached 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) (“2016 Allocation Notice”) (Exhibit US-16).

²⁹ *Reallocation Notice for Import Tariff-Rate Quotas for Agricultural Products in 2017* (National Development and Reform Commission and Ministry of Commerce 2017 Public Notice No. 11, issued 11 August 2017) (“2017 Reallocation Notice”) (Exhibit US-17). See also *Reallocation Notice for 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) (“2016 Reallocation Notice”) (Exhibit US-18).

³⁰ *2017 Allocation Notice* (Exhibit US-15). See also *2003 Provisional Measures*, Article 10 (Exhibit US-11).

³¹ *2017 Allocation Notice*, Article I (Exhibit US-15). See also *2003 Provisional Measures*, Article 4 (Exhibit US-11).

<i>Grain</i>	<i>TRQ Amount (million MT)</i>	<i>State trading portion (% of total)</i>
Wheat	9.63	90%
Corn	7.20	60%
Long-grain rice	2.66	50%
Short- and medium-grain rice	2.66	50%

24. According to the *Allocation Notice*, applicants may apply for TRQ allocations between October 15 and October 30 of the relevant year.³²

25. Article II of the *Allocation Notice*, “Application Criteria,” divides the eligibility requirements into, first, basic criteria for applicants (“Basic Criteria”) and, second, commodity-specific requirements. With regard to the commodity-specific requirements, applicants must qualify under one of several categories of applicants enumerated for each commodity: wheat, corn, and rice.³³

Basic Criteria

26. According to the Basic Criteria, all applicants must:

- Be “registered with the industry and commerce administrative departments prior to October 1;”
- Possess “a good financial condition, [good] taxpayer record, and a [good] integrity situation;”
- Have “no record of violating regulations with respect to customs, industry and commerce, taxation, credit and loans, inspection and quarantine, grain distribution, environmental protection, and other areas;”
- Not be on “a ‘Credit China’ website blacklist [of entities] receiving punishment;”
- Have “fulfilled social responsibilities associated with [their] operations;” and
- Have “no conduct in violation of the *Provisional Measures for the Administration of Import Tariff-Rate Quotas for Agricultural Products*.”³⁴

³² *Import Regulation*, Article 27 (Exhibit US-10); *2003 Provisional Measures*, Article 10 (Exhibit US-11); *2017 Allocation Notice*, Article III (Exhibit US-15).

³³ *2017 Allocation Notice*, Article II (Exhibit US-15).

³⁴ *2017 Allocation Notice*, Article II (Exhibit US-15).

Commodity-specific criteria

27. “With possession of the aforementioned [Basic C]riteria as a prerequisite, applicants for grain import tariff-rate quotas must also meet one of the following criteria,” divided by commodity:³⁵

(I) Wheat

1. State trading enterprise;
2. Enterprise with actual import performance (excluding imports through agents) in the previous year;
3. Flour production enterprise whose wheat usage was 100,000 tons or more in the two previous years;
4. Food production enterprise whose flour usage was 50,000 tons or more in the two previous years; or
5. Enterprise with no import performance in the previous year but possesses import-export operating rights, has been issued annual processing trade enterprise operating status and production capacity certification by the commerce department of its locality, and is engaged in processing trade with wheat or flour as the raw material.

(II) Corn

1. State trading enterprise;
2. Enterprise with actual import performance (excluding imports through agents) in the previous year;
3. Feed production enterprise whose corn usage was 50,000 tons or more in the two previous years;
4. Other production enterprise whose corn usage was 150,000 tons or more in the two previous years; or
5. Enterprise with no import performance in the previous year but possesses import-export operating rights, has been issued annual processing trade enterprise operating status and production capacity certification by the commerce department of its locality, and is engaged in processing trade with corn as the raw material.

(III) Rice (separate applications are required for long-grain rice and medium- and short-grain rice)

1. State trading enterprise;

³⁵ 2017 Allocation Notice, Article II (Exhibit US-15).

2. Enterprise with actual import performance in the previous year;
3. Grain enterprise possessing grains wholesale and retail qualifications, with annual rice sales value of 100 million yuan or more for two previous years;
4. Food production enterprise whose rice usage was 50,000 tons or more in the two previous years; or
5. Enterprise with no import performance in the previous year but possesses import-export operating rights, has been issued annual processing trade enterprise operating status and production capacity certification by the commerce department of its locality, and is engaged in processing trade with rice as the raw material.

Thus, the *Allocation Notice* provides that applicants must comply with all of the Basic Criteria and one of the commodity specific-criteria.

28. Article IV of the *Allocation Notice*, entitled “Allocation Principles,” states:

The aforementioned import tariff-rate quotas for grains will be allocated in accordance with applicants’ actual production and operating capacities (including historical production and processing, actual import performance, and the status of operations) and other relevant commercial standards.³⁶

29. Under Article V, “Other Requirements,” the *Allocation Notice* provides that “the grain import tariff-rate quotas obtained by an applicant must be self-used, and imported goods are required to be processed and operated by the enterprise itself. Among these, imported wheat and corn are required to be processed and used in its own plant; sales of imported rice are required to be organized in the name of the enterprise itself.”³⁷

30. The *2003 Provisional Measures* provide for the administration pursuant to the *Allocation Notice*. The *2003 Provisional Measures* provide that NDRC entrusts its authorized agencies to be responsible for: (1) accepting applications and forwarding them to NDRC; (2) accepting inquiries and conveying them to NDRC; (3) informing applicants “of any part of their applications that do not meet the requirements, and reminding them of their revisions;” and (4) issuing the certificates to approved applicants.³⁸ China has authorized thirty-seven provincial and municipal entities to act in this capacity.³⁹

31. After receiving the applications from the authorized agencies, NDRC publishes a list of TRQ applicants, accompanied by certain of the data submitted by each applicant. The publication includes the following instruction:

The period of public availability will be from December 1 to December 14, 2016. If during the period of public availability, you are in disagreement with the data reported by

³⁶ 2017 *Allocation Notice*, Article IV (Exhibit US-15); 2003 *Provisional Measures*, Article 13 (Exhibit US-11).

³⁷ 2017 *Allocation Notice*, Article V (Exhibit US-15).

³⁸ 2003 *Provisional Measures*, Article 8 (Exhibit US-11).

³⁹ 2003 *List of NDRC Authorized Agencies* (Exhibit US-13).

the enterprises, please provide feedback with your related opinion via fax to the National Development and Reform Commission (Economy and Trade Office).⁴⁰

Thus, NDRC calls on the public to provide information including “disagreement,” “feedback,” and “opinion,” regarding the TRQ applicants. Based on the annual applicant lists published by China, hundreds of potential importers apparently apply each year for allocations.

Number of TRQ Applicants

	WHEAT	CORN	RICE (LONG)	RICE (MED/SHORT)
2015	463	1,104	560	293
2016	429	956	527	254
2017	475	893	646	332
2018	437	834	609	321

32. By January 1 of each year, NDRC must issue an *Import Tariff-Rate Quota Certificate for Agricultural Products* (“TRQ Certificate”) to each recipient of TRQ allocation.⁴¹ TRQ Certificate holders present the TRQ Certificate, which authorizes the holder to import the quantity and commodity specified, to the customs offices for customs declaration and examination of the goods.⁴² The minimum total quota amount will be determined according to the commercially viable shipping volumes for each kind of agricultural product.⁴³ The TRQ Certificate is valid from January 1 until December 31.⁴⁴

33. According to the *2003 Provisional Measures*, “state trading quotas are specified in the Agricultural Product Import TRQ Certificate.”⁴⁵ Specifically, the sample TRQ Certificate – annexed to the *2003 Provisional Measures* – includes, as Box 7, “Allocation Quantity” and, as Box 8, “State trading quantity (out of total).”⁴⁶ Thus, any TRQ allocation may be state trading, non-state trading, or part state trading and part non-state trading.

⁴⁰ *Announcement of Applicant Enterprise Data for Import Tariff-Rate Quotas for Grains in 2017* (National Development and Reform Commission, issued 1 December 2016) (“*2017 Announcement of Enterprise Data*”) (Exhibit US-19). The 2016 Applicant List was published on December 5, 2015 and the period of public availability was from December 4 to 10, 2015. *Announcement of Applicant Enterprise Data for Import Tariff-Rate Quotas for Grains in 2016* (National Development and Reform Commission, issued 4 December 2015) (“*2016 Announcement of Enterprise Data*”) (Exhibit US-20).

⁴¹ *2003 Provisional Measures*, Article 14 (Exhibit US-11).

⁴² *Import Regulation*, Article 30 (Exhibit US-10).

⁴³ *2003 Provisional Measures*, Article 13 (Exhibit US-11).

⁴⁴ *2003 Provisional Measures*, Article 15 (Exhibit US-11).

⁴⁵ *2003 Provisional Measures*, Article 14 (Exhibit US-11).

⁴⁶ *2003 Provisional Measures*, Attachment (Exhibit US-11).

34. The United States is not aware of any publication of TRQ Certificate holders, their allocation amount, what portion of the allocation is to be imported through a state trading enterprise, or the aggregate amount of TRQ allocated to all TRQ Certificate holders for the year.

35. Regarding the portion of the TRQ subject to state trading, if a TRQ Certificate holder has not contracted with the state trading enterprise to import the quantities by August 15, the TRQ Certificate holder may seek NDRC approval to import through other enterprises that have trading rights or by themselves if the TRQ Certificate holder has trading rights.⁴⁷ Neither the *2003 Provisional Measures* nor the *Allocation Notice* specifies the procedure for obtaining NDRC approval.

36. Certain penalties apply to TRQ Certificate holders. If a TRQ Certificate holder is unable to sign or complete import contracts for the entire TRQ allocation on their certificate by the end of the year, the TRQ Certificate holder must return the unused quantity before September 15.⁴⁸ According to Article 30 of the *2003 Provisional Measures*, “[t]here will be a corresponding deduction” to the TRQ allocated the following year where a TRQ Certificate holder does not return unused quotas.⁴⁹ Where a TRQ Certificate holder is unable to complete imports for their entire TRQ allocation for two consecutive years, even if they return the unused amounts by September 15, there will also be a corresponding deduction the following year.⁵⁰

2. Reallocation

37. TRQ Certificate holders who have imported their TRQ allocation by the end of August, as well as new users that conform to the Application Criteria listed in the *Allocation Notice* but did not apply for a TRQ allocation at the start of the year, may apply for the returned quota amounts, from September 1 to September 15.⁵¹ One month prior to this application period, NDRC promulgates and publishes the *Reallocation Notice*, which sets out the specific conditions for applying for the TRQ reallocation.⁵²

38. NDRC and MOFCOM “will reallocate” the quotas returned by TRQ Certificate holders to reallocation applicants “according to the order in which applications were submitted online.”⁵³ According to the *Reallocation Notice*, each local authority accepts the applications before reporting applicants “that meet the criteria” to NDRC “via an agricultural product import tariff-rate quota computerized management system.”⁵⁴

⁴⁷ *2003 Provisional Measures*, Article 22 (Exhibit US-11).

⁴⁸ *2003 Provisional Measures*, Article 23 (Exhibit US-11); *Import Regulation*, Article 18 (Exhibit US-10). Note the *Import Regulation* sets the return deadline as September 1, rather than September 15.

⁴⁹ *2003 Provisional Measures*, Articles 30 (Exhibit US-11). See also *2017 Reallocation Notice*, para. 1 (Exhibit US-17); *Import Regulation*, Article 31 (Exhibit US-10).

⁵⁰ *2003 Provisional Measures*, Article 31 (Exhibit US-11)

⁵¹ *2003 Provisional Measures*, Articles 24, 25 (Exhibit US-11); *2017 Reallocation Notice*, para. 2-3 (Exhibit US-17).

⁵² *2017 Reallocation Notice* (Exhibit US-17); *2003 Provisional Measures*, Article 24, 26 (Exhibit US-11) (prior to September 30 each year, NDRC reallocates the unused TRQs for wheat, corn, and rice to end-users, on a first-come, first-served basis in line with the published application requirements).

⁵³ *2017 Reallocation Notice*, para. 5 (Exhibit US-17).

⁵⁴ *2017 Reallocation Notice*, para. 4 (Exhibit US-17).

39. With respect to distribution of the amounts available for reallocation, the *Reallocation Notice* provides that:

when the number of applications that meet the criteria, in total, is smaller than the quantity of reallocated tariff-rate quotas, every applicant’s application can be satisfied; when the number of applications that meet the criteria, in total, is larger than the quantity of reallocated tariff-rate quotas, reallocation will be carried out according to the *Allocation Principles* and the *Allocation Rules*.⁵⁵

40. Prior to October 1, “the tariff-rate quota reallocation results will be notified” to applicants for reallocation.⁵⁶ The applicants that have obtained a reallocated TRQ quantity may import through enterprises that have trading rights, and enterprises that have trading rights may also import by themselves.⁵⁷

41. The United States is not aware of any publication of TRQ Certificate holders for reallocations, their TRQ reallocation amount, or the aggregate amount of TRQ reallocated to TRQ Certificate holders for the year.

B. Utilization of China’s Wheat, Rice, and Corn TRQs

42. According to China’s own notifications and Chinese customs data, China’s TRQs for wheat, corn, and rice do not fill, despite market conditions indicating Chinese demand.⁵⁸

43. As noted above, the 2017 TRQ quantity for wheat was 9.636 million metric tons, the TRQ quantity for corn was 7.20 million metric tons, and the TRQ quantity for rice was 5.32 million metric tons. The rice TRQ is subdivided into a 2.66 million metric ton long-grain rice TRQ, and a 2.66 million metric ton of medium- and short-grain rice TRQ.⁵⁹ As set out below and as notified by China to the WTO, the TRQs do not fill.⁶⁰

⁵⁵ 2017 *Reallocation Notice*, para. 5 (Exhibit US-17).

⁵⁶ 2017 *Reallocation Notice*, para. 5 (Exhibit US-17). The 2003 *Provisional Measures*, Article 26 also provides that “[p]rior to September 30 of each year” NDRC will reallocate the quantities of import TRQs for wheat, corn, rice, and cotton. 2003 *Provisional Measures*, Article 26 (Exhibit US-11).

⁵⁷ 2003 *Provisional Measures*, Article 26 (Exhibit US-11).

⁵⁸ See TRQ Fill Rate Data (Exhibit US-21); Grain Pricing Data (Exhibit US-22).

⁵⁹ 2017 *Allocation Notice*, Article I (Exhibit US-17). See also Schedule CLII – People’s Republic of China, Part I – Most-Favoured-Nation Tariff: Section I-B – Tariff Quotas (Exhibit US-23).

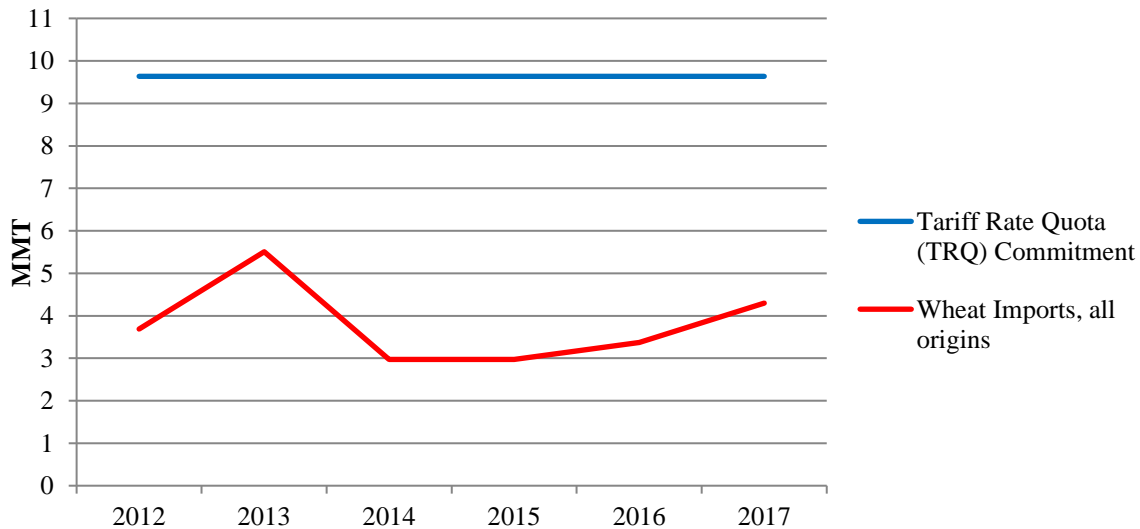
⁶⁰ *China Committee on Agriculture TRQ Notification* (2013-2014), G/AG/N/CHN/30 (Feb. 2, 2016) (Exhibit US-24); *China Committee on Agriculture TRQ Notification* (2012), G/AG/N/CHN/26 (Mar. 14, 2014) (Exhibit US-25). See also *China Committee on Agriculture TRQ Notification* (2011), G/AG/N/CHN/25 (Dec. 17, 2012) (Exhibit US-26); *China Committee on Agriculture TRQ Notification* (2010), G/AG/N/CHN/22 (Dec. 14, 2012) (Exhibit US-27); *China Committee on Agriculture TRQ Notification* (2009), G/AG/N/CHN/19 (Apr. 15 2010) (Exhibit US-28); *China Committee on Agriculture TRQ Notification* (2008), G/AG/N/CHN/16 (Aug. 10, 2009) (Exhibit US-29); *China Committee on Agriculture TRQ Notification* (2007), G/AG/N/CHN/14 (Feb. 19, 2009) (Exhibit US-30); *China Committee on Agriculture TRQ Notification* (2006), G/AG/N/CHN/11 (Sept. 14, 2007) (Exhibit US-31); *China Committee on Agriculture TRQ Notification* (2005), G/AG/N/CHN/9 (Oct. 25, 2006) (Exhibit US-32); *China Committee on Agriculture TRQ Notification* (2004), G/AG/N/CHN/7 (Apr. 6, 2005) (Exhibit US-33); *China Committee on Agriculture TRQ Notification* (2003), G/AG/N/CHN/2 (Sept. 21, 2004) (Exhibit US-34); *China Committee on Agriculture TRQ Notification* (2002), G/AG/N/CHN/3 (Sept. 21, 2004) (Exhibit US-35) (collectively, *China’s TRQ Notifications* (Exhibits 24-35)).

1. China’s Wheat TRQ

44. China’s wheat TRQ persistently under fills. For instance, while China establishes a 9.636 million metric tons wheat TRQ, China imported 4.3 million metric tons of wheat in 2017.⁶¹ This is less than half the permitted TRQ quantity. China’s fill rate for other recent years was similarly low.⁶²

Wheat	2012	2013	2014	2015	2016	2017
TRQ Fill Rates: total imports divided by total TRQ volume	38%	57%	31%	31%	35%	45%

China's Wheat TRQ and Import Levels



45. Economic conditions including domestic and international wheat prices, wheat demand, and other factors suggest that China’s wheat TRQ should have filled each year since 2012. China maintains relatively high domestic wheat prices through a variety of domestic support measures, including domestic price support programs.⁶³ Conversely, international wheat prices have been relatively low in 2016 and 2017.⁶⁴

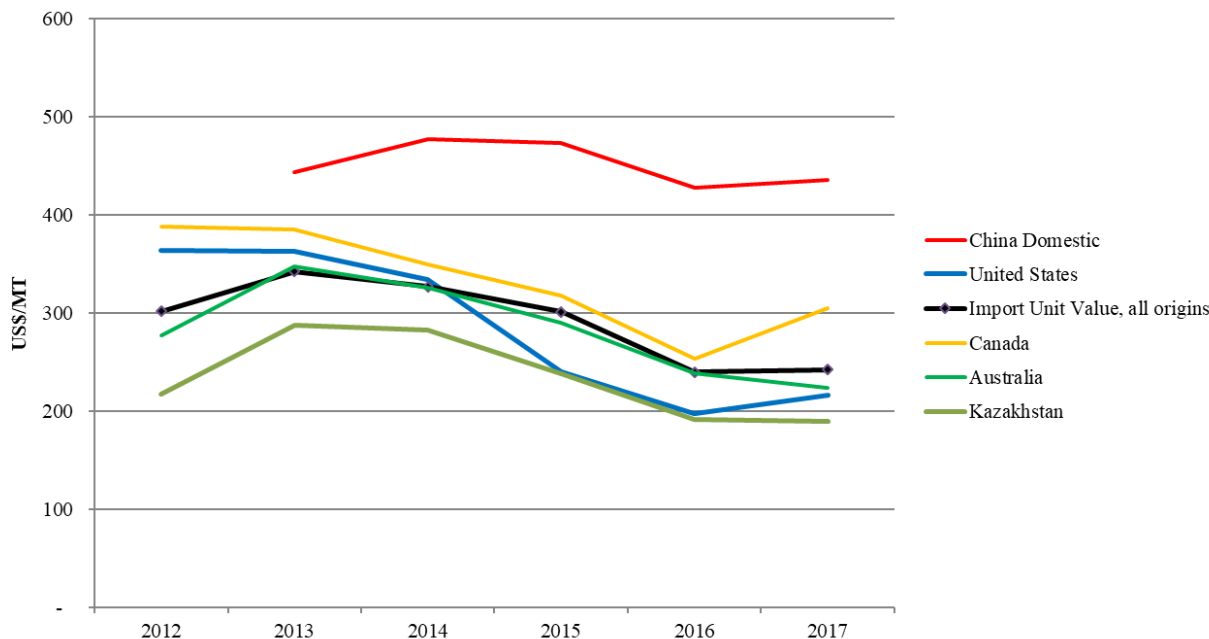
⁶¹ TRQ Fill Rate Data (Exhibit US-21); *see also* China’s TRQ Notifications (Exhibits US-24 – US-35).

⁶² TRQ Fill Rate Data (Exhibit US-21).

⁶³ China’s Notification (2009-2010) G/AG/N/CHN/28 (May 6, 2015). (Exhibit US-36).

⁶⁴ Gregory Meyer, *Wheat Price Falls to Lowest Level in a Decade*, Financial Times, (August 28, 2016), available: <https://www.ft.com/content/75fdb856-6b0c-11e6-ae5b-a7cc5dd5a28c> (Exhibit US-37); Jen Skerritt, *In a World Flooded by Wheat, Cutting a Crop by Half Isn’t Enough*, Bloomberg News (Oct. 6, 2017), available: <https://www.bloomberg.com/news/articles/2017-10-06/in-a-world-flooded-by-wheat-cutting-a-crop-by-half-isn-t-enough> (Exhibit US-38); *Grain Pricing Data* (Exhibit US-22).

Wheat Prices in China, Domestic and Imported



46. Further, imports of wheat provide for variety and quality that is not otherwise available on the Chinese market. For instance, certain high quality, high protein wheat varieties are utilized to produce specialty products like pastries but not available in China.⁶⁵ As consumer preferences have changed, demand has increased for these grain varieties.⁶⁶

2. China’s Rice TRQs

47. China’s rice TRQs also have been under-utilized in recent years.⁶⁷ In 2017, while China established a 2.6 million metric ton TRQ for long-grain rice, it only imported 1.9 million metric tons of long-grain rice.⁶⁸ Similarly, China imported only 2 million metric tons under its 2.6 million metric ton short- and medium-grain rice TRQ in 2017.⁶⁹

⁶⁵ Michael Raine, *What Does China Want? Great Hard Red Spring Wheat*, The Western Producers (Feb. 7, 2017) (Exhibit US-39)

⁶⁶ Michael Raine, *What Does China Want? Great Hard Red Spring Wheat*, The Western Producers (Feb. 7, 2017) (Exhibit US-39).

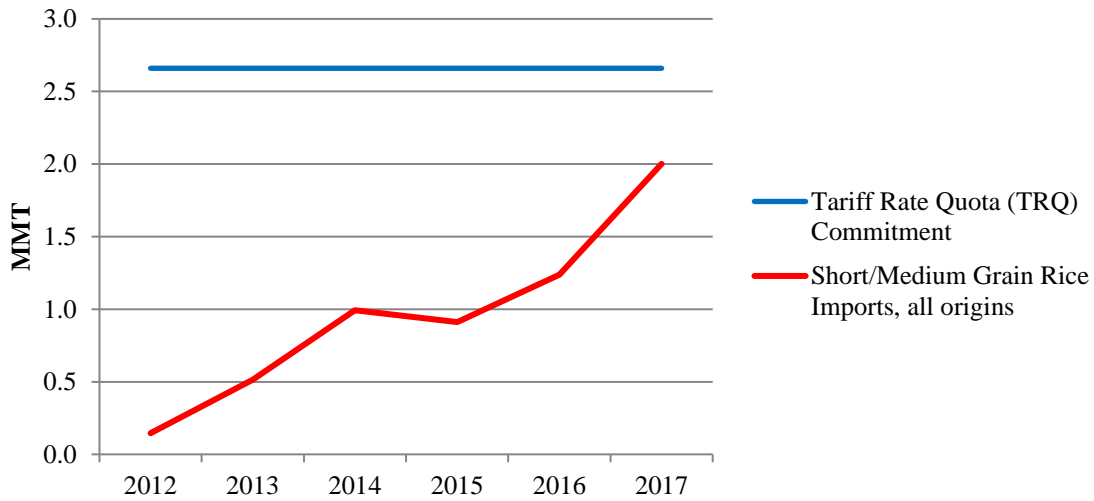
⁶⁷ TRQ Fill Rate Data (Exhibit US-21); see also *China’s TRQ Notifications* (Exhibits US-24 – US-35).

⁶⁸ TRQ Fill Rate Data (Exhibit US-21).

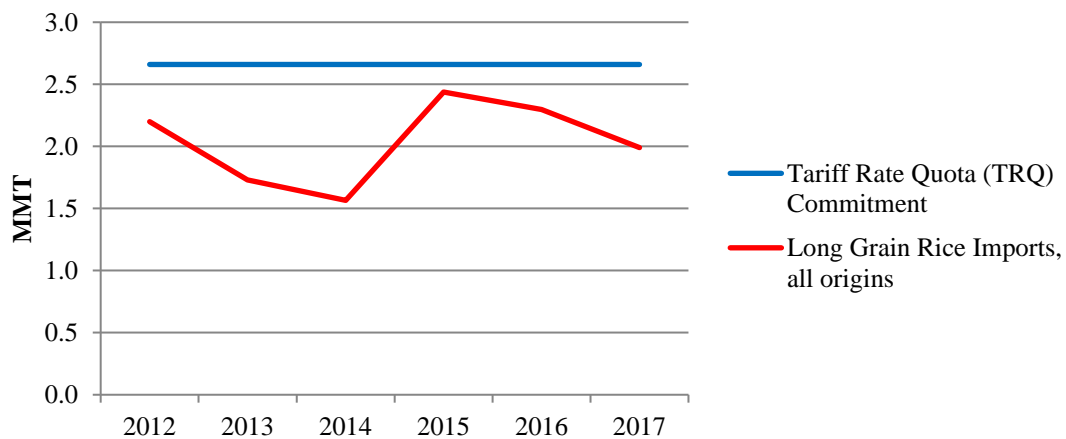
⁶⁹ TRQ Fill Rate Data (Exhibit US-21).

Rice TRQ Fill Rates: total imports divided by total TRQ volume	2012	2013	2014	2015	2016	2017
<i>Long Grain</i>	83%	65%	59%	92%	86%	75%
<i>Short- and Medium-Grain</i>	5%	19%	37%	34%	47%	75%
<i>Total</i>	44%	42%	48%	63%	66%	75%

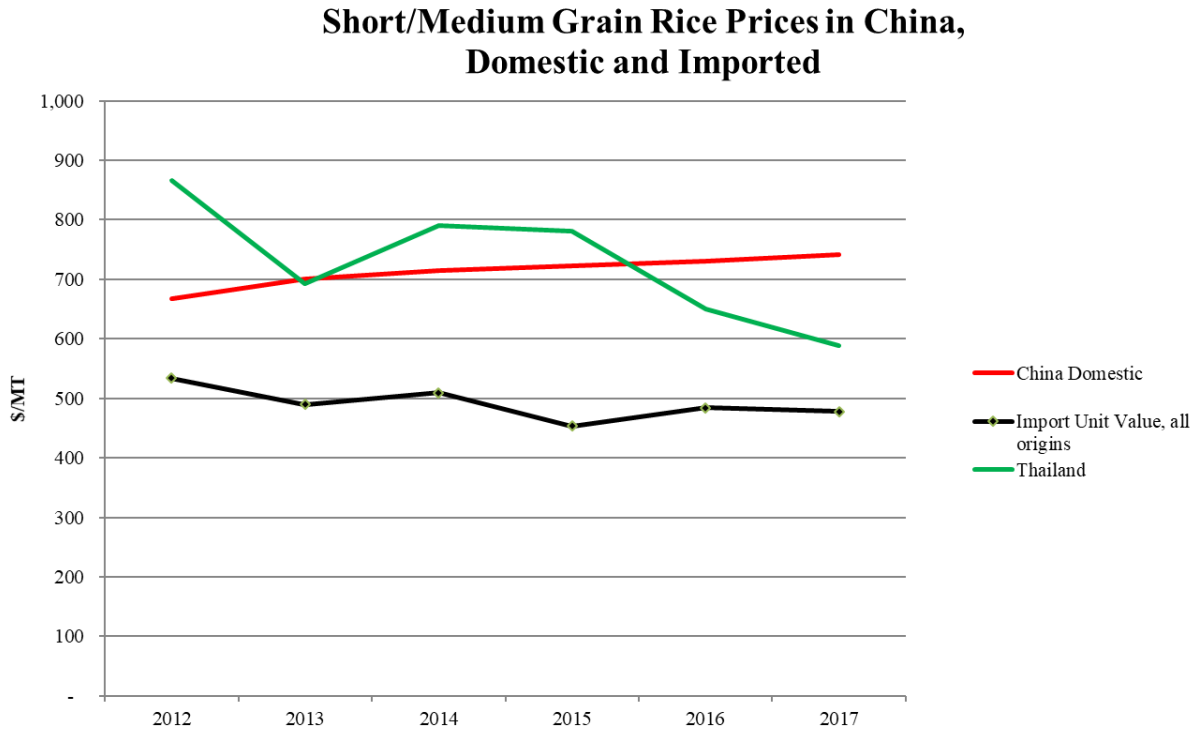
**China's Short/Medium Grain Rice
TRQ and Import Levels**



**China's Long Grain Rice
TRQ and Import Levels**

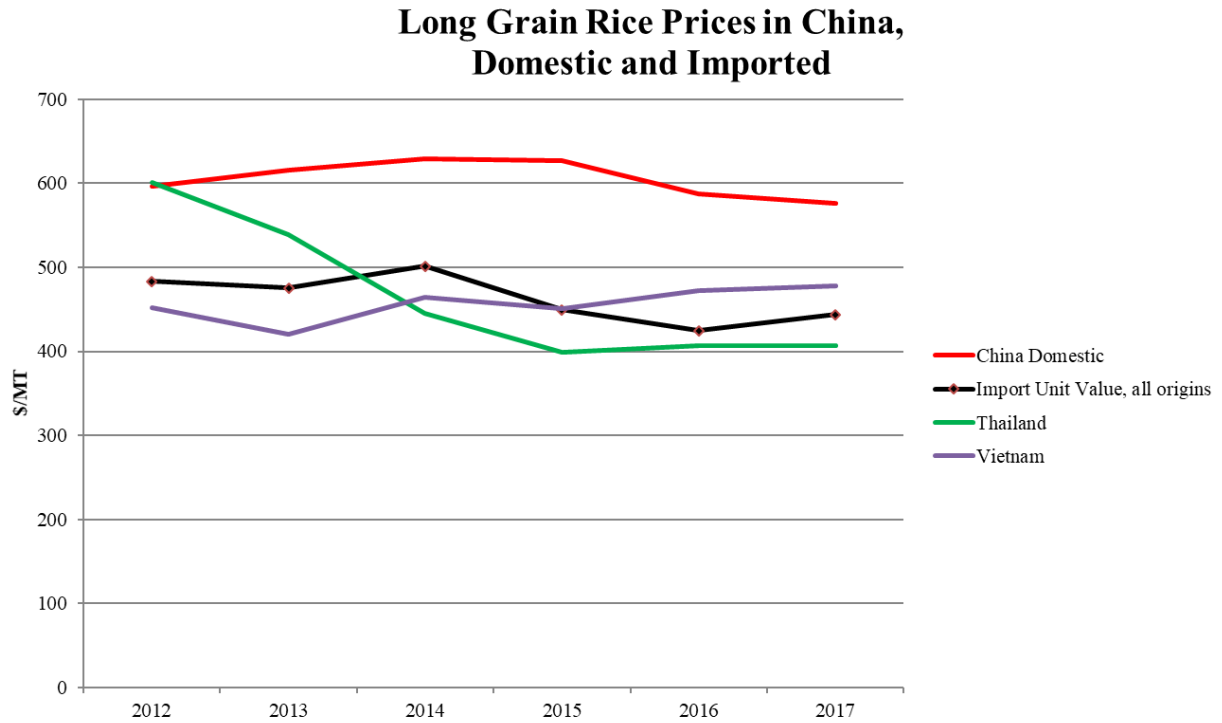


48. Economic conditions including domestic and international rice prices, rice demand, and other factors suggest that TRQs for rice should have filled in 2016 and 2017. China maintains relatively high domestic rice prices through a variety of domestic support measures, including domestic price support programs.⁷⁰ While rice prices have fluctuated, Chinese domestic rice prices exceeded international prices during 2016 and 2017.⁷¹



⁷⁰ China’s Notification (2009-2010) G/AG/N/CHN/28 (May 6, 2015) (Exhibit US-37); Huang Ge, *China Opens Domestic Rice Market to More Importers to Satisfy Growing Demand*, Global Times, Feb. 17, 2016 (Exhibit US-40).

⁷¹ See Grain Pricing Data (Exhibit US-22).



3. China’s Corn TRQ

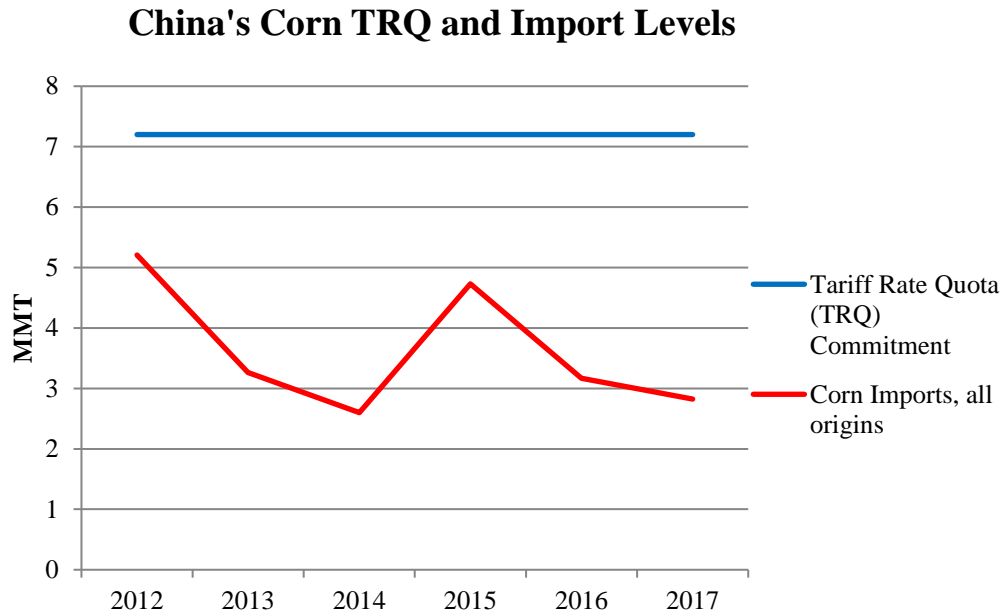
49. Finally, China’s corn TRQ also persistently under fills.⁷² For instance, while China established a 7.2 million metric ton corn TRQ, China imported only 2.8 million metric tons of corn in 2017⁷³ – less than half the total TRQ amount. China’s fill rate for other recent years was similarly low.⁷⁴

Corn	2012	2013	2014	2015	2016	2017
TRQ Fill Rates: total imports divided by total TRQ volume	72%	45%	36%	66%	44%	39%

⁷² TRQ Fill Rate Data (Exhibit US-21); see also *China’s TRQ Notifications* (Exhibits US-24 – US-35).

⁷³ TRQ Fill Rate Data (Exhibit US-21).

⁷⁴ TRQ Fill Rate Data (Exhibit US-21).

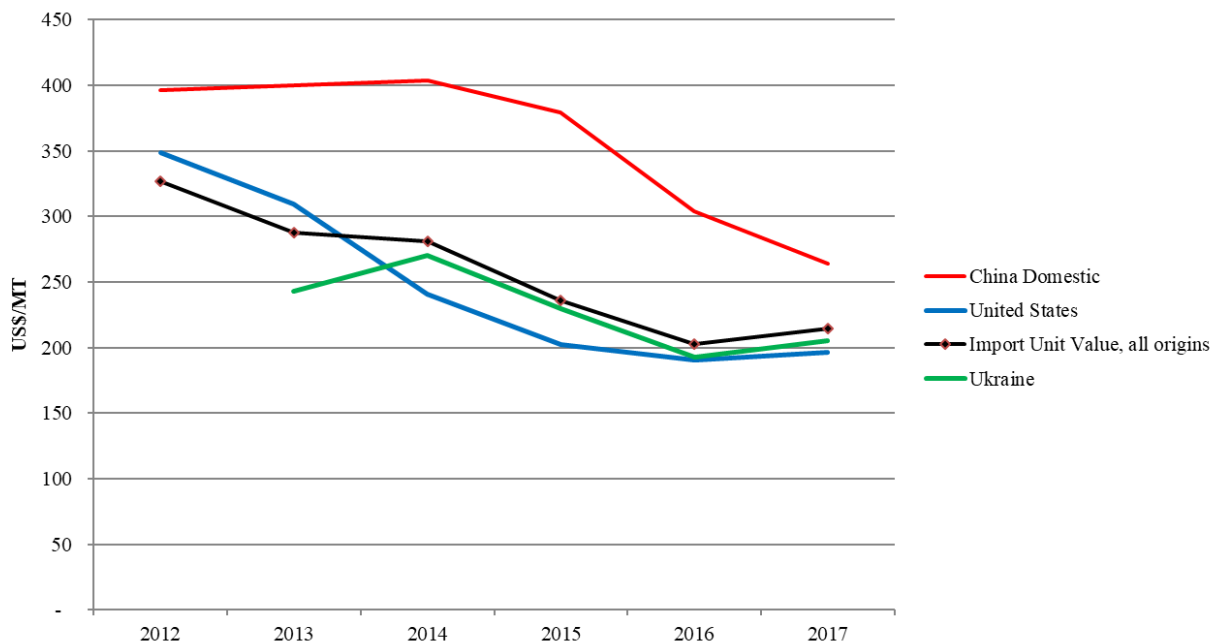


50. Domestic and international corn prices suggest that China's corn TRQ should have filled in each of the last several years. China maintains relatively high domestic corn prices through a variety of domestic support measures, including domestic price support programs.⁷⁵ While corn prices have fluctuated, international prices have been consistently below Chinese prices.⁷⁶

⁷⁵ China's Notification (2009-2010) G/AG/N/CHN/28 (May 6, 2015) (Exhibit US-37).

⁷⁶ See Grain Pricing Data (Exhibit US-22); Sybille de La Hamaide, *Corn, wheat prices to hit 10-year lows in 2016*: AgResource, Reuters (April 8, 2016), available: <https://www.reuters.com/article/us-grains-prices-agresource/corn-wheat-prices-to-hit-10-year-lows-in-2016-agresource-idUSKCN0X51QA> (Exhibit US-41).

Corn Prices in China, Domestic and Imported



51. Demand for corn also has increased for certain end uses, including livestock production.⁷⁷

IV. LEGAL DISCUSSION

52. In this section, the United States demonstrates that China’s administration of its grains TRQs, as described above, breaches China’s WTO obligations.

53. First, in Section A, the United States explains how China breaches Paragraph 116 of the *Working Party Report*, as incorporated into China’s Accession Protocol, because the basis for China’s TRQ administration is not: (1) transparent; (2) predictable; or (3) fair; because its grains TRQs are not administered using (4) clearly specified administrative procedures, or (5) clearly specified requirements; and because its grains TRQs are not administered (6) using timeframes, administrative procedures, and requirements that would not inhibit the filling of each TRQ.

54. Next, in Section B, the United States explains how China breaches Article X:3(a) of the GATT 1994 because China’s TRQ administration is not reasonable, because China: (1) utilizes vague eligibility criteria and allocation principles to allocate TRQ that applicants cannot reasonably understand; (2) permits numerous authorized agents to independently interpret the vague criteria; (3) publishes applicant data for comment and “disagreement” without clear guidelines regarding how this information will be verified and use; and (3) fails to make public information regarding TRQ allocation or reallocation in a manner that would make importation feasible.

⁷⁷ Kelsey Nowakowski, *Why Corn – Not Rice – Is King in China*, National Geographic (May 18, 2015) (Exhibit US-42).

55. In Section C, the United States explains how China breaches Article XIII:3(b) of the GATT 1994, the obligation to give public notice of the total quantity of the products which will be permitted to be imported during the specified period, and the obligation to notify of any change in such quantity. China fails to provide meaningful information to the public regarding actual TRQ allocation at the time of allocation, at the time unused quota amounts are returned, and at the time of reallocation.

56. Finally, in Section D, the United States explains how China breaches Article XI:1 of the GATT 1994, because China maintains an import prohibition or restriction other than duties, taxes, or other charges, through administrative actions creating a limitation on importation. In particular, China’s TRQ administration results in (1) commercial uncertainty surrounding whether TRQ Certificate holders will have to import through the state trading enterprise, or will receive a non-state trading portion of the TRQ, and the resulting obligations to obtain additional authorization to import freely after August 15 for holders of state trading quota, in association with compressed timeframes, and penalties associated with unused TRQ amounts; and (2) certain usage requirements for grain successfully imported under the TRQ, which limit importation and induces conservative requests for TRQ.

**A. China’s Administration of its TRQs for Wheat, Rice, and Corn is
Inconsistent with Working Party Report Paragraph 116**

57. For the reasons set forth below, China has breached numerous of its obligations under Paragraph 116 of the *Working Party Report*, incorporated by reference as a binding obligation into China’s Accession Protocol.⁷⁸

58. Paragraph 116 provides:

The representative of China stated that upon accession, China would ensure that TRQs were administered 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. China would apply TRQs fully in accordance with WTO rules and principles and with the provisions set out in China's Schedule of Concessions and Commitments on Goods.⁷⁹

59. The first sentence of Paragraph 116 thus contains several related but independent obligations.

60. First, Paragraph 116 prescribes the “basis” on which the TRQs must be administered. Specifically, the paragraph requires China to administer its TRQs on a basis that is (1)

⁷⁸ China memorialized this commitment in its *Working Party Report*, which includes Paragraph 116 in its list of commitments incorporated by reference. *Working Party Report*, para. 342 (Exhibit US-1).

⁷⁹ *Working Party Report*, para. 116 (Exhibit US-1). China’s Accession Protocol states, at paragraph 1.2: “This Protocol, which shall include the commitments referred to in paragraph 342 of the *Working Party Report*, shall be an integral part of the WTO Agreement.”⁷⁹ *Accession Protocol*, para. 1.2 (US-2).

transparent, (2) predictable, (3) uniform, (4) fair, and (5) non-discriminatory. Failure by China to administer its TRQs in any of these five ways would constitute a breach of Paragraph 116.

61. Next, Paragraph 116 requires China to administer its TRQs “using clearly specified timeframes, administrative procedures and requirements.” Failures by China to “clearly specify” any of these components of its TRQ administration, namely, (1) timeframes, (2) administrative procedures, or (3) requirements, would mean that China could not use “clearly specified” timeframes and would constitute a breach of Paragraph 116.

62. Finally, the third prong of the provision indicates that China committed that the “timeframes, administrative procedures and requirements” used by China to administer its TRQs “would” result in three situations. That is, China’s “timeframes, administrative procedures and requirements” must be ones that (1) would provide effective import opportunities; (2) would reflect consumer preferences and end-user demand; and (3) would not inhibit the filling of the TRQs.

63. Paragraph 116 thus contains related but distinct commitments, and failure by China to administer TRQs consistent with any of these commitments represents a distinct breach.

64. As detailed in this section, China administers its TRQs for corn, wheat, and rice inconsistently with six of these distinct obligations: (1) to administer the TRQ on a transparent basis; (2) to administer the TRQ on a predictable basis; (3) to administer the TRQ on a fair basis; (4) to administer the TRQ using administrative procedures that are clearly specified; (5) to administer the TRQ using requirements that are clearly specified; and (6) to administer the TRQ using timeframes, administrative procedures, and requirements that would not inhibit the filling of the TRQs.

65. The United States details below how specific aspects of China’s measures and TRQ administration are inconsistent with each of these separate obligations.

66. Consistent with Article 31 of the *Vienna Convention on the Law of Treaties* (“Vienna Convention”) and Article 3.2 of the DSU, the United States begins with an analysis of the ordinary meaning of the relevant terms of China’s commitments.⁸⁰

67. First, China’s obligations under Paragraph 116 require it to “administer” its TRQs consistent with several requirements. The dictionary definition of “administer” is “to carry on or execute (an office, affairs, etc.).”⁸¹ Therefore, China’s administration of its TRQs relates to all aspects of its execution, or carrying out, of those TRQs.

⁸⁰ Article 3.2 of the DSU indicates that WTO adjudicators are to apply customary rules of interpretation of public international law to the text of the covered agreements: “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” See *US – Gasoline* (AB), para. 16-17 (“the Appellate Body has been directed, by Article 3(2) of the *DSU*, to apply Article 31 of the Vienna Convention on the Law of Treaties in seeking to clarify the provisions of the *General Agreement* and the other ‘covered agreements’”).

⁸¹ *The New Shorter Oxford English Dictionary*, Vol. 1, at 28 (Exhibit US-43). Other definitions include: manage as steward; furnish, or supply.

68. The plain meaning of “administer” is thus broad, and encompasses “any series of steps, actions or events that are taken or occur in relation to the making of an administrative decision.”⁸² The plain meaning of “administer” encompasses more than China’s annual publication of measures, as directed by China’s Schedule of Concessions.⁸³ In the context of Article X:3(a) of GATT 1994, the Appellate Body found in *EC – Selected Customs Matters* that a government’s acts of administration include not only acts of administering the laws and regulations but also those legal instruments that regulate the application or implementation of such laws and regulations.⁸⁴

69. Here, China’s administration of its grains TRQs consists of the allocation and reallocation processes described in Section III.A above, which include the requirements and administrative processes described in its various legal instruments, as well as the series of actions or omissions by China in relation to the making and implementation of administrative decisions regarding the allocation or reallocation of the TRQ amounts. China therefore must ensure that all such administrative actions and legal instruments comply with its obligations under Paragraph 116.

1. China’s TRQs Are Not Administered on a Transparent Basis

70. China’s TRQ administration is inconsistent with Paragraph 116, because China does not administer its TRQs on a transparent basis. After setting out the proper interpretation of this obligation, the United States demonstrates that China does not administer its TRQs on a transparent basis, because (i) the eligibility criteria and allocation principles set out in China’s instruments are vague and not easily discerned; (ii) China does not provide any public information regarding which entities received TRQ allocations and in what amounts; (iii) China does not make public what unused TRQ quantities, if any, are returned and made available for reallocation; and, (iv) China does not publicize information regarding which entities received reallocations of TRQ quantities and in what amounts.

a. Interpretation of China’s Commitment to Ensure that its Grains TRQs are Administered on a Transparent Basis

71. Paragraph 116 prescribes the “basis” on which the TRQs must be administered or executed. The dictionary definition of “basis” is “a set of underlying or agreed principles” according to which an activity or process is carried on.⁸⁵ Here, the basis relates to the system according to which the TRQ is executed – specifically, how allocation and reallocation of the TRQ will occur.

⁸² *EC – Selected Customs Matters* (AB), paras. 224-225.

⁸³ *China’s Schedule CLII, Part I, Section I (B)* (Exhibit US-23).

⁸⁴ *EC – Selected Customs Matters* (AB), para. 200.

⁸⁵ *The New Shorter Oxford English Dictionary*, Vol. 1 at 188 (Exhibit US-43). Also, “a thing on which anything is constructed and by which its constitution or operation is determined.” Another definition is: the main constituent.

72. China must administer its TRQ on a “transparent” basis. As used in Paragraph 116, the dictionary definition of “transparent” is “easily seen through or understood; easily discerned; evident; obvious.”⁸⁶

73. This plain meaning of “transparent” is consistent with findings of the panel in *United States – Carbon Steel*, which interpreted “transparent” in the context of the chapeau of Article 14 of the *Agreement on Subsidies and Countervailing Measures*. The panel found that “[t]he requirement in the chapeau of Article 14 that the application of a benefit methodology be “transparent” conveys the sense that such application should be set out in such a fashion that it can be easily understood or discerned.”⁸⁷

74. Thus, reading these terms together, Paragraph 116 requires China to administer its TRQs, including with respect to allocation and reallocation, through a process or set of rules or principles that is easily understood, discerned, or obvious.

75. Transparency in this context would not be limited to the publication of any legal instruments relating to TRQ administration, as publication will not be sufficient to ensure that the requirements and procedures set out in those instruments are themselves transparent, or that the actions or omissions by China with respect to the implementation of the TRQs are transparent. As described above, for TRQ administration to be on a transparent basis, the system or principles pursuant to which administration of the TRQ occurs must be easily discerned and understood. If what is published does not allow traders to easily understand the basis for TRQ administration then that publication alone would not be sufficient to satisfy this requirement.

b. China has Failed to Ensure that its Grains TRQs are Administered on a Transparent Basis

76. As detailed below, China does not administer its TRQs on a transparent basis, because: (i) the eligibility criteria and allocation principles set out in China’s instruments are vague and not “easily discerned;” (ii) China does not provide any public information regarding which entities received TRQ allocations and in what amounts; (iii) China does not make public what unused TRQ quantities, if any, are returned and made available for reallocation; and, (iv) China does not publicize information regarding which entities received reallocations of TRQ and in what amounts. We address each of these arguments in turn.

i. The eligibility criteria and allocation principles are not easily discerned or understood

77. China does not provide sufficient information in its TRQ instruments, or otherwise, to enable applicants to easily understand or discern the criteria and principles applied by NDRC in the TRQ allocation and reallocation processes. As set out in the *2003 Provisional Measures and Allocation Notice*, NDRC applies certain “Basic Criteria” for TRQ eligibility and principles by which allocations are determined (“Allocation Principles”).⁸⁸ However, information provided about the Basic Criteria and Allocation Principles, respectively, is not sufficient to enable

⁸⁶ *The New Shorter Oxford English Dictionary*, Vol. 2, at 3,373 (Exhibit US-43).

⁸⁷ *US – Carbon Steel (India)* (Panel), para. 7.191.

⁸⁸ *2017 Allocation Notice*, Articles II, IV (Exhibit US-15); *Reallocation Notice*, para. 2 (Exhibit US-17).

applicants to easily understand or discern the actual criteria applied to determine applicants' eligibility to receive a TRQ allocation, or the basis upon which NDRC distributes TRQ amounts among eligible applicants.

Basic Criteria

78. As set forth in the annual *Allocation Notice*, the Basic Criteria for applicants for import tariff-rate quotas for grains in 2017 are:"

- Be “registered with the industry and commerce administrative departments prior to October 1;”
- Possess “a good financial condition, [good] taxpayer record, and [good] integrity situation;”
- Have “no record of violating regulations with respect to customs, industry and commerce, taxation, credit and loans, inspection and quarantine, grain distribution, environmental protection, and other areas;”
- Not be on “a ‘Credit China’ website blacklist [of entities] receiving punishment;”
- Have “fulfilled social responsibilities associated with [their] operations;” and
- Have “no conduct in violation of the *Provisional Measures for the Administration of Import Tariff-Rate Quotas for Agricultural Products*.”⁸⁹

79. The *Allocation Notice* enumerates these Basic Criteria, but does not define them such that the requirements would be easily understandable or obvious to potential applicants. China thus fails to administer its grains TRQs on a transparent basis because the following Basic Criteria are not easily discerned or understood: possessing a good financial condition; possessing “integrity;” no record of violating regulations in various areas; and having fulfilled social responsibilities associated with operations.⁹⁰

80. *Good Financial Condition:* The *Allocation Notice* does not define or describe what “good financial condition” means. We note that the application form itself, which is attached to the *Allocation Notice*, requests data on (1) registered capital; (2) 2015 and 2016 tax payment; and (3) 2015 and 2016 year-end debt-to-asset ratio.⁹¹ However, the application form does not indicate whether this information is relevant to the basic criterion of “good financial condition” or reflect additional or different requirements not otherwise specified. Even assuming that all of these data points are used to determine an applicant’s financial condition, neither the *Allocation Notice*, nor the application specifies how this information is evaluated, which data points carry more or less weight than the others, or what levels of capital, tax payments, debt-to-asset ratio,

⁸⁹ 2017 *Allocation Notice*, Article II (Exhibit US-15).

⁹⁰ 2017 *Allocation Notice*, Article II (Exhibit US-15).

⁹¹ 2017 *Allocation Notice*, Attachment (Exhibit US-15).

and bank credit ratings will be considered “good” for purposes of determining an applicant’s fulfillment of the Basic Criteria.

81. *Integrity*: The Basic Criteria also state that applicants must possess a “[good] integrity situation.” The *Allocation Notice* does not define the term “integrity” or explain how an applicant’s integrity must be demonstrated in an application. Nor does the *Allocation Notice* explain how this factor will be assessed by NDRC in its review of the application. The application form does not provide any additional clarification.

82. *No Record of Violations*: The *Allocation Notice* provides that eligible applicants must have no record of violating regulations with respect to customs, industry and commerce, taxation, credit and loans, inspection and quarantine, grain distribution, environmental protection, “and other areas.”⁹² However, the notice fails to further define any of the named areas or to identify which regulations the applicant must demonstrate compliance with in order to have fulfilled these criteria. Nor does the *Allocation Notice* indicate what would constitute a “violation” in any of the listed areas. Further, the *Allocation Notice* fails to explain what “other areas” may be relevant to an applicant’s eligibility. Nor does the application form provide any additional information. Therefore, an applicant cannot possibly understand the basis upon which her application will be evaluated, and therefore cannot, based upon the listed areas, provide all of the necessary information and certifications in her application.

83. *Social Responsibilities*: The Basic Criteria include having “fulfilled social responsibilities associated with operations.” But again, neither the *Allocation Notice* and application form, nor the *2003 Provisional Measures*, further defines or identifies what these “social responsibilities” include. The measures also fail to establish what constitutes “fulfilling” these responsibilities or how NDRC evaluates whether the social responsibilities have been fulfilled.

84. The *Allocation Notice* and *Reallocation Notice* make clear that the Basic Criteria are preconditions of eligibility to receive TRQ. However, applicants cannot easily discern or understand, from the text of the *2003 Provisional Measures* and *Allocation Notice* – even read with the application form itself – what all of the Basic Criteria are or how NDRC or its authorized agents might apply them in evaluating a TRQ application. Therefore, because each of the Basic Criteria discussed above is not “easily discerned or understood,” the basis on which China administers its grains TRQs is not transparent. China therefore breaches Paragraph 116.

Allocation Principles

85. The *2003 Provisional Measures* and *Allocation Notice* also set forth non-transparent Allocation Principles by which TRQs are allocated.⁹³ Article 4 of the *2003 Provisional Measures* provides that TRQs will be allocated according to “the number of applications, past actual import performance, production capacity, other relevant commercial standards, or based on a first-come-first-served method.”⁹⁴ The *Allocation Notice* implements Article 4 using similar language in Article IV, “Allocation Principles,” which states *in its entirety*:

⁹² 2017 *Allocation Notice*, Article II (Exhibit US-15).

⁹³ 2017 *Allocation Notice*, Article IV (Exhibit US-15).

⁹⁴ 2003 *Provisional Measures*, Articles 13-14 (Exhibit US-11).

The aforementioned import tariff-rate quotas for grains will be allocated in accordance with applicants’ actual production and operating capacities (including historical production and processing, actual import performance, and operations) and other relevant commercial standards.⁹⁵

86. As with the Basic Criteria described above, China’s instruments fail to define or explain the Allocation Principles on which allocation and reallocation of the relevant TRQs will be based.

87. First, it is unclear from the text of the *2003 Provisional Measures* or the *Allocation Notice* how NDRC evaluates applicants’ “actual production and operating capacities.” For example, it is not clear whether only those applicants having certain levels of production or capacity, or certain kinds of “operations,” will be given an allocation at all; or whether all eligible traders may receive an allocation, but in an amount corresponding to its relative production and operating capacity vis-a-vis other applicants.

88. Second, the instruments do not provide any context, or even content, for the factor “other relevant commercial standards.” That is, there apparently are “other” standards that are “relevant” to NDRC’s decision-making with respect to the allocation of TRQ amounts, but these are not identified in the *2003 Provisional Measures* or the *Allocation Notice*. Without more information, applicants cannot discern what those “other” factors may be, much less how she might demonstrate fulfillment of such factors, or how NDRC might evaluate such factors in making its allocation decisions.

89. Third, and among other principles *not* reflected in the *Allocation Notice*’s short statement of Allocation Principles, the *Allocation Notice* also does not address how NDRC determines which applicants will receive allocations of the portion of each TRQ reserved for state trading.

90. As described in Section III.A, the *2003 Provisional Measures* provide at Article 4 that TRQs for certain products, including wheat, corn, and rice, are divided into “state trading and non-state trading;” and that “state trading quotas must be imported through state trading enterprises.”⁹⁶ The *Allocation Notice* specifies, in Article I, the portion of each TRQ reserved for state trading. For wheat, this amount is 90% of the total TRQ amount; for corn, this amount is 60% of the total TRQ amount; for rice, this amount is 50% of the total TRQ amount for long-grain and short- and medium-grain rice, respectively.

91. The *Allocation Notice* provides no information, however, on how the state trading quota is allocated. The *Allocation Notice* does not distinguish or even reference state trading allocations in the enumeration of Allocation Principles, which states only that “the aforementioned import TRQs for grains” will be allocated in accordance with the allocation principles, enumerated above.⁹⁷

92. And, while the application form requires the applicant to include “Quantity Applied for (Tons),” there is no apparent opportunity for an applicant to specify whether she is requesting (or

⁹⁵ 2017 *Allocation Notice*, Article IV (Exhibit US-15).

⁹⁶ 2003 *Provisional Measures*, Article 4 (Exhibit US-11).

⁹⁷ 2017 *Allocation Notice*, Article IV (Exhibit US-15).

would accept) an allocation under the state trading or non-state trading portion.⁹⁸ Therefore, applicants do not know, apparently until they receive their TRQ certificate, whether they may import directly or must import through a state trading enterprise, which carries additional conditions of importation.

93. Fourth, the United States recalls that China apparently verifies applicant information through a public comment process. Specifically, approximately one month prior to the January 1 deadline to allocate the TRQ, NDRC publishes a list of applicants, along with certain of the data submitted by each applicant, and solicits information from the public regarding whether they “are in disagreement with the data reported by the enterprises.”⁹⁹

94. However, the document does not specify in what form the information must be provided, or indicate how NDRC will verify or evaluate the information received in making decisions regarding eligibility or allocation. Nor does the document indicate whether NDRC informs applicants of any negative information received by a commenter, or whether NDRC provides applicants an opportunity to rebut or refute such information.

95. This additional step renders NDRC’s administration of the TRQ application and allocation process, including NDRC’s determinations with respect to both the Application Criteria and Allocation Principles, much less clear, and increases applicants’ uncertainty regarding the status or sufficiency of their applications considerably.

96. In sum, the little information provided by China in its articulation of the Allocation Principles, and the lack of information on the basis of allocation for the state trading portions, does not permit an applicant to understand how NDRC interprets and applies those principles. And, NDRC’s request for public comments on applicants’ information makes NDRC’s determinations of eligibility and allocation of TRQ amounts less clear, and more difficult to understand. Therefore, because each of these aspects of the Allocation Principles set out in the *2003 Provisional Measures* and the *Allocation Notice* is not easily discernable or understood, China also fails to administer its grains TRQs on a transparent basis in breach of Paragraph 116.

ii. China does not provide any information regarding which entities received quota allocations and in what amounts

97. China also fails to administer its grains TRQs on a transparent basis because it fails to provide information on the results of the TRQ allocation process.

98. The *2003 Provisional Measures* provide that NDRC must allocate the grains TRQs by January 1 of each year.¹⁰⁰ However, China does not provide, through its published measures or otherwise, any information to the public regarding annual TRQ allocations. That is, China does not publish the total amounts allocated by January 1, or otherwise indicate whether the total amount available for allocation, as announced in the *Allocation Notice*, was in fact fully allocated. Nor does China publish a list of the entities to whom the TRQ was allocated, or in what amounts. Similarly, China does not publish information regarding the total allocated

⁹⁸ *2017 Allocation Notice*, Attachment (Exhibit US-15).

⁹⁹ *2017 Announcement of Enterprise Data* (Exhibit US-19).

¹⁰⁰ *2003 Provisional Measures*, Article 12 (Exhibit US-11).

amount of the TRQ that must be imported through an STE, and what amount may be imported directly.

99. Without such information, applicants cannot understand how NDRC assesses the applicants and determines allocated amounts. For example, an applicant may know that he did not receive an allocation, or received a smaller allocation than he had requested, but without knowing which other applicants received allocations, and in what amounts, he cannot discern the reasons for his own outcome. Specifically, applicants cannot discern or understand how NDRC and its local agencies apply each eligibility criterion or what relative weight is assigned to each criterion. Similarly, applicants cannot discern or understand on what basis the actual amounts allocated were distributed among applicants, or how NDRC determined which applicants would receive a share of the state trading portion of the TRQ and which would receive authorization to import directly. Thus, because China does not administer its TRQs through a process or set of rules or principles that is easily understood, discerned, or obvious, China is not administering its TRQs on a transparent basis.

100. Additionally, without this information relating to China's allocation process, traders inside and outside of China lack the necessary commercial information to engage in importation under the TRQs. Traders do not know which entities in China have permission to import grains, and they do not know what amounts those entities are permitted to import, either individually or as an industry. Further, traders do not know what amounts of each grain may be imported by the relevant state trading enterprises, or for which end uses those amounts may be needed.

101. Because China fails to provide the amounts allocated, the recipients of allocations, and the amounts allocated to different importing entities, China administers its grains TRQs through a process or set of rules or procedures that is *not* easily understood, discernable, or obvious, and thus not on a non-transparent basis, inconsistent with Paragraph 116 of the *Working Party Report*.

iii. China does not provide information regarding what quantities, if any, are returned for reallocation

102. NDRC does not administer the grains TRQs on a transparent basis because it launches a reallocation process, by publishing the annual *Reallocation Notice*, but does not provide information on what amounts, if any, were returned unused and are thus available for reallocation to other importers or interested entities.

103. Pursuant to the *2003 Provisional Measures*, NDRC must publish a *Reallocation Notice* one month prior to the application period for reallocation, which begins on September 1.¹⁰¹ As detailed in Section III.A, China's measures require TRQ Certificate holders to return unused portions of their TRQ allocation by September 15.¹⁰²

¹⁰¹ *2003 Provisional Measures*, Article 24 (Exhibit US-11).

¹⁰² *Import Regulation*, Article 31 (Exhibit US-10); *2003 Provisional Measures*, Article 23 (Exhibit US-11); *2017 Reallocation Notice*, para. 1 (Exhibit US-17).

104. However, China does not provide any additional information to applicants or to traders – either in the *Reallocation Notice* or, for example, after the September 15 deadline – regarding the amounts actually returned and available for reallocation.

105. Therefore, depending on the circumstances, China may initiate the reallocation process and accept applications but have no unused TRQ amounts to reallocate. Alternatively, NDRC may have available a large volume of unused TRQ allocation available for reallocation, and applicants and traders simply do not know that such amounts are available.

106. Without any information regarding the unused amounts returned and available for reallocation, potential applicants and traders do not even know whether a reallocation will, or did, take place in a given year. Rather, the public simply sees the same *Reallocation Notice* issued every year, setting out the same application instructions and timeframes without more.

107. The reallocation process should result in opportunities for applicant and traders to make use of TRQ amounts. Because China publishes the same *Reallocation Notice* annually, and does not disclose the TRQ amounts returned and available for reallocation, however, the process or set of rules or principles through which China administers this portion of the TRQs is *not* easily understood or discerned, or obvious. Thus, for these reasons as well, China fails to administer its grains TRQs on a transparent basis, in breach of Paragraph 116 of the *Working Party Report*.

iv. China does not provide information regarding whether entities received quota reallocations and in what amounts

108. Finally, China does not administer its grains TRQs on a transparent basis, because NDRC does not provide the public, including traders inside and outside of China, with any information on the TRQ quantities actually reallocated, if any.

109. As explained in Section III.A, “prior to September 30 of each year,” the *2003 Provisional Measures* require NDRC to reallocate unused quantities of the TRQs for wheat, corn, and rice.¹⁰³

110. However, China does not provide, through its published measures or otherwise, any public information regarding the actual TRQ reallocations. That is, as with the initial allocation, China does not publish the total amounts reallocated, or otherwise indicate whether reallocation in fact occurred. Nor does China provide, through its published measures or otherwise, a list of the entities that received reallocated amounts or the amount each entity received.

111. As with the initial allocation, without such information, reallocation applicants cannot understand how NDRC assesses the applicants and determines allocated amounts. Additionally, without knowing the results of the allocation process, traders inside and outside of China lack the necessary commercial information to engage in importation under the reallocated portion of the TRQs. Having such information with respect to reallocated amounts is particularly important given the limited amount of time available to execute additional imports before the TRQ period for a given year expires on December 31.

¹⁰³ *2003 Provisional Measures*, Article 26 (Exhibit US-11). “Prior to October 1, the end users will receive notice of the results of tariff-rate quota reallocation.” *2017 Reallocation Notice*, para. 5 (Exhibit US-17).

112. Therefore, because China fails to publish the results of its TRQ reallocation process, the process or set of rules or procedures through which China administers this portion of its grains TRQs is *not* easily understood or discerned, or obvious. Thus, for these reasons as well, China fails to administer its grains TRQs on a transparent basis, in breach of Paragraph 116 of the *Working Party Report*.

2. China’s TRQs Are Not Administered on a Predictable Basis

113. China separately breaches Paragraph 116 of the *Working Party Report* because it does not administer its grains TRQs on a predictable basis. The application process that governs TRQ allocation and reallocation creates substantial uncertainty for applicant users of the system, in a way that makes importing commercially difficult or not feasible.

In this section, the United States first provides an interpretation of the relevant obligation under Paragraph 116. The United States then demonstrates that China’s grains TRQs are not administered on a “predictable” basis because: (i) the eligibility criteria and allocation principles are vague and applicants cannot anticipate how they will be applied; (ii) China does not provide information on what amounts, if any, were returned unused and made available for reallocation; (iii) China does not provide information on which entities receive reallocations and in what amounts; and, (iv) applicants receiving a state trading allocation cannot predict whether they will be able to import the full amount.

a. Interpretation of China’s Commitment to Ensure that TRQs are Administered on a Predictable Basis

114. Pursuant to Paragraph 116, China must administer its grains TRQs on a “predictable” basis. The dictionary definition of predictable is “able to be predicted” or acting in a way that is easy to predict.¹⁰⁴ Predict, in turn, means to say that a thing will happen; foretell.¹⁰⁵

115. The context provided by Paragraph 116 provides further guidance in understanding China’s obligation to administer its TRQs on a “predictable” basis. Specifically, “predictable” appears as one of a number of adjectives to describe the basis for TRQ administration. That is, China committed to ensure that its TRQs “were administered on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements.” Therefore, the term “predictable,” in context, supports an interpretation that China must administer its TRQs through a process or system of rules or procedures such that applicants can easily predict or anticipate *how* decisions regarding TRQ administration, including allocation and reallocation, will be made.

b. China Fails to Ensure that its TRQs are Administered on a Predictable Basis

116. China fails to administer its TRQs on a “predictable” basis for many of the same reasons its administration is not completed on a “transparent” basis. That is, the lack of clarity in

¹⁰⁴ *The New Shorter Oxford English Dictionary*, Vol. 2 at 2,329 (Exhibit US-43).

¹⁰⁵ *The New Shorter Oxford English Dictionary*, Vol. 2 at 2,329 (Exhibit US-43). To “foretell” is to predict, foresee, or anticipate.

China’s requirements and processes not only renders them not transparent, it prevents applicants from being able to easily predict or anticipate how administration will occur. In the below sections, the United States will demonstrate that China fails to administer its grains TRQs on a predictable basis because: (i) the eligibility criteria and allocation principles are vague and applicants cannot anticipate how they will be applied; (ii) China does not provide information on what amounts, if any, were returned unused and made available for reallocation; (iii) China does not provide information on which entities receive reallocations and in what amounts; and, (iv) applicants receiving a state trading allocation cannot predict whether they will be able to import the full amount. Each of these reasons represents a separate and distinct breach of the obligation to administer TRQs on a predictable basis.

i. China’s Application Criteria and Allocation Principles are vague

117. First, China does not administer its grains TRQs on a predictable basis because the Basic Criteria for TRQ eligibility and the Allocation Principles set out in China’s legal instruments are vague. The unpredictability caused by the vagueness of the criteria is compounded in some cases by the fact that NDRC apparently verifies or supplements information submitted by an applicant by allowing any member of the public to submit their own comments and information if it is in “disagreement” with an applicant’s data. Therefore, the process or system of rules or procedures through which China administers its grains TRQs prevents applicants from being able to easily predict or anticipate how China will allocate or reallocate the grains TRQs.

118. As detailed in Section IV.A.1.b, the *2003 Provisional Measures and Allocation Notice* set forth vague and undefined Basic Criteria and Allocation Principles.¹⁰⁶ The lack of transparency provided in the instruments regarding these criteria and principles also renders them unpredictable because applicants cannot easily predict or anticipate how the requirements will be applied and thus what outcomes they might expect from the process.

Basic Criteria

119. The United States recalls that the “basic criteria for applicants for import tariff-rate quotas for grains in 2017 are:”

- Be “registered with the industry and commerce administrative departments prior to October 1;”
- Possess “a good financial condition, [good] taxpayer record, and [good] integrity situation;”
- Have “no record of violating regulations with respect to customs, industry and commerce, taxation, credit and loans, inspection and quarantine, grain distribution, environmental protection, and other areas;”
- Not be on “a ‘Credit China’ website blacklist [of entities] receiving punishment;”

¹⁰⁶ *2017 Allocation Notice*, Articles II, IV (Exhibit US-15).

- Have “fulfilled social responsibilities associated with [their] operations;” and
- Have “no conduct in violation of the 2003 Provisional Measures for the Administration of Import Tariff-Rate Quotas for Agricultural Products.”¹⁰⁷

120. China fails to administer its grains TRQs on a predictable basis because the following Basic Criteria prevent applicants from easily predicting or anticipating how they will be applied: possessing a good financial condition; possessing “integrity;” having no record of violating regulations in various areas; and having fulfilled social responsibilities associated with operations.

121. *Good financial condition:* The *Allocation Notice* does not define or describe what “good financial condition” means. Neither the *Allocation Notice* nor the Application specifies how this information is evaluated; which data points carry more or less weight than the others; or what levels of capital, tax payments, debt-to-asset ratio, and bank credit ratings will be considered “good” for purposes of determining an applicant’s fulfillment of the Basic Criteria. China’s failure to define these criteria, against which every applicant is evaluated, creates uncertainty in the process for applicants and prevents them from easily predicting or anticipating how their applications will be evaluated and whether they should expect to be eligible for TRQ allocation or reallocation.

122. *Integrity:* The Basic Criteria also require that applicants possess “integrity.” However, the *Allocation Notice* again does not define the term “integrity” or explain how an applicant’s integrity must be demonstrated in an application. Nor does the *Allocation Notice* explain how this factor will be assessed by NDRC in its review of the application. Furthermore, NDRC solicits information from the public regarding as to whether they “are in disagreement with the data reported by the enterprises.”¹⁰⁸ Therefore, in addition to an applicant’s not knowing what information she must provide in order to demonstrate her possession of “integrity,” it is also unclear how NDRC would consider any public comments regarding an applicant’s “integrity,” adding an additional layer of uncertainty for applicants. Without an applicant’s knowing how NDRC will determine her “integrity,” or how and whether the public may comment on this criterion, this criterion prevents an applicant from easily predicting or anticipating how her application will be evaluated, and thus China fails to administer its grains TRQs on a predictable basis.

123. *No record of violations:* The *Allocation Notice* provides that eligible applicants must have no record of violating regulations with respect to customs, industry and commerce, taxation, credit and loans, inspection and quarantine, grain distribution, environmental protection, “and other areas.”¹⁰⁹ However, the *Allocation Notice* fails to define further any of the named areas or to identify which regulations an applicant must demonstrate compliance with in order to have fulfilled these criteria. Nor does the *Allocation Notice* indicate what would constitute a “violation” in any of the listed areas. Further, the Notice fails to explain what “other areas” may be relevant to an applicant’s eligibility. Therefore, an applicant cannot understand all

¹⁰⁷ 2017 *Allocation Notice*, Article II (Exhibit US-15).

¹⁰⁸ 2017 *Announcement of Enterprise Data* (Exhibit US-19).

¹⁰⁹ 2017 *Allocation Notice*, Article IV (Exhibit US-15).

of the bases upon which her application will be evaluated, and therefore cannot, based upon the listed areas, provide all of the necessary information and certifications in her application.

124. Moreover, because NDRC solicits feedback from members of the public regarding the data submitted, an applicant also lacks information regarding all the data being reviewed by NDRC, or how any such additional data may be verified or evaluated. This criterion therefore prevents an applicant from easily predicting or anticipating how her application will be evaluated, and therefore China fails to administer its grains TRQs on a predictable basis.

125. *Social Responsibilities*: The “Basic Criteria” include “having fulfilled social responsibilities associated with operations.” Again, however, the *Allocation Notice* and *2003 Provisional Measures* fail to define “social responsibilities” or to elaborate on what would constitute “fulfilling” these responsibilities. The uncertainty regarding this criterion is also compounded because NDRC accepts public comments regarding “disagreement” with the applicants’ information. Therefore, the lack of information prevents an applicant from easily predicting or understanding whether it is eligible for a TRQ allocation or reallocation.

Allocation Principles

126. The *2003 Provisional Measures* and *Allocation Notice* also set forth unpredictable “Allocation Principles” by which NDRC allocates TRQ.¹¹⁰ The *Allocation Notice* Article IV, “Allocation Principles,” states in its entirety:

The aforementioned import tariff-rate quotas for grains will be allocated in accordance with applicants’ actual production and operating capacities (including historical production and processing, actual import performance, and operations) and other relevant commercial standards.¹¹¹

127. As with the Basic Criteria described above, China’s instruments fail to define or explain the Allocation Principles on which allocation and reallocation of the relevant TRQs will be based, and thus prevent applicants from anticipating how these principles will be applied or whether they can expect to receive an allocation based on the information provided in their applications.

128. First, the text of the *2003 Provisional Measures* or the *Allocation Notice* does not explain how NDRC evaluates applicants’ “actual production and operating capacities.” For example, the text does not specify whether only those applicants having certain levels of production or capacity, or certain kinds of “operations,” will be given an allocation at all, or whether all eligible traders will receive an allocation, but in an amount corresponding to its relative production and operating capacity. Furthermore, applicants, again, cannot predict whether and

¹¹⁰ *2017 Allocation Notice*, Article IV (Exhibit US-15).

¹¹¹ *2017 Allocation Notice*, Article IV (Exhibit US-15). The *2003 Provisional Measures* provide that TRQs will be allocated according to “the number of applications, past actual import performance, production capacity, other relevant commercial standards, or based on a first-come-first-served method.” *2003 Provisional Measures*, Article 13 (Exhibit US-11).

how NDRC will take into account information from the public, who may disagree with the applicant’s representation of its actual production and operating capacities.¹¹²

129. Second, the instruments do not provide any context, or even content, for the factor “other relevant commercial standards.” That is, there apparently are “other” standards that are “relevant” to NDRC’s decision-making with respect to TRQ allocation that are not listed in the *2003 Provisional Measures* or the *Allocation Notice*. However, the *Allocation Notice* does not identify, much less define, these additional criteria. Nor do the instruments indicate when any such “other” criteria may be required, or how such criteria would be considered or evaluated by NDRC. Without more information, applicants cannot predict what those “other” factors are, much less how they may affect NDRC’s allocation decisions.

130. Next, the *Allocation Notice* does not address how NDRC allocates the portion of each TRQ reserved for state trading.

131. The *2003 Provisional Measures* provide that TRQs for certain products are divided into “state trading and non-state trading,” and that “state trading quotas must be imported through state trading enterprises.”¹¹³ The *Allocation Notice* then specifies the portion of each TRQ reserved as state trading quota.¹¹⁴

132. However, the *Allocation Notice* provides no information on how the state trading quota is allocated. The *Allocation Notice* does not distinguish or even reference state trading allocations in the enumeration of Allocation Principles, which states only that “the aforementioned import TRQs for grains” will be allocated in accordance with the allocation principles, enumerated above.¹¹⁵ And while the application form requires the applicant to include “Quantity Applied for (Tons),” there is no apparent opportunity for an applicant to specify whether she is requesting (or would accept) an allocation under the state trading or non-state trading portion.¹¹⁶ Therefore, applicants do not know, apparently until they receive their TRQ Certificate, whether they may import directly or must import through a state trading enterprise, which carries additional conditions of importation.¹¹⁷

133. In sum, the scarce information provided by China on the Basic Criteria and the Allocation Principles, and the lack of information on allocation of the state trading portions, do not permit an applicant to easily predict or anticipate how NDRC interprets and applies those criteria or principles in making its decisions regarding allocation and reallocation.

134. For each of the reasons explained above, China fails to administer its grains TRQs on a predictable basis in breach of Paragraph 116 of the *Working Party Report*.

ii. China does not provide information on what amounts, if any, were returned unused and made available for reallocation

¹¹² 2017 Announcement of Enterprise Data (Exhibit US-19).

¹¹³ 2003 Provisional Measures, Article 4 (Exhibit US-11).

¹¹⁴ 2017 Allocation Notice, Article I (Exhibit US-15).

¹¹⁵ 2017 Allocation Notice, Article IV (Exhibit US-15).

¹¹⁶ 2017 Allocation Notice, Attachment (Exhibit US-15).

¹¹⁷ 2003 Provisional Measures, Articles 4, 22 (Exhibit US-11).

135. China does not administer its grains TRQs on a predictable basis because it launches a reallocation process, by publishing the annual *Reallocation Notice*, but does not publish information on what amounts, if any, were returned unused and are thus available for reallocation.

136. Pursuant to the *2003 Provisional Measure*, NDRC must publish a *Reallocation Notice* one month prior to the application period for reallocation, which begins on September 1.¹¹⁸ As detailed in Section III.A, China’s measures require TRQ Certificate holders to return unused portions of their TRQ allocation by September 15.¹¹⁹

137. However, China does not provide any additional information to applicants or to traders – either in the *Reallocation Notice* or, for example, after the September 15 deadline – regarding the amounts actually returned and available for reallocation. Therefore, depending on the circumstances, China may initiate the reallocation process and accept applications, but have no unused TRQ amounts available to reallocate. Alternatively, NDRC may have available a large volume of unused TRQ allocation available for reallocation, and applicants and traders simply do not know that such amounts are available.

138. Without any information regarding the unused amounts returned and available for reallocation, potential applicants and traders cannot easily predict or anticipate whether a reallocation will take place in a given year. Nor can they easily predict or anticipate how much of a reallocation they might receive were they to apply. Rather, applicants simply see the same *Reallocation Notice* issued every year, setting out the same application instructions and timeframes, without more.

139. China fails to administer its grains TRQs, through the reallocation process, on a predictable basis. China therefore breaches Paragraph 116 of its *Working Party Report*.

iii. China does not provide information regarding whether entities received quota reallocations and in what amounts

140. China’s administration of its grains TRQs also lacks a predictable basis because NDRC does not provide the public, including traders inside and outside of China, with any information on the TRQ quantities actually reallocated, if any.

141. We recall that, before September 30 of each year, the *2003 Provisional Measures* requires NDRC to reallocate unused quantities of the TRQs for wheat, corn, and rice.¹²⁰ However, China does not provide, through its published measures or otherwise, any public information regarding the actual TRQ reallocations. That is, as with the initial allocation, China does not publish the total amounts reallocated, or otherwise indicate whether reallocation in fact occurred. Nor does China provide, through its published measures or otherwise, a list of the entities that received reallocated amounts or the amount each entity received.

¹¹⁸ *2003 Provisional Measures*, Article 24 (Exhibit US-11).

¹¹⁹ *Import Regulation*, Article 31 (Exhibit US-10); *2003 Provisional Measures*, Article 23 (Exhibit US-11); *2017 Reallocation Notice*, para. 1 (Exhibit US-17).

¹²⁰ *2003 Provisional Measures*, Article 26 (Exhibit US-11) (indicating that “[p]rior to October 1, the end users will receive notice of the results of tariff-rate quota reallocation.” *2017 Reallocation Notice*, para. 5 (Exhibit US-17).

142. As with the initial allocation, without such information, reallocation applicants cannot easily predict or anticipate how NDRC assesses the various applicants and determines reallocated amounts. Therefore, potential applicants are unable to easily predict or anticipate the outcome of the TRQ reallocation process generally, because they are not able to see or understand the outcome of prior processes.

143. Additionally, without knowing the results of the reallocation process, traders inside and outside of China lack necessary commercial information to seek to engage in importation under the reallocated portion of the TRQs. This further reduces certainty with respect to an applicant's ability to import any TRQ reallocation granted. Having such information with respect to reallocated amounts is particularly important given the limited amount of time available to execute additional imports before the TRQ period for a given year expires on December 31.

144. Therefore, by not providing information on which entities received TRQ reallocations and in what amounts, China fails to administer its grains TRQs on a predictable basis, in breach of Paragraph 116 of the *Working Party Report*.

iv. Applicants receiving a state trading allocation cannot predict whether they will be able to import the full amount

145. Finally, China's TRQ administration lacks a predictable basis because applicants receiving an allocation of the state trading portion of the TRQ cannot be certain they will be able to import the full amount within the specified timeframes, and thus be eligible to apply for a reallocation, if desired, and avoid any penalties associated with failing to import.

146. Although traders know each TRQ is divided into state and non-state trading quota, as explained above, they do not have the opportunity to choose which TRQ portion they would like to apply for. They also do not know the basis upon which China determines which applicants will receive a state trading allocation and which will receive a non-state trading allocation. The inability of traders to anticipate whether they might receive a state trading allocation leads to significant uncertainty for potential applicants due to the additional requirements associated with the state trading portion of the TRQ.

147. As explained in Section III.A, holders of a state trading TRQ Certificate must import the product through a state trading enterprise.¹²¹ That is, such TRQ Certificate holders must rely on a state trading enterprise to obtain a contract for importation of the product. Nothing in the measures requires the state trading enterprise to contract for importation of a TRQ Certificate holder's state trading quota. If a TRQ Certificate holder has not contracted to import the quantities allocated by August 15, the TRQ Certificate holder "may seek approval from NDRC to import through other enterprises with trading rights, or to import by themselves."¹²² However, neither the *2003 Provisional Measure*, nor the *Allocation Notice* specifies the procedure for obtaining NDRC approval or indicates the basis upon which NDRC will decide whether to grant such approval. Approval is not automatic, and nothing in the measures requires NDRC to approve a TRQ Certificate holder's request. Therefore, a TRQ Certificate holder *may not obtain*

¹²¹ *2003 Provisional Measures*, Article 4 (Exhibit US-11) (noting that "state trading quotas must be imported through state trading enterprises").

¹²² *2003 Provisional Measures*, Article 22 (Exhibit US-11).

approval to import directly, and therefore *may not be able* to import the full amount of TRQ allocation received. If unable to import the full amount, an applicant would lose his eligibility to request an additional amount during the reallocation process.¹²³ Therefore, a holder of a state trading TRQ Certificate cannot anticipate whether he will be able to import in full or in part in a given year.

148. The time taken to receive NDRC authorization also reduces predictability because TRQ Certificate holders with a state trading allocation continue to be obligated to return unused quota by September 15 of each year.¹²⁴ Therefore, even if a TRQ Certificate holder were to seek approval to import through another enterprise or directly on August 15, and even if NDRC were to grant that authorization immediately, quota holders would have just thirty days to contract for importation. Failure to find a new importer or import on their own by September 15 will trigger the need to return the unused TRQ amounts, or face potential penalties for not importing the full amount during the next allocation process.¹²⁵ Specifically, if a TRQ Certificate Holder “fails to complete imports for the *entire* agricultural import tariff-rate quota quantity allocated for two consecutive years, but has returned” unused quota by September 15, “there will be a corresponding deduction to its tariff-rate quota quantity allocated in the following year, according to its proportion not completed in the most recent year.”¹²⁶ If the TRQs holder’s eligibility to receive an allocation is based on its actual import performance in the previous year,¹²⁷ the inability to import under the TRQ also could lead to ineligibility to receive an allocation in the following year at all.

149. Accordingly, entities holding a state trading portion of the allocation cannot easily predict or anticipate whether they will be able to import the amounts allocated within the specified time periods, and therefore avoid any potential penalties for failing to import some or all of their allocation. Therefore, China fails to administer its grains TRQs on a predictable basis, in breach of its obligations under Paragraph 116 of the *Working Party Report*.

3. China’s TRQs Are Not Administered on a Fair Basis

150. China also breaches Paragraph 116 because it does not administer its TRQs on a “fair” basis.

151. For a thing to be “fair” it must be “just, unbiased, equitable, impartial; legitimate, in accordance with the rules or standards.”¹²⁸ Therefore, in the context of Paragraph 116, China must administer its TRQs in an impartial manner, and in accordance with rules or standards. China does not administer its TRQs in an impartial manner or in accordance with rules or standards because in many instances, no rules or standards exist and, where they do exist, they are vague or unclear.

¹²³ 2017 Reallocation Notice (Exhibit US-17).

¹²⁴ 2003 Provisional Measures, Article 23; see also 2003 Provisional Measures, Article 30 (Exhibit US-11).

¹²⁵ 2003 Provisional Measures, Articles 22-23, 30-32 (Exhibit US-11).

¹²⁶ 2003 Provisional Measures, Article 31 (Exhibit US-11) (emphasis added).

¹²⁷ 2017 Allocation Notice, Article II (commodity-specific criteria) (Exhibit US-15).

¹²⁸ *The New Shorter Oxford English Dictionary*, Vol. 1 at 907 (Exhibit US-43). See also *US – Softwood Lumber V (Article 21.5 – Canada)* (AB), para. 138 (fair is generally understood to connote impartiality, even-handedness, or lack of bias).

152. China fails to administer its grains TRQs on a fair basis for many of the same reasons its administration is not a transparent or predictable basis.

153. China’s Allocation Principles and Basic Criteria are vague and unpredictable, such that they do not set out clear rules and standards for the allocation and reallocation of TRQs.

154. First, China’s administration is not impartial, or carried out in accordance with rules or standards, because the Allocation Principles enumerated in Article IV of the *Allocation Notice* are not defined; or, in the case of “other relevant commercial standards,” not even identified. We refer the Panel to Sections IV.A.1 and IV.A.2 of this submission for a detailed discussion of the reasons why the Allocation Principles set out in China’s *2003 Provisional Measures* and *Allocation Notice* are not able to be understood or discerned by potential applicants, and why this lack of clarity also prevents applicants from easily predicting or anticipating how the allocation and reallocation processes will operate in practice.

155. For similar reasons, the Allocation Principles do not provide an impartial basis for TRQ administration. Specifically, the Allocation Principles fail to set out clear rules and standards on the basis of which NDRC will make decisions regarding the allocation and reallocation of TRQ amounts. Moreover, the criteria are vague, and different applicants may submit different types of information in response to the listed factors. Equally eligible applicants may thus be evaluated very differently for purposes of allocation.

156. Therefore, the lack of clear rules or standards in the Allocation Principles applied by NDRC means that the process or system of rules through which China administers the grains TRQs is not impartial, or in accordance with rules or standards. China thus fails to administer its grains TRQs on a fair basis, in breach of Paragraph 116 of the *Working Party Report*.

157. Second, China’s administration is not impartial, or carried out in accordance with rules or standards, because the Basic Criteria are not defined. We recall that the *Allocation Notice* includes, but does not describe certain Basic Criteria, including “having a good financial condition . . . integrity . . . fulfillment of social responsibilities.”¹²⁹

158. We refer the Panel to Sections IV.A.1 and IV.A.2 of this submission for a detailed discussion of the reasons why the Allocation Principles set out in China’s *2003 Provisional Measures* and *Allocation Notice* are not easily understood or discerned by potential applicants, and why this lack of clarity also prevents applicants from anticipating with any certainty how the allocation and reallocation processes will operate in practice.

159. For similar reasons, the Basic Criteria cannot be said to reflect fair TRQ administration. Specifically, the Basic Criteria fail to set out clear rules and standards on the basis of which NDRC and its local agencies will make decisions regarding eligibility to receive an allocation or reallocation of the TRQ. Because the Basic Criteria are not well defined or in certain instances defined at all, different applicants may interpret these criteria differently, and therefore submit different types of information demonstrate that they meet the Basic Criteria. NDRC would

¹²⁹ 2017 *Allocation Notice*, Article II (Exhibit US-15).

evaluate different information for purposes of determining eligibility and cannot administer TRQs on a fair basis.

160. It is also unclear how NDRC considers comments from the public where that information may go to “disagreement” with an applicant’s eligibility. The United States recalls that NDRC publishes a list of applicants and certain of the data they submitted, and solicits opinions from members of the public “in disagreement with the data reported” by applicants.¹³⁰ As discussed in Sections IV.A.1 and IV.A.2 of this submission, it is unclear how NDRC verifies or evaluates this information, or whether applicants are given an opportunity to view or rebut any information that is provided to dispute their application. This aspect of China’s administrative process exacerbates the unfair nature of the administration, because not only do the Basic Criteria themselves lack clear rules or standards, but the public opinions submitted could introduce bias or inequity due to the potential motivations of a submitter or the inability of NDRC or the applicant to verify or refute the information provided. Such a process prevents evaluation of TRQ applicants, and administrative decisions with respect to eligibility from being made in accordance with rules and standards.

161. Therefore, because of the lack of clear rules or standards with respect to the evaluation of Basic Criteria, China also fails to administer its TRQs on a fair basis, in breach of China’s commitments under Paragraph 116 of the *Working Party Report*.

4. China Does Not Use Administrative Procedures that are Clearly Specified

162. Paragraph 116 of the *Working Party Report* also requires China to ensure its TRQs are administered using “administrative procedures” that are “clearly specified.”

163. A “procedure” is a set of instructions for performing a specific task.¹³¹ “Administrative” means pertaining to management of affairs; executive.¹³²

164. To determine whether an administrative procedure is “clearly specified,” we look first to the dictionary definitions of the relevant terms. To “specify” a thing is to speak or treat of a matter etc. in detail; give details or particulars.¹³³ The term “clearly,” in turn, means “distinctly; plainly; manifestly; obviously.”¹³⁴ Therefore the obligation under Paragraph 116 of the *Working Party Report* requires that China use administrative procedures that are set out in plain obvious detail.

165. In this section, the United States examines two of China’s administrative procedures for grains TRQs: (1) China’s procedures with respect to the allocation and reallocation of the TRQs, including as specified in the Allocation Procedures; and (2) China’s procedures with respect to obtaining approval to import TRQ amounts subject to state trading but not contracted for by August 15.

¹³⁰ 2017 Announcement of Enterprise Data (Exhibit US-19).

¹³¹ *The New Shorter Oxford English Dictionary*, Vol. 2 at 2,557 (Exhibit US-43).

¹³² *The New Shorter Oxford English Dictionary*, Vol. 1 at 28 (Exhibit US-43).

¹³³ *The New Shorter Oxford English Dictionary*, Vol. 2 at 2,973 (Exhibit US-43). See also *US – Clove Cigarettes* (Panel), fn. 840.

¹³⁴ *The New Shorter Oxford English Dictionary*, Vol. 1 at 415 (Exhibit US-43).

166. As discussed below, China does not administer its TRQs using administrative procedures that are “clearly specified” for many of the same reasons its TRQ administration lacks a transparent or predictable basis, namely, because (1) its Allocation Principles and reallocation procedures are vague and undefined, or not specified at all; and (2) China does not clearly specify the procedure for obtaining NDRC approval to import through a non-state trading entity using a state trading quota after August 15.

167. ***China’s Allocation Principles and reallocation procedures are vague and undefined, or not specified at all:*** The *2003 Provisional Measures* provide that TRQs will be allocated according to “the number of applications, past actual import performance, production capacity, other relevant commercial standards, or based on a first-come-first-served method.”¹³⁵ The *Allocation Notice* article entitled “Allocation Principles” restates that the TRQs:

Will be allocated in accordance with applicants’ actual production and operating capacities (including historical production and processing, actual import performance, and operations) and other relevant commercial standards.¹³⁶

168. For its part, the *Reallocation Notice* then sets forth, generally, that NDRC “will reallocate quotas returned by users according to the order in which applications were submitted online.” Further, the applicant “will receive notice of the results of tariff quota reallocation before 1 October.”¹³⁷ The *Reallocation Notice* further states:

When the total sum of qualified application amounts is smaller than the tariff quota reallocation amount, the applications of all applicants will be fully satisfied. When the total sum of qualified application amounts is greater than the tariff quota reallocation amount, the reallocation will be carried out according to the Allocation Principles and the Allocation Rules.¹³⁸

169. However, as explained in detail in Sections IV.A.1 and IV.A.2, China’s instruments fail to define or explain the Allocation Principles on which allocation and reallocation of the relevant TRQs will be based.

170. First, it is unclear from the text of the *2003 Provisional Measures* or the *Allocation Notice* how NDRC evaluates applicants’ “actual production and operating capacities.”

171. Second, the instruments do not provide any context, or even content, for the factor “other relevant commercial standards.”

172. Third, the *Allocation Notice* does not address how NDRC determines which applicants will receive allocations of the portion of each TRQ reserved for state trading. The *Allocation Notice* does not distinguish or even reference state trading allocations in the enumeration of Allocation Principles.¹³⁹

¹³⁵ *2003 Provisional Measures*, Articles 13-14 (Exhibit US-11).

¹³⁶ *2017 Allocation Notice*, Article IV (Exhibit US-15).

¹³⁷ *2017 Reallocation Notice*, para. 5 (Exhibit US-17).

¹³⁸ *2017 Reallocation Notice*, para. 5 (Exhibit US-17).

¹³⁹ *2017 Allocation Notice*, Article IV (Exhibit US-15).

173. Fourth, China apparently verifies applicant information in part through a public comment process. This additional step renders NDRC’s determinations with respect to both the Application Criteria and Allocation Principles unclear, and increases applicants’ uncertainty regarding the status or sufficiency of their applications.

174. Thus, China’s administrative procedures relating to allocation and reallocation, through the Allocation Principles, are not clearly specified. Because China fails to administer its grains TRQs using administrative procedures that are clearly specified, both with respect to allocation and reallocation, China breaches paragraph 116 of its Working Party Report.

China does not clearly specify the procedure for obtaining NDRC approval to import state trading quota through any enterprise with trading rights after August 15: China does not clearly specify the procedures for seeking approval from NDRC to import state trading quota after August 15. The United States recalls that with respect to state trading amounts, “in the event that a contract has not been signed prior to August 15,” the TRQ Certificate holder may seek NDRC approval to import without the state trading enterprise, COFCO.¹⁴⁰ Article 23 of the *2003 Provisional Measures* provides:

With respect to state trading agricultural product import tariff-rate quota quantities allocated to end-users, in the event that a contract has not been signed prior to August 15 of the current year, upon seeking approval from the Ministry of Commerce or NDRC according to the administrative jurisdiction set forth in Article 7 of these *Measures*, the end-user is permitted to entrust any enterprises that have trading rights to import; end-users that have trading rights may also import by themselves.

175. Neither the *2003 Provisional Measures*, nor *Allocation Notice* specifies the procedure for obtaining NDRC approval, however, or details on what basis NDRC will determine whether to grant approval. Article 7 of the *2003 Provisional Measures* only designates NDRC as the authority for administering TRQs for these commodities.¹⁴¹ Although China makes clear *there is a procedure* to be utilized to seek approval to import state trading quota without COFCO after August 15, none of the measures specify what that procedure is.

176. Therefore, China administers its grain TRQs through administrative procedures that are not “clearly specified.” These procedures include (1) procedures by which NDRC allocates TRQ; (2) procedures by which NDRC reallocates TRQ; and (3) procedures by which NDRC grants approval to import state trading quota after August 15. In each instance, China breaches its obligations set forth in Paragraph 116 of the *Working Party Report* by failing to administer its grains TRQs using administrative procedures that are “clearly specified.”

5. China Does Not Use Requirements that are Clearly Specified

¹⁴⁰ *2003 Provisional Measures*, Article 22 (Exhibit US-11).

¹⁴¹ *2003 Provisional Measures*, Article 7 (Exhibit US-11) (“Import tariff-rate quotas for wheat, corn, white rice, and cotton are allocated by the National Development and Reform Commission (hereinafter referred to as ‘NDRC’), in conjunction with the Ministry of Commerce”)

177. Paragraph 116 of the *Working Party Report* also requires China to ensure its TRQ is administered using “requirements” that are “clearly specified.”

178. A “requirement” is a condition which must be complied with.¹⁴² In this section, the United States discusses the requirements set out in China’s Basic Criteria, which identify the criteria for eligibility to receive a TRQ allocation.

179. To determine whether a requirement is “clearly specified,” we look first to the dictionary definitions of the relevant terms. To “specify” a thing is to speak or treat of a matter etc. in detail; give details or particulars.¹⁴³ The term “clearly,” in turn, means “distinctly; plainly; manifestly; obviously.”¹⁴⁴ Therefore the obligation under Paragraph 116 of the *Working Party Report* requires that China use requirements that are set out in plain obvious detail.

180. As explained below, China does not administer its TRQs using requirements that are “clearly specified” because its Basic Criteria, which applicants must demonstrate compliance with in order to be eligible to receive TRQ allocation or reallocation, are not set out in plain or obvious detail.

181. As set out in Section III.A, the *Allocation Notice* enumerates Basic Criteria, but does not provide any detail.

182. *Good financial condition:* The *Allocation Notice* does not define or describe what “good financial condition” means. The application form itself, which is attached to the *Allocation Notice*, requests data on (1) registered capital; (2) 2015 and 2016 tax payment; and (3) 2015 and 2016 year-end debt-to-asset ratio.¹⁴⁵ However, the application form does not indicate whether this information is relevant to the basic criterion of “good financial condition” or reflect additional or different requirements not otherwise specified. Even assuming that all of these data points are used to determine an applicant’s financial condition, neither *the Allocation Notice*, nor the application suggests, much less details, how this information is evaluated, which data points carry more or less weight than the others, or what levels of capital, tax payments, debt-to-asset ratio, and bank credit ratings will be considered “good” for purposes of determining an applicant’s fulfillment of the Basic Criteria.

183. *Integrity:* The Basic Criteria also state that applicants must possess “integrity.” The Notice does not define the term “integrity” or detail how an applicant’s integrity must be demonstrated in an application. Nor does the *Notice* explain how this factor will be assessed by NDRC in its review of the application. The application form does not provide any additional details on “integrity.”

184. *No record of violations:* The *Notice* provides that eligible applicants must have no record of violating regulations with respect to customs, industry and commerce, taxation, credit and loans, inspection and quarantine, grain distribution, environmental protection, “and other

¹⁴² *The New Shorter Oxford English Dictionary*, Vol. 2 at 2,557 (Exhibit US-43).

¹⁴³ *The New Shorter Oxford English Dictionary*, Vol. 2 at 2,973 (Exhibit US-43). See also *US – Clove Cigarettes* (Panel) fn. 840.

¹⁴⁴ *The New Shorter Oxford English Dictionary*, Vol. 1 at 415 (Exhibit US-43).

¹⁴⁵ 2017 *Allocation Notice*, Attachment (Exhibit US-15).

areas.”¹⁴⁶ However, the notice fails to further define any of the named areas or to detail which regulations the applicant must demonstrate compliance with in order to have fulfilled these criteria. Nor does *the Allocation Notice* detail what would constitute a “violation” in any of the listed areas. Further, *the Allocation Notice* fails to explain what “other areas” may be relevant to an applicant’s eligibility. Nor does the application form provide any additional detail.

185. *Social Responsibilities*: The Basic Criteria include having “fulfilled social responsibilities associated with operations.” But neither the *Allocation Notice*, application form, nor the *2003 Provisional Measures* detail what these “social responsibilities” include. The measures also fail to provide any detail on what constitutes “fulfilling” these responsibilities or how NDRC evaluates whether the social responsibilities have been fulfilled.

186. The *Allocation Notice* and *Reallocation Notice* make clear that the Basic Criteria are requirements to receive a TRQ allocation. However, the text of the *2003 Provisional Measures* and *Allocation Notice* – even read with the application form itself – does not detail the Basic Criteria or how NDRC or its local authorities might apply them in evaluating a TRQ application.

187. No other measures detail these requirements. The United States recalls that Article 10 of the *2003 Provisional Measures* references “the TRQ application criteria” as requirements to be announced one month prior to the application period, but does not otherwise speak of the requirements.

188. China’s measures make clear applicants must demonstrate compliance with the Basic Criteria to receive TRQ; however, the Basic Criteria are not plainly or obviously detailed in the *2003 Provisional Measures*, *Allocation Notice*, or any other instrument. Therefore, China has failed to administer its grains TRQs using clearly specified requirements, in breach of Paragraph 116 of its *Working Party Report*.

6. China Fails to Use Administrative Procedures and Requirements that Would Not Inhibit the Filling of Each TRQ

189. China’s breaches Paragraph 116 of the *Working Party Report* because China does not administer its grains TRQs using administrative procedures and requirements that would not inhibit the filling of each TRQ. In this section, the United States demonstrates that China breaches this obligation for several reasons.

190. First, China employs a single application process to allocate both the state trading and non-state trading portions of the TRQ, without permitting applicants to choose which portion they apply for. Nor can applicants understand the basis upon which NDRC will determine which applicants receive an allocation of the state trading portion, which restricts the TRQ Certificate holder from employing its importer of choice. This process discourages applicants from applying for an allocation, or from applying for the quantities desired.

¹⁴⁶ 2017 *Allocation Notice*, Article II (Exhibit US-15).

191. Second, China fails to provide sufficient public information regarding the results of the allocation process for traders, including foreign exporters, to make efficient use of the TRQ amounts available.

192. Third, China imposes usage restrictions coupled with penalties for non-use, which also discourages applicants from applying for the full quantities desired.

193. Paragraph 116 states:

China would ensure that TRQs were administered . . . *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.*¹⁴⁷

194. This prong of Paragraph 116 thus establishes that the “timeframes, administrative procedures and requirements” used by China to administer its TRQs must be such that they “would” result in three situations. The United States focuses on China’s “administrative procedures and requirements” that would “inhibit the filling” of the TRQs.

195. We have previously defined “administrative procedure” as a set of instructions for performing a specific task pertaining to management of affairs.¹⁴⁸ “Requirements” are conditions with which applicants must be comply.¹⁴⁹

196. “Inhibit” means to hinder, restrain, or prevent.¹⁵⁰ To “fill” is to make or become full; satisfy, fulfill, or complete.¹⁵¹ Therefore, in the context of China’s TRQ administration, China must not employ timeframes, procedures or requirements that would hinder, restrain, or prevent each TRQ from becoming full or being satisfied.

a. China Administers a Single Process for State Trading and Non-State Trading Allocations

197. China fails to administer its TRQs using administrative procedures and requirements that would not inhibit the filling of each TRQ because, first, NDRC allocates state trading and non-state trading quota using a single application process. As described in Section III.A, the *2003 Provisional Measures* provide that TRQs for certain products, including wheat, corn, and rice, are divided into “state trading and non-state trading,” and that “state trading quotas must be imported through state trading enterprises.”¹⁵² The *Allocation Notice* specifies, in Article I, the portion of each TRQ reserved as state trading quota.¹⁵³

¹⁴⁷ *Working Party Report*, para. 116 (emphasis added) (Exhibit US-1).

¹⁴⁸ *The New Shorter Oxford English Dictionary*, Vol. 2 at 2,557 (Exhibit US-43); *The New Shorter Oxford English Dictionary*, Vol. 1 at 28 (Exhibit US-43).

¹⁴⁹ *The New Shorter Oxford English Dictionary*, Vol. 2 at 2,557 (Exhibit US-43).

¹⁵⁰ *The New Shorter Oxford English Dictionary*, Vol. 1 at 1,369 (Exhibit US-43).

¹⁵¹ *The New Shorter Oxford English Dictionary*, Vol. 1 at 948 (Exhibit US-43).

¹⁵² *2003 Provisional Measures*, Article 4 (Exhibit US-11).

¹⁵³ *2017 Allocation Notice*, Article I (Exhibit US-15).

198. According to the sample application attached to the *Allocation Notice*, applicants choose the grain being applied for, as well as the quantity of that commodity they would like to import; however, applicants cannot choose whether to apply for the state trading allocation or non-state trading allocation. Nor can they indicate whether they would accept allocations for either portion, or only one of them.

199. As discussed in Section IV.A.1, above, applicants do not have any information regarding how NDRC will determine which applicants will receive state trading allocations. Therefore, they cannot anticipate whether they might receive allocation of the state trading portion of the TRQ, or the non-state trading portion, which can be imported directly or through a non-state enterprise,¹⁵⁴ or both. Apparently, an applicant will not know whether they have received a state trading allocation until they receive their TRQ Certificate reflecting the actual allocations granted.

200. As explained in Section III.A, holders of a state trading TRQ Certificate must import the product through a state trading enterprise.¹⁵⁵ That is, such TRQ Certificate holders must rely on a state trading enterprise to obtain a contract for importation of the product. Nothing in the measures requires the state trading enterprise to contract for importation of a TRQ Certificate holder's state trading quota.

201. Applicants need certainty with respect to the TRQ allocations they can expect to receive in order to effectively predict and plan for the actual costs of importation. For instance, if the importation is to be completed privately, they will need to complete the importation on the basis of their own trading rights, or identify and contract with another entity with trading rights. If the allocation is through the "state trading" portion of TRQ, the quota holder will need to contract through the state trading enterprise identified by the Ministry of Commerce – COFCO.¹⁵⁶ Each type of importation process has its own costs, time constraints, and administrative burdens. Therefore, the uncertainty inherent in China's process makes it more difficult to negotiate with potential exporters, contract for sale, and import the commodities.

202. For the state-trading portion of the TRQ, if a contract is not signed by August 15, the TRQ Certificate holder can, "upon seeking approval from" NDRC, "entrust any enterprises that have trading rights to import," or "import by themselves."¹⁵⁷ But, NDRC approval is not automatic, and neither the *2003 Provisional Measures*, nor the *Allocation Notice* specifies the procedure for obtaining NDRC approval or indicates the basis upon which NDRC will decide whether to grant such approval. Therefore, a TRQ Certificate holder *may not obtain* approval to import directly, and therefore *may not be able* to import the full amount of TRQ allocation received. If unable to import the full amount, an applicant would need to return the unused portion of the TRQ,¹⁵⁸ and will lose his eligibility to request an additional amount during the

¹⁵⁴ *2003 Provisional Measures*, Article 4 (Exhibit US-11).

¹⁵⁵ *2003 Provisional Measures*, Article 4 (Exhibit US-11) ("state trading quotas must be imported through state trading enterprises").

¹⁵⁶ *2003 Provisional Measures*, Article 38 (Exhibit US-11); *China State Trading Notification* (Exhibit US-12).

¹⁵⁷ *2003 Provisional Measures*, Article 22, (Exhibit US-11).

¹⁵⁸ *2003 Provisional Measure*, Article 23 (Exhibit US-11) (stating that if the TRQ Certificate holder "is unable to sign import contracts for, or has already signed import contracts for but is unable to complete, the entire quota quantity already applied for and obtained for the current year, [TRQ Certificate holder] must return the quota quantity it was unable to complete to the original certificate-issuing agency prior to September 15").

reallocation process.¹⁵⁹ A holder of a state trading TRQ Certificate or a mixed TRQ Certificate thus may not be able to import some or all of its TRQ allocation in a given year.

203. The time taken to receive NDRC authorization to import directly is of significant concern because TRQ Certificate holders with state trading TRQ allocation continue to be obligated to return unused TRQ allocation by September 15 of each year.¹⁶⁰ For those state trading TRQ Certificate holders who have been unable to contract with COFCO by August 15, delays in receiving authorization will undermine their ability to effectively import the relevant grains. Even if authorization were provided immediately, TRQ Certificate holders would have just thirty days to contract for importation.

204. Failure to find a new importer or to arrange for import on their own by September 15 will trigger the need to return the unused TRQ allocation. Any Certificate holders that return unused amounts are not eligible to apply for reallocated amounts. And, if a TRQ Certificate holder does not return or utilize the full TRQ allocation, the TRQ Certificate holder will be subject to “a corresponding deduction to its tariff rate quota quantity allocated in the following year, according to the proportion not completed.”¹⁶¹ Moreover, if a TRQ Certificate Holder “fails to complete imports for the *entire* agricultural import tariff-rate quota quantity allocated for two consecutive years, but has returned” unused quota by September 15, “there will be a corresponding deduction to its tariff-rate quota quantity allocated in the following year, according to its proportion not completed in the most recent year.”¹⁶² If the TRQs holder’s eligibility to receive an allocation is based on its actual import performance in the previous year,¹⁶³ the inability to import under the TRQ also could lead to ineligibility to receive an allocation in the following year at all.¹⁶⁴ Thus, China’s TRQ administration provides significant penalties for the failure to fully utilize each TRQ allocation, including where importation may have been impeded or prevented by the state trading enterprise.

205. In sum, the inability to request a particular method of importation may lead potential applicants not to apply for a TRQ allocation at all given the significant uncertainties and potential costs associated with importation through an STE. These uncertainties may also induce applicants to limit the quantities for which they apply, just as the potential inability to complete a contract through the state trading entity may increase the amount of unused TRQ allocations returned to NDRC by September 15. And where a TRQ Certificate holder must return unused amounts, she is not eligible to apply for a reallocation of TRQ amounts to be imported without the need to import through an STE.

¹⁵⁹ *2003 Provisional Measure*, Article 25 (Exhibit US-11) (noting that TRQ Certificate holders that “have, prior to the end of August of the current year, completed the entire agricultural product tariff-rate quota quantity allocated . . . may apply for tariff-rate quota reallocated quantities.”)

¹⁶⁰ *2003 Provisional Measures*, Article 23; *see also 2003 Provisional Measure*, Article 30 (Exhibit US-11).

¹⁶¹ *2003 Provisional Measures*, Articles 30-31 (Exhibit US-11).

¹⁶² *2003 Provisional Measures*, Article 31 (Exhibit US-11) (emphasis added).

¹⁶³ *2017 Allocation Notice*, Article II (commodity-specific criteria) (Exhibit US-15).

¹⁶⁴ Although it is not clear how such a factor is evaluated by NDRC, the Allocation Principles list “past import performance” as a factor upon which NDRC will determine an entity’s allocation, suggesting that lower levels of importation in one year also may lead to the allocation of smaller amounts to a given applicant in subsequent years. *2017 Allocation Notice*, Article II (Exhibit US-15).

206. For all of these reasons, China fails to administer its grains TRQs using administrative procedures and requirements that would not inhibit the filling of the each TRQ in breach of Paragraph 116 of the *Working Party Report*.

b. China does not Publish Critical Information Regarding TRQ Allocation or Reallocation

207. Next, China does not administer its TRQs using administrative procedures and requirements that would not inhibit the filling of each TRQ because China withholds critical information on the recipients of the initial allocation, and the amounts actually allocated and reallocated. Thus, grain-exporting entities do not have information that is necessary to enter into commercial relationships with potential importers, inhibiting the filling of each TRQ.

208. As described in Section IV.A.1, China does not announce which applicants are allocated TRQ amounts and in what amounts. Therefore, China does not provide sufficient information regarding the result of the application process, which prevents traders from understanding the TRQ allocations and making commercial arrangements to import the grains.

209. China does not publish the total amounts allocated by January 1, or otherwise indicate whether the total amount available for allocation, as published in the *Allocation Notice*, was in fact allocated. Nor does China publish a list of entities allocated TRQ, nor does it update the applicant list to reflect results of the allocation process. Similarly, China does not publish information regarding what portion of the TRQ must be imported through an STE, and what portion may be imported directly by end-users.

210. Without this information, TRQ applicants cannot anticipate how the TRQ application process will operate in practice. Furthermore, traders inside and outside of China lack the commercial information necessary to engage in importation under the TRQs.

211. With respect to reallocation, traders have even less information and thus are less able to fill the TRQs in the short time period remaining. As discussed in Section IV.A.1 above, China does not announce amounts returned for reallocation, such that potential applicants cannot know how much of the TRQ is available for importation, if any. Further, at the end of the reallocation process – if it has in fact occurred – China does not, provide information regarding the enterprises that receive reallocated amounts, or the amount of TRQ reallocated to each enterprise.

212. Uncertainty about how much quota will be reallocated, or whether reallocation will take place at all, may make potential importers less likely to apply for a reallocation quota amount or lead them to apply for a smaller amount than they otherwise would have. If any TRQ amounts are reallocated, the lack of information on recipients makes it more difficult and costly for traders in China and foreign exporters to identify recipients and enter into contracts for sale or importation.

213. Therefore, by using administrative procedures and requirements that do not provide traders with critical information regarding the enterprises in receipt of allocated or reallocated TRQ amounts, and by not announcing the amounts that may be available for reallocation, China

fails to administer its grains TRQs using administrative procedures and requirements that would not inhibit the filling of each TRQ in breach of Paragraph 116 of the *Working Party Report*.

c. China Applies Restrictions on Quota Use and Penalties for Non-Use

214. Finally, China fails to administer its TRQs using administrative procedures and requirements that would not inhibit the filling of each TRQ, because the usage restrictions and penalties for non-use impose a significant burden on TRQ Certificate holders and discourages applicants from applying for the full amounts desired for import.

215. The *Allocation Notice* provides that allocations obtained by an applicant must be *self-used*.¹⁶⁵ Specifically, imported wheat and corn must be processed and used in a TRQ Certificate holder's own plant.¹⁶⁶ Thus, any wheat or corn imported must be processed into a downstream product by that TRQ Certificate holder. Sales of imported white rice are required to be "organized in the name of the enterprise itself."¹⁶⁷ Thus, any rice must be sold under the enterprise's name.

216. These usage requirements, and the inability of an importer to sell any unused imported products in the event its business needs or plans change, raises uncertainty and therefore increases costs for a TRQ Certificate holder. Further, because unused amounts may be reported in the following year's allocation application and may be counted against the applicant in the next allocation, the usage requirement incentivizes applicants to request a *smaller* TRQ amount than it may otherwise wish to receive for commercial purposes.

217. The *Allocation Notice* also provides that group enterprises possessing multiple processing plants must individually apply for, and individually use, TRQ allocations in the name of each processing plant.¹⁶⁸ Further, "[t]rade-type enterprises applying for white rice import tariff-rate quotas may choose to apply in the name of the group headquarters or a subsidiary enterprise, but the headquarters and the subsidiary enterprise must not apply at the same time."¹⁶⁹

218. In other words, a corn or wheat processing enterprise with multiple processing plants must apply through each plant, and each plant may only use the TRQ amount it is individually allocated. An enterprise with multiple plants could not import corn or wheat for use at one facility but then, for business reasons, choose to process it at another facility. Again, because unused amounts may be counted against the applicant in the next allocation, the plant usage restriction would discourage applicants from applying for the quantity actually needed or desired for commercial purposes. The usage requirements therefore have the effect of inhibiting the filling of the grains TRQs.

219. Prior panels have similarly found that certain requirements of importation, or a combination of requirements of importation, result in a restriction on importation. For example, in the context of Article XI:1 of the GATT 1994, the panel in *Argentina – Import Measures*

¹⁶⁵ 2017 *Allocation Notice*, Article V (Exhibit US-15) (italics added).

¹⁶⁶ 2017 *Allocation Notice*, Article V (Exhibit US-15).

¹⁶⁷ 2017 *Allocation Notice*, Article V (Exhibit US-15).

¹⁶⁸ 2017 *Allocation Notice*, Article V (Exhibit US-1).

¹⁶⁹ 2017 *Allocation Notice*, Article II (Exhibit US-1).

found a measure to constitute an import restriction because it created uncertainty as to an applicant’s ability to import, did not allow companies to import as much as they desired or needed, and imposed a significant burden on importers that was unrelated to their normal importing activity.¹⁷⁰

220. Similarly, the panel in *Indonesia – Import Licensing* noted that by “prohibiting [importers] from trading and/or transferring [imported products], Measure 6 imposes an undue burden on imports,” because “importers are forced to either use all the products they import for processing or find alternative ways to dispose of unused products that do not involve selling or transferring them.”¹⁷¹

221. China’s restrictions in this case have a similar effect on imports. That is, the combination of restrictions on the usage of imported products and the penalties imposed on TRQ Certificate holders for failing to import the full TRQ amounts would tend to limit importation under the TRQs and therefore inhibit the filling of the TRQs.

222. For all the foregoing reasons, China also breaches Paragraph 116 of the Working Party Report because, by restricting the use of grains imported under the TRQs, and imposing penalties for failing to fully utilize TRQ allocations, China fails to administer its TRQs using administrative procedures and requirements that would not inhibit the filling of each TRQ.

B. Article X:3(a) of the GATT 1994

223. The manner in which China administers its TRQs for wheat, rice, and corn is inconsistent with China’s obligations under Article X:3(a) of the GATT 1994. Article X:3(a) of the GATT 1994 requires Members to administer their laws, regulations, decisions and rulings “in a uniform, impartial, and reasonable manner.”

224. However, China fails to administer its grains TRQs in a reasonable manner, because China: relies on vague applicant eligibility criteria and principles for allocation that applicants cannot reasonably understand; permits numerous “authorized agents” to interpret the undefined criteria, allowing for divergent understandings of the criteria; publishes applicant data for public comment and “disagreement” without clear guidelines regarding how this information is considered; and fails to publish information regarding TRQ allocations in a manner that would facilitate use of the wheat, rice, and corn TRQs.

225. The United States first provides a legal interpretation of Article X:3(a) of the GATT 1994, and then demonstrates why China’s administration of the wheat, corn, and rice TRQs is not “reasonable,” and therefore breaches Article X:3(a).

1. Legal Interpretation of Article X:3(a) of the GATT 1994

¹⁷⁰ *Argentina – Import Measures* (Panel), para. 6.474. The panel found that certain import procedures were inconsistent with Article XI:1 of the GATT 1994, which prohibits import restrictions. The findings were upheld. *Argentina – Import Measures* (AB), paras 5.287-5.288.

¹⁷¹ *Indonesia – Import Licensing* (Panel), para. 7.198.

226. Article X:3(a) of the GATT 1994 provides:

Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

The “laws, regulations, decisions and rulings” described in Article X:1 include, in relevant part, those “of general application, made effective by any contracting party, pertaining to . . . rates of duties . . . or to restrictions or prohibitions on imports.”¹⁷² Thus, the laws, regulations, decisions and rulings at issue must be of “general application,” not limited to the treatment of particular companies or particular shipments. The laws and regulations of general application in this dispute are China’s grains TRQs and the legal instruments used to administer those TRQs; thus, the measures pertain to “restrictions or prohibitions on imports,” as well as “rates of duties.”¹⁷³

227. The obligations provided in Article X:3(a) of the GATT 1994 relate to the “administ[rati]on” of legal instruments. As described in Section IV.A above, “administer” is defined as to “carry on or execute (an office, affairs, etc.),” or manage or steward an activity.¹⁷⁴ The Appellate Body in *EC – Selected Customs Matters* similarly indicated that “the term ‘administer’ in Article X:3(a) refers to putting into practical effect or applying a legal instrument of the kind described in Article X:1.”¹⁷⁵ Within the context of Article X:3(a), the scope of administration broadly includes “the manner in which the legal instruments of the kind falling under Article X:1 are applied or implemented in particular cases,” the “legal instrument that regulates such application or implementation,” and “administrative processes leading to administrative decisions.”¹⁷⁶

228. The obligations of uniformity, impartiality, and reasonableness are legally independent; thus a breach of any of the three obligations is sufficient to show a breach of Article X:3(a) of GATT 1994.¹⁷⁷ Of relevance in this dispute is China’s obligation to administer its TRQs for wheat, rice, and corn in a “reasonable manner.” “Reasonable” is defined as “in accordance with reason,” and “not irrational or absurd.”¹⁷⁸ Prior panels have interpreted “reasonable” to mean “proportionate,” “sensible,” and “within the limits of reason, not greatly less or more that might

¹⁷² GATT 1994, Article X:1 (provides that “[l]aws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, . . .”).

¹⁷³ See *EC – Chicken Cuts* (AB), paras. 111 and 113; see also *United States – Underwear* (AB), p. 21 (citing *United States – Underwear* (Panel)), para. 7.65).

¹⁷⁴ *The New Shorter Oxford English Dictionary*, Vol. 1, “administer” at 28 (ed. 1993) (Exhibit US-43).

¹⁷⁵ See *EC – Selected Customs Matters* (AB), paras. 224; see also *China – Raw Materials* (Panel), paras. 7.689 (citing *EC – Selected Customs Matters* (AB), paras. 224-25), and paras. 7.692-694, 7.696 (citing *Argentina – Hides and Leather* (Panel), paras. 11.83, 11.99-101). Noting that the finding in *China – Raw Materials* regarding Article X:3(a) were vacated by the Appellate Body on procedural grounds.

¹⁷⁶ *Thailand – Cigarettes (Philippines)* (Panel), para. 7.873; see also *EC – Selected Customs Matters* (AB), para. 226.

¹⁷⁷ *China – Raw Materials* (Panel), para. 7.685; see also *Argentina – Hides and Leathers* (Panel), para. 11.86 (stating that “the three requirements are legally independent in that Customs laws regulations and rules must satisfy each of the three standards”); *Thailand – Cigarettes (Philippines)* (Panel), paras. 7.31, 7.867.

¹⁷⁸ *The New Shorter Oxford English Dictionary*, Vol. 2, “reasonable” at 2,496 (ed. 1993) (Exhibit US-XXX).

be thought likely or appropriate.”¹⁷⁹ Therefore, reasonable administration is administration that is sensible, rational and appropriate under the circumstances.¹⁸⁰

229. Article X:3(a) requires a factual examination of the features and attributes of a Member’s administration of its laws, regulations, decisions and rulings to evaluate whether an inherent risk of administration that is not sensible or rational exists. As noted by prior panels, this evaluation requires a factual examination “of the features of the administrative act at issue in the light of its objective, cause or the rationale behind it.”¹⁸¹ In this context, an inconsistency with a Member’s WTO obligations under Article X:3(a) arises where “the identified features of the challenged administration necessarily lead to an inconsistency with Article X:3(a) with respect to the administration of laws and regulations in a uniform, impartial and reasonable manner.”¹⁸² According to the panel in *China – Raw Materials*, “necessarily lead to an inconsistency” does not mean administration is unreasonable in every instance.¹⁸³ Rather, the administration may be inconsistent with Article X:3(a) if there is a “*very real risk*”¹⁸⁴ or an “inherent danger”¹⁸⁵ of unreasonable administration in a specific, identifiable situation.

2. China’s Administration of its TRQs for Wheat, Rice, and Corn is Not Reasonable

230. China fails to administer its TRQs for wheat, rice, and corn in a “reasonable manner,” and therefore breaches Article X:3(a) of the GATT 1994, for several reasons, including because of China’s:

- inclusion of vague or undefined Basic Criteria and Allocation Principles that cannot reasonably be understood or complied with by applicants;
- authorization of numerous local agents to independently interpret the vague application criteria, allowing for divergent interpretations and inequitable application of the eligibility criteria and allocation principles;

¹⁷⁹ *United States – COOL* (Panel), para. 7.850-851; *Thailand – Cigarettes (Philippines)* (Panel), para. 7.919; *Dominican Republic – Import and Sale of Cigarettes* (Panel), para. 7.385.

¹⁸⁰ The panel in *China – Raw Materials* noted that “[a]pplying this definition to the facts, reasonable administration could be considered to be administration that is equitable, appropriate for the circumstances and based on rationality.” See *China – Raw Materials* (Panel), para. 7.696.

¹⁸¹ *United States – COOL* (Panel), para. 7.851. See also *Argentina – Hides and Leathers* (Panel), para. 11.77 (noting that this “does not require a showing of trade damage . . . [b]ut it can involve an examination of whether these is a possible impact on the competitive situation due to alleged partiality, unreasonableness or lack of uniformity in the application of customs rules, regulations, decisions, etc.”).

¹⁸² *China – Raw Materials* (Panel), para. 7.708; see also *EC – Selected Customs Matters* (AB), para. 226).

¹⁸³ See *China – Raw Materials* (Panel), para. 7.701.

¹⁸⁴ *China – Raw Materials* (Panel), para. 7.708 (citing *EC – Selected Customs Matters* (Panel), para. 7.108 (stating that “[i]n this context, we agree with the panel in *EC – Selected Customs Matters* when it stated that the aim of Article X:3(a) is to ensure that traders are treated fairly and consistently when seeking to import from or export to a particular WTO Member) (emphasis original)).

¹⁸⁵ *Argentina – Hides and Leather*, para. 11.100 (describing the “there is an inherent danger that the Customs laws, regulations and rules will be applied in a partial manner so as to permit persons with adverse commercial interests to obtain confidential information to which they have no right”).

- publication of applicant names and data for comment and “disagreement” by members of the public, without clarifying how this information will be vetted or considered;
- administration of both the state trading portion of the TRQ, and the non-state trading portion of the TRQ through a single application system that limits applicants’ ability to anticipate and commercially plan for the allocated TRQ amounts they receive; and,
- failure to publish information regarding the allocation and reallocation of TRQ amounts, such that traders have the information necessary to make timely use of all available amounts.

Each of these factors creates a very real risk that China’s administration its TRQs for wheat, rice, and corn is not rational, sensible, or appropriate under the circumstances.

a. Vague or Undefined Basic Criteria and Allocation Principles

231. China fails to administer its grains TRQs in a reasonable manner because it announces and applies vague Basic Criteria and Allocation Principles that make it difficult for applicants to understand and comply with its requirements. It is not rational, sensible, or appropriate to announce criteria and principles, but fail to make them comprehensible, undermining the carrying out of China’s TRQs for wheat, rice, and corn.

232. As described in Section III.A above, China’s TRQs operate on the basis of allocated import authorizations, TRQ Certificates, which applicants are required to apply for annually and receive authorization prior to importing wheat, rice, or corn at in-quota duty rates.¹⁸⁶ However, the Basic Criteria and Allocation Principles announced annually by China do not provide sufficient information to potential applicants regarding the standards they must meet to receive TRQ Certificates to import wheat, rice, or corn. This undermines the ability of applicants to reasonably comply with the requirements. Ambiguous or imprecise criteria for eligibility and principles for allocation are neither sensible, nor rational when considering the object and purpose of the TRQ process – to identify suitable importers and allow for the importation of grain under China’s TRQs.

233. *Basic Criteria:* In particular, and as discussed in detail in Section IV.A.1 above, the Basic Criteria for applicant eligibility identified by China are insufficiently specified to permit applicants to properly understand and subsequently meet the criteria. The *Allocation Notice* states that eligibility to receive TRQ allocation requires “possessing a good financial condition, [good] taxpayer record, and a [good] integrity situation.”¹⁸⁷ No explanation is provide as to the definition or criteria for “good financial condition” or “[good] integrity situation.” It also requires applicants to have no record of violation and demonstrate “having fulfilled social responsibilities.”¹⁸⁸

¹⁸⁶ See 2003 Provisional Measures, Articles 7-14 (Exhibit US-11); 2017 Allocation Notice, Article II (Exhibit US-15).

¹⁸⁷ 2017 Allocation Notice, Article II (Exhibit US-15).

¹⁸⁸ 2017 Allocation Notice, Article II (Exhibit US-15).

234. With regard to “good financial condition,” neither the *Allocation Notice*, nor the Application specifies how this information regarding financial condition is evaluated; which data points carry more or less weight than the others; or what levels of capital, tax payments, debt-to-asset ratio, and bank credit ratings will be considered “good” for purposes of determining an applicant’s fulfillment of the Basic Criteria. The Basic Criteria further note that the applicant must not have a “record of violating regulations with respect to customs, industry and commerce, taxation, credit and loans, inspection and quarantine, grain distribution, environmental protection, and other areas.”¹⁸⁹ The inclusion of no violations of regulations as a requirement separate from having a “good financial condition” indicates that these are distinct attributes of a potential applicant, which must be complied with separately.

235. With regard to the requirement to possess “a [good] integrity situation,” the *Allocation Notice* again does not define the term “integrity” or explain how an applicant’s integrity must be demonstrated in an application. Just based on the definition, “integrity” could be having an “unimpaired or uncorrupted condition” or displaying “sincerity.”¹⁹⁰ The *Allocation Notice* does not explain how this factor will be assessed by NDRC in its review of the application. Furthermore, NDRC solicits information from the public regarding as to whether they “are in disagreement with the data reported by the enterprises.”¹⁹¹ Therefore, in addition to an applicant’s not knowing what information she must provide in order to demonstrate her possession of “integrity,” it is also unclear how NDRC would consider any public comments regarding an applicant’s integrity, adding an additional layer of uncertainty for applicants. Without an applicant’s knowing how NDRC will determine her integrity, or how and whether the public may comment on this criterion, this aspect of China’s TRQ administration produces substantial uncertainty and therefore lacks a predictable basis.

236. Additionally, the Basic Criteria section also states that the eligibility requirements include having “no record of violating regulations with respect to customs, industry and commerce, taxation, credit and loans, inspection and quarantine, grain distribution, environmental protection, and other areas.”¹⁹² However, there is no further information provided to identify which regulations an applicant must demonstrate compliance with in order to have fulfilled these criteria. Nor does the *Allocation Notice* indicate what would constitute a “violation” in any of the listed compliance areas. Finally, the *Notice* fails to explain what “other areas” may be relevant to an applicant’s eligibility, providing essentially an open-ended list. Therefore, an applicant cannot possibly understand all of the bases upon which her application will be evaluated.

237. Finally, the Basic Criteria state that the applicant must “hav[e] fulfilled social responsibilities associated with [their] operations.”¹⁹³ Again, neither the *Allocation Notice*, nor the *2003 Provisional Measures* provide a definition of “social responsibilities” in this context, or provide a description of the metrics used to evaluate adherence to this criterion.¹⁹⁴ The uncertainty regarding this criterion is also compounded because NDRC accepts public comments

¹⁸⁹ 2017 *Allocation Notice*, Article II (Exhibit US-15).

¹⁹⁰ *The New Shorter Oxford English Dictionary*, Vol. I, “integrity” at 1,387 (ed. 1993) (Exhibit US-43).

¹⁹¹ 2017 *Announcement of Enterprise Data* (Exhibit US-19).

¹⁹² 2017 *Allocation Notice*, Article II (Exhibit US-15).

¹⁹³ 2017 *Allocation Notice*, Article II (Exhibit US-15).

¹⁹⁴ 2017 *Allocation Notice*, Article II (Exhibit US-15).

regarding “disagreement” with the applicants’ information. This means the criteria could be adjudicated by members of the public. Therefore, the lack of information creates substantial uncertainty and prevents an applicant from predicting whether it is eligible for a TRQ allocation or reallocation based on this criterion.

238. It is not sensible or rational to base TRQ eligibility on a series of vague, ambiguous, and open-ended criteria. Specifically, applicants seeking to import must be able to interpret, understand, and submit applications. However, the poorly specified requirements provided in the Basic Criteria limit applicants ability to understand what the Chinese government’s deems important for importers. In particular, the criteria focused on broad attributes, such as “integrity,” or provide open-ended lists, such as providing for non-violation of “other areas,” which raise serious concerns for applicants. Further, the vague criteria hamper TRQ applicants who are rejected from understanding the reasons for their denial. Uncertainty regarding the Basic Criteria prevent applicants from correcting or improving applications in the future. For these reasons, China’s TRQs for wheat, rice, and corn are not administered in a “reasonable manner” within the meaning of Article X:3(a) of the GATT 1994.

239. *Allocation Principles*: Furthermore, for those applicants determined to possess the “aforementioned criteria as a prerequisite,” the Allocation Principles provide further uncertainty.¹⁹⁵ The Allocation Principles state that the TRQs for grains “will be allocated in accordance with applicants’ actual production and operating capacities (including historical production and processing, actual import performance, and operations) and other relevant commercial standards.”¹⁹⁶

240. With regard to the first aspect, it is unclear from the text of the *2003 Provisional Measures* or the *Allocation Notice* how NDRC evaluates applicants’ “actual production and operating capacities.” For example, it is not clear whether only those applicants having certain levels of production or capacity, or certain kinds of “operations,” will be given an allocation at all; or whether all eligible traders will receive an allocation, but in an amount corresponding to its relative production and operating capacity. Furthermore, applicants, again, cannot predict whether and how NDRC will take into account information from the public, who may disagree with the applicant’s representation of its actual production and operating capacities.¹⁹⁷

241. Regarding the second aspect of the Allocation Principles, the instruments do not provide any context for the factor of “other relevant commercial standards.” Specifically, the *Allocation Notice* states that the TRQs for wheat, rice, and corn will be allocated in accordance with applicants’ actual production and operating capacities “and other relevant commercial standards.”¹⁹⁸ This echoes the *2003 Provisional Measures*, which state that “[i]mport tariff-rate

¹⁹⁵ *2017 Allocation Notice*, Article II (Exhibit US-15).

¹⁹⁶ *2017 Allocation Notice* (US-15) (italics added). The 2003 Provisional Measures provide that TRQs will be allocated according to “the number of applications, past actual import performance, production capacity, other relevant commercial standards, or be based on a first-come-first-served basis.” *2003 Provisional Measures*, Article 13 (US-11).

¹⁹⁷ *2017 Announcement of Enterprise Data* (US-19).

¹⁹⁸ *2017 Allocation Notice*, Article IV (Exhibit US-15). See also *2003 Provisional Measure*, Article 13 (noting that “[i]mport tariff-rate quotas for agricultural products are allocated in accordance with the applicants’ number of applications, past actual import performance, production capacity, and other relevant commercial standards, or based on a first-come first-served method”).

quotas for agricultural products are allocated in accordance with . . . other relevant commercial standards.”¹⁹⁹ As discussed in detail in Section IV.A.1 above, however, China’s instruments do not define these standards such that applicants can understand the basis for allocation or the information they must submit in order to demonstrate or fulfill each factor.

242. Additionally, China does not release any information regarding how the type of TRQ allocation will be determined. TRQ Certificate holders can receive state trading, non-state trading, or a mixed allocation. However, no guidance is provided regarding how NDRC determines the allocation.

243. Again, the poorly specified Allocation Principles do not appear to be a “sensible” or “rational” basis for TRQ administration. Specifically, applicants seeking to import must be able to interpret, understand, and submit applications for specific quantities, however the vague Allocation Principles limit applicants ability to interpret the Chinese government’s requirements for importers. Applicants who receive limited TRQ allocations are unable to understand which Allocation Principles may have caused their allocation.

244. Uncertainty regarding both the Basic Criteria and Allocation Principles prevent applicants from understanding the application requirements, and correcting or improving applications in the future. Therefore, China fails to administer its TRQs for wheat, rice, and corn in a reasonable manner, which is in breach of Article X:3(a) of the GATT 1994, because it uses vague or undefined Basic Criteria and Allocation Principles in its TRQ application process.

b. Review of Applications by Numerous Local Authorities

245. China fails to administer its TRQs in a reasonable manner, because it uses thirty-seven separate provincial and municipal “authorized agencies” to receive and review applications for TRQ allocations and reallocations. The *2003 Provisional Measures* provide that NDRC will entrust certain “authorized agencies” with accepting applications, informing applicants of deficiencies in their application, and reminding the applicants of the need for revisions.²⁰⁰ China maintains a list of thirty-seven provincial and municipal level entities “authorized” by NDRC.²⁰¹

246. The *Allocation Notice* reiterates that these authorized agencies will act as the intermediary between the central level of NDRC and applicants.²⁰² Similarly, the *Reallocation Notice* specifies that the authorized agents will report “the applications that meet the criteria via a[] . . . computerized management system,”²⁰³ and that NDRC “will carry out reallocation of quotas returned by users according to the order in which applications were submitted online.”²⁰⁴ Thus, authorized local entities approved by NDRC are obligated to receive and review

¹⁹⁹ *2003 Provisional Measures*, Article 13 (Exhibit US-11).

²⁰⁰ *2003 Provisional Measures*, Articles 8 and 12 (Exhibit US-11).

²⁰¹ *2003 List of NDRC Authorized Agencies* (Exhibit US-13).

²⁰² *2017 Allocation Notice*, Article III (Exhibit US-15) (indicating that applicants must submit applications to authorized agencies between October 15th and October 30th; authorized agencies have a month to review and transmit the application to NDRC, with a copy to the Ministry of Commerce).

²⁰³ *2017 Reallocation Notice*, para. 4 (Exhibit US-17).

²⁰⁴ *2017 Reallocation Notice*, para. 5 (Exhibit US-17).

applications for TRQ allocation and reallocation, referring applications that comply with the requirements to NDRC, and referring insufficient applications back to applicants.²⁰⁵

247. China’s TRQ administration instruments do not provide guidance to the authorized agencies regarding the definition or requirements associated with a number of the Basic Criteria, including “good financial condition,” “a [good] integrity situation,” and “having fulfilled social responsibilities associated with [their] operations.”²⁰⁶ Without an explanation of the underlying requirements, each local authorized agencies will attempt to interpret and apply each of these requirements in the manner they individually consider correct. Authorized agents will also be required to consider whether TRQ applicants meet the commodity-specific criteria, which appear to inform the basis of the Allocation Principles. Further, a similar review will occur upon reallocation to determine whether the entities “meet the criteria.”²⁰⁷ The review of applicants is particularly crucial for when the agent determines the criteria is met and enters the applicant into the database, rather than when the application is submitted appears to be relevant to the reallocation process.²⁰⁸ For this reason, applications made in one locality may receive different consideration and a different results than applications made in any of the other thirty-six locations.

248. Prior panels have found separate local entities interpreting overly vague criteria to be a circumstance that can result in non-sensible or irrational administration of laws, regulations, decisions, or rulings. For instance, the panel in *China – Raw Materials* noted that “a system of quota allocation where an undefined and vaguely worded criterion can trump all other criteria, yet is to be applied by [] different regional offices” may constitute relevant evidence for establishing unreasonable administration.²⁰⁹ That panel in particular noted that, where no guidelines or standards are provided to assist local reviewing entities in applying particular criterion, “each Local Department will necessarily have to interpret the . . . criterion as it sees fit.”²¹⁰ The panel found that administering “determinative criterion” in this manner is not reasonable, and that it “is not ‘fair,’ ‘equitable,’ ‘just,’ ‘legitimate’ or ‘appropriate for the circumstances’ that . . . applicants may well be subject to different interpretations of whether or not they [meet the criterion] depending on where they are located.”²¹¹

249. This Panel is confronted with similar facts. As just described, China does not provide guidance to local entities as to the meaning of particular requirements, and it is therefore impossible to ensure that the criteria and principles are interpreted and applied in a consistent manner. That an applicant in one locality may be subject to different interpretations of the criteria than an applicant in other localities is not sensible, rational, or appropriate. Further, during the reallocation process, the speed of the review by various authorized agents will result in different results for reallocation applicants, as they enter a first come, first serve distribution process. For these reasons, the application of vague and undefined criteria by thirty-seven

²⁰⁵ 2017 Allocation Notice, Article III (Exhibit US-15).

²⁰⁶ 2017 Allocation Notice, Article II (Exhibit US-15).

²⁰⁷ 2017 Reallocation Notice, para. 4 (Exhibit US-17).

²⁰⁸ 2016 Reallocation Notice, paras. 4-5 (Exhibit US-18); 2003 Provisional Measures, Article 26

²⁰⁹ *China – Raw Materials* (Panel), para. 7.744 (quoting *EC – Select Customs Matters* (AB), para. 225). Noting that the findings in *China – Raw Materials* were vacated by the Appellate Body on procedural grounds.

²¹⁰ *China – Raw Materials* (Panel), para. 7.743.

²¹¹ *China – Raw Materials* (Panel), para. 7.743.

separate authorized agents as a prerequisite for receipt of a TRQ allocation renders the manner in which China administers its grains TRQs unreasonable.

c. Review of Applicant Data by the Public

250. China fails to administer its wheat, rice, and corn TRQs in a “reasonable manner,” because it provides for the publication of applicant data and permits public to provide “disagreement,” “feedback,” and “opinions,” without providing relevant guidance regarding how these comments are vetted, considered, or impact the TRQ allocation process.

251. Annually NDRC issues an *Announcement of Applicant Enterprise Data*, which states that it is “to give play to the oversight function of all sectors of society.”²¹² For this reason, China publish relevant data regarding grain TRQ applicants and asks for information from members of the public who “are in disagreement with the data reported by the enterprise.”²¹³ It further states that it asks for “feedback with relevant opinions.”²¹⁴ In this manner, NDRC seeks public comment on data provided by TRQ applicants

252. China’s solicitation of public comment on applicant data raises serious concerns regarding the use of public opinion and feedback in determining eligible TRQ applicants. Specifically, it is unclear how NDRC verifies or evaluates this information provided by members of the public, or whether applicants are given an opportunity to view or rebut any information that is provided to dispute their application. Furthermore, there is nothing to suggest that members of the public are informed about the application criteria upon which they are opining.

253. This aspect of China’s administrative process exacerbates the unreasonable nature of the administration, because not only do the Basic Criteria and Allocation Principles themselves lack clear rules or standards, but the public opinions submitted could introduce bias or inequity due to the potential motivations of a submitter. Further, there is nothing suggesting that NDRC, authorized applicants, or the applicant itself can verify or refute the information provided. This additional step renders NDRC’s administration of the TRQ application and allocation process much less clear, and increases applicants’ uncertainty regarding the status or sufficiency of their applications considerably. Such a process prevents evaluation of TRQ applicants, and administrative decisions with respect to eligibility from being made in accordance in a rational or sensible manner.

254. For this reason, the publication of applicant data and request for “disagreement” regarding the applicant data renders the manner in which China administers its TRQs unreasonable.

d. Single Application Process for State Trading and Non-State Trading Portions of the TRQ

255. China administers its wheat, rice, and corn TRQs on an unreasonable basis, because it does not allow applicants to choose whether to apply for an allocation of the state trading portion

²¹² 2017 *Announcement of Enterprise Data* (Exhibit US-19).

²¹³ 2017 *Announcement of Enterprise Data* (Exhibit US-19).

²¹⁴ 2017 *Announcement of Enterprise Data* (Exhibit US-19).

of the TRQ or the non-state trading portion; and because applicants do not know, based on the information provided in China’s instruments, on what basis NDRC will determine which applicants will receive a state trading allocation.

256. Article 4 of the *2003 Provisional Measures* provides that the TRQs for wheat, rice and corn “are divided into state trading quotas and non-state trading quotas,” and consequently “[s]tate trading quotas must be imported through state trading enterprises; non-state trading quotas are imported through enterprises that have trading rights, and end-users that have trading rights may also import by themselves.”²¹⁵ Imports through the state trading and non-state trading TRQ channels are, however, administered together – through a single application process – creating uncertainty and potentially increasing costs to applicants seeking to import wheat, rice, and corn under the TRQ.

257. Specifically, the *Allocation Notice* and attached application direct applicants to indicate the “name of agricultural product quota applied for” and the “quantity applied for.”²¹⁶ However, nowhere on the form can an applicant specify a preference for importation through the state trading portion or the non-state trading portion of the TRQ, or indicate whether they would accept an allocation under either one. Further, China’s instruments do not provide any information regarding how NDRC determines which applicants will receive which TRQ allocation, or how an individual entity’s TRQ allocation might be split between the non-state trading and state trading portions of the TRQ.

258. The administration of the state trading and non-state trading TRQ as a single application process means that applicants may not determine in advance what portion of an annual anticipated TRQ allocation will need to be imported through a state trading enterprise. Because each type of allocation has its own requirements and commercial considerations, the applicant cannot plan or contract with a particular exporter in advance, but rather must wait to see what type of allocation is actually provided. Based on China’s measures, it appears that an applicant will not know the type of allocation(s) received until he receives the TRQ Certificate itself.²¹⁷ Specifically, the sample TRQ Certificate – annexed to the *2003 Provisional Measures* – includes, as Box 7, “Allocation Quantity” and, as Box 8, “State trading quantity (out of total).”²¹⁸ To reduce the risk of such uncertainty, an applicant would need to reduce the total quantity of TRQ he requests, or consider not applying at all. Similarly, the inability to timely contract for imports, either through a state trading entity or another entity with trading rights, may reduce the total quantities actually imported.

259. Further, a single applicant could, it appears, receive a TRQ allocation for both the non-state trading and state trading portions of the TRQs.²¹⁹ The receipt of two types of allocations means that applicants necessarily must engage in two separate transactions, which could increase the time required to complete the separate importations, as well as the costs. Additionally, while the entire allocation must be granted in a commercially viable amount, there does not appear to

²¹⁵ *2003 Provisional Measures*, Article 4 (Exhibit US-11).

²¹⁶ *2017 Allocation Notice*, 2017 Grain Import Tariff-Rate Quota Application Form (Exhibit US-15) (also providing space to indicate whether application is for “general trade” or “processing trade”).

²¹⁷ *2003 Provisional Measures*, Article 14 (Exhibit US-11).

²¹⁸ *2003 Provisional Measures*, Attachment (Exhibit US-11).

²¹⁹ *2003 Provisional Measures*, Article 36 (Exhibit US-11).

be any obligation that NDRC provide each portion of a split allocation in a commercially viable quantity.²²⁰ Were allocations in smaller amounts in fact made, this would further increase the risks and costs associated with importation, compounding an already unreasonable process.

260. Therefore, because China administers the state trading and non-state trading portions of the TRQ through a single application process that does not permit applicants to anticipate and properly plan for importation, China fails to administer its grains TRQs in a reasonable manner in breach of Article X:3(a) of the GATT 1994.

e. Failure to Publish Information Regarding Allocation and Reallocation

261. China fails to administer its TRQs for wheat, rice, and corn in a reasonable manner in breach of Article X:3(a) of the GATT 1994, because China fails to publish information regarding the results of the allocation and reallocation processes.

262. China does not publish information regarding actual annual allocated TRQ volumes in the aggregate at the time of allocation (January 1), or in the aggregate at the time of reallocation (September 30).²²¹ Similarly, China does not publish information regarding the total allocated amount of the TRQ that must be imported through a state-owned enterprise, and what amount may be imported directly by TRQ Certificate holders. This means meaningful information regarding the amount of wheat, rice, and corn permitted to be imported, as well as the amount of unallocated TRQ available for subsequent applicants is not provided on an annual basis.

263. Additionally, China does not release information regarding the specific TRQ allocation recipients or the TRQ volumes each recipient was granted. Providing information regarding the identity of TRQ Certificate holders and TRQ volumes allocated during initial allocation and reallocation would assist in connecting buyers and sellers within the market. This information is particularly critical during the reallocation process when TRQ Certificate holders have a limited period of time within which to contract for and import the authorized grain.²²² Furthermore, as noted above, TRQ applicants are not aware of whether they will be required to import through a state-owned enterprise or on the basis of their own trading rights prior to the TRQ allocation. For this reason, they are unlikely to be able to plan their importation activity prior to the distribution of TRQ allocation. The lack of published information regarding the successful TRQ applicants and permitted import volumes therefore further impedes the identification of appropriate importers to contract with, or to consolidate import volumes with, to permit cost-effective importation.

264. When coupled with the lack of clarity regarding the Basic Criteria, the failure to provide information regarding actual TRQ allocation and reallocation volumes prevents interested importers from understanding and utilizing the TRQ system. That is, potential applicants not only cannot understand the criteria and principles applied by NDRC and local agencies based on the text of the Chinese instruments themselves, but they also cannot infer from the results of that

²²⁰ 2003 *Provisional Measures*, Article 13 (Exhibit US-11).

²²¹ See e.g., 2003 *Provisional Measures*, Articles 14, 26 (Exhibit US-11).

²²² 2003 *Provisional Measures*, Articles 22-23 (Exhibit US-11).

process – *i.e.*, which applicants received TRQ allocations and of what type and in what amount – how the various criteria and principles were applied in practice.

265. Additionally, without knowing the results of the allocation process traders inside and outside of China lack the necessary commercial information to engage in importation under the TRQs. Traders do not know which entities in China have permission to import grains, and they do not know what amounts those entities are permitted to import, either individually or as an industry. Further, traders do not know what amounts of each grain may be imported “through” the relevant state trading enterprises, or for which end uses those amounts may be needed.

266. Therefore, China fails to administer its TRQs for wheat, rice, and corn in a reasonable manner in breach of Article X:3(a), because China does not publish information regarding the results of the allocation and reallocation processes, depriving market participants – including TRQ applicants, TRQ recipients, traders, and foreign exporters – of information necessary to both understand the process, and understand the import market in a given year.

C. Article XIII:3(b) of the GATT 1994

267. China’s administration of its TRQs for wheat, rice, and corn is inconsistent with its obligations under Article XIII:(3)(b) of the GATT 1994. Article XIII:(3)(b) of the GATT 1994 requires Members to provide public notice of *both* the “total quantity or value of the product or products which will be permitted to be imported during a specified future period,” *and* “of any change in such quantity or value.” However, as described below, China does not provide information regarding: the quantity of wheat, rice, or corn permitted to be imported at the initiation of the TRQ period; any changes to the quantity permitted to be imported after unused TRQ amounts have been returned to NDRC; or, any changes to this amount after reallocation of TRQ.

1. Legal Interpretation of Article XIII:3(b) of the GATT 1994

268. Article XIII of GATT 1994 provides for the “Non-discriminatory Administration of Quantitative Restrictions.” In relevant part, Article XIII:3(b) provides:

In the case of import restrictions involving the fixing of quotas, the WTO Member applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value.

Further, pursuant to paragraph 5 of Article XIII, the “provisions of this Article shall apply to any tariff quota instituted or maintained by any contracting party.”²²³

269. Thus, in instances where an import restriction is maintained, including through a tariff rate quota or TRQ, a Member is obligated to provide public notice in two circumstances. First, a Member must “give public notice of the total quantity or value of the product or products which

²²³ GATT 1994, Article XIII:5.

will be permitted to be imported during a specified future period;” and second, a Member must “give public notice . . . of any change in such quantity or value.”²²⁴

270. Regarding the first public notice obligation described in Article XIII:3(b), Members must provide information regarding the “total quantity . . . which will be permitted to be imported.” “Permit” is defined as to “[a]llow the doing or occurrence of; give permission or opportunity for,” or to “[a]llow or give consent to (a person or a thing) to do or experience something.”²²⁵ Thus, the obligation refers to those amounts for which consent is given for actual importation during a specified period.

271. The second public notice obligation provides that the Member must also notify “any change in such quantity.” That is, if the amount is reduced or increased subsequent to the initial public announcement, a Member must publicize the new or revised amounts as well. And, if another change in the quantity “permitted to be imported” for the specified period subsequently occurs, then to satisfy this requirement, a Member must provide public notification for each such change.

2. China’s Failure to Disclose TRQ Quantities Permitted to Be Imported is Inconsistent with Article XIII:3(b)

272. China’s administration of its TRQs for wheat, rice, and corn is inconsistent with Article XIII:3(b) of the GATT 1994 because China fails to provide information to the public regarding actual TRQ quantities permitted for import at the time of initial allocation, at the time that unused TRQ Certificates are returned, and at the time of reallocation.

273. With respect to the first notification obligation under Article XIII:3(b), the 2003 *Provisional Measures* direct that one month prior to the application period, the Ministry of Commerce and NDRC respectively announce the total quantities of import tariff-rate quotas for each type of agricultural product for the following year.²²⁶ Each year, China sets out in its *Allocation Notice* the total TRQ quantities available for wheat, rice, and corn, corresponding to the minimum amounts to which China has committed in its Schedule of Concessions.²²⁷

274. For example, on October 10, 2016, NDRC announced that “[t]he 2017 grain import tariff-rate quota quantities are: wheat – 9.636 million tons, with a state trading proportion of 90%; corn – 7.20 million tons, with a state trading proportion of 60%; rice – 5.32 million tons (of which: 2.66 million tons of long-grain rice and 2.66 million tons of medium- and short-grain rice), with a state trading proportion of 50%.”²²⁸ Identical announcements were made in the prior *Allocation Notices*.²²⁹

275. Permission to import under the TRQ, however, is only granted to successful applicants. The *Allocation Notice* also sets out an application process whereby applicants can request to import amounts of each grain under the TRQs at in-quota duty rates for the upcoming year. As

²²⁴ GATT 1994, Article XIII:3(b).

²²⁵ *The New Shorter Oxford English Dictionary*, Vol. 2, “permit” at 2,167 (ed. 1993) (Exhibit US-43).

²²⁶ 2003 *Provisional Measures*, Article 10 (Exhibit US-11).

²²⁷ *China’s Schedule CLII, Part I, Section I (B)* (Exhibit US-23).

²²⁸ 2017 *Allocation Notice*, Article I (Exhibit US-15)

²²⁹ See e.g., 2016 *Allocation Notice*, Article I (Exhibit US-16).

explained in Section III.A, above, applicants must comply with various eligibility requirements, and must provide information regarding various factors that NDRC allegedly takes into account in determining the amount of each allocation. Therefore, while NDRC has, for instance, 9.636 million metric tons of wheat TRQ that it may allocate amongst applicants,²³⁰ this number is not set out as the amount of wheat that “will be permitted to be imported” into China after January 1.

276. According to China’s 2003 *Provisional Measures*, TRQ Certificates, which permit an allocation recipient to import, are to be issued to successful TRQ applicants by January 1 of each year.²³¹ Thus, the amount of TRQ “which will be permitted to be imported during a specific future period,”²³² corresponds to the total amounts authorized on the TRQ Certificates issued to selected applicants.

277. As the United States has explained in Section IV.A.1 above, however, China does not provide a public notification of the amounts allocated under the initial allocation process. This failure to provide even aggregate public notice of the total volume for which permission to import has been granted under each TRQ is inconsistent with China’s obligation under Article XIII:3(b) to provide public notice of “the total quantity . . . [of] the product or products which will be permitted to be imported during a specified future period.”²³³ China’s *pro forma* announcement each year of the total TRQ quantities that it has committed to provide in its Schedule is not sufficient. To succeed in satisfying its obligation to provide public notification of amounts “permitted to be imported,” China must publicly announce the amounts for which permission to import has *in fact* been granted.

278. China’s TRQ administration is also inconsistent with the second public notice obligation, which requires Members to provide a public notification regarding any changes to quantities permitted to be imported.²³⁴ As described in paragraph 1 of the *Reallocation Notice*, when a TRQ Certificate holder either fails to contract for shipment of the entire quota quantity or has entered a contract but the goods cannot be shipped within the year, “the [TRQ Certificate holder] shall, before September 15, return the part of the tariff-rate quota for which import is not completed or is impossible to complete to” the local authorized agent.²³⁵ That is, when unused TRQ allocation amounts are surrendered to the local authorized agent as required by the annual *Reallocation Notice*,²³⁶ the total amount of product that “will be permitted to be imported” is reduced. Thus, after September 15, the total quantity of product permitted to be imported has changed.

279. However, as described in Section IV.A.1 above, China does not publish information regarding unused allocation amounts that TRQ holders return to NDRC, or regarding the amounts available to applications for potential reallocation. Because the return of unused TRQ

²³⁰ 2017 *Allocation Notice*, Article I (Exhibit US-15).

²³¹ 2003 *Provisional Measure*, Articles 14, 20-21 (Exhibit US-11).

²³² GATT 1994, Article XIII:3(b).

²³³ GATT 1994, Article XIII:3(b).

²³⁴ GATT 1994, Article XIII:3(b).

²³⁵ 2017 *Reallocation Notice*, para. 1 (Exhibit US-17); *see also* 2003 *Provisional Measure*, Article 23 (noting that quota holder “is unable to sign import contracts for, or has already signed import contracts for but is unable to complete [importation], [the end-user] must return the quota quantity it was unable to complete to the original certificate-issuing agency prior to September 15”) (Exhibit US-11).

²³⁶ 2017 *Reallocation Notice*, para. 1 (Exhibit US-17).

allocations reflects a “change” in the total quantity “permitted to be imported,” China’s failure to publically announce the change in these amounts breaches its obligations under Article XIII:3(b) of the GATT 1994.

280. Finally, pursuant to the annual *Reallocation Notices*, NDRC will reallocate unused TRQ amounts to successful applicants, and must notify applicants of this TRQ reallocation by September 30 of each year.²³⁷ After September 30, the amount wheat, rice, and corn “permitted to be imported” could again be fundamentally changed. However, it is not clear to applicants or importers whether in any given year China in fact grants additional permission to any applicants for the importation of reallocated TRQ amounts. Assuming the issuance of each annual *Reallocation Notice* in fact indicates that NDRC will undertake a reallocation process, the results of that process would, again, change the total quantity of product “permitted to be imported during a specified future period.”

281. As discussed in Section IV.A.1 above, China does not provide any public information regarding the results of the reallocation process, including the publication of the total amount of TRQ reallocated to successful applicants. Therefore, in the case of reallocation, China does not provide “public notice” of the “change” in the “total quantity or value of the product or products which will be permitted to be imported during a specified future period,”²³⁸ and thus again breaches its obligations under Article XIII:3(b) of the GATT 1994.

282. Thus, as described above, China fails to provide public notifications regarding actual TRQ quantities permitted for import at the time of initial allocation, at the time that unused TRQ Certificates are returned, or at the time of reallocation. Because Article XIII:3(b) requires China to provide a public notification of the total volume of wheat, rice, and corn “permitted to be imported,” as well as “any change in such quantity,” China’s failure to do so on each occasions constitutes a separate breach of this obligation.

D. Article XI:1 of the GATT 1994

283. China’s administration of its TRQs for wheat, rice, and corn is inconsistent Article XI:1 of the GATT 1994, because it imposes impermissible “restrictions” on the importation of wheat, rice, and corn. Article XI:1 of the GATT 1994 bars prohibitions or restrictions on importation or exportation other than through duties, taxes, or other charges.

284. China’s TRQ administration acts as a “restriction” beyond the duties applied on products because China’s TRQ application process and importation requirements act as a limitation on importation of grains pursuant to allocated TRQ Certificates, and discourage importers from applying for TRQ allocations, or from applying for the quantities they otherwise would in the absence of such requirements. First, China’s administration of the state trading and non-state trading portions of the TRQ through a single application process creates commercial uncertainty limiting importation. Different requirements and commercial considerations are relevant to the state trading and non-state trading portion of the TRQ, but applicants cannot indicate which TRQ portion they seek to apply for, and do not know on what basis NDRC will determine which applicants receive allocations for which portion, or in what amounts. Second, China’s TRQ

²³⁷ 2017 *Reallocation Notice*, para. 1 (Exhibit US-17).

²³⁸ GATT 1994, Article XIII:3(b).

administration use restrictions on products imported under the TRQ, combined with penalties for non-use of the full allocation. As described below, each of these features of China’s TRQ administration imposes a limitation or limiting condition on importation, or has a “limiting effect” on importation, in breach of Article XI:1 of the GATT 1994.

1. Legal Interpretation of Article XI:1 of the GATT 1994

285. Article XI:1 of the GATT 1994 provides that:

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any Member on the importation of any product of the territory of any other Member or on the exportation or sale for export of any product destined for the territory of any other Member.

That is, a Member may not maintain “prohibitions or restrictions” “on the importation of any product,” “other than duties, taxes or other charges.” Of relevance to the U.S. claims is the prohibition on “restrictions... on the importation” of wheat, rice and corn.

286. The ordinary meaning of the term “restriction,” in the context of Article XI:1, is a “limitation on action, a limiting condition or regulation,” or a “[c]onstriction, compression, [or] contraction.”²³⁹ Considering the definition of the term “restriction,” the panel in *India – Quantitative Restrictions* found that “[t]he scope of the term ‘restriction’ is . . . broad, as seen in its ordinary meaning.”²⁴⁰ The panel in *India – Autos* reached the same conclusion, finding that “any form of limitation imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Article XI:1.”²⁴¹ The Appellate Body endorsed this approach in *China – Raw Materials* and *Argentina – Import Measures*, finding that “restriction” refers to “[a] thing which restricts someone or something, a limitation on action, a limiting condition or regulation” and thus “refers generally to something that has a limiting effect.”²⁴²

287. Article XI:1 applies to any “restriction,” including those “made effective through quotas, import or export licenses or other measures.”²⁴³ Only measures that take the form of “duties, taxes, or other charges” fall outside the scope of Article XI:1.”²⁴⁴ The *India – Quantitative Restrictions* panel reasoned that the text of Article XI:1 “is very broad in scope, providing for a general ban on import or export restrictions or prohibitions ‘other than duties, taxes or other

²³⁹ *The Shorter Oxford English Dictionary*, Vol. 2, “restriction” at 2,569 (1993 ed) (Exhibit US-43).

²⁴⁰ *India – Quantitative Restrictions* (Panel), para. 5.128.

²⁴¹ *India – Autos* (Panel), para. 7.265 (original emphasis omitted); see also *Dominican Republic – Cigarettes* (Panel), para. 7.269 (citing same); *Indonesia – Import Licensing* (Panel), para. 7.43.

²⁴² See *China – Raw Materials* (AB), para. 319 (citing *Shorter Oxford English Dictionary*, 6th edn, W.R. Trumble, A. Stevenson (eds) (Oxford University Press, 2007), Vol. 2, p. 2553); *Argentina – Import Measures* (AB), para. 5.217 (quoting same).

²⁴³ Additionally, the “Ad Article” for Article XI of the GATT 1994 notes that “the terms ‘import restrictions’ and ‘export restrictions’ include restrictions made effective through state trading operations.” GATT 1994, Ad Articles XI, XII, XIII, XIV, and XVIII.

²⁴⁴ Article XI:2 contains a list of restrictions or prohibitions that are not prohibited under Article XI:1, and measures complying with certain other provisions of the WTO Agreements also may not be found to breach Article XI:1. See *Argentina – Import Measures* (AB), paras. 5.219-5.221.

charges.”²⁴⁵ The panel in *Indonesia – Import Licensing* further noted that the terms “made effective through” “suggests that the scope of Article XI:1 covers measures through which a prohibition or restriction is produced or becomes operative.”²⁴⁶ Subsequent panels have agreed with this interpretation.²⁴⁷

288. A finding that a measure constitutes a restriction within the meaning of Article XI:1 does not require a showing that trade flows have been affected.²⁴⁸ Article XI:1 proscribes restrictions “on the importation” or “on the exportation” of any product, not restrictions on the level of imports or exports. The terms used (“importation” / “exportation”) reach the process of importing or exporting.²⁴⁹ The Appellate Body in *Argentina – Import Measures* came to a similar conclusion, finding that the “limiting effect” of a restriction under Article XI:1 “need not be demonstrated by quantifying the effects of the measure at issue; rather, such limiting effects can be demonstrated through the design, architecture, and revealing structure of the measure at issue considered in its relevant context.”²⁵⁰

289. When considering “a limitation on action, a limiting condition or regulation” or “something that has a limiting effect” in the context of Article XI:1, panels and the Appellate Body have considered a wide range of factors affecting the competitive opportunities and the ability to import products. For instance, as described by the panel in *Indonesia – Import Licensing*, a panel may consider actions that “restrict market access for imports,” which may include measures that “make importation prohibitively costly or unpredictable, whether they constitute disincentives affecting importations, or whether there is unfettered or undefined discretion to reject a license application.”²⁵¹ In the context of Indonesia’s import licensing regime, the panel found that one measure, for example, “removes flexibility from importers to respond to changing market circumstances or external factors.”²⁵²

²⁴⁵ *India – Quantitative Restrictions* (Panel), para. 5.128 (quoting *Japan – Trade in Semi-conductors* (GATT Panel Report) and *The New Shorter Oxford English Dictionary*, vol. 2 at 2569 (ed. 1993)). See also *Colombia – Ports of Entry* (Panel), para. 7.226-227 (noting that “‘other measures’ in Article XI:1 is meant to encompass a ‘broad residual category,’ and that the concept of a restriction on importation covers any measures that result in ‘any form of limitation imposed on, or in relation to importation’ (footnotes omitted)).

²⁴⁶ *Indonesia – Import Licensing* (Panel), para. 7.42 (citing *Argentina – Import Measures* (AB), para. 5.218).

²⁴⁷ *Argentina – Import Measures* (Panel), para. 6.251; *India – Autos* (Panel), para. 7.264; *Colombia – Ports of Entry*, para. 7.233; *Dominican Republic – Cigarettes* (Panel), para. 7.248.

²⁴⁸ See *Indonesia – Import Licensing* (Panel), para. 7.50; *Argentina – Import Measures* (AB), para. 5.217.

²⁴⁹ See *The New Shorter Oxford English Dictionary*, Vol. 1, “importation,” (1993) at 1,324 (defining “importation” as, “the action of importing or bringing in something”) (Exhibit US-XXX); *The New Shorter Oxford English Dictionary*, Vol. 1, “exportation,” (1993) at 889 (Exhibit US-XXX) (defining “exportation” as “the action or practice of exporting”).

²⁵⁰ *Argentina – Import Measures* (AB), para. 5.217; see also *Argentina – Import Measures* (Panel), para. 6.455; *Colombia – Ports of Entry*, para. 7.240 (noting that the findings in prior disputes applying Article XI:1 “were based on the design of the measure and its potential to adversely affect importation, as opposed to a standalone analysis of the actual impact of the measure on trade flows.”); *US – Poultry* (China), para. 7.454; *Argentina – Hides and Leather*, para. 11.20; *Indonesia – Import Licensing* (Panel), paras. 7.44-7.45.

²⁵¹ *Indonesia – Import Licensing* (Panel), para. 7.46; *Brazil – Retreaded Tyres* (Panel), para. 7.370 (citing fines making importation “prohibitively expensive”); *Colombia – Ports of Entry* (Panel), para. 7.240 (stating that Article XI:1 applies to “measures which create uncertainties and affect investment plans, restrict market access for imports or make importation prohibitively costly, all of which have implications on the competitive situation of an importer”).

²⁵² *Indonesia – Import Licensing* (Panel), para. 7.110.

290. Similarly, the panel in *Argentina – Import Measures* concluded that Argentina’s measure was inconsistent with Article XI:1, where it “creates uncertainty as to an applicant’s ability to import; . . . does not allow companies to import as much as they desire or need without regard to their export performance; and . . . imposes a significant burden on importers that is unrelated to their normal importing activity.”²⁵³

2. China’s TRQ Administration for Wheat, Rice, and Corn is Inconsistent with its Obligations Under Article XI:1 of the GATT 1994

291. China’s administration of its TRQs for wheat, rice, and corn imposes impermissible “restrictions . . . on the importation of” these grains within the meaning of Article XI:1 of the GATT 1994.²⁵⁴

- First, China administration of the state trading and non-state trading portions of the TRQ through a single application process creates significant uncertainty for TRQ applicants. Each portion of the TRQ has its own requirements and commercial considerations, however, applicants cannot indicate for which TRQ portion they wish to apply, and do not know on what basis NDRC will determine which applicants receive allocations for which portion, or in what amounts.
- Second, China’s TRQ administration use restrictions on products imported under the TRQ, combined with penalties for non-use of the full allocation.

Each aspect of China’s TRQ administration is discussed in turn, below.

a. China Administers a Single Application Process For Allocation of the State Trading and Non-State Trading Portions of the TRQ

292. The use of a single application for the state trading and non-state trading TRQ allocations constitutes a “restriction” on importation of wheat, rice, and corn within the meaning of Article XI:1 of the GATT 1994, because of the significant risks and uncertainty associated with not being able to choose or predict in advance the method of importation in any particular year.

293. As described in Section III.A above, the *2003 Provisional Measures* provide that TRQs for certain products, including wheat, corn, and rice, are divided into “state trading and non-state trading” portions, and that “state trading allocations must be imported through state trading enterprises.”²⁵⁵ The *Allocation Notice* specifies, in Article I, the portion of each TRQ to be imported “through” the state trading enterprise.²⁵⁶

294. Although traders know each TRQ is divided into a state and non-state trading quota, as explained above, they do not have the opportunity to choose which TRQ portion they would like

²⁵³ *Argentina – Import Measures* (Panel), para 6.474. These findings were appealed by Argentina, but the Appellate Body agreed with and upheld the findings by the panel. See *Argentina – Import Measures* (AB), paras 5.287-5.288.

²⁵⁴ See *China – Raw Materials* (AB), para. 319 (citing Shorter Oxford English Dictionary, 6th edn, W.R. Trumble, A. Stevenson (eds) (Oxford University Press, 2007), Vol. 2, p. 2553); *Argentina – Import Measures*, para. 5.217 (quoting same).

²⁵⁵ *2003 Provisional Measures*, Article 4 (US-11).

²⁵⁶ *2017 Allocation Notice*, Article I (US-15).

to apply for. According to the sample application attached to the *Allocation Notice*, applicants must indicate the “name of the agricultural product quota applied for” and the “quantity applied for.”²⁵⁷ However, applicants cannot indicate whether they wish to apply for a state trading TRQ allocation or a non-state trading TRQ allocation.²⁵⁸ Nor can they indicate whether they would accept allocations for either portion, or only one of them.

295. In addition, applicants do not have any information regarding how NDRC will determine which applicants will receive state trading allocations and which will receive non-state trading allocations. Therefore, they cannot anticipate with any certainty whether they might receive an allocation from the non-state trading portion, which can be imported directly or through a non-state enterprise.²⁵⁹ Similarly, an applicant will not know whether they have received a state trading allocation until they receive their TRQ Certificate reflecting the actual allocations granted at the start of the importation period.

296. Further, a single applicant could receive a mixed allocation of both state trading allocation and non-state trading TRQ allocation. As described by the *2003 Provisional Measures*, the TRQ Certificate indicates both the “allocated quantity” and separately the “state trading quantity.”²⁶⁰ This suggests the total allocation may differ from the volume required to be imported through the state trading enterprise. While the *2003 Provisional Measures* appears to require that overall allocations to be made in commercially viable volumes, the text does not extend this indication to the subcomponents of a particular allocation.²⁶¹

297. The inability of traders to anticipate what type of allocation they may receive leads to significant uncertainty for potential applicants, because different requirements and commercial considerations are associated with the state trading and non-state trading portions of the TRQ. As explained in Section III.A, holders of a state trading TRQ Certificate must import the product “through” the state trading enterprise identified by the Ministry of Commerce, COFCO.²⁶² That is, these TRQ Certificate holders must negotiate with COFCO to obtain a contract for importation of the product. However, the legal instruments do not require the state trading enterprise to contract with the TRQ Certificate holder. Conversely, a TRQ Certificate holder with non-state trading TRQ allocation may import on the basis of their own trading rights or those of another entity, and are thus provided with a wider variety of commercial opportunities.²⁶³

298. For the state-trading portion of the TRQ, if a contract is not signed by August 15, the TRQ Certificate holder can, “upon seeking approval from” NDRC, “entrust any enterprises that have trading rights to import,” or “import by themselves.”²⁶⁴ But, NDRC approval is not automatic, and neither the *2003 Provisional Measures*, nor the *Allocation Notice* specifies the procedure for obtaining NDRC approval or indicates the basis upon which NDRC will decide

²⁵⁷ *2017 Allocation Notice*, Attachment: Import Tariff-Rate Quota Application for Grains (Exhibit US-15).

²⁵⁸ *2003 Provisional Measures*, Article 4 (Exhibit US-11).

²⁵⁹ *2003 Provisional Measures*, Article 4 (US-11).

²⁶⁰ *2003 Provisional Measures*, Article 4, Annex Sample TRQ Certificate (Exhibit US-11).

²⁶¹ *2003 Provisional Measures*, Article 13 (Exhibit US-11).

²⁶² *2003 Provisional Measures*, Article 38 (Exhibit US-11); *China’s State Trading Notification* (Oct. 19, 2015) (Exhibit US-12); *2001 Catalogue of Import STEs* (Exhibit US-14).

²⁶³ *2003 Provisional Measures*, Article 4 (Exhibit US-11).

²⁶⁴ *2003 Provisional Measures*, Article 22, (Exhibit US-11).

whether to grant such approval. Therefore, a TRQ Certificate holder *may not obtain* approval to import directly, and therefore *may not be able* to import the full amount of TRQ allocation received. If unable to import the full amount, an applicant would need to return the unused portion of the TRQ,²⁶⁵ and will lose his eligibility to request an additional amount during the reallocation process.²⁶⁶ A holder of a state trading TRQ Certificate or a mixed TRQ Certificate thus may not be able to import some or all of its TRQ allocation in a given year.

299. The time taken to receive NDRC authorization to import directly is of significant concern because TRQ Certificate holders with state trading TRQ allocation continue to be obligated to return unused TRQ allocation by September 15 of each year.²⁶⁷ For those state trading TRQ Certificate holders who have been unable to contract with COFCO by August 15, delays in receiving authorization will undermine their ability to effectively import the relevant grains. Even if authorization were provided immediately, TRQ Certificate holders would have just thirty days to contract for importation.

300. Failure to find a new importer or to arrange for import on their own by September 15 will trigger the need to return the unused TRQ allocation. Any Certificate holders that return unused amounts are not eligible to apply for reallocated amounts. And, if a TRQ Certificate holder does not return or utilize the full TRQ allocation, the TRQ Certificate holder will be subject to “a corresponding deduction to its tariff rate quota quantity allocated in the following year, according to the proportion not completed.”²⁶⁸ Moreover, if a TRQ Certificate Holder “fails to complete imports for the *entire* agricultural import tariff-rate quota quantity allocated for two consecutive years, but has returned” unused quota by September 15, “there will be a corresponding deduction to its tariff-rate quota quantity allocated in the following year, according to its proportion not completed in the most recent year.”²⁶⁹ If the TRQs holder’s eligibility to receive an allocation is based on its actual import performance in the previous year,²⁷⁰ the inability to import under the TRQ also could lead to ineligibility to receive an allocation in the following year at all.²⁷¹ Thus, China’s TRQ administration provides significant penalties for the failure to fully utilize each TRQ allocation, including where importation may have been impeded or prevented by the state trading enterprise.

301. The differing requirements and commercial consideration of state trading and non-state trading TRQ allocation, when combined with applicants’ inability to decide or predict which allocation they will receive and the time limits of contracting, result in significant risks and

²⁶⁵ 2003 *Provisional Measure*, Article 23 (Exhibit US-11) (stating that if the TRQ Certificate holder “is unable to sign import contracts for, or has already signed import contracts for but is unable to complete, the entire quota quantity already applied for and obtained for the current year, [TRQ Certificate holder] must return the quota quantity it was unable to complete to the original certificate-issuing agency prior to September 15”).

²⁶⁶ 2003 *Provisional Measure*, Article 25 (Exhibit US-11) (noting that TRQ Certificate holders that “have, prior to the end of August of the current year, completed the entire agricultural product tariff-rate quota quantity allocated . . . may apply for tariff-rate quota reallocated quantities.”)

²⁶⁷ 2003 *Provisional Measures*, Article 23; *see also* 2003 *Provisional Measure*, Article 30 (Exhibit US-11).

²⁶⁸ 2003 *Provisional Measures*, Articles 30-31 (Exhibit US-11).

²⁶⁹ 2003 *Provisional Measures*, Article 31 (Exhibit US-11) (emphasis added).

²⁷⁰ 2017 *Allocation Notice*, Article II (commodity-specific criteria) (Exhibit US-15).

²⁷¹ Although it is not clear how such a factor is evaluated by NDRC, the Allocation Principles list “past import performance” as a factor upon which NDRC will determine an entity’s allocation, suggesting that lower levels of importation in one year also may lead to the allocation of smaller amounts to a given applicant in subsequent years. 2017 *Allocation Notice*, Article II (Exhibit US-15).

uncertainty for TRQ applicants. In these circumstances, TRQ Certificate holders are faced with a substantial limitation on their ability to successfully import grains according to their commercial interests. Furthermore, these requirements, uncertainty, and potential penalties associated with failure to import discourage applicants from applying for allocations of wheat, rice or corn TRQ at all, or may lead them to apply for a smaller allocation of TRQ for importation than they might otherwise have in the absence of such uncertainty. These aspects of China’s TRQ administration thus constitute a restriction on the importation of rice, wheat and corn, in breach of Article XI:1 of the GATT 1994.

b. China’s TRQ Administration Requires the “Self-Use” of the Imported Grains Limiting Flexibility and the Ability of Importers to React to Commercial Considerations

302. China’s administration of its wheat, rice, and corn TRQs also constitutes a restriction on importation in breach of Article XI:1 of the GATT 1994, because China imposes usage restrictions and penalties for non-use, which creates burdens and uncertainty for importers and thereby discourage use of the TRQs.

303. China’s annual *Allocation Notice* specifies that TRQ allocation “obtained by an applicant must be self-used.”²⁷² The *Allocation Notice* further clarifies that “the imported goods are required to be . . . process[ed] by the enterprise itself.”²⁷³ The *Notice* provides that “imported wheat and corn are required to be processed and used in its own plant,” while “imported white rice is required to be organized for sale in the name of the enterprise itself.”²⁷⁴ This indicates that if an applicant applies for and receives TRQ allocation, it must “self-use” the imported grains in its own facilities. Thus, any wheat or corn imported must be processed into a downstream product, and any rice must be sold under the enterprises name.

304. The *Allocation Notice* also provides that enterprises that “own multiple processing plants must independently apply for and independently use import tariff-rate quotas in the name of each processing plant.”²⁷⁵ Further, “[t]rade-type enterprises applying for white rice import tariff-rate quotas may choose to apply in the name of the group headquarters or a subsidiary enterprise, but the headquarters and the subsidiary enterprise must not apply simultaneously.”²⁷⁶ In other words, a corn or wheat processing enterprise with multiple processing plants must apply through each plant, and each plant may only use the TRQ amount it is individually allocated and has imported. An enterprise with multiple plants could not import corn or wheat for use at one facility, but then, for commercial or other reasons, choose to process it at another facility. Nor could they implement more efficient business practices by consolidating their importing activity.

305. The *Allocation Notice* further provides that TRQ Certificate holders “are required to actively cooperate with the [NDRC] and its authorized agencies in organizing and carrying out supervision and inspection of grain import tariff rate quota applications and the circumstances of

²⁷² 2017 *Allocation Notice*, Article V(2) (Exhibit US-15).

²⁷³ 2017 *Allocation Notice*, Article V(2) (Exhibit US-15).

²⁷⁴ 2017 *Allocation Notice*, Article V(2) (Exhibit US-15).

²⁷⁵ 2017 *Allocation Notice*, Article II (US-15).

²⁷⁶ 2017 *Allocation Notice*, Article II (US-15).

their use.”²⁷⁷ Information regarding usage is required to be provided on each year’s application form,²⁷⁸ and may be part of what is considered under the Allocation.²⁷⁹

306. The above restrictions impose limitations and limiting conditions on importation by creating or increasing risks and uncertainties associated with importation, and thereby increasing the costs associated with importation. Restricting TRQ Certificate holders from selling or transferring imported wheat, rice, or corn creates waste and increases unnecessarily the cost of using imported products in their production processes. Further, China’s restrictions prevents TRQ Certificate holders from reacting to commercial considerations in a meaningful way. For instances, if demand in a particular part of China increases for processed wheat, an importer could not react by transferring imported wheat to its affiliated factory. Additionally, if a TRQ Certificate holder does not use all of the imported grain during its production process, the inability to sell or transfer the unused grain forces the importer to either destroy the excess products or incur the cost of storing it until such time as they can be utilized. Further, failure to utilize all imported grain covered by a TRQ Certificate may lead to reductions in the next year’s allocation. To avoid these outcomes, TRQ applicants would request a smaller amount of imports than they might otherwise request if acting pursuant to their commercial interests, rather than in the light of China’s requirements and penalties.

307. Previous panels have found that measures imposing limitations of this kind constitute restrictions under Article XI:1 of the GATT 1994. For example, the panel in *India – Quantitative Restrictions* considered an import measure that required goods to be imported only by the “actual user,” *i.e.* the person who utilized the goods for manufacturing in his own unit or for his own use in a commercial establishment, laboratory, or service industry.²⁸⁰ The panel found the actual user requirement to be “a restriction on imports because it precludes imports of products for resale by intermediaries, *i.e.* distribution to consumers who are unable to import directly for their own immediate use is restricted.”²⁸¹ Similarly, the panel in *Indonesia – Import Licensing* found that by prohibiting importers from trading and/or transferring imported products, the measure in question imposed “an undue burden on imports,” because “importers are forced to either use all the products they import for processing or find alternative ways to dispose of unused products that do not involve selling or transferring them.”²⁸² This Panel should come to a similar conclusion.

308. Therefore, through its use restrictions and penalties for non-use, China discourages importers from applying for allocations of the wheat, rice and corn TRQs, or discourages TRQ applicants from requesting allocations in the amounts they might otherwise request in the absence of China’s restrictions. China’s requirements thus constitute a “restriction... on the importation” of these products, in breach of China’s obligations under Article XI:1 of the GATT 1994.

²⁷⁷ 2017 Allocation Notice, Article V(3) (Exhibit US-15).

²⁷⁸ 2017 Allocation Notice, Attachment: Application (Exhibit US-15).

²⁷⁹ 2017 Allocation Notice, Article IV (Exhibit US-15).

²⁸⁰ *India – Quantitative Restrictions* (Panel), para. 2.24.

²⁸¹ *India – Quantitative Restrictions* (Panel), para. 5.142.

²⁸² *Indonesia – Import Licensing* (Panel), para. 7.198.

V. CONCLUSION

309. For the reasons detailed in this submission, the United States respectfully requests the Panel to find that China has failed to administer its TRQs for corn, wheat, and rice consistently with its obligations under China’s Accession Protocol and the GATT 1994. Article 19.1 of the DSU states that, “[w]here a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned bring the measure into conformity with that agreement.”²⁸³ The United States requests that the Panel, consistent with Article 19.1, recommend that China bring its measures into conformity with China’s Accession Protocol and the GATT 1994.

²⁸³ DSU, Article 19.1 (footnote omitted).