CHINA – TRQS[1]
(DS517)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. X:3(a), XI:1 and XIII:3(b) Part I, para. 1.2 Protocol of Accession (para. 116 China's Accession Working Party Report)*	Establishment of Panel	*22 September 2017*
			Circulation of Panel Report	*18 April 2019*
Respondent	*China*		Circulation of AB Report	*NA*
			Adoption	*28 May 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Administration of tariff rate quotas (TRQs) for wheat, short- and medium- grain rice, long grain rice, and corn.
- **Product at issue:** Certain agricultural products, in particular, wheat, rice, and corn.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **Para. 116 of China's Working Party Report (through para. 1.2 of China's Accession Protocol):** This was the first dispute to address para. 116. Considering the requirements set forth in para. 116, as applicable to China's administration of its TRQs, the Panel found that:

  (i) the basic eligibility criteria (considering also the practice of assessment using Credit China's blacklist of entities) were inconsistent with the obligations to administer TRQs on a transparent, predictable, and fair basis, and using clearly specified requirements;

  (ii) the allocation principles were inconsistent with the obligations to administer TRQs on a transparent, predictable, and fair basis, and using clearly specified administrative procedures; the reallocation procedures were inconsistent with the obligation to administer TRQs using clearly specified administrative procedures;

  (iii) the public comment process (which provides for no verification or rebuttal of comments) was inconsistent with China's obligations to administer TRQs on a transparent, predictable, and fair basis, and to use clearly specified administrative procedures;

  (iv) the administration of state-trading-enterprises (STE) and non-STE portions of TRQs (considering also the practice to allocate all STE portions to one STE) was inconsistent with the obligations to administer TRQs on a transparent, predictable, and fair basis, using clearly specified administrative procedures, and in a manner that would not inhibit the filling of each TRQ;

  (v) the extent of the public notice provided in connection with the allocation, return, and reallocations of China's TRQs was not inconsistent with China's obligations under para. 116.

  (vi) the usage requirements for wheat and corn were inconsistent with the obligations to administer TRQs on a predictable basis, using clearly specified administrative procedures, and in a manner that would not inhibit the filling of each TRQ; the usage requirements for rice were not inconsistent with China's obligations under para. 116.

  The Panel concluded that China's administration of TRQs for wheat, rice, and corn was, as a whole, inconsistent with the obligations to administer TRQs on a transparent, predictable, and fair basis, using clearly specified requirements and administrative procedures, and in a manner that would not inhibit the filling of each TRQ.

- **GATT Art. XIII:3(b)(non-discriminatory administration of quantitative restrictions):** This is the first time that GATT Art. XIII:3(b) was addressed in WTO dispute settlement. The Panel found that Art. XIII:3(b) requires a public notice of the total TRQs amounts available for allocation to all participants and, thus, to changes thereto. The Panel rejected the United States' argument that, by not providing public notice of the total TRQ amounts actually allocated and the changes to that amount, China's administration of its wheat, rice, and corn TRQs was inconsistent with this provision.

- **GATT Arts. X:3(a) and XI:1 (trade regulations – uniform, impartial and reasonable administration/prohibition on quantitative restrictions):** The Panel considered it was not necessary for them to make findings under these provisions to secure a positive solution to the dispute, given that findings of inconsistency under para. 116 of China's Working Party Report had been made. The Panel pointed at the factual findings that could assist the Appellate Body, should the Panel Report have been appealed.

1 *China – Tariff Rate Quotas for Certain Agricultural Products*
2 Other issues include: China's Schedule of Concessions and Commitments on Goods (Schedule CLII).