

CHINA'S TRANSITIONAL REVIEW MECHANISM

Questions to China from the European Communities in the context of the Transitional Review Mechanism under Paragraph 18 of the Protocol of Accession of the People's Republic of China

The following communication, dated 30 September 2003, has been received from the Permanent Mission of the European Communities, with the request that it be circulated to Members, for the purposes of the Transitional Review to take place at the Committee's meeting on 29-30 October 2003.

The EC is transmitting comments and questions well in advance of the meeting of the SPS Committee of 29 October 2003, in order for the Chinese authorities to reply and to complete any information that may be incomplete.

Once the information to be provided by China in accordance with paragraph 8 and Annex 1A of its accession protocol has been received, the EC might come back with additional questions.

The EC's comments and questions relate to the following priority items: transparency, consistency, non-discrimination and scientific justification for deviations from international standards with specific examples to illustrate each case.

Transparency

The EC would like to emphasise the importance of transparency with regard to the proper functioning of the SPS Agreement. The obligations under Article 7 of the Agreement to notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B. Members shall notify all proposed measures that are not in accordance with international standards, guidelines or recommendations issued by Codex Alimentarius, OIE or IPPC.

An important aspect of notifying is to do it before the measures are adopted so as to leave time for third country comments to be taken into account.

Emphasising the importance of transparency in the SPS Agreement, the EC welcomes China's implementation of the notification requirements in the Agreement during the first months of its WTO membership in 2002. The EC took note that China, after having submitted 140 notifications pursuant to section 14 of the Protocol of Accession to WTO, made 15 notifications during the remainder of 2002 but only seven to date during 2003.

Several of these were notified after the proposed date of entry into force of the legislation but a comment period of 60 days was still included.

Examples:

- G/SPS/N/CHN/22 was notified on 28/08/03 but has a proposed date of adoption of 06/11/02 and a proposed date of entry into force of 10/12/02.
- G/SPS/N/CHN/20 was notified on 17/06/03 but has a proposed date of adoption of 31/12/2002 and a proposed date of entry into force of 1 February 2003.
- G/SPS/N/CHN/18 was notified on 13/06/03 but has a proposed date of adoption of 31/12/02 and a proposed date of entry into force of 01/02/03).
 - Could China explain how comments were taken into account under these circumstances?
 - Can China explain what steps it has undertaken to ensure that other Member Countries are given a realistic opportunity to comment on notified measures in advance of their application?

Transposition and application - international standards and consistency

The EC emphasises the importance of the obligation under Article 3.2 and Article 5 of the Agreement for WTO Members to use relevant international standards as basis for their sanitary and phytosanitary measures. The EC would like to emphasise that the sanitary and phytosanitary measures not in accordance with international standards, guidelines and recommendations issued by Codex Alimentarius, OIE and IPPC, and which may have a significant impact on trade, shall be justified on the basis of a risk assessment.

With this regard:

- What policy and what schedule has China envisaged to align Chinese sanitary and phytosanitary measures with relevant international standards where appropriate?
- Has China based the sanitary and phytosanitary measures on risk assessment when these measures do not conform to international standard guidelines or recommendations?

To avoid unnecessary barriers to trade, the uniform and consistent application of sanitary and phytosanitary measures is vital.

With this regard:

- How does China ensure a consistent and uniform application of their sanitary and phytosanitary measures throughout their country, avoiding unnecessary additional regional/local regulations and standards imposed by regional/local authorities?
- What has China done to ensure that sanitary and phytosanitary measures are based on scientific principles and are not maintained without scientific evidence

The EU welcomes the fact that China accepted to engage into a scientific dialogue on cosmetics involving both European and Chinese experts in order to establish a common scientific view on standards applying to these products. The experts' report produced in the context of this dialogue concluded that a number of substances which were banned in China, or subject to specific import measures such as certification, were in fact safe. Despite this scientific assessment carried out jointly, China has not implemented any change to its regulations several months after the report has been submitted to the Chinese authorities.

With this regard:

- Could China explain how it intends to implement the conclusions of the experts' report?

Transposition and application - non-discrimination and necessity

The EC emphasises the importance of the spirit of the SPS Agreement that reserves the right of WTO Members to take sanitary and phytosanitary measures at the level they consider appropriate in order to meet the appropriate level of protection against risks to human life or health, or to animal and plant life or health. It is equally important that such measures take into account the objective of minimising negative trade effects and are not more trade-restrictive than required to achieve the appropriate level of protection.

With this regard:

- To what extent has China unified sanitary and phytosanitary measures applied to domestic and imported products?

Furthermore, China revised its health certification system during 2002 and expanded the scope of products that are subject to it. The EC has some concerns as regards the coverage of this new regime as well as the scientific justification.

With this regard:

- Can China provide a full list of products subject to mandatory health certification?
- What has China done to ensure that the principle of non-discrimination with regard to these products is fully respected?
- What has China done to eliminate multiple or duplicative control procedures and to avoid imposing requirements exclusively on imported products?
- What has China done to ensure that the same conformity assessment procedures apply to both imported and domestic products?

Less trade restrictive measures

The EC would like to emphasise that in order to avoid unnecessary barriers to trade WTO Members should choose, in cases when alternatives to meet chosen objectives exist, the less trade restrictive regulatory measure. The EC is concerned that this does not seem to have been the case with regard to Chinese notifications concerning food and cosmetics.

With this regard:

- Has China considered other less trade restrictive means to achieve the objective of consumer protection and information?
- Has China taken into account relevant international standards by the Codex Alimentarius and OIE?

To avoid unnecessary technical barriers to trade, the uniform and consistent application of sanitary and phytosanitary measures is vital. This seems to have not been the case for some EC exporters that have faced situations where different departments have been administering different rules on the same product or ingredients or that there have been inconsistencies with regard the rules.

The EC would like to encourage China to ensure the uniform and consistent application of its sanitary and phytosanitary measures.

With this regard:

- In addition to the above, is China considering steps to improve the coordination of the different administrations which have a regulatory competence in the SPS field (which are inter alia AQSIQ, the Ministry of Agriculture, the Ministry of Health and the State Food and Drug Administration)?
- Furthermore, is China considering adopting measures rationalising the repartition of competence between the different administrations which have an overlapping role in SPS issues?

BSE related measures

Furthermore, the EC reiterates the importance of Article 2.2 of the Agreement that obliges Members to base sanitary and phytosanitary measures on scientific principles taking into account relevant process and production method, relevant inspection and sampling methods. It is of great importance that the scientific basis of measures is justified where appropriate.

With this regard:

- Why does China not think that the internationally recognised standards (WHO and OIE) in connection with ingredients derived from cattle and sheep tissues coming from countries and regions affected by BSE do not fulfil the level of protection set up by China?
- Can China explain the scientific basis for deviating from the existing international standards, as required in Article 2 of the SPS Agreement, for the measures introduced via G/SPS/CHN/3, 4, 6 and 7 which relate to import restricting on a range of products related to BSE?
- What is the level of protection applied by China to the imports in comparison with the level of protection applied to national production?
- What is the scientific justification for this?
- Has China considered other less trade restrictive alternatives?

Proportionality of measures

How does China ensure that a proportional response in accordance with Article 5 of the SPS Agreement is adapted to risk? For example, could China explain the proportionality of the measure introduced via G/SPS/CHN/5, which introduced a measure restricting imports on all foodstuffs of animal origin from another member country as a response to a single positive interception of a veterinary drug residue in a single consignment of casings and with no positive interceptions having been reported in other food products before the measure was introduced.

During the SPS Committee meeting of June 2002, the representative from China defended the measures taken via G/SPS/CHN/5 by referring to Article 5.7 of the Agreement. Does China still invoke Article 5.7 when defending this measure and can this defence be elaborated?

Application of the principle of regionalisation

- Can China explain why measures in line with Article 6 of the SPS Agreement, i.e., the application of the principle of regionalization, were not applied in G/SPS/CHN/12

which introduced a measure restricting imports of porcine origin from France due to Classical Swine Fever? Under what circumstances would China seek to apply such provisions?
