

Committee on Sanitary and Phytosanitary Measures

**REPORT TO THE COUNCIL FOR TRADE IN GOODS
ON CHINA'S TRANSITIONAL REVIEW**

The present report is submitted under the responsibility of the Chairperson, as agreed by the Committee at its meeting of 24 October 2005.

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1. The Committee held its fourth annual Transitional Review under Paragraph 18 of the Protocol of the Accession of the People's Republic of China at the regular meeting commencing on 24 October 2005 (WT/L/432 refers).
 2. Prior to the meeting, the European Communities and the United States submitted questions in writing to China, which can be found in documents G/SPS/W/178 and G/SPS/GEN/594, respectively.
 3. Statements made at the Committee meeting in the context of this transitional review by Australia, China, the European Communities and the United States will be reflected in the Summary Report of the meeting, to be circulated as G/SPS/R/38 (excerpt attached).
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ATTACHMENT - EXCERPT FROM G/SPS/R/38

AGENDA ITEM: TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

1. The Chairman recalled that in accordance with Paragraph 18 of the Protocol of Accession of the People's Republic of China, the SPS Committee is to undertake an annual review for eight years of the implementation by China of the SPS Agreement. He opened the floor for comments or questions from Members.

2. The representative of the European Communities noted with satisfaction the increased cooperation between China and the European Communities on SPS issues and mentioned that a Memorandum of Understanding with China on SPS issues was being finalized. However, the European Communities would welcome further improvement in the currently limited access to the Chinese market for EC food products. Although the number of SPS notifications made by China to the WTO was increasing, Chinese regulatory measures still appeared sometimes to be non-transparent due to the lack of a formal legal framework.

3. The representative of the European Communities indicated two market access areas where enhancement of cooperation was needed: removal of the current BSE-related ban on certain ruminant derivative products from the EC and a greater flexibility on the approval procedure for listing of EC establishments eligible to export products into China.

4. The European Communities had welcomed on previous occasions at this Committee the compliance of China's import policy for EC bovine semen and embryos with the World Organization for Animal Health's (OIE) standards on BSE. The European Communities wanted to take the opportunity of this Transitional Review to remind China that at the 2005 OIE annual meeting significant changes to the OIE Terrestrial Animal Health Code chapter on BSE had been made, in particular to the recommendations for the trade in beef and blood and blood products. Based on scientific information provided by world experts, the OIE Code Commission had recommended that deboned skeletal muscle meat be in the list of commodities which, under certain conditions, could be safely traded regardless of the BSE status of the exporting country. The European Communities invited China to implement these new OIE recommendations.

5. China's current system of approval of EC establishments eligible to export bore some similarities with the EC system with one major exception: China's request for a veterinary inspection mission to take place for every EC establishment, not only meat establishments but also bovine semen and embryo production sites, wishing to export to China for the first time. The European Communities did not require that an inspection mission be sent to China every time the Chinese authorities wished to add a new establishment to the list of establishments eligible to export to the European Communities. The European Communities applied to China (and other WTO members) a procedure based on the guarantees provided by the competent authorities of the exporting country regarding the safety of the food chain (from farm to fork) rather than based on individual exporting establishment inspection. The European Communities invited China to take a reciprocal approach and allow EC establishments to apply for pre-listing of establishments once the entire EC food safety system was assessed as satisfactory by the Chinese competent authorities.¹

6. The representative of the United States recalled that this was the SPS Committee's fourth annual transitional review of China's efforts to implement the commitments it has made in its Protocol

¹ See document G/SPS/W/178.

of Accession to the WTO. The transitional review remained an important and useful mechanism, serving both the interests of China and the interests of other WTO Members as it provided Members with the opportunity to seek clarifications regarding China's policies and practices. China, in turn, had the opportunity to clarify these policies and practices in order to prevent misunderstandings that could lead to trade frictions. The transitional review mechanism also allowed Members to convey to China their views, expectations and concerns regarding China's efforts to comply with its WTO obligations. China then had the opportunity to explain its views and to inform Members about how it had addressed their expectations and concerns. The transitional review mechanism was therefore an important and useful exercise of transparency, one of the fundamental principles underlying the WTO Agreement.

7. The representative of the United States further indicated that in its submission for the 2005 transitional review (G/SPS/GEN/594), the United States had presented China with written questions covering a number of areas, including (1) China's BSE-related bans on US beef and low-risk products; (2) China's fire blight restrictions on US apples, pears and plums; (3) quarantine inspection permit procedures; (4) China's zero pathogen requirements on meat and poultry products; (5) inappropriate avian influenza restrictions on US poultry and (6) inadequate regulatory transparency. The themes underlying these questions continued to be the same as those underlying the submissions made at the three previous transitional reviews. As shown in documents G/SPS/W/126, G/SPS/W/139 and G/SPS/W/153, the United States had consistently raised concerns regarding (1) China's failure to notify numerous SPS measures; (2) the lack of transparency in China's application of SPS measures and (3) China's imposition of requirements that appear to have no basis in science. These concerns were most evident in two issues raised in the United States 2005 submission, namely China's BSE-related bans and China's fire blight restrictions.

8. The representative of the United States further noted that, with regard to BSE-related issues, the United States' strongest concern involved China's BSE-related ban on US beef. China had provided virtually no information to the United States on the basic regulatory framework under which it would make science-based decisions to consider the US request for China to lift this ban. Dozens of countries had lifted their bans on US beef. Each of them had, at a minimum, provided the United States with a detailed explanation of the regulatory steps necessary to make a decision on the US request to lift the ban. It was now 22 months since China had imposed its ban on US beef, and China had still not offered any explanation of its actions or the necessary regulatory steps for lifting the ban. The United States strongly urged China to take steps to ensure that its regulatory authorities quickly address this problem.

9. The United States was also concerned that China maintained a *de facto* BSE-related ban on low-risk, non-ruminant origin products from the United States, including pet food, rendered products, porcine proteins and spray-dried blood, although these products should never have been banned under existing OIE guidelines. The General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) had issued a notice in September 2004 conditioning the lifting of this ban on the conclusion of an import protocol. The United States and China had signed an import protocol shortly thereafter in November 2004, but China had since insisted on a series of additional information requirements that were onerous, detailed, unnecessary, not science-based and still inconsistent with OIE guidelines. They also contrasted sharply with US requirements for products of animal origin from China. The United States urged China to immediately remedy this situation.

10. Another important concern of the United States related to China's continuing fire blight-related ban on imports of US apples, pears and plums. As stated in the June 2005 Committee meeting, the United States encouraged all Members to review carefully their restrictions on these US fruit products in light of the decision of the Appellate Body in *Japan – Measures Affecting the Importation of Apples* (WT/DS245/AB/R). China was one of the Members that maintained these restrictions. It

was important that China moved quickly to modify its ban to allow the importation of mature symptomless fruit, consistent with the *Japan-Apples* decision.

11. In its written questions, the United States had also expressed ongoing concerns on several other matters which had been raised previously in this Committee including: (1) onerous quarantine inspection permit procedures; (2) zero pathogen requirements on meat and poultry products; (3) inappropriate avian influenza restrictions; and (4) inadequate regulatory transparency, especially with regard to regulations of major scope. The United States noted that it would like to see more progress in these areas.

12. The representative of Australia noted that Australia valued its strong relationship with China and continued to make efforts to strengthen communication and cooperation with China on SPS matters. Australia appreciated China's efforts to develop and improve its quarantine and inspection systems and to ensure that quarantine procedures were based on risk assessment and sound scientific evidence. While Australia understood the challenges China faced, it continued to encourage China to bring its systems fully into compliance with the SPS Agreement as quickly as possible, including ensuring consistency and transparency in its development and administration of SPS measures, at both a national and provincial level, as well as conformity with notification obligations under the SPS Agreement. This would benefit China and all WTO Members.

13. The representative of Australia further observed that Australia had been pleased to offer a significant amount of technical assistance to China, to assist development of its SPS capabilities and systems, and would continue to do so. Australia was continuing to pursue a number of bilateral SPS issues with China, some of a long-standing nature. Australia looked forward to early resolution of these issues to allow bilateral trade to expand to the mutual benefit of China and Australia.

14. The representative of China thanked the European Communities, the United States and Australia for their comments and questions. He expressed his appreciation for the technical assistance provided by Australia in the SPS area and welcomed any further technical assistance in this area. He further mentioned that, in response to the call from the chairperson of the General Council, China, as many other WTO Members, had shifted its resources and efforts to the new negotiations. As a consequence, no capital-based delegation was available to assist him today. However, he was willing to provide the following information and responses to the comments and questions raised by the European Communities and the United States under the framework of Paragraph 18 of China's Protocol of Accession.

15. In relation to transparency, since its accession to the WTO China had notified 140 SPS measures promulgated before China's accession to the WTO. From 2002 to 2005, China had circulated 94 notifications to the WTO Secretariat which provided Members with a comment period of 60 days calculated from the date of circulation of the notification by the Secretariat, as requested in China's proposal on transparency (G/SPS/W/131 and corrigendum). In China, the Ministry of Commerce of the People's Republic of China (MOFCOM) had established mechanisms to enhance coordination among ministries and agencies responsible for SPS measures and had already organized various meetings, workshops and training courses on notifications for officers from relevant ministries and agencies. These actions had greatly improved the SPS measures notification process in China. Moreover, MOFCOM, together with AQSIQ, had drafted and adopted guidelines on notification of SPS measures.

16. With regard to the seven decrees promulgated by the State Environmental Protection Administration (SEPA), they were not SPS measures but some sort of regulations on registration of dangerous chemicals. Therefore, China had not notified them under the SPS Agreement.

17. Regarding BSE-related international standards, China's SPS measures were drafted in a manner fully compliant with the SPS Agreement and were harmonized with the international standards of the three international standard-setting bodies of reference. China had lifted its previous bans on importation of bovine semen, bovine embryos and non-protein fat from countries affected by BSE, according to Chapter 2.3.13 of the OIE Terrestrial Animal Health Code, on the basis of scientific studies carried out together with other countries, such as Canada. Since China did not participate in the drafting of OIE standards, China's decision to adopt a new OIE standard was based on the results of a Chinese experts' study of the standard. Chinese experts were currently studying the new OIE standard on BSE adopted at the 2005 OIE annual meeting. China would review its current measures on the basis of the outcomes of this study.

18. Concerning pathogen rules, China had no criteria to require zero pathogens on fresh and frozen poultry products. China's national standard on fresh and frozen poultry products was GB16869-2005 rather than GB16869-2002. As far as China knew, the OIE had no new standard on *Salmonella*, *E. coli* and *Listeria* in cooked products. Should the United States provide China with detailed information on this topic, China would carry out a study on the new OIE standards. In the national standard (GB16869-2005), China did set the tolerance criteria for *E. coli* in fresh and frozen poultry products but did not set any specific tolerance criteria for *Listeria*.

19. In relation to food safety, although China was of the view that the European Communities misunderstood some aspects of China's food safety management system, including management of food manufacturing enterprises, China appreciated the technical assistance provided by the European Communities and other Members in the area of food safety management. China welcomed any further initiative by the European Communities and other Members to share their experiences on food safety management and the management of food manufacturing enterprises. China would make reference to these good experiences when reviewing its current regulations.

20. Concerning quarantine inspection permits, China had already explained its system to some Members on different occasions. However, China was willing to take this opportunity to reiterate that its quarantine inspection permit granting system was a unified system throughout the country. It was open to all applicants and transparent. Applicants received a fair and quick service free of charge. In order to facilitate the application procedure, applications were also accepted through Internet since last year.

21. Regarding bilateral cooperation, China had already set up good cooperation mechanisms in the SPS area with numerous Members including the United States. China would also sign a Memorandum of Understanding with the European Communities to enhance bilateral cooperation in the SPS area. China was of the view that these cooperation mechanisms were very useful and helpful in bettering the understanding of both sides and facilitating the settlement of specific issues. China highly valued technical exchanges and cooperation with WTO Members and was ready to further explore and strengthen cooperation mechanisms with them.

22. As to the specific questions mentioned by the representative of the United States, some progress had already been made through bilateral discussions and negotiations.

23. The representative of China concluded by expressing hope that his statement had covered most of the comments and questions raised by the United States and the European Communities and that the information he had provided was useful and helpful to Members.

24. The Chairperson thanked the representative of China for the very thorough response and asked if any other Member wished to take the floor.

25. The representative of the United States thanked the representative of China for his detailed responses and expressed appreciation of how China and the United States had been able to work together on issues. He noted that, as no capital-based delegation from China was attending this meeting, he might not get responses to his follow-up questions. He pointed out, however, that some of the US questions, although submitted about one month in advance of the meeting, had not been answered today. He specifically mentioned the US questions about the BSE-related ban on low-risk products and fire blight restrictions. With regard to quarantine inspection permits, the United States had specific questions about AQSIQ Announcement 111 and AQSIQ Decree 73 which had not been answered. No responses had been provided to questions on the remaining avian influenza restrictions. Should China have further responses, the United States would welcome hearing them.

26. The representative of the European Communities supported the US statement that all the issues might not have been addressed, in particular the issue on the new OIE guidelines for beef exports.

27. The Chairman expressed some empathy for the representative of China not benefiting from the support of a capital-based delegation and mentioned that the representative of China might not be in a position to respond.

28. The representative of China mentioned that, with regard to the US questions on fire blight, China had already carried out a risk assessment on fire blight which also extended to all other pests and diseases. On the basis of this risk assessment, China had already approved importation of apples from the United States. As to US plums, China was undertaking a risk assessment in a smooth manner with friendly cooperation from the United States. The risk assessment covered fire blight as well as other quarantine pests. China was hoping that both sides could further work and cooperate to improve their risk assessment procedures. As to avian influenza, China had already unsuccessfully requested the United States to provide information on the Avian Influenza control system in place in the states of Connecticut and Rhode Island. China urged the United States to provide relevant information in order to allow further discussions. Regarding AQSIQ Decree 73 for quarantine inspection permits, China had already answered this question last year and the representative of China invited the United States to refer to the 2004 Report to the Council for Trade in Goods on China's Transitional Review (G/SPS/34).

29. The Chairman stated that he would make a short factual report on the transitional review to the Council for Trade in Goods, G/SPS/38.
