

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO PARAGRAPH 18
OF THE PROTOCOL ON THE ACCESSION OF THE
PEOPLE'S REPUBLIC OF CHINA ("CHINA")**

Questions from the United States to China concerning
Sanitary and Phytosanitary Measures

Restrictions on trade in beef

1. China continues to impose BSE-related restrictions on imports of beef and beef products from the United States. These restrictions have raised serious questions as to how China believes it is satisfying its obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), taking into account the relevant international standards governing beef trade. In this area, the World Organization for Animal Health (OIE) provides guidelines for conditions under which the full range of beef and beef products are tradeable regardless of the BSE status of a country, as long as specified risk materials (SRM) appropriate to the risk category of the country are hygienically removed. Depending on the BSE category of a country ("undetermined risk" "controlled risk" or "negligible risk"), more or less SRM must be removed and/or the age from which SRMs must be removed varies. The United States requires US processing facilities to remove SRMs in accordance with OIE guidelines, and it has presented evidence to China showing that it qualifies, at a minimum, for the "controlled risk" BSE category.

2. The steps taken by the United States include: (a) the Enhanced Surveillance Program, which fully satisfies the OIE's Type A standard; (b) effective controls over the feeding of ruminant origin meat and bone meal since August 1997; and (c) the capability to perform thorough epidemiological investigations of all BSE cases. As a result, the United States has resumed trade for the full range of beef products with many of its trading partners. It is similarly reasonable that China should grant access to the full range of OIE-sanctioned products from the United States, including bone-in beef, boneless beef, variety meats, offals and processed products.

3. The United States remains frustrated that China has not adhered more closely to science-based principles contained in the OIE guidelines when making BSE-related regulatory decisions regarding imports of US-origin beef and beef products. Recently, China's General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) issued Announcement No. 89 (2006), Inspection and Quarantine Requirements on Conditional Resumption of Boneless Beef Imports from the United States (published on AQSIQ's website on 31 July 2006), which proposes the importation of a very limited scope of US-origin beef and beef products. This announcement does not even permit the importation of the range of beef and beef products deemed tradeable under OIE guidelines for the "undetermined risk" category for BSE purposes.

- (a) Has China performed a risk assessment relevant to its BSE-related restrictions on imports of beef and beef products from the United States? Please explain how the

risk assessment supports the measure that China is applying to US beef and beef products.

- (b) If China has not performed the relevant risk assessment, can China at least provide the science-based rationale for maintaining its BSE-related import restrictions against US-origin beef and beef products?

BSE-related restrictions on other products

4. China continues to impose a multitude of additional BSE-related import restrictions on protein-free tallow. The OIE's BSE chapter specifies that protein-free tallow should be traded regardless of the BSE status of the exporting country. However, China continues to insist that the United States certify that the tallow not be processed from certain SRMs, and that certain tallow processing methods commonly used in the United States be prohibited. Additionally, China insists that the United States certify that the materials used to produce tallow were not sourced from farms where a BSE-positive animal has been detected. China's position is not aligned with OIE guidelines and has effectively blocked imports of US-origin protein-free tallow. The United States has provided China with several quantitative risk assessments that demonstrate that any BSE-related risks associated with protein-free tallow are too small to calculate.

- (a) Has China performed a risk assessment relevant to its BSE-related restrictions on imports of protein-free tallow from the United States? Please explain how the risk assessment supports the measure that China is applying to US protein-free tallow.
- (b) If China has not performed the relevant risk assessment, can China at least provide the science-based rationale for maintaining its BSE-related import restrictions against US-origin protein-free tallow?

Pathogen standards

5. The United States is concerned that China continues to enforce a zero-tolerance requirement for certain pathogens (e.g., salmonella) on meat and poultry products (see Standardization Administration of China (SAC) and AQSIQ National Standard on Fresh and Frozen Poultry Products (GB16869-2005), effective 1 January 2006), which appears to be inconsistent with Codex Alimentarius (Codex) guidelines. The relevant Codex guidelines, set forth in CAC/GL21-1997, *Principles for the establishment and application of microbiological criteria for foods*, Chapter 4.1, provide:

A microbiological criterion should be established and applied only where there is a definite need and where its application is practical. Such need is demonstrated, for example, by epidemiological evidence that the food under consideration may represent a public health risk and that a criterion is meaningful for consumer protection, or as the result of a risk assessment. The criterion should be technically attainable by applying Good Manufacturing Practices.

In the case of pathogens like salmonella, the zero-tolerance requirement enforced by China on imported products is not technically attainable. The United States is also concerned because the zero-tolerance requirement applicable to imports does not appear to be enforced against domestic products. China has acknowledged the need to revise domestic regulatory controls in this area.

- (a) Please explain whether China has taken Codex criteria into account in the development of its existing zero-tolerance requirement for certain pathogens.

- (b) Does China apply its zero-tolerance requirement to domestically produced meat and poultry products? If not, please explain how China's ongoing review of domestic regulatory controls will ensure conformity with its obligations under Article 2.3 of the SPS Agreement.
- (c) Please explain how China would revise a national standard such as GB16869 and whether the United States can send a formal request for a revision to a regulatory body such as the Ministry of Health (MOH), SAC or AQSIQ.

Avian influenza (AI)

6. The United States is concerned about China's recent actions with regard to incidents of low pathogenicity notifiable avian influenza (LPNAI) in the United States and, in particular, the recent import suspension for poultry and poultry products originating from the State of Pennsylvania. The United States has an open and transparent animal disease reporting system, and a wealth of information about animal disease occurrences in the United States is available via the Internet and other sources. The United States urges China's regulatory ministries to recognize and distinguish the different disease risks associated with incidents of highly pathogenic avian influenza (HPAI) and those of LPNAI before taking actions that can have a negative impact on trade. LPNAI presents no serious threat to human health or animal health.

- (a) Has China performed a risk assessment relevant to its recent import suspension for poultry and poultry products originating from the State of Pennsylvania? Please explain.
- (b) If China has not performed the relevant risk assessment, can China at least provide the science-based rationale for maintaining its import suspension against Pennsylvania-origin poultry and poultry products?

7. China has also suspended the importation of heat-treated/cooked poultry and poultry products from Pennsylvania. The OIE's AI chapter clearly states that products that have been heat-treated in a manner to inactivate the virus should not be subject to an AI-related import suspension.

- (a) Has China performed a risk assessment relevant to the extension of its import suspension to heat-treated/cooked poultry and poultry products originating from the State of Pennsylvania? Please explain.
- (b) If China has not performed the relevant risk assessment, can China at least provide the science-based rationale for extending its import suspension to Pennsylvania-origin heat-treated/cooked poultry and poultry products?

Regulatory transparency

8. The United States remains concerned about the number of SPS measures that China enforces against US products without notification to the WTO Secretariat for Member comments prior to adoption and implementation. We have identified over 20 of these measures issued between 1 July 2005 and 30 August 2006. The most significant of them (in chronological order) include:

- (i) MOH and SAC Hygienic Standard for Fresh (Frozen) Meat of Livestock (GB 2707), 2005 Revision;
- (ii) MOA Announcement No. 517, Additional Chinese Product Registration Requirements, issued 6 June 2005;

- (iii) AQSIQ Circular 690, Dairy Standard, issued 1 October 2005;
- (iv) MOH and SAC Hygienic Standard for Grains (GB 2715), 2005 Revision;
- (v) SAC and AQSIQ National Standard for Fresh and Frozen Poultry Products (GB 6869), 2005 Revision;
- (vi) MOH Circular No. 1, Food Additive Supplement (GB 2760), Revision 1 for 2006;
- (vii) MOH Circular No. 5, Food Additive Supplement (GB 2760), Revision 2 of 2006;
- (viii) AQSIQ Ban on Pennsylvania Poultry, effective 12 July 2006 (published on AQSIQ's website on 18 August 2006);
- (ix) MOA Announcement No. 611, Animal Feed Registration Requirements, issued 15 July 2006;
- (x) AQSIQ Notice 777, Cadmium Residue Standard, issued 27 July 2006;
- (xi) AQSIQ Announcement No. 89 (2006), Inspection and Quarantine Requirements on Conditional Resumption of Boneless Beef Imports from the United States (published on AQSIQ's website on 31 July 2006);
- (xii) MOA Announcement No. 617, List of Agricultural Plant Quarantine Object and Plant and Plant Products Subject to Quarantine, 2006 Revision; and
- (xiii) SAC Maximum Level of Contaminants in Foods (GB 2762), 2006 Revision.

9. Some of these measures implement new registration requirements, and others set new safety standards for residues, while still others invoke new procedures for inspection or identify new quarantine pests. Some of the measures do not appear to be based on previously existing standards. The United States appreciates the fact that many of these measures are now posted on Chinese government websites. Invariably, however, these new measures have raised the cost of entry into China for US producers, particularly due to the lack of opportunity to review and assess them in advance.

- (a) What steps does China plan on taking to improve its record of notifying SPS measures to the WTO Secretariat?
- (b) Please explain whether any of the above measures have been published in China's official journal, the MOFCOM Gazette.

Packing house lists

10. AQSIQ requires that the United States and US industry provide China with annually updated lists of approved fruit packing facilities for use by Chinese port-of-entry inspectors to verify imported shipments of US-origin fruit. Currently, these lists are maintained and annually updated for citrus, grapes, two varieties of apples, cherries and plums. This AQSIQ requirement provides no phytosanitary security to China, and trade is often disrupted when local Chinese port inspectors do not have updated lists. As an alternative, US negotiators have proposed that these lists be maintained by US plant health authorities for consultation purposes if and when there are pest detections on US-origin shipments at Chinese ports of entry. This approach would mirror the established practice with the United States' other trading partners.

- (a) Would China explain why these lists must be used as inspection criteria at Chinese ports of entry?

National fruit fly trapping program

11. China is the only US trading partner that does not recognize our risk-based National Fruit Fly Trapping Program (NFFTP). As a result, the United States and US producers must maintain an alternative trapping program solely for trade with China. This requirement is costly and scientifically unnecessary. The United States, in accordance with the NFFTP, is committed to continue providing China (and other trading partners) with up-to-date information about outbreaks of quarantine fruit flies in the United States. The NFFTP ensures that all trading partners are notified in an immediate manner.

- (a) Could China provide a science-based rationale for why it has been unwilling to recognize the United States' NFFTP?

Hygienic standards for food contact materials

12. National Standard GB 9685-2003, issued by China's Ministry of Health (MOH), establishes hygienic standards for several polymeric materials commonly used to produce food-contact materials, including polyethylene, polypropylene, polystyrene, etc. Hygienic standards also exist for materials used to manufacture these polymers. These standards list substances that are approved for use as additives in food containers and packaging materials. Under these standards, China has approved only 65 types of materials for use in food packaging and food-contact materials sold in its market. To date, MOH officials have not set forth the specific procedures that must be followed to obtain new approvals, and it remains unclear to what extent or under what circumstances China will permit the use of the thousands of materials currently permitted for use in food-contact materials in the United States, Europe and/or Canada. Many of these products already exist in the Chinese stream of commerce and, if not permitted, could lead to significant economic losses for US and other producers/suppliers.

- (a) Could China clarify how it intends to proceed in this area? Specifically, does China intend to accept as valid food-contact approvals issued by foreign regulatory authorities?
 - (b) What procedures does China intend to follow for issuing new approvals for food-contact materials not previously approved in China or by foreign regulatory authorities?
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