

**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

The following communication, received on 25 September, is circulated at the request of the Delegation of the United States.

Restrictions on trade in beef

1. China continues to impose bovine spongiform encephalopathy (BSE) related restrictions on imports of beef and beef products from the United States. These restrictions have raised serious questions as to whether China 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. The World Organization for Animal Health (OIE) provides guidelines for conditions under which the full range of beef and beef products are tradeable. In May 2007, the OIE classified the United States as controlled risk for BSE. The OIE Code recognizes that trade in beef and beef products and cattle of all ages from a "controlled risk" country is safe, provided that certain slaughter and beef processing conditions are met, including the removal of specified risk materials (SRMs) in a manner that avoids contamination of meat.

2. The steps taken by the United States to mitigate BSE risk include: (a) removal of SRMs; (b) implementation of an appropriate feed ban that has been effectively enforced; (c) an active surveillance program that has exceeded OIE requirements, and; (d) thorough epidemiological investigations of all BSE cases.

3. The United States remains concerned that China has not adhered more closely to the science-based principles contained in the OIE guidelines when making BSE-related regulatory decisions regarding imports of US-origin beef and beef products. It is the United States' view 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 based on full review of the scientific evidence and in accordance with its WTO obligations. In July 2006, 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. More recently, in May 2007, China offered to accept all products from animals under 30 months of age. These offers do not permit the

importation of the range of beef and beef products deemed tradeable under OIE guidelines for the "controlled risk" category for BSE purposes.

- (a) Please explain why China has not taken into account relevant OIE guidelines with regard to its treatment of imports of beef and beef products from the United States.
- (b) Has China performed a risk assessment relevant to its BSE-related restrictions on imports of beef and beef products from the United States as contemplated by Articles 2 and 5 of the SPS Agreement? If so, please explain how the risk assessment supports the measures that China is applying to US-origin beef and beef products. If not, please explain the scientific rationale behind China's current restrictions.

BSE-related restrictions on other products

4. China continues to impose 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 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) Please explain why China has not taken into account relevant OIE guidelines with regard to its treatment of imports of US-origin protein-free tallow.
- (b) Has China performed a risk assessment relevant to its BSE-related restrictions on imports of protein-free tallow from the United States as contemplated by Articles 2 and 5 of the SPS Agreement? If so, please explain how the risk assessment supports the measures that China is applying to protein-free tallow. If not, please explain the scientific rationale behind China's current restrictions.

Pathogen standards

5. The United States is concerned that China continues to de-list poultry establishments based on a zero-tolerance requirement for certain pathogens (e.g., salmonella) on raw meat and poultry products (see Standardization Administration of China (SAC) National Standard (GB) on Fresh and Frozen Poultry Products (GB 16869-2005), effective 1 January 2006). This policy is 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.

6. In the case of pathogens like salmonella, the zero-tolerance requirement enforced by China on imported products is not feasible. In addition, the United States is concerned because the zero-tolerance requirement applicable to imports does not appear to be enforced against domestic products or domestic establishments. This requirement appears to be unnecessarily trade restrictive within the meaning of Article 5 of the SPS Agreement and raises serious national treatment concerns. China has acknowledged the need to revise domestic regulatory controls in this area.

7. In its responses during the 2006 Transitional Review Mechanism (TRM) meeting before this Committee (see G/SPS/43), China asserted that it has no criteria to require zero pathogens on fresh and frozen poultry products. However, China's National Standard on Fresh and Frozen Poultry Products (GB 16869-2005), in Chapter 4.6, Table 3, indicates a zero tolerance for salmonella. Specifically, the Table indicates that for fresh and frozen poultry products, a tolerance of zero/25 grams is permitted. Mathematically, this indicates an acceptable level of zero traces of salmonella in a 25 gram sample.

- (a) It appears that China is using the Codex standard established for ready-to-eat (RTE) products on raw products. Please clarify China's view on the applicability of this Codex standard to raw products.
- (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) What is the scientific basis for China's policy to require zero traces of salmonella in a 25 gram sample of fresh or frozen poultry as set forth in GB 16869-2005? Is this policy supported by a risk assessment? Please explain.
- (d) Please explain the procedures that China would use if it were to revise a national standard such as GB 16869-2005.
- (e) Please explain the de-listment of poultry establishments for the presence of pathogens on raw products in light of the fact that the subsequent heat treatment of the raw product will mitigate any concerns associated with the detected pathogens.

Residue standards

8. China has de-listed several United States pork establishments due to a Chinese ban on ractopamine, a swine-feed ingredient. China's ban on ractopamine is based on a blanket ban of a class of drugs called beta-agonists. The United States is unaware of any risk assessment conducted by China to evaluate the risk of ractopamine either at the time China banned ractopamine or at any subsequent occasion. The US Food and Drug Administration approved the use of ractopamine in the United States in 1999. Twenty-four countries in total have approved the use of ractopamine. Additionally, Codex Alimentarius has reviewed ractopamine and established a draft standard, based on recommendations from the relevant international scientific expert advisory committee (Joint FOA/WHO Experts Committee on Food Additives (JECFA) that will be considered for approval at a July 2008 meeting of the Codex Commission.

- (a) Please explain why China has not taken Codex recommendations into account in the development of its existing zero-tolerance requirement for residues like ractopamine.
- (b) Has China completed a risk assessment that documents the scientific basis for implementing a ban on ractopamine as contemplated by Articles 2 and 5 of the SPS

Agreement? If so, please explain how the risk assessment supports the measures China is applying. If not, please explain the scientific rationale behind China's current restrictions.

Avian influenza (AI)

9. The United States is concerned about China's continued 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 States of Nebraska and Virginia. Currently, China has suspended imports of poultry and poultry products from seven States (Rhode Island, Connecticut, New York, Pennsylvania, West Virginia, Nebraska, and Virginia) for LPNAI. 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. As the OIE confirms, substantial scientific evidence exists to demonstrate that LPNAI presents no serious threat to human health or animal health.

- (a) Please explain why China has not taken into account relevant OIE guidelines with regard to its treatment of imports of poultry and poultry products from the seven States identified above.
- (b) Has China performed a risk assessment relevant to its import suspension for poultry and poultry products originating from the seven States identified above as contemplated by Articles 2 and 5 of the SPS Agreement? If so, please explain how this risk assessment supports the measures that China is applying. If not, please explain the scientific rationale behind China's current restrictions.

10. China has suspended the importation of heat-treated/cooked poultry and poultry products from Rhode Island, Connecticut, New York, Pennsylvania, West Virginia, Nebraska, and Virginia for LPNAI. Additionally, China does not allow the trans-shipment of poultry and poultry products (including heat-treated product) through these seven States. 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 suspension.

- (a) Please explain why China has not taken into account relevant OIE guidelines with regard to its treatment of imports of heat-treated poultry and poultry products from the seven States identified above.
- (b) 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 seven States identified above as contemplated by Articles 2 and 5 of the SPS Agreement? If so, please explain how this risk assessment supports the measures that China is applying. If not, please explain the scientific rationale behind China's current restrictions.
- (c) Has China conducted a risk assessment relative to suspending imports of US-origin poultry and poultry products (including heat-treated product) that are trans-shipped through the seven States identified above as contemplated by Articles 2 and 5 of the SPS Agreement? If so, please explain how this risk assessment supports the measures that China is applying. If not, please explain the scientific rationale behind China's current restrictions.

Varietal restrictions on US apples

11. China limits imports of US apples to just two varieties, Red and Golden Delicious. The United States has requested that China remove this restriction numerous times since 2000 and has provided extensive scientific information supporting this request. The United States is concerned that China has failed to take this information into account and maintains these varietal restrictions despite scientific evidence demonstrating that they are not justified. Further, China has indicated that its restrictions on other varieties of US apples are related to concerns about fire blight, which are not scientifically based. The WTO's Appellate Body has already determined that there is no scientific justification for restricting imports of mature, symptomless apple fruit. China appears to be disregarding the findings of the Appellate Body regarding both varietal restrictions (*see Japan – Agricultural Products II*) and fire blight (*see Japan – Apples*).

- (a) Could China explain the scientific basis for its restrictions on varieties of US apples other than Red and Golden Delicious? Has China conducted a risk assessment that demonstrates that there are varietal differences in risk or that mature symptomless apple fruit poses a risk for transmitting fire blight?
- (b) Please explain how China's measures are in compliance with the findings of the Appellate Body on varietal restrictions and fire blight.

Lack of regulatory transparency

12. The United States remains concerned about the number of SPS measures that China enforces against US products without notification to the WTO Secretariat, which would allow Members to comment and China to take those comments into account prior to adoption and implementation. In its 2006 TRM submission (G/SPS/W/207), the United States identified 13 measures that China had issued between 1 July 2005 and 30 August 2006. These measures implemented new registration requirements, set new safety standards for residues, established new inspection procedures, and expanded the list of quarantine pests. To date, it does not appear that any of these measures have been notified to the WTO Secretariat for Member comments. However, many of these measures are constraining trade. The list of measures set forth in the US 2006 TRM submission is as follows:

- (a) Ministry of Health (MOH) and Standards Administration of China (SAC) National Hygienic Standard for Fresh (Frozen) Meat of Livestock (GB 2707), 2005 Revision;
- (b) Ministry (MOA) of Agriculture Announcement No. 517, Additional Chinese Product Registration Requirements, issued 6 June 2005;
- (c) AQSIQ Circular 690, Dairy Standard, issued 1 October 2005;
- (d) MOH and SAC Hygienic Standard for Grains (GB 2715), 2005 Revision;
- (e) SAC and AQSIQ National Standard for Fresh and Frozen Poultry Products (GB 16869), 2005 Revision;
- (f) MOH Circular No. 1, Food Additive Supplement (GB 2760), Revision 1 for 2006;
- (g) MOH Circular No. 5, Food Additive Supplement (GB 2760), Revision 2 of 2006;
- (h) AQSIQ Ban on Pennsylvania Poultry, effective 12 July 2006 (published on AQSIQ's website on 18 August 2006);

- (i) MOA Announcement No. 611, Animal Feed Registration Requirements, issued 15 July 2006;
- (j) AQSIQ Notice 777, Cadmium Residue Standard, issued 27 July 2006;
- (k) 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);
- (l) MOA Announcement No. 617, List of Agricultural Plant Quarantine Object and Plant and Plant Products Subject to Quarantine, 2006 Revision; and
- (m) SAC Maximum Level of Contaminants in Foods (GB 2762), 2006 Revision.

13. The above-listed measures were enacted by several ministries, including the Ministry of Agriculture, the Ministry of Health, the Standards Administration of China, AQSIQ, and even the Ministry of Commerce, China's National Notification Authority. It therefore appears that the lack of notification is a government-wide problem.

14. Several more measures affecting trade have since entered into force without notification to the WTO Secretariat for Member comments prior to adoption and implementation. They are:

- (a) MOA Announcement No. 736, Requirements for Renewal of GMO Safety Certificates, announced on 26 October 2006;
- (b) MOH Circular No. 7 of 2006, Food Additive Varieties Approved for Enlarged Scope of Application and/or Dose Levels;
- (c) MOH Circular No. 8 of 2006, Food Additive Varieties Approved for Enlarged Scope of Application and/or Dose Levels,
- (d) MOA Decree No. 70, Administrative Measures on Agricultural Product Packaging and Labelling;
- (e) State Administration for Industry and Commerce (SAIC) Measure for Administration of Special Signs of Geographical Indication Products, effective 30 January 2007, AQSIQ Wine Standard GB 15037 of 2006;
- (f) MOFCOM and AQSIQ Joint Announcement 70, strengthening inspection on human food, animal feed, and raw materials effective 15 May 2007;
- (g) AQSIQ and MOA Joint Announcement 848, Ban on West Virginia Poultry effective 17 April 2007; and
- (h) AQSIQ and MOA Joint Announcement 885, Ban on Virginia Poultry effective 23 July 2007.

15. The SPS Agreement obligates Members to notify measures affecting trade in advance for review and comment. As of 13 September 2007, China had notified 101 SPS measures. However, at the June 2007 meeting of this Committee, China stated that it had nine laws, eighteen regulations, 660 food safety and health standards, and 590 inspection and quarantine standards in force.

- (a) Is it China's position that only the 101 notified measures have trade implications?

- (b) The United States urges China to suspend implementation of all of the measures listed above until they have been notified to the WTO Secretariat and Members have been given the opportunity to comment on potential technical concerns. Will China consider this approach?

National treatment

16. Since 1 December 2006, China has rejected or destroyed at least 57 shipments of food and agricultural product originating from the United States due to alleged safety or quality concerns. Many of the measures used by China for import product testing do not appear to be consistent with international standards recognized by the WTO. Further, several of the actions taken by China since 1 December 2006 invoke regulations that have never been notified to the WTO Secretariat, such as Chinese standards GB 2760, GB 2761, GB 2762, GB/T 5009.29, GB 16565, GB 16869, and GB 19295. The non-notification of several of these measures is a regulatory transparency concern. Moreover, given the significant number of rejected shipments, the United States is highly concerned that China appears to be not meeting its obligations under Article 2.3 of the SPS Agreement, which provides, "Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade".

- (a) Please clarify how China tests Chinese domestic origin commodities using the standards identified above. What agencies conduct these tests? How does China identify manufacturers and producers whose products do not adhere to these standards?
 - (b) When will China notify these measures to the WTO Secretariat and allow Members to comment on them, especially with regard to their divergence from WTO-recognized international standards?
 - (c) Would China also explain what the procedures are for challenging a decision that a particular shipment is non-compliant? How is the relevant evidence provided to interested parties such as buyer and seller or importer and exporter?
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