

**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

BSE-related ban on beef

1. China has prohibited the import of cattle, beef and processed beef products from the United States since 25 December 2003 due to its concerns about bovine spongiform encephalopathy (BSE). Since that time, the United States has repeatedly provided China with extensive technical information on all aspects of its BSE-related surveillance and mitigation measures, internationally recognized as effective and appropriate, for both food safety and animal health. To the United States' knowledge, China has not provided any scientific justification for its measures to include restrictions that go beyond the relevant international standards.

- (a) Has China conducted a science-based risk assessment to justify its ban on US beef? If so, please provide details of the risk assessment.
- (b) Is China reviewing the US market access request for beef in light of the revised standards of 2004 on de-boned skeletal muscle meat issued by the World Organization for Animal Health (OIE)?
- (c) China has tentatively agreed to send a BSE/meat safety technical team to the United States from 23-29 October 2005 to gather information on the United States' BSE-related surveillance and mitigation measures. Please clarify what additional information and steps, beyond the visit of this technical team, are required for China to act on the United States' market access request for beef.

BSE-related ban on low-risk products

2. . China maintains a *de facto* ban on US-origin non-ruminant pet food, rendered products, porcine proteins and spray-dried blood based on concerns about BSE even though these products pose no risk of BSE and should not be banned under existing OIE guidelines. On 28 September 2004, the General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) issued Notice 407, which requires an import protocol for these products before they can be imported. A bilateral import protocol was signed on 18 November 2004 for US non-ruminant pet food, rendered products, porcine proteins and spray-dried blood, but China now insists on a series of onerous, detailed and unnecessary information requirements regarding animal origin of materials. These requirements that are not consistent with OIE guidelines and contrast sharply with US requirements for animal origin products from China. These additional information requirements were not specified in the import protocol

- (a) Please provide scientific justification for China's insistence that US facilities provide detailed information about origin of materials used to produce their products, particularly in light of the fact that these are non-ruminant origin materials and OIE guidelines do not call for such stipulations.
- (b) Please provide information on any remaining steps that China will require before it will issue import permits for US non-ruminant pet food, rendered products, porcine proteins and spray-dried blood.

Fire blight

3. The WTO Appellate Body in *Japan – Measures Affecting the Importation of Apples* (WT/DS245/AB/R) (*Japan-Apples*) endorsed the United States' argument that any hypothetical concerns regarding the spread of fire blight could be addressed by restricting exports of fruit to mature symptomless fruit. China currently bans the importation of all but two varieties of US apples, and bans all US pear varieties, allegedly due to phytosanitary concerns regarding fire blight. Additionally, China is the only country in the world that maintains fire blight-related import prohibitions on US plums.

- (a) Has China conducted science-based risk assessments to justify its current prohibitions on US apples, pears, and plums? If so, please provide details of each risk assessment.
- (b) Is China reviewing the US market access requests for apples, pears and plums in light of the *Japan-Apples* decision?

Quarantine Inspection Permits

4. The United States remains concerned about the quarantine import permit (QIP) procedures provided for in AQSIQ Ordinance 7, *Administrative Measures for the Entry-Exit Inspection and Quarantine for Grains and Feed Stuff* (effective 1 March 2002), and AQSIQ Decree 25, *Administrative Measures for Entry Animal and Plant Quarantine* (effective 1 September 2002). AQSIQ requires that importers obtain an import inspection permit prior to signing an import contract for grain or feed. Port quarantine authorities may return or destroy any cargoes without a prior import inspection permit. This import inspection permit is in addition to other import licenses, including a tariff-rate quota import certificate (in the case of TRQ commodities like wheat) and a safety certificate (in the case of certain commodities), and it does not replace inspection at the port. Similar procedures apply under Decree 25, pursuant to which importers are required to obtain a quarantine permit for a wide range of animal and plant products before an import contract can be signed. The United States continues to receive reports from traders regarding both the burdensome nature of the procedures and selective enforcement by AQSIQ under Ordinance 7 and Decree 25.

5. On 30 August 2004, China issued a measure exempting certain animal and plant products from entry quarantine review and approval, effective 1 September 2004. The measure, AQSIQ Announcement 111, appears to exempt certain animal and plant products from the requirement to obtain a quarantine import inspection permit in advance of entry and prior to signing an import contract. The United States welcomes this measure, as traders have expressed continued concern regarding the burdensome nature of the quarantine permit procedures. Announcement 111 lists the generic names of certain products in the animal products and plant products categories that are exempted from the quarantine permit requirement, but does not provide sufficient detail for traders or a description of these products based on the Harmonized Tariff Schedule (HTS) Number.

- (a) Please provide a description of exempted products by HTS Number.

- (b) Announcement 111 indicates that China's decision to exempt certain products is based on risk assessments. Please provide details of those risk assessments.
- (c) Please describe the process by which individual products are considered for removal from the QIP list. E.g., is there an application process or a regularized review of the products on the list?

Decree 73

6. AQSIQ Decree 73, *Items on Handling the Review and Approval for Entry Animal and Plant Quarantine* went into effect on 1 July 2004, but has still not been notified to the SPS Committee. AQSIQ Decree 73 modifies the requirements for applicants of quarantine inspection permits, and mixes product quality requirements with SPS measures. This decree also increases commercial risk for exporters, but fails to identify the phytosanitary risk that necessitates the measure.

- (a) Please explain the necessity of requiring inspection and quarantine requirements to be incorporated into commercial contracts. While the United States understands the need to provide the name of the *exporter* in a transaction, please explain why China needs the name of the *supplier* to be indicated in the application form for the quarantine permit for soybeans.
- (b) Please explain the necessity, from a plant health perspective, of requiring importers to obtain import inspection permits before signing a contract.

Zero Pathogen Rules

7. China's fresh and frozen poultry regulation (GB16869-2002), although notified on 9 August 2002 to the WTO Technical Barriers to Trade Committee in G/TBT/N/CHN/6, contains many SPS-related requirements, a number of which do not appear to be in compliance with OIE standards and current scientific testing practices. G/TBT/N/CH/6 establishes a zero tolerance limit for the presence of Salmonella bacteria in raw, uncooked products. The regulation was published without any accompanying public health risk data to support the establishment of such a restrictive measure. Similar zero-tolerance standards on fresh and frozen poultry products exist for *E. Coli* and Listeria pathogens without any published health risk data justifying the standards. Current science indicates that the complete elimination of enteropathogenic bacteria on raw meat and poultry products is unachievable without first subjecting such products to a process of irradiation.

- (a) Please explain what steps China is taking to adopt requirements consistent with those put forth by the OIE for the regulation of Salmonella bacteria, *E. Coli* and Listeria in raw, uncooked products.
- (b) Please provide details of the scientific justification used by China to regulate the presence of enteropathogenic bacteria on raw meat and poultry products.

Avian Influenza

8. The United States appreciates China's announcement on 27 December 2004 lifting its nationwide ban on imports of live poultry and poultry products from the United States due to Avian Influenza. We look forward to China's total removal of these controls for poultry products in full accordance with OIE guidelines.

- (a) Please provide information on any remaining steps that China will require before it will permit imports of US live poultry and poultry products from the states of Connecticut and Rhode Island, consistent with OIE criteria with respect to highly pathogenic Avian Influenza?

Regulatory Transparency

9. The United States would like to recognize the significant strides China has made in improving its regulatory transparency concerning the notification and implementation of SPS regulatory measures. The number of SPS measures that China has notified to the WTO Secretariat has increased substantially. China made 15 SPS notifications in 2002, 28 SPS notifications in 2003, 37 SPS notifications in 2004 and 4 SPS notifications in the first nine months of 2005, for a total of 84 SPS notifications (excluding addenda). According to our analysis, these data show that China's SPS National Notification Authority has become the 13th most active in the world and the 4th most active in Asia after Korea, Japan and Thailand. China is also notifying the draft regulatory requirements of a greater number of ministries and agencies, especially those of the Ministry of Health and the State Standardization Administration. We expect that China's notification of regulations drafted by the State Environmental Protection Agency (seven of which established SPS criteria and went into effect in 2003 and 2004) will occur sometime in the near future. In light of the fact that China has as many as 10 different legal bodies drafting, implementing and enforcing SPS requirements, please explain the steps that China is taking to ensure that all measures modifying SPS requirements are notified to the WTO Secretariat for comment by Members at the draft stage.
