

**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, dated 2 October 2009, is being 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, contrary to the guidelines of the World Organization for Animal Health (OIE). The OIE classified the United States as "controlled risk" for BSE in May 2007. The OIE Code provides for conditions under which beef and beef products can be safely traded from all countries. In the case of "controlled risk" countries, the OIE 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 appropriate specified risk materials (SRMs) in a manner that avoids cross-contamination of meat. The United States has satisfied these conditions by taking the following steps to mitigate BSE risk: (a) appropriate 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. Since the May 2007 OIE classification of the United States as a "controlled risk" country, the governments of Canada, the Philippines, Indonesia, Malaysia, Ghana, Costa Rica and Belize, among others, have opened their markets to the full range of US beef and beef products consistent with OIE guidelines, recognizing that US BSE measures are effective. To date, however, China has only offered to accept products from animals that are under 30 months of age.

- (a) In connection with last year's transitional review before this Committee, the United States asked China whether it had performed a risk assessment relevant to its BSE-related restrictions on imports of beef and beef products from the United States. China stated that it had "conducted the necessary risk assessments on beef imported from the United States and there had been many technical communications on numerous occasions". However, no additional information was provided. Please provide additional information on the risk assessment, including an explanation of how that risk assessment supports the measures that China is applying to US-origin beef and beef products.
- (b) Please explain China's plans for opening its market to the full range of US beef and beef products consistent with OIE guidelines.

BSE-related restrictions on other products

2. 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 without BSE-related restrictions. 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) In connection with last year's transitional review before this Committee, the United States asked China whether it had performed a risk assessment relevant to its BSE-related restrictions on imports of protein-free tallow from the United States. At last year's transitional review before this Committee, China stated that it had "conducted the necessary risk assessments on beef imported from the United States and there had been many technical communications on numerous occasions". However, no additional information was provided, and China's response was unclear as to whether it has also conducted a risk assessment relevant to protein-free tallow. Please provide additional information on any risk assessment that China has conducted which is relevant to its BSE-related restrictions on imports of US-origin protein-free tallow.

H1N1 restrictions

3. China continues to impose import restrictions for US pork and pork products that are not consistent with international guidelines to control the spread of the H1N1 virus. The international scientific bodies of the Food and Agricultural Organization of the United Nations, the World Health Organization and the OIE, have repeatedly stated that the H1N1 Influenza A virus is not transmitted by food. Furthermore, the OIE has stated that "the imposition of ban measures related to the import of pigs and pig products does not comply with international standards published by the OIE and all other competent standard setting international bodies for animal health and food safety". However, China has banned imports of live pigs and pork product from any states where *human* cases of H1N1 A are present, and imposes overly restrictive disinfection requirements, effectively blocking all imports from the United States, since the virus is present in all 50 US states. Technically, cooked product is allowed if containers are "disinfected" and bilateral discussions are ongoing to identify a practical way to disinfect so that some trade can resume. Regardless, any restrictions on US hogs, pork or pork products are inappropriate.

- (a) Please indicate whether China has performed a relevant risk assessment and, if so, explain how that risk assessment supports the measures that China is applying to imports of live hogs, pork, and pork products from the United States.
- (b) Please explain China's plans for opening its market to the full range of US live hogs, pork, and pork products consistent with OIE, FAO and WHO guidelines.

Pathogen standards

4. The United States is concerned that China continues to de-list US poultry establishments, thereby preventing them from exporting their products to China, 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). As the United States explained in connection with last year's transitional review before this Committee, China's policy appears to be inconsistent with the *Codex Alimentarius* (Codex) guidelines set forth in CAC/GL21-1997, *Principles for the establishment and application of microbiological criteria for foods*, Chapter 4.1. In particular, in the case of pathogens like *Salmonella*, the zero-tolerance requirement enforced by China on imported products is not technically feasible under typical Good Manufacturing Practices for poultry and therefore conflicts with the Codex guidelines. The United States believes that a more effective food safety strategy involves the use of Hazard Analysis and Critical Control Points (HACCP) that incorporate process control measures, good hygiene practices and good manufacturing practices to reduce levels of *Salmonella* as far as possible. Performance standards can be used to measure the effectiveness of the prevention strategies. As the United States has also previously explained, it is concerned because the zero-tolerance requirement that China applies to imports does not appear to be enforced against domestic products or domestic establishments. This raises concerns about the requirement's consistency with China's obligations under the SPS Agreement.

- (a) During last year's transitional review before this Committee, China explained that it was revising its sampling plans and microbiological criteria for food-borne pathogens in order to make them identical to those of the International Commission of Microbiological Specifications for Foods (ICMSF). China also indicated that these revisions would be completed in 2008. We are near the end of 2009; please explain the status of this effort.
- (b) In connection with last year's transitional review before this Committee, the United States asked China to explain the procedures that China would use if it were to revise a national standard such as GB 16869-2005. China did not respond to this question. Please explain these procedures.

Residue standards

5. Since 2007, China has de-listed several US pork establishments due to a Chinese ban on ractopamine, a swine-feed ingredient, thereby preventing these establishments from exporting their products to China. China's ban on ractopamine is based on a blanket ban of a class of drugs called beta-agonists. In bilateral meetings, China has acknowledged that it has imposed this ban without having performed a risk assessment to evaluate the risk of ractopamine to the human consumer. The US Food and Drug Administration approved the use of ractopamine in the United States in 1999. Twenty-six countries have approved the use of ractopamine. Additionally, the Joint Food and Agriculture Organization/World Health Organization Experts Committee on Food Additives (JECFA), the international scientific advisory body to Codex, has established an acceptable daily intake for residues of ractopamine, and has recommended that maximum residue levels for ractopamine can be safely established. Codex, in turn, has reviewed ractopamine and established a draft standard, based on JECFA's recommendations.

- (a) Please explain why China banned ractopamine without first conducting a risk assessment.
- (b) In bilateral meetings during the fall of 2007, the United States learned that China finally intended to conduct a risk assessment for ractopamine and that it would be completed by February 2008. The manufacturer subsequently submitted its safety data on ractopamine to China's Ministry of Agriculture. To date, however, it appears that China has not completed its risk assessment. When will China complete its risk assessment?

- (c) At the July 2009 Codex Commission meeting, delegates considered adoption of international maximum residue level standards for ractopamine. A decision on adoption of the standards was delayed at the request of China and a few other delegations pending two specific residue studies from China. Has China submitted these studies to JECFA for formal review? If not, when does China expect to submit the data?

Avian influenza (AI)

6. 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 ongoing suspension of poultry from Virginia, Kentucky and Idaho, and the import suspension in 2008 of poultry and poultry products originating from Arkansas. The United States has an open and transparent animal disease reporting system consistent with OIE guidelines, 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 and animal health. In connection with last year's transitional review before this Committee, the United States submitted several questions about China's AI bans, but China did not respond to any of them. The United States requests that China respond to the following questions during this year's transitional review:

- (a) Please explain whether China has taken into account relevant OIE guidelines with regard to its treatment of imports of poultry and poultry products. If not, please explain why China has not taken these guidelines into account.
- (b) Has China performed any risk assessments relevant to its import suspension for poultry and poultry products originating from Virginia, Kentucky, Idaho and Arkansas as identified above? If so, please explain how these risk assessments support the measures that China is applying. If not, please explain why China does not defer to OIE guidelines.

7. China has also suspended the importation of heat-treated/cooked poultry and poultry products from Virginia and Arkansas for LPNAI. Additionally, China does not allow the trans-shipment of poultry and poultry products (including heat-treated/cooked products) through these two 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. In connection with last year's transitional review before this Committee, the United States submitted several questions about China's restrictions on heat-treated/cooked products, but China did not respond to any of them. The United States requests that China respond to the following questions during this year's transitional review:

- (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 Virginia, Kentucky, Idaho and Arkansas.
- (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 Virginia, Kentucky, Idaho and Arkansas? If so, please explain how this risk assessment supports the measures that China is applying. If not, please explain why China does not defer to OIE guidelines.

- (c) Has China conducted any risk assessments relative to suspending imports of US-origin poultry and poultry products (including heat-treated/cooked products) that are trans-shipped through Virginia, Kentucky, Idaho and Arkansas? If so, please explain how these risk assessments support the measures that China is applying. If not, please explain why China does not defer to OIE guidelines.
