

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

Questions from the European Communities to China
concerning Sanitary and Phytosanitary Measures

The following communication, received on 16 October 2009, is being circulated at the request of the Delegation of the European Communities.

General Comment

1. This is the eight annual transitional review of the efforts of the People's Republic of China (hereinafter referred to as "China") to implement the commitments it has made in its Protocol of Accession to the WTO in the SPS Committee. The transitional review remains an important and useful mechanism, serving both the interests of China and the interests of other WTO Members to allow Members to convey to China their views, expectations and concerns regarding China's efforts to comply with its WTO SPS obligations. Therefore, the European Communities would like to take this opportunity to give its comments to China.
2. The European Communities notes with satisfaction the increased communication between China and the European Communities on SPS issues. The European Communities believes that our bilateral consultations are essential to build mutual trust and the better understanding indispensable to forging strong relationships.
3. The European Communities acknowledges that, with the increase in trade this work is growing and encourages China to dedicate more resources to these tasks consistent with the responsibilities that follow from membership in the WTO and specifically the SPS Agreement.
4. As a general remark, the European Communities would need to point out that China has not yet aligned its legislation to several international standards. Alternatively, a scientific justification should be submitted to support the sanitary and phytosanitary measures applied, as described in the Article 2.2 of the SPS Agreement.

The specific EC concerns on the application of the SPS Agreement

5. The European Communities would like to highlight the currently limited market access for its agricultural products to China. Among the specific concerns of the European Communities are in particular the following:

(a) H1N1

6. The European Communities follow closely the developments of the pandemic influenza virus H1N1 and consider it important that governments respond appropriately and proportionately to the risks imposed.

7. The European Communities has noted with great concern that China recently has taken the decision to impose additional trade requirements on pigs and pig products from several EC member States. These requirements take the form of additional testing and inspection for H1N1 on pork products exported to China as well as disinfection of containers. The European Communities considers these measures unnecessary, unjustified, and disproportionate and not in line with the statements made by the main relevant international organizations, of which China is a member, such as the World Organisation for Animal Health (OIE), the World Health Organization (WHO) and the Food and Agriculture Organization of the United Nations (FAO). There is no scientific justification for imposing additional trade requirements on the importation of pigs or their products.

(b) Beef - Bovine Spongiform Encephalopathy (BSE)

8. With reference to China's animal health policy, the European Communities is concerned about the Chinese interpretation of OIE guidelines on BSE. In this respect, the European Communities would like to remind China that OIE issued a list of bovine products which can be safely traded, regardless of the BSE status of the exporting country. Among these products is deboned skeletal muscle meat from cattle. Moreover 25 EC member States have been classified by the OIE either as "controlled risk" or "negligible risk". Despite these OIE guidelines and classification, EC beef and other bovine products are still banned.

9. The European Communities has comprehensive measures in place aimed at assuring the highest level of consumer protection. Among these are a strict feed ban, strict controls on specified risk materials and active surveillance. Although the European Communities offers the highest health guarantees to its trade partners, China has not allowed the trade of these products.

10. Therefore the European Communities would like to request China to open its market to EC exports of these products; or alternatively to justify, by scientific reasons, the restrictions on the products that under the OIE list can be safely traded, as well as for all the other products originating from EC member States.

(c) Plant health standards

11. The European Communities considers that compliance with the Chinese plant regulatory import system is unjustifiably difficult due to the fact that many of the import requirements go beyond the International Plant Protection Convention (IPPC) recommendations and the SPS Agreement.

(d) New Chinese Food Safety Law and its Implementing Regulation

12. The European Communities acknowledges that from 1 June 2009, China has put into force the new Food Safety Law and the Regulation on the Implementation of the Food Safety Law. The European Communities would like to congratulate China for its initiative to create new framework legislation on food safety in order to assure a high level of health protection.

13. The European Communities would like to express disappointment that China did not notify this new legislation and its implementing regulation before its implementation. The European Communities would like to remind China that Members should allow a reasonable interval between the publication of a sanitary and phytosanitary regulation and its entry into force in order to allow

time for other trading partners to adapt to the Chinese requirements and to follow the transparency regulations as laid down in the SPS Agreement in Article 7 and Annex B.

14. As a general comment concerning the new Food Safety Law, the European Communities notes the lack of reference in the legislation to any commitments to China's international obligations as a major global trader in food and lack of reference to international standards. The European Communities would like to point out that the measures and standards to be developed by China to achieve an appropriate level of protection should not be more trade-restrictive than necessary. The EC main concerns relate to the chapters on imports and exports. There is vagueness on how different procedures will work in practice, therefore the European Communities would ask China to confirm that these new developments will not delay the processes for imports and that China guarantees that the implementation of the new laws will not cause trade disruptions.

15. The European Communities would like to note that it will send detailed comments on the new Chinese Food Safety Law and its implementing regulation and would urge China to officially respond to the concerns from the European Communities.

Other concerns

16. The European Communities also wish to express concerns on several other matters on principles and approaches to facilitate trade which have been raised in our bilateral contacts. We firmly believe that countries should work closely together and build working relations that facilitate trade flows through appropriate mechanisms. The slow progress of negotiations of SPS protocols and the slow progress for inspections very seriously limit market access of EC products to China, especially for meat, and for fruits and vegetables. The European Communities wishes to see progress on these issues. The European Communities is ready to further discuss bilaterally at technical level to find a solution to accelerate these negotiations in order to avoid undue procedural delays which for the moment are hampering trade in various agricultural products.
