

CHINA'S TRANSITIONAL REVIEW MECHANISM

Questions to China from the United States in the context of the Transitional Review Mechanism
under Paragraph 18 of the Protocol of Accession of the People's Republic of China

The following communication, dated 3 October 2003, has been received from the delegation of the United States, with the request that it be circulated to Members, for the purposes of the Transitional Review to take place at the Committee's meeting on 29-30 October 2003.

1. The United States is concerned about certain Chinese measures and their consistency with China's obligations under the WTO SPS Agreement. Some of the new requirements, which have effects on trade, may not have been notified to the WTO. Others may be based on uncertain scientific rationale, or may raise questions of fair treatment for imports.

A. Notification of Measures

2. China's Decree 31, Certification Requirements for Fresh/Chilled, Frozen and Processed Aquatic Products, was published by AQSIQ on 6 November 2002, but has not been notified to the WTO.

- (i) What role does the State General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) play in monitoring the development and implementation of China's regulatory controls for seafood, including Decree 31?
- (ii) When does AQSIQ intend to notify Decree 31, as China committed to do in the June 2003 SPS Committee Meeting (see paragraph 60 in G/SPS/R/30)?

B. Science-based Measures

3. In August of this year, China's State Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) announced plans to suspend soybean imports from four US companies, as well as companies from Argentina and Brazil, based on detections of *Phytophthora sojae* in shipments of soybeans. The United States does not agree that a valid scientific basis exists for a suspension of shipments.

- (i) Could China describe the results of any risk assessments that it has conducted in this regard?

Decree 31, referenced above, also raises questions regarding the nature of risks addressed by the Decree and the scientific basis for the measure.

- (ii) What are the risks that Decree 31 is endeavouring to mitigate?
- (iii) What is the scientific justification for this certification requirement?

4. In October 2002, China's Ministry of Health (MOH) published on its website nearly one hundred new draft regulations covering food, forestry and fishery products.

- (i) What role does AQSIQ play in monitoring the development, implementation and notification of laws and regulations published by MOH?
- (ii) Have risk assessments been completed on the products for which standards and tolerances have been established at levels more restrictive than the relevant international standards?

5. The following are examples of proposed MOH regulations for which the scientific basis is uncertain:

- The maximum residue level (MRL) for selenium is much more restrictive than other national standards.
- Zero tolerances for commonly occurring microbes, such as *Staphylococcus aureus* in meat and poultry, are unrealistic.
- A very strict MRL for vomitoxin in wheat has been set for which there is no US or international standard.
- Some of the regulations confuse technical standards, such as pasteurization, with procedures, such as sterilization and testing methods. The scientific basis for these requirements is unclear.
- Certain regulations refer to standards and references that are not available for review.

6. The United States is concerned that the notification of these nearly one hundred MOH regulations would, in their current form, compel the initiation of an immense set of complex testing, grading and risk assessment reviews. Such reviews as currently envisioned will unjustifiably deny imports of products, such as grain, processed foods, dairy, meat and poultry into China.

C. National Treatment

7. The United States has concerns that some regulations regarding SPS matters appear to set differing standards for imported products than for like-products produced domestically.

- (i) Will the one hundred MOH regulations, referred to above, apply equally to domestic and imported products?
- (ii) AQSIQ's Decree 44, Certification Requirements for Live Aquatic Products mandates different practices for imports. Does a risk assessment support this differing treatment?
- (iii) The United States notes that certain meat and poultry standards are significantly stricter than those set by Codex and are blocking the entry of imports. Does China have in place the same standards for domestically produced meat and poultry? What

is the scientific rationale for these meat and poultry standards for imported products, and have risk assessments for such standards been completed?

D. Inspection and Approval Procedures

8. The United States remains concerned about the 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). The United States is equally concerned with AQSIQ Decree 25, Administrative Measures for Entry Animal and Plant Quarantine (effective 1 September 2002). Both of these affect entry of agricultural products such as livestock, poultry, grains, oilseeds, planting seeds, horticultural products, even hides and skins.

- (i) Could China describe the steps that it has taken to ensure that these two measures comply with its obligations under Article 8 and Appendix C of the Agreement on the Application of Sanitary and Phytosanitary Measures?
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