

**TRANSITIONAL REVIEW MECHANISM UNDER PARAGRAPH 18
OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA**

Questions to China from the United States concerning SPS obligations

Transparency and oversight of regulatory bodies

1. The United States recognizes that China has made great strides to participate in the SPS Committee work, including submitting Committee papers, comments, and well over 50 notifications of SPS measures in the past 12 months. China should be applauded for these efforts. We believe, at the same time, the greater openness has revealed large gaps between commitment and follow-through. China's SPS National Notification Authority is housed in the Ministry of Commerce but its SPS Enquiry Point is located under General Administration for Quality Supervision, Inspection and Quarantine's (AQSIQ) authority. China's SPS regulations may be drafted and promulgated at the level of the National People's Congress, the State Council, or with any of eight other individual ministries. The absence of one official journal for all of China's draft, amended, and final rules creates confusion regarding the status of China's SPS domestic and entry requirements. The United States, however, would like to acknowledge China's recent efforts to identify and discuss options to effectively reform its SPS management system and develop a process whereby all regulatory leaders have more effective tools for open and consistent communication.

2. A recent review by the United States has identified approximately 100 SPS-related measures that have not been notified to the WTO SPS Secretariat since China's WTO accession on 11 December 2001. Currently, China has ten different bodies in its legislative and executive branches that have the power to draft, implement or enforce SPS measures, making monitoring both within and outside of China difficult for all concerned stakeholders. The United States is aware of SPS regulations drafted by each one of these ministries that have not been notified to the WTO.

3. In many cases, China promulgated and implemented laws without any notification to the WTO. One example of this problem is AQSIQ Decree 73, *Items on Handling the Review and Approval for Entry Animal and Plant Quarantine*. It became effective 1 July 2004, but at the time of this review remains unnotified. This decree's many provisions increase commercial risk for exporters, but fail to identify the phytosanitary risk that necessitates such a measure. Although the intent of the decree was apparently to simplify and make more transparent SPS entry requirements for agricultural commodities, the vague wording of the measure, in fact, resulted in disrupting trade and reducing market access.

4. On several occasions notifications have been made after measures had gone into effect. One recent example is AQSIQ Decree 62, the *Administrative Measures for the Quarantine and Inspection Requirements for the Entry and Exit of Genetically Modified Organisms*. This measure was implemented on 23 May 2004, but not notified to the WTO Secretariat until two months later on 13 July 2004, as G/SPS/N/CHN/15/Add.1.

5. Under current circumstances, WTO Members and private businesses must monitor various food safety agency independent websites for occasional reports of regulatory developments. However, regulations are sometimes drafted and implemented by multiple agencies, and these documents cannot be systemically found. Because many ministries may have regulatory oversight, especially in the area of agricultural biotechnology, the absence of detailed published requirements and clear timelines for the safety assessment process unfairly constrains market access and increases exporters' burden.

- (a) With these observations in mind, please indicate when China will notify the approximately 100 outstanding measures, including Decrees 62 and 73?
- (b) Is China taking any steps to create one official journal to make it easier for all SPS regulatory authorities to monitor draft, amended, and final SPS measures?
- (c) What interaction is taking place between China's National Notification Authority and the relevant SPS regulatory organs to promote timely notification of measures to the WTO?

Absence of sound scientific evidence

6. China is obligated under the WTO SPS Agreement to base its SPS measures on sound science and risk assessments. If it follows existing standards of the three WTO-recognized international standard-setting bodies (Codex Alimentarius (Codex), the International Plant Protection Convention (IPPC) and the World Organization for Animal Health (OIE)), it is automatically assumed to be in compliance with this requirement; otherwise, risk assessments should be completed and made available. However, in dozens of notified and unnotified regulations, standards more restrictive than those of Codex, IPPC and OIE have been adopted without providing access to risk assessments identifying the necessity for such restrictive measures. We recognize that China is not a member of international standard-setting organizations like the OIE and IPPC. Nevertheless, the WTO SPS Agreement obligates members to base their measures on relevant international standards. If a member introduces a measure that provides a higher level of protection than that achieved by the international standard, it must present a scientific justification or a risk assessment to support its measure. What steps is China taking to make these scientific justifications and risk assessments available to interested parties or to bring these measures into line with the standards of OIE, IPPC, and Codex Alimentarius?

7. China's SPS requirements for a number of commodities, such as G/SPS/N/CHN/52, hygienic standards for grain, and the unnotified AQSIQ Decree 73, which modifies the requirements for applicants of quarantine inspection permits, mix product quality requirements with SPS measures. These two measures in particular introduce water, heat, and foreign material requirements that have no bearing on the safety of the product and which a foreign supplying government should not be expected to guarantee. Quality issues are primarily matters for resolution between buyer and seller on commercial sales. Please indicate when China will rescind these requirements, not only for the two identified regulations, but also as general practice.

Assessment of risk and appropriate level of phytosanitary protection

8. China is obligated to base its SPS measures on sound science and risk assessments. Regrettably, when the United States experienced isolated findings of low-pathogenic avian influenza (AI) in 2003, China immediately implemented a nationwide ban (again unnotified to the WTO) on all US-origin poultry, even though the appropriate standard-setting body recognized by the WTO, the OIE, does not consider low-pathogenic AI to be a reportable disease. Likewise, it has been over six months since the United States eradicated highly pathogenic AI, which had been found only in the state of Texas. The OIE's recommendations applicable to highly pathogenic AI state that a country

shall be considered free of highly pathogenic AI six months after the slaughter of the last affected animal where an eradication policy is practiced. Although China is not an OIE member, it is obligated under the WTO SPS Agreement to base its measures on relevant international standards, guidelines, and recommendations.

- (a) What steps will China take to ensure that its measures are consistent with the relevant standards developed by the OIE, IPPC, and Codex?
- (b) When will China align its import requirements for those products recognized by the OIE as safe for trade no matter the AI status of the exporting region?

9. China's fresh and frozen poultry regulation (GB16869-2002), notified on 9 August 2002 as G/TBT/N/CHN/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. 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) When will China provide the risk data to support the standard?
- (b) What evidence can China provide to document that, in accordance with its WTO/SPS obligations, the same standard is being applied to domestic as well as imported poultry products?

Control, inspection and approval procedures

10. In documents G/AG/W/64 and G/AG/W/64/Add.1, the United States submitted written questions for China in connection with the transitional review before the Committee on Agriculture on 23 September 2004. Some of the US questions addressed import control, inspection and approval procedures under AQSIQ Ordinance 7, *Administrative Measures for the Entry-Exit Inspection and Quarantine for Grains and Feed Stuff* (effective 1 March 2002), AQSIQ Decree 25, *Administrative Measures for Entry Animal and Plant Quarantine* (effective 1 September 2002), AQSIQ Decree 73 and AQSIQ Announcement 111. At the 23 September 2004 Committee on Agriculture transitional review, the Chinese delegation declined to respond to those questions, insisting that they addressed SPS matters. In order to receive responses to its questions, the United States is therefore submitting them in this Committee as well. They follow in paragraphs 11 to 13.

11. The United States remains concerned about the quarantine import inspection permit procedures provided for in AQSIQ Ordinance 7 and AQSIQ Decree 25. Specifically, pursuant to Ordinance 7, 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 (TRQ) 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.

- (a) Please clarify who is eligible to apply for an import inspection permit under Ordinance 7. What standards does AQSIQ employ in accepting or rejecting applications?
- (b) Please clarify who is eligible to apply for a quarantine permit under Decree 25. What standards does AQSIQ employ in accepting or rejecting applications?
- (c) Under Article 6 of Ordinance 7, in applying for an import inspection permit, the owner of the goods to be imported, or its agent, must provide information that includes details about plant location, storage capacity, transportation, processing and whether prior shipments have been fully utilized. Please explain why this information is necessary.
- (d) Please explain why AQSIQ requires an inspection of the facilities of an enterprise that processes agricultural commodities, since the State Administration of Industry and Commerce also requires an inspection of those same facilities. Will one inspection satisfy both requirements?
- (e) Please explain why an importer must re-apply for a new import inspection permit (rather than have the term of the original one extended) if it has not entered into a commercial contract and imported the commodities covered by the import inspection permit by the expiry date.
- (f) Please explain why an importer must specify the commodity weight, country of origin and port of entry before it has even entered into an import contract. Please also explain why an importer must reapply for a license if the commodity weight changes by more than ten per cent or if the country of origin or the port of entry changes.

12. AQSIQ Decree 73, which became effective 1 July 2004, adds provisions that may create unfavorable commercial terms for imports. While it is unclear how this new decree will be implemented and enforced, the vague wording of the decree leaves open the possibility for future enforcement actions and places liability on the foreign exporter.

- (a) Decree 73, in paragraph 4, requires importers to incorporate the inspection and quarantine requirements specified in the quarantine permit into contracts and to stipulate that the goods should comply with relevant Chinese laws and food safety regulations. This requirement appears to be unnecessary, because China's inspection and quarantine requirements are fully enforceable by Chinese authorities. Please explain the necessity of requiring inspection and quarantine requirements to be incorporated into commercial contracts.
- (b) b. The requirement of paragraph 4 of Decree 73 appears to oblige the seller of imported goods to bear the full commercial risk of non-compliance with China's inspection and quarantine requirements. Customarily in international sales contracts for bulk commodities, parties generally agree that upon inspection of goods by the exporting country and issuance of a certificate of approval by the exporting country, risk pertaining to the quality of goods passes to the buyers. Please explain the basis for changing existing commercial practice.
- (c) Decree.73, paragraph 6, requires the name of the exporter and the supplier to be indicated in the application form for the entry animal and plant quarantine permit when applying for agricultural product imports. It is often difficult to identify the name of the supplier (or the origin of the commodity) at the time an importer applies

for the inspection permit. Often, the supplier is changed after the quarantine permit is issued. 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.

13. 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 China's modification of its quarantine permit policies in Announcement 111 which removed some products from the list of products requiring quarantine permits, as traders have expressed continued concern regarding the burdensome nature of the quarantine permit procedures.

- (a) 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 the trade or a description of these products based on Harmonized Schedule (HS) Number. Please provide a description of exempted products by HS Number.
 - (b) Announcement 111 indicates that China's decision to exempt certain products is based on risk assessments. Please provide those risk assessments, along with any other analysis or criteria used as a basis for the exemptions.
 - (c) Were risk assessments performed on other products, i.e., products that are still on the list of products requiring quarantine permits? If so, please provide those risk assessments, along with any other analysis or criteria used.
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