

**SECOND REVIEW OF THE OPERATION AND IMPLEMENTATION  
OF THE SPS AGREEMENT**

Submission by China

Revision

The following communication, received on 17 December 2004, is being circulated at the request of the Delegation of China.

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**I. INTRODUCTION**

1. China believes that the Second Review of the Agreement on the Application of Sanitary and Phytosanitary Measures ("the Agreement") provides a valuable opportunity to improve the implementation, and if necessary to clarify certain provisions of the Agreement so as to ensure that sanitary and phytosanitary measures do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

2. As a developing country Member to the WTO for nearly three years, China's primary goal is to facilitate reducing the negative effect of SPS measures on international trade through more consistent and effective implementation of the SPS Agreement by all Members.

3. China's concerns on the Second Review include: (1) regionalization; (2) transparency; (3) technical assistance and special and differential treatment; and (4) harmonization; among those, transparency, regionalization and related special and differential treatment are the issues of most concern for China.

**II. ADAPTATION TO REGIONAL CONDITIONS (ARTICLE 6)**

4. China has noticed that adaptation to regional conditions, including the recognition of pest- or disease-free areas or areas of low pest or disease prevalence, is of significant importance for trade in agricultural products. China highly appreciates the work that has been done by the SPS Committee through the five informal meetings and five formal meetings, and the comprehensive discussions of the issue in this regard since March 2003.

5. However, China realizes that the three difficulties in recognizing pest- or disease-free areas or areas of low pest or disease prevalence identified in the first Review still remain alive, including divergences in interpretation and implementation of international guidelines; an excessively lengthy administrative process by importing Members; and the complexities often involved in risk

assessment. In addition, China has noticed that a few Members prohibit existing trade even when they have only detected one case of pathogen identified from the imported foods of animal origin or other agricultural products coming from an exporting country. These difficulties and facts have a significant negative impact on international trade.

6. In order to facilitate international trade by recognizing pest- or disease-free areas or areas of low pest or disease prevalence, China would like to put forward the following proposals:

- (a) China proposes to take full advantage of international standards setting organizations, such as OIE and IPPC, in recognizing pest- or disease-free areas and areas of low pest or disease prevalence, in order to avoid redundant work, reduce disputes, shorten the recognition period, and lower costs. International organizations could develop the concepts of pest- or disease-free areas and areas of low pest or disease prevalence as soon as possible, and develop the standards on pest- or disease-free areas and areas of low pest or disease prevalence and the relevant guidelines and procedures for recognition regarding certain severe diseases and pests of animals and plants, such as highly pathogenic avian influenza, Newcastle disease, Swine Fever, Mediterranean Fruit Fly, *Tilletia controversa kuhn* and so on, and could enhance recognition work and publish recognized lists of pest- or disease-free areas and areas of low pest or disease prevalence and notify them to all Members through the WTO Secretariat.
- (b) Before the recognition made by OIE or IPPC, in order to facilitate trade, importing Members recognize exporting Members' pest- or disease-free areas and areas of low-pest or disease prevalence themselves according to the relevant standards, guidelines and procedures developed by OIE and IPPC.
- (c) As to the standards, guidelines and procedures regarding the recognition of pest- or disease-free areas and areas of low-pest or disease prevalence that have not been developed by OIE or IPPC, Members should publish their own recognition agencies, standards, procedures and estimated time period for each step and notify them to Members through the Secretariat. This will help the exporting Member to confirm whether it complies with the requirements for pest- or disease-free areas and areas of low-pest or disease prevalence of the importing Member. Importing Members should take into consideration the relevant international standards, guidelines and procedures when establishing the recognition standards and procedures, and should reduce the adverse effects on international trade to the minimum level. Exporting Members should provide the relevant evidence to demonstrate to the importing Member that its areas comply with the importing Member's reasonable recognition standards and procedures, and accept the necessary inspection and testing by the importing Member upon request.
- (d) The Committee should encourage developed country Members to provide as much technical assistance as possible and special and different treatment to developing country Members, including exempting developing country Members as much as possible from the costs incurred in arranging for investigation the experts from the developed country Member.

The Committee should encourage Members to notify the end results of recognition of pest- or disease-free areas and areas of low-pest or disease prevalence to Members through the WTO Secretariat.

### III. TRANSPARENCY

7. The transparency principle is one of the fundamental WTO principles, and the most important one of the SPS Agreement. China notes that most of the work done by the SPS Committee focuses on promoting the implementation of the transparency principle, including developing the Handbook of How to Apply the Transparency Provisions of the SPS Agreement, and the Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7 of the SPS Agreement), holding the relevant informal and formal meetings, and making long-term efforts to the implementation of the Agreement. China appreciates all of this work by the SPS Committee.

8. However, China has noticed that there still exist some problems in the implementation of transparency obligations among Members. China submitted the analysis reports on the SPS notifications of WTO Members (G/SPS/GEN/378, G/SPS/GEN/498) to the Committee in 2002 and 2003 respectively, and made a proposal (G/SPS/W/131) on the starting date of the comment period as proposed in G/SPS/7/Rev.2 on the basis of the report mentioned above. China's analysis reports and recommendation received positive comments and facilitated further discussions concerning the implementation of transparency obligations in the Committee. Yet, regretfully, some Members did not accept the explicit method to calculate the comment period because of their domestic regulations.

9. According to document G/SPS/GEN/510 prepared by the Secretariat, as of 1 September 2004, 4,100 notifications on newly developed or modified SPS measures had been made, not including corrigenda, addenda and revisions. To fully exercise the right to make comments on these notifications, it is fundamentally important to provide sufficient comment period for Members whose official language is not a WTO official language (English, French and Spanish) to translate the notification forms and related texts and study those. As one of the recently acceded Members of the WTO, the difficulty China faces in respect of the comment period is even greater. However, as indicated in document G/SPS/GEN/378 and G/SPS/GEN/498, only 22.2 per cent of the 995 regular notifications made in 2002 and 2003 offered comment periods of 60 or more days, which demonstrated the ineffective implementation of the recommendation on providing 60 days for Members to make comments. China proposes that the SPS Committee carry out further discussions on this issue to ensure that the recommendation be effectively applied. The discussions could focus on the method of calculating comment period put forward by China, and it would be highly appreciated if Members made other suggestions which serve the same objective.

10. The Fourth Ministerial Conference decided that "Reasonable interval" between publication of a country's new SPS measure and its entry into force would now be understood to mean, normally, at least six months, subject to certain conditions (Implementation-Related Issues and Concerns Decision of 14 November 2001). Nevertheless, according to China's analysis reports (G/SPS/GEN/378 and G/SPS/GEN/498), only 6.5 per cent of regular notifications satisfied such requirement while most of the notifications provided adjustment periods of less than six months. China would like the SPS Committee to discuss this issue to ensure the decision of the Fourth Ministerial Conference is fully implemented.

11. The fourth Ministerial Conference decided that where a phased introduction is possible, the "longer time-frames" "for developing countries to comply is now understood to mean, normally, at least six months" (Implementation-Related Issues and Concerns Decision of 14 November 2001). China appeals that developed country Members actively consider providing another six months for adaptation by developing country Members, in addition to the at least six months for adaptation provided to all Members as mentioned in paragraph 10, when a developed country Member's appropriate level of SPS protection allows scope for the phased introduction of new SPS measures.

#### **IV. DEFINITIONS**

12. The Agreement did not give definitions of some words such as "sufficient scientific evidence" (Article 2.2), "the extent necessary" (Article 2.2), "base ... on", "conform to" (Article 3.2), "arbitrary or unjustifiable distinctions" (Article 5.5), which may lead to different understandings. We suggest that the Committee clarify or explain the above mentioned words so as to facilitate the understanding and implementation of the Agreement by Members.

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