

**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 15 September 2008, 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 all imports of beef and beef products from the United States, despite the fact that the World Organization for Animal Health (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. As the OIE recognized by its classification of the United States as "controlled risk," 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, Barbados, Malaysia, Qatar, Ghana, Costa Rica and Belize 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 as contemplated by Articles 2 and 5 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). China did not respond to this question. 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 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, as other WTO Members have done.

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. 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, as contemplated by Articles 2 and 5 of the SPS Agreement. China did not respond to this question. 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 protein-free tallow.

Pathogen standards

3. 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 is 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 requirement therefore appears to be unnecessarily trade restrictive within the meaning of Article 5 of the SPS Agreement and raises serious national treatment concerns.

- (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. Please explain the status of this effort.
- (b) In connection with last year's transitional review before this Committee, the United States asked China whether it applies its zero-tolerance requirement to domestically produced meat and poultry products. China did not respond to this question. Please indicate whether China applies its zero-tolerance requirement to domestically produced meat and poultry products. If it does not, please explain how China's ongoing review of domestic regulatory controls will ensure conformity with its obligations under Article 2.3 of the SPS Agreement.

- (c) 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

4. 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 (FDA) approved the use of ractopamine in the United States in 1999. Twenty-three countries in total 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) During last year's transitional review before this Committee, China explained that consumption of pork treated by ractopamine could cause side-effects to the human heart and nervous system. Please explain the scientific basis for these assertions. Are these assertions based solely on consumption of pork containing ractopamine in excess of the maximum residue levels recommended by JECFA?

Avian influenza (AI)

5. 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 and the import suspension in 2008 for poultry and poultry products originating from the State of Arkansas. In the past, China had suspended imports of poultry and poultry products from six other States (Rhode Island, Connecticut, New York, Pennsylvania, West Virginia, and Nebraska) for LPNAI, but it recently removed the bans on those imports. 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 why China has not taken into account relevant OIE guidelines with regard to its treatment of imports of poultry and poultry products.
- (b) Has China performed any risk assessments relevant to its import suspension for poultry and poultry products originating from Virginia and Arkansas as identified above and as contemplated by Articles 2 and 5 of the SPS Agreement? If so, please explain how this risk assessment supports the measures that China is applying. If not, please explain the scientific rationale behind China's current restrictions.

6. 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. China had imposed these same restrictions on the six States identified above, for which China recently lifted its AI bans. 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 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 and Arkansas as contemplated by Articles 2 and 5 of the SPS Agreement? If so, please explain how this risk assessment supports the measures that China is applying. If not, please explain the scientific rationale behind China's current restrictions.
 - (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 and Arkansas as contemplated by Articles 2 and 5 of the SPS Agreement? If so, please explain how this risk assessment supports the measures that China is applying. If not, please explain the scientific rationale behind China's current restrictions on Virginia and Arkansas.
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