

Committee on Sanitary and Phytosanitary Measures

**REPORT TO THE COUNCIL FOR TRADE IN GOODS
ON CHINA'S TRANSITIONAL REVIEW**

The present report is submitted under the responsibility of the Chairperson, as agreed by the Committee at its meeting of 12 October 2006.

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1. The Committee held its fifth Annual Transitional Review under Paragraph 18 of the Protocol of the Accession of the People's Republic of China at the regular meeting commencing on 11 October 2006.
 2. Prior to the meeting, the United States and the European Communities submitted questions in writing to China, which can be found in documents G/SPS/W/207 and G/SPS/W/208, respectively.
 3. Statements made at the Committee meeting in the context of this transitional review by Australia, Brazil, China, the European Communities and the United States will be reflected in the Summary Report of the meeting, to be circulated as G/SPS/R/43 (excerpt attached).
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ATTACHMENT - EXCERPT FROM G/SPS/R/43

AGENDA ITEM 11: TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

1. The Chairman recalled that in accordance with Paragraph 18 of the Protocol of Accession of the People's Republic of China, the SPS Committee is to undertake an annual review for eight years of the implementation by China of the SPS Agreement. He opened the floor for comments or questions from Members.

2. The representative of the United States recalled that in its submission for the 2006 transitional review (G/SPS/GEN/594), the United States had presented China with written questions covering a number of areas, including (1) China's BSE-related bans on US beef and other low-risk products; (2) China's zero pathogen requirements on meat and poultry products; (3) inappropriate avian influenza restrictions on US poultry; (4) inadequate regulatory transparency; (5) China's requirement for annually updated lists of approved fruit packaging facilities; (6) China's non-recognition of the US National Fruit Fly Trapping Program (NFFTP); and (7) China's non-recognition of all types of materials for use in food packaging and food-contact materials sold in the market. The themes underlying these questions continued to be the same as those underlying the submissions made at the three previous transitional reviews. As shown in documents G/SPS/W/126, G/SPS/W/139 and G/SPS/W/153, the United States had consistently raised concerns regarding (1) China's failure to notify numerous SPS measures; (2) the lack of transparency in China's application of SPS measures; and (3) China's imposition of requirements that appear to have no basis in science. These concerns were most evident in two issues raised in the United States 2006 submission, namely China's BSE-related bans and fire blight restrictions.

3. The representative of the United States further noted that the United States' strongest concerns involved China's BSE- and avian influenza-related bans on US beef and poultry and their products, respectively. China had provided virtually no information to the United States on the basic regulatory framework under which it would make science-based decisions to consider the US request for China to lift these bans. Dozens of countries had lifted their bans on US beef and each of them had, at a minimum, provided the United States with a detailed explanation of the regulatory steps necessary to make a decision on the US request to lift the ban. Since China imposed the bans on US beef and poultry, it had still not offered any explanation of its actions or on the necessary regulatory steps for lifting the bans. The United States was also concerned that China's measures were not based on relevant risk assessments. The United States requested China to adhere to the science-based principles contained in the OIE guidelines when making related regulatory decisions regarding imports of US cattle and beef products and US poultry and poultry products. The United States also urged China to take steps to ensure that its regulatory authorities quickly addressed this problem.

4. The representative of the United States also expressed concern that China continued to enforce technically unattainable zero-tolerance requirements for certain pathogens such as salmonella on imports of meat and poultry products from the United States. The Standardization Administration of China (SAC) and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) National Standard on Fresh and Frozen Poultry Products (GB16869-2005) on these pathogens, effective from 1 January 2006 appeared to be inconsistent with the Codex Alimentarius (Codex) guidelines. The United States was also concerned because the tolerance requirement applicable to imports did not appear to be enforced against domestic products. However, China had acknowledged the need to revise domestic regulatory controls in this area and the United States urged China to immediately remedy this situation.

5. Another important concern of the United States related to China's hygienic standards for food contact materials. The representative of the United States expressed concern that under the National

Standard GB 9685-2003, issued by China's Ministry of Health (MOH), China had approved only 65 types of materials for use in food packaging and food-contact materials sold in its market. Thousands of these materials were currently permitted for use in food-contact materials in the United States, Europe and Canada. The United States further noted that these products already existed in the Chinese stream of commerce and, if not permitted, could lead to significant economic losses for US and other producers/suppliers. While the United States appreciated China's many timely amendments to G/SPS/N/CHN/42 on solid wood packaging materials, the United States still urged China to move quickly and approve food-contact materials not previously approved in China or by foreign regulatory authorities.

6. On the issue of regulatory transparency, the United States was concerned about the number of SPS measures that China enforced against US products without notification to the WTO for members' comments prior to adoption and implementation. The United States had identified over 20 of these measures issued between 1 July 2005 and 30 August 2006. Some of these measures implemented new registration requirements, others set new safety standards for residues, while others invoked new procedures for inspection or identified new quarantine pests. Some of the measures appeared to be inconsistent with previous standards. Although the United States appreciated the fact that many of the measures were now available on the Chinese Government website, they had invariably raised the cost of entry into China for US producers, particularly due to lack of the opportunity to review and assess them in advance. However, the United States recognized the strides China had made in the past year to more consistently implement its WTO obligations in this regard. The United States also noted that China had now overtaken many Members in the WTO with its 99th notification of a new SPS measure made to the Secretariat on 28 August 2006, and encouraged China to continue to make progress on notification.

7. In its written questions, the United States had also expressed ongoing concerns on several other matters, which had been raised previously in the Committee, including: (1) the annually updated lists of approved fruit packing facilities requirement; (2) zero pathogen requirements on meat and poultry products; (3) inappropriate avian influenza restrictions; and (4) non-recognition of the National Fruit Fly Trapping Program (NFFTP). The United States recognized the advances made by China during the Phytosanitary Bilateral Technical meeting in Xi' during the week of 4 September 2006 (in which China recognized the NFFTP of the United States and eliminated the requirement of an annually updated list of US production orchards that were approved to ship fruit to China). The United States however, noted that it would still like to see more progress in these areas, particularly in the elimination of additional requirements for an annually updated list of approved fruit packing facilities.

8. The representative of the European Communities thanked China for its commitment to the transitional review mechanism (TRM) and expressed appreciation for the efforts deployed by China to answer the questions posed during the previous TRM exercise. The European Communities noted with satisfaction the increased cooperation between China and the European Communities on SPS issues and mentioned the increasing number of contacts and the establishment of formal cooperation mechanisms aimed at promoting increased trade flows under safe conditions. However, the European Communities would welcome further improvement in the currently limited access to the Chinese market for EC food products. The European Communities also noted that in contrast to the large number of notifications made as part of the WTO accession process, there has been a sharp fall in the number of notifications by China under the SPS Agreement over the past year. Clarification by China on this point would be welcome by the European Communities.

9. The representative of the European Communities indicated two market access areas where enhancement of cooperation was needed: removal of the current BSE-related ban on certain ruminant derivative products from the European Communities and a greater flexibility on the approval procedure for listing of EC establishments eligible to export products into China.

10. At previous Committee meetings, the European Communities had welcomed the compliance of China's import policy for EC bovine semen and embryos with the World Organization for Animal Health's (OIE) standards on BSE. The European Communities encouraged China to apply OIE standards in accordance with its obligations under Article 3 of the SPS Agreement. The representative of the European Communities noted that China was quick to apply international standards when problems arose, but often delayed far beyond these guidelines when lifting the measures. The European Communities also considered the very slow progress in negotiations of certain bilateral protocols between China and EC member States as a key factor hampering trade in agricultural products between the European Communities and China. The European Communities urged China to follow its obligations under the SPS Agreement, including obligations to maintain imports restrictions only if they were scientifically based. In this regard, the European Communities invited China to implement the OIE standards, accelerate the negotiations and to avoid undue delays.

11. The European Communities noted that China's ban on certain animal products from EC member States was based on a single isolated and completely controlled incident of contamination with dioxins. The European Communities believed that in the absence of proper scientific justification, the SPS Agreement gave no basis for China to maintain the ban. In addition, China's 100 per cent testing import requirements on dairy products for *E. Sakazakii* were not scientifically based and not proportional to the risk in accordance with provisions of the SPS Agreement. In this regard, the European Communities asked China to respect the provisions of the SPS Agreement and in particular Article 2.2.

12. The representative of Brazil noted that while Brazil acknowledged the considerable strides made by China with regard to SPS issues, it shared the concerns of the United States and other delegations regarding the extremely rigid levels and technically unattainable zero-tolerance requirements for certain pathogens, such as salmonella on imports of meat and poultry products, which China still continued to enforce. Brazil also requested China to make all possible efforts to develop and improve on the transparency process regarding notification of their regulations so that Members could have the necessary time to assess the measures.

13. The representative of Australia expressed appreciation for China's efforts since joining the WTO in 2001 to develop and improve its quarantine and inspection systems and to ensure that quarantine procedures were based on risk assessment and sound scientific evidence. Australia valued its strong relationship with China and continued to make efforts to strengthen communication and cooperation with China on SPS matters. Australia understood the challenges China faced and noted the steady progress made by China in the development of SPS measures consistent with the provisions of the SPS Agreement. Australia particularly appreciated recent work by China to develop an import protocol for Australian citrus, which was now being implemented. Australia was engaged in a number of bilateral SPS issues with China and looked forward to an early resolution of these issues to allow bilateral trade to expand for the mutual benefit of both Members. Australia further encouraged China to develop measures that were based on scientifically sound risk assessments and harmonized with international standards, while also ensuring consistency and transparency in its development and administration of SPS measures, at both a national and provincial level, as well as conformity with notification obligations under the SPS Agreement. Australia further urged China to make sure that adopted measures were reviewed appropriately to ensure that they were the least trade restrictive possible.

14. The representative of Australia further observed that Australia had been pleased to offer a significant amount of technical assistance to China, worth about US\$2 million, to assist development of China's SPS capabilities and systems. A recent example was the provision of SPS master class training in Canberra for 19 of China's quarantine officials in May 2006.

15. The representative of China thanked the United States, the European Communities, Brazil and Australia for their comments and questions. He stated that China had taken note of the comments from Brazil and Australia and were prepared to continue the constructive dialogue with them on any issue of bilateral interest in the SPS area. With regard to questions from the European Communities, China regretted the fact that due to late submission of document G/SPS/W/208 (on 9 September 2006), China had had difficulty in processing these questions in time and requested the European Communities to respect the basic rules and procedures on the handling of general item documents before the SPS Committee to avoid delays in dealing with their concerns. China further noted that as to the specific questions mentioned by the representative of the United States, some progress had already been made through bilateral discussions and negotiations prior to the Committee meeting. However, he provided the following information and responses to the comments and questions raised by the United States under the framework of Paragraph 18 of China's Protocol of Accession.

16. In relation to transparency, by March 2002, prior to its accession to the WTO, China had notified 140 SPS measures promulgated before its accession to the WTO. After its accession, China had circulated 100 notifications to the WTO Secretariat, which provided Members with a comment period of 60 days calculated from the date of circulation of the notification by the Secretariat, as requested in China's proposal on transparency (G/SPS/W/131 and corrigendum). The Ministry of Commerce of the People's Republic of China (MOFCOM) had established mechanisms to enhance coordination among ministries and agencies responsible for SPS measures and had already organized various meetings, workshops and training courses on notifications for officers from relevant ministries and agencies. These actions had greatly improved the SPS measure notification process in China. Moreover, MOFCOM, together with AQSIQ, had drafted and adopted guidelines on notification of SPS measures.

17. Regarding BSE-related international standards, the representative of China recalled that in previous bilateral talks on the OIE standards code and from a huge number of statistical analyses, China had already pointed out that there existed considerable loopholes in the US prevention and control project, tracing system and implementation of a feedstuff ban. This provided evidence that the United States was not qualified under OIE standards as a BSE risk controllable country. China further noted that at present, to prevent the risk of BSE entering China, it only allowed the importation of boneless beef from cattle under 30 months old, which meant that the Chinese authorities needed to be convinced that beef other than boneless beef from cattle under 30 months is safe from BSE. China nonetheless indicated its willingness to continue to discuss the issue bilaterally at a technical level.

18. Concerning pathogen requirements, China indicated that it had taken international standards into account. China had no criteria to require zero pathogens on fresh and frozen poultry products but had considered that it was common knowledge that salmonella was harmful to human health, and in discussions on food safety goals in the Codex Committee on Hygiene, most Members believed that salmonella should not be detected in food products. China further observed that it was a legal requirement in many countries that salmonella should not be detected in fresh or frozen poultry. The risk assessment report on salmonella in poultry by the Joint FAO/WHO Expert Meetings on Microbiological Risk Assessment (JEMRA) pointed out that data on exposure levels of salmonella was insufficient. In China, both domestic and foreign-produced poultry had to meet the same pathogen standard, as such China was in compliance with its obligations under Article 2.3 of the SPS Agreement.

19. In relation to avian influenza in poultry products from Pennsylvania in the United States, China drew Members' attention to OIE requirement that all H5 avian influenza cases, high or low pathogenic, should be reported to OIE, and China as an importer of US poultry should have also been notified of the outbreak in Pennsylvania. China noted that the United States had not notified them until repeatedly requested to do so. China justified the ban imposed on poultry products from the state of Pennsylvania in accordance with the regionalization principle of the SPS Agreement, as China

could still not identify poultry products that originated from an epidemic area in the United States. Nonetheless, China indicated its intention to hold further bilateral discussions with the United States in order to ensure that poultry entering China was safe from avian influenza.

20. Regarding the issue of notification, China further noted that among the 13 measures which the United States claimed it had not notified to the WTO Secretariat, some were revised according to international standards where no substantial changes had occurred while other were aimed at regulating internal trade of products.

21. The representative of China concluded by expressing thanks to Members for their cooperation and understanding and hoped that his statement had covered most of the comments and questions raised by the United States and that the information he had provided was useful and helpful to Members. China also expressed its desire for closer cooperation with all Members of SPS the Committee on issues of mutual interest and in the implementation of the SPS Agreement.

22. The Chairperson thanked the representative of China for the thorough response and asked if any other Member wished to take the floor. With regard to the procedural aspects of the review, he noted that last year China had requested that no reference should be made to any particular procedure when handling the review. Based on this, questions were not invited from Members, which was likely one of the reasons for the late submission of questions from the European Communities.

23. The representative of China agreed that questions should not be invited from Members, but with the Chairman but noted that during the bilateral meeting with the European Communities the explanation given by the European Communities for the late submission of the questions was not related to the procedural aspect of the review. China further noted that due to the complexity of the questions from the European Communities, it was going to take China a lot of time and effort to prepare the responses. China, nonetheless, appreciated clarification from the European Communities.

24. The representative of the European Communities noted that it had not at anytime suggested that it expected China to respond to their questions during this meeting. The European Communities, however, expected China to review the questions and provide them with a response at a time that China deemed appropriate. The European Communities will be very pleased to receive China contribution.

25. The Chairman stated that he would make a short factual report on the transitional review to the Council for Trade in Goods, and attach to this the relevant section from the report of the Committee's meeting.
