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Committee on Sanitary and Phytosanitary Measures

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WTO SPS COMMITTEE: TRANSPARENCY WORKSHOP OCTOBER 2017

COMMUNICATION FROM THE UNITED STATES OF AMERICA

The following communication, received on 31 May 2017, is being circulated at the request of the Delegation of the United States of America.

1. The United States appreciates the work of the Secretariat in organizing a Transparency Workshop to be held on the margins of the meeting of the SPS Committee on 2-3 November 2017. We value the Committee's work in strengthening Members' implementation of the transparency obligations in the SPS Agreement. The work of other organizations, such as the Organization for Economic Cooperation and Development¹, the Asia Pacific Economic Cooperation², and the World Bank³, has established that transparency in rulemaking can confer broad societal benefits through more effective and efficient regulations.

2. Articles 5.3 and 5.4, as well as the second recital of the preamble, of the SPS Agreement place a premium on measures that improve human, animal and plant health while minimizing unnecessary economic costs associated with implementation. In our view, the information accessed through public consultations can play a key role in the ability of the regulatory authority to minimize such unnecessary costs. In particular, regulators' consideration of and response to comments prior to finalizing an SPS measure, as provided for in paragraph 5(d) of Annex B of the SPS Agreement, is critical to minimizing the negative impact on trade.

3. At the Transparency Workshop held on the margins of the Committee meeting in November 2015, several Delegates indicated challenges in accessing the benefits of transparency due largely to a lack of established administrative procedures to interact with the range of interested individuals and groups in a fair, predictable and accountable way that can improve the efficiency and effectiveness – or in short, the quality – of SPS measures. In particular, several Delegates shared challenges in collecting information from the public – especially information from their agricultural producers, processors and traders – on SPS conditions to sufficiently inform the development and implementation of effective and efficient SPS measures.

4. Therefore, we suggest that the upcoming Workshop to be held on the margins of the Committee meeting on 2-3 November 2017 examine the various methods and tools for the conduct of public consultations in the SPS rulemaking process. We suggest a focus on the benefits of open, inclusive and accountable procedures in preventing obstacles to trade resulting from unjustified SPS measures. For example, Members could present case studies demonstrating procedures that prevented a negative impact on trade or that resulted in a more effective outcome on animal or plant health. Specifically, we believe the following topics would be of value to Members:

¹ See <https://www.oecd.org/mena/governance/36785341.pdf>.

² See <https://www.oecd.org/regreform/34989455.pdf>.

³ See <http://rulemaking.worldbank.org/> and

<http://documents.worldbank.org/curated/en/543401468176979961/pdf/556450WP0Box0349461B0GovReg01PUBLIC1.pdf>

Models and mechanisms for public consultation in SPS rulemaking

- OECD Secretariat to speak on models of public consultation (consultation procedures and tools, consultation documents, etc.)
- Exchange of Members' experiences in conducting public consultations (consultation procedures and tools, consultation documents, use of the internet, etc.) and internal mechanisms to link public consultations to SPS notifications
- The role of ePing in expanding private sector access to SPS notifications and opportunities for input into public consultations

Achieving the benefits of public consultation in SPS rulemaking

- Exchange of Members' experiences: Case studies of public consultations that improved regulatory quality through
 - expanding access to expertise, scientific evidence, and proposed alternatives from the public;
 - assisting regulators in synthesizing/reconciling information from opposing interests;
 - deploying techniques and practices to assess the quality of information provided by the public;
 - identifying unintended effects, practical problems and administrative burdens; and
 - improving the quality and accuracy of a risk assessment.
- Private sector views
 - The role and value of the public in providing technical and scientific information as well as knowledge of production and technologies;
 - The importance of having sufficient time to review draft measures after the regulator has developed a proposal but is still able to make changes in response to comments;
 - The value of openness and accessibility in limiting undue influence and in providing confidence in how the government reconciles information and comments submitted by the public; and
 - Utilizing contributions of expert participation in consultative and advisory groups while ensuring access and participation by interested persons outside of advisory groups.

5. The United States strongly supports the Committee's work on transparency. We appreciate the opportunity to share these views and look forward to the views of other Members.
