

THE TREATMENT OF PRECAUTION IN THE SPS AGREEMENT

Statement by Canada at the Meeting of 14-15 March 2001

1. WTO members recognize the central role of precaution in the management of risks in situations of limited scientific information, particularly in cases of risks to human life or health and animal or plant health. Indeed precaution is widely recognized as an important element in the formulation of measures in these areas.
2. The global community is engaging, through a variety of international fora, in discussions aimed at elaborating the appropriate role and application of precaution in the assessment and management of risk. This heightened interest in, for example, the CODEX Alimentarius, UNEP, and the system of multilateral environmental agreements, as well as the OECD, is to some extent rooted in increased consumer awareness and sensitivity to risk combined with an increasingly globalized system of production, distribution and consumption of products which may introduce additional sources of risk.
3. Welcoming these discussions in other fora, we have noted that the SPS Agreement is often referred to as relevant to the issue; in particular, Article 5.7. Such references are a recognition that the SPS Agreement is in many ways one of the most elaborated operational balance of rights and obligations on the role and use of precaution and in managing risks in a multilateral agreement. However, the relevance of the SPS Agreement to the issue of precaution is not limited to any one particular article.
4. For example, a central tenet of the SPS Agreement is the right, under Article 3.3, of each WTO member to set standards more stringent than established international standards so as to reflect properly their individual "appropriate level of protection". A country's appropriate level of protection includes, *inter alia*, its individual "tolerance to risk" and "degree of precaution". This sovereign right is, however, tempered or balanced by a number of obligations on Members, including those of Article 5.5, not to set such standards in an arbitrary or discriminatory fashion, i.e. to be consistent in their treatment of situations of similar risk.
5. It would appear that the relevance of the SPS Agreement to any discussion of the role and use of precaution in managing risks extends beyond Article 5.7. With this in mind, it would be useful for the SPS Committee to contribute to the international discussions on this issue at a future meeting of this body. To be most useful, a discussion within the SPS Committee should be a practical one, focused on an exchange of individual Member's experience in managing risks in situations of limited scientific information within the context of their rights and obligations under the SPS Agreement.
6. The object of such a discussion within the SPS Committee is not to revisit or re-negotiate the existing provisions of the Agreement. Nor should it aim at developing guidelines on precaution as such an undertaking would inevitably extend beyond the mandate of this Committee and into that of other multilateral bodies. Rather, the aim of the discussion would be to arrive at a common understanding on how precaution is addressed in the context of the existing rights and obligations of the SPS Agreement. This could then serve to inform the discussions ongoing in other fora. Given that the SPS Agreement's scope extends beyond, or overlaps with, the scope of other international bodies, this would facilitate coherent conclusions from such fora.