WORLD TRADE ORGANIZATION

G/SPS/GEN/366
20 December 2002

(02-7051)

Committee on Sanitary and Phytosanitary Measures Original: Spanish

BAN ON IMPORTS OF MEXICAN CANTALOUPE MELONS BY THE UNITED STATES

Statement by Mexico at the Meeting of 7-8 November 2002

1. My Government wishes to express its concerns regarding a measure which was recently adopted by the United States and which we regard as inconsistent with the provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

2. On 28 October 2002, the Government of the United States, acting through the Food and Drug Administration (FDA), decided to impose, in a totally unjustified manner, a general ban on imports of cantaloupe melons from Mexico. It should be pointed out that the Mexican health authorities were notified by telephone a few hours only before the measure was applied at the goods' points of entry into the US.

3. Despite the severity and lack of proportionality of the measure, the FDA decided to impose it without previously consulting the Mexican authorities in any way and, more serious still, in the absence of any type of imminent threat, substantiated by scientific evidence, regarding the safety of the fruit. Under the circumstances, it appears particularly strange that the US adopted such a measure precisely at the start of the current export season for Mexican cantaloupes – especially considering that the FDA had already inspected and admitted at least 59 consignments of the product for import since the beginning of the season.

4. It should be noted that indications of "supposed" health risks posed by Mexican cantaloupes exported to the US – even though such risks were not confirmed by the slightest scientific evidence – had led Mexico to work with the FDA over the preceding seven months with a view to improving regulations and inspection procedures for these products.

5. Hence, the imposition of this measure by the United States is a unilateral and unjustified restriction that is above all inconsistent with the SPS Agreement; this is substantiated by the following arguments:

(a) First, Mexico considers that in adopting the measure at issue the US should have satisfied each and every one of the obligations laid down in **paragraph 5 of Annex B** of the SPS Agreement, since the FDA had been aware of a "supposed" threat for several years, meaning that there was no right for it to adopt an emergency measure but that it should have followed and abided by the ordinary adoption procedures.

(b) Assuming, but not acknowledging, that the measure imposed was indeed adopted on the grounds of an allegedly imminent threat, Mexico considers that in proceeding in this manner the US violated the obligation in **paragraph 6 of Annex B** of the SPS Agreement, by failing to notify the measure through the WTO Secretariat.

(c) As regards the substance of the matter, Mexico informs the Committee that most of the companies affected by the measure (which are also the source of most of Mexico's

cantaloupe exports) have never been associated with any type of health incident and that they have, moreover, been assiduously cooperating with both the Mexican and the US health authorities. They are, however, affected by the prohibition in question, which clearly shows that it has been applied beyond the extent necessary to protect the health of US consumers, in blatant contradiction with the provisions of **Article 2.2** of the SPS Agreement.

(d) Many cantaloupe producers in the US as in other countries fail to meet the standards that this measure has imposed on Mexican producers. Thus, even though the US has reported similar safety problems regarding products from other countries, the measure has been imposed on Mexico alone. Moreover, microbiological tests conducted during concurrent periods in 2001 showed that contamination levels in cantaloupes produced in the US were practically identical to those in like Mexican products. In view of the above, Mexico considers that the measure at issue is openly discriminatory and hence **contrary to Article 2.3** of the SPS Agreement.

(e) Even though the FDA has announced that there is a procedure which should serve to exempt from the ban specific companies that provide evidence of compliance with FDA standards, no criteria or requirements have so far been specified for demonstrating such compliance, nor has any timeframe been set for processing the corresponding applications. As part of the procedure, the FDA has also provided for an *in situ* inspection of cantaloupe plantations and packaging plants, which is highly onerous for Mexican companies and especially those that have never been associated with the "supposed" health risk at issue. Thus, in Mexico's view, another reason why the ban cannot be maintained derives from **Article 5.4 and 5.6** of the SPS Agreement, because the measure is more trade restrictive than required to achieve an effective level of protection and fails to take account of the negative effects for Mexican cantaloupe exports.

(f) Lastly, it should be emphasized that the producing firms that have allegedly been associated with certain health risks are located in specific parts of Mexico. In this connection, the FDA has clearly made no effort to adapt the measure to the characteristics of the different production areas, meaning that the US has violated the obligation laid down in **Article 6.1** of the SPS Agreement.

6. On the basis of the above reasoning, Mexico considers it essential for the United States to repeal the measure imposed on Mexican cantaloupe exports without delay and thus to comply with its obligations under the SPS Agreement.

_____