

**COMMENTS FROM THE EC NOTIFICATION AUTHORITY AND ENQUIRY POINT
TO THE ISSUES PROPOSED FOR CONSIDERATION BY THE SECRETARIAT
AND TO MEMBERS REACTIONS**

Special Meeting of the SPS Committee on the Operation of Enquiry Points – 31 October 2003

The following communication is being circulated at the request of the Delegation of the European Communities.

1. As announced by the WTO Secretariat, the objective of this meeting is to use panel presentations and discussions to address specific problems countries might be facing which are inhibiting the effective performance of their Enquiry Points and identify possible solutions. This was already explained in a letter from the Secretariat underlying this opportunity of bringing together officials from Members' Enquiry Points and National Notification Authorities for an in-depth discussion of problems and concerns relating to the functioning of these institutions.

2. The European Communities (EC) supports this initiative and consequently refrained from sending any comments or presentations. Instead, it was our view that the best contribution of the European Communities could be to complete thoroughly the questionnaire on the operation of the EC SPS Enquiry Point and Notification Authority (EC NA/EP).¹ In doing so, several difficulties have been identified and documented. Furthermore, in addition to the questionnaire the European Communities also prepared a "Reflection Note" on EC operational procedures and recent experience.²

3. Further to the documents above, and with a view to facilitate the exchanges during the meeting, the EC NA/EP has analyzed several documents of relevance and made comments and/or observations to some interesting points raised.³

G/SPS/GEN/378 by China

4. This paper by China precedes the convocation of the meeting, but it is very useful and has been quoted already by Australia (G/SPS/GEN/429). In effect, two tables are elaborated by China (Tables 4 & 5) which provide clear elements. The European Communities is glad to see that the EC NA/EP rates among the best regarding "timing to submit comments" and "period for adaptation", two features that, should be carefully considered when preparing legislation and sending notices. The European Communities shares the view of China that a limited comment period on notifications (with

¹ G/SPS/W/103/Rev.1 - Questionnaire on the Operation of SPS Enquiry Points and National Notification Authorities (15 September 2003).

² G/SPS/GEN/456

³ G/SPS/GEN/378, G/SPS/GEN/425, G/SPS/GEN/427, G/SPS/GEN/429, G/SPS/GEN/430, G/SPS/GEN/436, G/SPS/GEN/438, G/SPS/GEN/441, G/SPS/GEN/442.

significant effect on EC export trade) is a major difficulty that inhibits the efficacy of the SPS Agreement. For future meetings, it may be a good idea to encourage Members to focus on tables such as the two contained in China's document and use them to evaluate on an accountable basis the degree of compliance of WTO Members with the recommendations by the Committee.

G/SPS/GEN/425 by Argentina

5. In paragraph 1, Argentina states "*Obviously, not all WTO Members suffer the impact of trade restrictions in the same way*". This is a very important observation, and the EC NA/EP seizes this opportunity to recall that not all agricultural trade consists of trade in commodities; there are also important exchanges of transformed products and genetic material. Most notified SPS measures affecting the European Communities are those related to the export conditions applicable to genetic material (reproductive material) of plant and animal origin such as nursery trees, potted plants, various seeds, embryos and ova of terrestrial and aquatic animals, select-stock breeds etc., followed by measures concerning high-quality foods such as fresh and unripe cheese, cured pork meat and wine. Many of these measures do not comply with IPPC and OIE recommendations. We will come back to this observation later.

6. The procedure outlined by Argentina in paragraph 4 is very similar to the one followed by the European Communities and Australia, with emphasis on the task of identifying "*those notifications on the list which are of outstanding significance, either because of their subject-matter or on account of their potentially negative impact on Argentine exports*". Our experience is that without this preliminary screening, the excess number of notifications mentioned already by China and Australia could lead to important notifications being missed. Nevertheless, it is clear to the EC NA/EP that this task requires well qualified and experienced officials and maybe more than one and, if present trends continue, more than two officials!

7. We could ask ourselves: "Would the administrative authorities sponsor these posts instead of other competing ones?" The answer would probably depend on how developing countries arrange their priorities, from which it follows that the sponsorship of this post could be part of "technical aid" programs.⁴

8. Of the difficulties outlined by Argentina, the European Communities shares the view on texts being often available only in non-WTO languages, because no resources are available for translation. The EC EP/NA takes note of the difficulties indicated by Argentina in paragraph 10.

G/SPS/GEN/427 by IICA

9. This paper identifies, in several parts of the text, that a key factor in the failure in notifying, sending comments and replying to questions is that "*the mechanisms for communication among institutions involved with sanitary and phytosanitary measures are deficient or non-existent*". The EC NA/EP experience is that this lack of "*mechanisms for communication among institutions involved with sanitary and phytosanitary measures*" appears also to exist in developed countries. Furthermore, and this makes matters worst, the administrative units or agencies handling the replies to comments do not inform the NNA or EP of the follow-up given to the EC comments. Therefore, we wonder if it would be a good policy to relieve the NNA/EP from the duties of ensuring that a reply has been made. This matter of further clarifying the role of the NNA has also been highlighted by Canada.⁵

⁴ It can be seen in the papers by Venezuela and Senegal that the eventual sponsorship of the post may be more important than the training of an official to perform these duties if this official quits the post rapidly. See also on this the IICA programme (G/SPS/GEN/427).

⁵ See G/SPS/GEN/430, by the Secretariat, 14 October 2003.

10. Another feature of major importance is the IICA observation that "*The continuity of the persons participating in the activity is critical for utilizing the experience gained*" (paragraph 12). From the experience gained in the three last years, the EC NA/EP endorses this view because it has noted dysfunctions in other WTO Members' NNA and EP when the responsible official changed post or was absent for extended periods. In our view, no developed country is free from this problem.

G/SPS/GEN/429 by Australia

11. Concerning the comments on resources, the EC NE/EP shares the views of Australia (also mentioned by Argentina) that the increasing volume of SPS notifications requires trained officials capable of ensuring that the SPS notification procedures are observed. The EC NA/EP calls this task the "Control Official responsible for good management practices". As explained in the reply to the questionnaire, the European Communities, like Australia, has two dedicated administrative officers in charge of retrieving and circulating to interested parties all SPS notifications, coordinating responses to comments received from other EPs, and requests for further information. It should be taken into consideration that the EC NA/EP has an extra task, i.e. consulting the EC member States prior to any paper or document being sent to the Secretariat.

12. Australia mentions that "*the position is enhanced by the maintenance of electronic address lists to ensure that notifications are distributed as soon as possible to relevant national agencies and other interested parties. The distribution lists are constructed by way of self-nomination, ensuring that interested parties receive relevant notifications. This ensures that interested parties receive notifications quickly, giving the maximum time for review of and comment on notified documents.*" The European Communities concurs to this observation; nevertheless, it should be noted that for mailing lists to be useful it is important to spend at least half an hour per week updating them. Once a year, members of mailing lists should be asked if they wish to remain on the list and implementing the consequent changes.

13. Regarding "documents availability", the EC NA/EP has the policy of distributing, prior to any request, the full notified text in English, French and Spanish, to a list of around 75 e-mail addresses. This number fluctuates because our mailing triggers numerous "error messages" (no receipt notice, no existing address, the mailer cannot handle our mail and similar messages); these addresses are therefore removed.⁶

14. After three-years experience of the EC NA/EP system combining a significant number of individual replies to individual requests into a single action appears to work satisfactorily. It can be calculated that by this system the EC NA/EP distributed last year more than 12,000 documents (considering the 3 texts and the individual addresses) amounting to around 250,000 pages. Inputs from other Members about this policy would be much appreciated, and this meeting is an important occasion for this.

15. Finally, regarding communication with the EC National Enquiry Points, the European Communities shares the Australian view that e-mails are effective conduits for communicating information to the relevant NNA, although because of the administrative structure of the European Commission, and with a view to make any mail official, we must also send signed faxes. On the other hand, when the EC NA/EP receives questions and comments, all e-mails are registered after transformation into a document.

G/SPS/GEN/430 by the Secretariat

⁶ It is interesting to note that in countries in which there is a single e-mail for NNA and EP, the error rate is minimal.

16. The Secretariat echoes the subject identified by New Zealand: (a) how to assist and support better and more efficiently systems to ensure responses from developing Members to requests for full texts of notified measures; and (b) how to avoid or reduce delays in the translations of notifications. Concerning point (a) the EC NA/EP can manage the three WTO official languages (English, French and Spanish) but up to now the biggest difficulty has been to translate (or to obtain a summary) from languages other than these. To overcome this difficulty, we send requests to the EC delegations that, in most cases, count on local personnel with the capacity to provide unofficial translations, although this is not a satisfactory solution and entails a lot of mail exchanges before a positive result is reached. Point (b) is not a concern of the EC.

17. On the issues raised by Canada, our observations are: (a) the European Communities has experienced the same difficulty, i.e. a number of countries neither provide documents nor an acknowledgement within five days as recommended (on our side, we send documents prior to any request); (b) the European Communities is also left wondering if the comments they have provided have been received; (c) the European Communities supports the need to further clarify the role of the National Notification Authority with respect to Annex B, paragraph 5(d) regarding the obligation of Members to discuss comments upon request, and to take the comments and the results of the discussions into account.

18. On what the Secretariat calls "concerns raised by more than one of the Members providing comments", the EC comments follow the observations: (i) "The workload for SPS Enquiry Points is increasing, creating pressure on resources": we share this view but this has to be taken as a positive development, i.e. more Members fulfilling their obligations; (ii) "When a full-text is requested from the notifying Member, these are not always provided within the recommended five-day response time": this has been the experience of the EC NA/EP; (iii) "Some requests for full-texts are unanswered": this has been the experience of the EC NA/EP; (iv) "The notifying Member fails to acknowledge receipt of comments on a notification: the EC NA/EP has also experienced this problem.

G/SPS/GEN/436 by the Department of Plant Protection of Pakistan

19. The EC NA/EP takes note of the difficulties (asymmetry) found by Pakistan (and other developing countries) as importers and exporters. Notice is also taken of the technical cooperation programme "Revision of Plant Quarantine Regulations" submitted to the Ministry of Agriculture: it illustrates the financial resources required to enable a developing country to overcome the asymmetry referred to above and enable it to apply the SPS Agreement.

G/SPS/GEN/438 by Panama

20. The EC NA/EP takes note of this communication. Relating to paragraph 6, maybe Panama could consider using the existing data bases in WTO which contain all the necessary information. For this to be possible, it is necessary to train an official in this task.

G/SPS/GEN/441 by Senegal

21. The EC NA/EP has carefully read the text submitted by Senegal, which it found clear and concise. This document illustrates the reality of the application of the SPS Agreement by developing countries.

G/SPS/GEN/442 by Venezuela

22. No special comments in relation to this meeting.

Further remarks from EC NA/EP

23. It is noteworthy that very few references have been made to the role of traders. Maybe this is an area to evaluate in the future.

24. Numerous notifications do not identify clearly the international standard (CODEX, IPPC, and OIE) concerned by the notice and deviations from this. The instructions from the Committee are clear on this.⁷

⁷ According to G/SPS/7/Rev.2 (2 April 2002) Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) in filling point 8. "If a relevant international standard, guideline or recommendation exists, put a cross in the box provided for the appropriate standard-setting organisation and give the appropriate reference of the existing standard, guideline or recommendation and briefly describe how the proposed regulation deviates from the international standard, guideline or recommendation. If no international standards, guideline or recommendation exists, put a cross in the box 'none'"