

INTERNATIONAL HEALTH REGULATIONS REVISION

Communication from the World Health Organization (WHO)

The following communication, dated 19 October 2004, is being circulated at the request of the World Health Organization.

1. The International Health Regulations (IHR) revision project is pleased to report that at the beginning of this month all 192 WHO Member States received the draft revision for review of the proposed amendments to the IHR. This draft is the culmination of the extensive consultation and testing of concepts that has taken place with all major stakeholders since WHO last updated the SPS Committee in March 2000. Technical and expert meetings were held with international shippers and ship owners, aircraft operators, and our international counterparts such as ICAO, IMO, ISF, and the WTO Secretariat. In January 2004 a preliminary draft working paper of the proposed Regulations was sent to all Member States and other major stakeholders for their further comments. A series of regional and subregional consultations were held from March to July 2004 in which the Member States provided direct input into the working paper. These comments and reports from Regional committees meetings are available on the IHR website: <http://www.who.int/csr/ihr/revisionprocess/comments/en/>

2. The next step in the revision process is to submit the draft revision for review and approval of the proposed amendments to an Intergovernmental Working Group that will convene at the Palais des Nations, Geneva, 1-12 November 2004. The list of documents for the meeting is available at the following website: <http://www.who.int/gb/ghs/e/index.html>

3. The March 2000 report of the International Health Regulations Revision to the SPS Committee stated that the potential for conflict between the IHR and the SPS Agreement (and other international legal regimes) would undoubtedly grow in future as the current Regulations were being rewritten, to, amongst other things, provide a considerably expanded scope for preventing the international spread of a wide range of diseases¹. The key areas of potential overlap with WTO agreements were related to international disease events and/or contaminated food which could disrupt the distribution of food products and the potential for an IHR dispute ruling that could interfere with subsequent WTO actions. The concern about minimizing possible conflicts and maximizing synergies with the SPS and other international instruments was raised by several Member States in their submitted comments and at the regional meetings.

4. To this end, the WHO commissioned a team of respected international lawyers to review the January 2004 working paper in light of other international legal instruments and received a number of comments and contributions on this topic. A summary of relevant conclusions is available on the IHR

¹ Beyond cholera, plague and yellow fever.

IGWG website: http://www.who.int/gb/ghs/pdf/A_IHR_IGWG_ID1-en.pdf. Generally speaking, it was felt that WTO agreements and the proposed revisions are compatible and offer broad areas of synergy. The relevant WTO agreements in fact recognize in various ways the right of Members to protect health from trade-related risks through the application of certain disciplines, which may accommodate obligations or recommendations based on the International Health Regulations that affect international trade in certain goods and services.

5. The review also identified two possible areas of overlap. First, the IHR prohibition on requiring health documents other than, "routine document requirements concerning the public health status of goods or cargo in international trade [issued] pursuant to applicable international agreements". WTO agreements, on the other hand, would arguably allow the Parties to those agreements to impose "non-routine" document requirements concerning the public health status of goods and cargo. In order to eliminate this possible conflict, the word "routine" does not appear in Article 31 of the latest draft revision.

6. The second possible overlap concerns the issuance by WHO of temporary or standing recommendations. Despite their non-binding nature, such recommendations give States Parties the authority to implement them, a right that might conflict with obligations under the relevant WTO agreements. Even though actual conflicts could be considered unlikely in view of the disciplines contained in the WTO agreements, attempts have been made to facilitate the compatibility between recommendations based on the International Health Regulations and trade-related obligations through the establishment of criteria similar to those used under the WTO agreements to justify measures that restrict trade.

7. In closing, the IHR revision projects is happy to continue working with the SPS Committee to keep it apprised of health developments regarding outbreaks that can impact on international trade. Thank you for the opportunity to appear before you today.
