

SPS AGREEMENT - TRANSPARENCY PROVISIONS

Submission by the European Community at the meeting of 12-13 March 1998

1. The European Community would like to refer to its previous document G/SPS/GEN/41, where the importance of the full implementation of the transparency and notification procedures, as a fundamental obligation WTO obligation, was stressed. As a follow-up to the above-mentioned document, we wish to reiterate that transparency provisions and especially the principle of preliminary publication has always been considered one of the cornerstones of the Agreements signed in the WTO framework. The above provisions are contained in GATT Article X and in the 1979 GATT Understanding on Notification, Consultation, Dispute Settlement and Surveillance, as well as in the specific WTO Agreements, where transparency provisions are coupled with the relevant measures.

2. By and large, WTO transparency provisions fulfil an important role in ensuring the proper functioning of the multilateral trading system, in helping to prevent unnecessary trade restriction and disruption from occurring and in providing general as well as providing specific information on market opportunities. To a certain extent, these can help prevent trade disputes from arising. Increased transparency is essential to protect trading partners from hidden protectionism through unnecessary non-tariff barriers to trade. Any WTO Member will draw benefit from such an approach. Transparency provisions provide a valuable first step in ensuring that trade and SPS measures are developed and implemented in a mutually supportive way.

SPS Agreement

3. Article 7 of the SPS Agreement provides that Members shall notify changes in their sanitary and phytosanitary measures and shall provide information on the above in accordance with the provisions of Annex B. Members are therefore required to notify other Members of changes to their sanitary and phytosanitary regulations which may have a significant effect on trade and are requested to set up Enquiry Points to respond to requests for general as well as specific information on the relevant measure. These obligations are partially reflected in document G/SPS/7, "Recommended Notification Procedures".

4. Notwithstanding the above, the provision is fulfilled only by a few Members and even then, only in part. According to document G/SPS/GEN/27, "Implementation of Transparency Obligations", a number of Members have not yet informed the Secretariat of either their Enquiry Point or the National Notification Authority. Furthermore, according to our records, only 41 Members, amongst those listed in the above paper, mainly developed countries, have notified sanitary and phytosanitary measures to the Secretariat. It is clear from the data available since January 1995 that a large number of Members have not informed the SPS Committee of existing measures or new measures taken in order to ensure the implementation of the Agreement in accordance with Article 13, and only a few notified SPS measures introduced after the implementation of the SPS Agreement. Bilateral or plurilateral agreements between Members are rarely notified.

5. Article 10, Special and Differential Treatment, and Article 14, Final Provisions, of the SPS Agreement do not specifically provide for phased implementation of transparency provisions for developing countries. However, least-developed countries can benefit from a derogation of five years for the implementation of the Agreement's provisions, including transparency. In the long run, increasing technical assistance for developing country Members should partially address this problem.

6. However, the European Community is aware of several SPS measures which clearly affect trade, which are not based on international standards, guidelines or recommendations and therefore fall within the scope of the SPS Agreement, namely Annex B, and which have never been notified. Of the 647 draft measures<sup>1</sup> notified since the date of implementation of the SPS Agreement, the European Community still lacks the texts of 161 notifications. Often the EC Enquiry Point's requests for relevant information are fruitless, as these are ignored. To overcome this, ad hoc mutual agreements were reached recently with a number of WTO Members in order to forward the text of draft measures as soon as these are notified to the Secretariat. However, we consider that this should not constitute the normal day-to-day working procedure.

#### Suggested actions

##### (a) Communication of the text of the proposal

7. An examination of the text of the draft regulation is essential to determine whether its adoption is likely to create discrimination or unnecessary barriers to trade. Since Members are required to provide a copy of the draft on request, it would be appropriate for the text to accompany the notification sent to the WTO Secretariat. It should be made compulsory for the concerned party to attach at least a summary in one of the WTO languages should the text not be provided in at least one of the WTO working languages. To enable such an approach to function efficiently, draft measures should be provided to the Secretariat in electronic form in order to allow the Secretariat to include them on their Internet web site, from which they could be easily withdrawn by Members. A solution should be found for a number of documents which are not meant to be available to the public - possibly through limiting access to that part of the web site.

8. At present, the notification format provides only for limited information on the measure concerned, thus not clarifying the extent and the importance of the measure itself.

##### (b) Time allowed for comments

9. Members, except in cases of urgency, are obliged to allow a reasonable period of time for other Members to make comments on the proposal notified (Annex B). The recommended period for comments is 60 days, even if Members are encouraged to allow a short period for comments of 45 days, whenever possible. This is seldom met by Members due to procedural problems in most of the cases. The availability on a specific web site (encoded) of texts of the measures notified - notification formats are on Internet already - would solve the above problem.

10. If the above should be ruled out, other available options could be:

- to run the comment period from the date on which the notification is issued by the Secretariat;

---

<sup>1</sup> This number does not take into account EC measures.

- to extend the period for comments on request in order to reach at least the sixty days period recommended.

(c) Enquiry Point and Notification Authority

11. In the most recent period we noticed frequent changes in both the above authorities without the Secretariat being properly informed. The Committee should recommend that Members inform the Secretariat of such changes within five working days.

Conclusions

12. As the Committee considers transparency as one of the fundamental provisions of the Agreement, a significant effort should be made to properly fulfil the notification and enquiry provisions, without which this essential principle would be nullified, with the risk of jeopardising the entire implementation of the Agreement. In the light of the above, the European Community would like to remind Members of their obligations and invite the Committee to consider revising document G/SPS/7 in order to reinforce the importance of Members meeting these provisions. The notification procedure is the fundamental instrument to ensure transparency in the application of the Agreement and it is therefore essential that Members regularly notify their proposals under the conditions laid down by the Agreement.

---