

**UNDUE DELAYS IN RELATION TO ARTICLE 5
(RISK ASSESSMENT) AND INTERIM MEASURES**

Statement by Thailand at the Meeting of 28 February-1 March 2007

The following communication, received on 1 March 2007, is being distributed at the request of the Delegation of Thailand..

1. As Members are encouraged to provide information regarding their experiences on the implementation of the SPS Agreement in the context of undue delays, Thailand would like to share its experiences accordingly.
2. The fact of the matter is that for more than six years Thailand has suffered from actions taken by a Member during the course of a risk analysis without, so far, knowing how much longer it will take before the analysis is expected to be finalized. Thailand strongly believes that this problem would not have happened if a risk assessment had been undertaken as appropriate to the circumstances of the health risks involved, with comments from stakeholders as well as all other legitimate factors taken into account, and if the risk assessment had been finalized within a reasonable period of time before implementing a measure in accordance with or consistent with the outcome of the risk assessment.
3. But the problem occurred when a Member imposed interim measures shortly after the issuance of a draft IRA, without further consultation, in which it changed SPS measures considerably. This taking action greatly affected international trade, including from Thailand.
4. The interim measures have been in place as if the Member adopted the proposed measures under the draft IRA without prior notice and consultation as required by the SPS Agreement. In particular, the measures imposed were not directly related to the draft IRA. It should be regarded as a unilateral action.
5. This gives rise to serious concerns over the legitimacy of such interim measures, for which there is no provision under the SPS Agreement. The relevant question in this regard is whether this is a provisional measure under Article 5.7 or whether it is an urgent situation.
6. Thailand would like to emphasize in the Committee that in both situations a Member has to comply with all obligations, in particular those relating to a scientific-basis for the measure, consistency, prior notice, opportunity for discussion and comments, and those comments taken into account.

7. The SPS Agreement provides that a provisional measure may only be adopted when relevant scientific evidence is insufficient, however the provisional measure must be reviewed within a reasonable period of time. For an urgent situation, all of the other provisions mentioned above must be complied with, except that a Member is allowed to take the measure without prior notice.. In this regard, Thailand has just learned that the interim measures should not be regarded as provisional measures as all necessary scientific evidence is already available. Neither can the interim measures be considered as necessary to respond to an urgent problem as there was no indication of an emergency situation at the time the measure was notified to WTO Members.

8. Thailand has been waiting for many long years for the finalization of the draft IRA, while at the same time trade is being affected by interim measures of questionable legitimacy. The matter is not likely to be resolved soon as there is now another revision of the draft IRA for which no one can predict the time frame.

9. In conclusion, Thailand would like to explore the views of the Committee, in particular on the issue of legitimacy of interim measures under the provisions of the SPS Agreement, as well as on possible solutions to the problem of undue delay in relation to risk assessment. Thailand would like to suggest that while a risk assessment is in progress, the Members concerned may mutually agree on possible interim market with measures that could appropriately address the health concerns of the importing Member in a science-based and least trade restrictive manner.
