

TRANSPARENCY

Submission made by India at the Meeting of 10-11 June 1998

1. Article 7 of the SPS Agreement states that:

"Members shall notify changes in their SPS measures and shall provide information on their SPS measures in accordance with the provisions of Annex B."

While this provision is an integral and important part of the Agreement, it is our view that the issue of transparency needs to be considered in a broader perspective. Transparency, we feel, cannot be limited to issues of notification and the need to ensure fulfilment of notification obligations alone, and would need to be viewed as an integral part of the primary objective of the Agreement that measures taken by Members do not constitute hidden barriers to trade.

2. In our view, therefore, issues of transparency need to be considered from two broad aspects. First, as generally accepted, it is of vital importance to ensure that all Members are up to date in the fulfilment of their notification obligations with respect to the implementation of the Agreement. The second aspect from which transparency provisions need to be examined is in ensuring that the process of developing SPS measures is made as transparent as possible, especially in view of the potential that SPS measures have for affecting international trade. This is particularly important where new measures are being introduced and where, as per Annex B of the Agreement, the notifying Member is expected to provide adequate opportunity to interested Members to comment on the proposed regulatory measures.

3. Viewed from this aspect, it is clear that transparency is critical for ensuring that trade is not subject to hidden barriers, since non-availability of relevant information regarding the standard(s) adopted by the importing countries can hamper free flow of trade. Very often the notifications of Members do not contain details regarding the methodology of risk assessment and the factors taken into account for determining the appropriate level of SPS protection. It is often difficult and time-consuming to obtain information in this regard since, at times, more than one domestic agency (within a Member) is involved in establishing these standards. The documentation/information provided is at times in the language of the importing country which may not necessarily be one of the official languages of the WTO. Moreover, requests for detailed information are responded to after a considerable time has elapsed and often after the expiry of the time period for making comments, rendering the whole exercise futile.

4. In this context we would like the Committee to consider the following issues in the course of the review:

- (i) A primary issue which needs to be examined is whether the notification provides sufficient information to enable Members to become acquainted with the proposed SPS measures. Often only a very brief description of the proposed measure is given. This

necessitates that details of the measure have to be then obtained from the Enquiry Points and by the time that these details are actually obtained, the last date for comments is invariably past. Similarly, the main legislation which is being amended is also usually not available and its procurement too takes a long time, which further delays the process. It also needs to be strictly ensured that the notification is in one of the official languages of the WTO only, and not in any other language.

(ii) A second issue which is significant relates to the time that is provided to the Members to analyze and respond to the new regulations that are proposed to be implemented. Article 2 of Annex B states that except in urgent circumstances, Members shall allow a reasonable interval between the publication of an SPS regulation and its entry into force, in order to allow time for producers in exporting Members, particularly in developing countries, to adapt their products and methods of production to the requirements of the importing Members. This recommended procedure has also been elaborated in G/SPS/7. However, it is unfortunate that very few notifications proposing the adoption of new SPS measures actually fulfil the obligations specified in Article 2 of Annex B.

(iii) It is clear that Members proposing new SPS measures need to provide adequate time for other interested Members to raise concerns. If complete details are not provided, as is often the case, then it is not possible for Members to obtain all necessary documents related to the proposed notification, analyze it and submit comments, all within a time frame which is invariably short. In fact, we have specific instances in the past where notifications have been issued on the last day of a month and which have indicated the next month as the date of entry into force, thereby providing practically no time for Members to respond to a proposed measure. One reason for this is that the Agreement does not specify what should be deemed to be a sufficient interval between the circulation of a proposed measure and its entry into force. While recognising the need for flexibility in urgent circumstances, India feels that this is an issue which needs to be addressed in the review of the Agreement.

(iv) Annex B pertaining to SPS regulations stipulates that proposed regulations be discussed bilaterally upon request. It is however felt that at times the comments are not given due consideration by the notifying Member, and the entire procedure is gone through only routinely. It may be appropriate for Members to be given an opportunity to present the comments personally and the Member who presented the comment should be intimated of the outcome of the discussions on the comments presented. In this context we would like to suggest that Members should specifically respond to Members who have submitted comments or raised objections on the proposed notification. Another alternative which could be considered is to ensure that the proposed measure, the various comments which may have been received, and the notifying Members response to the comments are all put on the Internet. This would go a long way in increasing the transparency in the procedure.

(v) We would also like to highlight the importance of a second interval of time, whenever new measures are being introduced. This second time frame that we are referring to is intrinsically related to the objective of providing producers sufficient time to adapt to the new requirements of the importing countries. It is logical to assume that producers in the exporting countries would commence initiating such changes only after the consultation process has been exhausted and the concerned Member has indicated its intention to finally promulgate an SPS measure, whether in the form that it was originally notified or in an amended form as a result of the consultations entered upon. This interval is perhaps as critical, if not more so, if SPS measures are not to act as barriers to trade. We hesitate to qualify this time period and would only like to state that, except in urgent circumstances, it should be as long as it would take for producers to practically adapt to the changed requirements. If such a period is not provided for, new SPS measures initiated by Members

could very easily result in the temporary nullification of exports, particularly from developing countries.

(vi) It would also be appropriate to create a suitable data base incorporating Member's SPS rules and regulations having a major trade impact so as to provide precise knowledge about SPS requirements of various countries, particularly since many of the rejections are due to lack of knowledge of these aspects. It may be noted that at times there is also lack of awareness of the legislative requirements of the importing country. It may be possible to mandate certain obligations on the importing Member that he keep the suppliers/exporting Member fully informed about the SPS obligations that would have to be met for the goods sought to be exported. It may therefore be useful to circulate standards on the Internet to facilitate easier and quicker accessibility.
