

WORLD TRADE ORGANIZATION

G/SPS/GEN/88
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Committee on Sanitary and Phytosanitary Measures

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SPS NOTIFICATION G/SPS/N/EEC/58 (EUROPEAN COUNCIL DOCUMENT VI/5637/98/REV.5)

Submission by the United States

1. The Commission of the European Communities published VI/5637/97 Rev 5 - EN, a revision of VI/5637/97 Rev 4 - EN a proposal notified to the WTO as G/SPS/N/EEC/58. This regulation lays down certain measures for implementing Council Directive 95/69/EC including the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector.

2. The United States appreciates the EC response to our concerns on the EC proposal G/SPS/N/EEC/58. However, we continue to believe that it could create unnecessary obstacles to trade which could have a negative effect on our well-established and substantial trade with the European Communities in the feedstuffs arena. For the benefit of the Committee, we would like to take the opportunity to further elaborate some of our concerns and questions.

Background

3. In the June 1998 SPS meeting, the United States raised some concerns with the EC proposal G/SPS/N/EEC/58 laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector. The United States questioned the EC requirement for a list of third country establishments operating under standards that are at least equivalent to those laid down in the Annex of the EC Directive 95/69.

4. The United States commented that the requirement of a list of third country establishments would create needless expense and bureaucracy and inhibit trade in feedingstuffs without creating a safer food supply. The United States was unclear as to the Commission's need to extend its list requirements beyond those necessary and sufficient to compile an accurate listing of third countries whose systems have been deemed equivalent to the EC system. The United States also requested clarification as to the product coverage of the proposed directive.

5. The European Communities responded that the standard EC framework consists of a list of third countries and their establishments exporting to the European Communities. The European Communities stated that the third country's competent authority would provide guarantees that those establishments on the list are operating under standards at least equivalent to EC standards. Establishments can be added to or removed from the list based on the screening by the third country's competent authority. The EC Commission will perform inspections based on resources. The inspections will focus primarily on the ability of the third country's competent authority to ensure compliance with EC requirements.

6. The European Communities stated that the proposed directive would not apply to petfood but only compound feedingstuffs, additives, and other products entering the production of feedingstuffs for farm animals.

7. In its written response, the European Communities recognized that the text of the regulation is of fundamental importance for trade relations concerning feedingstuffs between the United States and the European Communities. The European Communities stated that the proposal is based mainly on the identification of criteria which should enable the Commission to define which trade partners are able to provide safeguards equivalent to those in the European Communities. The European Communities also states that certain feed additives and feedingstuffs do pose a health risk.

8. The European Communities stated that the only specific request to third countries in the proposal is to provide the Commission, once "equivalence" has been established, with a list of establishments that the third country has approved on the basis of such an "equivalence" understanding. In addition, there are no fixed time limits by which the lists must be provided and trade can continue under transitional measures which are based on existing import rules.

9. The European Communities indicated that after careful consideration of the US comments, it amended the text of the regulation. The Standing Committee for Feedingstuffs expressed a favorable opinion on an updated version on 23 June 1998. To avoid any misunderstanding, the European Communities modified the wording of Articles 8 and 9, and of the corresponding parts of the Annex and of the preamble, by removing the direct reference to the law of third countries.

Need for Further Clarification

10. Our understanding of the EC response to our comments is that the European Communities will engage in equivalency discussions, in accordance with the SPS Agreement, with third countries to reach a determination of equivalency of the respective systems, and until an equivalency agreement has been reached, trade will occur under the transitional measures. Is this understanding accurate?

11. Upon study, the "transitional rules" appear quite confusing. Please outline the transitional rules, the reasoning behind such transitional rules, and how they deviate from the current import rules. When do these transitional rules become effective?

12. The draft directive would mandate a transitional period during which no third nation or facility thereof can export feeds or feedingstuffs to an EC member country without hiring an in-country sales/import representative. Please elaborate on this requirement and the reasoning for such requirement.

13. How would partnerships or consortiums of third country traders be treated? Would one agent suffice for all companies involved or would each component company need to have a representative? Since each representative could have multiple "clients", who is ultimately responsible for the actions of the representative? What criteria would the European Communities impose on individuals and firms wishing to serve as importer representatives?

14. In addition, the European Communities would hold the exporting third country company responsible for the representative's registration and continued observance of EC law. Please specify which EC laws apply.

15. We appreciate the EC objective of safeguarding public and animal health and the environment with respect to animal feed. We too are interested in this objective. We are also encouraged with the EC attention to the equivalency of systems. Please specify in detail the public, animal, and environmental risk concerns that this proposal, or any previous directives that this proposal is based on, addresses.

16. Please specify which products are covered under this proposal and the public and animal health reason for these products to be included. What are the risks associated with these products?

17. The European Communities response states "... for certain feed additives and feedingstuffs, since, as has been demonstrated by past experience, they do pose a health risk". This language is unfortunately vague. Please provide the specific information on these past experiences of public health risk, including the specific feedingstuffs and ingredients and in what context the risk was presented.

18. The EC response states that the reference to "country law" in Articles 8 and 9 has been deleted. In our review of the various revisions of the proposal, we did not see this change. Neither Rev. 4 or 5 show reference to third country law in those articles. In fact, reference to a third country's internal law is still referenced in Article 2. Please clarify this discrepancy.

19. Article 5 refers to "inspections on-the-spot" to be carried out by experts of the European Commission and Member States. Please clarify the meaning of on-the-spot inspections. Are these intended to be unannounced inspections? How often will the inspections occur? What will the inspections encompass? With what requirements will the European Communities be inspecting for compliance or equivalence?
