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Committee on Sanitary and Phytosanitary Measures

SUMMARY OF THE MEETING HELD ON 10-11 JUNE 1998

Note by the Secretariat

1. The Committee on Sanitary and Phytosanitary Measures ("the Committee") held its eleventh meeting on 10-11 June 1998, under the chairmanship of Mr. Alejandro Thiermann (United States). The agenda proposed in WTO/AIR/853 was adopted with amendments.

2. The Committee observed a minute of silence in tribute to Mr. Randy Benoit (Canada). Several delegations took the floor to praise his high level of expertise, unique negotiating skills, the personal contributions he made since 1989 to the negotiation of the SPS Agreement, as well as his active participation in the work of the SPS Committee.

1. Implementation of the Agreement

3. The Chairman reminded the Committee that the timely submission of papers to the Secretariat was essential to ensure that these were translated and distributed to Members well in advance of the meetings so that meaningful discussions could take place.

(a) Information from Members

(i) United States - Facilitation of informal consultations on specific SPS issues (G/SPS/GEN/74)

4. The representative of the United States reminded the Committee of the potential usefulness of Article 12.2 of the SPS Agreement which called for the Committee to "encourage and facilitate *ad hoc* consultations or negotiations among Members on specific sanitary and phytosanitary issues". Such a procedure could take the form of informal, confidential consultations, without prejudice to Members' rights and obligations under the SPS Agreement or any other WTO agreements. Speaking from experience, the delegations of Chile and the European Communities concurred that Article 12.2 was a useful instrument in solving SPS issues. Chile underlined that many trade grievances were resolved, or clarifications obtained, using not only Article 12.2, but also Article 5.8 and the SPS Committee meetings. Chile suggested that a record of all the SPS cases resolved using alternative approaches to the formal dispute settlement procedure would be most insightful.

5. Differing views were expressed with regard to the scope of Article 12.2 and the role envisaged for the Chairman in the US paper. The representative of Mexico noted that Article 12.2 did not preclude recourse to bilateral consultations, nor did it provide for the suggested proactive role by the Chairman to participate in "consultations and disputes". Australia, in contrast, found that recourse to the Chairman's services was a sensible suggestion, and the availability of the Chairman or any other designated person should be made known to Members who might wish to avail themselves of these services.

6. The Committee agreed to revert to the US paper for more substantial consideration at its next meeting.

(ii) United States - Use of international standards (G/SPS/GEN/76)

7. Introducing document G/SPS/GEN/76, the US delegation reaffirmed its view that the SPS Committee should not interfere in the development of objective, science-based international standards, but Members had certain expectations which related to the effective implementation of the SPS Agreement. The United States urged the Committee to reflect on the progress being made in the development and use of such standards and ensure that these continued to be developed in a transparent process, on the basis of science and risk assessment procedures, while reflecting the widely felt views and the scientific opinions of the WTO membership.

8. Several delegations thanked the United States for initiating debate on this issue especially in light of events currently taking place in the WTO as well as within the respective international standard-setting bodies. The delegations of Argentina, Chile and Mexico, in particular, embraced the main thrust of the paper, while suggesting some modifications.

9. Argentina praised the attempts made in paragraph 4 to take on board the informal discussions held in the context of Article 5.5, but noted that various elements needed rebalancing to more closely match the text of the SPS Agreement. According to Mexico, there seemed to be a contradiction in this paragraph between the overall objective of promoting the use of international standards, and the deviations which might take place when introducing a different level of protection.

10. Argentina pointed out that the first sentence of paragraph 6 gave room for interpretation when referring to "relevant pertinent information" as opposed to "other relevant scientific information". Similarly, the phrase "relevant evidence and views" seemed to refer to public hearings rather than evidence being sought from the scientific community. Finally, the language used in the first sentence of paragraph 9 should be more explicit, despite recent trends to develop health standards on the basis of other than scientific concepts, an option, Argentina recalled, which had been completely discarded during the Uruguay Round. In this respect, the delegation of Australia also stressed that it was essential for Members to preserve the congruence of the fundamental concepts which formed the basis of the SPS Agreement and the work of the relevant standard-setting bodies. Changing the approach to the formulation of standards would be a destabilizing factor for the international standard-setting bodies.

11. The representative of the European Communities indicated that the paper's focus on science as the sole guiding principle seemed to be oblivious of a number of other considerations which were taken into account when Codex standards, for example, were developed. While recognizing that science was a fundamental and key element, other criteria, such as practicability, controllability and environmental concerns should also be taken into consideration. The representative of Chile found this latter standpoint most confusing for a developing country which did not have the technical capacity to conduct comprehensive risk assessments, and who relied on international standards to formulate national sanitary regulations. Chile expressed concern that, increasingly, science-based standards were blocked during the Codex process for various reasons. Those reasons could well be legitimate and justifiable, but they fell within the purview of other agreements.

(iii) Chile - Disease free status (G/SPS/GEN/81)

12. On April 1998, Chile was declared free from Classical Swine Fever. As a result, Chile had acquired the status of a country free of the disease, appearing in List A of the International Office of Epizootics (OIE). The full text of the statement by Chile is contained in document G/SPS/GEN/81. Furthermore, Chile reported considerable progress in gaining recognition by two of its major trading partners as a country free from Mediterranean fruit-fly. Chile hoped to conclude its negotiations with Japan in 1998, and Korea was prepared to recognize certain regions as disease-free by the end of 1998.

13. Regarding bilateral agreements, the delegation of Chile announced that in April 1998, a joint United States/Chile Consultative Commission had discussed the terms of reference of a sanitary and phytosanitary group, the principal objectives of which would be the interchange of experience on the principles and implementation of the SPS Agreement. Chile had also concluded an economic cooperation agreement with Peru, with a chapter dedicated to SPS issues. The approach taken was consistent with the SPS Agreement and was intended to facilitate trade and develop transparency between the countries.

14. In May 1998, Chile hosted a meeting of the drafting group on fresh fruit and vegetables, a subsidiary group of the Codex Committee on Food Hygiene. Since the last SPS Committee meeting, Chile had also participated in the OIE meeting, the IPPC meeting on phytosanitary aspects, and the Codex meeting on pesticide residues and on milk and dairy products.

(iv) EC - Update on the EC regulation on Maximum Residue Limits (MRLs) for aflatoxins

15. In light of the extensive comments made during the last meeting to the effect that proposed EC requirements for MRLs and sampling methods for aflatoxins were too restrictive and onerous, as well as the deliberations of the Codex Committee on Food Additives and Contaminants, the European Commission had forwarded a revised proposal to EC member States acting within the framework of the EC Standing Committee on Foodstuffs. The EC Standing Committee on Foodstuffs would consider the proposed modifications at its meeting of 17-18 June 1998.

16. Regarding MRLs for groundnuts in raw form: the European Commission proposed an increase from 10 ppb (aflatoxin total) to 15 ppb, in line with the limit under discussion in the Codex framework. The European Commission considered that the initially-required aflatoxin content (i.e. 10 ppb) could still be met after sorting the groundnuts for direct human consumption.

17. Regarding dried fruits and nuts in raw form, the proposed limit remained at 10 ppb (aflatoxin total). For dried fruits and nuts after sorting, (or other physical treatment preparing the product for direct human consumption) the proposed MRL was 4 ppb. In this case, the European Communities did not have the available information regarding the incidence of physical treatments on the final level of aflatoxins which would have allowed an increase of the MRL from 10 to 15 ppb. However, if within a year, planned tests demonstrated that the same reduction from 15 ppb in the raw material to 4 ppb in the final consumer product could be obtained, then the European Communities would increase the MRL from 10 to 15 ppb.

18. In the case of cereals, and in spite of the lack of sufficient evidence that sorting or other physical treatment would reduce the aflatoxin content, the European Commission was ready to postpone requirements for a year. If, by this deadline, no new evidence was submitted that would justify specific MRLs for raw, untreated cereals, then the currently-proposed limit for cereals intended for human consumption, i.e. 4 ppm, would also apply to raw cereals.

19. As regarded sampling procedures, the previous requirement that each sub-sample should comply with the established MRL was changed to require only that the average of all the sub-sample MRLs should comply with the established MRL. A further element in the EC proposal was that due consideration would be given to transitional arrangements. As a result, the new measures would not enter into force before 1 January 1999.

(b) Specific trade concerns

20. To help ensure the smooth functioning of each meeting, the Chairman encouraged Members to address specific issues in formal submissions for circulation as documents as far in advance of the meeting as possible. If Members did not wish to address specific issues in formal documents, questions and comments should be provided to the Secretariat as far in advance of the meeting as

possible, so that these could be circulated as room documents at the beginning of each meeting. A new list of notifications received since the March meeting was circulated in document G/SPS/GEN/80.

(i) Thailand - Korean restrictions on imports of poultry (G/SPS/GEN/83)

21. Further to his interventions during the 9th and 10th meetings of the SPS Committee, the representative of Thailand again raised concerns about the Korean restriction on imports of poultry meat from Thailand. This measure, not notified to the WTO as yet, was not based on the relevant international norms, particularly the recommendations of the International Commission on Microbiological Specification for Foods (ICMSF), and repeated requests for explanations continued to be ignored.

22. In addition, the representative of Thailand believed that the proposed amendment to the Korean Food Code (notified in G/SPS/N/KOR/44), which required all meat to be free from certain micro-organisms, including those cited when Thai consignments were rejected, was enacted to retroactively cover the disputed testing requirements. Finally, Thailand specifically requested the Republic of Korea to avoid enforcing the testing requirements on *Listeria monocytogenes* during the process of amendment of the Food Code.

23. The representative of Korea reported that bilateral consultations had been held prior to the present Committee meeting. He emphasized that the amendment to the Food Code was intended to improve food safety and harmonize current Korean regulations with international standards. All comments received were currently being reviewed, although delays had occurred due to external factors. The Korean delegation undertook to inform Thailand about the final outcome as soon as possible.

(ii) Thailand - Mexican import prohibition of Thai milled rice (G/SPS/GEN/82)

24. Further to the discussions which took place during earlier Committee meetings, Thailand expressed disappointment at the lack of progress during the last four years with regard to the Mexican import prohibition of Thai milled rice, despite extensive recourse to bilateral as well as multilateral channels. While Thailand would initially request Mexico to provide an explanation of the reasons behind its measure on the basis of Article 5.8, Thailand reserved its rights under the WTO to use other relevant procedures. The representative of Mexico stated that this matter was still under consideration by his authorities.

(iii) Philippines - Brazilian prohibition on imports of coconut palms and related products

25. The representative of the Philippines, supported by Malaysia and Sri Lanka, raised concerns regarding Administrative Directive No. 70 (A.D. 70), approved by the Brazilian Ministry of Agriculture on 5 March 1998 and taking effect 60 days after its publication. In order to facilitate the Committee's consideration of this matter, the delegation of Philippines had submitted in advance a series of questions to the delegation of Brazil and had requested written answers. Clarification was sought on the following matters:

- whether the measure had been notified to WTO and whether a time period for comments had been granted;

- list of products covered (by HS tariff headings) and list of countries affected;

- request for an official copy of A.D. 70 in any of the WTO languages, preferably in English;

- consistency of the measure with Articles 2.2 and 2.3;

- whether the measure was in line with existing international standards, guidelines and recommendations. If not, clarification was sought on the extent of the deviation from such standards;

- in case the measure was the result of Brazil's determination of its appropriate level of protection, whether the obligations and criteria contained in Article 5 had been taken into account, in particular those in Articles 5.2 and 5.4;

- whether Brazil's analysis of "plague risk" referred to in A.D. 70 was based on any relevant international risk assessment method; whether Brazil considered that this method was consistent with Article 5;

- in light of Article 4, whether Brazil had taken into account the corresponding measures implemented in other countries to eradicate the plagues identified in A.D. 70.

26. In a preliminary answer, the representative of Brazil stressed that Administrative Directive 70 was introduced with the sole purpose of preventing the spread of quarantine pests. Brazil remained open to imports of coconut plants and related products from countries recognized by the relevant Brazilian authorities as being free from plagues, and if shipments were accompanied by a phytosanitary certificate issued by the authorities of the exporting country. To date, only one country had applied for disease-free status. Brazil maintained that the measure was in full conformity with the SPS Agreement as well as with the revised text of the IPPC. Moreover, the risk assessment methodology used was notified on 13 December 1995 in G/SPS/N/BRA/1. Brazil undertook to provide more detailed answers to the questions posed by the Philippines.

(iv) European Communities/Hungary - Slovak measures on imports of apples, pears and quinces (G/SPS/GEN/79, G/SPS/N/SVK/8/Rev.1)

27. Pursuing a matter addressed during the March Committee meeting, the representative of Hungary acknowledged the latest improvements made by the Slovak Republic in revising the regulation against the introduction of fire blight, a quarantine pest disease potentially affecting apples, pears and quinces (notified in G/SPS/N/SVK/8/Rev.1). However, quoting excerpts from publications of the European and Mediterranean Plant Protection Organization (EPPO), Hungary supported the view that such a prohibition must be brought in line with EPPO's recommendations, i.e. that: (a) fruits (as opposed to host plants for planting) should be exempted from the regulation since the risk of transmission on fruit was considered to be insignificant; and (b) the ban should be totally lifted during the winter period when the bacterium was in a dormant state, including in plant propagating material. The EC delegation concurred with the latter scientific standpoint and offered to address the issue of propagating material on a technical basis. The scope of the discussions, however, was likely to be limited given the nature of the current burdensome licensing and notification system applying to each consignment, and which the European Communities, Hungary and Bulgaria continued to find unjustifiably restrictive.

28. Invoking Article 5.8 of the SPS Agreement, Hungary questioned the validity of the scientific arguments and other considerations advanced so far and informed the Committee that it had not yet received replies to written queries put forward in December 1997. The delegations of Hungary, the European Communities and Bulgaria registered their interest in the immediate withdrawal of the import ban on fruit and urged the Slovak Republic to bring its measure into compliance with EPPO standards and recommendations and with the substantive provisions of the SPS Agreement.

29. The representative of the Slovak Republic informed the Committee that, in response to the comments received since G/SPS/N/SVK/8/Rev.1 was circulated, a second modification was being prepared in order to remove any remaining administrative obstacles and improve market access conditions. (The modification was subsequently circulated in document G/SPS/N/SVK/11.) More

precisely, the wording of the Slovak regulation was modified to require exporting authorities to identify where *Erwynia Amylovora* occurred rather than a list of species from all orchards. This amendment had also been notified on 8 June 1998 to the European Communities, Hungary and EPPO.

30. Slovakia denied that its phytosanitary measure was a "ban on imports" since, during the first half of 1998, a total of 9,500 tonnes of apples, pears and quinces, representing 35 per cent of domestic consumption and one third of domestic production, were imported from Austria, Belgium, Chile, the Czech Republic, Spain, France, Hungary (albeit in small quantities), Italy, Poland, Slovenia, Macedonia and South Africa. All these exporting countries were thus able to fulfil the phytosanitary requirements and did not experience market access impediments. Taking into account the possible consequent economic losses which could arise from the spread of the disease, the Slovak Republic maintained the view that the established phytosanitary requirements did not go beyond the level deemed necessary to protect plant health. Since available scientific information was not sufficient and in the absence of relevant international standards, a precautionary approach was adopted in line with Article 5.7. The phytosanitary requirements were thus of a temporary nature, and allowed for additional scientific information to be gathered and assessed. The Slovak Republic was currently engaged in an intensive exchange of information with countries applying similar phytosanitary requirements, and was ready to continue discussions in good faith to find an acceptable solution with trading partners.

31. Addressing problems of recognizing equivalence, the representative of Argentina noted that this issue had also emerged during consultations on citrus canker. The representative of the European Communities responded that, after examining Argentina's proposal for monitoring and control measures, the EC Standing Committee on Plant Health had come to the conclusion that, for the time being, Argentina could not objectively demonstrate the equivalence of its control measures with EC requirements. No EC producing member State accepted imports of citrus originating in infected areas or countries, and even Argentina prohibited the movement of fruit from the contaminated North East zone into its disease-free West zone. According to the EC delegation, Argentina's proposal lacked consistency, within the meaning of Article 5.5, since it applied a lower level of protection to the Community than that applied within Argentina.

32. Argentina maintained that the measures in its infected and exempt areas were introduced in accordance with the requirements of international buyers of Argentinean citrus fruit, principally EC member States. The representative of Argentina recalled that the recommendation that different criteria be applied to infected versus exempt zones was a written recommendation made by an EC technical expert. Argentina requested information on the risk assessment undertaken by the Community to support its claim that Argentina's proposed measures were not equivalent. The Chairman invited the delegates to put this item on the agenda of the next meeting of the Committee if they wished to further discuss it.

(v) United States - Turkey's livestock import ban

33. The United States reported that since August 1996, Turkey had banned imports of cattle and meat products from the United States. The ban was originally imposed for a period of three months, subsequently extended six times, and, recently, Turkey announced an extension through July 1998. The reason cited by the Turkish authorities was the protection of livestock from foot-and-mouth disease (FMD) while an eradication programme was under way. After numerous bilateral meetings and raising the issue in other WTO committees, the representative of the United States sought clarification on whether the measure in question had ever been officially published in Turkey or notified to the WTO, and an explanation of the scientific basis or evidence of risk assessment justifying this measure, especially in view of the FMD-free status of the United States (no occurrence of the disease was registered since the 1920's). The representatives of Uruguay and the European Communities associated themselves with the concerns expressed. Uruguay was free from FMD, and the Community was free from FMD as well as rinderpest, a disease which was cited at an earlier stage

by Turkey as a reason for imposing the ban. The European Communities, Uruguay and the United States urged Turkey to review its regulation and ensure its consistency with the WTO. The representative of Turkey indicated that he was unable to respond to the points raised since he had not received the questions in advance of the Committee meeting.

(vi) United States - EC's proposed restrictions on "Specified Risk Materials" (SRMs)

34. The representatives of Argentina, Canada, Chile, Switzerland and the United States sought an update on the BSE-related issue, extensively discussed during the ninth and tenth meetings of the SPS Committee. In particular, these delegations sought information on: (a) the current status of the restriction and the proposed time-frame for implementation; (b) whether the amended version of the regulation would be published and notified to WTO; (c) the criteria on the basis of which a country's BSE-status was to be determined; and (d) how the European Communities would ensure that individual EC member States did not start introducing their own measures.

35. The representative of the European Communities reported that EC member States were still unable to reach a common position on this issue. Consequently, EC Decision No. 97/934 would not enter into force until 1 January 1999. A suggestion that the list of SRMs be slightly reduced was subject to a scientific review. In the meantime, EC member States, such as the United Kingdom, France, Ireland, Belgium, the Netherlands, Portugal and Luxembourg, had introduced a number of measures. Notification of these national safeguard measures to the WTO had been considered but not yet made. (The concerns expressed by several delegations regarding the lack of notification by EC member States are reported under agenda item 2(c) below.)

36. The EC representative also reported that the EC Commission was submitting new legislation to the Council for approval, departing from the traditional procedure reserved for safeguards on BSE where the proposal was forwarded to the EC Standing Committee. The legislative proposal would include general provisions in terms of safeguards and control measures with respect to BSE. An important element in elaborating this proposal was the outcome of the recent meeting of the OIE, in particular classification of countries according to four categories of BSE incidence. This would play an important role in the formulation of EC internal policies. On the other hand, the Scientific Veterinary Committee had considered BSE-free status on several occasions and concluded that the United States could not be recognized as BSE-free. This did not mean that BSE was present in US territory, but rather that the country fell into the "low-risk" category, taking into account the presence of risk factors in feeding of meat and bone-meal and in ineffective meat rendering systems, and the absence of an adequate surveillance system in place for a sufficiently long time-period.

37. The US representative disagreed with the classification of the United States as a "low-risk" country. Furthermore, the United States had not been officially notified of any decision by the European Communities on the disease status of the United States. An official notice to the Chief Veterinary Officer, together with the criteria and scientific basis used by the European Communities to reach this determination, would be most appreciated by the United States. It was the US understanding that the EC Scientific Steering Committee had been unable to date to adopt an opinion on third country BSE-status because of lack of relevant data. The United States was currently preparing a new submission and requested clarification as to whether the Commission was prepared to consider new information in order to reassess its criteria and its application to individual countries. Information on the criteria used by the Commission to carry out its evaluation and deadlines for receipt of submissions was also requested.

38. The EC representative clarified that, in their view, no country could be designated as BSE-free as such, and confirmed that the Commission had not reached any conclusions with regard to provisions of the directive whose application was suspended until 1 January 1999. This was also the deadline for receipt of submissions. The revision and evaluation procedure was ongoing, and countries should submit further background information. For example, information required to be eligible for a

derogation from EC measures was whether the adequate risk management measures were in place. Applications had already been received from a number of EC member States, and Argentina, Australia, Canada, Chile, United States, Japan, New Zealand and the Czech Republic. The EC delegation invited other Members which considered themselves eligible for derogations or less stringent requirements to also send their applications to the Directorate General for Agriculture (DG VI).

(vii) Switzerland - Request for consultations under Article XXII, GATT 1994: Slovak Republic - Measures concerning the importation of dairy products and the transit of cattle (WT/DS133/1 and G/SPS/GEN/71)

39. The representatives of Switzerland and the Slovak Republic reported on the progress achieved during the consultations held between their respective veterinary authorities. One delegation had notified its interest in joining the bilateral consultations. Despite the negative response, at least at this stage of the consultation process, the Slovak Republic recognized that BSE-related issues attracted general interest and stated that the process would be transparent *vis-à-vis* trading partners and explanations would be given if necessary. If a mutually satisfactory solution were found, the Dispute Settlement Body and the SPS Committee would be informed about the outcome of the discussions.

(viii) Switzerland - Restrictions on imports of hard cheeses imposed by Australia and New Zealand

40. The representative of Switzerland, supported by the delegation of the European Communities, reported that, without advance notice, imports of hard cheese from unpasteurized milk had been stopped on the grounds that the product did not meet the sanitary requirements of New Zealand and Australia. This had caused disruptions of Swiss and EC exports of certain cheeses. Both delegations sought clarification with regard to the absence of notification and the scientific justification of what appeared to constitute an unnecessary restriction on trade. The EC representative argued that the issue of pasteurization was irrelevant when considering public health risks, as long as good manufacturing practices and hygiene standards were respected.

41. The representatives of Australia and New Zealand noted that their respective food codes required pasteurization as a measure to mitigate the human health risks which might arise from the presence of pathogenic organisms in raw milk cheeses since well before 1 January 1995. However, it had become evident that the measure was not being complied with in either country and steps were recently taken to enforce it, which had given rise to the trade problems encountered by the European Communities and Switzerland.

42. Australia and New Zealand confirmed that a comprehensive risk assessment exercise had been initiated with a view to revise the joint Australia/New Zealand Food Standards Code. Switzerland's application had been received, in accordance with the established procedures, and the joint Australia/New Zealand Food Authority sought public comments on the possibility of recognizing equivalence. The process would be completed as expeditiously as possible to resolve problems encountered by Switzerland. The EC application had also been received and was at an advanced stage of consideration.

(c) Consideration of specific notifications received

(i) European Communities - Suspension of import permits for certain ruminants and ruminant products into the United States (G/SPS/N/USA/106)

43. This issue, which the EC representative characterized as an outright ban on live cattle and meat, was extensively discussed during the last meeting. With reference to Article 5.8 of the SPS Agreement, the European Communities sought an explanation of the US measure. The EC representative noted that the OIE had recently indicated that when a country had no native cases of BSE, and surveillance systems in place for seven years, trade in meat products could take place.

Germany, Austria, Denmark, Sweden, Finland, Italy, Spain and Greece fell within that category. The OIE Code also provided the basis on which trade could take place for countries with low incidence of BSE, like France, the Netherlands, Ireland, Belgium, Luxembourg and Portugal. The United Kingdom fell under a third category which required the removal of certain SRM, of particular relevance for animals born before the effective EC feed ban was established on a Community-wide basis in July 1994. During bilateral consultations in May 1998, US officials had informed the European Commission that they were in the final stages of establishing criteria on which decisions would be based, although the nature and contents of such criteria were still unclear to the EC delegation.

44. The representative of the United States announced that a considerable amount of information had been received from all interested parties following the public announcement and notification of the interim measure under discussion. These inputs were being incorporated into the risk assessment along with other available information, taking into account the ongoing discussions in the OIE framework. The interim measure published in December 1997 identified in general terms the criteria upon which the US decision would be based, and questionnaires seeking specific information on the risk factors were sent to the chief veterinary officers of the countries affected by the US measure. This questionnaire further identified the criteria upon which the US decision would be based. The updated rule would soon be published and notified to the WTO, and responses provided to all the comments that were received on the interim rule. The preliminary indications of changes to the proposed rule included the removal of some countries previously subject to the measure on the basis of information that was provided regarding surveillance systems, other risk management practices, and other risk factors.

45. The representative of Switzerland noted that given that the state of scientific knowledge on BSE, the factors to be considered should be the same for all countries and based on OIE guidelines. Both the United States and the European Communities seemed to be developing their individual criteria, applying trade measures even before those criteria were finalized, and not applying the same standards to their domestic production. If Switzerland required others to meet the criteria it applied to domestic producers, there would be little meat imports into Switzerland. There was a flagrant problem of non-national treatment as well as discriminatory treatment among international suppliers where the same conditions prevailed.

46. Several delegations observed that BSE-related measures were causing a lot of problems in world trade. WTO Members needed to work constructively to address this important health issue on the basis of science, within the relevant fora, and consistently with the commitments made under the SPS Agreement. In this context, Argentina, Australia, Canada, New Zealand, South Africa, Switzerland and Uruguay registered their support to, and appreciation of, the progress being made at the OIE.

47. New Zealand noted with irony that although it provided to countries with internal BSE problems the negative control samples for the tests they were developing, reaffirming the perception of New Zealand as BSE-free, New Zealand, as well as a number of other countries which had never had a case of BSE, still did not meet the criteria established by some BSE-affected countries. For certain countries, there was no reason to believe that cases would ever occur in view of the surveillance and control policies which had been pursued for years on a domestic basis, as well as in terms of importation of semen, embryos, feeding practices and so forth. Several delegations complained that recognition of a country's status in relation to BSE took too long especially in Europe. Chile also noted that too much burden was placed on countries to demonstrate their "innocence", a situation which set a dangerous precedent and threatened to bring chaos to trade.

(ii) United States - G/SPS/N/POL/5: Temporary import ban by Poland on bovine gelatine and its derivatives

48. The representative of the United States sought clarification on the status of this measure, its scientific basis, and whether future amendments were being considered. In this context, Brazil, the European Communities, Switzerland, and the United States hoped that the disease status of the supplying country, the scientific factors relating to the infectivity of gelatine and gelatine-containing products, as identified by the OIE, as well as equal treatment of international suppliers where the same BSE conditions prevailed, would be taken into account in future amendments.

49. The representative of Poland stressed that his authorities were monitoring all the developments relating to the BSE issue. The measures taken by other WTO Members were also studied, as well as the discussions taking place in the SPS Committee. The measure in question was taken in order to protect consumers' health and would remain in force to the end of June 1998. It would be replaced by a measure reflecting the present state of scientific knowledge on the subject, and a new notification would be submitted in due course. Regarding the different treatment of Switzerland, the United Kingdom and Ireland, the representative of Poland stated that the new regulations had not yet been adopted by the Polish Government and he undertook to provide a response on the basis of written questions from Switzerland.

(iii) United States - G/SPS/N/EEC/58: EC measure on establishments operating in the animal feed sector

50. The representative of the United States raised concerns with regard to Council Directive No. 95/69/EEC, which set conditions and arrangements for approving and registering establishments and intermediaries operating in the animal feed sector. The United States sought clarification on: (a) the justification for requiring a list of establishments in addition to the maintenance of a list of third countries, especially if the country already fulfilled the requirements of the Directive; (b) the specific products covered by this proposal, e.g. was petfood included; (c) the specific criteria used for the inclusion of a country in the third-country list, as the requirements appeared to refer to the determination of equivalence; (d) the legislative and administrative procedures envisaged to modify the lists established under the Directive; (e) the requirement in Chapter 6 that imports could only come from third countries which had representatives "*established within the Community"* and the justification for that requirement in terms of the scientific risks involved; and (f) an update of the status of implementation of this Directive.

51. The EC representative stated that the European Communities were in the process of putting in place all the legislative framework for the establishment of the single market in regard to animal, plant and consumer health. It was the common practice to apply harmonized standards to all establishments supplying foodstuffs so that products could circulate freely within the Community. Provisions were also harmonized with regard to third countries. The standard EC framework consisted of a list of countries considered eligible to export products to the Community and an evaluation, the general criteria of which were the same as those applied in areas of public health and veterinary matters, as stipulated in the Directive. These criteria were the country's legislation in the area of feedingstuffs and in particular the rules relating to manufacturing and distribution of products; substances intended to be used in nutrition; control rules; the structure and organization of the competent authority; guarantees provided by the organization in the implementation of adequate controls; and guarantees provided by the country with regard to the compliance with standards at least equivalent to those laid down in the Annex to Directive No. 95/69.

52. The risks addressed by this framework were microbiological and those arising from the presence of extraneous matters, contaminants and chemical residues, transmitted through feedingstuffs to the animals or to consumers. An essential element of the measure was to be able to identify such risks as close as possible to the first source of contamination. For that purpose the

legislation of third countries was supplemented by: (a) the proper registration of individual establishments; (b) an assessment of the ability of the establishment to fulfil the requirements at least on an equivalent basis to those that were applicable in the Community; and (c) a certificate, a standard practice in international trade. Regarding the scope of the Directive, it did not include petfood but only compound feedingstuffs, additives and other products entering in the production of feedingstuffs for farm animals.

53. The measure was to be adopted by vote in the Standing Committee of Animal Feedingstuffs by the end of June 1998. By the end of 1998, EC member States must provide the Commission with a list of establishments considered eligible. As the competent authority of the exporting country carried out continuous screening of such establishments to ensure their compliance, establishment could be added or removed from the list. Inspection of such establishments was foreseen by the EC Commission, subject to the resources available, focusing primarily on the ability of the competent authority to ensure compliance. The registration requirements were flexible and not very onerous, contrary to views expressed by US industry.

54. The representative of Argentina requested a written copy of the statement made by the EC representative.

(d) Any other matters related to the operation of transparency provisions

55. The most recent list of Enquiry Points was circulated as G/SPS/ENQ/6 with Addenda 1 and 2. The latest list of National Notification Authorities was contained in document G/SPS/GEN/35 with Addenda 1 and 2. In addition, the Secretariat had updated document G/SPS/GEN/27/Rev.3, indicating which Members had identified their Enquiry Points and/or National Notification Authorities as of 5 June 1998.

56. During the March meeting, the European Communities introduced a paper containing some suggestions on the transparency provisions, G/SPS/GEN/64. In addition to the comments made at the last meeting on the EC suggestions for changes in the transparency provisions or the notification procedure, additional suggestions were made during the informal meeting on the review of the SPS Agreement.

(i) Switzerland - Notification by EC member States

57. The representative of Switzerland sought an update on the progress made by the EC Commission in internal discussions regarding the notification by EC member States of their sanitary and phytosanitary measures. Other delegations expressed strong concern with the lack of progress in resolving the problem of notification of EC member States' regulations since this had an important implication for Members' obligations and the exercise of their rights under the SPS Agreement. Trade flows were affected just as much by EC member States' actions as they were by actions taken under the jurisdiction of the European Communities.

58. The EC representative confirmed that, prompted by comments previously made by WTO Members, the EC Commission envisaged modifying its internal notification provisions in order to allow EC member States to notify national safeguard measures immediately to the WTO, with the proviso that such national measures might become irrelevant, if as a result of Community procedures, they were suspended or withdrawn. Only national safeguard measures were concerned, since other measures taken by member States on a national basis could not enter into force before they had been subject to the screening procedure at the Community level. The EC representative indicated that "national safeguard measures" could be emergency measures, quarantines, temporary import bans, suspension of certificates, etc. The EC legal service was still considering the proposed amendment and its general conformity with Community law. The EC representative hoped to provide a more affirmative statement on this issue at the next meeting of the Committee.

59. In response to a query regarding the conformity of non-safeguard measures with Annex B, paragraph 5(b) of the SPS Agreement, the EC representative indicated that such measures must be notified to the European Commission before their entry into force and comments from WTO Members were taken into account. As regards the impact that the internal screening process might have on the timely availability of information to international traders, the delays involved were normally from 10 to 15 days, although there were exceptions.

60. The delegation of Switzerland emphasized that each WTO Member was responsible for fulfilling its obligations under the WTO agreements and this applied to each member State of the European Communities. Furthermore, the obligations under the SPS Agreement applied to all measures, not only safeguard measures. The channelling procedure used by the European Communities to forward member States' notifications to the WTO was of secondary importance.

2. Monitoring the Use of International Standards

61. The Chairman recalled that in October 1997, the Committee adopted a provisional procedure to monitor the use of international standards (G/SPS/11). According to this procedure, Members were invited to submit, in advance of regular meetings, examples of what they considered to be problems with a significant trade impact which they believed related to the use or non-use of relevant international standards, guidelines or recommendations.

62. Further to comments made at the last meeting regarding the US submission (G/SPS/W/87 and Corr.1), the representative of the European Communities observed that the role of the SPS Committee was not to tell the Codex Alimentarius Commission or other relevant standard-setting bodies what to do. The US delegation noted that international standard-setting organizations were interested in feedback from the SPS Committee on issues within their purview which had an impact on trade. The provision of such feedback was in accordance with the mandate contained in Article 12 of the SPS Agreement.

63. With regard to the substance of the paper, the EC representative highlighted that EC rules distinguished between use of Chlortetracycline (CTC) as a veterinary medicine, i.e. in the form of medicated feedingstuff, administered to sick animals under close veterinary control *versus* its use as an additive in animal feedstuffs (i.e. as a growth promoter). The latter use was banned since 1975. Accordingly, the EC established different maximum residue limits (MRLs) for CTCs when they were used as veterinary medicines. Dosing instructions and "withdrawal" (minimum non-treatment) periods must be respected before the animal was slaughtered and entered the food chain, to avoid any residues in meat exceeding those established in Commission Regulation 281/96 dated 14 February 1996. Within the Codex framework, the EC delegation was in favour of setting MRLs for CTC as a veterinary medicine, but opposed fixing MRLs for the use of CTCs as a feed additive, because the use of growth promoters without close supervision, control and administration, could lead to public health risks arising from antibiotic resistance. EC MRLs for CTCs for veterinary therapeutic use was half those currently under discussion at the Codex. The monitoring suggestion put forward by the United States, although pointing to some important issues, was flawed because MRLs were not needed for substances that were prohibited as growth promoters.

64. The Chairman encouraged Members to contribute to the monitoring exercise by submitting, at least one month in advance of the next regular meeting, examples of trade problems which they believed were related to the use, non-use or absence of international standards. The delegation of the European Communities indicated that it hoped to make such a submission by the September meeting.

3. Consistency

65. The Chairman reported orally on the progress achieved during the informal consultations held with all interested Members on the development of guidelines to further the practical implementation

of Article 5.5 of the SPS Agreement regarding decisions on the appropriate level of protection. The Chairman praised the efforts of New Zealand, Norway, Mexico and the European Communities, which had provided non-papers for discussion during the recent informal consultations.

66. The representative of the European Communities emphasized that the EC paper in many ways mirrored the contribution by New Zealand, in terms of its analysis of Article 5.5. In light of the Hormones Panel final ruling, it appeared that the provision set down three steps, all of which had to be violated in order for there to be contravention of Article 5.5. Several delegations noted that the status of the guidelines should be clarified in relation to the WTO and the SPS Agreement, since these should in no way be considered as an interpretation of Article 5.5.

67. The Secretariat was requested to produce draft guidelines, taking into account the discussions, for the next informal meeting of the Committee.

4. Review of the SPS Agreement

68. The Chairman recalled that at the October meeting, the Committee had agreed on a procedure to conduct the review of the operation and implementation of the SPS Agreement provided for in Article 12.7. An informal meeting had been held on 10 June 1998, at which the implementation of the transparency provisions, the notification process and the operation of Enquiry Points had been considered. Several delegations submitted background discussion papers, notably the United States, identifying preliminary issues for consideration by the Committee (G/SPS/W/88); regarding the improvement of the operation of the notification provisions (G/SPS/GEN/75); on the use of international standards (G/SPS/GEN/76), and on transparency and implementation of the Agreement (G/SPS/GEN/77). The delegation of Hong Kong requested the Secretariat to insert on the consolidated list of issues for consideration, the "prompt publication of adopted SPS regulations as required under Annex B".

69. Fruitful discussions and a number of useful suggestions were also made on issues related to the special needs of developing countries, and technical cooperation and assistance. Speaking on behalf of ASEAN, the representative of the Philippines emphasized that all possible means should be identified to give full effect to the provisions on differential and more favourable treatment for developing countries. This was supported by Egypt, India, Mexico and Pakistan, especially with reference to the ideas presented in India's non-paper (subsequently circulated as G/SPS/GEN/85), which highlighted the importance of Article 10. The development of a survey questionnaire was suggested in order to compile the particular difficulties and market access barriers faced by developing countries in implementing the SPS Agreement. An alternative approach suggested by some Members was the creation of an inventory of specific examples of the difficulties faced, domestic limitations and weaknesses hindering the participation of developing countries in the WTO. In reply to this request, the Secretariat indicated that, in consultation with Members, a questionnaire could be designed.

70. The representative of Mexico reminded Members that according to the agreed procedure, the Chairman was to submit a report to the Committee and decisions on possible actions, taking into account all the topics reviewed during the exercise, would be made only once the review exercise was concluded. Transparency issues and the possible revision of the recommended notification procedures needed more in-depth discussion. Mexico was also concerned that issues and papers tabled for discussion during the informal process should not be discussed during regular Committee meetings.

71. The Chairman indicated that discussion on the topics of special and differential treatment and technical cooperation would continue at the next informal meeting. Delegations were also invited to submit specific papers on the adaptation of SPS measures to regional conditions, harmonization and equivalence, and to identify any other issue of interest, by the end of August. The Secretariat was

asked to compile all the proposals and suggestions made to date so that the Committee could consider these in more detail. The next informal meeting on the review of the Agreement will be held just prior to the next regular meeting of the Committee.

5. Technical assistance and cooperation

72. The Secretariat reported on technical assistance activities undertaken since the March meeting. In May 1998, the Secretariat participated in a regional seminar on the SPS Agreement for CARICOM countries, sponsored by USAID and organized in cooperation with USDA. Participants to the seminar highlighted their lack of financial resources, lack of coordination at national and regional levels and absence from the work of the relevant standard-setting bodies. The Secretariat was organizing a regional seminar to be held in Manila from 30 June-1 July 1998, in cooperation with the Government of the Philippines, USDA, Codex, OIE and IPPC. In addition to an overview of the WTO, dispute settlement procedures, and a detailed presentation of the SPS Agreement, the scope of this seminar would include a special session on risk assessment, as well as a two-day workshop on transparency and notification procedures. On that occasion, the role and functioning of national Enquiry Points would be presented. This new approach was praised by the US representative. A seminar on the SPS and TBT Agreements, organized by the International Trade Centre, would be held in Jordan in July 1998. The Secretariat announced that on 14-15 September, a seminar on TBT Enquiry Points would be organized in Geneva, bringing experts from all developing countries. To the extent that resources were available, the Secretariat would try to organize a session on the SPS notification procedures for those TBT Enquiry Points which were also SPS Enquiry Points. Given the limited human resources available in the SPS area, the Secretariat had not yet been able to fulfil its technical cooperation objectives with regard to African countries. Developing country Members were invited to continue to address their requests to the Secretariat. The Chairman indicated that he was invited, in his personal capacity, to an animal production and animal health conference for the SADC countries in Botswana.

73. The representative of the United States presented the US paper on technical cooperation and assistance, circulated as document G/SPS/GEN/78. This paper outlined the various US programmes on technical assistance addressing SPS issues within the Department of Agriculture, Foreign Agricultural Service; the Agency for International Development; and the Department of Commerce. Such programmes were designed to help developing countries enhance their participation in international standard-setting bodies, overcome their technical limitations within the transition period foreseen in Article 14, and establish bilateral cooperation and assistance on a long-term basis.

74. The delegation of Chile thanked the delegation of the European Communities for providing a list of experts in the field of risk assessment. In order to have as complete a list as possible, Chile suggested that all Members, as well as the international standard-setting institutions, provide such information.

75. The representative of the World Health Organization reported that a joint WHO/FAO Consultation on the role of government agencies in assessing hazard analysis and critical control points (HACCP) was held in June 1998. This event responded to the increasing need for guidance experienced by national food control authorities as the implementation of HACCP systems in the food industry progressed.

76. The representative of the IPPC Secretariat reported on the involvement of the IPPC in a number of FAO projects. The IPPC currently was in the final stages of a project designed to strengthen plant quarantine capabilities in Gambia, namely: (a) updating the phytosanitary legislation to improve its consistency with the SPS Agreement and the revised Convention; (b) training in pest risk analysis and in phytosanitary treatment and inspection. Two similar projects were being implemented in the Caribbean and Andean regions. Two other trade-based projects were under way to assist countries to meet phytosanitary requirements and avoid disputes. The first was to assist the

Bahamas in upgrading phytosanitary systems for citrus to gain markets in the Far East. The second involved assistance to the Dominican Republic in order to develop suitable pest risk management programmes for the export of coconuts to Brazil. Finally, the IPPC Secretariat participated in a recent workshop on pest risk analysis, held in South Africa, and sponsored by the USDA.

77. The representative of the joint FAO/WHO Codex Alimentarius Commission (Codex) announced that they, in collaboration with the IPPC, were preparing a sectoral plan for technical assistance for developing countries to assist them in meeting their obligations and accruing the benefits of the SPS and TBT Agreements. The plan included provisions related to food quality and safety measures consistent with the Codex principles and provisions related to the IPPC. The plan also included inputs from FAO fisheries, forestry and agriculture departments in relevant areas. FAO would welcome collaboration and partnership with WTO Members in providing technical assistance. FAO currently had 34 world-wide technical assistance projects designed to strengthen developing countries' capacities in food quality and safety.

78. The representative of the International Trade Centre (ITC) reported on its programme for Arab countries, funded by the UNDP, which included seminars on TBT and SPS, targeted at the business community. One event was scheduled for July 1998 in Jordan, others in Saudi Arabia and Egypt in 1999. Seminars on information services and Enquiry Points would be organized in Tunisia in September 1998, and in Saudi Arabia in 1999. An integrated WTO/UNCTAD/ITC project for Least Developed Countries and Other Selected Countries in Africa was planned, addressing the particular needs of eight countries. One element of this programme referred to the establishment of TBT and SPS Enquiry Points.

6. Matters of interest arising from the work of observer organizations

(a) WTO/OIE Agreement

79. On 4 May 1998, the Directors-General of the WTO and of the OIE formally signed a cooperation agreement (WT/L/272). This Agreement had been approved by the SPS Committee (G/SPS/W/62) and subsequently by the Council for Trade in Goods and the General Council. According to the representative of the OIE, this Agreement formalized the long-standing cooperation, working relationship and dialogue between the two organizations. It also strengthened the existing framework for sharing information and technical cooperation. The Secretariat of the WTO expressed its appreciation for this fruitful cooperation.

(b) Revision of the IPPC

80. The representative of the IPPC reported that the new text of the International Plant Protection Convention had been transmitted to all FAO member governments for acceptance or adherence. The FAO's legal office and the IPPC Secretariat were consulting with governments in order to facilitate rapid acceptance. A number of ratifications had already been forwarded to the FAO. The IPPC representative hoped this process would accelerate in order to bring the new Convention into force with little delay and allow IPPC to fully realize the role envisioned for it under the SPS Agreement. The IPPC Secretariat was grateful to the WTO Secretariat and SPS Committee for emphasizing the important relationship between the IPPC and the SPS Agreement and noted the importance of Article 3.4 concerning Members' participation in standard-setting activities.

81. The first meeting of the IPPC Commission on Phytosanitary Measures would be held in Rome, from 3-6 November 1998. This was an important event for IPPC as it marked the start of direct Member participation in establishing the structure and priorities for the Convention. The agenda of the IPPC Commission included: establishment of the rules of procedure; consideration of two new standards for approval; and discussions on the future work programme. Formal invitations would be sent in July 1998.

82. The Plant Protection Agreement for Asia and the Pacific, a supplementary agreement under the IPPC, was also under revision, *inter alia*, to strengthen and clarify the relationship of phytosanitary measures to trade.

(c) WHO - The revision of the International Health Regulations (IHR) - G/SPS/GEN/59

83. As requested at the March 1998 meeting of the Committee, informal consultations with the WHO were held on this matter. Questions raised by Members were provided to the WHO and their responses were circulated in advance of the informal consultations.

84. The representative of the WHO thanked the SPS Committee for the instructive comments made, which would be helpful in the next stages of the revision of the IHR. Although WHO and WTO had different mandates, structures, and working procedures, most WTO Members were also WHO members and consequently had obligations under both the SPS Agreement and the IHR. The fundamental principle of the IHR was to provide maximum protection against the spread of disease while causing minimal interference with international traffic and trade, which was consistent with the WTO. WHO believed that this common purpose should be reflected in the IHR and the SPS Agreement to avoid any potential conflict in the obligations of members of both organizations.

85. The WHO representative also believed that WHO could assist WTO with respect to public health aspects of disputes arising as a result of disease outbreaks. On the basis of the informal discussions, it appeared that no modification of the SPS Agreement could be envisaged at this stage, and the WHO hoped that other channels could be explored. WHO would report in July 1998 to its member states on the progress of revision of the IHR and the report would include reference to the discussions with the SPS Committee. In this respect, the WHO sought an indication from the SPS Committee as to whether a forum for continuing dialogue could be envisaged.

86. The representative of Thailand drew the attention of the WHO representative to the need for consultation with members of the WHO prior to initiating a proposal to establish a framework of cooperation with the WTO. This initiative should first be brought to the attention of member countries, to ensure no duplication at the national level of each member. Thailand encouraged members of both the SPS Committee and the WHO to further consider this matter and ensure coordination at the national level. The suggestion was supported by several delegations.

(d) Twenty-Third Session of the Codex Executive Committee

87. At its session of 3-5 June 1998, the Executive Committee finalized the draft Medium Term Plan for 1998-2002 for submission for approval by the Twenty-Third Session of the Codex Commission in 1999. The Executive Committee agreed to reinstate a programme strengthening transparency, to facilitate participation of non-governmental organizations as observers in the Codex decision-making process. In the area of food production and processing systems, the Executive Committee was of the opinion that a clear statement by the Codex on a policy approach which would ensure the safety and nutritional requirements of food prepared from biotechnology was needed as a matter of priority. The Executive Committee agreed to amend this programme area to include provisions of a draft general standard for food prepared from biotechnology.

88. The Executive Committee placed particular emphasis on the need for prompt action by FAO and WHO to establish a scientific advisory body on the microbiological aspects of food safety, e.g. microbiological risk assessment. The Executive Committee also stressed the need for expert advice on food allergies and intolerances which should be subject to appropriate labelling provisions. As a follow-up to the Commission's decisions concerning the judgement of equivalence of food control systems in different countries, the Executive Committee noted that guidance in this area was a shared responsibility of several Codex Committees, including the Codex Committee on Food Import and Export Certification Systems and the Codex Committee on General Principles. The SPS

Committee's clarification on how it would differentiate standards, guidelines and other recommendations (G/SPS/W/86) was reviewed by the Executive Committee and it was agreed that the work of Codex should now move forward without concern of misunderstanding or misinterpretation of how Codex standards or related texts might be used.

(e) Sixty-sixth General Session of the OIE

89. The representative of the OIE outlined the main achievements of the 66th General Session of the OIE. From the point of view of international trade, it was important to note changes to the International Zoosanitary Code with regard to anthrax, which was revised at the request of several OIE member states facing trade difficulties, especially in trade of dairy products.

90. There was also a new chapter on BSE in the OIE Code, which defined more precisely the different stages involved in risk analysis, for example by describing how adequate surveillance systems should operate. The description of the criteria that a country must fulfil in order for its BSE-free status to be established was also modified. A new category of disease-status was created of those countries which could not demonstrate their disease-free status and which had not declared native cases of BSE. However, this definition was still under study, together with provisions relating to trade in live bovine animals and bovine products originating from such countries. One major development was that bovine semen, some tallow, gelatine and collagen, exclusively prepared from hides and skins of healthy bovine animals, were added to the list of products which should not be restricted in international trade. New provisions were also adopted to address international trade in gelatine and collagen prepared from bones, as well as trade in other tallow.

91. With regard to BSE, a number of recommendations were still pending and would be closely examined in the coming months. The International Committee was expected to adopt a Resolution regarding the BSE-status of OIE member countries. The Commission on FMD and other epizooties was to establish a procedure which would allow the OIE to accept the facts presented by OIE member countries in support of their claims on BSE-status. An *ad hoc* working group began the practical and substantive work on the BSE subject as of the end of June and would report its findings in September 1998 to the OIE Commission.

92. The representative of Chile thanked the standard-setting bodies for making available updated versions of their international standards, guidelines and recommendations and expressed Chile's continued interest in regular updates.

7. Observers

93. The Chairman informed the Committee of informal consultations held to identify the criteria that might help the Committee reach decisions on requests for observer status. The Secretariat provided an informal paper on existing WTO criteria regarding observership, and the status of decisions in some other WTO bodies. It had been agreed to: (a) inform the non-governmental organizations that, in light of the decision of the General Council, the SPS Committee would not for the time being grant their requests for observer status; (b) request the intergovernmental organizations, whether of regional or global coverage, to provide more detailed information on their mandate, membership and reciprocity with WTO, and circulate this information to the Committee. On the basis of the information provided, each request would be considered on a case-by-case basis.

94. Echoing the concerns voiced by the delegation of Uruguay during the informal consultations, the representative of the European Communities cited the references made to regional plant protection organizations in Article 3.4 and in Annex A to recall their relevance to the operation of the SPS Agreement. The European Communities argued in favour of the acceptance of regional plant protection organizations as observers since, contrary to the situation in public or animal health, the plant health situation was largely of a regional nature. Chile, however, noted that the references to the

regional plant protection organizations was in the context of their relationship to the IPPC, which was an observer. The regional organizations provided their scientific input through the IPPC framework, and the IPPC provided the appropriate representation to the SPS Committee.

95. The EC delegation also argued in favour of the OECD, a globally-oriented organization. The OECD had observer status in a number of other WTO bodies, namely the General Council, the Council for Trade in Goods, the Committee on Agriculture, and the Committee on Technical Barriers to Trade.

8. Other business

(a) Tanzania – EC fish ban on Tanzania, Kenya, Uganda and Mozambique

96. The representative of Tanzania reported that on 16 January 1998 the EC Commission prohibited the importation of fresh, frozen and processed fishery products from Tanzania, as well as from Kenya, Uganda and Mozambique, alleging public health concerns. However, over 2,000 tests and EC inspection of Tanzania's fish processing establishments before 6 January 1998 had produced no positive tests for any of the bacteria concerned. Despite the existence of specific recommendations by both the WHO[1] and the FAO, the EC notification, G/SPS/N/EEC/4 circulated on 4 March 1998, indicated that no international standard, guideline or recommendation existed on the subject. In Tanzania's view, the recommendations made by the Codex and the International Commission on Microbiological Specifications for Food (ICMSF) were most relevant to this case. None of these bodies identified import prohibition as an appropriate response to the alleged public health concern.

97. This ban had adverse and severe economic effects on Tanzania's economy, in terms of rising unemployment, depressed prices, reduction of purchasing power and loss of export earnings, all of which were of vital importance to a least developed country. Tanzania questioned the consistency of this measure with Articles 2.2 and 5.7 of the SPS Agreement. Moreover, the SPS Agreement emphasized that Members should help developing countries comply with the sanitary measures necessary to achieve the appropriate level of protection in their export markets.

98. The EC representative maintained that the import measure was justified since there was a risk of transmission of cholera through foodstuffs which contained fresh water, such as fish products. WHO involvement in this matter was not appropriate; it was not the role of the WHO to determine what a Member's appropriate level of protection should be, nor what measures would be most relevant.

99. The EC representative confirmed that since the measure was taken, a number of consultations had been held with the competent authorities of the affected exporting countries, and the EC Commission was now satisfied that the necessary guarantees were in place. A formal proposal that trade be restored with the four African countries would be submitted to the EC Standing Veterinary Committee in June and was expected to enter into force on 1 July 1998, subject to approval by EC member States. The new measure would be notified to the affected countries and published in the Official Journal of the European Communities.

[1] WHO, WHO Guidance on Foundation of National Policy and Control of Cholera (Chapter IX). The same Chapter concludes:

"Although there is a theoretical risk of Cholera transmission associated with some food commodities moving in international trade, this has rarely proved significant and authorities should seek means of dealing with it other than by applying an embargo on importation".

(b) Canada's revised BSE policy

100. The representative of Canada provided an update on import policy with regard to BSE, notified and published on 16 April 1998, and expected to enter into force on 15 June 1998. According to the new policy, traditional supplying countries would have to demonstrate their BSE status in order to retain their eligibility to export to Canada. The Canadian representative encouraged those countries affected by the new policy to promptly submit their applications and contact Canada's Food Inspection Agency and animal health officials for assistance. Canada was cooperating with the United States in carrying out the assessments, so any data supplied through the USDA programme would automatically be recognized as equivalent and accepted by Canada.

(c) Canada – United Nations Biosafety Protocol

101. The representative of Canada drew the Committee's attention to the Biosafety Protocol being negotiated under the Convention on Biological Diversity, which might significantly affect world trade in food and agricultural products. According to Canada, this Protocol would have implications for: (a) agricultural material derived from biotechnology; (b) the regulatory systems of the signatory countries; and (c) WTO Members' obligations under the SPS and other agreements.

102. Substantive negotiations would take place in August 1998, to address the transboundary movement of live or living modified organisms resulting from modern biotechnology which may have adverse effects on biodiversity. A key element of the draft Protocol was the Advanced Informed Agreement procedure (AIA), a notification and approval process to assess and decide if a living modified organism posed a risk to a country's biodiversity before it could be imported. Several elements were still under study, including: the scope of the AIA, the responsibility for notifying and supplying information to the importing country (i.e. whether it would be the importer, the exporter or the importing country) and the capacity of countries to conduct approval procedures and assessments of incoming shipments.

103. The Protocol was expected to be finalized by February 1999. Canada encouraged Members who might not be familiar with the trade implications of the Protocol to become involved in the discussions.

104. The US delegation expressed concern with the overlapping and apparent lack of consistency between the risk assessment approaches, in the Protocol and in the SPS Agreement. The Protocol had the potential to affect trade flows of agricultural products without necessarily identifying precisely what specific risks were involved. Even more disturbing was the opposition shown by the delegations of some WTO Member countries to the suggestion that the Protocol should not affect their rights and obligations under WTO agreements; some countries proposed that the Protocol supersede the provisions of the SPS Agreement. The US delegation hoped that this was only the result of a lack of internal coordination.

105. The representative of Australia stressed that the overall objective in negotiating the Protocol should be to avoid excessive, burdensome and unjustified restrictions on trade. The Protocol should also be sufficiently flexible to allow importers to apply their sanitary or phytosanitary measures, e.g. domestic quarantine measures, if these were deemed necessary. The delegations of Argentina, Australia, Canada, Chile, Mexico and the United States concurred that the Protocol should not undermine WTO Members' rights and obligations and urged the delegations present to coordinate their efforts within their national governments to work towards that objective.

106. It was agreed that informal consultations with the Secretariat of the Protocol should be arranged. Members were invited to submit their questions for compilation by the Secretariat in advance of the consultations.

9. Date and agenda of the next meeting

107. The next meeting of the Committee is scheduled for 15-16 September 1998. The following items will be included on the agenda:

1. Adoption of the agenda
2. Implementation of the Agreement
   - (a) Information from Members
   - (b) Specific trade concerns

     [Tanzania – EC restrictions on fish and fish products (Cholera)]
   - (c) Consideration of specific notifications received
   - (d) Any other matters related to the operation of transparency provisions
3. Monitoring of the use of international standards
4. Consistency - report by the Chairman on consultations
5. Review of the SPS Agreement - report by the Chairman on consultations
6. Technical assistance and cooperation
7. Matters of interest arising from the work of observer organizations
8. Other business

   [United Nations Biosafety Protocol]
9. Date and agenda of next meeting

108. The Chairman reminded delegates of the deadlines for requesting the inclusion of specific items in the agenda or receiving the inputs from Members under respective agenda items:

Agenda item 2: (b) Specific trade concerns and (c) notifications	3 September 1998
Agenda item 3: Monitoring procedure: Specific examples	14 August 1998
Agenda item 5: Review of the SPS Agreement: Non-papers	31 August 1998
Agenda item 8: United Nations Biosafety Protocol: Questions	14 August 1998

109. The Committee noted with regret the departure of several delegates who had been very active participants in past years, notably Mr. Jorge Riaboi (Argentina), Mr. Lars Hoelgaard (EC), Mr. Christian Häberli (Switzerland) and Mr. John Ellis (US).