

Committee on Sanitary and Phytosanitary Measures

**SUMMARY OF THE SPECIAL MEETING OF THE SPS COMMITTEE
ON THE TRANSPARENCY PROVISIONS
OF THE SPS AGREEMENT**

9 November 1999

Note by the Secretariat

1. The Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") held a Special Meeting on the transparency provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement") on 9 November 1999. Mr. Attie Swart (South Africa) chaired the meeting. The programme for the meeting is attached (Annex 1).

I. BACKGROUND AND PURPOSE

2. The Chairman recalled that in the autumn of 1995, the Secretariats of the SPS and TBT Committees had jointly organized a meeting focusing on the transparency provision of both the TBT and SPS Agreements. At that time, the objective had been to introduce the provisions of these agreements, which were then new, and outline the differences between them. The emphasis in the current meeting was on implementation rather than on the basics. He noted that after 1 January 2000, the provisions of the SPS Agreement, including the transparency provisions, would be binding also on least developed country Members of the WTO.

3. The purpose of the meeting was to have an in-depth discussion of problems and concerns relating in particular to notifications and the functioning of enquiry points and notification authorities. Officials from the enquiry points and notification authorities of all Members had been invited. The Secretariat had sponsored¹ the participation of officials from the eight LDCs (Bangladesh, Burkina Faso, Djibouti, Madagascar, Malawi, Tanzania, Uganda and Zambia) which had notified either their enquiry point or notification authority to the WTO, or both. The Chairman welcomed the substantial and important participation by capital-based delegations from developing and least developed countries.

4. During the meeting the Secretariat made two presentations, one on the definition of SPS measures vis-à-vis TBT measures and the other on transparency provisions of the SPS Agreement.² Donna Roberts of the United States Permanent Mission to the WTO spoke about the implementation of the SPS Agreement's transparency provision over the past five years, with particular emphasis on developing countries.³ Under the programme item "case studies" several Members, including many developing countries, made presentations on the manner in which they had implemented the

¹ The Norwegian Trust Fund was used.

² The slides used by the Secretariat are contained in documents G/SPS/GEN/148 and 151. The presentation on the transparency provisions was based on the Annex of G/SPS/12. This Annex contains the currently valid Recommended Notification Procedures, together with the formats for regular and emergency notifications. It has subsequently been circulated as G/SPS/7/Rev.1.

³ Slides contained in G/SPS/GEN/147.

transparency provisions: Chile (G/SPS/GEN/154)⁴, New Zealand (G/SPS/GEN/161), Thailand (G/SPS/GEN/155), the European Communities (G/SPS/GEN/149), Malawi (G/SPS/GEN/150), South Africa, Zambia (G/SPS/GEN/156) and the United States. Finally, the Committee discussed a draft handbook on how to implement the transparency provisions of the SPS Agreement.

5. The Chairman stressed that this was a *special* meeting of the SPS Committee and that he would report on the outcome of the meeting at the Committee's regular session the following day. This summary report presents the main issues raised during the meeting.

II. ISSUES

1. Setting up an enquiry point or notification authority

6. Several Members noted that setting up a notification authority and enquiry point was not necessarily very resource demanding. Some countries had not hired additional staff at all and did not even employ one person on a full time basis. Others indicated that up to seven officers staffed a combined notification authority and enquiry point. The majority of Members to make presentations had combined the institutions. But there existed also examples of countries with several enquiry points – each with separate areas of responsibility (food safety, animal health and plant health) – and a separate notification authority. In some cases the same institutions serviced both the SPS and TBT Committees. The basic equipment needed included a computer with basic database and word-processing software, a phone, a fax machine, a telephone and, preferably, access to Internet and e-mail.

2. Domestic coordination

7. Members noted that the implementation of the SPS Agreement affected many different areas of competence in Members' governments. In particular, two points were stressed: (i) coordination among different government bodies affected by the implementation of the SPS Agreement's; and (ii) the link between policy people and technical people.

8. A major concern expressed by several developing countries was the need for domestic coordination among the various actors and institutions within a country involved in the implementation of SPS requirements. As the SPS Agreement covered several areas (food safety, animal health and plant health), potentially many agencies, institutions, departments or ministries were involved. Examples raised included proposed regulations emanating from a forestry research institute on imports of plant products; from the ministry of health on food safety; and from an institute on national parks and wildlife on imports of animals. All these institutions were not necessarily aware that regulations with a potential affect on trade would have to be notified to the WTO. Hence, there was in many countries the need for finding better ways of coordination. Some governments dealt with this problem by creating national "SPS committees" or "national coordination committees". Such a cross-cutting forum acted as a coordinator between different national institutions proposing regulations that could affect trading partners. This body could also liase with the three relevant international standard-setting bodies (the Codex, OIE and IPPC).

9. For some Members, the enquiry point and notification authorities already to some extent functioned as coordinating platforms. Officials running these institutions were directly involved in implementing and applying the SPS Agreement in that they were also involved with preparatory work ahead of SPS Committee meetings and other SPS related work. The usefulness of having those

⁴ The representative of Chile also drew the Committee's attention to documents G/SPS/W/38 and W/39 from 1995 which list, *inter alia*, bilateral agreements to which Chile is party and give a description, in more detail, of the implementation of the transparency provisions of the SPS Agreement in Chile.

responsible for the implementation of the transparency provisions involved in implementing SPS policy and following the work of the WTO SPS Committee was emphasized repeatedly by delegations. This did not mean that the notification authority and the enquiry point staff had to personally have technical competence in all SPS areas. For instance, whilst it was the responsibility of a notification authority to respond to a request for information from another Member concerning a notified regulation, the notification authority itself did not need to have the answer to the question posed. It did, however, need to know how and from whom to get the answer. Likewise, it did not necessarily have to be within the competence of notification authority officials to fill in the notification format for a proposed new or changed regulation. This could be the duty of, for example, a national standard-setting body responsible for developing that standard. Nevertheless, it would remain the responsibility of the notification authority to ensure that a notification be issued whenever a new measure was proposed that affected trade (or an old one changed). The notification authority would also typically be involved in checking the consistency and accuracy of notifications coming from different sectors of the country. In these cases, the notification authority served as a bridge between the work of the national standard-setting entities and the WTO SPS Committee. The Chairman noted that a good way of strengthening this "bridge" between policy and technical agencies was the participation in the Committee, at least for one meeting, of a senior capital based official.

3. E-mail and Internet

10. Several Members stressed the desirability to increase the use of electronic means of communication (e-mail and Internet) at enquiry points and notification authorities. The Chairman noted that transparency generally worked in favour of many developing countries and that electronic means were becoming an increasingly important tool to further this aim. Whilst it was true that electronic means of communication posed infrastructural problems for many developing countries, it could also be one of the cheapest ways of making a vast leap forward. Nevertheless, it would also be important to maintain a parallel alternative means of communication for those unable to use e-mail or the Internet.

11. The Secretariat noted that it had recently established an e-mail list to which Members could subscribe in order to receive notifications via e-mail (for information on how to subscribe see Annex 2 to this report). At the time of the meeting, notifications were being sent out twice a week. Parallel to this, the Secretariat maintained its usual practice of circulating notifications. Paper copies of notifications were provided to the missions of WTO Members. It was up to each individual mission to forward the notifications to their enquiry points or notification authorities in capitals. Alternatively, upon request, the Secretariat could also mail notifications to a single address in the capital.

12. The Secretariat stressed the importance of keeping the lists of enquiry points⁵ and notification authorities⁶ up to date. This could be done by informing the Secretariat about any change in contact details via fax, e-mail or letter. The Secretariat recalled that it had circulated a questionnaire after the last SPS Committee meeting to request Members to identify any relevant web-sites where there was information relevant to SPS measures. The responses have been put together in a compilation document contained in G/SPS/GEN/144.

13. The United States presented a proposal on "Voluntary transparency". The idea was to enhance the distribution of information via the Internet. The term "voluntary" was used as the proposal did not pertain to any obligation under the SPS Agreement. While currently there was some sharing of comments on notified documents and translations of these, most Members did not know

⁵ G/SPS/ENQ series. The latest at the time of writing: G/SPS/ENQ/9, dated 3 November 1999.

⁶ The latest list at the time of writing: G/SPS/GEN/141, dated 3 November 1999.

that this information existed. The proposal was intended to help Members to be kept informed about who was volunteering information on what. This could be done by making a very brief indication in the existing notification formats or directly on the document put on the Internet as a hyper-link. The full proposal is contained in document G/SPS/GEN/152.

4. Technical Assistance

14. Many developing countries stressed the need for continued technical assistance. Particularly in the areas of risk assessment there was a lack of know-how and laboratory equipment. The general knowledge of the WTO agreements was not high in most LDCs. Only those institutions directly involved with WTO matters were aware of obligations and requirements. There was a need for *regular* seminars on implementation of the SPS Agreement.

5. Implementation – five years on

15. On the implementation of the SPS Agreement to date, Donna Roberts of the US Permanent mission to the WTO, noted that the ongoing process of scientific change made it inevitable that governments over time would change existing or establish new SPS measures. This underlined the importance of the transparency provisions of the SPS Agreement. The transparency provisions created an extensive system of monitoring in the absence of which many developing countries would have little means of securing pertinent information on changes in import requirements.

16. In the first four years of implementation, 85 of 94 Members who have that obligation, had notified their notification authority and enquiry point. Notifications had increased steadily since 1995, and in particular, notifications from developing countries had increased in recent years. Using the SPS Committee as a forum for discussion, over 80 interventions on separate issues had been made. Whilst most issues were matters among developed countries, over the last two years an increasing number of developing countries raised specific trade concerns, particularly related to their trade with developed countries. To the extent trade concerns could be addressed and solved in the framework of the SPS Committee itself, this was less costly than pursuing the formal dispute settlement mechanisms. This was one of the benefits flowing from active participation in the SPS Committee.

III. DRAFT HANDBOOK ON THE TRANSPARENCY PROVISIONS

17. The Chairman informed the SPS Committee that the Technical Cooperation and Training Division had launched a project on developing a handbook offering practical guidance to developing and least developed countries on how to go about fulfilling the transparency obligations of the SPS Agreement. This had been done in response to requests from several developing and least developed countries. Similar requests had also surfaced at a number of SPS technical cooperation seminars, most recently in Namibia in July 1999. The aim was to publish the Handbook as a WTO publication early in the year 2000. The purpose of the discussion at the meeting was to solicit comments and suggestions on the draft at hand. The Chairman recognized the substantial contribution of New Zealand in developing the draft.

18. The Secretariat introduced the draft handbook. It was emphasized that the document represented "work in progress". The objective was to include in the final version of the handbook: (i) case studies of how Members operated their enquiry points and notification authorities; (ii) sample letters from these authorities (i.e., the acknowledgement of receipt of comments); and (iii) examples of text used for filling out the notification formats. The Secretariat emphasized that the document should not be seen as an interpretation of the SPS Agreement; it was a document that was for guidance for Members and did not prejudice Members rights under the WTO Agreements. A statement to this effect would be included in the text of the final version of the handbook.

19. In general, Members noted that the Handbook was potentially a useful document and stressed the importance of examples and a user-friendly presentation. Some Members made specific proposals. New Zealand stressed that the handbook would also be a good way for Members to realize how they could "get the most out of" their enquiry points and notification authorities; the transparency provisions of the SPS Agreement included rights and benefits, and not only obligations.

20. Members were invited to provide further comments on the draft by 15 December 1999.

IV. ANNEX 1 – THE PROGRAMME

**SPECIAL MEETING OF THE SPS COMMITTEE
ON SPS TRANSPARENCY PROVISIONS**

TUESDAY, 9 NOVEMBER 1999

PROGRAMME

ROOM D, 9.30 a.m.

- A. OPENING STATEMENT BY THE CHAIRMAN
Chairman of the SPS Committee, Mr. Attie Swart
- B. THE DIFFERENCE BETWEEN SPS AND TBT MEASURES
WTO Secretariat, Erik Wijkström
- C. THE TRANSPARENCY PROVISIONS OF THE SPS AGREEMENT
WTO Secretariat, Christiane Wolff
- D. TRANSPARENCY ISSUES - AFTER 5 YEARS OF IMPLEMENTATION
Donna Roberts, Senior Economist, Economic Research Service, USDA
- E. CASE STUDIES –
ENQUIRY POINTS / NATIONAL NOTIFICATION AUTHORITIES
Presentations by delegations
- F. DRAFT HANDBOOK ON THE OPERATION OF ENQUIRY POINTS AND
NATIONAL NOTIFICATION AUTHORITIES - PRESENTATION AND
DISCUSSION
- G. CONCLUSION AND BRIEFING ON THE UPCOMING SPS COMMITTEE
MEETING
WTO Secretariat, Gretchen Stanton

V. ANNEX 2 – ELECTRONIC TRANSMISSION OF NOTIFICATIONS

ELECTRONIC TRANSMISSION OF SPS NOTIFICATIONS

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