

**Committee on Sanitary and Phytosanitary Measures**

**SUMMARY OF THE MEETING HELD ON**  
**29-30 May 1996**

**Note by the Secretariat**

1. The Committee on Sanitary and Phytosanitary Measures ("the Committee") held its fifth meeting on 29-30 May 1996 under the chairmanship of Ambassador Kari Bergholm (Finland). The agenda proposed in WTO/AIR/334, with additions, was adopted.

**Observers**

2. The Chairman welcomed observers from the Codex Alimentarius Commission (Codex), Office International des Epizooties (OIE), International Plant Protection Convention (IPPC), Food and Agriculture Organization (FAO), World Health Organization (WHO), International Trade Centre (ITC) and the United Nations Conference on Trade and Development (UNCTAD).

**Rules of Procedure**

3. As India maintained its reservation, the Proposed Rules of Procedure (G/SPS/W/48) could not be adopted by the Committee. The Chairman noted that the Committee would continue to operate under its Working Procedures (G/SPS/1).

**Implementation of the Agreement**

*Korea's import clearance measures and practices*

4. The representative of the United States expressed serious concern regarding a number of Korea's import clearance measures and practices which, in his government's view, were not based on science, did not conform to international practice or standards, and were deliberately employed to discourage food and agricultural imports. As the United States felt that Korea had not followed through on their commitment to implement previously agreed reforms, the United States had, on 24 May 1996, submitted a formal request for consultations (G/SPS/W/64). The full statement by the United States is available in document G/SPS/W/66. Several delegations expressed their exasperation with regard to difficulties in access to the Korean market for agricultural products. It was noted that although there was a substantial potential for trade, it could not been fully realized. Korea was strongly urged to adhere to the principles of the SPS Agreement.

5. The representative of Korea informed the Committee that the issues raised had been discussed extensively in a series of bilateral consultations between Korea and the United States, and, intermittently,

with other countries. Korea had, since early 1995, taken various measures in order to bring its sanitary and phytosanitary practices in line with the SPS Agreement. Many of the difficulties encountered were common to developing countries, such as: a low level of sanitary infrastructure, the absence of accumulated experience and information, and the lack of relevant international standards. However, the representative of Korea noted that his government would continue to streamline its SPS measures in light of its obligations under the SPS and other WTO Agreements. Improvements would be made in a timely manner.

#### *Bovine Spongiform Encephalopathy (BSE)*

6. The representative of the European Communities provided the Committee with an update and detailed background information with regard to developments related to BSE in the European Communities (G/SPS/W/67). He stated that before notifying the WTO of SPS measures taken, internal consultations would have to be completed. Similarly, the representative of Switzerland introduced a paper on the BSE situation in his country (G/SPS/W/68). He noted that a number of countries had restricted imports on dairy products and reminded the Committee that both the OIE and the WHO had concluded that dairy products posed no risk in respect of BSE.

7. The representative of the OIE informed the Committee that subsequent to the statement made by the United Kingdom with regard to BSE in March 1996, the OIE had held an *ad hoc* meeting in May 1996. One result of this meeting had been an updating of a scientific document providing all available information on the disease itself, as well as on scientific progress related to it. Furthermore, many of the suggested improvements of the OIE Chapter on BSE were agreed at the subsequent meeting of the OIE International Committee. These included: (i) an encouragement to strengthen BSE monitoring, which could result in the determination of a list of countries considered to be free; (ii) a listing of products representing no risk, such as milk and dairy products; (iii) the identification of certain risk tissues; and, (iv) the formulation of the text so as to maintain the distinction between countries with a high prevalence and low prevalence of the disease.

8. The representative of the WHO informed the Committee that two expert consultations had been held since the beginning of 1996 on Creutzfeldt-Jacob Disease (CJD) and BSE. At one expert consultation, held with the participation of the OIE and the FAO on 2-3 April 1996, recommendations had been made regarding best practices for ensuring protection of the consumer. The final report was available upon request from the WHO (EMC/DIS/96.147). The second expert consultation examined the findings associated with the newly recognized variant of CJD and compared it with data on other human transmissible spongiform encephalopathies (TSEs). The Committee was informed that the WHO would intensify its world-wide system of CJD surveillance and collaborate with the OIE on similar surveillance systems with regard to animal TSEs. Copies of two press releases and a fact sheet concerning both consultations were made available in the room in English and French<sup>1</sup>.

9. The representative of Argentina stated that one of the territories alluded to in the European Communities' paper was part of Argentina's territory and that its correct designation was the Maldiv Islands (Islas Malvinas).

#### *Draft Agreement between the WTO and the OIE*

10. The Secretariat introduced a draft agreement (proposed exchange of letters) between the Director-General's of the OIE and the WTO (G/SPS/W/61). Its purpose was to facilitate the collaboration between the two organizations on questions of mutual interest arising from the SPS Agreement. The same

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<sup>1</sup> Press Release WHO/28 Rev.1 of 15 April 1996, Fact Sheet N 113 Revised April 1996 and Press Release WHO/38 of 17 May 1996.

document had been presented at the OIE International Committee a week earlier but had not been adopted, apparently due to lack of time to properly study the draft agreement.

11. A number of Members stressed the importance of such an agreement as there was a clear need to clarify the nature of the link between the two organizations regarding their mutual commitments to each other. One delegation noted that the document represented an administrative agreement between the Secretariats and suggested that the letters be drafted in such a way that they dealt only with matters which were the prerogative of the Director-General, thus leaving out elements which would necessitate its approval in the Committee itself.

#### *Argentina on Foot and Mouth Disease (FMD)*

12. The representative of Argentina informed the Committee that as of 27 April 1996, Argentina had fulfilled requirements to be recognized as FMD free country practising vaccination in accordance with the standards of the OIE (G/SPS/W/63).

### **Transparency Provisions**

#### *Consideration of Specific Notifications Received*

13. The representative of the European Communities expressed concern with regard to an apparent proposal by the Brazilian Ministry of Agriculture (10 April 1996) on import requirements for wine. The proposed measure had not been notified in accordance with the SPS Agreement. The European Communities expressed concern that Brazil was apparently intending to require that establishments in exporting countries be inspected and approved by Brazilian authorities prior to any exports to Brazil taking place. The European Communities considered their own requirements regarding conditions for the production of wine within the European Communities to be at least equivalent to those in Brazil with respect to the safety of the product for the consumer. The representative of the European Communities stated that comments would be presented in writing to Brazil once an official SPS notification was made. The representative of Brazil stated that while he was aware that Brazil was considering a measure in this area, he did not have the necessary information on hand to make a substantive comment on the issue.

14. On another matter, the representative of the European Communities brought the Committee's attention to a Canadian notification regarding a proposed requirement that cheese be pasteurized or produced from pasteurized milk in order for it to be marketed and sold in Canada (G/SPS/N/CAN/8). In his view, current legislation in force in the European Communities regarding, *inter alia*, production requirements, safe and correct sourcing and subsequent supervision in the various production stages from farm to consumer (Milk Hygiene Directive 9246), provided at least equivalent guarantees in terms of food safety as pasteurization. Canada was urged to consider the scientific basis and facts of the matter, taking into account relevant discussions in the Codex, and to consider the issue in the light of the equivalency provisions of the SPS Agreement (Article 4). The representative of the European Communities observed that a number of Members maintained restrictive practices in relation to the import of raw milk cheeses from the European Communities that were likewise not justifiable on health grounds. The Swiss delegation supported the views expressed by the representative of the European Communities. The representative of Canada noted that scientific documentation in support of the proposal would be provided upon request and that an Expert Advisory Committee had been appointed to examine the matter.

15. The representative of the European Communities expressed concern with regard to a notification by the United States on the introduction of the concept of regionalization in import policy and internal

control policy in relation to animal health (G/SPS/N/USA/37). While the representative of the European Communities welcomed the initiative by the United States with regard to regionalization, it was the opinion of the European Communities that the policy proposed by the United States did not meet the criteria of a true regionalization approach, at least not the way it had been developed in the European Communities and it had been discussed in other international fora such as the OIE. The representative of the United States outlined the proposal and stressed that its objective was to facilitate trade and to fulfil the obligations of the United States under the SPS Agreement, in particular Article 5.2 on risk assessment.

#### *Proposed Modifications to the Notification Procedures*

16. Referring to Point B in the proposed modifications to the Recommended Notification Procedures (G/SPS/W/47), the representative of Korea drew the Committee's attention to the fact that in Korea notified draft regulations were subject to parliamentary approval and could thus be changed during the parliamentary process (subsequent to notification), which could be the source of some confusion. Regarding Point E(c) of the document, the representative of Japan stressed his government's view that the comment period would not have to be extended in cases where a notifying Member, upon request, did provide copies of the requested document, or, where voluminous documents were involved, a summary of the document in one of the WTO official languages. The Committee adopted the Recommended Notification Procedures (G/SPS/7).

#### *De-restriction of SPS notifications and list of Enquiry Points*

17. The representative of Canada recalled his government's proposal made at the Committee's March 1996 meeting to derestrict notifications and list of Enquiry Points (G/SPS/W/60). The Committee agreed to the de-restriction of notifications and Enquiry Point lists with effect 1 July 1996, should there be no further objection from Japan or the European Communities prior to that date.

### **Monitoring the Use of International Standards**

18. At the March 1996 meeting of the Committee, the European Communities had tabled a proposal for a procedure to monitor the use of relevant international standards, as required by Articles 3:5, 12:4, 12:5 and 12:6 of the SPS Agreement (G/SPS/W/51). A number of preliminary comments had been made, and, as a result of the discussion, the Secretariat had requested Members to identify those international standards of major importance for their trade (G/SPS/W/58). No replies to the request had been received.

19. One suggestion by the European Communities was that the SPS Committee maintain an inventory of relevant standards, guidelines or recommendations (paragraph 15(b)). A number of delegations expressed a preference for focusing attention on those standards where there appeared to be difficulties rather than endeavouring to create a comprehensive list. In assessing whether a standard, guideline or recommendation had a major trade impact, it had earlier been suggested that the volume of trade involved be considered. In this regard one delegation observed that a low volume of trade could actually signal the absence of an international standard. In such cases the attention of the relevant international standard setting organization should be drawn to that fact. The representative of the Codex confirmed that when identifying areas where there were gaps in terms of needed standards, a "significant impact on trade" was one of the factors taken into account.

20. One delegation stressed that the SPS Committee's role was to develop a procedure to monitor the use of international standards (Article 12:4), not to engage in the monitoring itself. In light of this, the objective of the proposed Pilot Project should be to contribute to the development of such

a procedure. However, concern was expressed by a number of delegations at the prospect of a lengthy discussion of what products and standards might be covered by the Pilot Project. Participants agreed that it would be useful to have responses to the Secretariat's questionnaire (G/SPS/W/58) in order for the Committee to have a minimum of factual information to work from. It was agreed that Members would submit the answers to the questionnaire by 15 September 1996.

21. The representative of the Codex informed the Committee that work on the review of existing standards had been under way for five years and that by the end of the 1997 Codex Commission Session, more than 25 per cent of the Codex Maximum Residue Levels would have an age of less than 5 years - either having been recently established or reviewed. The remaining 75 per cent would have an age of between 5 and 10 years. The Codex acceptance procedures, which needed to be reviewed in the light of the SPS Agreement, would be an issue for discussion at the next session of the Codex Committee on General Principles in November 1996. The representative of the OIE noted that difficulties in updating international standards did not necessarily derive from cumbersome internal procedures, but rather from the fact that member countries themselves had difficulties in providing comments to the OIE in a timely fashion.

### **Consistency**

22. The Chairman presented his report on the informal consultations he had held with interested Members regarding how the Committee might proceed with the development of guidelines to further the practical implementation of the provisions on consistency in decisions on the appropriate level of protection, as required by Article 5:5 (G/SPS/W/59).

23. One delegation expressed the view that the setting of the level of protection was a political decision, and that a decision based on proper risk assessment was sufficient to ensure the objective of consistency (Article 5:5). In response, another delegate pointed out the frequent confusion between the terms "risk assessment" and "risk management". He noted that risk assessment was a process which resulted in the identification and evaluation of risks (Articles 5:1 through 5:3). Risk management, on the other hand, was a decision made by the responsible authorities as to how to reduce such risk to an appropriately low level. Under the SPS Agreement, it was an obligation that "... each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations if such distinctions result in discrimination or a disguised restriction to trade" (Article 5:5, emphasis added).

24. One delegation suggested that work might be promoted through continued informal consultations with interested Members with the objective of producing draft guidelines for consideration by the Committee. Many participants supported this proposal and it was suggested that document G/SPS/W/59 was a good basis from which to elaborate such guidelines. The Chairman agreed to prepare draft guidelines (or a progress report should that not be possible), to be presented at the next meeting of the Committee, on the basis of further informal consultations.

### **Development and Application of Residue Limits**

25. With regard to a paper previously presented by Australia on the development and application of residue limits to foods in trade (G/SPS/W/34), several delegations stressed the relevance of the work conducted by the Codex. A common problem faced by Members was the lack of maximum residue limits (MRLs) on certain chemicals in food. It was deemed essential that Members actively participate in the work of the Codex in order to enhance the process of setting residue limits based on science. One delegation stressed the need for the Codex to improve the use of up-to-date data with regard to

Good Agricultural Practices in the setting of MRLs. The representative of Australia informed the Committee that a paper similar to G/SPS/W/34 would be submitted for consideration to the Codex Executive Committee the following week.

26. One delegation stressed that when setting MRLs, the consumer's point of view should be the primary concern, irrespective of the origin of the imported product. The representative of Australia stressed that nothing in the paper should be seen to suggest a reduction in public health standards or an increase in risk to the consumer in national approval procedures for establishing residue limits.

27. Another delegation expressed concern that the proposed mechanism to set additional MRLs on a temporary basis could prejudice the Codex MRL setting process. Given legislative difficulties in establishing and amending MRLs, national authorities could hardly be expected to do so only for temporary use. The representative of Australia acknowledged that the handling of the matter might not be covered by current legislation but that it nevertheless was time to begin giving it some consideration. He noted that there were examples where, in response to trade problems, countries had established temporary MRLs in a way which maintained public confidence and allowed the trade problem to be solved. Some countries referred to Codex standards as a basis for temporary MRLs, or took guidance from MRLs set by other countries where there was a basis for comparison and confidence. A number of delegations indicated that they would give more in-depth comments on the paper at a later stage. The Chairman encouraged delegations to start considering conclusions at the next meeting of the Committee.

#### **Work Programme of the SPS Committee**

28. The representative of Argentina presented a proposal with regard to the Committee's future work programme (G/SPS/W/53). It was agreed that Members be encouraged to discuss trade problems in the Committee whenever possible before initiating formal dispute settlement procedures, without prejudice to their rights under that process. There was also a general consensus that Members raise in the Committee any trade problem or concern they might encounter with regard to other Members' implementation of the Agreement, particularly concerning notifications. For this purpose it was agreed to add a permanent sub-item entitled "Specific trade concerns" under the item "Implementation of the Agreement". The proposal that Members be encouraged to inform the Committee on relevant practical examples of the application of Article 4 (Equivalency) was also welcomed.

29. With respect to the proposal that a list be compiled of Members' risk assessment units, and of risk assessments developed and applied by Members, a number of delegations pointed out that although they had no formal risk assessment unit they nonetheless undertook risk assessments in various forms. Another delegation observed that regardless of the existence of a risk assessment unit or not, the SPS Agreement required Members to base their SPS measures on risk assessment (apart from the least developed Members and developing country Members during the first two years). Regarding the catalogue of risk assessments, several Members suggested that such information should be limited to appropriate examples for educational purposes. Further discussion between interested Members was deemed necessary in order to develop a more concrete, practical implementation of the two proposals.

30. A further proposal regarded the publishing of information on training activities related to the SPS Agreement which were being carried out or co-ordinated by relevant international organizations or regional bodies. Members invited the Secretariat to explore this issue in cooperation with the relevant international organizations and the delegation of Argentina to come up with a proposal on how to manage the task. The representative of the Codex noted that a list of all upcoming meetings, supplemented by detailed provisional agendas and summary reports on the outcome of each meeting, already existed on the Internet and was updated on a monthly basis.

### **Technical Assistance**

31. The Secretariat informed the Committee that it had held another regional seminar since its last meeting. This seminar, in Prague, was organized in cooperation with the Codex, OIE and the IPPC and financed by the United States Government. Thirteen countries had participated. A similar seminar was planned for Moscow in early July 1996.

32. The Secretariat had also participated in an APEC seminar on the SPS Agreement and its implementation which was held in Manila, 14-15 May 1996. The purpose of the seminar had been to broaden the understanding of the SPS Agreement, particularly with the objective of stimulating a more active participation of Members in the work of the SPS Committee.

33. The representative of the Codex noted that as a result of the restructuring of resources in the FAO, some additional funds had been provided to the Codex. This would allow it to assist developing countries to strengthen their ability to interact with the Codex Alimentarius Commission, particularly with regard to matters such as the establishment of Codex Contact Points and national Codex Committees.

34. The representative of Argentina informed the Committee that Mercosur was organizing a workshop on risk assessment with regard to SPS matters for the end of 1996 in cooperation with the European Communities. Members would shortly receive the agenda of the workshop, and, subsequently, the recommendations and conclusions reached.

35. New Zealand informed the Committee that a risk analysis workshop would be held in Switzerland, in August 1996. This meeting would be organized by the Swiss veterinary service and would also involve the New Zealand Ministry of Agriculture and the OIE.

36. The Chairman drew the Committee's attention to a specific decision adopted by the Committee on Technical Barriers to Trade (TBT) on technical assistance (G/TBT/W/26). The objective of this decision was to make operational the provisions on technical assistance of the TBT Agreement. It was suggested that Members assess whether a similar decision might be appropriate for the SPS Committee.

### **Preparatory Work for Singapore**

37. The Chairman noted that he had started informal consultations with Members regarding the report of the SPS Committee to the Ministerial Conference in Singapore in December 1996. He recalled that the Chairman of the General Council had provided guidelines concerning the report (WT/L/145). The Chairman informed the Committee that it was his intention to distribute a draft report to Members before the summer recess and invite Members to informally consult on the matter in late July or possibly early September. He stressed that the Committee must adopt the final report no later than at its October 1996 meeting.

### **Matters of interest arising from the work of Observer Organizations**

38. The representative of the IPPC introduced a paper (G/SPS/W/70) regarding an Expert Consultation on the Revision of the IPPC (the Convention). At that meeting there had been a general consensus that the scope of the IPPC should be at least as broad as that of the SPS Agreement. Furthermore, the experts agreed on the need to strengthen the administration of the Convention at the global level and that provisions for an IPPC Secretariat should be included in the Convention. The

establishment of a Commission, which would adopt standards and consider other matters relating to the implementation of the Convention, had also been discussed.

39. Several Members expressed serious concern regarding the prospect of the inclusion of the "principle of solidarity" in the revision of the IPPC. In brief, this principle would mean that countries within the same region would be required to apply the same SPS regulations vis à vis imports from a third country. However, as a number of delegations pointed out, all countries within a given region did not necessarily face the same risk from the imported product as ecological and other relevant conditions could vary. It was stressed that the IPPC should not be revised in such a way that it would be at odds with the principles of the SPS or other WTO Agreements. Moreover, it was suggested that greater effort be made to align the terminology used in the new Convention with the terminology used in the SPS Agreement. In this context, the representative of Uruguay briefly introduced a paper on the review of the IPPC and its relation to the SPS Agreement (G/SPS/W/69) which will be discussed at the Committee's next meeting.

40. The representative of the OIE reported on the OIE's General Session (20-24 May). In a resolution adopted by the Committee, the OIE was encouraged to continue its efforts to explain to its members what their responsibilities were under the SPS Agreement. This would be done primarily through regional workshops. Among other points raised by the OIE representative was the updating of the OIE Code on Mammals and Birds and the establishment of a list of countries considered to be free of FMD without vaccination. Furthermore, guidelines for OIE activities in the next five years were adopted; these included a request that the OIE increase its activities in standard-setting.

41. The representative of the WHO informed the Committee that at the World Health Assembly (20-25 May) there was general support for WHO standard-setting activities. Moreover, the view was expressed that the WHO should allocate more resources to the standard-setting activities of the joint FAO/WHO Codex Alimentarius Commission. It was noted that there existed a lack of information within national health sectors regarding sanitary measures. Finally, the representative informed the Committee that the FAO and WHO were planning to hold an experts' consultation on risk management in January 1997.

### **Other Business**

42. The representative of Australia expressed serious concern with regard to Korea's sanitary regulations on ultra heat treated milk in consumer packs (UHT milk). Australia informed the Committee that Korea had agreed to move to a manufacturer's determined shelf life for approximately 50 products, including dairy products, as of 1 July 1996. However, shelf life for UHT milk remained government mandated at a substantially shorter period of time compared to the period commonly applied by most countries. Australia was unaware of any scientific justification for the limited shelf life period mandated in Korea. Korea was requested to treat UHT milk in the same way as other like products and permit a manufacturer's determined shelf life by 1 July 1996. Several delegations shared the Australian concern. One delegation pointed out that manufacturers' determined shelf life was consistent with Codex standards.

43. On a separate but related issue, the representative of Canada informed the Committee about a similar concern regarding bottled water, also in relation to Korea. Although a formal understanding had been reached with regard to some aspects of the issue, concerns on shelf life of bottled water remained outstanding. In this regard, Korea had not offered any time-table for moving to manufacturer determined shelf life on bottled water.



44. The representative of Korea informed the Committee that it would convey the concerns raised to the relevant authorities in Korea.

**Date and Agenda of the next Meeting**

45. The following provisional agenda for the meeting of 8-9 October 1996 (tentative date) was agreed:

- A. Adoption of the agenda
- B. Observers
- C. Rules of Procedure
- D. Report to the Singapore Ministerial Conference
- E. Implementation of the Agreement
  - (i) Information from Members
    - Uruguay: Control of agricultural pests
  - (ii) Specific trade concerns
  - (iii) Draft agreement between WTO and OIE
- F. Transparency Provisions:
  - (i) Consideration of specific notifications received
  - (ii) Any other matters related to the operation of transparency provisions
- G. Monitoring of use of international standards
- H. Consistency
- I. Development and application of residue limits
- J. Technical assistance
- K. Matters of interest arising from the work of observer organizations
  - (i) Revision of IPPC
- L. Other business
- M. Agenda of next meeting