

**THE SECOND REVIEW OF THE OPERATION AND IMPLEMENTATION
OF THE SPS AGREEMENT**

Further elaboration of issues for consideration by New Zealand

The following communication, received on 11 October 2004, is being circulated at the request of the Delegation of New Zealand.

I. INTRODUCTION

1. New Zealand considers that Members have been served well by the SPS Agreement. We believe that the SPS Agreement contains the right balance between maintaining the sovereign right of any government to determine its own appropriate level of sanitary or phytosanitary protection while ensuring that this protection is science-based and does not create unnecessary barriers to international trade. New Zealand believes that this balance in the Agreement must be preserved.

2. The Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as the "Committee") agreed to a process (G/SPS/32) for the review at its June 2004 meeting and noted that the report of the review should be prepared for the Sixth Ministerial Conference. At that meeting, New Zealand noted the short period for consideration of issues under the review and stated that issues submitted for consideration should therefore be achievable within the given timeframe.

3. New Zealand identified and submitted four issues for consideration (G/SPS/W/150). They are:

- (a) Transparency¹
 - (i) the development of a more user-friendly SPS database as distinct from the WTO documents online facility (DDF+);
 - (ii) notification of all new measures that are based on international standards;
- (b) Administration
 - (i) discussion on the use of the SPS Committee to facilitate *ad hoc* consultations to progress trade concerns; and

¹ Both these issues were discussed at the June 2004 SPS Committee; see paragraphs 64 and 66 of G/SPS/R34 regarding notification of all measures even when based on international standards.

- (ii) discussion on how to avoid unnecessary duplication of work of the SPS Committee and the relevant standard-setting bodies.

4. Further elaboration of New Zealand's suggestions is provided below.

II. ISSUES

A. TRANSPARENCY

1. The development of a user-friendly searchable database of SPS notifications

5. In addition to the WTO documents online facility (DDF+), New Zealand supports the development of a searchable database as was suggested by the Secretariat at the Committee meeting in June 2004. New Zealand proposes that a database be developed that summarizes the content of notifications and can be used by Members to assist them in fulfilling their SPS transparency obligations and operating their National Notification Authorities and National Enquiry Points.

6. We consider that it would be useful to be able to use such a database to assist Members in identifying SPS measures of interest to them and to be able to ascertain the current status of those measures. It could also be useful to be able to search on the basis of products covered; regions affected; objectives e.g. food safety, animal health, plant protection, protect humans from animal/plant pest or disease, protect territory from other damages from pests; international standards that the measure is based on and any variation from the international standard; whether the measure is trade facilitating or not; and the deadline for comments. The summaries of notifications would be updated regularly based on information contained in the often numerous corrigenda, addenda and revisions of the same notification. The relevant notifications would be attached for Members to download and view, and links for information webpages containing the full text for measures and unofficial translations would be provided.

7. The database would enhance transparency and assist developing countries. It could assist the Secretariat to meaningfully implement the obligation in paragraph 9 of Annex B which requires it to draw the attention of developing country Members to any notifications relating to products of particular interest to them. Exporters could refer directly to the database to ascertain what measures importing Members apply to products of interest to them, policy makers could easily establish the number of notifications Members have made, the areas covered by and the objectives of those notifications. Moreover, the international standard setting bodies could use the database to evaluate which countries are deviating from international standards and the reasons for these deviations. Additionally, Enquiry Points and National Notification Authorities could use the database rather than spend scarce resources duplicating efforts to develop databases of their own.

2. Notification of all new measures that are based on international standards

8. New Zealand considers the notification of all new measures that are based on international standards as discussed in the June Committee meeting would further enhance transparency and facilitate the monitoring of harmonisation of international standards provided for in Articles 3.5 and 12.4 of the SPS Agreement. In accordance with those obligations under the SPS Agreement, the Committee has developed a mechanism for monitoring international harmonisation (G/SPS/11). However, monitoring is at present limited to instances where either existing international standards are not being used, are considered inappropriate or do not exist. Currently Members are not required to notify when their regulations are based on international standards. This makes it difficult for the Committee to fully monitor harmonisation and the use of such standards.

9. Another consideration is that by notifying all new measures that are based on international standards, Members will have up-to-date information on the SPS measures that a Member is utilizing. This will enable exporting Members to be able to readily work towards meeting these measures and facilitate trade.

10. Facilitation of this notification mechanism will mean more efficient monitoring of harmonization of international standards and further enhanced transparency which New Zealand considers would have positive and productive implications for Members. We believe that as part of its review, the Committee should amend its *Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7)* (G/SPS/7/Rev.2) only, to encourage Members to notify all SPS regulations even when they are based on international standards. This amendment would be similar to other amendments made to the transparency obligations such as those regarding equivalence² and would encourage Members to be more transparent. Members would not be expected to notify retrospectively all those SPS measures already harmonized.

B. ADMINISTRATION

1. Discussion on the use of the SPS Committee to facilitate ad hoc consultations to progress trade concerns

11. In its paper G/SPS/GEN/74 (June 1998), the United States reminded the Committee of the usefulness of Article 12.2, which provides that "*the Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary and phytosanitary measures*", this is also known more colloquially as the "good offices of the Chair". As noted by the United States, the mechanism of informal consultations between parties and the SPS Chair are not necessarily a prerequisite for the formal dispute system and could be used by Members to avoid disputes, which are costly and resource intensive.

12. New Zealand considers that the Committee should note in its review that the "good offices of the Chair" are a useful option for the facilitation of consultations on SPS issues such as specific trade concerns, and that the Committee remind Members that this is an option available to them to progress or resolve specific trade concerns. Further, in accordance with Article 12.2, we consider that the Committee should encourage Members to avail themselves of this option where appropriate.

2. Discussion on how to avoid unnecessary duplication of work of the SPS Committee and the relevant standard-setting bodies

13. We consider that the Committee and the relevant international standard setting bodies (Codex, OIE, and the ICPM) have distinct, yet complementary roles. The Committee works closely with these organizations to obtain the scientific and technical advice necessary for the practical application of the SPS Agreement. This is recognition of the scientific and technical foundation of the SPS Agreement and clarifies the roles of the Committee in relation to the standard setting organisations i.e. the Committee does not develop international standards as this would lead to a duplication of effort between the Committee and the international standard setting bodies.

14. More specifically, Article 12.3 of the SPS Agreement makes it clear that the Committee needs to maintain a close relationship with the international standard setting bodies to secure the best available scientific and technical advice for administering the SPS Agreement and avoiding unnecessary duplication of effort. The Committee needs to ensure that matters relating to scientific and technical aspects of the SPS Agreement (in particular the development, implementation and

² Notification of Determination of the Recognition of Equivalence of Sanitary and Phytosanitary Measures, Decision by the Committee, G/SPS/7/Rev.2/Add.1.

harmonization with international standards, recommendations or guidelines) are referred to the relevant standard setting bodies, which have the necessary technical expertise and experience to consider and if necessary report back to the Committee with appropriate advice, recommendations or further work required.

15. One facet of the relationship between the Committee and the relevant international organisations is in the area of international harmonization. In accordance with the obligations under the SPS Agreement, the Committee has developed a mechanism for monitoring international harmonization and there is a standing item on the Committee's agenda, so that Members can indicate where there is a need for the development of an international standard or where Members are not using an international standard. This agenda item was created for the purpose of allowing the membership to discuss such concerns. Discussions may result in the Committee formulating a recommendation inviting the relevant standards setting organisations to consider whether it is necessary to develop a standard. When utilised, the procedure for monitoring international harmonization can work effectively.

16. An illustration of the successful use of this procedure and the relationship between the Committee and the international standard setting bodies is the issue of "official control". The issue of "official control" and the lack of a definition for this term that was first brought to the attention of the Committee in a submission by the United States (G/SPS/W/97) in February 1999, under the provisional procedure to monitor the process of international harmonization. The matter was then referred by the Committee to the ICPM for its consideration. The ICPM commenced work on a definition for the term "official control" as a result of the request of the Committee, and a definition and guidelines for official control were adopted by the ICPM at its third Session in April 2001.

17. New Zealand considers that the Committee should note in its review that the Committee and the relevant international standard setting bodies have distinct, yet complementary roles. Further, that in the review the Committee agrees it will refer matters relating to scientific and technical matters pertaining to the practical application of the Agreement (in particular the development, implementation and harmonization with international standards, recommendations or guidelines) to the relevant standard setting bodies, which have the necessary technical expertise and experience to consider them, in order to ensure that unnecessary duplication of effort is avoided. The international standard setting bodies then can, if necessary, report back to the Committee with appropriate advice and/or recommendations of further work required.
