

**REVIEW OF THE AGREEMENT ON THE APPLICATION OF SANITARY AND
PHYTOSANITARY MEASURES - PROPOSAL FOR CONSIDERATION**

Submission by the United States

The following communication, received on 19 October 2004, is being circulated at the request of the Delegation of the United States.

1. The United States takes note of and supports the **Decision on Implementation-Related Issues and Concerns of the Fourth Session of the Ministerial Conference** (WT/MIN(01)/17). With specific reference to the decision contained in paragraph 3.4 pertaining to the review and implementation of the WTO SPS Agreement, the United States submits the following for consideration by the Committee.

2. The United States would like to commend the Secretariat and express appreciation for preparing the **Review of the Operation and Implementation of the SPS Agreement** (G/SPS/GEN/510) for the Committee. We believe the document provides a solid basis for the Committee's review of the operation and implementation of the Agreement. The United States finds GEN/510 to be an accurate summary of most of the Committee's activities and deliberations since 1999. We propose that two additional sections be added to GEN/510: one to summarize the Committee's discussion of specific trade concerns; and a second section to describe the work program or issues the Committee intends to address at future meetings.

Summary of Discussions of Specific Trade Concerns

3. While we believe GEN/510 provides an extensive review of many of the Committee's activities, the United States proposes the inclusion of two additional topics in GEN/510. First, we propose expanding the section of the paper on specific trade concerns (paragraph 51). In the view of the United States, the discussions in the Committee under the agenda item of specific trade concerns have made significant and meaningful contributions to the operation and implementation of the SPS Agreement. We believe these discussions demonstrate Member's increasing knowledge of the rights and obligations under the Agreement and show that the SPS Committee is a useful forum to address SPS-related issues among Members. The United States believes a short summary of major SPS-related trade issues, such as FMD, BSE and Avian Influenza (AI), would be beneficial for all Member countries and can help to demonstrate the Committee's role in the implementation and operation of the Agreement. In this regard, the Committee may wish to consider the summary material prepared by the Secretariat in G/SPS/GEN/204/Rev.4, as a basis for a report on the Committee's discussions on specific trade concerns in the context of the review.

Work Plan

4. The United States proposes that the review report include a section that identifies issues that the Committee may discuss at future meetings. Members have submitted a number of proposals for the Committee's consideration and these submissions will be discussed by the Committee in the near future. In the view of the United States, there is not sufficient time to evaluate properly each of these proposals and for the Committee to determine what action, if any, might be taken before the Committee completes the review as directed by paragraph 3.4 of the Ministerial Decision. Therefore, the United States suggests that the Committee discuss each of these submissions from Members to determine which of these issues will be the subject of more in-depth consideration. These identified issues would constitute the Committee's future work plan. We believe it would be helpful to inform Ministers of the Committee's future deliberations in the review of the Agreement.

Proposals for the Committee's Work Plan

5. The United States is pleased to submit the following proposals for consideration as part of the Committee's future work plan.

A. Implementation and relationship of Articles 2.1 and 5.6

6. A review of the SPS Agreement should ensure that Members are meeting their commitments and working together to enhance trade. There are two interrelated principles within the Agreement that deserve further attention by the Committee. The United States proposes the Committee review Members' experiences regarding the interrelated principles of Articles 2.1 and 5.6 of the Agreement.

7. Article 2.1 states that "Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement". The United States fully supports this right and encourages all Members to notify the Committee of their SPS proposals on a timely basis.

8. The second principle is contained in Article 5.6. It reads as follows: "... When establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility".

9. The Agreement goes on in Footnote 3 to explain that under Article 5.6, "a measure is not more trade restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade".

10. While important for full implementation of the Agreement, it is not clear that Members have forged a common understanding and application of these concepts in practice. The United States believes the implementation of the Agreement could be enhanced through a discussion and the identification of good practices regarding the implementation of these principles. We suggest that the best way to approach such a discussion is for the Committee to invite Members from different regions and economic circumstances to present information and discuss how their regulatory regimes implement Articles 2.1 and 5.6 and the phrase "not more trade-restrictive than required".

B. Consultations Under Article 12.2

11. The United States believes Article 12.2 provides Members with a useful opportunity to assist in the resolution of SPS issues that disrupt trade and which would enhance the full implementation of

the Agreement. However, the framework of the consultations provided for in Article 12.2 has not been developed into an operational mechanism with established procedures and processes. As a result, the provisions of Article 12.2 have been significantly under utilized.

12. There are a variety of possible alternative approaches regarding the consultations described in Article 12.2 of the Agreement which could be used to enhance the implementation and operation of the provisions of Article 12.2. For example, the Committee could discuss the following options:

- (a) Members could make themselves available to facilitate ad hoc consultations and to arrange for input from the standard-setting bodies and other technical experts, as appropriate. This could allow a larger number of issues to be the subject of ad hoc consultations without over-burdening the Chair or the Secretariat;
- (b) The Committee could identify more general trade issues that have been raised by several Members and which are disrupting trade. In such cases, the Committee could facilitate a session during which the relevant international standards and scientific opinions were presented; or
- (c) Members could discuss how implementation of Article 12.2 could result in the creation of a new mechanism for resolving SPS trade disputes that is considerably less resource-intensive than a dispute panel. A mechanism created under Article 12.2 may appeal to developing countries, as this mechanism may involve fewer resources than those necessary to pursue other dispute settlement procedures, such as those of the WTO, IPPC or OIE.

13. These options are presented to initiate a discussion regarding Article 12.2. The United States believes that the specific outcomes regarding understandings or procedures to implement the provisions of Article 12.2 should depend upon the deliberations of the Committee.
