

**SECOND REVIEW OF THE OPERATION AND IMPLEMENTATION  
OF THE AGREEMENT ON THE APPLICATION OF  
SANITARY AND PHYTOSANITARY MEASURES**

Communication from Mexico

The following communication, dated 26 October 2004, is being circulated at the request of the delegation of Mexico.

**I. INTRODUCTION**

1. As an original signatory to the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), Mexico has played an active role in activities relating to the implementation of this international instrument and is firmly committed to eliminating the unnecessary barriers to trade that are generated through the application of such measures. Even before the entry into force of the SPS Agreement, Mexico had started restructuring its legal framework covering sanitary and phytosanitary measures, with a view to implementing domestic mechanisms and procedures that would ensure the strict and effective fulfilment of obligations in that area. This marked the beginning of a new phase in Mexican administrative law, in which the preparation, adoption and amendment of all sanitary and phytosanitary measures are subject to fundamental principles such as transparency, rationality and harmonization.

2. Mexico attaches great importance to the Second Review of the Operation and Implementation of the SPS Agreement, principally on account of the impact that implementation of the SPS rules has on the health and growth of multilateral trade. In this regard, Mexico considers that, while tariffs are being eliminated, it is becoming increasingly obvious that the international flow of goods is being affected by a proliferation of non-tariff measures. Mexico further believes that the preparation and application of sanitary and phytosanitary measures, as well as the relevant control, inspection and approval procedures, are instrumental and highly effective in, *inter alia*, achieving sustainable economic growth in the developing countries, raising the standard of living of their citizens, developing and strengthening business infrastructure and competitiveness and protecting human, animal and plant health and the environment.

3. In analysing the operation of the SPS Agreement, pursuant to Article 12.7, and the results of the previous review, Mexico has come to the conclusion that all trade problems associated with sanitary and phytosanitary measures are directly linked to problems concerning the implementation of the SPS provisions. Mexico believes that the Agreement has a well-structured set of rules, which are sufficiently clear and exhaustive, and that consequently this review should not seek to modify its provisions, but solely make recommendations so as to enable the Members to apply them more promptly, effectively and appropriately.

4. In view of the foregoing, Mexico's objective during this second review is to discuss and, if appropriate, approve recommendations in the following fields (listed in no particular order):

- (a) Technical assistance;
- (b) good regulatory practices;
- (c) regionalization; and
- (d) transparency.

## **II. TECHNICAL ASSISTANCE**

5. Mexico believes that this second review of the SPS Agreement should both continue and deepen the discussion on the sustainability and durability of the effects of technical assistance provided by the Members in that field, which is why it is once again submitting for the Committee's consideration the arguments, explanations and conclusions contained in document G/SPS/GEN/382, dated 1 April 2003.

## **III. GOOD REGULATORY PRACTICES**

6. Articles 2.2, 2.3, 3.4, 5.4 and 5.6 of the SPS Agreement include, expressly or tacitly, various substantive obligations that the Members must fulfil so that the sanitary or phytosanitary measures that they adopt do not constitute disguised restrictions on international trade, are not applied in a discriminatory fashion and are not more trade-restrictive than required to achieve an appropriate level of sanitary or phytosanitary protection.

7. In Mexico's view, the obligations referred to in the above paragraph can be considered applicable *mutatis mutandis* to control, inspection and approval procedures, as provided for in Article 8, and Article 1(a), (e), (f) and (g) of Annex C, of the SPS Agreement.

8. In Mexico's opinion, many of the problems encountered by various WTO Members in gaining access for their products to other markets are directly linked to failure to comply in a timely fashion with the above-mentioned obligations laid down in the SPS Agreement. However, the Committee's discussions have, as yet, barely touched upon ways of implementing those provisions or the mechanisms used internationally to ensure their fulfilment. In this communication, these mechanisms are included within the concept of "good regulatory practices".

9. Mexico therefore suggests that, during the current review of the SPS Agreement, the Members discuss the possibility of drawing up guidelines on good regulatory practices that would promote practical implementation of the SPS provisions identified by Mexico in this section of the document. The purpose of such guidelines would be to enable the Members to check, before definitively issuing their respective sanitary and phytosanitary measures, that the substantive obligations laid down by the SPS Agreement had been fulfilled. To that end, it would be very useful if the Members exchanged information on the measures and mechanisms in force at the domestic level so as to ensure that their regulations or control, inspection and approval procedures are drawn up in accordance with the principles of non-discrimination and rationality.

10. Mexico believes that the preparation of guidelines on good regulatory practices, in addition to providing highly useful guidance for Members, will help the developing – and particularly the least-developed countries – the countries that have recently joined the WTO and those engaged in that process to implement the SPS Agreement effectively for the benefit of international trade.

#### **IV. REGIONALIZATION**

11. In accordance with its communication G/SPS/GEN/388, dated 1 May 2003, Mexico considers it necessary to continue the discussion on how to achieve more effective implementation of the provisions contained in Article 6 of the SPS Agreement. This must be done without prejudice to the activities of the relevant international organizations or to the progress made by each one of them to that effect. Mexico therefore believes that the review of the SPS Agreement should give rise to the recommendation for a Committee Decision on regionalization, similar to the Decision regarding the application of Article 4 of the Agreement (on the subject of equivalence).

#### **V. TRANSPARENCY**

12. In Mexico's opinion, the second review of the SPS Agreement provides a unique opportunity to discuss extensively, within the Committee, the measures or mechanisms aimed at ensuring the Members' strict fulfilment of transparency obligations, and, where appropriate, to improve the relevant notification procedures. Mexico therefore wishes to continue the discussion on some of the problems identified in document G/SPS/W/136 of 4 September 2003, and particularly those referred to in paragraphs 4 and 5 of the document. Independently of the above, Mexico believes it is necessary for the Committee to agree on recommendations to make the implementation of paragraph 5(a) of Annex B to the SPS Agreement more effective.

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