

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

Prioritization of issues for the future work programme of the SPS Committee

Submission by New Zealand

The following communication, received on 21 December 2004, is being circulated at the request of the Delegation of New Zealand.

1. At the informal meeting on the review of the operation and implementation of the SPS Agreement held in October 2004, New Zealand noted with interest the suggestion made by the United States of developing a future work programme for the SPS Committee (hereby referred to as the Committee). In New Zealand's view, the future work programme should prioritize issues for consideration by the Committee in its future meetings. The prioritized future work programme should be included in the final report on the review produced by the Committee.

2. Based on the issues submitted by Members thus far¹ and discussions on these by the Committee, New Zealand would like to submit, what are, in our view, issues that should be included in the Committee's future work programme and the relative priority of these issues. But first New Zealand explains why our prioritized future work programme for the Committee does not include certain issues raised in the context of the SPS Review and secondly proposes the immediate resolution of one issue.

The Committee's current work programme

3. New Zealand notes that some of the issues raised by Members for consideration in the context of the review are already being considered by the Committee in its on-going work programme. For example, regionalization is being considered in informal meetings prior to the Committee and is a standing agenda item of the Committee. While New Zealand recognizes the importance of continuing the work on these issues, we have excluded additional mention of them from the future work programme for the Committee.

¹ Background document prepared by the Secretariat (G/SPS/GEN/510), New Zealand (G/SPS/W/157), Canada (G/SPS/W/158), the European Communities (G/SPS/W/159), Uruguay (G/SPS/W/160), the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (G/SPS/W/161), China (G/SPS/W/162/Rev.1), the United States (G/SPS/W/163) and Mexico (G/SPS/W/166).

Issues that could be resolved by the Committee before June 2005

Transparency

4. To enhance transparency, facilitate the efficient monitoring of harmonization of international standards and avoid trade disruptions associated with the implementation of international standards, New Zealand along with Canada and the European Communities, proposed that Members notify all new measures that have a significant impact on trade, including those based on international standards.

5. New Zealand considers that the Committee should agree immediately to amend its *Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) (G/SPS/7/Rev.2)*, to encourage Members to voluntarily notify all SPS regulations, even when they are based on international standards.

A prioritized future work programme for the Committee

6. The future work programme for the Committee should address the following issues in the order of priority as set out below:

First - The relationship between the SPS Committee and the International Standard-Setting Bodies

7. New Zealand and Canada made proposals on the avoidance of unnecessary duplication of efforts between the SPS Committee and the international standard-setting bodies (ISSBs).

8. New Zealand considers that the Committee should give high priority to discussing the distinct yet complementary roles of the Committee and the relevant ISSBs with the view of avoiding overlaps and unnecessary duplication of efforts. It is New Zealand's view that the Committee should 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 ISSBs, which have the necessary technical expertise and experience to consider them, in order to ensure that unnecessary duplication of effort is avoided. The ISSBs then can, if necessary, report back to the Committee with appropriate advice and/or recommendations of further work required.

9. New Zealand supports Canada's observation that duplication of effort has occurred and could continue to occur with respect to the development of procedural guidelines. As proposed by Canada, we see that articulation by the ISSBs of their respective mandates, including their interest in and ability to develop procedural guidelines, would be useful for Members, as would discussions amongst the Secretariats of Codex, OIE and IPPC and the SPS Committee to clarify their roles in the administration of the SPS Agreement.

Second - Administration of the implementation of the SPS Agreement

10. Both New Zealand and the United States made proposals regarding the "good offices of the Chair" as a tool for resolving bilateral specific trade concerns. The United States proposed further enhancing the mechanism to increase its use by the Committee for bilateral technical consultations.

11. New Zealand considers that the Committee should give high priority in its future work programme to discussions on the "good offices of the Chair" which is a useful option for the facilitation of consultations on SPS issues such as specific trade concerns. Discussions on the implementation of Article 12.2 would draw Members' attention to this useful option available to them

to progress or resolve specific trade concerns and could result in an enhancement of this mechanism along the lines suggested by the United States.

Third - Implementation and the relationship of Articles 2.1 and 5.6

12. The United States proposed that the Committee review Member's experiences regarding the principles contained within Articles 2.1 and 5.6, and in particular that discussions focus on the phrase "not more trade-restrictive than required". Although broader than the US proposal, Mexico, in its proposal regarding good regulatory practices, also highlights the need for Members to exchange information on how measures are drawn up in accordance with the principles of non-discrimination and rationality. New Zealand supports discussions of these issues in the Committee, as proposed by the United States, and a resulting identification of good practises regarding the implementation of these principles. New Zealand considers that the proposal should be included in the future work programme and supports the approach suggested by the United States, of Members from different regions and economic circumstances presenting how their regulatory regimes implement Articles 2.1 and 5.6 and the principle of least trade restrictiveness.

Fourth - Transparency

13. Canada drew the attention of the Committee to the simultaneous use of the words "measures" and "regulations" in the SPS Agreement, which, in its view, creates confusion about what exactly needs to be notified. In New Zealand's view, this issue could be addressed by the Committee adopting a decision clarifying that both words are used interchangeably and that all measures should be notified under Annex B of the SPS Agreement. Such a decision would reiterate footnote 1 of the *Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7)* (G/SPS/7/Rev.2), April 2002.²

Fifth - Control and inspection (Annex C, paragraph 2)

14. The European Communities raised the concept of "necessary assistance", in order to clarify who should bear the costs associated with inspection and control visits. New Zealand waits with interest for more clarification from the European Communities on its proposal and considers this area could be usefully discussed in the context of the Committee.

² Footnote 1 of the *Recommended Procedures for Implementing the Transparency Obligation of the SPS Agreement (Article 7)* (G/SPS/7/Rev.2) states "The SPS Agreement uses the terms 'measures' and 'regulations' somewhat interchangeably when referring to any sanitary or phytosanitary measures such as laws, decrees, or ordinances applied to protect human, animal or plant life or health as defined under paragraph 1 of Annex A to the SPS Agreement".