

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

Undue Delays

Communication from Chile

The following communication, received on 13 June 2006, is being circulated at the request of the delegation of Chile.

1. The delegation of Uruguay was the first to raise this problem in 2005 and was supported by a large number of Members. Undue delays were included as one of the priorities in the action plan that arose from the review of the Agreement and were highlighted by Costa Rica, *inter alia*, at the Committee's meeting in March 2006.

2. There are frequently delays in procedures authorizing the entry of products and in many instances these are not due to technical reasons. The following are some of the procedures that lead to this type of delay:

- Public hearings, for which procedures at the national level vary greatly, usually lasting for one to three years. There are some delays in which the country concerned has reasonable doubts as to the real cause of the delay, particularly where general procedures allow temporary measures to be adopted while the administrative procedure is going ahead.
- Post-technical decision authorization. After a technical study into the case has been conducted and a decision proposed, in some Members the procedure requires the technical study to be submitted to other authorities of a political nature for analysis and approval and here again delays vary. In many cases, doubts arise concerning the nature of this further analysis, which goes beyond purely technical aspects.
- Technical procedure. In this procedure, with a view to more scientific independence, some countries have set up groups of independent experts whose decisions are virtually final. In some instances, the country that is the subject of the decision may not lodge an appeal nor provide technical background material and the authority concerned states that the decision has already been taken at this level and there is little to be done. Even when there are obvious errors, there is little flexibility to revise decisions.

3. Many Members do not use such procedures and the matter can therefore be concluded fairly rapidly after the technical stage has ended. Consequently, these countries could be at a disadvantage in the negotiating phase in relation to authorization of products. Members such as those mentioned in the preceding sentence are considering the adoption of some of the post-technical decision mechanisms, which would obviously impair the flexibility of the system in general.

4. From the WTO perspective, the most appropriate solution would be to speed up trade liberalization, harmonize transparency and create an intermediate procedure in which the time-limits for formalizing technical decisions are shorter and there are no delays which raise doubts as to whether they are justified. The SPS Committee could help to monitor delays through formal notifications or simply information at its meetings when there are excessive delays lasting for over two years after a technical decision has been taken.

5. At the same time, the technical process must not take any longer than needed, for example, there could be a bilateral agreement between parties on the steps, deadlines and responsibilities and on the total estimated time. If the delays during this technical stage exceed what has been agreed and there are no substantiated reasons for this, the Committee could be notified and the reference organizations present at the meeting could be given a hearing. The Committee should be given the information needed to identify cases and then reasons for delays, so as to examine the definition of "undue delays" and subsequently consider the procedures to be recommended to prevent them because of their impact on application of the Agreement.
