

**RELATIONSHIP BETWEEN THE SPS COMMITTEE AND
THE STANDARD-SETTING BODIES**

Submission by New Zealand

The following communication, received on 22 June 2006, is being circulated at the request of the Delegation of New Zealand.

1. Introduction

1. The Committee on Sanitary and Phytosanitary Measures (the “SPS Committee”) completed its second review of the operation and implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures (the “SPS Agreement”) in June 2005.

2. It was agreed that the SPS Committee would formulate a work programme to discuss issues raised in the review on the basis of papers put forward by Members. In New Zealand’s earlier paper (G/SPS/W/179), we proposed the issue around the relationship between the SPS Committee and standard-setting bodies as one of the initial topics for discussion in the SPS Committee due to its cross-cutting nature. Brazil (G/SPS/W/182) and Colombia (G/SPS/W/188) have also subsequently submitted papers indicating their support for the discussion of this topic.

3. The purpose of this paper is to provide further background and additional material to facilitate further consideration by the SPS Committee.

2. Issues

4. The SPS Agreement recognises three international organisations as standard-setting bodies to facilitate the harmonization of common SPS measures by different Members in the areas of food safety, animal health and zoonoses, and plant health. These three standard-setting bodies, the Codex Alimentarius, OIE and IPPC, existed prior to the SPS Agreement’s entry into force and all have mandates that are broader than the remit of the SPS Agreement. This paper focuses only on those aspects of the common areas of interest and the consequent relationship between the SPS Committee and the standard-setting bodies.

5. Focusing on the relationship between the SPS Committee and the international standards-setting bodies we have identified certain issues that should be given further consideration and discussion within the SPS Committee.

6. The avoidance of unnecessary duplication is a strong message that is given in the SPS Agreement and we would encourage Members to consider how the SPS Committee can operate to ensure that unnecessary duplication is avoided.

7. A discussion of the relevant roles of the SPS Committee and the standard-setting bodies as provided in the SPS Agreement is timely, with a particular focus on the technical versus administrative processes; the operational versus high level guidance; and specific versus broader issues. We believe this comparison is beneficial to provide greater clarity with regards to the expectations Members have from the SPS Committee and the standard-setting bodies. The SPS Committee may, through its focus on broader issues, be well placed to clarify where there may be potential areas of duplication and where opportunities may exist for collaboration.

8. The principle of harmonization is important in any discussion on the relationship between the SPS Committee and the standard-setting bodies. We note that there is a legal obligation to base Members' SPS measures on standards developed by the standard-setting bodies unless there is a scientific justification or as a consequence of the level of protection a Member determines to be appropriate. There is therefore a differential status between standards developed by the standard-setting bodies and decisions made by the SPS Committee, which do not carry this obligation.

9. The final point for discussion is consideration for Members of the coordination and information flows of SPS issues at a national level. This includes the consideration of how greater consistency and coordination can be achieved between delegations to the different fora.

10. Sections 3 to 6 of this paper gives further elaboration on these issues and section 7 poses a set of questions to assist the SPS Committee in discussion of these issues.

3. Avoidance of unnecessary duplication

11. The SPS Agreement explicitly recognizes the need for sound scientific and technical advice in order to effectively administer the SPS Agreement. It recognizes three international standard-setting bodies to fulfill this role, the OIE, IPPC and Codex Alimentarius. Article 12.3 of the Agreement requires the SPS Committee to maintain close contact with these standard-setting bodies to ensure that unnecessary duplication of effort is avoided. The Agreement therefore gives a strong message that such duplication is undesirable. New Zealand considers that it is important for the SPS Committee to consider how it can operate to ensure unnecessary duplication is avoided.

12. Having noted that duplication is to be avoided, the question that then follows is "which body should undertake which tasks?". It is therefore important to clarify relative roles and responsibilities of the SPS Committee and the standard-setting bodies. Section 4 outlines these roles and responsibilities.

4. Roles and responsibilities

4.1. SPS Committee

13. Under Article 12.1 of the SPS Agreement, the SPS Committee was established to provide a regular forum for consultations and to carry out the functions necessary to implement the provisions of the Agreement and the furtherance of its objectives, in particular with respect to harmonization. The SPS Agreement identifies a number of specific tasks for the SPS Committee (please refer to the annex to this paper for the relevant legal provisions):

- (a) Encouraging and facilitating ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues (Article 12.2).
- (b) Encouraging the use of international standards, guidelines or recommendations by all Members and, in this regard, sponsoring technical consultation and study with the

objective of increasing coordination and integration between international and national systems and approaches on specific issues (Article 12.2).

- (c) Maintaining close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex, OIE and IPPC. The objective is to secure the best available scientific and technical advice for the administration of the SPS Agreement and avoid unnecessary duplication of effort (Article 12.3).
- (d) Granting developing country Members, upon request, specified, time-limited exceptions in whole or in part from obligations under the SPS Agreement, taking into account their financial, trade and development needs (Article 10.3).
- (e) Monitoring and coordinating the process of international harmonization and the use of international standards, guidelines and recommendations. This includes through the development of a procedure (Articles 3.4, 12.4, 12.5 and 12.6).
- (f) Reviewing the operation and implementation of the SPS Agreement (Article 12.7).
- (g) Developing guidelines to further the practical implementation of Article 5.5 (Article 5.5).
- (h) Identifying appropriate standards, guidelines and recommendations promulgated by other relevant international organisations, for matters not covered by Codex, OIE or IPPC (Annex A.3 (d)).

14. The specific tasks referred to as (b), (c), (e) and (g) in the above paragraph are the most relevant to the relationship between the SPS Committee and the standard-setting bodies.

4.2. International standard-setting bodies

15. The SPS Agreement provides some guidance on what it sees as the role of the international standard-setting bodies in relation to the SPS Committee, in particular:

- (a) Providing scientific and technical advice for the administration of the SPS Agreement (Article 12.3).
- (b) Examining specific matters with respect to a particular standard, guideline or recommendation requested by the SPS Committee (Article 12.6).

4.3. Comparison of roles and responsibilities

16. These roles and responsibilities of the SPS Committee as compared to the standard-setting bodies have been categorized previously (such as in the SPS Committee's discussions on regionalization) as administration versus technical or scientific guidance. This may not be a useful distinction in all circumstances as it has been argued that it can be difficult to differentiate between these categories when specific issues, such as regionalization, are closely underpinned by technical considerations (for example G/SPS/GEN/613, paragraph 18). However, these categories can still provide useful guidance in many other instances.

17. Another categorization that New Zealand believes may prove useful in distinguishing between the relative responsibilities of the SPS Committee and the standard-setting bodies could be operational versus high-level guidance. This differentiates between the practical expertise and

technical capability role of the standard-setting bodies and the broad over-arching policy role of the SPS Committee.

18. The SPS Committee may also have a greater focus on issues that are broader in nature, that is they are common to more than one (or all) of the standard-setting bodies. The SPS Committee may be well placed to highlight where duplication could be avoided between the standard-setting bodies and where opportunities for collaboration could be explored. These objectives may be achieved by the SPS Committee and the standard-setting bodies improving the level of monitoring of work carried out by the other relevant international bodies. Areas of duplication could then be identified and discussions about potential collaborative initiatives considered. The SPS Committee may wish to make suggestions on how organisations may address these concerns.

4.4. Agreements between the SPS Committee and the standard-setting bodies

19. In May 1998, the Director General of the World Trade Organisation and the Director General of the OIE adopted an agreement to establish the basis for official relations between the two organizations. The agreement between the WTO and the OIE contains a section that states the Secretariats of the OIE and the WTO may agree on the procedure to be followed when the SPS Committee submits specific questions to the OIE concerning the standards, guidelines or recommendations of the OIE within the meaning of Article 12, paragraph 6, of the SPS Agreement.

20. There is no such formal agreement between the WTO and the FAO and/or WHO for the IPPC or Codex. Nevertheless, the WTO maintains excellent working relationships with these two standard-setting bodies. This raises the question of the utility of these formal agreements and what additional benefits they deliver.

5. Harmonization and international standard-setting

21. Ministers agreed during the Mid-Term Review of the Uruguay Round negotiations that harmonization was a key objective. The importance placed on harmonization and the relationship with the international standard-setting bodies is reflected in a number of places in the SPS Agreement, including a substantive provision (Article 3) and also in the preamble.

22. The SPS Committee developed a procedure to monitor the process of international harmonization ("the harmonization procedure"), as mandated in Articles 3.5 and 12.4 of the Agreement.¹ At the October 1997 meeting of the SPS Committee, it was agreed to implement the monitoring procedure on a provisional basis. The harmonization procedure was reviewed in November 2004, amended slightly and its implementation was extended until July 2006.

23. Implementation of the provisional harmonization procedure aims to encourage Members to use international standards, guidelines and recommendations. Its purpose is to:

- (i) identify where major impacts on trade result from non-use of these standards, guidelines and recommendations;
- (ii) determine the reasons for the non-use; and
- (iii) identify, for the benefit of the relevant international organisations, where a standard, guideline or recommendation is needed or is not appropriate for its purpose or use.

¹ G/SPS/11/Rev.1.

24. This harmonization procedure provides a mechanism for Members to highlight to the standard-setting bodies areas through the SPS Committee where standard, guideline or recommendation development or review may be of value to trade interests. The SPS Committee may invite the relevant standard-setting body to consider reviewing the existing standard, guideline or recommendation and also to provide information on any such document under consideration.

25. The upcoming review of the harmonization procedure is of relevance to this consideration of the relationship between the SPS Committee and the standard-setting bodies.

6. National level considerations

26. For many Members, representation at the SPS Committee and at the standard-setting bodies is by different people who may work in different agencies. As a result, it appears that in some circumstances there is a need to ensure coherence of national positions at the standard-setting bodies and the SPS Committee.

27. There is an expectation that Members will take a nationally coherent approach to ensure that priorities are aligned in the SPS Committee and the standard-setting bodies.²

28. New Zealand considers that it is very important that national delegations to the SPS Committee and the standard-setting bodies liaise closely and communicate effectively with each other. This should ensure coordination and consistency of viewpoints in all fora and provide for effective follow-up of any actions required.

7. Questions for the SPS Committee to consider

29. To assist the SPS Committee in discussions, New Zealand puts forward the following questions for consideration:

- (i) Through the harmonization procedure, does the SPS Committee effectively identify relevant issues stemming from non-use of standards, absence of standards, or inappropriate standards and appropriately prioritize these issues within the SPS Committee?
- (ii) As part of this process, how can we ensure that as Members we have clearly identified the high level or strategic cause of an issue and that we are not just focusing on the subsequent effects of the issue?
- (iii) Is the process used by the SPS Committee to invite the standard-setting bodies to address these concerns clear and efficient? To what extent can or should the SPS Committee give guidance towards an outcome that is being sought? To what extent can the SPS Committee provide information, guidance or background to the issue (Article 12.6)?
- (iv) What are the most effective mechanisms for the SPS Committee to communicate to the standard-setting bodies the importance and priority the SPS Committee places on identified issues?

² G/SPS/11/Rev.1: "Members will take this information into account, through their participation in these international organizations, in establishing those organizations' work priorities".

- (v) What role does the SPS Committee have in broader issues that are common to more than one (or all) of the standard-setting bodies? Is it to ensure consistency in interpretation of the SPS Agreement across the standard-setting bodies?
- (vi) Is there a coordinating role for the SPS Committee on these broader issues that might best be addressed by the standard-setting bodies?
- (vii) Is reporting back to the SPS Committee by the standard-setting bodies effective, does it meet Members expectations and promote harmonization?
- (viii) Does the SPS Committee have an evaluation role to assess if the actions taken by the standard-setting bodies have resolved an issue that the SPS Committee has invited them to consider?

8. Proposal

30. New Zealand proposes that the SPS Committee consider mechanisms to promote the effective use of the standard-setting bodies in the implementation and administration of the SPS Agreement, while avoiding unnecessary duplication of effort. We further suggest that the SPS Committee discuss the optimal process for effective collaboration and communication between the SPS Committee and the standard-setting bodies. In this regard, New Zealand submits the questions found in section 8 of this communication for the SPS Committee's consideration.

ANNEX: RELEVANT LEGAL PROVISIONS

Relevant legal provisions can be found in the preamble and Articles 3.4, 3.5, 5.1, 6.1, 11.2, and 12.

Preamble

Recognizing the important contribution that international standards, guidelines and recommendations can make in this regard;

Desiring to further the use of harmonized sanitary and phytosanitary measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention, without requiring Members to change their appropriate level of protection of human, animal or plant life or health;

Article 3.4

Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

Article 3.5 [emphasis added]

The Committee on Sanitary and Phytosanitary Measures provided for in paragraphs 1 and 4 of Article 12 (referred to in this Agreement as the "Committee") **shall develop a procedure to monitor the process of international harmonisation and coordinate efforts in this regard with the relevant international organizations.**

Article 5.1 [emphasis added]

Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account **risk assessment techniques developed by the relevant international organizations.**

Article 5.5 [emphasis added]

With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on

international trade. **Members shall cooperate in the Committee, in accordance with paragraphs 1, 2 and 3 of Article 12, to develop guidelines to further the practical implementation of this provision.** In developing the guidelines, the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

Article 6.1 [emphasis added]

Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area - whether all of a country, part of a country, or all or parts of several countries - from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and **appropriate criteria or guidelines which may be developed by the relevant international organizations.**

Article 11.2

In a dispute under this Agreement involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical experts group, or consult the relevant international organizations, at the request of either party to the dispute or on its own initiative.

Article 12.1

A Committee on Sanitary and Phytosanitary Measures is hereby established to provide a regular forum for consultations. It shall carry out the functions necessary to implement the provisions of this Agreement and the furtherance of its objectives, in particular with respect to harmonisation. The Committee shall reach its decisions by consensus.

Article 12.2

The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues. The Committee shall encourage the use of international standards, guidelines or recommendations by all Members and, in this regard, shall sponsor technical consultation and study with the objective of increasing coordination and integration between international and national systems and approaches for approving the use of food additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.

Article 12.3

The Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention, with the objective of securing the best available scientific and technical advice for the administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided.

Article 12.4

The Committee shall develop a procedure to monitor the process of international harmonisation and the use of international standards, guidelines or recommendations. For this purpose, the Committee should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact. The list should include an indication by Members of those international standards, guidelines or recommendations which they apply as conditions for import or on the basis of which imported products conforming to these standards can enjoy access to their markets. For those cases in which a Member does not apply an international standard, guideline or recommendation as a condition for import, the Member should provide an indication of the reason therefore, and, in particular, whether it considers that the standard is not stringent enough to provide the appropriate level of sanitary or phytosanitary protection. If a Member revises its position, following its indication of the use of a standard, guideline or recommendation as a condition for import, it should provide an explanation for its change and so inform the Secretariat as well as the relevant international organizations, unless such notification and explanation is given according to the procedures of Annex B.

Article 12.5

In order to avoid unnecessary duplication, the Committee may decide, as appropriate, to use the information generated by the procedures, particularly for notification, which are in operation in the relevant international organizations.

Article 12.6

The Committee may, on the basis of an initiative from one of the Members, through appropriate channels invite the relevant international organizations or their subsidiary bodies to examine specific matters with respect to a particular standard, guideline or recommendation, including the basis of explanations for non-use given according to paragraph 4.

Article 12.7

The Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, *inter alia*, to the experience gained in its implementation.
