

**THIRD REVIEW OF THE WTO SPS AGREEMENT**

Proposal by India

Revision

The following communication, received on 27 October 2009, is being circulated at the request of the Delegation of India.

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**1. Monitoring the Use of International Standards**

1. Article 3.1 of the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement") permits WTO Members to base their sanitary and phytosanitary (SPS) measures on international standards, guidelines or recommendations in order to seek harmonization of the SPS measures on as wide a basis as possible. At the same time Articles 3.5 and 12.4 of the SPS Agreement require the SPS Committee to develop a procedure for monitoring the process of international harmonization and the use of international standards, guidelines or recommendations. Article 3.5 of the SPS Agreement also requires the SPS Committee to coordinate efforts in this regard with international organizations.

2. India realizes that Members are not obligated to notify measures the content of which are substantially the same as that of an international standard. The notification format has always had an entry (item 8) on international standards (also asking for deviations), but the information provided by Members may not always be clear as to whether a notified measure was "based on" or "conformed to" an international standard or to what extent it deviated from it. With the adoption of the revised transparency guidelines (G/SPS/7/Rev.3) by the SPS Committee, Members are specifically encouraged to notify all regulations that are based on, conform to, or are substantially the same as an international standard (paragraph 8). Also, item 8 of the revised notification format seeks more specific information from Members on the relationship between the notified measure and relevant international standards. The new notification formats have been in operation since 1 December 2008.

3. The monitoring of the use of international standards has been a standing item on the agenda of the SPS Committee. While acknowledging the good work done by the Committee in this regard so far, India considers that it is still difficult for Members to assess the degree of harmonization of various SPS measures imposed by different Members with the relevant international standards.

4. India therefore suggests that the Secretariat prepare a Member-specific compilation, listing the various measures notified by each Member and assess how many of these were based on international standards. India considers that ever since the adoption of the revised transparency

guidelines (G/SPS/7/Rev.3) and the revised notification format<sup>1</sup> it may be easier to assess which measures are based on international standards and to what extent. To economize on the limited manpower resources of the Secretariat, a constraint identified by the work relating to the data collection may be outsourced, if required, to an independent agency. It is suggested therefore that the Committee request the Secretariat to compile and analyze the notifications over the two-year period from 1 August 2007 to 31 July 2009. An analysis of the notifications may be particularly useful in ascertaining the degree of harmonization of the notified measures with the relevant international standards. This would provide some useful food for thought on what needs to be done to increase the use of international standards.

5. Further, India is concerned that the detailed procedures<sup>2</sup> developed by the SPS Committee for monitoring the process of international harmonization and the use of international standards, guidelines or recommendations may not have been put to much use. It appears that the use of these procedures by Members to seek redressal of their concerns regarding specific international standards or the need for such standards has been minimal. This calls for a review of the overall progress achieved through the use of these monitoring procedures developed by the SPS Committee. In addition, India suggests that the Committee may consider including an indicative timeline within which a concern raised by a Member may be resolved.

## 2. Equivalence

6. Article 4.2 of the SPS Agreement requires a Member, when so requested, to enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified SPS measures. In this regard, India considers that the work undertaken by the Committee, including the guidelines issued by the Committee to facilitate the process of achieving "equivalence" under the Article 4.2 of SPS Agreement has been very useful.<sup>3</sup> As noted in the Draft Report of the Committee on the Review of the Operation and Implementation of the SPS Agreement the issue of "equivalence" has consistently been on the agenda for the SPS Committee meetings.<sup>4</sup> Several Members, including the United States, Brazil, Chile Panama and the Dominican Republic, have provided information in this regard or notified the Committee of their recognition of equivalence of SPS Measures.<sup>5</sup>

7. India, however, considers that it may now be useful for the Members if the SPS Committee undertakes the task of preparing a country-specific status report, listing the cases where the Members have successfully negotiated bilateral equivalence agreements. The SPS Committee may also take steps to encourage the Members to notify their respective equivalence agreements and share information regarding their experiences and difficulties in implementing Article 4.2 of the SPS Agreement. India considers that a country-specific status report may be particularly useful to Members in negotiating similar equivalence agreements. Members may be invited to share their experiences, including examples of successful equivalence agreements in order to help frame a model equivalence agreement.

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<sup>1</sup> The revised notification formats have been in operation since 1 December 2008 and specifically require Members to provide information on the relationship between the notified measures and relevant international standards.

<sup>2</sup> As contained in the documents G/SPS/11/Rev.1 dated 15 November 2004; and G/SPS/40, dated 5 July 2006.

<sup>3</sup> SPS Committee Decision, Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures, G/SPS/19/Rev. 2, dated 23 July 2004.

<sup>4</sup> SPS Committee Report, Review of the Operation and Implementation of the SPS Agreement, G/SPS/W/237, dated 8 May 2009.

<sup>5</sup> *Ibid.*, para 18.

8. Again, to economize on the limited manpower resources of the Secretariat, the work relating to the data collection may be outsourced, if required, to an independent agency.

### **3. Private Standards**

9. WTO Members in the previous meetings of the SPS Committee, expressed concerns about the proliferation of private voluntary standards ("private standards") and their impact on trade. Considering its importance, the Committee in its February 2007 meeting included the issue of private and commercial standards as part of its work agenda. Thereafter the Committee has carried out significant work on understanding the use of private standards and their impact on trade.

10. India is of the view that Article 13 of the SPS Agreement requires WTO Members to take reasonable measures to ensure that non-governmental entities within their territories comply with the disciplines contained in the SPS Agreement. India suggests that the SPS Committee further discuss the issues surrounding the impact of private standards on trade and clarify the scope and applicability of the SPS Agreement vis-à-vis private standards. A number of Members, including India, have already submitted information to the Secretariat on their products of export interest that have been affected by private standards, in response to the questionnaire G/SPS/W/232.

11. India also suggests that the SPS Committee develop specific guidelines on the measures to be taken by Members in cases where private standards are adopted by various non-governmental entities within their territories. In addition, India considers that it may be useful to develop and introduce a Code of Good Practice on the same lines as the Code of Good Practice under Annex 3 of the Agreement on Technical Barriers to Trade, to be followed by all the non-governmental entities engaged in formulating standards.

### **4. Clarifications of Terms**

12. In addition to the above issues, India concurs with China's proposal<sup>6</sup> and considers that certain terms and phrases as used in the SPS Agreement lack clarity and may be open to divergent interpretations. India therefore suggests that the SPS Committee may seek to clarify the meaning of the following terms or phrases:

- (a) The phrase "reasonable and necessary" as used in paragraph 1(e) of Annex C to the SPS Agreement;
- (b) The phrase "what is necessary" as used in paragraphs 1(c) and (h) of Annex C to the SPS Agreement;
- (c) The phrase "reasonable inspection" as used in paragraph 3 of Annex C to the SPS Agreement;
- (d) The phrase "reasonably available" as used in footnote 3, Article 5.6 of the SPS Agreement.

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<sup>6</sup> G/SPS/W/234 and G/SPS/W/234/Add.1.