



17 September 2018

(18-5722)

Page: 1/2

Committee on Sanitary and Phytosanitary Measures

Original: English

## IMPLEMENTATION OF THE SPS AGREEMENT – REGULATORY ISSUES

### FIFTH REVIEW

#### *Submission from Brazil*

The following communication, received on 14 September 2018, is being circulated at the request of the Delegation of Brazil.

---

On the occasion of the Fifth Review of the operation and implementation of the Agreement on Sanitary and Phytosanitary Measures (SPS), Brazil presents to the Committee on Sanitary and Phytosanitary Measures the following matter for its consideration, recommendation and possible adoption.

#### **1 SCIENTIFIC JUSTIFICATION (ARTICLE 2.2), ASSESSMENT OF RISK AND DETERMINATION OF THE APPROPRIATE LEVEL OF SANITARY OR PHYTOSANITARY PROTECTION (ARTICLE 5)**

1.1. The SPS Agreement has provided a solid basis for managing regulatory issues in the area of trade in agricultural products, but it is important, in the context of the 5th Review of the SPS Agreement, to reinforce and promote its main features in order to reaffirm its objectives and goals. Since the last review of the Agreement, the connection between SPS regulation and science has been one of the main topics of discussion in the SPS Committee, as well as in other WTO fora.

1.2. Article 2.2 of the SPS Agreement establishes that science-based approaches and scientific evidence must be the foundation of SPS measures adopted and applied by Members. This principle has been of paramount importance to the proper functioning of the multilateral trading system and to the overcoming of non-tariff barriers to trade.

1.3. Furthermore, Article 5 of the SPS Agreement requires Members to base their measures on risk assessment, understood as the most accepted scientifically based process to determine sanitary and phytosanitary requirements. According to the Codex Alimentarius Procedural Manual, the process of risk assessment consists of: (i) hazard identification; (ii) hazard characterization; (iii) exposure assessment; and (iv) risk characterization.

1.4. The link between these two pillars of the SPS Agreement – science-based approach and risk analysis - has been recognized by the Dispute Settlement Body in a number of cases (EC-Hormones, US/Canada-Continued Suspension, EC-Biotech, Australia-Salmon, US-Poultry). Many WTO Members have currently stressed and defended this link, as demonstrated through the increasing number of specific trade concerns raised by Members on the SPS Committee, as well as dispute complaints, related to SPS measures that are not based on international standards, guidelines and recommendations or that may be based on inadequate scientific justification (G/SPS/GEN/1143/Rev.2).

1.5. In a regulatory context, adopting an appropriate set of criteria for the determination of hazard, exposure and risks is important for regulating trade in agricultural products, with a view to minimize

possible adverse impacts of SPS regulation on international trade in food and agricultural products, while safeguarding human, animal and plant health.

1.6. In the case where relevant scientific evidence is insufficient, Brazil understands that the possibility highlighted under Article 5.7 should neither be used to maintain measures that are more restrictive than necessary to protect human, animal or plant life or health, nor to dismiss Members of their obligation to seek the information necessary for a more objective assessment of risk.

1.7. Many WTO Members have recently indicated concerns regarding the use of methodologies and provisional measures with a view to restrict trade, in spite of the obligations referred to in Articles 5.4 and 5.6 of the SPS Agreement. International standards, guidelines and recommendations to streamline and harmonize procedures for the adoption of provisional measures or other measures, in the case of insufficient scientific evidence, can also be object of the work of the relevant international organizations recognized by the SPS Agreement.

1.8. One of the functions of these organizations is to provide a technical and independent forum for advancing transparency and predictability for methodological procedures associated with the application and development of SPS measures. Governments drafting and applying SPS measures should refer to these organizations also to help avoiding disagreement over SPS issues. The SPS Committee, taking into consideration its objective of securing the best available scientific and technical advice for the administration of this Agreement, can work with relevant organizations to foster technical expertise regarding the specific issue of Article 5.7, particularly in addressing the necessary steps for the establishment of a measure.

1.9. Overall, the possibility of a WTO Member adopting provisional measures for their respective level of protection when the body of available scientific evidence is not appropriate in order to carry out a risk analysis according to the Codex Alimentarius Procedural Manual is a key principle of WTO law. Nevertheless, regulation in this context should be notified with a reference to Article 5.7 and Members should be urged to continue searching and seeking for scientific evidence that would make it possible to perform an objective risk assessment and moving these measures away from the threshold of Article 5.7. Moreover, it should be noted that the scientific evidence associated with a specific SPS measure can always be supplemented with additional information.

1.10. Not only the outcomes of adopted measures, but also the development of international standards and methodologies for risk analysis may improve transparency and predictability in agricultural trade as well as promote greater harmonization between WTO Members. In this sense, the harmonization of SPS standards regarding the topics of assessment of risks and determination of the appropriate level of sanitary or phytosanitary protection may promote greater predictability in SPS matters and facilitate access to food and other agricultural products worldwide.

## **2 PROPOSAL**

2.1. In order to develop and promote the adoption of science-based procedures for the implementation of the SPS Agreement, Brazil proposes the following:

- (a) Members should be urged to recognize that the risk assessment, as regulated under Article 5.1, is the main criteria and means by which scientific justification is attained for the adoption and implementation of SPS measures.*
  - (b) Members should – when making notifications of corresponding provisional measures – specify that they are taken under Article 5.7, stating their views on the insufficiency of scientific evidence in relation to the issue that gave origin to the measure and that the Member has sought and will continuously seek additional information in order to review the measure accordingly and within a reasonable period of time.*
  - (c) The Committee should ask Codex Alimentarius, as well as other relevant international organizations, to work on the procedural steps necessary, given the impossibility of establishing a proper risk assessment, for the adoption and application of provisional measures.*
-