RESTRICTED

WORLD TRADE ORGANIZATION

G/SPS/W/59

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(96-1745)

Committee on Sanitary and phytosanitary Measures

CONSISTENCY: ELABORATION OF GUIDELINES

Note by the Chairman

At the meeting of the Committee on 15-16 November 1995, I agreed to undertake informal consultations regarding the most appropriate manner in which to advance the work of the Committee with regard to the elaboration of guidelines to further the implementation of consistency in terms of Article 5:5 of the Agreement. To focus these consultations, I invited Members to consider a number of questions (G/SPS/W/45) and provide responses as appropriate.

On the basis of these consultations, I believe some commonly accepted elements of the guidelines can already be identified. Other points which some Members have suggested could be included in the guidelines need further consideration.

As agreed at the meeting of the Committee on 20-21 March 1996, this issue will be on the agenda of the next meeting of the Committee to be held on 29-30 May 1996 for general discussion. In addition, I am prepared to conduct further consultations with Members who so wish. These Members should so indicate to the Secretariat at their earliest convenience (Mrs. G. Stanton, Office 1033, Tel: 41-22-739 5086).

I will be available for consultations in Geneva during the days 28-31 May (excluding, of course, the time for the Committee meeting). If any delegation so wishes, I am prepared to consider also other places and times for the consultations.

Report by the Chairman

1. Most Members consulted agreed that is was desirable, if not imperative, for the Committee to proceed rapidly with the development of guidelines. However, it was recognized that the guidelines would, initially, need to be rather general and flexible. Some Members preferred to focus first on the development of the relevant risk assessment procedures and thus postpone the elaboration of any guidelines.

2. Most Members consulted agreed that consistency as such is only an objective, and that the legal obligation is to avoid arbitrary or unjustifiable distinction in the levels a Member considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. A widely held view was, however, that the question of whether or not consistency is a legal obligation or objective is not decisive. If governments are not consistent in their decisions they are likely to violate one or more of their obligations under the Agreement.

3. It seems to be a common understanding that promoting consistency is a step-by-step process. Several Members thought that at least initially the three sectors, human, animal and plant, should be treated separately and some suggested to start with even more limited groups of similar products or risks. Others, however, thought that the animal and plant sectors could perhaps be handled jointly. Most Members noted that at the outset most risk assessment may be qualitative and could then gradually be replaced by more quantitative methods.

4. All Members consulted stressed the importance of applying consistent risk assessment methodologies and procedures within a country, as well as the urgent need to develop and adopt internationally agreed procedures.

5. Few of the Members consulted had clear views as to what "relevant factors" should be taken into account in developing the guidelines, other than those already explicitly provided for elsewhere in the Agreement (ie., in Articles 2, 5:2 and 5:3). Many considered that it was not necessary to try to "list" any such factors, and that most unusual concerns (ie., endangered species) should adequately be taken into consideration in the risk assessment process itself. For a first version of the guidelines, this may be the most pragmatic approach.

6. With regard to addressing "voluntary exposure to risks", many Members thought that this would in practice be a rather limited exception and probably have little trade impact. Some Members suggested that for a first approximation of the guidelines, it might be sufficient to note that in order to qualify under this provision the consumers should be aware of the higher risk involved, and that the products concerned could be replaced by products with a normal risk. Any deviations from consistency should be clearly defined and appropriately motivated.

7. On the relation between the provisions of paragraph 5 of Article 5 and those in paragraphs 3:1, 3:2 and 3:3 the Members consulted had differing views. Some considered that preference should be given to the application of international standards, and that the provisions of consistency were relevant only in the absence of international standards. Others were of the opinion that application even of an international standard should be consistent with the appropriate level of protection established by the country concerned. Most seem to agree, however, that from the legal point of view, both options are equally justified.

Paragraph 5:4 was not considered as relevant in this connection.

8. As on how to assess whether a Member has achieved or not achieved a sufficient degree of consistency, most Members consulted considered any general guidelines here as premature or even unnecessary.

9. On the basis of the consultations, it appears that at this stage proposed guidelines should focus primarily on the procedures to be followed by governments in risk assessment and in the subsequent decisions, with the expectation that the application of a coherent internal process will reduce potential inconsistencies in the decisions taken. Such guidelines might, for example, include the following elements:

- Governments should be encouraged to have clearly established and transparent risk assessment procedures (whether qualitative or quantitative) for each sector (human, animal and plant health) which set out the factors to be examined in the assessment of the biological risks and the evaluation of the economic consequences (for animal and plant health). Similar procedures should, whenever feasible, be used for all risk assessments within the sector - or selection of a different risk assessment methodology should be justifiable (ie., due to lack of data, or use of a more sophisticated methodology of limited application, etc.).

- Information on the general risk assessment procedures used, and on the results of these in specific situations, should be exchanged among the government agencies responsible for risk assessment in the different sectors, with the objective of making the procedures used in the different sectors gradually more similar.

- Proposed decisions on appropriate levels of protection should be compared with previous decisions taken within the same sector, or at least for similar risks or similar products. Comparison of the proposed decision with the relevant international standard, or with decisions taken by trading partners facing similar risk situations, could be useful.

10. The Committee should clearly recognize that any guidelines which it adopts will need to be periodically reviewed and revised as necessary in light of experience gained through the implementation of the Agreement and of the guidelines. In particular, as the development of risk assessment methodologies by the international organizations proceeds, it may be possible to strengthen the guidelines by making reference to these - or even by recommending that governments use the internationally developed methodologies whenever possible. Likewise, should a number of disputes or potential disputes arise where the question of consistency in setting the appropriate level of protection is a factor, the Committee may need to examine the possibility of developing more detailed guidelines to address some of the apparent problems.