

OBSERVATIONS ON THE NOTE BY THE SECRETARIAT
ON "RISK ANALYSIS" (G/SPS/W/80)

Statement by the European Community at the Meeting of 1-2 July 1997

1. The note by the Secretariat on "Risk Analysis" dated 6 March 1997 (G/SPS/W/80) is intended, in the words of the Secretariat, "to provide background information to facilitate the task of the Committee [in developing guidelines to further the practical implementation of the provision on consistency contained in Article 5.5]. It is not intended to provide a legal interpretation of the Agreement".
2. The European Community takes note of the intended purpose of the paper and appreciates the background information provided by the Secretariat, although such information would not appear to be directly relevant to Article 5.5 and therefore to the ongoing work of the Committee on the development of guidelines.
3. The European Community also finds that notwithstanding the stated intention to provide solely background information, the note goes further and does indeed result in a legal interpretation of provisions of the SPS Agreement. The note attempts in fact to define concepts such as risk analysis and risk management and to associate them with several provisions of the SPS Agreement. These concepts are not present as such in the Agreement, and any attempt to relate them to specific provisions will inevitably entail legal interpretations of such provisions.
4. It is therefore the very approach at the basis of the Secretariat's note which raises concerns on the part of the European Community. In addition, the European Community would like to comment on a number of specific points.
5. Risk assessment is defined in paragraph 7 as "primarily a scientific procedure to identify the existence and severity of possible risks". The European Community is here concerned that this summary interpretation makes no reference to the well-defined concept and role of risk assessment in the SPS Agreement (see Articles 5.1, 5.2 and Annex A) as a basis for Members' sanitary and phytosanitary measures.
6. Risk management is defined in the note as "what is done with the information resulting from a risk assessment" (paragraph 7). According to the note, it "involves a series of steps. These include, *inter alia*, decisions regarding the acceptable level of risk; identification of possible options to reduce or eliminate the identified risk; evaluation and selection among these options; implementation of the selected measures, as appropriate; and monitoring and control of the effectiveness of the selected measure" (paragraph 8). Aside from noting that the above-mentioned steps are not present as such in the SPS Agreement, the European Community would like to underline that the impression is given that risk assessment is a phase which precedes the determination of the appropriate level of protection. This notion is not found in the SPS Agreement, and the European Community wishes to recall that the inapplicability of the concept of risk assessment to the notion of appropriate level of protection

has been the subject of extensive elucidation in the informal work of the Chairman and the Committee for the preparation of guidelines in accordance with Article 5.5.

7. In paragraph 9, it is stated that "risk management, or at least several elements of it, are addressed, *inter alia*, in Articles 5.4, 5.5 and 5.6. These provisions address the decisions to be taken on what level of risk is acceptable, as well as what measure is applied to ensure the selected level of protection". The European Community is here particularly concerned that the impression might be given that Article 5.5 deals with the determination of the level of protection or with the application of sanitary and phytosanitary measures.

8. Paragraph 11 affirms further that the subject of Article 5.5 is "the determination of the level of sanitary and phytosanitary risk which a Member determines to be acceptable in any particular situation". However, a reading of Article 5.5 will show that the provision does not regulate how a Member determines its appropriate level of protection; what it provides for is rather the obligation for Members to avoid arbitrary or unjustifiable distinctions in the levels they consider to be appropriate in different situations, if such distinctions result in discrimination or disguised restrictions on trade. In the view of the European Community, this is quite a different scope than the one attributed to Article 5.5 in the Secretariat's note.

9. The European Community would like to recall that the purpose of the ongoing work of the Committee is not to interpret the Agreement, nor to modify in any way the rights and obligations of Members under the Agreement, but rather to further the practical implementation of Article 5.5. It is for this purpose that Members cooperate in the Committee to develop guidelines, and it is in this light that the European Community has expressed the above concerns on the note circulated by the Secretariat.