

ACCESSION OF UKRAINE

Check-list of Illustrative SPS and TBT Issues

The Governmental Commission on Ukraine's Accession to the WTO has submitted the following information with the request that it be circulated to members of the Working Party.

**A. CHECKLIST OF ILLUSTRATIVE SPS ISSUES FOR CONSIDERATION IN
ACCESSIONS**

1. Standstill: the introduction of new standards, animal health regulations and food safety regulations shall conform to SPS Agreement principles. (Generally agreed principle in WTO accession negotiations.)

Not addressed directly in current legislation.

Deviation from the "standstill rule" and application of standards and rules regulating human and animal life and health and the safety of plants that are more strict than the current ones, can only take place under extraordinary circumstances (Law "On the Sanitary and Epidemic Safety of the Population" No. 4004-XII, of 24 February 1994, Articles 30, 42).

In the formulation, development and application of veterinary, sanitary and quarantine measures to protect the territory of Ukraine from harmful organisms, and dangerous pathogenic organisms, Main State Quarantine Inspection of Ukraine and the State Department of Veterinary Medicines use the international standards of phytosanitary measures, the international data bank (European and Mediterranean Plant Protection Organization www.eppo.org) and the requirements of the international office of epizootics (IOE).

2. Establishment and operation of a single Contact Point for Information ("enquiry point"). (Article 7 and Annex B.3).

A single enquiry point will be established in 2003, as provided in the Plan of Measures to resolve Matters of Sanitary and Phytosanitary Control in Ukraine, in particular at the State Border, as approved by an Instruction of the Cabinet of Ministers of Ukraine, dated 31 August 2001, to No. 129-sk/10.

3. Transparency: notification and access to documentation (Articles 7 and Annex B, Also G/SPS/7).

All ministry rules and regulations in the area of sanitary and phytosanitary measures are subject to state registration with the Ukrainian Ministry of Justice and are entered into the Uniform

State Registry of Ministry Rules and Procedures and are available to the public. (See Resolution No. 376 of the Cabinet of Ministers of Ukraine, dated 23 April 2001). Rules and regulations enacted by the Sanitary and Epidemiological Service are also published in the "Collection of Important Official Materials on Sanitary and Epidemiological Matters", issued by the Health Care Ministry.

"The Action Plan for the Resolution of Issues of Sanitary and Phytosanitary Control in Ukraine, in Particular at the State Border" envisages the establishment in 2002 of databases for the information support of central government authorities and their information and analysis services, in order to verify that the following types of sanitary control have indeed taken place:

- registration of pesticides and agrochemicals, and of the positive conclusions of the state sanitary and hygienic expertise, etc.;
- registration of food products, food raw materials, related materials, and of the positive conclusions of the state sanitary and hygienic expertise; and
- Sections 2, 16, 17, 18 and 19 of the Procedures for Maintaining the Single State Register of Normative Acts and Use Thereof Approved by Resolution of the Cabinet of Ministers No. 376, of 23 April 2001 "On the Approval of the Procedures for Maintaining the Single State Register of Normative Acts and Use Thereof" .

(a) identification of authority responsible for making notifications to the WTO and ensuring transparency obligations are met on an ongoing basis (Annex B.5.(b) and Annex B.10)

The authority responsible for making notifications to the WTO and ensuring that transparency obligations are met on an ongoing basis will be designated before Ukraine's accession to the WTO.

At present the Ministry of Agricultural Policy of Ukraine through its subordinate organizations (Main State Quarantine Inspection and the State Department of Veterinary Medicine) supplies the relevant international organizations with information on the changes in veterinary and phytosanitary measures.

(b) establish guidance or law requiring publication of proposed measures at an early stage for comment (Annex B.5(a)).

Point 10 of the Regulation on the Procedure of Preparation of Draft Regulatory Rules (approved by Resolution No. 1182 of the Cabinet of Ministers of Ukraine, dated 31 July 2000, "On the Approval of the Regulation on the Procedure of Preparation of Draft Regulatory Rules") provides for the conduct of public discussions of draft regulatory rules within a period not exceeding 20 days from their first publication, and for the consideration of proposals relating to such drafts.

(c) provision in law or administrative procedure to provide copies of proposed measures to WTO Members (Annex B.5.(c)).

Provisions, whereby WTO Members shall be obligatorily provided with copies of documents regarding proposed measures, will be made in the national law before Ukraine's accession to the WTO.

(d) require in law or administrative procedure, a reasonable period of time for comment from Members and the public, and establishment of a process to take comments into account without discrimination (Annex B.5(d)).

Requirements on the non-discrimination by the regulating authority in the consideration of comments are established in Resolution No.1182, of 31 July 2000 "On the Approval of the Regulation On the Procedure of Preparation of Draft Regulatory Acts".

4. Necessity: measures are applied only to the extent necessary to protect human, animal or plant health (Article 2.2)

Articles 1 and 9 of the Law of Ukraine "On Ensuring of Sanitary and Epidemic Safety of the Population" No. 4004-XII dated 24 February 1994, Article 3 of the Law of Ukraine "On Quality and Safety of Food Products and Food Raw Materials" No. 771/97-VR dated 23 December 1997 and the Preamble of the Law of Ukraine "On Protection of the Population against Infectious Diseases" No. 1645-III dated 6 April 2000 provide for the application of sanitary and phytosanitary measures only to the extent necessary to protect human, animal or plant health.

5. Regulations Based on Science: regulations governing animal and plant health and food safety shall be based on scientific evidence (Articles 2.2, 3.3 and 5.2)

Articles 9 and 36 of the Law of Ukraine "On Ensuring of Sanitary and Epidemic Safety of the Population" No. 4004-XII dated 24 February 1994; Articles 1 of the Draft Law "On the Amendment of Certain Laws On Veterinary Medicine" No. 7352; Article 12, section 2, of the Draft Law "On the Amendment of the Law On Quality and Safety of Food Products and Food Raw Materials" (pending in the relevant ministries and committees) provide for the conduct of hygiene regulation, i.e. scientific justification of regulations and norms on safe use of dangerous factors, (Article 9), and scientific justification of sanitary and anti-epidemic measures (Article 36)

6. Harmonization: to the extent possible, members shall follow international standards, guidelines, and recommendations in establishing SPS measures (6. Articles 3.1, 3.3 and 3.4)

In the formulation, development and application of veterinary and quarantine measures the relevant authorities use the international standards of phytosanitary measures and the international data bank (European and Mediterranean Plant Protection Organization www.eppo.org) and the requirements of the international office of epizootics (IOE).

See also Article 50, 51 of the Law "On the Sanitary and Epidemic Safety of the Population" No. 4004-XII, of 24 February 1994; Article 23 of the Law of "On Quality and Safety of Food Products and Food Raw Materials"; Articles 1 and 32 of the Draft Law "On the Amendment of Certain Laws On Veterinary Medicine" No. 7352.

7. Equivalence: members shall recognize different measures that achieve the same level of protection (Article 4)

Article 23 of the Law of Ukraine "On Quality and Safety of Food Products and Food Raw Materials" No. 771/97-VR, of 23 December 1997; Article 13, Paragraph 8, of the Draft Law "On the Amendment of Certain Laws On Veterinary Medicine" No.7352.

8. Risk Assessment: developing scientific evidence and conducting risk assessments to ensure that measures are based on science and applied only to the extent necessary to protect health (Article 5.1, 5.2 and 5.3)

Articles 9, 10 and 36 of the Law of Ukraine "On Ensuring of Sanitary and Epidemic Safety of the Population" No. 4004-XII, of 24 February 1994, deal with the identification of factors dangerous to human health on the basis of scientific evidence.

9. Regional conditions: measures take into account the regional characteristics both of the areas from which products originate and the areas for which they are destined (Article 6 and Annexes A.6 and A.7)

The regional characteristics both of the areas from which products originate and the areas for which they are destined for purposes of determining the adequate level of sanitary and phytosanitary protection will be taken into account before Ukraine's accession to the WTO.

10. Non-discrimination: measures do not arbitrarily or unjustifiably discriminate between different members or between domestic and foreign suppliers (Article 2.3, and Annex C.1(a) and (d))

Law of Ukraine No. 1212-XIV provides that, for residents, amounts of fees, which are collected at points of entry at the State border of Ukraine at the time of importation of agricultural products, are equivalent to any fees that are collected from non-Ukrainian residents. Fees for the conduct of customs, sanitary, veterinary, phytosanitary, radiology and environmental control pursuant to Ukrainian law may not exceed the costs related to the conduct of such control.

Fees for the conduct of sanitary examinations and issuance of required documents are specified by the Order "On Prices for Additional Services that are provided by State Sanitary Authorities to Organizations and Commercial, Private and other Firms" and Resolution No. 1138 of the Cabinet of Ministers of Ukraine, dated 17 September 1996, "On the Approval of the List of Services that are provided by State Health Care Institutions and Higher Medical Educational Establishments", as well as by Resolution No. 449 of the Cabinet of Ministers of Ukraine, dated 12 May 1997, "On Amendments to Resolution No. 1138 of the Cabinet of Ministers of Ukraine, dated 17 September 1996".

Procedures governing the conduct of state sanitary and hygienic examinations are defined in the Interim Procedure for the Conduct of State Sanitary and Hygienic Examinations (approved by Order No. 247 of the Health Care Ministry, dated 9 October 2001). In accordance with the specified Interim Procedure, a period within which an examination should be conducted is 30 days from the date of receipt of documents, both for domestic and foreign entities and persons.

Point 11.2 of the Interim Procedure for the Conduct of State Sanitary and Hygienic Examinations provides for the liability of examination performers for the disclosure of confidential information.

11. Control, inspection and approval procedures: ensure that procedures, including systems for approval of the use of additives or for establishing tolerances for contaminants in foods, beverages or foodstuffs comply with the Agreement (Article 8 and Annex C)

Provisional Procedures for the State Sanitary and Hygienic Expertise (approved by Order of the Ministry of Health No. 247, of 19 October 2001).

Law of Ukraine "On Ensuring of Sanitary and Epidemic Safety of the Population" No.4004-XII of 24 February 1994, Articles 10, 11, 16, 17, 43.

Law of Ukraine "On Quality and Safety of Food Products and Food Raw Materials" No.771/97-VR, of 23 December 1997, Article 4.

Regulation On the State Sanitary and Epidemic Supervision in Ukraine (approved by Resolution of the Cabinet of Ministers No. 1109, of 22 June 1999), paragraph 2 of item 3.

Draft Law "On the Amendment of the Law "On Quality and Safety of Food Products and Food Raw Materials" (pending in the relevant ministries and committees), paragraph 2 of item 5.

Requirements of the SPS Agreement, Annex C, section 1 (h), will be complied with in the national legislation by the moment of the Ukraine's accession to WTO.

At the moment of the Ukraine's accession to WTO the domestic legislation will provide for the application of the relevant international standard as the basis for the access until the final decision is made on the use of food additives and the permitted level of contaminants in food products, beverages or animal feed.

Requirements of the SPS Agreement, Annex C, section 2 will be complied with in the national legislation by the moment of the Ukraine's accession to WTO.

B. CHECKLIST OF ILLUSTRATIVE TBT ISSUES FOR CONSIDERATION IN ACCESSIONS

1. Standstill: the introduction of new standards, technical regulations and conformity assessment procedures should be fully compatible with the TBT Agreement (Generally agreed principle in WTO accession negotiations).

Article 5, paragraphs 4, 5, 8, 9, of the Law of Ukraine "On Standardization"; Article 5, paragraphs 3, 4, 5, 6, 9, of the Law of Ukraine "On Conformity Assessment"

2. Submission of Statement on Implementation (Article 15.2 and TBT Committee Decision (G/TBT/1))

Upon accession to the WTO, Ukraine will ensure that the provisions of Article 15.2 of the TBT Agreement are complied with.

3. Establishment and operation of a single Contact Point for Information ("inquiry point") (Article 7 and Annex B.3) (Article 10).

Article 16 of the Law of Ukraine "On Standardization"; Article 6 of the Law of Ukraine "On Conformity Assessment".

4. Identification of authority responsible for notifications, publications and other internal procedures to ensure transparency obligations are met on an ongoing basis (Articles 2, 3, 5, 7, 10, 15.2, Annex 3 and G/TBT/1).

Article 16 of the Law of Ukraine "On Standardization", Article 6 of the Law of Ukraine "On Conformity Assessment".

(a) identification of publication where notices of proposed technical regulations and conformity assessment procedures will appear (Articles 2.9.1, 3.1, 5.6.1, 7.1, 10.1.5).

Article 5, paragraphs 3, 9, and Article 6, paragraphs 17, 18, of the Law of Ukraine "On Conformity Assessment"; Article 16, paragraphs 2, 4, of the Law of Ukraine "On Standardization".

(b) identification of authority responsible for making notifications to the WTO (Article 2.9.2, 2.10.1, 3.2, 3.3, 5.6.2, 5.7.1, 7.2, 7.3, 10.7, 10.10).

Article 6, paragraphs 17, 18, of the Law of Ukraine "On Conformity Assessment", and Article 16, paragraphs 2, 4, of the Law of Ukraine "On Standardization".

(c) guidance/law to ensure regulatory authorities afford non-discriminatory consideration of comments in the preparation of a final regulation (Articles 2.9.4, 2.10.3, 3.15 3.3, 5.6.4, 5.7.3, 7.1, 7.3).

Article 6, paragraphs 17, 18, of the Law of Ukraine "On Conformity Assessment".

(d) guidance/law to ensure regulatory authorities allow a reasonable period of time between the final publication of a technical regulation and conformity assessment procedure and its entry into force so that suppliers can adapt (Articles 2.11, 2.12, 3.1, 5.8, 5.9, 7.1).

Article 5, paragraphs 3, 9, and Article 6, paragraphs 17,18, of the Law of Ukraine "On Conformity Assessment".

Note: The list of technical regulations, whose drafting is planned, is determined by annual plans of adaptation of Ukrainian law. For the year 2002 it is planned to draft a technical regulation setting forth procedures for the provision of information on technical regulations and standards. The state standard "Rules on the Making of Notifications to Trading Partners of Ukraine" is being drafted.

- (e) **publication and notification of work program for standards and non-governmental conformity assessment procedures, including publication of notices of draft standards and an opportunity for public comment (Article 4, Annex 3 (J, K, L, N, O); Article 8.1).**

Article 11, paragraphs 6, 13, 14, 15, 18, 22, and Article 16, paragraph 4, of the Law of Ukraine "On Standardization".

Note: Since 1993 the Derzhstandart has been a full member of ISO, IEC, and in 1996 Ukraine acceded to the Code of Good Practice for the Preparation, Adoption and Application of Standards. There has been adopted the National Standard DSTU ISO/IEC Guide 59-2000 "Code of Established Rules on Standardization", identical with ISO/IEC 59:1994.

5. **Development and Application of Technical Regulations and Conformity Assessment Procedures: Existence of legal and/or administrative underpinnings (or reasonable measures" as appropriate) to ensure ongoing compliance with provisions of the agreement concerning, in particular (Articles 2, 3, 5, 6, 7):**

Articles 5, 6, 12 of the Law of Ukraine "On Conformity Assessment".

- (a) **non-discrimination with respect to the treatment of products (Articles 2.1, 3.1, 5.1, 5.2, 7.1);**

Article 5, paragraphs 5, 6, and Article 6, paragraph 10, and Article 12, paragraph 4, of the Law of Ukraine "On Conformity Assessment".

- (b) **the prohibition of unnecessary obstacles to international trade and the consideration of less trade-restrictive alternatives to fulfilling legitimate objectives (Articles 2.2, 3.1, 5.1, 5.2, 7.1);**

Article 13, paragraph 1, of the Law of Ukraine "On Standardization", Article 1 paragraph 13, Article 5, paragraphs 4, 5, 6, Article 6, paragraphs 11 – 14, and Article 9, paragraph 1, of the Law of Ukraine "On Conformity Assessment".

- (c) **the ongoing review of technical regulations to ensure they are appropriate to achieve the desired legitimate objective (Article 2.3, 3.1, 7.1);**

Article 6, paragraph 12, and Article 9, paragraph 2, of the Law of Ukraine "On Conformity Assessment".

- (d) **the consideration of appropriate international standards, guides and recommendations as a basis for technical regulations and conformity assessment procedures (Article 2.4, 3.1, 7.1);**

Article 5, paragraph 6, of the Law of Ukraine "On Conformity Assessment", Article 5, paragraph 8, and Article 7, paragraph 4, of the Law of Ukraine "On Standardization".

Note: There has been adopted the basic standard DSTU 1.7-2001 DSS "Rules and Methods of Adoption and Application of International and Regional Standards", harmonized with ISO/IEC Guide 2:1999.

- (e) **the consideration of equivalent technical regulations of other Members (Article 2.7, 3.1, 7.1);**

Article 6, paragraph 6, Article 12, paragraph 4, and Article 21 of the Law of Ukraine "On Conformity Assessment".

Note: Adoption of technical regulations of other Members is considered on a bilateral basis and through participation in international (regional) certification systems.

- (f) **the acceptance of the results of conformity assessment procedures conducted by bodies in an exporting Member country (Article 6, 7.1);**

Article 6, paragraphs 6, 10, Article 12, paragraph 4, and Article 21 of the Law of Ukraine "On Conformity Assessment".

- (g) **non-discriminatory and cost-based fee structure (Article 5.2, 7.1, 10.4);**

Article 6, paragraphs 5, 18, of the Law of Ukraine "On Conformity Assessment".

Note: The Cabinet of Ministers of Ukraine approves rules on the calculation of the cost of conformity assessment services. As of 1 September 2001, the draft Rules are undergoing confirmation at the Economy Ministry of Ukraine.

6. **Development and Application of Standards and Conformity Assessment Procedures: Existence of legal and/or administrative underpinnings (or "reasonable measures" as appropriate) to ensure ongoing compliance with provisions of the agreement concerning, in particular (Article 4 and Annex 3, Article 8):**

- (a) **non-discrimination with respect to the treatment of products (Annex 3 (D), Article 8.1);**

Article 11, paragraph 4, of the Law of Ukraine "On Standardization".

- (b) **the prohibition of unnecessary obstacles to international trade (Annex 3 (E), Article 8.1);**

Article 5, paragraph 1, of the Law of Ukraine "On Standardization".

- (c) **the consideration of appropriate international standards, guides and recommendations as a basis for standards (Annex 3 (F), Article 8.1);**

Article 5, paragraphs 8, 9, of the Law of Ukraine "On Standardization".

- (d) **non-discriminatory and cost-based fee structure (Annex 3 (M), Annex 3 (P), Articles 8.1, 10.4);**

Note: The cost of a copy of a standard or any other regulatory document consists of the cost of paper and copying services, and is equal for both domestic and foreign customers.
