
General Council

Original: English

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Proposals Regarding the Agreement on Sanitary and Phytosanitary Measures
in terms of Paragraph 9(a)(i) of the Geneva Ministerial Declaration

Communication from India

The following communication, dated 7 June 1999, has been received from the Permanent Mission of India.

Issues

1. Arbitrary and restrictive sanitary and phytosanitary measures continue to represent a major obstacle to international trade of agricultural products. Developing-country exports are usually affected in two ways. Firstly, because the SPS measures are often developed in a non-transparent manner and developing countries invariably do not get adequate opportunity to respond to the proposed measures. Secondly, the Agreement provides that in order to ensure that the adoption of a new SPS regulation does not cause barriers to trade, there should be a reasonable interval between its publication and its entry into force. It further provides that "longer time-frames for compliance" be provided for developing countries. The basic purpose of these provisions is to provide sufficient time to producers in developing countries to adopt their products to the requirements of new regulations. In practice, compliance of these provisions by countries introducing new measures has been largely non-existent. Though the SPS Agreement provides that countries base their SPS measures on international standards, guidelines and recommendations, the participation of developing countries in the international standardization activities has been limited and ineffective. A number of international standards are thus being developed without the participation of developing countries. As a result, standards are often being adopted without taking into account the problems and constraints that developing countries face. Means have therefore to be found to ensure effective participation of developing countries in the development of standards by international standard-setting bodies.

2. Solution to some of these issues, which the experience of standardization activities raise, as well as those arising from ineffective participation of developing countries in these bodies could perhaps be found by reviewing the definition of an international standard. International standards could be distinguished according to the purpose for which they are being adopted i.e. whether for use on a voluntary or a mandatory basis. Guidelines and recommendations, in the context of the Agreement could be developed and adopted in the international standard setting bodies by majority. These guidelines or recommendations would be voluntary in nature. However, any international standards which would form a basis for a universal SPS measure should only be adopted by consensus. Moreover, in the formulation of such mandatory standards, an agreed minimum number of countries from different regions must have participated in the technical work throughout the process relating to its adoption.

./.

Proposals

3. Even though Article 10:1 of the SPS Agreement provides that in the preparation and application of SPS measures Members shall take into account of the special needs of the developing countries, this has rarely been done. Article 10:1 therefore needs to be translated into mandatory provisions.
 4. Similarly Article 10:2 which provides for longer time-frames for compliance on products of interest to developing-country Members has only been followed in the breach. This provision should be modified to make it mandatory/obligatory for developed countries to provide longer time-frames for compliance of new SPS measures for products from developing countries.
 5. If a SPS measure is found to create a problem for several developing countries, then the country which has adopted it should be obliged to reconsider it. If, after reviewing its implications, it still reconfirms the measure then it should provide the necessary technical cooperation to the affected countries.
 6. The participation of developing countries in the international standard development process is extremely limited and ineffective. International standardizing bodies must ensure the presence of countries at different levels of development and from different geographical regions, throughout different phases of standard setting. It must be ensured that in the formulation of standards the specific conditions prevailing in developing countries are taken into account. The international standard setting organizations, which are all observers in the SPS Committee, should, at the very minimum, be urged to accept the obligation to periodically report to the SPS Committee in this regard.
 7. Paragraph 2 of Annex B of the Agreement stipulates that Members shall allow a reasonable interval between publication of a sanitary or phytosanitary regulation and its entry into force in order to allow producers, particularly in developing countries, to adapt their products and methods of production to the new requirements. This has rarely been done. The provisions of this paragraph should therefore be made mandatory and what constitutes a "reasonable interval" should be specified.
 8. Though Article 4 of the SPS Agreement encourages equivalency, this principle has more often than not been interpreted as meaning "sameness". Equivalency may be the best option for developing countries until their participation in international standard setting bodies becomes satisfactory. This provision therefore must be suitably clarified so as to ensure that equivalence agreements are entered upon, particularly with developing countries.
 9. Though the SPS Agreement encourages Members to enter into MRA's, so far developing countries have not been included into such agreements. It is suggested that (i) MRA's are developed in a transparent way; (ii) they should be open to parties that may wish to join them at a later stage; and (iii) they should contain rules of origin which allow all products which pass the conformity assessment procedures to benefit from the MRA.
 10. The definition of an international standard, guideline and recommendation (paragraph 3 of Annex A) needs to be revised so that a differentiation is introduced between mandatory international standards and a voluntary international guideline/recommendation.
 11. Article 12:7 provides for a review of the operation and implementation of the Agreement three years after the date of entry into force of the Agreement and thereafter as the need arises. It is important that a decision is taken to the effect that this review is carried out once every two years.
-