

**TRANSPARENCY**

Communication from Mexico

A. INTRODUCTION

1. Pursuant to Article 7 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and paragraph 5 of Annex B of the Agreement, any Member purporting to issue a sanitary or phytosanitary regulation that may have a significant effect on trade and, whenever an international standard, guideline or recommendation does not exist in connection with the regulation or, if one does exist, the content is inconsistent with it, is subject to four obligations in the procedure, for preparing the regulation, namely:

- (a) Publishing a notice, *at an early stage*, in such a manner as to enable Members to become acquainted at the proper time with the proposal to introduce a particular regulation;
- (b) notifying, also *at an early stage*, the objective, rationale and products to be covered by the proposed regulation, so as to permit Members to make comments and, consequently, permit the possibility of amending the proposed regulation;
- (c) providing details on the content of the proposed technical regulation and indicating any differences with regard to applicable international standards, guidelines or recommendations; and
- (d) allowing reasonable time to make comments, discuss them and take the comments and results of the discussions into account.

2. Mexico attaches great importance to the SPS Agreement obligations regarding transparency and considers that compliance with them depends largely on the possibility of preventing unnecessary international trade barriers. Compliance with these obligations also enables countries to influence the content of foreign sanitary and phytosanitary regulations, so as to take account of the country's special conditions. Lastly, the opportunity to participate in formulating this type of regulation in other countries fosters harmonization and, unquestionably, the transfer of technology.

B. PROPOSAL

1. With reference to the obligation under Annex B, paragraph 5(a) of the SPS Agreement, Mexico deems it necessary for the Committee on Sanitary and Phytosanitary Measures (SPS Committee) to establish procedures to ensure compliance therewith and implementation by Members, for up to now the notices provided for in this provision go unnoticed or are not properly communicated. In this connection, it is proposed that Members consider the possibility of making notifications similar to those that Mexico regularly sends to the SPS Committee, whereby Members are informed of the annual publication of the National Standardization Programme and, where

appropriate, any Supplements.<sup>1</sup> In both instruments, Mexico lists all of the technical sanitary and phytosanitary regulations to be prepared during the year by the various offices of the federal public authorities, thereby enabling Members to become acquainted at a sufficiently early stage with the information thereon, independently of the corresponding notifications of each technical regulation issued later under paragraph 5(b) of Annex B of the SPS Agreement.

2. As to the obligations under paragraphs 5(b) and (c) of Annex B of the SPS Agreement, Mexico has been concerned to find that Members fulfill them in part or fail to fulfil them at all, as the corresponding notifications show a number of inconsistencies with those obligations:

- (a) Absence of a deadline for submitting comments;
- (b) absence of dates of adoption and entry into force,
- (c) failure to comply with the minimum 60 days for submitting comments (either because the deadline is shorter or has already elapsed when the notification is circulated);
- (d) date of adoption and entry into force before the date of circulation of the notification, or very close to that date.

3. Mexico considers that paragraphs 5(b) and (c) of Annex B of the SPS Agreement establish that the transparency obligations laid down therein must be met by Members when the regulations are still proposals and not when they have been adopted or are in the final stage of adoption. Again, even where Members are allowed to make comments on a particular regulation, the procedural stage at which the notification is made is not sufficiently early or the period is not long enough, thus preventing Members from exercising the rights tied in with those obligations, namely, to submit comments, for the comments to be considered, for them to be discussed and, where necessary, for amendments to be made to the corresponding technical regulation.

4. Accordingly, Mexico considers that it is necessary for the SPS Committee to discuss and adopt mechanisms for effective compliance with the transparency obligations set out in the SPS Agreement and, consequently, to promote exercise of the correlative rights that are of assistance to Members.

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<sup>1</sup> See document G/SPS/GEN/387, dated 15 April 2003, for example.