

PRELIMINARY OUTLINE OF ISSUES FOR CONSIDERATION BY
THE COMMITTEE AS PART OF THE TRIENNIAL REVIEW
OF THE SPS AGREEMENT

Submission by the United States

The following communication was received by the United States on 26 February 1998.

Introduction

1. The SPS Agreement is a critical component of the important advances that were made during the Uruguay Round in establishing a rules-based system to support international trade in agricultural products. The Agreement affirms Members' responsibilities, and fully protects their rights, to protect human, animal and plant life and health. In fulfilling these responsibilities, Members have agreed that their sanitary and phytosanitary measures will be based, *inter alia*, on scientific principles and scientific evidence. This reliance on science is critical in achieving Members' desire to prevent the use of what are alleged to be health regulations for protectionist purposes. Maintaining transparent, science-based regulatory procedures also helps to sustain public confidence in the objectivity and reliability of Members' public health regimes.

2. The principles incorporated in the Agreement are balanced and sound. Since its entry into force three years ago, however, implementation of important procedural and substantive provisions has at times been inconsistent. The review process provides an important opportunity for the SPS Committee to evaluate the implementation problems that have emerged and to propose practical steps that Members may take in order to fully achieve their common objectives for the Agreement.

Notification Procedures

3. The notification procedures set out in Annex B of the SPS Agreement have proven to be extremely useful in helping Members to identify and, in many cases, resolve potential trade problems associated with the application of new SPS measures. However, implementation of specific commitments has fallen short of the mark in some areas, such as the obligations under Annex B to designate national notification authorities and enquiry points.

4. In addition, Members' experience to date with the notification procedures has revealed a number of procedural and technical difficulties. Some of these important issues were brought to the Committee's attention in 1997 (e.g. in G/SPS/GEN/37 and G/SPS/GEN/41).

- *The Committee should review implementation of the notification provisions to date and, as appropriate, make practical recommendations for ensuring that these provisions are fully and effectively implemented.*

Transparency

5. Open and transparent decision-making procedures are not only important in complying with Article 7 and Annex B. They also make important contributions to Members' efforts to comply with other provisions of the SPS Agreement. For example, advance publication, consideration of public comments, peer review, and adherence to notification obligations can all help to ensure that: regulators are aware of all available scientific evidence relating to proposed SPS measures; protectionist trade restrictions are not disguised as health measures; decisions on the "appropriate level of protection" are in accord with relevant provisions of the Agreement; and the public is aware of the bases for regulatory decisions and remains confident in the objectivity and reliability of the regulatory system as a whole.

6. In view of the important contributions that regulatory transparency can make to the achievement of Members' goals under the SPS Agreement:

- *The Committee should analyze the relationships between transparency and Members' other commitments and objectives under the Agreement. The Committee's observations or recommendations may assist Members in taking practical steps which can facilitate adherence to their obligations under the Agreement.*

7. The principle of regulatory transparency is fully consistent with the principle of maintaining an objective, scientific basis for sanitary and phytosanitary measures. As noted above, improved transparency can in fact contribute to Members' efforts to ensure that their measures are based on science and appropriate risk assessment. At the same time, the need for improved transparency must not be interpreted as diminishing the importance of ensuring that SPS measures are based on scientific principles, scientific evidence and risk assessment.

Activities of International Standards-Setting Organizations

8. The SPS Agreement reflects Members' desire to expand the use of appropriate international standards, guidelines and recommendations, and includes specific commitments in this area. The Committee should continue to explore practical means for facilitating implementation of these provisions. The Committee's observations or recommendations in this area could help Members to ensure that their participation in the activities of international standards-setting organizations is consistent with their WTO commitments and goals, and that such participation strengthens the complementary relationship that Members envisaged between these organizations and the SPS Agreement.

9. It is important to ensure that international standards, guidelines and recommendations are broadly representative of scientific consensus throughout the WTO membership. As is recognized in Article 3.4 of the Agreement, this requires that WTO Members actively participate, to the greatest extent possible, in the deliberations of the relevant international standards-setting organizations. In addition, it is important that such participation result in the broadest possible consensus on the scientific basis for each standard that is adopted by those organizations.

- *The Committee should assess Members' experience to date in implementing Article 3.4 and, if appropriate, make recommendations that may facilitate progress in this area.*

- *The Committee should also review the relationship between the process of consensus building in the international standards-setting organizations and Members' interest in harmonizing international SPS standards, as envisaged in the Agreement.*

10. Progress toward harmonizing international standards also requires that WTO Members and their citizens be able to clearly understand the issues being addressed in international standards-setting organizations and the procedures by which the resulting standards are developed.

- *The Committee should review the relationship of transparency in international standards-setting activities to the goals of the SPS Agreement, and assess whether any improvements in transparency might be appropriate and useful.*

11. As noted above, the need for improved transparency must not be interpreted as diminishing the importance of ensuring that international standards, like national SPS measures, are based on scientific principles and scientific evidence.

Facilitating Resolution of Trade Problems

12. Members' interests are best served when the Agreement contributes to the quick and efficient resolution of real or potential trade problems. Under Article 12.2, the Committee is required to "encourage and facilitate *ad hoc* consultations or negotiations among Members on specific sanitary or phytosanitary issues."

- *The Committee should consider how it may best comply with its mandate to facilitate the resolution of SPS-related trade problems.*

Technical Assistance

13. The realization of Members' goals under the SPS Agreement - including the protection of human, animal and plant health, the facilitation of international trade in safe agricultural and food products, and the harmonization of international standards in a way that does not require Members to change their appropriate level of protection of human, animal or plant life or health - will depend to a great extent on continued progress in improving the quality and effectiveness of regulatory regimes throughout the membership, and particularly in the developing countries. Many Members are participating in ongoing work on regulatory reform in some multilateral and regional fora, including the OECD and APEC. Members are also participating in relevant technical cooperation and assistance programs through a wide range of bilateral and multilateral channels. Specific needs may vary according to each Member's individual circumstances.

- *The Committee should review the usefulness and accessibility of relevant information, and assess whether improvements in the distribution of that information, including through broader use of new technologies, could facilitate implementation of Members' commitments under the Agreement.*
- *The Committee should request that developing country Members identify specific provisions of the Agreement where they may experience difficulties in fulfilling their commitments and where technical cooperation and assistance may help to address those difficulties.*

- *The Committee should review the range of relevant international technical cooperation and assistance efforts, assess the extent to which those efforts are coordinated and effective, and identify any areas in which there appears to be a general need (i.e. applicable to a wide range of Members) for further work.*
