

**Committee on Sanitary and Phytosanitary Measures**

**THE SPS AGREEMENT AND DEVELOPING COUNTRIES**

Note by the Secretariat

In the context of the on-going review of the implementation of the SPS Agreement (Article 12.7), the Secretariat was requested to prepare a paper regarding the difficulties and technical assistance needs of developing countries. This note summarizes the concerns identified by developing countries in the implementation of the SPS Agreement and their suggestions of possible means of alleviating these concerns. The note draws on information provided by developing country Members and least-developed country Members in the context of meetings (formal and informal) of the SPS Committee and other WTO bodies, in particular the Committee on Trade and Development, as well as information provided to the Secretariat in the context of its technical assistance activities.<sup>1</sup> It should be noted that a number of these concerns and suggested solutions were also identified in the review of specific provisions of the Agreement.

Concerns Identified and Proposed Responses

1. The need to ameliorate the general understanding of the SPS Agreement endures. The Secretariat's programme of regional seminars, workshops and training sessions on the SPS Agreement has continued. Developing country Members see a need to expand this type of technical assistance, if necessary using other sources to complement the Secretariat's programme of technical assistance. Aside from addressing the basic rights and obligations, developing countries have emphasized the usefulness of practical examples in explaining the implementation of the SPS Agreement. To maximize the value of these training sessions, it is important that participating Members cooperate with the Secretariat in identifying which officials within their countries are the most appropriate participants for future technical assistance activities.

2. The need for a more specific understanding of the implementation of certain provisions of the SPS Agreement has increased. This is particularly so with respect to the concepts of risk analysis, appropriate level of protection, equivalence and disease-free areas. The international standard-setting bodies have been organizing special sessions on risk analysis, some as separate specific workshops, others in conjunction with regular meetings of these bodies. The Secretariat has started to integrate into WTO-organized seminars, special workshops on the functioning of enquiry points, equivalence and risk analysis, in cooperation with Members and other international organizations. The possibility of providing more such special workshops, and on other specific topics, should be explored. In addition, information regarding the use of risk analysis techniques by Members is considered to be particularly helpful. Some Members have already provided such information; others could be encouraged to do the same. It has also been suggested that the SPS Committee consider developing guidelines on risk assessment, complementary to the guidelines it currently is developing to further the practical implementation of Article 5.5.

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<sup>1</sup> Note by the Secretariat, "Experiences from technical assistance and cooperation in developing countries", dated 24 June 1997 (G/SPS/GEN/17).

3. Developing countries continue to face difficulties with respect to their internal regulatory infrastructure. In many cases, the role and structure of agencies dealing with SPS issues (i.e., food safety, animal health, plant health) *within* countries is not sufficiently clear. Eventual reorganizations of such agencies should take into account the need for enhanced internal transparency and cooperation. Partnerships between heads of agencies in developing country Members and those in developed country Members may be a means of facilitating these objectives, as well as speeding up mutual recognition of different procedures in different countries. The guidelines being developed by the Committee to further the practical implementation of Article 5.5 could help developing country Members ensure greater consistency between regulations relating to food safety, animal and plant health.

4. There is also a distinct need for creating, or improving, underlying legislation, for example food law.<sup>2</sup>

5. Developing countries have pointed at the inadequate harmonization of importing Members' requirements. In October 1997, the Committee adopted a provisional procedure to monitor the use of international standards.<sup>3</sup> The purpose of this procedure is to enable Members to submit examples of trade problems which are thought to be related to the use, non-use or absence of international standards. However, to date only three Members have submitted such examples. To the extent that Members are seeking the development of new – or the better use of current – international standards, this procedure could help achieve this goal. The development of international standards takes a number of years. Governments of developing country Members could establish a systematic approach whereby they examine their internal needs and ability to comply with proposed standards in advance of the formal adoption by the standard-setting organizations. In order to influence the work of the standard-setting bodies, the active participation of appropriate developing country officials at the different steps in the development of new standards is important, and means to further facilitate the participation of the appropriate officials should be explored.

6. Developing country Members have expressed a number of concerns in respect of transparency and notification procedures. In particular, many Members could be more precise in stating the period of time allowed for comments before the regulation enters into force. It has also been suggested that Members provide longer time frames (than the recommended minimum of 60 days) for developing countries to comment on notifications. In addition, developing country Members should be given adequate time to adapt to the proposed change before it become effective, as foreseen by the Agreement.<sup>4</sup>

7. There is also a need for more clarity in SPS notifications. In particular: sufficient information should be provided to all Members prior to the modification of import requirements; the factors used to determine the appropriate level of protection should be readily apparent in the notification or at least readily provided by the importing country upon request; the regulations or

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<sup>2</sup> This is an example of an area of technical assistance provided by the FAO/WHO Codex Alimentarius Commission (Codex).

<sup>3</sup> Decision of the Committee, "Procedure to Monitor the Process of International Harmonization", dated 22 October 1998 (G/SPS/11).

<sup>4</sup> Annex B, paragraph 2 of the SPS Agreement states that:

"Except in urgent circumstances, Members shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products and methods of production to the requirements of the importing Members." (emphasis added)

The SPS Committee's Revised Recommended Notification Procedures provides that a "specific date should be stated" for the final date for comments and that "[a] normal time limit for comments on notifications of sixty days has been recommended." (emphasis added)

documents notified should be made available in a WTO working language; and there should be an effective exchange of information following comments made in response to a notification. In addition, it would be helpful if developed country Members provided more general information on major food safety, animal or plant health requirements in their countries.

8. Many of the problems identified could be addressed through a more conscientious implementation by all WTO Members of their current notification obligations. One suggestion is that Members' exchange of information on any particular SPS requirement be posted in an Internet "mailbox". Such a centralized site could contain the notification at issue, the text of the relevant regulations and any comments submitted thereto. An alternative suggestion is the establishment of a coordination body serving the same purpose. These and other specific suggestions are being addressed in the context of the review discussions regarding transparency and notification provisions, and proposed modifications to the Recommended Notification Procedures contained in document G/SPS/7 (G/SPS/W/92 refers).

9. Developing countries have stressed the financial constraints posed by the requirements of the SPS Agreement. The provisions of Article 9 of the Agreement address these concerns, and the Committee may wish to consider ways of ensuring the full implementation of these provisions.

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