

Committee on Sanitary and Phytosanitary Measures

**TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF
THE AGREEMENT ON THE APPLICATION OF SANITARY AND
PHYTOSANITARY MEASURES**

Draft Summary Report

Note by the Secretariat

I. INTRODUCTION

1. Article 12.7 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) provides that "[T]he Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, *inter alia*, to the experience gained in its implementation."

2. The SPS Committee agreed in July 1997 on a procedure to review the operation and implementation of the Agreement.¹ The Committee held [] informal meetings and [] formal meetings, at which it considered issues and proposals identified by Members. These discussions were informed by a number of background papers submitted by Members.

II. GENERAL

3. The Committee emphasized that the SPS Agreement was a new framework which, during its first three years and a half of implementation, had improved international trading relationships with respect to SPS measures. The Agreement specified Members' rights and obligations in the application of SPS measures and provided useful guidance for the relevant authorities within each Member for implementing the new framework. A substantial part of each formal meeting of the Committee was devoted to the discussion of particular implementation problems, some of interest to a limited number of Members and others of broader interest. The Committee noted with satisfaction the number of SPS-related trade matters which had been resolved following their discussion bilaterally or at formal meetings of the Committee.

4. In its discussions of issues concerning the operation and/or implementation of the Agreement, the Committee focussed especially on the provisions relating to transparency of sanitary and phytosanitary measures (Annex B), including the notification procedures; special and differential treatment of developing country Members (Article 10); technical assistance (Article 9); international harmonization (Article 3); equivalence (Article 4); and adaptation to regional conditions (Article 6).

¹ G/SPS/10

5. The Committee observed that Members had not exhausted the discussions on the operation and implementation of the Agreement. The Committee adopted a number of decisions, recommendations and arrangements aimed at improving the operation and implementation of the Agreement. It recognized that a number of issues will need to be addressed in the context of the future work programme of the Committee. Moreover, the Committee recalled that, in accordance with Article 12.7, the operation and implementation of the Agreement could again be reviewed "... as the need arises ...".

III. TRANSPARENCY OF SANITARY AND PHYTOSANITARY MEASURES (ANNEX B)

6. Paragraph 5 of Annex B of the SPS Agreement requires Members to notify new SPS regulations or modification of existing regulations "[W]henver an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Members(...)". The Committee noted that the Agreement had significantly improved transparency in the application of sanitary or phytosanitary measures. As of [date], over [X] notifications had been submitted by [X] Members. Furthermore, [X] Members had established National Enquiry Points to respond to requests for information. The Committee recalled that it had adopted recommended notification procedures, as well as the formats for regular and emergency notifications in 1995 (G/SPS/7.) It noted that a number of the concerns related to the operation of the transparency provisions of the Agreement could be resolved if Members more comprehensively applied the recommended procedures. In this context, the Committee also noted that there was a procedure allowing for the extension of the comment period on notifications. The Committee recognized the need for an accurate summary of the notified measure in one of the WTO official languages. In this respect, the Committee agreed that access of all Members to informal translations of texts of notified measures should be facilitated, if possible through electronic facilities. A number of the other concerns identified could be addressed by modifications or clarification of the recommended procedures. In this regard, and with a view to ensuring a more effective functioning of the transparency provisions, the Committee agreed to the attached revised recommended notification procedures and notification formats.

IV. SPECIAL AND DIFFERENTIAL TREATMENT, TECHNICAL ASSISTANCE (ARTICLES 9, 10 AND 14)

7. The Committee recalled that Article 10.1 of the Agreement provides that "[I]n the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members".

8. The Committee agreed to give further consideration to the practical implementation of the provision in Article 10.2 which states that "... longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports". It noted, in accordance with Article 9.2, that some importing Members had provided technical assistance to developing country Members where substantial investments were required in order for these countries to fulfill the importing Member's SPS requirements. The Committee stressed the need for enhanced technical assistance and cooperation to developing countries, in particular with regard to human resource development, national capacity building, transfer of technology and information, particularly by way of concrete, "hands-on" assistance.

9. The Committee noted that some of the needed technical assistance could best be provided by the relevant international organizations, and agreed to bring this matter to their attention, keeping in mind, however, that this could have a significant impact on the resources of these bodies and/or Members' resources. The Committee reiterated the need for Members and the relevant international

organizations to provide information on their technical cooperation and assistance programmes on a regular basis. In this regard, and with a view to making the most efficient use of information resources available and to facilitate coordination of different technical assistance initiatives, Members agreed to make available such information.

V. INTERNATIONAL HARMONIZATION (ARTICLES 3 AND 12.4)

10. The Committee recalled that, as required by Articles 3.5 and 12.4 of the SPS Agreement, it had developed a preliminary procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations.² The Committee noted that several concrete examples had been submitted to the Committee under this procedure.³ It recalled that the operation of the monitoring procedure would be reviewed 18 months after its implementation.

11. The Committee recognized the concerns of developing countries with regard to the procedures for the elaboration and adoption of international standards, but considered that it would be more appropriate to address such concerns in the relevant international organizations. It noted that this issue was already under discussion in the standard-setting bodies, including by way of an evaluation of what additional steps are required to ensure more effective participation of developing countries in the adoption of international standards. The Committee agreed to request the representatives of these organizations to keep the Committee informed of developments in this matter.

VI. EQUIVALENCE (ARTICLE 4)

12. The Committee noted with satisfaction the progress in the application of the concept of equivalence of SPS measures as manifested in the increasing number of bilateral equivalence agreements. However, it also noted that most of the agreements were between Members where similar SPS conditions prevailed. In this regard, bearing in mind the importance of the recognition of equivalence of SPS measures for developing countries, the Committee recognized the need for wider efforts in the practical application of this concept. The Committee encouraged Members to submit information on bilateral equivalency agreements to be made available to all Members. The Committee also recognized the work underway in some of the relevant international organizations that could further the application of this concept.

VII. ADAPTATION TO REGIONAL CONDITIONS (ARTICLE 6)

13. The Committee noted that adaptation to regional conditions and the recognition of pest- or disease-free areas or areas of low pest or disease prevalence were concepts of significant importance for trade in agricultural products, especially horticultural and meat products. In this regard, the Committee welcomed the increasing number of Members applying these concepts. However, the Committee also noted certain difficulties in implementation. Such difficulties were of diverse nature and included divergences in interpretation of international guidelines; an excessive length of the administrative process in importing countries for recognizing pest- or disease-free areas or areas of low pest or disease prevalence; the relationship with other provisions of the Agreement, such as risk assessment and equivalence. The Committee welcomed the contribution of the relevant international standard-setting bodies in this area to addressing these difficulties.

² G/SPS/11

³ G/SPS/W/87 and Corr.1, G/SPS/W/89 and G/SPS/W/91.

VIII. [OTHER ISSUES CONSIDERED BY THE COMMITTEE

14. Members identified three issues for consideration which were not yet addressed in the discussions: (i) Risk assessment; (ii) Dispute resolution; and (iii) Annex C.]

ANNEX

**WORLD TRADE
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G/SPS/7/Rev.1
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Committee on Sanitary and Phytosanitary Measures

RECOMMENDED NOTIFICATION PROCEDURES

At its meeting of *[11-12 NOVEMBER 1998]*, the Committee adopted the following revised recommended notification procedures with regard to paragraphs 5 and 6 of Annex B of the Agreement.

Members should follow these guidelines when notifying regulations as required in paragraphs 5 or 6 of Annex B. The format for regular notifications (Item F below) should be used for notifications in accordance with paragraph 5 of Annex B, whereas the format for emergency notifications (Item G below) should be used for notifications as provided for in paragraph 6 of Annex B.

A. Application of Annex B, paragraph 5 (preambular part) of the SPS Agreement

Recommendation:

For the purposes of Annex B, paragraphs 5 and 6 in the SPS Agreement, the concept of "significant effect on trade of other Members" may refer to the effect on trade:

- of one sanitary or phytosanitary regulation only or of various sanitary or phytosanitary regulations in combination;
- in a specific product, group of products or products in general; and
- between two or more Members (countries).

When assessing whether the sanitary or phytosanitary regulation may have a significant effect on trade, the Member concerned should take into consideration, using relevant information which is available, such elements as the value or other importance of imports in respect of the importing and/or exporting Members concerned, whether from other Members individually or collectively, the potential development of such imports, and difficulties for producers in other Members to comply with the

proposed sanitary or phytosanitary regulations. The concept of a significant effect on trade of other Members should include both import-enhancing and import-reducing effects on the trade of other Members, as long as such effects are significant.

B. Timing of notifications

Recommendation:

(A) When implementing the provisions of paragraph 5 of Annex B, a notification should be made when a draft with the complete text of a proposed regulation is available and when amendments can still be introduced and comments taken into account.

(B) ***A NOTIFICATION SHALL BE MADE BEFORE THE ENTRY INTO FORCE OF THE RELEVANT MEASURE.***

C. Translation of documents relating to notifications and address of body supplying the documents

Recommendation:

When a Member seeks a copy of a document relating to a notification which does not exist in that Member's WTO working language, it will be advised, ~~on request~~, by the notifying Member, of other Members that have requested, as of that date, a copy of the document. The Member seeking a copy of a document relating to a notification may then contact such other Members in order to determine whether the latter are prepared to share, ~~on mutually agreed terms~~, any translation that they have or will be making into relevant WTO working language(s). ***MEMBERS POSSESSING AN UNOFFICIAL TRANSLATION OF A DOCUMENT RELATING TO A NOTIFICATION ARE ENCOURAGED TO MAKE IT AVAILABLE TO INTERESTED MEMBERS THROUGH ELECTRONIC FACILITIES.***

- (a) When a translation of a relevant document exists or is planned, this fact shall be indicated on the WTO notification form next to the title of the document. If only a translated summary exists, the fact that such a summary is available shall be similarly indicated.
- (b) Upon receipt of a request for documents, ~~any~~ ***A*** translated summary ~~that exist~~ ***ies*** in the language of the requester or, as the case may be, in a WTO working language, shall be automatically sent with the original of the documents requested.
- (c) Members shall indicate under point 12 of the WTO notification form (*point 11 for Emergency Notifications*) the exact address of the body responsible for supplying the relevant documents if that body is not the enquiry point.

D. Processing of requests for documentation or information

Recommendation:

- (a) Requests for documentation should contain all the elements permitting the identification of the documents and in particular, the WTO SPS notification number to which the requests refer. The same information should appear on the documents supplied in response to such requests.
- (b) Any request for documentation or information should be acknowledged if it cannot be responded to and processed within five working days. If a delay in supplying the documentation or information requested is foreseen, this should be acknowledged to the requester.
- (c) Fax **AND E-MAIL** facilities should be used to the extent possible in responding to requests for documentation or information.

E. Handling of comments on notifications

Recommendation:

- (a) Each Member should notify the WTO Secretariat of the authority or agency (e.g. its enquiry point) which it has designated to be in charge for handling of comments received, **OR ANY CHANGE AND/OR MODIFICATION OF SUCH AUTHORITY OR AGENCY.**

(B) COMMENTS ON NOTIFICATIONS SHALL BE FORWARDED WITHOUT UNNECESSARY DELAYS TO THE ENQUIRY POINT AND/OR TO THE AUTHORITY RESPONSIBLE TO HANDLE THE COMMENTS.

- ~~(b)~~(C) A Member receiving comments through the designated body should without further request

- (i) acknowledge the receipt of such comments;
- (ii) explain within a reasonable time to any Member from which it has received comments, how it will proceed in order to take these comments into account and, where appropriate, provide additional relevant information on the proposed sanitary or phytosanitary regulations concerned; and
- (iii) provide to any Member from which it has received comments, a copy of the corresponding sanitary or phytosanitary regulations as adopted or information that no corresponding sanitary or phytosanitary regulations will be adopted for the time being.

(IV) CONSIDER THE POSSIBILITY OF MAKING COMMENTS, QUESTIONS AND ANSWERS AVAILABLE THROUGH ELECTRONIC FACILITIES.

(e) **(D)** Favourable consideration should be given to requests for extension of the comment period, ***IN PARTICULAR WITH REGARD TO NOTIFICATIONS RELATING TO PRODUCTS OF PARTICULAR INTEREST TO DEVELOPING COUNTRIES, AND notably*** where there have been delays in receiving and translating the relevant documents. ***AN EXTENSION OF THE TIME-LIMIT FOR COMMENTS, UP TO 30 DAYS, SHOULD BE CONSIDERED WHENEVER POSSIBLE.***

F. Completion of formats - Regular notifications (Annex B, Paragraph 5)

Information contained in the notifications should be as complete as possible and no section should be left blank. Where necessary, "not known" or "not stated" should be indicated.

<u>Item</u>	<u>Description</u>
1. Member notifying	Government, including the competent authorities of the European Community, which is making the notification.
2. Agency responsible	Body elaborating a proposal for or promulgating a sanitary or phytosanitary regulation.
3. Products covered	Tariff item number(s) (normally HS, chapter or heading and number) as contained in national schedules deposited with the WTO. ICS numbers may be provided in addition, where applicable. A clear description is important for an understanding of the notification by delegations and translators. Abbreviations should be avoided.
<i>3(BIS) REGIONS LIKELY TO BE AFFECTED</i>	<i>THE GEOGRAPHICAL REGIONS OR COUNTRIES LIKELY TO BE AFFECTED BY THE NOTIFIED REGULATION SHOULD BE IDENTIFIED.</i>
4. Title and number of pages of the notified document	Title of the proposed or adopted sanitary or phytosanitary regulation. Number of pages in the notified document.
5. Description of content	An abstract of the proposed or adopted sanitary or phytosanitary regulation clearly indicating its content. <i>THE ABSTRACT SHOULD BE AS COMPLETE AND ACCURATE AS POSSIBLE TO ALLOW THE FULL UNDERSTANDING OF THE PROPOSED REGULATION.</i> A clear description is <i>ALSO</i> important for an understanding of the notification by delegations and translators. Abbreviations should be avoided.
6. Objective and rationale	For instance: food safety, animal health, plant protection, etc.

7. Existence of international standard
If a relevant international standard, **GUIDELINE OR RECOMMENDATION** does not exist, put a cross in the box provided; otherwise **WHENEVER PRACTICABLE GIVE THE ADEQUATE REFERENCE OF THE EXISTING STANDARD, GUIDELINE OR RECOMMENDATION AND** briefly describe how the proposed regulation deviates from **IT. ~~such international standard.~~**
8. Relevant documents and language(s) in which these are available
(a) Publication where notice appears, including date and reference numbers;
(b) Proposal and basic document to which proposal refers (with specific reference number or other identification), and the language(s) in which the notified documents and any summary of these are available;
(c) Publication in which proposal will appear when adopted;
(d) Whenever practicable, give reference to relevant international standard. If it is necessary to charge for documents supplied, the amount of the charge should be indicated.
9. Proposed date of adoption
The date when the sanitary or phytosanitary regulation is expected to be adopted.
10. Proposed date of entry into force
The date from which the requirements in the regulation are proposed or decided to enter into force.
11. Final date for comments and agency or authority handling comments
The date by which Members may submit comments in accordance with Annex B, Paragraph 5(b) of the SPS Agreement. A specific date should be indicated. A normal time limit for comments on notifications of sixty days has been recommended. A Member may, if necessary, however, indicate in its notification that it will proceed to implement the proposed measure after forty-five days if no comments or requests for extension of the time limit have been received from other Members within that time. Any Member which is able to provide a time limit beyond sixty days is encouraged to do so.

The agency or authority which has been designated to handle the comments should be indicated.
12. Texts available from
If available from national enquiry point, put a cross in the box provided. If available from another body, give its address, telefax number and (if available) E-mail address. Such indications should not in any way discharge the relevant enquiry point of its responsibilities under the provisions of Annex B, Paragraphs 3 and 4 of the SPS Agreement.

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Committee on Sanitary and Phytosanitary Measures

NOTIFICATION

Error! Bookmark not defined.1. Member to Agreement notifying: If applicable, name of local government involved:
2. Agency responsible:
3. Products covered (tariff item number(s) as specified in national schedules deposited with the WTO. ICS numbers may be provided in addition, where applicable):
3(BIS) REGIONS LIKELY TO BE AFFECTED:
4. Title and number of pages of the notified document:
5. Description of content:
6. Objective and rationale:
7. An international standard, guideline or recommendation does not exist []. If an international standard, guideline or recommendation exists, <i>WHENEVER PRACTICABLE GIVE ITS ADEQUATE REFERENCE AND BRIEFLY –whenever possible, identify deviations:</i>
8. Relevant documents and language(s) in which these are available:
9. Proposed date of adoption:
10. Proposed date of entry into force:
11. Final date for comments: Agency or authority designated to handle comments:
12. Texts available from: National enquiry point [] or address, telefax number and E-mail address (if available) of other body:

G. Completion of formats - Emergency notifications (Annex B, Paragraph 6)

Information contained in the notification form should be as complete as possible and no section should be left blank. Where necessary, "not known" or "not stated" should be indicated.

<u>Item</u>	<u>Description</u>
1. Member notifying	Government, including the competent authorities of the European Community, which is making the notification.
2. Agency responsible	Body elaborating a proposal for or promulgating a sanitary or phytosanitary regulation.
3. Products covered	Tariff item number(s) (normally HS, chapter or heading and number) as contained in national schedules deposited with the WTO. ICS numbers may be provided in addition, where applicable. A clear description is important for an understanding of the notification by delegations and translators. Abbreviations should be avoided.
3(BIS) REGIONS LIKELY TO BE AFFECTED	THE GEOGRAPHICAL REGIONS OR COUNTRIES LIKELY TO BE AFFECTED BY THE NOTIFIED REGULATION SHOULD BE IDENTIFIED.
4. Title and number of pages of the notified document	Title of the proposed or adopted sanitary or phytosanitary regulation. Number of pages in the notified document.
5. Description of content	An abstract of the proposed or adopted sanitary or phytosanitary regulation clearly indicating its content. THE ABSTRACT SHOULD BE AS COMPLETE AND ACCURATE AS POSSIBLE TO ALLOW THE FULL UNDERSTANDING OF THE PROPOSED REGULATION. A clear description is ALSO important for an understanding of the notification by delegations and translators. Abbreviations should be avoided.
6. Objective and rationale	For instance: food safety, animal health, plant protection, etc.
7. Nature of urgent problem(s)	Indication of the underlying reasons for resorting to emergency action.

8. Existence of international standard
- If a relevant international standard, **GUIDELINE OR RECOMMENDATION** does not exist, put a cross in the box provided; otherwise **WHENEVER PRACTICABLE GIVE THE ADEQUATE REFERENCE OF THE EXISTING STANDARD, GUIDELINE OR RECOMMENDATION AND** briefly describe how the proposed regulation deviates from ~~IT.such international standard.~~
9. Relevant documents and language(s) in which these are available
- (a) Measure(s) taken and basic regulation which was modified (with specific reference number or other identification), and the language(s) in which the notified documents and any summary of these are available;
- (b) Publication in which regulation will appear;
- (c) Whenever practicable, give reference to relevant international standard. If it is necessary to charge for documents supplied, the amount of the charge should be indicated.
10. Date of entry into force and period of application
- The date from which the requirements entered into force, and, if applicable, the period of time during which they will apply. (For example: immediate entry into force [date], duration of two months.)
11. Texts available from and agency or authority handling comments
- If available from national enquiry point, put a cross in the box provided. If available from another body, give its address, telefax number and (if available) E-mail address. Such indications should not in any way discharge the relevant enquiry point of its responsibilities under the provisions of Annex B, Paragraphs 3 and 4 of the SPS Agreement.
- The agency or authority which has been designated to handle the comments should be indicated.

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NOTIFICATION OF EMERGENCY MEASURES

Error! Bookmark not defined.1. Member to Agreement notifying: If applicable, name of local government involved:
2. Agency responsible:
3. Products covered (tariff item number(s) as specified in national schedules deposited with the WTO. ICS numbers may be provided in addition, where applicable):
3(BIS) REGIONS LIKELY TO BE AFFECTED:
4. Title and number of pages of the notified document:
5. Description of content:
6. Objective and rationale:
7. Nature of the urgent problem(s):
8. An international standard, guideline or recommendation does not exist []. If an international standard, guideline or recommendation exists, <i>WHENEVER PRACTICABLE GIVE ITS ADEQUATE REFERENCE AND BRIEFLY</i> —whenever possible, identify deviations:
9. Relevant documents and language(s) in which these are available:
10. Date of entry into force/period of application (as applicable):
11. Texts available from/and agency or authority designated to handle comments: National enquiry point [] or address, telefax number and E-mail address (if available) of other body: