
Committee on Sanitary and Phytosanitary Measures

**COMPENDIUM OF DOCUMENTS RELATED TO ISSUES ARISING FROM
THE SECOND REVIEW OF THE IMPLEMENTATION
OF THE SPS AGREEMENT**

Note by the Secretariat¹

I. INTRODUCTION

1. The Committee on Sanitary and Phytosanitary Measures (the SPS Committee) adopted the report of the second Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures on 30 June 2005 (G/SPS/36). This report identifies several issues where Members have proposed further work by the SPS Committee and contains a number of recommendations. The Committee agreed that it would address these issues based on proposals and specific submissions from Members. This document compiles the submissions by Members relating to matters for further work following the adoption of the report of the Review up until August 2006. Other issues raised in the context of the Review will be addressed when Members submit specific proposals or request specific consideration of proposals submitted during the Review process.

2. The documents submitted by Members address the following subjects: implementation of the transparency provisions and clarification of terms used in that context; the relationship between the SPS Committee and the international standard-setting bodies (ISSBs); undue delays; and consultations under Article 21.1, use of good offices and resolution of trade concerns. Section II lists the documents received for each subject and briefly summarizes them.

II. DOCUMENTS SUBMITTED BY MEMBERS

A. TRANSPARENCY / CLARIFICATION OF TERMS

Date	Member	Title/Subject	Symbol
June 2006	Australia, New Zealand, United States	Review of the Implementation of Transparency Provisions	G/SPS/W/197
March 2006	Canada	Clarification of the Terms "Measures" and "Regulations" as contained in the SPS Agreement	G/SPS/W/186

¹ This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights or obligations under the WTO.

3. **Australia, New Zealand and the United States** suggest that the Committee discuss how to ensure that all Members have operational enquiry points working to further the full implementation of the Agreement. Furthermore, the three proponents note that various Members have identified specific issues related to the implementation of the transparency provisions that could be addressed by the Committee. In addition, they suggest that Members could use the Handbook on Transparency to analyze their own implementation of the SPS Agreement. Other potential areas of work identified include evaluating the notification obligations, including the notification of special and differential treatment and of regionalization. According to the proponents, a thorough review of the transparency obligations and of their implementation would improve mutual understanding of Members' administrative procedures and allow the Committee to better evaluate the need for additional work on undue delays and timelines.

4. **Canada** notes that while the Preamble, Articles 1 (General Provisions) and 7 (Transparency) and Annex A (Definitions) of the SPS Agreement all use the term "measures", Annex B (Transparency of Sanitary and Phytosanitary Regulations) uses the term "regulations", defined in a footnote as "[s]anitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally". Although a footnote in the Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (G/SPS/7/Rev.2) indicates that the SPS Agreement uses the two terms somewhat interchangeably, in Canada's view the use of different terms can lead to uncertainty, and possibly to a failure to notify certain measures that are not considered regulations. In *Japan – Agricultural Products II* the Appellate Body ruled that:

"... [t]he scope of application of the publication requirement is not limited to 'laws, decrees or ordinances', but also includes, in our opinion, other instruments which are applicable generally and are similar in character to the instruments explicitly referred to in the illustrative list of the footnote to paragraph 1 of Annex B."²

5. Canada proposes clarifying the issue through a Committee decision recognizing that, when referring to "regulations" in Annex B, the intent of the SPS Agreement is to include all measures that are applicable generally and may have a significant effect on trade of other Members.

B. RELATIONSHIP BETWEEN THE SPS COMMITTEE AND INTERNATIONAL STANDARD-SETTING BODIES

Date	Member	Title/Subject	Symbol
January 2006	Brazil	Prioritization of Issues for the Future Work Programme of the SPS Committee	G/SPS/W/182
June 2006	Chile	Harmonization, Relations with International Organizations (OIE; IPPC, Codex Alimentarius), Monitoring of International Standards	G/SPS/W/203
March 2006	Colombia	Priority Topics to be Taken into Account in the Future Work of the Committee	G/SPS/W/188
November 2005	New Zealand	Work Programme	G/SPS/W/179
June 2006	New Zealand	Relationship between the SPS Committee and the Standard-Setting Bodies	G/SPS/W/206

² Appellate Body Report on *Japan – Agricultural Products II*, paras. 105-107.

6. **Brazil** considers of high importance that the Committee continue to discuss its relationship with the relevant International Standard-Setting Bodies (ISSBs). In Brazil's view, improving cooperation with these bodies as the international reference of technical and scientific matters would be beneficial to the implementation of the SPS Agreement, especially with regard to harmonization with international standards. The Committee should take into account the distinct roles and objectives of the ISSBs and of the SPS Agreement.

7. **Chile** notes that the number of international standards continues to increase, but that very little information on Members' application of these international standards is available. On their SPS notifications, most Members do not provide any details about measures which deviate from international standards. Chile proposes that Members notify all changes to their SPS import requirements, whether or not they represent a departure from an international standard, and provide more detail about the relevant standard and/or about the deviation from that standard. The Secretariat could then review this information, transmit it to the ISSBs and coordinate efforts to ascertain the level of use and departures from international standards.

8. **Colombia** argues that the Committee should give priority to its relationship with the ISSBs, especially regarding administrative procedures, since technical and scientific procedures are the domain of the ISSBs.

9. In its submission on the work programme, **New Zealand** suggests that the Committee should give high priority to discussing the distinct yet complementary roles of the Committee and the ISSBs with a view to avoiding overlaps and unnecessary duplication of efforts. In New Zealand's view, the Committee should refer technical and scientific matters pertaining to the practical application of the Agreement (in particular related to international standards) to the relevant ISSBs, which can then report back to the Committee if necessary. New Zealand suggests that it would be useful for Members if the ISSBs articulated their respective mandates, including their interest in and ability to develop procedural guidelines, and if the WTO and ISSB secretariats discussed their roles in the administration of the SPS Agreement and clarified them.

10. In its second, more specific paper, after analyzing the respective roles of the SPS Committee and of the ISSBs, **New Zealand** proposes that the SPS Committee consider mechanisms to promote effective collaboration with the standard-setting bodies in the implementation and administration of the SPS Agreement, while avoiding unnecessary duplication of effort. New Zealand further suggests that the SPS Committee discuss the optimal process for effective collaboration and communication between the SPS Committee and the ISSBs. In this regard, New Zealand raises a number of questions for discussion.

C. UNDUE DELAYS

Date	Member	Title/Subject	Symbol
January 2006	Brazil	Prioritization of Issues for the Future Work Programme of the SPS Committee	G/SPS/W/182
June 2006	Chile	Undue Delays	G/SPS/W/202
March 2006	Colombia	Priority Topics to be Taken into Account in the Future Work of the Committee	G/SPS/W/188
June 2006	Colombia	Proposal for Preventing Undue Delays in the Entry of Animals, Plants and their Products	G/SPS/W/201
November 2005	Costa Rica	Prioritization of Issues for the Future Work Programme of the SPS Committee	G/SPS/W/180

11. **Brazil** notes that undue delays are a cross-cutting issue, affecting areas such as equivalence; regionalization; risk assessment; control, inspection and approval procedures; and the suspension or adjustment of measures when SPS conditions have changed. The subject should therefore not be subsumed to the discussion of other topics.

12. According to **Chile**, delays in procedures to authorize the entry of products are often not due to technical reasons. In some cases, national procedures require public hearings, a process that can take up to three years. In other cases, authorization from a political authority is required after a technical decision has been made. In still other cases, a group of independent experts decides whether to authorize entry of a product, and sometimes these decisions cannot be appealed. Chile suggests that the SPS Committee monitor delays through formal notifications or through information provided at meetings, for example when delays last over two years after a technical decision has been made. Chile notes that the technical process itself must not take longer than required. To avoid long delays, trading partners could agree bilaterally on steps, responsibilities and timeframes. In cases where delays exceeded the agreed timeframes, the Committee could be notified and the relevant ISSBs could be asked to comment. The Committee should receive the information necessary to analyze these cases, develop a definition of "undue delays" and consider if procedures could be recommended to prevent them.

13. In its first document concerning priorities for future work, **Colombia** argues that greater importance should be attached to the issue of undue delays since they lead to heavy economic losses. According to Colombia, it is important to examine situations where market access is subject to the completion of a risk assessment.

14. In its second, more specific document, **Colombia** proposes procedures to prevent undue delays. As a first step, the exporting Member would submit a formal request to export animals, plants or their products to the importing Member. Within 30 days, the importing Member would provide information on its requirements and procedures and indicate the approximate timeframes for each step. The exporting Member would then send the required information. Colombia proposes that Members notify the WTO at the beginning of this process. Within 60 days after receipt of the information, the importing Member could request further information, if necessary. If the importing Member required an on-site visit, it would so inform the exporting Member and suggest a date for the visit. The on-site visit would have to take place within a period of no more than three months following receipt of the information. Once the risk assessment procedures agreed upon by the parties had been carried out, the results would have to be discussed with the exporting Member. Within 30 days after completion of the procedures, the importing Member would inform the exporting Member and the WTO of its decision and of the time required before trade could begin. Should the exporting Member's request be rejected, the importing Member would have to provide the technical and scientific reasons for its decision.

15. In **Costa Rica's** view, priority should be given to discussion of undue delays since this is a cross-cutting issue that affects many mechanisms and disciplines of the Agreement. Undue delays arise because of exaggerated information requirements; non-transparent procedures; and excessively long time limits for risk assessment, adoption or modification of measures and for other aspects related to the application of SPS measures.

D. CONSULTATIONS UNDER ARTICLE 12.1, USE OF GOOD OFFICES, RESOLUTION OF TRADE CONCERNS

Date	Member	Title/Subject	Symbol
January 2006	Brazil	Prioritization of Issues for the Future Work Programme of the SPS Committee	G/SPS/W/182
March 2006	Colombia	Priority Topics to be Taken into Account in the Future Work of the Committee	G/SPS/W/188
November 2005	Costa Rica	Prioritization of Issues for the Future Work Programme of the SPS Committee	G/SPS/W/180
January 2006	Costa Rica	Discussion Proposal for the More Effective Implementation of the Ad Hoc Consultations Mechanism within the Framework of Article 12.2 of the SPS Agreement	G/SPS/W/183
June 2006	Chile	Proposed Differences or Clarifications Procedure	G/SPS/W/204

16. **Brazil** proposes discussing the subject of specific trade concerns to improve this problem-solving mechanism. **Colombia** believes that more time should be available for specific trade concerns on the agenda of SPS Committee meetings. Colombia notes that despite attempts to resolve an issue by addressing it in the Committee, sometimes a satisfactory outcome cannot be reached even where the exporting country has provided scientific evidence.

17. In its first paper concerning the work programme, **Costa Rica** notes that through the application of Article 12.2, the SPS Committee has helped to solve trade concerns raised by Members. However, in Costa Rica's view the mechanism has been underutilized because it has not been operationalized through established processes and procedures. Costa Rica suggests studying the possible alternative approaches that might derive from the application of Article 12.2 and that represent an opportunity to settle disputes and facilitate trade without having to resort to the dispute settlement mechanism at considerable expense.

18. In its second submission addressing the subject, **Costa Rica** notes that mechanisms such as that provided for by Article 12.2 provide an opportunity to facilitate the resolution of trade concerns more quickly and at lower cost than the mechanisms provided for in the Dispute Settlement Understanding. Consequently, Costa Rica suggests that the Committee explore options to facilitate the use of Article 12.2 mechanisms by developing procedures and timeframes that would ensure expeditious resolution of trade concerns. Costa Rica identifies the following issues to be addressed: the usefulness of establishing timeframes for responding to trade concerns submitted by Members, and mechanisms to inform other Members of steps taken and of results; the possibility of establishing guidelines with definite timeframes and more detailed procedures for resorting to the good offices of the Committee Chairperson; and mechanisms to facilitate the more active participation in the Committee of developing and least-developed Members so as to improve their capacity to resolve trade concerns through Article 12.2.

19. **Chile** notes that several Members have proposed establishing procedures for resolving trade concerns. Chile suggests that as a first step, a Member can ask a trading partner to explain the reasons for a particular measure under Article 5.8. In addition, documents can be exchanged, possibly including questionnaires and replies. If this does not lead to an agreement, one or more bilateral meetings can be convened, for example in the margins of the meetings of the SPS Committee. If

these meetings don't lead to a resolution, the complainant may raise the matter at an SPS Committee meeting under the agenda item on specific trade concerns, possibly providing additional information in a Committee document. If the problem persists, the Member concerned may seek the good offices of the Chairperson or of the Secretariat, informing the Committee of any progress. Chile also suggests obtaining detailed information on the dispute settlement procedures of the OIE and the IPPC, and on the cost of bringing a case to a WTO dispute settlement panel.
