

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

Transparency enhancement proposal

Submission by Canada

The following communication, received on 5 June 2007, is being circulated at the request of the Delegation of Canada.

I. INTRODUCTION

1. Transparency is a cornerstone of the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement). The transparency provisions can facilitate Members in attaining a greater degree of predictability and clarity with respect to the adoption of sanitary and phytosanitary (SPS) measures by trading partners.

2. In the context of the Second Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures (Second Review), the SPS Committee has previously discussed expanding current recommended notification procedures to enhance transparency, including proposals that Members notify all regulations¹ that have a significant effect on trade, including those based on international standards, guidelines or recommendations (hereinafter referred to as "international standards") (see comments by New Zealand: G/SPS/W/157, Canada: G/SPS/W/158, and EC: G/SPS/W/159). One recommendation stemming from the Second Review was that "the Committee should consider whether further recommendations could be beneficial, inter alia: ... to encourage transparency regarding the use of the relevant international standards" (G/SPS/36, paragraph 39).

3. The purpose of this paper is to propose a revision to the *Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7)* (G/SPS/7/Rev.2). Canada proposes that Members notify all regulations that are based on, conform to, or are substantially the same as the content of international standards if they are expected to have a significant effect on trade (Article 3.2, Article 3.1, and Annex B, paragraph 5).

¹ In this paper, the word "regulations" is defined as per footnote 5 in Annex B of the SPS Agreement: "Sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally."

II. BACKGROUND AND RATIONALE

4. Under the SPS Agreement, Members are obligated to notify new or changed regulations that may have a significant effect on trade only if either the content of such regulations is not substantially the same as the content of an international standard, or where an international standard does not exist (as per Annex B, paragraph 5). The rationale underlying this provision appears to be that if a regulation is substantially the same as an international standard, the effect on trade would not be significant, as Members are presumed to have notice of the international standard.

5. However, if a Member adopts a new regulation that is substantially the same as, or even identical to, an international standard, without advance notice to trading partners, there could nonetheless be significant trade implications. The mere act of changing a Member's SPS regulations can affect trade, regardless of whether that change is based on international standards.

6. The implementation of the International Standard for Phytosanitary Measures on wood packaging material (ISPM 15) is an example of the potential for trade disruption associated with implementing international standards. ISPM 15 is an international standard for ensuring that the wood packaging used extensively to transport goods is treated (chemically or with heat) to ensure that it does not transport pests from one country to another. If WTO Members implement ISPM 15 requirements without issuing a WTO notification, shipments could be refused and trade could be disrupted while exporters adjust to the new requirements. In such a case, a notification could provide essential information for trading partners seeking to avoid disruptions in trade.

7. Canada's proposal aligns with Annex B, paragraph 5, which states that "significant effect on trade of other Members" is a necessary condition for requiring a notification. Notifying a regulation with a significant effect on trade of other Members, regardless of whether it is based on international standards, should be considered a good transparency practice.

8. The guidelines on transparency contained in the Secretariat's handbook *How to Apply the Transparency Provisions of the SPS Agreement* (November 2000) recognize and welcome the fact that, "for the sake of improved transparency, some countries also notify regulations which conform to international standards, a practice which is welcomed".²

9. As noted in the Secretariat's more recent *Analysis of Replies to the Questionnaire on the Operation of Enquiry Points and National Notification Authorities* (G/SPS/GEN/751, February 2007), a significant proportion of respondents preferred that Members notify, on a voluntary basis, "some" or "all" new or changed regulations, whether or not they are based on an international standard.

10. Canada agrees with the New Zealand proposal (G/SPS/W/157) that Members not be expected to retroactively notify all SPS regulations already in place that conform to or are based on international standards.

11. Canada notes the importance of granting a reasonable period, except in urgent circumstances, for the entry into force of the new domestic regulation to allow for exporting Members to make the necessary adjustments.

12. Certain Members have expressed concern with adding to the volume of notifications that they must process domestically. To minimize unnecessary work for Members, Box 4 (Regions or Countries Likely to be Affected) on the notification form should, to the extent relevant or practicable, be carefully drafted to include only those countries that may be affected by the regulation. In addition, the Secretariat has an obligation to bring to the attention of developing country Members

² Handbook available online at http://www.wto.org/english/tratop_e/sps_e/spshand_e.pdf

WTO notifications that are of special interest or have a significant impact on their export markets (Annex B, paragraph 9). Canada welcomes further information or proposals from Members regarding best practices for transparency and streamlining processes within the national notification authorities.

III. PROPOSED REVISION TO G/SPS/7/REV.2

13. The *Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement* (G/SPS/7/Rev.2) are intended to help countries improve transparency practices to facilitate trade between Members.

14. Canada proposes to add the following text to be placed before the existing paragraph 6 under Section A of G/SPS/7/Rev.2:

6. Members are obligated to notify all regulations the content of which are "not substantially the same as the content of" an international standard, guideline or recommendation, if such regulations are expected to have a significant impact on trade. Members are encouraged to notify all regulations that are based on, conform to, or are substantially the same as an international standard, guideline or recommendation, if they are expected to have a significant impact on trade. Members should still grant a reasonable period, except in urgent circumstances, for the entry into force of the new regulation, to allow for exporting Members to adapt to its application.
