

**RELATIONSHIP BETWEEN THE SPS COMMITTEE AND THE THREE
INTERNATIONAL STANDARD-SETTING BODIES
REFERENCED IN THE SPS AGREEMENT**

Submission by the European Communities

The following communication, received on 19 October 2009, is being circulated at the request of the Delegation of the European Communities.

I. INTRODUCTION

1. The main objective of this workshop is to exchange views on how to improve the coordination of the work between the three international standard-setting bodies referenced in the SPS Agreement (ISSBS - "the three sisters") - the World Organisation for Animal Health (OIE), the International Plant Protection Convention (IPPC) and the Codex Alimentarius Commission (CAC) and the SPS Committee to enhance effectiveness and avoid duplication of work.

2. The European Communities encourage dialogue and exchanges with a view to enhance coordination between the three sisters and the SPS Committee; in addition there are a number of cross-sectoral topics already discussed (regionalization) or under discussion (private standards) which would benefit from improved cooperation. The European Communities are of the view that this workshop could be very useful in considering how the SPS Committee could operate to ensure that unnecessary duplication of work is avoided between the three ISSBs and that no major gaps exist in the international standards.

II. ROLE OF THE THREE ISSBS

3. The SPS Agreement recognizes the need for sound scientific and technical advice in order to effectively implement it; in consideration of achieving this objective, it recognizes international organizations as standard-setting bodies to facilitate the harmonization of SPS measures by WTO Members in the areas of food safety, animal health, zoonoses and plant health. Members have the legal obligation to base their SPS measures on standards developed by the three standard-setting bodies unless there is a scientific justification or as a consequence of the level of protection a Member determines to be appropriate.

4. Article 12.3 of the SPS Agreement requires the SPS Committee to maintain close contact with these three standard-setting bodies to ensure that unnecessary duplication of effort is avoided.

5. The European Communities are of the view that the communication and reporting between the SPS Committee and the three sisters could be improved: the current participation in each SPS Committee of representatives of the three sisters and of representatives of the SPS secretariat in some

of the meetings of the ISSBs is useful but not sufficient. Oral reports are given, but no concrete action follows. This is currently just an exchange of information without any coordination attempt.

6. The SPS Secretariat could liaise more regularly with the three sisters in order to have a clearer process to exchange information. For example, the business plan for IPPC or the strategic plan for Codex for the coming years should be better taken into account.

III. ROLES AND RESPONSIBILITIES OF THE SPS COMMITTEE

7. Under Article 12.1 of the SPS Agreement, the SPS Committee was established to provide a regular forum for consultations about food safety or animal and plant health measures which affect trade and to ensure the implementation of the SPS Agreement.

8. Article 12 of the SPS Agreement identifies specific tasks more relevant to the relationship between the SPS Committee and the three ISSBs:

- The SPS Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, OIE and IPPC.
- The SPS Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations.
- In order to avoid unnecessary duplication, the SPS Committee may use the information generated by the procedures, particularly for notification, which are in operation in the relevant international organisations.
- The SPS Committee may invite the relevant international organizations or their subsidiary bodies to examine specific matters with respect to a particular standard, guideline or recommendation.
- The SPS Committee should further analyze possible mechanisms to monitor the process of international harmonization and the use of international standards, guidelines or recommendations, privileging options that are simple, less burdensome and do not impose additional notification duties to countries. It has to be noted that the Codex Alimentarius Commission recently abolished the so-called "acceptance procedure" which was a mechanism for member states to report on their acceptance and implementation of the international standards and related texts. This procedure was abolished because it was very rarely used by Codex members. Any new inventory mechanism put in place should be directly managed by the WTO SPS Committee, using in particular information provided by WTO Members in the new format for notification (section 8).

IV. QUESTIONS RAISED BY THE DOCUMENT G/SPS/GEN/933

9. Document G/SPS/GEN/933 suggests the need to identify concrete actions to:

- (i) *Enhance the coordination between the Committee and three sisters, and also between the three sisters;*
- (ii) *Increase the use and usefulness of international standards;*
- (iii) *Avoid unnecessary duplication of effort; and*
- (iv) *Ensure that the standard setting process is in line with the implementation of the SPS Agreement and facilitates trade in agriculture and food products.*

1. Enhance the coordination between the Committee and three sisters, and also between the three sisters

10. The European Communities are of the view that the first priority is to enhance the coordination between the three sisters themselves rather than between the SPS Committee and three sisters, however there is room for improvement here as well.

11. The work undertaken by OIE and Codex on *Campylobacter* and *Salmonella* spp. should be better coordinated in the future with a view to avoid duplication of energy and resources. It should be noted that some improvements have already been made in this area in particular with OIE and Codex. The OIE is initiating work to improve its relationship with Codex. The OIE is now tackling some food safety aspects (e.g. zoonoses) while the Codex Alimentarius Commission is dealing with some aspects of primary production. It is important that both OIE and Codex coordinate their work in advance where these issues overlap.

12. For example, the 40th session of the Codex Committee on Food Hygiene requested FAO and WHO to provide the necessary scientific advice to ensure that the Guidelines for control of *Campylobacter* and *Salmonella* spp. in chicken meat were underpinned with the most robust scientific data. In response, the FAO and WHO convened an expert meeting on 4-8 May 2009, in Rome, which the OIE attended. The Physical Working Group met in Brazil on 7-11 September 2009 to further develop the proposed draft Guidelines for control of *Campylobacter* and *Salmonella* in chicken meat. The draft Guidelines include references to relevant OIE standards as the primary source of recommendations regarding the primary production phase and it is noted that the Codex Guidelines are supplementary to relevant OIE standards with regard to control measures during primary production. In addition, the Codex Working Group agreed to use OIE definitions where they exist. The proposed Guidelines include OIE definitions for competitive exclusion, epidemiological unit, establishment and flock. The OIE will continue to participate actively in the drafting and revision of the Guidelines according to the CAC procedures.

13. This example illustrates how CAC and OIE are able to work together, however it has to be underlined that CAC and OIE never succeeded to establish joint task forces despite multiple attempts.

14. It is important that the three sisters do not expand their field of work beyond their core business, as this would create more discrepancies between them, with resulting negative effects. When needed, they can echo their opinion and substantiate their views with rational arguments and the SPS Committee could play a role of coordination when appropriate. For emerging new developments it would be appropriate if the SPS Secretariat could have discussions directly with the three sisters and maybe agree on a common approach, when possible, before tabling it to the respective Committees. This could help to avoid situations where there are major discrepancies between the players.

15. It is worth mentioning some improvements and concrete actions:

- (a) In the "IPPC Business Plan drafted for 2007-2011" and in particular on page 20 (Goal 6 - International promotion of the IPPC and cooperation with relevant regional and international organizations), IPPC recognizes the importance of maintaining strong links with international and regional organizations that share common interests and especially with the WTO. It does not specifically address the inter-three sisters' cooperation, but it is still useful to notice that it emphasizes the IPPC cooperation with the WTO.
- (b) During the 4th session of the Commission of Phytosanitary Measures (CPM 4) held in April 2009, the establishment of a system of international recognition of pest-free

areas similar to the practice carried out in OIE for certain animal diseases was considered amongst other topics. Furthermore, during a workshop which took place in Thailand on 14-18 July 2008, the participation and input from an OIE expert was highly appreciated and contributed to a thorough analysis of the issue. The outcome was discussed in CPM 4.

- (c) In its Strategic Plan for 2008-2013, the Codex Alimentarius Commission committed to work closely on matters of common interest with other relevant international organizations. Monitoring by the CAC of activities of other organisations dealing with food standards and coordination with them, where appropriate and consistent with Codex procedures, is necessary to achieve a harmonized approach, avoid duplication and prevent development of contradictory standards.
- (d) In its draft Fifth Strategic Plan for 2011-2015, the OIE stresses the importance to develop animal production food safety standards complementarily to the CAC standards. It also foresees a strong collaboration with its partners for promoting capacity building activities in terms of respect of standards, thanks to the Standards and Trade Development Facility (STDF) work.

The European Communities encourage the inter-exchange of expertise between the ISSBs, with regionalization being one example.

2. How to effectively encourage the use of international standards, guidelines or recommendations by all Members

16. How can the SPS Committee effectively identify relevant issues linked to non-use of standards, absence of standards, or inappropriate standards, and appropriately prioritize these issues?

17. Once the SPS Committee has effectively identified relevant issues linked to non-use of standards, absence of standards, or inappropriate standards, it should transmit this information to the three relevant ISSBs.

18. The Committee should take more profit from the information generated by the procedures, particularly in the notifications, which are in operation in the relevant international organizations. Since December 2008, all WTO Members should complete section 8 of the notification, even though the standards comply with the international standards. The SPS Secretariat strongly encourages the Members to fulfil the transparency provisions and it will be better able to identify the relevant issues linked to non-use of standards, absence of standards or inappropriate standards.

3. How to ensure effective collaboration and communication between the SPS Committee and the three sisters and among the three sisters?

19. A number of questions arise in this respect, including:

- (a) Reporting/communication from the three sisters to the SPS Committee
 - (i) Is reporting back to the Committee by the three sisters: (i) effective ;(ii) up to Members expectations; and (iii) a tool for harmonization?
 - (ii) Does the Committee have a role in assessing the actions taken by the three sisters to resolve a specific issue?

(b) Communication from the SPS Committee to the three sisters

- (i) Is the process used by the Committee to invite the three sisters to address concerns clear and efficient? To what extent can or should the Committee: (i) give guidance towards an outcome; and/or (ii) provide information, guidance or background to the issue?
- (ii) What are the most effective mechanisms for the Committee to communicate to the three sisters on the importance and priority placed on identified issues?

(c) Joint action for the prevention/resolution of problems

20. The establishment of regular meetings between the SPS Secretariat and the three ISSBs themselves would certainly improve the communication. The oral reports made during SPS Committees by the three ISSBs are useful but not sufficient as there are currently limited possibilities of further exchanges and coordination. The fact that the reporting is put at the end of the agenda does not promote any extensive discussion thereof.

21. A point of improvement could be to liaise closer with regard to capacity building activities which are now carried out independently from one another. The SPS Committee could play a greater role in this to demonstrate more clearly how Articles 9 and 10 of the SPS Agreement are applied (which is still overly criticized by developing countries). In fact the SPS Secretariat should better use such coordination to its own benefit and to underscore its "raison d'être", because the SPS Committee could currently be assessed as having no added value and only being a forum to complain about current trade restrictions. It is very important for the SPS Committee to continue discussing about implementation issues as well.

22. It should also be added that in terms of improving communication, the three ISSBs are also in favour to go in the same direction as the SPS Secretariat does. For example, the 5th Strategic Plan drafted by OIE for the coming years foresees a strong collaboration with its partners for promoting capacity building activities in terms of respect of standards, thanks to the STDF work.

23. It should be analyzed whether a certain level of harmonization in the adoption procedures of the three ISSBs may facilitate closer cooperation, including when appropriate, joint meetings. The procedures are currently very different in relation to the history and background of each organization: CAC by consensus with its eight steps, OIE by a vote during general sessions and IPPC by consensus. Further reflection on this matter could be considered.

4. What is the role of the SPS Committee in broader issues common to more than one (or all) of the three sisters? Is it to ensure consistency in interpretation of the SPS Agreement across the three sisters?

24. The SPS Committee could contribute by assisting the three ISSBs in ensuring consistency of the interpretation of the SPS Agreement. This could be done by e.g., providing guidance information in view to help them in their internal discussions. The SPS Committee has a useful role of coordination and a role of facilitator to play as well, however it should be made clear that there is no hierarchy between the SPS Committee itself and the three sisters which should remain independent in order to carry out their tasks in an appropriate manner.