

**ISSUES FOR CONSIDERATION AS PART OF
THE SECOND REVIEW OF THE OPERATION AND IMPLEMENTATION
OF THE SPS AGREEMENT**

Further elaboration of issues for consideration by Canada

The following communication, received on 12 October 2004, is being circulated at the request of the Delegation of Canada.

I. INTRODUCTION

1. At its meeting of 22-23 June 2004, the SPS Committee agreed to a process (G/SPS/32) for the review of the operation and implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures ("the SPS Agreement"), pursuant to the provisions of Article 12.7 of the Agreement.

2. Members were invited to identify issues for consideration as part of the review by 30 June 2004. Members were also invited to submit papers on the issues proposed for consideration and to identify any further issues for consideration during the review by 12 October 2004. Canada has identified the following two issues for consideration in the Review.

II. TRANSPARENCY (ANNEX B)

3. It is Canada's view that the transparency provisions of the SPS Agreement are a cornerstone to its effective implementation. Through the notification process adopted by the SPS Committee, Members can attain a greater degree of predictability and clarity with respect to the adoption of SPS measures by trading partners.

4. In this regard, Canada would like to lend support to the New Zealand proposal regarding the notification of all new measures that are based on international standards, guidelines, or recommendations (G/SPS/W/157). However, Canada is of the opinion that, as per Annex B of the SPS Agreement ("Transparency of Sanitary and Phytosanitary Regulations") and the Committee's "Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7)" (G/SPS/7/Rev.2), the proposal should be restricted to new regulations that are based on international standards, guidelines or recommendations.

5. In addition, it is Canada's view that Members would benefit from being notified of regulations that "conform to" (Article 3.2), are "based on" (Article 3.1), or are "not substantially the same as the content of" (Annex B, paragraph 5) international standards, guidelines, or recommendations, because of the potential impact on trade. This would be consistent with paragraph 5 of Annex B since both

conditions for the proposed SPS regulation (i.e., substantially the same content as an international standard, guideline or recommendation, and no significant effect on trade of other Members) must be met for a Member to opt out of its notification obligations. Canada believes that it would be exceptional for the adoption of a new SPS regulation by a Member to not have the potential to significantly affect the trade of at least some other Members.

6. Canada recognizes that Members have an obligation to harmonize SPS measures on as wide a basis as possible (Article 3.1). In a situation where all of the measures implemented by trading partners conform to international standards, guidelines or recommendations (i.e., the content of each SPS measure is the same as an international standard, guideline or recommendation), notification of proposed SPS regulations might not be necessary. Unfortunately, not all Members adopt measures that conform to international standards, guidelines, or recommendations. The adoption, by a Member, of a regulation that is the same as an international standard, guideline or recommendation has the potential to have a significant effect on trade. A good example is the Committee's discussions regarding implementation of IPPC's ISPM #15 (under the agenda item "Consideration of Specific Notifications Received" in October 2003 and March 2004). In reality, it is changing conditions (e.g., new SPS regulations) that affect trade, regardless of the basis for that change.

7. In Canada's view, the administration of the SPS Agreement, particularly in terms of increased transparency, would be improved if Members notified all new regulations, whether they "conform to," are "based on," or are "not substantially the same as the content of" international standards, guidelines, or recommendations. Therefore, Canada would like to have this proposal as an issue for discussion as part of the review of the SPS Agreement.

III. RELATIONSHIP BETWEEN RELEVANT STANDARD-SETTING BODIES AND THE SPS COMMITTEE

8. It is Canada's view that the SPS Committee and the international standard-setting bodies (ISSBs) have distinct yet complementary roles in providing guidance and elaborating disciplines related to international standards, guidelines, and recommendations. The ISSBs are clearly best placed to develop technical and scientific standards, guidelines, and recommendations. On the other hand, the SPS Committee's focus is on the effective implementation of the SPS Agreement. This close relationship is recognized in Article 12.3 of the SPS Agreement, which states that the Committee shall maintain close contact with the relevant international standard-setting organizations "with the objective of securing the best available scientific and technical advice for the administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided." In Canada's view, one area where such duplication of effort has occurred and could continue to occur is with respect to the development of guidelines on procedures.

9. It is Canada's view that Members would benefit from a discussion amongst the Secretariats of Codex, OIE, IPPC, and the SPS Committee, and that the clarity gained from such a discussion would improve the administration of the SPS Agreement. Such a discussion could include an articulation by the ISSBs of their respective mandates in the development of standards, guidelines, and recommendations, whether their mandates allow for them to develop procedural guidelines, etc. Canada supports such a discussion as part of the review of the SPS Agreement.
