

**SECOND REVIEW OF THE OPERATION AND IMPLEMENTATION
OF THE SPS AGREEMENT**

Communication by Chile

The following communication, dated 18 February 2005, is being circulated at the request of the delegation of Chile.

1. Secretariat document G/SPS/GEN/510 provides a fairly good overview of the state of implementation of the Agreement over the course of this period. Chile wishes to offer a few comments on the more specific aspects raised by Members for examination in the review process.

2. In general terms, Chile re-emphasizes that the text of the SPS Agreement is adequate and that improvements in its implementation can be made through more specific guidelines developed and decided on by the Committee, so as to clarify the application of principles that pose interpretation or implementation problems.

I. TRANSPARENCY

3. Implementation in the area of transparency has gradually improved, particularly as regards the increasing number of countries which are notifying the changes they have made to sanitary and phytosanitary measures. However, there is still room for improvement in complying with notification deadlines before new measures take effect and in following up on comments.

4. We agree with China's concerns about the comment period, which is usually disregarded, and it might be a good idea to establish a 60-day period for submitting comments prior to a measure's entry into force, counted from the date on which the Secretariat circulates the notification.

5. To our knowledge, the following are the only exceptions:

- Cases involving a trade facilitation aspect – as Chile itself previously proposed – which should be maintained; and
- emergency notifications of provisional measures, although this kind of measure is not always temporary and is frequently maintained on a permanent basis without any notification to that effect.

6. We concur with the proposal to notify measures that depart from an international standard as well of those that are consistent with such a standard, it being understood that the procedure can be significantly improved and can even further the process of monitoring the use of international standards.

7. We also find it interesting that New Zealand should suggest establishing a database and we endorse that proposal.

8. Although it is important to note that the original objective of notifying sanitary and phytosanitary measures has been expanded to include notification of equivalence and special and differential treatment, it is more crucial still for Members to ensure that such instruments are put into effect. Perhaps it would be possible to add something similar under other items such as regionalization, concerning the recognition of sanitary status among Members.

II. EQUIVALENCE

9. We greatly welcome document G/SPS/19/Rev.2 of July 2004, which clarifies the content and provides better guidance for the implementation of activities relating to equivalence; it should also give the impetus for more effective application of this principle.

10. We are concerned that countries are not notifying their progress in matters relating to equivalence, whether agreements or measures consistent with the decision to add a section on transparency in notifications (document G/SPS/7/Rev.2/Add.1 of 2002). Even where such agreements do exist, no use has been made of them. Moreover, although the agenda of each Committee meeting provides for the sharing of information on implementation of the principle of equivalence, no such information has been given there either, even when Members, and especially developing countries, are known to engage in bilateral activity in this field – a state of affairs that runs counter to transparency.

III. REGIONALIZATION

11. This is a principle which gives as much cause for concern as was it did at the time of the previous report on the review of the Agreement. The same problems persist as regards undue delays, primarily for administrative reasons, in the recognition of sanitary status. Chile has submitted a number of documents, including G/SPS/W/129, G/SPS/GEN/381, G/SPS/W/140/Rev.2, G/SPS/W/164, and G/SPS/W/165, in an endeavour to secure agreement in the Committee on the development of operational guidelines aimed at achieving better implementation of the principle. There is an international standard prepared by the OIE and the IPPC, but administrative procedures are evidently slowing down its adoption by Members. The overriding problem therefore lies in the implementation of the existing standard, which is a matter falling within the ambit of this Committee.

12. In sum, regionalization is a principle that has been extensively analysed and has given rise to discussions in the Committee. Moreover, since numerous countries have submitted documents voicing their concerns and perspectives, there is sufficient material for the Secretariat, at the Committee's request, to present draft guidelines designed to ensure better implementation of the principle.

13. Turning to the opinions of different countries on the review process, we agree with China's concerns over the application of this principle, and we fully endorse Mexico's suggestion to develop guidelines for regionalization similar to those on equivalence.

14. It should be recalled that a number of Members objected to the development of guidelines for equivalence when the idea emerged and that work did not begin until the Council for Trade in Goods so requested. It is our understanding that the Committee itself should take the initiative in order to fulfil or improve its implementation objectives in the case of principles that pose problems.

15. As suggested in the section on "Transparency", an initial step might be to include in the notification process an item concerning the request for and the acceptance of recognition of sanitary

and phytosanitary status between countries. This could provide factual substantiation of the need to develop guidelines in this area, for the sole purpose of detecting any trade barriers that might ensue from the above.

IV. TRADE CONCERNS

16. A great deal of work on this issue has been done in Committee meetings. Chile previously highlighted the need to follow up on the matter, which was included in the agenda and in the consolidated document circulated by the Secretariat.

17. The proposals of the United States in this respect seem appropriate, the first being to make greater use of existing Committee mechanisms such as the good offices of the Chair or the Secretariat, and the other is a further step towards the creation, in the Committee, of alternative mechanisms to the formal panel process, *inter alia* to avoid having to establish a panel and so reduce costs. Should agreement be reached on this point, appropriate procedural guidelines should be drawn up.

V. RELATIONSHIP WITH THE INTERNATIONAL SCIENTIFIC REFERENCE ORGANIZATIONS

18. Although there is smooth coordination via the Secretariat of the SPS Committee and those of the international reference organizations, it might be possible to consider joining efforts in pursuit of common objectives, such as the monitoring of international standards in the case of the SPS Committee, either through the little-used standards monitoring mechanism or through the notification process.

19. In the case of the Codex Alimentarius, for example, there is a procedure for countries to notify the application, in part or in full, of the standards developed by that Organization, but this has hardly been used. The procedure is currently being revised, and now might perhaps be the time to embark on a joint effort.

VI. MONITORING OF INTERNATIONAL STANDARDS

20. As noted earlier, a procedure has provisionally been endorsed in the Committee. This could be a very useful mechanism, but it has not been used by Members. On those occasions when the Committee consulted one or other of the international scientific organizations, the response was consistently favourable. It might be advisable to increase coordination in the Members' capitals between Members' representatives in the SPS Committee and those in the "three sister" organizations, in order to foster more effective use of this instrument in the Committee.

VII. SPECIAL AND DIFFERENTIAL TREATMENT (S&D)

21. Special and differential treatment is a source of considerable concern for a number of Members. The first step, however, is to clarify the basic meaning and purpose of S&D, which is granted by developed countries to developing or least developed countries, without jeopardizing sanitary protection, and countries requiring S&D should be encouraged to make a formal request to that effect. The incorporation, on Canada's initiative, of requests and responses regarding special and differential treatment in the notification process seems to be a good starting point. Guidelines conducive to better application of this principle could perhaps be developed if need be.

VIII. UNDUE DELAYS

22. This is an issue of paramount importance and Chile supports document G/SPS/W/160, in which Uruguay expresses concern about the delays in Members' decisions, especially as regards risk

assessment and the need for clarification or guidelines on the implementation of Article 5, to ensure more effective application of its provisions.

IX. ADMINISTRATION OF THE AGREEMENT

23. We have reached the stage where substantial progress has been made in developing guidelines for principles such as equivalence, consistency and monitoring of international standards. It will be necessary to continue with the drafting of guidelines for other principles; however, it is equally important for Members to use these instruments and, where appropriate, to notify the progress they have made.
