

THIRD REVIEW OF THE WTO/SPS AGREEMENT

Proposal by China

The following communication, received on 9 February 2009, is being circulated at the request of the Delegation of China.

I. BACKGROUND

1. Article 8 and Annex C of the WTO/SPS Agreement (hereinafter referred as "the Agreement") prescribe Members' rights and obligations in terms of control, inspection and approval procedures. These provisions are important components of the Agreement and can contribute greatly, when effectively implemented, to the fulfillment of the legitimate objectives of the Agreement.

2. A large percentage of specific trade concerns raised by WTO Members in the Committee meetings as well as in bilateral negotiations are related to control, inspection and approval procedures. For example, some Members have complained about the requirements of annual pre-inspection carried out on production sites when these were maintained for years in succession. As the cost of the pre-inspection was totally borne by exporters, such requirements brought burdensome costs to the exporters and lowered the competitiveness of their products, despite the convincing fact that decades of successful international trade had demonstrated that the production sites and related products fully met the SPS requirements of the importing Members.

3. In another instance, some Members have applied more stringent inspections to all food products of a certain kind just based on a single case of unconformity of pesticide residue limits, without taking into account that those products originated from different manufactures. As a result, the custom clearance of qualified products are unjustifiably delayed and their marketing and quality are seriously affected, especially for fresh or perishable foods.

II. OBSERVATIONS

4. Although cases such as those described above take place from time to time, it is interesting that Article 8 and Annex C are seldom used by Members to justify their positions in raising specific trade concerns both multilaterally and bilaterally, compared to Articles 2, 5 or other provisions that are more frequently referred to. China thinks that the main reason for this is that the Agreement is derived from the Tokyo Round TBT Agreement. Therefore, Article 8 and parts of Annex C are not directly pertinent to the characteristics of SPS measures and are not specific enough to provide adequate guidance for implementation by Members.

5. Some clauses in Annex C are ambiguous and further discussions and clarifications are needed. Article 1(e), as an example, provides that "... any requirements for control, inspection and approval of individual specimens of a product are limited to what is **reasonable and necessary**." What are the criteria of "**reasonable and necessary**"? Another example is Article 3 of Annex C which prescribes that "Nothing in this Agreement shall prevent Members from carrying out **reasonable inspection** within their own territories." China finds that interpretation of the term "**reasonable**" varies.

III. PROPOSALS

6. Based on the above observations, China would like to propose the following:

- (a) The SPS Committee should initiate discussions to identify typical steps of control, inspection and approval procedures in relation to sanitary and phytosanitary measures, as well as application recommendations and good practice therein to provide guidance for implementation.
 - (b) Such terms as "reasonable and necessary" in Article 1(e) and "reasonable inspection" in Article 3 of Annex C of the Agreement should be discussed in the SPS Committee so that necessary explanations and clarification can be made to facilitate their implementation.
 - (c) The SPS Committee should draw the attention of OIE, IPPC and CODEX of the discussion and consult with them regarding the development of relevant international standards pertaining to control, inspection and approval procedures, such as sampling, on-site inspection, determination of soil freedom, etc., to further the implementation of Article 8 of the SPS Agreement.
 - (d) Members should be encouraged to share their experiences and difficulties with implementing Article 8 of the SPS Agreement.
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