

THIRD REVIEW OF THE WTO SPS AGREEMENT

Proposal by India

The following communication, received on 27 March 2009, is being circulated at the request of the Delegation of India.

1. The Third Review of the SPS Agreement is due this year. India would like to raise the following issues for consideration by the Committee on Sanitary and Phytosanitary Measures (SPS Committee), and seek clarification/guidelines from the SPS Committee.
2. Article 3.1 of the SPS Agreement requires that Members base their SPS measures on international standards, guidelines or recommendations, where they exist. The Secretariat may undertake the work of preparing a Member-specific compilation listing the various measures notified by each country and assess how many of them are based on international standards.
3. However, Members are not obligated to notify measures the content of which are substantially the same as that of an international standard. The notification format has always had an entry (item 8) on international standards (also asking for deviations), but the information provided by Members may not always be clear as to whether a notified measure was "based on" or "conformed to" an international standard or to what extent it deviated from it.
4. With the adoption of the revised transparency guidelines (G/SPS/7/Rev.3) by the SPS Committee, Members are specifically encouraged to notify all regulations that are based on, conform to, or are substantially the same as an international standard (para. 8). Also, item 8 of the revised notification format seeks more specific information from Members on the relationship between the notified measure and relevant international standards.
5. The new notification formats have been in operation since 1 December 2008. Therefore, the analysis of notifications since then might throw some light on the issue. For this purpose the SPS Committee may ask the Secretariat to prepare a consolidated compilation of all notifications relating to SPS measures from that date and seek to analyze the results over a one-year period from 1 December 2008 to 30 November 2009.
6. According to Article 3.5 of the SPS Agreement, the SPS Committee shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations. Similarly, according to Article 12.4 of the SPS Agreement, the SPS Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations. For this purpose, the Committee has come up with procedures detailed in documents G/SPS/11/Rev.1

(15 November 2004) and G/SPS/40 (5 July 2006). There is a need to review the progress achieved through the use of the monitoring procedure recommended by the SPS Committee.

7. There have been only a few interesting issues under this agenda item (including a good example regarding Sri Lanka and cinnamon), but overall the procedure has not been used very much. There may be a need to review the procedure and include timelines for completion of the process. The timelines would be indicative and deviations therefrom may need to be explained to the Member making a request for seeking harmonization.

8. According to Article 4.2 of the SPS Agreement, Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified SPS measures. In this regard, the SPS Committee issued guidelines detailed in G/SPS/19/Rev.2 (23 July 2004). We may now seek the preparation by the SPS Committee of a country-specific status report, listing the cases where Members have entered into bilateral consultations and where a successful equivalence agreement has been negotiated as a result thereof. Members, especially developing country Members and least developed country Members, may be encouraged to share their experiences in and difficulties with implementing Article 4.2.

9. In fact, the decision on equivalence also encourages Members to submit notifications to the Committee regarding any equivalence arrangements reached. The specific format developed for this purpose is contained in Annex E of G/SPS/7/Rev.3. However, only two notifications regarding equivalence have been submitted so far. There is need for a specific and strong call for Members to submit more notifications and also share more information in the Committee. In fact, even if a Member does not enter into any equivalence arrangement, it could be required to make a statement to this effect. A faithful listing of all the negotiated equivalence agreements will help other Members also to negotiate similar agreements.

10. According to Article 5.5 of the SPS Agreement, the SPS Committee shall develop guidelines that will ensure that Members avoid arbitrary or unjustifiable distinctions in the level they consider to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. There is a need to review the progress achieved in this issue through the use of the Committee's guidelines detailed in document G/SPS/15 (18 July 2000). WTO may seek to analyze some SPS measures of key trading Members that have a major effect on exports from other countries and try to objectively assess to what extent they are "arbitrary or unjustifiable".

11. In Article 5.6 of the SPS Agreement, footnote 3, there is a need to clarify the words "reasonably available" regarding possible alternative measures.

12. In terms of Article 10 of the SPS Agreement, and document G/SPS/33 on the procedure to enhance transparency of special and differential treatment, the implementation of such a procedure would need to be evaluated. This issue should be built into the discussions of the SPS Committee, and notifications made by Members pursuant to G/SPS/33 should be examined.

13. Apparently there is on-going work in the Committee on this issue under the S&D agenda item. But no notification has been made so far under G/SPS/33. Hence, there is a need to expedite the work under the S&D agenda.

14. In terms of Article 12.2 of the SPS Agreement, there is a need to assess the work undertaken by the SPS Committee to encourage the use of international standards, guidelines or recommendations by all Members, and to sponsor technical consultation and study with the objective of increasing coordination between international and national systems and approaches for approving the use of food additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.

15. As per Article 13 of the SPS Agreement, Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories comply with the relevant provisions of the SPS Agreement. Accordingly, there is an urgent need for the SPS Committee to come up with specific guidelines on the measures to be taken by Members in cases where private standards are being adopted by various entities within their territories. Members may also consider introducing a Code of Good Practice (similar to Annex 3 of the TBT Agreement) for all voluntary standard-setting authorities located within their territories.

16. The following paragraphs in Annex C of the SPS Agreement are ambiguous and need to be clarified:

- (a) In paragraph 1(e), the criteria for the words "reasonable and necessary" need to be spelt out;
- (b) In paragraphs 1(c) and 1(h), the criteria for the words "what is necessary" need to be clarified;
- (c) In paragraph 3, the words "reasonable inspection" need to be clarified;
- (d) The SPS Committee should identify typical steps of control, inspection and approval procedures in relation to SPS measures as well as the application of recommendations and good practice therein to provide guidance for implementation; and
- (e) The SPS Committee may draw the attention of the OIE, IPPC and Codex to 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.

17. India would like to request the SPS Committee to initiate discussions on the above issues and come up with necessary clarification/guidelines. Members may be encouraged to share their views and suggest specific proposals. India, on its part, would at an appropriate stage make specific suggestions.
