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Committee on Sanitary and Phytosanitary Measures

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SIXTH REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE SPS AGREEMENT

COMMUNICATION FROM NEW ZEALAND

The following communication, received on 19 January 2024, is being circulated at the request of the delegation of New Zealand.

On the occasion of the Sixth Review of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), New Zealand would like to share four suggestions for enhancing the implementation of the SPS Agreement.

1 PROCEDURE TO MONITOR THE PROCESS OF INTERNATIONAL HARMONIZATION

1.1 BACKGROUND

1.1. We note the three New Zealand papers [G/SPS/GEN/1851](#), [G/SPS/GEN/1877](#) and [G/SPS/GEN/1915](#), which highlighted the renewed interest of the international standard-setting bodies (ISSBs) in the implementation of Article 3.5 and 12.4 of the SPS Agreement. As indicated in this series of papers, these Articles envisaged that the SPS Committee 'shall develop a procedure to monitor the process of international harmonization and coordinate efforts with the relevant international organisations'. At the time, the Committee agreed to and held a thematic session on Articles 3.5 and 12.4 of the SPS Agreement and initiatives of ISSBs in relation to international harmonization; however, other suggestions were found not to have enough resources for implementation at the time.

1.2 PROPOSAL – MONITORING THE PROCESS OF INTERNATIONAL HARMONIZATION

1.2. Given the continued discussions in the ISSBs is specifically around the use, implementation, and impact of their standards on trade and how best to monitor this process, the Sixth Review gives the Committee an opportunity to revisit some on the previous proposals.

- A review/analysis of specific trade concerns (STC), highlighting the themes and evidence of harmonization to ISSB standards;
- Relating specifically to Article 12.4, 'The 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 should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact': review the list of international standards, etc. relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact. Once the analysis has been undertaken, use the data to inform future proposals to monitor the use of the international standards; and,
- Reviewing (in consultation with the ISSBs) the notification template to gather more specific information on international harmonization and ensure that useful data can be extracted from the WTO/SPS notification system. In addition, discuss with the ISSBs what previous analysis may have been done to date.

2 G-90 DOCUMENT FOR THE SPECIAL SESSION OF THE COMMITTEE ON TRADE AND DEVELOPMENT (CTD-SS) ON 10 AGREEMENT-SPECIFIC SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS

2.1 BACKGROUND

2.1. On 27 February 2023, South Africa on behalf of the Organisation of African, Caribbean and Pacific States (OACPS), the African Group and the Least Developed Countries (LDC) Group submitted a proposal addressing Special and Differential Treatment (SDT) within WTO agreements. This included a specific proposal relating to the SPS Agreement, and its provisions under SDT Article 10.

2.2. The G-90 proposal on the application of sanitary and phytosanitary (SPS) measures, recognizes the legitimate goal of safeguarding populations' health and well-being and acknowledges that measures prohibiting imports for SPS reasons or imposing certification requirements can contribute directly and positively to public health and well-being.

2.3. The proposal aims to equip capacity-constrained developing countries and LDCs to participate effectively and provide meaningful comments in the development stages of measures or standards that would enable them to meet such standards and safeguard their market access.

2.4. Part of the objectives of the G-90 proposal is to embed the necessary capacity building and technical support to enable them to meet such standards developed in accordance with the SPS Agreement.

2.5. It is this area of the proposal to which New Zealand puts forward our suggestion to address some of these concerns by a reinvigorated the SPS Committee mentoring system.

2.2 PROPOSAL - MENTORING SYSTEM

2.6. In response to the G-90 Ministerial Conference proposal on the SPS Agreement, New Zealand is proposing to revisit of the mentoring system established in 2007, to provide valuable assistance for Members to address some of the concerns raised in the G-90 paper.

2.7. In 2007, New Zealand proposed (and the SPS Committee adopted) a method of assisting LDC with the transparency obligations through mentoring ([G/SPS/W/214](#)). As noted above, enabling LDCs to meet standards developed in accordance with the SPS Agreement still remains challenging for some Members, which has been highlighted by the G-90 Ministerial Conference proposal on amendments to the SDT Article of the SPS Agreement.

2.8. At the time, the mentoring system established by the Secretariat had limited success. This was mostly due to the inability to contact and connect the Members needing support with mentors in a meaningful way. Now sixteen years on, and technology has developed where connecting remotely has become much easier, useful, and practical.

2.9. The concept of the original transparency mentoring system was to provide developing country Members a single contact point for gaining assistance and support to resolve their individual transparency issues. However, as part of addressing some of the G-90 concerns, such mentoring support could be extended to other areas of the SPS Agreement as needed.

2.10. Developing a mentoring system involves developing a long term, positive and proactive relationship between those involved. It is a relationship based on trust, which requires thoughtful interaction and a commitment to provide ongoing assistance and support to those being mentored. A set of criteria would need to be developed for both the roles.

2.11. Much as with the original proposal, the types of support a mentoring Member could offer are:

- email/phone contact point for issues;
- legislative guidance;
- assistance with resources;
- assistance with translations;

- assistance with training.

2.12. Members that wish to be involved would register with the SPS Secretariat.

2.13. Mentoring Members would provide information on the level of mentoring they could offer, and the supported Members would indicate their level of need. The Secretariat would then pair the Members based on the information provided and on geographical region and language.

2.14. A review process would be integrated into the system, to ensure that the system meets its objective of providing reliable and focused assistance on key areas of the SPS Agreement.

3 MEANING AND UNDERSTANDING OF TERMS SUCH AS RESERVATION AND ABSTENTION FROM ACCEPTANCE IN THE CONTEXT OF THE WTO SPS AGREEMENT

3.1 BACKGROUND

3.1. As we are all aware, the WTO SPS Agreement had a major impact on the work of international standard-setting bodies, specifically Codex, WOH and IPPC, by providing specific recognition and status as international standards and provided significant impetus to international harmonization. When WTO Members base their national standards and regulations on international standards developed by Codex, WOH and the IPPC, they are deemed to be in accordance with the provisions of the SPS and TBT Agreements.

3.2. Since the adoption of the WTO SPS and TBT Agreements, the focus and effort has been largely to promote the development of international standards for use by Members of the above-mentioned organizations. The outputs of Codex, WOH and IPPC are in line with their role and purpose as defined in their statutes and rules and are based on the input and participation of their members.

3.3. While most of the standards and related outputs of Codex, for instance, are adopted by consensus, there have been occasions when members have expressed reservations at the time of adoption of a standard and have their positions recorded in the report of the meeting while not objecting to the advancement/adoption of the standard.

3.4. Another term that has come up for scrutiny in Codex relates to situations when members agree on science but hold differing views on other factors. In such situation members may not merely express opposition to a standard, but also indicate their 'abstention from acceptance' and have their positions reflected in the report of the meeting. In situations when consensus is not possible, Codex rules provide for decision on the basis of voting.

3.5. Recent discussions in Codex around terms such as reservation and abstention from acceptance have highlighted the need and value of promoting informal exchanges among WTO Members on the meaning and understanding of terms such as those mentioned above in the context of the SPS Agreement. The interest here is not to seek a formal legal interpretation but rather to encourage Members to share their understanding of these terms. Such a discussion could be helpful guidance for standard-setting bodies as they seek to progress issues in situations when Members have differing views, especially with respect to non-science considerations.

3.2 PROPOSAL

3.6. It is proposed that the SPS Committee agree to promote informal exchanges among Members on the meaning and understanding of terms such as 'reservation' and 'abstention from acceptance' in terms of the WTO SPS Agreement and facilitate more informed consideration of these terms during the process of standards development and decision making in the standards development organizations.

4 NOTIFICATION PROCEDURES UNDER THE SPS COMMITTEE - USE OF TBT/SPS NOTIFICATIONS

4.1 BACKGROUND

4.1. Transparency stands as a fundamental principle in WTO Agreements, chiefly grounded in notification requirements. The SPS Agreement's notification provisions ensure the sharing of essential factual details regarding a Member's regulatory intentions and potential trade impacts of new measures. This facilitates early bilateral or SPS Committee comments from trading partners. This notification system is one of the Agreement's most important functions, with thousands of notifications being made since the Agreement's ratification in 1995.

4.2. However, to be effective, it is necessary that WTO Members fully comply with all notification conditions, starting with notifications being made under the most appropriate agreement.

4.3. Observations indicate that some measures notified under the Technical Barrier to Trade (TBT) Agreement might also fall within the scope of the SPS Agreement. Given the overlapping areas regulated by both Agreements, determining the specific agreement under which to notify a measure is not always straightforward. Furthermore, many measures have multiple objectives, subjecting them to both agreements' disciplines. In these situations, a case may be made for such measures to be notified to both the SPS and the TBT Committees.

4.4. As previously noted in discussions during and following the Fifth Review, Members have raised several issues regarding the notification of measures not clearly fitting within the scope of either the SPS or TBT Agreements.

4.5. New Zealand recognizes that this confusion impacts on Members' ability to respond, comment, and adapt to such new regulatory measures. This proposal seeks to enhance the SPS and TBT ePing notification system by initiating a discussion on where to notify measures that do not neatly align with a single committee.

4.6. Noting that the TBT Committee is looking to address this issue as well and has previously discussed similar associated impacts and solutions, there is an opportunity for coordinated efforts from both Committees to identify and implement integrated solutions.

4.7. A summary of previous discussions in both the TBT and SPS Committee relating to notifications is noted in Annex 1 of this document.

4.2 PROPOSAL – ENHANCING TRANSPARENCY

4.8. The Sixth Review is an opportunity to propose further solutions, collaboration with the TBT Committee, to find innovative ways to address this growing and ongoing issue.

4.9. We propose a three-step process:

1. Discussion/stocktake of challenges faced by Members in situations where it is difficult to establish whether a measure falls under the TBT and/or SPS Agreement;
2. Discussion/stocktake of Members' responses to these situations;
3. Discussion of possible solution:
 - Ideas for how SPS and TBT Committee members can coordinate a solution:
 - Form a small working group with members from both Committees to work through the issues and offer recommendations for adoption in both Committees;
 - If a small working group is not agreed, then encourage the TBT Committee to adopt the same amended recommendations and adapted approaches as the SPS Committee.
 - Options for solutions for improving the current system:
 - Template change – tick box and criteria to consider TBT or SPS;
 - ePing integration – AI system of deciding where the notification should be made;

- Create a guidance document – include in next addition of the SPS procedural manual;
- Develop a simple criterion – e.g. if the regulation mentions food, animals or plants it must be notified under both TBT and SPS;
- Make the guidance document and criteria easily accessible through using the SPS capacity webpage and also link it to the templates so those using the template have it easily available to ensure the template is completed in full;
- When submitting a notification in ePing, as with other items in the template, set the system to make the person making the notification clearly identify they have considered whether it is only an SPS notification or whether there should also be a TBT notification as well.

Annex 1 - SPS and TBT Committee discussions held on establishing a joint mechanism for common issues.

Comment	Forum	
	SPS Committee	TBT Committee
Noted challenges related to situations where a Member considers it difficult to establish – or foresee – whether a draft technical regulation falls under the TBT and/or SPS Agreement	<p>Meeting: Report of the Fifth Review of the Operation and Implementation of the SPS Agreement</p> <p>Outcome: Agreement to adopt recommendations from Brazil and Canada:</p> <ul style="list-style-type: none"> • The Secretariat initially updated the SPS notification templates to include a new section 'related notification' be completed by Members, when a SPS measure is notified to other Committees or when there are other related notifications. • The final recommendation was the Members should include this information under the point of the notification format titled "Other relevant documents and language(s) in which these are available". • Members agreed that notifications should be submitted as quickly as possible under both Agreements, even if simultaneous submissions not always possible. 	<p>Meeting: Eighth Triennial Review – November 2018</p> <p>Submission from Brazil proposing thematic sessions and workshops, with a view to developing practical guidelines for notifications.</p> <p>Outcome: Agreement to exchange information, in co-operation with the SPS Committee, on practices used in situations where a Member considers it is difficult to establish whether a draft technical regulation or conformity assessment procedure may fall under the TBT and/or the SPS Agreement.</p>

Comment	Forum	
	SPS Committee	TBT Committee
Exchange of experiences on difference in scope between the SPS and TBT Agreements, and notification of measures containing both SPS and TBT elements.	<p>Meeting: Workshop on Transparency and Coordination – 15-16 July 2019</p> <p>The objective of the workshop was to focus on the difference in scope between the SPS and TBT Agreements, and on notification of measures containing both SPS and TBT elements.</p> <p>WTO Secretariat reviewed the objectives and coverage of the SPS and TBT Agreements, related discussions in the respective Committees and examples of measures notified under both agreements.</p> <p>The question of coverage of the SPS/TBT provisions was not new, as already back in 1995-1996 the SPS and TBT Committees, jointly as well as separately, had discussed how to identify and notify measures that may contain SPS and TBT elements.</p> <p>It was noted that the SPS Committee had adopted a recommendation to notify cross-cutting measures under both Agreements. Through an interactive exercise, participants were challenged to define whether a measure fell within the scope of one or both Agreements.</p> <p>Outcome:</p> <p>Matters raised and acknowledged by the Committee.</p>	<p>Meeting: Thematic Session on Transparency – 18-19 June 2019</p> <p>Secretariat Background Note noted this has been an ongoing issue, first discussed in 1995-1996, in both the TBT and SPS Committees. Following those early discussions, the SPS Committee – but not the TBT Committee – adopted a recommendation that a regulation containing both TBT and SPS measures should be notified under both agreements (G/SPS/7/Rev.4)</p> <p>Proposal from Brazil for the TBT Committee to "encourage" Members to reflect on the benefits of notifying simultaneously to both [TBT and SPS] Committees.</p> <p>"Best practice" suggestion from Canada for Members to indicate in their notification if the regulation has been notified to another Committee; for example, in the Description of Content Section.</p> <p>The European Union stressed the importance of indicating whether a notified measure falls under both the TBT and SPS Agreements. Non-simultaneous SPS and TBT notifications could prevent Members from submitting identical comments in such cases.</p> <p>Outcome:</p> <p>Matters raised and acknowledged by the Committee.</p> <p>The Committee requested the Secretariat improve and streamline current online TBT tools, including ePing, and work towards integrating these tools into a more comprehensive centralized platform</p>

Comment	Forum	
	SPS Committee	TBT Committee
<p>To upgrade the SPS and TBT information management systems for better alignment</p> <p>To upgrade ePing to an integrated platform to:</p> <ul style="list-style-type: none"> • allow Members to notify under both agreements. • to track these notifications to ensure the accuracy of research results (e.g., by introducing an automatic procedure for this) 	<p>N/A – has yet to be discussed in the SPS Committee.</p>	<p>Meeting: Ninth Triennial Review – November 2021: Committee requested the Secretariat improve and streamline current online TBT tools, including ePing, and work towards integrating these tools into a more comprehensive centralised system.</p> <p>Outcome: Recommendation noted.</p>
