

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

Submission by the European Communities

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

The Secretariat invited the Members in its document G/SPS/W/147 of 10 June 2004 to identify issues for discussion as part of the Review.

The European Communities would like to indicate their interest to discuss the question of transparency involving Annex B, in particular paragraphs 1, 5, and 6(a). Please see Attachment 1.

The European Communities also wish that the issue of control procedures, Annex C, paragraph 2, be considered. Please see Attachment 2.

In addition the European Communities would like to encourage the Committee to continue the examination of questions involving the implementation of Article 6 (adaptation to regional conditions).

ATTACHMENT 1

REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE SPS AGREEMENT

Transparency

1. Publication of SPS adopted regulations

1. Paragraph 1 of Annex B of the Agreement stipulates that Members must promptly publish all sanitary and phytosanitary regulations that have been adopted in order to enable interested Members to become acquainted with them. Paragraph 2 prescribes that a reasonable interval is arranged between the publication and the entry into force of the regulation in order to give time to the Members' exporting producers to adapt their products and production methods to the importing Member's requirements.

2. This provision aims at the regulations that were already adopted and therefore for which there is no longer any possibility of comments from other Members. It aims to inform the interested Members of the final regulatory text that will enter into force.

3. The notification procedures described in paragraph 5 (a) to (d) allow amendments to be brought to a proposal of SPS regulation taking account of the comments of other Members. The internal decision-making processes of a Member can make amendments to the original proposal, which was notified pursuant to the SPS Agreement and which was the subject of comments. The final adopted text can be substantially different to the text that had been notified, sometimes several months or years before.

4. Experience shows that, frequently, a Member who notified a SPS regulation project omits to inform other Members of the final text adopted at the end of the decision-making process and the date of entry into force.

5. The European Communities consider that, as from their adoption, and, except in an emergency, before their entry into force, the final text of the SPS regulations that were the subject of a prior notification should be communicated to all Members in the form of an Addendum to the initial notification.

2. Notification procedures

6. Paragraph 5 of Annex B envisages two conditions to notify a draft SPS regulation: the first is either the absence of an international standard or a substantial deviation of the proposal in relation to an existing international standard and the second is a significant effect on the trade of other Members.

7. Experience shows that when an importing country adopts a new SPS regulation based on an international standard without warning other Members about it, it can result in obstacles to the trade of exporting Members who were not informed of the new provisions and who did not have the time to adapt their conditions of production and of certification to the new requirements of the importing Member. Legally, Members are obliged by paragraphs 1 and 2 of Annex B to publish their SPS regulations and to give a reasonable period for their application. This publication is often not known by exporting Members who become aware of the new requirements only when products, plants or animals are refused at the importing Member's border.

8. The European Communities consider that the significant effect on the trade of a SPS measure is a sufficient reason for its notification even if this measure is based on an international standard.

9. For example: an importing Member adopts a maximum residue limit for a contaminant at a level identical to that adopted by the Codex Alimentarius Commission. In accordance with paragraph 5 of Annex B of the SPS Agreement, it is not required to notify it. However, in accordance with paragraph 1 it has to publish it. This publication is not communicated to exporting Members and the application of this residue limit disturbs current trade resulting in rejections of the products concerned at the border.

10. To avoid these negative effects on trade and to facilitate trade, the European Communities propose that Members notify the adoption of an international standard in their national legislation for information and without a period for comments, granting a reasonable period for the entry into force of the new standard in order to allow exporting Members to adapt to its application.

ATTACHMENT 2

REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE SPS AGREEMENT

Control Procedures

Paragraph 2 of Annex C of the SPS Agreement says that where a sanitary or phytosanitary measure specifies control at the level of production, the Member in whose territory the production takes place shall provide the necessary assistance to facilitate such control and the work of the controlling authorities.

1. As different Members may have different interpretations of the terminology "level of production", it may be advisable to better define the terms. The SPS Agreement indicates that an SPS measure includes "all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end-product testing, processes and production methods" (Annex A, Art. 1), but here specific reference is made to a certain level, which may be confusing. A clearer reference might be "control at the level of production *sensu largo*".

2. The European Communities is particularly interested in the views of Members on how "necessary assistance" should be interpreted.

3. This provision applies differently pending on the particular situation and the nature of the assistance can lead to contradictory interpretations. Therefore a number of items need clarification.

4. The following general concerns should be taken into account:

- When a country or region is declared free/exempt of a disease as recognized by an international standard-setting organization such as OIE or IPPC, then there is no need for inspections to be carried out by the importing Member for that purpose;
- Inspections can only be carried out by qualified persons.

5. Under "necessary assistance" may be understood all preparatory and accompanying measures facilitating the control activities, *inter alia*:

- practical organization and mission planning for the control activities (including assistance with visas, administrative authorizations, hotel reservations, etc.);
- possibility for meetings with the relevant national/local competent authorities;
- availability and easy access to all necessary information (approval procedures, inspection and certification practices, information concerning the epidemiologic situation in the country or region; results of control procedures, etc.);
- guided access to production premises, facilities and related premises (i.e. laboratories, retail etc.) (announced or non-announced);
- provisions to enable appropriate control (i.e. ensure that inspection visits are carried out during production activity; ensure that all necessary tools (including equipment, staff, raw materials etc.) are available at the time of inspection in close co-operation with the management of the facilities;

- provisions for good communication between local producers and competent authorities on the one hand and the controlling authorities on the other hand (presence of interpreters, to be agreed beforehand);
- availability of necessary staff both from the production site and from the local competent authorities.

6. A wider interpretation of "necessary assistance" could include, *inter alia*:

- (i) Reference to the expenses as a result of the inspection carried out by the importing Member on the territory of the exporting Member. Payment of mission expenses should be arranged between the parties, but it cannot be understood under "necessary assistance" that these expenses are automatically paid by the exporting Member. Distinction can be made between:
 - travel and subsistence expenses for the inspectors team;
 - inspection costs related to e.g. specific production costs, laboratory testing, etc.

For the latter, normal practice is that the costs are borne by the exporting Member.

- (ii) Special and Differential Treatment and Technical Assistance to the competent authorities of developing Members. In this respect the European Communities would like to highlight that under the new regulation (EC) 882/2004 on official controls entering into force on 1 January 2006, special provisions are foreseen for third countries under Art. 50. These include mainly assistance by EC experts in several areas related to controls as well as training within the European Communities. Particular efforts are foreseen to be implemented in due course.
-