

January 2005

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para la
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INTERIM COMMISSION ON PHYTOSANITARY MEASURES

Seventh Session

Rome, 4 – 8 April 2005

Report on the Activities of the Sanitary and Phytosanitary Committee and Other Relevant WTO Activities in 2004

Agenda Item 6.1 of the Provisional Agenda

1. A report on relevant activities of the Sanitary and Phytosanitary (SPS) Committee and the World Trade Organization (WTO) prepared by the WTO Secretariat is provided at Annex 1.

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Activities of the SPS Committee and other relevant WTO activities in 2004

4 - 8 April 2005

Report by the WTO Secretariat¹

The present report provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") during 2004 to the Seventh Interim Commission on Phytosanitary Measures (ICPM). It identifies the work of relevance to the ICPM and the International Plant Protection Convention (IPPC), including: specific trade concerns; equivalence; regionalization; monitoring the use of international standards; and technical assistance. The report also includes relevant information on dispute settlement in the WTO which occurred outside the context of the SPS Committee.

The SPS Committee held three regular meetings in 2004: on 17-18 March, 22-23 June and 27-28 October.² At the June meeting Mr. Gregg Young (United States) was appointed Chairperson for the period 2004/2005.

The Committee agreed to the following tentative calendar of regular meetings for 2005: 9-10 March, 29-30 June, and 26-27 October.

Specific Trade Concerns

A large part of each SPS Committee meeting is devoted to the consideration of specific trade concerns. Any WTO Member can raise particular problems with the food safety, plant or animal health requirements imposed by another WTO Member. Problems raised in this context are usually in relation to the notification of a new or changed measure, or based on the experience of exporters. Often other countries will share the same concerns. At the SPS Committee meetings, Members usually commit themselves to exchange information and hold bilateral consultations to resolve the identified concern.

A summary of the specific trade concerns raised in meetings of the SPS Committee is compiled on an annual basis by the Secretariat of the WTO.³ In the nine years of implementation of the SPS Agreement, from 1995 to the end of 2003, 29 per cent of specific trade concerns raised were related to plant health.

In 2004, six phytosanitary issues were raised for the first time in the SPS Committee:

- US concerns regarding India's phytosanitary import restrictions;
- Uruguay's concerns regarding the implementation of ISPM 15;
- US concerns regarding the EC's deviation from international standard for wood packing material;
- US concerns regarding Korea's *septoria* controls on horticultural products;

¹ This report has been prepared under the WTO Secretariat's own responsibility and is without prejudice to the positions of WTO Members or to their rights or obligations under the WTO.

² The report of the March meeting is contained in G/SPS/R/33, that of the June meeting in G/SPS/R/34 and corrigendum, and that of the October meeting will be circulated as G/SPS/R/35.

³ The latest version of this summary can be found in document G/SPS/GEN/204/Rev.4. This document is a public document available from <http://docsonline.wto.org>. The document will be updated prior to the March 2005 SPS Committee meeting, and an excerpt of the phytosanitary concerns will be distributed to the Seventh ICPM meeting.

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- Chile's concerns regarding Australia's restrictions on table grapes; and
 - Venezuela's concerns regarding Barbado's restrictions on citrus

Six issues relating to plant health that had been previously raised were discussed again, including:

- New Zealand's concerns regarding Japan's official control restrictions;
- Argentina's concern regarding Venezuela's restriction on imports of potatoes, garlic and onions;
- Brazil and India's concerns regarding Japan's restrictions on mangoes;
- EC's concerns regarding India's phytosanitary import conditions;
- US concerns regarding India's import restrictions on almonds; and
- China's concerns regarding US rule on artificially dwarfed plants.

Two phytosanitary issues were brought to the attention of the SPS Committee related to notifications made by Members, namely:

- US concerns regarding India's non-notification of various SPS measures; and
- EC's concerns regarding Member's implementation of ISPM 15

ISPM 15

In addition to the specific trade concerns identified above, concerns regarding the implementation and application of ISPM 15 were discussed by the SPS Committee at all of its meetings in 2004. A number of WTO Members reported on their actions to implement the standard and some of the difficulties they were facing in this regard. Some Members stressed the need to allow sufficient time for developing countries to put into place the necessary controls to ensure that their exports could circulate freely. Others questioned the requirement by some countries that wood packing materials be de-barked. Several delegates encouraged that all WTO Members notify the SPS Committee of their intended implementation of ISPM 15, even though this was not legally required by the SPS Agreement, so as to improve transparency regarding the use of this international standard. Since 2003, 50 notifications relating to wood packaging material have been submitted by WTO Members, most concerning the intended implementation of the standard (see Attachment 1).

Equivalence

In October 2001 the SPS Committee developed guidelines on the implementation of Article 4 of the SPS Agreement on equivalence in response to concerns raised by developing countries.⁴ In 2002 and 2003, the SPS Committee agreed on clarifications of certain paragraphs of the Decision on Equivalence and in 2004, completed the programme on equivalence with the adoption of the proposed further clarification of paragraph 5 of the Decision.⁵ These clarifications note the work on recognition of equivalence undertaken in the Codex and the OIE, and request the ICPM to take into consideration the Decision on Equivalence and the subsequent clarifications in its work on the judgement of equivalence with regard to measures to address plant pests and diseases. The SPS Committee has been kept informed of the progress made by the IPPC on its work on the development of a draft standard on the equivalence of phytosanitary measures in international

⁴ G/SPS/19.

⁵ The agreed clarifications are in G/SPS/19/Rev.2.

trade and the proposed revised wording for ISPM 1. Equivalence remains a standing agenda item of the Committee.

Regionalization

In 2003, the SPS Committee began to consider the implementation of Article 6 of the SPS Agreement, which requires consideration of the pest- or disease status of exporting and importing areas. Discussions on regionalization continued in the Committee meetings in 2004 with the Committee receiving regular updates on the work on regionalization undertaken by the IPPC and the OIE. There was a divergence of views among WTO Members on whether or not the SPS Committee should establish guidelines for the practical implementation of Article 6 of the SPS Agreement and the Committee agreed to further pursue this issue in 2005. An informal meeting on the subject is scheduled prior to the next regular SPS Committee meeting.

Monitoring the Use of International Standards

The procedure adopted by the SPS Committee in 1997 to monitor the use of international standards invites countries to identify specific trade problems they have experienced due to the use or non-use of relevant international standards, guidelines or recommendations.⁶ These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting body.

In 2004, a proposal on regionalization was submitted under this procedure recommending that the issue be referred to the relevant standard-setting bodies. The proposal needs to be further clarified before being referred to the standard-organizations but this does not preclude the Committee from continuing to hold discussions on regionalization.

In order to allow Members to better benefit from this procedure the Committee agreed to modify the deadline for identifying issues as established in the agreed procedures, from 30 days to 10 days.⁷ The Committee also received regular updates on the standard-setting activities of the IPPC, the OIE and Codex.⁸

Technical Assistance

At each of its meetings, the SPS Committee has solicited information from countries regarding their technical assistance needs and activities. The SPS Committee has been kept informed of the collaborative efforts of the IPPC and FAO secretariats to strengthen the capacity of developing countries and of the importance of the participation of the IPPC in the regional SPS workshops organized by the WTO. The IPPC secretariat and the FAO have also provided information regarding their technical assistance activities at each regular meeting of the SPS Committee in 2004.⁹

Review of the Operation and Implementation of the SPS Agreement

Article 12.4 of the SPS Agreement indicates that the Committee should review the operation and implementation of the Agreement three years after its entry into force, and thereafter as appropriate. The first review of the Agreement began in 1998 and was concluded in March 1999. The report of the review made it clear that the Agreement had contributed to improving international trading relationships with respect to sanitary and phytosanitary measures, although a number of implementation issues posed problems to some countries, especially developing

⁶ G/SPS/11.

⁷ A revised version of G/SPS/11 will be circulated.

⁸ G/SPS/GEN/482, G/SPS/GEN/513, G/SPS/GEN/476, G/SPS/GEN/478, G/SPS/GEN/500, G/SPS/GEN/501, G/SPS/GEN/512, G/SPS/GEN/479, G/SPS/GEN/495, G/SPS/GEN/514 and G/SPS/GEN/519.

⁹ This information is available in the reports of the SPS Committee meetings (G/SPS/R/33; G/SPS/R/34; and G/SPS/R/35).

countries. The work of the SPS Committee had permitted a substantial number of trade matters to be resolved.¹⁰

At the Doha meeting in November 2001, the trade ministers agreed that the operation and implementation of the SPS Agreement should occur every four years. Hence in 2004 the SPS Committee began its second review of the Agreement. A procedure and timetable for the review was adopted, to permit consideration of the report of the review at the ministerial conference scheduled for December 2005. Members were invited to identify those issues which they wanted to have reviewed, and to provide substantive papers and proposals on these. The WTO secretariat prepared a background document describing developments on the issues identified in the first review.¹¹

Although the review exercise is still underway, issues that have been identified for consideration in the second review include the transparency provisions (in particular, suggestions that measures be notified even when they are based on international standards); regionalization; use of the committee for the resolution of trade problems; special and differential treatment.

Other Relevant WTO Activities - Dispute Settlement

In 2004, dispute settlement reports were adopted in the case regarding trade restrictions due to *Erwinia amylovora* while panel proceedings commenced on the case regarding the European Communities' measures affecting the approval and marketing of biotech products. At the same time the *Fire blight* case and the *EC – Hormones* case were brought back to the WTO dispute settlement procedure.

The WTO dispute settlement procedure

Any WTO Member may invoke the formal dispute resolution procedures of the WTO if they consider that a particular measure imposed by another WTO Member violates any of the WTO Agreements, including the SPS Agreement. If formal consultations on the problem, the first step of the WTO dispute procedure, are unsuccessful, a WTO Member may request that a panel be established to consider the complaint.¹² A panel of three individuals considers written and oral arguments submitted by the parties to the dispute and issues a written report of its legal findings and recommendations. The parties to the dispute may appeal a panel's decision before the WTO's Appellate Body. The Appellate Body examines the legal findings of the panel and may uphold or reverse these. As with a panel report, the Appellate Body report is adopted automatically unless there is a consensus against adoption.

According to the SPS Agreement, when a dispute involves scientific or technical issues, the panel should seek advice from appropriate scientific and technical experts. Scientific experts have been consulted in all SPS-related disputes. The experts are usually selected from lists provided by the standard-setting organizations referenced in the SPS Agreement, including the IPPC for plant health. The parties to the dispute are consulted in the selection of experts and regarding the information solicited from the experts.

As of 2004, four SPS-related issues have been considered by panels. Two SPS cases dealt with plant pests and quarantine requirements: the United States complaint about Japan's requirement for testing each variety of fruit for efficacy of treatment against codling moth (*Variety testing*)¹³; and the United State's complaint about Japan's set of requirements on apples imported from the

¹⁰ The report of the review is contained in document G/SPS/12.

¹¹ G/SPS/GEN/510.

¹² A flow chart of the dispute resolution process can be consulted at (http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp2_e.htm).

¹³ The report of the panel is contained in document WT/DS76/R. The Appellate Body report is contained in document WT/DS76/AB/R.

United States relating to fire blight (*Fire blight*).¹⁴ Two dispute cases concerned food safety regulations – the European Communities (EC) ban on imports of meat treated with growth-promoting hormones, challenged by both the United States and by Canada (*Hormones*).¹⁵ One complaint dealt with diseases of fish, brought by Canada against Australia's import restriction on fresh, chilled or frozen salmon (*Salmon*).¹⁶ A US complaint on this same issue was resolved before the panel completed its examination.

Implementation of the Fire blight findings

On 9 January 2004, the WTO Dispute Settlement Body (DSB) adopted the panel and Appellate Body reports in the *Fire blight* case which recommended that Japan bring the measures at issue into conformity with WTO obligations. The United States and Japan agreed that Japan would have until 30 June 2004 to comply with the panel findings. However, in July 2004, the United States requested the establishment of a panel under Article 21.5 of the Dispute Settlement Understanding to examine the alleged failure of Japan to comply with the original panel's rulings, and requested authorization to retaliate against this failure. At the same meeting, Japan requested that an arbitrator be requested to consider the amount of trade which could be affected by the US retaliation. Both the Article 21.5 panel and 22.6 arbitration were established on 30 July, with the original panel members serving both cases. Japan and the United States immediately suspended the 22.6 arbitration proceeding, pending the conclusions of the 21.5 panel. The panel is examining the revised requirements imposed by Japan, and its new risk assessment. It is expected to issue its report in May 2005.

New Disputes

Two new panels were established on SPS-related issues on 29 August 2003. The first panel was established to examine the complaints by the United States, Canada and Argentina regarding the European Communities measures affecting the approval and marketing of biotech products.¹⁷ However, the three members of the panel were not appointed until March 2004. The panel received first submissions from the parties and held its first hearing in June 2004, followed by rebuttal submissions from the parties in July 2004. Proceedings were delayed when the panel, at the EC's request, searched for a suitable line-up of scientific experts to assist them with any technical issues that may arise from the dispute. The panel report is expected to be circulated in June 2005.

The second panel was established to examine complaints by the Philippines against the procedures applied by Australia on imports of fresh fruit and vegetables, including fresh bananas, papaya, and plantains.¹⁸ To date, neither of the parties has indicated their further intentions in progressing with this dispute.

On 7 November 2003, another panel was established at the request of the European Communities to examine Australia's quarantine regime for imports, including tomatoes, fresh citrus fruit, apples, peaches, nectarines, cucumber, lettuce, carrots, apricots, edible eggs and egg products, uncooked pigmeat, pig semen, uncooked poultry meat, calf- milk replacer, and organic fertiliser

¹⁴ The report of the panel is contained in document WT/DS245/R. The Appellate Body report is contained in document WT/DS254/AB/R.

¹⁵ The report of the panels are contained in documents WT/DS26/R/USA and WT/DS48/R/CAN. The Appellate Body report is in document WT/DS/26/AB/R and WT/DS48/AB/R.

¹⁶ The report of the panels are contained in documents WT/DS18/RW. The Appellate Body report is in document WT/DS18/AB/R.

¹⁷ The requests for the establishment of a panel by the US, Canada and Argentina are found in the documents WT/DS291/23, WT/DS292/17, and WT/DS293/17.

¹⁸ The request by the Philippines for the establishment of a panel is found in document WT/DS270/5/Rev.1.

based on chicken manure.¹⁹ To date, neither of the parties has indicated their further intentions in progressing with this dispute.

Disputes brought back to the WTO dispute settlement procedure

On 13 February 1998, the WTO Dispute Settlement Body adopted the panel and Appellate Body reports in the *EC – Hormone* case which recommended that the European Communities bring the measures at issue into conformity with WTO obligations. When the European Communities was unable to implement by the 13 May 1999 deadline, the US and Canada obtained authorisation from the DSB on 26 July 1999 to suspend obligations up to the level of US\$116.8 million and CDN\$11.3 million per year, respectively. On 28 October 2003, the European Communities announced that its measures were now in compliance with the rulings, and on 8 November 2004, requested consultations with the US and Canada on the continued suspension of concessions.²⁰ (WT/DS320).

¹⁹ The request by the European Communities for the establishment of a panel is found in document WT/DS287/7.

²⁰ The request by the European Communities for consultations with the US and Canada is found in 1 document WT/DS320.

ATTACHMENT 1

CHRONOLOGICAL LIST OF
NOTIFICATIONS ISSUED ON WOOD PACKAGING (ISPM 15)

Country	Symbol	Date of distribution
Colombia	G/SPS/N/COL/85/Add.1	07/01/2005
South Africa	G/SPS/N/ZAF/18/Add.1	15/12/2004
Costa Rica	G/SPS/N/CRI/35/Add.1	03/11/2004
European Communities	G/SPS/N/EEC/221/Add.2	14/10/2004
Turkey	G/SPS/N/TUR/4	05/10/2004
Mexico	G/SPS/N/MEX/207	04/10/2004
Brazil	G/SPS/N/BRA/96	01/10/2004
United States	G/SPS/N/USA/705/Add.1	24/09/2004
Australia	G/SPS/N/AUS/164/Add.1	03/09/2004
Chile	G/SPS/N/CHL/170	26/08/2004
Costa Rica	G/SPS/N/CRI/35	20/08/2004
Philippines	G/SPS/N/PHL/71/Add.1	20/07/2004
Colombia	G/SPS/N/COL/85	09/07/2004
India	G/SPS/N/IND/12/Add.2	28/06/2004
Australia	G/SPS/N/AUS/164	21/06/2004
Canada	G/SPS/N/CAN/163/Rev.1	21/06/2004
Mexico	G/SPS/N/MEX/204/Add.1	10/06/2004
Philippines	G/SPS/N/PHL/71	03/06/2004
European Communities	G/SPS/N/EEC/221/Add.1	13/05/2004
South Africa	G/SPS/N/ZAF/18	27/04/2004
Switzerland	G/SPS/N/CHE/35	05/02/2004
Mexico	G/SPS/N/MEX/204	10/12/2003
China	G/SPS/N/CHN/42	08/12/2003
European Communities	G/SPS/N/EEC/221	10/11/2003
Korea	G/SPS/N/KOR/138	11/07/2003
United States	G/SPS/N/USA/705	06/06/2003
Canada	G/SPS/N/CAN/163/Add.1	20/05/2003
New Zealand	G/SPS/N/NZL/210	29/04/2003
Canada	G/SPS/N/CAN/163	18/03/2003
Australia	G/SPS/N/AUS/123	13/11/2000

