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Implications of WTO Agreement on Trade Facilitation

Agenda item 20

Prepared by the IPPC Secretariat based on discussions with the Bureau
prior to the CPM-9 Meeting

English only

I. Background

1. In December 2013, the WTO Ministerial Meeting at Bali, Indonesia, reached agreement on the new Agreement on Trade Facilitation (ATF) subject to the legal review process for the temporarily agreed text¹. The original intent of this Agreement was to clarify the GATT Article V, VIII and X² as explained in its preamble³, which relate mainly to the custom issues. The Preparatory Committee on Trade Facilitation (PCTF) was established to conduct the legal review process. This should be completed by the end of June 2014 with the final protocol text for national ratification process and will be reported to the WTO General Council in July. The PCTF had its first meeting in February and planned the next meeting in the second week of April.

2. Many Articles of ATF refers not only to customs issues but to other border regulatory issues, including phytosanitary issues. With the Bureau's support, the IPPC Secretariat made a formal request in writing to the Chairperson of PCTF, on 26 March 2014, for the IPPC to be an observer in the legal review process so that the IPPC expertise can contribute to finalizing the ATF.

¹ The agreement of the Ministerial Meeting is available on the WTO website at:
http://ippc.int/largefiles/2014/WT_L_911-TradeFacilitation.doc.

² The text and relevant interpretations of GATT Articles are available at:
http://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_e.htm

³ The relevant text in Preamble of the ATF is "Desiring to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit,"

II. Possible concerns

3. There have been several meetings where the implications of the agreed text of ATF were discussed, including a Working Group of the World Customs Organization, the WTO SPS Committee, and the STDF meetings and workshops. The IPPC Secretariat participated in these meetings and found that there may be diverse interpretations of the text of ATF. Also, various documents have become available from different sources to “help understand the rights and obligations under the ATF”⁴. Some countries are making similar attempts to understand the ATF. These preliminary analyses also suggest a range of alternative interpretations.

4. The possible causes of these diverse interpretations may be due to:

1) Final Provision of the ATF includes the following text:

- Paragraph 6: “... nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.”
- Paragraph 7: “All exceptions and exemptions under the General Agreement on Tariffs and Trade 1994 shall apply to the provisions of this Agreement. ...” [Note: Article XX(b) of GATT 1994 refers to the general exceptions including the measures to protect plant health, among others.]

2) At the same time, the specific Articles of the ATF refer to the border regulatory measures other than customs operation, implying the IPPC issues are likely to be covered by the ATF. Examples are:

- Article 4.1.6, for appeal or review procedure
- Article 5.1, for notifications for enhanced controls or inspections
- Article 7.4.3, for risk management in the context of release and clearance of goods

3) The ATF does not have any explicit reference to clarify the relationship with other international conventions such as IPPC.

5. Another possible concern could be the enforcement mechanisms under the ATF. More specifically, there could be overlaps or conflicts in the scope of discussions and activities between the two WTO Committee, i.e. the existing WTO SPS Committee and the WTO Committee on Trade Facilitation (to be created at the entry into force of the ATF). If there are SPS plus obligations, another scope question may be which is the proper body or mechanism to provide capacity development to meet such obligations.

6. In addition, Articles in Section II of the ATF (relating to differential treatment) provides a mechanism to allow the developing countries to have grace period before meeting their obligations, which could be conflicting to the existing obligations if the scope is unclear. The usage of the key terminology such as “international standards”⁵ and “risk management”⁶ in the ATF can be additional issues of concern.

7. Given the above, an analysis is necessary to better understand the ATF to avoid possible conflicts in its actual implementation.

⁴ Examples are the ITC guideline (available in six languages at: <http://www.intracen.org/wto-trade-facilitation-agreement-business-guide-for-developing-countries/>) and the WTO SPS document (available at: http://www.wto.org/english/tratop_e/sps_e/tf_sps_e.pdf)

⁵ See how Article 10.3.1 refers to “international standards” where it suggests that the ATF takes precedence over international standards.

⁶ See Article 7.4

III. Recommendations

8. The CPM is invited to:
 - 1) *encourage* the IPPC Contracting Parties to be fully aware of the ongoing ATF review process and to contact their national representations who participate in the ATF review process to share the views and possible concerns in terms of plant health issues.
 - 2) *note* the actions made by the IPPC Secretariat prior to the CPM-9.
 - 3) *request* the IPPC Secretariat to enhance the dialogues with other International Standard Setting Organizations for the SPS related areas, and to further seek the opportunities to contribute to the international discussions to clarify the rights and obligations under the ATF in relation with those under the IPPC and ISPMs.
 - 4) *request* the Bureau to further analyse (with the assistance of the IPPC Secretariat), discuss in its June meeting, and make recommendations to the Contracting Parties and to the Secretariat