

Food Law News - FAO/WHO/WTO/Codex - 2009

WTO News Item, 25 June 2009

SPS COMMITTEE – Report on Committee Meeting: Members discuss trade responses to H1N1 flu

Exporting countries complained on 23 June 2009 about some of the trade restrictions that have been imposed in response to the H1N1 influenza pandemic, and about failures to notify the WTO, but some others said they had to act to deal with an emergency. The discussion was one of many trade concerns raised in the 23–24 June meeting of the WTO’s Sanitary and Phytosanitary Measures (SPS) Committee, which deals with food safety and animal and plant health.

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The committee also edged towards agreement on temporary guidelines for making use of the chairperson as a mediator in order to avoid formal legal disputes — strengthening the committee’s role in settling differences between members in specific trade issues. And it continued its work on private standards.

SOME DETAIL

H1N1 and other specific concerns

One of the SPS Committee’s most important functions is to provide an opportunity for members to raise concerns they have about each others’ SPS measures. This is the SPS Committee’s bread-and-butter work in overseeing the SPS Agreement’s implementation. Code numbers, eg, “no. 278”, identify particular issues and can be used to search the WTO’s SPS Information Management System.

Several issues discussed were old ones, raised in previous meetings. The full list of issues on the agenda is under “P.S.” below

H1N1 influenza — trade restrictions:

Canada, Mexico, Japan, the US, New Zealand, the EU, Brazil, Paraguay, Australia and the Dominican Republic were the countries arguing that import bans on live pigs and pork products are unjustified for dealing with H1N1 influenza. They praised countries that had based their responses on science and criticized countries that had imposed trade restrictions arguing that the restrictions have no scientific justification.

Some of them referred to a statement from the Food and Agriculture Organization (FAO), World Organization for Animal Health (OIE), World Health Organization (WHO) on 7 May 2009, which says “influenza viruses are not known to be transmissible to people through eating processed pork or other food products derived from pigs”.

Some also referred to a statement by the three organizations plus the WTO on 2 May, which says “there is currently ... no justification in the OIE Terrestrial Animal Health Standards Code for the imposition of trade measures on the importation of pigs or their products.”

Some observed that a number of countries with import restrictions have cases of the flu in humans inside their territories (but no restrictions on domestic trade). The US said not a single case of the current outbreak of H1N1 flu “has even been tentatively linked” to eating pork or handling pigs. Several, including Mexico — which described its actions in detail — also said that their swine herds have not caught the disease despite its presence in humans.

Canada said the disease’s popular description as “swine flu” is misleading because the pandemic is among humans and not pigs.

Some of the countries with restrictions (Ukraine, Indonesia, China, Jordan) said the measures were temporary and had been lifted or would be lifted when scientific evidence had been examined. China said it had to act urgently because of its large vulnerable population, the burden on its public health system, the importance of pigs and pork, and the fact that the H1N1 virus shares some genetic make-up with influenza that affects pigs.

H1N1 influenza — informing fellow-members:

Several of the exporting delegations also complained that many of the countries imposing restrictions have not informed fellow-members through the WTO. Mexico said 20 countries, including 14 WTO members have restricted its exports and seven still have measures in place: Armenia, Bahrain, China, Gabon, Indonesia, Jordan and Surinam.

(The SPS Agreement requires members to notify the measures they introduce. See Annex B. So far five countries have formally notified the WTO: Albania, China, Ecuador, Jordan and Ukraine.)

Other specific trade concerns:

A number of the other concerns raised have been discussed before, including restrictions arising from mad cow disease (bovine spongiform encephalopathy or BSE, no. 193) and bird flu (avian influenza). On the bird flu, the EU and US continued to complain that India’s restrictions on pigs and pigmeat are unjustified scientifically, although India has modified its measures; India continued to say it has scientific evidence of the risk (no. 185).

A number of Asian countries (China, Japan, Rep.Korea, Indonesia) continued to object to a draft regulation of the North American Plant Protection Organization on Asian gypsy moth; the US,

Canada and Mexico said their concerns were being taken into account and a new draft will be issued in August, but that the moth is a destructive pest and eradication is expensive.

A number of countries (Brazil, Japan, Paraguay) complained again about import restrictions on some plants and plant products under the Asia and Pacific Plant Protection Commission agreement.

Mediation by the chairperson

The chairperson's proposal for time-limited guidelines is a compromise between two views among the membership. Members agreed that they would look at a draft at the next meeting in October.

Argentina and the US have proposed guidelines for applying Art.12.2 of the SPS Agreement, which deals with members' consultations to resolve issues. In particular they envisage members making greater use of the "good offices" of the chairperson to settle specific trade concerns (G/SPS/W/233 and G/SPS/W/241).

Although members generally approve of the idea, some (India, the EU, Norway, etc) are concerned that having guidelines within SPS might undermine negotiations on similar guidelines across all issues under the Doha Round negotiations on non-agricultural market access (NAMA). Others would prefer not to wait for the NAMA talks to conclude (Japan, Chile, Costa Rica, Canada, Australia, New Zealand, etc).

If accepted, the compromise would set up the SPS guidelines only until the Doha Round NAMA deal takes effect.

Private sector standards

The committee examined a descriptive paper based on members' responses to a questionnaire on their experiences with private sector standards, prepared by the Secretariat. After the summer break, the Secretariat will start to prepare an analytical paper based on this information and including recommendations for possible actions by the SPS Committee. A first draft of the analytical report is to be discussed at the next meeting in October. Eventually this will also take into account work in some of the inter-governmental standards-setting organizations.

When first raised in 2005, this issue took the SPS Committee into comparatively new territory — the committee generally deals with standards set by international standards-setting bodies and those imposed by governments. Although the agreement says that governments should ensure that non-governmental entities should comply with the agreement, there is no indication of how this should be done. A number of developing countries in particular are concerned that private standards could undermine the disciplines negotiated in the SPS Agreement (see also SPS news archives)

Other subjects

These included: continuing work on a draft text to improve transparency on special treatment given by developed countries to developing countries (discussions continued in an informal meeting); reviews of the SPS Agreement, and information from international standard-setting bodies and other observer organizations.

Chairperson: Ms Miriam Chaves of Argentina

Next meetings

These dates (with informal meetings on other days in the week) could still be changed:

- 28-29 October 2009
- 17-18 March 2010
- 30 June-1 July 2010
- 20-21 October 2010

These are some of the trade issues or concerns on the meeting's agenda or information supplied to the meeting.

Activities of members

- Canada — information on influenza H1N1 activities
- Paraguay — global conference on foot and mouth disease
- Paraguay — mango exports
- Argentina — new system for phytosanitary import authorizations
- Zambia — report on pest survey programs
- Costa Rica — measures to prevent entry of yellow dragon disease (G/SPS/GEN/930)

Specific trade concerns

New

- Mexico — Import restrictions on pork products due to influenza H1N1 maintained by Armenia, Bahrain, China, Croatia, Gabon, Indonesia, Jordan, Thailand and Ukraine (G/SPS/GEN/921, G/SPS/N/CHN/116, G/SPS/N/JOR/20, G/SPS/N/UKR/2)
- EU — Indonesia's new meat import conditions
- Brazil — Colombia's import restrictions on gelatine from bovine hides and head skin due to BSE requirements
- China — US notice of enforcement by the food safety and inspection service regarding food products containing small amounts of meat, poultry or processed egg products (G/SPS/N/USA/1913)
- Brazil — Japan's pesticide maximum residue levels (MRL)
- China — proposed US rule on importation of wooden handicrafts from China (G/SPS/N/USA/1921)

Previously raised

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- Mexico — China’s hygienic standard for distilled spirits and integrated alcoholic beverages (G/SPS/N/CHN/111) (no. 278)
- EU — India’s non respect of international standards, in particular in relation to avian flu (no. 185)
- EU — General import restrictions due to BSE (no. 193)
- China — Japan’s pesticide maximum residue level (MRL) enforcement system (no. 267)
- Canada — Greece’s inspection and testing regime for imported cereals (no. 206)
- China — US import restrictions on apples (no. 269)
- Information from members on their pest or disease status
- Belize — freedom from Mediterranean fruit fly (G/SPS/GEN/922)
- Brazil — STDF project on sanitary compartmentalization in the poultry meat production chain
- Indonesia — freedom from khapra beetle (G/SPS/GEN/946)

Monitoring of the use of international standards

New

- Paraguay — adoption of international phytosanitary standards

Previously raised

- China — NAPPO regional standard no.33: guidelines for regulating the movement of ships and cargoes aboard those ships from areas infested with the Asian gypsy moth
 - Brazil — Compatibility of regional standards with international standards. Agreement establishing the Asia and Pacific Plant Protection Commission: restrictions on imports of havea plants from outside the region
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