SPS Thematic Session on Approval Procedures
5 November 2019
Session 1: The SPS Agreement and Relevant Disputes
Overview of Article 8 and Annex C provisions
Outline

- Revisiting provisions of Article 8 and Annex C
- Zooming in on Approval Procedures
- Examining relevant dispute settlement reports
- Examples of Specific Trade Concerns
“a failure to observe the provisions of Annex C implies a breach of Article 8”
Annex C
Control, inspection and approval Procedures

What is covered?

➢ sampling, testing and certification (Footnote 7)

➢ any procedure to check and ensure the fulfilment of SPS measures (Para. 1)
What is covered?

- any procedure to check and ensure the fulfilment of SPS measures (Para. 1)

SPS measures defined in Annex A(1)

Include both substantive requirements and procedures
Approval procedures can be in any form.

An SPS measure as defined in Annex A(1)

An SPS measure that includes procedural requirements

Provisions of the SPS Agreement

Provisions of Annex C
Scope of Approval Procedures

**equivalence determination?**

**YES!**

*(US-Poultry)*

**import risk assessment?**

**YES!**

*(Australia-Apples)*

Approval Procedures cover a broad array of procedures. Title or characterization of the measure given by the Member does not restrict application of Annex C(1).

Actual import risk assessment conducted for a specific good might constitute the procedure to check and ensure the fulfilment of the SPS measure.
Approval Procedures

Twin Requirements under Annex C(1)(a)

Such procedures need to be undertaken and completed without undue delay and without discrimination.
Approval Procedures
Paragraph 1(a) – first clause

What is undue delay?

Step 1 = Has there been delay?

NO → Consistent with Annex C(1)(a) first clause

YES → Step 2 = Was the delay undue?

YES → Inconsistent with Annex C(1)(a) first clause

NO → Consistent with Annex C(1)(a) first clause
What is undue delay?

An approval procedure has been delayed by 2 years! Is this sufficient to establish undue delay?

Not sufficient! [EC-Biotech]
Approval Procedures
Annex C (1)(a) – first clause

What is undue delay?

➢ Unjustifiable loss of time [EC-Biotech]

➢ Involving periods of time that are unwarranted, or otherwise excessive, disproportionate or unjustifiable [Australia-Apples]

Members are allowed to take time that is reasonably needed to determine with adequate confidence whether their relevant SPS requirements are fulfilled. [EC-Biotech]
An SPS approval procedure starts with submission of an application for approval, regardless of whether it satisfies all of the relevant requirements. **[Indonesia - Chicken]**
Approval Procedures
Paragraph 1(a) – first clause

Examples of undue delay

➢ Delay in completing SPS approval procedure due to pending non-SPS related information on halal slaughtering requirements in vet certificates [Indonesia - Chicken]

➢ To prohibit the use of funds for completion of approval procedures for the importation of poultry [US - Poultry]
Approval Procedures
Annex C (1)(b)

5 obligations in the operation of approval procedures:

(i) publication or communication of the processing period;
(ii) examination of the completeness of the documentation and communication of deficiencies;
(iii) transmission of the results of the procedure;
(iv) processing of applications which have deficiencies; and
(v) provision of information about the stage of a procedure and explanation of any delay.

As far as practicable
Approval Procedures
Annex C (1)(c)

Information requirements are limited to what is necessary

That's not necessary!

"excessive"

For ex., information on stamping out policies in territories which had never experienced ASF
Where an importing Member operates a system for the approval of the use of food additives or for the establishment of tolerances for contaminants, it shall consider the use of a relevant international standard as the basis for access until a final determination is made.
Approval Procedures
SPS Committee

SPS IMS: STCs’ Keywords

OR

undue delays

control, inspection and approval procedures

OR

certification, control and inspection

106
Approval Procedures
Examples of STCs

- Concerns relating to **undue delays** in concluding the pest risk analysis by the importing Member to open its market to avocados.

- Restrictions against products being imported from a Member by virtue of **undue delays** in the process of negotiating International Sanitary Certificates and **requiring more information than** what is scientifically **necessary** to perform risk analysis.

- Concerns over the **lack of transparency** and **undue delays** in importing Member’s approval procedures for animal products.

- Concerns on **excessive time** to undertake an IRA: “Four and a half years was too long a delay to wait for a risk assessment to be undertaken.”
THANK YOU!

rolando.alcala@wto.org

SPS gateway
http://www.wto.org/sps