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COMMITTEE FOR TRADE, INDUSTRY AND
ENTERPRISE DEVELOPMENT

Working Party on Standardization of
Perishable Produce and Quality Development

Specialized Section on Standardization of
Seed Potatoes
Thirty-second session, 4-6 March 2002, Geneva

Item 2 of the Provisional Agenda

MATTERS OF INTEREST ARISING SINCE THE THIRTY-FIRST SESSION

Note by the secretariat

This document sums up the relevant outcome of the fifth session of the Committee for Trade, Industry and Enterprise Development and the fifty-seventh session of the Working Party on Standardization of Perishable Produce and Quality Development. The document also contains a summary of the reply received from the legal services concerning questions asked by the Specialized Section.

1. FIFTH SESSION OF THE COMMITTEE FOR TRADE, INDUSTRY AND ENTERPRISE DEVELOPMENT

The following excerpt is taken from the report of the Committee (ECE/TRADE/280, paragraphs 55 to 60):

"Item 9 - Agricultural quality standards"

Documentation:

TRADE/WP.7/2000/11	Report of the 56 th session of WP.7
TRADE/2001/4	Summary of main activities and developments of the Working Party on Standardization of Perishable Produce and Quality Development (WP.7)

55. The secretariat gave an overview of the work carried out by the Working Party on Standardization of Perishable Produce and Quality Development (WP.7) and its specialized sections since the last session of the Committee.

56. The following items were highlighted:

- The successful meeting of rapporteurs on Seed Potatoes held in Moscow at the invitation of the Ministry of Industry, Science and Technology. In this respect the secretariat thanked the Russian authorities and the Permanent Mission of the Russian Federation to the United Nations Office at Geneva for the assistance in organizing this meeting.
- The adoption and publication of a UNECE Standard for Bovine Carcasses and Cuts.

57. The Committee, at its last session, had requested the secretariat to evaluate possibilities for reallocating resources within the Trade Division to the agricultural standards unit for the development of explanatory material (see ECE/TRADE/262, paragraph 37).

58. In response to this request, at the last session of WP.7, the Director of the Trade Division reported that additional resources had been requested for the work on agricultural standards but that the zero growth budget of UNECE made it unlikely that a new post would be created in the near future. She also emphasized that the secretariat would be prepared to support this work, provided that the required additional staff member could be obtained, either via extrabudgetary resources, or via a decision by member States as to which lower priority activities should be discontinued in order to free the required resources. (see TRADE/WP.7/2000/11, para. 89).

59. The delegation of the Russian Federation emphasized the high priority that it attached to this work and its global impact, as seen from the number of countries from outside the UNECE region participating actively in the work. He also stressed that it was important for UNECE standards to be applied to a greater extent in Russia and the CIS in order to encourage the production of high quality produce and to facilitate trade. He also

suggested achieving this by using the UNECE experience in this area to organize training courses for quality inspectors as well as for national standard-setting bodies.

60. The Committee **endorsed** the report of the fifty-sixth session of the Working Party on Standardization of Perishable Produce and Quality Development (TRADE/WP.7/2000/11) and **noted** the summary of main activities and developments (TRADE/2001/4)."

2. FIFTY-SEVENTH SESSION OF THE WORKING PARTY

The following excerpt is taken from the draft report of the Working Party (TRADE/WP.7/2001/9, paragraphs 65 – 70):

Item 6 Specialized Section on Standardization of Seed Potatoes

Document: TRADE/WP.7/GE.2/2001/8 (Report of the 31st session)

65 The Chairman of the Specialized Section Mr. G. Bianchi informed on the outcome of the thirty-first session.

66 He said that the group had decided to meet annually from now on and to replace the meeting of rapporteurs by bureau meetings which could be extended to other experts who had the task of developing specific proposals.

67 He said that the main areas of work at the moment were the rewriting of the introduction of the standards, the introduction of international classes for more transparency in trade and the preparation of an updated version of the UNECE publication on national certification schemes. Questionnaires had been sent out by the secretariat to 75 countries and 30 replies received up to now. He said that the replies would help the group defining their further direction.

68 He thanked the secretariat for the consistent support of the work on seed potatoes.

69 The delegation of the Russian Federation said that the meeting of rapporteurs held in Moscow had been highly appreciated and very well attended. He said that decisions had been taken in line with the proposals made by the group. He confirmed that Russia was prepared to organise further meetings also on other subjects e.g. meat.

Amendments to the standard

Document: TRADE/WP.7/GE.6/2001/8, Annex

70 The Working Party adopted the amendments proposed by the Specialized Section as revised UNECE Standard for Seed Potatoes. The text will be published as addendum 10 to this report (TRADE/WP.7/2001/9/Add.11).

3. ANSWER FROM THE LEGAL OFFICE

The secretariat summarizes below the exchange of information with the United Nations Office of Legal affairs.

3.1 Information provided to the Office of Legal Affairs

The UNECE Specialized Section on Standardization of Seed Potatoes develops and maintains the UNECE Standard for Seed Potatoes. The standard establishes minimum commercial quality requirements and falls under the WTO-TBT agreement. In the discussion of these requirements, phytosanitary matters (which are the domain of the International Plant protection Convention (IPPC) under the WTO/SPS agreement) come up because the presence/absence of diseases is a major quality criteria.

At the thirtieth session the following text was provisionally adopted:

"National Phytosanitary Provisions: The provisions of this standard relative to the pests mentioned in annexes II, III, IV and V are without prejudice to a country's national phytosanitary and seed potato certification requirements for regulated pests (quarantine and regulated non-quarantine pests), taken under provisions of the WTO-SPS agreement and the relevant international standards thereunder."

The report of the thirtieth session (TRADE/WP.7/GE.6/2000/8) and the text of the standard were also provided.

3.2 Questions asked

3.2.1 Can the explicit mention of the WTO-SPS agreement could lead to any legal problems?

3.2.2 If there is a trade dispute between two countries applying the ECE standard and one of them brings this to the attention of WTO-TBT. Who is responsible for the discussion and resolution of the conflict?

3.3 Reply received

The WTO-TBT agreement provides that all products, including industrial and agricultural products, shall be subject to the provisions of the agreement (Article 1, paragraph 1.3) and that Members of the WTO shall play a full part in the preparation by appropriate standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations (Article 2, paragraph 2.6).

Pursuant to the WTO-TBT agreement Members of the WTO shall ensure that such technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade and that for this purpose such technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective (Article 2, paragraph 2.2).

The WTO-TBT agreement states in Article 1, paragraph 1.5, that its provisions do not apply to sanitary and phytosanitary measures (emphasis added) as defined in Annex A of the Agreement of the Application of Sanitary and Phytosanitary Measures (hereinafter the "WTO-SPS agreement").

The latter was approved for the purposes of harmonizing sanitary and phytosanitary measures between Members of the WTO, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations. The WTO-SPS agreement provides that it applies to all sanitary and phytosanitary measures, to be developed and applied in accordance with the provisions, which may, directly or indirectly, affect international trade (Article 1, paragraph 1).

The WTO-SPS agreement further states that in order to harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members of the WTO should base their sanitary or phytosanitary measures on international guidelines or recommendations (Article 3, paragraph 1) and to that extent should play a full part in the relevant international organizations, in particular the international and regional organizations operating within the framework of the International Plant Protection Convention (hereinafter the "IPPC"), to promote within these organization the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures (Article 3, paragraph 4).

In accordance with Article I of the IPPC, it was adopted with the purpose of securing common and effective action to prevent the introduction and spread of pests and diseases of plants and plant products through the adoption and promotion of measures for their control. To achieve this objective Parties to the IPPC gave agreed to cooperate in establishing, as coordinating bodies, regional plant protection organizations (Article VIII).

As the UNECE Specialized Section on Standardization of Seed Potatoes comprises delegations of the countries most of which are Parties to the WTO-TBT agreement, as pointed out in your memorandum, it pursues to the policy of developing and maintaining the Standard for Seed Potatoes which is compatible with the relevant requirements of that agreement. Pursuant to Article 1, paragraph 1.5, of the WTO-TBT agreement, harmonization of sanitary and phytosanitary measures falls under the WTO-SPS agreement. The latter acknowledges the special role played by the IPPC in preventing the introduction and spread of pests and diseases of plants which include seed potatoes.

Since the revised Standard includes provisions relating to matters which fall under the WTO-SPS agreement it appears that it was quite appropriate for the Specialized Section to include reference to that agreement to clarify interrelationship between the revised Standard and the relevant standards established with the assistance of the IPPC under the WTO-SPS agreement. Therefore, we are of the view that the explicit mention of the WTP-SPS agreement in the revised Standard should not lead to any legal problems.

With reference to your second question we would like to point out that in accordance with the WTO-TBT agreement its dispute settlement provisions can be invoked only in cases where the countries concerned are Members of WTO and where a dispute relates to any matter affecting the operation of that agreement (Articles 13 and 14). The WTO-TBT agreement provides that consultations and the settlements of disputes with respect to such matters should take place under the auspices of the Dispute Settlement Body and should follow, *mutatis mutandis*, the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding. Similar procedures are applicable to the resolution of disputes under the WTO-SPS (Article 11). The WTO-TBT agreement, as noted above, encourages the harmonization of technical regulations through the preparation by appropriate international standardizing bodies of international standards for various products.

The UNECE Specialized Section on Standardization of Seed Potatoes is such a body. Consequently, if a dispute arises between two countries applying the ECE Standard and both of them are WTO Members, one of them can invoke the dispute settlement provisions of the WTO-TBT if the dispute relates to a matter affecting the operation of that agreement. If one of these countries is not a Member of WTO, the dispute settlement provisions of WTO-TBT cannot be invoked and the dispute will have to be resolved through other means. We noted in this regard that the revised UNECE Standard for Seed Potatoes approved by the Specialized Section does not contain any provisions concerning resolution of disputes regarding its implementation.