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significant effect on trade of other Members.<sup>5</sup> In this case, an international standard did not exist for the subject matter at issue. The Panel therefore was tasked with determining whether changes in the two instruments constituted changes that were to be notified under Article 7 because they may have a "significant effect on trade of other Members". The Panel applied a two-pronged test: (a) weighing the impact of the alleged changes in the measures on the conditions of market access, that is, would the exported product still be permitted to enter Japan if they complied with the prescription contained in the previous regulations; (b) if this is not the case, the Panel had to consider whether the change could be considered to potentially have a significant effect on the trade of other Members:

"[W]e must determine whether the changes identified above constitute changes which are required to be notified under Article 7 because, inter alia, they 'may have a significant effect on trade of other Members' in the context of the chapeau to Paragraph 5 of Annex B.

We consider that the most important factor in this regard is whether the change affects the conditions of market access for the product concerned, that is, would the exported product (apple fruit from the United States in this case) still be permitted to enter Japan if they complied with the prescription contained in the previous regulations.<sup>6</sup> If this is not the case, then we must consider whether the change could be considered to potentially have a significant effect on trade of other Members. In this regard, it would be relevant to consider whether the change has resulted in any increase in production, packaging and sales costs, such as more onerous treatment requirements or more time-consuming administrative formalities."<sup>7</sup>

4. In *EC – Approval and Marketing of Biotech Products*, on the basis of its finding that a generally applicable measure concerning the administration or operation of an SPS measure is not an SPS measure per se and therefore need not be published, the Panel ruled out notification requirements for this category of measures:

"Article 7 ... requires Members to notify changes in their 'SPS measures' and provide information on their 'SPS measures'. It does not require Members to notify changes in the administration of SPS measures and provide information on the administration of their SPS measures."<sup>8</sup>

### 1.3 Notification requirements

#### 1.3.1 Obligation to "provide information on SPS measures"

5. The Panel in *EC – Approval and Marketing of Biotech Products*, on determining the measures at issue under Article 6.2 of the DSU, considered the purpose of Article 7 and provided an outlook on whether the general reference to this provision, in the case at hand, could amount to a violation of the totality of the requirements under Annex B:

"Article 7 of the SPS Agreement imposes an obligation on Members to notify changes in SPS measures and to provide information on SPS measures in accordance with the provisions of Annex B of the SPS Agreement. Regarding the obligation to 'provide information' on SPS measures, we note that the Complaining Parties have specified in their Panel requests which particular provisions of Annex B they consider to have been violated. We therefore think it is clear that the reference to Article 7 cannot be taken as an indication that the Complaining Parties are alleging violations of all provisions of Annex B."<sup>9</sup>

<sup>5</sup> Panel Report, *Japan – Apples*, para. 8.310.

<sup>6</sup> (footnote original) This approach is in line with the discussion of the concept of "significant effect on trade of other Members" in the notification procedures adopted and revised by the SPS Committee (G/SPS/7/Rev.2, para. 7).

<sup>7</sup> Panel Report, *Japan – Apples*, paras. 8.313- 8.314.

<sup>8</sup> Panel Report, *EC – Approval and Marketing of Biotech Products*, para. 7.1459.

<sup>9</sup> Panel Report, *EC – Approval and Marketing of Biotech Products*, para. 7.47, sub-para. 85.

