

**Committee on Sanitary and Phytosanitary Measures**

**SPECIAL AND DIFFERENTIAL TREATMENT**

Report by the Chairman to the General Council

1. As was reported to the General Council last year (G/SPS/41), since the adoption by the SPS Committee of its substantive report on special and differential treatment in June 2005 (G/SPS/35), the Committee has followed a two-pronged approach to address the issue of special and differential treatment. That is, at each and every one of its regular meetings, the Committee has considered the proposals referred to it by the General Council, as well as the possible actions identified by the Committee to address some of the concerns underlying these proposals.
2. There has been little substantive discussion of the proposals as they are currently drafted, as Members maintain that their views on the proposed texts are known (as summarized in G/SPS/35) and have not changed. More substantive discussion has occurred when possible revisions to the existing proposed texts have been presented, as reported to the General Council last year (G/SPS/41, G/L/794).
3. At an informal meeting on special and differential treatment on 27 February and 1 March 2007, Egypt circulated a report on its analysis of the interpretation by WTO dispute settlement panels of provisions relating to special and differential treatment in the Agreement on the Implementation of Article VI of GATT 1994 (the Anti-Dumping Agreement), which use apparently mandatory language ("shall"), as in Article 10.1 of the SPS Agreement (JOB(07)/25). Egypt observed that the interpretations given in legal cases is that this language imposes no specific obligation on Members to undertake any particular action. Similar interpretation could be given to the provisions relating to technical assistance in the SPS Agreement. Egypt stated that it was undertaking an analysis of the procedure adopted by the SPS Committee by which Members could identify their need for special and differential treatment with respect to specific measures taken by trading partners (G/SPS/33). The analysis would examine why developing country Members are not making use of this procedure, and Egypt would propose a decision in this regard. Egypt stressed, however, that developing country Members were not seeking exceptions to the substantive provisions of the SPS Agreement that might result in health risks for Members, but were seeking assistance to enable developing country Members to meet the health requirements of their trading partners. Egypt indicated its intention to organize informal consultations on this matter prior to the June 2007 meeting of the SPS Committee.
4. At the same time, the Committee has continued to progress with its consideration of possible actions to address some of the concerns underlying the proposals. For example, a special meeting on transparency is being organized to coincide with the October 2007 meeting of the SPS Committee, and has been included in the WTO's 2007 Technical Assistance Plan so that funding might be available to facilitate the participation of officials from some developing country Members. Members were invited to respond to a questionnaire regarding the operation of their SPS Enquiry Points and National Notification Authorities, and to identify problems they faced in this regard (G/SPS/W/103/Rev.2). An analysis of the replies received (G/SPS/GEN/751) was discussed at an informal meeting of the Committee in February 2007, and the Committee agreed to hold another informal meeting in the margins of its June 2007 meeting to develop the agenda for the special

meeting and consider how to best address the problems that have been identified, especially by developing country Members.

5. Other possible actions identified by the Committee focussed on technical assistance. In this regard, the Committee was informed that the medium-term strategy of the Standards and Trade Development Facility (STDF) included a greater focus on the provision of information regarding flows of technical assistance and evaluations of the effectiveness of SPS-related technical assistance and how it responded to the needs of the beneficiaries. The STDF was organizing regional consultations in 2007 to examine the provision and receipt of SPS-related technical assistance, and to identify good practice on the basis of concrete experience. The Committee also received information from both the Secretariat and from participants regarding the first WTO specialized course on the SPS Agreement, as well as with regard to the second specialized course held in October 2006, in English. In light of the highly positive evaluations from the participants, a third specialized course, to be held in French, has been programmed to follow immediately after the October 2007 meeting of the SPS Committee.

6. At this point in time, it would appear that little progress is possible in the SPS Committee on the proposals as currently drafted, as the views of Members on these texts have not changed. Some progress may be possible on revised versions of the proposals, but this has been hampered by proposed revisions not being circulated for the consideration of Members in advance of meetings of the SPS Committee.

7. This is not to say, however, that the SPS Committee is failing to consider special and differential treatment and other ways to address the problems of developing country Members. On the contrary, special and differential treatment is a standing agenda item for every meeting of the SPS Committee, and usually the subject of informal meetings in the margins of the regular meetings. More importantly, the Committee continues its consideration of pragmatic and concrete actions to address the problems identified in the proposals, such as those relating to the identification of potential trade barriers, the effectiveness and appropriateness of technical assistance, and the actual provision of special and differential treatment in specific situations.

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