

Committee on Sanitary and Phytosanitary Measures

SPECIAL AND DIFFERENTIAL TREATMENT

Report by the Chairman to the General Council

1. This report is further to the information provided in April 2007 regarding the SPS Committee's consideration of the issue of special and differential treatment (G/SPS/44).
2. This issue has continued to be considered by the SPS Committee at each of its regular meetings, as well as at informal meetings just prior to the three regular meetings held in 2007.
3. At an informal meeting in June, the representative of Egypt informally tabled two proposals. The first of these contained a revision of earlier proposals on SPS Article 10.1, suggesting the inclusion of a new, first paragraph in the article, and further revisions to the existing first paragraph. This proposal can be found in document Job(07)99. The other proposal submitted by Egypt suggested revisions to the procedures for transparency of S&D adopted previously by the Committee. The adopted procedures are contained in document G/SPS/33, and the proposal by Egypt is in Job (07)/104.
4. Discussion of these proposals at the June meeting was limited to preliminary reactions, as Members had not received the proposals prior to the meeting.
5. In the discussion of the proposal relating to Article 10.1 at an informal meeting in October, several Members again stressed their concern that modifications to the text of the SPS Agreement would upset the delicate balance of rights and obligations contained therein. The representative of Egypt indicated that modification of the text of the Agreement was not the primary intention, and suggested that an authoritative interpretation or decision of the General Council could alternatively be used to bring clarity and predictability to the S&D provisions. What was being sought was an obligation of result rather than the current obligation of conduct; the process of taking into account the needs of developing countries should not be confused with the outcome of that process. Technical assistance, while useful, could not substitute for S&D.
6. Several Members noted that it was difficult for a Member considering the application of a food safety, plant or animal health protective measure to identify the special needs of developing countries and to take these into account. They suggested that further attention be given to the question of understanding the needs of developing countries and of how these could be taken into account. The representative of Egypt noted that the call for comments prior to the drafting of new legislation was one example of how the special needs of developing countries could be taken into account.
7. With regard to revision of the procedure for transparency of S&D treatment, the representative of Egypt noted that proposed revisions to the Committee's recommended notification procedures captured many of Egypt's proposed amendments to the G/SPS/33 procedure with regard to

transparency. However, these did not address the need to increase predictability of the special and differential treatment aspects of the procedure.

8. Members discussed the level of obligation implied through the use of the terms "should" or "shall", "could" or "should", recognizing that the SPS Committee could not change the legal obligations contained in the SPS Agreement but could only develop non-binding recommended procedures. While some Members felt that the use of more compulsory terminology would limit the range of solutions which could be found when an exporting Member identified significant difficulties with a measure, others considered that these terms were essential to underline the importance of following the recommended procedures. Several Members recalled the Committee's decision to review the operation of the procedure to enhance transparency of S&D treatment at its first meeting in 2008, which should include consideration of why it had not been used by Members (G/SPS/33/Add.1). They suggested it would be more appropriate to examine proposals to modify the procedure in that context.

9. The SPS Committee was also made aware of the proposals under consideration in the Special Session of the Committee on Trade and Development (CTDSS) relating to Article 10.3 of the SPS Agreement. The representatives of Egypt and of New Zealand each explained the intention of their respective proposals in this regard. Members highlighted the importance of sharing information on matters which could impact on the SPS Committee's future work.

10. The representative of Egypt also raised questions regarding the Doha Implementation Decision on longer time frames for phasing in measures on products of export interest to developing country Members (Article 10.2) and how that decision should be considered in relation to the transparency obligations of Members. The Secretariat agreed to prepare a brief document regarding the relationship between the timeframes in different provisions of the Agreement.

11. The Committee agreed to keep the issue of special and differential treatment on its agenda for future meetings, and to meet informally to further consider this issue immediately prior to its next regular meeting in April 2008.
