

Committee on Sanitary and Phytosanitary Measures

**REPORT TO THE COMMITTEE ON TRADE AND DEVELOPMENT
ON SPECIAL AND DIFFERENTIAL TREATMENT**

The present report is submitted on the responsibility of the Chairperson, Mrs. Alberto-Chau Huu, as agreed by the Committee at its regular meeting on 7-8 November 2002.

1. As was noted in the letter from the Chairperson of the SPS Committee to the CTD in January 2002, the SPS Committee first undertook systematic discussions regarding special and differential treatment in the context of the Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement") in the course of its first review of the operation and implementation of the SPS Agreement in 1998-1999. The concerns of developing countries, and the implementation of the special and differential provisions of the SPS Agreement have been a standing agenda item for all regular meetings of the SPS Committee since that time.

2. In the course of the Committee meetings during 2002, no specific papers were submitted by Members for the agenda item on "Implementation of the Provisions for Special and Differential Treatment". At the 19-21 March meeting of the SPS Committee, the Secretariat drew attention to the joint statement issued at Doha by the Directors-General of the WTO, FAO, WHO, OIE and the World Bank with respect to the SPS Agreement, and to the discussions among officials of these organizations of a draft paper by the FAO on a conceptual framework for capacity building in the areas of food safety, animal and plant health. The discussions went beyond the need for participation in standard-setting to the capacity to implement these standards. The need to involve the private sector had been identified, as well as enforcement of the capacity of developing countries to ensure the safety of products which they imported. The organizations shared information on the various training materials which they had developed, and recognized the need to include regional and national donor organizations in discussions at some future date. At the 7-8 November meeting, the Secretariat informed the Committee about the new Standards and Trade Development Facility, established at the WTO with funding from the World Bank. This Facility, which will be operated collaboratively with the OIE, FAO, WHO, Codex and IPPC, is designed to further cooperation among these organizations in providing capacity-building assistance to developing countries in the context of the SPS Agreement.

3. The issue of special and differential treatment was also specifically addressed in the context of the Committee's work on transparency provisions. At the 19-21 March meeting, the SPS Committee adopted revised recommendations regarding the implementation of the transparency provisions of the SPS Agreement. In the course of these discussions, two proposals specifically related to special and differential treatment were considered. One was the proposal from Brazil on transparency related to special and differential treatment, and particularly the need for Members to re-notify measures when the scope of a measure was changed in such a way that trade from developing

countries could be adversely affected. The revised notification procedures adopted by the Committee recommend that a revision of a notification should be submitted in such circumstances, and a further period for comments provided.

4. Also in the context of the revised notification procedures, the representative of Egypt, with the support of a number of developing country Members, proposed that a new box on special and differential treatment be included in the standard notification format. He suggested that any specific provisions of benefit to developing countries contained in the proposed regulation being notified could be identified in this box, including the names of developing countries which might be affected by the proposed measure and the availability of relevant technical assistance. Several Members raised the concern that few regulations contained explicit provisions for special and differential treatment, however, such treatment might nonetheless be provided in response to specific problems raised by developing country exporters. They noted the need for additional time to consider this new proposal.

5. In discussing this proposal at the 25-26 June meeting of the SPS Committee, Egypt suggested that one form of special and differential treatment could be the listing of the names of any developing country Members affected by the measure. Another form of special and differential treatment could be the application of international standards, or when these did not exist, the continued application of previous measures on imports from developing countries until such time as technical assistance permitted developing countries to meet the new requirements. Finally, developed countries could identify the effects of their measures on exports of developing countries and least developed countries. This information was already suggested, to some extent, in boxes 4 and 6 of the existing notification format. Egypt also proposed that this information be provided in the case of emergency notifications. Furthermore, developed countries should also provide technical assistance to help developing and least-developed countries comply with new or modified emergency measures through a period of 6 months.

6. Some Members expressed concerns about the introduction of new boxes in the notification format that might rarely be filled, and noted that other existing boxes already addressed the Egyptian concerns. An alternative approach suggested by Canada was that special and differential provisions provided in response to difficulties identified by developing countries should be identified in the addendum format used to notify the final measure. Some Members noted that the regulatory nature of SPS measures, and the obligation that such measures be no more restrictive to trade than necessary to ensure health protection, limited the scope of special and differential treatment in this area.

7. At the 7-8 November meeting, the SPS Committee discussed the proposal from Canada to address the concerns identified by Egypt. Canada proposed that special and differential treatment be notified *ex post* in the form of an addendum, i.e. once the importing Member and the developing exporting Member had found a solution to a problem identified by the exporting country. Such a solution might take the form of special and differential treatment, technical assistance, or an adjustment to the measure on an MFN basis. Although an importing country could probably not identify possibilities for special and differential treatment in advance, it could try to find a solution to a problem identified by a developing country. Notification of this solution might encourage other Members to address similar concerns. Unless a developing country expressed an interest and identified problems related to a notified measure, their concerns could not be addressed. A number of Members supported the proposal by Canada, however, others expressed the view that it addressed only the issue of transparency of special and differential treatment which had been provided. These Members requested further consideration of how information on special and differential treatment could be made at the time a measure was notified.

8. As previously reported, the discussion of the concerns of developing countries has in the past focussed primarily on the issue of the implementation of Article 4 of the SPS Agreement. The SPS Committee adopted a decision to facilitate the implementation of Article 4 in October 2001

(G/SPS/19), and in March 2002 the Committee agreed on a programme of further work with regard to the recognition of equivalence (G/SPS/20). The Committee has followed this programme of further work during its meetings of 2002. At its 25-26 June meeting, the Committee adopted a format for the notification of agreements recognizing equivalence. Several proposals for the clarification of paragraphs 5, 6 and 7 of the Decision on equivalence were considered by the Committee at its March and June meetings, and texts clarifying paragraphs 5 and 6 were adopted at the November meeting.

9. In the course of 2002, no Member requested a time-limited exception with respect to any obligations under the SPS Agreement, as provided for in Article 10.3.
