

Committee on Sanitary and Phytosanitary Measures

IMPLEMENTATION AND SPECIAL AND DIFFERENTIAL TREATMENT

Report by the Chairman to the General Council

Part I: Implementation

General

1. The primary function of the SPS Committee is to provide a forum for consultations and to carry out the functions necessary to implement the provisions of the SPS Agreement and the furtherance of its objectives (Article 12.1). Consideration of implementation problems and issues, whether of a bilateral or multilateral nature, are thus the major focus of the work of the Committee. At each meeting of the Committee, Members are invited to provide information regarding their implementation, including any problems arising therefrom, and are given the opportunity to raise any specific trade problem they have encountered related to the implementation of the Agreement by other Members. In addition, a standing item on the agenda of the SPS Committee is the "SPS Agreement and Developing Countries – Implementation of the Provisions for Special and Differential Treatment". A number of special and differential treatment implementation issues have been considered by the Committee, either raised by Members directly in the Committee or referred to the Committee by other WTO bodies.

Issues arising from the Doha Ministerial Conference

2. The Doha Ministerial Declaration provides that outstanding implementation issues are to be addressed as a matter of priority by the relevant WTO bodies.¹ These outstanding implementation issues included a proposal by Brazil with regard to the notification of SPS measures.² Furthermore, the Doha Ministerial Decision on Implementation-Related Issues and Concerns instructed the SPS Committee to address the programme to further the implementation of Article 4 of the SPS Agreement on equivalence.³

3. As reported to the Trade Negotiations Committee in November last year, in March 2002, the Committee agreed to revised recommended procedures for implementing the transparency provisions of the SPS Agreement.⁴ These agreed procedures include recommendations regarding the submission by Members of addenda, corrigenda and revisions to their original SPS notifications, as proposed by Brazil.⁵ In accordance with the recommendations, a Member should submit a revision to replace an existing notification when, for example, the scope of application of a notified regulation is extended,

¹ WT/MIN(91)/DEC/1, paragraph 12.

² JOB(01)/152/Rev.1, paragraph 3.

³ WT/MIN(01)/17, paragraph 3.4.

⁴ G/SPS/24.

⁵ G/SPS/7/Rev.2.

either in terms of Members affected or products covered. A Member should provide a further period for comments, normally 60 days, on the revised notification.

4. In October 2001, the SPS Committee adopted a Decision on the Implementation of Article 4 of the SPS Agreement.⁶ At the Fourth Ministerial Conference, Ministers took note of this Decision and instructed the Committee to expeditiously develop a specific programme to further the implementation of Article 4, as foreseen in paragraph 13 of the Committee's Decision.

5. In March 2002, the Committee adopted a work programme that identified particular actions to be undertaken at each of the Committee's informal and regular meetings during 2002 and 2003.⁷

6. The work by the Committee on this issue has progressed regularly in line with the agreed programme. It adopted a format for the notification of Determination of the Recognition of Equivalence of SPS Measures.⁸ It considered information provided by Members on their experiences regarding the implementation of Article 4, as well as information provided by the Codex, OIE and IPPC regarding their work on equivalence. In November 2002, the Committee agreed on a clarification of paragraph 6 of the Decision.⁹ The Committee also adopted a clarification of paragraph 5 at that time, but agreed to continue consideration of suggestions for further clarifications of paragraph 5.¹⁰ In accordance with this agreement, the Committee is currently considering proposals by some Members for further clarification of paragraph 5. Also in keeping with the work programme, the Committee agreed on a clarification of paragraph 7 at its meeting of 24-25 June 2003, on an ad referendum basis. If no objections are communicated before 14 July, this clarification will be adopted. The Committee has thus progressed well towards the completion of the programme of work it adopted, but will of course continue to address issues relating to the implementation of equivalence in the context of the SPS Agreement.

Part II: Special and Differential Treatment

Issues raised directly in the Committee

7. In the context of the Committee's review of the recommended notification procedures during 2002, Egypt proposed that a new box on special and differential treatment be included in the notification formats.¹¹ The objective was to identify, at the time a measure is being developed or modified, the developing countries which might be affected by the new measure and the availability of special and differential treatment or relevant technical assistance. Egypt suggested that one 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.

8. Canada submitted a proposal that special and differential treatment be notified ex post in the form of an addendum to a notification.¹² In accordance with the current recommended procedures, the notification should include identification of the countries which may be affected. An exporting Member with concerns regarding the notified measure should contact the notifying Member, within the comment period, to seek additional information with respect to the notified measure and to identify their concerns. If the exporting Member requests an extension of the comment period, the notifying Member should normally grant an extension of thirty days. If an exporting Member

⁶ G/SPS/19.

⁷ G/SPS/20.

⁸ G/SPS/7/Rev.2/Add.1

⁹ G/SPS/19/Add.1

¹⁰ *Idem.*

¹¹ G/SPS/GEN/358.

¹² G/SPS/W/127.

identifies potential difficulties which its exports might face in complying with the proposed new regulation and requests discussions, the notifying Member would enter into bilateral discussions to attempt to resolve the issue of concern. When the bilateral discussions conclude, the notifying Member would submit an addendum to its original notification which would indicate any modifications to the notified regulation, whether special and differential treatment was requested, the nature of such treatment, if provided, and an explanation if special and differential treatment was not provided.

9. The Committee adopted the Canadian proposal in principle, at its meeting of April 2003, subject to further elaboration of the procedures to be followed. Such elaboration was considered by the Committee at its meeting in June 2003¹³, however the Committee was unable to reach final agreement on this matter. The issue will stay on the agenda of the Committee.

10. A number of other Members have suggested additional ways to enhance the implementation of special and differential treatment. One suggestion is for assistance to reinforce the functioning of SPS enquiry points in developing countries, including the creation of national networks, so as to ensure that developing country Members can identify when a new measure may pose potential problems for their exports and seek appropriate assistance. Another suggestion is with regard to how a notifying Member could identify whether a new measure might have negative effects on the exports of developing country Members, so that potentially affected Members could be alerted. These ideas and others are under active consideration by the Committee, and Members are encouraged to submit specific proposals in this regard. The Committee agreed to hold a special meeting on the operation of enquiry points in the margins of its next meetings of 27-30 October 2003.

Issues referred to the Committee by the General Council

11. On 20 May 2003, the Chairman of the General Council referred five proposals relating to special and differential treatment to the SPS Committee.¹⁴ Some of these proposals address a number of elements, so that at least twelve specific recommendations are to be considered by the Committee. The proposals were referred to the SPS Committee with the understanding and direction, *inter alia*, that they be considered as soon as possible as part of the on-going work of the Committee and on the basis of a specifically drawn up time schedule of work.

12. Members were advised well in advance of my intention to address these proposals at an informal meeting on 23 June, as well as at the regular meeting of the Committee on 24-25 June. A proposed schedule of work with regard to these proposals was circulated in advance of the 23 June meeting.¹⁵ The Committee adopted a work plan on 24 June 2003 to further pursue this matter.¹⁶

13. At the informal and regular meetings of 23-25 June, the Committee undertook a preliminary consideration of the proposals, with a focus on the specific problems to be addressed. The proposals were discussed in the context of the specific provision they addressed, and within the framework of the Committee's on-going consideration of special and differential treatment, including the proposals submitted by Egypt and by Canada. In the discussions, proponents of several proposals argued that they would make the special and differential treatment provisions more operational and help developing countries comply with importing countries' SPS measures. A number of developing country Members noted their growing interest in trading with other developing countries, and their concern that the proposals for mandatory technical assistance to be provided by developed countries to specific developing country trading partners could result in discrimination among developing

¹³ G/SPS/W/132.

¹⁴ JOB(03)/100.

¹⁵ G/SPS/W/135.

¹⁶ G/SPS/26.

countries. While recognizing the importance of needs-based technical assistance, other delegations also disagreed with the suggested language to make technical assistance mandatory. In addition, a number of delegations suggested that special and differential treatment and technical assistance could be provided by some developing countries to other developing countries. Some Members also noted that justified SPS measures should not be withdrawn simply because some Members might have difficulty complying with the requirement.

14. In accordance with the agreed work plan, Members have been requested to submit specific comments on these proposals, including specific suggestions to address any differences of views regarding the proposals, before 30 September 2003. These comments and specific suggestions will be considered by the Committee at its meetings of 27-30 October, with the objective of reaching decisions on as many issues as possible. Following that meeting, I will inform the General Council of the progress of work in the Committee on these matters.
