

SPS AND DEVELOPING COUNTRIES

**SPECIAL AND DIFFERENTIAL TREATMENT, TECHNICAL ASSISTANCE,
TRANSPARENCY**

Submission by Papua New Guinea

The following communication, dated 3 March 2004, is being circulated at the request of the Delegation of Papua New Guinea.

A. INTRODUCTION

1. Papua New Guinea faces increasing difficulties in dealing with sanitary and phytosanitary standards and requirements imposed by major trading partners, especially developed country WTO Members. Many of these SPS measures are much more restrictive than internationally accepted standards and result in many instances in *de facto* trade barriers, affecting Papua New Guinea's ability to export more than do tariffs.

2. Around 90 per cent of tariff lines for Papua New Guinea's exports are complemented by a certain level of such SPS measures. Together with tariff escalation and tariff peaks, they are the actual factors constraining the fuller development of exports in the key sectors for the national economy: agriculture, fisheries and forestry.

3. Moreover, Papua New Guinea, like many other developing Members, and especially the small and vulnerable economies and the least-developed countries, cannot significantly benefit from the provisions of the SPS Agreement. Problems include:

- given Government's priorities in terms of health and education development and improvement of basic infrastructures, scarce financial and human resources cannot be devoted to institutional improvements and to testing and certification of quality and safety in order to comply with SPS import requirements of many trading partners. A recent example is the inability to participate in the special meetings in Geneva on the operation of enquiry points in October 2003;
- the lack of permanent representation in Geneva prevents Papua New Guinea from participating consistently in the discussions of the SPS Committee and to defend national interests in the international arena;
- the size and financial capacity of the public sector will make it extremely difficult to cope with the flood of SPS notifications submitted by trading partners, thus losing the opportunity to comment on the notifications within the allowed 60-day time period;

- trade-related technical assistance provided by the WTO Secretariat or by donors tends to focus on broader issues whereas Papua New Guinea still needs capacity-building in basic areas like implementation of WTO rules, negotiating skills, and dissemination of information on international agreements.

4. Papua New Guinea is committed to improving its use and understanding of the SPS Agreement in order to gain better market access conditions, and intends to be more proactive in the work of the SPS Committee: by raising any specific trade concern related to notifications and implementation of the Agreement by other Members; by submitting proposals on the current negotiations and clarifications of specific articles.

5. To achieve that, Papua New Guinea needs special and differential treatment (SDT) which is crucial for all developing countries. "Best-endeavour" language is not enough and SDT provisions should be strengthened and made more precise, effective and operational in all WTO Agreements, especially given that negotiations on the overall framework for SDT missed so many deadlines and are stuck at the Trade and Development Committee. The way ahead is implementation of the SDT concept agreement by agreement, article by article, annex by annex, interpretation by interpretation (as also the General Council seems to imply by referring implementation issues on SDT to specific WTO bodies). In the following, Papua New Guinea suggests how to strengthen SDT provisions in the context of the SPS Agreement.

B. SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS REFERRED BY THE GENERAL COUNCIL

6. On 20 May 2003, the Chairman of the General Council referred five proposals relating to special and differential treatment to the SPS Committee¹ and in June the Committee adopted a work plan for further consideration of these proposals.² Differences remain marked among Members even after the Committee meetings in October, therefore, further comments and specific suggestions on the five proposals will be considered at the March 2004 meeting.³

7. Papua New Guinea fully understands the concern expressed by a number of Members that legitimate SPS measures for health protection should not be withdrawn because they might be difficult for some Members to meet. On the other hand, all Members must recognize that SPS measures imposed by certain developed countries are too stringent, and developing countries often cannot meet such requirements for lack of human and financial resources. Developing countries should therefore be provided with concrete assistance to comply with SPS measures, and Articles 9 and 10 made more operational to prevent such measures becoming *de facto* trade barriers.

8. Papua New Guinea wishes to join India and other developing countries in supporting proposals A, F and K on amending Technical Assistance and Special and Differential Treatment provisions of the SPS Agreement.⁴ Such amendments offer a balance between the need for health protection and the recognition of the much needed assistance and special treatment for developing countries. To avoid complicating the already long debate conducted by the SPS Committee with new language, no changes are suggested to the wording of A, F and K, but an interpretation of the proposed text is put forward, in order to fully achieve the spirit and objective of Articles 9 and 10.

9. Technical Assistance should not be intended as short term, ad hoc provision of seminars and courses only, as it is currently shaped in most donors' activities, but rather as continuous cooperation between relevant national authorities. And not only through supply of technology and facilities, but

¹ JOB(03)/100.

² G/SPS/26.

³ G/SPS/30.

⁴ G/SPS/W/135.

also through consistent training of officers over time up to the establishment of appropriate institutions for certification and labelling where officials from involved developed country Members initially operate in a local-foreign partnership with the developing country government.

10. In terms of SDT, taking "account of the special needs of developing country Members" should translate into careful consideration of country-specific institutional and economic weaknesses and consequent action by the developed country Member in applying SPS measures. This would imply provision of "free of cost" assistance and granting of longer periods for full compliance to small and vulnerable economies and least-developed countries, where size, remoteness, economic vulnerability and reliance on a limited number of tradable goods may cause a restrictive measure to disrupt large shares of export earnings.

C. TRANSPARENCY

11. Alongside the difficulties in complying with the requirements of trade partners, the other major problem faced by developing countries with respect to SPS measures is the inability to keep pace with new regulations being notified and to influence the content of them. Many developing countries, and especially the least-developed and small and vulnerable among them, do not have the administrative capacity to deal with the flood of notifications submitted by trade partners, and therefore lose the opportunity to comment on the notifications and to react properly to new restrictions. Because they cannot influence regulations *ex ante*, SPS measures regularly fail to take into account their special needs, and this increases the likelihood for countries like Papua New Guinea of being unable to comply.

12. Similar concerns led the Committee to address the issue of transparency with the objective of improving the provisions of the SPS Agreement on formulation of new measures, especially in the context of special and differential treatment for developing countries. Papua New Guinea wishes to commend the effort of those Members, including Egypt, Canada, Mexico and China, who have submitted proposals to strengthen transparency, therefore preventing unnecessary international trade barriers and fostering harmonization, with a particular focus on the special needs of developing countries.

13. Papua New Guinea believes that all important issues raised in the proposals submitted by Canada, Egypt and Mexico should be taken into account to strengthen the provisions of the SPS Agreement in favour of developing countries. Improvements in the procedures for submission and handling of notifications, in the notification formats and in the "pre-notification" of measures should receive equal weight in the discussions of the SPS Committee and indeed should be considered as complementary in order to fully implement the SDT component of the Agreement. Therefore, Papua New Guinea proposes that the Committee accept the three mechanisms presented in documents G/SPS/W/132/Rev.1, G/SPS/GEN/358 and G/SPS/W/136, with few marginal amendments.

14. With respect to the procedures to be followed to enhance transparency of SDT, the revised elaboration by the Secretariat of the Canadian proposal, already adopted in principle, is acceptable to Papua New Guinea. The language submitted by the Secretariat makes Article 10.1 more operational and effective. The proposal by the United States⁵, instead, includes amendments which diminish the SDT element of the notification procedures:

- "should consider granting an extension of thirty days" (instead of "should normally grant an extension") in Step 3, "may request an opportunity to discuss the potential difficulty with the notifying Member" (instead of "the notifying Member will contact the appropriate officials in the exporting Member") in Step 5, and "possibly through

⁵ G/SPS/W/141

specifically-directed technical assistance in Step 6", represent "best endeavour" language, setting no mandatory commitments on the side of the notifying importing country to provide the required SDT to the exporting developing country (possibly in contrast to the mandatory nature of Article 10.1);

- the proposals of providing "justification for the request for extension" of the comment period and of additional obligations for written documents on the part of the exporting Member constitute an administrative burden for many developing countries and are not in the spirit of SDT.

15. Without amending the text of G/SPS/W/132/Rev.1 and, therefore, without further delaying the adoption of it by the Committee, Papua New Guinea would like to suggest that this new decision on submission and handling of notifications be considered applicable to previously existing SPS regulations which are harming export interests of developing countries, especially the small and vulnerable and least developed among them. The spirit of steps 6 and 7 should be applied to measures already enforced by developed Members, considering the fact that several developing country Members lag behind on the proper monitoring of SPS requirements or started only recently to closely follow the work of the Committee. If in some instances this may not be feasible, procedures included in step 6 and 7 should at least apply on a demand-driven basis, for the most important products of export interest to each developing country (based on export shares statistics), and especially in the case of countries relying on few commodities for export earnings.

16. Another effective measure to assist developing countries in their effort to benefit from the provisions of the SPS Agreement is the proposal by Egypt for the inclusion of information on available special and differential treatment in the notification formats. The objective of the additional box, as presented in document G/SPS/GEN/358, is 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. Papua New Guinea fully supports the proposal by Egypt to add the following information in a separate box of the notification formats: "exporting developing countries interested in the notified measures"; "type of technical requirements likely to be needed to comply with the notified measures"; "type of SDT measure that the notifying country is ready to provide before going into bilateral consultation"; "types and the source of technical and financial assistance that the notifying country is ready to provide upon bilateral requests".

17. As the Egyptian proposal refers to notified measures involving regulations that go beyond the level set by international standards, guidelines or recommendations, Papua New Guinea proposes that countries reporting SPS regulations not substantially different from relevant international standards and notified only for sake of transparency be exempted from filling the new SDT box. This would limit additional administrative burden for the notifying Member, and could be implemented by simply marking the appropriate reference of existing standard, guideline or recommendation while indicating "none" in the space for "deviations from the international standard, guideline or recommendation" (item 8 of the Recommended Transparency Procedures⁶). It is noted that such practice would also address the problem identified by China in the analysis on SPS notifications in 2002⁷, which showed that confusion is often created by Members notifying, for pure sake of transparency, also measures that are based on relevant international standards ("the present notification format does not take this situation into consideration and therefore it results in some misunderstanding").

18. With the objective of achieving a compromise, Papua New Guinea would be ready to consider adopting the mechanism proposed by Egypt only in the case of routine notifications

⁶ G/SPS/7/Rev.2.

⁷ G/SPS/GEN/378, Paragraph 8.

(Annex B, paragraph 5) if the Committee concluded that in the case of urgent problems of health protection the notifying Member should be exempted from providing the information on interested developing countries and technical requirements and available special and differential treatment. In this second option, the SDT box would not be included in formats for notification of emergency measures (Annex B, paragraph 6).

19. Finally, Papua New Guinea supports the suggestion under consideration by the Committee presented by Mexico for the pre-notification of SPS measures being developed by Members, and the description of the objective and the products to be covered. The proposal in document G/SPS/W/136 is a very good step in the direction of enhancing transparency and would be particularly useful for developing countries, especially the small and vulnerable and least developed among them. By receiving at the beginning of the year information on the technical sanitary and phytosanitary regulations to be submitted by trading partners during the year, relevant authorities could plan in advance which SPS requirements and which Member countries to focus on. For the most important of them, even countries like Papua New Guinea where the human and financial resources to be devoted to SPS regulations are very limited, could submit comments to be discussed with the proposing Member.

20. While recognizing the importance of the Mexican proposal, Papua New Guinea suggests that such a mechanism be initially implemented by developed country Members and, on a voluntary basis, by those developing country Members like Mexico which are ready to do so because they regularly work on such annual advance publication of planned SPS requirements. Given resource constraints and the administrative burden that such planning would imply, a longer implementation period should be granted for the "pre-notification" to other developing countries, and particularly to the small and vulnerable and least developed among them.

D. CONCLUSION

21. Papua New Guinea believes that the simultaneous operation of the proposals described in sections B and C would represent a turning point in the way developing countries benefit from the SPS Agreement as part of their efforts towards integration into the global economy. The mandate of Article 10 for Special and Differential Treatment can be fully achieved only if the SPS Committee endorses the mandatory nature of Articles 9 and 10 (as suggested by proposals A, F and K) and the improvements in the procedures for submission and handling of notifications, in the notification formats and in the "pre-notification" of measures. All these amendments should be viewed as a single new package in favour of developing countries, as the proposals by Canada, Egypt and Mexico could be considered part of the implementation of the new Articles 9 and 10 as shaped by proposals A, K, and F.

22. It has to be noted that the views expressed in this submission reflect some of the concerns of small and vulnerable economies, where institutional and economic weaknesses bring both inability to comply with many SPS measures imposed by trading partners and difficulties in screening notifications and influencing developments at the SPS Committee. Therefore, as a concluding remark Papua New Guinea would like to emphasize that the following suggestions included in document WT/COMTD/SE/W/3⁸ are still on the table for consideration by the Dedicated Session of the Committee on Trade and Development and that they are likely to be referred to the SPS Committee once the Work Programme on Small Economies is completed:

- "If an exporting small economy identifies specific problems of inadequate technology and infrastructure in complying with the requirements on sanitary and phytosanitary

⁸ "Concrete Proposals to address certain specific concerns and problems affecting the Trade of Small Economies".

measures and/or with the technical regulations and standards of an importing developed country, the latter shall provide the relevant technology and technical facilities on preferential and non-commercial terms, preferably free of costs."

- "There should be appropriate flexibility for small economies in dealing with time-frames and notifications requirements."
- "It should also be explicitly recognised that a regional body can be designated by any interested small economy as the competent authority for the implementation of the provisions of the SPS and TBT Agreements."
