

**Committee on Sanitary and Phytosanitary Measures**

**SPECIAL AND DIFFERENTIAL TREATMENT**

Note by the Secretariat

1. In preparation for the discussion on special and differential treatment at the 21-22 June 2000 meeting of the SPS Committee, the Secretariat was requested to prepare a paper summarizing the discussion to date of special and differential treatment in the context of the SPS Agreement. This note reviews the information provided by Members and observers at meetings, particularly during the discussions related to the three-year review of the SPS Agreement, as well as information circulated in preparation for the 1999 Ministerial Conference. Only issues directly related to special and differential treatment were included, since other matters identified as of interest to developing countries, such as equivalence, will be addressed at subsequent Committee meetings.

**(a) General comments on special and differential treatment (Article 10)**

2. In its report on the review of the SPS Agreement, the Committee noted that it had no information on the extent to which the special and differential treatment provided for in Articles 10.1 and 10.2 had been accorded to developing country Members, nor information on the extent to which developing country Members had made use of any special and differential treatment accorded to them.<sup>1</sup> The Committee also noted the proposals submitted by some developing country Members in the context of the review and encouraged Members to further the practical implementation of Articles 10.1 and 10.2. In particular, the Committee stressed that Members should, in accordance with the provisions of Article 10.2, accord longer time-frames for compliance on products of interest to developing country Members.

3. In various statements and submissions, Egypt, Brazil, India, Mexico and the Philippines suggested that either Article 10 of the Agreement should be made mandatory and/or that specific guidelines should be developed since this Article had not been widely implemented.<sup>2</sup>

**(b) Taking into account the special needs of developing countries (Article 10.1)**

4. Cuba, the Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Malaysia, Nigeria, Pakistan, Sri Lanka and Uganda raised concerns that although Article 10.1 provided that the special needs of developing countries shall be taken into account in the preparation and application of SPS measures, this had rarely been done.<sup>3</sup> They proposed that if an SPS measure created a problem for more than one developing country, then it should be withdrawn. India suggested that if an SPS measure created problems for several developing countries but could not be withdrawn, the country adopting it should reconsider it and provide the necessary technical assistance to enable developing countries to adapt. In India's view, SPS measures were often invoked in a discriminatory manner to

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<sup>1</sup> G/SPS/12 refers.

<sup>2</sup> G/SPS/R/15, paras. 34-37, G/SPS/GEN/85 and G/SPS/GEN/128 refer.

<sup>3</sup> In the context of the preparations for the 1999 Ministerial Conference, WT/GC/W/109, WT/GC/W/202 and WT/GC/W/354 refer.

the detriment of international trade, particularly trade originating from developing and least-developed countries. Developing country constraints such as lack of adequate infrastructure, technology, finance and skilled manpower led to difficulties in complying with trading partners' SPS measures. This resulted in restricted market access, especially since countries often found it difficult to adjust to frequently changing SPS measures.<sup>4</sup>

5. Guatemala stated that for developing countries, compliance with commitments under the SPS Agreement was not necessarily hindered by lack of financial resources, equipment or sophisticated infrastructures, but by a lack of understanding of the Agreement, the absence of an operational framework for the authorities responsible for administering the Agreement; and by limited participation in competent bodies and in the WTO's SPS Committee.<sup>5</sup>

6. In October 1998, the observer from the Codex informed the Committee that the Codex Committee on General Principles (CCGP) had discussed special and differential treatment for developing countries.<sup>6</sup> The CCGP stressed that it was important not to differentiate standards and compromise consumer safety aspects in the application of special and differential treatment to developing countries.

**(c) Longer time frames for compliance (Article 10.2)**

7. Egypt, Brazil, Mexico and the Philippines highlighted that there was little information regarding whether Members were, in fact, providing longer time frames for compliance on products of interest to developing countries.<sup>7</sup> Cuba, the Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Malaysia, Nigeria, Pakistan, Sri Lanka and Uganda suggested that Article 10.2 should be modified to include a mandatory period of at least 12 months between the date of notification and the entry into force for SPS measures on products from developing countries.<sup>8</sup> Zambia, Jamaica, Kenya, Tanzania and Zimbabwe informally supported the view that Article 10.2 had not been complied with, and proposed making it more binding, if necessary.

**(d) Time-limited exceptions (Article 10.3)**

8. India proposed extending the transition period during which developing and least-developed countries could delay the implementation of the Agreement. In India's view, this would allow developing country Members to gradually bring their standards into conformity with international standards, while also giving them time to forge equivalence agreements with developed country Members. This could be done in the context of Article 10.3, which provided for time-limited exceptions.<sup>9</sup>

**(e) Participation in the relevant international organizations (Article 10.4)**

9. Egypt, Brazil, India, Mexico and the Philippines stressed that the participation of developing countries in international standard-setting bodies remained inadequate.<sup>10</sup> As a result, international standards were often adopted without taking into account the problems and constraints facing developing countries. India noted that the lack of specific international standards for many products

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<sup>4</sup> G/SPS/GEN/85 refers.

<sup>5</sup> G/SPS/R/17, para. 30; G/SPS/GEN/157 refers.

<sup>6</sup> G/SPS/R/12, para. 73.

<sup>7</sup> G/SPS/R/15, paras. 34-37, G/SPS/GEN/128 refers.

<sup>8</sup> In the context of the preparations for the 1999 Ministerial Conference, WT/GC/W/109, WT/GC/W/202 and WT/GC/W/354 refer.

<sup>9</sup> G/SPS/GEN/85 refers.

<sup>10</sup> G/SPS/R/15, paras. 34-37, G/SPS/GEN/128 and WT/GC/W/202 (preparation for the 1999 Ministerial Conference) refer.

of interest to developing countries, as well as many importing countries' failure to specify their appropriate levels of protection, were hurdles to increasing exports.<sup>11</sup>

10. Kenya and Egypt made the point that active participation in standard setting required adequate institutional infrastructure, human and financial resources and effective follow-up capabilities.<sup>12</sup> Jamaica proposed that WTO Members should establish a joint fund with the purpose of assisting developing countries to increase their participation in the work of the SPS Committee and in the international standard-setting bodies.<sup>13</sup>

11. Cuba, the Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Malaysia, Nigeria, Pakistan, Sri Lanka and Uganda suggested that standards should only be recognized by the Agreement if the participation of countries from different geographical areas and levels of development had been ensured in their formulation, and if the specific conditions prevailing in developing countries had been taken into account.<sup>14</sup> This proposal was informally supported by Jamaica, Kenya, Tanzania, Zambia and Zimbabwe.

12. The observer from Codex, reporting on the twenty-third session of the Codex Alimentarius Commission in July 1999, emphasized that 103 member countries had participated, including a large number of developing countries.<sup>15</sup>

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<sup>11</sup> G/SPS/GEN/85 refers.

<sup>12</sup> In the context of the preparations for the 1999 Ministerial Conference, WT/GC/W/233 and WT/GC/W/109 refer.

<sup>13</sup> In the context of the preparations for the 1999 Ministerial Conference, WT/GC/W/371 refers.

<sup>14</sup> In the context of the preparations for the 1999 Ministerial Conference, WT/GC/W/354 refers.

<sup>15</sup> Codex Alimentarius Commission, *Report of the Twenty-Third Session*, Rome, 28 June – 3 July 1999.