

Committee on Sanitary and Phytosanitary Measures

**ELABORATION OF THE PROPOSAL TO ENHANCE TRANSPARENCY
OF SPECIAL AND DIFFERENTIAL TREATMENT IN FAVOUR
OF DEVELOPING COUNTRY MEMBERS**

Based on discussions of the Meeting of the SPS Committee on 18 March 2004

Note by the Secretariat¹

Revision

1. In October 2002, Canada submitted a proposal to enhance the transparency of special and differential treatment within the SPS Agreement (G/SPS/W/127). This proposal builds upon a proposal by Egypt for enhanced transparency through modification of the notification formats (G/SPS/GEN/358). At its meeting of 2-3 April 2003, the SPS Committee adopted, in principle, the Canadian proposal as one step for immediate implementation by Members, subject to further elaboration of the procedures to be followed. This document proposes such further elaboration.
2. Members suggesting specific modifications to the proposed text are requested to submit these to the Secretariat prior to 30 April 2004.
3. The proposed procedure essentially follows the relevant current practices and recommendations regarding the submission and handling of notifications as described in G/SPS/7/Rev.2, with new actions included as Steps 5, 6 and 7.
4. Following one year of the adoption of this procedure, the Committee shall review the proposed notification process to evaluate its implementation, and determine whether changes are required and/or its continuance is warranted.
5. This procedure is without prejudice to the rights and obligations of Members under Article 10.1 of the SPS Agreement. In adopting the Canadian proposal, the Committee recognized that this would not fully resolve the issue of special and differential treatment, but that this was one step in addressing the problem of implementation of the special and differential treatment provisions of the Agreement. The Committee also agreed to consider other proposals and possible actions.

Step 1. A Member preparing a new or a revision to an existing SPS regulation shall submit a notification to the WTO Secretariat, following the guidance provided in G/SPS/7/Rev.2. The notification should be made when a draft with the complete text of the proposed regulation is available, and when amendments can still be introduced and comments taken into account. The notifying Member should provide in Box 3 of the notification format a clear description of the

¹ This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights or obligations under the WTO.

products covered, including tariff item numbers where possible. The notifying Member should also complete Box 4, identifying the geographical regions or countries likely to be affected by the notified regulation to the extent relevant or practicable. The notifying Member should identify in Box 12 the final date for receiving comments and the agency responsible for handling comments. The Member shall normally allow a period of at least 60 days for comment, except for proposed measures which facilitate trade. Any Member which is able to provide a time-limit beyond 60 days is encouraged to do so.

Step 2. The Secretariat will circulate the notification with the minimal delay possible. The Secretariat will provide paper copies of the notification to the permanent missions of all WTO Members, and mail paper copies to one other designated address if so requested by a Member. The notification will be posted on both the "Members' Only" and the public web sites of the WTO, and will be electronically sent within one week of circulation to all addresses on the SPS self-subscribing electronic mailing list (in the language received by the Secretariat). The notification will be included in the monthly summary of SPS notifications circulated by the Secretariat. If a developing country Member has difficulties in receiving and distributing notifications after receipt, the Member should inform the Secretariat thereof and propose how the national enquiry point could be improved.

Step 3. If a Member with an interest in exporting the products affected by the notification identifies a concern with the content of the notification, the exporting Member 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 grant requests for extension of the comment period wherever practicable, in particular with regard to notifications relating to products of particular interest to developing country Members, where there have been delays in receiving and translating the relevant documents or where there is a need for further clarification of the measure notified. A 30-day extension should normally be provided.

Step 4. The notifying Member should acknowledge receipt of the request for an extension of the comment period, or for additional information, and explain within a reasonable period of time, and at the earliest possible date before the adoption of the measure, to any Member from which it has received comments, how it will take these comments into account and, where appropriate, provide additional relevant information on the proposed sanitary or phytosanitary regulations.

Step 5. If an exporting Member identifies significant difficulties with the proposed measure, that Member should submit comments and may request an opportunity to discuss the potential difficulty with the notifying Member. The notifying Member will contact the appropriate officials of the exporting Member and enter into bilateral discussions to attempt to resolve the issue of concern. These discussions may lead an exporting developing country Member to request special and differential treatment and/or technical assistance, and the notifying Member to examine whether and how the identified problem could best be addressed to take into account the special needs of the interested exporting developing country Member. Requests should be made in writing.

Step 6. If, following the entry into force of a new regulation (including an emergency measure), an exporting Member identifies significant difficulties which its exports face in complying with the new regulation, it may request an opportunity to discuss its difficulties with the importing Member to attempt to resolve the issue of concern, especially where no time, or an insufficient period of time, has been provided for comments. These discussions may lead an exporting developing country Member to request special and differential treatment and/or technical assistance to enable it to more readily satisfy the requirements of the measure. The discussions also may lead the importing Member to examine whether and how the identified problem could best be addressed to take into account the special needs of the interested exporting developing country Member.

Step 7. When a decision is taken on whether and how special and differential treatment may be provided for a final measure in response to specific requests, the notifying Member should submit to the WTO Secretariat an Addendum to its original notification.² The Addendum shall indicate: (1) if special and differential treatment was requested; (2) the name(s) of Member(s) that requested special and differential treatment; (3) if special and differential treatment was provided, the form of such treatment; (4) if not provided, the Addendum shall indicate why special and differential treatment was not provided and whether technical assistance or any other solution was found to address the identified concern. A proposed format for the Addendum is contained in Annex 1.

Step 8. The Addendum to the notification shall be circulated by the WTO Secretariat in the same manner as the notification.

² [The Committee recognizes that, for some developing country Members, resource constraints may make it difficult to provide addenda to notifications.]

ANNEX 1

WORLD TRADE

ORGANIZATION

G/SPS/N/COUNTRY/#/Add.#

date of distribution

(##-####)

Committee on Sanitary and Phytosanitary Measures

Original:

NOTIFICATION

Addendum

The following communication, dated DD/MM/YY has been received from [Member].

Title outlining what the SPS measure or product is

[Text describing any modification to the notified measure.]

Special and Differential Treatment

Text (1) indicating if special and differential treatment was requested; (2) providing the name(s) of the Member(s) that requested special and differential treatment; (3) if special and differential treatment was provided, describing how such treatment was provided, including what form it took; (4) if special and differential treatment was not provided, indicating why it was not provided and whether technical assistance or any other solution was found to address the identified concern.

Where the notified document can be obtained from – include contact name, agency, full address, telephone, facsimile, and e-mail as appropriate.
