

Committee on Sanitary and Phytosanitary Measures

**SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS –
SCHEDULE OF WORK**

Proposal by the Chairman

1. In a letter dated 20 May 2003, the Chairman of the General Council referred specific proposals relating to special and differential treatment to the SPS Committee (the proposals are detailed in the Attachment). Two other proposals, relating to Article 10.3 of the SPS Agreement, were considered to be proposals on which there appeared a greater likelihood of the General Council making recommendations. One proposal, on Article 10.2, was characterized as a proposal on which currently there appeared to be a wide divergence of views, and on which progress might not be possible without a certain degree of redrafting of the original text presented.

2. 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. I propose that the Committee agree to the following schedule of work with regard to these proposals:

Informal and regular meetings of 23-25 June 2003:

3. Preliminary consideration of the proposals, with a focus on the specific problems to be addressed. To the extent possible, these proposals should be considered within the context of the Committee's on-going consideration of S&D proposals, including those submitted by Egypt (G/SPS/GEN/358) and by Canada (G/SPS/W/127 and G/SPS/W/132). The Committee will be invited to adopt the proposal by Canada, on the basis of the further elaboration suggested by the Secretariat.

4. Immediately following the regular meetings of 24-25 June, the Chairman would submit a report, on his own responsibility, to the General Council regarding the work of the SPS Committee on S&D and implementation issues.

Before 30 September 2003:

5. Submission by Members of specific comments on the S&D proposals, including specific suggestions to address any differences of views regarding the proposals.

Informal and formal meetings of 28-30 October 2003:

6. Consideration by the Committee of the comments and specific suggestions submitted, with the objective of reaching tentative agreement on the elaboration of texts for decision on as many issues as possible.

Before 30 November 2003

7. Circulation of proposed texts of decisions by the Chairman on the basis of discussions in the SPS Committee. Submission by Members of specific suggestions for on other issues where differences remain

8. Immediately following the regular meeting, the Chairman would submit a report, on his own responsibility, to the General Council regarding the work of the SPS Committee on S&D and implementation issues.

First informal and formal meetings of 2004:

9. Consideration by the Committee of the proposed texts of decisions with a view to adopting as many of these as possible. Consideration by the Committee of the specific recommendations submitted, with the objective of reaching tentative agreement on the elaboration of texts for decision on as many of the remaining issues as possible.

10. Immediately following the regular meeting, the Chairman would submit a report, on his own responsibility, to the General Council regarding the work of the SPS Committee on S&D and implementation issues.

ATTACHMENT

The proposals which have been referred to the Committee are included in Job(03)/100. Some of the proposals include several distinct elements, which may ultimately be addressed separately. The proposals are reproduced below element-by-element, with an indication of the proposed action vis-à-vis the existing provision. For ease of reference, the current text of the Article to which they refer is provided.

Article 9

Technical Assistance

1. *Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.*

2. *Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.*

Proposal A (TN/CTD/W/2) is to make the following changes to Article 9.2:

"Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall ~~consider providing~~ **provide** such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved. **If an exporting developing country Member identifies specific problems of inadequate technology and infrastructure in fulfilling the sanitary or phytosanitary requirements of an importing developed country Member, the latter shall provide the former with relevant technology and technical facilities on preferential and non-commercial terms, preferably free of cost, keeping in view the development, financial and trade needs of the exporting developing country Member.**"

Proposal B (TN/CTD/W/3/Rev.2) suggests an interpretation of Article 9.2:

The phrase "substantial investments" in Article 9.2 shall be construed relative to resources of concerned government departments in developing and least-developed country Members and to their development needs. Any changes that would require additional resources to existing levels of current expenditure or their restructuring, or additional training or staffing, shall be construed to amount to "substantial investments".

Proposal C (TN/CTD/W/3/Rev.2) implies an addition to Article 9.2:

Where the importing Member does not actually provide such technical assistance, that Member shall withdraw the measures immediately and unconditionally; or the importing Member shall compensate the exporting developing country Members for loss resulting directly or indirectly from the measures.

Proposal D (TN/CTD/W/3/Rev.2) suggests an interpretation of Article 9.2:

It is understood that technical assistance shall be fully funded technical assistance and shall not entail financial obligations on the part of the exporting developing and least-developed country Members.

Proposal E (TN/CTD/W/3/Rev.2) implies an addition to Article 9.2:

It is agreed that the WTO shall recommend that impact assessments shall be conducted to determine the likely effect on the trade of developing and least-developed country Members for any proposed standards before adoption, and if the impact would be adverse, the standards would not become applicable until it is established that developing and least-developed country Members that would be affected have acquired the capacity to beneficially comply with them.

See also Proposals I and J below.

Article 10

Special and Differential Treatment

1. *In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.*
2. *Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.*
3. *With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.*
4. *Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.*

Proposal F (TN/CTD/W/2) is to add the following to Article 10.1:

"If an exporting developing country Member identifies specific problems in complying with a sanitary or phytosanitary measures of an importing developed country Member, the latter shall upon request enter into consultations with a view to finding a mutually satisfactory solution.

In this regard, such special needs shall include securing and enhancing current levels of exports from developing and least developed country members, maintain their market shares in their export markets, as well as developing their technological and infrastructural capabilities. While notifying a measure, Members shall, *inter-alia*, indicate the following: (i) systems and/or equivalent systems that

could be used to comply with such a measure; (ii) the names of the developing and least-developed country Members that could be affected by the applied measure."

Proposal G (TN/CTD/W/3/Rev.2) proposes an interpretation of Article 10.1:

The requirement to "take account of the special needs of developing country Members, and in particular least developed country Members" in Article 10.1 shall be understood to mean that Members shall either withdraw measures that adversely affect any developing and least-developed country Members or which they find difficult to comply with, or shall provide the technical and financial resources necessary for the developing and least-developed country Members to comply with the measures.

Proposal H (TN/CTD/W/3/Rev.2) proposes an interpretation of Article 10.1 which is also related to the transparency provisions.

The requirement shall be further understood to mean that Members shall always initiate consultations in the Committee whenever they propose or intend to take any measures that are likely to affect imports from developing and least-developed country Members. In the consultations, Members shall establish whether or not the proposed or intended measures, if justified under the Agreement, would adversely affect any developing and least-developed country Members.

Proposal I (TN/CTD/W/3/Rev.2) would not modify the SPS Agreement, and is related to Article 10.4 and Article 9.2:

Members shall establish a facility within the Global Trust Fund for ensuring that:

- (i) developing and least-developed country Members have the financial and technical capacity to meet the requirements under the Agreement;
- (ii) delegations from developing and least-developed country Members attend and effectively participate in meetings of the Committee and relevant international standard setting organisations;
- (iii) developing and least-developed country Members effectively utilise the flexibility under the Agreement; and
- (iv) measures adopted under the Agreement do not contravene the rights of developing and least developed country Members.

Proposal J (TN/CTD/W/3/Rev.2) is primarily related to Articles 9.1 and 9.2:

It is understood that technology transfer and any technical and financial assistance under the Agreement to developing and least-developed country Members shall be cost free.

Proposal K (TN/CTD/W/6) proposes an interpretation of Article 10.4:

In Article 10.4 the term "should" be read to express "duty" rather than mere exhortation. This could be clarified through an authoritative interpretation under Article IX.2 of the Marrakesh Agreement Establishing the WTO.
