

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

Proposal by the United States

1. In October 2002, Canada submitted a proposal to enhance the transparency of special and differential treatment under the implementation of the SPS Agreement (G/SPS/W/127). At its meeting of 2-3 April 2003, the SPS Committee adopted in principle the Canadian proposal, subject to further elaboration of the procedures. This document proposes such further elaboration and revises steps 3, 4, 5, 6, and 7 of procedures presented in G/SPS/W/132/Rev.1.

2. The United States has carefully considered these revisions in order to make these procedures meaningful to identify opportunities for consideration of special and differential treatment by members and to be consistent with domestic statutory requirements under which US regulatory agencies must operate. These requirements provide specific points in the regulatory development process when comments can be received and proposals can be discussed, and other points in this process when the implementing regulatory agency cannot receive or discuss the proposals it has under consideration. The clear delineation of timeframes when comments can be submitted and proposals discussed and the specification of other timeframes when regulatory agencies are prohibited from discussing proposals is to provide for fair and equal consideration all substantive comments received prior to the development of final regulations.

3. The United States proposes that, following one year of the adoption of this procedure, the Committee review the proposed notification process to evaluate its implementation, whether changes are required and/or its continuance warranted.

4. This procedure is without prejudice to the rights and obligations of Members under Article 10.1 of the SPS Agreement.

5. Specific changes to the steps presented in G/SPS/W/132/Rev.1 are as follows:

Step 1. No change

Step 2. No change

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, and provides justification for the request for extension, the notifying Member should consider granting an extension of thirty days, in particular with regard to notifications relating TOproducts of interest to developing country Members.

Step 4. The notifying Member receiving a written request for an extension of the comment period should review the request at the earliest possible date and, if an extension is granted, notify Members through an addendum to the original notification of its decision. To the extent practicable, a notifying Member should place written comments received on public display, in order that all Members have access to comments on the proposed measures. The notifying Member should explain how it has taken substantive comments into account in the publication of its final measure.

Step 5. During the comment period, if an exporting Member identifies significant difficulties its exports might face in complying with the proposed new measure, that Member should submit written comments and may request an opportunity to discuss the potential difficulty with the notifying Member. These discussions may lead an exporting developing country Member to request technical assistance or special and differential treatment, and may lead 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. The request should be made in writing to the appropriate officials.

Step 6. If, following entry into force of a new regulation, 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 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 problem could best be addressed, possibly through specifically-directed technical assistance 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 and in response to specific requests as discussed in steps 5 and 6, the notifying Member should submit to the WTO SPS Secretariat an Addendum to its original notification. The Addendum shall indicate (1) the name(s) of Member(s) that requested special and differential treatment; (2) if special and differential treatment was provided, the form of such treatment; (3) 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 SPS Secretariat in the same manner as the notification.
