

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

Submission by Canada

Members will recall that the SPS Committee adopted in principle a Canadian proposal to enhance the transparency of special and differential treatment within the SPS Agreement in April 2003, subject to elaboration by the Secretariat. The Secretariat prepared an elaboration, which formed the basis for discussion at the June 2003 SPS Committee meeting (G/SPS/W/132). The Committee has discussed the Secretariat's elaboration at SPS Committee meetings held in June and November 2003, and March and June 2004. At the June 2004 SPS Committee meeting, there was consensus to adopt the document but for one Member that raised three concerns. Canada has worked closely with that Member to resolve those concerns. Based on those bilateral discussions, Canada submits the following revised version of the Secretariat's "Elaboration of the Proposal to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members" (G/SPS/W/132/Rev.3) for consideration by the Committee. It is Canada's view that the following document should be adopted by the Committee at the October 2004 meeting.

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. 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.
3. 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.
4. 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, Members reaffirmed that in the preparation and application of SPS measures, Members shall take account of the special needs of developing country Members and in particular of the LDC Members. 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 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 may, in its comments, request an opportunity to discuss and resolve the potential difficulty with the notifying Member. In response to such a written request, 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. In the case of such a request from an exporting developing country Member, the notifying Member would in any discussions 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. Resolution of the concern identified could include one of the following, or a combination thereof: (1) a change in the measure to be applied on a MFN basis; (2) the provision of technical assistance to the exporting Member; or (3) the provision of special and

differential treatment. Should special and differential treatment be provided, it would apply equally to all developing country Members.

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. In the case of such a request from an exporting developing country Member, the importing Member would, in any discussions, 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, so as to enable it to satisfy the requirements of the measure. Resolution of the concern identified could include one of the following, or a combination thereof: (1) a change in the measure to be applied on a MFN basis; (2) the provision of technical assistance to the exporting Member; or (3) the provision of special and differential treatment. Should special and differential treatment be provided, it would apply equally to all developing country Members.

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 promptly submit to the WTO Secretariat an Addendum to its original notification. 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; and (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.

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; and (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.
