

Committee on Sanitary and Phytosanitary Measures

**PROPOSED REVISION OF THE PROCEDURE TO ENHANCE TRANSPARENCY
OF SPECIAL AND DIFFERENTIAL TREATMENT IN FAVOUR OF DEVELOPING
COUNTRY MEMBERS (G/SPS/33)**

Note by the Secretariat¹

Revision

INTRODUCTION

1. In October 2004, the Committee on Sanitary and Phytosanitary Measures ("the Committee") adopted a procedure to enhance transparency of special and differential treatment within the Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement") (G/SPS/33, hereinafter referred to as the "S&D Transparency Procedure"). This decision provided for a review of the implementation of the S&D Transparency Procedure within one year of its adoption.
2. In February 2006, the Committee decided to extend the S&D Transparency Procedure as adopted in October 2004 and to review its implementation no later than at its first regular meeting in 2008, with a view to deciding then whether to continue with the same procedure or introduce modifications.
3. In March 2008, the Committee decided to revert to its review of the S&D Transparency Procedure following confirmation of the ad referendum decision to revise the recommended transparency procedures (G/SPS/W/215/Rev.2). This latter decision was confirmed on 30 May 2008 (G/SPS/7/Rev.3).
4. On 6 June 2008, the Secretariat circulated a proposed revision to the S&D Transparency Procedure reflects proposals informally submitted by Egypt (Job(07)/104), modifications related to the change in the recommended transparency procedures in general (G/SPS/7/Rev.3), and relevant discussions in the SPS Committee (G/SPS/W/224). Members were invited to comment on this proposed revision, both at the meeting of June 2008 and subsequently in writing. This document reflects the comments by Members. Proposed additions to the text of G/SPS/W/224 are underlined, proposed deletions are struck-through. Explanations provided by Members for the proposed changes are included in footnotes.

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

PROCEDURE TO ENHANCE TRANSPARENCY OF SPECIAL AND DIFFERENTIAL TREATMENT IN FAVOUR OF DEVELOPING COUNTRY MEMBERS

Proposed Decision by the Committee

The Committee on Sanitary and Phytosanitary Measures ("the Committee"),

Recalling that paragraph 1 of Article 10 of the Agreement on the Application of Sanitary and Phytosanitary Measures ("the Agreement") states that 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;

Seeking to develop effective, concrete and operational means to facilitate the implementation of this provision;

Recognizing the difficulties that Members, and in particular developing country and least-developed country Members, may face in adapting their products and methods of production to new or changed requirements of importing Members;

Recognizing also the need to make transparency procedures more effective and operational for developing country Members, and in particular least-developed country Members;

Noting that the provision of technical assistance, as referred to in Article 9 of the Agreement, may assist Members adapt their products and methods of production to new or changed requirements;

Recalling that paragraph 2 of Article 9 of the Agreement indicates that 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;

Recalling that the Committee's regular agenda items on the "Implementation of Special and Differential Treatment" and on the "Operation of Transparency Provisions" provide opportunities, on an on-going basis, for raising concerns or assessing progress with respect to the implementation of the procedure to enhance transparency of special and differential treatment in favour of developing country Members;

Seeking to facilitate the use ~~*Regretting that little use has been reported*~~ of the procedure to enhance transparency of special and differential treatment in favour of developing country Members since its initial adoption in 2004;

Encourages Members to make full use of this procedure and thereby to also contribute to enhanced transparency with respect to special and differential treatment and/or technical assistance being offered or provided upon request; and

Decides that the following revised procedures should be followed to enhance transparency of special and differential treatment in favour of developing country Members:

1. The procedure to enhance transparency of special and differential treatment in favour of developing country Members essentially follows the relevant current practices and recommendations

regarding the submission and handling of notifications as described in G/SPS/7/Rev.3, with additional actions included as Steps 5, 6 and 7.

2. The Committee shall review the implementation of this procedure, in light of the experiences of Members and the submission of notifications, as an integral part of its periodic Review of the Operation and Implementation of the Agreement under Article 12.7. The next such Review is to be completed in 2009, and every four years subsequently.

3. This procedure is without prejudice to the rights and obligations of Members under Article 10.1 of the SPS Agreement. The Committee recognizes that this procedure does not fully resolve the issue of special and differential treatment, but that it is one step in addressing the problem of implementation of the special and differential treatment provisions of the Agreement. The Committee agrees to consider other proposals and possible actions.

Step 1. A Member preparing a new or a modification to an existing SPS regulation shall submit a notification to the WTO Secretariat, following the guidance provided in Annex B of the SPS Agreement and G/SPS/7/Rev. 3. The notification should be made when a draft with the complete text of the proposed regulation is available; such notification ~~shall~~ ^{should}² take place at an early stage, 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 include in Box 10 the proposed date of publication of the notified regulation, and identify in Box 11 the proposed date of its entry into force. Except in urgent circumstances³, the notifying Member shall allow a reasonable interval, normally a period of not less than six months, between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products and methods of production to the requirements of the importing Member.⁴ 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 and those which are substantially the same as an international standard, guideline, or recommendation. 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, including through the SPS Information Management System (<http://spsims.wto.org>) and will be

² The reference may be to both mandatory notifications and those which are encouraged in the Committee's recommendations (eg., measures based on international standards), and these latter notifications do not necessarily have to take place at an early stage in the development of the regulation.

³ This addition would make the phrase consistent with the Ministerial Decision (WT/MIN(01)/17, paragraph 3.1.

⁴ Paragraph 3.2 of the Ministerial Decision (WT/MIN(01)/17) states:

"Subject to the conditions specified in paragraph 2 of Annex B to the Agreement on the Application of Sanitary and Phytosanitary Measures, the phrase "reasonable interval" shall be understood to mean normally a period of not less than 6 months. It is understood that timeframes for specific measures have to be considered in the context of the particular circumstances of the measure and actions necessary to implement it. The entry into force of measures which contribute to the liberalization of trade should not be unnecessarily delayed."

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, preferably⁵ 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 and notified to the WTO.

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 regulation, ~~including such as~~⁶ information related to testing and inspection of the product(s) in question.

Step 5. If an exporting Member identifies significant difficulties with the proposed measure, that Member may in its comments⁷ request, in writing, 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, upon request, 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 will 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.⁸

Step 6. If, following the entry into force of a new or modified regulation (including an emergency measure), an exporting Member identifies significant difficulties which its exports face

⁵ The inclusion of the word "preferably" is not in the interest of developing country Members. While Members can communicate concerns they have with a measure of another trading partner at any time, it is in their best interest to do so within the comment period when comments can still be taken into account. It may be difficult if not impossible for the notifying Member to take developing country concerns into account if they raise these concerns after the comment period has ended and the measure has been adopted. Furthermore, the possibility of a Member identifying a concern following the adoption of a measure is addressed in Step 6 of the procedure.

⁶ This change would reflect the fact that not all concerns with an SPS measure relate to inspection and testing.

⁷ The proposed deletion of these words was objected to on the grounds that it would be difficult for notifying Members to adjust proposed regulations to take developing country concerns into account if the regulation had already been adopted. In particular, it may be difficult to apply a change in a measure on a MFN basis or to provide special and differential treatment if the regulation has been adopted.

⁸ A question has been raised regarding the criteria for the granting of special and differential treatment to all developing country Members, i.e., which definition of developing countries should apply.

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 will, 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.⁹

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; (2) if special and differential treatment was provided, the form of such treatment; and (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 format for the Addendum is contained in Annex 1.¹⁰

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

Step 9. Any Member receiving special and differential treatment or technical assistance should inform the notifying Member and the SPS Committee of the sufficiency or value of the treatment they have received.

⁹ Ibid.

¹⁰ It has been suggested that the addenda on special and differential treatment should have a distinct symbol so as to distinguish them from other 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, received on DD/MM/YY, is being circulated at the request of the Delegation of [Member].

Title outlining what the SPS measure or product is

[Text describing any modification to the notified measure.]

Special and Differential Treatment

(1) ~~Special and differential treatment requested~~ Yes No

(1) Name(s) of Member(s) that requested special and differential treatment

(2) Special and differential treatment provided Yes No

Describe how such treatment was provided, including what form it took.

(3) If special and differential treatment was not provided, indicate why it was not provided and whether technical assistance or any other solution was found to address the identified concern.

Text available from: National Notification Authority, National Enquiry Point, or address, fax number and E-mail address (if available) of other body:
