

**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 Secretariat<sup>1</sup>

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 delay its review of the S&D Transparency Procedure until after the confirmation of the revision of the recommended transparency procedures 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 reflecting (i) proposals informally submitted by Egypt (Job(07)/104), (ii) modifications related to the change in the recommended transparency procedures in general (G/SPS/7/Rev.3), and (iii) relevant discussions in the SPS Committee (G/SPS/W/224). The proposed revision has subsequently been modified in light of Members' comments and discussions in the Committee, most recently in June 2009. At that meeting it was suggested that the procedure could be significantly simplified, in particular by referring to other agreed procedures, in particular the agreed Recommended Procedures for Transparency (G/SPS/7/Rev.3), rather than repeating these.

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<sup>1</sup> 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;<sup>2</sup>

*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;

*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 procedure should be used to enhance transparency of special and differential treatment in favour of developing country Members:

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<sup>2</sup> Developing country Members may request assistance to ensure the effective functioning of a National Notification Authority and Enquiry Point, including the capacity to effectively receive and review the notifications of other Members, in order to identify and react to those which may have a potential significant effect on their international trade. The "mentoring" procedure for assisting Members in the implementation of the transparency provisions of the SPS Agreement may also be useful in this regard (see G/SPS/W/217).

1. This procedure to enhance transparency of special and differential treatment in favour of developing country Members should normally be used during the comment period following the circulation of an SPS notification in accordance with the relevant provisions and procedures contained in the Agreement or subsequently adopted by Members, except as provided in Step 5 below.<sup>3</sup>

#### Steps for proposed measures

2. If an exporting developing country Member identifies significant difficulties with a proposed measure that has been notified, that Member may, in the comments it submits in writing to the notifying Member, request an opportunity to discuss the issue of concern with the notifying Member. The exporting developing country Member should identify to the notifying Member the specific problems that the proposed measure may create for its exports, or the specific reasons why it is unable to comply with the notified measure by the implementation date.

3. In response to such a request, where the appropriate level of sanitary and phytosanitary protection allows scope for the phased introduction of the new measure, a longer time-frame for compliance should be accorded to developing country Members, which shall be understood to mean normally a period of not less than six months.<sup>4</sup>

4. Where the appropriate level of sanitary and phytosanitary protection does not allow scope for the phased introduction of a new measure, the Member notifying the measure shall, upon such request, enter into consultations with the exporting Member with a view to finding a mutually satisfactory solution to the problem while continuing to achieve the importing Member's appropriate level of protection.<sup>5</sup> Such consultations shall preferably take place prior to the entry into force of the new measure. A possible resolution of the concern identified could include one of the following, or a combination thereof: (1) a change in the proposed measure; (2) the provision of technical assistance to the exporting developing country Member; or (3) the provision of special and differential treatment.

#### Steps following entry into force of a new measure

5. If, following the adoption or entry into force of a new or modified measure (including an emergency measure), an exporting developing country Member identifies significant difficulties which its exports face in complying with the measure, 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, had been provided for the submission of comments prior to the implementation of the measure. The importing Member shall, upon such request from an exporting developing country Member, enter into consultations with the exporting Member to discuss possible means to address the identified problem while continuing to achieve the importing Member's appropriate level of protection. A possible resolution of the concern identified could include one of the following, or a combination thereof: (1) a change in the measure; (2) the provision of technical assistance to the exporting developing country Member; or (3) the provision of special and differential treatment.

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<sup>3</sup> In particular, Article 7 and Annex B of the Agreement, and the Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) contained in G/SPS/7/Rev.3. In addition, the Procedural Step-by-Step Manual for SPS National Notification Authorities and SPS National Enquiry Points can assist Members in meeting the obligations and following the recommended procedures (available electronically at: [http://www.wto.org/english/res\\_e/booksp\\_e/sps\\_procedure\\_manual\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/sps_procedure_manual_e.pdf)). These texts also provide information regarding the availability of SPS notifications, including through the SPS Information Management System (<http://spsims.wto.org>).

<sup>4</sup> Ibid.

<sup>5</sup> WT/MIN(01)/17, paragraph 3.1. This step may also be used where the phased introduction of a measure will not resolve the specific problems identified by the exporting developing country Member.

Transparency

6. When an importing Member decides on whether and how special and differential treatment may be provided in response to a specific request, that Member should inform the SPS Committee. This may be done in writing and/or under the agenda item on Special and Differential Treatment at any meeting of the SPS Committee. Information provided in writing should be submitted to the WTO Secretariat as an Addendum to the original notification concerning the measure. 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; 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 the Annex.

Administration

7. The Committee shall review the implementation of this procedure, in light of the experiences of Members and relevant Addenda, 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 2013, and every four years subsequently.

8. The Committee may decide to modify, suspend or terminate this procedure at any time, in light of the experiences of Members in its implementation.

9. 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.

ANNEX

**WORLD TRADE  
ORGANIZATION**

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

date of distribution

(##-####)

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**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].

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Title outlining the SPS measure at issue

[Text describing any modification to the notified measure.]

*Special and Differential Treatment*

- (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:

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