

**SPECIAL AND DIFFERENTIAL TREATMENT
AND TECHNICAL ASSISTANCE**

Submission made by India at the Meeting of 10-11 June 1998

1. In India's view the operation of the WTO Agreement on Sanitary and Phytosanitary (SPS) Measures, during the first three years of its existence reveals the significant potential of the Agreement to further the objectives of GATT 1994, especially in ensuring that SPS measures do not in any way create unnecessary obstacles to international trade. India is of the view that the SPS Agreement strives to achieve the twin objectives of providing Members the flexibility to adopt such measures which may be necessary to protect human, animal or plant life or health, while at the same time specifically providing that such measures do not constitute a disguised restriction to international trade. In India's view one of the prime objectives of this review is therefore to examine whether these twin objectives have been achieved, or whether in trying to meet one objective the achievement of the other is being derogated. Issues related to the "special and differential provisions" and those related to "technical assistance" are obviously fundamental to such an analysis.

Special and differential provisions

2. The Agreement on the Application of Sanitary and Phytosanitary Measures, while providing Members flexibility to adopt such measures which may be necessary to protect human, animal or plant life or health, simultaneously stresses that these measures should not in any way become disguised barriers to international trade. The Agreement accordingly enshrines the principle that SPS measures should not become a means of arbitrary or unjustified discrimination. Very often, however, it has been observed that SPS measures have been invoked in a discriminatory manner to the detriment of international trade, particularly that originating from developing and least developed countries. Developing countries are at times constrained by lack of adequate infrastructure, as well as constraints of technology, finance and skilled manpower, because of which they encounter special difficulties in complying with the SPS measures of their trading partners. As a result, their market access suffers, particularly since developing countries often find it difficult to adjust to constantly evolving SPS measures.

3. It is evident that due recognition needs to be given to the needs of developing countries. India therefore places special importance, as a developing country, on the successful implementation, both in letter and spirit, of those provisions of the Agreement which are directed towards addressing the special interests of developing countries. At the outset we would like to note that special and differential provisions in favour of developing country Members are an integral part of the WTO Agreements. It is therefore important to assess the status of implementation of these provisions in the context of the functioning of the SPS Agreement in the first three years of its existence. Any such assessment should necessarily be made with the objective of ensuring that the legitimate expectations of developing countries are being met, and if not, then to consider the possible remedial measures.

4. Article 10 of the SPS Agreement, which provides special and differential treatment for developing countries, has three important ingredients, namely that:

(i) In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members.

(ii) Where the appropriate level of protection allows scope for the phased introduction of new SPS measures, longer time frames should be provided for compliance on products of interest to developing country Members, so as to maintain opportunities for their exports.

(iii) Members should encourage and facilitate the active participation of developing country Members in the relevant international organisations.

5. Unfortunately, the in-built provisions in Article 10 for Special and Differential Treatment to developing countries have not been converted into specific guidelines, which would have given tangible benefits to the developing and least developed countries. Hence the provisions of Article 10 remain as general guidelines instead of having been transposed into more specific, and perhaps mandatory obligations. Developing countries suffer from certain handicaps which need to be considered by the developed Members especially in the context of the SPS Agreement. This has perhaps not been the case, as a result of which developing countries often face barriers in the form of stringent SPS standards in exporting their products to developed countries. In our view, it is therefore important that the Committee reviews the implementation of Article 10 of the Agreement to see whether particular attention has been given by developed country Members, since the entry into force of this Agreement, to take into account the special developmental, financial and trade needs of developing country Members.

6. Third world countries have traditionally been accustomed to lower levels of processing technology. In many cases, they do not have access to technologies developed abroad, for achieving standards acceptable to certain importing countries. Moreover, the preponderance of small scale industries and peasant farming in the production pattern makes it difficult for these countries to achieve some of the standards set by developed countries. This makes it all the more important for developed country Members to take cognizance of the constraints of developing country Members, while formulating their SPS measures.

7. The absence of specific international standards, guidelines or recommendations for specific products also create problems for developing countries, since this often means that exports of the same product from developing countries have to comply with varying standards. Also countries do not always specify their level of SPS protection. Developing countries are therefore not clear as to what measures would enable them to meet the importing countries appropriate level of protection.

8. India would accordingly like to propose for the Committee's consideration that the following issues, related to the special and differential provisions for developing countries, be examined in the course of the review of the Agreement. These issues could be analyzed on the basis of notifications received from Members during the operation of this Agreement, as also from the submissions made during the course of this review, and could be supplemented by asking for additional information from Members and relevant international standard setting bodies.

(i) Examination of the action taken by developed country Members since the entry into force of this Agreement to take into account the special development, financial and trade needs of developing country Members in the implementation of the Agreement.

(ii) Examination of the steps taken to engender the capacity of developing country Members to prepare and adopt SPS measures, keeping in view their technological and socio-economic constraints, and thereafter suggestion of measures which could be taken in the future to enhance this capacity.

9. India would therefore like to make the following suggestions in this regard:

(i) We would like the Secretariat to undertake a study to identify the market access barriers faced by developing country suppliers in the context of SPS standards, especially from buyers in developed countries insisting on the enforcement of standards, including test methods, which may not be appropriate to the developmental and technical standards prevalent in developing countries or to prevalent practices in international trade. This study could also draw upon the work which may have been already done in this regard by other international bodies and could be structured on the lines of the Secretariat paper G/TBT/W/42 which brought out the restrictive trade effects of standards, technical regulations and conformity assessment procedures.

(ii) Article 14 of the Agreement provides that the least developed country Members may delay the application of the provisions of this Agreement for a period of 5 years following the date of entry into force. Similarly, other developing country Members may delay application of the provisions of this Agreement for 2 years following the date of entry into force. However, keeping in view the prevalent level of technological development and lack of adequate infrastructure and trained manpower both in least developed countries and developing countries, India feels that this transition period provided in the Agreement needs to be extended. This additional time period, coupled with the provision of providing requisite technical and financial assistance would enable the developing country Members to gradually bring their standards in conformity with the international standards and would also give them time to forge equivalence agreements with developed country Members. It may be noted that Article 10.3 already provides that the SPS committee can grant specified time limited exceptions to developing country Members. We are building upon the existing provision by suggesting that in view of the fairly uniform problems being faced by the developing countries, and taking into account their financial, trade and development needs, this extension should be granted to all developing country Members

(iii) Inviting representatives of relevant international standardizing bodies to make written and oral presentations to the Committee, with a view to assess the extent to which special problems of developing countries have been taken into account in these bodies and what steps can be taken in the future in this regard.

10. We have made our suggestions in the light of the important role of special and differential provisions of WTO Agreements vis-a-vis the relevance of the WTO for developing countries. The implementation of these provisions in letter and spirit are important for meeting the objectives of the WTO Agreement. In our view it is important to ensure the balance and equity of these Agreements, which is ensured through the special and differential provisions contained in these Agreements. Unless developing countries are able to derive the benefits they have legitimately expected from the multilateral trading system by entering into the different agreements under the WTO Agreement, it would be extremely difficult for developing countries to be expected to proceed further along the path of trade liberalisation. It is therefore important that the opportunity provided by this review is used to objectively evaluate the constraints being faced by developing countries and to thereafter adopt such amendments in procedure which would help to overcome these difficulties.

Technical assistance

11. Under Article 9 of the Agreement Members agreed to facilitate technical assistance to others, especially developing countries, either bilaterally or through the appropriate international organisations, the objective being to allow such countries to adjust to and comply with sanitary and phytosanitary measures necessary to achieve the appropriate level of protection in their export

markets. So far technical assistance has largely comprised of holding seminars and workshops of a general nature. However, given the low levels of processing technology available within the developing countries, technical assistance today is primarily needed in setting up the requisite infrastructure necessary for ensuring quality testing in accordance with international standards. A mechanism needs to be set up whereby technical assistance and training provided, including in the areas of risk analysis and techniques of risk assessments, are monitored in the SPS Committee, perhaps through annual notifications.

12. It may be noted that it has also been mandated 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. This too has unfortunately been an exception rather than a rule as far as products of developing countries are concerned. In our view, in the implementation of this clause it is necessary to keep in mind that technical assistance compromising transfer of technology should be on fair and reasonable terms, keeping in view the level of economic development of the subject country.

13. India would therefore like to suggest that an examination be carried out of such technical assistance which may have been provided to developing country Members under the provisions of this Agreement, so as to ensure that the preparation and application of SPS measures do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members. It is our view that the provisions of Article 9 should be translated into specific and implementable guidelines so that positive gains of the technical assistance clause could accrue to developing country Members. In particular, it would be important to consider measures which would help in the transfer of technology on preferential and non-commercial terms to developing countries for preparing and adopting standards which are conducive to their technical and socio-economic conditions and to their development, financial and trade needs. Another possibility which needs to be explored is the provision of technical assistance in concrete, "hands-on" terms. That is, it may be appropriate to give on-the-job training for representatives of different industries in like industries of developed countries for imbibing the necessary technology required to meet the SPS standards set for these industries.
