

Committee on Sanitary and Phytosanitary Measures

DRAFT REPORT ON PROPOSALS FOR SPECIAL AND DIFFERENTIAL TREATMENT

Note by the Secretariat¹

Revision

This Revision reflects comments and suggestions made by Members at the informal meeting of 27, 28, 29 and 30 June 2005.

I. INTRODUCTION

A. BACKGROUND

1. On 1 August 2004, the General Council adopted the following decision with respect to special and differential treatment:

"... the General Council reaffirms that provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements. The Council recalls Ministers' decision in Doha to review all S&D treatment provisions with a view to strengthening them and making them more precise, effective and operational. The Council recognizes the progress that has been made so far ...

The Council also instructs all WTO bodies to which proposals in Category II have been referred to expeditiously complete the consideration of these proposals and report to the General Council, with clear recommendations for a decision, as soon as possible and no later than July 2005. In doing so these bodies will ensure that, as far as possible, their meetings do not overlap so as to enable full and effective participation of developing countries in these discussions."²

Furthermore, in the Doha Development Round Declaration, Ministers agreed:

"... that all special and differential treatment provisions shall be reviewed with a view to strengthening them, and making them more precise, effective and operational. In this

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

² WT/L/579.

connection, we endorse the work programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns."³

2. Among the 38 proposals in Category II, five were referred to the SPS Committee. These proposals concern specifically the provisions of Articles 9 and 10 of the SPS Agreement. The text of these articles and of the five proposals are reproduced below for ease of reference.

3. These proposals have previously been considered in various formal and informal meetings of the General Council, the Committee on Trade and Development, and the SPS Committee.⁴ This draft report is based on the discussions of these proposals and of special and differential treatment in the formal and informal meetings of the SPS Committee, as well as during informal consultations held on 28 January, 15 and 18 February, 18 and 24 May 2005. It also includes comments on the background document prepared by the Secretariat (G/SPS/GEN/543).

B. CONSIDERATIONS IN PREPARING THIS REPORT

4. In the context of the discussions of the proposals in the SPS Committee and in other WTO bodies, many Members have indicated that they are opposed to any formal modification of the text of the SPS Agreement at this time, whereas other Members have indicated that they would agree to consider such modification if this were deemed necessary. A broad consensus exists to actively seek alternative, concrete avenues to fulfil the mandate before undertaking specific changes in the text of the SPS Agreement. One major concern is that modification of Articles 9 and 10 could result in changes to the balance of rights and obligations established by the SPS Agreement, and could lead to changes in the text of other provisions. Many Members consider any such changes to be unacceptable, unnecessary to address the underlying concerns of developing country Members, and in particular least-developed country Members.

5. Members have stressed that it is not the intention of any of the proposals to impinge on the right of any Member to implement scientifically justified SPS measures necessary to ensure that products moving in international trade do not present unacceptable risks to human, animal or plant life or health, or to the territory of a Member. Trade in products considered to be unsafe or sub-standard would have deleterious effects on consumer demand, reflect poorly on the exporting Member's reputation, and unnecessarily call regulatory competencies into question. At the same time, Members

³ WT/MIN(01)/DEC/1, para. 44. Paragraph 12.1 of the Decision on Implementation-Related Issues and Concerns.(WT/MIN(01)/17) reads as follows:

12. Cross-cutting Issues

12.1 The Committee on Trade and Development is instructed:

(i) *to identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions, to identify those that Members consider should be made mandatory, and to report to the General Council with clear recommendations for a decision by July 2002;*

(ii) *to examine additional ways in which special and differential treatment provisions can be made more effective, to consider ways, including improved information flows, in which developing countries, in particular the least-developed countries, may be assisted to make best use of special and differential treatment provisions, and to report to the General Council with clear recommendations for a decision by July 2002; and*

(iii) *to consider, in the context of the work programme adopted at the Fourth Session of the Ministerial Conference, how special and differential treatment may be incorporated into the architecture of WTO rules.*

The work of the Committee on Trade and Development in this regard shall take fully into consideration previous work undertaken as noted in WT/COMTD/W/77/Rev.1. It will also be without prejudice to work in respect of implementation of WTO Agreements in the General Council and in other Councils and Committees.

⁴ See relevant sections of reports of meetings of the SPS Committee (G/SPS/R/Series), as well as G/SPS/23, G/SPS/24, G/SPS/27 and Corr.1, G/SPS/30.

recognize that developing country Members, and in particular least-developed country Members, face specific difficulties in meeting the sanitary and phytosanitary requirements of many of their trading partners, and need targeted technical assistance. Import requirements that differ from those based on the relevant international standards, while not necessarily inconsistent with the SPS Agreement⁵, can pose considerable difficulties to developing countries.

6. The SPS Agreement is relatively new, and some Members are still in the process of adjusting to and developing more effective implementation of the expanded new disciplines established by the Agreement. For developing country Members, most of the provisions of the Agreement became applicable only as of January 1997; for the least-developed country Members, the date of application was January 2000. Recent studies have shown that the level of knowledge and understanding of the Agreement remains relatively low, and that academic and institutional responses are also nascent.⁶ A number of WTO Members have not as yet fulfilled obligations relating to the identification of a national notification authority and of an SPS enquiry point, and many have not submitted any notifications of new or revised SPS measures.⁷

7. At the same time, it is apparent from the studies undertaken by the World Bank⁸ and others that SPS measures and the application of the SPS Agreement are of increasing importance to the movement of goods in agricultural trade. This importance is expected to increase, for all WTO Members. Members have recognized that developing country Members, and in particular least-developed country Members, face specific difficulties in effectively implementing provisions of the SPS Agreement, including the transparency provisions. Members have indicated their commitment to assist in addressing the specific difficulties and to ensure improved capacities and efficiencies.

8. This report describes some underlying concerns and common objectives as identified by Members in the Committee's discussions. Developments which have occurred since the proposals were submitted in 2002, and which address, in part, these concerns or objectives are also described. The report also describes constraints faced by the Committee in the development of precise, effective and operational recommendations on the five proposals referred to it by the General Council. The report identifies additional ways that could be examined by the SPS Committee with a view to providing more precise, effective and operational means to address, at least in part, identified concerns.

II. RELEVANT SPS PROVISIONS

Article 9

Technical Assistance

1. Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

⁵ See, *inter alia*, Article 3.3

⁶ "Food Safety and Agricultural Health Standards: Challenges and Opportunities for Developing Country Exports", World Bank Report No. 31207, 10 January 2005.

⁷ G/SPS/W/173/Rev.2, paragraphs 26 and 27.

⁸ *Idem*.

2. 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.

Article 10

Special and Differential Treatment

1. 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.

2. Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.

3. With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.

4. Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.

III. TEXTS OF THE PROPOSALS

A. PROPOSALS RELATING TO ARTICLE 9.2

9. To make this mandatory provision effective and operational it is proposed that the clause "shall consider providing" be changed to "shall provide". It is further proposed to add the following sentence to the provision:

"If an exporting developing country Member identifies specific problems of inadequate technology and infrastructure in fulfilling the sanitary or phytosanitary requirements of an importing developed country Member, the latter shall provide the former with relevant technology and technical facilities on preferential and non-commercial terms, preferably free of cost, keeping in view the development, financial and trade needs of the exporting developing country."⁹

10. The phrase "substantial investments" in Article 9.2 shall be construed relative to resources of concerned government departments in developing and least-developed country Members and to their development needs. Any changes that would require additional resources to existing levels of current expenditure or their restructuring, or additional training or staffing, shall be construed to amount to "substantial investments".¹⁰

⁹ TN/CTD/W/2.

¹⁰ TN/CTD/W/3/Rev.2.

11. Where the importing Member does not actually provide such technical assistance, that Member shall withdraw the measures immediately and unconditionally; or the importing Member shall compensate the exporting developing country Members for loss resulting directly or indirectly from the measures.¹¹

12. It is understood that technical assistance shall be fully funded technical assistance and shall not entail financial obligations on the part of the exporting developing and least-developed country Members.¹²

13. It is agreed that the WTO shall recommend that impact assessments shall be conducted to determine the likely effect on the trade of developing and least-developed country Members for any proposed standards before adoption, and if the impact would be adverse, the standards would not become applicable until it is established that developing and least-developed country Members that would be affected have acquired the capacity to beneficially comply with them.¹³

B. PROPOSALS RELATING TO ARTICLE 10.1

14. For effective operationalization of Article 10.1, it is suggested that the following addition be made to the existing provision:

"If an exporting developing country Member identifies specific problems in complying with a sanitary or phytosanitary measures of an importing developed country Member, the latter shall upon request enter into consultations with a view to finding a mutually satisfactory solution.

In this regard, such special needs shall include: securing and enhancing current levels of exports from developing and least developed country members, maintain their market shares in their export markets, as well as developing their technological and infrastructural capabilities. While notifying a measure, Members shall, *inter-alia*, indicate the following: (i) systems and/or equivalent systems that could be used to comply with such a measure; (ii) the names of the developing and least-developed country Members that could be affected by the applied measure."¹⁴

15. The requirement to "take account of the special needs of developing country Members, and in particular least developed country Members" in Article 10.1 shall be understood to mean that Members shall either withdraw measures that adversely affect any developing and least-developed country Members or which they find difficult to comply with, or shall provide the technical and financial resources necessary for the developing and least-developed country Members to comply with the measures.¹⁵

16. The requirement shall be further understood to mean that Members shall always initiate consultations in the Committee whenever they propose or intend to take any measures that are likely to affect imports from developing and least-developed country Members. In the consultations, Members shall establish whether or not the proposed or intended measures, if justified under the Agreement, would adversely affect any developing and least-developed country Members.¹⁶

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ TN/CTD/W/2.

¹⁵ TN/CTD/W/3/Rev.2.

¹⁶ Ibid.

17. Members shall establish a facility within the Global Trust Fund for ensuring that:
- (a) developing and least-developed country Members have the financial and technical capacity to meet the requirements under the Agreement;
 - (b) delegations from developing and least-developed country Members attend and effectively participate in meetings of the Committee and relevant international standard-setting organisations;
 - (c) developing and least-developed country Members effectively utilise the flexibility under the Agreement; and
 - (d) measures adopted under the Agreement do not contravene the rights of developing and least-developed country Members.¹⁷
18. It is understood that technology transfer and any technical and financial assistance under the Agreement to developing and least-developed country Members shall be cost free.¹⁸

C. PROPOSAL RELATED TO ARTICLE 10.4

19. In Article 10.4 of the Agreement on the Application of Sanitary and Phytosanitary Measures the term "should" be read to express "duty" rather than mere exhortation. This could be clarified through an authoritative interpretation under Article IX.2 of the Marrakesh Agreement Establishing the WTO. This would help achieve the intended objective of this S&D provision.¹⁹

IV. UNDERLYING CONCERNS

20. The underlying concerns relate to key difficulties developing countries may face in meeting new or modified SPS requirements of their trading partners, and hence in achieving or maintaining access to markets for their products. Import requirements that differ from those based on the relevant international standards, while not necessarily inconsistent with the Agreement²⁰, can pose considerable difficulties to developing countries. Developing country Members may lack the necessary knowledge, infrastructure or technology to deal with new requirements. These deficiencies can often not be overcome without initial institutional development, technical and financial assistance. These deficiencies can have negative consequences on the acceptability of products for trade.

21. Members attach importance to technical assistance being provided both on a bilateral basis and through relevant international organizations. However, such assistance is often characterized as supply-driven, and may be determined to a greater extent by the policy interests of the donor rather than the specific needs of the recipient. At the same time, Members noted the general paucity of demand-driven requests, apparently partially due to institutional capacity constraints. Furthermore, Members expressed concern that in the absence of more targeted, specific trade assistance goals, addressing timeliness and sustainability in an efficient manner is highly difficult. A particular concern is provision of assistance only after a developing country Member has lost market access due to a SPS measure. Another concern reflects the uncertainty of support and a desire to ensure that technical assistance is more predictable. Some developing country Members also maintain that a simplification of the administrative procedures of developed country Members would make it less costly and easier for developing country Members to comply with their SPS requirements and export. Some Members have indicated that one advantage of making these provisions binding is that

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ TN/CTD/W/6.

²⁰ See, *inter alia*, Article 3.3

developing country Members would no longer be required to specifically request technical assistance; however, all Members recognize that technical assistance should be more needs- and results-driven.

22. The general effectiveness of technical assistance has been questioned. In particular, a number of developing country Members have indicated that much of the assistance they have received has not had the desired effect of allowing them to maintain or achieve export opportunities in the face of new or existing SPS requirements. This concern underlies a desire to find more effective means to ensure the better overall performance and demonstrated specific results of technical assistance.

23. Developing country Members have further identified the need for special and differential treatment, in particular in the context of allowing more time for them to adjust to new requirements for the products they export.

24. Another underlying concern relates to the difficulties faced by developing country Members in effectively participating in the work of the SPS Committee and relevant international standard-setting bodies. Physical presence at meetings is necessary, but to ensure that participation is effective the necessary expertise and coordination must be built-up within developing country Members.

V. RELEVANT DEVELOPMENTS

25. The Decision on Implementation taken at the Doha Ministerial Conference in 2001 included *inter alia* a clarification on Article 10.2.²¹ It specifies that where the appropriate level of protection allows scope for the phased introduction of SPS measures, the "longer time-frame for compliance" referred to in Article 10.2 shall be understood to mean normally a period of not less than six months. Where the phased introduction of a new measure is not possible, but a Member identifies specific problems, the Member applying the new measure shall enter into consultations, upon request, to try to find a mutually satisfactory solution. The Decision also indicated that, subject to the conditions specified in paragraph 2 of Annex B of the SPS Agreement, a period of not less than six months shall normally be provided between the publication of a measure and its entry into force. Finally, the Doha Ministerial Decision instructed the SPS Committee to undertake a review of the operation and implementation of the SPS Agreement every four years.²²

26. Since the proposals were submitted in 2002, a number of developments have occurred which address some of the underlying concerns. With respect to the three standard-setting bodies of relevance under the SPS Agreement, the FAO and the WHO have established trust funds to increase participation of developing country Members in the standard-setting activities of the International Plant Protection Convention (IPPC) and of the FAO/WHO Codex Alimentarius Commission (Codex).²³ The World Organization for Animal Health (OIE) will establish a trust fund before the end of 2005. These trust funds are supported through contributions by donor agencies and member countries.

27. With respect to the Codex trust fund, during the period March to December 2004, a total of 83 persons from 75 countries attended 14 separate Codex meetings, including the Codex Alimentarius Commission meeting held in June-July 2004. All 83 participants were funded entirely by the Codex Trust Fund and most were government officials from least developed countries. The breakdown of participants was: 60 per cent from least-developed and other lower income countries; 29 per cent from lower middle income countries; and 11 per cent from upper middle income countries.²⁴ In order

²¹ WT/MIN(01)/17, paragraph 3.1.

²² The report of this review, the second since the entry into force of the Agreement, is contained in document G/SPS/#.

²³ See proposals in paras. 17(b) and 19 above.

²⁴ More information on the Codex Trust Fund is available in documents G/SPS/GEN/564 and 565, and from the web site <http://www.who.int/foodsafety/codex/trustfund/en/>

to improve the effectiveness of the trust fund, FAO/WHO plan an information meeting of both donor and beneficiary Members in July 2005.

28. In 2004, the IPPC established a trust fund to be used exclusively to the direct benefit of developing countries. It is used to facilitate their participation and involvement in all IPPC activities, including in the Interim Commission on Phytosanitary Measures, in regional workshops on draft international standards for phytosanitary measures, in Expert Working Groups, and also in phytosanitary capacity-building and information exchange.²⁵

29. The OIE will establish a trust fund before the end of 2005. The OIE also continues to provide financial support for the participation of Chief Veterinary Officers of its member countries in OIE standard-setting activities.

30. Since the SPS Agreement entered into force, the FAO/WHO, OIE and IPPC have also developed and/or strengthened technical assistance programmes, including conferences, seminars and workshops, to enhance national capacities on SPS matters. The IPPC developed a diagnostic tool, the Phytosanitary Capacity Evaluation (PCE), to help countries address their current capacity and identify needs for assistance.²⁶ Similar diagnostic tools have been developed by the FAO/WHO with respect to food safety, and recently by OIE.²⁷ In addition, other international and regional organizations, including the World Bank, OIRSA, IICA, UNIDO and UNCTAD, provide regular updates to the SPS Committee on their programmes related to SPS capacity building.

31. In order to address some of the needs identified with respect to technical assistance, the Secretariat has undertaken numerous regional and national training workshops on the SPS Agreement, and, in particular, on how Members can use the provisions of the Agreement to facilitate their trade interests.²⁸ The Secretariat also organized workshops in Geneva on: technical assistance needs and how to best address these in relation to the SPS Agreement (November 2002); the principles and methods of risk analysis (June 2000); the processes and procedures of the relevant standard-setting organizations (March 2001); and on the effective operation of national SPS enquiry points (November 2003). Furthermore, the Secretariat has developed a number of tools to assist Members with the understanding and implementation of the Agreement, including a booklet on "Understanding the SPS Agreement"²⁹; a handbook on the application of the transparency provisions of the Agreement; and an inter-active CD-ROM explaining and discussing in detail the provisions of the Agreement and circulated two questionnaires on technical assistance to Members.

32. In September 2002, following consultations by the Director-General with the FAO, OIE, WHO and the World Bank as requested by the General Council in October 2000, the Standards and Trade Development Facility (STDF) was established. The purpose of the STDF, which is administered by the WTO, is to enhance the capacity of developing countries in the SPS area through the provision of funding for projects in developing countries, as well as through cooperation between the relevant institutions in SPS-related activities including joint institutional projects.³⁰ This facility can be used to finance projects to assist developing country Members, and in particular least-developed country Members, make more effective use of all of the provisions of the SPS Agreement, including those related to dispute resolution.³¹ As of June 2005, the STDF had funded approximately US\$2 million of projects and project preparation grants. These include projects proposed by

²⁵ G/SPS/GEN/482.

²⁶ <http://www.ippc.int>.

²⁷ See G/SPS/GEN/525; also "Performance, Vision and Strategy (PVS) for National Veterinary Services", available from <http://www.oie.int>.

²⁸ These training activities are described in more detail in document G/SPS/GEN/521.

²⁹ WTO Agreements Series, Volume No. 4

³⁰ The Secretariat reports regularly to the SPS Committee on the STDF, most recently in G/SPS/GEN/523.

³¹ See proposals in paras. 9, 15 and 17 (a), (c) and (d).

developing country Members, as well as pilot projects developed to address specific needs identified by developing country Members in the SPS Committee. The STDF also maintains a database, which provides information on SPS-related technical assistance and capacity building projects.³²

33. Several Members have also created specific mechanisms to assist developing countries to participate in the relevant international institutions and in the activities of the SPS Committee, such as the Initiative for the Americas on Sanitary and Phytosanitary Measures.³³ Furthermore, bilateral technical assistance related to SPS capacity is being provided by many Members.³⁴

34. Guidelines and decisions adopted by the Committee have regularly taken into consideration the specific needs and concerns expressed by developing country Members. These include the recommended procedures for implementing the transparency provisions of the SPS Agreement (G/SPS/7/Rev.2 and Add.1 and 2); the guidelines to further the practical implementation of Article 5.5 (G/SPS/15), and the decision on the implementation of Article 4 of the Agreement regarding recognition of equivalence (G/SPS/19/Rev.2). For example, the most recently revised recommended procedures for the implementation of the transparency provisions of the Agreement, and the related format for the notification of SPS measures, request the identification of which Members or regions may be particularly affected by the measure being notified (G/SPS/7/Rev.2).³⁵

35. Furthermore, in October 2004, the Committee finalized a procedure to enhance both the provision and the transparency of special and differential treatment or technical assistance (G/SPS/33). The decision by the Committee requires an importing Member to consider any requests for special and differential treatment or technical assistance which are made in response to the importing Member's notification of a new or modified SPS measure. The importing Member is to subsequently submit a specific addendum to its notification which indicates that special and differential treatment or technical assistance had been requested; the Member(s) affected; the concern(s) identified; if special and differential treatment was provided, and if so, the treatment provided. This procedure is intended to ensure that the importing Member consults with any developing country Member that has expressed a concern regarding the potential effect of the proposed new/modified measure on its exports with the aim of finding a means to address their concerns.³⁶ The notification of solutions ensures fullest transparency, especially for other developing country Members.

36. Each regular meeting of the SPS Committee provides any Member with the opportunity to raise specific trade concerns, including proposed measures not yet implemented. Unfortunately, many developing country Members, and in particular least-developed country Members, continue to find it difficult to participate in the meetings of the SPS Committee. Nonetheless, a growing number of developing countries are participating actively under this agenda item in the SPS Committee meetings. Developing country Members have raised 101 of the approximately 200 specific trade concerns with respect to measures proposed or taken by other trading partners which adversely affect their trade interests, although least-developed country Members have raised only two concerns.³⁷ In 149 cases, a developing country Member has supported another Member raising an issue. In a number of cases, discussions in the Committee have provided the impetus for bilateral actions to

³² Available on-line at <http://stdfdb.wto.org>.

³³ G/SPS/GEN/549.

³⁴ Paragraphs 27 to 46 of document G/SPS/GEN/543 provide a summary description of recent actions taken to enhance the provision of SPS-related technical assistance.

³⁵ See proposal in para. 13.

³⁶ See proposals in paras. 9, 13, 14, 15 and 16.

³⁷ The European Communities was counted as one Member. Similarly, when one Member spoke on behalf of ASEAN, it was counted as one Member only. On certain issues, more than one Member has raised the same concern at a Committee meeting. Hence although the total number of specific trade concerns raised since 1995 is 204, the number of Members raising concerns, 246, is higher.

resolve these problems.³⁸ Several developing country Members have also made use of the good offices of the Chair of the SPS Committee to seek resolution of specific trade problems.³⁹ The WTO also provides assistance to developing country Members, and in particular least-developed country Members, involved in dispute settlement proceedings, as does the Advisory Centre on WTO Law, established in 2001.⁴⁰

VI. CONSTRAINTS TO FRAMING RECOMMENDATIONS

37. The Committee faces a number of constraints in elaborating recommendations to ensure that the concerns of developing country Members are addressed in a precise, effective and operational manner. First, there has been a paucity of concrete recommendations submitted by Members since the Committee was first requested to consider this issue in 2003. Second, the proposals submitted in 2002 have implications at many levels, including at the bilateral level, within the WTO as a whole, within the SPS Committee, at the level of the international standard-setting bodies, as well as at technical levels for executing capacity building, and in political and negotiating contexts.

38. A number of the submitted proposals would require actions outside of the sphere of influence of the SPS Committee, such as actions by the international standard-setting bodies, or by other institutions. The SPS Committee could, however, agree to draw certain issues to the attention of these other bodies, and encourage WTO Members to pursue certain results within the context of Members' involvement in the work of these other bodies.

39. Of particular note is that the SPS Committee has only recently discussed the proposals and the underlying concerns with some specificity and frankness, and only recently have some concrete examples been described of problems due to the lack of specific trade-related, needs-based technical assistance or of special and differential treatment. Formulation of precise modifications or operational recommendations on the five proposals remains a challenge.

40. Finally, these discussions have revealed an "expectations gap" between Members. All Members acknowledge that better-targeted and more effective technical assistance aimed at specific results will benefit developing country Members. This can, however, only be achieved by more successful communications and competent teamwork among involved Members. This commitment appears necessary to, at minimum, maintain the market access opportunities for products from developing country Members.

VII. CONCLUSIONS

41. The SPS Committee has to date been unable to develop any clear recommendations for a decision on the proposals on special and differential treatment referred to it by the General Council.

42. The Committee notes that some Members have indicated their intention to revise some of these proposals, and would welcome an opportunity to consider the revised proposals. Furthermore, the Committee agrees to continue to examine the proposals before it with the aim of developing specific recommendations.

43. Building on previous discussions in the SPS Committee on special and differential treatment and technical assistance, the SPS Committee agrees to expeditiously undertake discussions on further work to address the concerns underlying the proposals as identified by Members with a view to

³⁸ G/SPS/GEN/204/Rev.5.

³⁹ Argentina, Chile, South Africa and Uruguay with respect to measures relating to citrus canker taken by the European Communities; the United States with respect to restrictions on wheat and oilseeds maintained by Poland; and Canada with respect to import restrictions on bovine semen maintained by India.

⁴⁰ http://www.acwl.ch/e/index_e.aspx

fulfilling the Doha Development Mandate. The following represent some initial elements for this discussion:

- (a) Identify best practices, through which developing country Members, and in particular least-developed country Members, can become informed in a timely manner of SPS requirements of priority to their trade. The Committee will, *inter alia*, undertake to:
- identify specific actions to make existing transparency procedures more effective and operational for developing country Members, and in particular least-developed country Members;
 - determine how Members and the Secretariat can facilitate such actions;
 - examine whether further changes in the recommended transparency procedures would be useful.
- (b) Identify means through which developing country Members, and in particular least-developed country Members, can more productively evaluate which SPS requirements of their trading partners present trade problems. The Committee will consider, *inter alia*:
- the extent to which Members can more efficiently identify at the earliest possible stage potential trade problems for developing country Members, and in particular least-developed country Members;
 - if a forum for the exchange of comments on notifications can operationally address some key concerns of developing country Members, and in particular least-developed country Members;
 - if problems identified in respect to any specific notified measure are limited to a particular country or region, or if they represent a more systemic barrier for developing country Members, and in particular least-developed country Members.
- (c) Consider how developing country Members, and in particular least-developed country Members, can make greater use of the opportunities provided by the SPS Committee to identify and resolve specific trade concerns. The Committee will, *inter alia*, examine:
- how to facilitate the effective participation of developing country Members, and in particular least-developed country Members, in the SPS Committee;
 - how to facilitate the use of existing or new mechanisms for resolving specific trade problems.
- (d) Develop more effective mechanisms to monitor the demand and supply of technical assistance with the objectives of improving predictability, timeliness and results relative to specific trade-related needs of developing country Members, and in particular least-developed country Members. The SPS Committee will, *inter alia*:
- evaluate the effectiveness of current sources of information on technical assistance, including the STDF database, the two SPS Secretariat questionnaires, and ad hoc summary submissions by Members;

- identify mechanisms to provide opportunities for recipient countries to report on how they have utilized technical assistance received, and to identify areas where future technical assistance could be most effectively targeted;
 - identify mechanisms for the Committee to assess the overall effectiveness of current technical assistance programmes and the extent to which recipient countries have utilized available technical assistance to meet specified needs and achieve desired results;
 - consider how to improve "global SPS clearing-house" instruments to better align trade-related SPS technical assistance resources with assessed SPS needs;
 - identify how to reduce repetitive questionnaire requests to recipient Members, including through exploring the feasibility of establishing "balance sheets" on SPS-related technical assistance at the national level;
 - identify examples and pursue recommendations of how SPS capacity-building can be effectively integrated into national development plans;
 - identify how developing country Members, and in particular least-developed country Members, can more effectively request trade-related technical assistance, in particular through improved identification of, and access to, key technical assistance decision-making processes in both donor and recipient Members, and as appropriate, in other relevant bodies.
- (e) Develop best practices for SPS technical assistance under the WTO Global Trust Fund with the aim of making these programmes more effective, precise and operational. The Committee will, *inter alia*,
- identify ways to effectively improve and demonstrate specific results prior to, during and following national and regional training events, focusing on goal-oriented preparation, appropriate (decision-making) participants, and specific follow-up work programmes;
 - identify ways to improve the targeting of technical assistance by (i) evaluating, on the basis of feedback from recipients, the effectiveness of previous assistance, and (ii) identifying the specific needs of developing countries for future technical assistance.
 - develop an informal modus operandi to monitor the effectiveness and sustainability of SPS training events under the WTO Global Trust Fund;
 - evaluate the first WTO specialized course on the SPS Agreement to be held in the fall 2005 at the WTO Training Institute, and make recommendations as appropriate.

VIII. RECOMMENDATION

44. The SPS Committee recommends that the General Council:

- (a) Take note of this report.
 - (b) Take note of the Committee's commitment to continue to examine the proposals before it, and any revision of these proposals, with the aim of developing specific recommendations.
 - (c) Take note of the Committee's commitment to expeditiously undertake discussions on further work to address the concerns underlying the proposals as identified by Members.
 - (d) Instruct the Committee to report progress to the General Council on:
 - (i) further discussions on the five proposals referred to it, or potential revisions thereof; and
 - (ii) discussions on additional ways which may address the underlying concerns.
-