

1 ARTICLE 10 OF THE AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES1

1.1 Text of Article 10	1
1.2 General	1
1.3 The Procedure to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members	2
1.3.1 General	2
1.3.2 Notification	2
1.3.3 Entry into force of a new measure	3
1.3.4 Transparency	3
1.4 Article 10.2.....	3
1.4.1 Longer time frame for compliance.....	3
1.4.2 Where phased introduction of SPS measures is not possible.....	4

1 ARTICLE 10 OF THE AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES

1.1 Text of Article 10

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.

1.2 General

1. In 2003, the Committee on Sanitary and Phytosanitary Measures (SPS Committee) adopted in principle a proposal by Canada to enhance the transparency of the procedure. Under the proposal, a notifying Member would identify the special and differential treatment component of its proposed or adopted sanitary or phytosanitary measure (SPS measure), and would communicate with exporting Members about the content of this component (the Procedure).¹ Following discussions on the elaboration of the Procedure in the SPS Committee meetings in March 2004 and June 2004, in a October 2004 meeting, the SPS Committee adopted the Procedure.² The Procedure provides that if a Member interested in exporting products affected by a notification identifies a concern with the content of the notification, the exporting Member may request an opportunity to discuss and resolve the concern with the notifying Member. Upon receipt of a written request, the notifying Member would enter into bilateral discussions with the exporting Member with a view to resolving the concern.³ When a decision is taken on whether and how special and differential treatment may be

¹ [G/SPS/W/127](#).

² [G/SPS/33](#).

³ [G/SPS/33](#), Step 5.

provided, the notifying Member should submit an addendum to its original notification which indicates:

"(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."⁴

2. On 1 February 2006, the SPS Committee decided to extend the Procedure 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.⁵

3. At its meeting of 28-29 October 2009, the SPS Committee adopted a Decision revising the Procedure (2009 Decision).⁶

1.3 The Procedure to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members⁷

1.3.1 General

4. The SPS Committee clarified that the Procedure that is contained in the 2009 Decision 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", with the exception of a proposed step (Step 5) that involves the process to be followed after entry into force of a new measure.⁸

5. The SPS Committee emphasized that the procedure proposed in the 2009 Decision is without prejudice to the rights and obligations of Members under Article 10.1 of the SPS Agreement.⁹ That said, the SPS Committee proposed measures relating to the steps that Members ought to take after notification, the steps to be taken after entry into force of a new measure, transparency, and administration of the procedure.¹⁰

1.3.2 Notification

6. The SPS Committee proposed three steps relating to the notification of a proposed SPS measure¹¹:

- a. Where an exporting developing country Member identifies significant difficulties with a proposed SPS measure, that Member may, in the comments that it submits in writing to the notifying Member, request an opportunity to discuss the issue of the 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 measures by the implementation date.
- b. In response to such a request, where the appropriate level of SPS 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.

⁴ [G/SPS/33](#), Step 7.

⁵ [G/SPS/33/Add.1](#).

⁶ [G/SPS/33/Rev.1](#).

⁷ [G/SPS/33/Rev.1](#). See also [G/SPS/7/Rev.4](#), paras. 2.44-2.46.

⁸ [G/SPS/33/Rev.1](#), p. 2.

⁹ [G/SPS/33/Rev.1](#), p. 3.

¹⁰ [G/SPS/33/Rev.1](#), pp. 2-3.

¹¹ [G/SPS/33/Rev.1](#), p. 2.

- c. Where the appropriate level of SPS 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. Such consultations shall preferably take place prior to the entry into force of the new measure.

1.3.3 Entry into force of a new measure

7. The SPS Committee proposed that 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 that its exports face in complying with the measure, it:

"[m]ay request an opportunity to discuss its difficulties with the importing Member to attempt to resolve the issue of concern, especially where no time, or 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 solutions 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."¹²

1.3.4 Transparency

8. Finally, the SPS Committee put forward a procedure that would facilitate transparency in the implementation of the special and differential treatment activities contained in their proposal. The SPS Committee proposed that 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 information should be provided in writing and submitted to the WTO Secretariat as an Addendum to the original notification concerning the measure. The Addendum should indicate:

- a. The name(s) of the Member(s) that requested special and differential treatment;
- b. If special and differential treatment was provided, the form of such treatment; and
- c. If special and differential treatment was not provided, the Addendum should indicate why such treatment was not provided, and whether technical assistance or any other solution was found to address the identified concern.

1.4 Article 10.2

1.4.1 Longer time frame for compliance

9. At the Doha Ministerial Conference, Members adopted a decision in order to establish a time-frame for the gradual introduction of new sanitary and phytosanitary measures:

"Where the appropriate level of sanitary and phytosanitary protection allows scope for the phased introduction of new sanitary and phytosanitary measures, the phrase 'longer time-frame for compliance' referred to in Article 10.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures, shall be understood to mean normally a period of not less than 6 months."¹³

¹² [G/SPS/33/Rev.1](#), p. 3.

¹³ [WT/MIN\(01\)/17](#), para. 3.1.

1.4.2 Where phased introduction of SPS measures is not possible

10. At the same Ministerial Conference, Members adopted a decision that established a process to be applied in cases where the phased introduction of a new measure may not be possible:

"Where the appropriate level of sanitary and phytosanitary protection does not allow scope for the phased introduction of a new measure, but specific problems are identified by a Member, the Member applying the measure shall upon request enter into consultations with the country with a view to finding a mutually satisfactory solution to the problem while continuing to achieve the importing Member's appropriate level of protection."¹⁴

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¹⁴ [WT/MIN\(01\)/17](#), para. 3.1.