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Final Provisions

The least-developed country Members may delay application of the provisions of this Agreement for a period of five years following the date of entry into force of the WTO Agreement with respect to their sanitary or phytosanitary measures affecting importation or imported products. Other developing country Members may delay application of the provisions of this Agreement, other than paragraph 8 of Article 5 and Article 7, for two years following the date of entry into force of the WTO Agreement with respect to their existing sanitary or phytosanitary measures affecting importation or imported products, where such application is prevented by a lack of technical expertise, technical infrastructure or resources.

1.2 General

1. In *EC – Hormones*, the Panel referred to Article 14 in the context of finding that the SPS Agreement applies to SPS measures that were enacted before 1 January 1995 but were maintained thereafter:

"[S]everal provisions of the SPS Agreement confirm the general principle that the SPS Agreement should also apply to sanitary measures which were enacted before its entry into force but which remain in force thereafter. Except for Article 14 which authorizes delays in the application of some or all of the provisions of the SPS Agreement for least-developed and other developing countries, no transition periods are provided for. The fact that Article 14 explicitly provides for a two-year transition period for developing countries with respect to some of their *existing* sanitary and phytosanitary measures, confirms that the SPS Agreement generally applies to measures enacted before the entry into force of the SPS Agreement but which are maintained in force after that date."¹

2. In *EC – Hormones*, the Appellate Body upheld the Panel's finding regarding the temporal scope of the SPS Agreement. After stating that the SPS Agreement does not contain any provision limiting the temporal application of the SPS Agreement to SPS measures adopted after 1 January 1995, the Appellate Body noted:

"Article 14 of the *SPS Agreement* allows the *least-developed country Members* and other *developing country Members* to delay implementation of the provisions of that Agreement for a period of *five and two years*, respectively, following the date of entry into force of the *WTO Agreement*. Developing country Members may only delay application of the provisions of that Agreement where such application is prevented by lack of technical expertise, technical infrastructure or resources. This right to *defer* application of the provisions of the *SPS Agreement* concerns, however, both SPS measures existing before the entry into force of the *WTO Agreement* and SPS measures enacted since."²

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¹ Panel Reports, *EC – Hormones (US)*, para. 8.26, and *EC – Hormones (Canada)*, para. 8.29.

² Appellate Body Report, *EC – Hormones*, fn 99.