

**ENHANCING TRANSPARENCY OF SPECIAL AND DIFFERENTIAL (S&D)  
TREATMENT WITHIN THE SPS AGREEMENT**

Submission by Canada

1. During the informal discussion on transparency at the June 2002 meeting of the WTO Sanitary and Phytosanitary (SPS) Committee, Canada verbally presented a proposal for enhancing the transparency of special and differential (S&D) treatment under the SPS Agreement. The Canadian proposal was based on an Egyptian proposal that was tabled at the March 2002 SPS Committee meeting. The Chair requested that Canada submit to the Committee at its next meeting a written proposal concerning S&D treatment, taking into account points raised by Members during the June discussion.
2. At its March 2002 meeting, the SPS Committee discussed both informally and formally the document entitled *Recommended Notification Procedures* (G/SPS/7/Rev.1). During those discussions Egypt proposed that the notification format should capture S&D treatment accorded to developing country Members in relation to Article 10.1 (S&D Treatment) of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (the SPS Agreement). Specifically, Egypt proposed that a new box be added to the notification format. Within this box the notifying Member would indicate the S&D treatment component of the proposed or adopted sanitary or phytosanitary measure with respect to exports from developing country Members, as well as indicate the developing country Members that could be affected by the measure, and the ways that these Members could be assisted to comply with the measure.
3. While there was broad agreement with the objective of being more transparent about the operation of the S&D treatment provisions of the SPS Agreement contained in the Egyptian proposal, some Members expressed concerns with respect to certain aspects of the proposal. First, it would be difficult for the Member notifying its measure to identify *ex ante* the specific exporting Members that may require S&D treatment in order to adapt to the measure, as well as the specific type of S&D treatment that each particular exporting Member may require. Second, some Members noted that identifying *ex ante* specific S&D treatment for exporting Members would more naturally be the responsibility of the exporting Member. These Members were of the opinion that transferring the exporting Member's responsibility to importing Members would be inappropriate. As a result of these concerns, some Members feared that there would not be many occasions in which S&D treatment could be identified on an *ex ante* basis.
4. Building upon the Egyptian proposal for recognizing S&D treatment in the transparency provisions of the SPS Agreement, while addressing some of the concerns raised by Members with respect to the Egyptian proposal, at the June 2002 SPS Committee meeting, Canada proposed that information regarding S&D treatment be added to the information now required in an Addendum form rather than being included in the Notification form. The Committee agreed that Canada should submit this proposal in writing for the November, 2002 Committee meeting.

### **Summary of Canadian proposal**

5. The Canadian proposal comprises two components. As under the current WTO SPS notification process, the first component is bilateral. A Member that may be affected by the notified measure would contact the notifying Member to request further information concerning the measure. These two Members may then enter into bilateral discussions in an attempt to address the issues of concern while maintaining the importing Member's appropriate level of protection. The result of these discussions could be specific S&D treatment with respect to the notified measure or other mutually-acceptable solutions.

6. The second component is multilateral, where, in order to ensure transparency, the result of these bilateral discussions are reported in an Addendum by the importing Member. The Member that has proposed the measure issues an Addendum format, providing Members with information on the bilateral S&D treatment discussions. Specifically, a Member would issue an Addendum with respect to a notified SPS measure and would indicate the following: (1) if S&D treatment was requested; (2) which Member(s) requested S&D treatment; (3) if S&D treatment was provided, how it was provided; (4) if S&D treatment was not provided, why it was not provided and whether any other solution was found to address the identified concern (see Appendix I for proposed revised Addendum format). As Addenda are linked to the original SPS notification by a unique notification number and can be issued at any time, providing information to Members about S&D treatment through the addendum format allows for updates by importing Members when a S&D treatment request has been addressed. Canada proposes that this information be incorporated into paragraph 28 of G/SPS/7/Rev.2, as a new paragraph 28(g).

#### ***Ex post vs. ex ante***

7. Providing information on S&D treatment *ex post* rather than *ex ante* offers more opportunities to exporting Members to identify those measures (or elements thereof) for which they wish to seek S&D treatment, while ensuring importing Members are transparent with respect to their response to the request for S&D treatment. As well, providing this information *ex post* recognizes that S&D treatment must be tailored to each Member's need and, therefore, cannot be reported until the two Members have discussed which aspects of the measure the exporting Member would require assistance in meeting. Finally, providing information on S&D treatment *ex post* may allow for more frequent and accurate reporting by importing Members. This may encourage more Members to request and secure S&D treatment.

#### **Determining export interests**

8. Through the use of the Addendum format, this proposal recognizes the difficulty for an importing Member to anticipate the export interests of all Members and the particular S&D treatment pertinent to any particular measure. Under the Canadian proposal, it is the responsibility of the exporting Member to identify its export interests, while it is the responsibility of the importing Member to respond constructively to a request from an exporting Member.

## **S&D treatment with respect to SPS measures**

9. The use of the Addendum recognizes that S&D treatment for SPS measures is situation-specific (e.g. product, country, nature of risk, etc.). Utilizing the Addendum format allows for transparency through reporting on the results of the bilateral discussions.

### **How the Canadian proposal would work:**

- A country would notify a draft or proposed SPS measure. This Notification should indicate the products covered by the measure (Annex B.5b; Notification format, Box 6) as well as the regions or countries likely to be affected (Notification format, Box 4).
- To help ensure that developing country Members are aware of notifications that may affect them, the Secretariat is responsible for promptly circulating notifications to all Members and to "draw the attention of developing country Members to any notifications relating to products of particular interest to them" (Annex B.9).
- If a Member with an interest in exporting to the notifying country identifies a concern with the content of the notification, that Member would contact the notifying country, within the comment period, to seek additional information with respect to the notified measure.
- The notifying country and the developing country Member with an export interest would enter into bilateral discussions to attempt to resolve the issue of concern. These discussions could lead to a request for S&D treatment by the exporting Member and a response by the notifying country as to whether and how the implementation of the notified measure could be adjusted to take into account the special needs of the interested developing country.
- When the bilateral discussions conclude and a decision is taken on whether and, if so, how to provide S&D treatment, the notifying country would complete the Addendum format indicating the modifications to the measure that will come into force. This Addendum will also indicate (1) if S&D treatment was requested; (2) name(s) of Member(s) that requested S&D treatment; (3) if S&D treatment was provided; how S&D treatment was provided; (4) if not provided, indicate why it was not provided and whether any other solution was found to address the identified concern.
- A request for S&D treatment could be made after the normal comment period has expired. However, once the measure is already in force, the opportunities for the importing Member to consider S&D treatment will be much more limited. In the unlikely event that S&D treatment is possible after the measure has already come into force, its provision would be reported in an Addendum.

25 October 2002

## Appendix 1

### Proposed Treatment of S&D in Addendum

The following format for the Addendum was agreed to by the SPS Committee at its meeting in March 2002 (see G/SPS/7/Rev.2). Canada proposes that information on S&D treatment that has been requested by a developing country be added to the addendum format.

#### Addendum

The following communication, dated # Month Year has been received from [Member].

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Title outlining what the SPS measure or product is

[Text]

[Where the notified document can be obtained from – include contact name, agency, full address, telephone, facsimile, and email as appropriate].

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#### ***Proposed new text***

#### *Special and Differential Treatment (S&D)*

*[To indicate (1) if S&D treatment was requested; (2) name(s) of Member(s) that requested S&D treatment; (3) if S&D treatment was provided; how S&D treatment was provided; (4) if not provided, indicate why it was not provided and whether any other solution was found to address the identified concern.]*

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