Conclusion

ESTIMATED TIME: 1 hour

OBJECTIVES OF MODULE 9

- Revise the most important points of our course on the SPS Agreement.
I. SUMMARY

OBJECTIVE OF THE WTO

The objective of the WTO, as encapsulated in the Preamble of the WTO Agreement, is to improve the welfare of the people of its Member countries (standard of living, employment, income, etc.) by expanding the production of, and trade in, goods and services.

FUNCTIONS OF THE WTO

- Facilitate the implementation, administration and operation, of the WTO agreements (including the Plurilateral Agreements) as well as furthering their objectives;
- Serve as a forum for trade negotiations;
- Administer the Dispute Settlement Understanding (DSU);
- Administer the Trade Policy Review Mechanism (TPRM); and
- Cooperate *inter alia* with the IMF and the IBRD (World Bank) to achieve coherence in global economic policy making.

STRUCTURE OF THE WTO

Ministerial Conference
   | General Council (also DSB and TPRB)
   | Councils for Goods, Services, Intellectual Property
   | Committees
   | Sub-Committees

THE WTO AGREEMENT CONTAINS FOUR ANNEXES

Annexes 1, 2, and 3 - the "Multilateral Trade Agreements."

- Annex 1 is divided into three sections:
  - Annex 1A (The Multilateral Agreements on Trade in Goods);
  - Annex 1B (Agreement on Trade in Services); and
- Annex 2 covers the Dispute Settlement Understanding.
- Annex 4 includes the Plurilateral Trade Agreements, which are only binding on WTO Members that accept them.
THE DISPUTE SETTLEMENT SYSTEM

The Dispute Settlement System of the WTO "is a central element in providing security and predictability to the multilateral trading system". It serves to preserve the rights and obligations entered into by the Members of the WTO and it's an important tool to ensure that they live up to their commitments, with a common understanding on the nature of these commitments.

THE SPS AGREEMENT

The SPS Agreement is a WTO Agreement which lays down provisions that should guide WTO Members in their development and application of all sanitary and phytosanitary measures directly or indirectly affecting international trade. While it follows the general WTO rules on dispute settlement, it contains a provision that allows panels to consult technical or scientific experts for technical or scientific information, at the request of the parties to the dispute or on its own initiative.

OBJECTIVES OF THE SPS AGREEMENT

While recognizing the right of WTO Members to adopt sanitary and phytosanitary measures when scientifically justified, the SPS Agreement is intended to ensure that measures taken to protect the safety of food and animal or plant life or health, are not applied in a manner which constitutes an arbitrary or unjustifiable discrimination between WTO Members (where the same conditions prevail) or a disguised restriction to international trade.

SCOPE OF THE SPS AGREEMENT

The SPS Agreement applies to all measures whose purpose is to protect, within the territory of the WTO Member:

- human or animal life or health from food-borne risks (risks arising from additives, contaminants, toxins or disease-causing organisms in their food);
- human life or health from animal or plant-carried diseases;
- animal and plant life or health from pests, diseases or disease-causing organisms;
- the territory of a WTO Member from damage caused by the entry, establishment or spread of pests.

These measures include sanitary and phytosanitary measures taken to protect the health of fish and wild fauna, as well as of forests and wild flora, from the risks stated above.

It is important to remember that the SPS Agreement only applies to SPS measures which may, directly or indirectly, affect international trade.

RELATIONSHIP BETWEEN THE SPS AND TBT AGREEMENT

The SPS and the TBT Agreements are mutually exclusive (Article 1.5 of the TBT Agreement and Article 1.4 of the SPS Agreement).

- The SPS Agreement covers all measures whose purpose is to protect human or animal health from food-borne risks; human health from animal or plant-carried diseases; animals and plants from pests or diseases; or to prevent other damage from pests.
The TBT Agreement covers all technical regulations, standards and conformity assessment procedures regardless of their objectives, except when these are sanitary or phytosanitary measures as defined in Annex A of the SPS Agreement.

**RELATIONSHIP BETWEEN THE SPS AGREEMENT AND THE AGREEMENT ON AGRICULTURE**

The Agreement on Agriculture is intrinsically related to the SPS Agreement, as the latter complements the former on very specific measures. Indeed, the Agreement on Agriculture provides that "WTO Members agree to give effect to the Agreement on the Application of Sanitary and Phytosanitary Measures". The two Agreements may apply simultaneously as they are not mutually exclusive.

**RELATIONSHIP BETWEEN THE SPS AGREEMENT AND THE GATT**

- The SPS Agreement is, among other things, a further specialization of Article XX(b) of the GATT. Article 2.4 of the SPS Agreement provides that SPS measures considered to be in accordance with the relevant provisions of the SPS Agreement shall be presumed to be in accordance with the obligations of the WTO Members under the provisions of GATT 1994 (in particular Article XX(b));
- In the event of conflict between a provision of the GATT 1994 and a provision of the SPS Agreement, the provision of the latter shall prevail to the extent of the conflict.

**THE INSTITUTIONAL COVERAGE OF THE SPS AGREEMENT INCLUDES**

A wide range of bodies and systems: (i) central government bodies; (ii) local government bodies (which include provincial/state government bodies); and (iii) regional and non-governmental bodies. WTO Members’ obligations vary according to the type of body.

**THE TEMPORAL SCOPE OF THE SPS AGREEMENT**

The SPS Agreement applies to measures in legal force regardless of the date they were enacted by the WTO Member.

**SPS MEASURES INCLUDE ALL RELEVANT LAWS, DECREES, REGULATIONS, REQUIREMENTS AND PROCEDURES RELATING TO**

- end product criteria;
- processes and production methods;
- testing, inspection, certification and approval procedures;
- quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport;
- provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and
- packaging and labelling requirements directly related to food safety.
THE RIGHT TO ADOPT SPS MEASURES TO ACHIEVE A GIVEN APPROPRIATE LEVEL OF PROTECTION IS ACCOMPANIED BY BASIC OBLIGATIONS. ESSENTIALLY, COUNTRIES MAY ADOPT SPS MEASURES PROVIDED THE MEASURES

- are applied only to the extent necessary to protect life or health;
- are based on scientific principles and not maintained without sufficient scientific evidence; and
- do not unjustifiably discriminate between national and foreign, or among foreign sources of supply, where identical or similar conditions prevail.

WTO MEMBERS HAVE TWO OPTIONS TO SHOW THAT THEIR MEASURES ARE BASED ON SCIENCE. THEY MAY EITHER

- base their measures on international standards; or
- base their measures on scientific risk assessments.

THE PRINCIPLES WHICH CAN BE SINGLED OUT IN THE SPS AGREEMENT ARE

(i) Non-Discrimination; (ii) Harmonization; (iii) Equivalence; (iv) Scientific Evidence (Risk Assessment); (v) Regionalization; (vi) Transparency; (vii) Technical Assistance to Developing Members and Special and Differential Treatment.

HARMONIZATION IS A CENTRAL DISCIPLINE OF THE SPS AGREEMENT AND IT'S ARTICULATED INTO RIGHTS AND OBLIGATIONS FOR WTO MEMBERS

Their two main obligations are that:

- WTO Members shall base their SPS measures on international standards, guidelines or recommendations; and
- WTO Members shall participate in the development and periodic review of international standards, guidelines and recommendations prepared by international standard-setting bodies, in particular the "three sisters".

Their two main rights are that:

- WTO Members' SPS measures which conform to international standards, guidelines or recommendations will be deemed to be necessary and presumed to be consistent with the relevant provisions of the SPS Agreement.
- WTO Members may adopt SPS measures which are more strict than the relevant international standard, if they have a scientific justification, or as a consequence of the level of protection a WTO Member determines to be appropriate, in accordance with the relevant provisions of Article 5 of the SPS Agreement.

INTERNATIONAL STANDARDS

International Standards are defined in Annex A of the SPS Agreement as those created by the Codex Alimentarius Commission; the World Organization for Animal Health, and the International Plant Protection
Convention, in their respective area of action. The SPS Committee can identify other relevant standard-setting organizations, but has not done so to date.

**THE DIFFERENCE BETWEEN A MEASURE 'BASED ON' AND A MEASURE 'CONFORMING TO' AN INTERNATIONAL STANDARD WAS POINTED OUT BY THE APPELLATE BODY IN THE EC - HORMONES CASE, WHERE IT NOTED THAT**

"A thing is commonly said to be 'based on' another thing when the former 'stands' or is 'founded' or 'built' upon or 'is supported by' the latter. In contrast, much more is required before one thing may be regarded as 'conform[ing] to another: the former must 'comply with', 'yield or show compliance' with the latter..."

**PROCEDURE TO MONITOR THE PROCESS OF INTERNATIONAL HARMONIZATION AND THE USE OF INTERNATIONAL STANDARDS**

The SPS Committee developed a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations (G/SPS/11/Rev.1). The procedure's focus is on identifying, with the help of WTO Members, major impacts on trade resulting from the non-use of those international standards, guidelines or recommendations and to determine the reasons for their non-use. It also aims at identifying where there's a need for a standard, guideline or recommendation or when an existing one is not appropriate for its purpose and use.

**WHEN A WTO MEMBER DECIDED TO CREATE A NEW SPS MEASURE - OR REVISE ONE WHICH IS ALREADY IN PLACE**

When a WTO Member decides to create a new SPS measure - or revise one which is already in place - it should start its task by verifying if an international standard exists for the product and/or measure in question. If it exists, the WTO Member shall base its SPS measure on it, unless there is a scientific justification for not using it, or the relevant international standard does not achieve the level of protection aimed at by the WTO Member.

**EQUIVALENCE**

Equivalence is the state wherein sanitary or phytosanitary measures applied in an exporting country, though different from the measures applied in an importing country, achieve the importing country's appropriate level of sanitary or phytosanitary protection. It does not require duplication or identical measures, and can be applied between all WTO Members, irrespective of their level of development. Equivalence, however, has to be demonstrated by the exporting country and recognized by the importing country. Finally, a determination of recognition of equivalence may be with respect to a specific measure or measures related to a certain product or categories of products, or on a system-wide basis.

**THE SPS COMMITTEE DECISION ON EQUIVALENCE**

The SPS Committee Decision on Equivalence (G/SPS/19/Rev.2) provides guidance in the recognition of equivalence and recommends that a WTO Member which has recognized the equivalence of SPS measures of another WTO Member should notify others, through the WTO Secretariat, of the measure(s) recognized to be equivalent and of the products affected by this recognition. Significant changes in existing equivalence arrangements, including their suspension or termination, should also be notified.
IT IS CONSISTENT FOR WTO MEMBERS TO ADOPT SPS MEASURES WHICH ARE MORE STRINGENT THAN THE RELEVANT INTERNATIONAL STANDARDS OR ADOPT SPS MEASURES WHEN INTERNATIONAL STANDARDS DO NOT EXIST, PROVIDED THE MEASURES ARE, PURSUANT TO ARTICLE 5 OF THE SPS AGREEMENT:

- based on a scientific risk assessment;
- consistently applied; and
- not more trade restrictive than necessary.

THERE ARE TWO TYPES OF RISK ASSESSMENT AS DEFINED IN ANNEX A PARAGRAPH 4 OF THE SPS AGREEMENT

- For risks from pests or diseases: the evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing Member according to the SPS measures which might be applied, and of the associated potential biological and economic consequences; or
- For food-borne risks: the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feedstuffs.

BOTH TYPES OF RISK ASSESSMENT SHOULD BE SPECIFIC (THAT IS, DEMONSTRATE MORE THAN A GENERAL RISK OF HARM), AND COMPREHENSIVE (COVER EACH SUBSTANCE/PRODUCT AT ISSUE). FURTHERMORE

- WTO Members are not obliged to base a measure on a risk assessment that represents the mainstream scientific opinion, they are allowed to take into account diverging scientific opinions from respected, qualified sources (Appellate Body report in EC – Hormones).
- WTO Members are not required, under Article 5.1 of the SPS Agreement, to conduct their own risk assessment, and may base their measures on a risk assessment carried out by another WTO Member or by relevant international organizations (Appellate Body report in EC – Hormones). WTO Members are nonetheless responsible for the appropriateness and comprehensiveness of the risk assessment on which they base a measure, which should address the risk situation actually faced by the WTO Member imposing the measure.
- WTO Members have an obligation to base a measure on a risk assessment, even if the measure was enacted before the entry into force of the SPS Agreement (Panel Report on EC - Hormones). SPS measures should not be maintained without sufficient scientific evidence, which means that a WTO Member should be able to provide scientific evidence (a risk assessment) for an SPS measure which is in force and is not based on an international standard, if so requested.

IN THE ASSESSMENT OF RISKS, WTO MEMBERS SHALL TAKE INTO ACCOUNT

Available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; the prevalence of specific diseases or pests; the existence of pest – or disease – free areas; the relevant ecological and environmental conditions; quarantine and other treatments.
WHEN ASSESSING THE RISKS TO ANIMAL OR PLANT LIFE OR HEALTH, OR WHEN CHOOSING SPS MEASURES TO ACHIEVE ITS APPROPRIATE LEVEL OF PROTECTION, A WTO MEMBER SHALL TAKE INTO ACCOUNT

The potential damage in terms of loss of production or sales in the event of entry, establishment or spread of a pest or disease; the costs of control or eradication from the territory of the importing WTO Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

APPROPRIATE LEVEL OF PROTECTION: THE LEVEL OF SPS PROTECTION DEEMED APPROPRIATE IS SET BY THE WTO MEMBER IMPOSING THE MEASURE

- WTO Members should take into account the objective of minimizing negative trade effects when choosing their appropriate level of protection.
- WTO Members must avoid unjustifiable differences in the level of health protection they require in different situations, if such differences result in discrimination or a disguised restriction on international trade, pursuant to Article 5.5 of the SPS Agreement. The mere proof of different treatment in different situations is not sufficient to demonstrate a violation of this Article, although it might serve as a warning signal that the implementing measure might be discriminatory in its application, or a disguised restriction on trade.
- WTO Members shall adopt measures no more trade restrictive than what is required to achieve the chosen level of SPS protection, considering technical and economic feasibility. A measure is more trade restrictive than required if there is another measure which is reasonably available taking into account technical and economic feasibility; achieves the WTO Member’s appropriate level of sanitary or phytosanitary protection; and is significantly less restrictive to trade than the SPS measure contested (Appellate Body in Australia – Salmon).

GUIDELINES TO FURTHER THE PRACTICAL IMPLEMENTATION OF ARTICLE 5.5

In June 2000, the SPS Committee adopted the “Guidelines to Further the Practical Implementation of Article 5.5” (G/SPS/15). The Guidelines are intended to provide assistance to WTO Members in the objective of achieving consistency in the application of the concept of appropriate level of protection and its practical implementation, i.e., the adoption and implementation of SPS measures.

THE ROLE OF PRECAUTION IN THE SPS AGREEMENT

Article 5.7 of the SPS Agreement permits the adoption of provisional measures on the basis of the available pertinent information about the product’s or process’ health risk(s), when scientific evidence to permit a final decision on its safety is insufficient. However, a WTO Member must seek the additional necessary information in order to obtain a more objective assessment of the risk(s), as well as review the SPS measure within a reasonable period of time.

FOUR CONDITIONS MUST BE CUMULATIVELY MET SO ARTICLE 5.7 OF THE SPS AGREEMENT CAN BE LEGITIMATELY INVOKED (APPELLATE BODY REPORT ON JAPAN – AGRICULTURAL PRODUCTS II)

- The provisional SPS measure must be imposed when relevant scientific information is insufficient;
- The provisional measure must be adopted on the basis of available pertinent information;
The WTO Member adopting the measure must seek to obtain the additional information necessary for a more objective assessment of risk; and

The WTO Member must review the SPS measure accordingly within a reasonable period of time, which is determined on a case-by-case basis.

REGIONALIZATION (ARTICLE 6 OF THE SPS AGREEMENT)

WTO Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area — whether all of a country, part of a country, or all or parts of several countries — from which the product originated and to which the product is destined. The main obligations regarding Regionalization are:

- While determining a region's SPS characteristics, WTO Members shall take into account, inter alia, the level of prevalence of specific pests or diseases; the existence of eradication or control programmes; and appropriate criteria or guidelines developed by international organizations.
- WTO Members have the obligation to recognize pest- or disease-free areas and areas of low pest or disease prevalence, established in other WTO Members' territories. The determination of such areas shall be based on factors such as: geography, ecosystems, epidemiological surveillance, and the effectiveness of SPS controls.
- An exporting WTO Member that claims that areas within its territory are pest- or disease-free, or have low pest or disease prevalence, must provide the necessary evidence of this fact to the importing WTO Member. For this purpose, it must give the importing WTO Member reasonable access to inspect, test and other relevant procedures.

TRANSPARENCY IS AN IMPORTANT TOOL TO ENSURE THAT TRADE FLOWS AS SMOOTHLY, PREDICTABLY AND FREELY AS POSSIBLE. THE SPS AGREEMENT CONTAINS DETAILED TRANSPARENCY OBLIGATIONS IN

- Article 5.8
- Article 7 (general transparency provision)
- Annex B

THE TRANSPARENCY OBLIGATIONS IN ARTICLE 7 AND ANNEX 8 OF THE SPS AGREEMENT CAN BE GROUPED INTO THREE SETS OF OBLIGATIONS

- Notifications and establishment of SPS Notification Authorities
- Publications
- Establishment and functioning of SPS Enquiry Points

WTO MEMBERS SHALL NOTIFY DRAFT SPS REGULATIONS WHEN THE FOLLOWING TWO CONDITIONS APPLY

- The content of a proposed SPS regulation is not substantially the same as the content of the relevant international standard, recommendation or guideline, or such a standard does not exist; and
the proposed measure may have a significant effect on the trade of other WTO Members (either import-enhancing or import-reducing effects).

THE SPS COMMITTEE CLARIFIED THAT THE SIGNIFICANCE OF THE EFFECT ON TRADE OF SPS REGULATIONS CAN BE ASSESSED BY TAKING INTO ACCOUNT

- The value/importance of imports for the importing and/or exporting Members concerned, individually or collectively;
- the potential development of such imports; and
- the difficulties of WTO Members to comply with the proposed regulations.

Notifications of SPS regulations shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account. In case urgent problems of health protection arise or threaten to arise, WTO Members are allowed to notify the measure taken immediately before or after its adoption. The notification must describe the nature of the urgent problems. Formats of SPS notifications can be found in document G/SPS/7/Rev.2.

WTO Members are encouraged to share existing unofficial translations of documents in WTO languages, where an official translation is not available. WTO Members are encouraged to indicate in the notification form whether an official translation exists or is planned.

WTO MEMBERS HAVE THE FOLLOWING PUBLICATION OBLIGATIONS

- Before the adoption of a measure: WTO Members are required to publish an early notice of their intention to introduce a particular SPS regulation;
- After the adoption of a measure: WTO Members are required to promptly publish all adopted SPS measures, including those which do not have a significant effect on the trade of other WTO Members, or those which are in accordance with an international standard.

WTO Members shall allow a reasonable interval between the publication of an SPS regulation and its entry into force, except in urgent circumstances. Such reasonable interval normally means a period of no less than 6 months. The entry into force of measures which liberalize trade should not be unnecessarily delayed.

ENQUIRY POINTS ARE REQUIRED TO RESPOND TO ALL REASONABLE ENQUIRIES FROM OTHER WTO MEMBERS AND PROVIDE RELEVANT DOCUMENTS REGARDING

- Any sanitary or phytosanitary regulations adopted or proposed within the territory of the WTO Member.
- Any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within the territory of the WTO Member.
- Risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection.
- The membership and participation of the WTO Member, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this Agreement (including Equivalence Agreements), and the texts of such agreements and arrangements.
The addresses of WTO Members' SPS Enquiry Points are contained in document "National Enquiry Points", Note by the Secretariat, G/SPS/ENQ/. They are available and regularly updated on the SPS website at: http://www.wto.org/english/tratop_e/spse/spse.htm

The addresses of WTO Members' SPS Notification Authorities are contained in the document "National Notification Authorities", Note by the Secretariat, G/SPS/NNA/. They are available and regularly updated on the SPS website at: http://www.wto.org/english/tratop_e/spse/spse.htm

**BASIC REQUIREMENTS OF CONTROL, INSPECTION AND APPROVAL PROCEDURES**

The basic requirements of Control, Inspection and Approval Procedures are that any such procedures shall be no less favourable for imported products than they are for like domestic goods, and shall be no more than what is necessary to ensure compliance with regulations. This applies for time delays, information requirements,

**WTO MEMBERS HAVE TO OBSERVE THE REQUIREMENTS IN ANNEX C, PARAGRAPH 1 (A) TO (I), REGARDING**

- Timing: procedures must be undertaken and completed without undue delay.
- Transparency: publication or communication of the standard processing period of each procedure; prompt examination of the completeness of the application; expeditious transmission of precise and complete results of the procedure; continuation of the procedure as far as practicable even in case of deficiencies of application; and timely information about the stage of the procedure.
- Information to be submitted: the amount of information requested must be limited to what is necessary for appropriate control, inspection and approval procedures; confidentiality of information derived from such procedures must be respected in a way no less favourable than for domestic products, so that "legitimate commercial interests are protected".
- Non-discrimination and avoidance of unnecessary trade barriers: requirements for control, inspection and approval of individual specimens of a product are limited to what is reasonable and necessary; fees should not be higher than the cost of the service and should be equitable regarding procedures for imported and like domestic products; the location of facilities used and the selection of samples of imported products should be made equitably; when specifications of a product change, the procedure for the modified product has to be limited to what is necessary to determine if the product still meets the requirements concerned; and a review procedure shall exist for complaints concerning the operation of such procedures, so that corrective action may be taken when a complaint is justified.

**OTHER REQUIREMENTS REGARDING CONTROL, APPROVAL AND INSPECTION PROCEDURES ARE THAT**

- Prior approval systems for additives or contaminants on food shall also be based on an assessment of risk and WTO Members are encouraged to use relevant international standards as the basis for access to their markets.
- When control is at the level of production, the importing WTO Members shall be afforded the necessary assistance to facilitate such control at another WTO Member's territory (Annex C, paragraph 2).
- WTO Members shall not be prevented from carrying out reasonable inspections within their territories (Annex C, paragraph 3).
IN THE URUGUAY ROUND, THE "DEVELOPMENT DIMENSION" OF THE MULTILATERAL TRADING SYSTEM GAINED SPECIFICITY WITH THE INTRODUCTION OF DETAILED SPECIAL AND DIFFERENTIAL (S&D) TREATMENT PROVISIONS, INCLUDING ONES ON TECHNICAL ASSISTANCE (TA), WITHIN THE MANY AGREEMENTS.

SPS-RELATED TECHNICAL ASSISTANCE OBLIGATIONS ARE CONTAINED IN ARTICLE 9 OF THE SPS AGREEMENT

- Article 9.1 provides that WTO Members facilitate the provision of technical assistance to other WTO Members, especially developing country Members, either bilaterally or through the appropriate international organizations. This assistance may take the form of advice, credits donations and grants, for purposes of training, research, establishment of national regulatory bodies and systems, acquisition of technologies and expertise, as well as equipment.
- Pursuant to Article 9.2, WTO Members shall also consider providing technical assistance to permit a developing country Member maintain and expand its market access opportunities for a product which requires substantial investment in order to fulfil the SPS requirements of the importing country.

THE WTO SECRETARIAT

The WTO Secretariat provides demand-driven assistance to developing and least-developed country WTO Members in the implementation of the SPS Agreement, often with the participation of the three sister organizations. Much technical assistance is also provided bilaterally by WTO Members, as well as by the three standard-setting organizations independently. Other regional and international organizations also participate in the technical assistance effort. The Standards and Trade Development Facility (STDF) is a joint initiative which finances and coordinates projects aimed at the implementation of SPS obligations and standards.

SPECIAL AND DIFFERENTIAL (S&D) TREATMENT OBLIGATIONS IN ARTICLE 10 OF THE SPS AGREEMENT, LAY DOWN THE FOLLOWING OBLIGATIONS

- WTO Members have to take into account the needs of developing and least developed country Members in the application and preparation of SPS measures.
- WTO Members should accord longer time-frames for compliance on products of interest to developing country Members, where phased introduction of new SPS measures is possible.
- The SPS Committee may grant developing country Members, upon request, specified, time-limited exceptions from obligations under the SPS Agreement.
- WTO Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.

IN ADDITION TO ARTICLE 10 ON S&D TREATMENT, THERE ARE OTHER PROVISIONS IN THE SPS AGREEMENT WHICH RELATE TO THE SPECIFIC PROBLEMS OF DEVELOPING COUNTRIES

- The Preamble, which recognizes that developing country Members may encounter special difficulties in complying with the SPS measures of importing WTO Members, and also in formulating and applying SPS measures in their own territories. It also states the desire to assist them in their endeavours in this regard.
Article 14 "Final Provisions", which delayed the application of the SPS Agreement to LDCs by five years; and to developing countries by two years. In the latter case, WTO Members were still obliged to comply with the provisions on transparency.

Annex B, paragraph 2, which provides for a reasonable interval between the publication of SPS regulations and their entry into force.

Annex B, paragraph 8 which refers to the provision of translations of documents covered by a specific notification, by developed country Members.

TRANSPARENCY

Transparency in the provision of special and differential treatment was ensured by the adoption of a procedure by the SPS Committee (G/SPS/33). More specifically, after submitting a notification for a new or revised draft regulation (following the guidance provided in G/SPS/7/Rev.2) a notifying WTO Member shall submit additional information, in a specific addendum to the notification, indicating when special and differential treatment or technical assistance has been requested in the context of the notification, and the response to the request.

THE SPS COMMITTEE

SPS-related work in the WTO takes place in the Committee on Sanitary and Phytosanitary Measures ("SPS Committee"), which reports directly to the Council for Trade in Goods, and is open to all Members of the WTO. The SPS Committee normally meet three times each year.

The SPS Committee affords WTO Members the opportunity to consult on any matters relating to the operation of the SPS Agreement or the furtherance of its objectives. It also carries out such responsibilities as assigned to it under the SPS Agreement or by WTO Members, mainly the mandate to cooperate with the relevant international standard-setting bodies in order to promote the objective of harmonization and avoidance of duplication of work.

An Agenda Item of the SPS Committee meetings, on Specific Trade Concerns (under "Implementation of the Agreement"), provides an opportunity for WTO Members to raise concerns on specific SPS measures of another WTO Member (including transparency issues). Before raising a specific trade concern at the SPS Committee, WTO Members may have gone through several steps of information exchange and consultations, but these are not obligatory.

A WTO MEMBER MAY REQUEST

A WTO Member may request the initiation of formal consultations and a dispute settlement procedure, before the Dispute Settlement Body (DSB), with respect to SPS measures. Alternatively, WTO Members may use the good offices of the Chairperson of the SPS Committee or, if they so wish, the dispute settlement procedures available at the OIE or the IPPC, in their respective fields of action, to facilitate the resolution of specific trade concerns.

THE REVIEW OF THE SPS AGREEMENT

The Review of the SPS Agreement is carried out by the SPS Committee every four years. The first review took place after three years of operation of the Agreement. The Committee reviews the operation and implementation of the SPS Agreement and may submit proposals for amendments to the text of the SPS Agreement to the Council for Trade in Goods.
The SPS Committee has conducted two Reviews so far (one in 1999 and another in 2005) but there have been no proposals to amend the SPS Agreement (G/SPS/12 and G/SPS/36).