

Committee on Sanitary and Phytosanitary Measures

**TIME-FRAMES RELATING TO THE INTRODUCTION OF
NEW SPS MEASURES**

Note by the Secretariat¹

1. The text of the Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement") contains certain obligations that establish time periods relating to the adoption and application of new sanitary or phytosanitary measures by Members. These obligations relate, inter alia, to the notification of drafts of proposed new or modified measures, the publication of adopted measures, the entry into force of measures and the application to products of interest to developing country Members. None of these obligations are presented in terms of specific periods of time (X days or Y months), but rather as "at an early stage", "reasonable time", "promptly", etc.
2. The SPS Committee has adopted recommendations, in particular with regard to the implementation of the transparency provisions of the SPS Agreement, which provide more precision regarding some of the time-frames. For example, the Committee has recommended that the "reasonable time" for comments on the notification of a draft of a proposed new measure should normally be a period of at least 60 days. The recommendations of the Committee are contained in G/SPS/7/Rev.2 and in G/SPS/33 with regard to transparency of special and differential treatment.
3. At the Doha Ministerial Conference in November 2001, Members adopted decisions which give further precision to some of the provisions of the SPS Agreement (WT/MIN(01)/17). One decision was that the "reasonable interval" between the publication of an SPS measure and its entry into force should normally be a period of not less than six months. Another decision was that the "longer time-frames for compliance" accorded under certain circumstances to products of interest to developing country Members should normally be a period of not less than six months.
4. In the context of the Committee's discussions regarding special and differential treatment, as well as its discussions on the implementation of the transparency provisions of the SPS Agreement, several Members have indicated that it would be useful to clarify the relationship between the various steps involved in the drafting and notification of a new or modified SPS measure and its application, and in particular to clarify the obligations and recommendations regarding the time-frames for each step.

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

5. This document presents the Secretariat's understanding of this relationship and the applicable time-frames. The document first sets out the various actions taken by Members, *inter alia*: the notification of a draft proposed measure, provision of a period for comments, adoption of a measure, publication of a measure, entry into force of a measure, and the period of time provided for compliance with the new measure. For each of these steps, the legal obligations as contained in the SPS Agreement or in the Ministerial Decision are indicated, along with the Committee's recommendations. The final chart in this document presents this information in a summarized form, as a flow chart.

6. This document considers only the time-frames that are relevant for "regular" SPS measures, and not those which are imposed in circumstances where urgent problems of health protection arise or threaten to arise for a Member. The provisions of the SPS Agreement are different, with respect to the relevant periods of time, in the case of such urgent measures.

ACTION	LEGAL OBLIGATION	COMMITTEE RECOMMENDATION
<u>1. Notification</u>	<p>"Whenever an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Members, Members shall:</p> <p>(a) publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with the proposal to introduce a particular regulation;</p> <p>(b) notify other Members, through the Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place <u>at an early stage, when amendments can still be introduced and comments taken into account</u>"</p> <p>[SPS, Annex B.5, chapeau, 5(a) and 5(b)]</p>	<p>A notification should be made when a draft with the complete text of a proposed regulation is available and when amendments can still be introduced and comments taken into account. [G/SPS/7/Rev.2, para. 8]</p> <p>A notification shall be made well before the entry into force of the relevant measure, except when urgent problems of health protection arise or threaten to arise for the Member concerned. Any regulation brought into force in urgent circumstances must be notified immediately and a rationale for the urgent action provided. [G/SPS/7/Rev.2, para.9]</p>
<u>2. Comment period</u>	<p>"without discrimination, <u>allow reasonable time for other Members to make comments in writing ...</u>" [SPS, Annex B.5(d)]</p> <p>"...discuss these comments upon request, and take the comments and the results of the discussions into account" [SPS, Annex B.5(d)]</p>	<p>Members shall <u>normally allow a period of at least sixty days for comments.</u> [G/SPS/7/Rev.2, para. 8; G/SPS/33, Step 1]</p> <p>Any Member which is able to provide a time-limit beyond 60 days is encouraged to do so. [G/SPS/33, Step 1]</p> <p>For proposed measures which facilitate trade, Members may reduce or eliminate the period for receiving comments. [G/SPS/7/Rev.2, para. 36, Box 12]</p>

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		<p>Members should grant requests for extension of the comment period wherever practicable, in particular with regard to notifications relating to products of particular interest to developing country Members ... A 30-day extension should normally be provided. [G/SPS/7/Rev.2, para. 26; G/SPS/33, Step 3]</p> <p>A Member should explain within a reasonable period of time, and at the earliest possible date before the adoption of the measure, to any Member from which it has received comments, how it will take these comments into account and, where appropriate, provide additional relevant information on the proposed SPS regulations concerned. [G/SPS/7/Rev.2, para. 25(ii) and (iii); G/SPS/33, Step 4]</p> <p>If an exporting Member identifies significant difficulties with the proposed measure, that Member may, in its comments, request an opportunity to discuss and resolve the potential difficulty with the notifying Member. In response to such a written request, the notifying Member will contact the appropriate officials of the exporting Member and enter into bilateral discussions to attempt to resolve the issue of concern. In the case of such a request from an exporting developing country Member, the notifying Member would in any discussions examine whether and how the identified problem could best be addressed to take into account the special needs of the interested exporting developing country Member. Resolution of the concern identified could include one of the following, or a combination thereof: (1) a change in the measure to be applied on a MFN basis; (2) the provision of technical assistance to the exporting Member; or (3) the provision of special and</p>

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		differential treatment. Should special and differential treatment be provided, it would apply equally to all developing country Members. [G/SPS/33, Step 5]
<u>3. Adoption of measure</u>		<p>A Member should provide to any Member from which it has received comments, a copy of the corresponding SPS regulations as adopted or information that no regulations will be adopted for the time being [G/SPS/7/Rev.2, para. 25(ii) and (iii)]</p> <p>Members should submit an addendum to a notification when a proposed regulation is either adopted or comes into force. A Member may wish to indicate on the addendum if the final regulation has been substantially modified from the notified proposal. [G/SPS/7/Rev.2, para. 27]</p>
<u>4. Publication of measure</u>	<p>"Members shall ensure that all sanitary and phytosanitary regulations which have been adopted are <u>published promptly</u> in such a manner as to enable interested Members to become acquainted with them."</p> <p>[SPS, Annex B.1]</p>	<p>Members are encouraged to publish SPS regulations on the Internet where possible. [G/SPS/7/Rev.2, para. 47]</p>
<u>5. Entry into force of measure</u>	<p>Except in urgent circumstances, "Members shall <u>allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force</u> in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products and methods of production to the requirements of the importing Member. " [SPS, Annex B.2]</p> <p>Subject to the conditions specified in paragraph 2 of Annex B to the Agreement on the Application of Sanitary and Phytosanitary</p>	<p>If, following the entry into force of a new regulation (including an emergency measure), an exporting Member identifies significant difficulties which its exports face in complying with the new regulation, it may request an opportunity to discuss its difficulties with the importing Member to attempt to resolve the issue of concern, especially where no time, or an insufficient period of time, has been provided for comments. In the case of such a request from an exporting developing country Member, the importing Member would, in any discussions, examine whether and how the identified problem could best be</p>

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	<p>Measures, the phrase "reasonable interval" shall be understood to <u>mean normally a period of not less than 6 months</u>. It is understood that timeframes for specific measures have to be considered in the context of the particular circumstances of the measure and actions necessary to implement it. The entry into force of measures which contribute to the liberalization of trade should not be unnecessarily delayed." [WT/MIN(01)/17, para. 3.2]</p>	<p>addressed to take into account the special needs of the interested exporting developing country Member, so as to enable it to satisfy the requirements of the measure. Resolution of the concern identified could include one of the following, or a combination thereof: (1) a change in the measure to be applied on a MFN basis; (2) the provision of technical assistance to the exporting Member; or (3) the provision of special and differential treatment. Should special and differential treatment be provided, it would apply equally to all developing country Members. [G/SPS/33, Step 5]</p>
<p><u>6. Time period for compliance</u></p>	<p>"Where the appropriate level of protection allows scope for the phased introduction of new SPS measures, <u>longer time-frames for compliance should be accorded</u> on products of interest to developing country Members so as to maintain opportunities for their exports." [SPS, Article 10.2]</p> <p>"Where the appropriate level of protection allows scope for the phased introduction of new SPS measures, the phrase "longer time-frame for compliance" shall be understood to mean <u>normally a period of not less than 6 months</u>. Where the appropriate level of 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." [WT/MIN(01)/17, para. 3.1]</p>	

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