

WORLD TRADE ORGANIZATION

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Committee on Sanitary and Phytosanitary Measures

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AD HOC CONSULTATIONS

Communication from Brazil

The following communication, received on 15 October 2010, is being circulated at the request of the Delegation of Brazil.

	Proposal of the Secretariat (Origins: US/Argentina's proposal)	NAMA Horizontal Mechanism	Specific Trade Concerns in the SPS Committee	Bilateral Meetings
	G/SPS/W/243/Rev.2	TN/MA/W/106/Rev.1	G/SPS/W/48	
	May 2010	February 2010		
Participation	Voluntary [<u>beyond participation in a first meeting - BR</u>]. (par. 5).	Participation in Stage I (Request and Response) is mandatory and in Stage II (Resolution Procedures) is voluntary.	Mandatory	Voluntary
Deadlines	The consulting Members will endeavour to complete consultations within a reasonable period of time [which should not surpass 180 days- BR]. (par. 15).	Deadlines for each phase. However, any time limit may be modified by mutual agreement between the Members involved in these procedures (par.4).	The inclusion of an STC on the agenda for a specific SPS meeting shall be at least 10 days prior to the date of the SPS Committee meeting. However, there is no deadline for the conclusion of the STC.	NO
S&D	NO	Members shall exercise due restraint in raising matters involving a LDC. (par.5) Developing countries and LDCs may request assistance from the Secretariat or other developed Members to promote their understanding of the use and functioning of the consultation procedures. (par. 22).	NO	NO
Participation of Third Parties	NO	Any other Member may submit a written request to the parties within [10] days after the requesting and responding Members have notified their decision to proceed to Stage II (Resolution Procedures). Both parties need to agree on that participation.	After the STC is raised, the Chairperson invites any other Member interested to comment in the matter to take the floor.	Possible
Appointment of a Facilitator	Chairperson (or designee) in cases where the Chairperson is not available to assist the consulting Members, and in cases where there may be a conflict of interest, the Chairperson will designate a facilitator, after consultation with the consulting Members. (footnote 9).	The Parties may request that the Chairperson or one of the Vice-Chairpersons or a Friend of the Chair serve as facilitator. If the parties cannot agree on the appointment of a facilitator, after [25 days] the [Chairperson of the Council for Trade in Goods] shall appoint the facilitator after consulting the parties.(par. 12).	NO	NO

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Participation of Experts	The Chairperson (or designee) will consult with both Members regarding the parameters of the consultations, including whether it is recommended that technical experts of each consulting Member should be present at the consultations. (par.12). The Chairperson (or designee), after consulting the Parties, may request the participation of the secretariat of the organization whose standard, guideline or recommendation has been invoked. (par. 14)	The facilitator may consult with relevant experts after consulting with the parties. (par. 15)	Representatives of International Organizations may take the floor to comment on a STC.	Possible, but not usual.
Confidentiality	The consulting Members, as well as other participants in the consultations, will treat as confidential the information submitted and positions taken during consultations, unless disclosure is consented to by the consulting Members. (par. 7)	All information acquired in Stage II (Resolution Procedures) shall be confidential, except for factual information already existing in the public domain. (par. 17)	No confidentiality. STCs are included in the agenda and discussions take place during regular sessions.	Bilateral meetings are often confidential, but there is no legal guarantee about confidentiality.
Transparency	If approval is obtained from both Members, the Chairperson will report the general outcome of the consultations to the Committee. (par 17). The Secretariat will monitor the use of this procedure, which will be reflected in the summary of specific trade concerns provided annually to the Committee. (par. 18)	Notifications under the procedures (requests, responses, reports) shall constitute regular agenda items. The Chairperson shall provide to Members on an annual basis a status report of notified requests, responses and ongoing and recently completed procedures. (par. 20 and 21)	The discussion of STCs is summarized in the report of the Committee's meeting, and also included in the list of STCs.	NO
Revision of the Procedures	The Committee should undertake a first review not later than two years after their adoption by the Committee and thereafter as the need arises. (par. 19)	[5] years after the adoption of the Decision.	No specific timeframe to review STCs procedures, but the Committee has its own review process which could include STCs.	NO
DSU	This procedure will not result in any legal interpretation or modification to the Agreement itself. (par.2). At no time may the Chairperson (or designee) opine on a technical issue or on the consistency with any WTO Agreement of a measure or a national position. (par 13)	These procedures shall be without prejudice to Members' rights and obligations under the DSU. They are not intended to serve as a basis for the interpretation or the enforcement of specific obligations under the WTO Agreement or for dispute settlement procedures. (par.2)	These procedures shall be without prejudice to Members' rights and obligations under the DSU.	These procedures shall be without prejudice to Members' rights and obligations under the DSU.

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Submission of Requests for Consultations	Any Member may at any time request consultations regarding any sanitary and phytosanitary measure(s) or related technical issue(s) falling under the scope of the SPS Agreement. Members are encouraged to raise the issue(s) as a specific trade concern prior to requesting consultations. (par.4). Step A: Request consultation in writing, with detailed information (measure to be consulted on; reasons for requesting consultations; preliminary questions; relevant provisions of the Agreement or international standards). The request will be sent to the responding Member, to the Secretariat and to the Chairperson <u>[and the request will be circulated to the SPS Committee - BR].</u> (par.9)	Any Member may, individually or jointly with other Members, request information regarding a non-tariff barrier. The request shall be submitted in writing and identify and describe the specific measure at issue and provide a detailed description of the requesting Member's concerns regarding the measure's impact on trade.	Not applicable. The process is mandatory, the only requirement is the inclusion of the STC in the Committee's agenda.	Normally, bilateral meetings are scheduled by delegations at the margins of regular meetings.
Circulation of Requests between Members	<u>[and the request will be circulated to the SPS Committee - BR].</u> (par.9)	The requesting Member shall notify its request to the Committee, which shall circulate it to all Members. (par 8)	All Members are informed about the inclusion of a STC in the agenda through the airgramme previously circulated by the Secretariat.	Requests of consultations are circulated bilaterally.
Deadline to Submit Responses to Requests	The responding Member will notify the requesting Member in writing whether it accepts or rejects the request within 30 days of receiving the request. It will send the response to the Secretariat and the Chairperson of the Committee. <u>[If it accepts the consultations, the responding Member should respond to any questions or comments. The response will be circulated to the SPS Committee - BR].</u> (par.10)	The responding Member shall provide, within [20] days, to the extent practicable, a written response, and, when it is not possible, shall inform the reasons for the delay and an estimate of the period it will provide its response.	Responses are normally given during regular meetings, but they can be only preliminary.	NO, except if agreed bilaterally between Members.
Circulation of Responses between Members	<u>[The response will be circulated to the SPS Committee - BR].</u> (par. 10)	The responding Member shall notify its request to the Committee, which shall circulate it to all Members. (par 8)	Responses are public.	NO
Consultation Meeting after the Circulation of Requests and Responses	Within 45 days of acceptance of the consultations request by the responding Member <u>should</u> set a date for a meeting . Normally the meeting should take place no later than the next regular SPS Committee meeting. (par. 11)	Following the receipt of requests and responses, upon the request of either the requesting or the responding Member, the Chairperson shall convene a meeting with the parties to address any outstanding issues and explore next steps. (par 8) - Stage I	NO	NO

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Resolution Procedures	The Chairperson (or designee) will consult with both Members regarding the parameters of the consultations, including participation of experts, production of written responses and supplementary questions; and, if possible, determination of mutually agreed schedules. (par. 12)	Stage II (Resolution Procedures): The parties shall notify any decision to proceed to Stage II to the Committee, which shall circulate it to all Members. Stage II may only be initiated by mutual agreement of the parties. (par. 9 and 10)	NO	NO
Venue of Consultations	NO	Consultations should normally take place at the WTO headquarters, unless the parties agree on any other place of mutual convenience. Video conferencing and other telecommunications facilities may be utilized, if agreed by the parties. (par. 13)	Regular Meetings.	Normally, bilateral meetings are scheduled at the margins of regular meetings.
Deadline to Reach a Mutually Agreed Solution	The Chairperson (or designee) will consult with both Members whether a mutually acceptable schedule for submissions and further meetings, if necessary, can be determined. (par. 12). The consulting Members will endeavour to complete consultations within a reasonable period of time <u>[which should not surpass 180 days- BR]</u> . (par. 15)	[60] days from the appointment of the facilitator. Interim solutions may be considered if the barrier relates to perishable goods. Total: about [135] days.	NO	NO, except if agreed bilaterally between Members.
Final Report	If approval is obtained from both Members, the Chairperson will report the general outcome of the consultations to the Committee. (par 17)	In the event of a mutually agreed solution, the facilitator shall submit a draft report for the parties to comment on and then a final factual report to the Committee.	The discussions on a STC are summarized in the report of the Regular Meeting.	NO
Monitoring	The Secretariat will monitor the use of this procedure, which will be reflected in the summary of specific trade concerns provided annually to the Committee. (par. 18)	The Chairpersons of the relevant Committees shall provide to Members on an annual basis a status report of notified requests and responses and ongoing and recently completed procedures, together with a list of any reports from facilitators. (par. 21)	The STCs are included in a list circulated by the Secretariat. In case there are good developments, Members inform the Secretariat if STCs are partially or totally solved.	NO