

**CANADIAN EXPERIENCE USING ARTICLE 12.2 AD HOC CONSULTATIONS TO
FACILITATE THE RESOLUTION OF AN SPS TRADE-RELATED ISSUE**

Communication from Canada

The following communication, received on 24 March 2011, is being circulated at the request of the delegation of Canada.

1. During discussions held in June and October 2010 at the informal and formal SPS Committee meetings on the topic of ad hoc consultations, certain Members indicated an interest in receiving information from those Members that had experience using the ad hoc consultation mechanism (Article 12.2; the "Good Offices of the Chair") in the SPS Agreement. In particular, information was sought on what worked well, what could be improved and the role of the facilitator.¹

2. In light of the request by some Members for information about Members' experience with this provision, Canada, as a Member that has had occasion to utilize the provisions in Article 12.2, submits the following information. Canada notes, however, that due to amount of time that has passed since its participation in ad hoc consultations, the access to detailed information is limited.

Process

3. Canada had raised India's ban on bovine semen imports from Canada at bilateral technical discussions with India, at bilateral meetings with India, and as a specific trade concern on the formal WTO SPS Committee agenda (March 2000; June 2000; November 2000; March 2001).

4. During discussions on the margins of the November 2000 SPS Committee meeting, Canada and India agreed to jointly pursue informal consultations under Article 12.2 of the SPS Agreement to further advance the issue.

5. The process was coordinated through each Member's Geneva-based representatives.

6. The first ad hoc consultation between Canada and India was held on the margins of the March 2001 SPS Committee meeting. At this meeting, there was participation from representatives of both countries, and the Chair (represented by the WTO Secretariat).

7. During the March 2001 SPS Committee meeting, Canada and India advised Members that they had agreed to informal ad hoc consultations (under the Agenda Item for Specific Trade Concerns - Issues Previously Raised).

¹ G/SPS/R/59 para 102.

8. While the discussion that took place during the informal consultation was constructive, a resolution to the issue was not reached. A second ad hoc consultation was agreed to and was held on the margins of the July 2001 SPS Committee meeting. Again, there was participation by representatives of both countries, and the Chair.

9. During the July 2001 SPS Committee meeting, both Canada and India provided an update to Members under "Issues Previously Raised". Canada noted that both parties were engaged in consultations, that the matter remained under review, and that Canada was looking forward to early resolution. India indicated that the relevant regulations had been changed, and that these changes would soon be notified.

10. Further progress was made bilaterally between the July 2001 and the November 2001 SPS Committee meetings. At the November 2001 SPS Committee meeting, Canada and India met bilaterally (i.e. without the "Good Offices of the Chair"). At this time, it was agreed that the bovine semen issue, as raised in 2000, appeared to be resolved.²

11. The issue is included in the Secretariat's Specific Trade Concerns document (G/SPS/GEN/204/Rev.10/Add.2; specific trade concern #61) and its status is considered to be "partially resolved".

Observations

What worked well

12. India agreed to Canada's request for informal consultations. India's concurrence to pursue a resolution to the issue, including through the use of Article 12.2, allowed for continued good-will on both sides to find a reasonable solution to the issue.

13. The presence of the Chair added rigour to the process. The participation of the Chair in this informal consultation resulted in both parties arriving at the meeting prepared and able to participate constructively in discussions.

What could be improved

14. The Chair assisted in the process with little background on the issue other than information shared by Canada and India at three previous SPS Committee meetings under the "Specific Trade Concerns" and "Issues Previously Raised" agenda items. Requesting each Member to prepare a summary of their position on the issue in advance of the informal consultation, which would be shared amongst all participants (Members and Chair), would assist all participants in identifying the key areas for discussion to focus the consultations.

Role of the facilitator

15. Canada was unable to find specific information related to the role that the facilitator played. However, reports from that time indicate that the involvement of the Chair served to highlight the importance of the issue and added rigour to the consultations. Participants arrived at the meetings prepared to engage in substantive discussions on the issue.

² The ad hoc consultation resulted in a positive outcome on the specific issue under discussion. However, there remained other restrictions that prevented Canada and India from reaching agreement on certification. Canada has chosen not to announce full resolution of the issue until all concerns have been addressed.