

ARTICLE 12.2 - CONSULTATIONS

Proposal by the United States

The following communication, received on 23 June 2008, is being circulated at the request of the Delegation of the United States.

BACKGROUND

1. Article 12.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) states that the SPS Committee (the Committee):

"... shall encourage and facilitate *ad hoc* consultations or negotiations among Members on specific sanitary or phytosanitary issues. The Committee shall encourage the use of international standards, guidelines or recommendations by all Members and, in this regard, shall sponsor technical consultation and study with the objective of increasing coordination and integration between international and national systems and approaches for approving the use of food additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs."

2. In this regard, the Working Procedures of the Committee provide that:

"With respect to any matter which has been raised under the Agreement, the Chairperson may, at the request of the Members directly concerned, assist them in dealing with the matter in question. The Chairperson shall normally report to the Committee on the general outcome with respect to the matter in question."¹

3. As has been noted, the Members have made use of consultations under Article 12.2 on three prior occasions.²

4. The WTO Secretariat has invited the Committee to "consider whether more explicit guidance of the use of "Good Offices" would be helpful to Members, or whether other mechanisms for ad hoc consultations should be developed".³

5. The United States believes that the Committee meeting process, coupled with bilateral discussions, remains the best forum for Members to raise concerns regarding the measures and related technical issues of other Members and encourages the Members to continue to participate in these meetings and discussions.

¹ G/SPS/1, para. 6.

² G/SPS/1, para. 6; Communication from Argentina, G/SPS/W/219, footnote 3 (17 March 2008).

³ JOB(07)/14, para. 30.

6. However, SPS measures, their scientific bases, and related technical issues are often complex and Members may gain a better understanding of their concerns if they have the opportunity to consult with one another within the context of a formal procedure under Article 12.2. Such consultations may involve discussions on the technical aspects of the measure(s) and scientific support, as well as explore other related technical issues, including the possibility of technical exchanges or special and differential treatment, where available.

7. With these goals in mind, the United States considers that the elaboration of guidelines for the use of the consultations referred to in Article 12.2 would encourage and facilitate their use. Accordingly, the United States proposes the following guidelines.

GUIDELINES

8. Any Member may at any time request consultations regarding any SPS measure(s) or related technical issue(s).

9. Member participation in consultations is voluntary.

10. The decision of whether to participate in consultations, and all positions taken by Members during such consultations, will be without prejudice to the rights or obligations of a Member under the WTO Agreements.

11. The consulting Members will treat as confidential the information submitted and positions taken during consultations, unless consented to by the consulting Members.

12. A Member (the "requesting Member") must request consultations with another Member (the "responding Member") in writing. The request will refer to the measure(s) or technical issue(s) to be consulted on and state any preliminary questions and concerns regarding the measure(s) or technical issue(s). In addition to sending the request to the responding Member, the requesting Member will send the request to the Secretariat on the same day as the request is made.

13. The responding Member will notify the requesting Member in writing whether it accepts or rejects the request within 14 days of receiving the request. The responding Member will also send the response to the Secretariat on the same day as the response is made.

14. Where the responding Member has accepted the consultations request, the consulting Members will confer at a mutually acceptable time to discuss the parameters of the consultations, including, but not be limited to: whether the Chairperson (or a designee thereof) will have a role in the consultations, and, if so, whether that role will be limited to providing logistical and administrative assistance or whether the Chairperson (or designee thereof) will participate in the consultations to facilitate a better understanding of the concern(s) at issue; whether the production of written responses and supplementary questions are desirable; and whether a mutually acceptable schedule for such submissions and for further meetings, if necessary, can be determined.

15. Consulting Members will endeavour to schedule face-to-face consultations that take place in Geneva and that coincide with a scheduled meeting of the Committee.

16. Where a consulting Member identifies a standard, guideline, or recommendation of any of the three relevant standard setting bodies (Codex, OIE, and IPPC), the consulting Members may jointly request the participation of the secretariat of the organization whose standard, guideline, or recommendation has been invoked to explain the scope or content of that standard, guideline, or recommendation.

17. The consulting Members will endeavour to complete the consultations within a reasonable period of time.

18. Either consulting Member may conclude the consultations at any time with written notification to the other Member. The Member that concludes the consultations will report to the Secretariat and the Chairperson (or designee thereof), if the Chairperson is involved in the consultations pursuant to paragraph 14, that the consultations have concluded.

19. At the conclusion of the consultations, and without prejudice to the confidential nature of the consultations,⁴ the Chairperson will report the general outcome of the consultations to the Committee in accordance with the established working procedures of the Committee.⁵

20. At no time may the Chairperson, or any designee thereof, opine on a measure or technical issue's consistency with any WTO agreement, including the SPS Agreement.

⁴ *See supra*, para. 11.

⁵ G/SPS/1, para. 6.