

ARTICLE 12.2 - CONSULTATIONS

Proposal by Argentina and the United States

The following communication, received on 17 February 2009, is being circulated at the request of the Delegations of Argentina and 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. 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. In March 2008, Argentina introduced a proposal (G/SPS/W/219) that provides procedures for the functioning of good offices under Article 12.2. In June 2008, the United States introduced a separate proposal (G/SPS/W/227) that also elaborates on how Members would consult with one another pursuant to Article 12.2. Following the submission of the US proposal, the Chairperson

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.

called on Argentina and the United States to work together to propose draft Article 12.2 guidelines for the Committee's consideration.

PURPOSE

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

7. 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.

8. With this purpose in mind, Argentina and the United States propose the following guidelines for the Members to use when consulting with one another pursuant to Article 12.2.

GUIDELINES

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

10. Member participation in consultations is voluntary.

11. 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.

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

13. The Members agree that consultations will be held in good faith.

14. A Member (the "requesting Member") must request consultations with another Member (the "responding Member") in writing. The request will: (1) refer to the measure(s) or technical issue(s) to be consulted on; and (2) state the reasons for requesting consultations as well as any preliminary questions and concerns regarding the measure(s) or technical issue(s), including possible effects on trade. In addition to sending the request to the responding Member, the requesting Member will send the request to the Secretariat and the Chairperson of the SPS Committee on the same day as the request is made.

15. The responding Member will notify the requesting Member in writing whether it accepts or rejects the request within 30 days of receiving the request. The responding Member will also send the response to the Secretariat and the Chairperson of the SPS Committee on the same day as the response is made.

16. Where the responding Member has accepted the consultations request, the consulting Members shall set a date within 45 days of accepting the request for the consultations for a meeting.

17. The role of the Committee Chairperson (or designee thereof) is to facilitate communication between the consulting Members. In that regard, the Committee Chairperson (or designee thereof) will consult with both Members regarding the parameters of the consultations, including, but not limited to, whether it is recommended that technical experts of each consulting Member should be present at the consultations, whether 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. At no time may the Committee Chairperson (or designee thereof) opine on a technical issue or on the consistency with any WTO agreement, including the SPS Agreement, of a measure or a consulting Member's position on a technical issue.

18. Where a consulting Member identifies a standard, guideline, or recommendation of Codex, OIE, or 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.

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

20. When either one or both of the consulting Members wish to conclude the consultations, the Member(s) may do so through written notification to the other consulting Member at any time. The Member or Members (if acting jointly) will promptly provide written notification to the Secretariat and the Chairperson (or designee thereof) that the consultations have concluded.

21. At the conclusion of the consultations, with approval from both Members, the Committee Chairperson will report the general outcome of the consultations to the Committee in accordance with the established working procedures of the Committee.⁴ The report will not contain confidential information unless both consulting Members consent to the inclusion of such information as described in paragraph 12.

⁴ G/SPS/1, para. 6.