

ARTICLE 12.2 - CONSULTATIONS

Proposal by Brazil

The following communication, received on 26 October 2009, is being circulated at the request of the Delegation of Brazil.

Background

1. The *ad hoc* consultation mechanism, foreseen in Article 12.2 of the SPS Agreement and in the Working Procedures of the Committee, offers Members an additional route for dialogue, exchange of information and negotiations on sanitary, phytosanitary and food safety issues. In light of the proposals made by Argentina and the United States (G/SPS/W/233), Brazil would like to contribute to the efforts to implement an *ad hoc* good offices' consultation mechanism.

2. In order to guarantee that this mechanism is implemented, broadly used and considered as effective in the SPS Committee, Brazil deems it necessary that Members' participation be mandatory, at least regarding a first meeting between the consulting Members. In this first meeting, the requesting Member may orally present its demand to the responding Member and to the Chairperson of the SPS Committee. The decision to proceed to the next steps of the following guidelines will be announced by the responding Member in this meeting. All positions taken by Members during such consultations will be without prejudice to the rights or obligations of a Member under the WTO Agreements.

Guidelines

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

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

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

6. 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, on the same day as the request is

made the requesting Member will send the request to the SPS Committee,¹ which shall circulate it to all Members.

7. The Chairperson of the SPS Committee (or designee thereof) shall convene a first meeting with the consulting Members (hereinafter referred to as “the parties”) within 45 days of receiving the request. If one or both of the consulting Members considers that a meeting within 45 days is not practicable, it shall inform the Committee of its reasons together with an estimate of the period within which it will participate in the first meeting, as long as the period does not surpass the following Regular Meeting of the SPS Committee.

8. In the first meeting between the consulting Members, the requesting Member will present its demand orally to the responding Member, which will present its comments and announce if it accepts to follow the next steps of the consultation mechanism. If the answer is positive, the Chairperson (or designee thereof) will *inter alia* address any outstanding issues, explore possible next steps and set a schedule for further activities to solve the SPS concerns involved. If the answer is negative, within 30 days the responding Member will prepare a letter to be forwarded to the requesting Member and to SPS Committee, which shall circulate it to all Members.

9. The role of the Chairperson (or designee thereof) is to facilitate communication between the consulting Members. In that regard, the 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) present an opinion 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.

10. Where a consulting Member identifies a standard, guideline, or recommendation of the Codex Alimentarius, the OIE, or the IPPC, the consulting Members may jointly request the participation of the secretariat of the organization for which the standard, guideline, or recommendation has been invoked to explain the scope or the content of that standard, guideline, or recommendation.

11. The consulting Members will endeavour to complete the consultations within a reasonable period of time, which shall not surpass 180 days.

12. 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 been concluded.

13. 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.² The report will not contain confidential information unless both consulting Members consent to the inclusion of such information.

¹ If the Committee to which these communications were notified considers itself not to be the relevant Committee, it shall forward the notifications to the Committee overseeing the operation of the WTO agreement most closely related to the measure at issue, or if it is unclear which WTO agreement is most closely related, to the Council for Trade in Goods.

² G/SPS/1, para. 6.