

**OIE DISPUTE MEDIATION PROCESS**

Communication from the World Organization for Animal Health (OIE)

The following communication, received on 11 October 2006, is being circulated at the request of the OIE.

**Introduction**

1. At the 29<sup>th</sup> meeting of the Committee on Sanitary and Phytosanitary Measures (SPS Committee) of the World Trade Organization (WTO), the OIE provided a brief explanation of its dispute mediation mechanism (G/SPS/GEN/437). The purpose of this intervention is to remind SPS Committee Members of the purpose and structure of the OIE mechanism and to provide some comments on our experience in its use.
2. The OIE trade standards (the *Code*) provide sanitary standards and technical guidance for the use of importing countries and exporting countries. These standards are references for trade in animals and animal products between WTO Members in relation to the protection of animal health and, in relation to zoonotic diseases, public health. If a WTO Member country believes that a trading partner is not meeting its obligations under the SPS Agreement, including with reference to the standards set out in relevant *Code* provisions, it may lodge a formal complaint under WTO dispute settlement rules.
3. The OIE offers a voluntary mechanism for assisting Member countries to resolve technical differences whether these countries are members of the WTO or not. This mechanism (see Article 1.3.1.3., 2006 Edition) was incorporated into the *Code*. The OIE *Aquatic Animal Health Code* has contained equivalent provisions since its creation in 1995 (Article 1.4.1.3., 2006 Edition).

**Nature of the mechanism**

4. The OIE mechanism is a strictly science-based approach to finding solutions through mediated bilateral consultation. In contrast, the WTO dispute resolution process is rather based on legal provisions. The role of the OIE is to help the parties find a resolution of their differences strictly based on scientific elements and with facilitation by OIE experts.
5. The OIE needs the agreement of both parties to initiate the process and the outcomes are not legally binding unless both parties agree to this in advance. It is also necessary for both parties to agree on the terms of reference and the work program. The Director General of the OIE recommends experts, usually from the relevant OIE Reference Laboratories, to facilitate technical discussions.

6. The OIE expert(s) submit(s) a confidential report on the findings and recommendations to the OIE Director General, who then transmits the report to both parties. The disputing parties meet all costs associated with the mediation process.

#### **Experience in use of the OIE mediation mechanism**

7. The OIE dispute mediation mechanism has been officially used twice to date. The first of these cases relates to discussions between Japan and the United States of America on avian influenza in 2002:

- Initiation – the issue was brought to the OIE by mutual agreement of the parties;
- The two parties jointly selected three experts from a list presented by the OIE Director General;
- The two parties agreed the scope of discussions;
- Based on advanced technical submissions from both parties, a meeting was held with representatives of the parties and experts and coordinators from OIE Central Bureau;
- The mediation did not result in an agreed set of sanitary measures for both parties but did provide a basis for ongoing bilateral discussion and a better understanding of the reasons for differences of position;
- The report was circulated among the parties concerned and the OIE Central Bureau; and
- The process took about seven months and the cost was evenly shared by the two parties concerned.

8. The other case was not a typical dispute. The parties, the European Communities and the United States, jointly requested the OIE's assistance in facilitating bilateral consultations on the interpretation and implementation of the BSE provisions in the OIE *Code*. The request was made in January 2004 and the process concluded to the satisfaction of both parties in February 2006 after six meetings. With the agreement of the parties, the report was circulated to the OIE delegates of all member countries.

9. In both cases, the OIE's mediation mechanism was effective in facilitating technical discussions that assisted in significantly narrowing initial differences and providing a basis for better understanding of positions for the two parties.

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