

**RECOMMENDED PROCEDURE FOR AD HOC CONSULTATIONS OR
NEGOTIATIONS AMONG MEMBERS UNDER
THE SPS AGREEMENT (ARTICLE 12.2)**

Comments by Mexico on Document G/SPS/W/243

The following communication, received on 22 December 2009, is being circulated at the request of the delegation of Mexico.

INTRODUCTION

1. Mexico thanks the United States of America and Argentina for their joint proposal (document G/SPS/W/223) and the Secretariat of the Committee on Sanitary and Phytosanitary Measures for document G/SPS/W/243, circulated on 7 September 2009. These texts seek to establish a clear procedure for Members in relation to the use of ad hoc consultations, as provided for in Article 12.2 of the SPS Agreement.

2. Mexico's proposal aims to be constructive and, above all, to prevent any attenuation of the benefits derived under the SPS Committee agenda item "Specific trade concerns". The opportunity afforded by this agenda item is essential to all Members and, according to the SPS Secretariat itself, has enabled solutions to be found to a great many of these concerns. The procedure proposed in this document must not be construed as detracting from the use of this agenda item or the bilateral meetings held as a result of Members' statements.

**RECOMMENDED PROCEDURE FOR AD HOC CONSULTATIONS AND
NEGOTIATIONS AMONG MEMBERS UNDER
THE SPS AGREEMENT (ARTICLE 12.2)**

Proposal by Mexico

The Committee on Sanitary and Phytosanitary Measures ("the Committee"),

Having regard to paragraph 1 of Article 12 of the Agreement on the Application of Sanitary and Phytosanitary Measures ("the Agreement");

Seeking to further encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary and phytosanitary issues, in accordance with the provisions of Article 12.2 of the Agreement;

Recalling that the Working Procedures of the Committee calls on the Chairperson of the Committee to assist Members to deal with any matter which has been raised under the Agreement, upon a request by the Members directly concerned;

Recalling that during the reviews of the operation and implementation of the Agreement, Members recognized the usefulness of application of Article 12.2, and encouraged the use of ad hoc consultations, including through the good offices of the Chairperson of the Committee, to facilitate the resolution of specific trade concerns;

Taking into account the ongoing negotiations of the Doha Development Agenda;

Decides as follows:

1. This procedure is intended to encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues, with a view to assist Members to reach mutually satisfactory solutions, according to Article 12.2 of the Agreement. This procedure shall ensure that there are no "conflicts of interest" between the Members holding the ad hoc consultations or negotiations and the facilitator.
2. This procedure does not add to nor detract from the existing rights and obligations of Members under the Agreement or any other WTO Agreement. This procedure does not provide any legal interpretation or modification to the Agreement itself and is without prejudice to the right of a Member to determine its appropriate level of sanitary or phytosanitary protection against risks to human, animal or plant life or health.
3. This procedure is not intended to prejudice in any way the process or outcome of the work of other Committees, including the work those Committees are doing related to the Doha Development Agenda.

I. GENERAL CONSIDERATIONS

4. Any Member may at any time request consultations regarding any sanitary and phytosanitary measure(s) or related technical issue(s) falling under the scope of the Agreement, provided that the requesting Member has raised the measures or technical issues in respect of which consultations are being requested at least once under the agenda of the Committee on Sanitary and Phytosanitary Measures.

5. Member participation in consultations is voluntary.
6. 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.
7. The consulting Members, as well as the Chairperson of the Committee and the Secretariat when involved, will treat as confidential the information submitted and positions taken during consultations ~~unless disclosure is consented to by the consulting Members.~~
8. The Members agree that consultations will be held in good faith.

II. PROCEDURE FOR ADDRESSING CONCERNS REGARDING SPS ISSUES

Step A: Request for Consultations

9. 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, as well as, if any, relevant provision(s) of the Agreement and existing international standards, guidelines or recommendations adopted by the pertinent international organizations as referred to in the Agreement. 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 Committee on the same day as the request is made.

Step B: Response to a Request

10. 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. In the event of the responding Member notifying that it accepts consultations, it shall, within 45 days, express an opinion in relation to points (1) and (2) of paragraph 9 of this procedure.

Step C: Consultation Procedure

11. 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.

12. The role of the Chairperson of the Committee (or designee thereof) is to facilitate communication between the consulting Members. In that regard, the Chairperson of the Committee (or designee thereof) will consult with both Members regarding the parameters of the consultations, including, but not limited to:

- (a) Whether it is recommended that technical experts of each consulting Member should be present at the consultations;
- (b) whether production of written responses and supplementary questions is desirable; and
- (c) whether a mutually acceptable schedule for such submissions and for further meetings, if necessary, can be determined.

13. At no time may the Chairperson of the Committee (or designee thereof) opine on a technical issue or on the consistency with any WTO Agreement, including the Agreement, of a measure(s) or a consulting Member's position on a technical issue(s).

14. Where a consulting Member identifies a standard, guideline, or recommendation of the Codex Alimentarius Commission, the World Organisation for Animal Health (OIE) or the International Plant Protection Convention (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.

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

16. When ~~either one or both~~ of the consulting Members wishes 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 of the Committee (or designee thereof) that the consultations have concluded.

17. At the conclusion of the consultations, with approval from both Members, the Chairperson of the Committee will report the general outcome of the consultations to the Committee in accordance with the established working procedures of the Committee.¹ The report will not contain confidential information, ~~unless both consulting Members consent to the inclusion of such information as described in paragraph 7.~~

III. MONITORING

18. The Secretariat will monitor the use of this procedure, and, in accordance with paragraph 7, will ensure that the Secretariat's conclusions of such monitoring are reflected in the summary of Specific Trade Concerns that the Secretariat annually provides to the Committee (G/SPS/GEN/204).

IV. REVIEW AND DURATION

19. This procedure will be reviewed periodically and revised as necessary by the Committee in light of experience gained through its application. The Committee should undertake a first review of these guidelines not later than two years after their adoption by the Committee and thereafter as the need arises.

¹ G/SPS/1, paragraph. 6.