

GOOD OFFICES OF THE CHAIRPERSON

Communication from Argentina

The following communication, received on 13 March 2008, is being circulated at the request of the delegation of Argentina.

BACKGROUND

1. Article 12.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) encourages Members to hold ad hoc consultations, including through the good offices of the Chairperson of the SPS Committee, to facilitate the resolution of specific trade concerns. In this respect, it provides that:

"The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues. (...)."

2. Document JOB(07)/14 prepared by the WTO Secretariat shows that, to date, the ad hoc consultations provided for in Article 12.2 have involved: (1) Members raising specific trade concerns at regular meetings of the SPS Committee; (2) discussions by the Committee of specific issues such as implementation of ISPM 15, or private/commercial standards; and (3) the use of the good offices of the Chairperson.

3. With regard to the good offices of the Chairperson, paragraph 6 of the Working Procedures of the Committee¹ provides 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."

4. The yearly summary prepared by the WTO Secretariat of the specific trade concerns² raised at SPS Committee meetings shows that the good offices of the Chairperson have been 'underused' in comparison with the other types of ad hoc consultations provided for in the Agreement. They have in fact only been used on three occasions³, despite the substantial number of specific trade concerns raised at each SPS Committee meeting.

¹ G/SPS/1.

² G/SPS/GEN/204 and its revisions.

³ By Argentina, Chile, South Africa and Uruguay in respect of measures adopted by the European Communities in relation to citrus canker, in March 1998 (G/SPS/GEN/204/Rev.6/Add.3, paragraphs 25 to 88 (Concern No. 27)); by the United States in respect of restrictions imposed by Poland on wheat and oilseeds, in

5. It would appear that one of the reasons for this underuse is the lack of specific guidance concerning access to and the functioning of the mechanism. Argentina therefore welcomes the Secretariat's recommendation to provide "*more explicit guidance of the use of 'Good Offices'*".⁴ Below, Argentina wishes to share with Members its proposal for a decision regulating the functioning of good offices.

PROCEDURE

6. Any Member which considers that the adoption and/or application of a sanitary or phytosanitary measure unjustifiably affects its exports may request the good offices of the Chairperson of the SPS Committee. This request shall be sent, in writing, to the Member that adopted and/or applies the measure, with a copy to the WTO Secretariat and the Chairperson of the SPS Committee.

7. The request should clearly indicate: (i) the reasons for requesting the good offices; (ii) the measure(s) affecting exports; (iii) the trade affected; (iv) the legal basis for the request, including the applicable articles of the SPS Agreement and, if any, the pertinent standards, guidelines and recommendations developed by the relevant international organizations mentioned in the SPS Agreement.

8. The Member to which the request is sent should reply in writing within 30 days of its receipt, explicitly accepting or refusing the initiation of good offices. The reply shall be sent to the requesting Member, with a copy to the WTO Secretariat and the Chairperson of the SPS Committee. The Members agree to do their utmost to accept the good offices of the Chairperson. However, if a request is refused, the Chairperson shall include the matter on the agenda of the subsequent Committee meeting and inform the Membership. The Chairperson shall give the parties the opportunity to make a brief oral statement on the matter during the Committee meeting.

9. Should the Member accept the request for good offices, the Committee Chairperson, in consultation with the parties, shall set a date for a meeting which shall take place within a maximum of 45 days of the receipt of the request for good offices. This meeting should preferably be held in Geneva.

10. The good offices of the Committee Chairperson shall be confidential. Only the delegations of the duly accredited parties, the Committee Chairperson (who shall be responsible for coordinating the meeting), the WTO Secretariat, and interested third Members – provided this is accepted by the parties – shall participate in the meeting. At the request of any of the parties, and provided there is an international standard, guideline or recommendation on the matter, a representative from the secretariat of any of the three relevant international organizations (Codex, OIE, IPPC) may also participate in the meeting. The participation of such representatives shall be limited to explaining the scope and/or content of the standards, guidelines or recommendations invoked by the parties. They may also reply to requests for clarification or to other enquiries from the Chairperson or the parties. At no time may they give a direct opinion on the national measure under consideration or its consistency with the international standards, guidelines or recommendations.

11. During the good offices, the Chairperson shall provide all the support he can with a view to bringing the parties closer together and shall guide them towards a mutually satisfactory solution to the problem identified. The Chairperson shall ensure that the parties have the maximum freedom to

November 1998 (G/SPS/GEN/204/Rev.6/Add.2, paragraphs 444 and 445 (Concern No. 25)); and by Canada in respect of import restrictions imposed by India on bovine semen, in March 2001 (G/SPS/GEN/204/Rev.6/Add.2, paragraphs 327 to 335 (Concern No. 61)).

⁴ Job(07)/14, paragraph 30.

express their positions on the matter and that the greatest possible flexibility is afforded during the process.

12. The Members agree that all negotiations under the auspices of the good offices of the Chairperson shall be held in good faith.

13. In the event that the parties find a mutually satisfactory solution, the Chairperson shall draft a proposed report with a brief descriptive summary of the proceedings. The proposed report shall be submitted to the parties for their consideration and shall not contain any information that the parties consider confidential. Once the content has been established, the Chairperson shall send a copy of the report to the WTO Secretariat for distribution to the rest of the Membership. At the SPS Committee meeting immediately following the good offices meeting, the Chairperson shall give his report orally and the parties may share with the rest of the Membership their positive experience and the satisfactory solution found.

14. Should the parties not find a satisfactory solution, they may: (i) request that the Chairperson convene a second meeting or (ii) consider the Chairperson's intervention complete, thus terminating his good offices.

15. In the event that the parties consider the good offices terminated, the Chairperson shall have a period of up to 15 days in which to prepare a brief report of the proceedings, including recommendations to the parties on finding a solution to the problem.

16. The Committee Chairperson's recommendations are not binding for the parties. Nevertheless, the parties agree on the importance of doing everything within reason to implement these recommendations.

17. The parties are given period of 15 days from the receipt of the Chairperson's report to say whether they wish to abide by the recommendations or not. In any case, the Chairperson shall give a report to the Committee, as provided for in paragraph 13 *in fine*. At the subsequent SPS Committee meeting, the Chairperson shall present his report orally and give the parties the opportunity to express their positions on the matter.

18. The good offices shall be confidential and without prejudice to the rights of either party in any further proceedings.

19. The time-limits in these proceedings are calculated in calendar days. All communications to Members shall be sent to the Member's WTO Mission and to the national notification authorities specified by the Members.⁵

⁵ G/SPS/NNA series.