

GOOD OFFICES OF THE CHAIRPERSON

Communication from Argentina

The following communication, received on 11 June 2009, is being circulated at the request of the delegation of Argentina.

I. INTRODUCTION

1. As a result of the Second Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), Members agreed to encourage the use of ad hoc consultations, including through the good offices of the Chairperson of the SPS Committee, to facilitate the resolution of specific trade concerns.¹ The Committee subsequently discussed a number of proposals aimed at giving effect to this commitment, including the WTO Secretariat's proposal² to adopt specific guidelines that favour the use of the good offices of the Chairperson, provided for in Article 12.2 of the SPS Agreement and the Working Procedures of the Committee.³

2. During the Committee's discussions on this matter, several Members supported the recommendation made by the WTO Secretariat, noting that:

- (a) The mechanisms currently used within the Committee⁴ have not always been effective in achieving the objective of eliminating sanitary or phytosanitary measures that are inconsistent with the provisions of the SPS Agreement. In this respect, one only has to look at the yearly summaries prepared by the WTO Secretariat⁵, from which it is clear that although this tool may be useful, it has not been adequate to resolve reported problems, and that most of the claims made remain pending. In over 14 years of the Committee's existence, only 76 of the 277 trade concerns raised have been reported resolved.⁶
- (b) The dispute settlement process envisaged in the Dispute Settlement Understanding (DSU) has inherent limitations which prevent the prompt settlement of identified disputes. While it should be recognized that the DSU is a distinct improvement over the erstwhile GATT procedures due to its predictability and enforceability, as well as being one of the most efficient mechanisms available under international legal

¹ G/SPS/36, paragraph 88.

² JOB(07)/14, paragraph 30.

³ G/SPS/1.

⁴ Principally the raising of issues under the agenda item "Specific Trade Concerns".

⁵ G/SPS/GEN/204 and its revisions.

⁶ G/SPS/GEN/887/Rev.1.

regimes, the DSU is expensive, and the time of up to two years taken for an enforceable decision often frustrates the exporter's need for a timely solution.

3. Against this background, Argentina has submitted its proposals in an individual communication⁷ and in a joint communication with the United States⁸, with a view to the Committee taking steps to encourage the use of all the tools that are currently available to Members to help them address problems arising from the adoption or implementation of sanitary and phytosanitary measures.

4. At the 43rd regular meeting of the SPS Committee, however, several Members expressed their concerns with regard to avoiding any duplication or conflict with the horizontal mechanism under consideration within the framework of the Negotiating Group on Market Access (NAMA).⁹

5. With a view to furthering the analysis of the issue raised within the context of the current negotiations, we feel it is appropriate to highlight a number of points:

- (a) The communications submitted by Argentina to the SPS Committee propose practical guidelines to facilitate the implementation of the provisions of the SPS Agreement, in particular Article 12.2, and the furtherance of their objectives. Under no circumstances is the intention to add to or detract from the existing rights and obligations of Members under the SPS Agreement or any other WTO Agreement, or to provide any legal interpretation or modification to the SPS Agreement itself.
- (b) The communications in question are consistent with the horizontal mechanism proposals tabled by the NAMA-11 Group in the Negotiating Group on NAMA, in that, within a general and non-specific context for sanitary and phytosanitary measures, they are based on the same concern, seek the same objectives, propose similar solutions and also envisage flexibilities.
- (c) The two proposals are, however, part of different negotiating processes, with distinct origins, characteristics and dynamics. It is important to take these differences into account when assessing the action to be taken in the SPS Committee.

II. DIFFERENT ORIGINS OF THE NEGOTIATIONS

6. The work carried out in the Negotiating Group on NAMA is a result of paragraph 16 of the Doha Ministerial Declaration¹⁰, which states that: "*We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries*" (underlining has been added). Under this mandate, Members have put forward numerous proposals to reduce or eliminate, as appropriate, non-tariff barriers, as detailed in the Fourth Revision of Draft Modalities for Non-Agricultural Market Access (NAMA).¹¹

7. The work in the SPS Committee originates in the Members' realization that Article 12.2 of the SPS Agreement had been underused and in the WTO Secretariat's recommendation that the SPS Committee adopt specific guidelines favouring the use of good offices. We would also like to

⁷ G/SPS/W/219.

⁸ G/SPS/W/233, prepared following the SPS Committee Chairperson's request that the two countries work jointly on one proposal.

⁹ G/SPS/R/54, paragraph 100.

¹⁰ WT/MIN(01)/DEC/1.

¹¹ TN/MA/W/103/Rev.3.

point out that under Article 12.1 of the SPS Agreement, the Committee: " ... shall carry out the functions necessary to implement the provisions of this Agreement and the furtherance of its objectives". Work in the SPS Committee forms part of what could be described as the implementation of the commitments already assumed by Members in the Uruguay Round.

8. Therefore, while work in the SPS Committee relates to the adoption of guidelines that favour the implementation of Uruguay Round commitments (a task in respect of which the Committee is expressly empowered), negotiations in the Negotiating Group on NAMA come under the Doha mandate and relate to the establishment of new commitments over and above those already agreed within the framework of the Uruguay Round.

III. DIFFERENT NEGOTIATING PROCESSES

9. In view of the above, it should be noted that the development and adoption of new commitments in the Negotiating Group on Market Access are inextricably linked to the rest of the negotiations taking place in the framework of the Doha Round, under the umbrella of the Single Undertaking, which is why "nothing is agreed until everything is agreed".

10. In the SPS Committee, however, the work currently underway represents a joint effort to favour the implementation of commitments already assumed in the Uruguay Round. As such, there are no factors external to the SPS Committee negotiations which hamper or affect the adoption of mechanisms agreed on by the Members.

11. Without prejudice to our position on the submissions made by the NAMA-11 Group within the framework of the Doha negotiations, we wish to propose that the SPS Committee move forward in discussing a proposal of its own, which, nevertheless, takes into account ongoing work relating to NAMA.

IV. CONSISTENCY OF BOTH PROPOSALS

12. Having assessed the proposal tabled by the NAMA-11 Group and the joint proposal tabled by Argentina and the United States in the SPS Committee, we consider both to be consistent with each other, given that they:

- (a) *Address the same concern:* Existing trade barriers.
- (b) *Have the same objective:* To find pragmatic solutions aimed at overcoming these barriers within a short time-frame and at a relatively low cost.
- (c) *Envisage a similar solution:* Practical procedures that involve the intervention of the respective Committee chairperson to try and bring the parties closer together, improve their understanding, and facilitate the search for solutions to resolve the access-related problems identified.
- (d) *Are equally flexible:* The mechanisms and procedures envisaged are extremely flexible and give the parties concerned broad authority to agree on steps, bodies and meetings.

V. SPECIAL CHARACTERISTICS

13. The document submitted by the NAMA-11 Group proposes the adoption of a horizontal mechanism which aims to eliminate any non-tariff barrier affecting trade in goods. The mechanism would be applied to measures that come under any of the Agreements listed in Annex 1 of the

Marrakesh Agreement. Accordingly, the mechanism proposed in NAMA envisages only general issues, letting the specific competent Committee intervene depending on the topic in question.

14. The proposal drawn up jointly by the United States and Argentina (G/SPS/W/233) in the SPS Committee includes some specificities particular to the SPS Agreement and, in particular, to the type of measures involved. As such, it includes, among other issues specific to this Committee, the possible participation of the Codex, the OIE and the IPPC in the consultation procedure and a specific procedure for presenting the report on the outcome of the consultations that is prepared by whoever acts as facilitator in meetings of the Committee, etc.

VI. SUGGESTION

15. Argentina requests that the SPS Committee consider the possibility of moving forward in a project within the framework of the SPS Agreement with a view to the full implementation of the Uruguay Round commitments and, in particular, those provided for in Article 12.2 of the SPS Agreement. An agreement in this respect will make it possible to provide the necessary guidelines for recourse to an instrument that is provided for in the Agreement and intended for use in resolving specific trade issues, preventing harm to and additional costs for the Members.
