

Committee on Sanitary and Phytosanitary Measures

**PROPOSED RECOMMENDED PROCEDURE
RELATING TO THE IMPLEMENTATION OF ARTICLE 12.2**

Note by the Secretariat¹

Revision

INTRODUCTION

1. Article 12.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) states that: "The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues". The Working Procedures of the Committee, adopted by the Committee in March 1995, provide 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."²

2. The Committee has recognized the usefulness of Article 12.2, and in particular of the good offices of the Chairperson, as a means of facilitating the resolution of trade problems.³

3. Several Members have submitted proposals for a procedure to facilitate the use of ad hoc consultations and negotiations among Members.⁴

4. The draft procedure presented in the first version of this document sought to combine the proposals made to date, to facilitate the identification and consideration of those areas where there are substantive differences among the proposals. The document was subsequently revised twice to reflect comments received from Members and discussions at informal meetings of the Committee. The present revision is an attempt to reflect the outcome of the latest discussions at an informal meeting held preceding the March 2012 meeting of the Committee, as well as comments submitted in writing after the meeting⁵. The Committee has so far discussed the preamble and paragraphs 1 to 16; the remaining paragraphs have not yet been discussed and have not been changed.

¹ This document has been prepared under the Secretariat's own responsibility and is without prejudice to the position of Members or to their rights and obligations under the WTO.

² G/SPS/1, paragraph 5.

³ G/SPS/12, paragraph 24, G/SPS/36, paragraphs 87-88, G/SPS/53, paragraphs 116-126.

⁴ G/SPS/W/219; G/SPS/W/227; G/SPS/W/233; G/SPS/W/248; G/SPS/W/243/Rev.4; and Job/SPS/1.

⁵ Written comments were received jointly from India, the Philippines and Switzerland.

**RECOMMENDED PROCEDURE TO ENCOURAGE AND FACILITATE
AD HOC CONSULTATIONS [OR NEGOTIATIONS] AMONG MEMBERS
ON SPECIFIC SANITARY OR PHYTOSANITARY ISSUES**

Proposed Decision by the Committee

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 permit 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;

Noting that 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 and exchange of information on sanitary and phytosanitary concerns;

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;

[*Taking* into account [other proposals under discussion in the WTO Negotiating Groups or Committees or Councils] [the on-going negotiations of the Doha Development Agenda];]

Decides as follows:

I. GENERAL PROVISIONS

1. This procedure is intended to encourage and facilitate ad hoc consultations [or negotiations] (hereinafter referred to as "consultations") 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.
2. This procedure [is without prejudice to][does not alter][does not add to nor [detract from][diminish]] the existing rights and obligations of Members under the Agreement nor any other WTO Agreement [, including to their interpretation and enforcement.] [This procedure will not result in any legal interpretation, modification or enforcement of the Agreement itself.]
3. This procedure is not intended to prejudice in any way the process or outcome of the work of other WTO bodies, including in relation to the Doha Development Agenda.
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. [Prior to requesting an ad hoc consultation, a Member [is encouraged to] [may] [shall] raise the issue(s) at a meeting of the SPS Committee [as a specific trade concern].]

5. Member participation in consultations is voluntary [beyond the exchange of information] [beyond participation in a first meeting]. [At any time, the consulting Members may agree on carrying out bilateral meetings.]

6. [[The decision of whether to participate in consultations, and][all positions taken by Members during such consultations, shall be without prejudice to the rights or obligations of a Member under the WTO Agreements.]

7. The consultations shall be held in good faith, and without prejudice to the Understanding on Rules and Procedures concerning the Settlement of Disputes and Members' rights and obligations thereunder.

8. [The consulting Members, as well as all other participants in the consultation, shall treat as confidential the information submitted and positions taken during consultations, except for factual information already existing in the public domain, unless disclosure is consented to by the consulting Members.] [The consulting Members shall not be required to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.] [The obligation of confidentiality would, however, not extend to factual information already existing in the public domain.]

II. PROCEDURE FOR ADDRESSING CONCERNS REGARDING SPS ISSUES

Step A: Request for Consultations

9. A Member (hereinafter the "requesting Member") must request consultations with another Member (the "responding Member") in writing, in a WTO working language. [The request should: (1) identify the measure(s) or technical issue(s) to be consulted on; (2) describe the reasons for requesting consultations and provide a description of the requesting Member's concern regarding the possible effects on trade; [Further, the request may:] (3) provide any preliminary questions and concerns regarding the measure(s) or technical issue(s); and (4) identify any relevant provision(s) of the Agreement and relevant international standards, guidelines or recommendations adopted by the pertinent international organizations as referred to in the Agreement.] [The request should identify the sanitary or phytosanitary measure and provide a description of the requesting Member's concern regarding the measure's effect on trade.]

10. In addition to sending the request to the responding Member, the requesting Member will at the same time send a copy of the request to the Chairperson of the Committee and the Secretariat. [The Committee will be informed of the request at the subsequent meeting of the Committee.] [A copy of the request shall also be made available to the SPS Committee, which shall circulate it as a WTO document.]

Step B: Response to a Request

11. **Alternative A:** Within [[10][15][20] [working] days] [one calendar month] [a reasonable period of time] of receiving a request, the responding Member will notify the requesting Member, in writing in a WTO working language, whether it accepts or rejects the request for consultations, and shall provide a copy of this response also to the Chairperson of the Committee and the Secretariat. The Committee will be informed of the response to the request (i.e., whether the request was accepted or rejected) at the subsequent meeting of the Committee.

12. [If] [Irrespective of whether] the responding Member accepts the request for consultations, the responding Member [should] [shall] [normally] provide a written response to [the information

contained in] [addressing the concerns and issues raised in] the request [within [20][30] days]. [In case the response within the time period above is not practicable, the responding Member shall inform the requesting Member of the reasons for the delay, together with an estimate of the period within which it will provide its response. This period should not exceed an additional [10] days. [A copy of the response shall also be made available to the SPS Committee].

Alternative B (to paras. 11-12): The responding Member shall normally provide a written response within 20 days. In case the response within the time period above is not practicable, the responding Member shall inform the requesting Member of the reasons for the delay, together with an estimate of the period within which it will provide its response. This period should not exceed an additional 10 days. A copy of the response shall also be made available to the Chairperson of the SPS Committee and the Secretariat, which shall circulate it to all Members. The response shall also indicate the acceptance or rejection of the request for consultations. The response shall address the concerns and issues raised in the request. The Committee will be informed of the response to the request (i.e., whether the request was accepted or rejected) at the subsequent meeting of the Committee.

Step C: Consultation Procedure

13. **Alternative A:** [Within [15] days of the circulation of the response, the consulting Members shall request the SPS Committee Chairperson or the designee thereof to serve as facilitator for the consultations (hereinafter the "Facilitator").]

[Where the responding Member has accepted the request for consultations, the consulting Members shall set a date for a meeting, [which must occur within 45 days after the acceptance of the request,] in coordination with the Facilitator.]

Alternative B: Where the responding Member has accepted the request for consultations, the consulting Members shall request the SPS Committee Chairperson or the designee thereof to serve as a facilitator for the consultations (hereinafter the "Facilitator") [within [15] days of the circulation of the response]. The consulting Members shall set a date for a meeting, in coordination with the Facilitator.

Alternative C: Within 15 days of the circulation of the response and where the responding Member has accepted the request for consultations, the consulting Members shall request the SPS Committee Chairperson or the Vice Chairperson or a Friend of the Chair (hereinafter the "Facilitator") to serve as facilitator for the consultations. The consulting Members shall set a date for a meeting in consultation with the Facilitator, which must occur within 45 days after the date of acceptance of the request.

14. [Any other Member may submit a written request to the consulting Members asking to participate in the consultation procedure as a third party within [10] days of the date of circulation of the response and acceptance of the request for consultations by the responding Member. Such other Member may participate in the consultation procedure if the consulting Members so agree and on the terms agreed to by the consulting Members. The consulting Members shall reply to the request in writing and make a copy available to the Secretariat which will circulate it to all Members. The third party Member shall be bound by the confidentiality requirements outlined in paragraph 8 of these procedures.]

15. **Alternative A:** The role of the Facilitator is to assist, in an unbiased and independent way, communication between the consulting Members. The Facilitator will consult with both Members regarding the parameters of the consultations, including:

- (a) whether it is recommended that technical experts of each consulting Member should be present at the consultations;
- (b) whether provision of supplementary questions and written responses is desirable;
- (c) whether a mutually acceptable schedule for such submissions and for further meetings, if necessary, can be determined;
- (d) whether third party participation is desirable and acceptable; and
- (e) whether, in cases where a consulting Member identifies as relevant 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 secretariat of the relevant organization or a relevant expert thereof should be invited to explain the scope or content of that standard, guideline, or recommendation.

Alternative B: The facilitator, in consultation with the parties, shall have full flexibility in organising and conducting the consultations.

16. [The facilitator [may] [shall not] provide an opinion [on a technical issue nor] on the [consistency] [legality] with any WTO Agreement, including the SPS Agreement, of a measure or a consulting Member's position on a technical issue.]

17. Consultations should normally take place at the WTO headquarters, unless the Members agree to some other venue, taking into account the resource constraints of developing country Members. With a view to economising resources, video-conferencing and other telecommunication facilities may also be utilised for consultations.

17bis. [Where consultations identify a standard, guideline, or recommendation of the Codex Alimentarius Commission, of the International Plant Protection Convention (IPPC), or of the World Organization for Animal Health (OIE), to be relevant, the consulting Members may, by mutual consent, request the participation of the Secretariat of the relevant organization.]

18. The consulting Members will endeavour to complete the consultations within [a reasonable period of time] [a period of time which should not surpass 180 days]. [Any agreed] [The] time limit during the consultations may be modified with the mutual agreement of the consulting Members. When either one or both of the consulting Members wish(es) 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 Facilitator and the Secretariat that the consultations have concluded.

19. **Alternative A:** At the conclusion of the consultations, with approval from both Members, the Facilitator 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 8.

¹ G/SPS/1, paragraph 6.

Alternative B: At the end of the consultations, the Facilitator shall issue a draft report to the consulting Members on the [sanitary or phytosanitary measure in consideration, the procedures used in the consultations and the] outcome of the consultations. The Members shall have [15][30] days to comment on this report. After considering these comments, the Facilitator shall circulate a final, factual report to the SPS Committee.

Alternative C: At the end of the consultations, the Facilitator shall issue a draft report to the consulting Members on the outcome. The Members shall have 15 days to comment on this report. With approval from both Members, the Facilitator will report the general outcome of the consultations to the Committee in accordance with the established Working Procedures of the Committee. The report will not contain confidential information unless both consulting Members consent to the inclusion of such information as described in paragraph 8.

III. TECHNICAL ASSISTANCE

20. Developing country Members, and in particular least-developed country Members, may request assistance from the WTO Secretariat to promote their understanding of the use and functioning of these procedures.

IV. [MONITORING

21. The Secretariat will monitor the use of this procedure, and, in accordance with paragraph 8, will ensure that the conclusions of these procedures are reflected in the summary of Specific Trade Concerns (G/SPS/GEN/204).]

V. REVIEW AND DURATION

22. **Alternative A:** [This procedure shall cease to exist and shall be replaced by the "Procedures for the Facilitation of Solutions to Non-Tariff Barriers" as and when the latter is adopted by the Negotiating Group on Market Access (NGMA) and is made applicable to the SPS Committee.]

Alternative B: [This procedure shall be reviewed by the SPS Committee as and when the "Procedures for the Facilitation of Solutions to Non-Tariff Barriers" is adopted by the Negotiating Group on Market Access (NGMA) and a decision taken at that time as to whether this procedure should be maintained, revised, or replaced.]

23. [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][three] years after their adoption by the Committee and thereafter as the need arises.]
