

Committee on Sanitary and Phytosanitary Measures

**PROPOSED RECOMMENDED PROCEDURE
RELATING TO THE IMPLEMENTATION OF ARTICLE 12.2¹**

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 three times to reflect comments received from Members and discussions at informal meetings of the Committee.

5. For the 9 July 2012 informal meeting of the Committee, the Chairperson invited Members to focus on the substance of the procedure, and in particular on five unresolved elements, rather than continuing detailed text-based discussions. At the regular meeting of the SPS Committee on 10-11 July 2012, the Secretariat was requested to prepare, in consultation with the Chairperson, the revision of the document based on the Chairperson's report of the informal meeting. The present revision seeks, therefore, to reflect the conclusions of the Chairperson's report making use of existing text in G/SPS/W/259/Rev.3 to the extent possible.

6. As indicated at the July meeting, Members' comments on this draft are to be submitted to the Secretariat by 17 September 2012 and will be taken into account in the preparation of a further revision of this document for consideration by the Committee at its meetings in October 2012.

¹ This document has been prepared by the Secretariat, in consultation with the Chairperson, 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.

**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;

Decides as follows:

[NOTE: Title and Preamble based on G/SPS/W/259/Rev.3.]

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. Member participation in this procedure is voluntary.

[NOTE: Based on paras. 1, 5 and 6 of G/SPS/W/259/Rev.3.]

2. This procedure is without prejudice to the existing rights and obligations of Members under the Agreement nor any other WTO.

[NOTE: Based on paras. 2 and 7 of G/SPS/W/259/Rev.3.]

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.

[NOTE: No change from para. 3 of G/SPS/W/259/Rev.3.]

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.

[NOTE: Based on para. 4 of G/SPS/W/259/Rev.3.]

II. PROCEDURE FOR ADDRESSING CONCERNS REGARDING SPS ISSUES

A. REQUEST FOR CONSULTATIONS

5. A Member (hereinafter the "requesting Member") should request consultations with another Member (the "responding Member") in writing, in a WTO working language. The request should identify the measure(s) or technical issue(s) to be consulted on, 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 provide any preliminary questions and concerns regarding the measure(s) or technical issue(s), and may 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.

[NOTE: Based on para. 9 of G/SPS/W/259/Rev.3.]

6. 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 SPS Committee and the Secretariat. The Committee will be informed of the request at the subsequent meeting of the Committee. If the requesting Member wishes, a copy of the request can also be made available to the SPS Committee as a WTO document.

[NOTE: Based on para. 10 of G/SPS/W/259/Rev.3.]

B. RESPONSE TO A REQUEST

7. The responding Member should provide a response within 20 days, accepting or rejecting the request for consultations, in writing in a WTO language, with a copy to the Chairperson of the SPS 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. The response should normally address the concerns and issues raised in the request. If this is not practicable within 20 days, 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.

[NOTE: Based on paras. 11 and 12 of G/SPS/W/259/Rev.3]

C. CONSULTATION PROCEDURE

8. Where the responding Member has accepted the request for consultations, the consulting Members may request the Chairperson of the SPS Committee or the designee thereof to serve as facilitator for the consultations (hereinafter the "Facilitator"). If the consulting Members agree, they can request another person to act as Facilitator. The consulting Members should set a date for a meeting, in coordination with the Facilitator.

[NOTE: Based on para. 13 of G/SPS/W/259/Rev.3]

9. The primary role of the Facilitator is to facilitate the exchange between the parties. The consulting Members, in consultation with the Facilitator, should agree on the parameters of the consultations, including, *inter alia*:

- (a) the schedule and place of meetings;
- (b) whether to request technical advice, and if so, of whom;
- (c) whether the role of the Facilitator should go beyond assisting communication, e.g. whether (s)he will be expected to / allowed to give an opinion or express advice;
- (d) whether third party participation is desirable, and if so, in what manner this should occur;
- (e) the nature of the report to the Committee;
- (f) which information will be treated as confidential.

[NOTE: Based on paras. 8, 14, 15 16, 17 and 19 of G/SPS/W/259/Rev.3.]

10. The consulting Members should endeavour to complete the consultations within a reasonable period of time that should normally not surpass 180 days, unless they agree on a different timeframe. Either one or both of the consulting Members may decide to conclude the consultations at any time, and should do so through written notification to the other consulting Member. The Member or Members (if acting jointly) will promptly provide written notification to the Facilitator and the Secretariat that the consultations have concluded.

[NOTE: Based on para. 18 of G/SPS/W/259/Rev.3.]

11. At the conclusion of the consultations, the Facilitator will report the general outcome of the consultations to the Committee in accordance with the established Working Procedures of the Committee.¹ Further details regarding the outcome of the consultations will be provided only if so requested by both Members. The report will not contain confidential information unless both consulting Members consent to the inclusion of such information.

[NOTE: Based on para. 19 of G/SPS/W/259/Rev.3.]

III. TECHNICAL ASSISTANCE

12. 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.

[NOTE: No change from para. 20 of G/SPS/W/259/Rev.3.]

IV. MONITORING

13. 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).

[NOTE: No change from para. 21 of G/SPS/W/259/Rev.3.]

¹ G/SPS/1, paragraph 6.

V. REVIEW AND DURATION

14. This procedure will be reviewed periodically and revised as necessary by the Committee in light of experience gained through its application.

[NOTE: Based on para. 23 of G/SPS/W/259/Rev.3.]
