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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 The draft procedure presented in the first version of this document sought to combine the proposals made, to facilitate the identification and consideration of those areas where there are substantive differences among the proposals. The document was subsequently revised four times to reflect comments received from Members and discussions at informal meetings of the Committee. Document RD/SPS/1 contains a compilation of Members' comments on the last revision of the document.

4. At its meeting in October 2012, the Committee established an electronic Working Group (eWG) to attempt to make progress between Committee meetings. Individual delegates offered to act as stewards or co-stewards and took the leadership in developing a compromise proposal to address one of five outstanding issues. The stewards/co-stewards consulted the eWG in their development of compromise texts. The Secretariat, in consultation with the Chairperson, assembled the various texts provided by the stewards into one consolidated proposal, which was again circulated to the eWG for comments. Comments which required a substantive change of the compromise text and/or reiterated previously held positions have not been reflected in the present document. The present text reflects the compromise proposals developed by the stewards, in consultation with the eWG.

¹ This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights or 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;

Decides as follows:

1 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.^[1]

[1.bis. All consulting Members should comply with the procedure described hereafter.]

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

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.

2 PROCEDURE FOR ADDRESSING CONCERNS REGARDING SPS ISSUES

2.1 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

^[1] By voluntary participation, it is understood that a Member that has received a request for consultation is free to accept or reject the consultation procedure.

provision(s) of the Agreement and relevant international standards, guidelines or recommendations adopted by the pertinent international organizations as referred to in the Agreement.

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. If the requesting Member wishes, a copy of the request or a summary thereof can also be made available to the SPS Committee as a WTO document.

2.2 Response to a Request

7. The responding Member should, unless it is otherwise mutually agreed, provide a response within 30 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 response should normally address the concerns and issues raised in the request. Provided that the responding Member submits a response within the deadline established under this procedure and wishes to make the response or a summary thereof available to the SPS Committee as a WTO document, the request and its response will be made available to the SPS Committee simultaneously.

8. At the subsequent meeting of the Committee, the Chairperson will inform the Committee of any request for consultations made under this procedure since the last meeting of the Committee and its corresponding response (i.e., whether the request was accepted, rejected) and of all ongoing consultations under a separate agenda item. If a Member so requests, the Chairperson shall provide an opportunity for an exchange of views during a meeting of the Committee on any request for consultation made under this procedure, or on ongoing consultations.

9. Unless otherwise agreed by the consulting Members, information designated as confidential will not be shared with the Committee. The confidentiality designation shall not be extended to factual information already existing in the public domain.

2.3 Consultation Procedure

10. The consulting Members may request the Chairperson of the Committee, or any other person designated by the consulting Members, to serve as the Facilitator. The Facilitator will be independent of, and not be affiliated with any consulting Members.

11. The role of the Facilitator is to encourage and facilitate an exchange between the Members on specific SPS issues raised in the consultations with a view to resolving the issue. With the agreement of the consulting Members, the Facilitator may recommend one or more possible ways to resolve the concerns.

12. At the start of consultations, the Facilitator and the consulting Members should agree on a schedule, format and place of meetings and determine whether, and under what terms and conditions, third party participation is desirable.

13. The Facilitator shall communicate about the SPS issue in question only with the consulting Members and, consistent with the terms agreed to in paragraph 16, any participating third parties.

14. The Facilitator shall prepare and issue a written report on the general outcome through the Chair on the matter only with the consent of the consulting Members. Unless otherwise agreed by the consulting Members, the Facilitator's report is confidential and will not be shared with the Committee.

15. Prior to issuing a final report, the Facilitator will provide consulting Members with a draft report. Consulting Members shall be given 15 days to comment as well as indicate any confidential text that they would like deleted from the Facilitator's draft report. After considering these comments and deleting the confidential text, the Facilitator shall issue a final, factual report to the consulting Members.

16. All communications (whether in oral or written form) in the course of the consultation between [and among] the Facilitator and consulting Members, and other participating third parties,

if any, and all documents generated by a Facilitator or a consulting or participating Member for the Consultation shall be confidential, unless otherwise agreed by the consulting Members, and without prejudice to the rights and obligations of a Member under the WTO Agreement, or any other international agreement to which it is a party.

17. The consulting Members shall complete the consultations within a reasonable period of time that shall be mutually agreed, and should endeavour to not surpass 180 days, unless they agree on a different timeframe. Any 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, the Chair and the Secretariat that the consultations have concluded.

18. At the conclusion of the consultations, the Chair will report the general outcome of the consultations to the Committee in accordance with the established Working Procedures of the Committee.² Further details regarding the outcome of the consultations will be provided only if so agreed by the consulting Members. The report will not contain confidential information unless both consulting Members consent to the inclusion of such information.

3 TECHNICAL ASSISTANCE

19. 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.

4 MONITORING

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

5 REVIEW AND DURATION

21. This procedure will be reviewed periodically and revised as necessary by the Committee in light of experience gained through its application. Initially, this procedure shall apply for a period of [five] years from the adoption of the Decision by the Committee. Before the end of this period, the Committee shall decide on whether to continue, modify, or terminate this procedure in light of its experience and outcomes of the other proposals under discussion in the WTO Negotiating Groups or Committees.

² G/SPS/1, paragraph 6.