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**Committee on Sanitary and Phytosanitary Measures**

**PROPOSED RECOMMENDED PROCEDURE  
RELATING TO THE IMPLEMENTATION OF ARTICLE 12.2<sup>1</sup>**

*Revision*

**INTRODUCTION**

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."<sup>2</sup>

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.<sup>3</sup>

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

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, working towards compromises in five areas. The resulting fifth revision was discussed in March 2013 by the eWG and in an informal meeting of the Committee.

After the March 2013 meeting of the Committee, the stewards considered all comments received and revised their proposed compromise texts. These were compiled, and circulated for further rounds of comments from the stewards themselves and subsequently from the eWG. Comments were received from eleven Members of the e-Working Group. The resulting sixth revision took into consideration the diverse comments received, and proposed modified text, with a view to bridging the different positions expressed by Members.

At the June 2013 meeting, the Committee discussed the sixth revision and few substantive concerns were raised by Members. The present text takes into consideration all the comments received in the June 2013 meeting and subsequently by the deadline of 2 August 2013. As agreed in the June 2013 meeting, this seventh revision of the text will be proposed for adoption by the Committee at the October 2013 meeting.

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<sup>1</sup> This document has been prepared under the Chairperson's and the Secretariat's responsibility and is without prejudice to the positions of Members or to their rights or obligations under the WTO.

<sup>2</sup> G/SPS/1, paragraph 5.

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

<sup>4</sup> 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  
THE RESOLUTION OF SPECIFIC SANITARY OR PHYTOSANITARY ISSUES AMONG  
MEMBERS IN ACCORDANCE WITH ARTICLE 12.2**

**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 the resolution of specific sanitary or phytosanitary issues among Members, 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 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**

1.1. This procedure is intended to encourage and facilitate the resolution of specific sanitary or phytosanitary issues among Members, 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.<sup>[1]</sup>

1.2. This procedure is without prejudice to the rights and obligations of Members under the SPS Agreement or any other WTO agreement and shall not constitute a legally binding agreement. This procedure is not intended to prejudice in any way the process or outcome of the work of other WTO bodies.

1.3. Any Member(s) may at any time request consultations with another Member(s) 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**

2.1. A Member (hereinafter the "requesting Member") requests consultations with another Member (the "responding Member"), in writing, in a WTO working language. The request will 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.

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<sup>[1]</sup> By voluntary participation, it is understood that a Member that has received a request for consultation is free to accept or reject that request.

2.2. In addition to sending the request to the responding Member, the requesting Member sends at the same time a copy of the request to the Chairperson of the Committee and the Secretariat. If the requesting Member wishes, a copy of the request or a summary thereof will also be made available to the Committee as a WTO document.

## **2.2 Response to a Request**

2.3. Unless otherwise mutually agreed upon by the responding and requesting Members, as provided below under paragraph 2.4, the responding Member will, within 30 days of receiving a request, provide a written response in a WTO working language simultaneously to the requesting Member, the Chairperson of the Committee and the Secretariat, accepting or rejecting the request for consultations. To the extent possible, when submitting a negative response, the responding Member will address the concerns and issues raised in the request. If the responding Member wishes, a copy of the response or a summary thereof will also be made available to the Committee as a WTO document.

2.4. In the event that both the requesting and responding Members mutually agree upon a timeframe other than the prescribed 30-day period, both Members should inform the Secretariat of the timeframe agreed upon prior to the expiration of the original 30-day period.

2.5. If both the requesting and responding Members wish to circulate their request and response to the Committee as WTO documents, the request and response would normally be circulated together. Circulation occurs upon the Secretariat's receipt of the response. In the event that the requesting Member chooses to circulate its request, but no response is received within the 30-day or otherwise agreed upon deadline, or if the responding Member declines to circulate its response, the request will be circulated without a response after the expiry of such deadline. Conversely, in the event that a responding Member chooses to circulate its response, but the requesting Member declines to circulate its request, the response will be circulated without the request, upon its receipt.

2.6. 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 the corresponding answer to that request (i.e., whether the request was accepted, rejected) and of all on-going consultations under a separate agenda item.

2.7. Any information considered confidential by any of the requesting or responding Members (hereinafter the "consulting Members") will not be shared with the Committee without their agreement.

## **2.3 Consultation Procedure**

2.8. When the responding Member has accepted the consultation request, the consulting Members will agree on a Facilitator. The Chairperson of the Committee will normally serve as the Facilitator, unless the consulting Members decide otherwise.

2.9. The role of the Facilitator is to encourage and facilitate an exchange between the consulting 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 suggest one or more possible ways forward in an attempt to resolve the concerns.

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

2.11. The Facilitator shall communicate about the SPS issue in question only with the consulting Members and, in the event there are any, also with third party participating Members. Such communication shall be consistent with the terms agreed to in paragraph 2.12.

2.12. All communications (whether in oral or written form) in the course of the consultation between the Facilitator and consulting Members, and, where relevant, third party participating Members, shall be confidential. All documents generated by a Facilitator or a consulting or third

party participating Member 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.

2.13. The consulting Members shall complete the consultations within a reasonable period of time that shall be mutually agreed, and should not exceed 180 days, unless they agree on a different timeframe. Any of the consulting Members may decide to end the consultations at any time, and should do so through written notification to the other consulting Member(s). The Member or Members (if acting jointly) will promptly provide written notification to the Facilitator, the Chair and the Secretariat that the consultations have ended.

2.14. The Facilitator shall prepare and issue a written factual report on the consultations to the consulting Members. Prior to issuing this report, the Facilitator will provide consulting Members with a draft report. Consulting Members shall normally be given 30 days to comment. After considering these comments, the Facilitator shall issue a final, factual report to the consulting Members. Unless otherwise agreed by the consulting Members, the Facilitator's report will be confidential and will not be shared with the Committee or any other Members.

2.15. The Chair will report the general outcome of the consultations to the Committee in accordance with the established Working Procedures.<sup>2</sup> If agreed by all consulting Members, the Facilitator will make available the final factual report, or a summary thereof, to the Committee as a WTO document. The report will not contain confidential information unless all consulting Members consent to the inclusion of such information.

### **3 TECHNICAL ASSISTANCE**

3.1. 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**

4.1. The Secretariat will report once a year on the use of this procedure to the Committee.

### **5 REVIEW AND DURATION**

5.1. The Committee shall consider the implementation of this procedure as an integral part of the periodic review of the Operation and Implementation of the Agreement under Article 12.7. As part of that review, and no later than four years from the adoption of this procedure, the Committee shall decide whether to continue, modify or terminate this procedure in light of the experience of Members in its implementation and relevant developments in other WTO bodies.

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<sup>2</sup> G/SPS/1, paragraph 6.