

**AD HOC CONSULTATIONS OR NEGOTIATIONS AMONG MEMBERS UNDER
ARTICLE 12.2 OF THE AGREEMENT ON THE APPLICATION OF
SANITARY AND PHYTOSANITARY MEASURES**

Communication from Chile

The following communication, received on 7 October 2011, is being circulated at the request of the delegation of Chile.

1. The original idea was to establish rules or guidelines for a procedure that encouraged and structured conflict resolution and dispute clarification among Members on an informal basis.
2. At first this issue did not seem to pose any problems, but delays have led to complications in the Committee's discussions and confusion with the discussions of the Negotiating Group on Market Access.
3. Chile is in favour of a very simple document that encourages and facilitates consultations or negotiations among Members on specific sanitary or phytosanitary issues, as set out in Article 12.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures.
4. To this end, the procedure must be voluntary and flexible with regard to deadlines and procedures.
5. It has to be flexible because any country may have recourse to it at any moment it sees fit, irrespective of whether or not it has already raised the issue with the Committee.
6. It must also be flexible so that the document can be adapted or amended whenever the Committee deems this necessary.
7. We are in favour of transparency and it is our understanding that it will be the countries themselves that decide whether or not to notify the Committee, in the same way that at present each country is free to determine whether or not to submit communications on the outcome of clarifications received or concerns addressed.
8. In short, transparency matters to us, but we respect the fact that certain Members may prefer to have recourse to the procedure without being under an obligation to inform the Committee.
9. If the Committee is kept informed, follow-up can be conducted by the Secretariat. It is, however, a fact that at present a great many issues are resolved in informal bilateral meetings, in parallel to the work of the Committee, without the Members being obliged to notify it.

10. With regard to the Facilitator, it is preferable that he or she does not opine on the interpretation of the Agreement. Furthermore, the tasks required of the position should not be overly burdensome.

11. We should like to make some observations concerning document G/SPS/W/259:

- (a) Preamble: we endorse the text, including the additions proposed by India, Norway, the Philippines and Switzerland (the four countries);
- (b) Paragraph 4: we would rather this were not compulsory;
- (c) "General Considerations", paragraph 5: we would keep the sentence up to the word 'voluntary' and delete the rest;
- (d) All deadlines, notably those specified in paragraphs 11, 12, 13 and 18, should be deleted as these should be established bilaterally between the parties;
- (e) Paragraph 15: the Facilitator should not opine on interpretations of the Agreement or on technical issues, nor be responsible for organizing meetings;
- (f) Step C, "Consultation Procedure", paragraph 19: we prefer Alternative A;
- (g) Section V, "Review and Duration", paragraph 22: we prefer Alternative B.

12. Finally, we wish to state that, although we should like there to be rules or guidelines, given how involved the procedure has become and the fact that it is taking precedence over the key objective, in this instance we prefer to maintain the status quo, whereby a procedure can be conducted even in the absence of agreed guidelines.
