

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG5/WGSP/W/21
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DRAFT AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES

Note by the Nordic Countries

1. Introduction

There seems to be a rather common consensus that the international discipline to be agreed as a result of the ongoing negotiations should provide contracting parties with the necessary means to protect human, animal and plant life within their territories, but prevent that these measures are misused to create unjustifiable barriers to trade. Moreover such discipline should be sufficiently detailed and unambiguous so that in its implementation disputes could be avoided to the greatest extent possible.

The Nordic countries have maintained that the most appropriate way to achieve these aims would be to prepare a Code using as a model, as far as applicable, the TBT Code. Some delegations have, however, expressed concern as to this approach, because it could result in limited country coverage and rather weak dispute settlement procedures.

The Nordic countries fully agree that wide country coverage should be a basic objective of these negotiations. In substance, the "code" approach provides the detailed and unambiguous discipline we feel is necessary. As to participation, we consider an SPS discipline, whatever its form, to be an integral part of the Uruguay Round. Acceptance should consequently be viewed as linked to the final package of the Round. The utility of the proposed dispute settlement procedures should be judged by the degree to which the discipline succeeds in covering the realities of SPS use. The strength of the discipline, in terms of the scope for retaliation, depends on the link which can be forged with the General Agreement. The outcome of dispute settlement negotiations under NG13 plays an important rôle in this respect.

In order to illustrate our thinking in concrete terms we have prepared a complete text to reflect such a solution. This draft is in fact just a continuation to our earlier presentations in which we have tabled draft texts on harmonization and transparency (MTN.GNG/NG5/WGSP/W/9), on dispute settlement procedures (MTN.GNG/NG5/WGSP/W/11) and on technical assistance

and special treatment of developing countries (MTN.GNG/NG5/WGSP/W/14). Of the 24 pages of this draft, 16 are directly based on those earlier submissions and only 8 are new.

It is fair to state that whereas for our earlier submissions we were able to base our proposals to a rather great extent on the TBT Code, for this new draft that has not been feasible. The provisions now added, which form the most fundamental part of the proposed Agreement, are based on the results of the Mid-Term Review as well as on the position papers presented to the Working Group by various delegations.

2. Content of the draft agreement

Article 1

The product coverage of the Agreement has for the time being been left open. It should, however, be noted that the coverage might not be the same as for the general agricultural agreement.

Article 2 and Annex 1

The definitions are, of course, decisive for the coverage of the Agreement as well as for its correct understanding. They have not yet been discussed by the Working Group. The definitions in Annex 1 should be seen as first attempts of what is needed for the purposes of an SPS agreement.

Articles 3 and 4

The text is based on various position papers.

Article 5

This article is new and shall be understood in connection with Article 27.

Articles 6 to 9

This text has been presented in MTN.GNG/NG5/WGSP/W/9.

Article 10

The text is based on various position papers.

Article 11, paras. 1 and 2, and Article 12

These texts have been presented in MTN.GNG/NG5/WGSP/W/9.

Article 11, paras. 3 to 7

These provisions are based on various position papers.

Article 13

New

Article 14

These provisions present the "principle of equivalency" and are based on various position papers.

Articles 15 and 16

This text is based on MTN.GNG/NG5/WGSP/W/14.

Articles 17 and 18

New

Articles 19 to 25

This text is based on MTN.GNG/NG5/WGSP/W/11.

Article 26

This provision links the SPS Agreement to the General Agreement.

Article 27

New, connected to Article 5.

Article 28

New

3. Conclusions

The sincere hope of the Nordic countries is that by presenting the attached draft agreement they could contribute to the discussion of the most appropriate international discipline on sanitary and phytosanitary measures, as envisaged by the Uruguay Declaration and by the Mid-Term Review.

GENERAL PROVISIONS

Article 1

Scope of the Agreement

- 1.1 The following products shall be subject to the provisions of this Agreement:
[to be agreed]

- 1.2 All references in this Agreement to sanitary and phytosanitary measures shall be construed to include any amendments thereto, except amendments of an insignificant nature.

Article 2

Definitions

- 2.1 Terms for sanitary and phytosanitary measures shall normally have the meaning given to them by definitions adopted by the relevant international organizations taking into account their context and in the light of the object and purpose of this Agreement.
- 2.2 However, for the purpose of this Agreement the meaning of the terms given in Annex 1 applies.

Article 3

Basic rights and obligations

- 3.1 Parties shall have the right to take all necessary measures for the protection of human, animal or plant life or health within their territories that are not inconsistent with the provisions of this Agreement.
- 3.2 Parties have the obligation to ensure that sanitary and phytosanitary measures:
 - 3.2.1 are applied only to the extent necessary to protect human, animal or plant life or health;
 - 3.2.2 are consistent with established scientific evidence, where available; and
 - 3.2.3 are not applied in a manner that creates unnecessary obstacles to international trade.

Article 4

Regionalization of sanitary and phytosanitary measures

- 4.1 Parties shall recognize that products originating from regions free from specific disease or pest may be granted more favourable treatment by importing Parties than products originating in other regions.
- 4.2 Parties shall recognize that other Parties may maintain for regions which are free from specific disease or pest or where eradication programmes are being undertaken, more strict sanitary or phytosanitary measures than are applied for other regions.

- 4.3 Parties agree that a disease- or pest-free region may consist of a country, part of a country, or areas of several countries.
- 4.4 Parties claiming that areas within their territories are free from a specific disease or pest shall give necessary proof thereof. Importing Parties shall have the right to satisfy themselves by inspection, testing and other appropriate methods that such areas are, and will remain, free of that specific disease or pest.
- 4.5 Parties shall encourage relevant international organizations, and shall participate in the corresponding work within the limits of their resources:
 - 4.5.1 to develop and publish criteria for the establishment and recognition of disease- or pest-free regions;
 - 4.5.2 to compile and publish up-to-date lists of regions which Parties have notified and/or recognized as being free of specific diseases or pests; and
 - 4.5.3 to provide, upon request, independent experts competent to assess the absence of specific diseases or pests within an area and the adequacy of the relevant control measures.

Article 5

Sanitary and phytosanitary measures by central government bodies, local government bodies, non-governmental bodies and regional bodies

- 5.1 Parties shall ensure that their central government bodies as well as local government bodies within their territories comply with the provisions of this Agreement.
- 5.2 Parties shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories as well as regional bodies in which relevant bodies within their territories are members comply with the provisions of this Agreement with the exception of Articles 7, 8, 12 and 16 to 26. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with the provisions of this Agreement.

TRANSPARENCY ON SANITARY AND PHYTOSANITARY REGULATIONS

Article 6

Publication of regulations

- 6.1 Parties shall ensure that all sanitary and phytosanitary regulations which have been adopted are published promptly in such a manner as to enable interested parties to become acquainted with them.
- 6.2 Except in urgent circumstances, Parties shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting countries, and particularly in developing countries, to adapt their products and methods of production to the requirements of the importing country.

Article 7

Enquiry points

- 7.1 Each Party shall ensure that one enquiry point exists which is able to answer all reasonable questions from interested parties in other Parties as well as to provide the relevant documents regarding:
 - 7.1.1 any sanitary and phytosanitary regulations adopted or proposed within its territory;
 - 7.1.2 any conformity assessment procedures or proposed conformity assessment procedures which are operated within its territory; and
 - 7.1.3 the membership and participation of the Party, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this Agreement.
- 7.2 Parties shall ensure that where copies of documents are requested by interested parties in other Parties, they are supplied at the same price (if any) as to the nationals of the Party concerned.

Article 8

Notification procedures

- 8.1 Whenever a relevant international standard or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of relevant international standards or

recommendations, and if the regulation may have a significant effect on trade of other Parties, Parties shall:

- 8.1.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a particular regulation;
 - 8.1.2 notify other Parties through the GATT secretariat of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early appropriate stage, when a draft with the complete text of a proposed regulation is made available domestically, and when amendments can still be introduced and comments taken into account;
 - 8.1.3 provide upon request to other Parties copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards or recommendations;
 - 8.1.4 allow reasonable time for other Parties to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.
- 8.2 However, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit such of the steps enumerated in Article 8.1 as it finds necessary provided that the Party:
- 8.2.1 notify immediately other Parties through the GATT secretariat of the particular regulation, the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problems;
 - 8.2.2 provide upon request to other Parties copies of the regulation;
 - 8.2.3 allow other Parties to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.
- 8.3 Notifications to the GATT secretariat shall be in English, French or Spanish.

- 8.4 Parties shall, if so requested by other Parties, provide copies of the documents or summaries of the documents covered by a specific notification in English, French or Spanish.
- 8.5 The GATT secretariat shall promptly circulate copies of the notifications to all Parties and interested international organizations and draw the attention of developing country Parties to any notifications relating to products of particular interest to them.
- 8.6 Parties shall designate one single central government authority that is responsible for the implementation on the national level of the provisions concerning notification procedures according to Articles 8.1, 8.2, 8.3 and 8.4.

Article 9

General reservations

- 9.1 Nothing in this Agreement shall be construed as requiring:
- 9.1.1 the provision of particulars or copies of drafts or the publications of texts other than in the language of the Party except as stated in Article 8, paragraph 4; or
- 9.1.2 Parties to furnish any information, the disclosure of which they consider contrary to their essential security interests.

APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

Article 10

National and non-discriminatory treatment

- 10.1 Parties shall ensure that their sanitary and phytosanitary measures, without prejudice to Article 4, paragraphs 1 and 2, accord for products imported from the territories of any Party treatment no less favourable than that accorded in a comparable situation to like products of national origin and to like products originating in any other country. Treatment is understood to include also application of risk assessment procedures and choice of risk level.

Article 11

Necessary level of protection

- 11.1 Where sanitary or phytosanitary regulations are required and relevant international or regional standards or

recommendations adopted for example by the Codex Alimentarius Commission, International Office of Epizootics or bodies administering the International Plant Protection Convention, exist or their completion is imminent, Parties shall use them as a basis for the sanitary and phytosanitary regulations except where such standards or recommendations are inappropriate for the Parties concerned, for inter alia such reasons as national security requirements; the prevention of deceptive practices; enhanced protection of human, animal or plant life or health, or of the environment; fundamental climatic or other geographical factors; specific dietary habits; the spread of specific diseases or pests.

- 11.2 In case Parties are not using relevant international or regional standards and recommendations as a basis for their sanitary and phytosanitary regulations they shall, upon request by another Party, explain the reasons therefor.
- 11.3 Parties shall recognize that sanitary and phytosanitary regulations which are in accordance with relevant international standards and recommendations, or in their absence, with relevant regional standards and recommendations, satisfy the basic obligations as presented in Article 3, paragraph 2.
- 11.4 Parties shall ensure that sanitary and phytosanitary measures are, whenever appropriate, based on adequate risk assessment procedures taking into account available scientific evidence, relevant production processes and methods, inspection and control systems, disease- and pest-free regions, quarantine treatment as well as potential biological and economic consequences of damage for the importing country.
- 11.5 Parties shall, upon request, provide to other Parties relevant information on their risk assessment procedures.
- 11.6 Parties shall furthermore ensure that their sanitary and phytosanitary measures are not introduced, applied or maintained against established scientific evidence. Where scientific evidence is inconclusive or in doubt, the burden of proof shall be on the exporting Party.
- 11.7 Parties shall ensure that when preparing sanitary or phytosanitary regulations in the choice between different ways to present the necessary requirements they use those which are least trade restrictive except in cases when this for technical or economic reasons is not feasible.

Article 12

Harmonization of sanitary and phytosanitary regulations

- 12.1 With a view to harmonizing sanitary and phytosanitary regulations on as wide a basis as possible, Parties shall play a full part within the limits of their resources in the preparation by appropriate international organizations of international standards and recommendations for purposes for which they either have adopted, or expect to adopt, sanitary or phytosanitary regulations. Such harmonization shall cover, as appropriate, all relevant aspects of the sanitary and phytosanitary regulations.
- 12.2 With a view to further international (inter-regional) harmonization, Parties shall whenever practicable harmonize their sanitary and phytosanitary regulations on a regional basis.

Article 13

Conformity assessment procedures

- 13.1 In addition to obligations covering sanitary and phytosanitary measures in general Parties shall ensure when operating conformity assessment procedures that:
- 13.1.1 conformity assessment procedures are undertaken and completed without undue delay and in no less favourable order for imported products than for like domestic products;
 - 13.1.2 information requirements are limited to what is necessary to assess conformity and to establish the fees thereof;
 - 13.1.3 the confidentiality of information about imported products arising from or supplied in connection with conformity assessment is respected in the same way as for domestic products;
 - 13.1.4 any deficiencies in the application are promptly informed to the applicant;
 - 13.1.5 any requirements for conformity assessment of individual specimens of a product are limited to what is reasonable and necessary;
 - 13.1.6 any fees imposed for conformity assessment procedures on imported products are equitable in relation to fees chargeable on like domestic products or products originating in any other country;

- 13.1.7 the siting of facilities used in conformity assessment procedures and the selection of samples are such as not to cause unnecessary inconvenience to applicants, importers, exporters or their agents;
- 13.1.8 whenever specifications of a product are changed subsequent to its assessment of conformity to the applicable regulations, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned;
- 13.1.9 a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.

13.2 Nothing in this Agreement shall prevent Parties from carrying out reasonable spot checks within their territories.

Article 14

Recognition of sanitary and phytosanitary measures of Parties

- 14.1 Parties shall accept sanitary and phytosanitary measures by relevant bodies within the territories of other Parties even if these measures differ from their own, provided they are satisfied that these measures provide an equivalent level of protection as to products imported from those Parties.
- 14.2 Parties shall, whenever appropriate, enter into negotiations with the aim of achieving bilateral and multilateral agreements on mutual recognition of specified sanitary and phytosanitary measures.

TECHNICAL ASSISTANCE AND SPECIAL TREATMENT OF DEVELOPING COUNTRIES

Article 15

Technical assistance to other Parties

- 15.1 Parties shall, if requested, advise other Parties, especially the developing countries, on the preparation of sanitary and phytosanitary regulations.
- 15.2 Parties shall, if requested, advise other Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding:

- 15.2.1 the establishment of national regulatory or standardizing bodies and participation in the appropriate regional and international organizations;
 - 15.2.2 the steps that should be taken by their producers, if they wish to get their products tested, inspected, certified or approved in systems operated by governmental or non-governmental bodies within the territory of the Party receiving the request;
 - 15.2.3 the establishment of the institutions and legal framework which would enable them to fulfil the obligation of membership or participation in international or regional conformity assessment systems of which the Party receiving the request is a member or participant and shall encourage their national assessment bodies to do likewise.
- 15.3 Parties shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies or conformity assessment bodies within their territories to advise other Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding:
- 15.3.1 the establishment of regulatory bodies, or conformity assessment; and
 - 15.3.2 the methods by which their sanitary and phytosanitary regulations can best be met.
- 15.4 In providing advice and technical assistance to other Parties in terms of this Article, paragraphs 1 to 3, Parties shall give priority to the needs of the least-developed countries.

Article 16

Special and differential treatment of developing countries

- 16.1 Parties shall provide differential and more favourable treatment to developing country Parties to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement.
- 16.2 Parties shall give particular attention to the provisions of this Agreement concerning developing countries' rights and obligations and shall take into account the special development, financial and trade needs of developing countries in the implementation of this Agreement both

nationally and in the operation of the Agreement's institutional arrangements.

- 16.3 Parties shall, in the preparation and application of sanitary and phytosanitary regulations and conformity assessment procedures, take account of the special development, financial and trade needs of developing countries, with a view to ensuring that such regulations or procedures do not create unnecessary obstacles to exports from developing countries.
- 16.4 Parties shall take such reasonable measures as may be available to them to ensure that appropriate international organizations preparing international standards and recommendations and international conformity assessment systems are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Parties, taking into account the special problems of developing countries.
- 16.5 Parties shall take such reasonable measures as may be available to them to ensure that appropriate international organizations preparing international standards and recommendations, upon request of developing countries, examine the possibility of, and if practicable, prepare international standards concerning products of special interest to developing countries.
- 16.6 Parties shall, in accordance with the provisions of Article 15, provide technical assistance to developing countries to ensure that the preparation and application of sanitary and phytosanitary regulations or conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing countries. In determining the terms and conditions of technical assistance, account shall be taken of the stage of development of the requesting country and in particular of the least-developed countries.
- 16.7 It is recognized that developing countries may face special problems, including institutional and infrastructural problems, in the field of preparation and application of sanitary and phytosanitary regulations or conformity assessment procedures. It is further recognized that the special development and trade needs of developing countries, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Parties, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing countries are able to comply with this Agreement, the Committee is enabled to grant upon request specified, time-limited exceptions, in whole or in

part, from obligations under this Agreement. When considering such requests, the Committee shall take into account the special problems in the preparation and application of sanitary and phytosanitary regulations, as well as conformity assessment procedures and the special development and trade needs of the developing country, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed countries.

- 16.8 During consultations, developed countries shall bear in mind the special difficulties experienced by developed countries in formulating and implementing sanitary and phytosanitary regulations and methods of ensuring conformity with those regulations and standards. In their desire to assist developing countries with their efforts in this direction developed countries shall take account of the special needs of the former in regard to financing, trade and development.

ADMINISTRATION

Article 17

The Committee on Sanitary and Phytosanitary Regulations and Barriers

- 17.1 A Committee on sanitary and phytosanitary regulations and barriers composed of representatives from each of the Parties (hereinafter referred to as "the Committee") shall be established under this Agreement, and shall carry out such responsibilities as assigned to it under this Agreement or by the Parties.

Article 18

Procedures

- 18.1 The Committee shall elect its own Chairman and shall meet as necessary but no less than once a year, for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement, of the furtherance of its objectives, including the possibility of deciding upon the correct interpretation of the Agreement, and of making recommendations to Parties on its appropriate implementation.
- 18.2 Working parties, panels, or other bodies may be established as appropriate, to carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement.

- 18.3 It is understood that close contact shall be maintained by the Committee with the relevant international and regional organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics and bodies administering the International Plant Protection Convention, with the object of securing the best available scientific and technical opinions for the administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided.

CONSULTATION AND DISPUTE SETTLEMENT

Article 19 Consultation

- 19.1 Each Party shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representations made by other Parties with respect to any matter affecting the operation of this Agreement.
- 19.2 If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, by another Party or Parties, and that its trade interests are significantly affected, the Party may make written representations or proposals to the other Party or Parties which it considers to be concerned. Any Party shall give sympathetic consideration to the representations or proposals made to it, with a view to reaching a satisfactory resolution of the matter.
- 19.3 The Party to which a request on consultations is made shall, unless otherwise mutually agreed, reply to the request within ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually satisfactory solution. If the Party does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed from the date of the request, then the Party that requested the holding of consultations may proceed directly to request the Committee to investigate the matter.
- 19.4 Requests for consultations shall be notified to the Committee by the Party which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request.

- 19.5 In cases of urgency, including those which concern goods en route, Parties shall enter into consultations within a period of no more than ten days from the date of the request. If the consultations have failed to settle the dispute within a period of thirty days after the request, the complaining Party may proceed directly to request the Committee to investigate the matter.

Article 20

Dispute settlement

- 20.1 It is the firm intention of Parties that all disputes under this Agreement shall be promptly and expeditiously settled, particularly in the case of perishable products.
- 20.2 If the consultations under Article 19 fail to settle a dispute within sixty days after the request for consultations, the Committee shall meet at the request of any party to the dispute within thirty days of receipt of such a request, to investigate the matter with a view to facilitating a mutually satisfactory solution. If the parties to the dispute jointly consider that consultations have failed to settle the dispute, the request for a Committee meeting may be given during the sixty-day period.
- 20.3 It is understood that where disputes arise affecting products with a definite crop cycle of twelve months, every effort would be made by the Committee to deal with these disputes within a period of twelve months.
- 20.4 During any phase of a dispute settlement procedure including the earliest phase, competent bodies and experts in matters under consideration may be consulted and invited to attend the meetings of the Committee; appropriate information and assistance may be requested from such bodies and experts, notably from the Codex Alimentarius Commission, the International Office of Epizootics and bodies administering the International Plant Protection Convention as well as from experts nominated by these bodies.

Article 21

Good offices, conciliation, mediation

- 21.1 Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining Party can then proceed with a request for the Committee investigation or establishment of a panel as provided under this Article. When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the

complaining Party must allow a period of sixty days from the date of the request for consultations before requesting the meeting of the Committee. The complaining Party may request a meeting of the Committee during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

21.2 If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while Committee investigations or the panel process proceeds.

21.3 Chairman of the Committee may, acting in an ex officio capacity, offer his good offices, conciliation or mediation with the view to assisting Parties to settle a dispute.

Article 22 Arbitration

22.1 Expeditious arbitration as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties to a dispute.

22.2 Resort to arbitration shall be subject to mutual agreement of the parties to the dispute which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to the Committee sufficiently in advance of the actual commencement of the arbitration process.

22.3 Other Parties may become party to an arbitration proceeding upon the agreement of the Parties which have agreed to have recourse to arbitration. All parties to the proceeding shall agree to abide by the arbitration award.

Article 23 Panel proceedings

23.1 If no mutually satisfactory solution has been reached under the procedures of Article 19, paragraph 2 within three months of the request for the Committee investigation, the Committee shall, upon request of any party to the dispute, establish a panel. Such a request shall not be opposed by any other Party.

23.2 The request for a panel or a working party shall be made in writing. It shall indicate whether consultations were held, and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written

request shall include the proposed text of special terms of reference. Decision to establish a panel or working party shall be taken at the latest at the Committee meeting following that at which the request first appeared as an item on the Committee's agenda, unless at that meeting the parties to the dispute agree otherwise.

23.3 When a panel is established, the Committee shall, unless the parties to the dispute agree otherwise within twenty days from the establishment of the panel, direct it to:

- examine the matter;
- consult with parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
- make a statement concerning the facts of the matter as they relate to the application of provisions of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

23.4 In establishing a panel, the Committee may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute subject to the provisions of the preceding paragraph. The terms of reference thus drawn up shall be communicated to the Committee. If other than standard terms of reference are agreed upon, any Party may raise any point relating thereto in the Committee.

23.5 Panels shall be governed by the procedures in Annex 2.

Article 24

Time devoted to panel proceedings

24.1 After consulting the parties to the dispute, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the time-table for the panel process at least until its first substantive meeting. In determining the time-table for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

24.2 Each party to the dispute shall deposit its written submissions with the secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining Party shall submit its first submission in advance of the responding Party's first submission unless the panel decides, in fixing the

time-table referred to in the paragraph above and after consultations with the parties to the dispute, that the parties to the dispute should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding Party's submission. Any subsequent written submissions shall be submitted simultaneously.

- 24.3 In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the composition and terms of reference of the panel have been agreed upon to the time when the final report is provided to the parties to the dispute, shall, as a general rule, not exceed four months. In cases of urgency, the panel shall aim to provide its report to the parties within two months.

When the panel considers that it cannot provide its report within four months or within two months in cases of urgency, it shall inform the Committee in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case should the period from the establishment of the panel to the submission of the report to the Committee exceed nine months.

- 24.4 Reports by panels shall set out the rationale behind any findings that they make.

Article 25 Enforcement

- 25.1 After the investigation is complete or after the report of a panel or other body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within thirty days of receipt of the report, unless extended by the Committee, including:

- a statement concerning the facts of the matter; or
- recommendations to one or more Parties; or
- any other ruling which it deems appropriate.

- 25.2 Parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Committee meeting at which the panel report will be considered.

- 25.3 Prompt compliance with recommendations or rulings of the Committee is essential in order to ensure effective

resolution of disputes to the benefit of all Parties. The Party concerned shall inform the Committee of its intentions in respect of implementation of the recommendations or rulings. If it is impracticable to comply immediately with the recommendations or rulings, the Party concerned shall have a reasonable period of time in which to do so.

25.4 The Committee shall monitor the implementation of recommendations or rulings adopted. The issue of implementation of the recommendations or rulings may be raised at the Committee by any Party at any time following their adoption. Unless the Committee decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Committee meeting after six months following their adoption and shall remain on the Committee's agenda until the issue is resolved. At least ten days prior to each such Committee meeting, the Party concerned shall provide the Committee with a status report in writing of its progress in the implementation of the panel recommendations or rulings.

25.5 If a Party to which recommendations are addressed considers itself unable to implement them, it shall within two months furnish reasons in writing to the Committee. In that event the Committee shall consider what further action may be appropriate.

25.6 If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend, in respect of any other Party, the application of such obligations under this Agreement as it determines to be appropriate in the circumstances.

Article 26

Relation to GATT dispute settlement procedures

26.1 If disputes arise between Parties relating to rights and obligations of this Agreement, Parties shall complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT. Parties recognize that, in any case so referred to GATT, CONTRACTING PARTIES are fully competent to discuss and decide on any aspects of the dispute according to the rules of the GATT.

Article 27

Levels of obligation

27.1 The dispute settlement provisions set out above can be invoked in cases where a Party considers that another Party has not achieved satisfactory results under Article 5.2 and its trade interests are significantly affected. In this

respect such results shall be judged as if the body in question was covered by Article 5.1.

RETROACTIVITY

Article 28

28.1 Parties shall ensure that their sanitary and phytosanitary measures which exist at the time of entry into force of this Agreement are made consistent with the provisions of this Agreement within two years of that time, at the latest.

FINAL PROVISIONS

[To be added.]

ANNEX 1

DEFINITIONS

1. Sanitary and phytosanitary measure

Any mandatory measure to protect human, animal and plant life and health from risks caused by domestic or imported products.

Note 1 - Sanitary and phytosanitary measures include inter alia issuing and enforcing regulations, and operating conformity assessment procedures.

Note 2 - Sanitary and phytosanitary measures shall cover, as relevant, measures concerning:

- the products themselves;
- processes and production methods;
- testing, inspection, certification and approval procedures, quarantine treatments;
- packaging and labelling requirements directly related to food safety;
- provisions on relevant statistical methods, sampling procedures and methods of risk assessment.

Note 3 - Sanitary and phytosanitary measures do not include issues like food grading, consumer preference and information, animal welfare, and religious and moral concerns.

2. Sanitary and phytosanitary regulation

Sanitary and phytosanitary measure such as law, decree and ordinance applicable generally.

Note - The definition thus excludes individual permits and approvals based on regulations.

3. Conformity assessment procedure

Any procedure for determining that relevant requirements are fulfilled.

Note - Conformity assessment procedures include inter alia procedures for sampling, testing, inspection, certification and approval.

4. Central government body

Central government, its ministries and departments or any body subject to the control of the central government in respect of the activity in question.

Note - In the case of the European Economic Community the provisions governing central government bodies apply. However, regional bodies or certification systems may be established within the European Economic Community, and in such cases would be subject to the provisions of this Agreement on regional bodies or certification systems.

5. Local government body

A government other than a central government (e.g. states, provinces, Länder, cantons, municipalities, etc.), its ministries or departments or any body subject to the control of such a government in respect of the activity in question.

6. Non-governmental body

A body other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation.

ANNEX 2

PANEL PROCEDURES

The following procedures shall apply to panels established in accordance with the provisions of the Agreement.

1. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of sanitary and phytosanitary regulations and experienced in the field of trade relations. This list may also include persons other than government officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the Parties would be willing to make available for such work. When a panel is established, the Chairman, within seven days shall propose the composition of the panel consisting of three or five members, preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

2. Citizens of countries whose central governments are parties to a dispute or in customs union with a party to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

3. Each panel shall develop its own working procedures. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a Party, it shall inform the government of that Party. In case such consultation with competent bodies and experts is necessary it should be at the earliest possible stage of the dispute settlement procedure. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information shall be provided by the government or person supplying the information.

4. When using technical experts to assist in questions of a technical nature requiring detailed consideration by experts, panels may direct them to:

- examine the matter;
- consult with the parties to the dispute;

- make a statement to the panel concerning the facts of the matter;
and
- make such findings as will assist the panel in its work,
including inter alia if the provisions of Article 3, paragraph 2,
sub-paragraphs 1 and 2 have been correctly applied.

The selection of technical experts and their participation in panel proceedings shall be governed by the rules contained in Annex 3.

5. Where more than one Party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Parties concerned. A single panel should be established to examine such complaints whenever feasible.

6. The single panel shall organize its examination and present its findings to the Committee so that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints, are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants will be made available to the other complainants, and each complainant will have the right to be present when one of the other complainants presents its view to the panel.

7. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panellists on each of the separate panels and the time-table for the panel process in such disputes shall be harmonized.

8. The interests of the parties to a dispute and those of other Parties shall be fully taken into account during the panel process. Any third Party having a substantial interest in a matter before a panel, and having notified this to the Committee, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report. At the request of the third Party, the panel may grant the third Party access to the written submissions to the panel by those parties to the dispute which have agreed to the disclosure of their respective submission to the third Party.

9. Where the parties to a dispute have failed to come to a satisfactory solution, the panel shall submit its findings in a written form. Panel reports shall set out the rationale behind any findings and recommendations that it makes. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

10. To encourage development of mutually satisfactory solutions between the parties to the dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

ANNEX 3

Technical experts

The following rules shall apply to technical experts utilized in accordance with the provisions of the Agreement.

1. The selection of technical experts shall be restricted to persons, preferably government officials, of professional standing and experience in the field in question. The advice of relevant international and regional bodies, like the Codex Alimentarius Commission, the International Office of Epizootics and bodies administering the International Plant Protection Convention, shall be used, as appropriate, in selecting technical experts.

2. Citizens of countries whose central governments are parties to a dispute or in customs union with a party to a dispute shall normally not be eligible for selection in connection with that dispute. Technical experts shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters placed before them by the panel.

3. The parties to a dispute shall have access to all relevant information provided to technical experts, unless it is of a confidential nature. Confidential information provided to experts shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from technical experts but release of such information by them is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.

4. To encourage development of mutually satisfactory solutions between the parties to the dispute and with a view to obtaining their comments, technical experts should first submit the descriptive part of their report to the Parties concerned, and should subsequently submit to the parties to the dispute their conclusions, or an outline thereof, a reasonable period of time before they are presented to the Panel.