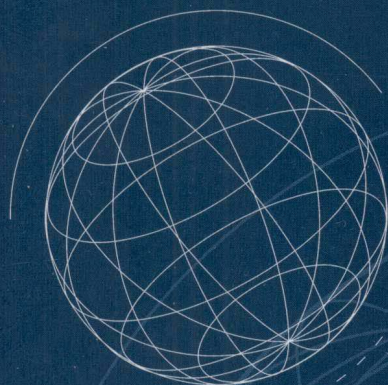




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WT/DS321/R

*Adopted by the Dispute Settlement Body
on 14 November 2008*

as Modified by the Appellate Body Report

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ANNEX A-1

LETTER TO THE PARTIES DATED 1 AUGUST 2005 ON THE PANEL DECISION ON OPEN HEARINGS FOR PUBLIC OBSERVATION

In light of the parties' common request made on 13 June 2005 to have their meetings with the Panel open to the public; keeping in mind the Panel's obligation to ensure that its Working Procedures are objective, impartial and non-discriminatory; and after careful consideration of the existing provisions of the DSU and its Appendix 3, the Panel has decided to accept the parties' request and to agree that the panel meetings at which the parties are invited to appear, as referred to in paragraph 2 of Appendix 3 of the DSU, will be open for observation by the public through a closed-circuit broadcast.

With a view to ensuring transparency to the fullest extent possible and non-discriminatory access by all people, in particular by all Members, the Panel will request the Secretariat to finalize the appropriate logistical arrangements, and to guarantee that each WTO Member delegation has at least two seats available in the room where the closed-circuit broadcast will be transmitted. In addition, before its second meeting with the parties, the Panel will review the need to extend further such non-discriminatory access, through internet broadcasting, in light, *inter alia*, of the interest shown by and comments received from the public and taking into consideration any relevant information provided by the Secretariat relating to this matter.

Since not all third parties have agreed that their session with the Panel be open for observation by the public, that session will remain closed.

Please note that, as provided in paragraph 3 of the Panel's Working Procedures, the parties retain the right to request at any time, including during panel meetings at which they are invited to appear, that specific statements of theirs not be broadcast so as to remain confidential. The Panel may also decide on its own to suspend broadcasting at any time, including during such meetings.

Finally, the Panel wishes to bring to the attention of the parties that the dates of the first meeting of the Panel with the parties and third parties have been changed as follows: On Monday and Tuesday, 12 and 13 September, the Panel will meet with the parties; on Wednesday morning, 14 September, the Panel will meet with the third parties; and on Thursday 15 September, the Panel will meet again with the parties to complete its first substantive meeting and allow parties, if need be, to present their closing statements.

The Panel reserves the right to elaborate further in its report on its reasoning with regard to this decision.

Attached is a revised version of the Working Procedures and a revised Timetable of the Panel that reflect this decision.

ANNEX A-2

WORKING PROCEDURES FOR THE PANEL

1. The Panel will provide the parties with a timetable for panel proceedings and will work according to the normal working procedures as set out in the DSU and its Appendix 3 plus certain additional procedures, as follows:
2. The Panel shall meet in closed session. The parties to the dispute, and the third parties, shall be present at the meetings only when invited by the Panel to appear before it. In light of the parties' common request, the panel meetings at which the parties are invited to appear will be open for observation by the public through closed-circuit broadcast, provided satisfactory logistical arrangements can be maintained by the Secretariat.
3. At any moment including during such meetings, any party may request the Panel to suspend the broadcasting for as long as necessary in order to protect confidentiality. The Panel also has the right on its own to suspend the broadcasting at any time, including during such meetings.
4. The deliberations of the Panel and the documents submitted to it shall be kept confidential. Nothing in these procedures shall preclude a party to a dispute from disclosing statements of its own positions to the public, provided that that party does not thereby disclose any confidential information from the other parties or third parties. Members shall treat as confidential information submitted by another Member to the Panel which that Member has designated as confidential. As provided in Article 18.2 of the DSU, where a party to a dispute submits a confidential version of its written submissions to the Panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.
5. Before the first substantive meeting of the Panel with the parties, the parties to the dispute shall transmit to the Panel written submissions in which they present the facts of the case and their arguments. The third parties may transmit to the Panel written submissions after the first written submissions of the parties have been submitted.
6. At its first substantive meeting with the parties, the Panel shall ask the party which has brought the complaint to present its case. Subsequently, at the same meeting, the party against which the complaint has been brought shall be asked to present its points of view.
7. The third parties shall be invited in writing to present their views during a session of the first substantive meeting of the Panel set aside for that purpose. In light of the absence of a common agreement among the third parties on the issue of opening this session of the panel meeting for observation by the public, this session will remain closed. The third parties may be present during the entirety of this session.

8. Formal rebuttals shall be made at the second substantive meeting of the Panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the Panel.
9. The Panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing. Written replies to questions shall be submitted by the date(s) decided by the Panel.
10. The parties to the dispute and any third party invited to present its views shall make available to the Panel and to the parties a written version of their oral statements.
11. The presentations, rebuttals and statements referred to in paragraphs 6 to 10 shall be made in the presence of the parties. Moreover, each party's written submissions, including responses to questions put by the Panel, comments on the descriptive part of the report, and comments on the interim report, shall be made available to the other party.
12. Any request for a preliminary ruling (including rulings on jurisdictional issues) to be made by the Panel shall be submitted no later than in a party's first written submission. If a party requests such a ruling, the other party shall submit its respective response(s) to such request within a time limit specified by the Panel. Exceptions to this procedure will be granted upon a showing of good cause.
13. The parties shall submit all factual evidence to the Panel no later than during the first substantive meeting, except with respect to evidence necessary for purposes of rebuttals, and answers and comments to questions. Exceptions to this procedure will be granted upon a showing of good cause. In such cases, the other parties shall be accorded a period of time for comment, as appropriate.
14. To facilitate the maintenance of the record of the dispute, and for ease of reference to exhibits submitted by the parties, parties are requested to number their exhibits sequentially throughout the stages of the dispute.
15. The parties and third parties shall endeavour to provide the Panel with executive summaries of the facts and arguments as presented to the Panel in their written submissions and oral statements within 10 days following the delivery to the Panel of the relevant written submissions or oral statements. The executive summaries of the written submissions to be provided by each party should not exceed 10 pages in length each and the executive summaries of the oral statements should not exceed 5 pages in length each.
16. The executive summaries shall not in any way serve as a substitute for the submissions of the parties in the Panel's examination of the case. However, the Panel may reproduce the executive summaries provided by the parties and third parties in the arguments section of its report, subject to any modifications deemed appropriate by the Panel. The parties' and third parties' replies to questions, and the parties' comments on each other's replies to questions may be attached to the Panel report as annexes.

17. The parties and third parties to these proceedings have the right to determine the composition of their own delegations. The parties and third parties shall have responsibility for all members of their delegations and shall ensure that all members of their delegations act in accordance with the rules of the DSU and the Working Procedures of this Panel. The parties shall provide a list of the participants of their delegation before or at the beginning of the meeting with the Panel.

18. Following issuance of the interim report, the parties shall have no less than 10 days to submit written requests to review precise aspects of the interim report and to request a further meeting with the Panel. The right to request such a meeting must be exercised no later than at the time the written request for review is submitted. Following receipt of any written requests for review, in cases where no further meeting with the Panel is requested, the parties shall have the opportunity within one week to submit written comments on the other party's written requests for review. Such comments shall be strictly limited to commenting the other party's written requests for review.

19. The following procedures regarding service of documents apply:

- (a) Each party and third party shall serve its submissions directly on all other parties, including where appropriate the third parties, and confirm that it has done so at the time it provides its submissions to the Panel.
- (b) The parties and third parties should provide the Panel and the parties with their submissions, answers to questions and comments invited by the Panel by 5:30 p.m. on the deadline dates established by the Panel, unless a different time is set by the Panel.
- (c) The parties and third parties shall provide the Panel and the parties with copies of their oral statements, preferably at the end of the meeting, and in any event not later than noon of the first working day following the last day of the substantive meetings. The parties and third parties are encouraged to provide a provisional written version of their oral statements at the time the oral statement is presented.
- (d) The parties and third parties shall provide the Panel with 9 hard copies of all their submissions, including the written versions of oral statements and answers to questions. All these copies shall be filed with the Dispute Settlement Registrar, ***** (office number 3154).
- (e) At the time they provide a hard copy of their submissions, the parties and third parties shall also provide the Panel with an electronic copy of all their submissions on a diskette or as an e-mail attachment in a format compatible with the Secretariat's software. E-mail attachments shall be sent to the Dispute Settlement Registry (DSRegistry@wto.org) with a copy to ***** (e-mail: *****@wto.org), Secretary to the Panel.

- (f) Each party shall serve executive summaries mentioned in paragraph 15 directly on the other parties, and third parties when relevant, and confirm that it has done so at the time it provides its submission to the Panel. Each third party shall serve executive summaries mentioned in paragraph 15 directly on the parties and other third parties and confirm that it has done so at the time it provides its submission to the Panel. Subparagraphs (d) and (e) above shall be applied to the service of executive summaries.
20. The Panel reserves the right to modify these procedures at any time following consultations with the parties.

ANNEX A-3

LETTER TO THE PARTIES DATED 20 OCTOBER 2005 ON THE PANEL DECISION ON CONSULTING SCIENTIFIC AND TECHNICAL EXPERTS

The Panel has instructed me to communicate the following message to you.

The Panel recalls that it sought the opinions of the Parties on whether there was a need to consult technical or scientific experts on sanitary issues, should the Panel consider it necessary in the process of resolving this dispute. From the Parties' replies to the questions of the Panel, it appears that no Party disagrees that, should the Panel proceed with an assessment of the measure taken by the European Communities to comply with the recommendations and rulings of the DSB in the *EC – Hormones* case (hereafter the "EC implementing measure"), advice from technical or scientific experts would be necessary.

The Panel notes the views expressed by the European Communities regarding the nature of this case and the order in which its claims should be reviewed by the Panel. At this early stage, the Panel is of the view that it is in its interest, as well as in the interest of the Parties, to be fully informed of all relevant aspects of the dispute before it reaches a decision.

As a result, in order to facilitate the smooth handling of the proceedings while ensuring that Parties are given ample opportunities to express their views on all aspects of the case, the Panel has decided to initiate a process for consultation with experts in relation to the technical or scientific aspects of the compatibility of the EC's implementing measure with the relevant provisions of the SPS Agreement.

The Panel would like to stress that the decision to proceed with the consultation with experts is without prejudice to the positions held by any Party in this respect and without prejudice to the conclusions that the Panel will ultimately reach on the claims raised by the European Communities.

Attached for your consideration and comments, if any, are (i) the working procedures the Panel proposes to use for consultations with experts and (ii) a revised timetable reflecting the necessary adjustments resulting from the incorporation of an expert consultation process in these proceedings.

You will note from the attached timetable that in light of this decision, the Panel considers it appropriate to grant to all Parties a further extension of the deadline for submitting rebuttals, until Wednesday, 16 November 2005. Furthermore, the date of the second substantive meeting of the Panel with the Parties

will be postponed to the week beginning on 13 March 2006.¹ Should a meeting with the experts be considered necessary, the Panel would intend to hold that meeting immediately prior to the second substantive meeting with the Parties.

The Panel would appreciate your comments and/or suggestions by close of business on Tuesday, 25 October 2005 (i) on the attached proposed working procedures, (ii) on the technical or scientific aspects on which you would like the Panel to consult experts, (iii) on the adjustments made in the revised Panel timetable as well as (iv) on whether the meeting with the experts and the parties should be open for observation by the public.

¹ The Panel recalls that a potential date for the second substantive meeting had been set for 6 December 2005. However, it was brought to the attention of the Panel in the meantime that the preparation and holding of the Ministerial Conference would make it quite impossible to hold any panel meeting before January 2006.

ANNEX A-4

LETTER TO THE PARTIES DATED 25 NOVEMBER 2005 ON THE PANEL DECISION ON CERTAIN ISSUES CONCERNING THE EXPERTS' WORKING PROCEDURES

The Panel thanks the Parties for their comments on the expert working procedures and related issues, complemented by additional letters in response to points raised in each other's communications.

Having considered the extensive comments from the Parties on the expert consultation process, the Panel wishes to inform the Parties of its decision. The modified working procedures for seeking expert advice are attached.

Nature of Advice

The Panel will take into account the rebuttals before finalizing the issues for expert consultations.

Selection of experts

With respect to the EC's suggestion that the Panel seek advice from an expert review group instead of individual experts, the Panel is not convinced that this is a preferable option. Firstly, the Panel would wish to hear any dissenting or minority views among the experts rather than receiving a consensus text from an expert review group. We do not consider that the risk that experts may have diverging opinions would generate difficulties as serious as alleged by the EC. We see rather the risk that an expert review group would only agree on a minimum common position, thus depriving the Panel of a full picture. In addition, the fields of competence proposed by the Parties are quite varied, rendering it difficult to find individual experts which have competence in most or all of these fields to serve in an expert group. The fact that no expert will have a comprehensive knowledge of all the relevant subjects makes it even more important for the Panel to seek advice from the experts on an individual basis on their respective fields of expertise. It is also worth noting that so far, all WTO panels have preferred to consult experts on an individual basis.

The Panel also wishes to clarify that it will initially seek suggestions for experts from the Codex Alimentarius Commission, JECFA and the IARC and may also contact these three organizations with questions on their working procedures and/or their work in areas relevant to the dispute. Should the Panel consider it necessary to consult any other relevant organization, it will provide the Parties with an opportunity to comment prior to undertaking such consultations.

Having considered the EC's proposals that the Parties provide suggestions for experts and that the Panel exclude from consideration those who have received funding from pharmaceutical companies and/or been involved in the

regulatory approval of hormones, the Panel has modified the expert working procedures to reflect some of the underlying concerns the EC might have. When contacting the experts suggested by international organizations, the Panel will underline the importance of disclosing information regarding any potential conflict of interest and elaborate more precisely the type of information that needs to be disclosed. Still, rather than ruling out any expert from the start, the Panel wishes to consider each expert's case individually, taking into account information provided by the experts and the comments provided by the Parties on these experts.

Should the Parties submit objections, which the Panel deems compelling, to all or most experts suggested, it will then seek additional suggestions for experts from other international organizations and, if deemed necessary, from the Parties.

Written Procedure

The Panel also wishes to confirm that a cover letter will accompany the questions to experts, explaining their role and mandate as well as their obligations in terms of potential conflicts of interest and confidentiality.

Meeting with Experts

The experts will be provided with an opportunity to respond to Parties' written comments on their replies during the meeting with the experts.

Further to affirmative statements from all Parties, the meeting with the experts will be open for observation by the public through closed-circuit television.

Other matters

With respect to the EC's request that the Panel ask the US and Canada to provide the studies underlying the risk assessments of the US, Canada (and JECFA), the Panel is not in a position to fully assess the necessity for this information at this stage. This said, the Panel notes that its task is not to conduct a comprehensive assessment of the safety of hormones in meat. Rather, should the Panel consider it necessary for the resolution of the present dispute, it would assess the compatibility of the EC's measure with the provisions of the SPS Agreement. Nevertheless, to the extent that this information becomes necessary for the Panel to make its determination in this case, the Panel cannot exclude that it may request part or all of the information referred to by the EC. More generally, the Panel expects the Parties' full collaboration in gathering the information necessary for an objective assessment of the matter before it. The Panel also recalls that it is for each party to submit sufficient evidence in support of its assertions.

Finally, the Panel wishes to remind the Parties that the main Working Procedures for the Panel also apply to the consultation with scientific experts.

ANNEX A-5

WORKING PROCEDURES FOR CONSULTATIONS WITH SCIENTIFIC AND/OR TECHNICAL EXPERTS

NATURE OF ADVICE

1. On the basis of the first written submissions, the oral statements, the replies to Panel's questions, and the rebuttals, the Panel will determine the areas in which it intends to seek expert advice

SELECTION OF EXPERTS

2. In consultation with the parties, the Panel will choose experts and seek their advice as individual experts. If it deems necessary, the Panel may also seek information and advice from the Joint FAO/WHO Codex Alimentarius Commission (CAC), the Joint FAO/WHO Expert Committee on Food Additives (JECFA) and/or the International Agency for Research on Cancer (IARC), or any other relevant international organization.

3. The Panel will solicit suggestions from the secretariats of CAC, JECFA and IARC for possible experts.

4. The Panel will seek a *curriculum vitae*, including all relevant publications, from each individual suggested. The candidate experts will also be asked to provide information about potential conflicts of interest and indications on whether they have worked for, been funded by or provided advice to the industries concerned, or to domestic or international regulatory bodies involved in issues similar to those addressed in this dispute. A list of eligible experts, including their *curricula vitae* and declarations of interest will be provided to the parties. Parties will have sufficient time to examine them and will be given the opportunity to comment on and to make known any compelling objections to any particular expert.

5. The Parties will receive copies of the Panel's correspondence with the relevant international organizations and the experts.

6. Should the Parties submit objections, which the Panel deems compelling, to all or most experts suggested by the CAC, JECFA, and the IARC, the Panel will seek additional suggestions for experts from other international organizations with competence in the matter and, if it deems it necessary, from the Parties.

7. The Parties are requested not to engage in direct contact in connection with this dispute with the individuals suggested.

8. The number of experts that the Panel will select will be determined in light of the number and types of issues on which advice will be sought, as well as by the different areas on which each expert can provide expertise.