

**MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS**

Questions on the Horizontal Mechanism

*Communication from the United States*

The following communication, dated 18 May 2009, is being circulated at the request of the delegation of the United States.

1. In the summary paragraph Section I on the Purposes of the Horizontal Mechanism," what is the distinction the proponents are trying to draw by saying that the procedure could "quickly and efficiently" address NTBs caused by "faulty implementation of a law rather than the law itself." What does this mean: "Faulty implementation of a law," who would decide how the law should be interpreted, and how can this be done without considering legal issues, which as we understand it continue to be outside the scope of the Horizontal Mechanism?

2. In the response to question II.1, you state that the HM is "not simply a bilateral engagement between two Members" and in the response to question 2 you suggest that proponents prefer not just to concentrate on bilateral solutions. Yet the procedures provide for a bilateral exchange between two Members, where one Member makes a request and another responds. The response to question IV.2 confirms that the standard situation is limited to just two parties. If the Members decide to proceed to the stage with the facilitator, the discussions would include those two Members. What opportunities do other Members have to learn about the issue? Will the two Members concerned take into account other Members' interests?

3. In the responses to questions II.3 and 5, you provided additional detail on the confidentiality provisions of the HM. These details clarify your position that the information provided during Stage I and even some of the information provided during Stage II would not be confidential. Is this correct? For Stage II, who would decide what information is confidential? If the Member who provided the information objects to the publication of information (e.g., its use during dispute settlement), does the objecting Member have any recourse to protect the information they provided for the HM?

4. Question II.6 and its response concern the effect of HM-solutions on other Members. The response notes that other Members may raise this issue with the Committee, dispute settlement, or the HM.

- Provided the HM-solution is WTO-consistent, on what basis could a Member other than the Member that made the HM request object to how the solution affects its interests?
- Could a Member whose measure is challenged under the HM offer different solutions to different Members?
- If a Member would like to have the same solution for a measure that another Member received through the HM, could it?

5. The response to question III.4 clarifies the broad scope of issues that Members may explore in the HM, regardless of whether the issue is politically sensitive or a resolution is likely. Responding to requests for information could be a significant burden, particularly for developing countries. Is there any limit on the number of HM requests a Member would need to respond to?

6. In Question III.2 and III.3, the response provided by the proponents seems to suggest that for SPS, agricultural SPS issues would be excluded from the scope of the Horizontal Mechanism, while fish and lumber SPS issues could be raised. Is this a correct interpretation? If so, please explain the rationale for such a distinction under the SPS Agreement.

7. Can we extrapolate from this that agriculture-related issues including customs valuation, licensing, TBT, or Rules of Origin issues also would be excluded from the scope of the HM?

8. Singapore asked a question regarding the relationship between joint requests and committee discussion. It's true that, as stated in the response, Members can discuss issues if they want. But, would it not be helpful to encourage such discussions in Committees early on so that Members can coordinate their approaches to issues? Would not a coordinated response limit the risk that a bilateral HM-solution would adversely affect other Members?

9. In question VIII.1, the U.S. asked for an example of how the HM would work, including regarding issues that had been raised in Committees. The response refers to the possibility that an issue is before a Committee for a long time, but does not provide an example as requested in the question. The U.S. believes a description of a hypothetical example of an HM request and facilitation procedures would be helpful. Could the proponents provide this?

10. In Article 23 of the latest HM text, it states that "...each Committee to which this Decision applies may decide, by consensus, to modify certain procedural aspects of this Decision." Can the proponents clarify the depth and breadth of what the Committees may modify with respect to procedural aspects, for example, could a Committee modify any procedural aspect – or all procedural aspects – and might other areas such as coverage or findings also be modified?

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