



**PROCEDURE TO ENCOURAGE AND FACILITATE THE RESOLUTION OF
SPECIFIC SANITARY OR PHYTOSANITARY ISSUES AMONG MEMBERS
OF THE CARIBBEAN COMMUNITY**

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*DECISION ADOPTED BY THE 104th MEETING OF THE COUNCIL ON TRADE AND ECONOMIC DEVELOPMENT
(COTED) ON 22 JULY 2022*

Background:

A procedure has been developed to facilitate a rapid, science-based resolution to specific sanitary and phytosanitary (SPS) trade concerns among Member States of the Caribbean Community (CARICOM)

Draft Decision:

The COTED agrees to establish a procedure to facilitate the discussion and resolution of specific trade concerns related to the application of sanitary and phytosanitary (SPS) measures. For those SPS trade concerns among CARICOM member countries that cannot be resolved through bilateral discussions, CARICOM member states may use this CARICOM Procedure

PROCEDURE TO FACILITATE RESOLUTION OF SPS-RELATED DISPUTES

1. INTRODUCTION

The Caribbean Agricultural Health and Food Safety Agency (CAHFSA) was established by the Heads of Government of the Caribbean Community (CARICOM) to assist the Member States in strengthening their infrastructure, institutional and human capacities to effectively deliver agricultural goods which achieve international agricultural health and food safety standards. Such a regime is expected to boost intra-regional trade flow and increase opportunities for competitive international trade.

Established by the Revised Treaty of Chaguaramas, the Council for Trade and Economic Development (COTED) is an Organ of the Community with responsibility for inter-alia, the promotion of trade and economic development, and the establishment and promotion of measures to accelerate structural diversification of industrial and agricultural production on a sustainable and regionally integrated basis.

Several bilateral trade issues have been reported to the COTED, some for successive years without resolution. Since several of these issues are related to the application of sanitary and phytosanitary (SPS) Measures, the COTED took note of CAHFSA's efforts to develop a step-by-step procedure to resolve SPS trade concerns and agreed that CAHFSA should engage with the Member States in this regard.

CAHFSA proposes a procedure to facilitate discussions between two or more Member States in circumstances where there are differing views on the science, risk assessment or risk management measures proposed or implemented by another member country. The procedure encourages CARICOM member countries to resolve disputes at a technical level wherever possible and to do so before submitting the issue for consideration by the COTED.

2. SCOPE

This procedure is aimed primarily at evaluating the technical aspects of SPS trade concerns. It shall apply to any dispute regarding the interpretation or application of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement) or if a Member State considers that any action by another contracting party conflicts with the obligations of this Agreement.

Issues will be limited to those falling within the scope of the Codex Alimentarius Commission (CAC), the International Plant Protection Convention (IPPC), the World Organization for Animal Health (WOAH) and their relevant international standards, as well as regional standards, policies and protocols adopted by CARICOM.

The procedure will complement but not duplicate the dispute resolution procedure of the Revised Treaty of Chaguaramas.

3. OBJECTIVES

The objectives are:

- i) To encourage and facilitate the resolution of SPS-related trade issues among the CARICOM Member States at the technical level.

- ii) Establish an informal procedure to resolve SPS trade issues without engaging the Council on Trade and Economic Development (COTED).
- iii) To provide technical and impartial recommendations on SPS issues based on conformity to the obligation of Member States under the WTO SPS Agreement and related international standard-setting bodies.
- iv) Position CAHFSA to carry out a more effective role under Articles 57 and 74 of the Revised Treaty of Chaguaramas

4. AUTHORITY

Under Article 57(1)(k) of the Revised Treaty of Chaguaramas, the Community, through competent organs and bodies, shall promote and support the establishment of an effective regime of sanitary and phytosanitary measures. Accordingly, CAHFSA has been mandated to perform a coordinating and organizing role in creating and maintaining this SPS regime.

This CARICOM procedure does not replace the consultations cited under Article 193 of Chapter Nine of the Revised Treaty of Chaguaramas, covering dispute settlement. Instead, it is meant to seek early resolution of SPS-related trade issues in a streamlined process which would complement the provisions of the Revised Treaty of Chaguaramas.

The procedure encourages CARICOM member countries to resolve disputes at a technical level wherever possible and to do so before submitting the issue for consideration by the COTED. Recommendations resulting from the procedure are non-binding. They will, however, be made available to the COTED and approved interested parties upon request.

This procedure is without prejudice to the rights and obligations of Members under the Revised Treaty of Chaguaramas, the WTO SPS Agreement or any other agreement to which the Member States are signatories. Furthermore, participation in the CARICOM process does not prevent any party from using the IPPC, OIE, World Trade Organization (WTO) or other dispute settlement procedures for the same or any other SPS-related trade issue.

5. MODE OF DISPUTE RESOLUTION

The procedure will seek to resolve issues through conciliation¹. The process uses an expert committee or an independent expert as an impartial body but does not provide a binding decision.

¹ This is not a mode of the formal dispute settlement procedure under Article 188 of the Revised Treaty of Chaguaramas.

6. PROCEDURAL STEPS

The procedure shall be completed according to the following steps

- Step 1. Initiating the procedure
- Step 2: Development of the rules of engagement (RoE) and Agreement by the parties
- Step 3: Selection of Expert Committee or Individual Expert
- Step 4: Conduct conciliation proceedings
- Step 5: Preparation and acceptance of the Expert report
- Step 6: Presentation of report and recommendation to COTED as necessary

6.1 INITIATING THE PROCEDURE

A CARICOM Member State shall provide a written request to the CAHFSA Secretariat to initiate the procedure and provide evidence that attempts to resolve the disagreement bilaterally have failed. The request must state the SPS issue to be consulted on, describe the reasons for requesting the use of this procedure, and include information on the possible effects on trade. To the extent possible, reference should also be made to the applicable international standards, guidelines or recommendations that may be applicable.

Where the CARICOM Members States, parties to a dispute, have agreed to use this alternative dispute settlement mechanism, any such member (the requesting Member or the responding Member) may initiate the process by informing the other party in writing. A copy of the notification should be shared with the CAHFSA Secretariat as proof of intent to use this Procedure.

The CAHFSA Secretariat shall verify that bilateral negotiations have occurred between the Member States. Parties shall be required to provide detailed background information to the CAHFSA Secretariat.

6.2 RULES OF ENGAGEMENT

The CAHFSA Secretariat, upon receipt of the initial documents and in consultation with the parties, will prepare the rules of engagement (RoE) for the procedure. The RoE will include:

- i) Identification of the SPS issue(s),
- ii) Identification of the party initiating the procedure.
- iii) Identification of the responding party.
- iv) A brief statement by the initiating party specifying points alleged to conflict with the interpretation or application of the CAC, IPPC, the OIE international SPS Standards, the CARICOM Regional Standards or the provisions of the SPS Agreement.
- v) Position statement prepared by the responding party relevant to the issue,
- vi) Whether an Expert Committee or Independent Expert will be engaged,
- vii) The number of members and the composition of the Expert Committee, including the Chairperson,
- viii) Expectations of the Expert Committee or independent expert (regarding report requirements, disclosure forms attesting to functioning without any impartiality or prejudice to the outcome of the case and deadlines).
- ix) Means of presentation of information (documents and verbal presentations),
- x) Distribution of costs.
- xi) Facilities required.

- xii) Administrative support arrangements, including whether/how proceedings are recorded;
and
- xiii) Timetable, including submission of information and presentation of the report.

The CAHFSA Secretariat shall circulate the draft RoE to all parties named in the request and propose a schedule for negotiating the terms. The parties shall provide written agreement to the RoE before engaging an Expert Committee or an Independent Expert. The final RoE shall be signed by the disputing parties and constitute the basis for the terms of reference (TOR) for the Expert Committee.

The parties shall mutually agree to resolve the SPS-related trade issue as soon as possible and should not exceed 180 days unless they agree on a different timeframe. Any party may end the consultations at any time and should do so through written notification to the other consulting party. The party or parties will promptly notify the CAHFSA Secretariat that the procedure has been ended.

All documents and information generated during the procedure shall be considered confidential unless otherwise agreed by the consulting parties.

The CAHFSA Secretariat will provide timely updates to the COTED on the use of this procedure and general outcomes from its use.

6.3 EXPERT COMMITTEE OR INDEPENDENT EXPERT

6.3.1 Expert Committee

Based on the agreed RoE, an Experts Committee will be established to provide conciliation service to the dispute. A list of prospective members will be prepared and submitted to the parties for approval. In addition, the parties will be invited to nominate potential members to the Expert Committee. The selection of nominees will be based on the following criteria:

- i. all nominees shall have a scientific/technical background relevant to the subject of the dispute,
- ii. all nominees shall be independent, i.e., no financial or other conflicts of interest in the outcome of the dispute,
- iii. all nominees must be able to serve in the Expert Committee in their individual capacities,
- iv. Citizens of the Member States whose governments are disputing parties shall not serve on the Expert Committee unless the parties agree otherwise.

6.3.1.1 Observers

The parties shall agree on observers to be admitted to meetings of the Expert Committee and the applicable rules of conduct of observers. Where there is no agreement among the parties on the number and type of observers, no observers shall be allowed. Where the presence of observers is agreed upon, but there is no agreement on the conduct of such observers, observers will only be allowed to attend but cannot participate.

6.3.2 Independent Expert

In cases where only one independent expert is required, the CAHFSA Secretariat will provide a list of three potential candidates' names (if possible) to the disputing parties, preferably of persons not

residing in or citizens of any of the countries in dispute. Each party shall have ten days to remove one name from the list, number the remaining names in order of preference, and return the list to the CAHFSA Secretariat. If a party does not respond within this time, all persons named therein shall be deemed acceptable to that party.

6.4 Country Contacts

Each party will designate one contact point and an alternate to facilitate communication, data collection etc., with the Expert Committee or the independent expert (herein after referred to as Experts).

6.5 Method of Work

The first step will entail a virtual meeting with the Parties. This step will be followed by the experts' review and analysis of written documents. Another meeting with country representatives should not usually be necessary. However, the independent expert will have the opportunity to request written responses to questions posed to the designated representatives of the parties. The expert may also request clarification or additional information, if necessary.

The expert or Expert Committee will produce a draft report which shall be circulated to the parties through the CAHFSA Secretariat for their review and comments. Responses will be provided to all who submit comments on the draft report. These responses will include reasoning for not accepting the proposed amendments. After receiving the comments, the expert or Expert Committee will finalize the report.

The final report shall be submitted to the parties through the CAHFSA Secretariat.

6.6 Acceptance of Expert Report

The final report shall be submitted to the CAHFSA Secretariat for circulation to the parties.

The Chair of the Expert Committee or the independent expert shall prepare a final report considering comments from the parties. The final report shall be submitted to the CAHFSA Secretariat for distribution to the disputing parties as the basis for renewed consideration of the matter out of which the disagreement arose.

7. FINANCIALCONSIDERATIONS

CAHFSA Secretariat will estimate the costs associated with a specific settlement procedure. This information will be duly communicated to the Member States involved by CAHFSA. Costs may include, among others: travel, subsistence and translation services for the members of the Expert Committee or Independent Expert and the CAHFSA Secretariat personnel involved in the process.

8. COSTS

Costs will be shared equally or as agreed by the disputing parties

9. LANGUAGE

The working language for this procedure is English.

10. CONFIDENTIALITY

Parties are not required to submit confidential commercial information.

Members of the Expert Committee and independent experts will be required to sign confidentiality and impartiality statements.

11. COMMUNICATION

The main points of contact for the Expert Committee and independent experts will be the designated representative of each party. With the parties' approval, the expert report will be released through the CAHFSA Secretariat. The following types of communication will be accepted for this procedure: letters, electronic mail, and reports.

12. IMPLEMENTATION

Unless otherwise agreed by the parties, they will meet within three months of receiving the independent expert report to determine the actions necessary to implement the recommendations.

13. DEADLINES

Approximate time limits for each stage of the process are provided in Appendix 1.

14. REVIEW

This Procedure will be reviewed every three years or upon a request of a CARICOM Member State.

APPENDIX 1

Approximate timelines for the Procedure

1. Notice from the Member State to CAHFSA Secretariat to initiate the process
2. CAHFSA Secretariat notifies the other party in writing and requests a written response. **(7 working days)**
3. Once both Member States agree to utilize this process, they will provide a written response to the CAHFSA Secretariat within **30 calendar days**.
4. The CAHFSA Secretariat prepares Terms of Reference for engaging an independent expert. **(10 working days)**
5. The CAHFSA Secretariat seeks the Agreement of both parties on the Terms of Reference **(10 working days)**
6. The expert selection process is undertaken, and at the same time, parties prepare documents for independent expert consideration **(30 calendar days)**
7. Expert analysis and report from commencement **(90-180 calendar days)**