

Committee on Sanitary and Phytosanitary Measures

ACTIONS REGARDING SPS-RELATED PRIVATE STANDARDS

Decision of the Committee

INTRODUCTION

1. The SPS Committee has been discussing the issue of SPS-related private standards since June 2005, when Saint Vincent and the Grenadines raised a specific trade concern regarding EurepGAP (now called GLOBALGAP) requirements for bananas destined for sale in the United Kingdom.¹ Since then, private standards have been discussed regularly at SPS Committee meetings.
2. The SPS Committee decided in October 2008 to request an ad hoc working group to undertake a three-step study, and present a report proposing concrete actions for consideration by the Committee at the end of this process.²
3. The ad hoc working group on SPS-related private standards completed its work on identifying "Possible Actions for the SPS Committee Regarding SPS-Related Private Standards", and presented its report to the SPS Committee. The report of the working group is contained in document G/SPS/W/256.
4. At its meeting of 30-31 March 2011, the Committee adopted five of the six actions put forward by the working group for endorsement. The five actions are listed below. Endorsement of these actions is without prejudice to the views of Members regarding the scope of the SPS Agreement.

Action 1: The SPS Committee should develop a working definition of SPS-related private standards and limit any discussions to these.

5. It is apparent from the discussions in the WTO and from the literature on this issue that private standards are already playing and will continue to play an increasingly important role in international trade and pose new challenges as well as opportunities for producers and exporters. They cover safety, quality, labour, social and environmental issues and can affect a wide range of products.
6. Given its mandate, the SPS Committee should focus any discussions solely on SPS-related private standards, most of which are currently in the area of food safety. However, some Members have expressed concerns that the discussions have covered issues beyond SPS-related private standards. One of the reasons for this is that many private standards include food safety as well as other requirements, making it more difficult to single out the SPS-related requirements and determine

¹ G/SPS/GEN/766; specific trade concern no. 219.

² See paras. 4-7 of G/SPS/W/230 and paras. 122-137 of G/SPS/R/53.

whether any trade effects can be attributed directly to these. At the same time, producers and exporters do not necessarily focus on the distinction between SPS versus TBT measures or public versus private standards, but rather on whether they are able to fulfill all the requirements imposed by the importers.

7. Given its mandate, the SPS Committee would limit any discussions to:

Requirements which are established and/or adopted by non-governmental entities to fulfill one of the four objectives stated in Annex A, paragraph 1 of the SPS Agreement and which may affect international trade. These four objectives are:

- (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
- (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; and
- (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Action 2: The SPS Committee should regularly inform the Codex, OIE and IPPC regarding relevant developments in its consideration of SPS-related private standards, and should invite these organizations to likewise regularly inform the SPS Committee of relevant developments in their respective bodies.

8. One of the concerns raised regarding SPS-related private standards has been that they sometimes deviate from the standards established by the international standard-setting bodies (ISSBs) referenced in the SPS Agreement, which are the Codex Alimentarius Commission (Codex), the World Organization for Animal Health (OIE), and the International Plant Protection Convention (IPPC). For example, in the area of food safety, some retail schemes have been identified as having maximum residue limits (MRLs) which are more restrictive than those set by Codex. In the area of animal health, examples of private standards with more trade-restricting BSE³ requirements than those of the OIE have been provided.

9. Given the interlinkages between SPS-related private standards and the standards developed by Codex, OIE and IPPC, these bodies would benefit from regular information exchanges on this topic. In addition, the Secretariats of the four organizations should inform each other regarding their work in this area, keeping in mind that the scope of work on private standards in the international standard-setting bodies may not be the same as that of the SPS Committee. Such updates by the ISSBs could be presented under: "Information on Relevant Activities – Information from Observer Organizations".

³ Bovine Spongiform Encephalopathy.

Action 3: The SPS Committee invites the Secretariat to inform the Committee on developments in other WTO fora which could be of relevance for its discussions on SPS-related private standards.

10. Private standards play an increasingly important role in international trade and may become a subject of discussion in various formal or informal WTO fora. While such discussions are likely to go beyond SPS issues, there could also be linkages. For example, a private standard could contain both TBT as well as SPS-related requirements or its environmental requirements could cover SPS aspects. Also, horizontal concepts such as transparency could be considered. In this context, it would be beneficial for the SPS Committee to keep abreast of relevant developments in the WTO.

Action 4: Members are encouraged to communicate with entities involved in SPS-related private standards in their territories to sensitize them to the issues raised in the SPS Committee and underline the importance of international standards established by the Codex, OIE and IPPC.

11. The SPS Committee has been discussing the issue of SPS-related private standards since 2005. While Members are by now quite familiar with each other's concerns and positions on this issue, it is not clear to what extent entities involved in the development, application, certification, etc of SPS-related private standards are aware of the SPS Committee's discussions. The information sessions with the participation of representatives of such entities were useful in bringing to their attention some of the concerns raised in the SPS Committee as well as in updating the Committee on latest developments.

12. Given the multitude and diverse nature of entities involved in private SPS standards such as retail firms, producers, certifiers and NGOs, Member governments may be best placed to communicate with such entities as necessary. Such communication could be achieved through meetings or other means and encourage harmonization, mutual recognition of standards by private standard holders, cost reduction in the areas of compliance and certification, and further transparency and consultation mechanisms. It would also help Members build an understanding of the extent and functions of SPS-related private standards. One limitation that has been identified is that for some developing countries, such meetings might encompass only producers and exporters facing private SPS standards in their export markets and not those setting and applying such standards.

Action 5: The SPS Committee should explore the possibility of working with the Codex, OIE and IPPC to support the development and/or dissemination of informative materials underlining the importance of international SPS standards.

13. The responses to the Secretariat's questionnaire revealed that many producers and traders are not aware of the differences between public and SPS-related private standards. In an effort to provide further clarity on this issue and promote the use of international standards, the SPS Committee could explore the possibility of working with the Codex, OIE and IPPC to support the development and/or dissemination of informative materials. Such materials would underline the merits of science-based international standards, which, when adopted by Member governments and private schemes, serve to facilitate trade while ensuring safety. They would build on already existing materials.

14. A better global understanding could contribute to the further incorporation of these standards in public and private requirements and may also improve the ability of producers and exporters to negotiate with those setting private standards on the content of these standards.