

**Committee on Sanitary and Phytosanitary Measures**

**POSSIBLE ACTIONS FOR THE SPS COMMITTEE REGARDING  
PRIVATE SPS STANDARDS**

Note by the Secretariat<sup>1</sup>

Revision

1. The SPS Committee has been discussing the issue of private SPS 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.<sup>2</sup> Since then this issue has been on the agenda of every SPS Committee meeting.<sup>3</sup>
2. In an effort to bring more structure and concrete examples to its discussions on private standards, the SPS Committee decided in October 2008 to undertake a three-step study on the effects of private SPS standards.<sup>4</sup>
3. As the first step of this process, the Secretariat circulated a Questionnaire on SPS-related Private Standards on 5 December 2008.<sup>5</sup> The questionnaire sought information from Members regarding products and markets of concern, the relevant private and international standards, trade effects, costs of compliance and a number of related elements.
4. As the second step, a compilation of replies summarizing the information contained in the 40 responses received from 22 Members was circulated on 15 June 2009<sup>6</sup>. The individual responses, including responses received after the circulation of the compilation of replies<sup>7</sup>, can be consulted through the WTO Members' website.<sup>8</sup> Most of the responses reiterated a number of concerns regarding private standards, which had already been raised on various occasions at the Committee. Some responses also underlined the positive and trade facilitating impact of private standards.
5. The compilation of replies was discussed during the SPS Committee's meetings held in June and October 2009. In addition, a number of Members submitted written comments on the compilation following the Committee meetings. While some Members found the report to be an useful basis for the Committee's deliberations, others raised concerns about the limitations of the report, especially

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<sup>1</sup> This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights or obligations under the WTO.

<sup>2</sup> G/SPS/GEN/766; specific trade concern no: 219.

<sup>3</sup> A list of all SPS Committee documents referring to private standards can be found in Annex 1.

<sup>4</sup> G/SPS/R/53, para. 132.

<sup>5</sup> G/SPS/W/232.

<sup>6</sup> G/SPS/GEN/932.

<sup>7</sup> Barbados and Trinidad and Tobago submitted responses after the circulation of the descriptive report. Argentina also provided additional information, complementing its two original responses.

<sup>8</sup> Please click on this address: [http://members.wto.org/WTO\\_resources/SPS/SPS-Private-Standards\\_tri.htm](http://members.wto.org/WTO_resources/SPS/SPS-Private-Standards_tri.htm). All responses are available in English and Spanish as these are the working languages of the 30 Members participating in the SPS Committee's ad hoc working group on private standards.

with regard to the accuracy, precision and scope of some of the data provided in the replies to the questionnaire. For example, some replies were found to be very general and lacking specificity and others went beyond SPS issues to include references to quality, environmental, and social standards. A revised version of this compilation was circulated on 10 December 2009 taking into account some of the comments from Members.<sup>9</sup>

6. As the third step, the Secretariat was requested to prepare a document identifying possible actions by the SPS Committee and/or Members regarding private SPS standards. The first version of the document was circulated on 20 October 2009,<sup>10</sup> drawing upon the Committee's discussions on the topic, Members and Observers' specific written contributions, and the compilation of replies, keeping in mind its limitations. It was discussed during the meetings of the ad hoc working group on private standards and of the SPS Committee in October 2009.<sup>11</sup> In addition, Switzerland and MERCOSUR members (Argentina, Brazil, Paraguay, and Uruguay) submitted written contributions on this topic following the circulation of the Secretariat document.<sup>12</sup> The Chair of the Committee invited Members to submit written comments on the Secretariat document by 16 December 2009, indicating in particular any sequencing they would like to see in discussing the possible actions identified. Subsequently, the Secretariat received written comments from nine Members and one observer organization. This revised version of the document on possible actions has been prepared in light of Members' oral and written comments and submissions as well as updates from the sister organizations (i.e., Codex and the World Organization for Animal Health (OIE)).

7. In light of the concerns raised regarding some of the examples in the compilation of replies, this document does not purport to provide a substantive analysis of the matter but rather focuses on possible actions that could be taken by the SPS Committee and/or Members to enhance the benefits of private standards and address their negative effects on market access, especially for producers/exporters in developing countries.

### POSSIBLE ACTIONS

8. The recommendations for possible actions below have been compiled in light of Members' and observers' oral and written inputs on this topic. Some of them focus on practical approaches for the Committee to address concerns raised regarding private standards. Others address systemic and legal questions. Eleven possible actions were listed in the first version of this document, which were presented in no particular order of importance, priority, or acceptability. In light of inputs from Members, this revised document contains 12 recommendations, some of which have been revised significantly. They have been grouped differently, but still without a precise ordering, to reflect Members' comments as to which ones could be further elaborated or acted upon in the short run and which ones are premature to raise at this stage or inappropriate for the Committee to take up. Some of the recommendations are related or similar; they have, however, been presented separately to accommodate the nuanced comments from Members.

9. The SPS Committee can only take decisions by consensus. Therefore, there will need to be agreement by the Committee to pursue any of these recommendations.

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<sup>9</sup> G/SPS/GEN/932/Rev.1

<sup>10</sup> G/SPS/W/247.

<sup>11</sup> G/SPS/R/56, paras. 155-175.

<sup>12</sup> G/SPS/GEN/967 and G/SPS/W/249 respectively.

**Recommendation 1: SPS Committee, Codex, the OIE, and the IPPC to update each other regularly regarding developments in their respective bodies on private standards**

10. One of the concerns raised regarding private SPS standards has been that they sometimes deviate from international standards set by the three sister organizations. For example, in the area of food safety, some retail schemes have been identified as having MRLs which are more restrictive than those set by the Codex. In the area of animal health, examples of private standards with more trade-restricting BSE requirements than those of the OIE have been provided. Given the interlinkages between private SPS standards and the standards developed by the sister organizations, the SPS Committee should liaise regularly and collaborate with the sister organizations regarding this issue. In addition, the Secretariats of the four organizations should exchange information regularly and consult each other regarding their work in this area.

11. The Codex Alimentarius Commission considered the issue of private standards during its 32<sup>nd</sup> session held in July 2009.<sup>13</sup> A paper commissioned by the FAO and the WHO regarding the impact of private food safety standards on the food chain and on the public standard-setting process was also presented during the session.<sup>14</sup> The Commission was of the opinion that Codex standards should be benchmarks for private food safety standards and agreed to monitor developments in the WTO and work in cooperation with the OIE and the IPPC to consult on a common position on this matter. The Commission also agreed that a study be conducted to analyze the role, cost, and benefits of private standards for consideration by the Executive Committee and the Commission. In addition, the Codex Secretariat was asked to prepare an analysis of the speed of the Codex standard-setting process, as this had been identified as one of the possible reasons for the emergence of private standards. Private standards will be on the agenda of the next meeting of the Commission scheduled for 5-9 July 2010.

12. OIE members adopted a resolution regarding the implication of private standards in international trade of animals and animal products in May 2008.<sup>15</sup> This resolution asks the Director General of the OIE, among others, "to work with relevant public and private international organizations with the objective that concerns of Members are taken into consideration and that private standards, where used, are consistent with and do not conflict those of the OIE."

13. The OIE Secretariat has provided regular updates to the SPS Committee and submitted a document entitled "Considerations Relevant to Private Standards in the Field of Animal Health, Food Safety, and Animal Welfare".<sup>16</sup> An OIE ad hoc working group was established to consider private standards in the areas of animal health and welfare. This group met in October 2009 to review the results of a questionnaire sent to Members and relevant organizations and prepare recommendations for future action by the OIE. The group's report<sup>17</sup> was reviewed by the Code Commission in February 2010 and will be published as an annex to the Code Commission report in March 2010. The latter report will be considered by the World Assembly in May 2010, which is when any recommendations would be adopted.

14. As most of the 68 OIE Members responding to the questionnaire recommended that the OIE work more closely with private standard setting organizations in an effort to avoid negative effects of private standards, the OIE convened a meeting with private organizations, with the participation of the WTO Secretariat on 16 February to exchange information and consider possible next steps.

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<sup>13</sup> ALINORM 09/32/REP, paras. 246-271.

<sup>14</sup> ALINORM 09/32/9D-Part II: The Impacts of Private Food Safety Standards on the Food Chain and on the Public Standards-Setting Process, Paper prepared for FAO/WHO by Spencer Henson and John Humphrey.

<sup>15</sup> Resolution No. XXXII.

<sup>16</sup> G/SPS/GEN/822.

<sup>17</sup> Executive summary at [http://www.oie.int/eng/normes/en\\_executive%20summary.pdf](http://www.oie.int/eng/normes/en_executive%20summary.pdf)

15. There has thus far been limited discussion of private standards at the IPPC.

**Recommendation 2: The Secretariat to brief the SPS Committee regularly on any developments regarding private standards in the TBT Committee and/or other WTO fora**

16. In view of the intertwined nature of SPS and TBT-related requirements in certain private standards, it would be beneficial for the SPS Committee to keep abreast of any discussions on private standards taking place in the TBT Committee.

17. There has thus far been limited discussion on the issue of private standards in the TBT Committee. During the March 2009 TBT Workshop on the Role of International Standards in Economic Development, several participants expressed concerns about the proliferation of private standards that could result in unnecessary barriers to trade and create confusion in the market place.<sup>18</sup>

18. In the context of the Fifth Triennial Review of the TBT Agreement, which was concluded in November 2009, the issue of private standards was raised for discussion.<sup>19</sup> The relevant section of the report of the Fifth Triennial Review states the following:<sup>20</sup>

"The Committee notes that several Members have raised concerns regarding "private standards" and trade impacts thereof, including actual or potential unnecessary barriers to trade.<sup>21</sup> The Committee also notes that other Members consider that the term lacks clarity and that its relevance to the implementation of the TBT Agreement has not been established. Without prejudice to the different views expressed, the Committee recalls that Article 4.1 of the TBT Agreement requires that Members shall take such reasonable measures as may be available to them to ensure that standardizing bodies accept and comply with the Code of Good Practice. The Committee further expresses the need to strengthen implementation of Article 4. In view of this, the Committee:

- (a) *Recalls* its discussion in the Third Triennial Review<sup>22</sup> regarding standards developed by bodies that are not commonly considered standardizing bodies;
- (b) *Reiterates* its 1997 invitation to Members to share their experiences with respect to steps taken to fulfil their obligations under Article 4, and to exchange information regarding the reasons some standardizing bodies have not yet accepted the Code of Good Practice<sup>23</sup>; and
- (c) With a view to facilitating an informed discussion on the development and use of standards in general, including with regard to standards developed by non-governmental bodies, Members are invited to *share their experiences* related to the implementation of the TBT Agreement, including the Code of Good Practice. Discussions will neither prejudice the role of the TBT Committee nor the scope of the TBT Agreement with respect to any issue that may arise."

19. The SPS Committee could request that the Secretariat provide regular updates to the Committee regarding any discussions on private standards taking place in the TBT Committee. The Secretariat should also inform Members of any relevant discussions in other WTO fora.

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<sup>18</sup> G/TBT/W/310, para. 63.

<sup>19</sup> G/TBT/W/318.

<sup>20</sup> G/TBT/26, para. 26.

<sup>21</sup> The Committee notes that the issue has been discussed in other fora.

<sup>22</sup> G/TBT/13, para. 25.

<sup>23</sup> G/TBT/1/Rev.9, p.21.

**Recommendation 3: SPS Committee to develop a working definition of private SPS standards**

20. It is apparent from the discussions in the WTO and from the literature on this issue that private standards play an increasingly important role in international trade and pose new challenges as well as opportunities for producers and exporters. They can cover safety, quality, social and environmental issues and affect a wide range of products.

21. Given its mandate, the SPS Committee should focus its discussions solely on private SPS standards, most of which are currently in the area of food safety. However, some Members have expressed concerns that the discussions are digressing to issues beyond private SPS standards. One of the reasons for this is that many private standards, such as GLOBALGAP, cover food safety as well as other requirements, making it more difficult to single out the SPS requirements and determine whether any trade effects can be attributed directly to these. At the same time, producers/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 the totality of the requirements imposed by the importer.

22. For this purpose and given its mandate, the SPS Committee could agree to focus its discussions only on:

Requirements 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 control, inspection, and approval procedures related to these requirements. 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; or
- (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

**Recommendation 4: SPS Committee to work with sister organizations to prepare promotional materials underlining the importance of international SPS standards**

23. The responses to the Secretariat's questionnaire revealed that not all producers might be aware of the differences between public and private SPS standards. In an effort to provide further clarity on this issue and promote the use of international standards, the SPS Committee could work in collaboration with the three international standard-setting organizations (Codex, OIE, and the IPPC) to prepare and disseminate promotional materials (brochure or video). 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.

24. Consideration could be given to requesting the Standards and Trade Development Facility (STDF) to spearhead this initiative. The STDF has already prepared a well-received film entitled "Trading Safely: Protecting health, promoting development."<sup>24</sup>

**Recommendation 5: SPS Committee and/or the ad hoc working group to hold information sessions with entities involved in private SPS standards**

25. Members have raised a number of concerns regarding private SPS standards, including:

- the lack of a scientific basis for requirements;
- deviations from international standards or from official governmental requirements (for example, for maximum residue limits);
- the multiplicity of standards and the lack of harmonization among them;
- the costs of compliance and certification, especially with a multitude of standards;
- the lack of transparency, consultation and appeal mechanisms;
- the prescriptive, rather than outcome-based, operational procedures required by private standards, disregarding the concept of equivalence; and
- the disproportionate effect on small- and medium-sized producers/exporters in developing countries.

26. A number of positive aspects have also been highlighted, including:

- the facilitation of compliance with national and international standards, where private schemes take as a basis these standards and provide comprehensive guidance on achieving them;
- the promotion of best-practices and productivity;
- improved brand reputation and facilitation of access to markets and credits; and
- the ability to address emerging risks in a rapid manner, fill gaps, and pave the way for eventual adoption of international standards.

27. While a number of Members would like to see the SPS Committee play a formal role in addressing concerns related to private standards, others are of the view that it is not for the governments of Members to interfere in the private contractual relations of firms, except when these result in deceptive practices or distortions of competition.

28. With a view to enhancing understanding and awareness on international, governmental, and private SPS standards by all concerned, the SPS Committee (or the ad hoc working group) may continue to hold informal meetings with relevant stakeholders, including international organizations; entities developing, adopting and certifying private standards; as well as producers and/or exporters who need to meet these standards. To facilitate the participation of a larger number of delegations, such meetings could be held back-to-back with SPS Committee meetings and focus on particular aspects of private standards. These information exchange meetings would be an opportunity for interested Members to highlight the concerns mentioned above and follow the latest developments in an evolving field. It should be clear, however, that the SPS Committee does not endorse or support any particular entity participating in such meetings.

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<sup>24</sup> To view the film, go to [http://www.standardsfacility.org/STDF\\_DVD.htm](http://www.standardsfacility.org/STDF_DVD.htm).

29. For example, the Global Food Safety Initiative (GFSI) could be invited to provide the Committee with an update on the number of firms and private food safety standards involved in their "once certified, accepted everywhere" initiative, on the development and implementation of the scheme, and on the recently launched Food Safety Knowledge Network (together with Michigan State University), which aims to build food safety capacity in developing countries.

30. GLOBALGAP could be invited to present an update on their work, including their global consultation mechanisms and on their partnership with GFSI.

31. Another meeting could focus on the experience of export-oriented initiatives such as Chile GAP and New Zealand GAP.

**Recommendation 6: SPS Committee to develop an information exchange mechanism regarding private standards**

32. An information exchange initiative could enhance awareness and understanding on the work of the SPS Committee and of the entities involved with private SPS standards. On the one hand, Members, observers, and the Secretariat could provide inputs and updates on developments in the area of private standards, including harmonization efforts and technical assistance programmes. On the other hand, the working group and/or the SPS Committee could announce a call for private SPS standard-setting entities to come forward and provide basic information on their requirements, procedures, and activities to the SPS Committee. The Secretariat could prepare a template for such entities to fill in by a certain deadline and act as an intermediary to circulate the replies. Members, the sisters, and other international organizations could be called upon to alert relevant entities to this initiative. This information exchange initiative could be covered as a sub-item under the agenda item on private standards but without prejudice to the different views of Members regarding the scope of the SPS Agreement.

33. Such a practical option would not attempt to imitate the transparency provisions applicable to Members governments. Transparency is one of the key principles of the SPS Agreement, requiring Members to notify their new or modified SPS measures while they are in draft form so that others Members have an opportunity to comment on them and producers/exporters have time to adapt their production and/or processing methods as necessary. One of the concerns raised regarding private SPS standards has been that there are limited opportunities to provide comments during the development of private standards and that it is very difficult to have an overview of the plethora of private standards. Some Members have proposed creating a more formal transparency mechanism through the SPS Committee. If this proposal is to be pursued, it would have to be clarified which entities would have the responsibility to notify, what form notifications would take, and what status they would have.

**Recommendation 7: SPS Committee to provide a forum for the discussion of specific trade concerns related to private standards**

34. As stated earlier, 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, first in June 2005 and then again in October 2006. No resolution has been reported on this concern. Systemic issues arising from private SPS standards have been on the agenda of the SPS Committee since then and a number of specific concerns have been highlighted in the context of the questionnaire circulated by the Secretariat. However, no other private standard-related concern has been raised under the Committee's agenda item on specific trade concerns, possibly because it is not always clear who should be the respondent to such concerns.

35. The SPS Committee could provide a practical forum for Members to raise specific trade concerns related to private SPS standards. Such concerns could be covered under a sub-item under an agenda item on private standards but without prejudice to the different views of Members regarding the scope of the SPS Agreement. Conversely, Members could raise such concerns under the agenda item on specific trade concerns.

**Recommendation 8: SPS Committee to develop guidelines on the implementation of Article 13 of the SPS Agreement**

36. Members are investing their time and resources to work on systemic and specific issues in the SPS Committee with the goal of facilitating trade and ultimately drawing benefits from the multilateral trading system. However, the increased prevalence of private standards is perceived by some Members to undermine this investment and devalue the principles and relevance of the SPS Agreement. Developing guidelines regarding the implementation of Article 13 and its application to private standards could be one way to reinforce the key principles of the SPS Agreement, such as scientific justification, transparency, and equivalence, in the private standards arena.

37. Such guidelines could also shed light on the "reasonable measures as may be available to Members" to ensure that entities involved with private standards comply with the "relevant" provisions of the SPS Agreement.

38. Specific proposals in this regard were put forth by India<sup>25</sup> and MERCOSUR members (Argentina, Brazil, Paraguay, Uruguay)<sup>26</sup> in the context of the Third Review of the Implementation of the SPS Agreement.

**Recommendation 9: SPS Committee to encourage WTO Members to hold regular meetings with entities involved in private SPS standards**

39. Given the diverse nature of entities involved in private SPS standards such as retail firms, producers, certifiers, and NGOs, Member governments may be best placed to convene meetings of all stakeholders to sensitize them to the issues raised in the Committee, reiterate the main principles of the SPS Agreement and underline the importance attached to international standards set by the sister organizations.

40. Therefore, the SPS Committee could encourage Members to convene meetings with entities involved in private SPS standards. Members could then report back to the Committee under the information exchange mechanism.

41. However, it has been pointed out 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.

**Recommendation 10: SPS Committee to develop a Code of Good Practice**

42. Some Members have proposed the development of a Code of Good Practice similar to that found in Annex 3 of the TBT Agreement. It provides disciplines, including those related to transparency, for the preparation, adoption and application of standards (which are voluntary as opposed to mandatory) by central, governmental, local, non-governmental and regional standardizing bodies, all of which can formally submit their acceptance of the Code. Members are required to take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories accept and comply with the Code.

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<sup>25</sup> G/SPS/W/236.

<sup>26</sup> G/SPS/W/245.



43. From 1 January 1995 until 1 February 2010, 162 standardizing bodies from 122 Members have accepted the Code of Good Practice, among them, 87 central governmental standardizing bodies, 64 non-governmental standardizing bodies, three statutory bodies, two parastatal bodies, three non-governmental regional bodies, one central governmental/non-governmental body, one central governmental/local governmental body and one autonomous body.<sup>27</sup>

44. Unlike the TBT Agreement, the SPS Agreement does not contain a distinction between mandatory "technical regulations" and "voluntary standards". It only makes reference to SPS measures, which must be necessary for the protection of human, animal or plant life or health. Still, in light of some private standards which contain SPS requirements, a Code of Good Practice could provide guidance and a framework for the development, adoption, and certification of private SPS standards.

45. An SPS Code of Good Practice could take the form of an SPS Committee recommendation, or could be submitted through the Committee's parent bodies to the Ministerial Conference for adoption. Alternatively, given that a number of private standards contain SPS as well as TBT-related elements, entities involved in private standards could be encouraged to sign on to the TBT Code of Good Practice. However, questions could arise as to whether the "non-governmental standardizing bodies" referred to in the TBT Code of Good Practice would cover the type of private standard-setting entities referred to in the SPS Committee discussions. Also, concerns have been raised regarding the fact that developing such a Code could endorse private standard-setting entities and undermine the primacy of international SPS standards.

**Recommendation 11: SPS Committee to develop guidelines for Member governments to liaise with entities involved in private standards**

46. The SPS Committee is the forum convening WTO Member governments to focus on systemic and specific implementation issues arising from the SPS Agreement. At the same time, Member governments need to consult regularly with their domestic stakeholders, be they governmental or non-governmental, export or import-oriented, regarding the implementation of the SPS Agreement. In an effort to facilitate the exchange of information between Member governments and entities involved with private SPS standards in their territories, the SPS Committee could develop guidelines for Member governments. Such guidelines could underline the importance of relaying the concerns raised in the Committee to these entities and of encouraging the application of the key principles of the SPS Agreement.

47. Some Member governments may wish to develop their own guidelines for the development of private standards or encourage entities developing private standards to develop their own codes of good practice..

48. A document submitted by Switzerland entitled "Voluntary Standards"<sup>28</sup> outlines the Swiss Government's strategy for ensuring that private voluntary standards contribute positively to sustainable development and that they do not operate as unnecessary barriers to trade. It suggests that national enquiry points could serve as entry points for ensuring "national" representation in private voluntary standards processes.<sup>29</sup> Also, section 6 of the document on Actions Undertaken by the Swiss Government in Support of the Sustainable Use of Private Voluntary Standards provides some examples on how a Member has been engaging in the area of private standards, even if these initiatives are not limited to SPS measures only.

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<sup>27</sup> G/TBT/CS/2/Rev.16.

<sup>28</sup> G/SPS/GEN/976

<sup>29</sup> G/SPS/GEN/976, para. 18.

**Recommendation 12: SPS Committee to seek clarification as to whether the SPS Agreement applies to private SPS standards**

49. A number of factors have led to the proliferation of private standards and associated certification requirements. These include the high profile of a number of food safety scares and reduced confidence in regulatory agencies; legal requirements on companies to demonstrate "due diligence" in the prevention of food safety risks; growing attention to "corporate social responsibility" and a drive by companies to minimize "reputational risks"; globalization and vertical integration of supply chains; and the expansion of supermarkets nationally and internationally.

50. The SPS Agreement was negotiated during the Uruguay Round (1986-1994) as part of the Single Undertaking. At the time, one of the main concerns of the negotiators was to ensure that the expected reduction of tariffs and elimination of quantitative restrictions would not be circumvented by governments through the use of protectionist measures disguised as sanitary or phytosanitary measures. The proliferation of private SPS standards, due mainly to the factors listed above, had not been anticipated and no explicit reference to "private standards" is included in the text of the Agreement.

51. Currently, Members have differing views as to whether the SPS Agreement applies to private standards. Article 1.1 states that the Agreement applies to "all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade" (emphasis added) without explicitly limiting this application to SPS measures taken by government authorities. Likewise, the definition of an SPS measure in Annex A(1) and the accompanying illustrative list of SPS measures does not explicitly limit these to governmental measures. On the other hand, other provisions of the SPS Agreement explicitly refer to measures "taken" (Article 2.1), "established" (Article 5.6), "maintained" (Articles 2.2 and 5.6) or "adopted" (Article 5.7) by Members. It is also not clear whether the certification requirements necessary to demonstrate compliance with private standards would be within the scope of Article 8 and Annex C of the Agreement.

52. Article 13 has been brought up numerous times in Committee discussions. The Article reads:

"Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement." (emphasis added)

53. Currently, there is no further guidance on Article 13 and Members have differing views as to whether "non-governmental entities" referred to therein includes entities involved in the development, adoption, implementation, certification, and enforcement of private standards.

54. The SPS Committee could pursue further work in clarifying the relationship between private standards and the SPS Agreement. This work could be based on specific written submissions from Members, which could be based on their own legal views or views developed by a private legal entity.

Alternatively, the Committee could instruct the Secretariat to seek a legal opinion on this question from a qualified private legal entity, for consideration by the Committee.

55. If Members reach consensus on a decision, for example clarifying the scope of Article 13, it could be forwarded to the Council for Trade in Goods and eventually to the General Council and/or the Ministerial Conference for formal adoption. This work could be undertaken in the context of a periodic review of the Agreement. In accordance with Article 12.7 of the SPS Agreement and the decision of the Fourth Session of the Ministerial Conference, Members are instructed to review the operation of the SPS Agreement at least once every four years.

56. Article 12.7 also states that "Where appropriate, the Committee may submit to the General Council for Trade in Goods proposals to amend the text of this Agreement having regard, *inter alia*, to the experience gained in its implementation.". Unlike an agreement on the clarification of a particular provision, any formal amendment of the text of the SPS Agreement would presumably need to be pursued in accordance with Article X of the Marrakesh Agreement Establishing the World Trade Organization.

57. Apart from any initiative through the SPS Committee, the extent of the applicability of the SPS Agreement to private SPS standards could also be the subject of deliberations of a dispute settlement panel established under the WTO's Dispute Settlement Understanding.

ANNEX

SPS Committee documents referring to private standards

Document Symbol	Date of distribution	Submitted by	Document title
G/SPS/W/249	23/12/2009	Argentina, Brazil, Paraguay, Uruguay	Private Standards
G/SPS/GEN/932/Rev.1	10/12/2009	WTO Secretariat	Effects of SPS-Related Private Standards – Compilation of Replies
G/SPS/GEN/967	20/10/2009	Switzerland	Voluntary Standards
G/SPS/W/247	20/10/2009	WTO Secretariat	Possible Actions for the SPS Committee Regarding Private SPS Standards
G/SPS/W/246	30/09/2009	Argentina, Brazil, Paraguay, Uruguay	Legal Framework for private standards in the WTO
G/SPS/W/245	15/09/2009	Argentina, Brazil, Paraguay, Uruguay	Third Review of the SPS Agreement - Guidelines on the Implementation of Article 13 of the SPS Agreement
G/SPS/GEN/932	15/06/2009	WTO Secretariat	Effects of SPS-Related Private Standards - Descriptive Report
G/SPS/W/237	08/05/2009	WTO Secretariat	Review of the Operation and Implementation of the SPS Agreement
G/SPS/W/236	17/04/2009	India	Third Review of the WTO/SPS Agreement
G/SPS/GEN/911	16/03/2009	Belize	Private and Commercial Standards - Statement at the Meeting of 25 - 26 February 2009
G/SPS/W/232	08/12/2008	WTO Secretariat	Questionnaire on SPS-Related Private Standards
G/SPS/GEN/891	08/12/2008	WTO Secretariat	Research and Researchers on Private Standards
JOB(08)/97	25/09/2008	WTO Secretariat	Private Standards and Practical Actions for the SPS Committee - Compilation of responses to the questionnaire
G/SPS/W/230	25/09/2008	WTO Secretariat	Private Standards - Identifying Practical Actions for the SPS Committee - Summary of Responses
G/SPS/R/50	24/07/2008	WTO Secretariat	Report of the STDF Information Session on Private Standards (26 June 2008)
G/SPS/GEN/865	11/07/2008	WTO Secretariat	Documents and Other Information on Private Standards

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Job(08)/58	03/07/2008	WTO Secretariat	Private Standards - Identifying Practical Actions for the SPS Committee
G/SPS/W/225	18/06/2008	Uruguay	Terms of Reference for the Working Group on Private Standards
G/SPS/GEN/843	21/05/2008	Uruguay	Private Standards - Statement by Uruguay at the Meeting of 2 - 3 April 2008
G/SPS/GEN/822	25/02/2008	World Organization for Animal Health (OIE)	Considerations Relevant to Private Standards in the Field of Animal Health, Food Safety and Animal Welfare
G/SPS/GEN/802	09/10/2007	United Kingdom	Private Voluntary Standards within the WTO Multilateral Framework
G/SPS/GEN/792	05/07/2007	Ecuador	Private and Commercial Standards - Statement by Ecuador at the Meeting of 27 - 28 June 2007
JOB(07)/89/Rev.1	15/06/2007	United Nations Conference on Trade and Development (UNCTAD), World Trade Organization (WTO)	Joint UNCTAD/WTO Informal Information Session on Private Standards - Revision
G/SPS/GEN/761/Corr.1	09/03/2007	United Nations Conference on Trade and Development (UNCTAD)	Private Sector Standards and Developing Country Exports of Fresh Fruit and Vegetables - Communication from the United Nations Conference on Trade and Development (UNCTAD) - Corrigendum
G/SPS/GEN/766	28/02/2007	Saint Vincent and the Grenadines	Private Industry Standards
G/SPS/GEN/764	28/02/2007	Bahamas	Report by the Commonwealth of the Bahamas to the WTO-SPS Committee on Private Standards and the SPS Agreement : the Bahamas Experience
G/SPS/GEN/763	27/02/2007	Organization for Economic Co-operation and Development (OECD)	Private Voluntary Standards and Developing Country Market Access: Preliminary Results

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G/SPS/GEN/761	26/02/2007	United Nations Conference on Trade and Development (UNCTAD)	Private Sector Standards and Developing Country Exports of Fresh Fruit and Vegetables
G/SPS/GEN/760	26/02/2007	United Nations Conference on Trade and Development (UNCTAD)	Typology of Global Standards
G/SPS/GEN/750	16/02/2007	International Organization for Standardization (ISO)	Submission by the International Organization for Standardization (ISO) to the SPS Committee Meeting - 28 February and 1 March 2007
G/SPS/GEN/746	24/01/2007	WTO Secretariat	Private Standards and the SPS Agreement

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